



TITLE IX/VAWA HEARING PANEL TRAINING

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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
- Overview of Process
- Working with the Parties
- Intake and Investigation Process
- Hearing/Decision-Making Process
 - Legal requirements
 - Stages of adjudication process
 1. Prepare for hearing
 2. Conduct hearing
 3. Deliberate and make determination
 4. Determine sanctions and remedies
 5. Draft notice of determination
 - Case study
- Appeals




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TERMINOLOGY

- DOE = Department of Education
- Recipient = Institutions covered by Title IX
- OCR = Department of Education's Office for Civil Rights
- VAWA = Violence Against Women Reauthorization Act
- FERPA = Family Educational Rights and Privacy Act
- CSA = Campus Security Authority
- Investigation/Grievance Procedures/Complaint Procedures
- Adjudicator/Decision-Maker/Hearing Panel
- Complainant/Reporting Party/accuser/victim/survivor
- Respondent/Responding Party/accused/alleged perpetrator




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TERMINOLOGY

- Complainant
 - An individual who is alleged to be the victim of conduct that could constitute sexual harassment
- Respondent
 - An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

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THE LEGAL LANDSCAPE





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SESSION OVERVIEW 

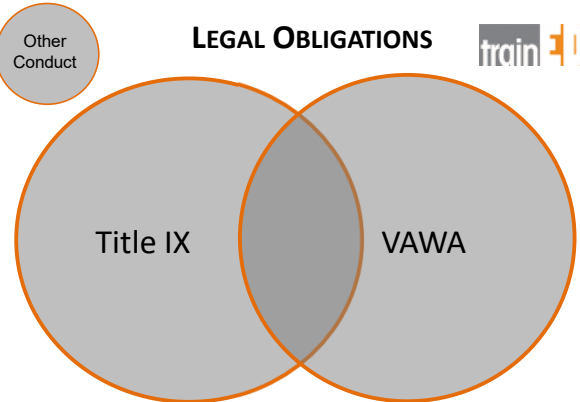
- Title IX
- Clery Act
- Violence Against Women Reauthorization Act
- Defining Sexual Misconduct
- Interaction with Other Laws
- Risks of Non-Compliance
- Training Requirements
- Recordkeeping Requirements



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LEGAL OBLIGATIONS 




Other Conduct

Title IX


VAWA

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TITLE IX 


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




20 U.S.C. § 1681

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WHO MUST COMPLY WITH TITLE IX? 

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



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**DISCRIMINATION
"ON THE BASIS OF SEX"** 

- Includes:
 - Sexual harassment
 - Differential treatment




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**WHEN INSTITUTIONS MUST
RESPOND UNDER TITLE IX** 

- 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 INSTITUTIONS MUST RESPOND UNDER TITLE IX 


- Actual knowledge
 - Notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or an official who has authority to institute corrective measures on behalf of the institution
 - Notice includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator
 - Vicarious liability and constructive notice are insufficient
 - Standard not met if the only official with actual knowledge is the respondent

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WHEN INSTITUTIONS MUST RESPOND UNDER TITLE IX 


- Actual knowledge (cont.)
 - The following does not qualify an individual as having the authority to institute corrective measures
 - Mere ability or obligation to report sexual harassment
 - Ability or obligation to inform a student about how to report
 - Being trained in how to report

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WHEN INSTITUTIONS MUST RESPOND UNDER TITLE IX 


- 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 INSTITUTIONS MUST RESPOND UNDER TITLE IX 

- 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 both parties
 - Follow a legally compliant grievance process
 - Train individuals with heightened responsibilities
 - Train students and employees





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OCR'S ENFORCEMENT AND GUIDANCE 

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




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CLERY ACT

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



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VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT (VAWA)


- Extends Clery crimes to include VAWA crimes: domestic violence, dating violence, and stalking
- Requires discipline procedures for addressing sexual misconduct
- 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
 - VAWA crimes


quid pro quo

hostile environment

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

quid pro quo


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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


hostile environment


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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 

- VAWA Crimes
 - Sexual assault
 - Dating violence
 - Domestic violence
 - Stalking
- As defined in Clery
- Consent: No particular definition of consent with respect to sexual assault is required





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TITLE IX—SEXUAL HARASSMENT 

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




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TITLE IX—SEXUAL HARASSMENT 

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


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TITLE IX—SEXUAL HARASSMENT 


- **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 **NEW 2022!**
 - **Dating Violence:** person with whom victim has/had a social relationship of a romantic or intimate nature (determined by reporting party's perspective and length, type, and frequency of interaction)
 - **Stalking:** course of conduct directed at a specific person that would cause fear for safety or substantial emotional distress

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TITLE IX—SEXUAL HARASSMENT 

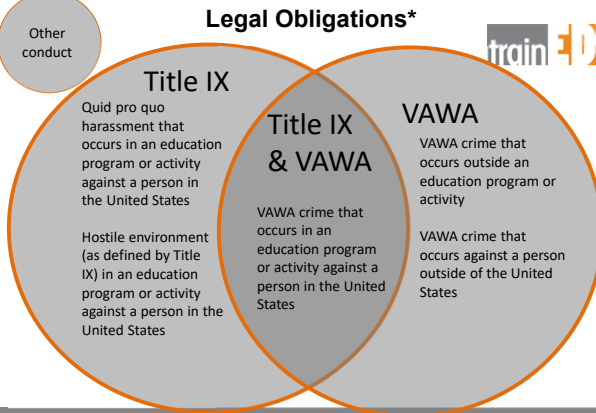
- Male/Female
- Female/Male
- Female/Female
- Male/Male
- Gender Identity



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Legal Obligations* 



Other conduct

Title IX
Quid pro quo harassment that occurs in an education program or activity against a person in the United States
Hostile environment (as defined by Title IX) in an education program or activity against a person in the United States

Title IX & VAWA
VAWA crime that occurs in an education program or activity against a person in the United States

VAWA
VAWA crime that occurs outside an education program or activity
VAWA crime that occurs against a person outside of the United States

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INTERACTION WITH OTHER LAWS 


- FERPA: Family Educational Rights and Privacy Act
- Disability accommodation laws
- State mandatory reporting laws
- Title VII/State anti-discrimination laws
- State student safety laws


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INTERACTION WITH OTHER LAWS 

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





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RISKS OF NON-COMPLIANCE 

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




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TRAINING REQUIREMENTS 

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

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TRAINING REQUIREMENTS 

- 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
- Decision-makers 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

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CHANGES TO TITLE IX 

- June 22-23, 2021: Public Notice & Dear Colleague Letter: DOE interprets Title IX to prohibit discrimination based on sexual orientation and gender identity
 - Relying on *Bostock v. Clayton County*
 - July 15, 2022: Federal judge in E.D. Tennessee temporarily blocked enforcement of guidance in 20 states
- August 24, 2021: DOE letter regarding regulation provision concerning statements of parties/witnesses who do not submit to cross-examination
- June 23, 2022: Proposed Title IX regulations
 - Open for public comment for 60 days from date of publication in the Federal Register (due 9/12)

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CHANGES TO TITLE IX—CHANGE TO CROSS-EXAMINATION RULE 

- If a party or witness does not appear at the hearing, decision-makers can consider other statements made by that individual in the decision-making process
 - Investigation report, text messages, police report, witness reports of statements, etc.
- Refusing to answer a question(s) or appear at the hearing may be considered in determining how much weight to give party’s/witness’s account or the credibility of their account
 - Still may not draw an inference regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer questions
- Consider allowing parties to use closing argument to share questions advisor would have asked that party or witness and how the individual’s testimony would have impacted the outcome
- Likely need to update written policy and procedures

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2022 PROPOSED
TITLE IX REGULATIONS




- Sex discrimination includes discrimination based on sex stereotypes, pregnancy, sexual orientation and gender identity
- Broader definition of “Sex-Based Harassment—Hostile Environment”
- Includes off-campus conduct that creates or contributes to hostile environment
- Expands employee reporting requirements

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2022 PROPOSED
TITLE IX REGULATIONS



- Supportive measures must be offered for any form of sex discrimination
- Procedural requirements for responding to allegations of any type of sex-based discrimination
- Additional procedural requirements for responding to allegations of sex-based harassment involving at least one student
 - Similar to 2020 regulations
 - Hearing not required, must have process for assessing credibility of parties/witnesses that includes the decision-makers asking live questions and for parties to have their questions asked
- Single investigator model is permissible

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Q & A



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OVERVIEW OF PROCESS

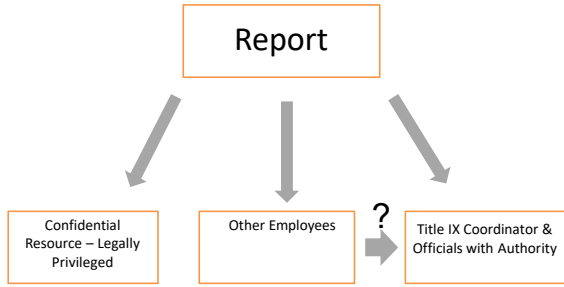


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RESPONDING TO A REPORT **train**



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RESPONDING TO A REPORT **train**


- Title IX Coordinator can delegate intake duties to others, but:
 - Avoid conflicts
 - Oversee training
 - Determine appropriate process
 - Ensure process is user-friendly
 - Make roles and responsibilities clear
 - Oversee process to ensure compliance and effectiveness




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RESPONDING TO A REPORT 

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




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RESPONDING TO A REPORT 


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

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RESPONDING TO A REPORT 


- Report vs. Formal Complaint
 - Report
 - Initiates obligation to respond, including offering supportive measures (see next slide for more details)
 - Complainant's identity may be kept confidential from respondent
 - Formal complaint
 - Initiates grievance process
 - Cannot be filed anonymously
 - Requires complainant's physical or digital signature or otherwise indicates that the complainant is the person filing the complaint
 - Title IX Coordinator can sign a complaint
 - Grievance process requires that complainant's identity be disclosed to respondent, if known


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RESPONDING TO A REPORT 

- Title IX Coordinator must promptly contact complainant (with or without formal complaint)
 - Inform complainant of the availability of supportive/interim measures with or without the filing of a formal complaint
 - Consider complainant's wishes with respect to supportive/interim 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/INTERIM 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/INTERIM MEASURES 

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



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RESPONDING TO A REPORT 

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



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RESPONDING TO A FORMAL COMPLAINT 


- Formal complaint
 - VAWA: No specific requirements
 - Title IX:
 - Document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment
 - At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed
 - Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party, and must comply with the requirements to be free from conflicts and bias

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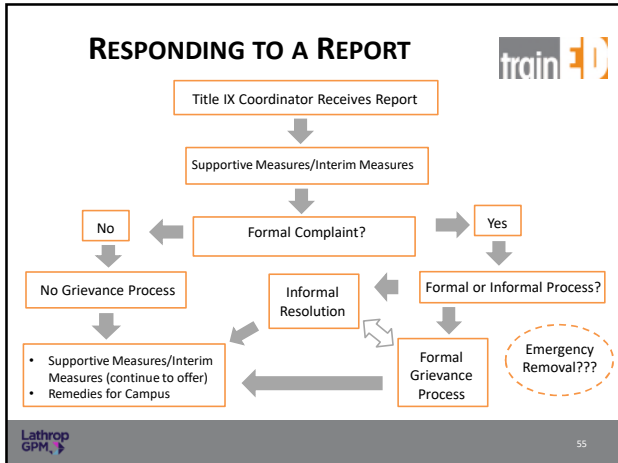
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INFORMAL RESOLUTION 

- 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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RESPONDING TO A FORMAL COMPLAINT – SUPPORTIVE/INTERIM MEASURES

- Review support/interim measures available during an investigation
 - Periodically update both parties on status of investigation
 - No contact orders
 - Available to both parties
 - Designed to restore or preserve equal access to education program or activity without unreasonably burdening the other party
 - All others mentioned earlier

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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 sexual harassment, 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 


- 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 applicable regulations before imposing disciplinary sanctions or other actions that are not supportive measures

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FORMAL GRIEVANCE PROCESS 


- Objective evaluation of all relevant evidence
 - Inculpatory and exculpatory evidence
 - Credibility determinations may not be based on status as complainant, respondent, or witness
- No conflicts of interest or bias as Title IX Coordinator, investigator, decision-maker, or facilitator of informal resolution process
 - For or against complainants or respondents generally
 - For or against an individual complainant or respondent
- Presumption of non-responsibility

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**FORMAL GRIEVANCE PROCESS:
DUAL ROLES UNDER TITLE IX** 

- Title IX requires independent decision-maker
 - Title IX Coordinator and decision-maker must be different individuals
 - Investigator and decision-maker must be different individuals
 - Title IX Coordinator and investigator may offer recommendations regarding findings and/or conclusions on responsibility, but decision-maker has independent obligation to objectively evaluate relevant evidence and cannot simply defer to recommendations
- Title IX Coordinator may act as investigator

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**FORMAL GRIEVANCE PROCESS—
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
 - Participate in pre-hearing meeting (if any)
 - Identify/present character or expert witnesses (if any)
 - Written notice of
 - Meetings
 - Allegations
 - Informal Complaint Process
 - Written simultaneous notices of determination




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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
- Parties have right for their advisors to receive a hard copy or electronic format of all directly related evidence and investigation report (Title IX only)
- Advisors may cross-examine parties and witnesses at live hearing (Title IX only)
- Institution must provide advisor 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 — CRIMINAL PROCESS 

- Separate from criminal investigation
- 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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FORMAL GRIEVANCE PROCESS 


- Policy must:
 - List all possible sanctions
 - Describe range of remedies available
 - Describe range of supportive measures available to both parties
 - Describe appeal bases and procedures

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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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FORMAL GRIEVANCE PROCESS 

- Any provisions, rules, or practices other than those required by the regulations that an institution adopts as part of its grievance process must apply equally to both parties




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FORMAL GRIEVANCE PROCESS — DISMISSAL OF FORMAL COMPLAINT 


- Mandatory dismissal under Title IX
 - Must dismiss formal complaint if alleged conduct
 - even if proved, would not constitute sexual harassment
 - did not occur in the institution's education program or activity or
 - did not occur against a person in the United States
 - Such dismissal does not preclude action under another provision of institution's code of conduct
- Discretionary dismissal under Title IX
 - May dismiss formal complaint if at any time during the investigation or hearing
 - complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations, therein
 - respondent is no longer enrolled or employed by the recipient or
 - specific circumstances prevent the recipient from gathering sufficient evidence to reach a determination as to the formal complaint or allegations therein

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FORMAL GRIEVANCE PROCESS — CONSOLIDATION OF FORMAL COMPLAINTS 


- Title IX: An institution may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the *allegations of sexual harassment arise out of the same facts or circumstances*
- VAWA: No specific guidance

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RECORDKEEPING REQUIREMENTS 


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

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RECORDKEEPING 

<ul style="list-style-type: none"> • Reports and complaints • Notice to respondent of complaint • Communications with parties and other correspondence relating to investigation (including documentation of verbal in-person/phone conversations) • No-contact orders and other interim measures (offered and whether accepted or declined) for both parties • Investigator’s notes • Party and witness statements, if applicable • Recordings of interviews or interview notes • Other evidence received (text messages, pictures, emails, etc.) • Investigation report or summary 	<ul style="list-style-type: none"> • Adjudicator or hearing panel notes • Notice of determination • Appeal records • Names of all involved in process (parties, witnesses, investigators, adjudicators, appeal officers) • Training records – relating to investigators, adjudicators, appeal officers, and other involved officials, as well as training received by parties • Records relating to complaints of retaliation or violation of interim measures or sanctions • Start and stop dates of investigation suspension • Records relating to other complaints involving same parties
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Lathrop GPM,  72

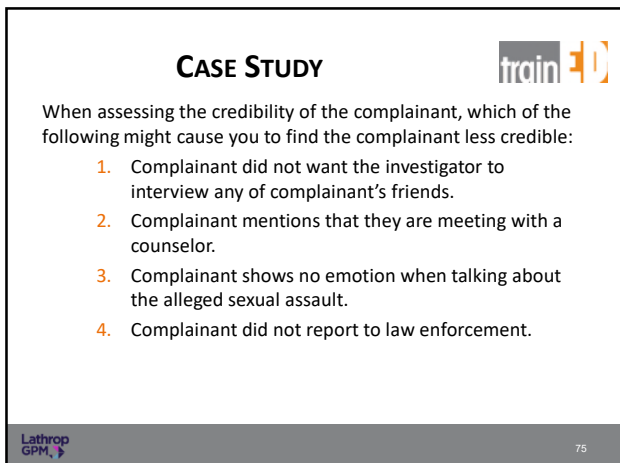
72



73



74




75

CASE STUDY

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


1. Respondent provides short, careful answers to all your questions.
2. Respondent told the investigator that respondent had text messages between respondent and the complainant, but later said that they must have been deleted somehow.
3. Respondent is very angry at complainant for bringing the complaint and calls complainant a liar.
4. Respondent has an attorney advisor.


Lathrop GPM,  76

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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




Lathrop GPM,  77


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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


Lathrop GPM,  78

78


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





Lathrop GPM,  80

80


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 

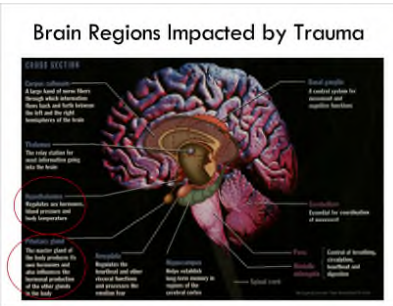
The Neurobiology of Sexual Assault


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82


NEUROBIOLOGY OF SEXUAL ASSAULT 

Brain Regions Impacted by Trauma



Lathrop GPM,  83

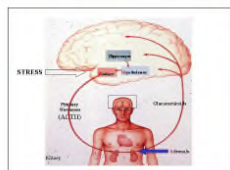
83

NEUROBIOLOGY OF SEXUAL ASSAULT 


Brain-Body Regions Impacted by Trauma

HPA Axis


Balances body following stress by releasing of various hormones/chemicals



SOURCE: Southwick et al., 2005

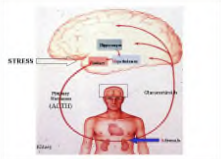
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84


NEUROBIOLOGY OF SEXUAL ASSAULT 

Brain-Body Regions Impacted by Trauma


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



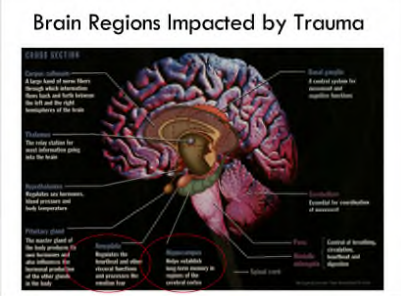
SOURCE: Southwick et al., 2005

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85

NEUROBIOLOGY OF SEXUAL ASSAULT 


Brain Regions Impacted by Trauma



SOURCE: Southwick et al., 2005

Lathrop GPM,  86

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NEUROBIOLOGY OF SEXUAL ASSAULT 

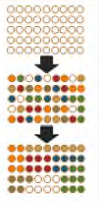
Memory Processes Impacted by Trauma

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



SOURCE: Southwick et al., 2005

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87

NEUROBIOLOGY OF SEXUAL ASSAULT

train ED

Like These . . .

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

THESE HORMONES IMPAIR MEMORY CONSOLIDATION

SOURCE: Southwick et al., 2005

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NEUROBIOLOGY OF SEXUAL ASSAULT

train ED

What Happens During A Sexual Assault

SOURCE: Banks, 2002; Southwick et al., 2005

Lathrop GPM, 89

89

NEUROBIOLOGY OF SEXUAL ASSAULT

train ED


What Happens During A Sexual Assault

SOURCE: Banks, 2002; Southwick et al., 2005

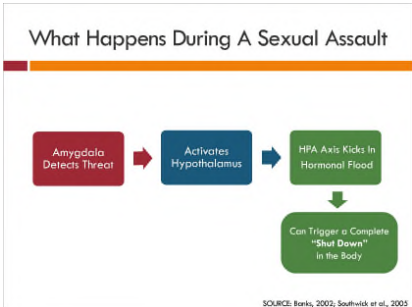
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NEUROBIOLOGY OF SEXUAL ASSAULT



What Happens During A Sexual Assault



```
graph TD; A[Amygdala Detects Threat] --> B[Activates Hypothalamus]; B --> C[HPA Axis Kicks In Hormonal Flood]; C --> D[Can Trigger a Complete "Shut Down" in the Body];
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SOURCE: Banks, 2002; Southwick et al., 2005

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NEUROBIOLOGY OF SEXUAL ASSAULT



Tonic Immobility (TI)

- AKA: "Rape-induced paralysis"
- Autonomic (uncontrollable) mammalian response in extremely fearful situations
- Increased breathing, eye closure, paralysis
- 12-50% rape victims experience TI during assault
- TI is ~more common in victims who have been assaulted before (childhood, adolescence, or adult)



SOURCE: Foa et al., 2007; Gellera et al., 1993; Heide et al., 2005

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92

92

COMMON BEHAVIORS DURING ASSAULT





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

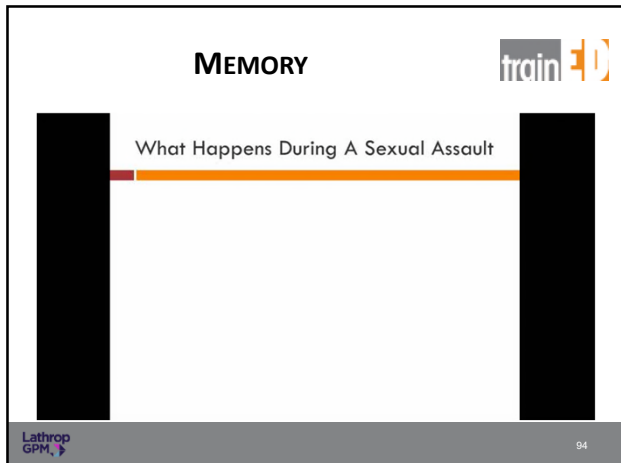
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93


MEMORY 

What Happens During A Sexual Assault

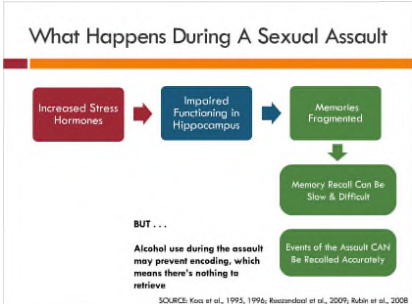


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94

MEMORY 

What Happens During A Sexual Assault




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

SOURCE: Koss et al., 1995, 1996; Essendrop et al., 2009; Rubin et al., 2008

Lathrop GPM, > 95

95

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 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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96

MEMORY 

Case Study: Memory Fragmentation

"It was classic good-cop / bad-cop. He stormed off and another detective sat down next to me. He offered me a cup of coffee.


Coffee? OK fine. How do I take it? WHAT? Why does he care how I take my coffee?

Well, he did.

He made me coffee. He gave me time to just sit, collect my thoughts."

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97

MEMORY 

Case Study: Memory Fragmentation


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

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

And drinking coffee."

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MEMORY 


Case Study: Memory Fragmentation

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

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


I: What do you mean?

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

 **MEMORY CONSOLIDATION**
A DOCUMENTED NEUROBIOLOGICAL CONDITION

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MEMORY 

Case Study: Memory Fragmentation


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


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

 **MEMORY CONSOLIDATION**
A DOCUMENTED NEUROBIOLOGICAL CONDITION


Lathrop GPM,  100

100


IMPACT OF TRAUMA ON MEMORY 




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

Lathrop GPM,  101


101

SENSORY DETAILS 


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

Lathrop GPM,  102

102


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




Lathrop GPM, > 103

103


TRAUMA-INFORMED APPROACH GONE WRONG 

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



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TAKE AWAY 

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

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SERVING IMPARTIALLY 


- Avoid prejudgment of the facts at issue
- Avoid conflicts of interest
- Avoid bias
- Avoid appearing to agree with either party's account
- Use impartial language

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106


SERVING IMPARTIALLY 

- Set boundaries
 - Make objective role clear up front
 - Differentiate from your other roles within institution
 - Know how to respond when coming close to line




Lathrop GPM, > 107

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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




Lathrop GPM, > 108


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SERVING IMPARTIALLY 


- Consider timing and location
- 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

Lathrop GPM,  109


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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

Lathrop GPM,  110


110


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


Lathrop GPM,  111

111


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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112

SOURCES OF INFORMATION 

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

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Q & A





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INTAKE AND INVESTIGATION PROCESS




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OBLIGATIONS OF THE INSTITUTION UPON RECEIVING REPORT




- Assess immediate safety and well-being for parties 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
- Enter into crime log, assess for timely warning
- Offer/provide supportive/interim measures
- Provide written notice of rights to complainant (VAWA)
- Notify complainant of importance of preserving evidence (VAWA)


Lathrop GPM,  116


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PRE-INVESTIGATION OBLIGATIONS OF THE INSTITUTION




- Upon formal complaint, provide written notice to known parties, including:
 - Notice of grievance process, including any informal resolution process
 - Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare response before initial interview
 - Identities of the parties involved, if known
 - Conduct allegedly constituting sexual harassment
 - Date and location of the alleged incident, if known



Lathrop GPM,  117


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PRE-INVESTIGATION OBLIGATIONS OF THE INSTITUTION 

- Upon formal complaint, provide written notice to both parties, including:
 - Statements that:
 - Respondent is presumed not responsible
 - Determination of responsibility is made at conclusion of grievance process
 - Right to advisor of choice who may be but is not required to be an attorney
 - Parties may inspect and review evidence *as permitted in sexual misconduct policy*
 - Inform parties of any policy provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance process
- Provide notice of *additional* allegations about the complainant or respondent that arise during process

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PRE-INVESTIGATION OBLIGATIONS OF THE INSTITUTION 


- Determine whether parties have advisors 
- Require advisors to sign advisor agreement (optional) 
- Consider whether informal resolution is appropriate 

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ROLE OF INVESTIGATOR 

- Identify factual issues
- Give parties opportunity for input
- Compile investigation materials for hearing panel and parties
- Credibility and/or make recommendations?
 - Can offer recommendations regarding responsibility but ultimate determination must be made by separate adjudicator (Title IX)



Lathrop GPM, > 120


120

INVESTIGATION—PROVIDING INFORMATION TO THE PARTIES 


- Parties must be provided:
 - VAWA: information used in the decision-making process – access required
 - Title IX:
 - Any evidence obtained that is **directly related** to the allegations – must send hard copy or electronic format to parties and advisors
 - Investigation report that fairly summarizes relevant evidence – must send hard copy or electronic format to parties and advisors
 - Opportunity to submit written response to each

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DIFFERENCES BETWEEN CRIMINAL AND INSTITUTIONAL INVESTIGATIONS 


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



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**HEARING/
DECISION-MAKING PROCESS** 



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SESSION OVERVIEW




- Legal Requirements
- Stages of Adjudication 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
- Case Study

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LEGAL REQUIREMENTS




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LEGAL REQUIREMENTS

- 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
 - If party does not have advisor, institution must provide one for cross-examination
 - ~~If a party or witness does not submit to cross-examination at hearing, their statements cannot be considered by decision-maker(s)~~

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LEGAL REQUIREMENTS—ADVISORS 

- Cross-examination must be conducted directly, orally, and in real time by the party’s advisor, never by the party personally
- Institution can otherwise place restrictions on advisors’ participation in the proceedings




Lathrop GPM,  127

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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

Lathrop GPM,  129


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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
 - Decision-maker(s) may still rely on previous statements from party/witness who is absent or refuses to answer one or more questions (check policy) **NEW!**
 - 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
 - Decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions

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**LEGAL REQUIREMENTS—
CROSS-EXAMINATION** 

- Party or witness who does not appear at the hearing
 - Advisor may conduct cross-examination on behalf of party even if party is not present
 - 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
 - Cross-examination must be respectful, non-abusive, not intimidating
 - Limit evidence at hearing to evidence that was gathered or presented as part of the investigation (or otherwise prior to the hearing)
 - Whether investigator may be called as a witness
 - Process for making objections to the relevance of questions and evidence
 - Other procedures at the hearing
 - Opening statements by parties or advisors
 - Closing statements by parties or advisors
 - Reasonable time limitations on hearings

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**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
 - Decision-maker may determine how much weight to give such evidence

Lathrop GPM, > 134

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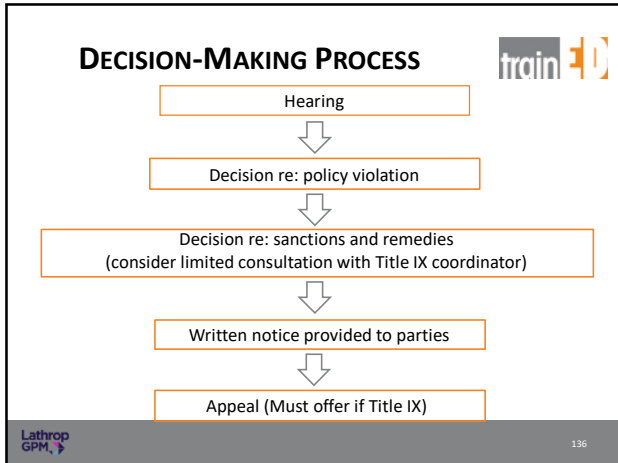


STAGES OF ADJUDICATION PROCESS




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DECISION-MAKING PROCESS 


- Process may be different depending on whether respondent is a student or an employee
- Process may be different depending on whether Title IX applies and whether your institution uses separate processes for Title IX and non-Title IX


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STAGES OF ADJUDICATION 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




Lathrop GPM,  138


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**STAGE ONE:
PREPARE FOR HEARING**


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**STAGE ONE: PREPARE FOR HEARING—
DECISION-MAKER(S)**

- May have single decision-maker or a panel of decision-makers
- If a panel of decision-makers, may appoint one decision-maker to make relevancy determinations at the hearing
- May appoint Title IX Coordinator or another individual who is not a decision-maker to enforce procedural rules at the hearing
 - Decision-maker(s) must still determine relevancy issues


Lathrop GPM,  140

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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
 - Witness cannot demand to be in a separate room, unless that witness alleges they are also a victim of respondent (institution can permit witness to be in a separate room upon request)
 - 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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**STATE 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


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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



Lathrop GPM, > 145

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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 decision-makers)
 - 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 who will notify parties of any party or witness who refuses to participate in hearing
 - Determine whether investigator will be called as a witness
 - Determine order of witnesses
 - Ensure that all "directly related evidence" provided to parties during investigation 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
 - 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 parties and witness(es) of recording and its use
 - Explain possible uses of party's/witness's statements
 - Instruct parties/witnesses they do not need to repeat information included in the investigation report
 - Explain that the hearing panel may need to ask difficult, detailed questions
 - Ask parties not to read into questions
 - Tell parties/witness if question unclear, let hearing panel know
 - Tell parties/witness okay to ask for break and pre-determine breaks
 - Instruct witness(es) regarding confidentiality
 - Assure/warn parties/witness(es) regarding policy prohibiting retaliation
 - Advise parties/witness(es) on alcohol or other policy waiver
 - Obtain commitment to tell truth

Lathrop GPM,  149


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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 witness
 - Remind witness of instructions regarding confidentiality
 - Remind regarding policy prohibiting retaliation

Lathrop GPM,  150


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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

Lathrop GPM, > 151


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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

Lathrop GPM, > 152

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CASE STUDY 

Review complaint and notice(s) of allegations

Lathrop GPM, > 153

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CASE STUDY




- On March 21, 2022, Hailey Hanson made a complaint of sexual misconduct against Jeff Jeffries.

Lathrop GPM, 154

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CASE STUDY



COMPLAINANT NAME: Hailey Hanson
ADDRESS: 1234 Off-Campus Drive
DATE OF REPORT OF ALLEGED POLICY VIOLATION: February 19, 2022
RESPONDENT NAME: Jeff Jeffries
ADDRESS: 999 Dorm Room Lane

ALLEGATIONS: I met Jeff Jeffries in the fall through the Nordic Skiing Club. We were friends and hung out a few times in January and February. We kissed once or twice before and everything was fine. But on February 19, Jeff took things too far. We were watching a show in my dorm room and we started kissing. A little while later, Jeff put his hand up my shirt and touched my boob without asking. I was not okay with him touching me there. After that night, I tried to avoid Jeff, but he wouldn't leave me alone. He kept trying to see me and snap me. He even started showing up places that he knew I would be. He came to my friend's party and my poetry reading. He's stalking me on social media. He even left a creepy note on my car. I'm really scared and I need him to leave me alone.


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 Hailey Hanson

Lathrop GPM, 155

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CASE STUDY



Excerpt from Notice of Allegations


On March 21, 2022, a formal complaint of alleged sexual misconduct was submitted by Hailey Hanson to the Title IX Coordinator alleging conduct by Jeff Jeffries. In the formal complaint, Hailey alleged that:

- On February 19, 2022, in her on-campus dorm room, Jeff sexually assaulted her by engaging in non-consensual touching of an intimate body part.
- Hailey alleged that between February 20, 2022 and March 17, 2022, Jeff engaged in a course of conduct directed at Hailey that would cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress, including:
 - Between February 20, 2022 and March 5, 2022, Jeff sent multiple unwelcome electronic messages to Hailey.
 - On February 26, 2022, at an off-campus Nordic Skiing Club event, Jeff followed and stared at Hailey.
 - On March 4, 2022, at an off-campus house party, Jeff followed and communicated to Hailey.
 - On March 10, 2022, in the University Fine Arts Center, Jeff followed and stared at Hailey.
 - On March 17, 2022, in University Parking Lot D, Jeff communicated to Hailey via written communication.

Lathrop GPM, 156

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CASE STUDY



Excerpt from Amended Notice of Allegations

On March 21, 2022, a formal complaint of alleged sexual misconduct was submitted by Hailey Hanson to the Title IX Coordinator alleging conduct by Jeff Jeffries. In the formal complaint, Hailey alleged that:

- On February 19, 2022, in her on-campus dorm room, Jeff sexually assaulted her by engaging in non-consensual touching of an intimate body part.
- Hailey alleged that between February 20, 2022 and March 17, 2022, Jeff engaged in a course of conduct directed at Hailey that would cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress, including:
 - Between February 20, 2022 and March 5, 2022, Jeff sent multiple unwelcome electronic messages to Hailey.
 - On February 24, 2022, at an unknown outdoor location on campus, Jeff communicated to Hailey via a third party.
 - On February 26, 2022, at an off-campus Nordic Skiing Club event, Jeff followed and stared at Hailey.
 - On March 4, 2022, at an off-campus house party, Jeff followed and communicated to Hailey.
 - On March 10, 2022, in the University Fine Arts Center, Jeff followed and stared at Hailey.
 - On March 15, 2022, Jeff communicated about Hailey via electronic communication.
 - On March 17, 2022, in University Parking Lot D, Jeff communicated to Hailey via written communication.

Lathrop GPM, > 157

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CASE STUDY




Review relevant policy definitions



Lathrop GPM, > 158

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**CASE STUDY –
DEFINITION OF SEXUAL ASSAULT**




Sexual assault is any actual or attempted sexual contact, including penetration, 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; 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 him/herself with or on any of these body parts.


Lathrop GPM, > 159

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**CASE STUDY –
DEFINITION OF CONSENT**




Consent means words or overt actions by a person in advance clearly and affirmatively 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.

Lathrop GPM,  160


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**CASE STUDY –
DEFINITION OF CONSENT**




The definition of consent is subject to the following:

- Consent can only be given if one is of legal age (16).
- Consent is a mutually understood and freely given “yes,” not the absence of “no.”
- Consent to one form of sexual activity cannot imply consent to other forms of sexual activity
- Consent can be withdrawn at any time. When consent is withdrawn, the sexual activity for which consent was initially provided must stop.
- Silence or failing to resist does not imply consent.
- Previous relationships or previous consent does not imply consent to future sexual acts.
- An existing sexual, romantic, or marital relationship does not imply consent.
- Prior sexual 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 below.
- An individual known to be – or who should be known to be – **incapacitated**, as defined by the Policy, cannot consent to sexual activity initiated by another individual.
- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.


Lathrop GPM,  161

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**CASE STUDY –
DEFINITION OF STALKING**




- Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.
 - **Course of conduct** means two or more acts, including but not limited to, acts which the stalker directly, indirectly, or through others, by any action, method, device or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person’s property.
 - For purposes of this definition, not all communication about a person will be considered to be directed at that person.
 - **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or professional treatment or counseling.
 - **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.

Lathrop GPM,  162

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**CASE STUDY –
DEFINITION OF STALKING**



- Stalking behavior includes, but is not limited to:
 - Repeated, unwanted, and intrusive communications by phone, mail, email, texting, and/or other electronic communications, including social media;
 - Repeatedly leaving or sending the victim unwanted items, presents, or flowers;
 - Following or lying in wait for the victim at places such as home, school, work, or recreational facilities;
 - Making direct or indirect threats to harm the victim, or the victim’s children, relatives, friends, or pets;
 - Damaging or threatening to damage the victim’s property;
 - Repeatedly posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth, that would cause a person to feel threatened or intimidated.

Lathrop GPM, > 163

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CASE STUDY



Investigation Report:
Summary of Facts Gathered



Lathrop GPM, > 164

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CASE STUDY




Party Response Statements



Lathrop GPM, > 165

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CASE STUDY 

Excerpt from Hailey’s Response to the Investigation Report:

- Jeff made it sound like if I wasn’t wearing a bra that that was an invitation for him to touch my breasts. My clothing choices do not give anyone the right to touch me without my consent. Jeff’s argument is like saying a woman who dresses provocatively is “asking for it.” Jeff’s statements should be removed from the report.

Lathrop GPM, > 166

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CASE STUDY 

Excerpt from Jeff’s Response to the Investigation Report

- I told the investigator that she should talk to people at the poetry reading, but she didn’t because Hailey asked her not to. Anyone at the reading could tell the investigator that Hailey was fine. Their testimony would prove that she is just making things up to blow this all out of proportion. And it’s not right for her to be able to eliminate witnesses. If a witness saw what happened, the investigator needs to talk to that witness.

Lathrop GPM, > 167

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CASE STUDY 


Excerpt from Jeff’s Response to the Investigation Report (cont.)

- The policy says that words *or overt actions* can show consent. Hailey invited me to come over to “watch Netflix and chill,” which everyone knows means to have sex or fool around while watching. She took off her bra and she moved her arms out of the way as I moved my hand up along her stomach toward her breasts. She also said that she was ok with it. These were words and overt actions that showed that she consented. If she did all of those things, there is no way that I should be found guilty of sexual assault.

Lathrop GPM, > 168


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train 




CASE STUDY

Review adjudication file and determine which witnesses you need to call for the hearing


Lathrop GPM,  169

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CASE STUDY


train 

- You and other members of the hearing panel consider which of the following parties and witnesses to call at the hearing:
 - Hailey
 - Jeff
 - Beth
 - Courtney
 - Tyler
 - Matt
 - Hailey’s roommate Molly
 - Brandon, Carter, & Melissa (Nordic Skiing Club teammates)
 - Attendees from poetry reading


Lathrop GPM,  170

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CASE STUDY

train 

- You and the other members of the hearing panel determine that you will call the following individuals at the hearing: Hailey, Jeff, Beth, Courtney, Tyler, Matt, Molly, and Hailey’s English professor, Dr. Bennet, who organized the poetry reading.
- You inform the Title IX Coordinator of your decision regarding witnesses.

Lathrop GPM,  171


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CASE STUDY 

- Besides the witnesses requested by the panel, how many additional witnesses will the parties be allowed to call at the hearing?

Lathrop GPM, > 172


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CASE STUDY 

- The Title IX Coordinator notifies the parties of the list of witnesses the hearing panel has requested be available. The Title IX Coordinator informs the parties that they have two days to provide the names of up to two additional witnesses each.

Lathrop GPM, > 173


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CASE STUDY 


- The Title IX Coordinator informs you that Beth is going on a family camping trip for the next two weeks. She says that she won't have internet access and therefore cannot attend the hearing.
- What do you do?

Lathrop GPM, > 174


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CASE STUDY 


- The Title IX Coordinator informs you that Beth will not be participating in the hearing.
- The Title IX Coordinator informs you that Matt has not responded to any of the Coordinator’s emails about the hearing.
- What should you do?

Lathrop GPM,  175


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CASE STUDY 


- Jeff wants to call Hailey’s ex-boyfriend as a witness. He had suggested the ex-boyfriend as a witness during the investigation, but the investigator did not interview him. When the Title IX Coordinator informs the parties of the other party’s witness choices, Hailey responds, telling the Coordinator that her ex-boyfriend should not be allowed to testify. She says that their relationship has nothing to do with this situation.
- Should the witness be allowed at the hearing?

Lathrop GPM,  176


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CASE STUDY 


- On the morning of the hearing Jeff calls you to tell you that his advisor had a work emergency and cannot attend the hearing.
- What do you do?


Lathrop GPM,  177

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STAGE TWO: CONDUCT HEARING




Lathrop GPM,  178


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STAGE TWO: CONDUCT HEARING

- Review 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
 - 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




Lathrop GPM,  179

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STAGE TWO: CONDUCT HEARING

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

Lathrop GPM,  180


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STAGE TWO: CONDUCT HEARING 

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

Lathrop GPM, > 181


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STAGE TWO: CONDUCT HEARING 

- 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

Lathrop GPM, > 182


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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
- When a party or witness refuses to submit to cross-examination, notify the parties (prior to hearing, if known) and 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


Lathrop GPM, > 183

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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 


- Complainant’s sexual behavior or predisposition are not relevant unless:
 - 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
- Adjudicators should not allow questions and should not consider any testimony or evidence regarding complainant’s sexual history unless exception is met

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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 without exception
 - Irrelevant
- Provide reasoning when excluding a question
- Exclude questions with caution
- Recommendation: allow advisors to briefly articulate why a question is relevant or not relevant


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STAGE TWO: CONDUCT HEARING 

- Review 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

Lathrop GPM, > 187


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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

Lathrop GPM, > 188

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CASE STUDY

Conduct Hearing



Lathrop GPM, > 189


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CASE STUDY 

- The Title IX Coordinator informs you that Hailey will have a school-appointed advisor with her at the hearing.
- The day of the hearing, Hailey logs in to the video conference and has another person who is not her school-appointed advisor with her. Hailey tells you that the additional person is her counselor and that her counselor will be present as a support person. The school-appointed advisor has also separately logged in to the video conference.
- How do you respond?

Lathrop GPM, > 190


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CASE STUDY 

- During the hearing, Hailey says that Jeff violated the no-contact directive by sitting at the table next to her in the cafeteria one day. This incident was not mentioned in the complaint, notice of allegations, or the report.
- What do you do?

Lathrop GPM, > 191

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CASE STUDY 

- At the hearing, Jeff says he would like to share screenshots of a string of text messages between Hailey and one of their teammates in the ski club. The screenshots were not provided to the investigator. Hailey objects, saying that the messages were not included in the directly related evidence.
- What do you do?

Lathrop GPM, > 192

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CASE STUDY



- Molly, one of the witnesses for the hearing was non-committal about her availability when scheduling the hearing, because she had an all-day lab for one of her classes. During the hearing, in the middle of Jeff’s testimony, Molly sends a message to the Title IX Coordinator stating that she is on a break from class and has 15 minutes to “pop in” to the hearing. What do you do?

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CASE STUDY



- In addition to limiting the number of witnesses each party was permitted to call, you limited the time each party could use at the hearing. Hailey has almost reached her time limit, and there are several witnesses remaining.
- What do you do?


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CASE STUDY—HAILEY/JEFF



- After the hearing, you and the other panel members are discussing the poetry reading allegation. You mention that you think there is a good chance that the event was recorded. Your fellow panel members agree and say that it would be helpful to see Hailey’s demeanor during the event first-hand.
- What do you do?


195

CASE STUDY 

- The hearing panel heard from Hailey, Jeff, Courtney, Tyler, Molly, and Dr. Bennet at the hearing.
- Hailey’s testimony was generally consistent with the account she provided to the investigator, except that in response to questions from the panel, Hailey clarified that Jeff asked her “Is this okay?” after he had already begun touching her breasts. Hailey also responded to questions from the panel regarding the impact Jeff’s conduct had had on her, explaining that she avoids going out, has become paranoid, and has talked with a counselor as a result.

Lathrop GPM, > 196


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CASE STUDY 

- Jeff’s testimony was generally consistent with the account he provided to the investigator, except that in response to questions from the panel, he clarified that he asked Hailey, “Is this okay?” before he touched her breasts.
- Courtney’s testimony was generally consistent with the account she provided to the investigator and no additional information was provided by her.

Lathrop GPM, > 197


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CASE STUDY 

- In addition to the testimony provided by the parties at the mock hearing, witnesses provided the following information at the hearing:
 - The panel called Hailey’s roommate, Molly, as a new witness. Molly confirmed the parties’ account that she came home while they were kissing on the couch. Molly stated that when she walked in the door, she saw Jeff and Hailey on the couch together. Molly stated that she “could tell [she] had interrupted something, because they were like scrambling around and then totally acting weird.” Molly stated that she went straight to her room and didn’t see Jeff again that night. Molly stated that when she came out of her room to get ready for bed, she asked Hailey how her night was. Molly stated that Hailey replied, “I don’t want to talk about it.” Molly stated that Hailey seemed really upset and her eyes looked red, like she’d been crying.


Lathrop GPM, > 198

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train 

CASE STUDY

- Additional witness testimony from the hearing (cont.):
 - The panel called Hailey’s English professor who organized the poetry reading. When asked about Hailey’s demeanor and performance at the reading, the professor stated, “She seemed a little off during her reading. I mean, she still did well, but she did seem a little distracted. Not quite as polished as normal.”


Lathrop GPM,  199

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train 

CASE STUDY


- Additional witness testimony from the hearing (cont.):
 - The panel asked Jeff’s friend Tyler if he had talked to Jeff about Hailey during the spring semester. Tyler stated, “Yeah, I mean, we all knew that he really liked her and was pretty bummed when things didn’t work out and she kinda cut him out.” When asked what he meant by Hailey cutting Jeff out, Tyler stated, “Like, she stopped talking to him at all and wouldn’t respond to messages.” When asked how he knew Jeff was “bummed” after Hailey “cut him out,” Tyler stated, “Well, he was just still constantly talking about her. I think he’d been really excited about her, and it was hard for him to, like, let her go, you know?”


Lathrop GPM,  200

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train 


STAGE THREE: DELIBERATE AND MAKE DETERMINATION




Lathrop GPM,  201


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STAGE THREE: DELIBERATE AND MAKE DETERMINATION




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




Lathrop GPM,  202


202

STAGE THREE: DELIBERATE AND MAKE DETERMINATION




- Evidentiary issues (cont.)
 - Complainant’s sexual behavior or predisposition are not relevant unless:
 - 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
 - The mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of sexual violence




Lathrop GPM,  203


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STAGE THREE: DELIBERATE AND MAKE DETERMINATION




- Evidentiary issues (cont.):
 - 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 adjudicators and the parties (Title IX vs. VAWA)




Lathrop GPM,  204


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STAGE THREE: DELIBERATE AND MAKE DETERMINATION 


▪ **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?




Lathrop GPM,  205

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STAGE THREE: DELIBERATE AND MAKE DETERMINATION 

▪ **Consider all relevant evidence, including inculpatory and exculpatory evidence**

- Inculpatory: evidence which tends to establish that respondent is responsible for a policy violation
- Exculpatory: evidence which tends to establish that respondent is not responsible for a policy violation


Lathrop GPM,  206

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STAGE THREE: DELIBERATE AND MAKE DETERMINATION 

▪ **Dealing with inculpatory and 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?

Lathrop GPM,  207


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STAGE THREE: DELIBERATE AND MAKE DETERMINATION 

- Be consistent
 - Doe v. Washington & Lee University
 - Hearing board credited complainant's "personal rule" that she does not have sexual intercourse with someone with whom she is not interested in having a relationship, but she is willing to engage in oral sex
 - Hearing board found respondent's testimony that he felt weird receiving oral sex from a friend but was fine to engage in sexual intercourse to be a source of inconsistency and incredibility
 - Court found that a reasonable jury could find gender bias based on this differing treatment of the parties' testimony

Lathrop GPM, > 208


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STAGE THREE: DELIBERATE AND MAKE DETERMINATION 

- 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?

Lathrop GPM, > 209

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STAGE THREE: DELIBERATE AND MAKE DETERMINATION 




- Determination
 - Finding re: what conduct occurred
 - Finding re: policy violation
 - Sanctions
 - Remedies (consult with Title IX Coordinator)
 - Written Notice

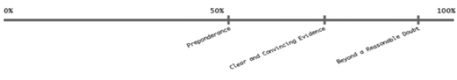
Lathrop GPM, > 210


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STAGE THREE: DELIBERATE AND MAKE DETERMINATION




- 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
 - Hearing panel 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)




Lathrop GPM,  211


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DETERMINATION—FINDING





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




Lathrop GPM,  212

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CASE STUDY

Determine Whether a Policy Violation Occurred and Rationale for your Decision

Lathrop GPM,  213

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STAGE FOUR: DETERMINE SANCTIONS AND REMEDIES



Lathrop GPM, >214

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STAGE FOUR: DETERMINE SANCTIONS

- 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) 
- Institution's policy must list *all* possible sanctions for sexual misconduct (VAWA; Title IX requires range or list of sanctions)
- 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)

Lathrop GPM, >215

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STAGE FOUR: DETERMINE SANCTIONS

- 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




Lathrop GPM, >216

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STAGE FOUR: DETERMINE SANCTIONS 

- 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
 - Consider restrictions when respondent graduates or withdraws, but complainant is still a student



Lathrop GPM, > 217


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STAGE FOUR: REMEDIES 


- Consider who will determine remedies
- 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

Lathrop GPM, > 218

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STAGE FOUR: 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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STAGE FOUR: 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., better lighting?)
- Regulations only require a range of all protective measures for sexual misconduct in policy



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CASE STUDY 



Determine Sanctions and Remedies and Rationale for Both

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CASE STUDY 

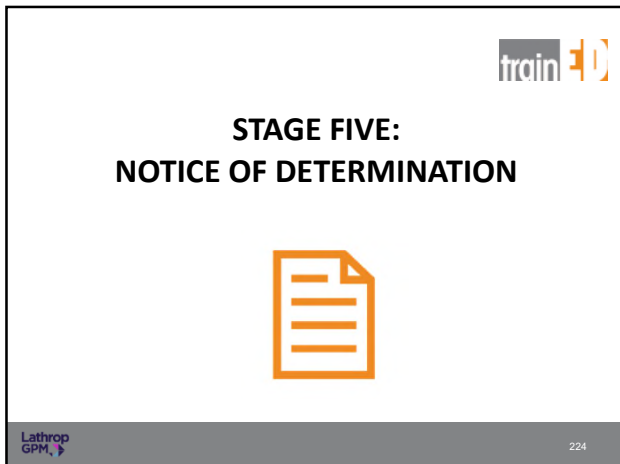
- The Title IX Coordinator informs you that Jeff is an RA at the University. The Coordinators says that Jeff is not an RA in the building in which Hailey resides. The Coordinator tells you that if you find Jeff responsible for a Policy violation, you will need to consider whether he can continue in his RA position.
- What do you do with this information?

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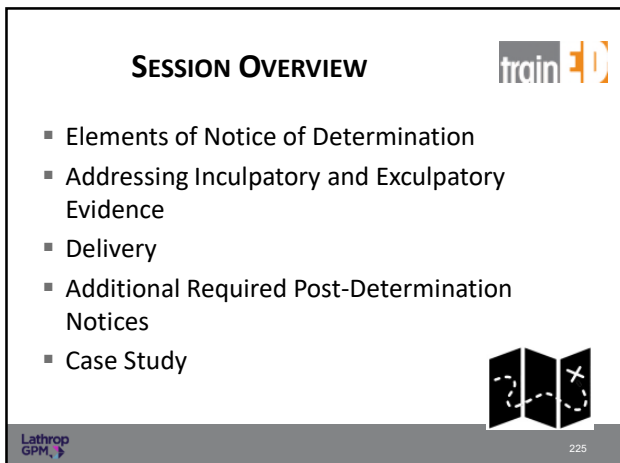
222




223



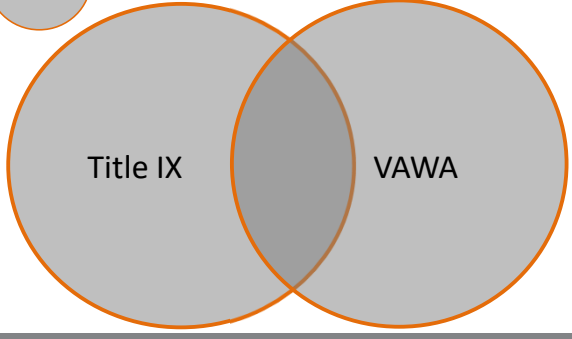
224




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OVERVIEW 


Other Conduct




Title IX VAWA


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STAGE FIVE: NOTICE OF DETERMINATION—ELEMENTS 

- Summary of complaint/allegations
- Summary of process/procedural steps
- Relevant policy provisions
- Findings of fact
- Result/decision
- Rationale for the result/decision
- Sanctions
- Rationale for the sanctions
- Whether remedies will be provided
- Appeal process





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STAGE FIVE: NOTICE OF DETERMINATION—ELEMENTS 

- 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(s) 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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STAGE FIVE: 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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STAGE FIVE: NOTICE OF DETERMINATION—ELEMENTS 

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



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STAGE FIVE: 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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STAGE FIVE: 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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STAGE FIVE: NOTICE OF DETERMINATION—ELEMENTS 

- Sanctions (if any)
 - 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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STAGE FIVE: 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
 - General process




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STAGE FIVE: 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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STAGE FIVE: 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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STAGE FIVE: NOTICE OF DETERMINATION—IMPLEMENTATION 


- Title IX
 - Determination regarding responsibility becomes final either on the date that the recipient provides the parties the written determination of the result of the appeal (if an appeal is filed) or the date on which an appeal would no longer be considered timely (if an appeal is not filed)

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STAGE FIVE: ADDITIONAL REQUIRED POST-DETERMINATION NOTICES 


- For sexual assault and VAWA crimes, your institution must provide simultaneous notice to both parties of—
 - Any change to the results that occurs prior to the time that such results become final
 - When such results become final



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CASE STUDY 



Notice of Determination

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APPEALS UNDER TITLE IX 

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

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APPEALS UNDER TITLE IX 

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

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APPEALS UNDER VAWA 

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

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Q & A




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UPCOMING TRAININGS




- Date TBD
 - Training for Appeal Officers
 - Trauma Informed Training for First Responders, Confidential Resources, and Campus Security


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ON DEMAND TRAININGS



- **Available on-demand:**
 - Annual Training for New Title IX Coordinators and Deputy Coordinators
 - Title IX/VAWA Investigator Training
 - Annual Training for Advanced Title IX Coordinators and Deputy Coordinators
 - Title IX/VAWA Hearing Panel Training
 - Trauma-Informed Training for First Responders, Confidential Resources, and Campus Security
 - Title IX/VAWA Appeal Officer Training
 - VAWA Adjudicator Training
 - Conducting a Grievance Process Under the New Title IX Regulations
 - Title IX Update: Final Regulations

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2022 Title IX/VAWA Hearing Panel Training

Handout 1

Complaint

On March 21, 2022, Hailey Hanson made a complaint of sexual misconduct against Jeff Jeffries.

Sexual Misconduct Complaint Form

COMPLAINANT NAME: Hailey Hanson

ADDRESS: 1234 On-Campus Drive

DATE OF REPORT OF ALLEGED POLICY VIOLATION: February 19, 2022

RESPONDENT NAME: Jeff Jeffries

ADDRESS: 999 Dorm Room Lane

ALLEGATIONS:

I met Jeff Jeffries in the fall through the Nordic Skiing Club. We were friends and hung out a few times in January and February. We kissed once or twice before and everything was fine. But on February 19, Jeff took things too far. We were watching a show in my dorm room and we started kissing. A little while later, Jeff put his hand up my shirt and touched my boob without asking. I was not okay with him touching me there.

After that night, I tried to avoid Jeff, but he wouldn't leave me alone. He kept trying to see me and snap me. He even started showing up places that he knew I would be. He came to my friend's party and my poetry reading. He's stalking me on social media. He even left a creepy note on my car. I'm really scared and I need him to leave me alone.

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 Hailey Hanson

2022 Title IX/VAWA Hearing Panel Training

Handout 2

Excerpt of Notice of Allegations

On March 21, 2022, a formal complaint of alleged sexual misconduct was submitted by Hailey Hanson to the Title IX Coordinator alleging conduct by Jeff Jeffries. In the formal complaint, Hailey alleged that:

- On February 19, 2022, in her on-campus dorm room, Jeff sexually assaulted her by engaging in non-consensual touching of an intimate body part.
- Hailey alleged that between February 20, 2022 and March 17, 2022, Jeff engaged in a course of conduct directed at Hailey that would cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress, including:
 - Between February 20, 2022 and March 5, 2022, Jeff sent multiple unwelcome electronic messages to Hailey.
 - On February 26, 2022, at an off-campus Nordic Skiing Club event, Jeff followed and stared at Hailey.
 - On March 4, 2022, at an off-campus house party, Jeff followed and communicated to Hailey.
 - On March 10, 2022, in the University Fine Arts Center, Jeff followed and stared at Hailey.
 - On March 17, 2022, in University Parking Lot D, Jeff communicated to Hailey via written communication.

2022 Title IX/VAWA Hearing Panel Training

Handout 3

Excerpt of Amended Notice of Allegations

On March 21, 2022, a formal complaint of alleged sexual misconduct was submitted by Hailey Hanson to the Title IX Coordinator alleging conduct by Jeff Jeffries. In the formal complaint, Hailey alleged that:

- On February 19, 2022, in her on-campus dorm room, Jeff sexually assaulted her by engaging in non-consensual touching of an intimate body part.
- Hailey alleged that between February 20, 2022 and March 17, 2022, Jeff engaged in a course of conduct directed at Hailey that would cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress, including:
 - Between February 20, 2022 and March 5, 2022, Jeff sent multiple unwelcome electronic messages to Hailey.
 - **On February 24, 2022, at an unknown outdoor location on campus, Jeff communicated to Hailey via a third party.**
 - On February 26, 2022, at an off-campus Nordic Skiing Club event, Jeff followed and stared at Hailey.
 - On March 4, 2022, at an off-campus house party, Jeff followed and communicated to Hailey.
 - On March 10, 2022, in the University Fine Arts Center, Jeff followed and stared at Hailey.
 - **On March 15, 2022, Jeff communicated about Hailey via electronic communication.**
 - On March 17, 2022, in University Parking Lot D, Jeff communicated to Hailey via written communication.

2022 Title IX/VAWA Hearing Panel Training

Handout 4

Definition of Sexual Assault

Sexual assault is any actual or attempted sexual contact, including penetration, 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; 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 him/herself with or on any of these body parts.

Definition of Consent

Consent means words or overt actions by a person in advance clearly and affirmatively 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:

- Consent can only be given if one is of legal age (16).
- Consent is a mutually understood and freely given "yes," not the absence of "no."
- Consent to one form of sexual activity cannot imply consent to other forms of sexual activity
- Consent can be withdrawn at any time. When consent is withdrawn, the sexual activity for which consent was initially provided must stop.
- Silence or failing to resist does not imply consent.
- Previous relationships or previous consent does not imply consent to future sexual acts.
- An existing sexual, romantic, or marital relationship does not imply consent.
- Prior sexual 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 below.
- An individual known to be – or who should be known to be – **incapacitated**, as defined

by the Policy, cannot consent to sexual activity initiated by another individual.

- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.

Definition of Stalking

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.

- **Course of conduct** means two or more acts, including but not limited to, acts which the stalker directly, indirectly, or through others, by any action, method, device or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property.
- For purposes of this definition, not all communication about a person will be considered to be directed at that person.
- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or professional treatment or counseling.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.

Stalking behavior includes, but is not limited to:

- Repeated, unwanted, and intrusive communications by phone, mail, email, texting, and/or other electronic communications, including social media;
- Repeatedly leaving or sending the victim unwanted items, presents, or flowers;
- Following or lying in wait for the victim at places such as home, school, work, or recreational facilities;
- Making direct or indirect threats to harm the victim, or the victim's children, relatives, friends, or pets;
- Damaging or threatening to damage the victim's property;
- Repeatedly posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth, that would cause a person to feel threatened or intimidated.

2022 Title IX/VAWA Hearing Panel Training

Handout 5

Excerpts from Party Statements in Response to the Directly Related Evidence

Excerpt from Hailey's Response to the Directly Related Evidence

Both Jeff and Beth mentioned my mental health in their interviews. That is private information that has nothing to do with this case. And the sexual misconduct policy says that medical information is not allowed unless I consent to it, which I do not. Nothing should be mentioned about that in the report, and those parts of the interviews should be removed from evidence.

Excerpt from Jeff's Response to the Directly Related Evidence

The investigator should talk to more of Hailey and my teammates from the ski team. Brandon Brown, Carter Carlson, and Melissa Meadows will all be able to explain that I didn't do anything wrong at the event on February 26th and that I was nothing but respectful toward Hailey.

2022 Title IX/VAWA Hearing Panel Training

Handout 6

Investigation Report Excerpt:

Background

Hailey and Jeff are both rising juniors at the University. The parties agree that they met in November 2021 during their sophomore year when Hailey joined the University's co-ed Nordic Skiing Club, of which Jeff had been a member since their freshman year. Both parties stated that they became friends during the skiing season and had hung out one-on-one a few times during January and February. Hailey stated that they had kissed "once or twice" prior to February 19, 2022. Jeff stated that they had "hooked up" a few times prior to February 19, 2022. When asked what he meant by "hooked up," Jeff stated, "Like we'd made out." When asked, both parties stated that they were never in an official dating relationship. Hailey stated that they were "just hanging out." Jeff stated that he "thought the relationship was going somewhere, but then obviously it didn't happen."

February 19, 2022 Sexual Assault Allegation

Hailey's Account

Hailey stated that on February 19, 2022, she and Jeff were at a skiing competition during the day and decided to hang out at her dorm at night to watch a show. Hailey stated that Jeff came over later that night, and they started watching Stranger Things. When asked what time Jeff arrived at her dorm room, Hailey stated that she thought it was around 9:00 or 9:30. When asked if anyone else was at the dorm room while Jeff was there, Hailey stated that at first, her three roommates were all either out of town or just out for the night, but that her roommate Molly came home later on, while Jeff was still there. Hailey stated that she and Jeff were watching the show in the shared living room of her dorm room, sitting next to each other on a couch.

Hailey stated that while they were watching, Jeff put his arm around her and pulled her closer to him, started kissing her neck and chin, and eventually they started kissing on the lips. When asked if the kissing was welcome, Hailey stated, "Yeah, I was expecting that."

Hailey stated that while they were kissing, Jeff put his hand up her shirt. When asked whether his hand was up the back or the front of her shirt, Hailey stated, "Just the back at first." When asked if Jeff touching her back under her shirt was welcome, Hailey stated, "Yeah, I mean, I didn't think much of it. It was just part of kissing."

Hailey stated that Jeff then moved his hand to her front and started touching her breasts. When asked if she was wearing a bra, Hailey stated, “I think so, I can’t be like 1000% sure, though.” When asked if Jeff touched her breasts over or under her bra, Hailey stated, “He definitely touched my skin.” When asked if anything was said by her or Jeff before Jeff touched her breasts, Hailey stated, “No, neither of us said anything. He just moved his hand there.” When asked if she consented to Jeff touching her breasts through words or overt actions, Hailey stated, “No. I was not comfortable with that and I certainly didn’t do or say anything to make him think that he could just do that. I mean, I was still sort of trying to decide where this was going, so that was way too much for me.”

When asked how she reacted to Jeff touching her breasts, Hailey stated, “I was just so shocked I didn’t know what to do. And it was awkward. We had been kissing, but we hadn’t done more and we hadn’t really talked about what we were or what was going on, you know? And I was just like, is he going to want to have sex? Like I don’t want that, but what do I do? So I didn’t say anything or push his hand away, nothing like that. We were still kissing, but he had to be able to tell that I wasn’t into it, I was kinda shutting down.” When asked what she meant by “shutting down,” Hailey stated, “Just, like, letting him kiss me, but not really actively participating anymore.” When asked how long Jeff touched her breasts, Hailey stated, “Just like a minute or two, I think.” When asked what happened after Jeff touched her breasts, Hailey stated, “We kept kissing for a bit and then my roommate Molly got home.” When asked what happened when her roommate got home, Hailey stated, “We stopped and like moved apart. I think we both heard her keys so that’s when we, like, moved away. Cause the door opens into the living room, so we were like right there.” Hailey stated that Molly said “something like, ‘oh, sorry for interrupting,’” and then went into her (Molly’s) bedroom.

When asked if they had any physical contact after Molly went into her bedroom, Hailey stated, “He started kissing me again, but that was it. Things seemed to like, cool down, I guess.” When asked how long they kissed after Molly went into her bedroom, Hailey stated, “A few minutes maybe, not long.” When asked how long they kept watching the show after they stopped kissing, Hailey stated, “I think we were on the last episode we watched that night, so it couldn’t have been more than 20, maybe 30 minutes.”

When asked what happened after they finished the show, Hailey stated, “I said I was tired and was gonna to go to bed. He got up to leave, gave me a kiss on my cheek, and said he wanted to see me the next day. I responded with something non-committal.” When asked if she saw Jeff the next day, Hailey stated, “No, he Snapped me asking to hang out, but I told him I wasn’t feeling well.”

Jeff's Account

Jeff stated that on February 19, 2022, he and Hailey were at a Nordic Skiing event all day. He stated that Hailey was “all over [him]” and invited him to come over that night to “watch Netflix and chill.” When asked what he meant by “all over [him],” Jeff stated, “It was partly just the way she was talking to me—you know, like, really smiley and joking around a lot. But she also came and sat on my lap at one point. Then there was the ‘watch Netflix and chill’ comment.” When asked how he interpreted Hailey’s invitation to “watch Netflix and chill,” Jeff stated, “You know, I thought she wanted to do stuff while we watched, like mess around. It’s pretty common knowledge that that’s what that means.” When asked what he meant by “do stuff” and “mess around,” Jeff stated, “Like sexual stuff, touching, more than just kissing—which we had already done before.” When asked to clarify whether he meant they had already kissed before or that they had already done more than kissing before, Jeff stated, “I meant that we had already kissed before. But I took Hailey’s comment to mean she wanted to take things to the next level.”

Jeff stated that once they got back to campus after the event, he went to his place, showered, ate dinner, and went over to Hailey’s dorm. When asked what time he arrived at Hailey’s dorm, Jeff stated, “It was about nine, I think.”

Jeff stated that he and Hailey “talked a little” and then started watching *Stranger Things*. When asked what they talked about, Jeff stated, “Just small talk, the competition that day, what we ate for dinner, stuff like that.”

Jeff stated that while they were watching the show, they “slowly started getting more physical.” When asked what he meant by “getting more physical,” Jeff stated, “You know, like my arm was around her, her head was on my shoulder or chest. That type of thing.”

Jeff stated that after sitting like that for a while, they started kissing. When asked how the kissing began, Jeff stated, “I think I just kissed her on her forehead, and she turned toward me, and I went in for a kiss on the lips. The kissing went from there.” When asked what he meant by the kissing went from there, Jeff stated, “Well, we kissed for a while, and we were like holding each other with our arms around each other.”

Jeff stated that while they were kissing, Hailey “put both her hands under [Jeff’s] shirt.” When asked whether Hailey put her hands under the front or back of Jeff’s shirt, Jeff stated, “The back.” When asked if anything was said before Hailey put her hands under the back of Jeff’s shirt, Jeff stated, “No, I don’t think so.” Jeff stated that Hailey then pulled back and got up and said “I’ll be right back, my bra is bugging me.” When asked if she said anything else, Jeff stated, “I think she said that her bra was digging into her or was too restrictive or something. I can’t recall exactly what it was, but something like that. So I assumed that she was going to change and then when she came back, she was wearing the same shirt with no bra on.”

Jeff stated that Hailey then sat down next to him again on the couch and “kind of pushed on me, like pushed until I was lying down and sort of under her and next to her on the couch.” Jeff stated that they continued making out and he then put his hands underneath Hailey’s shirt on her lower back. Jeff stated that he then moved his hands up her back and noticed that she wasn’t wearing a bra anymore. Jeff stated that he then started to move one of his hands around Hailey’s waist to her front side. When asked if his hand was still under Hailey’s shirt, Jeff stated, “Yeah, it was.” Jeff stated, “At that point I started moving my hand higher on her stomach, but I moved slowly, trying to gauge her reaction.” Jeff stated that Hailey kept kissing him and moved her hands and arms up around Jeff’s neck. Jeff stated that he thought Hailey moved her hands and arms so that her arms would not be in the way of Jeff continuing to move his hand up. Jeff stated that he then touched Hailey’s chest. When asked if by “chest” he meant her breasts, Jeff stated, “Yes, her breasts.” When asked if anything was said before he touched Hailey’s breasts, Jeff stated, “While I was moving my hand up, I sorta checked in and asked, you know, is this ok?” Jeff stated, that Hailey responded, “Yes.” When asked how long he touched Hailey’s breasts, Jeff stated, “Not long, like a minute.” When asked what happened after he touched Hailey’s breasts, Jeff stated, “Her roommate came home, so we stopped that and just like kept making out for a while, then we went back to cuddling and watching the show. Her roommate was, like, in the next room, so we weren’t going to do anything else.”

When asked what words or actions from Hailey indicated that she consented to him touching her breasts, Jeff stated, “I mean like, the whole progression I guess. We were kissing and then she takes her bra off cause it is too restrictive. That definitely sent a message. And then she wants to lie down on the couch, we keep kissing. The whole thing said it was moving that way. And I asked if it was okay.”

When told of Hailey’s account that after he touched her breasts Hailey was “kinda shutting down” and was just “letting him kiss [her]” and was “not really actively participating anymore,” Jeff stated, “No, she was into it the whole time. She had her arms around me and was, like, running her fingers through my hair. She was definitely participating.”

Jeff stated that after the episode ended, Hailey said she was tired, so he decided to go back to his place. When asked if they said anything else before he left, Jeff stated, “We talked about our plans for the next day. I think I said something about how it sucks that we were interrupted and maybe we could try again tomorrow.” When asked how Hailey responded, Jeff stated she said “Yes.” When asked if they made plans for when or where to meet, Jeff stated, “No, told her I would Snap her in the morning.” Jeff stated that before he left, he said, “This was really great,” and Hailey responded, “Yeah, it was.”

Jeff stated that the next morning he sent Hailey a message about meeting up, but she said she was sick.

Hailey's Follow-Up

When told of Jeff's account that she was "all over [him]" during the event on February 19 and invited him to "watch Netflix and chill," Hailey stated, "I wouldn't say I was all over him, but we often flirted with each other, and I might have made a joke like we could watch Netflix and chill. I thought we might make out or something. I didn't mean anything more by it." When asked if she sat on Jeff's lap at some point during the ski event, Hailey stated, "Yeah, I think that happened."

When told of Jeff's account that Hailey got up and said that her bra was too restrictive, Hailey stated, "Oh that's right, I forgot. My bra was really bugging me with the way we were sitting on the couch, so I went to change it. I don't remember saying anything to Jeff about it. I guess I might have said my bra's bugging me or something."

When told of Jeff's account that Hailey put her hands under the back of his shirt, before Jeff put his hands under her shirt, Hailey stated, "Yeah, I might have done that, but touching his back and him touching my breasts are very different."

When told of Jeff's account that she pushed him to lay back on the couch, Hailey stated, "We did end up laying down for part of it. I didn't push him, I think we just ended up like that as we were kissing." When told of Jeff's account that when he was moving his hands up toward Hailey's breasts, Hailey moved her hands and arms up around Jeff's neck so that they were not in Jeff's way, Hailey stated, "I don't remember exactly where my hands were at that exact moment, but if I moved them, it wasn't for that reason."

When told of Jeff's account that he asked, "Is this OK?" while moving his hands up toward Hailey's breasts and that Hailey answered, "Yes," Hailey stated, "I didn't say 'yes,' I said something like, 'I guess so.' He was already touching me by that point. I didn't know what to say. I didn't want it to go any further and I was just distracted trying to figure out how to slow things down."

When told of Jeff's account that before he left on the night of February 19, he said, that it sucks that they were interrupted and that they should try again the next day and that Hailey responded "yes," Hailey stated, "I think I just said something like 'mmhmm.' I was still in shock, and I didn't want to let on how upset I was. I just wanted him to leave."

When told of Jeff's account that Hailey agreed to meet up the next day, Hailey stated, "Again, I just wanted him to get out of there, so I think I said like, 'Ok, sure, text me.'"

February 20 – March 17, 2022 Stalking Allegation

Snapchat Messages Between February 20, 2022 and March 5, 2022

Hailey's Account

Hailey stated that after the incident on February 19, Jeff often sent her messages via Snapchat, asking to hang out. Hailey stated that at first she made excuses for why she couldn't hang out. Hailey stated that she eventually "stopped responding for a while," but Jeff "kept Snapping me, becoming more and more creepy." When asked what she meant by the Snaps being "creepy," Hailey stated, "Just the frequency of them. And he seemed kinda desperate." Hailey stated that during the time when she wasn't responding to his Snaps, Jeff wrote a Snapchat message that said, "I'm really sorry for what happened between us. I wish I could go back in time and start over." Hailey stated that on March 5, 2022, she sent a message to Jeff asking him not to message her anymore. Hailey submitted a screenshot of the exchange, which states:

Jeff: HRU¹

Jeff: Fun seeing you last night

Hailey: Ive made it clear I don't think we should talk plz stop msging me

Hailey stated that she didn't receive any more Snaps from Jeff after that.

When asked if any of the messages Jeff sent were sexual in nature, Hailey stated, "No, nothing like that, just always wanting to hang out or talk. But it was always, like, in the back of my mind, you know? Because I knew that's what he really wanted."

Jeff's Account

When asked when he next communicated with Hailey after he sent her a message on Snapchat on the morning of February 20 about meeting up, Jeff stated, "We Snapped more that day and the days following, and then we saw each other at practice that week."

When asked what they communicated about in the Snapchat messages, Jeff stated, "The usual stuff, how are you? What are you up to?" When asked who usually initiated the messages, Jeff stated, "I think at first we both did, but after a while I was the one starting the conversations." When asked how Hailey responded to Jeff's messages, Jeff stated, "At first she seemed normal, but then it seemed like she was avoiding me, always seeming busy." Jeff stated that Hailey

¹ When asked if she knew what Jeff meant by "HRU," Hailey stated, "That's how are you."

eventually stopped responding to messages. Jeff stated, “I kept reaching out. I was worried about her. She’d told me some personal stuff she’d been going through. I wanted to make sure she was okay. I realized by that point that nothing, like, romantic was going to happen between us, but we were still friends. It’s a small school. We’re on the same ski team. I didn’t want things to be weird.”

When asked how long he continued to reach out to Hailey via Snapchat, Jeff stated, “Maybe a week or two. One day she responded to a Snap I’d sent, telling me that she didn’t want me to message her anymore. So, I respected that and didn’t message her again.”

When told of Hailey’s account that Jeff sent her a Snapchat message stating, “I’m really sorry for what happened between us. I wish I could go back in time and start over,” Jeff stated, “I don’t think those were my exact words.” Jeff stated that maybe a week or so after February 19, a teammate told him that Hailey said that she did not want to date him and that Hailey told the teammate that she wished they had never made out. When asked how that conversation came up, Jeff stated, “I think I had just mentioned that I hadn’t talked to Hailey in a few days and then they told me.” Jeff stated, “I felt like, oh, okay, I’m fine just being friends and I just need to tell her that.” Jeff stated, “So that’s why I sent that message. I think I said something like this doesn’t need to be awkward, let’s just start over as friends.”

February 24, 2022 Communication through a Third Party

Hailey’s Account

Hailey stated that the week after the February 19 incident, she skipped ski practice on Monday, but went the rest of the week, hoping she could “just ignore Jeff.” Hailey stated, “It was the last week of the season. We had one competition left. I just wanted to put my head down and get through it.” Hailey stated that she was able to avoid Jeff at practice and she “thought he had gotten the hint.”

However, Hailey stated that later in the week one of her teammates, Beth, started talking with her and asked if she was alright. Hailey stated, “I thought it was weird because we didn’t talk that much. I didn’t really know her. So I said, ‘Yeah, why?’” Hailey stated that Beth told her that Jeff told Beth he was worried about Hailey and wanted Beth to see if she was okay.

Hailey stated that the conversation with Beth made her “super uncomfortable.” Hailey stated, “I was really weirded out that he was sending people to check on me.”

Jeff’s Account

When asked when he saw Hailey in person after being at her dorm on February 19, Jeff stated that he saw her at practice the next week. When asked if they talked at practice, Jeff stated, “Not

really. She was acting strange.” When asked what he meant by acting strange, Jeff stated, “Like she wasn’t talking, wasn’t coming near me. It was definitely not the way things had been between us before.” Jeff stated, “After a few days, I could tell that something was up. Between the Snaps and seeing her at practice, she seemed to be different, like she was ghosting me, but I knew she’d been sick, so I thought maybe she was just tired. It wasn’t until later that I learned what was really the matter.”

When asked if he ever asked anyone to speak with Hailey on his behalf, Jeff stated, “I wouldn’t say it was on my behalf, but I was worried about her, so I asked one of the other girls on the team to see if she was okay. I was just being a good friend.”

Beth’s Account

Beth stated that she knows both Jeff and Hailey from the Nordic Skiing Club. She stated that she is “probably closer with Jeff than with Hailey.” When asked about Jeff and Hailey’s relationship and interactions with each other, Beth stated, “This was Hailey’s first year on the team, and she and Jeff seemed to hit it off right away. We all thought that they were going to get together. That seemed to be where things were heading. Then toward the end of the season, they stopped talking to each other.”

When asked if she knew the reason for the change in their relationship, Beth stated, “Hailey seemed to have some of her own issues that she was working through. I always got the impression that she just wasn’t stable, emotionally or maybe even mentally.”

When asked if she ever communicated with Jeff or Hailey about the other person, Beth stated that after Hailey started acting weird toward Jeff, Jeff asked Beth to “check on Hailey to make sure she was okay.” Beth stated that she tried to talk to Hailey, but Hailey “was immediately suspicious of me and asked why I was asking her how she was.” Beth stated that she told Hailey Jeff wanted to make sure she was okay.

When asked whether she had any further conversations with either party about the other person, Beth stated that she did not.

February 26, 2022 Nordic Skiing Club Competition

Hailey’s Account

Hailey stated that throughout the day on February 26, while they were at their last ski competition of the season, Jeff “followed [her] around and just stared at [her] all day.” When asked to explain how Jeff followed her, Hailey stated, “While we were getting ready for the event and warming up, he was just always near me and looking at me.” Hailey stated that when she completed the race, Jeff was “at the finish line, waiting for [her] and then just sort of stayed

near [her] as things were wrapping up.” Hailey stated that the team went out for dinner afterward and she made sure to sit far away from Jeff, but she “kept catching [Jeff] staring at [her] from across the table.” When asked if Jeff talked with her on February 26, Hailey stated, “No. By that time I had stopped responding to his texts, so I think he had gotten the hint that I didn’t want to talk. But that didn’t stop him from staring, I guess.”

Jeff’s Account

When asked if he recalled seeing Hailey at the February 26 Nordic Skiing event, Jeff stated, “Of course I saw her. It’s a small team. It’s impossible not to see other people on the team.” When told of Hailey’s account that Jeff followed her around and stared at her throughout the day, Jeff stated, “I was at a competition with my team. I am going to be near my teammates. I am going to cheer on my teammates when they finish the race. I am going to sometimes make eye contact with my teammates when we are sitting at a table eating dinner together.” Jeff stated, “She’s accusing me of stalking for being on the same team as her.”

Beth’s Account

When asked if she recalled seeing Jeff and Hailey at the February 26, 2022 ski competition, Beth stated, “Yeah, of course.” When asked if she saw Jeff and Hailey interact at all, Beth stated, “No, not that I saw. Hailey was still avoiding Jeff.” When asked if she saw Jeff go near Hailey or look at her during the event, Beth stated, “No. He just seemed to be focused on the event.” When asked if she saw verbal or nonverbal interaction between Jeff and Hailey at dinner after the event, Beth stated, “No. I didn’t notice anything.”

March 4, 2022 Off-Campus Party

Hailey’s Account

Hailey stated that the next Friday night she was at a party at a house off campus, and Jeff showed up to the party. Hailey stated, “Jeff wasn’t even really friends with the person who threw the party. I know he just came because he knew I would be there.”

Hailey stated that she “was trying to avoid [Jeff]” but “he kept following [her] from room to room.” Hailey stated that Jeff eventually “cornered” her in the kitchen and started talking to her. Hailey stated that Jeff asked her how she’d been and told her he missed her. Hailey stated that he asked if they could hang out soon. Hailey stated that she told Jeff she was really busy with school and that she didn’t think them hanging out together “was a good idea.” Hailey stated that she told Jeff she needed to find her friend and then left the kitchen. Hailey stated that she was so upset from the interaction with Jeff that she left the party right away.

When asked if anyone else was in the kitchen during their conversation, Hailey stated, “Not anyone that I knew. But my friend Courtney saw me right after it before I left the party.”

Jeff’s Account

When asked when he saw Hailey next after the skiing season ended, Jeff stated that he saw Hailey from time to time around campus. When asked if she saw Hailey at an off-campus party on March 4, Jeff stated, “Yeah, that sounds right.” When told of Hailey’s account that he was not really friends with the person who threw the party, Jeff stated, “I was invited to a party. I went to the party. This is college. I’ve been at parties where I don’t even know who is throwing the party.”

When told of Hailey’s account that Jeff followed her from room to room, Jeff stated, “It was a small house, and our paths crossed a few times during the night. That doesn’t mean I was following her.”

When told of Hailey’s account that Jeff cornered her in the kitchen and talked with her, Jeff stated, “I did not corner her. I went into the kitchen to get a drink, and she was in there. We had a brief conversation.” When told of Hailey’s account that Jeff asked how Hailey was, told her he missed her, and asked if they could hang out soon, Jeff stated, “Yeah, I said those things. We had been friends and hung out for months. Just because we made out one night, I didn’t think the friendship needed to be over. I was just trying to keep the friendship.” Jeff stated, “I knew things were weird between us, and that bothered me. I was trying to fix that.”

When asked how Hailey responded to what he said, Jeff stated, “She blew me off, said she was busy. That was the end of it.” Jeff stated, “I don’t feel like I crossed any line by talking to a friend at a party. She is completely blowing this out of proportion.”

When asked if anyone else was in the kitchen during their conversation, Jeff stated, “There might have been people who came into the kitchen, but I couldn’t tell you who they were.” Jeff stated that he was at the party with his friends, Matt² and Tyler.

Courtney’s Account

Courtney stated that she went to a party with Hailey at their friend’s house on March 4, 2022. Courtney stated that Hailey was “really bothered” that Jeff was at the party. Courtney stated that “at some point” in the night, Hailey came to find her to tell her she needed to leave because she’d “had a confrontation with Jeff.” When asked what she meant by “confrontation,” Courtney stated, “Hailey just came up to me all upset and said she had run into Jeff in the kitchen and

² The Investigator emailed Matt Matthewson on multiple occasions to request an interview but did not receive a response.

needed to leave the party immediately.” When asked what happened next, Courtney stated, “I offered to go home with Hailey, but she told me she needed to be alone, and she left.”

When asked if she noticed any other interactions between Jeff and Hailey during the party, Courtney stated, “No. I didn’t see them interact at all. I saw him a few times during the night. He seemed to be hanging out with his friends.”

Tyler’s Account

Tyler stated that he went to a party with Jeff at a house off campus on March 4, 2022. When asked if he knew whether Jeff knew that Hailey was going to be at the party, Tyler stated, “Not that I know of. I guess he could have known that it was a possibility. Hailey is pretty good friends with some of the people who live in the house.” When asked if he saw Jeff and Hailey interact during the party, Tyler stated, “Jeff mentioned that they talked at some point, but I didn’t see it.” When asked if he noticed Jeff following Hailey during the party, Tyler stated, “No. Definitely not.”

March 10, 2022 Poetry Reading

Hailey’s Account

Hailey stated that she is an English major and that on March 10 she participated in a poetry reading in the University Fine Arts Center. Hailey stated that Jeff showed up to the event, even though he is a biology major. Hailey stated, “He wasn’t friends with anyone else who was doing a reading that night. He came because my name was listed on the flyer for the event.”

Hailey stated that she “caught Jeff staring at [her] several times during the event—especially during [her] reading.” Hailey stated that she was “so anxious and upset” that she “couldn’t concentrate on [her] reading” and was “having a panic attack” during the reading.

Hailey stated that she skipped the social time after the event and went straight home in order to avoid running into Jeff. When asked at her follow-up interview who else was at the poetry reading, Hailey stated that the only people she knew were her professor and some classmates from her English courses, but she stated that she did not want to involve any of them in the investigation.

Jeff’s Account

When asked if he recalled seeing Hailey at a poetry reading event on campus, Jeff stated, “Yes, I attended the event.” When told of Hailey’s account that Jeff only attended the event because he knew she was doing a reading, Jeff stated, “I went with Tyler and Matt. Matt’s girlfriend was performing, so I said I would go with him. It wasn’t because of Hailey. I mean, did I hope it

would help us be friends again? Sure. I was supporting her when she did her reading. But that wasn't why I went.”

When told of Hailey's account that she caught Jeff staring at her during the event, Jeff stated, “She was up front doing a reading. Where else was I supposed to be looking?”

When told of Hailey's account that she was so anxious and upset because of Jeff's presence at the event that she couldn't concentrate and was having a panic attack, Jeff stated, “No way. She seemed totally fine and did a great job. She was smiling throughout the night and seemed happy. You can ask anyone else there. She was fine.”

Tyler's Account

When asked if he attended a poetry event in March, Tyler stated, “Yeah.” When asked what he recalled about the event, Tyler stated, “Not much. I remember that Jeff brought it up and said we should all go. And then Matt said he was already going, I think his girlfriend was performing or something. So yeah, we went the three of us.” When asked if he recalled anything about Hailey's demeanor during her reading, Tyler stated, “I remember she did a reading, but no, I don't remember anything about it.”

March 15, 2022 Instagram Likes

Hailey's Account

Hailey stated that on March 15, Jeff “liked” an Instagram post on the Fine Arts Center's account containing pictures from the poetry reading, including several photos of Hailey. Hailey stated that on the same day, Jeff liked a photo of Hailey that one of her friends had tagged her in. Hailey stated that this was particularly upsetting because she had told Jeff to stop messaging her a few days earlier, and she had removed him as a follower on Instagram so that he would not see her posts. Hailey stated, “I wanted him to stop all communication, but he just wouldn't.” Hailey stated, “It was also upsetting because it showed that he was still following me online. He couldn't see my posts anymore, but he like went out of his way to like photos of me. I just felt like there was no safe space.”

Jeff's Account

When asked if he liked two Instagram posts with photos of Hailey on March 15, Jeff stated, “I might have” and proceeded to check his Instagram account to confirm that he had. Jeff stated, “I like tons of posts every day. They showed up in my feed. I had been at the poetry event. I liked it. The other picture is of a bunch of girls on the ski team. I'm not sure I even knew she was in the picture.” When told of Hailey's account that she had removed him as a follower, Jeff stated, “Maybe, but I honestly didn't even notice. She doesn't post that often.”

March 17, 2022 Note on Hailey's Car

Hailey's Account

Hailey stated that on March 17, she found a note on her car that read, "I still miss you. Text when you are ready to talk." Hailey stated that she "became so scared that [she] ran back to [her] dorm and locked the door." Hailey stated, "I wasn't even parked in my usual spot, so he had to have followed me there at some point." When asked if she still had the note, Hailey stated, "No, I threw it in the trash as soon as I could."

When asked about the impact that Jeff's conduct has had on her, Hailey stated, "I'm genuinely scared, and I have been for so long, especially with the note on my car. I avoid going out by myself cause I don't want to be caught alone and run into him. And I had to stop going to the cafeteria cause every time I went, he would be sitting at this table right by the entrance. I just couldn't face him."

Jeff's Account

When asked if he left a note on Hailey's car on or around March 17, Jeff stated, "Yeah, I left a quick note. I guess it was a last-ditch effort to salvage the friendship and make sure she was okay. Obviously now I wish I hadn't written it." When asked what the note said, Jeff stated, "Something like, I'm here if you want to talk." Jeff stated, "I was genuinely worried about her. I'd been hearing that she wasn't doing very well academically, and I knew that she'd been struggling with anxiety and depression off and on throughout the year. I just wanted her to know I was there for her." When told of Hailey's account that the note said, "I still miss you. Text when you are ready to talk," Jeff stated, "Pretty sure I didn't write, 'I still miss you.'"

When asked about Hailey's account that she stopped going to the cafeteria because he was frequently sitting at a table by the entrance, Jeff stated, "That's where the ski team always sits. I mean, I'm not there all the time. That's ridiculous. But I go to this school too and yeah, sometimes I eat in the cafeteria. Me being in the cafeteria has nothing to do with Hailey."

2022 Title IX/VAWA Hearing Panel Training

Handout 7

Excerpts from Party Statements in Response to the Investigation Report

Excerpt from Hailey's Response to the Investigation Report

Jeff made it sound like if I wasn't wearing a bra that that was an invitation for him to touch my breasts. My clothing choices do not give anyone the right to touch me without my consent. Jeff's argument is like saying a woman who dresses provocatively is "asking for it." Jeff's statements should be removed from the report.

Excerpt from Jeff's Response to the Investigation Report

I told the investigator that she should talk to people at the poetry reading, but she didn't because Hailey asked her not to. Anyone at the reading could tell the investigator that Hailey was fine. Their testimony would prove that she is just making things up to blow this all out of proportion. And it's not right for her to be able to eliminate witnesses. If a witness saw what happened, the investigator needs to talk to that witness.

The policy says that words *or overt actions* can show consent. Hailey invited me to come over to "watch Netflix and chill," which everyone knows means to have sex or mess around while watching. She took off her bra and she moved her arms out of the way as I moved my hand up along her stomach toward her breasts. She also said that she was ok with it. These were words and overt actions that showed that she consented. If she did all of those things, there is no way that I should be found guilty of sexual assault.

2022 Title IX/VAWA Hearing Panel Training

Handout 8

Summary of Hearing

- Matt did not participate in the hearing.
- The hearing panel heard from the parties and all of the witnesses in the investigation report. In addition to the parties' testimony during the mock hearing, the witnesses' testimony at the hearing was generally consistent with the accounts they provided to the investigator and no additional information was provided, except for the following:
 - The panel called Hailey's roommate, Molly, as a new witness. Molly confirmed the parties' account that she came home while they were kissing on the couch. Molly stated that when she walked in the door, she saw Jeff and Hailey on the couch together. Molly stated that she "could tell [she] had interrupted something, because they were like scrambling around and then totally acting weird." Molly stated that she went straight to her room and didn't see Jeff again that night. Molly stated that when she came out of her room to get ready for bed, she asked Hailey how her night was. Molly stated that Hailey replied, "I don't want to talk about it." Molly stated that Hailey seemed really upset and her eyes looked red, like she'd been crying.
 - The panel called Hailey's English professor who organized the poetry reading. When asked about Hailey's demeanor and performance at the reading, the professor stated, "She seemed a little off during her reading. I mean, she still did well, but she did seem a little distracted. Not quite as polished as normal."
 - The panel asked Jeff's friend Tyler if he had talked to Jeff about Hailey during the spring semester. Tyler stated, "Yeah, I mean, we all knew that he really liked her and was pretty bummed when things didn't work out and she kinda cut him out." When asked what he meant by Hailey cutting Jeff out, Tyler stated, "Like, she stopped talking to him at all and wouldn't respond to messages." When asked how he knew Jeff was "bummed" after Hailey "cut him out," Tyler stated, "Well, he was just still constantly talking about her. I think he'd been really excited about her, and it was hard for him to, like, let her go, you know?"

2022 Title IX/VAWA Hearing Panel Training

Handout 9

Excerpts from Adjudicator Outline

Review Policy definitions in handout #4

Hailey's Allegation of Sexual Assault

- Hailey alleged that Jeff engaged in sexual assault by touching her breasts without her consent.
- What sexual contact occurred?
 - Did Jeff touch Hailey's breasts?.....Yes No
- For each sexual contact you found occurred, who initiated the contact?
 - Did Jeff initiate touching Hailey's breasts?.....Yes No
- If Jeff initiated the sexual contact, did Hailey consent to the sexual contact?
 - Did Hailey consent to Jeff touching her breasts?.....Yes No

Do you find Jeff responsible for Sexual Assault for touching Hailey's breasts? Yes No

Rational for finding:

Hailey's Allegation of Stalking

- Hailey alleged that Jeff engaged in Stalking. Specifically, Hailey alleged that:
 - Between February 20, 2022 and March 5, 2022, Jeff sent multiple unwelcome messages to Hailey via Snapchat.
 - On February 24, 2022, during Nordic Skiing Club practice, Jeff communicated to Hailey through their teammate Beth.
 - On February 26, 2022, at an off-campus Nordic Skiing Club event, Jeff followed and stared at Hailey.
 - On March 4, 2022, at an off-campus house party, Jeff followed and communicated to Hailey.

- On March 10, 2022, during a poetry reading event in the University Fine Arts Center, Jeff followed and stared at Hailey.
- On March 15, 2022, Jeff liked two Instagram posts containing pictures of Hailey.
- On March 17, 2022, in University Parking Lot D, Jeff left a note on Hailey’s car.
- What conduct occurred? (Fill in below)
- Was the conduct you found to have occurred part of a course of conduct directed at Hailey? (Fill in below)
 - Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through others (by any action, method, device, or means), follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person’s property.

Alleged Conduct	Did it occur? (yes/no)	Was it part of a course of conduct directed at Hailey? (yes/no)
Feb 20-Mar 5 Snapchat Messages		
Feb 24 Communication through Beth		
Feb 26 Ski Event Following/Staring		
Mar 4 Party Following/Communicating		
Mar 10 Poetry Reading Following/Staring		
Mar 15 Instagram Likes		
Mar 17 Note on car		

- Would the conduct you found to have occurred and you found to be part of a course of conduct directed at Hailey cause a reasonable person in Hailey’s circumstances to (1) fear for their safety or the safety of others **or** (2) suffer substantial emotional distress? Yes No
 - Consider the impact of the conduct you found to be part of the course of conduct collectively when determining the impact on the complainant.
 - Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
 - Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or professional treatment or counseling.

Do you find Jeff responsible for Stalking? Yes No

Rationale for finding:

Sanctions (if applicable):

Rationale for sanctions:

**2022 Title IX/VAWA Hearing Panel 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 regarding Sexual Assault and Stalking, the Panel finds insufficient evidence to determine that it is more likely than not that Jeff engaged in Sexual Assault, as discussed below. The Panel finds sufficient evidence to determine that it is more likely than not that Jeff engaged in Stalking in violation of the Policy, as discussed below.

Analysis of Sexual Assault Allegation

Hailey alleged that Jeff engaged in sexual assault by touching her breasts without her consent. The Panel must determine what sexual contact occurred, whether Jeff initiated the sexual contact found to have occurred, and, if so, whether Hailey consented to the sexual contact.

The parties agree that Jeff touched Hailey’s breasts and that he initiated the touching. Accordingly, the Panel finds sufficient evidence to determine it is more likely than not that Jeff initiated touching of Hailey’s breasts, which constitutes sexual contact under the Policy.

The Panel will next consider whether Jeff obtained Hailey’s consent to that contact. Under the Policy, “Consent” means words or overt actions by a person in advance that clearly and affirmatively communicate 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.

The parties have set forth conflicting accounts as to whether Hailey consented to Jeff touching her breasts. The Panel first considers Hailey’s account of the contact and whether her account indicates that she consented to the contact with her breasts. Hailey stated that on the evening of February 19, 2022, while she and Jeff were watching a show in her dorm, Jeff put his arm around her and pulled her closer to him, started kissing her neck and chin, and eventually they started kissing on the lips. Hailey stated that while they were kissing, Jeff put his hand up her shirt. When asked whether his hand was up the back or the front of her shirt, Hailey stated, “Just the back at first.” Hailey stated that Jeff then moved his hand to her front and started touching her breasts. When asked if anything was said by her or Jeff before Jeff touched her breasts, Hailey stated, “No, neither of us said anything. He just moved his hand there.” When asked if she consented to Jeff touching her breasts through words or overt actions, Hailey stated, “No. I was not comfortable with that and I certainly didn’t do or say anything to make him think that he

could just do that. I mean, I was still sort of trying to decide where this was going, so that was way too much for me.” When told of Jeff’s account that he asked, “Is this OK?” while moving his hands up toward Hailey’s breasts and that Hailey answered, “Yes,” Hailey stated, “I didn’t say ‘yes,’ I said something like, ‘I guess so.’ He was already touching me by that point. I didn’t know what to say. I didn’t want it to go any further and I was just distracted trying to figure out how to slow things down.” Hailey clarified during the hearing that Jeff asked, “Is this OK?” after he had already begun touching her breasts.

Hailey’s account, if true, indicates that Hailey did not consent to Jeff touching her breasts through words or overt actions. While Hailey stated that Jeff asked, “Is this OK?” and she replied, “I guess so,” Hailey stated that this exchange occurred *after* Jeff had already begun touching her breasts. The Policy requires that consent be given *in advance* of sexual contact or activity and Hailey’s account does not include any words or actions she engaged in indicating her consent to the initial sexual contact.

The Panel next considers Jeff’s account of the contact and whether his account indicates that Hailey consented to the contact with her breasts. Jeff stated that Hailey put her hands under the back of Jeff’s shirt before he put his hands under her shirt. Jeff also described that while they were kissing, Hailey got up and said, “I’ll be right back, my bra is bugging me.” When asked if she said anything else, Jeff stated, “I think she said that her bra was digging into her or was too restrictive or something. I can’t recall exactly what it was, but something like that. So I assumed that she was going to change and then when she came back, she was wearing the same shirt with no bra on.” Jeff stated that after returning from removing her bra, Hailey sat down next to him on the couch and pushed on him until they were lying down on the couch. Jeff stated that after they were lying on the couch, he put his hands under the back of Hailey’s shirt, felt that she was no longer wearing a bra, and then moved one of his hands around Hailey’s waist to her front side. Jeff stated that he started slowly moving his hand higher on Hailey’s stomach, gauging her reaction. Jeff stated that Hailey continued kissing him and moved her hands and arms up around Jeff’s neck. Jeff stated that he thought Hailey moved her hands and arms so that her arms would not be in the way of Jeff continuing to move his hand up. Finally, Jeff stated that while he moved his hands up Hailey’s front side, he asked, “Is this okay?” and Hailey responded, “Yes.” When asked at the hearing if he asked Hailey the question before or after he first touched her breasts, Jeff stated, “It was definitely before.”

Accordingly, Jeff’s account, if true, indicates that Hailey consented to him touching her breasts. Jeff’s account of the verbal exchange that occurred between the parties indicates that Hailey clearly communicated verbal consent to Jeff touching her breasts in advance of the contact. While the Panel recognizes that Jeff did not explicitly refer to touching Hailey’s breasts in his question “Is this okay?”, Jeff’s account indicates that the meaning of his question was implied from the context—namely that he was moving his hand upward under the front of Hailey’s shirt

as he asked the question. Additionally, even if Hailey had not verbally consented to Jeff touching her breasts, Jeff’s account indicates that Hailey engaged in other overt actions—removing her bra during the parties’ encounter, making statements regarding her bra to Jeff, and moving her hands and arms out of the way while Jeff moved his hands up her front side under her shirt—which, while insufficient to communicate consent on their own, collectively could reasonably be interpreted as actions indicating Hailey’s consent to the sexual contact.

Because of the parties have both set forth generally plausible but conflicting accounts as to whether Hailey consented to the contact with her breasts, the Panel considered the evidence outside of the parties’ accounts. The Panel did not find evidence to tip the balance of evidence between the parties’ conflicting accounts sufficient to meet the preponderance of the evidence standard as to whether Hailey consented to Jeff touching her breasts. Therefore, the Panel finds insufficient evidence to determine that it is more likely than not that Jeff engaged in Sexual Assault of Hailey.¹

Analysis of Stalking Allegation

The Panel must next determine whether Jeff engaged in Stalking in violation of the Policy. Pursuant to the Policy, the Panel must determine what conduct occurred and whether such conduct constituted a course of conduct by Jeff that was directed at Hailey; and, if so, whether that course of conduct would cause a reasonable person to (1) fear for his or her safety or the safety of others, or (2) suffer substantial emotional distress.

What Conduct Occurred/Course of Conduct Directed at Hailey

Hailey alleges that Jeff engaged in the following course of conduct directed at Hailey:

¹ The Panel notes that Hailey stated that Jeff sent her a Snapchat message that said “I’m really sorry for what happened between us. I wish I could go back in time and start over.” While such a message could indicate an admission of wrongdoing, it is too general for the Panel to conclude that it is an admission of engaging in the specific wrongdoing of touching Hailey’s breasts without her consent. Additionally, Jeff’s message could also simply indicate regret that the friendship had deteriorated. Furthermore, Jeff disputed Hailey’s account of the wording of the message, stating, “I don’t think those were my exact words.” Jeff stated, “I think I said something like this doesn’t need to be awkward, let’s just start over as friends.” The parties did not submit a copy or screenshot of the message. Therefore, since the parties dispute whether Jeff said he was sorry in the message and since such a statement, if made, would not clearly be an admission of wrongdoing, the Panel finds that the message does not constitute an admission or otherwise indicate responsibility for a Policy violation.

- Between February 20, 2022 and March 12, 2022, Jeff sent multiple unwelcome messages to Hailey via Snapchat.
- On February 24, 2022, during a Nordic Skiing Club practice, Jeff communicated to Hailey through their teammate Beth.
- On February 26, 2022, at an off-campus Nordic Skiing Club event, Jeff followed and stared at Hailey.
- On March 4, 2022, at an off-campus house party, Jeff followed and communicated to Hailey.
- On March 10, 2022, during a poetry reading event in the University Fine Arts Center, Jeff followed and stared at Hailey.
- On March 15, 2022, Jeff liked two Instagram posts containing pictures of Hailey.
- On March 17, 2022, in University Parking Lot D, Jeff left a note on Hailey’s car.

The Panel considers whether each alleged incident occurred and, if so, whether the conduct at issue was part of a course of conduct directed at Hailey. Under the Policy, course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through others (by any action, method, device, or means), follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person’s property.

February 20, 2022-March 12, 2022 Snapchat Messages

Hailey alleges that after the above-described incident on February 19, Jeff often sent her messages via Snapchat, asking to hang out. Hailey stated that at first, she made excuses for why she could not hang out. Hailey stated that she eventually “stopped responding for a while,” but Jeff “kept Snapping me, becoming more and more creepy.” When asked what she meant by the Snaps being “creepy,” Hailey stated, “Just the frequency of them. And he seemed kinda desperate.” Hailey stated that during the time when she was not responding to his Snaps, Jeff wrote a Snapchat message that said, “I’m really sorry for what happened between us. I wish I could go back in time and start over.” Hailey stated that on March 5, 2022, she sent a message to Jeff asking him not to message her anymore. Hailey submitted a screenshot of the exchange, which states:

Jeff:	HRU
Jeff:	Fun seeing you last night
Hailey:	Ive made it clear I don’t think we should talk plz stop msging me

Hailey stated that she didn't receive any more Snaps from Jeff after that.

Jeff agrees that he sent messages to Hailey via Snapchat between February 20 and March 5, that at some point Hailey stopped responding to the messages, and that Hailey eventually asked him not to message her anymore, after which Jeff stopped sending messages. Regarding Hailey's account that Jeff sent a message stating, "I'm really sorry for what happened between us. I wish I could go back in time and start over," Jeff stated, "I don't think those were my exact words." Jeff stated, "I think I said something like this doesn't need to be awkward, let's just start over as friends."

Given the similarity in the parties' accounts regarding the messages and the screenshot of the final messages the parties exchanged, the Panel finds sufficient evidence to determine that it is more likely than not that Jeff sent multiple messages to Hailey via Snapchat between February 20 and March 5, 2022. The Panel also finds that at some point, Hailey stopped responding to the messages and that on March 5, 2022, Hailey responded to a message from Jeff, telling him that she had made it clear that she did not think they should talk and asking him to stop messaging her. The Panel also finds that on one occasion, Jeff sent a message about wanting to "start over." However, because the parties' account differ as to the exact content of the message, and there is no other evidence regarding the content of that message, the Panel finds insufficient evidence to determine that Jeff apologized in the message, as alleged by Hailey. The Panel also finds that pursuant to the Policy definition of Stalking, Jeff "communicated to" Hailey through the messages and that the messages were "directed at" Hailey. Therefore, the Panel finds sufficient evidence to determine that it is more likely than not that the messages were part of a course of conduct² directed at Hailey.

February 24, 2022 Communication Through Beth

Hailey alleged that on February 24, 2022, one of Jeff's and Hailey's teammates, Beth, talked to her at practice asking if she was alright and telling her that Jeff had asked Beth to talk to Hailey. Jeff's and Beth's accounts corroborate this allegation, and the Panel therefore finds sufficient evidence to determine that it is more likely than not that the conduct occurred. The Panel further finds that such conduct constituted Jeff communicating to Hailey through a third party—Beth—and that the communication was directed at Hailey. Therefore, the Panel finds sufficient evidence to determine that it is more likely than not that Jeff's communication through Beth was part of the course of conduct directed at Hailey.

² The Panel notes that because the Panel has found sufficient evidence to determine that Jeff sent multiple messages to Hailey, the factor of "two or more acts" under the definition of Stalking in the Policy has been satisfied.

February 26, 2022 Nordic Skiing Club Event

Hailey alleged that on February 26, 2022, during a Nordic Skiing Club event, Jeff followed Hailey around at the event and stared at her during the event and during the dinner that followed. Jeff, however, denied Hailey's allegations that he followed her around and stared at her throughout the February 26 event. Jeff explained "I was at a competition with my team. I am going to be near my teammates. I am going to cheer on my teammates when they finish the race. I am going to sometimes make eye contact with my teammates when we are sitting at a table eating dinner together." Jeff's account is corroborated by Beth, who stated that she did not see Jeff and Hailey interact at the February 26 event and did not notice any verbal or nonverbal interaction between the two at the event dinner.

When the parties' conflicting accounts are considered together with Beth's account, the Panel finds insufficient evidence to determine that it is more likely than not that Jeff was following or staring at Hailey during the event or the dinner that followed. The Panel notes that Hailey's allegations regarding the event also indicate that Jeff was engaging in normal team activities appropriate to the event when Hailey alleges that he followed and stared at her. For example, Hailey alleged that Jeff was near her and looking at her while they were getting ready and warming up for the event, that Jeff was at the finish line when she completed the event, and that Jeff was near her when things were wrapping up. Therefore, even Hailey's account provides some corroboration for Jeff's account that he was simply participating in a team event and dinner. The Panel finds that close proximity and occasional eye contact would be nearly unavoidable in such a situation. Accordingly, even if the Panel found that Jeff was near to Hailey and looked at her during the event and dinner, the Panel finds insufficient evidence to determine that it is more likely than not that such conduct was "directed at" Hailey, rather than simply being an inevitable part of Jeff's participation at the event as a member of the skiing club. Therefore, the Panel finds insufficient evidence to determine that Jeff engaged in conduct at the February 26, 2022 Nordic Skiing Club event that was part of a course of conduct directed at Hailey.

March 4, 2022 Off-Campus House Party

Hailey alleged that on March 4, 2022 at a house party off campus, Jeff followed and communicated to her. The Panel will address the allegations regarding Jeff following Hailey and Jeff communicating to Hailey in turn. As to the allegation that Jeff followed her, Hailey alleged that Jeff only came to the party because he knew she would be there and that while she was trying to avoid Jeff at the party, he kept following her from room to room. While accounts from Jeff, Jeff's friend Tyler, and Hailey's friend Courtney confirm that Jeff was at the party, none of these accounts indicate that Jeff came to the party to see Hailey or that he followed her around while there. When told of Hailey's account that Jeff followed her from room to room, Jeff

stated, “It was a small house, and our paths crossed a few times during the night. That doesn’t mean I was following her.” Courtney stated that she did not see Jeff and Hailey interact at the party and that while she saw Jeff a few times during the party, he “seemed to be hanging out with his friends.” When Tyler was asked if he noticed Jeff following Hailey during the party, Tyler stated, “No. Definitely not.” While Jeff agreed that they were in the same room at different times during the party, there is nothing beyond speculation to indicate that such encounters resulted from Jeff following Hailey. When the parties’ conflicting accounts are considered together with the accounts of Tyler and Courtney, which indicate that Jeff was not following or communicating with Hailey, the Panel finds insufficient evidence to determine that it is more likely than not that Jeff came to the party to see Hailey or followed Hailey while at the party.

Regarding the allegation that Jeff communicated to Hailey at the party, both the parties’ and witnesses’ accounts confirm that Jeff and Hailey had a conversation during the party. While the parties disagree as to whether Jeff “cornered Hailey” in the kitchen in order to talk to her, as Hailey alleged, the parties agree that they talked, that Jeff asked Hailey how she was, told her that he missed her, and asked to hang out soon. The parties also agree that Hailey told Jeff that she was busy in response to his request to hang out. Courtney and Tyler stated that while they did not witness the conversation, they were told about it by Hailey and Jeff, respectively, after it occurred. Therefore, given the consistent accounts regarding the conversation, the Panel finds that it is more likely than not that Jeff talked to Hailey at the party, asked how she was, told her he missed her, and asked to hang out. As such, the Panel finds that Jeff “communicated to” Hailey at the party and that such conduct was “directed at” Hailey. Therefore, the Panel finds sufficient evidence to determine that Jeff’s communication to Hailey at the March 4, 2022 house party was part of a course of conduct directed at Hailey.

March 10, 2022 Poetry Reading

Hailey alleged that on March 10, 2022, Jeff came to a poetry reading in which she participated, and that Jeff came because Hailey’s name was listed on the flyer for the event. Hailey alleged that Jeff stared at her during the event, particularly while she was doing her reading. The Panel will address the allegations regarding Jeff going to the event to see Hailey and Jeff staring at Hailey during the event in turn. Jeff’s statements regarding his reason for going to the event provide some corroboration for Hailey’s allegation that Jeff came to the event to see her. Jeff stated that he went to the event with his friends, Tyler and Matt. Jeff stated, “Matt’s girlfriend was performing, so I said I would go with him. It wasn’t because of Hailey. I mean, did I hope it would help us be friends again? Sure. I was supporting her when she did her reading. But that wasn’t why I went.” While Jeff stated that seeing Hailey was not the reason he went to the event, he admitted that going to support Hailey was on his mind when he went. Additionally, Jeff’s friend Tyler’s statements contradict Jeff’s statement that he went because Matt was going to watch his girlfriend. Tyler stated, “I remember that Jeff brought it up and said we should all

go. And then Matt said he was already going, I think his girlfriend was performing or something.”³ Therefore, given that Jeff’s and Tyler’s statements provide at least some corroboration for Hailey’s allegation that Jeff came to the poetry reading to see her, the Panel finds sufficient evidence to determine that it is more likely than not that Jeff came to the event to see Hailey.⁴ The Panel also finds that pursuant to the Policy definition of Stalking, such conduct was “directed at” Hailey.

Hailey also alleged that she “caught Jeff staring at [her] several times during the event—especially during [her] reading.” When told of Hailey’s account in this regard, Jeff stated, “She was up front doing a reading. Where else was I supposed to be looking?” Therefore, Jeff admitted to looking at Hailey during the event—at least during her reading. As such, the Panel finds sufficient evidence to determine that it is more likely than not that Jeff “observed” Hailey at the poetry reading, pursuant to the Policy definition of Stalking. The Panel acknowledges that it would be customary to look at someone while they give a poetry reading and that such observation would not always be “directed at” the reader so as to constitute conduct contributing to a course of conduct under the Policy definition of Stalking. However, the Panel finds that because there is sufficient evidence to determine that it is more likely than not that Jeff came to the event to see Hailey and that his attendance at the hearing was “directed at” Hailey, the Panel likewise finds that Jeff’s observation of Hailey during that event was “directed at” her and not merely the customary actions of an attendee at the event. Therefore, the Panel finds sufficient evidence to determine that it is more likely than not that Jeff’s following and observation of Hailey at the Poetry reading on March 10 contributed to the course of conduct directed at Hailey.

March 15, 2022, Jeff’s Instagram Likes

Hailey alleged that on March 15, 2022, Jeff “liked” an Instagram post on the Fine Arts Center’s account containing pictures from the March 10 poetry reading, including several photos of Hailey. Hailey also alleged that on the same day, Jeff liked a photo of Hailey that one of her friends had tagged her in. Jeff confirmed that he had liked these Instagram posts, stating that they had shown up in his feed, and he liked them. Jeff stated that he had been at the poetry reading and liked the post about it. Jeff stated that the other post tagging Hailey was a picture of “a bunch of girls on the ski team” and that he was not sure he even knew Hailey was in the

³ Matt Matthewson did not respond to the investigator’s requests for an interview or to the Hearing Panel’s requests for Matt to serve as a witness at the hearing.

⁴ The Panel also notes that the poetry reading occurred on March 10, 2022, after Hailey wrote a message to Jeff on March 5, 2022, stating, “Ive made it clear I don’t think we should talk plz stop msging me.”

picture. Because Jeff confirmed that he liked the posts, the Panel finds sufficient evidence to determine that the conduct occurred.

The Panel next determines whether such conduct constitutes conduct “directed at” Hailey. The Policy states as a part of the definition of Stalking, “For purposes of this definition, not all communication about a person will be considered to be directed at that person.” There is insufficient evidence to indicate that Jeff’s likes of the two Instagram posts were directed at Hailey specifically, rather than being directed at the individuals or groups making the posts, at all of Jeff’s Instagram followers, or at a wider Instagram audience. The Panel acknowledges that both of the likes were made on the same day, which could be seen as an indication that Jeff was targeting Hailey with the likes. However, Jeff stated that both of the posts showed up in his Instagram feed and, as a result, he liked them. Therefore, considering Jeff’s account of why he liked both posts, the Panel finds insufficient evidence to determine it is more likely than not that the two likes on the same day constituted conduct directed at Hailey.⁵

Therefore, while the Panel finds that the Instagram likes constituted communication about Hailey, the Panel finds insufficient evidence to determine that it is more likely than not that the likes were directed at Hailey so as to find that the likes contributed to a course of conduct directed at Hailey.

March 17, 2022 Note on Hailey’s Car

Hailey alleged that on March 17, 2022, Jeff left a note on her car that read, “I still miss you. Text when you are ready to talk.” Jeff confirmed that he left the note on Hailey’s car, but, when asked what the note said, stated, “Something like, I’m here if you want to talk.” When told of Hailey’s account of what the note said, Jeff stated, “Pretty sure I didn’t write, ‘I still miss you.’” Because of the parties’ relatively consistent accounts, the Panel finds sufficient evidence to determine that it is more likely than not that Jeff left a note on Hailey’s car and the note, at a minimum, invited Hailey to contact Jeff to talk. The Panel further finds that the note constituted “communication to” Hailey and was “directed at” Hailey. Therefore, the Panel finds sufficient

⁵ The Panel acknowledges that the Panel found above that Jeff attended the poetry reading, at least in part, to see Hailey and that his attendance at the event and his observation of her during the event were therefore directed at her. However, that context does not necessarily mean that Jeff liking a post about the event was directed at Hailey. While Jeff stated that he hoped his attendance at the poetry reading would help them be friends again and that he was supporting her while she was doing her reading, there is no similar evidence that Jeff was motivated to like the post about the event by a desire to show support to Hailey or by any other reason that would show the conduct was directed at her.

evidence to determine that it is more likely than not that Jeff leaving a note on Hailey’s car contributed to the course of conduct directed at Hailey.

Summary of Course of Conduct

Therefore, the Panel finds sufficient evidence to determine that it is more likely than not that the following conduct occurred and was part of a course of conduct directed at Hailey: (1) from February 20, 2022 to March 5, 2022, Jeff sent multiple messages to Hailey via Snapchat; (2) on February 24, 2022, Jeff communicated to Hailey through a third party (Beth); (3) on March 4, 2022 at an off-campus party, Jeff communicated to Hailey; (4) on March 10, 2022 at a poetry reading on campus, Jeff followed and observed Hailey; and (5) on March 17, 2022, Jeff communicated to Hailey by leaving a note on Hailey’s car. The Panel finds insufficient evidence to determine that it is more likely than not that the following conduct occurred or that it was part of a course of conduct directed at Hailey: (1) on February 26, 2022 at a Nordic Skiing Club event, Jeff followed and stared at Hailey; (2) on March 4, 2022 at an off-campus party, Jeff followed Hailey; and (3) on March 15, 2022 Jeff communicated about Hailey by liking two Instagram posts that contained pictures of Hailey.

Fear for Safety/Substantial Emotional Distress

The Panel must next determine whether the course of conduct found to have occurred above would cause a reasonable person to (1) fear for his or her safety or the safety of others, or (2) suffer substantial emotional distress. In making this determination, the Panel only considers the conduct found above to have occurred and to be directed at Hailey, and the Panel considers such conduct collectively.

Under the Policy, the Panel must consider whether a reasonable person in Hailey’s circumstances would fear for her safety or suffer substantial emotional distress. The Panel finds that there is sufficient evidence to determine that Jeff’s conduct would have caused a reasonable person in Hailey’s position to fear for their safety or suffer substantial emotional distress. First, Jeff’s conduct toward Hailey was persistent, despite her efforts to avoid it. For example, Hailey clearly asked Jeff to stop contacting her on March 5, 2022, yet he continued to contact and otherwise direct conduct toward her by coming to the poetry reading and leaving a note on her car. Additionally, Hailey stated that at the March 4, 2022 off-campus party, she tried to avoid Jeff and was so upset from the interaction with Jeff that she left the party right away.⁶ Second, the Panel finds that Jeff’s conduct in leaving a note on Hailey’s car, especially in light of the context provided by Hailey—that she was not parked in her usual spot and that

⁶ Hailey’s account in this regard is corroborated by the following statement from Courtney, “Hailey just came up to me all upset and said she had run into Jeff in the kitchen and needed to leave the party immediately.”

Jeff therefore “had to have followed [her] there at some point”—was an escalation in Jeff’s attempts to contact Hailey. The Panel finds that such circumstances would cause a reasonable person in Hailey’s circumstances to fear for her safety. Hailey, in fact, stated that she ran back to her dorm after finding the note from Jeff on her car and has been scared ever since.

The Panel recognizes that there is no evidence to indicate that Jeff made any explicit threats of harm or engaged in any directly threatening behavior.⁷ However, because of the persistence of the conduct despite a request for it to cease and because the note on the car was an escalation of the conduct, the Panel finds that the fear of possible harm was reasonable.

The Panel also finds that Jeff’s conduct would cause a reasonable person in Hailey’s circumstances to suffer substantial emotional distress.⁸ In addition to the factors discussed above regarding the reasonableness of Hailey’s fear for her safety, the Panel also recognizes that Jeff’s continued unwanted conduct would be particularly distressing for a college student who lives on the same campus and has to constantly worry about running into the person engaging in that conduct. The Panel finds that it would be reasonable under such circumstances to feel the type of paranoia that Hailey discussed during the hearing. At the hearing, Hailey explained:

I don’t even think I realized at first how much this was affecting me. I’ve caught myself looking around every time I walk to my car. I’ve like beefed up the security settings on all of my social media accounts. I have avoided going out or at least going out on my own because I’m afraid I’ll run into him. This has just made me, like, a paranoid person and I really hate that because that’s not me, you know? At least that’s

⁷ The Panel recognizes that Jeff’s conduct may not be as severe as other cases of stalking that involve more threatening statements or conduct. However, the Panel has found that Jeff’s conduct meets the definition of Stalking under the Policy, and any differences of degree as to the severity of the conduct can be addressed through the determination of sanctions, which are discussed below.

The Panel also recognizes that Jeff stated several times that his communications to Hailey were made out of a concern for her and a desire to be a good friend. However, Jeff’s motivation for communicating to, following, or observing Hailey is not a factor under the Policy’s definition of Stalking and is therefore not relevant to the Panel’s determination regarding responsibility.

⁸ The Panel notes that under the Policy, conduct need not cause a reasonable person to both fear for their safety and suffer substantial emotional distress in order to constitute Stalking. Here, however, the Panel finds that there is sufficient evidence to conclude that Jeff’s conduct satisfied both alternatives under the Stalking definition and therefore have included its analysis of both.

not who I was before this happened. I've been working through these issues with my counselor, but I feel like I still have a long way to go before I will feel like my old self again.

The Panel finds that it would be reasonable for a student in Hailey's circumstances to want to talk about the situation with a counselor.

The Panel also notes that, although it is not required to find that Hailey experienced substantial emotional distress in order to conclude that Jeff engaged in Stalking, there is abundant evidence in the record demonstrating that Hailey was bothered by Jeff's conduct, wanted it to stop, and became more and more upset as the conduct escalated, to the point that she changed her daily habits and spoke with a counselor. For example, Hailey stated that the February 24, 2022 interaction with Beth made her "super uncomfortable," which is corroborated by Beth's account that Hailey became suspicious of Beth during their interaction. Hailey also stated that at the March 10, 2022 poetry reading, she was "so anxious and upset" that she "couldn't concentrate on [her] reading" and was "having a panic attack" during the reading. When asked at the hearing to describe what she meant by saying that she was having a panic attack, Hailey stated, "I felt like really afraid and anxious with him there. I was breathing fast and like couldn't concentrate." The Panel recognizes that Jeff's account that Hailey "seemed totally fine and did a great job" during the reading and was "smiling throughout the night and seemed happy" contradicts Hailey's account on this point. However, testimony at the hearing from Hailey's English professor, Dr. Austen that her performance "was a little off" and that she did well but seemed "distracted" provides some support for Hailey's account.⁹

For the above reasons, the Panel finds sufficient evidence to determine that it is more likely than not that Jeff engaged in a course of conduct directed at Hailey that would cause a reasonable person to fear for her safety and to suffer substantial emotional distress. As such, the Panel finds that it is more likely than not that Jeff engaged in Stalking of Hailey in violation of the Policy.

Conclusion

Based on the Panel's consideration of the adjudication file, the evidence presented at the live hearing, the relevant Policy provisions, and for the reasons discussed above, the Panel concludes that there is insufficient evidence to determine that it is more likely than not that Jeff engaged in Sexual Assault of Hailey. The Panel finds sufficient evidence to determine that it is

⁹ The Panel notes that Tyler's account does not add much to the analysis. When asked if he recalled anything about Hailey's demeanor during her reading, Tyler stated, "I remember she did a reading, but no, I don't remember anything about it."

more likely than not that Jeff engaged in Stalking of Hailey in violation of the Policy.