



Sexual Misconduct Institute

2021

**July 19-23, 2021
Virtual Classroom**

Resource Booklet

Faculty



Dr. Mikiba W. Morehead (Track Coordinator) is a Student Affairs professional and Student Conduct practitioner specialized in the areas of Title IX, crisis management, and student advocacy. Mikiba has served as the Director of Student Disability Services and Title IX Coordinator at Baylor College of Medicine in Houston, TX, Director of Community Standards at The University of Texas at Arlington, and Program Coordinator for Student Conduct at Texas A&M University. Mikiba earned a Bachelor's degree in Communication, a Master's degree in Higher Education Administration from the University of Louisville in Kentucky, and a Doctorate of Education from the University of St. Thomas in Houston, Texas. Mikiba's research interests include cyber sexual violence, specifically the impact of nonconsensual pornography on college students and college-aged individuals. She is currently conducting research as part of a team from the Cyber Civil Rights Initiative and Florida International University on the prevalence and consequences of cyber sexual abuse during the COVID-19 pandemic funded by the National Science Foundation. Mikiba is an active member of ASCA most recently serving as State Coordinator for Texas from 2015 – 2019 and becoming the recipient of the State Coordinator of the Year Award in 2019. She served as faculty for the Sexual Misconduct Institute at Swathmore College in 2018 and as Gehring Academy Faculty for the Advanced Sexual Misconduct track in 2018 and 2020.



Linda Alvarez (Faculty) has worked in higher education for over thirteen years. For the past 5 years, she has worked in the Office of Equal Opportunity & Title IX (EOTIX) at Minnesota State University, Mankato and has served as its Director since December of 2018. In this capacity Linda serves as the Title IX Coordinator for the University. In this role, Linda is responsible for ensuring that equal opportunity and Title IX principles and requirements are being followed in all aspects of the University's strategic planning and operations, which includes compliance with Title IX, VAWA, Campus SaVE Act, and Equal Employment Opportunity legislation and regulations, including Title VII.

Prior to joining Minnesota State Mankato, Linda was an Assistant Director in the previously named Student Judicial Services office for 6 years at The University of Texas at Austin.

Linda earned her Bachelor's degree in Chicana/o Studies from the University of Minnesota – Twin Cities, and her Master's degree in Counseling and Student Personnel (College Student Affairs track) from Minnesota State University, Mankato.



Julia Duff (Faculty Fellow) is passionate about student development and restorative justice. Her background in higher education is in Residence Life and Student Intervention Services. Prior to working in higher education, Julia worked in domestic violence shelters doing intake, programming, overnight advocacy, and crisis response. She graduated from Christopher Newport University with a Bachelor's in American Studies with a concentration in Philosophy of Law, with minors in Leadership and Dance. Following her graduation, she attended Slippery Rock University where she earned her Master's degree in Student Affairs and Development. Julia spent time living and working in Alaska, where she enjoyed hiking, watching the Northern Lights, and

looking for moose. In 2019, Julia moved to DC to work in her current position as a Senior Student Conduct Officer at GW.



Erin Leeper, she/her, (Faculty) is the Director, Non-Discrimination Initiatives/Title IX Administrator and 504 Coordinator at Springfield College in Springfield, MA. In this role, Erin oversees the College's Title IX compliance, in addition to serving as the 504 coordinator, processing non-academic accommodation requests, supporting veteran and military-connected students, and other compliance related initiatives. Erin is currently completing her PhD in Educational Policy and Leadership at the University at Albany and writing her dissertation on the impact of sexual violence on college completion. She earned her Master's degree from Springfield College and Bachelor's Degree from Worcester State College. Over the last 10 years, Erin has held various

roles in higher education, including in student conduct, human resources, and equity and compliance. Erin has also been an active volunteer within ASCA, serving as the 2020 annual conference chair, state coordinator, and is currently the chair of the Sexual Misconduct and Title IX Community of Practice.



Jeremy Zilmer (Faculty) is an Associate Dean of Students at Bowling Green State University where his responsibilities include oversight of the Student Conduct, Student Case Management, and Crisis & Emergency Services areas within the Office of the Dean of Students. In addition, Jeremy serves as the Senior Deputy Title IX Coordinator with oversight for adjudication of Title IX cases. Jeremy also serves as the case manager for University's CARE Team and co-chairs the Clery Compliance Committee. Jeremy has worked in higher education since 2008 with experience in Residence Life, Greek Life, and Student Conduct. Jeremy has a Bachelor's degree from the University

of Wyoming, Master's degree from Bowling Green State University, and is finalizing his dissertation proposal for a Doctor of Education degree from Bowling Green State University.

Schedule

Day One – Laying the Foundation - Monday, July 19, 2021 - 6 hours

Pre-work: *Operationalizing the 2020 Title IX Regulations for Student Conduct Professionals* (webinar)

Have a copy of relevant campus policies accessible.

Time	Topic	Presenter(s)
11:00-11:30	Introduction	Mikiba
11:30-12:00	Prewrite Review	Mikiba
12:00-12:30	Title IX vs. Sexual Misconduct	Linda/Jeremy
12:30-12:45	Gehring Academy Opening	Travis Overton/ Pam Malyk
12:45-1:15	Title IX vs. Sexual Misconduct	Linda/Jeremy
1:15-2:15	Break	--
2:15-3:15	Understanding Trauma	Julia/Erin
3:15-3:30	Break	--
3:30-5:00	<i>Cross Cultural Competency for Investigations</i> (webinar) & Discussion	Mikiba

Day Two – Investigations - Tuesday, July 20, 2021 - 6 hours

Meissner, C.A., & Lyles, A.M. (2019). Title IX investigations: The importance of training investigators in evidence-based approaches to interviewing. *Journal of Applied Research in Memory and Cognition*, 8, 387-397.

Time	Topic	Presenter(s)
11:00-11:30	Log-on/Prep work/Engagement	All Faculty
11:30-12:00	Questions from Day 1/Homework Review - Small Groups	All Faculty
12:00-1:00	Conducting an investigation	Linda/Erin
1:00-1:15	Break	--
1:15-1:45	Conducting an Investigation (continued)	Linda/Erin
1:45-2:45	Break	--
2:45-3:45	Conducting an Investigation (continued)	Linda/Erin
3:45-4:00	Break	--
4:00-5:00	Investigation Report Writing	Linda/Erin

Day Three- Hearings -Wednesday, July 21, 2021 - 6 hours

Pre-work (TBD)

Time	Topic	Presenter(s)
11:00-11:30	Log-on/Prep work/Engagement	All Faculty
11:30-12:00	Questions from Day 2/Homework Review - Small Groups	All Faculty
12:00-1:00	Adjudication Models	Erin
1:00-2:00	Break	--
2:00-3:40	Conducting a Live Hearing & Decision Making	Jeremy/Linda/Julia
3:40-4:00	Break	--
4:00-5:00	Conducting a Live Hearing & Decision Making (continued)	Jeremy/Linda/Julia

Day Four – PIP - Thursday, July 22, 2021- 4 hours

Pre-work (TBD)

Time	Topic	Presenter(s)
11:00-11:30	Log-on/Prep work/Engagement	All Faculty
11:30-12:00	Questions from Day 3/Homework Review - Small Groups	All Faculty
12:00-12:45	PIP	Mikiba
12:45-1:30	Break	--
1:30-3:00	PIP	Mikiba

Day Five – Wrap Up - Friday, July 23, 2021 - 4 hours

Pre-work: *Beyond the Findings: Effective Interventions for Students Causing Sexual Harm* (webinar) and policy paper

Time	Topic	Presenter(s)
11:00-11:30	Log-on/Prep work/Engagement	All Faculty
11:30-12:00	Questions from Day 4 - Small Groups	All Faculty
12:00-1:00	Remedies, Sanctions & Reintegration	Erin
1:00-1:45	Break	--
1:45-2:45	Updates on TIX Regulations & Planning Your Next Steps	Erin/ Linda
2:45-3:00	Last thoughts and Good-bye	Mikiba

Day 1 – Monday, July 19, 2021 – 11:00-5:00 ET

Title IX vs. Sexual Misconduct | Linda Alvarez & Jeremy Zilmer

Learning Outcomes:

- Describe what behavior constitutes sexual harassment under Title IX, the policy provisions which govern Title IX, and the processes by which complaints of Title IX will be resolved.
- Describe what behavior constitutes sexual misconduct, the policy provisions which govern sexual misconduct, and the processes by which complaints of sexual misconduct may be resolved.
- Identify how to determine the appropriate resolution process.

Supplemental Resource:

Harrell, K. & White, J. (2020) Title IX of the amendments of 1972: 2020 regulations. *Association for Student Conduct Administration*

Trauma | Julia Duff & Erin Leeper

Learning Outcomes

Participants will be able to:

- Recognize trauma and impact on memory and recall.
- Identify impacts of trauma on the investigatory process.
- Develop trauma-informed investigation skills.
- Recognize secondary and vicarious trauma and burnout.

Supplemental Resources:

Lonsway, K.A., Hopper, J., & Archambault, J. (2020). Becoming trauma informed: Learning and appropriately applying the neurobiology of trauma to victim interviews. *End Violence Against Women International*.

Hopper, J. (2020). Sexual assault and the brain: Key information for investigators, attorneys, judges, and others. Retrieved from www.jimhopper.com

Cross Cultural Competency for Investigations (ASCA webinar) | Christy Anthony 2017

Recommended readings and media: <http://bit.ly/2raqFQ0>

Sandoval, E, (2014, April 7). Intercultural Development Continuum [Prezi]. Retrieved from https://prezi.com/7nfbf4_zx7y4/intercultural-development-continuum/

Day 2 – Tuesday, July 20, 2021 – 11:00-5:00 ET

Conducting an Investigation | Linda Alvarez & Erin Leeper

Learning Outcomes

Participants will be able to:

- Conduct a complaint intake and engage in pre-investigation planning.
- Conduct trauma-informed and culturally aware investigations.
- Compose an investigation report that summarizes all gathered information.

Supplemental Resources:

Westfield State University EOP Complaint Process Checklist

Sexual Misconduct Checklist - Complainant

Sexual Misconduct Checklist - Respondent

Title IX Sexual Harassment Investigation Plan

Investigation Report Writing | Linda Alvarez & Julia Duff

Learning Outcomes

Participants will be able to:

- Identify the essential components of an investigation report.
- Identify factors to consider when writing an investigation report.
- Identify best practices for writing the interview narratives/summaries for an investigation report and what to avoid.

Supplemental Resource:

Meissner, C.A., & Lyles, A.M. (2019). Title IX investigations: The importance of training investigators in evidence-based approaches to interviewing. *Journal of Applied Research in Memory and Cognition*, 8, 387-397.

Day 3 – Wednesday, July 21, 2021 – 11:00-5:00 ET

Adjudication Models | Erin Leeper

Learning Outcomes

Participants will be able to:

- Develop a formal grievance procedure that complies with the 2020 Final Rules.
- Identify informal and alternative resolution models.
- Determine how to select an adjudication model.

Supplemental Resource:

U.S. Department of Justice, Office of Justice Programs' National Criminal Justice Reference Service. (2020) *Responding to sexual assault on campus: A national assessment and systematic classification of the scope and challenges for investigation and adjudication* (NIJ Summary Report: 2015-IJ-CX-0009). Retrieved from <https://www.ojp.gov/pdffiles1/nij/grants/254671.pdf>

Conducting a Live Hearing & Decision Making | Linda Alvarez, Julia Duff, and Jeremy Zilmer

Learning Outcomes:

- Understand requirements regarding conducting live hearings per the 2020 Final Rule.
- Identify methods and processes necessary to make relevancy determinations before and during the live hearing.
- Understand requirements regarding cross-examination and the role of an advisor during the live hearing.
- Identify various methods to conduct a live hearing.
- Understand requirements for advisors and a process to provide advisors to those who do not have one.
- Identify a process to exclude statements during a live hearing from a party or witness who does not submit to cross-examination.
- Determine a process for the hearing body to ask questions in order to reach a decision and outcome.
- Understand the process for deliberation and relevancy determination in reaching a decision and outcome.

Day 4 – Thursday, July 22, 2021 – 11:00-3:00 ET

PIP – Conducting a Live Hearing | Mikiba W. Morehead

Day 5 – Friday, July 23, 2021 – 11:00-3:00 ET

***Beyond the Findings: Effective Interventions for Students Causing Sexual Harm* (ASCA webinar) | Rachel King, Ph.D., Sabrina S. Raposarda, M. Ed., and Joan Tabachnick, M.B.A.**

Supplemental Resource:

Rapisarda, S.S., Shields, R.T., & Tabachnick, J. (2020). A new perspective on college sexual misconduct: Effective interventions for students causing harm. Easthampton, MA: MASOC. Retrieved from www.masoc.net

Remedies, Sanctions & Reintegration | Erin Leeper

Learning Outcomes

Participants will be able to:

- Identify appropriate remedies to address the impact of conduct on Complainant and/or greater community.
- Identify and apply appropriate sanctions for findings of responsibility.
- Develop procedures for Respondent re-entry to campus community.

Supplemental Resources:

Follingstad, D.R., Li, C.R., Chahal, J.K., & Renzetti, C.M. (2021). Students' perceptions of justice: Application of sanctions, guilt, and responsibility in campus sexual assault cases. *Journal of Family Violence*, 36, 307-324. doi: <https://doi.org/10.1007/s10896-020-00129-5>

McMahon, S., Karp, D., and Mulhern, H. (2018). Addressing individual and community needs in the aftermath of campus sexual misconduct: Restorative justice as a way forward in the re-entry process. *Journal of Sexual Aggression*, doi: [10.1080/13552600.2018.1507488](https://doi.org/10.1080/13552600.2018.1507488)

Student Sanctioning Guideline for Sexual Misconduct

Day 5 – Friday, July 23, 2021 – 11:00-3:00 ET

Updates on Title IX Regulations & Planning Your Next Steps | Linda Alvarez & Erin Leeper

Learning Outcomes

Participants will be able to:

- Identify updates to Title IX Regulations from the Department of Education and examine the future impacts of any forthcoming changes.
- Plan and apply what they have learned from Gehring-SMI to their own practice.

Supplemental Resources:

Association for Student Conduct Administration. (2021). Written comments for consideration regarding specific regulations in the 2020 *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*.

Association for Student Conduct Administration. (2021). Legislative Updates <https://www.theasca.org/legislative>



Title IX of the Amendments of 1972: 2020 Regulation

by Kristen Harrell, Ph.D. and Jessica White

In November of 2018, the Office for Civil Rights (OCR) in the Department of Education (ED) released proposed changes to title 34 of the Code of Federal Regulations part 106. After an extensive submission, review, and response period with over 100,000 submitted comments, OCR posted the final regulation on May 6, 2020. For institutions of higher education receiving federal funds, this means evaluating policies, procedures, and training relating to complaints of sex discrimination and aligning them with the new regulation. The new federal regulation goes into effect on August 14, 2020. This paper provides a summary of changes made to 34 CFR part 106.

Student Conduct Practice and Educational Mission

As student conduct professionals evaluate the changes to title 34, many questions arise regarding staying true to an educational mission and the foundation of student conduct work. Process is important. Compliance with federal and state law binds that process along with applicable case law. This has been the case for decades. In the midst of that, student conduct professionals have found ways to continue to educate students, to help students make values-based decisions, to help students grow, and modify how they engage with others. Readers will find that parts of the regulation overlap with fundamental ethics and practices as outlined by ASCA (n.d.), including principles of: confidentiality; truthfulness in information provided to parties and campus partners; impartiality avoiding conflicts of interest; training; and more. In other ways, student conduct professionals are tasked with weaving student conduct principles into their policy and practice. Readers are encouraged to consider the educational mission and to remind others of that mission. This will not always be easy, but will ultimately serve students to a better end.

Philosophy of Changes and Application

From 1997 to date, there has been an ongoing interchange between the U.S. Department of Education (ED) and educational entities regarding the purview of Title IX as it relates to sexual harassment. This started with *Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (1997). Since that time, guidance from the Office for Civil Rights in the ED has been updated, removed, and rewound. Student conduct and civil rights professionals in higher education have worked relentlessly to adhere to this guidance, case law, and the ever changing social landscape of the United States. Their work, nevertheless, has been met with scrutiny and criticism. In the press release announcing the codification of the new regulation, current U.S. Secretary of Education, Betsy DeVos was quoted as saying “Too many students have lost access to their education because their school inadequately responded when a student filed a complaint of sexual harassment or sexual assault....This new regulation requires schools to act in meaningful ways to support survivors of sexual

misconduct, without sacrificing important safeguards to ensure a fair and transparent process. We can and must continue to fight sexual misconduct in our nation's schools, and this rule makes certain that fight continues” (Press Office, 2020, para. 2). Ultimately, the regulation is intended to combat sexual harassment and ensure due process. While this is certainly no new concept for student conduct professionals in the wide range of student misconduct they address, it does take on a new, more rigid form, in this regulation.

Reliance on *Gebser* and *Davis*

The reader is encouraged to read *Gebser* (524 U.S. at 292) and *Davis* (526 U.S. at 640) as these cases are heavily relied upon. These seminal cases influence many aspects of the regulation including the definition of sexual harassment, jurisdiction of Title IX, and the obligation of recipients. *Gebser* related to sexual harassment by an employee. As the focus of ASCA is student conduct, more attention in this section is paid to *Davis*. Specifically, there is substantial discussion regarding the *Davis* definition of sexual harassment in the preamble of the regulation (starting on page 449 of the unofficial copy of the regulation) and the use of “and” versus the use of “or.” The ED stands by their decision to use “and” indicating they believe this assists in providing a consistent standard for recipients, but does not let recipients “off the hook” (p. 452) from addressing sexual harassment. The ED further explains that the *Davis* standard prevents recipients from chilling or restricting speech.

Accountability

The Office for Civil Rights (OCR) has chosen to follow court standards, specifically referencing *Davis*, regarding their enforcement of Title IX and will assess complaints on whether the recipient has been deliberately indifferent to a complaint. OCR asserted in the proposed regulation that if a recipient follows the regulations, they would not be found deliberately indifferent to a complaint of sex discrimination, establishing a safe harbor for recipients. The safe harbor portion of the proposed regulation, §106.44(b), was removed as discussed on page 248 in the preamble in the unofficial copy of the regulation. Instead, OCR indicates it has replaced this concept with “mandatory steps that a recipient must take as part of every response to sexual harassment” (p. 248).

In situations where an institution of higher education fails to adhere to the requirements of the regulation, there are a variety of ways that OCR can respond and hold recipients accountable for noncompliance with Title IX. One such way is to require a recipient to engage in remedial action. §106.3(a) is an added requirement in the regulation that recipients must take remedial action as indicated by the Assistant Secretary if the recipient has discriminated against a person based on sex.

While the definition of sexual harassment, as referenced below, is more limited in its scope than previously suggested through guidance by OCR, and OCR has provided ways to demonstrate an institution is not deliberately indifferent, following the expectations of the regulation will not necessarily protect an institution of higher education from litigation and action by a court. Individuals developing policy and procedures should pay close attention to all jurisdictions of accountability, which may include relevant case law, state law, and, as applicable, system policies.

State Law

Evaluations of policy and practice will need to be done within the context of existing state laws that may have different definitions or other conflicting standards. Section 106.6(h) clearly indicates that conflicts with state laws do not alleviate obligations to comply with 34 CFR §§106.30 (definitions), 106.44 (recipient’s response to sexual harassment), and 106.45 (grievance process for formal complaints of

sexual harassment). Discussions with general counsel and legislative liaisons will be a necessity for many. Where state law directly conflicts with the regulation, the regulation takes precedence. Where state law does not directly conflict, institutions will need to find ways to follow both.

Religious Exemption

Section 106.12 provides clarity on the assurance of exemption for religious organizations. The provision allows religious entities seeking assurance of their exemption to submit a written statement to the Assistant Secretary. This provision further clarifies that this assurance is not required and that a recipient may assert its exemption at the time of notification from the Department that it is under investigation for noncompliance. An assertion may be submitted at this time even if the recipient has sought assurance of exemption previously. The assertion should be submitted to the Assistant Secretary. In any situation where a recipient is submitting an assertion of exemption, the written statement should be submitted by “the highest ranking official of the institution” (34 CFR §106.12(b)) and should identify “the provisions of this part which conflict with a specific tenet of the religious organization” (34 CFR §106.12(b)).

Definitions

Throughout the regulation, there are a number of terms it is important for the reader to understand. Some of these terms are defined in section 106.30. The terms referenced in section 106.30 are: *actual knowledge*, *complainant*, *consent*, *formal complaint*, *respondent*, *sexual harassment*, and *supportive measures*. A portion of these definitions as well as some other terms are found below along with brief commentary regarding some considerations relating to each term.

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” (34 CFR §106.30(a)).

Many states, systems, colleges, and universities have requirements for employees to report any disclosure of sexual harassment to their Title IX Coordinator or other authority on campus. Section 106.30 includes a statement that “the mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient.” Institutions should be clear on who “has authority to institute corrective measures on behalf of the recipient.”

Complainant: “*Complainant* means an individual who is alleged to be the victim of conduct that could constitute sexual harassment” (34 CFR §106.30(a)).

Some institutions have moved away from using the term *complainant* in their policies as some feel this term has negative connotations. Policy makers may wish to consider the ongoing implications of this term in combination with ensuring clear communication to those bound by policy and ensuring alignment with the regulation.

Consent: While the regulation does not define consent, there is guidance regarding their expectation on this topic. “The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault, as referenced in this section” (34 CFR §106.30(a)).

While the ED does not define consent in the regulation, policymakers need to ensure that they continue to have a definition as required by the Violence Against Women Act.

Decision-maker: Makes the decision regarding the outcome of a hearing. Makes determinations regarding relevancy of questions in cross-examination. Writes and issues written decision letter.

This definition of a decision-maker does not restrict recipients from utilizing a panel for decisions in Title IX cases so long as those involved in decision-making are not the Title IX Coordinator, did not investigate the case, and are not the appellate authority. Should a recipient choose to utilize a panel for their Title IX cases, they are encouraged to create clear roles regarding making relevancy determinations on cross-examination questions and putting the outcome in writing.

Deliberately Indifferent: A recipient is *deliberately indifferent* when its response to sexual harassment is “clearly unreasonable in light of the known circumstances” (34 CFR §106.44(a)).

This is the standard that OCR has formally adopted to evaluate whether a recipient has discriminated based on sex. Documentation of outcomes, including the dismissal of formal complaints, needs to be thorough and provide rationales that may help demonstrate that the recipient was not deliberately indifferent in its response to a formal complaint.

Formal Complaint: “*Formal complaint* means 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” (34 CFR §106.30(a)). The definition further describes the multiple means by which a complainant may file a formal complaint. One of these means includes electronic submissions with a scanned physical or digital signature and other means of authentication.

While a formal complaint is required for a recipient’s Title IX response (including formal and informal resolutions), other types of complaints may result in action by a recipient. Policies and notices need to be clear about differentiating between Title IX responses and other conduct action.

Investigator: Collects statements and other evidence regarding a formal complaint of sexual harassment. Writes a summary report.

Investigators need to be trained on evaluating relevance of information to be included in the investigation summary report. The investigator may not be the Title IX Coordinator or a decision-maker in the process. Many institutions will have to rework investigation templates and formats to remove the decision-making aspects of existing investigations and ensure investigators know where the boundaries lie in writing their reports.

Parties: Complainant(s) and respondent(s) involved in a formal complaint.

While the regulation and much discussion on Title IX tends to limit an incident to one complainant and one respondent, there are situations in which there are multiple complainants and/or respondents. Understanding this is the case, institutions should be prepared to provide more than two advisors if necessary. The advisor requirement is discussed in a later section.

Postsecondary institution: Postsecondary institutions include graduate, undergraduate, professional, and vocational education as defined in §§106.2(l) - 106.2(o). See 34 CFR §106.30(b).

ASCA serves conduct administrators working for postsecondary institutions, and thus this paper focuses on implications for higher education. The regulation, however, applies to elementary and secondary schools as well. There are portions of the regulation that speak specifically to primary and secondary schools, one such instance is in reference to parental rights under FERPA. When reading the regulation, it is important to contextualize the information related to the educational setting.

Program or Activity “For the purposes of this section [§106.44], §§ 106.30, and 106.45, ‘education program or activity’ includes locations, events, or circumstances over which the recipient exercised 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” (34 CFR §106.44(a)). Title IX responsibilities only apply to sexual harassment occurring in an “education program or activity of the recipient against a person in the United States” (34 CFR §106.44(a)).

This definition narrows the scope of what Title IX covers. This has implications for education abroad, international branch campuses, as well as education on international waters. While obligations under Title IX do not apply to behaviors occurring outside of the United States or in situations where the sexual harassment was not a part of a program or activity of recipient, a recipient may still choose to address those behaviors, but need to be clear that this response is not part of the Title IX response. This is particularly important as a recipient has the obligation to dismiss formal complaints under Title IX if the reported behavior did not occur within the context of a program or activity.

Recipient: An educational entity receiving federal funds.

If pulling language directly from the regulation for policy, individuals are encouraged to ensure that language is consistent. The regulation consistently utilizes *recipient* throughout Title 34, if the rest of a recipient’s policy references *the University* or utilizes another term, *recipient* should be replaced with that term for clarity.

Remedies: “Remedies must be designed to restore or preserve equal access to the recipient’s education program or activity. Such remedies may include the same individualized services described in § 106.30 as ‘supportive measures’; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent” (34 CFR §106.45(b)(1)(i)).

The Merriam-Webster dictionary defines *remedy* as “something that corrects or counteracts” or “the legal means to recover a right or to prevent or obtain redress for a wrong.” It can be reasonably argued that there is no true remedy for a sexual assault; no true action that can repair the harm, though perhaps there may be remedies that restore the opportunity for a complainant to pursue their educational goals should a respondent be found responsible for sexual misconduct. If utilizing *remedies* in policy, policy makers are encouraged to ensure the meaning of this term is clear in the context of the applicable rule(s).

Respondent: “*Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment” (34 CFR §106.30(a)).

Many institutions will likely use a broader definition of this term as the conduct allegedly perpetrated by a respondent will likely apply to more than just sexual harassment.

Sexual Harassment under Title IX: “*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; or
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)" (34 CFR §106.30(a)).

As referenced above, a key component of this definition is the use of "and" versus the use of "or" in the second bullet indicating that unwelcome conduct must be so severe, pervasive, "and" objectively offensive that it denies a person of equal access. Another important note is that this definition does not include reference to prohibitions on creating a hostile environment, which can be found in Title VII definitions and in prior guidance from OCR in the ED. While recipients must dismiss any complaint that falls outside of this definition under Title IX, a recipient may engage in other processes to address that conduct. Policies should be written to differentiate between sexual harassment as defined under 34 CFR §106.30 and other forms of sexual misconduct that may be addressed through other policy.

While the focus here is on student misconduct, many readers may have responsibility over employee conduct. For employees, there is additional nuance as it applies to multiple jurisdictions in managing Title VII requirements. Not only is the definition of sexual harassment broader under Title VII, but the supreme court held on June 15, 2020 in *Bostock v. Clayton County* that under the protections against discrimination based on sex, that "an employer who fires an individual merely for being gay or transgender violates Title VII. Pp.4-33" (p. 1). While OCR provided guidance in May 2016 indicating that they would interpret Title IX to provide protections for transgender students, this guidance was rescinded in 2017.

Policy makers, prevention education specialists, and conduct practitioners should be aware of the multiple jurisdictions and which definitions apply in which contexts. This may assist in helping students and employees better understand their responsibilities and the responsibilities of others. Further consideration, particularly as it relates to quid pro quo and hostile environment harassment, must be given when an individual holds the roles of student and employee, such as an employee taking continuing education classes, a resident assistant, or graduate teaching or research assistant.

Supportive Measures: "*Supportive measures* means 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." (34 CFR §106.30(a)). The definition further provides some examples of supportive measures and that the measures must be confidential "to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures" (34 CFR §106.30(a)).

Recipients are encouraged to review all existing supportive measures or other interim measures utilized throughout their institution in response to a complaint of sexual harassment. This includes evaluating interim actions by athletics, student organizations - particularly those with significant oversight or supervisions by university employees, residence life, academic colleges, and other entities on campus who have direct control over access to resources and services of the institution.

Title IX Coordinator: Individual identified by a recipient to handle that recipient's compliance with Title IX. The Title IX Coordinator receives and submits formal complaints regarding sexual harassment.

Institutions who have chosen to name their Title IX Coordinator a Title IX Officer or other variation of the term will need to ensure that they have someone with the Title IX Coordinator title. Requirements regarding the posting of this person's information shifted slightly giving recipients the option to post the Title IX Coordinator's name or title. This may assist in reducing the number of times and places contact information needs to be updated when transitions occur with who serves in that role.

What is Allowed

Prohibited Behavior: The final guidance ensures Title IX is more closely aligned with the Clery Act by adding dating violence, domestic violence, and stalking to the definition of sexual harassment. However, institutions may have prohibited behavior not contained within the 2020 Regulations such as sexual exploitation.

The 2020 Regulation clarifies that the 2017 Q&A document and the 2001 Sexual Harassment Guidance "remain the baseline against which these final regulations make further change to enforcement of Title IX obligations" (Office of Civil Rights, 2020, p. 17). Therefore, according to the Revised Sexual Harassment Guidance of 2001, gender-based discrimination remains a prohibited behavior (Office of Civil Rights, 2001).

In order to adjudicate non-sexual harassment prohibited behavior, such as sexual exploitation and gender-based discrimination, a recipient may offer a similar set of procedures for prohibited behavior excluded from Title IX. "Nothing in these final regulations prevents a recipient from addressing conduct that is outside the Department's jurisdiction due to the conduct constituting sexual harassment occurring outside the recipient's education program or activity, or occurring against a person who is not located in the United States" (Office of Civil Rights, 2020, p. 46). Additionally, a similar set of procedures may assist with offering a fair process for sexual harassment that occurred outside of the Title IX geography (such as off-campus residences or international study abroad). In order to do so, it is imperative that the recipient keep parties informed as to whether the formal complaint and subsequent procedures are governed by Title IX.

Consolidation: The recipient may consolidate formal complaints when there is more than one respondent, more than one complainant against one or more respondent, or one party against the other party where the incident arises out of the same facts or circumstances. (34 CFR § 106.45(b)(4))

Emergency Removal (Interim Suspensions): Recipients may remove students from educational programs as long as there is an individualized safety and risk analysis conducted to determine "an immediate threat to physical health or safety of any student or other individuals" (34 CFR §106.44(c)). In addition, the recipient must provide the respondent with notice and an opportunity to challenge the decision (34 CFR § 106.45(b)(3)(iii)). The recipient should determine the definition of an educational program; meaning is an "educational program" solely access to attend classes and be on campus or does it include housing, athletics, events, programs, or switching classes?

Informal Resolutions: "Improving and sustaining a healthy campus climate is a shared community responsibility that must not rest solely on the back of those targeted by incidents that leave them feeling left out in the cold (Schrage & Giacomini, 2009, p. 20)." A blend of procedural protections found in an informal resolution process recognizes the various "social, educational, and developmental needs"

(Schrage & Giacomini, 2009, p. 20) of students. In addition, being able to offer an informal resolution that recognizes multiculturalism and social justice may be enticing to a diverse campus population.

Therefore, according to the guidance, recipients may offer informal resolutions, but recipients cannot make the informal resolution a condition of continued enrollment, or deny an investigation or formal adjudication (34 CFR § 106.45(b)(9)). Informal resolutions cannot be used to facilitate employee sexual harassment of a student (34 CFR § 106.45(b)(9)(iii)).

A formal complaint must be filed to proceed with an informal resolution. Parties may commence with an informal resolution in between formal complaint and decision of responsibility in the adjudicative process. When offering a formal resolution, the recipient must provide written notification that includes: the allegation; procedures including how to resume adjudication; the right to withdraw from formal resolution; possible consequences; and record keeping (34 CFR § 106.45(b)(9)(i)). In addition, recipients must seek written agreement from all parties to participate (34 CFR § 106.45(b)(9)(ii)).

Standard of Evidence: Recipients must state the standard of evidence, which may be either preponderance or clear and convincing. The chosen standard must be applied to all sexual harassment cases, regardless of whether the respondent is a student or employee (34 CFR § 106.45(b)(1)(vii)).

Concurrent Student Conduct Charges: To avoid retaliation, the recipient should consider how to address concurrent student conduct charges that arise out of an incident with Title IX charges. 34 CFR § 106.71(a) “prohibits charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations.” (p.1876)

What is Required

Timeframes: When the recipient has actual knowledge, it must respond in a manner that is prompt and not deliberately indifferent. The procedures to resolve allegations of sexual harassment must be reasonably prompt (34 CFR § 106.45(b)(1)(v)). The recipient must provide a reasonable process to temporarily delay procedures when there is good cause. Such cases include when a party, advisor or witness is absent, concurrent legal proceedings, need for language assistance, or disability accommodations (34 CFR § 106.45(b)(1)(v)).

Notice of Allegation: The recipient is required to notify the parties in writing that a formal complaint was filed (34 CFR § 106.45(b)(2)). The notification must include: the recipient’s process for resolution (informal and adjudication); sufficient details known at that time about the allegation (identification of parties, behavior alleged to violation, date and location); presumption of not responsible statement; that a determination of responsibility is made at the end of the process; that parties may have an advisor of their choosing; the right to review and inspect evidence; and the location of applicable policy(ies) that knowingly making a false statement is prohibited. Prior to the next step of the process, the recipient must provide the parties sufficient time to prepare (34 CFR § 106.45(b)(2)(B)).

Presumption of Not Responsible: A statement must be included that the respondent is presumed not responsible until a determination of responsibility is made (34 CFR § 106.45(b)(1)(iv)). The recipient can include additional statements to clarify the institution’s philosophy. For example, “The University starts by believing the complainant. At the same time, the University presumes the respondent is not responsible. Decisions of responsibility will occur at the conclusion of the grievance process, after all evidence is presented and evaluated.”

Dismissal: The recipient must investigate all formal complaints. The recipient must dismiss a formal complaint when the behavior does not constitute sexual harassment, did not occur in an educational program or activity, or did not occur in the United States (34 CFR § 106.45(b)(3)(i)). The recipient may dismiss a formal complaint at any point between the investigations and hearing if the complainant withdraws the complaint in writing, the respondent is not enrolled as a student, or there are circumstances that prevent the collection of evidence (34 CFR § 106.45(b)(3)(ii)).

When an allegation is dismissed, the recipient notifies the parties in writing and must offer an appeal on the decision. An alternate adjudicative process, such as another student conduct process, may adjudicate the incident (34 CFR § 106.45(b)(3)(iii)).

Advisors: All parties have the opportunity to be accompanied to a meeting or proceeding by an advisor of their choosing, which may be a lawyer. While the recipient cannot limit the choice of the advisor, the recipient is able to restrict an advisor's participation within the process, as long as it is applicable to both parties (34 CFR § 106.45(b)(5)(iv)). For the purpose of the hearing, the recipient must provide an advisor to a party that is without one. The advisor need not be an attorney and must be offered to the parties free of charge. (34 CFR § 106.45(b)(6)(ii))

In the event either party believes their advisor is inadequate in their responsibilities, the party can dismiss their advisor. The absence of an advisor to cross examine a party can result in a delay to the live hearing. To avoid delays, readers should consider what and how the recipient is communicating to parties and their advisors regarding the expectations of the advisor role. The impact of the following discussion points may vary with each campus:

- Particularly for victims, the hearing process can be a triggering event. Having a trauma-informed or trusted support person can be emotionally beneficial. However a support person or advocate may not have the skill set to cross examine. Is it the expectation that the advisor act in the capacity of a support person, or is the party able to obtain a victim advocate? Lastly, if an accommodation due to a disability is an advocate, does that person become the advisor or does the policy allow for a separate individual?
- The recipient is able to set expectations for behavior of the advisors. Ensure the advisor is aware of circumstances in which the investigator or decision maker can excuse the advisor from a proceeding or hearing.
- The recipient is required to communicate with the advisors upon completion of the investigative report and in preparation for the hearing (34 CFR § 106.45(b)(5)(vi-vii)). Recipients should ensure methods of communication allow for external correspondence. For instance, if the recipient typically requires authentication for students or employees to retrieve letters and documents, they may need to find an alternative way to provide that information to advisors. Further, for consistency, ensure all administrators who may communicate with parties understand the guidelines for communication with the advisors. Lastly, determine if FERPA protected information is being shared and address how to maintain compliance.

Investigation: The burden of proof and responsibility to collect evidence and reach a determination of responsibility is on the recipient and not the parties (34 CFR § 106.45(b)(5)(i)). Each party is provided equal opportunity to present evidence and witnesses, including expert witnesses (34 CFR § 106.45(b)(5)(ii)).

The recipient cannot access, consider, disclose, or otherwise use information protected under a legally recognized privilege, such as documents by physician, psychiatrist, psychologist, unless that party provides written consent (34 CFR § 106.45(b)(5)(i)).

Evidence Review: Both parties have equal opportunity to review all information collected during the investigation. Information that will be used to make a decision, as well as information that does not speak to the allegation, are to be included. Information can be presented electronically or hard copy and should be made available to the parties and their advisor for at least ten days. Parties may then submit a response to the review of evidence for the investigator to consider prior to the conclusion of the investigation. The evidence should continue to be accessible to the parties and their advisors for hearing preparation. (34 CFR § 106.45(b)(5)(vi))

Investigative Report: At the conclusion of the investigation, the investigator will prepare an investigative report that summarizes relevant evidence. “Prior to completion of the investigative report, the recipient must send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy” (34 CFR § 106.45(b)(5)(vi)). Any response submitted by a party must be considered prior to drafting the final report. A decision of responsibility cannot be determined prior to the live hearing, and therefore cannot be included in the investigative or final report. The investigative report is sent to the parties and their advisor at least ten days prior to a hearing. (34 CFR § 106.45(b)(5)(vii))

Hearing: Recipients must provide a live hearing. Hearings may occur in separate rooms with the use of technology in order for all parties to participate simultaneously. The recipient must create an audio, audiovisual recording or transcript of the hearing. The media file or transcript of the hearing must be made available to the parties for inspection and review. The decision maker is an individual tasked with making a decision regarding responsibility. The decision maker cannot be the Title IX Coordinator or investigator (34 CFR § 106.45(b)(6)(i)).

The recipient should consider whether to use an individual decision maker or a panel. An individual decision maker will provide less schedules to consider when determining the date and time of hearing. Limiting the decision maker to an individual will also make tracking and uploading training to the recipient’s website less difficult. On the other hand, a panel of decision makers will provide diversity of thought. A diversity of perspectives and lenses to see points that require clarification can create a more inclusive and insightful process. Please note, if using a panel of decision makers, consideration needs to be given as to the procedures for determining relevancy and communicating rationales.

Cross Examination: During the hearing, the recipient must allow the advisor for each party to question the other party and any witnesses. Questions must be direct, oral, and in real time. Questions must be relevant and can include challenges to credibility. Before answering a question, the decision maker must determine if each question is relevant and explain, if not deemed not relevant, why a question is excluded. If a party or witness does not participate in questioning, the decision maker must not rely on any statement of that party in reaching a determination of responsibility. The hearing officer cannot use the lack of participation as a factor in making determinations of responsibility. (34 CFR § 106.45(b)(6)(i))

Relevancy: Questions regarding prior sexual behavior are irrelevant. Exceptions include questions or evidence that prove someone other than the respondent committed the conduct, or provide evidence between the complainant and respondent that shows how consent was communicated previously (34 CFR § 106.45(b)(6)(i)).

Outcome: The decision maker must provide written notification of the determination of responsibility. Notification must be provided to all parties simultaneously (34 CFR § 106.45(b)(7)(iii)). Written notification must include the following:

- Pinpointing the allegation that would be defined as sexual harassment (34 CFR § 106.45(b)(7)(ii)(A))
- Interpretation of procedures from the formal complaint through determination, “including any notification to parties, interview with parties and witnesses, site visits, methods used to gather evidence, and the hearings held” (34 CFR § 106.45(b)(7)(ii)(B))
- “Finding of facts that support the outcome”(34 CFR § 106.45(b)(7)(ii)(C))
- A conclusion applying the policy definition (34 CFR § 106.45(b)(7)(ii)(D))
- Statement and rationale for each allegation regarding determination of responsibility, sanctions on the respondent and remedies for the complainant (34 CFR § 106.45(b)(7)(ii)(E))
- Procedures for the parties to appeal (34 CFR § 106.45(b)(7)(ii)(F))

Appeal: The recipient must offer all parties an appeal regarding determination of responsibility and dismissal of formal complaint (34 CFR § 106.45(b)(8)(i)). The recipient must provide an opportunity for the parties to provide a written statement, which can be in support of or challenging the outcome (34 CFR § 106.45(b)(8)(iii)(D))

Appeal procedures must be applied equally to all parties. Appeals can be filed “on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.”(34 CFR § 106.45(b)(8)(i))

The recipient may add additional bases for appeal, which must apply to all parties, at their discretion.

All parties must be notified in writing when an appeal is filed (34 CFR § 106.45(b)(8)(iii)(A)). The decision maker for the appeal cannot be the Title IX Coordinator, investigator, or decision maker from the hearing (34 CFR § 106.45(b)(8)(iii)(B)). The outcome of the appeal is a written document that includes the results and rationale for the appeal decision (34 CFR § 106.45(b)(8)(iii)(E)). The decision must be sent simultaneously to both parties (34 CFR § 106.45(b)(8)(iii)(E)).

A decision becomes final when the parties are sent notification of outcome of appeal. If an appeal is not filed, the decision becomes final on the date a request for appeal is no longer accepted (34 CFR § 106.45(b)(7)(iii)).

Recordkeeping: The recipient must maintain records for seven years. Records that must be maintained including supportive measures, investigative reports, hearing outcome, hearing media files or transcripts, sanctions, remedies, appeal, and informal resolutions (34 CFR § 106.45(b)(10)(i-ii)).

Training: The training materials for the Title IX Coordinator, investigators, decision makers and informal resolution facilitators must be made available on the recipient’s website (34 CFR § 106.45(b)(10)(i)(D)). Training topics include:

- Definition of sexual harassment;

- Definition of educational program or activity;
- Instructions and procedures for investigations and adjudication including hearing, appeals, and informal resolution;
- How to serve impartially, avoiding prejudgment of the evidence, conflict of interest and bias;
- Technology used during live hearings;
- How to determine if a question is relevant along with rape shield protections; and
- For investigators, how to develop a fair investigative report when addressing relevancy (34 CFR § 106.45(b)(1)(iii)).

Conclusion

This document has provided some of the key elements and concepts for consideration as institutions move forward with modifying education, policy, and practice regarding Title IX as it applies to sexual harassment. This document should not be used in place of directly reading the new regulation, but has, hopefully, provided some insight into critical considerations for conduct practitioners. The following resources are tools that may assist in communicating process requirements to others and in working towards ensuring compliance with the regulation.

Resources

**Minimum Personnel Required for
Formal Process Resolution of Sexual Harassment Complaints
under Title IX of the Education Amendments of 1972 as defined by 34 CFR §106**



1 Title IX Coordinator

Responsible for compliance with Title IX, and receiving & submitting formal complaints



1 Investigator

Responsible for collecting evidence, interviewing parties and witnesses, evaluating information, & writing summary report



1 Decision Maker

Responsible for running hearing, determining relevance of cross-examination questions, & writing and sending hearing decision



1 Appellate Authority

Responsible for reviewing appeals & writing and sending appeal decision



***1 Institution Provided Advisor
If the complainant does not have an advisor of their own**

Responsible for being in alignment with and advising complainant & questioning respondent during cross examination



***1 Institution Provided Advisor
If the respondent does not have an advisor of their own**

Responsible for being in alignment with and advising respondent, & questioning complainant during cross examination

***?# Institution Provided Advisors
If other involved parties do not have an advisor of their own**

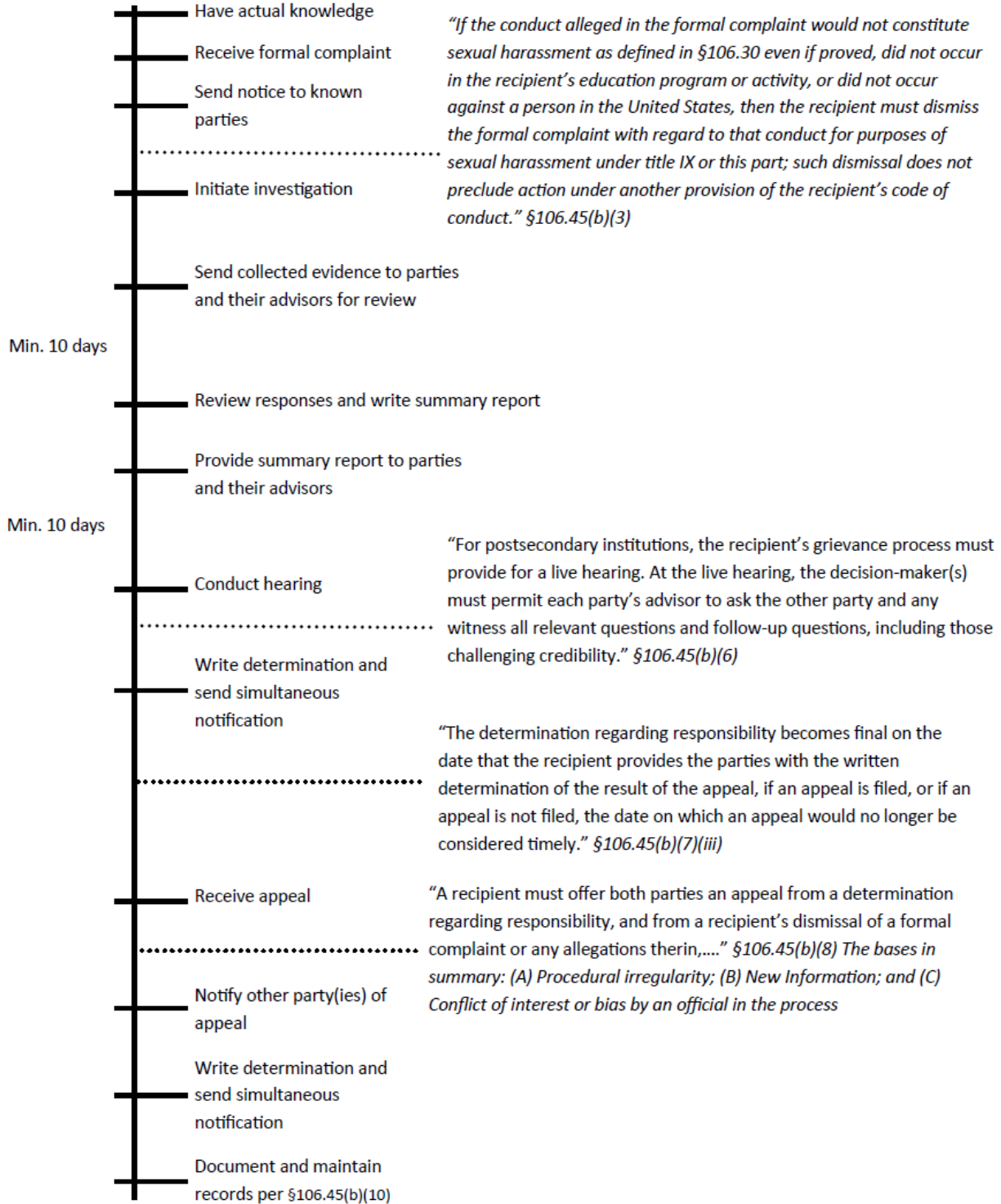
Some cases may involve multiple complainants or respondents. An example may be a situation where sexual harassment is part of an organization hazing event.



Summarized Flow of Title IX Grievance Process for Formal Complaints

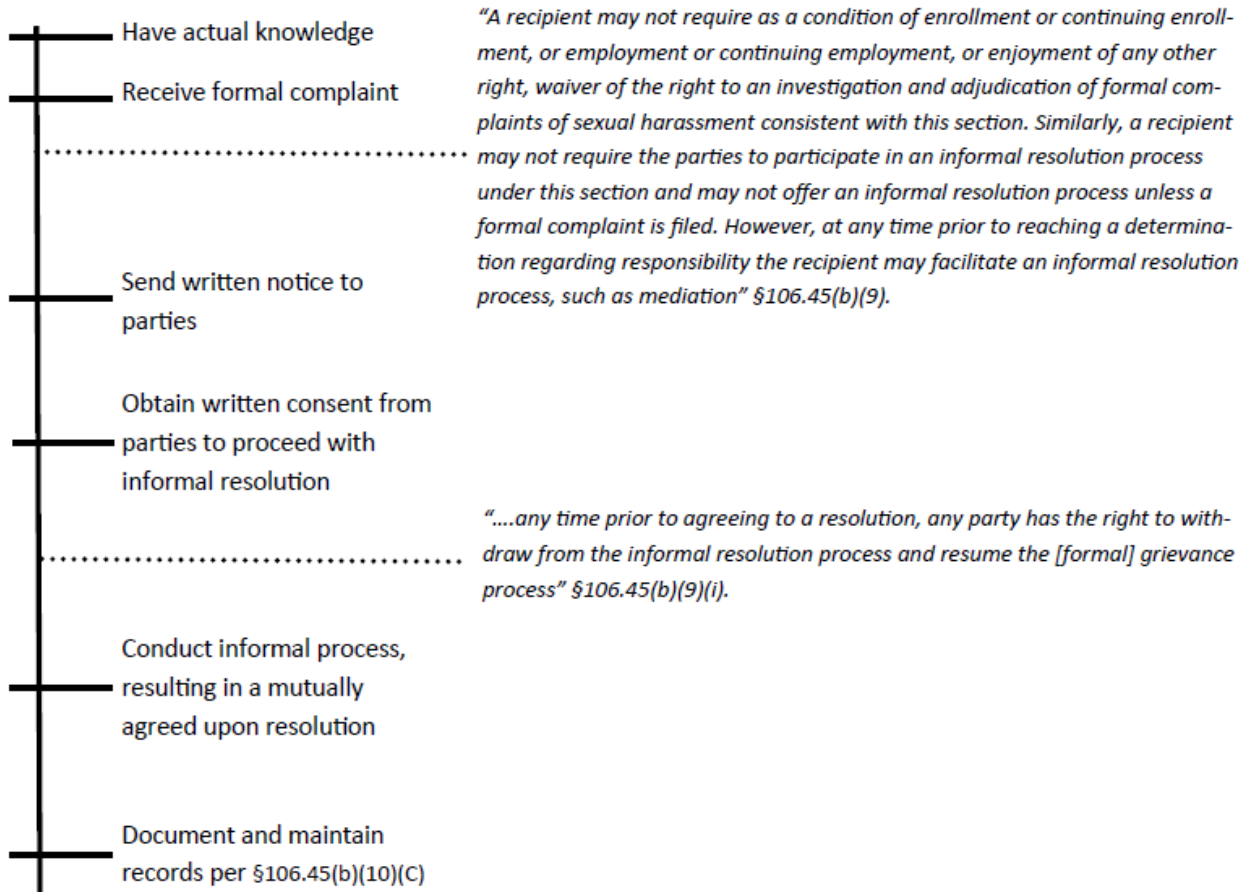
34 CFR §106.45

This diagram is not intended to be exhaustive and does not constitute a checklist



Summarized Flow of Title IX Process for Informal Resolutions 34 CFR §106.45(b)(9)

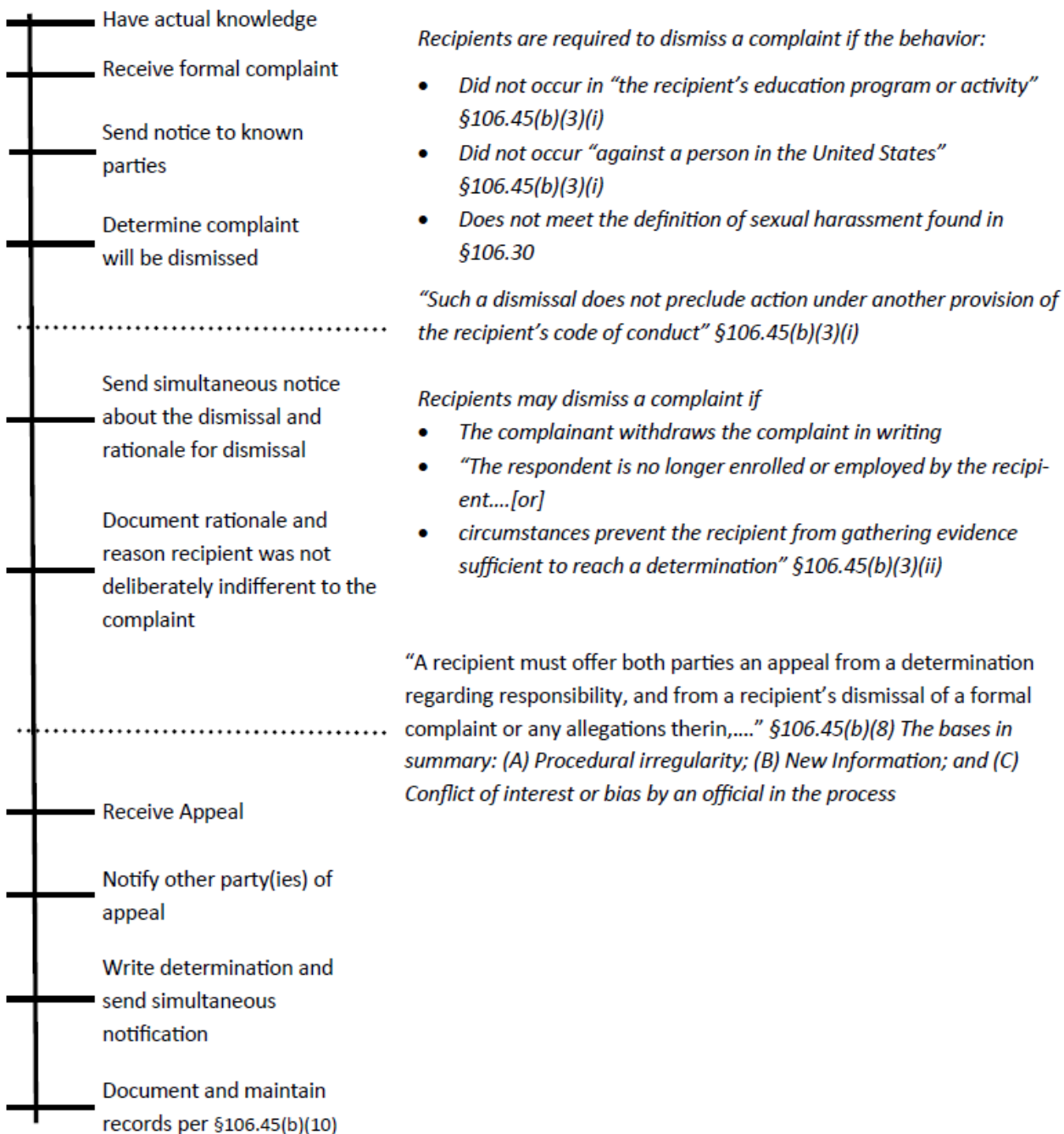
This diagram is not intended to be exhaustive and does not constitute a checklist



Summarized Flow of Title IX Dismissals

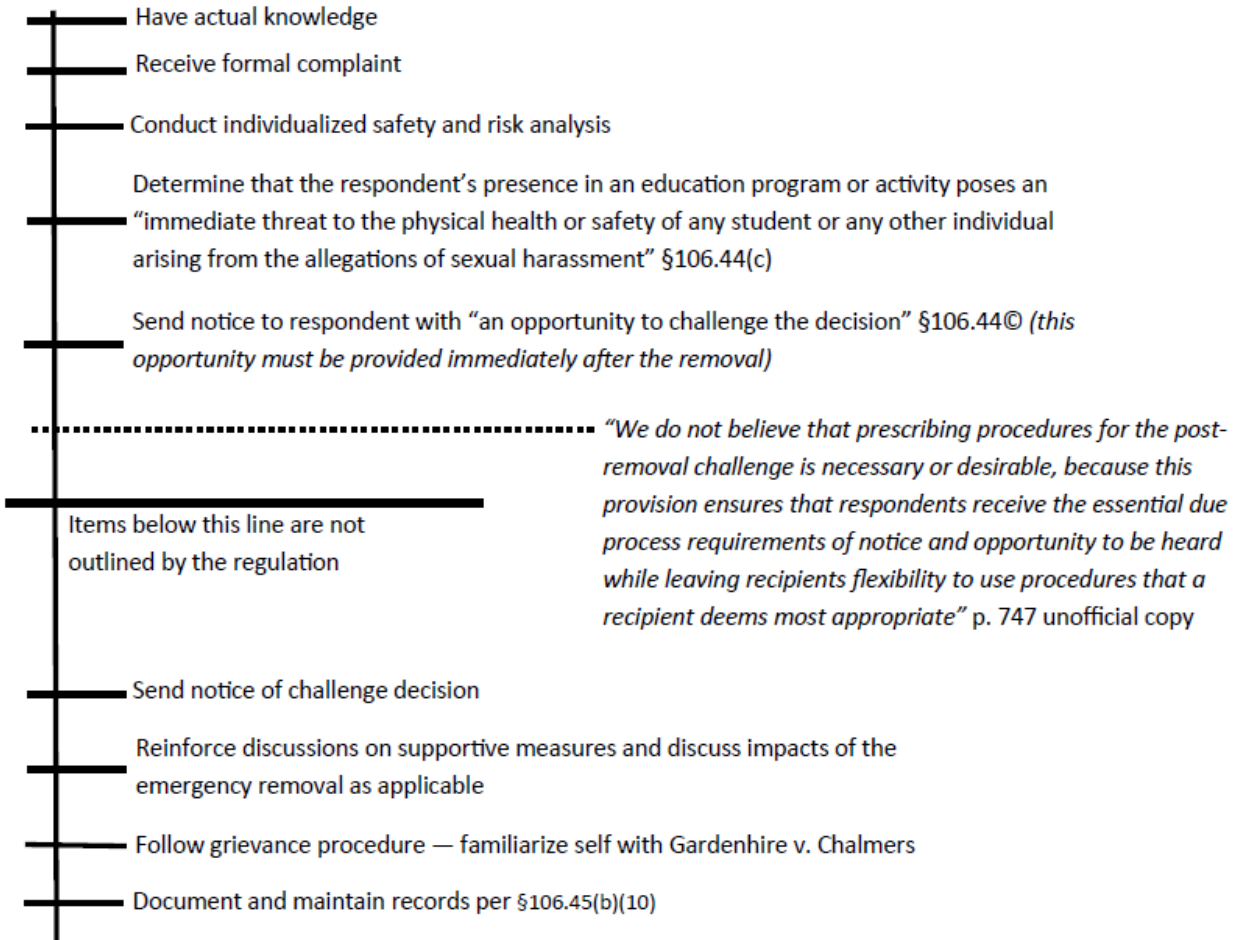
34 CFR §106.45(b)(9)

This diagram is not intended to be exhaustive and does not constitute a checklist



Summarized Flow of Title IX Emergency Removals (Interim Suspension) 34 CFR §106.44(c)

This diagram is not intended to be exhaustive and does not constitute a checklist



Task Checklist

ASCA has identified documents and tasks that each institution should be reviewing, revising, and or developing prior to August 14, 2020. These include:

Documents

- Initial outreach to Complainant
 - Consider how and when to send
 - Supportive measures irrespective of formal complaint
 - How to file formal complaint
- A document to provide to Complainant during initial meeting
 - Review rights and options
 - Process for filing a formal complaint
 - Provide the choice for formal complaint
- A document to explain the procedures within the process
 - Possible flow chart
 - Widely shared throughout the University
- A document to provide the Respondent during initial meeting
 - Discussing rights
 - Provide supportive measures
 - Emergency Removal and appeal process
 - Description of the process
 - Standard of evidence
 - Notice of allegation
 - Dismissal of formal complaint
- The formal complainant and associated tasks
 - Contains physical or digital signature of Complainant or Title IX Coordinator
 - Accepted in person, by mail, or email
 - Provide
 - Procedures for grievance or informal resolution process
 - List of supportive measures
 - Standard of evidence
 - Notice of allegation
 - Dismissal of formal complaint
- Notice that the University has a policy against discrimination on basis of sex
 - Title IX Coordinator contact information
 - The location of the policy
 - Widely shared throughout the University
 - A prompt and equitable resolution process
- Notification to those who have authority to institute corrective measures
 - Tracking form of irrelevant or re-worded questions used by investigator and decision maker
 - Includes rationale decisions for each question
- Hearing Outcome
 - Summary of allegation
 - Identification of prohibited behavior
 - Procedural steps from receipt of formal complaint to hearing
 - Findings of fact
 - Conclusion summarizing how the behavior is applied to the policy
 - Determination of responsibility for each allegation including a rationale
 - Disciplinary sanctions including a rationale
 - Restorative remedies including a rationale

- Appeal procedures
- Advisor expectation form (for parties and advisors)
 - Expectations of advisor
 - Procedures where advisor is included
 - Communication with an advisor
 - Behavior not allowed of advisors
 - Removal from position

Policy Items

- Update responsible employee to authorities who can take corrective action (may still have “responsible” employees, but need to define and distinguish between the two)
- Update interim measures to supportive measures
- Emergency Removal
- Definition of Sexual Harassment
- Definition of Complainant
- Definition of Respondent
- Confidentiality
- Concurrent Student Conduct violations
- False allegation
- Dismissing a formal complaint
- Definition of education program or activity
- Add remedies
- Sanctions
- Jurisdiction
- Actual knowledge
- Formal complaint vs formal notice/report
- Presumption of not responsible
- Reasonably prompt timeframes and when able to delay
- Checks for conflict of interest
- Standard of evidence
- Burden of proof
- Time frames and ability to evidence
- Protected evidence (ie medical records)
- Advisors
- Hearings procedures
- Notification of Outcome
- Appeal
- Retaliation
- Informal Resolution
- Record keeping
- Process when outside jurisdiction
- Is language legalistic or understandable by all
- Is policy in line with state laws
- Update other handbooks
 - Study Abroad
 - Employee Handbook
 - Student Handbook
 - Residence Life Handbook
 - Grievance

Tasks

- Updated campus stakeholders
 - Individuals updating policy
 - Deputy Title IX Coordinators
 - Threat assessment team
 - Individuals with authority to institute corrective action
 - President/Board of Trustee/Cabinet
 - Confidential Employees
 - Statement to campus
 - Entities who previously implemented interim measures
- Emergency Removal
 - Procedure for individuals safety and risk analysis
 - Opportunity to appeal by Respondent
- Determine staffing
 - Informal Resolution facilitator
 - Investigator
 - Decision Maker
 - Single person
 - Board
 - Advisors
 - Appeal authority
- Training
 - Positions
 - Title IX Coordinator
 - Deputy Title IX Coordinator
 - Investigator
 - Decision Maker
 - Advisor offered by the University
 - Appeal authority
 - Informal Resolution facilitator
 - Logistics
 - Who will facilitate
 - Length of training
 - When to occur
 - In person or electronic
 - Topics
 - Implicit Bias
 - Prejudgment of facts
 - Conflict of interest
 - Definitions
 - Scope of educational activities/jurisdiction
 - How to conduct the process
 - Technology used within hearing
 - Relevance of questions and evidence including exceptions
- Update website
 - Contact information of Title IX Coordinator
 - How and where to file report
 - Training materials
- Updates to reporting formats
 - Any person may report, even those not connected to University
- Update case management platforms

- Update or add hearing procedures
- Technology to assist with live hearing
 - Identify
 - Purchase
 - Train
- Review and update procedures for review of documents in preparation for hearing
- Communication plan to update campus community
- Update or add Informal Resolution process
 - Identify properties off campus that are owned or controlled by a recognized student organizations

Index of May 2020 Changes to 34 CFR Section 106

This index includes the most helpful sections for the terms below, it is not an exhaustive list of every mention of each term.

Page numbers are gathered from the unofficial copy made available on May 6, 2020 of the Department of Education Final Rule on Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

§106.03 p. 2008	Allegations §106.45(b)(7)(ii)(A) p. 2026
§106.06 p. 2008	Americans with Disabilities Act §§106.44(c) & 106.44(d) p. 2017
§106.08 p. 2009	Appeal §106.45(b)(1)(viii) p. 2020, §106.45(b)(8) p. 2027
§106.09 p. 2011	Bases §106.45(b)(8)(i)(A) - (C) p. 2027;
§106.18 p. 2012	Record keeping §106.45(b)(10)(i)(B) p. 2029
§106.24 p. 2013	Application Outside the United States §106.8(d) p. 2011
§106.30 p. 2013	Assurance of exemption §106.12(b) p. 2012
§106.44 p. 2016	Attorney §106.45(b)(5)(iv) p. 2023
§106.45 p. 2018	Bias §106.45(b)(8)(i)(C) p. 2028
§106.45 p. 2030	Burden of proof §106.45(b)(5) p. 2022
§106.62 p. 2031	Clear and convincing see Standard of evidence
§106.71 p. 2031	Complainant definition §106.30(a) p. 2013
§106.72 p. 2032	Conclusions §106.45(b)(7)(ii)(D) p. 2027
§106.81 p. 2033	Confidential §106.71(a) p. 2031
§106.82 p. 2033	Consent Definition §106.30(a) p.2013; Informal resolution §106.45(b)(9)(ii) p. 2029
Actual knowledge §106.30(a) p. 2013	Consolidation of complaints §106.45(b)(4) p. 2022
Additional allegations §106.45(b)(2)(ii) p. 2021	Constitution §106.6 p. 2008, 2009
Administrative leave §§106.44(c) & 106.44(d) p. 2017	Credibility §106.45(b)(1)(ii) p. 2018
Advisor §106.45(b)(2)(i)(B) p. 2021, §106.45(b)(5)(iv) p. 2023; §106.45(b)(6)(i) p. 2024	Cross-examination §106.45(b)(6)(i) p. 2024

Dating violence §106.30(a)(3) p. 2015

Decision-maker §106.45(b)(1)(iii) p. 2019,
§106.45(b)(6)(i) p. 2025

Appeals §106.45(b)(8)(iii)(C) p. 2028

Definitions

Actual knowledge §106.30(a) p. 2013;

Complainant §106.30(a) p. 2013;

Consent §106.30(a) p. 2013;

Formal complaint §106.30(a) p. 2014;

Respondent §106.30(a) p. 2014;

Sexual harassment §106.30(a) p. 2014;

Sexual assault §106.30(a)(3) p. 2015;

Supportive measures §106.30(a) p. 2015;

Elementary and secondary school §106.30(b) p.
2015;

Postsecondary institution §106.30(b) p. 2016

Deliberate indifference §106.44(a) p. 2016;

Record Keeping §106.45(b)(10)(ii) p. 2030

Determination, written §106.45(b)(7)(ii) p. 2026

Appeal decision, written §106.45(b)(8)(iii)(E) p.
2028

Dishonesty see False Statements

Dismissal of complaint §106.45(b)(3) p. 2021

Dissemination of Policy §106.8(b) p. 2010

Domestic violence §106.30(a)(3) p. 2015

Education program or activity *see Program or
activity*

Elementary and secondary school §106.30(b) p. 2015

Emergency removal §106.44(c) p. 2017

Equitable resolution §106.8(c) p. 2011

Evidence

Inculpatory & exculpatory §106.45(b)(1)(ii) p.
2018;

Right to review §106.45(b)(2)(i)(B) p. 2021;

Provided by parties §106.45(b)(5)(ii) p. 2023;

Inspect and review §106.45(b)(5)(vi) p. 2023;

Appeal basis §106.45(b)(8)(i)(B) p. 2028

Extension §106.45(b)(1)(v) p. 2020

False Statements §106.45(b)(2)(i)(B) p. 2021,
§106.71(b)(2) p. 2032

FERPA §106.6(e) p. 2009; §106.71(a) p. 2032

Fifth Amendment §106.6(d)(2) p. 2008, §106.44(a) p.
2016

Finding of facts §106.45(b)(7)(ii)(C) p. 2027

First Amendment §106.6(d)(1) p. 2008, §106.44(a) p.
2016, §106.72(b)(1) p. 2032

Formal complaint §106.30(a) p. 2014, §106.44(b) p.
2016:

Grievance procedure §106.8(c) p. 2011;

Informal resolution §106.45(b)(8) p. 2029;

Record keeping §106.45(b)(10) p. 2030

Fourteenth Amendment §106.6(d)(2) p. 2008,
§106.44(a) p. 2016

Free speech §106.6(d)(1) p. 2008

Grievance Procedures §106.8(c) p. 2011

Grievance Process §106.45 p. 2018

Requirements §106.45(b)(1) p. 2018;

Hearings §106.45(b)(6) p. 2024;

Appeals §106.45(b)(8) p. 2027

Hearing §106.45(b)(6) p. 2024

Hearing transcript

Process §106.45(b)(6)(i) p. 2026;

Record keeping §106.45(b)(10)(i)(A) p. 2029

Individuals with Disabilities Education Act
§106.44(c) p. 2017

Informal resolution §106.45(b)(9) p. 2028

Record keeping §106.45(b)(10)(i)(C) p. 2029

Interim suspension see Emergency removal

International §106.8(d) p. 2011

Investigation §106.45(b)(5) p. 2022

Investigative report §106.45(b)(5)(vii) p. 2024

Investigator §106.45(b)(1)(iii) p. 2019

Jurisdiction see Application

Medical records See Records maintained [by medical
professionals]

Nondiscrimination Statement §106.8(b) p. 2010

Notice
 Receipt of formal complaint §106.45(b)(2) p. 2020;
 Dismissal of complaint §106.45(b)(3)(iii) p. 2022;
 Meetings §106.45(b)(5)(vi) p. 2023;
 Appeals §106.45(b)(8)(iii)(A) p. 2028;
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End Violence Against Women International
(EVAWI)

Becoming Trauma- Informed: Learning and Appropriately Applying the Neurobiology of Trauma to Victim Interviews

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Please Note

An earlier version of this document was released by EVAWI in September 2019 entitled: [Statement on Trauma-Informed Responses to Sexual Assault](#). It was written in response to a position statement issued in August 2019 by the Association of Title IX Investigators (ATIXA) titled, *Trauma-Informed Training and the Neurobiology of Trauma*.

This Training Bulletin is the first of a series addressing a variety of topics related to trauma-informed interviewing, including: an examination of their evidentiary value, a description of specific interviewing strategies such as the Forensic Experiential Interview (FETI), and an exploration of research on how to effectively elicit information during an investigative interview, whether it is conducted with a victim, witness or suspect in a criminal investigation, as well as recommendations for best practice.

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Introduction

The detailed interview with a sexual assault victim may be the most critical component in an effective sexual assault investigation. It directs the investigator where to collect evidence, identifies possible witnesses and suspects to interview, and it can generate corroborative information. The interview also communicates to victims whether law enforcement will take their report seriously and treat them with respect, ultimately affecting whether they decide to participate and stay involved in the process.

Unfortunately, traditional law enforcement interviews with sexual assault victims have often been ineffective at best – and inappropriate or abusive at worst.¹ Why? There are numerous causes, but one is the bias that sexual assault victims have historically faced, not only from law enforcement and other responding professionals, but also from friends and family members. This bias is often based on misconceptions that lead people to blame victims and believe that they are lying about the sexual assault. Yet we now have a body of well-established neuroscience that explains how humans respond to stress and trauma, and this can be used by law enforcement investigators to inform and improve their interviews with sexual assault victims.

With this reality in mind, it is critical that law enforcement agencies assess how successful their current sexual assault victim interviewing practices are:

- Do these interviewing practices maximize the potential completeness and accuracy of victims' recall of incidents?
- Are these practices thoroughly documented in investigative case files?
- Do they successfully guide thorough, professional, and fair investigations?
- Do they yield sufficient evidence to make proper case determinations?
- If not, what improvements can be made to increase their effectiveness?

This training bulletin is the first in a series designed to help agencies make improvements in their interviewing practices with victims of sexual assault, as well as victims and witnesses of other types of violence. Many of these same principles also

¹See, for example: Amnesty International (2007). *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA*. New York, NY; Dissell, R. (2009, November 16). [Cleveland woman says she fought, fled Anthony Sowell in 2008 attack but authorities didn't believe her](#). *The Plain Dealer*, Cleveland, OH; Human Rights Watch (2009). *Testing Justice: The Rape Kit Backlog in Los Angeles City and County*. New York, NY; Human Rights Watch (2010). *"I Used to Think the Law Would Protect Me:" Illinois' Failure to Test Rape Kits*. New York, NY; Human Rights Watch (2013). *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*. New York, NY; Krakauer, J.R. (2015). *Missoula: Rape and the Justice System in a College Town*. New York, NY: Doubleday; Stevick, E. & Hefley, D. (2011, November 4). Rape wasn't a lie Lynwood Police now say. *The Herald*, Everett, WA; US Department of Justice (2015). [Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence](#).



apply to other types of investigative interviews, such as those conducted by prosecutors, civil attorneys, campus Title IX investigators, and others.

Traditional Strategies Don't Work with Trauma Victims

One fundamental problem with many sexual assault interviews is that victims are asked to recount their memories of the crime in ways that are often inconsistent with how those memories were encoded and stored, as well as the reality that stress experienced during the interview can impair memory retrieval.² To illustrate:

- Victims are typically asked to provide their narrative in chronological order;
- Interviews rely heavily on “who, what, when, where, and why” questions; and
- Investigators assume that victims will remember particular details of the assault, including the suspect’s appearance and behavior throughout the event.

As a result, questions asked by investigators often don’t “make sense” to sexual assault victims, given what they can actually remember, and the statements victims make in traditional interviews often don’t “make sense” to investigators. Instead, victims’ honest answers and statements in response to this type of questioning often raise unwarranted suspicion in the minds of investigators – as well as prosecutors, judges, jurors, other professionals like health care providers and victim advocates, and even loved ones.

People also frequently misinterpret victim behaviors during the interview. For example, investigators mistakenly interpret the victim’s body language, emotional expression, or lack of eye contact as signs of dishonesty.³ Or they view the victim’s lack of engagement as a sign that they are uncooperative, rather than a result of being emotionally overwhelmed and/or shut down. In other words, victims don’t act the way investigators *assume they themselves would act* in a similar situation, and this only fuels the existing misconceptions and bias against sexual assault victims.

Indeed, these practices can *create* the very inaccuracies and inconsistencies that are held against victims and cause investigators to question their credibility or conclude that the report is unfounded. This is especially likely when investigators ask leading questions or ask questions repeatedly, because eventually most victims will submit to the pressure and provide some type of answer, just to get the investigator to move on.

² For authoritative reviews of the relevant research, please see: Gagnon, S. & Wagner, A. (2016). [Acute stress and episodic memory retrieval: Neurobiological mechanisms and behavioral consequences](#). *Annals of the New York Academy of Sciences*, 1369 (1), 55-75; Wolf, O. (2017). [Stress and memory retrieval: Mechanisms and consequences](#). *Current Opinion in Behavioral Sciences*, 14, 40-46.

³ Research documents that nonverbal behaviors such as these are not reliable indicators of deception. As Vrij et al. (2017) concluded: “Meta-analyses summarizing the findings of over more than 100 separate research studies conclude that nonverbal cues to deceit, particularly those promoted in interrogation training manuals (e.g., gaze aversion, shifting position, and fidgeting) are faint and unreliable” (p. 928). See: Vrij, A., Meissner, C.A., Fisher, R.P., Kassin, S.M., Morgan, C.A., & Kleinman, S.M. (2017). Psychological perspectives on interrogation. *Perspectives on Psychological Science*, 12 (6), 927-955.



Coercive interviewing practices such as these are powerfully depicted in the Netflix series, [Unbelievable](#). The first episode offers a hard-hitting portrayal of what can go wrong when professionals and loved ones disbelieve sexual assault victims and pressure them to recant. The series is based on a real case that was described in a [Pulitzer Prize-winning article](#), and developed into a full-length book by T. Christian Miller and Ken Armstrong. For more detailed information on this topic, see EVAWI's training bulletin, [Raped, Then Jailed: The Risks of Prosecution for Falsely Reporting Sexual Assault](#).

“Trauma-Informed” Approaches to Interviewing

When interviewing techniques are based on an accurate understanding of trauma, and informed by the relevant research on memory and neurobiology, interviewers can listen more perceptively to a victim's memories, especially descriptions of how the trauma impacted their attention, cognition, and behavior (e.g., narrowed attention, impaired reasoning capacities, freezing, habit behaviors, dissociation, and tonic immobility). Interviewers can also ask questions in ways that are more consistent with how traumatic memories are often encoded, stored, and retrieved. This can elicit more complete and accurate information, which in turn can lead to more thorough evidence-based investigations. For example, a trauma-informed interview of a sexual assault victim will likely include:

- Sincere efforts to establish trust, rapport and comfort for the victim.
- Acknowledgment of the victim's trauma and/or pain.
- Creating an environment that feels physically and emotionally safe for victims.
- Communicating in language the victim will understand and be comfortable with.
- Use of non-leading questions and other open-ended prompts (e.g., “Tell me more about that,” or “What were you thinking/feeling at that point?”).
- Encouragement of narrative responses with pauses, and without interruptions.
- Focus on what the victim can recall thinking and feeling throughout the experience.
- Particular emphasis on emotional and sensory experiences (five externally focused senses plus internal body sensations).
- Expressions of patience, empathy, and understanding throughout the interview.
- No necessity for information to be provided in a sequential or “logical” order.
- Instruction not to guess at any answers, and to say “I don't know” when needed.
- Not asking victims “why” they did or did not do something during the assault, but rather inquiring in ways that convey a non-judgmental desire to understand their



experiences, reactions, and (often automatic) decisions (e.g., “Tell me what you were thinking/feeling/experiencing when you got in the suspect’s car?”).

Most of these techniques are not new, or particularly innovative. For example, many come from the field of child forensic interviewing and are incorporated in science-based investigative interviews.⁴ What is new is that we now understand *why* they work, in part based on the relevant neuroscientific research.

Science can also help investigators better understand victim statements and responses, including in the context of how the brain shifts toward reflexive and habitual behaviors during a traumatic event. Again, this information can help to “make sense” of behaviors that might otherwise be confusing to those listening to a victim’s narrative.

Also, by expanding the range of behaviors that might be viewed as “normal” among sexual assault victims, investigators can avoid wrongly misinterpreting them as signs of deception. In other words, the information may not necessarily add to the credibility of any victim statement, but it might help to avoid unjustifiably discrediting it. Finally, this knowledge can help to inform professional and investigative practices, as we will describe later. However, it is worth noting at the outset that many of these practices were discovered and recommended long before we had science to back them up.

“Trauma-Informed” Before There Was Such a Term

Long before the term was coined, many good investigators were following practices that are now described as “trauma-informed.” For example, they were patient and compassionate with victims, they provided flexibility in the way victims were asked to recall and relay events, they included victim advocates in investigative interviews, and they recognized that their interactions with victims, regardless of the legal outcome, could help them begin a healing journey by affording them simple dignity.

For most of these investigators – and other professionals at the time – the psychological effects of stress and trauma were not as well understood as they are today. Still, many good investigators used these methods anyway, believing from experience and insight that they were good for victims, and good for interviews; they were simply the right thing to do. Fast-forward to today, and it’s clear we’ve benefitted enormously from more sophisticated theory and practice, based on the relevant neuroscience.

⁴ See research commissioned and compiled by the US government’s High-Value Detainee Interrogation Group (HIG), including Brandon, S.E., Wells, S., & Seale, C. (2018). Science-based interviewing: Information elicitation. *Journal of Investigative Psychology and Offender Profiling*, 15, 133–148; HIG Report (2016). *Interrogation: A review of the science. High-value detainee interrogation group*, Washington DC. Retrieved from <https://www.fbi.gov/file-repository/hig-report-august-2016.pdf/view>. Meissner, C.A., Surmon-Böhr, F., Oleszkiewicz, S., & Alison, L. J. (2017). Developing an evidence-based perspective on interrogation: A review of the US government’s high-value detainee interrogation group research program. *Psychology, Public Policy, and Law*, 23, 438; Wells, S. & Brandon, S.E. (2019). Interviewing in criminal and intelligence-gathering contexts: Applying science. *International Journal of Forensic Mental Health*, 18, 50-65.

Defining the Neurobiology of Trauma

For the purpose of this document, we will generally define the *neurobiology of trauma* as a science-based understanding of: (1) How brains and bodies respond to acutely stressful and traumatic events such as a sexual assault, *as they are happening*, and (2) How these experiences of extreme stress are encoded, stored, and potentially retrieved from memory. This is consistent with the way in which psychological trauma is defined by scientists in the field of traumatic stress,⁵ and also how it is defined in the *Diagnostic and Statistical Manual of Mental Disorders (DSM 5)*.⁶ Based on that definition, we provide the following brief tutorial on some of the fundamental processes involved.

Neurobiology of Trauma: A Basic Tutorial

*In a 1-page handout for investigators, advocates, and other professionals, Dr. Jim Hopper (2019) has summarized how the brain is commonly affected during a sexual assault. The brief tutorial that follows is adapted from that handout and other materials written by Dr. Hopper.*⁷

Defense Circuitry

At some point during a sexual assault, as in other traumatic situations, the brain's defense circuitry⁸ (also sometimes referred to as the fear circuitry) will detect the attack, and it will likely immediately take over the dominant role in brain functioning. This is true as long as the person is conscious – even if they are intoxicated.

Prefrontal Cortex Impairment

Within seconds of the defense circuitry kicking in, the prefrontal cortex of the brain will likely become impaired in fundamental ways. This impairment results in:

- **“Bottom-up attention,”** in which the defense circuitry dominates where a person's attention goes. This is based on automatic, moment-by-moment appraisals of what's essential to cope and survive, not rational “top-down” goals and plans of the prefrontal cortex. For example, attention is likely to be involuntarily captured by the physical sensations of being restrained, sexually

⁵ For example, the International Society for Traumatic Stress Studies (ISTSS) [defines](#) traumatic events in this way: “Traumatic events are shocking and emotionally overwhelming situations that may involve actual or threatened death, serious injury, or threat to physical integrity.”

⁶ According to the American Psychiatric Association (APA), the [definition](#) of trauma in the *DSM-5* requires “exposure to actual or threatened death, serious injury or sexual violence.”

⁷ The scientific research supporting points summarized in this brief tutorial can be found in Dr. Hopper's writings, for example on his blog, [Sexual Assault and the Brain](#), and in later footnotes (e.g., page 14).

⁸ While the brain is not a computer, the metaphor of the brain being composed of a variety of “circuitries” has proven useful and become dominant in neuroscience. The term “circuitry” refers to a collection of brain areas that work together to perform certain functions.

penetrated, and having difficulty breathing, rather than deliberately focused on gathering information that could later be useful to an investigator.

- **Impaired prefrontal cortex capacities**, specifically related to rational thinking, planning effective responses, and remembering important information (for example, that there are people nearby who would hear a scream); and
- A shift to **reflex responses** that are hard-wired into our brains, partly because human beings evolved as prey, not just predators, and **habit responses** that, like reflex responses, can be rapidly and automatically selected and executed by the brain (which is why evolution selected for prefrontal cortex impairment, because its deliberative processes can be too slow in dangerous situations). These reflex- and habit-based responses (including freezing and habits of politely responding to aggressive and dominant people) are outlined below.

Reflex Responses

Reflex responses may include a **brief freeze response** when the threat is detected, during which movement ceases and the brain rapidly and automatically assesses the attack and possible escape options.

Following this initial “freeze,” other automatic reflex responses can include:

- **Dissociation**, where awareness is disconnected from emotions and body sensations, and one may operate on “autopilot” or with extreme passivity – even potentially engaging in sex acts without consciously choosing to do so.
- **Tonic immobility**, where the person cannot move or speak, and muscles are rigid (this is different from the initial freeze response).
- **Collapsed immobility**, involving sudden loss of oxygen to the brain, leading to dizziness or passing out, and muscles may become limp.

These reflex responses are so common among humans that some professionals – such as law enforcement – must train *continuously for years*, in the hopes of avoiding and overcoming them during a traumatic situation such as an officer-involved shooting.⁹

Habit Responses

In addition to reflexes, during severe stress and trauma, humans can revert to habit responses that are rooted in:

⁹ The word “freeze” is often colloquially used to describe any lack of movement by people during a traumatic situation. However, in terms of the scientific research, this word is only used for the initial inhibition of movement that often arises at the point when an attack or other source of danger is detected.

- **Social conditioning**, such as how girls and women are socialized to respond to males' unwanted sexual advances in "nice," polite, face-saving ways;
- **Habitual ways of dealing with aggressive and dominant people**, which we all have learned in the course of our lives; and
- **Habits learned to cope with past abuses** (including abuse in childhood).

For example, statements of protest or resistance may be simple, habitual, passive, and ineffective ("It's late," "Someone will hear us," "You have a girlfriend").

Memory Processes

When the defense circuitry dominates the brain, it has rapid and ongoing impacts on memory processes, including how different aspects of the experience are encoded and stored – or not.

Central Details

The human brain is always filtering and extracting sensory information, encoding some of it into short term memory, and storing some of that into long-term memory. Parts of experiences that receive attention and have emotional significance are **central details**; these are well encoded and likely to be retained in memory, and this is particularly true for stressful and traumatic experiences.

- Because the defense circuitry focused attention on these details and engaged neurobiological processes to strengthen their encoding and storage, such central details are generally accurate, consistent, and often able to be corroborated.¹⁰
- These central details may not initially seem important to the investigation, from a traditional law enforcement perspective (because they might not establish elements of the offense, identify a suspect, etc.).
- However, they can be important if they help to corroborate the victim's state of fear, stress, and trauma, or if they corroborate information about events or the victim being in a certain location, etc. (For example, a victim may offer a detailed description of a specific table or plant in a room.)

¹⁰ Even central details can be distorted by external interference (such as repeated leading questions by an interviewer) and strong internal (but not necessarily conscious) motivations. However, they are much less susceptible to distortion than peripheral details (aspects of the experience that received little or no attention during the traumatic event, and had little or no significance attached to them at the time). See Van Damme, I. & Smets, K. (2014). The power of emotion versus the power of suggestion: Memory for emotional events in the misinformation paradigm. *Emotion*, 14, 310-320.

Peripheral Details

In contrast, **peripheral details** are those that the defense circuitry gave little or no attention or significance to during the attack, because they were not assessed as relevant to survival or coping at the time. As a result, peripheral details are likely to be remembered poorly, if at all, and/or inconsistently over time.

- Unfortunately, these peripheral details are often the focus of a traditional law enforcement interview. For example, investigators will typically ask a sexual assault victim about specific aspects of the suspect's appearance and actions that have direct relevance to the investigation (e.g., whether the suspect penetrated the victim, how many times, and whether he ejaculated). While many people (including investigators) will assume such details had central importance to the victim at the time and therefore will be remembered, the defense circuitry may have automatically directed the victim's attention elsewhere, in which case these seemingly key details would in fact be peripheral.
- Such a focus on details that were peripheral for the victim at the time, especially when combined with leading questions, is a major cause of inaccuracies and inconsistencies in victims' memories.

In addition, **contextual information** (such as the layout of a room) and **time-sequence information** (like the order in which sex acts were perpetrated) are often poorly encoded or stored. Even in non-stressful and non-traumatic situations, the brain doesn't always encode or store time sequencing information very well, and this deficit can be even greater for stressful and traumatic experiences.¹¹

Victim Credibility

Because of these scientifically well-established memory processes, Dr. Hopper (2018) counsels not to assume that victims who "fail" to recall such peripheral details, or recall them inaccurately or inconsistently, lack credibility.

- Not recalling such details may simply indicate that those details were not encoded into memory in the first place or were not retained, which should be *expected* of a brain for *any* experience, especially a traumatic one. For example, law enforcement professionals recognize that colleagues involved in officer-involved shootings often don't remember drawing their weapon or how many shots were fired, let alone whether the suspect was holding a gun or other weapon, in their right or left hand. Without an understanding of trauma and memory, supervisors might doubt an officer's credibility and wonder if they are covering something up or not telling the truth.

¹¹ For an introduction to the scientific research on the encoding and storage of central vs. peripheral details for stressful experiences, see Dr. Hopper's blog post, "[Why Incomplete Sexual Assault Memories Can Be Very Reliable.](#)"

- Remembering such details inaccurately or inconsistently may indicate, as can sometimes be verified by recordings or transcripts of investigative interviews, that those inaccuracies and inconsistencies were created, at least in part, by inappropriate interviewing practices. Family members, friends, and others can also inadvertently contribute to such inaccuracies and inconsistencies.

Super-Encoding vs. Minimal-Encoding

Finally, it is worth noting that experiences are often well encoded around the time the threat was first detected (“when the fear kicked in”). At that point the hippocampus, a particular brain structure involved in memory formation, can temporarily go into a **super-encoding mode**. This is why victims often remember many more details from the beginning of a sexual assault (just as police officers often remember what happened just before they fired their gun). Also, memories of the attack’s onset may include substantial information about context and time-sequence.

However, at a later point (from 3 to 20 minutes later, depending on a variety of factors) the hippocampus can switch to a **minimal-encoding mode**. This shift is understood by neuroscientists as protecting the hippocampus from negative consequences that could result from staying too long in the super-encoding mode. This also involves the hippocampus dedicating resources to storing information captured in the initial super-encoding phase.¹²

Fragmented Memories

The factors described above – differential encoding of central vs. peripheral details, and impaired ability to encode and store more complex information, especially during the minimal-encoding phase – contribute to the “fragmented memories” that are so often seen among sexual assault victims,¹³ and are too often misinterpreted as evidence that they are lying or otherwise not credible. Interviewers who don’t push for information that was not encoded or stored, because they understand how stress and trauma effect memory formation, and who use effective interviewing practices, are: (a) much more likely to collect potentially important central details, and (b) much less likely to contribute to inaccuracies and inconsistencies in peripheral details or time-sequencing information.

¹² For an introduction to the research on these time-dependent effects of stress on the functioning of the hippocampus and memory formation, see Dr. Hopper’s blog post, [“Why Christine Blasey-Ford Can’t Remember How She Got Home.”](#)

¹³ “Fragmented memories” are also seen among others who have experienced traumatic events, such as victims of physical violence, police officers involved in shootings and other traumatic on-duty experiences, and soldiers who are recalling traumatic combat experiences.



For more information about the neurobiology of stress and trauma, please see EVAWI's training bulletin, [Understanding the Neurobiology of Trauma and Implications for Victim Interviewing](#) (Wilson, Lonsway & Archambault, 2016). In addition, you can find resources on the [neurobiology of trauma on EVAWI's website](#). Also see materials posted on Dr. Jim Hopper's website on [Sexual Assault & The Brain](#).

Not Only Is the Science Strong – It Keeps Getting Stronger

It is important to recognize that the scientific findings described above are robust and reliable, as evidenced by decades of work published in prestigious peer-reviewed journals.¹⁴ To illustrate, in 2015 the *Harvard Review of Psychiatry* published a thorough review of the neuroscientific and behavioral research on various “survival reflexes” (or “animal defense responses”) exhibited by humans and animals in traumatic situations.¹⁵ The lead author of that article, Dr. Kasia Kozłowska, is an international expert in the field, and she referenced over 200 other scientific publications in that review.

Yale neuroscientist Dr. Amy Arnsten is a leading expert on stress-induced impairment of the prefrontal cortex. In 2009¹⁶ and 2015¹⁷ she published comprehensive reviews of the extensive research on how stressful experiences can impair functioning of the rational prefrontal cortex and lead people to rely on more automatic responses such as habits and reflexes. Other reviews, written by Dr. David Diamond and colleagues in 2007¹⁸ and Dr. Lars Schwabe in 2017,¹⁹ have summarized and synthesized numerous studies showing that the onset of stress can first enhance encoding and storage of information in memory, and then switch to impairing encoding as the stressful condition continues.

¹⁴ Hopper, J. (January 22, 2018). [Sexual assault and neuroscience: Alarmist claims vs. facts](#). *Psychology Today* (online).

¹⁵ Kozłowska, K., Walker, P., McLean, L., & Carrive, P. (2015). [Fear and the defense cascade](#). *Harvard Review of Psychiatry*, 23 (4), 263-287.

¹⁶ Arnsten A. (2009). [Stress signaling pathways that impair prefrontal cortex structure and function](#). *Nature Reviews Neuroscience*, 10 (6), 410-422.

¹⁷ Arnsten, A. (2015). [Stress weakens prefrontal networks: Molecular insults to higher cognition](#). *Nature Neuroscience*, 18 (10), 1376-1385.

¹⁸ Diamond, D., Campbell, A., Park, C., Halonen, J., & Zoladz, P. (2007). [The temporal dynamics model of emotional memory processing: A synthesis on the neurobiological basis of stress-induced amnesia, flashbulb and traumatic memories, and the Yerkes-Dodson law](#). *Neural Plasticity*, 60803, 1-33.

¹⁹ Schwabe, L. (2017). [Memory under stress: From single systems to network changes](#). *European Journal of Neuroscience*, 45 (4), 478-489.



Hundreds of other studies demonstrate that the “central details” of any event, including traumatic ones, can be strongly encoded and stored, because they had the most attention and/or emotional significance at the time.²⁰ On the other hand, “peripheral details” may be poorly encoded and stored, or not at all, by someone experiencing any event, especially a traumatic one. Peripheral details are more likely to quickly fade in memory, rendering them unavailable for later recall or vulnerable to being recalled inconsistently. Indeed, the differential encoding and storage of central vs. peripheral details is *even greater* for stressful and traumatic events, and this is just as true for soldiers’ memories of combat and police officers’ memories of shootings as it is for anyone’s memories of a sexual assault. As scientists who study this know, that’s simply how evolution has shaped our brains to encode and store information, especially for stressful and traumatic experiences.

In sum, there is no question that the existing science on the neurobiology of stress and trauma is solid, especially for responses during the event and how memories are typically encoded and stored. The research is robust and reliable. As Dr. Hopper has concluded, “Not only is the science strong – it keeps getting stronger.”²¹



Subjective Appraisal of Traumatic Experiences

While the science is strong in terms of how people respond to traumatically stressful events, the appraisal of experiences as traumatically stressful (or not) is subjective to a large degree. In other words, the same event might be experienced as traumatic to one person but not another. This will be influenced by variables operating at a variety of different levels: individual, interpersonal, community, societal, and cultural – even the period of time in history.²² A few such variables include:

- The severity and frequency of the traumatic event(s)
- Whether the traumatic event was repeated/ongoing (for example, in the context of intimate partner violence, human trafficking, or stalking)
- Characteristics of the victim (age, socioeconomic status, racial/cultural group)
- Personal history (including prior victimization, responses to past disclosures, and training to respond in situations such as combat or critical incidents)
- Beliefs, values, and coping skills (including maladaptive coping skills)

²⁰ Levine, L. & Edelman, R. (2009). [Emotion and memory narrowing: A review and goal-relevance approach](#). *Cognition and Emotion*, 23, 833-875; Mather, M. & Sutherland, M. (2011). [Arousal-biased competition in perception and memory](#). *Perspectives in Psychological Science*, 6 (2), 114-133.

²¹ Hopper, J. (January 22, 2018). [Sexual assault and neuroscience: Alarmist claims vs. facts](#). *Psychology Today* (online).

²² For a detailed description, please see *Trauma-Informed Care in Behavioral Health Services: Treatment Improvement Protocol (TIP), Series 57*, published by the Substance Abuse and Mental Health Services Administration (2014). HHS Publication No. (SMA) 13-4801 (especially Exhibit 1.1-3, p. 16).



- Mental health, presence and severity of any mental illness
- Level of support from friends, family members, and professionals²³

While factors such as these will influence *whether an individual subjectively experiences an event as traumatically stressful*, the brain-based processes that unfold after an event has been appraised as traumatically stressful *are not subjective at all*. Those are detailed in the scientific findings summarized earlier.

Science Helps to Understand Sexual Assault Victims

Equally important, these scientific findings have been tremendously helpful for increasing our understanding of the behaviors sexual assault victims commonly exhibit just before and during an attack. To illustrate, if responding professionals do not know anything about common brain-based responses to sexual assault (such as impaired prefrontal cortex function, freezing, passive habit behaviors, dissociation, tonic immobility, or collapsed immobility), they might wonder why a victim did not resist the assault – and question whether this means the sexual contact was consensual.

Similarly, if they don't understand basic information about the functioning of the brain's hippocampus and the distinction between central vs. peripheral details, they might question why the victim can't remember what seem (to the investigator during an interview, but not to the victim's brain at the time) like basic or crucial details about the assault, but *can* recall what might seem to be insignificant information in great detail.

If investigators don't understand that the hippocampus can go into a minimal-encoding mode after an initial super-encoding mode, it won't make sense when a victim is able to recall a great deal about the initial moments of the sexual assault, but very little about later aspects. Too often, such memories lead investigators to believe that a victim is being "selective" and untruthful about the information they relay during an interview.



Every Victim's Reaction is Unique

Although there are many deeply-held societal expectations about how victims "should" respond to a sexual assault, the countless factors affecting individual experience mean that victims will exhibit practically every imaginable response. Clearly, each victim is unique, and every situation or event is unique, so it stands to reason that an individual victim's response will be unique in important ways.

²³ Drawn in part from the Santa Barbara Graduate Institute, Center for Clinical Studies and Research & Los Angeles County Early Intervention and Identification Group (n.d.). [Emotional and Psychological Trauma: Causes and Effects, Symptoms and Treatment](#). Reprinted from Helpguide.org (2005). Also see Yuan, N.M., Koss, M.P., & Stone, M. (2006, March). [The Psychological Consequences of Sexual Trauma](#). Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence..



Detectives: “I Wish I Knew This Years Ago”

Time and time again, we hear law enforcement professionals describe how this information on the neurobiology of trauma has helped them to better understand victim responses, behaviors, and memories, and to view their interactions in a radically different way. Many say they wish they had this information years ago, as they reflect back on past interviews.

For example, when EVAWI first published our training bulletin, [Understanding the Neurobiology of Trauma and Implications for Interviewing Victims](#), one police academy administrator at a Peace Officer Standards and Training (POST) agency said:

I spent about 10 years of my law enforcement career as a criminal investigator, and I want to tell you that I wish your article was available then, as I find it a most valuable tool containing knowledge that every law enforcement officer should be trained in.

Since this training bulletin was first posted on our website in November 2016, it has been downloaded more than 25,000 times, and it is consistently the single most downloaded document from our Resource Library (which includes about 1,000 resources). In the first 9 months of 2019, for instance, this one document was downloaded more than 4,000 times, an average of 17 times *every single day*. Clearly, many professionals find this information valuable for guiding practices in the field.

The Importance of Properly Applying Science to Practice

Having said all this, there is a legitimate concern that the scientific literature is currently being misinterpreted and misapplied in some trainings (and court testimony), and this can yield inaccuracies and inappropriate conclusions during the course of a sexual assault investigation. The reality is that some people who are teaching, and potentially testifying on the neurobiology of trauma, do not have sufficient background or expertise in the area, and they have not carefully examined the existing research – or at least scientifically sound reviews of it – let alone analyzed appropriate versus inappropriate applications. This can result in inaccurate information being passed along, sometimes in ever-widening circles, as one professional shares their misinterpretations or misinformation with others during a training or more informally through word-of-mouth.

In addition, findings from the neuroscientific research are sometimes oversimplified and/or overgeneralized. For example, it is not accurate to simply state that stress and trauma “impair” the brain or memory in some general or overarching way; the processes involved are complex, and they have a range of intersecting impacts. Similarly, it is unwarranted to assume or act as if neurobiology can explain *everything* in terms of how victims respond during and after a sexual assault. We have already described the areas where neuroscientific research is extremely well-established, in explaining processes involved in how brains respond during stress and trauma, and how stress and trauma

can impact post-traumatic memory storage and retrieval. Not as advanced, however, is research on the neurobiological bases of *post*-traumatic behaviors.

The value of this scientific knowledge therefore depends on how it is being applied and in what context. It is imperative that anyone teaching or testifying about the neurobiology of trauma remain within well-established findings of scientific research.²⁴

Inappropriate to Label or “Diagnose” Victim Responses

It is particularly important for investigators and other non-clinicians not to use this science to “diagnose” victim responses such as freezing, tonic immobility, or collapsed immobility. Such use of the science is clearly unjustified and inappropriate. It is not even the investigator’s role to determine whether someone has experienced trauma. As taught in any report writing class for law enforcement, the investigator’s job is to document the statements and observable behaviors of victims (as well as suspects and witnesses). Explaining or interpreting responses should be left to experts.

To illustrate, investigators should not write in their report that the victim “went into tonic immobility” or “experienced fragmented memory,” unless this is exactly what the victim said (which is unlikely). Instead, investigators should focus on documenting how victims describe their own experience, with quotation marks to indicate their exact wording.

In addition, investigators should document the victim’s behavior with concrete and objective wording that is free of interpretation. For example, rather than saying that the victim “exhibited dissociation” during the interview, the investigator should simply document that the victim “did not make eye contact,” “stared at the wall throughout the interview,” “exhibited flat affect,” “spoke without any emotional expression,” etc.

Similarly, when victims say they “froze” during the sexual assault (which they often do), investigators should document this exact wording, but then go on to explore what this means for the victim. Using open-ended prompts, investigators can strive to elicit a detailed description of the physical, sensory, and emotional aspects of the victim’s experience. For example: “Tell me more about when you ‘froze.’” “What were you feeling at that point?” or “What was going through your head when you ‘froze?’” Then the investigator can document these thoughts, feelings, and experiences from the victim’s perspective, and not simply write down that the victim “froze” without indicating what the victim actually means by that.

²⁴ Some of the writings that professionals should read, understand (at least the gist), and apply appropriately are cited in previous footnotes, including scientific literature reviews authored by Gagnon & Wagner (2016), Wolf (2017), Arnsten (2009, 2015), Kozłowska (2015), Diamond et al. (2007), Schwabe (2017), Levine & Edelstein (2009), and Mather & Sutherland (2011). Also essential are the writings of Dr. Jim Hopper on [Sexual Assault & The Brain](#) and an EVAWI training bulletin entitled, [Understanding the Neurobiology of Trauma and Implications for Interviewing Victims](#).

Besides being the most appropriate way of documenting victim behaviors, this style of documentation also avoids the scenario where an investigator (or other non-clinician who uses such terminology in their report) is called into court to defend their “diagnosis” (on the basis of science they might not be able to explain). It also avoids mislabeling a behavior, or incorrectly explaining a behavior based on the neurobiology of stress or trauma when it is actually due to some other cause. For example, trauma can certainly cause gaps and inconsistencies in memory, but so can alcohol or drug use, inappropriate interviewing tactics, and many other factors. Investigators should not assume the role of scientists or clinicians; they are factfinders, and their critical value lies in their ability to accurately gather, investigate, and document information.



For more information, please see EVAWI’s OnLine Training Institute (OLTI) module entitled, [Effective Report Writing: Using the Language of Nonconsensual Sex](#).

Trauma Symptoms Do Not Prove or Disprove Sexual Assault

Another key point is that observable (potential) indicators of neurobiological processes should not be used as direct evidence of a sexual assault, for the purpose of criminal, civil, or campus investigation or adjudication. Neuroscientific knowledge can certainly help investigators and others understand why victims of sexual assault might behave and remember in the ways they do, and it can also inform the strategies and techniques used to conduct interviews and investigations. However, the responses and memories themselves do not prove that an assault was committed or took place as described.

This point can be illustrated with one common response: Gaps or inconsistencies in a victim’s memory of sexual assault. In the past, this has often been viewed as evidence of deception, even though there is no scientific basis for this. Indeed, normal memory functioning, as well as the impacts of stress and trauma, can cause such gaps and inconsistencies (as a result of the differential encoding and storage of central vs. peripheral details, or the ways stress can impair recall). This is one of the primary gifts from the neurobiological research: It can validate people’s responses to sexual assault and their memories of the event – both in their own eyes and the eyes of others, such as investigators and other responding professionals – all with the credibility of science.

However, these gaps and inconsistencies are not direct evidence of a sexual assault, just as they are not, on their own, evidence of lying. Assuming this would put us in the untenable position of defending why an apparent *absence* of such gaps or inconsistencies for other victims wouldn’t call their credibility into question.²⁵ As Dr. Hopper has noted: “Such gaps and inconsistencies are never, on their own, proof

²⁵ Other examples can be used to illustrate the same point. For example, if we claim that lack of emotion exhibited by a victim in one case is clearly indicative of a sexual assault, because we know that lack of emotion is a possible response, then we can’t turn around and claim, with another victim, that hysteria or crying is just as indicative of the same experience.

of *anyone's* credibility, innocence, or guilt."²⁶ This is true regardless of whether it is for the purposes of criminal, civil, or campus investigation or adjudication.

Understanding Trauma to Improve Investigative Practices

Dr. Hopper's quote provides a good transition to our next point, because it raises the question of whether there is *other evidence* that can corroborate a report of sexual assault, beyond victim statements. This is another area where neuroscience can be helpful, by informing strategies for interviewing sexual assault victims *and following up on that information* to conduct thorough and unbiased sexual assault investigations.

In EVAWI's training materials, we seek to outline the most effective techniques for interviewing survivors in a way that maintains their dignity and increases their willingness to participate in the criminal justice process. This also helps to maximize the information and evidence gained, to reach appropriate case determinations.

But the victim interview is not the only step in a thorough sexual assault investigation; it is just the starting point. A thorough investigation should include numerous additional steps. For example, investigators will need to gather and review background information and evidence such as: criminal history checks, crime scene diagrams, and 911 calls, in addition to other phone calls, text messages, photographs, security tapes, reports from a medical forensic exam, etc. They will also need to interview the suspect(s) and any witnesses. An understanding of trauma, including the neurobiology of trauma, can inform the ways in which these other types of evidence are collected, documented, and – perhaps most important – interpreted within the context of a sexual assault case.

One example is how investigators might follow up on information the victim provides about how the experience of the sexual assault changed them. During a detailed interview, the victim can be asked to describe who they are now, and how this is different from who they were before the sexual assault. This information may then be corroborated in interviews with friends and family members, classmates and co-workers. If there is evidence that the victim has changed their personality or behavior in important ways, this may corroborate the victim's report of being sexually assaulted. This type of corroboration can be especially critical for victims who cannot verbally articulate these changes themselves, for example, as a result of their age, experience, incapacitation, or a disability affecting their cognitive ability or communication.

²⁶ Hopper, J. (January 22, 2018), [Sexual assault and neuroscience: Alarmist claims vs. facts](#). *Psychology Today* (online).

Conclusion

As professionals and the public have focused attention on the low rates of reporting, investigation, prosecution, and conviction for sexual assault, it has become increasingly clear that we need to improve how sexual assault victims are interviewed. Better interviews result in more thorough investigations that can effectively exclude suspects, gather evidence to establish probable cause when a viable suspect is identified, and support referrals for prosecution with a better chance of holding offenders accountable. Training in well-established neurobiology basics can help to support this effort.

The utility of this science is not for investigators to label or explain any particular victim behavior. It is not to prove that the sexual assault did, or did not, occur. Rather, the science can help investigators create a safe and nonjudgmental orientation toward interviewing, focused on *carefully listening to victims* and documenting what they say and do in the interview, without leaping to premature conclusions or judgments. It can also help investigators avoid poor interviewing practices such as constantly interrupting a victim or witness, asking leading questions, or pushing for peripheral details that may never have been encoded or retained by the victim's brain — all based on erroneous beliefs about how memory works, including how memory is impacted by stress. To that extent, the science can help us to counter common misconceptions and sources of bias in sexual assault interviews, and improve sexual assault investigations.

For More Information

EVAWI offers a training bulletin entitled, [Understanding the Neurobiology of Trauma and Implications for Victim Interviewing](#) by Dr. Chris Wilson, Dr. Kim Lonsway & Sgt. Joanne Archambault (Ret.), with contributions by Dr. Jim Hopper (2016).

EVAWI also offers a 2-part webinar series on *Neurobiology of Sexual Assault*, with training provided by Dr. Jim Hopper (2016): [Part 1: Experience and Behavior](#) and [Part 2: Experience and Memory](#). Dr. Hopper also worked with EVAWI to develop [FAQs](#) with detailed responses, to accompany this webinar series.

Also see materials posted on Dr. Jim Hopper's website on [Sexual Assault & The Brain](#). Resources include articles, blog posts, and videos of training presentations, both brief and more detailed. Included among these resources is a [1-page handout \(2019\)](#) with key information and recommendations for investigators, advocates, and other professionals implementing trauma-informed interviewing practices with sexual assault victims, as well as a [Post-Training Handout for Interviewers: Preparing for Victim/Survivor/Complainant Interviews](#)

Sexual Assault and the Brain: Key Information for Investigators, Attorneys, Judges, and Others

Jim Hopper, Ph.D., www.jimhopper.com – January 2020

Common Brain-Based Effects: Defense Circuitry in Control, Prefrontal Cortex Impaired, Reflexes and Habits

- If someone is being sexually assaulted, as long as the person is conscious, even if intoxicated, at some point **the defense/fear circuitry will detect the attack and it will likely immediately dominate brain functioning.**
- Within seconds of the defense circuitry kicking in, the **prefrontal cortex will likely be impaired**, resulting in...
- **Bottom-up attention:** the defense circuitry, not the prefrontal cortex, dominates where attention goes.
- **Impairment of prefrontal cortex capacities** for rational thinking, coming up with effective responses, remembering important information (e.g., there are people nearby who would hear a scream), etc.
- **Reflex responses**, which are hard-wired into human brains – because we evolved as prey, not just predators. These can range from **brief freeze responses** when attack is detected (in which movement ceases, thinking stops, and the brain assesses the attack and possible escape options), to **extreme survival reflexes**, including **dissociation** (awareness is disconnected from emotions and body sensations, and one may go on “autopilot,” including engaging in sex acts), **tonic immobility** (literally can’t move or speak and rigid muscles, *different from freeze*), and **collapsed immobility** (loss of oxygen to brain, ‘dizzy’ or even pass out, limp muscles).
- **Habit responses**, including **passive** ones, such as habits **for dealing with aggressive and dominant people**, habits rooted in social conditioning, e.g., **how girls and women are socialized** to respond to males’ unwanted sexual advances (in nice, polite, face-saving ways), and/or habits **learned to cope with childhood abuse.**

Common Brain-Based Effects: Memories

- **Central details:** What the defense circuitry gave **attention/significance** during the assault. Tend to be well encoded and stored, and **more likely to be accurate, consistent, and corroborated.** They may (at first) not seem central to the case (e.g., detailed description of a table or plant), but may be consistent with states of stress and trauma (e.g., detail perceived while dissociated) and/or corroborate being in a specific location.
- **Peripheral details:** Details given **little or no attention/significance**, likely because defense circuitry didn’t see them as relevant to survival/coping. Usually encoded into memory poorly or not at all, thus **recalled poorly and/or inconsistently over time.** Reason for “fragmentary” remaining memories. May be central focus of case (e.g., perpetrator actions), but “failure” to recall **does not indicate lack of credibility** – only that they weren’t (well) encoded or stored, which is *common, especially* when brain is under attack (e.g., in combat too).
- **Time-sequence information** (e.g., the order in which sexual acts occurred) and **contextual information** (e.g., layout of a room) are often poorly encoded/stored. Again, *common* impacts on a brain under attack.
- Experiences around the time **when attack was detected** are usually well encoded and stored. Attention is still required for encoding, but because the hippocampus *temporarily* goes into **super-encoding mode**, memories of when the attack was detected may include substantial contextual and time-sequence information.

Cautions, Vulnerabilities, and Needs

- Victims’ brains can respond in **many** different ways. **Never** assume that **any** reported behaviors or memories are – or aren’t – “proof” of assault or trauma. Some people retain prefrontal cortex functioning. Some escape. Some fight – deliberately, reflexively, or from habit. Some remember in great detail. Some inaccurately recall details (e.g., due to others’ leading questions and/or their own needs and motivations) that seem “central.”
- Victims may be tormented by the (fragmentary) memories, or emotionally “numbed out” and “shut down.” They may cycle between those extremes. **It’s important not to assess credibility based on emotional state.**
- Symptoms and problems may be **attempts to cope**, including using substances to escape terrible memories, or compulsive or risky sexual behaviors in attempt to gain a sense of control over one’s sexual experiences.
- **Stress impairs recall**, even when people are sincerely trying their best. And having to talk about the assault **can feel like having one’s “defenses” battered down.** Therefore, it’s common for people being questioned or testifying to have difficulty recalling and articulating parts of the assault experience, particularly parts that are very disturbing or associated with shame. Also, while and after disclosing such things, especially under cross-examination (figurative or literal), they may feel as the assault made them feel: traumatized, violated.
- **Most important needs: safety, control, trust, understanding, and compassion.** Find ways to meet these needs within the boundaries of your professional role and appropriate procedures. Even simple options and choices, like whether or when to take breaks, can help a lot – improving cooperation and results.



Title IX Investigations: The Importance of Training Investigators in Evidence-Based Approaches to Interviewing



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Under Title IX, schools in the United States that receive federal financial assistance are legally required to provide a prompt and impartial process for investigating complaints of sex-based discrimination. These investigations critically rely upon information obtained in interviews. We provide an evaluation of interview training that is presently available to college and university Title IX investigators. Our review finds that while certain core interviewing skills align with evidence-based practice and available research, other suggested practices are at odds with the available science, and additional effective interviewing practices related to the retrieval of memory and the assessment of credibility are critically absent. We recommend a set of evidence-based practices for Title IX investigative interviews that are likely to (a) improve the development of rapport and cooperation with an interviewee, (b) elicit more accurate and relevant information from memory, and (c) enhance assessments of credibility when applying strategic questioning approaches.

General Audience Summary

Title IX investigations are conducted in the United States when schools receive complaints of sex-based discrimination. These civil procedures rely on the participation, recall, and evidence provided by complainants (individuals who report experiencing sexual misconduct), respondents (individuals who are alleged to have engaged in sexual misconduct), and witnesses. This renders critical the role of effective interviewing procedures in Title IX investigations. In the present article, we evaluate current training and practice based upon several trauma-informed interview courses that are prevalent in the U.S. higher education industry. We find that while certain core interviewing skills appear to align with evidence-based practice and available research, other suggested practices are at odds with the available science, and additional effective interviewing practices that are related to the retrieval of memories and the assessment of credibility within an interview are critically absent. We believe it is important that colleges and universities develop standards of best practice for Title IX interviews, and we recommend a set of evidence-based approaches that have been evaluated in relevant contexts. We also encourage university Title IX offices to initiate collaborations with scholars both to introduce evidence-based training and to initiate research programs that might further advance the science of interviewing in the context of Title IX investigations.

Keywords: Investigative interviewing, Credibility assessment, Eyewitness memory

Title IX of the Education Amendments of 1972 states, “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.” Title IX applies to any education or training program (from preschool through

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higher education) operated by a recipient of federal financial assistance. The present article centers on colleges and universities, wherein the primary function of Title IX is to guarantee the right to participate in higher education free from discrimination on the basis of sex. This in turn requires that such institutions identify, respond to, end, remedy, and prevent sexual misconduct. Federal guidance stemming from the [Clery Act \(1990\)](#) broadly defines sexual misconduct as including sexual assault, sexual harassment, stalking, and relationship (including dating and domestic) violence. If institutions of higher education fail to adequately respond to sexual misconduct allegations, they risk losing federal funding. Toward this end, Title IX requires all recipients of federal assistance to designate at least one Title IX coordinator who is charged with managing the implementation and administration of a university's procedures for resolving Title IX complaints, including investigating complaints. Title IX's statutory language is brief, and the law is supported by a variety of policy guidance documents that elaborate an institution's responsibilities. The U.S. Department of Justice (Civil Rights Division) and the U.S. Department of Education (Office for Civil Rights) share enforcement responsibility for Title IX. In 2015, the Department of Education's Office for Civil Rights published a [Title IX Resource Guide](#) that outlines the scope of Title IX, the responsibilities and authority of a Title IX coordinator, and Title IX's various administrative requirements.

The White House Task Force to Protect Students from Sexual Assault ("Task Force") was established in January 2014 to address sexual misconduct in higher education. The Task Force's First Report ([Not Alone: The First Report of the White House Task Force to Protect Students From Sexual Assault, 2014](#)) called on the Justice Department's Center for Campus Public Safety to develop a "trauma-informed training program" for campus officials involved in sexual misconduct investigation and adjudication. This trauma-informed approach was further promoted by the Obama administration in its (now rescinded) 2014 Q&A on Title IX and Sexual Violence, wherein the administration promoted the training of investigators and school officials on such topics as the impact of trauma on victims, the neurobiology of traumatic experiences, and appropriate methods to communicate with students subjected to sexual violence. The guidance also suggested that schools should consider that traumatic events such as sexual violence can lead to delayed decision making by the complainant, and that engagement with the complainant (such as interviews and hearings) should be conducted in a manner that does not reintroduce or inflict additional trauma. The Task Force's Second Report ([Preventing and Addressing Campus Sexual Misconduct: A Guide for University and College Presidents, Chancellors, and Senior Administrators, 2017](#)) once again emphasized the importance of trauma-informed investigations, and was accompanied by a guide for higher education presidents and senior leaders that reinforced the obligation for institutions to provide a victim-centered and trauma-informed response to sexual misconduct.

While the current article centers on U.S. Title IX regulations and related investigations of sexual misconduct on higher education campuses, the topic is truly an international challenge. A high-profile sexual assault case at Warwick University in the

United Kingdom is illustrative of the issues faced by higher education officials around the globe ([Mararike & Griffiths, 2019](#)). While our focus here addresses the U.S. Title IX context, we expect that the evidence-based interviewing practices, having been developed by an international research community, would be broadly applicable to the conduct of such investigations on higher education campuses in other countries.

How Do Title IX Investigations Differ from Law Enforcement Investigations?

There are important differences between Title IX investigations of sexual assault and police investigations, and a number of writers have discussed the significance of maintaining this distinction ([Swan, 2016](#)). Whereas criminal complaints cannot usually go forward without a victim's participation, higher education institutions are required to address every complaint: Once a school knows or reasonably should know of an incident of sexual misconduct, the school must take steps to understand what occurred and respond appropriately. Criminal investigations are supported by subpoenas, search warrants, and forensic testing; in contrast, Title IX investigations rely on the participation, recall, and evidence provided by the parties themselves. This renders critical the role of effective interviewing in Title IX investigations. Because it is up to the investigator to gather, document, and analyze all available evidence and to do so relying entirely on the voluntary participation of the parties, it is essential that investigators work to promote the cooperation and reporting of all those involved.

The differences between criminal investigations and campus Title IX investigations are made clear when one reflects upon the function of Title IX: Schools are investigating and adjudicating *sex discrimination*, not rape. Title IX is a civil, not a criminal, law that imposes obligations on schools, not on individuals ([Collins, 2016](#)). Schools do not have primary responsibility for investigating criminal conduct, but they do have primary responsibility for investigating unwelcome, inappropriate, and harassing conduct (i.e., sexual misconduct) in the same way that schools are responsible for responding to academic misconduct ([Baker, 2017](#)). School proceedings can be understood as a means to address sexual violence as a civil rights issue, a process that is separate from and parallel to criminal proceedings in those cases where a victim, or jurisdiction, chooses to pursue a criminal complaint against a subject.

Importantly, a complainant (or victim) may choose to pursue a campus Title IX investigation and criminal charges at the same time. Federal guidelines do not reconcile conflicts on state and federal laws, nor do they provide guidance for coordinating campus and criminal processes in the case of concurrent investigations ([Smith & Gomez, 2016](#)). Under the U.S. Department of Education's 2018 proposed Title IX regulations, which would replace the Obama administration's Title IX guidance, concurrent law enforcement activity may constitute good cause for reasonably extending the timeframe of the grievance process in order to allow evidence uncovered in the criminal investigation to be included in the school's final determination of responsibility.

In general, a criminal investigation is completely independent of a Title IX investigation and often runs concurrently. Concurrent investigations, in which a complainant pursues *both* criminal and campus investigations, could be independent (information shared only through formal processes as the criminal and campus investigations reach certain stages), joint (criminal and campus investigators communicate frequently through formal and informal methods), or simultaneous (investigators coordinate their efforts). What a concurrent investigation looks like depends entirely on the jurisdiction. A school may decide to temporarily delay the fact-finding portion of a Title IX investigation while law enforcement gathers evidence for a criminal investigation; however, the school would promptly resume and complete the Title IX investigation once police have completed their own evidence gathering. In all cases, Title IX investigators are careful to ensure that complainants do not have to tell their stories multiple times to different people across disparate offices. As such, Title IX investigators work collaboratively across campus units and community agencies to ensure that both complainants and respondents have adequate support and resources.

What Types of Cases do Title IX Investigators Address?

As Title IX practitioners will attest, there is no such thing as a “typical” Title IX investigation. The alleged misconduct, facts, circumstances, and relationship of the parties varies widely across cases. The most complex cases may involve complicated power dynamics, alternative sexual behavior, sexual subcultures, minoritized populations, and reluctant complainants. Title IX complaints can also involve parties across campus affiliations, including undergraduate students, graduate students, faculty, staff, administrators, visitors, and third-party affiliates.

There is little available data that describe the relative frequency of campus investigations by complainant and respondent status, and such data reporting is not required by either law or federal guidance. While the Obama administration’s Office for Civil Rights did provide details about its investigations into schools’ handling of Title IX investigations, the Trump administration ended the practice of disclosing when and how investigations are resolved in March of 2018. Although they rarely make the data public, Title IX offices will generally track complainants and respondents across a variety of data points. This is especially important as campuses evaluate the complexity of Title IX complaints involving male complainants, sexual minorities, historically underrepresented and marginalized students, and graduate students alleging sexual misconduct by faculty members (Black et al., 2011; Cantor et al., 2017; Edwards et al., 2015). Though data describing the relative frequency of case types is generally not made available by universities, several schools have publicly released such figures. For example, Brown University disclosed that the primary types of incidents reported in 2017–2018 involved sexual or gender-based harassment (49%) and sexual assault (38%), while the University of Alaska at Fairbanks disclosed for 2016–2017 that the most frequently reported incidents involved sexual assault (28%), sexual harassment (27%), unwelcomed sexual contact (14%), and dating or domestic violence (14%).

What are the Qualifications and Training of Title IX Investigators?

Universities have wide discretion as to who conducts Title IX investigations and how investigations are conducted. According to federal regulations (see *Revised Sexual Harassment Guidance, 2001*), investigations must be “prompt” (though there is no fixed time frame under which a school must complete an investigation) and they must be “equitable.” An equitable Title IX investigation requires a “trained investigator” to “analyze and document the available evidence to support reliable decisions,” “objectively evaluate the credibility of parties and witnesses,” “synthesize all available evidence,” and “take into account the unique and complex circumstances of each case” (see *Q&A on Campus Sexual Misconduct, 2017*).

There is no formal training or minimum qualifications required for either Title IX coordinators or investigators, and there is little available information on Title IX investigators’ training, background, or practices. While coordinators may or may not themselves conduct investigations, Title IX does not require that a school have investigators—it requires that each school have at least one *coordinator* (34 C.F.R. § 106.8(a)). One recent study, while highlighting the lack of standardization and requirements for Title IX coordinators, found that the majority of Title IX coordinators have less than three years of experience, have widely varying training, and serve their Title IX role in only a part-time capacity (Wiersma-Mosley & DiLoreto, 2018).

While Title IX regulations require that federal funding recipients, when they know or reasonably should know of possible sex-based harassment, take immediate and appropriate steps to investigate or otherwise determine what happened, the regulations do not offer guidance as to best practice for conducting investigations. For-profit consultation firms and law practices have largely filled this gap by offering workshops and trainings to support the development of investigative skills. Unfortunately, these trainings lack standardization and are frequently presented from a compliance perspective, including “tips” on not getting sued and checklists for investigations.

The Association of Title IX Administrators (ATIXA) and the NCHERM Group (TNG) are popular providers of training for Title IX offices. A recent study of the role of Title IX coordinators in institutions of higher education found that a majority of Title IX coordinators were current members of and trained by ATIXA (see Wiersma-Mosley & DiLoreto, 2018). Because these Title IX trainings are often facilitated by attorneys, there is an emphasis on due process as encompassing notice, the presumption of innocence, and the opportunity to participate, present evidence, and offer witnesses. Workshops typically center on recent case law, as well as federal policy and enforcement updates. ATIXA and TNG, for instance, offer several levels of trainings, from “foundational” skills for civil rights investigators to “nuanced” questioning techniques and training in investigation techniques. The Association for Student Conduct Administration’s (ASCA) Sexual Misconduct Institute offers training that claims to provide participants with updates on court cases, practice in investigative skills, knowledge in cultural competency, information on consent and capacity, and advice on trauma and self-care.

The Association of Workplace Investigators similarly offers a training institute, seminars, and webinars in workplace investigations. Many law firms also provide Title IX trainings and seminars. The second author (AML) has attended multiple trainings facilitated by Husch Blackwell LLP, and similar trainings are offered by law firms such as Clark Hill PLC, Hirschfeld Kraemer LLP, and Van Dermyden Maddux Law Corporation. Given the vast landscape of training options, we offer a review of the most prevalent training protocols in the industry: investigative interview training provided by ATIXA and a trauma-informed interview protocol known as the Forensic Experiential Trauma Interview.

Current Training in the Conduct of Title IX Investigative Interviews

Organizations such as ATIXA also offer training in the conduct of investigative interviews for Title IX investigators. We note at the outset that while studies have generally documented the interviewing and interrogation practices of law enforcement, military, and intelligence personnel (see [Russano, Kelly, & Meissner, \(2019, in press\)](#)), no empirical studies have detailed the training or interviewing practices of Title IX investigators. For the purposes of this paper, we conducted a review of training materials that were publicly available on the ATIXA website—the industry’s leading distributor of interview training for Title IX investigators (see [Wiersma-Mosley & DiLoreto, 2018](#)). As an example, ATIXA offers an *Investigation in a Box* ([Sokolow, Swinton, Morris, Price, & Issadore, 2015](#)) toolkit that describes best practices with respect to interviewing the complainant (or victim), witnesses, and respondent (or alleged perpetrator). In addition, we also reviewed both presentations and supplemental materials associated with ATIXA training from recent years (2012 to 2017), as well as materials from courses completed by one of the current authors who conducts Title IX investigations (AML), including presentations by Husch Blackwell LLP, Markel Consulting LLC, Fisher Phillips LLP, and Cozen O’Connor. Finally, we offer a review of trauma-informed interviewing, with a focus on the most well-known interview protocol currently being trained to Title IX investigators, the Forensic Experiential Trauma Interview. We note that few (if any) distinctions are generally made with respect to interviewing best practice across different types of interviewee (complainants, witnesses, or respondents), with the exception that trauma-informed interviewing has generally focused on eliciting information from a complainant who may have experienced (and therein reexperience) anxiety or trauma related to an incident.

Basic interviewing skills. In general, these documents and course materials might best be described as covering the basics of interviewing cooperative individuals and highlighting, in an abbreviated format, the core skills and competencies that investigators should demonstrate. Overall, the available course materials were generally consistent with an evidence-based perspective (see [Swanner, Meissner, Atkinson, & Dianiska, 2016](#)). For example, investigators were encouraged (a) to develop

rapport and offer an empathic, understanding, and non-judgmental interview context; (b) to inform the interviewee about the process of both the investigation and the interview, and to address any questions they might have therein; (c) to ask open-ended questions, followed by more focused questions once an initial narrative has been provided; (d) to avoid biased or leading questions and more generally to be mindful of investigative biases that might influence the interview process; and (e) to invite the interviewee to describe or provide any evidence that would support the account.

Confrontational and accusatorial interview approaches.

Where the training materials appear to conflict with best practice relates to interviews of the respondent. Federal guidelines require that once a school opens an investigation that may lead to disciplinary action against a respondent, the school should provide the respondent with written notice of the allegations ([Q&A on Campus Sexual Misconduct, 2017](#)). However, there is some disagreement across the training materials regarding whether the respondent should be confronted with evidence supporting the allegation (such as a statement by the complainant or physical evidence collected by investigators) at the outset of the interview. Such confrontation at the outset of the investigative process could both increase resistance and promote the use of direct questioning by investigators regarding the veracity of the allegations (see [Kelly, Miller, & Redlich, 2016](#)). More generally, a confrontational and guilt-presumptive approach is likely to lead to a confirmatory process wherein investigators ask presumptive and leading questions, conduct longer and more pressure-filled interviews, and ultimately increase the likelihood of eliciting false information or false confessions ([Meissner & Kassin, 2004](#); [Narchet, Meissner, & Russano, 2011](#)). While certain training materials promote a somewhat confrontational approach ([Sokolow et al., 2015](#)), other materials suggest a more empathic and non-judgmental approach in which the interviewer acknowledges the difficulty of the situation and allows the respondent to provide information about their contact and interaction with the complainant, including an open-ended narrative related to the allegation (e.g., [Sandler, 2013](#)). The latter empathic and non-judgmental approach is consistent with an evidence-based perspective (see [Meissner, Surmon-Bohr, Oleszkiewicz, & Alison, 2017](#)).

On a related note, we find no evidence that training materials advocate an accusatorial (or psychologically manipulative) approach to interviewing the respondent ([Kassin et al., 2010](#))—for example, no “themes” involving the minimization of blame or responsibility are provided, and no suggestions are offered with respect to downplaying the seriousness of the allegations or the potential consequences associated with the allegation. Further, we found no evidence that Title IX investigators are regularly sent to popular interrogation training courses that advocate accusatorial practices (such as the Reid Technique). Indeed, an accusatorial ethos contradicts the premise of Title IX as a civil rights procedure, distinct from criminal proceedings. Participation in traditional interrogation courses and the application of such interview procedures would likely be

grounds for objection by a respondent's attorney in subsequent litigation.

Credibility assessment. Federal guidance stipulates that the credibility of *all parties and witnesses* should be evaluated (Q&A on Campus Sexual Misconduct, 2017). ATIXA training documents generally address the issue of credibility assessment, given its importance to rendering a determination regarding the allegation (Henry et al., 2016); however, recommendations for evaluating interview testimony is somewhat mixed as it relates to the available evidence base (Vrij, 2019; Vrij, Hartwig, & Granhag, 2019). For example, training materials at times recommend against the evaluation of non-verbal behavior, while other materials encourage investigators to consider demeanor and anxiety cues along with non-cooperative responses (vague responses or refusals to answer a question). Studies have shown that non-verbal indicators of deception are weak and unreliable (DePaulo et al., 2003), whereas verbal cues and the elicitation of verifiable details are most diagnostic (Vrij, 2019). On a positive note, the majority of the available training materials encourage an emphasis on subsequent evaluation of the interview narrative and the practice of corroborating statements with other investigative evidence or information. Finally, training documents offered a mixture of recommendations with respect to evaluating the (in)consistency of information provided by an interviewee. While some encourage investigators to contextualize the nature or relevance of the inconsistency, others note that within-statement inconsistency can be used to impeach the credibility of the individual. As discussed below, some aspects of trauma-informed interviewing allow for the presence of omissions and inconsistencies related to anxiety or discomfort, or the retrieval of traumatic memories (e.g., Sokolow et al., 2015). Generally speaking, inconsistencies have not been shown to reliably discriminate veracity (Granhag & Strömwall, 2002) and truthful memory recall has been shown to include the natural omission or subsequent recollection of details (Fisher, Brewer, & Mitchell, 2009).

Trauma-informed interviewing. Many of the workshops offered by ATIXA and best practice guides developed for Title IX investigations emphasize the importance of trauma-informed interviewing (Busch-Armendariz, Sulley, & Hill, 2016; Henry et al., 2016; Rohman, Ingram, & Watkins, 2018; Webb et al., 2018). As to the question of why and when trauma-informed interviewing became accepted best practice, it appears to have been the result of guidance offered by the Department of Education's Office for Civil Rights, which arose out of a Resolution Agreement with the University of Virginia requiring that the university "develop and provide training on sexual harassment and sexual violence" that includes "the potential impact of trauma on the behavior of victims of sexual harassment or sexual violence, including how it may impact participating in the investigative process" (University of Virginia Resolution Agreement, V(B)4, 2015).

In general, trauma-informed interviewing involves both understanding how a traumatic experience influences the encoding, storage, and retrieval of information in memory, and recognizing that the retrieval of such a memory could itself be a traumatic experience for the interviewee (Rohman et al., 2018).

Investigators are encouraged to offer a supportive, empathic, and non-judgmental context in which they invite the complainant to largely control the narrative that is provided. A lack of chronological linearity and the omission of details from the narrative are acknowledged as facets of retrieving a traumatic memory, and investigators are encouraged to explore the party's sensory experiences, asking about sounds, smells, sights, and feelings. Investigators are also encouraged to watch for non-verbal and emotional signs of re-experiencing the traumatic event, including lack of eye contact, being physically closed-off, and extreme variations in affect.

One of the most popular trauma-informed interviewing protocols currently offered to Title IX investigators is the Forensic Experiential Trauma Interview (FETI). This protocol was originally developed by Russell Strand (Strand & Heitman, 2017), a former special agent with the U.S. Army Criminal Investigative Division, as a trauma-informed approach to interviews with victims of sexual assault. The second author (AML) recently completed FETI training, and the first author (CAM) has reviewed training and source materials associated with the technique. FETI training is also being given to sexual assault investigators in federal, state, and local law enforcement agencies.

FETI is purportedly based upon the neurobiology of traumatic memory (Hopper, 2012; Lisak, 2009), in which a traumatic event is said to cause the release of "stress hormones" that impair the "cognitive brain" (i.e., the prefrontal cortex and hippocampus), leaving the more "primitive" parts of the brain to encode experiential and sensory information. FETI specifies that perpetrators and victims experience different neurobiological responses to the same event: Whereas perpetrators are believed not to experience a neurobiological stress response and to therein maintain cognitive control, victims are purported to experience significant stress leading to cognitive impairment, peritraumatic dissociation, and tonic immobility. We know of no scientific studies that support this contention of neurobiological response differences between perpetrators and victims. A review of the available evidence-base suggests that the neurobiological mechanisms that generally influence cognition during traumatic events (encoding, consolidation, and retrieval from long-term memory) are well understood at the biochemical level, including subcortical pathways involving the hippocampus, amygdala, and thalamus, as well as the sensory and association cortices (see Hoscheidt, Dongonkar, Payne, & Nadel, 2013). While a critique of the claims offered by FETI regarding the neurobiology of trauma lie outside the scope of this review, it is clear that the influence of stress and emotion on the brain are complex and multifaceted, leading at times to the enhancement of memory and at other times to the disruption of encoding and retrieval processes (see Lindau, Almkvist, & Mohammed, 2016).

Based upon these claims, FETI assumes that victims will offer inaccurate and chronologically disorganized recall, and thereby encourages interviewers to accept omissions or errors in recall and to focus on the elicitation of sensory and emotional experiences. Strand and Heitman (2017) go even further: "In fact, good solid neurobiological science routinely demonstrates that, when a person is stressed or traumatized, inconsistent statements

are not only the norm, but sometimes strong evidence that the memory was encoded in the context of severe stress and trauma” (p. 2). Available research, however, fails to fully substantiate systematic differences in inconsistent or disorganized recall as a function of traumatic experience (Metcalf, Brezler, McNamara, Maletta, & Vuorre, 2019; Rubin et al., 2016; Waters, Bohanek, Marin, & Fivush, 2013).

Further, Strand and Heitman (2017) note that FETI was purportedly designed to obtain *psychophysiological evidence*:

The victim/witness may also experience physiological reactions to the trauma including the emotional feelings combined with the physical manifestations of stress, crisis, and trauma such as shortness of breath, increased heart rate, dilated pupils, muscle rigidity and/or pain, light-headedness and or headache, tonic immobility, dissociation, etc. Identifying and properly documenting these reactions to their experience are essential pieces of information that can greatly assist the Interviewer in understanding the context of the experience and provide significant forensic psychophysiological evidence. (p. 8)

There is no available research known to the current authors that would support such claims.

The FETI protocol suggests initiating an interview by demonstrating “genuine concern and empathy towards the interviewee in an attempt to provide a sense of psychological and physical safety during the interview process” (Strand & Heitman, 2017, p. 4). Research has supported the importance of developing rapport and demonstrating empathy and interest in an investigative interview (see Vallano & Schreiber Compo, 2015). The protocol also appears to encourage the use of open-ended prompts to initiate the recall of information, as well as active listening to encourage continued recall (“please tell me more”), and to discourage the use of leading or suggestive questions. This orientation is quite consistent with the robust research literature on effective interviewing protocols, including the Cognitive Interview for witnesses (Fisher & Geiselman, 1992) and suspects (Geiselman, 2012).

Overall, Strand and Heitman (2017) describe FETI as a “highly effective technique for victim, witness, and some suspect/subject interviews” (p. 2). They further claim that the method has resulted in “reports of better victim interviews by those who have used it” (p. 2) and that the method “obtains significantly more information about the experience, enhances a trauma victim’s ability to recall, reduces the potential for false information, and allows the interviewee to recount the experience in the manner in which the trauma was experienced” (p. 3). A search of the available research literature yielded no published, peer-reviewed studies on the efficacy or effectiveness of FETI. The supporting materials reviewed by the authors provided no experimental or field studies comparing the effectiveness of FETI to either existing practice or other comparable methods developed within the empirical literature. Only anecdotal claims (testimonials) are provided to bolster some degree of efficacy and relevance to forensic practice: we

deem this an insufficient basis upon which to rest claims of effectiveness.

Recommendations for Developing Evidence-Based Interviewing Best Practices in Title IX Investigations

Our review of current training and practice in Title IX investigative interviewing suggests that while some core elements might be considered evidence-based, other aspects (such as disagreement regarding the confrontational nature of a complainant interview and the perceived efficacy of trauma-informed interviewing approaches) are at odds with the available science. In addition, many novel tactics that have been developed and assessed by scholars over the past few decades (such as the Cognitive Interview, the Timeline Technique, and other strategic interviewing tactics to assess credibility) have not been trained to Title IX investigators or incorporated into practice. Given the essential role of interview statements provided by complainants, respondents, and witnesses in Title IX investigations, we believe it is critical that the field begin to adopt standards of best practice that incorporate evidence-based interviewing approaches.

A robust research literature has developed over the past three decades to document (a) the fragility of memory and the potential influence of misinformation and biased or leading questioning strategies (Loftus, 2005; Newman & Garry, 2013), (b) the impacts of stress and emotion on memory recall (Hoscheidt et al., 2013; Lindau et al., 2016), (c) the influence of psychologically manipulative interviewing and interrogation approaches that can lead to false admissions or false confessions (Kassin et al., 2010), and (d) the relative inability of individuals, including skilled investigators, to assess credibility (Bond & DePaulo, 2006) given their focus on non-diagnostic cues to deception such as non-verbal signs of anxiety or nervousness (DePaulo et al., 2003). Further, an emerging research literature has begun to systematically develop and evaluate best practices for investigative interviews (Meissner et al., 2017; Russano et al., (2019, in press)). Below, we review a set of evidence-based interviewing tactics that, based upon our experience, would appear most appropriate for Title IX investigations.

Limit Cognitive Biases in Investigative Interviews

While the goal of an investigative interview is generally to facilitate an interviewee’s recall, it is important that investigators remove any potential influence of bias prior to entering the interview context. Research has demonstrated that investigators are susceptible to various forms of bias, and that presumptions of guilt can both influence assessments of credibility (Meissner & Kassin, 2002) and set in motion a cycle of cognitive and behavioral confirmation in which investigators ask more guilt presumptive and pressure-filled questions, leading to contamination of a statement (Garrett, 2015) and false confessions (Kassin, Goldstein, & Savitsky, 2003; Narchet et al., 2011). Investigators must be careful not to presume that the respondent engaged in misconduct, and to utilize interview approaches that limit the

likelihood of biased or leading questioning.¹ Because cognitive biases can be problematic in any interview (complainant, respondent, or witness), it is important to limit cognitive biases throughout the investigatory process.

Develop Rapport and Facilitate Cooperation with Interviewees

Evidence-based recommendations for developing rapport and trust have been developed by scholars (Abbe & Brandon, 2014). The development of rapport is frequently cited by investigators as critical (Kassin et al., 2007; Russano, Narchet, Kleinman, & Meissner, 2014), and field data support the influence of rapport for developing cooperation and facilitating disclosure (Kelly et al., 2016). Building rapport—like limiting bias—is crucial with all parties and witnesses involved in the investigatory process (Vallano & Schreiber Compo, 2015). It is clear that an empathic, non-judgmental, and collaborative approach can facilitate conversational rapport and reduce an interviewee’s reluctance to cooperate (Alison, Alison, Noone, Elntib, & Christiansen, 2013; Walsh & Bull, 2012). Rapport has also been shown to increase the quality of information provided by witnesses and reduce the likelihood of errors or acceptance of misinformation (Vallano & Schreiber Compo, 2011). Further, a variety of tactics have been developed to facilitate liking and common ground with an interviewee (Brimbal, Kleinman et al., 2019; Goodman-Delahunty & Howes, 2014), including the selective disclosure of personal information by the interviewer (Mann & Murphy, 1975), acts of reciprocity that provide hospitality or fulfill an interviewee’s needs (Matsumoto & Hwang, 2018), offers of positive affirmation that support an interviewee’s self-worth (Davis, Soref, Villalobos, & Mikulincer, 2016), and the identification of common interests or identities shared by the interviewer and interviewee (Brimbal, Dianiska, Swanner, & Meissner, 2019). Importantly, these rapport strategies are effective with and apply equally to *all interviewees*.

Enhance the Retrieval of Accurate Information from Memory

Research has consistently demonstrated the value of open-ended questions, followed by relevant probe questions (i.e., who, what, where, when, why, or how), and the minimal use of appropriate closed-ended questions (i.e., a question designed to resolve, validate, or verify certain details that were mentioned previously) (Griffiths & Milne, 2006; Powell, Fisher, & Wright, 2005). More than three decades of research has also confirmed the efficacy of the Cognitive Interview (CI), first developed by Fisher and Geiselman (1992). Studies have consistently shown that the CI increases the amount of correct information retrieved

by the interviewee, absent a significant cost to the accuracy of responding (Memon, Meissner, & Fraser, 2010). While the CI includes aspects of interviewing best practice, it is the cognitive elements of the interview protocol that appear to provide its most important benefits to memory retrieval, including the use of eye closure and mental context reinstatement, witness compatible questions (e.g., sketching), and various mnemonic approaches (e.g., recalling from a different perspective or reversing temporal order; see Leins, Fisher, & Vrij, 2012). Scholars have demonstrated the effectiveness of the CI for recalling events involving high-arousal (Ginet & Verkamp, 2007) and for eliciting information from subjects in sexual assault cases (Brandon et al., 2019). In addition to the benefits of interview tactics generally subsumed within the CI, a novel technique has been developed to facilitate the recollection of information during a specified period of time. Referred to as the Timeline Technique (Hope, Mullis, & Gabbert, 2013), the approach has been shown to significantly increase the retrieval of information and to reduce sequencing errors in recall.

Use Strategic Questioning to Improve Assessments of Credibility

Finally, given the ineffectiveness of training in non-verbal indicators of deception detection (Hauch, Sporer, Michael, & Meissner, 2016), a new science of credibility assessment has emerged that is based upon a cognitive understanding of deception (Vrij, 2019). From this perspective, interview tactics have been developed that leverage key differences in cognitive processing and strategy use between liars and truth tellers. These techniques are premised on seminal findings that liars experience greater cognitive load, that truth tellers generally can recall and provide more information (details) than liars, and that liars generally prepare for questions that they expect to be asked (and therein develop a relatively fixed narrative that they can provide consistently). Interviewing techniques such as asking for the narrative in reverse chronological order (Evans, Michael, Meissner, & Brandon, 2013), inviting the individual to provide more information by sharing a model statement (Ewens et al., 2016), or asking unexpected questions or inviting the individual to recall information in unexpected ways (such as generating a sketch; Leins et al., 2012) have been shown to significantly improve assessments of credibility (Vrij, Fisher, & Blank, 2017). Research has also demonstrated that asking an interviewee to explicitly provide details that could be verified by an investigator following the interview (a so-called *verifiability approach*) can successfully distinguish liars and truth tellers with respect to the type of details provided (Nahari, 2018; Nahari, Vrij, & Fisher, 2014). Finally, research has demonstrated that effective evidence disclosure tactics can facilitate assessments of credibility. Specifically, studies suggest that the strategic revelation of information is most successful when evidence is presented late in an interview (after the interviewee has exhausted their narrative), and when evidence is gradually disclosed from weaker to stronger evidence types or framings (Hartwig, Granhag, & Luke, 2014).

¹ This presumption of “innocence” has been formally proposed under the Department of Education’s November 29, 2018, Notice of Proposed Rulemaking amending regulations implementing Title IX such that a school must “include a presumption that the respondent is not responsible for the alleged misconduct until a determination regarding responsibility is made at the conclusion of the grievance process.”

The Importance of Researcher-Practitioner Collaborations and Avenues for Future Research

The evidence-based practices described above are often a product of researcher-practitioner collaborations that have been facilitated over the past decade (see Meissner, Hartwig, & Russano, 2010; Meissner et al., 2017). In fact, the current article is the product of exactly this type of collaboration: the first author (CAM) is a psychological scientist who has spent his career examining the psychological mechanisms underlying investigative interviews, and the second author (AML) is both a scholar (PhD) and a practicing attorney (JD) who currently serves as Associate Director of Equal Opportunity and Senior Deputy Title IX Coordinator. Their mutual interest in improving the interviewing practices of Title IX investigators was spurred by a recent training that was coordinated by the first author and attended by the second author. Implementing and assessing the effectiveness of evidence-based techniques in the Title IX context has since become a collaborative exercise. There is tremendous value in scholars working with practitioners to understand the Title IX context, and jointly initiating a research program that ensures the efficacy of the proposed reforms.

Finally, our review highlights a significant deficiency in descriptive, experimental, and applied research on current practices in the context of Title IX investigations. Collaborations between scholars and practitioners could begin to address this lapse by conducting field assessments of interview practices and noting challenges or unique aspects of the interview context that might require adaptation or further research. Having said this, we believe that the interviewing literature has addressed relevant issues surrounding the retrieval of emotional or traumatic memories, including cases involving sexual assault and abuse, and therein has demonstrated the value of a rapport-based approach (Read, Powell, Kebbell, & Milne, 2009), the utility of asking appropriate open-ended questions (e.g., Powell et al., 2005), and the effectiveness of the Cognitive Interview (e.g., Brandon et al., 2019; Fisher & Geiselman, 2010; Shepherd, Mortimer, Turner, & Watson, 1999). To a lesser extent, recent experimental work has also assessed other important factors that are relevant to Title IX investigations. For example, alcohol and/or drugs are frequently involved in sexual assaults among college students (see Richards, 2019). Consumption of alcohol has been shown to reduce the amount of information subsequently recalled in an interview setting (Jores, Colloff, Kloft, Smailes, & Flowe, 2019), though limited research has assessed the efficacy of various interview protocols or techniques in this context (Flowe et al., 2019). Further research is also needed to assess whether and how rapport-based tactics might motivate reluctant witnesses to provide information, particularly surrounding alternative sexual practices, sexual subcultures, and the experiences of sexual minorities. Finally, it is important to further evaluate current interview approaches with respect to how the retelling of a traumatic experience might impact the psychological well-being of the victim, and the extent to which certain approaches that purport to be “trauma informed” might actually minimize such negative repercussions.

In Closing

Under Title IX, schools that receive federal financial assistance are legally required to provide a prompt and impartial process for investigating complaints of sex-based discrimination. These investigations critically rely upon information obtained in interviews conducted with complainants, respondents, and witnesses. In the present article, we evaluated a sample of trauma-informed interview training that is presently available to Title IX investigators, including the Forensic Experiential Trauma Interview (one of the most popular interview protocols in this area). Our review finds that while certain core interviewing skills appear to align with evidence-based practice and available research, other suggested practices are at odds with the available science, and additional effective interviewing practices related to the retrieval of memories and the assessment of credibility within an interview are absent from current training programs. We recommended a set of evidence-based practices for Title IX investigative interviews that are likely to (a) improve the development of rapport and cooperation with an interviewee, (b) elicit more accurate and relevant information from memory, and (c) improve assessments of credibility when applying strategic questioning approaches. Further, we encourage Title IX offices to collaborate with scholars to both introduce evidence-based practices and to spur further research that will improve the application of these practices to the Title IX context.

Conflict of Interest

The authors declare no conflict of interests.

Author Contributions

The authors contributed equally to the writing and editing of the current article.

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In order to help all participants fully understand the complaint process, this checklist has been prepared to assist all parties as they go through the Complaint and Investigation Procedures as outlined in the EO Plan. The following items will be addressed and/or clarified for Complainants (C), Respondents (R), and Witnesses (W) at their first meeting with the EO Officer or designee.

<p>€ I have been given a copy of the following documents and have been afforded the opportunity to ask any questions or have any part of the policy further explained to me (C, R, W).</p> <ul style="list-style-type: none"> € EO Plan, including investigation and resolution procedures € Complainant Rights (C) € Respondent Rights (R) 	<p>The EO Plan can be found in its entirety on the Discrimination, Sexual Violence and Misconduct website: westfield.ma.edu/sexual-violence</p>
<p>€ I understand the role of the Investigator(s) (C, R, W).</p>	<p>The Administrative Investigator is assigned to investigate all formal complaints made under the EO Plan. The Investigation shall include: an analysis of the allegations and defenses presented using the preponderance of the evidence (more likely than not) standard; consideration of all relevant documents, including written statements and other materials presented by the parties; interviews of the parties and other individuals and/or witnesses; and/or reviewing certain documents or materials in the possession of either party that the Administrative Investigator has deemed relevant. The Administrative Investigator may also review any available campus police investigation reports or the investigation reports of local law enforcement authorities.</p> <p>At the conclusion of the investigation of the complaint, the Administrative Investigator shall prepare an Investigation Report for an administrative review. Both parties shall be provided with an opportunity to review the Investigation Report and an opportunity to respond in writing in advance of a decision of responsibility and before the Investigation Report is submitted for administrative review.</p>
<p>€ I understand my right to have an advisor of my choosing present at all meetings (C, R).</p> <ul style="list-style-type: none"> € I will have _____ serving as my advisor for this investigation (C, R). 	<p>Each party to an investigation initiated under the Complaint Investigation and Resolution Procedures is entitled to have an advisor present during any meetings regarding the process (other than meetings between a party and University officials regarding accommodations or protective interim measures). Except as otherwise required by law, the advisor may observe, but may not participate in any way whatsoever, including, without limitation, by asking questions or speaking during the meeting or proceeding. The advisor's role is to provide support and/or advice to the party. During meetings and proceedings, the advisor may speak with the party or pass notes in a non-disruptive manner. The University reserves the right to remove from the meeting or proceeding any advisor who disrupts the process, or who does not abide by the restrictions on their participation. In addition, please note that the University does not need to cancel or delay a meeting or proceeding simply because an advisor cannot be present. Further, the advisor is not permitted to attend a meeting or proceeding without the advisee.</p> <p>The personal advisor for a complainant, a student respondent or a non-unit employee respondent can be any person, including an attorney.</p> <p>Respondents who are unit members may elect to have a union representative (or other University employee) present during any meeting that the unit member reasonably believes may result in discipline pursuant to the unit member's Weingarten rights. A respondent unit member who invokes their Weingarten right to a union representative or other University employee is not also permitted an advisor.</p> <p>If a party's advisor is an attorney, the University's legal counsel may also attend the meeting or proceeding.</p>
<p>€ I have been given information about available confidential and non-confidential resources (C, R, W).</p>	<p>One may report sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation in confidence to licensed mental health counselors, licensed health care personnel, pastoral counselors or clergy who work for the University. Employees may also report such misconduct in strict confidence through the EAP. Except in rare, extreme circumstances, these individuals will share nothing without one's permission.</p> <p>http://www.westfield.ma.edu/sexual-violence#Confidential</p> <p>The University offers a variety of resources to those community members who have experienced or been affected by sexual violence, sexual harassment, gender-based harassment, domestic violence,</p>

	<p>dating violence, stalking and retaliation. While the following resources are not bound by confidentiality, they will maintain one's privacy within the limited group of University personnel necessary to address the issues of prohibited conduct presented.</p> <p>http://www.westfield.ma.edu/sexual-violence#Non_Confidential</p>
<p>€ I do not wish to file a formal complaint at this time (C).</p> <p>_____ Initial if selected</p>	<p><i>Victims have the right not to make a report to anyone.</i> The University, however, strongly encourages victims to seek medical attention, counseling and support. Victims are always welcome to file a report at a later date, but please note that a delay in reporting could weaken the evidence necessary to determine whether the accused is found responsible for committing an act of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation.</p> <p>If a victim discloses an incident of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation, but requests that the University maintain confidentiality or that no investigation or disciplinary action occur, the University will weigh the request against its obligation to provide a safe, non-discriminatory environment for its entire community, including the victim, and its obligation to comply with applicable laws. It is important to understand that the University's ability to investigate an incident and pursue disciplinary action against the alleged perpetrator(s) may be limited if the University honors a confidentiality or no investigation request.</p>
<p>€ It is clear that I am filing a complaint, but I do not want to participate any further in an investigation (C).</p> <p>_____ Initial if selected</p>	<p>If a victim discloses an incident of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation, but requests that the University maintain confidentiality or that no investigation or disciplinary action occur, the University will weigh the request against its obligation to provide a safe, non-discriminatory environment for its entire community, including the victim, and its obligation to comply with applicable laws. It is important to understand that the University's ability to investigate an incident and pursue disciplinary action against the alleged perpetrator(s) may be limited if the University honors a confidentiality or no investigation request.</p> <p>The complainant may withdraw a complaint at any point during the investigation. The EO Officer, or designee, however, may determine, in their discretion, that the allegations raised in the complaint warrant further investigation despite the complainant's desire to withdraw the complaint.</p> <p>The University may not require a victim to participate in any investigation or disciplinary proceeding.</p>
<p>€ I am filing a formal complaint and requesting the University to complete a full investigation (C).</p> <p>_____ Initial if selected</p>	<p>Complainants must file a written complaint, preferably using the Complaint Form, and submit the complaint to the EO Officer or Deputy TIX Coordinator. The complaint must be in the words of the complainant and contain all known facts pertaining to the alleged violation, the names of any known witnesses and others with knowledge of the allegations, and an identification of any documents or other evidence.</p> <p>Upon receipt of a formal complaint, the EO Officer, or designee, will notify the Respondent of the complaint, provide the Respondent a copy of the complaint, and invite the Respondent to submit a written response. An investigation will then commence.</p>
<p>€ I understand that the complaint process will be handled to protect privacy as much as possible, but that the Investigator(s) and EO Officer are not Confidential Resources (C, R, W).</p>	<p>These Procedures will be conducted as confidentially as reasonably possible to protect the privacy of all involved. The University may share information about the allegations with parties, witnesses or others on a need-to-know basis, and shall share information with union representatives pursuant to M.G.L. Chapter 150E, or as otherwise required by law. All with whom information is shared shall be advised of the confidential nature of the information and directed not to discuss it with anyone except an advisor or union representative.</p>
<p>€ I understand that the EO Plan outlines the timeline for completing an Administrative Investigation and Review but that I may contact the EO Officer, or designee, or the Investigator at any time with questions or to provide information. The Investigator will keep me updated on a regular basis about how the investigation is progressing (C, R).</p>	<p>Complaints may be filed at any time, but the University's ability to take action may be limited by the matriculation or employment status of respondents or witnesses. A prompt report will enable the University to most effectively respond to a complaint.</p> <p>The process for resolving a complaint consists of three major stages: the investigation, the administrative review, and a possible appeal. Every effort will be made to investigate a complaint within sixty (60) calendar days after its receipt. Extenuating circumstances, including the complexity or severity of a complaint, breaks in the academic calendar or exam periods, may require that the investigation process be extended beyond 60 days. Every effort will be made to conclude the administrative review within fourteen (14) calendar days after the receipt of the investigation report and, where practicable, the appeal process will be concluded within thirty (30) days of receipt of the appeal.</p> <p>In the event that good cause prevents the investigation and resolution process from being concluded in this time frame, the University will notify in writing all parties of the need for additional time and best efforts will be made to complete the process as expeditiously as possible. As a matter of course, parties can expect to receive status updates at reasonable intervals until the matter is resolved.</p>

<p>€ I understand that the investigation process may take several days, and that as a witness I do not have a right to the current status, but I can contact the Investigator at any time to ask questions or provide more information (W).</p>	
<p>€ I understand that retaliation of any kind as a result of this complaint and my participation in it is a violation of University policy (C, R, W).</p>	<p>The University prohibits retaliation against any person for making a complaint of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation, for assisting in making a complaint, for resisting or openly opposing such conduct, or for otherwise using or participating in the complaint investigation process under the Policy. Persons who file, or participate in the investigation or resolution of, claims or complaints of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation with outside agencies, law enforcement or otherwise pursuant to any applicable state or federal law, are also protected from retaliation by this Policy.</p> <p>Prohibited retaliation includes, but is not limited to: threats; intimidation; reprisals; continued harassment or misconduct; other forms of harassment; slander and libel; and adverse actions related to employment or education. Retaliation can be committed by individuals or groups, including friends, relatives or other associates of the person against whom a complaint is filed. Retaliation, even in the absence of proven sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence or stalking in an underlying complaint, constitutes a violation of this Policy that is just as serious as the main offense itself.</p>
<p>€ I understand that I will have an opportunity to appeal the decision made by the Administrative Investigator (C, R).</p>	<p>Either party may appeal the results of an investigation under these Procedures by submitting a written letter of appeal to the EO Officer or designee within ten (10) business days of the party's receipt of the Notice of Outcome.</p> <p>Upon timely receipt of the appeal letter, the EO Officer shall transmit the Investigation Report and the appeal letter to the appropriate appellate officer or body for review. If the appealing party has presented an appeal on the basis of the grounds set forth above, the appellate officer or body, who shall not have participated in the investigation or administrative review, will review the appeal and make a determination to uphold, reverse or modify the decision. When necessary, the appellate officer or body may seek additional information and/or refer the matter back to the Administrative Investigator, prior to making an appellate determination.</p> <p>Where practicable, within thirty (30) days of receiving the appeal, the appellate officer or body shall contemporaneously issue a written decision to the parties in which it may uphold, reverse or modify the decision. All appellate decisions are final, provided that any corrective action and/or discipline imposed upon a unit member is subject to applicable collective bargaining agreements.</p>
<p>€ I understand that any information provided to investigators may be shared with the Complainant and Respondent, and may be used in making a determination of responsibility by the Administrative Investigator (C, R, W).</p>	
<p>€ I understand that any information I share will be kept private by the Administrative Investigators but could be subpoenaed in the event of a criminal investigation (C, R, W).</p>	
<p>€ I understand that if I wish, I may pursue an external/legal complaint at any time that is separate from any further action that the University may take (C).</p>	<p>Individuals have the right to file charges of discrimination, discriminatory harassment, sexual violence, sexual or gender-harassment, domestic or dating violence, stalking or retaliation at any time with the appropriate government agency, with or without utilizing these Procedures. More information about filing an outside complaint can be found in the Non-Discrimination and Harassment Policy and the Sexual Violence Policy, both of which are contained in the EO Plan.</p>
<p>€ I understanding that I may also file a complaint with the Department of Education's Office of Civil Rights if I feel the University is not appropriately handling</p>	<p>The U.S. Department of Education Office for Civil Rights 33 Arch Street, 9th Floor Boston, MA 02119-1424 (617) 289-0111/Fax (617) 289-0150 TDD (877) 521-2172 OCR.Boston@ed.gov</p>

my complaint (C, R).		
<input type="checkbox"/> I understand my right to request interim accommodations and request no accommodations at this time (C, R).	<p>The University may provide individualized services as appropriate to either or both parties involved, making every effort to avoid depriving a student of access to the student's education, throughout the investigation process.</p> <p>The University will maintain as confidential any accommodations or protective interim measures provided, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the accommodations or protective interim measures.</p> <p>The determination of interim measures shall be made on a case-by-case basis in consideration of the information available to the EO Officer. The University may provide one or more of the following protective measures:</p> <ul style="list-style-type: none"> • "no contact/communication" orders; • escorts to ensure safety while moving between locations on campus; • changes in academic or work schedules; • statutorily-provided leave to employees, such as Domestic Violence Leave pursuant to M.G.L. c.49, §52D; • alternative housing, dining and/or office accommodations; • restrictions from areas of campus; • medical and/or mental health services; • assistance in identifying an advocate to help secure additional assistance, such as off-campus and community advocacy, support and services; and/or • academic accommodations, such as: <ul style="list-style-type: none"> o transferring to another section of a course, lecture or lab; o rescheduling an academic assignment or test; o arranging for incompletes, a leave of absence, or withdrawal from campus; and o preserving eligibility for academic, athletic, or other scholarships, financial aid, internships, study abroad, or foreign student visas 	
<input type="checkbox"/> I would like to request the following interim accommodations (C, R): <ul style="list-style-type: none"> <input type="checkbox"/> No Contact Directive <input type="checkbox"/> Housing relocation <input type="checkbox"/> Academic accommodation <input type="checkbox"/> Other 		
<input type="checkbox"/> I am aware that a No Contact Order is in place and that I may ask for clarification of this Order at any time (C, R).		
<input type="checkbox"/> I have reviewed this document and the EO Plan and have been given the opportunity to ask any questions (C, R, W).		
Complainant/Respondent/Witness Name (Print)	Complainant/Respondent/Witness Name (Signature)	Date
EO Officer or Designee (Print)	EO Officer or Designee (Signature)	Date

**Signed copies of this checklist shall be provided to the Complainant, Respondent, or Witness

**Original copy of this checklist shall be kept on file with the Office of Human Resource, Inclusion, Diversity, & Equity

Sexual Misconduct Checklist - Complainant

Initials	Initials	Complainant Initial Meeting – Items Reviewed
		<p>Data Privacy Notice Review / Sign (if applicable)</p> <p>1. Review form and discuss</p>
		<p>Discuss:</p> <ol style="list-style-type: none"> 1. Definition of Sexual Misconduct and Title IX Sexual Harassment 2. Review Policy/Procedure and explain the Formal Complaint Process. <ol style="list-style-type: none"> a. Sexual Misconduct Policy: [Provide Link] b. Sexual Misconduct Procedure: [Provide Link] 3. Inform complainant of the prohibition of retaliation 4. Discuss pursuit of other process, if applicable 5. Discuss determinations for No Basis to Proceed (Title IX dismissal) 6. Discuss formal hearing process (if applicable)
		<p>Confirm: (for Title IX sexual harassment)</p> <p>Complainant is a current student or attempting to participate in an education program or activity at the college/university where the complaint is being filed.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
		<p>Discuss Complainant Options/Rights:</p> <ol style="list-style-type: none"> 1. Right to make a report to law enforcement officials 2. Rights under the crime victims bill of rights 3. Availability of prompt assistance from campus officials, upon request, in notifying the appropriate campus investigating authorities and law enforcement officials. 4. Assistance available from campus authorities in preserving for a sexual violence complainant material relating to a campus disciplinary proceeding. 5. Complaints of incidents of sexual violence made to campus security authorities must be promptly and appropriately resolved. 6. Upon a sexual assault complainant’s request, the university office may take action and other supportive measures to prevent unwanted contact with alleged assailant (i.e., transfer complainant/respondent to alternative classes or work sight, or college-owned housing. 7. Upon request, if reporting party transfers to another college/university will be provided with information about resources for victims of sexual assault at the college or university to which the complaint is transferring.
		<p>Complainant considers/selects the following process:</p> <ol style="list-style-type: none"> 1. Formal Complaint Process <input type="checkbox"/> Yes <input type="checkbox"/> No 2. Informal Complaint Process <input type="checkbox"/> Yes <input type="checkbox"/> No 3. Does not want to participate <input type="checkbox"/> Yes <input type="checkbox"/> No

		Supportive Measures Discussed and Provided:
		Report made to law enforcement? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not disclosed
		Advisor Name Affiliation Phone Number Email Address Requested access to Advisor <input type="checkbox"/> Yes <input type="checkbox"/> No
		Witnesses (Names and contact Information) 1. 2. 3. <i>(If additional space is needed, attach a separate form)</i>
		Documentation provided (Emails, text messages, Facebook messages, Instagram, etc.)
		Report of Retaliation (Use if complainant states they experienced retaliation)
		Interim Measures (i.e., trespassed, hold on account, student ID suspended, etc.) Mutual No Contact Directive(s) You are to have no contact with the following individual(s): 1. _____ 2. _____ (If additional space is needed, attach a separate form) Other:

Sexual Misconduct Checklist - Respondent

Initials	Initials	Respondent Initial Meeting – Items Reviewed
		<p>Data Privacy Notice Form / Sign (if applicable)</p> <p>1. Review form and discuss</p>
		<p>Discuss:</p> <ol style="list-style-type: none"> 1. Definition of Sexual Misconduct and Title IX Sexual Harassment 2. Review Policy/Procedure and explain the Formal Complaint Process. <ol style="list-style-type: none"> a. Sexual Misconduct Policy: [Provide Link] b. Sexual Misconduct Procedure: [Provide Link] 3. Inform complainant of the prohibition of retaliation 4. Discuss pursuit of other process, if applicable 5. Discuss determinations for No Basis to Proceed (Title IX dismissal) 6. Discuss formal hearing process (if applicable)
		<p>Confirm: (for Title IX sexual harassment)</p> <p>Respondent is a current student or attempting to participate in an education program or activity at the college/university where the complaint is being filed.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
		<p>Discuss Respondent Options:</p> <ol style="list-style-type: none"> 1. Respondent may provide a written response to the allegations. 2. Discuss other individuals that are permitted to accompany the respondent during investigative interviews and the extent of their involvement.
		<p>Complainant has selected to proceed with the following process:</p> <ol style="list-style-type: none"> 1. Formal Complaint Process <input type="checkbox"/> Yes <input type="checkbox"/> No 2. Informal Complaint Process <input type="checkbox"/> Yes <input type="checkbox"/> No <p>Respondent agrees to _____ process.</p>
		<p>Supportive Measures Discussed and Provided:</p>
		<p>Advisor</p> <p>Name</p> <p>Affiliation</p> <p>Phone Number</p> <p>Email Address</p> <p>Requested access to Advisor <input type="checkbox"/> Yes <input type="checkbox"/> No</p>

		<p>Witnesses (Names and contact Information)</p> <ol style="list-style-type: none"> 1. 2. 3. <p><i>(If additional space is needed, attach a separate form)</i></p>
		<p>Documentation provided (Emails, text messages, Facebook messages, Instagram, ect.)</p>
		<p>Report of Retaliation (Use if respondent states they experienced retaliation)</p>
		<p>Interim Measures (i.e., trespassed, hold on account, tech ID suspended, ect.) No Contact Directive(s) You are to have no contact with the following individual(s):</p> <ol style="list-style-type: none"> 1. _____ 2. _____ <p>(If additional space is needed, attach a separate form)</p> <p>Other:</p>
		<p>Respondent questions and investigator answers about process</p>
		<p>Campus Resources / Contact Information Provided (Resource Sheet) Additional Resources:</p>
		<p>Provide Copies of:</p> <ol style="list-style-type: none"> 1. Student Code of Conduct 2. Sexual Misconduct Policy 3. Sexual Misconduct Procedure 4. Data Privacy Form (if applicable) 5. Sexual Misconduct Checklist (Completed checklist will be sent once reviewed)

Title IX Sexual Harassment Investigation Plan

Involved Parties <i>Complainant & Respondent</i>
<p>Name of Alleged Complainant: <i>Complainant Status:</i> <input type="checkbox"/> Student <input type="checkbox"/> Employee</p> <p>Name of Alleged Respondent: <i>Respondent Status:</i> <input type="checkbox"/> Student <input type="checkbox"/> Employee</p> <p>Date(s) of Incident/Conduct:</p>
Report of Conduct
<p>Date of Initial Report to Institution: Initial Report of Incident to Institution Made by: Reporting Party Status: Initial Report Made to:</p> <p>Date Title IX Coordinator Contacted: Contact Method:</p>
Type of Reported Harassment (Check all that apply)
<p><input type="checkbox"/> <i>Sexual Harassment</i> – [Include institutional definition]</p> <p><input type="checkbox"/> <i>Sexual Assault</i> – [Include institutional definition]</p> <p><input type="checkbox"/> <i>Stalking</i>: – [Include institutional definition]</p> <p><input type="checkbox"/> <i>Dating/Intimate Partner/Relationship Violence</i>: – [Include institutional definition]</p>
Description of Reported Sexual Harassment

Initial Assessment of Complaint

Date Formal Complaint Submitted and Signed:

The Title IX Coordinator (or Deputy) determined the complaint met the following definitions under institutional policies:

- Title IX Coordinator was contacted to initiate a complaint.
 - Incident or reported conduct involved sexual harassment as defined by Title IX. *Specifically, the report/complaint indicated:*
 - Conduct occurred in an institutional educational program or activity in the United States. *Specific location of alleged conduct:*
 - An employee of the institution is alleged to have conditioned the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.
 - An employee of the institution or student is alleged to have engaged in unwelcome conduct determined by a reasonable person to be so severe pervasive and objectively offensive that it efficiently denies a person equal access to the university's educational program or activity.
 - An employee of the institution or student is alleged to have engaged in sexual assault, dating, intimate partner and relationship violence, and/or stalking as defined by institutional policy.
- Formal complaint was made by complainant or Title IX Coordinator alleging sexual harassment as defined by Title IX and requesting that the institution investigate the allegation of sexual harassment.
Submitted by: Complainant Title IX Coordinator
- At the time of filing the formal complaint, Complainant was participating in or attempting to participate in the education program or activity of the university.

Scope of Investigation

Applicable Policies and Procedures

Party Contact and Communications

Complainant Contact

- Initial Meeting
- Checklist Reviewed
- Notice of Investigation

Respondent Contact

- Initial Meeting
- Checklist Reviewed
- Notice of Allegations

Review of Supportive and Interim Measures

Witness List

Complainant Witnesses:

- Name
Interview? Yes No Rationale:
- Name
Interview? Yes No Rationale:
- Name
Interview? Yes No Rationale:
- Name
Interview? Yes No Rationale:

Respondent Witnesses:

- Name
Interview? Yes No Rationale:
- Name
Interview? Yes No Rationale:
- Name
Interview? Yes No Rationale:
- Name
Interview? Yes No Rationale:

Interview Strategy

Order of interviews? Questions to ask all interviewees? Questions for each interviewee?

Documentation and Review

Additional Evidence

What other evidence do you need to obtain?



The author(s) shown below used Federal funding provided by the U.S. Department of Justice to prepare the following resource:

Document Title: Responding To Sexual Assault on Campus:
A National Assessment and Systematic
Classification of the Scope and Challenges
for Investigation and Adjudication

Author(s): Linda M. Williams, Ph.D., April Pattavina,
Ph.D., Alison C. Cares, Ph.D., Nan D. Stein,
Ed.D.

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Responding to sexual assault on campus: A national assessment and systematic classification of the scope and challenges for investigation and adjudication

Final Summary Overview

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Executive Summary

Given the considerable changes in federal legislation and the pressing requirements that colleges and universities develop policies and practices that meet the needs of victims and of those accused of sexual assault, there is a critical need to document and understand how colleges are handling these demands and coordinating campus approaches to investigation and adjudication of sexual assaults. In 2015, the National Institute of Justice (NIJ) funded a project to commence January 2016, designed to examine the variations in policies and practices and understand more about challenges and emerging best practices. The research reported here was designed to identify the range and scope of policies and practices related to the investigation and adjudication of sexual assault on college campuses in the U.S. The Wellesley Centers for Women (WCW) with the assistance of an expert panel of advisory board members has documented and classified the current landscape (the breadth and differences) of campus approaches to investigations and adjudication of sexual assault. Our first step, informed by a victim-centered focus, was a web-based search of a randomly selected sample of four year colleges and universities (Institutions of Higher Education, IHEs) on policies and practices for investigation and adjudication of sexual assault reports. This web search was a systematic broad-based environmental scan designed to examine the policies and practices promulgated to the public and, most importantly, made available to students by IHEs. This environmental scan was followed by interviews with Title IX coordinators to develop a clearer understanding of the challenges and successes of these policies.

Environmental Web-scan:

Institutions of higher education are required to make detailed information regarding sexual assault and the related institutional policy public, particularly via an institution's website (Campus SaVE Act, 2013). We conducted an environmental scan to provide a panoramic snapshot of how colleges publicly present their investigation and adjudication approaches to reports of sexual assault. The scan was a content analysis conducted in 2016 of each IHE's website information related to reporting, investigation, and adjudication of sexual assault and was informed by a victim-centered focus. Trained undergraduate student researchers conducted a web-based search of a randomly selected representative sample of 969 four year colleges and universities. Data on 151 items related to response to sexual assault were collected. Of the 969 IHE websites scanned, 33 (3% of the websites) were excluded from analyses because the website had no information about sexual assault and lacked details on the definition of sexual assault, the reporting of a sexual assault, a Title IX office, or investigation or adjudication policies. Beyond the 33 IHEs with no discernable information on Title IX and sexual assault, the lack of information on many sites and the missing information on investigation and adjudication generally raises concerns about the extent to which IHEs are effectively serving as a resource for students concerned about sexual assault. In general, the further along in the process in response to a complaint of sexual assault (reporting → investigation → adjudication → sanctioning), the less likely our student researchers were able to find information on the IHE websites.

Where information on reporting, investigation and adjudication was available, our web-scan did not find a dominant model for who investigates complaints, determines responsibility or imposes sanctions. Investigators included sole investigators, teams or panels. Adjudicatory and sanctioning responsibilities were spread across general panels, sexual misconduct specific

panels, administrative panels, and sole campus administrators, with some determinations of responsibility made by a sole investigator. Following a finding of responsibility, possible sanctions described on the websites ranged from low level and infrequently mentioned sanctions, such as community service or a no contact order, to serious sanctions more typically described on the websites, such as expulsion and suspension.

An important caveat is that these data represent *what an IHE promulgated in writing on their publicly accessible website*, but may (or may not) differ from what they do in actual practice. Also, just because information could not be located on a website does not mean that information, service, or policy does not exist. Finally, the data were collected in 2016 and, therefore do not reflect any more recent changes in the website content.

While there were no readily discernable models for investigation or adjudication found in the review of the IHE public websites, we explored the extent to which more sophisticated statistical methodologies could be useful in identifying models of approaches to investigation and adjudication from the data collected. While recognizing that these data are based only on what was gleaned from the websites and that much information was missing, we conducted an exploratory cluster analysis to determine if any, clear investigation and adjudication policy models emerged from the web-scan data. These analyses identified some themes and preliminary typologies of investigatory and adjudicatory responses to sexual assault on college campuses including: A *Single Investigator Model* (42% of IHEs), a *Quasi-Criminal Justice Investigative Model* (40% of IHEs) and a *Collaborative Investigative Model* (18% of IHEs) and, for adjudication, a *Basic Due Process Model* (57% of IHEs) and a *Criminal Justice Based Due Process Model* (24 % of schools). In the analyses conducted, we did not identify distinct or mutually exclusive models nor did we find models that were specifically associated with IHE characteristics. Further analyses we conduct will be reported in scholarly papers and reports.

Interviews of Title IX Coordinators

Our interviews with 47 Title IX coordinators focused on the approaches used in investigation and adjudication of sexual assault and the challenges and benefits of the approaches they took. In regard to models for investigation and adjudication, our initial meetings with the advisory board and some preliminary interviews led us to the plan to collect specific answers to mutually exclusive categories such as: the approach to investigation that involves a solo investigator OR a team of investigators (either comprised on internal or external staff or contractors), OR the investigation includes fact finding hearings, etc. Interestingly, and paralleling our web-scan findings, we found that the protocols within many IHEs involved more of a “smorgasbord” approach and included “all of the above” as possibilities. Interviews also uncovered new changes in protocols in response to new guidance, laws or regulations. The pathways to different approaches in some cases depended on characteristics of the complaint and the wishes of the parties involved. We found that some IHEs included administrative review panels not only for adjudication, but also for investigations. In addition, we found that sanctioning protocol varied and was administered by individuals (including the Title IX coordinator) or by boards of various compositions, and often (especially in cases which resulted in suspension or expulsion) with final affirmation by the president of the institution.

Regardless of the format of the investigation and adjudication, which we found varied considerably across institutions, Title IX coordinators described efforts to assure the protection of the victims along with a focus on assuring fairness in response to both the complainants and the respondents (alleged perpetrators). Efforts were also made to handle sexual assault cases, particularly sanctioning, as partly an educational process, in keeping with the main mission of IHEs to educate.

Many challenges were mentioned by the Title IX coordinators including:

1.) Lacking capacity to respond to what have been increased numbers of complaints and reports of sexual assault. Especially acute is a need for more well-trained investigators, whether these are from within the IHE community, public safety, or external sources.

2.) Garnering support from institutional leadership (the chief officers, including the President) is critical to the success of the office of the Title IX coordinator. Such support includes resources; visibility of the office, and an approach that supports and legitimates the importance of the Title IX activities (reporting, investigation, and adjudication, as well as, prevention) as a part of an institutional commitment to prevent and respond to campus sexual assault.

3.) Improving the Title IX office network of connections on campus and cultivating trust of the Title IX officer in the community among students, faculty, and staff.

4.) Achieving a high level of institutional support, not only in terms of funding but also in supporting an administrative structure that does not “silo” the Title IX office in such a way that it diminishes the Title IX coordinator’s authority or isolates them from the larger campus community.

5.) Achieving institutional support designed to lower barriers to reporting by students, faculty and staff and thereby providing a culture in which sexual harassment and assault are understood and not tolerated.

Based on data gathered from a national sample of 969 four-year IHEs, in conjunction with interviews with key informants from 47 institutions, this project provides a context for understanding and elaborating the wide variety of individual IHE approaches and programs and thus provided an opportunity to examine how a variety of approaches address the challenges of responding to college sexual assault. In part, the diversity of responses may be a reflection of the ever-changing landscape of Title IX, driven by changes in federal guidance and policies, state laws and policies, and the impact of civil suits and judicial guidance emerging from these cases. These responses point to a need for follow-up research designed to examine the impact of different approaches so recommendations can be made for best practices.

The work of this project will be disseminated on our website (<http://www.wcwonline.org/jgbvr>) and through guidelines such as the guidance prepared for institutions to conduct a website self-evaluation (see appendix D). In addition, we are developing a digest of investigative and adjudicative approaches based on our cluster analysis and the interview findings. Scholarly presentations, articles, and white papers are planned for future dissemination.

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A study of this scope required the assistance of many not only in conceptualizing the project but also in guiding its many pieces to completion. This research would not have been possible without the work of Mary Frederick, Project Manager and Research Administrator, and Research Associates, Ineke Cedar and Amanda Richer. In addition, the invaluable support provided by the Wellesley Centers for Women and Wellesley College supported student interns, Meredith Clark, Alex Shook, and Dhanya Nageswaran who provided critical research and policy assistance. Data collection and web-scan work was completed by a team of hard-working Student Research Assistants including Sabine Admanson, Abby Animashaun, Denisse Becerra, Val Gardner, Sam Goldstein, Ayeona Hopkins, Vipasana Karkee, Callie Kim, Lumi Kinjo, Diana Lobontiu, Katie Madsen, Melissa Marcial, Monica Naranjo, Trang Nguyen, Jennifer Nwako, Bridget Peak, Neha Rajbhandary, Iris Remillard, Juliette Sander, Soo Jin So, Rhoda Tano-Menka, Kavindya Thennkoon, Esa Tilija, Yuhan Wu, Danielle Zarbin, Sitara Zoberi, and Sophia Zupanc.

Responding to sexual assault on campus: A national assessment and systematic classification of the scope and challenges for investigation and adjudication

Introduction

Sexual assault on college campuses is a critical concern for students, policy makers, college administrators, and parents of current and prospective students. The best estimates from national studies reveal that between one in four to one in five women will experience an attempted or completed sexual assault during their college careers (Fisher, Cullen, & Turner, 2000; Krebs, Lindquist, Warner, Fisher, & Martin, 2007; Edwards, Sylaska, Barry, Moynihan, Banyard, Cohn, Walsh, & Ward, 2015; Kilpatrick, Resnick, Ruggiero, Conoscenti, & McCauley, 2007) and the vast majority of these incidents go unreported (Fisher, Cullen, & Turner, 2000; Sinozich & Langton, 2014). A recent meta-analysis found that completed rapes (i.e., forcible vaginal, anal, or oral intercourse using physical force or threat of force) ranged from 0.5% to 8.4% of college women. The rate of unwanted sexual contact (i.e., attempted or completed unwanted kissing, sexual touching using physical force, threat of physical force, and/or verbal coercion) ranged from 1.8% to 34% (Fedina, Holmes, & Backes, 2018).

Since the year when we proposed this research (2015), hundreds of IHEs (Institutes of Higher Education) were investigated by the U.S. Department of Education Office for Civil Rights (OCR) for possible violations of federal law under Title IX in their handling of sexual violence and harassment complaints. At the state level, multiple legislatures passed and adopted new laws to address issues of sexual assault on college campuses including: mandated campus climate surveys; requirements regarding hearings and rights to appeal; requirements to implement sexual assault prevention programming; and specified definitions of sexual assault and consent. The Obama Administration initiated the *Task Force to Protect Students from Sexual Assault*, and the resulting “Not Alone” and “It’s On Us” campaigns (<https://www.notalone.gov/> and www.itsonus.org). At the time this study was funded, IHEs had come under fire for taking inadequate steps to address the problem of sexual assault on campus (i.e., seen as providing inadequate support for survivors and failure to hold offenders accountable and to impose appropriate sanctions), which led to rapid policy change.

In the years after these policy changes, in addition to continued criticism on behalf of victims, IHEs came under fire for their handling of sexual assault investigations and adjudications, this time on behalf of the accused. Central to these critiques were that these processes “lack the most basic elements of fairness and due process, are overwhelmingly stacked against the accused, and are in no way required by Title IX law or regulation.” (See the September 2017, OCR issued Dear Colleague letter rescinding many of the provisions of current guidelines and introduced a rules making process.¹

¹ In a September 22, 2017, “Dear Colleague” letter from the Department of Education under Secretary DeVos, prior policy documents issued under the President Barack Obama administration were withdrawn. These included statements of policy and guidance as were reflected in the “Dear Colleague Letter on Sexual Violence” issued by the Office for Civil Rights at the U.S. Department of Education, dated April 4, 2011 and the “Questions and Answers on Title IX and Sexual Violence”, issued by the Office for Civil Rights at the U.S. Department of Education, dated April 29, 2014.

At the time of this report, IHEs are awaiting the final rules to emerge from that process, as well as adjusting to a number of new state laws and federal appeals court decisions. It is not surprising that this has been a time of great change for IHEs, that there is high turnover in Title IX coordinators (Brown, 2019); and, where resources permit, IHEs are hiring additional staff and advocates, sending staff to conferences and trainings focused on the issue, and implementing campus climate surveys to assess and address the issue. Finally, a number of consultants, not-for-profit and for-profit companies and professional associations have positioned themselves to assist.

There is a lack of high quality information on exactly what IHEs are doing in an atmosphere in which there is formidable advocacy for victims and considerable push-back from individuals, institutions and the media with the contention that the problem of sexual assault on college campuses is overblown (Schmidt, 2015; Will, 2014). While conversations about Title IX and sexual assault on college campuses have become more frequent and organizations and collaborators both locally and nationwide have burgeoned, the system is currently at a crossroads and seeks information on how peer institutions are handling these issues and if there are different approaches and solutions in place in different institutional settings (e.g., specifically to address campus sexual assault in either private or public, small or large, rural or urban, commuter or residential institutions).

Colleges and universities continue to seek guidance on how to develop and implement investigative and adjudicative policies and practices. It is a crucial time when the stakes are high for the victims, the accused, and the institutions. Although Richards (2016) found that over the past decade the IHE response to sexual assault demonstrates increased compliance with more recent OCR guidance on Title IX and new directives from the Campus SaVE Act, there is a need to develop a better understanding of models that are employed by IHEs and the benefits and challenges of these models so that, even in the face of likely changes in federal guidelines, there is a better understanding of what is promising practice to reduce rates of victimization and improve investigation and adjudication of sexual assault.

This project was designed to identify the range and scope of policies and practices related to the investigation and adjudication of sexual assaults on college campuses in the U.S. The Wellesley Centers for Women with the assistance of an expert panel of advisory board members has documented and classified the current landscape (the breadth and differences) of campus approaches to investigations and adjudication of sexual assault complaints. Advisors included

The 2017 letter from the U.S. Department of Education (ED), Office for Civil Rights Acting Assistant Secretary Candice Jackson not only announced the withdrawal of the guidance established by the prior administration, but also published a document, Q&A on Campus Sexual Misconduct to be in effect until new policy is developed through a "rulemaking process that responds to public comment." The Department of Education noted that they would continue to rely on the 2001 Revised Sexual Harassment Guidance and the reaffirmation of that guidance in the 2006 Dear Colleague Letter on Sexual Harassment. In addition, the Q&A references the Violence Against Women Reauthorization Act and Amendments to the Clery Act and requirements of the Clery Act, which can be found in The Handbook for Campus Safety and Security Reporting 2016 Edition.

The issues raised by the Department of Education under Ms. DeVos related to standards of proof, the appeals process, use of cross-examination, collaborations with law-enforcement authorities, and raised concerns that "lack the most basic elements of fairness and due process, are overwhelmingly stacked against the accused, and are in no way required by Title IX law or regulation."

student advocates and survivors of sexual assault, university leaders in student life, and those responsible for investigations and counseling. These advisors helped to guide our data collection protocols and assisted in developing frameworks for the typologies of responses guiding schools and gathering their feedback on the challenges and successes of their practices.

Principal Aims of the Project

1. Identify the range and scope of policies and practices related to the investigation and adjudication of sexual assaults on college campuses in the U.S. by documenting and classifying the current landscape (the breadth and differences) of campus approaches.
2. Develop a clear understanding of the challenges and successes of the current policies.
3. Create accessible resources for those on IHE campuses regarding current and promising practices to respond to sexual assault reports in a fair and equitable manner and thus inform their ongoing work.

Thus, the project was conducted in three phases. Phase One: Environmental Web- scan; Phase Two: Title IX coordinator interviews and; Phase Three: Development and dissemination of reports and web resources describing models in use in responding to sexual assault at IHEs and the challenges and benefits of current approaches.

Environmental Web-scan

Background

Campus sexual assault and the responses of institutions of higher education (IHEs) have received much attention in the last 10 years. Institutions of higher education are required to make public detailed information regarding sexual assault and the related institutional policy, particularly via an institution's website (Campus SaVE Act, 2013). This is based on an assumption that IHE websites are a primary source students use to gather information. Other researchers have taken advantage of the availability of this information to conduct systematic studies of IHE policies. For example, Richards (2016) updated research conducted by Karjane, Fisher, and Cullen (2002) and found supply of information has improved over time. IHE websites were likely to include their Title IX and Sexual Misconduct policies on their website.

Methods- Environmental web-scan

Our web-scan was informed by a victim-centered focus and involved a web-based search of a randomly selected sample of four-year colleges and universities to document the policies and practices for investigation and adjudication of sexual assault reports. We conducted a systematic broad-based environmental scan to examine the policies and practices promulgated to the public and, most importantly, made available to students by IHEs. The web-scan provided a panoramic snapshot of how colleges publicly presented their investigation and adjudication approaches to reports of sexual assault. An environmental scan was undertaken because college and university websites are a key resource that many students use to seek information or guidance. Issues and concerns with investigation and adjudication of sexual assault on campus begin at the reporting

stage. The information to which a victim² has access when considering if, how, or when to report a sexual assault may influence the decision whether to report to campus authorities at all, and how to connect with other resources or services. Thus, this review of information provided on IHE websites took the perspective of a reporting student to evaluate if what they may want to know is commonly available on IHE websites: “Can I get help without reporting? How do I report? What happens after a report? Who investigates? Who decides? What is my role?”

Sample selection: Environmental Web-scan. Institutions of Higher Education with at least a baccalaureate (4 year) degree program were selected (N=1982) from the data maintained by the Integrated Post-Secondary Education Data Center (IPEDS) housed at the National Center for Education Statistics (NCES). That data includes information on every college, university, and technical and vocational school that participates in federal student financial aid programs. IPEDS data include institutional characteristics, admissions, enrollment, and degrees conferred. We removed from the sample any schools with more than 90% of students enrolled only in online classes, schools located outside of the 50 states, and all-male theological schools or seminaries. This resulted in a population of 1822 schools. From these a stratified random sample of 1019 schools was selected to assure a large enough sample representative of geographic area and school size in the overall population. Of the 1019 schools selected an additional 50 schools were eliminated from analysis for the following reasons: 25 of the school websites were found to have no internal search mechanism; seven schools had merged with another school or closed; nine schools were found to have no undergraduate students enrolled or had no 4-year program; and nine were found to be largely offering course-work on line. This resulted in a final sample of 969 schools for which we collected data from the websites. Tables 1–3 provide the details of the sample of 969 schools surveyed.

Data collection: Environmental Web-scan. The scan was a content analysis of each IHE’s website information related to reporting, investigation, and adjudication of sexual assault. The scan and its results were informed by the knowledge of what was required to be made public about campus sexual assault from key legislation and documents (e.g., Clery Act, Campus SaVE Act, OCR 2011 Dear Colleague Letter, OCR 2014, Title IX Q & A, DOJ Findings Letters). Data were collected from the IHE’s websites by trained undergraduate students, which was fitting since undergraduates are the target audience. Data were entered directly into a secure online survey platform. The 25 student researchers received human subjects training and signed a confidentiality pledge. In addition, they also received a mandatory training that included information on self-care and use of the team discussion boards; guidelines for collecting data from the websites, including the meaning of the questions and definitions of terms; technology instruction; and access to a secure server. These students collected data on 151 questions (see appendix A - Web-scan Data Collection Form) and reliability checks were conducted to assure that there was at least an 80% reliability coefficient.

² We use the terms victim, (alleged) perpetrator, accused, complainant, and respondent somewhat interchangeably depending on the individual’s status being discussed. In criminal justice system writings, one might also use alleged victim and alleged perpetrator and in some materials survivor may be a better substitution for the term “victim.” Here we use terms “complainant” and “respondent” when the official status of the individual relating to a Title IX complaint is discussed – the victim becomes a complainant and the (alleged) perpetrator becomes the respondent. In some of the quotes from Title IX coordinators, they use different terminology and the quotes reflect their words.

Findings – Environmental Web-scan³

The final sample of 969 institutions was representative of four-year colleges and universities on characteristics including geographic location (region of the U.S.) (Table 1); locale classification (urban/suburban/rural) (Table 2); size of student body (under 1,000/1,000-4,999/5,000-9,999/10,000-19,999/20,000 and above) and “sector” of the institution (36% were public institutions, 59% were private non-for-profit, 5% were private for profit institutions) (Table 3); religious affiliation (35% religiously affiliated), college sports division, and percent of students living on campus (Table 4).

Thirty-three IHEs (3% of the websites scanned) were excluded from further analyses because the website had no information about sexual assault and lacked details on the definition of sexual assault, the reporting of a sexual assault, a Title IX office, or investigation or adjudication policies. As a result, data presented on the investigation and adjudication characteristics of the sample are based on the sample 936 IHEs with at least some information on responding to college sexual assault (See Table 5).

Beyond these 33 IHEs with no discernable information on Title IX (recall that the websites of an additional 50 IHEs of the initial 1019 selected had no search engine), the lack of detailed information on many sites and the missing information as described below (Tables 5-11) generally raises serious concerns about the extent to which IHEs are effectively serving as a resource for students concerned about sexual assault. In general, the further along in the process (reporting → investigation → adjudication → sanctioning), the less likely student researchers were able to find information on the websites. Please also note that when tables do not total 100, that is because there could be multiple options selected.

Tables 5 - 11 present report findings on some key questions that were a part of the environmental scan of the 969 websites (936 with basic information on sexual assault and Title IX office) and provide an overview of the information that was available on the websites. On the IHEs websites 75 – 94% had basic information about definitions of sexual assault, guidance in reporting sexual assault, or contact information for making a report of sexual assault. An important caveat is that these data represent *what an IHE promulgated in writing on their website*, but may (or may not) differ from what they do in actual practice. In addition, just because information could not be located on a website does not mean that information, service, or policy does not exist. For example, a victim may be required to participate in an investigation after reporting, even if information about that could not be located on the website (e.g., see Table 11).

In terms of information about adjudication and sanctioning, a substantial minority of college websites (17% to 23%) were missing this information entirely. The exceptions were that websites typically did include who was involved in determining responsibility (4% no information, Table 15) but usually did not provide information on whether the victim or alleged perpetrator were permitted to question each other at hearings (Table 16). The available information on the college websites reflected an equal balance of rights afforded to victims and alleged perpetrators in terms of being allowed to have advisors (Table 13), to question the other

³ For additional detail on variables, analysis, and results, please contact that research team and refer to future published materials.

party during hearings (Table 16), and to file an appeal (Table 19). An exception our finding on an equal balance of information on the victim's and accused's rights was in the detail provided on provision of interim measures. The possible changes to academic, housing, dining and work arrangements were mentioned as available options more often for victims than for alleged perpetrators (Table 12). The information available on websites was largely consistent with what was recommended or required under Title IX for handling of sexual assault cases at the time of data collection: interim measures were available to students (information found on 77% of websites, Table 12), students were allowed advisors (74% of websites, Table 13), and the standard of proof for a finding of responsibility was preponderance of the evidence (72% of websites, Table 14).

There was no evidence of a dominant model for what type of board adjudicated or who the members were who determined the responsibility or sanctions. Adjudicatory and sanctioning responsibilities were spread across general panels, sexual misconduct specific panels, administrative panels, and sole campus administrators, with some determinations of responsibility made by an investigator (Tables 15 & 17). Once there was a finding of responsibility, possible sanctions ranged from low level and infrequently mentioned sanctions, such as community service or issuance of a no contact order, to serious sanctions frequently mentioned on the websites, such as expulsion and suspension (Table 18).

In terms of prevention and education (Tables 20-22), most IHE websites provided sexual assault statistics on their websites (86%, Table 20), with the majority being part of the annual security report required by the Clery Act (78%, Table 20). Information on mandatory student education (Table 21) and bystander programs was found less often, but a substantial number of websites reflected that schools had these two things (61% required education on sexual assault, Table 21; 46% of campuses had a bystander program, Table 22).

Overall, we found that most IHE websites provided answers to basic questions students with a complaint about a sexual assault may ask. Different approaches to investigation, adjudication, and sanctioning were evidenced. Information varied considerably on who is involved in these aspects of the IHE response. We found that, generally, the websites of public IHEs provided information that is more detailed and websites of very small IHEs (less than 1,000 students) were less likely to do so. Additional research is needed, however, to explore how different approaches are actually implemented, including fidelity to the written policies

Models of Investigation and Adjudication. While there were no easily discernable models for investigation or adjudication found in the review of the IHE public websites, we explored the extent to which we could utilize some statistical methodologies to identify models of approaches to investigation and adjudication. While recognizing that these data are based only on what was gleaned from the websites and that much information was missing, we conducted an exploratory cluster analysis⁴ to determine what, if any, clear investigation policy and adjudication policy models emerged in the information available to inform students about these processes from the web-scan data.

⁴ We used a latent cluster analysis methodology and Latent Gold software to estimate the cluster models.

Investigation model variables included:

1. Is there information on who is involved in the investigation of sexual assault complaints?
2. Who is involved in the investigation of sexual assault complaints? (We included five variables as multiple choices could be indicated): Title IX coordinator; Campus law enforcement; Local law enforcement; Other administrator; and Independent investigator
3. Is there training for the investigative unit or office?
4. How are concurrent investigations with law enforcement handled?
5. Is there a Memo of Understanding (MOU) with local law enforcement?
6. Are there time frames associated with making a report and when an accused student is notified?
7. Are student victim reporters, third party reporters, and witnesses protected from retaliation for participating in proceedings? (3 variables)
8. Are victims and accused students entitled to lawyers/advisors in proceedings? (4 variables)
9. Are there interim measures available to victims during the investigation?
10. Is the victim required to participate in the investigation after a report?
11. Is there information on a time frame for completing the investigation after a report?
12. Does the website offer guidance on how to obtain interim measures?
13. Are there interim measures available for victims not wishing to participate in investigation?

Adjudication model variables included:

1. Who is involved in the responsible decision and sanctioning decisions? (2 variables)
2. Does the policy mention that prior sexual behavior of victim and alleged perpetrator will not be considered in the adjudication proceedings? (2 variables)
3. Does the policy mention if victims and alleged perpetrators are allowed to question each other? (2 variables)
4. Does the policy mention if victims and alleged perpetrators are allowed to present witnesses at hearings, meetings, or conferences? (2 variables)
5. Is there an appeals process?
6. Is there a restorative justice/reintegration option for alleged perpetrators who accept responsibility for a violation before adjudication?
7. Does the alleged perpetrator have an adjudication format choice?
8. Do victims have an option not to participate in proceedings?
9. What are the sanctioning options?
10. What is the standard of proof in determining responsibility for a violation?

Several parallel web-scan review questions related to complainants or respondents had very similar distributions. For example, the questions on advisors/lawyers for each indicated that policies included that complainants (28%) and respondents (28%) could have lawyers as advisors and 50% of policies provided that both could have advisors that could not be lawyers. Including both options in the cluster model estimation increased the number of parameters, but did not necessarily further distinguish the clusters. Therefore, we included the complainant version of the question in the investigation model analyses and the respondent version of the response in the adjudication model analyses, but they could have been interchanged.

Given the multitude of interim measures and post-adjudication sanctions reported, entering them individually into the cluster routine would significantly increase the number of parameters to be estimated without necessarily contributing context. Therefore, for each, the options were categorized into a single multi-category variable. For interim measures, a value of zero was information not located, one indicated minor level measures (e.g., mental health or medical services; class, work or housing changes), two indicated moderate level measures (e.g. leave of absence, no contact order, escort, geographic restrictions), and three indicated major level measures (e.g. suspension, removal from sports program, police notification or transcript notation). For sanctions, a value of zero was information not located, one was moderate level (such as warning, probation, change of residence, awareness training, class changes, no contact order, monetary damages, limits on program participation, apology, geographic restrictions, and suspension), and two was major level (including expulsion, law enforcement notice, and transcript notation). Schools were coded according to the highest level of sanction identified.

Investigation Cluster Analysis Results. After preliminary analysis for model fit, eight nominal level variables were entered into the cluster analysis.⁵ The solution with the best fit was the three cluster model (L^2 square, $p = .23$). To determine the global fit for the model, a measure of misclassification was obtained by cross classifying the modal classes by the actual probabilistic latent classes, resulting in eighty-six percent of the cases as correctly classified (or a misclassification of 14%). Table 23 reports the marginal conditional probabilities of how clusters are related to each policy variable. The columns for each policy item sum to 1 within each cluster. Table 24 reports covariate relationships between selected variables in each cluster. Taken together, these results are used to describe the three clusters.

Investigation Cluster 1 - Single Investigator Model (42% of IHEs). While all clusters were likely to involve a Title IX staff in investigations, Cluster 1 was much less likely to report the involvement of other administrators. They were not likely to involve law enforcement (campus or local) or have a Memorandum of Understanding (MOU) with local law enforcement. While all clusters were likely to report some training for investigators, this cluster of IHEs was much less likely to have training. Students could have advisors, but they were not likely to be lawyers. The IHEs in this cluster had a varied level of interim measures, but there were also many that did not include information on interim measures on their websites. This cluster had higher probabilities for the “not located” categories of policy variables including who investigates reports of sexual assault, time limit for an investigation report, if the victim was required to participate after initial report, a time frame for an alleged perpetrator receiving notice of a complaint, how a concurrent investigation with law enforcement is handled, interim measures,

⁵ The latent cluster analysis results reports L^2 statistics for the fit of each cluster estimation routine increasing from 1 cluster solution to a 4 cluster solution. The desired solution is the one with the fewest number of clusters and an adequate fit indicated by a non-significant L^2 statistic which follows a chi-square distribution. All variables were initially considered in the estimation but some were removed when the routine did not produce a solution with an adequate fit according to the L^2 statistic. This may be due to lack of sufficient variation in some of the variables. For example, less than 10% indicated there was a time limit for when a report has to be made, 11% for a time frame when accused get notified, and 13% with no policy on prohibiting retaliatory behavior against victim reporters. These variables were, however reintroduced as independent, inactive covariates to the final clusters to help further define the clusters.

and policies on interim measures for victims. In short, the websites for the IHEs in this cluster were more likely to be missing important policy information.

Investigation Cluster 2 - Quasi-Criminal Justice Investigative Model (40% of IHEs). In cluster 2, Title IX investigators and campus law enforcement were likely to be involved in investigations. Students may have lawyers as advisors. IHEs in this model were much less likely to involve local (off campus) law enforcement than Investigation Cluster 3. Interestingly, while the websites for these IHEs were not likely to reflect involvement of local law enforcement, they were more likely than other IHEs to indicate that they let local law enforcement take priority in an investigation. They have a .52 probability of having an MOU in place with local law enforcement. The websites of the IHEs in this cluster were likely to provide information that they offer protection against retaliation against those who participate in procedures. This is the most likely of the clusters to have detailed information on their websites on severe interim measures. Interim measures can be severe but are likely to be decided on a case-by-case basis.

Investigative Cluster 3 - Collaborative Investigative Model (18% of IHEs). In this cluster, the IHE websites are more likely to reflect the potential to include all actors in investigations, including local law enforcement. This feature distinguishes this cluster from the other two investigative models. The websites of the IHEs in this cluster are more likely to indicate that investigations are handled collaboratively. IHEs in this model are most likely to report that they have in place an MOU with local law enforcement (.83) and to reflect that students can have advisors but not lawyers. The websites of these IHEs have information on varied interim sanctions but lean toward reporting information on severe sanctions. These websites are also more likely to reflect that they offer interim measures at a victim's request.

Adjudication Cluster Analysis Results. As with the investigations cluster analysis and after preliminary analysis for model fit, eight variables were included in the final analyses for the adjudication models reflected in the IHE websites. We generated model estimates for 1 to 4 cluster solutions. The routine converged on an adequate fit for a three cluster solution based on the L square statistic ($p = .87$). The global model indicates that 95% of schools are correctly classified (or a 5% error rate). (See Tables 25 & 26)

Adjudication Cluster 1 - Basic Due Process (57% of schools). This cluster of IHEs did not present with a dominant type of responsible/not-responsible decision-making body. The websites of these IHEs reflected a strong presence of utilizing a general conduct board or sole administrator in adjudication, but other forms of decision-making bodies were also reflected on the websites of these IHEs. This cluster was likely to include IHEs that present information on their websites on appeal protocols for the victim and the alleged perpetrator, on allowing alleged perpetrators (and victims) to have witnesses at proceedings, and to report major sanction options. These IHEs were much less likely than Adjudication Cluster 2 to report including information from confidential sources as part of the process, use victim impact statements, or employment of restorative justice options. Adjudication Cluster 1 IHEs were more likely to report that it is not necessary for victims to participate in adjudicatory proceedings. The websites for the IHEs in this cluster tended to reflect that investigators present evidence to administrators in determining responsibility.

Adjudication Cluster 2 - Criminal Justice Based Due Process (24 % of schools). This cluster reflects websites that have the most comprehensive policy coverage that aligns closely with a criminal justice-based due process model, as well as having the highest uniformity across IHEs of policy attributes of the adjudication clusters. This cluster represents IHEs that were most likely to utilize a board or panel decision format when making a “responsible” decision. They were most likely to use a conduct board specific to handling sexual assault cases, followed by an administrative panel and a general conduct board. Adjudication Cluster 2 was most likely to use a conduct board specific to sexual assault in determining sanctions. Most offered appeals for victims and accused. The websites indicated that alleged perpetrators (and victims) could provide witnesses at proceedings. These schools also noted in their policies the potential use of confidential sources in proceedings, prohibited a victim’s (and a perpetrator’s) prior sexual history from being considered in proceedings, and indicated major sanction options. They were also much more likely to provide opportunities for victim impact statements and restorative justice options. While preponderance of evidence was the typical standard for all clusters, this group includes the few IHEs that used a “beyond a reasonable doubt” standard. This cluster also includes IHEs that were more likely than other IHEs to expect the victim to participate in adjudicatory proceedings and allow alleged perpetrators (and victims) to question each other. Investigators in this cluster were more likely than others to participate directly with administration in determining responsible/not responsible. In this cluster, alleged perpetrators were also more likely than in other clusters to have an adjudication format choice.

Adjudication Cluster 3 - Limited Information (18%). IHEs in this cluster tend to use a general conduct board, a board specific to handling sexual assault, or a sole administrator in determining responsibility. However, there was a significant group for which this information was not located when compared to other clusters. These schools also provided few additional defining details. Specifics on appeals, type of sanctions, and victim impact statements were not provided in the web-based policies for schools in this cluster. They were also more likely than other clusters to lack information related to the use of prior sexual history in adjudication or details on the use of witnesses or questioning of victims and perpetrators.

We identified some themes and preliminary typologies of investigatory and adjudicative responses to sexual assault on college campuses. We identified preliminarily a *Single Investigator Model (42% of IHEs)*, a *Quasi-Criminal Justice Investigative Model (40% of IHEs)* and a *Collaborative Investigative Model (18% of IHEs)* and for adjudication a *Basic Due Process Model* and a *Criminal Justice Based Due Process (24 % of schools)*. While in the analyses we conducted, we did not identify distinct or mutually exclusive models nor did we find models that were specifically associated with IHE characteristics, further analyses are possible and in progress. These will be reported in scholarly papers and reports.

Title IX Coordinator Interviews

Background

We conducted interviews with Title IX coordinators to develop a clearer understanding of the challenges and successes of the policies in effect at their institutions. The project start date was in January 2016 and, as described in the introduction, as the environmental scan of the IHE websites was completed, there were major changes in some state laws relating to responding to sexual assault on college campuses. There was also the beginning of discussion of anticipated major changes in the federal guidelines for implementation of Title IX as it related to sexual assault on college campuses. Directives about responding to sexual assault were promulgated by the new administration following the election of a new president in November of 2016. This led to a dramatic change in federal policies related to college sexual assault.

As of September 2017, the policy guidance issued in 2011 and 2014 under the President Barack Obama administration were withdrawn. Not only was this guidance withdrawn but also a newly published document, *Q&A on Campus Sexual Misconduct* (U.S. Dept. of Education, 2017) went into effect and remains in effect as of the writing of this report. A new policy was promised following a period of public comment on a document published in the Federal Register (*Nondiscrimination on the Basis of Sex in Education Programs Receiving Federal Financial Assistance*, 2018) and has not yet been issued.

The issues raised by the U.S. Department of Education, under Secretary of Education Betsy DeVos, include proposed changes related to standards of proof, the appeals process, use of cross-examination, collaborations with law enforcement authorities, and timeliness of the investigation. The document also responded to the administration's stated concerns that "lack the most basic elements of fairness and due process, are overwhelmingly stacked against the accused, and are in no way required by Title IX law or regulation." There were 124,196 comments in response to the Federal Register publication (*Nondiscrimination on the Basis of Sex in Education Programs Receiving Federal Financial Assistance: Public Comments*, 2019).

Methods - Title IX Coordinator Interviews

The Title IX coordinator interviews were planned to assist in identifying and assessing successes and challenges associated with the IHE responses to reporting, investigation, adjudication, and sanctioning of sexual assault. In 2017, we conducted a series of key informant pre-test interviews and our team then revised the methodology and the planned interview protocol to accommodate the changes in and the challenges of the Title IX guidance that was being rolled out by the U.S. Department of Education. In 2018-2019, we recruited participants and conducted interviews with 47 Title IX coordinators who were our key informants for this project.

Sample selection - Title IX Coordinator interviews. We recruited interview participants from a listing of Title IX coordinators in the 969 IHEs that had been included in our web-scan. The list excluded participants from 18 institutions, which had closed in the time that elapsed since the web-scan, 49 IHEs with ongoing OCR investigations, and 50 for-profit institutions. In addition, several IHEs were excluded due to possible conflict of interest with members of the project team or board of advisors. We found that many of the Title IX coordinators had left the institution or changed their positions within the IHE over the time of the study, reflecting high

rates of employee turnover. Some IHEs no longer provided information that permitted us to identify a Title IX coordinator by name, and for these we recruited participation via email to the generic email address provided by the institution.

To focus our recruitment efforts in accord with the distribution of institutions in the sample selected for the web-scan, we calculated a target proportion of interviews to obtain from each type of institution (public, private not religiously affiliated, and private-religiously affiliated) and size of student body (from <1000 students to 20,000+ students - See table 27). We sent three or more email messages from our team at Wellesley Centers for Women at Wellesley College to the institution's Title IX coordinator. These email had links to our website with letters of support from the funder, a list of advisory board members, and letters from relevant experts in the field. We informed the individuals that we were working on a National Institute of Justice sponsored research project "Responding to Sexual Assault on Campus" and that we planned to interview key campus stakeholders with knowledge of investigation and adjudication of campus sexual assault. We explained that the interviews would focus on challenges confronted and innovations available for responding to reports of college student-on-student sexual assault. We arranged confidential phone interviews stressing that their participation would make an important contribution to this research.

We had been concerned that Title IX coordinators would have some trepidation about participation due to the high level of scrutiny these cases were receiving in the media and the attention focused on the policies and attempts to alter these policies by the new administration. Indeed, some never responded to our multiple requests to participate, but we were pleased with the response of many and we were able to achieve a sample of interviewees from a broad array of schools representative of the domains of interest (see Table 27). Many of the interviewees expressed strong interest in the project, support for the work, and indicated they were looking forward to learning the results of the project.

Title IX coordinators from small schools (<1,000) comprised 9% of the sample, schools with a 1,000 - 4,999 enrollment made up 49% of the interviewees, and the next three groupings of larger schools (5,000 - 20,000+ enrollees) comprised 43% of the interviewees (with seven, five, and eight Title IX coordinators interviewed in each size grouping respectively). We also achieved a representative distribution of Title IX coordinators from public, private non-religiously affiliated and private-religiously affiliated institutions. We had a wide distribution of locales (urban, rural, and suburban) and individuals from 23 states from all regions of the country were interviewed.

Data Collection - Title IX Coordinator Interviews. Based on input from our advisory board we developed an interview that could be completed by telephone in 30 minutes (although if time permitted and the participant was willing the interview could be expanded to 60 minutes). The advisory board was unanimous in asserting that a request for a 30-minute confidential interview would assure more willingness on the part of Title IX coordinators to participate. Also stressed was the importance of assuring confidentiality, which we assured via the IRB protocol, and consenting procedure, which involved no recording of names and no audio recordings. While it appeared to the interviewers that some coordinators would agree to longer interviews and not object to audio recording, many took maximal steps to assure they were not overheard during the

call and asked for, and were granted, additional assurances of confidentiality during the interview.

To reduce the amount of time needed for the phone interview, a short Qualtrics survey (appendix B) was sent to the participant (along with the consent information) once they agreed to set up a time for the interview. The interviews were conducted via telephone and no audio recording was made. With the consent of the participant, however, all telephonic interviews were conducted by a lead interviewer (one of the study investigators) and listened in on by a second person (one of the study investigators or a research associate) who took detailed notes including some exact quotations from the interview. The interview focused on the approaches used to investigate and adjudicate reports of sexual assault at their institution and the successes and challenges associated with these cases (see IHE coordinator interview Appendix C). We conducted the interviews until saturation was reached, that is, we had reached a point that sampling more data would not lead to more information related to our study questions

Data Analysis - Title IX Coordinator Interviews. Data from the interviews were entered into a spreadsheet by both the interviewer and the researcher who listened in on each phone call. Where entries differed, the two parties discussed the answer until they were in agreement about the participant's response. Detailed text and quotations from the interview were also entered into the data collection spreadsheet and then utilized to illustrate themes that emerged from the interviews.

Findings - Title IX Coordinator Interviews

Characteristics of the interviewed sample. Of the 47 stakeholders interviewed, 44 completed our requested pre-interview survey.⁶ The short pre-interview survey was designed to gather basic background information to help guide the interview questions and to save the limited interview time for more substantive questions about the institution's sexual assault investigation and adjudication process. From these data emerged a picture of the interview sample, particularly their experience related to Title IX and sexual assault case processing.

In terms of demographics, it was a heavily white (72%) and female (68%) sample with a high level of education (83% reported having a graduate or other professional degree). Breakdowns that are more specific are not provided to protect respondent identity.

In the interviews we aimed to gather perspectives from across the various stages of the sexual assault case process, so it was important to include respondents who had experience including coordination of the overall process, initial review of cases, investigation, adjudication, sanctioning, appeals, and acting as advisor for victims and accused. Table 28 reflects that we achieved a diversity of perspectives. Please note that respondents could select all responsibilities that applied to their role at their institution, so the column totals more than 100%.

The interview sample included a range of depth of experience, in terms of years in their current position, overall years of experience with responding to campus sexual assault cases, and number of cases investigated or adjudicated. The vast majority was not long serving in their

⁶ Percentages provided are out of the 47 interviews even though only 44 completed the pre-interview surveys.

current position – 72% had held their position for less than 5 years, with 21% being in their position less than one year. However, a number of respondents had long-term experience either by being in their current positions more than five years (21%) or also by having experience in other roles at the same or at different institutions. When that was taken into account, 36% had more than 5 years' experience. A significant minority had also been involved in the investigation or adjudication of a large number of campus sexual assault cases – 39% of the sample had been involved with at least 20 cases (26% had more than 50 cases). However, a significant percent had also handled very few cases – 13% had handled none and an additional 15% had only handled between one and ten cases. This may be because the roles they have held have never required them to conduct the investigation or to adjudicate the case, they were too new to their role to have yet handled many cases, their institution has had very few cases, or other reasons.

Within the last two years, all interviewees had received training related to handling campus sexual assault cases. They indicated having received training via a number of different avenues (Table 29). Note that respondents could select all ways they had received training, so the column totals more than 100%. This also indicates that many of the interviewees received multiple forms of training in the past two years. Interviewees received training provided by a variety of sources: in-house staff (21%), membership organizations such as the Association of Title IX Administrators (ATIXA) and the National Association of Student Personnel Administrators NASPA (62%), private consulting companies (32%), and other sources (36%).

Our interviews revealed important information about the role of the Title IX coordinators and the approaches to investigation and adjudication. Only 25% reported that coordinating Title IX responses to sexual assault was their primary responsibility. Many of those interviewed also (or primarily) served in leadership roles across a variety of domains: human resources, student affairs, academic affairs, equal opportunity, student development, and student safety. The titles of those interviewed included provost, vice chancellor, vice president, and dean, among others. Many reported to an individual one level below the president and many (but not all) commented that they had a direct line to the president of the IHE.

Investigation and Adjudication Models and Approaches

The plan for our interviews was to focus on the approaches used in investigation and adjudication of sexual assault and to discern models that may be associated with the institutional size and structure. We conducted an exploratory cluster analysis to determine if any clear investigation policy and adjudication policy models emerged from the web-scan data and wanted to see if the interviews could contribute to these. Finally, we wished to learn about the challenges and benefits of the approaches they took to these tasks.

In regard to models for investigation and adjudication, our initial meetings with advisors and some preliminary interviews led us to the plan to collect specific answers to mutually exclusive categories such as: the approach to investigation that involves a solo investigator OR a team of investigators (either comprised of internal or external staff or contractors), OR the investigation includes fact finding hearings, etc. Interestingly, we found that the protocol within many IHEs involved more of a “smorgasbord” approach and included “all of the above” as possibilities. The pathways to different approaches at times depended on details of the complaint and the wishes of the involved parties. We also found that some included administrative review panels for purposes

of investigation and not only for adjudication. In addition, we found that sanctioning was administered by individuals (including the Title IX coordinator) or by boards of various compositions, and often (especially in cases which resulted in suspension or expulsion) with final decision-making or affirmation of the boards' recommendations by the president of the institution.

Investigative Approaches.

Who investigates? Concerning the IHE investigation, while most Title IX coordinators interviewed reported that they do not themselves actually conduct the investigations (e.g., they do not interview parties and witnesses), for many others their role included conducting investigations of all complaints (or a proportion of the complaints) that require an investigation. Most coordinators reported that they rely on trained internal staff (singly or in teams of two or three) to conduct the investigations and these are generally non-attorneys and often receive no compensation from the IHE for the additional time required for this work. In some IHEs, the investigators included persons designated as "deputy" Title IX coordinators. Some of these were individuals selected from other departments (e.g., athletics, schools located within the IHE such as nursing).

Most of those interviewed reported that in their IHE the investigations under Title IX are handled concurrently with police (if a report to the police has been made by the complainant). The interviewees stated that the police on rare occasions might have priority, especially when there was a need to delay informing the accused perpetrator of a serious, possibly criminal, accusation. While more than one-half of Title IX coordinators reported that the IHE had an MOU with police, most relied on MOUs executed between their campus police and local law enforcement and most stated there were only rare instances when they would report a case to the police.

Again, there appears to be a "multiple choice menu" in effect regarding differing approaches as complaints proceed to investigation and beyond in many IHEs. Findings from the interviews, however, do not strictly parallel the findings of the cluster analyses derived from the web-scan. At many institutions, the police (campus police or local law enforcement) had little or no role in investigation of the Title IX case. Some IHEs, however, did have MOUs with the police and worked very closely with in-house (i.e., campus) police. In some IHEs, the campus police served either as lead investigators or on the investigation team. In one institution, where campus police led the investigation team, the chief of the campus police reported administratively to the individual who was also the Title IX coordinator. Finally, campus police also may become involved with these complaints as co-recipients of students' on-line reports of sexual assaults.

The model of law enforcement involvement was not associated with one type of institution as the following example reveals. The coordinator from a small to medium sized IHE said, *"The (campus police chief) leads a team of investigators. Typically, a male and female will together interview the complainant and then the respondent. Witnesses will typically be interviewed by only one of the investigators (typically from the pair but sometimes another investigator entirely based on availability). The campus police chief then pulls together the investigative report, which is shared with both parties."*

On the other hand, a large private university in the Northeast had a three-person investigatory team in place and the Title IX coordinator noted that they:

“Always include someone from public safety, as well as at least one female and one male member. So there is always someone the same gender as the complainant. There is a pool of 24 trained investigators. They also come from faculty, student affairs, (and other administrators and VPs)”.

Often the Title IX coordinators remarked that they wanted people on that team interested in campus safety, including individuals who have had trauma-informed training.

Concerns about investigator availability and training. Often the investigators are not paid for this work and a common concern among Title IX coordinators who relied on such investigators who were not part of their Title IX office or Public Safety was that this investigatory work had to compete for the time of these staff that were responsible for their other demanding and customary faculty or administrative duties. In addition, due to the demands on time and the challenge of finding staff and faculty to perform these duties, the coordinators reported that often the same few individuals were over-burdened and called upon many times. On the other hand, when the staff or faculty were only occasionally tapped to serve as investigators, they would need more time to get current with the most recent guidelines. These challenges were reportedly minimized in IHEs with more well-resourced offices with dedicated and paid staff, including investigators and paid departmental liaisons who met regularly to ensure nothing- and in the words of one Title IX coordinator, *“no one slipped through the cracks.”*

While a few Title IX coordinators we interviewed reported that their IHEs have tapped lawyers within their institution to assist with this work or have sought outside attorneys as investigators and adjudicators, when asked about this practice the following roadblocks and concerns were mentioned: 1) not having adequate resources to afford such expertise; 2) difficulty posed when an attempt is made to secure outside assistance in a timely fashion; and 3) problems posed when external investigators are not steadily involved with these cases (e.g., rotating *pro bono* attorneys) and/or are not familiar with the culture of the institution.

Other concerns about the IHE approach to investigations stressed the need for more investigators and for training. One participant reported s/he *“feels good about the decision the institution made to train additional people, as originally they only had one to two trained investigators.”* The quandary that arises when only a small number of individuals are trained investigators was described by one coordinator from a private, midwestern college: *“what do you do when someone is busy or leaves?”* However, when resources and institutional support exist, IHEs have implemented an expanded team approach. In contrast, some Title IX coordinators indicated a preference for using funds to support professionally trained investigators hired for that one purpose (or perhaps for handling investigations as well as conducting sexual assault prevention training). This preference arose based on the concern that having too many individuals trained means that *“Mary from X department gets called on once per year or two and really has not retained much of the training.”*

Assembling teams of investigators is a challenge that was mentioned often in the interviews. One tip (though not without cognizance of some liabilities as well) was mentioned in one IHE

where they started audiotaping interviews recently. The Title IX coordinator stated, “*This (taping) is something that the investigators really like. They feel less pressured to get everything right when taking notes in the interview.*” The Title IX coordinator also said that audiotaping seems to make the investigation faster.

Finally, to underscore the finding based on the interviews that there is not one model that emerges for handling investigations but rather a more fluid process, the variations described by one Title IX coordinator are illustrative:

“There will also be consideration of if the case can be handled informally. First, the school would need to be comfortable with an informal resolution. If so, that possibility is first presented to the complainant and if it is something they want, then also the respondent.”

The Title IX coordinator went on to point out, however, that after an initial investigation, 95% of the time informal process is declined or is not an option. If the complaint goes forward, an adjudicatory hearing is scheduled and in this institution as in some others, the formal investigation is actually conducted by the adjudicatory body.

Adjudicatory decision-making. The Title IX coordinators described a very wide variety of adjudicatory approaches, more varied than our cluster analysis of web-scan data revealed. Some approaches employed a very expeditious manner of handling cases with a small number of persons adjudicating the responsibility of the respondent. Others involved more elaborate adjudicatory proceedings or blended investigations and adjudications.

About one-fourth of the interviewees reported that the adjudication decision (which was almost always reported to be made based on the preponderance of evidence) could be made by the investigators, or by the investigators in consultation with the Title IX coordinator or other senior administrator. This approach, generally, could be referred to as a sole investigator and sole adjudicator model.

In one example, in a small, private university in the northeast, “*A team makes a finding and recommendations which are reviewed*” by the coordinator in consultation with a deputy. In this case, the Title IX coordinator never serves on the investigatory team. There also are no students on investigation teams for sexual misconduct. In the three years of this model, this coordinator reports that s/he “*has only sent back a team recommendation for further review once...*” Furthermore, in this approach it was stated that there are no lawyers on the investigatory team but they have an “*outside attorney who advises when there is something the committee is not real sure of.*” In this institution, as in others, it was also mentioned, “*external investigators may be used in rare instances when there is a conflict of interest, or a special issue arises.*”

In about one-third of the interviews, the Title IX coordinator reported that rather than a sole adjudicator the IHE uses an adjudicatory body (specific to sexual misconduct violations) which reviews evidence gathered in the investigation and decides on the responsibility of the respondent. (A small number of interviewees reported that the IHE instead has a non-sexual assault specific adjudicatory body that reviews the evidence and makes a decision.) Generally, the adjudicatory board approach does not involve a hearing or further investigation. For example, in these cases, a panel of adjudicators will read the investigatory reports and may have access to the investigators themselves but there is no hearing.

In more than one-half of the interviews, however, the Title IX coordinator told the interviewer that the IHE generally relies on an adjudicatory hearing (as distinguished from an adjudicatory

panel that reviews the evidence gathered by others). This hearing board may serve an investigatory and an adjudicatory function. One example was in a large institution and the Title IX coordinator stated that:

“...adjudication is a hearing before a three-member panel. The members are pulled from a pool of 35 trained adjudicators. The members are only faculty and staff (no students) and they try to balance the panel in terms of gender and seasoned versus new adjudicators, but who has the time is always a big factor.”

As one Title IX coordinator with this more elaborate hearing model reported, *“Before the hearing the panel members receive the final investigative report and any rebuttals from the complainant or respondent.”* Both parties submit a list of witnesses they would like to appear and testify (providing further evidence) during the hearing. Character witnesses are not allowed. The panel meets with the lead investigator or case manager to review procedure and discuss the questions they would like to be answered in the hearing. The (lead investigator) attends the hearing to answer any questions from the panel about the investigation. The panel proceeds with investigation in the hearing and adjudicates responsibility. The two parties can each have their advisor of choice, *“but the advisor has to be like a potted plant”* (i.e., is an observer only).

Also notable is the disclosure that some Title IX coordinators had no role in investigations or adjudications and some stated that they had never even attended any of the hearings. Their role was entirely one of coordination of the parties and assurance that the policies and protocol were made available to all.

Sanctioning decision-making. While sanctioning may be part of the adjudication process, it also may be separated and the responsibility of a different panel, different panel members, or even a different hearing. We found a wide diversity of choices and avenues for making the sanctioning decisions. In a small number of Title IX interviews, it was reported that the sole investigator makes the sanctioning decision. In a number totaling about one-quarter of the interviews we found that either the sole investigator or the small team of investigators makes that decision. In the majority of the interviews, however, the Title IX coordinator reported that the adjudicators (i.e., a panel or a board separate from the investigation) decide on the sanction. About one-fourth of the interviewees reported that their IHE held a separate sanctioning hearing. In regard to such hearings, in just over one-fourth of the interviews it was reported that sanctions were determined by a sexual assault conduct board and in another quarter, sanctions came from an administrative panel. Often a sole campus administrator had a prominent role in the sanctioning either as part of the sanctioning panel or board or as a final decision-maker. It was only in a small number of interviews that it was reported that students had any role in sanctioning.

We asked about the use of expulsion as a sanction and although it was reported to be rarely used, a majority of the Title IX coordinators reported that the IHE had used expulsion as a sanction (although some mentioned that expulsion had never happened during their tenure or that many years had passed since the last expulsion). Some interviewees mentioned current cases that are likely to result in expulsion. The cases that result in expulsion were reported to be those that involved a finding of forced sexual penetration; physically assaultive behavior (other than the rape itself); physical injury to the complainant; or prior adjudications in which the respondent had been found responsible for sexual misconduct. Separation or suspension were sometime used

especially in smaller schools or in situations in which the person found responsible and the victim were in a class or department that operated with a cohort of students working the program together and from which s/he could not effectively be omitted. In these cases, the respondent found responsible might be suspended until the complainant completed that course work or graduated.

Themes Identified from Research and Interviews.

As we compiled the interviews and the notes we had taken during the calls, several key themes emerged that provide insight into the approaches taken by the IHEs, the key concerns of the Title IX coordinators, and their specific suggestions regarding the benefits of the approaches they are taking and the challenges going forward.

Response to sexual assault should be aligned with the educational mission of the institution as distinguished from the criminal justice system. Many interviewees from IHEs of different sizes and from varying locations across the U.S. stressed the role of the educational mission of the IHE and expressed the opinion that as an educational institution their college or university must serve an educational function about proper student behavior and prevention of sexual misconduct while they *“help the student do better.”* This educational mission was reflected in the goals of the Title IX office, e.g., both *“to be fair to all parties”* and to make this *“an educational process.”* In light of the educational mission, some of the coordinators stressed to the interviewers the ways that the fairness is achieved by *“affording all due process.”* One coordinator from a large, state school system in the Northeast stated, *“Hearings are non-adversarial by design, they are meant to be educational...”* suggesting a contrast to a criminal justice system approach or to an adversarial hearing adjudication model.

More than one Title IX coordinator expressed sentiments in accord with this preference for a non-adversarial system. A coordinator from a large, public, NCAA Division 1 Football university would prefer *“that the process could be driven by a humanistic and educational development philosophy rather than a legal one”* and went on to state that the *“(legalistic) goals are not always aligned* (with the educational mission of the institution).” This sentiment was echoed in one very different IHE setting (a small, private college in a southern state) where the Title IX coordinator stated, *“for an educational setting the ‘preponderance of evidence’ is a fair standard.”* And many indicated a wish to retain this standard, suggesting that the standard of *“clear and convincing evidence,”* which is now allowed under the interim rules from the U.S. Department of Education, Office of Civil Rights, is closer to *“beyond a reasonable doubt”* and is more suited for the legal system.

The coordinators emphasized the motivation to handle these cases well and with empathy. In both the web-scan portion of this research and in the interviews we found a recurrent theme that stressed providing a fair system that recognizes the rights of the accusers and the accused. For example, one coordinator from a medium-sized private college stated that s/he approached this (task of investigating and adjudicating college sexual assault) as *“a human with empathy”* and expressed concern that *“some of this empathy is lost in the ‘Title IX world’”* and added, *“What is lost is being human.”* The coordinator from a state university reported s/he is *“always mindful that we need to treat people like people - be fair and consistent - there are*

always 6 sides to one story,” suggesting also that the coordinators need to address the difficult job and *“find the correct balance between compassion and responsibility.”*

One might question how realistic such goals are in the face of some troubling cases of sexual assault and pressures to provide appropriate victim services. Yet, it was clearly expressed by many that there is a need for the Title IX Office to be *“transparent with information”* and to *“remove the opportunity of bias.”* Some coordinators suggested that because this is an issue *“we care deeply about”* there is an opportunity to *“do what is right.”* Title IX coordinators stressed the need for care and concern and victim advocacy to be the role of others and the pressing need to have such services in place. This was different from the role of the Title IX coordinator that was seen as *“to balance this work”* and to do the right thing for the students and the community.

The pressing need to professionalize this work. Yet, despite the humanistic concerns expressed, many Title IX coordinators stressed the need to professionalize the practice of investigation and adjudication of complaints of sexual assault. Having experienced lawsuits and legal challenges and after attaining many years dealing with these cases, some experienced Title IX coordinators strongly expressed the need to professionalize. Some coordinators argued that more experience handling these cases is needed and that, just as one would not give *“brand new lawyers and cops these cases to handle (in the criminal justice system), so why (would inexperienced Title IX coordinators be expected to do so)?”*

The key challenge here may be balancing different assessments of what it means to “be professional.” While some of the interviewees were, perhaps, less definitive in their exhortation of the need to professionalize, there was widespread agreement on the need for quality training and the difficulty in finding convenient, appropriate or affordable training and time for such training for investigators in their institutions. In regard to the issue of training and the need to professionalize, one coordinator from a very large, private, university stated that *“Title IX investigators and coordinators are the most maligned set of individuals”* and went on to assert that the training that is being delivered by some organizations is *“thin and poor”* and that it is even *“exploitative and predatory”* (i.e., that some take advantage of the desperation that leads to the high demand for training). Indeed, to professionalize this work high quality training is needed. Such training, as some suggest, may require tapping into the skills of the most experienced individuals and may lead to revision of current training priorities.

Resources, institutional structure, and authority. In the current climate of increased reports of sexual assault inspired by the #MeToo movement, concerns were raised about how Title IX coordinators can achieve justice in an environment of scarce resources. Large or small, if the institution did not have or did not devote resources to the Title IX office and its functions, there were considerable difficulties reported by Title IX coordinators in accomplishing the goals. For example, not having enough and properly trained investigators created a large workload for some. In addition, IHEs often did not provide sufficient resources to help change the campus culture and deal with the critical issues raised in these interviews.

As one Title IX coordinator put it, *“When the office is swamped with work it becomes difficult to have an effective response.”* In addition, one coordinator asserted, it all comes down to *“time, money, and authority.”* A frequent call was for the support of senior leadership and for the

removal of administrative siloes that kept Title IX administratively separated from other units and, in the opinion of many, powerless to effect change. Coordinators described the challenges of seeking the authority and capacity to follow through with their mandates. They also pointed out the difficulty encountered when they were charged with conflicting roles, such as when the Title IX Coordinator is also the Dean of Students.

In schools where the Title IX coordinator does not get appropriate support (and authority), the concern was that the professionalism suffers and the educational mission and responsibility are overlooked in favor of exceptions that are made for star students or decision-making that reflects the preferences of donors. Without support for Title IX and an institution-wide response to sexual assault, the Title IX coordinators suggested that time, effort, and resources are more likely to be spent by the IHE's leaders on concerns about the institution's reputation than on making the response to sexual assault effective.

Title IX Coordinators' expectations for the future. These interviews took place at a time of upheaval for Title IX and for guidelines on responding to sexual assault at colleges and universities. The laws in many states had changed and were continuing to be revised or vetted, mostly in accord with the principles reflected in the Obama era guidance. Yet because of some civil suits, challenges arose (e.g., Circuit court decisions mandated changes in procedures including one circuit opinion which directed the IHEs to hold adversarial hearings.) Most critical, the U.S. Department of Education imposed new guidelines in September 2017 and announced planned changes in policy, which, at the time of the interviews and of the writing of this report, have not been finalized. One interviewee said that what s/he has been spending much time on is *"keeping up with what is going on as a pendulum swings."* In contrast to claims made by the U.S. Department of Education, many Title IX coordinators reported strong efforts to *"be conscious of the rights of the accused in spite of what others are saying."* While recognizing concerns about coming changes, many reported that they continue to be guided by state law and institutional policies. As one Title IX coordinator from a medium-sized public university in the northwest bluntly put it, *"We are standing behind the 2014 (Obama) policies - come hell or high water."*

New procedures as a result of the 6th circuit ruling (U.S. Court of Appeals, 2019), according to one interviewee, will result in the report going to a hearing where both parties will appear at the same time (but at this IHE the hearings will occur electronically so they are not in the same place at the same time). One Title IX coordinator reflected the concerns of many about the *"chilling effect this change may have on reporting."* Another coordinator from a small religious school in the northeast said, *"new rules coming in are super concerning."* Few *"want to see colleges turn into courtrooms."* Another pointed out that these new changes do not *"feel trauma informed."* In addition, some find the *"cross-examination piece super concerning."* One interviewee pointed out that the *"proposed rules (from the U.S. Department of Education) are in direct conflict with State law."*

The consensus from those interviewed seemed to be that there are new regulations that are or could be both positive and negative. The fact, however, that so much has changed makes it *"frustrating to deal with, it is and confusing for students."* One interviewee from a large private university went on to say, the rumored changes are *"heartbreaking"* and *"everything will change"*

in the next few months and the significant guidance will be criticized.” In addition, a coordinator from a large private university in the northwest told us *"No one will trust our findings. Politics is playing a big part - it is a political rollercoaster."* Many expressed concerns that fewer students will report sexual assault under the proposed new guidelines.

Nevertheless, all are awaiting the federal guidelines while continuing to consider options for addressing off-campus assaults, live hearings with direct cross-examination, and changes in investigatory practices and evidentiary standards. As one Title IX coordinator from a large public university in a western state put it *"The Title IX machine has shifted so much time and energy to responding...we just aren't growing our prevention programs as well as we are growing our Title IX protocol."* Another said, *"fear about litigation leads to more resources (given) to responding after the fact and there is a need for more prevention and education."* Indeed, many Title IX coordinators commented on resources being shifted to the legal side and called for more resources for outreach, prevention and education.

Dissemination, Discussion and Implications of the Research

This research has identified numerous approaches to and challenges of responding to sexual assault complaints in colleges and universities in the U.S. The work of this project will be disseminated on our website (<http://www.wcwoonline.org/jgbvr>) and through guidelines such as the prepared guidance for institutions to conduct a website self-evaluation (see appendix D). In addition, we are developing a digest of investigative and adjudicative approaches and a link to our cluster analysis and the interview findings. Finally, we will prepare web resources and reports detailing the wide array of models of sexual assault responses used on college campuses. Scholarly presentations, articles, and white papers are planned.

Based on the environmental scan and the interviews with Title IX coordinators, one important finding is that we have not identified clearly distinct and mutually exclusive models for responding to sexual assault on college campuses. While models of investigation and adjudication based on the details described on the IHE websites identified some themes and preliminary typologies of investigatory and adjudicative responses to sexual assault on college campuses, we found that there is no one model associated with IHEs of a certain size, geographic location, or sector (public, private or religiously affiliated). Instead we found extreme variation in the information made available to the public (and to the students) on the IHE websites and in the approaches to investigation and adjudication described by the Title IX coordinators interviewed.

We did find that the institution's administrative structure and the resources allocated were a key part of the assessment Title IX coordinators made of the effectiveness of the approaches used and the challenges they faced. The number of complaints and the resources available clearly frame the challenges faced in the investigation and adjudication of complaints of sexual assault and we have found that there is no "one size fits all" model on the horizon. In addition, we learned how possible conflicts of interest (necessitating the appointment of different investigators or adjudicators) and the nature of the behavior alleged in the complaint might affect the approach taken in the investigation and adjudication. This was more important than any one

“model” for investigation or adjudication. Even in institutions with a requirement of a formal investigation, approval of findings by a board, an adjudicatory hearing, or a sanctioning board, many complaints never reach these stages. More focus on early stages of complaint processing (remedies available, the role of advocates, and institutional climate, for example) may be an important next step in future research.

Regardless of the format of the investigation and adjudication, which we have found varied considerably across institutions, the challenges mentioned by the Title IX coordinators are many.

- In regard to investigation, when reports increase there is a need for an increased number of well-trained investigators, whether these are from within the IHE community, from public safety, or from external sources.
- There is a need to improve Title IX office connections on campus and to cultivate trust in the community.
- Support from the top is critical to the success of the office of the Title IX coordinator. Such support includes resources, visibility of the office, and leadership that highlights the importance of the Title IX activities including reporting, investigation, and adjudication—but also including prevention
- Much depends on the level of institutional support received, not only in terms of funding but also in terms of providing an administrative structure that does not silo the Title IX office off in a way that diminishes the Title IX coordinator’s authority or isolates them from the larger campus community.
- Institutional support is needed to lower barriers to reporting by students, by faculty and by staff and thus providing a culture in which sexual harassment and assault are understood and not tolerated.

More research is needed in a number of areas. A new review of IHE websites could be undertaken to examine changes and also to assess the extent to which institutions utilize the recommendations found in this report. A next step would be to assess the extent to which what IHEs represent on their websites comports with the reality within the institution. Further research is also needed to examine in detail the implementation of a variety of approaches to investigation and adjudication and to examine how different models impact all parties involved. Only then can recommendations be made for best practices. Assessment of models in sample of IHEs of differing sizes, locales, and administrative structures is needed to evaluate the success on a variety of levels including responding to complaints, student satisfaction, and reduction of sexual assault as measured via official reporting and climate surveys.

In addition to understanding the diversity of responses, we also see emerging in the Title IX arena a complex interplay of old guidelines, state laws, federal circuit court rulings and guidance coming out of law suits, institutional mandates and the speculation about the much anticipated new guidelines from the current administration. It will be important to understand the current state of the field when designing the IHEs response to the new guidelines and to campus sexual assault. This is an important area for new research on the interplay of laws, policy, and practice.

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Table 1. Geographic distribution of schools in web scan

Region		
	Number	%
US Military schools	5	.5
<i>New England</i> CT ME MA NH RI VT	87	9
<i>Mid-East</i> DE DC MD NJ NY PA	177	18
<i>Great Lakes</i> IL IN MI OH WI	143	15
<i>Plains</i> IA KS MN MO NE ND SD	109	11
<i>Southeast</i> AL AR FL GA KY LA MS NC SC TN VA WV	227	23
<i>Southwest</i> AZ NM OK TX	78	8
<i>Rocky Mountains</i> CO ID MT UT WY	32	3
<i>Far West</i> AK CA HI NV OR WA	111	12
Total	969	100

Table 2. Locale classification distribution of schools

	Sample	
	Number	%
City	504	52
Suburb	221	23
Town	190	20
Rural	54	6
Total	969	100.0

Table 3. Sector of institution by size of student body

	Under 1,000	1,000 - 4,999	5,000 - 9,999	10,000 - 19,999	20,000 and above	Total
Public, 4-year or above	12 6%	75 18%	74 59%	91 68%	97 85%	349 36%
Private not-for-profit, 4-year or above	143 77%	317 77%	52 41%	40 30%	16 14%	568 59%
Private for-profit, 4-year or above	30 16%	18 4%	0 0%	3 2%	1 1%	52 5%
Total	185 100%	410 100%	126 100%	134 100%	114 100%	969 100%

Table 4. Institutional characteristics

	% Yes (N=969)
With a religious affiliation	35%
With a Title IX complaint filed (as of June 2016)	11%
With an NCAA Division 1 football team	10%
Offer on-campus housing	90%

Table 5. Locating information in websites

Locating Basic Information on websites (N=969)	% yes*
Does the website provide a definition of sexual assault/ sexual misconduct?	93
Does the website provide information pertaining to Title IX or Title IX affiliated office?	93
Does the website provide guidance on reporting sexual assault?	94
Does the website provide information on who investigates reports of sexual assault?	91

*None of the above=33 schools

Table 6. Web Provides Sexual Assault Definitional Elements

Sexual assault definitional elements (N=936)	% yes
Q6. Does the definition mention consent in relation to sexual assault	88
Q9. Does the definition discuss inability to consent due to incapacitation related to alcohol use	78
Q10. Does the definition discuss inability to consent due to incapacitation related to drug use	78
Q12. Website identifies as sexual misconduct sexual contact through coercion	83

Table 7. Reporting information provided: contact person(s)

Information is provided on reporting a sexual assault to... (N=936)	% yes
Title IX coordinator	90
Campus security/law enforcement	84
Local law enforcement	75

Table 8. Title IX Coordinator Titles

Does Title IX coordinator have another title? (N=936)	%
HR-EEO-compliance	28
Student affairs	29
Other	2
No	36
Could not locate	4
Total	100

Table 9. Reporting and Recommendations

Reporting sexual assault (N=936)	% yes
Q37. Is there an option for anonymous reporting?	67
Q50. Is there recommendation to preserve evidence?	68
Q51. Is there recommendation to get medical services?	83
Q52. Is there a recommendation to get counseling?	72

Table 10. Law Enforcement Notification Information Found

Will police be notified if sexual assault is reported to campus official (N=936)	% yes
Yes, if campus safety is a concern	20
Yes, at victims request	49
Yes, other circumstances	4
Yes, no circumstances mentioned	16
No information	31

Table 11. Post report Victim¹ Involvement

Is the victim required to participate in the investigation after a report? (N=936)	
Yes	18%
No	40%
Could not locate	42%
Total	100%

¹ We use the terms “victim” and “perpetrator” in these tables to refer to the complainant and the respondent or accused.

Table 12. Interim Measures Described

	% yes
Are interim measures available? (N=936)	77
	Options
Academic arrangements for victim	69
Academic arrangements by perpetrator	50
Housing or dining reassignments by victim	62
Housing and dining arrangements by perpetrator	49
Suspension of perpetrator	43
Changes to work arrangements for victim	52
Changes to work arrangements for perpetrator	43
Removal from sports	23
No contact order	22
Leave of absence	2
Does website offer guidance on how to obtain interim measures?	57

Table 13. Advisors

Are alleged perpetrators allowed to have advisors at hearings or meetings? (N=936)	%
Yes	74
No	8
Other	1
Could not locate	17
Total	100
Are victims allowed to have advisors at hearings or meetings? (N=936)	%
Yes	74
No	6
Other	1
Could not locate	19
Total	100

Table 14. Standard of Proof

What is the standard of proof used to determine responsible vs. not responsible? (N=936)	%
Preponderance of evidence	72
Beyond reasonable doubt	7
Other, specify	.05
Could not locate	20
Total	100

Table 15. Determining Responsibility

What campus actors are involved in determining responsibility (N=936)				
	% Yes	Are students involved?		
		Yes	No	No info
General conduct board	24	18%	34%	48%
Conduct Board specific for sexual assault	28	9%	47%	44%
Administrative panel	17			
Sole campus administrator	17			
Investigator	9			
Other	1			
No information	4			

Table 16. Hearing Questioning

Are alleged perpetrators allowed to question the victim? (N=936)	% Yes
Yes, face to face	2
Yes, through submitting written questions	10
Yes, but no details on method of questioning	13
Could not locate	60
Yes, by other means, specify	2
No	13
Total	100
Are victims allowed to question the alleged perpetrator? (N=936)	
Yes, face to face	2
Yes, through submitting written questions	11
Yes, but no details on method of questioning	14
Could not locate	61
No	12
Total	100

Table 17. Determining Sanctions

What campus actors are involved in determining sanctions? (N=936)				
	% Yes	Are students involved?		
		Yes	No	No info
General conduct board	22.2	18%	35%	46%
Conduct Board specific for sexual assault	18.4	10%	49%	37%
Administrative panel	17.6			
Sole campus administrator	18.9			
Could not locate	22.8			
Other, please specify	0.1			
Total	100			

Table 18. Sanctions

Possible sanctions when found responsible (N=936)	
	% Yes
Expulsion	78
Suspension	74
Probation	60
Warning	53
Change of residence	45
Awareness training	36
Monetary damages	30
Mental health evaluation	28
Transcript note	22
Could not locate	18
Local law enforcement notice	15
Loss of privileges	7
Community service	6
No contact order	5
Parental notification	1
Schedule changes	1
Apology	1

Table 19. Appeals

Is there an appeal process? (N=936)	% Yes
Yes, either victim or offender may appeal	75
Yes, only offender may appeal	7
No	2
Could not locate	16
Total	100%

Table 20. Sexual Assault Statistics

Are there sexual assault statistics available? (N=936)	% Yes
Yes, climate survey	22
Clery Act -- Official statistics	78
Other	2
Could not locate	14

Table 21. Mandatory Student Education

Is there a required education course for students on student conduct/sexual assault awareness? (N=936)	% Yes
Yes	61
Could not locate	39
Total	100

Table 22. Bystander Education Program

Is there a bystander program on campus? (N=936)	% Yes
Yes	46
Could not locate	54
Total	100

Table 23. Investigation Three Cluster Probability Profiles				
	Cluster1	Cluster2	Cluster3	Overall
Cluster Size (modal)	0.42	0.4	0.18	1.0
<u>Variables</u>				
q59. Title IX person involved in investigation				
No	0.2671	0.024	0.0718	0.141
Yes	0.7329	0.976	0.9282	0.859
q59. Campus LE involved in investigation				
No	0.812	0.6598	0.0031	0.6154
Yes	0.188	0.3402	0.9969	0.3846
q59. Local law enforcement involved in investigation				
No	0.9066	0.896	0.166	0.7756
Yes	0.0934	0.104	0.834	0.2244
q59. Other Admin (Dean, HR)				
No	0.6806	0.4179	0.2169	0.5011
Yes	0.3194	0.5821	0.7831	0.4989
Q44. MOU with local law enforcement				
Yes	0.0957	0.5163	0.8339	0.3825
No/could not locate	0.9043	0.4837	0.1661	0.6175
Q70. Is there policy prohibiting retaliatory behavior against witnesses in proceedings?				
Yes	0.6693	0.9735	0.5759	0.7692
No/Could not locate	0.3307	0.0265	0.4241	0.2308
q75.q77 Can victims have lawyers/advisors				
Yes advisors can be lawyers	0.1732	0.5208	0.0228	0.2799
Yes advisors but not lawyers	0.5188	0.3953	0.6899	0.5011
No advisors	0.0046	0.0673	0.044	0.0353
Could not locate	0.3034	0.0166	0.2433	0.1838
q80. Sanctions				
Could not locate	0.3789	0.0212	0.2976	0.2286
Minor	0.1676	0.052	0.282	0.1432
Moderate	0.1916	0.0747	0.0006	0.1143
Maximum	0.262	0.852	0.4198	0.5139

Table 24. Covariate Profiles (inactive)				
	Cluster 1	Cluster 2	Cluster 3	Overall
q58. Are there details on who investigates sexual assault complaints				
No	0.0947	0.0146	0.0695	0.0598
Yes	0.9053	0.9854	0.9305	0.9402
q61. Is there time limit for when report has to be made for formal investigation?				
Yes (specify time)	0.1137	0.068	0.113	0.0962
No	0.232	0.5798	0.5864	0.4253
Could not locate	0.6543	0.3522	0.3006	0.4786
q62. Is victim required to participate in the investigation after a report?				
Yes	0.0515	0.343	0.1313	0.1763
No	0.3489	0.3832	0.5873	0.4028
Could not locate	0.5996	0.2738	0.2814	0.4209
q64. Is there a time frame for when alleged perpetrators notified of investigation?				
Yes, specify how long	0.1442	0.0853	0.0757	0.11
Could not locate	0.8267	0.5719	0.4405	0.6634
No	0.029	0.3428	0.4839	0.2266
q66. How are concurrent investigations involving sexual misconduct handled between investigators and local law enforcement?				
Handled collaboratively	0.1989	0.2759	0.7567	0.3238
Law enforcement takes priority	0.0709	0.2549	0.0334	0.1346
Unclear	0.1771	0.2076	0.0919	0.1741
Campus takes priority	0.0161	0.043	0.0121	0.0256
Could not locate	0.537	0.2186	0.1059	0.3418
q68. Policy prohibiting retaliatory behavior against victim reporters?				
Yes	0.8231	0.9881	0.7028	0.8654
No/Could not locate	0.1769	0.0119	0.2972	0.1346
q69. Policy prohibiting retaliatory behavior against third party reporters?				
Yes	0.7691	0.9836	0.6729	0.8344
No/Could not locate	0.2309	0.0164	0.3271	0.1656

Table 24. Covariate Profiles (inactive), cont.				
	Cluster 1	Cluster 2	Cluster 3	Overall
q81. Interim measures for victim not wishing to participate in an investigation?				
Yes	0.2007	0.5507	0.5707	0.3975
No	0.0177	0.0435	0.0564	0.0342
Could not locate	0.7816	0.4058	0.3729	0.5683
q82. website offers guidance on how to obtain interim measures?				
Yes	0.4371	0.7837	0.5696	0.5919
No/Could not locate	0.5629	0.2163	0.4304	0.4081
q84. information on time frame for completing the investigation after a report?				
Yes, specify time frame	0.5045	0.4615	0.5179	0.4904
Could not locate	0.4492	0.194	0.2781	0.3226
No	0.0463	0.3445	0.204	0.187
q83. Policy on interim measures				
interim measures-at victims request	0.1326	0.1445	0.3552	0.1753
Interim Measures on a Case by Case	0.2837	0.6252	0.2064	0.4006
Could no locate	0.5837	0.2303	0.4384	0.4241
q59. Other independent investigator involved in investigation?				
No	0.835	0.8638	0.5301	0.7937
Yes	0.165	0.1362	0.4699	0.2063
q60. Is there mention of sexual assault training for investigative unit or office?				
No	0.3316	0.0926	0.1126	0.203
Yes	0.6684	0.9074	0.8874	0.797

Table 25. Adjudication Three Cluster Probability Profiles				
	Cluster1	Cluster2	Cluster3	Overall
Cluster Size (modal)	.57	.24	.18	1.00
<u>Variables</u>				
q90. What campus actors are generally involved in determining if a person is responsible for violation?				
General conduct board	0.2789	0.1733	0.2123	0.2436
Conduct board specific to handling sexual assault	0.1592	0.6015	0.2659	0.2831
Administrative panel	0.1651	0.2157	0.0718	0.1645
Sole campus administrator	0.2248	0.0088	0.19	0.1667
Investigator	0.1391	0.0006	0.0605	0.094
Could not locate	0.0329	0.0001	0.1995	0.0481
q115. Is there an appeal process?				
Yes, either victim or offender may appeal	0.9151	0.7749	0.1951	0.7799
Yes, only offender may appeal	0.0314	0.2035	0.0228	0.0726
No	0.0115	0.0214	0.0495	0.0192
Could not locate	0.042	0.0002	0.7326	0.1282
q112.Does sanctioning process allow victim impact statements?				
Yes	0.1517	0.7542	0.0217	0.2821
No	0.0335	0.244	0.0343	0.0855
Could not locate	0.8148	0.0018	0.9439	0.6325
q111. Sanctions				
Could not locate	0.0966	0.0121	0.6783	0.157
Moderate	0.032	0.0088	0.0349	0.0267
Major	0.8714	0.9791	0.2868	0.8162
q95.Does the policy mention that the victim’s prior sexual behavior will not be considered in adjudication process?				
Could not locate	0.716	0.0025	0.8571	0.5598
Yes	0.284	0.9975	0.1429	0.4402
q100. Are alleged perpetrators allow to present witnesses at proceedings				
No/could not locate	0.1884	0.0097	0.7994	0.2297
yes	0.8116	0.9903	0.2006	0.7703
q85.Is there a restorative justice/reintegration for alleged perpetrators who accept responsibility for violation before adjudication proceedings begin?				
Yes	0.0449	0.6452	0.0027	0.187

Table 25. Adjudication Three Cluster Probability Profiles, cont.				
	Cluster1	Cluster2	Cluster3	Overall
Could not locate	0.9551	0.3548	0.9973	0.813
q97. Does policy mention there is possibility that information from confidential sources sought by victim may be admitted under legal ruling/hearing in an adjudication proceeding?				
Yes	0.1038	0.9305	0.1201	0.3098
Could not locate	0.8962	0.0695	0.8799	0.6902

Table 26. Adjudication Covariate Profiles (inactive)				
Investigation 3 Cluster Classification				
1. Single Investigator	0.5218	0.0359	0.6494	0.4199
2. quasi-cj	0.3825	0.6164	0.1224	0.4038
3. collaborative	0.0957	0.3477	0.2282	0.1763
q92 Role of investigator determining alleged perpetrator responsible/not responsible				
Present results to board/administrators for review in making	0.4944	0.4177	0.2642	0.4433
Participates directly with administration in determining the	0.138	0.5406	0.0918	0.2308
Has sole responsibility for determining responsible/not responsible	0.1668	0.0343	0.0627	0.1196
No role in determining responsible/not responsible	0.2007	0.0074	0.5813	0.2063
q93. Does alleged perpetrator have adjudication format choice?				
Yes	0.0789	0.3635	0.0064	0.1389
No	0.2201	0.591	0.1701	0.3045
Could not locate	0.7011	0.0455	0.8235	0.5566
q98. Mention the possibility that information from confidential sources sought by offender admitted under legal ruling				
Yes	0.0755	0.9028	0.0721	0.2789
Could not locate	0.9245	0.0972	0.9279	0.7211
q99_3 During disciplinary proceedings, victim's participation options? (Check all that apply)-No participation				
Participate as complainant or witness	0.2844	0.7193	0.1659	0.375
No participation	0.3556	0.2686	0.1201	0.3012
Could not locate	0.3601	0.0121	0.714	0.3238
q102. Are alleged perpetrators allowed to question the victim?				
No	0.1722	0.0975	0.0499	0.1367
Yes	0.1216	0.8301	0.0052	0.28
Could not locate	0.7062	0.0724	0.9449	0.5833
q104 Are Victims allowed to present witnesses at hearings?				
No/Could not locate	0.2082	0.0435	0.7987	0.2501
Yes	0.7918	0.9565	0.2013	0.7499

Table 26. Adjudication Covariate Profiles (inactive), cont.				
q108. Standard of evidence used in determining responsibility				
Preponderance of evidence	0.8706	0.6915	0.3529	0.7541
Beyond reasonable doubt	0.0052	0.2686	0.0005	0.0695
Could not locate	0.1241	0.0399	0.6466	0.1764
q109. What campus actors involved in determining sanctions				
General conduct board	0.2579	0.236	0.0943	0.2297
Conduct board specific to handling sexual assault	0.1078	0.4726	0.0543	0.1902
Administrative panel	0.1731	0.2588	0.0903	0.1827
Sole campus administrator	0.2744	0.0233	0.1445	0.1944
Could not locate	0.1867	0.0093	0.6166	0.2031

Table 27: Interviewees institution size and type

Institution	Public	Private Not Religiously Affiliated	Private Religiously Affiliated	Total Interviewed	Target
Size	Interviewed	Interviewed	Interviewed	n (%)	%
<1000	1	1	2	4 (9%)	18%
1000-4999	4	10	9	23 (49%)	42%
5000-9999	4	1	2	7 (15%)	13%
10000-19999	3	0	2	5 (11%)	14%
20000+	6	2	0	8 (17%)	13%
Total n (%)	18 (38%)	14 (30%)	15 (32%)	47 (100%)	
Target	38%	28%	34%		100%

Table 28: Current Roles of Interview Sample (n=47)

Role	% (n)
Coordinator of Title IX Process	92% (43)
Initial Review	68% (32)
Investigator	38% (18)
Adjudicator	28% (13)
Sanctioner	23% (11)
Appeals Arbiter	2% (1)
Advisor/Advocate Victim	9% (4)
Advisor/Advocate Accused	4% (2)
Investigator for a Criminal Justice Process	6% (3)
Decision Maker for a Criminal Justice Process	9% (4)

Table 29: Training Modalities

Type of Training	% (n)
Online	47% (22)
In Person	
On campus	30% (14)
At a Conference	60% (28)
Elsewhere	28% (13)

APPENDICES

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Appendix A: Web Scan Data Collection Form A-1

Appendix B: TIX Coordinator Pre-Interview Survey..... B-1

Appendix C: IHE/TIX Coordinator Interview Protocol..... C-1

Appendix D: Draft Website Checklist..... D-1

RSACscaninventory

Q1 Please take note of when you start this scan, so you can enter the duration of your work on this session at the end of this list of questions. If you need to take a break in the middle of this scan, make sure to close your browser before you leave your desk.

THIS INSTRUCTION HAS CHANGED: Enter the 8-digit code for this session, no spaces (for example, 00112244). For instructions, see your training handout.

Q2 SECTION 1: SEXUAL ASSAULT DEFINITION

Q3 LOCATION EFFORT QUESTION: Does the website provide a definition of sexual assault? Instructions for search: From school homepage enter recommended search term 1. "sexual assault"; view results and answer options below; if necessary, enter recommended search term 2: "sexual misconduct"

- Yes, was able to locate definition using search term 1, directly on results page
- Yes, was able to locate definition using search term 1, first link from results page
- Yes, was able to locate definition using search term 1, first link and 1 subsequent link from results page
- Yes, was able to locate definition using search term 2 directly on results page
- Yes, was able to locate definition using search term 2, first link from results page
- Yes, was able to locate definition using search term 2, first link and 1 subsequent link from results page
- Yes, was able to locate, but with additional effort beyond above
- Could not locate

Q4 In what you found above, is the sexual assault definition embedded within a sexual harassment or discrimination policy or context?

- Yes
- No
- Could not locate definition

Q5 Does the definition cover attempted sexual assault?

- Yes
- No
- Could not locate definition

Q6 Does the website provide a definition or description of consent in relation to sexual assault or misconduct?

- Yes
- Could not locate

Q7 Does the website provide a definition or description of affirmative consent in relation to sexual assault or misconduct?

- Yes
- Could not locate

Q8 Does the website define or describe sexual misconduct or sexual assault as sexual contact with someone who is unable to consent due to incapacitation?

- Yes
- Could not locate

Q9 Does the website define or describe sexual misconduct or sexual assault as sexual contact with someone who is unable to consent due to incapacitation or intoxication resulting from alcohol use?

- Yes
- Could not locate

Q10 Does the website define or describe sexual misconduct or sexual assault as sexual contact with someone who is unable to consent due to incapacitation or intoxication resulting from drug use?

- Yes
- Could not locate

Q11 Does the website define or describe sexual misconduct or sexual assault as sexual contact with someone who is unable to consent due to psychological or physical impairment (not related to substance use)?

- Yes
- Could not locate

Q12 Does the website define or describe sexual misconduct or sexual assault as sexual contact through coercion (duress, threat, force, deception)?

- Yes
- Could not locate

Q13 Is there a policy stating that school code of conduct applies to sexual assault by students occurring while they are off campus? (hint: may be covered in a "scope of the policy" section)

- Yes, policy language explicitly states that policy applies to students when off campus
- No, policy language explicitly states that policy refers only to students on campus
- No, policy language does not explicitly differentiate between students when on and off campus
- Decided on a case by case basis by a University representative
- Could not locate

Q14 Is there information pertaining to Title IX or Title IX-affiliated office (i.e. Office of Institutional Equity)?

- Yes
- Could not locate

Q15 If yes to above, does Title IX information indicate that Title IX pertains to reporting of sexual assault?

- Yes
- No
- Not applicable

Q16 If yes to above, is the language provided in gender neutral terms? (i.e. uses language that indicates a person can be male, female, or transgender; or generally uses the generic word "they.")

- Yes
- No
- Not applicable

Q17 Please provide any comments or insights on the preceding questions/answers.

Q18 SECTION 2: SEXUAL ASSAULT REPORTING

Q19 LOCATION EFFORT QUESTION: Does the website provide any guidance on reporting sexual assault? Instructions for search: From school homepage enter recommended search term 1. "report sexual assault;" view results and answer options below; enter recommended search term 2, if necessary: "reporting a sexual assault"

- Yes, was able to locate information using search term 1, directly on results page
- Yes, was able to locate information using search term 1, first link from results page
- Yes, was able to locate information using search term 1, first link and 1 subsequent link from results page
- Yes, was able to locate information using search term 2, directly on results page
- Yes, was able to locate information using search term 2, first link from results page
- Yes, was able to locate information using search term 2, first link and 1 subsequent link from results page
- Yes, was able to locate, but with additional effort beyond above
- Could not locate

Q20 Is there information on how to make a sexual assault report to the Title IX Coordinator or Liaison or Office?

- Yes
- Could not locate

Q21 If yes to above, is contact information provided? (check all that apply)

- Yes, by email
- Yes, by phone
- Yes, by campus location
- Yes, by name (person)
- Not applicable

Q22 Does the Title IX Coordinator have another administrative title within the university?

- Yes, Provost
- Yes, Dean of Students
- Yes, Other, specify _____
- No
- Could not locate

Q23 Is there information on how to report sexual assault to campus security / law enforcement?

- Yes
- Could not locate

Q24 If yes to above, is contact information provided? (check all that apply)

- Yes, by email
- Yes, by phone
- Yes, by campus location
- Yes, by name
- Not applicable

Q25 Is there information on how to report a sexual assault to local law enforcement?

- Yes
- Could not locate

Q26 If yes to above, is contact information provided for reporting a sexual assault ? (check all that apply)

- Yes, by email
- Yes, by phone
- Yes, by street address
- Yes, by name (person)
- Not applicable

Q27 Is there guidance on reporting sexual assault to other campus personnel, and if yes, is contact information provided? (Select an answer for each given campus personnel.)

	No	Yes, by email	Yes, by phone	Yes, campus location	Yes, by name
Faculty	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Coaches/athletic personnel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Student work supervisors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Residential life	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dean of Students	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Health services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Counseling services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Disability services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Diversity offices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Women's resource center	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victim services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ombudsman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other staff; specify	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q28 Does the website indicate if any of the following campus personnel are designated as mandatory reporters or responsible employees (meaning they must divulge the name of the person who reports) and required to officially report to the college once they are made aware of an assault? Check all that apply.

- Yes, faculty
- Yes, administrators (i.e. Dean of Students)
- Yes, student supervisors (i.e. coaches, residential life)
- Yes Ombudsmen
- Yes, but policy is not specific about which employee categories
- Yes, other, specify _____
- Could not locate

Q29 If yes to previous question, to whom must a responsible employee/mandated reporter report the incident? Check all that apply.

- Title IX Officer or Liaison
- Campus security / law enforcement
- Local Police
- Other, specify _____
- Could not locate
- Not applicable

Q30 Is a sexual assault reported to college counseling services confidential?

- Yes
- Yes, but conditional (enter "not if minor involved" and / or "not if campus safety is a concern" as applicable)
- _____
- No
- Could not locate

Q31 Is a sexual assault reported to college health services confidential?

- Yes
- Yes, but conditional (enter "not if minor involved" and / or "not if campus safety is a concern" as applicable)
- _____
- No
- Could not locate

Q32 Is a sexual assault reported to college religious services confidential?

- Yes
- Yes, but conditional (enter "not if minor involved" and / or "not if campus safety is a concern" as applicable)
- _____
- No
- Could not locate

Q33 Is a sexual assault reported to university administrators (e.g. Ombudsmen) confidential?

- Yes
- Yes, but conditional (enter "not if minor involved" and / or "not if campus safety is a concern" as applicable)
- _____
- No
- Could not locate

Q34 If yes to above, specify which university administrators sexual assault confidentiality is discussed for.

Q35 Is a sexual assault reported to other college victim services confidential?

- Yes
- Yes, but conditional (enter "not if minor involved" and / or "not if campus safety is a concern" as applicable)
- _____
- No
- Could not locate

Q36 If yes to above, specify which other college victim services sexual assault confidentiality is discussed for.

Q37 Is there an option provided for anonymous victim or student reporting of a sexual assault?

- Yes
- Could not locate

Q38 Will campus security / law enforcement be notified if a sexual assault is first reported to campus officials (i.e. Title IX coordinator or liaison)? Check all that apply.

- Yes, if campus safety is a concern
- Yes, at victim's request
- Yes, under other circumstances, specify _____
- Yes, but no special circumstances specified
- Could not locate

Q39 Will campus officials be notified if a report is first made to campus security / law enforcement? Check all that apply.

- Yes, if campus safety is a concern
- Yes, at victim's request
- Yes, under other circumstances, specify _____
- Yes, but no special circumstances specified
- Could not locate

Q40 Will campus officials be notified if the on-campus incident is first reported by the victim to local law enforcement?

Check all that apply.

- Yes, if campus safety is a concern
- Yes, at victim's discretion
- Yes, under other circumstances, specify _____
- Could not locate

Q41 Is there any indication that campus staff have training on responding to reports of sexual assault?

- Yes
- Could not locate

Q42 Does the website provide information about state laws about the crime of rape and sexual assault?

- Yes
- Could not locate

Q43 Which of the following are listed as general responsibilities of campus security / law enforcement. Check all that apply.

- Answer emergency calls
- Answer routine calls
- Monitor security cameras
- Investigate reported crimes
- Authority to make arrests
- Other, specify _____
- Could not locate

Q44 Is there a memorandum of understanding between the University (including campus security / law enforcement) and local law enforcement?

- Yes
- Could not locate

Q45 Will local law enforcement be notified when a sexual assault is reported to campus officials? (check all that apply)

- Yes, if University personnel decide campus safety is a concern
- Yes, at victim's request
- Yes, under other circumstances, specify _____
- Yes, but no circumstances mentioned
- Could not locate

Q46 Is reporting to local law prosecutors required?

- Yes, if University personnel decide campus safety is a concern
- Yes, at victim's request
- Yes, under other circumstances, specify _____
- Yes, no circumstances mentioned
- Could not locate

Q47 Is there a policy describing any (amnesty, Good Samaritan) protection for reporting students from alcohol use consequences?

- Yes, policy states that no students will be disciplined
- Yes, policy states that amnesty or other protection will be at the discretion of the school
- Could not locate

Q48 Is there an amnesty or Good Samaritan policy describing any protection for reporting students from drug use consequences?

- Yes, policy states that no students will be disciplined
- Yes, policy states that amnesty or other protection will be at the discretion of the school
- Could not locate

Q49 Is there an amnesty or Good Samaritan policy describing any protection for reporting students from other infractions?

- Yes, policy states that no students will be disciplined
- Yes, policy states that amnesty or other protection will be at the discretion of the school
- Could not locate

Q50 Is there information about preserving evidence in the aftermath of sexual assault? (check all that apply)

- Yes, Not washing or showering
- Yes, Preserve clothing and bedding
- Yes, Preserve electronic evidence (texts, emails)
- Yes, Other (specify) _____
- Could not locate

Q51 Is there a recommendation to seek a medical exam after an assault?

- Yes
- Could not locate

Q52 Is there a recommendation for victims to seek counseling services after an assault?

- Yes
- Could not locate

Q53 Is the cost for a medical exam provided by on-campus medical services covered by the university?

- Yes
- Yes, unless a minor
- No
- Could not locate

Q54 Are medical services sought at off-campus health service providers confidential?

- Yes
- Yes, unless a minor
- No
- Could not locate

Q55 Is the cost for a medical exam provided by off-campus medical services covered by the university?

- Yes
- Yes, unless a minor
- No
- Could not locate

Q56 Please provide any comments or insights on the preceding questions/answers.

Q57 SECTION 3: SEXUAL ASSAULT INVESTIGATION

Q58 LOCATION EFFORT QUESTION: Does the website provide any information on who ON CAMPUS conducts sexual assault investigations after a sexual assault on campus is reported to campus officials? Instructions for search: From school homepage enter recommended search term 1. "sexual assault investigation"; view results and answer options below. 2. WHAT IS SEARCH TERM 2, IF ANY?

- Yes, was able to locate information using search term 1, directly on results page
- Yes, was able to locate information using search term 1, first link from results page
- Yes, was able to locate information using search term 1, first link and 1 subsequent link from results page
- Yes, was able to locate information using search term 2, directly on results page
- Yes, was able to locate information using search term 2, first link from results page
- Yes, was able to locate information using search term 2, first link and 1 subsequent from results page
- Yes, was able to locate, but with additional effort beyond above
- Could not locate

Q59 Who is responsible for the investigation of sexual assault reported to campus authorities? Select an answer for each option. If yes, also select whether this party has primary responsibility.

	Is responsible for investigation			
	Yes, and primary responsibility	Yes, but not primary	Yes, but role unclear	Could not locate
Title IX coordinator/liaison	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Dean of Students	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Campus law enforcement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other campus employee/office, specify:	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Independent investigator	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Local law enforcement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other off-campus, specify	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q60 Is there mention of sexual assault training for investigative unit or office?

- Yes
- Could not locate

Q61 Is there a time limit for when the report has to be made in order for there to be a formal investigation?

- Yes (specify time) _____
- No
- Could not locate

Q62 Is the victim required to participate in the investigation after a report to campus authorities?

- Yes
- No
- Could not locate

Q63 How are alleged perpetrators notified of an on-campus investigation?

- Notified in writing (email or letter)
- Notified at a meeting with campus officials
- Phone call or text
- Other, specify _____
- Could not locate

Q64 Is there a time frame for when alleged perpetrators will be notified of an investigation?

- Yes, specify how long _____
- No
- Could not locate

Q65 In relation to a criminal investigation, a misconduct investigation may take place when?

- Before a criminal investigation begins
- During a criminal investigation
- After a criminal investigation concludes
- Unclear or not specified
- Could not locate

Q66 How are concurrent investigations involving sexual misconduct and criminal behavior handled between campus investigators and local law enforcement?

- They may be handled collaboratively
- Criminal investigation by local law enforcement will take priority
- Sexual misconduct / campus investigation will take priority
- Other, specify _____
- Unclear
- Could not locate

Q67 How are concurrent investigations handled between authorized campus investigators and campus security / law enforcement?

- They may be handled collaboratively
- Investigations by authorized campus investigators take priority
- Investigations by campus security / law enforcement take priority
- Other, specify _____
- Unclear
- Could not locate

Q68 Is there a policy prohibiting retaliatory behavior against victim reporters?

- Yes
- Could not locate

Q69 Is there a policy prohibiting retaliatory behavior against third party (or witness) reporters ?

- Yes
- Could not locate

Q70 Is there a policy prohibiting retaliatory behavior against witnesses in proceedings?

- Yes
- Could not locate

Q71 Are alleged perpetrators allowed to have advisors at hearings or meetings?

- Yes
- No
- Other, specify _____
- Could not locate

Q72 Re: Advisors for alleged perpetrators: Does the school choose advisors?

- Yes
- No, students choose advisors
- Could not locate
- Not applicable

Q73 Re: Advisors for alleged perpetrators: Are lawyers allowed to serve as advisors?

- Yes
- No
- Could not locate
- Not applicable

Q74 Re: Advisors for alleged perpetrators: If yes, does the school provide lawyers?

- Yes
- No
- Could not locate
- Not applicable

Q75 Are victims allowed to have advisors at hearings or meetings?

- Yes
- No
- Other, specify _____
- Could not locate

Q76 Re: Advisors for victims: Does the school choose advisors?

- Yes
- No, students choose advisors
- Could not locate
- Not applicable

Q77 Re: Advisors for victims: Are lawyers allowed to serve as advisors?

- Yes
- No
- Could not locate
- Not applicable

Q78 Re: Advisors for victims: If yes, does the school provide lawyers?

- Yes
- No
- Could not locate
- Not applicable

Q79 Are there interim measures that consider threat to victim safety (class changes, housing assignments)? Check all that apply.

- Yes, interim measures are possible without a formal investigation
- Yes, interim measures may apply before an investigation
- Yes, measures are possible during an investigation
- Yes, but policy does not distinguish at what stage they may apply
- Could not locate

Q80 What interim measures are possible? Check all that apply.

- Class changes or other academic arrangements by victim
- Class changes or other academic arrangements by alleged perpetrator
- Housing or dining reassignments by victim
- Housing or dining reassignments by alleged perpetrator
- Suspension of alleged perpetrator
- Changes to work arrangements by victim
- Changes to work arrangements by alleged perpetrator
- Mental health counseling
- The identification of alleged perpetrator to local law enforcement if alleged assailant is a serious or ongoing threat
- Removal from sports team or other university club or organization
- Other, specify _____
- Could not locate

Q81 Are interim measures possible when victim does not wish to participate in an investigation?

- Yes
- No
- Could not locate

Q82 Does the website offer guidance on how to obtain interim measures?

- Yes
- Could not locate

Q83 If yes above, what is the policy?

- The victim's request will be honored
- On a case by case basis, at the discretion of university personnel
- Other, specify _____
- Not applicable

Q84 Does the website provide a time frame for completing the investigation after a report?

- Yes, specify time frame _____
- No
- Could not locate

Q85 Is there a restorative justice/reintegration program for alleged perpetrators who accept responsibility for violation before adjudication proceedings begin?

- Yes
- Could not locate

Q86 Please provide any comments or insights on the preceding questions/answers.

Q87 SECTION 4: ADJUDICATION

Q88 Does the website provide information about state laws or university policies regarding victim rights in the adjudication of sexual assault complaints?

- Yes, reference to state laws
- Yes, reference to university policies
- Yes, both state law and university policies are referenced
- Could not locate

Q89 Does the website provide information about state laws or university policies regarding alleged perpetrator rights in the adjudication of sexual assault complaints?

- Yes, reference to state laws
- Yes, reference to university policies
- Yes, both state law and university policies are referenced
- Could not locate

Q90 What campus actors are generally involved in determining if a person is responsible vs. not responsible for violation?

- General conduct board
- Conduct board specific to handling sexual assault
- Administrative panel
- Sole campus administrator
- Investigator
- Other, specify _____
- Could not locate

Q91 If a general conduct board or conduct board specific to handling sexual assault are involved in determining the responsible/non-responsible status, are students included as members of these boards?

	Yes	No	Could not locate	Not applicable
General conduct board	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conduct board specific to handling sexual assault	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q92 What is the role of the investigator(s) in determining if alleged perpetrator is responsible/not responsible for a violation?

- Present results to board/administrators for review in making responsible/not responsible determination
- Participates directly with administration in determining the responsible/not responsible decision
- Has sole responsibility for determining responsible/not responsible
- No role in determining responsible/not responsible
- Could not locate

Q93 Does the alleged perpetrator have an adjudication format choice?

- Yes
- No
- Under certain circumstances, specify _____
- Could not locate

Q94 If yes, what are the choices? Check all that apply

- General conduct board with student members
- General conduct board with no student members
- Conduct board specific to handling sexual assault with student members
- Conduct board specific to handling sexual assault with no student members
- Administrative panel
- Sole campus administrator
- Investigator
- Other, specify _____
- Not applicable

Q95 Does the policy mention that the victim's prior sexual behavior will not be considered in adjudication process?

- Yes, during the responsible/not responsible decision
- Yes, during the sanction process
- Yes, during both the adjudication and sanction procedures
- Yes, but extent unclear or not mentioned
- Could not locate

Q96 Does the policy mention that the alleged perpetrator's prior sexual behavior will not be considered during the adjudication process?

- Yes, during the responsible/not responsible decision
- Yes, during the sanction process
- Yes, during both the adjudication and sanction procedures
- Yes, but extent unclear or not mentioned
- Could not locate

Q97 Does the policy mention that there is a possibility that information from confidential sources (i.e. medical services, counseling) sought by the victim may be admitted under legal ruling/hearing in an adjudication proceeding?

- Yes
- Could not locate

Q98 Does the policy mention that there is a possibility that information from confidential sources (i.e. counseling) sought by the alleged offender may be admitted under legal ruling/hearing in an adjudication proceeding?

- Yes
- Could not locate

Q99 During disciplinary proceedings, what are the victim's participation options? (Check all that apply)

- Victim may be complainant
- Victim may be co-complainant along with university
- Victim may participate as a witness
- No participation
- Could not locate

Q100 Are alleged perpetrators allowed to present witnesses at hearings, meetings, or conferences?

- Yes, during the investigation
- Yes, during adjudication
- Yes, during investigation and adjudication
- Yes, but no distinction between investigation and adjudication
- No
- Could not locate

Q101 If yes to above, is there a time limit on when witnesses can be presented?

- Yes, what is the time limit/deadline for identification of witnesses? _____
- Could not locate
- Not applicable

Q102 Are alleged perpetrators allowed to question the victim?

- Yes, face to face
- Yes, through submitting written questions
- Yes, but no details provided on method of questioning
- Yes, by other means, specify _____
- No
- Could not locate

Q103 Are alleged perpetrators allowed to question the witnesses?

- Yes, face to face
- Yes, through submitting written questions
- Yes, but no details provided on method of questioning
- Yes, by other means, specify _____
- No
- Could not locate

Q104 Are victims allowed to present witnesses at hearings, meetings, or conferences?

- Yes, during the investigation
- Yes, during adjudication
- Yes, during investigation and adjudication
- Yes, but no distinction between investigation and adjudication
- No
- Could not locate

Q105 If yes to above, is there a time limit on when witnesses can be presented?

- Yes, what is the time limit/deadline for identification of witnesses? _____
- Could not locate
- Not applicable

Q106 Are victims allowed to question the alleged perpetrator?

- Yes, face to face
- Yes, through submitting written questions
- Yes, but no details provided on method of questioning
- No
- Could not locate

Q107 Are victims allowed to question the witnesses?

- Yes, face to face
- Yes, through submitting written questions
- Yes, but no details provided on method of questioning
- No
- Could not locate

Q108 What is the standard of proof used to determine responsible vs. not responsible?

- Preponderance of evidence
- Beyond reasonable doubt
- Other, specify _____
- Could not locate

Q109 What campus actors are involved in determining sanctions?

- General conduct board
- Conduct board specific to handling sexual assault
- Administrative panel
- Sole campus administrator
- Other, please specify _____
- Could not locate

Q110 If a general conduct board or conduct board specific for handling sexual assault are involved in determining sanctions, are students members of these boards?

	Yes	No	Could not locate	Not applicable
General conduct board	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conduct board specific to handling sexual assault	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q111 What university sanctions are possible when a student is found responsible? Check all that apply.

- Expulsion from school
- Suspension from school
- Warning
- Probation
- Change of residence
- Notation on transcript
- Awareness training (reflective essays, individual plan to address behavior)
- Notification of judgment to local law enforcement
- Monetary damages to victim
- Mental health evaluation
- Other, specify _____
- Could not locate

Q112 Does the sanctioning process allow victim impact statements?

- Yes
- No
- Could not locate

Q113 Does the adjudication process apply if an accused student has graduated, voluntarily withdrawn, or transferred?

- Policy states process only applies to currently enrolled students
- Policy states that process applies to students who have graduated
- Policy states that process applies to students who have transferred
- Policy states that process applies to students who have voluntarily withdrawn
- Decided by University representative on a case by case basis
- Could not locate

Q114 If yes, what sanctions apply if the accused student is found in violation but has transferred? (check all that apply)

- Notation on transcript
- Notification of institution to which student transferred
- Notification of local law enforcement where student transferred
- Could not locate
- Not applicable

Q115 Does the website indicate that there is an appeal process?

- Yes, either victim or offender may appeal
- Yes, only offender may appeal
- No
- Could not locate

Q116 Are the circumstances under which an appeal is possible described?

- Yes
- No
- Could not locate
- Not applicable

Q117 If yes to above, which circumstances are mentioned? Check all that apply.

- Introductory of new information
- Incorrect application of policies or procedures
- Other, specify _____
- Not applicable

Q118 Are there multiple stages to the appeal process?

- Yes
- No
- Could not locate

Q119 Who is responsible for handling final appeal?

- General conduct board
- Conduct board specific to handling sexual assault
- Administrative panel
- Sole campus administrator
- Other, specify _____
- Could not locate

Q120 If general conduct board or conduct board specific to handling sexual assault are responsible for handling final appeal, are students members of these boards?

	Yes	No	Could not locate	Not applicable
General conduct board	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conduct board specific to handling sexual assault	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q121 Does the website publish the outcomes of investigations (i.e. number of arrests, expulsions)?

- Yes
- No
- Could not locate

Q122 Please provide any comments or insights on the preceding questions/answers.

Q123 SECTION 5: STUDENT SERVICES

Q124 LOCATION EFFORT QUESTION: Does the website provide any information on a college-based 24-hour crisis line?

Instructions for search: From school homepage enter recommended search term 1. "hotline;" view results and answer options below; enter recommended search term 2, if necessary: "24 hour"

- Yes, was able to locate information using search term 1, directly on results page
- Yes, was able to locate information using search term 1, first link from results page
- Yes, was able to locate information using search term 1, first link and 1 subsequent link from results page
- Yes, was able to locate information using search term 2, directly on results page
- Yes, was able to locate information using search term 2, first link from results page
- Yes, was able to locate information using search term 2, first link and 1 subsequent link from results page
- Yes, was able to locate, but with additional effort beyond
- Could not locate

Q125 Is there a college-based 24-hour crisis line?

- Yes, contact info included
- Yes, no contact info included
- Could not locate

Q126 LOCATION EFFORT QUESTION: Does the website provide any information on mental health counseling services?

Instructions for search: From school homepage enter recommended search term 1. "counseling services;" view results and answer options below; enter recommended search term 2, if necessary: "mental health"

- Yes, was able to locate information using search term 1, directly on results page
- Yes, was able to locate information using search term 1, first link from results page
- Yes, was able to locate information using search term 1, first link and 1 subsequent link from results page
- Yes, was able to locate information using search term 2, directly on results page
- Yes, was able to locate information using search term 2, first link from results page
- Yes, was able to locate information using search term 2, first link and 1 subsequent link from results page
- Yes, was able to locate, but with additional effort beyond
- Could not locate

Q127 Is there reference / link to information on mental health counseling services for victims available on campus?

- Yes, contact info included
- Yes, no contact info included
- Could not locate

Q128 Is there reference/ link to mental health counseling services off campus?

- Yes, contact info included
- Yes, no contact info included
- Could not locate

Q129 Is there reference/ link to any state or national resources that deal with sexual assault? e.g., RAINN

- Yes
- No
- Could not locate

Q130 Is there a Woman's Resource Center on campus?

- Yes, contact info included
- Yes, no contact info included
- Could not locate

Q131 LOCATION EFFORT QUESTION: Does the website provide any information on an on-campus medical services office? Instructions for search: From school homepage enter recommended search term 1. "medical services" View results and answer options below; enter recommended search term 2, if necessary: "health services"

- Yes, was able to locate information using search term 1, directly on results page
- Yes, was able to locate information using search term 1, first link from results page
- Yes, was able to locate information using search term 1, first link and 1 subsequent link from results page
- Yes, was able to locate information using search term 2, directly on results page
- Yes, was able to locate information using search term 2, first link from results page
- Yes, was able to locate information using search term 2, first link and 1 subsequent link from results page
- Yes, was able to locate, but with additional effort beyond above
- Could not locate

Q132 Is there reference to medical services offered on campus?

- Yes, contact info included
- Yes, no contact info included
- Could not locate

Q133 Are medical services available on campus 24/7?

- Yes
- No
- Could not locate

Q134 Do university health services include SANE exams or sexual assault kits?

- Yes
- No
- Could not locate

Q135 Is there reference to medical/health services offered off campus?

- Yes, contact info included
- Yes, no contact info included
- Could not locate

Q136 Does the description of health and counseling services available on campus use language inclusive of the LGBTQIA population?

- Yes, uses gender neutral language
- Yes, specific reference to LGBTQIA population
- No, language is not inclusive

Q137 Please provide any comments or insights on the preceding questions/answers.

Q138 SECTION 6: STUDENT CLIMATE

Q139 Is there a required education course for students that addresses student conduct/sexual assault awareness?

- Yes
- Could not locate

Q140 Are there sexual assault reporting statistics available from a campus safety report? Check all that apply.

- Yes, climate survey results
- Yes, official police statistics (UCR, Clery Act)
- Yes, incident log reported by police
- Other, specify _____
- Could not locate

Q141 What is the number of sexual assault incidents reported? Enter the number of incidents in the time frame in which number is reported. (For example if incidents are reported on a yearly basis, enter the number there.)

- Yearly _____
- Monthly _____
- Other time frame, specify time frame. For example: "Semester, 3" indicating reported by semester, 3 incidents

Q142 Are there sexual assault prevention tips provided?

- Yes
- No
- Could not locate

Q143 If yes to above, which sexual assault prevention tips provided? Check all that apply.

- Mention alcohol use
- Mention drug use
- Mention consent
- Location restrictions (i.e. warnings about times and places to be avoided)
- Mention bystander behavior and looking out for each other (e.g., plans to go to and leave parties with friends?)
- Not applicable

Q144 If yes to above, do they suggest that the victim must do something differently? Change behavior? Take self-defense?

- Yes
- No
- Not applicable

Q145 Are student-led resource centers or awareness campaigns to combat sexual assault mentioned?

- Yes, specify _____
- Could not locate

Q146 Is there a bystander program on campus?

- Yes, specify _____
- Could not locate

Q147 Are there other campus security / law enforcement programs to combat sexual assault?

- Yes, specify _____
- No

Q148 Is there a self defense program offered to students?

- Yes
- Could not locate

Q149 Are there support services offered to alleged perpetrators (students)?

- Yes
- Could not locate

Q150 Does the website contain a general statement about the college's commitment to responding to sexual assault?

- Yes
- Could not locate

Q151 If yes to above, what elements included in statement? Check all that apply

- Privacy in reporting
- Respectful treatment of victims (no judging)
- Assistance with getting medical needs met
- Commitment to investigation
- Option and contact information for reporting if commitment not met
- Other, Specify _____
- Not applicable

Q152 Is there instruction on making a complaint of discrimination or harassment to the Department of Higher Education or Office of Civil Rights?

- Yes
- No, could not locate

Q153 Please take the time to double check that you have answered each question. Before you press "submit" you will get a reminder if you skipped a question that requires an answer. Please enter the complete time you spent on this scan session when you are finished, excluding breaks. If you took a break, do please let us know (in the comment field below) approximately how long it was so we can deduct it from the timing the survey tool captures behind the scenes.

Spent Hours								Spent Minutes											
1	2	3	4	5	6	7		5	10	15	20	25	30	35	40	45	50	55	0
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q154 Please provide any comments or insights on the preceding questions/answers. Once you press "SUBMIT" you will NOT be able to re-visit this particular data form.

RSACC Interview Survey (revised 5/23/18)

I confirm that no coercion of any kind was used in seeking my participation in this research project and that I have read received the consent form and fully understand the purpose of the research project and its risks and benefits.

By clicking "continue" you are agreeing to participate in this on-line portion of the study.

Q1 When we ask about “campus sexual assault” we are referring to sexual assault by and against students that occurs either on or off campus.

Q2 What is your job title?

Q3 What role do you play in **your institution’s** response to campus sexual assault cases? (select all that apply)

- Coordinator of the Title IX response process
- Initial reviewer or part of the initial review team for sexual assault reports
- Investigator or part of the investigative team (for campus decision-making)
- Decision maker or part of the decision making team for determination of responsibility
- Sanctioner or part of the sanction determining team
- Appeals arbiter or part of the appeals team
- Advocate or advisor for the complainant
- Advocate or advisor for the respondent
- Investigator or part of the investigative team for an on or off-campus policing function
- Decision maker or part of the decision making team related to a criminal justice system process
- Other, please explain: _____

Q4 How long have you been in your current job/role related to response to campus sexual assault cases **at this institution?**

- Less than 1 month
- Less than 1 year
- 1-5 years
- More than 5 years

Q5 Have you been in another role related to response to sexual assault on campus **at your current institution?**

- Yes
- No

Q6 Have you been in any role related to response to campus sexual assault at any other institution?

- Yes
- No

Display This Question:

If Have you been in another role related to response to sexual assault on campus at your current institution? Yes Is Selected

Or Have you been in any role related to response to sexual assault on campus at any other institution? Yes Is Selected

Q7 In total, combining your time in this current institution and at any other institution(s), how long have you been involved in response to campus sexual assault?

- Less than 1 month
- Less than 1 year
- 1-5 years
- More than 5 years

Q8 As an adjudicator or investigator how many cases of campus sexual assault have you been involved in at your current institution?

- None
- 1-10
- 11-20
- More than 20

Q9 Over your entire career as an investigator or an adjudicator in how many cases of campus sexual assault at higher education institutions – including at your current institution – have you been involved?

- None
- 1-10
- 11-20
- 21-50
- More than 50

How can individuals report a sexual assault at your institution? (check all that apply)

- Call the Title IX staff directly
- Email the Title IX staff directly
- Anonymous online reporting system
- Not anonymous online reporting system

These questions cover training you may have received since June of 2017 to the present on responding to campus sexual assault complaints.

Q10 Have you received training since June 2017?

- Yes
- No

Display This Question:

If Have you received training since June 2017? Yes Is Selected

Q11 Thinking of the most recent training; What type of training was it? (select all that apply)

- Online
- In person on campus
- In person at a conference
- In person at another location

Display This Question:

If Have you received training since June 2017? Yes Is Selected

Q12 Who delivered the training(s)? (select all that apply)

- Someone at your institution (in-house training)
- Membership organization (e.g., ATIXA, NACUA, NASPA)
- Private company or consultant
- Other, please specify **type** of trainer _____

Display This Question:

If Have you received training since June 2017? Yes Is Selected

Q13 How would you rate the quality of the training in giving people what they need to know to do their job (related to investigation and adjudication)? 1 = Not at all adequate in preparing for responsibilities related to campus sexual assault; 10 = Completely adequate in preparing for responsibilities related to campus sexual assault.

- 1=not at all adequate
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10=completely adequate

Q14 From the following list, select the top 3 training topics most needed for people responding to sexual assault at your institution.

- Adjudication
- Campus Climate Surveys
- Clery Act
- Investigations
- Reporting
- Rights of the accused
- Sanctioning
- Victim support
- Other, please specify: _____

Q15 Please provide some basic demographic information. This information is used to help ensure that we interview a broad and diverse sample of campus community members.

Q16 Gender:

- Man
- Woman
- Non-binary, non-conforming, or gender-queer
- My gender identity is not listed here
- I prefer not to answer

Q17 Race/Ethnicity (select all that apply):

- American Indian or Alaska Native
- Asian
- Black or African American
- Hispanic/Latino/a
- Native Hawaiian or Other Pacific Islander
- White
- My racial/ethnic identity is not listed here
- I prefer not to answer

Q18 Highest level of education completed:

- High school, GED, or less
- Some college
- Associate's degree
- Bachelor's degree
- Graduate or other professional degree
- Other, please specify: _____

Thank you for your participation. We look forward to talking to you soon.

INTRODUCTION**Interview Protocol****Re: informed consent**

As you know, we are talking to people on campuses across the county to better understand successes and challenges associated with investigating and adjudicating sexual assault complaints. We are aware of changing state and federal landscape for implementing the Title IX provisions and approaches to handling these cases, so we know there is no perfect time for completing these interviews. However, we also know that you who are on the front lines are going forward with your day-to-day work responding to complaints of sexual assault. So your input is very important and we thank you for agreeing to participate.

As a reminder, your identity and your institutions' identity will be confidential but your experiences and suggestions will help others learn from you so in the future the policies and procedures can be improved. The interview is not being recorded, although we are taking notes but those notes are identified only by a participant ID number and do not include any names of individuals or institutions.

I have some questions but mostly want to hear your experiences and suggestions.

When discussing reports of sexual assault for purposes of this interview we are referring to reports by students of contact sexual assault by another student (we know that there are many other cases that don't involve contact and that these can be very serious and also pose challenges to handle... but for now our focus is on contact sexual assault.)

When referring to an institution we are referring to your college or university... in other words to -

Note to interviewer: Throughout the interview, acknowledging the changing landscape, the interviewer should be open to discussion of the current process and how it is impacted by changes or anticipated changes. By the end of the interview get a sense of whether the institution is:

- Waiting for federal guidelines before it makes many changes
- Primarily intending to stay the course with provisions implemented under the dear colleague letter guidelines (unless they are forbidden from following the original guidance)
- Already made many changes in effort to comply with new provisions and changing landscape

	PROBE and CHECK LIST	NOTES AND COMMENTS
<p>Q1. Who coordinates or oversees your institution's response to sexual assault (role or titles)</p> <p>Q2. To whom does s/he report?</p>	<p>Does your school have a Title IX coordinator?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Does this person have other institutional responsibilities (For example, are they also the director of human resources or dean of students?) or is being the Title IX coordinator their primary responsibility?</p>	
A. REPORTING		
	PROBE & CHECK LIST	NOTES AND COMMENTS
<p>Q3. What is the most common way that reports of sexual assault come in? (Interviewer check off)</p>	<p>Method</p> <p>Call the Title IX staff directly Email the Title IX staff directly Anonymous online reporting system Not anonymous online reporting system</p> <p>Top 3 Reporters</p> <p>Other, describe Victim Other student Residence life staff Other staff Faculty Coaches</p>	

B. INITIAL STAGES		
	PROBE & CHECK LIST	COMMENTS
<p>Q4. What happens once a report is received?</p>	<p>Alternate: Please quickly walk me through the typical steps that are taken prior to a more formal investigation or fact-gathering process?</p> <p>(Prompt) Who receives and reviews the report (and do they/ how do they all end up there)?</p>	
	PROBE & CHECK LIST	COMMENTS
<p>Q5. (THIS QUESTION LIKELY TO BE SKIPPED) How are requests for confidentiality handled?</p> <p>What is done when a reporting student or a victim, if not the one who reported, requests that no action be taken?</p>	<p>What is the decision process here? Are there circumstances in which the institution might move forward with an investigation even if a complainant does not want to?</p> <p>(Prompt: What factors are considered in making this decision? What steps might be taken other than an investigation?)</p> <p>And: If the complaining student wants no action to be taken do they receive any relief?</p>	

REPORTING-POLICE	PROBE & CHECKLIST	COMMENTS
<p>Q6. When or under what circumstances do you report a case to the police?</p> <p>(How common is this?)</p> <p>If you report, do you report to:</p>	<p><i>(Don't read this interviewer checks boxes)</i></p> <p>When ongoing victim safety is concern When safety of others on campus is a concern at victim's request always under certain circumstances, explain never</p> <p><i>(Don't read this interviewer checks boxes)</i></p> <p>Campus safety/ security Campus police Local police Both Other, specify:</p>	
<p>C.1. INVESTIGATION (with Police)</p>		
INVESTIGATION	PROBE & CHECKLIST	COMMENTS
<p>Q7. When a case is or is going to be investigated by the police, how do you coordinate your campus investigation?</p> <p>What are the pros and cons of this approach?</p>	<p>Are investigations: (Prompt) Concurrent Shared Law enforcement takes priority Campus investigation takes priority Other, explain</p> <p><i>(And does it matter if it is on or off campus... be aware of prior OCR that LE invest should not delay school's attention.)</i></p>	

INVESTIGATION-POLICE	PROBE & CHECKLIST	COMMENTS
<p>Q8. Does the institution have an MOU or formalized agreement with local (or campus) police?</p>	<p> <input type="checkbox"/> Yes, Local <input type="checkbox"/> Yes, Campus <input type="checkbox"/> No <input type="checkbox"/> don't know </p> <p>What are the details of the MOU(s)?</p> <p>Is the MOU helpful? How?</p> <p> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> don't know </p>	
<p>C.2. INVESTIGATION (general)</p>		
INVESTIGATION	PROBE & CHECKLIST	COMMENTS
<p>Q9. If it has been determined that there should be an investigation (or process that includes further fact gathering), then generally what happens?</p> <p>Please walk me through the typical steps to resolution.</p> <p>At the investigation stage do you have a hearing/ hearing board process? (describe including who is involved)</p>	<p>Who conducts the investigation or fact-finding process? (don't read this interviewer checks boxes)</p> <p> <input type="checkbox"/> Title IX Coordinator/ Deputy Coordinator <input type="checkbox"/> External/Contracted Investigator – Attorney <input type="checkbox"/> External/ Contracted Investigator – Non-Attorney <input type="checkbox"/> Internal (i.e., staff) Investigator – Attorney <input type="checkbox"/> Internal (i.e., staff) Investigator – Non-Attorney <input type="checkbox"/> Other </p> <p>Also note details re: interim measures and determination to move to adjudication.</p>	

INVESTIGATION	PROBE & CHECKLIST	COMMENTS
<p>Q10.</p> <p>a. What have you found to be helpful about your institution’s investigative model/ approach?</p> <p>b. What are the challenges in using that model?</p> <p>IF NO EXTERNAL INVESTIGATOR <i>A number of schools have started contracting with outside investigators for the investigation of campus sexual assault cases.</i> Have you considered doing this at this institution:?</p>	<p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> NO - Why did you decide against that model?</p> <p>Don’t know</p>	
INVESTIGATION	PROBE & CHECKLIST	COMMENTS
<p>Q11.</p> <p>At the conclusion of the investigation stage, what is the final product or decision?</p>		

D. ADJUDICATION		
	PROBE & CHECKLIST	COMMENTS
<p>Q12. Once the investigation is complete please walk me through the adjudication process.</p> <p>What is the format of any hearings?</p> <p>Who are the decision-makers?</p>	<p>Does the investigator make a decision of responsibility— (who makes the decision regarding responsibility?)</p> <p>Check boxes for choices—more than one may be checked</p> <p>sole (or __two or more) investigator decision</p> <p>___sole (or __two or more) investigator decision affirmed by an individual in the institution?</p> <p>Who? _____</p> <p>___an adjudicatory body reviews and makes a decision?</p> <p>General body</p> <p>Sexual misconduct specific</p> <p>___ a hearing takes place and the hearing board adjudicates (what is the format of the hearing body for adjudication (number, composition, etc.)</p> <p>___ other describe</p> <p>Are students involved on boards or otherwise as adjudicatory decision-makers?</p> <p>Same Standard of Evidence:</p> <p>Yes</p> <p>No</p> <p>Don't know</p>	

<p>Q13. What standard do you follow in making a determination of responsibility? (check boxes)</p> <p><i>if not already answered in the response to the questions above</i></p> <p>Is this the same system used for other types of student misconduct, such as academic misconduct or general student misconduct?</p> <p>Does the standard of evidence differ?</p> <p>Does this process differ if the respondent accepts responsibility? If so, how?</p>	<p>Standard of evidence: Preponderance of evidence Clear and Convincing evidence Beyond reasonable doubt Other, specify -</p> <p>Do you find this challenging? In what ways?</p> <p>Same Process: Yes No Don't know</p>	
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SANCTIONING	PROBE & CHECK LIST	COMMENTS
<p>Q15. If a hearing that involves the complainant or respondent may occur (for the sanctioning decision) what are the details?</p>	<p>The complainant role? The respondent role? Other witnesses?</p>	
SANCTIONING	PROBE & CHECK LIST	COMMENTS
<p>Q16. What are the benefits and challenges of this model of/ approach to sanctioning?</p>		
SANCTIONING	PROBE & CHECK LIST	COMMENTS
<p>Q17. What are some common factors that you consider when determining sanctions?</p>	<p>Factors (don't read list) Other conduct violations Other sexual misconduct violations Remorse on the part of the respondent Admission of responsibility by the respondent Victim input (including Victim Impact Statement) Seriousness of the incident (e.g., weapon involved, force involved) Injury to the victim Personal characteristics of the respondent</p>	

<p>Q18. Under what circumstances are the sanctions of suspension or expulsion used?</p> <p>Q19. To your knowledge has the institution suspended or expelled a student for sexual misconduct?</p>	<p>Are there factors that warrant a more serious sanction?</p> <p>A less severe one?</p> <p>If you think of past cases, are there characteristics or issues that made it difficult to determine sanctions? What were those?</p>	
<p>APPEALS</p>	<p>PROBE & CHECK LIST</p>	<p>COMMENTS</p>
<p>Q20. Is there an appeals process for the determination of responsibility and/or sanction?</p> <p>What is the appeal process?</p> <p>What are the required/most common bases for appeal?</p>	<p>Is there an appeals process? Yes No</p> <p>Is there a time frame?</p> <p>What rights do the accused have?</p>	
<p>FOLLOW UP PROCESS</p>	<p>PROBE & CHECK LIST</p>	<p>COMMENTS</p>
<p>Q21. ((THIS QUESTION LIKELY TO BE SKIPPED)) What type of post-hearing or post-sanctioning follow up (if any) do you do with the involved parties?</p>	<p>What is done with the complainant in the event of a finding of responsibility?</p> <p>What is done for complainants in the event of a finding of no responsibility?</p> <p>What is done with the respondent?</p>	

LEGAL ENVIRONMENT	PROBE & CHECK LIST	COMMENTS
<p>Q22. Are there any recent (new) laws that have been passed in your jurisdiction/STATE that have impacted your policies and practice? Specify:</p>		
CHALLENGES	PROBE & CHECK LIST	COMMENTS
<p>Q23. What do you think are the biggest challenges to having an effective and coordinated investigative and judicial response to campus sexual assault cases?</p>	<p>Has your campus been able to try any solutions to address those challenges?</p> <p>What has worked and what has not?</p>	
RECOMMENDATIONS	PROBE & CHECK LIST	COMMENTS
<p>Q24. Are there any policies or procedures your institution has implemented that you think are particularly effective in the investigation and adjudication of campus sexual assault cases?</p>	<p>What are they?</p> <p>What do you like about them?</p> <p>Why do you think they are “working?”</p>	

ADDITIONAL COMMENTS	PROBE & CHECK LIST	COMMENTS
<p>Q25. Is there anything else you think it is important for us to know about handling these cases?</p>	<p>Is there someone else at your institution with whom I should talk who knows a lot about the types of issues we discussed?</p> <p>(do not divulge with whom we have already talked/ or who has been approached)</p>	

End with a debriefing review---

Ask participant if they have any questions; remind them of confidentiality; assure that they have a copy of the consent which also provides the contact phone numbers.

Appendix D

Website Checklist

Sexual violence is widespread on today's college campuses: one in 4 or 5 college women and one in 16 college men experiences an attempted or completed sexual assault during their college career.^{1,2} A primary resource for support for students who experience sexual violence, as well as those who they may tell who can help them, is the institution's website.

A high quality website is a critical part of providing a transparent, fair, and equitable response to campus sexual violence. A high quality website provides victims, those accused, and those working to support them with the information they need to make important decisions about reporting, self-care, and participation in any investigative or adjudicatory processes. To be helpful, information must be accurate, complete, comprehensive, and easy to locate and understand. This can be particularly helpful for students, who whether they are victims or accused, are accessing this information at a stressful juncture in their lives. For victims, information has been identified as one of their critical needs.³ Finally, all institutions of higher education that receive federal funds (including financial aid for students) are required to have a public provision of information regarding the institution's programs, policies, and procedures related to sexual violence. A high quality website satisfies this requirement.

Our project, the [Responding to Sexual Assault on Campus \(funded by the U.S. Department of Justice, National Institute of Justice\)](#), developed this website checklist to aid institutions in designing and maintaining user-friendly website content related to the prevention and response to sexual violence. It was developed based on the [project's review of 969 college and university websites by undergraduate students](#) and policy documents related to federal requirements (e.g., the OCR Dear Colleague Letter 2011⁴, the Clery Act including the Campus SaVE Act, the U.S. Department of Education's final rule on the Campus SaVE Act, the OCR Title IX Q & A 2014⁵, and the OCR Title IX Q & A from September 2017). Many of the items on the checklist are recommendations based on the fact that most institutions make their Annual Campus Security Report required by the Clery Act public via their website. Some items are required to be on the website and others are recommended, which is indicated in the table in Part Three below.

This document is comprised of three parts.

Part One: **Website design guidelines** for website information related to sexual violence and the institution's prevention and response efforts.

Part Two: **Semester review guidelines** for regular maintenance of the website

Part Three: **Webpage checklist** to outline what information should be included on the website

¹ Fisher, B. S., Cullen, F. T., & Turner, M. G. (2000). *The Sexual Victimization of College Women* (NCJ 182369). Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice and Bureau of Justice Statistics.

² Krebs, C. P., Lindquist, C. H., Warner, T. D., Fisher, B. S., & Martin, S. L. (2007). *The Campus Sexual Assault (CSA) Study Final Report* (NCJ 221153). Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

³ International Association of Chiefs of Police. (2007). *Enhancing law enforcement response to victims: A 21st century approach*. Alexandria, VA: IACP.

⁴ Although the OCR Dear Colleague Letter 2011 is no longer an active guidance document, the information in it was considered and incorporated into this checklist guide as appropriate regarding website content.

⁵ Although the OCR Title IX Q & A 2014 is no longer an active guidance document, the information in it was considered and incorporated into this checklist guide as appropriate regarding website content.

PART ONE: Website design guidelines

- ✓ Make information available on the public access webpage and within any password access systems, such as campus portals
- ✓ Whenever possible, make information available on the webpage, not as part of a pdf
- ✓ When use of pdfs is necessary, insure the pdf is searchable
- ✓ When use of pdfs is necessary, if they are long or have multiple sections, insure there is a live table of contents included, so users can click on a section title in the table of contents and be taken directly to that section of the document
- ✓ Use a google powered search box for searching the institution website as it better accommodates misspellings and non-exact search terms
- ✓ Insure that the web content is viewable across different platforms (computers, tablets, and phones) and web browsers
- ✓ Make sure resources (on and off campus) are clearly designated as confidential or not confidential
- ✓ Make sure long documents include a live table of contents
- ✓ Insure that information on the website related to prevention and response to sexual violence is compatible with accessibility software programs for those with visual and other impairments, such as a text reader program
- ✓ Work with the institution's IT and/or marketing departments to assist with these efforts
- ✓ Designate someone, preferably a student, to review the website information related to sexual violence prevention and response efforts before the start of every semester

PART TWO: Semester review guidelines

- ✓ Check all hyperlinks, both internal and external
- ✓ Confirm phone numbers, locations, and names for all on and off campus resources
- ✓ Insure that the most recent policy information is linked to or included on the web page
- ✓ Do a search on the website using the terms rape, sexual assault, domestic violence, and stalking to insure that users can easily locate resources and applicable policies

PART THREE: Webpage checklist

The information listed on the next page is either generally required to be available on an institution's website or is recommended.

	Required to be on Website	Recommended to be on Website*
<i>Title IX Information, Policy & Procedures</i>		
Name of Title IX Coordinator(s)	X	
Contact information of Title IX Coordinator(s), including email, phone number, and office address	X	
Notice of non-discrimination stating the institution does not discriminate on the basis of sex in education policies		X
Link to Title IX information on institution home page	X	
Title IX policy, including:	X	
Procedures that will be followed once a report is received	X	
The time frame for the investigation	X	
Descriptions of the disciplinary proceedings	X	
The standard of evidence for disciplinary proceedings	X	
That complainant and respondent can have advisors of their choice present during proceedings	X	
Procedures for appeal by the complainant and respondent	X	
That complainants and respondents will be notified simultaneously in writing of the outcomes of disciplinary proceedings and appeals	X	
Notice that Title IX prohibits retaliation and officials at the institution will take steps to prevent retaliation and strongly respond to it if it occurs	X	
<i>Definitions</i>		
Definitions of types of violence, including sexual harassment, sexual assault, dating violence, domestic violence, and stalking		X
Definition of what constitutes a hostile environment		X
Definition of consent		X
Definition and identification of Responsible Employees under Title IX		X
Definition and identification of Campus Security Authorities under the Clery Act**		X
<i>Reporting</i>		
Clear instructions on how to report an incident of sexual assault, dating violence, domestic violence, or stalking		X
Online option for anonymous reporting		X
Statement of confidentiality, including how to request confidentiality, who will consider the request, and how confidentiality will be maintained		X
<i>Support Resources</i>		
Advice to victims, including:		X
The importance of preserving evidence		X
To whom the alleged offense should be reported		X
The option to notify proper law enforcement authorities, including on-campus and local police, and be assisted by campus authorities in doing so		X
The option to decline to notify law enforcement		X

	Required to be on Website	Recommended to be on Website*
<i>Support Resources, cont.</i>		
Their rights and the institution's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil or tribal court		X
Describe the range of protective measures the institution offers following an allegation of dating violence, domestic violence, sexual assault, or stalking		X
Information on how to request accommodations including changing of academic situations, changing of living situations, changing of transportation situations, and changing of work situations		X
Resources available to victims on and off campus, including if the resource is confidential and details such as names, phone numbers, office location, emails, websites, costs, and specific services provided		X
Counseling and mental health services		X
Health services		
Victim advocacy services		X
Legal assistance for victims		X
Other services (e.g., disability services, LGBT services, academic support, service for international students)		X
<i>Adjudications & Sanctions</i>		
Notification that interim measures are available to complaints during investigation and adjudication		X
Notification that victims do not have to be present at a hearing for proceedings to go forward		X
Notification that a complainant's sexual history with individuals other than the respondent will not be considered as a part of the proceedings		X
List all possible sanctions that may be imposed after a finding of responsibility		X
<i>Prevention & Education</i>		
Details of campus prevention programming, including that they cover sexual assault, dating violence, domestic violence, and stalking, and cover topics including definitions, consent, safe and positive bystander interventions, and risk reduction		X
Three years of data in the number of incidents of sexual assault, dating violence, domestic violence, and stalking (as reported in the Annual Safety Report)		X
Results of the Campus Climate Survey		X

*If not included on website, must be made public in some form

** See Clery Offenses Definitions attached to this document

APPENDIX D

Clery Offenses Definitions

Dating Violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined 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.

For the purposes of this definition:

- 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.

Domestic Violence is defined as 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;
- 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.

Sexual Assault (Sex Offenses) is any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent.

- 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. This offense includes the rape of both males and females. Include the crime as Rape, regardless of the age of the victim, if the victim did not consent or if the victim was incapable of giving consent. If the victim consented, the offender did not force or threaten the victim, and the victim was under the statutory age of consent, include the crime as Statutory Rape.
- Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape is sexual intercourse with a person who is under the statutory age of consent.

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.

For the purposes of this definition:

- Course of conduct means 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 person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.



A New Perspective on College Sexual Misconduct:

Effective Interventions for Students Causing Harm

Introduction

In order to effectively address sexual misconduct on college and university campuses, it is necessary to understand the complexity of campus sexual misconduct, the students who have been harmed, and importantly, the students who engage in harmful behavior. But what are the prominent media images of these students who have caused sexual harm? Consider the following examples. In 2012, former Florida State University football quarterback, Jameis Winston, was accused of forcibly raping a classmate and, in a later incident, was accused of sexually groping a female Uber driver. In 2016, Stanford University student, Brock Turner, was convicted of three counts of felony sexual assault for raping an unconscious 22-year old outside of a campus fraternity house. These high-profile cases received extensive media attention and

publicity and shed light on the seriousness of campus sexual violence. However, this attention has also contributed to a narrow view of campus sexual misconduct, the range of behaviors it involves, and the diversity of the students who commit these violations, which may impact the quality and effectiveness of responses to these incidents.

Support and services for students who have been harmed are critical for institutions to have in place, and they must be centered on survivors' responses to sexual misconduct. As Tarana Burke, a civil rights advocate and founder of the #MeToo movement noted, making lasting change and preventing future sexual misconduct also requires institutions—and society more broadly—to examine how to respond to those who do harm:



“We can’t move to a culture that eliminates sexual violence if we’re not dealing with how harm-doers become harm-doers and how they undo that.”

Tarana Burke



We can’t move to a culture that eliminates sexual violence if we’re not dealing with how harm-doers become harm-doers and how they undo that. Leaving them in a heap on the side of the road is not the answer; allowing them to sneak back in through the back door [...] and acting like nothing happened [is not] the answer. There should be an expectation that there’s real rehabilitation and that [offenders] have seen the light and want to make dramatic shifts in their behavior.¹

This paper is intended to serve as a resource for campus administrators and staff tasked with addressing student sexual misconduct. Below is a review of the research literature on campus sexual misconduct to offer insight into the nature of these behaviors, as well as the traditional-aged students (18-22) who engage in harmful sexual behavior on campuses. This overview includes a special focus on cognitive and developmental factors that may impact students’ motivations and understanding of their behavior. This paper then closes with a set of recommendations and information for campus administrators and staff to understand and more effectively respond to campus sexual misconduct.

What is sexual misconduct?

Sexual misconduct, broadly defined, refers to any unwelcome behavior of a sexual nature that occurs without consent or by force, intimidation, coercion, or manipulation.² It can involve strangers, but in the campus setting is more likely to occur between acquaintances, peers, or individuals involved in an intimate or sexual relationship. Sexual misconduct involves a range of behaviors, including rape or attempted rape, sexual assault, sexual harassment, groping/sexual touching, and non-contact offenses such as non-consensually taking or forwarding explicit pictures or videos of other students.³ Individuals may engage in sexual misconduct through force, incapacitation, or coercion, and may also do so with or without a full understanding of consent.³

Sexual misconduct may also involve psychological coercion, which includes threats or emotional manipulation to compel others to agree to, or feel obliged to, engage in sexual acts they would otherwise not want to do.⁴ Feelings of guilt, awkwardness, embarrassment, or even shame can be evoked from the victim, for instance, because the victim

had agreed to “go home” with the perpetrator, but had not agreed to engage in a sexual encounter, or had simply wanted to leave.

Sexual harassment refers to behaviors such as stalking, pressuring an individual to engage in sexual behavior for some educational or employment benefit, making a real or perceived threat that rejecting sexual behavior will carry a negative consequence for the individual in any capacity on campus, persistent unwelcomed efforts to develop a romantic or sexual relationship, unwelcomed commentary about one’s body or sexual activities, repeated unwanted sexual attention, and sexually-oriented teasing, joking, or flirting, and more.²

Who engages in campus sexual misconduct?

This paper examines sexual misconduct within the college and university campus environment, recognizing that the campus is not restricted to its physical boundaries, but rather includes people and places affiliated with the campus. Although there is a tremendous amount of research about the prevalence of rape and sexual abuse regarding rates of victimization, there is a dearth of information about the prevalence of perpetration. However, in the campus world, some studies have been conducted. Using the definition of rape and attempted rape, research has reported that 6 to 13% of male students have either raped or attempted to rape.⁵⁻¹³ Studies using a broader definition of sexual misconduct report prevalence estimates ranging from 2 to 47%.^{5,6,9,13-17} Further, these studies demonstrate that not only is there a broad range of sexually inappropriate behaviors being reported, but also that rape and attempted rape are only accounting for a portion of campus sexual misconduct.

Research clearly shows that people do not experience trauma or react to trauma in the same way. There is no one-size-fits-all response to rape, attempted rape, or any form of sexual misconduct. Similarly, students who have committed some form of sexual misconduct do not fit within a single box. Each student will reflect differences in motivations, tactics/intentions, and cognitive understanding. Furthermore, although the traditional-aged student is legally an adult, they will vary considerably in terms of their developmental stage, and in many cases, these students may have more in common with an adolescent population.

Individuals who have committed multiple sexual misconduct violations have often remained the focus of media and scholarly work. These individuals may target vulnerable students with repeated deliberate and malicious sexual behaviors, such as attempted or completed forceful touching, kissing, groping, or even rape. Other individuals may intentionally inebriate another student or take advantage of an inebriated state in order to facilitate sexual assault, otherwise known as date rape or incapacitated sexual assault.⁴

Others may perpetrate repeated sexual misconduct without much premeditation or reflection on the seriousness or impact of their behavior on the student they harmed. For example, these individuals may engage in frequent binge drinking with a social group, which may lead to the repeated engagement in risky and harmful behaviors, such as sex without obtaining consent. Gervais et al. (2014) found that heavy drinking – in frequency or in quantity – was associated with more sexual misconduct perpetration, including rape, coercion, and sex without consent.¹⁸ This behavior may persist due to continued drug and/or alcohol use, failure to internalize or conceptualize this behavior as sexual misconduct, lack of understanding of the impact of the misconduct on the other student, or reinforcement by an environment that normalizes sexual misconduct.

Still others may engage in campus sexual misconduct only once or within a limited time period.^{5,11} There is evidence, too, that most students who engage in some forms of campus sexual misconduct might be classified in this manner. For example, one study found that male college students who committed rape could be organized into three groups: the vast majority as low or time limited, while a few showed decreasing rape patterns and others showed increasing patterns.¹¹ These acts may have originated from a lack of understanding of, or failure to obtain, consent to engage in sex.

Less frequently addressed is campus sexual misconduct committed by individuals that possess communication deficits or developmental disabilities, such as those on the autism spectrum. These students may have difficulty with social communication and interaction, restricted interests, and repetitive behaviors.^{19,20} Among other behaviors, students on the spectrum may have trouble understanding another person’s point of view or may be unable to predict

or understand other people's actions.²⁰ In social contexts, it may be difficult for those on the spectrum to interpret subtle cues in social interactions such as understanding personal space boundaries or to distinguish between wanted and unwanted attention (e.g. flirty vs. unnerving, appropriate vs. inappropriate).²¹ For this population, the significant challenges in reading social cues may increase the likelihood for these behaviors, but does not lessen the impact on the student who is harmed.

What is Known about Intervention and Treatment

Research has shown that treatment of adolescents and young adults with problematic sexual behaviors is effective – if interventions are tailored to the individual. This individualized approach is aligned with recent American Bar Association Task Force recommendations on sanctioning campus sexual misconduct:

[S]anctioning should be decided on an individualized basis taking into account the facts and circumstances including mitigating factors about the respondent, the respondent's prior disciplinary history, the nature and seriousness of the offense, and the effect on the victim and/or complainant as well as the university community.²³

Professionals who work with these youth typically use a framework called Risks-Needs-Responsivity (RNR) to ensure that the cognitive, emotional, and developmental understanding of that youth are addressed. The RNR model focuses on matching interventions with clients' level of risk, identifying criminogenic needs that increase their risk of reoffending, and aligning interventions to clients' cognitive capabilities.

Campuses are faced with a range of students who may need a variety of interventions that are tailored to their unique situation, including students:

- found responsible for sexual misconduct and who may return to campus after a suspension
- who may remain on campus with restrictions
- with a previous misconduct violation who are transferring to a new campus

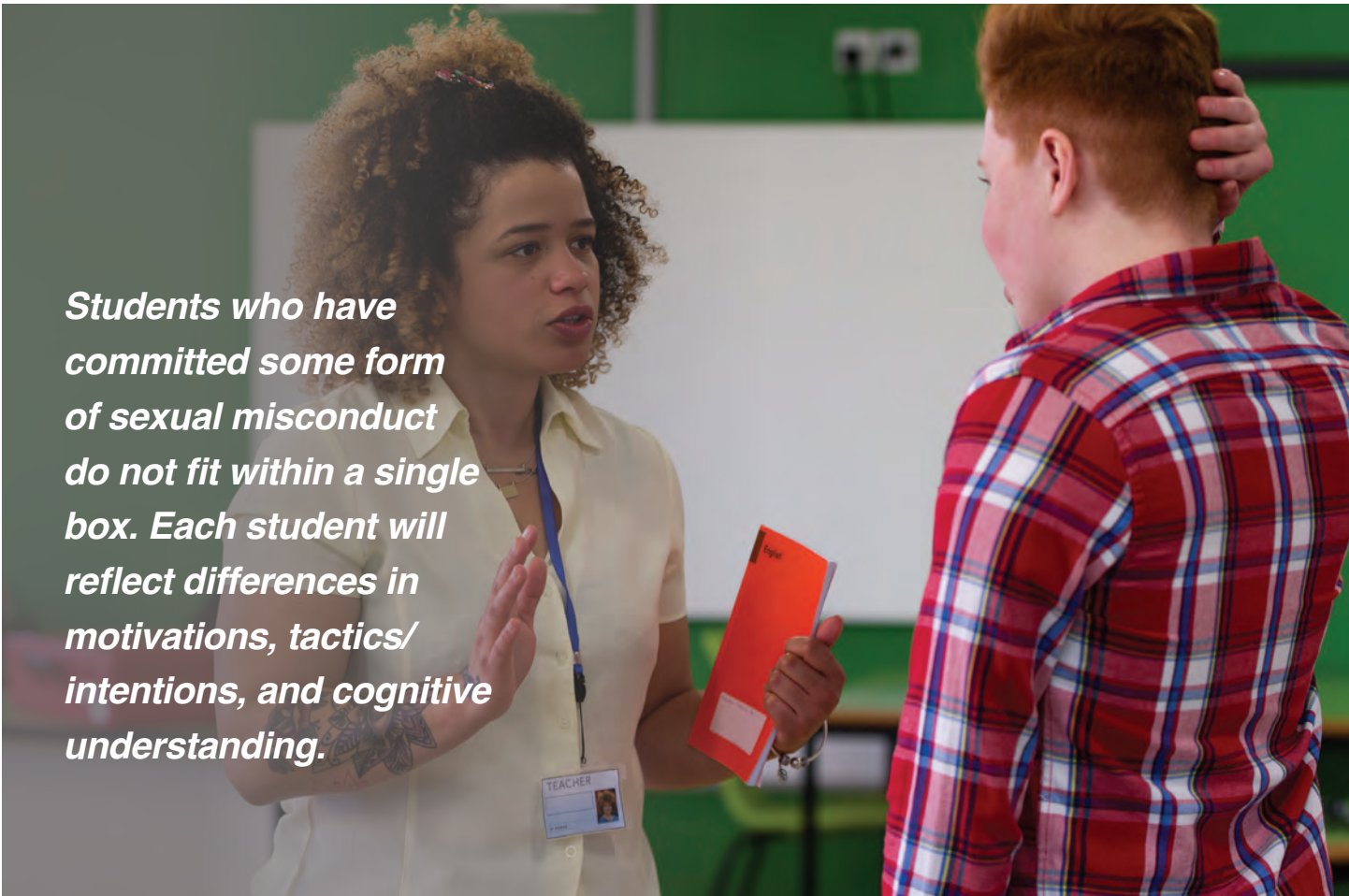
To individualize the intervention for students with more significant problematic behaviors, a risk assessment by a qualified professional may offer important insights and articulate the best intervention. The intervention may include treatment by a qualified therapist, an education program, and/or detailed safety planning to address the identified issue for the student while ensuring both the student's safety and the safety of the entire campus.

Recommendations

Campus sexual misconduct includes various types of behaviors involving different motivations, tactics, cognitive understanding and developmental differences. School administrators and staff who recognize this nuance will be able to develop a more effective response—one that includes a comprehensive understanding of the student and the context in which the harm was caused.

Here, we provide several recommendations to assist campus stakeholders in this effort.

- **Focus on perpetration prevention:** Many campus prevention programs focus on preventing and responding to victimization and may ignore opportunities to prevent the perpetration of sexual misconduct. Programs that focus on students at risk to harm or preventing further perpetration need to be incorporated. Establishing programs that offer all students, staff, and faculty the resources and skills on how to talk to someone who may be harmed, intervene with someone who may be at risk to cause that harm, and to offer resources for these students is an essential element of prevention. Furthermore, each of these prevention programs need to expand beyond a one-size-fits all approach to examine the range of behaviors, the range of individuals, and the motivations for those behaviors when designing a prevention approach.
- **Services for students:** Campuses may need to develop more robust services for students with problematic sexual behaviors through either partnerships with off-campus experts who regularly evaluate and treat these cases, additional training for counseling centers and sanctioning bodies, or additional staff hired to address these issues.



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These expanded services would challenge campus staff to offer students with problematic sexual behaviors various interim measures as their behavior is addressed or they reach out for help (e.g., safety plans, changes in schedules); challenge campus counseling services to be trained to work with this population or develop an agreement with those off-campus experts; and challenge sanctioning bodies to develop or consult with experts when individualizing sanctions to enhance the likelihood of a successful outcome. It is equally important for campuses to actively let students and the community know that these services exist. Research shows that without informing students of these services, few will be able to access them when needed the most.²⁴ Finally, these services would need to address a range of situations that include students who have not been reported, students who have been reported and in the conduct process, as well as students found responsible and

returning to school after a suspension or transferring in with a disciplinary history.

- **Individualized response:** To ensure an individualized response to each student that reflects their risk, the special challenges they may face, and the resources needed to ensure their safety, MASOC recommends referring students to a qualified clinician to conduct a specialized risk assessment for problematic sexual behaviors. In Massachusetts, a listing of qualified clinicians who work with youth or young adults can be accessed through MASOC (www.masoc.net), and for older students, through MATSA (www.matsa.info). To access someone locally outside of MA, contact the Association for the Treatment of Sexual Abusers (www.atsa.com) or the Safer Society Foundation (<https://www.saferociety.org/>). Research also shows that without these tools to guide the process, assessments would be inconsistent

across individuals. One such tool is the M-CAAP developed by MASOC and a team of nationally recognized experts with over 100 years of collective experience in working with this traditional-aged population. Go to www.masoc.net for more information.

- **Treatment and educational interventions:** When working with adolescents, research shows that the risk to reoffend is fairly low.²⁵ The research also indicates that the risk to reoffend sexually for many young adults is equally low, especially with evidence-based intervention and treatment. For higher risk students, a comprehensive treatment program is an opportunity to address their behaviors as well as the decisions that led up to causing such harm. However, research shows that for those at the lowest risk to reoffend, a full treatment program may not be as useful as other interventions such as a short educational program. In some cases, individualized sanctions or educational interventions may be enough to redirect behaviors. The clear take-away is to match the intervention to the student's risks, protective factors, and needs to ensure the most successful and safe outcome.
- **Community reentry:** Safety planning is often used for students who have been harmed. But a similar process can be used for a student remaining enrolled, returning from suspension, or transferring to a new institution after a finding of responsibility for sexual misconduct. Research shows that even if you place high-risk adolescents into a low-risk environment, their risk to reoffend is

significantly lower.^{26,27} A key element of all of these approaches is to address risk factors but also to enhance the protective factors surrounding the individual at risk to cause harm. Some of these will be needed to counter a risk factor (e.g., substance-free events and substance-free support network) and others will be necessary to bolster the strengths that already exist (e.g., supportive friends and family, academic support, setting longer term goals). Therefore, colleges and universities can utilize some of the tools developed for family reunification or other forms of community reentry to ensure a safer reentry for the student while also helping to maintain a safer campus community.

- **Restorative justice:** Restorative justice is a framework that addresses harm by prioritizing acknowledgment of harm, personal accountability, and connection instead of the traditional strict focus on statute violations.²⁸⁻³¹ Restorative justice practices can vary but may include features of victim-offender conferencing, family group conferences, and peacemaking circles. There have been recent calls for campuses to adopt restorative justice principles in addressing sexual misconduct. As part of this process, campus restorative justice coordinators must identify the needs, preparedness, and consent of both the student who filed the complaint and the student who was accused. When implementing restorative justice practices, institutions must ensure that facilitators are adequately trained in applying the process to sexual misconduct cases.

Campuses may need to develop more robust services for students with problematic sexual behaviors through partnerships with off-campus experts, additional training for existing staff, or new staff with this expertise.

Conclusion

Sexual misconduct remains a pressing concern for campus environments, and the policy landscape surrounding these behaviors is complex. Ensuring effective responses to campus sexual misconduct is vital to creating safe learning environments for students. Therefore, it is important for campus administrators and policy-makers to recognize that one-size-fits-all policy approaches are unlikely to adequately address the perpetration of campus sexual misconduct because they fail to recognize the myriad causes, motivations, people, and contexts involved.

Schools would benefit from a proactive response—one that incorporates: a focus on perpetration prevention; the

development and promotion of resources for students at risk, students accused, and students found responsible; and coordination with qualified clinicians in establishing sanctions and community reentry. When creating an individualized approach to students who have engaged in harmful sexual behavior, a response that is rooted in a deeper recognition of the diversity of students, differences in behaviors, and understandings of that behavior is critical. Doing so ensures that students harmed by these behaviors have their needs addressed, students who have committed these violations receive effective services, and that healing, accountability, and safety are fostered in the broader campus environment.

Go to www.masoc.net for a full listing of the references noted in this paper.

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About MASOC

MASOC's mission is to ensure that children and adolescents with problematic or abusive sexual behaviors live healthy, safe, and productive lives. We strive to prevent sexually abusive behaviors in these youth by training professionals and educating the community about developmentally appropriate interventions, evidence-based treatment, and effective public policies.



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Students' Perceptions of Justice: Application of Sanctions, Guilt, and Responsibility in Campus Sexual Assault Cases

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Abstract

Despite growing attention to adjudication of campus sexual assault cases, little is known how students perceive “justice” for such cases. The present study examined whether victim, perpetrator, and assault characteristics influenced students’ perceptions of: whether a sanctionable violation occurred; the type of sanction to be applied; perceived severity of the sanction; proportion of guilt attributable to the victim and perpetrator; and level of responsibility of the victim and perpetrator. Fourteen factors pertaining to potential negative evaluation of rape victims were derived; thus, a non-factorial vignette survey design focusing only on each main effect was employed. 846 college students responded to one of four versions of a randomly distributed survey each containing eight vignettes that varied to represent all levels of the 14 factors. Students were not consistent in their application of sanctions or assignment of guilt or responsibility for the sexual assault vignettes, but rather were influenced in their ratings for 10 of the 14 factors. Students responded differentially to levels of the following factors: psychological impact on the victim, victim’s medical consequences, reason for the victim’s incapacitation leading to assault, consistency of victim’s and perpetrator’s accounts of the assault, sexual orientation of the victim, type of forced sex, number of perpetrators involved, fraternity membership of the perpetrator, gender of the perpetrator, and victim’s initial display of sexual interest in the perpetrator. Cases consistent with rape myths appear to influence students’ perceptions of justice. Findings are discussed in terms of implications for research and prevention programming.

Keywords Sexual assault · Campus sexual violence · Perceptions of justice in sexual assault cases · Sanctions for sexual assault · Violence against women

Institutions of Higher Education (IHEs) across the United States have spent several decades implementing legislation and Department of Education Title IX guidelines as a response to the problem of sexual assault on campuses (Dunn 2013). Specifically, they have developed policies and procedures for investigation of such cases and subsequent adjudication of them. There appears to be a relatively similar focus across campuses on the issues of identification, prevention, and adjudication of sexual assault cases due to this recent national spotlight on sexual misconduct that is often furthered by students’ on-campus efforts. However, in the process, there has

been very little investigation as to how students perceive “justice” in these cases. At the same time, IHEs have variously retained or removed college students from panels hearing cases of sexual misconduct (e.g., Brown 2018) without much empirical knowledge of their perceptions of justice for these cases. Information of this nature would seem important for IHEs deciding how to adjudicate these cases and for understanding students’ perspectives.

Varying definitions of *consent* to sexual activity for student codes of conduct (Gruber 2016) influencing IHEs’ definitions for “sexual assault” (Krause et al. 2018) suggests that individuals on hearing panels may not have one “rape” scenario in mind and may not view just one sanction as appropriate to apply to all cases of reported sexual assault. Universities historically have responded in drastically different ways when applying sanctions, sending the message that factors other than the occurrence of an assault may be influential. However, in the current climate of no tolerance for campus sexual assault, we do not know whether college students view all sexual assault cases through a narrow lens deserving of severe sanctions or whether they

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identify significantly with peers who are victims and perpetrators, creating greater angst for decision-making in these cases.

Researchers have yet to explore college students' perspectives on what constitutes appropriate and just responses from their universities' panoply of sanction options for campus sexual assault cases. Different from studies of community samples making judgments about rape victims within the framework of the criminal system is the fact that college students are less likely to be reacting to distantly imagined, unrealistic, or stereotypical rape cases (e.g., Maier 2008; Williams 1984). Rather, descriptions of sexual assaults on their age mates and by their peers involving scenarios of college life (e.g., drinking at a party) likely produces closer identification with the parties involved and an awareness that one could be a potential victim or even a perpetrator. Knowing whether students' perceptions are influenced by aspects of sexual misconduct cases (i.e., descriptive details of the victims, perpetrators, and the sexual assault) would be important for determinations whether to include students on hearing panels. However, this knowledge may be even more significant for understanding students' reactions to cases on campuses, for understanding victims' reactions to disciplinary proceedings and outcomes, and for educating students regarding sexual assault. Supporting this, two studies have suggested that students' perceptions of procedural fairness in these cases are strongly linked to their acceptance of the outcomes (Mackey et al. 2017) and to the educational value received from the disciplinary process (King 2012). Findings from this study may provide exceptions to prior literature regarding perceptions of sexual assault cases in criminal justice arenas due to participants feeling more aligned with the actors in the cases on which they make their judgments. Although students' perceptions must be filtered through campus disciplinary systems rather than the criminal justice system, we have yet to learn how sanctions for assault cases are viewed by college students within these academic realms and disciplinary limitations.

University Justice for Sexual Assault Cases

An ongoing debate has been whether disciplinary systems in IHEs should be viewed as “legal” systems with attendant requirements and protections of the criminal justice system (DeMatteo et al. 2015) or whether the purpose of a university's disciplinary system is educational even though sanctions/restitution are applied (Karp and Conrad 2005; Lake 2009). Until recently, expulsion was considered the rare option due to IHEs' emphasis on educational/reparative approaches as paramount for both perpetrators and victims of campus violations. But with the spotlight on infamous campus cases where perpetrators received minor or no sanctions, IHEs have tightened their regulations and procedures because of the severity of this violation. Whether students' attitudes parallel

this shift by institutions' is unknown. The only study we identified as examining students' perceptions of university sanctions for campus sexual assaults (Ayenibiwo 2014) employed a small African sample to rate the applicability of two sanctions, thus bolstering the need for investigating students' approach to these cases.

Perceptions of Justice for Sexual Assault

While justice, as a philosophical principle, may be generally agreed upon by a cultural group, its application in specific settings is likely to be highly debated. Individuals' concepts of justice are typically an amalgam of personal learned experiences overlaid on indoctrinated principles by major social institutions, thus providing an explanatory structure involving external and internal factors. This study, however, focuses on external factors to determine whether students' perception of justice for sexual assault cases involving peers is influenced by characteristics of the persons involved (i.e., victim and perpetrator) as well as characteristics of the assault to evaluate more clearly the effect of these.

With that intentional delimitation, whether person and contextual factors will produce similar impacts on college students assigning sanctions to perpetrators on campus compared with research on community sample reactions toward sexual perpetrators (not in college) is unknown. McFatter (1982) found that the general public prioritized retribution and punishment for sexual assault cases, suggesting their goal was to keep sexual perpetrators off the streets and that they believed this violation deserved a serious outcome. But sexual assault cases in IHE disciplinary systems are subject to potential sanctions that fall far short of losing one's civil liberties for a period of time. Even being found in violation of the code of conduct for rape does not imply which of the widely ranging IHE sanctions might be applied. Campus assault cases frequently have discrepant characteristics from what is viewed as constituting a “stereotypical” rape or “real” rape (i.e., assault by a stranger outside in the dark on a sober victim who physically fights back). Campus cases which often involve contexts that seem normative to students (e.g., drinking, being in a student's room, a basic acquaintance between perpetrator and victim) might lead them to reject claims of sexual assault, leading to lowered sanctions.

Literature on Perceptions of Sexual Assault A recent meta-analysis on perceptions of rape victims conceptually organized the approach to findings in the literature based on whether the manipulated factors were consistent or inconsistent with rape myths (Hockett et al. 2016). [Rape myths are beliefs that reject reports of sexual assault by maintaining that victims (or their behavior) are responsible for the occurrence of the rape. General concepts for rape myths include: “she asked for it;” he didn't mean to;” it wasn't really rape;” “she

lied;” and “rape isn’t as big a problem as women suggest” (McMahon and Farmer 2011).] This framework allowed the researchers to consider the wide range of factors tested in this literature according to whether they were inconsistent compared to the stereotype of a ‘real rape’ as commonly viewed by the general public (Hockett et al. 2016) with the expectation that perceptions toward rape victims would be negative when descriptions of sexual assaults seemed consistent with rape myths. The meta-analysis included 40 studies that found significance and/or gender differences in perceptions toward the victim when the following factors were examined:

“(a) ...prior physical relationship between the victim and perpetrator, (b) how provocative the victim’s dress was, (c) the forcefulness of the victim’s verbal protest, (d) the forcefulness of the victim’s physical protest, (e) the extent of coercion used by the perpetrator, (f) the sexual suggestiveness of the victim’s pre-rape behavior, (g) the victim’s relationship status, (h) the perpetrator’s relationship status, (i) the victim’s socioeconomic status (SES/class), (j) the extent to which the victim and perpetrator knew each other in date/acquaintance rape scenarios, (k) the stranger’s appearance in stranger rape scenarios, (l) the extent of the victim’s apparent alcohol consumption, (m) the extent of the perpetrator’s apparent alcohol consumption, (n) the privacy of the rape location, (o) the rape time of day, and (p) the types of sex utilized by the perpetrator...” (Hockett et al. 2016, p. 146).

Factors from other studies consistent with rape myths were also included, specifically (q) an invitation to the apartment by either party, and, (r) a promiscuous reputation of the victim. Factors that might negatively affect an observer’s view of a rape victim has extended beyond these variables over time, but this conceptual organization evaluating the factors as consistent or inconsistent with rape myths appears to hold as a framework.

Utilizing this conceptual framework to organize this body of research suggests we do not have to approach it piecemeal. Specifically, Pollard (1992) concluded from studies assessing victim characteristics (e.g., behavior prior to the rape; what they wore) that rape victims are considered more responsible for what happens the more they engage in what appear to be “incautious” behaviors (i.e., consistent with rape myths). Similarly, Whatley’s (1996) analysis of observers’ perceptions suggested victims were considered more responsible for events if their dress or actions could be construed as less “respectable” (i.e., again, consistent with rape myths).

Literature was thus reviewed to identify factors pertaining to negative evaluation of rape victims because students’ assignment of sanctions might reasonably be influenced by previously identified factors where victims were considered at least partially

responsible. These factors were, in turn, expected to mitigate assigned sanctions to perpetrators. However, we also recognized that our focus on sexual assaults of college-aged students occurring in conjunction with college life activities would render some of the identified factors inapplicable to this study. Most demographics were not investigated (except race) because of the anticipated greater homogeneity of college students, e.g., age range, primary relationship status (single), and educational, and to some extent SES, level of students. Factors not highly relevant to sexual assaults on college campuses were excluded (e.g., college sexual misconduct occurs more with acquaintances rather than strangers). Factors considered potentially unique for campus cases were included: a) high status of the perpetrator was modified to depict a star athlete rather than manipulating social class, b) a range of discrepant reactions by the perpetrator to the victim’s claim of sexual assault, c) perpetrator affiliation as a fraternity member, d) attractiveness of the victim, and e) gender of the perpetrator in heterosexual assault. Although studying the impact of multiple factors on perceptions can seem daunting, both Pollard (1992) and Whatley (1996) stated the importance of investigating victim, perpetrator, *and* sexual assault characteristics to best understand perceptions of victims.

Guilt Vs. Responsibility Because characteristics of many campus sexual assaults do not fit stereotypical cases representative of rape myths (Maier 2008; Williams 1984), students may view victims in these cases as at least partially responsible for the rape while still placing more guilt/blame on the perpetrator. This may, in turn, affect their assignment of sanctions for the sexual assault. The distinction between “blame” (i.e., guilt) versus “responsibility” was investigated conceptually in the 1980s (e.g., Brewin and Antaki 1987; Hamilton 1980; Shaver and Drown 1986) and remains significant for assessments by observers for sexual assault cases. Bradbury and Fincham (1990) concluded that blame/guilt distinctly implies liability for a person’s actions and could be assessed by intentionality, motivation, voluntariness, knowledge of consequences, understanding the wrongfulness, and ability to have done otherwise. In contrast, a judgment of responsibility determines whether an individual had a role or was accountable in some way for an event’s occurrence. Hockett et al. (2016) concluded that observers use different case information for determining guilt versus responsibility. Thus, this study also endeavored to understand students’ assignments of guilt and responsibility for cases with varying factors.

Purpose of the Study

This study was designed to explore whether variations in victim, perpetrator, and assault characteristics in depictions of campus sexual assault cases affected college students’ perceptions of a) whether they believed a sanctionable violation had

occurred, b) which, if any, sanction should be applied, c) their perception of the seriousness of the sanction they applied, d) guilt attributable to the victim and the perpetrator, and e) the level of responsibility of the victim and the perpetrator. The findings were expected to contribute to understanding what constitutes “just” outcomes for these cases from the perspective of peers that could inform IHEs deciding whether to include students on disciplinary panels or could be used for educational and prevention efforts on campus. However, the findings have broader implications for guiding sexual assault prevention and programming on campuses. When students might act or not to intervene in potential sexual assaults, when students assign some guilt or responsibility to the victim, and when students believe that victims would not be believed or protected, all are findings with the potential to inform campus intervention and prevention programming.

Hypotheses

Hypothesis 1 Students presented with varying scenarios of campus sexual assault will not consistently apply strong sanctions or assign total guilt and responsibility to the perpetrator.

Hypothesis 2 Characteristics (victim, perpetrator, or sexual assault) of campus sexual assault scenarios consistent with rape myths will result in college students assigning less serious sanctions to the perpetrator, assigning a portion of blame to the victim, and assigning more responsibility to the victim than for scenarios not consistent with rape myths.

Method

Participants

Students at a large Southern university participated in this study to fulfill a research course requirement. The sample consisted of 846 completed surveys with 248 male students (29%) and 597 female students (71%). The age range was 18–46, with a median age of 19. The sample was 80% Caucasian (African American = 10%; Hispanic = 5%; Asian = 2%; Other = 3%). Approximately 1% were international students, and approximately 2/3 were raised in the Southern United States. Most students were raised in suburban areas or small cities/towns with approximately 19% coming from urban environments and 8% coming from rural areas. Almost 2/3 of the participants were first year students (21% = sophomores; 14% = juniors or seniors).

Experimental Conditions

Factors expected to impact students’ determinations of appropriate sanctions for campus cases of sexual assault were identified 1) from extant literature using criminal justice frameworks, 2) from recent infamous campus cases where salient factors were raised as the reasons for potential “injustice,” e.g., athletes not investigated, and 3) from descriptive literature on campus sexual assault identifying unique college life factors (e.g., Bennett and Jones 2018) that included victim, perpetrator, and sexual assault characteristics. For each factor, a series of vignettes was developed for which the only difference was the language used to describe the levels for that factor. To reduce the chance for differences in responses based on the various scenarios presented, vignettes included the same generic information to eliminate potential confounding variables: “[Victim name] was invited to a party off campus at the house of some students who [her/his] friends knew. During the party, a guy named [Perpetrator name], who seemed interested in [her/him]...” This language indicated that the victim thought s/he was going to a safe environment to avoid faulting the victim for initial poor judgment and to indicate that initial contact with the perpetrator was relatively benign. All vignettes stated that the victim reported the incident to the Resident Advisor the next day to prevent participants from questioning the legitimacy of the claim due to time delays in reporting. All vignettes clearly described a sexual assault without the victim’s consent except for the factor in which the male’s response to the woman’s claim of sexual assault was intentionally varied as the variable to be manipulated. Sample vignettes are found in [Appendix A](#).

The 14 factors assessed in this project are detailed in [Table 1](#) with the number and description of levels for each factor along with citations for prior studies investigating the factor or suggesting that factor as relevant to victimization. Based on recommendations by Pollard (1992) and Whatley (1996), four of the factors depicted victim characteristics, four depicted perpetrator characteristics, and six depicted characteristics of the sexual assault or its impact.

A factorial design was not considered because permutations of the vignette population that would include all levels of the factors ($N = 331,776$) was too large to be presented to respondents. Instead, a non-factorial (i.e., a main effects) design focusing on the *main effect* of factors, rather than interactions, was used to capture the influence of victim, perpetrator, and sexual assault characteristics on students’ perceptions of justice. Across the 14 factors, a total of 32 vignettes (see [Table 1](#)) were generated which were then assigned to four versions (i.e., 8 vignettes per version) with the intention that half in each version represented rape myth consistent scenarios likely to produce lighter sanctions/lesser guilt assigned to perpetrators, while the other half represented rape myth inconsistent scenarios. To avoid an interaction effect among the

Table 1 Factor descriptions and levels

Name of factor	Levels	Description of each level and version of survey on which it appeared
Victim characteristics	Reason for Victim's Incapacitation leading to Sexual Assault Angelone et al. 2007; Girard and Senn 2008; Hammock and Richardson 1997	3 1. Victim slipped a drug without her knowledge (V3) 2. Victim slipped extra liquor without her knowledge (V2) 3. Victim was voluntarily drinking a lot (V4)
	Sexual Orientation of Male Victim Sleath and Bull 2010; Wakelin and Long 2003; White and Kurpius 2002	3 1. Straight man sexually assaulted by gay man (V1) 2. Gay virgin man sexually assaulted by gay man (V3) 3. Gay man sexually assaulted by gay man (V4)
	Level of Attractiveness of Victim Calhoun et al. 1978; Ryckman et al. 1998	2 1. Small and cute victim (V1) 2. Larger and less attractive victim (V2)
	Initial Level of Sexual Interest indicated by the Victim Kowalski 1992; Schult and Schneider 1991	2 1. Woman very interested in sexual activity initially but then decides she does not want to have intercourse (V2) 2. Woman only mildly responsive to man and states at the onset she does not want to have intercourse (V4)
	Perpetrator characteristics	
Accused's Reaction Varied as to Discrepancy with the Victim's Account	3 1. Accused admits to sexual assault (V1) 2. Accused reported surprise and said he must have misunderstood victim's reactions (V4) 3. Accused had a very discrepant story from victim, claiming her consent (V3)	
Perpetrator as High-Status Student on Campus	2 1. Intercourse forced on woman by star basketball player (V4) 2. Intercourse forced on woman by student with no status (V1)	
Greek Status of Sexual Assault Perpetrator Jozkowski and Wiersma-Mosley 2017	2 1. Forced intercourse by a member of a fraternity (V2) 2. Forced intercourse by an individual with no fraternity membership (V4)	
Gender of the Assaulting Perpetrator in Heterosexual Sexual Assault Ballman et al. 2016	2 1. Female forces oral sex on male (V3) 2. Male forces oral sex on woman (V1)	
Name of Factor	Levels	Description of each level and number of survey on which it appeared
Sexual assault characteristics	Physical Injury Resulting from Sexual Assault Cohn et al. 2009	2 1. Physical injuries resulted from the sexual assault. (V4) 2. Victim did not incur any physical injuries from the sexual assault (V1)
	Medical Consequences from the Sexual Assault	3 1. Victim contracted a STI from the sexual assault (V1) 2. Victim became pregnant from the sexual assault (V4) 3. No STI or pregnancy occurred (V2)
	Psychological Sequelae Resulting from the Sexual Assault Pickel and Gentry 2017; Omata 2013	2 1. Victim had serious psychological sequelae from the sexual assault (V2) 2. Victim did not have psychological sequelae from the sexual assault (V4)
	Type of Forced Sex	4 1. Man forces oral sex (cunnilingus) on woman (V1) 2. Man forces woman to perform oral sex (fellatio) on him (V2) 3. Man forces anal sex on woman (V3) 4. Man forces vaginal intercourse on woman (V4)
	Individual versus Multiple Perpetrator Sexual Assault Shackelford 2002	2 1. Forced intercourse by man on a woman (V3) 2. Three men force intercourse on a woman (V4)
	Race of Victim and Perpetrator George and Martinez 2002	4 1. Both victim and perpetrator are African American (V1) 2. Victim is African American and perpetrator is Caucasian (V2) 3. Victim is Caucasian and perpetrator is African American (V3) 4. Both victim and perpetrator are Caucasian (V4)

factors and between survey versions and factors, the surveys did not overlap. More than 200 students completed each version.

Dependent Variables

The focus of this study on students' assignment of "justice" in the form of IHE sanctions required some dependent variables to be devised due to no prior study providing prototypical items. Dependent variables are listed below in the order participants received them for rating.

Should the Perpetrator be Punished? Participants determined the degree to which they believed the perpetrator in each vignette should be punished (**Attitude about Sanction**) using a 4-point Likert scale (4 = Strongly Agree; 1 = Strongly Disagree) as a general assessment of whether the perpetrator's actions warranted sanctioning.

Choice of Sanction Participants chose from among a range of sanctions (**Type of Sanction**) available at most IHEs which one they considered most appropriate for the perpetrator in each vignette. Participants could choose "No punishment at all" as well as choosing from a hierarchical list of sanctions, from least to most severe, provided to them.

Pilot Testing The list of sanctions used for assigning sanctions was pilot tested to determine a hierarchical ranking based on severity. An introductory sociology course that fulfills general educational requirements was utilized because students from a large range of majors and across class rankings attend. Students scored (1 = Very mild punishment to 10 = Very severe punishment) 12 possible sanctions used for campus disciplinary hearings as to their impression of severity of each sanction. Students in the pilot testing did not participate in the current study.

Mean scores representing the students' ratings for the disciplinary sanctions (in order from lowest to highest) are as follows: Verbal Warning = 1.7; Written Assignment about the Violation = 3.0; Community Service = 3.1; Written Disciplinary Reprimand in Record = 3.3; Educational Program about the Violation = 3.6; Mandatory Psychological Counseling = 3.7; Fines and/or Restitution for Damages = 4.3; Mediation Sessions following a Restorative Justice Model = 4.7; Social Suspension from Campus and Campus Activities (excluding attending classes) = 5.6; Withholding One's Degree until a given sanction is completed = 6.5; Admission or Degree Revocation = 7.9; and Expulsion from the University = 8.8.

Scoring Rank ordering of sanctions by severity allowed two scores to be devised. First, the numbered ranking of the sanction across a student's choices determined the modal sanction

selected for the eight vignettes (Type of Sanction Mode). Second, the sanction scores yielded a mean score (Type of Sanction Mean) for the eight cases a participant read. Descriptive statistics showed that for all four survey versions, Type of Sanction Mode equaled 13, thereby limiting statistical analyses using mode score. Thus, Type of Sanction Mean scores were used for analyses because means could be treated as continuous.

Student Assessment of the Severity of the Chosen Sanction (Level of Sanction) Even though the hierarchical structuring of the sanction list implies a level of seriousness, students made a subjective assessment whether their choice for each scenario was mild (=1), moderate (=2), or severe (=3). Mean scores across the eight cases were used.

Assignment of Guilt Participants assigned a proportional level of guilt for the sexual assault to the victim (**Guilt of the Victim**) and the perpetrator (**Guilt of the Perpetrator**) in each case that had to total 100%. A sliding scale from 0 to 100 was provided with a readout showing the percentages they were assigning to the victim and the perpetrator. The survey platform signaled participants whose total did not equal 100% to modify their responses accordingly.

Assignment of Responsibility for the Sexual Assault To assess whether students may view victims in these cases as at least partially responsible for the rape occurring while still placing more guilt/blame for the assault on the perpetrator, participants next designated responsibility for the incident to the victim (**Victim Responsibility**) and to the perpetrator (**Perpetrator Responsibility**). The item was phrased "...to what extent overall do you think [victim name] could have influenced or changed the likelihood of the situation happening as it did?" and was repeated a second time using the perpetrator's name. Response options constituted a 5-point Likert scale (Total responsibility = 5; No responsibility at all = 1).

Procedures

Procedures for this study were approved by the University's IRB committee for protocol 16–0678-P2H. Student volunteers were given a link to the project survey on the Qualtrics platform located behind University firewalls. Students opted to participate after reading the Informed Consent. Using either a personal computer or a mobile device, those agreeing to participate were directed randomly to one of the four versions of the survey. Identifying data (i.e., IP address) were removed to ensure anonymity of the dataset.

After opting to participate, students read the first scenario in the version they received and answered seven outcome items about the vignette. This process continued for the next seven vignettes. Last, they reported demographics including

gender, age, year in school, race/ethnicity, domestic vs. international, and region of U.S. and type of area (i.e., urban vs. rural) reared in.

Data Analytic Strategy

To assess college students' application of sanctions to varying scenarios of sexual assault, MANOVAs were conducted separately on each of the 14 factors to examine whether the seven dependent variables as a set were affected by each designated factor. Significant findings were subjected to post hoc ANOVAs to determine which dependent variable(s) differed by levels of that factor. A Bonferroni correction ($p = .05/7 = .007$) was used to account for Type I error of seven ANOVAs being conducted at the same time. Multiple comparisons finally established which students' assignments of sanctions, guilt, and responsibility were statistically different between levels of each factor.

Results

Data Screening

The random assignment of college student participants to the four survey versions resulted in relatively equal distribution (Version 1 = 219; Version 2 = 215; Version 3 = 206; Version 4 = 206). Because four versions were constructed to prevent participants from receiving more than one level of a factor and to prevent fatigue, we tested for statistical differences across participants in the four versions. Chi-square dependency tests indicated that across surveys, participants did not differ significantly (p values ranged from .24 to .62) due to categorical demographics (Gender $\chi^2 = 1.76$; Race $\chi^2 = 9.95$; Race/ethnicity $\chi^2 = 4.24$; Area raised in $\chi^2 = 13.70$; Class level $\chi^2 = 11.50$), and an ANOVA conducted to compare participants' ages indicated no differences across versions, $F(3, 842) = 0.90$, $p = .443$. Thus, no statistical adjustments based on participant demographics were made on subsequent analyses (See Appendix B Table 6 for these data),

A correlation table (see Table 2) of the seven dependent variables indicated they were all significantly correlated with each other. Most correlations were low to medium in strength. Higher correlations between assignments of guilt and responsibility for victims and perpetrators are a function of their dependence, i.e., lower scores assigned to victims would result in higher scores to perpetrators. Of note, participants' perception of the severity of the sanction they applied showed the lowest correlations with the other variables and participants' assignments of responsibility to the perpetrator and victim were more highly correlated with the actual sanction they applied than the participants' assignment of guilt to the victim and perpetrator.

Primary Results

Hypothesis 1 Participants selected sanctions from the full range of options (1 = No punishment at all; 2–13 = hierarchical list of sanctions) for the perpetrators in the vignettes, even though all but one factor clearly indicated that a sexual assault had occurred (V1:3–13; V2:1–13; V3:1–13; V4:2–13). Therefore, we examined whether college students applied similar sanctions to all 32 cases resulting from the 14 factors using MANOVA and Bonferroni corrections and found Wilks' $\Lambda = .719$, $F(217, 45,276) = 10.302$, $p < .001$. Post hoc ANOVAs indicated that, overall, students' applied sanctions differently across cases at $p < .001$.

Table 2 provides descriptive information for the outcome variables by factor. Students tended to strongly agree that perpetrators in these scenarios should receive *some* type of sanction. Notably, most students assigned sanctions at the medium to severe range of the possible sanctions (see Table 2). The mode choice of sanction for 10 of the 14 factors was the most severe option of permanent expulsion (i.e., score of 13), and mean scores for chosen sanctions ranged from 8.29 to 11.77. Students were less likely to select the most severe sanction options for particular levels of the following factors: Amount of Discrepancy of Accused's Reaction with the Victim's Account; Type of Forced Sex; Initial Level of Sexual Interest indicated by the Victim; and Gender of the Assaulting Perpetrator (See factor details below).

Employing the Bonferroni correction, post hoc ANOVAs indicated whether differences existed in students' responses when assigning guilt and responsibility at $p < .001$. Mean guilt scores assigned to the victim and the perpetrator are listed by factor in Table 2 and, added together, equal 100 because assignment of guilt was proportional between the two parties. Mean guilt assigned to victims across the 14 factors ranged from 8.05% to 26.99%, with converse mean assignment of guilt to perpetrators of 91.95% to 73.01%. Independent ratings of responsibility for victim and perpetrator indicated students assigned mean responsibility ratings for victims ranging from 1.30 to 2.15, while mean responsibility assigned to perpetrators ranged from 3.91 to 4.76.

Hypothesis 2 Table 3 provides means and SDs for dependent variables for all levels of factors, and Table 4 indicates that 10 of the 14 factors demonstrated overall significance in the choice of sanctions and/or assignment of guilt/responsibility using Wilks' Lambda tests of significance. Four factors that did *not* result in different ratings by participants were Victim Level of Attractiveness, Perpetrator as High Status Campus Figure, Physical Injury Resulting from Sexual Assault, and Race of Victim and Perpetrator.

Factors demonstrating significant differences across all or almost all outcome variables included: *Victim characteristics* – Reason for Victim's Incapacitation leading to Sexual

Table 2 Means of the outcome variables across factors and mean, sd, and correlations among the outcome variables for the whole sample

Factors	1. Attitude about sanction Mean (1–4)	2. Type of sanction Median (1–13)	2. Type of sanction Mean (1–13)	3. Level of sanction Mean (1–4)	4. Guilt of the victim Mean (0–100)	5. Guilt of the perpetrator Mean (0–100)	6. Victim's responsibility Mean (1–5)	7. Perpetrator's responsibility Mean (1–5)
Victim Characteristics								
Reason for victim's incapacitation	3.84	13	11.2	2.61	13.39	86.61	1.57	4.66
Sexual Orientation of Male Victim	3.87	13	11.56	2.6	8.05	91.95	1.3	4.78
Level of attractiveness of victim	3.85	13	11.32	2.58	8.18	91.82	1.34	4.73
Initial level of sexual interest indicated by the victim	3.67	12	10.49	2.4	19.15	80.85	1.86	4.29
Perpetrator Characteristics Factors								
Accused's reaction varied	3.25	9	8.29	2.04	26.99	73.01	2.15	3.91
Perpetrator as high-status student on campus	3.77	13	11.11	2.53	11.48	88.52	1.53	4.56
Greek status of Perpetrator	3.81	13	11.2	2.57	9.42	90.58	1.44	4.63
Gender of the perpetrator (Heterosexual)	3.66	11	10.01	2.33	12.4	87.6	1.57	4.54
Sexual Assault Characteristics Factors								
Physical injury	3.89	13	11.59	2.63	8.22	91.78	1.34	4.76
Medical consequences	3.93	13	11.63	2.66	9.31	90.69	1.40	4.75
Psychological sequelae	3.83	13	11.38	2.56	9.54	90.46	1.37	4.72
Type of forced sex	3.79	12	10.93	2.5	9.44	90.56	1.45	4.64
Individual vs. multi-perpetrator sexual assault	3.83	13	11.77	2.59	8.54	91.35	1.39	4.71
Race of victim and perpetrator	3.81	13	11.16	2.56	9.68	90.32	1.42	4.66
Whole Sample (N = 846)								
Mean	3.77	11.42	2.5	11.89	88.1	1.51	4.6	3.77
SD	0.29	2.33	0.52	16.49	16.49	0.47	0.44	0.29
Correlations of the outcome variables								
1. Attitude about sanction	1	2	3	4	5	6		
2. Type of sanction	.32**							
3. Level of sanction	.16**	.33**						
4. Guilt of the victim	-.29**	-.20**	-.11**					
5. Guilt of the perpetrator	.29**	.20**	.11**	-1.00**				
6. Victim's responsibility	-.46**	-.35**	-.15**	.42**	-.41**			
7. Perpetrator's responsibility	.47**	.37**	.18**	-.43**	.43**	-.81**		

The upper panel presents the mean values of the outcome variables across factors and of the whole sample. The lower panel presents the correlations among the outcome variables

2 = Because the variable Type of Sanction used a 13-category response system, median values are also reported. Given that 10 out of 14 factors have a median of 13, median is not a good representation of central tendency. Therefore, mean values were used to represent this variable.

***p* < .01

Table 3 Means for different levels of factors of the dependent variables

Factors		1.Attitude about sanction	2.Type of sanction	3.Level of sanction	4.Guilt of victim	5.Guilt of perpetrator	6.Victim’s responsibility	7.Perpetrator’s responsibility
Victim characteristics factors								
Reason for victim’s incapacitation								
Slipped extra liquor (n = 213)	<i>M</i>	3.87	11.11	2.69	15.48	84.52	1.62	4.64
	<i>SD</i>	0.42	2.64	0.54	23.79	23.79	0.61	0.53
Slipped a drug (n = 205)	<i>M</i>	3.96	11.58	2.62	9.40	90.60	1.36	4.86
	<i>SD</i>	0.26	2.31	0.62	21.49	21.49	0.52	0.34
Voluntarily drinking (n = 203)	<i>M</i>	3.70	11.16	2.46	14.66	85.34	1.70	4.50
	<i>SD</i>	0.65	2.68	0.69	21.17	21.17	0.70	0.75
<i>F</i> (2,624)		15.58*	2.08	7.12*	4.56	4.56	17.08*	21.65*
Sexual orientation of male victim								
Straight man raped by gay man (n = 217)	<i>M</i>	3.90	11.54	2.61	6.74	93.26	1.17	4.91
	<i>SD</i>	0.48	2.13	0.62	20.40	20.40	0.43	0.35
Gay virgin raped by gay man (n = 205)	<i>M</i>	3.89	11.62	2.59	9.13	90.87	1.34	4.73
	<i>SD</i>	0.47	2.22	0.66	21.58	21.58	0.64	0.67
Gay man raped by gay man (n = 203)	<i>M</i>	3.85	11.69	2.58	8.26	91.74	1.40	4.71
	<i>SD</i>	0.48	2.17	0.62	18.13	18.13	0.73	0.64
<i>F</i> (2,622)		0.54	0.25	0.13	0.77	0.77	8.68*	7.82*
Level of attractiveness of victim								
Small and cute victim (n = 215)	<i>M</i>	3.89	11.32	2.54	7.67	92.33	1.36	4.74
	<i>SD</i>	0.44	2.47	0.67	18.98	18.98	0.63	0.60
Not small or cute victim (n = 210)	<i>M</i>	3.84	11.51	2.62	8.16	91.84	1.30	4.76
	<i>SD</i>	0.48	2.43	0.63	18.72	18.72	0.56	0.57
<i>F</i> (1,423)		1.04	0.66	1.41	0.07	0.07	1.35	0.10
Initial level of sexual interest indicated by the victim								
Highly sexual woman (n = 212)	<i>M</i>	3.56	10.01	2.30	24.63	75.37	2.08	4.08
	<i>SD</i>	0.62	3.14	0.74	22.18	22.18	0.86	0.86
Mildly sexual woman (n = 204)	<i>M</i>	3.79	11.16	2.47	13.18	86.82	1.61	4.52
	<i>SD</i>	0.54	2.72	0.73	22.12	22.12	0.83	0.85
<i>F</i> (1,414)		17.38*	15.69*	5.22	27.77*	27.77*	32.41*	28.77*
Perpetrator Characteristics Factors								
Accused’s reaction varied								
Admit rape (n = 214)	<i>M</i>	3.81	10.09	2.35	14.53	85.47	1.71	4.47
	<i>SD</i>	0.43	2.83	0.66	18.38	18.38	0.60	0.60
Discrepant story (n = 174)	<i>M</i>	2.90	7.32	1.66	37.07	62.93	2.50	3.48
	<i>SD</i>	0.59	3.27	0.67	20.64	20.64	0.84	0.85
Surprised and sorry (n = 200)	<i>M</i>	3.19	8.68	1.92	25.40	74.61	2.14	3.95
	<i>SD</i>	0.68	3.43	0.73	23.47	23.47	0.90	0.89
<i>F</i> (2, 585)		130.44*	36.85*	50.72*	55.97*	55.97*	49.31*	77.64*
Perpetrator as high-status student on campus								
No status (n = 217)	<i>M</i>	3.80	11.24	2.55	10.78	89.22	1.52	4.61
	<i>SD</i>	0.58	2.50	0.64	20.20	20.20	0.65	0.67
Star basketball player (n = 202)	<i>M</i>	3.79	11.22	2.51	11.33	88.67	1.51	4.56
	<i>SD</i>	0.48	2.60	0.65	19.70	19.70	0.67	0.70
<i>F</i> (1,417)		.01	.01	.38	.079	.08	.01	.43
Greek status of perpetrator								
Raped by frat member (n = 211)	<i>M</i>	3.89	11.47	2.64	7.51	92.49	1.32	4.74
	<i>SD</i>	0.41	2.50	0.60	17.21	17.21	0.62	0.64
	<i>M</i>	3.78	11.16	2.47	10.30	89.70	1.53	4.57

Table 3 (continued)

Factors		1.Attitude about sanction	2.Type of sanction	3.Level of sanction	4.Guilt of victim	5.Guilt of perpetrator	6.Victim's responsibility	7.Perpetrator's responsibility
Raped not by frat member (<i>n</i> = 200)	<i>SD</i>	0.52	2.57	0.66	19.68	19.68	0.77	0.77
<i>F</i> (1,409)		5.29	1.58	7.79*	2.35	2.35	8.72*	6.20
Gender of the perpetrator (Heterosexual)								
Male sexually assaults female (<i>n</i> = 216)	<i>M</i>	3.79	10.47	2.38	9.47	90.53	1.45	4.64
	<i>SD</i>	0.57	2.95	0.72	18.93	18.93	0.71	0.72
Female sexually assaults male (<i>n</i> = 198)	<i>M</i>	3.59	9.87	2.24	14.48	85.52	1.69	4.45
	<i>SD</i>	0.66	3.24	0.74	22.07	22.07	0.82	0.80
<i>F</i> (1,412)		10.49*	3.87	3.42	6.18	6.18	9.56*	6.39
Sexual Assault Characteristics Factors								
Physical injury								
No injuries (<i>n</i> = 219)	<i>M</i>	3.90	11.41	2.62	7.79	92.21	1.31	4.81
	<i>SD</i>	0.48	2.28	0.61	18.92	18.92	0.48	0.42
Had injuries (<i>n</i> = 206)	<i>M</i>	3.88	11.79	2.63	8.68	91.32	1.36	4.71
	<i>SD</i>	0.51	2.16	0.60	18.89	18.89	0.51	0.59
<i>F</i> (1,423)		0.19	3.04	0.03	0.23	0.23	1.23	3.72
Medical consequences								
Contracted STI (<i>n</i> = 217)	<i>M</i>	3.93	11.59	2.60	6.31	93.69	1.31	4.77
	<i>SD</i>	0.42	2.10	0.66	18.22	18.22	0.64	0.58
No STI, no pregnancy (<i>n</i> = 215)	<i>M</i>	3.91	11.62	2.67	9.23	90.77	1.34	4.77
	<i>SD</i>	0.37	2.21	0.60	21.06	21.06	0.60	0.53
Became pregnant (<i>n</i> = 206)	<i>M</i>	3.94	11.67	2.67	12.52	87.48	1.54	4.69
	<i>SD</i>	0.29	2.13	0.54	21.97	21.97	0.64	0.57
<i>F</i> (2,635)		.36	.07	1.00	4.88	4.88	8.53*	1.40
Psychological sequelae								
Psychological sequelae (<i>n</i> = 213)	<i>M</i>	3.87	11.78	2.64	8.15	91.85	1.31	4.77
	<i>SD</i>	0.48	1.94	0.63	19.00	19.00	0.66	0.64
No psychological sequelae (<i>n</i> = 206)	<i>M</i>	3.81	11.11	2.44	10.61	89.39	1.43	4.69
	<i>SD</i>	0.57	2.58	0.72	20.26	20.26	0.60	0.58
<i>F</i> (1,416)		1.28	9.12*	8.76*	1.65	1.65	3.74	1.47
Type of forced sex								
Forced oral sex on woman (<i>n</i> = 216)	<i>M</i>	3.79	10.47	2.38	9.47	90.53	1.45	4.64
	<i>SD</i>	0.57	2.95	0.72	18.93	18.93	0.71	0.72
Forced woman to perform oral sex (<i>n</i> = 212)	<i>M</i>	3.85	11.14	2.60	7.78	92.22	1.42	4.70
	<i>SD</i>	0.46	2.37	0.60	17.55	17.55	0.78	0.71
Forced anal sex (<i>n</i> = 204)	<i>M</i>	3.82	11.36	2.54	8.66	91.34	1.32	4.75
	<i>SD</i>	0.56	2.46	0.68	20.50	20.50	0.55	0.58
Forced intercourse (<i>n</i> = 200)	<i>M</i>	3.78	11.16	2.47	10.30	89.70	1.53	4.57
	<i>SD</i>	0.52	2.57	0.66	19.68	19.68	0.77	0.77
<i>F</i> (3,828)		0.77	4.71*	4.42*	0.65	0.65	2.95	2.50
Individual vs. multi-perpetrator sexual assault								
Individual (<i>n</i> = 205)	<i>M</i>	3.78	11.16	2.47	10.30	89.70	1.53	4.57
	<i>SD</i>	0.52	2.57	0.66	19.68	19.68	0.77	0.77
Multi-perpetrator (<i>n</i> = 200)	<i>M</i>	3.92	12.58	2.70	6.09	93.70	1.22	4.88
	<i>SD</i>	0.45	1.22	0.62	19.03	20.11	0.45	0.34
<i>F</i> (1,403)		7.99*	51.30*	12.80	4.79	4.09	23.95*	28.97*
Race of victim and perpetrator								
V = AA, P = AA (<i>n</i> = 218)	<i>M</i>	3.81	11.15	2.54	9.50	90.50	1.38	4.70

Table 3 (continued)

Factors	1.Attitude about sanction	2.Type of sanction	3.Level of sanction	4.Guilt of victim	5.Guilt of perpetrator	6.Victim’s responsibility	7.Perpetrator’s responsibility
V = AA, P=W (n = 210)	SD 0.56	2.72	0.67	21.29	21.29	0.69	0.68
	M 3.85	11.51	2.66	7.22	92.78	1.35	4.75
V = W, P = AA (n = 202)	SD 0.47	2.43	0.61	16.69	16.69	0.72	0.59
	M 3.85	11.31	2.53	9.68	90.32	1.39	4.69
V = W, P = W (n = 200)	SD 0.50	2.42	0.67	20.41	20.41	0.58	0.64
	M 3.78	11.16	2.47	10.30	89.70	1.53	4.57
F (3,826)	SD 0.52	2.57	0.66	19.68	19.68	0.77	0.77
	0.97	0.93	2.97	0.98	0.98	2.54	2.74

V = Victim. P = Perpetrator. AA = African American. W = White. For all F tests, $p = .05/7 \approx .007$ was used to indicated significance given that there are seven dependent variables

* $p < .007$

Assault, Initial Level of Sexual Interest by the Victim; *Perpetrator characteristics* – Amount of Discrepancy of Accused’s Reaction with Victim’s Account, Perpetrator was Fraternity Member, Gender of the Assaulting Perpetrator (Heterosexual sexual assault); *Sexual assault characteristics* – Type of Forced Sex, Individual vs. Multiple Perpetrator Sexual Assault.

One factor varying the victim’s sexual orientation in the sexual assault of a male by a male did not demonstrate post-hoc significant differences in the students’ choices of sanctions, but did indicate that students were assigning guilt and/or responsibility to the two parties differently dependent on the level of the factor they received. Two other factors were

characterized by the participants choosing different severity of sanctions for corresponding levels of that factor, but not assigning different levels of guilt or responsibility for the victim and perpetrator, i.e., Psychological Sequelae Resulting from the Sexual Assault and Type of Forced Sex. Means and SDs for factor levels are in Table 3 and post-hoc comparisons are in Table 5.

Victim Characteristics Factors

Reason for Victim’s Incapacitation Leading to Sexual Assault

The overall MANOVA test was significant, Wilks’ $\Lambda = .878$, $F(12, 1226) = 6.883$, $p < .001$, partial $\eta^2 = .063$. If the victim

Table 4 Multivariate results

Factor	Wilks’ Λ	F	df	Error df	p	partial η^2
Victimization Characteristics						
Reason for victim’s incapacitation	.878	6.883***	12	1226	<.001	.063
Sexual orientation of male victim	.963	1.963*	12	1234	.024	.019
Level of attractiveness of victim	.987	0.936	6	418	.469	.013
Initial level of sexual interest indicated by victim	.905	7.135***	6	409	<.001	.095
Perpetrator Characteristics						
Accused’s reaction varied	.644	23.784***	12	1160	<.001	.197
Perpetrator as high-status student on campus	.995	0.367	6	412	.900	.005
Greek status of perpetrator	.962	2.690*	6	404	.014	.038
Gender of the perpetrator (Heterosexual)	.962	2.694*	6	407	.014	.038
Sexual Assault Characteristics						
Physical injury	.974	1.862	6	418	.086	.026
Medical consequences	.945	2.986***	12	1260	<.001	.028
Psychological sequelae	.965	2.476*	6	411	.023	.035
Type of forced sex	.959	1.917*	18	2328	.011	.014
Individual vs. multiple perpetrator sexual assault	.870	8.488***	7	397	<.001	.130
Race of victim and perpetrator	.977	1.050	18	2322	.398	.008

* $p < .05$. *** $p < .001$

Table 5 Multiple group comparison results: mean differences and effect sizes in the dependent variables

Factors	1. Attitude about sanction		2. Type of sanction		3. Level of sanction		4. Victim Guilt		5. Perpetrator Guilt		6. Victim Responsibility		7. Perpetrator Responsibility	
	ΔM	<i>ES</i>	ΔM	<i>ES</i>	ΔM	<i>ES</i>	ΔM	<i>ES</i>	ΔM	<i>ES</i>	ΔM	<i>ES</i>	ΔM	<i>ES</i>
Victim characteristics factors														
Reason for victim's incapacitation														
Slipped extra liquor - Slipped a drug	-0.09	0.26	-0.47	0.19	0.06	0.10	6.08	0.27	-6.08	0.27	0.26*	0.46	-0.22*	0.49
Slipped extra liquor - Voluntarily drinking a lot	0.17*	0.31	-0.05	0.02	0.22*	0.36	0.82	0.04	-0.82	0.04	-0.08	0.12	0.15	0.23
Slipped a drug - Voluntarily drinking a lot	0.26*	0.53	0.41	0.16	0.16	0.24	-5.26	0.25	5.26	0.25	-0.34*	0.55	0.37*	0.64
Sexual orientation of male victim														
Straight man by gay man - Gay virgin by gay man	0.01	0.02	-0.08	0.04	0.02	0.03	-2.39	0.11	2.39	0.11	-0.18	0.33	0.18*	0.34
Straight man by gay man - Gay man by gay man	0.05	0.10	-0.15	0.07	0.03	0.05	-1.52	0.08	1.52	0.08	-0.24*	0.40	0.19*	0.37
Gay virgin by gay man - Gay man by gay man	0.04	0.08	-0.08	0.04	0.01	0.02	0.88	0.04	-0.88	0.04	-0.06	0.09	0.01	0.02
Level of attractiveness of victim														
Small and cute victim - Not small and cute	0.05	0.11	-0.19	0.08	-0.08	0.12	-0.49	0.03	0.49	0.03	0.06	0.10	-0.02	0.03
Initial level of sexual interest indicated by the victim														
Highly sexual woman - Mildly sexual woman	-0.26*	0.40	-1.20*	0.39	-0.16	0.23	11.95*	0.52	-11.95*	0.52	0.50*	0.56	-0.47*	0.51
Perpetrator characteristics factors														
Accused's reaction varied														
Perpetrator admits rape - Very discrepant stories	0.91*	1.76	2.77*	0.91	0.69*	1.04	-22.54*	1.15	22.54*	1.15	-0.79*	1.08	0.99*	1.35
Perpetrator admits rape - Surprised but felt misunderstood	0.62*	1.09	1.41*	0.45	0.44*	0.63	-10.87*	0.52	10.87*	0.52	-0.42*	0.55	0.53*	0.70
Very discrepant stories - Surprised but felt misunderstood	-0.28*	0.44	-1.36*	0.41	-0.25*	0.36	11.67*	0.53	-11.67*	0.53	0.37*	0.43	-0.47*	0.54
Perpetrator as high-status student on campus														
Forced by student with no status - Star basketball player	0.01	0.02	0.02	0.01	0.04	0.06	-0.55	0.03	0.55	0.03	0.01	0.02	0.05	0.07
Greek status of perpetrator														
Raped by frat member - Not Raped by frat member	0.11	0.23	0.31	0.12	0.17*	0.27	-2.79	0.15	2.79	0.15	-0.21*	0.30	0.17	0.24
Gender of the perpetrator (Heterosexual)														
Male sexually assaults female - Female sexually assaults male	0.20*	0.32	0.60	0.19	0.14	0.19	-5.01	0.24	5.01	0.24	-0.24*	0.31	0.19	0.25
Sexual assault characteristics factors														
Physical injury														
No physical injury - With physical injury	0.02	0.04	-0.38	0.17	-0.01	0.02	-0.89	0.05	0.89	0.05	-0.05	0.10	0.10	0.20
Medical consequences														
Contracted STI - No STI or pregnancy	0.01	0.03	-0.03	0.01	-0.08	0.13	-2.92	0.15	2.92	0.15	-0.03	0.05	0.00	0.00
Contracted STI - Became pregnant	-0.02	0.06	-0.08	0.04	-0.07	0.12	-6.21*	0.31	6.21*	0.31	-0.23*	0.36	0.08	0.14
No STI or pregnancy - Became pregnant	-0.03	0.09	-0.04	0.02	0.01	0.02	-3.29	0.15	3.29	0.15	-0.20*	0.32	0.08	0.15
Psychological sequelae														
With psychological sequelae - No psychological sequelae	0.06	0.11	0.67*	0.29	0.20*	0.30	-2.46	0.13	2.46	0.13	-0.12	0.19	0.08	0.13

Table 5 (continued)

Type of forced sex	0.12	-0.67	0.25	-0.22*	0.33	1.68	0.09	-1.68	0.09	0.03	0.04	-0.06	0.08
Forced oral sex on woman - Forced woman to perform oral sex	0.07	-0.89*	0.33	-0.16	0.23	0.81	0.04	-0.81	0.04	0.14	0.22	-0.11	0.17
Forced oral sex on woman - Forced anal sex	0.02	-0.68	0.25	-0.10	0.14	-0.83	0.04	0.83	0.04	-0.07	0.09	0.07	0.09
Forced oral sex on woman - Forced intercourse	0.06	-0.22	0.09	0.06	0.09	-0.88	0.05	0.88	0.05	0.11	0.16	-0.05	0.08
Forced woman to perform oral sex - Forced anal sex	0.22	-0.01	0.01	0.13	0.31	-2.52	0.20	2.52	0.20	-0.10	0.18	0.13	0.26
Forced woman to perform oral sex - Forced intercourse	0.07	0.21	0.08	0.07	0.10	-1.64	0.08	1.64	0.08	-0.21	0.31	0.18	0.26
Forced anal sex - Forced intercourse	0.04												
Individual vs. multi-perpetrator sexual assault													
Individual - Multi-perpetrator	-0.14*	-1.42*	0.71	-0.23*	0.36	4.21*	0.22	-4.00*	0.20	0.31*	0.49	-0.31*	0.52
Race of victim and perpetrator													
(V = AA, P = AA) - (V = AA, P = W)	-0.05	0.10	-0.36	0.14	-0.12	2.27	0.11	-2.27	0.11	0.02	0.03	-0.05	0.07
(V = AA, P = AA) - (V = W, P = AA)	-0.04	0.05	-0.16	0.09	0.01	-0.19	-0.01	0.19	0.01	-0.01	0.01	0.01	0.01
(V = AA, P = AA) - (V = W, P = W)	0.03	0.08	0.00	0.00	0.07	-0.80	0.06	0.80	0.06	-0.15	0.37	0.14	0.31
(V = AA, P = W) - (V = W, P = AA)	0.00	0.00	0.20	0.10	0.13	-2.46	0.18	2.46	0.18	-0.04	0.02	0.06	0.03
(V = AA, P = W) - (V = W, P = W)	0.07	0.19	0.35	0.19	0.19	-3.08	0.22	3.08	0.22	-0.17	0.31	0.18	0.33
(V = W, P = AA) - (V = W, P = W)	0.07	0.10	0.16	0.24	0.16	-0.62	0.89	0.62	0.89	-0.13	0.07	0.12	0.06

The “-” sign in the first column means subtraction. ΔM = Mean differences. ES = effect size = Cohen’s *d*. V = victim. P = perpetrator. AA = African American. W = White. Means and standard deviations of the outcome variables for each factor level are in Table 3. For mean comparisons, $p = .007$ (number of comparisons) was used to determine significance for the comparison of that specific factor

was voluntarily drinking heavily leading up to her incapacitation and subsequent victimization, the perpetrator was less likely to be thought to deserve sanctions at all and participants believed they were assigning less severe punishments, although the actual level of sanctions across the three levels was not significantly different. Being slipped a drug which led to incapacitation resulted in significantly less responsibility being assigned to the victim than the other two levels of the factor, with conversely more responsibility assigned to the perpetrator.

Sexual Orientation of Male Victim The overall MANOVA test was significant, Wilks’ $\Lambda = .963$, $F(12,1234) = 1.963$, $p < .05$, partial $\eta^2 = .019$. Although sanctions were not different for levels of this factor, participants assigned less responsibility to the straight man sexually assaulted by a gay man compared with a gay virgin or a gay man who was sexually assaulted. A gay male perpetrator who assaulted a straight man was assigned greater responsibility compared with the gay perpetrator who sexually assaulted either the gay virgin or a gay man.

Level of Attractiveness of Victim The overall MANOVA test was not significant, Wilks’ $\Lambda = .987$, $F(6,418) = 0.936$, $p = .469$. No differences were identified regarding participants’ ratings based on the victim’s attractiveness.

Initial Level of Sexual Interest Indicated by the Victim The overall MANOVA test was significant, Wilks’ $\Lambda = .905$, $F(6,409) = 7.135$, $p < .001$, partial $\eta^2 = .095$. All outcome variables demonstrated significant differences between the two conditions of this factor except for the participants’ perceptions of the level of sanction they were applying. If a perpetrator forced sex on a highly flirtatious and sexual woman who decided not to have intercourse, he received less severe sanctions and was perceived as less likely to have engaged in a violation. Participants also assigned less guilt and less responsibility to the perpetrator whose victim had initially acted sexually toward him compared with the perpetrator who forced sex on a woman who only demonstrated mild sexual interest prior to making the same decision not to proceed to sex.

Perpetrator Characteristics Factors

Accused’s Reaction Varied as to Discrepancy with the Victim’s Account The overall MANOVA test was significant, Wilks’ $\Lambda = .644$, $F(12,1160) = 23.784$, $p < .001$, partial $\eta^2 = .197$. All three levels of this factor produced significant differences across all outcome variables. The perpetrator who admitted the rape was assigned more serious punishment than perpetrators who reported surprise or who claimed consensual sex, but not at the highest levels of punishment (i.e., 10.09 vs. highest score = 13). The perpetrator who admitted the assault also

received a higher percentage of guilt and a higher level of responsibility than a perpetrator who challenged the victim's account. The perpetrator claiming surprise at the woman's claim and expressed being sorry for "misinterpreting" her intentions was assigned less severe sanctions (in the moderate range 8.68), and significantly lower guilt/responsibility than the perpetrator who admitted the rape, but significantly more than the perpetrator who claimed consensual sex. Thus, the least severe sanctions (7.32) and lowest ratings of guilt/responsibility were applied to the perpetrator who directly contradicted the woman's account. In this condition, significantly higher ratings of guilt were assigned to the woman, and the mean punishment for the perpetrator was in the range of requiring him to attend an educational program.

Perpetrator as High Status Student on Campus The overall MANOVA test was not significant, Wilks' $\Lambda = .995$, $F(6,412) = 0.367$, $p = .90$. Ratings were not different when the perpetrator was a star basketball player versus someone who was just a friend with the team.

Greek Status of Sexual Assault Perpetrator The overall MANOVA test was significant, Wilks' $\Lambda = .962$, $F(6,404) = 2.690$, $p < .05$, partial $\eta^2 = .038$. Students thought they were assigning a more serious sanction to a frat member than a nonmember, although the assignment of sanctions was not statistically different. Students' ratings of guilt were not different, but the victim of a fraternity member was rated as having less responsibility than a victim of a perpetrator who did not belong to a Greek organization.

Gender of the Assaulting Perpetrator in Heterosexual Sexual Assault The overall MANOVA test was significant, Wilks' $\Lambda = .962$, $F(6,407) = 2.694$, $p < .05$, partial $\eta^2 = .038$. Scenarios only varied the gender of the victim and perpetrator for forced oral heterosexual contact. A man forcing oral sex on a woman was more likely to be perceived as deserving of punishment than a woman forcing oral sex on a man. In addition, more responsibility was assigned to a male than a female victim experiencing forced oral sex.

Sexual Assault Characteristics Factors

Physical Injury Resulting from Sexual Assault The overall MANOVA test was not significant, Wilks' $\Lambda = .974$, $F(6, 418) = 1.862$, $p = .086$. No significant differences emerged for this factor, either for assigned sanctions or assignment of guilt/responsibility.

Medical Consequences from the Sexual Assault The overall MANOVA test was significant, Wilks' $\Lambda = .945$, $F(12, 1260) = 2.986$, $p < .001$, partial $\eta^2 = .028$. Fairly severe sanctions were applied similarly across the three levels of this

factor. However, more guilt was assigned to the victim if pregnancy resulted compared with contracting an STI, and more responsibility was assigned to the victim who became pregnant compared to a victim who contracted a STI or a victim experiencing no medical consequences.

Psychological Sequelae Resulting from the Sexual Assault The overall MANOVA test was significant, Wilks' $\Lambda = .965$, $F(6,411) = 2.476$, $p < .05$, partial $\eta^2 = .035$. Participants who received the scenario in which the sexual assault victim experienced psychological sequelae subsequent to the sexual assault selected more severe sanctions and also believed they were assigning more serious punishment to the perpetrator, although no differences in assignment of guilt or responsibility occurred in response to the different levels of this factor.

Type of Forced Sex The overall MANOVA test was significant, Wilks' $\Lambda = .959$, $F(18,2328) = 1.917$, $p < .05$, partial $\eta^2 = .014$. Perpetrators who forced anal sex were given more severe sanctions than perpetrators who forced the victim to receive oral sex. For perpetrators who forced cunnilingus versus those who forced fellatio, participants believed they were assigning a more serious sanction to the man forcing the woman to perform oral sex on him. There were no differences across levels on guilt or responsibility ratings.

Individual Versus Multiple Perpetrator Sexual Assault The overall MANOVA test was significant, Wilks' $\Lambda = .870$, $F(7,397) = 8.488$, $p < .001$, partial $\eta^2 = .130$. Participants significantly rated every outcome variable for this factor differently, with more severe punishment assigned to a sexual assault with multiple perpetrators as well as less guilt and less responsibility assigned to the victim of the multiple perpetrator sexual assault.

Race of Victim and Perpetrator The overall MANOVA test was not significant, Wilks' $\Lambda = .977$, $F(18,2322) = 1.050$. Severity of assigned sanctions and guilt or responsibility ratings did not differ across the varied vignettes manipulating race of victim and perpetrator.

Discussion

Even though this study presented scenarios that described sexual assaults and participants were highly likely to mete out more serious disciplinary outcomes available at universities, it is apparent that victim, perpetrator, and context characteristics still influenced assignment of sanctions, guilt and responsibility. The authors did not expect to find large effect sizes given the planned limitation that the scenarios described a sexual assault, so the fact that 10 of the 14 factors still

influenced students' perceptions of justice for these cases is noteworthy.

Our initial research question asking whether college students apply similar sanctions across sexual assault cases appears answered. Sanctions assigned by college students tended to be severe which seems in line with the general public's prioritization of punishment (Lake 2009) over an educational response to such a severe action. But, when comparing levels of factors and when contrasting factors, sanctions are not consistently applied, reinforcing the idea that case characteristics can influence perceptions of whether a sexual assault occurred or what sanctions are deserved (Krause et al. 2018). This was especially true for factors assessing psychological sequelae, consistency of the perpetrator's story with the victim's story, type of forced sex, number of assaulters, and the victim's initial sexual interest. Scenarios that appeared to mirror beliefs consistent with rape myths produced more severe sanctions than other levels, i.e., if a version of a factor reflected commonplace ideas of what "real" rapes are like, students assigned stronger punishments. This finding suggests more of a parallel than expected to prior sexual assault literature utilizing community members which found that cases with characteristics consistent with rape myths were more likely to be viewed as more lenient toward the perpetrator (Hockett et al. 2016).

To obtain a broader conceptual view of students' perceptions, this project assessed their designations of guilt and responsibility of the victim and the perpetrator as suggested by Hockett et al. (2016). Similar to the variation in application of sanctions, assignments of guilt and responsibility were not always consistent whether they differed within an individual factor or across factors. For example, students assigned higher sanctions to a perpetrator who drugged his victim versus one whose victim drank voluntarily to incapacitation, but the perpetrator who drugged the victim was not rated higher in proportional guilt than the perpetrator who violated a woman without actively contributing to her incapacitation. Consistent with rape myths, victims whose incapacitation was due to voluntary drinking were assigned more responsibility for being in a situation that resulted in sexual assault. These findings are in line with Maier's (2008) and Williams' (1984) contention that rape cases not fitting the stereotypical view of the elements necessary to be a "real" rape place greater judgments on the victims as being partially to blame.

Only two factors demonstrated consistent differences across levels for all dependent variables – a) consistency of the perpetrator's story with the victim's report of events (when there was no definitive statement that sexual assault had occurred); and b) the initial level of sexual interest by the victim – strongly suggesting that rape myths appear to be active ingredients in these judgments. Specifically, the perpetrator who admitted raping the woman was sanctioned more harshly and assigned more guilt/responsibility than the perpetrator

who reported he misunderstood the victim's intentions, who in turn was treated more harshly than the perpetrator who contradicted the victim's report. The perpetrator who immediately contradicted the victim's report was given significant latitude rather than being viewed with skepticism, and the victim's account was immediately placed in doubt based on the perpetrator's contradictory response.

For the second factor, although student codes of conduct state that individuals have the right to stop sexual activity at any point, rape myths promote ideas that women tease men beyond their ability to contain themselves and that if women allow sexual activity to progress to certain stages they do not have the right to stop. Contrasting scenarios of two victims who differed in their initial sexual interest resulted in starkly different assignments of guilt and responsibility. The young woman who acted sexually, but decided not to engage in intercourse was assigned significantly greater responsibility/guilt for the assault that subsequently happened compared with the woman who only seemed mildly interested in sex. Consistent with those views, the perpetrator whose victim was more overtly sexual received less severe sanctions.

Gender and sexual orientation were variables that proved significant for perceptions of justice. More responsibility was assigned to gay men who were sexually assaulted by a man (whether a gay virgin or gay man) than to a heterosexual man, supporting prior research (e.g., Davies et al. 2001). All three scenarios indicated the male victims were clear they did not want sex, so it is difficult to know why being gay would result in more responsibility placed on those victims than on a straight man. Possibly rape myths that have been used to place responsibility on women for sexual assaults are also placed onto gay victims, assuming they "should have known not to go anywhere with a potential attacker" or "likely gave the wrong signals to the perpetrator."

Gender was also an important factor for scenarios of heterosexual forced oral sex. A different "double standard" appeared to arise, in that students viewed the male as more culpable than the female, suggesting, similar to findings in parallel literature (e.g., Follingstad et al. 2004), woman are deemed at times to be less deserving of sanctions for similar actions. Possibly, observers believe less fear is engendered if a woman sexually assaults a man, e.g., men do not expect threats of bodily harm or death to accompany a woman's violation of his body. The myth that healthy heterosexual men always welcome sexual advances from women may also account for these findings.

When a factor not only demonstrated different assignment of sanctions for its levels, but also differences in guilt and responsibility ratings, these ratings appeared useful in explaining the sanctions that were applied. When the students' ratings were not consistent over the dependent variables, interesting questions are raised. For example, when sanctions are similar, but guilt and/or responsibility are rated differently,

it is possible that the occurrence of a sexual assault is, in and of itself, the most significant issue resulting in sanction assignment, such that different views of guilt or responsibility do not change the application of sanctions. For example, students assigned similar sanctions for cases in which different medical consequences resulted from sexual assault, but placed more responsibility on the woman who became pregnant. We are also left with less explanatory power where sanctions were applied differently, but no differences in ratings of guilt or responsibility occurred. For example, different types of sex forced on a woman resulted in different sanctions applied to the perpetrator, but guilt and responsibility were not rated differently. Because a perpetrator forcing oral sex on a woman (cunnilingus) was assigned lighter sanctions than a perpetrator forcing intercourse or anal sex, it is possible that forced cunnilingus was viewed differently due to lack of vaginal penetration by the perpetrator and possibly some sense that the perpetrator is less hostile. These issues are raised to suggest further research into students' perceptions that appear more complex than initially thought.

Implications of Findings Currently, we have mostly anecdotal information about students' reactions to investigations and hearings of sexual assault cases on their campuses which have included victims' visual representations of their perception of injustice for their own cases up to campus protests. Knowing that students who are involved in the disciplinary process are more likely to accept the outcomes if they believe procedures were fairly conducted (King 2012; Mackey et al. 2017), understanding how students view these cases is important at all levels of campus functioning. Administrators who are aware of the potential biases we found for particular characteristics of campus cases can ensure that hearing panels are well trained in understanding extraneous factors that bias decision-making as well as rape myths. Campus personnel and advocates can use these findings for educational programs and campaigns to address the existence of these biasing factors. Developing awareness that personal or situational contexts do not negate the fact that a sexual assault occurred should empower women on campuses to identify nonconsensual sex as well as reduce their exposure to risky situations. As a result of policy and programming changes and additions, evaluations should occur to determine whether changes in perceptions that justice is done on a campus affects the general campus culture regarding relationships with college officials as well as students' perceptions of safety.

Limitations This project was only administered at one large university, although the sample was quite large, and we determined that pertinent demographics did not affect results. However, conducting this study with a more diverse sample, as well as in different regions of the country and different size IHEs, will be important for identifying potential differences

not readily discernible with this mostly female Caucasian sample.

Vignette-based research always raises concerns about the generalizability of the findings to "real life" situations, such as actual decision-making at a campus hearing. Judgments about actual cases are also likely to involve a variety of factors which make decision-making more complex, which cannot be represented by assessment of vignettes that vary only one aspect of a case to maintain control over the experimental conditions. Thus, using these exploratory findings, factorial vignette investigations would be an appropriate next step.

Because this study only investigated main effects of a number of factors that potentially influence judgments of campus sexual assault cases, further research could determine whether interactions of combinations of the significant variables would provide increasingly nuanced findings to enhance our understanding of students' perceptions.

The decision to state clearly that a sexual assault had occurred in the vignettes was important for controlling demand characteristics, but smaller effect sizes resulted. Future studies could test whether the hypothesized factors are more influential if the degree of certainty that a sexual assault had occurred was also experimentally manipulated.

Conclusion

While college students fairly consistently deem a sexual assault to warrant serious and consequential campus sanctions for the perpetrator, this study suggests that at least a portion of students are more variable in their view of justice as evidenced by their assignment of sanctions, guilt, and responsibility. More importantly, perhaps, is the finding that particular victim, perpetrator, and/or contextual factors result in greater variability of applied sanctions. Students' perceptions of proportional guilt for a rape and their view of a victim's responsibility also differ due to factors that frequently are present in campus sexual assault cases. Awareness of the characteristics of cases to which students respond in line with rape myths appears important for educational purposes for students in general, and specifically for students on hearing panels for campus sexual assault cases.

Appendix 1

Sample Vignettes

Sample Vignette #1 (Victim Characteristic)

Emily was invited to a party off campus at the house of some students who her friends knew. During the party, a guy named Josh, who seemed interested in her, kept pouring liquor into Emily's glass when she was not looking. She became so intoxicated that her friends later said that she could no longer

talk to them and they thought she would probably pass out. At this point, Josh took her to his room upstairs where he took off her clothes and had intercourse with her. She reported the incident to her Resident Advisor the next day.

Sample Vignette #2 (Perpetrator Characteristic)

Christa was invited to a party off campus at the house of some students who her friends knew. She was excited to go because the basketball team, including the star player, were supposed to show up at the party. Later in the evening, the star player, Trent, seemed very interested in her and convinced Christa to leave the party and go to his room a block away to get some liquor. In his room, Trent became very aggressive, pushed her on to the bed where he held her down and proceeded to have intercourse with her. Christa reported the incident to her Resident Advisor the next day.

Sample Vignette #3 (Sexual Assault Characteristic)

Courtney was invited to a party off campus at the house of some students who her friends knew. One guy at the party, Charlie, seemed very interested in her and they spent time together during the evening. Later, Charlie convinced Courtney to come upstairs to his room because he said he had some liquor. In the room, there were two other guys waiting who, along with Charlie, became very aggressive, pushed her onto the bed where they held her down and each proceeded to have intercourse with her. Courtney reported the incident the next day to her Resident Advisor.

Note. The full list of the vignettes can be obtained by contacting the first author.

Appendix 2

Table 6 Chi-square Dependency test results on the invariance of students’ demographics across four versions of the survey

Types of variables	df	χ^2	P
Gender	3	1.764	.623
Race	12	9.949	.620
Nationality	3	4.235	.237
Reared in Urban vs. Rural Environment	15	13.699	.548
Year Level	9	11.502	.243

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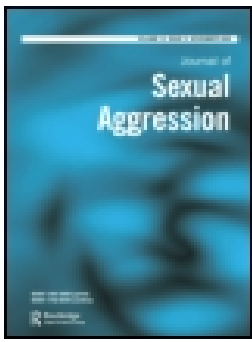
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Addressing individual and community needs in the aftermath of campus sexual misconduct: restorative justice as a way forward in the re-entry process

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ABSTRACT

Restorative justice is an approach to incidents of harm involving a high level of support and accountability for people who cause harm. To date, there is neither federal regulation nor commonly applied standard of care for re-entry to campus by a student who has been found responsible for sexual misconduct. Restorative justice re-entry circles represent a promising approach to the reintegration of students, taking into account the needs of the individual survivor, the student who violated policy, and the safety concerns of the campus community. Using a case study, this article outlines an example of a re-entry circle at a university in the United States and discusses the lessons learned with regard to concerns about the student's mental health status, issues of race and racism on campus, and the role of a trauma-informed approach to circle practice in incidents involving a complex interplay of mental health, social status, and race on campus.

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Introduction

In the aftermath of reported incidents of sexual misconduct, campus communities are often confronted with multiple perspectives that can encourage divisiveness and distrust: "Campuses are sheltered, highly social environments, where the spread of personal information can create a hostile environment for victims as well as respondents, regardless of the factual nature of the information" (Harper, Kirkner, Maskaly, & Lorenz, 2017, p. 307). Survivors¹ often feel that their institutions do not take their experiences of victimisation seriously (Smith & Freyd, 2013; Sulkowicz, 2014). Respondents also distrust their institutions' handling of these cases and many have filed suits against their institutions, often regarding respondents' due process rights, including the right to cross-examination and disagreements over the standard of evidence [preponderance of the evidence] used in Title IX adjudication processes in the United States (Harper et al., 2017). Additionally, because colleges and universities are not criminal courts, these institutions have limited capacities for conducting fact-finding (Kaplan, 2016), which can further exacerbate feelings of mistrust or a sense of harm by the institution itself toward the complainant and the respondent. Given the broad range of behaviours that constitute sexual misconduct, according to the U.S. Department of Education Office for Civil Rights (OCR), a one size fits all approach to adjudication of these incidents does not seem appropriate (Koss, Wilgus, & Williamsen, 2014). Therefore, thoughtful, tailored responses to sexual misconduct are required at all stages of the investigation, adjudication, finding of responsibility, and reintegration after a respondent has been separated from campus for a period of time. While the

Department of Education Office for Civil Rights (OCR) has provided guidance to colleges and universities regarding adjudication of sexual misconduct cases under Title IX, currently in the U.S., there are no model policies nor shared set of practices for responsibly addressing a respondent's return to campus after a period of separation. Thus, alternative solutions are needed to repair the harm experienced by survivors, ensure accountability for the student who committed harm and violated University policy, and to ensure the safety of the campus community.

Title IX

Campus administrators' primary response to sexual and gender-based misconduct is determined by college policy. While the behaviour may be a crime and survivors may choose to go to the police, administrators are responsible for offering support and accommodations, and for determining whether or not the behaviour is a violation of campus policy. In the United States, many aspects of campus policy are mandated by federal law, including Title IX, the Clery Act, and the Violence Against Women Act (VAWA), and institutions are accountable to guidance from the Department of Education's Office for Civil Rights (OCR), which enforces federal regulations (Karp, Forthcoming). OCR guidance under the Obama Administration received widespread attention in the media and spurred changes at colleges and universities around the country (Eilperin, 2016). Changes to the guidance by the Trump Administration have created controversy and confusion about how campuses should best respond to sexual misconduct (Gersen, 2017). Even though student affairs administrators prioritise educational and developmental learning outcomes in their conduct practices, the current climate on campuses has become highly adversarial, limiting an administrator's ability to hold students accountable and promote positive developmental outcomes (Williams, 2015).

Restorative justice

Restorative justice is a "*contemporary justice mechanism* to address crime, disputes, and bounded community conflict. The mechanism is a *meeting* (or several meetings) of affected individuals, facilitated by one or more impartial people" (Daly, 2016, p. 21). It includes a variety of practices in schools, universities, and juvenile and criminal justice. The approach has been used to address minor crimes and policy violations, other offenses that affect community climate but do not violate conduct codes, as well as serious offending and human rights violations (Umbreit & Armour, 2011). RJ has evolved from numerous faith-based and indigenous justice traditions and strives to be inclusive and respectful of cultural values, beliefs, and practices. In the context of sexual and gender-based misconduct, RJ circle practices may be employed in prevention and education; trauma-informed RJ conferencing may be used for resolution of certain cases; and Circles of Support and Accountability – the method used in this case study – may be used for students returning from suspension or transferring. Since RJ is guided by a set of values, no one set of practices define it, and new practices may be developed and applied as needed.

Restorative justice may provide a way to ensure accountability and increase the potential for positive outcomes for all stakeholders. Unlike mediation, RJ requires that the responsible party accept responsibility for their actions prior to participation (McGlynn, 2011; Zehr, 2002). RJ provides both a high level of accountability and support for the responsible party so that they can address the harms, gain skills and insight in order not to re-offend, and to be reintegrated into the community after the incident has been addressed. Research has demonstrated that restorative practices produce high levels of satisfaction for participants, even in cases of severe violence (Sherman & Strang, 2007). Restorative responses may offer a more humane response for all parties involved, and one that is better aligned with institutional goals of education and student development. In Australia, RJ has been used successfully for juvenile sex offending (Daly, 2016). More generally, research evidence demonstrates that RJ, compared to court processes, can better reduce recidivism (Sherman, Strang, Mayo-Wilson, Woods, & Ariel, 2015), reduce survivors' post-traumatic stress symptoms (Angel

et al., 2014), increase all parties' satisfaction with the justice process (Sherman & Strang, 2007), and increase respondent learning and development (Karp & Sacks, 2014).

The problem of suspension and reintegration

National data on suspensions for Title IX violations are unavailable. Some institutions publish adjudication data. For example, Yale University provides data on formal adjudication of Title IX complaints including findings and sanctions (Yale University, 2017). Summarising findings from their reports between 2012 and 2016, we found that Yale formally adjudicated 60 complaints against undergraduate and graduate students. Of these 60 complaints, 45 students were found in violation of the institution's sexual misconduct policy. Of these 45 students, 20 were suspended and seven were expelled. Extrapolating from these data, suspensions are a common outcome in Title IX adjudication, accounting for almost half of the sanctioning outcomes.

Suspensions do not guarantee behavioural change, nor do they provide much reassurance to the complainant or wider campus community that the student will be responsible and not reoffend upon return. We are not aware of any campus that has a formal policy to address the reintegration process. We reviewed the Title IX policies of 20 institutions, the U.S. News top 10 liberal arts colleges, top five public universities and top five private universities. Our reasoning for this selection was that these are all highly resourced institutions, likely to have well-developed policies. Not one of these institutions described a policy for reintegration after suspension. Although practice may include thoughtful, supportive guidance for the respondent and advocacy support for a survivor, such practice is not captured in their formal policies. We see this as a significant gap given the potential risk of stigma, revictimization, and a hostile campus climate in the aftermath of an incident involving sexual misconduct.

In K-12 schools, restorative practices are increasingly common (Armour, 2016; Karp & Frank, 2016). Practitioners advocate the use of "reentry circles" for students who are returning from suspension. A popular example of a reentry circle is documented on video by the organisation Restorative Justice for Oakland Youth (2017). Boyes-Watson and Pranis (2015), outline a "Welcome Back after Suspension Circle" as having the following elements: identifying the strengths and capacities the returning student can bring to the school; strengths or gifts that circle participants can offer to help support the student's successful reentry; identifying and addressing concerns about the return; obligations of the student to respond to remaining harms caused by the offending behaviour; and practical next steps to ensure success.

Rarely have campuses developed strong systems to manage the return of students to campus after suspension or for their integration into a new campus community as transfer students. Increasingly, such students are subject to campus-wide concern, anger, and fear (Kingkade, 2014; Mulholland, 2015). While we are not aware of any research examining the reintegration of students suspended for sexual misconduct, studies of students returning from mental health leaves consistently reinforce the need for social support systems to ensure success (Walker, 2014; Wang & Pilarzyk, 2009). Circles of Support and Accountability (CoSA) are a restorative practice used to assist high-risk people incarcerated for sex crimes that are being released to the community (McWhinnie, Wilson, & Brown, 2013). It is a model of proactive and positive community engagement that recognizes that successful reintegration is not solely dependent on the individual, but also on the community support system. This model may be adapted for campuses and could provide community reassurance and better outcomes for key stakeholders.

In general, people who engage in socially unacceptable conduct are more likely to change if they are provided with opportunities to address their transgressions, learn new ways of behaving, and are able to re-enter their respective communities with support and a reasonable accountability framework (Colvin, Cullen, & Ven, 2002). Due to the strong negative response most communities demonstrate regarding sexual violence, best practice initiatives are often difficult to implement. Emotionally charged reactions often follow incidents of sexual violence on college and university campuses

across the United States, as well as in Canada and other similar nations (Gray, 2014). The highly contentious nature of these situations has sometimes left few opportunities for support and advocacy for parties on both sides, and it is that void that early purveyors sought to address by establishing what later became known as a Circle of Support and Accountability or CoSA.

A CoSA is a collection of 4–6 community volunteers who pledge to assist individuals convicted of sex crimes in their attempts to integrate with a community. These volunteers are supported by community professionals and the program is managed by a circle coordinator. The original intent was to address shortcomings associated with re-entry, especially when those incarcerated had little or no access to services that would assist them in remaining safe. In CoSA terminology, the person-of-risk is known as the core member of the circle. The circle offers community support while the core member commits to doing everything in their power to avoid reoffending and the situations that put them at risk to do so. The circle holds the core member accountable to this commitment through regular meetings and checking to make sure agreements are upheld. It also serves as a conduit for communication should concerns arise. This role is crucial to the needs of communities that are serious about risk management and, ultimately, gaining empowerment as they heal from the wounds of sexual and other violence.

In 1994, two particularly high-risk individuals incarcerated for sex offenses, Charlie and Wray, were released to the community in Ontario, Canada. Significant media coverage surrounded each of these releases, with the public being told that they were at extremely high risk to sexually reoffend in a short period of time. All of the usual community social service agencies declined to work with these men, citing concerns over the particularly high-risk profile each presented (Wilson & Picheca, 2005). In both situations, local citizens expressed fear for the safety of their families and friends. Despite the protests and threats intended to drive the men from the community, in both cases, church leaders organised groups of volunteers from their congregations to assist them with their integration back into the community. Even though both were at the highest risk for reoffending, over a period of years, Charlie and Wray and their respective Circles proved that they could be law-abiding citizens (Wilson & McWhinnie, 2010). Following the success of the both of these pioneering efforts, the Mennonite Central Committee of Ontario sought funding from the Canadian government to establish the first CoSA program.

Since the time of the two inaugural Circles noted above, hundreds of CoSAs have been established throughout Canada and in Europe, the United Kingdom, and the United States. Peer-reviewed studies of the model have reported important data regarding quantitative and qualitative outcomes. Quantitatively, in comparison to matched control samples, men in a CoSA reoffended sexually at rates 70% less than their circle-less peers (Bates, Williams, Wilson, & Wilson, 2014; Wilson, Cortoni, & McWhinnie, 2009; Wilson, Picheca, & Prinzo, 2007). Evaluating a CoSA program in Vermont, Fox (2013, p. 9) found, “Core members expressed more positive senses of self as contributing members to society, a commitment to pro-social relationships, a sense of mutual obligation toward and trust of circle members, and somewhat greater optimism for the future.” Based on her interviews with core members, circle members, and reentry coordinators, Fox argues that the success of CoSAs is based on the relationships developed in the circle:

The normative expectations of the core member are communicated through a trusting and honest relationship. The genuineness of the relationships models positive relationships for the core member and legitimizes the intrusion of the volunteers in core members’ lives. In other words, the team only has moral Karpity because of the caring and respectful relationships formed. (Fox, 2013, p. 14)

As research indicates that the CoSA model works well in non-academic settings, its potential for successful adaptation to address risk on campus is promising.

Adapting the CoSA model to campuses

Incidents involving sexual misconduct on college campuses often occur in contexts in which the student who has caused harm and the student who has experienced harm are known to one

another prior to the incident (National Institute of Justice, 2008). For survivors, this can mean not only lost trust in the respondent, but the loss of shared friend circles and other social supports. Additionally, survivors of these incidents often experience negative physical and mental health outcomes such as PTSD, depression, anxiety, self-blame, a sense of loss of control, and academic repercussions ranging from lower GPA's to dropping out altogether (Campbell, Dworkin, & Cabral, 2009; Jordan, Combs, & Smith, 2014; Mengo & Black, 2016). Research has demonstrated that meeting survivors' needs in the aftermath of a sexual assault requires a trauma-informed perspective, which includes personal safety and care, being believed, feeling empowered to give voice to one's experience, personal expression and support, information and options, and accountability for the person who did the harm (Oudshoorn, Jackett, & Amstutz, 2015). Because restorative justice practices focus on the particular needs of the individuals who have experienced harm, RJ circles represent a promising practice that honours survivors' rights to be safe, to be heard, and to make decisions for themselves while also providing high support and accountability for the individual who did the harm.

Although some students who violate campus sexual and gender-based misconduct policies will require criminal prosecution and/or expulsion from the institution, others will remain enrolled or be allowed to reenter after some period of suspension. Implementation of a CoSA-type approach would provide opportunities for returning students to address their issues in a meaningful and socially accountable manner while providing for enhanced monitoring and service provision. The circle works to ensure survivor and community safety while supporting students to demonstrate change and succeed academically. At the request of the survivor or respondent, and with approval by the administration, a CoSA could be offered to an individual who wants to remain on campus and repair the relationship with the harmed party and campus community. Volunteers could be recruited or appointed from faculty, administrative staff, and the student body, according to principles established in the broader CoSA community. The length of time a student would remain in a CoSA would be determined by the members of their circle in cooperation with the professional support circle, but a minimum of six months to a year is likely necessary to achieve optimal outcomes.

Method

Because there is not any consistent use of CoSA models for sexual misconduct on college campuses, a case study (Denzin & Lincoln, 1994) is presented below to illustrate the process, content, and challenges associated with the successful implementation of CoSAs on a campus. While there are significant limitations associated with case study models, such as lack of generalizability (Noor, 2008; Yin, 2015), the case study method is an effective teaching tool to introduce new approaches or ways of thinking about a given problem (Wylie & Griffin, 2013). As well, case studies provide insight about the complexities of real world problems (Noor, 2008), of which campus sexual misconduct and its aftermath are certainly one. Informed consent for this study was obtained from the two circle facilitators, "Daniel" and "Tina", who serve as the subjects for this study. As well, all names have been changed in order to protect individuals' identities.

Case study findings

Background for the circle

Based on interviews with the two circle facilitators, this case study chronicles the use of RJ circle practice for an undergraduate student's return to a U.S. university campus after a period of separation due to an incident of sexual misconduct. This re-entry circle was convened by two facilitators who were not members of the campus community; they were contracted by the university to facilitate the circle based on their extensive experience with restorative justice facilitation and issues of sexual victimisation, diversity and inclusion. Daniel had familiarity with the campus community, as he had previously conducted training for the staff in the aftermath of a series of campus tragedies. The staff who participated in the circle included three representatives from the Dean of Students Office, one person

from Academic Affairs, one person from the international study office, and a representative from the campus counseling centre. In addition, there were three support people for the returning student who were members of the campus community: a male student leader and two faculty members. In the CoSA model, victims are not included in the circle, but a victim advocate may be. By the time the re-entry circle was enacted, the complainant, "Sarah", had already graduated.

The student of concern, "Ivan", was a junior when the incident of sexual misconduct occurred. As a student of colour at a predominantly White institution, Ivan was involved in significant leadership roles on campus. He was considered an influential student leader in the Black community on campus and also one who was well-acquainted with student life staff due to his role as a representative of students' concerns about racist incidents on campus. At the time of the incident of sexual misconduct, Ivan was struggling with significant mental health issues, including erratic outbursts, paranoia, delusions, and sudden bursts of aggression, all of which contributed to the decision to have him take a leave of absence from the campus. Ivan's mental health concerns are central to understanding the context in which he committed the harm, was separated from the institution, and his return to campus.

The accusation in the case was based on the complainant's experience of coercion for sexual activity. He was found responsible and sanctioned. It was not clear whether he did not understand what he did, whether it was intentional, or a result of the impact of mental illness on his perceptions. (These questions lingered even as the circle process unfolded.) The re-entry circle was included in the sanctioning process as a prerequisite to Ivan's request to study abroad after having been found responsible. It is important to note that Ivan would be going abroad after the circle, rather than returning directly to campus.

According to the facilitators, the staff members were motivated to address the harm and repair relationships with Ivan through a re-entry circle because they viewed him as having a low risk of re-offending. In addition, the staff had received previous training in restorative justice practices; the elapsed time between the incident and the re-entry circle had created social distance; the staff involved knew this student well; and the Title IX adjudication process was complicated by his significant mental health issues, which were undiagnosed at the time of the incident but had adversely impacted his interpersonal interactions in many facets of his life on campus.

Preparations for the CoSA were done by the facilitators in conjunction with the conduct administrator. This included several phone calls between Daniel and the administrator to establish the frame for the circle, with a focus on the RJ process, the introduction of Tina as an additional facilitator, and some communication about the case content. Since race was an important component of the case, Tina was recruited, in part, because she is a woman of colour with a long history of anti-racism work and anti-sexual violence activism, which made her uniquely situated to this complex incident. Importantly, also during this period, the co-facilitators had multiple points of contact with the returning student, Ivan, in order to establish trust and the neutrality of the facilitators' role. These conversations gave Ivan the opportunity to share his concerns with the facilitators, as well as to identify support people for him who could be invited to participate in the circle. It was important for Ivan to understand that the facilitators were not acting as agents of the institution, but as guides to develop a plan that would provide support and accountability for him in his return.

Pre-conferencing process

During the pre-conferencing process, the facilitators went to the campus and interviewed 8 of the 9 circle participants, followed by a final phone call with Ivan. These interviews ranged in length based on the participants' availability. In each conversation, the facilitators explained the RJ circle process and previewed the rounds of questions with each person. As time permitted, Daniel and Tina also asked each person the following questions: (1) How could they serve as a resource to Ivan? (2) What concerns did they have about Ivan and his re-entry process? And (3) what was their connection to this incident and to Ivan? The facilitators believed more time with each participant would have

been helpful in order to unpack this complex story, but the time spent with participants provided important insights about its layers.

During the pre-conferencing phase, when the facilitators spoke with Ivan, he expressed anger and a sense of isolation after interacting with the staff during the formal Title IX process. The facilitators listened and reflected back what they heard Ivan say, reiterating that the focus of the re-entry circle was to provide support to Ivan *and* to address the needs of the community members with whom he would be studying abroad. During the pre-conferencing, staff members expressed concerns about institutional racism, tokenism, and fears about possible racial re-victimisation of Ivan in the circle as a result of these dynamics on campus. There were also concerns about the timing of the circle, as Ivan would not be returning directly to the campus, but re-enrolling as a student and studying abroad first.

The re-entry circle

The re-entry circle is structured by elements common to restorative circle practices (Boyes-Watson & Pranis, 2015). These include the use of a “talking piece” (a symbolic object that is passed from speaker to speaker); circular turn-taking as the talking piece is passed sequentially around the circle; and phases of the circle that begin with questions or activities that help to establish trust, progress to questions of concern, and then collective brainstorming to develop a plan for action – in this case a plan for reintegration support. Between circle rounds, facilitators may summarise major themes, ask follow-up questions, or create opportunities for open, unstructured discussion, particularly when brainstorming next steps.

The questions posed in this re-entry circle included: (1) Can you describe a time in which you faced a difficult reintegration or community transition? (2) How are you connected to the issue at hand? (3) What happened from your perspective? (4) What concerns do we need to address? (5) What needs do we have to meet? (6) What plan will address those concerns and needs?

In their reflections on this circle, the facilitators observed that there was a great deal of sadness about this incident of sexual misconduct, as Ivan was a well-respected student leader on campus. There appeared to be broken relationships between Ivan and many of the staff members who were present, and these personal relationships among administrators and this student added a layer of complexity to the circle. The concerns expressed by participants included a variety of themes. Ivan expressed concerns about maintaining his mental health, peers’ potential negative perceptions of his mental health status, lost student leadership opportunities due to the finding of responsibility, and frustration about the formal adjudication process. Administrators were also concerned about Ivan’s mental health and shared concerns about inadvertently causing additional harm to his mental health in this process. There were also concerns about how Ivan would receive necessary support while studying abroad, as well as his on-campus support system, given the broken relationships with several administrators with whom he had previously been very close. Almost all of the circle participants expressed explicit concerns about race and racism on campus, and how the campus climate could affect Ivan’s overall well-being and his reintegration to the campus community.

Commitments/outcomes from the circle

To meet the needs of this student and the campus community, the group identified outcomes at all levels of the university: individual, interpersonal, group and institutional. At the individual level, several members of the circle committed to regular check-ins with Ivan throughout his time abroad. As well, two members of the Dean of Students’ Office agreed to serve as transition liaisons for Ivan upon his return to campus. For his part, Ivan agreed to participate in a facilitated conversation with the student leader who attended the circle in order to address peers’ concerns about him upon his return to campus. At the group level, the counseling centre staff and members of the faculty agreed to reinvigorate efforts to address mental health concerns, with a focus on the mental health needs of students of colour on campus. At the institutional level, the Dean of Students’

Office committed to reviewing the campus Title IX process for best practices, as well as ways to increase communication, transparency, and support for all parties involved in the process. The student leader who was present also agreed to raise concerns about mental health care needs among students of colour with the Board of Trustees.

Discussion

There are a variety of important themes from this re-entry circle that are relevant to campuses exploring re-entry circles as a method for reintegrating students into the fabric of campus life in the aftermath of an incident involving sexual misconduct: students' mental health; institutional racism; the timing of the CoSA; and the composition of these circles. To elaborate, Ivan's mental health status was a critical factor in this case; it was not clear the degree to which his mental health interfered with his decision-making abilities and it was a difficult topic to address openly in the circle, in part because key participants, such as the counseling centre staff, were bound by strict confidentiality and could not disclose their observations or the details of Ivan's treatment trajectory.

As noted previously, concerns about the impact of institutional racism on Ivan (and other students) weighed heavily on the circle participants and diminished trust among all parties in this circle. This may be cause for general concern as there is some evidence that Black male students are disproportionately likely to be accused of sexual misconduct (Rice Lave, 2016; Yoffe, 2017). As well, there was clearly distress among the circle participants about this process as a possible way of re-victimizing Ivan, who had been an important leader in student-led anti-racism protests around the time that the incident of harm occurred.

Because the circle was a requirement for Ivan's desire to study abroad, the timing of the circle itself presented two significant challenges: limited support for Ivan, who would be going abroad rather than returning directly to the campus community; and given that he would be abroad, no follow-up circle would be available to him during that critical transition period.

Because the administrator who led the formal adjudication process also participated in the circle process, the facilitators found that Ivan often focused on wanting to re-adjudicate his formal case. He expressed great distrust of this administrator, which ultimately made the work of the circle more difficult. Given these dynamics, as well as the unmet needs of faculty and staff in the circle whose lives were also adversely impacted by campus incidents of racism, activism, and mental health-related events, the composition of the circle may have needed adjusting and further opportunities to gather were needed in order to meaningfully address each of these critical concerns.

Conclusion

Each case is unique. While each individual case of student reintegration will be unique in its particular stressors, it is unlikely that any reentry after sexual misconduct will be easy or smooth. Our case study should not be interpreted as typical in its particulars, but exemplifies the complexity that each case may entail. Cases may vary based on race, campus climate, mental health status, clarity of the process, the nature of the formal process that may have preceded it, and so on. Based on this case, the following recommendations are suggestions for successful approaches to restorative justice reintegration practices: While a one-time re-entry circle may have some benefit, the CoSA model is an **ongoing process**, which provides campuses with multiple opportunities to build trust, offer support, and to hold students accountable. Given the social justice issues raised in this re-entry circle, multiple meetings would also provide time to address institutional and systemic barriers to students' meaningful participation in campus life. Given RJ's commitment to addressing systemic social justice issues (Zehr, 2005), CoSA facilitators should be prepared to engage with respondents whose lives reflect the complex interplay of structural issues including the stigma associated with mental illness, race and related institutional racism faced by students of colour at predominantly White universities in the U.S. To do so, it is critical for universities to build the institutional capacity to accommodate

the need for multiple circles not only in the aftermath of an incident but also as part of the re-entry process. Finally, RJ is a set of practices that are consistent with trauma-informed approaches to justice. Trauma-informed care is based on “safety, trustworthiness, choice, collaboration, and empowerment” (Karp, Shackford-Bradley, Wilson, & Williamsen, 2016).

Professionals using RJ models for re-entry should be well-trained, modeling for participants the value of a trauma-informed approach, organising a re-entry process that meets the needs of survivors and respondents, and ensuring the circle considers the safety and well-being of the entire campus community. As part of good practice, RJ facilitators on campus should have a clear evaluation plan for the circle, including evaluation of the process (e.g. the quality of program activities) and outcomes (e.g. the effects of program activities on participants) (Presser & Van Voorhis, 2002). Karp and Sacks (2014) identified six domains for assessing learning outcomes for college students in the conduct process, which could be applied in evaluations of CoSAs on campus. These domains included just community and self-Karpship (“I had a voice”), accountability (“I took responsibility”), interpersonal competence (“I talked it out”), procedural fairness (“that was fair”), closure (“I’m ready to move on”), and institutional social ties (“I belong here”) (Karp & Sacks, 2014, p. 164). In order to capture these complex intra and interpersonal processes, Presser and Van Voorhis (2002) recommend repeated assessments across time. While this may not always be feasible, given limited resources and the pace of the academic term, evaluation questions could be integrated into subsequent meetings designed to ensure appropriate ongoing support, accountability, and action.

Based on the gleanings from this case study and research findings from community samples that show positive outcomes for CoSA participants (Clarke, Brown, & Völlm, 2017), we believe restorative reintegration circles provide a new and innovative method for managing the return of students to campus after suspensions for sexual misconduct. It is a practice that may meet the needs of the returning student, reassure the campus community, and provide a forum to address larger systemic issues that are often embedded in case management of reintegration to campus.

Note

1. In this article, we use the terms survivor, complainant, and harmed party interchangeably. We avoid the stigmatising term “offender” in favour of “respondent,” “accused student,” and instead use person-first phrasing such “student who caused harm” or “student that violated policy.”

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Student Sanctioning Guideline for Sexual Misconduct

The information presented in this document includes general guidelines for the decision-maker to assess sanctions for violations of the sexual misconduct policy. These guidelines are not meant to be prescriptive, but rather provide for consistency in the decision-making process.

The appropriate sanction will be determined on a case-by-case basis, taking into account the severity of the conduct, the student’s disciplinary history, and other factors as appropriate.

Available Sanctions



Sanction	Definition	Duration and Effective Date	Additional Information
<i>Sanctions Impacting Student Status</i>			
Disciplinary Warning	Written warning that indicates the alleged conduct constitutes inappropriate behavior for a member of the campus community.	N/A	
Disciplinary Probation	Continuance of enrollment at the institution, but under specific conditions or required activities assessed for a specified period of time. This is a period of observation during which time the student is expected to demonstrate a willingness and ability to strictly comply with the policies of the institution, and student community standards and expectations.	1+ Semester – 1 academic year Effective on the specified date determined by the decision-maker or effective immediately upon notice of decision. Effective through the last day of the semester.	Progressive disciplinary action should result, including suspension or expulsion, if repeat violations occur, especially during the probationary period.

<p>Stayed (Deferred) Suspension</p>	<p>Under certain conditions, a suspension may be “stayed” or deferred. Student can avoid suspension by agreeing to and following specific conditions.</p>	<p>1+ Semester – 1 academic year</p> <p>Effective on the specified date determined by the decision-maker or effective immediately upon notice of decision.</p> <p>Effective through the last day of the semester.</p>	<p>Any additional disciplinary violations of institutional policies, no matter the degree of seriousness, will result in Disciplinary Suspension.</p>
<p>Disciplinary Suspension</p>	<p>Separation from the institution for a specified period of time after which the student is eligible to return. During the suspension period the student cannot qualify for graduation nor progress toward a degree by registering for, taking or completing classes at the institution. Additionally, the student cannot participate in an institution sponsored activity or be present on campus without prior approval.</p>	<p>Students may be suspended at any point in the academic year with suspension retroactive to the first day of the term in which the incident or discipline occurs.</p> <p>Effective on the specified date determined by the decision-maker or effective immediately upon notice of decision.</p> <p>The Suspension may be retroactive to the beginning of the semester in which the incident occurred.</p> <p>Effective through the last day of the semester.</p>	<p><i>Transcript Notation:</i> Notation of disciplinary suspension is made on the student’s academic transcript. The notation will remain for the duration of the suspension period. Any transcript issued during that time will indicate disciplinary suspension. At the end of the disciplinary suspension, the notation will be removed from the transcript.</p> <p>Conditions for re-admission may be specified.</p> <p>Additional sanctions may be assessed as conditions of re-enrollment as well.</p>
<p>Expulsion</p>	<p>Permanent separation from the institution through permanent denial of enrollment.</p>	<p>Effective on the specified date determined by the decision-maker or effective immediately upon notice of decision.</p> <p>The Expulsion may be retroactive to the beginning of the semester in which the incident occurred.</p>	<p><i>Transcript Notation:</i> Notation of the expulsion is made on the student’s academic transcript. Only notations of disciplinary suspension and disciplinary expulsion sanctions will be made on the student’s academic transcript. The notation will remain for the duration of the sanction period. Any transcript issued during that time will indicate expulsion.</p>

Revocation of Degree	A degree awarded from the institution may be revoked for fraud, misrepresentation, or other violation of institution standards, or for other serious violations committed by a student prior to graduation.	Effective date is determined by the decision-maker. It may be retro-active to the beginning of the semester in which the incident occurred.	
Withholding of Degree	The institution may withhold awarding a degree otherwise earned until the completion of the disciplinary process, including the completion of all sanctions assessed.	Effective date is determined by the decision-maker.	
Admission Rescinded	An offer of admission to the institution may be rescinded for misconduct occurring prior to enrollment.	Effective date is determined by the decision-maker.	A hold (bar) is placed on the student's enrollment so that they may not register for courses.
Ineligibility to Enroll	Currently unenrolled student is not permitted to enroll in current or future semester(s) or summer session(s).	1+ Semester – Indefinite Consideration for the duration of the period of ineligibility should be considered similar to the duration of a suspension period or expulsion.	A hold (bar) is placed on the student's enrollment so that they may not register for courses for the specified period of time.
Sanction	Definition	Duration and Effective Date	Additional Information
<i>Restricted Access and Loss of Privileges</i>			
Campus Restriction	Restriction from student's presence on campus.	Duration of Suspension. Indefinite for Expulsion. Effective on the specified date determined by the decision-maker or effective immediately upon notice of decision that typically corresponds with the period of disciplinary suspension.	

Restricted Access to Campus	Restriction limits the student's access to specific area(s) of campus.	Effective on the specified date determined by the decision-maker or effective immediately upon notice of decision that typically corresponds with the period of disciplinary probation or suspension.	Students who have been suspended may have <i>Restricted Access to Campus</i> upon their re-enrollment to the institution. For example, they may not be permitted to utilize the parking lots for the duration of their time as a student.
Housing Contract Termination	Termination of a housing contract for an institutional residence community.	<p>Remainder of academic year to permanent restriction from residing in an institutional residence community.</p> <p>Effective on the specified date determined by the decision-maker or effective immediately upon notice of decision that typically corresponds with the period of disciplinary probation, suspension, or expulsion.</p> <p>Students are typically given 24 hours to check-out.</p>	<p>Includes a restriction of student being a guest of other residents.</p> <p>Students who have a housing contract termination are also restricted from accessing residential community designated parking lots.</p>
Housing Relocation	Reassignment within the residence communities.	<p>Effective date determined by the decision-maker by which the student must check-out of their current room, and the first date that they are able to move to their newly assigned room.</p> <p>Students are typically given 24 hours to check-out.</p>	Restrictions to specific area(s) and restrictions of the student to be a guest in the community from where they were relocated.
Restrictions from Residential Life Housing	Restrictions to all residence communities or to specific area(s).	Effective on the specified date determined by the decision-maker or effective immediately upon notice of decision.	Includes a restriction of the student being a guest of other residents for specified areas.

		The end date may correspond with the period of disciplinary probation or suspension, or may be indefinite.	
Guest Restrictions	Student who is permitted to continue to reside in a residence community is restricted from having guests.	Effective on the specified date determined by the decision-maker or effective immediately upon notice of decision. The end date may correspond with the period of disciplinary probation or may be indefinite.	
Denial of Participation and/or Representation in Institution Co-curricular Activities	Student is denied the privilege of participating in and/or representing the institution in all or specific co-curricular activities.	Effective on the specified date determined by the decision-maker or effective immediately upon notice of decision. The end date may correspond with the period of disciplinary probation or suspension, or may be indefinite.	
Loss of Computer Access	Student is denied the privilege of computer access through the institution.	Effective on the specified date determined by the decision-maker or effective immediately upon notice of decision. The end date may correspond with the period of disciplinary probation or suspension, or may be indefinite.	

Sanction	Definition	Timeline for Completion	Additional Information
Mandatory Educational Sanctions			
Sexual Violence Prevention Training	Training on sexual violence prevention with content including: education on consent, bystander empowerment, sexual violence, institutional policies, reporting, and healthy relationships, along with local and national resources.	Complete within 30 days of effective date of sanction. Sanction may be assessed as a condition of re-enrollment following a period of disciplinary suspension.	Required for all findings of violations of the sexual misconduct policy. A hold (bar) can be placed on course registration to ensure timely completion of sanction.
Alcohol Education	Under the Influence CHOICES	Complete within 30 days of effective date of sanction. Sanction may be assessed as a condition of re-enrollment following a period of disciplinary suspension.	A hold (bar) can be placed on course registration to ensure timely completion of sanction.
Drug Education	Marijuana 101 CHOICES	Complete within 30 days of effective date of sanction. Sanction may be assessed as a condition of re-enrollment following a period of disciplinary suspension.	A hold (bar) can be placed on course registration to ensure timely completion of sanction.
Writing Assignment	Written assignment on topic determined appropriate to violation. For example: a. Define sexual harassment. b. Explain why these actions constitute sexual harassment. (provide scenarios) c. Describe the impact on the recipient of your actions. How were they made to feel by your actions?	Deadline for completion determined by the decision-maker.	A hold (bar) can be placed on course registration to ensure timely completion of sanction. Decision letter should specify other requirements regarding formatting, such as: 3-5 pages; use at least 3 credible sources (books, newspapers, internet, etc.) which are cited properly; 12-point font with 1-inch margins.

Sanction	Definition	Duration or Timeline for Completion	Additional Information
<i>Additional Sanctions & Required Compliance</i>			
“No Contact” Directive	Restriction from having direct or indirect contact, in any form, with Complainant.	Indefinite Effective on the specified date determined by decision-maker or effective immediately upon notice of decision.	Contact includes, but is not limited to, the following direct or indirect actions: verbal communications, written communications, and electronic communications; such as social media apps, communication through a third party or any physical contact. Student notified that violations of this directive could result in additional disciplinary action.
Community Service	Assigned unpaid hours on-campus or in the community.	Deadline for completion determined by the decision-maker, which is dependent on the number of hours that are to be completed.	A hold (bar) can be placed on course registration to ensure timely completion of sanctions.
Restitution	Required services, payment or reimbursement of funds to the institution or to other persons, groups or organizations for damages incurred as a result of a violation.	Deadline for completion determined by the decision-maker.	Monetary restitution limited to damage to institutional property.

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Assessing Sanctions by Policy Violation(s)

Policy Violation & Definition	Range of Sanction(s)	Duration	Aggravating Factors	Other Factors
<p>Sexual Assault:</p> <ul style="list-style-type: none"> Sexual Assault - By Force Sexual Assault - By Duress or Deception Sexual Assault - By Coercion Sexual Assault - Sexual Act without Consent Sexual Assault - Touching Intimate Parts 	<p>Suspension – Expulsion</p>	<p>Suspension: 1+ Semester – 2 years</p> <p>Expulsion: Indefinite</p>	<ul style="list-style-type: none"> ▪ Use of force ▪ Incapacitation ▪ Use of weapons ▪ Penetration ▪ Other physical injury ▪ On disciplinary probation at the time of the incident 	<ul style="list-style-type: none"> ▪ Use of alcohol and/or drugs ▪ Violations of “no contact” directives and/or other interim measures such as access restrictions. ▪ Retaliation occurring during the investigation. ▪
<p>Dating, Intimate Partner, and Relationship Violence</p>	<p>Disciplinary Probation – Expulsion</p>	<p>Disciplinary Probation: 1+ Semester – 1 academic year</p> <p>Suspension: 1+ Semester – 2 years</p> <p>Expulsion: Indefinite</p>	<ul style="list-style-type: none"> ▪ Use of physical violence ▪ Use of weapons ▪ Physical injuries ▪ Nature, severity, and frequency ▪ Damage to property ▪ On disciplinary probation at the time of the incident ▪ 	<ul style="list-style-type: none"> ▪ Violations of “no contact” directives and/or other interim measures such as access restrictions. ▪ Retaliation occurring during the investigation.
<p>Stalking</p>	<p>Disciplinary Probation – Expulsion</p>	<p>Disciplinary Probation: 1+ Semester – 1 academic year</p> <p>Suspension: 1+ Semester – 2 years</p> <p>Expulsion: Indefinite</p>	<ul style="list-style-type: none"> ▪ Use of weapons ▪ On disciplinary probation at the time of the incident 	<ul style="list-style-type: none"> ▪ Violations of “no contact” directives and/or other interim measures such as access restrictions. ▪ Retaliation occurring during the investigation.

<p>Non-Forcible Sex Offense:</p> <p>Non-forcible Sex Acts (General)</p> <p>Non-forcible Sex Acts (Incest)</p> <p>Non-forcible Sex Acts (Statutory Rape)</p>	<p>Disciplinary Probation – Expulsion</p>	<p>Disciplinary Probation: 1+ Semester – 1 academic year</p> <p>Suspension: 1+ Semester – 2 years</p> <p>Expulsion: Indefinite</p>	<ul style="list-style-type: none"> ▪ On disciplinary probation at the time of the incident 	<ul style="list-style-type: none"> ▪ Violations of “no contact” directives and/or other interim measures such as access restrictions. ▪ Retaliation occurring during the investigation.
<p>Aiding Acts of Sexual Violence</p>	<p>Disciplinary Probation – Expulsion</p>	<p>Disciplinary Probation: 1+ Semester – 1 academic year</p> <p>Suspension: 1+ Semester – 2 years</p> <p>Expulsion: Indefinite</p>	<ul style="list-style-type: none"> ▪ Use of physical violence ▪ Use of weapons ▪ On disciplinary probation at the time of the incident 	<ul style="list-style-type: none"> ▪ Violations of “no contact” directives and/or other interim measures such as access restrictions. ▪ Retaliation occurring during the investigation.
<p>Other Sexual Misconduct</p> <p>Offensive Sexual Behavior (General)</p> <p>Offensive Sexual Behavior (Indecent Exposure)</p> <p>Offensive Sexual Behavior (Voyeurism)</p>	<p>Disciplinary Probation – Suspension</p>	<p>Disciplinary Probation: 1+ Semester – 1 academic year</p> <p>Suspension: 1+ Semester – 1 year</p>	<ul style="list-style-type: none"> ▪ On disciplinary probation at the time of the incident 	<ul style="list-style-type: none"> ▪ Violations of “no contact” directives and/or other interim measures such as access restrictions. ▪ Retaliation occurring during the investigation.
<p>Retaliation</p>	<p>Disciplinary Probation – Suspension</p>	<p>Disciplinary Probation: 1+ Semester – 1 academic year</p> <p>Suspension: 1+ Semester – 1 year</p>		<ul style="list-style-type: none"> ▪ Violations of “no contact” directives and/or other interim measures such as access restrictions.



Submitted by: Association for Student Conduct Administration

Contact information: Jennifer Waller, ASCA Executive Director, wallerjl@theasca.org

The Association for Student Conduct Administration (ASCA) is proud to serve almost 2200 members at over 1200 institutions. ASCA serves to promote the student conduct profession through educational opportunities.

ASCA strongly supports student-centered conduct processes that provide equal rights to all parties involved. Higher education student conduct processes are not criminal processes and should not be expected to mirror such processes. They are administrative processes designed to resolve complaints within the institution's community. The *General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax-Supported Institutions of Higher Education of 1968* stated,

“The discipline of students in the educational community, is in all but the case of irrevocable expulsion, a part of the teaching process. In the case of irrevocable expulsion for misconduct, the process is not punitive or deterrent in the criminal law sense, but the process is rather the determination that the student is unqualified to continue as a member of the educational community...The attempted analogy of student discipline to criminal proceedings against adults and juveniles is not sound” (District Court, W.D. Mo, 1968).

Student conduct processes, including those addressing policy issues of sexual harassment and discrimination, exist to determine if an institution's policy has been violated. They do not determine if a person has committed a crime. There are behaviors, such as drug dealing, that are also crimes that the institution adjudicates to determine if a policy has been violated, but it is important to note that the institution is not making a decision that has legal consequences in these instances. They are making a determination as to whether a student remains qualified to continue as a member of the educational community in light of a violation of the institution's policies.

Given that our processes are educational in nature and meant to be non-adversarial, we continue to support the practice of students engaging in the process and not having representatives actively engaged. Students should be able to utilize support persons for guidance and support, but those support persons should not be actively involved such as lawyers are in the criminal process. Students should also be able to provide information, respond to information, and ask questions; however, these need to be done in a manner that is appropriate and not adversarial.

In line with our verbal comments, we would like to address the regulations and the Department of Education's review of such from three different perspectives: access, equity, and education.

First, the goal of any regulation should be to ensure equal access to the process and provide clear guidance for those responsible for administration and compliance. Yet, since the inception of these

new regulations, many of our members have reported that students are experiencing even more difficulty accessing the Title IX process.

Second, these regulations have a disparate impact on our students and have created an inequity within our disciplinary procedures by requiring two very different processes for behaviors that violate institutional policy. For example, the role and use of the advisor and cross-examination for Title IX policy violations is not the same for non-Title IX policy violations. Furthermore, when advisors for both parties are not both attorneys or do not have the same training or experience, they cannot equitably advise the student and engage in cross-examination. These unfunded mandates create an inherent imbalance to the students, to the process, and among colleges and universities.

Third, ASCA strongly supports student-centered conduct processes that provide equal rights and fairness to all parties involved. We seek policies and processes that treat all students with care, concern, honor, and dignity and we want processes that are fundamentally rooted in education.

We respectfully submit the following comments regarding specific regulations in the 2020 *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance* regulations.

106.8 Designation of a coordinator, dissemination of policy, and adoption of grievance procedures

- 106.8(d) Application outside the United States. The requirements of paragraph (c) of this section apply only to sex discrimination occurring against a person in the United States. **Comment:** *Incidents of sexual harassment/misconduct that occur outside the geographic borders of the United States can and do have an effect on students when they return to the United States, if the alleged respondent is a student, and the conduct occurred during a school-sponsored trip/activity. Setting this standard creates a confusing bifurcated system. We recommend that institutions be able to hold their students accountable for sexual harassment in the same way that they can hold students accountable for all other policy violations regardless of where they occur. When sexual harassment occurs outside of the United States, all of the involved students return to our institutions. When all students return and if the alleged sexual harassment or violence that happened abroad is not addressed more conflict will arise. That added conflict often leads to disruptions for the complainant's or the alleged respondent's educational experience. Failing to address the complaint through the Title IX process implies that we don't place any value on someone who experiences sexual harassment or violence if it happened outside of the country. Excluding these types of complaints from the Title IX process is harmful for our college and university communities as a whole. Furthermore, complainant's and respondents are even more vulnerable by being away from support systems and legal options they are most familiar with. Institutions have a duty to support and protect their students that are participating in their education program or activity, regardless of the location of such program or activity.*

106.30 Definitions

- 106.30(a) As used in this part: 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. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual

knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient... Formal complaint means 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. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under § 106.8(a), and by any additional method designated by the recipient. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part or under § 106.45, and must comply with the requirements of this part, including § 106.45(b)(1)(iii).

Comment: *Institutions need to be allowed to investigate with constructive notice, not just actual notice. Institutions are responsible for providing an educational environment that is free from discrimination. When the institution has constructive notice, but not actual notice, it could be seen as deliberately indifferent for the institution to take no action to protect the members in its community from continued discrimination. Additionally, requiring a signed formal complaint places a barrier to reporting and a barrier for the institution to take action. Oftentimes, complainants are willing to speak about their experiences, but requiring them to write the experience in a document and sign it presents a difficult challenge for them. In these instances, the institution can take measures to ensure that the complainant is making a report to the college and requesting an investigation without requiring a formal signature. While a Title IX Coordinator can sign a formal complaint in lieu of the complainant, the ability to investigate without the complainant’s statement is severely diminished and makes it almost impossible for the institution to move forward with a fair process.*

106.30(b)(iii)(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

Comment: *The change to the definition to be so severe, pervasive, AND objectively offensive creates a conflict with existing laws, such as Title VII surrounding sexual harassment that require behavior to be severe, pervasive, or objectively offensive. Additionally, many state laws have attempted to fill the gap left by inadequate Title IX regulations and require the latter standard of sexual harassment leaving institutions conflicted in complying with both federal and state law. Often this results in a bifurcated grievance process to handle “non-Title IX Sexual Harassment” and created a confusing process for all parties involved.*

106.44 Response to Sexual Harassment

- 106.44(a) “For the purposes of this section, §§ 106.30, and 106.45, “education program or activity” includes locations, events, or circumstances over which the recipient exercised 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.”

Comment: *The expectation that the conduct occur “within the recipient’s program or activity...” prevents institutions from investigating the conduct if it occurs outside of a*

program or activity but still impacts a person's participation in the recipient's program or activity. For example, if one student allegedly rapes another student at an off-campus house and those students are in the same academic program, there will be an impact on the complainant's ability to participate fully in that program. In addition, most institutions have off-campus jurisdiction over student misconduct that negatively reflects on the institution or threatens the safety of the community. A student's responsibility to an institution cannot end at the door of the institution. The text of the law 20 U.S.C 1681 et. seq, clearly identifies a broad jurisdiction of the application of the law. The Department's own guidance ([Equal Opportunity in Intercollegiate Athletics \(1991\)](#)) states that the regulation 34 CFR Part 106 "It also permits individual institutions considerable flexibility in achieving compliance with the law." This guidance was not rescinded. While guidance is different than regulation, it is still published on the Department's website and provides contradictory information regarding the interpretation of section.

106.45 Grievance process for formal complaints of sexual harassment

- 106.45(b)(1)(iv) "Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process"

Comment: *When conducting a fair and impartial investigation, the investigator should not have a presumption of either "responsible" or "not responsible." A presumption is a belief which would give an unfair advantage to one party over the other. The investigator should enter an investigation without bias and predetermination. Requiring this statement as part of the notice of allegations is unnecessary and confusing, but if required should read instead that "no determination as to responsibility will be made until after the conclusion of the grievance process or, if applicable, other informal resolution process."*

- 106.45(b)(1)(vii) State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment;

Comment: *To have truly equitable processes, the parties must be allowed equal rights and considerations. To use a standard other than the preponderance of the evidence standard creates a stance that one party enters the proceedings at an advantage when neither party should have an advantage over the other. Preponderance is the only standard that allows institutions to be as equally fair as possible when there are students involved on both sides of a case. When both students have so much to lose, depending on the outcome of the hearing, preponderance is the appropriate standard. Much is often made of the life-changing consequence of being found responsible for sexual assault or sexual misconduct and being expelled from an institution of higher learning. However, the expelled student can make a new beginning at another institution. It is also important to keep in mind the life-changing consequences for the victim of sexual assault. Preponderance is the standard used in civil rights investigations for other types of discrimination and harassment and sex/gender-based harassment should not be held to a different standard than discrimination of race, national origin, and other protected classes.*

- 106.45(b)(5)(iv) "Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient

may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties”

Comment: *Allowing for the choice of advisor without a criteria such as mandating that the student must choose an advisor that is available for the scheduled meetings and that delays cannot be made because of an advisor’s lack of availability can cause significant delays in a timely resolution of the process. We support parties’ choice of advisor, but also see the need for institutions to put reasonable restrictions in place to not unfairly prolong the investigation and grievance process.*

- 106.45(b)(5) (vi) “Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the recipient must send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format, such as a file sharing platform, that restricts the parties and advisors from downloading or copying the evidence, and the parties shall have at least ten days to submit a written response, which the investigator will consider prior to completion of the investigative report”

Comment: *Regarding the opportunity to inspect and review all evidence obtained, even if it’s not relevant remains unclear as to why this needs to be shared. By the nature of sharing it with all parties, it becomes part of the investigation and therefore, part of the decision-making process. Investigators can be trained to review for relevancy and determine whether or not this should be included for review. Irrelevant evidence has the possibility of confusing the parties, creating additional delays in timelines if a substantial amount exists, and can be omitted from the investigation report with no impact on the final outcome, if in fact it is irrelevant. If parties submit evidence and it is deemed irrelevant, the investigators should notify that specific party why that information is irrelevant and that it will not be considered. In regard to the requirement to share evidence in a way that restricts what the parties and their advisors do with such evidence, there are limited platforms that allow for a viewing of a file without downloading and/or copying capability. Even if that is available, an individual could easily take a screenshot of the information. This regulation forces institutions to pay for additional platforms that may or may not accomplish these objectives, and such an unfunded mandate puts a strain on institutional resources. Additionally, placing a specific timeline adds length to the investigation and engages the Federal Government in the day-to-day operations of an institution. Institutions should determine their own timelines that are reasonable and appropriate for their individual grievance processes.*

- 106.45(b)(5)(vii) “Create an investigative report that fairly summarizes relevant evidence and, at least ten days prior to a hearing (if a hearing is required under this section) or other time of determination regarding responsibility, provide a copy of the report to the parties for their review and written response.”

Comment: *While we agree that all parties should have an opportunity to review the investigation report in order to adequately prepare for a hearing, our concern is with the mandated ten days. Institutions should determine the appropriate timelines for their processes.*

- 106.45(6) Hearings. (i) For postsecondary institutions, the recipient’s grievance process must provide for a live hearing.
 - 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, notwithstanding the discretion of the recipient under paragraph (b)(5)(iv) of this section to otherwise restrict the extent to which advisors may participate in the proceedings.

Comment: *Student conduct processes are not akin to criminal court processes. Allowing for advisors to cross-examine creates an adversarial process that mirrors a criminal process. In addition, it has a chilling effect that causes many complainants to refrain from participating in the process thus perpetuating barriers to access. We believe students should have the right to provide information, respond to information, and to have questions asked. These issues are institution-specific and should be managed by the institution in a manner most appropriate for that institution. For example, many institutions' previous procedures allowed for parties to submit questions to the hearing chair to assess for relevancy, and the hearing chair would then ask the question to the intended party. This ensures that questions are reviewed prior to being asked and allows the hearing chair to ask all questions, rather than having an advisor, with or without proper training, asking the questions.*

- 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.

Comment: *Providing an advisor to a party places a significant burden on institutions from a staffing and financial perspective as these types of roles are not readily available at an institution. It would be unfair for an institution to provide a staff member as an advisor when the other party has an attorney or other highly trained advisor, but in many instances, that is the only choice an institution has. This also opens up an institution to liability on the basis of ineffective assistance to counsel, even if that was unintended by the regulation. In addition, this has the potential to discriminate against students due to their economic standing given that students may not be able to afford the same type of advisor regarding subject matter expertise and experience and must solely rely on the institution's chosen advisor. This regulation also conflicts with the Violence Against Women Act Amendments which requires that all parties should be allowed to have an advisor of their choosing. By assigning an advisor for the purpose of cross-examination, we are removing that party's choice.*

- 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.
Comment: *We agree that questions and evidence about a complainant's prior sexual behavior are not relevant, except in those situations mentioned. A complainant's prior sexual history has no bearing on whether or not a respondent committed a violation of the institution's policies.*
- 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; provided, however, that the

decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Comment: *It is unclear as to whether this includes statements given prior to the hearing during the investigation or in other submitted evidence. Allowing an individual to make a statement or submit to cross-examination has always been seen as a fundamental right (e.g., the 5th Amendment), however requiring them to answer all questions asked, otherwise we lose the ability to consider all other statements that person has created a standard that even criminal proceedings do not use and is in contradiction to formal rules of evidence which don't even apply in these types of processes. This has the potential to harm both the complainant and respondent's access to a fair process in which they both have a right to submit information, but also not be forced to "incriminate" themselves lest the rest of their statements be thrown out. Allowing individuals to choose whether or not to answer a single question should not have such a profound impact on the outcome of an investigation. All parties must be given the opportunity*

- 106.45(b)(9) Informal resolution. A recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, a recipient may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. 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


Comment: *Requiring a complainant to sign a formal complaint prior to engaging in an informal resolution process creates an unnecessary barrier and formalization of an informal process. The informal resolution process has been a valuable asset to institutions to resolve allegations of misconduct and to be able to address the harm done when the respondent is willing to engage is such a process. Any informal resolution process should always be voluntary, all parties should be informed of the procedures to be used, and institutions should require written consent to participate in such a process. We agree that institutions should never force or require an individual to participate in an informal process as a condition of their employment or education and that any party can, at any time, request the matter be returned to the formal grievance process.*

Summary

As previously stated, ASCA strongly supports student-centered conduct processes that provide equal rights and fairness to all parties involved. We seek policies and processes that treat all students with care, concern, honor, and dignity and we want processes that are fundamentally rooted in education. The 2020 final rules created inconsistency and contradiction between the law (U.S.C.) and the regulations (34 CFR part 106) which unreasonably placed barriers to access our processes when students have experience sexual harassment and make the application of the law inequitable, as well as interfere with the education offered by institutions to its students. These regulations, as written and enforced, attempt to equate the process used to investigate and resolve incidents falling under the auspices of Title IX of the Education Amendments of 1972 to quasi-

criminal proceedings, while institutions are not required to do such for other types of student misconduct which may also represent criminal behavior. Institutions of higher education do not and should not have the same authority as criminal courts. This has been identified in several court decisions (Dixon v. Alabama (5th Circuit, 1961), *The General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax-Supported Institutions of Higher Education (W.D. Mo (1968))*). ASCA recommends that the regulations be (re)written with deliberate thought regarding the operationalizing of the regulations by different institutions, and without legislative overreach.


We would be glad to meet with Department staff to follow up on any of our comments, if that would be helpful.




Title IX vs. Sexual Misconduct

Gehring Academy | Sexual Misconduct Track | July 19-23, 2021
 Association for Student Conduct Administration

Presenters: Linda Alvarez & Jeremy Zilmer




1




Learning Outcomes

- ▶ Describe what behavior constitutes sexual harassment under Title IX, the policy provisions which govern Title IX, and the processes by which complaints of Title IX will be resolved.
- ▶ Describe what behavior constitutes sexual misconduct, the policy provisions which govern sexual misconduct, and the processes by which complaints of sexual misconduct may be resolved.
- ▶ Identify how to determine the appropriate resolution process.

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Behavior Under Title IX


Under new federal regulations, Title IX processes must be applied to incidents of "sexual harassment" defined as 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; or
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)" (34 CFR §106.30(a)).

Recipients must dismiss any complaint that falls outside of this definition under Title IX, however a recipient may engage in other processes to address sex and gender-based conduct not designated as a Title IX offense (i.e. sexual misconduct).

Recipients must clearly describe what behavior constitutes sexual misconduct, the policy provisions which govern sexual misconduct, and the processes by which complaints of sexual misconduct will be resolved.

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Behavior that may be considered Sexual Misconduct:

- Sex and/or gender discrimination
- Quid pro quo
- Creating a hostile environment
- Sex- based comments/jokes
- Inappropriate sexual touching/contact (fondling, groping, flashing)
- Sexual coercion
- Sexual exploitation
- Unwelcomed sexual and/or romantic attention
- Unwelcomed sexual advances
- Unwelcomed exposure to sexual material

Off-campus conduct of the above, as well as those matters that are also defined as sexual harassment under Title IX.

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Determining the Appropriate Adjudication Process

Each institution determines the adjudication model to be utilized to address complaints which fall under Title IX sexual harassment or sexual misconduct that does not meet the regulatory definitions.

- Title IX sexual harassment for allegations against a student may be resolved through an informal resolution or a formal hearing.
- Non-Title IX sexual harassment and misconduct may be addressed through the model determined by the institution.

Note: On Day 3, Adjudication Models will be discussed in more detail.

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Requirements

All complaints must be investigated. Once the investigation is complete the recipient may make determinations based on the factual findings outlined in the investigation. The recipient may:

1. Determine the alleged behavior falls within Title IX, and begins the prescribed Title IX processes.
1. Determine the alleged behavior falls outside of Title IX, and dismisses the complainant without further action.
1. Determine the alleged behavior falls outside of Title IX, but may constitute policy violations regarding sexual misconduct. Allegations of sexual misconduct are then adjudicated via available student conduct processes.

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State and Federal Law Considerations

Institutions must take into consideration compliance with other federal and state laws that also may apply to their process.

- VAWA
- Clery
- State Laws
 - May differ in definitions of sexual harassment, sexual violence and sexual misconduct
 - May impact reporting requirements for employees
 - May include provisions of specific information to be provided to a complainant, respondent or other involved parties
 - May define amnesty

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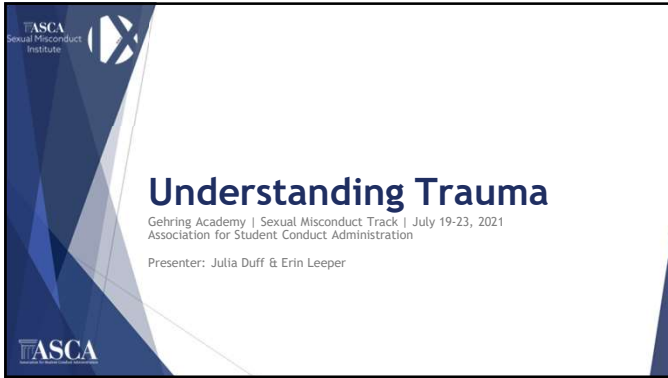
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Questions?

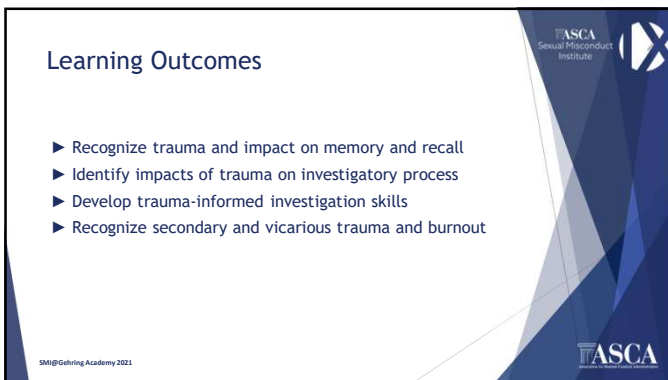
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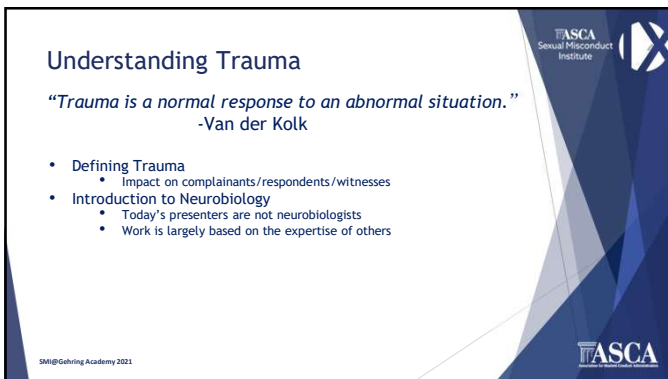
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1



2




3

What is Trauma?

“Trauma is a normal response to an abnormal situation.”
-Van der Kolk

Extreme threat/terror/horror
+
Lack of control or perceived lack of control
- Dr. Christopher Wilson, Psy.D., 2017

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What is Trauma?

- Exposure to actual or threatened death, serious injury, or sexual violence in one or more of the following ways:
 - Directly experiencing the traumatic event(s)
 - Witnessing, in person, the event(s) as it occurred to others
 - Learning that the traumatic event(s) occurred to a close family member or close friend. In cases of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental
 - Experiencing repeated or extreme exposure to aversive details of the traumatic event(s) (ex: first responders)

(DSM-V Diagnostic Criteria for PTSD)

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Neurobiology of Trauma

- ▶ Science-based understanding of:
 1. How brains and bodies respond to acutely stressful and traumatic events such as a sexual assault, as they are happening, and
 2. How these experiences of extreme stress are encoded, stored, and potentially retrieved from memory.
- ▶ This is consistent with the way in which psychological trauma is defined by scientists in the field of traumatic stress, and also how it is defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM 5).

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Other Aspects of Trauma


- Experiences that are emotionally painful and distressing, that overwhelm people's ability to cope
- Developing situation and person specific
- More than violence- more subtle forms such as discrimination, racism, oppression, etc. can have a cumulative impact

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Hopper - Sexual Assault and the Brain in 6 minutes

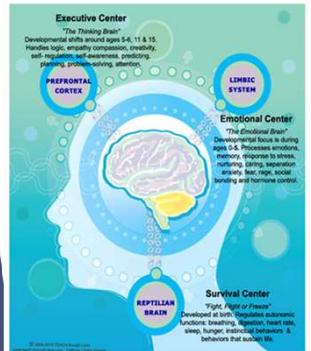


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Loss of Prefrontal Regulation



- No "if-then logical thinking"
- No ability to process temporal questions
- Inability to make meaning of experience and feelings

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How does trauma show up?

- Impacts:
 - Physical response (freeze/fight/flight)
 - Cognitive (memory)
 - Emotional regulation (affect)
 - Behavioral (decision-making)
- Impacts are:
 - Immediate (during incident)
 - Persistent (immediately following)
 - Potentially permanent (impacts brain structure)

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Fight Flight Freeze Response



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Survival Reflexes

- Fight - Flight - Freeze
- Types of freezing
 - Pause: Momentary freezing while they determine what happens
 - Tonic Immobility: Remain conscious, but unable to move
- Other survival reflexes:
 - Disassociation
 - Habit behaviors
 - Negotiation

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Tonic Immobility



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Discussion

- Share with break out room, then with larger group
 - How have you seen trauma in investigations?
 - What can we do with this information as investigators?

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Trauma-Informed

- “A ‘trauma-informed’ system is one in which:
 - All components of a given system have been reconsidered and evaluated in the light of a basic understanding of the role that violence plays in the lives of people seeking mental health and addiction services
 - [and] uses that understanding to design service systems that accommodate the vulnerabilities of trauma survivors
 - Allows services to be delivered in a way that will avoid inadvertent re-traumatization and will facilitate consumer participation in treatment” (Harris & Fallot, 2001).

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Considerations for Trauma in Investigation Process

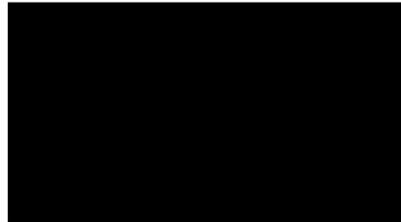
- If someone reports an incident
- How someone acted during the incident
- Whether someone discloses
 - How they do it, to whom
 - What the narrative sounds like
- Whether someone reports/takes action
- How someone behaves in the aftermath
 - With friends/family
 - With medical personnel
 - Investigators/law enforcement
 - In a hearing

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Trauma & Memory



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Trauma-Informed Investigations

- ▶ Sincere efforts to establish trust, rapport and comfort for the victim.
- ▶ Acknowledgment of the victim's trauma and/or pain.
- ▶ Creating an environment that feels physically and emotionally safe for victims.
- ▶ Communicating in language the victim will understand and be comfortable with.
- ▶ Use of non-leading questions and other open-ended prompts (e.g., "Tell me more about that," or "What were you thinking/feeling at that point?").
- ▶ Encouragement of narrative responses with pauses, and ~~without~~ interruptions.

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Trauma-Informed Investigations

- ▶ Focus on what the victim can recall thinking and feeling throughout the experience.
- ▶ Particular emphasis on emotional and sensory experiences (five externally focused senses plus internal body sensations).
- ▶ Expressions of patience, empathy, and understanding throughout the interview.
- ▶ No necessity for information to be provided in a sequential or “logical” order.
- ▶ Instruction not to guess at any answers, and to say “I don’t know” when needed.
- ▶ Not asking victims “why” they did or did not do something during the assault, but rather inquiring in ways that convey a non-judgmental desire to understand their

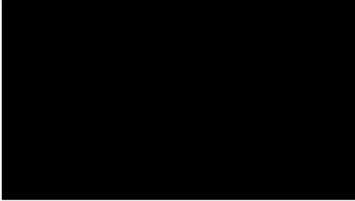
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Hopper - Trauma Informed Sexual Assault Investigations



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Vicarious Trauma and Burnout

Impact of investigating sexual violence on investigators

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Impact of Investigating Trauma

- ▶ **Vicarious trauma** is the experience of trauma symptoms that can result from being repeatedly exposed to other people's trauma and their stories of traumatic events. A person's worldview (belief systems) can be significantly changed as a result of hearing those stories. Vicarious trauma is cumulative, building up over time.
- ▶ **Secondary traumatic stress** is the emotional duress that results when an individual hears about the first hand trauma experiences of another. Its symptoms mimic those of post-traumatic stress disorder (PTSD).
- ▶ **Burnout** is the prolonged physical and psychological exhaustion related to a person's work. It does not include traumatic elements or PTSD-like symptoms.

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Recognizing the signs and symptoms of vicarious trauma

- ▶ Invasive thoughts of victim's situation/distress
- ▶ Frustration/fear/anxiety/irritability
- ▶ Disturbed sleep/nightmares/racing thoughts
- ▶ Problems managing personal boundaries
- ▶ Taking on too great a sense of responsibility or feeling you need to overstep the boundaries of your role
- ▶ Difficulty leaving work at the end of the day/noticing you can never leave on time
- ▶ Loss of connection with self and others/loss of a sense of own identity
- ▶ Increased time alone/a sense of needing to withdraw from others
- ▶ Increased need to control events/outcomes/others
- ▶ Loss of pleasure in daily activities

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Recognizing the signs and symptoms of burnout

- ▶ Physical and emotional stress
- ▶ Low job satisfaction
- ▶ Feeling frustrated by or judgmental of clients
- ▶ Feeling under pressure, powerless and overwhelmed
- ▶ Not taking breaks, eating on the run
- ▶ Unable to properly refuel and regenerate
- ▶ Frequent sick days or "mental health days"
- ▶ Irritability and anger

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Managing Trauma and Burnout

- ▶ Some tips for managing symptoms of vicarious trauma and burnout:
 - ▶ Reach out to someone. This could be your manager, a trusted friend or colleague, a counsellor or another support person. You could also access your employee assistance program (EAP), if you have one. For after-hours support, the [SAMSHA National Hotline](#) can help connect you with a provider in your area.
 - ▶ Find a way to escape physically and/or mentally e.g. reading, days off, holidays, walks, seeing friends
 - ▶ Rest - have some time with no goals e.g. taking naps, watching clouds, lying on the beach
 - ▶ Play - have fun and do things that make you laugh e.g. playing with children and pets, creative activities, watching a favorite comedy

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References

- ▶ DSM-5 Diagnostic Criteria for PTSD: https://www.ncbi.nlm.nih.gov/books/NBK207191/box/part1_ch3_box16/
- ▶ https://evawintl.org/wp-content/uploads/2019-12_TB-Becoming-Trauma-Informed-Trauma-to-Victim-Interviews.pdf
- ▶ <https://www.jimhopper.com/topics/sexual-assault-and-the-brain/>

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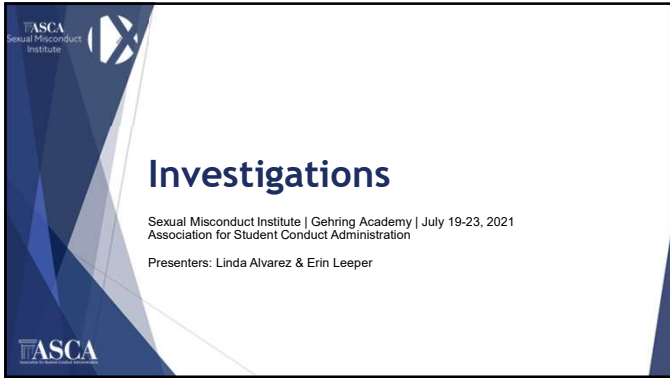
Additional Resources

- ▶ Forensic Experiential Trauma Interviewing: <http://www.azcvs.net/wp-content/uploads/FETI-Public-Description-Jan-2017.pdf>
- ▶ EVAWI Forensic Experiential Trauma Interviewing Course (Free): <https://evawintl.org/courses/forensic-experiential-trauma-interview-a-trauma-informed-experience/>
- ▶ IACP Successful Trauma Informed Victim Interviewing: <https://www.theiacp.org/sites/default/files/2020-06/Final%20Design%20Successful%20Trauma%20Informed%20Victim%20Interviewing.pdf>
- ▶ Campbell Neurobiology of Sexual Assault Lecture: <https://nij.ojp.gov/media/video/24056>

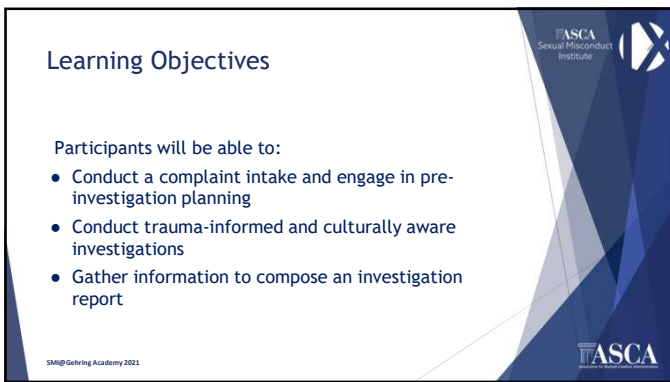
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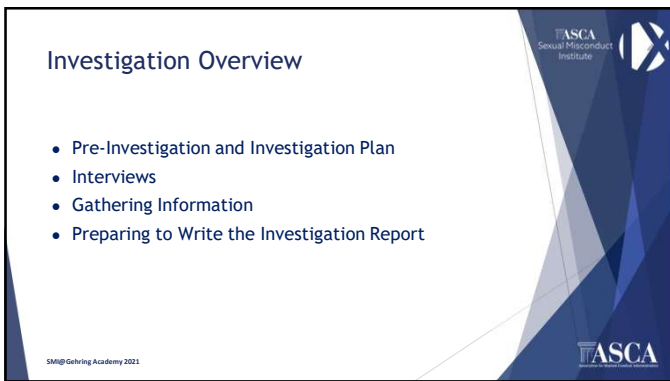
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-
- Review the report/complaint to determine potential process for investigation and/or resolution
 - Gatekeeping
 - Determine if there are any immediate needs and/or safety concerns that need to be addressed
 - Conduct intake with the complainant
 - Assess for supportive and interim measures
 - Develop an investigation strategy

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Complaint Intake

- Typically conducted by the Title IX Coordinator or their designee
- May or may not be with the person who will investigate
 - Under Title IX final rules, this may be a conflict of interest
- Establish understanding of complainant's intentions
 - To tell their story/be heard?
 - Signing a formal complaint?
 - Requesting an investigation?
 - Requesting confidentiality? Reluctant?
- Address confidentiality
 - How information will be shared and why
 - How request for confidentiality will be evaluated
- Review rights, options, and resources
 - Counseling and/or advocacy
 - Law enforcement reporting
 - Assess immediate needs of students involved/interim measures

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Pre-Investigation Planning

The following need to be determined:

- **Investigators:** One or two?
- **Interviews:** Audio record, video record, or neither?
- **Record keeping:** Typing or writing notes?
- **Criminal investigations:** How will you coordinate with local/campus police?
- **Witnesses:** Are or should they be compelled to appear for an interview?
 - Under Title IX final rules - anyone who gives a witness statement will need to appear at the live hearings if requested for cross-examination in order for their testimony to be considered
- **Timeline:** What would be considered prompt for this investigation?

Some of these elements may be dictated by your institution's policy.

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Pre-Investigation Planning

Some of these elements may be dictated by your institution's policy:

- **Requests for delay:** Will those be considered?
- **Advisors:** What role do they play?
- **Environment:** Is it safe, calming, free of perceived bias?
- **Expectations & transparency:** Do students know what to expect and when?
- **Conflict of interest:** How do you address real and perceived conflict or bias?

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Pre-Investigation Planning

- Initial information gathering:
 - By intake officer? By investigator?
 - Are parties invited to submit written statements?
- Assign investigator(s)
- Determine which witnesses to interview
- Determine order of witness interviews
- Gather all relevant, reasonably available documents, media, and information

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Pre-Investigation Planning

- Special considerations
 - Multiple respondents
 - Student groups/organizations
 - Cross-complaints

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Investigation Requirements under 2020 Title IX Final Rules

(5) Investigation of a formal complaint. When investigating a formal complaint and throughout the grievance process, a recipient must—

(i) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient and not on the parties provided that the recipient cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the recipient must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3);

(ii) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

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2020 Title IX Final Rules - Investigations

(iii) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

(iv) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;

(v) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;

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2020 Title IX Final Rules - Investigations

(vi) Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, 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 each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and

(vii) Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

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Formal Complaints - Title IX Process

Under Title IX:

Formal complaint means 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.

- ▶ 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 contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint
- ▶ Title IX Coordinator can sign a formal complaint.

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Dismissal of Formal Complaint
- Title IX Process

(i) The recipient must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the recipient's education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX or this part; such a dismissal does not preclude action under another provision of the recipient's code of conduct.

(ii) The recipient may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

(iii) Upon a dismissal required or permitted pursuant to paragraph (b)(3)(i) or (b)(3)(ii) of this section, the recipient must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

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Emergency Removal
- Title IX Process

Emergency removal. Nothing in this part precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

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Supportive Measures
- Title IX Process

Supportive measures means 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. Supportive measures may include 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. 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.

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Correspondence: Letters

- Notice to complainant regarding status of complaint
 - Summary of allegations
 - Applicable codes, policies, procedures, etc
 - Resolution process or investigation notice
 - Interim measures
 - Prohibition of retaliation
- Charge letter or notice of charges/investigation to respondent
 - Written statement of policy charges
 - Right to be heard
 - Make procedures clear
 - Interim measures - For example, no contact directives, housing exclusions/relocations, etc.
 - Retaliation prohibition

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Example: Written Notice of Charges

The Office of Compliance has received information alleging that during a fraternity party that occurred on or about March 12, 2021, you engaged in sexual activity with another student without the student’s consent; you attempted to physically force that student to perform a sex act and slapped the student when the student refused to do so. The information indicates that you may have been under the influence of alcohol at the time.

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Example: Written Notice of Charges

Include the specific policy violations

- 17.09(2) Sexual Assault: Conduct defined in s. 940.225, Stats.
- 17.09(6) Illegal Use, Possession, Manufacture, or Distribution of Alcohol or Controlled Substances: Use, possession, manufacture or distribution of alcoholic beverages or of marijuana, narcotics, or other controlled substances, except as expressly permitted by law or university policy.
- 17.09(15) Violation of University Rules: Conduct that violates any published university rules, regulations, or policies, including provisions contained in university contracts with students; specifically university rules prohibiting sexual harassment.

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Example: No Contact Directive

NO CONTACT DIRECTIVE: In the meantime, be advised that you are to have no contact with XXX of any kind, direct or indirect, until further notice. This includes, but is not limited to: face-to-face/in-person, telephone, e-mail, text message, social media sites, written communication, video and other electronic communication, and contact through third parties. Any attempt to contact this person may be construed as harassment and result in disciplinary action.

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Example: Anti-Retaliation Statement

Please be advised that University policies prohibit acts of retaliation taken against a person because they reported any form of sex discrimination, including sexual assault or sexual harassment, filed a complaint, participated in the investigation of a complaint, or assisted others who raised a complaint. Retaliation is a serious offense which can result in disciplinary action. Any adverse action taken by you or others on your behalf against XXX for reporting this information to the University will be investigated by the Office of Compliance as an act of retaliation.

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Notice of Allegations
- Title IX Process



(2) Notice of allegations--(i) Upon receipt of a formal complaint, a recipient must provide the following written notice to the parties who are known:

(A) Notice of the recipient's grievance process that complies with this section, including any informal resolution process.

(B) Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under § 106.30, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section. The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

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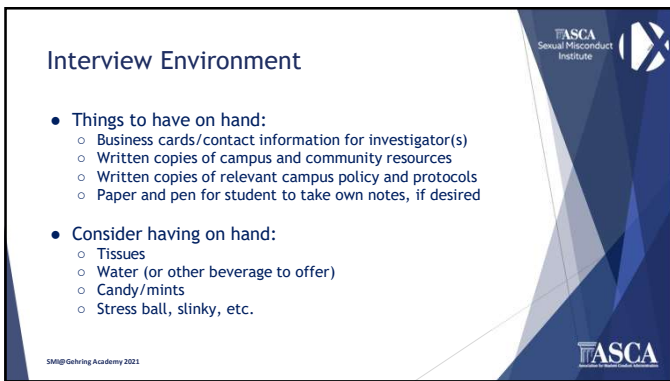
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Interviewing Tips

- Dress/appearance
- Attend to own non-verbal behaviors
 - Focus on student, rather than advisor, support, attorney
 - Present open posture
 - Balanced eye contact
- Practice active listening
- Demonstrate empathy, but with proper boundaries
 - Do not "own" the emotions yourself
- Be mindful of own reaction to triggering information
 - Consult with colleagues to learn more about your own non-verbal cues

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Virtual Interviews

All considerations must be taken even when an interview is being held virtually.

- Set up a private virtual meeting
- Set ground rules for meeting attendees, recordings, etc.
- Share documents electronically prior to the meeting for interviewee to access during the meeting

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Interviewing Tips

- Managing the difficult conversation
 - Acknowledge at the beginning that this could be a difficult conversation
 - Do not preface with "I know this is hard" or "this must be difficult"
- Language is extremely important
 - Use correct anatomical terminology for body parts
 - Ask interviewees to explain what they mean when using slang terms even if you think you understand them
 - Consider differences in how words can be defined differently even if speaking the same language

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Framing the Initial Interview

- Welcome and introductions
- Use this as opportunity to begin building rapport
- Overview of the process
 - Explanation of investigatory process, resolution process, appeal rights
 - Have written copies of these materials available, flowcharts are helpful
- Review rights and options specific to interviewee role
 - Complainant/respondent rights differ from witness
 - Discuss confidential resources, availability of interim measures and supports, other available resources

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Framing the Initial Interview

- Discussion of roles
 - Investigator(s), advisor, support person, attorney, etc.
- Setting expectations for interview
 - Okay to take breaks
 - Explain whether interview is being recorded and/or notes being taken, privacy considerations
- Discuss process
 - Find out if party intends to cooperate
 - Explain when/how updates will be provided
 - Discuss prohibition against retaliation

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Reluctant Complainants

- Complainant may request confidentiality, that nothing be done, or say that they don't want to participate in investigation
 - Explain further confidentiality in the process
 - Discuss in more detail protections against retaliation in the policies
 - Explain responsibility of university to maintain safe and non-discriminatory environment may require to take action
 - Explain what options available if investigation does not proceed
 - Explain limitations in response without participation
- Document complainant's request and rationale for honoring it (or not)

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Reluctant Complainants

- If necessary/possible to proceed without complainant's participation:
 - Seek detailed information from those with most direct knowledge
 - Witnesses
 - First responders
 - RA, Security staff and/or police who spoke with complainant
 - Try to piece together narrative from physical information (ex: social media, photographs, etc.)
- Be mindful of rights and impact on respondent

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Reluctant Respondents

- May be concern for impact on criminal process
- May want to first know what information has been reported/gathered
- May claim right to avoid incrimination
- If proceeding without respondent:
 - Try not to rely on complainant's narrative alone
 - Seek additional information to either support or refute claims
 - Avoid finding of responsibility/drawing adverse inference from refusal to participate

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Activity #1

Develop an investigative strategy based on what you observe in the video.

<https://www.youtube.com/watch?v=y6zZYCb-hyQ&t=4s>

Note that this activity may trigger some personal trauma. If you need, please feel free to use this moment for self-care.

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Goals of Questioning

- Establish a narrative and timeline of events
- Clarify conflicting information
- Understand how all parties perceived events

Use elements of the policy related to the allegations as the framework for questions- indeed, as framework for entire investigation

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Tips for Effective Questioning

- Ask open-ended questions
- Avoid leading questions
- Listen more than speaking, be comfortable with silence
- Allow time for people to answer questions
- Use appropriate tone
- Identify conflicting information
- Ask for clarification
- Ask questions that reveal attitude and belief
- Avoid questions that imply judgment
- Keep it simple

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Determining What to Ask

- Ask yourself:
 - What information do I need to gather?
 - Do I need to know more about the information?
 - Will an answer to my question help me to understand what happened?
 - Will getting an answer to this question inform the decision?
 - What facts may be in dispute?

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Determining What to Ask

- In framing the questions, be sensitive to the emotional states of both complainant and respondent, as well as other parties involved
- Do not make assumptions about complainant's fragility or vulnerability
- Important/relevant questions should always be asked

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Useful Phrases

- Would you be willing to tell me more about...?
- How did you feel about...?
- What did you do after...? What happened then?
- What did you mean when you said ...?
- What was your reaction to ...?
- How did you become involved in ...?
- What is your understanding of...?

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What to Ask When

- "What" questions ask for facts and details
- "How" questions ask about the process, sequence of events, or focus on emotions
- Closed "who/when/where" questions ask for the specifics of the situation
- Avoid "why" questions that could be perceived as judgmental
- Avoid multiple choice questions
- Avoid asking more than one question at one time

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Additional Questioning Tips

- Ask interviewee to physically demonstrate what happened as appropriate
- Ask interviewee to draw maps, diagrams, room layout, floorplan, etc
- Ask interviewee if they have documents or other evidence that they discuss, and ask them if they would be willing to share
- Avoid interrupting
- Observe body language
- Consider cultural differences
- Consider language needs

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Avoid Leading Questions

- Were you feeling stressed when you told your roommate what happened?
- Were you drunk after having 7 drinks?
- Were you worried after the complainant left your room?

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Closing the Interview

- Connection to additional witnesses/information
 - Do you have any texts, pictures, etc. that may be related to this incident?
 - Is there anyone else you can think of that I should talk to? What information do you think they may be able to provide?
- Wrap up questions
 - Is there anything else you think I need to know?
 - Is there anything you were expecting me to ask that I did not?

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Closing the Interview

- Allow time for student to ask questions
- Additional information
 - How to contact you if they remember anything else after the interview or have additional questions
 - Remind them about the prohibition of retaliation
- Next steps
 - Will this person hear from you again?
 - Will this person need to review the summary of their interview?
 - When should they expect that contact?
 - What might that contact look like?

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Special Considerations for Various Parties





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Considerations for Complainant

- Minimize number of interviews and interviewers
 - Could be retraumatizing to have to retell story multiple times
- Ask questions that speak to sensory elements of incident may unlock details
 - Sight, smell, taste, texture, sound, etc.
- Ask questions that speak to emotional elements of incident that may unlock details
 - Allow complainant to unpack their feelings
 - May generate recall of incident-specific information

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Considerations for Complainant

- Possible questions- sensory or emotional information
 - What is the memory that sticks out most for you?
 - Is there anything you can add...?
 - What sounds (smells, etc) do you recall?
 - Tell me more about what you recall feeling (physically) at that time.
 - Tell me more about how this has impacted you.
 - Seek more information about the physical and emotional response
 - Seek more information about academic, social, personal, behavior impact

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Considerations for Respondent

- Undergoing an investigation may cause respondent to feel:
 - Stressed
 - Shame and/or embarrassment
 - Anger
 - Hopeless
- Important to provide respondent with appropriate resources/support
 - Respondent who feel supported may be more likely to participate in process
- Trauma-informed practices may be appropriate to use with Respondents as well

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Considerations for Respondent

- Begin interview with broad inquiry
 - Let's discuss the night of the alleged incident.
 - Tell me more about what you were doing on X date, starting at wherever the beginning is for you.
 - You have been accused of behavior (on X date) that violated our policy/code of conduct. Tell me why that may be.
 - Tell me about your relationship/interaction(s) with the complainant.

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Considerations for Respondent

- Possible interview questions - consent
 - What did the complainant do or say that showed you had consent?
 - Tell me more about what you observed from the complainant in response to your actions.
 - What did you do when the complainant indicated that they weren't interested?
 - What did the complainant do that showed they were enjoying the interaction?

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Considerations for Respondent

Common responses:

- Denial based on character
 - I would never do this because I'm a spiritual person
 - I know someone who was raped and there is no way I would do that
- Denial based on physical condition
 - I had so much to drink I couldn't maintain an erection
 - I'm the one who was blacked out- ask my friend how much I had to drink
- Refuse to address the allegation
 - Under the advice of counsel...
 - I want to see the file before I say anything.

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Considerations for Respondent

- Denial based on their prior sexual experience
 - I was a virgin before that night.
 - I'm the one who was violated.
 - I'm not trying to brag, but I don't need to take advantage of anyone to get laid.
- Reframe incident or raise distractions
 - This isn't about consent, it's about a bad breakup.
 - We should be talking about how the complainant took advantage of me.
 - If I wasn't a [special population], you wouldn't even be talking to me.
 - I've seen the news and know that the process is stacked against me.

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Considerations for Witnesses

- Often, the situations we are investigating are “word against word” with no direct witnesses. But witnesses can:
 - Fill in gaps in timeline
 - Provide information about parties’ alcohol/drug use
 - Provide observations regarding observable behaviors indicating possible incapacitation
 - Provide contemporaneous accounts of what parties told them

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Considerations for Witnesses

- Address confidentiality
 - Explain what, if any, confidentiality you can provide
 - If witness’ name will be used, explain context and who will know
- Address protections against retaliation
- Explain hearing involvement, if applicable
- Connect to resources
 - If witness is showing signs of distress/discomfort, help connect them to assistance
 - If appropriate, consider offering interim measures such as no contact order
 - But consider whether that will restrict party’s due process right to question them

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Considerations for Witnesses

- Strategies:
 - Be strategic about order in which to interview them
 - If possible, schedule interviews so as to minimize opportunities for witnesses to compare stories, notes, questions asked
 - Listen for accounts that sound too familiar
 - Using same wording or phrasing
 - Telling story in exact same sequence
 - Ask about the witness’ use of alcohol/drugs and whether it affected their observations/memories
 - The disinterested witness is the best source of information

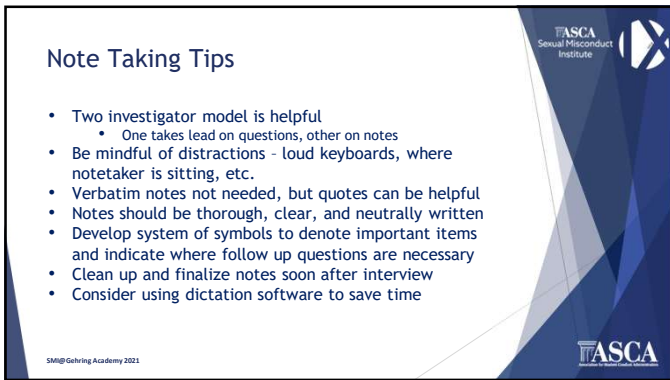
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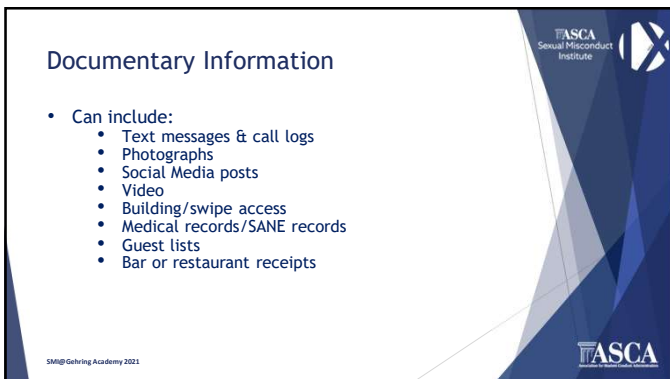
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Verifying Documentary Information

- Text Messages
 - Messages in a thread can be selectively deleted
 - Ask student for phone bill to verify time stamps
 - Ask others involved in the text conversation if they still have the messages
- Social Media Posts
 - Templates online to take posts/messages
 - Ask student to sit at your computer/desk to print or screen capture
- Photographs
 - Look at date and time of creation for digital images

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Relevancy of Information

- **Relevant:** closely connected or appropriate to what is being done or considered
- Regardless of relevance, 2020 final rules require investigators to accept and consider all evidence
- Examples of potentially irrelevant information:
 - Does not speak to the issue
 - Speaks to a fact not in dispute
 - Sexual history
 - Character references/letters

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Relevancy of Information

- Sometimes, information can be prejudicial
 - Inflammatory social media posts not related to the issue
 - Opinion/evaluative statements not backed by fact
- What to do with irrelevant/prejudicial information
 - All parties have a right to inspect ALL evidence, regardless of relevance
 - If you choose not to use/include something in the final investigation report, document decision and rationale

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Prior Sexual History

- What the regs say about prior sexual history:
 - 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.

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Prior Sexual History - Example

- Complainant claims she never has sex without a condom and she wouldn't have allowed respondent to have sex with her without a condom if she had not been incapacitated.
- Respondent claims this isn't true and that complainant has had sex with 3 of his friends who didn't use condoms. Respondent wants investigator to interview friends and include information in report.

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Prior Sexual History - Example

- Complainant objects, saying her previous sexual history isn't relevant.
- Respondent says the information is relevant as to complainant's credibility. He says she was not being truthful when she said she always uses condoms and his witnesses can prove it.
- If this information allowed under your policy?

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Assessing Credibility

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What is credibility?

Definition of credibility - Merriam Webster

- 1: the quality or power of inspiring belief
"an account lacking in credibility"
- 2: capacity for belief
"Their account exceeds credibility"

In sexual misconduct investigations and adjudications, we often need to determine if one party is credible, or more credible than another party when their testimony does not line up.

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Assessing Credibility

Best way to evaluate credibility is to use everyday tools and life skills.

- Not complicated- we do it every day.
- Procedures are based on reason and common sense.
- Process is a "search for the truth."


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Assessing Credibility

- Factors that influence credibility
 - Direct observation or experience
 - Circumstantial/indirect information
 - Contemporaneous statements
 - Witness accounts
 - Documentation
 - Claimed lack of knowledge
 - Interest/motive/malice
 - Cultural factors

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Assessing Credibility

- Establishing credibility: Listening to the witness
 - Invest in learning the language of your witness
 - Do not attempt to reinterpret their language, quote whenever possible over summarization
 - Learn from the witness' narrative
 - Refrain from interrupting
 - Go back and follow up to clarify details
 - Explore the entire incident and investigative process with witness
 - Pay attention to areas which may be able to be corroborated

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Assessing Credibility

- Focus on sensory details
- Pay attention to emotional cues and responses
- Create running timeline
- Barring other forms of information, the information of the unbiased person is given more weight
- Give more weight to disputed information or events when corroborated by multiple witnesses
- Consistency versus inconsistency
 - Be aware of possible impact of trauma or retaliation for inconsistent statements

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Credibility Across Cultures

- Continuum of honesty and face-saving
 - Some cultures do not equate face-saving with an outright lie. Parties from such cultures may believe they can read the context of when they are telling a story in a way to preserve someone's dignity or privacy.
- In-group/out-group rigidity or flexibility
 - For cultures with rigid in-group/out-group boundaries, they may be very hesitant to disclose to someone outside of the group.

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Credibility Across Cultures

- Low-context and high-context cultural communication
 - Some cultures communicate indirectly, with much nuance and context needed to correctly understand verbal statements.
 - These parties may appear to be withholding information/giving incomplete statements, but are acting within a cultural norm.
 - Can you interpret nuance and context of their statements to get complete information?
 - Ask for clarification and elaboration. Explain why you are doing do.

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Credibility Across Cultures

- Linear and nonlinear narration
 - Some cultures rely on linear storytelling, which matches well with investigative culture.
 - Other cultures normalize non-linear storytelling... important to not confuse this with effort to obscure the truth.
 - Explain the cultural value of linear narrative in your process. Clarify linear details after story is completed.

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Credibility Across Cultures

- Impact of hierarchy
 - In cultures with high degree of hierarchy, parties may believe they should tell authority figures what those figures want to hear. This may not be an effort to deceive, but an effort to win approval.
 - Explain that you value candor and honesty, even when that makes situations more complex and challenging.

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Activity #2

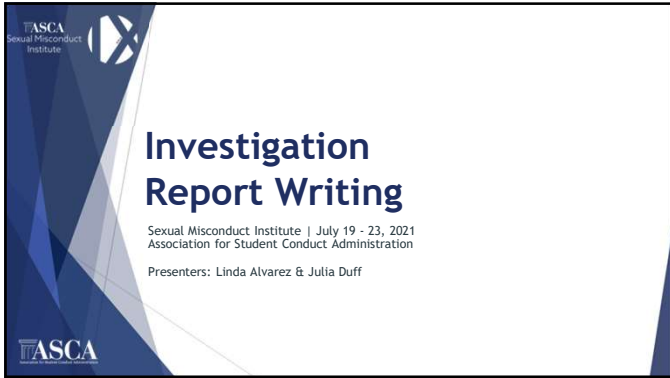
Note that this activity may trigger some personal trauma. If needed, please feel free to step outside.

<https://www.youtube.com/watch?v=y6zZYCb-hyQ&t=4s>

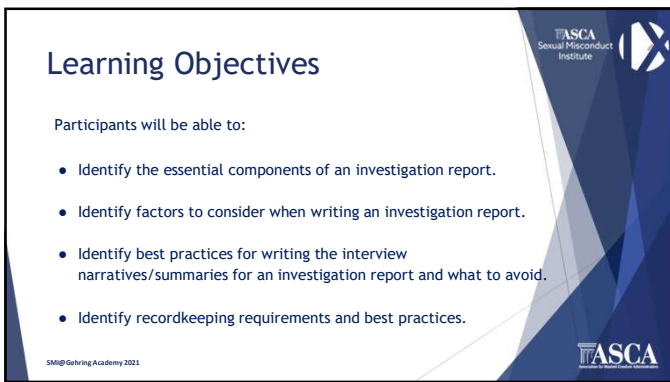
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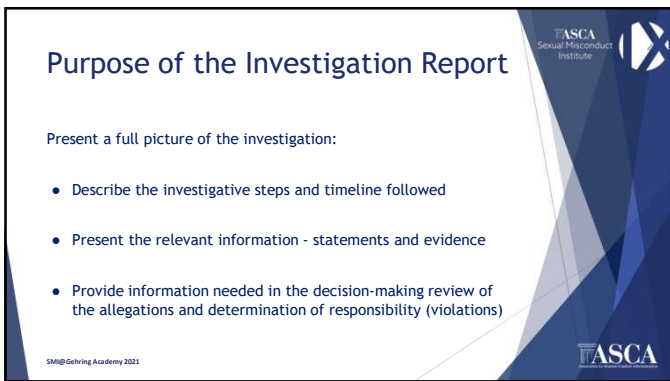
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Before you begin writing:

- Review your Investigation Plan
 - Did you complete all of the items in your plan?
- Review interview summaries and documentation to make sure you do not have to conduct any follow-up.
 - Are there any documents you were waiting for from the parties that you have not received?
 - Did you review all documents you received?
- Gather your materials.
 - Is all the information that you need readily accessible to you?

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Written Documents

- Complaint
- Charge Letter or Notice of Allegations (*Title IX*)
- Other Relevant Correspondence
- Investigation log or timeline
- Completed checklist(s)
- List of documentation (evidence)
- List of parties
- Policies, procedures, etc.

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Contents of the Report

Determine what you will include in the report

- What are the required components per the applicable policies, procedures, state/federal laws or statutes?
- What is the relevant information that will be included based on the allegations?

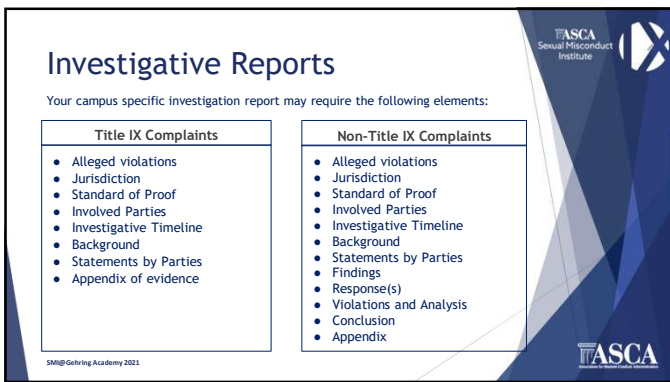
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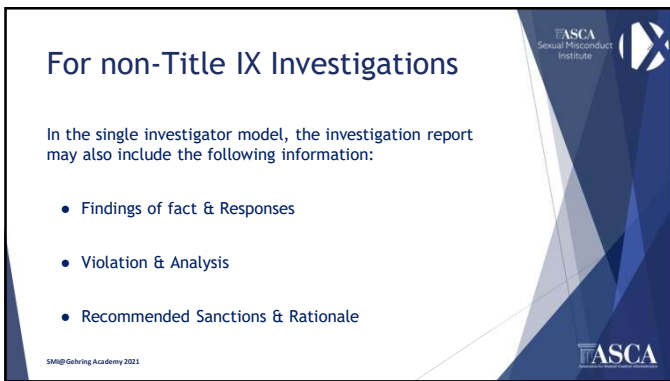
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9

Alleged Violations & Analysis

- Outline each code violation and analyze it with the information gathered in the investigation
 - 17.09(1) Dangerous Conduct
 - The Student Code defines dangerous conduct as conduct that endangers or threatens the health or safety of oneself or another person
 - 17.09(2) Sexual Assault
 - The Student Code defines sexual assault as...
- Clearly articulate how the alleged behavior fits or does not fit the policy violation
 - If only conducting fact-finding, present the facts with the next reviewer in mind.
 - Address all elements and key questions

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Jurisdiction & Standard of Proof

- Explain the jurisdiction for addressing the complaint
 - Include nexus to the campus for non-Title IX complaints
- Cite the institution's policy and procedure explaining jurisdiction
- Explain the standard of proof used to determine finding of responsibility/violation of policy
 - Preponderance of the evidence
 - Clear and convincing

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Involved Parties

- List the parties (Complainant, Respondent, Witnesses)
- Describe the status of the party:
 - Respondent is a graduate student.
 - Complainant is an undergraduate student.
- State how many witnesses were interviewed and how they will be referred to within the report:
 - Six witnesses were interviewed in the process and are referred to as W1-W6 in the investigative report. Note: Investigators have discretion to list witness names or use other designations such as W1, W2, W3.
- Describe the relationship of the parties to each other:
 - Complainant is roommates with W1.
 - Respondent is a member of the same student organization as Complainant and W2.

Include witnesses that may have observed behavior and/or had duty to report but no relationship to the parties. Also include information for those who declined to participate in the interview, including attempts to contact.

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Investigative Timeline & Background

- Timeline of specific events occurring during the investigation
 - Dates of notice, interview, review of file, etc.
 - Can be presented as narrative
- Background information
 - Circumstances under which the Complainant reported he alleged conduct
 - When/how the notice of investigation/charge letter was sent to respondent
 - When/how the respondent and complainant interviewed with office
 - Other documentation reviewed (text messages, screenshots, photos, police reports, emails, etc.)

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Statements and Interview Summaries

- Factual, neutral summary of interviews
 - Complainant's interview
 - Respondent's interview
 - Witnesses' interview(s)
- Include the relevant exculpatory and inculpatory evidence
- Use quotation marks for actual quotes

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Findings & Responses

- Summarize separately the information that is undisputed and disputed
 - For undisputed elements
 - "It is undisputed that the complainant and respondent engaged in mutual kissing."
 - For disputed elements
 - "It is disputed that the respondent moved the complainant's underwear aside while on top of her and penetrated her vagina with his penis."
- If applicable to your process, separately provide summaries of the responses to findings from the complainant(s) and respondent(s)

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Parties' Review

- Commented incorporated as footnotes
- Signed sheet to acknowledge review

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Conclusion (If applicable)

- Depending on the adjudication model, investigation report may include a conclusion by the investigator.
- In simplest form, states investigation is complete.
- The conclusion may state whether the investigator finds that by the standard of evidence, the allegations were substantiated or unsubstantiated. For example:

Based on the preponderance of the evidence, including statements from the complainant, the respondent, and witnesses, it is determined that it is more likely than not that the respondent is responsible for violating the codes of student conduct as outlined previously in this report.
- Include next steps in the process. For example, with the Investigator / Decision-maker model, report will be provided to decision maker(s) for determination.

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Appendix/Exhibits

- Full meeting notes (if applicable)
- Incident Reports
 - Law enforcement reports
 - University incident reports (security department, residence life, etc)
- Phone logs
- Screenshots or photos of text messages, social media posts
- Emails
- Photos
- Medical records
- Parties' review of draft investigative report without findings (if applicable)
- Privacy notices (if applicable)
- Full copies of applicable codes, policies and procedures

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Result, Per Clery Handbook

- Result: "any initial, interim and final decision by any official or entity authorized to resolve disciplinary matters within the institution"
- Be prepared to articulate, in writing, how information was weighed and credibility was assessed
 - Practice crediting and discrediting individual pieces of information in relation to the full record.
- It is not sufficient to write:
 - "The evidence presented met the institution's standard of evidence"

SMI@Gehring Academy 2021 U.S. Department of Education, 2016



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Cultural Considerations



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Cultural Considerations

- Trust in writing vs. trust in verbal communication
 - US culture trusts deeply in written communication.
 - Other cultures may have a distrust in written communication, seeing it as inflexible, unauthentic, and/or incomplete.
- Linear narrative vs. non-linear narrative
 - Student conduct culture prefers linear narrative.
 - Some other cultures do not organize stories in this way. They will focus on what is most salient or other touchstone points in a narrative.
- The challenge: We still need written linear narratives in our report writing.

SMI@Gehring Academy 2021 U.S. Department of Education, 2016




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Cultural Considerations

- Orient the parties, and possibly their families, to why our reports are structured the way they are.
- Note the purpose of the report: An "official record of the investigation." Not "the complete story of what happened."
- Note the multiple audiences for the report: parties, institution, need for legal compliance, etc.
- Note parts of the report that are not strictly linear
- Talk through summarized report verbally with parties, also encourage them to read it fully.

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Record Keeping & Releasing Records




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Record Keeping

Database contents should include (in separate case for respondent and complainant):

- Charge letter
- Finding letter
- Investigative report
- Information supporting investigative report
- Hearing materials
 - Request(s) for hearing
 - Hearing packet
 - Hearing recording
 - Hearing decision
 - Hearing appeal
 - Appeal decision
 - Emails
 - Confirmation of meetings, what was discussed
 - Documentation regarding Interim measures

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Records Retention Policy

- What is your institution’s policy?
- Read it carefully, and follow it.
- Ask: Does it match up with housing/residence life policies?
- Talk with your Registrar’s office
- Remember Clery Act record retention: 7 years
- Record release to students involved
 - Consider creating a form that students fill out to request to view their student record.

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Open Records

- Work with legal counsel or open records steward
- If you charge for open records requests, be ready to share your hourly rate of pay
- Be ready to justify your training
- Advocate, if necessary, for both parties
 - Ex: student newspaper requesting names of students found responsible for a sexual assault violation in the past 10 years (FERPA)

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Subpoenas

- Work with campus legal counsel
- Be ready to release documents
- Notify students that you are releasing their information
- Watch for “no disclosure”
 - The FERPA notice provisions don’t apply with the subpoena directing us to not disclose its existence. So, we can’t notify any student who may appear in those records and we can’t share the existence of the subpoena.

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References

U.S. Department of Education. Office for Civil Rights. (2017). *Q&A on Campus Sexual Misconduct*. Accessed May 9, 2018.
<https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>

U.S. Department of Education. Office for Civil Rights. (2001). *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties*. Accessed May 9, 2018.
<https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>

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Contact ASCA

Phone
979.589.4604

Email
asca@theasca.org

Address
P.O. Box 2237
College Station, TX 77840

Contact SMI Facilitators

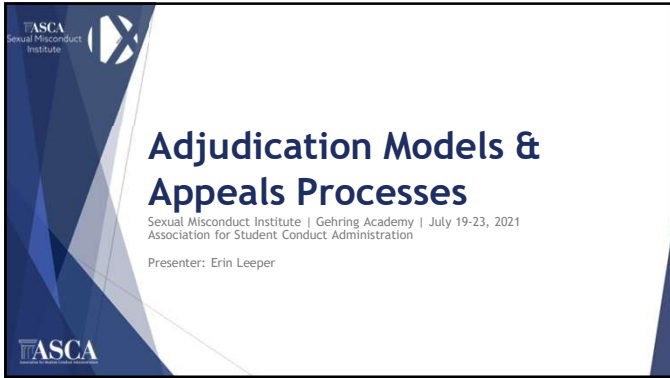
Linda Alvarez
linda.alvarez.s18@gmail.com

Julia Duff
jduff@email.gwu.edu

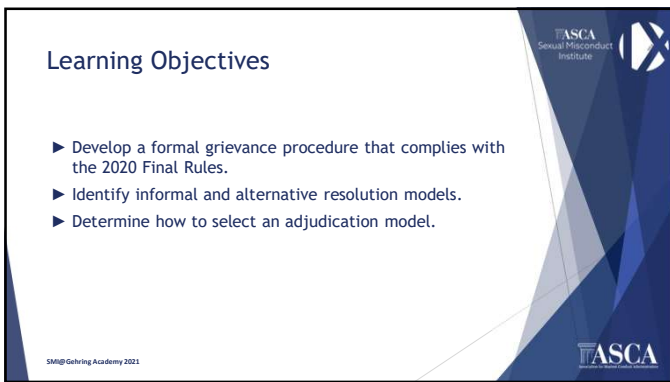
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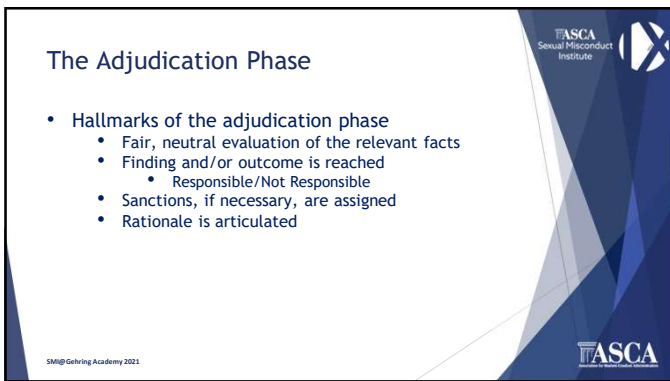

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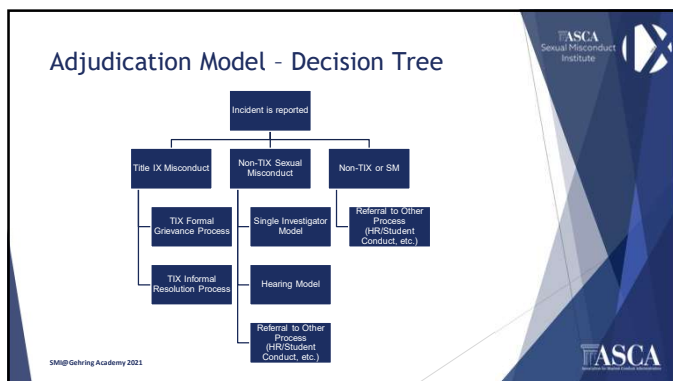
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Examples from Other Colleges

Kenyon College (OH): <https://documents.kenyon.edu/communications/sexual-misconduct-process-chart.pdf>

Converse College (SC): https://my.converse.edu/ICS/icsfs/Converse_Decision_Tree.pdf?target=9879b665-4222-48fa-98a4-2d9a99b6a0e5

Skidmore College (NY): <https://www.skidmore.edu/sgbm/overview.php>

Bowling Green State University (OH): <https://www.bgsu.edu/content/dam/BGSU/bgsu-cares/images/TitleIX/3.0-flowchart-and-Process-2-of-2-Title-IX-Flowcharts.pdf>

Gehring Participant Drop Box: https://drive.google.com/drive/folders/1dBjCrJ97Y_P0I-Pog5dsN3B0mTi-kEVT?usp=sharing

The slide includes the ASCA logo and 'SMI@Gehring Academy 2021' in the bottom left corner.

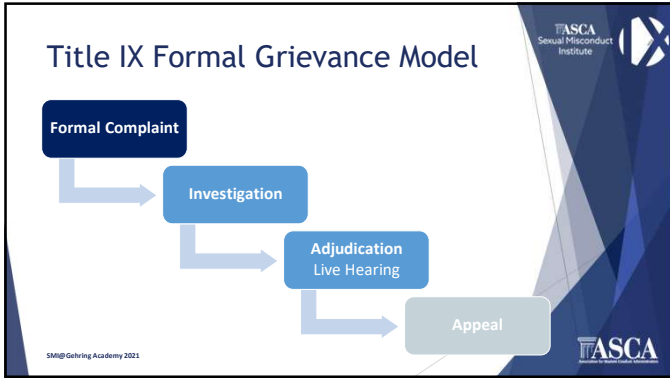
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Adjudication Models

- ▶ Title IX Formal Grievance Process
- ▶ Hearing Model
- ▶ Investigator Model
- ▶ Alternative and Informal Resolution

The slide includes the ASCA logo and 'SMI@Gehring Academy 2021' in the bottom left corner.

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7

Dismissal of Formal Complaint Under Title IX

- ▶ 2020 Final Rules require institutions to dismiss a formal complaint under the following conditions:
 - ▶ If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved,
 - ▶ did not occur in the recipient's education program or activity, or
 - ▶ did not occur against a person in the United States.
- ▶ Such a dismissal does not preclude action under another provision of the recipient's code of conduct or other appropriate policy.

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Dismissal of Formal Complaint Under Title IX

- ▶ Institutions can dismiss the formal complaint or any allegations at any time during the investigation or hearing when:
 - ▶ a complainant makes written request;
 - ▶ the respondent is no longer enrolled or employed by the institution; or
 - ▶ specific circumstances prevent the institution from gathering evidence sufficient to reach a determination.
- ▶ When dismissed, the institution must send written to all parties

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Title IX Hearings

- ▶ Requirements of Title IX Hearing
 - ▶ Must be live and conducted in a way that all parties can see and hear each other simultaneously
 - ▶ At the request of either party, the recipient must provide for the 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
 - ▶ Create an audio or audiovisual recording or transcript of any live hearing

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Title IX Hearings

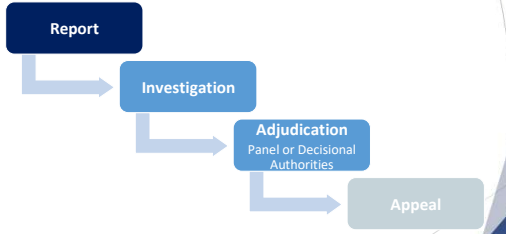
- ▶ Requirements of Title IX Hearing
 - ▶ Advisor's engage in cross-examination
 - ▶ Institution must provide an advisor, for the purpose of engaging in cross-examination, at no charge to the party
 - ▶ Reliance on statements when party refuses to answer any cross-examination questions

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Hearing Model



```
graph TD; Report[Report] --> Investigation[Investigation]; Investigation --> Adjudication[Adjudication  
Panel or Decisional  
Authorities]; Adjudication --> Appeal[Appeal];
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Hearing Model

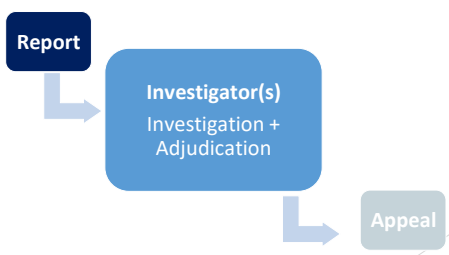
- ▶ Highly trained individuals with specific tasks
- ▶ Clearly defined, separate roles: Investigator(s) and Adjudicator(s)
 - ▶ In some models the Investigator only conducts fact-finding
 - ▶ In others, Investigator makes a decision on policy violations or recommends a decision on policy violations

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Investigator Model



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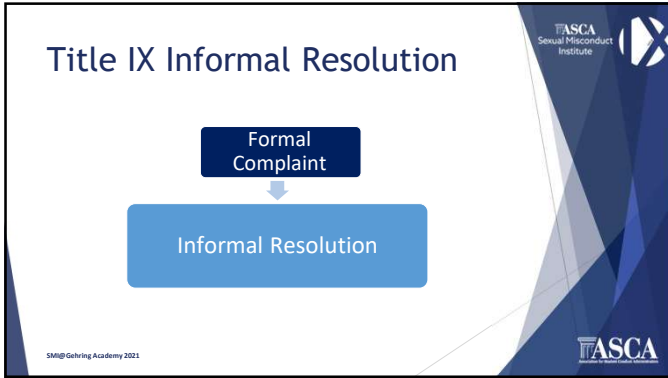
Investigator Model

- ▶ Investigator(s) serve as the point of contact for all parties
- ▶ Serves several main functions
 - ▶ Neutral fact-finder
 - ▶ Deliberative authority charged to render an outcome
 - ▶ May also refer to an adjudicative decisional authority without a hearing
 - ▶ May also be asked to facilitate interim measures process
- ▶ Investigation may be documented in a formal report
- ▶ Must have autonomy and authority

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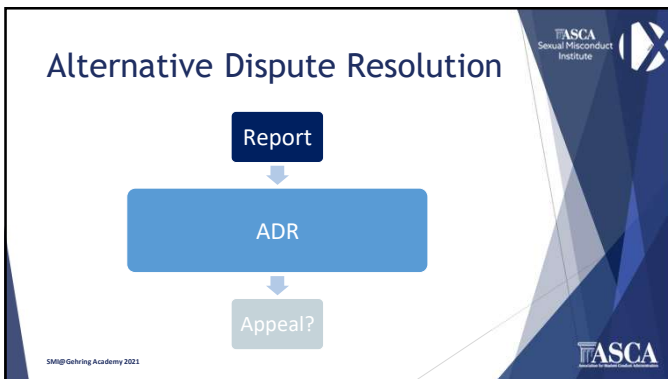
Title IX Informal Resolution

- ▶ 106.45(b)(9): At any time prior to reaching a determination regarding responsibility the institution may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication,
 - ▶ (i) Provides parties a written notice of allegations of procedures;
 - ▶ (ii) Obtains the parties' voluntary, written consent to the informal resolution process; and
 - ▶ (iii) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

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Alternative Dispute Resolution

Philosophy of conflict resolution that uses Restorative Justice and Social Justice principles to resolve interpersonal conflict.

- ▶ Complainant options
- ▶ Respondent accountability
- ▶ Community opportunities and protection
- ▶ Community accountability
- ▶ Competency development

Title IX Coordinator, or designee, should always have the final say of the most appropriate resolution procedure in order to protect all parties from further harm.

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Alternative Dispute Resolution

- ▶ Resolution agreement between institution and respondent
 - ▶ Respondent is in general agreement about the facts of the case
 - ▶ Agrees to a set of proposed sanctions
 - ▶ Respondent typically waives right to appeal
- ▶ Complainant needs/rights should be considered with any agreement
- ▶ Appropriate when the respondent is not disputing responsibility
- ▶ To use, option must exist in your policy

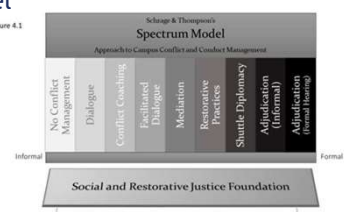
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Schrage & Thompson (2020) Spectrum Model

Figure 4.1: Schrage & Thompson Spectrum Model
Approach to Campus Conflict and Conflict Management



The diagram shows a spectrum of conflict resolution approaches from Informal on the left to Formal on the right. The approaches, from left to right, are: No Conflict Management, Dialogue, Conflict Coaching, Facilitated Dialogue, Mediation, Restorative Practices, Shuttle Diplomacy, Adjudication (Informal), and Adjudication (Formal Hearing). Below the spectrum is a 'Social and Restorative Justice Foundation' which is supported by an 'Existing Commitment to Transformative and Procedural Justice'.

Reframing Campus Conflict and Student Conduct Practice for Inclusive Excellence, 2nd edition, edited by Jennifer Meyer Schrage and Nancy Gerst Giacomini. Sterling, VA: Stylus Publishers. Herndon, VA: Stylus. SMI@Gehring Academy 2021



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Schrage & Thompson (2020) Spectrum Model

Figure 4.1

Schrage & Thompson's Spectrum Model

Approaches to Campus Conflict and Conduct Management

Informal Formal

Social and Restorative Justice Foundation

Existing Commitment to Transformative and Procedural Justice

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Alternative Dispute Resolution

- ▶ Mediation
- ▶ Restorative Practices
- ▶ Shuttle Diplomacy
- ▶ Adjudication (Informal)

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Mediation

Third-party structured session aimed at resolving a conflict and/or constructing a go-forward or future state for the parties involved.

- ▶ Achieve reconciliation
- ▶ Find settlement or agreement
- ▶ Reach understanding

Key Tenets:

- ▶ Neutrality
- ▶ Confidentiality
- ▶ Authority
- ▶ Autonomy

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Restorative Practices

Restorative practices are structured, collaborative decision-making processes that typically includes harmed parties, people who caused harm, and sometimes other members of the community. The goal is for the participants to share their experience of what happened; understand the harm caused; and reach consensus on how to repair the harm, prevent its recurrence, and/or ensure safe communities.

- ▶ Focused on repairing harm
- ▶ Earning trust
- ▶ Building community

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Shuttle Diplomacy

Facilitator actively negotiates an agreement between two parties that do not wish to directly engage with one another.

- ▶ A form of mediation
- ▶ Private spaces for complainant and respondent
- ▶ Focused on reaching resolution

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Adjudication (Informal)

Using the process outlined in campus policy, facilitator meets with the parties to resolve an incident. Resolution is achieved when the parties accept an agreed upon outcome. Offers the Respondent an opportunity to take responsibility for alleged behavior and accept sanctions offered by the Title IX Coordinator or their designee

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Considerations for ADR Processes

- ▶ Record keeping & Confidentiality
- ▶ What process is available in each case and do you have written procedures
- ▶ Who will conduct the resolution?
- ▶ What are the possible outcomes and how do they compare to formal resolution process?



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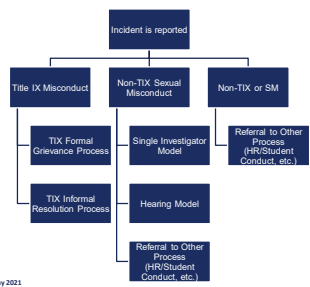
Selecting the appropriate adjudication model

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Adjudication Model - Decision Tree



```

graph TD
    A[Incident is reported] --> B[Title IX Misconduct]
    A --> C[Non-TIX Sexual Misconduct]
    A --> D[Non-TIX or SM]
    B --> B1[TIX Formal Grievance Process]
    B --> B2[TIX Informal Resolution Process]
    C --> C1[Single Investigator Model]
    C --> C2[Hearing Model]
    C --> C3[Referral to Other Process HR/Student Conduct, etc.]
    D --> D1[Referral to Other Process HR/Student Conduct, etc.]
  
```

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Selecting an Adjudication Model

- Consideration of the alleged behavior and location
- Consideration of the Complainant's choice (formal vs. informal)
- Consideration of the Respondent's choice (formal vs. informal)

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Selecting an Adjudication Model

- ▶ Logistical considerations and other involved parties
 - ▶ Management of the adjudication process
 - ▶ Identifying and resolving possible conflicts of interest
 - ▶ Assistance and/or advisor to the adjudicator(s)
 - ▶ Training of the adjudicator(s)
 - ▶ How often, by whom, and to what depth?
 - ▶ Record of the adjudication
 - ▶ Written, audio, or visual documentation?
 - ▶ Who manages the record?

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Selecting an Adjudication Model - Policy Considerations

- Considerations for the adjudicator(s)
 - Identity of the adjudicator(s)
 - Faculty, staff, student? Outside party?
 - Selection process?
- Role of the adjudicator(s)
 - Continued fact-finding or review?
 - Reach a finding and/or determine sanctions?

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Selecting an Adjudication Model - Policy Considerations

- Considerations for the parties
 - Level of participation of the parties
 - Notice to the parties
 - Review of the draft report/investigative file?
 - To what degree can the parties contribute, question, and/or comment?
 - Direct or indirect format?

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Selecting an Adjudication Model - Policy Considerations

- Involvement of an advisors/support person of choice
 - If made available to one party, must be made available to the other party
 - Cannot restrict choice of advisor, but can restrict level of participation
- Pre- and post-adjudication opportunities to engage
 - Early file/report review option, with/without feedback
 - Notifications- hearing, outcome, opportunity to appeal

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Reframing Campus Conflict and Student Conduct Practice for Inclusive Excellence, 2nd edition, edited by Jennifer Meyer Schrage and Nancy Geist Giacomini. Sterling, VA: Stylus Publishers. Herndon, VA: Stylus.

- ▶ Overview Powerpoint: https://s3.amazonaws.com/bi-dam-prod/5c4f4ac4ad5ef2b7c173e99a8/633570b16f960b965b1713af071361e07ee4468/9781642670493_78_6f89f11417abbeaaf250ad005f2733ea.pdf


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Conducting a Live Hearing & Decision Making

Gehring Academy | Sexual Misconduct Track | July 19-23, 2021
Association for Student Conduct Administration

Presenters: Jeremy Zilmer, Linda Alvarez, & Julia Duff




1




Learning Outcomes

- Understand requirements regarding conducting live hearings per the 2020 Final Rule.
- Identify methods and processes necessary to make relevancy determinations before and during the live hearing.
- Understand requirements regarding cross-examination and the role of an advisor during the live hearing.
- Identify various methods to conduct a live hearing.
- Understand requirements for advisors and a process to provide advisors to those who do not have one.
- Identify a process to exclude statements during a live hearing from a party or witness who does not submit to cross-examination.
- Determine a process for the hearing body to ask questions in order to reach a decision and outcome.
- Understand the process for deliberation and relevancy determination in ~~SMI@Gehring~~ decision and outcome.



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The Live Hearing

[A] live hearing gives both parties the most meaningful, transparent opportunity to present their views of the case to the decision-maker, reducing the likelihood of biased decisions, improving the accuracy of outcomes, and increasing party and public confidence in the fairness and reliability of outcomes of Title IX adjudications.

Title IX Regulations, May 19, 2020, Preamble 85 F.R. 30359

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Summary of Major Requirements for Live-Hearings under the Final Rule

- Must provide opportunity for live-hearings
- Both Complainant and Respondent must have an advisor
- Opportunity for Cross-Examination
- Advisors must handle cross examination of other parties and all witnesses
- Relevancy determinations must be made by the decision-maker prior to a question being answered

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Role of Decision-Maker

- May be one person or panel/board, depending on institutional process
- Cannot be the Title IX Coordinator or Investigator
- Conduct the live hearing
- At the live hearing make determination of relevancy of questions -
- Make determination of whether policies violated
- Write the determination of the finding of facts and policy violations
- Must make "issue a written determination regarding responsibility"
- Depending on institutional process, may determine sanctions and remedies

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Role of Advisors


Through the investigation process:

- Serves as a support person for the complainant or respondent
- May ensure understanding of policies, procedures, and process
- Advises them on process

In addition, for Title IX formal investigation:

- Is provided evidence subject to inspection and review
- Is provided investigation report for review
- Conducts cross-examination in the live hearing

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Cross-Examination Requirements

- Both the complainant and respondent are required to have an advisor during the live-hearing.
- The advisor will ask relevant questions and follow-up questions to the other party and any witnesses.
- The school must provide an advisor if the party does not have one
- Questions are verbally asked and in real time by the advisor.
- Only relevant questions are permitted (Not defined in the Final Rule).
- Prior to a party or witness answering a question, the decision-maker will need to make a relevancy determination and provide a rationale for the disallowance of a question if determined not relevant.

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Cross-Examination Requirements Cont.

- Rape Shield Protections- The decision-maker must determine questions and/or evidence related to the complainant's previous sexual history irrelevant with two exceptions.
- Schools may elect to do live-hearings in person or virtually.
- Upon request, parties may be placed in separate rooms but technology must be utilized so both parties can be seen and heard during the hearing.
- Parties and witnesses have the ability to refuse to submit to cross examination.
- Numerous implications for a party or witness refusal to submit to cross-examination including non-participation of hearing.
- Opportunity to challenge evidence including credibility.

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The Live Hearing- Title IX

- Hearing Methods- Hearing Board or sole adjudicator
- Opportunities for questions during a hearing including from hearing-body
- Deliberation and making relevancy determinations
- Evaluating the evidence and credibility
- Determining Standard of Proof
 - Must apply same standard to students and employees
 - Preponderance of the evidence or clear and convincing

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Written Determinations

The decision-maker(s) ... must issue a simultaneous written determination regarding responsibility, including

- Identification of the allegations
- Description of the procedural steps taken from the receipt of the formal complaint through the determination
- Findings of fact supporting the determination
- Conclusions regarding the application of the recipient's code of conduct to the facts
- Rationale
- Appeal procedures

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Rationale Statements, Per Clery

- Rationale for result and sanctions must include:
 - Information presented during the proceeding
 - Explanation for how the evidence was weighed
 - How the evidence and information support the result and sanctions
 - Description of how the institution's standard of evidence was applied

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Rationale Writing

- Two approaches:
 - Minimalist approach
 - Not too much detail
 - Keep it simple
 - Bare minimum amount of information
 - Extensive detail

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Rationale Writing

- “I determined based on the preponderance of the evidence...”
- Avoid terms like “I believe” or “I think”
- Should include:
 - Elements of policy student is alleged to have violated
 - Facts from investigation/hearing
 - Nature of conversation with student
 - Evidence that is credited and evidence that is discredited or found to be unreliable and a discussion of why


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Sample Rationales

Responsible, Not Responsible, Sanctions






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Rationale Example

“Based on the information that was available to me, as the Hearing Officer in this case, I determined, by the preponderance of the evidence, that Alex Smith violated the sexual misconduct policy. The information I evaluated in this determination included: a report from University PD which documented a trip to the hospital for a forensic nurse exam, and the information provided at the hearing including medical records from the local hospital.”

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Rationale: Responsible (continued)

After communicating in a variety of ways that she was not interested in a relationship with Respondent, including Complainant's specific direction that Respondent leave her alone and stop texting her, Respondent texted Complainant numerous times. Based on these surrounding factors and the definitions provided by the Code of Student Conduct, the Respondent was found to be in violation of the aforementioned charge.

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Rationale: Not Responsible

The Administrative Hearing Officer did not believe there was enough information to establish, by a preponderance of the evidence, the violation of Non-Consensual Sexual Contact and Sexual Harassment based on the definition of consent in the Code of Student Conduct. The investigation report and testimonies during the hearing provided contradictory information on the level of Complainant's intoxication, including but not limited to the extent to which Complainant's speaking and walking were impaired at the time of the events in question, the perception of the Complainant's witnesses as to her level of intoxication and whether Complainant was able to fully understand and consent to her interactions with Respondent during and after their time at the Restaurant.... Cont.

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Rationale: Not Responsible

The Complainant described herself as blacked out during some of the conversations with other witnesses while at the Restaurant; however, several witnesses who saw her at the Restaurant and/or at Respondent's apartment after they left the Restaurant described her as talking coherently and walking without any trouble. Testimony provided by one of the Complainant's witnesses stated that she watched the Respondent order, pick-up, and provide the Complainant with one cup of wine and that she did not see Respondent put anything in the Complainant's drink.... Cont.



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Rationale: Not Responsible

The Administrative Hearing Officer acknowledges that some of these contradictions could be read in a way that is consistent; e.g. the Complainant could have been blacked out and still appeared to other witnesses to be coherent. Viewing the information presented in its entirety, the Administrative Hearing Officer concluded that there was not sufficient evidence presented to establish a violation of 4.15a or 4.15b.






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Rationale: Sanctions

In considering the most appropriate educational sanctions regarding this case for the Complainant and Respondent, this Administrative Hearing Officer reviewed the information provided in the investigative report, the information provided by the Respondent, and the sanctioning guidelines provided by the Code of Student Conduct. In doing so, this Administrative Hearing Officer has determined that the most appropriate resolution regarding this case is disciplinary probation along with the additional sanctions specified. The sanctioning in this matter also reflected "compelling factors" (Code Section *Identify section as needed*) offered by the Respondent to support a sanction different from the standard guidance including, but not limited to, information about the Respondent's character and information provided by the Respondent regarding his insight to the behavior. The additional components are provided to help educate about community standards at the University and to facilitate the continued development of thoughtful, responsible, engaged members of the University community.






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Rationale: Sanctions

The rationale provided for these sanctions is as follows: In considering the most appropriate educational sanctions regarding this case for the Complainant and Respondent, this Administrative Hearing Officer reviewed the impact statement provided by the Complainant, the information provided by the Respondent, the sanctioning guidance provided by the Code of Student Conduct, and the totality of the information presented about the case. In doing so, this Administrative Hearing Officer has determined that, in the Hearing Officer's professional judgment, suspension for a two-year period is the most appropriate resolution regarding this case. Factors that weighed into this decision included, but were not limited to, the nature and severity of the incident, the impact on the Complainant, Complainant's anticipated time to degree completion, and the educational mission set forth by the Code of Student Conduct. The sanctioning in this matter also reflected "compelling factors"(Code Section *Identify section as needed*).



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Final Thoughts


- Decision-maker must provide rationale of all decisions including exclusions
- Decision-maker must issue a simultaneous written determination regarding responsibility
- Major institutional philosophical decisions to consider for policies and procedures
- The decision-maker may assess credibility based on numerous factors, including: evaluation of body language and demeanor, specific details, inherent plausibility, internal consistency, and corroborative evidence.
- School must create an audio or audiovisual recording or transcript of the live hearing and must be made available to both parties for inspection and review.

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Questions?



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Sanctions, Remedies, & Reintegration

Sexual Misconduct Institute | Gehring Academy | July 19-23, 2021
Association for Student Conduct Administration

Presenter: Erin Leeper





1

Learning Objectives

Participants will be able to:

- Identify appropriate remedies to address impact of conduct on Complainant and/or greater community
- Identify and apply appropriate sanctions for findings of responsibility
- Develop procedures for Respondent re-entry to campus community






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Sanctions vs. Remedies

- **Sanctions:** disciplinary action assigned to an individual who is found responsible for violating campus policies
- **Remedies:** actions taken to address the impact of an incident on the Complainant and broader community and restore access to educational program or activity

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Breakout Room Conversation

- What do you believe are appropriate sanctions for sexual misconduct?
- What does your campus believe are “appropriate” sanctions for sexual misconduct?
- What are some remedies that your campus might implement to ensure access to your educational program or activity is restored?

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Sanctions
Assigning sanctions to Respondents






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2020 Final Rules - What they say about sanctioning

- 106.45(b)(1)(i): Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in §106.30, against a respondent. Remedies must be designed to restore or preserve equal access to the recipient's education program or activity. Such remedies may include the same individualized services described in §106.30 as “supportive measures”; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent

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2020 Final Rules - What they say about sanctioning

- 106.45(b)(1)(vi): Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility
- 106.45(b)(7)(ii)(E): A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant

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Title IX Hearing Sanctions

The Decision-maker(s) from the live hearing is charged with also determining appropriate sanctions and remedies.

A statement of, and rationale for, any disciplinary sanctions the institution imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the institution to the complainant

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Mandated Sanctions

- Advantages
 - Consistency
 - Consequences for behaviors that violate policies are publicly known and accessible to campus community
- Disadvantages
 - Could discourage reporting, especially from marginalized communities
 - Unable to consider respondent's acceptance of responsibility or what complainant wants as outcome
 - Complainants may not come forward to report knowing what the sanctions are in advance
 - Could be seen as biased in subsequent court challenge by respondent

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Factors to Consider in Sanctioning

- Nature of conduct
- Impact on university community, including complainant
- Prior misconduct
- Acceptance of responsibility
- Safety of university community
- Precedent
- Impact of separating respondent from education
- Mitigating and aggravating circumstances

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Assess: What is the Policy Violation?

- What does your policy say about sanctions? Are there mandated sanctions?
- What is the level of impact?
- Is there a pending criminal case?
- How has the community been impacted?
- Was there consensual sex with something non-consensual like videotaping, sending a picture, etc.? If so, was there mass distribution?
- Was there more than one violation?

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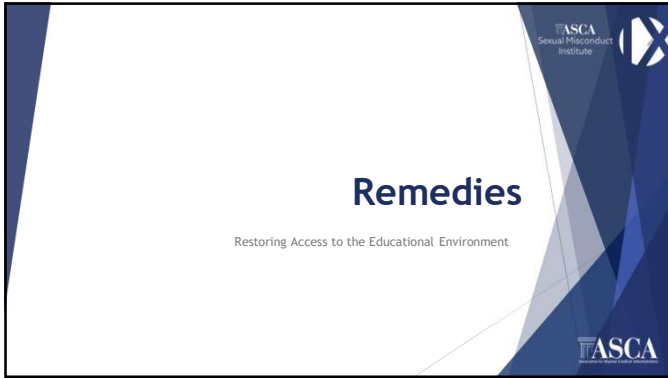
Assess: What is the Policy Violation?

- Did the respondent provide alcohol to the complainant?
- Where did the violation occur? During a class? In a lab?
 - What role was the respondent assuming at the time?
 - Graduate students teaching courses/instructors?
- Is there a power dynamic between the respondent and complainant in their roles?
 - Example: Respondent is an RA in a residence hall, and the complainant is a resident that reports to respondent
- Are there any other mitigating and/or aggravating factors?

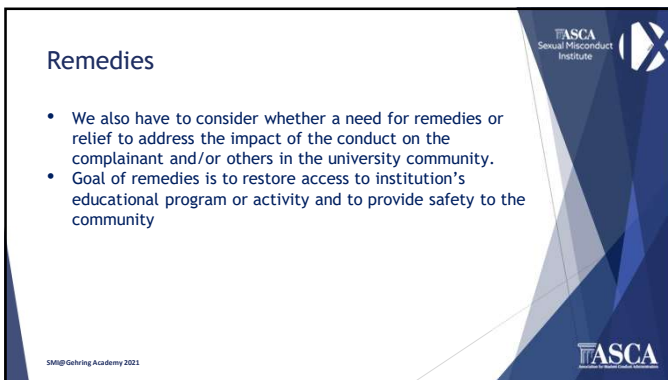
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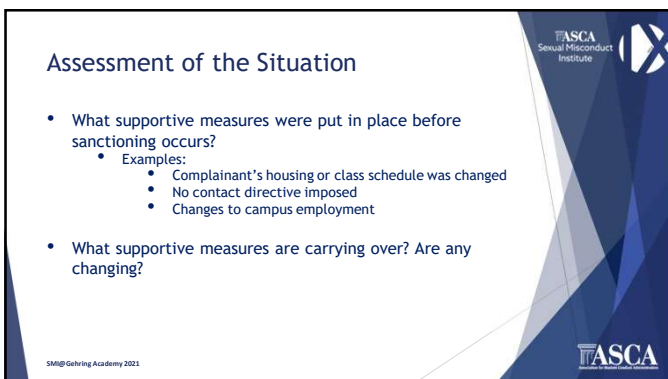
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Assessing Complainant's Situation

- Should any supportive measures be continued as a remedy?
- Are there additional measures needed to repair harm?
 - Protective measures?
 - Academic or housing modifications?
 - Reinstatement to any courses/clubs/activities dropped because of the harassment?
 - Short term counseling?
- Will you/how will you notify complainant if/when respondent returns
- Do not disclose remedies for complainant to respondent
 - Not a "joint educational record" under FERPA

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Assessing Respondent's Situation

- The institution should consider the impact of separating a respondent from their education or remaining on-campus
 - What is the respondent's housing situation? Where is the complainant's housing?
 - Are the respondent and complainant members of shared organizations or academic settings?
 - Is the respondent studying on a student visa?
 - If suspended, does the respondent have the means to return home or have housing?

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Assessing Respondent's Situation

Additional considerations:

- ▶ Which school/college is the respondent enrolled in? Do they have an honor code? Is the program available in an online format?
- ▶ What is the add/drop date for financial aid? Does your school have a reimbursement program?
- ▶ Does the respondent have an on-campus job?
- ▶ Does the respondent have a fellowship or scholarship that requires them to be in good standing? Will they lose funding if separated?

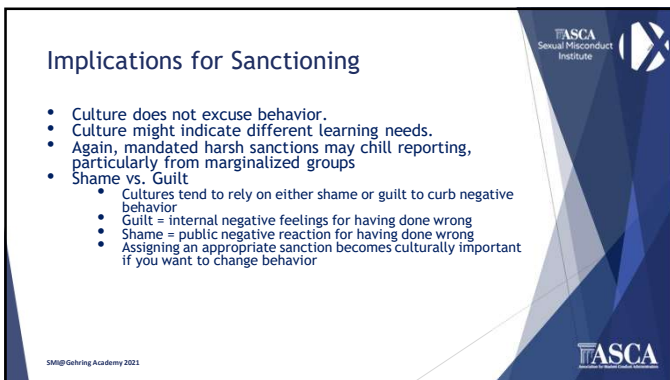
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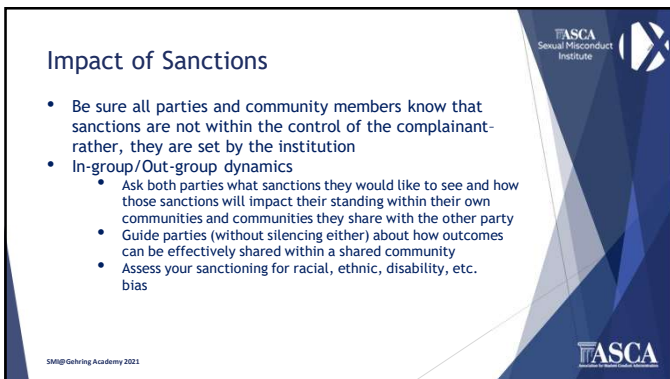
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Impact of Sanctions

- Ask the parties how, if at all, they will discuss this with others
 - ▶ Discuss the risk for retaliation or harassment if other's become aware of sanctions
- If party's family/community of origin will learn the outcome, ask how they will manage those effects
- If either party is leaving the institution, help them assess how they will reintegrate to their community
- Counseling may present cultural barrier. Pastoral counseling or other faith/community-based resources may be more culturally appropriate and should be offered as options unless licensure or specific services are required.

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Sanctioning Options & Case Studies





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Possible Status Sanctions

- Expulsion
- Suspension
- Disciplinary probation
- Formal warning/reprimand (placed in conduct file)
- Admonition/informal warning (not placed in conduct file)
- Employment restrictions

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Additional Sanctions

- Withdrawal of privileges (housing restrictions, etc.)
- Exclusion (from campus or parts of campus, activities)
- No contact directives
- Community service
- Reparations
- Counseling
- Behavioral assessment
 - Alcohol assessment or reduction program
- Educational projects/initiatives
 - Workshop, reading and reflective essay, workbooks, interviewing member of community, etc.

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Resource: Sanction Guideline

Student Sanctioning Guideline for Sexual Misconduct

The information presented in this document includes general guidelines for the decision-maker to assess sanctions for violations of the sexual misconduct policy. These guidelines are not meant to be prescriptive, but rather provide for consistency in the discipline-making process. The appropriate sanction will be determined on a case-by-case basis, taking into account the severity of the conduct, the student's disciplinary history, and other factors as appropriate.

Available Sanctions

Sanction	Definition	Duration and Effective Date	Additional Information
Disciplinary Warning	Disciplinary Warning is issued to the student when the student is found responsible for a violation of the sexual misconduct policy, but the student's conduct is considered to be a first-time offense and the student is expected to demonstrate a commitment to responsible behavior during which time the student is expected to demonstrate a willingness to accept responsibility and comply with the policies, procedures, and standards of the institution.	N/A	N/A
Disciplinary Probation	Disciplinary Probation is issued to the student when the student is found responsible for a violation of the sexual misconduct policy, and the student's conduct is considered to be a second-time offense or a more serious offense. The student is expected to demonstrate a commitment to responsible behavior during which time the student is expected to demonstrate a willingness to accept responsibility and comply with the policies, procedures, and standards of the institution.	12 months - 1 academic year	Progressive discipline action should result, including suspension or expulsion, if a repeat violation occurs, regardless of the probationary period.
Disciplinary Suspension	Disciplinary Suspension is issued to the student when the student is found responsible for a violation of the sexual misconduct policy, and the student's conduct is considered to be a third-time offense or a more serious offense. The student is expected to demonstrate a commitment to responsible behavior during which time the student is expected to demonstrate a willingness to accept responsibility and comply with the policies, procedures, and standards of the institution.	Effective at the specified date determined by the decision-maker or after the immediately next term of session.	Effective through the last day of the semester.
Expulsion	Expulsion is issued to the student when the student is found responsible for a violation of the sexual misconduct policy, and the student's conduct is considered to be a fourth-time offense or a more serious offense. The student is expected to demonstrate a commitment to responsible behavior during which time the student is expected to demonstrate a willingness to accept responsibility and comply with the policies, procedures, and standards of the institution.	Effective at the specified date determined by the decision-maker or after the immediately next term of session.	Effective through the last day of the semester.

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Case Study Activity

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Sanctioning Case Study 1

Morgan, a senior, has been dating Jamie for a few months. They became intimate very quickly and engaged in mutually consensual intercourse a few times a week. One night, Jamie fell asleep in Morgan's room wearing Morgan's shirt and nothing else. Morgan grabbed a phone and took photos of Jamie's exposed genitals and full body and sent them via text to friends. When Jamie found out the next morning, Jamie broke up with Morgan and went to Student Conduct to file a complaint. Morgan is deeply remorseful for taking the pictures. Morgan begs Jamie to get back together, apologizing sincerely. Jamie won't talk to Morgan at all. Morgan falls into a depression and begins to miss classes. Morgan's friends contact Student Affairs because Morgan seems deeply torn about the break-up and has stopped eating and going to the gym regularly.

Morgan is found responsible for violating the sexual misconduct policy. What are some possible sanctions that could be assigned?

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Sanctioning Case Study 2

Tim, a sophomore, has a white board on his dorm door. At least eight times in the last two weeks, his RA, Molly, has seen harassing pictures and threatening comments on the board, e.g., "Go away, fag" and "Kill all homos." Molly took photos of the writings but then erased them because she didn't want Tim to see them. Molly noted that the handwriting was the same each time. Tim actually only saw one of these, a drawing of two people engaged in anal sex. One day Molly comes back to the floor and is about to turn the corner when she sees William writing on the board. She waits until William leaves and then goes to see the door -- another remark in the same handwriting as the others. She snaps a photo, erases the board, and sends the picture to her supervisor.

William is found responsible for violating the sexual misconduct policy. What are some possible sanctions that could be assigned?

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Issuing Sanctions





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Issuing Sanctions

- Provide very clear instructions for the complainant and respondent
- Set the duration and deadline for each sanction
- Be sure what you sanction is actually possible administratively and enforceable. If not, it can create liability.
- Have a conversation about desired learning outcomes.

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Issuing Educational Sanctions

- Find out if respondent's institutional email will be available after separated; seek out alternative addresses/phone numbers
- Ensure respondent understands implications
 - Transcript notations
 - Disciplinary records policies
- Provide a copy to the complainant
 - Ensure that letters go out at the same time
 - Only notify complainant of sanctions directly related to the complainant
 - Other sanctions aren't "joint educational records" under FERPA

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Sanction Monitoring

- Who will monitor sanctions?
- Will your conduct software send out late notices?
- What additional actions can you take if sanctions are not completed in time or if further violations (ex: violation of no contact or trespass order)?

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Reintegration & Re-Entry

Assisting a student returning from suspension




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Process of Re-Entry

- Reapply to the school
- Petition to return
- Automatic re-entry on completion of sanction(s)
- A multi-tiered process of re-entry
- Review and evaluation process before reintegration

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Review and Evaluation Considerations

- Which stakeholders should be present? Who holds the decision-making power for reentry based on your policy?
- What are the objectives and possible outcomes?
- Do another case management assessment
 - Academic advising support may be needed
 - Housing, etc.

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Review and Evaluation Considerations

- Are there outlined criteria in the sanctioning process to determine if the respondent is ready/able to return?
 - Sanctions completed on time and at a standard that demonstrates growth?
 - Does the respondent take accountability?
 - If not, do they acknowledge the harm/impact to the survivor?
- What is the level of social support when returning to campus?
- Provide the respondent with a decision regarding reintegration

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Additional Considerations

- Do you need to lift holds on an account for a respondent to register for classes nearing the end of the suspension?
- If expelling, is there a no trespass order?
 - If so, what is the process for issuing this?

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Reintegration

- Remove holds
- Connect respondent with campus resources
- Make up missed education requirements
 - Ex: If respondent didn't complete mandatory student sexual misconduct training
- Review prohibition against retaliation

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Reintegration

- What sanctions may still be in place as the respondent returns?
 - No contact
 - Disciplinary probation
 - Employment restrictions
 - Building restrictions
 - Check-in meetings

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Complainant Notification

- Check class schedules to ensure there is no conflict
 - Ex: If classes are in the same hall or building, create a walking path for both parties
- Assess for clubs/activities and possible conflicts
- Review no contact order
- Review prohibitions against retaliation

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Other Support/Accountability

- Circles of support and accountability
- Counseling services
- Health/wellness services
- Academic advising
- Social support

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Resources


Follingstad, D. R., Li, C. R., Chahal, J. K., & Renzetti, C. M. (2020). Students' Perceptions of Justice: Application of Sanctions, Guilt, and Responsibility in Campus Sexual Assault Cases. *Journal of Family Violence*, (2021)36; 307-324

Karp, D.R., Shackford-Bradley, J., Wilson, R., Williamsen K.M., (2016) CAMPUS PRISM, A Report on Promoting Restoring Initiatives for Sexual Misconduct on College Campuses, https://www.sandiego.edu/soles/documents/center-restorative-justice/Campus_PRISM_Report_2016.pdf

McMahon, S. M., Karp, D. R., & Mulhern, H. (2018). Addressing Individual and community needs in the aftermath of campus sexual misconduct: restorative justice as a way forward in the re-entry process. *Journal of Sexual Aggression*.

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Updates on TIX Regulations & Next Steps

Sexual Misconduct Institute | Gehring Academy | July 19-23, 2021
 Association for Student Conduct Administration

Presenter: Linda Alvarez and Erin Leeper




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Learning Objectives

- Discussion on TIX regulation review from the Department of Education and anticipated changes
- Plan next steps upon return to campus

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Executive Order 14021: Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex

March 8, 2021: Biden issued [EO](#) that gave DOE 100 days to complete a review of the 2020 Final Rules and to review any laws related to sexual orientation and gender identity


June 7-11, 2021: DOE held public hearings June 7-11, 2021 to hear from stakeholders

ASCA participated in the public hearing and submitted written comments (in Google folder)

June 16: [Notice of Interpretation](#) that TIX does apply to gender identity and sexual orientation

June 23: [Dear Education Letter](#) outline LGBTQ protections and coming changes

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Are new regulations coming?

YES - In late June, the Department of Ed. released in the Unified Agenda that new regulations will be proposed in May 2022 and open the Notice and Comment period.

New/amended regulations likely to be published in Spring 2023



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Gehring Reflections & Next Steps



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Reflection Activity

1. What are your top 3 takeaways from the academy?
2. What are your top 3 goals or action steps following the academy?



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Next Steps

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

The materials used throughout the Gehring Academy can be posted for purposes of complying with Title IX.

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Resources

1. Participant List & Faculty Contact - Reach out to process through tough scenarios
2. Review of participant manual
3. ASCA Title IX Resource Website:
 - <https://www.theasca.org/titleixresources>
 - a. If you want a specific resource, contact Central Office or Sexual Misconduct CoP Chairs

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Continued Learning Opportunities

- ASCA Opportunities
 - Sexual Misconduct and Title IX Community of Practice
 - Annual Conference - February 2022
- Look for Title IX trainings that meet the requirements of the regulations
 - Technology used at hearings
 - Bias/ Conflict of Interest
 - Training for advisors
- Look for trainings to fill any other knowledge gaps
 - employee investigations (Title VII)

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