



**D. STAFFORD**  
& ASSOCIATES

# **Decision Maker Training-2023**

## **Carleton College**

**Presented by:**

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**Associate**

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**President and CEO**

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## **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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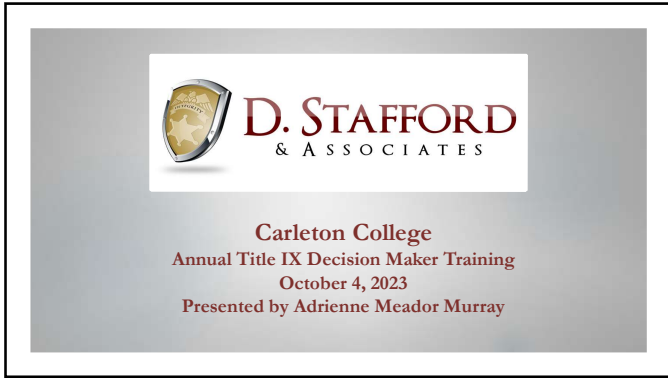
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Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based trainings pertaining to the resolution of sexual misconduct offenses on college and university campuses. Murray frequently presents at regional and 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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Conflicts of Interest



  
Roles on campus

  
Past employment

  
Volunteering

  
Interactions with parties

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RECOGNIZING  
BIAS



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Bias - *From Regs*

Bias against Complainants or Respondents

Bias against THIS Complainant or Respondent

Sex Stereotyping

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Bias



Parties

Race

Gender

Gender identity

Sexual orientation

Nationality

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Bias



Personal experience

Personal identity

Social identity

Theoretical perspective

Professional identity

Religious perspective

Political perspective

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REPRESENTATION MATTERS


  
Title IX Coordinator


  
Deputy

  
Investigator

  
Investigator

  
Board Chair

  
Board Member

  
Board Member

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How to address

Training

Acknowledgements

Party-identified Conflict

Decision-maker-identified Conflict

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Campus Handbook

Student Handbook

Faculty Handbook

Staff Handbook

Policy and Procedural Considerations

Academic Regulations & Procedures

Buildings & Grounds

College Governance

Communications

Community

Employment & Benefits

Events

Faculty Appointments

Financial

Health & Safety

Housing & Residential Living

Information Technology, Documents, & Records

Research

Health & Safety

Policy Against Sexual Misconduct

I. Statement of Philosophy

Carleton College is committed to:

- Fostering a safe environment, free of sexual misconduct in any form. We expect community members to engage in relationships and sexual interactions that are characterized by consent. Individuals who engage in behaviors that violate Carleton's Policy Against Sexual Misconduct are held responsible for their actions.
- Responding to reports of sexual misconduct through established procedures that are comprehensive in scope, supportive in approach, and fair in execution. Support will be provided before, during, and after any resolution process, recognizing that for all parties affected by an instance of sexual misconduct—alleged or proven—the experience is emotionally, socially, and intellectually demanding. Retaliation against any person participating in the investigation or adjudication of a report of sexual misconduct is strictly prohibited.
- Taking seriously the fact that the best process to address sexual misconduct should begin before any sexual misconduct has occurred, with prevention through education, and should conclude with intentional measures to work towards healing individuals and community.

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Title IX Personnel – Title IX Coordinator

- Accepts reports, determines jurisdiction, and if Title IX, offers supportive measures to Complainant and explains process, including the option to file a Formal Complaint
- Accepts or signs Formal Complaints
- Coordinates each investigation and offers supportive measures to the Respondent
- Drafts all Title IX related notice documents
- Assigns Investigators for each investigation, if applicable
- Assigns the advisor of the institution's choice for the live hearing if a party does not have one
- Oversees the live hearing procedures, but does not make any decisions regarding the outcome of the allegations

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Title IX Personnel – Decision-maker



- Emergency Removal/Administrative Leave decision maker, hearing bodies, and appeal officers (both for emergency removal and administrative) are all considered "decision-makers"
- Decision-makers can only serve one role within a case
- Emergency Removal/Administrative Leave
  - Makes the determination if a removal or leave is necessary
- Hearing
  - Reviews the investigation report and evidence
  - Manages the hearing (Asks questions of the parties and manages cross-examination by the advisors, including determining relevancy of questions)
  - Issues notice of findings including allegations, procedural steps, findings of fact, conclusion/application, rationale for each allegation (determination, sanctions, remedies), appeal procedures
- Appeal
  - Hears the appeal of a removal or leave (it cannot be the same person who initiated the removal/leave)
  - Hears the appeal of the hearing (it should not be the same person who heard the removal/leave appeal)

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Title IX Personnel – Investigators and Advisors



- Investigators
  - Interviews both parties and witnesses
  - Gathers evidence
  - Write the preliminary and final investigative reports
- Advisors
  - Chosen by the party; can have throughout the process but not required until live hearing
  - Receives evidence and investigation report
  - Conduct cross-examination at the hearing
  - If a party does not have an advisor at the live hearing, the institution must provide one (of the institution's choice)

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Title IX Case Flowchart



Title IX Coordinator Informed (Actual Knowledge)

Outreach and Supportive Measures

Complainant Decision

Formal Complaint Signed

No Formal Complaint

Informal Process

Investigation-Hearing-Appeal

Case closed (except for supportive measures)

Title IX Coordinator may sign complaint

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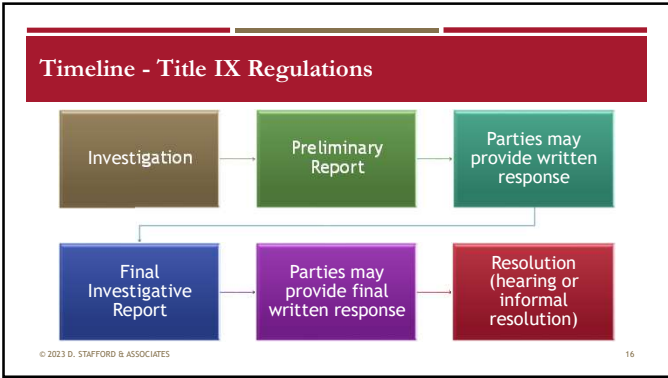
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**Definition of Sexual Harassment**

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

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

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**Definitions: Parties/Witnesses**

Complainant

Respondent

Witnesses

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Definitions: Title IX Personnel



Title IX Coordinator

Investigator

Decision-Maker

Informal Resolution Facilitator

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Sexual Harassment-Jurisdiction




Our student and/or employee (must be participating in the institution's educational program)



Occurred in the context of educational program or activities (Online)



Substantial control over the Respondent



In the United States

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Formal Complaint



Signed formal complaint



Complainant or Title IX Coordinator



Complainant MUST be participating at the time of filing

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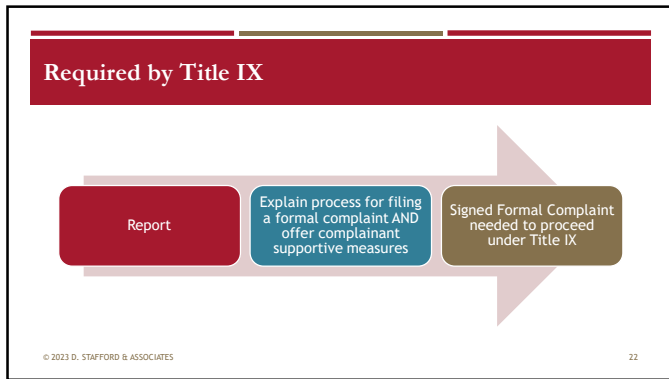
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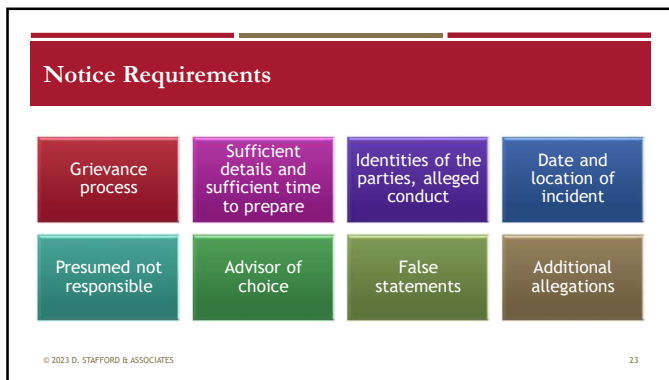
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### Advisors

#### Investigation

- May accompany party to investigation meetings
- Receives preliminary and investigative reports
- Who fills this role?

#### Hearing

- Institutions must provide an advisor if a party does not have one at hearing
- Conducts cross examination of witnesses and opposing party
- Who fills this role?

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### Hearings



Live hearing



Cross-examination

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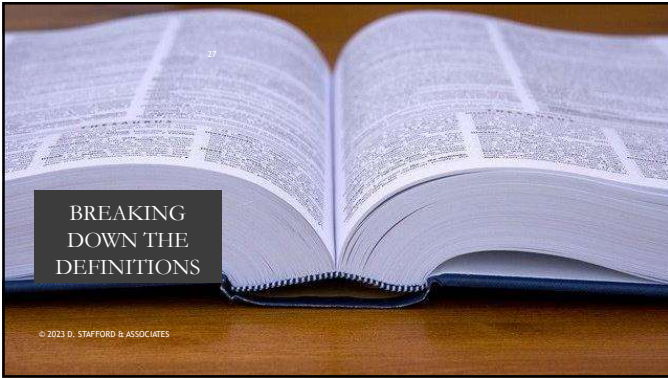
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BREAKING DOWN THE DEFINITIONS

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Understanding the Elements

**Elements**

Actions

Conditions

**Additional info**

Clarifiers

Exceptions

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Roles in the Process

**Investigator**

- Evidence for each element
- Evidence of any exceptions

**Decision-maker**

- Weigh the evidence provided
- “Reasonable person” standard

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The “Elements”

What specific evidence would indicate the behavior?

What evidence have we been presented with?

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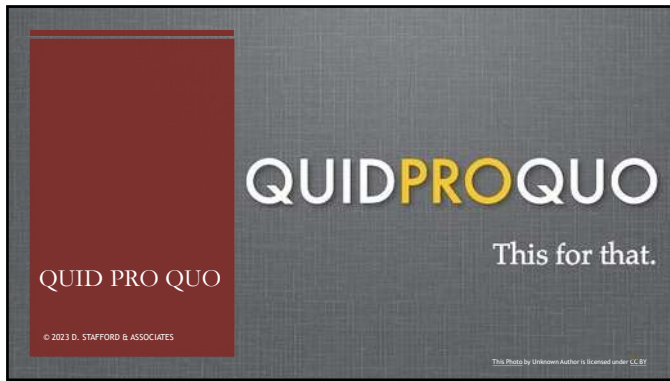
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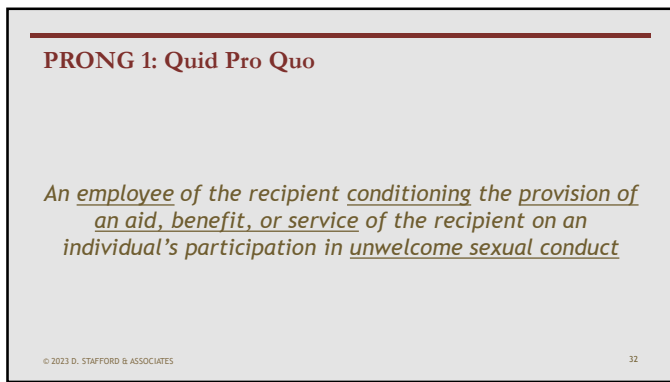
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PRONG 1: Quid Pro Quo



- What was the aid, benefit, or service?
  - Education: admission, grades, awards, housing, access, membership, resources, support
  - Employment: hiring/firing, salary, benefits, promotions, location, privileges
  - Other: participation, movement, personnel/education records, reputation, access, status
- How was it conditioned/communicated?
  - Implied, stated, written

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Quid Pro Quo:  
Respondents

Supervisors, Coaches, Faculty  
(Title IX)

Volunteers/Non-employees  
(Non-Title IX)

Students  
(Non-Title IX)

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PRONG 1: Quid Pro Quo



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

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

*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*

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Hostile Environment+



Sex  
Gender-based



Unwelcome



Conduct  
Severe  
Pervasive  
Objectively offensive



Impact on  
education (or  
employment)

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Hostile Environment+



ON THE BASIS OF SEX

- Physical touching
- Comments of a gender or sexual nature
- Motivated by complainant's gender or sexuality
- Sex stereotyping
- Pregnancy, childbirth, related medical conditions
- Gender-based harassment
- Gender Identity, Gender Expression, Sexual Orientation

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Hostile Environment+



UNWELCOME

- Unpack “consent” definition
- Behaviors that by their nature are “unwelcome”
- What was communicated between parties?
- Coercion, threats, intimidation
- Who initiated?
- Did the complainant participate?

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Hostile Environment+



SEVERE

- Characteristics of complainant and respondent
- Witnesses, public nature
- Direct vs. second-hand
- Degrading, crude
- Threats
- Physical actions, touching

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Hostile Environment+



**PERVASIVE**

- Number of incidents (dates, times)
- Number of witnesses, recipients, participants
- Different types of behaviors

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Hostile Environment+



**OBJECTIVELY OFFENSIVE/REASONABLE PERSON**

- *“Turns on both subjectivity (i.e., whether the conduct is unwelcome, according to the complainant) and objectivity (i.e., ‘objectively offensive’)”*
- *“Whether, standing in the shoes of the complainant, the conduct would be offensive”*
- The investigator conducts the subjective analysis while the decision-maker conducts the objective analysis

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Hostile Environment+



**EFFECTIVELY DENIES ... EQUAL ACCESS ... EDUCATION PROGRAM**

- *“Does not require that a complainant has already suffered loss of education before being able to report”*
- Harassment *“so undermines and detracts from the victim’s educational experience”* that it effectively denies...
- Does not require certain manifestations of trauma
- Can’t turn away a complainant who is *“high-functioning,” “not showing particular symptoms,”* or *“not traumatized enough”*
- No requirement for *“tangible adverse action or psychological harm”*

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Hostile Environment+



EFFECTIVELY DENIES

- Skipping class to avoid a harasser
- A decline in a student's grade point average
- Difficulty concentrating in class
- Dropped out of school
- Failed a class
- Had a panic attack
- Reached a "breaking point"

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
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Sexual Harassment+: Definition Considerations

Definition vs. Interpretation

First Amendment issues

"Below the line" unwelcome conduct

No intent requirement

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THE VAWA OFFENSES

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**PRONG 3: The VAWA Offenses**

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

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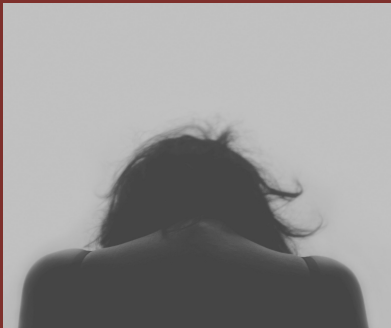
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**Sexual Assault**



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**Definition - RAPE**

*Rape is 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.*

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Definition -  
FONDLING

*Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim.*

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Definition -  
INCEST

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

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Definition -  
STATUTORY  
RAPE

*Statutory Rape is sexual intercourse with a person who is under the statutory age of consent.*

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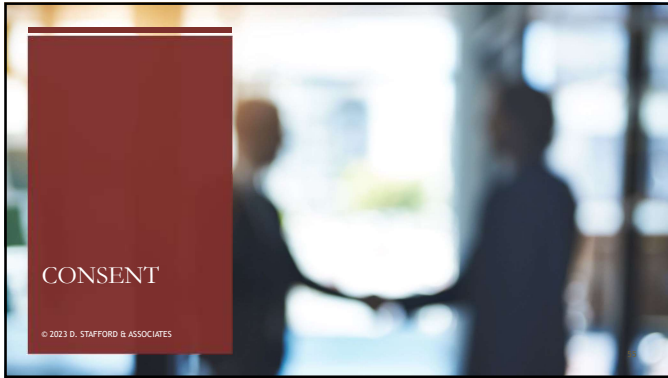
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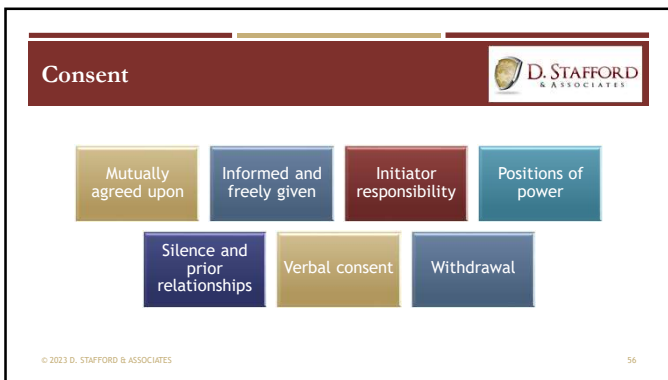
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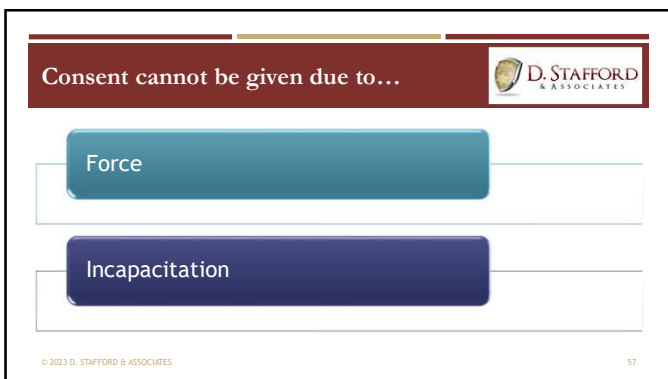
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Force

Physical

Coercion

Intimidation

Threat

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Physical Force

Holding down

Forced to touch

Level of violence

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How do you define coercion?

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Intimidation





PhysicalVerbal

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Threats



Physical harm

Reputational harm

Veiled threats

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Incapacitation

*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.*

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### Incapacitation Causes



Alcohol



Drugs



Disability



Other

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### Incapacitation Results

Lack understanding

Physically helpless

Blackout

Unconscious

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### Levels of Consumption

Impairment

Intoxication

Incapacitation

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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

**Question: Is it a violation of policy if two IMPAIRED people have sexual intercourse?**

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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

**Question: Is it a violation of policy if two INTOXICATED people have sexual intercourse?**

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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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Two-Step Determination

Was the complainant incapacitated?

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

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Intimate Partner Violence

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Dating Violence

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
- The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- For the purposes of this definition -
  - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - Dating violence does not include acts covered under the definition of domestic violence.

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Domestic Violence

- A felony or misdemeanor crime 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
  - By a person who is cohabitating with, or has cohabitated with the victim, as a spouse or intimate partner
  - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred 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 in which the crime of violence occurred

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Important Considerations





Unique



Cycle of violence



Power and control

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Interview Considerations



Lack of cooperation

Fear/Intimidation

Cross-claims

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Primary Aggressor

Past behaviors?

Self Defense?

Who is afraid?

Body language of each?

Witnesses?

What does the scene look like?

Excited utterances?

What are the extent of the injuries?

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STALKING

IM WATCHING YOU

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PRONG 3:  
Stalking

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to -

• Fear for the person's safety or the safety of others; or

• Suffer substantial emotional distress

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Course of Conduct

*“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.”*

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Breaking Down the Definition

Acts of stalking behavior

Directed at a specific person

Two or more acts

Fear or emotional distress

Reasonable person

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SUBSTANTIAL EMOTIONAL DISTRESS

Difficulty eating or sleeping

Anxiety or nervousness

Nightmares

Drug or alcohol use

Headaches/illness

School/work impacted

Irritability, anger, shock, or confusion

Fear response/hypervigilance

Changing routines

Depression

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STALKING -  
SPECIAL  
CONSIDERATIONS

Stalking

- and Intimate Partner Violence

Stalking

- and disability considerations

Stalking

- under Title IX

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LIVE  
HEARINGS

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Live Hearings



- Must provide for a live hearing
- At the request of either party, the recipient must provide for a live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions
- Must create an audio recording or transcript and make available.

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Advisors





“If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient’s choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.”

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Cross Examination





“At the live hearing, the decision-maker(s) must permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party’s advisor of choice and never by a party personally...”

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Relevancy





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

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Relevancy



Prior sexual history

Privileged information

Duplicative

Why are you asking the question?

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Participation





“If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility.”

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Formal Resolution – Making a Finding





Policy language -  
Alleged violations



Weighing the  
evidence



Determined  
behaviors



Standard of  
evidence

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Determination Regarding Responsibility



Allegations

Procedural steps

Findings of fact

Conclusion/application

Rationale

Appeal procedures

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Recordkeeping (Seven Years)



  
Case Materials

  
Training materials

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