

Sexual Violence Sexual Harassment Quid pro quo Hostile work environment Sexual violence Rape Non-stranger rape Nonconsensual touching Domestic violence Dating violence Stalking

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	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.
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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

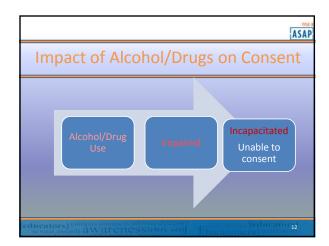
"Adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present ...evidence." Gather facts so that the investigator can make a credible determination as to what happened in a given situation. Prompt, fair, and impartial investigation, including Investigators 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.

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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.
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Other Standards to Consider	
 Admissibility of Evidence Hearsay – report of another's statement Standard – consider all evidence that is material and relevant 	
EyewitnessesReliability issuesSelective attentionDeliberate indifference	
 If investigation is later reviewed by a court Follow your process! 	6

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

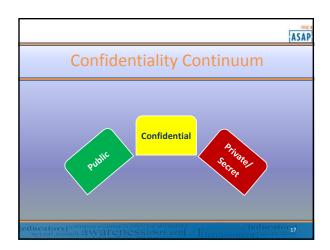


ASAP Common Reasons for NOT Bringing Charges I don't want to bring a formal charge. I just wanted you to know about the situation. I don't want my name used. I don't want this public. People won't believe me. My parents will be ashamed. I don't want to ruin anyone's life. It was my fault too. We have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

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	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.
	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.
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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

Confidentiality When a student is sexually assaulted, there should be someone the student can talk to in confidence – White House Task Force Report Make clear who can maintain confidence & who can't Limited instances when the request for confidentiality is not honored. Inform that institution's ability to act may be limited. Explain that institution has a strong policy prohibiting retaliation that will be strictly enforced. Balance duty to provide a safe and non-discriminatory environment with request.



Requests for Confidentiality If the complainant requests confidentiality or asks that the complaint not be pursued, take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, inform the complainant that the institution's ability to respond may be limited.

Balancing Confidentiality Requests with Institution's Responsibility 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 relevant evidence of the sexual violence (e.g., security cameras or personnel, physical evidence); Pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group. Constitution Must Act Assist the victim in accessing victim advocacy, academic support, counseling, disability, health or mental health services, and legal assistance both on and off campus.

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Provide other security and support:
 issuing a no-contact order, arranging a change of living or working arrangements or course schedules (including for the alleged perpetrator pending the outcome of an investigation) or adjustments for assignments or tests; and

Inform the victim of the right to report a crime to campus or local law enforcement
 provide the victim with assistance if the victim wishes to do so

CASE STUDY PART 1
EVALUATING CONFIDENTIALITY REQUESTS

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.

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	Post Traumation	Stress Disorder
	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 emotionally numb Lack of interest in activities Hopelessness about the future Memory problems Difficulty in close relationships Irritable, angry and aggressive Always being on guard for danger Overwhelming guilt or shame Self-destructive behavior Trouble concentrating Trouble sleeping Being easily startled or frightened
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Considerations When Interviewing Survivors Impact of trauma on memory. Shame, fear and blame. Disassociation. Alcohol and drug impairment. Difficult questions.

Trauma Impact on Survivors Sexual assault survivors frequently experience negative and often long-term psychological and physical consequences following the event. Although many survivors report distinctive psychological post-rape responses such as heightened fear, avoidance, re-experiencing the traumatic event and anxious arousal, not all survivors will have these specific post-rape reactions. American Prosecutors Research Center

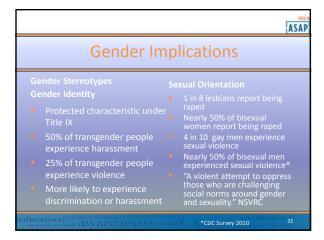
Trauma: Physical Impact Aches and pains (head, back, and/or stomach aches) Sudden sweating and/or heart palpitations (fluttering) Changes in sleep patterns, appetite, interest in sex Easily startled by noises or unexpected touch More susceptible to colds or illnesses Increased use in alcohol or other drugs and/or overeating

**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. **Mulmizing the experience. **Attempts to avoid anything associated with the trauma. **Feelings of destackment. **Concern with burdening others with problems. **Emotional numbing or restricted range of feelings. **Feelings of self-blame, guilt and/or shame.

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	Cultural Issues in Sexual Misconduct
	Cultural norms may foster societal acceptance of sexual assault. male honor, masculinity, and men's sexual entitlement In cultures emphasizing male dominance, physical strength and male honor, rape is more common.
-	Community honor is frequently connected to the behavior of the women of the community. • honor is preserved when women are "pure"
	Cultural norms that devalue women can combine with norms that value male dominance and aggressiveness to create a subculture that sanctions sexual misconduct http://www.stopvaw.org/sexual_assault_and_cultural_norms
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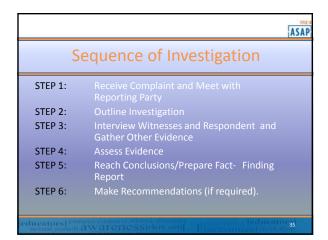
Impact of Cultural Issues on Investigations	ASA
	Impact of Cultural Issues on Investigations
 Language and culture may need to be accommodated. Avoid shutdown due to culturally offensive or inappropriate approaches. Narrative style is influenced by culture. Story-telling in a circular rather than linear. Subject-matter may be difficult. Explore cultural considerations of the potential victim prior to an interview. 	 Avoid shutdown due to culturally offensive or inappropriate approaches. Narrative style is influenced by culture. Story-telling in a circular rather than linear. Subject-matter may be difficult. Explore cultural considerations of the potential victim prior to





Impact of Trauma, Culture, Religion, Gender on Investigations Trauma manifests itself is a variety of ways. Cultural and religious backgrounds should be considered and evaluated as to best approach prior to interviews. Gender stereotyping, identity, and orientation require attention and sensitivity throughout the process.

Session 5 — Initiating Investigation Overview of Investigation Interview Techniques Meeting with Initial Reporter Victim Resources Interim Actions Complainant Interview Checklist



Effective Interview Techniques The most important objective of this initial interview is to GET THE FACTS! Proceed as your journalism teacher taught you - get the WHO, WHAT, WHERE, WHEN and WHY. Fire hose approach to gathering information.

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 whether witness summaries are necessary.

Meeting with Complainant Explain who you are and your role. Describe the process. Explain the fact-finding efforts of the investigation. Discuss the anti-Retaliation provisions of policy. Fully explain confidentiality. Establish credibility in the process and your role as an objective, neutral fact-finder.

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Complainant Consent to Investigate

- Inform and obtain consent from the Complainant
- reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an

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Responding to Request for Confidentiality

- If the Complainant insists that his or her name or
- Tell the Complainant that Title IX prohibits retaliation, and that your institution will not only take steps to prevent retaliation but also take strong

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Checklist for Concluding Interview

- Thank the person raising the issue
- Inform the person raising the issue.

 Inform the person raising the issue that the institution does not permit any retaliation or reprisal due to a legitimate issue having been raised.

 Advise the Complainant that in the event there is a need to undertake an investigation, he or she will be apprised of this fact and will be told who will be conducting the investigation.

Tell the Complainant that you will limit the disclosure of information to those people having a legitimate need to

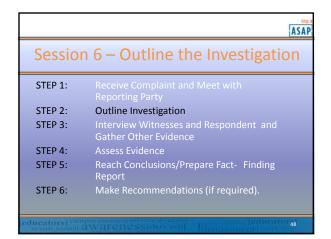
Checklist for Concluding Interview (2 of 2) It let the Complainant that the person conducting the investigation will be getting back to him or her from time to time during the investigation and that his or her continued cooperation in the investigation will be necessary to reach a resolution. Let the 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

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Additional Considerations	
AdvisorsAttorneysParents	
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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





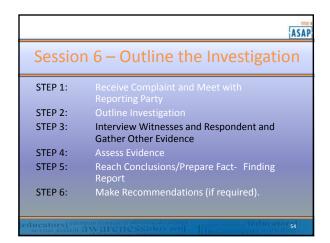
Session 6 Organizing the overall structure of the investigation. Addressing considerations and challenges in process. Unavailable and challenging witnesses

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

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

MOU may dictate interaction between campus and local law enforcement Delay to prevent compromising law enforcement investigation – active investigation

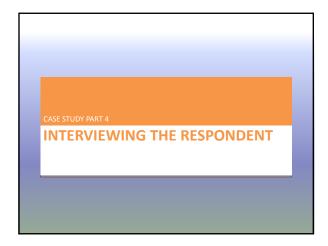


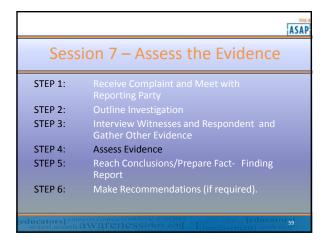


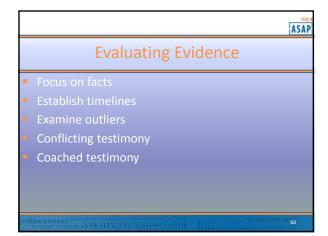
Initial Considerations Initia

Managing the Respondent's Advisor Share institution policy and explain role of advisor Set group rules for interview Maintain control Compare criminal investigations: Prosecutorial discretion 6th Amendment right to counsel 5th Amendment right against self-incrimination 5th and 14th Amendments due process rights

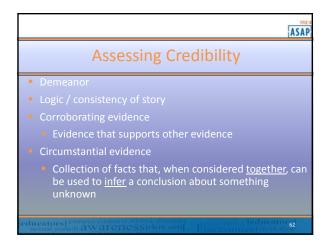
Meeting with Respondent • Explore possible ill-motives • "Do you have any idea why he / she would make this up? • "Have you had any conflicts or problems with him / her? **Meeting with Respondent** • "Bo you have any idea why he / she would make this up? • "Have you had any conflicts or problems with him / her?







Tips on Evaluating Evidence 1. Keep an open mind until all evidence has been compiled. 2. Render a reasoned decision. 3. Consider only the evidence. 4. Be reasonable and impartial. 5. Decide how much weight to give the evidence. Accurators 6. Evaluate the credibility of witnesses. 7. Draw reasonable inferences. 8. Apply the Preponderance of the Evidence standard. 9. Don't consider the potential impact of your decision when determining if charges have been proven.





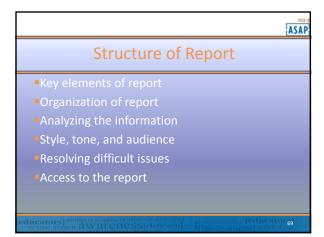
Witness Credibility & Impact of Trauma Retelling may not follow a logical sequence Pushing for responses for specific facts may lead to less reliable data Examine what raw data is available Generally valid investigation techniques may not work with a trauma victim

CASE STUDY PART 5 REACH A CONCLUSION AND OUTLINE FINAL REPORT

	ASAP
Session 8	 Reach Conclusion, Prepare the Final
Repo	ort, 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).
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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

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?



ASAP Organizing the Report (1 of 2) 1. Executive Summary 2. Procedural History 3. Applicable Policies & Procedures 4. Summary of Witness Allegations 5. Factual Findings 6. Conclusions A. Policy Violation B. State the conduct that was or was not the policy violation 7. Recommendations (if appropriate)

Organizing the Report (2) Summary of witness allegations What each party reported Documents/evidence from each party Factual Findings Ithink, using a preponderance of the evidence standard, that.... This was confirmed by.... Witness was credible when he/she reported because.... Conclusion Policy violation? Which conduct?

Notification of Parties Both parties must be notified simultaneously, in writing of: (a) the result of the disciplinary proceeding; (b) any appellate procedures available (both parties); (c) any change to the result that may occur prior to the time that the result becomes final; and (d) when the results become final. Note: OCR recommends only that the parties be provided the determination "concurrently."

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

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

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

Other Remedial Actions Training opportunities Adopting protocols to protect against dangerous situations Exploring bystander intervention Finding creative ways to provide prevention strategies to individuals at risk

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	Day 2 Wrap-Up
•	Sexual Violence and Standard of Review
•	Consent, Confidentiality, Impact of Drugs/Alcohol
-	Confidentiality
-	Effects of Trauma, Cultural and Gender Awareness
•	Conduct Investigations
	 Interviews, credibility, evaluating evidence, conclusion, and final report.
	Other remedial actions
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