



January 10, 2024

University of Tampa Title IX Team Training

Presenter: Melissa Carleton



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Agenda

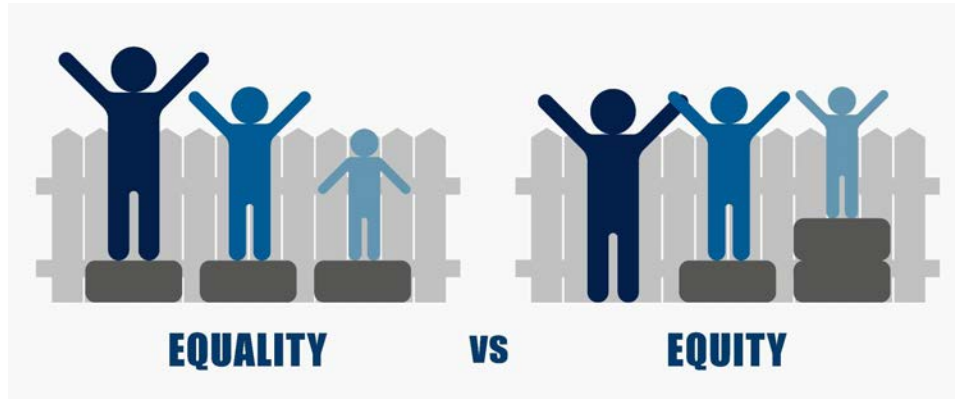
- 9:00-9:30 Icebreaker
- 9:30-11:30 Themes for Today, Clery Training, Trauma Informed Questioning
- 11:30-12:00 Lunch Break (or whenever food arrives)
- 12:00-12:15 Prep for Mock Interview
- 12:15-1:00 Mock Interview
- 1:00-2:00 After the Interviews: Outlining the Process



Themes for Today

Compliance + Values = Your Process

Title IX is an Equity Statute



Ethic of Care

- When you think about what your campus community expects in terms of addressing sexual misconduct, what values do they want your team to display?
- Do you think institutional values align between administration, faculty, and staff?
- What about students?
- What about the city around your institution? The state?

Overview of Themes



Access

- It is meant to ensure ACCESS to your programs and activities, regardless of sex.
- “What we do for one, we do for the other” (or at least consider whether it is appropriate under the circumstances)
- Why are you treating someone differently?

Protection

- **“They are all our students.”**
- Supportive measures
- Any action by a recipient that results in changes or removal of access to education for respondents will require a process to respond
 - Appeal of interim emergency measure
 - Hearing with live cross-examination

Transparency

- **TRANSPARENCY** is key to trusting the process.
 - Know your grievance process
 - Help them understand next steps.
- If participants don't know what is happening, they will assume nothing is happening

Evidence-Based Decisions

We base decisions on EVIDENCE.

- “Don’t weigh your gut.”
- We can make reasonable inferences and credibility determinations, but be mindful of implicit bias, stereotypes, and using our own behavior as a yardstick.
- Beware of confirmation bias based on what you *think* may have happened.

Constant Improvement

Always be working to IMPROVE:

- Yourself as a neutral
- Your campus as a healthy and fair place to be
- Your policy to provide a better process informed by case law, regulations, guidance, and experience
- Your resources for all involved

Conflicts of Interest/Bias

- Always be working to avoid actual or perceived:
 - Conflict of interest
 - Bias

Institutional Duties and Interests vs. Personal interests

Your work can impact the lives of others: take periodic self-inventories to be mindful of your activities, involvements, social media, and biases you may have and work to ensure you remain neutral.



Clery Training: IPV, Sexual Assault, and Stalking

Sticky Issues & Difficult Questions

Clery Act in Context

- April 5, 1986 – Jeanne Clery is raped and murdered at Lehigh University
- 1990 - Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act – tied to Higher Education Act funding
- 2013 – Violence Against Women Act amends the Clery Act with regard to sexual assault, dating violence, domestic violence, and stalking procedures
- July 1, 2015 – Current Clery regulations go into effect
- 2016 Handbook – Issued to give detailed guidance on compliance
- August 13, 2020 – New Title IX Regulations go into effect
- October 9, 2020 – 2016 Handbook is rescinded; new Appendix put in place; updated January 19, 2021

Where does Clery fit?

- Title IX policies handle sexual assault, dating violence, domestic violence, and stalking when:
 - The complainant is currently participating or attempting to participate in your education program or activity and
 - The conduct occurred in your education program or activity and
 - The conduct occurred against a person in the United States

If any one of these things is not true, the case is subject to “mandatory dismissal” from the Title IX process – but if the case is addressed through another policy, the Clery Act still applies.

A Note About Terminology

- The Clery Act is closely intertwined with criminal law. It uses terms like “victim” and “perpetrator” – but both of these words suggest potential predetermination.
- We will use the words “complainant” and “respondent” except when using language from the Act or the Title IX Policy.

Training Requirements

From the Clery regulations:

Proceedings involving sexual assault, dating violence, domestic violence, and stalking must –

- “Be conducted by officials who, at minimum, receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking, and on *how to conduct an investigation and* hearing process that protects the safety of victims and promotes accountability”

We will discuss safety for all parties – not just victims – and our community.

Title IX Overlay

- New regulations issued on May 6, 2020, effective on August 13, 2020.
- OCR Blog posts and guidance issued throughout fall of 2020.
- New administration has issued guidance on *Bostock*, which has been enjoined in 20 states (but not Florida)
- ED discontinued enforcement of regulatory provision that prohibited consideration of “statements” by individuals not subjected to cross-exam
- Proposed Title IX rules are pending (final rules due in March 2024).

Data Disclaimer

- We will be discussing statistics regarding sexual assault, dating violence, domestic violence, and stalking
- Statistics help us understand the way these crimes may affect the individuals involved, as well as our community.
- Statistics should **never** influence your decisions with regard to handling a specific case.

Sexual Assault

Sexual assault is defined as “an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s UCR program and included in Appendix A of this subpart”

Appendix A includes definitions from the FBI’s Summary Reporting System (SRS), which was phased out effective December 31, 2020. The FBI now uses NIBRS.

The Policy must include in its definition the conduct not permitted by NIBRS, but can be worded differently.

Sexual Assault: Rape and Fondling

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

Fondling: 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.

Sexual Assault: Incest and Statutory Rape

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(In Florida, you can't marry descendants, direct ancestors, siblings, aunt/uncle, or nephew/niece.)

Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent. (In Florida, that's 18 years old.)

Sexual Assault: Hypos

- Do the following count as sexual assault, if there is no consent?
 - Kissing
 - French kissing
 - Grinding on a dance floor
 - Slap on the butt on the way out to the football field
 - Slap on the butt on the way onto the dance floor
 - Mouth-to-vagina oral sex

Sexual Assault: Attempt

Note that attempted sexual assault is considered to be sexual assault under the UCR.

What constitutes “attempt”?

Florida law says that attempt is doing any act toward the commission of the offense, but failing in the perpetration or is intercepted or prevented in the execution thereof. Fla. Stat. § 777.04(1).

Sexual Assault: Attempt Hypos

Which of the following do we believe constitute attempted rape?

- Respondent stranger pulls Complainant into the bushes, begins to undress Complainant, and then is disrupted by passersby and runs away
- Respondent attempts to penetrate Complainant with genitalia but does not aim correctly and misses, then is disrupted
- Respondent attempts to fondle Complainant for sexual gratification but actually fondles Complainant’s roommate, for whom Respondent has no sexual attraction

Sexual Assault Data Women and Men

More than **1 in 2 women** and almost **1 in 3 men** have experienced sexual violence involving physical contact during their lifetimes.

1 in 4 women and about **1 in 26 men** will experience completed or attempted rape during their lifetimes.

Nearly **1 in 9 men** was made to penetrate someone (completed or attempted) during his lifetime.

Statistics from [CDC.gov/violenceprevention/sexualviolence/fastfact.html](https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html) (last accessed January 8, 2024)

Sexual Assault Data 1 of 3

- Nearly 1 in 2 women and about 1 in 4 men have experienced sexual violence involving physical contact during their lifetimes.
- 1 in 4 women and about 1 in 26 men will experience completed or attempted rape during their lifetimes.

Statistics from: Basile, K.C., Smith, S.G., Kresnow, M., Khawwaja S., & Leemis, R.W. (2022). *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Sexual Violence*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. (last visited January 2023)
Located at: <https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvsReportonSexualViolence.pdf>

Sexual Assault Data 2 of 3

Figure 1

Lifetime Reports of Sexual Violence — U.S. Women, National Intimate Partner and Sexual Violence Survey, 2016/2017 Annualized Estimates¹



¹ All percentages are weighted to the U.S. adult population.

² Contact sexual violence includes rape, sexual coercion, and/or unwanted sexual contact.

Types of Sexual Contact Reported by U.S. Women:

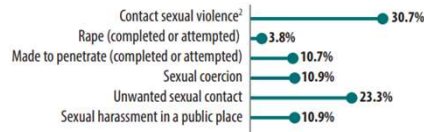
- 54.3% reported sexual violence;
- 26.8% experienced completed or attempted rape;
- 23.6% experienced sexual coercion;
- 47.6% reported experiencing some form of unwanted sexual contact other than those specifically identified elsewhere.

Statistics from: Basile, K.C., Smith, S.G., Kresnow, M., Khatiwada S., & Leemis, R.W. (2022). *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Sexual Violence*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. (last visited January 2023)
 Located at: [Link to survey: CDC website](#)

Sexual Assault Data 3 of 3

Figure 2

Lifetime Reports of Sexual Violence — U.S. Men, National Intimate Partner and Sexual Violence Survey, 2016/2017 Annualized Estimates¹



¹ All percentages are weighted to the U.S. adult population.

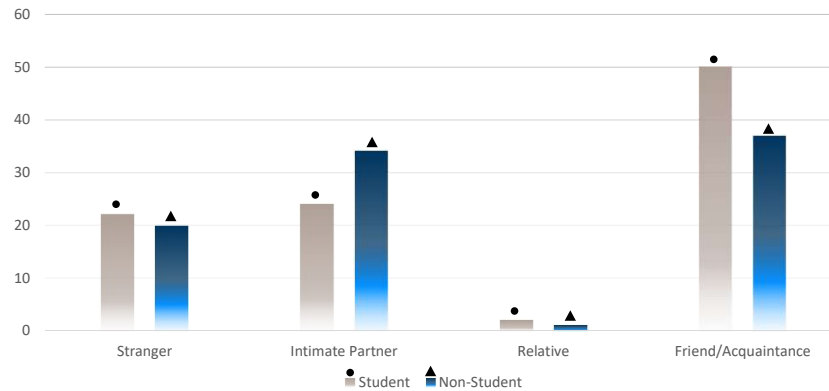
² Contact sexual violence includes rape, being made to penetrate, sexual coercion, and/or unwanted sexual contact.

Types of Sexual contact reported by U.S. Men:

- 30.7% reported some form of sexual violence
- 3.8% experiencing completed or attempted rape,
- 10.7% made to penetrate, 10.9% experiencing sexual coercion,
- 23.3% experiencing some other form of unwanted sexual contact.

Statistics from: Basile, K.C., Smith, S.G., Kresnow, M., Khatiwada S., & Leemis, R.W. (2022). *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Sexual Violence*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. (last visited January 2023)
 Located at: <https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvsReportonSexualViolence.pdf>

Sexual Assault Data: Identity of Perpetrator (BJS 2014)



30

Preamble, p. 300767 (Official) notes that "Commenters cited: U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics Special Report: Rape and Sexual Assault Victimization of College Age Females, 1995-2013 (2014).

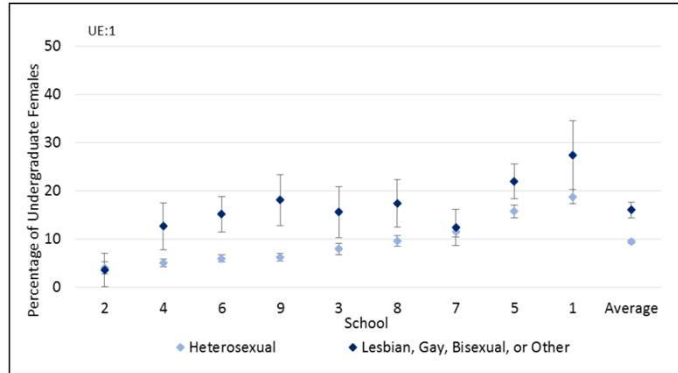
Sexual Assault Data: Timing Prevalence Data for Postsecondary Institutions

- More than **50 percent** of college sexual assaults occur in **August, September, October, or November**, and students are at an increased risk during the first few months of their first and second semesters in college.

Preamble, p. 30076 (Official) notes that "Commenters cited: Rape, Abuse & Incest National Network (RAINN), *Campus Sexual Violence: Statistics*, <https://www.rainn.org/statistics/campus-sexual-violence>."

31

Sexual Assault Data: Timing Prevalence Data for Non-Heterosexual Female Students



Source: Campus Climate Survey Validation Final Technical Report (2016)

32

Sexual Assault Data: Alcohol/Drug Use

“About half of sexual assaults involve survivors drinking alcohol before the assault.”

“Survivors impaired by alcohol are more likely to disclose to informal, but not formal support sources than are non-impaired victims.”

Lorenz, Katherine, and Sarah E Ullman. "Exploring Correlates of Alcohol-Specific Social Reactions in Alcohol-Involved Sexual Assaults." *Journal of aggression, maltreatment & trauma* vol. 25,10 (2016): 1058-1078. doi:10.1080/10926771.2016.1219801.

33

Data and Statistics: Reporting Data

About **65 percent** of surveyed rape victims reported the incident to a friend, a family member, or roommate but only **ten percent** reported to police or campus officials.

Preamble, p. 30082 (Official) notes that "Commenters cited: U.S. Dep't of Justice, Office of Justice Programs, Office for Victims of Crime, 2017 National Crime Victims' Rights Week Resource Guide: Crime and Victimization Fact Sheets (2017).

34

Data and Statistics: Impact Data (1 of 2)

Approximately **70 percent** of rape or sexual assault victims experience moderate to severe distress, a larger percentage than for any other violent crime.

Preamble, p. 30080 (Official) notes that "Commenters cited: U.S. Dep't of Justice, Bureau of Justice Statistics, Special Report: Socio-emotional impact of violent crime (2014).

35

Data and Statistics: Impact Data (2 of 2)

81% percent of women and **35% percent** of men report significant short- or long-term impacts of sexual assault, such as post-traumatic stress disorder (PTSD).

Preamble, p. 30080 (Official) notes that "Commenters cited: Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, The National Intimate Partner and Sexual Violence Survey (NISVS); 2010 Summary Report (Nov. 2011).

36

Sexual Assault: Common Concerns

- Be cautious of questions that appear to blame the party for what happened or they will shut down and stop engaging.
- Better options:
 - Explain why you need information on alcohol/drug use, what the party was wearing, etc. before you ask the questions.
 - Explain the concept of consent to the parties so that they can understand why you need detailed information on the sexual encounter.
 - Check your tone constantly so as to encourage continued sharing of information.

Sexual Harassment: Dating Violence

“Dating Violence” means any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship.

“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.

38

Sexual Harassment: Domestic Violence

“Domestic violence” is any felony or misdemeanor crimes of violence committed by:

- A current or former spouse or intimate partner of the victim
- 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 Florida domestic or family violence laws
- 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 Florida

39

IPV vs. Healthy Relationships

- Counseling individuals on healthy and unhealthy relationships will teach them about warning signs and how to handle problematic behavior.
- The line between healthy and unhealthy is not typically where your policy draws the line for disciplinary purposes.
 - How do you partner with your counseling center and domestic violence shelter to ensure consistent messaging with regard to the policy?

Common Concerns in IPV Situations

- Supportive measures are important to ensure the parties can be separate and feel safe
- Retaliation is often a critical concern – parties may still have a relationship
- Consider whether parties need contingency plans as part of their supportive measures if safety concerns arise
- Balancing third-party reports of violence and safety concerns with complainant's refusal to participate in the process
- No contact order violations as continued evidence of underlying policy violation allegation
- It is not uncommon for both parties to be complainants and respondents. Watch for this scenario and ensure you provide appropriate intake for both.

Supportive Measures in IPV

- Think of a no-contact order as a protective bubble. The bubble gets bigger by:
 - Mutual residence-hall restrictions
 - Dividing resources on campus
 - Building presence restrictions
 - Emergency removal
- How big of a bubble is necessary based on your facts?
- Let the parties guide you. Remember: Defining the bubble may increase the risk.

IPV: Questions

- What is the relationship between the parties? Do they agree?
- What is the violence described?
- Under what circumstances did the violence occur?
- If the situation involved mutual combat:
 - Was one person the initiator and the other acting in self defense?
 - Should an investigation be opened against the complainant as well as the respondent?

Sexual Harassment: Stalking

“Stalking” is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for their safety or the safety of others; or
- Suffer substantial emotional distress.

44

Stalking: Course of Conduct

“Course of Conduct”

- Under VAWA regulations: 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.

45

Stalking: Reasonable Person

“Reasonable person”

Under VAWA regulations: means a reasonable person under similar circumstances and with similar identities to the victim.

46

Stalking: Substantial Emotional Distress

“Substantial emotional distress”

Under VAWA regulations: means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

47

Stalking: Data (1 of 2)

- **31.2%** of women and **16.1%** of men in the U.S. reported stalking victimization at some point in their lifetime.
- **43.4%** of female victims and **32.4%** of male victims of stalking are stalked by a **current or former intimate partner**.
- Over **85%** of stalking victims are stalked **by someone they know**.

First and second statistics: Smith, S.G., Basile, K.C., & Kresnow, M. (2022). *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Stalking — Updated Release*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

Third statistic: National Intimate Partner and Sexual Violence Survey: 2010-2012 State Report (CDC)

48

Stalking: Data (2 of 2)

- **11%** of stalking victims have been **stalked for 5 years or more**.
- **46%** of stalking victims experience **at least one unwanted contact per week**.

[Matthew J. Breiding et al., "Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization – National Intimate Partner and Sexual Violence Survey, United States, 2011"]

Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report, Vol. 63, No. 8 (2014): 7]

[Katrina Baum et al., (2009). "Stalking Victimization in the United States," (Washington, DC:BJIS, 2009).]

49

Stalking: Common Concerns

- Clearly defined no-contact orders can be helpful to keep the parties apart and help calm the situation.
- Complainants are often concerned that the respondent may not respect no-contact orders, especially if they have already asked the respondent to stand down. Think of ways to help address this concern through supportive measures.
- Stalking after a no contact order may constitute additional instances of the underlying alleged policy violation, which may mean you need to run it through your Title IX process.

50

Stalking: Considerations

- Outline a timeline of the “course of conduct” aspect of the allegations
- Cases are often documentation-heavy
- May have multiple contacts and multiple witnesses that must be considered
- Have you asked questions of parties and witnesses regarding the potential impact of the conduct on the complainant?

51

Sexual Harassment

Any conduct **on the basis of sex** that satisfies one or more of the following:

- An employee of UT conditioning the provisioning of any educational benefit, aid, or service on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo)
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to UT's education program or activity
- Sexual assault, dating violence, domestic violence, and stalking

52

Quid Pro Quo

Complainant: Anyone

Respondent: Employee

Consider:

- What impact did the behavior have on their ability to participate at UT?
- What power differentials exist between the parties, if any?

53

Unwelcome Conduct

Severe: Consider physical vs. verbal conduct

Pervasive: Must be more than once

Objectively offensive: To a reasonable person

Impact: How has this changed the way they go about their business?

54

Impact

- Do you go to class? Has it affected your grades or participation?
- Do you feel comfortable on campus?
- Are you still going to the gym, clubs, dining hall as usual?
- Has this changed the way you move about campus?
- How are you handling this emotionally?
- Has this caused disruptions to your sleep? To other parts of your schedule or habits?

55

Impact: Tips

- Not everyone can automatically articulate impact. It may be easier to answer questions about behavioral changes in response to the situation than it is to discuss emotional impact.
- Ask every Complainant about impact. In some cases, it is an element of the charge. In all cases, it can help identify if more supportive measures are needed, and may give additional details about the underlying allegations.
- Witnesses may have observed impact.

56



Our Scenario

The Parties

- Complainant: Cassie Coulter
- Respondent: Roger Reynolds
- Date: September 16-17, 2023
- Location: Roger's bedroom in an on-campus apartment

58

The Formal Complaint

- “On the night of September 16 into September 17, 2023, Roger Reynolds inappropriately touched me and had sex with me when I was too drunk to consent.”

59

Charges

- What charges are appropriate here?
 - Sexual Assault → What type(s)?
 - Anything else?

60



Trauma Informed Approaches to Questioning

Role Reminders

If your friend tells you something terrible happened to them, it's not your job to interrogate them or figure out what happened.

- In this situation, be supportive and listen.

If you are in your role as a Title IX team member and someone tells you something terrible happened to them, it might actually be your job to ask detailed questions and make a determination regarding a policy violation.

- The institution still provides support to people during the process.
- That being said, you may still be required to ask tough questions and make tough decisions.

62

Goal: Don't Make This Any Harder

- The process is difficult.
- Telling your story is difficult. Telling your story *multiple times* is difficult.
- Reliving trauma is difficult.
- Being accused of something is difficult.
- Everyone brings their own burdens into the process. They also bring their own history into the process—including past trauma that may be triggered.
- Our goal is to get the best evidence on the table for consideration when a decision is made. How can we do that when *everyone* we talk to may be traumatized?

63

First: Make No Assumptions

- Treat everyone as though they may be traumatized, so you aren't picking and choosing who you *think* may be responding to trauma—and then subconsciously holding them to different standards.
- Different people who undergo trauma may present and behave differently. Some may cry, or be angry, or be calm. This makes demeanor a poor indicator as whether someone is traumatized, particularly because people can display all of these traits for other reasons.
- Don't assume only those who are crying or angry need supportive measures!

64

Second: They Are Not You

- There is no “right way” to behave.
- If you think there is a “right way” to behave, you are imposing your own values and judgments—informed by your background—on others, when you should be neutral.
- A value judgment is different than evaluating the *plausibility* of behavior. Compare:
 - Complainant cried during the sexual encounter. (plausible)
 - Complainant said nothing during the sexual encounter. (plausible)
 - Complainant had a Facetime conversation with a third party during the sexual encounter, but that person had no indication that Complainant was engaged in sexual activity. (Huh? We have questions.)

65

Trauma and the Brain

- Individuals who experience a traumatic event may have difficulty processing the event as it is happening and after it is happening.
- Trauma may make it difficult to sequence events in a chronological order.
- People can have these same issues for many other reasons not related to trauma.
- Signs of trauma ≠ policy violation
- No signs of trauma ≠ no policy violation
- Being aware of the effects of trauma gives us a broader definition of what behavior might be *plausible* in a particular situation.

66

Practical Application

- Make interviewees comfortable and offer to take breaks when needed.
- Give *everyone* the space to tell their own narrative in their own way.
 - “What happened? And then what happened? What happened next?”
 - “Tell me more about...”
- Once the person has completed their monologue, ask follow-up questions for clarification.
- If details are still unclear, ask specific yes/no questions. (Write down the question and the answer.)
- When someone has trouble giving details, sensory cues are sometimes helpful.

67

Managing Emotions

- Individuals may experience a range of emotions being interviewed, including sadness, frustration, and anger (maybe at you!). It's normal.
- The goal is to keep the emotional temperature turned down to the point that the interviewee feels able to engage and provide information.
- Recognize that certain topics may trigger negative responses (e.g. what someone was wearing, alcohol/drug use). Introduce these topics by explaining why the information is needed in the context of your investigation.
- If an individual's emotions become a barrier, consider taking a break, explaining why you are asking what you are asking, and restarting.
- Main goal: keep people talking and sharing their stories.

68

First Interview vs. Second Interview

- The first interview is space to tell a person's story. Get all the details. Be curious.
- Often, a second interview may be necessary where other information significantly contradicts that person's story—which can be hard for that person to hear. Again, get all the details and be curious.
- Always walk into an interview assuming there are logical explanations for everything. This keeps you asking questions, and it keeps people answering them (because you don't maintain an accusatory tone!).
- Above all – keep your interviewees talking. The more information they give, the more helpful it will be to your decision maker.

69

Trauma and Decision Making

Focus on corroboration, consistency, and plausibility.

- Is there anything else in the file that backs up this assertion?
- Has the person been consistent over time (recognizing that it is hard to say exactly the same words when telling the story multiple times)?
- Is the person's story plausible?

Avoid making decisions based on demeanor, as there are too many reasons—including cultural norms—that may affect how some people behave and how you perceive it.

These are good practices regardless of whether anyone may be traumatized.

70



Questioning Cassie

What is Missing?

- Timeline of events
- Timeline of consumption and effects of intoxicating drinks/drugs
- Potential witnesses at each stage of the evening
- Discussion of corroborative evidence
- Details about sexual encounter
- Details about consent

72

Consent: Definition

- An informed, voluntary, and mutual agreement.
- Consent can be withdrawn at any time.
- There is no consent when there is force, expressed or implied, or when coercion, intimidation, or duress is used.
- Consent cannot be given by a person who is incapacitated.

73

Questions about Consent

- “They gave consent” is more conclusory than probative
- Goal is to get as many specific details as possible about the sexual encounter:
 - Words exchanged
 - Sounds made
 - Body positions
 - Body weight distribution
 - Hand positions
 - Removal of clothing – what and by whom
 - Discussions about and provision of contraception
 - Whether kissing was occurring (and was the kissing mutual)

74

Consent: Examples for Cassie

- Do you remember what position you were in? What position was he in?
- Do you remember how you got into that position? How he got into his position?
- Do you remember feeling his body weight on you at all?
- Where did he touch you? Did you respond? If so, how?
- Do you remember if you were kissing each other when he touched you?
- Do you remember any discussion about using a condom? Was one used?
- Do you remember if he ejaculated? If so, where?

75

Consent: Flipside for Roger

- What did the other person say to you to show consent?
- What actions did the other person do to show consent?
- Were they making any noises during the encounter?
- Did they help position their body during the encounter?
- Did they move your hands during the encounter?

76

Incapacitation

- Incapacitation is typically defined as not able to understand the nature or consequences of one's circumstances
 - Sleep
 - Intoxication/being high
- It is more than just intoxication.
- Finding a Respondent responsible due to incapacitation of the Complainant typically requires that the Respondent knew or should have known of the incapacitation

77

Questions for Consumption

- Did you drink that night? When did you start drinking?
- How big was the cup? What was in the cup? Who poured it for you? Who brought it to you?
- Did you have anything to eat? What? When? How much?
- Who was with you when you drank it?
- Did you take any medication that could have affected the way you felt while drinking?
- Did you vape, smoke, or take any other drugs that evening?
- Remember: Amnesty.

78

Questions for Effect

- How did you feel at that point? What does tipsy/drunk/wasted mean to you?
- What symptoms of intoxication did you have at that point, if any?
 - Difficulty walking, talking, standing, dancing
 - Slurring words, laughing loudly
 - Inappropriate emotional response (combative, overly emotional, giggly)
 - Confusion about where you were or what was happening
 - Difficulty texting or performing other simple tasks

79

Questions for Witnesses

- Did you see Complainant drink? Who else was there?
- Did you notice any symptoms of intoxication at that point?
 - Difficulty walking, talking, standing, dancing
 - Slurring words, laughing loudly
 - Inappropriate emotional response (combative, overly emotional, giggly)
 - Confusion about where you were or what was happening
 - Difficulty texting or performing other simple tasks
- Had you seen Complainant this intoxicated before? Was it different than on other occasions?
- Were you worried about Complainant's level of intoxication?

80

Questions about Respondent's involvement

- Did Respondent see Complainant display signs of intoxication?
- Did Respondent talk to anyone about Complainant's intoxication level?
- Did Respondent give Complainant any drugs/alcohol and if so, what, when, and how much?
- Did Respondent express concern about Complainant?
- Was Respondent present when Complainant vomited?

81

Planning

- Group One: Incapacitation
- Group Two: Sexual activity and consent

82

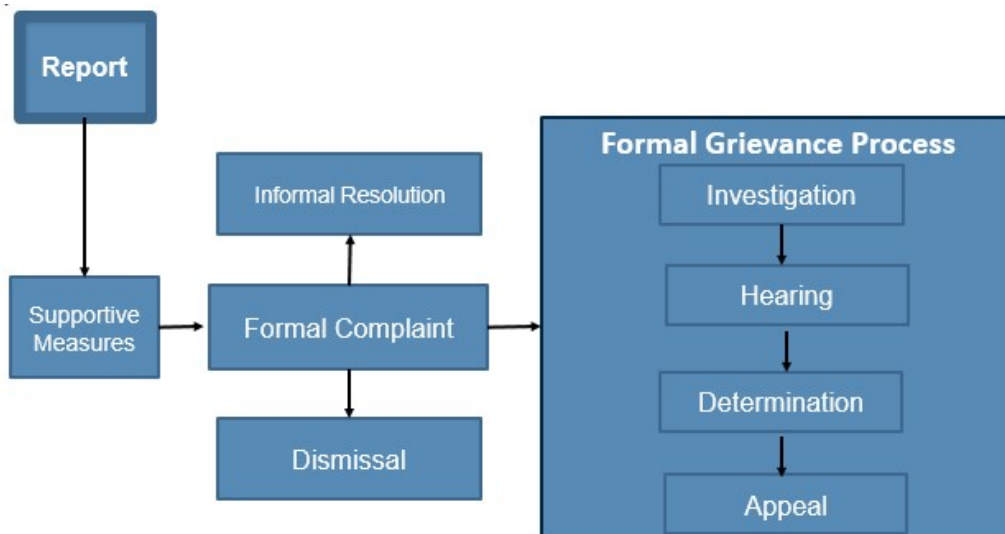


Mock Interview



The Process

Overview



85

Role of Advisors

- Advisors can be any human being.
- During investigation: Silent observers
 - If they come to a meeting/interview without an advisor, ask if they would like to reschedule so they can bring someone.
- During hearing: Ask questions on behalf of their party
 - If parties do not have an advisor of choice, University must provide one.

Party Participation

- Parties may each separately decide whether to participate in the process and if so, to what extent.
 - Interview?
 - Written statement?
 - Written questions/answers?
 - Submission of evidence/witness lists?

Reluctant Party

- How do you encourage a reluctant party to participate?
- Address concerns about:
 - Retaliation
 - Intimidation
 - Subtle attempts to influence party
 - Emotional impact of the process
- There is a line between providing support to allow for participation and coercing participation. Remember: retaliation definition is broad. Don't coerce.

Participation by Reluctant Party

- If a party opts out of participation during the investigation, what does this mean for the investigative report review?
- Can the party still provide information in response to the case file and/or draft report? YES. Don't coerce the party to participate either.

Witness Participation

- Invite them to participate. We can't force them to.
- Let them know that they are not in any trouble.
- Consider what level of information you should provide them as to the topic of discussion.
- Rule of thumb: Ask nicely twice before giving up if they are non-responsive.

Gathering Evidence from Parties/Witnesses

- Ask for it from parties and witnesses
 - Text messages
 - Photos/screenshots
 - Call logs
 - Rideshare information
 - Receipts
 - Audio/video
 - Emails
 - Physical evidence?
- Get time, date, and location information for texts, photos, etc.
- Where messages are really critical, gather messages from both parties to a conversation and ensure they match.

Gathering Evidence from Other Sources

- Gather it if it is in possession of the University
 - Security footage should be gathered immediately if available
 - Incident report(s)
 - Card swipes
 - Relevant emails?
- Request it from other sources (e.g. police, hospital)
 - Need specific written consent to gather and include medical records

Preliminary Investigation Report

- Investigators:
 - Conduct interviews of all available, relevant witnesses who are willing to participate
 - Gather relevant evidence
 - Provide regular status updates to the parties
 - Prepare a comprehensive investigation report fairly summarizing the investigation, all witness interviews, and addressing all relevant evidence (attached)
 - Provide draft report and evidence file to parties and advisors for review and response within 10 business days

Elements of a Report

- Introduction – Who are the parties, and what policy applies?
- Summary of the Formal Complainant (from Notice of Investigation)
- Relevant Policy Language (Definitions)
- Procedural History
 - Witnesses – Who you spoke with, who declined to participate, who never responded, who was requested but wasn't relevant (and why)
 - Evidence – What you gathered, what you tried to gather but couldn't, what you were asked to gather but didn't (and why)

Summary of Information

- Do you want to detail what each witness said?
- Do you want to synthesize and summarize undisputed facts?
- Do you want to do a combination, depending on whether a particular issue is disputed or undisputed?
- Do you want to intersperse evidence, or make it a separate section?
- Do you organize it chronologically or by source?
- Do you organize it chronologically by story or gathered date?
- Do you use complete sentences or bullet points?

What to Include

- Summary of statements by parties and witnesses
- Summary of all relevant inculpatory, exculpatory, and expert evidence
- All other information deemed relevant by the investigator

Tips for Drafting

- If the case is complicated, consider including a timeline.
- Consider listing disputed and undisputed facts to help focus the parties on what is most important.
- Have you gathered and included information regarding every element of every charge?

Attachments to Report

- Put it in a single PDF
- Make a table of contents
- Bonus: Make the table of contents clickable
- Refer to relevant documents when you write your summary
 - Every sentence should have a citation to the attachments
- Include all relevant evidence
- Include Formal Complaint(s) and Notice(s) of Allegations

What is Relevant?

- Relevant evidence is evidence that tends to prove or disprove a fact significant to the case.
- Your investigative report must summarize all relevant evidence.
- What if you are given something that you don't believe is relevant?

Finalizing Report

- Investigators:
 - Conduct any follow-up deemed necessary
 - Incorporate responses and additional evidence into report
 - Finalize report
- Parties/advisors have 10 business days to provide a written response to the report

Hearing

- Pre-hearing conferences are held with each party/advisor to review procedures, determine witnesses, and address any evidentiary issues
- Hearing panel holds the hearing
- In making the decision, the Board can generally use:
 - Hearing testimony
 - Investigative report/attachments
 - Other new, relevant evidence if permitted at the hearing

Can't Consider

- Evidence that is not relevant
- Evidence relating to prior sexual history/predisposition of the complainant
- Evidence relating to privileged information where privilege has not been waived
- Medical records, the inclusion of which consent has not been provided from patient
- Inferences from party/witness refusing to submit to cross-examination or declining to participate

Relevancy

- Chair will make relevancy determinations at the hearing: "Relevant"
- Cross-examination will be live and direct
- Board members will be permitted to ask questions

Decorum

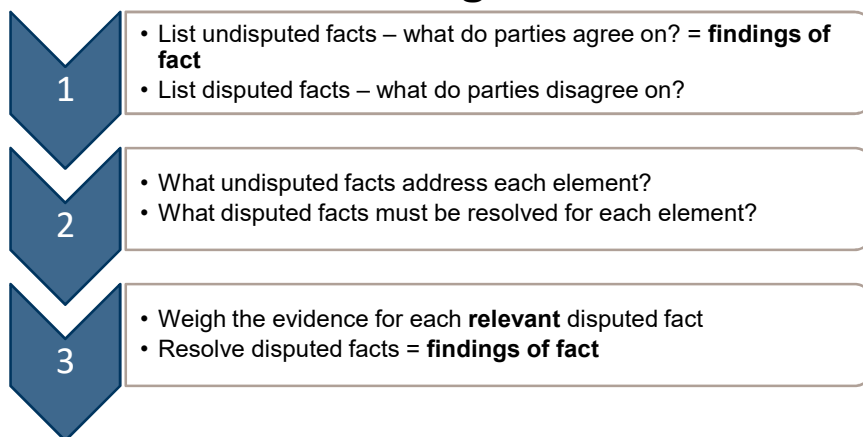
- Parties and advisors are expected to abide by decorum standards – cannot be an “impediment to the hearing board process”
- Generally, questions must be relevant, respectful, and non-abusive
 - Hard questions can be asked without being disrespectful

Final Decision

- Board issues written final decision, including:
 - Determination
 - Rationale
 - Evidence used and evidence not relied upon
 - Credibility assessments
 - Any sanctions
- Parties receive simultaneous written notice of outcome

Resolving Factual Disputes

Fact Finding Process:



Credibility Determinations

The 2001 guidance was rescinded but the list of factors to consider is still relevant:

- Level of detail and consistency of accounts
- See if corroborative evidence is lacking where it should logically exist
- Pattern of behavior by the respondent
- Evidence of the complainant's reaction or behavior after the encounter*
- Evidence of whether the complainant took action to protest the conduct soon after the alleged incident*
- Other contemporaneous evidence – writing a journal, telling a friend

*The Department noted that counterintuitive responses and delayed reaction may be normal.

Sanctions

- Holding parties accountable also includes sanctioning appropriately where the policy has been violated
- Be consistent in sanctioning similar conduct under similar circumstances
- Under UT's policy, sanctions are determined based on the appropriate handbook depending on the Respondent's status (student, faculty, staff)

Sample Sanctioning Factors

- Prior discipline for similar conduct by others (remember to look outside Title IX conduct)
- Respondent's disciplinary history
- Harm to or impact on the complainant/community
- Severity of the behavior (e.g. injury, weapon)
- Acceptance of responsibility
- Mitigating/aggravating circumstances
- Ability of the Respondent to conform behavior to expectations going forward
- Deterring future behavior
- Remedy to the Complainant?

Appeals

- Basis for appeals at UT:
 - 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
 - The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against the complainant or respondent generally, or the individual complainant or respondent that affected the outcome of the matter.