



D. STAFFORD
& ASSOCIATES

Advanced Investigation Class

(2 Day Class)

Presented by:

Cathy Cocks and/or Adrienne Murray
Associates

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President and CEO

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Advanced Sexual Harassment Investigation Course
Two Day Agenda (16 hours)

This 2-day intensive virtual training class is designed for campus administrators and investigators who have responsibility for conducting and overseeing sexual harassment investigations under the 2020 Title IX regulations on their college or university campuses. The class will focus primarily on two key advanced topics, advanced interviewing techniques and report writing, while ensuring procedural requirements are met. Day one is lecture based with opportunities for group discussion while day two is a practical application day whereby learners will be applying what they learned and conducting interviews and engaging in constructing a summary of relevant evidence.

Day One – Lecture-Based Learning & Discussion

- **Understand Title IX Foundations:** Define Title IX and its historical evolution.
- **Analyze Title IX Regulations:** Break down compliance requirements and institutional responsibilities.
- **Navigate the Grievance Process:** Identify procedural steps and investigative requirements.
- **Define Prohibited Conduct:** Examine elements of sexual harassment and other prohibited conduct as defined by Title IX.
- **Clarify Consent & Capacity:** Explore legal definitions, challenges, and misconceptions surrounding consent.
- **Recognize Trauma's Impact:** Understand how trauma affects memory, reporting, and interactions with victims.
- **Apply Evidence Evaluation:** Learn how to assess credibility, relevance, and admissibility of investigative findings.
- **Enhance Interviewing Skills:** Develop advanced questioning techniques for complainants and respondents.
- **Strengthen Report Writing:** Craft investigative reports with accuracy, neutrality, and compliance in mind.

Day Two – Practical Application

- **Conduct Trauma-Informed Interviews:** Apply techniques learned in Day One to a real-world case study.
- **Analyze and Evaluate Evidence:** Practice assessing witness statements and physical evidence.
- **Draft Comprehensive Investigative Reports:** Incorporate key elements of report writing while maintaining objectivity.
- **Apply Title IX Standards to Case Findings:** Ensure adherence to institutional policies and federal regulations.
- **Enhance Critical Thinking & Decision-Making:** Navigate complex scenarios with fairness and thorough analysis.



TITLE IX

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ISSUANCE OF CERTIFICATES FOR COMPLETION

To receive a certificate, attendees must attend the majority of the class and have paid class invoice in full. This applies to both in-person classes and virtual classes. We understand that attendees may need to miss class for a legitimate reason for longer periods of time or may need to leave the room during a class for a few minutes to take a phone call or attend to other business. If an attendee misses a significant amount of the class (depending on the length of the class) or they miss an attendance poll, they will not be issued a certificate of completion for the class.

Attendees should report each absence using the online form provided (each class has its own unique form that is sent to all attendees via email prior to class). Attendees should complete the form twice for each absence: once to record their departure, and again to record their return. Attendees should complete the form immediately before leaving class and as soon as practicable upon their return. If an attendee signs out but does not sign back in, they will be marked absent for the remainder of the day.

The criteria for receiving a certificate is determined based on missed class time and participation in the Attendance Polls that will be launched throughout each day of class. Attendance polls are left up for approximately 5 minutes and the instructor notifies the attendees that a poll is being launched to ensure that everyone who is present can respond to the poll. If an attendee is unable to respond to the attendance poll, the attendee would need to **immediately post "I am here"** in the chat feature within the Zoom platform. That way we can give the attendee credit for being in attendance for that specific poll. Notifying us after the attendance poll has been closed will not allow us to give the attendee credit for being in class during the poll.

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



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Adrienne Meador Murray, Vice President, Equity Compliance and Civil Rights Services



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

College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.).

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

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA



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

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



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Catherine Cocks, M.A.
Director, Student Affairs, Behavioral Threat Assessment and
Independent Investigation Services



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

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

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

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

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

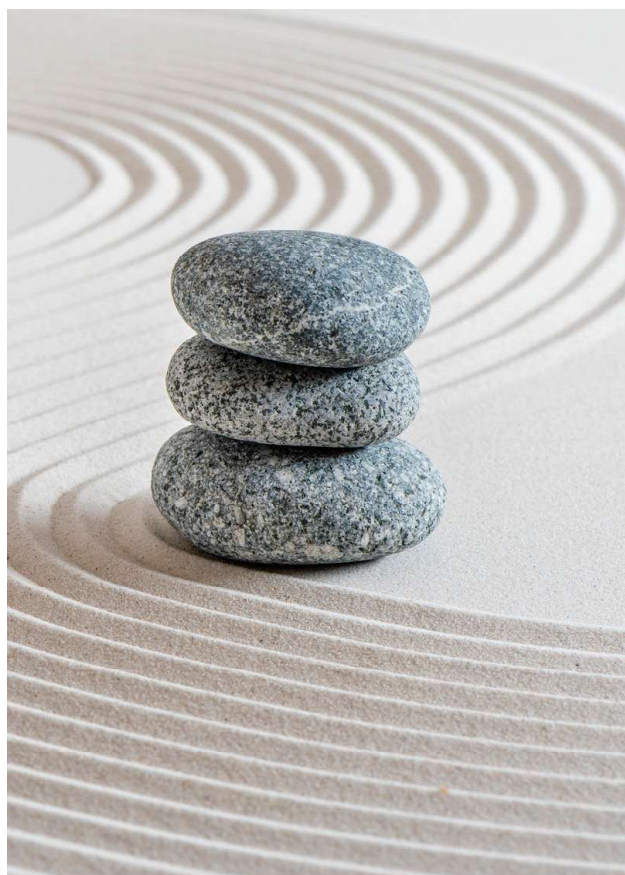
She was the 2015 recipient of ASCA's Donald D. Gehring Award. She is a past recipient of the NASPA Region I Mid-Level Student Affairs Professional Award and the NASPA Region I Continuous Service Award.

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



ADVANCED INVESTIGATIONS COURSE

2020 TITLE IX REGULATIONS



OVERALL AGENDA

- Title IX Overview
- Title IX Regulations
 - Procedural Requirements related to Grievance Process, including Investigative Related Requirements
- Unpacking the Elements of Prohibited Conduct
- Unwelcome Conduct, Consent, and Capacity
- Trauma
- Evaluating Evidence
- Advanced Interviewing
- Advanced Report Writing

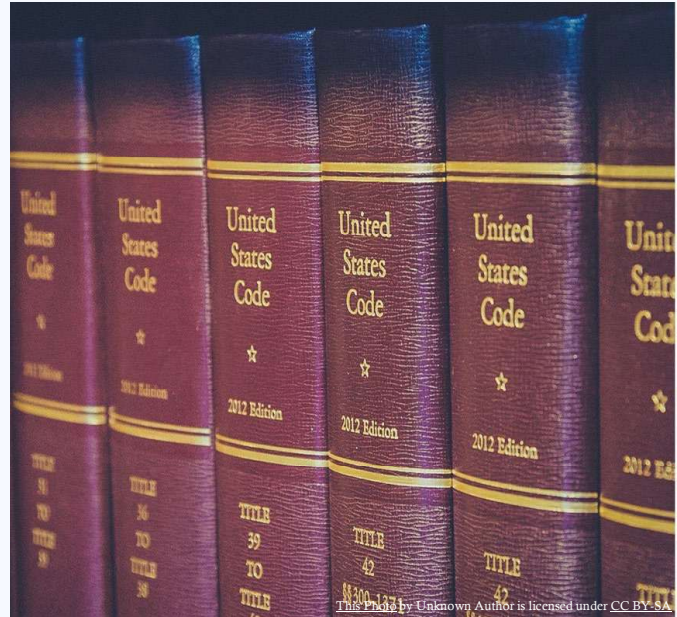
THE "TITLES"

Title IX of the Education Amendments of 1972	Title VI of the Civil Rights Act of 1964	Title VII of the Civil Rights Act of 1964
<ul style="list-style-type: none"> No discrimination on the basis of sex under any education program or activity receiving Federal financial assistance 	<ul style="list-style-type: none"> Cannot deny the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance on the ground of race, color, or national origin 	<ul style="list-style-type: none"> Unlawful for an employer to discriminate against someone because of race, color, religion, sex (including pregnancy, childbirth, and related conditions, sexual orientation, and gender identity), or national origin

DON'T FORGET ABOUT DISABILITY LAWS!

Federal Law	Public Colleges	Private Colleges - Recipient of Federal Financial Assistance	Private Colleges - Non-Recipient of Federal Financial Assistance
Section 504	Yes	Yes	No
ADA Title II	Yes	No	No
ADA Title III	No	Yes	Yes

TITLE IX LAW



FEDERAL LAW



Statutes

20 U.S.C.D.
§1681-1688



Regulatory Guidance

34 C.F.R. § 106



Sub-Regulatory Guidance

DCLs
Preamble to Regs
Executive Orders
OCR Website



Case Law

Circuit courts
District courts

TITLE IX, EDUCATION AMENDMENTS OF 1972, 20 U.S.C. § 1681

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

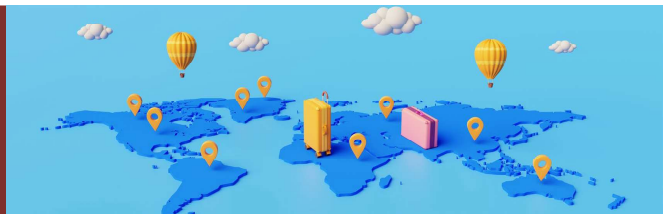
§ 1681(a) - EXCEPTIONS

- Admission policies
- Institutions changing from single-sex status
- Religious institutions
- Military services or merchant marines
- Public traditional single-sex institutions
- Social fraternities or sororities
- Voluntary youth organizations
- Boy or girl conferences
- Father-son/mother-daughter activities
- “Beauty” pageants

§ 1681(c) - “EDUCATIONAL INSTITUTION”

Any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

THE THREE-PART REQUIREMENT FOR TITLE IX



Prohibited conduct as defined by the law and our policy

Our students or employees or applicants for admission or employment (we have jurisdiction over both parties)

Within our education program where we have control over the Respondent **and** the context of the conduct **and** within the United States

TITLE IX GRIEVANCE PROCEDURES



BEFORE WE BEGIN...

Sex Discrimination

§ 106.8(c)

- “grievance procedures that provide for the prompt and equitable resolution of student and employee complaints.”
- Any person may report sex discrimination to the Title IX Coordinator
- Must publish grievance procedures to address sex discrimination
- No requirement other than “prompt” and “equitable”

Sexual Harassment

§ 106.44 and § 106.45

Other Behaviors

Conduct codes

§ 106.30(a) - DEFINITIONS

Complainant

- An individual who is alleged to be the victim of conduct that could constitute sexual harassment

Respondent

- An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

TITLE IX PERSONNEL

Title IX
Coordinator

Investigator

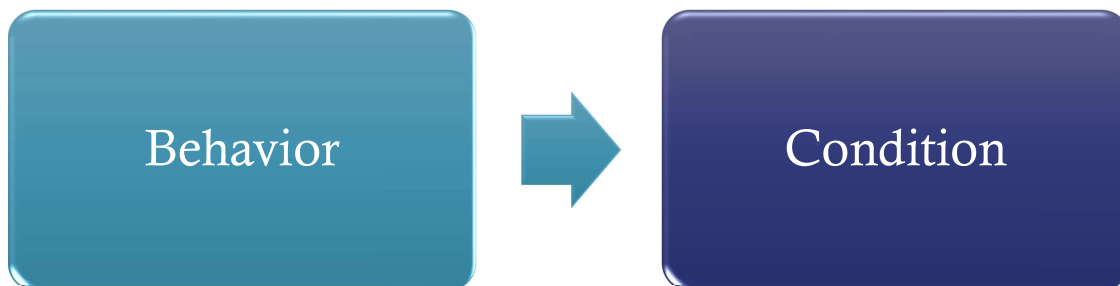
Decision-
maker

Informal
Resolution
Facilitator

SEX-BASED HARASSMENT



UNDERSTANDING THE ELEMENTS



INVESTIGATOR'S PATH

What was the conduct?

Have you clearly articulated the parties and witnesses' series of events?

Have you ensured all elements in each alleged offense have been addressed?



Have you put forth a thorough, fair, and impartial process uncovering all available relevant exculpatory and inculpatory evidence and included it in the investigative report?

QUID PRO QUO
HARASSMENT



QUID PRO QUO HARASSMENT

An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct

QUID PRO QUO INVESTIGATIONS

Respondent

- What is the respondent's status and authority?
- What is the relationship to the complainant?
- What, if any, perceived or actual power exists?

Aid, Benefit, or Service

- What was offered?
- How was it communicated?

Sexual Conduct

- What was the conduct requested?
- Was it sex-based?
- How was it communicated?
- How was it unwelcome?

HOSTILE ENVIRONMENT HARASSMENT

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HOSTILE ENVIRONMENT HARASSMENT

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.

HOSTILE ENVIRONMENT INVESTIGATIONS

Type, frequency, and
duration of the
conduct

Location of the
conduct and the
context

Parties' ages, roles,
previous
interactions, other
factors

Degree to which the
conduct affected
access to the
program or activity

Other sex-based
harassment in the
program or activity

SEXUAL ASSAULT

CLERY DEFINITIONS OF 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. This offense includes the rape of both males and females.
- **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 age or because of temporary or permanent mental incapacity.
- **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.

34 CFR 668 Appendix A

SEXUAL ASSAULT INVESTIGATIONS

What was the sexual behavior?

Who was the initiator?

What, if any, were the words or actions to indicate consent?

- Is there an issue of incapacitation or force?

STALKING

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STALKING

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (A) Fear for the person's safety or the safety of others; or
- (B) Suffer substantial emotional distress.

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STALKING (CONTINUED)

(ii) For the purposes of this definition -

*(A) **Course of conduct** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.*

*(B) **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.*

*(C) **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.*

INTIMATE PARTNER VIOLENCE

DATING VIOLENCE

Violence committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

- (1) The length of the relationship;
- (2) The type of relationship; and
- (3) The frequency of interaction between the persons involved in the relationship.

§ 106.2

DOMESTIC VIOLENCE

The term “domestic violence” includes felony or misdemeanor crimes of violence committed

- by a current or former spouse or intimate partner of the victim,
- by a person with whom the victim shares a child in common,
- a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

INTIMATE PARTNER VIOLENCE INVESTIGATIONS

Parties

- Type of relationship
- Length of the relationship
- Frequency of interaction between the persons

Behaviors

- Type of violence
- Possible patterns of behaviors
- Other behaviors that may fall under other policy definitions

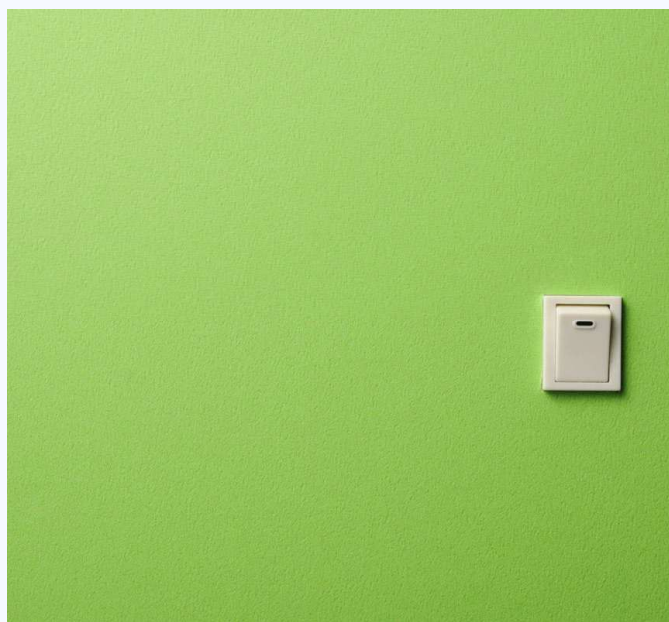
THE SIGNED FORMAL COMPLAINT



FORMAL COMPLAINT

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.

TITLE IX- INITIATED COMPLAINTS





What if the complainant doesn't respond or doesn't want to proceed?



TITLE IX-INITIATED COMPLAINTS

The Title IX Coordinator can initiate a complaint. The Title IX Coordinator is not considered the complainant or a party.

EIGHT FACTORS TO CONSIDER

Complainant's
request

Safety
concerns

Risk of
additional acts


Severity of
allegation

Age and
relationship

Scope and
pattern

Evidence

Alternatives to
resolve



What circumstances
may warrant the Title
IX Coordinator to
initiate a complaint?

IF TITLE IX INITIATES A COMPLAINT...

Notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others, including by providing supportive measures.

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CONSOLIDATION




CONSOLIDATION OF COMPLAINTS

Multiple
respondents

More than one
complainant
against one or
more respondent

One party
against another
party



Consolidation
Considerations

DISMISSALS



DISMISSALS

- Must
 - The formal complaint, on its face, does not constitute sexual harassment
 - Not in educational program or activity
 - Not in the United States
- May
 - Complainant withdraws complaint
 - Respondent no longer enrolled
 - Prevented from gathering evidence

SUGGESTED DUTIES BEFORE DISMISSAL

Unable to identify the respondent

- Reasonable steps to identify respondent

Complainant withdraws allegation(s)

- Must consider initiating the complaint

Allegation if proven not discrimination?

- Prior to dismissing, must clarify with the complainant

BASES FOR APPEAL OF DISMISSAL



Procedural Irregularity



New Evidence



Bias or Conflict of Interest

NOTICE



NOTICE

Requirements	2020 §106.45(b)(2) required to be in writing
Grievance Procedures	YES
“Sufficient information” (parties, conduct, date, location)	YES
Statement that retaliation prohibited	NO (prohibited but not required in notice)
Access to relevant evidence	YES (any evidence)
Respondent is presumed not responsible	YES
Right to advisor of choice	YES
Prohibition on false statements	YES

LETTERS



Who sends the letters?

Notice of report/request for intake

Notice of case closure

Notice to the complainant of Title IX-initiated complaint

Notice of allegations/investigation

Notice of any meeting or proceeding

Outcome letter

Appeals

- Appeal submission
- Appeal decision
- No appeal submitted

Alternative resolution

- Notice of option
- Agreement

Dismissal

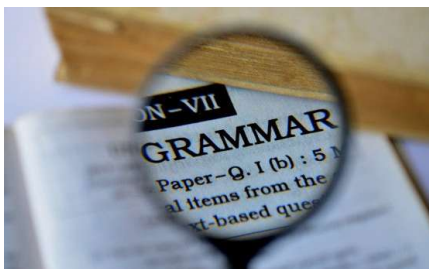
- Notice of dismissal
- Notice of appeal
- Notice of result

Investigation status

- Additional allegations
- Temporary delay
- Periodic updates

Witness notifications

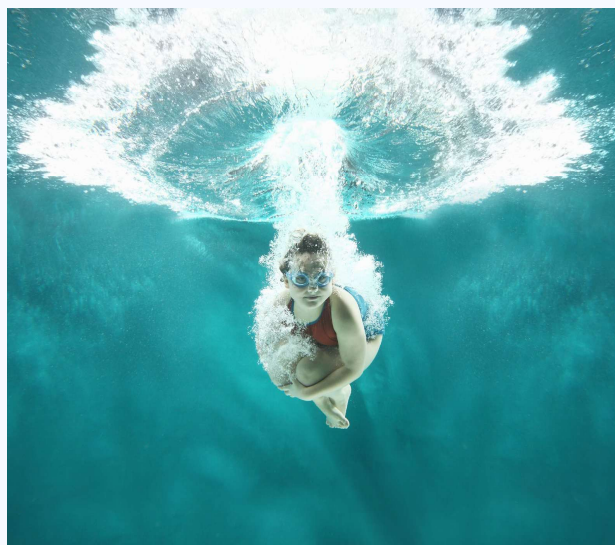
- Interview
- Meeting hearing



COMMON PITFALLS WITH NOTICES OF ALLEGATION & INVESTIGATION

- Dates - incorrect or not broad enough
- Description of behaviors is too specific or too narrow
- Typos
- Poor grammar

THE INVESTIGATIVE PROCESS- DEEP DIVE



ADEQUATE, RELIABLE, & IMPARTIAL INVESTIGATION



Burden is on the institution to conduct the investigation



Provide an equal opportunity for the parties to present fact witnesses and relevant evidence



Identify what evidence is relevant to the allegations and not otherwise impermissible



Provide each party with an equal opportunity to access the evidence that is relevant to the allegations and not otherwise impermissible

INVESTIGATIONS "MUSTS"



Provide notice of meetings, time to prepare



Provide an opportunity for the parties to present evidence, including fact witnesses



Allow advisor of choice



Allow reasonable extensions of time



Provide party and advisor access to evidence (2020 - any, 2024 - relevant)



Create an investigative report that summarizes relevant evidence

ADVISOR OF CHOICE



May be but is not required to be an attorney



May accompany to any meeting or proceeding



Institution may restrict participation

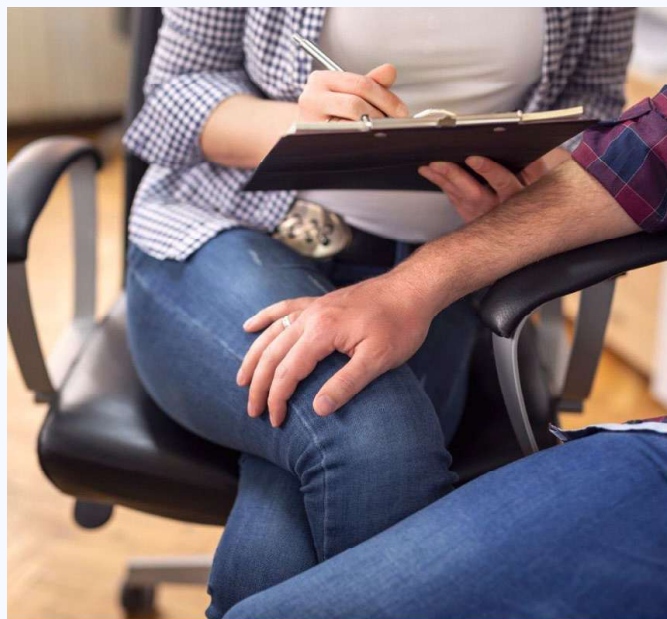


Receives access to evidence and report



Must conduct cross-examination at hearing

UNWELCOME CONDUCT & CONSENT



“Unwelcome conduct” vs. “without consent”

Unwelcome conduct: Quid pro quo,
hostile environment, and stalking
Without consent: Sexual assault

UNWELCOME CONDUCT



WHEN DOES CONDUCT BECOME UNWELCOME?

Invited



Uninvited but welcome



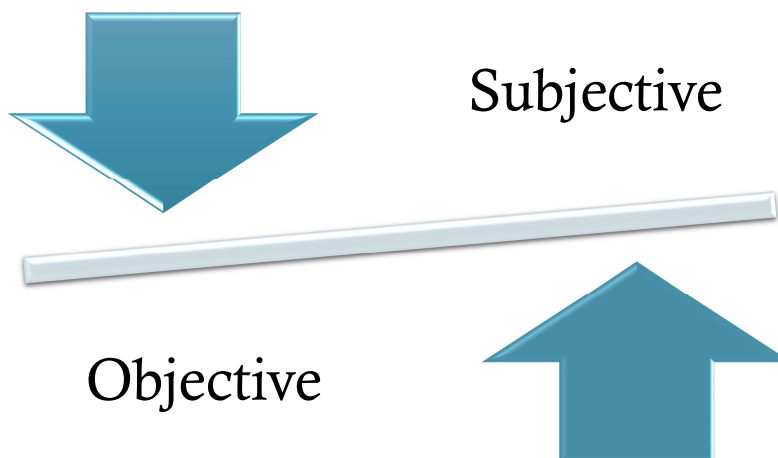
Offensive but tolerated



Flatly rejected



TESTING FOR UNWELCOMENESS



CONSENT



CONSENT

Sexual
Permission

Verbal or
Nonverbal

Absent if force
or incapacitation

FORCE

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INCAPACITATION

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INCAPACITATION - SAMPLE DEFINITION

Incapacitation is the physical and/or mental inability, whether temporary or permanent, of an individual to make rational, reasonable decisions, or judgments regarding one's well-being or welfare.



Alcohol



Drugs



Disability



Other

TWO-STEP DETERMINATION

Was the
complainant
incapacitated?



Did the respondent
(or would a
reasonable person)
know?



ALCOHOL &
OTHER DRUGS

SUBSTANCE USE AND SEX

“...analysis of SHIFT survey data showed that two-thirds of sexually active students who had sex in the prior three months reported some substance use prior to or during sex.”

Jennifer S. Hirsch & Shamus Khan. “Sexual Citizens: A Landmark Study of Sex, Power, and Assault on Campus.”
SHIFT survey = Alexander Wamboldt et al., “Wine Nights, ‘Bro-Dinners,’ and Jungle Juice: Disaggregating Practices of Undergraduate Binge Drinking,” *Journal of Drug Issues*, 2019, 49(4): 643–67.

HALLUCINOGENS AND OPIOIDS

Hallucinogens

- Change how the world is perceived
- Colors, sounds, movement and time are all experienced in an altered state of mind

Opioids

- Block pain by sealing off the receptors that trigger the sensation
- Provide a sense of euphoria

STIMULANTS AND DEPRESSANTS

Stimulants (Uppers)

- Raise levels of physiological or nervous activity in the body
- Enhance alertness, concentration, and energy

Depressants (Downers)

- Inhibit the function of the central nervous system
- Reduce intrusive thoughts, providing a sense of relaxation

ALCOHOL STANDARD MEASUREMENTS



12 oz. of beer



4-5 oz. of wine



1.5 oz. and 80 proof of
liquor

HOW DO COLLEGE STUDENTS MEASURE THEIR DRINKS?

Hint: They don't!

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Levels of Alcohol/Drug Consumption

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IMPAIRMENT

- The state of being diminished or weakened due to the consumption of alcohol
 - Begins as soon as alcohol enters the bloodstream
 - Increases with consumption of alcohol
-

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INTOXICATION

- An act or instance of inebriation, drunkenness
 - Intoxication is legally met when an individual's blood alcohol level reaches .08 or greater
-

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INCAPACITATION

- So impaired as to be incapable of giving consent
- Lacking the capacity to consent
- If a person cannot understand the nature of the proposed act or cannot understand they have a right to refuse or are otherwise unaware that the activity is occurring

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BLACKOUTS

Fragmentary Blackout

Also known as
“grayout” or
“brownout”

Gaps in memory with
some level of
recollection

En Bloc Blackout

No recollection of
events

What about
“passed
out”?



ASKING ABOUT INCAPACITATION

Context

Timelines
Location
Respondent's role
Witnesses
Other factors (e.g., food)

Alcohol

Type(s) of alcohol
Alcohol content
Quantity
Pace

Behaviors

Baseline
Presenting behaviors
Witness observations
Party observations

"Unwelcome Conduct & Consent"



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Stress



Trauma



TYPES OF TRAUMA



Acute



Chronic



Complex



Secondary



Adverse Childhood
Experiences (ACE)



Historical/
intergenerational
trauma

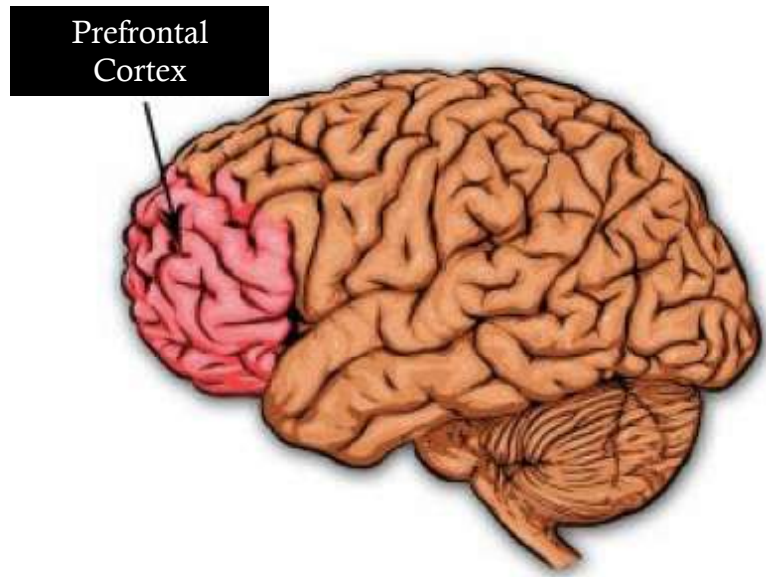
IMPACT OF TRAUMA



DURING THE TRAUMATIC EVENT: NEUROBIOLOGY



THE PREFRONTAL CORTEX



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DEGRADED PREFRONTAL CORTEX



Alcohol

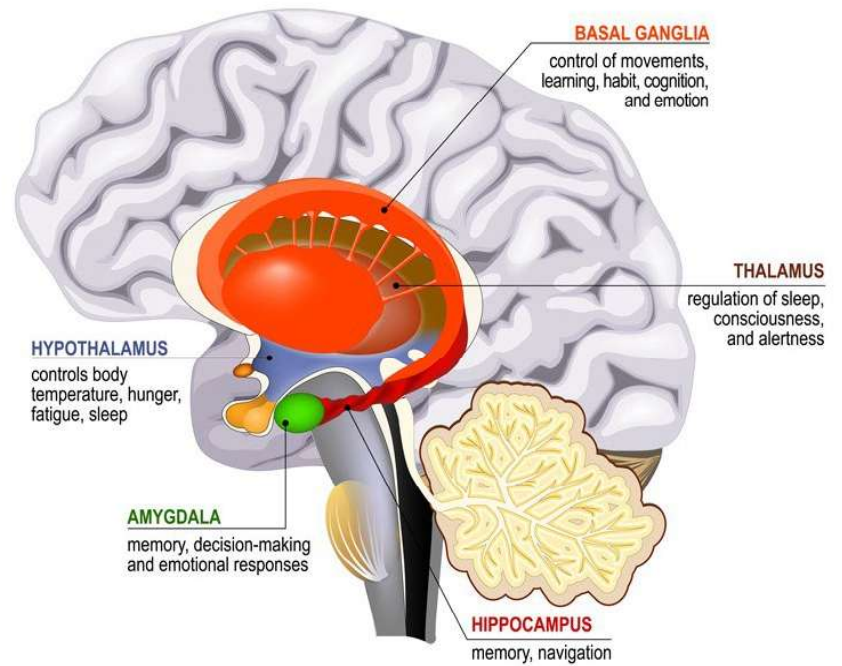


Age



Prolonged stress
exposure

THE LIMBIC SYSTEM



THE BODY'S RESPONSE TO FEAR



Heart



Lungs



Muscles



Prefrontal
Cortex



Eyes



Stomach



Skin

RESPONSE



Habit



Reflex

IMMEDIATELY
AFTER THE
TRAUMATIC
EVENT:
MEMORY



MEMORY



MEMORY ENCODING



Central Details



Peripheral Details



Time and Context

TRAUMA MEMORY ENCODING



Sensory



Emotional



Flashbulb
memories

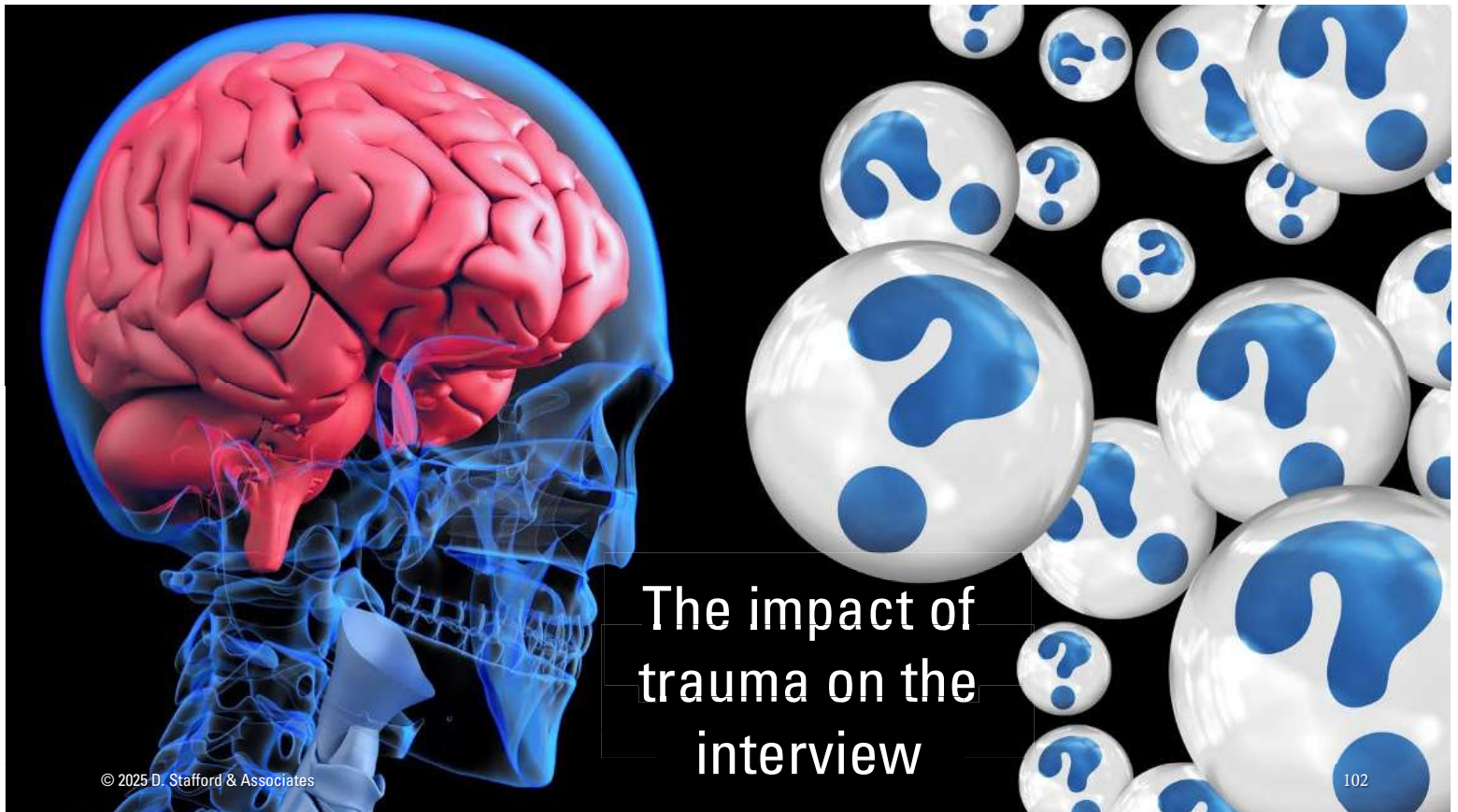


LONG TERM RESPONSE: IMPACT

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The impact of
trauma on the
interview

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PRESENTATION STYLES



AVOIDING RE-TRAUMATIZATION



QUESTION FORMAT



Tone



Phrasing



Open-ended



Safe



Judgment-
free

INTERVIEW TECHNIQUES



Clarify linear
information



Use sensory
prompts



Ask for feelings
and emotions



Understand
statement
variations

IMPARTIAL INVESTIGATIONS



Consistent application

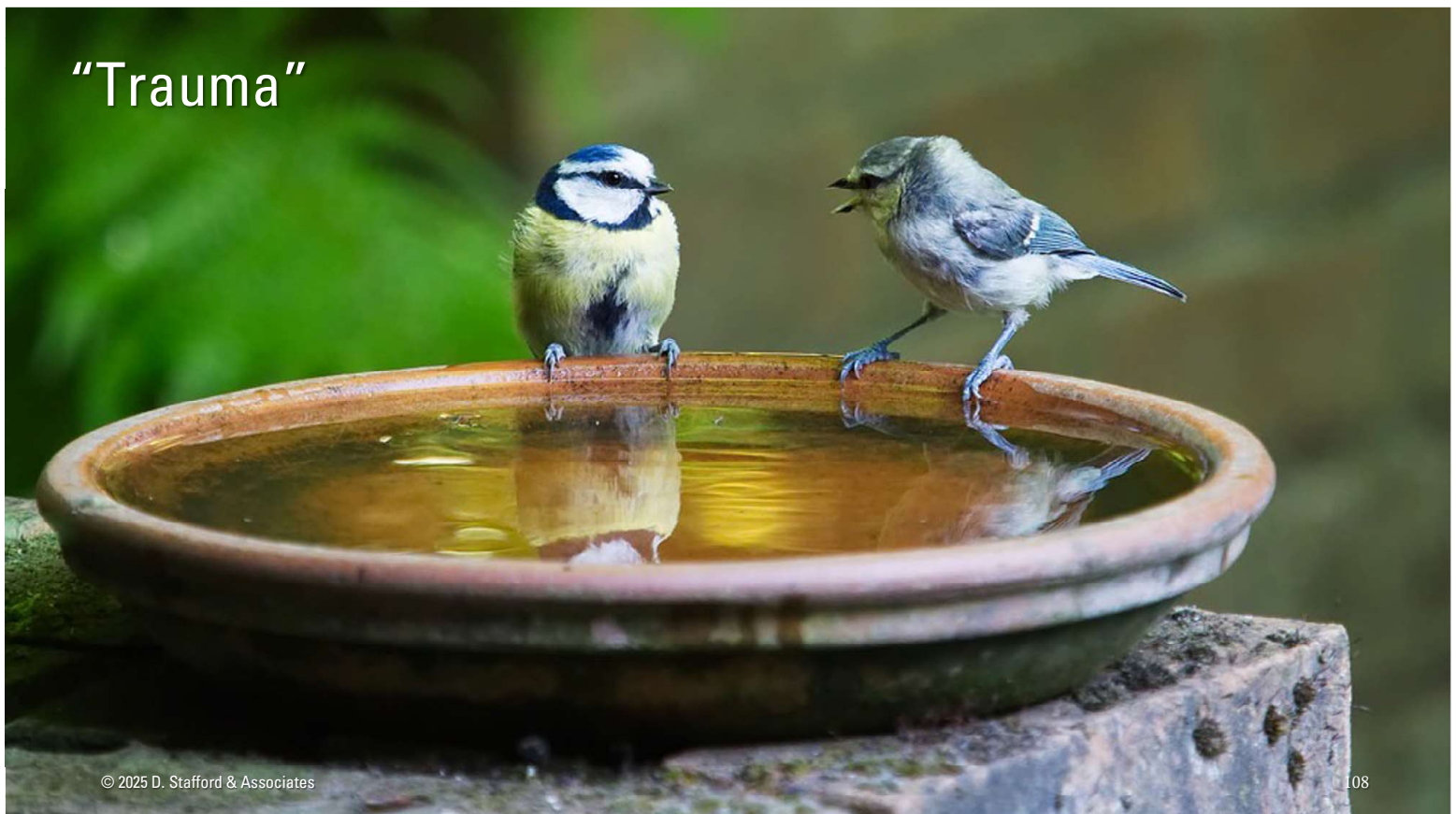


Ask clarifying
questions

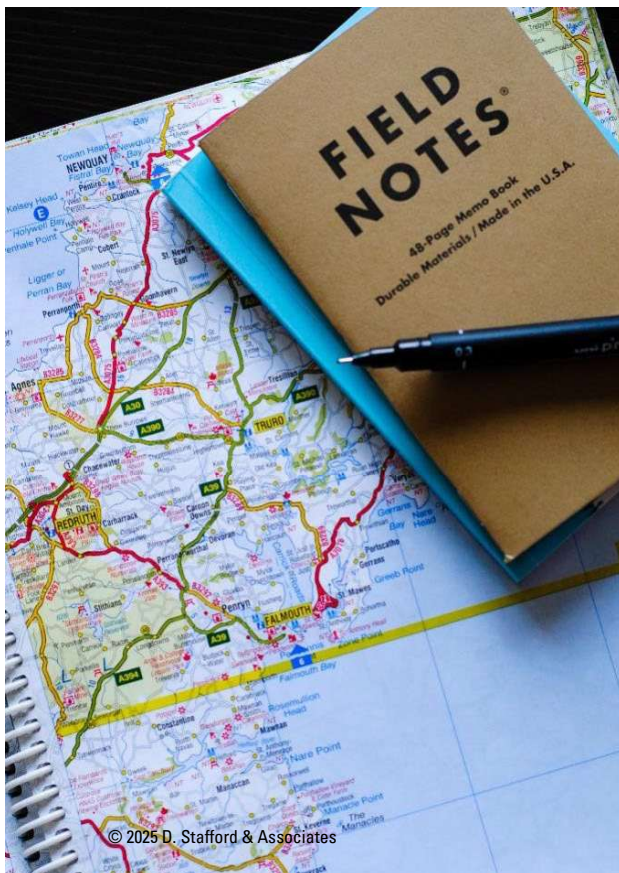
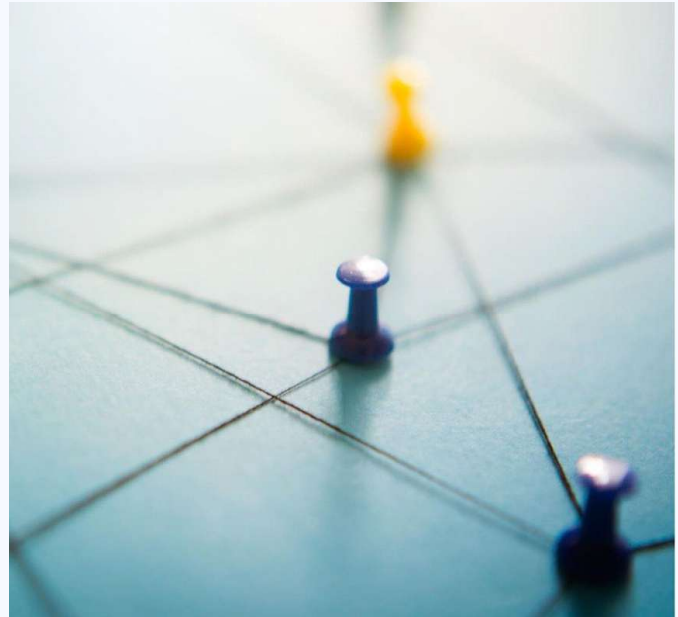


Avoid bias

“Trauma”



INVESTIGATIVE STRATEGY & EVIDENCE COLLECTION



INVESTIGATION ROAD MAP



DEVELOPING AN INVESTIGATIVE STRATEGY



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INVESTIGATIVE STRATEGY



Scope



Methodology



Preparation



Challenges



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SCOPE



Notice of Allegation



Notice of Investigation



Policy Definitions



Rights of the Parties

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METHODOLOGY



File Management



Liaisons

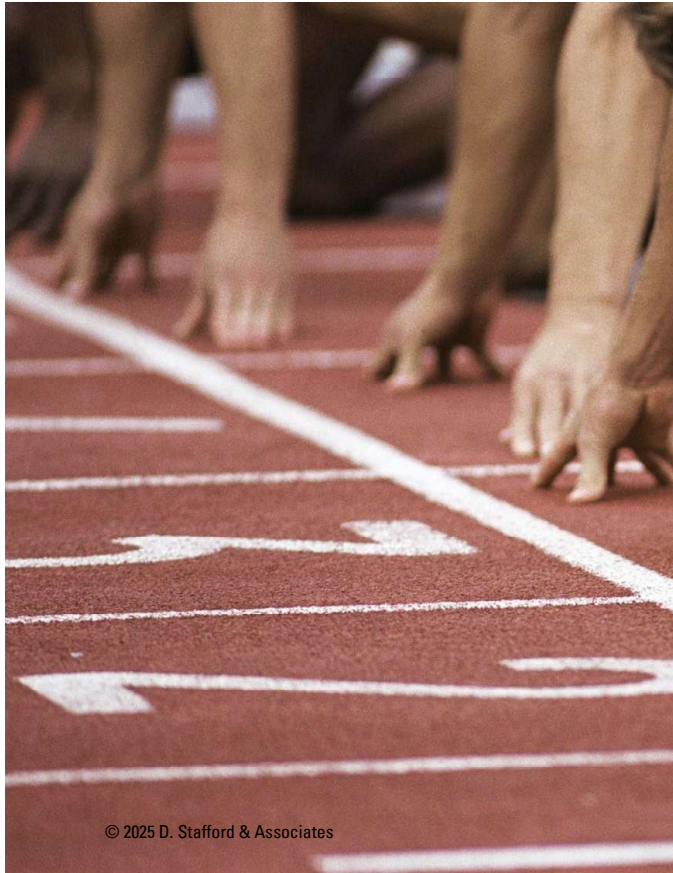


Logistics



Internal Communications

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PREPARATION



Review Complaint



Research



Draft Questions



Initial Evidence Collection

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Photo by Iwona Castiello d'Antonio on Unsplash

Investigative Case File

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Investigation Challenges

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EVIDENCE COLLECTION



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EVIDENCE REQUIREMENTS

1

Provide an equal opportunity to present fact witnesses and evidence

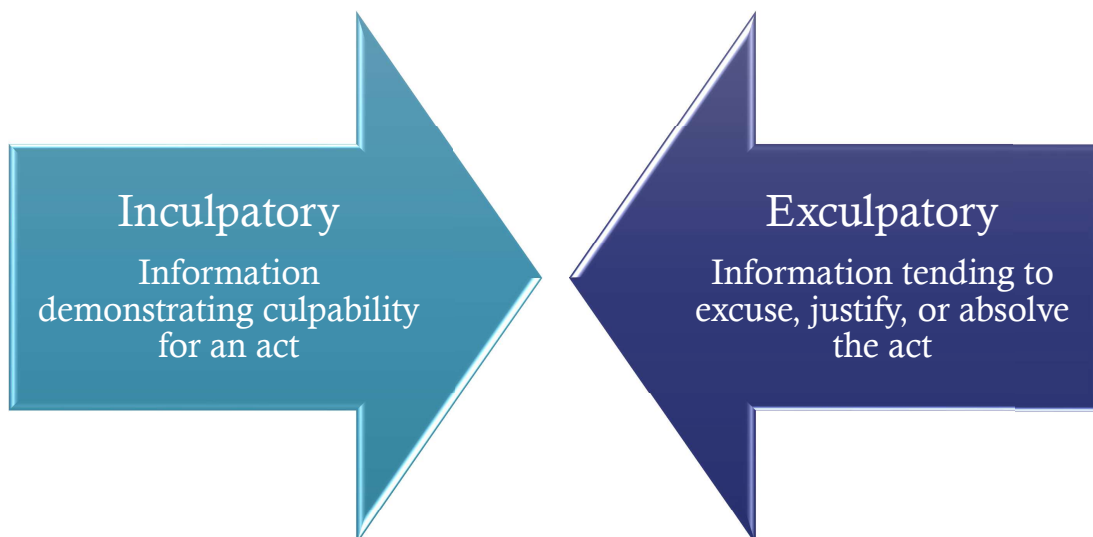
2

Provide an equal opportunity for each party to inspect and review the evidence and respond

3

Investigator must determine relevant and permissible evidence

EVIDENCE



EVIDENCE THAT MUST BE EXCLUDED



Protected by Privilege

- Unless voluntarily waived



Records Connected to Treatment

- Unless voluntary, written consent



Complainant's Sexual Interests or Prior Sexual Conduct

- Unless offered to prove that someone else committed the conduct or about specific incidents offered to prove consent

TYPES OF EVIDENCE



Real evidence



Demonstrative



Documentary



Testimonial

PROVIDERS OF EVIDENCE



Parties



Witnesses



Institution



Investigators

Managing Evidence Requests

Shopping List

1. Milk
2. Eggs
3. Cheese
4. Butter

EXAMPLES OF EVIDENCE

Photographs

Text messages

Social media/dating
apps

Documents (memos,
letters, notes)

Voicemail

Phone logs

Guest lists

Investigator-created
evidence

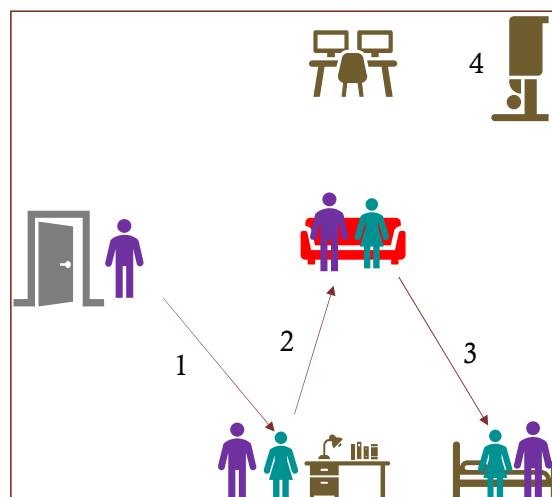
FLOORPLANS



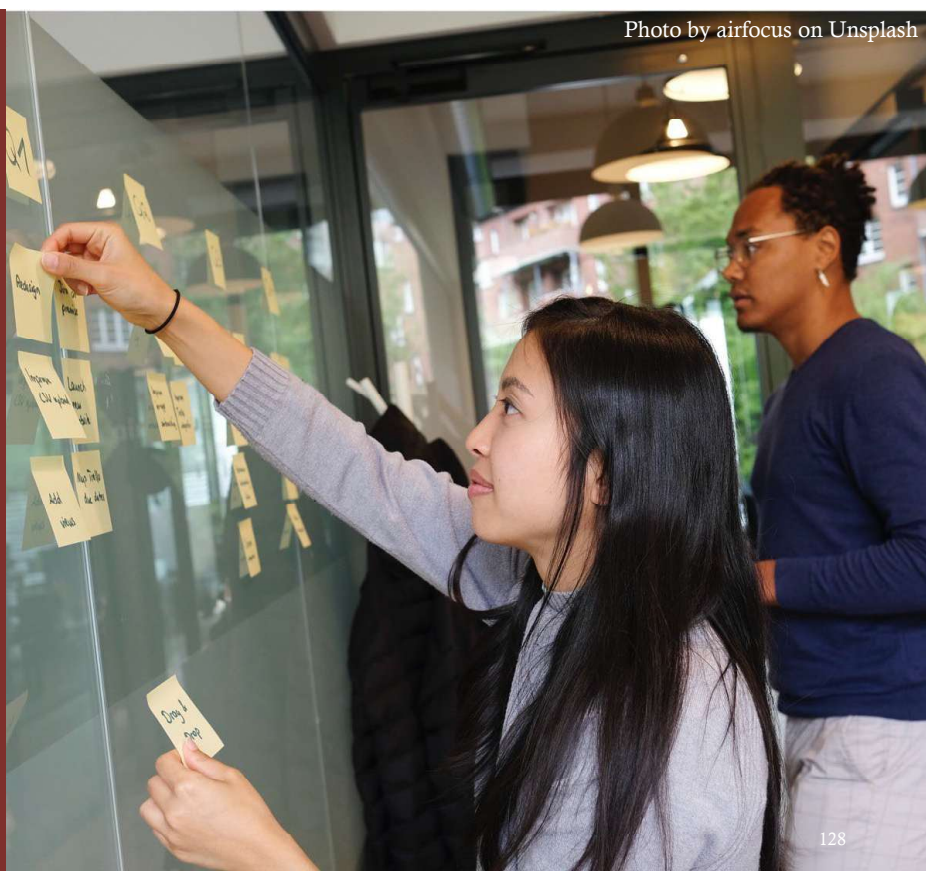
INVESTIGATOR-CREATED EVIDENCE

During the Complainant's interview, the Complainant drew a model demonstrating the movements of the parties:

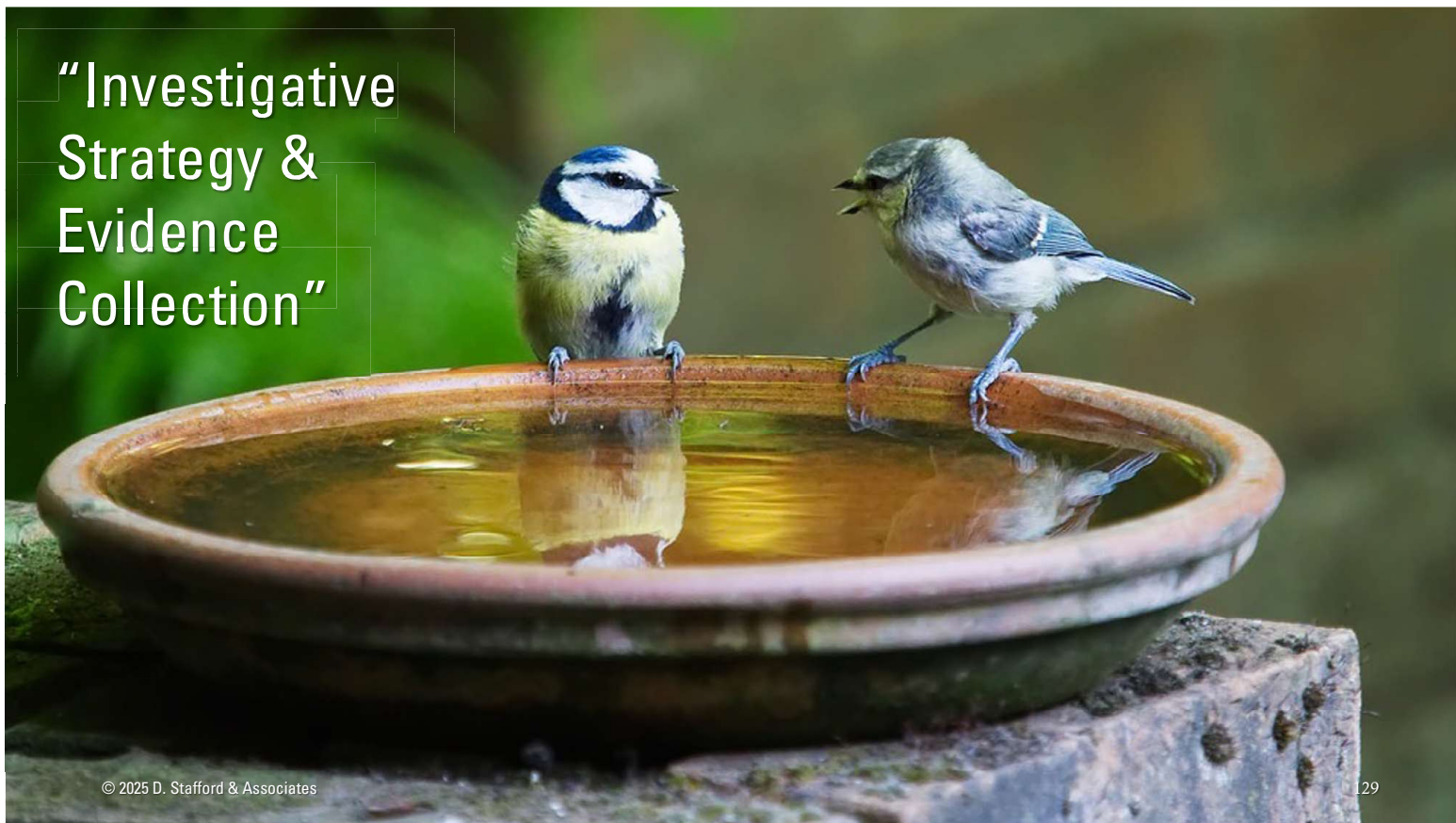
1. The Respondent arrived and went over to the Complainant who was at her desk.
2. The Respondent and Complainant moved to the couch and watched a movie.
3. The Complainant woke up as the Respondent was carrying her to her bed.
4. The roommate was in her bed across the room.



INCIDENT TIMELINE



"Investigative Strategy & Evidence Collection"



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ADVANCED INTERVIEWING



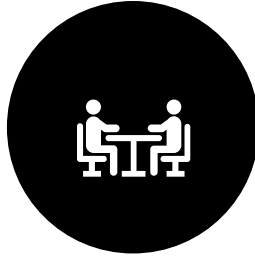
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WHAT ARE INTERVIEWS



PART OF EVIDENCE
(TESTIMONIAL)



CONVERSATION



STRUCTURED

INTERVIEW GOLDEN RULES

Preparation

Environment

Flexibility

PRE-DRAFT QUESTIONS



Confirmation

Dates
Location
Witnesses
Respondent



Evidence Collection

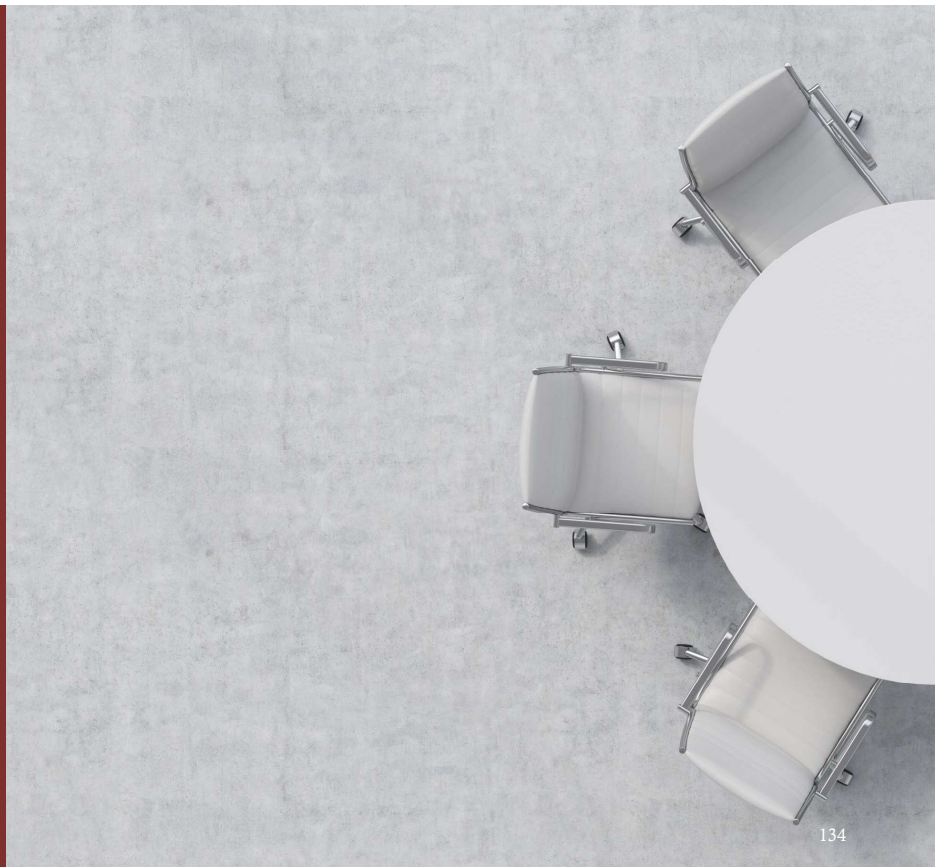
What can you get?
What should you get?
What more do you need?



Policy refresh

Elements
Process
Report
Rights

CREATING THE ENVIRONMENT



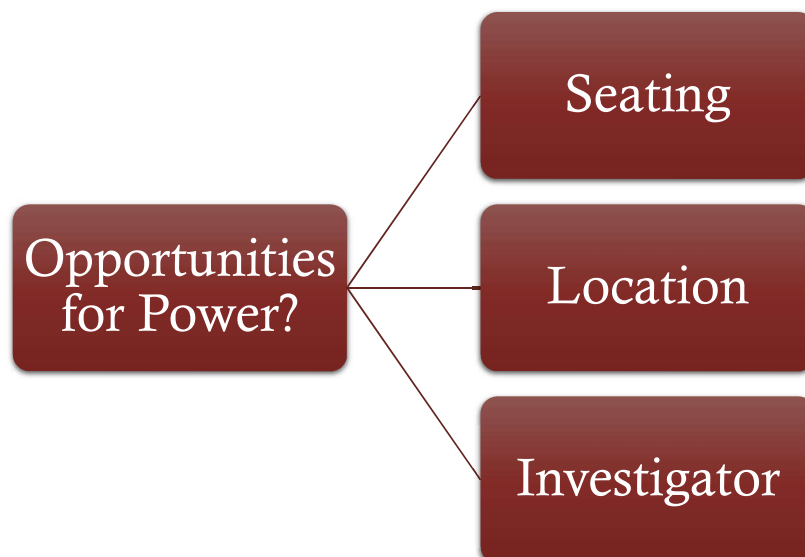


CREATING THE ENVIRONMENT

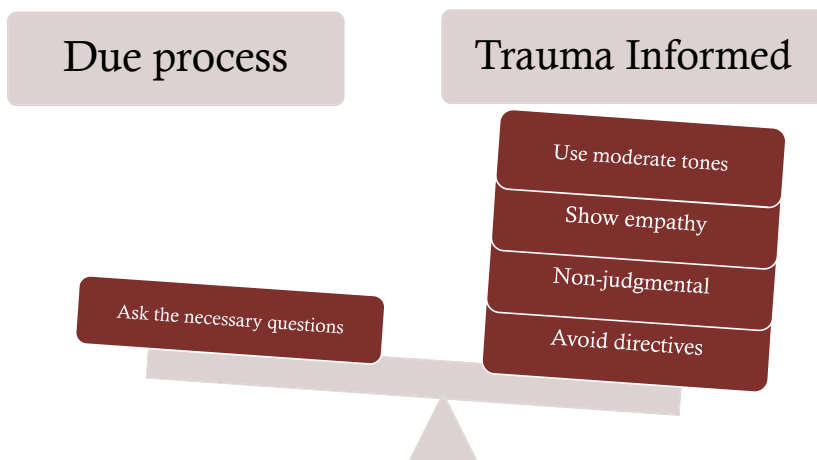
Discussion:

Where do you conduct interviews?

CREATING THE ENVIRONMENT



CREATING THE ENVIRONMENT—THE INVESTIGATOR’S ROLE



INTERVIEWING FLEXIBILITY

I pledge to...

- Be open-minded
- Consider different theories of a case
- Roll with the surprises
- Adapt to the room

DISCUSSION: DO YOU AUDIO OR VIDEO RECORD INTERVIEWS? WHAT ARE THE PROS AND CONS?



WHO IS IN THE ROOM?



- Investigator(s)
- Parties
- Advisor
- Support Person
- Interpreter
- ADA/504 Accommodation
- Others?

THE INTERVIEW

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THE DSA INTERVIEW OUTLINE

Preliminaries

Background

Narrative

Clarification

Case Questions

Closing

PRELIMINARIES: YOU DO THE TALKING

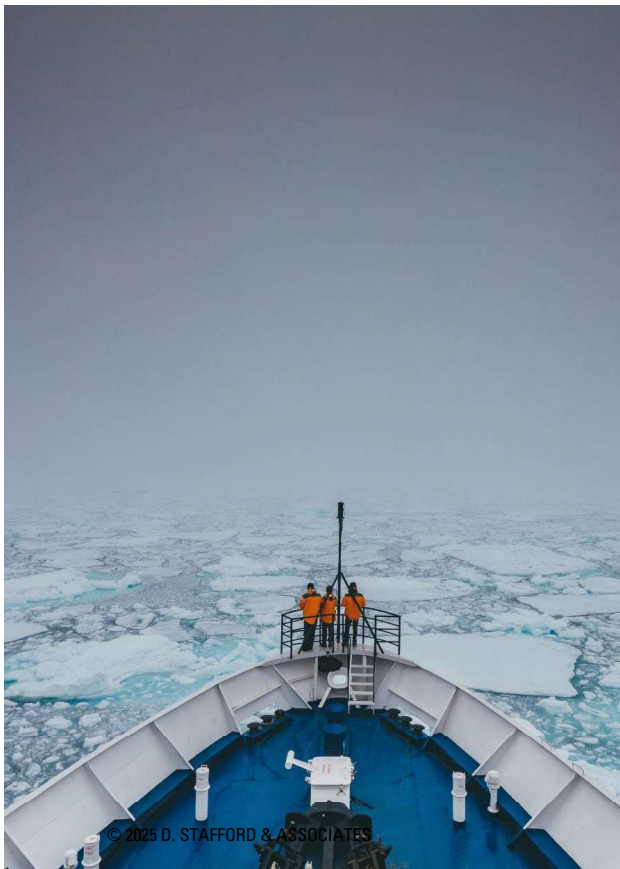


Role of the investigator

Confidentiality vs. Privacy

Retaliation

School policy



BACKGROUND: BUILD THE RAPPORT

Icebreaker

Safe topics

Common ground

Pre-Draft

NOT BACKGROUND ON CASE



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NARRATIVE: THE BIG QUESTION

Introduce the question

Let the interviewee talk

- No interruptions
- No rush
- No interruptions
- Allow for silence

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CLARIFICATION: FILLING IN THE HOLES

What questions came up from the Narrative?

Ask chronology questions

Verify statements, words, people

Ask for corroborating evidence where expected

Dates/Times/Locations

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CASE QUESTIONS: THE PRE-DRAFTED MUST ASKS

Case-specific Questions

Close-ended Questions

Confirmations

Contradictions

Defenses/Alternative Theories

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CLOSING: LOOSE ENDS

Final thoughts from interviewee

Final questions from investigator

Reiterate policy issues

Next Steps

Complainant/Respondent

- Questions for other parties
- Additional witnesses
- Interim measures/resources

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INTERVIEWING BAD HABITS

Interrupting

Two questions at once

Not listening for the answer

Avoiding the hard questions

Lost focus on elements

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ALTERNATIVE INTERVIEW TECHNIQUES



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FORENSIC EXPERIENTIAL TRAUMA INTERVIEW

“Good solid neurobiological science routinely demonstrates that, when a person is stressed or traumatized, inconsistent statements are not only the norm, but sometimes strong evidence that the memory was encoded in the context of severe stress and trauma.”

Russell Strand, US Army Military Police School

FETI



Interview technique developed to tap the more primitive portions of the brain.

Reduces inaccuracy of information
Enhances understanding of totality of the event.



May be used for complainant, witness and some respondents.

FETI

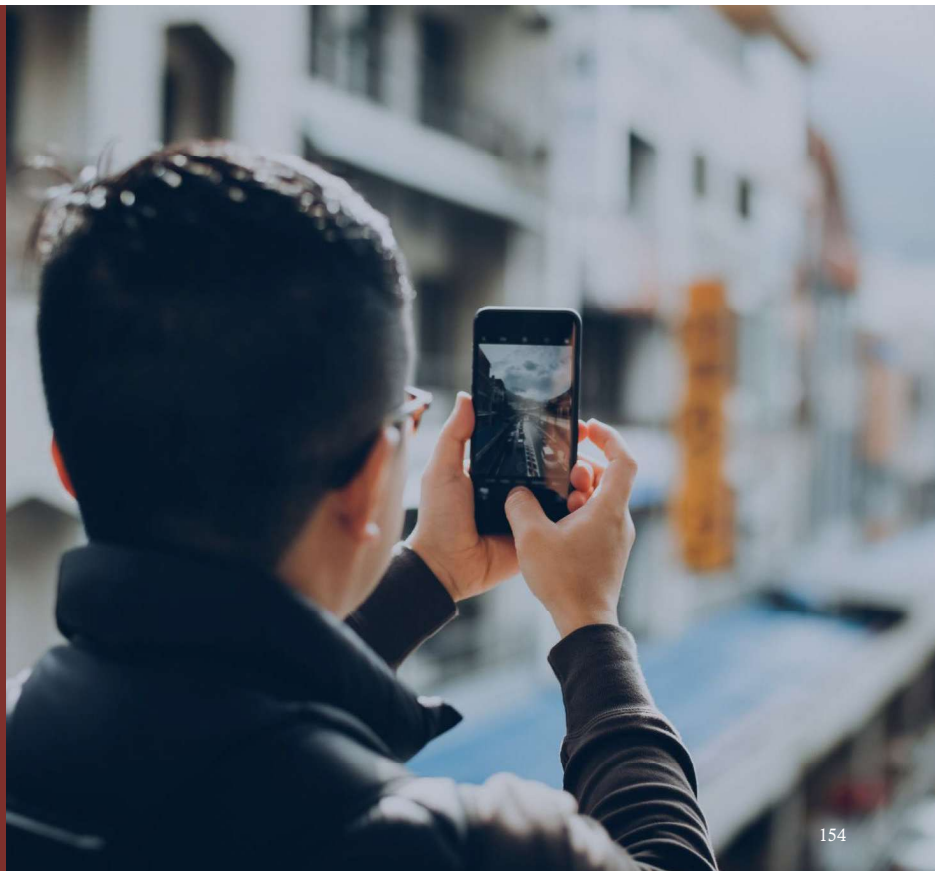
Uses principles and techniques
developed for forensic child
interviews

Taps into the lower functioning
portion of the brain

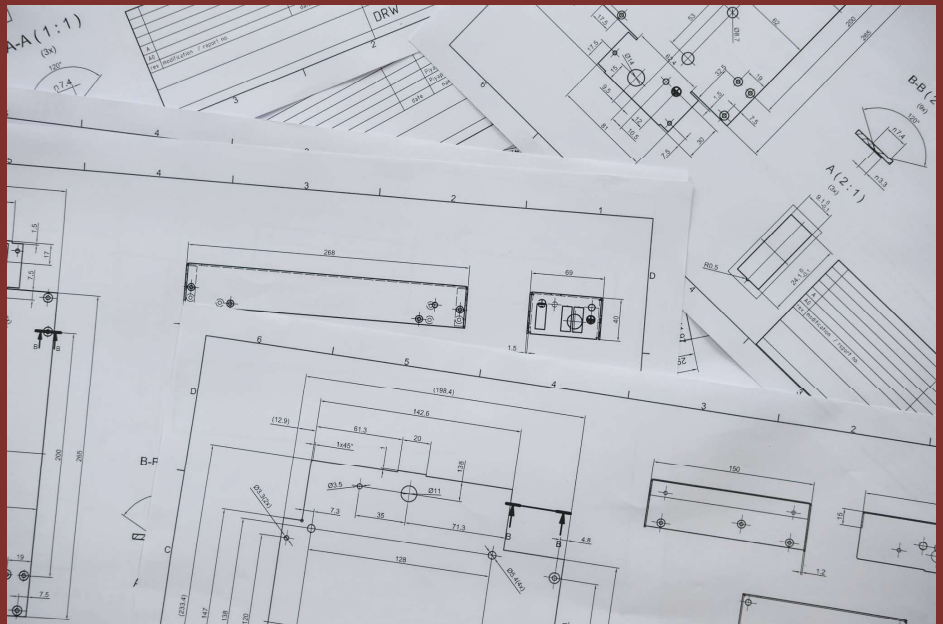


Open-ended
Non-leading
Soft interview room
Empathy

RECREATE THE SCENE



PHYSICAL SPACE



SENSORY



SENSORY



SMELLS



TEMPERATURE



TOUCH



SOUNDS

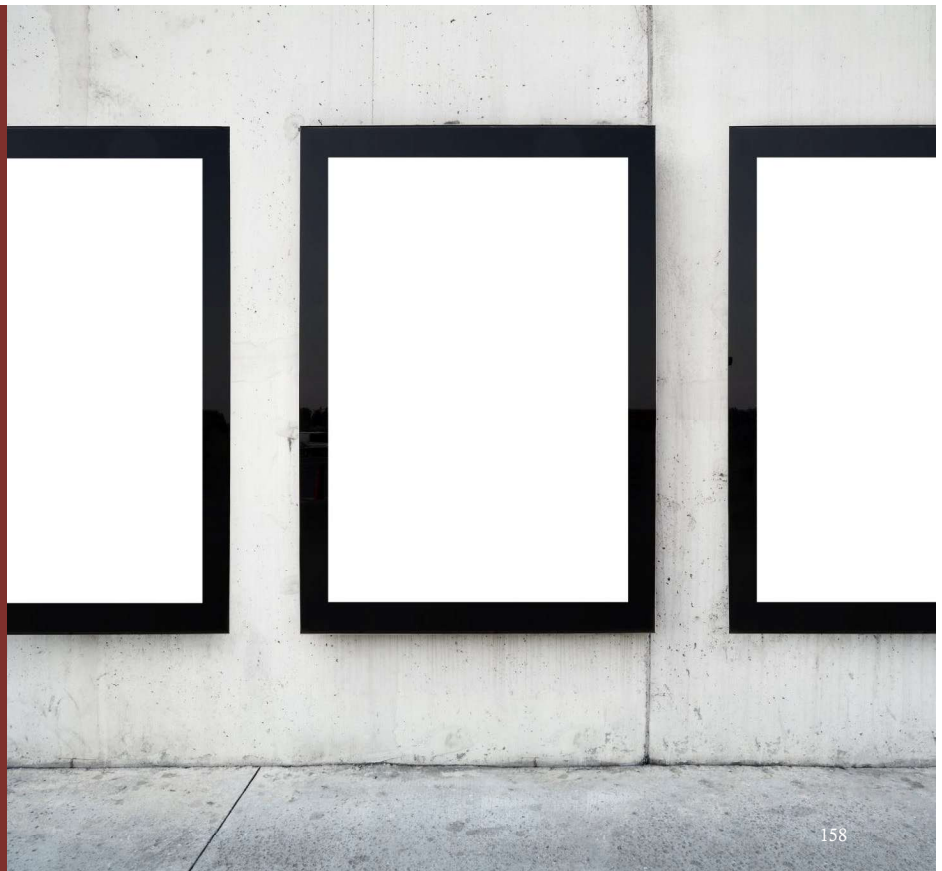


LIGHT



TASTE

FRAME BY FRAME



FRAME BY FRAME ANALYSIS

“If we watch a movie in real time we may understand what is going on, but we might not observe all of the details. However, if we run the same movie in slow motion, frame-by-frame, we may better recognize the details of the action as it occurs. Investigators must use this concept if they wish to capture all of the details of a crime during a give interview. . . It is also key to separating false statements from those that are genuine.

John Savino, Det. NYPD, Rape Investigation Handbook

FRAME BY FRAME ANALYSIS



Best used to interview complainants (including those suspected of a false report)



Opposite of “tell me what happened”



Elicits all details of the victim’s assault

FRAME BY FRAME ANALYSIS

Part one

- Tell me about your day from the time you got up (without interruption)
- This statement however brief or detailed provides the basis for the in-depth FFA



Part two

- Analysis of the attack
- Use the initial victim's statement as the foundation
- Ask specific questions that will establish the known sequence of events in detail (Frame by Frame)

FRAME BY FRAME



- I woke up this morning in my dorm
 - What time?
 - What woke you up?
 - Who was in the room?
- And left for class
 - What time did you leave?
 - How do you know?
 - Who did you see?
 - Do you normally leave at this time?
 - Where was your class?
 - What was your exact route?
 - Did you stop anywhere on the way?

COGNITIVE



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COGNITIVE INTERVIEW

One such universal problem is the limitation imposed by human memory, a problem faced by all witnesses—caring or unconcerned, cooperative or uncooperative, victims or innocent bystanders,...As opposed to the other insurmountable obstacles of investigation, eye-witness memory definitely can be enhanced by appropriate interviewing techniques.

Fisher, Ronald P., and R. Edward Geiselman

Memory-Enhancing Techniques for
Investigative Interviewing : The Cognitive
Interview



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THE COGNITIVE INTERVIEW

Developed by Ron Fisher, Ph.D. in the late 1980's

Began with helping people to find things they had misplaced

Asked questions to help trigger their memory

Used memory theory and general cognitive psychology theory

Results have been studied with 35-60% more information recalled with the Cognitive Interview.

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THE COGNITIVE INTERVIEW

CI is basic psychological principles of memory, with social dynamics and communication thrown in to create a way to help people more accurately describe objects or events

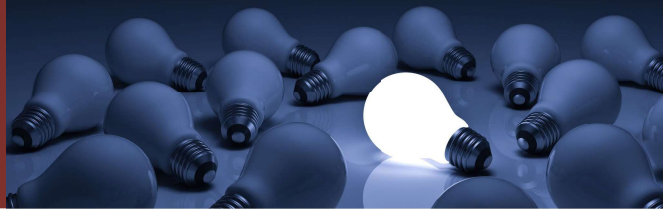
Starts as a narrative interview

Objective is to elicit information, not extract it

Police are trained in interrogation techniques

People think it is easy to interview a cooperative witness – but how do you get the information?

COGNITIVE INTERVIEW



Interviewer tries to mentally reinstate the environmental and personal context of crime.



Uses four general methods for jogging memory—which can be used at varying points in the interview.

Negative—argument that “recreating” the event can be traumatic (and all interviews require this to some extent)



Particularly useful for witnesses and identification cases.



MEMORY RECALL TECHNIQUES

Change perspectives: Report the incident from different perspectives (what others might have seen)

Recalling in reverse order:
Recounting in a different narrative order

COGNITIVE INTERVIEWING

Reconstructing the circumstances: Asking about general activities and feelings of the day

Be complete: Reporting every detail, even the trivial

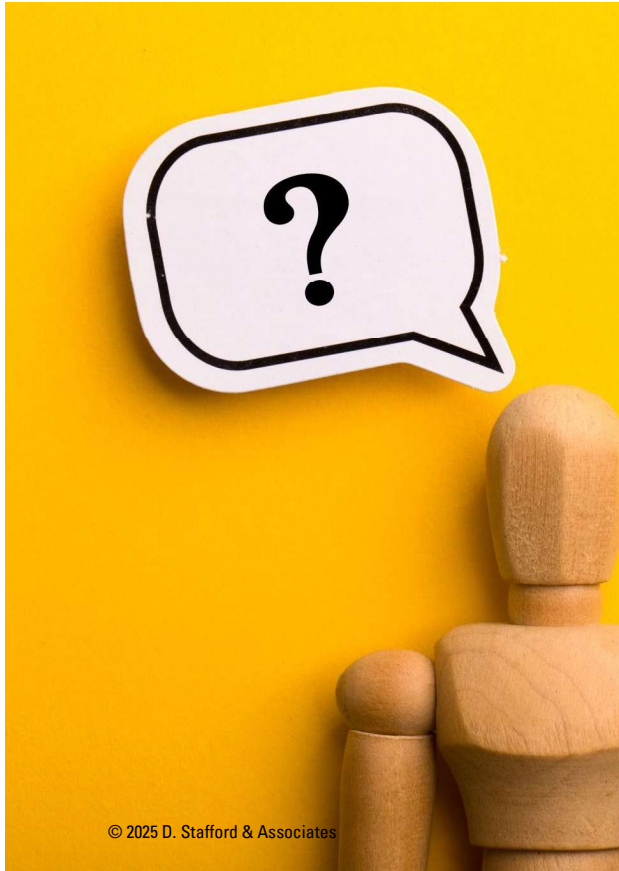
THE COGNITIVE INTERVIEW

Traditional – many questions and brief response

- “I don’t remember” = next question

Cognitive – question-less interview

- Try to create a social environment so that the witness generates information without having to wait for a question
- Incorporate principles of memory to assist witness to remember more details



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THE COGNITIVE INTERVIEW MISTAKES

Too many closed questions/not enough open-ended

Interrupt frequently

Think of follow-up questions during the narrative response

Asking a question immediately after the witness stops speaking

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THE PEACE MODEL

Created in the UK in the 1980s following a series of interviewing failings that led to miscarriages of justice

- Designed to offer a more effective and ethical alternative to persuasive and 'confession-focused' interviewing techniques
- Now being used by law enforcement around the world.

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PEACE MODEL

- Combines Cognitive Interviewing and Conversation Management
- A non-accusatory, information gathering approach to investigative interviewing
- Considered to be best practice
- Suitable for any type of interviewee, victim, witness or suspect

PEACE MODEL

P

PREPARATION
AND PLANNING

E

ENGAGING AND
EXPLAINING

A

ACCOUNT,
CLARIFICATION
AND CHALLENGE

C

CLOSURE

E

EVALUATION



PEACE MODEL

Preparation and Planning—

Create and record interview plan

Characteristics of interviewee

Practical arrangements

Written interview plan

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PEACE MODEL

Engaging and Explaining

Beginning the interview

Objectives of the interview

Routines and expectations

Active listening to establish and maintain rapport

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PEACE MODEL

Account, clarification and challenge

- ☐ Open-ended prompt (“tell me what happened”)
- ☐ Clarify by asking questions
 - ☐ Breaking into manageable topics
 - ☐ Systematically probing topics
 - ☐ Asking pre-drafted questions
 - ☐ (open ended, specific closed, forced choice, multiple, leading (last resort))

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PEACE MODEL

Closure

- ☐ Interviewers confirm questions done
- ☐ Accurately summarize what said
- ☐ Ask if interviewee has questions
- ☐ Clarify when statement can be reviewed
- ☐ Explain next steps

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PEACE MODEL

Evaluation

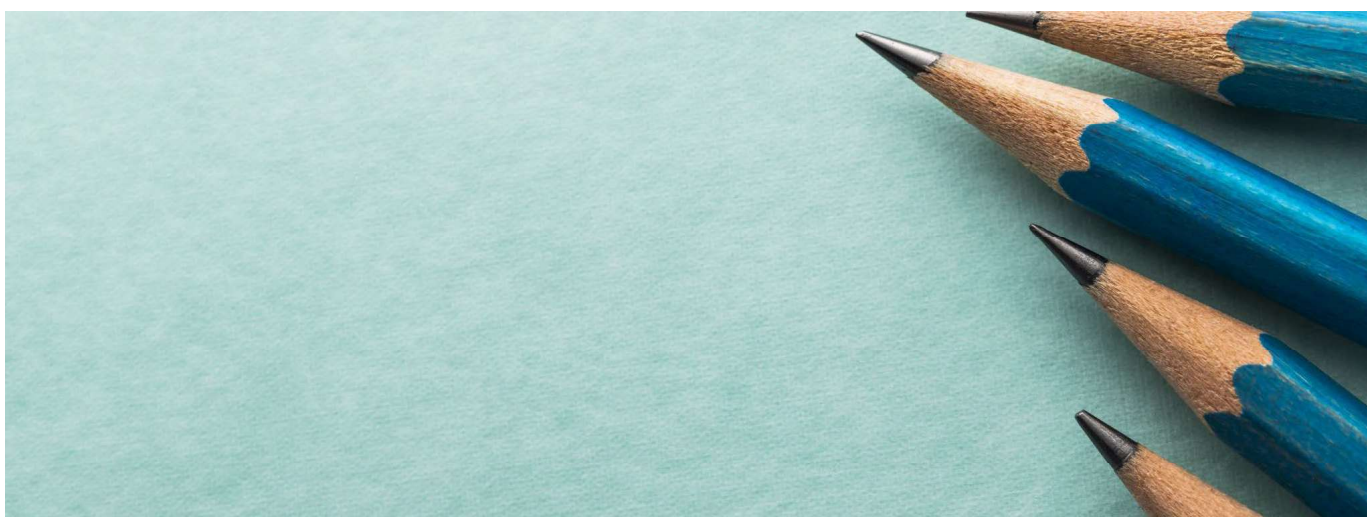
Determine whether further action necessary

Determine how account fits with rest of investigation

Reflecting on interviewer's performance

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DEVELOPING YOUR TECHNIQUE



YOUR INTERVIEW TECHNIQUE

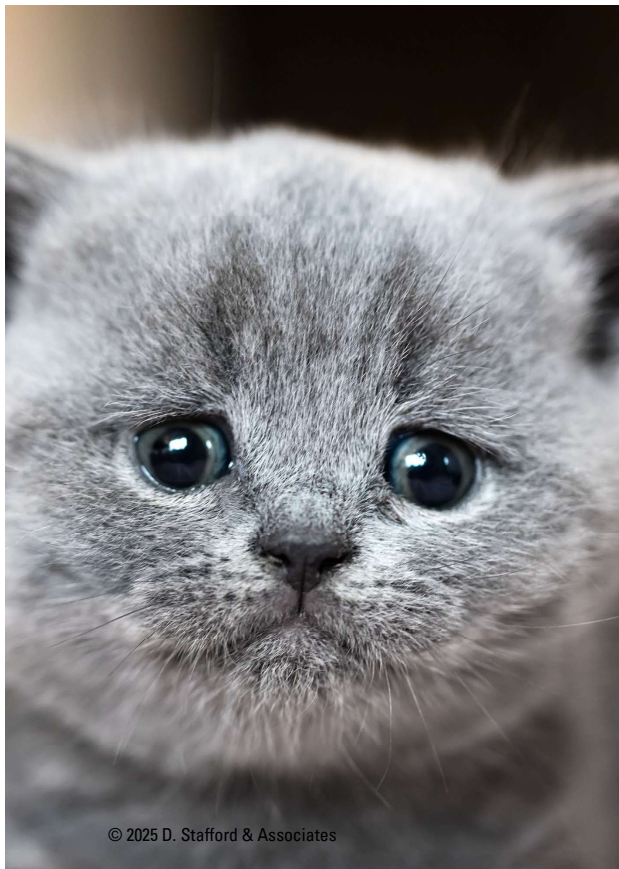
Planning—what
do you need to
know?

Pros and Cons to
each technique—
study them

Practice,
Practice, Practice

Be nimble—may
need to change
formats mid-
interview

GOAL--Control
the interview



YOUR INTERVIEW TECHNIQUE

Review/watch/listen to your
interviews when you are finished

- Look for bad habits
- Look for good habits
- Work with a trusted colleague—
ASK FOR FEEDBACK

“Interviewing”



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EVIDENCE EVALUATION



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RELEVANCY



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RELEVANCY

Makes a fact more
or less probable than
it would be without
the evidence

The fact is of
consequence in
determining the
action

KEY RELEVANCY POINTS

1

The evidence does not need to be conclusive

2

Is sufficient if it constitutes a link in the chain

3

Enough if in connection with other evidence, helps “*a little*”

CREDIBILITY



CREDIBILITY OF THE STORY

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Corroborating
Evidence

What are some
examples?

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CREDIBILITY OF THE STORYTELLER

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What motivates a
storyteller?

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What impacts our
ability to perceive?



DO THESE IMPACT CREDIBILITY?

Past
Behaviors

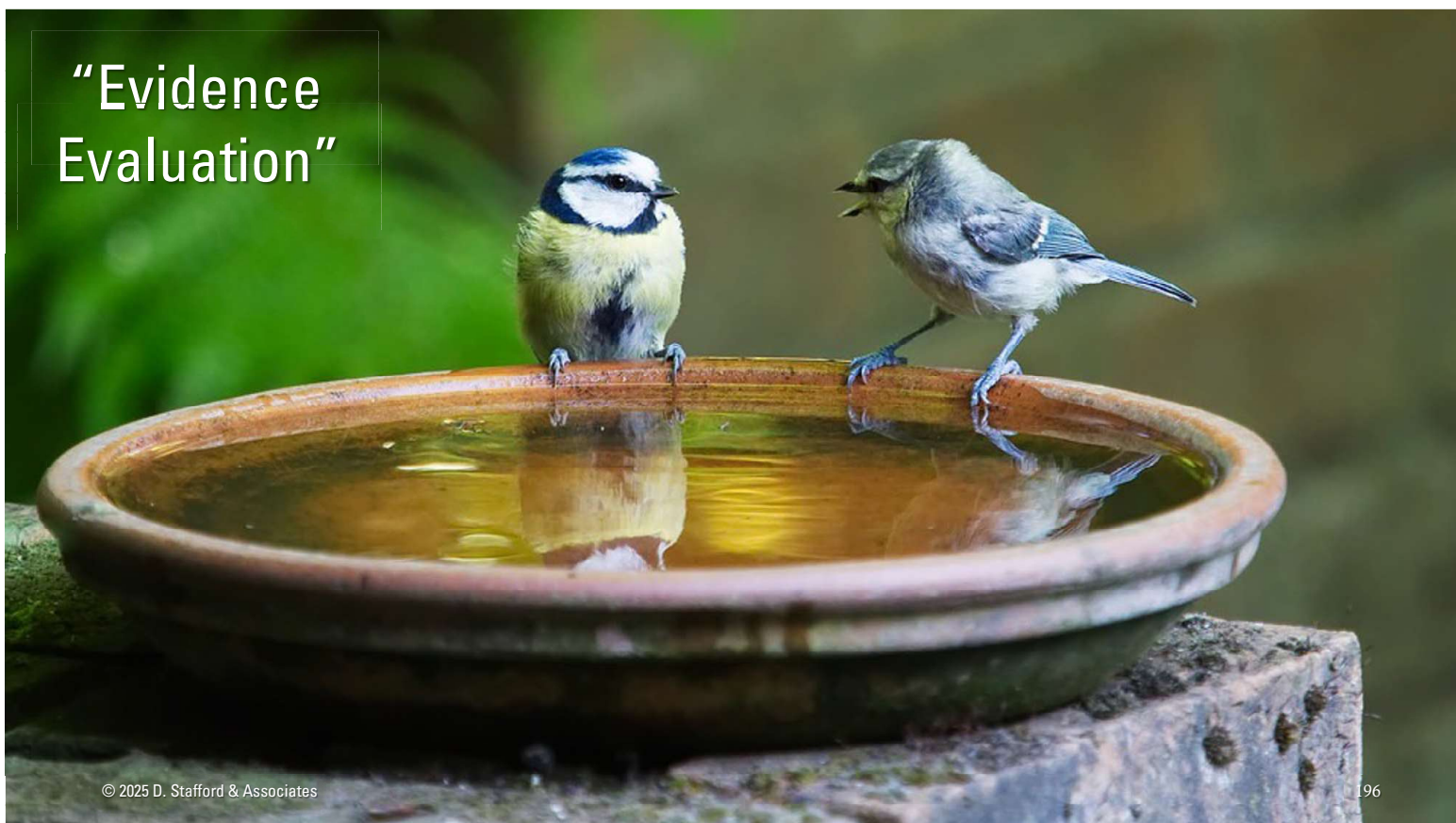
Post-
Incident
Behavior

Character

Interview
Demeanor

Identity

“Evidence
Evaluation”



CONSTRUCTING THE REPORT(S)

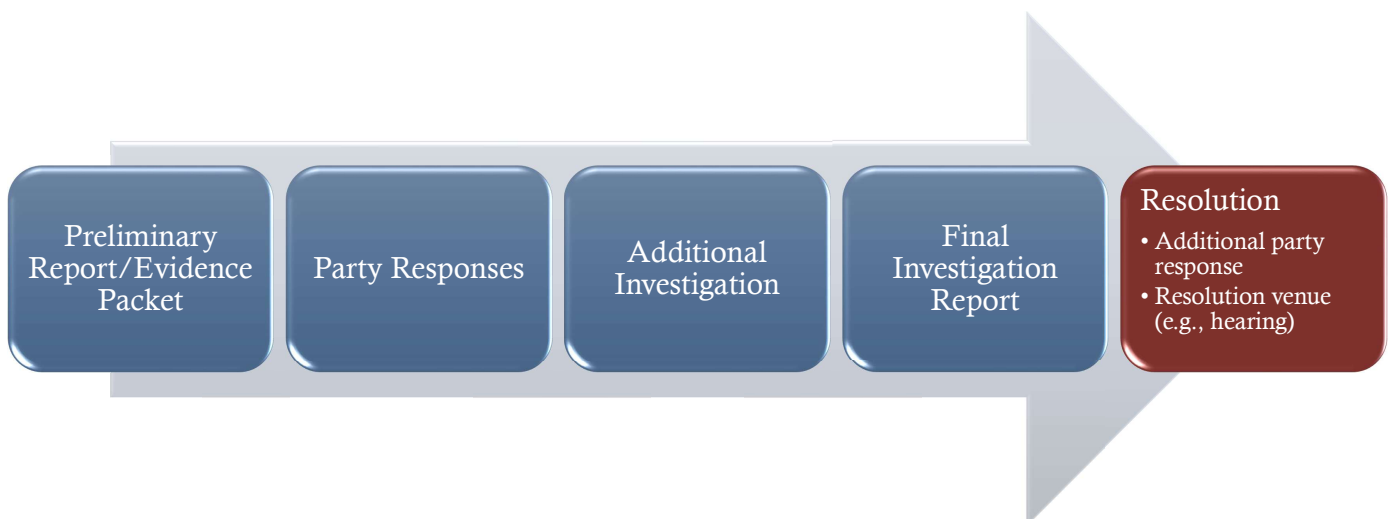
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REPORT WRITING STAGES



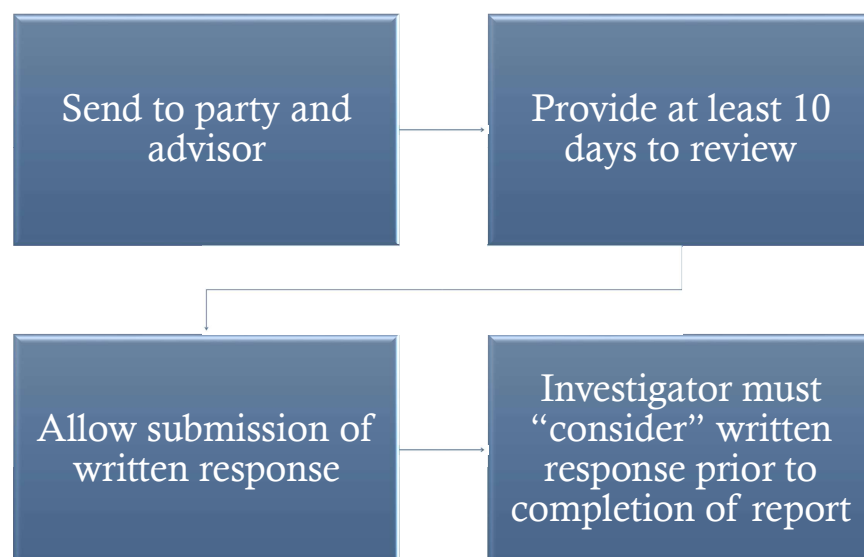
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PRELIMINARY REPORT



TITLE IX INSPECT AND REVIEW STAGE





INSPECT & REVIEW OPTIONS



Individual
Files



Evidence
Packet



Preliminary
Report

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THE FINAL REPORT



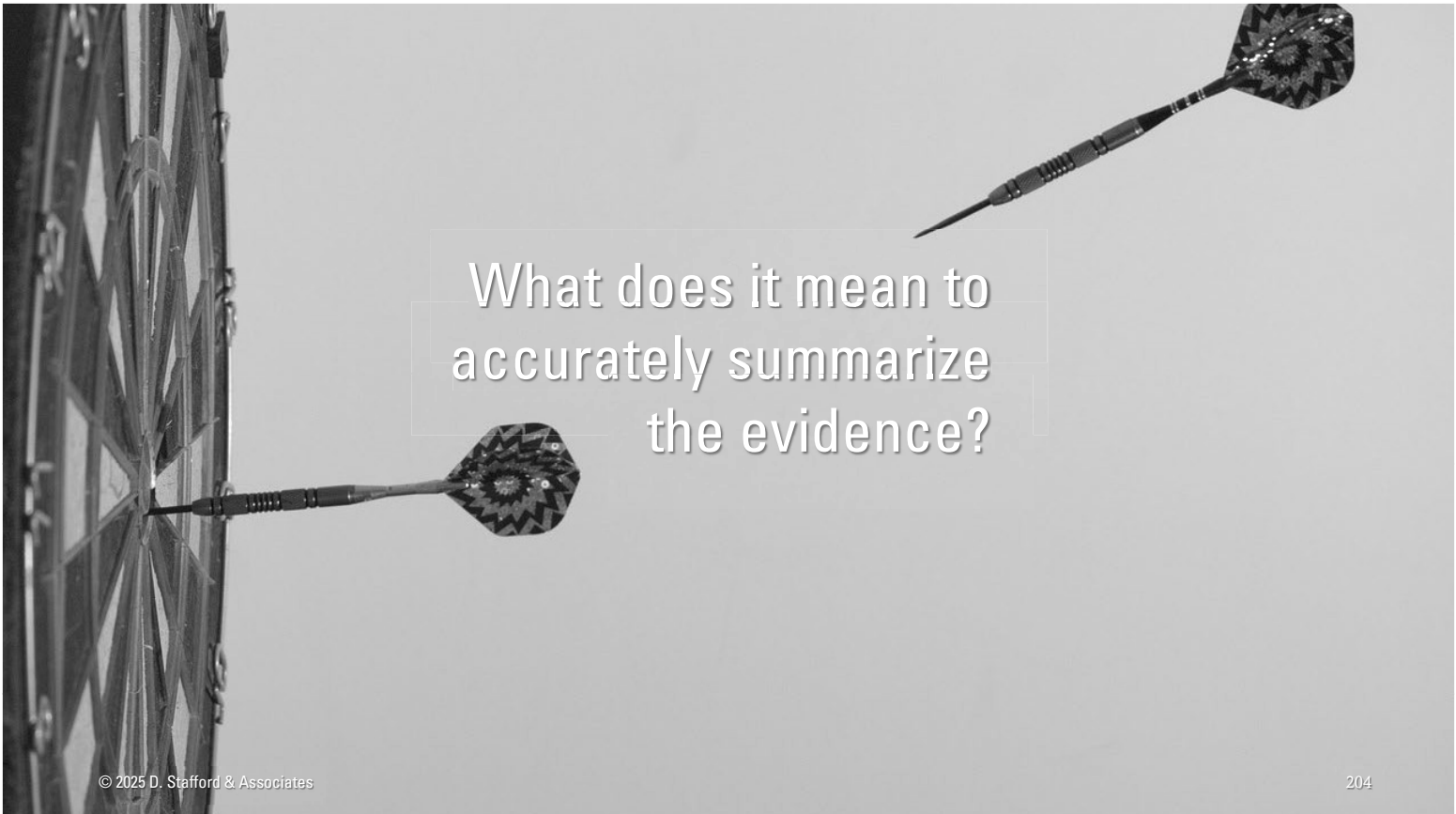
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TITLE IX FINAL INVESTIGATION REPORT

Summarizes the
relevant evidence

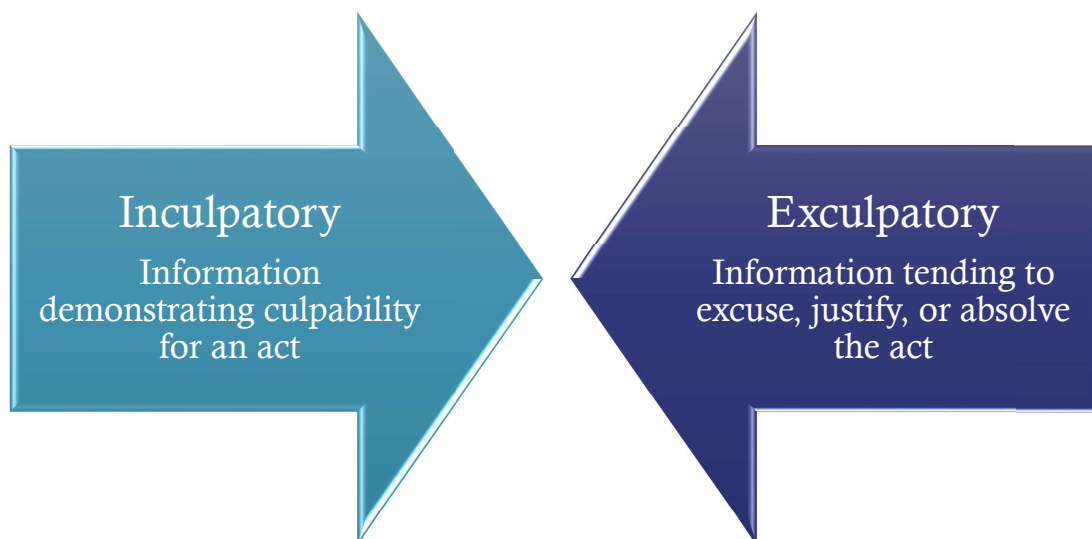
The parties and
advisors receive the
report at least ten
days before a hearing

The parties can
submit a written
response for the
hearing



What does it mean to
accurately summarize
the evidence?

EVIDENCE



EVIDENCE THAT MUST BE EXCLUDED



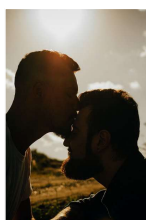
Protected by Privilege

- Unless voluntarily waived



Records Connected to Treatment

- Unless voluntary, written consent



Complainant's Sexual Interests or Prior Sexual Conduct

- Unless offered to prove that someone else committed the conduct or about specific incidents offered to prove consent

THE REPORT CONTENTS



PURPOSE OF THE REPORT

Documentation
of process

Compilation of
relevant
evidence

Summary of
relevant
evidence

DOCUMENTATION OF THE PROCESS



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KEEPING TRACK OF THE DATES



- Incident timeline (if relevant)
- Institutional action
 - Actual knowledge
 - Notice of investigation
 - Any temporary delays
 - Key report dates (if there is a preliminary report)

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CONFLICT OF INTEREST AND BIAS



Investigator
background



Training



Acknowledge any
relationship to
parties



Opportunity to
request new
investigator

TRAINING



Evidence gathering



Evidence assessment



Equitable process

INVESTIGATIVE METHODOLOGY

- Burden is on the institution to conduct the investigation
- Provide an equal opportunity for the parties to present fact witnesses and relevant evidence
- Identify what evidence is relevant to the allegations and not otherwise impermissible
- Provide each party with an equal opportunity to access the evidence that is relevant to the allegations and not other impermissible

EVIDENCE



Fact Witness list



Evidence submission

COMPLILATION OF THE EVIDENCE



EVIDENCE COLLECTION



OBTAINED EVIDENCE

“[A]ny evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.”

“DIRECTLY RELATED”



“interpreted using their plain and ordinary meaning”



We note that “directly related” in § 106.45(b)(5)(vi) aligns with requirements in FERPA, 20 U.S.C. 1232g(a)(4)(A)(i). (“information directly related to a student.”)



“directly related” may sometimes encompass a broader universe of evidence than evidence that is “relevant.”

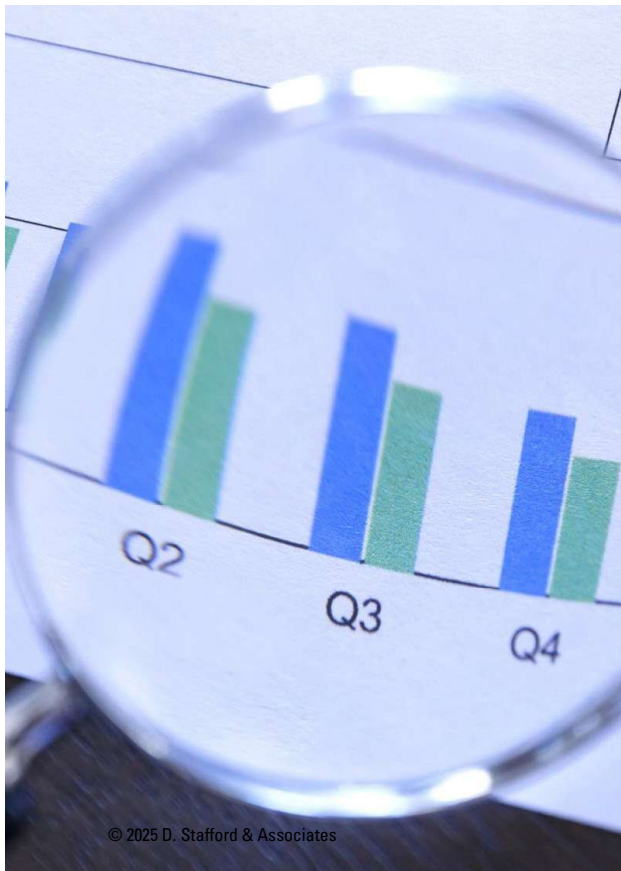
CAPTURING INVESTIGATIVE INTERVIEWS

How do you capture the interview in the report?

Verbatim Record

Question/Answer
format

Reorganization
for clarity



OTHER EVIDENCE

1

Incorporated



Attached



Available

RELEVANT EVIDENCE

1

The evidence does not need to be conclusive

2

Is sufficient if it constitutes a link in the chain

3

Enough if in connection with other evidence, helps *“a little”*



“FAIRLY SUMMARIZES THE RELEVANT EVIDENCE”

How do you organize?

- Facts in agreement/facts in dispute
 - Disputed and undisputed facts
 - Exculpatory and inculpatory evidence
 - Factual summary
 - Timeline
-

THE BALANCING GAME



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NEUTRAL VS. ACCURATE



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**Know your audience:
The parties and
decision-makers**

You are not writing a court brief or
an application for an arrest warrant

**PUTTING IT
ALL TOGETHER**





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COVER PAGE

- Case identifier
 - Title
 - Drafter
 - Reviewer
 - Date
-

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SCOPE

- Allegation
 - Policy
 - Notice timeline (or summary)
-

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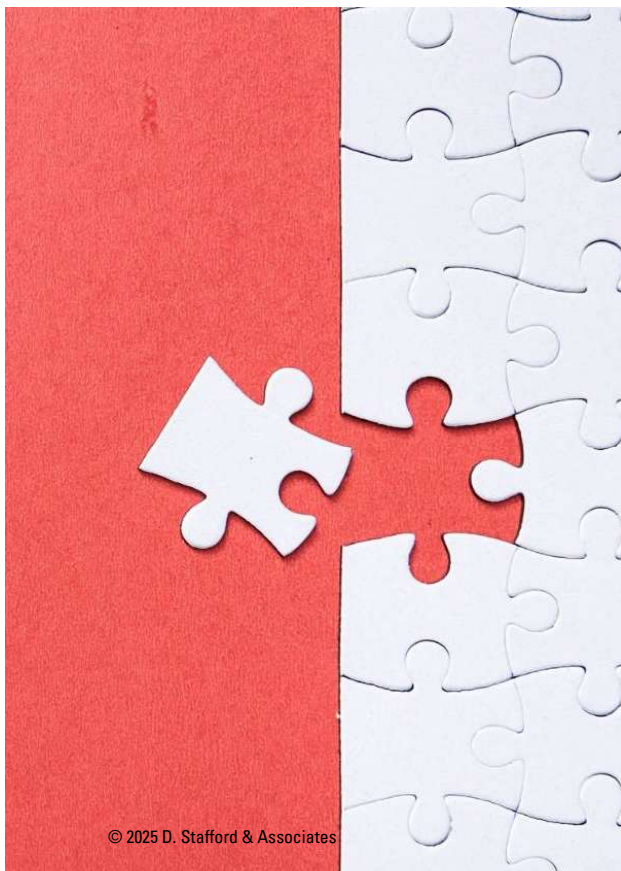


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METHODOLOGY

- Steps taken
 - Evidence collected
 - Persons interviewed
 - Report versioning
-

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SUMMARY OF RELEVANT EVIDENCE

- Context
 - The alleged behaviors
 - The elements of a prohibited conduct
-

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FORMATTING

Page numbers

Line numbers

Footnotes

Capitalization

Punctuation

Titles

Redactions

Legalese/
Disclaimers



Case Study





NACCOP Title IX & Equity Alliance

The Alliance is a dedicated affinity group through which Title IX and Equity Professionals, and the practitioners who support and/or supervise them, can benefit from NACCOP's expertise in complying with the Clery Act, Title IX, and other civil rights laws that affect their work.

BENEFITS OF JOINING THE ALLIANCE

- **Access to NACCOP's annual 9 on IX webinar series at no additional cost (a \$710 value)**
 - These 60-minute succinct webinars will offer legal insight and practical guidance on Title IX topics from experts who have served or are currently serving as active practitioners on college and university campuses.
- **Alliance-Exclusive Professional Development Opportunities such as the Title IX & Equity Open House Discussion Series**
 - An Alliance-exclusive virtual open house will be held bi-monthly (every other month, 6 sessions annually) to engage with experts from NACCOP's partner organization, D. Stafford & Associates, as well as other invited guests, to discuss current trends and issues. Each open house will focus on a specific topic for discussion and participants will be encouraged to engage in the conversation.
- **Access to Alliance-Exclusive Whitepapers regarding Title VI, VII, and IX**
- **Connect and collaborate with other Title IX and Equity Professionals via an Alliance-restricted Listserv**
- **Discounted Professional Development Opportunities**
 - Coffee and Conversations webinar series and individual webinars focused on Title IX & Equity compliance issues
- **A 50% discount on the Title IX Notice Document Library developed by NACCOP's Partner Organization, D. Stafford & Associates (a \$335 value)**

Join the Alliance

Eligible individuals must have Institutional, Professional, or Committee Membership with NACCOP.

Cost: \$425 for 1 year subscription

(The first year of enrollment will be pro-rated to match the NACCOP membership expiration date.)

Request to Join: <https://naccop.memberclicks.net/join-the-alliance>

Questions? Contact us at info@naccop.org or 302-344-1068.



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