



INVESTIGATION in a BOX



A TOOLKIT FROM THE ASSOCIATION OF TITLE IX ADMINISTRATORS

By:

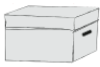
Brett A. Sokolow, J.D.

Daniel C. Swinton, J.D., Ed.D.

Leslee K. Morris, J.D.

Marianne E. Price, M.S.

Michelle N. Issadore, M.Ed.



NAVIGATING INVESTIGATION IN A BOX

The Table of Contents headers and page numbers serve as internal links; Click on the TOC item or page number to which you wish to go to be taken there directly.

Editor:
Cynthia E. Gomez

Associate Editor:
Samantha Dutil

This toolkit is intended to provide assistance in conducting campus civil rights investigations. It is not given and should not be taken as legal advice. Before acting on any of the ideas, opinions, or suggestions in this toolkit, users should always check first with a licensed attorney in their own jurisdiction.

©2015, ATIXA.
All rights reserved.

www.atixa.org

TABLE OF CONTENTS

Title IX Overview	1
A Note on Terminology	2
Flow of Resolution in 5 Steps	4
Model Variations — Investigators Making a Determination	4
Civil Rights Investigation/Resolution Process in 10 Steps	5
Investigation Overview	6
Preparing for the Investigation	8
Models of Proof	8
Investigator’s Preparation Checklist	11
Additional Planning for the Investigation	12
Reviewing the Policy: Parsing the Policy Elements	16
The Investigation Timeline	20
Investigation Timeline Compliance Example	21
Investigation Timeline Compliance Template	22
Sample Investigation Timeline (Civil Rights Model)	23
Sample Investigation Timeline (Hearing Panel)	24
The Investigation File and Logs	25
Investigator’s Checklist	25
Sample Communications Log	26
Communications Log Template	27
Organizing the Investigation File	28
Investigator’s Checklist	28
Initial Contact/Scheduling Witness Interviews	29
Initial Contact/Scheduling Responding Party	30
Notice of Investigation	31
Notice of Interview and Investigation	32
Notice of Allegation	35
Notice of Hearing	37
Persona Non Grata	38
No-Contact Directives	39
General Interview Questions	40
Questioning Skills	42
Sample Questions Exercise	44

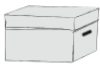


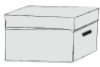
TABLE OF CONTENTS (CONT.)

Questioning Reminders	45
Interviewing the Reporting Party	46
Investigator’s Checklist	46
Potential Interview Considerations and Questions for the Reporting Party	48
Addressing a Reluctant Victim	50
Investigator’s Checklist	50
Template Letter To Reluctant Victim	51
Notifying the Responding Party of the Allegations	53
Investigator’s Checklist	53
Interviewing the Responding Party	54
Investigator’s Checklist	54
Potential Interview Considerations and Questions for the Responding Party	56
Release of Information from an Educational Record Protected Under FERPA	57
Interviewing Witnesses	58
Investigator’s Checklist	58
Sample Witness List	60
Flowchart of Witnesses	61
Witness List Template	62
Witness Rights Model Disclosure Template	63
Follow-Up Email to All Witnesses	64
Interviewee Verification: Email to Parties/Witnesses	65
Interview Question Examples: Initial and Follow-Up Interviews	66
Post-Interview: 5 Documents to Create	71
Other Evidence	72
Writing Investigation Reports, Making Credibility Determinations, Conducting Analysis, and Making Findings	73
Investigator’s Checklist	73
Weighing Evidence and Assessing Credibility	75



TABLE OF CONTENTS (CONT.)

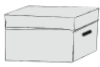
Sample Template for Investigative Reports	80
Sample Template for Investigative Reports II	84
Sample Investigation Report and Findings with Analysis	87
Investigation Report into Allegations of Hazing and Sexual Misconduct with Analysis	97
Drug-Related Assault Investigation	108
Post-Investigation: Outcome Letters	120
Communicating the Final Results to the Parties	120
Sample Outcome Letter for Title IX Resolutions	121
Sample Outcome Letter For Reporting Party	124
Finding and Sanction Letter Notification to Reporting Party	127
Finding and Sanction Letter	128
Notice Of Final Determination — No Appeal	129
Notice Of Outcome — Investigator Renders Finding	130
Notice Of Outcome — Hearing Board Renders Finding	131
Notice Of Appeal	132
Notice Of Final Determination — Post-Appeal	133
Appendix 1	134
Civil Rights Investigation Model Flowchart	135
Sample Pre-Investigation Action Plan	136
General Investigation Tips	140
12 Tips for Investigating Sexual Misconduct Allegations	141
12 Tips for Investigating Stalking Allegations	142
12 Tips for Investigating Intimate Partner Violence/Relationship Violence Allegations	143
Template Questions for a Reporting Party in a Title IX Case	144
Sample Timeline of Incident	147
ATIXA Gender-Based and Sexual Misconduct Model Policy	148
Best-Practice Checklist Related to Sexual Harassment/Violence	173
Appendix 2	177
Case Studies	178
Vignettes	225



TITLE IX OVERVIEW

“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.”

Title IX of the Education Amendments of 1972
Implementing Regulations at:
20 U.S.C. § 1681 & 34 C.F.R. Part 106



A NOTE ON TERMINOLOGY

Reporting Party: In this document, the person alleging to have experienced a violation of campus policy is referred to as the reporting party.

Responding Party: In this document, the person who is alleged to have violated campus policy is referred to as the responding party.

Examples of Conduct Covered by Title IX

Sexual Misconduct:

Sexual harassment

- Hostile environment
- Quid pro quo
- Retaliatory harassment

Non-consensual sexual intercourse

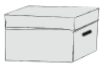
Non-consensual sexual contact

Sexual exploitation, including:

- Voyeurism
- Invasion of sexual privacy
- Prostitution
- Nonconsensual video or audio recording, or broadcasting of sexual activity
- Exceeding boundaries of consent, such as allowing friends to hide in the closet to observe sexual activity without the consent of both parties
- Knowingly transmitting an STI or STD

The following common code violations could also fall under Title IX if severe or pervasive enough to cause a discriminatory effect on the basis of sex and/or gender:

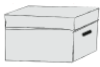
- Discrimination
- Hazing (a form of sexual harassment)
- Stalking (a form of sexual harassment)
- Intimate partner/relationship abuse or violence (a form of sexual harassment)
- Threatening physical harm
- Causing physical harm
- *Extreme* verbal abuse
- Hate speech (on a private campus)
- Bullying/cyberbullying
- Vandalism
- Public exposure (could also be viewed as sexual exploitation)
- Destruction of/damage to property



- Intimidation
- Conduct that may endanger the health or safety of others

Additional employee/faculty policies

- Consensual relationships (should be processed as employee misconduct, not as a Title IX matter, unless there is a quid pro quo element)

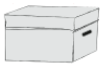


FLOW OF RESOLUTION IN 5 STEPS

1. Incident
2. Notice
3. Investigation
4. Finding (hearing, determination, and appeal)
5. Remedies for victim and community (begin upon receipt of notice and are implemented on an ongoing basis, often even after finding)

MODEL VARIATIONS — INVESTIGATORS MAKING A DETERMINATION

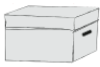
- Investigators gather facts only, making no assessment or analysis. A subsequent finding by the next decision-maker in the chain (e.g., administrator, hearing panel, etc.) is informed by the investigation.
- Investigators gather and fact-find to include an assessment of credibility, triangulation of witness/evidence, and corroboration assessment. No determination is made by them. A subsequent determination by the next decision-maker next in the chain is informed by the investigation.
- Investigators gather facts, then share informal (unwritten) opinions with the next decision-maker in the chain.
- Investigators fact-find, then make a determination as to whether the reporting party violated the code in the form of a recommendation to the next level of decision-maker.
- Investigators fact-find, making a determination that is subject to a hearing (does not have to be a hearing panel) at the next level of decision-maker. (In this model, the finding of the investigation is the subject of the hearing or determination.)
- Investigators fact-find, then make a determination by a preponderance of the evidence.
- Investigators fact-find, then make a determination by a preponderance and recommend sanctions, responsive actions, and/or remedies.
- Investigators fact-find, then make a determination by a preponderance and decide sanctions, responsive actions, and/or remedies.



CIVIL RIGHTS INVESTIGATION/ RESOLUTION PROCESS IN 10 STEPS

Most Title IX and other civil rights resolutions will involve the following 10 steps, although the ordering of some steps may occur differently depending on the specifics of the investigation.

1. Allegation/notice/grievance to school
2. Preliminary inquiry
3. Gatekeeper determination (as early as step 3 or as late as 9)
4. Strategize investigation
5. Formal comprehensive investigation
6. Notice of allegations to the responding party (could occur as early as step 3, but likely between 6–8)
7. Witness interviews
8. Evidence gathering
9. Analysis
10. Finding (followed by resolution and remedies, which are afforded throughout and could continue following conclusion of the resolution process)



INVESTIGATION OVERVIEW

The investigation is the process of actively gathering information to determine if a school's policies have been violated. The investigation involves the active accumulation of information by neutral investigators, who are either fact-gatherers and/or fact-finders, and who may make a determination as to whether the reporting party violated the code and may also determine sanctions. Fact-gathers do exactly that, accumulating all information into a report without making any assessment of that information. Fact-finders analyze the information received and make assessments of credibility, corroboration, and consistency. Fact-finders may also take the next step of making a determination by weighing the evidence and deciding if policy has been violated and determining appropriate sanctions. A civil rights investigation must be:

» THOROUGH

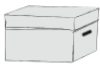
A thorough investigation chases every viable lead; patiently and doggedly hounds unresponsive witnesses; takes the time to verify every interview; and turns over every relevant rock, even if it is unlikely to lead to reliable evidence, because you don't know until you ask. Thorough investigators don't take shortcuts, and don't assume they know things until they have evidence to show it.

» RELIABLE

An investigation is reliable when its determination rests on a preponderance of relevant, credible evidence. It means that no matter how many times you do the investigation, or no matter which of the trained investigators performs the investigation, the information and evidence gathered are basically the same and reliably reflects the available evidence. Your gut, your dislike for a participant, or even your sense that you have been lied to, are not substitutes for a sufficiency of facts, opinions, and circumstantial evidence that support your conclusion. Your audience consists of the next decision-makers in your chain, appeals officers, the Title IX coordinator, the president and Board of Trustees, the front page of your local media, the Office for Civil Rights (OCR), the judge, and the jury. They need to be able to see the logic of your conclusion from start to finish, and see the evidence that clearly supports it. Write your report with those audiences in mind. Your job is to convince them that you got it right.

» PROMPT

OCR and the courts have an expectation that investigations will result in resolutions without undue delay. Legally, failure of a timely resolution could cause your campus to become a perpetuator of a third party's discriminatory acts within your programs. OCR has told us that the goal is to investigate and provide resolution within +/- 60 calendar days of notice to the institution. This is a goal, not a hard-and-fast deadline, with the expectation that we move as expediently as possible. Some resolutions will require 90 days or more, just because of their breadth, or the fact that they take place during the summer. Delays caused by law enforcement investigations and/or at the request of the reporting party represent good cause to extend beyond 60 days. That said, if your average time for resolution is close to 60 days, something likely needs to change to better expedite the process.



» **IMPARTIAL**

The resolution of an allegation must be impartial, meaning that it must be objective and unbiased. To render an objective decision, investigators must be sufficiently removed from the parties, witnesses, and subject matter that their relationships or experiences do not impact their investigation and decision-making. Recuse yourself when you are too close to the participants or the subject matter to render an objective determination. Resist political forces that can attempt to distort the outcome, including parents, money, athletics, etc. To be impartial, investigators must also be unbiased. All human beings have biases. The key is to recognize what those biases are, check them at the door, and not to let them influence the investigation. You may have strong opinions about pre-marital sex, homosexuality, race, underage alcohol consumption, drug use, or even have victim-blaming thoughts. You may not let those beliefs and thoughts impact your evaluation of whether the responding party violated the policies of your campus. Screen out your biasing beliefs or the integrity of your investigation will become suspect.

» **FAIR**

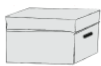
Fairness is procedural and substantive, and incorporates elements of impartiality and reliability. Procedural fairness comes from establishing fair procedures and following them. For responding parties, fairness emanates from due-process protections, such as knowing the allegations made, and having a full opportunity to respond to them. For reporting parties, procedural fairness is a result of Title IX's equity mandate, where a preponderance of evidence establishes a violation of a policy framed under federal guidance. Substantive fairness requires a decision that is neither arbitrary nor capricious, but grounded in evidence. Women have alleged for years that rape myths and victim-blaming pervade campus decisions and result in toothless sanctioning. When they do, that is unfair. Men increasingly allege that they are being expelled for drunken hookups when their accusing partners are incapacitated and are also challenging the substantive fairness of that bias toward victims, or against men. The goal is a process that is as fair to the reporting party as to the responding party, both in the way it is crafted, and in the way you carry it out.

» **TRAINING-INFUSED**

The investigation must be conducted by individuals who have significant training or experience in handling allegations of gender-based violence (including sexual violence, domestic violence, dating violence, and stalking) and in the school's resolution policies and procedures.

In addition, the investigation must afford equity to the parties, for example:

- » Throughout the investigation, the parties must have an equal opportunity to present relevant witnesses and other evidence.
- » The school must use a preponderance of the evidence (i.e., more likely than not) standard in any Title IX proceedings, including any fact-finding and hearings.
- » Any school-imposed restrictions on the ability of lawyers or other advisors to speak or otherwise participate in proceedings must apply equally.
- » If the school permits one party to submit third-party expert testimony, it must do so equally for both parties.



PREPARING FOR THE INVESTIGATION

Competent, professional investigations do not happen by chance, but result from careful planning, strategic practices, patience, diligence, and strong report-writing skills. The following are selected policy issues concerning investigations, including timeline considerations.

Investigations are often complicated. Many practices and procedures need to be embedded in either the sexual harassment policies and procedures and/or in other policies, protocols, or documents to assure compliance with federal and state civil rights mandates and to achieve best practices. Policies are necessary to ensure that investigations are carried out in a consistent manner. There are many common issues that need to be addressed in institutional policies, procedures, or protocols.

MODELS OF PROOF

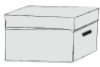
Evidentiary Standard: The investigation as well as any hearings and appeals must use the preponderance of the evidence standard, also known as “more likely than not.”

Institutional procedures should reflect a notice-based standard, rather than an allegation-based standard, where an investigation is instigated by notice in any form. For instance:

- Institutions can receive actual or constructive notice of alleged violations in a myriad of ways and from a myriad of sources (e.g., student, faculty, staff, third-parties, parents, guests, visitors, etc.); all are valid and notice from any source must be investigated.
- Once an institution receives notice, it has an obligation to investigate. This obligation exists regardless of whether an employee observes misconduct directly, or someone gives informal notice or files a formal allegation orally or in writing.
- Once notice is received, a preliminary inquiry is a necessary first step, and may be the only step unless further investigation and exploration is indicated by the findings of that inquiry.

Institutions are discouraged from setting a timeline within which allegations or notice of alleged violations must be received, and any deadlines that are established should allow extensions by the Title IX coordinator or other appropriate official. Technically, you have jurisdiction for as long as the responding party is still a member of the campus community, and because reporting often results in remedies rather than discipline, there is no reason to artificially set time limits for reporting. Despite this, some institutions create a window for reporting much like a statute of limitations, outside of which the institution will not investigate. If your institution has such restrictions, it should also have good reasoning as to why the timeline for receipt of notice exists, other than for the sake of administrative ease. OCR will only accept such restrictions when they are not set arbitrarily.

If you have a timeline within which notice must be received, also consider whether the timelines may be extended for reasons such as illness. What is the procedure for extending the timeline? Who



makes that decision? The simpler approach is to address all allegations of which the institution receives notice, regardless of when they occurred.

Institutional policies should provide basic timelines as to when a matter will be investigated and resolved. Timelines should be established for each and every major step of the process, but should not be rigid. Give your campus the flexibility to extend time intervals when necessary, as it often will be necessary to do so.

Who are the designated and trained persons who will conduct investigations? How are investigators selected as investigators? How are investigators selected for a specific case? Try to be strategic in terms of which investigators are chosen from the available pool, based on demographics, ability to build rapport, affinity for a particular type of investigation, other talents, etc.

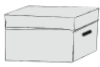
Notifying Police: Is there a policy and Memorandum of Understanding (MOU) detailing how, why, when, and by whom the district attorney and/or police/public safety will be notified when criminal acts such as sexual assault, sexual abuse, and relationship violence are involved? How much information will be given? Are there timelines within which to do so? Which police force needs to be informed: campus police, local police, and/or state police? Typically, the best practice is to follow the victim's wishes on such a notification, unless there is an emergency health/safety risk or the victim is a minor. Of course, information-only (Jane Doe/John Doe) reports are a common practice as well, and don't implicate victim consent. Today, some police agencies will also take full reports, but will not act on them without the victim's consent. This can be workable, but we still need to be mindful of the mandate for privacy and confidentiality that stem from FERPA and Title IX.

Who makes a determination as to whether a Clery timely warning should be issued regarding the alleged incident? Who provides the pertinent information to the timely warning coordinator? Typically, sex offenses are not subject to timely warnings unless they present an ongoing threat to the community, but stalking and IPV cases may represent more of a risk, depending on the circumstances. Even if a timely warning is not issued, some campuses still publish a less formal crime alert. Regardless of format, no warning can identify or lead to the identification of victims without their consent.

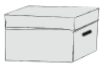
An investigation protocol (see model that follows) should require investigators to include relevant policies and procedures (and not just links) in the investigation file. Institutions should use the policies in place at the time of the alleged violation, and the procedures in place at the time the institution received notice of the alleged violation.

Some key questions to consider in relation to investigation protocols:

- Are all relevant policies (e.g., Title IX, conduct code, sexual harassment policy, etc.) listed prominently and in a place where people can easily find online? OCR has recommended that schools link to their Title IX information directly from their homepages.

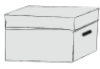


- Is there a procedure on how to set up an investigation file that is sufficiently private? Who should do it? What should it contain? Where it is located? Who has access to it?
- Is there a list of those who need to be informed of notice of the alleged violation as well as notice of an investigation within the institution, such as the dean of students, the president, public relations, etc.? Who does the informing and within what timeline?
- Who is responsible and what is the procedure for giving parties a copy of the institution's relevant sexual harassment/sexual misconduct policies and procedures? How do you strategically formulate and deliver notices of investigation, charges, hearing and/or appeal?
- What is your protocol for providing the reporting party with regular updates on the status of the investigation, as required under Title IX? What about updating the responding party?
- If you are using a pure civil rights model, without a hearing, how do you assure that the responding party is fully informed of all allegations and has a comprehensive opportunity to respond to the evidence and offer countervailing information?
- Who typically notifies the parties and witnesses about the retaliation policy? How should individuals report retaliation? Does your policy provide examples of what constitutes retaliation?
- Is there a centralized database of sexual harassment allegations (involving students, faculty, and staff) so that Title IX coordinator can tell whether a person being investigated has been accused of similar behavior in the past, and can track patterns and the effectiveness of remedies?
- If your procedures provide that parties receive a copy of the investigation report, when can they expect to receive it? Do they get to inspect it, or get a copy of their own? Is it redacted? May it be shared with their advisors? Others?
- What is the timeline for notifying parties of a hearing? When must materials be provided to the parties in advance to allow sufficient time for preparation?
- When and how are parties notified of the outcome of an investigation and/or hearing? Do those notifications meet the mandates of the Violence Against Women Act, Section 304 that they are provided simultaneously and in writing; explain the finding, any sanctions, and the rationale for each; explain when a determination is final; state how and if it may be appealed and by what procedures; and explain any changes made prior to the final determination? Do you give this written notice each time the decision could be final, even if it is subject to further potential reconsideration (e.g., appeal)?
- How long do the parties have to appeal a finding or sanction? What are the grounds for appeal? When do sanctions take effect?
- What role do investigators play post-investigation? Are they consulted by the coordinator at the time of determination? Are they witnesses in a hearing, or do they present the case on behalf of the college? Do they have a role in deliberations? Given the highly involved role most investigators have in hearings, how do you ensure the independence of the hearing officers? What role do investigators play in appeals?
- If notified by an outside authority (e.g., local police) of a parallel investigation, determine the appropriate action. Usually, it will be to continue the campus investigation without regard to the parallel process, or at the point at which law enforcement has concluded the evidence-gathering phase of its investigation.



INVESTIGATOR'S PREPARATION CHECKLIST

- Confer with your campus Title IX coordinator on overall strategy and process for the investigation.
 - When to interview:
 - Reporting party
 - Responding party
 - Relevant witnesses
 - How to contact parties and witnesses and schedule interviews
 - Who will conduct interviews
 - Where interviews will be conducted
 - How information from interviews will be documented
- Clearly identify ALL the applicable policies and procedures that apply to the investigation.
- Coordinate policies and procedures where more than one policy and procedure applies.
- Establish a preliminary timeline for the investigation using reasonable time frames.
 - Possible timeline guideposts:
 - Interviews
 - Reporting party(ies)
 - Responding party(ies)
 - Witness(es)
 - Verify statements and information provided
 - Follow-up interviews
 - Request and obtain other evidence
 - Compile and analyze evidence
 - Draft report
 - Hearing (if applicable)
 - Update this timeline as you progress
 - Note clearly and document any delays in this timeline and the reasons therefor.
 - Any delays should be explained in writing to the reporting party and the responding party. Notice, rather than permission, is the standard.
- Communicate the timeline to appropriate parties.



ADDITIONAL PLANNING FOR THE INVESTIGATION

Below is a partial list of actions that must be addressed to achieve a prompt, thorough, impartial, fair, and reliable investigation.

Remember that as an investigator, you have no “side” other than the integrity of the process.

INITIAL ACTIONS

Create a new file for the case if this has not already been done (paper copy, electronic copy, or both).

Coordinate the investigation, determine your initial strategy, and set a timeline collaboratively with the institution’s Title IX coordinator (or designee). Anticipate challenges and use the resources of the coordinator’s office to address them and problem-solve.

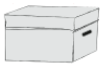
Add the name of the reporting party and the responding party to the master file list. A master file is essential for tracking all allegations over time. The file will also identify a person who has engaged in or been accused of engaging in misconduct previously and who, in some instances, might be treated differently from a person who has not previously been accused of misconduct.

Include in the file copies of all relevant sexual misconduct and sexual harassment *policies* in place at the time the reported incident occurred (not when the incident was reported). It is important to include these policies so that all parties, investigators, hearing officers, and appellate officers are working from the same definitions. It is also helpful to have these in the event of legal action (which may take years to adjudicate and during which time the stated policies may have changed).

Include in the file copies of all relevant sexual misconduct and harassment investigation and adjudication *procedures* in place at the time the incident was reported (not when it occurred). It is important to include these policies so that all parties, investigators, hearing officers, and appellate officers are working from the same definitions. It is also helpful to have these in the event of legal action (which may take years to adjudicate and during which time the procedures may have changed).

Consider developing a list of those who have access to the file. This may include specific administrators and support staff members who may be handling the file. Inform each person, including support staff members, about the confidentiality requirements. They should not discuss the case with anyone who is not involved in the investigative process or does not have a need to know.

Inform the institution’s attorney about the allegation and the investigation. Consult with this individual as needed.



Identify other parties who need to know about the allegation and the investigation, such as an employee's supervisor, the dean of students, the Behavioral Intervention Team, resident assistants of the residence hall where either of the students involved may reside, etc.

Maintain confidentiality. Only those with a need-to-know should be informed and discussion about the incident/investigation should not expand outside this circle. Also, the parties should not be gag-ordered (prevented from speaking about the investigation/incident with others), as confidentiality is a legal obligation on the institution, not the parties.

Strategize when and how the responding party will be notified of the allegation/investigation and who will provide this notice. In-person is preferred, though basic notification of the allegation/investigation is often made via email or letter when the investigator (or other appropriate administrator) requests an initial meeting with the responding party.

Strategize if and when to provide the responding party with a copy of the allegation. Sometimes it is better to learn the responding party's account before providing that individual with a copy of the statement or the allegation.

If applicable, discuss no-contact orders or other restrictions with both the reporting party and responding party. Note that no-contact orders do not need to be identical to be equitable. Mutually applicable no-contact orders should not be the default. Each restriction should be custom-crafted to address the specific situation. The reporting party should be restricted as little as possible to achieve the desired defusing/separation effect.

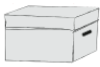
Ensure that the reporting party, the responding party, and witnesses are informed about the policy prohibiting retaliation, given examples, and asked to report it immediately should it occur. They should also be given the name and phone number of the person(s) to whom it can/should be reported.

Depending on the nature of the allegation and the comfort level of the reporting party, there may be a need for temporary or permanent reassignment of seating, workspace, project teams, classes, housing arrangements, or other reassignment to reduce contact between the parties. Unless there is a strong reason not to do so (e.g., the reporting party wants to be reassigned), the responding party should be the one to be reassigned, but not at the expense of the due-process rights of the responding party. Note that if the reporting party does not wish the institution to proceed with an investigation, it is unlikely that the institution will be able to reassign the responding party.

Establish a timeline for the investigation. This is explained in the next section.

Allocate responsibilities. Investigations often involve a number of institutional personnel and resources, highlighting the importance of appropriate allocation of responsibilities. Determine:

- Who (if anyone) is the lead person for the specific investigation?



- Will you work as a team?
- How many teams are needed?
- Are the teams fixed or will the investigators rotate team duties?
- Who will schedule meetings?
- Who will interview and who will take notes at each interview?
- Who will arrange meeting locations?
- Who will ensure the appropriate maintenance of records?
- Who will communicate with the parties and other relevant individuals regarding the progress of the investigation and its outcomes?
- Who will communicate with the institution's attorney and top administrators when needed?
- Who will monitor compliance with the timeline?
- Who will write the report?

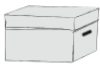
Ensure that *everyone* involved in the process is free from bias and conflict of interest (e.g., a personal or professional relationship with any of the parties involved or their families; a belief that all fraternity men are rapists or that victims never lie; etc.). Give consideration as well to perceived bias or conflict of interest.

Determine who will communicate with the press if necessary and ensure everyone involved in the investigation is aware and has that individual's contact information on hand. It should not be anyone directly involved with the investigation, and having multiple spokespersons makes it hard to keep the messaging consistent. Anticipate that one or more of the parties may go public, so your version of the story may not be the only one out there. Also, note that due to FERPA and employment privacy laws, you're limited in what you can say, and the press and public tend to disbelieve the institutional perspective.

Identify witnesses that need to be interviewed. Witnesses should typically be interviewed separately, and key witnesses may need to be interviewed two or three times as new information is revealed over the course of the investigation.

Identify which witnesses and what questions will help obtain the information needed. Try to use other witnesses to help you anticipate what you will learn from the next witness, and prepare your questions for them in advance accordingly. Try to ask witnesses the same set of questions, to the extent practical and possible.

Witnesses can include students, faculty, other staff, volunteers, etc. Not all individuals provided by the parties qualify as witnesses. Some are witnesses only to what they were told about the incident after the fact by one party or the other. These individuals can sometimes be helpful in determining credibility and timeline, etc., but often lack probative value. Character witnesses are of little value and typically are not appropriate for sexual harassment investigations. In some cases, there are no witnesses other than the parties. It is acceptable to interview off-campus witnesses, and to conduct interviews by phone, Skype, Facetime, Webex, GotoMeeting, etc.



Ensure that all parties are informed in writing that they may have an advisor of their choice present for all meetings and proceedings, from intake through final appeal. Typically, advisors' roles are limited to supporting and advising the person they are accompanying; they are usually not permitted to answer questions or address investigators or hearing panels, though sidebar conversations are common and rarely problematic. Advisors should not be witnesses.

Identify documents, photos, texts, emails, etc. that need to be obtained. Ask the parties and witnesses to provide copies of such information.

Identify which relevant issues must be decided as part of the investigation. The relevant issues typically speak directly to whether a violation of policy occurred. For example: Was there penetration? Was there consent? Was the reporting party incapacitated? There will always be discrepancies in accounts between the parties and the witnesses, but many are immaterial to a finding of whether a violation occurred or not. Some discrepancies can also speak to credibility, but note that minor memory errors or lapses are common.

Know what to do if the reporting party also:

- Files a charge with OCR, the Equal Employment Opportunity Commission, or a state agency
- And/or goes to court
- And/or goes to the local police department, which begins an investigation of its own

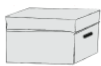
The fact that someone filed an allegation elsewhere is not a reason to stop the investigation. To do so might be considered as retaliation or violative of Title IX's promptness requirements. In some instances, the satisfactory resolution of an allegation in one venue might lead to the withdrawal of charges filed by the target of harassment.

Identify corroborating evidence. This is evidence that provides factual or credible opinion-based support to a party's or witnesses' version of events.

Identify triangulating evidence. This is evidence with factual support from the logic of other facts in evidence, leading to conclusions from multiple sources that are not directly corroborative. Corroboration is proof; triangulation is a logical conclusion from evidence with no direct proof.

Use only relevant evidence. This tends to prove or disprove (directly or indirectly) a fact in issue.

Use only credible evidence: This type of evidence is more likely than not to be verifiable, truthful, unbiased, and/or impartial.



REVIEWING THE POLICY: PARSING THE POLICY ELEMENTS¹

A critical part of the investigation is knowing what you are looking for. An institution's provisions on prohibited conduct ideally should be broken into specific key elements. This provides clarity for your campus constituents and will enable the investigator to focus the investigation on whether each element of the alleged violation is present. Here, each bullet represents a required element. For each policy, the investigator will assess whether each element of proof is present, and will find a violation only when each element of proof is proven by a preponderance of evidence.

SEXUAL HARASSMENT

Sexual harassment is:

- Unwelcome,
- Sexual, sex-based, and/or gender-based verbal, written, online, and/or physical conduct.

HOSTILE ENVIRONMENT

A hostile environment is created when sexual harassment is:

- Sufficiently severe, or
- Persistent or pervasive, and
- Objectively offensive that it:
 - Unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the university's educational (and/or employment), social, and/or residential program.

QUID PRO QUO HARASSMENT

Quid pro quo harassment is:

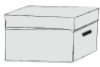
- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature,
- By a person having power or authority over another constitutes sexual harassment when,
- Submission to such conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational (or employment) progress, development, or performance.
 - This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational (or employment) program.

RETALIATION

Retaliation is:

- Any adverse action,
- Taken against a person participating in a protected activity,
- Because of their participation in that protected activity.
 - Subject to limitations imposed by the First Amendment and/or academic freedom.

¹ Further definitions and examples are provided in the [ATIXA Gender-Based and Sexual Misconduct Model Policy](#) in the appendix. Note that state definitions may differ.



RETALIATORY HARASSMENT

Retaliatory harassment is:

- Any harassing action (as defined above),
- Taken against a person participating in a protected activity,
- Because of their participation in that protected activity.
 - Subject to limitations imposed by the First Amendment and/or academic freedom.

NON-CONSENSUAL SEXUAL CONTACT

Non-consensual sexual contact is:

- Any intentional sexual touching,
- However slight,
- With any object,
- By a person upon another person,
- That is without consent and/or by force.

Sexual contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals; or
- Touching another with any of these body parts; or
- Making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.

NON-CONSENSUAL SEXUAL INTERCOURSE

Non-consensual sexual intercourse is:

- Any sexual intercourse,
- However slight,
- With any object,
- By a person upon another person,
- That is without consent and/or by force.

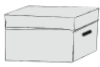
Intercourse includes:

- Vaginal or anal penetration by a penis, object, tongue, or finger; and/or
- Oral copulation (mouth-to-genital contact),
- No matter how slight the penetration or contact.

SEXUAL EXPLOITATION

Sexual exploitation occurs when:

- One person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and
- That behavior does not otherwise constitute one of other sexual misconduct offenses.



CONSENT

Consent is:

- Clear, and
- Knowing, and
- Voluntary (or affirmative, conscious, and voluntary),
- Words or actions,
- That give permission for specific sexual activity.

FORCE:

Force is:

- The use of physical violence and/or imposing on someone physically to gain sexual access.
- Force also includes threats, intimidation (implied threats), and coercion that
 - Overcomes free will,
 - Overcomes resistance, or
 - Produces consent.

THREATENING CONDUCT:

Threatening conduct is:

- Threatening, or
- Causing physical harm, or
- Extreme verbal abuse, or
- Other conduct which threatens or endangers the health or safety of any person.

DISCRIMINATION

Discrimination is:

- Actions that deprive other members of the community of educational or employment access, benefits, or opportunities
- On the basis of sex or gender.

INTIMIDATION

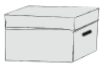
Intimidation is:

- Implied threats or acts that cause another to reasonably fear harm.

HAZING

Hazing is:

- Acts likely to cause physical or psychological harm or,
- Social ostracism,
- To any person within the university community,



- When related to admission into, initiation into, pledging of, affiliating with, or joining any group, club or activity.

BULLYING

Bullying is:

- Repeated and/or severe, aggressive behavior, that is,
- Likely to intimidate, intentionally hurt, control or diminish another person, physically or mentally,
- That is not speech or conduct otherwise protected by the First Amendment.

INTIMATE PARTNER VIOLENCE

Intimate partner violence is:

- Violence or emotional and/or psychological abuse between those in an intimate relationship to each other².

STALKING

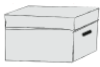
Stalking 1 is:

- A course of conduct,
- Directed at a specific person,
- On the basis of actual or perceived membership in a protected class,
- That is unwelcome, AND
- Would cause a reasonable person to feel fear.

Stalking 2 is:

- Repetitive and menacing,
- Pursuit, following, harassing, and/or interfering with the peace and/or safety of another.

² The definition provided here is model policy language from ATIXA. The state legal definitions of “domestic violence” and “dating violence” may also be included (if desired) as either a footnote or an appendix (find links to each state's definition [here](#)). While the state definitions are not required as policy by either Title IX or recent Clery Act amendments, they are required in the Clery Act Annual Security Report. Thus, many campuses refer to this policy in their ASRs, or will use a link to this policy to satisfy the ASR requirements on sexual assault disclosures. Incorporating the state definitions of “domestic violence” and “dating violence” will help to satisfy the ASR disclosure requirement, but it is important to note that nothing in the law requires schools to evaluate campus reports using state legal standards, and we recommend differentiating campus standards from state law as a best practice. The Clery requirement is just one of disclosure, so that victims may know what the state provisions are if they are considering making a criminal allegation.



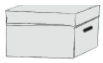
THE INVESTIGATION TIMELINE

The 60-calendar day time frame referenced by the Office for Civil Rights (OCR) refers to the entire investigation process, which includes conducting the fact-finding investigation; holding a hearing or engaging in another decision-making process to determine whether the conduct occurred; and determining what actions the institution will take in response, including imposing sanctions/responsive actions and providing remedies for the reporting party and campus community, as appropriate. OCR does not require an institution to complete investigations within 60 days; rather OCR evaluates on a case-by-case basis whether the resolution of sexual violence allegations was prompt and equitable. OCR has also provided latitude with respect to appeals, which may fall outside the 60-day goal, but which must still be completed within a reasonable time.

Set up a timeline (with flexible targets), including for those items that have built-in deadlines for completion as set by the institution's policies on sexual harassment or elsewhere.

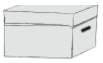
The timeline should include the following:

- Once notice is given, how long does a preliminary inquiry take?
- When are initial actions implemented?
- How long between the preliminary inquiry and gatekeeping/formal investigation?
- When will notice be given?
- When will interviews be conducted?
- When will the investigation process be completed?
- When will a finding be rendered?
- How long before the finding is finalized?
- What is the timeline for any hearing?
- What is the timeline for appeals?
- If the investigation results in a finding of responsibility, when will actions, including sanctions, be implemented?
- When will the parties be informed of the outcome (and how, including phone, in person, via email, in writing, or a combination)?



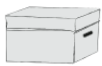
INVESTIGATION TIMELINE COMPLIANCE EXAMPLE

	TIMELINE (60 DAYS +/-)	DATE	DATE SATISFIED	DELAY?	REASON FOR DELAY	NOTICE TO PARTIES?	NOTES
Notice of Grievance to Coordinator		April 1					
Title IX Eligibility Determined	Within 2 business days	April 3	April 3	N/A	N/A	N/A	
Assignment to Investigation Team	Within 4 business days	April 9	April 10	Yes	One investigator out sick on the 9th	Not needed	
Notice of Investigation to Both Parties	Varies		April 11	No		Yes	
Investigation	Typically 10-14 business days	April 11-25	April 22	No			
Notice of Allegation	Varies		April 11			Yes	
Notice of Hearing (if applicable)	Varies		April 12	No		Yes	
Shared Outcome of Investigation	Typically within 1-3 business days	April 20-23	April 22-23	No		Yes	
Hearing (if applicable)	Within 7 business days	April 16-17	April 17	No		Yes	
Notice of Finding/Outcome & Information on Appeal Process	Varies	April 23	April 23	No		Yes	
Notice of Implementation of Remedies/Sanctions	Varies	April 23	April 23	No		Yes	
Appeal	N/A						
Notice of Appeal	N/A						
Notice of Final Determination	N/A						
Gatekeeping	Varies						

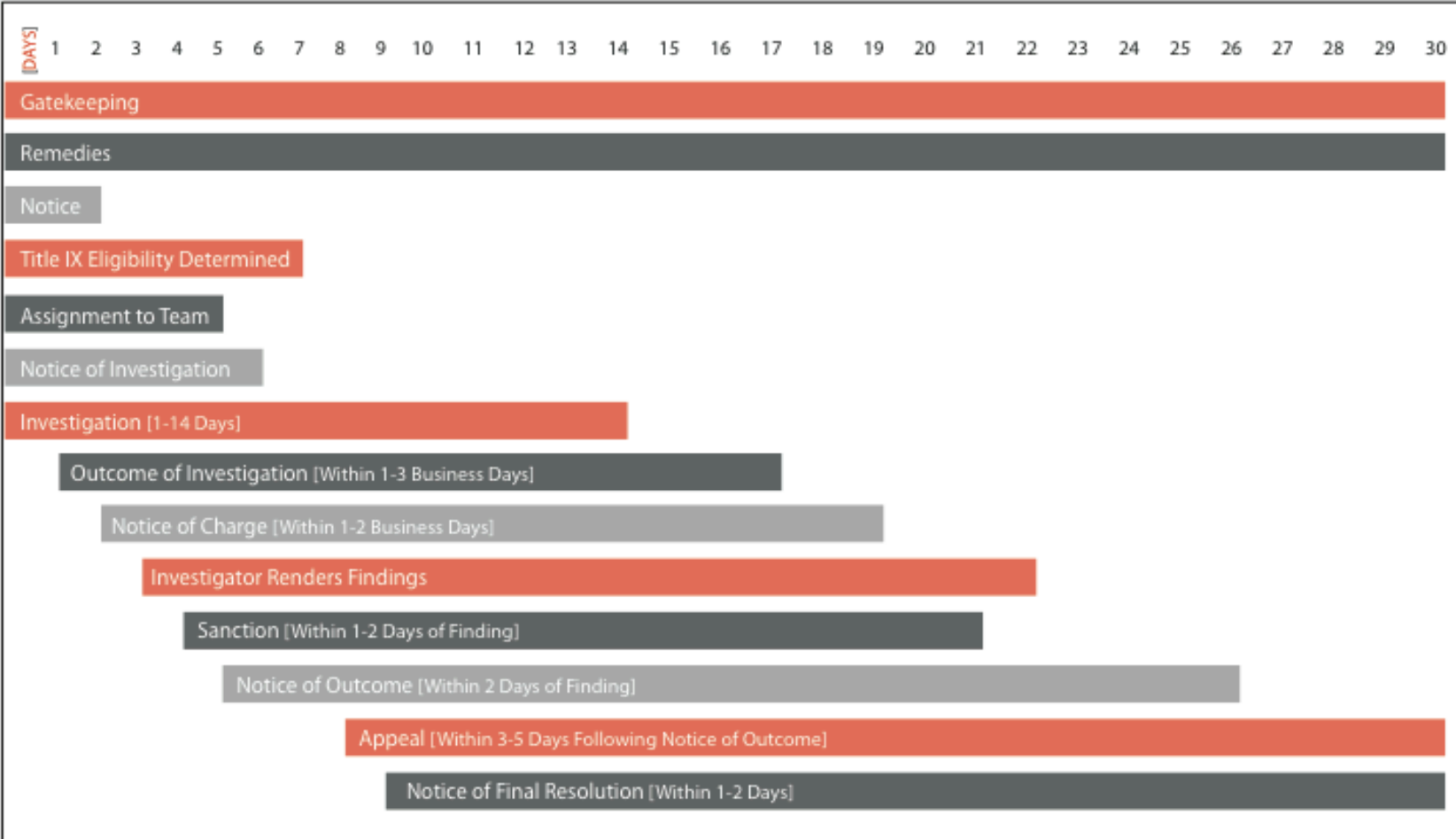


INVESTIGATION TIMELINE COMPLIANCE TEMPLATE

	TIMELINE (60 DAYS +/-)	DATE	DATE SATISFIED	DELAY?	REASON FOR DELAY	NOTICE TO PARTIES?	NOTES
Notice of Grievance to Coordinator							
Title IX Eligibility Determined							
Assignment to Investigation Team							
Notice of Investigation to Both Parties							
Investigation							
Notice of Allegation							
Shared Outcome of Investigation							
Notice of Hearing (if applicable)							
Hearing (if applicable)							
Notice of Finding/Outcome & Information on Appeal Process							
Notice of Implementation of Remedies/Sanctions							
Appeal							
Notice of Appeal							
Notice of Final Determination							
Gatekeeping							

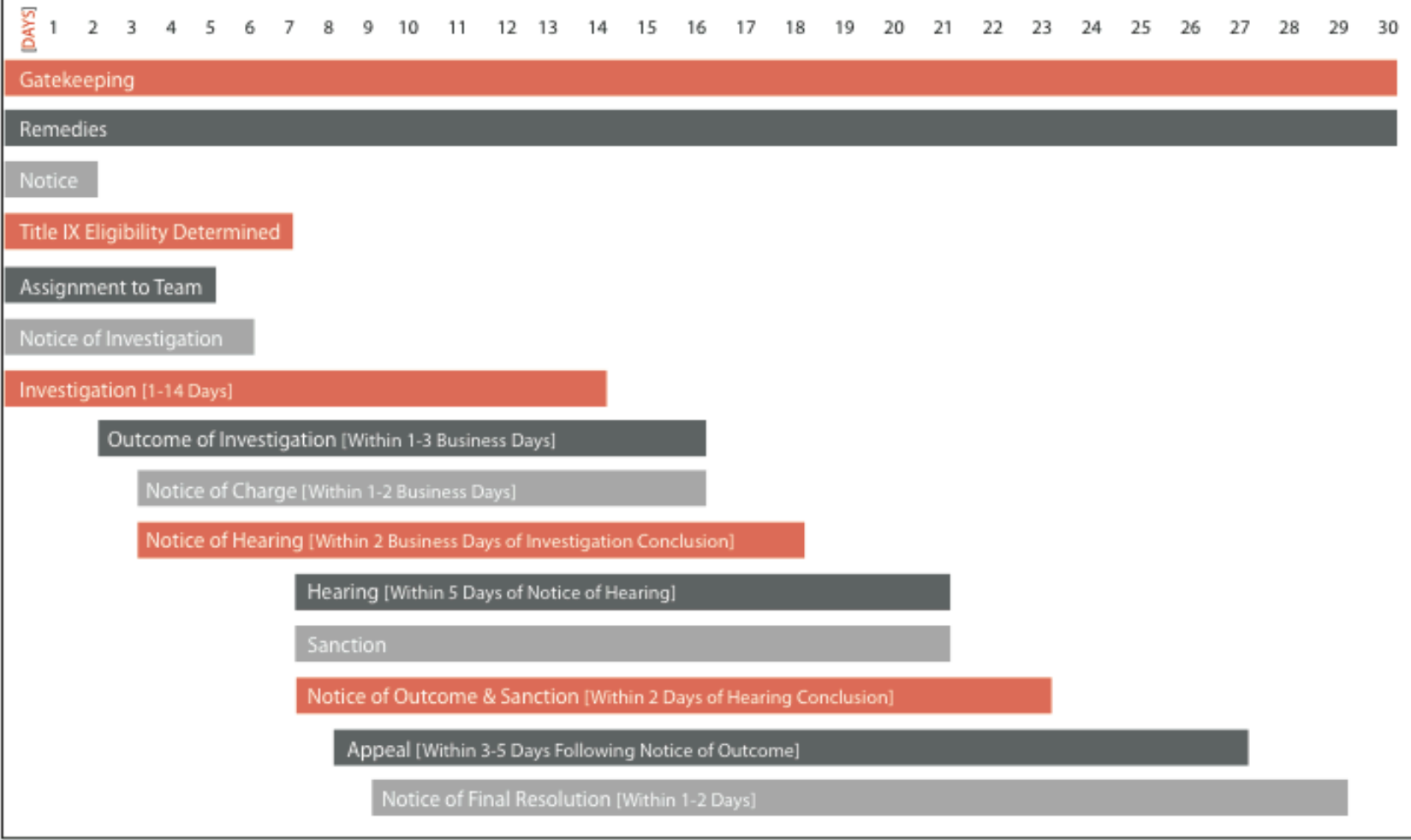


ATIXA Sample Investigations Timeline [Civil Rights Investigation Model]





ATIXA Sample Investigations Timeline [with Hearing Panel]





THE INVESTIGATION FILE AND LOGS

INVESTIGATOR'S CHECKLIST

- Create the investigation file (clarify where it is to be housed, and who has access).
 - The timeline checklist for this investigation should be kept on the inside, left cover of this file.
- Record all significant dates of the investigation on the timeline.
- Log the receipt of information, evidence, and other materials as obtained in the course of the investigation.
- Log delays.
- Log all related emails and texts.
- Log all relevant communications with parties and witnesses.
- Log procedural communications with administrators, attorneys, etc. (see template that follows).
 - This file should be separate from the personnel or student file of the responding party or reporting party.
 - Only when a report is completed should it be included in the appropriate files of the individuals involved.
 - Student parties have a right of access to files within 45 days of making the request, though the files must be redacted unless written consents are in place.
 - Investigation files can be accessed through litigation against the institution. File contents should be supported by reliable evidence. Idle speculation, conjecture, unsubstantiated theories, and prejudicial evidence or information should be purged or clearly noted as such.
- Include a copy of all relevant institutional policies and procedures in the investigation file (not just a link). These documents change over time, and your counsel will be assisted by having the relevant policies in the file if called upon to defend a lawsuit or investigation.



SAMPLE COMMUNICATIONS LOG

Please complete this form daily. Be detailed and provide a resolution to the situation when possible.

Staff Member:

Date(s) for Communications Log:

Communications Log

DATE	TIME	NAME OF CONTACT	TYPE OF COMMUNICATION (EMAIL, PHONE, IN PERSON)	COMMUNICATION NOTES	RESOLUTION PROVIDED AND FOLLOW-UP NEEDED
EXAMPLE: Monday, October 22, 2014	10:45 a.m.	Tracey Goldmann	Email and phone call	<ul style="list-style-type: none"> Email received at 10:15 a.m.; reviewed at 10:30 a.m. Staff member in facilities department requested a meeting/conversation with a Title IX representative to discuss a concern with another staffer. Called Tracey to better understand concern so that she could be best assisted. She shared that she witnessed harassment by a co-worker towards others on her team. Was referred to our office after sharing with her supervisor. Would like to discuss in a private setting. Asked questions about privacy policy and how the process works. Assured a private meeting could be arranged. 	<ul style="list-style-type: none"> Called Tracey at 10:40 a.m. to schedule a meeting. Meeting scheduled for Wednesday, October 24 at 10:00 a.m. Sent Tracey via email at tgoldmann@university.edu documents on Title IX, university harassment policy, and brochures on reporting Title IX concerns. Begin documentation process; start paper file.



ORGANIZING THE INVESTIGATION FILE

INVESTIGATOR'S CHECKLIST

(these may be tabs if your file is electronic)

- Start the investigation file with the reporting party's allegation.
- Include documentation supportive of the allegation next.
 - Research, notes, medical records, police reports, text messages, social media, videos, prior allegations, etc.
- Add witness statements supportive of the allegation next.
- Include Investigator notes of interviews/recordings/transcripts.
- Include the responding party's written response to the allegations next (if applicable).
- Include documentation supportive of the responding party next.
 - Research, notes, medical records, police reports, text messages, social media, videos, prior allegations, etc.
- Include witness statements supportive of the responding party next.
- Include neutral or expert witness information next.
- Add the investigator's findings and conclusion, including an analysis and credibility determinations.
- Include exhibits next, along with timeline of incident, witness list and/or flowchart, diagram of scene, pictures of location, etc.
- Include medical records.
- Add physical items obtained as evidence.
- Include communications log, strategic action plan, etc.



INITIAL CONTACT/SCHEDULING WITNESS INTERVIEWS

Date:

Witness Name:

Address:

Email Address:

Dear [FIRST NAME]:

Our office is investigating an incident that occurred on [DATE] in [LOCATION]. *(Note: If necessary, you can also include the identity of either or both parties to enable the witness to appropriately identify the situation.)* Reports gathered thus far indicate that you may have information that would be helpful to our investigation.

Please contact my office at your earliest convenience to schedule a meeting. It is our intention to address and resolve this matter as quickly and thoroughly as possible for all individuals concerned. The scheduled meeting time is your opportunity to provide any information you may have in response to this matter, provide names of witnesses, ask questions about the process, and assist the university in completing a timely and thorough investigation. Your assistance is appreciated. For further information on our investigation process, please go to [LINK].

The university takes all allegations very seriously. It is our expectation that you will assist in the investigation process and will provide any information you have. This investigation is confidential under federal law, and we ask that you respect the privacy of those involved and of any information disclosed to you by the university during your interview.

Please contact the [OFFICE] at [PHONE] to schedule your meeting, and let us know if you have any questions or concerns. *(Alternately, suggest some potential meeting dates and times to choose from here).*

Thank you for your prompt attention to this matter.

Sincerely,

[INVESTIGATOR]

cc: File



INITIAL CONTACT/SCHEDULING RESPONDING PARTY

Date:

Party Name:

Address:

Email Address:

Dear [FIRST NAME]:

Our office is investigating an incident in which you were allegedly involved that occurred on [DATE] in [LOCATION]. *(Note: If necessary, you can also include the identity of the reporting party to enable the responding party to appropriately identify the situation.)* According to the information my office has received thus far, you allegedly [DESCRIPTION OF BEHAVIOR]. This alleged behavior may be in violation of the following [CODE OF CONDUCT] policies:

[LIST OF POLICIES ALLEGEDLY VIOLATED]

I need to meet with you to discuss this incident. It is our intention to address and resolve this matter as quickly and thoroughly as possible for all individuals concerned. **Accordingly, please contact my office at the number provided below as soon as possible to schedule a meeting.**

The scheduled meeting time is your opportunity to respond to these allegations, provide names of witnesses, ask questions about the process, and assist me in completing a timely and thorough investigation. Please attend this meeting in person. You may bring an advisor to this meeting if you wish, although the advisor may not speak for you or on your behalf.

Failure to participate in this investigation is a violation of the [CODE]. Additionally, my office is authorized to render a decision without your participation, and a failure to respond to this meeting request within one week of the date of this letter may result in a decision being made on the alleged violations in your absence. In such instances, I will review information already provided and received and make a responsible/not responsible decision for each listed alleged violation. You have the right to discuss this matter with your advisors and others, but the university is required under federal law to conduct this investigation confidentially. We ask for your discretion in what you choose to share, and hope that you will respect the private and sensitive nature of these allegations.

For further information on our investigation and resolution process, go to [LINK]. Please contact the [OFFICE] at [PHONE] to schedule your meeting and let us know if you have any questions or concerns.

Sincerely,

[INVESTIGATOR]

cc: File



NOTICE OF INVESTIGATION

[DATE]

Dear [REPORTING PARTY/RESPONDING PARTY],

On [DATE] [NAME & TITLE OF INDIVIDUAL] received an allegation that you:

[BRIEFLY SUMMARIZE INCIDENT AND INCLUDE DATE AND PLACE].

This letter serves as notice that we will be conducting an impartial investigation of this allegation according to the procedures detailed in the [FACULTY/STAFF/STUDENT] Handbook available at: [LINK TO PERTINENT PORTION OF HANDBOOK]. The relevant investigation and resolution procedures are also included as an attachment. You have the right to an advisor of your choosing to assist you in this process. The university policy on advisors is linked [HERE].

Retaliation

This letter also serves as a reminder that [INSTITUTION] policy prohibits retaliation, which is defined as: [INSERT DEFINITION; Sample Definition: *“Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal against a participant in a civil rights grievance proceeding”*]. Retaliation exists when an individual harasses, intimidates, or takes other adverse actions against a person because of that person’s participation in an investigation of discrimination or sexual misconduct or their support of someone involved in an investigation of discrimination or sexual misconduct.

Retaliatory actions include, but are not limited to, threats or actual violence against the person or that person’s property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism. The university will impose sanctions on any faculty, student, or staff member found to be engaging in retaliation, or individuals who encourage third parties to retaliate on their behalf.

If you experience any retaliation, please contact either [CONTACT PERSON #1’S NAME, PHONE NUMBER & EMAIL] or [CONTACT PERSON #2’S NAME, PHONE NUMBER & EMAIL].

You have the right to discuss this matter with your advisors and others, but the university is required under federal law to conduct this investigation confidentially. We ask for your discretion in what you choose to share, and hope that you will respect the private and sensitive nature of these allegations. If you have any questions or concerns, please contact [INVESTIGATOR NAME, PHONE NUMBER & EMAIL].

Sincerely,

[NAME & TITLE]

Enclosure: [CAMPUS RESOURCE BROCHURE]



NOTICE OF INTERVIEW AND INVESTIGATION

[DATE]

[ADDRESSEE]

Dear [ADDRESSEE]:

This letter is being sent to inform you that the college is investigating an allegation that you may have engaged in acts of serious misconduct. Specifically, the policies alleged violated include:

- Sexual misconduct [LINK]
- Stalking [LINK]
- Sexual harassment [LINK]
- Etc.

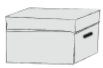
No decision on these allegations has been made at this time, and other and/or different policies may pertain once the investigation is completed. At this time, you will need to meet with the college's investigators [XX] and [XX] for an interview. While the college cannot obligate you to participate in the interview, you are required to attend. Failure to do so will result in charges for failure to comply [LINK POLICY] under the Code of Student Conduct, and may result in suspension until you do comply.

Two times that work for an appointment to interview you are below, and we have already checked to make sure that these times work with your class/work schedule. Please contact us at [XXX-XXX-XXXX] to confirm which of these times work best for you:

- Tuesday at 2:00 p.m.
- Wednesday at 9:00 a.m.

Following are details designed to ensure that the college process is transparent to you, so that you fully understand your rights and the college's procedures:

- The college's applicable procedures are to be found online at [LINK]. If you need a hardcopy or accessible copy of these procedures, you should direct a request to [XXX].
 - If you will need disability-related accommodations during this process, please contact [XXX] for more information and to request specific accommodations.
 - You are entitled to one advisor of your choosing to accompany you and assist you throughout the college's process. The college maintains a pool of trained advisors who are college employees, and you are encouraged to choose an advisor from the attached list as soon as possible. You may also choose from outside this pool if you prefer, but your advisor will not be trained in college procedures. Your advisor may be a friend, parent, faculty mentor, attorney, or any person you wish. Your advisor will not be permitted to advocate for you in the process, or to have any role in the process other than to advise and assist you. More about advisors can be found at [XXX].
-



- Upon request, a pre-interview meeting between your advisor and the college's investigator to explain the process and answer any questions may be arranged by contacting [XX AT XX].
- You may not record any meetings pursuant to this process. Doing so is a violation of the Code of Student Conduct. The college will record or take detailed notes of the proceedings, and those recordings or detailed notes will be made available to you.
- Breaks are permitted during the interview, upon request.
- You should plan to be available for the interview for at least [XXX] time.
- You may bring materials into the interview that are relevant to the investigation, but no other materials, bags, backpacks, or personal items are permitted. Phones should be silenced if you will have one with you.
- Please do plan to bring all evidence, documents, and items that you believe will be helpful to the interviewers. Originals are preferred to copies, and all materials should be in unaltered form.
- You will be permitted to ask questions of the interviewers, and should be prepared for them to ask many questions of you. Your honesty and cooperation is expected. You are expected to maintain decorum during the interview and to respect the serious nature of the proceedings.
- *Specify any meeting procedures/conditions if interim suspension is in effect.*
- At the interview, the investigators listed below will be in attendance on behalf of the college. They are neutral fact-finders whose role is to determine whether college policy has been violated. They will be taking notes, and potentially recording during the interview. You will be asked after the interview to verify the accuracy of the recording or notes in writing.
- The college's resolution process is confidential by federal law, and we request your discretion to minimize the sharing of information so as to respect the privacy and sensitivity of this matter to all parties.
- The college has zero tolerance for retaliation. Please review the retaliation policy by clicking here: [LINK]. If you experience retaliation, please bring it to the attention of the investigators or Title IX coordinator immediately. If you engage in retaliatory acts or encourage others to do so, you can expect a swift response and investigation by the college.
- Your rights in the process are detailed in the college's procedures. Additionally, a section of the procedures details specific rights, as follows:
[INSERT RELEVANT PORTION OF INSTITUTIONAL PROCEDURES.]

Should you have any questions about the process and/or the interview, please contact your advisor and/or the investigators for this matter at [XXX-XXX-XXXX] or [EMAIL].

Retaliation

This letter also serves as a reminder that [INSTITUTION] policy prohibits retaliation, which is defined as: [INSERT DEFINITION; Sample Definition: *“Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal against a participant in a civil rights grievance proceeding”*]. Retaliation exists when an individual harasses, intimidates, or takes other adverse actions against a person because of that person's participation in an investigation of discrimination or sexual misconduct or that person's support



of someone involved in an investigation of discrimination or sexual misconduct. Retaliatory actions include, but are not limited to, threats or actual violence against the person or that person's property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism. The university will impose sanctions on any faculty, student, or staff member found to be engaging in retaliation, or individuals who encourage third parties to retaliate on their behalf.

If you experience any retaliation, please contact either [CONTACT PERSON #1'S NAME, PHONE NUMBER & EMAIL] or [CONTACT PERSON #2'S NAME, PHONE NUMBER & EMAIL].

We look forward to meeting you and to hearing your account of the events leading to these allegations. Please do not suggest to any witness that they distort or align their accounts, so that we may obtain as much objective information about this matter as possible.

Signed,
[INVESTIGATORS/CONDUCT OFFICER/COORDINATOR/ETC.]



NOTICE OF ALLEGATION

[DATE]

Dear [RESPONDING PARTY],

You have allegedly violated the student/faculty/staff code, which prohibits:

[LIST APPLICABLE POLICIES (e.g., Sexual misconduct, specifically nonconsensual sexual intercourse, which is defined as: ...)]

Specifically, it is alleged that you:

[DESCRIPTION OF INCIDENT INCLUDING DATE, TIME & LOCATION.]

Once the investigators conclude their interviews and information-gathering, they will compile an impartial investigation report and render a finding of responsible or not responsible using a preponderance of the evidence standard (i.e., whether a policy violation is more likely than not to have occurred) for each of the above-listed allegations. You have the right to an advisor of your choosing to assist you in this process. The university policy on advisors is linked here: [LINK].

Retaliation

This letter also serves as a reminder that [INSTITUTION] policy prohibits retaliation, which is defined as: [INSERT DEFINITION; Sample Definition: *“Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal against a participant in a civil rights grievance proceeding”*]. Retaliation exists when an individual harasses, intimidates, or takes other adverse actions against a person because of that person’s participation in an investigation of discrimination or sexual misconduct or that person’s support of someone involved in an investigation of discrimination or sexual misconduct.

Retaliatory actions include, but are not limited to, threats, or actual violence against the person or that person’s property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism. The university will impose sanctions on any faculty, student, or staff member found to be engaging in retaliation, or individuals who encourage third parties to retaliate on their behalf.

If you experience any retaliation, please contact either [CONTACT PERSON #1’S NAME, PHONE NUMBER & EMAIL] or [CONTACT PERSON #2’S NAME, PHONE NUMBER & EMAIL].

You have the right to discuss this matter with your advisors and others, but the university is required under federal law to conduct this investigation confidentially. We ask for your discretion in what you choose to share, and hope that you will respect the private and sensitive nature of these allegations.



If you have any questions or concerns, please contact [INVESTIGATOR NAME, PHONE NUMBER & EMAIL].

Sincerely,

[NAME & TITLE]

Enclosure: [CAMPUS RESOURCE BROCHURE]



NOTICE OF HEARING

[DATE]

Dear [REPORTING PARTY/RESPONDING PARTY],

[NAME OF RESPONDING PARTY] has allegedly violated the Faculty/Staff/Student Code of Conduct:

[POLICY AND ALLEGATION #1]

[POLICY AND ALLEGATION #2]

[POLICY AND ALLEGATION #3]...

This letter serves as notice that [HEARING BOARD] will hold a hearing to address each of the above-listed allegations on [DATE OF HEARING] in [LOCATION] at [TIME OF HEARING].

[HEARING BOARD] procedures are detailed in the [FACULTY/STAFF/STUDENT] Handbook at [LINK] and are included as an attachment with this letter.

You may have an advisor of your choice accompany you in the hearing. As a reminder, advisors may consult with you during the hearing, but may not address the [HEARING BOARD] or provide testimony.

A list of hearing officers will be emailed to you at least 48 hours prior to the hearing, with instructions to identify any panelists who may have a conflict of interest, so that alternates can be appointed instead.

An exchange of information is part of the process. At least 48 hours prior to the hearing, you will receive a copy of the investigation report to aid in your preparation and help you frame questions that you want posed during the hearing. Questions are posed through the panel; direct questioning between the parties is not permitted unless both consent. Witness lists and other preparatory documents are also submitted in advance, as set out in the policy [LINK HERE].

If you have any questions or concerns, please contact [INVESTIGATOR NAME, PHONE NUMBER & EMAIL]

Sincerely,

[NAME & TITLE]

Enclosure: [HEARING BOARD PROCEDURES]



PERSONA NON GRATA

[DATE]

PERSONAL AND CONFIDENTIAL

[NAME]

[ADDRESS]

[HAND or E-] DELIVERED AND
REGULAR MAIL AND
CERTIFIED MAIL — RETURN RECEIPT REQUESTED

Dear [NAME],

Information has been forwarded to this office that indicates that your presence on the campus of [COLLEGE OR UNIVERSITY OR SPECIFIC LOCATION] has been or may be disruptive to the campus environment and/or to the safety and security of the campus. This is primarily based on information received by this office in an incident report. This letter serves as official notice that you are **not to be on the campus of [COLLEGE OR UNIVERSITY OR SPECIFIC LOCATION]; except as expressly authorized in writing by [LAW ENFORCEMENT OFFICE, STUDENT CONDUCT OFFICE, AND/OR OFFICE ISSUING THIS LETTER].** Failure to comply with this directive may result in your arrest for criminal trespass, a disciplinary charge of violation of the directive of a college official, as well as any other appropriate action that the [COLLEGE OR UNIVERSITY] may deem necessary.

If you believe this information to be in error, or if you have questions about this request, please contact our office at [PHONE NUMBER] or [EMAIL] and set up an appointment to speak with me.

Thank you for your cooperation in this matter.

Sincerely,

[NAME & TITLE]



NO-CONTACT DIRECTIVES

[DATE]

PERSONAL AND CONFIDENTIAL

[PARTY]

[ADDRESS]

[HAND or E-] DELIVERED AND
REGULAR MAIL AND
CERTIFIED MAIL — RETURN RECEIPT REQUESTED

Dear [NAME],

This letter serves as an official directive that you are to have no contact with [STUDENT]. Should you contact [STUDENT] in person, by telephone, email, or text message; or contact or reference [STUDENT] on social media or other electronic means of communication; or through a third party (other than attorney-to-attorney communication), our office will take immediate action. Should you need to contact [STUDENT], you are to do so via this office. These restrictions are also being imposed on [STUDENT], and you should bring any contact by [STUDENT] to our immediate attention. [These restrictions are not being imposed on [STUDENT], and if [STUDENT] contacts you first and creates an expectation of response by you, you may respond to [STUDENT], only to the extent necessary based on [STUDENT'S] initial contact to you.]

If appropriate and/or necessary based on the information gathered to this point, you may want to insert information regarding the need to discuss or implement class schedule changes, work schedule changes, and additional restrictions, such as distance, proximity, or specific locations, etc.

[STUDENT] has been notified of this directive.

Failure to comply with this directive will result in action under the Code of Student Conduct, including possible suspension or expulsion from the [COLLEGE OR UNIVERSITY] for failure to comply with the reasonable directives of campus officials.

If you have questions about this request, please contact our office immediately at [XXX-XXX-XXXX] or [EMAIL]. Thank you for your cooperation in this matter.

Sincerely,

[NAME & TITLE]



GENERAL INTERVIEW QUESTIONS

Persons with information about the allegation may include:

- Direct Witnesses: Those who observed or might have observed the incident(s) or have knowledge of it/them.
- Outcry Witnesses: Those who know details of the incident(s) from the parties from the period immediately thereafter.
- Indirect Witnesses: Those who were later told about the incident(s) by the reporting party or the responding party, or by a third party. (Have more limited value.)
- After-the-Fact Witnesses: Those who observed the Reporting Party's reactions or changes in behavior by either party.

Prepare a list of general questions in advance for each interview. Be prepared to add/delete questions as you learn more from the party or witness during the interview. Many questions or sequence of questions are likely to be repeated for some or all witnesses. Such questions may include information about:

- The identities of and relationships between the parties.
- The identities of and relationships between witnesses and the parties (and often, witnesses and other witnesses. Your witness flowchart can be used to create a pictorial relationship web). You are trying to ascertain whether the witnesses are neutral or have loyalties to one or all parties that may bring bias to their statements, subtly or overtly, and consciously or unconsciously.
- Details of the alleged misconduct, including date and time(line), place, circumstances, witnesses, and available corroborating and/or triangulating evidence.
- Effect of the alleged harassment on the reporting party and others.
- Emails, text messages, photos, and conversations between parties themselves, between parties and witnesses, and between witnesses.
- Response to the incident by the reporting party before and after filing the allegation.
- Reconciling disparities between witness testimony or indications of evidence.
- Pattern and predatory indicator questions to the responding party, such as:
 - If the reporting party was here right now, what would you say to him/her if you could say anything you wanted?
 - If you could do anything differently with respect to the incident now, looking back on what has happened, what would you change?
 - How do you think this incident has impacted the reporting party?
 - Has anyone accused you of anything similar to this before?
 - Will I come across anyone in my interviews who will accuse you of conduct similar to the reporting party's accusation(s)?

Here are some comments and questions appropriate for almost all interviews:

- Thank the interviewee for meeting with you.



- Introduce yourself (yourselves). Regardless of your other institutional role, your only role in that room is that of civil rights investigator. Introduce yourself as such, not with your other title(s). Omit such titles from email correspondence related to the investigation so as to minimize any assertion of conflict-of-interest with your other role/roles.
- Indicate what your role is as an investigator and how it differs from others they may have interacted with (e.g., impartial investigator vs. advocate). Indicate that your role necessitates asking difficult or sensitive questions to thoroughly perform your role and that you will be professional and direct in your questioning.
- Explain that you will be taking notes (or someone else will — and if so, introduce the note-taker), or that you are recording the interview so that you get all the information down accurately.
- Explain the process of investigation in a supportive manner to seek the person’s cooperation.
- Attempt to built rapport, establish trust, and create comfort.
- Before questioning begins, ask the person being interviewed if s/he has any questions about the process (sometimes advisors may have questions about the process and you can permit those at your discretion).
- If the person brought an advisor, reinforce the role of the advisor as an observer, not a participant (ideally, you went over this with the advisor before the interview).
- Reassure the person being interviewed that all information will be kept confidential to the extent possible and that no retaliation will be permitted.
- In emotional situations, be sympathetic in a neutral manner using statements such as, “This is hard to talk about,” or “I know this is difficult for you.”
- Do not be afraid to be silent after you have asked a question or if the person is upset. You can give the individual some reassurance (e.g., “I’m sorry this is hard for you.”) and then wait silently for the person to be ready to talk again.
- Ask the parties and all witnesses if they know of anyone who might be witness to the incident(s) or have relevant knowledge about the incident(s).
- Ask the parties and all witnesses if there are any documents, photos, videos, texts, postings, emails etc., that might be helpful, such as journals, diaries, or other written descriptions, calendar entries, or notes.
- Give all those interviewed an opportunity to ask questions. Record the questions asked in your notes.
- Ask interviewees if there is anything else you should be asking them, or any information they wish to volunteer.
- Invite interviewees to supplement their statements if they think of anything else important to share with you.
- Ask the person being interviewed to review the notes from the interview (this can also be done after the meeting is concluded to give you the opportunity to clean up and clarify your notes).
- Review the next steps in the process and any follow-up that may be necessary before the interview is complete.
- Ask interviewees to provide the best way to contact them, should you have any follow-up questions or issues to address.



QUESTIONING SKILLS

Questioning is one of the most important aspects of the investigation process. The purpose of questioning is to help the decision-maker have sufficient information to render a fair, impartial, and well-informed finding, and when applicable, determine appropriate sanctions. Determinations of credibility, honesty, and responsibility hinge on solid, thorough questioning. As investigators become more skillful at phrasing their questions, more useful information will be obtained from all participants. In-depth questioning helps investigators ascertain the facts pertaining to the allegation and clarify vague or unclear issues.

Your questions should use the funnel technique of asking broad, open-ended questions first, and then narrowing each successive question as it flows logically from the previous question or answer. The final, closed-ended question should get the answer you need to drop out of the bottom of the funnel, if possible. You can then use the circular questioning technique to repeat questions to verify consistency, or ask the same question in a different way, again to see if the same answer results.

It is also critical to remember that in questioning, the investigator(s) must remain impartial and “stay in their lane,” meaning serve as investigator, not a student development specialist, a supervisor, an advocate, etc. Questioning is intended to help the decision-maker (which could be the investigator) determine, using a preponderance of evidence standard, what happened and whether it violated policy. Questions seeking to engage in student or staff development or encourage or prompt reflection or restorative insight pull investigators out of their lane and compromise the investigation.

Here are some tips while you are preparing to ask questions.

Open-ended questions: Carefully phrase questions as open-ended (i.e., who, what, how, etc.) rather than close-ended (i.e., Did you...? Were you...?). Close-ended questions often result in a yes/no response, which does not offer much additional information and discourages narration by the interviewee. If a witness will narrate, be wise enough to let the person’s story flow without interruption. You can always circle back to clarify later. Open-ended questions allow interviewees to answer as long as they desire, possibly yielding more information than requested.

Close-ended questions: Use close-ended questions less frequently, but consider that they can be used effectively to pin down a key point that is elusive, or to get a party or witness to commit to a statement if various versions of an account are present. Often, closed questions are most effective when used to parrot back an answer for confirmation.

For example:

Close-ended

Question: "Were you angry when you broke the window?"

Response: "No."



Open-ended

Question: "What were your feelings when you broke the window?"

Response: "I guess I was pretty angry..."

Multiple-choice questions: Another pitfall investigators run into is offering multiple-choice questions for interviewees to answer. This is sometimes just the unintentional result of a long-rambling question that is not well thought-out beforehand. When the investigator offers the party all of the choices the investigator deems appropriate, often the interviewee will give the investigator the answer the party believes the investigator wishes to hear.

For example:

Question: "What were your feelings when you broke the window? Were you angry, elated, frustrated, or just letting off steam? This was right around mid-term exam time."

Response: "Oh, I was just letting off steam; exams weren't going well..."

The responding party will choose the reply that s/he thinks is least indicative of a violation. Ask the question without suggesting any or multiple answers, as that is a form of leading that can impact the quality and credibility of the information you receive.

Multiple questions: Related to multiple-choice questions are instances where an investigator asks multiple questions at one time. If you have multiple questions, make note of them and ask them one at a time. Doing otherwise can confuse the party, the investigator, and often leads to incomplete or overlapping answers requiring unnecessary clarification.

Silence is golden: Do not be alarmed or show discomfort when a question is asked and the person does not respond immediately. It is natural to think about a response before responding. Allow the person ample time to think without undue pressure to respond quickly. If the person needs clarification, let him/her ask for it; don't assume that the person does not understand the question.



SAMPLE QUESTIONS EXERCISE

Critique the following questions: Note that many of these questions are intentionally improper or problematic. The aim of this exercise is to critique and parse out how and why questions are or are not appropriate and to whom such questions may or may not be directed.

1. What effect did your actions (or behavior) have on others? On the community? On yourself? (Ask these three separately.)
2. Explain what you hoped to accomplish through your actions.
3. Why did you choose to drink so much if you knew it was risky?
4. Who is responsible for your behavior?
5. Did you sign the Honor Code as a first-year student?
6. I have a couple of questions: First, do you know what incapacitated means?; Second, could you tell she was incapacitated?; and Third, why did you give her another drink when evidence from witnesses indicates she was already really drunk?
7. What other options were there for you in this situation?
8. What was the purpose of your behavior?
9. How would you feel if others were engaged in comparable behavior?
10. What would be the consequences to the community if everyone engaged in comparable behavior?
11. How is your relationship with those you impacted?
12. How does your responsibility for living within community standards apply to your actions in this situation?
13. How might you react if such a situation were to come up again?



QUESTIONING REMINDERS

During every investigation, remember these tips for being an effective investigator:

1. Carefully listen to everything that is being said. If you miss something, do not hesitate to ask the person to repeat it.
2. Watch for non-verbal behaviors, particularly those that deviate from the baseline of typical behaviors, which may indicate attitudes, true feelings, or emotions.
3. Clarify any conflicting information before you begin your analysis. Continue to ask questions until you have all of the necessary information regarding the incident. Do not wait until after the interview and then start guessing at reasons why the information presented was conflicting.
4. Where a question will touch on sensitive topics, just acknowledge it as such before you ask it. If you realize after you ask a question that it inadvertently touched a raw nerve, acknowledging it may minimize the discomfort.
5. If a question comes out wrong, seems blaming, or is poorly phrased, withdraw it immediately and reframe it.
6. Carefully examine the time/date sequence of the incident. Follow up on contradictions when questioning.
7. Avoid jumping from one line of questioning to another; attempt to examine one area completely before moving on. Investigators should look to the other investigators for their suggestions before changing lines of questioning.
8. If possible, avoid unnecessary writing during interviews. You should be concentrating on the content while developing lines of questioning. A co-investigator or recorder should be taking notes and will provide a complete record of the interview.
9. Note-passing or whispering should not occur between investigators unless it's absolutely necessary. You would not be showing the respect to the interviewee that you would expect if you were speaking. Request a recess if you need to confer.
10. Maintain your concentration throughout the interview and remain attentive. Demonstrate active listening skills such as good posture and eye contact.
11. Never accuse a party or participate in heated arguments. Maintain your composure even if others do not. Insist that interviewees respect the decorum of the proceedings and excuse them if they do not.
12. Carefully prepare your questions in advance. Avoid questions that are not relevant. Follow leads to their logical ends, but don't chase the rabbit into Wonderland by focusing on irrelevant issues or irrelevant discrepancies.



INTERVIEWING THE REPORTING PARTY

INVESTIGATOR'S CHECKLIST

- Designate a member of the investigation team as the intake officer for the allegations, unless the reporting party has already shared the allegations with another administrator.
 - The same person conducting the intake should then serve on the investigation team, if possible.
 - If the allegations have already been made, share them with the investigation team.
 - The intake officer should consider the value of getting the allegations in writing:
 - Have the reporting party write a statement.
 - Recognize that there may be the need to edit the written statement to remove extraneous or prejudicial information from before handing it off to a hearing panel/hearing officer (e.g., A statement says: "I know he has done this with three other people." If those three cases are not at issue, then the reference to them could be improperly prejudicial).
 - Accept a written statement from the reporting party if it's already written (as long as the reporting party understands that under FERPA, you may need to share it with the responding party).
 - Use your first interview with the reporting party as the basis for the allegations.
 - Thank the reporting party for being willing to come forward.
 - Develop a rapport with the reporting party, allowing time for the interview to wander, and to gently accept information about an emotional/difficult/embarrassing experience.
 - Don't guide the oral interview unless you need to. Allow the reporting party to narrate without interruption. Clarify what you need to when the narration is complete.
 - If the flow is interrupted, use open-ended questions to get it going again (e.g., "Tell me more about that," or "Please continue your description of that night.").
 - Do not insinuate with questions. Instead, ask specific, precise questions to get precise answers when they are needed.
 - If an answer is unexpected, follow-up on why that is.
 - DO NOT VICTIM-BLAME or ask questions that could be perceived as blaming, even if you don't mean to.
 - If you realize that you have asked such a question, then reframe it, and/or apologize.
 - Use trauma-informed interview techniques, and an understanding of how trauma impacts your interview and the evidence.
 - Record the interview if and only if the reporting party is comfortable with it and you don't have a note-taker. Otherwise, take good notes to create a near-verbatim transcript. With a team, one investigator can question while the other takes the notes. Avoid writing notes from memory after the interview, as details may be lost. Decide whether to produce a summary of the
-



interview, a transcript, or both. Summaries are interpretive, by definition, and may be less helpful than a transcript.

- If the reporting party brings an advisor or support person to the interview:
 - Advisors should be able to communicate with their advisees during the interview. A reporting party may be more comfortable having eye contact with the advisor, rather than being seated side-by-side.
 - Advisors should only address you when you address them, or off-the-record. They may not present evidence.
 - Choose neutral, comfortable turf for the interview. Avoid displays of power (e.g., uniforms, your office, sitting behind a desk or in a higher chair than the reporting party sits, etc.).
 - Ensure privacy by turning off the phone, closing the door (if the reporting party is comfortable with doing so), etc.
 - Describe the purpose of the investigation and the interview.
 - Describe your role as the investigator.
 - Review the institutional policy(ies) at issue, if known.
 - Explain the process for investigation.
 - You can have reporting parties sign a statement that they understand the process, if that is your campus practice, though that is no longer a common practice.
 - Emphasize the non-retaliation policy, if appropriate.
 - Review the privacy, confidentiality, and anonymity policies.
 - Do not promise absolute confidentiality, but assure privacy and explain the difference, if necessary.
 - Elicit information on the outcome the reporting party desires for the allegations, but do not promise or guarantee that any outcome will happen.
 - If using written allegations, they should be as specific as possible, and should be signed and dated by the reporting party.
 - Solicit a witness list from the reporting party.
 - Ask the interviewee what you may expect to learn from each identified witness, or anything in particular you should ask them.
 - Identify relationships between witnesses, witness loyalty, and any other potential credibility issues.
 - When the allegations are written by the investigator, either in person or in summary based on the interview with the reporting party, they should then be shared with the reporting party for final editing and verification.
 - Request, without chilling, that reporting parties be discreet about sharing their allegations widely with others:
 - Responding parties are increasingly willing to use defamation claims to silence accusers.
 - Talking about the allegations widely may also increase the risk of retaliation.
 - Inform reporting parties that they will be kept up-to-date on the progress of the investigation. Let them know when they are likely to hear from you again. **Ask them to sign their consent to revealing the allegations to responding parties and to witnesses as necessary.**
-



POTENTIAL INTERVIEW CONSIDERATIONS AND QUESTIONS FOR THE REPORTING PARTY

In addition to the preceding general interview questions and strategies, you may consider the following information when interviewing a reporting party:

- Recognize that it may be difficult for a reporting party to talk about what happened.
 - Use open-ended, non-leading, nonjudgmental questions, such as, “What happened?” or “Tell me more,” rather than “Why were you wearing such skimpy clothing?” “Do you think that was a smart decision?” or “Why didn’t you scream, hit him, or try to leave?” (which is both compound and blaming).
 - Do not ask about prior or current sexual conduct or activities of the reporting party (except in very limited circumstances, i.e., with the responding party, to the extent relevant and/or where necessary to establish communication patterns for purposes of determining consent).
 - Use trauma-informed interviewing techniques:
 - Honor gaps in the recitation of events; something intentionally omitted may be too painful to address at that moment.
 - Gaps in memory are a common result of denial (an early stage of rape trauma), as may be early failures to characterize behavior as abusive.
 - Delays in reporting are common, and may result from the denial phase of trauma, from a failure to self-identify as having been victimized, from concern about not being believed, or from unconscious suppression, among many other reasons.
 - Variations in the recital of the account are common. Typically, more details are added over time as the reporting party begins to process an act of violence, but trauma literally rewires the brain, and varying accounts may not match up at all. This does not mean that violence did not happen, but it may make violence much more difficult to prove.
 - After asking about the incident(s), ask how the reporting party felt about the incident(s), both at the time and afterward.
 - Ask if there are any documents such as journals, calendar entries or notes, social media posts, texts, emails, or video, or if anyone the reporting party knows has information about the allegations, including:
 - Anyone who observed or might have observed the incident(s) or who may have knowledge of them.
 - Anyone whom the reporting party told about the incident(s).
 - Anyone who observed the reporting party’s reactions or changes in behavior.
 - Ask if there is anything else the reporting party would like to add.
 - Reassure again that you will maintain privacy to the extent possible and that retaliation will not be permitted.
 - Give some examples of retaliation and ask the individual to report it to you or other officials whose name and phone numbers you provide.
-



- Ask how the reporting party would like the matter resolved, but do not promise any specific results. Consider questions such as, “What do you want to happen next?” This can be helpful in working out the actual resolution as well as providing an opportunity to explain what is possible or not possible under the policy.
- Ask if the reporting party has any additional comments or questions.
- Inform the reporting party about how long the investigation is likely to take, without committing yourself to a rigid timeline.
- Inform reporting parties that they will be notified about any decisions.
- Thank the reporting party again for meeting with you.



ADDRESSING A RELUCTANT VICTIM

INVESTIGATOR'S CHECKLIST

- Remind reporting party that the institution will vigorously enforce its policy on retaliation to help protect the individual.
- Offer to allow the reporting party time to consider, and the chance to come back later to file a report if the person so desires.
- Offer to change circumstances to make it easier for reporting party to report (e.g., change of classes, living arrangements, etc.).
- Follow up with the reporting party, offering to investigate.
- If reporting parties refuse to file formal allegations, or will not allow their names to be revealed, the investigator shall share this information with the responsible administrator, and a decision will be made on whether circumstances exist that warrant an investigation independent of the cooperation of the reporting parties. Alternative responses/community remedies, such as general programs and workshops, or communicating with the alleged harassers/responding parties in a general way regarding the behavior alleged, should be considered.
- Where appropriate, consider initiating a formal allegation on behalf of the institution. This may alleviate fears of the reporting party, who may then cooperate. It may also agitate the reporting party, and it is important to keep the reporting party informed of actions the institution is taking.
- Any time that a responding party is notified of an allegation, the reporting party (or non-cooperating victim) should be given the time of such notification in advance, and precautions against retaliation should be taken as necessary.



TEMPLATE LETTER TO RELUCTANT VICTIM

[DATE]

Dear [REPORTING PARTY],

This letter is to document our conversation on [DATE]. At that time you shared the following information with me: [INSERT A DESCRIPTION OF THE INFORMATION PROVIDED].

You stated that you did not want to make a formal allegation, and did not want to participate further in any formal resolution involving the person you have accused. I explained to you that my obligation is to investigate all reports of sexual [MISCONDUCT/ASSAULT/HARASSMENT] as required by law, and that I will investigate to the extent of the information available to me. If I obtain independent corroborating information of the misconduct you reported, I may determine that it is necessary to go forward with the process without your involvement, or implement other appropriate remedies. Although you stated that you do not wish to participate in the process, you will be notified if such an action occurs.

In addition, I am required to document this report for general Clery Act statistics (if relevant). There will be no personally identifiable information about you shared for this report. Your identity will remain anonymous.

It is important that you are aware of your rights and opportunities for support and assistance. The following are resources available both on campus and in the campus community:

Confidential Resources: Reporting to any of the following sources will be kept confidential. Your personal information will not be shared by any of the following resources unless there is an emergency.

[LIST HERE ALL CONFIDENTIAL RESOURCES, INCLUDE HOURS OF OPERATION, SERVICES PROVIDED, LOCATION/ADDRESS, AND PHONE NUMBER; ALSO INCLUDE MEDICAL, COUNSELING, PASTORAL ASSISTANCE, AND VICTIMS ADVOCATE SOURCES.]

In addition, you are encouraged to file a report with the campus police. The campus police are located at [CAMPUS ADDRESS], and their phone number is [PHONE NUMBER]. The campus police may conduct an investigation based on potential criminal activity related to the situation you reported. You may also choose to initiate an independent legal action for damages against the responding party. You will need to obtain legal counsel (an attorney) for this action.

Although at this time you chose neither to pursue nor participate in a formal resolution, you may request further action at any future time, consistent with the institution's policy. Of course, the more



delayed the investigation, the more difficult it will be to obtain information as individuals graduate or leave school, or physical evidence is no longer obtainable. However, this does not mean that a successful resolution is impossible. You are encouraged to meet with me at any time to discuss options, and you may, of course, be accompanied by an advisor or advocate of your choice.

If you need additional support during this time in the form of counseling support, alternative housing options, academic modifications, or other supports, please contact my office so that we can work with you in a timely way to provide assistance.

I have enclosed a copy of our Sexual Misconduct Policy and a description of the resolution process. In addition, I have enclosed information regarding your rights in this process.

If you have any questions or wish to seek any type of support, please don't hesitate to contact my office immediately.

Sincerely,
[ADMINISTRATOR'S NAME]



NOTIFYING THE RESPONDING PARTY OF THE ALLEGATIONS

INVESTIGATOR'S CHECKLIST

- ❑ In some circumstances, it may be best to notify the responding party immediately upon receipt of the formal allegations, whereas it may make more sense to wait in other cases until after the preliminary inquiry, or until some point in the formal investigation.
 - That decision should be strategic, weighing when there is enough information to know what policies are in play and whether the allegations were made in good faith; and giving the responding party sufficient advanced notice of your interview, and the implications for destruction or deceit with respect to evidence and witnesses.
- ❑ In many cases, interviewing witnesses and accumulating evidence first may be the best practice.
 - Keep in mind that interviewing witnesses favorable to the responding party may tip that party to the allegations.
 - That can be detrimental or beneficial to the investigation, especially if used strategically. Remember, you are not trying to build a case, but determining the best way to gather information.
 - Strategize your interviews and notification so as to reduce the responding party's opportunities for fabrication or incite witnesses to coordinate versions of events.
- ❑ Inform the responding party of the purpose of the meeting in advance, with sufficient detail to allow the that party to understand the nature and extent of the allegations, choose an appropriate advisor, and otherwise identify witnesses and prepare to respond. "Gotcha" or surprise meeting tactics should be avoided, as they undermine the fairness of the investigation.
 - If your goal is to build rapport and trust with the responding party, understand that unanticipated interviews may undermine that.
 - Unanticipated interviews can be used when appropriate for interviewing witnesses, or for follow-ups with the reporting party to test veracity or accuracy of descriptions.
 - See [templates for notification](#) included earlier in this kit.



INTERVIEWING THE RESPONDING PARTY

INVESTIGATOR'S CHECKLIST

- Some of the checklist items listed under "[Interviewing the Reporting Party](#)" will appear here as well, such as developing rapport, choosing a neutral and comfortable setting for the interview, and ensuring privacy during the interview.
 - At the interview, describe the behaviors alleged, and by whom.
 - Be neutral, not accusatory. Be non-judgmental, even in the face of evasive or patently false answers. Your role is to help responding parties see that they are not helping themselves by lying, rather than calling them out for lying to you.
 - Define the policies at issue, providing written copies.
 - Ask a direct question about whether the described behaviors happened as alleged.
 - Typically this is done after the responding parties offer their narratives, but can be done first if the interviewers believe there is an advantage.
 - Consider providing a written copy of the allegations to the responding party, redacting any names/identifying information that are not necessary, or from whom written permission to share information has not been obtained.
 - If there is an admission of responsibility, immediately label the conduct as inappropriate and a violation of institutional policies.
 - If there is no such admission, explain the investigation process and timeline, and ask the responding party to sign a statement that s/he understands the process, if that is your campus practice. Explain the institution's obligation to take allegations seriously, and to vigorously investigate them.
 - Invite responding parties to tell their version of the events. Use open-ended questions to encourage narration.
 - As with the reporting party, you should take notes. You may also ask the responding party for a written statement once the responding party's narration is complete.
 - A recording may be appropriate, if the responding party consents, but the two-interviewer method of note-taking is preferred. If two laptops are available, notes can be taken and edited in real-time using Google Docs™.
 - Solicit a witness list from the responding party.
 - Ask what you may expect to learn from each identified witness, or anything in particular that you should ask them.
 - Identify relationships between witnesses, witness loyalty, and any other potential credibility issues.
 - Request documents and evidence that support the response.
 - Strongly caution against retaliation, giving some examples of what constitutes retaliation.
 - Caution against contact with the reporting party, either directly or by third parties.
-



- ❑ Discuss no-contact orders and/or initial remedial actions that may be in place or pending.
- ❑ Remind the responding party that Title IX investigations are kept confidential by the institution and encourage the individual to use discretion when sharing private and sensitive information.
- ❑ Once the response to the allegations has been written or the interview transcript/summary completed, make sure the responding party signs and dates it. You may also send the transcript/summary electronically later for verification if your notes need some additional attention. The individual should also execute a consent that allows the institution to share this response with the reporting party/witnesses as necessary to further the investigation. If the party does not, we typically do not allow them to view the allegation and documents from the reporting party. This is a somewhat literal interpretation of FERPA, though your legal counsel may conclude that FERPA's consent requirements cannot be interpreted to interfere with the institution's obligations under Title IX.



POTENTIAL INTERVIEW CONSIDERATIONS AND QUESTIONS FOR THE RESPONDING PARTY

In addition to the preceding general interview questions and strategies, you may consider the following information when interviewing a responding party:

- Assure responding parties that they will have an opportunity to talk about what happened.
- Be aware that the allegations, whether accurate or not, may lead to anxiety and to defensiveness.
- Use open-ended, nonjudgmental questions, such as “Please tell me about that night?”, “Tell me more,” or “What happened next?” rather than “Why would you do something like that?”
- Give the responding party the opportunity to **fully understand, comment on, and respond to** the accusations.
- If the responding party denies the allegations, ask why the individual thinks the allegations were made.
- After questions have been asked about the incident(s), ask if there are any documents such as journals, calendar entries or notes, social media posts, texts, or videos, or if there is anyone who has information about the allegations, including:
 - Those who observed or might have observed the incident(s) or have knowledge of them.
 - Those who were told about the incident(s) by the reporting party.
 - Those who observed the reporting party’s reactions or changes in behavior by either party.
- Ask if there is anything else the reporting party would like to add.
- Reassure the responding party that you will maintain confidentiality to the extent possible and that retaliation against that party³ or against the reporting party will not be permitted.
- Give some examples of retaliation and ask the individual to report it to you or other administrators whose names and phone numbers you provide.
- Ask if the responding party has any additional questions.
- Inform the responding party about how long the investigation is likely to take without committing yourself to a rigid time schedule.
- Inform responding parties that they will be notified about any decisions.
- Thank the responding party again for meeting with you.

³ Some experts and courts do not believe that a responding party can experience retaliation, though they may be harassed on the basis of sex and/or gender.



RELEASE OF INFORMATION FROM AN EDUCATIONAL RECORD PROTECTED UNDER FERPA

All students have the right to protection of their educational records from general disclosure under the terms and provisions of 20 U.S.C. 1232g (FERPA). Under the Family Education Rights and Privacy Act (FERPA), limited disclosure of personally identifiable information from a student's protected educational record is permitted in accordance with the exceptions to FERPA's coverage, and with the specific consent of the student whose record it is.

Through your participation as a party or witness, you have been advised that the information you provide may be shared with witnesses, the reporting party or responding party, or school officials on a need-to-know basis.

Signature of Student _____

Name of Student _____

Date _____



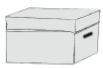
INTERVIEWING WITNESSES

INVESTIGATOR'S CHECKLIST

- Strategize contacting witnesses, ordering witness interviews, and preventing contact between witnesses, when necessary. The default order recommended by ATIXA follows, but can vary based on context and availability:
 - Reporting party
 - Reporting party's witnesses
 - Neutral witnesses
 - Responding party's witness (as identified so far)
 - Responding party
 - Any additional witnesses identified by the responding party
 - Second interviews for any witnesses/parties
 - Third interviews for any witnesses/parties
 - Prepare a list of written questions in advance for each witness.
 - Do not label the conduct. Ask what witnesses know about specific behaviors/events.
 - Take notes or allow witnesses to write statements (if they are unavailable for interview), and have witnesses verify those statements when complete.
 - With a responding party who refuses to be interviewed, consider sending a list of written questions to see if the individual is willing to respond, at least in part, in writing.
 - Only share with witnesses the details of the allegations needed to elicit information.
 - Establish a rapport with witnesses.
 - Utilize your dual interviewer approach (i.e., one interviewer and one note-taker). Otherwise, a recording may be appropriate, if consented to by the witness.
 - Ask for witness opinions.
 - Ask witnesses if they have been contacted by the responding party or reporting party, and what, if anything, was discussed.
 - Ask if there is anything they have been coached or encouraged to say or omit.
 - Give copies of relevant policies and procedures to witnesses.
 - Sequester witnesses if needed (this is rare, usually only if you are questioning a group that was together right after an incident), to isolate the truth and prevent opportunities for cover-up.
 - Arrange for witnesses to wait in separate facilities from each other.
 - Consider limiting cellphone and other communication between witnesses during the interview or pre-interview holding process.
 - Consider not limiting communication and then asking to see their texts/emails to reveal any collusion that occurred.
 - Solicit a witness list from the witnesses.
 - Ask them what you may expect to learn from each identified witness, or anything in particular you should ask them.
-



- Identify relationships between witnesses, witness loyalty, and any other potential credibility issues.
- ❑ Request documents and evidence that support witness statements.
- ❑ Flowchart your witness list if it is extensive so that you can easily see who provided what information, how it came to you, and where it led. Also, use it to notate relationships/loyalties that may impact objectivity. Maintain full contact information for those on this chart.
- ❑ Explain to witnesses the privacy of the process and their obligation not to discuss what is shared with them in the interview with anyone.
- ❑ Strongly caution against retaliation and offer protections for them if they experience retaliation.
- ❑ Find out if the witnesses will agree to be present in the event of a hearing.
- ❑ Investigators should keep notes on their impressions of witnesses, including credibility, nervousness, evasiveness, similarity of descriptions to other witnesses, nonverbal behavior, contradictions, etc.



SAMPLE WITNESS LIST

Investigator: John David Lowe

Date Report Made: March 25, 2015

Investigation Began on: March 27, 2015

Reporting Party: Quinn Lester

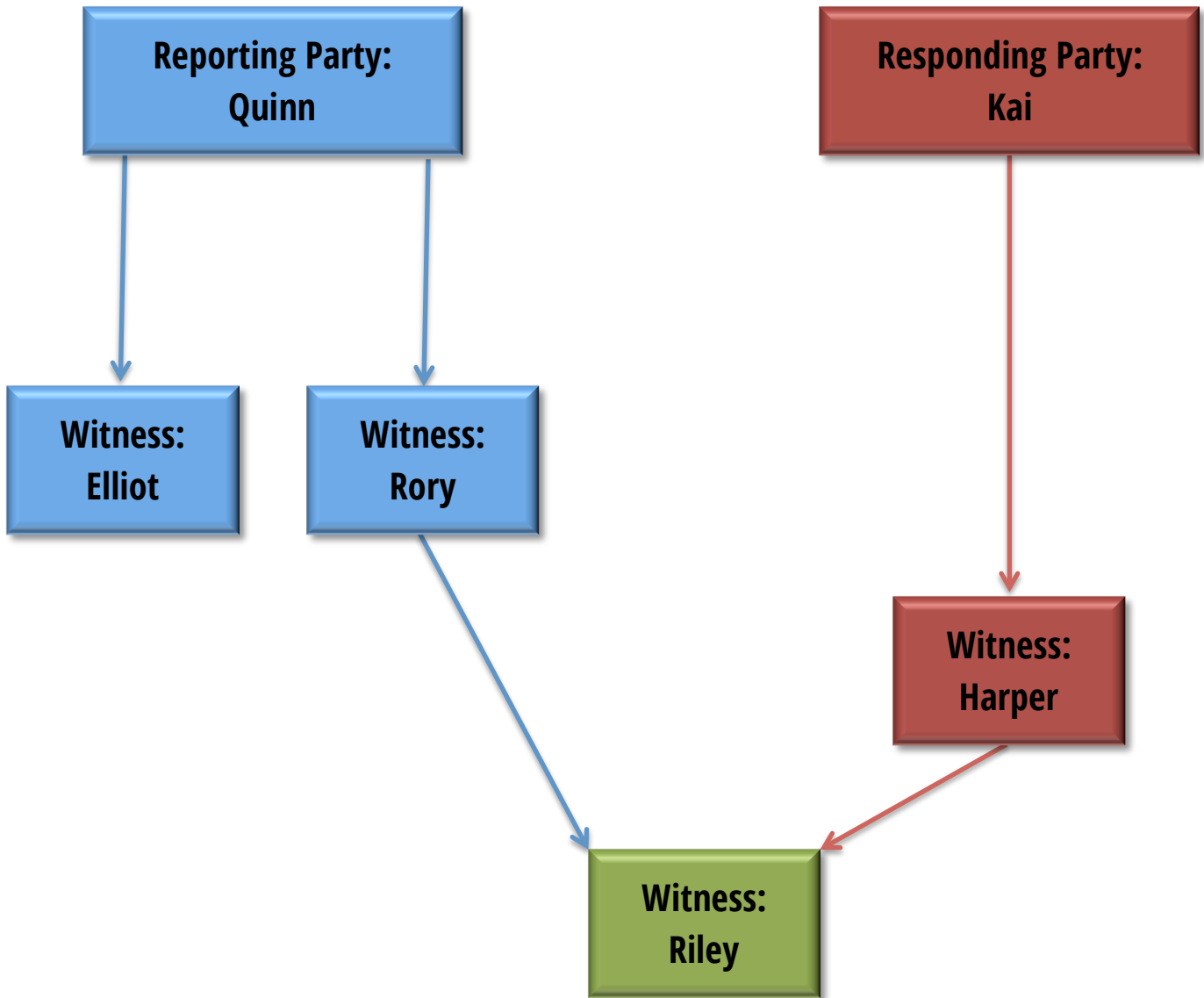
Responding Party: Kai Johnson

WITNESS LIST

WITNESS NAME	AFFILIATION	WITNESS FOR: <i>Reporting Party or Responding Party or Other</i>	WITNESS INTERVIEW DATE	NOTES
Elliot Reese	Student	Reporting Party	April 2, 2015	Attended party with the reporting party. Witnessed the responding party and reporting party together prior to the alleged assault.
Rory Mason	Student	Reporting Party	April 2, 2015	Met the reporting party and Witness Elliot at party.
Harper Collins	Student	Responding Party	April 4, 2015	Attended party with the responding party.
Riley Cooper	Student	Reporting and Responding Parties	April 5, 2015	Reported as a witness by the responding party, stating that Riley was together with the responding party and reporting party prior to the alleged assault. Reported as a witness by Witness Harper, stating the same.



FLOWCHART OF WITNESSES





WITNESS RIGHTS MODEL DISCLOSURE TEMPLATE

I understand that as an individual providing witness information in a civil rights investigation, I am entitled to certain rights as enumerated below:

- I am entitled to be free from any form of retaliation directed toward me as a result of my participation. This includes any physical, written, verbal, or academic retaliation, including through the Internet and/or on social networking sites. Any behavior perceived by me to be retaliatory based on my participation in this civil rights investigation should be immediately reported to [TITLE IX COORDINATOR AT PHONE NUMBER].
- All records created that include personally identifiable information about me are protected by the federal Family Educational Rights and Privacy Act (FERPA). This means that:
 - I am entitled to review all material created for this investigation that identifies me (subject to a reasonable period of time for redaction of others' protected information).
 - Information related to my witness interview will only be accessible to the reporting party and the responding party and to any college/university officials who have a legitimate need to know this information.
 - Release of information related to me and containing my identity (or reasonably linked to my identity) to individuals other than those listed above will be redacted so that neither my name nor information identifying me will be revealed.
- I will be provided an opportunity to ask questions to the investigator(s) about my privacy rights and any other issues of concern to my providing witness information.

Name

Date



FOLLOW-UP EMAIL TO ALL WITNESSES

Date:

Name:

Address:

Email Address:

Dear [FIRST NAME]:

This letter serves as a follow-up to our meeting on [MEETING DATE] regarding an allegation reported to our office. In this meeting, we discussed the alleged violations of the [CONDUCT CODE] by [PARTY]. A summary [TRANSCRIPT] of this meeting is included below containing points discussed and relevant information you provided. Please review them to ensure their accuracy and use the track changes function in Word to make any edits, additions, and/or deletions needed to accurately reflect our conversation. Please leave the edits visible so I can track them. Please review and return them by the close of business on [DATE]. If I do not hear anything from you by then, I will assume the notes are acceptable and will move forward accordingly.

[MEETING NOTES]

To preserve the confidentiality of the investigation, this document cannot be shared. Also, please contact me if you remember or learn of any additional information related to the incident we discussed.

Our office appreciates your continued cooperation during the investigations process. You can find additional information on the investigations process at [LINK].

If you have any questions regarding this matter or additional information to share, please contact my office.

Thank you for your cooperation and your prompt attention to this matter.

Sincerely,

[INVESTIGATOR]

cc: File



INTERVIEWEE VERIFICATION: EMAIL TO PARTIES/WITNESSES

To: [WITNESS OR PARTY]

From: [INVESTIGATOR]

Date: [DATE]

Re: Interviewee Verification

Thank you for your participation in the interview on [MEETING DATE]. A summary [TRANSCRIPT] of this meeting is included below containing points discussed and relevant information you provided.

Please review them to ensure their accuracy and use the track changes function in Word to make any edits, additions, and/or deletions needed to accurately reflect our conversation. Please leave the edits visible so we can track them.

Based on the time-sensitive nature of our investigation, if you have any suggested changes to these notes, please advise us by the close of business on [DATE (E.G., TWO BUSINESS DAYS FROM DATE OF LETTER)]. If you have no changes, deletions, or additions, please confirm that the notes are accurate. If I do not hear anything from you by then, we will assume the notes are accurate and will proceed accordingly.

[MEETING NOTES]

To preserve the confidentiality of the investigation, these notes cannot be shared.

Thank you for your cooperation and your prompt attention to this matter.

Sincerely,

[INVESTIGATOR]



INTERVIEW QUESTION EXAMPLES: INITIAL AND FOLLOW-UP INTERVIEWS

Tanya has brought forward an allegation that Mark has violated the institution's sexual misconduct policy.

Suggested Initial Interview Questions for Tanya:

1. Please tell me what happened that night. Given the nature of the allegations, please discuss what you were doing before you got to Mark's room, what happened in Mark's room, and what happened immediately thereafter. Please be as complete and detailed in your account as possible and include any information about alcohol or drug use.
2. Please describe in a detailed way what sexual contact occurred.
3. Who initiated each sexual action?
4. How did the sexual contact end?
5. Did Mark use a condom? Who supplied it? What did he do with it afterward? Did he ejaculate? If so, where? (Please use these questions sparingly and carefully.)
6. Who did you interact with that night?
7. Were you in contact with anyone over the course of the night by text or in another way?
8. Who was the first person you talked with about what happened? When did you tell this person?
9. Did you seek any medical treatment?
10. When I ask Mark if you consented, what do you think he will tell me?
11. How has this impacted you?

Suggested Initial Interview Questions for Mark:

1. Please tell me what happened that night. Given the nature of the allegations, please discuss what you were doing before you got to your room, what happened in your room, and what happened immediately thereafter. Please be as complete and detailed in your account as possible and include any information about alcohol or drug use.
 2. Please describe in a detailed way what sexual contact occurred.
 3. Who initiated each sexual action?
 4. Did you use a condom? Who supplied it? What did you do with it afterward? Did you ejaculate? If so, where? (Please use these questions sparingly and carefully.)
 5. How did the sexual contact end?
 6. Who did you interact with on this night?
 7. Were you in contact with anyone over the course of the night by text or in another way?
 8. Who was the first person you talked with about your sexual contact with Tanya?
 9. What words or actions by Tanya gave you permission for the specific sexual contact that took place?
 10. What evidence can you provide to verify that you had consent?
-



Suggested Follow-Up Questions for Tanya (blaming and insensitive questions shown with strikethroughs, with better versions of each question provided, where needed):

1. You have said that you were drinking that afternoon. Were you taking any medications that day?
2. ~~I need to clarify some of the details from when you were inside Mark's dorm room. When you entered Mark's dorm room, did you use your cellphone to call or text with anyone? Did you send or receive any texts while in Mark's room?~~
3. You said you were expecting there to be others in the room to watch the basketball game. What did you say to Mark when you got to the room and no one was there?
4. When you decided to stay, did you use your cellphone to call or text others to let them know where you were?
5. ~~Why did you decide to stay?~~ I don't mean this in any way to blame you for staying, but if there is a reason why you decided to stay, I'd like to be able to include it in my report.
6. ~~Did you talk about protection before beginning intimacy?~~ Did the topic of using protection come up, and if so, how?
7. Did you know that Mark had condoms?
8. When did you first see that he had condoms?
9. What position were you in when you first realized he had a condom on?
10. What position was he in when you first realized he had a condom on?
11. You said previously that you performed oral sex on Mark for about 30 seconds and then stopped.
 - a. Why did you stop?
 - b. Can you describe what position this occurred in?
 - c. Do you consider the oral sex to be consensual or non-consensual?
12. ~~When you were having intercourse with Mark,~~ During the incident, can you please tell me his position and your position?
 - a. Did you change positions ~~during intercourse?~~
 - b. Who initiated the change in positions?
 - c. Mark has asserted that you were on top at one point. Is that accurate? ~~Were you ever in the position on top of Mark?~~
 - d. ~~How would you describe the intercourse? (Unpleasant? Rough? If yes, what happened to make it that way?)~~ Describe for me how what Mark was doing was making you feel.
 - e. Where were Mark's hands during the incident?
 - i. Did he touch your breasts?
 - ii. Buttocks?
 - iii. Genital area?
 - f. You described his hands being on your shoulders. Why do you think he had his hands on your shoulders?
 - g. Where were your hands?
 - h. Were you kissing?



- i. ~~Did you talk to each other during intercourse?~~ Did you say anything during the incident? Did he?
 - j. When ~~intercourse~~ he was finished, what happened?
 - k. How soon after ~~intercourse~~ did you get dressed?
 - l. How soon after did you leave the room?
13. When you left his room, did you say anything?
14. Did he kiss you goodbye when you left his room?
15. Do you know where he was going?
16. Did you plan on seeing him again?
17. Did you make plans to be in touch?
18. What was your emotional state when you left?
19. What was your emotional state when you got back to your room and met up with your friend Amy?
20. Did you receive any injuries from the incident?
21. What did you tell Amy about what happened?
- a. ~~Did you tell Amy that you performed oral sex on Mark?~~
 - b. ~~Did you tell Amy that you had intercourse with Mark?~~
 - c. ~~Did you tell Amy details about the sexual activity?~~ What details, if any, did you share with Amy?
22. What did Amy say to you after you told her?
23. Please describe your normal bathing routine.
24. Is there a reason you didn't shower on Saturday night or Sunday?
25. You spoke with your parents on Sunday. Did you call them?
26. ~~Is there a reason you didn't call them on Saturday evening?~~ Did you consider calling them on Saturday evening?
27. ~~What did you text to your friend Ryan?~~ Who did you text with afterward about the incident?
- a. What did you text?
28. ~~What did you text to your friend Nate?~~
29. Could you please describe how you were feeling physically that evening?
30. You were with your friend Susan that evening. ~~What did you share with Susan?~~
- a. Did you share anything with Susan?
 - b. Was Amy there when you talked with Susan?
31. Was your roommate in your room that night?
32. When did you find out that your roommate was going to be away from campus that night?
33. Did you tell anyone at the party that your roommate was going to be away that evening?
- a. Did you tell Mark that your roommate was going to be away that evening?
 - b. If so, when and where?
34. You offered us some details about your previous sexual experiences;
- a. Can you help me to understand the differences in your statements regarding your previous sexual partners?
 - b. Can you clarify for me now so that I have a clear record?
-



35. Did you keep any records of the incident?
 - a. If so, may I have copies?
36. It's been a little bit of time since we last talked. Is there anything else that you remember that I should know?
37. How have you been doing since then?
38. Have you communicated with Mark since?
39. Have you experienced retaliation or have any concerns that I should be aware of?

Suggested Follow-Up Questions for Mark:

1. You have said that you were drinking that afternoon. Were you taking any medications that day?
 2. I need to clarify some of the details from when you were inside your dorm room. When you and Tanya entered your room, did you use your cell phone to call or text with anyone?
 - a. Did Tanya?
 - b. Who?
 - c. For how long?
 3. Did Tanya express concern when you got to your room and there was no one else there?
 4. ~~Did she say she wanted to leave?~~ What did she say?
 5. Did she use her cell phone to call or text anyone to let him/her know that she was with you?
 - a. If yes, do you know who she called or texted?
 6. Did you talk about protection before beginning ~~intimacy~~ sexual activity?
 7. Did you tell Tanya that you had condoms?
 8. Did you show her the condom at any point?
 9. What position were you in when you first put the condom on?
 - a. What position was she in when you first put the condom on?
 - b. Do you think she could see you put it on? ~~Could she see you put it on?~~
 10. Did you have sexual contact ~~in the genital area~~ prior to placing the condom on?
 - a. If so, where/how?
 11. Did you ask Tanya to perform oral sex on you?
 - a. If so, how did you ask (e.g., What did you say?)?
 12. Did she say or ~~do~~ communicate anything while performing oral sex?
 - a. What did she say or communicate?
 13. You said previously that she performed oral sex on you for a little bit. How long did the oral sex last?
 14. ~~Why did she stop?~~ Do you know why she stopped performing oral sex?
 15. ~~Did she tell you why she didn't like to perform oral sex?~~ Did she tell you she didn't like to perform oral sex?
 - a. Did she tell you why?
 16. ~~Describe the tone of the sexual activity at this point.~~ Describe the sexual activity after the oral sex. How would you characterize it? Do you know what I mean by that? I don't want to put words in your mouth.
-



17. When you began having intercourse with Tanya, can you tell me her position and your position?
 - a. Did you change positions during intercourse?
 - b. Who initiated the change in positions?
 - c. Was Tanya ever in the position of being on her stomach, face down?
 - d. Was she on top at any point?
 - e. How would you describe the intercourse? ~~Was it rough?~~
 - f. Where were Tanya's hands during intercourse?
 - g. ~~Did you have your hands on Tanya's shoulders?~~
 - i. ~~Why on her shoulders?~~ Where were your hands?
 - h. Were you kissing each other?
 - i. Did you talk to each other during intercourse? What was said?
 - j. Did you ejaculate? When, where, and how?
 - k. What did you do with the condom?
 - l. Did Tanya climax?
 - m. When intercourse was finished, what happened?
 - n. How soon after intercourse did you get dressed?
 - o. How soon after did you leave the room?
 18. When you parted from each other, ~~what did you say?~~ Did you saying anything?
 19. Did you kiss you goodbye when you parted from each other?
 20. Do you know where she was going?
 21. Did you plan on seeing her again?
 22. Did you make plans to be in touch?
 23. What was your emotional state when you parted from her?
 24. Did you tell anyone what happened with Tanya?
 - a. Did you tell anyone that Tanya performed oral sex on you?
 - b. Did you tell anyone that you had intercourse with Tanya?
 - c. Did you tell anyone any other details about the sexual activity?
 25. Where was your roommate during that time?
 26. Did your roommate comment about anything when he returned?
 27. ~~Have you had any other intimate partners on campus?~~ Has anyone ever accused you of something like this before?
 28. Did you keep any records pertaining to the incident, such as emails, text messages, pictures, or video? If so, may I have copies?
 29. It's been a while since we last talked. Is there anything else that you remember that I should know?
 30. Have you experienced any retaliation or concerns that I should be aware of?
 31. Have you done anything that Tanya would characterize as retaliatory toward her?
-



POST INTERVIEW: 5 DOCUMENTS TO CREATE

Don't do back-to-back interviews. Try to leave yourself as much time between interviews as each interview is scheduled to take. After each interview, it will benefit you and your co-investigator to create the following five documents:

1. Interview Transcript/Detailed Summary in Final Form:

Take 15–20 minutes to edit your notes into polished, presentable form so that the transcript/detailed summary of the interview can be verified by the party or witnesses. They may be waiting to come back in to review it, or you can email it to them.

2. Future Pointers Document:

Describes what leads you are taking from this interview.

- a. New witnesses
- b. New evidence
- c. Future questions to ask
- d. Witnesses to go back to with new information and/or requests for emails, texts, etc.

3. Opinions & Perceptions Document:

Describes your observations of any behaviors not reflected on the transcript, (i.e., crying, nervous tics, strong denials, long pauses, and any opinions about the credibility or reliability of the party or witness or the information shared).

4. The Drips Document:

A list of short bullet points. Describes the information that investigators shared with the party or witnesses during the interview (i.e., “We heard from several witnesses that you were asked to leave the party later that evening,” or “I checked the school’s video surveillance and found no record of you entering the dining hall around 8:00 a.m.”). The note-taking interviewer should track these as they are asked in the main transcript document, and then take them out and give them their own separate document after the interview. Double-check this list for accuracy during your post-interview time. This will help you to clearly keep track of what information has been shared with each party or witness.

5. Bulleted Key Takeaways from the Interview:

Because transcripts tend to be lengthy and difficult to sort through, it is often helpful to have a bulleted list of takeaways from the interview for easy reference. Create a list of the top 3–5 things you learned from this interview. It will also give you a head start on writing your report.



OTHER EVIDENCE

As an investigator, you may need to gather information other than statements from parties and witnesses. Some of this evidence may be identified for you by the parties or witnesses, or you may identify other evidence on your own. Listed below are some examples of information you may identify and seek that may assist you in conducting a thorough investigation:

- Copies of text messages (Beware of sites like www.ifaketext.com.)
- Copies of phone bills. Old, deleted text messages can be retrieved using software such as Wondershare (www.wondershare.com/data-recovery-mac/mac-iphone-data-recovery.html). Occasionally, data can be preserved on smartphone memory cards, depending on what app is used for texting. Text records can be obtained from most carriers for up to 90 days (and beyond with a subpoena), but only the records of the text, not the contents, are typically retrievable.
- Facebook postings
- Other social media postings
- Medical records
- Medical legal exams/SANE kits
- Police reports
- Public safety reports
- Photographs
- Video recordings
- Video surveillance
- Receipts
- Diaries/journals
- Expert sources
- Voicemail messages



WRITING INVESTIGATIVE REPORTS, MAKING CREDIBILITY DETERMINATIONS, CONDUCTING ANALYSIS, AND MAKING FINDINGS

The investigative report will summarize the steps of the investigation and the information gathered pursuant to the investigation. It typically will weigh and assess the evidence gathered and assess the credibility of the individuals involved and the information obtained. Depending on a school's procedure, the investigative report may or may not include findings and may or may not conclude whether or not the school's policies were violated.

INVESTIGATOR'S CHECKLIST

(not every campus process will include all steps below):

- Ensure that all evidence has been examined, and all leads exhausted.
- Evaluate the evidence (consult with administration, legal counsel, and experts as needed).
- Make a statement of findings.
- List the evidence and describe what it shows.
- Assess credibility.
- Make a determination as to whether it is more likely than not that the evidence (i.e., facts, opinions, and circumstances) establishes a violation of policy. Do so for each policy allegedly violated.
- Cite concretely the reasons for your conclusion(s) in a written report.
 - Some campuses allow the parties a period to comment on the report before it is finalized.
 - A dean, director, or investigator may share results of investigation with parties.
- Refer the allegation and your findings to the dean of students, director of student conduct, or other appropriate administrator for implementation, sanctioning, and/or hearing.

The determination of who will write the final report should have been decided from the outset of the investigation.

The report should include the following information:

- Introductory data: Reporting party's name and biographical data (e.g., class standing, major, residence, etc.), responding party's name and biographical data, type of allegation(s), date filed, name of person and office that received the allegation, and name(s) of investigator(s).
 - Background information: the history of the relationship between the parties and other details surrounding the allegation(s).
-



- Listing of the specific allegation(s).
- Summary findings from the investigation concerning each allegation.
- Detailed discussion of evidence.
- Conclusions: Findings as to whether or not the institution's policy was violated.
- Recommendations for corrective action/sanctions if the conclusion is that a violation occurred.
- Signature of investigator(s) and date of report.
- Appendices:
 - Verified transcripts/summaries of interviews
 - Expert sources
 - Documents/physical evidence
 - Timeline of incident
 - Timeline of investigation
 - Witness list/flowchart
 - Diagrams/schematics

Decide who receives a copy of the final report of the investigation report.

This would usually include the parties, their advisors, and the next decision-maker in the process (and/or the Title IX coordinator). Include instructions that it not be duplicated or shared with anyone else, (i.e., that it should be kept private and not made public). Adobe Professional™ will permit you to provide a PDF file that cannot be copied or printed, and that can be locked after a set number of uses (2–3, usually). Remember, the best risk management involves honoring the equal dignity of the parties throughout the process. Only allowing the parties to come in and inspect the report without providing a copy runs afoul of equal dignity.

There should be a central, confidential repository of reports and findings, typically as part of the master file. A copy of the report should be filed there. Ideally this should be housed in an electronic, password-protected database.

Even if the report is shared, unless it contains a final determination, all parties still need to be informed orally *and* in writing about the final outcome.

Four documents follow the section on credibility, below, to assist you in preparing an investigative report:

- Sample Report Template
- Investigative Report Skeleton
- Investigative Report and Findings with Analysis (Title IX)
- Investigative Report into Allegations of Hazing and Sexual Misconduct with Analysis



WEIGHING EVIDENCE AND ASSESSING CREDIBILITY

How does one weigh evidence? What are the criteria to be used?

The standard is not "beyond a reasonable doubt." That is the appropriate standard for a criminal trial but not for an administrative proceeding at an educational institution.

The standard is "the preponderance of evidence," that is, given the preponderance of evidence, a reasonable person would conclude that the event(s) in question occurred (or did not occur). This standard for weighing evidence is mandated by the U.S. Department of Education's Office for Civil Rights in its "Dear Colleague Letter: Sexual Violence, April 4, 2011."

A preponderance has been alternately described as the greater weight of evidence (picture the scales of justice, tipped slightly one way or the other), as what is more likely than not, 50.01 percent, or 50 percent plus a feather. In this sense, investigators are feather hunters, trying to find any feathers and weight them on the scale. A feather can weigh as much as a real feather, or as much as a cinder block, depending on the nature of the evidence, but it must be there, or there is no policy violation. The question is not what happened, but what can be proven. If the evidence is 50/50, the tie goes to the responding party. Every time. You may feel deep down that the responding party did what was alleged, but you can't hold the individual accountable based on your gut feeling. It's not what you feel, but what you can prove, with reliable, relevant, and credible evidence.

WEIGHING THE EVIDENCE

All evidence should be evaluated, including factual evidence by the parties and witnesses, observations of the conduct, opinions about the conduct, and circumstantial evidence that supports or negates a party's statements or has bearing on the truthfulness of the party or a witness.

Here are some steps that may be helpful in evaluating the evidence:

- When reviewing all interview notes and materials, list the unanswered questions or information that needs clarification.
- Make a list of all verifiable facts that would substantiate the claim, and see whether they can be verified.
- Obtain additional needed information if possible.
- Make a list of the facts relevant to the allegation(s) that must be true for the allegation(s) to be supported. The [Models of Proof](#) section provided earlier in this kit should be your guide for the necessary policy elements. List the supporting data for each fact that has been obtained.
- Evidence presented by a person of authority such as an administrator or supervisor should be given no more credibility than evidence from a student or lower-level employee. Don't confuse seniority or hierarchy with expertise.



ASSESSING CREDIBILITY

Credibility is the process of weighing the accuracy and veracity of evidence. To assess credibility, you have to evaluate the source, the content, and the plausibility of what is offered. When source, content, and plausibility are strong, credibility is strong. Credibility exists on a 100 percent point scale, with the most credible evidence being 100 percent, and the least credible being zero percent. Most evidence lies somewhere in between. Your job is to figure out where. If credibility dips below 50 percent, the witness or evidence is less credible than more. That doesn't weight the scale. Evidence has to be more credible than not to weight the scale at all. Some aspects of credibility are positional/locational. Could witnesses hear what they say they heard? See what they say they saw? Know what they claim to know? Some aspects of credibility are based on credentials/knowledge/expertise, but those factors need to be established, not assumed. Some aspects of credibility are weighted based on neutrality, impartiality, and objectivity. The more loyal a witness is based on relationships to one party, the more biased their evidence may be. Neutral witnesses may be more objective than partisan witnesses.

Credibility is best established through corroboration, which is provided through sufficient independent evidence to support the fact at issue. Corroboration is not merely another witness who agrees with the first witness (they could be lying to support each other), but evidentiary support for what the witness contends, evaluating source, content, and plausibility together. Also, look for subtle bias, which the witness may not even be aware of, including victim-blaming attitudes, group defensiveness (think teams and fraternities), or whether the witness fears getting in trouble. Lack of proximity detracts from credibility. What you saw in person is most valuable. What you heard from the responding party about the incident after the fact is less so, and what you learned after the fact from the responding party's best friend about what the responding party told him/her is even less so. Generally, avoid micro-expression analysis and gestic unless you are an expert and have discovered someone's tell for deceit. Otherwise, crossing limbs, looking up to the right, and other so-called telltales are not evidence. Let's explore credibility assessment in context to get a better feel for it.

The harassing behavior continued after the responding party was informed that the behavior was unwelcome. If established, this would add credibility to the reporting party's account as corroborative.

Major inconsistencies in testimony would likely detract from credibility. Minor inconsistencies usually would not detract from credibility. Even lying is not a 100 percent credibility killer. We all lie. The job of the investigator is to determine why the witness is lying, or what the lie is about. Lying about alcohol consumption to avoid an alcohol violation does not prove or disprove the underlying interpersonal violence allegation.

A delay in reporting harassment does not detract from credibility. Individuals may delay reporting because of fear of retaliation, not knowing or trusting the policy, fear of being blamed for causing the harassment, not understanding it was harassment, etc.



Changes in the behavior of the reporting party after the harassment might add to credibility. For example, after being harassed, the reporting party cried; was upset; avoided class, meetings, or certain areas; the student's grades or performance deteriorated; etc. However, if none of these things occurred, it would not mean that the allegation was not credible, only that the individual who complained perhaps was affected differently, less intensely than others might, or did not express emotions openly. Similarly, the reporting party could be displaying the classic symptoms of traumatic response because that individual thinks an incident happened, not because it did, or because the person may want you to think it happened, but it didn't. This is infrequent, but still must be accounted for by investigators.

Documents such as diaries, calendar entries, journals, notes, or letters describing the incident(s) can add to credibility, but can also be manufactured after-the-fact. The adage, "Trust, but verify," applies.

Telling another person about the harassment may add to credibility, but if the accounts provided to others vary meaningfully, that can also undermine credibility.

Other allegations about the responding party could add to credibility of the allegation.

The fact that a relationship was at one time or in some aspects consensual does not detract from credibility nor is it a defense against a subsequent charge of sexual harassment. Consensual relationships can be followed by sexual harassment when one person tries to end the relationship and the other person uses his/her power to intimidate the former partner into staying in the relationship. People can be assaulted after consensual sexual acts, or engage in consensual sexual acts after having been assaulted.

The fact that the responding party did not intend to harass the reporting party is not a defense to an allegation of sexual harassment. It is the act itself that is important, not the intent of the person who engaged in the behavior. Exceptions might include accidental or incidental sexual contact, or causing your intimate partner accidental physical harm.

Not knowing that the behavior was offensive and unwelcome is not a defense to an allegation of sexual harassment. The standard is whether a reasonable person would deem the behavior offensive and unwelcome.

The fact that the person who made the allegation(s) did not tell the alleged harasser that the behavior was offensive does not affect credibility. Many people are fearful of doing so. Additionally, there is no obligation for the reporting party to inform the responding party that behavior is offensive.

Motivation to lie, exaggerate, or distort information should be assessed when there are differences in what was reported or questions about veracity or accuracy.

**Questions to consider in assessing credibility:**

- How might a reasonable person react to the incident(s)?
- What was the effect of the behavior on the reporting party?

A decision can be made that harassment occurred when the evidence of the allegation(s) is credible, even if there were no witnesses to the harassment. Put another way, a preponderance can be established simply because you believe one party and not the other, based on assessment of credibility of the party and the evidence provided.

Explanations of why the harassment occurred do not add to credibility.

People who have sexually harassed others often acknowledge their behavior but explain and defend it in ways that do not justify their actions and should not add to their credibility. To the contrary, such excuses should be seen as admissions of having engaged in sexually harassing behaviors. For example:

- *"It was an accident. I didn't do it on purpose (from a student who put his hands on a female student's crotch)."*
- *"I didn't know it was against the rules."*
- *"I was just joking around."*
- *"She flirts all the time."*
- *"I was just flirting with her."*
- *"She was asking for it. She was leading me on!"*
- *"You have to understand, we guys have special needs."*
- *"It's no big deal. I don't know why he is so upset."*
- *"I wasn't lying. She really is a slut (bitch, whore, etc.)."*
- *"She's a snitch for telling on me."*

The following do not add or detract from credibility of the responding party because they are irrelevant:

- **Character witnesses.** (*"He is such a good kid; I know he would never do that."*)
- **Popularity with staff and other students.** (*"Everybody likes him; I just don't believe he would do that."*)
- **No history of past problems.** (*"She's never been in trouble before."*)
- **Academic performance.** (*"But he's a really good student. His professors really like him."*)

The following do not add or detract from credibility of the reporting party:

- **Clothing.** (*"Just look at what she was wearing."*) Clothing does not cause sexual harassment, nor does it give anyone permission to touch or make sexual remarks.
- **Appearance.** (*"She is so pretty no wonder he did it,"* or *"She is so unattractive! I don't believe anyone would do that to her."*)
- **Flirting behavior.** (*"He's always flirting with the boys, what did he expect?"*)
- **Males being victims.** (*"He should have realized she meant it as a compliment."*)



- **Sexual orientation of victim** (*"Listen, he came out of the closet and told everyone. He should have expected that people would act like this."*)

Politics, including athletics participation, concern about the team, concern about "getting a good student in trouble," whether someone is a last semester senior, etc., cannot impact decisions about whether a policy has been violated.



UK

YOUR UNIVERSITY
LOGO HERE

SAMPLE TEMPLATE FOR INVESTIGATIVE REPORTS

This is just one example that may be useful. You should consult with a licensed attorney in your own jurisdiction before adopting this template.

University of Knowledge

Date of Report:

This report addresses alleged violations of the **Policy Name(s)** of the University of Knowledge. **Names of Investigators** conducted the investigation into these allegations. This report will determine whether it is more likely than not that there has been a violation of the relevant university policy or policies.

Executive Summary:

(Summarize findings here.)

Procedural History:

Include the date of the incident, the date on which it was reported, how and to whom (generally) it was reported, the date on which investigators were assigned to it, and the date on which the investigation closed.

On **Month XX, 20XX**, **Reporting Party** met with **Name Here** in the Office of Victim Assistance at University of Knowledge along with **Name Other Present Parties**. **Reporting Party** reported that **General Allegations** occurred on **Month XX, 20XX**. **Reporting Party** has not reported this matter to law enforcement at this time, although she is aware of this option.

This report was referred to Investigators **Name Here** and **Name Here** on **Month XX, 20XX**. Both investigators were present in person for each interview. They alternated questioning and note-taking roles. This investigation was completed on **Month XX, 20XX**.

Involved Parties:

Reporting Party is (e.g., a first-year undergraduate female residing in the residence halls).

1. **Responding Party** is (e.g., a male graduate student and a residence advisor in the residence halls).
2. **Witness 1** is (e.g., a freshman female residing in the residence halls and **Reporting Party's** roommate).
3. **Witness 2** is (e.g., a male undergrad living off-campus and a classmate and friend of **Reporting Party**).
4. **Witness 3** is (e.g., an employee of **Nearby Bar**; employee is not affiliated with the university).



Investigation Timeline/Table of Interviews:

See example on [p. 60](#), (Witness List). A flowchart of these witnesses follows as Appendix A.

Alleged Violations:

A Notice of Investigation (NOI) was sent to Responding Party on Month XX, 20XX via campus email. Investigator Name Here spoke with Responding Party by phone on this date to confirm that he received the NOI. The NOI informed Responding Party that an investigation was being conducted pursuant to Policy. The NOI contained the following allegations:

- *Add details of first allegation here.*
- *Add details of second allegation here.*
- *Etc.*

The university investigated possible violations of two provisions of the Policies. The relevant policy definitions follow. The applicable policies are attached as Appendix B.

1. Sexual Misconduct: Non-Consensual Sexual Intercourse

Non-consensual sexual intercourse is defined by policy as:

- Any sexual intercourse (anal, oral, or vaginal),
- Including sexual intercourse with an object,
- However slight,
- By one person upon another,
- Without consent and/or by force.

2. Sexual Misconduct: Non-Consensual Sexual Contact

Non-consensual sexual contact is defined by policy as:

- Any intentional sexual touching,
- However slight,
- With any object,
- By one person upon another,
- Without consent and/or by force.

3. Consent

Consent is defined by policy as:

- Informed,
- Voluntary,
- Active,
- Clear words or actions
- Indicating permission to engage in mutually agreed upon sexual activity.

Jurisdiction and Status:

Add jurisdictional statement here. The university has jurisdiction over these misconduct allegations pursuant to... *Add any necessary details about interim suspension, initial actions, and remedial actions.*



Standard of Evidence:

To determine whether an individual has violated the university's Policy, the standard of evidence required is a preponderance of evidence (i.e., the evidence demonstrates that it is more likely than not that the conduct occurred). This standard is often referred to as "50 percent plus a feather."

Interview(s) with Reporting Party:

Include the name and title of the interviewer(s); the names and roles of others present; the location and date of the interview(s); and detailed notes of the interview(s).

Additional Information Provided By Reporting Party:

Include information such as written statements, any relevant emails, texts, voice mails, and photographs. Can attach part as Appendix C.

Interview(s) with Responding Party:

Include the name and title of the interviewer(s); the names and roles of others present; the location and date of interview(s); and detailed notes of the interview(s).

Additional Information Provided By Responding Party:

Include information such as written statements, any relevant emails, texts, voice mails, and photographs. Also attach part as Appendix D.

Interview(s) with Witness(es):

Include the name and title of the interviewer(s); the names and roles of others present; the location and date of interview; how witness(es) was/were identified; and detailed notes from those interviews.

Other Information:

1. Attached as Appendix C/D, with proper redaction
2. Relevant Residence Life information, Appendix E
3. Sexual assault nurse exam, Appendix F
4. Campus security or police report, Appendix G
5. Expert reports or information, Appendix H
6. Reviewed video surveillance etc., Appendix I

Credibility Assessment:

Include parties, witnesses, and any relevant information.

Findings of Fact and Analysis for Policy 1:

State your policy and apply the facts as you find them related to the policy, weighing evidence and incorporating credibility assessment as you proceed.



Findings of Fact and Analysis for Policy 2:

State your policy and apply the facts as you find them related to the policy, weighing evidence and incorporating credibility assessment as you proceed.

Conclusion (if applicable):

Based on the totality of the circumstances and the information obtained pursuant to this investigation, and based on a more likely than not standard of evidence, we conclude that it is/is not more likely than not that Responding Party violated Policy for the following reasons...

Sanction Recommendation (if applicable):

Include recommendations here.

Respectfully submitted,

Name, Title of Investigator,	University of Knowledge	Date signed
------------------------------	-------------------------	-------------

Name, Title of Investigator,	University of Knowledge	Date signed
------------------------------	-------------------------	-------------

- Appendix A: Timeline of Investigation
- Appendix B: Applicable Policies
- Appendix C: Witness Interview Transcripts and Other Evidence Collected
- Etc.



SAMPLE TEMPLATE FOR INVESTIGATIVE REPORTS II

[UNIVERSITY]

[ADDRESS]

[PHONE]

[NAME OF INVESTIGATOR(S)]

[DATE OF REPORT]

This report addresses alleged violations of the [NAME OF CONDUCT CODE POLICY HANDBOOK] of the [UNIVERSITY], including possible violation of the [POLICY]. [INVESTIGATOR NAME(S)] conducted the investigation into these allegations. This report will determine whether it is more likely than not that there has been a violation of the [STUDENT CONDUCT CODE/POLICY].

Involved Parties:

Reporting Party: [NAME] [RELEVANT INFORMATION]

Responding Party: [NAME] [RELEVANT INFORMATION]

Witness 1: [NAME] [RELEVANT INFORMATION]

Date of Reported Incident: [DATE]

Date Report was made: [DATE]

To whom report was made: [NAME(S)]

History of the Allegation:

[DETAILS]

Alleged Violations:

A Notice of Investigation was (NOI) sent to Responding Party on [DATE].

The NOI informed Responding Party that an investigation was being conducted pursuant to [RELEVANT INFORMATION].

The NOI contained the following allegations: [ALLEGATIONS INFORMATION]

The investigation examined possible violations of the following provisions of the Student Conduct Code/University Policy:

1. [CONDUCT CODE/UNIVERSITY POLICY]
[CONDUCT CODE/UNIVERSITY POLICY DESCRIPTION]
2. [CONDUCT CODE/UNIVERSITY POLICY]
[CONDUCT CODE/UNIVERSITY POLICY DESCRIPTION]



Jurisdiction:

[JURISDICTIONAL STATEMENT]

Standard of Evidence:

In order to determine that a person has violated the [NAME OF CONDUCT CODE POLICY HANDBOOK] of the [UNIVERSITY], the standard of evidence required is a preponderance of evidence (i.e., the evidence demonstrates that it is more likely than not that the conduct occurred). This standard is often referred to as “50 percent plus a feather.”

Interview(s) with Reporting Party:

INTERVIEW 1

[DATE], [TIME], [LOCATION]
[PERSONS PRESENT AT INTERVIEW]
[INTERVIEW REPORT]

Additional Information Provided By Reporting Party:

[WRITTEN STATEMENT]
[RELEVANT EMAILS]
[TEXTS]
[VOICEMAILS]
[OTHER]

Interview(s) with Responding Party:

INTERVIEW 1

[DATE], [TIME], [LOCATION]
[PERSONS PRESENT AT INTERVIEW]
[INTERVIEW REPORT]

Additional Information Provided By Responding Party:

[WRITTEN STATEMENT]
[RELEVANT EMAILS]
[TEXTS]
[VOICEMAILS]
[OTHER]

Summary of Information Provided By Witnesses:

[SUMMARY]

Other Information:

[SUMMARY FROM OTHER DEPARTMENT]
[SEXUAL ASSAULT EXAM REPORT]



[CAMPUS SECURITY/POLICE REPORT]

[SUMMARY FROM EXPERTS]

Credibility Assessment:

[ASSESSMENT]

Findings of Fact and Analysis:

[POLICY STATEMENT WITH FACT APPLICATION AS RELATED TO POLICY]

Conclusion:

Based on the totality of the circumstances and the information obtained pursuant to this investigation, and based on a more likely than not standard of proof, I conclude that [IT IS]/[IS NOT] more likely than not that Responding Party violated [POLICY].

[SIGNATURE]

[NAME]

[POSITION]



SAMPLE INVESTIGATION REPORT AND FINDINGS WITH ANALYSIS

University of Knowledge (UK)

Allegation by [Reporting Party]
Alleging Sexual Misconduct by
[Responding Party]

Investigation Interviews Conducted:
[X/X/XX] and [X/X/XX]

Investigation Team:
[XX and XX]

Report Submitted 9/11/14 to:
[XX], UK Title IX Coordinator



INVESTIGATION REPORT AND FINDINGS⁴

Contents:

- Allegations of Misconduct
- Summary of Findings
- Detailed Findings
- Information About Allegation
- Detailed Findings
- Conclusion
- Appendix of Interview Notes
- Appendix of Documentation

Allegations of Misconduct:

Sophomore student [XX] (hereinafter “Reporting Party”) formally alleged that she was sexually assaulted by Junior student [XX] (hereinafter “Responding Party”) on August 23, 2014 in [NAMED RESIDENCE HALL] following a party at [NAMED FRATERNITY HOUSE], where they met for the first time. Reporting Party claimed that when left alone in the Media Room with Responding Party, who was a stranger to her, he forcefully kissed her, fondled her breasts both over and under her shirt to the point of bruising, pushed her down on the couch while squeezing her throat to the point where she had trouble breathing, and then attempted to remove her leggings to rape her. Reporting Party managed to grab her phone as he attempted to remove her leggings, text her friends for help, and those friends came to the Media Room immediately, but did not witness any of the alleged misconduct. Responding Party admits to the kissing and fondling, asserts that they were mutually consensual acts, and denies causing any bruising, denies ever touching her neck with his hands, and denies any attempt to remove her leggings or to have intercourse with her.

Following a preliminary inquiry conducted by the Department of Public Safety (DPS) and [UK Title IX Coordinator], a formal allegation of sexual misconduct was lodged. This formal investigation ensued.

Reporting Party alleged that Responding Party kissed, fondled, and attempted to rape her in the Media Room in [NAMED RESIDENCE HALL] when the two were alone in the room. Reporting Party indicates that she resisted the attack, said “No” repeatedly, and experienced visible physical bruises and emotional harm as a result.

Summary of Findings:

This investigation finds that Reporting Party’s educational environment became one of sex-based hostility as the result of conduct by Responding Party and that the university should remedy accordingly. Specifically, this investigation finds:

⁴ Policy discussion is omitted from this report for sake of brevity. Don’t forget to include policy and specific assessments of how each element was met or not met and by what evidence in the reports your write.



1. That a preponderance of evidence supports Reporting Party's allegation that Responding Party committed a violation of the sexual misconduct policy, specifically for forcible and non-consensual sexual contact by fondling and groping Reporting Party's breasts without consent.
2. That a preponderance of evidence supports finding that Responding Party engaged in non-consensual sexual contact, thereby violating the sexual misconduct policy.
3. That a preponderance of evidence supports Reporting Party's allegation that Responding Party committed a further violation of the sexual misconduct policy, specifically for attempted non-consensual sexual intercourse by forcibly trying to remove Reporting Party's leggings in an effort to have sexual intercourse with her despite her protests.
4. That a preponderance of evidence supports a violation of the campus alcohol policy by Responding Party.

Detailed Findings:

The first finding is supported by well more than a preponderance of the evidence. It is a 100 percent certainty that Responding Party had non-consensual contact with Reporting Party by his own admission when interviewed. The second finding is self-proving, as non-consensual sexual contact is a form of sexual harassment (specifically sexual misconduct), which was established by credible evidence as sex-based, sexual in nature and unwelcome to the reporting party. As to the third finding, Reporting Party provided a credible allegation. While no independent corroboration was available because only the parties were present during the incident, Reporting Party provided timely, ample, and persuasive self-corroboration to several third parties in the immediate aftermath. The attempt is also consistent with the sexual behavior that led up to it.

Witnesses identified by Reporting Party were supportive of her allegation, and were credible. The third finding is supported by a preponderance of the evidence, both circumstantially and inferentially, from the information discussed below. The information available supports the conclusion that Responding Party used some elements of physical force, coercion, and intimidation during his attack on Reporting Party. He denied this credibly in his interview, but the corroboration Reporting Party offered by outcry (immediately after) witnesses, medical, and photographic evidence outweighs Responding Party's denials. The fourth conclusion is supported by witnesses whose credible statements lend a preponderance to the fact that Responding Party, who is 19 years of age, was under the influence of alcohol that night.

Any other conclusion regarding findings 1–3 would require us to believe that Reporting Party caused or exacerbated her own documented injuries, which is not supported by any evidence. To draw that conclusion would also require acceptance of this utterly implausible line of reasoning: that Reporting Party planned a series of events starting with texting for help in the middle of a consensual sexual interaction, immediately self-corroborated neck pain in the minutes thereafter to four witnesses, and then faked a series of bruises and pain for weeks. Assuming that did happen, we would then be required to offer some reason or motivation why Reporting Party would go to such lengths to attempt to both prosecute and have a perfect stranger expelled from college. No such motivation is proffered



or suspected. To bring logic to Responding Party's account, you have to accept that Reporting Party is a masterful manipulator, brilliant strategist, and perfect liar. She is not.

Information About Allegation:

a. Witness List and Relationships

1. [WITNESS 1]: close friend of Reporting Party; witness before and immediately after the incident
2. [WITNESS 2]: hallmate of Reporting Party; witness before the incident
3. [WITNESS 3]: close friend of Reporting Party; witness before and after the incident
4. [WITNESS 4]: friend of Reporting Party; witness before the incident
5. [RESPONDING PARTY]: witness to the incident
6. [WITNESS 6]: roommate to [WITNESS 1]; acquaintance to Reporting Party; witness immediately after the incident
7. [WITNESS 7]: friend of Reporting Party; witness before the incident
8. [REPORTING PARTY]: witness to the incident
9. [WITNESS 9]: friend of Reporting Party; witness before the incident
10. [WITNESS 10]: friend and hallmate of Reporting Party; witness after the incident
11. [WITNESS 11]: friend of Reporting Party; witness before the incident
12. [WITNESS 12]: RA in Reporting Party's hall, witness after the incident
13. [WITNESS 13]: RA to Reporting Party, also close friend and confidant; witness before, somewhat during and immediately after the incident

b. The Incident

On [WEEKDAY], [MONTH] [DATE], Sophomore [REPORTING PARTY] went to the off-campus apartment of student [RESPONDING PARTY]. [REPORTING PARTY] was accompanied by Sophomore students [WITNESS 1] and [WITNESS 11]. Note that [WITNESS 11]'s interview does not corroborate this, and through piecing various statements together, it seems that [WITNESS 11] has her dates confused. At least three witnesses place her at [RESPONDING PARTY'S] on that night. Students [WITNESS 4] and [WITNESS 9] joined them there, all of them from the same campus club sport. At that party, [WITNESS 1] reports that [REPORTING PARTY] consumed two drinks (whiskey and cokes), but [REPORTING PARTY] does not recall even being at [RESPONDING PARTY'S] apartment. [WITNESS 4] believes [REPORTING PARTY] had been pre-gaming, and was tipsy before she arrived at [RESPONDING PARTY'S]. [REPORTING PARTY] denied this. After being at [RESPONDING PARTY'S], the group met up with Sophomore [WITNESS 3] at [NAMED FRATERNITY HOUSE] shortly after 11:00 p.m. [REPORTING PARTY] considers [WITNESS 1] and [WITNESS 3] her best friends at UK. They hung out at the party for perhaps an hour. No one kept exact track of time. Witnesses report that [REPORTING PARTY] consumed 3-5 beers at the party, obtained from [NAMED FRATERNITY HOUSE], though she only recalls having one beer. [WITNESS 9], a friend of the group, reported that beer was being served from cans and that UK IDs were checked by the fraternity, but not driver licenses.



Witnesses reported [REPORTING PARTY] then met [RESPONDING PARTY], in the basement of [NAMED FRATERNITY HOUSE]. They had not met before. According to witnesses, for perhaps 40–45 minutes, the parties danced with each other. The dancing included kissing and grinding. Just before 1:00 a.m., [WITNESS 1] decided to leave the party, and let [REPORTING PARTY] know, because they don't leave each other behind at parties. [REPORTING PARTY] decided to go home with [WITNESS 1] at that time, and asked [RESPONDING PARTY] to go with them, taking [RESPONDING PARTY] by the hand. [WITNESS 4] accompanied them but did not enter [NAMED RESIDENCE HALL] with them. The group walked across the common back to [NAMED RESIDENCE HALL]. While walking, [RESPONDING PARTY] ran straight into a table on the green that he did not see in the dark. [WITNESS 4] thought he was looking down at his phone, but [RESPONDING PARTY] said he was not (and did not send any texts or emails that night, according to his records). It was just dark and he did not see the table, he said. [WITNESS 4] said the table was clearly visible, so perhaps the alcohol was impacting [RESPONDING PARTY]'s sensory perceptions. RA [WITNESS 13] reports that he saw the three come onto the hall just after 1:00 a.m., with [RESPONDING PARTY]'s arm around [REPORTING PARTY].

Both parties appeared to [WITNESS 13] to have been drinking, but were not out-of-control. [WITNESS 1] corroborated that [RESPONDING PARTY] tried to enter [REPORTING PARTY]'s room with [REPORTING PARTY], who made an excuse that her roommate was there and asleep and could not be disturbed. [REPORTING PARTY] claimed that [RESPONDING PARTY] actually tried to push her from behind into her room as she tried to enter, though [RESPONDING PARTY] denied this. [WITNESS 1] went to shower and the parties entered the Media Room in [NAMED RESIDENCE HALL], which was occupied by [WITNESS 13] and resident [WITNESS 2]. The group made some small talk until [WITNESS 13] and [WITNESS 2] left. [WITNESS 2] remained nearby in the hall with other students, and the doors to the Media Room remained open.

At that point, [RESPONDING PARTY] began kissing [REPORTING PARTY], who repeatedly asked him to stop. She tried to move her head away from his. She cannot recall if he was kissing her neck or had his hand around it, but believes that her bruises were consistent with having a hand around her neck. He pushed or laid her down on the sofa and positioned himself on top of her on the sofa, touched her breasts, and put his hand up under her shirt. She attempted to reach for her phone, which he pushed out of her reach. He then stated something like "I know you want to do it with me, but are uncomfortable doing it here (meaning the Media Room)." He denies saying this. [RESPONDING PARTY] then attempted to remove her leggings. Then, [REPORTING PARTY] got a text from [WITNESS 1] and replied with a help message to [WITNESS 1] and [WITNESS 13]. A text to [WITNESS 3] at the same time (1:47 a.m.) told her [REPORTING PARTY] was in the Media Room, which [WITNESS 3] interpreted as a need for help.

[WITNESS 13] arrived first and while he did not see anything going on, he entered the room and remained in order to defuse whatever was going on. [WITNESS 1] arrived next, and saw nothing. After a few minutes of awkward silence, [WITNESS 1] suggested she and [REPORTING PARTY] go



get some water, and [REPORTING PARTY] took the opportunity to leave with [WITNESS 1]. [WITNESS 13] shared that while in the Media Room, [REPORTING PARTY] mouthed “Get me out of here” to him twice. [RESPONDING PARTY] noticed some sort of repeated hand gesture from [REPORTING PARTY] to [WITNESS 13], which is corroborative of [REPORTING PARTY]’s account. As soon as [WITNESS 1] and [REPORTING PARTY] were down the hall, [REPORTING PARTY] burst into tears. They went down to [WITNESS 1]’s room and [WITNESS 13] followed. [WITNESS 3] found them there a short while later.

All witnesses present assert that [REPORTING PARTY] was hysterical for some time, describing [RESPONDING PARTY]’s attack. She stated that he was kissing her, holding her down, not letting her up, and she kept stating that her neck hurt. [WITNESS 1]’s roommate, [WITNESS 6], was also present. [WITNESS 13] and [REPORTING PARTY]’s friend [WITNESS 10] attempted to get [RESPONDING PARTY] to leave the building, which took some time and the intervention of [WITNESS 13] and [WITNESS 12]. [RESPONDING PARTY] was asking if [REPORTING PARTY] was OK, was asking if he was going to get in trouble, and told [WITNESS 13], “I don’t want to leave now and find out tomorrow that I’m fucked.”

Detailed Findings:

Because of the admission as to the first finding, no additional detail is needed. This part of the transcript of the interview of [RESPONDING PARTY] is verbatim:

“Q: You believe you treated her respectfully that evening?

A: I think that touching her breasts in that room maybe not, but I don’t think it was aggressive. And I don’t think it was unwanted.

Q: How do you know that was what she wanted?

A: I can’t know that, sir.”

As to the third finding and sanctioning, a discussion of credibility is necessary. As noted above, the investigation found Reporting Party to be credible. There were, in fact, numerous discrepancies between [REPORTING PARTY]’s account and that of other witnesses, even those who are her friends. When confronted with the discrepancies, [REPORTING PARTY] attributed them to the trauma of the experience. She accepted and acknowledged that each witness’s version of events was likely accurate, even if it did not comport with her own memories. She did not dispute facts supplied by witnesses that supported her allegation more than her own account, but still could not remember them. The investigation does not show [REPORTING PARTY] to have lied, or to lack credibility related to being truthful, only to lack memory and to be distraught about that. Significant (self and third-party) corroboration is present in the following information:

- [REPORTING PARTY] steered [RESPONDING PARTY] from her room to the Media Room, as corroborated by [WITNESS 1], first-hand. If [REPORTING PARTY] wanted to be alone with [RESPONDING PARTY], she had an empty room right there.



- [REPORTING PARTY] texted three people for help from the Media Room. This strongly supports the conclusion that she contemporaneously needed help.
- [REPORTING PARTY] immediately self-corroborated by becoming hysterical, describing her injuries, her pain, and her fear. Injuries, largely corroborated by Health Service records, include a contusion to her right breast and bruising, muscle strain, and swelling of her neck in the shape of finger marks.
- [REPORTING PARTY] self-corroborated further in her experience of significant post-traumatic stress. One does not experience post-traumatic stress, typically, without a triggering trauma. She is stressed, has trouble sleeping because of neck pain, is taking medications for the pain, jumps at the slightest sounds (activated fight/flight response common to trauma), flinches at sudden movements, feels fearful often for no reason, has panic attacks, missed a week of classes, and has developed an aversion to lacrosse players (which Responding Party is). Most of these reactions are verified by witnesses. Notes from her campus counselor do not support the possibility that Reporting Party is faking her traumatic response.
- All of [REPORTING PARTY]'s friends believe her and do not think she is lying, which is both situational and character-corroborative. They do not believe that she is a person who is dramatic, exaggerates, or is dishonest.

Significant discrepancies include:

- [REPORTING PARTY] does not recall going to [RESPONDING PARTY'S] apartment prior to the party at [NAMED FRATERNITY HOUSE] on Saturday night, a fact confirmed by several witnesses.
 - [REPORTING PARTY] does not recall pre-gaming before going out on the night in question, but her friend, [WITNESS 4], stated that she was already tipsy when she met up with him around 11:00 p.m. that night at [RESPONDING PARTY'S].
 - [REPORTING PARTY] does not recall drinking whiskey and coke (perhaps two drinks) at [RESPONDING PARTY'S] before going to [NAMED FRATERNITY HOUSE], yet several witnesses claimed she did.
 - [REPORTING PARTY] recalls having perhaps one beer at [NAMED FRATERNITY HOUSE], citing an allergy. Several witnesses observed her having 3–5 beers, and one of those witnesses does not drink at all, and has very clear recall of the night.
 - [REPORTING PARTY] does not recall dancing with [RESPONDING PARTY] at [NAMED FRATERNITY HOUSE], an observation confirmed by several witnesses;
 - [REPORTING PARTY] does not recall kissing [RESPONDING PARTY] at [NAMED FRATERNITY HOUSE], an observation confirmed by several witnesses;
 - [REPORTING PARTY] does not recall grinding while dancing with [RESPONDING PARTY], an observation confirmed by several witnesses.
 - [REPORTING PARTY] does not recall inviting [RESPONDING PARTY] back to [NAMED RESIDENCE HALL] from the party, a fact confirmed by [WITNESS 1].
 - [REPORTING PARTY] does not recall [RESPONDING PARTY]'s arm around her as they entered [NAMED RESIDENCE HALL], a fact clearly recalled by [WITNESS 13].
-



- [REPORTING PARTY] stated that she went to the Media Room to be sure that people saw her and were aware of her situation, and did not recall that [WITNESS 1] was with her and aware.
- [WITNESS 1] was able to corroborate [REPORTING PARTY]'s description of [RESPONDING PARTY] trying to go into [REPORTING PARTY]'s room when they first returned to [NAMED RESIDENCE HALL]. [REPORTING PARTY] had no recall that [WITNESS 1] was standing right there and heard the whole exchange, in which [REPORTING PARTY] pretended that her roommate was in their room asleep to keep [RESPONDING PARTY] from going in with her as [REPORTING PARTY] tried to enter. The possibility of a potential drugging was ruled out based on medical records.

None of these gaps in memory are relevant to the determination of this allegation, but they provide context, either for trauma or inebriation (which would also put consent into question had [RESPONDING PARTY] not already admitted that he had no consent). It is worth noting that [REPORTING PARTY]'s memory failure on the events leading up to the attack carried through to some aspects of the attack as well, such as a lack of recall of where she was sitting and how exactly [RESPONDING PARTY] caused the marks on her neck. She attributes this to the effects of trauma. This is consistent with what is called psychogenic amnesia, and is well documented in the literature of trauma.

Conversely, [RESPONDING PARTY] lacked credibility on some basic issues:

- He stated to the Title IX coordinator that, "I do not drink..." and that "I try to follow all the rules." Despite these assertions, a preponderance of evidence supports the conclusion that [RESPONDING PARTY] did drink that night and though his coaches made it strictly clear he was not to go out, nevertheless, he did. Witness statements support the conclusion that [RESPONDING PARTY] was drinking that night, especially that of RA [WITNESS 13], who judged [RESPONDING PARTY] under the influence, but not out of control. [WITNESS 10], who encountered [RESPONDING PARTY] in the hall immediately after the attack, also assumed [RESPONDING PARTY] had been drinking based on his affect, smell, and behavior.
 - [RESPONDING PARTY] claimed that he was unaware that [REPORTING PARTY] had any alcohol that night. While it might be conceivable that [REPORTING PARTY]'s entire consumption occurred prior to meeting [RESPONDING PARTY] (he stated he never saw her take a drink), many witnesses corroborate that within a roughly two-hour period that night, [REPORTING PARTY] consumed what is likely in excess of seven drinks, including beer and hard liquor. It is hard to believe that [RESPONDING PARTY] would have been unaware of that.
 - Credibility was again strained when [RESPONDING PARTY] claimed that he had fondled [REPORTING PARTY] on top of her shirt, and not under it. It strains credulity to believe that significant bruising to [REPORTING PARTY]'s breast, as corroborated by medical evidence and pictures, could have occurred from touching on top of her shirt and bra only.
 - Finally, [RESPONDING PARTY] flatly denied, or did not recall, a self-implicating statement he made to [WITNESS 13] that night as he left [NAMED RESIDENCE HALL]. Hesitating to leave, [RESPONDING PARTY] told [WITNESS 13], "I don't want to leave now and find out tomorrow
-



I'm fucked." He asked repeatedly if he was in trouble, but wavered on this in his interview. He told [WITNESS 3] in [NAMED RESIDENCE HALL] afterward, when told that [REPORTING PARTY] was sick, "She is a nice girl and I would not hurt her." But, he would not have had reason to think she was hurt at that point unless he knew that he might have hurt her. These corroborated statements strongly imply that [RESPONDING PARTY] was concerned or aware that night that there was something he might be in trouble for.

- His written statement (dated at [TIME] on the [XXrd], the morning of the incident, and created at the instigation of his Lacrosse coach) specifically denies "holding [REPORTING PARTY] down, putting his hands around her neck, or attempting to remove her leggings." This statement both impeaches and implicates [RESPONDING PARTY'S] conduct and his awareness of it, given that the investigation was able to demonstrate that no one communicated these specific allegations by [REPORTING PARTY] to [RESPONDING PARTY] until she gave her formal statement on the [XXth]. Thus, there would be no way for [RESPONDING PARTY] to know to defend these specific actions in his statement unless he had in fact engaged in exactly these actions.

Conclusion:

These allegations were evaluated as force- and consent-based claims. While it is possible to apply an incapacitation lens to this incident, it is unclear whether alcohol-included incapacity or trauma, or both, created the gaps in [REPORTING PARTY'S] recall. Given that uncertainty, and the fact that both force and non-consent are proven by a preponderance of the evidence, those are more appropriate bases for a conclusion than incapacity. It is never easy to hold an individual accountable, especially one who appears as earnest and sincere as [RESPONDING PARTY] does. It is even more difficult to recommend expulsion, which is the recommended sanction here, on the basis of the four violations, above. [RESPONDING PARTY] appears to become a different person when he is drinking, one who can be intimidating and forceful. UK has no assurance that this will never happen again, or that [RESPONDING PARTY] can refrain from drinking. Further, allegations that involve attempted acts are challenging because of the speculative nature of what [RESPONDING PARTY] might have done had [REPORTING PARTY] not texted for help. He said he would not have had sex without a condom, but then why try to take off her leggings? Common sense dictates that it is unlikely that someone would be raped in a Media Room with the doors open, but, again, why try to take off her leggings? It does not seem that [RESPONDING PARTY] was operating from common sense, but from senses quite altered by alcohol. Recommended sanctions are based on what was attempted, and are designed to prevent the future recurrence of any similar acts. In her interview, [REPORTING PARTY] demanded a right to feel safe at UK, and expulsion is a proportionate and effective way to assure that safety.

Given the bruising, and [REPORTING PARTY]'s credible account of the forcible elements of the incident, UK will need to consider adding charges under its Code of Conduct related to:

6. Actual or Threatened Physical Assault or Intentional or Reckless Conduct
9. Harassment or Intimidation
12. Behavior or Activities Which Recklessly or Intentionally Endanger the Safety of Oneself or Others



These three are self-proving allegations, if the conclusions of this report are accepted, because their elements are also elements of the sexual misconduct allegations addressed in this report. These additional charges add further support to the recommendation for expulsion, if proven by a preponderance of evidence.

This report constitutes the result of a thorough, objective, and reliable investigation, and is rendered this [XXth] day of [MONTH], [20XX] by:

[XX] _____

[XX] _____

Appendices:

- Interview notes from all interviews
- Screenshot of group message text
- Screenshot of text message from Reporting Party to witnesses
- Photo of neck bruising
- Reporting Party's written statement and list of witnesses
- Counseling notes
- Medical records
- Nurse's assessment of bruising



INVESTIGATION REPORT INTO ALLEGATIONS OF HAZING AND SEXUAL MISCONDUCT WITH ANALYSIS

Written by [XX]

Dated: [XX/XX/XXXX]

TABLE OF CONTENTS

I.	Executive Summary	P. 97
II.	Introduction/Origin of Allegation	P. 99
III.	Scope of the Investigation	P. 100
IV.	University Policies and Procedures	P. 101
V.	Findings of Fact	P. 104
VI.	Witnesses	P. 106
VII.	Conclusion	P. 107

I. EXECUTIVE SUMMARY

This investigation is the result of an allegation regarding [REPORTING PARTY], a former first-year student at the university. The submission of the allegation originated from an email from the mother of [REPORTING PARTY] expressing concern that her son had stated that he would soon leave the university as a result of severe hazing by swim team members in August 2013 (Attachment 1). The alleged hazing is reported to have taken place over an approximate three-week period that included a two-week swimming camp, a one-week academic skills program, and the start of the fall semester.

In an email communication with the university's Department of Public Safety (DPS) director, the mother asked to receive a copy of the Student Handbook and also expressed that her son had indicated that he felt coerced by other students in the residence hall to engage in underage drinking and smoking. However, neither the mother nor the reporting party ever indicated that this coercion was related to the students named in the hazing incident; this information also was not provided by [REPORTING PARTY] to DPS. The mother stated in her email that although she was aware that the swim coach had suspended the swim team members named in the hazing incidents, her son had communicated to her that he was still feeling threatened and uncomfortable at the university. The mother also requested a copy of a police report regarding the hazing incident and was informed by the director of DPS that her son had waived his right to file a police report both with DPS and/or [LOCAL] Police Department (PD). (Attachment 42)

Both the email by the reporting party's mother and the DPS incident report were shared with the university's risk manager, who subsequently provided the university's insurer and myself with a summary of the allegation. (Attachment 2)



As a result of the information received, my investigation included:

- A review of the incident report taken by the lieutenant of DPS. (Attachment 3)
- Email communication between the swim coach and the athletic director discussing a possible hazing event with the members of the swim team. (Attachment 4)
- A review of the university's "Student Code of Conduct - Rules and Regulations to include the university's Hazing Policy." (Attachments 5-7)
- Interviews with the students charged in the incident(s). (Attachments 8-12)
- A memorandum from the swim coach that was sent to the athletic director, dean of students, associate dean of students, and the coordinator of the Office of Student Conduct (OSC) conveying that there had been confirmed hazing and "inappropriate acts" against [REPORTING PARTY] by four members of the swim team; the memorandum further reported details of the incidents confirmed by the students involved. (Attachment 13)
- Email communication from the swim coach to Lieutenant [XX], investigator for DPS, referencing his memorandum dated Aug. 24, 2013. He explained in his memo that he sought to find out what happened to [REPORTING PARTY], who was reluctant to share information. However, the lieutenant indicated in this email that after a short period of time, "the [REPORTING PARTY] divulged the truth." The coach expressed in this email his desire to ensure that the sanctions given to the swim team members were appropriate. (Attachment 14)
- The reporting party's statement to the coordinator of OSC regarding the incidents. (Attachment 15)
- A written chronology of events from the coordinator of OSC regarding all actions taken related to the incidents. (Attachment 16)
- A review of OSC documentation of the independent (and preceding) conduct process charging the students with Student Code of Conduct violations. (Attachments 17-27)
- Written Statements from accused students SD and KW. (Attachments 28-29)
- Written student athlete statements taken by lieutenant of DPS. (Attachments 30-33)
- Interviews with student-athlete witnesses. (Attachments 34-39)
- Interview and written statement from CI, a new responding party named in the allegation. (Attachments 40-41)

On the basis of my investigation, I recommend:

The university file the following additional charges against the students found responsible in the original allegation according to the University Policies and Procedures section of the Student Handbook:

- Sexual Misconduct and/or Sexual Harassment
- Stalking
- Hazing
- Non-Compliance with University Sanction

The students found responsible by OSC in its independent hazing determination are as follows: SD, CH, TJ, and KW.



An additional responding party was named in the Incident Report dated Nov. 21, 2013 who was not included in the original charges by OSC. This student's name is CI. The report states that the reporting party's buttocks were slapped and grabbed several times by the Responding Party CI while on campus. According to the reporting party, this alleged physical contact occurred more than 25 times and had been reported to the coordinator of Residence Life (CRL). CRL did not recall any reports of harassment by [REPORTING PARTY] but did acknowledge that he was aware that [REPORTING PARTY] was unhappy with the swim team. However, CI admits to the behavior described by [REPORTING PARTY] in the incident report. Based on my investigation, it is my recommendation for the university to charge CI with violations of the University Policies and Procedures section of the Student Handbook:

- Physical Abuse, Verbal Abuse, Threats, Intimidation, Harassment, Bullying, and /or Coercion
- Bias Related Harassment
- Sexual Misconduct and/or Sexual Harassment
- Stalking

In conclusion, I find that the reporting party was hindered from receiving an appropriate education, which is a contradiction to the university's general commitment to providing a living and learning environment free from physical intimidation in accordance with the Sexual Misconduct Policy as written in the Student Handbook. I find that there is sufficient evidence based on a preponderance of the evidence that a serious violation of university policy occurred. Therefore, it is my recommendation that Reporting Party receive the redress requested for a waiver of the remaining balance owed to the university.

II. INTRODUCTION/ORIGIN OF ALLEGATION

On Sept. 22, 2013, the mother sent an email (Attachment 1) to the dean of students explaining that her son, [REPORTING PARTY], said he was withdrawing from the university as a result of severe hazing by four swim team members. The email further expressed that despite the four students named in the incident having been disciplined, [REPORTING PARTY] was still feeling threatened and uncomfortable. The mother also expressed concern regarding a tuition bill for the current semester of \$8,000. Additionally, the mother requested a police report for the incident (she was told that there was one) and requested a copy of the Student Handbook. The dean of students replied to the mother via email indicating that he was aware of the alleged hazing incident and disciplinary actions taken by the head swim coach. The dean copied DPS on his response to the mother to assist with getting a copy of any police report that may have been taken and gave the mother a link to the Student Handbook.

On Sept. 28, 2013, the director of Public Safety responded to the mother (Attachment 42) and copied the dean of students and the coordinator of OSC expressing regret for the alleged incidents. DPS also included in his response to the mother that [REPORTING PARTY] was referred to the Office of Student Conduct for the incident and that OSC had offered him an opportunity to make an official police report but he had declined.



On Nov. 21, 2013, DPS completed an incident report (Attachment 3). The report states that [REPORTING PARTY] told the lieutenant that he had been sexually assaulted and had been the victim of hazing and harassment when he was a student at the university during a swim camp prior to start of the fall semester in late August of 2013. The incident report detailed several incidents that support the reporting party's allegations of the aforementioned violations of university policy.

A second incident report was taken on Nov. 22, 2013, and the interview was conducted by Lieutenant [XX] to ensure that the details were accurate in the report and to ask additional questions. [REPORTING PARTY] reiterated that he was just as detailed with Lieutenant [XX] as he was with his coach and OSC. [REPORTING PARTY] was asked why he thought he was the target of sexual assault and harassment. He felt that his university teammates had probably heard about this athletic ability and were jealous, and/or that the treatment was related to his religious views. [REPORTING PARTY]'s mother explained in this second interview that she wasn't "against gay people" but did not agree with their lifestyle. (Attachment 3A)

III. SCOPE OF THE INVESTIGATION

I began the investigation by reviewing the relevant university violations as written in the University Policies and Procedures "Student Code of Conduct" section of the Student Handbook. (Attachments 5-7)

Interviews were scheduled for the responding parties and witnesses of the incident(s) named in the allegation. All the student interviews were videotaped. I transcribed notes from the interviews.

The following chronology of events outlines the start of the investigation:

On Nov. 21, 2013, an incident report was taken at 18:42. Lieutenant [XX] interviewed the victim, [REPORTING PARTY], on Nov. 22, 2013. The report states that [REPORTING PARTY] reported to the lieutenant that he had been sexually assaulted and had been the victim of hazing and harassment when he was a student at the university during a swim camp prior to start of the fall semester in late August of 2013. The incident report gave an accounting of several incidents that support his allegations of the aforementioned violations of university policy. (Attachment 3)

A second incident report was taken on Nov. 22, 2013. The interview was conducted by Lieutenant [XX] to ensure that the details were accurate and to ask additional questions. [REPORTING PARTY] reiterated that he was just as detailed with Officer [XX] as he was with his coach and OSC. [REPORTING PARTY] was asked why he thought he was the target of sexual assault and harassment. He felt that his university teammates had probably heard about this athletic ability and were jealous, and/or that the harassment was related to his religious views. [REPORTING PARTY] explained in this second interview that he was not "against gay people" but did not agree with their lifestyle. (Attachment 3A)

On Nov. 23, 2013, the Title IX coordinator was copied on an email sent by the risk manager to the university's insurance company with a summary of the allegation. (Attachment 2)



On Dec. 2, 2013, I met with the coordinator of the Office of Student Conduct; notes from the meeting (Attachment [XX]) are included in this report. He stated that because of the comments related to “the gay lifestyle,” he categorized the incident as “bias-related” harassment. (Attachment 43)

On Dec. 7, 8, and 13, 2013, the following students were interviewed and videotaped by the Title IX coordinator and Lieutenant [XX] of the Department of Public Safety (DPS). The students listed include those accused in the allegation as well as witnesses to the incident(s). Transcript/notes of the interviews are included with this report:

1. KW (Attachment 8)
2. SD (Attachment 9)
3. TJ (Attachment 11)
4. CH (Attachment 12)
5. BS (Attachment 34)
6. MJ (Attachment 35)
7. DH (Attachment 36)
8. VR (Attachment 37)
9. SS (Attachment 38)
10. OT (Attachment 39)
11. CI (Attachment 40)

On Dec. 12, 2013, I met with the associate dean of students regarding the case that was referred to OSC. He stated that he felt the incident was bias-related harassment and that no investigation was done, in part because one of the accused students accepted responsibility and the others did not show up for the pre-hearing. All the students received the same sanctions. (Attachment 44)

On Jan. 25, 2014, I met with the swim coach at the university. Notes from the meeting are included in this report. (Attachment 45)

IV. UNIVERSITY POLICIES AND PROCEDURES

General Policy

The university is committed to providing a living and learning environment free from physical intimidation and acknowledges the seriousness of sexual misconduct. The university takes the necessary steps to reduce the need for reactive intervention by providing preventive and risk education and training and by preparing and disseminating educational pamphlets, fact sheets, and articles related to sexual misconduct. The university also attempts to eliminate pressure that might lead students to suppress a sexual misconduct charge or to minimize its seriousness by providing a process whereby the parties involved are treated with dignity; privacy and confidentiality are maintained to the fullest extent possible; allegations of sexual misconduct are investigated promptly and thoroughly; and the alleged survivor is provided with full support and assistance.



Sexual misconduct by any university student occurring on university property or at a university-sponsored event is a violation of the Student Code of Conduct and warrants administrative and/or disciplinary action. The university reserves the right to review and adjudicate any off-campus occurrences of sexual misconduct that may directly impact or have a significant effect upon the university or members of its community. Incidents of sexual misconduct are adjudicated in accordance with the disciplinary procedures as outlined in the Student Conduct Program section of this handbook, with a few exceptions as described under "disciplinary process" in this section. Any student found responsible of sexual misconduct may be subject to disciplinary action up to and including expulsion. Criminal prosecution may also be pursued.

Definition of Sexual Misconduct

For the purposes of this policy, sexual misconduct is defined as any sexual contact or conduct with another person without that person's expressed consent, including, but not limited to, unwanted touching, rape, sodomy, unwanted embraces or bodily contact, sexual gestures, and/or penetration with objects. Sexual harassment, which refers to the misuse of power to coerce sexual activity or to create an offensive working and learning environment, forced viewing, exposing oneself to others, sexual gestures, requests for sexual favors, verbal abuse, or other conduct of a sexual nature, is described by the university's policy on sexual harassment. Any violation of the university's policy on sexual harassment is a violation of the Sexual Misconduct Policy and is subject to the same disciplinary procedure as any other infraction of the Student Code of Conduct. The Administration and Operations Manual provides a detailed definition of the Sexual Harassment Policy.

University Hazing Policy

The university's Hazing Policy states hazing is a fundamental violation of human dignity and is strictly prohibited. The following hazing policy applies to all student organizations and students of university. Hazing is defined according to the University Student Handbook as any action taken or situation with or without consent, whether on or off university premises, which recklessly, intentionally or unintentionally, endangers the mental or physical health or safety of a student; or creates risk of injury, or serious emotional distress; or causes discomfort, embarrassment, harassment or ridicule; or which willfully destroys or removes public or private property; or violates any federal, state, and/or local laws and regulations, or university policy; or causing or encouraging any person to commit an act that would be in violation of law or university policy. In most instances, it concerns actions taken or situations with or without consent for the purpose of initiation, promotion, fostering, or confirming any form of admission into or affiliation with, or as a condition for continued membership in, a student group or organization. The expressed or implied consent of the victim will not be a defense to any action brought pursuant to this policy.



Activities and situations that are explicitly prohibited include, but are not limited to, the following:

1. Any type of physical brutality, such as paddle swats of any nature, forced tattooing or branding, pushing, shoving, striking, tackling, or similar activity.
2. Conducting any activity that results in sleep deprivation (less than seven hours of uninterrupted sleep) on any given day, or conducting a new pledge/associate member activity between the hours of 11:45 p.m. and 7:45 a.m. Sunday evening through Friday morning; conducting activities which do not allow adequate time for study or involve late work sessions or assignments that interfere with academic, occupational, or athletic obligations; denying a pledge/associate member access to his/her bed at any time.
3. Forcing, requiring, encouraging pledges/associate members to drink alcohol or use any other drugs; providing or using such alcohol or other drugs as part of organizational activities. Under no circumstances should an individual be under the influence of alcohol or other drugs during pledge/associate member activities.
4. Forcing the consumption of any substance, i.e., dropping food in the mouth (e.g., eggs, grapes, liver, etc.) or goldfish; pouring, dropping, throwing, or rubbing any substance (e.g., eggs, garbage, water, paint, syrup, etc.) on any individual.
5. Engaging in morally degrading or humiliating games, pranks, and activities such as: a) scavenger hunts that require or result in theft, forced or coerced road trips, and/or kidnapping; b) destruction of property; c) interfering with or disrupting other organizations on campus; d) blindfolding pledges/associate members; e) personal servitude (e.g., requiring pledges/associate members to clean up the mess of others, doing chores or errands for the group or individual members, cleaning their rooms, serving meals or driving them to class, etc.); and/or f) requiring or recommending the carrying of unusual items (e.g., bricks, skulls, pumpkins, plants, etc.).
6. Conducting activities that deter or hinder fulfillment of academic, athletic, or occupational obligations; under no circumstances should pledge activities be conducted during academic hours (i.e., 8 a.m.–5 p.m. Mondays through Fridays, unless special permission has been granted by the director of campus activities).
7. Deception and/or threats contrived to convince any student prior to installment that s/he will not be initiated or able to join the organization.
8. Forced isolation from friends or other members of the university community, including any prohibition from social interaction, talking, or signing.
9. Yelling, taunting, cursing, insulting, and screaming at pledge/associate members.
10. Nudity or partial nudity at any time.
11. Exposure to the elements; calisthenics such as push-ups, sit-ups and runs; or any activity that adversely affects the mental or physical health or safety of a student.
12. Forcing, requiring, causing, or endorsing pledges/associate members to commit an act that would be in violation of any university policy or any local, state, or federal law.
13. Requiring line-ups, which are defined as lines or gatherings created for the purpose of traveling/going from one place to another or a line where pledges/associate members



are subject to interrogation or harassment. Occasional ceremonial line-ups for the purpose of the announcement of pledges/members or events, however, can be conducted with advance approval from the director of campus activities.

14. Requiring the wearing of apparel or hairstyles that are conspicuous and/or normally in bad taste. This includes unusual clothing styles or repetitious wearing of uniforms. Occasional wearing of uniforms for special events during normal academic hours (8:00 a.m.–5:00 p.m. on weekdays) can be conducted with advance approval from the director of campus activities.

V. FINDINGS OF FACT

1. The coach communicated via email and in a memorandum to the athletic director, dean of students, the associate dean of students, and the coordinator of OSC that he was concerned about allegations of hazing, inappropriate touching, and bullying.
2. OSC filed an allegation against students KW, SD, TJ, and CH as a result of information received from the swim coach. Charge letters dated Sept. 27, 2013 were mailed to the aforementioned students. The charges filed include:
Physical Abuse, Verbal Abuse, Threats, Intimidation, Harassment, and/or Coercion, and Bias-Related Harassment
3. SD accepted responsibility for the charges filed by OSC during a pre-hearing interview on Oct. 24, 2013. He was subsequently issued a decision letter on Oct. 25, 2013. SD accepted responsibility for the charge of Physical Abuse, Verbal Abuse, Threats, Intimidation, Harassment, and/or Coercion and Bias-Related Harassment.
4. Three of the four students charged by OSC did not respond to the charge letters issued by OSC. The letters indicated that if the students did not show up for a pre-hearing meeting, OSC would render a decision in the case.
5. There have been two incident reports filed with the Department of Public Safety (DPS). The first report outlines the allegation. The second report complies with the [REPORTING PARTY]'s request to confirm that the information given in the incident report is the same information that was given to the coach and to OSC, which includes the allegations of the sexual assault.
6. The Office of Student Conduct contends that [REPORTING PARTY] did not include information in his meeting with them or in his statement that was included in the incident report to DPS, which included sodomy and several allegations of sexual harassment/misconduct.
7. OSC sent email communication to [REPORTING PARTY] on Aug. 29, 2013 to meet with him to discuss an incident that was reported to OSC. [REPORTING PARTY] replied on Sept. 1, 2013. (Attachment 46)
8. KW gave a statement in his interview that he personally asked SD if he had put his finger in [REPORTING PARTY]'s anus, and SD admitted that he did.
9. It is confirmed by several swim team members that KW threatened to rape [REPORTING PARTY]. However, it is not confirmed if coercion occurred to keep [REPORTING PARTY] from notifying the coach while KW, CH, and TJ sat on him.



10. KW admits to being one of the students involved with restraining [REPORTING PARTY] in the locker room on one occasion. This incident is related to TJ sitting on [REPORTING PARTY]'s leg while naked. There are several confirmations from witnesses that he sat on [REPORTING PARTY]'s leg and moved with a grinding motion. TJ disputes this claim and contends that he sat down and immediately got up to go the shower.
11. CH admits to being one of the two students accused of restraining [REPORTING PARTY] in the locker room on one occasion.
12. [REPORTING PARTY] has asked the accused students on several occasions to stop the harassing behavior.
13. [REPORTING PARTY] submitted a written statement to OSC regarding several incidents. In his statement, [REPORTING PARTY] stated that he had been taunted, called gay, restrained, and physically touched. However, [REPORTING PARTY] indicated in his statement, "good thing they stopped." [REPORTING PARTY] also said in his statement that he would leave the university if the actions didn't stop and that he "cannot take this."
14. Four students of the university swim team were issued sanctions by the swim coach to include suspension for one week from all swimming activities, 20 hours of community service under the Athletic Department to be completed by Sept. 30, 2013; online educational program that focuses on sexual assault or bullying awareness to be completed in 30 days; and attendance at a support group or shelter for sexually abused or bullied individuals.
15. According to several students, hazing is a frequent occurrence in school athletic programs, particularly the swim team. Several students indicated that "worse things" had happened to them during their first year on the swim team.
16. It was corroborated by several members of the swim team that while naked, TJ sat on and proceeded to move around on [REPORTING PARTY] in a "grinding motion" after KW and CH restrained him. This action continued despite requests by [REPORTING PARTY] to stop.
17. The Office of Student Conduct had sufficient information to charge the students accused in this allegation with sexual misconduct despite their categorization of the matter being Physical Abuse, Verbal Abuse, Threats, Intimidation, Harassment, and/or Coercion and Bias related harassment. OSC contends that [REPORTING PARTY] did not reveal information to that department that was disclosed in his incident report to DPS. However, I have determined that sufficient evidence existed in the reporting party's statement as well as in the coach's memorandum to infer that the abuse and harassment that occurred was of a sexual nature. Additionally, OSC staff members should have obtained the DPS report once they learned of it.
18. OSC stated in a decision letter to SD dated Oct. 25, 2013 that he (SD) was being sanctioned after pleading responsible.
19. CH, TJ, and KW were issued decision letters dated Nov. 21, 2013 stating that the case had been handled in their absence and it had been determined that they were individually responsible for the violation as charged. Sanctions were issued as a result, which included rehabilitative probation, effective immediately until May 31, 2013; online Residence Life Educational Modules to be completed by Dec. 12, 2013; and a multicultural workshop/program at the university (to be completed by Feb. 28, 2014).



20. According to my investigation, one of the coaching staff members suspended the student accused of sodomizing [REPORTING PARTY]. However, the suspension was not for the sodomy incident, but for slapping him on the buttocks during horseplay in the locker room. SD stated during an interview with me that he heard about the rumor but was vague about its validity.
21. During one of the harassment incidents, one of the swimmers (SS) defended [REPORTING PARTY] and also reported the behavior to the coach. The coach suspended four of the swimmers for one week as written in the university Athletic Handbook according to a memo that he wrote to the dean of student affairs on Aug. 24, 2013.
22. In the memo, the coach stated that it was brought to his attention that the four swimmers had been "inappropriately abusing" [REPORTING PARTY] on the basis of his religious beliefs about homosexuality. According to the memo, the coach acknowledges that while showering, [REPORTING PARTY]'s towel was placed in different areas of the locker room, causing him to walk around naked for extended periods of time; [REPORTING PARTY] had been inappropriately touched (touched on the behind and pinched on the chest) on several occasions and that he had asked the accused students to stop; [REPORTING PARTY] was restrained on one occasion by two of the accused students while another of the accused sat on his leg; one of the accused students touched [REPORTING PARTY] in an inappropriate manner; and one of the accused admits to jokingly threatening to rape [REPORTING PARTY] if he told the coaches about the incidents. The coach included in his plan of action suspension for the swimmers, along with 20 hours of community service and an online educational program focusing on sexual assault or bullying awareness which was to be completed in 30 days. In addition, the swimmers were required to attend a support group or shelter for sexually abused or bullied individuals. This memo was sent to the Office of Student Conduct on Aug. 24, 2013.
23. The coordinator of Residence Education denies [REPORTING PARTY]'s account that he reported incidents of harassment to him.

VI. WITNESSES

- Dec. 2, 2013, interviewed coordinator of OSC. (Attachment 43)
- Dec. 12, 2013, interviewed associate dean of students. (Attachment 44)
- Dec. 7, 8, and 13, 2013, the following students were interviewed and videotaped by Title IX coordinator and lieutenant from the Department of Public Safety (DPS). The students listed include those accused of the allegation as well as witnesses to the incident(s). Transcript/notes of the interviews are included with this report (Attachment [XX]):
 1. KW (Attachment 8)
 2. SD (Attachment 9)
 3. TJ (Attachment 11)
 4. CH (Attachment 12)
 5. BS (Attachment 34)
 6. MJ (Attachment 35)
 7. DH (Attachment 36)
 8. VR (Attachment 37)



9. SS (Attachment 38)

10. OT (Attachment 39)

11. CI (Attachment 40)

- Jan. 25, 2012, interviewed head swim coach in the Athletics Department. (Attachment 45)

VII. CONCLUSION

Based on the totality of the circumstances and the information obtained pursuant to this investigation, and based on a more likely than not standard of proof, I conclude that it is more likely than not that the responding parties sexually touched, harassed, and penetrated the reporting party and violated the school policies described in this report.

Signed, Title IX Coordinator
Appendix of Attachments



DRUG-RELATED ASSAULT INVESTIGATION

Investigation #: [XXXX]
College
Campus Safety & Security

Record Date	02/17/2015	Investigation Type	Sexual Misconduct
Lead Investigator		Status	Started
Start Date	02/10/2015	Completion Date	

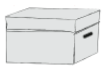
Synopsis of Incident:

Student Reporting Party alleges that student Responding Party violated the college's sexual misconduct policy.

Incident Involved the Following Individuals:

Reporting Party
Responding Party

Investigators:



Investigation #: [XXXX]
College
Campus Safety & Security

Investigation Event Tracking

Investigator	Date/Time Started	Date/Time Ended	Event	Synopsis
DIRECTOR	02/18/2015 1140	02/18/2015 1230	INTERVIEW	Interview of Responding Party
DIRECTOR	02/17/2015 1515	02/17/2015 1537	RESEARCH	Confirmation of response times
DIRECTOR	02/16/2015 0900	02/16/2015 0915	RESEARCH	Information about mixing ketamine, alcohol, and marijuana.
DIRECTOR	02/13/2015 1542	02/13/2015 1545	EMAIL	Reporting Party emailed confirming interview notes
DIRECTOR	02/11/2015 1330	02/11/2015 1400	INTERVIEW	Interview with Witness #1
DIRECTOR	02/10/2015 1430	02/10/2015 1515	INTERVIEW	Interview of Witness #2
DIRECTOR	02/10/2015 0900	02/10/2015 1015	INTERVIEW	Interview with Reporting Party
DIRECTOR	02/09/2015 1955	02/09/2015 1956	STATEMENT	Reporting Party emails a statement
DIRECTOR	02/09/2015 1705	02/09/2015 1730	NO CONTACT AGREEMENT	No-Contact Agreements issued between Reporting Party and Responding Party
DIRECTOR	02/09/2015 1355	02/09/2015 1430	INTERVIEW	Reporting Party meets with Campus Safety officer
DIRECTOR	02/08/2015 1326	02/08/2015 1327	EMAIL	Reporting Party and director set time to meet
DIRECTOR	02/08/2015 1307	02/08/2015 1308	EMAIL	Reporting Party emailed to set up a time to meet director



Investigation #: [XXXX]
College
Campus Safety & Security

Incident Report

Report Number: [XXXX]

Reported By: [CAMPUS SAFETY OFFICER #1]

Location: [OFFICE]

Incident: [SEXUAL MISCONDUCT]

Narrative Text

On the above date and time, Reporting Party came to Campus Safety Office and told me as she was returning to Location after leaving the party at Greek organization on Friday, Feb. 7, 2015 at 0200 Hours, when Responding Party caught up to her and wanted to hang out. Reporting Party told me that she had been drinking alcohol and taking Ketamine at the time. When they got to Location, Reporting Party let Responding Party into her room. Responding Party then asked Reporting Party to take off her pants and she did. Reporting Party reported that they then had nonconsensual sexual intercourse.

Reporting Party told me that she ran into Responding Party Saturday night and ran away from him because she didn't wanted talk to him. Responding Party had texted her on Sunday saying they needed to talk. I asked Reporting Party if she wanted to call the Police and report this and she said no she didn't. She did want to get tested for STDs.

I radioed for Campus Safety Officer #2 to return to Campus Safety Office. Campus Safety Officer #2 escorted Reporting Party to Student Affairs to talk to Advocate.

Both Reporting Party and Responding Party were issued verbal No-Contact orders. Campus Safety Director was also called.



Investigation #: [XXXX]
College
Campus Safety & Security

Supplement Report
Report Number: [XXXX]
Reported By: DIRECTOR

Synopsis

Reporting Party emails a statement.

Narrative Text

To Whom It May Concern,

I have already spoken with two campus safety officers, but felt it might be helpful to put my full statement into writing. The following is my honest report of an incident of rape that happened to me very early in the morning of February 7th. I feel it is my duty as a member of the school community to report it so that measures can be taken to prevent these situations from happening in the future, so maybe someone else can be spared from becoming a victim the way I did.

Earlier in the night of February 6th, I had taken probably about six shots of alcohol, and two bumps of ketamine. Because I was already drunk, and therefore impaired of judgment, and because I was on a significant amount of ketamine when it happened, I spent the majority of the incident in a dissociative state.

Directly prior to the incident, I had been in Greek organization lounge when I felt started feeling very hot and overwhelmed, so at around 2 in the morning, I started walking back to my room at Location. I was just past the house of another Greek organization when my "friend," Responding Party, caught up with me and asked what I was doing. I told him I was just going back to my room to chill, and invited him to come hang out. I distinctly remember telling him at that point that I was on ketamine, to which he responded, "Oh, word."

We got into my room and I offered him an unopened beer that someone had left on my desk, but he said "no." Feeling woozy, I went to lie down. He asked if I wanted to cuddle, and I said yes. He began fondling me, which quickly led to kissing. He then asked me to take my pants off, which I did. He then went to perform oral on me for several seconds, and I remember instinctively apologizing for not being shaved. That was the last thing I said to him before I felt him inside me — I didn't even see it happen. I remember being shocked that he had entered me so suddenly, without even bothering to take any kind of precaution, let alone find out if it was OK to do so in the first place.



Narrative Text (Cont.)

Trying to process the shock, I said "Just so you know, I'm on birth control, because I feel like that would be kind of important..." to which he replied, "Yeah, totally," and just continued what he was doing. (I realized later that I had said it more as reassurance to myself, because it clearly didn't matter to him at all, as it clearly hadn't even occurred to him to ask in the first place.) I think at this point I knew something was very wrong, but I was too terrified, and too dissociated, to do or say anything about it. At one point, a couple of my friends started to come into my room, but soon realized I was in bed with someone, so they left before they could see what was happening.

I spent the rest of the time imagining I was somewhere outside of my body, until he finished inside of me. (He had not been wearing a condom.) He suggested we take a shower, and I felt dirty, so I agreed. I remember him trying to make conversation with me while we were in the shower, but I wasn't aware of whatever we were talking about, as I was still dissociated from reality. I left the shower after a few minutes and went back to my bed to try and process what had just happened to me. He came back probably 10 or 15 minutes later and was getting ready to go to sleep in my bed when my friends came back in to tell me that my friend had fallen and hit her head, and needed to stay awake in case she had a concussion. I readily took this as an excuse for him to leave; I didn't tell any of my friends what had happened right away, because I was focused on making sure my friend was OK, and still hadn't had a chance to fully process any of it. It wasn't until the next day that I think I really understood what had happened to me.

While I was on ketamine when this whole thing happened, I feel that he was 100 percent coherent and fully aware of what he was doing, which to me proves beyond a doubt that I was absolutely taken advantage of.

Now that my situation is known, I hope it can be dealt with in the most appropriate way to ensure that it doesn't happen to someone else. I believe that everyone has a right to feel safe on this campus, and I appreciate your efforts to make that possible.

Sincerely,

Reporting Party

Party Phone



Investigation #: [XXXX]
College
Campus Safety & Security

Supplement Report
Report Number: [XXXX]
Reported By: DIRECTOR

Synopsis

Information about mixing ketamine, alcohol, and marijuana.

Narrative Text

The following information was provided by area hospital regarding the use of ketamine with alcohol and other drugs.

Ketamine is a medication that should be administered for the purpose of general anesthesia in the hospital under a provider's care and with close monitoring. Ketamine's potential/common SE includes hallucinations, emergence delirium, tonic clonic movements, low blood pressure, laryngospasm, and fasciculation. It is well known and advised never to mix any drugs while consuming alcohol. The result can be harmful. Such is the case with ketamine and alcohol. The interaction of both substances can be extremely dangerous. The results of mixing both substances can be unpredictable. Ketamine can cause dissociative effects that can interfere with a person's awareness of how damaging it can be to mix certain substances.

The side effects of ketamine can cause bizarre thoughts and hallucinations, confusion, memory loss, delirium, rapid heartbeat, heart palpitations, elevated blood pressure, and slow or "stop and start" breathing. "Flashbacks" or visual disturbances can appear days or weeks after ingestion. Mixing ketamine and alcohol can pose serious health risks. In some cases, this combination can be fatal.

Some known effects of using both ketamine and alcohol together are listed below:

- Ketamine can impair motor skills and make it hard to move about. When mixed with alcohol, these effects can intensify.
- Nausea and vomiting can result when both of these substances are used together.
- Ketamine and alcohol can make a person drowsy and fall asleep. If a person vomits, he/she may also end up choking on the vomit.
- The interaction of these two substances can also decrease breathing rate, resulting in respiratory problems.

Mixing ketamine with a depressant like alcohol can also impose the risk of coma or death. When used for illicit purposes, ketamine can cause harmful effects. A marijuana/alcohol/ketamine mixture would further exacerbate the potential effects such as respiratory depression. Ketamine has been known to amplify the effects of cannabis, such as hallucinations and paranoia.



Investigation #: [XXXX]
College
Campus Safety & Security

Supplement Report
Report Number: [XXXX]
Reported By: DIRECTOR

Synopsis

Interview with Witness #1.

Narrative Text

On Feb. 11, 2015, I met with Witness #1 for an interview concerning the allegations by Reporting Party that Responding Party violated the college's sexual misconduct policy. The following is the information that Witness #1 provided during the interview.

Witness #1 stated he was sober. Witness #1 was with Reporting Party almost the entire night. Witness #1 doesn't remember Reporting Party being "too intoxicated," which to him means stumbling, unable to stand up, and mumbling her words. He believes that Reporting Party was coherent and knew that was going on. Witness #1 says it is not normal for Reporting Party to do ketamine.

As Witnesses #1, #2, and #3, and Reporting Party were walking to Greek organization, Reporting Party saw this guy that she was hooking up with walking away from Greek organization with another girl. Reporting Party jumped to the conclusion that he was leaving to hook up with this girl. Witness #1 said that Reporting Party seemed to distance herself from the group and kept saying things like, "Oh my God, I can't believe that just happened." Witness #1 stated that he believes Reporting Party might have wanted to get back at this guy by sleeping with Responding Party and then regretted it. As soon as the group got to Greek organization, Witness #1 noticed that Reporting Party disappeared. Witnesses #1, #3, and #2 went to check on her. As they walked up the steps, Witness #3 fell and cut her head open. He became preoccupied with helping Witness #3. Witness #1 stated that after dealing with EMTs and Witness #3, they went up to Reporting Party's room. Responding Party was putting his pants on and Reporting Party was in a robe. Witness #1 said, "What's up?" to Responding Party, and Responding Party said that he was going back to Greek organization.

Witness #1 says that he has talked to both Reporting Party and Responding Party. He says they both tell the same story, but Reporting Party is calling it nonconsensual. Witness #1 talked to Responding Party the next night. Responding Party told Witness #1 that Reporting Party was talking to him during sex. Witness #1 doesn't remember Responding Party and Reporting Party seeing each other at the party, and Responding Party was not around when Reporting Party was drinking or doing drugs.

Note: One other witness stated that Witness #1 was doing ketamine that night. Therefore, Witness #1's credibility may be impacted by this. It may also explain why he had trouble providing details.



Investigation #: [XXXX]
College
Campus Safety & Security

Supplement Report
Report Number: [XXXX]
Reported By: DIRECTOR

Synopsis

Interview with Responding Party.

Narrative Text

On Wednesday, February 18, 2015, I met with Responding Party regarding the allegation by Reporting Party that he violated the College's sexual misconduct policy. The following is the information that Responding Party provided during the interview.

On February 6 into the night of February 7 around 12:00 or 1:00 am in the morning, Responding Party left Greek organization to go see his other friends at Unrelated Greek organization. Responding Party believes that he had four to five beers that night and felt good but wasn't drunk. He didn't black out or brown out that night. As he was going to Unrelated Greek organization, he ran into Reporting Party, who was going back to her residence hall. Reporting Party and Responding Party started talking. Reporting Party told him that she was on "K" and he told her that he was pretty hammered. She also told him that she saw Ex (a guy that she "dates") go off with another girl. Responding Party wanted to make sure that he wasn't "home wrecking" or "intruding" by talking to her due to the situation with Ex. Reporting Party asked if Responding Party wanted to come over to her room. He agreed. He does not remember seeing anyone when they walked back to her room.

When they got to Reporting Party's room, they talked for a bit on the left side of the room. Reporting Party asked if he wanted to lie down. He took his shoes off and they then lay down on the bed. Responding Party lay down behind her and spooned her, as the "big spoon." He put his hand along her rib cage underneath her breast on her stomach (not touching her breast). Reporting Party turned into Responding Party and started kissing him. They made out for approximately two minutes. He began feeling her breasts. Reporting Party told him to take her pants off. Her pants were ripped jeans. He took her pants off to her ankles and she took them the rest of the way off, she also removed her shirt at this time. While she was removing her pants all the way off, Responding Party removed his clothes. He started feeling her stomach and she moved his hand down to her vagina. Responding Party started touching her vagina. He then asked her if he could take her panties off, which he believes were dark purple or violet in color. Responding Party decided to then give her oral sex. He began kissing her breasts and chest and moved his face down to her vagina.

**Narrative Text (Cont.)**

The whole time he was kissing her body, he looked at her face and she didn't indicate that she wanted him to stop. He started to perform oral sex. While he performed oral sex, Reporting Party told him that she was on birth control. It was also while he performed oral sex that someone came into the room and Reporting Party told them, "not a good time." Responding Party and Reporting Party laughed about it and then he continued. After approximately 15 minutes of performing oral sex, he began having unprotected intercourse with her. At first Responding Party started out on top of her (in missionary position) but about half way through, she moved to on top of him. While she was on top of him, she would say, "Oh my God" and repeat Responding Party's name. Responding Party ejaculated inside of Reporting Party while she was on top. He stated it was his fault for not wearing a condom; he didn't plan on "getting laid" that night so he wasn't carrying one on him.

Responding Party stated that after intercourse, they lay down on the bed together and talked. Reporting Party asked if she was better in bed than one of her friends, who Responding Party had a one night stand with last year. Responding Party told her that she was better. Responding Party stated that it seemed like Reporting Party was curious about her performance in bed. Responding Party believed that this was developing into a "friends with benefits situation."

Responding Party suggested they take a shower because they had stuff on them from intercourse. In the shower, they used another person's soap. They laughed about it because the soap had exfoliating beads. He washed her back and began to wash himself. Reporting Party left first. He stayed in the shower and finished up showering because Reporting Party was using most of the water.

When Responding Party got back from the shower, they continued talking. He asked how he was going to reach her. He never got her number (doesn't really know why he didn't get it). As they were talking, Responding Party stated that Reporting Party asked him why he didn't approach her earlier in the year because they could have been already doing this before now. Responding Party responded that he didn't know if she and Ex were a "thing."

Responding Party stated that he saw a "huge mood swing" in Reporting Party after bringing up Ex. Reporting Party stopped initiating the conversation and the situation became really awkward. At about that time, Witness #3, Witness #1, Witness #2, and another guy came into the room. Responding Party was dressing as they came into the room. Witness #3 had busted her head and needed help, so there was no reason for him to stay.

The rest of the night and next day, Responding Party was excited because the night had been fun and he thought there was the potential to hook up with her again the next night. Responding Party even reached out to her through Facebook messenger. While he was at another party on Saturday night, he ran into Reporting Party at Greek organization bathroom.



Narrative Text (Cont.)

Reporting Party flipped out on him, accusing him of taking advantage of her while she was on ketamine. He told her that she was talking in full sentences, invited him to her room, took her own pants off, gave him permission to take her panties off, and encouraged him through body language. Reporting Party left and it was the last time they talked together. He did try to send her a Facebook message hoping that they could talk again about the situation but she didn't reply.

Responding Party understands that there was no verbal consent. Reporting Party's body language did not tell him to stop. He stated that he is not aroused unless the other person is aroused. He was under the impression that the acts were consensual. Since Reporting Party confronted Responding Party, he stated that he has become a hermit. He has hardly gone outside and is scared about his current position because it has an effect on his future.

Responding Party later found out that Ex didn't sleep with the girl who he left with from Greek organization. Responding Party believes that this made Reporting Party feel guilty. He feels that this may be a stretch, but believes that by reporting this incident, there is the possibility of him being used as a scapegoat to revive the relationship between Reporting Party and Ex, a situation that could be solved by honesty.

Responding Party stated that he knows ketamine is a horse tranquilizer. He knows there is something called a "K-hole," where individuals are passed out in a chair and cannot move.

Responding Party has never taken ketamine but has seen people on it. He stated that the effects vary by how much they do. If an individual does a lot of ketamine, they are unresponsive, but if they do a little or are coming off of it, they seem like they are drunk or tipsy.



Investigation #: [XXXX]
College
Campus Safety & Security

Related Info

Case #: [XXXX]

Contact #1 (VICTIM)

Full Name: _____ College ID #: _____

VICTIM _____ [XXXX]

Drivers License #: _____ Drivers License State: _____ Email Address: _____

Date of Birth: _____ Age: _____ Gender: _____ Race: _____

Notes: _____

Affiliation(s):

Case #: [XXXX]

Contact #2 (SUSPECT)

Full Name: _____ College ID #: _____

SUSPECT _____ [XXXX]

Drivers License #: _____ Drivers License State: _____ Email Address: _____

Date of Birth: _____ Age: _____ Gender: _____ Race: _____

Notes: _____

Affiliation(s):

Case #: [XXXX]

Contact #3 (WITNESS)

Full Name: _____ College ID #: _____

WITNESS #1 _____ [XXXX]

Drivers License #: _____ Drivers License State: _____ Email Address: _____

Date of Birth: _____ Age: _____ Gender: _____ Race: _____

Notes: _____



Affiliation(s):

Case #: [XXXX]

Contact #4 (WITNESS)

Full Name:	College ID #:		
WITNESS #1	[XXXX]		
Drivers License #:	Drivers License State:	Email Address:	
Date of Birth:	Age:	Gender:	Race:
Notes:			

Affiliation(s):



POST INVESTIGATION: OUTCOME LETTERS

COMMUNICATING THE FINAL RESULTS TO THE PARTIES

After the resolution process concludes, whether an incident was resolved formally, informally, or if the allegation was not pursued for any reason, someone at the institution must write a letter to the parties involved. VAWA requires that the parties must be simultaneously (meaning without substantial delay between notifications) informed in writing of:

- The outcome (findings, any sanctions, and the rationale supporting the findings) that arises from an allegation of domestic violence, dating violence, sexual assault, or stalking.
- The institution's procedures for appeal.
- Any change to the results that occurs prior to the time that such results become final.
- When such results become final.

The letters to the parties include similar information but are not identical. The letters serve as a closing chapter. It includes a description of the allegation, to whom and when it was reported, what materials were given to the parties (e.g., the policy, and written examples of retaliation, etc.), what happened afterwards, and information about the investigation and its findings. The letter to the reporting party should summarize the initial actions taken, the remedies afforded, and those that are still available to the reporting party, upon request, should they wish.

The letter should address what to do if retaliation occurs, and should include the name of the person(s) that can be contacted for assistance.

Following are several examples of notification letters. A school's particular procedures will determine what documentation is most useful.

You May Also Communicate the Results To School Officials With a Legitimate Need to Know:

Where appropriate, this includes notifying the reporting party's supervisor, RA, or housing officials that work performance, living environment, etc. may be affected. Note that where an incident occurs on the job or in class, a supervisor or faculty member may be helpful in preventing reoccurrence. It is also important to keep key administrators in the loop and updated on the progress and outcomes of the investigation and resolution process and the provision of interim and long-term remedial actions.



SAMPLE OUTCOME LETTER FOR TITLE IX RESOLUTIONS

Personal and Confidential

[NAME]
[ADDRESS]
[DATE]
[VIA]

Dear [NAME],

Thank you for your patience and cooperation as the [UNIVERSITY OR COLLEGE] has worked to conduct a thorough, neutral, fact-finding investigation into the allegation of sexual misconduct involving student [RESPONDING PARTY], alleged to have occurred on [DATE]. While we know that it can be difficult to wait, we take seriously the responsibility to seek and evaluate all available and relevant evidence.

This letter serves to inform you that the investigation into the allegation is now complete. Having reviewed all available evidence, including written reports, voluntary written statements, and evidence provided by both parties and several witnesses; and using the required “preponderance of the evidence” standard, the [UNIVERSITY OR COLLEGE] has concluded that the evidence does not support a finding that [RESPONDING PARTY] has violated the sexual misconduct policy.

In forming decisions about allegations of sexual misconduct, the school reviews all available, relevant evidence. [OPTIONAL SECTION ON CREDIBILITY WHEN NEEDED: When some of the evidence requires the evaluation of one person's word against another, colleges are encouraged to follow guidance from the Office for Civil Rights to weigh evidence and credibility. In the absence of any first-hand, third-party witnesses to the alleged incident, the evaluation of evidence and credibility may take into account:

- *Detail and consistency:* The accuracy of each person's account should be compared in an attempt to evaluate honesty and consistency.
- *Demeanor:* While emotional responses vary widely, each party's reactions and behavior after the alleged incident could be evaluated as part of a decision.
- *Action taken:* The timing of a report may be considered, although either an immediate or delayed report could be reasonably explained.
- *Other contemporaneous evidence:* Verbal or electronic communication with friends or family (and their reactions), any other form of written details, and the timing of such communications may be factors in a decision].

While there were details that aligned with each party's version of the events, including the recollection that oral and vaginal sexual intercourse took place, the investigation also revealed two distinctly different accounts of the sexual encounter. While none of the



rationale used below can establish that sexual misconduct did not occur, numerous inconsistencies undermine proof that sexual misconduct did occur, resulting in a finding of insufficient evidence. Weighing the details of the allegation, the following points were persuasive to the investigators in reaching their conclusion:

- Taking into account possible effects that trauma or medication may have had on [REPORTING PARTY]'s memory, there were numerous inconsistencies in [REPORTING PARTY]'s account of the events that occurred before, during, and after the alleged incident. By way of contrast, [RESPONDING PARTY]'s account of the events remained consistent over all of the interviews with him, including the first time he was questioned about the incident without advanced warning of the investigation.
- [REPORTING PARTY] indicated that after the alleged incident, she and [RESPONDING PARTY] did not have any substantive conversation. [RESPONDING PARTY] stated that after the alleged incident, he and [REPORTING PARTY] talked about getting together later that same evening and that her roommate would be away for the night, which, in fact, she was. It seems that [RESPONDING PARTY] likely would not have known this information unless [REPORTING PARTY] had shared it with him.
- [RESPONDING PARTY] reported that after the incident, they left his residence hall room, holding hands, discussing getting in contact later in the evening, and parting with a kiss. [REPORTING PARTY]'s statements about the interaction with [RESPONDING PARTY] after the alleged incident varied over the course of the investigation. Initially, [REPORTING PARTY] stated that she quickly departed while [RESPONDING PARTY] stayed behind in the hallway speaking with another student. Later in the investigation, [REPORTING PARTY] stated that they parted ways outside [RESPONDING PARTY]'s residence hall after a short kiss.
- [REPORTING PARTY]'s description of her body position and [RESPONDING PARTY]'s body position during intercourse varied significantly over the course of the investigation and included a description of [RESPONDING PARTY] supporting himself on top of [REPORTING PARTY] while holding down her shoulders with his hands, an unstable position in which intercourse would be unlikely to take place.
- [REPORTING PARTY] provided inconsistent statements about her alcohol consumption, varying initially from having only a few sips of an alcoholic drink, to reporting to the [POLICE DEPARTMENT] the next day that she had three mixed drinks, even though she doesn't typically drink. She later acknowledged bringing a 750ml bottle of tequila and approximately 15 frozen tequila popsicles to the party, and consuming three mixed drinks and two of the popsicles at the party.
- [REPORTING PARTY] reported to [POLICE DEPARTMENT] that there was no physical contact with [RESPONDING PARTY] at the party, although several witnesses and [RESPONDING PARTY] himself stated otherwise, observing [REPORTING PARTY] and [RESPONDING PARTY] flirting, kissing, and hugging during the party. After additional inquiry, [REPORTING PARTY] acknowledged that kissing occurred.
- Initially, [REPORTING PARTY] reported that [RESPONDING PARTY] held her down by



lying over her legs while placing a condom on before penetrating her. Later, she recollected that they may have been lying side by side when he placed the condom on his penis. [RESPONDING PARTY] consistently reported that [REPORTING PARTY] was on top of him the entire time.

- When [POLICE DEPARTMENT] coordinated the rape kit, it inquired if [REPORTING PARTY] had had any other sexual partners, to which she responded that she had not had any other sexual partners with the exception of her boyfriend, with whom she had most recently been intimate approximately one year prior to this reported incident. When the rape kit found traces of semen, [REPORTING PARTY] stated that she had been sexually intimate with another individual two weeks prior to the alleged incident with [RESPONDING PARTY]. When later asked if she had been intimate with anyone else after the alleged incident, [REPORTING PARTY] stated that she had not. Later, she indicated that she had intimate contact, which did not include sexual intercourse, on [DATE].
- When [POLICE DEPARTMENT] asked [REPORTING PARTY] if it was possible that [RESPONDING PARTY]'s penis may have come in contact with her vagina prior to placing the condom on, [REPORTING PARTY] stated that it was possible. When asked this question again by the [UNIVERSITY OR COLLEGE] investigators, [REPORTING PARTY] stated that [RESPONDING PARTY]'s penis did not come into contact with her vagina prior to placing the condom on.

For these reasons, we find that the evidence does not support a finding that [RESPONDING PARTY] has violated the sexual misconduct policy.

Both parties to the allegation have the right to appeal this finding within five (5) business days, as described on page 5 of the attached policy.

This decision is considered a final determination in the event it is not appealed. If appealed, the decision that results from the appeal will be considered final. You will be notified of any changes to this outcome that result from the appeal, but no other changes can be made to the finding outside of that appeal option.

If you have any questions regarding this letter or the appeal process, please do not hesitate to contact us.

Thank you again for your cooperation and patience.

Sincerely,
[TITLE IX COORDINATOR]



SAMPLE OUTCOME LETTER FOR REPORTING PARTY

Personal and Confidential

[NAME]
[ADDRESS]
[DATE]
[VIA]

Dear [NAME],

Thank you for taking the time to meet with [NAMES], two of the institution's Title IX investigators, on Feb. 12, 2015, [AT LOCATION], and on Feb. 19, 2015, [AT LOCATION] as they investigated a report you made of non-consensual sexual activity, specifically sexual assault. You were advised prior to our meeting, and throughout each of your investigatory meetings, of your right to have an advisor of choice present to assist you.

In your initial report to the investigators, you described the sexual activity that occurred on Feb. 9, 2015, between you and student [RESPONDING PARTY] as non-consensual. You also were able to provide details and names of other people to whom we could speak about the events of that evening. The investigators conducted interviews with you (two interviews), [RESPONDING PARTY] (2 interviews), and five other students throughout the course of the investigation.

The investigators were able to confirm several facts that were provided as follows:

- Sexual intercourse between you and [RESPONDING PARTY] occurred at some point on Feb. 9, 2015.
- Alcohol consumption by you and [RESPONDING PARTY] took place before the sexual activity occurred on Feb. 9, 2015.
- You and [RESPONDING PARTY] did not consume alcohol together.
- The interaction in your room involved two other females who left the room before sexual intercourse between you and [RESPONDING PARTY] took place.
- Prior to sexual intercourse, [RESPONDING PARTY] asked you to perform oral sex and you declined.
- There were two instances during the sexual intercourse when you told [RESPONDING PARTY] to stop because it hurt.
- After the sexual intercourse, and during the following day, [RESPONDING PARTY] did not respond to your attempts to reach him via text message.
- Both you and [RESPONDING PARTY] confirm that you sent a text message essentially stating that you felt pressured to have sex, and that he should have known that you were incapacitated.



There were also inconsistencies in the information gathered by investigators as follows:

- You indicated that due to your intoxication, [RESPONDING PARTY] should have known that you were incapacitated. [RESPONDING PARTY] indicated that consent was given before any activity occurred and that you assisted him in having intercourse with you on both occasions when intercourse was attempted.
- You indicated in your first interview that you were bleeding from being hurt; however, in the follow-up interview, you said that you had started your menstrual period.
- There were inconsistencies in statements made related to the removal of your clothing.
- The issue and language used around being pressured to have sex did not come up in either of your interviews, but came up during a text message that you shared with investigators.
- You did not indicate any kissing with [RESPONDING PARTY] in any of your interviews, which did not align with reports of kissing made by the two female witnesses and [RESPONDING PARTY].

Before going any further, it is important to state that based on the facts gathered, you and [RESPONDING PARTY] are both considered to be very credible people who cooperated fully throughout this process. The facts you provided fully comport with the account that sexual intercourse occurred, and that alcohol was involved prior to your sexual interaction. It is also credible that you could have, as you stated in your interviews, experienced periods of black-out where you may have been unaware of your activities but still retained the appearance of giving consent.

Given the fact pattern described and to assess whether or not a violation has occurred in the form of non-consensual sexual intercourse, the questions must then become:

- Was force used (including physical force, threats, intimidation, or coercion)?
- Was there clear consent?
- Were you incapacitated at the time and unable to give clear consent and if so, should [RESPONDING PARTY] have known this, based on a reasonable person standard?

A review of the facts, both in terms of consistencies and inconsistencies, leads me to a determination that physical force did not come into play in your interaction with [RESPONDING PARTY]. The only instance in which pressure of any kind was mentioned was through text message, and not during either interview, and was insufficient to establish that coercion was more likely than not to have occurred. The facts also bear out that despite your assertion that you were in a black-out during some points of the interaction, your ability to decline oral sex indicates that to [RESPONDING PARTY], you could have had the appearance of having the capacity to consent. Further, both of you gave accounts that sexual intercourse was attempted twice, after oral sex was declined, which could have indicated to [RESPONDING PARTY] that you had the capacity to consent and were willing to participate. Again, this does not mean that had you been sober, you would have participated. The standard is whether or not [RESPONDING PARTY] knew or should have known that you were unable to give clear consent.

Based on these facts, the preponderance of evidence does not show a violation of the college's Sexual Harassment or Sexual Misconduct Policies. As a result, I recommend the following actions:



- Counseling services will follow-up with you to offer services directly, which can also include alcohol education.
- No-contact restrictions remain in place for you and [RESPONDING PARTY] until such time as I determine that they are no longer needed for your protection.
- As you have moved off-campus, [RESPONDING PARTY] will be permitted to return to [RESIDENCE HALL]. If you make the decision to return to campus, something that we would be glad to facilitate for you, we will revisit this arrangement and look for alternatives that work for both you and [RESPONDING PARTY] and that support the no-contact restrictions.
- Our academic resources, some of which you have been in contact with already, will work with you to minimize the academic impact that your absence due to this situation has had on you.

It is important to us that, regardless of the findings of this investigation, you receive the support you need from the college. A finding like this is in no way a suggestion that we did not believe you. Cases such as this depend on whether sufficient evidence can show a violation. Despite this outcome, which I am sure is a disappointment to you, it is always our goal for students to participate fully in our community, so if there is any way we can assist you, please let me know.

Finally, as we discussed in the meeting, the college has a no-tolerance policy for retaliation. This means that you should not suffer retaliation in any way for cooperating with us during this process, nor should you engage in retaliatory behavior. If this type of behavior occurs, please contact me immediately and we will investigate accordingly.

At this point, this is considered a final determination and no changes will be made to it unless the investigation is reopened. In accordance with university policy, there is no opportunity to appeal this determination, as it has been fully vetted by the Title IX coordinator, who has final say in all Title IX-related matters.

Once again, thank you for your time and assistance throughout the investigation.

Sincerely,
[ADMINISTRATOR NAME]



FINDING AND SANCTION LETTER⁵ NOTIFICATION TO REPORTING PARTY

[DATE]

[PARTY NAME]

[ADDRESS]

[EMAIL ADDRESS]

Dear [FIRST NAME]:

This letter is to inform you that the investigation into the alleged violations of [STUDENT/STAFF/FACULTY NAME] has been completed. Based on the evidence presented during the investigation, I have rendered the following decisions with regard to the alleged violations of the [FACULTY/STAFF/STUDENT CODE]:

1. [VIOLATION]	[RESPONSIBLE OR NOT RESPONSIBLE]
2. [VIOLATION]	[RESPONSIBLE OR NOT RESPONSIBLE]
3. [VIOLATION]	[RESPONSIBLE OR NOT RESPONSIBLE]

Based on this finding, the sanctions are as follows:

Sanctions
1.
2.
3.

[ADD RATIONALE SECTION HERE, PROVIDING SUFFICIENT INFORMATION TO ALLOW THE PARTIES TO CHOOSE TO APPEAL AND TO ASSERT A CLEAR BASIS OR BASES FOR DOING SO].

This decision is considered final, in the event that it is not appealed. All persons under investigation have the right to request a review of their sanctions and may do so by submitting a/an [WRITTEN OR ONLINE] appeal to [OFFICE/PERSON/DESIGNATE]. The appeal is due within [#] business days of [DATE]. Information on the appeals process is found at [LINK]. Should the investigation and/or sanctioning be appealed, you will be notified; otherwise, no changes to this decision will occur. If the finding and/or sanction does change as the result of the appeal, you will again receive written notification. If you have any questions regarding this notification, please contact my office.

Sincerely,

[HEARING CHAIR/INVESTIGATOR]

cc: File

⁵ We have provided this letter as an alternative to the Notice of Sanction letter. Which you choose to utilize is merely a matter of preference.



FINDING AND SANCTION LETTER⁶

[DATE]

[PARTY NAME]

[ADDRESS]

[EMAIL ADDRESS]

Dear [FIRST NAME]:

Based on the evidence presented throughout the investigation, I have rendered the following decisions with regard to the alleged violations of the [FACULTY/STAFF/STUDENT CODE]:

1. [VIOLATION]	[RESPONSIBLE OR NOT RESPONSIBLE]
2. [VIOLATION]	[RESPONSIBLE OR NOT RESPONSIBLE]
3. [VIOLATION]	[RESPONSIBLE OR NOT RESPONSIBLE]

Based on this finding, you have been sanctioned as follows:

Sanctions
1.
2.
3.

[ADD RATIONALE SECTION HERE, PROVIDING SUFFICIENT INFORMATION TO ALLOW THE PARTIES TO CHOOSE TO APPEAL AND TO ASSERT A CLEAR BASIS OR BASES FOR DOING SO].

Please understand that compliance with and completion of these sanctions is your responsibility. Failure to complete the sanctions will result in further action.

This decision is considered a final decision in the event that it is not appealed. You have the right to request a review of this sanction and may do so by submitting a/an [WRITTEN OR ONLINE] appeal to [OFFICE/PERSON/DESIGNATE]. Your appeal is due within [#] business days of [DATE]. Information on the appeals process may be found at [LINK]. No change to the sanction will occur outside of this appeals process. If the sanction does change as the result of the appeal, you will again receive written notification. If you have any questions regarding this decision, please contact my office.

Sincerely,

[HEARING CHAIR/INVESTIGATOR]

cc: File

⁶ We have provided this letter as an alternative to the Notice of Sanction letter. Which you choose to utilize is merely a matter of preference.



NOTICE OF FINAL DETERMINATION – NO APPEAL

[DATE]

Dear [REPORTING PARTY/RESPONDING PARTY],

This letter serves as notice of the final determination of the allegation filed by [REPORTING PARTY] dated [DATE OF ALLEGATION]. The [INVESTIGATOR/HEARING PANEL] rendered the following decisions related to the alleged violations:

[CHARGE #1]: [RESPONSIBLE/NOT RESPONSIBLE]

[CHARGE #2]: [RESPONSIBLE/NOT RESPONSIBLE]

[CHARGE #3]: [RESPONSIBLE/NOT RESPONSIBLE]...

[RESPONDING PARTY] was assigned the following sanctions:

[SANCTION #1]:

[SANCTION #2]:...

Neither the reporting party nor the responding party appealed the decision, thus the above-listed decisions stand with no further opportunity for appeal.

If you have any questions or concerns, please feel free to contact me [HEARING OFFICER] at [EMAIL & PHONE].

Sincerely,

[HEARING CHAIR/INVESTIGATOR]



NOTICE OF OUTCOME – INVESTIGATOR RENDERS FINDING

[DATE]

Dear [REPORTING PARTY/RESPONDING PARTY],

Based on the evidence presented throughout the investigation, I have rendered the following decisions with regard to the alleged violations of the [FACULTY/STAFF/STUDENT CODE]:

[CHARGE #1]: [RESPONSIBLE/NOT RESPONSIBLE]

[CHARGE #2]: [RESPONSIBLE/NOT RESPONSIBLE]

[CHARGE #3]: [RESPONSIBLE/NOT RESPONSIBLE]...

You are assigned the following sanctions:

[SANCTION #1]:

[SANCTION #2]:...

[ADD RATIONALE SECTION HERE, PROVIDING SUFFICIENT INFORMATION TO ALLOW THE PARTIES TO CHOOSE TO APPEAL AND TO ASSERT A CLEAR BASIS OR BASES FOR DOING SO].

This decision is considered a final decision in the event that it is not appealed. You have the right to request a review of this sanction and may do so by submitting a/an [WRITTEN OR ONLINE] appeal to [OFFICE/PERSON/DESIGNATE]. Your appeal is due within [#] business days of [DATE]. Information on the appeals process may be found at [LINK]. No change to the sanction will occur outside of this appeals process. If the sanction does change as the result of the appeal, you will again receive written notification.

If you have any questions or concerns, please contact [HEARING BOARD CHAIR, PHONE NUMBER & EMAIL].

Sincerely,

[INVESTIGATOR]



NOTICE OF OUTCOME – HEARING BOARD RENDERS FINDING

[DATE]

Dear [REPORTING PARTY/RESPONDING PARTY],

On [DATE OF HEARING], [HEARING BOARD] rendered the following decisions with regard to the alleged violations of the [FACULTY/STAFF/STUDENT CODE]:

[CHARGE #1]: [RESPONSIBLE/NOT RESPONSIBLE]

[CHARGE #2]: [RESPONSIBLE/NOT RESPONSIBLE]

[CHARGE #3]: [RESPONSIBLE/NOT RESPONSIBLE]...

The [HEARING BOARD] assigned the following sanctions:

[SANCTION #1]:

[SANCTION #2]:...

[ADD RATIONALE SECTION HERE, PROVIDING SUFFICIENT INFORMATION TO ALLOW THE PARTIES TO CHOOSE TO APPEAL AND TO ASSERT A CLEAR BASIS OR BASES FOR DOING SO].

This decision is considered a final decision in the event that it is not appealed. You have the right to request a review of this sanction and may do so by submitting a/an [WRITTEN OR ONLINE] appeal to [OFFICE/PERSON/DESIGNATE]. Your appeal is due within [#] business days of [DATE]. Information on the appeals process may be found at [LINK]. No change to the sanction will occur outside of this appeals process. If the sanction does change as the result of the appeal, you will again receive written notification.

If you have any questions or concerns, please contact [HEARING BOARD CHAIR, PHONE NUMBER & EMAIL]

Sincerely,

[HEARING BOARD CHAIR]



NOTICE OF APPEAL

[DATE]

Dear [REPORTING PARTY/RESPONDING PARTY],

This letter serves a notice that [REPORTING PARTY/RESPONDING PARTY] has petitioned to appeal the decision of the [INVESTIGATOR/HEARING PANEL] on the basis of []. You are entitled to a copy of the petition, which is attached. You may respond to this petition in writing, and/or may file a petition of your own by the close of business on [DATE].

The process followed when an appeal petition is submitted is described in the [STUDENT/FACULTY/STAFF] Handbook, located at [LINK]. You will be notified of the outcome once the appellate process is complete.

If you have any questions or concerns, please feel free to contact [APPEALS COORDINATOR] at [EMAIL & PHONE].

Sincerely,

[HEARING OFFICER OR APPEALS COORDINATOR]



NOTICE OF FINAL DETERMINATION — POST-APPEAL

[DATE]

Dear [REPORTING PARTY/RESPONDING PARTY],

This letter serves as notice of the final determination of the allegation filed by [REPORTING PARTY] dated [DATE OF ALLEGATION]. On [DATE OF HEARING/DECISION] the [INVESTIGATOR/HEARING PANEL] rendered the following decisions related to the alleged violations:

[CHARGE #1]: [RESPONSIBLE/NOT RESPONSIBLE]

[CHARGE #2]: [RESPONSIBLE/NOT RESPONSIBLE]

[CHARGE #3]: [RESPONSIBLE/NOT RESPONSIBLE]...

[RESPONDING PARTY] was subsequently assigned the following sanctions:

[SANCTION #1]:

[SANCTION #2]:...

After a thorough review of the appeal and the records used to render the original decision, we/I have determined [DECISION OF APPELLATE BODY, INCLUDING RATIONALE]. No further appeals are permitted.

If you have any questions or concerns, please feel free to contact me, [APPEALS COORDINATOR], at [EMAIL & PHONE].

Sincerely,

[APPEALS COORDINATOR]⁷

⁷ Some of the information included in this kit has drawn from, reproduced, and/or adapted source materials from the University of Vermont and the National Association of College and University Attorneys (NACUA), including the pamphlet, "How to Conduct a Sexual Harassment Investigation," by Elsa Kircher Cole and Thomas P. Hustoles and from Bernice R. Sandler and Harriett M. Stonehill, including "Student-To-Student Sexual Harassment, K-12: Strategies And Solutions For Educators To Use In The Classroom, School, and Community," published by Rowman & Littlefield Education, Lanham, MD, 2005.



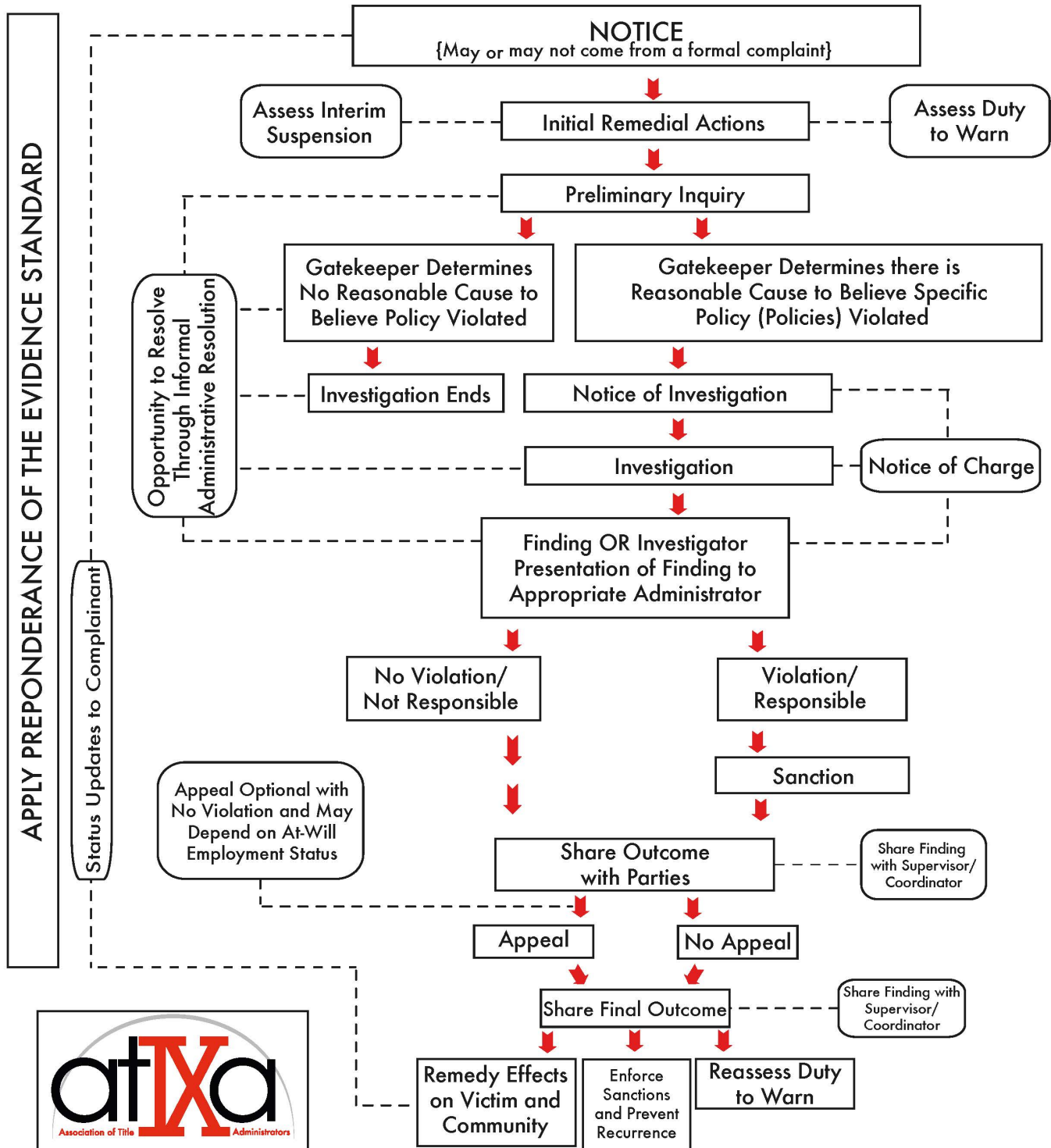
APPENDIX 1

TABLE OF CONTENTS

Civil Rights Investigation Model Flowchart	135
Sample Pre-Investigation Action Plan	136
General Investigation Tips	140
12 Tips for Investigating Sexual Misconduct Allegations	141
12 Tips for Investigating Stalking Allegations	142
12 Tips for Investigating Intimate Partner Violence/Relationship Violence Allegations	143
Template Questions for a Reporting Party in a Title IX Case	144
Sample Incident Timeline	147
ATIXA Sex/Gender-Based Harassment, Discrimination, and Sexual Misconduct Model Policy	148
Best-Practice Checklist Related to Sexual Harassment/Violence	173



CIVIL RIGHTS INVESTIGATION MODEL





SAMPLE PRE-INVESTIGATION ACTION PLAN

This document should result from the preliminary inquiry. Once the gate goes up initially, there should be a pre-investigation meeting between investigators and the coordinator to strategize the approach to the investigation. The action plan is the roadmap to the investigation that comes out of that meeting. It helps to keep the investigation on track, and to keep the coordinator apprised of the steps that the investigators will be taking. It often includes a preliminary timeline as well.

ALLEGATION

Suspect: C1 has alleged that she was violently sexually assaulted off-campus on Saturday night. The building she describes would have the address 310 McCarter Terrace, if Google Maps and her recollection are accurate. There is no student in our SIS who lists that address, but Googling the address yields the name R1, who is a registered student with an on-campus address. R1 is about 5'7" tall, has a slim, athletic build, and sandy-brown hair that is long in the back, according to C1. This matches with his picture in our SIS.

Disposition: C1 is physically safe right now. C1 has specifically asked us (in her intake meeting with the coordinator) to identify whether the assailant is a student, as she is unsure. This will help her to decide her next steps. She is inclined to pursue a formal allegation on campus if he is in fact a student. She understands our process, in overview. She indicated that she would be more inclined to involve the police if R1 is not a student. She is conferring with her campus advocate this afternoon to make some decisions. She is not inclined to seek medical attention; hopefully the advocate will have some success at encouraging C1 to go to the hospital. She has the university resource brochure. The coordinator has outlined initial actions, and the advocate will follow-up.

Specific Incident Description from the Title IX Coordinator: C1 met R1 at 10:30 p.m. at McNally's Pub, just off campus. She is 19 (has a fake ID). The coordinator told her not to worry about that (amnesty). She met R1, who was drinking at the bar. C1 went to McNally's with three friends, W1, W2, and W3. W3 introduced her to R1 at the bar, but not by name. C1 and R1 exchanged names while dancing, but it was too loud for her to hear. He was wearing a red baseball cap with our logo on it. Thus, she suspects he is a student. Around 11:30 p.m., R1 invited C1 to his apartment. They walked from McNally's to the building described above, which is adjacent to campus, just across O'Neill Street from Rand Hall. We know the landlord there (have had some problems with him in the past), but it is a 30-unit building that is mostly occupied by our students. C1 described going into the apartment that corresponds with 310's location in the building, but she did not note the exact apartment number that night. R1 pushed C1 into the room from behind, tied her to the bed, and violently sexually assaulted her (rape). The room was pitch black, sealed from all light. During the assault, R1 did something to her that felt like pinching her skin. She still had faint red marks all over her body when the coordinator met with her this morning. The coordinator took pictures. C1 described the assault as over within several minutes. R1 got up, a door opened, and she could hear a shower running.



Still, there was no light in the room. She tried to escape and found that she was not restrained. She found the light switch and turned on lights to find the door. Once the lights were on, she saw that the room was covered floor to ceiling in pornographic posters. Porn books and magazines lined the shelves. She was alarmed to find a camera on a tripod facing the bed. Still hearing the shower, and fearing that he had filmed her, she thought she would take the camera before she left. It was fixed to the tripod, and did not have a cartridge or cassette. She grabbed the camera and she ran out. This was less than seven hours ago. C1 has provided the camera to the coordinator, thinking that it might be a recording of her. The coordinator has turned the camera over to investigators to determine what to do with it, and has opined that it should be given to the police. C1 is refusing to contact the police at this point, and has asked the coordinator not to do so until she can talk to the advocate and make some decisions later this afternoon. It is 11:00 a.m. now. C1 and the advocate are planning to meet at 2 p.m. today. The advocate is confidential, but C1 seems willing (at least at this point) to share what they discuss. We will ask her to sign a release so that we can talk to the advocate. C1 is also concerned with the row of videos on his bookshelf that appear to have been homemade.

Identified Challenges and Potential Obstacles (in priority order, as agreed between the Title IX coordinator and investigators in a strategy meeting):

1. Can we identify R1 and is he a student?
2. Should we alert campus or local police?
 - a. If so, do we do it now, or wait for C1's decision later today?
 - b. If so, do we backchannel (non-investigative report), or as a formal report?
3. Clery Act timely warning/threat to campus?
4. Medical attention for C1?
5. Was she recorded during alleged assault?
 - a. How to obtain video?
 - b. Has R1 recorded others as well, shared the videos, or posted them online?
6. Parental notification?
7. I have custody of stolen video camera; What to do with it?
8. Fear that R1 will dismantle/alter crime scene if we do not act quickly.
9. Interim suspension if R1 is a student, or might that interfere with criminal investigation?
10. R1, if our ID is correct, is a residential student. Should we search his room? How?
11. Concerns with account: Why go to the apartment of a stranger? Why didn't they discuss if he was a student or exchange names more clearly? Why did she take time after being violently assaulted to search the room? She claims to have been tied up, but then was able to get up and flee without restraints. How do we know video did in fact come from crime scene?
12. Corroboration: She has told no one about this: Is TIXC first disclosure?
13. McNally's has surveillance video. Should we approach McNally's for video/receipts/ID? What if the bartender is friend of R1? What if bar destroys security video once it knows we are looking for it? What if someone alerts R1?



14. Should we approach W1, W2 and/or W3 for details, ID? C1 has asked us not to, but should we do so anyway?
15. Do C1's preferences matter here? Violence, threat, pattern, predation, and weapon analysis. University has a duty to proceed here regardless of what she wants. How much input/control should C1 have?

PROBLEM-SOLVING PLAN

Our first step is to see if we can accurately identify R1 as being the student whose picture we have. At the same time, we are back-channeling information to UPD (who may share some/all of it with local PD per our MOU). Without telling C1 any details about the photo, we are going to have the advocate share the photo in the hope of getting a positive ID. If that is R1 in the photo, we plan to give C1 two choices: 1) She can go to UPD with this information; or 2) We can. There is no scenario, given the danger, in which we will not fully alert UPD (and local police, if appropriate) by 3 p.m.–4 p.m. today. We are going to hold off on interim suspension, timely warning, and no-contact order or other initial actions that would tip R1 that C1 has reported. Once we confer with PD, we will determine a timeline for these actions, if at all. If they make an immediate arrest, a timely warning will not be necessary. We may do an FYI crime alert anyway, without specific details. While we are under an obligation to do a timely warning immediately at 11 a.m., we are not going to, because it will jeopardize an ongoing investigation (while the Clery Act says we should release something, our position is that until we confirm an identity around 3 p.m., we are not sure what to release). With the apprehension of the suspect and destruction of the scene/evidence at risk, we are going to withhold all warning until after 3 p.m., and then do so only in collaboration and coordination with PD so as not to obstruct its interdiction.

Working with the advocate, we will determine if the parents of C1 should be notified. This will be largely up to her, unless we fear for her safety. We will assist with this notification if requested. Further, we anticipate that working with PD and/or the advocate, we will be able to encourage C1 to go to the hospital, to preserve evidence, and to preserve all of her options going forward.

We have decided not to contact the landlord or bar owner until we have a positive ID on R1. Any such action could tip R1 off. Even when we do, this is likely to become a police matter, and the university will likely hold off on its investigation for some time, especially if that is C1's preference once PD is contacted. We are also going to wait on contacting C1's friends, at her request, and to allow police to have first contact with them. At the time that police are contacted, we will turn the camera over to them, along with a narrative that the TIXC and investigators viewed it, and handled the camera, however carefully. Its chain of custody and storage will be detailed in written form and provided to police.

Finally, we are conferring with Residential Life. If R1 is the perpetrator, he is a residential student. There may be evidence stored in his room. We will take immediate action to ensure that evidence in the room is not disturbed, without alerting R1 or his roommate to our suspicions.



ANTICIPATED TIMELINE

11:00 a.m. Sunday: Conferred with investigators. TIXC will backchannel information to UPD immediately, as a non-investigative report. Will tell UPD this could change by mid-afternoon today, and we are encouraging C1 to report to that department.

Noon to 2:00 p.m. Sunday: TIXC and investigators to perform preliminary inquiry (small i) on discovering R1's identity and whether he is a student.

2:00 p.m. Sunday: C1 to meet with advocate. Inform C1 of what we find out about R1, if anything.

3:00 p.m. to 4:00 p.m.: University to make decision on full police report/timely warning/interim suspension.

Monday: Commence university investigation unless we hold off for criminal investigation. Still should cull our security video to see what it may show. Cameras on Rand Hall may pick up some activity along O'Neill St. in the vicinity of the apartment complex.

ANTICIPATED WITNESSES (IN ORDER OF POTENTIAL INTERVIEWS):

- C1 (no outcry witnesses, after the fact, besides TIXC)
- Title IX coordinator
- Advocate
- W1: friend of C1; accompanied her to McNally's on night in question
- W2: friend of C1; accompanied her to McNally's on night in question
- W3: friend of C1; accompanied her to McNally's on night in question; introduced her to R1
- Bartender(s) at McNally's
- Landlord of apartment complex
- Anyone else who we can identify from video as being at McNally's, or who may have seen C1/R1 walking to the apartment, or may have seen C1 leave?
- R1
- Any witnesses identified by R1

COMMUNICATION PROTOCOL:

- TIXC to loop general counsel and president.
- Investigator 1: Backchannel report to UPD as non-investigative report; discuss timely warning and outline this action plan; coordinate as necessary.
- Investigator 2: Loop advocate on parts of this action plan prior to her meeting with C1 this afternoon; give her copy of picture of R1 without identifying details. Convey that alerting the PD is obligatory in this case, regardless of who R1 is.



GENERAL INVESTIGATION TIPS

1. Keep your campus Title IX coordinator in the loop.
2. Structure your investigation model as a team of trained investigators.
3. Engage in active accumulation of evidence...don't wait for it to come to you.
4. Deliberately strategize when you are going to question the responding party.
5. Turn over every rock, even those that look as though there is nothing underneath. You won't know that until you look.
6. Remember, your primary role is feather hunter. Find and weigh all the potential feathers that are there to be found.
7. Be thorough in your analysis. At times, benign evidence may later reveal additional important information.
8. State a conclusion resulting from your investigation, if that is your process.
9. Make use of expert sources of information, where necessary and possible.
10. Structure the investigation so as to make every effort to protect participant privacy.
11. Maintain a clean investigation file, purging any inadmissible, irrelevant, and non-probative evidence.
12. Include a copy of all relevant institutional policies and procedures in the investigation file. These documents change over time, and your counsel will be assisted by having the relevant policies in the file, if called upon to defend a lawsuit or investigation.
13. Keep clear notes of the investigation timeline and note reasons for any delays and/or deviations from established investigation timelines in the investigation file.
14. If you take notes on an interview session, type them up and submit them to the interviewee for comment and verification of accuracy. Usually, one investigator will question the witness while the other takes notes.
15. Interview in a neutral space.
16. If you find in the course of the investigation that you are investigating the institution (e.g., its handling of an allegation), notify your supervisor and/or legal counsel.
17. Caution parties and witnesses about the need for privacy and about the risk of lawsuits for defamation.
18. Keep those who need to know in the loop on your investigation progress.
19. Flowchart your witness list so that you remember who led you to whom.
20. Keep the flow of information from witnesses loose and to witnesses tight.
21. Emphasize that retaliation will be dealt with seriously and swiftly.
22. Keep state employee records laws and collective bargaining agreements in mind as to applicable requirements.



12 TIPS FOR INVESTIGATING SEXUAL MISCONDUCT ALLEGATIONS

1. Consider safety concerns and the need for a threat assessment.
 2. Timing of evidence collection and medical treatment is an important consideration for a reporting party. If evidence was collected or a medical exam was conducted, investigators may need access to those records, if the reporting party consents. In some cases, the reporting party will be able to obtain a copy. Some agencies may be willing to provide a redacted version in place of one with identifying information. In a preponderance setting, medical evidence can be of limited value because sex is usually admitted, but said to be consensual. When sex is contested, or a blood/urine screening or photos or descriptions of injuries are needed, forensic and medical evidence may be more useful.
 3. Be sure you understand the language that parties use to describe behavior. For example, “talking” means hooking up to many students; “hooking-up” can mean everything from kissing to having sex; “hitting it from behind” refers to sex in the doggy-style position, “to nut” means to climax, etc. If you are unsure of the meaning of a phrase used by a student, ask for clarification.
 4. The credibility of the parties may be an important consideration in your analysis, as often there will be no witnesses.
 5. When alcohol and other drugs (AOD) are used by one or both parties, details about consumption will be highly relevant in your analysis. What others observed about the parties’ demeanor and behavior will as well. While many AOD-related cases hinge on the question of incapacity, the majority hinge on the question of whether the responding party should have known of that incapacity (i.e., Would a reasonable person, sober and using good judgment, have known that the reporting party was too drunk/drugged to make a rational, reasonable decision about sex?).
 6. Consider whether investigators should visit the location of the alleged misconduct to gain a clear picture of the setting (e.g., Does the door lock? Is there light coming in from outside? Would neighbors hear conversation or a commotion?).
 7. Text messages, voice mails, phone calls, photos, videos, and social media messages may be important for your investigation. Parties or witnesses may have these stored or backed up on devices. Your campus IT personnel, data forensics firms, and/or a private investigator may be able to help you retrieve electronic evidence.
 8. Many large parties use designated sober individuals to manage the parties. Identify and interview these individuals if relevant to the inquiry.
 9. It is not unusual for the level of involvement of a reporting party to wane over the course of the investigation. Use victim advocates or advisors to facilitate communication with a reporting party who has gone off the radar.
 10. Use trauma-informed interview techniques to make it easier for the reporting party to share difficult details, minimize blaming, and contextualize unexpected or uncharacteristic responses.
 11. Account for the roles that race, class, privilege, sexual orientation, and other factors play in sexual violence allegations. Not all situations deserve to be treated the same, and demographic factors may matter a lot.
 12. Add a sexual harassment analysis, as sexual violence is legally also a form of harassment.
-



12 TIPS FOR INVESTIGATING STALKING ALLEGATIONS

1. Consider safety concerns and the need for a threat assessment.
2. Recognize that many stalking cases involve proclamations of love/interest rather than threats of violence; however, the terrorizing effect is often no less real for the victims.
3. Investigators may need to access the institution's email system or network or retrieve video surveillance or building access records during the investigation.
4. Many stalking cases occur over a long period of time; thus, the creation of a timeline of events will be helpful. Often, the reporting party is best able to provide this documentation. Too many coincidences evidenced in a timeline will start to appear implausible and, when taken as a whole, could reflect stalking.
5. In many cases, stalking begins with low-level conduct that does not cause initial alarm. Often, the reporting party will have kept a record of this seemingly innocuous behavior.
6. Lurking, a form of steady-state stalking, or stalking that does not exacerbate or become more dangerous over time, tends not to escalate, and usually wanes over time. But other forms of stalking almost always escalate, potentially to the point of violence. Lurking often feels like stalking to victims, and while lurkers can be fixated on their subject, they mean no harm. Many allegations related to lurking result from individuals on the autism spectrum who do not read the social cues of the disinterest of their subject.
7. The federal definition of "stalking" is incredibly broad, encompassing even benign lurking behaviors by individuals who may not read social cues accurately (such as those on the autism spectrum). Sanction those individuals accordingly. Use the standard of "stalking 2" for menacing cases where harm is intended.
8. Many stalking cases cross jurisdictions, occurring both on and off campus and crossing municipal boundaries. Investigators may need to access information such as police reports from multiple agencies.
9. In some cases, the responding party has engaged in a course of conduct directed not only at the reporting party, but also at that person's family members, friends, or romantic partners. Investigators will need to strategize how to contact and collect information from those individuals.
10. Stalking cases often involve the use of sophisticated technology such as tracking devices, apps, keystroke recorders, and other ways to obtain passwords. If this isn't an investigator's area of expertise, seeking assistance is a good idea.
11. Text messages, voice mails, phone calls, photos, videos, and social media messages may be important for your investigation. Parties or witnesses may have these stored or backed up on devices.
12. Don't forget to add sexual harassment analysis, as sex-based stalking is legally also a form of harassment.



12 TIPS FOR INVESTIGATING INTIMATE PARTNER VIOLENCE/ RELATIONSHIP VIOLENCE ALLEGATIONS

1. Consider safety concerns and the need for a threat assessment. By its nature, intimate partner violence (IPV) always involves some other violation of the code of conduct.
2. In many case of relationship violence, there will be cross allegations and concerns about possible retaliation. Consider how your investigation will address this.
3. Consider carefully how the imposition of initial actions may tip the responding party to the investigation and/or recklessly endanger the reporting party. More on this can be found in the [2015 ATIXA Whitepaper](#).
4. In some cases, the reporting party will have shared concerns with a therapist or counselor. Investigators should consider how they or the reporting party may access those records, if the reporting party consents.
5. Many relationship violence cases cross jurisdictions, occurring both on and off of campus and crossing municipal boundaries. Investigators may need to access information such as police reports from multiple agencies.
6. Many relationship violence cases unfold over a long period of time; thus, the creation of a timeline of events will be helpful. Often, the reporting party is best able to provide this documentation.
7. Text messages, voice mails, phone calls, photos, videos, and social media messages may be important for your investigation. Parties or witnesses may have these stored or backed up on devices.
8. It is not unusual for a reporting party to recant a previously credible statement. Investigators will need to strategize how to handle this situation when it occurs.
9. Returning to an abusive partner is a common practice, and does not negate the validity of an allegation.
10. In some cases, violence breeds responsive violence or forceful self-defense. Investigators will have to account for this. Legitimate self-defense is not IPV, but responsive violence may be.
11. Relationship violence occurring between parties on campus can significantly impact social networks. It can be helpful to convey why witnesses are expected to participate in the institution's process when they are hesitant to do so.
12. Don't forget to add sexual harassment analysis, as IPV can legally also be a form of harassment.



TEMPLATE QUESTIONS FOR A REPORTING PARTY IN A TITLE IX CASE

FORCE

- Was any type of physical violence used?
- Was a weapon used?
- Were you restrained?
- Did you feel the need to resist?
- Were you able to resist?
- Were you threatened, directly or indirectly?
 - How?
 - With injury to you or someone else?
 - With a threat of damage to your property?
- Was there some reason you felt that you had to comply?
 - What was it?
- Were you intimidated in some way?
 - Did someone use power or authority over you?
 - How?
- Were you coerced in some way to do something you didn't want to do?
 - Were you verbally pressured?
 - How many times?
 - Over how long of a time period?
 - Where were you?
 - Were others around?
 - What exactly was said?
 - How did you feel?

INCAPACITATION

- Please describe any alcohol, legal or illegal drug use, and the time period over which it was ingested.
 - Please describe your condition as a result of this consumption.
 - What type of alcohol/proof/size of drink/dosage of drug?
 - When had you last eaten?
 - Did you drink or take drugs/medications together?
 - Did you or anyone else tell the responding party about your alcohol or drug use?
 - Are there other reasons the responding party would have known of your alcohol or drug use?
 - Did you take any medications in the [24 hours] prior to the incident?
 - Was the responding party aware of this?
 - What effect do your medications usually have on you?
-



- Do you recall interacting with anyone who might have information about how you were behaving?
 - Has anyone told you or showed you photos or video that would reflect how you were behaving/acting?
- Did you vomit?
 - Was the Responding Party aware of this?
- Did you experience unconsciousness?
- How was your equilibrium or balance impacted?
- Did you seek medical attention after the incident?
 - Did you have a Blood Alcohol Content or drug test taken?

CONSENT

- Did you discuss consent to the sexual activity that occurred, either verbally or in some other way?
- How did you communicate about expectations for sexual activity?
 - Was there any discussion about things you each enjoy/don't enjoy doing or experiencing?
- Was there any discussion of prior sexual partners? STDs?
- Was there any discussion of safe sex, birth control, the pill, etc.?
- What words were spoken during the sexual activity?
- Were you asked for consent (e.g., "Are you OK with this?" "Do you like this?" "Can I do this?")?
- What did you agree to?
- What was the timing of any agreement to sexual activity?
- Was consent withdrawn at any time? If so, how?
- If there were no words spoken, what were you physically doing when the sexual activity was occurring (e.g., Where were your hands, etc.)?
- When I ask the responding party, "What clear words or actions by the reporting party gave you permission for the specific sexual activity that took place?" what is the responding party going to say?

SEXUAL HARASSMENT

- Was the conduct sexual?
 - Was the conduct sex-based and/or gender-based?
 - Was the conduct unwelcome? What made it unwelcome?
 - How often did the sexual conduct occur? When did it start?
 - How long did this incident last?
 - Did you feel the need to address the sexual conduct in some way to try to make it stop? If so, how?
 - How did you feel about what was happening?
-



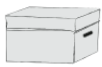
- Were you threatened in some way or offered a reward or benefit based on whether you complied?
- Please describe the power dynamics of the situation, as you experienced them?
- Did you report this to anyone or otherwise keep a record of what was occurring?
- Do you have witnesses, emails, texts, photos, videos, social media postings, or other forms of corroboration for what you experienced?
- Did it impact your educational experience/work? Did you miss classes or work? Did you avoid parts of campus? Any other impact?

STALKING

- Were you followed or surveilled?
- Did you receive unwelcome texts, emails, phone calls, or other communication?
- Did you receive unwelcome attention in the form of letters or gifts?
- Have you learned that someone had been trying to gather information about you without your knowledge?
- Did someone access your email, phone, computer, or other device without your permission?
- Has this behavior also been directed at anyone you are close to, such as a romantic partner or family member?
- Did you feel the need to address the responding party's behaviors in some way to try to make it stop? If so, how?
- How did you feel about what was happening?
- How did you respond to what was happening?
- Were you threatened in some way or offered a reward or benefit based on whether you complied?
- Did you report this to anyone or otherwise keep a record of what was occurring?
- Did the responding party's behavior impact your educational experience/work? Did you miss classes or work? Did you avoid parts of campus? Any other impact?

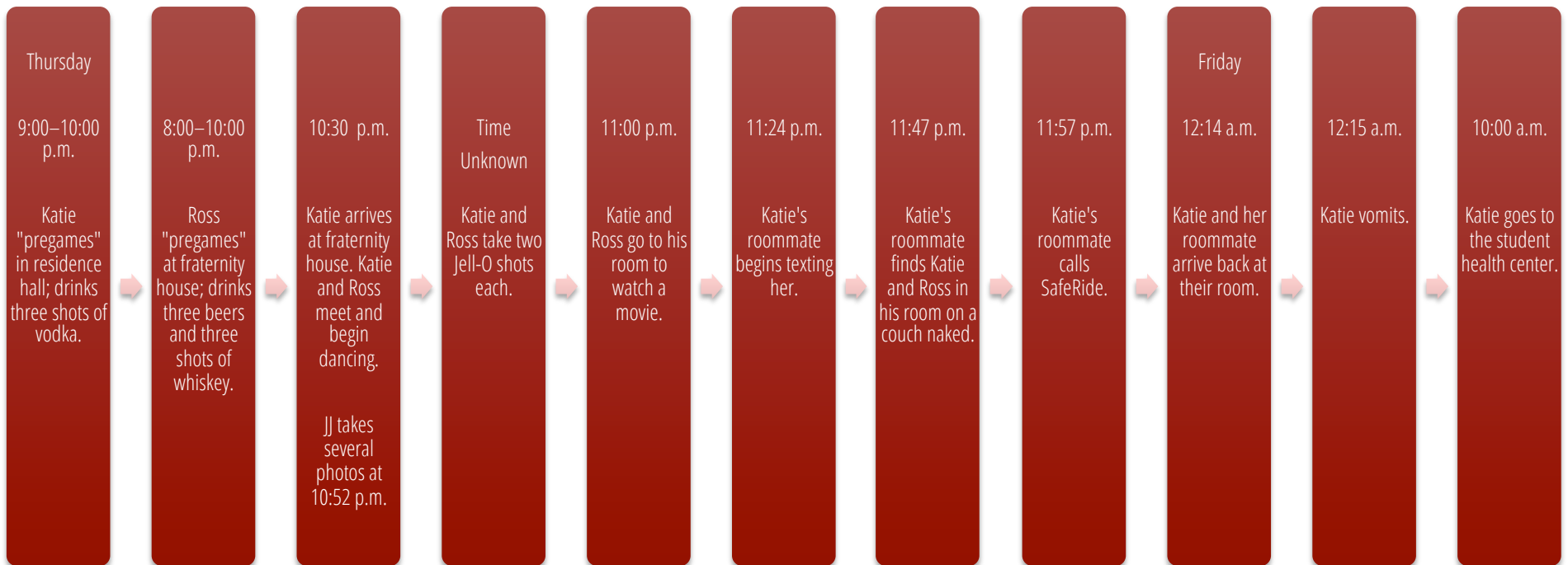
INTIMATE PARTNER VIOLENCE

- Are you currently or were you recently involved in a romantic or intimate relationship with the responding party?
 - Have you been physically harmed or threatened with physical harm?
 - Has your property been damaged or has there been a threat of damage to your property?
 - Have there been threats of harm or actual harm to anyone you are close to, such as a romantic partner or family member?
 - Has the responding party threatened self-harm as a method of control or coercion against you?
 - How did you feel about what was happening?
 - Did you report this to anyone or otherwise keep a record of what was occurring?
-



SAMPLE TIMELINE OF INCIDENT

During the investigation, create an incident timeline, noting the time of events leading up the incident, as well as any significant events that occur after the incident. The creation of a timeline will assist the investigator in filling in gaps and in making determinations about intoxication and capacity. Use documentary evidence such as time stamps from receipts, photos, and texts to create the timeline. Be sure to note time of and amount of alcohol, drugs, and medications ingested by both parties. The following is an example of a timeline in a sexual assault case.





ATIXA SEX/GENDER-BASED HARASSMENT, DISCRIMINATION, AND SEXUAL MISCONDUCT MODEL POLICY

AUTHORED BY
THE NCHERM GROUP, LLC. PARTNERS:

BRETT A. SOKOLOW, J.D.
W. SCOTT LEWIS, J.D.
SAUNDRA K. SCHUSTER, J.D.
DANIEL C. SWINTON, J.D., Ed.D.

www.atixa.org
www.ncherp.org

© 2015. THE NCHERM GROUP/ATIXA.

Use with citation permitted without compensation by ATIXA members.

This model is provided as an example, and not as any assurance of Title IX compliance by ATIXA or The NCHERM Group. Any use of the ideas included in this document should first be vetted with qualified legal counsel in your jurisdiction.



EDITOR'S NOTE:

Welcome to our model policy and procedures. This publication is both a guide and template, and we hope that sections of it, or its entirety, will help your campus or school to become compliant with Title IX, including the 2001 "OCR Guidance on Sexual Harassment," 2011 "Dear Colleague Letter," the SUNY and Montana OCR resolution templates, the 2014 OCR "Q&A on Title IX," the April 2015 "Dear Colleague Letter," the Violence Against Women Act Section 304 (March 2014), its implementing regulations finalized in October 2014, other relevant OCR "Dear Colleague Letters," and the best practices emerging in the field.

There are a number of essential concepts that undergird this model, the foremost of which is the notion that we all have sexual sovereignty: the right not to be acted upon sexually by someone else unless and until we give clear permission. The law calls this "autonomy." The field of student conduct uses the term "equal dignity." Discrimination law calls it "equity." These are all lenses on the same fundamental concept, which we embrace fully and meaningfully.

Additionally, we use some terms of art intentionally. "Gender-based misconduct" is the umbrella for a wide range of behaviors that fall under that descriptor. We use the term "sexual misconduct," too, when actions are gender-based, but manifest in sexual actions. We recommend that you use these terms, as they are the most neutral and least fraught policy titles, when it comes to the need to avoid crime-laden language, terms that have their own connotations, such as abuse, and terms that tend to minimize the severity of the actions they describe. We also use the term "victim" throughout this model, whereas many campuses prefer the term "survivor." This is intentional on our part. Rather than assuming victims are survivors, we believe that individual victims need to decide at their own pace whether and how they will become survivors. It is not for us to presume it. It also denotes the difference between policy language and advocacy language. Other advocacy-based documents on your campus rightfully should use the "survivor" term. Once victims enter the process, we refer to them individually as a "reporting party." Reports brought by individuals other than the recipient of the unwelcome behavior are referred to as "third-party reports," and those bringing them are deemed "third-party reporters." The person facing an accusation is referred to throughout as the "responding party".

Where suggested language is an option that a campus can elect for or omit, the language is set off by brackets [], which are also used to indicate areas where you will need to fill in campus-specific information, and we have left these blank to allow you to do so.

Finally, our definitions of "sexual harassment" may or may not reflect the standards of your state or the courts of your jurisdiction, so we strongly encourage you to consult with legal counsel before adopting the terms that follow. There are many ways to define a "hostile environment." OCR uses the standard "severe, persistent, or pervasive." The Davis⁸ court predicated monetary damages on the basis of conduct that was "severe, pervasive, and objectively offensive." Many courts examining sexual harassment policies for First Amendment over breadth use this standard as well, but it would not be as applicable to private

⁸ *Davis v. Monroe County Bd. of Education*, 526 U.S. 629 (1999).



colleges. The key here is not in these terms, but in the notion that our policies need to prohibit a discriminatory effect. When conduct changes employment conditions or limits, or denies or interferes with educational access, benefits, or opportunities, our policies need to address it. Sometimes, state law or the courts of our jurisdiction may qualify the language, as in “substantially limits” or “unreasonably interferes,” or confuse persistence with pervasiveness. Whatever words we use, we will do well to keep in mind that the qualifiers of severity, reasonableness, etc., are secondary considerations to the primary question of the discriminatory impact.

— Brett, Scott, Saunie, and Daniel



POLICY ON SEX/GENDER HARASSMENT, DISCRIMINATION, AND MISCONDUCT

Introduction

Members of the university⁹ community, guests, and visitors have the right to be free from all forms of sex/gender harassment, discrimination, and misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The university believes in zero tolerance for sex/gender-based misconduct. Zero tolerance means that when an allegation of misconduct is brought to an appropriate administrator's attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the victim and community are remedied, including through serious sanctions when a responding party is found to have violated this policy. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations, and ATIXA's model procedures (available to members) establish a mechanism for determining when those expectations have been violated.¹⁰

The university's sex/gender harassment, discrimination, and misconduct policies are not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom [link to university definition of "academic freedom" here or insert something like this: "Academic freedom extends to topics that are pedagogically appropriate and germane to the subject matter of courses or that touch on academic exploration of matters of public concern."].

The university uses preponderance of the evidence (also known as "more likely than not") as the standard for proof of whether a violation occurred. In campus resolution proceedings, legal terms like "guilt," "innocence," and "burdens of proof" are not applicable, but the university never assumes a responding party is in violation of university policy. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

Title IX Coordinator

The university's Title IX coordinator oversees compliance with all aspects of the sex/gender harassment, discrimination, and misconduct policy. The coordinator reports [directly] to the [president of the university], and is housed in [Equal Opportunity Office]. Questions about this policy should be directed to the Title IX coordinator.

⁹ Rather than awkwardly inserting "college/university" every time an institution is referenced, this model policy uses the convention "university" with the understanding that "college" can be substituted by the end-user as necessary with a simple find-and-replace command.

¹⁰ The policy and procedure models offered by ATIXA have been, in part or in full, promulgated by the White House Task Force to Protect Students from Sexual Assault and/or accepted by OCR in resolutions of its investigations of campuses accused of Title IX violations.



Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the university Title IX coordinator:

[Name:
Title: Title IX Coordinator
Office of []
Location/Address:
Phone:
Email:]

Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted at [INSERT URL], or the reporting hotline at (###) ###-####. Note that these anonymous reports may prompt a need for the institution to investigate.

Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities:

Office for Civil Rights (OCR)
[Insert Regional Office — DC office provided as an example]
400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline: (800) 421-3481
Facsimile: (202) 453-6012
TDD: (877) 521-2172
Email: OCR@ed.gov
Web: www.ed.gov/ocr

[Public universities include this:]
U.S. Department of Justice Civil Rights Division
950 Pennsylvania Avenue, N.W.
Educational Opportunities Section, PHB
Washington, D.C. 20530
Email: education@usdoj.gov
Phone: (202) 514-4092 or (877) 292-3804 (toll-free)
Facsimile: (202) 514-8337

In the event that an incident involves alleged misconduct by the Title IX coordinator, reports should be made directly to the [] at [CONTACT INFORMATION].



Overview Of Policy Expectations With Respect To Physical Sexual Misconduct¹¹

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing (or affirmative, conscious, if you wish to track the California affirmative consent statute), and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. Silence or passivity — without actions demonstrating permission — cannot be assumed to show consent. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as would physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.¹²

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, persons will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (i.e., who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are

¹¹ This section is often broken out of the policy or handbook, to be used as a separate brochure or handout, or on a website. It can also be included within the policy for those seeking a preventive policy element.

¹² For further guidance on coercion v. seduction (this is unlikely to be included in policy, but is of value for decision-makers): An unwelcome advance that results in a welcome encounter is seduction. An unwelcome advance that results in an unwelcome encounter is coercive. Often, the question revolves around how to determine after the fact if the encounter was unwelcome, and that will largely depend on what the contextual evidence shows. Society defines "seduction" as reasonable, and "coercion" as unreasonable. Both involve convincing others to do something you want them to do, so how do they truly differ? The distinction is in whether the person who is the object of the pressure wants or does not want to be convinced or is OK with the convincing once it happens. In seduction, the sexual advances are ultimately welcome. You want to do some convincing, and the person who is the object of your sexual attention wants to be convinced. Twist my arm; I'll go along. Two people are playing the same game. Coercion is different because you want to convince others, but they make it clear that they do not want to be convinced. They do not want to play along. They do not want to have their arm twisted. You are able to change your mind, both toward consent and away from it. The evaluation of coercion, however, has to focus on the actions of the person applying the pressure, as well as how that pressure is received.

Consider the totality of the circumstances of the alleged coercion (all four factors together):

- *Frequency*: Asking to have sex three times over 30 minutes vs. 30 times over 30 minutes. The frequency of coercion can be enhanced easily via technology.
 - *Intensity*: Individuals talking themselves up (e.g., "I'm the best there ever was.") are obnoxious, not coercive. When they turn on you and start to attack your character, values, and morals, there is a difference in intensity (e.g., "Do you want to be the last virgin on earth? No one will find out, I won't tell anyone...").
 - *Isolation*: Making advances at a crowded bar is going to be less coercive than when the advances occur when two people are alone in someone's living room.
 - *Duration*: Making advances over 30 minutes vs. making advances over three hours.
-



doing. Under this policy, “no” always means “no,” and “yes” may not always mean “yes.” Anything but a clear, knowing, and voluntary consent to any sexual activity is equivalent to a “no.”

Overview Of Policy Expectations With Respect To Consensual Relationships¹³

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (e.g., teacher and student or supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks. The university does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the university. For the personal protection of members of this community, relationships in which power differentials are inherent (e.g., faculty-student, staff-student, administrator-student, and supervisor-supervisee) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes resident advisors (RAs) and students over whom they have direct responsibility. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.¹⁴

Sexual Violence: Risk Reduction Tips

Risk reduction tips can often take a victim-blaming tone, even unintentionally. Only those who commit sexual violence are responsible for those actions. We offer the tips below with no intention to victim-blame, but rather with recognition that these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.

¹³ This section is offered as an optional conclusion, as some campuses prefer to include this policy elsewhere, such as a faculty handbook or employee manual. We include it here to inform students, not just employees, of our expectations.

¹⁴ When a consensual relationship gives rise to quid pro quo harassment allegations, those allegations are to be resolved in accordance with the university’s policies on Title IX. When an employee fails to timely notify a supervisor under this policy, but no allegations of harassment are present, the resolution falls under the policy on “Failure to comply” in the employee/faculty handbook, and should be resolved as such.



- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use, and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Give thought to sharing your intimate content, pictures, images, and videos with others, even those you may trust. If you do choose to share, clarify your expectations as to how or if those images may be used, shared, or disseminated.
- Take care of your friends and ask that they take care of you. Real friends will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to sexual partners and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether others are attracted to you; about how far you can go; or about whether potential partners are physically and/or mentally able to consent. Consent should be affirmative and continuous. If there are any questions or ambiguity, then you DO NOT have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension, and communicate better. You may be misreading the person. Individuals may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which each person is comfortable.
- Don't take advantage of someone's drunkenness or altered state, even if the person willingly consumed alcohol or substances.
- Realize that your potential partner could feel intimidated or coerced by you. You may have a power advantage simply because of your gender or physical presence. Don't abuse that power.
- Do not share intimate content, pictures, images, and videos that are shared with you.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

Sexual Misconduct Offenses Include, But Are Not Limited To:

1. Sexual Harassment
2. Non-Consensual Sexual Contact (or attempts to commit same)
3. Non-Consensual Sexual Intercourse (or attempts to commit same)
4. Sexual Exploitation



1. SEXUAL HARASSMENT

Sexual harassment is:

- unwelcome,
- sexual, sex-based, and/or gender-based verbal, written, online, and/or physical conduct.¹⁵

Anyone experiencing sexual harassment in any university program is encouraged to report it immediately to the Title IX coordinator or a deputy. Remedies, education, and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment or retaliatory harassment, and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- objectively offensive that it:
 - unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the university's educational [and/or employment], social and/or residential program.

Quid pro quo harassment is:

- unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature,
- by a person having power or authority over another,
- when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational [or employment] progress, development, or performance.
- This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational [or employment] program.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual-based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; and gender-based bullying.¹⁶

Some examples of possible sexual harassment include:

- A professor insists that a student have sex in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list that student

¹⁵ Purpose or intent is not an element of sexual harassment.

¹⁶ These offenses are referenced and incorporated within sexual harassment, but also broken-out as stand-alone offenses, below. They are both, so be sure to charge accordingly.



created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.

- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door.
- Two supervisors frequently "rate" several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.
- Male students take to calling a brunette student "Monica" because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, "sexual relations," and Weight Watchers.
- A student grabs another student by the hair, then grabs her breast and puts his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

2. NON-CONSENSUAL SEXUAL CONTACT

Non-consensual sexual contact is:

- any intentional sexual touching,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.¹⁷

Sexual contact includes:

- intentional contact with the breasts, buttocks, groin, or genitals, or touching others with any of these body parts, or making others touch you or themselves with or on any of these body parts; or
- any other intentional bodily contact in a sexual manner.

3. NON-CONSENSUAL SEXUAL INTERCOURSE

Non-consensual sexual intercourse is:

- any sexual intercourse,
- however slight,
- with any object,

¹⁷ The use of force is not "worse" than the subjective experience of violation of someone who has sex without consent. However, the use of physical force constitutes a standalone non-sexual offense as well, as it is our expectation that those who use physical force (e.g., restrict, battery, etc.) would face not just the sexual misconduct charge, but charges under the code for the additional assaultive behavior.



- by a person upon another person,
- that is without consent and/or by force.¹⁸

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

4. SEXUAL EXPLOITATION

Occurs when one person takes the non-consensual or abusive sexual advantage of others for self-serving advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual digital, video or audio recording of nudity or sexual activity;
- Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
- Engaging in voyeurism;
- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
- Knowingly exposing someone to or transmitting an STI, STD, or HIV to another person;
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances, or inducing another to expose their genitals; and
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

ADDITIONAL APPLICABLE DEFINITIONS

- Consent;¹⁹
 - clear, and
 - knowing, and
 - voluntary [or affirmative, conscious, and voluntary],
 - words or actions,
 - that give permission for specific sexual activity.
 - Consent is active, not passive.

¹⁸ *Id.*

¹⁹ The definition of "consent" provided here is model policy language from ATIXA. The state legal definition of "consent" may also be included here (if desired) as a footnote or an appendix. While the state definition is not required to be published here, many campuses refer to this policy in their Annual Security Reports (ASR), or will use a link to this policy to satisfy the ASR requirements on sexual assault disclosures. Incorporating the state definition of "consent" will help to satisfy the policy disclosure requirement, but it is important to note that nothing in the law requires schools to evaluate campus reports using state legal standards. The Clery requirement is just one of disclosure, so that victims may know what the state provisions are if they are considering making a criminal complaint. A listing of all state consent definitions is here: <http://atixa.org/resources/consent-statutes-by-state/>.



- Silence, in and of itself, cannot be interpreted as consent.
- Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
- In order to give consent, one must be of legal age.
- Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.
 - Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.²⁰
 - The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party.
 - Incapacitation is a state in which individuals cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why, or how” of the sexual interaction).
 - This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of rape drugs. [Possession, use, and/or distribution of any of these substances, including Rohypnol, Ketomine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy. (More information on these drugs can be found at www.911rape.org/.)
- Force: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit you. OK, don’t hit me, I’ll do what you want.”).
 - Coercion is unreasonable pressure for sexual activity. When individuals make it clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

²⁰ “Blackout,” as it is used in scholarly literature, refers to a period where memory formation is blocked. A period of consistent memory loss is termed a “blackout,” whereas periods where memory is both lost and formed intermittently can be referred to in the literature as a “brownout.” Neither state of blackout nor brownout automatically indicates incapacitation, but factual context can establish that a blackout or a brownout is occurring in an individual who is incapacitated (where incapacity is defined as an inability to make rational, reasonable decisions or judgments). It is a mistake to automatically associate memory loss with incapacitation; they are often coupled, but not always. (See Mundt & Wetherill — 2012; NIH 2004.)



- NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
- Use of alcohol or other drugs will never function to excuse any behavior that violates this policy.
- This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity.
- For reference to the pertinent state statutes on sex offenses, please see [insert reference here, or place in Appendix].

Examples²¹

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to go up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being “a prude.” Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a “hand job” (hand-to-genital contact). Amanda would never had done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. **Bill is responsible for violating the university's Non-consensual sexual contact policy. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied on Amanda were unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. When sexual activity is coerced, it is forced. Consent is not valid when forced. Sex without consent is sexual misconduct.**
2. Jiang is a junior at the university. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? **Jiang would be held responsible in this scenario for non-consensual sexual intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, it is important to be as clear**

²¹ OCR recommends incorporation of examples into policy as an educational and preventive tool. Some campuses may prefer to break these out into separate documents or resources.



as possible as to whether or not sexual contact is desired, and to be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.

3. Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his room, and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this, and John says "yes." Clothes go flying, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex. But he does not let that stop him. When Kevin runs into John the next day, he thanks him for the wild night. John remembers nothing, and decides to make a report to the dean. **This is a violation of the non-consensual sexual intercourse policy. Kevin should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol, and Kevin thought John was physically ill, and that he passed out during sex. Kevin should be held accountable for taking advantage of John in his condition.**

Other Misconduct Offenses (Will Fall Under Title IX When Sex Or Gender-Based)²²

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits, or opportunities on the basis of sex or gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
5. Bullying, defined as
 - a. Repeated and/or severe,
 - b. aggressive behavior,
 - c. likely to intimidate or intentionally hurt, control, or diminish another person, physically or mentally,
 - d. that is not speech or conduct otherwise protected by the First Amendment.

²² These offenses appear here, rather than along with the other offense definitions, because we do not encourage their inclusion as standalone violations in this policy. They can be referenced, but we already should have policies in our code addressing each of these violations. We expect that charges under the code will bootstrap the procedural equity of this model when needed, without the need to make two versions of hazing, bullying, etc., based on the motivation of the violator.



6. Intimate partner violence, defined as violence or abuse between those in an intimate relationship to each other²³
 - a. A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based on jealousy is a violation of the Intimate Partner Violence Policy.
 - b. An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of intimate partner violence.
 - c. A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control, even though it makes her ill, to prevent pregnancy.
 - d. Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.
7. Stalking
 - a. Stalking 1:
 1. A course of conduct,
 2. directed at a specific person,
 3. on the basis of actual or perceived membership in a protected class,
 4. that is unwelcome, AND
 5. would cause a reasonable person to feel fear.
 - b. Stalking 2:
 1. Repetitive and menacing
 2. pursuit, following, harassing, and/or interfering with the peace and/or safety of another.
 - c. Examples of Stalking:
 1. A student, Student A, repeatedly shows up at another student's on-campus residence, always notifying the front desk attendant that Student A is there to see the resident, Student B. Upon a call to Student B, Student B informs residence hall staff that Student A is uninvited and continuously attempts to see Student B, even so far as waiting for Student B outside of classes and showing up to Student B's on-campus place of employment requesting that they go out on a date together.
Stalking 1.
 2. A graduate assistant working as an on-campus tutor received flowers and gifts delivered to the office. After learning the gifts were from a student the graduate assistant recently tutored, the graduate assistant thanked the student and stated

²³ The definition provided here is model policy language from ATIXA. The state legal definitions of "domestic violence" and "dating violence" may also be included (if desired) as either a footnote or an appendix (find links to each state's definition [here](#)). While the state definitions are not required as policy by either Title IX or recent Clery Act amendments, they are required in the Clery Act Annual Security Report (ASR). Thus, many campuses refer to this policy in their ASR, or will use a link to this policy to satisfy the ASR requirements on sexual assault disclosures. Incorporating the state definitions of "domestic violence" and "dating violence" will help to satisfy the ASR disclosure requirement, but it is important to note that nothing in the law requires schools to evaluate campus reports using state legal standards, and we recommend differentiating campus standards from state law as a best practice. The Clery requirement is just one of disclosure, so that victims may know what the state provisions are if they are considering making a criminal complaint.



that it was not necessary and asked that the gift deliveries stop. The student then started leaving notes of love and gratitude on the graduate assistant's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the graduate assistant did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together." **Stalking 2.**

8. Any other university policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

Retaliation

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of that person's participation in that protected activity (subject to limitations imposed by the First Amendment and/or academic freedom). Retaliation against an individual for an allegation, for supporting a reporting party, or for assisting in providing information relevant to an allegation is a serious violation of university policy.

Sanctions

The following sanctions may be imposed upon any member of the community found to have violated the Sex/Gender Harassment, Discrimination, and Misconduct Policy. Factors considered in sanctioning are defined in [reference or link to Student Handbook, Faculty Handbook, and/or Staff Handbook]. The following are the typical sanctions that may be imposed upon students or organizations singly or in combination:

Student Sanctions (listed below and defined in [Student Handbook])

- Warning
- Probation
- Suspension
- Expulsion
- Withholding diploma
- Revocation of degree
- Transcript notation
- Organizational sanctions
- Other actions

Employee Sanctions (listed below and defined in [Employee Handbook])

- Warning — written or verbal
 - Performance improvement plan
 - Required counseling
 - Required training or education
 - Demotion
-



- Loss of annual pay increase
- Suspension without pay
- Suspension with pay
- Revocation of tenure
- Termination

Sanctioning for Sexual Misconduct

- Any person found responsible for violating the Non-Consensual Sexual Contact Policy (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.*
- Any person found responsible for violating the Non-Consensual Sexual Intercourse Policy will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).*
- Any person found responsible for violating the Sexual Exploitation or Sexual Harassment Policies will likely receive a recommended sanction ranging from warning to expulsion or termination, depending on the severity of the incident, and taking into account any previous disciplinary violations.*

*The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.



MODEL CONFIDENTIALITY, PRIVACY, AND REPORTING POLICY

Confidentiality and Reporting of Offenses Under This Policy

All university employees (faculty, staff, and administrators) are expected to immediately report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality — meaning that they are not required to report actual or suspected discrimination or harassment to appropriate university officials, thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested that information be shared. Other resources exist for a victim to report crimes and policy violations, and these resources will take action when an incident is reported to them. The following describes the two reporting options at the university:

Confidential Reporting

If reporting parties would like the details of an incident to be kept confidential, they may speak with:

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff
- [On-campus victim’s advocates]
- [On-campus members of the clergy/chaplains working within the scope of their licensure or ordination]
- [Athletic trainers] (if licensed, privileged under state statute and/or working under the supervision of a health professional)
- Off-campus:
 - Licensed professional counselors
 - Local rape crisis counselors
 - Domestic violence resources,
 - Local or state assistance agencies
 - Clergy/chaplains

All of the above-mentioned employees will maintain confidentiality except in extreme cases of immediate threat or danger, or abuse of a minor. Campus counselors [and/or the Employee Assistance Program] are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees will submit [timely, quarterly, semesterly, yearly] anonymous, aggregate statistical information for Clery Act purposes unless they believe it would be harmful to a specific client, patient, or parishioner.

Formal Reporting Options

All university employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee



with the Title IX coordinator and/or deputy coordinators. Employees must share all details of the reports they receive. Generally, climate surveys, classroom writing assignments, human subjects research, or events like Take Back the Night marches or speak-outs do not provide notice that must be reported to the coordinator by employees. Remedial actions may result without formal university action.

If individual victims do not wish for their names to be shared, do not wish for an investigation to take place, or do not want a formal resolution to be pursued, they may make such a request to the Title IX coordinator or deputy coordinators, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threats, use of weapons, and/or violence, the university will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the university to honor that request, the university will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by the university when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: [Office for Institutional Equity, Division of Student Affairs, Integrity and Compliance Office, University Police, and the Behavioral Intervention Team]. Information will be shared as necessary with investigators, witness, and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy. [Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted at [insert URL], or the reporting hotline at (###) ###-####. Note that these anonymous reports may prompt a need for the institution to investigate.]

Reports to the Title IX coordinator can be made via email, phone, or in person at the contact information below:

- [Title IX Coordinator
- Office Address
- Phone Number
- Email Address]

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex or gender harassment or discrimination of which they become aware, is a violation of university policy and can be subject to disciplinary action for failure to comply with university policies.

[OPTIONAL ADDITIONAL INFORMATION]:

Federal Statistical Reporting Obligations

Certain campus officials — those deemed Campus Security Authorities — have a duty to report sexual assault, domestic violence, dating violence, and stalking for federal statistical reporting purposes



(Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (e.g., on- or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories), and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

Federal Timely Warning Reporting Obligations

Victims of sexual misconduct should also be aware that university administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The university will ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

Additional Policy Provisions

a. Attempted Violations

In most circumstances, the university will treat attempts to commit any of the violations listed in the Gender-Misconduct Policy as if those attempts had been completed.

b. False Reports

The university will not tolerate intentional false reporting of incidents. It is a violation of the [Student Code of Conduct] to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

c. Amnesty for Victims and Witnesses

The university community encourages the reporting of misconduct and crimes by victims and witnesses. Sometimes, victims or witnesses are hesitant to report to university officials or participate in resolution processes because they fear that they themselves may be accused of policy violations that occurred at the time of the incident, such as underage drinking. It is in the best interests of this community that as many victims as possible choose to report to university officials, and that witnesses come forward to share what they know. To encourage reporting, the university pursues a policy of offering victims and witnesses of misconduct amnesty from minor policy violations related to the incident.

Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (e.g., an underage student who has been drinking might hesitate to help take a sexual misconduct victim to the campus police). The university pursues a policy of amnesty



for students who offer help to others in need. [While policy violations cannot be overlooked, the university will provide educational options, rather than punishment, to those who offer their assistance to others in need.]

d. Parental Notification

The university reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status, or conduct situation, particularly alcohol and other drug violations. The university may also notify parents/guardians of non-dependent students who are under the age of 21 of alcohol and/or drug policy violations. Where a student is non-dependent, the university will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The university also reserves the right to designate which university officials have a need to know about individual conduct reports pursuant to the Family Educational Rights and Privacy Act (FERPA).



QUESTIONS AND ANSWERS

Here are some of the most commonly asked questions regarding the university's sexual misconduct policy and procedures.

Does information about a report remain private?

The privacy of all parties to a report of sexual misconduct must be respected, except insofar as it interferes with the university's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. The university will not disseminate information and/or written materials to persons not involved in the resolution process without the consent of both parties. Witnesses are also required to maintain the privacy of information shared with them during interviews and/or hearings. Violations of the privacy of the reporting party or the responding party may lead to conduct action by the university, though both parties are allowed to share their perspectives and experiences. All parties, including witnesses, involved in an allegation are strongly encouraged to maintain the privacy of information and/or written materials.

In all resolutions of sexual misconduct, all parties will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement of the nature of the violation and the action taken, without using the name or identifiable information of the alleged victim. Certain university administrators are informed of the outcome within the bounds of student privacy (e.g., the president of the university, dean of students, and director of security). [If there is a report of an act of alleged sexual misconduct to a conduct officer of the university and there is evidence that a felony has occurred, local police will be notified. This does not mean that charges will be automatically filed or that a victim must speak with the police, but the institution is legally required to notify law enforcement authorities].²⁴ The institution also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an "Annual Security Report" of campus crime statistics. This statistical report does not include personally identifiable information.

Will my parents be told?

No, not unless you tell them. Whether you are the reporting party or the responding party, the university's primary relationship is with the student and not with the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. University officials will directly inform parents when requested to do so by a student, in a life-threatening situation, [or if an individual has signed the permission form at registration which allows such communication].

²⁴ If this is your policy: Felony reporting is required in some locales. This practice of automatic reporting without victim consent is to be avoided if possible, and likely would violate FERPA. Many campuses are negotiating Memoranda of Understanding (MOUs) with local law enforcement agencies to clarify reporting expectations. Often, anonymous reports will be enough to satisfy local law enforcement.



Will the responding party know my identity?

Yes, if the university determines that there is reasonable cause to believe that a violation has occurred and investigates the matter. The responding party has the right to know the identity of the reporting party. If there is a hearing, the university provides options for questioning without confrontation, including closed-circuit testimony, Skype, using a room divider, or using separate hearing rooms.

Do I have to name the responding party?

Yes, if you want formal disciplinary action to be taken against the responding party. You can report the incident without divulging the identity of the responding party, but doing so may limit the institution's ability to respond comprehensively.

What do I do if I am accused of sexual misconduct?

DO NOT contact the reporting party. You may immediately want to contact someone who can act as your advisor [or advocate]; anyone may serve as your advisor [or advocate]. You may also contact the [Student Conduct Office], which can explain the university's procedures for addressing sexual misconduct reports. You may also want to talk to a confidential counselor at the counseling center or seek other community assistance. See below regarding legal representation.

Will I (as a victim) have to pay for counseling/or medical care?

Not typically, if the institution provides these services already. If a victim is accessing community and non-institutional services, payment for these will be subject to state/local laws, insurance requirements, etc. [In this state, victims may be ineligible for state-based assistance if they were engaged in any illegal activity during the assault or if they fail to cooperate with criminal prosecution].

What about legal advice?

Victims of criminal sexual assault need not retain a private attorney to pursue criminal prosecution because representation will be handled by the District Attorney's [Prosecutor's] office. You may want to retain an attorney if you are considering filing a civil action or are the responding party. Responding parties may retain counsel at their own expense if they determine that they need legal advice about criminal prosecution and/or the campus conduct proceeding. Both the responding party and the reporting party may also use an attorney as their advisor [or advocate] during the campus' resolution process. Attorneys are subject to the same restrictions as other advisors [or advocates] in the process as described here [insert URL].

How is a report of sexual misconduct decided?

The university investigates allegations of sex/gender-based harassment, discrimination, or misconduct to determine whether there is evidence to indicate that a policy violation is "more likely than not" to have occurred. This standard, called the preponderance of evidence, corresponds to an amount of evidence indicating that a policy violation is more than 50 percent likely.



What about changing residence hall rooms?

You may request a room change if you want to move. Room changes under these circumstances are considered emergencies. It is typically institutional policy that in emergency room changes, the student is moved to the first available suitable room. If you prefer that the responding party be moved to another residence hall, that request will be evaluated by the Title IX coordinator or deputy to determine if it can be honored. Other assistance and modifications available to you might include:

- Assistance from university support staff in completing a room relocation;
- Arranging to dissolve a housing contract and pro-rating a refund;
- Help with finding an off-campus residential alternative;
- Assistance with or rescheduling an academic assignment (e.g., paper, exams, etc.) or otherwise implementing academic assistance;
- Taking an incomplete in a class;
- Assistance with transferring class sections;
- Temporary withdrawal;
- Assistance with alternative course completion options;
- Escorts to and from campus locations;
- On- or off-campus counseling assistance;
- Transportation assistance or support;
- Other accommodations for safety as necessary.

What should I do about preserving evidence of a sexual assault?

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim's person within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc., for much longer periods of time. If you believe that you have been a victim of a criminal sexual assault, you should go to the hospital emergency room before washing yourself or your clothing.²⁵ The sexual assault nurse examiner (a specially-trained nurse) at the hospital is usually on-call 24 hours a day, seven days a week (call the emergency room if you first want to speak to the nurse; ER will refer you). A victim advocate from the institution can also accompany you to the hospital and law enforcement or security can provide transportation. If a victim goes to the hospital, local police will be called, but the victim is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligate the victim to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide later to exercise that option.

For the victim: The hospital staff will collect evidence, check for injuries, address pregnancy concerns, and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have

²⁵ Specify here the nearest local hospital with an appropriate SANE program.



not changed clothes, bring a change of clothes with you to the hospital, if possible, as the worn clothing will likely be kept as evidence. You can take a support person with you to the hospital, and that person can accompany you through the exam, if you want. Do not disturb the crime scene — leave all sheets, towels, etc. that may bear evidence for the police to collect.

Will a victim be sanctioned when reporting a sexual misconduct policy violation if the person has illegally used drugs or alcohol?

No. The seriousness of sexual misconduct is a major concern, and the university does not want any of the circumstances (i.e., drug or alcohol use) to inhibit the reporting of sexual misconduct. The university provides amnesty from any consequences for minor policy violations that occur during or come to light as the result of a victim's report of sexual misconduct.

Will the use of drugs or alcohol affect the outcome of a sexual misconduct conduct resolution?

The use of alcohol and/or drugs by either party will not diminish the responding party's responsibility. On the other hand, alcohol and/or drug use is likely to affect the reporting party's memory and, therefore, may affect the resolution of the reported misconduct. A reporting party must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence, and/or witnesses to prove that policy was violated. If the reporting party does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the responding party without further corroborating information. Use of alcohol and/or other drugs will never excuse a violation by a responding party.

Will either party's prior use of drugs and/or alcohol be a factor when reporting sexual misconduct?

Not unless there is a compelling reason to believe that prior use or abuse is relevant to the present matter.

What should I do if I am uncertain about what happened?

If you believe that you have experienced sexual misconduct, but are unsure of whether it was a violation of the institution's sexual misconduct policy, you should contact the institution's Title IX coordinator (not confidential) or counseling center [victim advocate's office] (confidential). [The institution also provides process advisors [or advocates], who can help you to define and clarify the event(s) and advise you of your options].



BEST PRACTICES CHECKLIST RELATED TO SEXUAL HARASSMENT/VIOLENCE

Adapted with Permission from the University of the Pacific

Obligation to Respond to Sexual Harassment/Violence

Procedural Requirements Pertaining To Sexual Harassment And Sexual Violence

- A. Publish and disseminate a notice of nondiscrimination.
- Offer definitions and examples of sexual harassment (covering hostile environment, quid pro quo, and retaliatory harassment), sexual violence, IPV, and stalking.
 - Include a statement of the university's jurisdiction over Title IX.
 - Explain the institution's jurisdiction over staff, faculty, students, and third parties.
 - Name the Title IX coordinator as the compliance officer to coordinate efforts and comply with and carry out responsibilities and institutional responses under Title IX.
 - Include the Title IX coordinator and all deputy coordinators' contact information (i.e., name, title, office address, phone number, and email address), as well as a description of each deputy's responsibilities.
 - Outline resolution procedures providing for prompt and equitable resolution of student and employee sex discrimination allegations.
 - Include a description of informal mechanisms and administrative hearings as described in the April 2011 "Dear Colleague Letter."
 - Detail who is a responsible employee.
 - Provide notice that responsible employees must report incidents of sexual harassment to the Title IX coordinator (or designee).
 - Detail who is deemed a confidential employee for purposes of notice and reporting.
 - Outline employee training on reporting of/responding to harassment/violence.
 - Cover all university programs or activities, as well as off-campus conduct when there are on-campus effects of the off-campus harassment.
 - Explain that initial remedies can be implemented for victims of on- and off-campus sexual misconduct to protect from further harm or retaliation.
 - State that reports about harassment/violence are promptly, thoroughly, and impartially investigated so that action steps can be determined.
 - Cover the procurement of consent from complainants (or students' parents if complainants are under 18) before investigating; and explain that if a complainant requests confidentiality or asks that allegations not be pursued, the university takes reasonable steps to investigate and respond (but ability to respond may be limited).
 - Explain that the university evaluates if reporting parties' continued requests for confidentiality in the context of its responsibility to provide a safe and nondiscriminatory environment for all students; and that the university informs complainants if it cannot ensure confidentiality.



- B. Provide adequate, reliable, and impartial investigation of all allegations.
- Notify reporting parties of the right to file a criminal complaint.
 - Investigate independently of city police.
 - Take immediate steps to protect victims and assure their well-being.
 - Allow parties to end the informal process and begin the formal one at any time.
 - Use a preponderance of evidence standard of proof to assess allegations.
 - Provide all parties an equitable opportunity to participate and to present relevant witnesses and other evidence, including by having similar and timely access to any relevant information.
 - Give notice that the institution will regularly inform the parties of the status of the investigation and resolution processes.
 - Offer parties in proceedings a separate room or other accommodations to avoid in-person confrontations and prevent them from directly questioning each other.
 - Offer an appeals process for all parties.
 - Document all proceedings, which may include tracking of patterns, written findings of fact, transcripts, or audio recordings.
 - Train those involved in investigating and resolution on sexual harassment and violence, IPV, stalking, trauma-informed interviewing, and other key skills.
 - Ensure that all investigation and resolution processes are impartial and devoid of conflicts of interest that would compromise the objectivity of the process.
 - Maintain a process to allow either party to raise a conflict of interest regarding those involved with handling the resolution procedures.
 - Provide due (or fair) process to all parties.
 - Afford the parties an equal opportunity to have an advisor of their choice accompany them throughout the process, including at any meetings or hearings.
 - Allow parties to share information with others who may support/assist them in preparing for investigation meetings/hearings.
 - Allow parties to only ask questions directly of each other at the consent of both parties and the discretion of the Hearing Board chair²⁶ if a hearing model is used.
 - Forbid the introduction of the sexual history of the reporting party, except when involving the responding party. Exceptions are permitted when, at the discretion of the chair, the prior relationship is deemed relevant to the current allegations²⁷.
 - Prohibit using mediation to address allegations of sexual or relationship violence.
 - Ensure the reporting party is not required to attend a hearing as a prerequisite to proceeding.
 - Issue specifications for the documentation of proceedings and record-keeping.

²⁶ OCR's guidance disallows cross examination between parties, but ATIXA feels that if both parties are willing and the chair consents and maintains control over proceedings, that can be useful and provide good probative information.

²⁷ OCR's guidance disallows any sexual history other than that between the reporting and responding parties. However, ATIXA has seen a number of allegations in which sexual history is highly relevant and should be permitted (e.g., the reporting party says she has never and would never perform oral sex on anyone, yet did so in a prior relationship).



C. Provide designated and reasonably prompt time frames by:

- Have resolution procedures that specify reasonably prompt time frames for major stages of the resolution process, including: 1) investigation of allegations (immediately, but full resolution of process within +/- 60 calendar days, unless a short delay occurs to allow police to gather evidence, or other delay is agreed by all parties); 2) time when both parties will receive the report of the investigation and/or outcome; and 3) time frame for filing an appeal, if applicable.
- Notify the parties when additional time will be necessary, as well as the process for extending deadlines.
- Update the parties on the status of the investigation and process by the coordinator or designee at regular intervals and/or upon request.

D. Provide written notice of outcome.

- Notify all parties concurrently in writing about the outcome.
- Disclose the results of resolutions publicly as needed if a student is found to have committed a crime of violence or a non-forcible sex offense.
- Comply with all Clery Act and VAWA Section 304 regulations.

Steps to Prevent Sexual Harassment/Violence and Correct its Discriminatory Effects on Reporting Party and the Community

Education and Prevention

- Provide mandatory training for those implementing resolution procedures, including on the institution's applicable policies and procedures and how to handle Title IX-based reports and sexual harassment.
- Provide training on sexual harassment/violence education and prevention in accordance with Title IX and VAWA Section 304 (see ATIXA Prevention/Training Checklist for details).
- Include information about Title IX in the curriculum and implement that in general education courses for all undergraduate students.
- Encourage students to report incidents of sexual misconduct, by providing amnesty to reporting parties if they were involved with collateral alcohol and/or other non-violent violations of campus policy.
- Publish specific sexual violence materials for policies, rules, and resources, including in the employee and student handbooks, manuals, website, and brochures.
- Include information on what constitutes sexual harassment/violence, what to do and how to report, information for resources, how to contact the Title IX coordinator, and measures the school will take in materials and the implementation of policies and procedures.



Remedies and Enforcement

- The university will take immediate action to eliminate hostile environments, prevent recurrence, and address any effects on the reporting party and the community.
- The university will take immediate steps to protect reporting parties even before the final outcome of investigations, including prohibiting a responding party from having any contact with the reporting party. Steps should minimize the burden on the reporting party while respecting the (due process) rights of the responding party, unless there is a direct conflict, in which case Title IX protections control.
- Remedies for the reporting party might include, but are not limited to, no-contact orders, transportation assistance, campus escorts, ensuring parties do not attend the same classes if possible, moving either or both parties to a different residence hall, counseling services, advocacy, medical services, academic support services, course withdrawal without penalty, review of resolutions, etc. Remedies should be provided at no cost to the reporting party.
- Listing of available resources for counseling, advocacy, and support.
- Remedies for campus student populations might include counseling services, on-call victim assistance, policy review, educational, awareness and prevention programs, Title IX coordinator training, school law enforcement Title IX training, and other employee Title IX training.
- The university will have policies and procedures to protect against retaliatory harassment, including how to report any subsequent problems.
- Provide notification and assistance in reporting to local law enforcement, including notice that the criminal and institutional processes may be simultaneously pursued.
- The institution will comply with law enforcement requests for cooperation, including temporarily suspending the Title IX fact-finding process while law enforcement gathers evidence. The institution will promptly resume its Title IX investigation once notified that law enforcement has completed its evidence-gathering process.
- The Title IX coordinator reviews all evidence and sexual harassment/violence cases to ensure prompt and equitable remedies.
- The university will create a committee to identify and implement education strategies.
- Issue and review policy statement and all faculty/staff/student resolution procedures to ensure equitable processes and compliance with Title IX.
- Investigations and reports are aligned with Title IX guidelines.
- Respond immediately to all allegations.



APPENDIX 2

TABLE OF CONTENTS

Case Studies²⁸	178
1. Ivan and Juanita: Allegation of Sexual Harassment	178
2. Bill and Sarah: Allegation of Sexual Misconduct	184
3. Dencie and Will: Allegation of Sexual Misconduct	189
4. Amy and Todd: Allegation of Sexual Misconduct	194
5. Anne: Allegation of Sexual Misconduct	199
6. Courtney and Shawn: Allegation of Intimate Partner Violence	201
7. Gwen and Mark: Allegation of Stalking	204
8. Carla and Don: Allegation of Sexual Misconduct	207
9. Sarah, Janelle, and Nev: Employee-Reported Intimate Partner Violence	210
10. Carey and Stan: Allegation of Intimate Partner Violence	213
11. Jeremy and Professor Sanchez: Consensual Student/Faculty Relationship	216
12. Tiffany and Jason: Allegations of Sexual Misconduct/ Intimate Partner Violence	218
Vignettes	225

²⁸ The case study discussion guide immediately following each case study is designed to direct a dialogue of potential Title IX policy violations on your campus. There are numerous factors that might impact your analysis, including the policy definitions used by your campus, whether the campus is public or private, your jurisdictional limitations, and what determinations you make about the credibility and reliability of the parties and witnesses and the information they provide in each case study. The definitions used are drawn from ATIXA's Model Policies. Note that the "answers" provided are not absolutes and some would shift based on the above-listed factors. The "answers" are provided to show how one could analyze certain situations, not necessarily the only way to do so.



1. IVAN AND JUANITA: ALLEGATION OF SEXUAL HARASSMENT

Reporting Party: Juanita Morales — Student
Responding Party: Ivan Petrovich — Student
Investigator: Michelle Goldberg
Employee: John Wang — Assistant director of information technology
Witness: Allen Davis — Student; president of Ivan’s fraternity

Report by: Investigator Michelle Goldberg

Reported by: Juanita Morales

Allegations: Harassment, sexual harassment, policy on computer network acceptable use, and violation of laws (copyright infringement).

I, Michelle Goldberg, met with a female student, Juanita Morales, who was extremely upset. Apparently, Juanita received a picture, via email, that had her face attached to a body with exaggerated breasts. She received the picture while studying at her sorority house. Many sorority members also saw the picture. Juanita was very worried that the picture had been distributed campuswide. Juanita stated that she thought that another student, Ivan Petrovich, was responsible.

I contacted John Wang, the assistant director of information technology, to investigate how the picture originated. We supplied Mr. Wang with the IP address from the originating email. Mr. Wang determined that the picture was sent from the community recreation room of the Lambda Lambda Lambda fraternity house, from on a desktop permanently installed there. However, he could not positively identify who actually sent the picture. The email account was assigned generically by the university (TriLambda@university.edu), as with all Greek Letter organizations, to be used for official organization business, and could be accessed by the fraternity’s executives, who have shared the password broadly within the fraternity. The email was sent at 10:24 a.m. on October 11, when Petrovich was in class, to the sorority’s generic email address. Once received, it was forwarded by sorority members within the sorority, and then externally, to hundreds, if not thousands, of recipients.

Petrovich learned the file had been shared only when he received it via email later on the 11th, and believes that it was stolen from the laptop in his room, where he stored it after copying it off a class shared drive, where he was working on it for an assignment. Petrovich noted that when he attempted to submit the picture for the class assignment, his professor refused to accept it. Ivan then transferred the image to a flash drive so that he could finish it at home on his own laptop. Petrovich noted that he usually signs out of his laptop when he is not using it, but does leave it unguarded while signed in occasionally to go down the hall to use the bathroom or to get some food.

Subsequently, statements were collected from Juanita Morales, Ivan Petrovich, Allen Davis (the Lambda Lambda Lambda fraternity president), and John Wang, the assistant director of information technology.

**Reporting Party's Statement:** Juanita Morales

On the morning of October 11, I was sitting in the common room of the sorority house studying for a quiz with my Big Sis Alice. Another sister came into the room, sat down on the couch, and began checking her email on her laptop. All of a sudden, she started to yell for all of us to come over to her computer and look at what was sent to her from the fraternity next door, Lambda, Lambda, Lambda. The email said, "Greetings new freshman, meet the girl next door." Everyone in the room walked over to the computer as she opened the picture. When I looked at the screen, I was horrified! It was a picture of me and I was totally naked, except it really wasn't me. I mean, it looked like me; it was my face pasted on this body that had these really huge breasts. It was amazing how everyone in the room knew it wasn't me, but they were all laughing at the picture. I was so embarrassed that I ran out of the room in tears. All I could think about was that everyone on campus was going to see this picture and think it was really me, and that I posed for a picture naked. I called this boy named Ivan, because I just knew that the email came from him. At first, he said that it was only a joke, and that I couldn't take a joke, and then he said that he didn't send it.

The next day, as I walked out the front door on my way to a class, several of the brothers from Tri Lambda were standing outside their house and started pointing at me and laughing. I just started crying and ran back to my room. As a result of this incident and quite a number of others, I stopped going to classes and withdrew from one with a lot of TriLams in it. My grades suffered and I stopped going out, because everywhere I went, people would ridicule me. As a result, I contacted the university to file this complaint. I am so upset about this whole thing.

Earlier this semester, Ivan asked me out several times, but I didn't want to go out with him. I know that I wasn't very nice, calling him a total loser in front of his friends, but he was really annoying and he wouldn't stop bothering me. I never really considered him to be my friend, but I can't imagine why he would hurt me or embarrass me like that when he doesn't even know me that well.

Signed: Juanita Morales

Responding Party's Statement: Ivan Petrovich

Juanita is totally blowing this out of proportion! I have never harassed her. Earlier this year, I asked her out a few times and she told me no. Actually, she called me a loser, but hey, I was cool with that. I told her that she didn't know what she was missing, but as far as I know, that is not harassment. I moved on and left her alone.

I still can't believe that she went to university with this. When she was at parties at our house and when she was drinking, she always used to tell me and everyone in the room that she wanted to get a boob job. I just helped her out a little bit. I had this project to do for my media design class, where you had to morph two objects together that did not belong together. I figured that this was the perfect opportunity to give her the boob job she wanted. Besides, she has flashed her boobs in public to many of the brothers when she was drinking. It was only meant to be a joke. I never put



her name on it, so what's the big deal? This is a work of art that I created for my class, not a porn picture or anything.

I only showed my artwork, which by the way is protected by the First Amendment, to a few of my brothers. I know my rights very well, since I am a criminal justice major. In fact, the First Amendment states that *"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."*

I never sent that picture out to anyone, and I have no idea who did. It wasn't meant to hurt anyone, and besides, it's my property and my artwork.

Signed: Ivan Petrovich

Statement of: John Wang , assistant director of information technology

At the request of the Title IX coordinator, I initiated an investigation to determine, if possible, who sent a picture via computer of Juanita Morales, a student at the university, to several members of the Delta Pi Epsilon Sorority. I started the investigation by reviewing the computer use records of Ivan Petrovich. I was able to confirm that someone using the computer port in the common room of the Lambda Lambda Lambda house (a building owned by the university that has our computer network in each room) sent the picture to the Delta Pi common account. I then contacted the president of the fraternity and told him that I needed to inspect the computer in the common room (the residents of the house typically use the computer for printing to the printer in the common room). I found the picture in question had been sent at 10:24 a.m. on October 11 using the TriLam common account, with no evidence of which brother had logged in. The picture was inserted into the email via a flash drive. The image was not stored on the computer's hard drive or transmitted to it, only from it to the sorority.

I then contacted Ivan to inform him that I needed to inspect his laptop relative to my investigation. Ivan allowed me to inspect his laptop and I was able to determine that the picture was saved to his hard drive, but was not sent out via email to anyone. Ivan told me that he created the picture as a joke and part of his media design project, and that he didn't understand what all the fuss was about. He told me that he did not send the picture out and did not allow it to be removed from his laptop. If he does not have his laptop with him, Ivan indicated that it is typically locked in his bedroom, and that he signs out. No one else knows his password.

Statement of: Allen Davis, president, Lambda Lambda Lambda Fraternity

Earlier this semester, a member of our fraternity, Ivan Petrovich, tried to date Juanita Morales, a member of our sister sorority. After she turned him down several times, he stopped asking. Ivan knew Juanita because she has attended most of the parties we've hosted this year. Ivan told me he "liked her style" because she had flashed her breasts a couple of times. What I mean is that she



lifted her shirt, showing her breasts like girls do at Mardi Gras. She was showing everyone. Ivan also told me that she had talked to him about wanting to get breast enlargements. So, after she turned him down, and since he had this project due, he thought it would be funny to generate a computer picture with her head on a body with very large breasts. Ivan is pretty good on computers, so it didn't take him long. He got a picture of her face from Facebook and found a picture to use for her body online.

Once the picture was done, a few of the guys in the house looked at it and thought it was pretty funny. Everyone who looked at it knew it was a joke because everyone knows Juanita doesn't look anything like the picture. Actually, the picture is more like an exaggerated caricature. While we were looking at the picture, someone — not Ivan but I can't remember who — suggested that he send it to the girls in Juanita's sorority. Since we know all the girls there, it seemed like a funny thing to do, especially since they all know Juanita looks nothing like the picture. But we didn't send it out, we just laughed about it. The day after the picture was sent, I got a call from Juanita. She was really angry. She said that she was sure Ivan had done it, and that she was going to get Ivan for doing this. Then Ivan told me he had been charged with harassing Juanita and that I needed to come here and tell people that this was all a joke and that Juanita has blown this all out of proportion. I don't think it's right that she can charge Ivan for what is clearly a mistake and an art project, especially when she has flashed her breasts at our parties and talked about wanting larger breasts.



1. IVAN AND JUANITA: DISCUSSION GUIDE

Issues:

- A. Is this sexual harassment? YES.
- B. Is Ivan responsible for creating a hostile educational environment for Juanita? YES.

Policy Definitions:

Sexual Harassment:

- Unwelcome,
- sexual, sex-based, and/or gender-based verbal, written, online, and/or physical conduct.²⁹

Anyone experiencing sexual harassment in any university program is encouraged to report it immediately to the Title IX coordinator or a deputy. Remedies, education, and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment, and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- objectively offensive that it:
 - unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the university's educational [and/or employment], social, and/or residential program.

Issue A: Is this sexual harassment?

Based on the information Investigator Goldberg gathered, we know that a photo of Juanita's face was pasted onto an image of a body with exaggerated breasts, that the combined image was created on Ivan's computer, was shared with fraternity members in person, somehow got onto the desktop computer in the Lambda, Lambda, Lambda common room, and was sent using the computer port in the common room to each female in Juanita's sorority. The information suggests that Juanita did not give her permission for this, and the fact that she may have flashed her breasts previously or talked about her desire for a breast enhancement is irrelevant. This conduct is both *unwelcome and gender-based*.

Conclusion: Juanita has experienced sexual harassment.

²⁹ Purpose or intent is not an element of sexual harassment.



Issue B: Did the sexual harassment create a hostile environment?

Juanita has described that she stopped studying for a quiz when she initially received the image by email and that she missed class when the fraternity brothers were laughing at her. Her grades have slipped, she has withdrawn from a class, faces constant ridicule and social ostracism. Thus, her ability to participate in or benefit from the university's educational program has been impacted by conduct the effect of which is sufficiently *severe and pervasive to create a hostile environment*. Based on the information the investigator has compiled at this point, Ivan has admitted to creating the picture and showing it to a few fraternity brothers, but denies sending it out to anyone or allowing it to be removed from his computer. The assistant director of IT found the image on the desktop computer in the Lambda, Lambda, Lambda common room and determined that the image was sent out from the computer port in the common room. The assistant director of IT could not determine if the image had been sent from Ivan's computer to anyone via email. You know that someone in the fraternity, unidentified at this time, suggested that Ivan send the photo out to the sorority. You also know that Juanita declined when Ivan asked her out previously, and called him a loser. Moreover, Juanita states that when she called Ivan about the photo, he said it was only a joke and then said he didn't send it. Are you ready to make a finding?

Consider whether Ivan has violated your policy simply by creating the image and showing it to his fraternity brothers, regardless of whether he sent it out. Doubtful.

Based on the information available from Investigator Goldberg's report, would you find Ivan responsible or not responsible for violating the policy on sexual harassment?

Conclusion: Even without determining whether Ivan sent the email out, Ivan's conduct violated the policy by creating a hostile environment. If not for his action, no harm would have occurred.



2. BILL AND SARAH: ALLEGATION OF SEXUAL MISCONDUCT

Complainant: Sarah Stone — First-year student
Respondent: Bill Baker — First-year student
Witness: Andy Stewart — First-year student
Witness: Ted Jones — First-year student; Bill's roommate
Witness: Amy Knight — First-year student; Ted's girlfriend
Contacting Officer: Michael Henry

Responding Party's Statement: Bill Baker

It was the first week of school and the college had a bunch of activities set up for us freshmen. Thursday night, there was a concert on campus, so me and my roommate Ted, the guy down the hall, Andy, and some other kids decided to meet at Andy's room around 8 p.m., have a few beers, and then head to the concert. I had a beer or two, and then these girls showed up. I guess it was around 9 p.m. or so, because we left right after they got there.

The nine of us walked to the concert, but when we got there it was dead, so we decided to go back to Andy's room and hang out. I had been talking with Sarah, who I had just met that night, on the way there; we were getting along pretty good. On the way back, we were all kind of walking with different people, but the same nine of us ended up back in Andy's room.

Some guys brought beer to the room, and I had one. Some people left the room, some stayed, and Sarah and I started flirting pretty hard with each other. At one point, we were leaning on the bed, which was up on blocks, and I knocked it over. I thought it would be funny, so I blamed Sarah for it and she was embarrassed. After a while, most people left, and it was just me, Ted, Ted's girlfriend (Amy), Sarah, and Andy. Ted and I shared a blunt, but no one else wanted any. While we were smoking, Sarah and I would kiss occasionally. Ted and Amy left to go to her room; and me, Andy, and Sarah were watching TV when Sarah and I were starting to make out on Andy's roommate's bed. Andy said he was tired, so Sarah and I went down the hall to my room. I guess it was around 12:30 a.m. or 1:00 a.m.

When we got to my room, we starting kissing and undressing. I took her shirt off and mine, and then she took off her shorts and I took off mine. I put my hand down her underwear and asked her if it felt good, and she said, "yes." We kept fooling around pretty hard, and then we started to have sex. I was on top of her at first, and she was grabbing onto the sheets and bedrail, so I could tell she was still enjoying it. At one point, she was on top of me, but then I got back on top of her. After we finished, she fell asleep pretty fast. I wasn't tired, so I climbed up to my roommate's bunk and watched TV on my laptop. Around 3 a.m., she woke up and asked me if I was going to climb down and sleep with her. I did. Shortly after that, I think she got up and went to the bathroom.



My alarm went off at 6 a.m. for practice, so I got up and got dressed; she got up too, and put her clothes on and left. Neither one of us really said anything. Later that day, the police showed up and took me to the station to question me.

Reporting Party's Statement: Sarah Stone

On Thursday, my girlfriends and I met for dinner at the cafeteria, and then went back to my room for some drinks. I know we met for dinner at 6 p.m., because that is when I take my medicine, so we couldn't have started drinking before 7 p.m. I got a text from this guy I met named Andy, asking if we wanted to go to his room and then to the concert on campus. I texted him back telling him we would after we finished our drinks. I had three drinks in my room and then we left at around 9 p.m. to go to Andy's. When we got there, I met Bill, who seemed pretty nice, and we started talking. We all decided to go to the concert, but when we got there, there was hardly anyone there, so we decided to go back to Andy's.

As we were leaving the concert, I tripped on the stairs and almost fell. A security guy walked over to me and asked me if I was OK. I told him "yes," and then he asked if I had been drinking. I told him "yes," and he told me to go back to my room and to not have any more to drink.

We went back to Andy's and hung out. A bunch of people went in and out of the room, but I was hanging out with Bill. We were sitting on the floor holding hands and leaning on Andy's bed. I leaned back too far one time when Bill went to kiss me, and almost knocked the bed over. It was pretty embarrassing, and Bill made a joke about it. After a while, there were only a few of us left, and Bill and his friend Ted smoked a joint. I didn't want any. After that, it was just me, Bill, and Andy in the room watching TV. Bill and I were kissing on Andy's roommate's bed. Andy asked us to leave because he was tired, so we went to Bill's room.

When we got to Bill's room, we started kissing and making out. At one point, Bill put his hands down my pants, and asked me if it felt good. I really didn't know what to say, so I said, "yes." The next thing I knew, we were on the lower bunk, naked, and he was on top of me and inside of me. The next thing I remember after that was waking up. He was on the upper bunk on his computer. I asked him why he was up there, and he jumped down and laid down next to me. I think I got up one time to use the bathroom, but I am not sure. His alarm went off around 6 a.m., and he said he had to get up to go to practice. I grabbed my clothes and cell phone, and got out of there as fast as I could. I went downstairs, and found the closest emergency phone and called the police to tell them what had happened to me.

Statement of: Andy Stewart, first-year student

I had a few kids over to my room before the concert, and we were just hanging out drinking a few beers. My friends Bill and Ted came over, and then I texted this girl I had met, Sarah, to see if she wanted to come over. She said she would after she finished her drink and then she and her friends stopped by. I guess it was close to 9 p.m. or so.



She and Bill were talking, and then we all decided to go to the concert shortly after they arrived. It sucked, so we decided to go back to my room. Some guy brought some beer because we ran out; I don't know if Bill or Sarah had any. At some point, my bed got knocked over — I think Sarah did it.

After a while, most people left, and Ted broke out a blunt and he and Bill smoked it. Me, Ted's girlfriend, and Sarah didn't have any. Ted and his girl took off and left the three of us. Bill and Sarah were kissing and stuff, so I asked them to leave. I guess they went to his room. I went to bed after they left. It was around 12:30 a.m.

Statement of: Officer Michael Henry

I was walking patrol of the freshmen week concert on Thursday on the east end of the amphitheater behind the Union. At approximately 9:40 p.m., I saw a young woman stumbling on the stairs as she was leaving the concert. I approached her and her friends, and, since she had almost fallen, I asked her if she was OK. She said she was. Since she had stumbled on the stairs, and I could smell alcohol on her breath, I asked her if she had been drinking. She indicated that she had.

As she did not appear overly intoxicated, I asked where she was going. She said "back to her dorm," and I told her to go straight there and to not have any more to drink. Had I believed her to be too intoxicated, I would have detained her and/or had her transported. I performed no field sobriety tests.



2. BILL AND SARAH: DISCUSSION GUIDE

Issues:

- A. Is Bill responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard of proof because Sarah was incapacitated when sexual activity occurred and he should have known this fact? NO.
- B. Is Bill responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard because Sarah didn't consent to sexual activity? NO.

Policy Definitions:

Non-Consensual Sexual Intercourse:

- Any sexual intercourse,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue, or finger; and/or
- oral copulation (mouth-to-genital contact),
- no matter how slight the penetration or contact.

Consent:

- Clear, and
- knowing, and
- voluntary (or affirmative, conscious, and voluntary),
- words or actions,
- that give permission for specific sexual activity.

Incapacitation: A state where someone cannot make rational, reasonable decisions because the person lacks the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why, or how” of the sexual interaction).

Issue A: Is Bill responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard because Sarah was incapacitated when the sexual activity occurred and he should have known this fact?

The nature of the allegation suggests that you will apply a three-part analytic: force, incapacitation, and consent. Because there is no information to indicate force was used to obtain sexual access, you will move to the issue of incapacitation. You will ask whether Sarah was incapacitated, and, if so, whether Bill knew, or should have known that she was incapacitated. Evidence of incapacity comes from context clues. The fact that Sarah was drinking and does not seem to remember much of the sexual interaction raises the possibility that she may have been



incapacitated. She described that between 7:00 p.m. and 9:00 p.m., she had three drinks, although you do not know what the drinks consisted of, what their size was, how quickly she drank them, or a number of other factors that would be important in determining whether she was incapacitated. Sometime between 9:40 p.m. and 12:30 a.m., she was exposed to secondary marijuana smoke. Based on the accounts of Andy and Bill, Sarah and Bill got to Bill's room around 12:30 a.m. or 1:00 a.m. Sarah also had taken her medication at 6:00 p.m. Consider whether Sarah could have been incapacitated by the time she and Bill went back to his room. It is possible that the combination of alcohol, medication, and secondary marijuana smoke caused her to become incapacitated by the time the sexual contact occurred?

If you determine that Sarah was incapacitated, the next question is whether Bill knew or should have known that. You have several factors to consider. There is no information suggesting that Bill knew how much alcohol Sarah consumed, or about Sarah's medication and how it may have interacted with other substances to affect her. Information from Officer Henry suggests that around 9:40 p.m., Sarah stumbled but did not appear overly intoxicated. There is some implication that Sarah knocked or nearly knocked Andy's bed over, which could have some bearing on how she was behaving.

Conclusion: Based on the preponderance of evidence standard, you would find that Bill did not know of Sarah's incapacitation, and that a reasonable person would not have known.

Issue B: Is Bill responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard because Sarah didn't consent to sexual activity?

When assessing whether consent existed, you will ask what clear words or actions by Sarah gave Bill permission for the specific sexual activity that took place. Here, both parties indicate that when Bill put his hand down Sarah's pants and asked if it felt good, she responded "yes." Although Sarah told the investigator that she did this because she didn't know what to say, her positive affirmation means there is insufficient evidence to determine this contact was without consent. Because consent must be assessed at every stage of sexual interaction, you will separately consider whether consent existed for sexual intercourse. Sarah remembers very little, and Bill's account of the intercourse is fairly vague. Investigators likely will want to drill down on the details of Bill's account.

Based only on the information you have at this time, would you determine that there were clear, knowing, voluntary, active words or actions indicating permission to engage in mutually agreed upon sexual activity? Bill claims he could tell that Sarah was "enjoying it" because she was grabbing onto the sheets and bedrail, and was on top of him at one point. Consider whether this indicates clear and active consent for sexual activity. Does Bill's description paint a clear picture of Sarah's response to intercourse?

Conclusion: Based only on the information available, you would likely find Bill not responsible for violating the policy on non-consensual sexual intercourse because of actions sufficient to indicate permission to engage in mutually agreed upon sexual activity. Additional investigation is definitely needed, as this is such a borderline issue.



3. DENCIE AND WILL: ALLEGATION OF SEXUAL MISCONDUCT

Responding Party:	Will Washington — Junior and a resident advisor at Tessera University
Reporting Party:	Dencie Smith — Sophomore transfer student at Tessera University
Witness:	Kim — Student at Tessera; Dencie’s roommate; is dating Alex
Witness:	Alex — Student at Tessera; Will’s neighbor; is dating Kim

Reporting Party’s Statement: Dencie Smith

I met Will Washington in October at the campus dining hall and on November 15, he raped me in his room. I knew Will was an RA, and he seemed nice enough, so I gave him my number. He started coming over to my room, just kind of hanging out with me and my roommate Kim and some of his friends. I liked Will as a friend, but I knew I didn’t want a relationship with him. I kissed him a few times and we made out a little, but I kept telling him that was as far as it was going to go. I usually made sure there were a lot of people around, like my roommate Kim and some of his teammates. I was a little afraid of him because he is such a big guy, and I heard he has a pretty bad temper.

The last time we were together before the rape, we were in my room watching movies. It was getting late and everyone had left except Will and Kim. Will was getting pissed that Kim was still there, so I asked her if she would step out for a bit, but not to go too far or for too long. So after Kim left, Will turns out the lights and starts taking his clothes off. I kept telling him not to, but he wasn’t listening to me. He said he wasn’t going to bother me, but since it was late, he was staying over and he wanted to get comfortable. I had been sitting up in my bed when he got onto the bed and wanted me to lay down with him. I said “no,” but he began to raise his voice, so I did. I felt him reach over and try to touch me, but I kept moving away. I kept telling him not to, but he kept trying. He told me he didn’t want to have sex — that he just wanted to rub against me. I was scared to death, so I just lay there. He got on top of me, pinned me down, and started rubbing against me. Just then, Kim came back in the room. He got off me, but stayed in bed and went to sleep. The next day, he was gone when I woke up.

A couple days later, he texted to invite me to his room. I wanted to see his dorm since I wanted to live there next year. I told him nothing was going to happen between us, and he swore that he wouldn’t touch me if I didn’t want him to. I walked to his place. Because he’s an RA, he doesn’t have a roommate. He offered me a drink and gave me a pair of his boxers to change into... “to get more comfy.” His voice was raised when he told me he wanted me to change, so I did. We started to watch the movie and he was good for about an hour, but then he started to bite my neck. I told him to stop, that nothing was going to happen; he said “OK,” but kept trying. Then he penetrated me with his finger. Even though I tried, I couldn’t stop him. Eventually, he wanted to have intercourse. I said “no” many times, but he kept going. I was hitting him and saying “no,” but he kept on ‘til he was done. Then he rolled over and went to sleep. I cried a little and went to sleep too ‘cause it was too late to catch the bus.

When his alarm went off at 6:30 a.m., I woke up too. Will said he had to go meet with a study group, so I had to leave. It was cold outside, so I asked if I could stay there ‘til 8:00 a.m., but he said “no.” He



said he didn't know me well enough to leave me in his room with his stuff. That's also when he told me that we could never do this again because he had a serious girlfriend at home. I left when he did and walked back to my room without a coat. I went back to my room, cried a little, and took a shower. I felt so ashamed about what happened and I needed to wash this whole thing away. I called my sister the next day and she told me to call the police. I couldn't do it then. I knew Will was an RA and was really well liked; plus, Tessera is a small school where rumors spread really quickly and everyone seems to know everyone. I was also scared about what he might do to me or my friends if I reported this.

I just wanted to forget the whole thing. Eventually I connected with the Counseling Center because everything went pretty bad for me for the rest of the term. It was only after I had been working with a counselor for a while that I got my confidence back and reported this. That's why I am here today.

Responding Party's Statement: Will Washington

I really don't know what this case is all about. I got called into the dean's office just as school started. The dean asked me if I knew Dencie Smith, and at first I said I didn't. Her name didn't mean anything to me because I date a lot of women and it had been a long time since I was with her. I didn't realize who she was until the dean showed me her picture. Then the dean told me that she said I raped her last semester. That @#\$%^ is crazy, because nothing happened between us that she didn't want to happen. I'm telling you the truth! We had sex only one time, but it didn't happen the way she said.

I met her at the campus dining hall and we talked and she gave me her number. The first time I went to her room, she pulled up this website of pictures of her posing. I think she was like a model or something. She was wearing lingerie in most of them, and in some of them, she was only half-dressed. I asked her for one of the pictures, and she emailed it to me. We made out and she was into it as much as I was, but we didn't have sex that night. The next time I came over to Dencie's room to watch movies, I stayed overnight because she asked me to. Her roommate was in the room working on her laptop, and Dencie asked her to leave, I guess so we could be alone. She was laying on her bed, so I took most of my clothes off, except for my boxers, and got into bed with her. We were fooling around, and I could tell she was into it. I started to rub up against her, and the only reason we didn't "do it" was because her damn roommate came back into the room. She wouldn't have sex with me with her roommate in the next bed, so I just rolled over and went to sleep.

On the night she says I raped her, she texted me and asked if she could come over to my room. It was late, but I said "OK." I figured maybe this was her way of picking up where we left off last time without her roommate being around. She got here and I offered her a pair of my boxers to get comfortable. She changed and got onto my bed to watch a movie. We were cuddling the whole time, so when the movie was over, we started kissing; one thing led to another, and we had sex that night. I didn't do anything to her she didn't want me to do.

I think she's just pissed with me because, the next morning, I told her we couldn't do that again, because I have a girlfriend at home I'm real serious with. Also, I asked her to leave the room when I



did, because I had an early morning study group and I didn't know her well enough to leave her in my room with all my stuff. I didn't have time to drive her back across campus, so she had to walk and it was pretty cold outside. I think I saw her maybe one more time after that. I think she's just pissed and is trying to get back at me. I have no idea why she waited so long to do this; but I'm telling you, she's making this stuff up.

Additional Considerations:

- Will contends that Dencie didn't do well in school that term because she's not a great student. She had experienced academic difficulty before meeting him, and she trumped up this violation as a way to offer an excuse for her bad academic performance.
- Will's neighbor Alex will testify that he did not hear any noises coming from Will's room; also, that Will continued to hang out with Dencie for a while after the incident because she was helping him with a paper.
- Kim will testify that Dencie did ask her to leave their room, but that she didn't seem to be upset. Kim dates Will's neighbor, Alex, and Dencie thinks Kim is lying just to keep things cool between her and Alex.
- Dencie has brought this complaint against Will. She has asked that her counselor be present as a support person. She and Kim are no longer friends, so she does not want to have Kim contacted as a witness. Will has asked investigators to meet with Alex to testify regarding what he may have heard that night. Should any additional witnesses be contacted?
- What are the key issues surrounding the question of effective consent? Did Will's behavior violate the conduct code? Did Dencie's earlier behavior constitute consent for Will's subsequent behavior? More importantly, did Dencie's complaint meet the university's preponderance of evidence standard of proof?
- Is this a case of "he said/she said," or is there a more clear-cut set of issues here? Does Will's treatment of Dencie in his room on "the morning after" affect the outcome of your decision-making? Should Dencie be judged negatively for making poor choices, like going to Will's apartment?
- The campus newspaper reported a rumor that the responding party has been involved in three incidents of sexual assault. About that you know that one incident is the case at hand.
- You also know that:
 - An anonymous report was received while the respondent was a first-year student, alleging similar actions to the complaint at hand. No investigation was done, and no action was taken; and
 - The respondent was accused as a sophomore as well. The alleged victim has transferred to another school. At a campus hearing, the responding party was found not responsible on facts substantially similar to those of reporting party in the complaint at hand.



3. DENCIE AND WILL: DISCUSSION GUIDE

Issues:

- A. Is Will responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard of proof because he used force to gain sexual access? YES.
- B. Is Will responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard because Dencie didn't consent to sexual activity? YES.

Policy Definitions:

Non-Consensual Sexual Intercourse:

- Any sexual intercourse,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue, or finger; and/or
- oral copulation (mouth-to-genital contact),
- no matter how slight the penetration or contact.

Consent:

- Clear, and
- knowing, and
- voluntary (or affirmative, conscious, and voluntary),
- words or actions,
- that give permission for specific sexual activity.

Issue A: Is Will responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard of proof because he used force to gain sexual access?

The nature of the allegations suggests that you will apply the three-part analytic: force, incapacitation, and consent. The first question in the analytic is whether force was used to gain sexual access. Here, you are presented with two very different accounts of what occurred in Will's room and credibility will be a vital part of your analysis. Dencie's description indicates elements of physical force, as she described that she "tried" but "couldn't stop" Will from penetrating her with his fingers before sexual intercourse. Dencie's description also indicates elements of intimidation, as she described Will's raised voice and propensity for sexual aggression based on their previous interaction in her room. Will's description is vague but states, in general, that Dencie wanted the sexual contact. Other relevant information may include the fact that Alex didn't hear any noises coming from Will's room, which may go to how loudly Will spoke to Dencie, and the two previous allegations against Will involving actions similar to this allegation. If the two previous allegations



were good-faith allegations, those are a valid consideration in the immediate case. There is sufficient information to conclude that Will used force to gain sexual access, assuming that you find Dencie's account credible. Hopefully, you were not influenced by the many red herrings in this scenario, chiefly the information about Dencie's modeling photos, the fact that Dencie went to Will's room after a previous bad encounter, or Will's inconsiderate treatment of Dencie in the morning.

Issue B: Is Will responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard of proof because Dencie didn't consent to sexual activity?

Although Will gave Dencie a drink, there is no information to suggest that Dencie's incapacitation is at issue, therefore you will move to the third question in the analytic: What clear words or actions by Dencie gave Will permission for the specific sexual activity that took place? Again, credibility will be important in making your determination. If you find Dencie credible, then her description of trying to stop Will from penetrating her with his finger and saying "no" and hitting Will as he had intercourse with her would clearly lead to a violation, as her words and actions indicated that she did not want this sexual contact.

Conclusion: If you find Dencie and her account credible, you would find Will *responsible* for violating the policy on non-consensual sexual intercourse.



4. AMY AND TODD: ALLEGATION OF SEXUAL MISCONDUCT

Reporting Party: Amy Craft — First-year student at Tessera University
University Employee: Julia — Professor, Women and Gender Studies
Responding Party: Todd Martin — First-year student at Tessera University

On April 27, Amy Craft, a first-year student at Tessera, set up a time to meet with her Women and Gender Studies Professor, Julia, for later that afternoon. Upon arriving for the appointment, Julia can see that Amy is very upset and looks exhausted. Julia asks if everything is OK, and Amy asks if she can close the door. Julia gets up, closes the door, and sits back down. Amy blurts out, “I think I was raped last weekend in my dorm room by another student, a friend of a friend named Todd.” Stunned and very concerned, Julia asks what happened. What follows is Amy’s account as provided to the faculty member.

Reporting Party’s Statement: Amy Craft

On Friday, April, 23, I went to an on-campus party. I was doing a lot of drinking and dancing and getting to know people. I had at least four drinks in the first few hours I was there. Then, I met Todd. I remember that he came up to me on the dance floor, and started to dance with me. He was really good-looking, and so was the other guy he was with, Jeff, whom I had met at a different party the week before.

We danced and had a lot of fun, and I remember drinking some more and Todd getting me some Jell-O shots, which were really strong and nasty. I wasn’t feeling well and went into the bathroom, thinking I might throw up. The bathroom was really crowded, so I went outside for some fresh air instead. I sat on the stoop, feeling nauseated. I went over to the bushes and got sick. Todd came over and helped me out. I remember walking home with him and throwing up some more in my bathroom, but nothing else.

When I woke up the next day, his name and number were scrawled on a pad by my sofa, and there was a used condom in the toilet. I got scared, and called him to find out what had happened. I remembered most of what he said about the party, but when he told me that we came back to my room and had sex, I started to cry. I didn’t remember any of it, and was afraid I might be pregnant. Todd assured me that he wore a condom, and asked me out again. I hung up and cried. I told everything to my roommate Sarah, who was sitting on the sofa when I called Todd. She suggested that I call the campus police, but I felt more comfortable talking to you. Please don’t tell anyone...

Responding Party’s Statement: Todd Martin

On the night of Friday, April 23, I went to an on-campus party. There was a band and a lot of alcohol. I got to the party at about 11:00 p.m. and slammed about three beers in the first hour I was there. It was very crowded, and people were dancing. A lot of people already seemed to be drunk. I hung out around the dance floor with my friend Jeff Kwik for a while, until I noticed Amy Craft



dancing. She was really cute, and I had noticed her on campus a few times. I went up to her and we started talking. She seemed a little tipsy and in a pretty loose mood. We talked for a while, and I think I got her about two or three beers over the next hour. I didn't have anything more to drink because the three beers I slammed were doing the trick just fine.

Around 1:00 a.m., somebody started passing out Jell-O shots spiked with grain alcohol. I didn't want to mix beer and liquor, but Amy had a few shots. We danced a lot, and then I got her a few more Jell-O shots. She went off to the bathroom, and after that I couldn't find her, which really bummed me out. I waited around to see if she would show up again, but she didn't. I took off and started to walk back to my residence hall. As I left the party, I heard someone vomiting. I looked over and saw Amy in the bushes throwing up. I went over to help her, and she seemed to be in pretty bad shape. I offered to take her home, and she told me her dorm and leaned on my arm.

When we got to her dorm, I helped her inside, and was about to leave, but she asked me to come up to her room, just to make sure she got there. I took her upstairs, opened the door for her, and let her in. She asked me to get her a glass of water, and I did. I started to take off again, but she asked me not to go. When I turned around, she kissed me, hard. We kissed for a while, but she wasn't feeling well and went into the bathroom again. When she came out, she said she felt better, but tired. She lay down and we kissed some more. I started to massage her back, and she passed out. She came to about 20 minutes later, and started to kiss me and fondle me. She took off her shirt, and all of my clothes. I started to kiss her all over, and she said she wanted to lay down again. I asked her if she was OK, and she said she was. I asked her if she had a condom, and she said she had one in her dresser. I went to get it, and when I got back to the couch, she was out again.

She woke up after about 20 minutes, and I suggested that she just go to sleep. But, she said she felt much better, and started to give me oral sex. After a while, she put the condom on me and we had sex. It was great. She was really wild, and liked to be on top. Afterward, we talked until the early morning, and I gave her my number and left. The next day, she called me to ask me why my name was on the pad by her sofa. I told her about meeting her at the party, and about our evening together. She seemed to get upset, and said she remembered meeting me at the party, but nothing else. I asked if she ever wanted to get together again, and she hung up on me.

Additional Considerations:

- Todd knew that Amy was pretty drunk, although Todd was unsure of how much alcohol Amy had consumed.
- Todd remembered that when Amy went into the bathroom in her room, she came back smelling like she had just brushed her teeth.
- Todd believes that Amy was fully alert and conscious during the sex. He had been feeling badly, but Todd thought Amy threw up a lot of the alcohol. Amy kind of passed out/went to sleep twice when they were fooling around, but after the second time, Amy seemed to be feeling much better.



- Amy initiated all the sexual contact with Todd, put the condom on him with no difficulty, and was an active participant in the sex, both physically and verbally.
- Todd drinks frequently and copiously. He has a high tolerance for alcohol.
- It takes at least eight beers to get him really drunk.
- Todd had a full stomach when he got to the party.
- He did not drug Amy.
- Todd served Amy at least two beers and four Jell-O shots over the course of three hours. Amy believes she consumed four or five beers, and at least two Jell-O shots.
- Todd did not bring his own condom. He used Amy's, which was in her dresser. She told Todd it was there.
- In Todd's opinion, Amy was not incapacitated.
- Todd left Amy's room at 6:00 a.m.
- Physical evidence in the form of PERK results proved sex with Todd.
- There were no signs of any illegal drugs in Amy's system.
- Amy had a condom in her dresser and now it is gone. She does not recall telling Todd that it was there.
- Amy recalls throwing up in the bathroom, but does not recall brushing her teeth.
- Amy does not recall putting the condom on Todd, or engaging in any sexual activity with Todd, or talking with him afterward.
- Amy has been drunk before, but nothing like this has ever happened.
- Amy called the police station at 1:30 p.m. Her call was referred to Lt. Discov.
- Lt. Discov noted that Amy is experiencing bad dreams and eating disturbances that he believes are consistent with those of others who have experienced significant trauma.
- Lt. Discov refers to Amy's condition as "black time." He asserts that it is possible for students to consume enough alcohol that they black out mentally, but not physically. That would explain why Amy recalls nothing, but Todd says she was an active participant.
- Neither party has a criminal or disciplinary record.



4. AMY AND TODD: DISCUSSION GUIDE

Issue: Is Todd responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard of proof because Amy was incapacitated when the sexual activity occurred and he should have known this fact? YES.

Policy Definitions:

Non-Consensual Sexual Intercourse:

- Any sexual intercourse,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue, or finger; and/or
- oral copulation (mouth-to-genital contact),
- no matter how slight the penetration or contact.

Consent:

- Clear, and
- knowing, and
- voluntary (or affirmative, conscious, and voluntary),
- words or actions,
- that give permission for specific sexual activity.

Incapacitation: A state where someone cannot make rational, reasonable decisions because the person lacks the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of the sexual interaction).

Issue: Is Todd responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard of proof because Amy was incapacitated when the sexual activity occurred and he should have known this fact? YES.

The nature of the allegations suggests that you will apply the three-part analytic: force, incapacitation, and consent. Because there is no information to indicate that force was used to obtain sexual access, you will move to the issue of incapacitation. You will ask whether Amy was incapacitated, and, if so, whether Todd knew or should have known that she was incapacitated. Evidence of incapacity often comes from context clues. The creation of a timeline of events will be important for your analysis, especially given the intermittent nature of sexual contact. You know that Amy initiated all the sexual contact with Todd, was an active participant in sex both verbally and physically, told Todd where the condom was, and put it on him with no difficulty. Although it



certainly sounds like she was consenting through words or actions, remember that there is nothing an incapacitated person can do or say to consent to sex.

The facts indicate that Amy was *incapacitated*. She consumed a lot of alcohol, vomited repeatedly, passed out at one point, and has no recollection of any sexual activity occurring or any later conversation with Todd. She was unable to make considered decisions or to understand the who, what, when, where, why, or how of the sexual interaction.

Having determined that Amy was incapacitated by alcohol, the next question is whether Todd knew or should have known of her incapacitation. From Todd's statement and the Additional Considerations, you know that Todd did not believe Amy was incapacitated. You will consider, however, whether he *should have known*. Although Todd is unaware of exactly how much alcohol Amy had, he was aware that she was tipsy when they began dancing, and that she subsequently consumed at least two beers and four Jell-O shots over three hours. He is also aware that she had vomited and was in "bad shape" when they left the party. He knows that she went into the bathroom at her dorm after saying she wasn't feeling well, and when she came out she had brushed her teeth and said she felt better. He also indicated that she passed out shortly before their initial sexual contact. During this initial period of sexual activity, Amy was incapacitated and Todd should have known that based on context clues. Remember, it is irrelevant that Amy voluntarily consumed the alcohol and Jell-O shots.

What about the second period of sexual activity, 20 minutes later, when Amy said she felt better and performed oral sex on Todd before having sexual intercourse, including with her positioned on top? Knowing that Amy had passed out only 20 minutes earlier, in combination with all the additional information Todd had about her consumption and vomiting, Todd should have known that Amy was still incapacitated at that time. We wouldn't expect Todd to be an expert on how the body metabolizes alcohol, but common sense would lead a reasonable person to this conclusion.

Conclusion: Based on the preponderance of evidence standard, you would find that Todd should have known of Amy's incapacitation and would find Todd *responsible* for violating the policy on non-consensual sexual intercourse.



5. ANNE: ALLEGATION OF SEXUAL MISCONDUCT

Reporting Party: Anne Chen — Student at Citron College

Anne Chen, a student at Citron College, was an ardent basketball fan. Last term, she attended a basketball game with a group of friends. At the game, she met three young men who were fraternity brothers. Anne had friendly conversations with the men, who shared a container of rum and coke with her.

The young men invited Anne and her friends back to their fraternity house for a post-game party and to talk about the “big win,” but her friends declined. Anne decided to go with the young men. The party lasted for hours, and a considerable amount of alcohol was consumed by everyone, including Anne.

Anne eventually accompanied the three men to their upper floor room for further conversation, and to listen to music. She continued to drink alcohol there, and became so intoxicated that she occasionally “passed out” for several minutes at a time. Anne contends that she was raped by the three men while she was not fully conscious.

Anne left the fraternity house early in the morning to return to her dorm. She did not call the police or seek medical attention. Ten days later, she described the incident to a friend, who convinced her to file a report with the Dean of Student’s Office at the college.

During follow-up interviews, two of the three men denied having any sexual contact with Anne. The third admitted having sex with her, but stated that it was “definitely consensual,” and that Anne was fully conscious during that time.

All three men were charged with sexual assault. A lawyer representing all three men wrote to the dean, stating that the charges by the college must be dropped because there were pending criminal charges, and that would place the men in double jeopardy.

Anne does not want to testify at the conduct hearing if it means that she will have to confront the three men, but she is willing to submit a written statement.



5. ANNE: DISCUSSION GUIDE

Issue: Did the three men violate the policy on non-consensual sexual intercourse by having sex with Anne while she was not fully conscious, based on a preponderance of evidence standard of proof?
YOUR FINDING WILL BE BASED ON CREDIBILITY.

Conclusion: Anne states that she became so intoxicated that she occasionally passed out for several minutes at a time and was raped by the three men while she was not fully conscious. Two of the men denied having sexual contact with Anne, and one stated that he engaged in consensual sex with Anne. You have very limited information, but if you had to make a finding at this point, it would be based on how credible you find the parties and the information they provided.

Future Directions: Investigators will want to conduct full interviews with each of the parties and consider the role of each of the men as a witness in each others' cases. Investigators may wish to talk with the friends who were with Anne at the game, as well as with individuals who attended the party and who interacted with or saw Anne and the three males. Investigators also may wish to talk with the friend to whom Anne described the incident 10 days after it occurred.



6. COURTNEY AND SHAWN: ALLEGATION OF INTIMATE PARTNER VIOLENCE

Reporting Party:	Courtney — Rising senior on women’s soccer team
Responding Party:	Shawn — Rising senior on men’s baseball team
Witness:	Jenna — Courtney’s roommate
First Responder:	Women’s soccer coach
Investigator:	Deputy Title IX coordinator

For the last three years, Shawn, a rising senior outfielder on the men’s baseball team, has been dating Courtney, also a rising senior and team captain on the women’s soccer team. Their relationship is quite serious and the two have even discussed marriage, although Courtney is hesitant to commit until Shawn controls his drinking and his behavior when he is drunk. When sober, Shawn is engaging, light-hearted, and easy-going, but when he drinks heavily, he becomes aggressive, destructive, and prone to yelling at people and getting into fights. His teammates typically keep a close watch on Shawn if he goes out or is at a party, and occasionally it takes two or three of them to keep Shawn under control. They know that Shawn cannot afford any more problems because he was suspended the previous year for his third alcohol and disruptive behavior incident. During his suspension, Shawn received some counseling, and it seems to have helped him drink less and make more mature decisions; at least until Friday night.

Three days ago (Friday), Courtney and Shawn got into a very loud and public argument at breakfast in the athletes’ dining hall. At the end of the argument, Courtney told Shawn that she was cancelling their plans for that night and that they both needed some time to calm down; Shawn agreed.

That night, Shawn and some of his teammates played X-box in Shawn’s room and began drinking a few beers (Shawn is 22 years old). One of the teammates brought whiskey, and Shawn made himself a very strong whiskey and coke. His friends left for a party, and Shawn, who told his friends that he was just going to bed, continued drinking. As he became very drunk, he began to get worried, frustrated, and angry about the state of his relationship with Courtney. He felt he really needed to talk to her.

At about 1:00 a.m., Shawn made his way over to the off-campus apartment Courtney and her roommate were renting nearby, banged on the living room window, and yelled that he wanted to talk to Courtney. Courtney refused to let him in because he was both drunk and angry. Shawn threatened to break down the door if she did not let him in. Courtney told him to go home and go to bed, and that they could talk in the morning. Shawn yelled and cursed, then started to cry, saying that he couldn’t live without Courtney and he just needed to talk. Courtney still refused to let him into the house, and Shawn became very angry, punching a window near the door and breaking it. Courtney told Shawn that he was out of control and she was going to call the police.



She pulled out her phone, but before she could dial, Shawn broke the rest of the window near the front door, reached in, unlocked the door, threw it open, and charged at Courtney, screaming at her to “put the f-ing phone down!” Courtney screamed and ran to her bedroom with Shawn chasing her. Courtney tried to close the door, but Shawn wedged himself between the door and the jam, and forced the door back open, calling her a “crazy bitch.” Courtney backed away, and they continued to yell at each other. Shawn charged at Courtney, reaching for the phone, but Courtney kept her arm extended and away from him. The two wrestled as Shawn tried to reach the phone. When he couldn’t, Shawn reached for Courtney’s neck, and put his hand around the front of it, still trying to get to the phone. The two hit and toppled onto the bed, with Shawn on top, his hand still on her neck, while he reached for the phone with his other hand. Courtney could not breathe well and slapped/punched Shawn’s face and kicked him with her legs, which seemed to bring Shawn back to his senses. He quickly released Courtney, got off the bed, and said he was so sorry and that he did not know what came over him. He told her that a phone call to the police would end his baseball career and his time at the school. Courtney, sobbing, screamed at Shawn that he needed help and that he could not keep doing this. Shawn, also sobbing, apologized again and left.

Courtney’s roommate, Jenna, who had barricaded herself into her own bedroom when Shawn burst through the door (unfortunately her cell phone was in the kitchen), told Courtney to call the police. Courtney, however, called the person she trusted the most — her coach. Her coach rushed over and convinced Courtney that Shawn needed help. Courtney gave the coach permission to call the police.

The police arrived, took statements and photos of the damage to the house and the bruising and marks on Courtney’s body, then arrested Shawn. The next day, in a conversation with the school’s deputy Title IX coordinator/investigator, the soccer coach indicated, to the obvious surprise of the deputy coordinator, that this was the third time Shawn had done something like this; the previous two times, the coach said she simply “worked the situation out” with an assistant coach on the baseball team.

Questions to Consider:

1. How does this case involve Title IX?
 2. What issues of jurisdiction arise?
 3. Given the pending criminal prosecution, how would you address this situation?
 4. From the perspective of an institutional response, what went wrong in this situation?
 5. Who should be interviewed in the course of the institution’s investigation?
 6. What responsibility (if any) does the institution have to investigate the first two incidents?
 7. As a Title IX coordinator, how do you best address the way the soccer coach and the baseball coach handled the previous two incidents?
 8. What interim remedies would you provide?
 9. What long-term remedies appear to be appropriate in this situation?
 10. What is the institution’s Title IX obligation pertaining to Courtney’s roommate?
 11. Who else at the institution do you need to inform of the situation? Given the profile of the participants, who do you keep apprised of the progress of the investigation?
-



6. COURTNEY AND SHAWN: DISCUSSION GUIDE

Issue: Did Shawn violate the policy on intimate partner violence based on a preponderance of evidence standard of proof? YES.

Policy Definition:

Intimate Partner Violence:

- Violence between those in an intimate relationship toward each other.
 - Examples include:
 - Physical abuse by a spouse or partner such as hitting, slapping, pushing, or strangling.
 - Sexual violence by a spouse or partner.
 - Extreme verbal abuse by a spouse or partner.

Conclusion: In addition to the issues of unlawful entry and damage to property, you will consider whether Shawn engaged in intimate partner violence. Courtney and Shawn were in an intimate relationship, so if you find Courtney's account credible as corroborated by physical evidence and her roommate's account, you will find Shawn responsible for violating the provision on intimate partner violence because he damaged Courtney's property and charged at and choked her.

Future Directions: In addition to interviewing the parties, investigators will want to interview Jenna and request the police report and photos. Investigators will also want to interview the soccer coach, Courtney, and others about the previous incidents.



7. GWEN AND MARK: ALLEGATION OF STALKING

Reporting Party:	Gwen — Freshman student at Tessera University and Holly's roommate
Responding Party:	Mark — Student at Tessera University
Witness:	Holly — Freshman student at Tessera University and Gwen's roommate
Referring Party:	Resident Assistant

You are an Investigator at Tessera College. It's the second week of school and one of the resident assistants in Cedar Hall, an all-freshman residence hall, refers Gwen, a student, to meet with you. Gwen comes to your office and shares her story and recent experiences on your campus.

She is an in-state freshman who lives in Cedar Hall with her roommate, Holly. She loves Tessera College so far, but she has been having some strange things happen that she's worried about, and she doesn't know who to talk to. She told Campus Public Safety about her concerns, but they said they couldn't really do anything.

The first week of school, Gwen was studying in Fleming Library on campus. She went to check out a reading that was on reserve at the front desk of the library for one of her classes, Introduction to Economics. The next day, she got an email sent to her campus email address that said: "Hey Gwen, its Mark from the library. I took Econ when I was a freshman, so if you need any help just let me know."

Gwen was surprised to get this email, but she didn't want to be rude, so she wrote back, "Thanks, but I think I got it so far lol!" She didn't recognize the name on the email account, Mark Noy, but she assumed that it was the guy who worked at the library. Mark wrote back and said, "Cool. How do you like Tessera so far? One of my buddies is having a party after the game Saturday; you should come. It'll be a blast." They emailed back and forth a few times, and Mark sent her pictures of himself, but Gwen eventually stopped responding because she started to get a little creeped out.

One night, Gwen was at a party with a guy named Carter, whom she has been seeing for a few weeks. Gwen, remembering her evening studying in the library, noticed that Mark was at the party. Doing her best to avoid Mark, Gwen circled the party, saying "hello" to friends and catching up with acquaintances she had not seen in a while. As the evening progressed, a few people expressed concern about Mark. Friends told her that Mark went up to Carter and started asking questions about her. The next day, Gwen received a friend request from Mark on Facebook, but she hasn't responded. She doesn't want to be friends with him, but she doesn't want to seem like a jerk either.

Gwen, leaving Math with her roommate Holly, saw Mark standing outside the Math building by himself, staring at her. She sort of waved but kept walking. There have been some other weird things happening, and Gwen is starting to get a little nervous. She keeps finding notes on her car, which she parks on campus; they just have hearts and arrows on them. Someone wrote, "Gwen u r so hot" on the whiteboard outside her room, and drew the same hearts and arrows she had been



seeing on her car. Last week, she got a text on her cell from a blocked number that said, “Gwen I luv you.” She freaked out and wrote back “Who is this?? Leave me the fuck alone.” The person texted back, “Fuck you, you ugly bitch.”

Gwen shares with you that she doesn’t want to make a big deal about her situation. She simply wants it to stop. Although she can’t prove it, she feels like it must be Mark. She has been avoiding Fleming Library and has been having friends walk her to and from her car at night. Other than Public Safety, her RA is the first person to hear of these concerns.

Questions to Consider:

1. Now that Gwen has shared her story, how do you proceed?
2. What is your top priority in this case?
3. When you consider that Gwen is scared for her safety on campus, what type of things should you do to assure her safety?
4. What should you do in regards to the previous incidences? Should you report them to anyone? Should you refer Gwen to any other departments on campus?
5. Knowing that follow-up with Mark will be necessary, what types of questions do you have for him?
6. Are there others in this case, besides Mark and Gwen, whom you feel you should speak to?



7. GWEN AND MARK: DISCUSSION GUIDE

Issue: Did Mark violate the policy on stalking based on a preponderance of evidence standard of proof? NO.

Policy Definition:

Stalking 1:

- A course of conduct,
- directed at a specific person,
- on the basis of actual or perceived membership in a protected class,
- that is unwelcome, AND
- would cause a reasonable person to feel fear.

Stalking 2:

- Repetitive and menacing
- pursuit, following, harassing, and/or interfering with the peace and/or safety of another.

Conclusion: The information you have at this point certainly indicates that Mark may be stalking Gwen, but further investigation is required to determine if it is Mark leaving the notes and texting her. If you had to make a finding at this point, you would find Mark not responsible for both forms of stalking.

Future Directions: In addition to interviewing Mark, investigators will want to look into the physical evidence and the text Gwen got from a blocked number to see if they lead back to Mark. Investigators may wish to interview Holly about seeing Mark outside of class and the note on their whiteboard as well. Investigators may also wish to see if there is any available video surveillance that could show who left the notes on Gwen's car or wrote on her whiteboard. If these things link back to Mark, he may be responsible for violating the stalking policy, as his conduct is unwelcome and could cause a reasonable person to feel fear. Regardless of the results of this analysis, investigators may wish to consider whether Mark contacting Gwen violated the terms of his employment.



8. CARLA AND DON: ALLEGATION OF SEXUAL MISCONDUCT

Reporting Party: Carla — Student
Responding Party: Don — Student

First-year students Don and Carla met in honors English. They studied together and became close friends. They had a great deal in common and spent hours talking about their families, music, movies, and sports. As the weeks rolled on, their friendship grew, along with their respect and affection for each other. Don finally asked Carla out on a date of pizza and movie. After the movie, they went to the local bar and had beers while they discussed the movie. Over the course of the next few hours, they consumed two pitchers of beer.

Carla was quite tipsy, and Don wanted to make sure she arrived at her apartment safely, so he accompanied her to her door. Carla asked Don if he would like to come in to see how she had decorated. Don eagerly agreed. They sat on the couch and talked about how much fun they had that evening, and how glad they both were to get to know each other better. Carla told Don how easy it was to feel comfortable with him. Don was delighted to hear this and put his arms around Carla and kissed her. She eagerly kissed him back. They continued to kiss and touch, and Don gently pushed Carla back on the couch. Carla said, "I think things are going too fast." Don replied, "We won't do anything you are not comfortable with."

The two continued kissing with increasing passion. Don, tentative at first, began to unbutton Carla's blouse. She brushed his hand aside but continued kissing him. A short time later, he reached under her blouse and fondled her breast. Carla did not stop him. Don told Carla, "I really want to make love to you." Carla did not respond. Don took this as consent and proceeded to remove Carla's panties (she was fully clothed otherwise). They had intercourse. Don cuddled Carla, who cuddled back but did not say a word. Since it was getting late and Carla was so quiet, Don gave her a kiss, told her he'd call her, and left. In the following days, Carla refused to take Don's calls and did not respond to his text messages.

Several weeks later, Carla attended a date rape seminar and felt that she had experienced the same type of behavior as described in the case study presented there. She went her advisor to ask what she should do. They called the campus police and subsequently met with a female officer. The officer reluctantly told Carla that since several weeks had passed, there would be no evidence that would support pressing criminal charges, but she encouraged Carla to file a complaint with the campus conduct officer. Carla met with the assistant dean and made a formal complaint.

Carla's Story:

Carla, who is from a small town, was excited to break out of the mold of her older sisters and go away to college. She is the first person in her family to attend college. Carla's mother warned her about the dangers that lurk for young women "out there." She repeatedly told her not to be "easy," and that a man would never respect her if she "gave in."



Carla really liked Don. They had so much fun together, and she felt that he was a very nice person who liked and respected her. Yet, if that was the case, why didn't he stop when she told him things were going too fast? He knew her family background and how she felt about casual sex. Yet, they still had sex. Was it her fault? Did she have too much to drink? Did she send him a wrong message? Should she have pushed him away so he wouldn't go further? If he really liked and respected her, why didn't he understand her silence and lack of response?

Her mother was right. All men were alike and after just one thing. She knew Don would never respect her now, and she didn't respect herself either. Maybe by holding him accountable for his pushing forward to have sex too soon and not respecting her wishes, he would realize that you can't treat women that way. If only she just didn't still like him so much. She has missed a week of English class because she just can't face him.

Don's Story:

Don was so happy to meet Carla in English class. He and his long-time high school girlfriend had broken up before he came to college, and he had been lonely since arriving there. Carla was a breath of fresh air. She was from a small town and had good values, and she was so much fun to be with.

He had been really looking forward to their date and was a little nervous beforehand, but the evening seemed to go so well. They seemed compatible, and their kissing was so passionate. When Carla told him she thought they were going too fast, he even assured her that they wouldn't do anything she didn't want to do.

Don and his high school girlfriend had sex for the past year, and before her, there had only been one other girl, but he knew how to please a girl, and he wanted to please Carla, too. Although she brushed him aside, she didn't push his hand away when he fondled her breasts under her blouse, so he thought for sure that it was "cool" to go forward to the next step. He took her lack of response as her not wanting to seem too eager. She even cuddled with him after they had intercourse.

So, what went wrong? Why wouldn't she take his phone calls or respond to any of his text messages? Why hasn't she been coming to class? And NOW THIS?! What is going on with this letter about an institutional investigation for alleged non-consensual sexual intercourse?



8. CARLA AND DON: DISCUSSION GUIDE

Issue: Is Don responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard of proof? YES.

Policy Definition:

Consent:

- Clear, and
- knowing, and
- voluntary (or affirmative, conscious, and voluntary),
- words or actions,
- that give permission for specific sexual activity.

Conclusion: The nature of the allegations suggests that you will apply the three-part analytic: force, incapacitation, and consent. Because there is no information to indicate that force was used to obtain sexual access, you will move to the issue of incapacitation. Although the information suggests that Carla was “quite tipsy” after sharing two pitchers of beer with Don over a few hours time, there is no information to suggest that she lacked an ability to make rational, reasonable decisions, and this does not present itself as an incapacitation case. Thus, you will proceed to analyzing whether consent existed for the sexual activity, and will ask what clear words or actions by Carla gave Don permission for the specific sexual activity that took place. You know that when Don initially began to unbutton Carla’s blouse, Carla brushed his hand aside but continued kissing him. When Don reached under her blouse and began fondling her breast, she did not stop him. When Don told Carla that he wanted to make love, she did not respond, and he proceeded. The critical component of the consent definition in this scenario is *active*. The scenario suggests that Carla was silent and passive, and silence is not consent. There is no information to suggest that she consented through words or actions, and based on the available information, you would find Don responsible.

Future Directions: Investigators will want to conduct full interviews with each of the parties to drill down on the details of the sexual interaction. You know that Carla was silent, but how did she respond physically (i.e., Did she pull Don into her, push him away, or lay still?). Investigators will want to review these details, as consent can be given through clear actions indicating permission to engage in mutually agreed upon sexual activity.



9. SARAH, JANELLE, AND NEV: EMPLOYEE-REPORTED INTIMATE PARTNER VIOLENCE

Witness:	Sarah — Administrative assistant at Braeburn Community College and Janelle’s co-worker
Alleged Victim:	Janelle — Employee of Braeburn Community College
Alleged Harasser:	Robert — Janelle’s Partner
Reported To:	Nev — Sarah’s and Janelle’s Supervisor

Sarah, an administrative assistant at Braeburn Community College, approaches her supervisor, Nev, asking if she can speak with her confidentially about one of her co-workers. Nev agrees, and they meet one-on-one in Nev’s office.

Sarah starts by saying that she does not want to get anyone in trouble and that she is only trying to help. She reveals that the matter is very sensitive and involves one of her co-workers, Janelle. Nev immediately asks what is going on.

Sarah says she thinks that Janelle is being physically abused by her partner, Robert. Sarah tells Nev that Janelle seems noticeably withdrawn. Recently, Janelle came to work late, had red puffy eyes, and looked as though she had been crying. When Sarah and others asked Janelle if she was OK, she simply nodded and said she was fine, and that she was just dealing with some personal issues. Sarah shares that she saw Janelle walking with a limp last week and, when asked about it, Janelle told people that she twisted her knee after slipping on some ice in her driveway. Later that same day, Sarah overheard Janelle on the phone saying, “But I’m scared of what he would do if I tried to leave him.”

Sarah shares with Nev that a month ago, Janelle missed a few days of work and returned to work wearing a sling. Janelle claimed that she had sprained her shoulder while working in the yard. Just yesterday, Janelle showed up over an hour late to work and had some swelling around her eye and her bottom lip. When asked, Janelle said that she got up to the bathroom last night in the dark and walked right into the edge of her open closet door. Sarah says that she also heard Janelle crying in the bathroom yesterday. Sarah notes that she has hesitated to raise any concerns or suspicions previously, but she now worries that Janelle’s situation is escalating and that someone needs to step in. Nev thanks Sarah for coming in, for her candor, and her concern. Sarah returns to her desk.

Concerned, Nev pulls Janelle’s employee file. Nev knows that Janelle has been making more mistakes lately, and has missed an unusual amount of time, but feels that Janelle is a good employee who interacts well with students, faculty, and administrators. Whatever is going on, it is really beginning to impact Janelle’s attendance at work. Janelle has taken 10 sick days in the last six weeks, which is more than she used the previous six months combined. Janelle only has one sick day remaining. While normally punctual, Janelle has also been late five times in the last month.



Nev had already planned to address the tardiness issue in her one-on-one with Janelle tomorrow, but given this new information, Nev is unsure of what approach to take. She is also unsure of whether she should share Sarah's concerns with anyone else.

Questions to Consider:

1. What Title IX issues, if any, do you see?
2. What should Nev do at this juncture?
3. Does Nev have an obligation to investigate this matter further?
4. Who at your institution do you need to inform of the situation? Would it change if Janelle admitted she is being abused?
5. If Janelle's work continues to decline and she continues to miss work, do you proceed with typical performance improvement processes?
6. Would it change anything if you knew Janelle's partner also works on campus?



9. SARAH, JANELLE, AND NEV: DISCUSSION GUIDE

Issue: In this scenario, Janelle’s partner Robert is not affiliated with the college, so your response may be limited to offering support and assistance (e.g., counseling, help in applying for a restraining order or in making a police report, etc.) and to excluding Robert from campus. If Janelle’s partner was an employee of the college, the analysis in Case 12 would apply.



10. CAREY AND STAN: ALLEGATION OF INTIMATE PARTNER VIOLENCE (A variation on Courtney and Shawn case study)

Reporting Party:	Carey — Part-time employee of Braeburn Community College and part-time student
Responding Party:	Stan — Employee of Braeburn Community College and part-time student
Witness:	Jenny — Carey's roommate
First Responder:	Carey's supervisor from work
Investigator:	Deputy Title IX coordinator

Stan is a full-time employee in the facilities management department at Braeburn Community College; he is also a part-time student. For the last three years, Stan has been dating Carey, a part-time receptionist in the college's English department, as well as a part-time student at the college. Their relationship is quite serious, and the two have even discussed marriage, although Carey is hesitant to commit until Stan controls his drinking and his temper when he is intoxicated.

When sober, Stan is engaging, light-hearted, and easy-going, but when he drinks heavily, he becomes aggressive, destructive, and prone to yelling at people and getting into fights. His friends usually keep a close watch on Stan when he goes out to a party. It typically takes two or three of them to keep Stan under control when he starts to act up. Stan has had a few problems at work, primarily in response to coming in hung-over or his temper problems; last year he was placed on probation and performance improvement for yelling and cussing at his supervisor. At the prompting of his supervisor, Stan received some counseling, and it seems to have helped him drink less and has allowed him to make more mature decisions.

Three days ago (Friday), Carey and Stan get into a very loud and public argument at the campus's main bus stop. At the end of the argument, Carey tells Stan that their plans for that night need to be cancelled and that they should both take some time to calm down; Stan agrees. That night, some of Stan's friends come over. They drink beer and watch some basketball. One of Stan's friends brings whiskey, and Stan makes himself a very strong, large whiskey and coke. After his friends leave, Stan continues to drink. He begins to worry, and becomes frustrated and angry about his relationship with Carey. He can't stop thinking about their relationship and really needs to talk.

At about 1:00 a.m., Stan makes his way to Carey's apartment, bangs on the living room window, and yells that he wants to talk to Carey. She refuses to let him in because he is both drunk and angry. Stan threatens to break down the door. Carey tells him to go home and go to bed, and that they can talk in the morning. Stan yells and curses, then starts to cry, saying he can't live without Carey and asking to talk. Carey still refuses to let Stan into the house, and Stan becomes very angry. He punches a window near the door, breaking it. Carey tells Stan that he is out of control and threatens to call the police. Carey pulls out a cellphone, but before Carey can dial, Stan breaks the rest of the window near the



front door. He reaches in, unlocks the door, and throws it open. He charges at Carey. Stan bellows at Carey, “Put the fucking phone down!” Carey screams and runs to the bedroom. Stan chases Carey, who tries to close the door between them, but Stan wedges himself between the door and the doorframe. Stan tries to force the door open while yelling, “Open the door, you crazy bitch!” Carey lets the door open and they continue to yell at each other. Carey threatens again to call the police. Stan charges at Carey, grabbing for the phone. Carey keeps her arm extended and tries to back away from Stan. They wrestle as Stan tries to grab the phone. When he can’t reach it, Stan grabs Carey’s neck. He puts his hand around the front of it, still trying to get to the phone. The two fall onto the bed, with Stan on top. His hand is still on Carey’s neck as he reaches for the phone with his other hand. Carey has trouble breathing and slaps Stan’s face and kicks him. This seems to bring Stan back to his senses. He releases Carey, gets off the bed, and apologizes, saying, “I don’t know what came over me.” He adds, “If you call the police, that will get me fired and thrown out of school.” Carey, sobbing, screams at Stan, “You need help! You can’t keep doing this!” Stan, also crying, apologizes again and leaves.

Carey’s roommate, Jenny, who is also a part-time student at Braeburn, barricaded herself in her own bedroom when Stan burst through the door (unfortunately her cell phone was in the kitchen). After Stan leaves, she tells Carey to call the police. Instead, Carey, calls her supervisor from work, a woman Carey sees as a mentor whom she deeply trusts. Over the phone, Carey tells the supervisor about what just happened. The supervisor rushes over and convinces Carey that Stan needs help. Carey gives permission to call the police. The police arrive and take statements from Carey and the roommate. They also take photos of the damage to the house and the bruising and marks on Carey’s body. They arrest Stan at his home. Stan tells the police, “I really only remember bits and pieces of what happened, but whatever Carey tells you, it’s the truth.”

The next day in conversation with the school’s deputy Title IX coordinator, the supervisor indicates — to the obvious surprise of the deputy coordinator — that this was the third time Stan has done something like this.

Questions to Consider:

1. How does this case involve Title IX?
 2. What issues of jurisdiction arise?
 3. Given the pending criminal prosecution, how would you address this situation?
 4. From the perspective of an institutional response, what went wrong in this situation?
 5. Who should be interviewed in the course of the institution’s investigation?
 6. What responsibility (if any) does the institution have to investigate the first two incidents?
 7. How should the deputy Title IX coordinator best address the way the supervisor handled the previous two incidents?
 8. What interim remedies should be provided?
 9. What long-term remedies appear to be appropriate in this situation?
 10. What is the institution’s Title IX obligation pertaining to Carey’s roommate?
 11. Who else at the institution do you need to inform of the situation? Who do you keep apprised of the progress of the investigation?
-



10. CAREY AND STAN: DISCUSSION GUIDE

Issue: Did Stan violate the policy on intimate partner violence based on a preponderance standard of proof? YES.

Policy Definition:

Intimate Partner Violence:

- Violence between those in an intimate relationship toward each other.
 - Examples include:
 - Physical abuse by a spouse or partner such as hitting, slapping, pushing, or strangling,
 - Sexual violence by a spouse or partner,
 - Extreme verbal abuse by a spouse or partner.

Conclusion: In addition to the issues of unlawful entry and damage to property, you will consider whether Stan engaged in intimate partner violence. Carey and Stan were in an intimate relationship, so if you find Carey's account credible as corroborated by physical evidence and her roommate's account, you will find Stan responsible for violating the provision on intimate partner violence because he damaged Carey's property and charged at and choked her.

Future Directions: In addition to interviewing the parties, investigators will want to interview Carey's roommate and request the police report and photos. Investigators will want to interview Carey's supervisor about the previous incidents as well.



11. JEREMY AND PROFESSOR SANCHEZ: CONSENSUAL STUDENT/FACULTY RELATIONSHIP

Alleged Victim: Jeremy Costa — Senior student at Tessera University
Alleged Harasser: Antonia Sanchez — Associate professor of Spanish at Tessera University

Background:

Jeremy Costa is a senior with a dual major — one in Accounting and the other in Spanish. He is a very good student, is active in a couple of student organizations, and spends his winter and spring breaks building schools in Mexico. For the last three months, Jeremy has been in a sexual relationship with Antonia Sanchez, an associate professor specializing in Spanish literature.

Professor Antonia Sanchez is a 32-year old rising star within the department; her research is stellar and her teaching evaluations are always among the highest in the department.

Beginning February 2013:

Jeremy is struggling with some of the writings for his Spanish Literature course and seeks out Professor Sanchez during her office hours. Jeremy took a previous course from Professor Sanchez and performed well, though the current course is more difficult. After guiding Jeremy through his concerns, Professor Sanchez gets up and closes the door to her office. She then sits down next to Jeremy and proceeds to tell him about a special comparative literature project that she would like him to be part of. During their conversation, she compliments his work and places her hand over his, indicating that she really hopes he will agree to be part of the project. Pleased and a little excited, he readily agrees. Professor Sanchez tells him the project group will be meeting at her house the following evening. She also notes that he should stay after the group leaves so they can discuss his long-term goals of getting into graduate school and how she can be of help in the process.

Jeremy arrives at Professor Sanchez's house and the group of four students and the professor meet for about an hour. Jeremy notices that Professor Sanchez makes prolonged eye contact with him, and she goes out of her way to compliment him throughout the evening. Once the other group members leave, Professor Sanchez draws close to him. She tells him that he has remarkable potential and wants to see him do well in her course, but she needs something from him in return. She leans in to kiss him. The two ultimately begin a sexual relationship.

Jeremy and Professor Sanchez meet a few times a week, typically at her house, and engage in sexual intercourse. Occasionally, they engage in sex in her office after hours as well. They spend a weekend in Miami together. With regularity, the two send each other naked pictures of themselves and involve themselves in daily sexting.



11. JEREMY AND PROFESSOR SANCHEZ: DISCUSSION GUIDE

Issue: Is Professor Sanchez responsible for violating the policy on sexual harassment based on a preponderance of evidence standard of proof? NO.

Policy Definitions:

Quid Pro Quo Harassment:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
- by a person having power or authority over another constitutes sexual harassment when
- submission to such conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational (or employment) progress, development, or performance.
- This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational (or employment) program.

In addition, most schools have policies restricting amorous/consensual relationships between students and faculty, or between any two individuals when one has evaluative authority by the other. A typical policy establishes that an amorous relationship between two individuals constitutes a conflict of interest when one of the individuals has direct evaluative authority over the other, and requires that the direct evaluative authority be eliminated.

Conclusion: This case sounds like it could be quid pro quo sexual harassment. Remember that one of the elements of any form of sexual harassment is that the conduct is unwelcome. Here, there are some indications that Jeremy may have welcomed the professor's advances and the opportunity to engage in a sexual relationship with her. Jeremy participated in sexting, including sending nude photos of himself, travelled with the professor, and engaged in sex with her regularly. You will need to determine why he did these things. If the conduct was welcomed by Jeremy, this case wouldn't constitute sexual harassment toward him and your investigation would focus on whether the amorous/consensual relationship policy was violated. If you had to make a finding regarding possible sexual harassment at this time, you would find Professor Sanchez not responded for quid pro quo sexual harassment, as there is no information to suggest that her conduct was unwelcome.

Future Directions: It will be important to interview Jeremy about his perceptions of the professor's attention and demands, and whether he felt compelled to comply, perhaps out of a concern for getting into graduate school, or whether he chose to do willingly. Remember that he may have been a willing participant initially, but that could have changed over time. A detailed interview with Jeremy is needed to gain more information about how he perceived this situation. Additional investigation will include interviewing the professor and checking to see if there have any allegations made against her that include similar conduct.



12. TIFFANY AND JASON: ALLEGATIONS OF SEXUAL MISCONDUCT/ INTIMATE PARTNER VIOLENCE

Reporting Party:	Tiffany Lake — Tessera University student
Responding Party:	Jason Best — former Tessera University student; current TU instructor
Witness:	Sarah — Tiffany's roommate
Witness:	Isaiah — Tiffany's new boyfriend

Intake Report:

Tiffany Lake met Jason Best at Tessera University when she came to campus for freshman orientation. Jason was a senior tour guide for the university. Over the remainder of the summer, they texted each other daily, and Tiffany was excited to come to campus to begin her college career and hopefully develop a stronger friendship with Jason. Jason was very good-looking and popular, a member of a campus fraternity, and captain of the ice hockey team. Tiffany was flattered when he texted her to see if she would meet him to study, and she enthusiastically agreed. She was surprised when after only an hour of studying, he wanted to go back to his fraternity house to “chill out” and have a few beers.

When they arrived at the house and went to his room, Jason rolled a joint and offered one to Tiffany. Feeling somewhat out of her element, she accepted the cigarette, although she had never smoked weed before. They ordered a pizza and Jason brought out some beers. They enjoyed the evening just relaxing and talking and drinking beer. Tiffany had an early class and told Jason that she needed to go back to her dorm. Jason said it was customary for the college women to end a lovely evening by engaging in “mutual satisfaction.” Tiffany again felt awkward and asked what he meant. Jason explained that the cool girls who date guys in his fraternity always ended the evening by providing some form of sexual gratification to their dates. She responded that although they had texted for a few months, this was the first time they had actually been together, so she didn't feel comfortable engaging in sexual activity with him so soon. Jason laughed and told her that she really needed to get on board with being in college now, and that all the girls provided their dates with a “satisfactory ending” to the evening. Still Tiffany resisted. Jason told her that, “Clearly, he had misjudged her,” and that, “She probably wasn't cut out to be a part of the inner crowd at his fraternity.” He offered to take her home. Tiffany noticed a significant shift in Jason's attitude toward her, and she was very anxious to fit in with the cool people on campus. Besides, Jason told her that all the college girls did this, and what did she know about the college culture as a freshman student? Tiffany offered to give Jason oral sex, and he agreed that for a first date, that would be acceptable and would give him an opportunity to see how skilled Tiffany was in providing pleasure.

Jason walked Tiffany to her residence hall gave her a kiss goodnight, and Tiffany went to her room. She wanted to talk about the evening with her roommate, but she had just met her and felt that it may be too soon to share these types of details. She decided to pay attention and listen carefully to what other girls were saying so that she could learn more about the college culture. Tiffany was



desperate to fit in and really had a crush on Jason. She shared that she didn't want to appear to be the small-town girl who was the prude in the college environment.

Jason didn't call Tiffany for over a week, and she worried during that time that her lack of sophistication and hesitation to pleasure him on their first date turned him off, and that he wouldn't want to go out with her again. She was so excited when he finally called and invited her to a party at the fraternity house the coming weekend. As the weekend approached, she worried about what she would wear and what she could do to show Jason a good time so that he would think she was cool and want to go out with her again. After they arrived at the party, Jason handed her a glass of some kind of punch. Tiffany assumed it contained alcohol.

Over the course of the next two hours, he filled her glass several times. They danced and kissed, and Tiffany commented that she was feeling really relaxed but a little dizzy. Jason offered to take her to the "secret room," where she could lay down and they could cuddle for a while. He led her to a basement room, and when they entered, she realized it was very dark, but there were many mattresses on the floor, mostly occupied by couples. Jason led her to a mattress, and they lay down. He put his arms around her. She shared that she felt so safe and close to Jason, but she was concerned by some of the sounds that she was hearing, which sounded like some of the women in the room were not enjoying their time there. She asked Jason about it and he replied that some of the couples liked to role-play and play "fake rape" just as a turn on. He said the girls who were there were the most popular ones on campus, and that Tiffany should get to know them because those were the type of girls to whom his fraternity would give the honor of being "little sisters" of the fraternity.

Tiffany was anxious to be a part of this group, so she unbuttoned Jason's shirt and began kissing his chest. Then she unzipped his pants and began fondling him. Jason responded by taking off her shirt and bra and slipping down her pants. Jason produced a condom from beside the mattress and asked Tiffany to put it on him. She hesitated, silently asking herself, "What was she thinking?" She had never gone this far with a guy. Yet here she was naked with a guy asking her to put a condom on him. She shared her hesitation with Jason. He laughed and told her that she had a lot of learning to do if she was going to be a part of the in crowd at the college for the next four years, and that she needed to get with the culture.

Reluctantly, she agreed and they had sexual intercourse. During sex, Tiffany felt so scared that she just froze and stopped touching Jason and responding. Jason didn't seem to notice and continued until he climaxed. Afterward, Jason took her back to her dorm and kissed her goodnight. Tiffany went to her room and again wanted to talk about what she had just experienced, but didn't know who to talk to. Who would understand? Was this really what college was all about? If she told someone, would Jason get in trouble? What about the girls in the secret room, who sounded like they were not consenting? If she told someone, would she get in trouble for drinking the punch, since she was under age? Would they tell her parents? Would they send her home? Would she have to talk about it a lot? She said that she was scared and confused.



Over the next year, Jason called Tiffany from time to time, and every time they were together, the evening ended in some form of sexual activity. But even though Tiffany didn't see Jason all the time, he referred to her, when they talked, as his girlfriend or his special person. She felt special and included. Jason graduated at the end of Tiffany's freshman year and told her that he had accepted a graduate assistant position in the English department for the coming two years. They talked about what fun it would be if Tiffany took a course that he was teaching. She was flattered at the suggestion, because it meant that he wanted to see her more often.

Over the summer, Jason and Tiffany texted frequently, although they did not visit each other. It seemed like Jason always had to work or go away with his family when she was available. Tiffany found out what courses Jason was teaching and arranged to enroll in one of them for the fall term. It was great fun being able to see Jason several times a week in class and occasionally on the weekends during the term, although she became jealous of the attention he paid to two of the women in the class. He reassured her there was no reason to be jealous, since she was the most special. He also told her that the more she demonstrated to him how much she liked him and enjoyed being with him, the better she would do in his class. Tiffany heard rumors about Jason dating some of his students, but she knew it was not true. All the girls had a crush on him and wanted to be his girlfriend, but Tiffany knew she was the one.

During the next two years, as Tiffany finished her sophomore and junior years, she continued to see Jason. In fact, he knew her schedule, would call or text her many times a day, and would often accuse her of cheating on him. He wanted to know where she was every minute of the day. This led to many fights, some of which got very heated. A couple of times, she slapped him and he pushed her around. In the end, they always made up, and even though his sexual demands became more bizarre over time, he explained that granting those demands should be her way of proving her love for him.

During her senior year, Tiffany moved into an apartment with seven other women who were high school friends of her junior-year roommate. One evening, she went into one of the girl's rooms, Sarah, with whom she had become close friends. As they were chatting over a glass of wine, Tiffany shared with Sarah details about her relationship with Jason and about his temper, which seemed to be getting increasingly threatening. Sarah told her that she should talk with someone, and they tried to find out whom she could talk to at the university who would keep the information confidential. They found some information stating, "If you or someone you know has been a victim of sexual assault, get medical attention or call this office." Tiffany and Sarah decided that that didn't apply to Tiffany's situation, so they would need to find someone in the town. But they became increasingly busy over the course of the semester, and they didn't have time to find a resource that Tiffany could go to, so the two girls continued to share her concerns just between them.

One night, Tiffany came to Sarah's room crying. She had bruises on her arm and a red cheek. She told Sarah that she and Jason, who had been appointed an instructor after finishing his master's degree, had gotten into a huge fight. Tiffany had heard so many rumors about Jason seeing



students in his class or flirting with them and she was sick and tired of it. When she confronted Jason about the rumors, he became enraged and threatened to break up with her if she told anyone about those rumors. Tiffany tried to leave his apartment, but he grabbed her by one arm and pulled her back in. She pushed him with her free hand to try to leave, and he hit her across the cheek. She told him they were through and ran out. Sarah told her to stay away from him and to be careful.

The next day, Sarah went to her former RA to ask her for advice and told her about Tiffany and Jason. The RA gave her some resource information, but also told her that she was required to report this. The RA reported the information to her hall director, and the hall director told the deputy Title IX coordinator for students. The Title IX deputy contacted Tiffany and asked if she would be willing to talk to her about it, and explained that the university could provide her with assistance and support. Tiffany told her that Sarah had inaccurate information and that Jason did not harm her in any way. The Title IX deputy reported this to the Title IX coordinator, who decided to contact Jason, since he was a university employee. Jason denied harming Tiffany in any way. In fact, he denied having dated her since the time when they were undergraduates. The university did not pursue this any further, since both parties denied it happening.

Tiffany moved on with her life, and that winter term, she met a guy she really liked named Isaiah. Tiffany noticed that it seemed like every time she and Isaiah went out to dinner or to a movie, they ran into Jason. She tried to consider this to be a coincidence, but the frequency with which it happened was troubling. Then one evening, Isaiah mentioned that he had been getting weird messages on his school email address. Those messages threatened him about seeing Tiffany, stating that Tiffany was “trouble,” and that she was cheating on Isaiah. Both Tiffany and Isaiah were concerned but decided that it was probably one of Isaiah’s friends playing tricks. After all, who would know Isaiah’s university e-mail?

When the spring term began, Isaiah returned to campus and realized that he had been dropped from all his classes. He thought it might be the result of an error by the registrar’s office, so he went to that office to resolve the problem. The registrar told him that a university official had canceled his classes because it was done internally in the system. This began an investigation process with the IT Department and Campus Police. They were able to trace the action to Jason’s academic department. When questioned, Jason denied knowing anything about it and stated that the office staff all had access to the same account.

When Tiffany found out about the connection between Isaiah’s courses being dropped and Jason’s department, she became alarmed. She then began to believe that Jason had used his campus access to track Isaiah (and perhaps her too?) and that maybe he was also the person who had been sending Isaiah weird emails. Tiffany then went to Sarah’s RA friend and told her this story.

This account has now been passed along to you to address.



12. TIFFANY AND JASON: DISCUSSION GUIDE

Issue: Did Jason violate policies on sexual misconduct, stalking, or intimate partner violence based on a preponderance of evidence standard of proof? NO, NO, and YES.

Policy Definitions:

Consent:

- Clear, and
- knowing, and
- voluntary (or affirmative, conscious, and voluntary),
- words or actions,
- that give permission for specific sexual activity.

Coercion: Unreasonable pressure for sexual activity. When someone makes it clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Stalking 1:

- A course of conduct
- directed at a specific person
- on the basis of actual or perceived membership in a protected class
- that is unwelcome, AND
- would cause a reasonable person to feel fear.

Stalking 2:

- Repetitive and menacing
- pursuit, following, harassing, and/or interfering with the peace and/or safety of another.

Intimate Partner Violence:

- Violence between those in an intimate relationship toward each other.
 - Examples include:
 - Physical abuse by a spouse or partner such as hitting, slapping, pushing, or strangling.
 - Sexual violence by a spouse or partner.
 - Extreme verbal abuse by a spouse or partner.

Conclusion: Tiffany's allegations involve multiple possible policy violations occurring over a long period of time, and a full investigation is warranted based on this intake report.

- A. With respect to the first night in the fraternity house, when Tiffany provided oral sex to Jason, Tiffany smoked marijuana for the first time and consumed alcohol, but given her recollection of events and the intentional choices she made around sexual activity, incapacitation doesn't seem



to be an issue. Investigators will consider whether the oral sex was consensual, and specifically will assess whether Jason coerced Tiffany into sexual activity.

Non-consensual sexual intercourse includes any sexual intercourse (including oral sex) that is without consent and/or by force; and force includes coercion that overcomes resistance to produce consent. When Tiffany resisted Jason, he pressured her and implied that she couldn't be a part of the cool crowd if she didn't engage in sexual conduct with him. Your analysis will consider whether the amount of pressure he applied was reasonable or unreasonable. Coercion is typically measured by the frequency, intensity, and duration of the pressure applied for sexual access. Here, although he took advantage of her naiveté, the degree of pressure applied by Jason would not lead to a finding that Tiffany was coerced into sexual activity, as the pressure was not so intense or concentrated as to be unreasonable.

- B. With respect to the second night in the fraternity house, when sexual intercourse occurred in the "secret room," Tiffany's incapacitation doesn't seem to be an issue given her recollection of events and the intentional decisions she made around sexual activity. When Jason produced a condom, she hesitated and then agreed to sex after he pressured her about being a part of the cool crowd. Was this coercion? Again, although Jason took advantage of Tiffany, the degree of pressure he applied would not lead to a finding that Tiffany was coerced into sexual activity, as the pressure was not so intense, repeated, or concentrated as to be unreasonable.

Tiffany described that during sex, she became scared, froze, and stopped touching Jason and responding. How does this comport with the requirement that consent requires clear words or actions giving permission for specific sexual activity? There are competing pieces of information here, and you will consider whether Tiffany withdrew her permission at some point. A typical sexual misconduct policy states that consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly, and that a withdrawal of consent can be done in numerous ways and need not be a verbal withdrawal of consent. Your analysis will focus on whether Tiffany withdrew consent by disengaging. Based on the information here, it is unlikely that Tiffany withdrew consent in a manner that was communicated clearly, and you would find no policy violation.

- C. What do you make of the fact that Tiffany was Jason's student while they were in a sexual relationship during her sophomore year? This likely would be a violation of your amorous/consensual relationship policy, which typically establishes that an amorous relationship between two individuals constitutes a conflict of interest when one of the individuals has direct evaluative authority over the other.
- D. With respect to Jason's behavior during Tiffany's sophomore and junior years, Tiffany indicates that Jason knew her schedule, repeatedly called or texted her, and repeatedly accused her of cheating, which led to physical confrontations. You will consider whether Jason's behavior
-



constitutes stalking, and whether either party engaged in intimate partner violence. Based on the information available at this time, it appears that both parties engaged in intimate partner violence, as Tiffany described slapping Jason, and that Jason pushed her around. Regarding the allegation of stalking, although it appears Jason's conduct was unwelcome, it likely would not cause a reasonable person in a situation similar to Tiffany's to feel fear, and would not be a violation of the stalking provision.

- E. When Tiffany tried to leave Jason's apartment after confronting him about his involvement with other students, he grabbed her and pulled her back into the apartment, she pushed him, and then he hit her. Both parties engaged in intimate partner violence. Investigators might want to consider whether their school addresses the use of force as self-defense and how that may apply here.
- F. Tiffany described that after the relationship ended, her new partner Isaiah began receiving email messages that threatened him against seeing Tiffany, and was dropped from all his classes by someone in Jason's academic department. In addition, Tiffany and Isaiah repeatedly ran into Jason whenever they went out. Investigators will consider whether Jason is stalking Tiffany. Although some of the behavior attributed to Jason is directed at Isaiah, it is indirectly focused on Tiffany, and may be considered a part of a course of conduct directed at her. Investigators will need to look into whether the email and class schedule changes can be linked back to Jason, and whether there is a legitimate explanation for Jason continually appearing at the same locations as Tiffany and Isaiah. Based on the information available at this time, there is insufficient information to find Jason responsible for stalking. Further investigation may lead to a different result.

Future Directions: In addition to interviewing Jason and making credibility assessments of both parties, investigators will want to otherwise conduct a reliable and thorough investigation by interviewing any witnesses with relevant information. As an example, perhaps Tiffany or Jason can identify other individuals who were in the "secret room." Tiffany's roommate Sarah and Isaiah will be important witnesses. In addition, investigators will want to obtain the police report and look further into the source of the emails and Isaiah's class schedule changes.



VIGNETTES

The following information is designed to guide a discussion of potential Title IX policy violations on your campus. There are numerous factors that might impact your analysis, including the policy definitions used by your campus, whether the institution is public or private, your jurisdictional limitations, and what determinations you make about the credibility and reliability of the parties and witnesses and the information they provide in each case. The outcomes below are based on use of the ATIXA model policies.

1. MONICA AND BILL

Monica and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Monica to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Monica to have sex with him, but she adamantly refuses. Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a "hand job" (hand-to-genital contact). Monica would never have done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left.

Coercing someone into sexual activity violates the sexual misconduct policy in the same way as physically forcing someone into sexual activity does. Coercion happens when someone is pressured unreasonably for sex. The evaluation of coercion focuses on the actions of the person applying the pressure, as well as how that pressure is received. We consider four factors when analyzing whether coercion exists: frequency, intensity, isolation, and duration. Bill convinced Monica to go up to his room and, over four hours, continually tried to convince her to have sex despite her adamant refusal. Monica made it clear that she didn't want to be convinced, and she would not have engaged in sexual activity but for the pressure applied by Bill. The totality of the circumstances suggests that sexual activity was the result of coercion, and policy has been violated.

2. WOODY AND SOON-YI

Woody and Soon-Yi are best friends. Woody has always been attracted to Soon-Yi, but he was already in a relationship with Mia. Shortly after he broke up with Mia, Woody was despondent. He went to Soon-Yi, telling her that what he really needed to get over his pain was some "rebound" sex. Soon-Yi told Woody that she did not want to have sex with him, citing their large age difference (four years). Woody maneuvered Soon-Yi into the corner, using his large size to pin her against the wall, but he did not touch her. Woody expressed his attraction to her, and Soon-Yi felt he would never let her go if she didn't have sex with him, so she consented.

Sexual activity that results from force constitutes a policy violation, and force means more than physical violence. Woody maneuvered Soon-Yi into the corner, pinned her to the wall using his large size, and kept her there. Woody used force to gain sexual access, and policy has been violated.



3. LUKE AND LAURA

When Luke and Laura first met, their relationship was tumultuous. At first, Laura didn't want to have sex with Luke because she felt like too many people would find out. He kept trying to convince her. He suggested that if Laura didn't sleep with him, he would break up with her. Laura finally gave in and had sex with Luke. Several seasons later, she realized what had happened. Was there a policy violation?

Consent should be an act of free will. Sexual activity that results from the use of a threat constitutes a policy violation. Here, Luke threatened Laura with a negative consequence (breaking up with her), which caused her to acquiesce to sexual activity, something she would not have done absent the threat, so the policy has been violated.

4. SAM AND DIANE

Sam and Diane both worked off-campus in the same bar. Diane was very attractive, but naive. Sam often hit on her. Eventually, Diane responded to Sam's advances, and they began to date. Diane was a virgin and did not want to have sex before getting married. Sam realized that Diane was so naive that she really didn't even know what sex was. He convinced her that they could just fool around, and that she would still be a virgin. He told her that sexual intercourse was just fooling around, and that she wouldn't lose her virginity by having it. A product of abstinence-only education, Diane was never taught the facts of life when she was younger, so she didn't know any better, and believed Sam. They had sexual intercourse on many occasions. Finally, Diane read a book called *50 Shades of Gray* and learned that Sam had tricked her. Is this a policy violation?

Consent is shared sexual permission. Generally, consent consists of clear, knowing, and voluntary words or actions that give permission for specific sexual activity. Here, when Diane said she didn't want to have sex before marriage, Sam provided her with false information to obtain her agreement. Sam fraudulently told her that she would still be a virgin after having intercourse. Diane's agreement was based on Sam's deceit, and thus was not truly knowing, so policy has been violated.

5. ANGELICA AND JACK

Angelica and Jack have been dating for several years. Over that period of time, they have come to know each other very well, and have established non-verbal patterns of sexual communication that suit them well. For example, among other habits, Jack knows that if Angelica puts on her green nightgown before bed, she wants to have sex with him. If she wears her pink nightgown, she does not want to have sex with him. For three years, they communicate sexually in this manner, which works just fine for them. Late one night in the fourth year of their relationship, Angelica heads off to bed before Jack. Realizing that her pink nightgown is in the laundry, she puts on her green nightgown. She knows that Jack might assume the wrong thing, but she has nothing else to wear, and she figures she'll be asleep by the time Jack goes to bed, so he'll know that she is not really interested. Jack comes to bed, and sees that Angelica has on her green nightgown. He knows what



this means. He thinks it will be romantic to wake Angelica up by beginning to have sex with her (as this has been the case with them in the past). When he does this, Angelica is so annoyed that she breaks up with him and kicks him out. She additionally charges him with non-consensual sexual intercourse. Is Jack responsible for a policy violation?

Generally, consent consists of clear, knowing, and voluntary words or actions that give permission for specific sexual activity. In most cases, beginning to have sex with someone who is asleep would violate policy, but in this case, the parties had a clearly established pattern of behavior relating to sexual activity, which included Jack waking Angelica up by beginning to have sex with her when she wore her green nightgown. Based on their established pattern of behavior, his initiation of sex while she was sleeping while wearing that green nightgown would not constitute a policy violation.

6. DEMI AND BRUCE

Demi and Bruce met at a movie. They started to date on and off. One night, Demi and Bruce went out drinking. After the bars closed, they went to Demi's dorm room. Demi was very drunk, and engaged in sex with Bruce, despite his protests. Bruce was not as drunk as Demi. Demi argues that even if she might have had non-consensual sex with Bruce, it's not her fault because of how drunk she was. She believes she was so drunk that she didn't even know she was having sex with him, let alone that it was something he didn't want. Is this a policy violation?

In this case, Bruce protested having sex with Demi. Demi was very drunk however, being drunk does not excuse a policy violation, and Demi has violated the sexual misconduct policy by having sex with Bruce over his protests.

7. TOMMY AND PAM

Tommy had consensual sex with Pam, a student he met in Geology lab, after which she drank a large amount of alcohol. She passed out on Tommy's bed and Tommy left her to sleep it off. He headed out to a fraternity party. He got drunk with his brothers, and they were vocally complaining about how hard it is to "get laid" on campus. Tommy told them he had a sure thing for them. He explained that Pam was passed out on his bed, and told them she wouldn't remember a thing. Tommy gave them the keys to his room, and the four fraternity brothers had sexual intercourse with Pam while she was unconscious. Tommy stayed at the party and was not present during the incident. Is Tommy responsible for any policy violation?

Most school policies prohibit aiding, abetting, or inciting others to commit prohibited conduct. Tommy initiated and facilitated the sexual assault and is responsible for a policy violation. In addition, most policies prohibit sexual exploitation, which occurs when individuals take non-consensual or abusive sexual advantage of others for their own advantage or benefit, or to benefit or advantage of anyone other than those being exploited. Tommy has violated the sexual exploitation provision.



8. JOHN AND JODIE

John is a junior at the College of Knowledge. Jodie is a sophomore. John comes to Jodie's dorm room with some mutual friends to watch a movie. John and Jodie, who have never met before, are attracted to each other. After the movie, everyone leaves, and John and Jodie are alone. They hit it off, and are soon becoming more intimate. They start to make out. John verbally expresses his desire to have sex with Jodie. Jodie, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As John takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Jodie has a severe flashback to her childhood trauma. She wants to tell John to stop, but cannot. Jodie is stiff and unresponsive during the intercourse. Is this a policy violation?

Silence or passivity, without actions demonstrating permission, is not consent for sexual activity. Further, consent must occur prior to and during sexual activity. In this case, there is nothing in Jodie's actions that would indicate that she consented prior to or during the sexual activity, and John has violated policy.

9. HUGH AND ELIZABETH

Hugh is a junior at the College of Knowledge. Elizabeth is a sophomore. Hugh comes to Elizabeth's dorm room with some mutual friends to watch a movie. Hugh and Elizabeth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Hugh and Elizabeth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Hugh verbally expresses his desire to have sex with Elizabeth, but she isn't ready to have sex with Hugh, since they just met. At the same time, she likes him and doesn't want to scare him off, so she decides to satisfy him orally, hoping they can get to know one another better later before engaging in intercourse. Perceiving the oral sex to be foreplay, Hugh stops Elizabeth, lays her back on the bed, takes off her clothes, and engages in intercourse with her. Elizabeth is unresponsive during the intercourse. Is this a policy violation?

Consent to some forms of sexual behavior does not automatically imply consent to any other forms of sexual behavior. Elizabeth chose to engage in oral sex, but that does not mean she consented to intercourse. When Hugh initiated and began intercourse, Elizabeth was unresponsive. Silence, by itself, is not consent, and nothing in Elizabeth's actions indicates she consented prior to or during the sexual activity. Hugh has violated policy.

10. HARRY AND SALLY

Harry and Sally, two students at the College of Knowledge, have been dating for seven months. During that time, they have had mutually consensual intercourse on many occasions. One night, Sally overhears that Harry is also sleeping with a friend of hers. Enraged, Sally confronts Harry. Harry promises never to be unfaithful again, and Sally agrees to give him another chance. However, she withholds sex from him because she is still angry and hurt. One night, feeling frustrated over



Sally's reluctance to have sex with him, Harry physically forces himself on her, even though Sally tells him "no" repeatedly. Sally is hurt and confused. She continues to date Harry for two more months, and has consensual sex with him during that period. She then discovers that Harry is cheating on her again. She breaks up with Harry, and charges him under the college policy.

Harry used force to obtain sexual access and has violated policy. Although Sally's motivation for reporting may be related to her discovery of his recent infidelity, that would not change the fact that he lacked consent for sex. Additionally, the fact that they continued to date and have consensual sex after the forced sex has no bearing on the analysis.

11. AMANDA AND THE BETAS

Amanda is a second-year student at the College of Knowledge. She is in a sorority, and hangs out a lot at the Beta house, her favorite fraternity. She knows most of the brothers, and is good friends with many. One night, the brothers informed her that they wanted her to be a little sister in their house. They also told her that Danielle, a classmate of Amanda's, was also being considered. It was made clear to both women that the one who slept with the most brothers would be made the little sister. Amanda seemed hesitant, but was eventually persuaded by the brothers. Both Amanda and Danielle competed for this prize. Many nights, after wild parties at the fraternity house, and with much alcohol and drug use, Amanda and Danielle would spend the night at the Beta house. After a month, Danielle was declared the winner of the contest, and was made the Official Beta Little Sister. Hurt and feeling used, Amanda charged the entire fraternity with sexual misconduct. Is there a policy violation?

The Beta brothers were the only people who could make Amanda a little sister to her favorite fraternity. The Beta brothers used their power or authority to influence Amanda, and convinced her to engage in sex by offering a benefit to her if she complied (and conversely, threatened to not reward her the title of little sister if she didn't comply). This behavior has elements of intimidation and coercion; the sexual harassment policy has been violated. Given the description of alcohol and drug use, there may be a separate question of capacity, and we'd need more information to determine if the policy on non-consensual sexual intercourse has been violated.

12. FRAZIER AND LILLITH

Frazier has been dating Lillith for three months. He is her first boyfriend, and she is a virgin. They have been engaging in much petting and fooling around, and Frazier thinks Lillith is ready to have intercourse. Frazier knows she is a virgin, and has always been respectful about his advances. He knows that Lillith is shy and embarrassed about talking about sex. He usually just keeps petting and fooling around until Lillith stops him. On the night in question, Frazier and Lillith are alone together. They kiss, and she pulls his hand to her breast. After fondling her for a while, Frazier wants to put his hand up Lillith's skirt. Not knowing whether this is OK with her or not, Frazier goes very slowly. He puts his hand on her knee, and slowly begins creeping up her leg. She continues to kiss him. He puts



his hand on her underwear, and she allows him to caress her. He starts to penetrate her with his finger, and she slaps him and pushes him away. Crying, she tells him to leave. The next day, she charges him with non-consensual sexual contact.

Consider what words or actions gave Frazier permission for the specific sexual activity that took place. Lilith acquiesced in some actions, and then objected, making it clear that Frazier did not have permission, by word or action, for the penetration that took place. Affirmative consent does not require resistance. Is Frazier responsible for non-consensual sexual intercourse?

13. JOEY AND THE FOOTBALL PLAYERS

On Friday night, Joey told her roommate Jenn that she was going out. Jenn asked her where she was going, and Joey said, "I'm going out to get drunk enough to do the whole football team." Joey went alone to the local pub where the college athletes liked to hang out, where she polished off two pitchers of beer at the bar. As it became later, and the bar got more crowded, Joey flirted with many men, including a group of football players. Joey and one of the football players snuck off into the back room of the bar, which was usually reserved for private parties but was not in use that night. They were soon having sex with each other on one of the tables. Suddenly, six other football players came into the room, and they joined their teammate in "pulling a train" on Joey. She did not physically resist them, but she was pretty groggy and limp during the incident. Afterward, Joey charged six of the men with policy violations. She did not charge the first man with whom she went into the back of the bar.

Jenn testified at the hearing that on that evening, Joey had told her that she was going out to get drunk enough to have sex with the whole football team. Joey admitted that she might have said that, but that it was only an expression. Was this non-consensual sexual intercourse?

There are a couple of issues here. First, given that Joey drank two pitchers of beer by herself, there is the question of whether she was incapacitated by alcohol and lacked an awareness of what was happening. She was incapacitated, and the players knew or should have known this. Thus, the players violated policy. As a separate matter, Joey was limp, and presumably non-responsive, when the players had sex with her. Even if you did not find her to be incapacitated, her words or actions did not indicate a willingness to engage in agreed upon sexual activity, despite what she said earlier, which was not communicated to these men, and therefore there was not consent for sex. Additionally, even though Joey did not charge the first man, he is equally responsible.

14. WILL AND JADA

Will and Jada meet at a party. They are very attracted to each other. Jada drinks to excess, and is clearly incapacitated by the end of the party. Will starts to take her upstairs to his room, when several friends of Jada confront them and offer to take Jada home with them. They try to convince Will that Jada is just not in good enough shape to spend the night with him. Will says he'll leave the decision to Jada, who decides to stay with him. Her friends leave. Will and Jada have sex that night.



Jada tells her friends about it later, and her friends decide to go talk to the dean. They offer to be witnesses to how much Jada drank at the party, and to her state of mind at the end of the party. The friends and the dean agree that Jada was incapacitated. The college charges Will with non-consensual sexual intercourse. Jada refused to file charges, but appears as a witness for Will. She testifies that she liked Will and wanted to have sex with him that night. She insists that it was a conscious decision, though when questioned, she cannot remember much about the night or the sex. She further testifies that it was not non-consensual sexual intercourse because she consented, and that the two of them are now dating and really like each other. Jada's friends provide sufficient testimony to convince you that Jada was in fact incapacitated. Did Will violate college policy?

If Jada was incapacitated and Will knew or should have known this fact, then policy has been violated, despite Jada's testimony and the fact that they are currently dating. Any time that sexual activity takes place when the alleged victim did not understand the who, what, when, where, why, and how with respect to that sexual activity, incapacity is at issue because consent is not fully informed. Here, the witnesses establish that Jada was incapacitated. If they could tell, it is most likely that Will should have been able to tell, too. Having sex with someone who is incapacitated is a violation of policy.

ABOUT ATIXA

The Association of Title IX Administrators provides a professional home for school and college Title IX coordinators and administrators who are interested in serving their districts and campuses more effectively. ATIXA brings campus and district Title IX coordinators and administrators into professional collaboration to explore best practices, share resources, and advance the worthy goal of gender equity in education. For more information about ATIXA, its products and services, or how to become a member, please visit www.atixa.org.



This Kit is proprietary. It may be shared internally by institutions that purchase it. No permission is granted to otherwise share this Kit, publish it, post it publicly, or on the Internet without the express prior permission of ATIXA.

©2015, ATIXA.
All rights reserved.