



# **TITLE IX/VAWA INVESTIGATOR TRAINING**

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# TELL US ABOUT YOURSELF



How many investigations of Title IX matters have you participated in?

- Not applicable (I have a different role in the process)
- None
- Less than 10
- 10 or more

# AGENDA



- Introduction and Legal Landscape
- Overview of the Process
- Working with the Parties
- Stages of Investigation
- Drafting an Investigation Report
- The Decision-Making Process
- Weighing Evidence and Assessing Credibility



# TERMINOLOGY



- DOE = Department of Education
- Recipient = Institutions covered by Title IX
- OCR = Department of Education's Office for Civil Rights
- VAWA = Violence Against Women Reauthorization Act
- FERPA = Family Educational Rights and Privacy Act
- CSA = Campus Security Authority
- Investigation/Grievance Procedures/Complaint Procedures
- Adjudicator/Decision-Maker
- Complainant/Reporting Party/Accuser/  
Victim/Survivor
- Respondent/Responding Party/  
Accused/Alleged Perpetrator



# THE LEGAL LANDSCAPE



### SESSION OVERVIEW



- Title IX
- Clery Act
- Violence Against Women Reauthorization Act
- Defining Sexual Misconduct
- Interaction with Other Laws
- Risks of Non-Compliance
- Training Requirements
- Recordkeeping Requirements
- Updates to Title IX/VAWA Landscape



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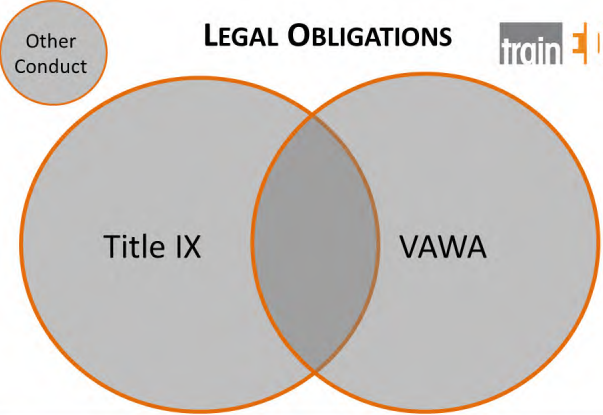

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### LEGAL OBLIGATIONS



Other Conduct

Title IX

VAWA

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### TITLE IX



- “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 educational program or activity receiving Federal financial assistance”



20 U.S.C. § 1681

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**WHO MUST COMPLY WITH TITLE IX?** 

- Institutions that receive federal funds
  - Students
  - Employees
  - Third Parties
    - Visitors
    - Vendors



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**DISCRIMINATION  
"ON THE BASIS OF SEX"** 

- Includes:
  - Sexual harassment
  - Differential treatment



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
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**WHEN INSTITUTIONS MUST  
RESPOND UNDER TITLE IX** 

- Institution has actual knowledge of
- Sexual harassment
- In an education program or activity of the institution
- Against a person in the United States



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**WHEN INSTITUTIONS MUST RESPOND UNDER TITLE IX** 

- Actual knowledge
  - Notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or an official who has authority to institute corrective measures on behalf of the institution
    - Notice includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator
  - Vicarious liability and constructive notice are insufficient
  - Standard not met if the only official with actual knowledge is the respondent

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**WHEN INSTITUTIONS MUST RESPOND UNDER TITLE IX** 

- Actual knowledge (cont.)
  - The following does not qualify an individual as having the authority to institute corrective measures
    - Mere ability or obligation to report sexual harassment
    - Ability or obligation to inform a student about how to report
    - Being trained in how to report

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**WHEN INSTITUTIONS MUST RESPOND UNDER TITLE IX** 

- Education program or activity
  - Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs
    - Includes all incidents of sexual harassment occurring on an institution's campus
    - Also includes off-campus conduct if
      - Occurs as part of the institution's "operations"
      - Institution exercised substantial control over the respondent and the context of alleged sexual harassment
      - Occurs at an off-campus building owned or controlled by a student organization officially recognized by the postsecondary institution (e.g., fraternities and sororities)

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**How INSTITUTIONS MUST RESPOND UNDER TITLE IX** 

- Must respond promptly in a manner that is not deliberately indifferent
- Deliberately indifferent = response is clearly unreasonable in light of the known circumstances
- Follow grievance process outlined in the regulations 

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**THE LEGAL LANDSCAPE** 

- All schools receiving federal funds must:
  - Publish Notice of Nondiscrimination
  - Designate a Title IX Coordinator
  - Disseminate policy prohibiting sex discrimination
  - Adopt and publish fair and equitable grievance procedures
  - Offer supportive measures to a complainant and respondent
  - Follow a legally compliant grievance process
  - Train individuals with heightened responsibilities
  - Train students and employees

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**OCR's ENFORCEMENT AND GUIDANCE** 

- OCR's Role:
  - Issue guidance
  - Compliance reviews
  - Resolution agreements

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**CLERY ACT** 

- Provide accurate, timely, and complete information
- Regarding certain types of crimes/incidents
- Occurring on or adjacent to campus
- To promote campus safety and consumer protection



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**VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT (VAWA)** 

- Extends Clery crimes to include VAWA crimes: domestic violence, dating violence, and stalking
- Requires discipline procedures for addressing sexual misconduct
- Requires education programs to promote awareness
- Codified parts of 2011 Dear Colleague Letter on Title IX

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**DEFINING SEXUAL MISCONDUCT** 



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**TITLE IX—SEXUAL HARASSMENT** 

- Conduct *on the basis of sex* that satisfies one or more of the following:
  - Quid pro quo
  - Hostile environment
  - Sexual assault and VAWA crimes

quid pro quo

hostile environment

sexual assault & VAWA crimes

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**TITLE IX—SEXUAL HARASSMENT** 

- Quid pro quo:
  - Employee conditions aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct
  - Examples
    - Supervisor conditioning promotion on participation in sexual advance
    - Professor conditioning grade on participation in sexual advance

quid pro quo

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**TITLE IX—SEXUAL HARASSMENT** 

- Hostile Environment:
  - Unwelcome conduct (on the basis of sex) determined by a reasonable person to be *so severe, pervasive, and objectively offensive* that it effectively denies a person equal access to the institution's education program or activity

hostile environment

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**TITLE IX—SEXUAL HARASSMENT** 

- Examples: Multiple incidents of the following conduct may constitute hostile environment sexual harassment
  - Unwelcome sexual flirtations, advances, or propositions
  - Requests for sexual favors
  - Verbal abuse of a sexual nature, obscene language, off-color jokes, sexual innuendo, and gossip about sexual relations
  - The display of derogatory or sexually suggestive posters, cartoons, drawings, objects, notes, letters, photos, emails, or text messages
  - Visual conduct such as leering or making gestures
  - Sexually suggestive comments about an individual's body or body parts, or sexually degrading words to describe an individual



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**TITLE IX—SEXUAL HARASSMENT** 

- Examples: Multiple incidents of the following conduct may constitute hostile environment sexual harassment
  - Unwelcome touching of a sexual nature such as patting, caressing, pinching, or brushing against another's body
  - Unwelcome verbal or physical conduct against an individual related to the individual's gender identity or the individual's conformity or failure to conform to gender stereotypes
  - Cyber harassment, including but not limited to disseminating information, photos, or videos of a sexual nature without consent
  - Videotaping or taking photographs of a sexual nature without consent



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
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**TITLE IX—SEXUAL HARASSMENT** 

- Sexual Assault
- VAWA Crimes
  - Dating violence
  - Domestic violence
  - Stalking
- As defined in Clery
- Consent: No particular definition of consent with respect to sexual assault is required



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**TITLE IX—SEXUAL HARASSMENT** 

- **VAWA Crimes—Sexual Assault:**
  - **Rape:** The carnal knowledge of a person, 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 or physical incapacity.
  - **Sodomy:** Oral or anal sexual intercourse with another person, 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 or physical incapacity.
  - **Sexual Assault With An Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, 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 or physical incapacity.



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**TITLE IX—SEXUAL HARASSMENT** 

- **VAWA Crimes—Sexual Assault:**
  - **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 or physical incapacity.
  - **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - **Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent.

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**TITLE IX—SEXUAL HARASSMENT** 

- **VAWA Crimes:**
  - **Domestic Violence:** a felony or misdemeanor crime committed by current/former spouse or intimate partner of the victim under domestic or family violence laws of the jurisdiction **NEW 2022!**
  - **Dating Violence:** person with whom victim has/had a social relationship of a romantic or intimate nature (determined by reporting party's perspective and length, type, and frequency of interaction)
  - **Stalking:** course of conduct directed at a specific person that would cause fear for safety or substantial emotional distress

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**TITLE IX—SEXUAL HARASSMENT** 

- Male/Female
- Female/Male
- Female/Female
- Male/Male
  
- Gender Identity



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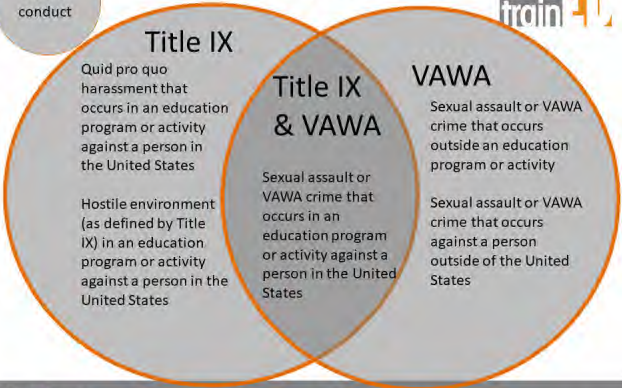
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**Legal Obligations\*** 

Other conduct



**Title IX**  
Quid pro quo harassment that occurs in an education program or activity against a person in the United States  
  
Hostile environment (as defined by Title IX) in an education program or activity against a person in the United States

**Title IX & VAWA**  
Sexual assault or VAWA crime that occurs in an education program or activity against a person in the United States

**VAWA**  
Sexual assault or VAWA crime that occurs outside an education program or activity  
  
Sexual assault or VAWA crime that occurs against a person outside of the United States

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\*If one of the parties is affiliated with the institution in some way

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**INTERACTION WITH OTHER LAWS** 

- FERPA: Family Educational Rights and Privacy Act
  - Limits disclosure of student education records
  - Several exceptions permit disclosure
    - In Title IX cases, exception permits school to disclose to both parties all directly related evidence, all information in the investigation report and attachments that goes to the decision-maker, and statement of, and rationale for, the final results of any disciplinary proceedings or appeals, including sanctions and whether remedies will be provided
      - Required by Title IX
      - Does not include what the remedies are
    - In cases involving sexual assault/VAWA crime, exception permits school to disclose to the parties any information provided to the decision-makers and the final results of the disciplinary proceedings, including all sanctions



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**INTERACTION WITH OTHER LAWS** 

- **Mandatory reporting laws: state-specific laws requiring school employees to report child abuse**
  - Mandatory reporters may include teachers, coaches, administrators, or others who interact with minors or who supervise those who interact with minors
  - Must report if know or reasonably suspect abuse or neglect of a child
  - Report to police or county department

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**RISKS OF NON-COMPLIANCE** 

- OCR enforcement
- Clery Act enforcement
- Lawsuits
  - Private right of action under Title IX, breach of contract, interference with contract, negligence, negligence *per se*, negligent supervision, intentional infliction of emotional distress, defamation, violation of right to due process at public schools, invasion of privacy/violation of confidentiality
- Public relations



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**TRAINING REQUIREMENTS** 

- **Train Title IX Coordinator, investigator, decision-maker, or facilitator of informal resolution process on**
  - Definition of sexual harassment
  - Scope of the institution's education program or activity
  - How to conduct investigation and grievance process, including hearings, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at interest, conflicts of interest, and bias
  - Issues related to sexual assault, domestic violence, dating violence, and stalking (annually)
  - How to conduct an investigation and hearing that protects the safety of complainants and promotes accountability (effects of trauma) (annually)
  - Institution's policies and procedures

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**TRAINING REQUIREMENTS** 

- Investigators must also receive training on
  - Issues of relevance to create an investigative report that fairly summarizes relevant evidence
- Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications
- Training materials must be publicly available on institution’s website

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**RECORDKEEPING REQUIREMENTS** 

- Title IX – for 7 years, must maintain:
  - Investigation and adjudication records
  - Training materials for investigators, decision-makers, coordinators, and persons designated to facilitate informal resolution process
  - Any actions taken (including supportive measures) in response to a report of sexual harassment

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**RECORDKEEPING REQUIREMENTS** 

- Examples of investigator’s records:
  - Communications with parties and other correspondence relating to investigation (including documentation of verbal in-person/phone conversations)
  - Investigator’s notes
  - Party and witness statements, if applicable
  - Recordings of interviews or interview notes
  - Other evidence received (text messages, pictures, emails, etc.)
  - Investigation report or summary
  - Start and stop dates of investigation suspension
  - Training records – relating to investigators

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**CHANGES TO TITLE IX**



- June 22-23, 2021: Public Notice & Dear Colleague Letter: DOE interprets Title IX to prohibit discrimination based on sexual orientation and gender identity
  - Relying on *Bostock v. Clayton County*
  - July 15, 2022: Federal judge in E.D. Tennessee temporarily blocked enforcement of guidance in 20 states
- July 2021 Q & A
- August 24, 2021: DOE letter regarding regulation provision concerning statements of parties/witnesses who do not submit to cross-examination
- June 23, 2022: Proposed Title IX regulations
- April 6, 2023: Proposed Title IX regulation re athletics
- Final regulations expected October 2023

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**CHANGES TO TITLE IX—CHANGE TO CROSS-EXAMINATION RULE**



- If a party or witness does not appear at the hearing, decision-makers can consider other statements made by that individual in the decision-making process
  - Investigation report, text messages, police report, witness reports of statements, etc.
- Refusing to answer a question(s) or appear at the hearing may be considered in determining how much weight to give party's/witness's account or the credibility of their account
  - Still may not draw an inference regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer questions
- Consider allowing parties to use closing argument to share questions advisor would have asked that party or witness and how the individual's testimony would have impacted the outcome
- Likely need to update written policy and procedures

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**2022 PROPOSED TITLE IX REGULATIONS**



- Sex discrimination includes discrimination based on sex stereotypes, pregnancy, sexual orientation and gender identity
- Broader definition of "Sex-Based Harassment—Hostile Environment"
- Includes off-campus conduct that creates or contributes to hostile environment
- Expands employee reporting requirements

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**2022 PROPOSED  
TITLE IX REGULATIONS**



- Supportive measures must be offered for any form of sex discrimination
- Procedural requirements for responding to allegations of any type of sex-based discrimination
- Additional procedural requirements for responding to allegations of sex-based harassment involving at least one student
  - Similar to 2020 regulations
  - Hearing not required, must have process for assessing credibility of parties/witnesses that includes the decision-makers asking live questions and for parties to have their questions asked
- Single investigator model is permissible

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**CHANGES TO TITLE IX**



- April 6, 2023: Notice of Proposed Rulemaking regarding Students' Eligibility for Athletic Teams
  - If a school adopts or applies sex-related criteria that would limit or deny a student's eligibility to participate on a male or female team consistent with their gender identity, such criteria must, *for each sport, level of competition, and grade or education level*:
    - Be substantially related to the achievement of an important educational objective, and
    - Minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied.
- Final rule expected October 2023

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**Q & A**



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## OVERVIEW OF PROCESS



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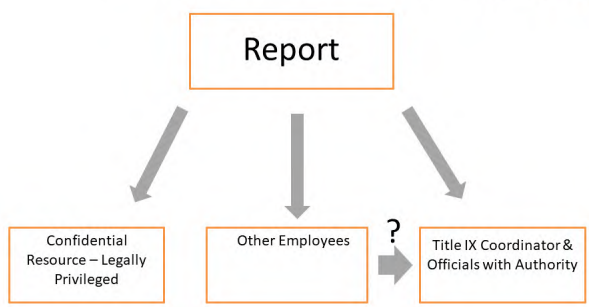
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## RESPONDING TO A REPORT



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## RESPONDING TO A REPORT

- Title IX Coordinator can delegate intake duties to others, but:
  - Avoid conflicts
  - Oversee training
  - Determine appropriate process
  - Ensure process is user-friendly
  - Make roles and responsibilities clear
  - Oversee process to ensure compliance and effectiveness



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**RESPONDING TO A REPORT** 

- Title IX:
  - Institution has actual knowledge of
  - Sexual harassment (as defined by regulations)
  - In an education program or activity of the institution
  - Against a person in the United States
- VAWA:
  - Allegations of sexual assault, domestic violence, dating violence, or stalking
  - Applies regardless of location of alleged conduct (on or off campus; in or out of the education program of activity; in or out of the U.S.)



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**RESPONDING TO A REPORT** 

- Response must treat complainant and respondent equitably by:
  - Providing written explanation of rights and options to complainants of sexual assault or VAWA crime
  - Offering supportive measures to a complainant (with or without formal complaint)
  - Following a grievance process that complies with the applicable regulations before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent

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**RESPONDING TO A REPORT** 

- Report vs. Formal Complaint
  - Report
    - Initiates obligation to respond, including offering supportive measures (see next slide for more details)
    - Complainant's identity may be kept confidential from respondent
  - Formal complaint
    - Initiates grievance process
    - Cannot be filed anonymously
      - Requires complainant's physical or digital signature or otherwise indicates that the complainant is the person filing the complaint
      - Title IX Coordinator can sign a complaint
      - Grievance process requires that complainant's identity be disclosed to respondent, if known

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**RESPONDING TO A REPORT** 

- Title IX Coordinator must promptly contact complainant (with or without formal complaint)
  - Inform complainant of the availability of supportive/interim measures with or without the filing of a formal complaint
  - Consider complainant's wishes with respect to supportive/interim measures
  - Explain the process for filing a formal complaint
  - Notify complainant of right to report to law enforcement and offer help with report (VAWA)
  - Provide complainant with written notice of rights (VAWA)



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**RESPONDING TO A REPORT – SUPPORTIVE/INTERIM MEASURES** 

- Offered to complainant and respondent
- Must be non-disciplinary, non-punitive
- Must be without fee or charge to the complainant or respondent
- Available before or after the filing of a formal complaint or where no formal complaint is filed
- Designed to restore or preserve equal access to recipient's education program or activity without unreasonably burdening the other party
- Including measures designed to protect safety of all parties or the educational environment, or deter sexual harassment
- Must maintain as confidential as long as confidentiality does not impair ability of the institution to provide measures



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**RESPONDING TO A REPORT – SUPPORTIVE/INTERIM MEASURES** 

- Examples
  - Mutual restrictions on contact between the parties
  - Change academic or extracurricular activities, living, transportation, dining, and working situations
  - Access to resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, legal assistance, visa and immigration assistance, campus escort services, increased security, and student financial aid
- If school does not offer these services, enter into MOU with local victim services provider, if possible



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**RESPONDING TO A REPORT** 

- Other obligations:
  - Notify campus security, if necessary
  - Clery report, if necessary



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**RESPONDING TO A FORMAL COMPLAINT** 

- Formal complaint
  - VAWA: No specific requirements
  - Title IX:
    - Document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment
    - At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed
    - Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party, and must comply with the requirements to be free from conflicts and bias

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**INFORMAL RESOLUTION** 

- VAWA: No specific requirements
- Title IX:
  - Any time prior to determination, may facilitate informal resolution process, such as mediation, if
    - Provide parties with detailed written notice
    - Obtain parties' voluntary written consent to informal process
  - May not offer informal resolution unless a formal complaint is filed
  - May not offer or facilitate informal resolution to resolve allegations that an employee sexually harassed a student

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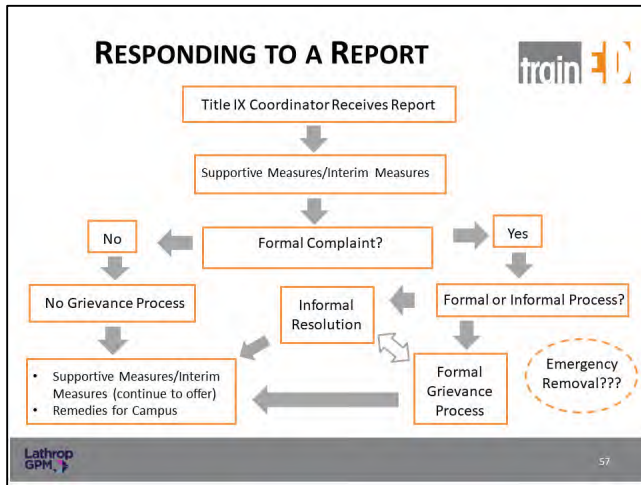
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### RESPONDING TO A FORMAL COMPLAINT – SUPPORTIVE/INTERIM MEASURES

- Review supportive/interim measures available during an investigation
  - Periodically update both parties on status of investigation
  - No contact orders
  - Available to both parties
    - Designed to restore or preserve equal access to education program or activity without unreasonably burdening the other party
  - All others mentioned earlier



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### FORMAL GRIEVANCE PROCESS

- The process the school uses to resolve sexual harassment complaints. This includes the fact-gathering investigation and any hearing or decision-making process the school uses to determine:
  - Whether or not the conduct occurred using
    - Preponderance of the evidence standard (“more likely than not”) or
    - Clear and convincing evidence standard (“highly probable”); and
  - If the conduct occurred, what actions the school will take to eliminate the hostile environment, prevent its recurrence, and remedy its effects, which may include:
    - Imposing sanctions on the respondent;
    - Providing remedies for the complainant; and
    - Addressing the campus community



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**FORMAL GRIEVANCE PROCESS** 

- Must treat complainants and respondents equitably by
  - Providing remedies to a complainant where a determination of responsibility for sexual harassment has been made
    - Remedies must be designed to restore or preserve equal access to the institution's education program or activity
    - May include the same individualized services as "supportive measures"
    - Do not need to be "non-disciplinary" or "non-punitive" and do not need to avoid burdening the respondent
  - Following grievance process that complies with applicable regulations before imposing disciplinary sanctions or other actions that are not supportive measures

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**FORMAL GRIEVANCE PROCESS** 

- Objective evaluation of all relevant evidence
  - Inculpatory and exculpatory evidence
  - Credibility determinations may not be based on status as complainant, respondent, or witness
- No conflicts of interest or bias as Title IX Coordinator, investigator, decision-maker, or facilitator of informal resolution process
  - For or against complainants or respondents generally
  - For or against an individual complainant or respondent
- Presumption of non-responsibility

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**FORMAL GRIEVANCE PROCESS:  
DUAL ROLES UNDER TITLE IX** 

- Title IX requires independent decision-maker
  - Title IX Coordinator and decision-maker must be different individuals
  - Investigator and decision-maker must be different individuals
  - Title IX Coordinator and investigator may offer recommendations regarding findings and/or conclusions on responsibility, but decision-maker has independent obligation to objectively evaluate relevant evidence and cannot simply defer to recommendations
- Title IX Coordinator may act as investigator

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**FORMAL GRIEVANCE PROCESS—  
EQUAL RIGHTS FOR THE PARTIES**



- Interview/hear from both parties
- Equal opportunity for parties
  - Identify/present fact witnesses and evidence, including inculpatory and exculpatory evidence
  - Access to evidence (if any) (Title IX and VAWA)
    - Must allow access for sexual assault/VAWA
    - Must send *hard copy or electronic format* for Title IX
  - Right to an advisor (may be attorney) (Title IX and VAWA)
    - May limit extent of participation (must apply equally)
    - If party has no advisor, school will provide for cross-examination
  - Participate in pre-hearing meeting (if any)
  - Identify/present character or expert witnesses (if any)
- Written notice of
  - Meetings
  - Allegations
  - Informal Resolution Process
- Written simultaneous notices of outcome



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**FORMAL GRIEVANCE PROCESS—  
OTHER REQUIREMENTS**



- Burden of proof and gathering evidence is on the institution, not on the parties
- May not restrict ability of either party to discuss the allegations or to gather and present relevant evidence
- Allow advisor of choice

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64

**FORMAL GRIEVANCE PROCESS —  
ADVISORS**



- Parties have a right to an advisor of their choice
- May be, but not required to be, an attorney
- Advisors have right to receive copies of all directly related evidence (Title IX only)
- Advisors may cross-examine parties and witnesses at live hearing (Title IX only)
- Institution must provide if none (Title IX only)
  - Limited role
- May otherwise limit extent of advisor’s participation in the process (must apply equally)

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**FORMAL GRIEVANCE PROCESS — TIMEFRAMES** 

- Reasonably prompt timeframes
  - Including timeframes for filing and resolving appeals and informal resolution processes
  - Temporary delay or extension of timeframes for good cause, which may include
    - Absence of parties, a party's advisor, or witnesses
    - Concurrent law enforcement activity
    - Need for language assistance or accommodations of disability
  - Must provide written notice to parties of the delay or extension and the reason for it
    - DOE guidance: also include anticipated length of delay
  - Some timeframes are set by the regulations (Title IX)



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66

**FORMAL GRIEVANCE PROCESS — CRIMINAL PROCESS** 

- Separate from criminal investigation
- May not dissuade complainant from going to police in cases involving allegations of criminal conduct—should encourage reporting to police
- May temporarily delay for initial police investigation
  - Prior guidance said police evidence-gathering stage typically takes 7-10 days
  - Must resume when notified that police are done gathering evidence
- May not delay for criminal prosecution



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67

**FORMAL GRIEVANCE PROCESS** 

- Policy must:
  - Describe range of possible sanctions and remedies or list the possible sanctions and remedies
  - Describe range of supportive measures available to both parties
  - Describe appeal bases and procedures

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68

**FORMAL GRIEVANCE PROCESS** 

- Privileged information
  - Do not require, allow, rely upon, otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legally recognized privilege, unless person holding such privilege has waived the privilege
- Treatment records
  - Institution 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 school obtains that party's voluntary, written consent to do so

Lathrop GPM,  69

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**FORMAL GRIEVANCE PROCESS** 

- Any provisions, rules, or practices other than those required by the regulations that an institution adopts as part of its grievance process must apply equally to both parties



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70

**FORMAL GRIEVANCE PROCESS —  
DISMISSAL OF FORMAL COMPLAINT** 

- Mandatory dismissal under Title IX
  - Must dismiss formal complaint if alleged conduct
    - even if proved, would not constitute sexual harassment
    - did not occur in the institution's education program or activity or
    - did not occur against a person in the United States
  - Such dismissal does not preclude action under another provision of institution's code of conduct
- Discretionary dismissal under Title IX
  - May dismiss formal complaint if at any time during the investigation or hearing
    - complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations, therein
    - respondent is no longer enrolled or employed by the recipient or
    - specific circumstances prevent the recipient from gathering sufficient evidence to reach a determination as to the formal complaint or allegations therein

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71

**FORMAL GRIEVANCE PROCESS —  
CONSOLIDATION OF FORMAL COMPLAINTS** 

- Title IX: An institution may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the *allegations of sexual harassment arise out of the same facts or circumstances*
- VAWA: No specific guidance

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72



**Q & A**



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73



**WORKING WITH THE PARTIES**



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74

**CASE STUDY**



When assessing the credibility of the complainant, which of the following might cause you to find the complainant less credible:

1. Complainant told multiple people about the interaction with respondent the next day but did not describe it as an assault.
2. Complainant voluntarily invited the respondent into complainant’s bedroom late at night.
3. Complainant received a SANE exam shortly after the alleged assault but declines to provide the medical record to the investigator.
4. Complainant did not report to law enforcement.

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**CASE STUDY**



When assessing the credibility of the respondent, which of the following might cause you to find the respondent less credible:

1. Respondent texted the complainant the day after the alleged assault, including saying “Sorry if I made you feel uncomfortable.”
2. A witness says that Respondent has been accused of assault by multiple students.
3. Respondent seems very nervous during the initial interview.
4. Respondent has an attorney advisor.

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76

**SESSION OVERVIEW**



- Rape Myths
- Secondary Victimization
- Common Victim Responses
- Neurobiology of Sexual Assault
- How to Serve Impartially
  - Working with complainant
  - Working with respondent



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77

## RAPE MYTHS



Myth	Reality
Rape is primarily sexually motivated	Rape combines elements of power, anger and sexuality
Rapists are usually strangers	Most perpetrators are known to the victim
The victim did something to cause the rape	No behavior warrants being raped; under no circumstances can the victim be blamed
Acquaintance rape is not as traumatic	There are no differences in victim psychological symptoms between acquaintance and stranger rape

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## SECONDARY VICTIMIZATION




- Secondary victimization:
  - The attitudes, beliefs, and behaviors that victims experience as victim blaming and insensitive
  - It exacerbates their trauma, and it makes them feel like what they're experiencing is a second rape — hence the term “secondary victimization”

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## SECONDARY VICTIMIZATION



- Examples of behaviors:
  - Discouraging the victim from making the report
  - Telling victim it's not serious enough to pursue
  - Asking about dress, behavior, or what they might have done to provoke the assault
- Psychological impact on victims:
  - Blamed
  - Depressed
  - Anxious
  - Violated
  - Reluctant to seek help



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## COMMON VICTIM RESPONSES



- Initial denial of incident
- No reporting/delayed reporting
- Maintaining contact with perpetrator
- Fight, flight, or freeze



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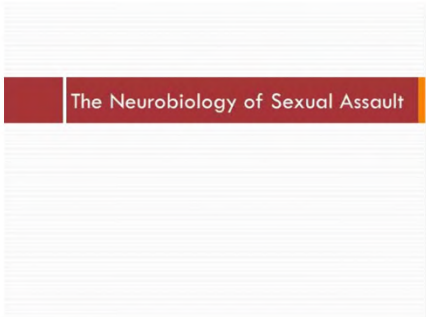
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81

## NEUROBIOLOGY OF SEXUAL ASSAULT





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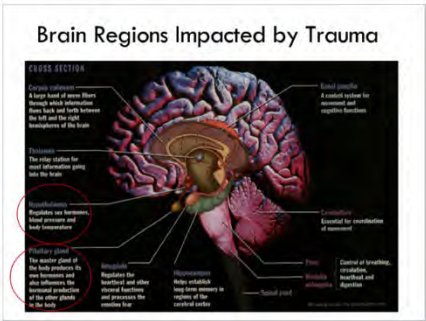
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82

## NEUROBIOLOGY OF SEXUAL ASSAULT





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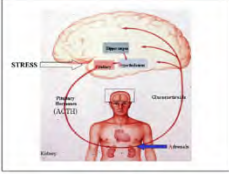
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**NEUROBIOLOGY OF SEXUAL ASSAULT** 


**Brain-Body Regions Impacted by Trauma**

**HPA Axis**

Balances body following stress by releasing of various hormones/chemicals



SOURCE: Southwick et al., 2003

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**NEUROBIOLOGY OF SEXUAL ASSAULT** 

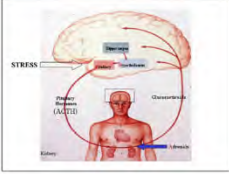
**Brain-Body Regions Impacted by Trauma**

**Catecholamines:** Fight or flight response


**Cortisol:** Energy available

**Opioids:** Prevent pain

**Oxytocin:** Promotes good feelings



SOURCE: Southwick et al., 2003

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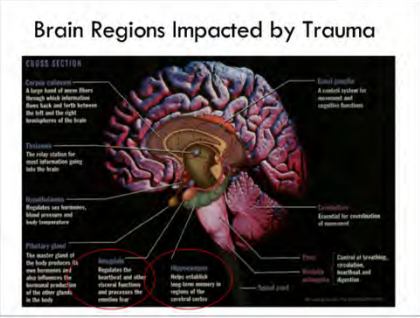
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**NEUROBIOLOGY OF SEXUAL ASSAULT** 

**Brain Regions Impacted by Trauma**



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### NEUROBIOLOGY OF SEXUAL ASSAULT

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#### Memory Processes Impacted by Trauma

**Hippocampus** processes information into memories

- Encoding = Organizing sensory information
- Consolidation = Grouping information into memories and storing them

**Amygdala** specializes in the processing of emotional memories (works with the hippocampus)

Both structures are **VERY** sensitive to hormonal fluctuations

SOURCE: Southwick et al., 2003

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### NEUROBIOLOGY OF SEXUAL ASSAULT

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#### Like These . . .

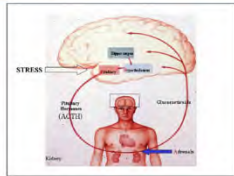
- Catecholamines:** Fight or flight response
- Cortisol:** Energy available
- Opioids:** Prevent pain
- Oxytocin:** Promotes good feelings

THESE HORMONES IMPAIR MEMORY CONSOLIDATION

SOURCE: Southwick et al., 2003

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88

### NEUROBIOLOGY OF SEXUAL ASSAULT

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#### What Happens During A Sexual Assault

Amygdala Detects Threat → Activates Hypothalamus → HPA Axis Kicks In Hormonal Flood

SOURCE: Benke, 2002; Southwick et al., 2003

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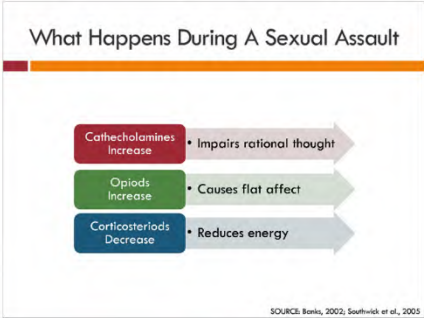
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89

### NEUROBIOLOGY OF SEXUAL ASSAULT



#### What Happens During A Sexual Assault



SOURCE: Banks, 2002; Southwick et al., 2003

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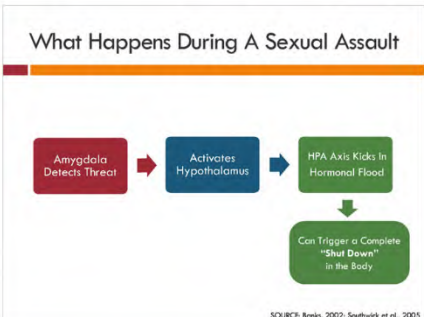
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90

### NEUROBIOLOGY OF SEXUAL ASSAULT



#### What Happens During A Sexual Assault



SOURCE: Banks, 2002; Southwick et al., 2003

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91

### NEUROBIOLOGY OF SEXUAL ASSAULT



#### Tonic Immobility (TI)

- AKA: "Rape-induced paralysis"
- Autonomic (uncontrollable) mammalian response in extremely fearful situations
- Increased breathing, eye closure, paralysis
- 12-50% rape victims experience TI during assault
- TI is ~more common in victims who have been assaulted before (childhood, adolescence, or adult)

SOURCE: Foa et al., 2007; Galano et al., 1993; Heith et al., 2003

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### COMMON BEHAVIORS DURING ASSAULT



- Impaired rational thought
- Flat affect
- Reduced energy
- Flight
- Fight
- Freeze

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### MEMORY

#### What Happens During A Sexual Assault



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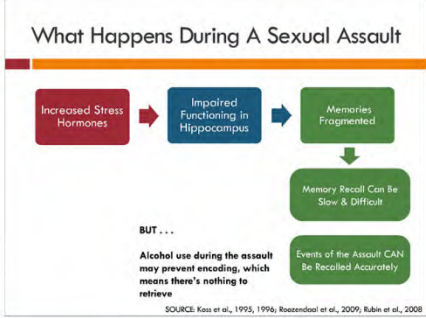
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94

### MEMORY


#### What Happens During A Sexual Assault



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graph LR; A[Increased Stress Hormones] --> B[Impaired Functioning in Hippocampus]; B --> C[Memories Fragmented]; C --> D[Memory Recall Can Be Slow & Difficult]; E[Events of the Assault CAN Be Recalled Accurately];
```

**BUT ...**  
Alcohol use during the assault may prevent encoding, which means there's nothing to retrieve

SOURCE: Koss et al., 1995, 1996; Rosenthal et al., 2009; Rubin et al., 2008

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95

**MEMORY** 

Case Study: Memory Fragmentation

- 25 year-old woman
- Raped by a friend's brother at 4<sup>th</sup> July party
- Filed police report
- Detective interview was when it all went to hell

"He wouldn't let up, pounding me with question after question after question. Trying to trick me, trying to get me to mess up. I wanted to say, 'hold on, give me a minute to think'. No, he kept coming at me."

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**MEMORY** 

Case Study: Memory Fragmentation

"We talked it through. And I didn't feel rattled and freaked out. I'm sure I was incoherent and he just let it roll. He was patient.

I felt like I was piecing it together, like a puzzle, we were putting together a puzzle together.

And drinking coffee."

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**MEMORY** 


Case Study: Memory Fragmentation


I: So, why did you do that? (give her the coffee)

R: It helps. Not the coffee so much, just the moment to let it all come together in their heads.

I: What do you mean?

R: I don't know why it's like that, I've just noticed that over the years. If you give them a few minutes to breathe . . . it starts to make more sense. I don't know why, it just does.

 **MEMORY CONSOLIDATION**  
A DOCUMENTED NEUROBIOLOGICAL CONDITION

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**MEMORY** 

**Case Study: Memory Fragmentation**

I: Were you worried that if you gave her some time, she'd just make something up?

R: Nah, not really. I mean, some victims lie, but most don't. Besides, if they're lying, we'll catch 'em at it eventually. I think it's just hard for victims to talk about and we just need to have a little patience.

 **MEMORY CONSOLIDATION**  
A DOCUMENTED NEUROBIOLOGICAL CONDITION

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99

**IMPACT OF TRAUMA ON MEMORY** 



- Memories accurately stored
- Memory recall slow
- Fragmented account
- Concentration difficult
- Alcohol exception—may impact storage and accuracy of memories

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100

**SENSORY DETAILS** 

- Victims of trauma may be able to recount vivid sensory details, including certain things the victim saw, heard, or smelled during the assault
- These details could provide more information about the incident and may help clarify the victim's memory
- Use open-ended questions
  - What can you recall about what happened?
- May also use sensory-based questions
  - What did you see?
  - What did you hear?
  - What did you smell?
  - What did you taste?
  - What did you touch?

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101

**IMPACT OF CULTURE** 

- Cultural background is one of many factors that may impact the way that complainant, respondent, and witnesses react to the incident and present during the investigation interviews
- Different cultural backgrounds will influence individuals in different ways
- Be aware of and sensitive to possible cultural influences
- Incorporate training as appropriate



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**TRAUMA-INFORMED APPROACH  
GONE WRONG** 

- University of Mississippi lawsuit based in part on its training materials
  - Victims sometimes withhold facts and lie about details
  - Victims lie about anything that casts doubt on their account of the event
  - When complainants withhold exculpatory details or lie to an investigator or the hearing panel, the lies should be considered a side effect of an assault
- A trauma-informed approach should not unfairly favor the complainant or prejudice the decision-maker against the respondent



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103

**TAKE AWAY** 

- Do not automatically draw negative inference based on a behavior that may be a response to trauma
- If an individual exhibits behaviors associated with trauma, it does not automatically mean that individual experienced trauma
- A response consistent or inconsistent with a typical trauma response should not in and of itself be outcome determinative

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104

**SERVING IMPARTIALLY** 

- Avoid prejudice of the facts at issue
- Avoid conflicts of interest
- Avoid bias
- Avoid appearing to agree with either party's account

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105

**SERVING IMPARTIALLY** 

- Set boundaries
  - Make objective role clear up front
  - Not counseling or advocacy services
  - Differentiate from your other roles within institution
  - Know how to respond when coming close to line
  - Point to resources on campus



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106

**SERVING IMPARTIALLY — WORKING WITH COMPLAINANT** 

- Slow down
- Make him/her feel comfortable
- Consider timing and locations
- Allow sufficient time for thorough exploration of the issues
- Develop rapport and allow for closure
- Explain process
- Remind the complainant of the ability to ask questions and present information during the entire process



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**SERVING IMPARTIALLY —  
WORKING WITH COMPLAINANT**



- Recognize the impact of trauma on memory
  - Allow the complainant to give a narrative
  - Use open-ended free recall questions
  - Build in an opportunity for follow-up
  - Allow a written narrative if that is more comfortable
- Memory may be impaired by alcohol
- Use “account” or “experience” rather than “story”
- Allow advisor to be present
- Avoid secondary victimization
- Be transparent about how information will be used

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**SERVING IMPARTIALLY —  
WORKING WITH RESPONDENT**



- Recognize stress involved with being accused of sexual misconduct
  - He/She may be defensive
  - He/She may be nervous or uncomfortable
- Explain fair and equitable process
- Do not appear to take sides
- Use impartial language
- Afford same opportunity to provide narrative of experience, to provide physical or other evidence, etc.
- Memory may be impaired by alcohol



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**SERVING IMPARTIALLY —  
WORKING WITH RESPONDENT**

- Remind the respondent of the ability to ask questions and present information during the entire process
- Ensure the respondent is fully aware of the process and prohibition against retaliation
- Be transparent about how information will be used
- Allow advisor to be present

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**COMMUNICATION** 



- Identify contact person who will coordinate with multiple departments/people on complainant's/respondent's behalf
- Ensure regular and timely communications to both parties regarding: next steps, expectations, timing, and delays
- Ensure that parties have notice of all meetings
- Document all communications, including phone calls
- Use sensitive and informed tone and content, both to the parties and among team members

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**SOURCES OF INFORMATION** 

- NIJ Presentation by Rebecca Campbell
- trainED gratefully acknowledges the U.S. Department of Justice, Office of Justice Programs, and National Institute of Justice for allowing us to reproduce, in part or in whole, the recording of The Neurobiology of Sexual Assault. The opinions, findings, and conclusions or recommendations expressed in this recording are those of the speaker(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Lathrop GPM,  112

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**Q & A**



Lathrop GPM, 

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## STAGES OF INVESTIGATION



Lathrop GPM  114

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### OBLIGATIONS OF THE INSTITUTION UPON RECEIVING REPORT



- Assess immediate safety and well-being for individual and campus
  - Consider whether emergency removal is necessary
- Notify complainant of right to contact law enforcement (or not to) and seek medical treatment; offer institution's assistance
- Enter into crime log, assess for timely warning
- Offer/provide supportive/interim measures
- Provide written notice of rights to complainant (VAWA)
- Notify complainant of importance of preserving evidence (VAWA)

Lathrop GPM  115

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### PRE-INVESTIGATION OBLIGATIONS OF THE INSTITUTION



- Upon formal complaint, provide written notice to known parties, including:
  - Notice of grievance process, including any informal resolution process
  - Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare response before initial interview
    - Identities of the parties involved, if known
    - Conduct allegedly constituting sexual harassment
    - Date and location of the alleged incident, if known



Lathrop GPM  116

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**PRE-INVESTIGATION OBLIGATIONS OF THE INSTITUTION** 

- Upon formal complaint, provide written notice to both parties, including:
  - Statements that:
    - Respondent is presumed not responsible
    - Determination of responsibility is made at conclusion of grievance process
    - Right to advisor of choice who may be but is not required to be an attorney
    - Parties may inspect and review evidence *as permitted in sexual misconduct policy*
    - Inform parties of any policy provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance process
- Provide notice of *additional* allegations about the complainant or respondent that arise during process

Lathrop GPM  117

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**PRE-INVESTIGATION OBLIGATIONS OF THE INSTITUTION** 

- Determine whether parties have advisors 
- Require advisors to sign advisor agreement (optional) 
- Consider whether informal resolution is appropriate 

Lathrop GPM  118

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**ROLE OF INVESTIGATOR** 

- Identify factual issues
- Give parties opportunity for input
- Compile investigation materials for decision-makers and parties
- Credibility and/or make recommendations? 
  - Can offer recommendations regarding responsibility but ultimate determination must be made by separate adjudicator (Title IX)
- Role does not include:
  - Adjudication of complaint
  - Providing support or advocacy to either party
  - Serving as a confidential resource

Lathrop GPM  119

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**DIFFERENCES BETWEEN CRIMINAL AND INSTITUTIONAL INVESTIGATIONS**



- Different standards of proof
  - Probable cause vs. beyond reasonable doubt vs. preponderance of evidence vs. clear and convincing
- Different investigation “powers”
  - Subpoena powers vs. disciplinary actions
- Timing of processes
- Cooperating with law enforcement
  - Memorandum of Understanding
  - Use of police report



Lathrop GPM  120

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**STAGES OF INVESTIGATION**



- **Stage One:** Review complaint and outline investigation
- **Stage Two:** Gather evidence
- **Stage Three:** Review / Draft / Conduct additional interviews
- **Stage Four:** Make evidence available to parties (Title IX only)
- **Stage Five:** Package investigation for decision-maker(s)



Lathrop GPM  121

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**STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION**



- Review formal complaint
- Review notice provided to parties
  - Alert Title IX Coordinator if there are additional allegations
- Review institution’s policy and how it defines relevant terms
- Identify all known witnesses and gather information about them
- Begin to create chronology of events
- Strategize about the timing and location of interviews



Lathrop GPM  122

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**STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION** 

- Prepare script of opening remarks
  - Explain your role in the grievance/complaint process
  - Provide general explanation of reason for interview—gathering facts
  - Explain possible uses of party’s/witness’s statements
  - If applicable, explain cross-examination
  - If applicable, inform party/witness of recording and its use
  - Advise party and advisor on advisor’s limited role
  - Explain the need to ask difficult, detailed questions
  - Ask party/witness not to read into questions
  - Tell party/witness he or she can ask for a break during the interview



Lathrop GPM  123

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**STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION** 

- Prepare script of opening remarks (cont.)
  - Explain that timelines and order of events may not be clear
  - Tell the party/witness to feel free to ask why a question is asked (investigators: be prepared to answer)
  - Instruct *witness* regarding confidentiality (gag orders on parties is not permissible)
  - Assure/warn party/witness regarding policy prohibiting retaliation
  - If applicable, advise party/witness on alcohol or other policy waiver
  - If video/phone interview, confirm no one else is in the room
  - Obtain commitment to tell the truth

Lathrop GPM  124

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**STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION** 

- Prepare script of closing remarks
  - Ask if there is anything else the party/witness wants you to know
    - Ask if there is anything the party/witness thought you would ask about that you have not yet discussed
  - Give parties opportunity to suggest witnesses, evidence, and questions to ask the other party
    - Find out what information those witnesses/evidence/questions will provide
  - Give witnesses opportunity to suggest other witnesses and evidence
    - Find out what information those witnesses/evidence will provide
  - Remind party/witness regarding need to preserve evidence

Lathrop GPM  125

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**STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION** 

- Prepare script of closing remarks (cont.)
  - If applicable, explain that an additional interview may be necessary at a later date
  - Advise that party/witness may reach out to you with additional information
  - Reminder regarding policy prohibiting retaliation
  - Remind *witness* of instructions regarding confidentiality
    - Must not restrict the ability of either party to discuss the allegations under investigation
  - Explain to party that questions related to process or resources should be directed to the Title IX Coordinator or Deputy Coordinator

Lathrop GPM 126

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**STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION** 

- Identify ultimate questions that will need to be decided
- Develop checklist for key questions—examples:
  - Elements of each potential violation
  - Consent to each act
  - Impact of alcohol
  - Ask for written communications—texts, emails, etc.
- Create list of topics for witness interviews (not questions)
- Avoid investigative techniques and approaches that apply sex stereotypes or generalizations

Lathrop GPM 127

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**STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION** 

- Gather and review available evidence
- Know the setting(s) of the events
- Determine whether witness interviews will be recorded
- Stay flexible



Lathrop GPM 128

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**STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION** 



- Prepare for parties with advisors
  - Consider having advisors review and sign document outlining purpose and role of advisor
- Also be prepared for how to handle “private” investigations by the parties

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**CASE STUDY**

Lathrop GPM,  130

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**CASE STUDY** 

- On April 14, 2023, Allison Allen made a complaint of sexual misconduct against Henry Henderson.

Lathrop GPM,  131

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**CASE STUDY –  
DEFINITION OF CONSENT**



Consent means words or overt actions by a person in advance clearly and affirmatively communicating a freely given present agreement to participate in a particular sexual contact or activity. Words or overt actions clearly communicate consent when a reasonable person in the circumstances would believe those words or actions indicate a willingness to participate in a mutually agreed-upon sexual contact or activity. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent. It is the responsibility of the person initiating the specific sexual contact or activity to obtain consent for that contact or activity.

Lathrop GPM

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**CASE STUDY –  
DEFINITION OF CONSENT**



The definition of consent is subject to the following:

- Consent can only be given if one is of legal age (16).
- Consent is a mutually understood and freely given “yes,” not the absence of “no.”
- Consent to one form of sexual activity cannot imply consent to other forms of sexual activity.
- Consent can be withdrawn at any time. When consent is withdrawn, the sexual activity for which consent was initially provided must stop.
- Silence or failing to resist does not imply consent.
- Previous relationships or previous consent does not imply consent to future sexual acts.
- An existing sexual, romantic, or marital relationship does not imply consent.
- Prior sexual activity with other individuals does not imply consent.
- Consent cannot be procured, expressly or implicitly, by use of force, intimidation, threats, or coercion, as that term is defined below.
- An individual known to be – or who should be known to be – incapacitated, as defined by the Policy, cannot consent to sexual activity initiated by another individual.
- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.

Lathrop GPM

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**STAGE TWO: GATHER EVIDENCE**



- Types of evidence:
  - Witness interviews
  - Physical evidence
    - Text messages/emails/photos
    - Social media
    - Police report
    - Medical examination – *Caution!*
    - Student/personnel records
    - Surveillance video



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**STATE TWO: GATHER EVIDENCE – NOTICE OF MEETINGS** 

- Title IX: Written notice to the party whose participation is invited or expected of the
  - Date
  - Time
  - Location
  - Participants
  - Purpose



of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate

- VAWA: Timely notice to the other party of meetings that are part of the disciplinary process

Lathrop GPM 138

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**STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES** 

- Go through script of opening remarks
  - Explain your role in the grievance/complaint process
  - Provide general explanation of reason for interview—gathering facts
  - Explain possible uses of party's/witness's statements
  - If applicable, explain cross-examination
  - If applicable, inform party/witness of recording and its use
  - Advise party and advisor on advisor's limited role
  - Explain the need to ask difficult, detailed questions
  - Ask party/witness not to read into questions
  - Tell party/witness he or she can ask for a break during the interview



Lathrop GPM 139

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**STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES** 

- Go through script of opening remarks (cont.)
  - Explain that timelines and order of events may not be clear
  - Tell the party/witness to feel free to ask why a question is asked (investigators: be prepared to answer)
  - Instruct *witness* regarding confidentiality (gag orders on parties is not permissible)
  - Assure/warn party/witness regarding policy prohibiting retaliation
  - If applicable, advise party/witness on alcohol or other policy waiver
  - If video/phone interview, confirm no one else is in the room
  - Obtain commitment to tell the truth

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**STAGE TWO: GATHER EVIDENCE –  
INITIAL PARTY INTERVIEWS** 

- Purpose is to provide each party with an opportunity to share their account
- Do not ask party to respond to or rebut other party’s or witness’s accounts
- Ask limited follow-up questions to clarify party’s own account
- When in doubt, don’t ask

Lathrop GPM,  141

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**STAGE TWO: GATHER EVIDENCE –  
WITNESS INTERVIEWS** 

- “Do you know why you were asked to come speak with me today?”
  - “Highway” or “Scenic Route” interview?
- If Scenic Route, use “funnel” approach
- If Highway interview, download everything they “know” about relevant events

Lathrop GPM,  142

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**STAGE TWO: GATHER EVIDENCE –  
WITNESS INTERVIEWS** 

- Scenic Route: Funnel Approach
  - Start broadly; avoid leading questions
    - “I understand you were at a party off-campus last Saturday; did anything unusual happen while you were there?”
    - “You take Professor Johnson’s architectural drafting course on Wednesday afternoons; did you observe anything out of the ordinary last week?”
  - Decide whether to ask more detailed questions
  - More reliable responses and less rumor mill



Lathrop GPM,  143

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**STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES** 

- Create chronology of events
- Identify the who, what, where, when, and how
  - If don't know names, figure out other identifiable information
  - If helpful, consider drawing a map/diagram
  - If exact times aren't known, what events were going on to help fix a time
  - Avoid "why" questions
- Close "chapters" by recapping events
- Distinguish between personal knowledge and hearsay

Lathrop GPM  144

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**STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES** 

- Ask about evidence (text messages, photos, emails)
  - Expect that the parties and witnesses may be talking to each other during the complaint process—ask for these communications later in the process
  - Ask witnesses to forward information immediately
- Don't share information unless necessary
- Don't focus on writing exhaustive notes
- Let witness do most talking ("What happened next?")



Lathrop GPM  145

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**STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES** 

- Don't avoid questions because answers seem too obvious or too personal
- Don't inquire into complainant's prior sexual history with anyone other than respondent
  - Unless respondent alleges someone else committed the conduct
- Do not ask or initiate discussion about privileged information, unless individual holding the privilege has waived it (e.g., doctor-patient privilege, attorney-client privilege)
- Do not ask for or otherwise access treatment records without the party's written consent
- Prepare a summary/draft report immediately following interview



Lathrop GPM  146

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**STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES** 

- Go through script of closing remarks
  - Ask if there is anything else the party/witness wants you to know
    - Ask if there is anything the party/witness thought you would ask about that you have not yet discussed
  - Give parties opportunity to suggest witnesses, evidence, and questions to ask the other party
    - Find out what information those witnesses/evidence/questions will provide
  - Give witnesses opportunity to suggest other witnesses and evidence
    - Find out what information those witnesses/evidence will provide
  - Remind party/witness regarding need to preserve evidence

Lathrop GPM,  147

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**STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES** 

- Go through script of closing remarks (cont.)
  - If applicable, explain that an additional interview may be necessary at a later date
  - Advise that party/witness may reach out to you with additional information
  - Reminder regarding policy prohibiting retaliation
  - Remind *witness* of instructions regarding confidentiality
    - Must not restrict the ability of either party to discuss the allegations under investigation
  - Explain to party that questions related to process or resources should be directed to the Title IX Coordinator or Deputy Coordinator

Lathrop GPM,  148

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**CASE STUDY** 

Ask questions of Allison

Lathrop GPM,  149

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**CASE STUDY**



- During her initial interview, Allison stated that Henry removed her underwear without her consent, which was not in her complaint or the Notice of Allegations.
- What do you do after the interview?

Lathrop GPM,  150

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**CASE STUDY**



- You send the information about the potential additional allegation to the Title IX Coordinator. The Title IX Coordinator determines that the new allegation, if true, potentially constitutes an allegation of sexual exploitation under the University’s Sexual Misconduct Policy. The Title IX Coordinator meets with Allison, and Allison chooses to add the allegation to her complaint. The Title IX Coordinator issues an Amended Notice of Allegations.

Lathrop GPM,  151

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**CASE STUDY**



**Excerpt from Amended Notice of Allegations**

On April 14, 2023, a formal complaint of alleged sexual misconduct was submitted by Allison Allen to the Title IX Coordinator alleging conduct by Henry Henderson. In the formal complaint, Allison alleged that in the early morning hours of January 21, 2023, in her on-campus dorm room, Henry engaged in sexual assault in the form of non-consensual sexual penetration **and sexual exploitation in the form of removing Allison’s clothing without her consent.**

Lathrop GPM,  152

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**CASE STUDY –  
DEFINITION OF SEXUAL EXPLOITATION**



Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another person for anyone’s advantage or benefit other than the person being exploited. Examples of Sexual Exploitation may include, but are not limited to:

- Intentional removal or attempted removal of clothing covering an individual’s intimate parts without consent;

Lathrop GPM,  153

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**CASE STUDY**



- You send an email to Henry asking to schedule an interview. You let him know that in light of the Amended Notice of Allegations he just received, you can schedule the interview for the next week so that he has sufficient time to prepare.
- Once you set a time for the interview, what information do you need to include in your email to Henry?
- You update the Title IX Coordinator.

Lathrop GPM,  154

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**CASE STUDY**



- You send the notice of meeting to Henry. He responds asking you to send your interview questions to him prior to the interview.
- How do you respond?

Lathrop GPM,  155

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**train** 



## CASE STUDY

Ask questions of Henry

Lathrop GPM

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## CASE STUDY

**train** 

- During his initial interview, Henry states that a week after the alleged assault, Allison came up to him at a party and started touching him and kissing him. Henry states that it made him “really uncomfortable.”
- What do you do after the interview?

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## CASE STUDY

**train** 

- You send the information about Henry’s potential allegations to the Title IX Coordinator. The Title IX Coordinator determines that the new allegation, if true, potentially constitutes an allegation of Non-Title IX Sexual Harassment under the University’s Policy. The Title IX Coordinator meets with Henry, and Henry chooses to file a cross-complaint against Allison. The Title IX Coordinator issues a Second Amended Notice of Allegations.

Lathrop GPM

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**CASE STUDY – DEFINITION OF NON-TITLE IX SEXUAL HARASSMENT** 

As used in this Policy, Non-Title IX Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following definitions.

....

**2. Non-Title IX Hostile Environment Harassment:** Non-Title IX Hostile Environment Harassment is unwelcome conduct on the basis of sex determined by a reasonable person to be so severe or pervasive that it substantially and unreasonably interferes with an individual’s employment or education, or creates an intimidating, hostile, or offensive employment or educational environment.

Lathrop GPM  162

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**CASE STUDY – DEFINITION OF NON-TITLE IX SEXUAL HARASSMENT** 

Examples of Non-Title IX Hostile Environment Harassment may include, but not be limited to:

- Sexual flirtations, attention, advances, or propositions;
- Requests for sexual favors;
- Verbal abuse of a sexual nature or obscene language;
- Jokes and comments of a sexual nature;
- Verbal commentary about an individual’s body, sexual innuendo, or suggestive commentary about a person’s clothing and appearance;
- Displaying derogatory or sexually suggestive pictures or other objects in an office, in a residence hall, or on a computer monitor;
- Visual conduct such as leering or making gestures;
- Unwanted kissing;
- Touching of a sexual nature such as patting, pinching, or brushing against another’s body;
- Gossip about sexual relations; and
- Cyber or electronic harassment of a sexual nature.

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**CASE STUDY – DEFINITION OF NON-TITLE IX SEXUAL HARASSMENT** 

*Unwelcome Conduct*

For the purposes of the definitions of Title IX Sexual Harassment and Non-Title IX Sexual Harassment (see below), conduct is unwelcome when the individual did not request or invite and regarded it as undesirable or offensive. The fact that an individual may have accepted the conduct does not mean that they welcomed it. On the other hand, if an individual actively participates in conduct and gives no indication that they object, then the evidence generally will not support a conclusion that the conduct was unwelcome. That a person welcomes some conduct does not necessarily mean that person welcomes other conduct. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion. Whether conduct was unwelcome may be determined based on the context and circumstances of the encounter or incident.

Lathrop GPM  164

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**CASE STUDY – DEFINITION OF NON-TITLE IX SEXUAL HARASSMENT** 

*On the Basis of Sex*  
 For the purposes of the definitions of Title IX Sexual Harassment and Non-Title IX Sexual Harassment (see below), conduct is on the basis of sex when it is sexual in nature or is referencing or aimed at a particular sex.

*Reasonable Person*  
 For the purposes of the definitions of Title IX Hostile Environment Harassment and Non-Title IX Hostile Environment Harassment (see below), reasonable person means a reasonable person in the shoes of the complainant, considering the ages, abilities, and relative positions of authority of the individuals involved in an incident.

Lathrop GPM  165

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**CASE STUDY** 

- After the Title IX Coordinator issues the Second Amended Notice of Allegations, you receive an email from an attorney, informing you that she represents Allison. The attorney states that she wants you to copy her and Allison’s parents on all communications going forward and that she and one or both of Allison’s parents will come with Allison to all future meetings regarding this matter.
- How do you respond?

Lathrop GPM  166

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**STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES – ADVISORS** 

- VAWA requires:
  - Proceeding must “provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the **opportunity to be accompanied to any related meeting** or proceeding by the advisor of their choice”
- Title IX requires:
  - Allow advisor of choice, who may be but is not required to be an attorney
    - May establish equal restrictions on advisors’ participation



Lathrop GPM  167

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**STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES – ADVISORS** 

- Advisors, particularly attorney advisors, have become increasingly common participants
- Tips for addressing disruptive advisors:
  - Signed advisor agreements
  - Be prepared to enforce the agreement parameters
  - Set the ground rules at the outset (e.g., “potted plant”)
  - Don’t engage with the advisor; only address the party (even in response to the advisor’s statements)
  - Hold the party responsible for the advisor’s actions
  - Don’t be afraid to consider pausing the process if the advisor continues to be disruptive
  - Be consistent

Lathrop GPM 168

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**CASE STUDY** 

- A few days later you receive an email from Henry. He says he just received notice from the Title IX Coordinator that Allison has hired an attorney as her advisor. Henry says that he cannot afford an attorney, so the University should provide him with one now that Allison is represented by an attorney.
- How do you respond?

Lathrop GPM 169

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**CASE STUDY** 

- You are conducting a second investigation for the institution involving an allegation of domestic violence between two male students who were in a relationship. During your interview with the complainant in that matter, the complainant tells you that the day after the alleged incident involving physical violence, he went to the hospital to get his wrist and some bruising checked out.
- What should you do?

Lathrop GPM 170

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**FORMAL GRIEVANCE PROCESS** 

- Privileged information
  - Do not require, allow, rely upon, otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legally recognized privilege, unless person holding such privilege has waived the privilege
- Treatment records
  - Institution 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 school obtains that party's voluntary, written consent to do so

Lathrop GPM  171

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**STAGE THREE: REVIEW/DRAFT/  
CONDUCT ADDITIONAL INTERVIEWS** 

- Draft report
- Assess what more needs to be done
- Determine whether additional witnesses are necessary or merely duplicative
- Determine whether new facts/allegations require additional interviews
- Inform Title IX Coordinator of any new allegations (related or unrelated)
- Determine whether notice to the parties needs to be amended
- Be sure that each party has adequate notice of the other party's allegations
- Inform parties in advance of close of evidence date



Lathrop GPM  172

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172

**CASE STUDY** 

- During her initial interview, Allison suggests that you interview Natalie, who has also filed a formal complaint against Henry for sexual assault. Allison says that Henry did the same thing to Natalie that he did to Allison.
  - Do you interview Natalie?

Lathrop GPM  173

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173

**CASE STUDY** 

- Allison also told you during her initial interview that the week after she reported the alleged assault, she went to see her counselor and told her about the assault. Allison requests that you interview her counselor as a witness.
- What should you do?

Lathrop GPM  174

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174

**CASE STUDY** 

- You get written consent from Allison to interview her counselor. At the interview, you ask the counselor if Allison told her anything about the night of January 20/morning of January 21. The counselor says yes but does not elaborate. You ask the counselor what Allison told her. The counselor says that she needs more details about the information you are seeking to confirm that she only reveals the confidential information that Allison has authorized her to disclose.
- How do you respond?

Lathrop GPM  175

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175

**CASE STUDY** 

- During Henry's initial interview, he tells you that he has proof that Allison wanted a sexual relationship with him. He says that right before they hooked up the second time, Allison sent Henry text messages that included nude photos of herself along with explicit comments about sexual things she wanted to do with him. After the interview, Henry sends you an email attaching the screen shots.
- What do you do with the explicit content?

Lathrop GPM  176

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176

**CASE STUDY**



- After consulting with the Title IX Coordinator, you ask Henry to resubmit the screenshots with the explicit content redacted. Henry sends you the redacted images and you review them and determine that they are directly-related and may be relevant. You decide that you will ask Allison about the images during her follow-up interview.

Lathrop GPM 177

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**CASE STUDY**



- You receive a phone call from the local police. The officer tells you that they are investigating criminal charges against Henry by Allison and Natalie. He instructs you to suspend your investigation until further notice from him.
- What do you do?

Lathrop GPM 178

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**NOTICE OF DELAY**

- Reasonably prompt timeframes
  - Including timeframes for filing and resolving appeals and informal resolution processes
  - Temporary delay or extension of timeframes for good cause, which may include
    - Absence of parties, a party's advisor, or witnesses
    - Concurrent law enforcement activity
    - Need for language assistance or accommodations of disability
  - Must provide written notice to parties of the delay or extension and the reason for it
    - DOE guidance: also include anticipated length of delay
  - Some timeframes are set by the regulations (Title IX)

Lathrop GPM 179

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**CASE STUDY** 

- The police investigator also asks you to send all records of your investigation to the police.
- How do you respond?

Lathrop GPM  180

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180

**CASE STUDY** 

- After about a week, you receive word from the Title IX Coordinator that you can resume your investigation.
- Chris, a member of the basketball team, was mentioned as a possible witness to the conduct underlying Henry’s harassment allegation. You reach out to Chris to arrange an interview, but he responds that he will only meet with you if you don’t use his name. He says that he isn’t willing to take “backlash” from the team. How do you respond?

Lathrop GPM  181

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181

**STAGE THREE: REVIEW/DRAFT/  
CONDUCT ADDITIONAL INTERVIEWS** 

- Purpose of follow-up interviews with the parties
  - Gather any missing information from each party’s account
  - Provide each party an opportunity to respond to the other party’s factual account, including any specific allegations and defenses to those allegations
- Preparing for follow-up interviews with the parties
  - Complete draft report prior to conducting follow-up interviews
  - Identify gaps in each party’s account
    - Ensure that the accounts have addressed each allegation of a policy violation (including all elements of alleged policy violations)
  - Identify differences between the parties’ accounts and between each party’s account and witness accounts
  - Outline questions for follow-up interviews

Lathrop GPM  182

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182



**CASE STUDY** 

- Allison is accompanied by her attorney to her follow-up interview. During the interview, you begin asking Allison questions about a sexual encounter between Allison and Henry prior to the January 21 alleged assault.
- Allison’s attorney “objects” to the question and tells you that under Title IX you are not allowed to ask questions about the complainant’s prior sexual history.
- How do you respond?

Lathrop GPM,  183

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183

**CASE STUDY** 

- Following the criminal charges, Henry also retained an attorney advisor. Henry emails you to tell you that his attorney advisor will be attending his follow up interview. He also says that he’ll be bringing his assistant basketball coach as a support person.
- How do you respond?

Lathrop GPM,  184

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184

**CASE STUDY** 

- Henry emails you the next day to say that bringing a support person is necessary as an accommodation for his anxiety. Henry said this matter has caused him a lot of stress.

Lathrop GPM,  185

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185

**CASE STUDY** 

- Henry attends his follow-up interview with both his attorney advisor and his support person. During Henry’s follow-up interview, the attorney advises Henry not to answer certain questions because of the impact it could have on the concurrent criminal investigation.
- How do you respond?

Lathrop GPM  186

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186

**CASE STUDY** 

- You have completed your interviews and have prepared a draft of the investigation report.
- Now what do you do?

Lathrop GPM  187

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187

**STAGE THREE: REVIEW/DRAFT/  
CONDUCT ADDITIONAL INTERVIEWS** 

- Set close of evidence date and notify parties
- Finalize draft of investigation report
- Meet with coordinator
  - Ensure parties have received notice of all allegations
  - Confirm process and timing for sharing evidence (if any)
    - Title IX: Send hard copy or electronic format of directly related evidence
    - VAWA: Access to evidence that will be shared with the decision-maker
    - When in doubt, err on side of following Title IX process

Lathrop GPM  188

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188

**CASE STUDY**



- You notify the parties of the close of evidence date. A few days later, before the close of evidence, you receive an email from Allison stating that the police informed her that they have completed their investigation in the concurrent criminal matter and that the matter has been referred to the prosecutor's office. Allison tells you that she just has requested a copy of the police report. She asks that you delay the close of evidence until she receives a response from the police/prosecutor regarding her request.
- How do you respond?

Lathrop GPM 189

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**CASE STUDY**



- You extend the close of evidence date by one week to give time for Allison to receive a response about her request for the police report. You issue a notice of delay/extension to the parties. On the close of evidence date, Allison asks you to extend for one more week to give her more time to get the report.
- How do you respond?

Lathrop GPM 190

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**STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND\***



- *Prior to completion of investigation report, must provide equal opportunity to inspect and review any evidence obtained that is directly related to the allegations*
  - Includes evidence upon which the institution does not intend to rely in reaching a determination and inculpatory or exculpatory evidence whether obtained from a party or other source
  - Must send to party and party's advisor in hard copy or electronic format
    - May use a file sharing platform that restricts downloading or copying
    - May prohibit photographing/copying
    - May require signing a non-disclosure agreement
    - May not limit time for review (besides the 10 days)
    - May not require supervision
  - Party must be given at least 10 days to submit a written response
- Investigator must consider that written response before completing investigation report
- Must make all that evidence available at any hearing

Lathrop GPM \* Title IX Only 191

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**STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND\*** 

- Types of evidence that must be provided to parties:
  - Documents collected from the parties
    - Text messages
    - Emails
    - Social media posts and messages
    - Photos and videos
  - Other evidence
    - Police reports
    - Security footage
    - Wifi access point records
  - Party and witness interviews

Lathrop GPM, \* Title IX Only -192

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**STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND\*** 

- Sexual history = include if directly related
  - Protections related to complainant’s prior sexual history do not apply at this stage
  - Still analyze whether such evidence is “directly related to the allegations”
- Privileged information = only with waiver of privilege
- Treatment records = only with written consent

Lathrop GPM, \* Title IX Only -193

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193

**STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND\*** 

- May permit or require the investigator to redact information that is not directly related to the allegations (or that is otherwise barred from use under the final regulations)
  - Redactions are limited to information not directly related or that is otherwise specifically barred
  - May not redact other information, such as confidential, sensitive, or prejudicial information, if it is directly related to the allegations

Lathrop GPM, \* Title IX Only -194

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**STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND\*** 

- Maintain records of any information withheld and the rationale for doing so
- Investigator and Title IX Coordinator should both be involved in determination of what is directly related

Lathrop GPM,  \* Title IX Only 195

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**STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND\*** 

- Ensuring privacy
  - May use platform that restricts downloading/copying
  - May require parties and advisors to:
    - Use the evidence (and investigation report) only for purposes of the grievance process and
    - Require them not to further disseminate or disclose these materials
  - May use a non-disclosure agreement
  - May use digital encryption or other practices to address privacy concerns (e.g., watermarks)

Lathrop GPM,  \* Title IX Only 196

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**CASE STUDY** 

“Directly Related” Evidence

Lathrop GPM,  197

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**CASE STUDY**



- Do you include the following in “directly related” evidence?
  - The following statement from Callie: “I’d heard [Henry] was bad news, but I didn’t feel like it was my place to say anything to Allison. We aren’t like that close.”
  - The following statement from Luke: “Girls really throw themselves at Henry. And he’s not the type to settle down. So let’s just say Allison’s not the first girl to get all crazy after getting her heart broken by him.”

Lathrop GPM 198

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**CASE STUDY**



- Do you include the following in “directly related” evidence? (cont.)
  - Allison’s statement that she was not sure she would file a report because she was too afraid of the backlash, especially since Henry is so popular and is on the basketball team. But when she found out that he had done this to others and another girl was even going to file a complaint against him, it gave her courage to speak out.

Lathrop GPM 199

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**CASE STUDY**



- Do you include the following in “directly related” evidence?
  - Henry’s statement that this “whole thing” came about because Natalie (who also filed a complaint against Henry) convinced Allison to file a complaint. Henry says Natalie planted the idea of rape in Allison’s mind.
  - Redacted screenshots of explicit images sent by Allison to Henry

Lathrop GPM 200

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**PRIOR SEXUAL HISTORY** 

- Complainant’s sexual behavior or predisposition are not relevant unless:
  - Such questions and evidence are offered to prove someone other than respondent committed the alleged conduct or
  - 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

Lathrop GPM, P  -201

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**CASE STUDY** 

- You provide the directly related evidence to the parties and their advisors and give them 10 days to submit a written response.

Lathrop GPM, P  202

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**CASE STUDY** 

- Two days into the review of the directly-related evidence, Allison emails and says:
  - The transcript from the interview from my counselor is included in this document. My understanding is that Henry got the same document, meaning he is now looking at the confidential information related to my mental health. That was for the decision-makers to see in confidence.
- How do you respond?

Lathrop GPM, P  -203

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**CASE STUDY** 

- Both Allison and Henry submit timely responses to the directly related evidence.

Lathrop GPM,  204

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204

**CASE STUDY** 

- In her response to the directly related evidence, Allison wrote:
  - I noticed that Henry only suggested the investigator interview his guy friends who were at the party on January 28 and not the girl he was with (Rory). He doesn't even mention her name. I heard that he used her just like every other girl. I'll bet she'd tell the truth about that night. It's not what his basketball buddies said. I want the investigator to interview her.
- What do you do?

Lathrop GPM,  205

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205

**CASE STUDY** 

- In Henry's response to the directly related evidence, he stated:
  - Allison tries to downplay the way that she touched me at the party, but she was all over me. If a guy did that to a girl at a party, he would for sure be labeled as a harasser and a creep.

Lathrop GPM,  206

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206



**CASE STUDY** 

- Henry also stated:
  - Allison told the investigator that she has needed counseling because of what happened between us, but Allison’s friend, Sasha, told me that Allison has been in counseling all year because she gets so stressed out over school. I want the investigator to get Allison’s records from the counseling center to see when she started seeing a counselor.
- What do you do with this information?

Lathrop GPM  207

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207

**CASE STUDY** 

- In addition to the excerpts above, both parties submitted additional substantive information clarifying their own accounts and responding to the other party’s account.
- What do you do with this additional information in the written responses?

Lathrop GPM  208

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208

**STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND\*** 

- Steps following parties’ review
  - Review parties’ responses
  - Consult with Title IX Coordinator to decide whether any additional action is needed
  - Investigator should consider parties’ viewpoints about whether the evidence directly related to the allegations is relevant and therefore whether to include it in the investigation report
  - May provide a copy of each party’s written response to the other party, but that is not required

Lathrop GPM  \* Title IX Only 209

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209

**STAGE FIVE: PACKAGE INVESTIGATION FOR DECISION-MAKERS**



- Complete investigation report
- Provide access (VAWA) or hard copy/electronic format (Title IX) to parties, and parties' advisors
  - At least 10 days prior to hearing (Title IX)
  - Allow parties to supplement with written responses (Title IX)
- Review parties' responses
- Consult with Title IX Coordinator to decide whether any additional action is needed
- Provide report, attachments/evidence, and if applicable, parties' written responses to adjudicator(s)



Lathrop GPM  210

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210



**Q & A**



Lathrop GPM  211

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211



**DRAFTING AN INVESTIGATION REPORT**



Lathrop GPM  212

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212

**SESSION OVERVIEW** 

- Legal Requirements
- Relevancy Issues
- Purpose
- Preparation
- Elements of the Report
- Role of the Title IX Coordinator
- Case Study



Lathrop GPM,  213

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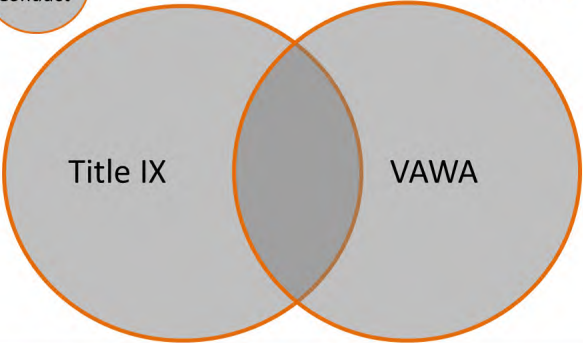
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**LEGAL REQUIREMENTS** 

Other Conduct



Title IX

VAWA

Lathrop GPM,  214

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214

**LEGAL REQUIREMENTS** 

- Must create investigative report that fairly summarizes **relevant** evidence (Title IX)
- Investigator cannot adjudicate (Title IX)
- Parties must be provided:
  - VAWA: information used in the decision-making process – access required
  - Title IX:
    - Investigation report –must send hard copy or electronic format to parties and advisors
      - May use a file sharing platform that restricts downloading or copying
      - May prohibit photographing/copying
      - May require signing a non-disclosure agreement
      - May not limit time for review
      - May not require supervision
    - Opportunity to submit written response



Lathrop GPM,  215

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**TITLE IX RELEVANCY ISSUES** 

- Complainant’s sexual behavior or predisposition are **not relevant** *unless*:
  - Such questions and evidence are offered to prove someone other than respondent committed the alleged conduct or
  - 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
- The investigation report should not include any information about the complainant’s sexual history that is not relevant

Lathrop GPM 216

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**RELEVANCY ISSUES** 

- Always consider relevance:
  - Expert reports?
  - Character evidence?
  - Lie detector test results?
  - Prior violation by respondent?
  - Allegations of similar misconduct?



Lathrop GPM 217

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**PURPOSE** 

- Know the purpose of your investigation and report under your institution’s policies
  - Provide a summary of your investigation
  - Allow parties to submit a response (Title IX)
  - Allow adjudicators to prepare for hearing and/or make a decision
  - Determine whether you are weighing in on credibility
  - Determine whether the adjudicator(s) want you to provide a recommendation



Lathrop GPM 218

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**PREPARATION** 

- Prepare for report drafting during your investigation by—
  - Staying organized
  - Taking good notes and/or recording interviews
  - Review recordings, notes, and evidence to assess whether you need more information
  - Think about how you will summarize the facts in your report to help assess whether you've gathered all of the evidence you need
  - Drafting the report as you conduct your investigation
    - Identify information that is not directly related
    - Identify information that is directly related but not relevant

Lathrop GPM  219

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**ELEMENTS OF THE REPORT** 

- Introduction
- Summary of allegations/complaint(s)
- Documents/evidence reviewed
- Witnesses interviewed
- Interview methodology
- Summary of facts by allegation OR witness summaries



Lathrop GPM  220

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**ELEMENTS OF THE REPORT** 

- Introduction
  - State the reason for your investigation
  - Date of complaint(s)
  - Date of notice(s) of allegations
  - Your appointment as investigator
    - Refer to policy/procedures
  - Purpose of report
  - Scope of your role (e.g., credibility, recommendation)
  - Date of close of evidence
  - Date parties were provided with copies of directly related evidence (Title IX)
  - Date parties submitted responses (if any) to directly related evidence (Title IX)



Lathrop GPM  221

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**ELEMENTS OF THE REPORT** 

- Summary of allegations/complaint(s)
  - Include allegations from original complaint and those gathered during interviews; consider whether to differentiate between the two
  - Check notice(s) of allegations for consistency



Lathrop GPM,  222

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**ELEMENTS OF THE REPORT** 

- Include a list of documents and evidence reviewed
  - Policies
  - Written complaints
  - Text messages
  - Social media screen shots
  - Letters from institution to parties
  - Emails from witnesses to investigator
  - Other written documentation
  - Physical evidence
  - Parties' responses to "directly related evidence" (Title IX)



Lathrop GPM,  223

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**ELEMENTS OF THE REPORT** 

- Interview methodology
  - List of witnesses
  - Dates of interviews
  - Location
  - Individuals present—e.g., advisors
  - Recorded or not recorded
  - Reasoning for choice of whom to interview (and not interview)



Lathrop GPM,  224

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**ELEMENTS OF THE REPORT** 

- Interview methodology (cont.)
  - General questions asked by investigator
  - General approach used in interviews
  - Statements made by investigator
  - Information shared with or withheld from witnesses



Lathrop GPM, P 225

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**ELEMENTS OF THE REPORT** 

- Summary of the facts—two approaches:
  - Summary of facts by allegation
    - Separate out each allegation
    - Give account from each party/witness
    - Describe other evidence supporting or refuting allegation
  - Witness summaries
    - Recap account from each party/witness
    - Describe other evidence offered by or gathered from witness



Lathrop GPM, P 226

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**ELEMENTS OF THE REPORT** 

- Summary of the facts
  - Include facts that may impact a credibility finding
  - Weigh in on credibility if that's part of your role
    - Adjudicator must make the ultimate determination (Title IX)
  - Exclude facts that are not relevant
    - No longer a prejudicial vs. probative evaluation (Title IX)



Lathrop GPM, P 227

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**ROLE OF TITLE IX COORDINATOR DURING INVESTIGATION PHASE** 

- Determine who will provide ongoing communication with the parties throughout the complaint process
  - Notify parties of delays and reason for delays
  - Notify parties of their own and other party's meetings
- Ensure that parties receive adequate notice of any new allegations
- Oversee process to ensure compliance with policy and designated timeframes
- Determine which process applies (if multiple)
- Review investigation report, party responses, and rebuttals
  - Redact impermissible content
  - Evaluate whether further investigation is necessary
- Intake and investigate?
  - Beware of conflicts when filling multiple roles
  - Cannot adjudicate or decide appeal (Title IX)

Lathrop GPM 228

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**CASE STUDY** 

Relevant Evidence to Include in the Investigation Report

Lathrop GPM 229

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**CASE STUDY** 

- If you included the following in “directly related” evidence, do you include it in your investigation report?
  - The following statement from Callie: “I’d heard [Henry] was bad news, but I didn’t feel like it was my place to say anything to Allison. We aren’t like that close.”
  - The following statement from Luke: “Girls really throw themselves at Henry. And he’s not the type to settle down. So let’s just say Allison’s not the first girl to get all crazy after getting her heart broken by him.”

Lathrop GPM 230

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**CASE STUDY**



- If you included the following in “directly related” evidence, do you include it in your investigation report?
  - Allison’s statement that she was not sure she would file a report because she was too afraid of the backlash, especially since Henry is so popular and is on the basketball team. But when she found out that he had done this to others and another girl was even going to file a complaint against him, it gave her courage to speak out.
  - Henry’s statement that this “whole thing” came about because Natalie (who also filed a complaint against Henry) convinced Allison to file a complaint. Henry says Natalie planted the idea of rape in Allison’s mind.

Lathrop GPM 231

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**CASE STUDY**



- During the investigation, you asked Allison about the redacted explicit images that Henry submitted. Allison agreed that she had sent the images and said that they were sent when things were going well with Henry and she thought they were moving toward a relationship.
  - Both parties submitted redacted versions of the photos.
  - Do you include the redacted screenshots of the explicit images in the investigation report?

Lathrop GPM 232

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**CASE STUDY**



Investigation Report:  
Summary of Facts Gathered

Lathrop GPM 233

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**PROVIDING THE PARTIES  
ACCESS TO REPORT**



- Title IX:
  - Prior to finalizing the report, parties and advisors must have received copies of all directly related evidence
  - At this stage, parties and advisors must receive hard copy or electronic format of investigative report (and attachments) at least 10 days prior to hearing
  - Parties must have opportunity to submit a written response to the report
  - Allow for rebuttal?
  - Use confidentiality protections listed in Stage Four, including:
    - Use of platform that restricts downloading/copying
    - Use of watermark
    - Prohibition of dissemination
    - Non-disclosure agreement

Lathrop GPM,  234

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**PROVIDING THE PARTIES  
ACCESS TO REPORT**



- VAWA cases that are not Title IX:
  - Access to whatever information is provided to the decision-maker(s)
  - Access to review information; not copies
  - Use of watermarks
  - Prohibit photographs, copying, downloading (check smart phones at the door)
  - Supervise access
  - Out of town access
    - secure site with ability to prohibit downloading AND
    - Zoom session during review
    - access by advisor – must be with party
  - Require confidentiality/prohibit dissemination?
  - Allow parties to submit written response?
  - Allow parties to submit rebuttal?

Lathrop GPM,  235

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**CASE STUDY**



Parties Review and Respond to  
the Investigation Report



Lathrop GPM,  236

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**CASE STUDY**



- You send a link to the investigation report and attachments to the parties and their advisors. Your policy provides the parties with ten days to submit written responses to the report. You send the report on a Monday with responses due the following Thursday.
- Over the weekend, you receive an email from Allison stating that she just received access to the police report in the concurrent criminal matter. She says that Henry’s account to the police differs from what he said in his interviews with you.
- Allison asks you to reopen the investigation or at least accept the police report into evidence and revise the report to include it.
- How do you respond?

Lathrop GPM 237

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**CASE STUDY**



- You review the police report and determine that it contains relevant information. You notify the parties that the new evidence will be considered. You issue a notice of delay to the parties and pause the investigation report review period.
- In reviewing the police report, you do not note any major inconsistencies in Henry’s account to the police, only that his account does not include the same level of detail that he gave in his account to you.
- You issue a supplemental investigation report stating that both parties gave accounts to the police of the January 21, 2023 encounter, which are documented in the police report, which is included as an attachment to the supplemental report.
- You send a link to the supplemental investigation report and attachments to the parties and their advisors and provide 10 days for their review and response.
- Allison and Henry both submit timely responses to the Investigation Report and supplemental report.

Lathrop GPM 238

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**CASE STUDY**



Excerpt from Allison’s Response to the Investigation Report:

- Henry never told the police that I “helped” him take off my underwear. Obviously, he was willing to lie to the investigator, but not to the police.
- Several witnesses mentioned that Henry has a reputation for using women. Those statements should have been included in the report. This is how guys like Henry get away with violating women over and over again.
- What do you do with this response?

Lathrop GPM 239

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**CASE STUDY**



Excerpt from Henry’s Response to the Investigation Report

- Allison only made up these allegations after Natalie convinced her to. If she thought I had raped her, why would she throw herself at me the next weekend at the party?
- Allison’s counselor’s testimony should not be considered. She refused to answer so many questions. She had to have been coached by Allison about what she was and was not allowed to say. She should either have to answer all of the questions or have her testimony thrown out.

Lathrop GPM 240

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**THE DECISION-MAKING PROCESS**

Lathrop GPM 241

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**SESSION OVERVIEW**



- Decision-Making Process
- Weighing Evidence and Assessing Credibility
- Determination
- Case Study
- Sanctions and Remedies
- Notice of Determination
- Appeals



Lathrop GPM 242

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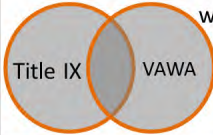
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**DECISION-MAKING PROCESS** 

- Must be prompt, fair and impartial
  - Timely completion
  - Timely notice of meetings
  - Consistent with policies
  - Conducted by officials with training and without conflict/bias



Lathrop GPM,  243

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**DECISION-MAKING PROCESS** 

- Objective evaluation of all relevant evidence
  - Inculpatory and exculpatory evidence
  - Credibility determinations may not be based on status as complainant, respondent, or witness
- Presumption of non-responsibility

Lathrop GPM,  244

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**DECISION-MAKING PROCESS** 

- What evidence will the decision-maker(s) consider?
  - Investigation report
  - Parties' response statements
  - Recordings
  - Live hearing (required under Title IX)
- NOTE: Whatever information is provided to the decision-maker(s) for adjudications or hearings must be shared with the parties
  - Title IX or VAWA

Lathrop GPM,  245

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**LIVE HEARING** 

- General requirements under Title IX
  - Must provide live hearing
  - Permit each party’s advisor to ask the other party and witnesses “all relevant questions and follow-up questions”
  - If party does not have advisor, institution must provide one for cross-examination

Lathrop GPM  246

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**HEARING—RELEVANCY DETERMINATIONS** 

- Decision-maker may hear arguments regarding relevancy of a question on the spot or may tell parties to reserve arguments for appeal (incorrect relevancy determination could be an alleged procedural error on appeal)
- Must allow question if relevant, even if misleading or assumes facts not in evidence
- Can establish rule that duplicative questions are not relevant
- Exclude questions with caution

Lathrop GPM  247

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**HEARING—CROSS-EXAMINATION** 

- Party or witness who does not appear at the hearing
  - ~~Cannot rely on any statements from a party or witness who does not submit to cross-examination~~
  - Decision-maker(s) may still rely on previous statements from party/witness who is absent or refuses to answer one or more questions
  - Refusing to answer a question(s) or appear at the hearing may be considered in determining how much weight to give party’s/witness’s account or the credibility of their account
  - 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

Lathrop GPM  318

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**HEARING—CROSS-EXAMINATION** 

- School also cannot coerce unwilling participant
  - Be careful with any requirement that a student or employee cooperate with grievance process
  - Discipline for not attending hearing may constitute retaliation

Lathrop GPM,  249

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**HEARING—OTHER PROCEDURAL RULES** 

- May establish additional rules that apply equally to both parties
  - Cross-examination must be respectful, non-abusive, not intimidating
  - Limit evidence at hearing to evidence that was gathered or presented as part of the investigation (or otherwise prior to the hearing)
  - Whether investigator may be called as a witness
  - Process for making objections to the relevance of questions and evidence
  - Other procedures at the hearing
    - Opening statements by parties or advisors
    - Closing statements by parties or advisors
  - Reasonable time limitations on hearings

Lathrop GPM,  250

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**HEARING—OTHER PROCEDURAL RULES** 

- Some procedural rules are prohibited
  - Cannot prohibit a party from conferring with his or her advisor during the hearing
  - Cannot prohibit character evidence, lie detector test results, evidence that is unduly prejudicial, or evidence of prior bad acts
    - Decision-maker may determine how much weight to give such evidence, as long as applied equally to both parties

Lathrop GPM,  251

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**INVESTIGATOR ROLE IN DECISION-MAKING PROCESS**



- If role is investigator (and not adjudicator), role in adjudication should be limited
  - May be asked to review parties' responses to investigation report
  - Avoid communication with adjudicators, if at all possible (outside of the hearing process)
  - If communication with adjudicators outside the hearing process is necessary, work with Title IX Coordinator to provide the parties with access to additional information
  - May be called as witness at hearing?



Lathrop GPM  252

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**CASE STUDY**



Live Hearing



Lathrop GPM  253

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**CASE STUDY**



- At the hearing:
  - Chris did not participate in the hearing.
  - The hearing panel heard from the parties and all of the witnesses in the investigation report. Their testimony was generally consistent with the accounts they provided to the investigator and no additional information was provided, except for the following...

Lathrop GPM  254

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**CASE STUDY**



- At the hearing (cont.):
  - At the request of Allison, the panel called Rory, the female student who was with Henry at the party on January 28, 2023. Rory stated that Allison came up to Henry at the party, gave him a hug, and “kinda let her hands linger on him.” Rory stated that Henry seemed “annoyed” by it, but “that’s only because he was wanting to hook up with [Rory] that night.” Rory stated that Henry “treated Allison like crap and said something about her drinking too much. I felt bad for her.”

Lathrop GPM  255

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**CASE STUDY**



- At the hearing (cont.):
  - When Allison’s advisor asked Henry why he didn’t tell the police about Allison helping him with her underwear, Henry stated, “The officer didn’t ask me for those details. I told those things to the investigator because the investigator specifically asked how I took off her underwear.”

Lathrop GPM  256

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**WEIGHING EVIDENCE AND ASSESSING CREDIBILITY**

Lathrop GPM  257

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**EVIDENTIARY ISSUES** 

- Always consider relevance and weight of evidence
- Types of evidence
  - Statements from parties and witnesses contained in investigation report
  - Live testimony and cross-examination
  - Character evidence
  - Physical evidence (texts, video, security access information, etc.)
  - Medical information (including mental health records)
    - Only with waiver/consent
    - Consider need for expert guidance in understanding and interpreting information
  - Polygraph/lie detector test results



Lathrop GPM  258

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**EVIDENTIARY ISSUES** 

- Complainant's sexual behavior or predisposition are not relevant unless:
  - Such questions and evidence are offered to prove someone other than respondent committed the alleged conduct or
  - 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
  - The mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of sexual violence



Lathrop GPM  259

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**EVIDENTIARY ISSUES** 

- Prior bad acts/pattern evidence:
  - Allegation v. policy violation
  - Determine relevance and weight of evidence
  - May be relevant in fact-finding *and/or* sanction determination
  - Consider timing and process for requesting and providing access to the adjudicators and the parties (Title IX vs. VAWA)



Lathrop GPM  260

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**EVIDENTIARY ISSUES**



**Weighing Evidence / Assessing Credibility:**

- Is information the witness provided accurate based on other evidence?
- How did the witness learn the facts?
- How well did he or she recall facts?
- How forthcoming was the witness?
- Did the witness seem honest and sincere? (*caution*)
- What are the possible motives for being less than truthful?
- What is the witness's relationship to the complainant and respondent?
- Are there other factors that bear on the believability of the witness?



Lathrop GPM,  261

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**DEALING WITH INCULPATORY & EXCULPATORY EVIDENCE**



- Consider all relevant evidence provided
  - Do not cherry-pick evidence that supports your conclusion
  - Do not ignore contrary evidence
- If evidence supporting both conclusions exists:
  - Is some evidence stronger than other evidence? If so, why?
  - Do you find one party more credible than the other party? If so, why?
  - If a witness's statement is contrary to your conclusion, why do you not believe the witness?

Lathrop GPM,  262

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**DETERMINATION**





- Finding re: policy violation
  - Sexual contact/harassment
  - Consent/unwelcomed
- Sanctions
- Remedies
- Written Notice

Lathrop GPM,  263

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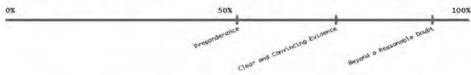
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**DETERMINATION—FINDING** 

- Standard of proof
  - “Preponderance of the evidence” or “clear and convincing” (not “beyond a reasonable doubt”)
  - Use same standard of proof for all formal complaints of sexual harassment
  - Burden is on the school to gather sufficient evidence to reach a fair, impartial determination
  - Presumption of non-responsibility that would need to be overcome
  - Decision-maker(s) must ultimately decide whether it was more likely than not that a policy violation has occurred (preponderance) or whether it is highly probable that a policy violation has occurred



Lathrop GPM  264

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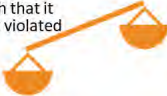
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**DETERMINATION—FINDING** 

- Preponderance:
  - Must decide either that:
    - It was “more likely than not” that the respondent violated the institution’s sexual misconduct policy OR
    - That there was insufficient evidence to establish that it was “more likely than not” that the respondent violated the institution’s sexual misconduct policy
- Clear and convincing:
  - Must decide either that:
    - It was “highly probable” that the respondent violated the institution’s misconduct policy OR
    - That there was insufficient evidence to establish that it was “highly probable” that the respondent violated the institution’s sexual misconduct policy



Lathrop GPM  265

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**CASE STUDY** 



Relevant Definitions

Lathrop GPM  266

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**CASE STUDY –  
DEFINITION OF SEXUAL ASSAULT**



Sexual assault is any actual or attempted sexual contact, including penetration, with another person without that person’s consent. Sexual contact includes intentional contact by the accused with the victim’s genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; touching another with any of these body parts, whether clothed or unclothed; coerced touching by the victim of another’s genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; or forcing another to touch him/herself with or on any of these body parts.

Lathrop GPM 267

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**CASE STUDY –  
DEFINITION OF CONSENT**



Consent means words or overt actions by a person in advance clearly and affirmatively communicating a freely given present agreement to participate in a particular sexual contact or activity. Words or overt actions clearly communicate consent when a reasonable person in the circumstances would believe those words or actions indicate a willingness to participate in a mutually agreed-upon sexual contact or activity. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent. It is the responsibility of the person initiating the specific sexual contact or activity to obtain consent for that contact or activity.

Lathrop GPM 268

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**CASE STUDY –  
DEFINITION OF CONSENT**



The definition of consent is subject to the following:

- Consent can only be given if one is of legal age (16).
- Consent is a mutually understood and freely given “yes,” not the absence of “no.”
- Consent to one form of sexual activity cannot imply consent to other forms of sexual activity.
- Consent can be withdrawn at any time. When consent is withdrawn, the sexual activity for which consent was initially provided must stop.
- Silence or failing to resist does not imply consent.
- Previous relationships or previous consent does not imply consent to future sexual acts.
- An existing sexual, romantic, or marital relationship does not imply consent.
- Prior sexual activity with other individuals does not imply consent.
- Consent cannot be procured, expressly or implicitly, by use of force, intimidation, threats, or coercion, as that term is defined below.
- An individual known to be – or who should be known to be – incapacitated, as defined by the Policy, cannot consent to sexual activity initiated by another individual.
- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.

Lathrop GPM 269

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**CASE STUDY –  
DEFINITION OF SEXUAL EXPLOITATION**



Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another person for anyone’s advantage or benefit other than the person being exploited. Examples of Sexual Exploitation may include, but are not limited to:

- Intentional removal or attempted removal of clothing covering an individual’s intimate parts without consent;

Lathrop GPM 270

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**CASE STUDY – DEFINITION OF  
NON-TITLE IX SEXUAL HARASSMENT**



While Title IX requires that the alleged conduct meet a certain threshold before it is considered Title IX Sexual Harassment, the University also prohibits unwelcome conduct on the basis of sex (1) that may not rise to the level of Title IX Sexual Harassment (as defined above), (2) that did not occur in the University’s education program or activity, but may nevertheless cause or threaten to cause an unacceptable disruption at the University or interfere with an individual’s right to a non-discriminatory educational or work environment, or (3) that did not occur against a person in the United States.

Lathrop GPM 271

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**CASE STUDY – DEFINITION OF  
NON-TITLE IX SEXUAL HARASSMENT**



As used in this Policy, Non-Title IX Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following definitions.

- 2. Non-Title IX Hostile Environment Harassment: Non-Title IX Hostile Environment Harassment is unwelcome conduct on the basis of sex determined by a reasonable person to be so severe or pervasive that it substantially and unreasonably interferes with an individual’s employment or education, or creates an intimidating, hostile, or offensive employment or educational environment.

Lathrop GPM 272

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**CASE STUDY – DEFINITION OF NON-TITLE IX SEXUAL HARASSMENT** 

Examples of Non-Title IX Hostile Environment Harassment may include, but not be limited to:

- Sexual flirtations, attention, advances, or propositions;
- Requests for sexual favors;
- Verbal abuse of a sexual nature or obscene language;
- Jokes and comments of a sexual nature;
- Verbal commentary about an individual's body, sexual innuendo, or suggestive commentary about a person's clothing and appearance;
- Displaying derogatory or sexually suggestive pictures or other objects in an office, in a residence hall, or on a computer monitor;
- Visual conduct such as leering or making gestures;
- Unwanted kissing;
- Touching of a sexual nature such as patting, pinching, or brushing against another's body;
- Gossip about sexual relations; and
- Cyber or electronic harassment of a sexual nature.

Lathrop GPM  273

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**CASE STUDY – DEFINITION OF NON-TITLE IX SEXUAL HARASSMENT** 

*Unwelcome Conduct*

For the purposes of the definitions of Title IX Sexual Harassment and Non-Title IX Sexual Harassment (see below), conduct is unwelcome when the individual did not request or invite and regarded it as undesirable or offensive. The fact that an individual may have accepted the conduct does not mean that they welcomed it. On the other hand, if an individual actively participates in conduct and gives no indication that they object, then the evidence generally will not support a conclusion that the conduct was unwelcome. That a person welcomes some conduct does not necessarily mean that person welcomes other conduct. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion. Whether conduct was unwelcome may be determined based on the context and circumstances of the encounter or incident.

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**CASE STUDY – DEFINITION OF NON-TITLE IX SEXUAL HARASSMENT** 

*On the Basis of Sex*

For the purposes of the definitions of Title IX Sexual Harassment and Non-Title IX Sexual Harassment (see below), conduct is on the basis of sex when it is sexual in nature or is referencing or aimed at a particular sex.

*Reasonable Person*

For the purposes of the definitions of Title IX Hostile Environment Harassment and Non-Title IX Hostile Environment Harassment (see below), reasonable person means a reasonable person in the shoes of the complainant, considering the ages, abilities, and relative positions of authority of the individuals involved in an incident.

Lathrop GPM  275

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**CASE STUDY**

Determine Whether  
a Policy Violation Occurred  
and Rationale for your Decision

Lathrop GPM

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**DETERMINATION—  
SANCTIONS AND REMEDIES**

- Consider who will decide the sanctions and how
  - Consider limited role of Title IX Coordinator
- Any information provided to individual(s) who determine sanctions must also be provided to the parties
- Policy must list *all* possible sanctions and describe the range of remedies
- The list of sanctions must be specific, including the type and length of suspensions and any requirements that must be met for reinstatement

Lathrop GPM

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**DETERMINATION—  
SANCTIONS AND REMEDIES**

- Must treat complainants and respondents equitably by
  - Providing remedies to a complainant where a determination of responsibility for sexual harassment has been made
    - Remedies must be designed to restore or preserve equal access to the institution's education program or activity
    - May include the same individualized services as "supportive measures"
    - Do not need to be "non-disciplinary" or "non-punitive" and do not need to avoid burdening the respondent
  - Following grievance process that complies with regulations before imposing disciplinary sanctions or other actions that are not supportive measures
- Consider remedies for broader student population

Lathrop GPM

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**NOTICE OF DETERMINATION** 

- Identification of the allegations potentially constituting sexual harassment
- Procedural steps since complaint
  - Notices to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, hearings held
- Findings of fact
- Conclusion regarding application of code of conduct to the facts
- Statement of and rationale for the result as to each allegation
  - Determination of responsibility
  - Any disciplinary sanctions imposed on respondent
  - Whether remedies will be provided to complainant
- Appeal information
- Simultaneous delivery to the parties
- Becomes final either the date the parties receive the written determination of the appeal or the date on which an appeal would no longer be timely

Lathrop GPM  279

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**APPEALS UNDER TITLE IX** 

- Must be offered to both parties
  - From a determination regarding responsibility
  - From a recipient's dismissal of a formal complaint or any allegations therein
- Required 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;
  - The Title IX Coordinator, investigator, or decision-maker 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;
  - May offer an appeal equally to both parties on additional bases

Lathrop GPM  280

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**APPEALS UNDER TITLE IX** 

- Requirements
  - Notify other party in writing when an appeal is filed
  - Appeal officer is different than Title IX Coordinator, investigator and decision-maker at hearing
  - No conflict of interest or bias
  - Give both parties reasonable, equal opportunity to submit written statement in support of, or challenging, the outcome
  - Written decision describing result of appeal and rationale
  - Simultaneous delivery of result to parties

Lathrop GPM  281

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**APPEALS UNDER VAWA** 

- Not required, but if offered, must do so equally
- Transparency, equality, notice requirements from main process will apply to appeals
- Examples include:
  - Right to advisor
  - Notice of meetings
  - Access to information used by appeals panel/individual
  - Simultaneous notice of outcome

Lathrop GPM,  282

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**Q & A**



Lathrop GPM,  283

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**UPCOMING TRAININGS** 

- **Trainings for individuals with heightened responsibility:**
  - Annual Training for Title IX Hearing Panels
  - Title IX/VAWA Appeal Officer Training
  - TBD: Trainings regarding new Title IX regulations (following release of regulations)

Lathrop GPM,  284

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**ON DEMAND TRAININGS** 

▪ **Available on-demand:**

- Annual Training for New Title IX Coordinators and Deputy Coordinators
- Title IX/VAWA Investigator Training
- Annual Training for Advanced Title IX Coordinators and Deputy Coordinators
- Title IX/VAWA Hearing Panel Training
- Trauma-Informed Training for First Responders, Confidential Resources, and Campus Security
- Title IX/VAWA Appeal Officer Training
- VAWA Adjudicator Training
- Conducting a Grievance Process Under the New Title IX Regulations
- Title IX Update: Final Regulations

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## 2023 Title IX/VAWA Investigator Training

### Handout 1

#### Complaint

On April 14, 2023, Allison Allen made a complaint of sexual misconduct against Henry Henderson.

#### Sexual Misconduct Complaint Form

COMPLAINANT NAME: Allison Allen

ADDRESS: 1234 On-Campus Drive

DATE OF ALLEGED POLICY VIOLATION: January 21, 2023

DATE OF REPORT: April 14, 2023

RESPONDENT NAME: Henry Henderson

ADDRESS: 999 Dorm Room Lane

#### ALLEGATIONS:

I met Henry Henderson in the fall because he is on the basketball team, and I am an athletic trainer for the team this year. We started hanging out and flirting on team trips and at parties, and then we hooked up a few times. But one night I told him I didn't want to have sex, but Henry invited himself over and was putting a lot of pressure on me. We ended up fooling around and he just kept going and I didn't know what to do. I felt so helpless and used. I did not consent to having sex with him that night. I found out later that I was just one of many women he has treated like this, just using us until he gets what he wants and moves on. I don't want him to ever do this to someone ever again.

**I understand that by signing this formal complaint, I am seeking to initiate the formal grievance process and/or informal resolution process in regards to the above allegations and am requesting that the University investigate the allegations.**

X *Allison Allen*

## 2023 Title IX/VAWA Investigator Training

### Handout 2

#### **Excerpt of Notice of Allegations**

On April 14, 2023, a formal complaint of alleged sexual misconduct was submitted by Allison Allen to the Title IX Coordinator alleging conduct by Henry Henderson. In the formal complaint, Allison alleged that in the early morning hours of January 21, 2023, in her on-campus dorm room, Henry sexually assaulted her by engaging in non-consensual sexual penetration.

## 2023 Title IX/VAWA Investigator Training

### Handout 3

#### **Excerpt of Amended Notice of Allegations**

On April 14, 2023, a formal complaint of alleged sexual misconduct was submitted by Allison Allen to the Title IX Coordinator alleging conduct by Henry Henderson. In the formal complaint, Allison alleged that in the early morning hours of January 21, 2023, in her on-campus dorm room, Henry engaged in sexual assault in the form of non-consensual sexual penetration **and sexual exploitation in the form of removing Allison's clothing without her consent.**

## 2023 Title IX/VAWA Investigator Training

### Handout 4

#### Complaint

On April 25, 2023, Henry Henderson made a complaint of sexual misconduct against Allison Allen.

#### Sexual Misconduct Complaint Form

**COMPLAINANT NAME:** Henry Henderson

**ADDRESS:** 999 Dorm Room Lane

**DATE OF ALLEGED POLICY VIOLATION:** January 28, 2023

**DATE OF REPORT:** May 1, 2023

**RESPONDENT NAME:** Allison Allen

**ADDRESS:** 1234 On-Campus Drive

#### ALLEGATIONS:

Allison came up to me at a party at my buddy's apartment and started touching me and kissing me. I think she'd had too much to drink, because she was all over me. She also made a comment about going back to her place. It made me really uncomfortable and I was embarrassed because a couple of my friends were there with me. I literally had to remove her hands from around my waist. I told her I thought she'd had too much to drink. Then she stormed off.

**I understand that by signing this formal complaint, I am seeking to initiate the formal grievance process and/or informal resolution process in regards to the above allegations and am requesting that the University investigate the allegations.**

**X** *Henry Henderson*

## 2023 Title IX/VAWA Investigator Training

### Handout 5

#### **Excerpt of Second Amended Notice of Allegations**

On April 14, 2023, a formal complaint of alleged sexual misconduct was submitted by Allison Allen to the Title IX Coordinator alleging conduct by Henry Henderson. In the formal complaint, Allison alleged that in the early morning hours of January 21, 2023, in her on-campus dorm room, Henry engaged in sexual assault in the form of non-consensual sexual penetration and sexual exploitation in the form of removing Allison's clothing without her consent.

**On May 1, 2023, a formal complaint of alleged sexual misconduct was submitted by Henry to the Title IX Coordinator alleging conduct by Allison. In the formal complaint, Henry alleged that on January 28, 2023, at an off-campus apartment owned by the University, Allison engaged in unwelcome conduct on the basis of sex in the form of unwelcome kissing, unwelcome touching of a sexual nature, and unwelcome sexual comments toward Henry.**

**Because Allison's and Henry's formal complaints arise out of the same facts or circumstances, the University has consolidated the complaints into one complaint resolution process.**



## 2023 Title IX/VAWA Hearing Panel Training

### Handout 6

#### **Definition of Sexual Assault**

Sexual assault is any actual or attempted sexual contact, including penetration, with another person without that person's consent. Sexual contact includes intentional contact by the accused with the victim's genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; touching another with any of these body parts, whether clothed or unclothed; coerced touching by the victim of another's genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; or forcing another to touch him/herself with or on any of these body parts.

#### **Definition of Consent**

Consent means words or overt actions by a person in advance clearly and affirmatively communicating a freely given present agreement to participate in a particular sexual contact or activity. Words or overt actions clearly communicate consent when a reasonable person in the circumstances would believe those words or actions indicate a willingness to participate in a mutually agreed-upon sexual contact or activity. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent. It is the responsibility of the person initiating the specific sexual contact or activity to obtain consent for that contact or activity.

The definition of consent is subject to the following:

- Consent can only be given if one is of legal age (16).
- Consent is a mutually understood and freely given "yes," not the absence of "no."
- Consent to one form of sexual activity cannot imply consent to other forms of sexual activity.
- Consent can be withdrawn at any time. When consent is withdrawn, the sexual activity for which consent was initially provided must stop.
- Silence or failing to resist does not imply consent.
- Previous relationships or previous consent does not imply consent to future sexual acts.
- An existing sexual, romantic, or marital relationship does not imply consent.
- Prior sexual activity with other individuals does not imply consent.
- Consent cannot be procured, expressly or implicitly, by use of force, intimidation,

threats, or **coercion**, as that term is defined below.

- An individual known to be – or who should be known to be – **incapacitated**, as defined by the Policy, cannot consent to sexual activity initiated by another individual.
- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.

### **Definition of Sexual Exploitation**

Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another person for anyone’s advantage or benefit other than the person being exploited.

Examples of Sexual Exploitation may include, but are not limited to:

...

- Intentional removal or attempted removal of clothing covering an individual’s intimate parts without consent;

...

### **Definition of Non-Title IX Sexual Harassment**

While Title IX requires that the alleged conduct meet a certain threshold before it is considered Title IX Sexual Harassment, the University also prohibits unwelcome conduct on the basis of sex (1) that may not rise to the level of Title IX Sexual Harassment (as defined above), (2) that did not occur in the University’s education program or activity, but may nevertheless cause or threaten to cause an unacceptable disruption at the University or interfere with an individual’s right to a non-discriminatory educational or work environment, or (3) that did not occur against a person in the United States.

As used in this Policy, Non-Title IX Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following definitions.

...

**2. Non-Title IX Hostile Environment Harassment:** Non-Title IX Hostile Environment Harassment is unwelcome conduct on the basis of sex determined by a reasonable person to be so severe or pervasive that it substantially and unreasonably interferes with an individual’s employment or education, or creates an intimidating, hostile, or offensive employment or educational environment.

Examples of Non-Title IX Hostile Environment Harassment may include, but not be limited to:

- Sexual flirtations, attention, advances, or propositions;
- Requests for sexual favors;
- Verbal abuse of a sexual nature or obscene language;
- Jokes and comments of a sexual nature;
- Verbal commentary about an individual's body, sexual innuendo, or suggestive commentary about a person's clothing and appearance;
- Displaying derogatory or sexually suggestive pictures or other objects in an office, in a residence hall, or on a computer monitor;
- Visual conduct such as leering or making gestures;
- Unwanted kissing;
- Touching of a sexual nature such as patting, pinching, or brushing against another's body;
- Gossip about sexual relations; and
- Cyber or electronic harassment of a sexual nature.

### *Unwelcome Conduct*

For the purposes of the definitions of Title IX Sexual Harassment and Non-Title IX Sexual Harassment (see below), conduct is unwelcome when the individual did not request or invite and regarded it as undesirable or offensive. The fact that an individual may have accepted the conduct does not mean that they welcomed it. On the other hand, if an individual actively participates in conduct and gives no indication that they object, then the evidence generally will not support a conclusion that the conduct was unwelcome. That a person welcomes some conduct does not necessarily mean that person welcomes other conduct. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion. Whether conduct was unwelcome may be determined based on the context and circumstances of the encounter or incident.

### *On the Basis of Sex*

For the purposes of the definitions of Title IX Sexual Harassment and Non-Title IX Sexual Harassment (see below), conduct is on the basis of sex when it is sexual in nature or is referencing or aimed at a particular sex.

### *Reasonable Person*

For the purposes of the definitions of Title IX Hostile Environment Harassment and Non-Title IX Hostile Environment Harassment (see below), reasonable person means a reasonable person in the shoes of the complainant, considering the ages, abilities, and relative positions of authority of the individuals involved in an incident.

## 2023 Title IX/VAWA Investigator Training

### Handout 7

#### **Excerpts from Party Statements in Response to the Directly Related Evidence**

##### Excerpt from Allison's Response to the Directly Related Evidence

I noticed that Henry only suggested the investigator interview his guy friends who were at the party on January 28 and not the girl he was with (Rory). He doesn't even mention her name. I heard that he used her just like every other girl. I'll bet she'd tell the truth about that night. It's not what his basketball buddies said. I want the investigator to interview her.

##### Excerpt from Henry's Response to the Directly Related Evidence

Allison tries to downplay the way that she touched me at the party, but she was all over me. If a guy did that to a girl at a party, he would for sure be labeled as a harasser and a creep.

Allison told the investigator that she has needed counseling because of what happened between us, but Allison's friend, Sasha, told me that Allison has been in counseling all year because she gets so stressed out over school. I want the investigator to get Allison's records from the counseling center to see when she started seeing a counselor.

## 2023 Title IX/VAWA Investigator Training

### Handout 8

#### **Investigation Report Excerpt:**

##### **Background**

Allison and Henry are both juniors at the University. The parties agree that they saw each other on campus during their freshman and sophomore years, but that they did not meet until the beginning of the 2022–2023 basketball season. Henry is a member of the basketball team and Allison is an athletic trainer for the basketball team. Both parties stated that after they met, they flirted at basketball games and hung out together at parties.

##### **Parties' Prior Interactions**

###### *Allison's Account*

Allison stated that she and Henry spent a lot of time together related to the basketball team. Allison stated, “He needed to get his ankle taped before practice and games and he always came to my table. He would even wait if I was already working with one of his teammates.” Allison stated that once she and Henry got to know each other, they would also hang out at parties.

Allison stated that in mid-November, she and Henry went back to her room after a post-game party and had sex. When asked what she meant by “sex,” Allison stated, “Normal sex, like intercourse I guess.” When asked what happened before she and Henry had sex, Allison stated, “We were making out and things just progressed.” When asked if there was any conversation before she and Henry had sex, Allison stated, “No, not really, except that he asked about using a condom. I told him that I was on birth control, so we didn't use one.” Allison also stated, “I wasn't really expecting to have sex when we left the party, but we had been talking, so it just kind of happened.” When asked to further clarify what she meant by “talking,” Allison stated, “That's like not dating yet, but on the way to dating.”

Allison stated that after they had sex for the first time, Henry started texting her a few times a week about coming over to her dorm to hang out. Allison stated that she has her own bedroom, so Henry “always” wanted to hang out at her place. Allison stated that over the next month or

so, they had sex maybe three or four other times. Allison stated that during this time period, she would also ask Henry if he wanted to meet other places, like the dining hall, the library, or the student union for a movie night. Allison stated, “He always had an excuse for that. It was like, he could hang out if it was at my apartment, but when I asked about other stuff he never had time or he wouldn’t even answer sometimes.”

Allison stated, “I started to feel not great about it. He would talk to me at practice and before games and came over and we’d watch tv and have sex, but nothing else.” Allison stated that she started to question whether she should keep hanging out with Henry. Allison stated that in mid-December, Henry asked her if she wanted to hang out and she told him he could come over. Allison stated that she wanted to slow things down so that she could think about what to do. Allison stated that when Henry came over, they were hanging out as normal, watching a tv show and cuddling and that “things went from there.” Allison stated, “I was pretty confused about what I wanted to do in the moment, but I told myself that slowing things down would help.” Allison stated that she told Henry she was on her period and that she was tired and maybe they should stop. Allison stated, “After that, we just laid in bed and cuddled for a while, and then he said he needed to go.” Allison stated, “I didn’t hear from him for a few weeks and then it was winter break, so we didn’t hang out.”

### *Henry’s Account*

Henry stated that he and Allison “hooked up” a couple of times, but “[they] weren’t in a relationship or anything.” When asked what he meant by “hooked up,” Henry stated, “We had sex.” When asked what he meant by sex, Henry stated, “My penis in her vagina.” When asked when they had sex, Henry stated, “The first time I think was in November, I think it was early in the [basketball] season.” Henry stated, “We had sex a few more times after that.” Henry stated, “And that was all consensual. I mean, Allison was really into it. After the first time we had sex, she sent me a few topless photos and messages about how bad she wanted me again

and like, other really sexual stuff.”<sup>1</sup>

When asked if they spent time together on other occasions, Henry stated, “Yeah, she was a trainer, so I’d see her before practice and games. Sometimes she would tape my ankle.” Henry further stated that he went to Allison’s room “a few other times just to hang out.” When asked how he would describe his relationship with Allison, Henry stated, “it wasn’t like a relationship. We were friends for sure.” Henry further stated, “I don’t really date during basketball season, I just don’t have any time for that, but Allison and I had fun hanging out.”

When asked about Allison’s account that Henry would not respond or would say he was busy if she asked him to hang out in other places, like the dining hall, library, or student union, Henry stated, “Not necessarily. I don’t really remember her asking to hang out other times. But I’m super busy in season. I don’t have much of a social life outside of basketball. And I usually eat and study with the team.”

#### *Callie’s Account*

Callie stated that she is Allison’s roommate. She stated that she does not know Henry personally. Callie stated that she knew that Allison and Henry “hooked up” a few times. When asked what she meant by “hooked up,” Callie stated, “I think they had sex twice, I think that’s right, maybe more, I’m not sure. And they maybe fooled around other times, I don’t really know specifics.” Callie stated, “when they first started hanging out, I thought they were going to start dating, but obviously that didn’t work out. But I know Allison really liked him.”

#### *Luke’s Account*

Luke stated that he knows Henry because they are on the basketball team together. Luke stated that he also knows Allison because she is the athletic trainer for the basketball team. Luke stated

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<sup>1</sup> Henry provided screenshots of the photos and messages he stated Allison sent him. The messages are dated December 2, 2022 and include several photos of Allison that it appears Allison took herself. In one photo, Allison is lying in bed in a bra and underwear. In two other photos, Allison is sitting up, she is no longer wearing a bra, and her breasts are exposed. The messages Henry provided from Allison include the text “can’t wait for tonight” and “I want you so bad.” When asked about these images and messages, Allison stated, “Yeah, I sent those. That was early on when things were going really well with Henry. I thought we were going to start dating and I was just excited about it.”



that he could tell that Allison was really into Henry, and that Henry and Allison started hanging out and hooking up. When asked how he knew that Allison was into Henry, Luke stated, “She laughs at everything he says and touches his arm a lot.” Luke further stated, “They had sex multiple times before the night she claims he raped her.”

## **Night of January 20, 2023 Sexual Assault Allegation**

### *Allison’s Account*

Allison stated that on Friday, January 20, 2023, she had been out with her friends and that they had gone to a few bars. Allison stated that she and her friends left the bars around midnight on the night of January 20. Allison stated that when they were on their way back to campus, Henry texted her “out of the blue.” Allison stated, “I was kind of mad because he hadn’t texted in weeks and then he texts at midnight. I just knew what he wanted.” Allison further stated, “I was pretty sure this was just sexual for him” and that “it wasn’t going to go anywhere.” Allison stated that it was “hard for her” because “I did still have some hope, things were really fun when we were together, but I didn’t want it to always be about sex.” Allison stated that she decided to let Henry come over, but that she wanted to try just hanging out without sex again. Allison stated that she also had been so busy with the start of the semester that week that she had forgotten to take her birth control pills a few times. Allison stated, “So that was another reason I didn’t want to have sex because I knew I would just be worried because of the birth control thing. I don’t want to get pregnant.” Allison stated, “But I just felt like, maybe we can just hang out again and maybe even talk, figure out what we are.” Allison submitted a screenshot of the following exchange:

Henry:           wyd?<sup>2</sup>  
Allison:          not much, on my way home. you?  
Henry:           Im about to leave this party and I want to see you  
Henry:           I miss you we havent hung out in foreverrrrr  
Henry:           maybe I can come over?  
Allison:          ya, sure

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<sup>2</sup> When asked if she knew what Henry meant by “wyd,” Allison stated, “It means, ‘what are you doing.’”

Allison stated that after she told Henry that he could come over, he started sending her photos via Snapchat of random things on campus as he walked to her dorm room. Allison stated that in response, she sent him a selfie and a message that said something like, “Just so you know, I missed a few bc pills this week so I can’t have sex.”<sup>3</sup> When asked if she still had this message, Allison stated, “It was on Snapchat so it disappeared. I don’t have it anymore.” When asked if Henry responded to her message about not having sex, Allison stated, “No.”

Allison stated that when Henry got to her dorm room, her roommate, Callie, and her boyfriend were watching a movie in the living room. When asked if anyone else was there, Allison stated, “I don’t remember where our other roommate, Michelle, was at the time. Maybe she had already gone to bed or was like hanging out in her room.” Allison stated that she and Henry went to hang out in her room. When asked if they talked about going to her room, Allison stated, “I didn’t want to disturb Callie and her boyfriend because they were watching a movie so after I opened the door for Henry, I just walked to my room and he followed me.” Allison stated that she offered Henry a drink from the fridge in her room. Allison stated that he had a beer and she had a White Claw. When asked where she would put herself on a scale from 0 to 10, 0 being completely sober and 10 being so intoxicated that she was passed out, when Henry arrived at her room, Allison stated, “Like a two. I just had two drinks when we were out at the bars so I felt a little buzzed but that was it.”<sup>4</sup> When asked where she would put Henry on the intoxication scale when he arrived at her room, Allison stated, “Also a two. He seemed a little tipsy but I don’t think he was drinking much that night.”

Allison stated that she and Henry sat on her bed and talked about their nights for a little bit. Allison stated that she asked Henry, “How was the party?” Allison stated that Henry responded, “Mid.”<sup>5</sup> You weren’t there.” Allison stated, “And then he was like, ‘Seriously, I haven’t seen you. I’ve missed hangin’ out with you.’ And he just kept staying stuff like that and then moved in to kiss me.” Allison stated that she and Henry then made out for a while. When asked how long they made out, Allison stated, “I don’t know, maybe five to ten minutes.” When asked if she

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<sup>3</sup> When asked what she meant by “bc,” Allison stated, “birth control.”

<sup>4</sup> The intoxication scale is asked by the investigator to assist in understanding how an individual views their own intoxication level and how that compares to reports from others about an individual’s level of intoxication and its impact on them. How an individual ranks themselves or others on the intoxication scale is not determinative of whether that individual or someone else was incapacitated.

<sup>5</sup> When asked what “mid” means, Allison stated, “Like fine, not bad, not great.”

was okay with that, Allison stated, “Yeah, you know, he said some of what I wanted to hear I guess. Maybe I should have known, it sounds dumb now, but at the time I was happy. I wasn’t sure before he got there if he was ghosting me or if he was just busy. He was in season. And then when he said he missed hanging out, I felt like, maybe this can work.”

Allison stated that things then started to move “so fast.” Allison stated that she was wearing a dress at the time, and Henry took it off and then removed his shirt. When asked if anything was said by her or Henry before he took off her dress, Allison stated, “No, he just started to pull it up while we were kissing.” When asked how she responded when Henry started to pull up her dress, Allison stated, “I don’t know that I really did. I mean, I was trying to make him happy. Like I said, I was feeling good in the moment. I know I didn’t tell him not to.” When asked if anything was said by her or Henry before Henry removed his shirt, Allison stated, “No, he just did it after he took off my dress.”

Allison stated that she and Henry then continued to make out. When asked if there was any contact other than kissing, Allison stated, “He was stroking my back with one hand and touching my breast with the other.” When asked how she responded, Allison stated, “I didn’t say anything.” When asked if she was wearing a bra, Allison stated, “Yeah.” When asked if Henry touched her breast over or under her bra, Allison stated, “At first, it was over my bra but then he took that off too.” When asked if anything was said by her or Henry before Henry removed her bra, Allison stated, “No, he just took it off and then continued stroking my back. We just kept kissing.” When asked if there was any other contact, Allison stated, “I think maybe my hands were on his back while we kissed but that was it.” When asked if anything was said by her or Henry before Henry touched her breast and back, Allison stated, “No, we didn’t say anything because we were kissing.” When asked if she was okay with Henry removing her bra and touching her breast, Allison stated, “That’s when it started to be more than I wanted. I was good with kissing and taking some clothes off. I just wanted to be close, but then my bra came off and I started to wonder if he thought we were going to go further and I wasn’t okay with that.” When asked to clarify if she was not okay with this contact or the contact that followed, Allison stated, “I’d say I was okay with him touching my breasts and with my bra being off. That’s like, okay, we’re being close, touching each other. But I did start to worry that he maybe thought we were going to do more than that and I didn’t want anything beyond that.”

Allison stated that she and Henry eventually moved so that they were lying down on the bed. When asked how their bodies were positioned, Allison stated, “He was lying on his back and I was sort of on top of him.” When asked to explain further, Allison stated, “The like top half of my body was on his chest but my legs were to the side of him on the bed, if that makes sense.”

Allison stated that when they were lying on the bed, Henry started to take off his pants. When asked how she responded, Allison stated, “I didn’t do anything. We just kept kissing.” Allison stated that she started giving Henry a hand job hoping that that would end it. When asked if Henry was still wearing his pants at that point, Allison stated, “He had pushed down his pants and underwear so they were still on but they were around like his knees or ankles.”

Allison stated, “All of a sudden he turns me onto my back and takes off my underwear.” When asked if anything was said by her or Henry before he turned her on her back and removed her underwear, Allison stated, “No, he just did it.” When asked how he turned her on her back, Allison stated, “He just kind of sat up and pushed my hips over so that I was lying on my back. And then he just reached down and pulled off my underwear.” When asked if she consented to Henry turning her on her back and removing her underwear, Allison stated, “No. I mean I was fine with the making out and touching and even giving him a hand job. But I didn’t want him to take my underwear off—that was too far and I just kind of froze like I knew what was coming next.”

Allison stated that Henry then moved on top of her and started having sex with her. Allison stated, “I just froze and thought, ‘How did this happen? I didn’t want this.’” When asked how she responded when Henry started having sex with her, Allison stated that “I just went through the motions.” When asked what she meant by “went through the motions,” Allison stated, “I just laid there. I didn’t say anything but I also wasn’t like actively participating or anything. I just wanted it to be over.” When asked if she consented to Henry having sex with her, Allison stated, “No. He didn’t ask or say anything before he just did it. And I already had told him that we couldn’t have sex because I had missed some birth control pills. But he didn’t care.” Allison stated that Henry finished, put on his pants and then went to the bathroom. Allison stated that she laid there for a moment still frozen but then put on a robe so that she could have something on before Henry came back from the bathroom.

Allison stated that when Henry got back to the room, he told her, “I gotta go baby. I gotta rest up for tomorrow’s game,” and then left.

### *Henry’s Account*

Henry stated that on Friday, January 20, he went to a house party on campus. Henry stated that a little bit after midnight, he texted Allison about hanging out.<sup>6</sup> Henry stated that they had hooked

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<sup>6</sup> Henry submitted a screenshot of this exchange, which is the same exchange provided by Allison.

up a few times so it was “pretty obvious” that they were going to hook up again. When asked if they always “hooked up” when they spent time together, Henry stated, “Like I said, there might have been a few times when we just watched tv, made out, cuddled, that kind of thing, but usually there was at least making out and then one of us would say something if we weren’t feeling like more.” When told of Allison’s account that she sent him a message via Snapchat stating something like, “Just so you know, I missed a few bc pills this week so I can’t have sex,” Henry stated, “She never said that. I Snapped her a few times when I was walking to her place, but the only thing she sent me on Snapchat was a selfie.”<sup>7</sup> When asked if there was any text with the selfie, Henry stated, “No, I think it was just her waiting in her room.”<sup>8</sup> Henry further stated, “We didn’t use a condom and I definitely would have if she had told me she wasn’t on birth control.”

Henry stated that when he got to Allison’s dorm room, she invited him to her bedroom. When asked how she invited him, Henry stated, “She was like, ‘Do you wanna go to my room?’ and I said yeah.”<sup>9</sup> Henry stated that they talked for a little bit on Allison’s bed and had a drink. When asked what they drank, Henry stated, “I had a beer and she had one of those seltzer things, I think.” When asked where he would put himself on a scale from 0 to 10, 0 being completely sober and 10 being so intoxicated that he was passed out, when he arrived at Allison’s place, Henry stated, “A one or a two. I had a basketball game the next day, so I wasn’t drinking that much.” When asked where he would put Allison on the intoxication scale when he arrived at Allison’s place, Henry stated, “Probably a one. I think she had been out earlier that night but she was acting like her usual self, so I didn’t think she was drunk or anything.”

When asked what they talked about, Henry stated, “We talked about our nights. She asked about the party so I told her about it.” Henry stated that he and Allison then started fooling around. When asked what he meant by “fooling around,” Henry stated, “Kissing, touching, we took off each other’s clothes.” When asked to explain further, Henry stated, “We were making out for a bit and then she started touching me under my shirt. So then I pulled up her dress and she sort of

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<sup>7</sup> When told of Henry’s account that she never said that she could not have sex because she missed a few birth control pills, Allison stated, “That’s a lie. I definitely did. I remember because I felt kind of awkward saying it so I rewrote the message a few times before sending it.”

<sup>8</sup> Henry stated that because this was over Snapchat, he does not have a copy of the message.

<sup>9</sup> When told of Henry’s account that she asked him if he wanted to go to her bedroom, Allison stated, “I don’t remember saying that, but I guess it’s possible.”

helped me.” When asked how Allison helped him, Henry stated, “She raised her arms up so that I could take it off. And then I’m not sure but I think she was the one who took off my shirt.”<sup>10</sup> When told of Allison’s account that he removed his own shirt, Henry stated, “I’m not 100% sure but I think she took off my shirt. I could be wrong though. It was like months ago.”

Henry stated that after she took off his shirt, they continued making out. When asked if there was any other contact, Henry stated, “We both had our hands on each other’s back. And I think I touched her breasts.” When asked if anything was said by him or Allison before they touched each other’s backs and he touched her breasts, Henry stated, “Nope. We just kept kissing.” When asked if Allison was wearing a bra, Henry stated, “I don’t remember. Maybe.” When asked if he touched Allison’s skin when he touched her breasts, Henry stated, “Yeah, so maybe she wasn’t wearing a bra. I don’t remember taking it off or her taking it off.” When told of Allison’s account that he removed her bra, Henry stated, “I don’t remember. I suppose that’s possible.” Henry stated that Allison then had her hands down around the waistband of his pants and started putting her fingers under the waistband. Henry stated he then took off his pants. When asked if he was wearing underwear, Henry stated, “Yeah. I took them off when I took off my pants.” When told of Allison’s account that he took off his own pants, Henry stated, “Well, I took them off but only after she started tugging on the waistband.”<sup>11</sup>

Henry stated that Allison then began giving him a hand job. Henry stated, “And we didn’t like talk about that or anything. That’s not how things went with us, but I was fine with that.” When asked how their bodies were positioned at this point, Henry stated, “We were lying on the bed. I was on my back and she was on top of me.” Henry stated that after a minute or two, he “sort of nudged” Allison to lie on her back. When asked what he meant by “nudged,” Henry stated, “I sat up a little bit and kind of moved my legs under her to suggest that she move so that she was on the bed next to me.” When asked how Allison responded, Henry stated, “She laid down next to me and just looked at me, like she wanted me to do something.” Henry stated that at that point, Allison only had her underwear on. Henry stated that he started pulling Allison’s underwear

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<sup>10</sup> When told of Henry’s account that she raised her arms up so that Henry could take her dress off, Allison stated, “Maybe I moved my arms while he was touching me under it. I didn’t really mean to say anything with that, but I was pretty much okay with him taking my dress off. I think I was caught up in the moment at that point.” When told of Henry’s account that she removed his shirt, Allison stated, “No, I’m pretty sure he took off his own shirt.”

<sup>11</sup> When told of Henry’s account that she put her hands under the waistband of Henry’s pants, Allison stated, “No, I was trying to avoid contact below the waist at that point.”

down and that she “kinda helped” him. When asked how she helped him, Henry stated, “Like, she lifted her hips and moved her legs so I could take them off.”<sup>12</sup> When told of Allison’s account that he turned her on her back and took off her underwear, Henry stated, “I mean, I took off her underwear but she helped me. And she laid on her back on her own, I didn’t move her or anything other than just like nudging her to see if she wanted to. She did that by herself.”

Henry stated that he then moved on top of Allison.<sup>13</sup> When asked how he moved on top of Allison, Henry stated, “We just sort of switched positions so I was on top of her.” Henry stated that they then started having sex. Henry stated, “She was into it.” When asked how he knew that Allison was into it, Henry stated, “I mean, she was like moaning. And she ran her hands up and down my back.” Henry stated, “I finished and then went to the bathroom to clean up.” When asked what words or actions indicated that Allison consented to having sex, Henry stated, “Like I said, she had turned on her back and waited for me. She helped me take off her underwear. And then when we were having sex, she was stroking my back with her hands and moaning. And that’s how it went, this wasn’t our first time. We’d never have like a conversation about it, we just went with it and the times that somebody wasn’t into it, we’d say something.” When told of Allison’s account that during sex, she just laid there and did not actively participate, Henry stated, “No, she was stroking my back and making noises like she was enjoying it.”<sup>14</sup>

Henry stated that at that point, it was late and he had a basketball game the next day. Henry stated that he said bye to Allison and went back to his dorm room. Henry stated that Allison

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<sup>12</sup> When told of Henry’s account that she laid on her back, waited for him, and then helped him take off her underwear, Allison stated, “That is 100% not true. He turned me on my back and then took off my underwear. I was shocked so I didn’t do anything. I definitely didn’t help him take off my underwear.”

<sup>13</sup> When told of Henry’s account that he moved on top of her, Allison stated, “Yes, that’s right.”

<sup>14</sup> When told of Henry’s account that during sex, she ran her hands along his back and moaned, Allison stated, “That is not true either. I just laid there. I didn’t put my hands on his back. I also don’t remember making any noises. If I did, it wasn’t because I was enjoying it. Maybe something just to get it over with faster.”

kissed him before he left. When asked if he or Allison said anything else, Henry stated, “Not really, she was just like ‘bye, see you at the game’ and then I left.”<sup>15</sup>

#### *Callie’s Account*

Callie stated that on a Friday night in January, Henry came over to her and Allison’s dorm room. Callie stated that she and her boyfriend were watching a movie in the common area of their dorm when Henry arrived. Callie stated that Henry said hello, but then he and Allison went to her room. Callie stated that she did not see Henry leave and thought he must have left after she went to bed.

#### **The Next Day (Saturday, January 21, 2023)**

#### *Allison’s Account*

Allison stated that the next morning, she went with her roommate, Callie, to the pharmacy to get a Plan B pill. Allison stated, “I was kind of in shock. I didn’t really know what happened or how I felt about it, but I was worried about having missed some pills and so I went to get Plan B.” When asked if she told her roommate about the night before, Allison stated, “I don’t think I really told her much. I’m not sure I even knew what to say at that point.”

#### *Callie’s Account*

Callie stated that the next morning, she asked Allison how her night went. Callie stated that Allison told her that she and Henry had “hooked up.” Callie stated, “I could tell something was bothering her so I asked what was wrong.” Callie stated that Allison told her that she “wasn’t sure” about where things stood with Henry. Callie stated that Allison told her that Henry left the apartment right away after they had sex. Callie stated that Allison also was worried because she did not take a few of her birth control pills that week and she and Henry did not use a condom.

Callie stated that later that morning she went with Allison to get Plan B from the pharmacy nearby. When asked if they talked about Henry when they went to the pharmacy, Callie stated, “I think she might have said that she was questioning if Henry was just using her or if he really liked her. But she didn’t say too much and she was pretty worried about the whole birth control thing, so I didn’t want to press her too much.”

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<sup>15</sup> When told of Henry’s account that she kissed him before she left and told him, “Bye, see you at the game,” Allison stated, “He was the one who kissed me. I didn’t like push him away or anything because I still felt frozen and wasn’t sure what had just happened. I did say ‘bye’ before he left.”



### *Luke's Account*

Luke stated that he saw Henry and Allison the next day because they had a basketball game. Luke stated that everything seemed fine. When asked to explain further, Luke stated, "Well, I didn't notice them interacting at all, but Allison seemed fine. She wasn't like crying or anything." Luke stated that he asked Henry how his night went and that Henry told him something like, "Fine, nothing to report."

## **January 28, 2023 Sexual Harassment Allegations**

### *Henry's Account*

Henry stated that after he and Allison hooked up on January 21, he saw her a few times around campus and at basketball games. Henry stated that the following weekend, on January 28, he saw Allison at a party. Henry stated that he was hanging out with another girl at the party. Henry stated, "I don't know if Allison was like jealous or something but she starts like touching me and like kissing me." When asked where she touched him, Henry stated, "She had her hands on my waist and lower back. At one point, she put her hand on my chest." When asked where Allison kissed him, Henry stated, "She kissed me on my cheek a few times. She tried to kiss me on my lips but I turned my head so she kissed my like jaw area instead." Henry stated that it made him "really uncomfortable." Henry stated that Allison was acting like she was his girlfriend, and all of his friends were around. Henry stated that Allison made the girl he was with uncomfortable too.

Henry stated that he told Allison, "Hey, woah, what are you doing?" Henry stated that Allison kept putting her hands "all over [him]." When asked where Allison put her hands, Henry stated, "Her hands were around my waist and on my back." Henry stated that Allison also said loudly, "Let's go to my place." Henry stated that he took Allison's hands from around his waist and tried to "lighten the mood," by saying something like, "Seems like somebody's had too much to drink." Henry stated that at that point, Allison got mad, called him "a player," and "stormed off." When asked where he would put Allison on the intoxication scale when he saw her at the party, Henry stated, "Probably like a six or seven. She seemed pretty drunk." When asked how he knew she was drunk, Henry stated, "I mean, she was all over me, hanging on me. And she was talking really loudly." When asked where he would put himself on the intoxication scale when he saw Allison at the party, Henry stated, "Maybe a two. I try not to drink that much during the season, so I only had a few drinks that night."

### *Allison's Account*

Allison stated that after January 21, she saw Henry at basketball games and practices but that they did not really talk. Allison stated that the following Saturday, January 28, a basketball player had a party after their game. Allison stated that she saw Henry and wanted to keep things normal. Allison stated that she was still confused and wasn't sure whether she should be upset. Allison stated, "I know I should have been, but I just wasn't ready to face it. And I think I just wanted to see if he'd be different. It sounds stupid now, I just really liked him." Allison stated, "So I like came up to him and like said hi and gave him a hug and he like blew me off and like acted like we barely knew each other." Allison stated that she then realized that Henry was with another girl and that "he'd already moved on."

When asked where her hands were when she hugged Henry, Allison stated, "Like on his back, maybe around his waist."<sup>16</sup> When told of Henry's account that she put her hands on his waist, lower back, and chest, Allison stated, "I just hugged him around his waist. I don't remember touching his chest." When asked if they had any other contact other than the hug, Allison stated, "I might have like pecked him on the cheek as I was hugging him."<sup>17</sup> When told of Henry's account that she kissed him on the cheek a couple of times and tried to kiss him on his lips but he turned his head away, Allison stated, "That is an exaggeration. I kissed him once on his cheek when I hugged him and that was it." When asked how Henry "blew [her] off," Allison stated, "He like made some comment that I must be drunk, which I was not." Allison stated that after that, she just left. When told of Henry's account that he asked her what she was doing, Allison stated, "I don't remember that. I just remember him saying something about me being drunk." When told of Henry's account that he took her hands off his waist, Allison stated, "Yeah, that's true."

When asked where she would put herself on the intoxication scale when she saw Henry at the party, Allison stated, "Maybe a three or four. I had a few drinks and felt tipsy but I was still very

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<sup>16</sup> When told of Allison's account that she only hugged him around his waist, Henry stated, "She hugged me but she kept her hands on my waist and back after the hug was over. And she touched my chest."

<sup>17</sup> When told of Allison's account that she pecked him once on the cheek, Henry stated, "That's not true. She kissed me multiple times on the cheek and tried to kiss me on the lips."

much with it and aware of my surroundings.”<sup>18</sup> When told of Henry’s account that she was talking loudly and seemed intoxicated, Allison stated, “Again, he’s exaggerating. I might have been talking more loudly than usual but we were at a party and the music was really loud, but I’d only had a few drinks, I was fine.” When asked where she would put Henry on the intoxication scale when she saw him at the party, Allison stated, “I don’t know. Maybe a two. He didn’t seem drunk or anything, but he was holding a drink.”

#### *Luke’s Account*

Luke stated that towards the end of January, the basketball team threw a party after one of their games. Luke stated that during the party, he was talking to Henry and another teammate Chris and two girls. Luke stated that he knew that one of the girls is named Rory because she has been with Henry other times since then. Luke stated that Allison and Lizzy, the basketball team manager, came up to them. Luke stated that Allison went right up to Henry and “got all handsy” with him. When asked what he meant by “handsy,” Luke stated, “She hugged him, and I think she kissed him on the cheek and then put her hand around his waist.” Luke stated that Henry seemed weirded out because he tried to distance himself from her. Luke stated that Henry also made a comment about how much Allison had to drink. Luke stated that Allison then “got all pissed” at Henry and left the party.

When asked where he would put Allison on the intoxication scale when he saw her at the party, Luke stated, “Maybe a six. She was definitely drunker than I had ever seen her.” When asked why he thought Allison was drunk, Luke stated, “She seemed more like animated than usual, and her mood was sort of all over the place. Like when we first saw her, she was really friendly but then as soon as Henry made that comment about her being drunk, she got really mad.”

#### *Lizzy’s Account*

Lizzy stated that she knows Henry and Allison because she is the manager for the basketball team. Lizzy stated that during the last weekend of January, she went to a party with Allison after the basketball game. Lizzy stated that she and Allison had some drinks and just hung out. When asked where she would put Allison on the intoxication scale when they were at the party, Lizzy stated, “A five or six. She was drinking more than me because she wasn’t driving. She seemed tipsy but she wasn’t super drunk or anything.” Lizzy stated that at one point, Allison saw Henry with a few other people and wanted to say hi. Lizzy stated that she is not exactly sure what

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<sup>18</sup> When told of Allison’s account that she was tipsy but felt aware of her surroundings and was still “with it,” Henry stated, “I don’t know about that. I mean she wasn’t like falling over, but she definitely didn’t seem like she was totally herself.”

happened because she was talking to another member of the team, Chris, but she saw that Allison had her hand around Henry's waist. Lizzy stated that Henry took Allison's hand away and said something. Lizzy stated that Allison then pulled her arm and told her, "Let's go. I gotta get outta here." Lizzy stated that she then drove Allison back to campus. Lizzy stated that she asked Allison what was wrong, but Allison said that she did not want to talk about it.

#### *Callie's Account*

Callie stated that about a week or so after Henry came over, she came home and Allison was on the couch crying. Callie stated that Allison had run into Henry at a party and he treated her "like crap." Callie stated that Allison told her, "he'd been using her and that he was already sleeping with someone else."

#### **After January 2023**

#### *Allison's Account*

Allison stated that she and Henry stopped talking after the party at the end of January. Allison stated, "It was clear I meant nothing to him. It was just sex. I just felt used." Allison stated that over spring break, she talked to one of her friends from home about Henry. Allison stated that her friend mentioned that it didn't sound like everything with Henry had been consensual. Allison stated, "That really hit me, I just hadn't thought about why this had been so difficult for me and then it all started to make sense." Allison further stated, "I was assaulted, it took me so long to even say that." Allison stated that when she returned to campus after spring break, she started talking to other women on campus who had been involved with Henry. Allison stated, "That's when I realized I wasn't the only one. He's done this to other girls. He ignores boundaries and takes what he wants. I just couldn't let that keep happening." Allison stated that she was not sure she would file a report because she was afraid of the backlash on campus, especially since Henry is a popular athlete, but hearing that Henry had done this to others and that another student was filing a complaint against him, she got the courage to report to the Title IX Coordinator.

#### *Henry's Account*

Henry stated that he stopped hanging out with Allison after the party at the end of January. Henry stated, "It wasn't fun anymore, that party made me really uncomfortable." Henry stated that he stopped texting Allison and avoided her at basketball events.

Henry stated, "This whole thing came up because Allison talked to Natalie. Natalie accused me of assault, which is completely false, and then she convinced Allison to file a complaint too."

Allison clearly still wanted to be with me after she says I assaulted her. This whole idea was just planted in her mind by Natalie.”

*Callie’s Account*

Callie stated that Allison talked to her about Henry after spring break. When asked what Allison said, Callie stated, “That was the first time she said anything about assault. I was surprised, because I just didn’t realize it had gone that far. I knew he was a player, but I was pretty upset to learn what she had been going through.”

*Dr. Susan Smith’s Account*

Dr. Smith stated that she is a counselor at the University’s health center. Dr. Smith stated that she met with Allison several times in April 2023. Dr. Smith stated, “Allison shared with me that she had been sexually assaulted by a student on the basketball team.” When asked when she first started meeting with Allison, Dr. Smith stated, “I’m not able to answer that due to my confidential role.” When asked if Allison shared any additional details about the sexual assault, Dr. Smith stated, “She said that this was an individual she had been in a sexual relationship with previously, but that she was considering ending that and expressed that she did not want to engage in sexual activity on the night at issue.” When asked how Allison expressed that, Dr. Smith stated, “I’m not able to share additional details.” When asked if Allison shared the name of the individual she said sexually assaulted her, Dr. Smith stated, “Not that I recall. She may have, but I do not have my notes in front of me.”

## 2023 Title IX/VAWA Investigator Training

### Handout 9

#### **Excerpts from Party Statements in Response to the Investigation Report**

##### Excerpt from Allison's Response to the Investigation Report

Henry never told the police that I “helped” him take off my underwear. Obviously, he was willing to lie to the investigator, but not to the police.

Several witnesses mentioned that Henry has a reputation for using women. Those statements should have been included in the report. This is how guys like Henry get away with violating women over and over again.

##### Excerpt from Henry's Response to the Investigation Report

Allison only made up these allegations after Natalie convinced her to. If she thought I had raped her, why would she throw herself at me the next weekend at the party?

Allison's counselor's testimony should not be considered. She refused to answer so many questions. She had to have been coached by Allison about what she was and was not allowed to say. She should either have to answer all of the questions or have her testimony thrown out.

## 2023 Title IX/VAWA Investigator Training

### Handout 10

#### Summary of Hearing

- The hearing panel heard from the parties and all of the witnesses in the investigation report. Their testimony was generally consistent with the accounts they provided to the investigator and no additional information was provided, except for the following:
  - At the request of Allison, the panel called Rory, the female student who was with Henry at the party on January 28, 2023. Rory stated that Allison came up to Henry at the party, gave him a hug, and “kinda let her hands linger on him.” Rory stated that Henry seemed “annoyed” by it, but “that’s only because he was wanting to hook up with [Rory] that night.” Rory stated that Henry “treated Allison like crap and said something about her drinking too much. I felt bad for her.”
  - When Allison’s advisor asked Henry why he didn’t tell the police about Allison helping him with her underwear, Henry stated, “The officer didn’t ask me for those details. I told those things to the investigator because the investigator specifically asked how I took off her underwear.”

# 2023 Title IX/VAWA Investigator Training

## Handout 11

### Excerpts from Adjudicator Outline

#### *\*Review Policy definitions in handout #6\**

#### **Allison's Allegations Against Henry**

##### Allison's Allegation of Sexual Assault

- Allison alleged that Henry engaged in sexual assault in the form of non-consensual sexual penetration.
- What sexual contact occurred:
  - Did Henry engage in vaginal penetration of Allison?.....Yes No
    - (While the parties agree that other sexual contact occurred, the vaginal penetration is the only sexual contact that Allison alleged was non-consensual.)
- For each sexual contact you found occurred, who initiated the contact:
  - Did Henry initiate vaginal penetration of Allison?.....Yes No
- If Henry initiated the sexual contact, did Allison consent to the sexual contact:
  - Did Allison consent to Henry vaginally penetrating her?.....Yes No

**Do you find Henry responsible for Sexual Assault?.....Yes No**

#### **Rationale for finding:**

##### Allison's Allegation of Sexual Exploitation

- Allison alleged that Henry engaged in Sexual Exploitation in the form of removing Allison's underwear without her consent.
- What conduct occurred:
  - Did Henry remove Allison's underwear?.....Yes No
- Did Henry take non-consensual or abusive sexual advantage of Allison for anyone's advantage or benefit other than Allison's?.....Yes No



- For reference, examples of Sexual Exploitation may include, but are not limited to:
  - Intentional removal or attempted removal of clothing covering an individual’s intimate parts without consent.

**Do you find Henry responsible for Sexual Exploitation?.....Yes No**

**Rationale for finding:**

**Sanctions for Henry (if applicable):**

**Rationale for sanctions:**

**Henry’s Allegations Against Allison**

Henry’s Allegation of Non-Title IX Sexual Harassment

- Henry alleged that Allison engaged in unwelcome conduct on the basis of sex including unwelcome kissing, unwelcome touching of a sexual nature, and unwelcome sexual comments toward him.
- What conduct occurred:
  - Did Allison touch Henry’s waist and lower back?.....Yes No
  - Did Allison put her hand on Henry’s chest?.....Yes No
  - Did Allison kiss Henry on the cheek multiple times?.....Yes No
  - Did Allison try to kiss Henry on the lips and kiss his jaw area when he turned his head?.....Yes No
  - Did Allison say to Henry, “Let’s go to my place”?.....Yes No
- Was the conduct you found to have occurred on the basis of sex?.....Yes No
- For conduct that was on the basis of sex, was the conduct unwelcome?.....Yes No
- For conduct that was on the basis of sex and unwelcome, would a reasonable person determine the conduct to be so severe or pervasive that it substantially and unreasonably interfered with Henry’s employment or education, or created an intimidating, hostile, or offensive employment or educational environment?.....Yes No

- In making this determination, consider the collective impact of the conduct that you found to be on the basis of sex and unwelcome.

**Do you find Allison responsible for Non-Title IX Sexual Harassment?.....Yes No**

**Rationale for finding:**

**Sanctions for Allison (if applicable):**

**Rationale for sanctions:**