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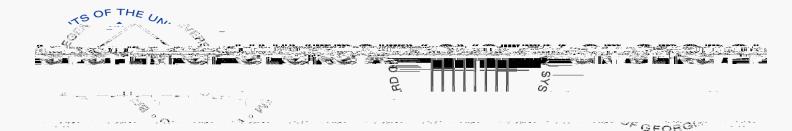
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Who's Here in the Room?

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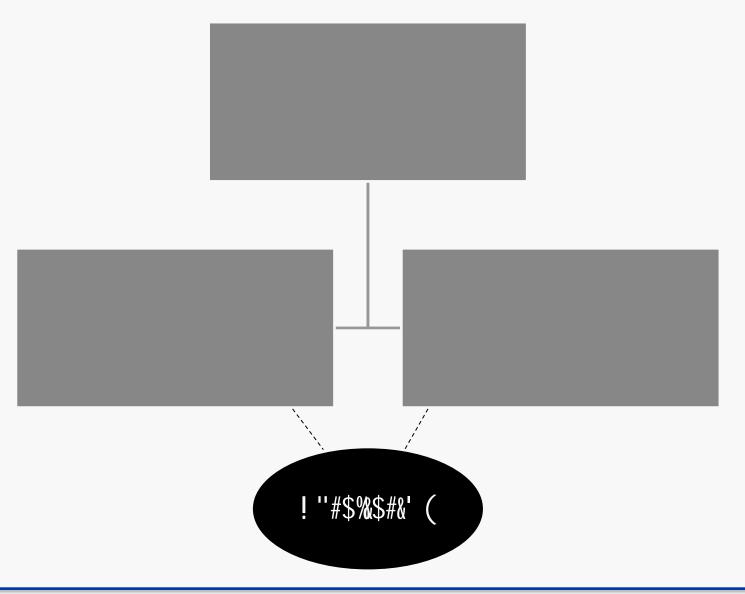
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What is Sex Discrimination?



Title IX Sexual Harassment §106.30

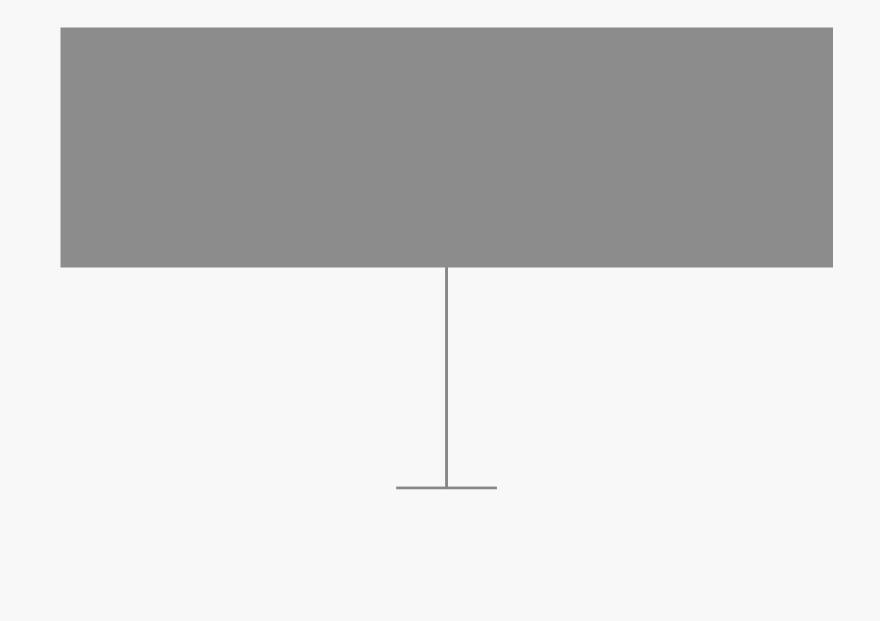
- ! (i)An employee conditioning education benefits on participation in unwelcome sexual conduct (i.e quid pro quo); or
- ! (ii)Unwelcome conduct that a reasonable person would determine is so severe, pervasive, AND objectively offensive that it effectively denies a person equal access to the school's



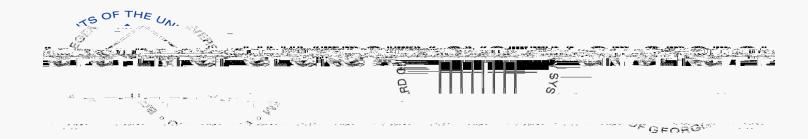
Title IX Jurisdiction

- Institution property
- Institution sponsored or affiliated events [substantial control is key]
- Buildings owned or controlled by officially recognized student organizations

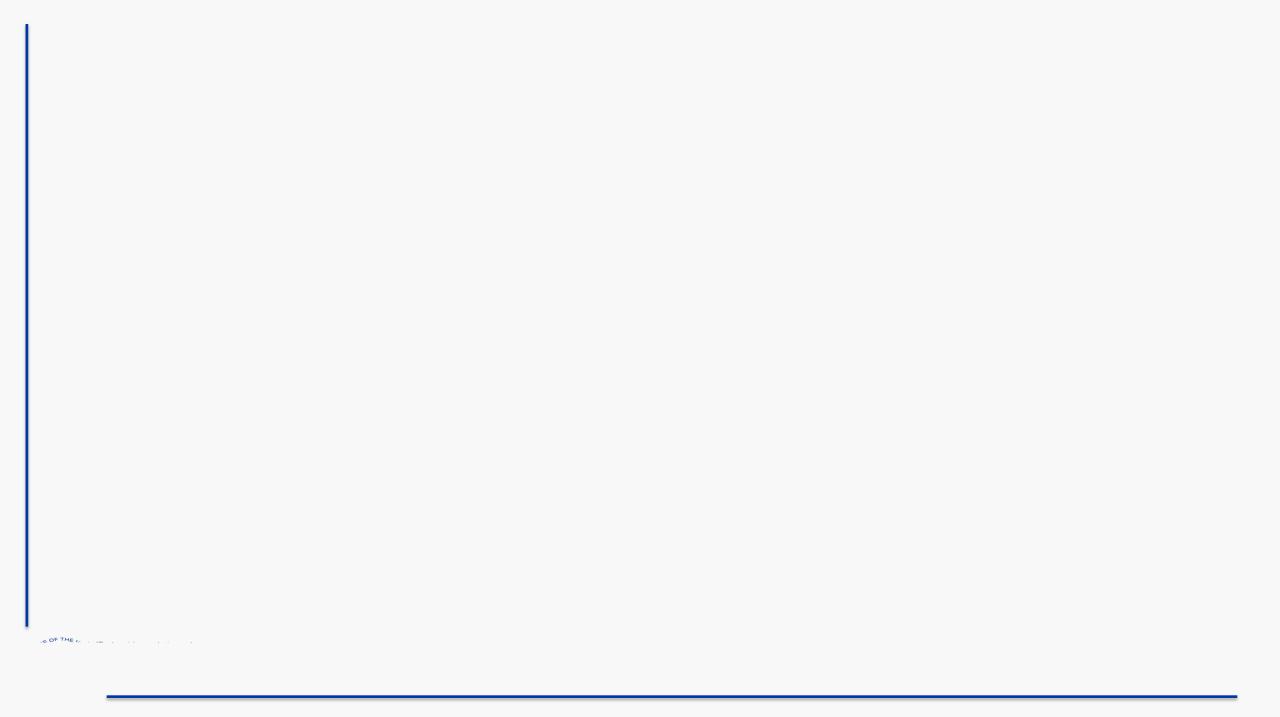
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Stalking



Sexual Exploitation

Taking non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or for the benefit or advantage of anyone otheori. 8001-86e)1(-10)-681(Ex)1(o)-69)86(-08-1() 3(e)-1()]TJET @ 2002888T-66Tc 000028 Tr

Nonconsensual Sexual Contact

Any physical contact with another person of a sexual nature without the person's consent.

Includes:

- " Touching of another's intimate parts (genitalia, groin, breasts, buttocks)
- " Touching a person with one's own intimate parts; or
- " Forcing a person to touch his or her own or another person's intimate parts



Sexual Harassment (Student on Student)

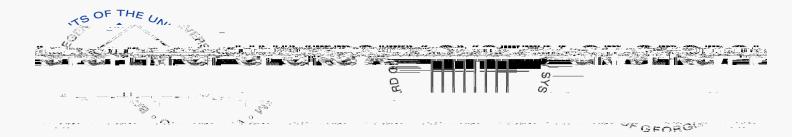
Unwelcome verbal, nonverbal, or physical conduct based on sex (including gender stereotypes), determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access



Sexual Harassment (Other)

Unwelcome verbal, nonverbal, or physical conduct, based on sex (including gender stereotypes) that may be any of the following:

- " Implicitly or explicitly a term or condition of employment status in a course program or activity
- " A basis for employment or education decisions; OR
- " Sufficiently severe, persistent, or pervasive to interfere with one's work or educational performance creating an intimidating, hostile, or offensive work environment
- " Note: Behavior may rise to the level of a Title IX violation



Overview of the Construct

- 1. Was force used by the Respondent to engage in the sexual activity?
- 2. Was the Complainant Incapacitated?
 - a) Did the Respondent know OR
 - b) Should the Respondent have known that the Complainant was incapacitated?
- 3. What clear words or actions by the Complainant gave the Respondent

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Consent

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Force

- Was force used by the Respondent to engage in the sexual activity?
- Because consent must be voluntary (an act of free will)
 consent cannot be obtained through use of force
- Types of Force to consider:
 - Physical violence -- hitting, restraint, pushing, kicking, etc.
 - Threats -- anything that gets the other person to do something they wouldn't ordinarily have done absent the threat

Force Continued

Intimidation

Coercion

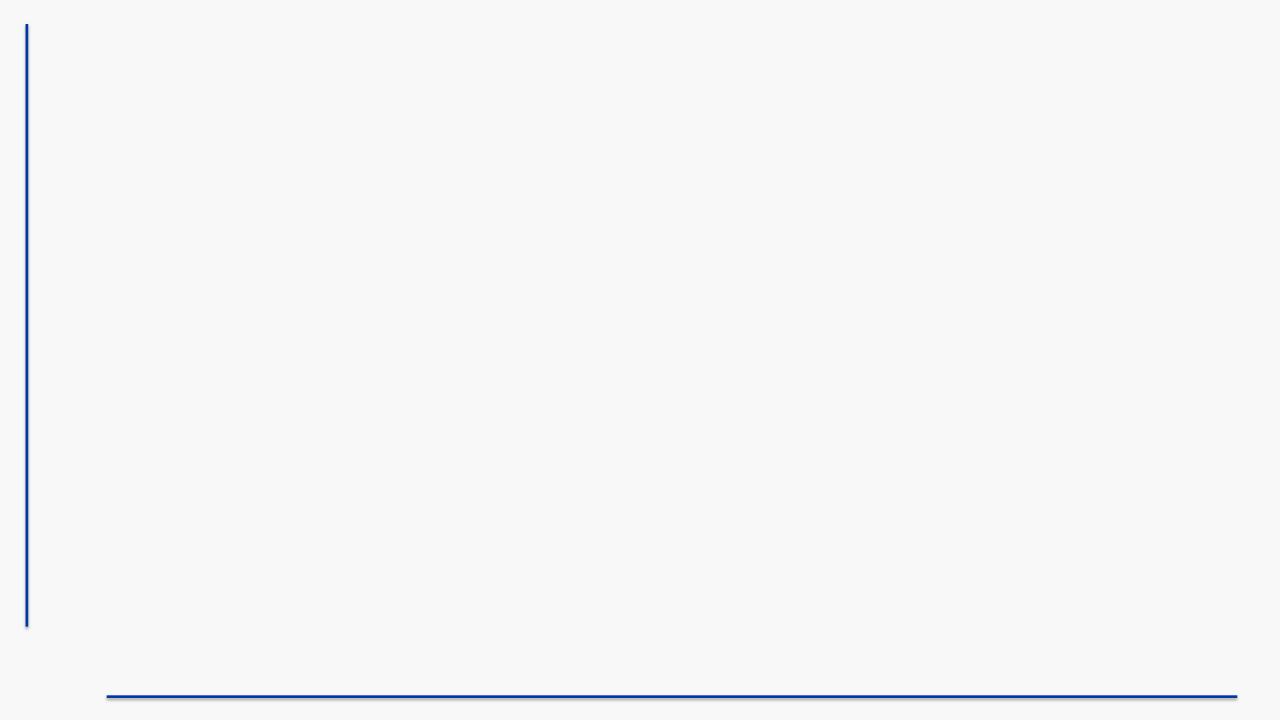
" Consider:

- ! Frequency
- ! Intensity
- ! Duration
- ! Isolation

Force Analysis

 Did the Respondent utilize force or intimidation to engage in the sexual activity with the Complainant?

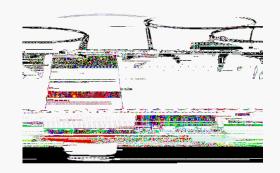
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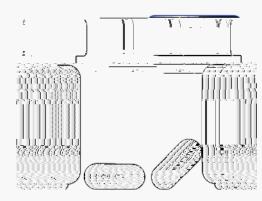


Incapacitation

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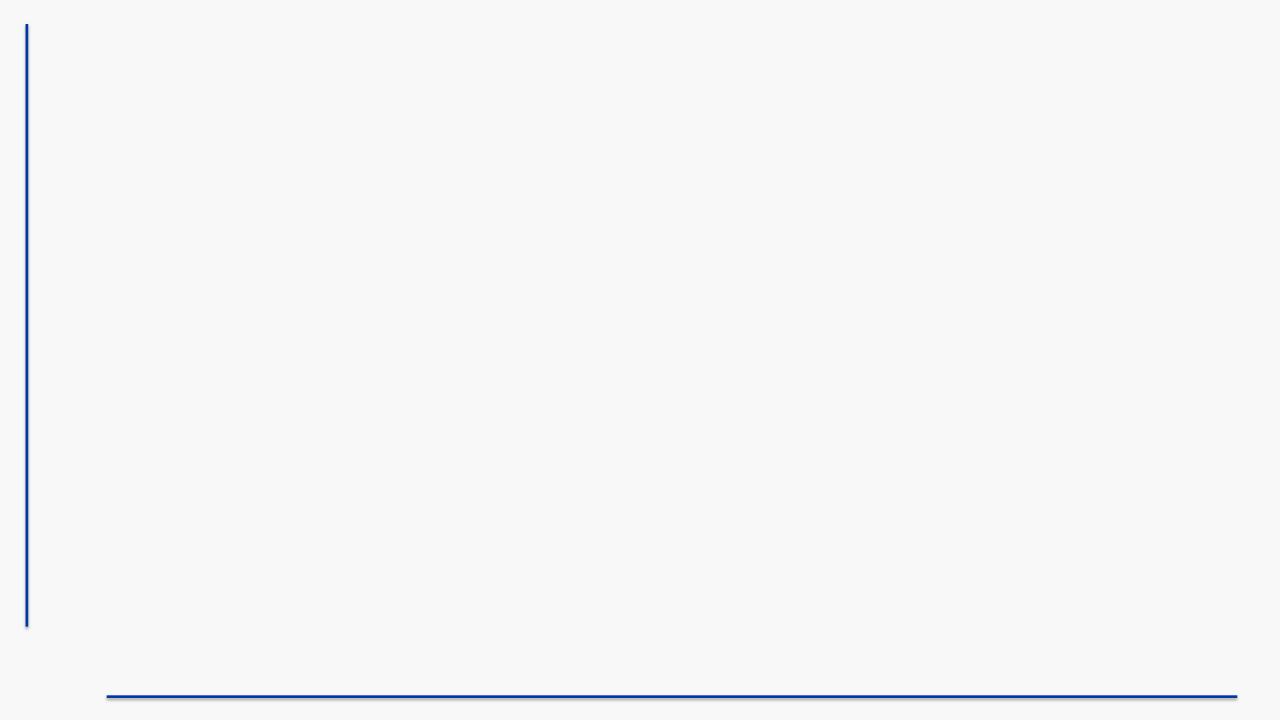
- ! Could the Complainant make rational, reasonable decisions?
- ! Could the Complainant appreciate the situation and address it consciously?





Determining Incapacitation

- Incapacitation is a determination that will be made after the incident in light of all the facts available
- Assessing incapacitation is very fact dependent analysis of the incident in question
- Various forms of incapacity
 - Alcohol or other drugs
 - Mental/cognitive impairment
 - Injury
 - Sleep



Common Factors that Impact the Effect of Alcohol

Rate of consumption

Strength of drink

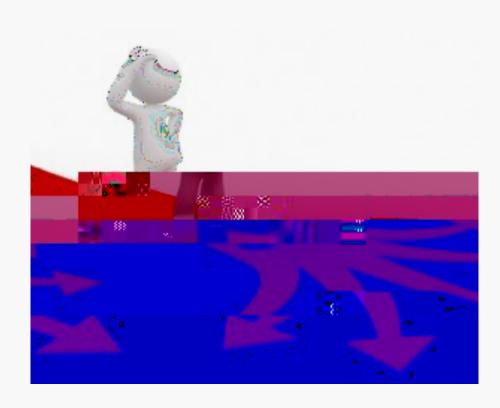
Food in the stomach

Body Weight

Body Type – body fat percentage

Possible Signs of Incapacitation

- " Lack of control over physical movements
 - Ex. Inability to dress or walk without assistance
- " Lack of awareness of circumstances or surroundings
- " Inability to communicate coherently
- " Vomiting
- Total or intermittent unconsciousness



Respondent's Awareness

Incapacitation Analysis

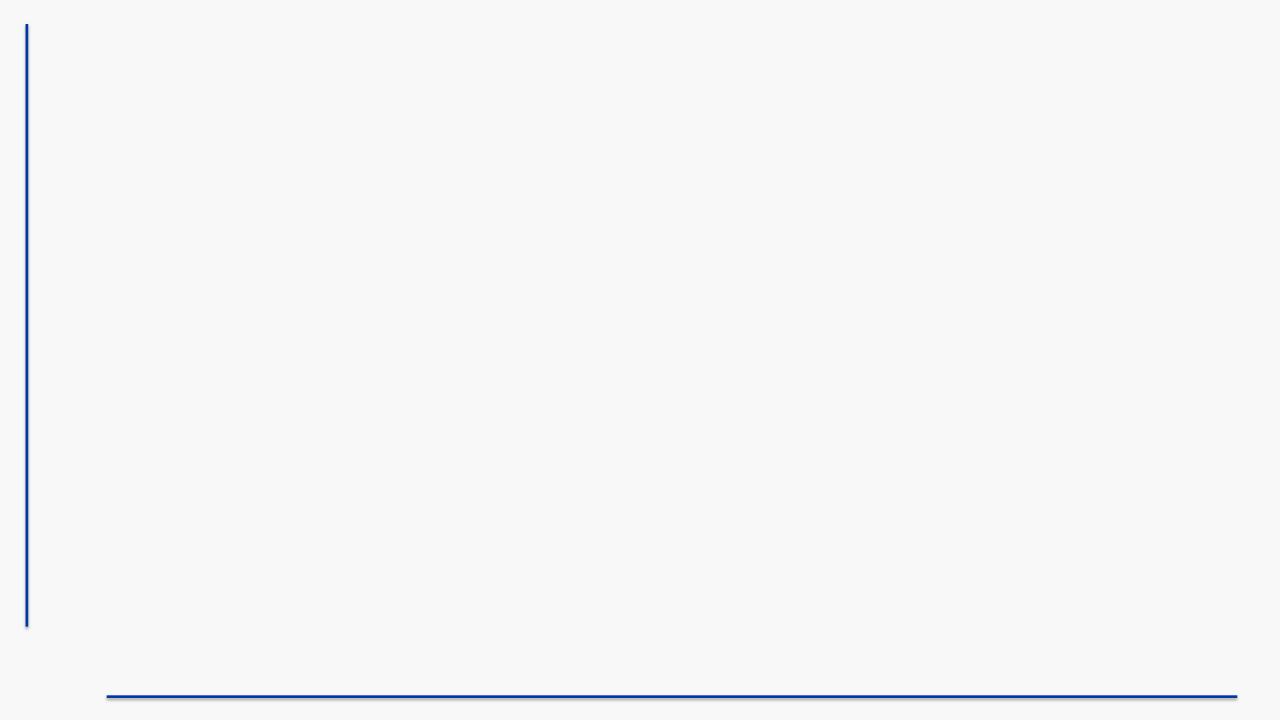
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Consent

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Consent Is...

- Informed (kno ing)
- Vol ntar (freel gi en)
- Acti e (not passi e)
- Clear ords or actions
- Indicates permission to engage in m t all agreed pon (se al) acti it



Withdrawal

Remember consent can be withdrawn at any time

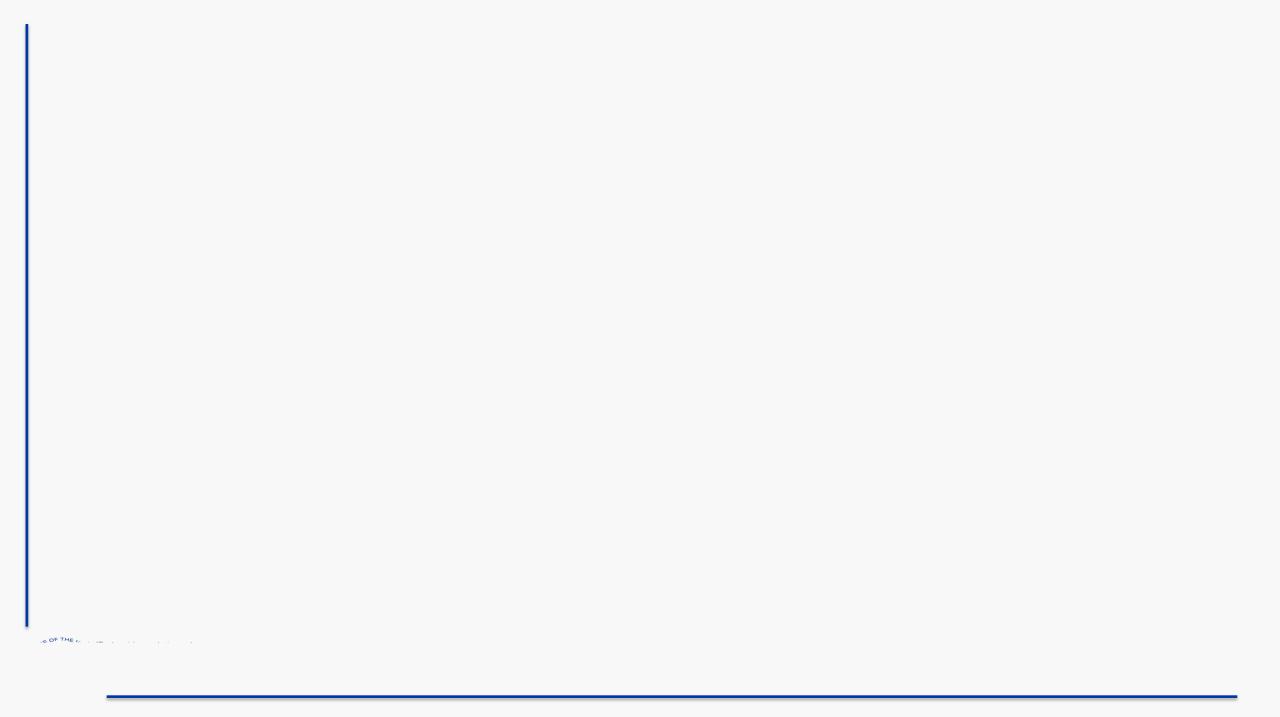
The person withdrawing consent is expected to clearly communicate with words or actions they are withdrawing consent

Other person is required to cease sexual activity until consent is regained

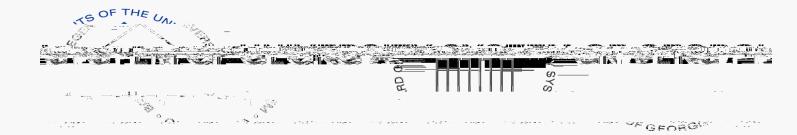




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Recognize and Avoid Your Own Bias



Steps in the Investigation Process

" Report is made

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- " Intake by Title IX Coordinator
- " Filing of a Formal Complaint
- " Assignment to the Investigator



Interim Measures

- " May be implemented at any point by the Title IX Coordinator
- " Must be available to both parties
- " Must be implemented in an equitable manner designed to protect the parties and/or the campus community
- *Require approval of System Director

Examples
Housing changes
No Contact Directive
Class changes
Employment schedule or location
changes
Administrative Leave
Interim Suspension*



Formal Complaint §106.30

- A document filed by a Complainant OR signed by the Title IX Coordinator
- Alleges Sexual Harassment (Title IX)
- Requests an investigation
- Note: must be filed while the Complainant is participating in or attempting to participate in an education program or activity

Developing an Investigation Plan

- Review the Complaint Intake and any available information
- Review the Sexual Misconduct Policy
- Review relevant investigation procedures
- Determine order of interviews
- Gather preliminary evidence
- Develop preliminary questions

Key Aspects in the Investigation Process

Written notice to parties

Pending investigation

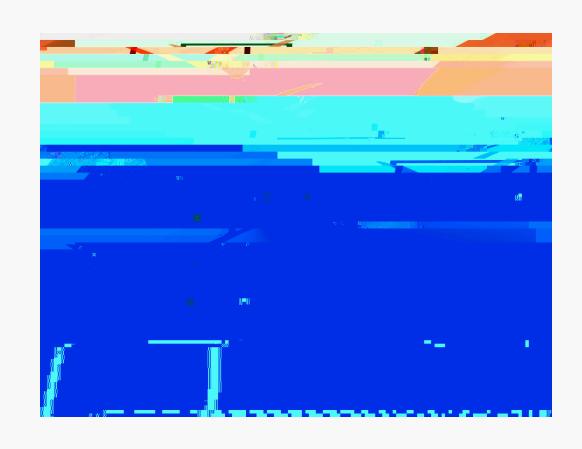
Possible charges

Possible sanctions

Available support resources

Identify the assigned investigator

Opportunity for written response



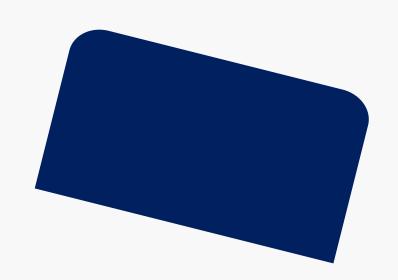
Key Aspects in the Investigation Process

- Parties' right to an Advisor
 - ___
 - ___

- Parties' right to remain silent or otherwise not participate
 - _
 - _

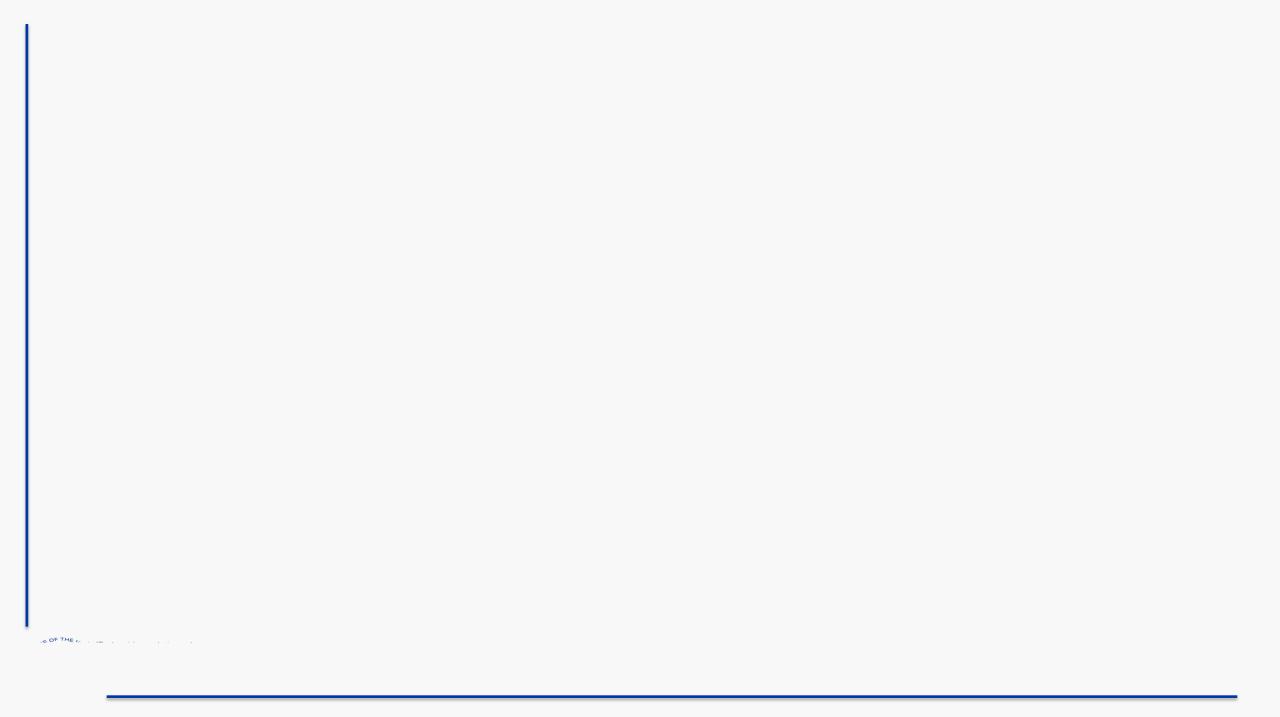
Fact Gathering





Interview Strategies

- Set a professional non-accusatory tone
- Introduce yourself and outline your role
- Acknowledge what emotions they may be experiencing
- Review the amnesty and retaliation policies



Effective Questioning

- Questions should be used to determine:
 - " Who
 - " What
 - " When
 - " Where
 - " How

Effective Questioning

What are your goals?

What are NOT your goals?

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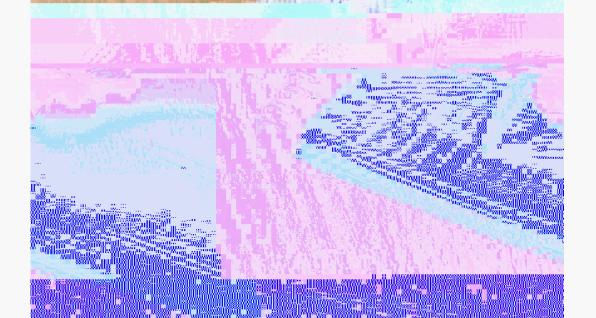
How to Deal With...

A Challenging/Reluctant Participant

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Note-Taking

- ! Remember you are creating a publicly available record
- ! Try to include verbatim statements



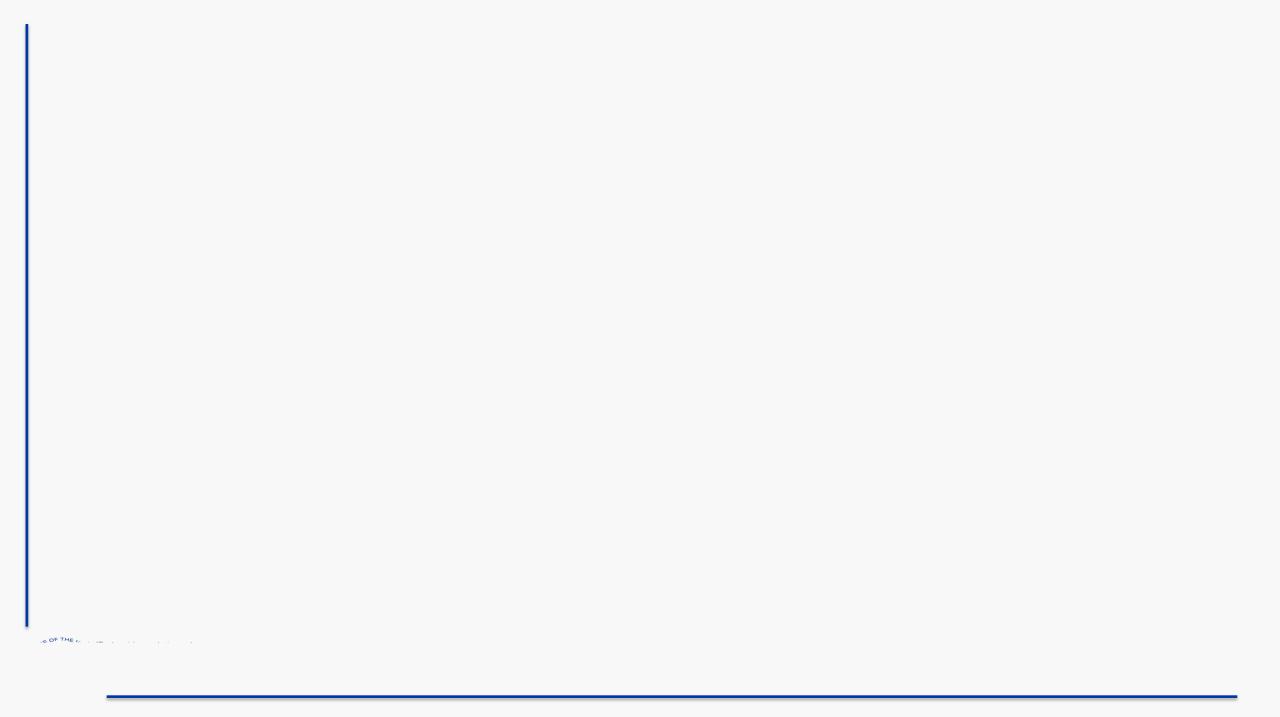
Note-Taking Considerations

Use of audio recordings

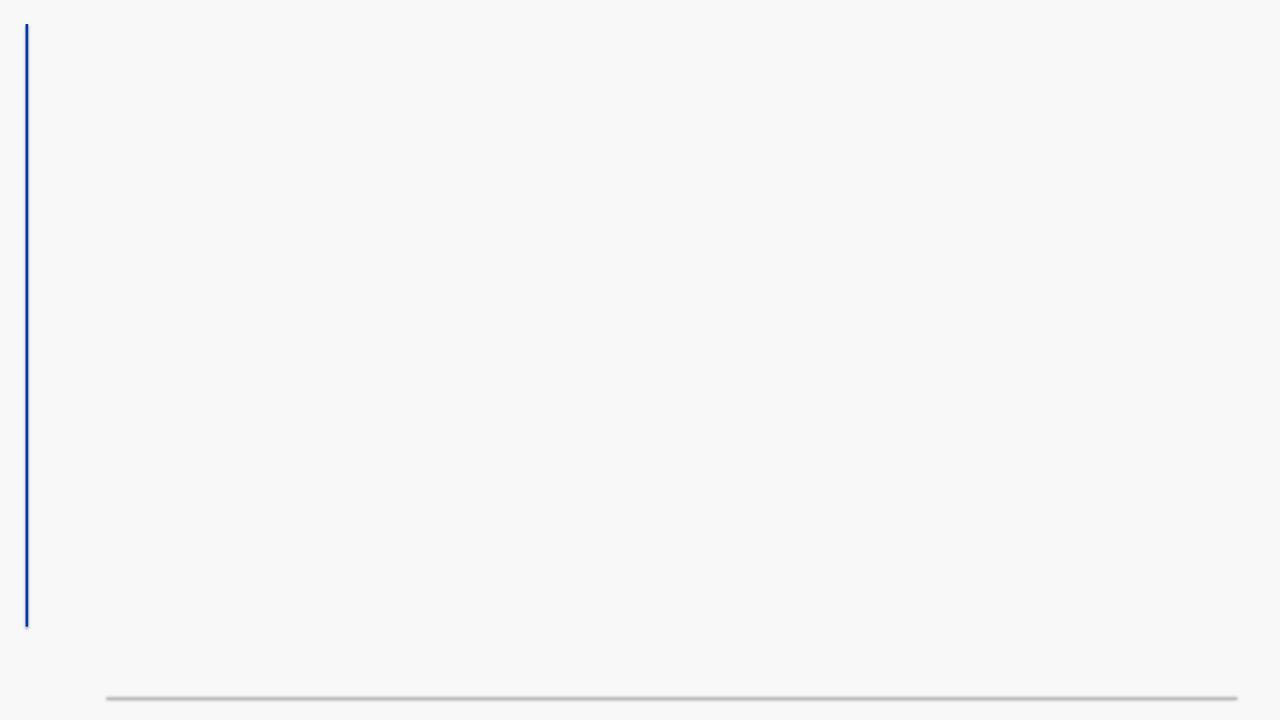
 Sending an interview summary for the participant to review and edit

Tip: Schedule time after an interview to review and type narrative summary





Understanding Evidence Thresholds



Weighing Evidence: Impact Factors

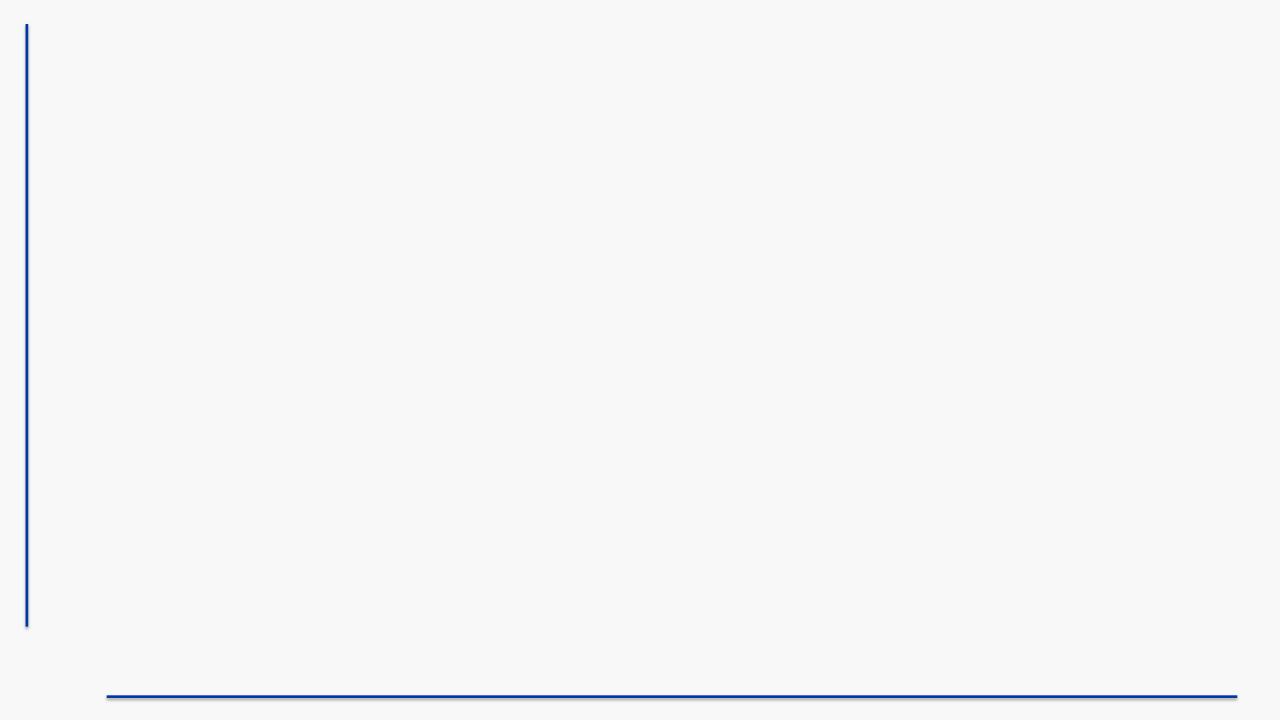
• Bias

- Understand who the person is and their relationship to the parties and incident at issue
- Bias can manifest in multiple ways:

Credibility

Other Evidentiary Exclusions

- Legally privileged information is protected
- A party's treatment records cannot be used without their voluntary, written consent
- Duplicative evidence may be deemed irrelevant
- If an individual does not submit to cross examination, at a Title IX hearing, their statements cannot be relied upon



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The Investigation Report

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Basic Formatting

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Information Gathered During The Investigation

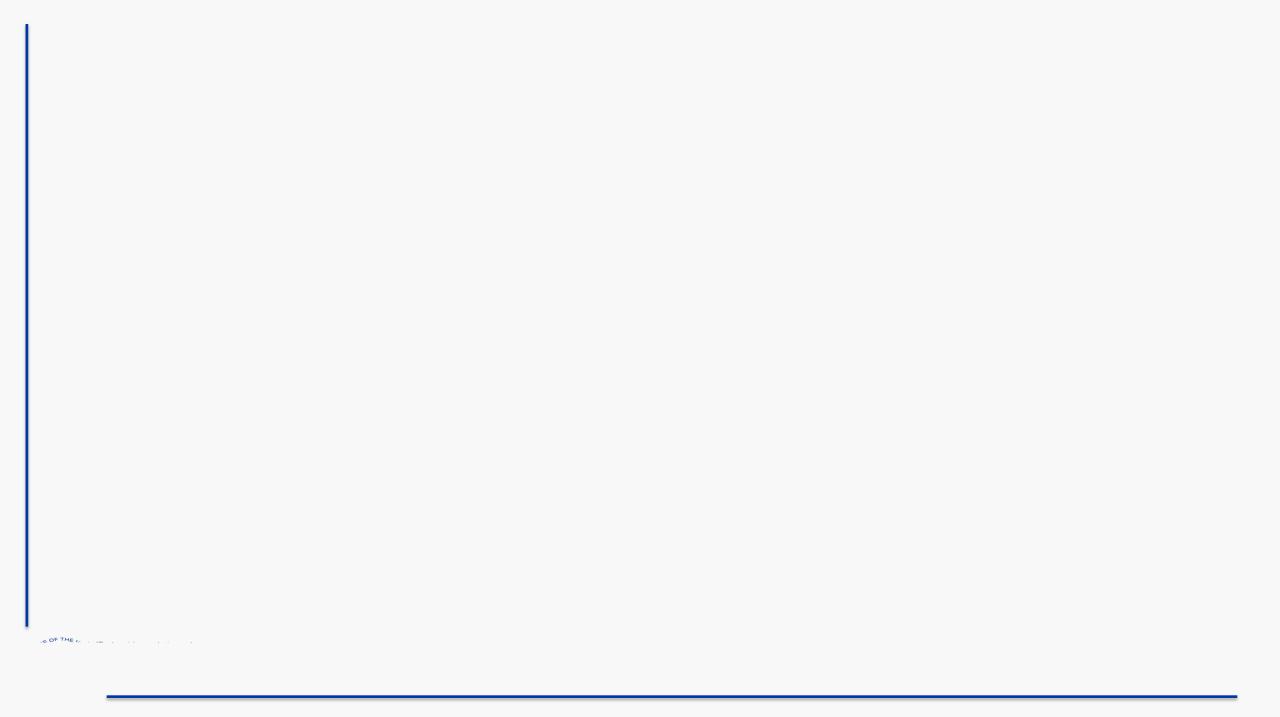
Narrative summaries of information NOT transcriptions

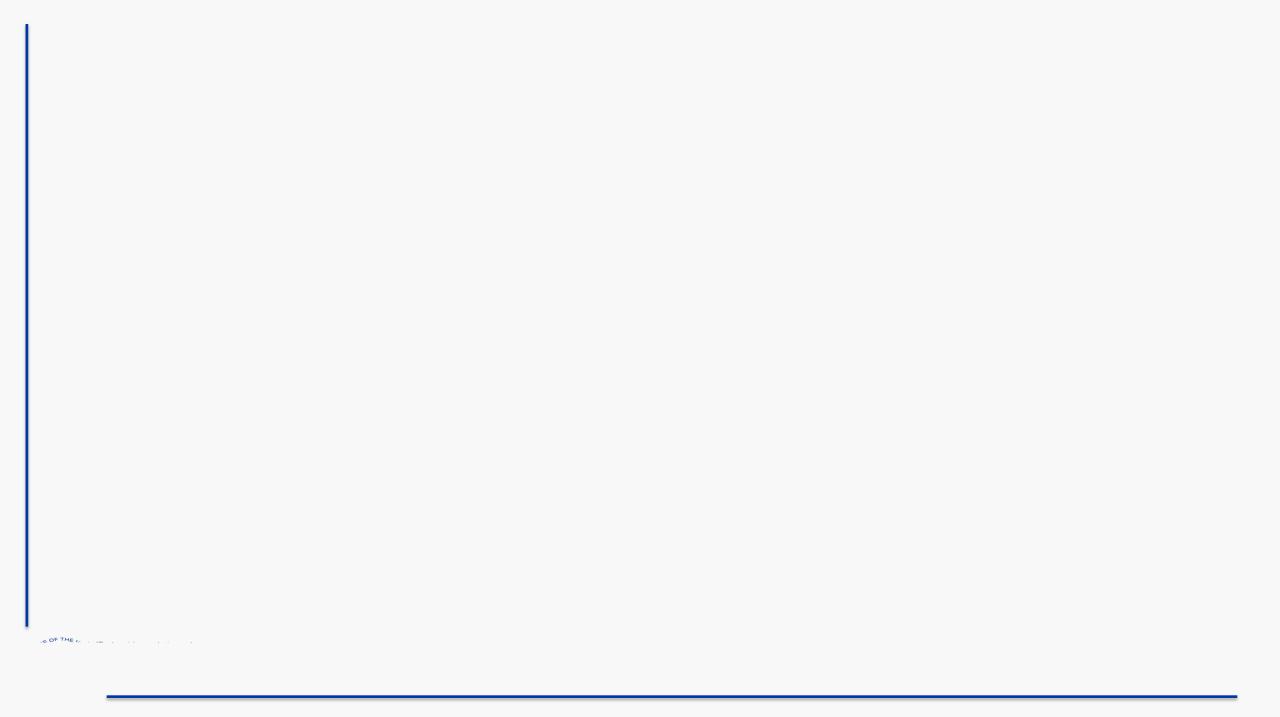
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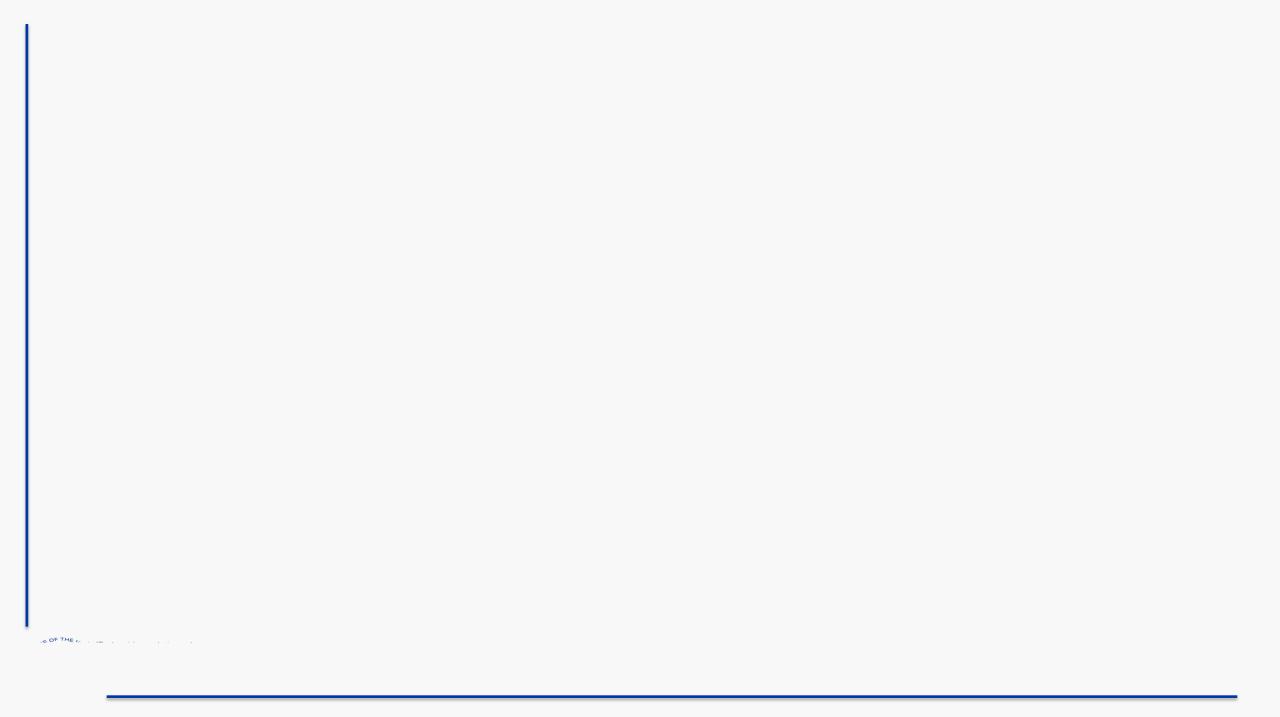
Information Gathered During The Investigation

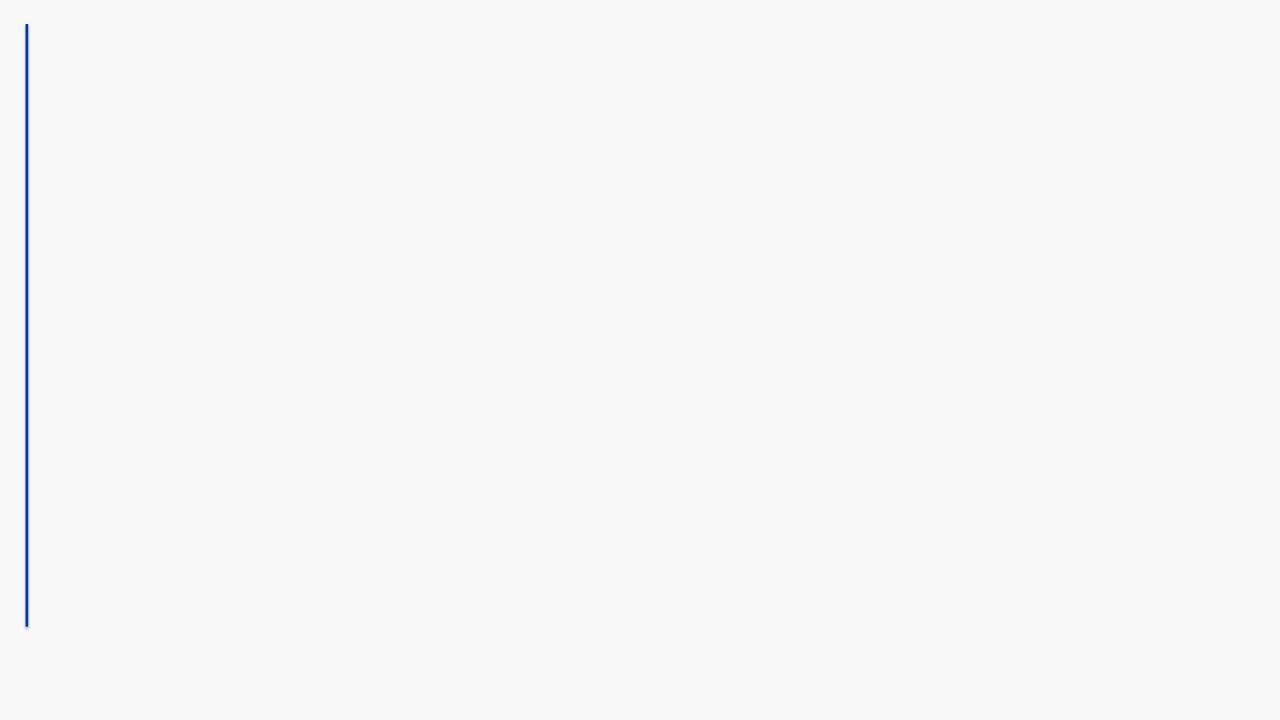
- Discuss individuals not interviewed
- Discuss any other evidence gathered and the source even failed attempts
- TIP: Schedule time after each interview to begin writing narrative summary



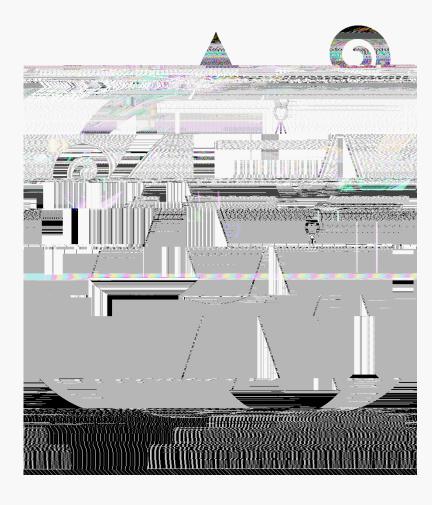


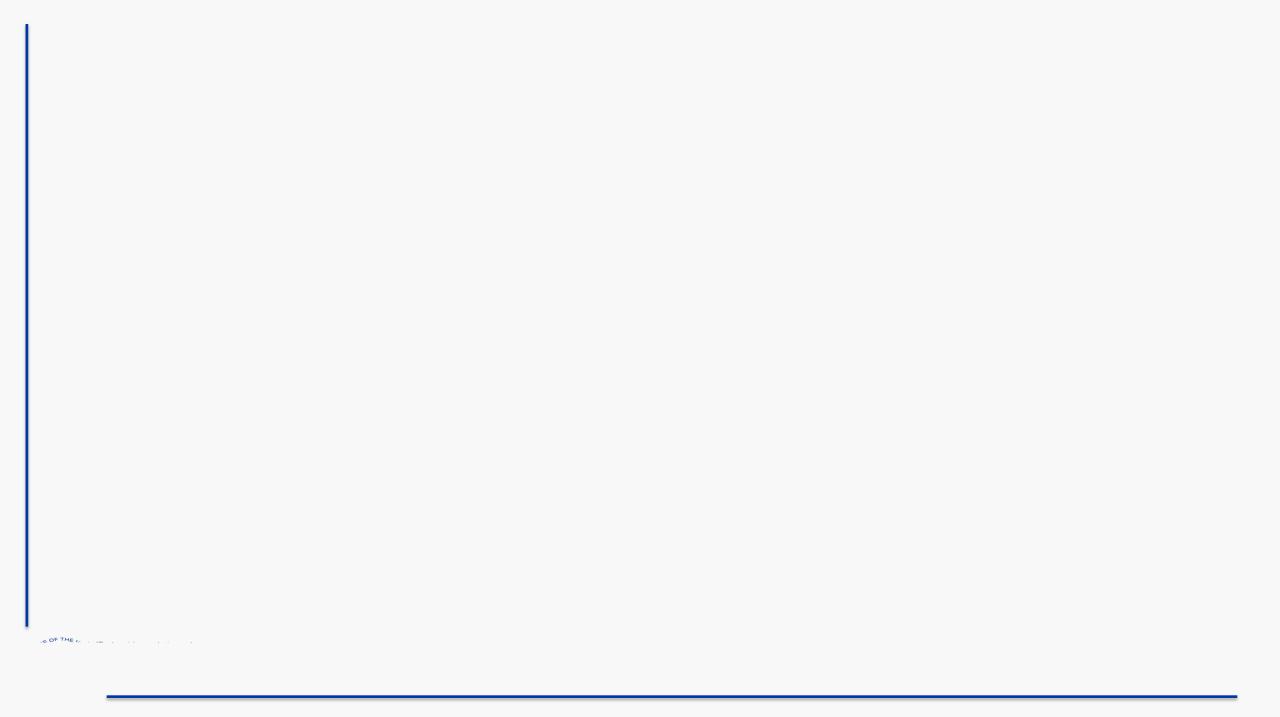






Understanding Substantial Evidence





Necessary Attachments

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Optional Aspects of the Investigative Report

Key Aspects in the Investigation Process

Parties right to review and respond to the investigation report

Sharing the final investigation report

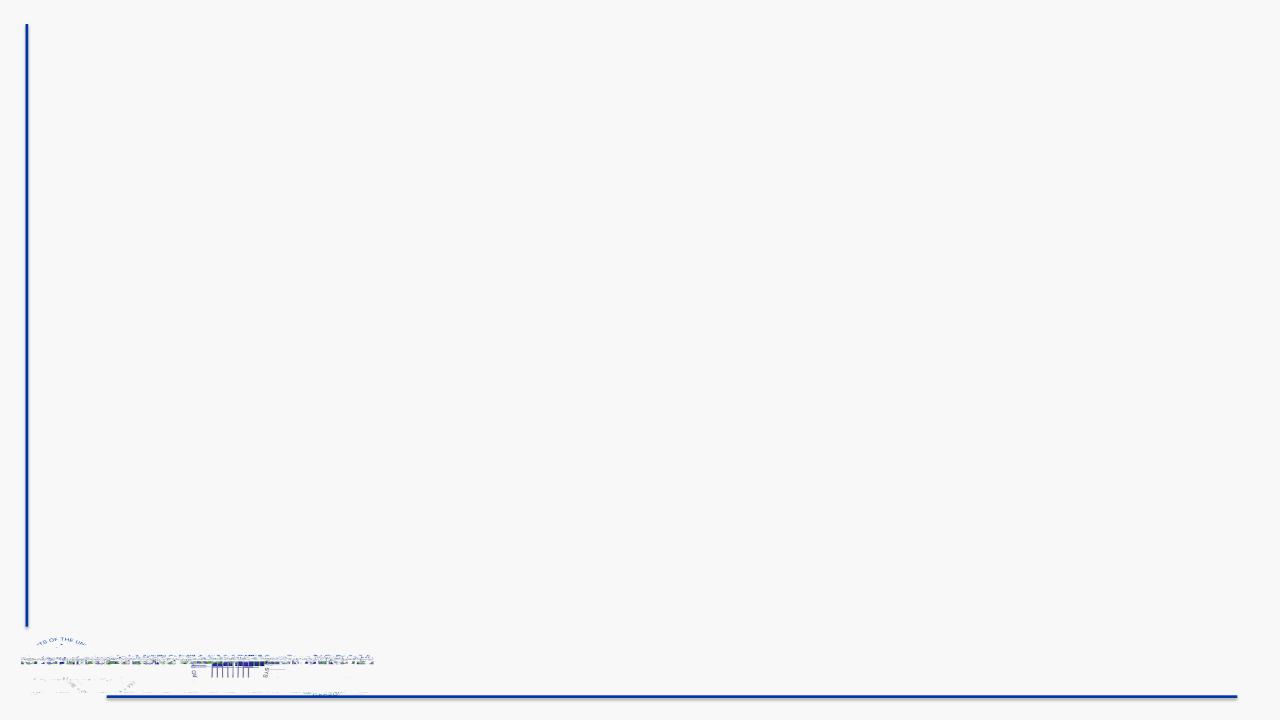
Things to Avoid

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The USG Adjudication Processes

Students

- All matters not informally resolved will be heard by a Hearing Panel
- Hearing Panels comprised of trained faculty and staff

Employees

Title IX matters not informally



Title IX Hearings

- Advisors required to conduct cross examination
- Relevancy determinations must be made before a question may be answered
- If an individual does not submit to cross examination panelists may not rely on their statements

Sexual Misconduct Hearings

- Hearing Panelist or Officer performs all questioning
- Relevancy determinations are made before and during the hearing
- Panelists permitted to rely on statements provided during the hearing and in the investigation report

Typical Order of a Hearing

- " Opening by Decision Maker
- Opening statements by both parties

Appeals

- Parties will continue to have both institutional level and Board level appeal opportunities
- Groundsfor an appeal:
 - New information
 - **Procedural Error**
 - ! Ex. Bias or conflict of interest of Title IX personnel
 - Finding inconsistent with the weight of the information





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Retaliation §106.71

- Who is protected: Reporters, Complainants,
 Witnesses, Respondents, even those who choose to not participate
- What is protected: Intimidation, threats, coercion, discrimination

Record Keeping §106.45(b)(10)

- ! Reports [supportive measures, why not deliberately indifferent and what measures taken to restore or preserve equal access]
- ! Investigations