



UNIT 11
ASAP

Sexual Violence

<p>Sexual Harassment</p> <ul style="list-style-type: none"> Quid pro quo Hostile work environment Sexual violence 	<p>Sexual Violence</p> <ul style="list-style-type: none"> Sexual misconduct Sexual assault <ul style="list-style-type: none"> Rape Non stranger rape Nonconsensual touching Domestic violence Dating violence Stalking
---	--

UNIT 11
ASAP

Investigation Defined

“[T]he term **investigation** refers to the process the school uses to resolve sexual violence complaints.”

OCR Q & A, April 2014.

Fact finding *and* decision making process

Whether or not conduct occurred

If the conduct occurred, what actions the institution will take to end the sexual violence, eliminate the hostile environment and prevent its recurrence.

UNIT 11
ASAP

Investigators

- Person who takes the initial report of an incident of violence
- Person who checks the records to determine if the respondent has been investigated previously
- Person who begins asking questions to other students/staff who may have relevant information
- Person who does a social media search to determine the relationship between complainant and respondent

Goals for Investigation

"Adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present ...evidence."

Gather **facts** so that the investigator can make a credible determination as to what happened in a given situation.

Prompt, fair, and impartial investigation, including

- Investigators trained and no bias;

- Equal opportunity to have others present at ANY meeting;

- Simultaneous, timely notice of meetings, hearings and appeal;

- Completed in reasonable timeframe (60 days);

- Adequate information used in formal or informal investigation; and

- Culturally unbiased.

Required Standard of Proof

The greater weight of the evidence required in a civil (non criminal) lawsuit for the trier of fact (jury or judge without a jury) to decide in favor of one side or the other. This **preponderance** is based on the more convincing **evidence** and its probable truth or accuracy, and not on the amount of **evidence**.

Admissibility of Evidence

Hearsay – report of ~~the~~

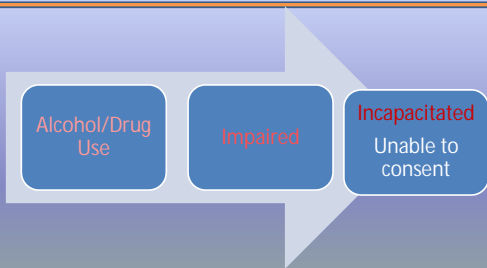
Session 2 – Consent & Alcohol/Drug Impairment

Define Consent
Alcohol/Drug Impairment
Black out vs. Passed out vs. Memory Loss due to Trauma
Common Reasons for Not Going Forward
Myths and Misconceptions

Consent

Voluntary
Freely given
Consent to one act does not mean consent to other acts
Can be withdrawn at any time
Other standards – Affirmative consent


Impact of Alcohol/Drugs on Consent



UNIT 10
ASAP

Common Reasons for NOT Bringing Charges

I don't want to bring a formal charge. I just wanted you to know about the situation.
I don't want my name used.
I don't want this public.
People won't believe me.
My parents will be ashamed.
I don't want to ruin anyone's life.
It was my fault too.
We have the same friends.



UNIT 10
ASAP

Myths and Misconceptions


If a person doesn't fight back or run away, it isn't rape.
If a weapon wasn't used, it isn't rape.
Women often falsely accuse men of rape.
A person can avoid being raped as long as he or she follows some general rules, like dressing conservatively and staying at home.
Someone who was drinking or drunk when sexually assaulted is at least partially to blame.
Rapists normally have a history of psychological problems.

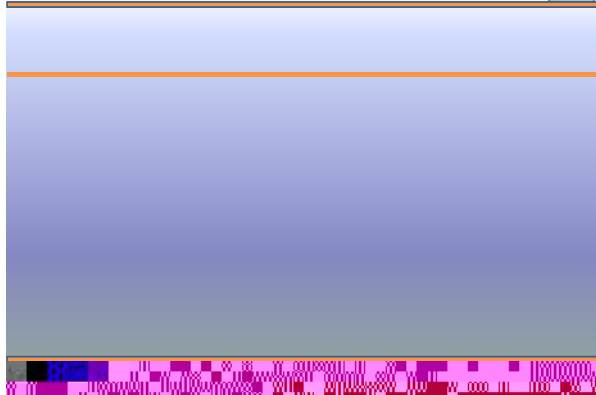


UNIT 10
ASAP

Session 3 Confidentiality

Confidential resources on campus
Confidential, Privileged, Secret
Complainant requests confidentiality
Weighing analysis to determine whether to go forward with an investigation against request for confidentiality
Considerations when moving forward





Increased risk that perpetrator will commit sexual or other misconduct, such as:

- other sexual violence complaints;
- perpetrator has a history of arrests or records indicating a history of violence;
- perpetrator threatened further sexual or other violence
- sexual violence was committed by multiple perpetrators.

Sexual violence was perpetrated with a weapon;
Victim is a minor;
Other means to obtain

Session 4 – Impact of Trauma

- Post Traumatic Stress Disorder
- Results of Trauma
 - Physical
 - Psychological
- Behaviors of Trauma Survivors
- Cultural and Religious Implications
- Gender Issues

Statistics on Survivors of Sexual Assault

81% of women and 35% of men who've experienced rape, stalking or physical violence by an intimate partner report short or long term impacts such as PTSD.
Only a small percentage of survivors report it.

Mental health condition triggered by a terrifying event (experiencing or witnessing).

Symptoms may include:

- Reliving the memory flashbacks, nightmares and severe anxiety, as well as uncontrollable thoughts about the event.

- Avoiding the memory – refusal to discuss

Other PTSD reaction

Feeling

the

s

Trauma: Psychological Impact

- Shock, disbelief, fear, anxiety, grief, disorientation, **denial**.
- Hyper alertness or vigilance.
- Irritability, restlessness, outbursts of anger or rage, mood swings.
- Worrying, ruminating, flashbacks.
- Feelings of helplessness, panic, feeling out of control.
- Increased need to control everyday experiences.
- **Minimizing** the experience.
- Attempts to avoid anything associated with the trauma.
- Feelings of **detachment**.
- Concern with burdening others with problems.
- Emotional numbing or restricted range of feelings.
- Feelings of self blame, guilt and/or **shame**.

Cultural norms may foster societal acceptance of sexual assault.
 male honor, masculinity, and men's sexual entitlement
 In cultures emphasizing male dominance, physical strength

Session 5 – Initiating Investigation

- Overview of Investigation
- Interview Techniques
- Meeting with Initial Reporter
 - Victim Resources
 - Interim Actions
- Complainant Interview Checklist

- STEP 1: Receive Complaint and Meet with Reporting Party
- STEP 2: Outline Investigation
- STEP 3: Interview Witnesses and Respondent and Gather Other Evidence
- STEP 4: Assess Evidence
- STEP 5: Reach Conclusions/Prepare Fact Report 0g8.3754

Questioning Techniques

- Broad to narrow questions
- Leading questions
- Tough questions
- Follow up questions
- Avoid compound questions
- Committing interviewee to a story / chronology

Note Taking Techniques

Policy defines what notes must be maintained.
Policy or practice may allow for recordings.
Policy or practice may dictate

Inform and obtain consent from the Complainant before beginning an investigation.
If the Complainant requests confidentiality or asks that the complaint not be pursued, take all reasonable steps to investigate and

Checklist for Concluding Interview (2 of 2)

Tell the Complainant that the person conducting the investigation will be getting back to him or her from time to time during the investigation and that his or her continued cooperation in the investigation will be necessary to reach a resolution.

Let the Complainant know the institution will make any final determination regarding the best way to resolve the issue; however his/her input is valuable and will be considered.

Express your commitment to resolving the matter in a timely manner.

Third Party Reporters

Reluctant complainant

Notice of potential sexual misconduct complaint received through third parties

Unique challenges and concerns

Advisors

Attorneys

UNIT 11
ASAP

Avoiding Retraumatization

- Avoid judgmental attitudes
- Recognize that events do not need to be extreme to be traumatic
- Concurrent crises can occur
- Provide for safety of complainant/victim
- Provide supportive relationships
- Make referrals to proper resources
 - Confidential, sexual assault organizations
- Empower victims of trauma and recognize resilience
- Provide clear guidance on process

CASE STUDY PART 2
INTERVIEWING COMPLAINANT

UNIT 11
ASAP


Session 6 – Outline the Investigation

- STEP 1: Receive Complaint and Meet with Reporting Party
- STEP 2: Outline Investigation
- STEP 3: Interview Witnesses and Respondent and Gather Other Evidence
- STEP 4: Assess Evidence
- STEP 5: Reach Conclusions/Prepare Fact Finding Report
- STEP 6: Make Recommendations (if required).

UNIT 11
ASAP

Session 6


Organizing the overall structure of the investigation.
Addressing considerations and challenges in process.
 Unavailable and challenging witnesses



UNIT 11
ASAP

Initial Considerations


Timing
Order of witnesses
Timing of the interviews and the 60 day requirement
Confidentiality and information sharing



UNIT 11
ASAP

Additional Considerations

Group complainant/respondents
Managing group dynamics
Recognizing and reporting retaliation
Unavailable and challenging witnesses



Initial Considerations

- Disclosure of allegations to witnesses and/or respondent
- Rights under institution policy
- Due process rights (State institutions)
 - Right to notice and hearing

CASE STUDY PART 4
INTERVIEWING THE RESPONDENT

ASAP

Session 7 – Assess the Evidence

STEP 1: Receive Complaint and Meet with Reporting Party

STEP 2: Outline Investigation

STEP 3: Interview Witnesses and Respondent and Gather Other Evidence

STEP 4: Assess Evidence

STEP 5: Reach Conclusions/Prepare Fact Finding Report

STEP 6: Make Recommendations (if required).

ASAP

Evaluating Evidence

Focus on facts

Establish timelines

Examine outliers


Conflicting testimony

Coached testimony

UNIT 11
ASAP

Witness Credibility & Impact of Trauma

Retelling may not follow a logical sequence
Pushing for responses for specific facts may lead to less reliable data
Examine what raw data is available
Generally valid investigation techniques may not work with a trauma victim




CASE STUDY PART 5
**REACH A CONCLUSION AND
OUTLINE FINAL REPORT**

UNIT 11
ASAP

Session 8 – Reach Conclusion, Prepare the Final Report, and Make Recommendations

STEP 1: Receive Complaint and Meet with Reporting Party
STEP 2: Outline Investigation
STEP 3: Interview Witnesses and Respondent and Gather Other Evidence
STEP 4: Assess Evidence
STEP 5: Reach Conclusions/Prepare Fact Finding Report
STEP 6: Make Recommendations (if required).



UNIT 11
ASAP

Session 8 Outline

- Analyzing the relevant evidence
- Preparing the fact finding report
- Notification of findings
 - Parties
 - Witnesses
- Attorney Client privilege
- Ongoing monitoring
- Title IX and FERPA

UNIT 11
ASAP

Analyzing the Evidence

- What facts are not in dispute?
- What facts are in dispute?
- What undisputed facts are important?
- Do you need more information about anything?
- On which points are witnesses NOT credible and why?
- Who do you believe?
- What do you think probably happened?
- What do think probably happened between the parties?
- Was there a policy violation?
- How should you organize your report?

UNIT 11
ASAP

Structure of Report

- Key elements of report
- Organization of report
- Analyzing the information
- Style, tone, and audience
- Resolving difficult issues
- Access to the report

UNIT 11
ASAP

Title IX and FERPA

Notice to complainant:
 the finding;
 any individual remedies offered or provided to the complainant;
 any sanctions imposed on the perpetrator that directly relate to the complainant; and
 other steps the school has taken to eliminate the hostile environment and prevent recurrence.

Institutions may not require complainant to agree to nondisclosure agreement
 DOE FERPA does not conflict with the Title IX

If there is a direct conflict between the requirements of FERPA and the requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions.

Notalone.gov

UNIT 11
ASAP

Attorney Client Privilege

Involvement of counsel does not immunize the records from discovery in a later litigation
 Strategic about involvement of attorney in investigation process
 Draft reports, attorney reviews and final report

UNIT 11
ASAP

Ongoing Monitoring

Outreach to parties
 Questions regarding interim/permanent actions and/or sanctions
 Maintaining records and data on parties
