



D. STAFFORD
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Sexual Misconduct Decision Maker Class

Presented by:

**A D. Stafford & Associates
Title IX Team Member**

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Have you joined NACCOP yet? If not, go to www.naccop.org to become a member of this professional association supporting Clergy Compliance Officers.

Once an institution is a member, individual membership is \$50.00. You can sign up your entire Clergy Compliance Committee for membership!

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Decision-Maker Agenda

Day 1

Module 1: The Law and the Hearing Process

- The Title IX Grievance Process
 - Legal Overview
 - Definitions
 - Jurisdiction
 - Hearing Basics
- Conflict of Interest and Bias

Module 2: Hearing Preparation

- Steps of the Formal Process
- Hearing Attendees
- Hearing Preparation
- Q and A

Day 2

Module 3: The Hearing

- Evidence and Relevancy
- Roles at the Hearing
- The Hearing agenda
- Relevancy determinations
- Difficult situations
- Case Studies

Module 4: Findings and Appeals

- Weighing the Evidence
- Elements of a violation
- Findings, Sanctions and Remedies
- Written Determination
- Appeals and Other Decision-makers
- Case Studies
- Q and A



TITLE IX

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To receive a certificate for classes held by D. Stafford & Associates, LLC or the National Association of Clerly Compliance Officers and Professionals (NACCOP), attendees must attend the majority of the class. This includes in-person classes and virtual classes. DSA and NACCOP understands that attendees may need to miss class for a legitimate reason for longer periods of time or may need to leave the room during a class for a few minutes to take a phone call or attend to other business. That said, our general rule of thumb for our 4 and 5 day classes is that if an attendee misses more than 1 hour of class time, they will not be issued a certificate of completion for the class. If the class is a 1, 2 or 3 day class, the amount of time that can be missed may be less, as classes of those lengths are more condensed.

For virtual classes, because we can't see all of the attendees all of the time like we can in an in-person class (based on the attendee controlling whether they have their camera turned on or not), the criteria for receipt of a certificate is determined based on missed class time (no more than 1 hour or less, depending on the length of the class) and participation in the Attendance Polls that will be launched throughout each day of class. Attendance polls are left up for approximately 5 minutes and the instructor notifies the attendees that a poll is being launched before doing so, to ensure that everyone who is there can/will respond to the poll. If there is an issue with responding to the attendance poll, the attendee would need to **immediately notify the Administrative Support person** in the course via the chat function in the zoom platform. That way we can immediately resolve any issues and give the attendee credit for being in attendance for the poll. Notifying us hours or days after having an issue with not being able to complete the attendance poll will not allow us to give the attendee credit for being in class during the poll.

Our classes qualify for credit toward a Master's Degree at New England College (and regardless if you decide to seek credit or not, but accreditation requirements mandate that we follow the same standards for all class attendees), so we have strict attendance standards that we follow for issuance of a certificate, which equates to verification that the participant attended the complete class. For DSA and NACCOP, issuance of a Certificate of Completion is verification of that fact.

If the attendee missed class for a legitimate reason, that doesn't mean that an attendee wasn't there for much of the class and that they didn't benefit from that attendance. It just means that based on the missed time and/or attendance polls (in virtual classes only), we aren't able to issue you a certificate of completion.

If an attendee has to miss time in class, the instructions attendees receive before the class provide instructions for notifying the Administrative Support person about the time that will be missed **IN ADVANCE**, so we can jointly identify what blocks of instruction will be missed, and the DSA/NACCOP team will then work with the attendee to see if we can get them in a future class module to make up that material, which would result in us being able to issue the attendee a certificate. We provide this service and opportunity at no additional cost, as we want each attendee to finish the class and get a certificate of completion. Effective communication by each attendee is the key to this option.



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Catherine Cocks, M.A.
Consultant, Student Affairs, Title IX, and
Equity Compliance Services



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

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

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

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

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

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

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



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



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

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

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

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



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Devonshire currently serves as an Associate for D. Stafford & Associates, a highly reputable consulting firm specializing in delivering on organizational, physical security, vulnerability and arming assessments; Clery Act compliance audits; assessments of Title IX compliance; Behavioral Intervention Team and Student Conduct Assessments and Training; and a host of other services related to security, safety and compliance for institutions of higher education.



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Adrienne Meador Murray, Executive Director of Training and Compliance Activities



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

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

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



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

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



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Ann Todd

Consultant, Equity Compliance and Civil Rights Investigations



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

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

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

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

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



Decision-Makers in Title IX Hearings

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COURSE AGENDA

- Module 1: The Law and the Hearing Process
- Module 2: Hearing Preparation
- Module 3: The Hearing
- Module 4: Findings and Appeal

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Introduction



Name



Role on Campus

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Course Logistics

- Camera
- Breaks
- Interact
- Attendance

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The Law and the Hearing Process

The 2020 Title IX Regulations and the Formal Process

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Agenda

- The Title IX Grievance Process
 - Legal Overview
 - Definitions
 - Jurisdiction
 - Hearing Basics
- Conflict of Interest and Bias

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Interpreting Laws



Law



Regulations



Substantive
guidance



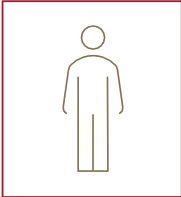
Case law

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Definitions: Parties/Witnesses



Complainant

Respondent

Witnesses

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Definitions: Key Terms



Actual Knowledge

Formal Complaint

Supportive Measures

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Definitions: Title IX Personnel



Title IX Coordinator

Investigator

Decision-Maker

Informal Resolution Facilitator

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New Regulations

For it to be covered under Title IX, it must meet:

- New Definitions
- Jurisdiction of person
- Jurisdiction of activity



If it does NOT meet these requirements...

- Mandatory dismissal
- Can go to different resolution process

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Jurisdiction of Person



"At the time of filing a formal complaint...the complainant must be participating in or attempting to participate in the education program or activity"



The institution must exercise control over the Respondent



All regulations apply to students and employees

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Jurisdiction of Activity

- Behavior must occur as part of the “education program or activity”
 - Locations, events, or circumstances over which the recipient exercised substantial control over the context in which the sexual harassment occurs
 - And any building owned or controlled by a student organization that is officially recognized
- Must occur in the United States (including US territories)

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Definition of Sexual Harassment under Title IX

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

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

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PRONG 1: Quid Pro Quo



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



“This for that” harassment



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

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



Not the same Title VII "hostile environment" or 2001 Guidance



First Amendment protections



Not a zero tolerance policy

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PRONG 3: The VAWA Offenses



Sexual Assault

Rape
Fondling
Incest
Statutory Rape



Intimate Partner Violence

Dating Violence
Domestic Violence



Stalking

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§106.30 Definitions - CONSENT

*The Assistant Secretary
will not require recipients to
adopt a particular definition
of consent with respect to
sexual assault*



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Definitions/consent/jurisdiction at your institution:
Where do the non-Title IX sexual misconduct cases go?

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Other Considerations



First Amendment



Retaliation



Bias/Conflict of
Interest



State Laws

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Three Primary Stages



Intake



Investigation



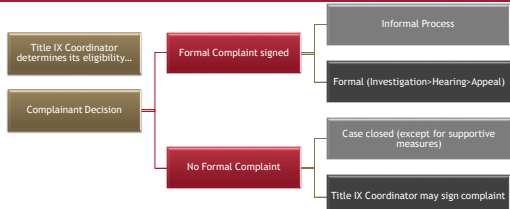
Resolution

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Title IX Case Flowchart Post Outreach

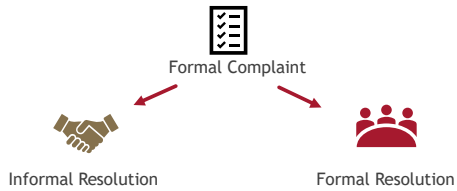


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Resolution Options

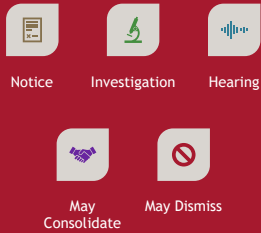


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Formal Resolution



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Hearing Basics

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Live



Cross Examination



Advisors

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Standard of Evidence

Preponderance

Clear and Convincing

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Conclusions

Sanctions/Remedies

Written
Determination

Options for Appeal

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Conflicts of Interest



Roles on
campus



Past
employment



Volunteering



Interactions
with parties

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Recognizing Bias



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Bias--From Regs

- Bias against Complainants or Respondents
- Bias against THIS Complainant or Respondent
- Sex Stereotyping

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Bias

Parties

Race

Gender

Gender identity

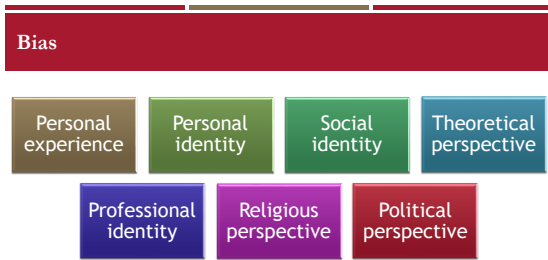
Sexual orientation

Nationality

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Preparation, Preparation, Preparation

Pework and planning before the big day

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Agenda

- Steps of the Formal Process
- Hearing Attendees
- Hearing Preparation

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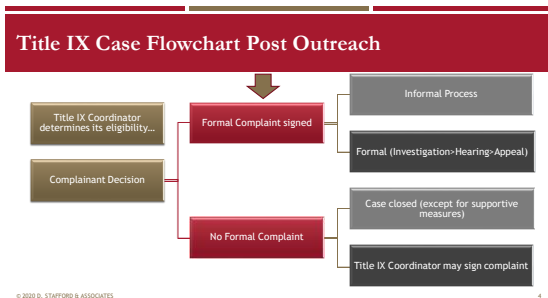
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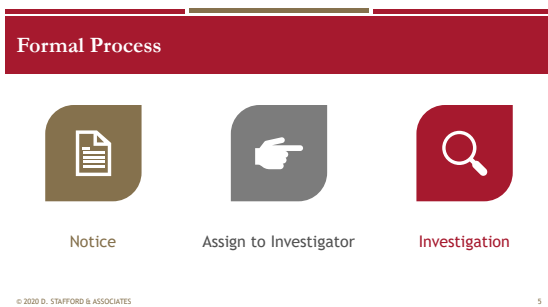
STEPS IN THE FORMAL PROCESS

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Ability to Utilize Evidence



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Versions of the Report



Preliminary Report:

Scope
Methodology
Evidence Obtained



Final Report:

Scope
Methodology (edited)
Evidence Obtained
Summary of Relevant Evidence



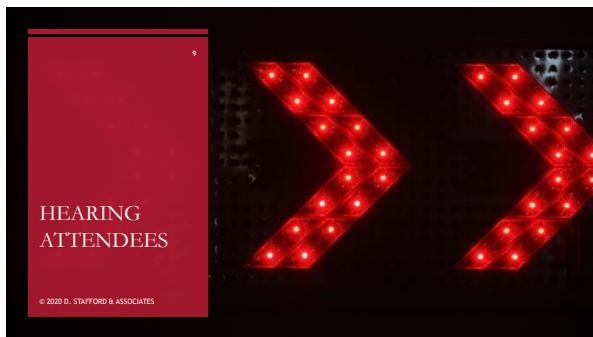
Written Determination:

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

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Decision-makers for the hearing
Decision-makers on appeal

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Decision-maker Rules



No previous role



Requests for removal for
bias/conflict

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Hearing Attendees



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Hearing - LIVE



Cross-examination -
directly, orally, and in real
time



Option for separate rooms
with technology to hear/see
or virtual

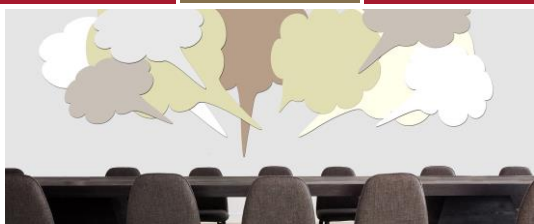


Recording -
audio, video or
transcript

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Hearing technology

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Pre-hearing Steps
Role of the Decision-maker pre-hearing

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Rules and Process (from the Regs)

Recipients may adopt rules that govern the conduct and decorum of participants at live hearings so long as such rules comply with these final regulations and apply equally to both parties

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Decision-maker Pre-work



Review report



Review allegations



Review policy



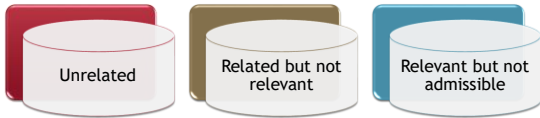
Draft relevant questions

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Decision-maker Determinations on Evidence

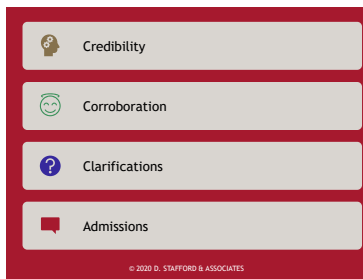


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Decision-maker Questions



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Welcome to the Show

The Hearing, the Findings, and the Appeal

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Agenda

- Evidence and Relevancy
- Roles at the Hearing
- The Hearing Agenda
- Relevancy Determinations
- Difficult situations

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Types of Evidence



Real evidence



Demonstrative



Documentary



Testimonial

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Statements



Investigator
Interviews



Written
Statements



Formal
Complaint



Other

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Other Sources of Evidence

Photographs

Text messages

Social media/dating
apps

Documents
(diagrams, memos,
letters, notes)

Voicemail

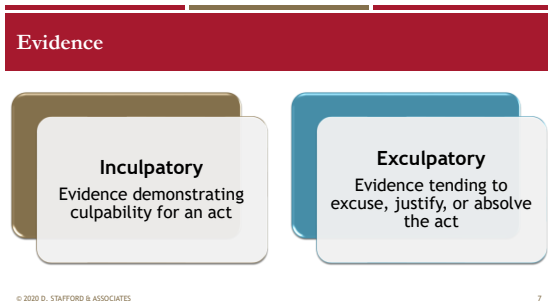
Phone logs

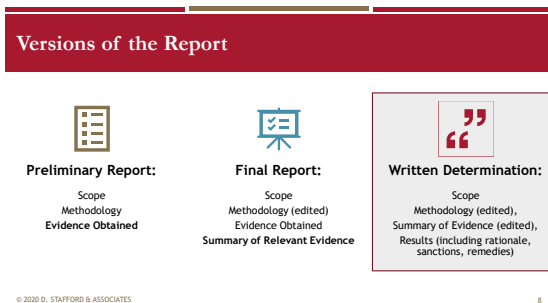
Guest lists

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What Does Relevancy Mean?



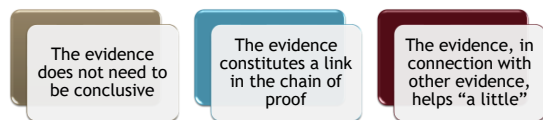
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- Directly related to the issue and helps prove or disprove the issue
- Fact must be material to an issue in the case
- Makes something more/less true or more/less false

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Other Ways to Put It...



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Relevancy Examples



Admissions



Eyewitness



Credibility

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Relevancy Examples



Background



Charts



Floorplans

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Relevant Examples



Research



Character and
Character Traits



Expert Testimony

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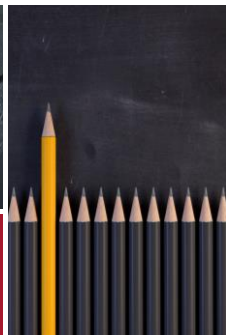
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WHAT IS NOT RELEVANT?

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Not Applying Federal Rules of Evidence

Rule 403:—The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 404:—Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

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NOT RELEVANT (from the Regs)

Past Sexual Behavior

- Complainant's sexual predisposition or prior sexual behavior unless...
 - Offered to prove that someone other than the respondent committed the conduct alleged or
- Complainant's prior sexual behavior with respect to the respondent and are offered to prove consent

Privileged Information

- Physician, psychiatrist, psychologist records in connection with the provision of treatment to the party unless
 - Voluntary, written consent

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Not Relevant



Repetitive



Related By Not Relevant



New Evidence - Is It Relevant?

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STAYING ON POINT

- Allegation
- Definitions
- Summary of Relevant Evidence

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Relevancy Determination



“Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.”

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Advisor

1) Cross-examination of Other Party and Witnesses

2) No Training Required
(Recommended if appointed)

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Cross-examination – The Preamble

The Department clarifies here that conducting cross-examination consists simply of posing questions intended to advance the asking party's perspective with respect to the specific allegations at issue . . . (Fed. Reg. 30319)

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Role of the Decision-maker



Relevancy
Determinations



Credibility
Assessment



Make Finding



Written
Determination

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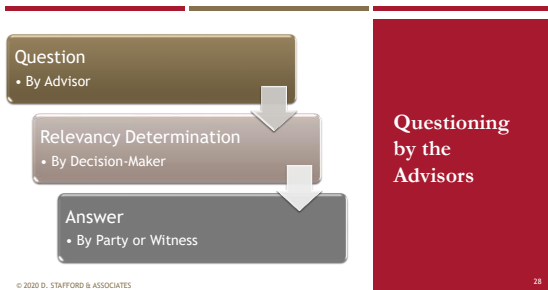
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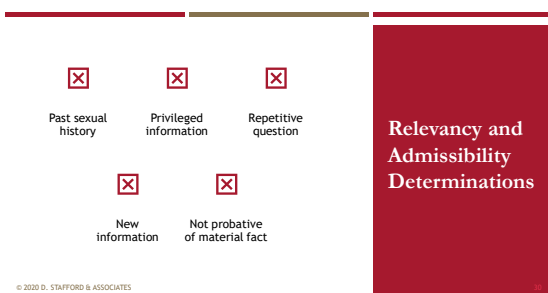
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Not a lengthy or complicated explanation



Logic and common sense



Shows neutrality



May trigger appeal ("procedural irregularity")

Reason for Relevancy Determination

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"New Evidence" at the Hearing

APPEAL GROUND: "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."



Allow



Disallow



Stop Hearing

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Decision-maker Questions



Statement of Accuracy



Credibility



Clarity

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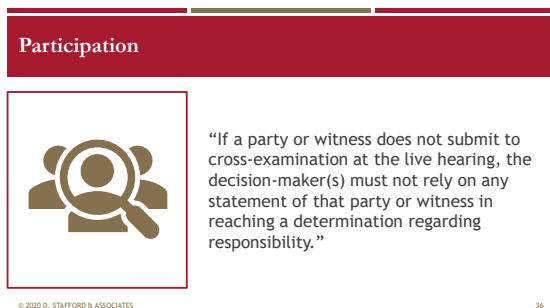
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Attendance



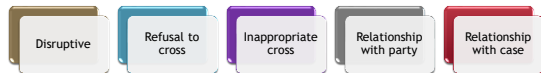
"The decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions."

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Advisor Issues



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Decision-maker issues (appeal grounds)



Procedural Error



New Evidence



Bias/Conflict

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Situational issues



Safety



Disability



Length



Phrasing

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Findings and Appeals

1



Agenda

- Weighing the Evidence
- Elements of a Violation
- Findings, Sanctions and Remedies
- Written Determination
- Appeals and Other Decision-makers

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2

2



3



From the Regs...

"must objectively evaluate all relevant evidence (inculpatory and exculpatory) but retains discretion, to which the Department will defer, with respect to how persuasive a decisionmaker finds particular evidence to be"

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Fact Considerations



Weight



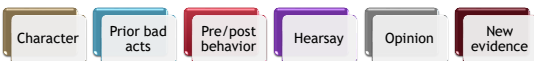
Credibility

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Weight/Relevance



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- Specific details
- Inherent plausibility
- Internal consistency
- Corroborative evidence

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Assessing
Credibility
from the Regs

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Credibility

8

Perception

Memory

Deception

Motivation

Bias

Plausibility

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Faulty memory

Inaccurate facts

Omissions

False Statements

9

Truth seeking

9

9

Ability to Remember



Passage of
time



Alcohol



Blackout



Peripheral
details



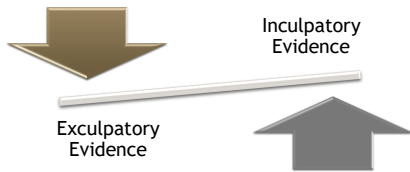
History of
memory

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Decision-maker Bias *from the Regs*



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Stress, Trauma, and Memory



Stress



Trauma

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Response



Reflex



Habit

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Impact on Memory



Details



Time and Context

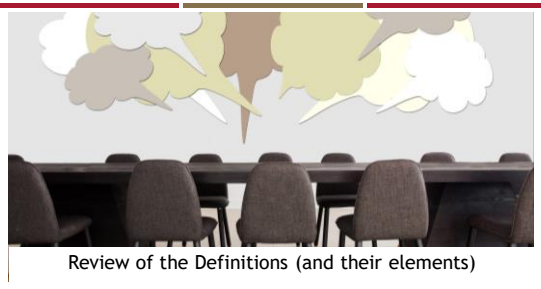
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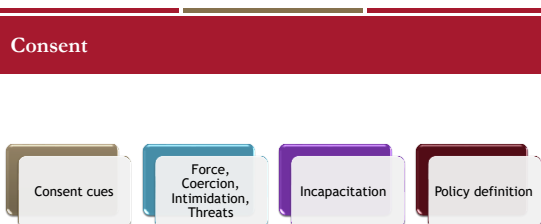
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Physical Force

Holding down

Forced to touch

Level of violence

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Coercion

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

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Intimidation



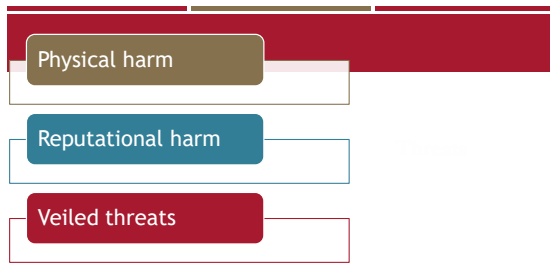


Physical Verbal

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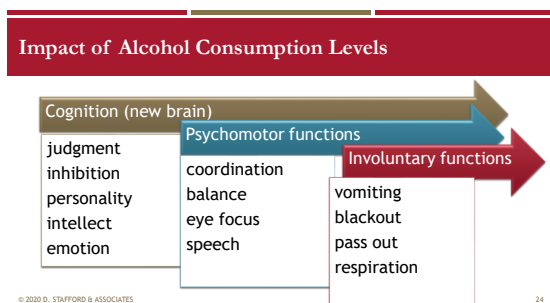
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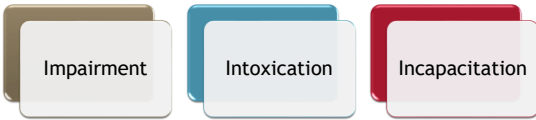


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Levels of Consumption



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Incapacitation

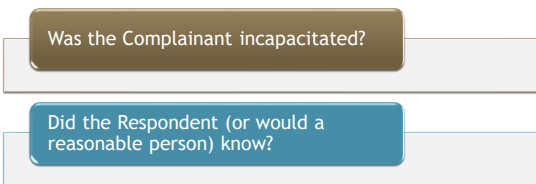


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Two-Step Determination



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Formal Resolution – Making a Finding



Policy language -
Alleged violations



Weighing the
evidence



Determined
behaviors



Standard of
evidence

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Disciplinary Sanctions and Remedies



Sanctions



Remedies

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Formal Resolution – Disciplinary Sanctions

A recipient may impose disciplinary sanctions upon a respondent after a grievance process that complies with § 106.45.

"The Department does not prescribe whether disciplinary sanctions must be imposed, nor restrict recipient's discretion in that regard. As the Supreme Court noted, Federal courts should not second guess schools' disciplinary decision, and the Department likewise believes that disciplinary decisions are best left to the sound discretion of recipients."

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Formal Resolution - Disciplinary Sanctions

Status

- Expulsion, separation, probation

Prevention

- Protective measures, restrictions, separation

Educational

- Action plans

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Formal Resolution – Disciplinary Sanctions



Aggravating factors



Mitigating factors

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Formal Resolution – Disciplinary Sanction

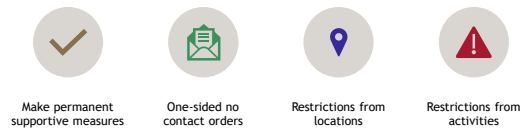


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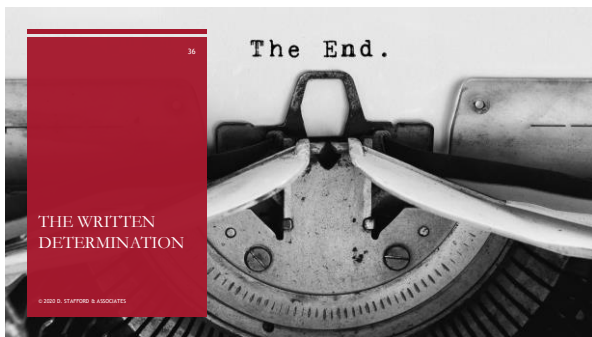
Formal Resolution – Remedies



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Determination Regarding Responsibility

Allegations

Procedural steps

Findings of fact

Conclusion/application

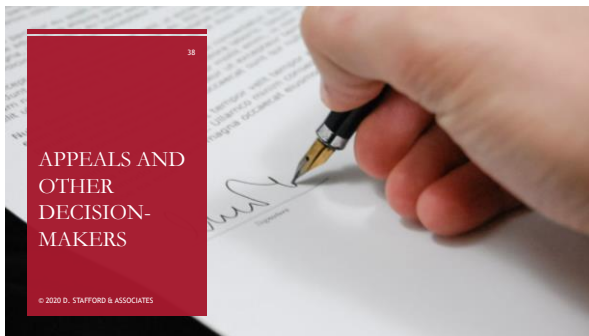
Rationale

Appeal procedures

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Title IX Required Appellate Grounds

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

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Role of Appellate Decision-Maker



Follow the Appellate Basis



Not A Substitute of Judgement



Respect the Credibility of Previous Decision-maker

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ADDITIONAL CONCERNS



Run a fair, thorough, and impartial process



Let your morale compass guide you



Do what your policy says you will do



Do what the regulations tell you to do

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