



TITLE IX/VAWA INVESTIGATOR TRAINING

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TELL US ABOUT YOURSELF

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

1. Not applicable (I have a different role in the process)
2. None
3. Less than 10
4. 10 or more

2



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



3



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



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SEXUAL VIOLENCE STATISTICS 



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SEXUAL VIOLENCE STATISTICS 

- United Educators’ Study
 - 28% of reports resulted in lawsuits, demand letters, or federal Title IX complaints
 - 78% involved one or both parties consuming alcohol
 - 40% of complainants delayed reporting, waiting, on average, nearly a year after the incident
 - 80% of complainants were freshmen or sophomores
 - 90% of complainants knew the respondent



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THE LEGAL LANDSCAPE



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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

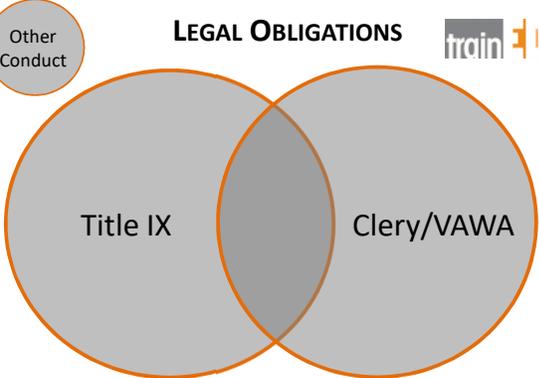


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8

Other Conduct

LEGAL OBLIGATIONS



Title IX

Clery/VAWA

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9

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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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
 - 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

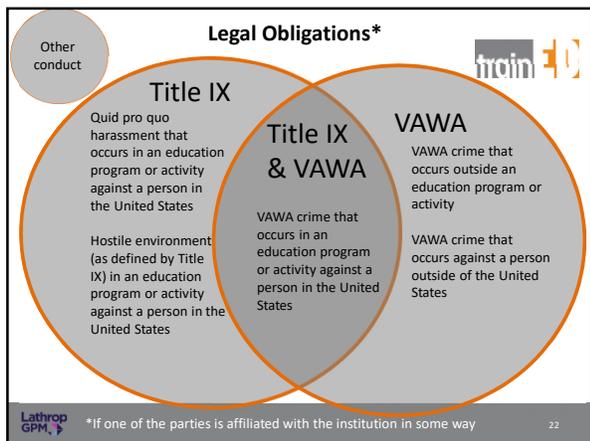


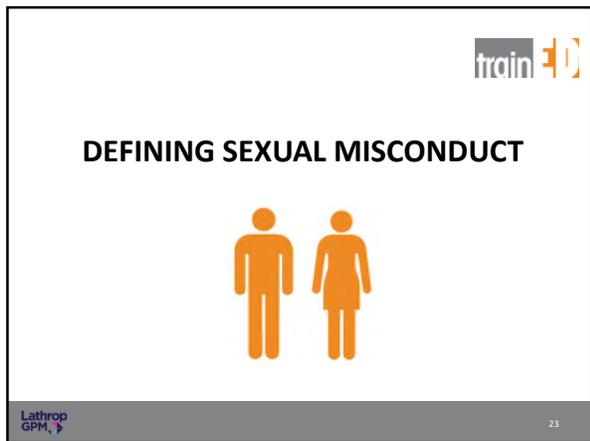
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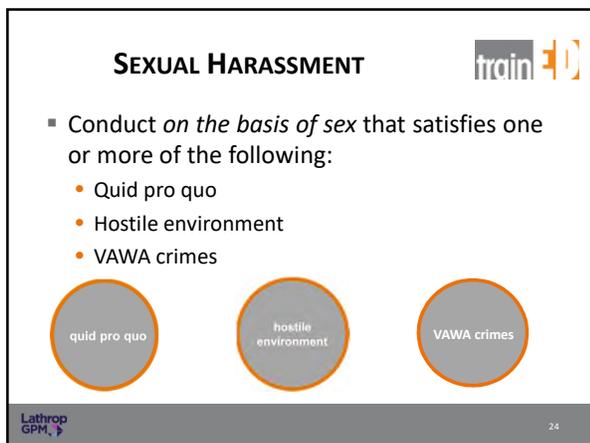
VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT (VAWA) 

- 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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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



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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



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HOSTILE ENVIRONMENT – 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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HOSTILE ENVIRONMENT – 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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SEXUAL HARASSMENT

- VAWA Crimes
 - Sexual assault
 - 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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CLERY/VAWA CRIMES – SEXUAL ASSAULT

- Definition in Clery/VAWA:
 - Rape
 - Fondling
 - Incest
 - Statutory Rape



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VAWA CRIMES – SEXUAL ASSAULT 

- **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object or oral penetration by a sex organ of another person without the consent of the victim
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity

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VAWA CRIMES – SEXUAL ASSAULT 

- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent



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VAWA CRIMES DEFINITIONS 



- **Domestic Violence:** committed by current/former spouse, intimate partner, co-parent, cohabitant, or others protected under domestic or family violence law



- **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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SEXUAL HARASSMENT 

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



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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
 - Everything is given to parties and their advisors
 - 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)

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TRAINING REQUIREMENTS 

- Train Title IX Coordinator, investigator, decision-maker, or facilitator of informal resolution process on (cont.)
 - Relevant evidence and how it should be used during a proceeding (annual)
 - Proper techniques for questioning witnesses (annual)
 - Basic procedural rules for conducting a proceeding (annual)
 - Avoiding actual and perceived conflicts of interest (annual)
 - 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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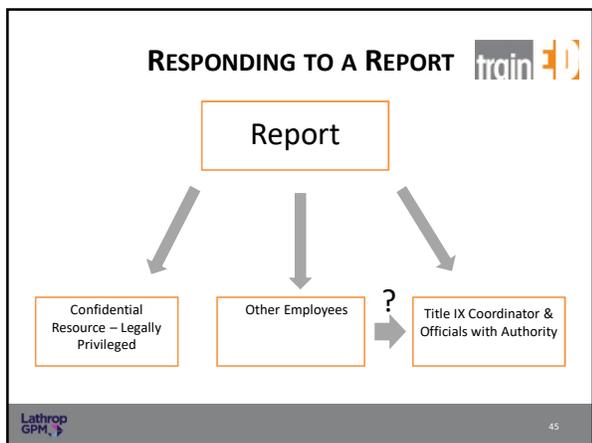
RECORDKEEPING REQUIREMENTS 

- 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, adjudicators, appeal officers, and other involved officials, as well as training received by parties

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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 individual reporting to be a victim of 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)
 - Discuss availability of supportive/interim measures
 - Consider complainant's wishes with respect to supportive/interim measures
 - Inform complainant of the availability of supportive/interim measures with or without the filing of a formal complaint
 - Explain the process for filing a formal complaint
 - Notify alleged victim 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

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



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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 FORMAL COMPLAINT



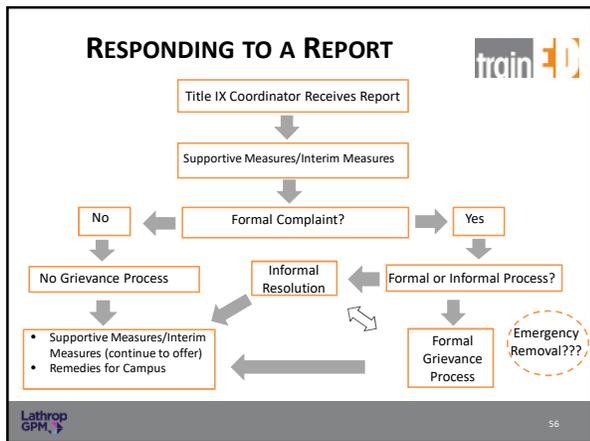
- Formal complaint
 - VAWA: No specific requirements
 - Title IX:
 - Document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment
 - At the time of filing a formal 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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RESPONDING TO A FORMAL COMPLAINT – SUPPORTIVE/INTERIM MEASURES

- Review support/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 

- 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)
 - Must allow *access* for sexual assault/VAWA
 - Must provide *copy* for Title IX
 - Participate in pre-hearing meeting (if any)
 - Identify/present character witnesses
 - Written notice of outcome of complaint



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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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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 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
 - Some timeframes are set by the regulations (Title IX)



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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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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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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

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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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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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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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Q & A 



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WORKING WITH THE PARTIES



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TELL US ABOUT YOUR EXPERIENCE **train**

When assessing the credibility of the complainant, the following are factors that could cause me to find the complainant less credible:

1. Complainant does not want Respondent to get in trouble
2. Complainant continues hanging out with Respondent periodically after the alleged assault
3. A witness reports that she saw Complainant 10 minutes after the alleged assault and that Complainant did not seem upset
4. Complainant did not resist or seek help
5. The police investigated but did not press charges

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TELL US ABOUT YOUR EXPERIENCE **train**

When assessing the credibility of the respondent, the following are factors that could cause me to find the respondent less credible:

1. Respondent alleged that Complainant violated the mutual no contact directive
2. Respondent insisted on receiving more specific information about the allegations before participating in an interview
3. Respondent is very defensive in the interview
4. Respondent added more detail to Respondent's account in the second interview
5. Respondent hired an attorney as an advisor

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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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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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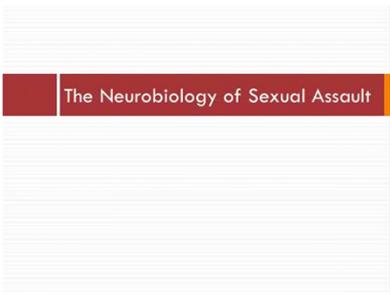
COMMON VICTIM RESPONSES

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



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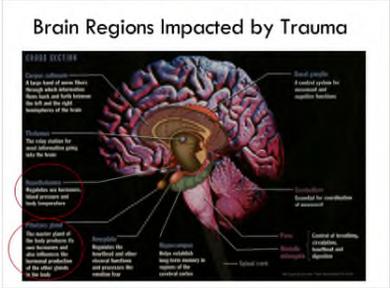
NEUROBIOLOGY OF SEXUAL ASSAULT



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NEUROBIOLOGY OF SEXUAL ASSAULT 

Brain Regions Impacted by Trauma



Brain regions and functions:

- Cerebrum:** A large part of your brain through which information that is sent to and from the rest of the body.
- Brain plasticity:** A neural system for emotional and cognitive functions.
- Thalamus:** The relay station for your sensory and motor signals.
- Hypothalamus:** Regulates all hormones that primary and secondary sex characteristics.
- Pituitary gland:** The master gland of the body produces its own hormones and releases your other hormones into the blood stream.
- Brainstem:** Regulates the breathing and other basic functions and processes the sensory input.
- Midbrain:** Relays messages long distance at various points of the central cortex.
- Pons:** Control of breathing, swallowing, heartbeat and digestion.
- Medulla:** Control of breathing, swallowing, heartbeat and digestion.
- Spinal cord:** Control of breathing, swallowing, heartbeat and digestion.

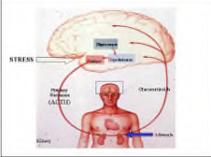
Lathrop GPM  82

NEUROBIOLOGY OF SEXUAL ASSAULT 

Brain-Body Regions Impacted by Trauma

HPA Axis

Balances body following stress by releasing of various hormones/chemicals



HPA Axis: Balances body following stress by releasing of various hormones/chemicals.

SOURCE: Southwick et al, 2005

Lathrop GPM  83

NEUROBIOLOGY OF SEXUAL ASSAULT 

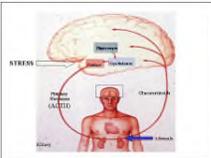
Brain-Body Regions Impacted by Trauma

Catecholamines: Fight or flight response

Cortisol: Energy available

Opioids: Prevent pain

Oxytocin: Promotes good feelings



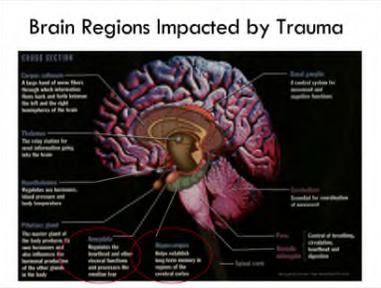
Chemicals: Catecholamines, Cortisol, Opioids, Oxytocin.

SOURCE: Southwick et al, 2005

Lathrop GPM  84

NEUROBIOLOGY OF SEXUAL ASSAULT 

Brain Regions Impacted by Trauma



Cerebral cortex
A large part of your brain through which information flows up and down between the left and right hemispheres of the brain.

Hippocampus
The brain region for your short-term memory and learning.

Amygdala
Responsible for emotions, fear, primary and long-term memory.

Hypothalamus
The lower part of the brain performs its various functions and maintains your body temperature.

Pituitary gland
Responsible for releasing hormones and controlling the activity of other glands in the body.

Brain stem
Responsible for vital functions like breathing and heart rate.

Cerebellum
Responsible for coordinating movement and balance.

Spinal cord
Responsible for relaying messages between the brain and the rest of the body.

Basal ganglia
A control system for movement and cognitive functions.

Brain
Control of thoughts, emotions, and behavior.

Lathrop GPM  85

NEUROBIOLOGY OF SEXUAL ASSAULT 

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., 2005

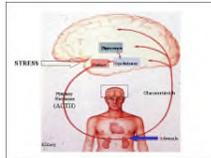
Lathrop GPM  86

NEUROBIOLOGY OF SEXUAL ASSAULT 

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., 2005

Lathrop GPM  87

NEUROBIOLOGY OF SEXUAL ASSAULT 

What Happens During A Sexual Assault



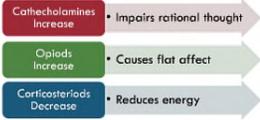
```
graph LR; A[Amygdala Detects Threat] --> B[Activates Hypothalamus]; B --> C[HPA Axis Kicks In Hormonal Flood];
```

SOURCE: Barks, 2002; Southwick et al., 2005

Lathrop GPM  88

NEUROBIOLOGY OF SEXUAL ASSAULT 

What Happens During A Sexual Assault



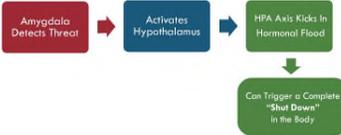
```
graph TD; A[Catecholamines Increase] --> B[Impairs rational thought]; C[Opioids Increase] --> D[Causes flat affect]; E[Corticosteroids Decrease] --> F[Reduces energy];
```

SOURCE: Barks, 2002; Southwick et al., 2005

Lathrop GPM  89

NEUROBIOLOGY OF SEXUAL ASSAULT 

What Happens During A Sexual Assault



```
graph TD; A[Amygdala Detects Threat] --> B[Activates Hypothalamus]; B --> C[HPA Axis Kicks In Hormonal Flood]; C --> D[Can Trigger a Complete 'Shut Down' in the Body];
```

SOURCE: Barks, 2002; Southwick et al., 2005

Lathrop GPM  90

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: Pace et al., 2007; O'Leary et al., 1993; Heit et al., 2003

Lathrop GPM  91

COMMON BEHAVIORS DURING ASSAULT



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

Lathrop GPM  92

MEMORY

What Happens During A Sexual Assault

Lathrop GPM  93

MEMORY 

What Happens During A Sexual Assault

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

SOURCE: Koss et al., 1985, 1996; Besselbaum et al., 2009; Rubin et al., 2008

Lathrop GPM  94

MEMORY 

Case Study: Memory Fragmentation

- 25 year-old woman
- Raped by a friend's brother at 4th 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."

Lathrop GPM  95

MEMORY 

Case Study: Memory Fragmentation

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"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."

Lathrop GPM  96

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."

Lathrop GPM  97

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

Lathrop GPM  98

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

Lathrop GPM  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

Lathrop GPM,  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?

Lathrop GPM,  101

IMPACT OF CULTURE



- Survivors' experiences of sexual assault are not universal
- A survivor's cultural background is one of many factors that may impact the way that the individual reacts to sexual assault
- Different cultural backgrounds will influence individuals in different ways
- Be aware of and sensitive to possible cultural influences
- Incorporate training as appropriate

Lathrop GPM,  102

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

Lathrop GPM,  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

Lathrop GPM,  104

SERVING IMPARTIALLY 

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

Lathrop GPM,  105

SERVING IMPARTIALLY 

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



Lathrop GPM,  106

SERVING IMPARTIALLY 

- Separate support/advocacy services from investigation/adjudication process
- Conflation of roles can:
 - Impact thorough assessment of the facts
 - Create distrust/confusion by complainant
 - Give appearance of bias/lack of impartiality



Lathrop GPM,  107

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



Lathrop GPM,  108

**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

Lathrop GPM,  109

**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



Lathrop GPM,  110

**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

Lathrop GPM,  111

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

Lathrop GPM,  112

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,  113



Q & A



Lathrop GPM, 

train 

STAGES OF INVESTIGATION



Lathrop GPM,  115

train 

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,  116

train 

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,  117

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,  118

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,  119

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,  120

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,  121

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,  122

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,  123

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,  124

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
 - Obtain commitment to tell the truth

Lathrop GPM,  125

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,  126

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,  127

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,  128

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,  129

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

Lathrop GPM, 

CASE STUDY  

Lathrop GPM,  131

CASE STUDY 

- On March 14, 2021, Madison Moore made a complaint of sexual misconduct against Josh Johnson.
- The Title IX Coordinator calls you and tells you that Madison’s friend Chloe originally reported the alleged assault. The Coordinator tells you that Madison made her complaint the next day.

Lathrop GPM,  132

CASE STUDY



Sexual Assault/Harassment Complaint Form

COMPLAINANT NAME: Madison Moore
ADDRESS: 1234 University Circle
DATE OF REPORT OF ALLEGED POLICY VIOLATION: February 9, 2021
RESPONDENT NAME: Josh Johnson
ADDRESS: 999 College Lane

TITLE IX COORDINATOR SUMMARY OF MADISON'S ORAL REPORT:
 Madison reported that she was at a party with Josh on February 9. Madison reported that Josh pressured her to drink and got her drunk. Madison reported that she went back to Josh's dorm room with him after they left the party together. Madison reported that Josh touched her breasts and engaged in sexual intercourse with her when she was unable to consent due to incapacitation.

Lathrop GPM,  133

CASE STUDY



Excerpt of Notice of Allegations

Madison alleges that you engaged in sexual assault in violation of the Sexual Misconduct Policy. Specifically, Madison alleges as follows:

- On February 9, 2021, in your dorm room, you engaged in sexual contact, including penetration, of Madison without her consent.

Lathrop GPM,  134

CASE STUDY—DEFINITION OF SEXUAL ASSAULT



Sexual assault is any actual or attempted sexual contact 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,  135

CASE STUDY—DEFINITION OF CONSENT 

Consent means words or overt actions by a person clearly and affirmatively communicating a freely-given present agreement to perform a particular sexual act. 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 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 activity to obtain consent for that activity.

Lathrop GPM,  136

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. The legal age of consent in this state is 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.
- There can be no consent to sexual activity with someone known to be—or who should be known to be—mentally or physically **incapacitated**, as that term is defined below.
- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.

Lathrop GPM,  137

CASE STUDY—DEFINITION OF INCAPACITATION 

A person who is incapacitated cannot give valid consent to sexual contact. Incapacitation means the inability to understand the fact, nature, or extent of the sexual situation. Incapacitation may result from mental or physical disability, sleep, unconsciousness, involuntary physical restraint, or from the influence of drugs or alcohol. With respect to incapacitation due to the influence of drugs or alcohol, incapacitation requires more than being under the influence of drugs or alcohol; a person is not incapacitated just because they have been drinking or using drugs.

Lathrop GPM,  138

CASE STUDY—DEFINITION OF INCAPACITATION 

Where drugs and/or alcohol are involved, incapacitation is determined based on the facts and circumstances of the particular situation looking at whether the individual was able to understand the fact, nature, or extent of the sexual situation, whether the individual was able to communicate decisions regarding consent, nonconsent, or the withdrawal of consent, and whether such condition was known or reasonably known to the respondent or a reasonable person in respondent's position. Use of drugs or alcohol by the respondent is not a defense against allegations of sexual misconduct and does not diminish personal accountability or criminal liability. It is the responsibility of the person initiating the specific sexual activity to obtain consent for that activity.

Lathrop GPM,  139

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



Lathrop GPM,  140

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,  141

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,  142

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
 - Obtain commitment to tell the truth

Lathrop GPM,  143

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,  144

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,  145

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,  146

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,  147

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,  148

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,  149

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,  150

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,  151

CASE STUDY  

Ask questions of Madison

Lathrop GPM,  152

CASE STUDY 

- In your initial interview with Madison, Madison tells you that in late January, a few weeks before the party, Josh tried to put his hand into her pants. Madison stated that they were kissing and that Josh then put his hands on her hips and starting applying pressure as he was trying to put his hand down her pants. Madison stated that she then stood up and said she needed to go to bed and that Josh then left.
- What do you do after the interview?

Lathrop GPM,  153

CASE STUDY 

- After speaking with the Title IX Coordinator, the Title IX Coordinator decides to reschedule Josh's interview to allow the Coordinator to revise the notice of allegations. The Coordinator also tells you that Josh has requested some accommodations.
- A few days later, the Title IX Coordinator sends you an updated notice of allegations. The Coordinator also tells you that Josh will have two advisors with him at the interview and that you should allow them to interject if they think Josh misunderstood a question. Finally, the Coordinator tells you that Josh will provide a written account of his response to the allegations and that you can read that and then ask any follow-up questions you have.

Lathrop GPM  154

CASE STUDY 

Excerpt of Amended Notice of Allegations

Madison alleges that you engaged in sexual assault and sexual harassment in violation of the Sexual Misconduct Policy. Specifically, Madison alleges as follows:

- On January 25, 2021, in Madison's dorm room, you attempted to engage in sexual contact with Madison without her consent.
- On February 9, 2021, in your dorm room, you engaged in sexual contact, including penetration, of Madison without her consent.

Lathrop GPM  155

CASE STUDY 



Ask questions of Josh

Lathrop GPM  156

CASE STUDY



- At Josh’s initial interview, Josh requests three breaks in the first 25 minutes. Each time, you had asked Josh a question and he responded that he needed a minute to speak with his advisors. You would then step into the hall and wait for Josh to alert you that he was finished speaking with his advisors.
- How do you respond to additional requests for breaks?

Lathrop GPM,  157

**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,  158

**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,  159

CASE STUDY 

- In Josh’s initial interview, he reported that Madison performed oral sex on him for several minutes before they had sex. Madison did not mention performing oral sex on Josh in her account.
- What do you do after the interview?

Lathrop GPM,  160

CASE STUDY 

- In Madison’s initial interview, you asked Madison who might have relevant information related to her allegation. Madison told you that you should interview two students: Jen and Abby, and her therapist.
 - Madison tells you that she saw Jen right before she left the party with Josh on February 9.
 - Madison tells you that Josh also sexually assaulted Abby and she could tell you more about him.
 - Madison tells you that her therapist helped her realize that she was raped.
- Who do you interview and why?

Lathrop GPM,  161

CASE STUDY 

- In Josh’s initial interview, you asked Josh who might have relevant information related to this matter. Josh told you that you should interview two students: Tony and Liam.
 - Josh tells you that Tony used to date Madison and dealt with a lot of issues from her.
 - Josh tells you that Liam was at the party with him and Madison on February 9.
- Who do you interview and why?
- Anyone else you should interview?

Lathrop GPM,  162

CASE STUDY 

- You decide to interview Madison’s friend Jen and Josh’s friend Liam. You also interview Chloe, after the Title IX Coordinator told you that Chloe originally reported the alleged sexual assault.

Lathrop GPM,  163

CASE STUDY 

- You begin your interview with Liam by asking if he knows why he is there. Liam responds, “no, it would be helpful if you could tell me why I’m here.”
- How do you respond?
- How do you approach the rest of the interview?

Lathrop GPM,  164

CASE STUDY 

- When you interview Chloe, she tells you that she knows another student who has been raped by Josh, but that person asked her not to tell anyone. Chloe stated that she knew Josh needed to be stopped, so she reported Madison’s rape to the Title IX Coordinator.
- What do you do with this information?
- Do you include it in the investigation report?

Lathrop GPM,  165

CASE STUDY



- Chloe also tells you that she'll need to be informed of the outcome of the investigation so that she can help campus organizations decide what to do with Josh.
- How do you respond to Chloe?

Lathrop GPM  166

**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  167

**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  168

CASE STUDY 

- The Title IX Coordinator tells you that Madison has filed a police report related to the allegation from February 9. The Title IX Coordinator asks that you pause your investigation while the police gather evidence.

Lathrop GPM,  169

CASE STUDY 

- After the police complete their investigation, Madison sends you and the Title IX Coordinator a copy of the police report.

Lathrop GPM,  170

CASE STUDY 

- You review the police report and notice that both Madison and Josh have made some statements that are different than what they told you in their interviews.
 - Madison told the police that she drank seven shots of tequila and four beers at the party. She told you she drank three or four shots of tequila and two beers.
 - Josh did not tell the police that Madison performed oral sex on him on the night of February 9.
- What do you do next?

Lathrop GPM,  171

CASE STUDY



- Josh provided screenshots of a text message exchange with Madison dated March 7. Josh tells you that the text messages occurred after Madison found out that he slept with someone else.

Lathrop GPM,  172




Lathrop GPM,  173

CASE STUDY



- Josh says that the text messages show that Madison brought her complaint to get back at him for being with another girl.
- What do you do with these text messages?

Lathrop GPM,  174

train 



CASE STUDY

Ask follow-up questions of Madison

Lathrop GPM,  175

train 

CASE STUDY

- In your follow-up interview with Madison, you ask Madison about the text messages. Madison tells you that Josh responded to the last message in the screenshot and acknowledged that she had been too drunk to consent on February 9. Madison says that she got a new phone last month and no longer has the text messages.
- What do you do next?

Lathrop GPM,  176

train 

CASE STUDY

- You reach out to Josh and ask for a screenshot of the messages following the last message in the screenshot he previously sent you. Josh replies that his phone is set to auto-delete text messages after 30 days, so he does not have the messages anymore. Josh tells you that he sent you the only screenshot he took.
- Do you include the screenshot of the text messages Josh sent you in the investigation report?

Lathrop GPM,  177

CASE STUDY



- After her follow-up interview, Madison sends you a copy of one of her journal entries. The entry is dated March 12 and discusses an appointment with her therapist when she realized she was raped.
- What do you do with the journal entry?

Lathrop GPM,  178

CASE STUDY



- In your follow-up interview with Josh, he tells you that Madison was hanging out in the lounge right outside his room for several hours last week. Josh also tells you that he was at the gym the next day and that Madison came and used the machine right next to him. Josh tells you that Madison saw that it was him, but she just kept working out. Josh tells you it made him uncomfortable, so he packed up and left the gym.
- Josh also tells you that a friend, Kayla, saw him after class a few days ago. Josh says that Kayla told him she was having a party the next night at her apartment. Josh tells you Kayla said something like “Madison wanted me to tell you that you can’t come to the party because she is going.”
- Josh says that Madison’s actions are retaliation for him participating in the investigation and also violate the no contact directive.
- What do you do after the interview?

Lathrop GPM,  179

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



- 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: Copy 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,  180

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
 - 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 181

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

Lathrop GPM,  * Title IX Only 182

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

- Types of evidence that must be provided to parties:
 - Party and witness interviews — regulations unclear
 - Possible approach if institution audio records interviews
 - Transcripts of recorded interviews with evidence that is not directly related to allegations redacted OR
 - Copies of recordings (consider how to remove audio that is not directly related to allegations)
 - Possible approach if institution does not record interviews
 - Summaries of directly related evidence from interviews (potentially reviewed by parties and witnesses if that is part of the process)

Lathrop GPM,  * Title IX Only 183

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

- “Directly related” should be interpreted using plain and ordinary meaning
- Includes inculpatory or exculpatory evidence whether obtained from a party or other source
- Universe of evidence is not screened for relevance – may sometimes encompass a broader universe of evidence than evidence that is relevant
- Investigator must gather evidence directly related to the allegations whether or not the recipient intends to rely on such evidence
 - For example, where evidence is directly related to the allegations but the investigator does not believe the evidence to be credible and does not intend to rely on it or include it in the investigation report

Lathrop GPM,  * Title IX Only 184

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 185

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 186

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

- Maintain records of any information withheld and the rationale for doing so
- May offer process where a log of information that is not produced is provided to the parties to allow them to dispute whether the information is directly related to the allegations (but not required to offer such a process)
- Investigator and Title IX Coordinator should both be involved in determination of what is directly related

Lathrop GPM,  * Title IX Only 187

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

- Ensuring privacy
 - 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 188

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 189

STAGE FIVE: PACKAGE INVESTIGATION FOR DECISION-MAKERS



- Complete investigation report
- Provide access (VAWA) or copy (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,  190



Q & A



Lathrop GPM,  191



DRAFTING AN INVESTIGATION REPORT



Lathrop GPM,  192

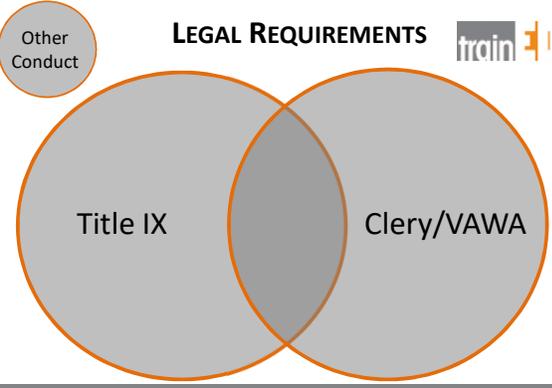
SESSION OVERVIEW 

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



Lathrop GPM,  193

LEGAL REQUIREMENTS 



Lathrop GPM,  194

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:
 - any evidence obtained that is **directly related** to the allegations – copy for parties and advisors required
 - Investigation report – copy to parties and advisors required
 - Opportunity to submit written response to each



Lathrop GPM,  195

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,  196

RELEVANCY ISSUES 

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



Lathrop GPM,  197

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,  198

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,  199

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,  200

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,  201

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,  202

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,  203

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,  204

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,  205

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,  206

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
 - Exclude facts that are not relevant
 - No longer a prejudicial vs. probative evaluation (Title IX)



Lathrop GPM,  207

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,  208

CASE STUDY

Investigation Report:
Summary of Facts Gathered

Lathrop GPM,  209

CASE STUDY—INVESTIGATION REPORT 

Investigation Report Excerpt

The parties are both sophomores at the University. The parties agree that they spent time together on a few occasions in January, February, and March 2021.

Lathrop GPM,  210

CASE STUDY—INVESTIGATION REPORT 

January 25, 2021
Madison's Account

Madison stated that she was hanging out in her room with a few friends, including Josh, on January 25.¹ Madison stated that around 9:30 p.m., everyone except Josh left. Madison stated that Josh had made a mixed drink of vodka and soda and offered to share it with her. Madison stated that she had six or seven sips from the mixed drink.

¹ Madison stated that she has a single room without a roommate.

Lathrop GPM,  211

CASE STUDY—INVESTIGATION REPORT 

Madison stated that she and Josh were sitting on the edge of her bed when Josh leaned in and started kissing her. Madison stated that she was surprised, but she kissed Josh back. Madison stated that they kissed for about one minute and that Josh then put his hands on her hips. Madison stated that Josh started applying pressure and that “it felt like he was trying to put his hands down my pants.” Madison stated that she was wearing jeans and Josh’s hands were right at the top of the waistband. Madison stated that Josh moved his hands from her hips around to above her butt, still with his hands at her waistband. Madison stated that she then pulled away from Josh and stood up. Madison stated that she told Josh that she needed to go to bed and that Josh then left.

Madison stated that she did not consent to Josh putting his hands in her pants.

Lathrop GPM,  212

CASE STUDY—INVESTIGATION REPORT 

Josh's Account

Josh stated that he went over to Madison’s room to meet a few friends on January 25. Josh stated that most people left around 9:00 p.m. and that by 9:45 p.m., he was the only person left with Madison. Josh stated that he and Madison shared a mixed drink he had made and sat on Madison’s bed talking. Josh stated that after 30 minutes or so, he and Madison started “making out.” Josh stated that things “started to get more heated” and he put his hands on Madison’s hips. When asked where his hands were in relation to Madison’s clothes, Josh stated that his hands were on “the top of her pants” and were slightly under the bottom of her shirt.

Lathrop GPM,  213

CASE STUDY—INVESTIGATION REPORT 

Josh also stated that he slipped one of his hands into Madison’s front pocket at one point, but that only the tip of one of his thumbs went into her pocket.² Josh stated that he kept his hands there for a few minutes while he and Madison kissed. Josh stated that Madison then stopped kissing him and said that it was late and she should go to bed. Josh stated that he then left.

² When asked about Josh’s account that he put his hands on the top of her pants and put his fingertips in her front pocket, Madison stated “it felt like he was trying to put his hands in my pants.”

Lathrop GPM,  214

CASE STUDY—INVESTIGATION REPORT 

When asked about Madison’s account that he put pressure on her hips as if he were trying to put his hands down her pants, Josh stated “I was holding her hips and pulling her closer to me as we kissed, but I never put them down her pants. I mean, if we kept making out, that’s where it was headed, but we stopped.” When asked about Madison’s account that he moved his hands from her hips around to above her butt, Josh stated “they were on her hips, on her side, and in her front pocket just a little. That’s it.”

Lathrop GPM,  215

CASE STUDY—INVESTIGATION REPORT 

Between January 25 and February 9, 2021

Madison’s Account

Madison stated that after January 25, she and Josh would “be flirty” when they saw each other. Madison stated that she was enjoying the “possibility of a relationship with Josh, but [she] wanted to take things slow.”

Lathrop GPM,  216

CASE STUDY—INVESTIGATION REPORT 

Josh's Account

Josh stated that after January 25, he and Madison started flirting and talking about hanging out again. Josh stated that he did not see Madison again for several weeks.

Lathrop GPM,  217

CASE STUDY—INVESTIGATION REPORT 

The Party on February 9, 2021

Madison's Account

Madison stated that on February 9, she went to a party with a friend from her hall, Jen. Madison stated that she and Jen arrived at the house party around 9:30 p.m. Madison stated that she and Jen hung out in one room at the party with a few other people from their residence hall for about an hour. Madison stated that she then went further into the house where she saw Josh.

Lathrop GPM,  218

CASE STUDY—INVESTIGATION REPORT 

Madison stated that she and Josh hung out and talked for a few minutes. Madison stated that Josh then “started trying to get [her] drunk.” Madison stated that Josh was “pressuring [her]” to take shots. When asked what she meant by “pressuring” her, Madison stated that Josh was saying things like “come on, it’s a party” and “we’re here to have fun, right?” Madison also stated that Josh kept pouring shots and handing them to her. Madison stated that because Josh “made [her] feel like she had to,” she had four shots of tequila.

Lathrop GPM,  219

CASE STUDY—INVESTIGATION REPORT 

Madison stated that around 11:30 p.m. or midnight she was feeling “pretty drunk.” Madison stated that she said she should go soon and Josh offered to walk her home. Madison stated that she went and found Jen at the party to say goodbye and then left with Josh. When asked how long she talked to Jen before leaving the party, Madison stated “not long, maybe just a minute” and that she just told Jen she was leaving.

Lathrop GPM,  220

CASE STUDY—INVESTIGATION REPORT 

Josh’s Account

Josh stated that he went to a party off-campus on February 9 with his friends Caleb and Liam. Josh stated that he and his friends split up “pretty soon” after they arrived. Josh stated that he got to the party around 10:00 p.m. and that not long after that, he saw Madison there. Josh stated that he and Madison talked and were “flirting a lot” at the party. Josh stated that they took a few shots together, played a game of beer pong, and also danced in the living room for a bit. Josh stated that around 12:30 a.m., he suggested that they go back to his place and that Madison responded “yes.”³

³ When asked about Josh’s account that he suggested that they leave the party to go back to his place, Madison stated “not true, I had been planning on going home until we walked past Josh’s building.”

Lathrop GPM,  221

CASE STUDY—INVESTIGATION REPORT 

When asked if he spent time with anyone else at the party, Josh stated “yeah, I was dancing in a group on and off and hanging out with other people.” When asked if any of the other people were female, Josh stated “yes.” When asked if anyone he was hanging out with was particularly intoxicated, Josh stated, “People were definitely wasted, yes. I don’t really remember anyone in particular, but it was a pretty crazy party. Everyone was drinking.”

Lathrop GPM,  222

CASE STUDY—INVESTIGATION REPORT 

When asked about Madison’s account that he was pressuring her to drink, Josh stated “no, we were all drinking. I didn’t pressure her at all. I offered her shots and she took them.” When asked about Madison’s account that Josh offered to walk her home, Josh stated, “we both decided to go back to my place. We weren’t leaving the party to sleep, we were going back to my room to be alone.”

Lathrop GPM,  223

CASE STUDY—INVESTIGATION REPORT 

The Walk to Campus on February 9, 2021
Madison’s Account

Madison stated that she and Josh started walking back to her residence hall. Madison stated that the house that held the party was just a few blocks off campus. Madison stated that it took them “probably five minutes” to get to the quad on campus and that they then cut across the quad. When asked whether there were any hills or stairs on the walk, Madison stated “I don’t think so, I think it was pretty flat. Except for the quad, which is mostly grass and we cut across that. So that was bumpy in some spots.”

Lathrop GPM,  224

CASE STUDY—INVESTIGATION REPORT 

Madison stated that it took them “probably five more minutes” to walk across the quad and that it would normally be only a two minute walk. Madison stated “I was definitely struggling and stumbling. Josh had to put his arm around me to get me to walk straight.” When asked for more details of how Josh put his arm around her, Madison stated “It was around my shoulder or maybe my waist and he just kinda pulled me close to him so that he could sort of carry me. I was still walking, but like, he steadied me so I wouldn’t fall.” When asked if they saw anyone during the walk, Madison stated “not that I can recall.”

Lathrop GPM,  225

CASE STUDY—INVESTIGATION REPORT 

Madison stated that Josh’s dorm is at the end of the quad and that when they arrived at his dorm, Josh suggested that Madison sleep in his room so that she would not have to walk to her dorm. When asked where her dorm is, Madison stated that it was a few blocks past Josh’s building. Madison stated that she was tired, so she agreed to stay overnight in Josh’s room.

Lathrop GPM,  226

CASE STUDY—INVESTIGATION REPORT 

Josh’s Account

Josh stated that he and Madison held hands as they left the party and walked back toward campus. Josh stated that the party had been a few blocks off campus and that he and Madison cut across the quad once they were back on campus. When asked how long the walk took, Josh stated that it probably took them ten to fifteen minutes to get to his dorm because they stopped to make out a few times on the way.⁴ When asked how long that walk typically takes, Josh stated that it would normally be about a five to ten minute walk.

⁴ When asked about Josh’s account that they stopped to make out during the walk, Madison stated, “I think we kissed a few times. I don’t think we actually stopped to like make out though.”

Lathrop GPM,  227

CASE STUDY—INVESTIGATION REPORT 

Josh also stated that he had his arm around Madison for much of the walk and that doing so slowed him down. When asked what he meant by had his arm around her, Josh stated that he had his right arm around Madison’s shoulder at first and then later around her waist. When asked why he had his arm around her, Josh stated that he and Madison had been kissing and “we were on our way to my room to hook up, so we were just touching a lot you know.” When asked what made him think he and Madison were going to “hook up,” Josh stated “I didn’t know for sure, but that was definitely the vibe, I mean, we were making out, we decided to go to my place, yeah.”

Lathrop GPM,  228

CASE STUDY—INVESTIGATION REPORT 

When asked if she had any trouble walking or talking during the walk, Josh stated “no, she was talking normally. She might have tripped once but the grass on the quad is super uneven and we were kissing on and off, but mostly it was just normal. She walked fine.” When asked if they saw anyone during the walk, Josh stated “there were other people around, but no one we actually talked to.” When asked if he knew any of the people he saw during the walk, Josh stated “no.”

Lathrop GPM,  229

CASE STUDY—INVESTIGATION REPORT 

Security Footage

The investigator reviewed security footage showing the quad on campus in the early morning of February 10, 2021. Security footage from 12:14 a.m. to 12:16 a.m. shows Madison and Josh walking across the grass on the quad. The security footage is included at Attachment E.

Lathrop GPM,  230

CASE STUDY—INVESTIGATION REPORT 

Madison and Josh in Josh’s Room on February 9, 2021

Madison’s Account

Madison stated that by the time they arrived at Josh’s room, she was “really struggling to stay with it.” When asked what she meant by “struggling to stay with it,” Madison stated that she does not remember everything that happened and does not think she was “really participating.”

Lathrop GPM,  231

CASE STUDY—INVESTIGATION REPORT 

Madison stated she does remember going in to Josh’s room when they arrived and lying down on the bed. Madison stated that she took off her shoes before climbing in to bed, but left all of her other clothing on. Madison stated that she was really tired and was expecting to go to sleep.

Lathrop GPM,  232

CASE STUDY—INVESTIGATION REPORT 

Madison stated that she has “flashes of memories” from the rest of the night. Madison stated that she remembers making out with Josh in his bed. When asked if she was participating in the kissing, Madison stated “I guess so. We had kissed before, so I was, but I was really sleepy.” Madison also stated that she remembers Josh touching her bare breasts. When asked if she knew how her shirt and bra came off, Madison stated that she does not remember, but she assumes that Josh took them off. Madison also stated that she remembers Josh on top of her in his bed, having sex with her.

Lathrop GPM,  233

CASE STUDY—INVESTIGATION REPORT 

When asked if she recalled how the intercourse began, Madison stated “no, I was really confused and sleepy the whole night. I just have one memory of him having sex with me.” When asked if she remembered how the sex ended, Madison stated “I have no idea, I only remember a few seconds of it, of him on top of me, and it’s really hazy. I just know that he had sex with me.” When asked if she recalled any conversation between her and Josh in his room, Madison stated “no.”

Lathrop GPM,  234

CASE STUDY—INVESTIGATION REPORT 

Josh's Account

Josh stated that his roommate was out of town, so he and Madison were alone in his room when they arrived. Josh stated that when he and Madison arrived in his room, they sat on his bed and continued making out. Josh stated that Madison then performed oral sex on him. When asked who initiated the oral sex, Josh stated "She did. She pretty much just started doing it after we stopped making out." When asked how the oral sex occurred, Josh stated that Madison moved down to the carpet to be on her knees in front of him. Josh stated that Madison undid his pants and pulled his pants and underwear down to expose his penis.

Lathrop GPM,  235

CASE STUDY—INVESTIGATION REPORT 

Josh stated that Madison then started performing oral sex on him.⁵ Josh stated that he lay back in bed while Madison performed oral sex for about three minutes. When asked if he or Madison said anything before or during the oral sex, Josh stated "yeah, she asked if I wanted her to give me head and I told her yes." When asked where his hands were during the oral sex, Josh stated "next to me on the bed I think."⁶

⁵ When asked about Josh's account that she performed oral sex on him, Madison stated "I don't remember that. It doesn't seem like something that would have happened with how out of it I was. It just doesn't sound like me."

⁶ When asked about the fact that his account of the night of February 9 in the police report did not include an account of Madison performing oral sex on him, Josh stated "I may have just forgotten about it when talking to the police. Madison is accusing me of rape, that's what I told them about."

Lathrop GPM,  236

CASE STUDY—INVESTIGATION REPORT 

Josh stated that after Madison stopped performing oral sex, he asked Madison, "are you sure you're good with having sex?" When asked if he and Madison had discussed having sex before, Josh stated "that was the vibe when we left the party, but I don't remember if we actually said it. And it had been a while since then, so I asked again in my room." When asked how Madison responded, Josh stated that Madison took off her shirt and bra and got into bed next to him.⁷ Josh stated that he then cupped Madison's breast with his hand while he kissed her. When asked what words or actions from Madison indicated that Madison consented to Josh touching her breast, Josh stated "she took off her shirt and bra and like got in bed next to me."

⁷ When asked about Josh's account that she took off her shirt and bra, Madison stated "I think Josh took off my shirt. I was not participating in anything that was going on."

Lathrop GPM,  237

CASE STUDY—INVESTIGATION REPORT



Josh stated that he then rubbed Madison’s vagina with his hand for a few minutes.⁸ When asked if it was over or under Madison’s clothes, Josh stated “I pulled her pants and underwear off first.” When asked if they talked at all while Josh touched Madison’s vagina, Josh stated “no, I don’t think so. But she moaned occasionally and was breathing heavy.” When asked what words or actions from Madison indicated that Madison consented to Josh rubbing her vagina with his hand, Josh stated “I asked if she was good with having sex and she took off her shirt and her bra and came up next to me. She kept kissing me in bed. We were about to have sex, so she was into it.” When asked if Madison responded verbally to his question about having sex, Josh stated “I don’t think so, but like I said, she was into it.”

⁸ When asked about Josh’s account that he touched her vagina, Madison stated “I don’t remember everything, so yeah, he probably did that.”

CASE STUDY—INVESTIGATION REPORT



Josh stated that he then grabbed a condom from his nightstand next to the bed and put it on. Josh stated that he and Madison had sex for ten or fifteen minutes. When asked how they were positioned during the intercourse, Josh stated that they started with Madison on the bottom and Josh on top. When asked if Madison was participating, Josh stated, “yeah, at that point, she had her arms around my back and her legs wrapped around me too and was kind of pulling me and sort of directing me.” When asked what he meant by “directing me,” Josh stated “just like pulling to tell me how fast to go.”

CASE STUDY—INVESTIGATION REPORT



Josh stated that Madison then got on top of him and they had sex with her on top “for maybe a minute.” Josh stated that Madison then moved to lay down on her side so that Josh was behind Madison and they continued having sex in that position for several minutes. When asked if Madison was participating at that point, Josh stated “not really, I mean she was moaning every so often, but it is hard for her to really participate in that position. I was doing most of it.” Josh stated that he then moved to get back on top of Madison and asked if she wanted to continue in the missionary position. Josh stated that Madison did not answer and he noticed that she was “sort of unfocused, not looking at [him].”

CASE STUDY—INVESTIGATION REPORT 

Josh stated that he rolled over and “stopped all contact” with Madison at that point.⁹ Josh also stated “I don’t know what happened. All of a sudden she looked really out of it and I started thinking that maybe she drank more than I thought. It was just all of a sudden she was completely gone.” Josh stated that he got Madison a glass of water, which she drank, and that they then fell asleep.

⁹ When asked about Josh’s account of having sex with her in multiple positions, Madison stated “I only remember him being on top of me. I was totally out of it, I don’t know how I could have been on top.”

Lathrop GPM,  241

CASE STUDY—INVESTIGATION REPORT 

When asked what words or actions indicated that Madison consented to having sex with him, Josh stated “same as I said before, I asked and she like took it to the next level, taking off her shirt and getting into bed with me. She was also leading things, like she was super into it, like directing me with her arms and legs when I was on top and doing most of the work when she was on top. It was not until the end that I saw that something was wrong, that she was out of it, and then I stopped right away.”

Lathrop GPM,  242

CASE STUDY—INVESTIGATION REPORT 

When asked about Madison’s account that she was “struggling to stay with it,” Josh stated “not until the end, no, it wasn’t like that, that’s not true. We were having fun, both of us. She was showing me what she wanted. I stopped as soon as I noticed that she was out of it.”

Lathrop GPM,  243

CASE STUDY—INVESTIGATION REPORT 

Parties' Intoxication Levels on February 9, 2021
Madison's Account

Madison stated that she had just gotten home from work and did not have time to eat before going to the party on February 9. Madison stated that at the party she had around two cups of beer and that she then had four shots of tequila.¹⁰

¹⁰When asked about Madison's statement in a police report that she drank "seven tequila shots and four beers" at the party, Madison stated "it's hard to remember exactly how much I drank. I think it was maybe closer to seven tequila shots. I just know that I was really drunk."

Lathrop GPM,  244

CASE STUDY—INVESTIGATION REPORT 

When asked over what time period she was drinking at the party, Madison stated that she had two beers in the first hour after she arrived, that she then took a break from drinking for maybe 30 minutes, and that she then had 3 or 4 shots over the course of "maybe an hour." Madison stated that around 11:30 p.m. or midnight she was feeling "pretty drunk."

Lathrop GPM,  245

CASE STUDY—INVESTIGATION REPORT 

When asked how intoxicated she was on a scale of 1 (sober) to 10 (passed out) when she left the party, Madison stated "I would say 8, I was drunk."¹¹

¹¹The 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.

Lathrop GPM,  246

CASE STUDY—INVESTIGATION REPORT 

When asked what made her say 8, Madison stated “I was tired and I definitely had trouble standing during the walk. Josh had to help me.”

When asked how intoxicated she was on a scale of 1 (sober) to 10 (passed out) when she was in Josh’s room, Madison stated “9.5 to 10.” When asked why she said 9.5 to 10, Madison stated, “I was not with it at all. I might have passed out. I don’t even remember most of what happened.”

Lathrop GPM,  247

CASE STUDY—INVESTIGATION REPORT 

When asked if Josh was drinking, Madison stated “yes, he had some shots with me. But I don’t know how much he drank.” When asked if he seemed intoxicated at all on February 9, Madison stated “not really. He was drinking, but he seemed normal.” When asked how intoxicated he was on a scale of 1 (sober) to 10 (passed out) when they left the party, Madison stated “I would say a 2. You really couldn’t tell.”

Lathrop GPM,  248

CASE STUDY—INVESTIGATION REPORT 

Josh’s Account

Josh stated that Madison had a few shots and a few cups of beer at the party. Josh stated that he thought Madison was “probably tipsy.” When asked why he thought Madison was tipsy, Josh stated “we were all drinking and she was chill, just having fun.” When asked how intoxicated Madison was on a scale of 1 (sober) to 10 (passed out) when they left the party, Josh stated “maybe a 4.” When asked what made him say 4, Josh stated “she had been drinking, but like, nothing crazy. She was walking, talking, all that.”

Lathrop GPM,  249

CASE STUDY—INVESTIGATION REPORT 

When asked how intoxicated Madison was on a scale of 1 (sober) to 10 (passed out) when they were in Josh’s room, Josh stated “still a 4. She was into it, she started some of it, and we were talking and stuff.” When asked how intoxicated Madison was on a scale of 1 (sober) to 10 (passed out) when he noticed she was out of it, Josh stated “I don’t even know. It was weird, I really don’t know what happened. I couldn’t give you a number, I just don’t know what that was about. It was just like all of a sudden she was done for the night.”

Lathrop GPM,  250

CASE STUDY—INVESTIGATION REPORT 

When asked how much he had to drink, Josh stated, “maybe two shots and three beers.” When asked if he felt intoxicated on February 9, Josh stated “a little buzzed, nothing more than that.” Josh also stated that he went out to dinner before the party and that he drinks fairly regularly so that amount “doesn’t really hit” him. When asked how intoxicated he was on a scale of 1 (sober) to 10 (passed out) when they left the party, Josh stated “maybe a 3, I felt good, but I was still totally fine, I remember everything.” When asked how intoxicated he was on a scale of 1 (sober) to 10 (passed out) when they were at his apartment, Josh stated “probably a 2, I didn’t have any more after the party and I started to sober up on the walk.”

Lathrop GPM,  251

CASE STUDY—INVESTIGATION REPORT 

Jen’s Account

Jen stated that she went to a party off-campus with her friend Madison on February 9. Jen stated that she hung out with Madison for about 30 minutes or so after first arriving and that they then each ended up hanging out with other people. Jen stated that around 11:30 p.m. or midnight, she saw Madison leaving with Josh. Jen stated that she and Madison said bye to each other and that Madison then left. When asked how long she talked to Madison, Jen stated, “maybe ten seconds.” When asked if she noticed anything unusual about Madison, Jen stated “I don’t think so.”

Lathrop GPM,  252

CASE STUDY—INVESTIGATION REPORT 

When asked if Madison was drinking at the party, Jen stated that she thought Madison was drinking beer from the keg during the party, but that she did not pay much attention. When asked if Madison seemed intoxicated when she said bye to her, Jen stated “I think we all were, so sure, she was drunk.” When asked what made her think Madison was drunk, Jen stated, “I haven’t really been around her drinking all that often, but I just know that everyone was drinking and having a good time.”

Lathrop GPM,  253

CASE STUDY—INVESTIGATION REPORT 

When asked how she would rate Madison on a scale of 1 (sober) to 10 (passed out) when she said goodbye to her at the party, Jen stated “maybe a 7.” When asked why she said 7, Jen stated “she was loud and was hugging me, that’s not something she would do sober.” When asked if Madison had trouble walking or standing, Jen stated, “I don’t think so, but I didn’t really see her other than when she walked out of the room to leave.”

Lathrop GPM,  254

CASE STUDY—INVESTIGATION REPORT 

When asked if she noticed whether Josh had been drinking, Jen stated “no, the first time I noticed him was when he was leaving with Madison and I didn’t interact with him at all.”

Lathrop GPM,  255

CASE STUDY—INVESTIGATION REPORT 

Liam's Account

Liam stated that he was at a party off campus on the night of February 9, 2021. Liam stated that he arrived with his friends Josh and Caleb around 9:00 or 10:00 p.m. Liam stated that he and Josh each took a shot as soon as they arrived. When asked what the shot was, Liam stated "I honestly don't remember." Liam stated that he said hi to a few people and then spent most of the night in the living room where there was "a sort of dance floor."

Lathrop GPM,  256

CASE STUDY—INVESTIGATION REPORT 

When asked if he talked to Josh while at the party, Liam stated "I was with him right when we got there. And I think I saw him on and off, but we didn't talk really after like the first 10 minutes." When asked who else he saw at the party, Liam stated that he saw students named Shelly, Kristin, Joe, and Mike. When asked if anyone was particularly intoxicated at the party, Liam stated, "yeah, a few people definitely had too much." When asked who those people were, Liam stated "this guy Joe was, like, falling over."

Lathrop GPM,  257

CASE STUDY—INVESTIGATION REPORT 

And then there was a girl that I saw who was loud and like over the top. I can't remember her name. I think I saw her with Josh at one point." When asked what that individual looked like, Liam stated "honestly, I couldn't tell you. Did she have light hair maybe? I just remember that I saw her with Josh at one point." When asked how intoxicated that student was on a scale of 1 (sober) to 10 (passed out), Liam stated "I don't know, she seemed pretty drunk, but I don't even know who she was."

Lathrop GPM,  258

CASE STUDY—INVESTIGATION REPORT 

When asked if Josh was drinking at the party, Liam stated, "I'm sure he was. I think he had a cup in his hand. But I wasn't paying attention." When asked if Josh seemed intoxicated, Liam stated "honestly I didn't see him much at the party. I don't know, not that I noticed."

Lathrop GPM,  259

CASE STUDY—INVESTIGATION REPORT 

The Morning of February 10, 2021
Madison's Account

Madison stated that when she woke up on the morning of February 10, 2021, she was naked in Josh's bed. Madison stated that she felt pretty sick, so she got dressed and then went to the bathroom to throw up. Madison stated that after she threw up, she came back to Josh's room to grab her purse. Madison stated that Josh was awake when she came back. Madison stated that Josh asked if she was okay.

Lathrop GPM,  260

CASE STUDY—INVESTIGATION REPORT 

Madison stated that she replied, "Not really. Had a little too much to drink I guess." Madison stated that Josh told her, "yeah, we were having a great time and then you seemed kind of out of it before we went to bed." Madison stated that she "sort of laughed it off" and felt "uncomfortable and embarrassed" that she did not remember everything from the night before. Madison stated that she told Josh she should go home so she could go back to bed.

Lathrop GPM,  261

CASE STUDY—INVESTIGATION REPORT 

Josh's Account

Josh stated that Madison was not in bed when he woke up the next day, but that she came back a few minutes later. Josh stated that he checked with her to see if she was okay and told her that she was kind of out of it at the end of the night. Josh stated that Madison told him that she must have had more to drink than she was intending. When asked about Madison's demeanor, Josh stated that Madison "seemed to be fine, she was laughing." Josh stated that Madison left a few minutes later.

Lathrop GPM,  262

CASE STUDY—INVESTIGATION REPORT 

After February 10, 2021

Josh's Account

Josh stated that he and Madison saw each other occasionally after February 10, including a few occasions when they made out in Josh's room. Josh stated that he was "never exclusive" with Madison and that he was also "with other girls." Josh stated that in early March, Madison found out that he had sex with another student from her residence hall. Josh stated that Madison sent him a text message "showing how jealous she was and how pissed."

Lathrop GPM,  263

CASE STUDY—INVESTIGATION REPORT 

Josh provided a screenshot of the below text message from Madison, dated March 7, 2021.

Madison: You seriously had sex with her???

Madison: I thought we were more than friends, but now I know we weren't even that. I don't just hookup with guys. This really meant something to me.

Josh: Are you seriously pissed

Josh: we were just having fun, didn't know you read more into it. Didn't think we had to talk about what we were, that we were just casual.

Josh: It just seemed like we were both having fun, we both wanted to that night.

Madison: You took advantage of me. I should not have even been in your room that night.

Lathrop GPM,  264

CASE STUDY—INVESTIGATION REPORT 

Josh stated that Madison brought the complaint against him a few days later. Josh stated that Madison’s complaint “is her way of getting back at me for not wanting to be her boyfriend or whatever. She wanted more from it than I did and now she brings this complaint to get back at me.”

Lathrop GPM,  265

CASE STUDY—INVESTIGATION REPORT 

Madison’s Account

Madison stated that she saw Josh once a week or so after February 10 until early March. Madison stated that they made out in Josh’s room a few times. Madison stated “I thought we were on our way to being boyfriend and girlfriend.”

Lathrop GPM,  266

CASE STUDY—INVESTIGATION REPORT 

Madison stated that in mid-March she had an appointment with her therapist. Madison stated that she had just found out that Josh had sex with someone in her residence hall and she was upset. Madison stated that she told her therapist about going home with Josh after the party. Madison stated that her therapist asked her a few questions and Madison explained that she did not really remember that night, but she knows that they had sex. Madison stated that she explained that Josh told her she looked “out of it.”

Lathrop GPM,  267

CASE STUDY—INVESTIGATION REPORT 

Madison stated that her therapist then responded that it “sounded like [Madison] w[as] raped.” Madison stated that she talked to her friend Chloe when she got home from her appointment and that Chloe reported to the Title IX Coordinator the next day.

Lathrop GPM,  268

CASE STUDY—INVESTIGATION REPORT 

Madison stated that she journals “almost every day” and that she wrote an entry at the end of the day that she met with her therapist and spoke with Chloe. Madison provided a copy of the journal entry dated March 12. The journal entry stated:

It has taken me time to come to terms with it, but now after talking to Dr. Lee, I realize it is true. I was raped. Josh got me drunk, took me back to his place, and took advantage of me. I didn’t want to believe it. Now I have to and it won’t be easy.

Lathrop GPM,  269

CASE STUDY—INVESTIGATION REPORT 

When asked about her text message from March 7, 2021, Madison stated “I found out Josh had sex with someone else and it really hurt. I thought we were going to be something.” When asked what she meant by “took advantage of her,” Madison stated “at that point I didn’t even realize how much he took advantage of me, I just knew that he took advantage of how much I cared about him. And I knew it was wrong. But then a few days later I realized how wrong it was, that I was actually raped.” Madison also stated that Josh responded to her message about taking advantage of her and “acknowledged that [she] was too drunk that night.”

Lathrop GPM,  270

CASE STUDY—INVESTIGATION REPORT 

Madison stated that the text message said something like “You’re right, you were really drunk, but we were having fun so I just went with it.” Madison stated that she got a new phone last month and no longer has any of the text messages she exchanged with Josh.¹²

¹²When asked about Madison’s account of his text message acknowledging that Madison was drunk, Josh stated “That’s not true, I did not say that. I don’t even think I answered that text message. She was pissed at me and I just didn’t want to get into it. If anything, I might have said that she seemed out of it at one point, but that was when I stopped. She was having a good time and leading a lot of it, so I definitely didn’t think she was that drunk until right at the end.” Josh also stated that his phone is set to auto-delete after 30 days, so he no longer has the text message exchange. Josh stated that he gave the investigator the only screenshot he had from his text message exchange with Madison.

Lathrop GPM,  271

CASE STUDY—INVESTIGATION REPORT 

Chloe’s Account

Chloe stated that she and Madison have been friends since the fall of their freshman year. Chloe stated that she talked to Madison in mid-March when Madison came back from an appointment with her therapist. Chloe stated that Madison told her that she had been talking about how Josh had cheated on her when she mentioned having sex with him after a party. Chloe stated that Madison told her that her therapist asked her questions about the party and about going home with Josh. Chloe stated that Madison told her that she told her therapist that she had sex with Josh, but that she blacked out for part of the night. Chloe stated that Madison told her that her therapist then said that it sounded like Madison was raped.

Lathrop GPM,  272

CASE STUDY—INVESTIGATION REPORT 

Investigation Report: Attachment E

For purposes of the case study, the security footage shows Josh with his arm around Madison. Madison appears to stumble two times. In addition, Madison and Josh sway side to side occasionally as they walk across the quad and do not walk in a straight line to Josh’s dorm. Josh and Madison appear to kiss once briefly while walking.

Lathrop GPM,  273

CASE STUDY



- You submit your completed investigation report to the Title IX Coordinator.
- The parties each review the investigation report and submit a response.

Lathrop GPM,  274

**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 electronic or hard copy 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 watermark
 - Prohibition of dissemination
 - Non-disclosure agreement

Lathrop GPM,  275

**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
 - skype 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,  276

CASE STUDY



Madison's Initial Response

Josh raped me. His conduct has impacted my entire life, hurt my grades, and caused me and my family so much pain. Reading the report, I cannot believe Josh's lies. He admitted in a text message to me that I was too drunk that night. He told me that. Now he says that I magically became incapacitated right before he stopped? Josh knows the truth and I hope you will see it too.

Lathrop GPM,  277

CASE STUDY



Josh's Initial Response

One thing is clear: Madison made this complaint to get back at me for having sex with someone else. She wanted a relationship, but that was not what we were about. When she found out I had sex with someone else, she decided to make up this serious allegation in an attempt to ruin my life. There should be serious doubts about Madison's statements. Just look at what she says about how much alcohol she drank at the party. She tells the school one thing, then she exaggerates it even more to the police.

Lathrop GPM,  278

CASE STUDY



Josh's Initial Response (cont.)

I do not know what happened to Madison that led to her looking so out of it. Maybe she is telling the truth and was drunker than anyone knew. But it is obvious that I could not have known that. No one says that she was falling over or slurring her words and I definitely didn't carry her to my room. As soon as I saw something was off, I stopped.

Lathrop GPM,  279

CASE STUDY 

Josh's Initial Response (cont.)

Madison has chosen to submit a journal entry from just one day, but she journals every day. Her journal entries from February 10 and March 7 should also be included in the report.

Lathrop GPM,  280

CASE STUDY 

- In Josh's response statement, he says that additional journal entries from Madison's journal should have been included, including her entries from February 10 and March 7.
- The Title IX Coordinator asks you to reach out to Madison to ask about the other journal entries.

Lathrop GPM,  281

CASE STUDY 

- You set up a call with Madison and ask if she could provide you with those journal entries. Madison responds that she does not want to share anything additional from her journal. Madison says that she journals almost every day, so she is sure that she has an entry from those days or very close to those days, but her journal is very private and she is not comfortable with additional entries being included in the investigation.
- After your call, Madison emails you and states: "I looked at those entries and there was nothing related to this investigation."
- What do you do next?

Lathrop GPM,  282

CASE STUDY



- After speaking with the Title IX Coordinator, you decide to amend the investigation report to include this additional information.

Lathrop GPM,  283

CASE STUDY—AMENDED INVESTIGATION REPORT



It has taken me time to come to terms with it, but now after talking to Dr. Lee, I realize it is true. I was raped. Josh got me drunk, took me back to his place, and took advantage of me. I didn't want to believe it. Now I have to and it won't be easy.¹²

¹² The investigator asked Madison if she would be willing to provide copies of journal entries from other relevant days, including February 10 and March 7. Madison declined to provide the journal entries. Madison stated "I journal almost every day, so I do probably have entries from those days, but my journal is really private. It was hard enough for me to show you just that one entry. I don't want more of my journal to be part of this investigation." Madison later sent the investigator an email that stated: "I looked at those entries and there was nothing related to this investigation."

Lathrop GPM,  284

CASE STUDY



- You submit your amended investigation report to the Title IX Coordinator.
- The parties are given an opportunity to respond to the amended report.

Lathrop GPM,  285

CASE STUDY 

Josh's Response to Amended Report

Madison refused to provide the other journal entries. The one she submitted should not be considered as part of this process at all. And you certainly shouldn't take Madison's word for it that there was nothing relevant on those other days.

Lathrop GPM,  286

CASE STUDY 

Madison's Rebuttal Statement

It is horrible for Josh to suggest that I would make something like this up. Yes, I was hurt that he had sex with someone else. No, I would never make up such a serious allegation in response to that. I found out Josh cheated before I even knew I was raped. It was my appointment with my therapist after I found out Josh had sex with someone else that I even started to come to terms with what happened. I'm not sure I would even have reported it knowing I would have to go through this horrible process, but my friend Chloe did and after that I felt I had a responsibility to do something and protect others.

Lathrop GPM,  287

CASE STUDY 

Josh's Rebuttal Statement

I won't address Madison's statements about being incapacitated. I have said what I have to say in the report. But I want to be clear that I did not ask for this. This has impacted my semester and my life more than I even could have imagined. Madison is the one who made this false allegation and put us both through this, not me.

Lathrop GPM,  288

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THE DECISION-MAKING PROCESS



Lathrop GPM,  289

SESSION OVERVIEW

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



Lathrop GPM,  290

DECISION-MAKING PROCESS

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

Title IX

Clery/
VAWA

Lathrop GPM,  291

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,  292

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,  293

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,  294

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,  295

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
 - Failure to answer one question constitutes a failure to submit to cross-examination (unless question came from decision-maker)
 - Still applies even if disability or death is the reason the person did not submit to cross-examination
 - Statements that cannot be considered include statements in investigation report or any other source (police report, medical exam, text messages, witness accounts, etc.)

Lathrop GPM,  296

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,  297

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,  298

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

Lathrop GPM,  299

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,  300

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WEIGHING EVIDENCE AND ASSESSING CREDIBILITY



Lathrop GPM,  301

EVIDENTIARY ISSUES

train 

- 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,  302

EVIDENTIARY ISSUES

train 

- 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,  303

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,  304

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,  305

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,  306

DETERMINATION 

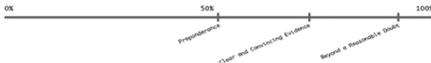


- Finding re: policy violation
 - Sexual contact/harassment
 - Consent/unwelcomed
- Sanctions
- Remedies
- Written Notice

Lathrop GPM,  307

DETERMINATION—FINDING 

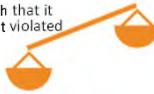
- Standard of proof
 - “Preponderance of the evidence” or “clear and convincing” (not “beyond a reasonable doubt”)
 - Use same standard of proof for all formal complaints of sexual harassment
 - Burden is on the school to gather sufficient evidence to reach a fair, impartial determination
 - Presumption 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,  308

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,  309




CASE STUDY

Relevant Definitions



310

CASE STUDY—DEFINITION OF SEXUAL ASSAULT



Sexual assault is any actual or attempted sexual contact 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.



311

CASE STUDY—DEFINITION OF CONSENT



Consent means words or overt actions by a person clearly and affirmatively communicating a freely-given present agreement to perform a particular sexual act. 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 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 activity to obtain consent for that activity.



312

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. The legal age of consent in this state is 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.
- There can be no consent to sexual activity with someone known to be—or who should be known to be—mentally or physically **incapacitated**, as that term is defined below.
- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.

Lathrop GPM,  313

CASE STUDY—DEFINITION OF INCAPACITATION 

A person who is incapacitated cannot give valid consent to sexual contact. Incapacitation means the inability to understand the fact, nature, or extent of the sexual situation. Incapacitation may result from mental or physical disability, sleep, unconsciousness, involuntary physical restraint, or from the influence of drugs or alcohol. With respect to incapacitation due to the influence of drugs or alcohol, incapacitation requires more than being under the influence of drugs or alcohol; a person is not incapacitated just because they have been drinking or using drugs.

Lathrop GPM,  314

CASE STUDY—DEFINITION OF INCAPACITATION 

Where drugs and/or alcohol are involved, incapacitation is determined based on the facts and circumstances of the particular situation looking at whether the individual was able to understand the fact, nature, or extent of the sexual situation, whether the individual was able to communicate decisions regarding consent, nonconsent, or the withdrawal of consent, and whether such condition was known or reasonably known to the respondent or a reasonable person in respondent’s position. Use of drugs or alcohol by the respondent is not a defense against allegations of sexual misconduct and does not diminish personal accountability or criminal liability. It is the responsibility of the person initiating the specific sexual activity to obtain consent for that activity.

Lathrop GPM,  315

train 



CASE STUDY

Determine Whether
a Policy Violation Occurred
and Rationale for your Decision

Lathrop GPM,  316

DETERMINATION— SANCTIONS AND REMEDIES

train 



- 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,  317

DETERMINATION— SANCTIONS AND REMEDIES

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- 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,  318

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,  319

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,  320

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,  321

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,  322

Q & A



Lathrop GPM,  323

UPCOMING TRAININGS

- **Trainings for individuals with heightened responsibility:**
 - 7/27/20: Annual Training for Advanced Title IX Coordinators and Deputy Coordinators
 - 7/28/20: Title IX/VAWA Investigator Training
 - 8/3/20: Annual Training for New Title IX Coordinators and Deputy Coordinators
 - 8/4/20: Annual Training for Advanced Title IX Coordinators and Deputy Coordinators
 - 8/5/20: Title IX/VAWA Investigator Training
 - 8/11/20: Title IX/VAWA Hearing Panel Training
 - 8/13/20: Adjudicator Training for Non-Title IX Cases

Lathrop GPM,  324

ON DEMAND TRAININGS

- **Available on-demand:**
 - Annual Trauma Informed Training for Investigators and Adjudicators
 - Annual Training for NEW Title IX Coordinators and Deputy Coordinators
 - 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
 - Making Your Sexual Misconduct Policy a 10
 - Title IX/VAWA Training for Chief Academic Officers
 - Title IX/VAWA Panel Discussion for Coaches and Athletic Directors
 - Compliance Update: New VAWA Guidance
 - Senior Leadership Training
 - Transgender Students and Employees Training
 - Minnesota Law Update: Title IX Coordinator Overview of Legal Requirements
 - Confidential Resources Training
 - Attorneys Serving as Advisors
 - Panel Discussion on Interviewing Survivors of Sexual Assault
 - Fundamentals of FERPA

Lathrop GPM  325

ON DEMAND TRAININGS

- **Available on-demand:**
 - Conducting a Grievance Process Under the New Title IX Regulations
 - Title IX Update: Final Regulations
 - Drafting Your Notice of Determination
 - Post-VAWA Annual Security Report Drafting
 - Additional Requirements Under Minnesota's Campus Sexual Assault Law
 - Drafting Effective and Compliant Investigation Reports
 - Title IX Coordinator Training: Duties Beyond Sexual Assault
 - Title IX/VAWA Training for Adjudicators
 - Title IX/VAWA Investigator Training
 - Train the Trainer: Title IX/VAWA Training for Coaches and Athletic Directors
 - Panel Discussion on Title IX Recordkeeping Requirements and Best Practices
 - Complying with the NCAA Sexual Violence Policy – Part 1
 - Complying with the NCAA Sexual Violence Policy – Part 2
 - Unique Challenges in Responding to Allegations of Domestic Violence, Dating Violence, and Stalking
- **Prevention programs for students & employees—customizable online modules**

Lathrop GPM  326

2020 Title IX/VAWA Investigator Training

Handout 1

Complaint Excerpt

On March 14, 2021, Madison Moore made a complaint of sexual misconduct against Josh Johnson.

Sexual Assault/Harassment Complaint Form

COMPLAINANT NAME: Madison Moore

ADDRESS: 1234 University Circle

DATE OF REPORT OF ALLEGED POLICY VIOLATION: February 9, 2021

RESPONDENT NAME: Josh Johnson

ADDRESS: 999 College Lane

TITLE IX COORDINATOR SUMMARY OF MADISON'S ORAL REPORT:

Madison reported that she was at a party with Josh on February 9. Madison reported that Josh pressured her to drink and got her drunk. Madison reported that she went back to Josh's dorm room with him after they left the party together. Madison reported that Josh touched her breasts and engaged in sexual intercourse with her when she was unable to consent due to incapacitation.

2020 Title IX/VAWA Investigator Training

Handout 2

Excerpt of Notice of Allegations

Madison alleges that you engaged in sexual assault in violation of the Sexual Misconduct Policy. Specifically, Madison alleges as follows:

- On February 9, 2021, in your dorm room, you engaged in sexual contact, including penetration, of Madison without her consent.

2020 Title IX/VAWA Investigator Training

Handout 3

Excerpt of Amended Notice of Allegations

Madison alleges that you engaged in sexual assault and sexual harassment in violation of the Sexual Misconduct Policy. Specifically, Madison alleges as follows:

- On January 25, 2021, in Madison's dorm room, you attempted to engage in sexual contact with Madison without her consent.
- On February 9, 2021, in your dorm room, you engaged in sexual contact, including penetration, of Madison without her consent.

2020 Title IX/VAWA Investigator Training

Handout 4

Definition of Sexual Assault

Sexual assault is any actual or attempted sexual contact 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 clearly and affirmatively communicating a freely-given present agreement to perform a particular sexual act. 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 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 activity to obtain consent for that activity.

The definition of consent is subject to the following:

- Consent can only be given if one is of legal age. The legal age of consent in this state is 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.
- There can be no consent to sexual activity with someone known to be—or who should be known to be—mentally or physically **incapacitated**, as that term is defined below.

- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.

Definition of Incapacitation

A person who is incapacitated cannot give valid consent to sexual contact. Incapacitation means the inability to understand the fact, nature, or extent of the sexual situation. Incapacitation may result from mental or physical disability, sleep, unconsciousness, involuntary physical restraint, or from the influence of drugs or alcohol.

Where drugs and/or alcohol are involved, incapacitation is determined based on the facts and circumstances of the particular situation looking at whether the individual was able to understand the fact, nature, or extent of the sexual situation, whether the individual was able to communicate decisions regarding consent, nonconsent, or the withdrawal of consent, and whether such condition was known or reasonably known to the respondent or a reasonable person in respondent's position. Use of drugs or alcohol by the respondent is not a defense against allegations of sexual misconduct and does not diminish personal accountability or criminal liability.

2020 Title IX/VAWA Investigator Training

Handout 5

Amended Investigation Report Excerpt

The parties are both sophomores at the University. The parties agree that they spent time together on a few occasions in January, February, and March 2021.

January 25, 2021

Madison's Account

Madison stated that she was hanging out in her room with a few friends, including Josh, on January 25.¹ Madison stated that around 9:30 p.m., everyone except Josh left. Madison stated that Josh had made a mixed drink of vodka and soda and offered to share it with her. Madison stated that she had six or seven sips from the mixed drink.

Madison stated that she and Josh were sitting on the edge of her bed when Josh leaned in and started kissing her. Madison stated that she was surprised, but she kissed Josh back. Madison stated that they kissed for about one minute and that Josh then put his hands on her hips. Madison stated that Josh started applying pressure and that “it felt like he was trying to put his hands down my pants.” Madison stated that she was wearing jeans and Josh’s hands were right at the top of the waistband. Madison stated that Josh moved his hands from her hips around to above her butt, still with his hands at her waistband. Madison stated that she then pulled away from Josh and stood up. Madison stated that she told Josh that she needed to go to bed and that Josh then left.

Madison stated that she did not consent to Josh putting his hands in her pants.

Josh's Account

Josh stated that he went over to Madison’s room to meet a few friends on January 25. Josh stated that most people left around 9:00 p.m. and that by 9:45 p.m., he was the only person left with Madison. Josh stated that he and Madison shared a mixed drink he had made and sat on Madison’s bed talking. Josh stated that after 30 minutes or so, he and Madison started “making out.” Josh stated that things “started to get more heated” and he put his hands on Madison’s hips. When asked where his hands were in relation to Madison’s clothes, Josh stated that his hands were on “the top of her pants” and were slightly under the bottom of her shirt. Josh also stated that he slipped one of his hands into Madison’s front pocket at one point, but that only the

¹ Madison stated that she has a single room without a roommate.

tip of one of his thumbs went into her pocket.² Josh stated that he kept his hands there for a few minutes while he and Madison kissed. Josh stated that Madison then stopped kissing him and said that it was late and she should go to bed. Josh stated that he then left.

When asked about Madison's account that he put pressure on her hips as if he were trying to put his hands down her pants, Josh stated "I was holding her hips and pulling her closer to me as we kissed, but I never put them down her pants. I mean, if we kept making out, that's where it was headed, but we stopped." When asked about Madison's account that he moved his hands from her hips around to above her butt, Josh stated "they were on her hips, on her side, and in her front pocket just a little. That's it."

Between January 25 and February 9, 2021

Madison's Account

Madison stated that after January 25, she and Josh would "be flirty" when they saw each other. Madison stated that she was enjoying the "possibility of a relationship with Josh, but [she] wanted to take things slow."

Josh's Account

Josh stated that after January 25, he and Madison started flirting and talking about hanging out again. Josh stated that he did not see Madison again for several weeks.

The Party on February 9, 2021

Madison's Account

Madison stated that on February 9, she went to a party with a friend from her hall, Jen. Madison stated that she and Jen arrived at the house party around 9:30 p.m. Madison stated that she and Jen hung out in one room at the party with a few other people from their residence hall for about an hour. Madison stated that she then went further into the house where she saw Josh.

Madison stated that she and Josh hung out and talked for a few minutes. Madison stated that Josh then "started trying to get [her] drunk." Madison stated that Josh was "pressuring [her]" to take shots. When asked what she meant by "pressuring" her, Madison stated that Josh was saying things like "come on, it's a party" and "we're here to have fun, right?" Madison also stated that Josh kept pouring shots and handing them to her. Madison stated that because Josh "made [her] feel like she had to," she had four shots of tequila.

² When asked about Josh's account that he put his hands on the top of her pants and put his fingertips in her front pocket, Madison stated "it felt like he was trying to put his hands in my pants."

Madison stated that around 11:30 p.m. or midnight she was feeling “pretty drunk.” Madison stated that she said she should go soon and Josh offered to walk her home. Madison stated that she went and found Jen at the party to say goodbye and then left with Josh. When asked how long she talked to Jen before leaving the party, Madison stated “not long, maybe just a minute” and that she just told Jen she was leaving.

Josh’s Account

Josh stated that he went to a party off-campus on February 9 with his friends Caleb and Liam. Josh stated that he and his friends split up “pretty soon” after they arrived. Josh stated that he got to the party around 10:00 p.m. and that not long after that, he saw Madison there. Josh stated that he and Madison talked and were “flirting a lot” at the party. Josh stated that they took a few shots together, played a game of beer pong, and also danced in the living room for a bit. Josh stated that around 12:30 a.m., he suggested that they go back to his place and that Madison responded “yes.”³ When asked if he spent time with anyone else at the party, Josh stated “yeah, I was dancing in a group on and off and hanging out with other people.” When asked if any of the other people were female, Josh stated “yes.” When asked if anyone he was hanging out with was particularly intoxicated, Josh stated, “People were definitely wasted, yes. I don’t really remember anyone in particular, but it was a pretty crazy party. Everyone was drinking.”

When asked about Madison’s account that he was pressuring her to drink, Josh stated “no, we were all drinking. I didn’t pressure her at all. I offered her shots and she took them.” When asked about Madison’s account that Josh offered to walk her home, Josh stated, “we both decided to go back to my place. We weren’t leaving the party to sleep, we were going back to my room to be alone.”

The Walk to Campus on February 9, 2021

Madison’s Account

Madison stated that she and Josh started walking back to her residence hall. Madison stated that the house that held the party was just a few blocks off campus. Madison stated that it took them “probably five minutes” to get to the quad on campus and that they then cut across the quad. When asked whether there were any hills or stairs on the walk, Madison stated “I don’t think so, I think it was pretty flat. Except for the quad, which is mostly grass and we cut across that. So that was bumpy in some spots.” Madison stated that it took them “probably five more minutes” to walk across the quad and that it would normally be only a two minute walk. Madison stated “I was definitely struggling and stumbling. Josh had to put his arm around me to get me to walk straight.” When asked for more details of how Josh put his arm around her, Madison stated “It

³ When asked about Josh’s account that he suggested that they leave the party to go back to his place, Madison stated “not true, I had been planning on going home until we walked past Josh’s building.”

was around my shoulder or maybe my waist and he just kinda pulled me close to him so that he could sort of carry me. I was still walking, but like, he steadied me so I wouldn't fall." When asked if they saw anyone during the walk, Madison stated "not that I can recall."

Madison stated that Josh's dorm is at the end of the quad and that when they arrived at his dorm, Josh suggested that Madison sleep in his room so that she would not have to walk to her dorm. When asked where her dorm is, Madison stated that it was a few blocks past Josh's building. Madison stated that she was tired, so she agreed to stay overnight in Josh's room.

Josh's Account

Josh stated that he and Madison held hands as they left the party and walked back toward campus. Josh stated that the party had been a few blocks off campus and that he and Madison cut across the quad once they were back on campus. When asked how long the walk took, Josh stated that it probably took them ten to fifteen minutes to get to his dorm because they stopped to make out a few times on the way.⁴ When asked how long that walk typically takes, Josh stated that it would normally be about a five to ten minute walk. Josh also stated that he had his arm around Madison for much of the walk and that doing so slowed him down. When asked what he meant by had his arm around her, Josh stated that he had his right arm around Madison's shoulder at first and then later around her waist. When asked why he had his arm around her, Josh stated that he and Madison had been kissing and "we were on our way to my room to hook up, so we were just touching a lot you know." When asked what made him think he and Madison were going to "hook up," Josh stated "I didn't know for sure, but that was definitely the vibe, I mean, we were making out, we decided to go to my place, yeah." When asked if she had any trouble walking or talking during the walk, Josh stated "no, she was talking normally. She might have tripped once but the grass on the quad is super uneven and we were kissing on and off, but mostly it was just normal. She walked fine." When asked if they saw anyone during the walk, Josh stated "there were other people around, but no one we actually talked to." When asked if he knew any of the people he saw during the walk, Josh stated "no."

Security Footage

The investigator reviewed security footage showing the quad on campus in the early morning of February 10, 2021. Security footage from 12:14 a.m. to 12:16 a.m. shows Madison and Josh walking across the grass on the quad. The security footage is included at Attachment E.

⁴ When asked about Josh's account that they stopped to make out during the walk, Madison stated, "I think we kissed a few times. I don't think we actually stopped to like make out though."

Madison and Josh in Josh's Room on February 9, 2021

Madison's Account

Madison stated that by the time they arrived at Josh's room, she was "really struggling to stay with it." When asked what she meant by "struggling to stay with it," Madison stated that she does not remember everything that happened and does not think she was "really participating."

Madison stated she does remember going in to Josh's room when they arrived and lying down on the bed. Madison stated that she took off her shoes before climbing in to bed, but left all of her other clothing on. Madison stated that she was really tired and was expecting to go to sleep.

Madison stated that she has "flashes of memories" from the rest of the night. Madison stated that she remembers making out with Josh in his bed. When asked if she was participating in the kissing, Madison stated "I guess so. We had kissed before, so I was, but I was really sleepy." Madison also stated that she remembers Josh touching her bare breasts. When asked if she knew how her shirt and bra came off, Madison stated that she does not remember, but she assumes that Josh took them off. Madison also stated that she remembers Josh on top of her in his bed, having sex with her. When asked if she recalled how the intercourse began, Madison stated "no, I was really confused and sleepy the whole night. I just have one memory of him having sex with me." When asked if she remembered how the sex ended, Madison stated "I have no idea, I only remember a few seconds of it, of him on top of me, and it's really hazy. I just know that he had sex with me." When asked if she recalled any conversation between her and Josh in his room, Madison stated "no."

Josh's Account

Josh stated that his roommate was out of town, so he and Madison were alone in his room when they arrived. Josh stated that when he and Madison arrived in his room, they sat on his bed and continued making out. Josh stated that Madison then performed oral sex on him. When asked who initiated the oral sex, Josh stated "She did. She pretty much just started doing it after we stopped making out." When asked how the oral sex occurred, Josh stated that Madison moved down to the carpet to be on her knees in front of him. Josh stated that Madison undid his pants and pulled his pants and underwear down to expose his penis. Josh stated that Madison then started performing oral sex on him.⁵ Josh stated that he lay back in bed while Madison performed oral sex for about three minutes. When asked if he or Madison said anything before or during the oral sex, Josh stated "yeah, she asked if I wanted her to give me head and I told her

⁵ When asked about Josh's account that she performed oral sex on him, Madison stated "I don't remember that. It doesn't seem like something that would have happened with how out of it I was. It just doesn't sound like me."

yes.” When asked where his hands were during the oral sex, Josh stated “next to me on the bed I think.”⁶

Josh stated that after Madison stopped performing oral sex, he asked Madison, “are you sure you’re good with having sex?” When asked if he and Madison had discussed having sex before, Josh stated “that was the vibe when we left the party, but I don’t remember if we actually said it. And it had been a while since then, so I asked again in my room.” When asked how Madison responded, Josh stated that Madison took off her shirt and bra and got into bed next to him.⁷ Josh stated that he then cupped Madison’s breast with his hand while he kissed her. When asked what words or actions from Madison indicated that Madison consented to Josh touching her breast, Josh stated “she took off her shirt and bra and like got in bed next to me.”

Josh stated that he then rubbed Madison’s vagina with his hand for a few minutes.⁸ When asked if it was over or under Madison’s clothes, Josh stated “I pulled her pants and underwear off first.” When asked if they talked at all while Josh touched Madison’s vagina, Josh stated “no, I don’t think so. But she moaned occasionally and was breathing heavy.” When asked what words or actions from Madison indicated that Madison consented to Josh rubbing her vagina with his hand, Josh stated “I asked if she was good with having sex and she took off her shirt and her bra and came up next to me. She kept kissing me in bed. We were about to have sex, so she was into it.” When asked if Madison responded verbally to his question about having sex, Josh stated “I don’t think so, but like I said, she was into it.”

Josh stated that he then grabbed a condom from his nightstand next to the bed and put it on. Josh stated that he and Madison had sex for ten or fifteen minutes. When asked how they were positioned during the intercourse, Josh stated that they started with Madison on the bottom and Josh on top. When asked if Madison was participating, Josh stated, “yeah, at that point, she had her arms around my back and her legs wrapped around me too and was kind of pulling me and sort of directing me.” When asked what he meant by “directing me,” Josh stated “just like pulling to tell me how fast to go.” Josh stated that Madison then got on top of him and they had sex with her on top “for maybe a minute.” Josh stated that Madison then moved to lay down on her side so that Josh was behind Madison and they continued having sex in that position for several minutes. When asked if Madison was participating at that point, Josh stated “not really, I mean she was moaning every so often, but it is hard for her to really participate in that position. I was doing most of it.” Josh stated that he then moved to get back on top of Madison and asked if

⁶ When asked about the fact that his account of the night of February 9 in the police report did not include an account of Madison performing oral sex on him, Josh stated “I may have just forgotten about it when talking to the police. Madison is accusing me of rape, that’s what I told them about.”

⁷ When asked about Josh’s account that she took off her shirt and bra, Madison stated “I think Josh took off my shirt. I was not participating in anything that was going on.”

⁸ When asked about Josh’s account that he touched her vagina, Madison stated “I don’t remember everything, so yeah, he probably did that.”

she wanted to continue in the missionary position. Josh stated that Madison did not answer and he noticed that she was “sort of unfocused, not looking at [him].” Josh stated that he rolled over and “stopped all contact” with Madison at that point.⁹ Josh also stated “I don’t know what happened. All of a sudden she looked really out of it and I started thinking that maybe she drank more than I thought. It was just all of a sudden she was completely gone.” Josh stated that he got Madison a glass of water, which she drank, and that they then fell asleep.

When asked what words or actions indicated that Madison consented to having sex with him, Josh stated “same as I said before, I asked and she like took it to the next level, taking off her shirt and getting into bed with me. She was also leading things, like she was super into it, like directing me with her arms and legs when I was on top and doing most of the work when she was on top. It was not until the end that I saw that something was wrong, that she was out of it, and then I stopped right away.”

When asked about Madison’s account that she was “struggling to stay with it,” Josh stated “not until the end, no, it wasn’t like that, that’s not true. We were having fun, both of us. She was showing me what she wanted. I stopped as soon as I noticed that she was out of it.”

Parties’ Intoxication Levels on February 9, 2021

Madison’s Account

Madison stated that she had just gotten home from work and did not have time to eat before going to the party on February 9. Madison stated that at the party she had around two cups of beer and that she then had four shots of tequila.¹⁰ When asked over what time period she was drinking at the party, Madison stated that she had two beers in the first hour after she arrived, that she then took a break from drinking for maybe 30 minutes, and that she then had 3 or 4 shots over the course of “maybe an hour.” Madison stated that around 11:30 p.m. or midnight she was feeling “pretty drunk.” When asked how intoxicated she was on a scale of 1 (sober) to 10 (passed out) when she left the party, Madison stated “I would say 8, I was drunk.”¹¹ When asked what made her say 8, Madison stated “I was tired and I definitely had trouble standing during the walk. Josh had to help me.”

⁹ When asked about Josh’s account of having sex with her in multiple positions, Madison stated “I only remember him being on top of me. I was totally out of it, I don’t know how I could have been on top.”

¹⁰ When asked about Madison’s statement in a police report that she drank “seven tequila shots and four beers” at the party, Madison stated “it’s hard to remember exactly how much I drank. I think it was maybe closer to seven tequila shots. I just know that I was really drunk.”

¹¹ 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.

When asked how intoxicated she was on a scale of 1 (sober) to 10 (passed out) when she was in Josh's room, Madison stated "9.5 to 10." When asked why she said 9.5 to 10, Madison stated, "I was not with it at all. I might have passed out. I don't even remember most of what happened."

When asked if Josh was drinking, Madison stated "yes, he had some shots with me. But I don't know how much he drank." When asked if he seemed intoxicated at all on February 9, Madison stated "not really. He was drinking, but he seemed normal." When asked how intoxicated he was on a scale of 1 (sober) to 10 (passed out) when they left the party, Madison stated "I would say a 2. You really couldn't tell."

Josh's Account

Josh stated that Madison had a few shots and a few cups of beer at the party. Josh stated that he thought Madison was "probably tipsy." When asked why he thought Madison was tipsy, Josh stated "we were all drinking and she was chill, just having fun." When asked how intoxicated Madison was on a scale of 1 (sober) to 10 (passed out) when they left the party, Josh stated "maybe a 4." When asked what made him say 4, Josh stated "she had been drinking, but like, nothing crazy. She was walking, talking, all that."

When asked how intoxicated Madison was on a scale of 1 (sober) to 10 (passed out) when they were in Josh's room, Josh stated "still a 4. She was into it, she started some of it, and we were talking and stuff." When asked how intoxicated Madison was on a scale of 1 (sober) to 10 (passed out) when he noticed she was out of it, Josh stated "I don't even know. It was weird, I really don't know what happened. I couldn't give you a number, I just don't know what that was about. It was just like all of a sudden she was done for the night."

When asked how much he had to drink, Josh stated, "maybe two shots and three beers." When asked if he felt intoxicated on February 9, Josh stated "a little buzzed, nothing more than that." Josh also stated that he went out to dinner before the party and that he drinks fairly regularly so that amount "doesn't really hit" him. When asked how intoxicated he was on a scale of 1 (sober) to 10 (passed out) when they left the party, Josh stated "maybe a 3, I felt good, but I was still totally fine, I remember everything." When asked how intoxicated he was on a scale of 1 (sober) to 10 (passed out) when they were at his apartment, Josh stated "probably a 2, I didn't have any more after the party and I started to sober up on the walk."

Jen's Account

Jen stated that she went to a party off-campus with her friend Madison on February 9. Jen stated that she hung out with Madison for about 30 minutes or so after first arriving and that they then each ended up hanging out with other people. Jen stated that around 11:30 p.m. or midnight, she saw Madison leaving with Josh. Jen stated that she and Madison said bye to each other and that Madison then left. When asked how long she talked to Madison, Jen stated, "maybe ten seconds." When asked if she noticed anything unusual about Madison, Jen stated "I don't think so."

When asked if Madison was drinking at the party, Jen stated that she thought Madison was drinking beer from the keg during the party, but that she did not pay much attention. When asked if Madison seemed intoxicated when she said bye to her, Jen stated "I think we all were, so sure, she was drunk." When asked what made her think Madison was drunk, Jen stated, "I haven't really been around her drinking all that often, but I just know that everyone was drinking and having a good time." When asked how she would rate Madison on a scale of 1 (sober) to 10 (passed out) when she said goodbye to her at the party, Jen stated "maybe a 7." When asked why she said 7, Jen stated "she was loud and was hugging me, that's not something she would do sober." When asked if Madison had trouble walking or standing, Jen stated, "I don't think so, but I didn't really see her other than when she walked out of the room to leave."

When asked if she noticed whether Josh had been drinking, Jen stated "no, the first time I noticed him was when he was leaving with Madison and I didn't interact with him at all."

Liam's Account

Liam stated that he was at a party off campus on the night of February 9, 2021. Liam stated that he arrived with his friends Josh and Caleb around 9:00 or 10:00 p.m. Liam stated that he and Josh each took a shot as soon as they arrived. When asked what the shot was, Liam stated "I honestly don't remember." Liam stated that he said hi to a few people and then spent most of the night in the living room where there was "a sort of dance floor."

When asked if he talked to Josh while at the party, Liam stated "I was with him right when we got there. And I think I saw him on and off, but we didn't talk really after like the first 10 minutes." When asked who else he saw at the party, Liam stated that he saw students named Shelly, Kristin, Joe, and Mike. When asked if anyone was particularly intoxicated at the party, Liam stated, "yeah, a few people definitely had too much." When asked who those people were, Liam stated "this guy Joe was, like, falling over. And then there was a girl that I saw who was loud and like over the top. I can't remember her name. I think I saw her with Josh at one point." When asked what that individual looked like, Liam stated "honestly, I couldn't tell you. Did she have light hair maybe? I just remember that I saw her with Josh at one point." When asked how intoxicated that student was on a scale of 1 (sober) to 10 (passed out), Liam stated "I don't know, she seemed pretty drunk, but I don't even know who she was."

When asked if Josh was drinking at the party, Liam stated, “I’m sure he was. I think he had a cup in his hand. But I wasn’t paying attention.” When asked if Josh seemed intoxicated, Liam stated “honestly I didn’t see him much at the party. I don’t know, not that I noticed.”

The Morning of February 10, 2021

Madison’s Account

Madison stated that when she woke up on the morning of February 10, 2021, she was naked in Josh’s bed. Madison stated that she felt pretty sick, so she got dressed and then went to the bathroom to throw up. Madison stated that after she threw up, she came back to Josh’s room to grab her purse. Madison stated that Josh was awake when she came back. Madison stated that Josh asked if she was okay. Madison stated that she replied, “Not really. Had a little too much to drink I guess.” Madison stated that Josh told her, “yeah, we were having a great time and then you seemed kind of out of it before we went to bed.” Madison stated that she “sort of laughed it off” and felt “uncomfortable and embarrassed” that she did not remember everything from the night before. Madison stated that she told Josh she should go home so she could go back to bed.

Josh’s Account

Josh stated that Madison was not in bed when he woke up the next day, but that she came back a few minutes later. Josh stated that he checked with her to see if she was okay and told her that she was kind of out of it at the end of the night. Josh stated that Madison told him that she must have had more to drink than she was intending. When asked about Madison’s demeanor, Josh stated that Madison “seemed to be fine, she was laughing.” Josh stated that Madison left a few minutes later.

After February 10, 2021

Josh’s Account

Josh stated that he and Madison saw each other occasionally after February 10, including a few occasions when they made out in Josh’s room. Josh stated that he was “never exclusive” with Madison and that he was also “with other girls.” Josh stated that in early March, Madison found out that he had sex with another student from her residence hall. Josh stated that Madison sent him a text message “showing how jealous she was and how pissed.” Josh provided a screenshot of the below text message from Madison, dated March 7, 2021.

Madison: You seriously had sex with her???

Madison: I thought we were more than friends, but now I know we weren’t even that. I don’t just hookup with guys. This really meant something to me.

Josh: Are you seriously pissed

Josh: we were just having fun, didn't know you read more into it. Didn't think we had to talk about what we were, that we were just casual.

Josh: It just seemed like we were both having fun, we both wanted to that night.

Madison: You took advantage of me. I should not have even been in your room that night.

Josh stated that Madison brought the complaint against him a few days later. Josh stated that Madison's complaint "is her way of getting back at me for not wanting to be her boyfriend or whatever. She wanted more from it than I did and now she brings this complaint to get back at me."

Madison's Account

Madison stated that she saw Josh once a week or so after February 10 until early March. Madison stated that they made out in Josh's room a few times. Madison stated "I thought we were on our way to being boyfriend and girlfriend."

Madison stated that in mid-March she had an appointment with her therapist. Madison stated that she had just found out that Josh had sex with someone in her residence hall and she was upset. Madison stated that she told her therapist about going home with Josh after the party. Madison stated that her therapist asked her a few questions and Madison explained that she did not really remember that night, but she knows that they had sex. Madison stated that she explained that Josh told her she looked "out of it." Madison stated that her therapist then responded that it "sounded like [Madison] w[as] raped." Madison stated that she talked to her friend Chloe when she got home from her appointment and that Chloe reported to the Title IX Coordinator the next day.

Madison stated that she journals "almost every day" and that she wrote an entry at the end of the day that she met with her therapist and spoke with Chloe. Madison provided a copy of the journal entry dated March 12. The journal entry stated:

It has taken me time to come to terms with it, but now after talking to Dr. Lee, I realize it is true. I was raped. Josh got me drunk, took me back to his place, and took advantage of me. I didn't want to believe it. Now I have to and it won't be easy.¹²

¹² The investigator asked Madison if she would be willing to provide copies of journal entries from other relevant days, including February 10 and March 7. Madison declined to provide the journal entries. Madison stated "I journal almost every day, so I do probably have entries from those days, but my journal is really private. It was hard enough for me to show you just that one entry. I don't want more of my journal to be part of this investigation." Madison later sent the

When asked about her text message from March 7, 2021, Madison stated “I found out Josh had sex with someone else and it really hurt. I thought we were going to be something.” When asked what she meant by “took advantage of her,” Madison stated “at that point I didn’t even realize how much he took advantage of me, I just knew that he took advantage of how much I cared about him. And I knew it was wrong. But then a few days later I realized how wrong it was, that I was actually raped.” Madison also stated that Josh responded to her message about taking advantage of her and “acknowledged that [she] was too drunk that night.” Madison stated that the text message said something like “You’re right, you were really drunk, but we were having fun so I just went with it.” Madison stated that she got a new phone last month and no longer has any of the text messages she exchanged with Josh.¹³

Chloe’s Account

Chloe stated that she and Madison have been friends since the fall of their freshman year. Chloe stated that she talked to Madison in mid-March when Madison came back from an appointment with her therapist. Chloe stated that Madison told her that she had been talking about how Josh had cheated on her when she mentioned having sex with him after a party. Chloe stated that Madison told her that her therapist asked her questions about the party and about going home with Josh. Chloe stated that Madison told her that she told her therapist that she had sex with Josh, but that she blacked out for part of the night. Chloe stated that Madison told her that her therapist then said that it sounded like Madison was raped.

investigator an email that stated: “I looked at those entries and there was nothing related to this investigation.”

¹³ When asked about Madison’s account of his text message acknowledging that Madison was drunk, Josh stated “That’s not true, I did not say that. I don’t even think I answered that text message. She was pissed at me and I just didn’t want to get into it. If anything, I might have said that she seemed out of it at one point, but that was when I stopped. She was having a good time and leading a lot of it, so I definitely didn’t think she was that drunk until right at the end.” Josh also stated that his phone is set to auto-delete after 30 days, so he no longer has the text message exchange. Josh stated that he gave the investigator the only screenshot he had from his text message exchange with Madison.

Investigation Report: Attachment E

For purposes of the case study, the security footage shows Josh with his arm around Madison. Madison appears to stumble two times. In addition, Madison and Josh sway side to side occasionally as they walk across the quad and do not walk in a straight line to Josh's dorm. Josh and Madison appear to kiss once briefly while walking.

2020 Title IX/VAWA Investigator Training

Handout 6

Excerpt of Party Response Statements

Madison's Initial Response

Josh raped me. His conduct has impacted my entire life, hurt my grades, and caused me and my family so much pain. Reading the report, I cannot believe Josh's lies. He admitted in a text message to me that I was too drunk that night. He told me that. Now he says that I magically became incapacitated right before he stopped? Josh knows the truth and I hope you will see it too.

Josh's Initial Response

One thing is clear: Madison made this complaint to get back at me for having sex with someone else. She wanted a relationship, but that was not what we were about. When she found out I had sex with someone else, she decided to make up this serious allegation in an attempt to ruin my life. There should be serious doubts about Madison's statements. Just look at what she says about how much alcohol she drank at the party. She tells the school one thing, then she exaggerates it even more to the police.

I do not know what happened to Madison that led to her looking so out of it. Maybe she is telling the truth and was drunker than anyone knew. But it is obvious that I could not have known that. No one says that she was falling over or slurring her words and I definitely didn't carry her to my room. As soon as I saw something was off, I stopped.

Madison has chosen to submit a journal entry from just one day, but she journals every day. Her journal entries from February 10 and March 7 should also be included in the report.

Josh's Response to Amended Report

Madison refused to provide the other journal entries. The one she submitted should not be considered as part of this process at all. And you certainly shouldn't take Madison's word for it that there was nothing relevant on those other days.

Madison's Rebuttal Statement

It is horrible for Josh to suggest that I would make something like this up. Yes, I was hurt that he had sex with someone else. No, I would never make up such a serious allegation in response to that. I found out Josh cheated before I even knew I was raped. It was my appointment with my therapist after I found out Josh had sex with someone else that I even started to come to terms with what happened. I'm not sure I would even have reported it knowing I would have to

go through this horrible process, but my friend Chloe did and after that I felt I had a responsibility to do something and protect others.

Josh's Rebuttal Statement

I won't address Madison's statements about being incapacitated. I have said what I have to say in the report. But I want to be clear that I did not ask for this. This has impacted my semester and my life more than I even could have imagined. Madison is the one who made this false allegation and put us both through this, not me.



Training for Title IX/VAWA Investigators

WEB RESOURCES

Title IX Final Regulation:

- **Department of Education Fact Sheet:**
<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-fact-sheet.pdf>
- **Department of Education Final Rule Overview:**
<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-overview.pdf>
- **Department of Education Summary of Major Provisions:**
<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>
- **Final Regulation:** <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf>

January 2001, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties:

<https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>

January 25, 2006 Dear Colleague Letter on Sexual Harassment:

<https://www2.ed.gov/about/offices/list/ocr/letters/sexhar-2006.html>

April 24, 2015 Department of Education Guidance on Title IX Coordinators:

- **Dear Colleague Letter on Title IX Coordinators:**
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>
- **Letter to Title IX Coordinators:** <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-letter-201504.pdf>
- **Title IX Resource Guide:** <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>

Final Regulations for the Violence Against Women Act amendments to the Clery Act (October 20, 2014):

<http://www.gpo.gov/fdsys/pkg/FR-2014-10-20/pdf/2014-24284.pdf>

Handbook for Campus Safety and Security Reporting:

<http://www2.ed.gov/admins/lead/safety/handbook.pdf>

September 22, 2017 Department of Education Guidance:

- **Dear Colleague Letter:** https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf?utm_name
- **Q & A on Campus Sexual Misconduct:**
https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf?utm_name

April 4, 2011 Dear Colleague Letter on Sexual Violence (withdrawn):

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

Questions and Answers on Title IX & Sexual Violence (2014) (withdrawn):

<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

**Building Partnerships among Law Enforcement Agencies, Colleges and Universities:
Developing a Memorandum of Understanding to Prevent and Respond Effectively to Sexual
Assaults at Colleges and Universities:**

https://obamawhitehouse.archives.gov/sites/default/files/docs/white_house_task_force_law_enforcement_mou.pdf

Not Alone: <https://obamawhitehouse.archives.gov/1is2many/notalone>

It's On Us Campaign:

<http://www.itsonus.org/>