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& ASSOCIATES

Title IX Investigator Report Writing (Tier 5)

Presented by DSA Associates:

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Adrienne Murray
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Report Writing

- Title IX report requirements
- Report contents
 - Compilation of the evidence
 - Documentation of the process
 - Summary of relevant evidence
- Putting it all together

Adrienne Meador Murray, Vice President,
Equity Compliance and Civil Rights Services



In January 2014, Adrienne Meador Murray joined D. Stafford & Associates where she currently serves as the Vice President, Equity Compliance and Civil Rights Services after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012 and the National Association of Clery Compliance Officers & Professionals (NACCOP) where she currently serves as Director of Training and Compliance Activities. Murray began her career in municipal law enforcement as a civilian employee with the City of Richmond Police Department (Virginia). She graduated from the Virginia Commonwealth University Police Training Academy and began her career as a sworn police officer for the University of Richmond (UR) Police Department (Virginia). At UR, Murray progressed through the ranks from a night shift patrol officer to Operations Lieutenant (overseeing criminal investigations, crime prevention and patrol) over the span of a decade before becoming the Chief of Police at Davidson

College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.).

As the Executive Director, Equity Compliance and Civil Rights Services for DSA, Murray builds on her 17-year career in law enforcement in which she became a nationally recognized expert in the field of best practice postsecondary institutional response to the sexual victimization of college women in the United States and in Canada. She is also a trained civil rights investigator and is well respected throughout the country for her ability to aid institutions in understating how to do best practice criminal and civil rights investigations concurrently. She is well known for her work in having provided support, advocacy and criminal investigative services for victims of sexual assault, stalking and intimate partner violence and is a sought-out speaker and investigator. She has expertise in the construction of best practice law enforcement standard operating procedures and training police officers to respond in best practice and trauma-informed ways to victims of sexual assault and intimate partner violence. In her current role, Murray coordinates curriculum development and instruction for national classes, including basic and advanced sexual misconduct investigation classes; an investigation of dating violence, domestic violence and stalking class; and a Title IX Coordinator/Investigator class offered through D. Stafford & Associates. To date, Murray has trained more than 3,500 criminal and civil rights investigators throughout the U.S.

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA



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Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based trainings pertaining to the resolution of sexual misconduct offenses on college and university campuses. Murray frequently presents at regional and national conferences on topics such as the *Sexual Victimization of College Women*, *Understanding Consent and Incapacitation*, and *Responding to Sexual Assault on Campus: Clery Act and Title IX Implications*. Murray also conducts provincially specific sexual misconduct trainings throughout Canada.

Murray is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management and of New England College, where she received her Master's Degree in Campus Public Safety Administration. Murray is also a graduate of the 235th session of the prestigious FBI National Academy where she was awarded a graduate certificate in Criminal Justice from the University of Virginia. She has authored numerous journal articles.

Catherine Cocks, M.A.
Consultant, Student Affairs, Title IX, and
Equity Compliance Services



Ms. Cocks has been a higher education professional for over thirty years. Her work with D. Stafford & Associates focuses on Title IX investigations and training; assessment of student affairs policies, practices and services; and behavioral threat assessment. Cathy was the Director of Community Standards for the University of Connecticut for 14 years where she managed the student conduct process, which included managing all Title IX cases involving student respondents and chaired the University's student threat assessment team. Prior to that, she held several positions within Residential Life at the University of Connecticut and Roger Williams University.

She is a faculty member for the Association for Student Conduct Administration's (ASCA) Donald D. Gehring Academy teaching on subjects such as ethics, governance, threat assessment, media relations, and higher education trends. She was an affiliated faculty

member for many years in the University of Connecticut's Higher Education and Student Affairs Master's program teaching "The Law, Ethics, and Decision-Making in Student Affairs."

Cathy has co-authored the "Philosophy of Student Conduct" chapter in the 2nd edition of "Student Conduct Practice" (2020) and was a member of the writing team for CAS Standards' Cross-functional Framework for Identifying and Responding to Behavioral Concerns.

Cathy is a Past President of ASCA. She has also served as a Circuit representative, co-chair of the Public Policy and Legislative Issues Committee, and as a member of the ASCA Expectations of Members Task Force. Cathy has served in a variety of leadership roles in NASPA Region I.

She was the 2015 recipient of ASCA's Donald D. Gehring Award. She is a past recipient of the NASPA Region I Mid-Level Student Affairs Professional Award and the NASPA Region I Continuous Service Award.

She earned her Master's degree in Higher Education Administration from the University of Connecticut and Bachelor's degree in Communications/Media from Fitchburg State University.

Ann Todd
Consultant, Equity Compliance and Civil Rights Investigations



Ann Todd, Esq is a seasoned civil rights investigator in higher education for D. Stafford & Associates (DSA). Ms. Todd is a graduate of Davidson College with a degree in psychology and holds a JD from the University of Nebraska. Prior to joining DSA, she practiced law in Charlotte, NC, specializing in employment and civil rights and worked for a number of non-profit organizations. She returned to her alma mater (Davidson College) in 2008 and worked there through March of 2016 serving as the Assistant Director of Human Resources with the responsibility of managing employee relations and the learning and development function while also serving as the deputy Title IX Coordinator.

Ms. Todd joined the DSA in 2015 and currently serves as the Consultant, Equity Compliance and Civil Rights Investigations. She is the Senior Investigator for the DSA Title IX Investigation Team. She conducts external investigations on behalf of colleges and universities, specializing in investigating student allegations of sex discrimination, sexual assault, intimate partner violence, and stalking. Additionally, she brings a strong Human Resources background to investigating a range of employee misconduct—from performance issues to discrimination.

In addition to conducting investigations, Ms. Todd is a frequent speaker and consultant on Title IX investigations, conducting 20-30 courses every year on best practices for investigating sex discrimination and sex crimes on campus. She works with schools to draft policies and processes that provide equity and fairness to



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all parties involved and is adept at facilitating discussions with institutions to ensure the end product represents the values of the campus community.

Ms. Todd is licensed private investigator and a member of the NC Bar. She is a Certified Clery Compliance Officer through the National Association of Clery Compliance Officers and Professionals (NACCOP) and she is also a certified 360 facilitator through the Center for Creative Leadership. Ms. Todd lives in Davidson, NC where she volunteers on a number of local and town boards.

INVESTIGATION CLASS ACRONYMS

- ASR:** Annual Security Report (often used as a reference to the Annual Security Report and/or the Annual Security and Fire Safety Report) that must be published by each institution of higher education.
- CSA:** Campus Security Authority—Individuals on each campus who have been identified by the Department of Education as persons who are required to report crimes that they become aware of to the Reporting Structure at each institution.
- DCL:** Dear Colleague Letter—this is a formal name of the method of communication from the Department of Education to college campuses. It is like naming their official “memo” to campuses.
- FERPA:** Family Educational Rights and Privacy Act—governs the confidentiality of student records.
- FNE:** Forensic Nurse Examiners
- GO:** General Order—some departments describe their operating procedures as general orders
- HEOA:** Higher Education Opportunity Act—the broader law that contains the Clery Act language and the fire safety and missing person language that is in the law but not contained within the “Clery Act” portion of the law.
- HIPAA:** Health Insurance and Privacy and Portability Act—governs privacy of medical records.
- MOU:** Memorandum of Understanding—an official agreement developed between agencies.
- NIBRS:** National Incident-Based Reporting System. 1 of 2 crime reporting systems developed by the FBI, but not the system that you are required to use for Clery Reporting—the only portion of this system that is used for Clery Act purposes are the 4 forcible and 2 non-forcible sex offense definitions.
- OCR:** Office of Civil Rights—the unit of the Department of Education that oversees Title IX Compliance.
- PD:** Police Department
- PS:** Public Safety
- PNG:** Persona-non-Grata—process used by some campuses not keep students from entering certain areas of the campus or the entire campus (administrative process) versus legal bar notice or trespass warning.
- SACC:** Sexual Assault Crisis Center, also known as Women’s Center.
- SANE:** Sexual Assault Nurse Examiner

SART: Sexual Assault Response Team

SOP: Standard Operating Procedures—some departments describe their operating procedures as Standard Operating Procedures. Some call them General Orders, etc...

SWA: Senior Women's Administrator (Athletics)

TWN: Timely Warning Notice

UCR: Uniformed Crime Report. This is 1 of 2 crime statistics reporting systems developed by the FBI. Institutions are required to use UCR Standards for counting and classifying crimes for reporting the Clery statistics.

VAWA: Violence Against Women Act



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TITLE IX

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- Public inspection upon request.*

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ISSUANCE OF CERTIFICATES FOR COMPLETION

To receive a certificate, attendees must attend the majority of the class and have paid class invoice in full. This applies to both in-person classes and virtual classes. We understand that attendees may need to miss class for a legitimate reason for longer periods of time or may need to leave the room during a class for a few minutes to take a phone call or attend to other business. If an attendee misses a significant amount of the class (depending on the length of the class) or they miss an attendance poll, they will not be issued a certificate of completion for the class.

Attendees should report each absence using the online form provided (each class has its own unique form that is sent to all attendees via email prior to class). Attendees should complete the form twice for each absence: once to record their departure, and again to record their return. Attendees should complete the form immediately before leaving class and as soon as practicable upon their return. If an attendee signs out but does not sign back in, they will be marked absent for the remainder of the day.

The criteria for receiving a certificate is determined based on missed class time and participation in the Attendance Polls that will be launched throughout each day of class. Attendance polls are left up for approximately 5 minutes and the instructor notifies the attendees that a poll is being launched to ensure that everyone who is present can respond to the poll. If an attendee is unable to respond to the attendance poll, the attendee would need to **immediately post "I am here"** in the chat feature within the Zoom platform. That way we can give the attendee credit for being in attendance for that specific poll. Notifying us after the attendance poll has been closed will not allow us to give the attendee credit for being in class during the poll.


Some of our classes may qualify for credit toward a Master's Degree at New England College (and regardless if you decide to seek credit or not, accreditation requirements mandate that we follow the same standards for all class attendees), so we have strict attendance standards that we follow for issuance of a certificate. For DSA & NACCOP, issuance of a Certificate of Completion is verification of attendance.



REPORT WRITING



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AGENDA

- Title IX report requirements
- Report contents
 - Compilation of the evidence
 - Documentation of the process
 - Summary of relevant evidence
- Putting it all together

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YOU DO YOU (BUT FOLLOW YOUR POLICY)



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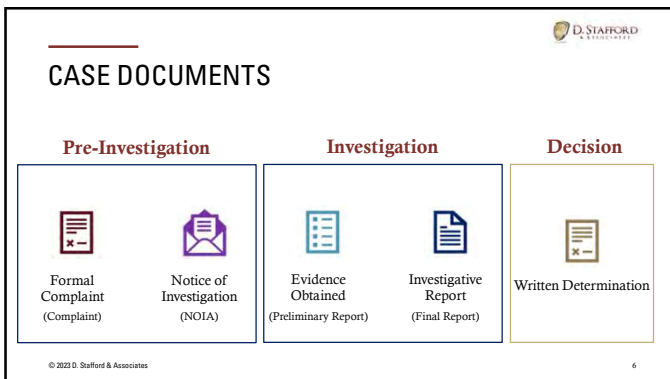
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STARTING AT THE END:

THE WRITTEN DETERMINATION

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WRITTEN DETERMINATION

(A) Allegations potentially constituting sexual harassment

(B) Description of the procedural steps taken from the receipt of the formal complaint through the determination:

- notifications to the parties
- interviews with parties and witnesses
- site visits
- methods used to gather other evidence
- hearings held

(C) Findings of fact supporting the determination

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WRITTEN DETERMINATION (PART 2)

(D) Conclusions regarding the application of the recipient's code of conduct to the facts

(E) A statement of, and rationale for, the result as to each allegation

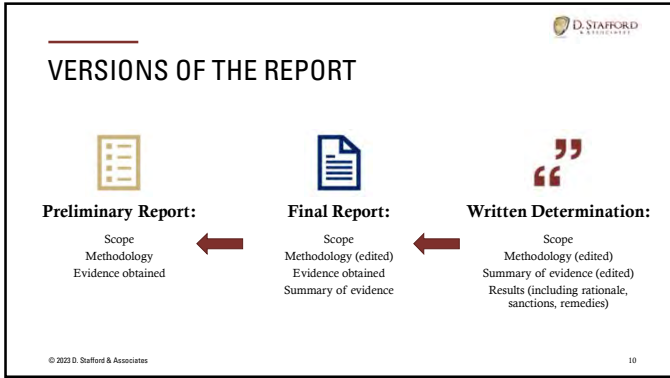
- determination regarding responsibility
- disciplinary sanctions on the respondent
- remedies to the complainant

(F) The recipient's procedures and permissible bases for the complainant and respondent to appeal

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"INSPECT & REVIEW" STAGE

EVIDENCE THAT IS DIRECTLY RELATED

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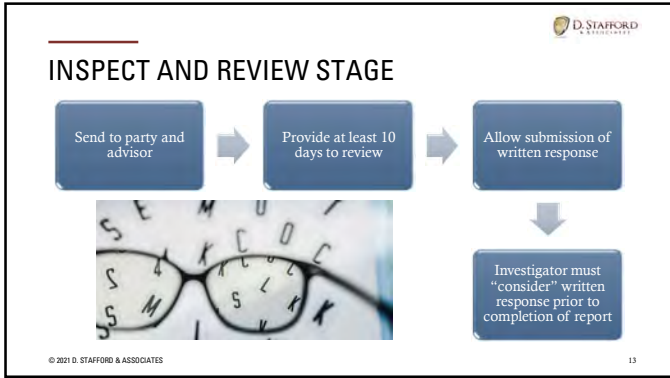
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EVIDENCE REVIEW

“provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation”

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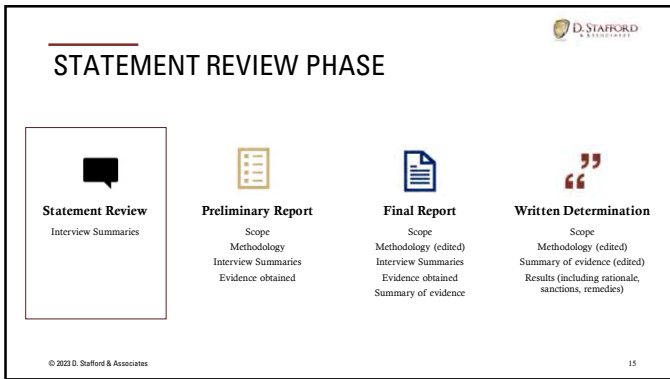
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INVESTIGATIVE REPORT:

"THE SUMMARY"




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INVESTIGATIVE REPORT

"Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response."




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CONSIDERATIONS FOR FINAL "REPORT"



Parties have a right to submit written response to evidence



The investigator will consider prior to the completion of the investigative report



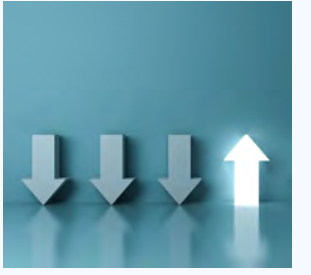
All related evidence must be available at hearing for parties to reference

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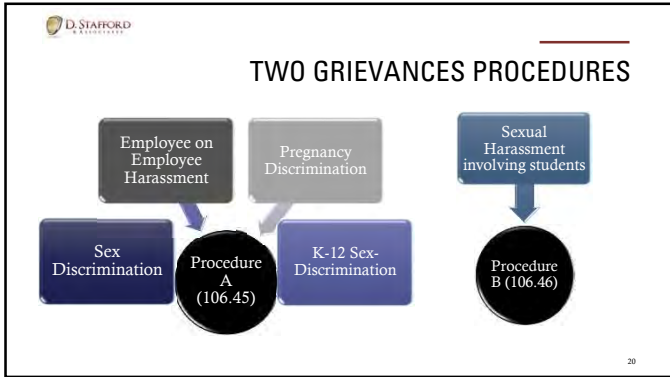
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REPORTS UNDER THE PROPOSED NEW TITLE IX REGULATIONS



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SEX DISCRIMINATION (PROPOSED 106.45)

- Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.
- Provide each party with a description of the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, as well as a reasonable opportunity to respond.

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SEX-BASED HARASSMENT (PROPOSED 106.46)

- Must provide each party and the party's advisor, either
 - Equitable access to the relevant and not otherwise impermissible evidence, OR
 - A written investigative report that accurately summarizes this evidence and parties may request access to view relevant evidence.
- If no hearing, must provide a reasonable opportunity to review and respond to the evidence prior to the determination.
- If there is a hearing, must provide a reasonable opportunity to review prior to hearing; and can provide opportunity to respond either before the hearing or at the hearing or both.

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WRITTEN DETERMINATION (106.46)

- A description of the alleged sex-based harassment
- Information about the policies and procedures that the postsecondary institution used to evaluate the allegations
- The decisionmaker's evaluation of the relevant evidence and determination of whether sex-based harassment occurred
- Disciplinary sanctions (if any) imposed on the respondent and remedies (if any) for the complainant and others
- Procedures for the complainant and respondent to appeal

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THE REPORT CONTENTS



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PURPOSE OF THE REPORT

- Documentation of process
- Compilation of evidence obtained
- Summary of relevant evidence

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DOCUMENTATION OF THE PROCESS



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KEEPING TRACK OF THE DATES




- Incident timeline (more to come)
- Institutional action

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CONFLICT OF INTEREST AND BIAS


Investigator background



Training


Acknowledge any relationship to parties



Opportunity to request new investigator


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TRAINING



Evidence gathering


Evidence assessment



Equitable process

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INVESTIGATIVE METHODOLOGY




Party rights
Present fact witnesses
Present expert witnesses
Present evidence




Quality investigation
Burden on school
Exculpatory & inculpatory

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PARTY EVIDENCE



Witness list



Evidence submission

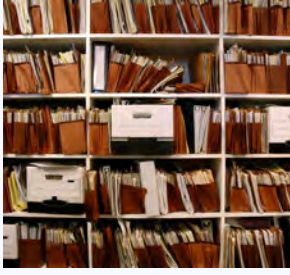



Expert testimony

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COMPLILATION OF THE EVIDENCE





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OBTAINED EVIDENCE

“[A]ny evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.”

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“DIRECTLY RELATED”: IN THE COMMENTS



“interpreted using their plain and ordinary meaning”



We note that “directly related” in § 106.45(b)(5)(vi) aligns with requirements in FERPA, 20 U.S.C. 1232g(a)(4)(A)(i). (“information directly related to a student.”)



“directly related” may sometimes encompass a broader universe of evidence than evidence that is “relevant.”

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EVIDENCE COLLECTION




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WHAT IS NOT DIRECTLY RELATED



Medical
(unless signed waiver)



Other

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SEXUAL HISTORY OF COMPLAINANT



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CAPTURING INTERVIEWS

How do you capture the interview in the report?

Verbatim Record

Question/Answer format

Reorganization for clarity

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OTHER EVIDENCE

1 Incorporated Attached Available

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THE BALANCING GAME

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NEUTRAL VS. ACCURATE

Remember Believed Thought Stated Gussed Swore Said Suspected

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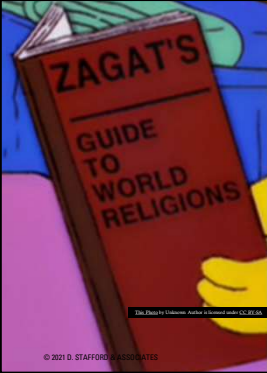
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CONVEY THE MESSAGE



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USE QUOTATIONS

It's **“whole chicken heaven”** at this acclaimed Flatiron offshoot of a Paris standout where **“French country-style”** dishes featuring responsibly farmed birds (including hens, duck and squab) are **“seriously delicious”** (as are the egg starters); tabs run **“pricy”**, but **“lovely”** service is another reason this place is **“taking off.”**

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SUMMARY OF RELEVANT EVIDENCE




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“RELEVANT” IN THE COMMENTS



“The parties should have the opportunity to argue that evidence directly related to the allegations is in fact relevant.”




“The investigator would then consider the parties’ viewpoints ... and on that basis decide whether to summarize that evidence in the investigative report.”



“A party who believes the investigator reached the wrong conclusion about the relevance of the evidence may argue again to the decision-maker (i.e., as part of the party’s response to the investigative report, and/or at a live hearing) about whether the evidence is actually relevant.”

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NOT RELEVANT (FROM THE TITLE IX REGULATIONS)

<p>Past Sexual Behavior</p> <ul style="list-style-type: none"> • Complainant’s sexual predisposition or prior sexual behavior unless... <ul style="list-style-type: none"> • Offered to prove that someone other than the respondent committed the conduct alleged or • Complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent 	<p>Privileged Information</p> <ul style="list-style-type: none"> • Physician, psychiatrist, psychologist records in connection with the provision of treatment to the party unless <ul style="list-style-type: none"> • Voluntary, written consent
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“FAIRLY SUMMARIZES THE RELEVANT EVIDENCE”

How do you organize?

- Facts in agreement/facts in dispute
- Disputed and undisputed facts
- Exculpatory and inculpatory evidence
- Factual summary
- Timeline

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PUTTING IT ALL TOGETHER



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COVER PAGE: WHAT THIS IS

- Case identifier
- Title
- Drafter
- Reviewer
- Date

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SCOPE: WHY WE DID IT

- Allegation
- Policy
- Notice timeline (or summary)

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METHOD: HOW WE DID IT

- Rights established
- Steps taken
- Report versioning

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SUMMARY: WHAT WE LEARNED

- In final report only
- Recognize the target audience

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EVIDENCE: WHAT DID WE GET

- Testimonial
- Documentary
- Demonstrative
- Real

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FORMATTING



Page numbers



Line numbers



Footnotes



Capitalization



Punctuation



Titles



Redacting



Disclaimers/
Legalese

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Consolidation and Reports

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RECOMMENDED FINDING?

“The Department does not wish to prohibit the investigator from including recommended findings or conclusions in the investigative report. However, the decision-maker is under an independent obligation to objectively evaluate relevant evidence, and thus cannot simply defer to recommendations made by the investigator in the investigative report.”

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OTHER D. STAFFORD TRAINING OPPORTUNITIES

<p>Title IX Coordinator Track</p> <ul style="list-style-type: none"> <input type="checkbox"/> Tier 1: Law and Policy <input type="checkbox"/> Tier 2: Sex Discrimination Response <input type="checkbox"/> Tier 3: Safety & Risk Analyses for Sex-Based Harassment Emergency Removals 	<p>Investigator Track</p> <ul style="list-style-type: none"> <input type="checkbox"/> Tier 1: Sex-Based Harassment Investigations <input type="checkbox"/> Tier 2: Dating/Domestic Violence and Stalking (DVDVS) Investigations <input type="checkbox"/> Tier 3: Case Study and Simulation (Interviewing) <input type="checkbox"/> Tier 4: Statement Analysis <input checked="" type="checkbox"/> Tier 5: Report Writing <input type="checkbox"/> Tier 6: Technology & Investigations <input type="checkbox"/> Tier 7: Violence Against Men 	<p>Related Offerings</p> <ul style="list-style-type: none"> <input type="checkbox"/> Institutional trainings <input type="checkbox"/> Threat Assessment Teams <input type="checkbox"/> Clery Compliance <input type="checkbox"/> Procedural Justice <input type="checkbox"/> Appellate Officer (www.naccop.org) <input type="checkbox"/> Constructing Resolution Processes (www.naccop.org) <input type="checkbox"/> Title IX Webinars (www.naccop.org)
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THANK YOU

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