Conducting a Live Hearing Under Title IX/VAWA

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Kathryn Nash


Pamela Kovacs


Grace Quintana

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Tell Us About Yourself

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

a. Not applicable (I have a different role in the process)
b. None
c. Less than 10
d. 10 or more

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Agenda

- Introduction and Legal Landscape
- Defining Sexual Misconduct
- Overview of the Process
- Working with the Parties
- The Hearing and Decision-Making Process
- Drafting a Notice of Determination
- Appeals



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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
- DOJ = Department of Justice
- 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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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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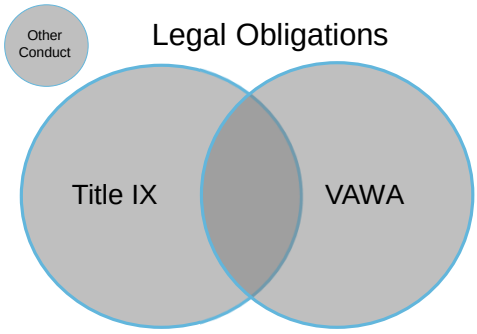
Legal Obligations



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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 an Institution Must Respond

- 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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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



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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

- **Sexual Assault:**
  - ***Rape***: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object without the consent of the victim, including instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.

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Title IX—Sexual Harassment

- **Sexual Assault:**
  - ***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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Title IX—Sexual Harassment

- **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.

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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:** violence by a 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 a reasonable person to fear for safety or suffer 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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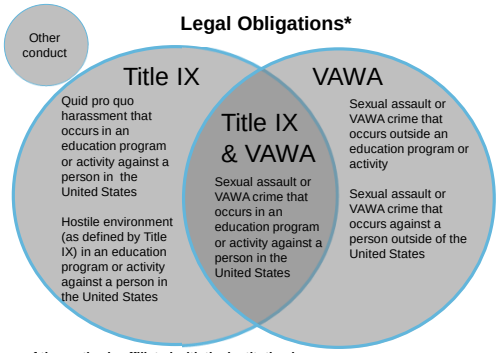
Legal Obligations*



*If one of the parties is affiliated with the institution in some way

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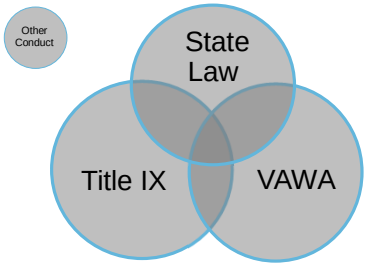
Interaction with Other Laws – State Laws



* See Minnesota Campus Sexual Misconduct Law Training for trainED's training on Minnesota law.

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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 decisionmaker, 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 decisionmakers 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/DOJ 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, decisionmaker, 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 issue, 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

- Decisionmakers must also receive training on
  - Technology to be used at a live hearing
  - Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant
- 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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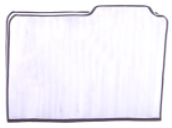
Recordkeeping Requirements

- Title IX – for 7 years, must maintain:
  - Investigation and adjudication records
  - Training materials for investigators, decisionmakers, 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 decisionmaker's records:
  - Adjudication file
    - Party and witness statements, if applicable
    - Recordings/transcripts of interviews or interview notes
    - Other evidence received (text messages, pictures, etc.)
    - Investigation report
  - Decisionmaker notes (caution!)
  - Recordings/transcripts of decisionmaker meetings, if applicable
  - Recording/transcript of live hearing, if applicable
  - Notice of determination
  - Training records – relating to decisionmakers

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Overview of Process

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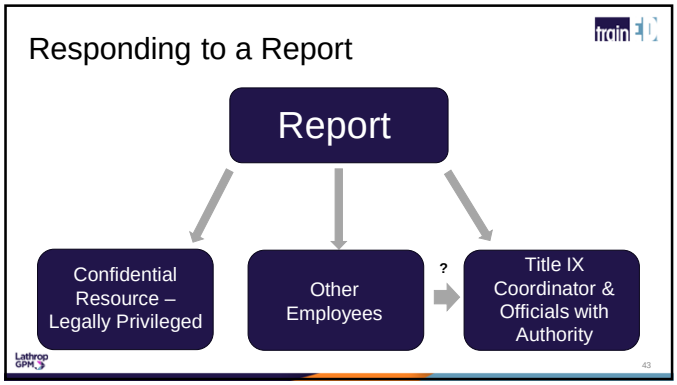

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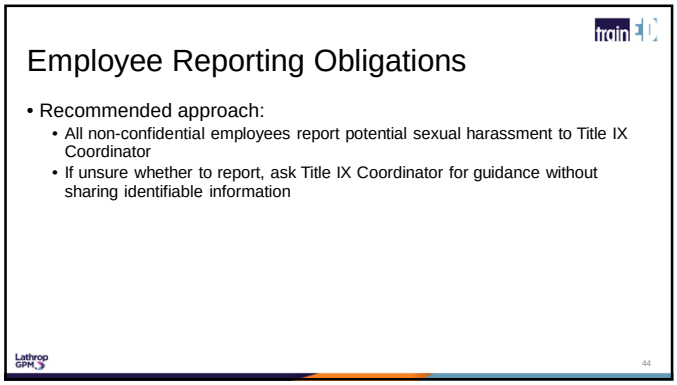

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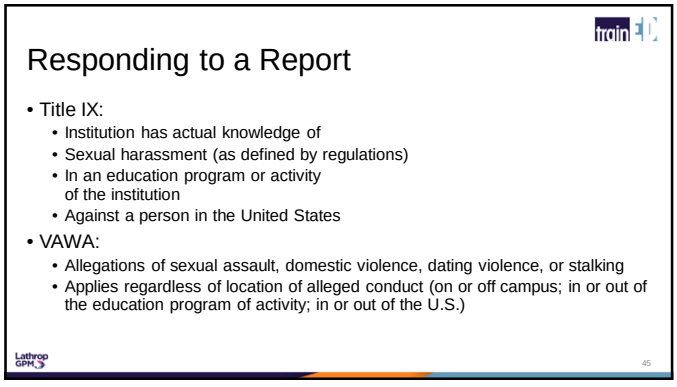

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Responding to a Report

- 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 enforcement 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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Supportive Measures

- Examples
  - Mutual restrictions on contact between the parties
  - Changes in 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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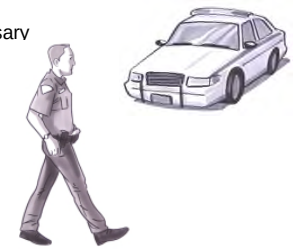
Responding to a Report

- 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
    - 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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How an Institution Must Respond to Formal Complaint

- Notify respondent of allegations and of grievance procedures and informal resolution process (if available and appropriate)
- Take steps discussed in prior section regarding responding to a report (if not yet taken)
  - Treat complainant and respondent equitably
  - Offer and coordinate supportive measures
  - Notify complainant of right to report to law enforcement and offer help with report (VAWA)
  - Provide written notice of rights (VAWA)
  - Notify campus security, if necessary
  - Clery report, if necessary
- Initiate grievance procedures or informal resolution process

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Grievance Procedure

- The process the school uses to resolve sexual harassment complaints. This includes the fact-gathering investigation and the 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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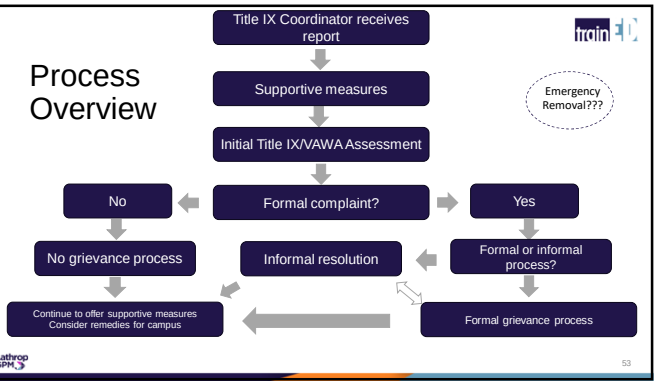
Process Overview



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Role of Investigator in Formal Grievance Process

- Identify factual issues
- Give parties opportunity for input
- Compile investigation materials for decisionmakers 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, decisionmaker, 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 decisionmaker
  - Title IX Coordinator and decisionmaker must be different individuals
  - Investigator and decisionmaker must be different individuals
  - Title IX Coordinator and investigator may offer recommendations regarding findings and/or conclusions on responsibility, but decisionmaker 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 of/electronic access to all directly related evidence (Title IX only)
- Advisors may cross-examine parties and witnesses at live hearing (Title IX only)
- Institution must provide if none (Title IX only)
  - Limited role
- May otherwise limit extent of advisor's participation in the process (must apply equally)

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Formal Grievance Process—Timeframes

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



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Formal Grievance Process

- 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 institution 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 process 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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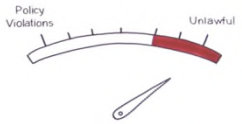
Differences Between Criminal and Institutional Processes

- 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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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 repeatedly asks the investigator to repeat the investigator's questions.
  2. Complainant did not break up with Respondent until five months after the alleged assault.

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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 initially says she does not remember the interaction with Complainant but in a follow-up interview, provides specific details about the interaction.
  2. Respondent suggests a witness who he says can corroborate his account, but the witness declines to be interviewed.

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Session Overview

- Rape Myths
- Secondary Victimization
- Common Victim Responses
- Neurobiology of Sexual Assault
- How to Serve Impartially
  - Working with complainant
  - Working with respondent



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Rape Myths

Myth	Reality
Rape is primarily sexually motivated	Rape combines elements of power, anger and sexuality
Rapists are usually strangers	Most perpetrators are known to the victim
The victim did something to cause the rape	No behavior warrants being raped; under no circumstances can the victim be blamed
Acquaintance rape is not as traumatic	There are no differences in victim psychological symptoms between acquaintance and stranger rape

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Secondary Victimization

- Secondary victimization:
  - The attitudes, beliefs, and behaviors that victims experience as victim blaming and insensitive
  - It exacerbates their trauma, and it makes them feel like what they're experiencing is a second rape — hence the term "secondary victimization"



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Secondary Victimization

- Examples of behaviors:
  - Discouraging the victim from making the report
  - Telling victim it's not serious enough to pursue
  - Asking about dress, behavior, or what they might have done to provoke the assault
- Psychological impact on victims:
  - Blamed
  - Depressed
  - Anxious
  - Violated
  - Reluctant to seek help



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Common Victim Responses

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

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Neurobiology of Sexual Assault

The Neurobiology of Sexual Assault

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Neurobiology of Sexual Assault

Brain Regions Impacted by Trauma



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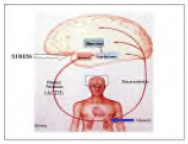
Neurobiology of Sexual Assault

Brain-Body Regions Impacted by Trauma

HPA Axis

Balances body following stress by releasing of various hormones/chemicals



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Neurobiology of Sexual Assault

Brain-Body Regions Impacted by Trauma

Catecholamines: Fight or flight response

Cortisol: Energy available

Opiods: Prevent pain

Oxytocin: Promotes good feelings



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Neurobiology of Sexual Assault

Brain Regions Impacted by Trauma



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Neurobiology of Sexual Assault

Memory Processes Impacted by Trauma

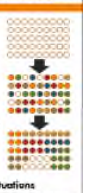
Hippocampus processes information into memories

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



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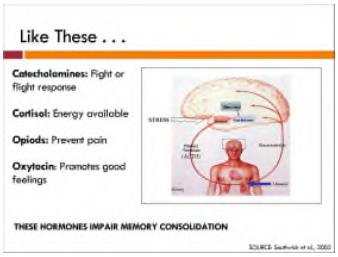

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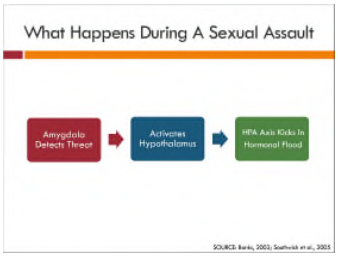
Neurobiology of Sexual Assault



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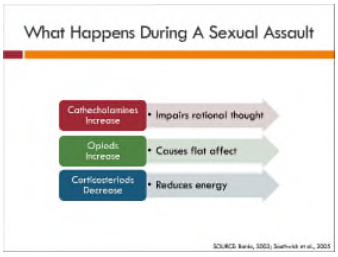
Neurobiology of Sexual Assault



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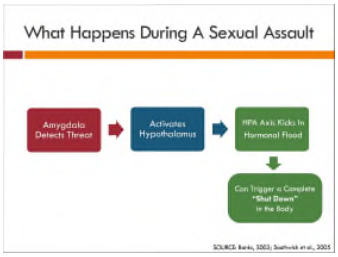

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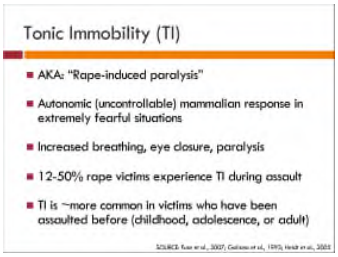
Neurobiology of Sexual Assault



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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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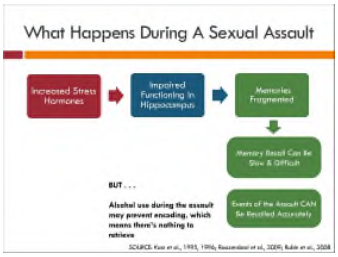
Memory

What Happens During A Sexual Assault



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Memory

Case Study: Memory Fragmentation

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

"He wouldn't let up, pounding me with question after question. 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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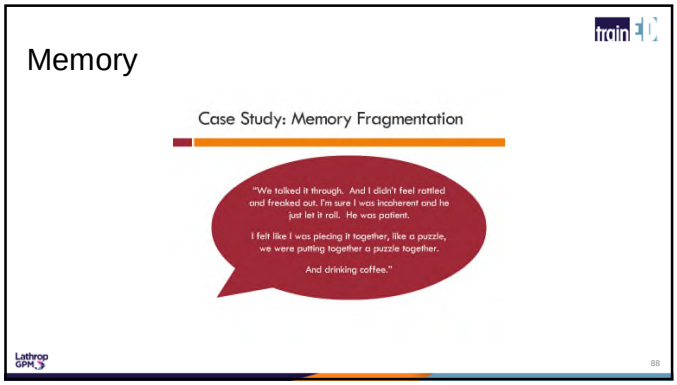

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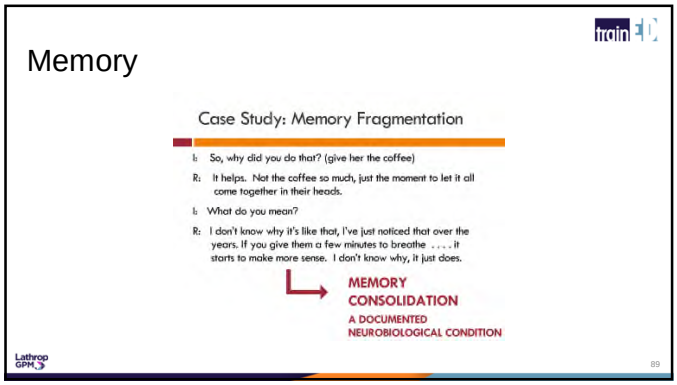

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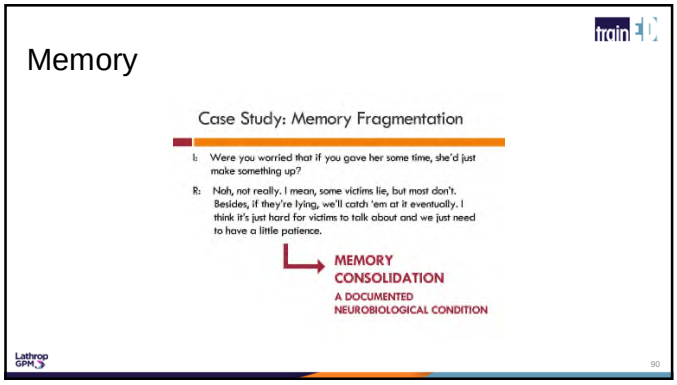

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Impact of Trauma on Memory

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



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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 decisionmaker 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 prejudgment 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 Title IX Coordinator for resources

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Serving Impartially

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

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Serving Impartially

- Allow sufficient time for exploration of the issues as needed
- Explain hearing process and agenda
- Allow questions about the hearing process
- Afford equal opportunity to participate in hearing (cross-examination, opening/closing statements, presentation of other evidence)
- Be transparent about how information will be used
- Ensure parties are fully aware of the prohibition against retaliation

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Serving Impartially — Working with Complainant

- Recognize the impact of trauma on memory
- Memory may be impaired by alcohol
- Use “account” or “experience” rather than “story”
- Avoid secondary victimization

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Serving Impartially — Working with Respondent

- Recognize stress involved with being accused of sexual misconduct
  - May be defensive
  - May be nervous or uncomfortable
- Memory may be impaired by alcohol
- Use impartial language

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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

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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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Live Hearing & Decision-Making Process

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Title IX Post-Investigation, Pre-Hearing Requirements

- Provide parties with access to evidence that is **directly related** to the allegations – must send hard copy or electronic format to parties and advisors
  - Parties must have access to directly related evidence for use during hearing
- Provide parties with access to **investigation report** that fairly summarizes relevant evidence – must send hard copy or electronic format to parties and advisors
- Provide parties with opportunity to submit **written response** to each

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Legal Requirements for 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," including those challenging credibility
    - Cross-examination must be conducted directly, orally, and in real time by the party's advisor, never by the party personally
  - If party does not have advisor, institution must provide one for cross-examination
  - Institution can otherwise place restrictions on advisors' participation in the proceedings

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Legal Requirements – School-Appointed Advisors

- Can request that the parties inform school in advance whether they have an advisor
  - If party does not have an advisor at the hearing, still required to provide an advisor even if party stated that they would have one
  - May want to have an advisor for each party on standby so that delaying the hearing is not necessary
- School-appointed advisor
  - Role is limited to relaying a party's questions
  - No particular skills, qualifications, or training is required
  - Does not need to be neutral or avoid conflicts of interest
  - If a party refuses to work with an assigned advisor – the party forfeits his or her right to cross-examination

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Legal Requirements – Attendance at Hearing

- Parties may be accompanied only by their advisors and other persons for reasons "required by law"
  - Institution must keep confidential the complainant, respondent, and any witness except as may be permitted by FERPA, as required by law, or to carry out the grievance process
    - Limits institution's ability to authorize the parties to be accompanied to the hearing by individuals other than their advisors
  - A person assisting a party with a disability, or a language interpreter, may attend because presence is required by law and/or necessary to conduct the hearing

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Legal Requirements – Cross-Examination

- Party or witness who does not appear at the hearing or refuses to answer questions at the hearing
  - Decisionmaker may still rely on previous statements from party/witness who is absent or refuses to answer one or more questions
    - Consider weight to be given to statements
    - Consider allowing party or advisor to share questions they would have asked a party or witness who is absent or will not submit to cross-examination
  - Decisionmaker 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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Legal Requirements – Cross-Examination

- Party or witness who does not appear at the hearing
  - Advisor may conduct questioning on behalf of party even if party is not present
    - If institution-appointed advisor, party needs to provide questions in advance
  - If one party does something to wrongfully procure absence of a party or witness, that is likely retaliation and the school must remedy
  - 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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Legal Requirements – Relevancy Determinations

- Hearing panel 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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Legal Requirements – Other Procedural Rules

- May establish additional rules that apply equally to both parties
  - Questioning 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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Legal Requirements – Other Procedural Rules

- Some procedural rules are prohibited
  - Cannot prohibit a party from conferring with his or her advisor during the hearing
    - Likely can prohibit conferring when a question is pending
    - Could also discourage from conferring when a question is pending by warning that such conduct will be considered when weighing the party's credibility
  - Cannot prohibit character evidence, lie detector test results, evidence that is unduly prejudicial, or evidence of prior bad acts
    - Decisionmaker may determine how much weight to give such evidence

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Stages of Decision-Making Process

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Decision-Making Process

Hearing

↓

Decision re: policy violation

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Decision re: sanctions and remedies
(Consider limited consultation with the Title IX Coordinator)

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Written notice provided to parties

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Appeal

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Stages of Decision-Making Process

- Stage 1: Prepare for hearing
- Stage 2: Conduct hearing
- Stage 3: Deliberate and make determination
- Stage 4: Determine sanctions and remedies
- Stage 5: Draft notice of determination

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Stage One: Prepare for Hearing

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Stage One: Prepare for Hearing - Decisionmaker

- May have single decisionmaker or a panel of decisionmakers
- If a panel of decisionmakers, may appoint one decisionmaker to make relevancy determinations at the hearing
- May appoint Title IX Coordinator or another individual who is not a decisionmaker to enforce procedural rules at the hearing
  - Decisionmaker must still determine relevancy issues

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Stage One: Prepare for Hearing

- Communication with Others
  - Limit communication with Title IX Coordinator to procedural issues
  - Do not communicate with investigator outside of hearing
  - Do not communicate with parties, witnesses, or advisors outside of hearing

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Stage One: Prepare for Hearing

- Determine hearing format and arrange technology
  - May conduct with all parties physically present in the same location
    - At the request of either party, institution must provide for live hearing to occur with the parties located in separate rooms with technology enabling the hearing panel and parties to simultaneously see and hear the party or witness answering questions

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Stage One: Prepare for Hearing

- Determine hearing format and arrange technology (cont.)
  - May conduct virtually (for all parties, witnesses, and other participants), with technology enabling participants simultaneously to see and hear each other
    - Video is required; phone is insufficient

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Stage One: Prepare for Hearing—Schedule Hearing

- Begin scheduling hearing during directly related evidence stage
- Notify all witnesses that their presence may be requested to check availability

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Stage One: Prepare for Hearing–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 One: Prepare for Hearing

- Pre-hearing meeting with parties
  - Best for Title IX Coordinator to handle
  - Discuss procedure for hearing
  - Discuss parameters for evidence to be presented
  - Discuss role of advisors

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Stage One: Prepare for Hearing

- Hearing panel reviews adjudication file
  - Ensure that parties have access to same information as panel
- Analyze issues for hearing (work together if multiple decisionmakers)
  - Identify ultimate questions that will need to be decided
    - Review institution's policy and how it defines relevant terms
    - Determine whether any additional information is needed to make the decision
      - Identify witnesses to ask if additional information is needed or if credibility is at issue
      - **CAUTION:** Don't base credibility on demeanor
  - Consider questions or topics that may come up and any anticipated relevancy issues

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Stage One: Prepare for Hearing

- Determine logistics for hearing
  - Determine who will chair the hearing
  - Determine who provides list of witnesses requested by hearing panel to parties
  - Determine who will request that witnesses make themselves available for the hearing (including those identified by hearing panel and parties)
  - Determine whether investigator will be called as a witness
  - Determine order of witnesses
  - Ensure that all directly related evidence provided to parties during review phase is available for use at the hearing
  - Set up technology needed for hearing

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Stage One: Prepare for Hearing

- Prepare script of opening remarks
  - Provide general explanation of reason for hearing
  - Explain hearing panel's role in the complaint process
  - Confirm hearing panel has reviewed investigation report

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Stage One: Prepare for Hearing

- Prepare script of opening remarks
  - Explain hearing process to parties:
    - Process for hearing panel and advisors to ask questions
    - Advise party and advisor on advisor's role
    - Parameters for permitted questions
    - Discuss what type of evidence may be considered (relevant)
    - Instruct parties they do not need to repeat information included in the investigation report
    - Process for presenting arguments
    - Time limitations

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Stage One: Prepare for Hearing

- Prepare script to use before each party/witness testifies
  - Confirm that no one else is in the room (if virtual hearing)
  - Inform party/witness of recording and its use
  - Explain possible uses of party's/witness's statements
  - Explain that the hearing panel may need to ask difficult, detailed questions
  - Ask party not to read into questions
  - Tell party/witness if question unclear, let hearing panel know
  - Tell party/witness okay to ask for break and pre-determine breaks
  - Instruct witness regarding confidentiality
  - Assure/warn party/witness regarding policy prohibiting retaliation
  - Advise party/witness on alcohol or other policy waiver
  - Obtain commitment to tell truth

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Stage One: Prepare for Hearing

- Prepare script to use prior to dismissing each party/witness who testifies
  - Ask parties if any more questions for this party/witness
  - Remind witness of instructions regarding confidentiality
  - Remind regarding policy prohibiting retaliation

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Stage One: Prepare for Hearing

- Prepare script of closing remarks
  - Remind regarding policy prohibiting retaliation
  - Explain that questions related to the process or resources should be directed to the Title IX Coordinator

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Stage One: Prepare for Hearing

- Consider reviewing redacted excerpts of other hearings as part of training and preparation for hearing
- Consider holding a mock hearing to practice procedures and maintaining control during testimony and questioning

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Case Study

Review complaint and notices of allegations

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Case Study: Haddie/Damian

- On May 6, 2026, Haddie Haderson made a complaint of sexual misconduct against Damian Daniels.

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Case Study: Haddie/Damian

Sexual Misconduct Complaint Form

COMPLAINANT NAME: Haddie Haderson
DATE OF ALLEGED POLICY VIOLATION: May 1–2, 2026
DATE OF COMPLAINT: May 6, 2026
RESPONDENT NAME: Damian Daniels

ALLEGATIONS:

I went on a few dates with Damian Daniels earlier this semester. We were getting along well, but then he started to pressure me physically and ultimately took advantage of me when I was drunk. On Friday, May 1, I went to his dorm to watch a show and when he tried to put his hand up my shirt, I told him I didn't want to do that type of thing yet. But he wouldn't take no for an answer. Then the next night we were at a party together and I got super drunk. He brought me back to my dorm and the next thing I knew we were both naked and he was having sex with me. The night is a total blur. I was way too drunk to consent.

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 Haddie Haderson

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Case Study: Haddie/Damian

Excerpt of Notice of Allegations

On May 6, 2026, a formal complaint of alleged sexual misconduct was made by Haddie Haderson ("Haddie" or "Complainant") against Damian Daniels ("Damian" or "Respondent") under the University's Sexual Misconduct Policy.

Haddie alleged that:

- On May 1, 2026, in Damian's dorm room in Residence Village, Damian engaged in nonconsensual sexual contact in the form of touching Haddie's intimate body parts.
- On May 2, 2026, in Haddie's dorm room in Residence Village, Damian engaged in nonconsensual sexual penetration of Haddie.

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Case Study: Haddie/Damian

Excerpt of Amended Notice of Allegations

On May 6, 2026, a formal complaint of alleged sexual misconduct was made by Haddie Haderson ("Haddie" or "Complainant") against Damian Daniels ("Damian" or "Respondent") under the University's Sexual Misconduct Policy.

Based on the May 6, 2026 formal complaint and additional information from Haddie, it is alleged that:

- On May 1, 2026, in Damian's dorm room in Residence Village, Damian engaged in nonconsensual sexual contact in the form of touching Haddie's intimate body parts.
- On **May 3**, 2026, in Haddie's dorm room in Residence Village, Damian engaged in nonconsensual sexual penetration of Haddie **and took nonconsensual or abusive sexual advantage of Haddie in the form of removing Haddie's clothing without consent**.

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Case Study

Review relevant policy definitions

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Case Study: Sexual Assault

Sexual Assault: is any actual or attempted sexual contact, including contact with an object, with another person without that person's consent. As used in this Policy, sexual contact includes intentional contact by the accused with the victim's genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; touching another with any of these body parts, whether clothed or unclothed; coerced touching by the victim of another's genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; or forcing another to touch oneself with or on any of these body parts. Sexual Assault includes but is not limited to an offense that meets any of the following definitions:

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Case Study: Sexual Assault

- Rape: the penetration, no matter how slight, of the vagina or anus with any body part or object, oral penetration by a sex organ of another person, or oral contact with the sex organ of another person, without the consent of the victim.
- Fondling: the touching of the intimate parts (including the genital area, groin, inner thigh, buttocks, or breast) of another person for the purpose of sexual gratification, without the consent of the victim.
- Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory rape: sexual intercourse with a person who is under the statutory age of consent; in this state, the legal age of consent is 18.

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Case Study: Sexual Assault

While Title IX requires that the alleged conduct occurs in a University program or activity against a person in the United States, the University also prohibits Sexual Assault that did not occur in the University's education program or activity or against a person in the United States, but may nevertheless (1) have continuing adverse effects on campus, University property, or in a University program or activity, (2) substantially and unreasonably interfere with a community member's employment, education, or environment on campus, University property, or in a University program or activity, or (3) create a hostile environment for community members on campus, University property, or in a University program or activity.

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Case Study: Consent

Consent means words or overt actions by a person in advance clearly communicating a freely given present agreement to participate in a particular sexual contact or activity. Words or overt actions clearly communicate consent when a reasonable person in the circumstances would believe those words or actions indicate a willingness to participate in a mutually agreed-upon sexual contact or activity. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent. It is the responsibility of the person initiating the specific sexual contact or activity to obtain consent for that contact or activity.

The definition of consent is subject to the following:

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Case Study: Consent

- Consent can only be given if one is of legal age. In this state, the legal age of consent is 18.
- Consent to one form of sexual contact or activity does not, by itself, constitute consent to any other forms of sexual contact or activity.
- Consent can be withdrawn at any time. When consent is withdrawn, the sexual contact or activity for which consent was initially provided must stop.
- Consent is active, not passive. Silence or the absence of resistance or saying "no," in and of themselves, cannot be interpreted as consent.
- Whether an individual actively and willingly participates in conduct may be a factor in determining whether there was consent.

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Case Study: Consent

- Previous relationships or previous consent do not, by themselves, constitute consent to future sexual contact or activity. In cases of prior relationships, the manner and nature of prior communications between the parties and the context of the relationship may be factors in determining whether there was consent.
- An existing sexual, romantic, or marital relationship does not, by itself, constitute consent.
- Prior sexual contact or activity with other individuals does not imply consent.
- Consent cannot be procured, expressly or implicitly, by use of force, intimidation, threats, or coercion, as that term is defined by this Policy.
- An individual known to be—or who should be known to be—incapacitated, as defined by this Policy, cannot consent to sexual contact or activity initiated by another individual.
- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.

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Case Study: Incapacitation

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

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Case Study: Incapacitation

Where alcohol and other drugs are involved, incapacitation is determined based on the facts and circumstances of the particular situation, looking at whether the individual was able to understand the fact, nature, or extent of the sexual situation; whether the individual was able to communicate decisions regarding consent, non-consent, or the withdrawal of consent; and whether such condition was known or reasonably should have been known to the accused or a reasonable, sober person in the accused's position. Use of drugs or alcohol by the accused is not a defense against allegations of Sexual Misconduct and does not diminish personal responsibility.

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Case Study: Coercion

Coercion is conduct or intimidation that would compel an individual to do something against their will by (1) the use of physical force, (2) threats of severely damaging consequences or (3) pressure that would cause a reasonable person to fear severely damaging consequences. Coercion is more than an effort to persuade or attract another person to engage in sexual contact or activity. Coercion differs from seductive behavior based on the degree and type of pressure someone uses to obtain consent from another.

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Case Study: Sexual Exploitation

Sexual Exploitation: occurs when a person takes nonconsensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited. Examples of Sexual Exploitation include, but are not limited to:

- Intentional and repeated invasion of sexual privacy without consent (e.g., walking into the other person's room or private space without consent);
- Prostituting another person;
- Nonconsensual taking of photographs/images, video recording, and/or audio recording of a sexual activity;
- Nonconsensual distribution of photographs/images, video recording, audio recording, or live-streaming of a sexual activity;
- Intentionally allowing third parties to observe sexual activities or view another's intimate body parts, in a place where that person would have a reasonable expectation of privacy, without consent;

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Case Study: Sexual Exploitation

- Engaging in nonconsensual voyeurism;
- Knowingly transmitting a sexually transmitted disease or sexually transmitted infection to another person without that person's knowledge and consent;
- Intentional removal or attempted removal of clothing that exposes an individual's bra, underwear, or intimate body part, or that is otherwise sexual in nature, without consent;
- Exposing one's intimate body parts in nonconsensual circumstances;
- Inducing another to expose his/her intimate body parts in nonconsensual circumstances;

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Case Study: Sexual Exploitation

- Ejaculating on another person without consent;
- Distributing or displaying pornography to another in nonconsensual or unwelcomed circumstances;
- Nonconsensual distribution of sexual images;
- Sexual extortion;
- Nonconsensual dissemination of a deepfake depicting intimate parts or sexual acts;
- Sex trafficking.

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Case Study

Review investigation report and attachments

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Case Study

Review party responses to the investigation report

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Case Study: Party Report Responses

Excerpts from Party Statements in Response to the Investigation Report and Supplemental Directly Related Evidence

Excerpt from Haddie's Response to the Report

The texts Damian provided mean nothing. I sent those before I was super drunk. And just because I invited him over doesn't mean I consented to having sex with him. He took advantage of me when I was vulnerable.

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Case Study

Preparing for the hearing

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Case Study: Haddie/Damian

- The Title IX Coordinator emails Haddie and Damian asking them which witnesses they would like to request for the live hearing.
- Haddie requests Elise and Bethany, who both participated as witnesses during the investigation.
- Damian requests his roommate, Chris. Damian had told the investigator that Chris came home while Damian and Haddie were at his dorm on May 1 and suggested that the investigator interview Chris. However, Chris was never interviewed. In his response to the directly related evidence, Damian wrote: "Why wasn't my roommate Chris interviewed? He came home while Haddie and I were making out at my place on the first night. I told the investigator to talk to him."
- Should Chris be allowed as a witness at the hearing?

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Case Study: Haddie/Damian

- The Title IX Coordinator requests the following witnesses be available for the live hearing:
  - Elise
  - Bethany
  - Collin
  - Mark
  - Chris
- The Title IX Coordinator informs the parties of the final list of witnesses that have been requested.

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Case Study: Haddie/Damian

- After reviewing the adjudication file, what questions do you have for the parties or witnesses at the live hearing?
- Are there any holes in the investigation report?

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Case Study: Haddie/Damian

- Both parties have advisors lined up for the live hearing. Haddie selected a friend to serve as her advisor. Damian retained an attorney. The institution provided both advisors with access to the directly related evidence and investigation report in advance of the hearing.
- The morning of the hearing, Haddie's advisor contacts the Title IX Coordinator and says she can no longer attend due to a family emergency.
- What should the Title IX Coordinator do?

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Case Study: Jordan/Marcus

- You will be serving on the hearing panel for another upcoming hearing involving an allegation of dating violence brought by Jordan against Marcus.
- You receive the full witness list and note that Alyssa will be called as a witness at the hearing. Alyssa was not interviewed during the investigation. The investigation report states that Jordan suggested that the investigator interview Alyssa, but the investigator decided not to interview Alyssa after determining that Alyssa was unlikely to have relevant information. The investigation report also states that Alyssa is Marcus's ex-girlfriend.
- How should the hearing panel prepare for this witness?

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Stage Two: Conduct Hearing

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Stage Two: Conduct Hearing

- Go through scripts of opening remarks, remarks before and after each party/witness, and closing remarks
- Allow parties and witnesses to present oral testimony, written statements, and/or relevant documents, records, or exhibits
- Hearing panel asks questions of parties and witnesses as needed
- Follow your procedures
  - Opening and closing statements, if any

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Stage Two: Conduct Hearing

- Provide an opportunity for the parties to cross-examine all parties and witnesses who are willing to submit to cross-examination
  - Questioning conducted through advisors
- When a party or witness refuses to submit to cross-examination, provide an opportunity for the party to discuss the impact of the party's/witness's refusal to answer questions or appear at the hearing, including questions they would have asked the party/witness

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Stage Two: Conduct Hearing

- Hearing panel questioning of parties and witnesses
  - Ask clarifying questions as needed
    - Limit questions to those needed to make your decision (avoid questions out of curiosity)
    - Distinguish between personal knowledge and hearsay
  - Review checklist of issues – confirm addressed

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Stage Two: Conduct Hearing

- Avoid impermissible evidence
  - Privileged information, unless individual holding privilege has waived it (e.g., doctor-patient privilege, attorney-client privilege, victim advocate privilege)
  - Treatment records, unless individual has provided written consent
  - Prior sexual history/conduct (see next slide)

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Stage Two: Conduct Hearing

- Prior Sexual History/Conduct
  - Complainant's prior sexual history is not relevant 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: Conduct Hearing

- Instruct parties and witnesses to pause after each question to allow time for relevancy determination
- Potential reasons to exclude a question:
  - Redundant
  - Harassing
  - Prior sexual history/conduct without exception
  - Irrelevant
- Provide reasoning when excluding a question
- Exclude questions with caution
- Recommendation: allow advisors or parties to briefly articulate why a question is relevant or not relevant

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Stage Two: Conduct Hearing

- Wait to make final decision on responsibility and sanctions (rather than making the decision immediately after hearing)
  - Notice must include explanation of how information and evidence was weighed and how it supports the result and sanctions

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Case Study

Conduct Hearing

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Case Study: Haddie/Damian

- During the hearing, Haddie's advisor asks her about text messages between the parties. Haddie starts reading texts that you don't recall reviewing in the adjudication file.
- What should you do?

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Case Study: Haddie/Damian

- In addition to hearing from the parties at the hearing, the hearing panel also heard from the witnesses in the investigation report—Elise, Bethany, Collin, and Mark. Their testimony was generally consistent with the accounts they provided to the investigator, and no additional information was provided.

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Case Study: Haddie/Damian

- The panel also heard from Chris as a witness at the hearing. Chris said that on the evening of May 1, he came home and Haddie was over with Damian. When asked where Haddie was when he walked in the dorm, Chris stated, “They were hanging out in the living room.” When asked what Damian and Haddie were doing when he came home, Chris stated, “Just hanging out like talking. I didn’t see anything else.” When asked if Haddie was sitting or standing when he came in, Chris stated, “I don’t remember.” When asked how long Haddie stayed after he came home, Chris stated, “I don’t know. I probably just went to my room and gave them space.”

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Case Study: Riley/Madison

- You are conducting another live hearing involving Riley and Madison. During the hearing, when asking questions of Riley, Madison's advisor asks the Title IX Coordinator to screenshare screenshots of Snapchat messages exchanged between Madison and Riley. Before the Title IX Coordinator can pull up the messages, Riley's advisor objects, explaining that the Snapchat messages contain photos of Riley in her bra and underwear. Riley's advisor argues that displaying those images on the screen during the hearing would be unnecessarily harmful to Riley and asks that the images not be shown.
- You give Madison’s advisor a chance to respond to the objection. Madison’s advisor states the text messages were already attached to the investigation report and are relevant to the issue of consent.
- How do you respond to the objection from Riley’s advisor?

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Stage Three: Deliberate and Make Determination

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Decision-Making Process

- Objective evaluation of all relevant and not otherwise impermissible evidence
  - 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 decisionmaker consider?
  - Investigation report
  - Parties' response statements
  - Evidence presented at live hearing
- NOTE: Whatever information is provided to the decisionmaker must be shared with the parties
  - Title IX or VAWA

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Evidentiary Issues

- Always consider relevance and weight of evidence
  - Relevant: related to the allegations under investigation
  - Questions are relevant when they seek evidence that may aid in showing whether the alleged conduct occurred
  - Evidence is relevant when it may aid a decisionmaker in determining whether the conduct occurred
- Do not consider impermissible evidence

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Evidentiary Issues

- Types of evidence
  - Statements from parties and witnesses contained in investigation report
  - Evidence from live hearing
    - *Caution* – do not rely on party or witness's demeanor
  - 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



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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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Lesson Learned From Litigation

- In April 2026, a court denied Virginia Tech's motion for summary judgment regarding the plaintiff's Title IX claim. The male plaintiff had been found responsible for violations of the University's Sexual Harassment policy through the University's complaint resolution process.
- Court found plaintiff's claim of gender bias raised a genuine issue of material fact where University (1) imposed a sanction for the male respondent to read "Man Enough: Undefining My Masculinity"; (2) hearing officer had made social media posts about holding men accountable and men not understanding consent; and (3) hearing officer provided deposition testimony regarding counteracting implicit male bias, men struggling with concept of consent, and a patriarchal society.
- Lesson Learned: Hearing officers need to ensure that they are remaining neutral and avoid sex-based comments both in complaint resolution processes and in the public sphere.

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Case Study: Riley/Madison

- You're weighing the evidence in the case involving Riley and Madison. In the case, Riley alleged that Madison coerced her into sexual activity in Madison's bedroom at Madison's on-campus apartment.
- In her initial interview, Riley said that after they went into Madison's bedroom, Madison closed the bedroom door, pushed in the button on the doorknob, and jiggled the handle to make sure it was locked. Riley said that Madison told her, "Now nobody's going to bother us."
- Riley told the investigator that she felt trapped and fearful alone in the room with Madison, which is one reason she felt like she had to go along with the sexual activity even though she didn't want to.
- Later in the investigation, the investigator asked Riley a follow-up question about the bedroom door being locked. Riley said, "Actually, I take that back. Madison's bedroom door doesn't have a lock."
- How does this affect your assessment of Riley's credibility?

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Judging Credibility

- Cautions about judging credibility based on demeanor:
  - Remember trauma-informed training
  - Parties and witnesses may be nervous or uncomfortable
  - Parties and witnesses may be defensive, especially when subjected to cross-examination
- Focus on evidence presented
  - What evidence is consistent with complainant's and respondent's accounts?
  - What evidence is inconsistent with complainant's and respondent's accounts?

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Determination

- Finding re: what conduct occurred
- Finding re: policy violation
- Sanctions (if any)
- Remedies (if any)
- Written Notice



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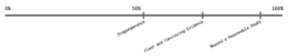
Determination—Finding

- 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
  - Decisionmaker(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:
    - There was sufficient evidence to establish that it was "more likely than not" that the respondent violated the institution's policy OR
    - There was insufficient evidence to establish that it was "more likely than not" that the respondent violated the institution's policy
- Clear and convincing:
  - Must decide either that:
    - There was sufficient evidence to establish that it was "highly probable" that the respondent violated the institution's policy OR
    - There was insufficient evidence to establish that it was "highly probable" that the respondent violated the institution's policy

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Case Study

Determine whether a policy violation occurred and rationale for your decision

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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 (VAWA)
- Policy must list *all* possible sanctions and describe the range of remedies (VAWA)
  - The list of sanctions must be specific, including the type and length of suspensions and any requirements that must be met for reinstatement (VAWA)
- Sanctions must be included in notice of determination (Title IX and VAWA)



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Determination—Sanctions and Remedies

- Possible Sanctions
  - No contact order
  - Suspension or Expulsion
    - Transcript notations?
    - Disclosure to other institutions?
    - Separate disciplinary file?
  - Change in class schedule/living arrangements
  - Mandatory training/counseling
  - Limitations on access to campus facilities
  - Limitations on campus activities
  - Community service
  - Delay of degree conferral
  - Temporary or permanent revocation of degree

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Determination—Sanctions and Remedies

- Sanctions when student **not** suspended or expelled
  - Make inquiries to determine whether restrictions need to be made to:
    - living arrangements
    - class schedules
    - use of facilities
    - co-curricular activities
    - campus events
  - Allow for Title IX Coordinator or other designee to modify or clarify
    - General no contact directive → limit use of facilities to specific time/location
  - Consider restrictions when respondent graduates or withdraws, but complainant is still a student

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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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Determination—Sanctions and Remedies

- Remedies for complainant
  - Changing living arrangements
  - Escorts
  - Separation from respondent
  - Counseling services
  - Medical services
  - Academic support services/accommodations
  - Allowing course withdrawal without penalty
  - Reviewing disciplinary actions against complainant to determine if harassment contributed
  - Reviewing academic issues to determine if harassment contributed
  - Financial aid and/or immigration assistance

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Determination—Sanctions and Remedies

- Remedies for broader student population in some cases:
  - Proactive measures to prevent sexual harassment and violence, such as trainings
  - Developing effective written materials to educate students on policy and resources
  - Encourage students to report
- Periodic "climate checks" and review of issues (e.g., related to a particular department, athletic team, student group, or event?)
- Regulations only require a range of all protective measures for sexual misconduct in policy

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Case Study

Determine sanctions and rationale for your decision

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Case Study: Sanctions

- You have found Damian responsible for a policy violation. How will you determine the appropriate sanctions?

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Drafting a Notice of Determination

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Legal Requirements

- Allegations of sexual harassment
- Procedural steps taken (notifications to the parties, interviews, site visits, other methods used to gather information, hearing)
- Findings of fact supporting the determination
- Conclusions regarding application of code of conduct to the facts
- Statement of and rationale for results as to each allegation
- Disciplinary sanctions, if any, and rationale for sanctions
- Whether remedies will be provided to complainant
- Procedures and permissible bases for appeal
- Simultaneous delivery

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Notice of Determination—Elements

- Contents and level of detail may vary depending on applicable legal requirements
- Summary of complaint(s)/allegations
  - Recap allegations in the complaint
  - Use neutral language
- Procedural steps since complaint
  - Notices to the parties
  - Interviews with parties and witnesses
  - Site visits
  - Methods used to gather other evidence
  - Hearing held
    - Note which parties/witnesses appeared
    - Note consideration of parties' arguments in closing regarding impact of any party's/witness's refusal to appear/answer questions
  - Reference policy provisions setting forth the process



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Notice of Determination—Elements

- Relevant policy provisions
  - Definition of relevant prohibited conduct
    - Elements of the offense
  - Consider other relevant definitions (e.g., consent, incapacitation, coercion, welcomeness)
  - Burden of proof

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Notice of Determination—Elements

- Findings of fact supporting the determination
  - Specify whether testimony/evidence came from the investigation or from another portion of the process
  - Double-check recording when quoting from hearing
- Result/decision
  - Conclusion regarding application of policy definition to the facts



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Notice of Determination—Elements

- Rationale for the result as to each allegation
  - Must include explanation of how information and evidence was weighed and how it supports the result
  - Explain how standard of evidence was applied

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Notice of Determination—Elements

- Written notice should address all relevant evidence provided, including evidence that is contrary to your conclusion
  - What evidence supports your conclusion?
  - What evidence is contrary to your conclusion?
  - Why is the evidence that supports your conclusion stronger?
- Explain credibility determinations
  - Why do you find one party more credible than the other?
  - If a witness's statement is contrary to your conclusion, why do you not believe the witness?
- The reader should be able to tell that you considered all relevant evidence in making your decision

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Notice of Determination—Elements

- Sanctions (if any)
  - Also provide the rationale for the sanctions
  - Build in ability for Title IX Coordinator to modify/clarify sanctions and address future right to appeal
- State whether any remedies will be provided

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Notice of Determination—Elements

- Appeal process
  - To whom appeals should be sent
  - Required format of request for appeal
  - Timing/deadline for appeal
  - Bases for appeal
  - Who will decide the appeal
  - Overview of process



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Notice of Determination—Delivery

- Must be in writing
- Must be delivered simultaneously
  - Email
  - In-person meetings to deliver hard copies of written notice
- Best practice: Let parties know ahead of time when decision will be delivered

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Notice of Determination—FERPA

- FERPA Exception – compliance with requirements for disciplinary proceedings—including the inclusion of the rationale for the result and the sanctions—does not violate FERPA

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Notice of Determination—Implementation

- Determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of any appeal or if no party appeals, date on which appeal would no longer be timely

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Case Study

Review notice of determination

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Appeals

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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 decisionmaker 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 decisionmaker 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 appeal panel/individual
  - Simultaneous notice of outcome

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Q & A



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Upcoming Trainings

- October 6, 2026 – Non-Hearing Adjudicator Training
- October 8, 2026 – Title IX/VAWA Appeal Officer Training
- Other trainings available on demand

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2026 Title IX/VAWA Live Hearing Training

Handout 1

Formal Complaint

On May 6, 2026, Haddie Haderson made a complaint of sexual misconduct against Damian Daniels.

Sexual Misconduct Complaint Form

COMPLAINANT NAME: Haddie Haderson

DATE OF ALLEGED POLICY VIOLATION: May 1–2, 2026

DATE OF COMPLAINT: May 6, 2026

RESPONDENT NAME: Damian Daniels

ALLEGATIONS:

I went on a few dates with Damian Daniels earlier this semester. We were getting along well, but then he started to pressure me physically and ultimately took advantage of me when I was drunk. On Friday, May 1, I went to his dorm to watch a show and when he tried to put his hand up my shirt, I told him I didn't want to do that type of thing yet. But he wouldn't take no for an answer. Then the next night we were at a party together and I got super drunk. He brought me back to my dorm and the next thing I knew we were both naked and he was having sex with me. The night is a total blur. I was way too drunk to consent.

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 *Haddie Haderson*

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Handout 2

Excerpt of Notice of Allegations

On May 6, 2026, a formal complaint of alleged sexual misconduct was made by Haddie Haderson ("Haddie" or "Complainant") against Damian Daniels ("Damian" or "Respondent") under the University's Sexual Misconduct Policy.

Haddie alleged that:

- On May 1, 2026, in Damian's dorm room in Residence Village, Damian engaged in nonconsensual sexual contact in the form of touching Haddie's intimate body parts.
- On May 2, 2026, in Haddie's dorm room in Residence Village, Damian engaged in nonconsensual sexual penetration of Haddie.

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Handout 3

Excerpt of Amended Notice of Allegations

On May 6, 2026, a formal complaint of alleged sexual misconduct was made by Haddie Haderson ("Haddie" or "Complainant") against Damian Daniels ("Damian" or "Respondent") under the University's Sexual Misconduct Policy.

Based on the May 6, 2026 formal complaint and additional information from Haddie, it is alleged that:

- On May 1, 2026, in Damian's dorm room in Residence Village, Damian engaged in nonconsensual sexual contact in the form of touching Haddie's intimate body parts.

- On **May 3**, 2026, in Haddie's dorm room in Residence Village, Damian engaged in nonconsensual sexual penetration of Haddie **and took nonconsensual or abusive sexual advantage of Haddie in the form of removing Haddie's clothing without consent**.

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2026 Title IX/VAWA Live Hearing Training

Handout 4

Excerpt of Policy Definitions

Sexual Assault: is any actual or attempted sexual contact, including contact with an object, with another person without that person's consent. As used in this Policy, sexual contact includes intentional contact by the accused with the victim's genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; touching another with any of these body parts, whether clothed or unclothed; coerced touching by the victim of another's genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; or forcing another to touch oneself with or on any of these body parts. Sexual Assault includes but is not limited to an offense that meets any of the following definitions:

- Rape: the penetration, no matter how slight, of the vagina or anus with any body part or object, oral penetration by a sex organ of another person, or oral contact with the sex organ of another person, without the consent of the victim.
- Fondling: the touching of the intimate parts (including the genital area, groin, inner thigh, buttocks, or breast) of another person for the purpose of sexual gratification, without the consent of the victim.
- Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory rape: sexual intercourse with a person who is under the statutory age of consent; in this state, the legal age of consent is 18.

While Title IX requires that the alleged conduct occurs in a University program or activity against a person in the United States, the University also prohibits Sexual Assault that did not occur in the University's education program or activity or against a person in the United States, but may nevertheless (1) have continuing adverse effects on campus, University property, or in a University program or activity, (2) substantially and unreasonably interfere with a community member's employment, education, or environment on campus, University property, or in a University program or activity, or (3) create a hostile environment for community members on campus, University property, or in a University program or activity.

Consent

Consent means words or overt actions by a person in advance clearly communicating a freely given present agreement to participate in a particular sexual contact or activity. Words or overt actions clearly communicate consent when a reasonable person in the circumstances would believe those words or actions indicate a willingness to participate in a mutually agreed-upon sexual contact or activity. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent. It is the responsibility of the person initiating the specific sexual contact or activity to obtain consent for that contact or activity.

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The definition of consent is subject to the following:

- Consent can only be given if one is of legal age. In this state, the legal age of consent is 18.
- Consent to one form of sexual contact or activity does not, by itself, constitute consent to any other forms of sexual contact or activity.
- Consent can be withdrawn at any time. When consent is withdrawn, the sexual contact or activity for which consent was initially provided must stop.
- Consent is active, not passive. Silence or the absence of resistance or saying "no," in and of themselves, cannot be interpreted as consent.
- Whether an individual actively and willingly participates in conduct may be a factor in determining whether there was consent.
- Previous relationships or previous consent do not, by themselves, constitute consent to future sexual contact or activity. In cases of prior relationships, the manner and nature of prior communications between the parties and the context of the relationship may be factors in determining whether there was consent.
- An existing sexual, romantic, or marital relationship does not, by itself, constitute consent.
- Prior sexual contact or activity with other individuals does not imply consent.
- Consent cannot be procured, expressly or implicitly, by use of force, intimidation, threats, or coercion, as that term is defined by this Policy.
- An individual known to be—or who should be known to be—**incapacitated**, as defined by this Policy, cannot consent to sexual contact or activity initiated by another individual.
- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.

Incapacitation

Incapacitation is the physical and/or mental inability to understand the fact, nature, or extent of the sexual situation. Incapacitation may result from mental or physical disability, sleep, unconsciousness, involuntary physical restraint, or from the influence of drugs or alcohol. With respect to incapacitation due to the ingestion of alcohol or other drugs, incapacitation requires more than being under the influence of alcohol or other drugs; a person is not incapacitated just because they have been drinking or using other drugs. Where alcohol and other drugs are involved, incapacitation is determined based on the facts and circumstances of the particular situation, looking at whether the individual was able to understand the fact, nature, or extent of the sexual situation; whether the individual was able to communicate decisions regarding consent, non-consent, or the withdrawal of consent; and whether such condition was known or reasonably should have been known to the accused or a reasonable, sober person in the accused's position. Use of drugs or alcohol by the accused is not a defense against allegations of Sexual Misconduct and does not diminish personal responsibility.

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Coercion

Coercion is conduct or intimidation that would compel an individual to do something against their will by (1) the use of physical force, (2) threats of severely damaging consequences or (3) pressure that would cause a reasonable person to fear severely damaging consequences. Coercion is more than an effort to persuade or attract another person to engage in sexual contact or activity. Coercion differs from seductive behavior based on the degree and type of pressure someone uses to obtain consent from another.

Sexual Exploitation: occurs when a person takes nonconsensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited. Examples of Sexual Exploitation include, but are not limited to:

- Intentional and repeated invasion of sexual privacy without consent (e.g., walking into the other person's room or private space without consent);
- Prostituting another person;
- Nonconsensual taking of photographs/images, video recording, and/or audio recording of a sexual activity;
- Nonconsensual distribution of photographs/images, video recording, audio recording, or live-streaming of a sexual activity;
- Intentionally allowing third parties to observe sexual activities or view another's intimate body parts, in a place where that person would have a reasonable expectation of privacy, without consent;
- Engaging in nonconsensual voyeurism;
- Knowingly transmitting a sexually transmitted disease or sexually transmitted infection to another person without that person's knowledge and consent;
- Intentional removal or attempted removal of clothing that exposes an individual's bra, underwear, or intimate body part, or that is otherwise sexual in nature, without consent;
- Exposing one's intimate body parts in nonconsensual circumstances;
- Inducing another to expose his/her intimate body parts in nonconsensual circumstances;
- Ejaculating on another person without consent;
- Distributing or displaying pornography to another in nonconsensual or unwelcomed circumstances;
- Nonconsensual distribution of sexual images;
- Sexual extortion;
- Nonconsensual dissemination of a deepfake depicting intimate parts or sexual acts;
- Sex trafficking.

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Handout 5

Excerpts from Party Statements in Response to the Directly Related Evidence

Excerpt from Haddie's Response to the Directly Related Evidence

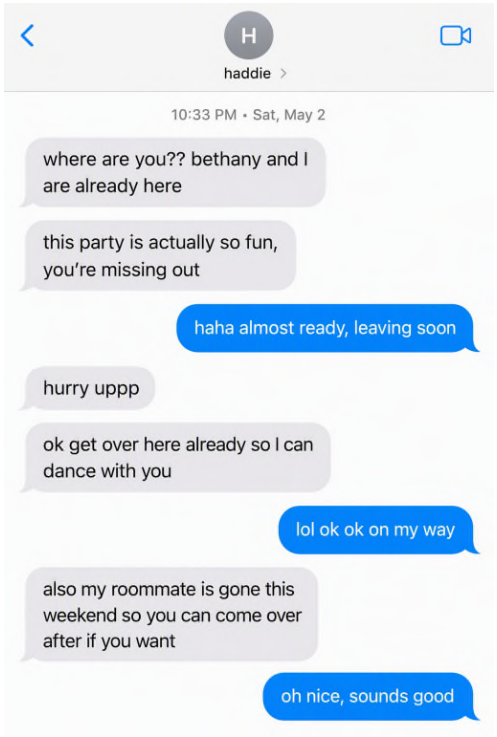
Damian told the investigator that I was grinding up on him at the party. Dancing with him did not mean that I wanted to have sex with him. Plus, I remember dancing with him at the party because I wasn't that drunk yet, but my memory of the time back at my place is very limited. I was too drunk to consent by the time we got back to campus.

Excerpt from Damian's Response to the Directly Related Evidence

Why wasn't my roommate Chris interviewed? He came home while Haddie and I were making out at my place on the first night. I told the investigator to talk to him.

…

Haddie makes it seem like it was my idea to go into her place after the party. But she's the one who invited me to come over and even said her roommate was going to be out of town. I have the texts to prove it.



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2026 Title IX/VAWA Live Hearing Training

Handout 6

Investigation Report Excerpt

Background

Haddie's Account

Haddie stated that she just finished her sophomore year at the University and is majoring in Biology. Haddie stated that she knows Damian because they live in the same dorm and her friend Ally is dating Damian's friend, Tyler. Haddie stated that after hanging out in a group a lot, Damian asked her on a date. Haddie stated that she and Damian had gone on two dates prior to May 1st. Haddie stated that they went to dinner on April 25 and went out for ice cream on April 27. Haddie stated that they kissed at the end of the dates but didn't do anything more. When asked if she was okay with the kissing, Haddie stated, "Yeah, definitely."

Damian's Account

Damian stated that he is a rising junior at the University, studying Engineering. Damian stated that he and Haddie met through mutual friends and were part of the same friend group. Damian stated that he and Haddie had gone on a few dates in the month of April and "things seemed to be going really well." When asked what, if any, physical contact occurred on those dates, Damian stated, "We kissed, maybe held hands. We were usually out in public, so that's about it."

Elise's Account

Elise stated that she is going into her junior year at the University. Elise stated that she met Haddie their freshman year because they lived on the same floor, and they roomed together their sophomore year. When asked to describe where they lived, Elise stated, "We were in Residence Village. It was a two-bedroom dorm room, but we were each in a different bedroom with the other two girls who lived with us."

Bethany's Account

Bethany stated that she just finished her sophomore year at the University. Bethany stated that she knows Haddie from being in the same friend group. Bethany stated, "We are also both bio majors, so we spend a lot of time together. She's one of my closest friends."

Collin's Account

Collin stated that he is a rising senior at the University. Collin stated that he is good friends with Damian and also knows Haddie because they are in the same friend group.

Mark's Account

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Mark stated that he just finished his junior year at the University. Mark stated that he knows both Haddie and Damian as acquaintances because they are friends with his roommate, Collin.

Haddie's May 1, 2026 Sexual Assault Allegations

Haddie's Account

Haddie stated that Damian invited her to his dorm room on May 1, 2026 to watch "The Pitt." When asked what time she went to Damian's room, Haddie stated, "around 9:30 or 9:45."

When asked if she and Damian had talked about what they were going to do in Damian's room that night, Haddie stated, "I thought we were going to watch the show. He really likes it, and I'd never seen it, so he wanted me to watch it with him." Haddie stated, "I figured we would maybe cuddle and kiss, but I didn't expect anything more than that. We were still getting to know each other, you know?"

Haddie stated that when she arrived at Damian's room, he offered her a drink. Haddie stated that she drank "maybe half of a beer" but did not want to drink much because she had to work in the morning. When asked if Damian was drinking, Haddie stated, "I think he had a beer, too." When asked how she would rate her level of intoxication on a scale of 0 to 10, 0 being completely sober and 10 being so intoxicated that she was passed out,[1] Haddie stated, "Probably a 2. I wasn't even feeling buzzed or anything."

When asked how she would rate Damian's level of intoxication, Haddie stated, "The same. He didn't seem different at all."

Haddie stated that after they talked for "15 or 20 minutes," Damian turned on the show, and they sat on the couch. When asked how they were sitting, Haddie stated, "We were just next to each other. I think he had his arm around my waist."

When asked to describe Damian's dorm room, Haddie stated, "There was a living room and two bedrooms. It's just like mine. He has three roommates, but they were all out that night." When asked where they were in the dorm room, Haddie stated, "In the living room."

Haddie stated that during the episode, Damian "started to get more handsy." When asked what she meant by "handsy," Haddie stated, "Like he was moving his hand up my back. And he put his hand on my thigh." When asked where he touched her thigh, Haddie stated, "While we were watching the show, it was just like above my knee, not super high." When asked how she felt about the touching during the show, Haddie stated, "I was fine with it, but I was worried that he might want to push things further."

[1] The intoxication scale is asked by the investigator to assist in understanding how an individual views their own intoxication level and how that compares to reports from others about an individual's level of intoxication and its impact on them.

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Haddie stated that once the episode ended, they started kissing and “moved into more of a laying position.” When asked how she felt about the kissing and moving into a laying position, Haddie stated, “Like the same. I was okay with making out, but I was starting to feel like things were going to progress beyond that, and I didn't want that.” Haddie stated, “Then he put his hand under my shirt and started moving toward my breasts.” Haddie stated that she stopped Damian with her hand and told him that she "didn’t want to do that type of thing yet." Haddie stated that Damian said something like, “Why not? I thought we were into each other.” Haddie stated that she told Damian that she “usually want[s] to be in a more serious, long-term relationship before things get physical.” Haddie stated that Damian said, “‘I’m serious about you. Are you not serious about me? Cause if you’re not, we should just be done with whatever you think this is.’” Haddie stated that she told Damian that she was serious about him, she just felt like it was a little soon. Haddie stated that Damian said something like, “I don’t get it. You told me that you’ve done more than this with other guys and we’ve known each other a while. What more are you waiting for?”

Haddie stated, “At that point I was really worried that he was going to end things, and that’s not what I wanted.” Haddie stated that she “was like, ‘yeah, I guess it’s fine, but I’m really not ready to have sex.’” Haddie stated that Damian told her he “was in this for the long haul” and that she “shouldn’t worry and just relax.” Haddie stated that they then continued “making out” and Damian put his hand back up her shirt and touched her breasts. When asked if he touched her breasts over or under her clothing, Haddie stated, “Both, I think.” When asked if she was wearing a bra at the time, Haddie stated, “Yes, I was.” When asked if her bra was removed, Haddie stated, “No, I think he just went under it a little.”

Haddie stated that Damian also started running his hand up and down the inside of her thigh and said, “Are you still good?” Haddie stated that she responded, “Uh-huh” because she didn’t want him to get upset again. Haddie stated that he kept touching her thigh and touched her “down there, too.” When asked what she meant by “down there,” Haddie stated, “like on my vagina.” When asked if Damian touched her over or under her clothing, Haddie stated, “just over.”

Haddie stated that she eventually told Damian she needed to go home because she had to work early in the morning. Haddie said that she left and walked back to her dorm around 11:30 p.m.

Haddie stated, “I felt really uncomfortable, but I didn’t even realize that the touching that night was assault until later. I tried to stop him, but he kept pressuring me. I felt like he was giving me an ultimatum, like let me do this or we’re over.”

Damian’s Account

When asked if he saw Haddie on Friday, May 1, 2026, Damian stated, “Yeah, she came over to my place that night and we watched a show together.” When asked what time of day Haddie came over, Damian stated, “At night like around 9 or 10. She didn’t stay that late, though because she had to be at work early.” When asked to describe where he lived, Damian stated, “I was in a place with three other guys. There were two bedrooms and a common space.” When asked if anyone else was there when Haddie came over, Damian stated, “No, I don’t think so. I remember they all went out that night because they invited me to go, but I said I had plans with

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Haddie." When asked if they watched the show in his bedroom or in the common space, Damian stated, "The common space."

When asked what happened when Haddie came over, Damian stated, "We talked, watched the show, made out a little, and she went home."

When asked if any sexual contact occurred, Damian stated, "Not really, I mean we were touching each other while we were making out, but no clothes came off." When asked to describe what touching occurred, Damian stated, "I touched her breasts and her legs and stuff and she like ran her hands up the back of my shirt, stuff like that."[2]

When asked if he touched Haddie's breasts over or under her clothing, Damian stated, "I think it was under her shirt, but she was still wearing a bra. So like over the bra but under the shirt." When asked if Haddie engaged in any words or overt actions to indicate that she consented to Damian touching her breasts, Damian stated, "Oh definitely. We had to have a whole conversation about where things were going before she was willing to do anything more than kissing." When asked what was said during the conversation, Damian stated, "Well we like started to make out and when I put my hand under her shirt like on her stomach, she stopped and said she didn't want to keep going if we weren't like serious and stuff. I assured her that I was really into her and wasn't just fooling around. I mean I took her out to dinner and stuff. And we had already been friends for a while. I really liked her. I guess she just needed to hear that." Damian stated that after they talked, Haddie "said she was good to keep going." Damian stated that he then touched Haddie's breasts and she "was really into it." When asked how he could tell Haddie was "into it," Damian stated, "She was like sighing and running her fingers through my hair, stuff like that."[3]

When asked to describe where on her legs he touched Haddie, Damian stated, "Like the inside of her thigh." When asked if he touched her vaginal area, Damian stated, "I might have a little. My hand was like going up and down her leg." When asked whether he touched Haddie's inner thigh and vaginal area over or under her clothing, Damian stated, "Over. She was wearing jeans the whole time."

When asked whether Haddie engaged in words or overt actions indicating that she consented to Damian touching her inner thigh and vaginal area, Damian stated, "Yes, because of the conversation, I was extra careful to make sure she was okay with everything. I was like moving

[2] When given an opportunity to respond to Damian's account that she ran her hands up the back of his shirt, Haddie stated, "I might have, yeah."

[3] When given an opportunity to respond to Damian's account that she was sighing and running her hands through Damian's hair while he was touching her breasts, Haddie stated, "I was maybe doing those things while we were making out, but I don't remember doing them in response to him touching my breasts."

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my hand down from her breast and stopped at her waist and was like, 'Are you good with down here, too?' and she was like, 'Yeah.'"

When asked what happened next, Damian stated, "My roommate came home, so we stopped making out and just like talked and cuddled for a few minutes. Then she had to leave because she had work in the morning."[4] When asked what they talked about, Damian stated, "We talked about the next day and what we planned to do. She had to work. I needed to study. And then we both planned to go to a party that our friend was throwing." When given an opportunity to respond to Haddie's account that they stopped making out when Haddie said she had to go because she had work in the morning and that his roommate came home after she had already gotten up, Damian stated, "No, we stopped when he came home."

Elise's Account

When asked if she talked to Haddie about her interactions with Damian, Elise stated, "Yeah, she would tell me about their dates or how the relationship was going." When asked if they discussed any interaction on May 1, Elise stated that on the morning of May 2, she asked Haddie how her night with Damian had gone the night before. Elise stated that Haddie told her that she and Damian had "made out," but that Haddie did not say anything more than that. When asked to describe Haddie's demeanor when she told Elise about the night, Elise stated that it was early in the morning, so Haddie was "kind of quiet and groggy." Elise stated that Haddie "didn't really show much emotion one way or the other."

Haddie's May 3, 2026 Sexual Assault and Sexual Exploitation Allegations

The Parties' Interactions at the Party

Haddie's Account

Haddie stated that the next night she and Damian were both planning to go to a party off campus at their friend Collin's house. Haddie stated that she rode to the party with her friend Bethany and arrived around 10:00 p.m. Haddie stated that Damian didn't come to the party until later. When asked what time she thought Damian arrived at the party, Haddie stated, "It was after 11 for sure, probably 11:15 or 11:30."

Haddie stated that she was "already pretty tipsy" by the time Damian arrived at the party. When asked what she had had to drink by that point, Haddie stated, "Bethany and I had a beer when we got there and then I had a White Claw. When Damian got there, we were doing tequila shots. I'd had one before he came and then we did one together right away." When asked how she would rate her level of intoxication on the intoxication scale after the second tequila shot, Haddie stated, "At that point I would say an 8. I remember dancing after that, and I had to hang on to

[4] When given an opportunity to respond to Damian's account that they stopped making out because his roommate came home, Haddie stated, "No, we stopped because I said I had to go. I had already gotten up to leave when his roommate came home."

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Damian because I felt like I was going to fall down." When asked how she would rate Damian's level of intoxication after the tequila shot, Haddie stated, "Like a 1 or 2. It was his first drink, so I didn't notice anything different."

When asked what she had to drink the rest of the night, Haddie stated, "It's hard for me to remember, because the details of that night are pretty fuzzy after that point. I think I had a mixed drink of some sort."

When asked to describe her interactions with Damian at the party, Haddie stated, "We were pretty much together the whole time. We danced and talked to people. Normal party stuff." When asked if they had any physical or sexual contact at the party, Haddie stated, "Well, we were dancing and probably kissed a few times. All of our friends knew we had been hanging out together, so we weren't trying to hide it or anything. We probably had our arms around each other or were holding hands, stuff like that. But nothing sexual at the party."

When asked what time she left the party, Haddie stated, "Sometime between 1 and 2. I remember that Bethany left around 1 and asked me if I was ready to go. Damian said that he could take me back to campus, so I stayed a little longer." Haddie stated that soon after Bethany left, Damian asked her if she was ready to go home and she said yes.

When asked how she would rate her level of intoxication on the intoxication scale at the time she left the party, Haddie stated, "I would say a 9. I just remember bits and pieces of the ride back to campus and everything seems a bit fuzzy." When asked how she would rate Damian's level of intoxication, Haddie stated, "I would say he was only at like a 1 or 2. He was driving, so after that first shot, he just sipped on a beer, but I don't even think he finished it. I remember asking if he wanted something when I was getting a drink and he said no because he had to drive."

When asked what she recalls from the ride back to campus, Haddie stated, "Not much. I was pretty drunk. I remember turning on Taylor Swift's '22' really loud and singing along. But it was a short ride. I don't remember anything besides that."

Damian's Account

Damian stated that on Saturday, May 2, he and Haddie "met up" at a friend's party off campus. Damian stated that Haddie got there before him and was texting him, asking where he was and telling him to come. Damian stated, "She was like, 'Get over here so that I can dance with you.'" Damian provided the following text messages exchanged between the parties on May 2:

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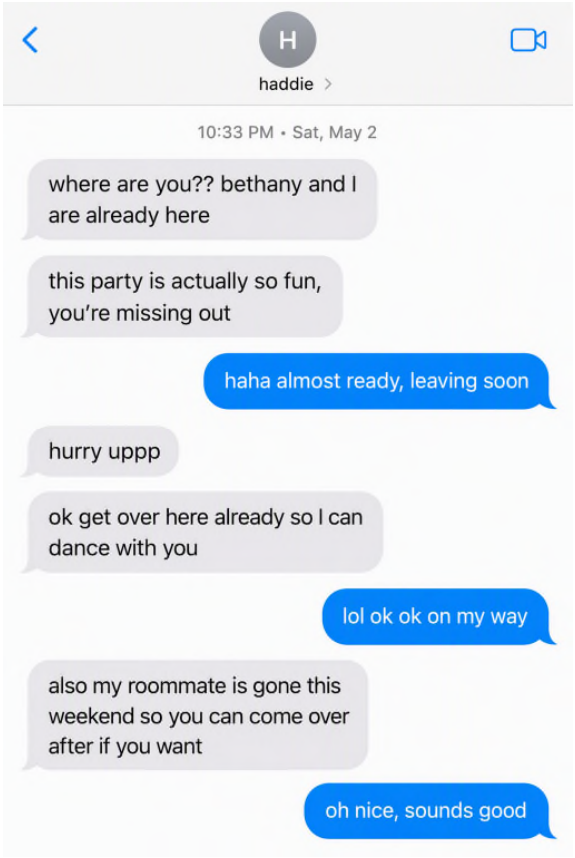

Damian stated that he got to the party around 11:00 and "right away Haddie wanted [him] to do a shot with her." When asked how he would rate Haddie's level of intoxication on the intoxication scale after they did the shot together, Damian stated, "Maybe like a 5 or 6. She was definitely letting loose and being a little silly, but she could walk and wasn't puking or anything like that." When asked how he would rate his own level of intoxication at that point, Damian stated, "A 1 or a 2. I had only had that shot, so I wasn't feeling anything."

When asked to describe their interactions at the party, Damian stated, "We just hung out, talked to people, danced. She was getting pretty spicy while we were dancing." When asked to explain what he meant by "spicy," Damian stated, "Like she was grinding up on me, like pushing her hip region into mine."[5]

[5] In her response to the Directly Related Evidence, Haddie stated, "Damian told the investigator that I was grinding up on him at the party. Dancing with him did not mean that I wanted to have sex with him. Plus, I remember dancing with him at the party because I wasn't that drunk yet, but my memory of the time back at my place is very limited. I was too drunk to consent by the time we got back to campus."

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When asked what the two of them each drank after the shot they had when he arrived, Damian stated, “I maybe drank half of a beer. I had driven so I didn’t want to drink more than that.” Damian stated, “Haddie had another drink but nothing crazy, just some fruity mixed drink.”

When asked how long they stayed at the party, Damian stated, “We went back to campus at about 1:30 I’d say.” When asked if they left together, Damian stated, “Yeah, I drove Haddie back to campus. She had come with a friend, but she left earlier, and I told Haddie I could bring her home.”

When asked how he would rate Haddie’s level of intoxication when they left the party, Damian stated, “Like a 4 or 5. She was still buzzed but was not stumbling or slurring her words.” When asked how he would rate his own level of intoxication at that point on the intoxication scale, Damian stated, “Still a 1 or 2. I felt totally normal and capable of driving.”

When asked to describe their interactions on the car ride back to campus, Damian stated, “It was a short ride, like less than 10 minutes. Haddie was choosing the music and singing and stuff. We were just having a good time.”

Bethany’s Account

When asked if she saw Haddie and Damian on May 2, Bethany stated that they were all at a party together off campus that night. Bethany stated that she drove Haddie to the party, but Haddie did not come back to campus with her. Bethany stated that they arrived at the party around 10:00 p.m. When asked what, if anything, Haddie had to drink at the party, Bethany stated, “When we got there we each had a beer, and then Haddie had another drink right away. I don’t remember what it was. After that I know she had a couple of shots, and I’m pretty sure a mixed drink at some point too.” When asked if she could estimate the total number of drinks Haddie had, Bethany stated, “I wasn’t counting exactly, but it was at least, I’d say, five drinks, maybe a little more. She was definitely drinking more than me because I had to drive back to campus. Plus, she stayed longer than me, so she might have kept drinking after I left. I’m not sure.” When asked what time she left the party, Bethany stated, “Around 1. I asked Haddie if she wanted to leave with me, but Damian said he’d take her home, so she stayed.”

When asked how she would rate Haddie’s level of intoxication on the intoxication scale at the time Bethany left the party, Bethany stated, “I’d say like a 7 or 8. She was slurring a little and being really giggly, and at one point she kind of stumbled on the dance floor and had to grab onto Damian.” When asked how she would rate Damian’s level of intoxication, Bethany stated, “He seemed pretty sober, honestly. Like a 2. I knew he had driven, so I don’t think he was drinking much.”

Collin’s Account

Collin stated that he hosted a party at his house off campus on May 2. When asked, Collin stated that he saw Damian and Haddie at the party. When asked, Collin stated that both Damian and Haddie were drinking at the party. When asked what Haddie had to drink, Collin stated, “I

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wasn't really keeping track of her drinks, but I saw her do a couple of shots and she had a drink in her hand for most of the night." When asked how he would rate Haddie's level of intoxication on the intoxication scale, Collin stated, "Maybe a 4 or 5? She was having fun and dancing, but she didn't seem out of control or anything. I've definitely seen people way more wasted at parties." When asked whether Haddie had any trouble walking or talking, Collin stated, "Not that I noticed. She was talking and dancing fine. I remember her laughing a lot." When asked how he would rate Damian's level of intoxication, Collin stated, "Like a 1. He told me he was driving Haddie home, so he was mostly just hanging out with a beer."

Mark's Account

Mark stated that he and his roommates threw a party at their house off campus on May 2. When asked, Mark stated that he saw Haddie and Damian at the party. When asked, Mark stated that Haddie and Damian were drinking at the party. When asked how much Haddie had to drink, Mark stated, "I really couldn't tell you. I wasn't counting and I wasn't with her the whole time." When asked whether Haddie seemed intoxicated, Mark stated, "I don't know. She was being loud, and I saw her spill part of her drink at one point." When asked if he observed anything else, Mark stated, "She was definitely tipsy, but she was also still carrying on conversations. I talked to her for a few minutes about our chem class and she was telling me this whole story about her lab partner—she was making sense, remembering details, that kind of thing." When asked where he would put Haddie on the intoxication scale, Mark stated, "I don't know, somewhere in the middle maybe? Or on the higher end? It's hard to say. She might have been drunk, but it wasn't like she was passing out or couldn't function."

When asked how much Damian had to drink at the party, Mark stated, "I couldn't say. I saw him take a shot, but he seemed totally with it." When asked where he would rate Damian on the intoxication scale, Mark stated, "Maybe a 2?" When asked why he would rate him a 2, Mark stated, "Like I said, he was acting completely normal. I didn't notice any signs of him being drunk. But I know he had at least one drink."

<u>The Parties' Interactions in Haddie's Dorm</u>

Haddie's Account

When asked what happened when they got back to campus, Haddie stated that Damian parked outside their dorm and said he would walk her to her room. Haddie stated, "I think he was worried that I wouldn't be able to make it on my own. But I also think he saw an opportunity to take advantage of me."

Haddie stated that when they got to her door, Damian came in with her. When asked if they talked about Damian coming in, Haddie stated, "I don't remember how that happened." When asked if she had expected Damian to come in with her, Haddie stated, "I don't remember what I expected. I was pretty out of it."

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When asked if anyone else was in the room at that time, Haddie stated, “My roommates in the other bedroom were home, but I think they had gone to bed. My immediate roommate was at her parents’ house for the weekend.”

When asked what happened after they got into the dorm room, Haddie stated, “We ended up in my bedroom. I don’t remember how. And we were making out. My memory goes in and out. I remember clothes coming off. And then the next thing I know we were both naked and he was having sex with me.”

When asked who removed which articles of clothing, Haddie stated, “I was wearing a dress. I think he kind of pulled it up and then I took it off the rest of the way. But he definitely took off my bra and underwear by himself. I remember unbuttoning his shirt, but he took it off and removed his pants and boxers.” Haddie stated, “But I never would have let any of that happen if I hadn’t been so drunk.”

When asked if she engaged in words or overt actions indicating consent to Damian removing her bra and underwear, Haddie stated, “No, we weren’t talking at all. And I had clearly communicated the night before that I wanted to take things slow. Plus, I was too drunk to consent to anything.”

When asked to describe what happened after their clothing was removed, Haddie stated, “He was just on top of me and having sex with me. I remember feeling frozen and not understanding how we had gotten to that point.”

When asked if she engaged in any words or overt actions indicating that she consented to having sex, Haddie stated, “No. Again, we weren’t talking at all. And I had told him the night before that I wasn’t ready to have sex.”

When asked what happened next, Haddie stated, “He got out of bed, threw away the condom, put on his pants and went out to the bathroom. I just laid there. I was in shock.” Haddie stated, “When he came back to the room, I pretended to be sleeping. He kissed me on the cheek and told me he was going to go back to his room. Then he left.”

When asked when during the encounter Damian had put on the condom, Haddie stated, “I think it was when he took off his underwear, but I’m not positive. It all happened so quickly.”

Damian’s Account

Damian stated that when they got back to campus, he offered to walk Haddie to her dorm room. Damian stated, “She had suggested earlier on in the night that I should come over after the party. It was also late at night, so I wanted to make sure she got in alright.”

Damian stated that when they got to Haddie’s door, she invited him in and told him her roommate was back home for the weekend. Damian stated that Haddie walked to her bedroom and he followed her there. Damian stated that they talked for a while about the party and then

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started kissing. Damian stated, “Things just progressed from there. We started to take each other’s clothes off and had sex.”

When asked who took off which articles of clothing, Damian stated, “The first thing that happened was that she took off her dress. That’s when I was like, ‘Okay, this is happening.’” When given an opportunity to respond to Haddie’s account that Damian had pulled her dress up and she took it off the rest of the way, Damian stated, “Yeah, I think I like pushed it up her leg, but she is the one who lifted it up over her head and took it off.” When asked how far up her leg he lifted the dress, Damian stated, “I don’t know, just to like mid-thigh.”

Damian stated, “She took off my shirt. I think we both removed our own underwear.”[6] When given an opportunity to respond to Haddie’s account that Damian removed her underwear, Damian stated, “No. I’m positive that she took them off herself. I started taking mine off and then she did the same.”

When asked if Haddie was wearing a bra, Damian stated, “Yeah, and I think I took that off. So we were completely naked when we were having sex.” When asked if Haddie engaged in words or overt actions to indicate that she consented to Damian removing her bra, Damian stated, “Well, we had already talked about me touching her breasts the night before and now she was taking off her own dress and taking off my shirt, so she was participating in that whole progression. She also kept kissing me and touching me that whole time. She was clearly into it all.” Damian stated, “Oh, and I specifically remember that I was having trouble, like with the clasp thingy, and she kinda turned her body to make it easier for me to take it off.”[7]

When asked to describe how they started having sex once their clothes were off, Damian stated, “I grabbed a condom out of my wallet and put it on. Then I got back on the bed with her and we started having sex.” When asked to describe the position they were in when having sex, Damian stated, “I was on top of her.” When asked if either of them said anything around the time they started having sex, Damian stated, “I don’t think we said anything, besides maybe she said my name and was like moaning and stuff.”[8]

When asked if Haddie engaged in words or overt actions indicating that she consented to having sex, Damian stated, “She engaged in a lot of actions, like taking off her clothes and my shirt and kissing me and touching me. Just the whole progression. Plus, she was the one who invited me

[6] When given an opportunity to respond to Damian’s account that they both removed their own underwear, Haddie stated, “I can’t remember. It’s all a blur.”

[7] When given an opportunity to respond to Damian’s account that he was having trouble with her bra clasp and that she turned her body to make it easier for him, Haddie stated, “No, I don’t remember that happening.”

[8] When given an opportunity to respond to Damian’s account that she said his name and was moaning during sex, Haddie stated, “No. I was not. No way.”

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in, told me her roommate was gone, and led me to her bedroom. It was obvious where we were heading, and she never showed any sign of being uncomfortable with it."[9]

When asked what happened next, Damian stated, "I went to the bathroom to clean up. It was pretty late by then, so we said goodbye and I went back to my place."

The Parties' Subsequent Actions and Interactions

Haddie's Account

Haddie stated that the next morning she talked to her roommates about what happened, and they encouraged her to report to Title IX. Haddie stated that she "thought it over for a few days" before contacting the Title IX Coordinator the following Wednesday. Haddie stated, "I just don't want him to do this to anyone else."

Haddie stated that Damian texted her over the next few days, but she made excuses for not being able to see him. Haddie stated that he eventually asked if she was okay and she responded, "I think you know I'm not and why. Just leave me alone." Haddie provided the following text messages exchanged between the parties between May 3 and May 7:

[9] In his response to the Directly Related Evidence, Damian stated, "Haddie makes it seem like it was my idea to go into her place after the party. But she's the one who invited me to come over and even said her roommate was going to be out of town. I have the texts to prove it." Damian provided the May 2, 2026 text exchange included above and at Attachment E.

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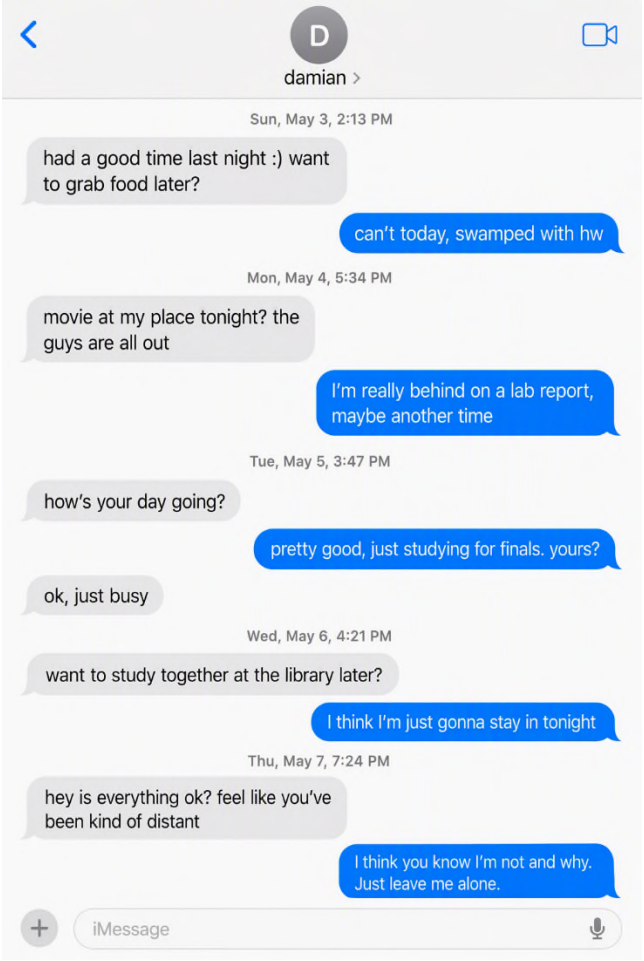

Damian's Account

When asked to describe his interactions with Haddie after that night, Damian stated, "We were texting like usual, but then she started acting weird and didn't want to see me. Then I got the notice that she had filed a complaint against me."

Elise's Account

Elise stated that she was home in her own bedroom on the night of May 2 into the early morning of May 3. Elise stated that she had gone to bed and did not hear or see Haddie or Damian come in. Elise stated that the next morning, Haddie told her about what had happened with Damian. Elise stated that Haddie "said she had been really drunk and didn't remember a lot of what happened." Elise stated that Haddie told her that she "had told Damian the night before that she wasn't ready to have sex." Elise stated, "I told her that what she was describing was sexual assault and that she should report it."

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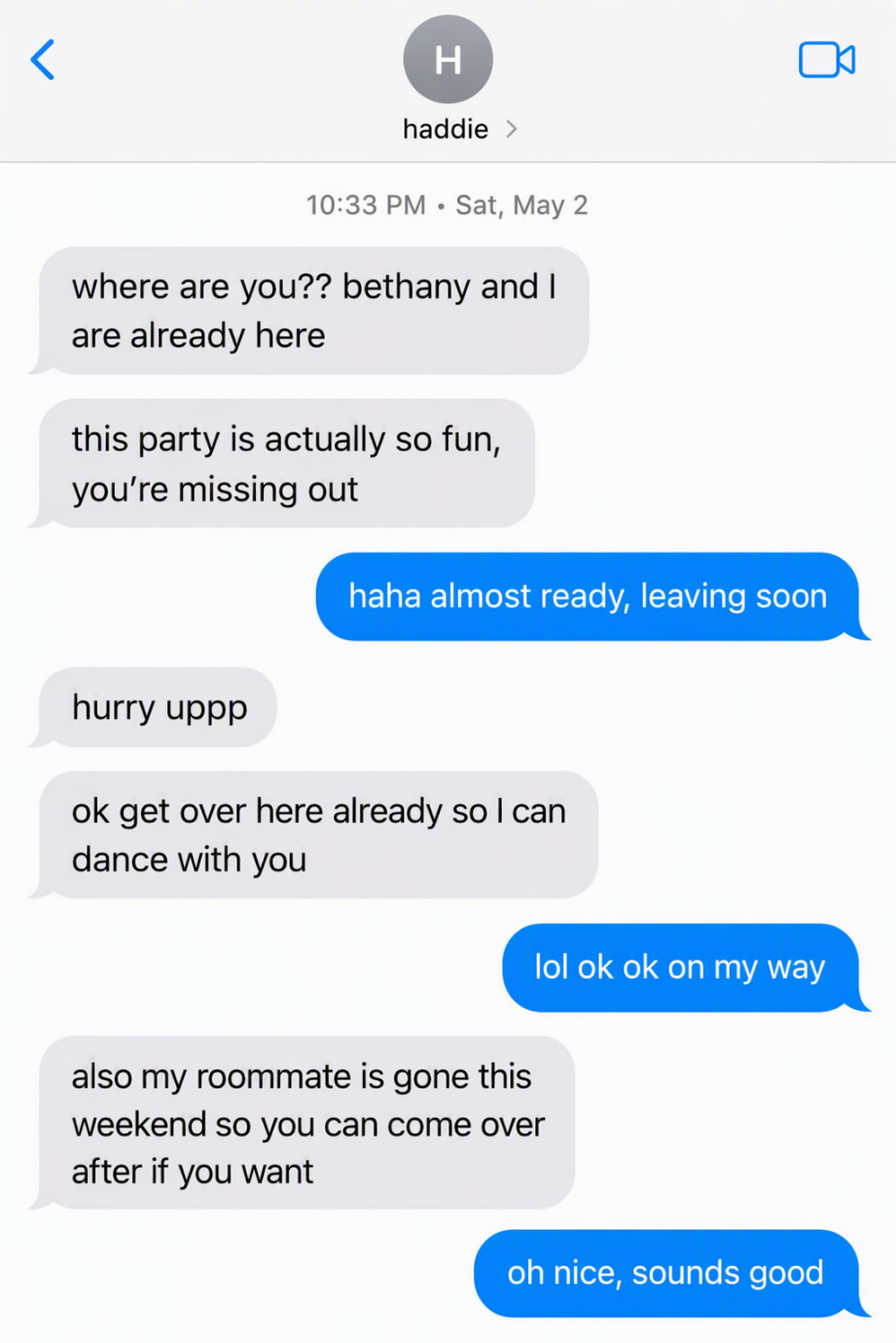
Attachment E



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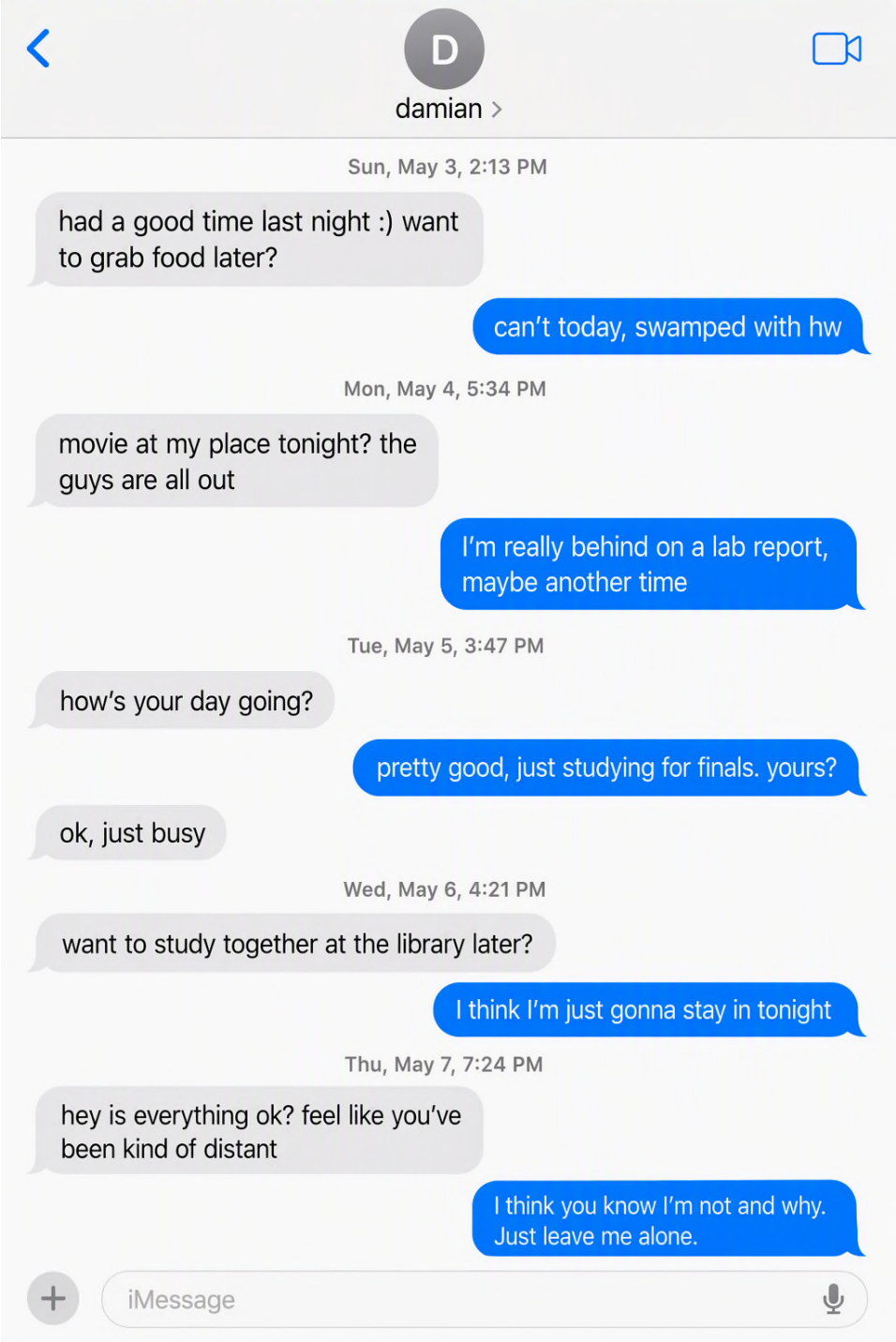
Attachment F



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2026 Title IX/VAWA Live Hearing Training

Handout 7

Excerpts from Party Statements in Response to the Investigation Report and Supplemental Directly Related Evidence

Excerpt from Haddie's Response to the Report

The texts Damian provided mean nothing. I sent those before I was super drunk. And just because I invited him over doesn't mean I consented to having sex with him. He took advantage of me when I was vulnerable.

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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:

- Haddie
    - The Panel gave Haddie an opportunity to respond to Damian's account of the conversation they had on May 1 before Damian touched her breasts. In response, Haddie stated, "I don't have a response to that."
    - The Panel gave Haddie an opportunity to respond to Damian's account that on May 1 he touched her breasts under her shirt but over her bra. In response, Haddie stated, "I thought he touched me under my bra, too, but I'm not 100% sure."
    - The Panel gave Haddie an opportunity to respond to Damian's account that after touching her breasts on May 1, he moved his hand down to her waist, stopped and said, "Are you good with down here, too?" and she responded, "Yeah." In response, Haddie stated, "No, he didn't ask me ahead of time. He started touching me down there and then was like, 'you still good?'"
    - The Panel gave Haddie an opportunity to respond to Damian's account that during the encounter on May 3, he only lifted her dress to mid-thigh. Haddie stated, "I don't remember how far he lifted it."
- Damian
    - The Panel gave Damian an opportunity to respond to Haddie's account of the conversation they had on May 1 before Damian touched Haddie's breasts. In response, Damian stated, "No way. No. It wasn't like that. I didn't pressure her like that." When asked by the Panel whether Haddie told him that she was not ready to have sex, Damian responded, "Yeah, I think she said something like that."
    - The Panel gave Damian an opportunity to respond to Haddie's account that on May 1 Damian touched her breasts over and under her bra. In response, Damian stated, "I don't remember that."
    - The Panel gave Damian an opportunity to respond to Haddie's account that on May 1 after he touched her breasts, he started running his hand up and down the inside of her thigh and then said, "Are you still good?" In response, Damian

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stated, “No, I was careful to ask her before I touched her because we had just had that whole discussion about touching her breasts.”

- Chris
    - The Hearing Panel heard from Chris as a witness at the hearing. Chris said that on the evening of May 1, he came home and Haddie was over with Damian. When asked where Haddie was when he walked in the dorm, Chris stated, “They were hanging out in the living room.” When asked what Damian and Haddie were doing when he came home, Chris stated, “Just hanging out like talking. I didn’t see anything else.” When asked if Haddie was sitting or standing when he came in, Chris stated, “I don’t remember.” When asked how long Haddie stayed after he came home, Chris stated, “I don’t know. I probably just went to my room and gave them space.”

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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. If a question is not applicable, indicate so ("**N/A**").

Haddie's May 1, 2026 Allegation of Sexual Assault

Haddie alleged that Damian engaged in sexual assault in the form of nonconsensual sexual contact, including touching Haddie's breasts, inner thigh, and vaginal area.

- What sexual contact occurred:
    - Did Damian touch Haddie's breasts? SE IE
    - Did Damian touch Haddie's inner thigh? SE IE
    - Did Damian touch Haddie's vaginal area? SE IE
- Did Damian initiate the sexual contact that you find occurred:
    - Damian touching Haddie's breasts? SE IE N/A
    - Damian touching Haddie's inner thigh? SE IE N/A
    - Damian touching Haddie's vaginal area? SE IE N/A
- If Damian initiated the sexual contact, did Damian engage in the sexual contact without Haddie's consent:
    - Damian touching Haddie's breasts? SE IE N/A
    - Damian touching Haddie's inner thigh? SE IE N/A
    - Damian touching Haddie's vaginal area? SE IE N/A

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Haddie's May 3 Allegation of Sexual Exploitation

Haddie alleged that Damian engaged in sexual exploitation in the form of removing Haddie's clothing without her consent.

- What conduct occurred:
    - Did Damian remove Haddie's bra? SE IE
    - Did Damian remove Haddie's underwear? SE IE
- If you find that Damian removed Haddie's bra and/or underwear, was Haddie incapacitated as defined by the Policy? SE IE N/A
- If Haddie was not incapacitated as defined by the Policy, did Damian remove Haddie's clothing without her consent:
    - Damian removing Haddie's bra? SE IE N/A
    - Damian removing Haddie's underwear? SE IE N/A

Haddie's May 3 Allegation of Sexual Assault

Haddie alleged that Damian engaged in sexual assault in the form of nonconsensual sexual penetration.

- What conduct occurred:
    - Did Damian engage in sexual penetration of Haddie? SE IE
- Did Damian initiate the sexual contact that you find occurred:
    - Damian engaging in sexual penetration of Haddie? SE IE N/A
- If Damian initiated the sexual contact that you find occurred, was Haddie incapacitated as defined by the Policy? SE IE N/A
- If Haddie was not incapacitated as defined by the Policy, did Damian engage in the sexual contact without Haddie's consent?
    - Damian engaging in sexual penetration of Haddie? SE IE N/A

Conclusions

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Policy Violations

Based on the answers to the questions above, please indicate for which alleged policy violations (if any) you find Damian responsible.

- Do you find Damian responsible for Sexual Assault (May 1, 2026)? Yes No
- Do you find Damian responsible for Sexual Assault (May 3, 2026)? Yes No
- Do you find Damian responsible for Sexual Exploitation (May 3, 2026)? Yes No

Sanctions and Remedies

- Sanctions for Damian (if applicable):
    - Rationale for sanctions:
- Remedies for Haddie (if applicable):

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2026 Title IX/VAWA Live Hearing Training

Handout 10

Notice of Determination Excerpt:

Based on the evidence in the adjudication file, the evidence presented at the live hearing, and the Policy provisions regarding Sexual Assault and Sexual Exploitation, the Panel finds sufficient evidence to determine it is more likely than not that Damian engaged in Sexual Assault on May 3, 2026, as discussed below. The Panel finds insufficient evidence to determine that it is more likely than not that Damian engaged in Sexual Assault on May 1, 2026, or Sexual Exploitation on May 3, 2026, as discussed below.

Analysis of May 1, 2026 Sexual Assault Allegation

Haddie alleged that Damian engaged in sexual assault in the form of nonconsensual sexual contact, including touching Haddie's breasts, inner thigh, and vaginal area on May 1, 2026, in Damian's dorm room in Residence Village.

Under the Policy, Sexual Assault is any actual or attempted sexual contact with another person without that person's consent. Sexual contact includes intentional contact by the accused with the victim's genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed. It is the responsibility of the person initiating the specific sexual contact or activity to obtain consent for that contact or activity.

Therefore, the Panel must determine (1) what sexual contact occurred; (2) whether Damian initiated the sexual contact found to have occurred; and, if so, (3) whether Haddie consented to the sexual contact.

What Sexual Contact Occurred

The parties' accounts are generally consistent that Damian touched Haddie's breasts, inner thigh, and vaginal area on the night of May 1.

Haddie stated that Damian put his hand up her shirt and touched her breasts. When asked if he touched her breasts over or under her clothing, Haddie stated, "Both, I think." When asked if she was wearing a bra at the time, Haddie stated, "Yes, I was." When asked if her bra was removed, Haddie stated, "No, I think he just went under it a little." Haddie stated that Damian also started running his hand up and down the inside of her thigh. Haddie stated that Damian kept touching her thigh and touched her "down there, too." When asked what she meant by "down there," Haddie stated, "like on my vagina." When asked if Damian touched her over or under her clothing, Haddie stated, "just over."

When asked if any sexual contact occurred on May 1, Damian stated, "Not really, I mean we were touching each other while we were making out, but no clothes came off." When asked to describe what touching occurred, Damian stated, "I touched her breasts and her legs and stuff

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and she like ran her hands up the back of my shirt, stuff like that." When asked if he touched Haddie's breasts over or under her clothing, Damian stated, "I think it was under her shirt, but she was still wearing a bra. So like over the bra but under the shirt." When asked to describe where on her legs he touched Haddie, Damian stated, "Like the inside of her thigh." When asked if he touched her vaginal area, Damian stated, "I might have a little. My hand was like going up and down her leg." When asked whether he touched Haddie's inner thigh and vaginal area over or under her clothing, Damian stated, "Over. She was wearing jeans the whole time."

Therefore, the parties' accounts both indicate that Damian touched Haddie's breasts, inner thigh, and vaginal area. However, the parties' accounts are conflicting regarding whether Damian touched Haddie's breasts over or under her bra. Both parties stated that Damian touched Haddie's breasts over her bra, but Haddie also stated that Damian touched her breasts under her bra. At the live hearing, the Panel gave Haddie an opportunity to respond to Damian's account that on May 1 he touched her breasts under her shirt but over her bra. In response, Haddie stated, "I thought he touched me under my bra, too, but I'm not 100% sure." The Panel gave Damian an opportunity to respond to Haddie's account that on May 1, Damian touched her breasts over and under her bra. In response, Damian stated, "I don't remember that."

Because Damian only gave an account of touching Haddie's breasts over her bra and stated that he did not remember touching her breasts under her bra, and because Haddie expressed some uncertainty about whether Damian touched her breasts under her bra, the Panel finds insufficient evidence to determine that it is more likely than not that Damian touched Haddie's breasts under her bra.

Considering the parties' consistent accounts, the Panel finds sufficient evidence to determine it is more likely than not that Damian touched Haddie's breasts over her bra and touched her inner thigh and vaginal area over her clothing, all of which constitute sexual contact under the Policy. The Panel finds insufficient evidence to determine it is more likely than not that Damian touched Haddie's breasts under her bra.

Initiation

Having determined what conduct occurred, the Panel next considers whether Damian initiated the sexual contact. The parties' accounts are consistent that Damian initiated the touching. As described above, Haddie stated that Damian put his hand under her shirt, touched her breasts, ran his hands up and down the inside of her thigh, and touched her vagina; she did not describe initiating any of this contact. Similarly, Damian stated that he touched Haddie's breasts, inner thigh, and vaginal area and gave no indication that Haddie was the one initiating these actions by him.

Accordingly, the Panel finds sufficient evidence to determine it is more likely than not that Damian initiated the sexual contact.

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Consent

Having determined that Damian initiated the sexual contact, the Panel considers whether Haddie consented to the sexual contact.

Consent to Touching Haddie's Breasts

The Panel first considers whether Haddie consented to Damian touching her breasts. The parties' accounts are consistent that they had a conversation about physical contact and their relationship before Damian touched Haddie's breasts and that, following that conversation, Haddie expressed agreement to Damian touching her breasts.

Haddie stated that once the episode ended, they started kissing and "moved into more of a laying position." When asked how she felt about the kissing and moving into a laying position, Haddie stated that she was "okay with making out, but I was starting to feel like things were going to progress beyond that, and I didn't want that." Haddie stated, "Then he put his hand under my shirt and started moving toward my breasts." Haddie stated that she stopped Damian with her hand and told him that she "didn't want to do that type of thing yet." Haddie stated that Damian said something like, "Why not? I thought we were into each other." Haddie stated that she told Damian that she "usually want[s] to be in a more serious, long-term relationship before things get physical." Haddie stated, "I had told him in an earlier conversation that I'd only been with a few guys and only when we were exclusively dating for a while." Haddie stated that Damian said, "I'm serious about you. Are you not serious about me? Cause if you're not, we should just be done with whatever you think this is." Haddie stated that she told Damian that she was serious, she just felt like it was a little soon. Haddie stated that Damian said something like, "I don't get it. You told me that you've done more than this with other guys and we've known each other a while. What more are you waiting for?" Haddie stated, "At that point I was really worried that he was going to end things, and that's not what I wanted." Haddie stated that she "was like, 'yeah, I guess it's fine, but I'm really not ready to have sex.'" Haddie stated that Damian told her he "was in this for the long haul" and that she "shouldn't worry and just relax." Haddie stated that they then continued "making out" and Damian put his hand back up her shirt and touched her breasts.

When asked if Haddie engaged in any words or overt actions to indicate that she consented to Damian touching her breasts, Damian stated, "Oh definitely. We had to have a whole conversation about where things were going before she was willing to do anything more than kissing." When asked what was said during the conversation, Damian stated, "Well we like started to make out and when I put my hand under her shirt like on her stomach, she stopped and said she didn't want to keep going if we weren't like serious and stuff. I assured her that I was really into her and wasn't just fooling around. I mean I took her out to dinner and stuff. And we had already been friends for a while. I really liked her. I guess she just needed to hear that." Damian stated that after they talked, Haddie "said she was good to keep going." Damian stated that he then touched Haddie's breasts.

At the hearing, the Panel gave Haddie an opportunity to respond to Damian's account of the conversation. Haddie stated, "I don't have a response to that." The Panel gave Damian an

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opportunity to respond to Haddie's account of the conversation. Damian stated, "No way. No. It wasn't like that. I didn't pressure her like that." When asked by the Panel whether Haddie told him that she was not ready to have sex, Damian responded, "Yeah, I think she said something like that."

Therefore, the parties' accounts are consistent that they had a conversation about sexual contact and activity before Damian touched Haddie's breasts and that following that conversation, Haddie expressed agreement to the contact. While the parties' accounts differ regarding what was said during the conversation, both accounts indicate that the conversation ended with Haddie communicating that she was okay with proceeding. Specifically, Haddie stated she said, "yeah, I guess it's fine, but I'm really not ready to have sex," and Damian stated Haddie "said she was good to keep going."

The Panel notes that Haddie's account implies that she felt coerced into agreeing to Damian touching her breasts as a result of the conversation. Haddie stated, "I tried to stop him, but he kept pressuring me. I felt like he was giving me an ultimatum, like let me do this or we're over." The Panel considered whether the statements made by Damian during the conversation constitute coercion as defined by the Policy. Under the Policy, coercion is conduct or intimidation that would compel an individual to do something against their will by the use of physical force, threats of severely damaging consequences, or pressure that would cause a reasonable person to fear severely damaging consequences. The Panel finds that even under Haddie's account of the conversation, Damian's statements did not rise to the level of coercion as defined by the Policy. The statements Haddie attributes to Damian—expressing frustration, questioning her commitment to the relationship, and alluding to ending the relationship—while potentially pressuring, do not rise to the level of threats of severely damaging consequences or pressure that would cause a reasonable person to fear severely damaging consequences. The potential end of a new dating relationship does not constitute a "severely damaging consequence" under the Policy. Therefore, the Panel finds insufficient evidence to determine that it is more likely than not that Damian's statements during the conversation that preceded Haddie's agreement to Damian touching her breasts constituted coercion as defined by the Policy.

Accordingly, the Panel finds insufficient evidence to determine it is more likely than not that Damian touching Haddie's breasts was nonconsensual.

In reaching this finding, the Panel considered that the parties provided differing accounts as to Haddie's response to Damian touching her breasts. Damian stated that Haddie "was really into it." When asked how he could tell Haddie was "into it," Damian stated, "She was like sighing and running her fingers through my hair, stuff like that." When given an opportunity to respond to Damian's account that she was sighing and running her hands through Damian's hair while he was touching her breasts, Haddie stated, "I was maybe doing those things while we were making out, but I don't remember doing them in response to him touching my breasts." The Panel finds that the parties' differing accounts on this point do not impact the finding that there is insufficient evidence to determine that Haddie did not consent to Damian touching her breasts. While under the Policy, whether an individual actively and willingly participates in conduct may be a factor in determining whether there was consent, here, the stronger indication of consent is

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the verbal communication of consent that the parties agree Haddie made prior to Damian touching her breasts. In light of the evidence of this clear communication of consent, the Panel did not need to rely on Damian's account, which is disputed by Haddie, that Haddie was engaging in conduct demonstrating that she was "into" him touching her breasts.

Consent to Touching Haddie's Inner Thigh and Vaginal Area

The Panel next considers whether Haddie consented to Damian touching her inner thigh and vaginal area. The parties' accounts are conflicting on this issue.

Haddie stated that Damian started running his hand up and down the inside of her thigh and said, "Are you still good?" Haddie stated she responded "Uh-huh" because she didn't want him to get upset again. As described above, Haddie stated that Damian then continued touching her thigh and touched her vaginal area.

When asked whether Haddie engaged in words or overt actions indicating that she consented to him touching her inner thigh and vaginal area, Damian stated, "Yes, because of the conversation, I was extra careful to make sure she was okay with everything. I was like moving my hand down from her breast and stopped at her waist and was like, 'Are you good with down here, too?' and she was like, 'Yeah.'" At the hearing, the Panel gave Damian an opportunity to respond to Haddie's account that on May 1 after he touched her breasts, he started running his hand up and down the inside of her thigh and then said, "Are you still good?" In response, Damian stated, "No, I was careful to ask her before I touched her because we had just had that whole discussion about touching her breasts."

At the hearing, the Panel gave Haddie an opportunity to respond to Damian's account that after touching her breasts on May 1, he moved his hand down to her waist, stopped and said, "Are you good with down here, too?" and she responded, "Yeah." In response, Haddie stated, "No, he didn't ask me ahead of time. He started touching me down there and then was like, 'you still good?'"

Therefore, the parties' accounts on this point are conflicting. Under Haddie's account, she did not give *prior* consent to Damian touching her inner thigh, and her response of "Uh-huh" to him asking if she was "still good" would have only referred to the inner-thigh touching and would have been insufficient to constitute consent to the subsequent vaginal touching. Under Damian's account, Haddie's affirmative response of "Yeah"—given in advance of the touching and in response to a specific question about touching her "down here"—would indicate to a reasonable person consent to touching both her inner thigh and vaginal area in that region, particularly in light of the parties' prior discussion. Both parties' accounts indicate that Haddie agreed to Damian touching her breasts but clarified that she was not ready to have sex. Such a statement could indicate that Haddie was open to engaging in sexual contact other than sex—particularly the touching of intimate body parts. Damian's question, "Are you good with down here, too?" and Haddie's response, "Yeah," would be sufficient to confirm that Haddie consented to Damian touching her inner thigh and vaginal area. Therefore, under Damian's account, a reasonable person in Damian's position would understand Haddie's earlier statement during their discussion

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and her response of “Yeah” to his question about touching her “down there” indicated consent to touching her inner thigh and vaginal area.

Because the parties’ accounts are conflicting, the Panel considers whether there is evidence outside the parties’ accounts sufficient to tip the scales between the parties’ conflicting accounts and overcome the presumption that Damian is not responsible for the alleged misconduct. Here, there are two witness accounts related to the May 1 allegation—Haddie’s roommate, Elise, and Damian’s roommate, Chris.

When asked if she talked to Haddie about her interactions with Damian, Elise stated, “Yeah, she would tell me about their dates or how the relationship was going.” When asked if they discussed any interaction on May 1, Elise stated that on the morning of May 2, she asked Haddie how her night with Damian had gone the night before. Elise stated that Haddie told her that she and Damian had “made out,” but that Haddie did not say anything more than that. When asked to describe Haddie’s demeanor when she told Elise about the night, Elise stated that it was early in the morning, so Haddie was “kind of quiet and groggy.” Elise stated that Haddie “didn’t really show much emotion one way or the other.” The Panel finds Elise’s account insufficient to tip the scales, because it does not speak to what occurred during the sexual contact or whether Haddie consented to the contact.

At the hearing, Chris stated that he came home the evening of May 1 and Haddie was over with Damian. When asked where Haddie was when he walked in the dorm, Chris stated, “They were hanging out in the living room.” When asked what Damian and Haddie were doing when he came home, Chris stated, “Just hanging out like talking. I didn’t see anything else.” When asked if Haddie was sitting or standing when he came in, Chris stated, “I don’t remember.” When asked how long Haddie stayed after he came home, Chris stated, “I don’t know. I probably just went to my room and gave them space.” The Panel finds that Chris’s account is likewise insufficient to tip the scales so as to overcome the presumption of nonresponsibility. Chris did not observe any sexual contact or any other interaction between the parties that would indicate whether Haddie consented to the sexual contact that occurred.

Therefore, the evidence outside the parties’ accounts is insufficient to tip the scales between the parties’ conflicting accounts. Considering the presumption of non-responsibility that applies to Damian, the Panel finds insufficient evidence to determine it is more likely than not that Haddie did not consent to Damian touching her inner thigh and vaginal area. Consequently, the Panel finds insufficient evidence to determine it is more likely than not that Damian engaged in Sexual Assault on May 1, 2026.

In reaching this finding, the Panel considered that the parties’ accounts conflict as to why they stopped engaging in sexual contact, specifically whether they stopped because Chris came home, as Damian stated, or because Haddie said she had to go home because she had work in the morning, as Haddie stated. However, the Panel does not find the reason the parties stopped engaging in sexual contact to be material to the finding as to whether Haddie consented to Damian touching her breasts, inner thigh, and vaginal area. Even assuming Haddie stopped the sexual contact, that does not on its own indicate that she did not consent to the contact.

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Moreover, while Haddie stated that she was uncomfortable with the contact, she did not state that she stopped the contact because she was uncomfortable or because the contact was nonconsensual; she stated that she stopped the contact because she had to work early in the morning so she needed to go home. Consequently, the Panel does not find the parties' accounts of why they stopped engaging in sexual contact to impact the finding.[10]

Background Information Related to Haddie's May 3, 2026 Allegations

The parties agree that on the evening of May 2 and early morning hours of May 3, they both attended a party off campus where they both consumed alcohol. The Panel considers background information regarding the party in its analysis of the May 3 allegations.

Haddie stated that on the night of May 2 she and Damian were both planning to go to a party off campus at their friend Collin's house. Haddie stated that she rode to the party with her friend Bethany and arrived around 10:00 p.m. Haddie stated that Damian didn't come to the party until later. When asked what time she thought Damian arrived at the party, Haddie stated, "It was after 11 for sure, probably 11:15 or 11:30."

Haddie stated that she was "already pretty tipsy" by the time Damian arrived at the party. When asked what she had had to drink by that point, Haddie stated, "Bethany and I had a beer when we got there and then I had a White Claw. When Damian got there, we were doing tequila shots. I'd had one before he came and then we did one together right away." When asked how she would rate her level of intoxication on a scale of 0 to 10, 0 being completely sober and 10 being so intoxicated that she was passed out,[11] after the second tequila shot, Haddie stated, "At that point I would say an 8. I remember dancing after that, and I had to hang on to Damian because I felt like I was going to fall down." When asked how she would rate Damian's level of intoxication after the tequila shot, Haddie stated, "Like a 1 or 2. It was his first drink, so I didn't notice anything different."

When asked what she had to drink the rest of the night, Haddie stated, "It's hard for me to remember, because the details of that night are pretty fuzzy after that point. I think I had a mixed drink of some sort."

[10] The Panel also notes that Chris's account does not contradict or corroborate either party's account as to why they stopped engaging in sexual contact. Chris stated that he could not recall whether Haddie was sitting or standing when he came in or how long Haddie stayed after he got home.

[11] The intoxication scale is asked by the investigator to assist in understanding how an individual views their own intoxication level and how that compares to reports from others about an individual's level of intoxication and its impact on them. How an individual ranks themselves or others on the intoxication scale is not determinative of whether that individual or someone else was incapacitated.

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When asked to describe her interactions with Damian at the party, Haddie stated, “We were pretty much together the whole time. We danced and talked to people. Normal party stuff.” When asked if they had any physical or sexual contact at the party, Haddie stated, “Well, we were dancing and probably kissed a few times. All of our friends knew we had been hanging out together, so we weren’t trying to hide it or anything. We probably had our arms around each other or were holding hands, stuff like that. But nothing sexual at the party.”

When asked what time she left the party, Haddie stated, “Sometime between 1 and 2. I remember that Bethany left around 1 and asked me if I was ready to go. Damian said that he could take me back to campus, so I stayed a little longer.” Haddie stated that soon after Bethany left, Damian asked her if she was ready to go home and she said yes.

When asked how she would rate her level of intoxication on the intoxication scale at the time she left the party, Haddie stated, “I would say a 9. I just remember bits and pieces of the ride back to campus and everything seems a bit fuzzy.” When asked how she would rate Damian’s level of intoxication, Haddie stated, “I would say he was only at like a 1 or 2. He was driving, so after that first shot, he just sipped on a beer, but I don’t even think he finished it. I remember asking if he wanted something when I was getting a drink and he said no because he had to drive.”

When asked what she recalls from the ride back to campus, Haddie stated, “Not much. I was pretty drunk. I remember turning on Taylor Swift’s ‘22’ really loud and singing along. But it was a short ride. I don’t remember anything besides that.”

Damian stated that on Saturday, May 2, he and Haddie “met up” at a friend’s party off campus. Damian stated that Haddie got there before him and was texting him, asking where he was and telling him to come. Damian stated, “She was like, ‘Get over here so that I can dance with you.’” Damian provided the following text messages exchanged between the parties on May 2:

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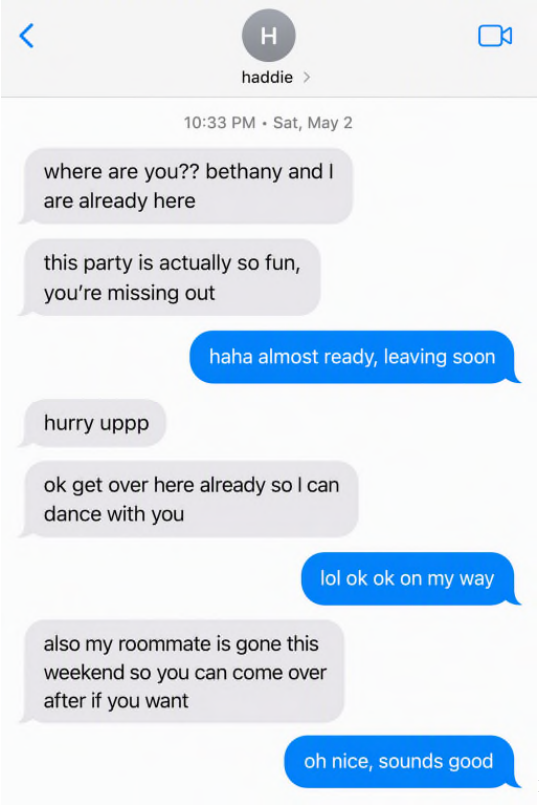

Damian stated that he got to the party around 11:00 and "right away Haddie wanted [him] to do a shot with her." When asked how he would rate Haddie's level of intoxication on the intoxication scale after they did the shot together, Damian stated, "Maybe like a 5 or 6. She was definitely letting loose and being a little silly, but she could walk and wasn't puking or anything like that." When asked how he would rate his own level of intoxication at that point, Damian stated, "A 1 or a 2. I had only had that shot, so I wasn't feeling anything."

When asked to describe their interactions at the party, Damian stated, "We just hung out, talked to people, danced. She was getting pretty spicy while we were dancing." When asked to explain what he meant by "spicy," Damian stated, "Like she was grinding up on me, like pushing her hip region into mine."

When asked what the two of them each drank after the shot they had when he arrived, Damian stated, "I maybe drank half of a beer. I had driven so I didn't want to drink more than that." Damian stated, "Haddie had another drink but nothing crazy, just some fruity mixed drink."

[12] In her response to the Investigation Report and Supplemental Directly Related Evidence, Haddie wrote, "The texts Damian provided mean nothing. I sent those before I was super drunk. And just because I invited him over doesn't mean I consented to having sex with him. He took advantage of me when I was vulnerable."

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When asked how long they stayed at the party, Damian stated, “We went back to campus at about 1:30 I’d say.” When asked if they left together, Damian stated, “Yeah, I drove Haddie back to campus. She had come with a friend, but she left earlier, and I told Haddie I could bring her home.”

When asked how he would rate Haddie’s level of intoxication when they left the party, Damian stated, “Like a 4 or 5. She was still buzzed but was not stumbling or slurring her words.” When asked how he would rate his own level of intoxication at that point on the intoxication scale, Damian stated, “Still a 1 or 2. I felt totally normal and capable of driving.”

When asked to describe their interactions on the car ride back to campus, Damian stated, “It was a short ride, like less than 10 minutes. Haddie was choosing the music and singing and stuff. We were just having a good time.”

In her response to the Directly Related Evidence, Haddie stated, “Damian told the investigator that I was grinding up on him at the party. Dancing with him did not mean that I wanted to have sex with him. Plus, I remember dancing with him at the party because I wasn’t that drunk yet, but my memory of the time back at my place is very limited. I was too drunk to consent by the time we got back to campus.”

In addition to the parties’ accounts of the party, several witnesses provided accounts of the parties’ interactions and alcohol consumption at the party.

When asked if she saw Haddie and Damian on May 2, Bethany stated that they were all at a party together off campus that night. Bethany stated that she drove Haddie to the party, but Haddie did not come back to campus with her. Bethany stated that they arrived at the party around 10:00 p.m. When asked what, if anything, Haddie had to drink at the party, Bethany stated, “When we got there we each had a beer, and then Haddie had another drink right away. I don’t remember what it was. After that I know she had a couple of shots, and I’m pretty sure a mixed drink at some point too.” When asked if she could estimate the total number of drinks Haddie had, Bethany stated, “I wasn’t counting exactly, but it was at least, I’d say, five drinks, maybe a little more. She was definitely drinking more than me because I had to drive back to campus. Plus, she stayed longer than me, so she might have kept drinking after I left. I’m not sure.” When asked what time she left the party, Bethany stated, “Around 1. I asked Haddie if she wanted to leave with me, but Damian said he’d take her home, so she stayed.” When asked how she would rate Haddie’s level of intoxication on the intoxication scale at the time Bethany left the party, Bethany stated, “I’d say like a 7 or 8. She was slurring a little and being really giggly, and at one point she kind of stumbled on the dance floor and had to grab onto Damian.” When asked how she would rate Damian’s level of intoxication, Bethany stated, “He seemed pretty sober, honestly. Like a 2. I knew he had driven, so I don’t think he was drinking much.”

Collin stated that he hosted a party at his house off campus on May 2. When asked, Collin stated that he saw Damian and Haddie at the party. When asked, Collin stated that both Damian and Haddie were drinking at the party. When asked what Haddie had to drink, Collin stated, “I wasn’t really keeping track of her drinks, but I saw her do a couple of shots and she had a drink

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in her hand for most of the night." When asked how he would rate Haddie's level of intoxication on the intoxication scale, Collin stated, "Maybe a 4 or 5? She was having fun and dancing, but she didn't seem out of control or anything. I've definitely seen people way more wasted at parties." When asked whether Haddie had any trouble walking or talking, Collin stated, "Not that I noticed. She was talking and dancing fine. I remember her laughing a lot." When asked how he would rate Damian's level of intoxication, Collin stated, "Like a 1. He told me he was driving Haddie home, so he was mostly just hanging out with a beer."

Mark stated that he and his roommates threw a party at their house off campus on May 2. When asked, Mark stated that he saw Haddie and Damian at the party. When asked, Mark stated that Haddie and Damian were drinking at the party. When asked how much Haddie had to drink, Mark stated, "I really couldn't tell you. I wasn't counting and I wasn't with her the whole time." When asked whether Haddie seemed intoxicated, Mark stated, "I don't know. She was being loud, and I saw her spill part of her drink at one point." When asked if he observed anything else, Mark stated, "She was definitely tipsy, but she was also still carrying on conversations. I talked to her for a few minutes about our chem class and she was telling me this whole story about her lab partner—she was making sense, remembering details, that kind of thing." When asked where he would put Haddie on the intoxication scale, Mark stated, "I don't know, somewhere in the middle maybe? Or on the higher end? It's hard to say. She might have been drunk, but it wasn't like she was passing out or couldn't function." When asked how much Damian had to drink at the party, Mark stated, "I couldn't say. I saw him take a shot, but he seemed totally with it." When asked where he would rate Damian on the intoxication scale, Mark stated, "Maybe a 2?" When asked why he would rate him a 2, Mark stated, "Like I said, he was acting completely normal. I didn't notice any signs of him being drunk. But I know he had at least one drink."

Analysis of May 3, 2026 Sexual Exploitation Allegation

Haddie alleged that Damian engaged in Sexual Exploitation on May 3, 2026, in the form of removing Haddie's clothing without her consent. Haddie also alleged that she did not have capacity to consent to the removal of her clothing.

Under the Policy, Sexual Exploitation occurs when a person takes nonconsensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited. Examples include intentional removal or attempted removal of clothing that exposes an individual's bra, underwear, or intimate body part, or that is otherwise sexual in nature, without consent. Under the Policy definition of consent, an individual known to be—or who should be known to be—incapacitated cannot consent.

Therefore, the Panel must determine (1) what conduct occurred; (2) whether Haddie was incapacitated; and, if not, (3) whether Haddie consented.

What Conduct Occurred

Haddie alleged that Damian removed her bra and underwear on May 3 while they were in her dorm room in Residence Village.

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When asked what happened when they got back to campus, Haddie stated that Damian parked outside their dorm and said he would walk her to her room. Haddie stated, "I think he was worried that I wouldn't be able to make it on my own. But I also think he saw an opportunity to take advantage of me." Haddie stated that when they got to her door, Damian came in with her. When asked if they talked about Damian coming in, Haddie stated, "I don't remember how that happened." When asked if she had expected Damian to come in with her, Haddie stated, "I don't remember what I expected. I was pretty out of it." When asked if anyone else was in the room at that time, Haddie stated, "My roommates in the other bedroom were home, but I think they had gone to bed. My immediate roommate was at her parents' house for the weekend."

When asked what happened after they got into the dorm room, Haddie stated, "We ended up in my bedroom. I don't remember how. And we were making out. My memory goes in and out. I remember clothes coming off. And then the next thing I know we were both naked and he was having sex with me." When asked who removed which articles of clothing, Haddie stated, "I was wearing a dress. I think he kind of pulled it up and then I took it off the rest of the way. But he definitely took off my bra and underwear by himself. I remember unbuttoning his shirt, but he took it off and removed his pants and boxers." Haddie stated, "But I never would have let any of that happen if I hadn't been so drunk."

Damian stated that when they got back to campus, he offered to walk Haddie to her dorm room. Damian stated, "She had suggested earlier on in the night that I should come over after the party. It was also late at night, so I wanted to make sure she got in alright." Damian stated that when they got to Haddie's door, she invited him in and told him her roommate was back home for the weekend. Damian stated that Haddie walked to her bedroom and he followed her there. Damian stated that they talked for a while about the party and then started kissing. Damian stated, "Things just progressed from there. We started to take each other's clothes off and had sex."

When asked who took off which articles of clothing, Damian stated, "The first thing that happened was that she took off her dress. That's when I was like, 'Okay, this is happening.'" When given an opportunity to respond to Haddie's account that Damian had pulled her dress up and she took it off the rest of the way, Damian stated, "Yeah, I think I like pushed it up her leg, but she is the one who lifted it up over her head and took it off." When asked how far up her leg he lifted the dress, Damian stated, "I don't know, just to like mid-thigh."[13]

Damian stated, "She took off my shirt. I think we both removed our own underwear." When given an opportunity to respond to Haddie's account that Damian removed her underwear, Damian stated, "No. I'm positive that she took them off herself. I started taking mine off and then she did the same." When asked if Haddie was wearing a bra, Damian stated, "Yeah, and I think I took that off. So we were completely naked when we were having sex."

[13] At the hearing, when given an opportunity by the Panel to respond to Damian's account that during the encounter on May 3, he only lifted her dress to mid-thigh, Haddie stated, "I don't remember how far he lifted it."

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When given an opportunity to respond to Damian's account that they both removed their own underwear, Haddie stated, "I can't remember. It's all a blur."

Therefore, the parties' accounts are consistent that Damian removed Haddie's bra, and the Panel accordingly finds sufficient evidence to determine it is more likely than not that Damian removed Haddie's bra.

The parties' accounts are conflicting as to which of them removed Haddie's underwear; however, the Panel notes an internal inconsistency in Haddie's own account: she initially stated Damian removed her underwear, but when given an opportunity to respond to Damian's account, she stated she could not remember. In light of the parties' conflicting accounts and the inconsistency within Haddie's own account, and considering the presumption of non-responsibility that applies to Damian, the Panel finds insufficient evidence to determine it is more likely than not that Damian removed Haddie's underwear.[14] Accordingly, the Panel's remaining analysis of the Sexual Exploitation allegation addresses only the removal of Haddie's bra.

Capacity

Having determined what conduct occurred, the Panel next considers whether Haddie was incapacitated as defined by the Policy at the time Damian removed her bra. Under the Policy, incapacitation is the physical and/or mental inability to understand the fact, nature, or extent of the sexual situation. Incapacitation may result from mental or physical disability, sleep, unconsciousness, involuntary physical restraint, or from the influence of drugs or alcohol. With respect to incapacitation due to the ingestion of alcohol or other drugs, incapacitation requires more than being under the influence of alcohol or other drugs; a person is not incapacitated just because they have been drinking or using other drugs. Where alcohol and other drugs are involved, incapacitation is determined based on the facts and circumstances of the particular situation, looking at whether the individual was able to understand the fact, nature, or extent of the sexual situation; whether the individual was able to communicate decisions regarding consent, non-consent, or the withdrawal of consent; and whether such condition was known or reasonably should have been known to the accused or a reasonable, sober person in the accused's position.

The Panel finds that even Haddie's own account indicates she was not incapacitated at the time of the sexual encounter. While Haddie stated her "memory goes in and out" and that some details are "fuzzy," she recalls a number of specific details from the time leading up to, during, and right after the sexual encounter. Leading up to the sexual encounter, Haddie recalls what time she left the party, Bethany leaving before her and asking if she was ready to go, Damian offering to bring her back to campus and asking if she was ready to go, and choosing and singing particular music

[14] The Panel notes that even if Haddie's account was not internally inconsistent, there is no evidence outside the parties' accounts to tip the scales between their conflicting accounts regarding who removed Haddie's underwear, as none of the witnesses nor any of the other evidence speaks to the removal of Haddie's underwear.

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on the car ride back. During the sexual encounter, Haddie remembers each party removing particular items of their own or the other's clothing, including that Haddie unbuttoned Damian's shirt and removed her own dress and that Damian removed her bra, pulled up her dress, removed his shirt after she unbuttoned it, and removed his own pants and boxers.[15] Additionally, as discussed in more detail below, Haddie recalls Damian putting on a condom, how the parties were positioned during sex, and what thoughts she was having during sex. Finally, as described in more detail below, Haddie also remembered details about what happened immediately after the parties' sexual encounter, including Damian getting out of bed, throwing away the condom, putting on his pants, and going to the bathroom, Haddie pretending to be asleep when he returned, and Damian kissing Haddie on the cheek and telling her he was going to go back to his room before leaving. In addition to recalling details of the evening, Haddie also gave an account that she engaged in conduct that required a certain degree of dexterity and/or decision-making, including choosing music on the ride home, singing along to the music, unbuttoning Damian's shirt, and removing her own dress.

Therefore, Haddie's own account reflects a degree of awareness, dexterity, and decision-making inconsistent with incapacitation as defined by the Policy. Choosing music, singing along, unbuttoning a shirt, removing her own dress, and recalling the sequence and details of the sexual encounter indicate that Haddie was able to understand the fact, nature, or extent of the sexual situation and was able to communicate decisions. Furthermore, in light of Haddie's own account of her outward actions, a reasonable, sober person in Damian's position would not have reasonably believed Haddie to be incapacitated. Consequently, the Panel finds that even considering Haddie's own account, there is insufficient evidence to determine that she was incapacitated at the time Damian removed her bra.

In reaching this finding, the Panel considered Haddie's account that she had to hang on to Damian while they were dancing at the party because she felt like she was going to fall down. However, a single instance of reduced physical functioning is insufficient to reach a finding of incapacitation, especially in light of the other portions of Haddie's account that indicate she retained capacity. Additionally, Haddie herself indicated that she was not incapacitated at the time she was dancing at the party. In her response to the Directly Related Evidence, Haddie stated, "Damian told the investigator that I was grinding up on him at the party. Dancing with him did not mean that I wanted to have sex with him. Plus, I remember dancing with him at the party because I wasn't that drunk yet, but my memory of the time back at my place is very limited. I was too drunk to consent by the time we got back to campus." Furthermore, Haddie's action in holding on to Damian while dancing—a common occurrence when couples dance—would be insufficient on its own to indicate to Damian or a reasonable sober person in Damian's

[15] The Panel recognizes that when given an opportunity to respond to Damian's account that they both removed their own underwear, Haddie stated, "I can't remember. It's all a blur." However, originally, Haddie's account indicated that she clearly remembered Damian removing her underwear, stating, "But he definitely took off my bra and underwear by himself." Therefore, Haddie's account of her ability to remember who removed her underwear is inconsistent.

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position that Haddie was incapacitated, again, especially in light of the other outward actions in which Haddie engaged that indicated she retained capacity.

In reaching the above finding, the Panel also considered Haddie's account regarding how many drinks she consumed at the party and the ratings she gave herself on the intoxication scale. However, the Panel finds Haddie's account regarding the impact the alcohol had on her memory, her functioning, and her decision-making ability to be far more indicative of whether she was incapacitated than her account of the number of drinks she consumed or the intoxication rating she gave herself. Drinks can vary in the percentage of alcohol they contain, and alcohol can affect each person differently, depending on various factors. Likewise, different people can view and rate their own or other's levels of intoxication differently. The most reliable evidence of whether a person was incapacitated is the tangible ways in which the alcohol impacted them, particularly the outward manifestations of their incapacitation, since the standard under the Policy is whether the accused or a reasonable, sober person in the accused's position knew or should have known the person was incapacitated.

In reaching the above finding, the Panel also considered that Haddie stated, regarding the removal of clothing, "But I never would have let any of that happen if I hadn't been so drunk." However, the Policy does not define incapacity as a state in which a party's decisions are influenced by the consumption of alcohol, but rather the inability to understand the fact, nature, or extent of the sexual situation and the inability to communicate decisions regarding consent, non-consent, or the withdrawal of consent. The fact that someone would have made a different decision if sober is insufficient without more to support a finding that the individual was incapacitated.

Finally, in reaching the above finding, the Panel notes that even if the Panel needed to look outside the parties' accounts and consider witness accounts related to Haddie's level of intoxication and capacity to consent, the witness accounts vary as to the degree to which Haddie appeared to be intoxicated and the conduct in which she engaged that would demonstrate her capacity or incapacity to consent. As a result, the witness accounts would be insufficient to impact a finding as to whether Haddie was incapacitated.

Therefore, considering the evidence from Haddie's own account that indicates she retained awareness and decision-making ability during the encounter, the Panel finds insufficient evidence to determine it is more likely than not that Haddie was incapacitated as defined by the Policy at the time Damian removed her bra.

Consent

Having found insufficient evidence of incapacitation, the Panel must determine whether Haddie consented to Damian removing her bra.

When asked if she engaged in words or overt actions indicating consent to Damian removing her bra and underwear, Haddie stated, "No, we weren't talking at all. And I had clearly communicated the night before that I wanted to take things slow."

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When asked if Haddie engaged in words or overt actions to indicate that she consented to Damian removing her bra, Damian stated, “Well, we had already talked about me touching her breasts the night before and now she was taking off her own dress and taking off my shirt, so she was participating in that whole progression. She also kept kissing me and touching me that whole time. She was clearly into it all.” Damian stated, “Oh, and I specifically remember that I was having trouble, like with the clasp thingy, and she kinda turned her body to make it easier for me to take it off.”

When given an opportunity to respond to Damian’s account that he was having trouble with her bra clasp and that she turned her body to make it easier for him, Haddie stated, “No, I don’t remember that happening.”

Therefore, while Haddie stated that she did not engage in any words or overt actions indicating that she consented to Damian removing her bra, Damian’s account points to several factors indicating consent, such as Haddie turning her body to make it easier for Damian to unclasp her bra, Haddie’s participation in the removal of clothing by removing her own dress and removing Damian’s shirt, Haddie’s continued participation in kissing and touching Damian, and the context of the conversation the night before in which, as described in more detail above, Haddie agreed to Damian touching her breasts. The Panel finds that under Damian’s account, a reasonable person in Damian’s position would believe those words and actions by Haddie indicated a willingness to have Damian remove her bra, especially when considering the presumption of nonresponsibility that applies to Damian.

In relying in part on the parties’ conversation and subsequent sexual contact the night before, the Panel recognizes that under the Policy, prior consent does not by itself constitute consent to future sexual contact or activity. Nonetheless, under the Policy, “the manner and nature of prior communications between the parties and the context of the relationship may be factors in determining whether there was consent.” Here, the prior communication is considered *along with* Haddie’s actions prior to Damian removing her bra as evidence indicating consent.

The Panel also notes that under the Policy, “[w]hether an individual actively and willingly participates in conduct may be a factor in determining whether there was consent.” Here, Damian stated that Haddie participated in the removal of her bra by turning her body to make it easier for him to unclasp the bra and participated in the removal of clothing more generally by removing her own dress and removing Damian’s shirt.

Furthermore, the Panel notes that while Haddie stated that she did not engage in words or actions indicating consent to Damian removing her bra, her own account corroborates that many of the words and actions Damian described occurred, including that Haddie removed her dress, unbuttoned Damian’s shirt, and said it was fine for Damian to touch her breasts the night before.

Nonetheless, Haddie does not agree that she engaged in all of the actions Damian described. In light of the differences between the parties’ accounts, the Panel considered whether evidence outside the parties' accounts is sufficient to tip the scales between their differing accounts. However, here, none of the evidence outside the parties’ accounts speaks to whether Haddie

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consented to Damian removing her bra. Therefore, the evidence outside the parties' accounts is insufficient to tip the scales and overcome the presumption that Damian is not responsible.

Therefore, in light of the presumption of nonresponsibility that applies to Damian, the Panel finds insufficient evidence to determine it is more likely than not that Damian removing Haddie's bra was nonconsensual. Accordingly, the Panel finds insufficient evidence to determine it is more likely than not that Damian engaged in Sexual Exploitation of Haddie on May 3, 2026.

Analysis of May 3, 2026 Sexual Assault Allegation

Haddie alleged that Damian engaged in Sexual Assault on May 3, 2026, in the form of nonconsensual sexual penetration in Haddie's dorm room in Residence Village. The Panel must determine (1) what sexual contact occurred; (2) whether Damian initiated the sexual contact found to have occurred; if so, (3) whether Haddie was incapacitated; and, if not, (4) whether Haddie consented to the sexual contact.

What Sexual Contact Occurred

The parties agree that they had sexual intercourse in Haddie's dorm room in the early morning hours of May 3.

When asked to describe what happened after their clothing was removed, Haddie stated, "He was just on top of me and having sex with me. I remember feeling frozen and not understanding how we had gotten to that point." When asked what happened next, Haddie stated, "He got out of bed, threw away the condom, put on his pants and went out to the bathroom. I just laid there. I was in shock." Haddie stated, "When he came back to the room, I pretended to be sleeping. He kissed me on the cheek and told me he was going to go back to his room. Then he left." When asked when during the encounter Damian had put on the condom, Haddie stated, "I think it was when he took off his underwear, but I'm not positive. It all happened so quickly."

When asked to describe how they started having sex once their clothes were off, Damian stated, "I grabbed a condom out of my wallet and put it on. Then I got back on the bed with her and we started having sex." When asked to describe the position they were in when having sex, Damian stated, "I was on top of her." When asked what happened next, Damian stated, "I went to the bathroom to clean up. It was pretty late by then, so we said goodbye and I went back to my place."

Accordingly, the Panel finds sufficient evidence to determine it is more likely than not that sexual penetration occurred, which constitutes sexual contact under the Policy.

Initiation

Having determined what sexual contact occurred, the Panel considers whether Damian initiated the sexual penetration. When asked to describe what happened after their clothing was removed, Haddie stated, "He was just on top of me and having sex with me. I remember feeling frozen and not understanding how we had gotten to that point." When asked to describe how they started having sex once their clothes were off, Damian stated, "I grabbed a condom out of my wallet and

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put it on. Then I got back on the bed with her and we started having sex." When asked to describe the position they were in when having sex, Damian stated, "I was on top of her." Accordingly, in light of the parties' consistent accounts that it was Damian who took action to begin the sexual penetration, the Panel finds sufficient evidence to determine it is more likely than not that Damian initiated the sexual contact.

Capacity

Having determined that Damian initiated the sexual penetration, the Panel considers whether Haddie was incapacitated at the time the sexual penetration occurred. The parties' accounts indicate that the removal of Haddie's bra and the sexual intercourse took place close in time within the same sexual encounter. As described in more detail above, the Panel has found that based on Haddie's own account, there is insufficient evidence to determine that Haddie was incapacitated at the time Damian removed her bra. While it is possible for an individual to have capacity at one point and then lose capacity, Haddie's account indicates that she continued to have capacity through the end of the sexual encounter. In addition to recalling details related to the removal of clothing, as discussed above, Haddie remembered Damian putting on a condom, the position they were in while having sex, and specific thoughts and feelings she had during sex. When asked to describe what happened after their clothing was removed, Haddie stated, "He was just on top of me and having sex with me. I remember feeling frozen and not understanding how we had gotten to that point."[16] Finally, as described above, Haddie recalled specific details about what happened immediately after they had sex, including Damian getting out of bed, throwing away the condom, putting on his pants, and going to the bathroom; Haddie pretending to be asleep when he returned; and Damian kissing Haddie on the cheek and telling her he was going to go back to his room before leaving. Therefore, Haddie's account indicates that she remembered details throughout the whole sexual encounter. Furthermore, as discussed above, Haddie's account indicates that she retained the ability to engage in certain conduct—such as removing her dress and unbuttoning Damian's shirt—just before sexual penetration occurred. Consequently, the Panel finds insufficient evidence to determine it is more likely than not that Haddie was incapacitated as defined by the Policy at the time of the sexual penetration.

[16] The Panel recognizes that Haddie's statement that during sex she remembered not understanding how they had gotten to that point could indicate that she literally did not understand what had happened to lead to that point. However, the Panel finds that Haddie's account of the conduct prior to the sexual intercourse indicates that she did have *capacity* to understand the fact, nature, or extent of the sexual situation. Nonetheless, the Panel recognizes that Haddie may not have understood how they had gotten to the point of having sex when there had been no communication of consent, as described below. Still, Haddie's account of her specific memory of what she was thinking during sex weighs against a finding that she was incapacitated at the time sexual penetration occurred.

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Consent

Having found insufficient evidence of incapacitation, the Panel must determine whether Haddie consented to the sexual penetration. Under the Policy, consent means words or overt actions by a person in advance clearly communicating a freely given present agreement to participate in a particular sexual contact or activity. It is the responsibility of the person initiating the specific sexual contact to obtain consent.

When asked to describe what happened after their clothing was removed, Haddie stated, "He was just on top of me and having sex with me. I remember feeling frozen and not understanding how we had gotten to that point." When asked if she engaged in any words or overt actions indicating that she consented to having sex, Haddie stated, "No. Again, we weren't talking at all. And I had told him the night before that I wasn't ready to have sex."

When asked to describe how they started having sex once their clothes were off, Damian stated, "I grabbed a condom out of my wallet and put it on. Then I got back on the bed with her and we started having sex." When asked to describe the position they were in when having sex, Damian stated, "I was on top of her." When asked if either of them said anything around the time they started having sex, Damian stated, "I don't think we said anything, besides maybe she said my name and was like moaning and stuff." When asked if Haddie engaged in words or overt actions indicating that she consented to having sex, Damian stated, "She engaged in a lot of actions, like taking off her clothes and my shirt and kissing me and touching me. Just the whole progression. Plus, she was the one who invited me in, told me her roommate was gone, and led me to her bedroom. It was obvious where we were heading, and she never showed any sign of being uncomfortable with it."

When given an opportunity to respond to Damian's account that she said his name and was moaning during sex, Haddie stated, "No. I was not. No way."

The Panel finds that neither party's account indicates that Haddie engaged in words or overt actions in advance clearly communicating a freely given present agreement to participate in sexual penetration. Neither party points to any verbal communication of consent. Damian points to actions by Haddie, including her removal of her own and his clothing, kissing, touching, inviting him in, and leading him to her bedroom. However, while such actions indicate agreement to participate in being in her bedroom together, making out, and removing clothing, none of these actions clearly communicated an agreement to participate in sexual penetration. Under the Policy, consent to one form of sexual contact or activity does not, by itself, constitute consent to any other forms of sexual contact or activity.

The Panel further notes that the parties agree that the night before, on May 1, Haddie expressed hesitation about engaging in sexual contact at that point in their relationship and specifically said that she was not ready to have sex. While the parties' accounts are consistent that Haddie eventually agreed to at least some form of sexual touching and that Damian touched Haddie's breasts, inner thigh, and vaginal area, a reasonable person in Damian's position would not have

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understood Haddie's above-described actions on May 3, without more, to indicate that Haddie had changed her mind about being ready to have sex.

The Panel notes that Damian's account seems to be looking for a "no" instead of affirmative consent. Damian stated, "It was obvious where we were heading, and she never showed any sign of being uncomfortable with it." However, under the Policy, silence or the absence of resistance or saying "no," in and of themselves, cannot be interpreted as consent.

In finding that neither party's account indicates that Haddie consented to sexual penetration, the Panel recognizes that when asked if either of them said anything around the time they started having sex, Damian stated, "I don't think we said anything, besides maybe she said my name and was like moaning and stuff."[17] However, in addition to Damian's ambivalent account that Haddie "maybe" said his name and moaned, under the Policy, consent must be words or overt actions by a person *in advance* clearly communicating a freely given present agreement to participate in a *particular* sexual contact or activity; Haddie moaning and saying Damian's name at some point around the time the intercourse began do not indicate consent in advance to the particular sexual contact of sexual penetration. Additionally, while the Panel recognizes that under the Policy, whether an individual actively and willingly participates in conduct may be a factor in determining whether there was consent, Damian's account of Haddie "maybe" saying his name and moaning around the time they started having sex is insufficient on its own to show that she was actively and willingly participating in the sexual penetration, much less to clearly communicate in advance an agreement to participate in such contact.

Therefore, the Panel finds sufficient evidence to determine it is more likely than not that Haddie did not consent to sexual penetration. Accordingly, the Panel finds sufficient evidence to determine it is more likely than not that Damian engaged in Sexual Assault on May 3, 2026.

Conclusion

For the above reasons, the Panel finds sufficient evidence to determine it is more likely than not that Damian engaged in Sexual Assault of Haddie on May 3, 2026, in the form of nonconsensual sexual penetration, but finds insufficient evidence to determine it is more likely than not that Damian engaged in Sexual Assault of Haddie on May 1, 2026, or Sexual Exploitation of Haddie on May 3, 2026.

[17] The Panel notes that Haddie denied this, as discussed above.

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