



D. STAFFORD
& ASSOCIATES

Title IX Coordinator and Investigator Training Class

Presented by DSA Associates:

Cathy Cocks

Beth Devonshire

Adrienne Murray

Ann Todd

D. Stafford & Associates, LLC

179 Rehoboth Avenue, #1121

Rehoboth Beach, DE 19971

302-344-5809

Dolores@DStaffordandAssociates.com

www.dstaffordandassociates.com

©All rights reserved by DSA

(Limited permission is granted to each attendee of this class to make training materials available per the requirements outlined in the Title IX Regulations published on May 19, 2020)



Title IX Coordinator & Investigator Training

Online Course Agenda

11am-5pm EDT each day
Breaks: 1:00pm - 1:30pm; 3:30pm - 3:45pm

Day 1 - Understanding Title IX

- Module 1: Introductions and Definition of Terms
- Module 2: Title IX Overview
- Module 3: Clery for Title IX Practitioners
- Breakout room (if time)

Day 2 - Title IX Coordinator and Policy Development

- Review and Reflection
- Module 4: Policy Development
- Module 5: Title IX and Athletics
- Module 6: Campus-wide Education
- Breakout room (if time)

Day 3 - Process Considerations

- Review and Reflection
- Module 7: Consent and the Role of Alcohol and Other Drugs
- Module 8: Special Considerations
- Breakout room (if time)

Day 4 - Process Stages

- Review and Reflection
- Module 9: Intake and Supportive Measures
- Module 10: Evidence Collection and Investigatory Process
- Module 11: Interviewing
- Breakout room (if time)

Day 5 - Case Evaluation

- Review and Reflection
- Module 12: Credibility and Relevancy
- Module 13: Resolutions and Outcomes
- Final Activity



Copyright

These materials are copyright of D. Stafford & Associates, LLC © 2020 D. STAFFORD & ASSOCIATES. All rights reserved.

Any distribution or reproduction of part or all of the contents in any form is prohibited other than the following:

- *As required by 34 C.F.R. § 106.45(b)(1)(iii) and § 106.45(B)(10)(i)(D), this material in its entirety may be posted to the website of the institution in which you were associated with at the time in which you were enrolled in this training.*
- *Public inspection upon request.*

You may not, except with our express written permission, distribute or commercially exploit the content. Nor may you transmit it or store it in any other website or other form of electronic retrieval system.



Dolores Stafford, President & CEO



Ms. Stafford was the Chief of Police at The George Washington University in Washington, DC from 1992-2010. During her distinguished 26 year career in the law enforcement and security industry, she worked in Campus Law Enforcement for 23 years at Bucknell University, Butler University, and most recently, at the George Washington University, where she served as Chief of Police of a 176 member police department for 18 years. Chief Stafford retired from active law enforcement on May 5, 2010. She has a Bachelor's Degree in Criminal Justice from Mansfield University and has a Master's of Science Degree in Education from Bucknell University. Chief Stafford is a Certified Litigation Specialist.

As one of the nation's premier campus police chiefs, she is a much sought after speaker, consultant, educator, expert witness, and instructor on campus security, campus safety and law enforcement related issues and on compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (The Clery Act) and the security and safety requirements of the HEOA.

Chief Stafford has won numerous accolades for her 26 years of service in the law enforcement field. She won the "Breaking the Glass Ceiling" award in 2002 in honor of her ongoing contributions to improving the law enforcement profession. In 2004, Stafford was honored by the European Association for Campus Security for her expertise and achievements in campus security. Campus Safety Magazine awarded her their 1st Annual Campus Safety Director of the Year Award for 2006. In June 2008, Chief Stafford was presented with the Distinguished Young Alumni Award by her alma mater, Mansfield University in Pennsylvania.

She has been a member of the International Association of Campus Law Enforcement Administrators (IACLEA) since 1990 and she served on the Board of Directors from 2000-2005. She served as the Chair of the IACLEA Accreditation Commission from 2005-2008 and she served as the 45th President of the International Association of Campus Law Enforcement Administrators in 2003-2004, she was the first female to hold that office.

Chief Stafford has been a keynote speaker and has conducted presentations on the Clery Act for various organizations, including IACLEA, NACUBO, American Council on Education (ACE); the Stetson Law Conference, Security on Campus Inc, and other video/teleconference training companies.

She was a member of the IACLEA Government Relations Committee from 1995 to 2010 and was the Committee Chair from 1998 to 2000. Chief Stafford has testified at several congressional hearings, one at the request of the U.S. House of Representatives in July of 1997 and two at the request of the U.S. Senate in March of 1998 and July of 2015. Chief Stafford was selected to represent IACLEA as the primary negotiator during the 1999 and 2009 Negotiated Rule Making processes sponsored by the Department of



D. STAFFORD
& ASSOCIATES

P.O. Box 1121
Rehoboth Beach, DE 19971
Phone: (202) 438-5929
dolores@dstaffordandassociates.com

Education regarding the development of final rules for the implementation of the Clery Act. She is a nationally recognized expert on compliance with the Clery Act.

Chief Stafford has been a featured speaker in many other areas of security and safety for the American Council on Education (ACE); American Association of State Colleges and Universities (AASCU); National Association of Student Personnel Administrators (NASPA), the National Association of College and University Business Officers (NACUBO); University Risk Management and Insurance Association (URMIA); Stetson University College of Law; and the International Association of Campus Law Enforcement Administrators (IACLEA).

Chief Stafford led the GW Police Department as the agency became an internationally accredited law enforcement agency with the Commission of Law Enforcement Accreditation (CALEA) in March of 2006 and the agency was successfully reaccredited in March of 2009. The agency subsequently achieved accreditation with the International Association of Campus Law Enforcement Administrators in May of 2007. She was chosen to become an assessor for CALEA in March 2006 and she is currently an IACLEA assessor, and as such, she has completed numerous on site assessments for those organizations.

She has published more than a dozen articles in various professional journals and magazines. She was one of the lead authors of the International Association of Campus Law Enforcement Administrator's [Blueprint for Safer Campuses: An Overview of the Virginia Tech Tragedy and Implications for Campus Safety](#). This document, unveiled at a press conference sponsored by the Woodrow Wilson School at Princeton University on April 18, 2008, is a roadmap for campus safety and security. The Blueprint for Safer Campuses outlines the guiding principles for campus safety and security worldwide.



Catherine Cocks, Consultant **Student Affairs, Title IX, and Equity Compliance Services**



Ms. Cocks has been a higher education professional for over thirty years. Her work with D. Stafford & Associates focuses on Title IX investigations and training; assessment of student affairs policies, practices and services; and behavioral threat assessment. Cathy was the Director of Community Standards for the University of Connecticut for 14 years where managed the student conduct process, which included managing all Title IX cases involving student respondents and chaired the University's student threat assessment team. Prior to that, she held several positions within Residential Life at the University of Connecticut and Roger Williams University.

She is a faculty member for the Association for Student Conduct Administration's (ASCA) Donald D. Gehring Academy teaching on subjects such as ethics, governance, threat assessment, media relations, and higher education trends. She was an affiliated faculty

member for many years in the University of Connecticut's Higher Education and Student Affairs Master's program teaching "The Law, Ethics, and Decision-Making in Student Affairs."

Cathy has co-authored the "Philosophy of Student Conduct" chapter in the 2nd edition of "Student Conduct Practice" (2020) and was a member of the writing team for CAS Standards' Cross-functional Framework for Identifying and Responding to Behavioral Concerns.

Cathy is a Past President of ASCA. She has also served as a Circuit representative, co-chair of the Public Policy and Legislative Issues Committee, and as a member of the ASCA Expectations of Members Task Force. Cathy has served in a variety of leadership roles in NASPA Region I.

She was the 2015 recipient of ASCA's Donald D. Gehring Award. She is a past recipient of the NASPA Region I Mid-Level Student Affairs Professional Award and the NASPA Region I Continuous Service Award.

She earned her Master's degree in Higher Education Administration from the University of Connecticut and Bachelor's degree in Communications/Media from Fitchburg State University.



Beth Devonshire, Consultant **Equity Compliance and Title IX/Civil Rights Training**



Beth Devonshire, Esq., has been an Associate with DSA since 2012 and she became a full-time consultant in August of 2018. She was the Associate Dean of Students at UMass Boston from November 2016 to July 2018. In that role, Beth administered the student conduct system, chaired the CARE and BIT Teams, served as the Deputy Title IX Coordinator, oversaw the U-Access (an office dedicated to assisting students who are dealing with a multitude of issues such as food insecurity, homelessness, emancipation from foster care, and chronic poverty), and acted as a liaison with the various constituencies around the University. Additionally, Beth was responsible drafting the policies and procedures related to students. Prior to that, Beth was the Director of Student Conduct at Bridgewater State University and the Director of Community Standards Stonehill College. Before beginning her career in Higher Education, Beth served as a clerk for the Justices of the Superior

Court, and in various positions for the Massachusetts House of Representatives. Beth has also presented extensively on Title IX including presentations to Colleges, State Wide Organizations, Regional Conferences, and at the OCR Title IX Conference in March of 2011.

Additionally, Beth has given multiple presentations on other legislation and legal issues effecting higher education, including FERPA, Clery and Alcohol and Other Drug Prevention. Beth is the former National Knowledge Community Public Policy Liaison for NASPA, and also the former Massachusetts Public Policy Liaison for MA NASPA. Beth also served as the Director of the Legislative Committee for The Association for Student Conduct Administrators (ASCA) for two years. In those roles, Beth was charged with keeping abreast of proposed and passed legislation and cases impacting higher education and communicating those changes to the membership.

Before beginning her career in Higher Education, Beth served as a clerk for the Justices of the Superior Court from 2006-2007. Prior to that, Beth worked at the Massachusetts State House as Deputy Attorney for House Ways and Means, Chief of Staff for the Committee on Election Laws and as a Researcher for the Committee on Local Affairs.

Devonshire currently serves as an Associate for D. Stafford & Associates, a highly reputable consulting firm specializing in delivering on organizational, physical security, vulnerability and arming assessments; Clery



D. STAFFORD
& ASSOCIATES

P.O. Box 1121
Rehoboth Beach, DE 19971
Phone: (202) 438-5929
dolores@dstaffordandassociates.com

Act compliance audits; assessments of Title IX compliance; Behavioral Intervention Team and Student Conduct Assessments and Training; and a host of other services related to security, safety and compliance for institutions of higher education.



Adrienne Meador Murray, Executive Director of **Training and Compliance Activities**



Adrienne Meador Murray began her career in municipal law enforcement as a civilian employee with the City of Richmond Police Department (Virginia). She graduated from the Virginia Commonwealth University Police Training Academy and began her career as a sworn police officer for the University of Richmond (UR) Police Department (Virginia). At UR, Murray progressed through the ranks from a night shift patrol officer to Operations Lieutenant (overseeing criminal investigations, crime prevention and patrol) over the span of a decade before becoming the Chief of Police at Davidson College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.). In January 2014, Murray joined the National Association of Clery Compliance Officers & Professionals (NACCOP) and D. Stafford & Associates where she currently serves as Executive Director of Training and Compliance Activities after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012.

As the Executive Director, Equity Compliance and Civil Rights Services, Murray builds on her 17-year career in law enforcement in which she became a nationally recognized expert in the field of best practice postsecondary institutional response to the sexual victimization of college women in the United States and in Canada. She is also a trained civil rights investigator and is well respected throughout the country for her ability to aid institutions in understating how to do best practice criminal and civil rights investigations concurrently. She is well known for her work in having provided support, advocacy and criminal investigative services for victims of sexual assault, stalking and intimate partner violence and is a sought-out speaker and investigator. She has expertise in the construction of best practice law enforcement standard operating procedures and training police officers to respond in best practice and trauma-informed ways to victims of sexual assault and intimate partner violence. In her current role, Murray coordinates curriculum development and instruction for national classes, including basic and advanced sexual misconduct investigation classes; an investigation of dating violence, domestic violence and stalking class; and a Title IX Coordinator/Investigator class offered through D. Stafford & Associates. To date, Murray has trained more than 3,500 criminal and civil rights investigators throughout the U.S.

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based



D. STAFFORD
& ASSOCIATES

P.O. Box 1121
Rehoboth Beach, DE 19971
Phone: (202) 438-5929
dolores@dstaffordandassociates.com

trainings pertaining to the resolution of sexual misconduct offenses on college and university campuses. Murray frequently presents at regional and national conferences on topics such as the *Sexual Victimization of College Women*, *Understanding Consent and Incapacitation*, and *Responding to Sexual Assault on Campus: Clery Act and Title IX Implications*. Murray also conducts provincially specific sexual misconduct trainings throughout Canada.

Murray is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management and of New England College, where she received her Master's Degree in Campus Public Safety Administration. Murray is also a graduate of the 235th session of the prestigious FBI National Academy where she was awarded a graduate certificate in Criminal Justice from the University of Virginia. She has authored numerous journal articles.



Ann Todd, Consultant

Equity Compliance and Civil Rights Investigations



Ann Todd, Esq is a seasoned civil rights investigator in higher education for D. Stafford & Associates (DSA). Ms. Todd is a graduate of Davidson College with a degree in psychology and holds a JD from the University of Nebraska. Prior to joining DSA, she practiced law in Charlotte, NC, specializing in employment and civil rights and worked for a number of non-profit organizations. She returned to her alma mater (Davidson College) in 2008 and worked there through March of 2016 serving as the Assistant Director of Human Resources with the responsibility of managing employee relations and the learning and development function.

Ms. Todd joined the DSA in 2015 and currently serves as the Consultant, Equity Compliance and Civil Rights Investigations. She is the Senior Investigator for the DSA Title IX Investigation Team. She conducts external investigations on behalf of colleges and universities, specializing in investigating student allegations of sex discrimination, sexual assault, intimate partner violence, and stalking. Additionally, she brings a strong Human Resources

background to investigating a range of employee misconduct—from performance issues to discrimination.

In addition to conducting investigations, Ms. Todd is a frequent speaker and consultant on Title IX investigations, conducting 20-30 courses every year on best practices for investigating sex discrimination and sex crimes on campus. She works with schools to draft policies and processes that provide equity and fairness to all parties involved and is adept at facilitating discussions with institutions to ensure the end product represents the values of the campus community.

Ms. Todd is a member of the NC Bar and a Certified Clery Compliance Officer through the National Association of Clery Compliance Officers and Professionals (NACCOP). She is also a certified 360 facilitator through the Center for Creative Leadership. She lives in Davidson, NC where she volunteers on a number of local and town boards.

INVESTIGATION CLASS ACRONYMS

- ASR:** Annual Security Report (often used as a reference to the Annual Security Report and/or the Annual Security and Fire Safety Report) that must be published by each institution of higher education.
- CSA:** Campus Security Authority—Individuals on each campus who have been identified by the Department of Education as persons who are required to report crimes that they become aware of to the Reporting Structure at each institution.
- DCL:** Dear Colleague Letter—this is a formal name of the method of communication from the Department of Education to college campuses. It is like naming their official “memo” to campuses.
- FERPA:** Family Educational Rights and Privacy Act—governs the confidentiality of student records.
- FNE:** Forensic Nurse Examiners
- GO:** General Order—some departments describe their operating procedures as general orders
- HEOA:** Higher Education Opportunity Act—the broader law that contains the Clery Act language and the fire safety and missing person language that is in the law but not contained within the “Clery Act” portion of the law.
- HIPAA:** Health Insurance and Privacy and Portability Act—governs privacy of medical records.
- MOU:** Memorandum of Understanding—an official agreement developed between agencies.
- NIBRS:** National Incident-Based Reporting System. 1 of 2 crime reporting systems developed by the FBI, but not the system that you are required to use for Clery Reporting—the only portion of this system that is used for Clery Act purposes are the 4 forcible and 2 non-forcible sex offense definitions.
- OCR:** Office of Civil Rights—the unit of the Department of Education that oversees Title IX Compliance.
- PD:** Police Department
- PS:** Public Safety
- PNG:** Persona-non-Grata—process used by some campuses not keep students from entering certain areas of the campus or the entire campus (administrative process) versus legal bar notice or trespass warning.
- SACC:** Sexual Assault Crisis Center, also known as Women’s Center.
- SANE:** Sexual Assault Nurse Examiner

SART: Sexual Assault Response Team

SOP: Standard Operating Procedures—some departments describe their operating procedures as Standard Operating Procedures. Some call them General Orders, etc...

SWA: Senior Women's Administrator (Athletics)

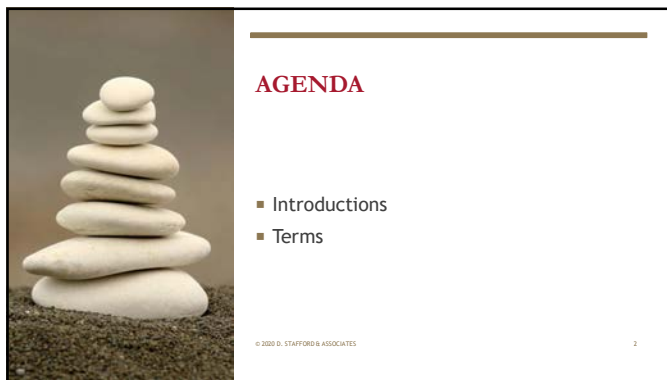
TWN: Timely Warning Notice

UCR: Uniformed Crime Report. This is 1 of 2 crime statistics reporting systems developed by the FBI. Institutions are required to use UCR Standards for counting and classifying crimes for reporting the Clery statistics.

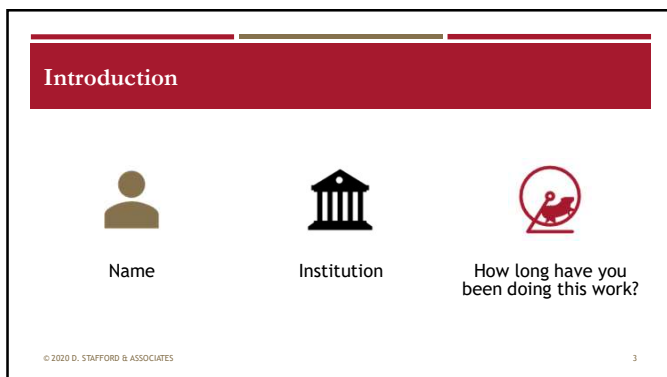
VAWA: Violence Against Women Act



1



2



3

Attorneys



- Not your attorney
- Consult with YOUR legal counsel

© 2020 D. STAFFORD & ASSOCIATES

4

4

The Laws

- **Title VII** of the Civil Rights Act of 1964
- **Jeanne Clery** Disclosure of Campus Security Policy and Campus Crime Statistics Act (1990)
 - Violence Against Women Reauthorization Act of 2013
- **Title IX** of the Education Amendments of 1972

© 2020 D. STAFFORD & ASSOCIATES

5

5

Language

- **Civil Rights**
 - Complainant vs. respondent (must use for Title IX)
 - Accuser vs. accused
 - Reporting party vs. responding party
- **Criminal** (for purposes of concurrent investigations)
 - Victim vs. suspect/perpetrator

© 2020 D. STAFFORD & ASSOCIATES

6

6

Parties

- **Complainant**
 - An individual who is alleged to be the victim of conduct that could constitute sexual harassment
- **Respondent**
 - An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- **Witness**
 - Any individual who has direct knowledge of an incident

© 2020 D. STAFFORD & ASSOCIATES

7

7

Outcomes

- **Findings**
 - "Responsible" or "Not Responsible"
 - "In Violation" or "Not In Violation"
 - "Substantiated" or "Unsubstantiated"
 - "Founded" or "Unfounded"
- **Criminal Findings**
 - "Guilty" or "Not Guilty" (Innocent)

A False Report/False Allegation is not the same thing as a finding of "Not Responsible."

© 2020 D. STAFFORD & ASSOCIATES

8

8

Standard of Proof

- **Preponderance of the Evidence**

Based on the evidence presented, it is more likely than not that...
- **Clear & Convincing Evidence**

Based on the evidence presented, it is highly probable that ...
- **Evidence Beyond a Reasonable Doubt**

Highest level of proof which is used in criminal cases and therefore, not applicable.

© 2020 D. STAFFORD & ASSOCIATES

9

9

Umbrella Terms

- **Sexual harassment** is a form of sex discrimination prohibited by Title IX
- **Sexual assault** means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program. Defined under the Clery Act
- **Sexual misconduct** is a term often used in school policies to adequately describe the spectrum of unwanted behaviors

© 2020 D. STAFFORD & ASSOCIATES

10

10

Terminology

Androgynous	Asexual	Bisexual	Cisgender	Gay	Gender dysphoria	Gender expression
Gender-fluid	Gender identity	Gender non-conforming	Gender queer	Intersex	Lesbian	LGBTQ+
Non-binary	Outing	Pansexual	Queer	Questioning	Sexual orientation	Transgender

© 2020 D. STAFFORD & ASSOCIATES

11

11



© 2020 D. STAFFORD & ASSOCIATES

12

12



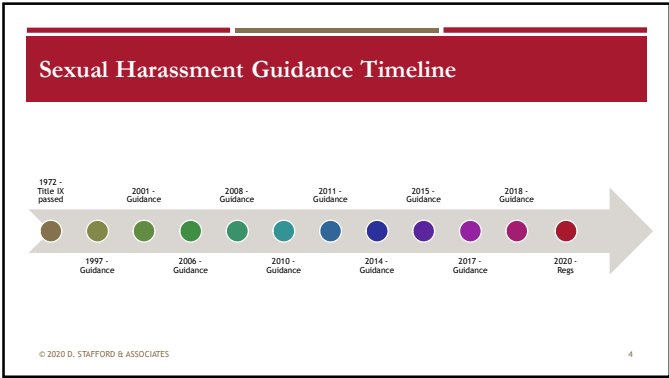
1



2



3



4



5

Law - Federal

Statute	Overview
Title IX 20 USCA § 1681	No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

© 2020 D. STAFFORD & ASSOCIATES

6

Law - Federal

Statute	Overview
Title IX 20 U.S. Code § 1681	Exceptions: ...3) religious organizations; 4) military services or merchant marines; 5) traditional single-sex institutions; 6) social fraternities or sororities and voluntary youth organizations; 7) Boy or girl conference; 8) Father-son/mother-daughter activities; 9) "beauty pageants."

© 2020 D. STAFFORD & ASSOCIATES

7

7

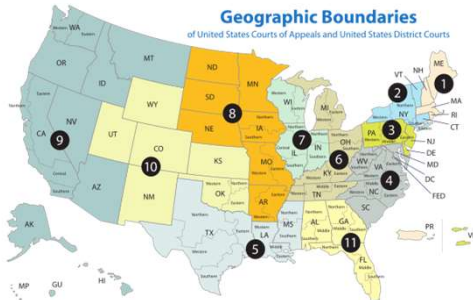
CASE LAW

© 2020 D. STAFFORD & ASSOCIATES

8

Geographic Boundaries

of United States Courts of Appeals and United States District Courts

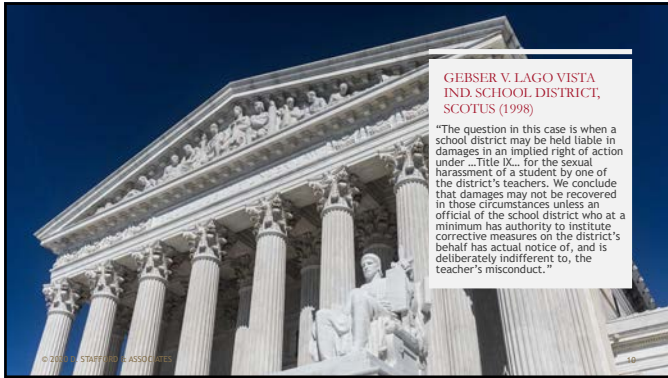


© 2020 D. STAFFORD & ASSOCIATES

https://www.uscourts.gov/files/default/files/u.s._federal_courts_circuit_map_1.pdf

9

9



**GEBSER V. LAGO VISTA
IND. SCHOOL DISTRICT,
SCOTUS (1998)**

"The question in this case is when a school district may be held liable in damages in an implied right of action under ...Title IX... for the sexual harassment of a student by one of the district's teachers. We conclude that damages may not be recovered in those circumstances unless an official of the school district who at a minimum has authority to institute corrective measures on the district's behalf has actual notice of, and is deliberately indifferent to, the teacher's misconduct."

10



**DAVIS V. MONROE COUNTY
BOARD OF EDUCATION,
SCOTUS (1999)**

"We consider here whether a private damages action may lie against the school board in cases of student-on-student harassment. We conclude that it may, but only where the funding recipient acts with deliberate indifference to known acts of harassment in its programs or activities. Moreover, we conclude that such an action will lie only for harassment that is so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit."

11



**JACKSON V. BIRMINGHAM
BOARD OF EDUCATION,
SCOTUS (2005)**

"We consider here whether the private right of action implied by Title IX encompasses claims of retaliation. We hold that it does where the funding recipient retaliates against an individual because he has complained about sex discrimination."

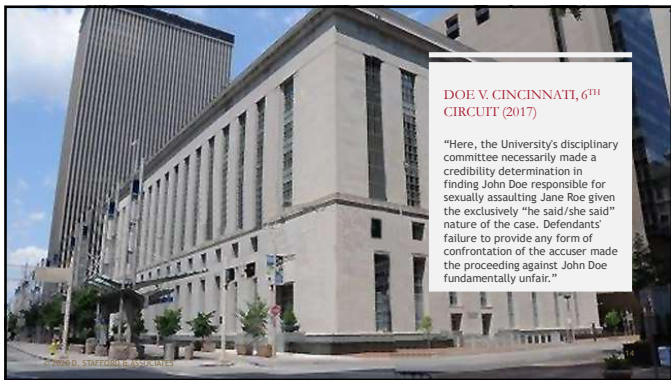
12



**FITZGERALD V.
BARNSTABLE SCHOOL
COMMITTEE, SCOTUS
(2009)**

"...Title IX was not meant to be an exclusive mechanism for addressing gender discrimination in schools, or a substitute for §1983 suits as a means of enforcing constitutional rights. Accordingly, we hold that §1983 suits based on the Equal Protection Clause remain available to plaintiffs alleging unconstitutional gender discrimination in schools."

13



**DOE V. CINCINNATI, 6TH
CIRCUIT (2017)**

"Here, the University's disciplinary committee necessarily made a credibility determination in finding John Doe responsible for sexually assaulting Jane Roe given the exclusively "he said/she said" nature of the case. Defendants' failure to provide any form of confrontation of the accuser made the proceeding against John Doe fundamentally unfair."

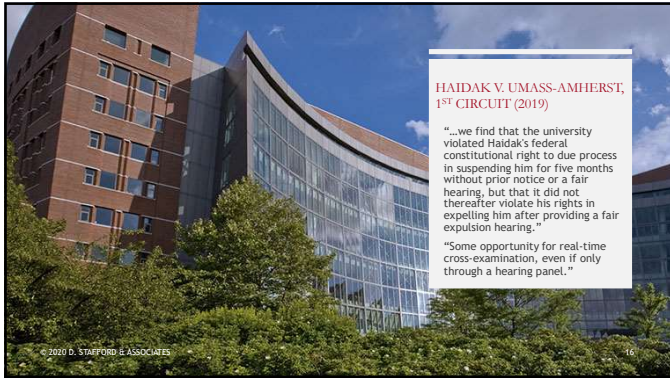
14



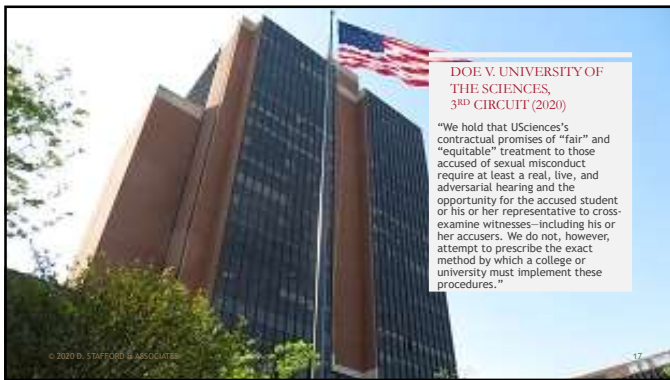
**DOE V. BAUM,
6TH CIRCUIT (2018)**

"...if a public university has to choose between competing narratives to resolve a case, the university must give the accused student or his agent an opportunity to cross-examine the accuser and adverse witnesses in the presence of a neutral fact-finder."

15



16



17



18

Interpreting Laws



Law



Regulations




Substantive guidance

© 2020 D. STAFFORD & ASSOCIATES


19

19


General Comments and Thoughts – 2020 Regulations




Applies to
Higher Ed and
K-12




Preamble



Technical
assistance



Implement
date of
August 14,
2020




Possible Delay

© 2020 D. STAFFORD & ASSOCIATES


20

20

§106.3 – Remedial Action



Fix it



No monetary damages

© 2020 D. STAFFORD & ASSOCIATES

21

21

§106.6 – Effect of Other Requirements and Preservation of Rights

Constitutional Rights

FERPA

Title VII

Parents and guardians


State and local laws


© 2020 D. STAFFORD & ASSOCIATES


22


22

§106.8(a) Designation of Coordinator


Title IX Coordinator


Notification of parties


Contact information


Reporting information

© 2020 D. STAFFORD & ASSOCIATES

23

23

§106.8(b) Dissemination of Policy


Notification that you do not discriminate


Title IX Coordinator contact information


Grievance procedure


United States

© 2020 D. STAFFORD & ASSOCIATES

24

24

§106.8(C) Adoption of Grievance Procedure

"grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30."

© 2020 D. STAFFORD & ASSOCIATES

25

25

Only applies to US

Use other policy

No Clery conflicts

§106.8(d)
Application
Outside of the
United States

© 2020 D. STAFFORD & ASSOCIATES

26

26

Submit in writing

Specific tenant

Not required

Raise any time

§106.12 –
Religious
Institutions

© 2020 D. STAFFORD & ASSOCIATES

27

27

§106.30 Definitions – Actual Knowledge

“Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient.”

© 2020 D. STAFFORD & ASSOCIATES

28

28

§106.30 Definitions – Actual Knowledge



Title IX
Coordinator



Official with
authority



Different
K-12
standard



Designation



Not same as
CSAs

© 2020 D. STAFFORD & ASSOCIATES

29

29

§106.30 Definitions – Complainant & Respondent

© 2020 D. STAFFORD & ASSOCIATES

30

- **Complainant**
 - “an individual who is alleged to be the victim of conduct that could constitute sexual harassment”
- **Respondent**
 - “an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment”

30

§106.30 Definitions – Formal Complaint

- "... a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment."
- At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed."
- "Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party."

© 2020 D. STAFFORD & ASSOCIATES

31

31

§106.30 Definitions – Formal Complaint



Signed formal
complaint



Title IX
Coordinator



Third parties



Anonymous
reports

© 2020 D. STAFFORD & ASSOCIATES

32

32

§106.30 Definitions - Sexual Harassment

Sexual
harassment
means
conduct on
the basis
of sex that
satisfies
one or
more of
the
following:


1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).


© 2020 D. STAFFORD & ASSOCIATES


33

33

PRONG 1: Quid Pro Quo

 Must be an employee (not volunteer, visitor, student)

 “This for that” harassment


 When favorable professional or educational treatment is conditioned on a sexual activity


© 2020 D. STAFFORD & ASSOCIATES


34

34

PRONG 2: Hostile Environment+ (The *Davis* Standard)

 No definition of consent required

 Not the same Title VII “hostile environment” or 2001 Guidance


 First Amendment protections

© 2020 D. STAFFORD & ASSOCIATES

35

35

PRONG 3: The VAWA Crimes


 Sexual Assault

Rape

Fondling


Incest

Statutory Rape

 Intimate Partner Violence

Dating Violence

Domestic Violence

 Stalking

© 2020 D. STAFFORD & ASSOCIATES

36

36

12

§106.30 Definitions – Supportive Measures

“Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.”

“Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment, or deter sexual harassment.”

© 2020 D. STAFFORD & ASSOCIATES

37

37

§106.30 Definitions – Supportive Measures



Non-disciplinary, non-punitive



Both parties



Academic, housing, and athletic impact



“Mutual restrictions on contact”

© 2020 D. STAFFORD & ASSOCIATES

38

38

§106.44 Recipient’s Response to Sexual Harassment; (a) General Response to Sexual Harassment

Deliberately
Indifferent

Educational
Program or
Activity

Equitable

Contact
Complainant

On-line

© 2020 D. STAFFORD & ASSOCIATES

39

39

§106.44 (c) Emergency Removal; (d) Administrative Leave



Emergency removal



Administrative leave

© 2020 D. STAFFORD & ASSOCIATES

40

40

§106.45 Grievance Process for Formal Complaints of Sexual Harassment (a) Discrimination

“A recipient’s treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX.”

© 2020 D. STAFFORD & ASSOCIATES

41

41

§106.45 Grievance Process for Formal Complaints of Sexual Harassment, (b) Grievance Process(1) Basic Requirement

Equitable

Objective
Evaluations

Impartiality
and Training

Presumption
of Not
Responsible

Prompt Time
Frames

© 2020 D. STAFFORD & ASSOCIATES

42

42

§106.45 Grievance Process for Formal Complaints of Sexual Harassment, (b) Grievance Process, (1) Basic Requirements

Range of sanctions and remedies

Standard of evidence

Appeal


Supportive measures


Respect privilege


© 2020 D. STAFFORD & ASSOCIATES
43

43

§106.45 Grievance Process for Formal Complaints of Sexual Harassment, (b) Grievance Process, (2) Notice







Notice requirements

Additional allegations

Clarifications

© 2020 D. STAFFORD & ASSOCIATES
44

44

§106.45(b)(3) Dismissal of a Formal Complaint

Must dismiss:

May dismiss:

- Behavior does not constitute sexual harassment
- Did not occur in educational program or activity, not in the United States

- Complainant withdraws formal complaint
- Respondent no longer enrolled/employed
- Insufficient evidence

© 2020 D. STAFFORD & ASSOCIATES
45

45

§106.45(b)(4) Consolidation of a Formal Complaint

Multiple respondents

More than one complainant against one or more respondent

One party against other party

© 2020 D. STAFFORD & ASSOCIATES

46

46

Burden of proof

Witnesses and facts

No restriction on discussing allegations

Advisor

Notice

Inspect evidence

Investigative report


§106.45
Grievance
Process for
Formal
Complaints of
Sexual
Harassment,
(b) Grievance
Process, (5)
Investigation


© 2020 D. STAFFORD & ASSOCIATES

47

47

§106.45(b)(6) Hearings





Live hearing

Cross-examination

© 2020 D. STAFFORD & ASSOCIATES

48

48

§106.45(b)(6) Hearings

Advisor

Relevancy

Participation consequences

“Physically present”

© 2020 D. STAFFORD & ASSOCIATES

49

49

§106.45(b)(7) Determination Regarding Responsibility

Allegations

Procedural steps

Findings of fact

Conclusion/application

Rationale

Appeal procedures

© 2020 D. STAFFORD & ASSOCIATES

50

50

Sanctions and Remedies



Sanctions



Remedies

© 2020 D. STAFFORD & ASSOCIATES

51

51

§106.45(b)(8) Appeals

MUST have

- Procedure
- New evidence
- Conflict or bias that impacted outcome

Additional grounds permitted

Decision-maker can have no other role

Reasonably prompt time frame

© 2020 D. STAFFORD & ASSOCIATES

52

52

§106.45(b)(8) Appeals

Notification of appeal

Equal opportunity to respond

Written outcome - rationale

© 2020 D. STAFFORD & ASSOCIATES


53

53


§106.45(b)(9) Informal Resolution



Notice



Voluntary



Not allowed for Employee/student

© 2020 D. STAFFORD & ASSOCIATES

54

54

§106.45(b)(10) Recordkeeping (seven years)


Case Materials


Training materials

© 2020 D. STAFFORD & ASSOCIATES

55

55

Intimidation, threats, coercions,
discrimination

May use same grievance procedure

1st Amendment

False reports

§106.71
Retaliation
Prohibited

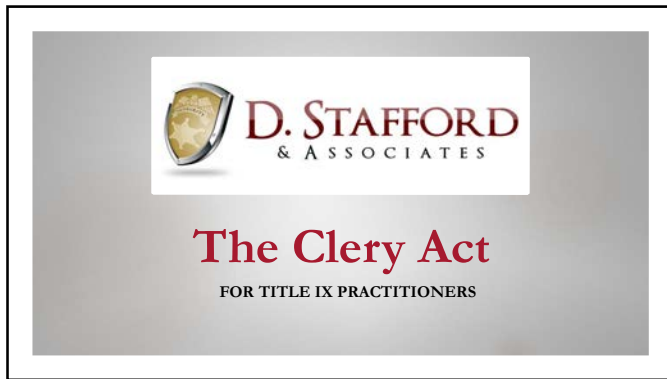
© 2020 D. STAFFORD & ASSOCIATES

56

56



57



1

Agenda

- The Clery Act (with Title IX Intersections)
 - CSAs
 - Crimes
 - Geography
 - Campus Alerts
- VAWA
 - Amendments/Definitions
 - Procedural Requirements
 - Education Requirements

© 2020 D. STAFFORD & ASSOCIATES 2

2

Key Requirements of the Clery Act

-  Collect, Classify, and Count Crime Reports/Statistics
-  Public Disclosures
-  Publish Annual Security Report
-  Submit Crime Statistics to the Department

© 2020 D. STAFFORD & ASSOCIATES 3

3

Key Requirements (part 2)

© 2020 D. STAFFORD & ASSOCIATES

Provide Educational Programs and Campaigns on Dating/Domestic Violence, Sexual Assault, & Stalking

Have Procedures for Institutional Disciplinary Action for DV/DV/SA/S

If you have a campus police or security department: Publish Daily Crime Log

If you have residential facilities: Fire Log, Fire Safety Report, Missing Persons Procedures

4

COUNTING CRIME STATISTICS

© 2020 D. STAFFORD & ASSOCIATES

Gettysburg College

2019 - 2020 Academic Year Annual Security and Fire Safety Report

Prepared by the Department of Public Safety
Includes Crime Statistics for Calendar Years (CYs) 2016, 2017 & 2018

5

Three Part Test

1. Was the crime reported to a Campus Security Authority?
2. Is the crime a Clery Act crime?
3. Did the crime occur on or within the institution's reportable Clery geography?

6

Campus Security Authorities (CSA)

Campus police/security

Security responsibility

Individual or organization where crimes should be reported

An official with responsibility for student and campus activities

© 2020 D. STAFFORD & ASSOCIATES 7

7

Who is never a CSA?



Professional Counselors

Licensed, professional counselors. Includes individuals who are unlicensed and uncertified but acting under the supervision of an exempt counselor, e.g., a graduate student doing an internship.



Pastoral Counselors

NOTE: These positions are exempt only when acting within the scope of their duties as a counselor or trainee.

© 2020 D. STAFFORD & ASSOCIATES 8

8

REPORT



CSA FUNCTION

A CSA'S FUNCTION IS TO REPORT ALLEGATIONS OF CLERY ACT CRIMES MADE IN GOOD FAITH.

© 2020 D. STAFFORD & ASSOCIATES 9

9

Reporting Considerations

Title IX—"Officials with authority to institute corrective action on behalf of the institution"

Clery Act--CSAs

- Title IX Coordinator
- Official(s) who can institute corrective measures on behalf of the school
- Any other person who is designated by the institution as a person who shall report
- Campus police department responsible for security
- individuals to whom crimes should be reported
- "officials with significant responsibility for student and campus activities"
- Local law enforcement



This Photo by Unknown Author is licensed under CC BY-SA-NC

10

10

COUNTING CRIME STATISTICS: CLERY CRIMES

© 2020 D. STAFFORD & ASSOCIATES

(See the Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act)

Calendar Years (CY) 2016 – 2018

Criminal Offenses or Primary Crimes (Crimes Reported By Hierarchy)	Calendar Year	On Campus (Including Residential)	Non-Campus	Public Property	Totals	On Campus (Residential Only)
Murder & Non-Negligent Manslaughter	2016	0	0	0	0	0
	2017	0	0	0	0	0
	2018	0	0	0	0	0
Manslaughter by Negligence	2016	0	0	0	0	0
	2017	0	0	0	0	0
	2018	0	0	0	0	0
Rape	2016	11	2	0	13	11
	2017	25	2	0	27	18
	2018	14	2	0	16	10
Fondling	2016	11	1	0	12	8
	2017	4	1	0	5	4
	2018	0	0	0	0	0
Incest	2016	0	0	0	0	0
	2017	0	0	0	0	0
	2018	0	0	0	0	0
Statutory Rape	2016	0	0	0	0	0
	2017	0	0	0	0	0
	2018	0	0	0	0	0
Robbery	2016	0	0	0	0	0
	2017	0	0	0	0	0
	2018	0	0	0	0	0
Aggravated Assault	2016	9	0	0	9	9
	2017	9	0	0	9	9
	2018	32	9	0	41	33
Burglary	2016	7	1	0	8	7
	2017	3	1	0	4	3
	2018	0	0	0	0	0
Motor Vehicle Theft	2016	0	0	0	0	0
	2017	0	0	0	0	0
	2018	0	0	0	0	0

11

11

Three Part Test

1. Was the crime reported to a Campus Security Authority?
2. Is the crime a Clery Act crime?
3. Did the crime occur on or within the institution's reportable Clery geography?

© 2020 D. STAFFORD & ASSOCIATES

12

12

Clery Crime Categories

- Primary Crimes
- Hate Crimes
- Arrests and Referrals for Drug, Liquor and Weapon Violations
- Dating Violence, Domestic Violence and Stalking Incidents (VAWA Crimes)

© 2020 D. STAFFORD & ASSOCIATES 13

13

Clery Reportable Crime Categories

- Murder/Non-negligent Manslaughter*
- Negligent Manslaughter*
- Sex Offenses* (Rape/Fondling)
- Sex Offenses* (Incest/SR)
- Robbery*
- Aggravated Assault*
- Burglary*
- Motor Vehicle Theft*
- Arson*
- Arrests and Disciplinary Referrals for:
 - Liquor
 - Drugs
 - Weapons
- Domestic Violence
- Dating Violence
- Stalking
- Hate Crimes for *, plus
 - Larceny-Theft
 - Simple Assault
 - Intimidation
 - Vandalism

© 2020 D. STAFFORD & ASSOCIATES 14

14

Counting Clery Crimes

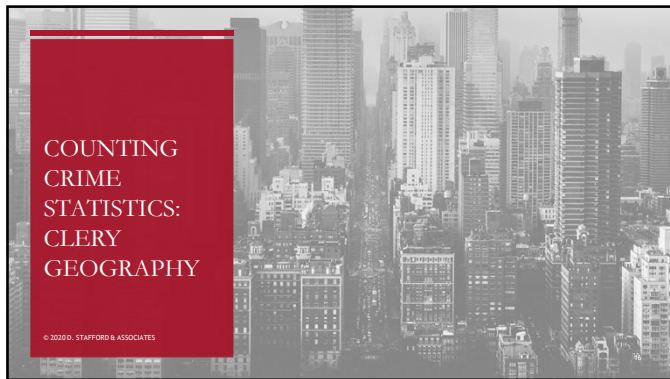
If a crime is reported (and otherwise meets the three-part test) it is counted.

- Includes attempts
- Includes cases a DA would reject
- Includes cases of "not responsible"
- Does NOT include every conduct code violation

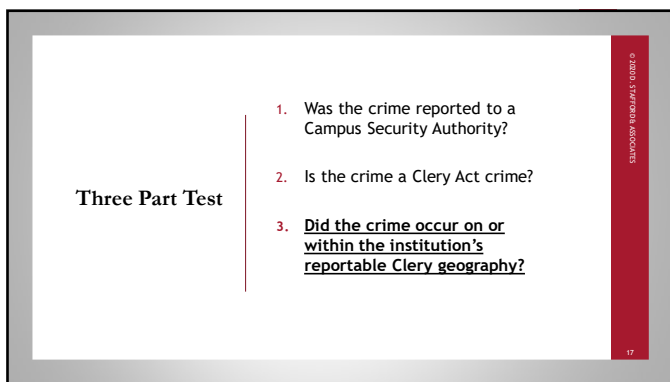
It is not the word used but the facts of the case that determine how it gets counted

© 2020 D. STAFFORD & ASSOCIATES 15

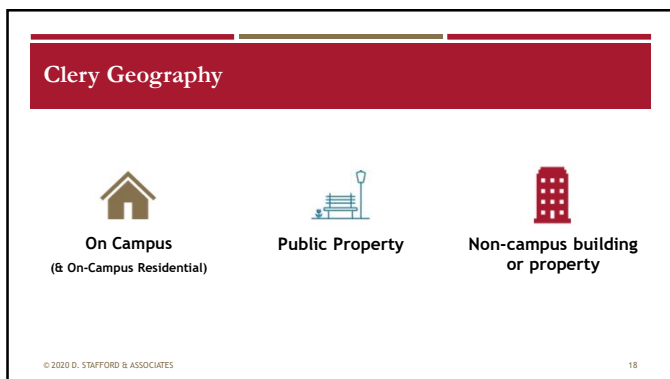
15



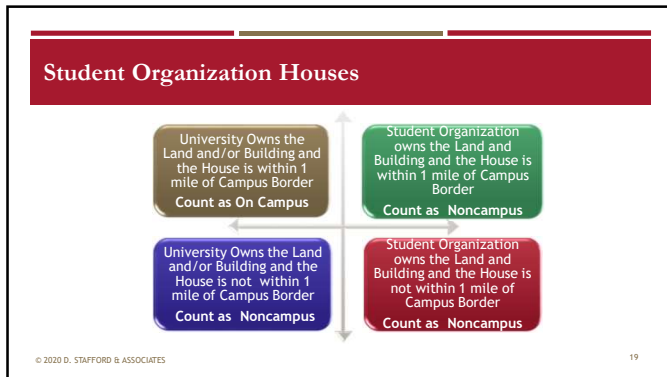
16




17



18



19



Impact of Location & Party

- **2020 Title IX Regulations**
 - Conduct that occurs within its 'education program or activity'
 - Against a person within the United States
 - School must have exercised substantial control over both the respondent and the context in which the sexual harassment occurs
 - Also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution
- **Clery Act**
 - On campus; on public property within or immediately adjacent to and accessible from the campus; in or on non-campus buildings or property that your institution (or a recognized student organization) owns/controls
 - May include some study abroad programs
 - For VAWA crimes, must use processes even if occurs off-campus

© 2020 D. STAFFORD & ASSOCIATES 20

20

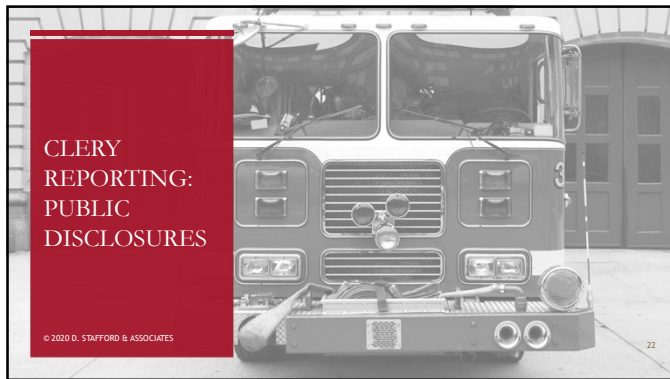
Geography versus Jurisdiction

Geography is the defined physical area in which the Clery Act attaches. A crime **MUST** occur within the institution's physical Clery geography to be captured.

Jurisdiction generally describes authority to apply law to a certain area and/or to certain persons. For example, under Title IX, an act may not physically occur on campus, but if it occurs within certain programs between certain people, Title IX attaches.

© 2020 D. STAFFORD & ASSOCIATES 21

21



22

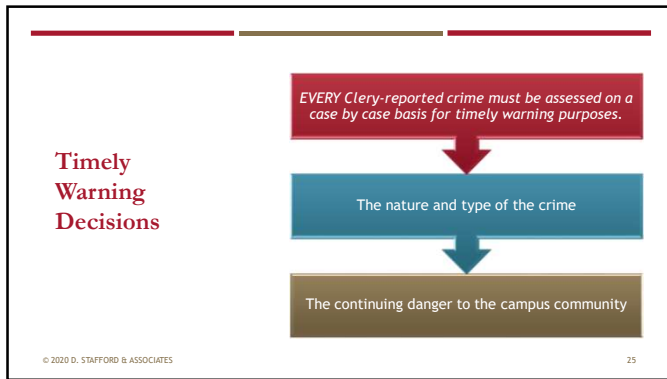


23

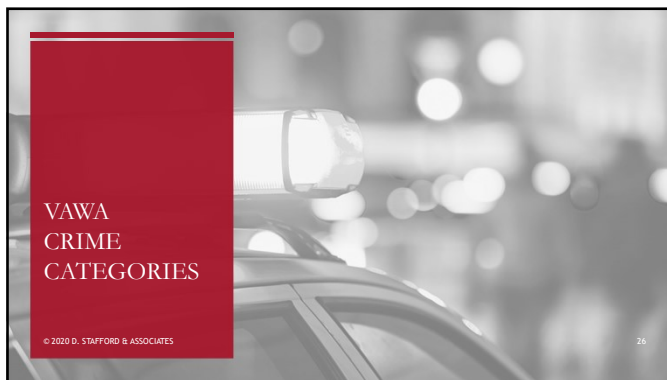
Timely Warning/Emergency Notification		
	TIMELY WARNING (TWN)	EMERGENCY NOTIFICATION (EN)
Legal Standard:	Serious or continuing threat	Immediate threat to health and safety
Circumstance:	Clery-reportable crimes that have been reported (occurred in past)	Clery-reportable crimes as well as other types of emergencies (happening right now or about to happen)
Audience:	Community-wide	Can send to a segment of the community, if appropriate
When Issued:	As soon as pertinent information is available	Upon confirmation of emergency (when possible)
Follow-Up:	Not Required	Required

© 2020 D. STAFFORD & ASSOCIATES 24

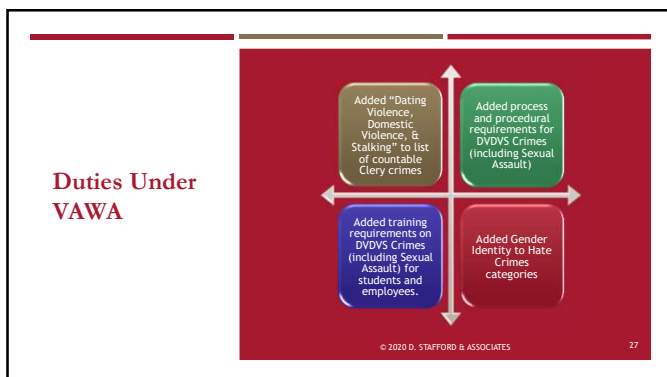
24



25



26



27

Clery Crime Categories

- Primary Crimes
- Hate Crimes
- Arrests and Referrals for Drug, Liquor and Weapon Violations
- Dating Violence, Domestic Violence and Stalking Incidents (VAWA Crimes)

© 2020 D. STAFFORD & ASSOCIATES 28

28

Rape

Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This definition includes any gender of victim or respondent.

© 2020 D. STAFFORD & ASSOCIATES 29

29

Fondling

The touching of the private body parts of another person for the purpose of sexual gratification without consent of the victim, including instances where the victim is incapable of giving consent b/c of his/her age or temporary or permanent mental or physical incapacity.

© 2020 D. STAFFORD & ASSOCIATES 30

30

Consent

The Clery Act does not require any particular definition of consent

ASR must include definition of consent as defined by jurisdiction (state law)

Institution should have a definition in their institutional sexual misconduct policy

© 2020 D. STAFFORD & ASSOCIATES 31

31

“Non-Forcible” Sex Offenses

STATUTORY RAPE
Non-forcible sexual intercourse with a person who is under the statutory age of consent

INCEST
Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

© 2020 D. STAFFORD & ASSOCIATES 32

32

Domestic Violence

A felony or misdemeanor crime of violence committed by:

- a current or former spouse or intimate partner of the victim
- by a person with whom the victim shares a child in common
- by a person who is cohabitating with, or has cohabitated with the victim as a spouse or intimate partner
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred OR
- by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred

© 2020 D. STAFFORD & ASSOCIATES 33

33

What is a “Crime of Violence?”

- According to Section 16 of title 18 of the United States Code, the term “crime of violence” means
 - an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
 - any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

34

© 2020 D. STAFFORD & ASSOCIATES

34

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

- i. The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- ii. For the purposes of this definition—
 - A. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - B. Dating violence does not include acts covered under the definition of domestic violence.

© 2020 D. STAFFORD & ASSOCIATES

35

35

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- a) Fear for the person's safety or the safety of others; or
- b) Suffer substantial emotional distress

© 2020 D. STAFFORD & ASSOCIATES

36

36

Stalking (related definitions)

- a) **Course of conduct** means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device, or means--follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.
- b) **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.
- c) **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

© 2020 D. STAFFORD & ASSOCIATES

37

37

Discussion: What's Missing?

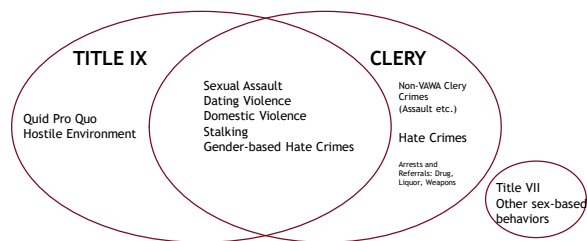
- Are there sex-based offenses that are not included here but should be included in our conduct codes?
- Are there other behaviors that are sex-based that are not included here but should be included in our conduct codes?

© 2020 D. STAFFORD & ASSOCIATES

38

38

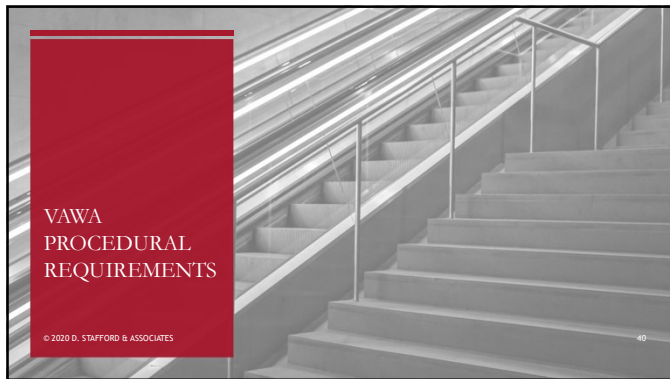
Overlapping Conduct Violations



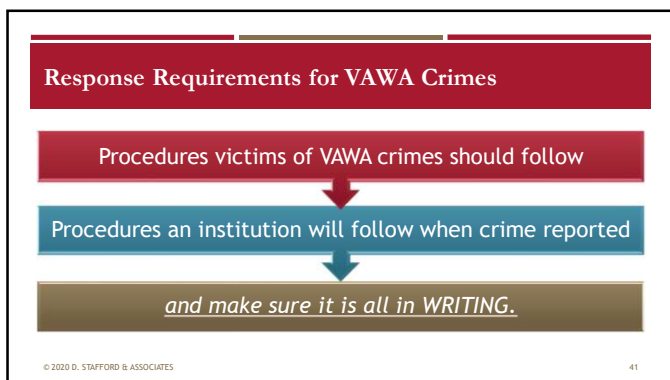
© 2020 D. STAFFORD & ASSOCIATES

39

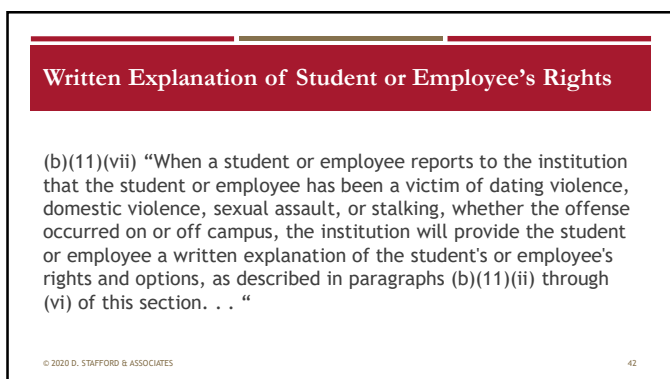
39



40



41



42

Written Explanation of Rights and Options



© 2020 D. STAFFORD & ASSOCIATES

1. **The importance of preserving evidence** that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order
 - Not required but recommended: Where to obtain forensic exams, contact info, does not require police report and can have exam now, decide later
2. **How and to whom the alleged offense should be reported**
 - List any person or organization that can assist the victim
 - Recommended: Also include community organizations

43

43

Written Explanation of Rights and Options



© 2020 D. STAFFORD & ASSOCIATES

3. **Notification of the victim's option to**
 - Notify proper law enforcement authorities, including on-campus and local police;
 - Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
 - Decline to notify such authorities
4. **The rights of victims and the institution's responsibilities for**
 - orders of protection,
 - "no contact" orders,
 - restraining orders, or
 - similar lawful orders issued by a criminal, civil, tribal, or institutional

44

44

Written Explanation of Rights and Options




© 2020 D. STAFFORD & ASSOCIATES

5. **To students AND employees about existing:**
 - Counseling
 - Health
 - Mental Health
 - Victim Advocacy
 - Legal Assistance
 - Visa and Immigration Assistance
 - Student Financial Aid
 - Other services available for victims
6. **Options for, available assistance in, and how to request changes to (if requested and reasonably available)**
 - Academic, Living, Transportation, Working

45

45

Written Explanation of Rights and Options



7. Confidentiality

- Publicly available recordkeeping has no personally identifying information about the victim. (not required for respondent but best practice in most cases)
- Accommodations and protective measures are confidential (to the extent they can be without impairing the ability to provide them)

8. Disciplinary Procedures

- An explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as required by paragraph (k)

© 2020 D. STAFFORD & ASSOCIATES 46

46

Response to “Actual Knowledge”


Response to “Actual Knowledge”

- 2020 Title IX Regulations**
 - Contact the Complainant
 - Offer and/or implement supportive measures
 - Explain the process for filing a formal complaint
- Clery Act**
 - Written explanation of victim's rights and options including:
 - procedures to follow (preserve evidence, where report)
 - information about confidentiality
 - existing counseling, mental health, assistance etc.
 - access to law enforcement and no contacts etc.
 - changes to academic, living, transportation and working situations, institutional procedures
 - process for Institutional disciplinary process
 - Assess for Timely Warning Notice OR Emergency Notification

© 2020 D. STAFFORD & ASSOCIATES 47

47

Clery Requirements for Disciplinary Proceedings



- Anticipated timelines (“reasonably prompt”)
- Decision-making process
- How to and options for filing a school complaint (with contact info)
- How school determines which process to use
- Who makes decisions
- Include employee procedures
- Use procedures regardless of Clery geography

© 2020 D. STAFFORD & ASSOCIATES 48

48

Advisors under Clery



Advisor Requirement

- Advisor - individual who provides support, guidance, or advice
- Do not limit the choice of advisor
- May restrict participation if apply equally
- Provide timely notice of meetings
- May form a pool of people
- Can remove a disruptive advisor
- Could allow them to serve as a proxy
- Don't have to delay for them (but encouraged to be reasonable)

With Photo by Unknown Author & licensed under CC BY-SA/NC
© 2020 D. STAFFORD & ASSOCIATES

49

49

Advisor Requirement



© 2020 D. STAFFORD & ASSOCIATES

50

50

Standard of Evidence



2020 Title IX Regulations

- Either the preponderance of the evidence standard or the clear and convincing standard but must be the same for all sexual misconduct

Clery Act

- Any standard of evidence ... must include in policy
- Would not prohibit using different standards for different groups

© 2020 D. STAFFORD & ASSOCIATES

51

51

2020 Title IX Regulations

- Can offer, but may not require
- Not allowed for “employee on student” sexual harassment
- Party may withdraw up to a point

Clery Act

- Written information about procedures the institution will follow for VAWA offense (does not differentiate between formal vs informal)

Informal Resolutions

© 2020 D. STAFFORD & ASSOCIATES 52

52

Formal Complaint Rights

2020 Title IX Regulations

- Treat equitably with goal to restore/preserve access to education; due process for respondent;
- Include presumption of not responsible;
- Include any discipline for false statements
- reasonably prompt time-frames*;
- Describe the range of sanctions;
- Describe range of supportive measures

Clery Act

- Prompt, fair, and impartial investigation and resolution
- Anticipated timeframes
- List all possible sanctions for each offense (employees and students)
- Consistent with policy and transparent
- Not required to list all protective measures

Formal Resolutions

© 2020 D. STAFFORD & ASSOCIATES 53

53

Formal (Live Hearing)



2020 Title IX Regulations

Requires live hearing with cross examination by advisor



Clery Act

Clery is silent regarding live hearing

Formal Resolutions

© 2020 D. STAFFORD & ASSOCIATES 54

54

Appeals

2020 Title IX Regulations	Clery Act
<ul style="list-style-type: none"> • Must offer both parties an appeal • Based on specific grounds 	<ul style="list-style-type: none"> • Not required (but must provide notice if allowed along with appeal procedures) • Simultaneous written decision describing result, sanction, any changes to the result, when it becomes final

© 2020 D. STAFFORD & ASSOCIATES 58

58

Recordkeeping

2020 Title IX Regulations	Clery Act
<ul style="list-style-type: none"> • 7 years 	<ul style="list-style-type: none"> • Retain all records used in compiling ASR for three years from the latest publication of the report to which they apply (in effect 7 years)

© 2020 D. STAFFORD & ASSOCIATES 59

59

VAWA Education Requirements

© 2020 D. STAFFORD & ASSOCIATES



60

60

Education and Prevention under Clery

- Annual training for conducting "officials" (Investigators, Adjudicators, Appeals)
- Primary Prevention and Awareness Programs for all incoming students and new employees
- Ongoing Prevention and Awareness Campaigns for ALL students and employees
- CSA Training and "Super" CSA Training

© 2020 D. STAFFORD & ASSOCIATES 61

61

Primary Prevention Best Practices

"Programming, initiatives, and strategies intended to stop dating violence...stalking... before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in a health and safe directions."


- Not required that all students take or attend (but mandate encouraged)
- Must show "good faith effort" to reach them with "active notification"
- Format and timeframe encouraging maximum attendance
- Equally important to prevent perpetration as it is to prevent victimization

© 2020 D. STAFFORD & ASSOCIATES 62

62

Primary Prevention & Awareness

"The institution's primary prevention and awareness programs for all incoming students and new employees, which must include..."



- Statement prohibiting dating DVDVSAS
- Definitions of DVDVSAS
- Definition of consent
- Safe and positive options for bystander intervention;
- Information on risk reduction

© 2020 D. STAFFORD & ASSOCIATES 63

63

Ongoing Prevention & Awareness

"Ongoing prevention and awareness campaigns for students and employees...must provide the same information as the primary awareness and prevention programs"



- Deeper dives
- Sustained over time
- Promote services
- Range of strategies/audiences
 - Social media, email, posters, ads
 - Take Back the Night
 - Sports teams, Greek, dorms
 - Student fairs or campus events
 - DV program for supervisors

© 2020 D. STAFFORD & ASSOCIATES

64

64

CSA Training (Recommendations, Not Requirements)



- Role of a CSA
- Provide Reporting materials
 - Map of Clery geography
 - Definitions of Clery crimes
 - Forms for documenting and reporting
- Importance of documentation
- Need for timely reporting
- "Super CSAs?"
- Personally Identifiable Information

© 2020 D. STAFFORD & ASSOCIATES

65

65



© 2020 D. STAFFORD & ASSOCIATES

66

66



1




Agenda

- Policy vs. Procedures
- Important considerations
- Policy sections
- Additional considerations

© 2020 D. STAFFORD & ASSOCIATES

2




POLICY VS. PROCEDURES

© 2020 D. STAFFORD & ASSOCIATES


3

Policy vs Procedure




Policy

What are the rules, why they exist, when they apply



Internal Procedures

Step by step actions for the staff



External Process Information

Information through a notice letter or information sheet explaining the process and steps for the involved parties

© 2020 D. STAFFORD & ASSOCIATES

4

4

Example

Policy statement

- Prior to completion of the investigative report, the Respondent and Complainant, and their respective advisors, if any, will be provided a copy of the evidence in an electronic format or a hard copy. The parties will have 10 calendar days to submit a written response

Internal procedure

- All documents considered evidence should be converted and merged into one pdf.
- The pdf should be watermarked for each party, and security settings should be set to prohibit editing.
- A transfer link is sent to the parties simultaneously via email.

External process information

- "Prior to the completion of the report, you and your advisor, if applicable, will receive a Dropbox link to access a copy of the evidence. You will have until [DATE] to review the evidence and provide a written response to the investigator. To provide the written response, use the following link: [submission link]."

© 2020 D. STAFFORD & ASSOCIATES

5

5

Example

Policy statement

- Either party may request, no later than seven calendar days prior to the hearing, for the hearing to occur with the parties located in separate rooms with technology enabling the hearing body and parties to simultaneously see and hear the party or the witness answering questions.

Internal procedure

- Notify both parties of the request for a virtual hearing.
- Book the space and technology.
- Send login information to the hearing officer and parties.
- Include an instruction sheet on using the technology.

External process information

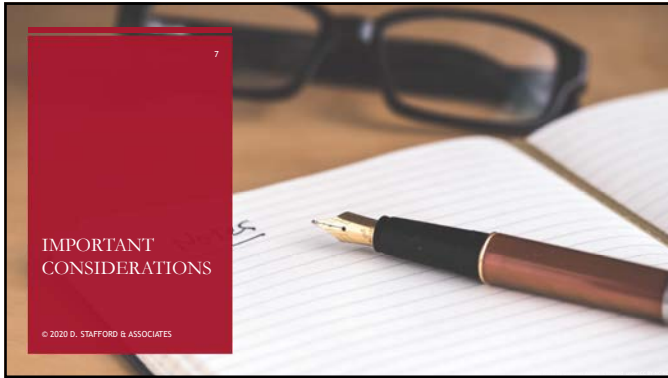
- "Either the Complainant or Respondent may request to have the parties located in separate rooms and the hearing will be held using Zoom technology. If you wish to utilize this option, you must notify [NAME] at [EMAIL] no later than [DATE]."

© 2020 D. STAFFORD & ASSOCIATES

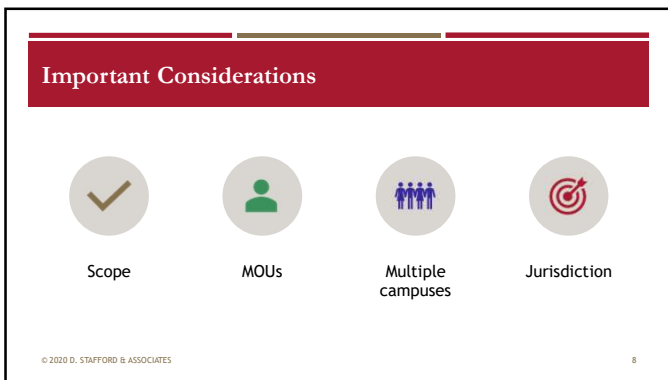
6

6

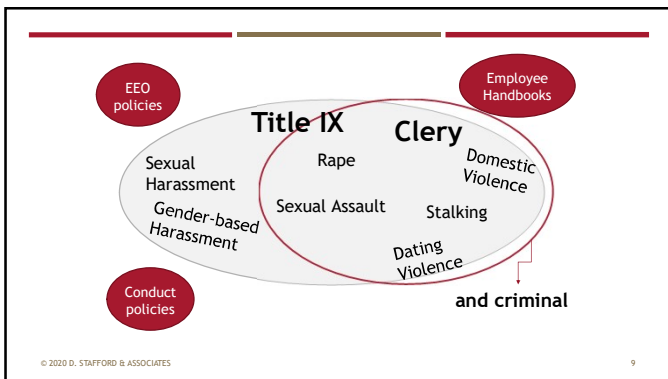
2



7



8



9

When Multiple Policies May Apply

Conflict

Application

Status of Respondent

Jurisdiction

© 2020 D. STAFFORD & ASSOCIATES

10

10

LAW	WHO	WHAT	ENFORCEMENT
TITLE VI	STUDENTS	RACE, COLOR, OR NATIONAL ORIGIN	OCR
TITLE VII	EMPLOYEES	RACE, COLOR, RELIGION, SEX	EEOC
TITLE IX	STUDENTS/EMPLOYEES	BASIS OF SEX	OCR
504	STUDENTS	DISABILITIES	OCR
ADA/ADAA	EMPLOYEES (TITLE I) STUDENTS (TITLE II/III)	DISABILITIES	EEOC/DOJ
ADEA	EMPLOYEES	AGE (40+)	EEOC
PDA	EMPLOYEES	PREGNANCY/TITLE VII	EEOC
USERRA	EMPLOYEES	VETERANS	DOL/DOJ

© 2020 D. STAFFORD & ASSOCIATES

11

11

Discussion:
Different
Voices

■ Who should be around the table when drafting the policy?

© 2020 D. STAFFORD & ASSOCIATES

12

12

Competencies



Laws and legal issues



Cultural competencies



Campus climate



Campus politics



Approval process

© 2020 D. STAFFORD & ASSOCIATES

13



14

POLICY SECTIONS

© 2020 D. STAFFORD & ASSOCIATES

14

Policy Sections

Statement of Policy

Related Policies

Applicability/Jurisdiction

Title IX Coordinator

Employee Responsibilities

Definitions

Prohibited Conduct

Reporting Options

Supportive Measures

Accommodations and Interpretive Services

Interim Action

Grievance Procedures

Education and Prevention


Record Management


Interpretation and Revision


© 2020 D. STAFFORD & ASSOCIATES


15


Statement of Policy


Mission of the institution


Intent of the policy


Behaviors


Equitable Treatment


Scope

© 2020 D. STAFFORD & ASSOCIATES

16

16

Related Policies

Code of Conduct

Retaliation


Employee handbook


© 2020 D. STAFFORD & ASSOCIATES


17

17

Applicability/Jurisdiction


Who


Location


Educational program or activity

© 2020 D. STAFFORD & ASSOCIATES

18

18

Applicability – Individuals

Students

Employees

Students in dual credit/enrollment programs

Students in institution-operated K-12 schools

© 2020 D. STAFFORD & ASSOCIATES

19

19

Title IX Coordinator



Role



Contact information



Additional coordinators/deputies?

© 2020 D. STAFFORD & ASSOCIATES

20

20

Employee Responsibilities



Reporter



Witness



Advisor

© 2020 D. STAFFORD & ASSOCIATES

21

21

7

Definitions from Title IX Regulations

- **Education Program or Activity:** Includes locations, events, or circumstances over which the institution exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. This does not include education programs or activities outside of the United States.

© 2020 D. STAFFORD & ASSOCIATES

22

22

Definitions from Title IX Regulations

- **Actual knowledge:** Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school.

© 2020 D. STAFFORD & ASSOCIATES

23

23

Definitions from Title IX Regulations

- **Formal Complaint:** A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

© 2020 D. STAFFORD & ASSOCIATES

24

24

Definitions from Title IX Regulations

- **Complainant:** An individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- **Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

© 2020 D. STAFFORD & ASSOCIATES

25

25

Definitions from Title IX Regulations

- **Supportive Measures:** Nondisciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.

© 2020 D. STAFFORD & ASSOCIATES

26

26

Other Recommended Definitions

- **Advisor:** Any person who accompanies a respondent or complainant during the investigatory process and/or hearing. Except for conducting cross-examination at a hearing, the advisor's role is limited to providing support and guidance to their advisee and the advisor may not speak or otherwise represent their advisee throughout the process. If an advisor of the party's choice does not attend the hearing, the institution will provide an advisor of the institution's choice for the sole purpose of conducting cross-examination on behalf of the party.

© 2020 D. STAFFORD & ASSOCIATES

27

27

Other Recommended Definitions

- **Decision-maker(s):** Annually trained University official(s) authorized to determine emergency removals, conduct hearings, and/or review appeals. Decision-maker(s) may only serve one role within a case and must be free of bias or a conflict of interest.
- **Witness:** Any individual who has direct knowledge of an incident. Character witnesses are not part of the Title IX grievance process.

© 2020 D. STAFFORD & ASSOCIATES

28

28

Decisions About Definitions

- **Day:** Identify that a day is “calendar day” if that is what you are using.
- **Employee:** Is there a definition of “employee” that is institutionally-accepted? Who interprets that definition?
- **Student:** Is there a definition of “student” that is institutionally-accepted? Who interprets that definition?

© 2020 D. STAFFORD & ASSOCIATES

29

29

Title IX Specific Prohibited Conduct

Sexual Harassment
Sexual Assault
Dating Violence
Domestic Violence
Stalking
Retaliation

30

© 2020 D. STAFFORD & ASSOCIATES

30

Reporting Options


Institution


And/or


Law Enforcement

© 2020 D. STAFFORD & ASSOCIATES

31

31

Reminder: Clery
Obligations about
Reporting

1. Evidence preservation

2. How and to whom to report

3. Notification of options

4. Rights of victims and responsibilities of institution

5. Existing resources

6. Options for available assistance and how to request changes

7. Confidentiality


8. Disciplinary procedures


© 2020 D. STAFFORD & ASSOCIATES


32


32

Supportive Measures


Counseling


Course-related


Modifications of
work/class
schedules



Campus escort
services

© 2020 D. STAFFORD & ASSOCIATES


33

33


Accommodations and Interpretive Services



Disability resources



Interpretive services



Student responsibility to request

© 2020 D. STAFFORD & ASSOCIATES 34

34

Interim Action

Emergency Removal

Administrative Leave

© 2020 D. STAFFORD & ASSOCIATES 35

35

Grievance Procedures

Notice

Dismissal

Consolidation of complaints

Investigation

Hearing

Determination of responsibility

Appeals

Informal resolution

Retaliation

© 2020 D. STAFFORD & ASSOCIATES 36

36

Education and Prevention



Primary and on-going



Bystander



Risk reduction


© 2020 D. STAFFORD & ASSOCIATES

37


37

Record Management

Records




All case materials




Training materials

Considerations




Data custodian



Record retention policy



Duration




Access

© 2020 D. STAFFORD & ASSOCIATES


38

38


Interpretation and Revision




Policy interpreter



Review process



Published date



Reports in progress

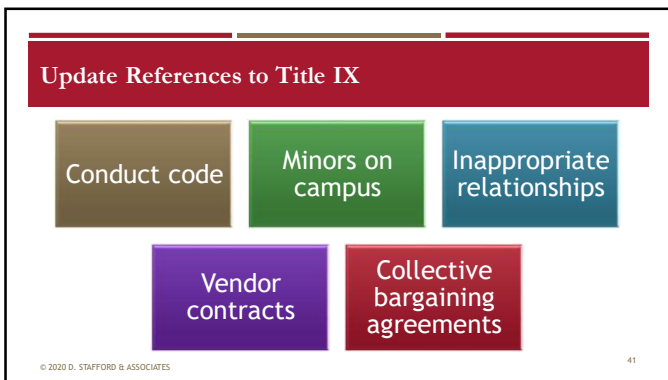
© 2020 D. STAFFORD & ASSOCIATES

39

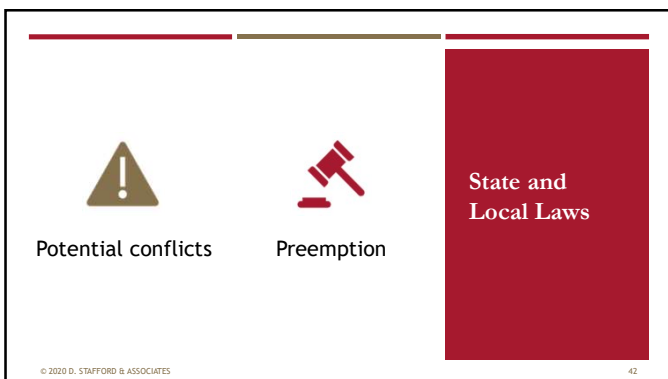
39



40



41



42

Discussion:
First
Amendment

© 2020 D. STAFFORD & ASSOCIATES

- How does the First Amendment come into play with our processes?
- How do we reference it in the policy?

43

43

Discussion:
Time
Implications of
Reports

© 2020 D. STAFFORD & ASSOCIATES

- How are you managing active cases?
- If a report is submitted for an incident that occurred prior to the implementation of the policy, what applies?

44

44



© 2020 D. STAFFORD & ASSOCIATES

45

45



1



Agenda

- Compliance
- Inclusion of LGBTQ+ student-athletes
- NCAA Sexual Violence policy
- Miscellaneous

© 2020 D. STAFFORD & ASSOCIATES

2

An athletics program can be considered gender equitable when the participants in both the men's and women's sports programs would accept as fair and equitable the overall program of the other gender. No individual should be discriminated against on the basis of gender, institutionally or nationally, in intercollegiate athletics.

NCAA Gender Equity Task Force, 1992

© 2020 D. STAFFORD & ASSOCIATES

3



4

Title IX Compliance



**Effective Accommodation
of Interest and Abilities**



Scholarships




Laundry List


© 2020 D. STAFFORD & ASSOCIATES
5

5


Three-part Test



**Substantially
proportionate**



Program expansion




Interest and abilities


© 2020 D. STAFFORD & ASSOCIATES
6

6

Participation



Sport



Participation

© 2020 D. STAFFORD & ASSOCIATES 7

7



PART 1 – Substantially Proportionate

Athletic opportunities substantially proportionate to enrollment

© 2020 D. STAFFORD & ASSOCIATES 8

8

Part 2 – History and Continuing Practice of Program Expansion

- History or continuing practice of adding programs
 - Adding or upgrading teams
 - Expansion plan



© 2020 D. STAFFORD & ASSOCIATES 9

9

Part 3 – Interests and Abilities



“Safe harbor”



Unmet interest



Sustainability



Competition

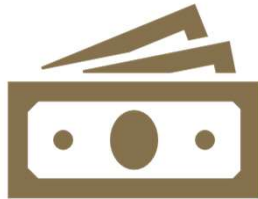
© 2020 D. STAFFORD & ASSOCIATES

10

10

Scholarships

- Athletic-based award compared to percentage of M/F student athletes
- Other awards not counted



© 2020 D. STAFFORD & ASSOCIATES

11

11

Equal Athletic Opportunities – Laundry List

- | | |
|--------------------------|------------------------|
| ■ Equipment and supplies | ■ Facilities |
| ■ Scheduling | ■ Locker rooms, fields |
| ■ Travel and per diem | ■ Medical and training |
| ■ Tutors | ■ Housing and dining |
| ■ Coaching | ■ Publicity |
| | ■ Support services |
| | ■ Recruiting |

© 2020 D. STAFFORD & ASSOCIATES

12

12

Compliance Efforts

Committee?

Audit

Other

Equity in Athletics Disclosure Information

Sexual Violence Policy

© 2020 D. STAFFORD & ASSOCIATES

13

13

14

INCLUSION OF LGBTQ+ STUDENT-ATHLETES

© 2020 D. STAFFORD & ASSOCIATES



14

Inclusion of LGBTQ+ Student Athletes

Champions of Respect

Importance of inclusivity

Best practices

Definitions and terms



© 2020 D. STAFFORD & ASSOCIATES

15

15

Inclusion of LGBTQ+ Student Athletes

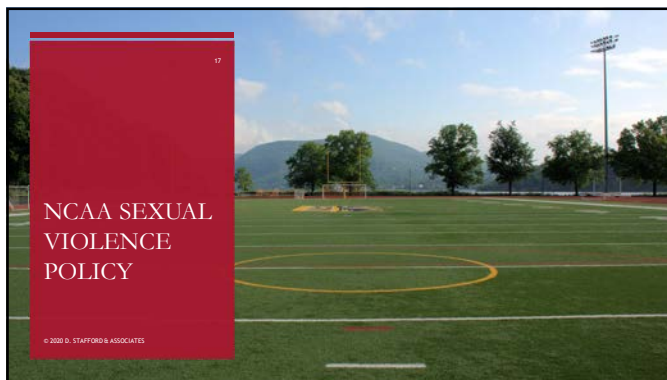


- Transgender participation guidance
 - FTM taking testosterone can compete on men's team
 - MTF taking suppression medication can compete on men's team
 - If not taking medication, participation on assigned birth gender
 - FTM can participate on men's or women's team
 - MTF may not compete on women's team

© 2020 D. STAFFORD & ASSOCIATES 16

16

NCAA SEXUAL VIOLENCE POLICY



© 2020 D. STAFFORD & ASSOCIATES 17


17

NCAA Campus Sexual Violence Policy – 2014

History	Principles	Attestation Form	Investigations
<ul style="list-style-type: none"> • 2011 Summit • 2014 Resolution • 2017 Policy • 2017 and 2019 Toolkit 	<ul style="list-style-type: none"> • Policy and procedures • Education • Collaboration 	<ul style="list-style-type: none"> • Knows procedures • Policies available • Education requirements 	<ul style="list-style-type: none"> • Staff must cooperate

© 2020 D. STAFFORD & ASSOCIATES 18

18



NCAA Sexual Violence Policy – May 2020

- New Requirements regarding investigation, discipline, or criminal conviction
 - Student-athlete disclosure
 - Institutions must share information
 - Policy directing staff to information
- Effective date 21-22

© 2020 D. STAFFORD & ASSOCIATES 19

19

NCAA Sexual Violence Policy – The Tool Kit

Leadership

Collaboration

Compliance


Education

Student-Athlete engagement

Additional materials

© 2020 D. STAFFORD & ASSOCIATES 20

20

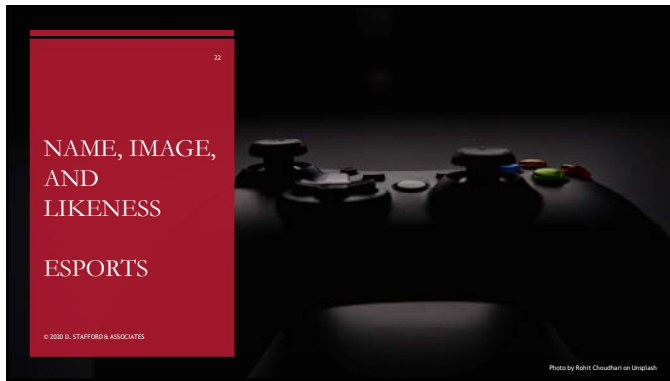


Regulation Implications

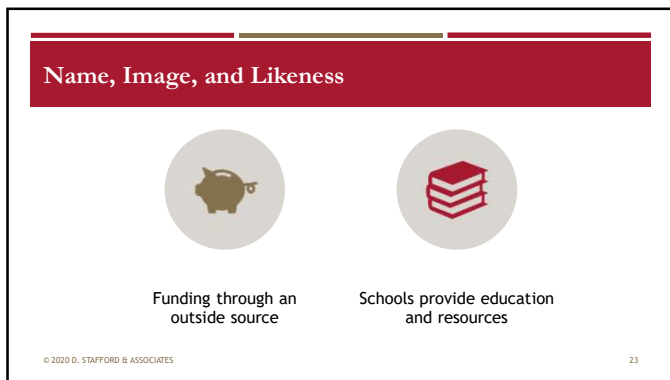
- Supportive measures - non-disciplinary
 - Communication restrictions
 - Fact-specific
 - Changing class schedule “more acceptable” than removal from sports team
 - Disciplinary if it is listed
- Emergency removal
 - Immediate threat to PHYSICAL health or safety

© 2020 D. STAFFORD & ASSOCIATES 21

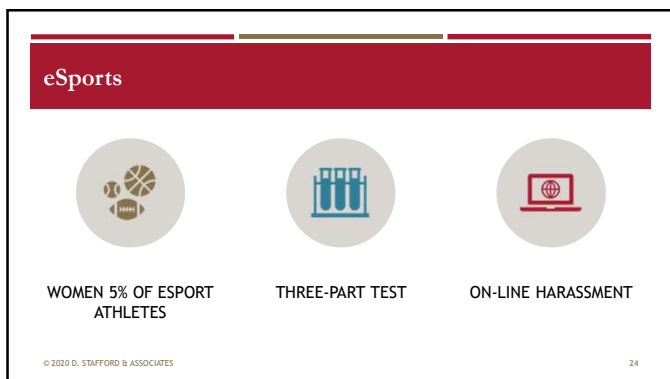
21



22



23



24

Discussion: Moving Forward

© 2020 D. Stafford & Associates

- Who is in charge of athletic compliance efforts on your campus?
- How can you work with athletics in terms of sexual violence?
- What strategies are effective?

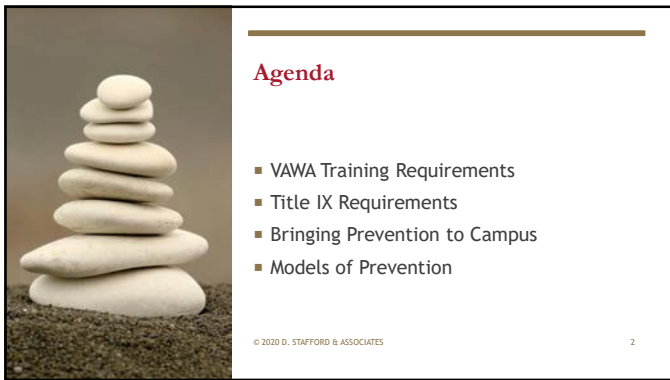
25



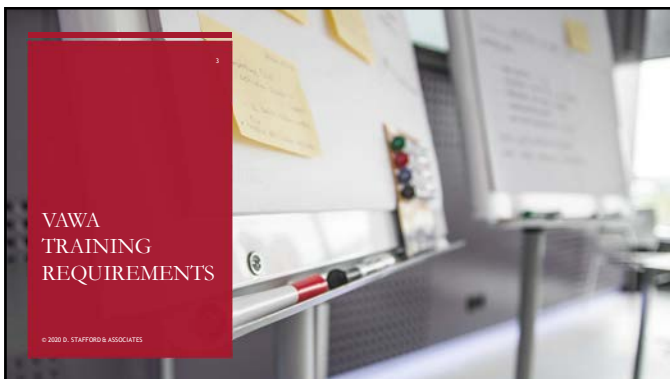
26



1



2



3

From the VAWA Regulations...

(j) ... an institution must include in its annual security report a statement of policy that addresses the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking.

© 2020 D. STAFFORD & ASSOCIATES

4

4

Programs to Prevent VAWA Crimes

- Programs and campaigns that are...
 - Culturally relevant
 - Inclusive
 - Sustainable
 - Responsive
 - Informed by research



© 2020 D. STAFFORD & ASSOCIATES

5

5

Programs to Prevent VAWA Crimes

- Programs and campaigns that are...
 - Individual
 - Relationship
 - Institutional
 - Community
 - Societal



© 2020 D. STAFFORD & ASSOCIATES

6

6

Programs to Prevent VAWA Crimes

Programs to prevent dating violence, domestic violence, sexual assault, and stalking include both primary prevention and awareness programs directed at incoming students and new employees and ongoing prevention and awareness campaigns directed at students and employees, as defined in paragraph (j)(2) of this section.

© 2020 D. STAFFORD & ASSOCIATES

7

7

Primary Prevention Programs

- Primary prevention programs mean:
 - Research and assessment
 - Stop before they occur . . . Positive behaviors
 - Bystander intervention
 - Change social norms

© 2020 D. STAFFORD & ASSOCIATES

8

8

Primary Prevention Programs Requirements

- Institutional statement
 - Definitions
 - Bystander intervention
 - Risk reduction

© 2020 D. STAFFORD & ASSOCIATES

9

9

Ongoing Prevention Programs

- Programs and campaigns that are:
 - Sustainable
 - Increased understanding
 - Range of strategies
 - Inclusive audience

© 2020 D. STAFFORD & ASSOCIATES

10

10

More VAWA Definitions

(i) Awareness programs means community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration.

(v) Risk reduction means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.

© 2020 D. STAFFORD & ASSOCIATES

11

11

Bystander Intervention



(ii) Bystander Intervention means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and culture conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.

© 2020 D. STAFFORD & ASSOCIATES

12

12

Clery
Handbook
Guidance

Community involvement

- Local rape crisis centers
- Local law enforcement officials
- Social services personnel
- Coalitions against domestic and sexual violence


Not required for all to attend

Can combine topics

13
© 2020 D. STAFFORD & ASSOCIATES

13

Primary Prevention Programs



Delivery Options

- In-person interactive workshops
- Theater performances
- Presentations
- Videos
- Online interactive training

Considerations: community college, campus is closed, adult learners, traditional aged students

© 2020 D. STAFFORD & ASSOCIATES
14

14

Coordinated Strategies:

- Communication
- Programming, such as TBTN, safe walks, etc.
- Coordination with campus groups
- Tabling
- Curriculum infusion

Ongoing
Prevention &
Awareness

© 2020 D. STAFFORD & ASSOCIATES
15

15



16

Campus Community: Who is included?

 Students	 Employees	 "Mandatory Reporters" Title IX School policy State law	 Officials with authority to institute corrective measures Deans Supervisors Other?	 "Title IX Personnel" Title IX Coordinators Investigators Decision-makers Informal Resolution Facilitator
---	--	--	--	---

© 2020 D. STAFFORD & ASSOCIATES 17

17

Students and Employees



- No Training required

© 2020 D. STAFFORD & ASSOCIATES 18

18

Mandatory Reporters



- Institutions decide for student disclosures
 - Who are mandatory reporters?
 - No reporting obligation
 - Report with consent
 - No training requirement
- Different than state law regarding “mandated reporters”

© 2020 D. STAFFORD & ASSOCIATES

19

19

Removal of “Responsible Employee”



- Rationale:
 - Receive reporting information
 - Maintain control
- But...
 - You still can have...
 - Train on how to report

© 2020 D. STAFFORD & ASSOCIATES

20

20

Official with Authority to Institute Corrective Measures



Actual notice



Institutional specific



Training does not trigger obligation



Limitless



Publicize list



Not all Campus Security Authorities (CSAs)

© 2020 D. STAFFORD & ASSOCIATES

21

21

Title IX Personnel

Title IX Coordinators

Investigators

Decision-makers

Facilitate informal resolution

© 2020 D. STAFFORD & ASSOCIATES22

22

§ 106.45 (1)(iii): Title IX Training – Bias

- “Require that any individual designated by a recipient as a Title IX Coordinator, investigator, decisionmaker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.”
- Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;
- The Department leaves recipients flexibility to decide the content of the training required for Title IX personnel under that provision, and nothing in the final regulations precludes a recipient from addressing implicit or unconscious bias as part of such training.

© 2020 D. STAFFORD & ASSOCIATES23

23

§ 106.45 (1)(iii): Title IX Training

- “A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on
 - the definition of sexual harassment in § 106.30,
 - the scope of the recipient’s education program or activity,
 - how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and
 - how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.”

© 2020 D. STAFFORD & ASSOCIATES24

24

§ 106.45 (1)(iii): Title IX Training

- A recipient must ensure that decision-makers receive training on:
 - any technology to be used at a live hearing and
 - on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in paragraph (b)(6) of this section.
- A recipient also must ensure that investigators receive training on:
 - issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in paragraph (b)(5)(vii) of this section.

© 2020 D. STAFFORD & ASSOCIATES

25

25

Recordkeeping

- 7 years
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

© 2020 D. STAFFORD & ASSOCIATES

26

26

Discussion: School year training

- What training events are you planning for the fall to achieve these requirements?
- What are your fears?

© 2020 D. STAFFORD & ASSOCIATES


27

27



28


Training for Employees and Students



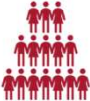
- Types?
- Who receives training?

29

Who's Around the Table?




How many tables?




Who is at the table?

30


Essential Campus Components




Coalition Building




Policy Analysis




Data Collection



Inclusive Programming



Male Involvement



Social Marketing

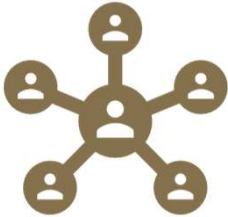
© 2020 D. STAFFORD & ASSOCIATES

31

31

Coalition Building

- Collaboration
- Share knowledge
- “Check ins”



© 2020 D. STAFFORD & ASSOCIATES

32

32

Policy Analysis

Mission

Easy to understand

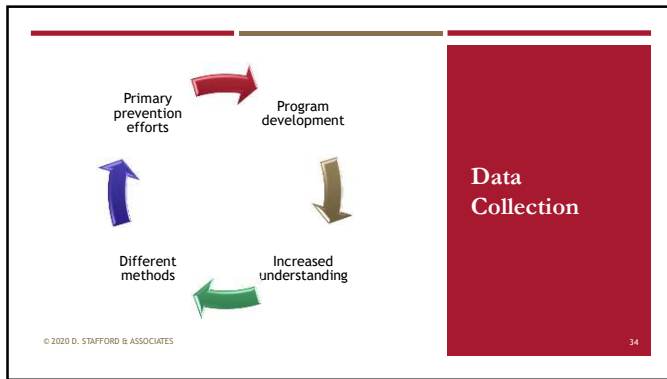
Information

Easily accessible

© 2020 D. STAFFORD & ASSOCIATES

33

33



34

Inclusive of Marginalized Populations

- ADA compliant
- Interpreters
- Universal design
- Safe spaces
- Inclusive training material
- Challenge stereotypes

© 2020 D. STAFFORD & ASSOCIATES 35

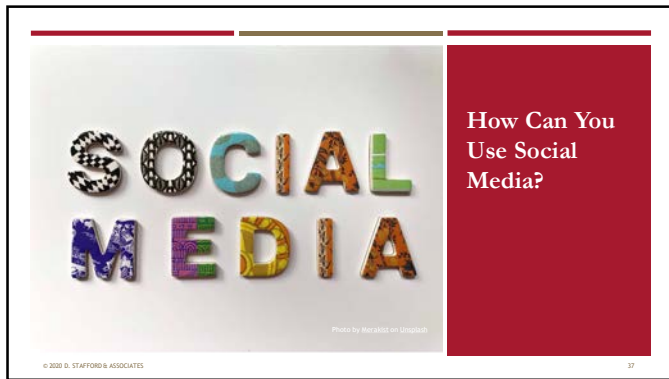
35

Male Involvement

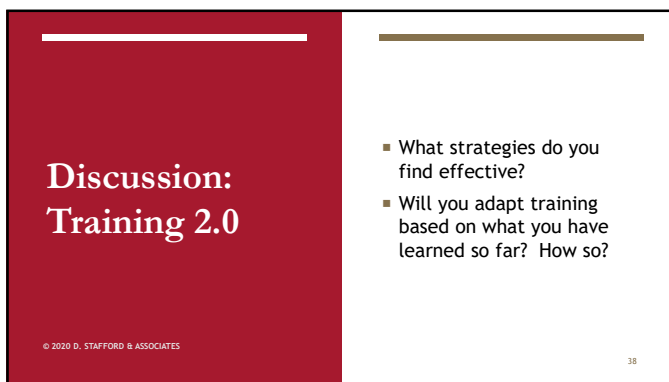
Influential	Allies	Masculinity
Messaging	Healthy relationships	Victim perspective

© 2020 D. STAFFORD & ASSOCIATES 36

36



37



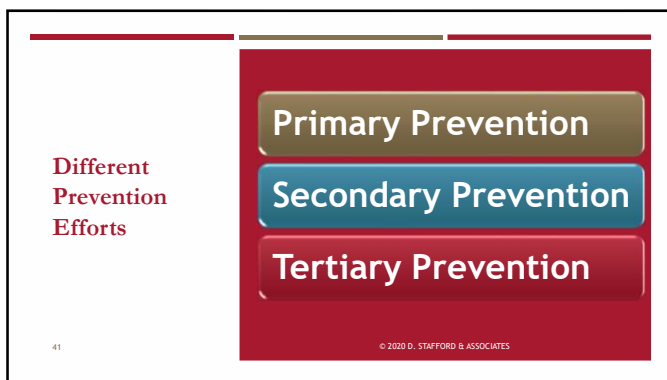
38



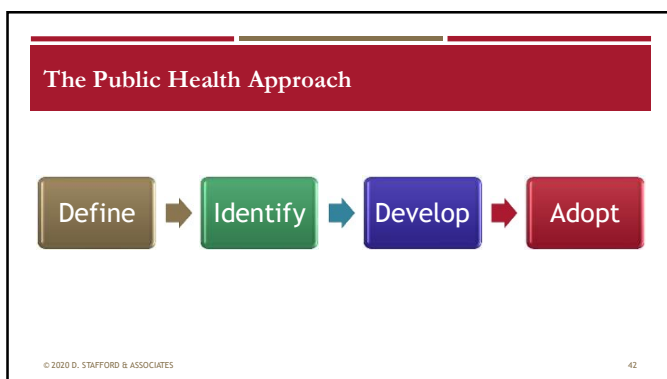
39



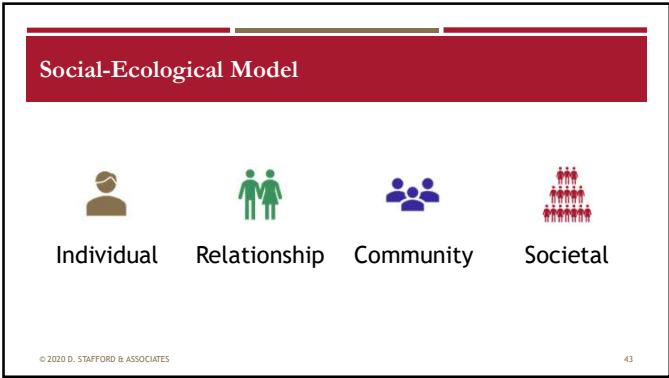
40



41



42



43

Level	Influences	Strategy	Prevention activities example
Individual	Personal traits and beliefs	Positive attitudes	Mentoring and education
Relationship	Peers and family	Modeling behavior	Bystander
Community	Institutional relationships	Polices and processes	Social media
Societal	Belief systems and social norms	Laws	Target lawmakers

(2019, January 16). The Social-Ecological Model: A Framework for Prevention. Retrieved from <https://www.cdc.gov/violenceprevention/publichealthissue/social-ecologicalmodel.html>

© 2020 D. STAFFORD & ASSOCIATES 44

44



45

Other Strategies



Social Justice Paradigm
Root cause of sexual violence



Stop Sexual Violence
Strategies
Approaches

© 2020 D. STAFFORD & ASSOCIATES

46

46

Discussion:
Different
Populations

- What strategies do you consider based on population?
 - Students
 - Employees
 - Special Populations

© 2020 D. STAFFORD & ASSOCIATES

47

47

Clothesline project

Take back the night

Walk a mile in our shoes

It's on us

Bystander

One Love

360 Stay Safe

Examples

© 2020 D. STAFFORD & ASSOCIATES

48

48

Primary Prevention - Incoming Students

Name of Program	Date Held	Location Held	Which Prohibited Behavior Covered?
First Year Student Orientation	8/15/2013	Main Auditorium	DoV, DaV, SA & S*
First Year Student Orientation	8/16/2013	Main Auditorium	DoV, DaV, SA & S*
Transfer Student Orientation	8/15/2013	South Hall	DoV, DaV, SA & S*
Law School Student Orientation	8/17/2013	North Hall	DoV, DaV, SA & S*
Graduate School Orientation	8/16/2013	East Hall	DoV, DaV, SA & S*
Bystander Intervention Training	8/17/2013-8/19/2013	Fair Sports Complex	SA*

© 2020 D. STAFFORD & ASSOCIATES

49

49

Primary Prevention - Incoming Employees

Name of Program	Date Held	Location Held	Which Prohibited Behavior Covered?
New Employee Orientation	01/15/2013	Human Resources	DoV, DaV, SA & S*
New Employee Orientation	03/18/2013	Human Resources	DoV, DaV, SA & S*
New Employee Orientation	06/21/2013	Human Resources	DoV, DaV, SA & S*
New Employee Orientation	8/25/2013	Human Resources	DoV, DaV, SA & S*
New Employee Orientation	9/10/2013	Human Resources	DoV, DaV, SA & S*

© 2020 D. STAFFORD & ASSOCIATES

50

50

Ongoing Prevention - Students

Name of Program	Date Held	Location Held	Which Prohibited Behavior Covered?
Behind Closed Doors Skits	3/15/2013	Main Auditorium	DoV, DaV, SA & S*
Behind Closed Doors Skits	9/03/2013	Main Auditorium	DoV, DaV, SA & S*
Residence Hall Speaker Series-1	2/17/2013	Cole Residence Hall	DoV* DaV
Residence Hall Speaker Series-4	12/02/2013	Cole Residence Hall	S*
Clothesline Project	10/01/2013-10/05/2013	Student Commons Main Floor	DoV, DaV, SA *
Vagina Monologues	12/02/2013	Main Auditorium	SA*
Poetry Speak Out	03/19/2013	Student Commons Lounge	DoV, Dav*
Safe Zone Hate Crime Prevention	11/02/2013-11/04/2013	Office of Diversity & Inclusion	DoV, DaV, SA & Stalking (LGBTQ)

© 2020 D. STAFFORD & ASSOCIATES

51

Ongoing Prevention -Employees				
Name of Program	Date Held	Location Held	Complied with Section B a-e?	Which Prohibited Behavior Covered?
Faculty Spring Orientation	01/15/2013	Graduate School Faculty Conference Room	Yes	DoV, DaV, SA & S*
Faculty Spring Orientation	03/18/2013	Arts & Sciences Conference Room	Yes	DoV, DaV, SA & S*
Faculty Fall Orientation	8/25/2013	Moot Court Room	Yes	DoV, DaV, SA & S*
Staff In-Service	9/11/2013	Human Resources	Yes	DoV, DaV, SA & S*
Poster Campaign: "Challenging Myths and Stereotypes About Victims of Rape in HE"	11/01/2013-12/01/2013	Posters placed in Faculty lounges in Main Hall B1-B5, King Hall, offices of advisors	Yes	DoV, DaV, SA*
Web-based Training: "The Role of Faculty in Assisting Students Who Disclose Abuse"	04/10/2013	Provost Smith	Yes	DoV, DaV, SA & S*

52

Final Thoughts



Develop a plan



Clery requirements



Primary and ongoing programs



Prevention



Documentation

53



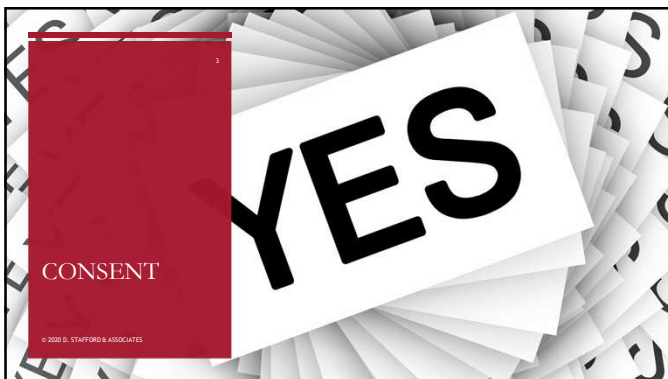
54



1



2



3

Discussion:

© 2020 D. STAFFORD & ASSOCIATES

- When is touching ok?
- When is sexual touching ok?
- How do you know if you have consent?
- How do you know when consent is withdrawn?

4

4

Consent

Sexual permission

Verbal

Non-verbal

Policy

© 2020 D. STAFFORD & ASSOCIATES

5

5

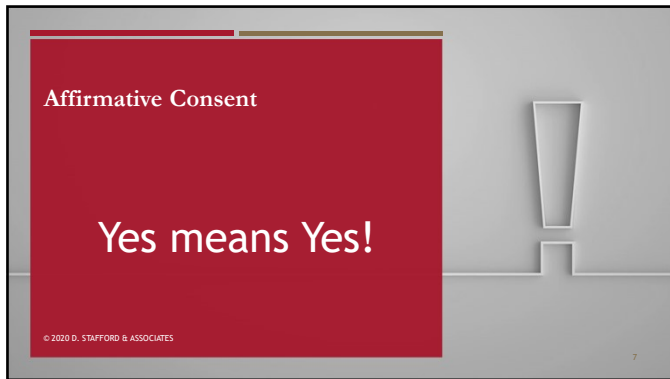
GOT CONSENT?

© 2020 D. STAFFORD & ASSOCIATES

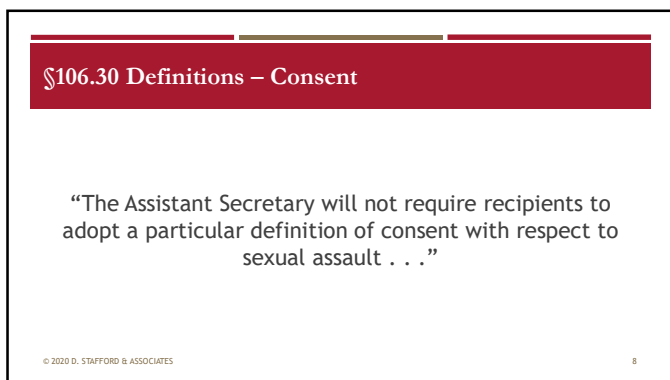


6

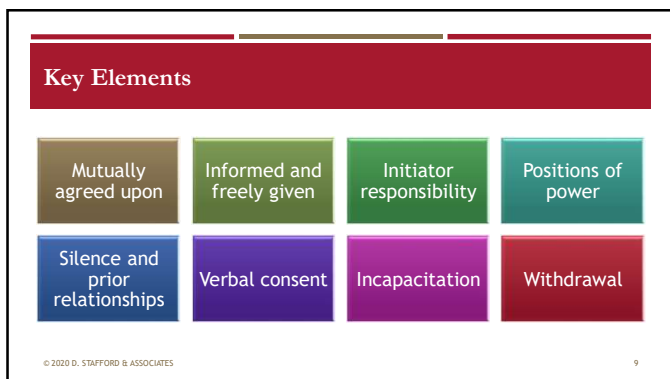
6



7



8



9

Consent Is Absent when...

Force

- Physical
- Coercion
- Intimidation
- Threat

Incapacitation

© 2020 D. STAFFORD & ASSOCIATES 10

10

Physical Force

Holding down

Forced to touch

How much?

© 2020 D. STAFFORD & ASSOCIATES 11

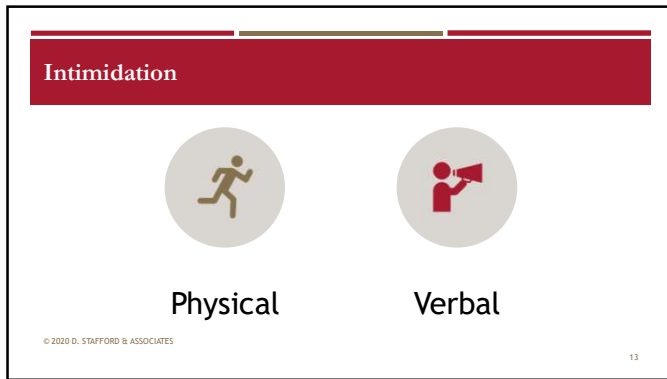
11

Coercion

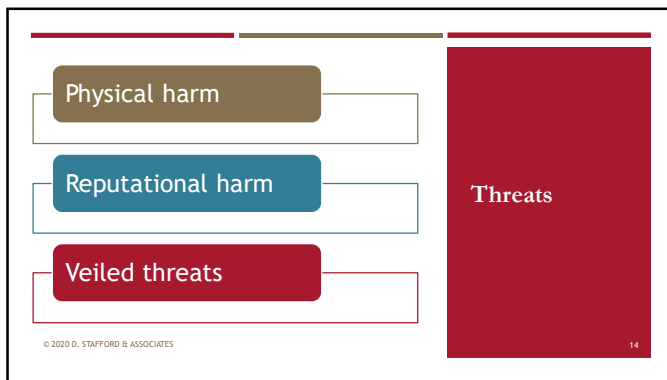
Frequency +	Intensity +	Duration +	Isolation
?	Now	5 minutes?	Library
Twice	?	?	Bar
Fifty times	?	2 days?	?

© 2020 D. STAFFORD & ASSOCIATES 12

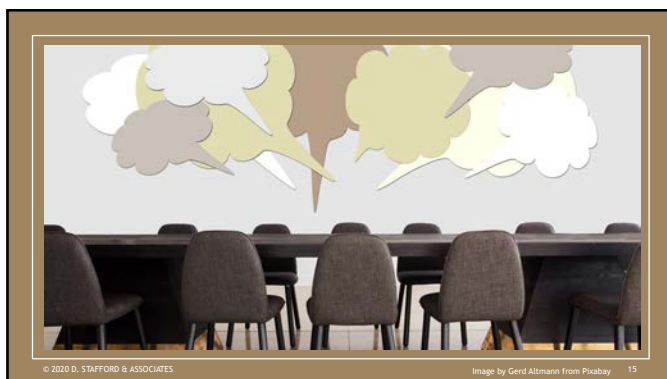
12



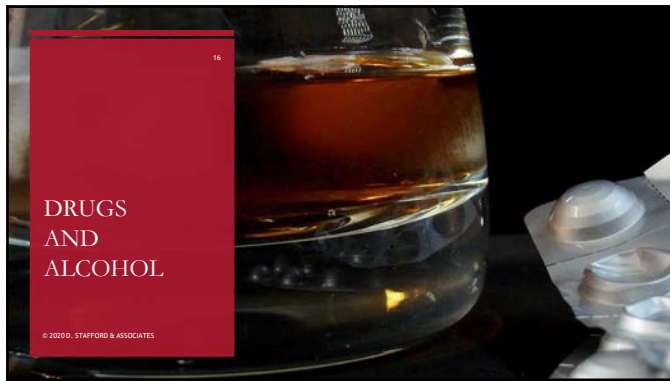
13



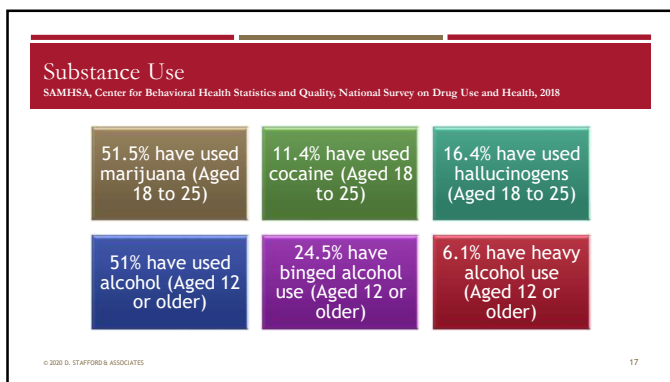
14



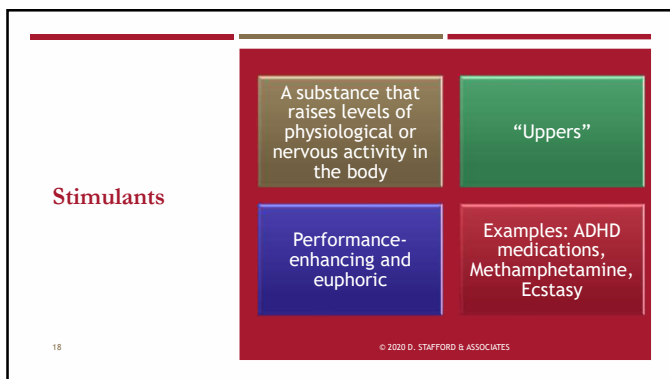
15



16



17



18

Depressants



Inhibit the function of the central nervous system	"Downers"
Relaxing, decreased inhibitions	Examples: "benzos," sleeping pills, marijuana

19

© 2020 D. STAFFORD & ASSOCIATES

19

Other Drugs

	
Hallucinogens	Opioids

© 2020 D. STAFFORD & ASSOCIATES

20

20

What is a Drink?

		
12 OZ BEER	4-5 OZ OF WINE	1.5 OZ 80 PROOF

© 2020 D. STAFFORD & ASSOCIATES

21

21

What is a Drink in College?



- Water bottle
- Boxed wine
- Solo cups

Photo by Joanne Sessler on Unsplash
© 2020 D. STAFFORD & ASSOCIATES

22

22

Impact of Alcohol Consumption Levels

Cognition (new brain)

judgment
inhibition
personality
intellect
emotion

Psychomotor functions

coordination
balance
eye focus
speech

Involuntary functions

vomiting
blackout
pass out
respiration

© 2020 D. STAFFORD & ASSOCIATES

23

23

Levels of Consumption

Impairment


Intoxication

Incapacitation

© 2020 D. STAFFORD & ASSOCIATES

24

24



Impairment


- The state of being diminished or weakened due to the consumption of alcohol.
- Alcohol is a nervous system depressant.
- Impairment begins as soon as alcohol enters the bloodstream.
- Impairment increases with consumption of alcohol.

Question: Can two initially IMPAIRED people legally have sexual intercourse?

© 2020 D. STAFFORD & ASSOCIATES 25

25

Intoxication




- An act or instance of inebriation; drunkenness.
- Intoxication is legally met when an individual's blood alcohol level reaches .08 or greater.

Question: Can two INTOXICATED people legally have sexual intercourse?

© 2020 D. STAFFORD & ASSOCIATES 26

26



INCAPACITATION

© 2020 D. STAFFORD & ASSOCIATES 27

27

Incapacitation

Physical and mental impairment

Temporary or permanent

Decisions and judgement

Unconscious, sleep, blackout

© 2020 D. STAFFORD & ASSOCIATES 28

28

Incapacitation – Not Alcohol Related



Physical



Mental


© 2020 D. STAFFORD & ASSOCIATES 29

29

Incapacitation


Unconscious


Sleep


Blackout

© 2020 D. STAFFORD & ASSOCIATES 30

30

Incapacitation Questions

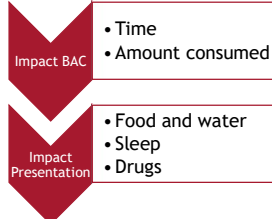
- Were any parties or witnesses INCAPACITATED?
- Were any parties or witnesses IMPAIRED to a degree that it would impact memory and actions?
- Were any parties impaired during the interview to a degree that it would impact recall and judgement?

© 2020 D. STAFFORD & ASSOCIATES

31

31

Incapacitation



© 2020 D. STAFFORD & ASSOCIATES

32

32

Blood Alcohol Content



Number of drinks



Body weight



Time

© 2020 D. STAFFORD & ASSOCIATES

33

33

Incapacitation

- Smell
- Slurred speech
- Bloodshot eyes
- Cannot stand
- Cannot walk
- In and out of consciousness
- Blackout
- Vomiting
- Behavior

© 2020 D. STAFFORD & ASSOCIATES

34

- Lack the ability to determine:
 - Who is having sex with them?
 - When are they having sex?
 - Where are they having sex?
 - What is the sexual act?

Incapacitation

© 2020 D. STAFFORD & ASSOCIATES

35

Two-Step Determination

Was the Complainant Incapacitated?

Did the Respondent (or would a reasonable person) know?

© 2020 D. STAFFORD & ASSOCIATES

36

Blackout v. Pass Out

Fragmentary blackout


En Bloc blackout

Pass out

© 2020 D. STAFFORD & ASSOCIATES

37

37



© 2020 D. STAFFORD & ASSOCIATES

Image by Gerd Altmann from Pixabay 38

38



39



1




2




3

Conflicts of Interest




Roles on campus



Past employment



Volunteering



Social media presence

© 2020 D. STAFFORD & ASSOCIATES 4

4

Recognizing Bias



© 2020 D. STAFFORD & ASSOCIATES 5

5

Discussion: Bias

What is the difference between *implicit bias* and *explicit bias*?

© 2020 D. STAFFORD & ASSOCIATES 6

6

Bias

Parties

Race

Gender

Sexual orientation

Disabilities

© 2020 D. STAFFORD & ASSOCIATES
7

7

Bias

Personal experience

Personal identity

Social identity

Theoretical perspective

Professional identity

Religious perspective

Political perspective

© 2020 D. STAFFORD & ASSOCIATES
8

8

Intersectionality

Race and ethnicity

Immigrants

Gender

Sexual orientation

Disabilities

© 2020 D. STAFFORD & ASSOCIATES
9

9

Considerations

- Low reporting
- Who is reporting?
- More reports of stranger rape than acquaintance rape
- More likely to report when a different race

© 2020 D. STAFFORD & ASSOCIATES 10

10

Barriers to Reporting

- Race
- Sexual Orientation
- Disabilities

© 2020 D. STAFFORD & ASSOCIATES 11

11

Impact on Reporting

- Race
- Sexual Orientation
- Disability

© 2020 D. STAFFORD & ASSOCIATES 12

12

Discussion:

What are potential biases with each of the parties?

© 2020 D. STAFFORD & ASSOCIATES

- Complainant
- Respondent
- Witnesses

13

13

What are biases with each of the parties?

Complainant

Respondent

Witnesses

© 2020 D. STAFFORD & ASSOCIATES

14

Race



Historical context



Stereotypes

© 2020 D. STAFFORD & ASSOCIATES

15

15

Gender

Perception

Impact on credibility

© 2020 D. STAFFORD & ASSOCIATES 16

16

Gender Identity and Sexual Orientation

Higher risk

Fewer reports

Lack of understanding

© 2020 D. STAFFORD & ASSOCIATES 17

17

Disability

Limited data is available

Neuro processing implications

Stereotypes

Accessibility

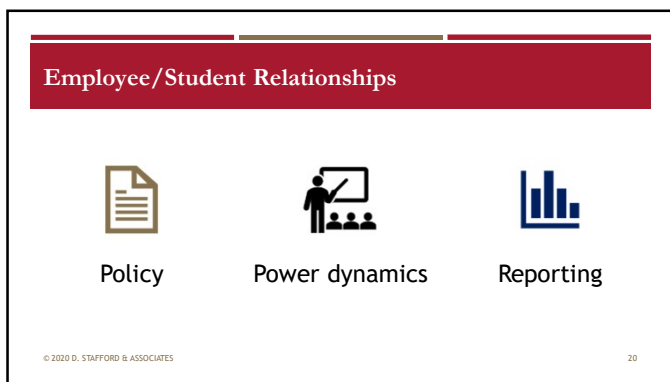
Accommodations

© 2020 D. STAFFORD & ASSOCIATES 18

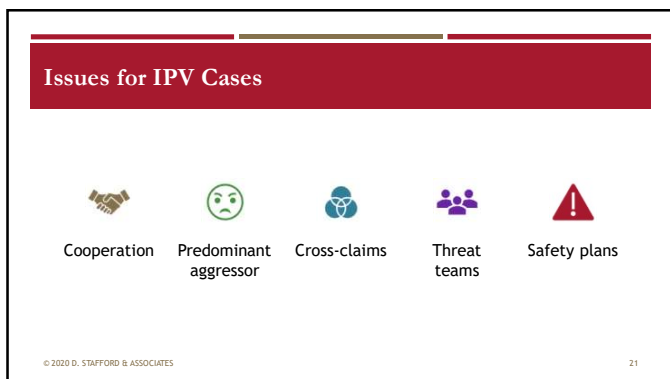
18



19




20




21


Issues for Stalking Cases




Recognize behaviors



Duration



Frequency



Safety plan

© 2020 D. STAFFORD & ASSOCIATES 22

22

Retaliation

Identify behaviors

Which policy?

Remedies

What qualifies?

© 2020 D. STAFFORD & ASSOCIATES 23

23

UNDERSTANDING STRESS AND TRAUMA

© 2020 D. STAFFORD & ASSOCIATES 24



24

Keep in Mind

Application Neutral Fact-finder

© 2020 D. STAFFORD & ASSOCIATES 25

25

Comparison

Stress Trauma

© 2020 D. STAFFORD & ASSOCIATES 26


26

NEUROBIOLOGY


© 2020 D. STAFFORD & ASSOCIATES 27

27

Impact on Memory



Details



Time and Context

© 2020 D. STAFFORD & ASSOCIATES 28

28

Response



Reflex




Habit


© 2020 D. STAFFORD & ASSOCIATES 29

29


Interviewing



Consistent application



Ask clarifying questions



Avoid bias

© 2020 D. STAFFORD & ASSOCIATES 30

30



31



1

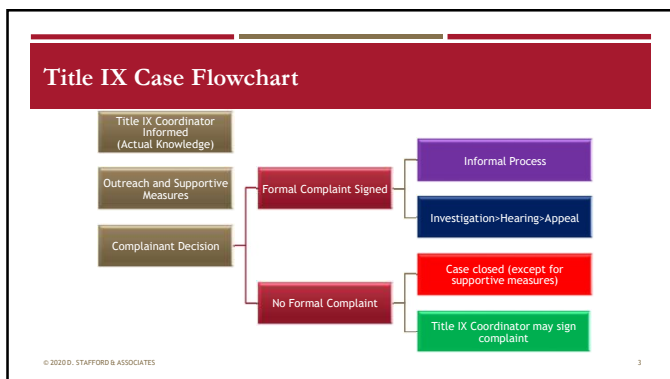


Agenda

- Review Title IX and Clery Regulations
- Contacting the Complainant
- Contacting the Respondent

© 2020 D. STAFFORD & ASSOCIATES 2

2



3



4

Actual Knowledge

- Title IX
 - "Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school."
- Clery
 - Campus police, security, or official with significant responsibility for student and campus activities
 - "Official" is any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution

© 2020 D. STAFFORD & ASSOCIATES

5



6

Terminology

Clery	Title IX
<ul style="list-style-type: none"> • Accommodations • Victim • Protective Measures • Victim • Support Services • Victim • Accused (can but not required) • Employees 	<ul style="list-style-type: none"> • Supportive Measures (2020 Title IX Regulations) • Complainant • Respondent

© 2020 D. STAFFORD & ASSOCIATES 7

7

2020 Title IX Regulations - Supportive Measures

- Non-disciplinary, non-punitive individualized services
- Offered as appropriate, as reasonably available, and without fee or charge
- To the complainant and/or the respondent
- Before or after the filing of a formal complaint or where no formal complaint has been filed
- Designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment
- The recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures
- The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures

© 2020 D. STAFFORD & ASSOCIATES 8

8

2020 Title IX Regulations - Supportive Measures

Counseling	Extensions of deadlines or other course-related adjustments	Modifications of work or class schedules	Campus escort services	Mutual restrictions on contact between the parties
Changes in work or housing locations	Leaves of absence	Increased security and monitoring of certain areas of the campus	and other similar measures	

© 2020 D. STAFFORD & ASSOCIATES 9


9

Clery Support Services and Resources


Counseling	Health	Mental health	Victim advocacy	Legal assistance
Visa and immigration assistance	Student financial aid	Other on-campus services	Other off-campus services	

© 2020 D. STAFFORD & ASSOCIATES 10

10



Clery Accommodations






Clery Protective Measures

© 2020 D. STAFFORD & ASSOCIATES 11

11

Title IX Formal Complaint

 <p>Filed/Signed</p>	 <p>Alleging sexual harassment</p>	 <p>Requesting an investigation (or informal option)</p>
---	---	---

© 2020 D. STAFFORD & ASSOCIATES 12

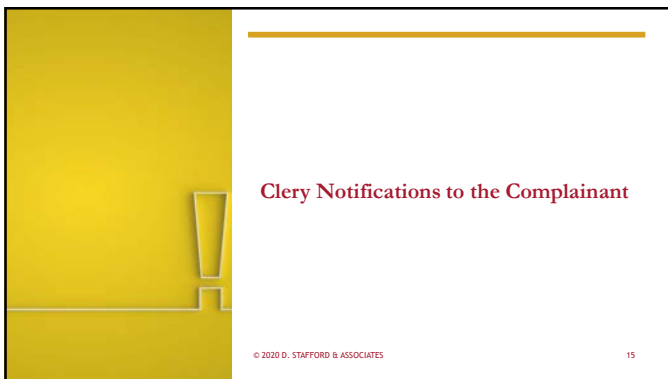
12



13



14



15



16



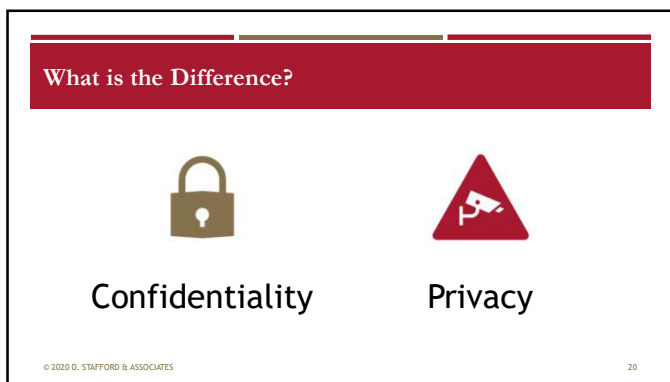
17



18



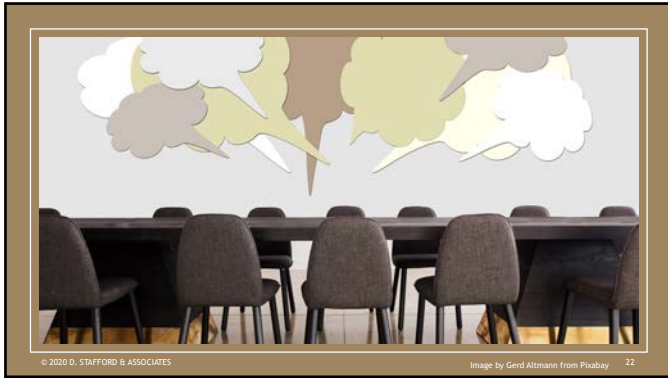
19



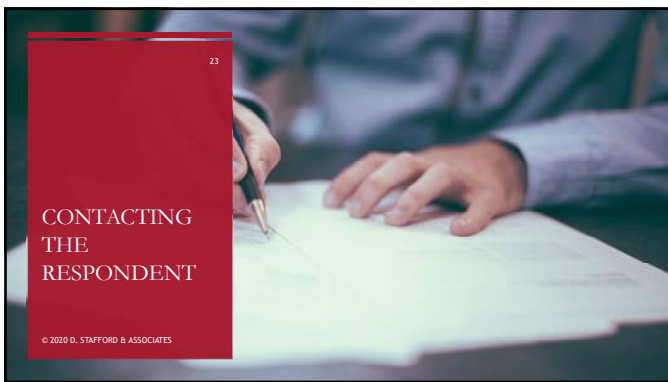
20



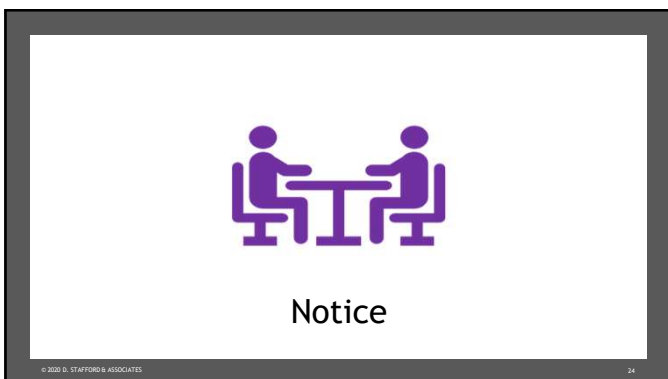
21



22



23



24



25



26



27



28



1



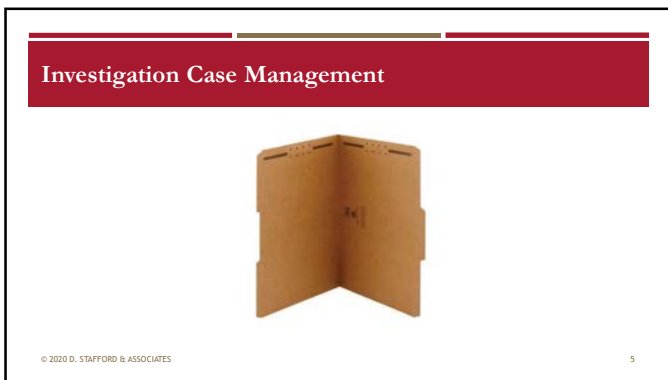
2



3



4



5



6

Investigative Strategy

 Scope

 Methodology

 Challenges

 Pre-Work


 Roadmap

© 2020 D. STAFFORD & ASSOCIATES

7

7

Scope



- Notice of Allegation
- Notice of Investigation
- Policy Definitions
- Rights of the Parties

© 2020 D. STAFFORD & ASSOCIATES

8

8

Methodology (and who does what?)



- Liaisons
- Logistics
- Internal Communications

© 2020 D. STAFFORD & ASSOCIATES

9

9

Challenges: Evidence Considerations



- Testimonial Evidence
- Non-Testimonial Evidence

© 2020 D. STAFFORD & ASSOCIATES

10

10

Challenges: Other



What issues could come up given the facts of the case?

© 2020 D. STAFFORD & ASSOCIATES

11

11

Pre-Work

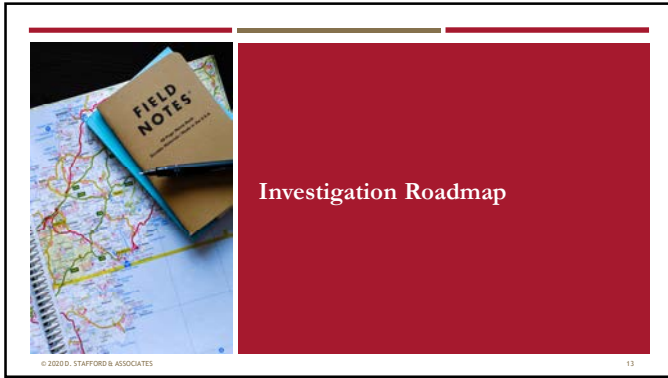


- Draft Questions
- Initial Evidence Collection

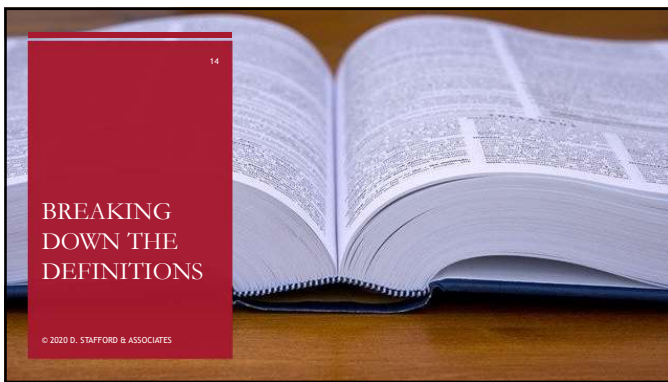
© 2020 D. STAFFORD & ASSOCIATES

12

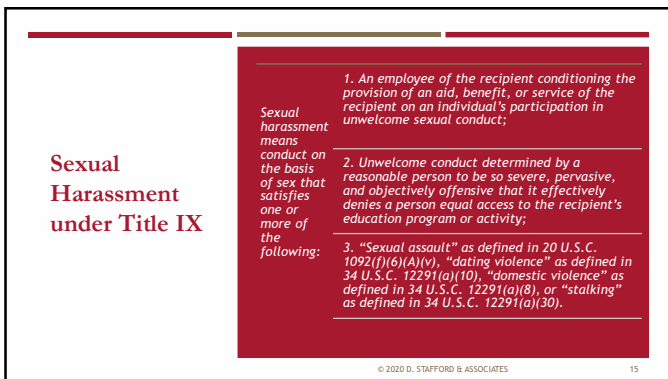
12



13



14



15

PRONG 1: Quid Pro Quo

An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct

© 2020 D. STAFFORD & ASSOCIATES

16

16

PRONG 2: Hostile Environment +

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity

© 2020 D. STAFFORD & ASSOCIATES

17

17

PRONG 3: Sexual Assault

Rape is the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim

© 2020 D. STAFFORD & ASSOCIATES

18

18

PRONG 3: Intimate Partner Violence

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

Domestic Violence: A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim. . .

© 2020 D. STAFFORD & ASSOCIATES

19

19

PRONG 3: Stalking

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following: Stalking

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress

© 2020 D. STAFFORD & ASSOCIATES

20

20



Retaliation

© 2020 D. STAFFORD & ASSOCIATES

21

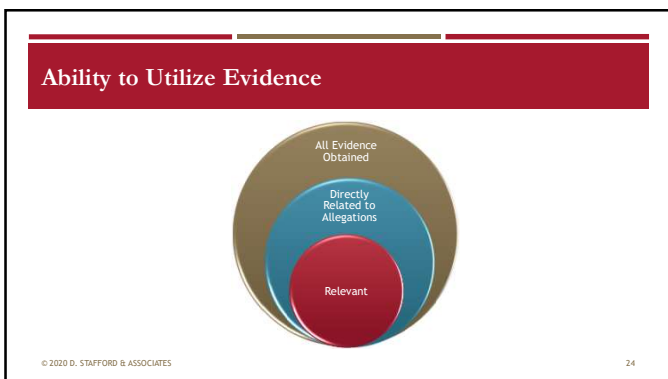
21



22




23




24


Research




Websites



Organizations



Calendars



Schedules




Party "directory information"

© 2020 D. STAFFORD & ASSOCIATES

25

25



© 2020 D. STAFFORD & ASSOCIATES

Image by Gerd Altmann from Pixabay

26

26

Initial Evidence Collection

Other "statements"

Evidence from campus sources

© 2020 D. STAFFORD & ASSOCIATES

27

27

Other Sources of Evidence

Photographs

Text messages

Social media/dating apps

Documents
(diagrams, memos, letters, notes)

Voicemail

Phone logs


Guest lists

© 2020 D. STAFFORD & ASSOCIATES

28

28

Floorplans




© 2020 D. STAFFORD & ASSOCIATES

29

29

Diagrams



© 2020 D. STAFFORD & ASSOCIATES

30

30

Investigation Timeline



© 2020 D. STAFFORD & ASSOCIATES

31

31

REPORTS



© 2020 D. STAFFORD & ASSOCIATES

32

Versions of the Report



Preliminary Report:
Scope
Methodology
Evidence Obtained



Final Report:
Scope
Methodology (edited)
Evidence Obtained
Summary of Evidence



Written Determination:
Scope
Methodology (edited),
Summary of Evidence (edited),
Results (including rationale,
sanctions, remedies)

© 2020 D. STAFFORD & ASSOCIATES

33

33

The Regs on Evidence

- Any evidence obtained
 - directly related to the allegations
 - including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and
 - inculpatory or exculpatory evidence whether obtained from a party or other source
 - So that a party can meaningfully respond

© 2020 D. STAFFORD & ASSOCIATES

34

34

Evidence Collection

Everything Collected

Directly Related

Relevant

© 2020 D. STAFFORD & ASSOCIATES

35

35

Everything BUT...

- Complainant's sexual predisposition or prior sexual behavior unless...
 - offered to prove that someone other than the respondent committed the conduct alleged or
 - complainant's prior sexual behavior with respect to the respondent and are offered to prove consent
- Physician, psychiatrist, psychologist records in connection with the provision of treatment to the party
 - unless voluntary, written consent

© 2020 D. STAFFORD & ASSOCIATES

36

36

“Directly Related”: in the comments

- “interpreted using their plain and ordinary meaning”
- We note that “directly related” in § 106.45(b)(5)(vi) aligns with requirements in FERPA, 20 U.S.C. 1232g(a)(4)(A)(i). (“information directly related to a student.”)
- “directly related” may sometimes encompass a broader universe of evidence than evidence that is “relevant.”

© 2020 D. STAFFORD & ASSOCIATES

37

37




© 2020 D. STAFFORD & ASSOCIATES

38

38



1



Agenda

- Interviewing Basics
- The DSA Interview Outline
- Stress, Trauma, and the Interview
- Sample Questions

© 2020 D. STAFFORD & ASSOCIATES 2

2

What are Interviews



PART OF EVIDENCE
(TESTIMONIAL)



CONVERSATION



STRUCTURED

© 2020 D. STAFFORD & ASSOCIATES 3

3

Interview Golden Rules

Preparation

Environment

Flexibility

© 2020 D. STAFFORD & ASSOCIATES

4

4

Interview Preparation

Research
The incident
The policy
Topics of inquiry

Pre-draft questions
Background questions
Narrative question
Case Specific Questions

Preliminary Info
Procedural
Recordkeeping
Notice

© 2020 D. STAFFORD & ASSOCIATES

5

5


INTERVIEW –
WHAT TO
BRING

© 2020 D. STAFFORD & ASSOCIATES

6

6

Flexibility



I pledge to...

- Be open-minded
- Consider different theories of a case
- Roll with the surprises
- Adapt to the room

© 2020 D. STAFFORD & ASSOCIATES 7

7



THE INTERVIEW

© 2020 D. STAFFORD & ASSOCIATES

8



The DSA Interview Outline

- Preliminaries
- Background
- Narrative
- Clarification
- Case Questions
- Closing

© 2020 D. STAFFORD & ASSOCIATES 9

9

PRELIMINARIES:
You do the talking



© 2020 D. STAFFORD & ASSOCIATES

10

10

BACKGROUND:
Build the Rapport



© 2020 D. STAFFORD & ASSOCIATES

11

11

NARRATIVE:
The Big Question



© 2020 D. STAFFORD & ASSOCIATES

12

12

CLARIFICATION:
Filling in the holes



© 2020 D. STAFFORD & ASSOCIATES

13

13

CASE QUESTIONS:
The Pre-Drafted
Must Asks



© 2020 D. STAFFORD & ASSOCIATES

14

14

CLOSING:
Loose Ends



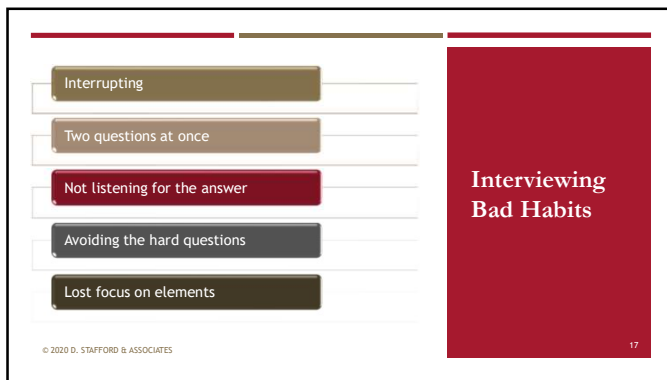
© 2020 D. STAFFORD & ASSOCIATES

15

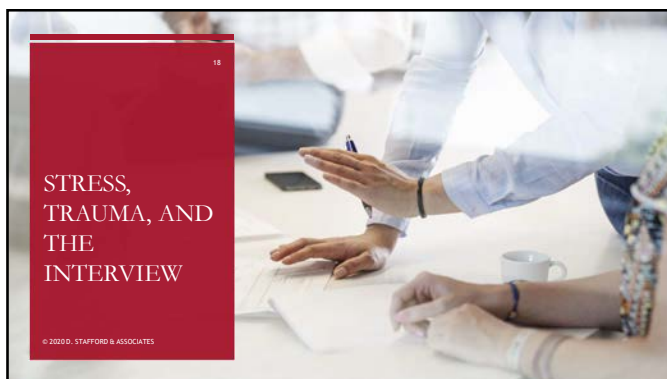
15



16



17




18

Re-traumatization

 Safety and Wellbeing

 Maintain privacy and confidentiality


 Kept up to date


 Empathy and respect


© 2020 D. STAFFORD & ASSOCIATES 19


19


Question Format

 Tone

 Phrasing

 Open-ended


 Safe


 Judgment-free


© 2020 D. STAFFORD & ASSOCIATES 20


20

Witness Interviews

 Follow same interview structure

 Assess credibility

 Confidentiality/Privacy

 How do they "know"?

© 2020 D. STAFFORD & ASSOCIATES 21

21

RESPONDENT - POTENTIAL DEFENSES

© 2020 D. STAFFORD & ASSOCIATES

- !
 Victim consented and is now lying (Regret? Guilt?).
- 🍷
 Victim consented but does not remember due to intoxication.
- 👤
 The sexual misconduct did not occur (victim was mistaken).
- 🔄
 The sexual misconduct occurred but a different assailant.

22

22

SAMPLE QUESTIONS

© 2020 D. STAFFORD & ASSOCIATES



23

23



© 2020 D. STAFFORD & ASSOCIATES

RECREATE THE SCENE

24

24

Physical Space



© 2020 D. STAFFORD & ASSOCIATES

25

25









SENSORY

© 2020 D. STAFFORD & ASSOCIATES

26

26

Sensory

SMELLS

TEMPERATURE

TOUCH

SOUNDS

LIGHT

TASTE

© 2020 D. STAFFORD & ASSOCIATES

27

27

Harassment Questions



WHO, WHAT, WHEN, WHERE, AND HOW



RESPONSE



IMPACT



WITNESSES



EVIDENCE

© 2020 D. STAFFORD & ASSOCIATES 28

28

Elements of the Policy Violations

- Sex Act
- Relationship
- Consent
- Act of Violence
- Conduct
- Impact
- Location

© 2020 D. STAFFORD & ASSOCIATES 29

29

Consent

Consent cues

Force, Coercion, Intimidation, Threats

Incapacitation

Policy definition

© 2020 D. STAFFORD & ASSOCIATES 30

30



31



32



1




2



3

Deception



What is the percentage of people who cannot go 10 minutes without lying??

© 2020 D. STAFFORD & ASSOCIATES 4


4

Answer:

60%

© 2020 D. STAFFORD & ASSOCIATES 5

5



CREDIBILITY

CREDIBILITY CHECKLIST

© 2020 D. STAFFORD & ASSOCIATES

6

Credibility Checklist

Truthfulness	Past behaviors	Post-assaultive behaviors	Corroborating evidence	Ability to perceive
Ability to remember	Plausibility	Demeanor	Motivation	Bias

© 2020 D. STAFFORD & ASSOCIATES 7

7

Truthfulness


Omission


Embellishment


© 2020 D. STAFFORD & ASSOCIATES 8


8

Truthfulness

 Repeat v. Reconstruct

 Get them to talk

 Consistency

 Details

© 2020 D. STAFFORD & ASSOCIATES 9

9

Past and Post Behaviors



Past behaviors




Post assaultive


© 2020 D. STAFFORD & ASSOCIATES 10

10


Corroborating Evidence




Physical




Contemporaneous documentation




Personal documents




Admissions



Eyewitness



Outcry




Other?

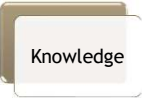
© 2020 D. STAFFORD & ASSOCIATES 11

11

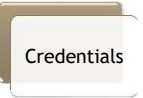
Ability to Perceive




Distance



Knowledge



Credentials





Competence

© 2020 D. STAFFORD & ASSOCIATES 12

12

Ability to Remember







Passage of time

Alcohol

Blackout

Peripheral details

History of memory

© 2020 D. STAFFORD & ASSOCIATES 13

13





Plausibility




© 2020 D. STAFFORD & ASSOCIATES 14

14

Demeanor









Baseline

Discomfort

Emotions

Shame

Anger

Defensive

Fear

© 2020 D. STAFFORD & ASSOCIATES 15

15

Motivation

To lie


Pressure

Past relationships


© 2020 D. STAFFORD & ASSOCIATES 16

16


Bias



Personal preference



Impartiality



Internal Biases

© 2020 D. STAFFORD & ASSOCIATES 17

17

Confirmation Bias

- Confirmed preconceived opinion

Availability Bias

- Most important to the memory immediately recalled

Hindsight Bias

- See things as more predictable than they were

Foresight Bias

- Ability to predict future events

Gender Bias

- More likely to believe one gender over another

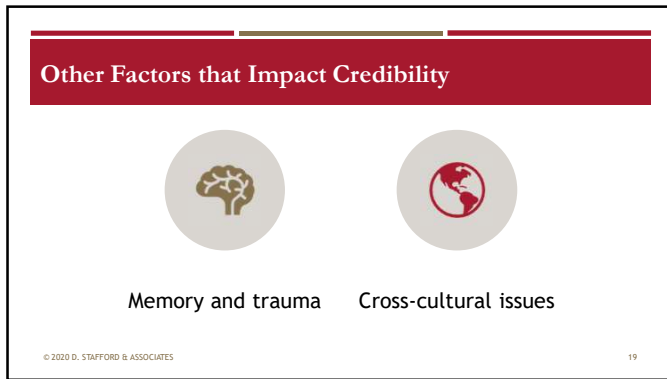
Race

- More likely to believe one race over another

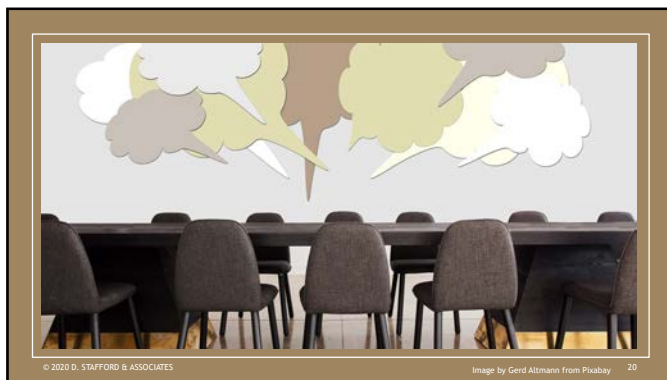
Bias

© 2020 D. STAFFORD & ASSOCIATES 18

18



19




20




21


Relevancy



Decision-maker determines



Built-in pause



Cannot be pre-screened

© 2020 D. STAFFORD & ASSOCIATES 22

22

What Does Relevancy Mean?

- Directly related to the issue and helps prove or disprove the issue AND fact must be material to an issue in the case
- Makes something more/less true or more/less false
- The tendency to make a fact more or less probable than the fact would be without the evidence
- Questions are irrelevant when they are not related to the issue at hand

© 2020 D. STAFFORD & ASSOCIATES 23

23

Other Ways to Put It...

Testimony that witness was "pretty certain" defendant had been a patron at a bar was relevant and properly admitted

It is sufficient if the evidence constitutes a link in the chain of proof

It is enough if in connection with other evidence, it helps a little

© 2020 D. STAFFORD & ASSOCIATES 24

24

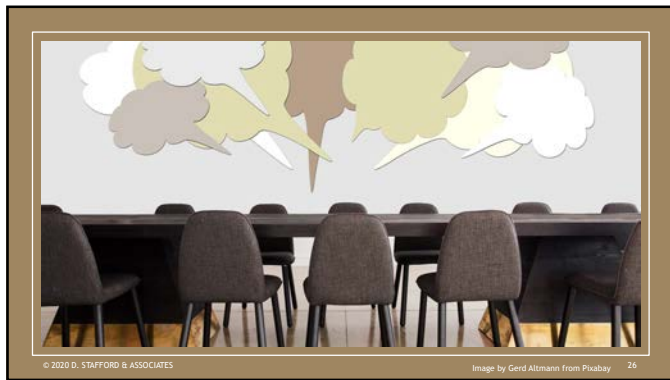
Relevancy Exceptions

“Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.”

© 2020 D. STAFFORD & ASSOCIATES

25

25



26



27



1



Agenda

- Informal resolution
- Formal resolution
- Sanctions and remedies
- Appeals

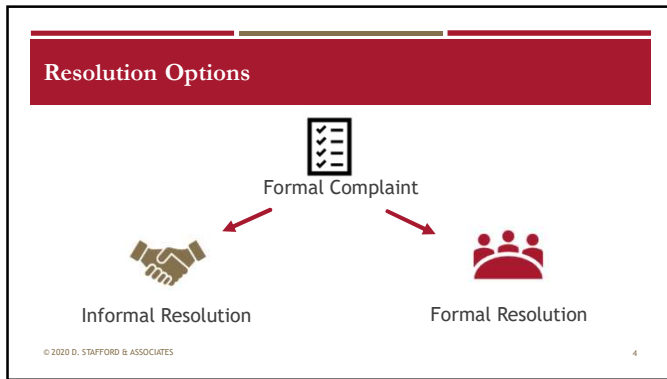
© 2020 D. STAFFORD & ASSOCIATES

2

2



3



4



5

§106.45(b)(9) – Informal Resolution

“However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication...”

© 2020 D. STAFFORD & ASSOCIATES 6

6

Informal Resolution



Notice



Voluntary



Not allowed for Employee/student

© 2020 D. STAFFORD & ASSOCIATES 7

7

Informal Resolutions – Conduct Conferences



Both parties must agree



Acceptance of Responsibility



Sanctions

© 2020 D. STAFFORD & ASSOCIATES 8

8

Informal Resolution Recordkeeping Considerations

Records subject to subpoena

What happens if go formal?

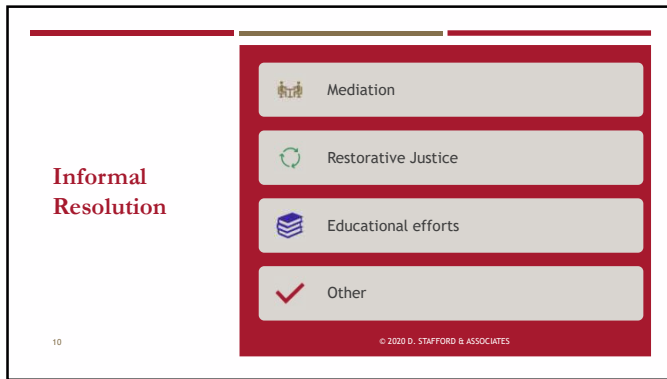
Incomplete requirements

Required record keeping

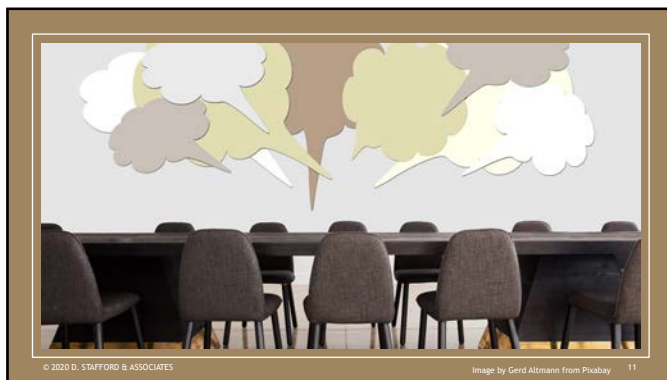
Is it considered "conduct history"?

© 2020 D. STAFFORD & ASSOCIATES 9

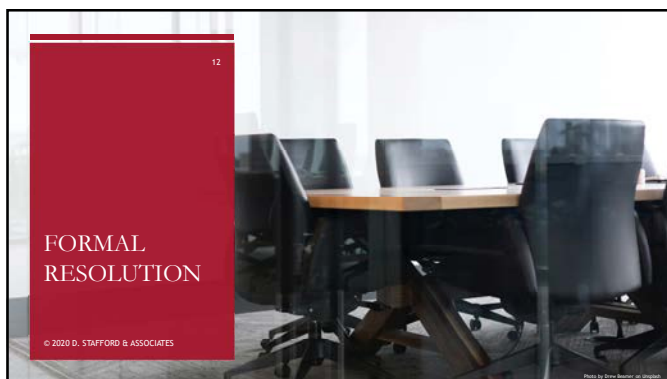
9



10



11



12

Single Adjudicator Model



“Combining the investigative and adjudicative functions in a single individual may decrease the accuracy of the determination regarding responsibility, because individuals who perform both roles may have confirmation bias and other prejudices that taint the proceedings, whereas separating those functions helps prevent bias and prejudice from impacting the outcome.”

© 2020 D. STAFFORD & ASSOCIATES

13

13

Formal Resolution – Considerations



Scheduling



Decision maker(s)



Advisors



In person or virtual

14

© 2020 D. STAFFORD & ASSOCIATES

14

Live Hearings



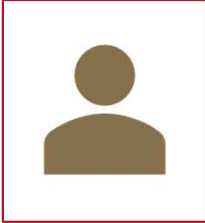
- Must provide for a live hearing
- At the request of either party, the recipient must provide for a live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions
- Must create an audio recording or transcript and make available.

© 2020 D. STAFFORD & ASSOCIATES

15

15

Advisors



"If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party."

© 2020 D. STAFFORD & ASSOCIATES

16

16

Cross Examination



"At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally..."

© 2020 D. STAFFORD & ASSOCIATES

17

17

Relevancy



"Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant."

© 2020 D. STAFFORD & ASSOCIATES

18

18

Relevancy

Prior sexual history

Privileged information

Duplicative

Why are you asking the question?

© 2020 D. STAFFORD & ASSOCIATES 19

19

Participation



"If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility."

© 2020 D. STAFFORD & ASSOCIATES 20

20

Formal Resolution – Making a Finding



Policy language -
Alleged violations



Weighing the
evidence



Determined
behaviors



Standard of
evidence

© 2020 D. STAFFORD & ASSOCIATES 21

21



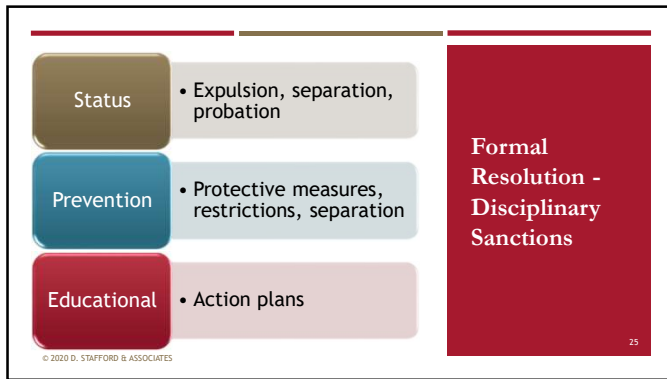
22



23



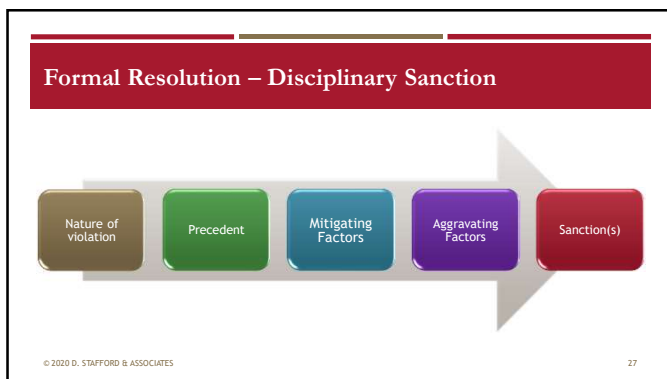
24



25



26



27

Formal Resolution – Remedies



Make permanent
supportive measures



One-sided no
contact orders



Restrictions from
locations



Restrictions from
activities

© 2020 D. STAFFORD & ASSOCIATES 28

28

Written Outcome

- Allegations
- Procedural steps
- Findings of fact
- Conclusion/application
- Rationale for each allegation (determination, sanctions, remedies)
- Appeal procedures

© 2020 D. STAFFORD & ASSOCIATES 29

29

Live Hearing Recording or Transcript



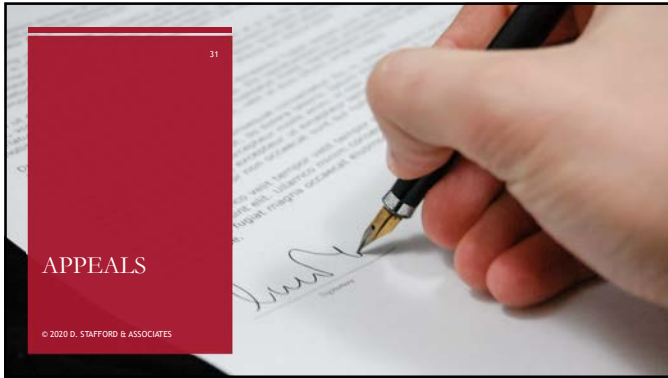
Recording



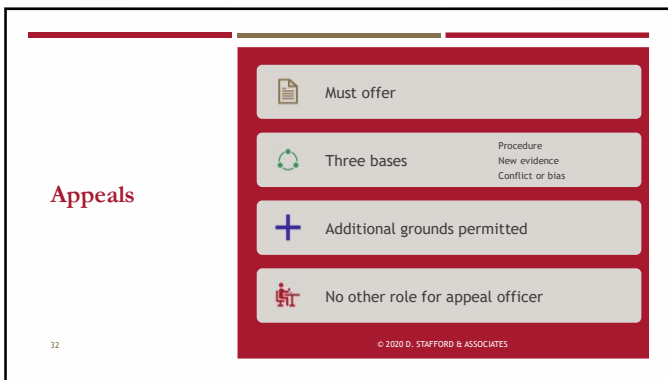
Transcript

© 2020 D. STAFFORD & ASSOCIATES 30

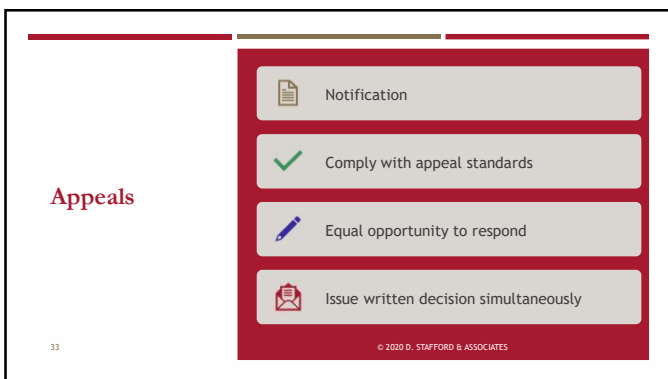
30



31



32



33

When is the Decision Final?

© 2020 G. STAFFORD & ASSOCIATES

34



35
