WELCOME!

- Please log in to your ATIXA Event Lobby each day to access the course slides, supplemental materials, and to log your attendance.
- The ATIXA Event Lobby can be accessed by the QR code or visiting www.atixa.org /atixa-event-lobby in your internet browser.
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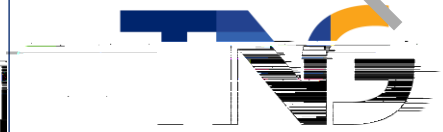
Civil Rights Investigator Two

Training & Certification Course

TR UTION



Any advice or opinion provided during this training, either privately or to the entire group, is<u>never</u>to be construed as legal advice. Always consult with your legal counsel to ensure you are receiving advice that considers existingp9r privately

The content and discussion in this course will necessarily engage with sex- and gender-based harassment, discrimination, and violence and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language.

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1. Title IX and Investigations Overview
2. Due Process
3. Effective Investigations
4. Statutory and Regulatory Status
5. 34C.F.R.x106.30 Sexual Harassment Definitions
6. Investigating Retaliation Claims
7. Other Civil Rights Offenses

TR UTION

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8 Issue Spotting

9 Consent Construct

10 Creating Timelines

11 Case Study

12 Trauma and Investigations

13 Investigation Strategy

14 Notetaking and Recordkeeping

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15 Meeting Considerations

16 Questioning Skills and Guidelines

17 Hit the G.A.S.

18 The Investigation Report

19 Bias and Prejudice

20 Inclusive Investigations

TR UTION

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- 1972:Congress passed Title IX of the Education Amendments
- 1980: ± † s I s § ^ ª ± ˜ s ™ ± I › • I o µ I ^ ± ‹ › ™ B « I 6 • • ‹ I s given primary responsibility for enforcing Title IX
- November 2018:OCR proposed the most detailed and comprehensive Title IX regulations to date, which focused on sexual harassment response
- August 2020:Significantly amended, due process oriented Regulations took effect (proposed in Nov. 2018)
- June 2022:OCR published a Notice of Proposed Rule Making (NPRM) outlining proposed changes to the Title IX regulations focused on sexual harassment response and pregnancy and related conditions

TR UTION

- Continue to fulfill obligations under the current regulations for the 2022–2023 academic year.
- Anticipate OCR will expect schools to implement the new sexual harassment and pregnancy-related Title IX regulations before the start of the 2023–2024 academic year.

TRIBUTION

Steps to Take Now:

- Prepare to educate your community on the changes
- Identify stakeholders that will need to be involved in making policy decisions (e.g., whether to have hearings)
- Determine how you will manage policy changes
- Plan for the training needs for your community
- Consider state laws, court decisions, and other regulations that may affect your institutional approach

Remember: As an Investigator, you

INVESTIGATION

(plus prompt & fair per VAWA Sec. 304)

PROCESS

REMEDIES

Prompt	Effective	Equitable
Act reasonably to stop discrimination	Act reasonably to prevent recurrence	Act equitably to remedy effects

NOT FOR DISTRIBUTION

Incident	Initial Assessment	Formal Investigation & Report	Determination (Hearing)	Appeal
Complaint or notice to the Title IX Coordinator	*Following a formal complaint*	Notice to parties	Cross-examination	
Strategy development	Jurisdiction	Identification of witnesses	Determination	
	Dismissal?	Interview scheduling	Sanction?	
	Policy violation implicated?	Evidence collection	Remedies	
	Emergency removal?	Reportdrafted		
	Reinstatement to another process?	Evidence and draft investigation report shared		
	Informal or formal resolut1.171 T (rm)-3nvessE1 (d)g <0120>Tj /T/ /Aro[(p)-3 (roce)a 41 0 Td [(De)*e2Ty			

TRUTION

1. Receive Notice/Complaint
2. Initial Assessment and Jurisdiction Determination
3. Establish basis for investigation (Incident, Pattern, and/or Culture/Climate)
4. Notice of Investigation to Parties/Notice of Formal Allegation (NOIA)
5. Establish investigation strategy
6. Formal comprehensive investigation
   - *f* Witness interviews
   - *f* Evidence gathering

TRIBUTION

7. Draft report
8. Meet with Title IX Coordinator (or legal counsel) to review draft report and evidence
9. Provide draft report and all evidence directly related to the allegations to parties and their advisors for inspection and review with 10 days for response
10. Complete final report
    - *ƒ* Synthesize and analyze relevant evidence*
    - *ƒ* Send final report to parties for review and written response at least 10 days prior to hearing

*The 2020 Regulations permit, but ATIXA does **not** recommend, that Investigators make recommended findings or conclusions

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DUEPROCESS

- What is Due Process?
- Due Process in Procedure
- Due Process in Decision

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EFFECTIVE INVESTIGATIONS

- Civil Rights Investigation Hallmarks
- Terminology
- Title IX Regulatory Framework
- Promptness

Investigation is a critical part of the Title IX grievance process

- Active identification and strategic gathering of evidence
- Emphasized transparency, communication, and fairness
- Grounded in the concepts of neutrality and equity
- Enhanced Due Process protections for parties
- 2020 Title IX Regulations made substantial changes and additions to grievance resolution processes

TR UTION

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- Formal complaint
- Grievance process
- Recipient
- Complainant
  - Individual(s) affected by alleged conduct or circumstances
- Respondent
  - Individual(s) alleged to be responsible for alleged conduct or circumstances

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- Sexual harassment
  - Quid pro quo
  - ? # › « ± ‹ – s l s ™ » ‹ ª › ™ ˜ s ™ ± @
  - VAWA offenses (sexual assault, domestic and dating violence, stalking)

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- Reasonably prompt timeframes for the conclusion of the grievance process, including reasonably prompt timeframes for filing and resolving appeals
- Concurrent law enforcement investigation does not relieve the burden of the school to investigate
- J s ˜ § › ª ^ ª ¿ l o s – ^ ¿ « l • › ª l ? € › › o l l ^ µ « s @ l ^ ™ notice of the delay to parties
  - Complexity of the investigation
  - Concurrent law enforcement investigation with time-dependent release of evidence
  - Delays for administrative needs are insufficient

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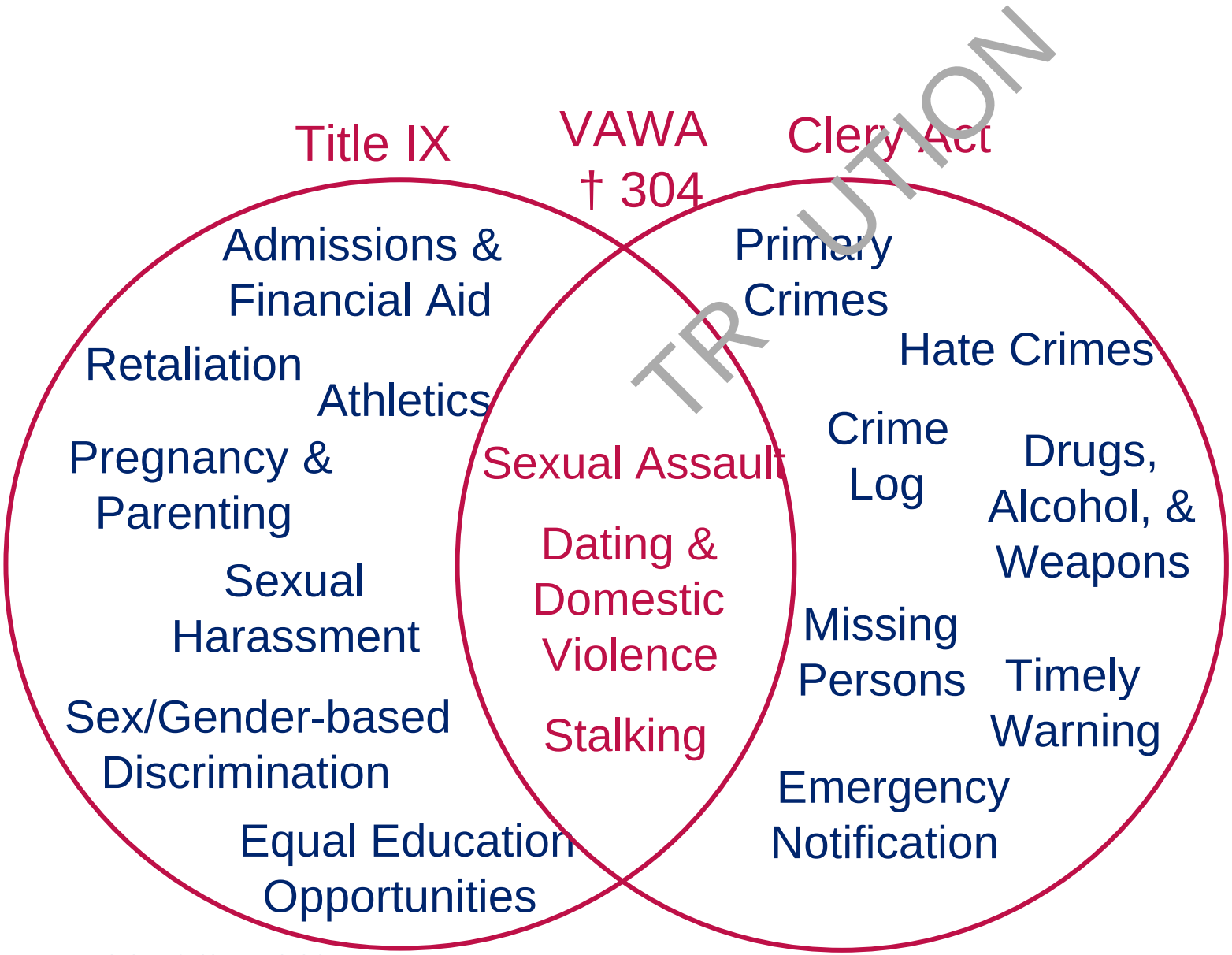

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VAWA Section 304 created extensive new policy, procedure, training, education, and prevention requirements for:

- Sexual assault
- Stalking
- Dating violence
- Domestic violence

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- Prohibits retaliation
- The 2020 Title IX regulations also include new procedural and training requirements for Investigators for all forms of sexual harassment

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Still in effect:

- 1975 Regulations, as amended
- 2003 DCL on Title IX and Free Speech
- 2010 DCL on Harassment and Bullying
- 2013 DCL on Pregnant and Parenting Students
- 2020 Q&A on Final Rule
- 2021 Q&A on Title IX and Single Sex Scholarships, Clubs, and other Programs
- 2021 Notice of Interpretation and Enforcement of Title IX
- 2021 Q&A on the Title IX Regulations on Sexual Harassmen (Revised July 2022)

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- 2020 Title IX regulations
  - Effective and enforceable August 14th, 2020
  - Amend the Code of Federal Regulations and have force and effect of law
  - Some provisions already mandated by due process case law in some jurisdictions
  - Intervening variables (litigation and legislation) may impact enforcement in the short or long term
- The regulations are significant, legalistic, surprisingly prescriptive, very due process heavy, and go well beyond what any court has required under 5th/14th Amendment case law

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- Preamble explains thought process for regulations
- OPEN Center responses provide clarification for enforcement

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Must include:

- Presumption that the Respondent is not responsible until determination is reached
- ? D s ^ « › ™ ^ j – ¿ l § ª › ˜ § ± @ l ± ‹ ˜ s • ª ^ ˜ s « l
  - Requirement to set specific timelines for major stages of the grievance process now gone
- Range of possible sanctions and remedies (mirrors Clery Act mandate)
- Description of standard of evidence
- Bases and procedures for appeal
  - Appeal now required, equitably, on three grounds
- Range of supportive measures available to all parties
  - 4 › ± s l « † ‹ • ± l • ª › ˜ l ? ‹ ™ ± s ª ‹ ˜ l ˜ s ^ « µ ª s « @ l ± s ª

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- Emphasizes the *Davis* standard
  - Control over the harasser and the context of the harassment
  - ? s o µ l ^ ± ‹ › ™ l § ª › € ª ^ ˜ l › ª l ^ l ± ‹ » ‹ ± ¿ @ l ˜ s ^
    - locations, events, or circumstances under substantial control
    - any building owned or controlled by an officially recognized studE7 v54tnize7Tr 24.4ed or controlled by a

TR UTION

- The definition of sexual harassment covers the in-program effects of out-of-program misconduct (though not the misconduct itself)
- 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
  - OCR adopts a fairly broad definition of what could constitute attempting to participate

TR UTION

- Mandatory steps upon notice (34 C.F.R. 106.44)
- Promptly contact the Complainant to discuss the availability of supportive measures
- With or without filing formal complaint, inform complainant of « µ § § › ª ± ‹ » s l ˜ s ^ « µ ª s « l ^ ™ o l ª s « § s l ± l l › ˜ § – ^ ‹
- Explain to the Complainant the process for filing a formal complaint
- Mandatory steps upon formal complaint (34 C.F.R. 106.45)
  - Follow detailed grievance process requirements
  - Offer informal resolution options
  - Dismiss complaint if no jurisdiction or no prima facie sexual harassment allegation

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x106.30 DEFINITIONS
SEXUAL HARASSMENT

- Quid Pro Quo
- Hostile Environment Sexual Harassment
- Dating Violence
- Domestic Violence
- Sexual Assault
- Stalking

Title IX regulations require each Recipient to define sexual harassment as conduct on the basis of sex that satisfies one or more of the following:

- Quid Pro Quo An employee of the Recipient conditioning the provision of an aid, benefit, or service of the Recipient on an ‹ ™ o ‹ » ‹ o µ ^ – B « l § ^ ª ± ‹ l ‹ § ^ ± ‹ › ™ l ‹ ™ l µ ™ ½ s – l › ˜ s l «

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Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar l ‹ ª l µ ˜ « ± ^ ™ l s « ‹ 3 † ? s ™ ll › ± • † ± s † – s ‰ l ‹ › ™ Š ‹ ™ ™ ± l @ µ 4 o ' ‹ ™ the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced

TRIBUTION

- Widespread
- Openly practiced; occurring in public spaces
- Well-known among students or employees; reputation of a department, person, etc.
- Frequency, intensity, and duration of the conduct
- Unreasonable interference with school or job
- l ? € ^ µ ™ ± – s ± l › • l « *Meritor v. Vinson*, 477 U.S. 57 (1986)
- Incidents occurring in concert or with regularity are more likely to be considered pervasive
- Consider the specific circumstances and facts

TRIBUTION

- Reasonable person standard in context
- ? ' l “ ™ › ½ l ‹ ±« l ¼ s ¶ l s ± ™ # l @
- Age and relationships of Complainant and Respondent
- Number of persons involved
- Frequency
- Severity
- Physically threatening
- Humiliating
- Intimidating
- Ridiculing
- Abusive

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- ƒ Hostile environment analysis requires that you evaluate ± † s l ? ± › ± ^ – ‹ ± ¿ l › • l ± † s l l ‹ ª l µ ˜ « ± ^ ™ l s « ' @
- ƒ In evaluating the totality of the circumstances, consider:
  - ƒ Frequency, nature, and severity of the conduct
  - ƒ Whether the conduct was physically threatening
  - ƒ Whether the conduct was humiliating
  - ƒ Identity of and relationship between the Respondent and the Complainant
  - ƒ Age and sex of the Respondent and the Complainant
  - ƒ Size of the school, location of the incidents, and context in which they occurred

TR UTION

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- Totality of the circumstances to consider:
  - • • s l ± l › ™ l ± † s l › ˜ § – ^ ‹ ™ ^ ™ ± B « l ˜ s ™ ± ^
  - Whether the conduct was directed at more than one person
  - Whether the conduct unreasonably interfered with the › ˜ § – ^ ‹ ™ ^ ™ ± B « l s o µ l ^ ± ‹ › ™ ^ – l › ª l ½ › ª “
  - Whether the statement was an utterance of an epithet which was offensive or offended by discourtesy or rudeness
  - Whether the speech or conduct deserves the protections of academic freedom or First Amendment protection
  - ? › ™ « ± s – – ^ ± ‹ › ™ l › • l « µ ª ª › µ ™ o ‹ ™ € l l ‹ ª

TR UTION

- 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 Complainant.
- Fondling – The touching of the private body parts of the Complainant (buttocks, groin, breasts) for the purpose of sexual gratification , without the consent of the Complainant,

TRIBUTION

- Statutory Rape – Sexual intercourse with a person who is under the statutory age of consent of [insert age in your state].

Note: Sexual Assault also includes having another person touch you sexually, forcibly, and/or without their consent.

* This definition set is not taken from the FBI Uniform Crime

TRIBUTION

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall j s l o s ± s ª ˜ j ‹ ™ « s o l ± ² ™ S › ˜ § – ^ ‹ ™ ^ « ™ ^ ± ± B s « ˜ s ™ ± l ^ with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition5
  - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - Dating violence does not include acts covered under the definition of domestic violence.

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- A felony or misdemeanor crime of violence committed
  - By a current or former spouse or intimate partner of the Complainant;
  - By a person with whom the Complainant shares a child in common;
  - By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
  - By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws [insert your state here];
  - By any other person against an adult or youth Complainant ½ † › l ‹ « l § ª › ± s l ± s œ§l•ª«˜l™±ÐÞ±^l±«lµ™osªl± or family violence laws of [insert your state here].

TR UTION

ƒ To categorize an incident as Domestic Violence, the

TR UTION

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to
  - s ^ ª l • › ª l ± † s l § ^ ª « ± ™ l Þ ª « l ± † s l « ^ • s ± ¿ l › •
  - Suffer substantial emotional distress.
- For the purposes of this definition:
  - Course of conductmeans two or more acts, including, but not limited to, acts in 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
    § s ª « › ™ " l › ª l ‹ ™ ½ ‹ ++s†ª l•^sl§ss«ª « › ™ B « l § ª › § s ª

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- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

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^ ™ ¿ › ™ s B « l ‹ ª « ± l ˜ s ™ o ˜ s ™ ± l ª ‹ €

TR UTION

INVESTIGATING RETALIATION CLAIMS

- Basic Legal Principles
- InvestigatingRetaliation Claims

- Establishing retaliation, unlike establishing sexual harassment, requires proving motive the intent to retaliate.
- E › ˜ s › ™ s B « l ‹ ™ ± s ™ ± ‹ › ™ l ‹ « l ª ^ ª s – ¿ l o ‹ « § the legal framework is about whether a retaliatory motive can be inferred from the evidence.
- Gathering details of what occurred is critical.

TR UTION

- The following elements establish an inference of retaliation :
  - Did the individual engage in protected activity?
    - Usually straightforward,
    - Unless there is a question of reasonableness of belief or manner.
  - Was the individual subsequently subjected to adverse action?
  -

TRIBUTION

Common definition of adverse action:

- Significantly disadvantages or restricts the individual as to their status as students or employees, or their ability to gain the benefits or opportunities of the program; or
- Precluded from their discrimination claims; or
- Reasonably acted or could act as a deterrent to further protected activity.

- The U.S. Supreme Court and the federal courts have defined adverse actionvery broadly.

TRIBUTION

- What is the stated nonretaliatory reason for the adverse action?
  - Is the explanation for the action legitimate on its face?
- Is there evidence that the stated legitimate reason is a pretext?
  - This is the heart of the case: is the explanation the true reason?
- Must establish that the adverse action was motivated by retaliation by the standard of evidence

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Factors to consider:

- The explanation makes sense
- The action was consistent with established policy or practice
- No adverse action was taken against others who engaged in protected activity
- Complainant was treated the same as other individuals

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Factors to consider:

- The explanation given is not credible
- Other actions by the same individual are inconsistent with the explanation
- The explanation is not consistent with past policy or practice
- There is evidence of other individuals treated differently in similar situations

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Sexual Exploitation: an individual taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that behavior does not otherwise constitute sexual harassment.

Examples include, but are not limited to:

- Sexual voyeurism
- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression

TRIBUTION

- Takingpictures, video, or audio recordingof another ina sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved inthe activity; or exceedingthe boundaries of consent (such as allowinganother person to hide in a closet and observe sexual activity; or disseminating sexual § ‹ l ± µ ª s « l ½±‹†±s†l ›§µ†± ± › € ª ^ § † s o l § s ª « › ™ B « l l › ᵀ the makingor postingof non-consensual pornography
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection

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- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other ˜ s ^ ™ « 4 l • › ª l ± † s l § lµ ª § ª » ˜ S « ‹ ™ € l ± † ^ ± l § s ª ability to give consent to sexual activity, or for the purpose of making that person vulnerable to nonconsensual sexual activity
- 3 ‹ « ^ § § ª › § ª ‹ ^ ± ‹ › ™ l › • l ^ ™ › ± † s ª l § s ª « › ™ B websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- › ª l ‹ ™ € l ^ l § s ª « › ^ ™ l l ± ^ › l ± ± ‹ › ™ S l ^ € ^ ‹ ™ « ± l ± † ^ will by threatening to show, post, or share information, » ‹ o s › " l ^ µ o ‹ › " l › ª l ^ ™ l ‹ ˜ ^ ± € † S l ± § † s ^ ª ± « l › o ™ S § B « l ± or sexual activity

TR UTION

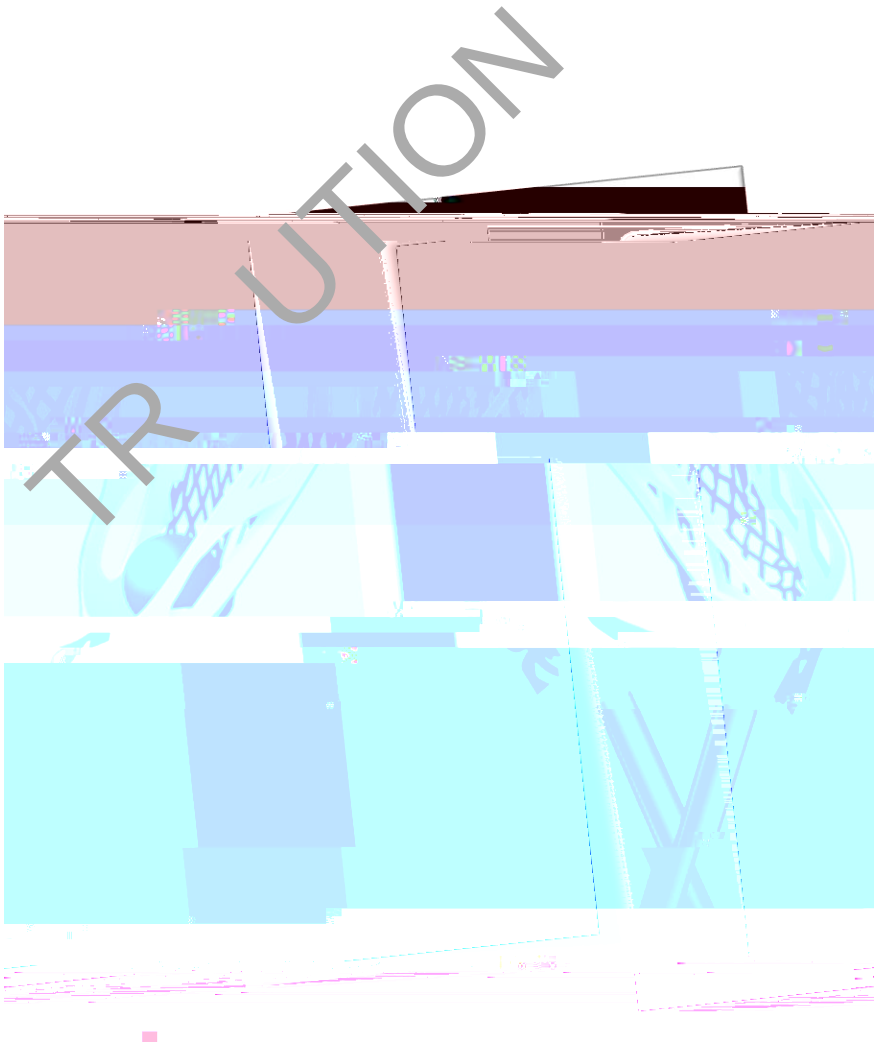
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the institutional community, when related to the admission, initiation, pledging, joining, or any other group affiliation
- ™ ¿ l § › – ‹ l ¿ l »™›l–±j^^±s‹œ‹ l › • l ± † s l › ˜ § – ^ ‹ ™ ^ protected characteristic, which is severe and/or pervasive/persistent enough to cause a discriminatory effect
- May not fall under Title IX jurisdiction, but requires a response with appropriate due process

TRIBUTION

ISSUE SPOTTING

Using a case study, attendees should evaluate the available facts, identify issues and related evidence (available and still needed)

TRAVIS AND JUSTIN



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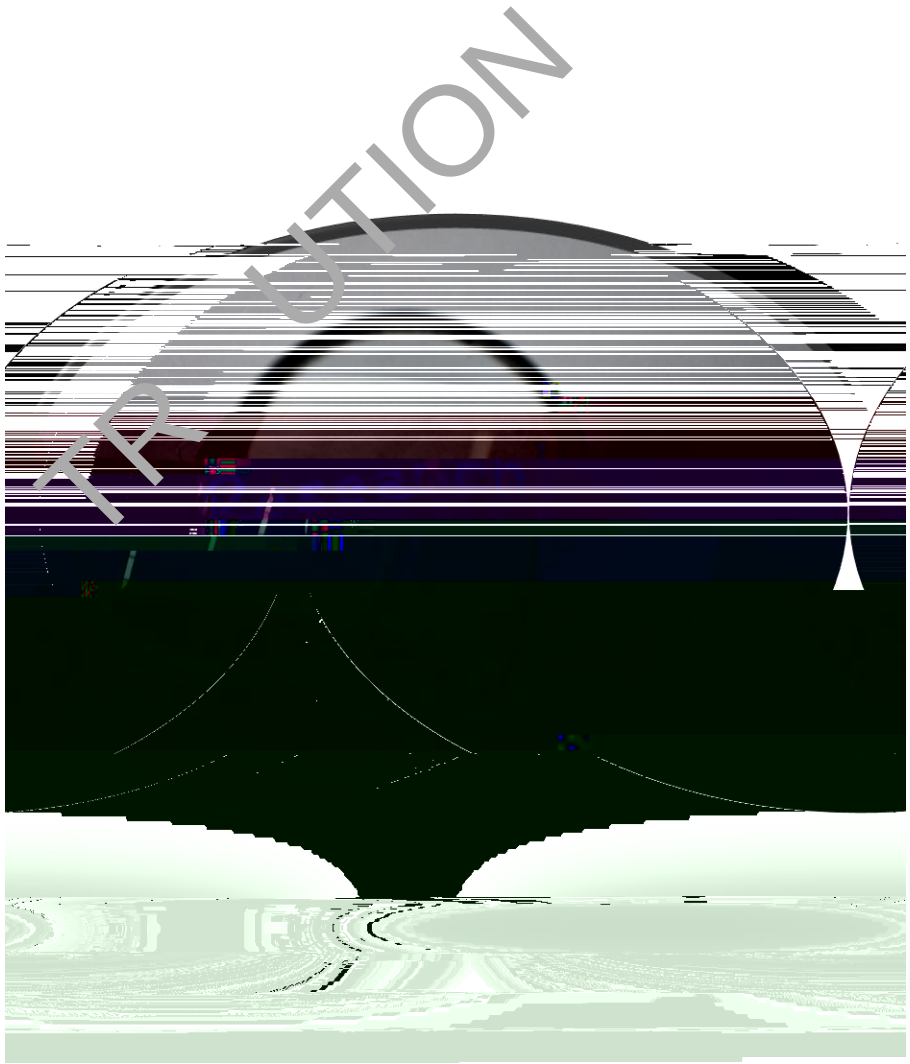
Travis was on the lacrosse team for three weeks. Travis reported that he was being sexually harassed by Justin, the lacrosse team captain. In the span of two weeks, Justin has asked Travis out three times. The first time Justin asked Travis out was in the locker room when they both were ™ ^ “ s o " l ^ ™ o l - µ « ± ‹ ™ l § µ ± lj † ‹ “' ll ‡J ^ † S ™ l o « l s › l ™ ™ J ± ‹ ˜ s l - µ « ± ‹ ™ l ^ « “ S s ª o s "‡ l ± ¿ l ⁄ ² ª ^ µ « ™ “ l ^ ™ o l € › ± l ‹ personal space at a bar. The third time, Justin walked up ™ s ¾ ± l ± › l J ª ^ » ‹ « l ‹ ™ l ± † s l « † › ½ s ª l ^ ™ o l ± ª ‹ buttocks. Travis also kissed Justin at a party the weekend before the shower interaction.

TRIBUTION

DEB



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Deb is a faculty member working with a small team of seven student research assistants who meet each morning to check-in with each other and the status of their grant projects in the university lab. May is a student team member who has recently announced that she is pregnant.

One morning, May texted Deb that she was going to miss the morning meeting. Deb announced to the group that they « † › µ – o l € s ± l « ± ^ ª ± s o l j s l ^ µ « s l 3 ^ ¿ l ½ › µ – o meeting that day. A third student researcher, Paulie, ª s « § › ™ o s o l ½ ‹ ± † l ^ l « ?™ ⊳ j ª s ⊣ ± ' ‖ « ⊼ ⊤ ™ s d ⊮ « ^ ^ « ‹ l õ ' ª ™ sickness. Too bad, her breasts are getting to be GINORMOUS ^ ™ o l ' l ½ ^ « l – › › “ ‹ ™ € l • › ª ½ ^ ª o l ± » ª ⊤ ™ ^ ‹ » ™ ⊤ ™ ' @ l Several team members laughed hard at this joke, while a

TR UTION

Deb was livid, and immediately began to wonder how she could work with a team of people who objectify women like this. After the meeting she stormed into the Title IX office to l › ˜ § – ^ ‹ ™ l ^ j › µ ± l A ^ µ – Es†Bs¾l §›—™ o™µ ls±o' l † › ½ l uncomfortable she felt by the incident, how she no longer could work with Paulie, stating that he should be terminated from the grant-funded position and that the other students who laughed should be put on probation.

TRIBUTION

- Force
- Incapacity
- Consent

- Informed, knowing, and voluntary (freely given)
- Active (not passive)
- Creates mutually understandable permission regarding the conditions of sexual activity
- No means no, but nothing also means no. Silence and passivity do not equal consent.
- To be valid, consent must be given immediately prior to or contemporaneously with the sexual or intimate activity
- Consent can be withdrawn at any time, so long as it is clearly communicated verbally or nonverbally

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1. Was force used by the Respondent to obtain sexual or intimate access?

f

TR UTION

- Incapacitation is a state where individuals cannot make rational, reasonable decisions because they lack the capacity to give knowing consent
  - unable to understand who, what, when, where, why, or how
- Incapacitation is a determination that will be made after the incident in light of all the facts available
- Assessing incapacitation is very fact dependent
- Blackouts are frequent issues
  - – ^ l “ › µ ± l f l ‹ ™ l ^ § ^ l ‹ ± ^ ± ‹ › ™ l 3 ^ µ ± › ˜ ^ ± ‹ l ^ – –
  - Blackout = working memory functional; short-term memory not retained, not stored long-term; long-term memory from before blackout can be accessed
  - Partial blackout must be assessed as well

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Evidence of incapacity context clues:

- *f* Slurred speech
- *f* The smell of alcohol on the breath in combination with other factors
- *f* Shaky equilibrium; stumbling
- *f* Passing out
- *f* Throwing up
- *f* Appearing Disoriented
- *f* Unconsciousness

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Evidence of incapacity context clues:

- *f* Known blackout
- *f* Although memory is absent in a blackout, verbal and motor skills are still functioning
- *f* Outrageous or unusual behavior (requires prior knowledge)

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- These answers should be in the investigation report if the primary consideration is the out of norm behaviors of the Complainant as a determination of incapacity:
  - Did the Respondent know the Complainant previously?
  - If so, was Complainant acting very differently from previous similar situations?
  - Evaluate what the Respondent observed the

TR UTION

- Most abused drug on college campuses
- Most commonly used date rape drug
- Time 6the only sobering tool
- 6 ™ s l ? o ª ‹ ™ “ @ l § s ª l † › µ ª
- ? 3 ¿ ± † l › • l § µ “ ‹ ™ € @
- Pace of consumption
- Food in the stomach
- Carbonation and alcohol
- Medications and alcohol

TRIBUTION

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- Rate of consumption
- Strength of drink
- Food in the stomach
- Body weight
- Body type & body fat percentage
- Gender
  - E.g., enzymes, hormones, body fat, and water in body
- Functional tolerance
- Medications
- Illness and dehydration
- Fatigue
- Caffeine
- Genetics
- Ethnicity

TRIBUTION

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- If the Complainant was not incapacitated, move on to the Consent Analysis.
- If the Complainant was incapacitated, but:
  - The Respondent did not know it, AND
  - The Respondent would not have reasonably known it = policy not violated. Move to Consent Analysis.
- If the Complainant was incapacitated, and:
  - The Respondent knew it or caused it = policy violation Sanction accordingly
  - The Respondent should have known it = policy violation Sanction accordingly
  - J † s l D s « § › ™ o s ™ ± B « l › ½ ™ l ‹ ™ ± › ¾ ‹ l ^ ± ‹ defense

TR-UTION

CREATING TIMELINES

- Timeline Construct

TR UTION

First evaluate if the Complainant was incapacitated

- This inquiry may be triggered by statements such as:
  - ? J † s l ™ s ¾ ± l ± † ‹ ™ € l ' l ª@˜ s ˜ j s ª l ½ ^ « l '
  - ? ' l ½ › “ s^l ™ §o'l@l '
  - ? ' l o › ™ B ± l ª s^˜™ ˜¿j ±s ª † ‹ ™ € l ^ • ± s ª l ' l ' l ' @
- This is your cue to start a timeline of the events during the incident to collect the evidence to assist the Decision-maker(s) in making their analysis as to whether the Complainant was incapacitated

TR UTION

- Begin the timeline at the time the incident began, starting at the time the Complainant began using alcohol/drugs
- Ask (but perhaps in a different way):
  - What were you drinking (e.g., wine, beer, or hard liquor)?
  - Quantity? (e.g., shot glass, large Solo cup, 12 oz. can)
  - How many drinks did you have?
  - Were you using any drugs?
  - When did you eat? What did you eat?
  - Are you taking any medications?
  - Functional tolerance questions

TR UTION

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- If Complainant did not have anything to drink, or only had a small amount, you need to consider if the individual was drugged. You will need to ask:
  - Where were you when you were drinking?
  - Did you leave your drink at any time then resume consuming?
  - Did anyone provide drinks for you?

TR UTION

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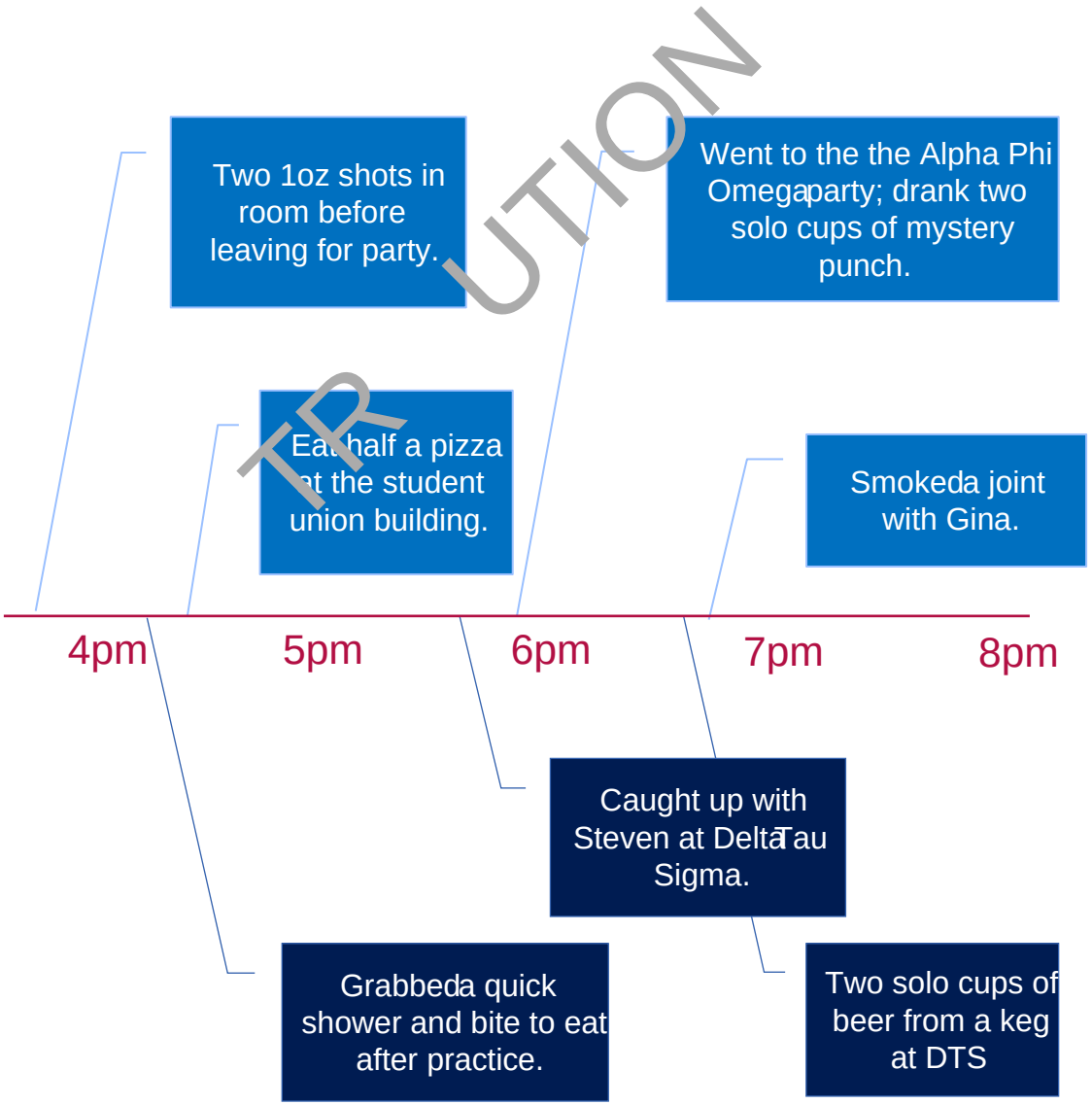
- Determine what the Respondent observed about the › ˜ § – ^ ‹ ™ ^ ™ ± B « l j s † ^ » ‹ › ª « ' l › l ™ › ± l ^ « “ l directly as written below:
  - Slurring words?
  - Stumbling?
  - Acting unusual (e.g., not making sense, appearing drunk)?
  - Falling asleep?
  - Throwing up?
  - Disoriented?
  -

TR UTION

- The Decision-maker will need to make an assessment if, based on the standard of evidence, the Complainant was incapacitated
- ' • l ± † s l ^ ™ « ½ s ª l ‹ « l ? 4 › " @ l § ª › l s s o l ± › l ± †
- ' • l ± † s l ^ ™ « ½ s ª l ‹ « l ? W s « " @ l ˜ ›™» ls^l§±^ ll §±^¿ l analysis
- Conduct the same timeline for the Respondent, « µ § s ª ‹ ˜ § › « s o l › ™§ l–±^†‹ s™ ^ ™ ± B « l ± ‹ ˜ s – ‹ ™ s

TR UTION

- Use documentary evidence (e.g., texts) to establish where, why, when, how, and who
- Match up as many times and locations as possible
- What did the other party observe?



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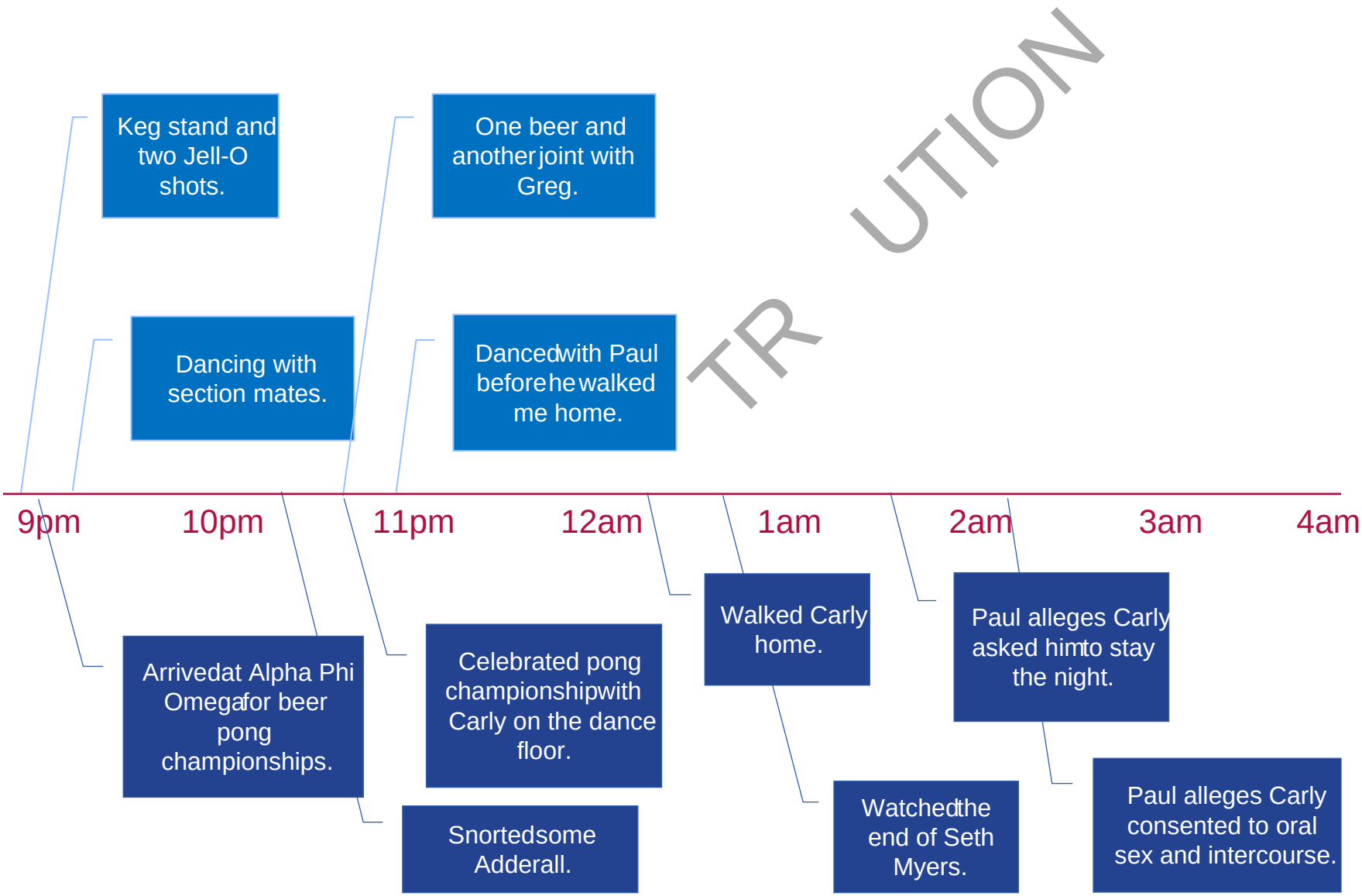

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CASE STUDY

Using a case study, attendees should evaluate the available facts, identify issues and evidence (available and still needed), and assess compared to policy prohibitions.

AMY AND TODD

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On Friday, April 23, I went to an on-campus party. I was doing a lot of drinking and dancing and getting to know people. I had at least four drinks in the first few hours I was there. Then, I met Todd. I remember that he came up to me on the dance floor and started to dance with me. He was really good-looking, and so was the other guy he was with, Jeff, whom I had met at a different party the week before.

We danced and had a lot of fun, and I remember drinking some more and Todd getting me some Jell-

TRIBUTION

When I woke up the next day, his name and number were scrawled on a pad by my sofa, and there was a used condom in the toilet. I got scared and called him to find out what had happened. I remembered most of what he said about the party, but when he told me that we came back to my room ^ ™ o l ‡ « ^ s ∂ ¾ " l ' l « ± ^ ª ± s o l ± › l l ª ¿ ' l ' l o ‹ o ™ B ± l ª s was afraid I might be pregnant. Todd assured me that he wore a condom and asked me out again. I hung up and cried.

I told everything to my roommate, Sarah, who was sitting on the sofa when I called Todd. She suggested that I call the campus police, but I felt more comfortable talking to you.

TR UTION

Around 1:00 a.m., somebody started passing out Jell-O shots « § ‹ “ s o l ½ ‹ ± † l € ª ^ ‹ ™ l ^ – l › † › – ' l ' l o ‹ o ™ B ± l ½ liquor, but Amy had a few shots. We danced a lot, and then I got her a few more Jell-O shots. She went off to the j ^ ± † ª › ›˜ ™ o l ^ • ± s ª l ± † ^ ± l ' l l › µ – o ™ B ± l • ‹ ™ o bummed me out. I waited around to see if she would show µ § l ^ € ^ ‹ ™ " l j µ ± l « † s l o ‹ o ™ B ± ' l ' l ± › › “ l › • • l ^ to my residence hall. As I left the party, I looked over and saw Amy. She seemed to be in pretty bad shape. I offered to take her home, and she told me her dorm and leaned on my arm.

When we got to her residence hall, I helped her inside, and was about to leave, but she asked me to come up to her room, just to make sure she got there.

TRIBUTION

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I took her upstairs, opened the door for her, and let her in. She asked me to get her a glass of water, and I did. I started to take off again, but she asked me not to go. When I turned around, she kissed me, hard. We kissed for a while, but she ½ ^ « ™ B ± l • s s – ‹½™s€™1⁄2 s‹–™ ±› ™±d s l j ^ ±U††ª›› ™˜ ‖ ^ she came out, she said she felt better, but tired. She lay down and we kissed some more. I started to massage her back, and she passed out. She came to about 20 minutes later and started to kiss me and fondle me. She took off her shirt, and all of my clothes. I started to kiss her all over, and she said she wanted to lay down again. I asked her if she was OK, and she said she was. I asked her if she had a condom, and she said she had one in her dresser. I went to get it, and when I got back to the couch, she was out again.

TRIBUTION

She woke up after about 20 minutes, and I suggested that she just go to sleep. But she said she felt much better and started to give me oral sex. After a while, she put the condom on me and we had sex. It was great. She was really wild and liked to be on top. Afterward, we talked until the early morning, and I gave her my number and left. The next day, she called me to ask me why my name was on the pad by her sofa. I told her about meeting her at the party and about our evening together. She seemed to get upset, and said she remembered meeting me at the party, but nothing else. I asked if she ever wanted to get together again, and she hung up on me.

TRIBUTION

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TRAUMA AND INVESTIGATIONS

- Introduction to Trauma
- Neurobiological Impact of Trauma
- Trauma and Interviewing

- The brain also does not typically differentiate between an actual threat and a perceived or subjective threat
  - Sometimes also a function of prior experiences, rather than the immediate situation

TR UTION

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- Memory is formed in two steps:
  - Encoding: organizing sensory information coming into brain
  - Consolidation: grouping into memories and storing the stimulus
- Trauma can interfere with the encoding and/or the consolidation of memory
- May create fragmented memories
- Recall can be slower and more difficult
- Alcohol may interfere further with memory
- However, sensory information (smell, sound, etc.), may still function properly

TRAUMA

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- Expecting a Complainant to give a linear account in the days after an incident, or after having been triggered, is not always realistic
- Memory fragmentation can occur
- # ^ » ‹ ™ € l ? ‹ ™ l › ™ « ‹ « ± s ™ ± @ l ˜ s ˜ › ª ¿ " l § ^ µ provide an account are not outside the bounds of what one could expect from a person who has experienced trauma
- Considerations for credibility?

TR UTION

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- Empathy is critical
  - However, remember to remain impartial
- J s – – l ˜ s l ˜ › ª s l ^ j › µ ± #
- Help me understand your thoughts when...
- What was going through your mind when...
- What are you able to remember about...?
  - 5 senses
- What were your reactions to this experience?
  - Physically
  - Emotionally
- What, if anything, can you not you forget about this experience?

TR UTION

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- Trauma may help explain elements that negatively impact ^ | § ^ ª ± ¿ B « | | ª s o ‹ j ‹ – ‹ ± ¿
  - ' ™ | › ™ « ‹ « ± s ™ | ‹ s « | ‹ ™ | ^ | § ^ ª ± ¿ | › ª | ½ ‹ ±
  - 1 ^ | “ | › • | – ‹ ™ s ^ ª ‹ ± ¿ | ‹ ™ | ^ | § ^ ª ± ¿ | › ª | ½ ‹ ± statement
  - Lack of memory about an incident
  - Memory errors by a party or witness
  - Demeanor or affect
  - Brief answers, or answers lacking in detail

TR UTION

- However, while trauma may help explain issues that impact credibility, it typically does NOT excuse them
  - An assessment of credibility must focus on issues such as the reliability, consistency, and believability of the parties
  - ' • " l • › ª l s ¾ ^ ~ § – s " l ^ l § ^ ª ± ¿ B « l ^ l l › µ ™ ± l ‹ « l ‹ lacking in detail, or has material memory gaps, it typically lacks credibility
  - An understanding of trauma and its impact will provide

TR UTION

TR UTION

- Use your issues list
- Develop your strategy
  - Is there undisputed information? Is it relevant to explore?
  - Is there disputed information? Is it relevant to explore?
  - ª s l ± † s ª s l ^ ™ ¿ Ł“ ѣ ^ ¿ ± ł « ª « ѕ µ ™ Š ® ± l § › – ‹ l ¿ l » ‹
  - Are there possible policy violations that were not included in the notice of investigation/allegation?
  - Who do you want to talk with (order of interviews?)
  - What represents your next steps?

TR UTION

NOTETAKING AND RECORDKEEPING

- What Kinds of Notes Should Be Kept?
- Notetaking
- Recordkeeping

- Assemble an investigation file and keep it in a secure location
- Keep a timeline of the steps in the process, including dates of all meetings and interviews
- Interviews & notes vs. recording
  - Recording is becoming more common
- Notes

TR UTION

- Taking notes may slow down the interview in a good way
- Use preprepared numbered questions as a framework but be flexible
- Notetaking should occur throughout the entire interview, not just when a Respondent makes a pertinent disclosure
  › ª | ^ ™ | ? ‹ ™ | ª ‹ ª ş ™^ª ± ‹ ™ € @
- Documentation is critical to creating the record of the complaint
- Remember that students have the right to inspect their education record under FERPA

TR UTION

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- Notes should be complete and detailed
  - Important for assessing credibility
  - Decision may turn on small details
- Where possible, include verbatim statements on critical issues – use their words, not yours
- Keep notes regarding what the Complainant, Respondent, and witnesses are told
- You may want to summarize perceptions of credibility
  - Recognize, however, that notes and evidence may be subject to review

TRIBUTION

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- D s ˜ s ˜ j s ª l ± † ^?±«l ±–†ssl § › « « s « « ‹ › ™ @ l D A l very limited
- Date all records and include who was present at any meetings; number pages
- Review your notes before the interview concludes
- Clarify anything about which you are unclear
- Document any refusal to answer, evasion, or refusal to participate
- Capture key quotations
- Review and finalize notes immediately upon completion of interview

TR UTION

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- Certain records must be maintained for at least seven years:
  - Sexual harassment investigation, including any responsibility determination, any disciplinary sanctions imposed, and any remedies implemented
  - Any appeal and related result(s)
  - Any informal resolution implemented
  - Any supportive measures implemented
- For each conclusion, Recipient must document the rationale for its determination
- Recipient must document measures taken to preserve/restore access to education programs/activity

TRIBUTION

- Considerations for Investigator notes
  - Fact-based observations
  - Avoid conclusions or determinations
- ? 3 ^ ‹ ™ ± ^ ‹ ™ @ › ll ^ ⅛ § ‡ § ^ – ± ls « « l “ s § ±
- Develop and maintain minimalistic note-taking style
- Overwritten notes
- Think about who could potentially read (parties, attorneys, judge, jury, public

TR UTION

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TR UTION

MEETING CONSIDERATIONS

- Environment
- Investigators
- Managing Expectations

- Maintain professionalism, but balance with relaxed atmosphere
  - Attire
  - Demeanor
- The Investigator is an extension of the environment
- Investigator neutrality is key but should be balanced with compassion
- Maintain good eye contact and comfortable, open body language

TR UTION

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- Consider who should conduct the interview and who should be taking notes
- – – › ½ l ± ‹ ˜ s l 3 U † ^ ± l ‹ • l ± † s ª s l ‹ « ™ B ± l s ™ ›
- Use breaks strategically
- Remain calm and professional

TR UTION

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- No one is happy at the end of these processes
- People who conduct investigations with skill rest secure in the knowledge that all involved, including witnesses, are treated objectively and fairly
- Be sure the parties understand parameters of the policy, what it does and does not cover, how the process plays out, and what process can and cannot accomplish
- Provide ample opportunity for interviewee (especially the Complainant and the Respondent) to ask questions

TR UTION

QUESTIONING SKILLS & GUIDELINES

A review from Investigator One

- Questioning Guidelines
- Conducting Interviews
- Interview Guidelines
- Impact of Non-Participation

Take the complaint from start to finish through a processof broad to narrow questions and issues that need to be addressed.

- Prepare an outline of your questions in advance
  - Ask questions about the allegations and the evidence and the policy elements
  - Focus on areas of conflicting evidence or gaps in information
  - Drill down on timelines and details
  - Review your questions before ending interview

TRIBUTION

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- Restate/summarize what is said – helps validate that you are listening
- Do not sanitize the language
  - Report what is said; rephrase with caution
- Helps ensure you understand what is being said
- Consider using these phrases
  - ? E › " l ‹ ± l « › µ ™ o « l – ‹ “ s # @
  - ? J s – – l ˜ s l ˜ › ª s # @
  - ? U ^ – “ l ˜ s l ± † ª › µ € † @
  - ? # s – § l µ ™ o s ª « ± ^ ™ o @

TR UTION

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- Explain that you will be taking notes or recording and why
- Acknowledge that they may have told others what happened multiple times already and determine who that may be
- Ask if they or others they are aware of have written about this in any fashion:
  - Blog
  - Facebook/Twitter/Social Media
  - Journals or other writings
  - Texts
  - Video journals

TRIBUTION

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f Pay attention to alcohol/drug consumption and timing of
l › ™ « µ ˜ § ± ‹ › ™ l 3 ± † s l ? † › ª ‹ Ã › ™ ± ^ – l ± ‹ ˜ s – ‹

f

TR UTION

- In an interview
  - Let them talk
  - ‹ » s l ± † s ˜ l ^ l « ± ^ ª ± ‹ ™ € l § › ‹ ™ ± l ‹ • l ± † s ¿
  - Drill down later
  - Interrupt for questions only when you must
- Note: some strategies may change based on the

TR UTION

- Reverse chronological order
- Asking unexpected questions
- Asking the individual to recall information in unexpected ways, e.g., sketch
- Asking interviewees for details that the Investigator can check
  - J ª µ ± † l ± s – – s ª « l € s ™ s ª ^ – – ¿ l ^ o o l ˜ › ª s l ?
  - Liars provide details that are difficult to verify
- TheFunnel technique(broad to narrow questions)

TR UTION

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At the end:

- What else do you think might be important for us to know?
- What other questions are there that you thought we might ^ « ‘± † ^ ± b½ ™ B ± (
-

TRIBUTION

f The Decision

TR UTION

HIT THE G.A.S.

- Gather Evidence
- Assess Credibility
- Synthesize the Information

- Collect the evidence from all sources
- Organize it according to the investigation strategy and allegations
  - Chronology
  - Geography
  - Policy prohibitions
  - Alleged violations
- Summarize evidence in a written report
-

TR JTION

ƒ Accuracy and reliability of information

ƒ ? ª s o ‹ j – s @ l ‹ « l ™ › ± l « ¿ ™ › ™ ¿ ˜ › µ « l ½ ‹ ± † l

ƒ Memory errors, evasion, misleading may impact

ƒ Primary factors: corroboration and consistency

ƒ Avoid too much focus on irrelevant inconsistencies

ƒ Source + content + plausibility

ƒ Trauma-informed approach should be consistent

TRIBUTION

- Misplaced emphasis on nonverbal indicators of deception such as nervousness/anxiety
- Misplaced emphasis on inconsistency of information provided by an interviewee
  - Research shows truthful memory recall includes the natural omission or subsequent recollection of details
- Confusion about memory
  - Stress and emotion may lead to enhancement of memory or to the disruption of encoding and retrieval processes

TR UTION

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- Misplaced focus on the status of the parties
  - No scientific studies support the notion of neurobiological response differences between perpetrators and victims
- Bias in interviews
  - Presumptions of guilt can influence credibility assessments

TRIBUTION

Corroborating Evidence

- Strongest indicator of credibility
- Independent, objective authentication
  - Party says they were in class, teacher confirms
  - Party describes text conversation, provides screenshots
-

TRIBUTION

Corroborating Evidence (Cont.)

- Can include contemporaneous witness accounts
  - 3 › ª S? « s § ^ ª ^ ± ½@Ĥ ™Ŧ SS« « " l € ª ª S S^ ± <j ª ł– ± x ŧ ± S l boost
- Outcry witnesses
  - Does what party said then line up with what they say now?
- Pay attention to allegiances
  - Friends, teammates, group membership
  - This can work both directions (ex. honest teammate)

TRIBUTION

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Inherent Plausibility

- Does what the party described make sense?
  - Consideration of environmental factors, trauma, relationships
- Is it believable on its face?
- ? A – ^ µ « ‹ j ‹ – ‹ ± ¿ @ I ‹ « I ^ I • µ ™ I ± ‹ › ™ I › • I ? – ‹ ‘
  - Would a reasonable person in the same scenario do the same things? Why or why not?
  - Are there more likely alternatives based on the evidence?

TR UTION

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Inherent Plausibility (Cont.)

- ƒ ' « l ± † s l § « ª ± ± ¿ ˜ « s ™ ± l l › ™ « ‹ « ± s ™ ± l ½ ‹ ± † l
- ƒ Is their physical location or proximity reasonable?
  - ƒ Could they have heard what they said they heard?
  - ƒ Were there other impediments? (darkness, obstructions)
- ƒ How good is their memory?
  - ƒ Temporal proximity based on age of allegations
  - ƒ ? ' l ± † ‹ ™ “ " @ l ? ' B ˜ l § ª s ± ± ¿ l « µ ª s " @ l ? ' ± l

TRIBUTION

Motive to Falsify

- Does the party have a reason to lie?
- U † ^ ± B « l ^ ± l « ± ^ “ s l ‹ • l ± † s l ^ – – s € ^ ± ‹ › ™ « l
  - Think academic or career implications
  - Personal or relationship consequences
- What if the allegations are false?
  - Other pressures on the Complainant (failing grades, dramatic changes in social/personal life, other academic implications
- Reliance on written document during testimony

TRIBUTION

Past Record

- Is there evidence or records of past misconduct?
- Are there determinations of responsibility for substantially similar misconduct?
- Check record for past allegations
  - » s ™ l ‹ • l • › µ ™ o l ? ™ › ± l ª s « § › ™ « ‹ j – s " @ l
    or proclivity
-

TR UTION

Demeanor

- Is the interviewee uncomfortable, uncooperative, resistant?
- Certain lines of questioning agitated, argumentative
- BE VERY CAREFUL
  - Humans are excellent at picking up non-verbal cues
  - Human are terrible at spotting liars (roughly equivalent to polygraph)
- Look for indications of discomfort or resistance
- Make a note to dive deeper, discover source

FOR DISTRIBUTION

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- Indicate where to focus for the Decision-maker without rending conclusions or making findings related to credibility
- NOT GOOD
  ? J † s l s l-maker™ should find Mark to be unbelievable in his testimony about having received consent for the • › – – › ½ ‹ ™ € l ª s ^ « › ™ « ' ' ' @ l
- GOOD
  ? 3 ^ ª “ B « l ± s « ± ‹ µ ˜ ¥ ™ ¿ ™ ± ª ^ « ± « l ½ ‹ ± † l 3 ^ ª ‹ ^ testimony about X, and the accounts of Witness 1 and U ‹ ± ™ s « « l ½ ← ± € ™ 3 s ‹ ^ ™ ^ B « l ± s « ± ‹ ˜ › ™ ¿ o µ ª ‹ ™ € ™ ± s « ± ‹ € ^ ± ‹ › ™ ' @ l

TR UTION

- Examine only actions that have a direct relation to the situation under review or a pattern of incidents
- Narrow the scope to areas in dispute or disagreement between the parties
  - Two lists: contested and uncontested facts
- Use evidentiary and report review periods to clarify disputed facts
- Present evidence in report organized around facts relating to alleged policy violations
- Contested facts will form the bulk of the Decision

TRIBUTION

THE INVESTIGATION REPORT

- Case identification information:
  - Case number, Investigator(s), date of notice, date assigned to Investigator(s), and date investigation closed
- Source of initial complaint/allegation:
  - Source of initial report, information regarding the formal complaint; name and contact information of Complainant, and status; record same for Respondent
- Details from initial report/complaint:
  - Nature of incident(s)
  - How initial report and/or formal complaint was received (e.g., security incident report, hotline, in person, web form)

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- Results of interviews with parties and witnesses
- Results of interviews with experts
- Roles of the parties and witnesses, and any relations between them
- Summary of other information collected (i.e., information from police reports including pretext calls, medical exams, video surveillance and photographs, copies of texts, emails, and social networking messages)
- TIP: A skeleton report template is helpful

The investigation report is the one comprehensive document summarizing the investigation

TR UTION

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Bias

- A preference or tendency to like or dislike
- A cognitive process
- A thought process developed over time through repeated personal experience
- Implicit or explicit
- Formed from stereotypes, societal norms, cultural experience, expectations of the people around you

Prejudice

- A preconceived opinion that is not based on fact, reason, or actual experience
- Can be classified as cognitive prejudice, affective prejudice, and conative prejudice
- Can include injury or damage as a result of some judgment or action of another in
  o ‹ « ª s € ^ ª o l ›• $ €™ –s lB ª « € †

TR UTION

- Gender Bias
  - Showing favoritism toward one gender identity/expression over another
- Racial Bias
  - Showing favoritism toward one race over another or associating negative traits toward one race over another
- Confirmation Bias
  -

TR UTION

- • s l ± « l ' ™ » s ‹ ± ª € ^ ± ª ™ l › • l ^ ª ± ‹ s « l ^ ™ o l ½
- Impacts the ability to build rapport, connect, and create safe/neutral spaces for all participants throughout the investigation
- Creates risk of *flawed* decision-making when collecting evidence and questioning participants
- Written materials become subjective and include biased language
- Presents moments for assumptions not based on evidence to be made during the investigation
- Increases opportunity for a party to successfully litigate
- Reticence to ask needed questions, pursue evidence, or witnesses who should be questioned

TR UTION

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- Cognitive Prejudice
  - What people believe is true based on stereotypes
  - Can include expectations, impressions, criticisms, and assumptions
- Affective Prejudice
  - What people dislike and like
  - Considered an emotional form of prejudice
- Conative Prejudice
  - Refers to how people tend to behave toward another person or group of people (often driven from first impressions or impulsive conclusions)
  - Directly related to cognitive and affective prejudices

TR UTION

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- Creates tension within the investigation and the process
- Presents risk of discriminatory actions/behaviors toward parties
- Ability to stop, prevent, and remedy diminished
- Can create a hostile environment
- J † ª s ^ ± s ™ « l s © µ ^ – k^™l«s±«Ëµ±k± ™sB « l s o µ program, activity, or employment
- Problematic and damaging to institutional culture

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- LGBTQIAA2SP+
- Gender identity/Expression
  - Example: Nonbinary identities
- Race
  - Example: BIPOC
- Ethnicity
  - Example: International students/employees
- Religion
  - Example: Muslim
- Athletes
- Fraternity and Sorority Members

TR UTION

- Anticipate questions about Investigator credentials/bias at the hearing
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  fester.
- Develop an appeal process that can address bias

TR UTION

INCLUSIVE INVESTIGATIONS

- Bias-free Writing
- Tips for Inclusive Investigations
- Considerations for Inclusive Investigations
- Importance of Visibility

- Know your own biases
  - Have your writing proofread by others
  - Read your own work to recognize language that is part of your everyday speech
- › l µ « l › ™ l ½ † ^ ± B « l ª s – s » ^ ™ ±
  - Only include information on identities when applicable
- Recognize and acknowledge differences
  - 4 › ± l « µ § § › « s o l ± › l ‹ ˜ § – ¿ l o ‹ • • s ª s ™ l s « l o › ™
- Think small
  - Be as specific as possible
  - Specificity is preferred over generalization
    - 6 ¾ ^ ˜ § – s ! l » › ‹ o l µ « ‹ ™ € l ? « ± µ o s ™ ± « l › • l l › you are really referring to a specific racial group

TR IUTION

- Educate members of the Title IX Team
  - Avoid labels
  - When in doubt, ask
- Be mindful of power dynamics and targeting within the process
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  - Describe identities and group connections as they have been described by parties
  - Avoid using language that refers to people in objectifying ways
- Provide a safe, non-judgmental, and respectful environment

TR UTION

- People trust what they see and what they know
  - Limited visibility equates to limited trust
  - Includes trust in policy and procedures
  - Includes trust in the investigation
- Visibility Bias
  - Directly impacts the effectiveness of the work
  - Regularly assess the prevalence of visibility bias as it relates to the Title IX office and program
  - Visibility does not always equate to bias or impartiality
  - Be cautious, too much targeted visibility can create a different type of bias

TRIBUTION

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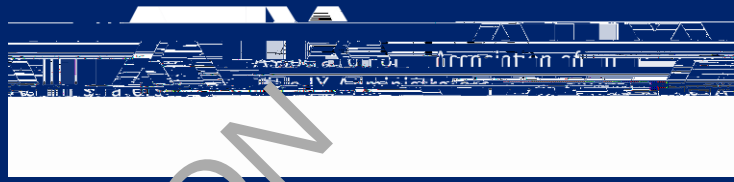
TR UTION

Thanks for joining us today.



TR UTION

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