

# Title IX/VAWA Investigator Training (2020 Title IX Regulations)


 Kathryn Nash  
 Emily Mawer  
 Caitlin Gehlen

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## Tell Us About Yourself

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

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

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## 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



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**Terminology**

- ED = 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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**Title IX Updates**

- 2020 regulations effective August 14, 2020
- New regulations effective August 1, 2024
  - Injunctions in place in:
    - Statewide: Alaska, Arkansas, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, North Dakota, Ohio, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wyoming, and
    - Institution Specific : any institution attended by members of Young America's Foundation and Female Athletes United, and children of members of Moms for Liberty (impacts nearly 700 institutions)

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**Title IX Updates**

Which regulations apply?

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    graph TD
      A[Institution covered by injunction] --> B[Apply 2020 regulations]
      C[No injunction] --> D[Conduct alleged to have occurred before August 1, 2024]
      C --> E[Conduct alleged to have occurred on or after August 1, 2024]
      D --> F[Apply 2020 regulations]
      E --> G[Apply 2024 regulations]
  
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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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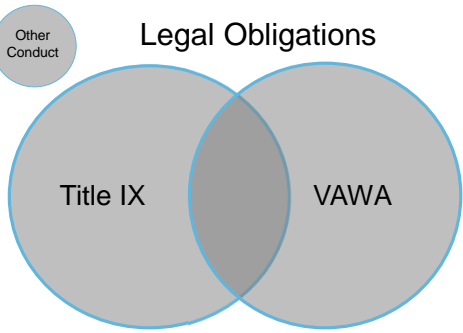
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## Legal Obligations



Other Conduct

Title IX

VAWA

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**Title IX**

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

20 U.S.C. § 1681

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**Who Must Comply With Title IX?**

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

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**Discrimination “on the Basis of Sex”**

- Includes:
  - Sexual harassment
  - Differential treatment

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**When an Institution Must Respond**

- 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 an Institution Must Respond**

- 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 an Institution Must Respond**

- 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 an Institution Must Respond**

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



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**The Legal Landscape**

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

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**OCR's Enforcement and Guidance**

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



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**Clery Act**

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



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**Violence Against Women Reauthorization Act (VAWA)**

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

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# Defining Sexual Misconduct



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## Title IX—Sexual Harassment




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

Quid Pro Quo

Hostile Environment

Sexual Assault & VAWA Crimes



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## Title IX – Sexual Harassment



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





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### Title IX – Sexual Harassment

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

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### Title IX – Sexual Harassment

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

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### Title IX – Sexual Harassment

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

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**Title IX—Sexual Harassment**

- Sexual Assault
- VAWA Crimes
  - Dating violence
  - Domestic violence
  - Stalking
- As defined in Clery



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**Title IX—Sexual Harassment**

- **VAWA Crimes—Sexual Assault:**
  - **Rape:** The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - **Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - **Sexual Assault With An Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

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**Title IX—Sexual Harassment**

- **VAWA Crimes—Sexual Assault:**
  - **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - **Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent.

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**Consent**

- No particular definition of consent with respect to sexual assault is required under Title IX or VAWA

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**VAWA Crimes**

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

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**Title IX – Sexual Harassment**

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

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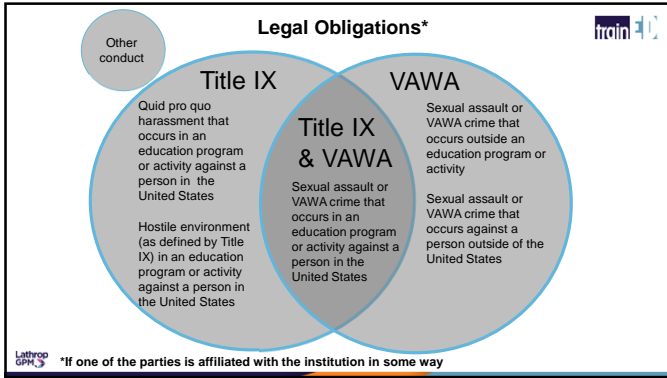
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### Interaction with Other Laws

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



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### Interaction with Other Laws

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



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**Risks of Non-Compliance**

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



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**Training Requirements**

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

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**Training Requirements**

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

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**Recordkeeping Requirements**

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



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**Recordkeeping Requirements**

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

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**Q & A**



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# Overview of Process



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## Case Study

- A financial aid counselor, Mark Matthews, sometimes has lunch with John Johnson, an academic advisor. During one lunch, Mark shares with John that Mark's coworker, Silvia, has been making him uncomfortable with frequent text messages and Teams messages. Mark tells John that Silvia has also started touching him, including touching his hand when they got coffee with colleagues and kissing him on the cheek when he ran into her over a weekend. Mark says things escalated recently when they were out celebrating a colleague's birthday and Silvia asked him to come over for some "fun" afterward. Mark tells John he has tried to figure out a polite way to tell Silvia to back off, but so far Silvia has not gotten the hint.
- Does John have an obligation to report this information?
- If John is not sure, what should he do?



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**Responding to a Report**

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

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**Responding to a Report**

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

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**Responding to a Report**

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

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**Responding to a Report—Supportive 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 Measures**

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

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**Responding to a Report**

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



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## Responding to a 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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## 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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## Informal Resolution

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

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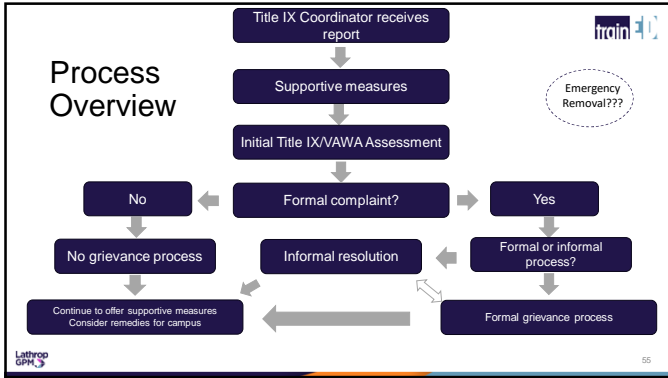
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### Role of Investigator in Formal Grievance Process

- 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

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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—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

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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/electronic access to of all directly related evidence (Title IX only)
- Advisors may cross-examine parties and witnesses at live hearing (Title IX only)
- Institution must provide if none (Title IX only)
  - Limited role
- May otherwise limit extent of advisor's participation in the process (must apply equally)

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**Formal Grievance Process—Timeframes**

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



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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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**Criminal Process**

- Institution's formal grievance procedure is separate from criminal process
- Institution 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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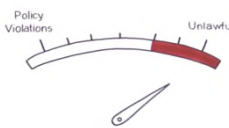
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**Differences Between Criminal and Institutional Investigations**

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



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Q & A



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Working with the Parties



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Case Study

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

1. Complainant made a complaint against her ex-boyfriend after he broke up with her.
2. Complainant told his roommate his night was "fine" the day following the alleged assault.
3. Complainant cannot recall portions of the encounter with respondent.
4. Complainant did not report to law enforcement.

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**Case Study**

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

1. Respondent started avoiding complainant after the alleged assault.
2. Respondent adds details to their account after hearing details from complainant's account.
3. Respondent cannot recall portions of the encounter with complainant.
4. Respondent has an attorney 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	Rage 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

The Neurobiology of Sexual Assault

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Neurobiology of Sexual Assault

Brain Regions Impacted by Trauma

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Neurobiology of Sexual Assault

Brain-Body Regions Impacted by Trauma

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

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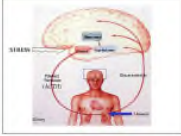
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### Neurobiology of Sexual Assault

**Brain-Body Regions Impacted by Trauma**

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



SOURCE: Southwick et al., 2002

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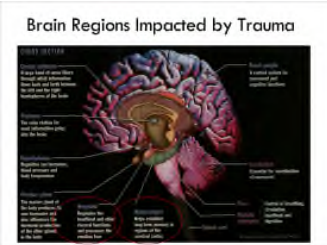
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### Neurobiology of Sexual Assault

**Brain Regions Impacted by Trauma**



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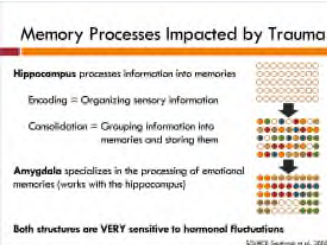
80

### 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., 2002

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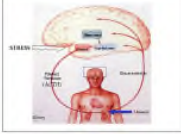
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### Neurobiology of Sexual Assault

Like These . . .

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



THESE HORMONES IMPAIR MEMORY CONSOLIDATION

SOURCE: Berkis, 2003; Southwick et al., 2003

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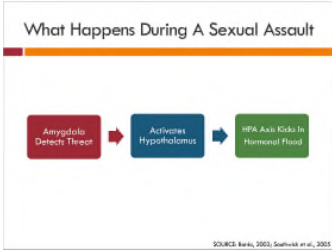
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82

### Neurobiology of Sexual Assault

What Happens During A Sexual Assault



SOURCE: Berkis, 2003; Southwick et al., 2003

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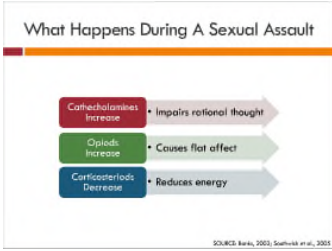
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### Neurobiology of Sexual Assault

What Happens During A Sexual Assault



SOURCE: Berkis, 2003; Southwick et al., 2003

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### Neurobiology of Sexual Assault

What Happens During A Sexual Assault

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    graph LR
      A[Amygdala Detects Threat] --> B[Activates Hypothalamus]
      B --> C[HPA Axis Kicks In Hormonal Flood]
      C --> D[Can Trigger or Complete "Shut Down" in the Body]
  
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SOURCE: Barak, 2003; Southwick et al., 2001

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### 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: Rose et al., 2007; Collins et al., 1992; Hirsch et al., 2001

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### Common Behaviors During Assault

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

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# Memory

What Happens During A Sexual Assault

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88

# Memory

What Happens During A Sexual Assault

Increased Stress / Hormones → Impaired Functioning in Hippocampus → Memory Fragmentation

Memory Based Can Be Slow & Difficult

Events of the Assault CAN be Recalled Accurately

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

SOURCE: Koss et al., 1987, 1996; Bussard-Dubey et al., 2006; Rabe et al., 2008

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# Memory

## Case Study: Memory Fragmentation

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

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

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Memory

Case Study: Memory Fragmentation

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

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

And drinking coffee."

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91

Memory

Case Study: Memory Fragmentation

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

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

I: What do you mean?

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

MEMORY CONSOLIDATION  
A DOCUMENTED NEUROBIOLOGICAL CONDITION

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Memory

Case Study: Memory Fragmentation

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

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

MEMORY CONSOLIDATION  
A DOCUMENTED NEUROBIOLOGICAL CONDITION

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**Impact of Trauma on Memory**

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



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**Sensory Details**

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

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**Impact of Culture**

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



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**Trauma-Informed Approach Gone Wrong**

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

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**Take Away**

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

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**Serving Impartially**

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



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**Serving Impartially**

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

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**Serving Impartially — Working with Complainant**

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

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101

**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 consistent with policy
- Avoid secondary victimization
- Be transparent about how information will be used

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**Serving Impartially — Working with Respondent**

- Recognize stress involved with being accused of sex discrimination
  - Respondent may be defensive
  - Respondent 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 103

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**Serving Impartially — Working with Respondent**

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

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**Communication**

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

Lathrop GPM 105

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**Sources of Information**

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

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**Q & A**



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**Stages of Investigation**



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**Stages of Investigation**

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

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**Stage One: Review Complaint and Outline Investigation**

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

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**Notice of Allegations**

- 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

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**Notice of Allegations**

- 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

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**Stage One: Review Complaint and Outline Investigation**

- Prepare script of opening remarks
  - Explain your role in the grievance 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

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**Stage One: Review Complaint and Outline Investigation**

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

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**Stage 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

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**Stage One: Review Complaint and Outline Investigation**

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

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**Stage One: Review Complaint and Outline Investigation**

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

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**Stage One: Review Complaint and Outline Investigation**

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



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**Case Study**

- The employee, Mark Matthews, brings a formal complaint against another employee, Silvia Silverman.

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**Case Study**

Sex-Based Harassment Complaint Form

COMPLAINANT NAME: Mark Matthews

ADDRESS: 1234 Main Street

DATE OF ALLEGED POLICY VIOLATION: September and October 2024

DATE OF COMPLAINT: October 30, 2024

RESPONDENT NAME: Silvia Silverman

ADDRESS: 999 Fourth Ave. S

**ALLEGATIONS:**

I work in the Financial Aid office with Silvia Silverman. Our interactions have always been friendly, but during the last month or two, Silvia's actions have been making me uncomfortable. She texts me often, both during work and after hours. She sends Teams messages to me in the evenings and on the weekends. One day we got coffee over our lunch break, and she touched my hand while we were talking. Another time when I ran into her at a restaurant on the weekend, she gave me a hug and kissed me on the cheek. Then she asked me to go home with her for some fun after a birthday celebration for a colleague. I've tried to brush off the ways she acts toward me as just being friendly, but now Sylvia is up for a promotion that would make her my supervisor. I don't feel comfortable having her as my boss. I'd like to be transferred to a different department or at least report to a different supervisor.

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

X Mark Matthews

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**Case Study**

- What potential policy violation does Mark’s complaint raise?

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**Case Study**

Excerpt of Notice of Allegations

October 30, 2024, a formal complaint of alleged sexual harassment was submitted by Mark Matthews to the Title IX Coordinator alleging conduct by Silvia Silverman. Mark alleges that Silvia engaged in unwelcome conduct on the basis of sex in the form of the following:

- On multiple dates during the months of September and October 2024, Silvia sent messages to Mark via electronic communication.
- On September 24, 2024, at Starbucks on Main Street, Silvia engaged in physical contact with Mark.
- On October 5, 2024, at Luigi’s restaurant on First Avenue, Silvia engaged in physical contact with and kissed Mark.
- On October 18, 2024, at O’Malley’s Pub on Second Avenue, Silvia made verbal comments toward Mark.

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**Stage Two: Gather Evidence**

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

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**Stage 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

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**Stage Two: Gather Evidence—Interview Parties and Witnesses** 

- Strongly recommend audio recording interviews
  - Reduces risk of misinterpretation by investigator
  - Facilitates sharing of relevant evidence from interview
  - Accurate record in case of dispute



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**Stage Two: Gather Evidence—Initial Party Interviews** 

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

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**Stage Two: Gather Evidence—  
Witness Interviews**

- Purpose is to gather relevant information from each witness without providing more information than necessary
- “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

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**Stage Two: Gather Evidence—  
Witness Interviews**

- Scenic Route: Funnel Approach
  - Start broadly; avoid leading questions
    - “I understand you live in Smith Hall; did you observe anything out of the ordinary in the last few weeks?”
    - “Tell me about your courses this semester. Did anything unusual happen in your classes in February?”
  - Decide whether to ask more detailed questions
  - More reliable responses and less rumor mill

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**Stage Two: Gather Evidence—  
Interview Parties & Witnesses**

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

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**Stage Two: Gather Evidence—  
Interview Parties & Witnesses**

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

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**Stage Two: Gather Evidence—  
Interview Parties & Witnesses**

- Do not inquire into impermissible evidence
  - Privileged information, unless individual holding the privilege has waived it
  - Treatment records, unless the individual has provided written consent
  - Complainant's prior sexual history, unless an exception applies
    - 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

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**Stage Two: Gather Evidence—  
Interview Parties & Witnesses**

- Prepare a summary/draft report immediately following each interview
  - Assists investigator in identifying:
    - Whether the Notice of Allegations needs to be amended
    - Follow-up questions for that party/witness
    - Additional evidence that needs to be obtained from that party/witness
    - Other individuals to interview
    - Questions for follow-up interviews with other party and witnesses
  - Distributes workload throughout the process
  - Allows Title IX Coordinator to provide meaningful supervision and feedback throughout the investigation

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**Stage Two: Gather Evidence—  
Interview Parties—Advisors**

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

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**Case Study: Interview Mark**

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**Case Study**

- During Mark's initial interview, he says that on September 12, 2024, when he walked into the Academic Center, Silvia told him she liked his new pants and said "you should wear slim-fit pants more often."
- What do you do with this information?

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**Case Study**

**Excerpt of Amended Notice of Allegations**

October 30, 2024, a formal complaint of alleged sexual harassment was submitted by Mark Matthews to the Title IX Coordinator alleging conduct by Silvia Silverman. Mark alleges that Silvia engaged in unwelcome conduct on the basis of sex in the form of the following:

- On September 10, 19, and 29 and October 13, 17, and 23, 2024, Silvia sent messages to Mark via electronic communication.
- On September 12, 2024, in the Financial Aid office in the Academic Center, Silvia made verbal comments toward Mark.
- On September 24, 2024, at Starbucks on Main Street, Silvia engaged in physical contact with Mark.
- On October 5, 2024, at Luigi's restaurant on First Avenue, Silvia engaged in physical contact with and kissed Mark.
- On October 18, 2024, at O'Malley's Pub on Second Avenue, Silvia made verbal comments toward Mark and engaged in physical contact with Mark.

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**Case Study**

- In your investigation of Mark's complaint against Silvia, you have interviewed Mark and are scheduled to interview Silvia tomorrow.
- Silvia stops by your office and says she has been really stressed about this and just wants to get some things off her chest.
- How do you respond?

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**Case Study: Interview Silvia**

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**Case Study**

- There is another complaint resolution process ongoing involving Ellie Ellison's complaint against Grant Grayson. Ellie alleged that on September 20, 2024, in Grant's University owned off-campus apartment, Grant engaged in sexual intercourse with Ellie when Ellie was incapacitated due to consumption of alcohol.
- What policy violation is alleged in Ellie's complaint?
- What other definitions will be important to the investigation?

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**Case Study: Interview Ellie**

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**Case Study**

- You conduct your initial interview with Ellie via Zoom. During the interview, Ellie informs you that her mom is also in the room.
- What do you do?

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**Case Study**

- Your interview with Ellie was scheduled for one hour. At the conclusion of one hour, you have not covered all of the topics you had planned. Ellie says that she cannot stay any longer.
- What do you do?

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**Case Study**

- You also investigate claims of differential treatment at your institution. During an investigation of an allegation of differential treatment on the basis of sex, the complainant sends you the following email:
  - Under the new Title IX rules, I am entitled to meet with the decisionmaker to share my experience. I also have a right to review all of the relevant evidence and respond to that. Please let me know as soon as possible when those steps will be taken.
- How do you respond?

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**Case Study**

- Callie brought a formal complaint alleging Brandon sexually assaulted her. Both Callie and Brandon are students and both play on the University's tennis team. During the investigation into Callie's complaint, you receive an email from the coach of the tennis team. The email states:
  - I wanted to reach out to you on behalf of Brandon. Brandon is an exemplary student and athlete. He has the utmost character and I am deeply sad that the University is putting him through this terrible process. I know it is having a severe impact on him and I hope that you will end this now and allow Brandon to get on with his life.
- What are your next steps?

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**Stage Three: Review/Draft/  
Conduct Additional Interviews**



- Continue to draft report
- Assess what more needs to be done
  - Additional witnesses necessary or duplicative?
  - New facts or allegations that require additional interviews?
- Ensure notice of allegations is up to date; inform Title IX Coordinator of any new allegations
  - Also inform Title IX Coordinator of any allegations unrelated to your investigation
- Check timeframe for investigation and assess need for a notice of delay



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**Stage Three: Follow-Up 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



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**Stage Three: Review/Draft/  
Conduct Additional Interviews**



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



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**Stage Four: Provide Evidence to Parties to Review and Respond\***

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

**\*Title IX Only**

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**Stage Four: Provide Evidence to Parties to Review and Respond\***

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

**\*Title IX Only**

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**Stage Four: Provide Evidence to Parties to Review and Respond\***

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

**\*Title IX Only**

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**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 3 **\*Title IX Only** 151

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**Stage Four: Provide Evidence to Parties to Review and Respond\***

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

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**Stage Four: Provide Evidence to Parties to Review and Respond\***

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

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**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

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**Stage Five: Package Investigation for Decision-Makers**

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

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**Role of Title IX Coordinator During Investigation Phase**

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

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Q & A



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## Drafting an Investigation Report

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## Session Overview

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



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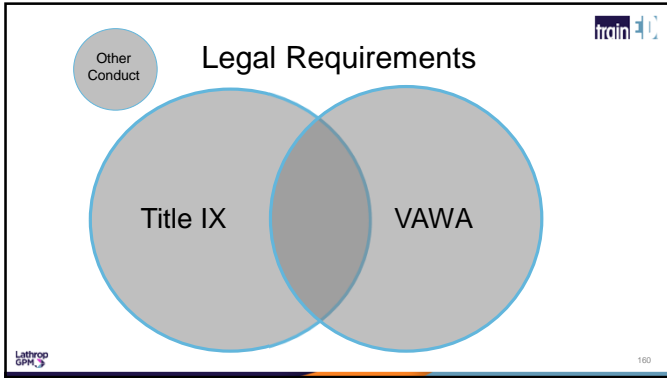
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**Legal Requirements**

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

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**Relevancy Issues**

- Always consider relevance:
  - Expert reports?
  - Character evidence?
  - Lie detector test results?
  - Prior violation by respondent?
  - Allegations of similar misconduct?
- The investigation report should not include any information about the complainant's sexual history that does not meet an exception

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**Purpose**

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

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**Preparation**

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

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**Elements of the Report**

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

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**Elements of the Report**

- Introduction
  - State the reason for your investigation
  - Date of complaint(s)
  - Date of notice(s) of allegations
  - Your appointment as investigator
    - Refer to policy/procedures
  - Purpose of report
  - Scope of your role (e.g., fact gatherer only vs. also decisionmaker)
  - 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)

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**Elements of the Report**

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

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**Elements of the Report**

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

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**Elements of the Report**

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



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**Elements of the Report**

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



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**Elements of the Report**

- Summary of facts by allegation
  - Separate out each allegation
  - Give account from each party/witness
  - Describe other evidence supporting or refuting allegation
  - Include facts that may impact a credibility finding
  - Exclude facts that are not relevant
- Weigh in on credibility if that's part of your role
  - Adjudicator must make the ultimate determination (Title IX)

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Q & A



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## Decision-Making Process



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## Session Overview

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



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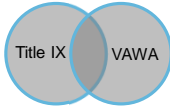
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**Decision-Making Process**

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



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**Decision-Making Process**

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

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**Decision-Making Process**

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

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**Live Hearing**

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

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**Hearing—Relevancy Determinations**

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

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**Hearing—Cross-Examination**

- Party or witness who does not appear at the hearing
  - ~~Cannot rely on any statements from a party or witness who does not submit to cross-examination~~
  - Decision-maker(s) may still rely on previous statements from party/witness who is absent or refuses to answer one or more questions
  - Refusing to answer a question(s) or appear at the hearing may be considered in determining how much weight to give party’s/witness’s account or the credibility of their account
  - Decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions

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**Hearing—Cross-Examination**

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

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**Hearing—Other Procedural Rules**

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

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**Hearing—Other Procedural Rules**

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

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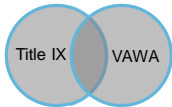
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**Investigator Role in Decision-Making Process**

- If role is investigator only (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 of 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?



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**Weighing Evidence and Assessing Credibility**

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**Evidentiary Issues**

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

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**Evidentiary Issues**

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

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**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?



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**Dealing with Inculpatory & Exculpatory Evidence**

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

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**Determination**

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



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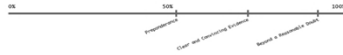
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**Determination—Finding**

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



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**Determination—Finding**

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

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**Determination—Sanctions and Remedies**

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



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**Determination—Sanctions and Remedies**

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

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**Case Study: Make a Determination**

Mark's Complaint Against Silvia

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**Notice of Determination**

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

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**Appeals Under Title IX**

- Must be offered to both parties
  - From a determination regarding responsibility
  - From a recipient's dismissal of a formal complaint or any allegations therein
- Required bases:
  - Procedural irregularity that affected the outcome of the matter;
  - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
  - The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter;
  - May offer an appeal equally to both parties on additional bases

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**Appeals Under Title IX**

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

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**Appeals Under VAWA**

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

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**Q & A**



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**Upcoming Trainings**

- Confidential Resources, First Responder, and Campus Safety Training on August 7, 2024
- Conducting an Informal Resolution Under Title IX/VAWA on August 28, 2024
- Non-Hearing Adjudicator Training Under Title IX/VAWA on September 9, 2024
- Supplemental Decisionmaker Training on Live Hearings on September 23, 2024
- Conducting a Live Hearing Under Title IX/VAWA on September 24, 2024
- Title IX/VAWA Appeal Officer Training on October 10, 2024

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## 2024 Title IX/VAWA Investigator Training

### Handout 1

#### **Formal Complaint**

On October 30, 2024, Mark Matthews made a complaint of sexual harassment against Silvia Silverman

#### **Sexual Harassment Formal Complaint Form**

**COMPLAINANT NAME:** Mark Matthews

**ADDRESS:** 1234 Main Street

**DATE OF ALLEGED POLICY VIOLATION:** September and October 2024

**DATE OF COMPLAINT:** October 30, 2024

**RESPONDENT NAME:** Silvia Silverman

**ADDRESS:** 999 Fourth Ave. S.

#### **ALLEGATIONS:**

I work in the Financial Aid office with Silvia Silverman. Our interactions have always been friendly, but during the last month or two, Silvia's actions have been making me uncomfortable. She texts me often, both during work and after hours. She sends Teams messages to me in the evenings and on the weekends. One day we got coffee over our lunch break, and she touched my hand while we were talking. Another time when I ran into her at a restaurant on the weekend, she gave me a hug and kissed me on the cheek. Then she asked me to go home with her for some fun after a birthday celebration for a colleague. I've tried to brush off the ways she acts toward me as just being friendly, but now Sylvia is up for a promotion that would make her my supervisor. I don't feel comfortable having her as my boss. I'd like to be transferred to a different department or at least report to a different supervisor.

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

**X** *Mark Matthews*

## 2024 Title IX/VAWA Investigator Training

### Handout 2

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

October 30, 2024, a formal complaint of alleged sexual harassment was submitted by Mark Matthews to the Title IX Coordinator alleging conduct by Silvia Silverman. Mark alleges that Silvia engaged in unwelcome conduct on the basis of sex in the form of the following:

- On multiple dates during the months of September and October 2024, Silvia sent messages to Mark via electronic communication.
- On September 24, 2024, at Starbucks on Main Street, Silvia engaged in physical contact with Mark.
- On October 5, 2024, at Luigi's restaurant on First Avenue, Silvia engaged in physical contact with and kissed Mark.
- On October 18, 2024, at O'Malley's Pub on Second Avenue, Silvia made verbal comments toward Mark.

## 2024 Title IX/VAWA Investigator Training

### Handout 3

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

October 30, 2024, a formal complaint of alleged sexual harassment was submitted by Mark Matthews to the Title IX Coordinator alleging conduct by Silvia Silverman. Mark alleges that Silvia engaged in unwelcome conduct on the basis of sex in the form of the following:

- On **September 10, 19, and 29 and October 13, 17, and 23, 2024**, Silvia sent messages to Mark via electronic communication.
- **On September 12, 2024, in the Financial Aid office in the Academic Center, Silvia made verbal comments toward Mark.**
- On September 24, 2024, at Starbucks on Main Street, Silvia engaged in physical contact with Mark.
- On October 5, 2024, at Luigi's restaurant on First Avenue, Silvia engaged in physical contact with and kissed Mark.
- On October 18, 2024, at O'Malley's Pub on Second Avenue, Silvia made verbal comments toward Mark **and engaged in physical contact with Mark.**

## 2024 Title IX/VAWA Investigator Training

### Handout 4

#### **Definition Title IX Sexual Harassment**

As used in this Policy, Title IX Sexual Harassment includes conduct on the basis of sex that satisfies one or more of the following definitions, when the conduct occurs (1) in the University's education program or activity and (2) against a person in the United States.

1. ...
2. Title IX Hostile Environment Harassment: Title IX Hostile Environment Harassment is 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 University's education program or activity.

Multiple instances of the following conduct, or other unwelcome conduct on the basis of sex, may constitute Title IX Hostile Environment Harassment:

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

The circumstances that may be considered when determining whether conduct was so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity include, but are not limited to:

- The frequency of the conduct;
- The nature and severity of the conduct;
- Whether the conduct was physically threatening;

- The effect of the conduct on the victim's mental or emotional state;
- Whether the conduct was directed at more than one person; Whether the conduct arose in the context of other discriminatory conduct;
- Whether the conduct was merely a discourteous, rude, or insensitive statement;
- Whether the speech or conduct deserves the protection of academic freedom.

...

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

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

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

1. ...

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

Examples of Non-Title IX Hostile Environment Harassment may include the same type of conduct listed above for Title IX Hostile Environment Harassment, when such conduct (1) does not rise to the level of being so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; (2) does not occur in the University's education program or activity; or (3) does not occur against a person in the United States.

### **Unwelcome Conduct**

For the purposes of the definitions of Title IX Sexual Harassment and Non-Title IX Sexual Harassment, conduct is unwelcome when the individual did not request or invite and regarded it



as undesirable or offensive. The fact that an individual may have accepted the conduct does not mean that they welcomed it. On the other hand, if an individual actively participates in conduct and gives no indication that they object, then the evidence generally will not support a conclusion that the conduct was unwelcome. That a person welcomes some conduct does not necessarily mean that person welcomes other conduct. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion. Whether conduct was unwelcome may be determined based on the context and circumstances of the encounter or incident.

### **On the Basis of Sex**

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

### **Reasonable Person**

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

## 2024 Title IX/VAWA Investigator Training

### Handout 5

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

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

The time stamps on the text messages from October 23 show that Silvia only invited Melanie to lunch after I had said no. So it was not a group invite.

Silvia definitely said I should take her home and then come inside for some fun. Maybe she drank too much to remember what she said, but I know she said it. And she touched my waist.

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

Mark says that I was "overly friendly." That's really all he is complaining about. He can't point to anything sexual, except a comment that he completely made up about the night at the pub. I never made a sexual comment. I never came on to him. I was just being friendly, and there is nothing wrong with that.

## 2024 Title IX/VAWA Investigator Training

### Handout 6

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

##### **Background**

Silvia has worked as a Financial Aid Counselor in the Financial Aid office since July 2022. Mark was hired as a Financial Aid Counselor in January 2024. Both parties stated that Silvia helped train Mark when he first started and that they often interact and work together.

Silvia stated that Mark often comes to her with work questions and that they “get each other’s opinion on complex financial aid issues that we come across.” Silvia stated that she and Mark are “work friends” and that she talks to him more than anyone else in the office.

Mark stated that he and Silvia have always been “cordial” toward each other.

Melanie stated that she has worked as an administrative assistant in the Financial Aid office since November 2023. When asked what her general perception of Mark and Silvia’s relationship was, Melanie stated, “Honestly, for a while there, I thought they would maybe start dating. They were pretty friendly and talked a lot. I especially got the vibe that Silvia was pretty into Mark.” When asked what gave her the impression that Silvia was into Mark, Melanie stated, “Well, like the pants comment<sup>1</sup> and she would mention him a lot in conversations and laugh at his jokes. You know, the usual stuff.”

Avery stated that he has worked as a compliance officer in the Financial Aid office for approximately three years.

##### **Mark’s Sex-Based Harassment Allegation**

###### **Teams and Text Messages Generally**

###### *Mark’s Account*

Mark stated that prior to September 2024, he and Silvia usually just communicated via Teams during the workday. When asked whether the communications were work-related, Mark stated, “For the most part. Occasionally we would talk about weekend plans or things like that, but it was just normal water cooler talk.”

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<sup>1</sup> See “Thursday, September 12, 2024 Comment about Mark’s Pants” section below.

Mark stated that in September, Silvia started messaging him at night and on the weekends via Teams. Mark stated, “I have the Teams app on my phone, so I got the messages even when I wasn’t logged in.” When asked what the messages were about, Mark stated, “It was never anything urgent, just like venting about difficult students or asking a question that could wait until the next day.” Mark stated, “It was always sort of inviting me to chat, like she was looking for an excuse to start up a conversation.” Mark stated, “Then she started messaging me about things that weren’t even about work.”

When asked if he received Teams or text messages in the evenings or on the weekends from other co-workers in the office, Mark stated, “I’m sure I have, but it’s rare. Silvia did it the most by far.”

Mark stated that he eventually started turning his Teams status to “Do not disturb.” Mark stated that after he did that for a week or so, Silvia started texting him. When asked how Silvia got his cell phone number, Mark stated, “There is a list of everyone’s cell phone in the office, so I assume she got it there.” When asked when the text messages started, Mark stated, “I’m pretty sure they started in October. I only have the last few because I cleared out my text messages a few weeks ago when my phone storage was full.” Mark provided screenshots of his September and October Teams messages with Silvia<sup>2</sup> and several text messages with Silvia from October.<sup>3</sup>

#### *Silvia’s Account*

Silvia stated that she has never sent an inappropriate message to Mark. She stated that she often communicates with co-workers on Teams and via text.

When asked if she ever communicated with Mark via Teams or text in the evenings or on the weekends, Silvia stated, “Probably, just like I do with other people in the office. But it is never anything inappropriate.” When asked why she texted Mark instead of sending the messages via Teams, Silvia stated, “One time I saw that Mark has his Teams set to ‘do not disturb,’ so I didn’t think he would see a message on Teams. So I texted him. Then I think I just kept using text more.”

When asked, Silvia provided screen shots of her Teams and text messages with Mark from September and October.<sup>4</sup>

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<sup>2</sup> See Attachment A.

<sup>3</sup> See Attachment B.

<sup>4</sup> See Attachments C and D.

### *Avery's Account*

When asked if Silvia had ever communicated with him via Teams or text messages in the evenings or on the weekends, Avery stated, "Maybe once or twice, but it is not a regular occurrence. Our office tends to keep more of a nine-to-five schedule." When asked whether Silvia had ever sent him a Teams or text message that was not work related," Avery stated, "I don't think so. Maybe if we were going to get coffee or something, but that would be during the workday. She never sent me like personal messages."

### Tuesday, September 10, 2024 Teams Messages

#### *Mark's Account*

Mark stated that on Tuesday, September 10, 2024, Silvia sent him a Teams message in the evening and provided the following screenshot<sup>5</sup>:

**Tuesday, September 10**

Silverman, Silvia 9/10 7:24 PM

[REDACTED] submitted another appeal this afternoon!

9/10 7:25 PM

What is that now? #4? 5?

Silverman, Silvia 9/10 7:27 PM

I lost count 😞  
I'm pouring myself a glass of merlot to cope

9/10 7:27 PM

Sounds like the right move 🥰

Mark stated, "I found it odd that she was messaging me outside of work and telling me things like that she's drinking wine. But I didn't think much of it until it kept happening."

#### *Silvia's Account*

When asked if she sent Mark a message via Teams on the evening of September 10, Silvia said that she had and provided a screenshot of the messages, which was the same as the screenshot

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<sup>5</sup> See Attachment A. Silvia also submitted a screenshot of this exchange, which is included at Attachment C.

provided by Mark. When asked if Mark said or did anything to indicate that he welcomed the messages, Silvia stated, “We message over Teams as part of our job. I didn’t think that I needed special permission to message him after hours. People in our department work at night all the time.”

When provided Mark’s account about the September 10 Teams message above, Silvia stated, “We’re co-workers. We vent to each other all the time about frustrations with a student or a particular file. I made a joke about needing a glass of wine. That’s not sexual. And Mark clearly was not bothered by it. He sent a winking emoji. If anything, he’s being flirtatious.”

#### Thursday, September 12, 2024 Comment about Mark’s Pants

##### *Mark’s Account*

Mark stated that on September 12, 2024, he wore a new pair of pants to work. Mark stated that he and Silvia walked into the office at the same time, and Silvia said something like, “Oh, did you get new pants? They look great on you. You should wear slim fit more often.” When asked if anyone was around when Silvia made the comment, Mark stated, “I don’t know. We were by the front desk, so Melanie may have been nearby.” When asked how he responded to the comment, Mark stated, “I was so surprised that she would say that that I didn’t know how to respond. I think I just nervously laughed. She had to see that I was uncomfortable.”

##### *Silvia’s Account*

When asked if she ever commented on Mark’s clothing, Silvia stated, “I’m sure I did. If someone in the office is dressed up or something like that, I will usually compliment them.” When asked if she commented on a new pair of pants Mark wore on September 12, Silvia stated, “I remember that, yes. They were noticeable because they had a subtle plaid pattern, and the cut was trendier than what he usually wears. I asked if they were new and told him I liked them.” When asked if she recalled exactly what she said, Silvia stated, “Well I can’t say exactly, but it was something like, “‘Oh, are those new pants? They’re so stylish.’ Or something like that.” When asked how Mark responded to the comments, Silvia stated, “I think he just said, ‘thank you.’ He did not seem upset in any way.” When asked if anyone was around during the exchange, Silvia stated, “I don’t remember.”

During her follow-up interview, when told of Mark’s account regarding her comments about his pants, Silvia stated, “I might have said I like the cut and that it was really stylish or really in right now. I did not say that he should wear slim fit more often.” When provided Mark’s account of his reaction, Silvia stated, “He definitely thanked me for the compliment and did not show any sign of being uncomfortable.”

### *Melanie's Account*

When asked if she ever heard Silvia comment on Mark's clothing, Melanie stated, "Sure, I think she's said like, 'Nice tie' or 'Nice shirt,' things like that." When asked if she ever heard Silvia comment on Mark's pants, Melanie stated, "Oh yeah, a few weeks ago she made a comment about his pants being like a tight fit. I remember being surprised that she would say something like that." When asked if she recalled exactly what Silvia said, Melanie stated, "It was something like, 'Oh, did you get new pants? I like the tighter fit. It looks good.'" When asked how Mark responded to Silvia's comments, Melanie stated, "He kind of seemed embarrassed. He was like, 'thanks' and sort of laughed."

### Thursday, September 19, 2024 Teams Messages

#### *Mark's Account*

Mark stated that on Thursday and Friday, September 19 and 20, 2024, he took PTO and was out of the office. Mark stated that on Thursday evening, Silvia sent him a Teams message and provided the following screenshot<sup>6</sup>:

#### **Thursday, September 19**

Silverman, Silvia 9/19 8:16 PM

Missed you in the office today  
Its just not the same w/o you



9/19 8:56 PM

I think you'll survive...  
Im out tmrw too

Silverman, Silvia 9/19 8:58 PM



When asked how he felt about Silvia's messages, Mark stated, "Again, she's messaging me at night on my day off and it's not about actual work. It's also weird that she's saying she misses me and the office isn't the same without me."

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<sup>6</sup> See Attachment A. Silvia also submitted a screenshot of this exchange, which is included at Attachment C.

### *Silvia's Account*

When asked if she sent Mark a message via Teams on the evening of September 19, Silvia said that she had and provided a screenshot of the messages, which was the same as the screenshot Mark provided. When asked if Mark said or did anything to indicate that he welcomed the messages, Silvia stated, “Again, we are co-workers. I was just commenting on him being missed at the office.”

During her follow-up interview, when provided Mark's account concerning the September 19 Teams messages, Silvia stated, “He never told me that this message or any other message weirded him out. And he responded in a friendly, joking way.”

### Tuesday, September 24, 2024 Coffee Shop Interaction

#### *Mark's Account*

Mark stated that on September 24, 2024, Silvia and a few of their co-workers walked to a nearby Starbucks to get coffee. Mark stated that he and Silvia ordered and got their drinks first and sat down at a table while the others were still waiting for their drinks. Mark stated that while they were talking, Silvia put her hand on his multiple times. When asked how many times he recalled Silvia touching his hand, Mark stated, “It was at least twice.” When asked how long Silvia's hand was touching his hand, Mark stated, “Not long. It was just like when she was saying something she would touch me. Actually, I think one of the times was after I made a joke. She laughed and tapped my hand, like really flirtatiously.” When asked how he responded to Silvia touching his hand, Mark stated, “I just tried to ignore it, pretend it didn't happen. I didn't want to make a big deal out of it, especially with other people from the office around.” When asked which other co-workers were at Starbucks with them, Mark stated that Melanie and Avery had come with them.

#### *Silvia's Account*

When asked if she recalled going to Starbucks with Mark and other co-workers on September 24, Silvia stated, “Yes, I remember walking over one day around then.” When asked if she had any physical contact with Mark at Starbucks, Silvia stated, “No, I did not.”

During her follow-up interview, when told of Mark's account of Silvia touching his hand at least two times while they were sitting at a table together, Silvia stated, “I remember sitting with him at the table while Melanie and Avery were waiting for their drinks. I remember that he made a joke that was making fun of someone and I kind of jokingly scolded him and lightly slapped his hand or arm.” When asked if she remembered what the joke was, Silvia stated, “I don't remember. I just remember thinking it was mean and he shouldn't have said it.” When asked how Mark responded to Silvia lightly slapping his hand or arm, Silvia stated, “I don't remember him reacting at all. We kept talking.” When asked if she touched Mark's arm or hand more than



one time while they were at Starbucks on September 24, Silvia stated, “No, it was just when he had made the joke that I thought was harsh that I lightly slapped his hand or arm.”

#### *Melanie’s Account*

When asked if she recalled going to Starbucks with Mark, Silvia, and another co-worker on September 24, Melanie stated, “Yeah, we walked there over lunch. I think Avery was with us, too.” When asked if she noticed any interactions between Mark and Silvia while they were at Starbucks, Melanie stated, “I know that they were talking, but nothing sticks out to me.” When asked if she noticed any physical contact between Mark and Silvia, Melanie stated, “No, I didn’t notice anything. I know they sat next to each other, but I don’t know other than that.”

#### *Avery’s Account*

When asked if he recalled going to Starbucks with Mark, Silvia, and another co-worker on September 24, Avery stated, “Yes, I remember that.” When asked if he noticed any interactions between Mark and Silvia while they were at Starbucks, Avery stated, “I know that while Melanie and I were still waiting for our drinks, those two sat at a table by themselves and were talking. I couldn’t hear what they said, but they were smiling and almost a little flirtatious.” When asked what made them seem flirtatious, Avery stated, “Just like the laughing and body language.” When asked to explain what he meant by “body language,” Avery stated, “Like I remember her touching his arm and laughing.” When asked how Mark seemed to respond when Silvia touched his arm and laughed, Avery stated, “He just kept talking and laughing.” When asked if he had ever seen other interactions between Mark and Silvia that he would describe as “flirtatious,” Avery stated, “I don’t know. They talked a lot but that’s because they work together a lot. I think the time at Starbucks was just more of a non-professional setting so they were more relaxed.”

#### Sunday, September 29, 2024 Teams Messages

#### *Mark’s Account*

Mark stated that on Sunday, September 29, 2024, Silvia sent him a Teams message and provided the following screenshot<sup>7</sup>:

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<sup>7</sup> See Attachment A. Silvia also submitted a screenshot of this exchange, which is included at Attachment C.

## Sunday, September 29

Silverman, Silvia 9/29 7:31 PM

Hey  
Any chance you have time to talk?  
After the day ive had I could really use a friend

9/30 8:46 AM

Hey Im just seeing your message now  
Sorry I wasn't available  
Hope things are going better today

When asked how he reacted to the messages, Mark stated, "I saw them come through on my phone Sunday night, but I didn't open them so that she couldn't see that I'd seen them. It was really awkward for her to ask to talk to me on the weekend. And it seemed like if I didn't, I would be a bad friend. I decided not to open it and pretend I didn't see it until the next morning. I tried to respond in a way that was sympathetic but made clear that we don't have the kind of relationship where we talk on the phone about our personal problems." Mark stated, "I feel like I kept trying to give her subtle hints that she was being too friendly, but she just didn't pick up on it. Instead, it got worse."

### *Silvia's Account*

When asked if she sent Mark a message via Teams on the evening of September 29, Silvia said that she had and provided a screenshot of the messages, which was the same as the screenshot Mark provided. When asked if Mark said or did anything to indicate that he welcomed the messages, Silvia stated, "We would discuss personal issues with each other occasionally at work. I thought we were friends."

During her follow-up interview, when provided Mark's account about the September 29 messages, Silvia stated, "I didn't know that he intentionally ignored my message. I thought he was telling the truth when he said he just saw it on Monday morning. If he was really that offended, I feel like he could have just said something."

### Saturday, October 5, 2024 Restaurant Interaction

#### *Mark's Account*

Mark stated that on the evening of Saturday, October 5, 2024, he was leaving Luigi's, an Italian restaurant in town, after having dinner with friends. Mark stated that as he was walking past the bar, he saw Silvia having drinks with a few people and he walked up and said hi to her. Mark stated that Silvia seemed very happy to see him and gave him a hug and a kiss on the cheek. Mark stated that she then introduced him to her friends. Mark stated that the hug and kiss made

him “very uncomfortable.” Mark stated that he told Silvia he had to catch up with his friends who were leaving the restaurant.

#### *Silvia’s Account*

When asked if she recalled seeing Mark at Luigi’s Italian restaurant on October 5, Silvia stated, “Yeah, we ran into each other there on a Saturday night.” When asked to describe their interaction at the restaurant, Silvia stated, “I was having drinks with some friends, and Mark came up to me and gave me a hug.<sup>8</sup> I introduced him to my friends and invited him to join us for a drink. He said he was leaving with friends.”

In her follow-up interview, when provided Mark’s account that Silvia hugged him and kissed him on the cheek, Silvia stated, “I guess I don’t know who hugged whom. He came up to me. We hugged. I suppose I may have kissed his cheek when we hugged. We were outside of work. I’d had a few glasses of wine and was relaxed. That’s how I would greet any friend in that situation.”

#### Sunday, October 13, 2024 Text Messages

#### *Mark’s Account*

Mark stated that on October 12 or 13, Silvia sent him a text message with a selfie of her holding a muffin and telling him that she had tried a bakery he recommended and liked it. Mark stated, “Then she said something like, ‘We should go together next time.’” Mark stated, “Also, she was wearing a shirt in the selfie that showed a lot of cleavage.”

#### *Silvia’s Account*

When asked if she sent Mark a text message on October 13 or 14, 2024, Silvia said that she had and provided the following screenshot of messages from October 13 at 11:46 a.m.<sup>9</sup>:

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<sup>8</sup> During his follow-up interview, when provided Silvia’s account of the restaurant interaction on October 5, Mark stated, “She definitely hugged me. I just came to say hi quick. She is the one who hugged me. And I know she kissed me on the cheek.”

<sup>9</sup> See Attachment D.

MM

Sun, Oct 13 at 11:46 AM

[Selfie of Silvia holding a muffin]

I picked up some muffins from the bakery on Madison that you recommended

AMAZING!

Jealous

Jealous of me or the muffin? 😊😂

We should pick some up for the office sometime

👍 to message: We should pick some up for the office sometime 10

During her follow-up interview, when provided Mark's account of the October 13 texts, Silvia stated, "You can see from the texts I gave you that I said we should get them for the office sometime, not that he and I should go there together." Silvia stated, "If he wants things to be completely professional, then he shouldn't be commenting on whether I have cleavage showing. I think it's sexist that he's even talking about that." Silvia stated, "I just can't believe that he is turning these innocent interactions between friends into a full-on sexual harassment investigation."

#### Thursday, October 17, 2024 Text Messages

##### *Mark's Account*

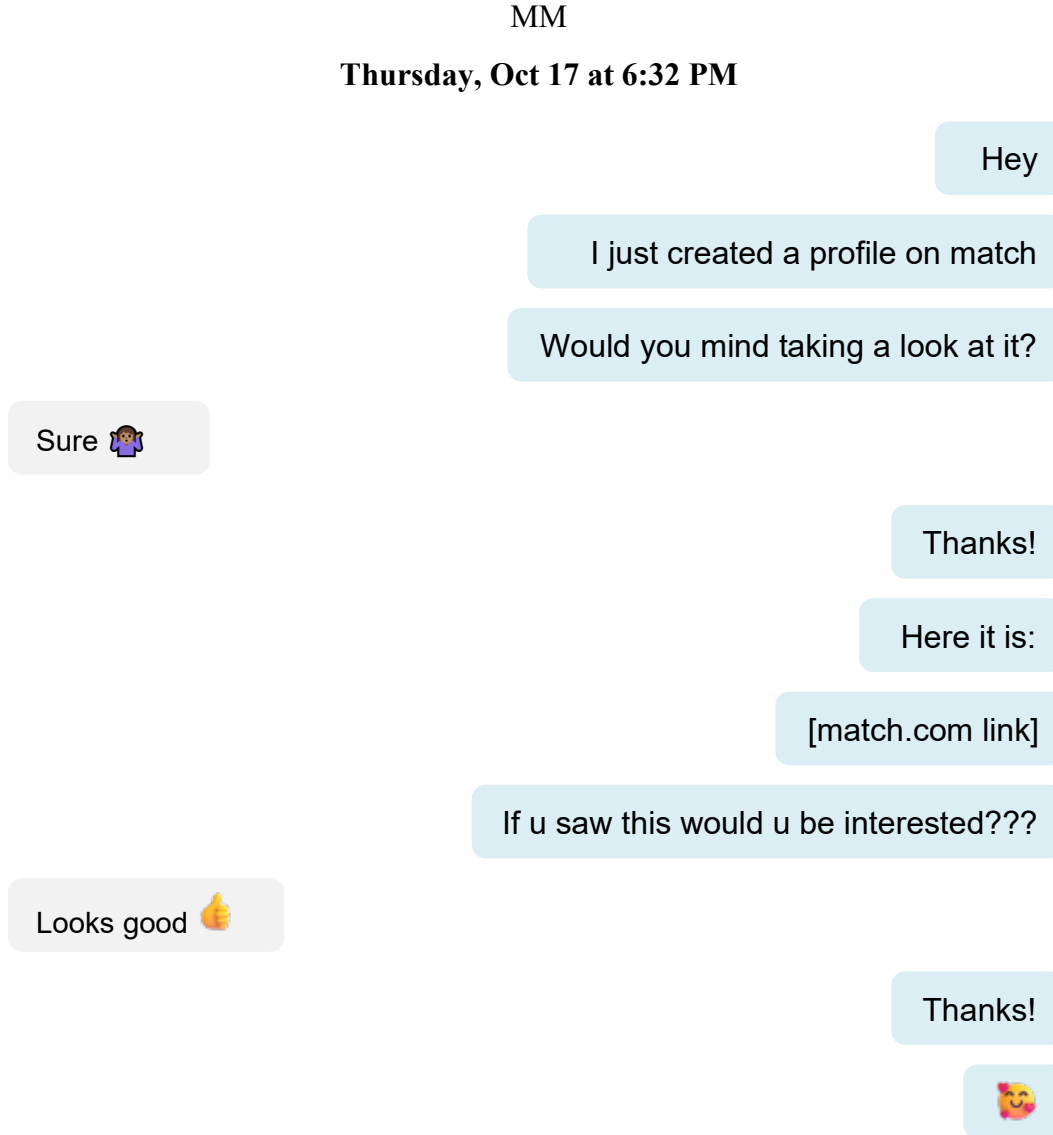
Mark stated that on October 17, 2024, Silvia texted him right after work and asked him to review a dating profile she had prepared. Mark stated, "She asked me if I'd be interested if I saw that profile online." Mark stated, "That really felt like she had crossed a line." When asked how he responded, Mark stated, "I just said it looked great and didn't say anything else. I didn't know how to respond. It was really awkward." When asked if he still had the text exchange, Mark stated, "No, I must have cleared out my messages after that."

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<sup>10</sup> The screenshot indicates that Mark "liked" this message.

*Silvia' Account*

When asked if she sent Mark a text message on October 17, Silvia said that she had and provided the following screenshot of messages from October 17 at 6:32 p.m.<sup>11</sup>:



When asked what she meant when she asked Mark if he would be interested if he saw the profile, Silvia stated, “I wanted his opinion as a guy. I knew that he used Match, so he would be able to

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<sup>11</sup> See Attachment D. When asked if she could provide screenshots of the dating profile she sent to Mark, Silvia stated that she cancelled her Match.com account, so she does not have access to the profile anymore.

give me advice on my profile.” When asked how she knew he used Match.com, Silvia stated, “I happened to see the app on his phone one time and asked him about it. He said he uses it but is pretty picky so he rarely goes on dates with women from the app.”<sup>12</sup>

### Friday, October 18, 2024 Pub Interaction

#### *Mark’s Account*

Mark stated that on October 18, 2024, a few people from the office went to O’Malley’s Pub after work because it was Avery’s birthday. Mark stated that he had a couple of beers and then said he was going to head home because he had plans later than night with friends. Mark stated that Silvia called for him to “wait up” and walked with him to the door. Mark stated that Silvia said something like, “Are you sure you have to leave? Why don’t you stay, I’m gonna get really drunk, and you can take me home. Maybe come inside? It could be fun!” Mark stated that Silvia put her hand around Mark’s waist when she made the statement, “and you can take me home, maybe come inside, it could be fun.” Mark stated that he thought Silvia had had a few drinks already and “seemed pretty tipsy.” When asked how long they had been at O’Malley’s when he left, Mark stated, “probably close to two hours.” When asked how he responded to Silvia, Mark stated, “I backed away and said something like, sorry I have to go. Then I just walked away. I was shocked that she would say that to me. I tried to brush it off and chalk it up to her having too much to drink. But I made sure I got out of there as fast as I could.” When asked if anyone was around during his interaction with Silvia, Mark stated, “No, everyone else stayed at the bar. We were in kind of a hallway near the entrance.”

#### *Silvia’s Account*

When asked if she recalled going to O’Malley’s Pub after work on October 18, Silvia stated, “Yeah, a bunch of us went there for Avery’s birthday.” When asked if she had any one-on-one interactions with Mark at the pub, Silvia stated, “Probably. I was talking to everyone. We were there most of the night.” When asked if she had an interaction with Mark in a hallway near the entrance to the pub when he was leaving, Silvia stated, “Yeah, I remember that. I told him he should stay longer because a bunch of us were going to order dinner and make a night of it. And I think I mentioned that I needed a ride home and we lived in the same direction so he could

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<sup>12</sup> In his follow-up interview, when provided Silvia’s account regarding the dating profile texts, Mark stated, “It’s one thing to talk about using a dating app at work. It’s another thing to send your co-worker your profile.”

maybe give me a ride if he stayed longer.”<sup>13</sup> When asked how Mark responded, Silvia stated, “He said he had plans with friends, so he had to go. Then he left.” When asked how much they had each had to drink at that point in the night, Silvia stated, “Mark left pretty early, so I’m sure neither of us had had much.” When asked if anyone was around when she talked to Mark near the entrance, Silvia stated, “No, that part of the pub is separated from the bar area where everyone was hanging out.”

In her follow-up interview, when provided Mark’s account of the interaction, Silvia stated, “No. Absolutely not. I never said I was going to get drunk. I did mention that I took the bus to work and didn’t have a ride home and maybe he could stay and then drive me. And I think I offered that he could come in for a snack just as a thank you for driving me, but I didn’t say it like that. I wasn’t coming on to him. I cannot believe he said that.” When asked if she put her hand around Mark’s waist during the interaction, Silvia stated, “Nope. I did not touch him at all.”<sup>14</sup>

### *Avery’s Account*

When asked if he recalled going to O’Malley’s pub on October 18, Avery stated, “Yes. We went there for my birthday.” When asked if Mark and Silvia were at the pub, Avery stated, “Yeah. Silvia was there all night, but Mark cut out pretty early.” When asked if he noticed any interactions between them at the pub, Avery stated, “Nothing out of the ordinary.” When asked if he knew how much Silvia and Mark had to drink at the pub, Avery stated, “A normal amount. Silvia more than Mark. We were having fun, but no one was out of control.”

### Wednesday, October 23, 2024 Text Messages

#### *Mark’s Account*

Mark stated that on October 23, 2024, during the workday, Silvia sent him a text message about getting lunch. Mark provided the following screenshot of text messages between him and Silvia at 11:32 p.m.<sup>15</sup>:

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<sup>13</sup> In his follow-up interview, when provided Silvia’s account regarding the pub interaction, Mark stated, “No, she definitely said that she wanted me to take her home.”

<sup>14</sup> In his response to the directly related evidence, Mark wrote, “Silvia definitely said I should take her home and then come inside for some fun. Maybe she drank too much to remember what she said, but I know she said it. And she touched my waist.”

<sup>15</sup> See Attachment B. Silvia also submitted a screenshot of this exchange, which is included at Attachment D.

SS

Wed, Oct 23 11:32 PM

I'm thinking about grabbing a sandwich at Tony's

Wanna join?

Thanks

I brought food today

need to work through lunch

*Silvia's Account*

When asked if she sent Mark a text message on October 23, Silvia said that she had and provided a screenshot of the messages, which was the same as the screenshot Mark provided.<sup>16</sup> Silvia stated, "Sometimes I grab lunch with my co-workers. I sent that same message to our colleague, Melanie, and she came with me." When asked if she sent the message to anyone else, Silvia stated, "Not that I recall."

Silvia provided the following screenshot of text messages between her and Melanie from October 23 at 12:05 p.m.<sup>17</sup>:

MM

Wed, Oct 23 12:05 PM

I'm heading to Tony's for lunch

Want to come?

Sure

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<sup>16</sup> See Attachment D.

<sup>17</sup> See Attachment E.



5 mins ok?



### *Melanie's Account*

When asked if she had lunch with Silvia on October 23, Melanie stated, “I went with her to Tony’s Deli one day that week. I would have to look at my calendar to be sure.” When asked how they decided to go to lunch together, Melanie stated, “She just texted me about going.” When asked if she had the text message, Melanie stated that she did and later provided a screenshot of the same exchange Silvia provided.<sup>18</sup> When asked if Silvia invited anyone else to lunch, Melanie stated, “I don’t know. No one else came.” When asked how often she exchanges text messages with Silvia, Melanie stated, “That is the only time Silvia has ever texted me.”

### Impact

#### *Mark's Account*

When asked to describe any impact that Silvia’s actions have had on him or his work environment, Mark stated that he recently learned that Silvia was being considered for an Assistant Director role in the department, which would make her Mark’s supervisor. Mark stated that he had tried to just ignore Silvia’s “overly friendly behavior,” but he is not comfortable reporting to someone who did those types of things. Mark stated, “I’m not trying to get her fired. I just think she needs to learn how to be more professional in her interactions before she moves into leadership.”

#### *Silvia's Account*

Silvia stated that the investigation and the way it has impacted her work as been “very difficult.” Silvia stated, “It’s just so awkward. Everyone knows that something is happening. We’ve had to be separated and can’t interact. I just wish he would have come to me and said something. This could have been cleared up so easily.”

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<sup>18</sup> See Attachment F.

## 2024 Title IX/VAWA Investigator Training

### Handout 7

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

##### Excerpt from Mark's Written Response to the Investigation Report

Silvia suggests that I should have talked to her about how she was making me uncomfortable. I didn't want to make a big deal about it, because I knew that it would be awkward since we worked together so much. Then when I realized that she was up for the Assistant Director position, I didn't feel like I could say anything to her directly because I was afraid that it would impact how she treated me as a subordinate. I knew that I needed to get someone else involved. I also don't think anyone would expect a woman to say something to a man who was engaging in this type of conduct.

##### Excerpt from Silvia's Written Response to the Investigation Report

Ever since I learned of Mark's allegations, I did not understand why he would make a complaint about this instead of just talking to me. After reading what he said about me being his supervisor, now I understand. Mark is just upset because he applied for the Assistant Director role, too. He brought this claim to prevent me from getting the job that he wanted.

I have never said anything sexual to Mark. There is nothing sexual about the messages that are in evidence. I did not commit sexual harassment.

## 2024 Title IX/VAWA Investigator Training

### Handout 8

#### **Summary of Hearing**

The hearing panel heard from the parties and all of the witnesses in the investigation report. Their testimony was generally consistent with the accounts they provided to the investigator and no additional information was provided, except for the following:

- When asked by the Panel if he saw Mark and Silvia interact when Mark left the pub, Avery stated, “I saw Silvia follow Mark out. It seemed like she wanted to talk to him about something.” When asked if he heard what she said or saw them interact, Avery stated, “No, she followed him out of the room. I couldn’t see or hear anything.”
- When Silvia’s advisor asked Mark if he had applied for the Assistant Director position in the Financial Aid office, Mark stated, “Yes.” When asked when he found out that he was not being considered for the position and Silvia was, Mark stated, “I don’t recall.” When asked if it was before he made the complaint against Silvia, Mark stated, “Yes, it was. I decided to report when I found out that she might be my supervisor. I wasn’t comfortable with that.”

# 2024 Title IX/VAWA Investigator Training

## Handout 9

### Excerpts from Adjudicator Outline

#### *\*Review Policy definitions in handout #4\**

For each element, indicate whether there is sufficient evidence (“SE”) or insufficient evidence (“IE”) to determine that it is more likely than not that the element is met.

#### Mark’s Allegation of Title IX Sexual Harassment—Hostile Environment Harassment and Non-Title IX Sexual Harassment—Hostile Environment Harassment

- Mark alleged that Sylvia engaged in unwelcome conduct on the basis of sex in the form of sending messages to him via electronic communication, engaging in physical contact with him, and kissing him.
- What conduct occurred:
  - Did Silvia send Mark a Teams messages on September 10?.....SE IE
  - Did Silvia comment on Mark’s pants on September 12? .....SE IE
  - Did Silvia send Mark a Teams messages on September 19?.....SE IE
  - Did Silvia put her hand on Mark’s hand or arm multiple times on September 24, 2024? .....SE IE
  - Did Silvia send Mark a Teams messages on September 29?.....SE IE
  - Did Silvia hug Mark on October 5, 2024?.....SE IE
  - Did Silvia kiss Mark on the cheek on October 5, 2024? .....SE IE
  - Did Silvia send Mark text messages on October 13? .....SE IE
  - Did Silvia send Mark text messages on October 17? .....SE IE
  - Did Silvia tell Mark he could come in her home for some fun on October 18?.....SE IE
  - Did Silvia put her hand around Mark’s waist on October 18?.....SE IE
  - Did Silvia send Mark text messages on October 23? .....SE IE
- Was the conduct you found to have occurred on the basis of sex?
  - Teams messages on September 10?.....SE IE N/A
  - Silvia’s comment on Mark’s pants on September 12?.....SE IE N/A
  - Teams messages on September 19? .....SE IE N/A
  - Silvia putting her hand on Mark’s hand or arm multiple times on September 24, 2024?.....SE IE N/A
  - Teams messages on September 29? .....SE IE N/A

- Silvia hugging Mark on October 5, 2024?.....SE IE N/A
- Silvia kissing Mark on the cheek on October 5, 2024?.....SE IE N/A
- Text messages on October 13? .....SE IE N/A
- Text messages on October 17? .....SE IE N/A
- Silvia telling Mark he could come in her home for some fun on October 18?..... SE IE N/A
- Silvia putting her hand around Mark’s waist on October 18?..... SE IE N/A
- Text messages on October 23?. .....SE IE N/A
  
- For conduct that was on the basis of sex, was the conduct unwelcome?
  - Teams messages on September 10?.....SE IE N/A
  - Silvia’s comment on Mark’s pants on September 12?.....SE IE N/A
  - Teams messages on September 19?.....SE IE N/A
  - Silvia putting her hand on Mark’s hand or arm multiple times on September 24, 2024?.....SE IE N/A
  - Teams messages on September 29? .....SE IE N/A
  - Silvia hugging Mark on October 5, 2024?.....SE IE N/A
  - Silvia kissing Mark on the cheek on October 5, 2024? ....SE IE N/A
  - Text messages on October 13? .....SE IE N/A
  - Text messages on October 17? .....SE IE N/A
  - Silvia telling Mark he could come in her home for some fun on October 18?..... SE IE N/A
  - Silvia putting her hand around Mark’s waist on October 18?..... SE IE N/A
  - Text messages on October 23? .....SE IE N/A
  
- For conduct that you find to be on the basis of sex and unwelcome, was the conduct so severe, pervasive, and objectively offensive that it effectively denied Mark equal access to the University’s education program or activity.....SE IE
  - In making this determination, consider the collective impact of the conduct that you found to be on the basis of sex and unwelcome.

**If you find *insufficient evidence* that the conduct was so severe, pervasive, and objectively offensive that it effectively denied Mark equal access to the University’s education program or activity:**

- For conduct that you find to be on the basis of sex and unwelcome, would a reasonable person determine the conduct to be so severe or pervasive that it substantially and unreasonably interfered with Mark’s employment or education,

or created an intimidating, hostile, or offensive employment or educational environment?..... SE.....IE N/A

Do you find Silvia responsible for Title IX Sexual Harassment?..... Yes No

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

**Rationale for finding:**

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

**Rationale for sanctions:**