Trauma-Informed Training for First Responders, Confidential Resources, and Campus Security

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Kathryn Nash



Pamela Kovacs

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Agenda

- The Legal Landscape
- Title IX Team
- Neurobiology of Sexual Assault
- Creating a Culture of Understanding and Prevention



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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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Sexual Violence Statistics

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Sexual Violence Statistics

United Educators' Study

- 28% of reports resulted in lawsuits, demand letters, or federal Title IX complaints
- Types of sexual assault:
  - Incapacitation: 33%
  - Physical force: 29%
  - Failed consent: 16%
  - Sexual coercion: 13%
  - Drug-facilitated: 7%



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Sexual Violence Statistics

- 78% of incidents involved one or both parties consuming alcohol
- 40% of complainants delayed reporting, waiting, on average, nearly a year after the incident
- 80% of complainants were freshmen or sophomores
- 90% of complainants knew the respondent



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Legal Overview



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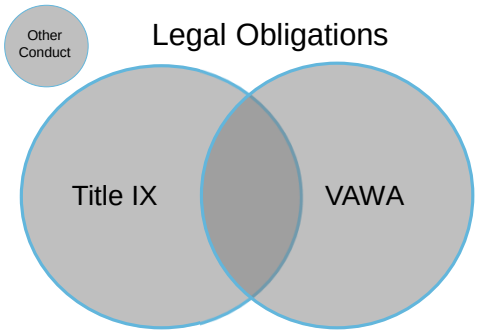
Legal Obligations



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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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Enforcement and Guidance

- OCR's Role:
  - Issue guidance
  - Compliance reviews
  - Investigations (with DOJ)
  - Agency enforcement (Resolution agreements)
- DOJ's Role:
  - Investigations (with OCR)
  - Judicial enforcement (lawsuits)



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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

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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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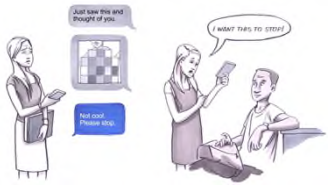
Title IX – Sexual Harassment

- 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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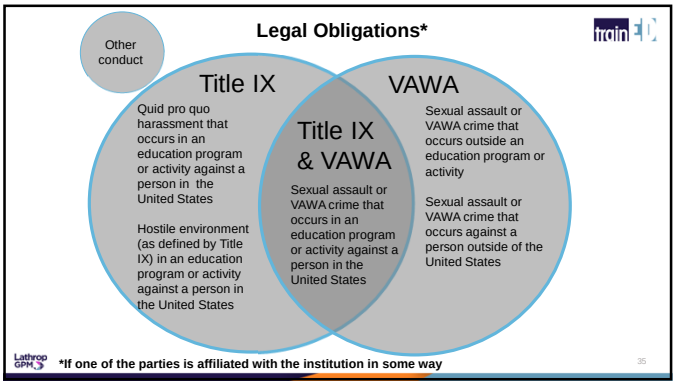

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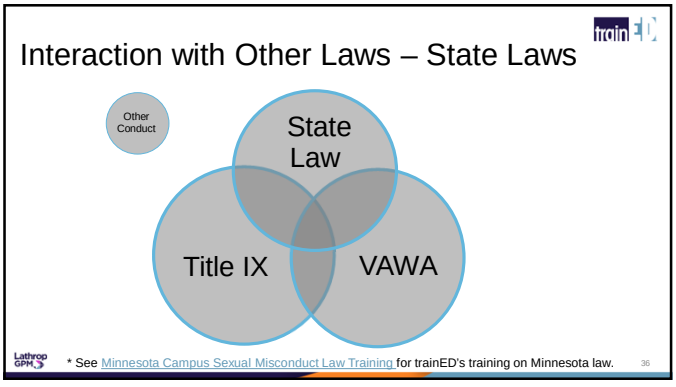

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Interaction with Other Laws

- FERPA: Family Educational Rights and Privacy Act
  - Limits disclosure of student education records
  - Several exceptions permit disclosure
    - In Title IX cases, exception permits school to disclose to both parties all directly related evidence, all information in the investigation report and attachments that goes to the 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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Case Study – Maya/Kevin

- Maya, a sophomore, stops by her RA's room one evening and tells her RA the following:
- A graduate teaching assistant in her biology department, Kevin, has been making her uncomfortable all semester. It started about two months ago when Kevin began commenting on her appearance during lab sections — saying things like "you're too pretty to be stuck in a lab" and "I'd love to take you out sometime." When Maya didn't respond, Kevin started finding excuses to stand behind her during lab, placing his hands on her shoulders and the small of her back while "helping" with her lab work.

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Case Study – Maya/Kevin

- Maya says that after she told Kevin she wasn't interested and asked him to stop, things escalated. Over the past three weeks, she has noticed Kevin waiting outside her other classes, and he has shown up at the campus coffee shop where she studies almost every evening. She discovered Kevin had been messaging her roommate to find out Maya's daily schedule. Maya says she now looks over her shoulder constantly, has stopped going to the coffee shop, changed her walking routes, and has trouble sleeping. She is thinking about dropping the biology course.
  - What potential policy violation(s) has Maya alleged?
  - What laws are implicated? Title IX? Clery? VAWA?
  - What should the RA do?

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Title IX Team



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Session Overview

- Identifying the Title IX Team
- Title IX Coordinator Responsibilities
- The Complaint/Grievance Process
- First Responders
  - Designated First Responders (Campus Safety Officers; Title IX Coordinator; Deputy Coordinators)
  - Confidential Resources
  - Other First Responders
- Case Studies

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The Team

- Title IX Coordinator
- Deputy Coordinator(s)
- Investigators
- Adjudicators/hearing board
- Appeal officers
- Campus Security
- Student Affairs
- Human Resources
- Counseling/support service providers
- Community partners
- Others



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Title IX Coordinator Responsibilities

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Title IX Coordinator Responsibilities

- Create and implement policies
- Ensure training requirements are met
- Oversee the grievance process to ensure compliance and effectiveness
- Identify and address any patterns or systemic problems
- Additional responsibilities

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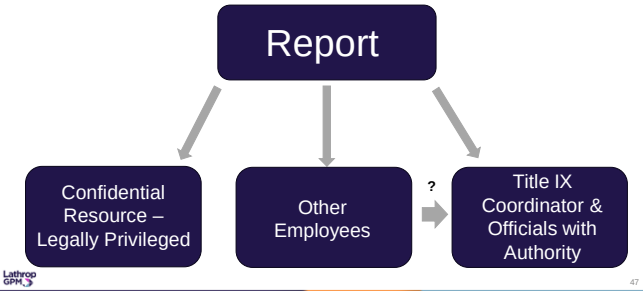
Responding to a Report



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Response of Title IX Coordinator

- Title IX Coordinator can delegate intake duties to others but:
  - Avoid conflicts
  - Make roles and responsibilities clear

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Title IX Coordinator's Response to Report

- Assess immediate safety and well-being for individual and campus
  - Consider whether emergency removal is necessary
- Notify complainant of right to contact law enforcement (or not to) and seek medical treatment; offer institution's assistance
- Ensure report is entered into crime log and assessed for timely warning, if applicable
- Offer/provide supportive measures
- Explain the process for filing a complaint
- Provide written notice of rights to complainant (VAWA)
- Notify complainant of importance of preserving evidence (VAWA)

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Responding to a Report - Supportive Measures

- Offered to complainant and respondent
- Must be non-disciplinary, non-punitive
- Must be without fee or charge to the complainant or respondent
- Available before or after the filing of a formal complaint or where no formal complaint is filed
- Designed to restore or preserve equal access to recipient's education program or activity without unreasonably burdening the other party
- Including measures designed to protect safety of all parties or the educational environment, or deter sexual harassment
- Must maintain as confidential as long as confidentiality does not impair ability of the institution to provide measures

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Responding to a Report - Supportive Measures

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

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Responding to a Report

- 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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Responding to a Report—Requests for Confidentiality or No Action

- Recommended Approach:
  - Factors to consider
    - Seriousness of the alleged harassment
    - Increased risk of additional violence by the respondent
      - Other complaints about the same respondent
      - History of violence from arrests/records from prior school
      - Respondent threatened further violence
    - Increased risk of additional violence under similar circumstances
      - Pattern of perpetration at a given location or with a certain group
    - Whether sexual violence was perpetrated with a weapon
    - Age of the complainant

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Responding to a Report—Requests for Confidentiality or No Action

- Recommended Approach:
  - Factors to consider (cont.)
    - Whether school has other means to obtain evidence (security footage, eyewitness, or physical evidence)
      - Notice will still need to identify parties involved
    - Rights of the respondent to receive information about the complainant and the allegations if a formal proceeding with sanctions may result
    - Whether the report alleges sexual harassment by an employee against a student
    - Whether the respondent is in a position of authority

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Responding to a Report—Requests for Confidentiality or No Action

- Recommended Approach:
  - If the school determines it *can* honor the request for confidentiality/no action
    - Continue to offer supportive measures
  - If the school determines it *cannot* honor the request for confidentiality/no action
    - Inform the complainant prior to proceeding
    - Continue to offer supportive measures
    - Title IX Coordinator signs formal complaint and begins process

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The Complaint/Grievance Process

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Informal Resolution

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

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Formal Grievance Process

- The process the school uses to resolve sexual harassment complaints. This includes the fact-gathering investigation and any hearing or decision-making process the school uses to determine:
  - Whether or not the conduct occurred using
    - Preponderance of the evidence standard ("more likely than not") or
    - Clear and convincing evidence standard ("highly probable"); and
  - If the conduct occurred, what actions the school will take to eliminate the hostile environment, prevent its recurrence, and remedy its effects, which may include:
    - Imposing sanctions on the respondent;
    - Providing remedies for the complainant; and
    - Addressing the campus community



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Formal Grievance Process—Equal Rights for the parties

- Interview/hear from both parties
- Equal opportunity for parties
  - Identify/present fact witnesses and evidence, including inculpatory and exculpatory evidence
  - Access to evidence (if any) (Title IX and VAWA)
    - Must allow access for sexual assault/VAWA
    - Must send hard copy or electronic format for Title IX
  - Right to an advisor (may be attorney) (Title IX and VAWA)
    - May limit extent of participation (must apply equally)
    - If party has no advisor, school will provide for cross-examination



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Formal Grievance Process—Equal Rights for the parties

- Equal opportunity for parties (cont.)
  - Participate in pre-hearing meeting (if any)
  - Identify/present character or expert witnesses (if any)
  - Written notice of
    - Meetings
    - Allegations
    - Informal Resolution Process
  - Written simultaneous notices of determination



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Formal Grievance Process

- Privileged information
  - Do not require, allow, rely upon, otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legally recognized privilege, unless person holding such privilege has waived the privilege
- Treatment records
  - Institution cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the school obtains that party's voluntary, written consent to do so

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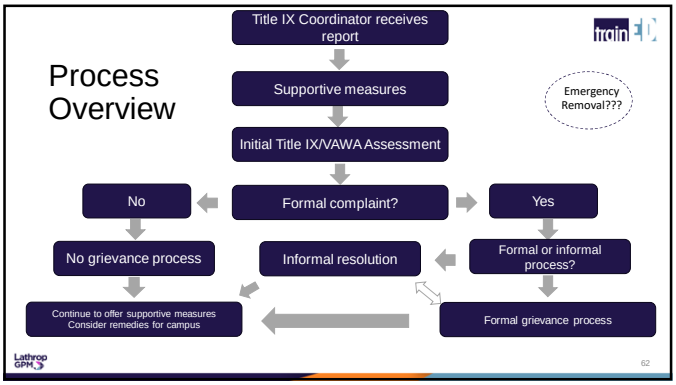
Process Overview



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Criminal Process

- Institution's complaint process is separate from criminal investigation
- Institution may not dissuade complainant from going to police in cases involving allegations of criminal conduct—should encourage reporting to police
- Institution 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
- Institution may not delay for criminal prosecution

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First Responders

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Who are First Responders?

Designated

- Title IX Coordinator and Deputy Coordinators
- Campus Security

Confidential

- Counselors
- Health center personnel
- Clergy
- Others with legal privilege

Other

- Title IX team
- Student services
- RAs and other residential staff
- Coaches
- Faculty
- Others

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Role of All First Responders

- Assist the institution in stopping harassment, preventing its recurrence, and addressing its effects
  - Speak up if you see inappropriate behavior
  - Encourage reporting – help break down barriers to reporting
  - Build confidence in the school's process, so perpetrators are held responsible
  - Make Title IX Coordinator aware of reports*
  - Handle matter discreetly – need to know (generally just Title IX Coordinator)*
  - Create awareness of available resources and supportive measures to ensure that complainants get help

*Confidential resources must keep all reports confidential and cannot share report unless statutory exception applies

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Designated First Responders

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Role of Designated First Responder

- Institution-specific decision – Level of involvement in process and at what point to hand matter over to Title IX Coordinator or Deputy Coordinator
- If responsible for intake of report/complaint
  - Allow individual to provide a narrative account
  - Use form to document the report/complaint, helpful to know:
    - Who – name of respondent, relationship to complainant, relationship to institution (student, staff, faculty, visitor)
    - What – nature of allegation (differential treatment, sexual harassment, sexual assault, domestic violence, dating violence, or stalking) – don't need all of the details
    - When – Date and time the alleged incident occurred
    - Where – location of alleged incident

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Role of Designated First Responder

- If responsible for intake of report/complaint (cont.)
  - Obtain consent to move forward with process, if not, explain that Title IX Coordinator will evaluate request for confidentiality
  - Review policy and procedures, including supportive measures, right to report to police, available resources
  - Provide written notice of rights

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Clery CSAs

- "Campus Security Authority" under Clery
  - Campus security department
  - Individuals or organizations designated to receive reports of criminal incidents from students and employees
  - Officials who have significant responsibility for student and campus activities
- Clery reporting duties
  - If CSA receives a report of a Clery crime – must include it as a crime report in Clery statistics (daily crime log and annual security report)
  - If CSA receives a report of a Clery crime and institution considers it to be a serious or continuing threat to students and employees – timely warning
  - Process for gathering statistics varies from institution to institution

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Role of Campus Safety

- Level of involvement is an institution-specific decision
  - Likely conduct intake of report/complaint
  - May be involved in initial risk assessment and immediate protective actions, if any
  - May serve as investigator

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Confidential Resources

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Who Are Confidential Resources?

- Confidential resources under Title IX:
  - Professional and pastoral counselors
  - Others with state law privilege
  - Non-professional counselors or advocates?
  - Others designated as confidential by the institution?

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Who Are Confidential Resources?

- Pastoral counselor:
  - A person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor
- Professional counselor:
  - A person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of his or her license or certification
- Anyone designated as confidential under state law and is functioning under such designation

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Who Are Confidential Resources?

- Non-professional counselors or advocates?
  - Other individuals who provide assistance to individuals who experience sexual violence, but who are not professional or pastoral counselors
  - Includes all individuals who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women's centers, or health centers, including front desk staff and students
  - Confidential resource?
    - Depends on state law

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Student Health Services: Confidential Resources

- Screen students for incidents of sexual violence and sexual harassment
- Receive training:
  - best practices for interacting with victims
  - preserving evidence
  - campus disciplinary processes
  - locally available resources
- Must be available to meet with victims



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Who Are Confidential Resources?

- Others designated as confidential by the institution?
  - An employee designated by the institution as confidential for purposes of providing services to persons related to sexual misconduct
- Caution!
  - Only confidential as to the institution – may be required to disclose in the event of a legal process later
  - Risk that knowledge could trigger institution's response obligations if it is later determined that individual is an official who has authority to institute corrective measures on behalf of the institution

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Case Study – Jalen/Lauren

- Jalen, a junior, walks into the campus counseling center without an appointment and asks to speak with someone. He is visibly upset and anxious. He is paired with Dr. Reyes, a licensed professional counselor employed by the university's counseling center.
- Jalen tells Dr. Reyes the following: He has been dating another student, Lauren, for about eight months. Things were good at first, but over the past two months Lauren has become increasingly controlling and jealous. Lauren insists on knowing where Jalen is at all times, goes through his phone, and has told him he is "not allowed" to spend time with friends unless Lauren is present. When Jalen pushes back, Lauren becomes physically aggressive — shoving him and grabbing his arms hard enough to leave marks.

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Case Study – Jalen/Lauren

- Last weekend, Jalen told Lauren he wanted to take a break from the relationship. Lauren responded by slapping Jalen across the face and blocking the door to his residence hall room, telling him, "You're not breaking up with me." Jalen's suitemate texted him asking if everything was okay and knocked on the door. Lauren eventually stormed out crying.
- Jalen says he has not reported the incident to anyone else. He came to the counseling center because he does not know what to do and is worried about how Lauren will react going forward and what will happen when he runs into her on campus.
  - What potential policy violation(s) has Jalen described?
  - What laws are implicated? Title IX? Clery? VAWA?
  - What should Dr. Reyes do with the information Jalen has provided?

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Information Confidential Resources Should Provide to Complainants

- Provide complainants with reporting options and rights
  - Explain right to report to campus authorities and/or local law enforcement
  - Offer to assist with filing such complaints
- Discuss the reporting and the campus disciplinary processes (institution specific)
  - Complaint filed with Title IX Coordinator
  - Informal or formal resolution
  - Describe process – i.e. fact-finding investigation, possible hearing
  - Interim measures, possible sanctions

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Information Confidential Resources Should Provide to Complainants

- Discuss process if report to law enforcement
  - What is the local legal process for sexual assault or sexual harassment claims?
- Inform/offer information regarding legal assistance
- Discuss/offer campus resources for counseling, medical, and academic support, as well as other support services or interim measures



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Information Confidential Resources Should Provide to Complainants

- Discuss the importance of preserving evidence
  - Try to avoid activities that could damage evidence, such as: bathing, showering, cleaning up the area, using the rest room, changing clothes, brushing hair, doing laundry
  - Try to store any physical evidence in an impermeable or non-porous container
  - Write down everything you can remember about the incident as soon as possible
  - Take photographs
  - Save any text messages, social media communications, etc. that could be helpful
  - Record the chain of custody

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Information Confidential Resources Should Provide to Complainants

- Discuss school's prevention of and response to retaliation
  - Title IX includes protections against retaliation
  - School officials will not only take steps to prevent retaliation, but also take strong responsive action if it occurs
  - This includes retaliatory actions taken by the school and school officials



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Information Confidential Resources Should Provide to Complainants

- Disclose institution's limited ability to respond if request for confidentiality
- Written notice of rights (resources, how to request interim measures)



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Case Study – Jasmine/Marcus

- Pastor David is an ordained minister who serves as the full-time campus chaplain at a small liberal arts college. In that role, he leads weekly chapel services, organizes interfaith programming, and provides pastoral counseling to students who seek him out for spiritual guidance. Pastor David also supervises a group of student worship leaders who help plan and lead the chapel services each week.
- Jasmine is a junior who serves as one of the student worship leaders. After a Tuesday evening rehearsal for the upcoming chapel service, Jasmine and Pastor David are straightening up the stage in the chapel. Jasmine mentions that she has been having a hard time focusing on her worship preparation lately. Pastor David asks what has been going on.

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Case Study – Jasmine/Marcus

- Jasmine tells Pastor David that she and her boyfriend, Marcus, have been fighting a lot lately. She says they have been dating for about six months and that she really cares about him, but they keep having the same argument about physical boundaries in their relationship. Jasmine says she has told Marcus that she wants to honor God in their relationship and that she is not comfortable going further physically, but Marcus keeps pushing. She says that last weekend, when they were alone in his dorm room, Marcus started touching her in ways she had asked him not to, and when she pulled away and said no, he got frustrated and told her she was "being ridiculous" and that "this is what people in relationships do." She says that she eventually pulled away and left. She says Marcus later apologized and said he "got carried away," and things have been tense between them since.

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Case Study – Jasmine/Marcus

- Jasmine's eyes fill with tears and she says, "I just don't know what to do. I want to do what's right. I don't want to get Marcus in trouble. I just needed to talk to someone. And I know I can trust you to not tell anyone and that you will give me good advice."
  - What potential policy violation(s) has Jasmine described?
  - What laws are implicated? Title IX? Clery? VAWA?
  - What should Pastor David do with the information Jasmine provided?

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Limitations on Confidential Resources – Dual Roles

- Employees who have state law privilege must be functioning within the scope of their recognition as pastoral counselor or of their professional license or certification

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Other First Responders

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Case Study – Derek/Dr. Randall

- Dr. Anita Chen is a tenured professor in the English Department. She has completed the university's annual Title IX training, which covered her obligation to report information about potential sex discrimination and sexual harassment to the Title IX Coordinator.
- Derek is an adjunct instructor in the English Department. He and Dr. Chen have been colleagues for three years and have a friendly professional relationship. One afternoon, Derek stops by Dr. Chen's office to return a book he borrowed. They chat for a few minutes, and then Derek closes the door and says he needs to tell her something.

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Case Study – Derek/Dr. Randall

- Derek tells Dr. Chen that Dr. Randall, the department chair, has been making him increasingly uncomfortable. He says it started last semester when Dr. Randall began making comments about Derek's appearance — telling him he "cleaned up nice" at department events and once saying, "If I were twenty years younger, watch out." Derek says he laughed it off at first, but the comments have become more frequent and more personal. A few weeks ago, at a department happy hour, Dr. Randall put his hand on Derek's thigh under the table and whispered something suggestive in his ear. Derek says he moved away but didn't say anything because Dr. Randall controls adjunct course assignments and he cannot afford to lose his classes.

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Case Study – Derek/Dr. Randall

- Derek then tells Dr. Chen that last Friday, Dr. Randall called him into his office to discuss his spring teaching schedule. During the meeting, Dr. Randall closed his office door, came around to his side of the desk, stood very close to him, and said that he "takes care of people who take care of him." Derek says he understood this to mean that his course assignments depended on being receptive to his advances. He says he made an excuse and left, but he has been anxious ever since about whether he will be assigned courses next semester.
- Derek says, "Anita, I'm telling you this as a friend. I don't want to file a complaint — I just need someone to talk to. Please don't say anything. If Randall finds out I said something, he'll pull my courses and I won't be able to pay my rent."
- Dr. Chen listens, expresses concern, and tells Derek she is sorry he is going through this. She does not mention her reporting obligations under Title IX.

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Case Study – Derek/Dr. Randall

- What potential policy violation(s) has Derek described?
- What laws are implicated? Title IX? Clery? VAWA?
- What are Dr. Chen's reporting obligations? Can she honor Derek's request for confidentiality?
- What should Dr. Chen have done differently?

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Employee Reporting Obligations

- Recommended approach:
  - All non-confidential employees report potential sexual harassment to Title IX Coordinator
  - If unsure whether to report, ask Title IX Coordinator for guidance without sharing identifiable information

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Role of Other First Responders

- Role does NOT include:
  - Keeping report confidential from Title IX Coordinator
  - Investigating the complaint* – not your job to get all of the details
  - Adjudicating the complaint*
  - Answering detailed questions relating to process
  - Promising that institution won't move forward with process unless individual consents

*If you play dual role – serving as first responder and investigator/adjudicator on same case – may create conflict

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Other First Responders: Responding to a Report

- If possible, before information revealed, disclose:
  - You are not a confidential resource
  - Depending on information shared may be required to report to Title IX Coordinator
  - You cannot promise confidentiality, but will be discreet
- Only share information with individuals responsible for handling the institution's response (e.g., Title IX Coordinator, Deputy)
- If an individual wants confidentiality, offer assistance in finding a confidential resource

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Other First Responders: Responding to a Report

- Explain institution's process including:
  - Report to Title IX Coordinator
    - Offer to assist the individual in reporting to Title IX Coordinator
    - Explain if you have information of possible sexual misconduct, you must report to Title IX Coordinator
  - Title IX Coordinator evaluates request for confidentiality
  - Supportive measures available
  - Protections against retaliation
  - Complaint resolution process (institution specific)
  - Discuss the importance of preserving evidence
- Direct individual to Title IX Coordinator for specific questions

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Neurobiology of Sexual Assault

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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
- Impact of Culture
- Interacting with the Parties



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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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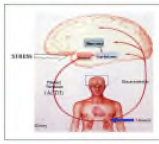
Neurobiology of Sexual Assault

Brain-Body Regions Impacted by Trauma

HPA Axis

Balances body following stress by releasing of various hormones/chemicals



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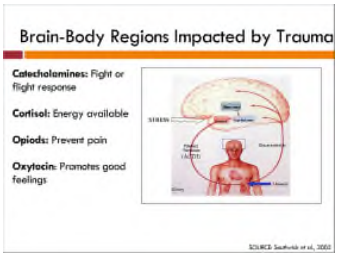
Neurobiology of Sexual Assault



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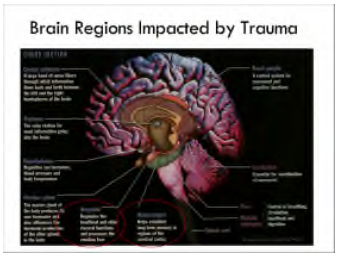
Neurobiology of Sexual Assault



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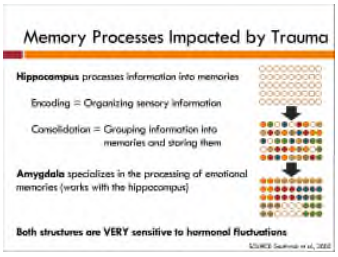
Neurobiology of Sexual Assault



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Neurobiology of Sexual Assault

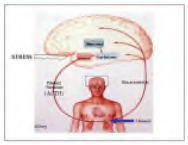
Like These . . .

Catecholamines: Fight or flight response

Cortisol: Energy available

Opiods: Prevent pain

Oxytocin: Promotes good feelings



THESE HORMONES IMPAIR MEMORY CONSOLIDATION

SOURCE: Southwick et al., 2005

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Neurobiology of Sexual Assault

What Happens During A Sexual Assault

Amygdala Detects Threat → Activates Hypothalamus → HPA Axis Kicks In Hormonal Flood

SOURCE: Banks, 2005; Southwick et al., 2005

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Neurobiology of Sexual Assault

What Happens During A Sexual Assault

Catecholamines Increase	• Impairs rational thought
Opioids Increase	• Causes flat affect
Corticosteriods Decrease	• Reduces energy

SOURCE: Banks, 2005; Southwick et al., 2005

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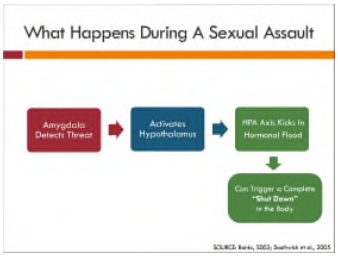
Neurobiology of Sexual Assault



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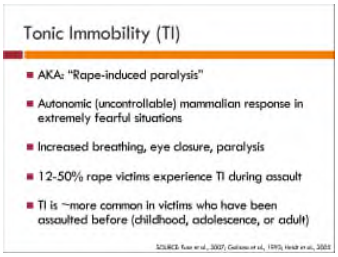
Neurobiology of Sexual Assault



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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

[redacted]

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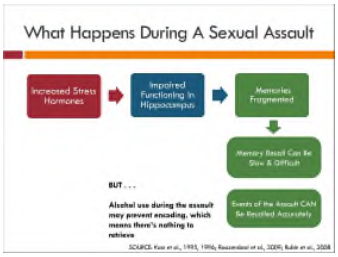
Memory

What Happens During A Sexual Assault



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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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PK1 Lincoln: Please make usual video preparations.
Kovacs, Pamela J., 2026-09-11T19:12:08.072

Impact of Culture

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



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Trauma-Informed Approach Gone Wrong

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

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Take Away

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

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Interacting with Complainant: Responding to a Report

- Offer to go with individual to Title IX Coordinator to make a report/file a complaint
- If individual instead chooses to tell you:
  - Allow individual to tell their account
  - Slow down
  - Make individual feel comfortable
  - Not "investigating" allegation – don't need all of the details
  - Don't ask questions about what individual was wearing
  - Don't ask if the individual said no, yelled for help, tried to fight, tried to run
  - Use "account" or "experience" – not "story"
  - Don't draw conclusions – you aren't adjudicating
  - Take detailed notes after the individual is done
  - Be transparent about how information will be used
  - Contact the Title IX Coordinator

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Interacting with Respondent

- Recognize stress involved with being accused of sexual misconduct
  - Respondent may be defensive or nervous
- Do not appear to take sides
- Don't draw conclusions – you aren't adjudicating
- Use impartial language
- Explain complaint process
- Afford same opportunity to provide narrative of experience
  - Not "investigating" allegation – don't need all of the details
- Be transparent in your roles and responsibilities
- Be transparent in how information will be used
- Contact the Title IX Coordinator

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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 by the parties
  - Give appearance of bias/lack of impartiality

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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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Creating a Culture of Understanding & Prevention



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Missing the Mark

- Common Concerns from Students:
  - Lack of clarity and transparency in policy and process
  - Lack of communication and coordination with parties
  - Lack of fairness and equity
  - Complainants discouraged from reporting
  - Retaliation/harassment and re-victimization
  - Inadequate support during and after process
  - Failure to accommodate documented disabilities
  - Dissatisfaction with outcome or sanctions
  - Inadequate training, education, and prevention programs

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Creating a Culture of Understanding

- Confidentiality – Revisited
  - Importance of Confidential Resources
    - Make confidential resources available and publicize their availability
      - Train employees to notify complainants of their right to talk to a confidential resource
    - Many complainants will end up reporting after talking to a confidential resource
  - Even if confidentiality is not requested, always respect the parties' privacy
  - These practices will create trust on your campus and encourage reporting



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Training

Who?

- Title IX Coordinators
- Investigators
- Individuals on hearing panels or who have responsibility for student discipline decisions
- Student Affairs/HR
- Residence Life staff
- Security
- Counseling staff
- Other employees likely to witness or receive reports – faculty, certain staff, coaches, and athletic department members
- Student leaders
- New students and employees
- Existing students and employees

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Awareness and Prevention

- Collaboration with Title IX Coordinator
- Training for employees
- Training for students
  - bystander awareness
  - consent, incapacitation, coercion
  - the role of alcohol in sexual misconduct
  - reporting and resources
  - consequences of sexual harassment
  - discrimination
  - hazing and bullying
  - healthy relationships
- Awareness campaigns – It's on Us, Locker Room Talk
- Collaborations between student groups on campus

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Upcoming Trainings

- **Trainings for individuals with heightened responsibility:**
  - September 30, 2026 - Conducting a Live Hearing Under Title IX/VAWA
  - October 6, 2026 – Non-Hearing Adjudicator Training
  - October 8, 2026 - Title IX/VAWA Appeal Officer Training

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On Demand Trainings

- **Available on-demand:**
  - Annual Training for New Title IX Coordinators and Deputy Coordinators
  - Annual Training for Advanced Title IX Coordinators and Deputy Coordinators
  - Title IX/VAWA Investigator Training
  - Conducting a Live Hearing Under Title IX/VAWA
  - Title IX/VAWA Appeal Officer Training
  - Trauma-Informed Training for First Responders, Confidential Resources, and Campus Security
  - Non-Hearing Adjudicator Training
  - Informal Resolution Training
  - Exploring Alternative Non-Hearing Options for Resolving Complaints of Sex Discrimination
  - Notice of Allegations: Strategies of Drafting, Amending, and Avoiding Common Mistakes
  - Minnesota Campus Sexual Misconduct Law Training

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Slide 133

PK1 Lincoln: Please prepare the video as usual.
Kovacs, Pamela J., 2026-09-11T19:24:08.847