

WESTERN OREGON UNIVERSITY HEARING BOARD TRAINING

2019

www.oregonsatf.org
taskforce@oregonsatf.org

3625 River Road North, Suite 275
Keizer OR 97303
503. 990.6541

OREGON ATTORNEY
GENERAL'S SEXUAL
ASSAULT TASK FORCE



ABOUT THIS DOCUMENT



34 CFR Part 106.45(b)(10) requires all Title IX-related training materials to be posted publicly to a school's website. These materials are specific to Oregon SATF's 2020 Campus Investigator Training.

The materials included here are proprietary and are copyrighted. The legal penalties for copyright infringement range from \$200 to \$150,000 for each work infringed, and the infringer pays for all attorneys' fees and court costs.

Your right is a right of inspection and review of the materials on this site, only. No other right is granted beyond viewing. You are not authorized to copy, use, adapt, save, repost, share publicly, or alter any contents from this document. .

You are not permitted to use the materials in this document for training, or for any commercial purpose. Any such use will result in damages equivalent to the full-per-head registration costs to the applicable Oregon SATF training, plus damages for reputational harm to Oregon SATF or our partners, in addition to any copyright infringement fines and/or penalties.

Proceeding to use and access the content in this document demonstrates your acceptance and understanding of these terms and conditions. To contact Oregon SATF with questions about any of the contents of this site, please email carli@oregonsatf.org





WOU Student Conduct Board Training

Hello!

Our names are Carli Rohner
and Kate Hildebrandt.

We work with the Oregon
Sexual Assault Task Force
Campus Program.



Oregon Attorney General's Sexual Assault Task Force

Formed in 1999 by Attorney General Hardy Myers at the request of a group of advocates and multidisciplinary responders in order to organize statewide efforts to address adolescent and adult sexual assault in Oregon. The SATF incorporated into a 501(c)(3) non-profit, non-government organization in 2003.

Mission: The effective prevention of and response to sexual violence through collaborative, comprehensive, survivor-centered strategies.



Before we get started...


These materials were created by the Oregon Attorney General's Sexual Assault Task Force (Oregon SATF) for the purposes of this training. Please do not reproduce this material without consultation of the Oregon SATF. If you share or present information from this presentation, please give written credit to the Oregon SATF noting the training was taken from and the date.

Please be advised that although we update this curriculum on a continual basis, as research, new data and new regulations become available, certain portions of content (including statistics) may become temporarily outdated. Nothing in this curriculum serves as legal advice, nor is it intended to do so.






Today's Agenda

- ◀ Introduction to Title IX
 - ◀ Sexual Violence on Campus
 - ◀ Neurobiology of Trauma
 - ◀ Situating Hearings
 - ◀ Understanding Bias in Hearings
 - ◀ Formulating Questions
 - ◀ Evaluating Consent
 - ◀ Adjudications and Decision-Making
- 



Tell us about you!



- ◀ Name
 - ◀ Role on campus
 - ◀ Are you new or returning?
 - ◀ Why did you decide to join the Student Conduct Committee?
- 

A Brief History of Title IX



What comes to mind when you hear Title IX?

Women's
Athletics



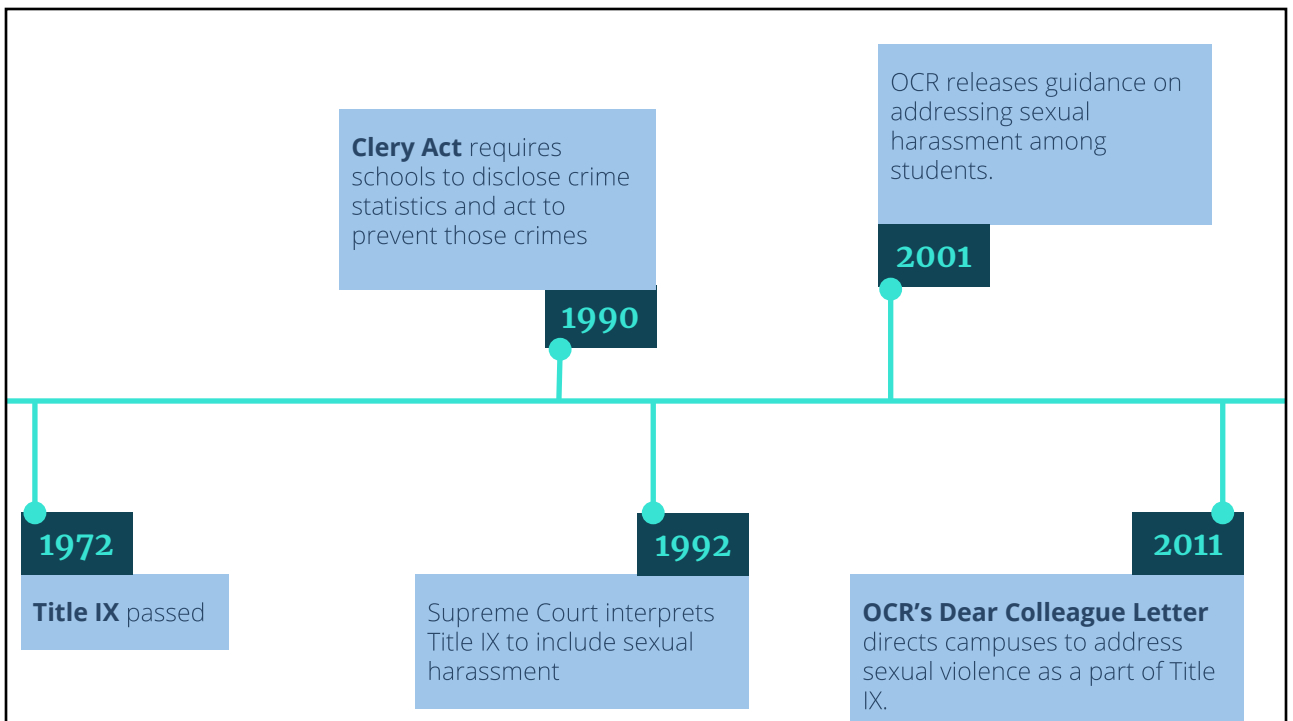
Sexual
Violence

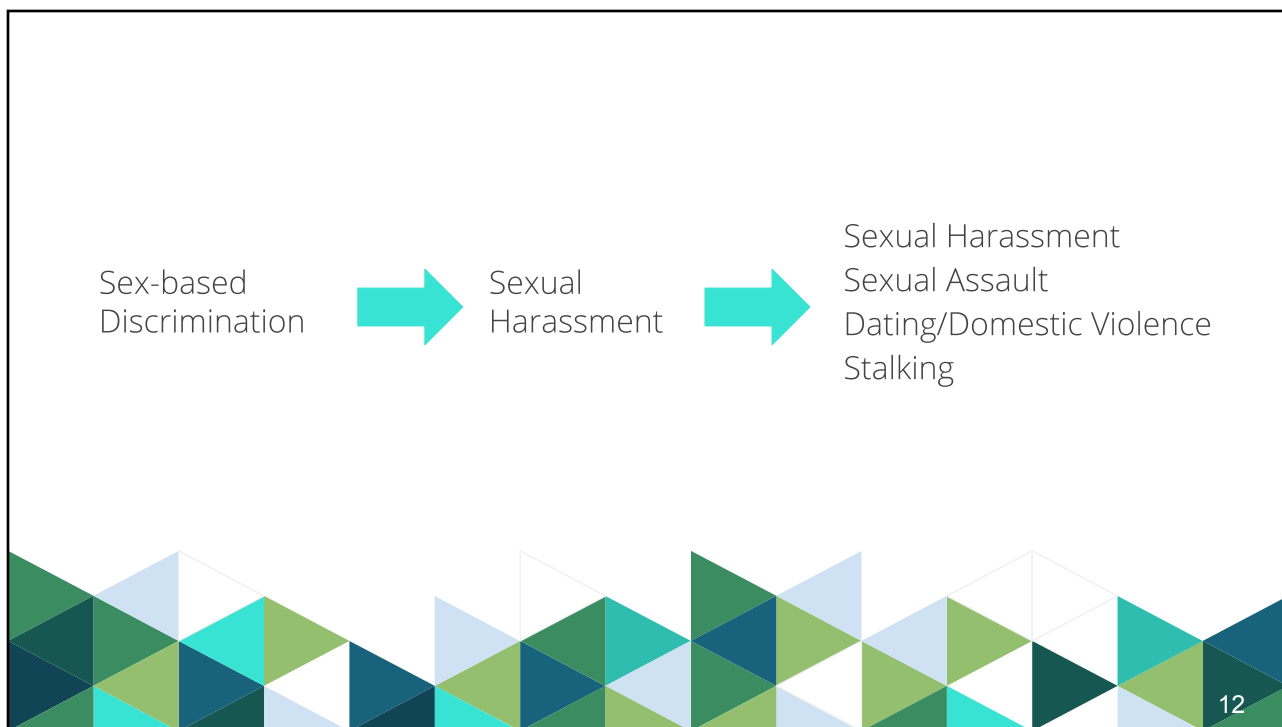
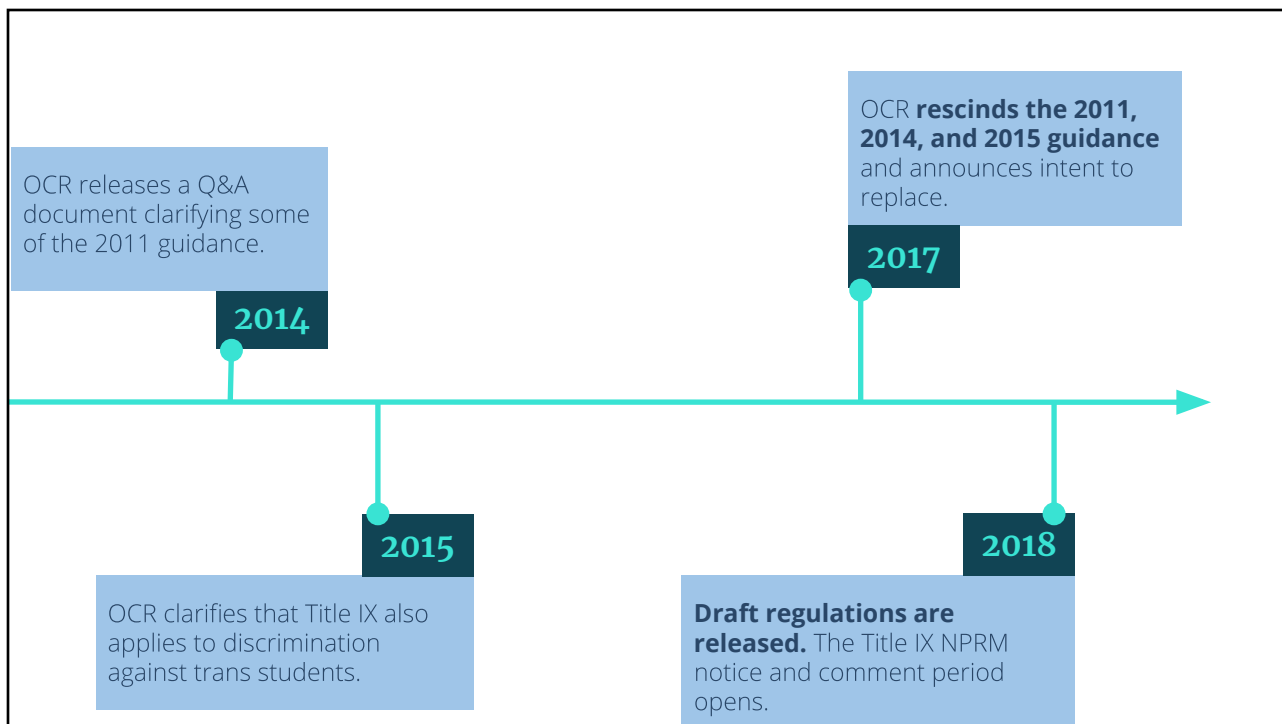


“

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html





Language

Criminal Justice

Rape/Sexual Assault

Defendant

Victim

Investigation

Trial

Verdict

Guilty/Not Guilty

Title IX

Sexual Harassment/Misconduct

Respondent

Complainant

Investigation

Adjudication

Finding

Responsible/Not Responsible

Students

?

Definitions and Dynamics

Title IX Reportable Offenses

- ◀ Sexual or Gender-based Harassment
- ◀ Non-consensual sexual intercourse (rape)
- ◀ Non-consensual contact
- ◀ Sexual exploitation
- ◀ Intimate partner violence
- ◀ Dating violence
- ◀ Domestic violence
- ◀ Stalking



Code of Student Responsibility

•Sexual misconduct is an **umbrella term** encompassing a range of behavior, including sexual harassment, sexual violence, sexual assault, intimate partner violence, domestic violence, dating violence, and stalking.

•Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is **incapable** of giving consent due to incapacitation.

•Intimate partner violence refers to any act of violence or threatened act of violence, sexual or otherwise, against a person who is or has been involved in a sexual, dating, domestic or other intimate relationship with that person.

•The prohibited conduct of this policy includes a broad range of behavior.






Types of Sexual-misconduct Offenses

Sexual Harassment

- Gender-based verbal or physical conduct that unreasonably interferes with or deprives someone of educational access, benefits, or opportunities

Non-consensual Sexual Intercourse

- Any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a human upon another human without consent.
- 




Types of Sexual-misconduct Offenses

Non-consensual Sexual Contact

- Any intentional sexual touching, however slight, with any object, by a human upon another human, without consent

Sexual Exploitation

- Occurs when a student takes non-consensual or abusive sexual advantage of another for their 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 the other sexual misconduct offenses
- 

Consent - Oregon Law

- It is the responsibility of the parties to both give and receive consent in a clear, concise and mutually understood manner.
- Consent once given can be revoked at any time.
- The Oregon Revised Statutes defines the inability to consent as:

163.315 Incapacity to consent; effect of lack of resistance.

(1) A person is considered incapable of consenting to a sexual act if the person is:

- (a) Under 18 years of age;
- (b) Mentally defective;
- (c) Mentally incapacitated; or
- (d) Physically helpless.

(2) A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of fact along with all other relevant evidence. [1971 c.743 §105; 1999 c.949 §2; 2001 c.104 §52]



How Does WOU Define Consent?

- ◀ Consent is informed, knowing, and voluntary.
- ◀ Consent is active, not passive.
- ◀ Silence, in and of itself, is not consent.
- ◀ Consent can be given by words or actions as long as those words and actions create mutually understandable permission regarding the condition of sexual activity.



How Does WOU Define Consent?

- ◀ Consent to one form of sexual activity cannot imply consent to other forms of sexual activity.
- ◀ Previous relationship or consent cannot imply consent to future sexual acts.
- ◀ Ability to give clear consent (not impaired by alcohol, drugs, disability, or injury).
- ◀ Consent can be withdrawn at any point in the ongoing behavior.

Let's Practice!

Michael is an exchange student. Upon arrival in the U.S. 9 months ago, his host family took his passport, claiming they needed it to complete paperwork related to his stay. After several weeks, Michael asked to have his passport returned but his host family refused.

His host family owns a local family restaurant where he works as a dishwasher when not attending school. Michael initially was glad for the job and hopeful for the opportunity to earn money. After Michael recently missed several classes in a row, his professor asked him why he had not attended. Michael told the professor that he had to pick up extra shifts in the restaurant. When he picks up additional shifts the host family does not pay him, keeping his pay to cover "additional costs" related to his room and board.

He also knows that his family has sent him money in letters addressed to him that arrive at the house, but he has never received any of it. He is usually at school when the mail arrives, and when he returns home, the letters from his family have been opened and the money removed.

Is this consensual? Why or why not?



Sarah tells you that she knows someone in her class (Greg) cheated on their final paper by having another student (Mark) write it. Sarah says that she saw Mark and Greg in the computer lab many times, late into the night, where she witnessed Mark typing up Greg's paper while Greg watched.

Greg admits that Mark wrote most of his paper. He tells you he was worried about failing, and knew that Mark was a strong writer. Greg says that Mark agreed to write the paper because they are both on the lacrosse team and the coach has set a GPA requirement for them to play.

Mark tells you that he didn't initially plan to write the whole paper for Greg. Greg came to him asking for help, and that Mark agreed to tutor Greg and proofread his materials for him. As Mark started to help Greg with his paper, Mark tells you that Greg started pressuring Mark to just write it for him, coming up with excuses why he can't do it, and telling Mark that if he doesn't help him that he'll be the reason the lacrosse team doesn't make it to the playoffs.

Mark says that as the semester went on, that Greg convinced him to write more and more of the paper as opposed to just proofreading. Mark tells you that he feels guilty for writing the paper and that he felt like once he started, that there was no way out without Greg and the whole team being mad at him.

Is this consensual? Why or why not?



Dynamics of Sexual Violence

digging deeper



1 in 4

women in Oregon experiences sexual violence in their lifetime

1 in 20

men in Oregon experiences sexual violence in their lifetime



1 in 4

trans students experiences sexual assault while in college

1 in 5

women experiences sexual assault while in college

1 in 14

men experiences sexual assault while in college



Cantor et al., 2015; Krebs et al., 2007; AAU, 2015

75%

of trans students experience sexual harassment while in college

62%

of women experience sexual harassment while in college

43%

of men experience sexual harassment while in college



https://www.aau.edu/sites/default/files/%40%20Files/Climate%20Survey/AAU_Campus_Climate_Survey_12_14_15.pdf



Perpetrators tend to target individuals who are

- ◀ Vulnerable
- ◀ Accessible
- ◀ Lacking in credibility



Populations on campus who experience higher rates of violence

Students of color

Undocumented students

Indigenous students

Non-English speaking

LGBTQ+ students

Minors

Trans* students

Sex workers

Students with disabilities

Alcohol and drug users

Students experiencing homelessness

International students



45%

of Native and Indigenous women in the United States experience sexual violence in their lifetime

1 in 2

trans individuals experiences sexual violence in their lifetime

1.5x

adults with disabilities are more likely to experience sexual violence

<https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>; James et. al., 2016



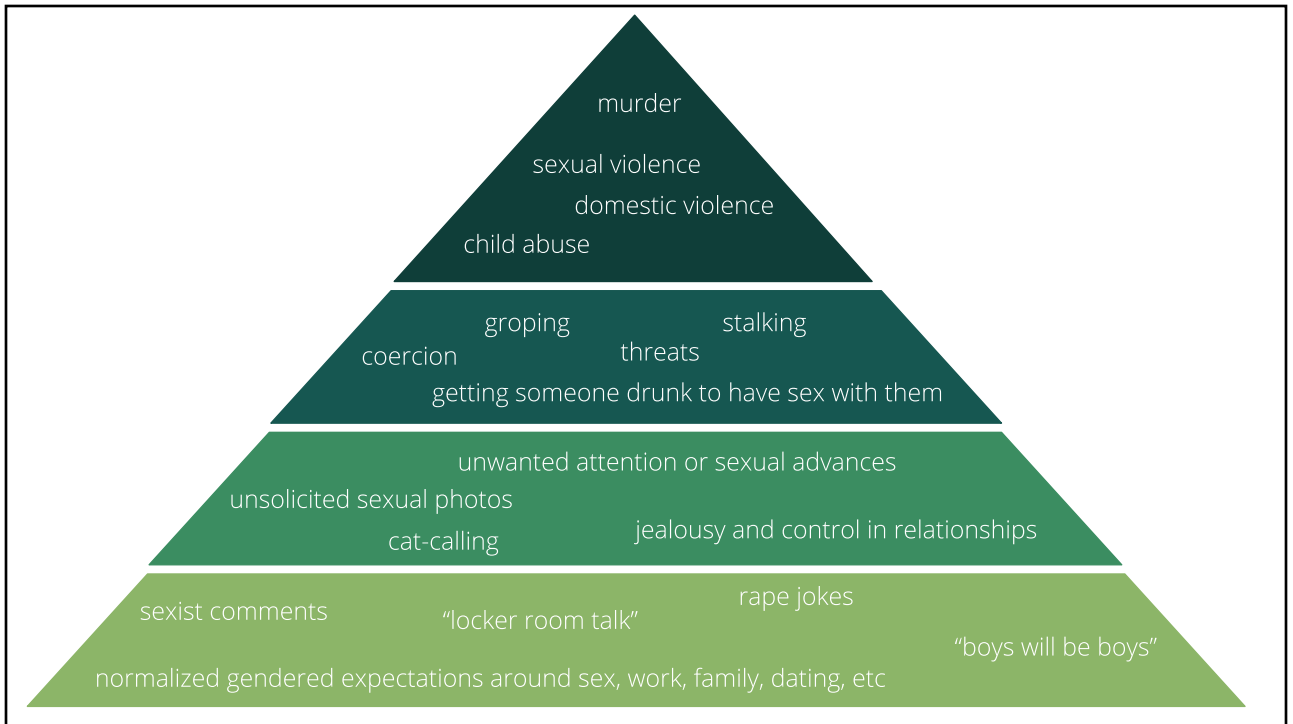
**Why don't we see more students
report?**

Cultural Norms: Childhood



Cultural Norms: Protection





4%

of college men reported committing more than one act of forcible physical sexual assault while in college (Lisak, 2002)

19.4%

of college men reported committing at least one act of sexual aggression (contact sexual violence) before age 18 (Salazar et. al., 2018)

29%

of college men committed at least one act of sexual coercion or aggression while in college (Zinzow & Thompson, 2015)



Lawyer Says 11-Year-Old Gang Rape Victim Was a 'Spider' Luring Men Into Web

Residents in the neighborhood where the abandoned trailer stands — known as the Quarters — said the victim had been visiting various friends there for months. They said she dressed older than her age, wearing makeup and fashions more appropriate to a woman in her 20s. She would hang out with teenage boys at a playground, some said.

ICE detains alleged domestic violence victim


AUSTIN — Federal immigration agents went to the El Paso County Courthouse last week and arrested an undocumented woman who had just received a protective order alleging that she was a victim of domestic violence.

Kavanaugh accuser has reportedly received death threats and is in hiding

What other norms or beliefs impact the environment around reporting on campus?



Takeaways:

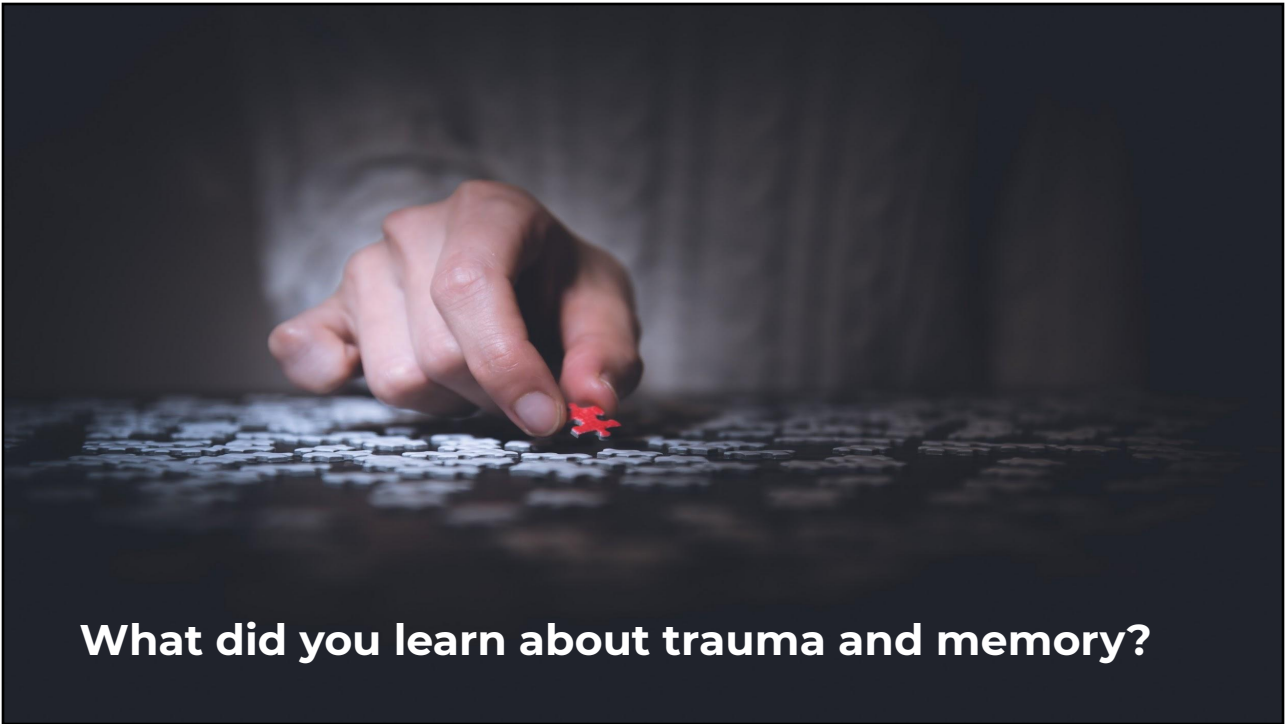
- ◀ Survivors face many barriers in understanding and reporting their experiences.
 - ◀ Social and cultural dynamics play a role in the process of reporting (and in participating in a hearing).
- 

Neurobiology of Trauma

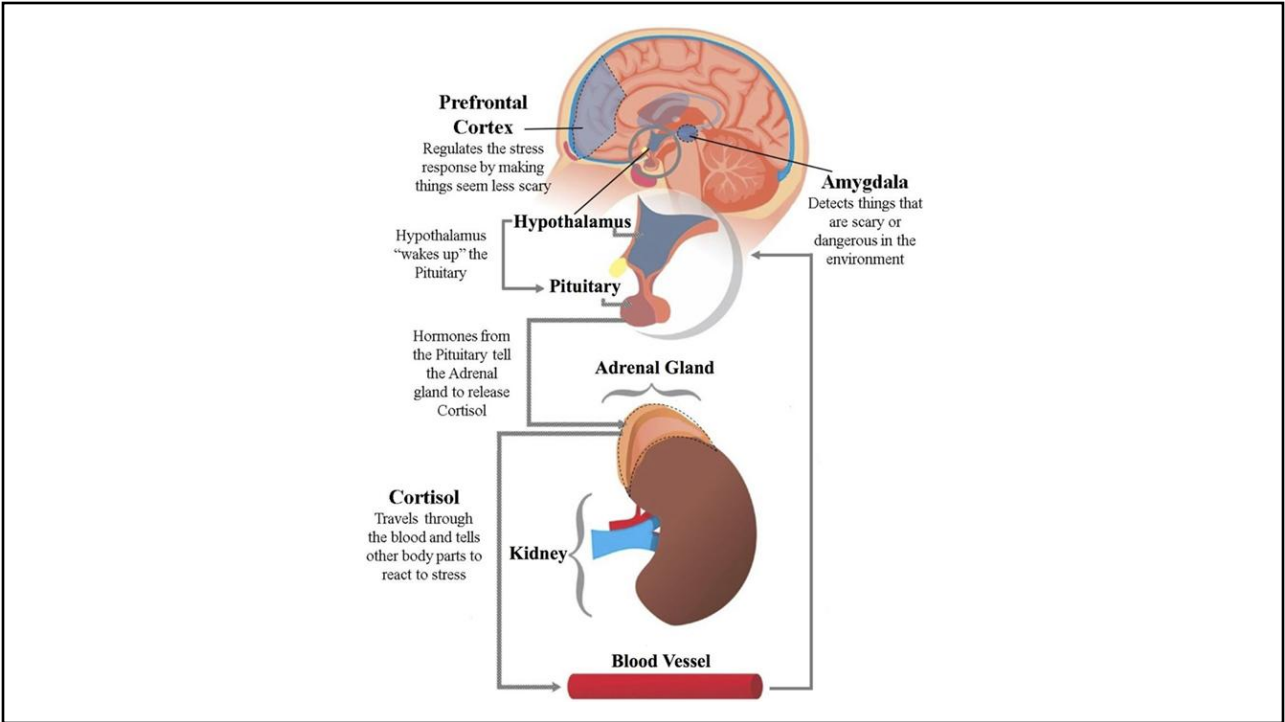


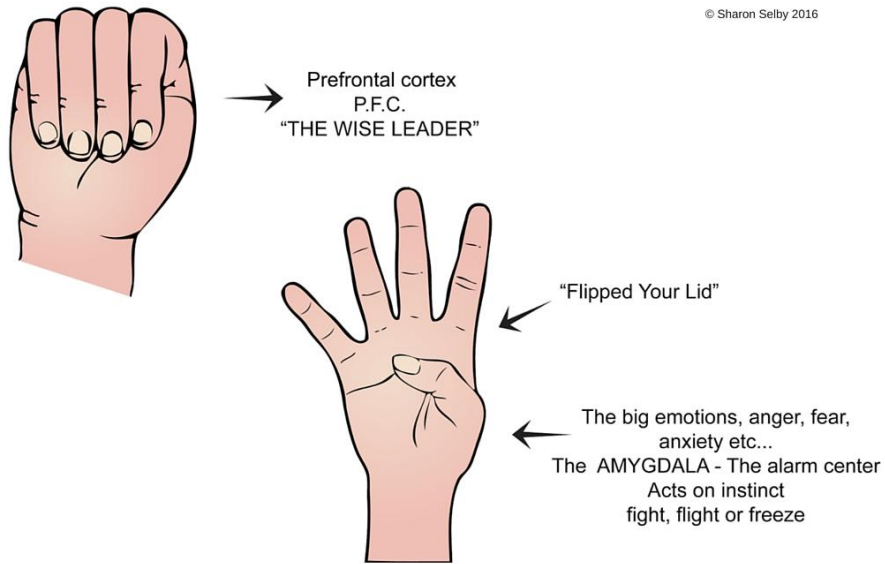
**What do we expect people who
have experienced trauma to act
like? Sound like?**





What did you learn about trauma and memory?





Adapted from Dr. Daniel J. Siegel's Hand Model of the Brain found in *Mindsight: The New Science of Personal Transformation* (Bantam Books, 2010)

Fight

Flight


Freeze



How might the effects of trauma show up in the hearing process?



Takeaways:

- ◀ Trauma and stress are different experiences
 - ◀ Trauma overwhelms the brain
 - ◀ Fight, flight, or FREEZE
 - ◀ Hormones from trauma = difficulty with memory recall, differences in affect, and physical symptoms
 - ◀ Short-term and long-term effects
- 



**Time for
a Break!**



WOU Student Conduct Board Training



Framing Considerations

The Framework of the Hearing
and Adjudication Process



Goals for this section

- ◀ Understand the purpose of the hearing process
- ◀ Explore how bias influences Title IX processes
- ◀ Understand student rights and how students are supported through the process





Theoretical Grounding





Goals of the Investigation and Hearing Process

- ◀ Educational access
 - ◀ Student and campus safety
 - ◀ Equity and fairness
 - ◀ Reduce and prevent future harm
- 




What are some traditional models, and concerns that may occur? Key: Balance for all parties involved.

concern for safety, educational access and emotional wellbeing of responding student

safety of campus community

concern for safety, educational access and emotional wellbeing of reporting student





“


Hearing processes promote safety, accountability and learning processes for all involved - reporting students, responding students, and the campus community.

AND

Students who are assaulted often suffer academically, leave school for a time, or drop out, especially if they are not believed or experience institutional betrayal.


CONCERN

If a student is suspended/expelled, it could ruin their future.





Let's reframe again!

- ◀ Safety, access, and success are important for all our students and are built into our policies and procedures.
 - ◀ Equitable and trauma-informed support options/resources should be built-in before, during, and after hearings - and should be consistent.
- 



“

Western Oregon University's Campus Student Conduct Program **holds the education of the Student at its philosophical heart.**

This educational philosophy defines a structure for the Student Conduct Program.

-Code of Student Responsibility



Bias



**What comes to mind when you
think of bias?**



**What do we expect
a sexual assault
survivor to look
and act like?**



Studies have found that people were more likely to believe survivors who:

- ◀ were emotionally distressed
- ◀ displayed more stereotypical gendered behaviors (clothing, social roles, etc)
- ◀ were women

Schuller, McKimmie, Masser, & Klippenstine, 2010. Judgements of Sexual Assault. *New Criminal Law Review*, 13(4)



What do we expect a perpetrator of sexual assault to look and act like?

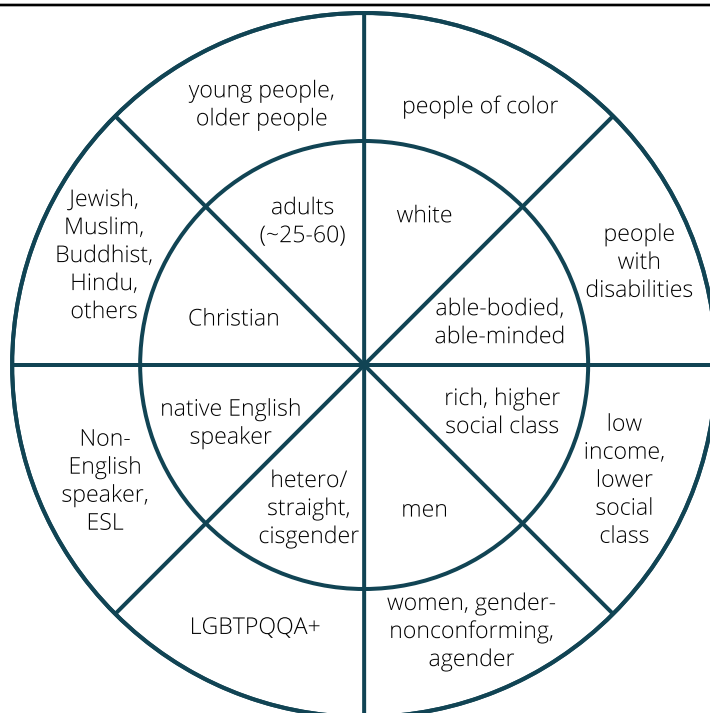




- ◀ evil
- ◀ angry
- ◀ hostile
- ◀ unwilling to submit to authority
- ◀ pattern of previously documented bad behavior
- ◀ unapologetic
- ◀ outbursts
- ◀ uncontrolled
- ◀ Why could this framing be problematic?




**How does this
intersect with social
identities and other
oppressions?**





Race and Criminal Convictions

- ◀ Black men are 12x more likely than White men to be wrongfully convicted of murder, and 5x more likely to be wrongfully convicted of sexual assault, based on exoneration rates.
 - ◀ Black men tend to receive longer sentences for murder, sexual assault, and drug charges than White men.
- 

http://www.law.umich.edu/special/exoneration/Documents/Race_and_Wrongful_Convictions.pdf

What other dynamics in sexual misconduct cases might trigger an implicit bias?

When does implicit bias most influence our decisions and actions?

- ◀ Ambiguous or incomplete information
- ◀ Compromised cognitive load (such as stress)
- ◀ Time constraints
- ◀ Overconfidence in objectivity

Kirwin Institute, The Ohio State University




How might this show up in the hearing process?

Work with a partner to brainstorm 2 ways bias might manifest during hearings, and 2 strategies to intervene.



Strategies to address bias

- ◀ Slow down
 - ◀ Question what you “know” to be true
 - ◀ Increase your knowledge about identities you don’t share
 - ◀ Ask others to evaluate you
 - ◀ Use data - case reviews and statistics
- 

Kirwin Institute, The Ohio State University



Student Rights





No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

-Title IX

Student Rights

An education free from harassment and violence.

Complainant Rights

- ◀ Advisor of choice
- ◀ Advance and appropriate notice of hearing process and all hearings/meetings
- ◀ To have knowledge of the charge and witnesses
- ◀ To indirectly challenge statements from the respondent or witnesses
- ◀ Can opt-out of any part of the process (*HB 2972 - Reluctant Complainants*)
- ◀ To be notified in writing of outcomes
- ◀ To appeal the outcome

Respondent Rights

- ◀ Advisor of choice
- ◀ Advance and appropriate notice of hearing process and all hearings/meetings
- ◀ To have knowledge of the charge and witnesses
- ◀ To indirectly challenge statements from the complainant or witnesses
- ◀ Can opt-out of any part of the process
- ◀ To be notified in writing of outcomes
- ◀ To appeal the outcome

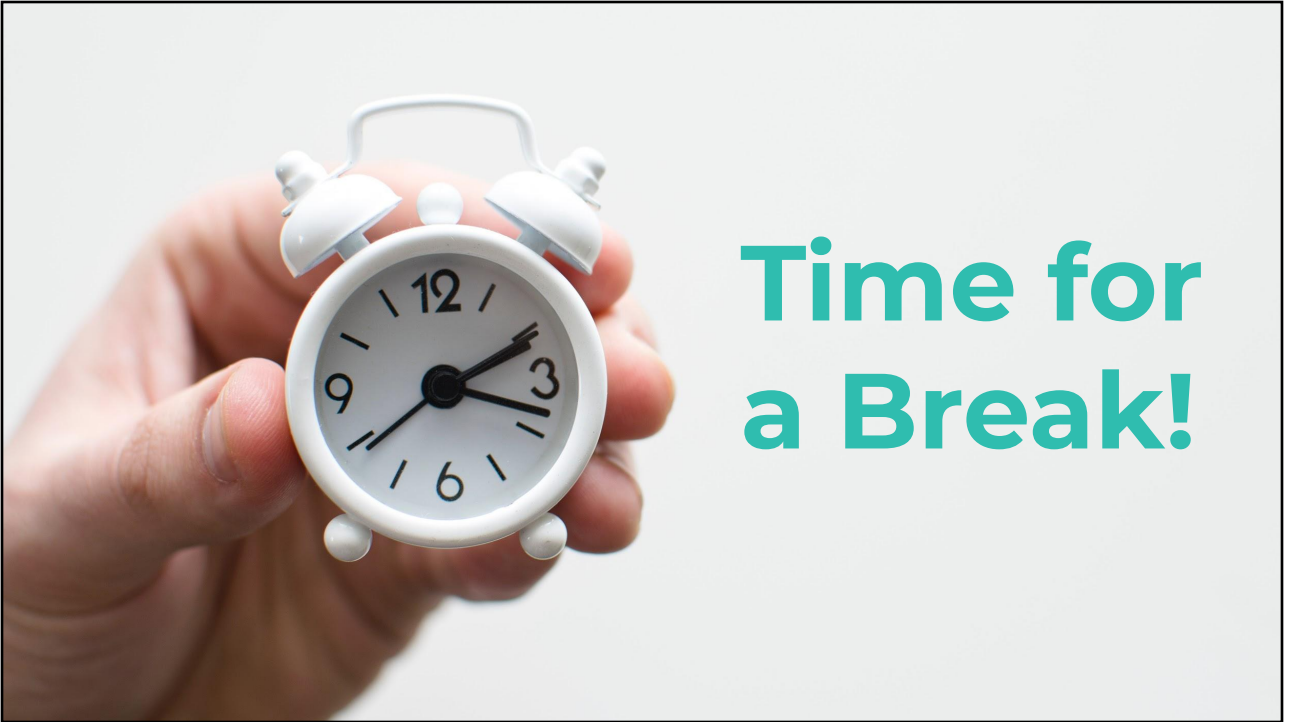
Why might a student not want to participate in the hearing process?



Takeaways:

- ◀ Our goal is to ensure educational access, to keep students and the campus safe, and to mitigate current and prevent future harm.
- ◀ We all have biases, and they can creep into the hearing process. Use intentional strategies to check and intervene on your bias.
- ◀ All students have rights in the hearing process to help ensure a fair and supportive process.





Hearings and Adjudications

Trauma-Informed and
Student-Centered Processes





Goals for this section

- ◀ 2 strategies for eliciting questions that get the information you need (in a trauma-informed way!)
- ◀ Examine a rubric for analyzing consent
- ◀ List considerations for coming to a finding

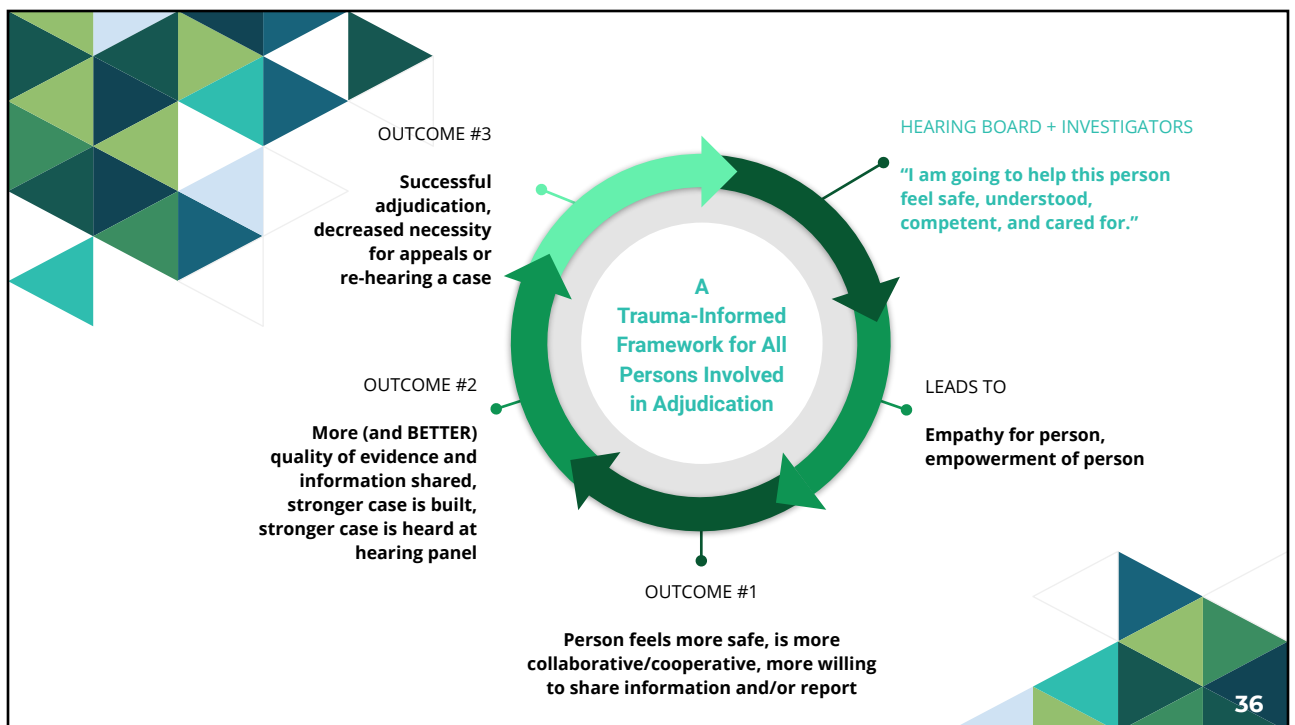
Feel welcome to ask questions as we go!

Questions & Interview Methods in the TIX Context



What feels difficult about asking questions during a hearing?

What do you take into account when formulating questions?



TAKE AWAY:

If we treat *all persons* involved in the process with *respect*, we reduce the likelihood of negative outcomes for survivors, respondents AND our campus community.



Purpose of asking questions in a hearing setting

IS

- ◀ To clarify information in the investigative report
- ◀ To address a gap in information:
 - ◀ On behalf of one party
 - ◀ When no party has addressed an important dynamic

IS NOT

- ◀ To repeat information in a report (corroboration)
- ◀ To test a particular person's credibility

What are the benefits of using closed questions in a hearing setting?

Strategies for using closed questions

- ◀ Specific detail or clarification is needed
 - ◀ "You stated the shirt was blue. Is that correct?"
- ◀ Timing and duration of responses



What are the benefits of using open-ended questions in a hearing setting?

Strategies for using open-ended questions

- ◀ Experiential (we will practice this next!)
- ◀ Avoid “why”? → lots of ways to redo this!
- ◀ Need for a lot of information
 - ◀ Area not covered in report?



Strategies to make both prior strategies effective!

- ◀ Limit the number of questions to only those that are absolutely necessary
- ◀ Check our bias(es)
- ◀ Give context when necessary
- ◀ Don't interrupt



Experiential-based Questioning



How Experiential-based questioning methods help

- ◀ Memory stored in different ways
- ◀ Trauma impacts memory storage
- ◀ Asking questions based in senses/experience help recall
- ◀ Difficult to lead



How behavior-based questioning methods help your hearing:

- ◀ Memory stored in different ways / Trauma impacts memory storage
- ◀ Asking questions based in senses/experience help recall
- ◀ Difficult to lead



Tips and Tricks:

- ◀ “What can you remember about your experience...”
- ◀ “What do you remember feeling when...”
- ◀ “Tell me more about...”
- ◀ Consent!



Scenario:

- ◀ The report details a sexual assault involving one claimant and two named respondents.
- ◀ Your committee has information that the three students walked home together from a local restaurant, and all report being “tipsy”, or “super drunk”.



Scenario:

- ◀ Your committee is examining the issue of incapacitation (regarding the claimant), and needs more information about the claimant's mental state during different periods of the night. You also want more information about what "tipsy" and "really drunk" mean to the students being interviewed.



Scenario:

- ◀ What types of experiential questions could you ask the claimant?
- ◀ The respondents?



Considerations for Evaluating Consent



Force Incapacitation Consent



EXAMINING CONSENT DYNAMICS

FORCE

- Physical
- Threats
- Intimidation
- Coercion
 - Isolation
 - Intent

INCAPACITATION

- 5Ws
- Blackouts

CONSENT

- Your university policy
- All the things Aislinn said!

53

Indicators of Threat:

- ◀ “What can you remember thinking when you walked back into the residence hall?”
- ◀ Previous knowledge
- ◀ What else?

EXAMINING CONSENT DYNAMICS



Indicators of Incapacitation:

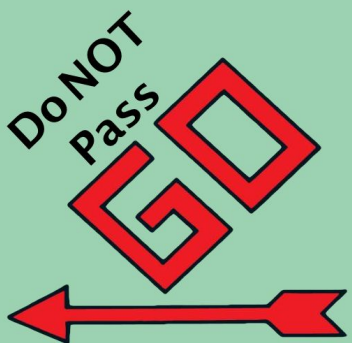
- ◀ A witness or the responding party may know how much the other party has consumed
- ◀ Slurred speech
- ◀ Bloodshot eyes
- ◀ The smell of alcohol on the breath
- ◀ Shaky equilibrium
- ◀ Vomiting
- ◀ Outrageous or unusual behavior
- ◀ Unconsciousness.

EXAMINING CONSENT DYNAMICS

FORCE

INCAPACITATION

CONSENT



What words (or actions) by the reporting party gave the responding party permission for the specific sexual activities that took place?

57

EXAMINING CONSENT DYNAMICS

FORCE

INCAPACITATION

CONSENT



58

Building from the previous scenario:

- ◀ Claimant's original report did not include any information about physical injury.



Building from the previous scenario:

- ◀ Claimant also shares during hearing she originally went inside the residence hall with the respondents to get a jacket, but did not want to go into their hall (where the jacket was).
- ◀ Instead, she tried to have one of the men bring it to her.



**What experiential-based questions
might you want to ask the
claimant about the residence hall?**

**Building from
the previous scenario:**

- ◀ Claimant shares that she and the RA of that hall were in an argument and she didn't want to see them.



Building from the previous scenario:

- ◀ Report states that the group walked approximately 9 blocks between destinations.
- ◀ Claimant reports feeling “tipsy”, respondents report “being super drunk”.



**What experiential-based questions
might you have for the claimant?
Respondents?**

Building from the previous scenario:

- ◀ Clarification from the claimant during hearing stated that “tipsy means like silly...like I knew we were going down the main street, but I had to focus so hard on walking, and did have to be propped up a few times (by one of the respondents). I mostly remember the last block”

◀



**What consent questions do you
need to understand?**

Building from the previous scenario:

- ◀ Use the rubric!
 - ◀ FORCE
 - ◀ INCAPACITATION
 - ◀ CONSENT



Considerations for Coming to a Finding



What do you love about the culture of WOU?

COMING TO A FINDING

The two-prong approach to more successful hearings, and reducing trauma

Consistency

- ◀ Apples to Apples
- ◀ Oranges to Oranges
- ◀ Reputation matters...just ask businesses with a 1-star Yelp Review

Evaluation

- ◀ Who is getting what sanctions?
- ◀ Who is participating?
- ◀ Who isn't?
- ◀ How many appeals?

Questions?

71

Thank you!

Carli Rohner

carli@oregonsatf.org

Kate Hildebrandt

kate@oregonsatf.org

72