



Title IX Training

Hearing Panel,  
Appeal Panel, or  
Investigator

February 21, 2019  
2:00-4:30

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# What is Title IX?



# What is 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 education program or activity receiving Federal financial assistance."

# What is Title IX?

Title IX protects ALL students from discrimination on the basis of sex, whether that discrimination is perpetrated by another **student**, a **faculty** member, a **staff** member, or a member of the **administration**.

# OCR the Title IX Regulator

- See attached, OCR presentation about Title IX
  - What does Title IX require every recipient institution to do (policy-wise)?
    - Have a notice of non-discrimination
    - Appoint a Title IX Coordinator
    - Have grievance procedures
  - Highlights of 2015 Q&A
    - Let's go over OCR expectations in detail

# Sex Discrimination

Sex Discrimination is an umbrella term encompassing **multiple** types of actions involving the unfavorable treatment of an individual or group of identifiable individuals based on sex.

# Sex Discrimination Includes:

- Sexual Harassment
- Sexual Misconduct
- Domestic Violence
- Dating Violence
- Stalking



# Sexual Harassment

Sexual harassment is unwelcomed sexual advances, requests for sexual favors and other verbal or physical contact or communication of a sexual nature when:

- a. Submission to such conduct or communication is made either explicitly or implicitly a term or condition of educational benefits, employment, academic evaluations or other academic opportunities,
- b. Submission to or rejection of such conduct or communication by an individual is used as the basis for decisions affecting an individual's employment or academic standing, or participation in a CASC program or event, or an employment decision or academic decision affecting such individual, or
- c. Such conduct has the purpose or effect of unreasonably interfering with a person's work or academic performance or creating an intimidating, hostile or offensive work or social environment.



# Two Forms of Sexual Harassment

- Quid Pro Quo
- Hostile Environment

# Quid Pro Quo

- Exchange of sexual favor for benefit in workplace or educational environment.



# Hostile Environment

- Subjective **AND** Objective



Subjectivity refers to an individual's perspective, feeling, or belief on a given matter.



Objectivity refers to the reality or truth about a given matter independent of an individual's perspective

# Hostile Environment

- Sufficiently Severe, Pervasive, **OR** Persistent
  - Severe- How bad is it?
  - Pervasive- How wide spread is it?
  - Persistent- How frequent is it?

# Hostile Environment Examples

- Student in a biology class sends frequent e-mails to the class listserv that contain sexist jokes
- Student hangs nude male photos in her room that are visible to all of her roommates

Does this create a hostile environment?



# What about this?



# Examples

- Unwelcome sexual flirtation, advances or propositions for sexual activity.
- Continued or repeated verbal abuse of a sexual nature. Suggestive comments and sexually explicit jokes, or turning discussions at work or in the academic classroom to sexual topics.
- Making offensive sounds such as smacking or licking lips, making kissing sounds, or “cat calls”



# Examples

- Sexually offensive or degrading language used to describe an individual or remarks of a sexual nature to describe a person's body or clothing.
- Stating, indicating, or implying in any manner that benefits will be gained or lost based on response to sexual advances.

# Examples

- Displaying sexually demeaning or offensive objects and pictures.
- Staring repeatedly at someone, blocking another person's path or otherwise restricting their movements.
- Bringing physical items to work which express sexually offensive comments regarding men or women.
- Making sexual gestures with hands or body movements. Looking a person up and down in a suggestive or intimidating manner

# Examples

Offensive physical contact- Possible problem areas include:

- Massaging a person's neck or shoulders
- Touching a person's clothing, hair, or body hugging, kissing, patting, or stroking a person's body
- Touching or rubbing oneself in a sexual manner around or in the view of another person
- Brushing up against another person
- Tearing, pulling, or yanking a person's clothing
- Sexual assault or other sexual contact

# Domestic Violence



# Domestic Violence

- Domestic violence is a crime of violence committed by a:
  - Current or former spouse or intimate partner of the victim
  - Person with whom the victim shares a child in common
  - Person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
  - Person similarly situated to a spouse of the victim.
- Domestic violence is a pattern of abusive behavior that is used by one partner to gain or maintain power and control over another intimate partner. It can be physical, sexual, emotional, economic, or psychological actions or threat of actions that influence another person.

# Dating Violence

- Dating violence is committed by a person who is or has been in a social relationship of a romantic or intimate nature with another person.
  - Includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - Does not include acts that meet the definition of domestic violence.
- <http://sde.ok.gov/sde/teen-dating-violence-prevention>

# Stalking

- Stalking is the willful, malicious, and repeated following or harassment of a person in a manner that would cause a reasonable person to feel frightened, intimidated, threatened, harassed or molested.
- Stalking also means a course of conduct composed of a series of two or more separate acts over a period of time
  - demonstrating a continuity of unwelcomed contact with a person that is initiated or continued without the consent of the individual or in disregard of the expressed desire of the individual that the contact be avoided or discontinued
- This may include repeatedly contacting another person
  - through any means, such as in person, by phone, electronic means, text messaging, etc.), following another person, or having others contact another person on your behalf
  - <http://www.victimsofcrime.org/our-programs/stalking-resource-center/training/archived-events#web>

# Retaliation

- The College will not tolerate retaliation against a person who, acting in good faith, brings a complaint forward.
- Retaliation against an individual who has brought a complaint forward, or against an individual who has participated in an investigation or conduct process, is prohibited.
- Retaliation is subject to discipline, up to and including termination of employment, suspension, or expulsion from CASC, even if no Harassment is found.





**Sexual  
Misconduct  
Specific  
Training**

# Sexual Assault on College Campuses

- Campus Sexual Assault Study (2007) found:
  - 1 in 5 women will be in assaulted in college
  - 1 in 16 men will be assaulted in college
  - First and second year students are greatest risk for victimization
- Only between 2-8% reports of assault are false
- 4 out of 5 victims know their attacker
- The accused individual is usually a classmate, friend, boyfriend, family member, or ex-boyfriend.

# Sexual Misconduct Defined

Sexual misconduct, whether physical, mental or emotional in nature includes actions that are demeaning and includes, but is not limited to, rape (whether the victim does or does not know the aggressor and includes “date rape”, “acquaintance rapes”, and “gang rape”), sexual assault or sexual harassment, dating violence, stalking, and domestic violence.

Engaging in non-consensual contact of a sexual nature. Sexual misconduct may vary in its severity and consists of a range of behavior or attempted behavior including, but not limited to the following examples of prohibited conduct:

- Rape means all acts of sexual intercourse involving vaginal or anal penetration accomplished without consent and with a male or female (who may be of the same or opposite sex as the perpetrator).
- Rape by instrumentation means any act in which an inanimate object or part of the human body, not amounting to sexual intercourse, is used in the carnal knowledge of another person without his or her consent and penetration of the anus or vagina occurs to that person.
- Sexual battery shall mean the intentional touching, mauling, or feeling of the body or private parts of any person in a lewd and lascivious manner and without the consent of that person. Sexual battery includes, but is not limited to, the touching of a person’s genitalia, buttocks, or breasts.

# Sexual Misconduct Defined

- Sexual contact shall mean intentional touching of the victim's sexual or intimate parts or intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the accuser's sexual or intimate parts when such touching is intentionally caused by the accused. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party.
- Sexual penetration shall mean sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight of any part of the accuser's or victim's body, or any object manipulated by the accused into the genital, oral or anal openings of the victim's body which can be reasonably construed as being for non-medical or non-health purposes. Sexual penetration shall not require emission of semen.

# Sexual Misconduct Defined

- Dating Violence shall mean violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.
- Stalking shall mean a course of conduct directed at a specific person that would cause a reasonable person to fear for her, his, or others' safety, or to suffer substantial emotional distress.
- Domestic Violence shall include asserted violence misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

# Consent Defined

Consent shall mean the positive cooperation in act or attitude pursuant to an exercise of free will. The persons consenting must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. The determination regarding the presence or absence of consent shall be based upon the totality of the circumstances present in a particular case, including the context in which the alleged incident occurred. Consent will not be implied from silence or passivity alone.

# Effective Consent

(Educational Material)

- Effective Consent is:
  - Informed
  - Freely and actively given
  - Mutually understandable words or actions
  - Words which indicate a willingness or non willingness to participate in mutually agreed upon sexual activity

Consent is **not** effective if obtained from someone who cannot give consent:

- ❑ The person is not aware of what is happening
- ❑ Intoxicated by alcohol or drugs
- ❑ Under legal age to give consent
- ❑ Has a mental, physical, developmental disability

# Effective Consent

- Silence or passivity is not effective consent.
- The use of intimidation, coercion, threats, force or violence negates any consent obtained.
- Consent is based on choice.
- Receiving consent at times in the past **does NOT mean** that you have consent now and in the future.



# Definition from notalone.gov

Consent must be informed, voluntary, and mutual, and can be withdrawn at any time. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance does not imply consent. Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person.

If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption that meets this standard, or being asleep or unconscious.

<https://www.notalone.gov/assets/definitions-of-prohibited-conduct.pdf>

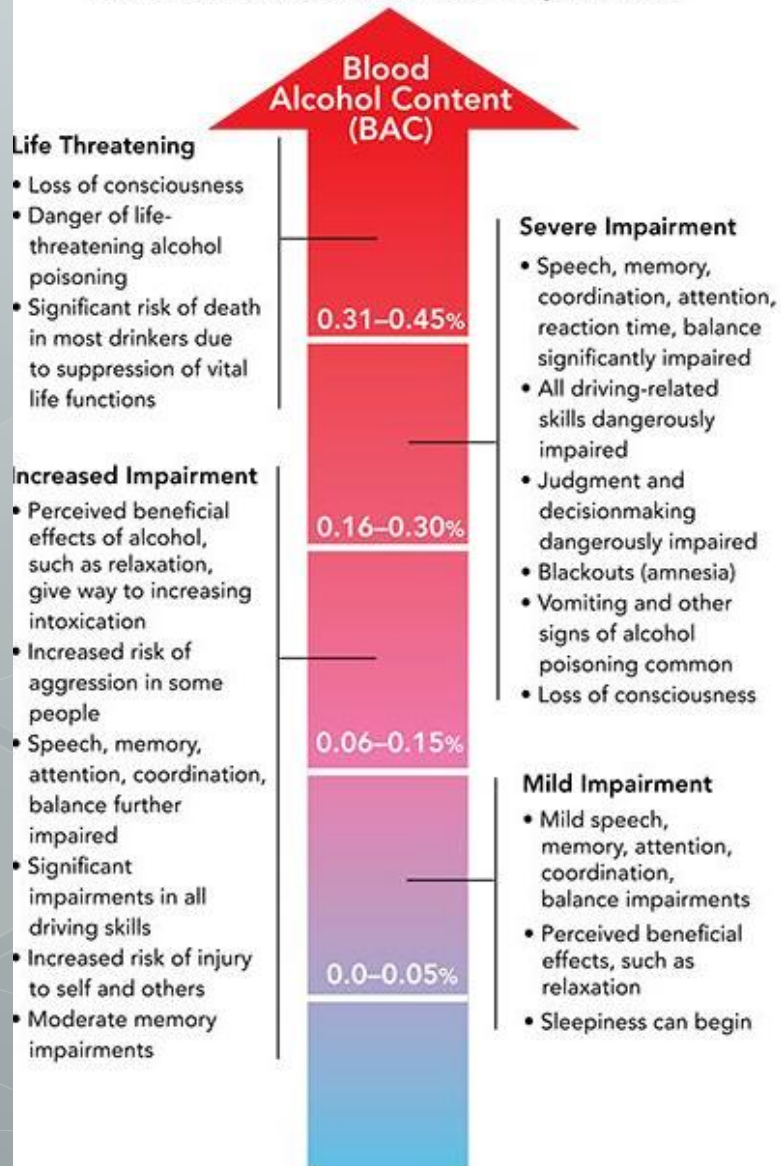
# Cup of tea video



# Intoxication vs. Incapacitation

- States of Incapacitation include sleep, unconsciousness, intermittent consciousness, or any other state where the individual is unaware that Sexual Contact is occurring. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to Consent to Sexual Contact.
- Alcohol or drug use is one of the prime causes of Incapacitation. Where alcohol or drug use is involved, Incapacitation is a state beyond intoxication, impairment in judgment or “drunkenness.” Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is Incapacitated, and therefore unable to give Consent, requires an assessment of whether the consumption of alcohol or other drugs has rendered the individual physically helpless or substantially incapable of:
  - Making decisions about the potential consequences of Sexual Contact;
  - Appraising the nature of one’s own conduct;
  - Communicating Consent to Sexual Contact; or
  - Communicating unwillingness to engage in Sexual Contact.

## As BAC Increases, So Does Impairment

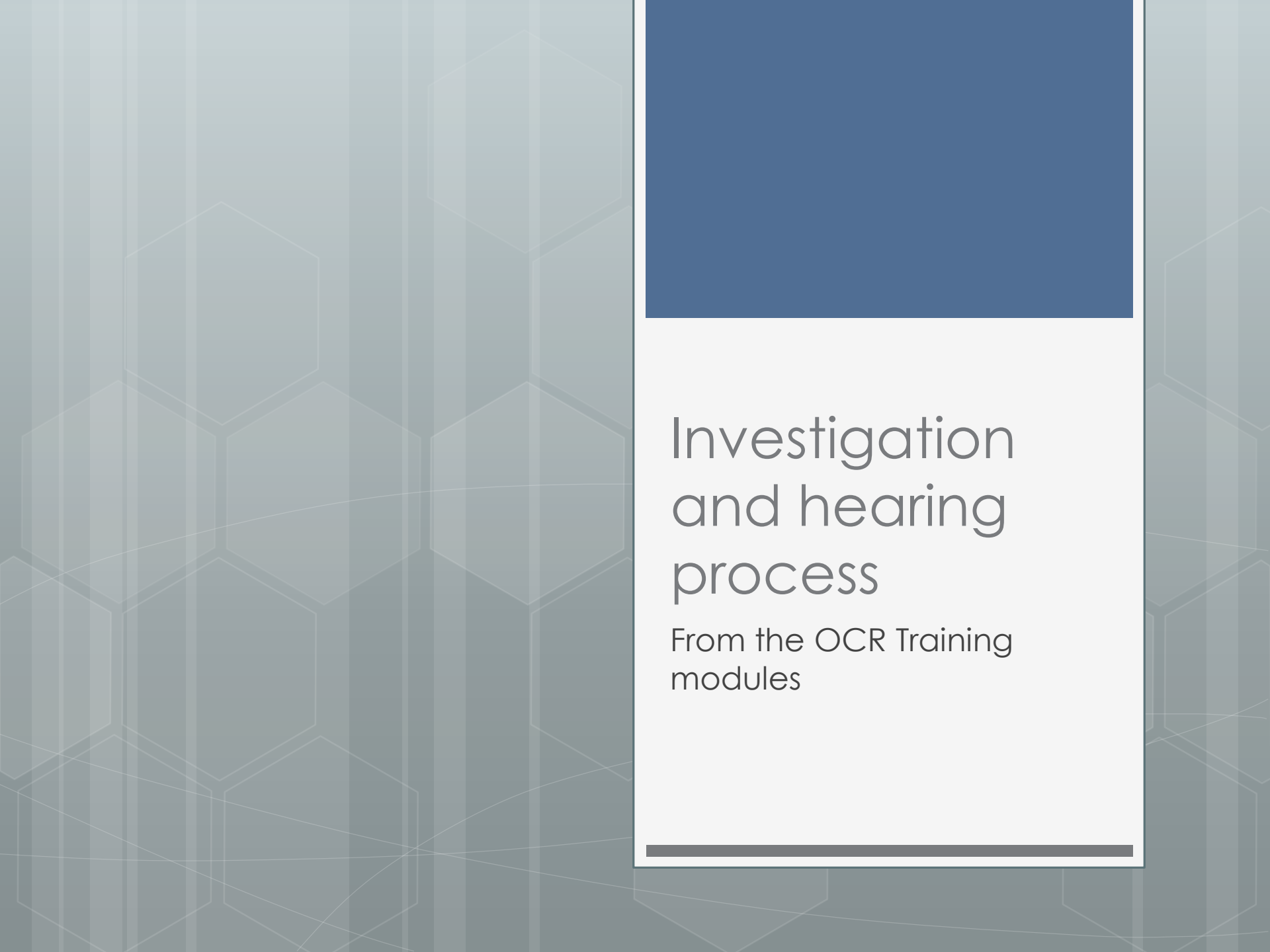


# Alcohol Incapacitation

From [www.niaaa.nih.gov](http://www.niaaa.nih.gov)

# Assessing incapacitation during an investigation

- Determining how drunk/high/incapacitated was the complainant?
  - Level of consciousness
  - Any memory of the event?
  - Could the person walk (was the person carried), talk, or speak coherently?
  - Were they able to perform physical tasks?
  - Could they control bodily functions?
  - How did witnesses describe level of incapacitation?



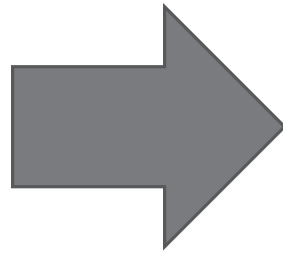
# Investigation and hearing process

From the OCR Training  
modules

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# When Is a School on Notice of Sexual Violence?

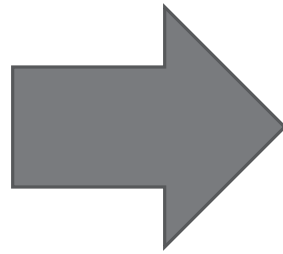
A school has notice of student-on-student sexual violence if:



A responsible employee knew, or in the exercise of reasonable care should have known about the sexual violence.

# A School's Obligation to Respond to Sexual Violence

When a school knows or reasonably should know of possible sexual violence, it must:

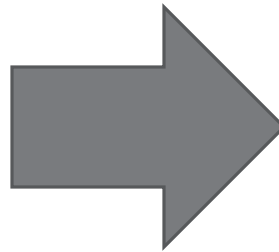


Take immediate and appropriate steps to investigate or otherwise determine what occurred.



# A School's Obligation to Respond to Sexual Violence

If an investigation reveals that sexual violence created a hostile environment, the school must:



Take prompt effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

# Who Is a Responsible Employee?

- Person who has the authority to take action to redress sexual violence;
- Has been given the duty of reporting incidents of sexual violence or other misconduct by students to the Title IX Coordinator or other school designee; or
- A student could reasonably believe has this authority or duty.



# List of Responsible Employee Definition or Titles

- ✓ Cabinet Members,
- ✓ Full-time Faculty,
- ✓ Administrators,
- ✓ Directors and Coordinators of programs,
- ✓ Student Life personnel,
- ✓ Club Sponsors,
- ✓ Coaches, and
- ✓ Assistant Coaches.

# Duties of Responsible Employees

- What should a responsible employee do when alleged sexual violence has been disclosed?
  - Report the information to the Title IX Coordinator :  
*Vicki Sullivan or Randy Graves*
  - Include all relevant details about the alleged sexual violence that the student or another person has shared and that the school will need to determine what occurred and resolve the situation.

# Duties of Responsible Employees

- What should a responsible employee do when alleged sexual violence has been disclosed?
  - Provide information about on campus and off campus resources
  - You can access this information for our campus at the 1is2 Many website



# Exception for Counselors and Advocates

- Although certain employees may have responsibilities that would otherwise make them responsible employees for Title IX purposes, OCR recognizes the importance of protecting the counselor-client relationship which often requires confidentiality.
  - Pastoral and professional counselors
  - Non-professional counselors or advocates



# Exception for Counselors and Advocates

Pastoral and professional counselors whose official responsibilities include providing mental-health counseling to members of the school community are not required by Title IX to report *any* information regarding an alleged incident of sexual violence.

# Exception for Counselors and Advocates

- Non-professional counselors or advocates (victim advocacy offices, women's centers, or health centers) are not required by Title IX to report any identifying information.
- Schools should collect aggregated data about sexual violence incidents from these offices to identify patterns or systemic problems.
  - Only general information such as the nature, date, time, and general location of the incident.
  - No personally identifiable information about a student.



# Requests for Confidentiality

- OCR strongly supports a student's interest in confidentiality in sexual violence cases.
- A non-responsive victim is when a victim:
  - does not respond to contact made by the College.
  - does not want to file a formal complaint and wishes to maintain confidentiality; or
  - requests that no investigation or conduct action be taken.
- The College must weigh that request against the obligation to provide a safe environment for all students, including the victim. When weighing a victim's request for confidentiality or that no investigation or conduct process be pursued, numerous factors must be considered.

# Confidentiality factors

- There have been other sexual violence complaints about the same alleged respondent
- The alleged respondent has a history of arrests or records from a prior school indicating a history of violence.
- The alleged respondent threatened further sexual violence or other violence against the victim or others.
- The sexual violence was committed by multiple respondents
- The sexual violence was perpetrated with a weapon
- The victim is a minor.
- The College possesses other means to obtain relevant information of the sexual violence (e.g., security cameras, personnel, physical evidence)
- The victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

# When a School Determines It Can Respect a Confidentiality Request

- A school should take all reasonable steps to respond to the complaint consistent with the confidentiality request.
- The confidentiality request may limit a school's ability to respond fully, but it can still take steps to limit the effects of the alleged sexual violence and prevent recurrence.

# Interim Measures

- Interim measures are not sanctions
- Randy Graves coordinates interim measures (for students)
- Common interim measures include
  - Assist in filing a police report
  - Assist in filing for an Emergency Order of Protection in court
  - Coordinate reasonable arrangements for students' ongoing safety
  - Connect students to support services on campus and in the community
  - Put a No Contact Order in place between complainant and respondent
  - Make arrangements with academic classes
  - Change living arrangements
  - Change parking
  - Change work schedules

# Investigation Process

1. Meet with the complainant
2. Meet with the respondent
3. Meet with any witnesses
4. Review any documentary information
5. Compile an Investigation Report
6. Offer an explanation to both the complainant and respondent

# Initial Investigative inquiries

- Where and when did the incident happen?
  - Who else was there?
- Any videos, pictures, social media
- What transportation was taken to/from
- Any on or off campus video
- Who observed the person leaving
- Develop a timeline

# Example

On Thursday night, Cher consents to have sex with Sonny. Just at the point of intercourse, the phone rings. Cher is on the phone with her mother for an hour. After the call, Sonny and Cher engage in sex, consensually.

- He comes over Friday night. Does he need to get consent again?

# Standard of Evidence

The Department of Education established “preponderance of evidence” as the standard schools must use in cases involving sexual assault. As clarified in its April 2011 Dear Colleague Letter, “in order for a school’s grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (*i.e.*, it is more likely than not that sexual harassment or violence occurred).”



# What are the different standards?

- Three different standards are used in courts of law. Generally, each of the three judicial standards of proof<sup>1</sup> requires a different level of confidence in the facts supporting a decision:
  - **beyond a reasonable doubt** requires at least 95% confidence that the facts support a guilty verdict
  - **clear and convincing** requires at least 70-75% confidence that the facts support the decision
  - **preponderance of evidence** requires at least 50.1% confidence that the facts support the decision

# More on preponderance of the evidence

- The preponderance standard is the lowest of the three judicial standards of proof and requires that the weight of evidence makes it more likely than not that the decision is correct. This is the standard used in civil litigation that primarily involves a claim for money. Because the risk of harm involves dollars not loss of liberty society places a lower value on the risk of a wrong decision, which is shared equally by both parties.
- Preponderance of evidence is also the standard required in disciplinary proceedings involving sexual misconduct where the accused faces sanctions ranging from a verbal warning to expulsion from school, as well as a damaged reputation.

# Sanctioning

- Do not establish a sanction until a decision is reached about violation of policy.
- Responsibility to complainant that sanction is:
  - appropriate with the violation
  - appropriate to the severity of the violation
- Responsibility to have the sanction to be appropriate and balanced with other similar infractions.

# Sanctioning

- Four Purposes:

- 1) Restore and protect the victim
- 2) Protect the campus community
- 3) Reinforce community standards
- 4) Educate and aid in understanding impact of actions, deter violations

Suspension is sometimes **necessary** to reinforce community standards and to protect others

# Sanctioning

- Is the victim made safe?
- Will the accused's continued presence on campus re-traumatize the victim or make the community unsafe?
- Community service is a bad sanction—accused are not good candidates by virtue of their actions

Berkowitz, A. D. (2007). Guidelines for sanctioning perpetrators of sexual assault. Unpublished manuscript. Berkowitz, A. D. (2007). Guidelines for sanctioning perpetrators of sexual assault. Unpublished manuscript.

# Sanctioning

- Suspension or expulsion should be considered
- Loss of campus privileges (should not serve in leadership positions)
- Living restrictions (must avoid victim)
- Look at the entire list of sanctions in the code of conduct

# Activity

- What information is relevant vs. irrelevant?
- Questions asked by Panel members:
  - Have you ever been sexually involved with Andrew before this incident?
  - Andrew, why did you not attend the party?
  - James, what were your expectations when you went to Andrew's room?
  - Andrew, did James ask you to stop?
  - James, did you ask Andrew to stop or say "no"?
  - James, how many men have you engaged in sexual activity with in the past?

# Notice of the Outcome

- Title IX requires both parties to be notified, in writing, about the outcome of the complaint and any appeal.
- For Title IX purposes, the notice of the outcome for the complainant must include:
  - Whether or not the school found that the conduct occurred;
  - Any individual remedies offered to the complainant or sanctions imposed on the perpetrator that directly relate to the complainant; and
  - Other steps the school has taken to eliminate the hostile environment and prevent recurrence.



# Notice of the Outcome

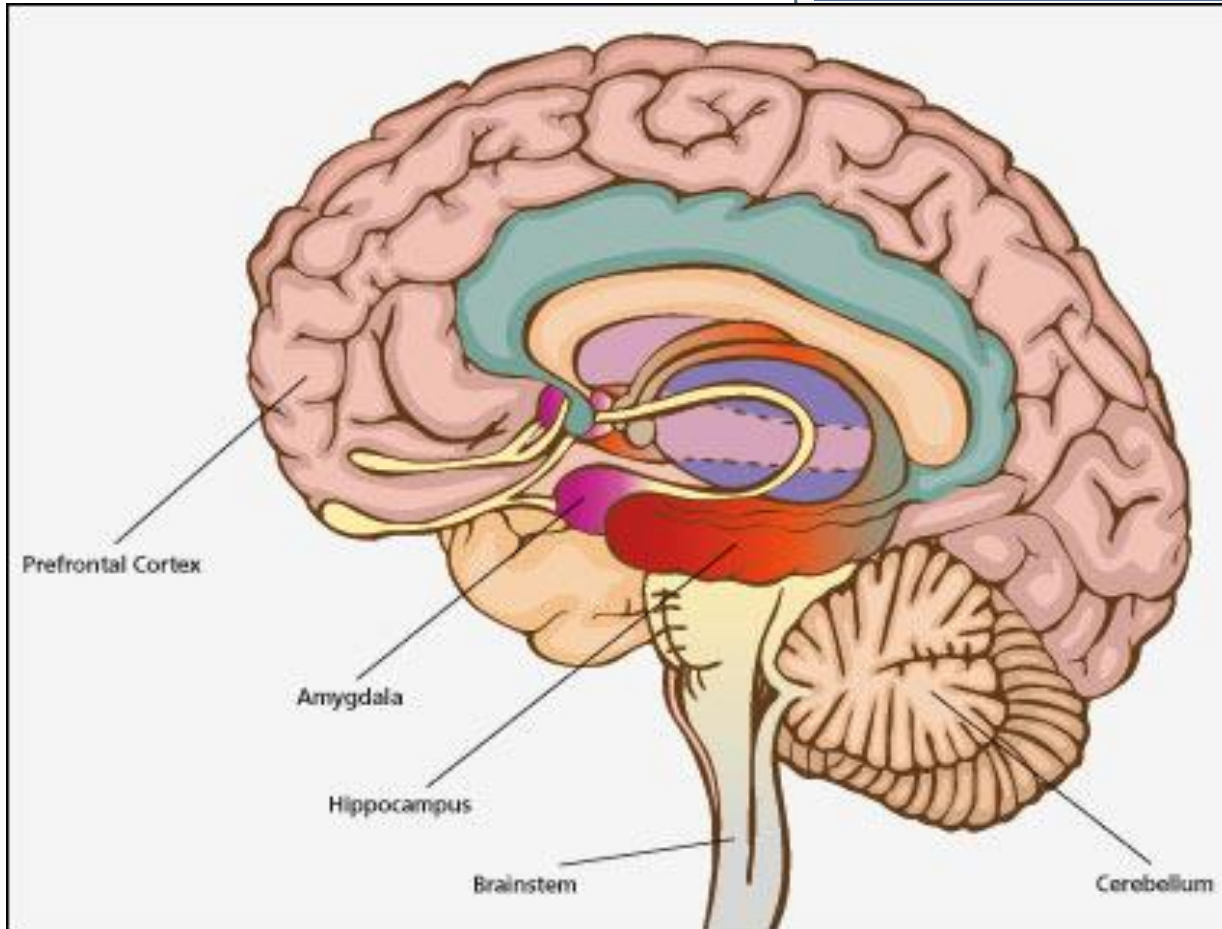
In addition to the Title IX requirements for notice of the outcome, the Clery Act requires, and FERPA permits, postsecondary institutions to inform the complainant of the final determination and any disciplinary sanctions imposed on the perpetrator, not just those sanctions that directly relate to the complainant.



# Brain Trauma

Neurobiology of sexual  
assault

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Dr. Campbell's Neurobiology of sexual assault – watch it!  
<http://nij.gov/multimedia/presenter/presenter-campbell/Pages/welcome.aspx>

<http://insideawarenessblog.files.wordpress.com/2010/10/empathy-brain.jpg>

# Prefrontal Cortex

- Cognitive part of the brain that includes higher order mental processes, such as:
  - Attention
  - Memory
  - Language
  - Learning
  - Reasoning
  - Problem Solving
- Plays a role in integration of data and consolidation of memory/narrative
  - who, what, where, when, why
- Plays a role in logical decision making

# Prefrontal Cortex

- When trauma occurs: **prefrontal cortex shuts down** and the more primitive portions of the brain take over and record the event in memory
  - High stress+fear=impaired prefrontal cortex
- Without the prefrontal cortex what do you have?
  - Reflexes and habitual behavior
    - Self protection habits
      - Habits from childhood, relationships, how we were raised (polite)
    - Survival reflexes
      - Activates Freeze- then Flee – then fight
      - Freezing
        - Alert and immobile but able to move
      - Tonic immobility
        - Paralysis – can't move or speak due to perception of inescapability
    - Altered memory encoding and consolidation
      - Threat turns on – prefrontal turns off and you focus on survival only
      - Detail survivors remember are those central to survival not the peripheral details
        - Very little time sequence information

# The Amygdala

- Stores emotional memories
- Responsible for regulating safety  
(heart rate, blood pressure,  
parasympathetic/sympathetic  
nervous system)
- Monitors incoming stimuli for threats
- Assesses safety  
Large release of cortisol  
Activates Freeze- then Flee – then fight

# The Hippocampus

- Stores cognitive memory
  - Functions like a computer memory chip
- Highly sensitive to the stress hormone Cortisol—Hippocampus **shuts down** during traumatic event or *trauma reminders*
- When the Hippocampus shuts down it is hard for an individual to remember details.

# Forensic Experiential Trauma Interviews

- I want us to consider this type of training in order to address what we know about brain trauma
  - <http://www.bwjp.org/resource-center/resource-results/the-forensic-experiential-trauma-interview-feti.html>
- Idea was developed by DoD and Law Enforcement
  - Honors experience and humanity
  - Doesn't treat victim as a witness to their victimization, it was experienced not seen.
  - Designed to allow interviewee to focus on central details



# FETI in a nutshell

- Acknowledge trauma/pain/difficult situation
- What are you able to tell me about your experience
  - Tell me more about
- What were your reactions to the experience
  - Physically and Emotionally
- What was your thought process during the experience?
  - What are you able to tell me about what made you decide to call today?
  - Tell me what you are able to about any words you used?
  - Tell me what you are able to about the thoughts you were having?
- What was the most difficult part of this experience for you?
- What if anything cant you forget about the experience?
- Clarify information and details AFTER you facilitate all you can about the experience
- Conclude by thanking the survivor for speaking with you and honor the fact this person was willing to possible share memories with you they didn't even know they had with you – a stranger

# There is No Typical response

- Reasons an individual may not immediately report
  - Fear of retaliation
  - Fear of friends and family finding out
  - Self-blame: “No one will believe me”
  - Empathy for the accused: “I don’t want to ruin his/her/their life”
  - Denial: part of the healing process and how we process trauma
  - Fear of facing the accused
  - Lack of trust in the system

# Memory concerns

- Memory may be disjointed
- Memory may come back slowly and in fragments
- Disjointed memory may be a sign of dishonesty
  - you must remember how memory works in traumatic situations (trauma/stress is stored in short-term, not long-term memory)

# Reactions to Sexual Violence

- There is no “normal” reaction to rape
- You cannot base their reaction on what you would do
  - Everyone has different coping mechanisms
  - It is naïve to assume you will do what you now think you would do because you can't know until you're in that situation.
- Sometimes victims do things to maintain denial
  - continue a friendship if that was normal before the rape; continued contact is not uncommon
- Role of subconscious: “If I don't act differently, then \_\_\_ won't get mad and won't hurt me again”
- Coping mechanisms do not always make sense and are not always logical

# Past Sexual History

- The panel may, at its discretion, exclude information regarding the past sexual history of the complainant from discussion during the hearing.
- The past sexual history of the complainant with persons other than the respondent shall be presumed irrelevant.

# Relevance

- We only deliberate on **relevant** information
- Relevance is controlled by the Chair
- Do not wait for objections
- Disregard testimony if you discover it is irrelevant after it is said
- Is the fact or information likely to prove/disprove an issue in the hearing?

# Victim Blaming

- One of the biggest sources of victim blaming is the way we talk about it
- Language surrounding abuse and sexual assault immediately puts our attention on the victim instead of the perpetrator
- Common Victim Blaming Statements:
  - “She provoked him”
  - “They both have problems”
  - “She shouldn’t have continued to date him.”
  - “She was drunk”

# Victim Blaming in Language

- **John beat Mary**; This sentence is written in active voice. It is clear who is committing the violence.
- **Mary was beaten by John**; The sentence has been changed to passive voice, so *Mary* comes first.
- **Mary was beaten**; Notice that John is removed from the sentence completely.
- **Mary is a battered woman**; Being a battered woman is now part of *Mary's* identity, and John is not a part of the statement.



# Questioning using a trauma informed approach

- Soft eyes
  - Beware of reflective facial expressions
- Tell me what you are able
  - Don't use the word can
- Have the complainant tell their narrative
  - Don't interrupt and write down questions for prompts for later

# Questions

## **Questions that are not trauma-informed:**

- “What were you wearing?”
- “Did you try to run away?”
- “Why didn’t you fight back?”

## **Instead ask:**

- “What did you do then?”
- “How did you respond when he kissed you?”

# Questions- Activity

- When would this question be appropriate, and when would it be inappropriate?
  1. Have you ever engaged in sexual activity with this person?
  2. How much alcohol did you consume on the night of the incident? (asking complainant)
  3. Did you plan on having sex that night?

- Materials from The Sexual Misconduct Judicial Training Manual by Brett Sokolow, J.D. Copyright 2000, NCHERM, [www.ncherp.org](http://www.ncherp.org) as well as *Student Rights and Responsibilities* document
- The impact of trauma on the brain by Dr. Christopher Wilson NWATIXA seminar April 2016
- Incapacitation and Consent by Jerry Trew, Esq. NWATIXA seminar April 2016
- OCR 101 and Title IX by Amy Klosterman, Esq. Seattle Regional OCR Office seminar April 2016