

Annual Title IX Team Training and Update August 12, 2026



Disclaimer



- This training does not constitute legal advice.
- I am happy to address questions about the materials, as well as hypotheticals.
- If you need legal advice for a pending situation, you have wonderful counsel and they will be delighted to assist!

Permission to Post



- You have permission to post these slides on your website as required by 34 C.F.R. 106.45(b)(10)(i)(D).

Agenda



- Themes of Title IX
- Annual Clery Training – Sexual Assault, Dating Violence, Domestic Violence, and Stalking
- Procedures that Hold Respondents Accountable and Protect Your Community
 - Intake & Support
 - Formal Complaints
 - Informal Resolution
 - Investigation
 - Hearings and Cross-Examination
 - Reaching a Decision
 - Appeals

Themes of Title IX

Themes of Title IX (cont.)



- Compliance
- Integrity
- Ethic of Care
- Neutrality
- Transparency

Compliance



- Title IX – 20 U.S.C. 1681 et seq.
- Regulations – 34 C.F.R. Part 106 (2020 version)
- Clery Act and Regulations – 20 U.S.C. 1092(f); 34 C.F.R. 668.46
- U.S. Department of Education
- U.S. Department of Justice
- Executive Orders
- U.S. Supreme Court Case Law
- U.S. Circuit Court of Appeals – 6th Circuit
- U.S. District Court for the Southern District of Ohio
- Occasionally, your state courts
- **Start with compliance.**

Integrity



- Yes, you personally require integrity, but that's not what I'm talking about!
- **Follow your policy. Follow your process.**
- You should be able to point to the part of the policy you are following.
- You should continually refer to the policy.
- When you provide updates, tell the parties what part of the policy you are on, and what you are doing next.
- The policies and procedures should be your guide.

Ethic of Care



- No policy can provide an answer for every possible situation.
- When your policy is silent, you should be guided by your ethic of care—the underlying values that drive your institution and the way your campus community is treated.
- Your ethic of care also involves supporting the parties, before, during, and after any formal process.
- **“They are all our students.”**
- **Note also: you are a part of the campus community and are deserving of care.**

Neutrality



- The policy doesn't put a finger on the scale, and neither should you.
- All Title IX team members (except for advisors) are expected to be neutral throughout the process.
 - No bias for or against complainants or respondents generally
 - No bias for or against a particular complainant or respondent
 - No conflicts of interest that would tilt your findings in one direction or another
- How do you stay neutral?
 - Be curious, not judgmental. Don't make a determination until the last bit of evidence has passed through your fingertips.
 - Stay supportive.
 - Stay human.
- The biggest risk in terms of liability is to decide how the case "should" come out, instead of relying on the evidence.

Transparency

- “If the parties don’t hear from you, they will assume you are doing nothing or actively working against them.”
- The regulations require evidence to be shared equitably. What does this mean?
- We make sure parties know they have the right to an advisor, and we encourage them to bring one.
- We don’t do things by ambush.
- At the end of the process, even if the parties aren’t satisfied with the ultimate outcome, we want them to feel heard.

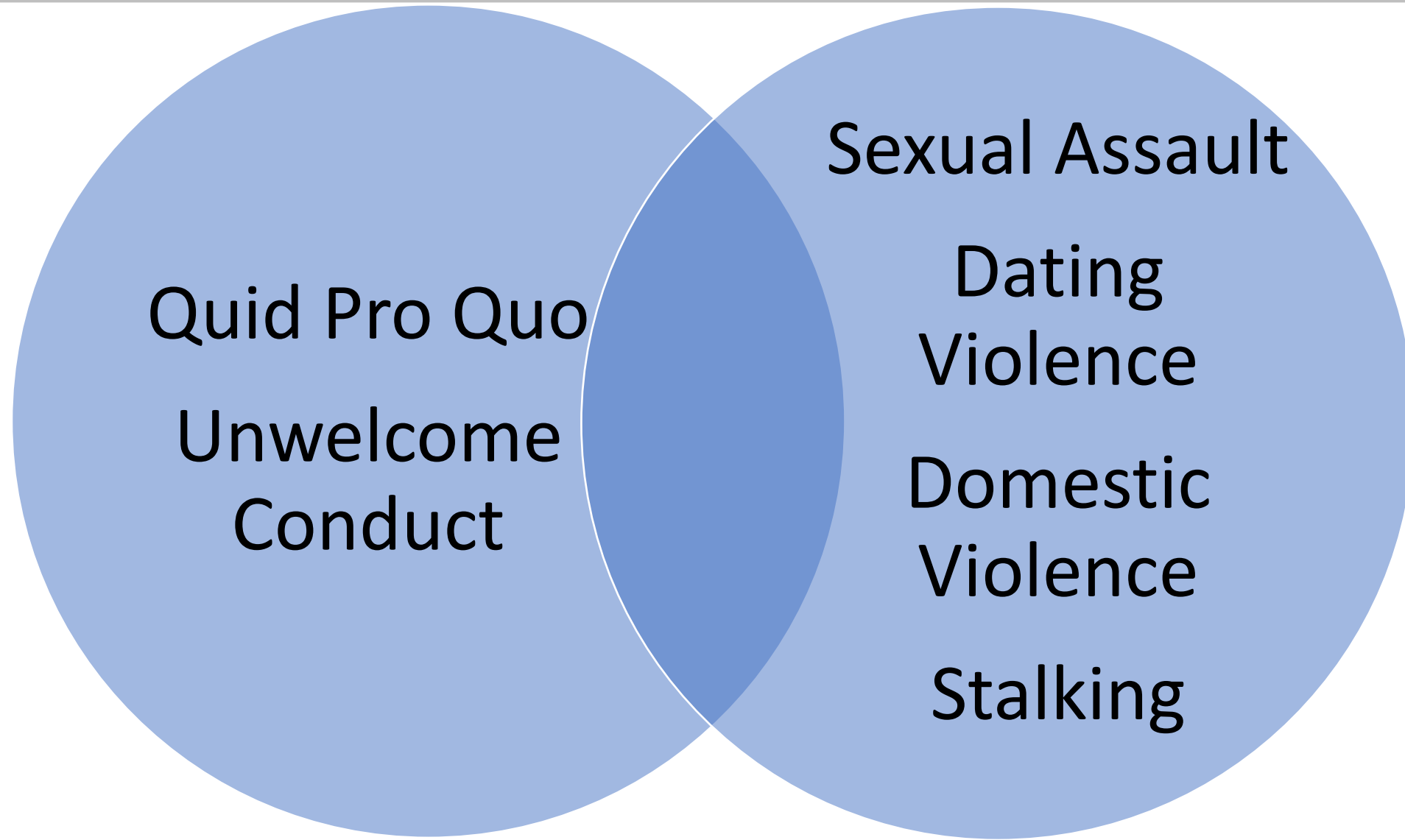
Annual Clergy Training: Sexual Assault, Dating Violence, Domestic Violence, and Stalking

Clery Act in Context



- April 5, 1986 – Jeanne Clery is raped and murdered at Lehigh University
- 1990 - Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act – tied to Higher Education Act funding
- 2013 – Violence Against Women Act amends the Clery Act with regard to sexual assault, dating violence, domestic violence, and stalking procedures
- July 1, 2015 – Current Clery regulations go into effect
- 2016 Handbook – Issued to give detailed guidance on compliance
- August 13, 2020 – New Title IX Regulations go into effect
- October 9, 2020 – 2016 Handbook is rescinded; new Appendix put in place; updated January 19, 2021

Where does Clery fit?



Training Requirements



- From the Clery regulations:
- Proceedings involving sexual assault, dating violence, domestic violence, and stalking must –
 - “Be conducted by officials who, at minimum, receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking, and on *how to conduct an investigation and* hearing process that protects the safety of victims and promotes accountability”
- We will discuss safety for all parties – not just victims – and our community.

Data Disclaimer



- We will be discussing statistics regarding sexual assault, dating violence, domestic violence, and stalking
- Statistics help us understand the way these crimes may affect the individuals involved, as well as our community.
- Statistics should never influence your decisions with regard to handling a specific case.
- Statistics help us understand the water, not the goldfish.

Sexual Assault – OSU Definition



- Any sexual act directed against another person, without the consent of the complainant including instances where the complainant is incapable of giving consent. Sexual assault is an umbrella term that includes: non-consensual sexual contact, non-consensual sexual penetration, incest, and statutory rape.

Non-Consensual Sexual Contact – OSU Definition



- The intentional touching of the clothed or unclothed body parts without consent of the complainant for the purpose of sexual degradation, sexual gratification, or sexual humiliation.
- The forced touching by the complainant of the actor's clothed or unclothed body parts without consent of the complainant for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

NIBRS Examples: Criminal Sexual Contact



- A mother contacted a law enforcement agency to report her son's bus monitor had inappropriately touched her son. The mother's statement disclosed the 59-year-old bus monitor told her son to pull down his pants and was touching his genitals.
- A woman working at a retail store makes a complaint that her new boss has fondled her without her consent. She said she has felt uncomfortable around him since he started, but recently he has touched her breasts on several occasions. The complaint includes an instance when the manager has come up behind the victim and wrapped his arms around her at which point he touches her breasts. The woman has told the manager to stop and has also reported him to his superiors.
- A woman is walking by a construction area when the workers begin catcalling her. One man runs up to the woman, grabs her breast and buttocks, then laughs with his colleagues. The woman notifies the police of the incident.

Non-Consensual Sexual Penetration

– OSU Definition



- Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or a sex-related object without the consent of the complainant. Non-consensual sexual penetration includes rape.

NIBRS Examples: Rape



- A woman provided a statement to the law enforcement agency that her male roommate forced her to have sex with him the night before. She told him to stop several times during the incident. The officer noted she had several scratches on her head and arms from resisting the offender.
- A woman provided a statement to the law enforcement agency that her female roommate forced her to have oral sex with her the night before.
- A man attended a party, drank too much, and passed out. While unconscious, he was sodomized with an object by his ex-girlfriend.

Incest – OSU Definition



- Non-forcible sexual intercourse between persons who are related to each other within the degree wherein marriage is prohibited by law.

[In Ohio, this means you couldn't have sex with anyone closer in kin than second cousins.]

[Also in Ohio, this definition is broader than Ohio's criminal definition for the crime of incest.]

Statutory Rape – OSU Definition



- Non-forcible sexual intercourse with a person who is under the statutory age of consent in the applicable jurisdiction.

[In Ohio: Under 13 can't consent. 13-16 can consent to someone under 18. 16 and up can consent to someone of any age.]

Consent – OSU Definition



- Permission that is clear, knowing, voluntary, and expressed prior to engaging in and during an act. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.
- Full definition at page 2 of the Non-Discrimination, Harassment, and Sexual Misconduct Policy (6/1/2026).

Sexual Assault: Hypos

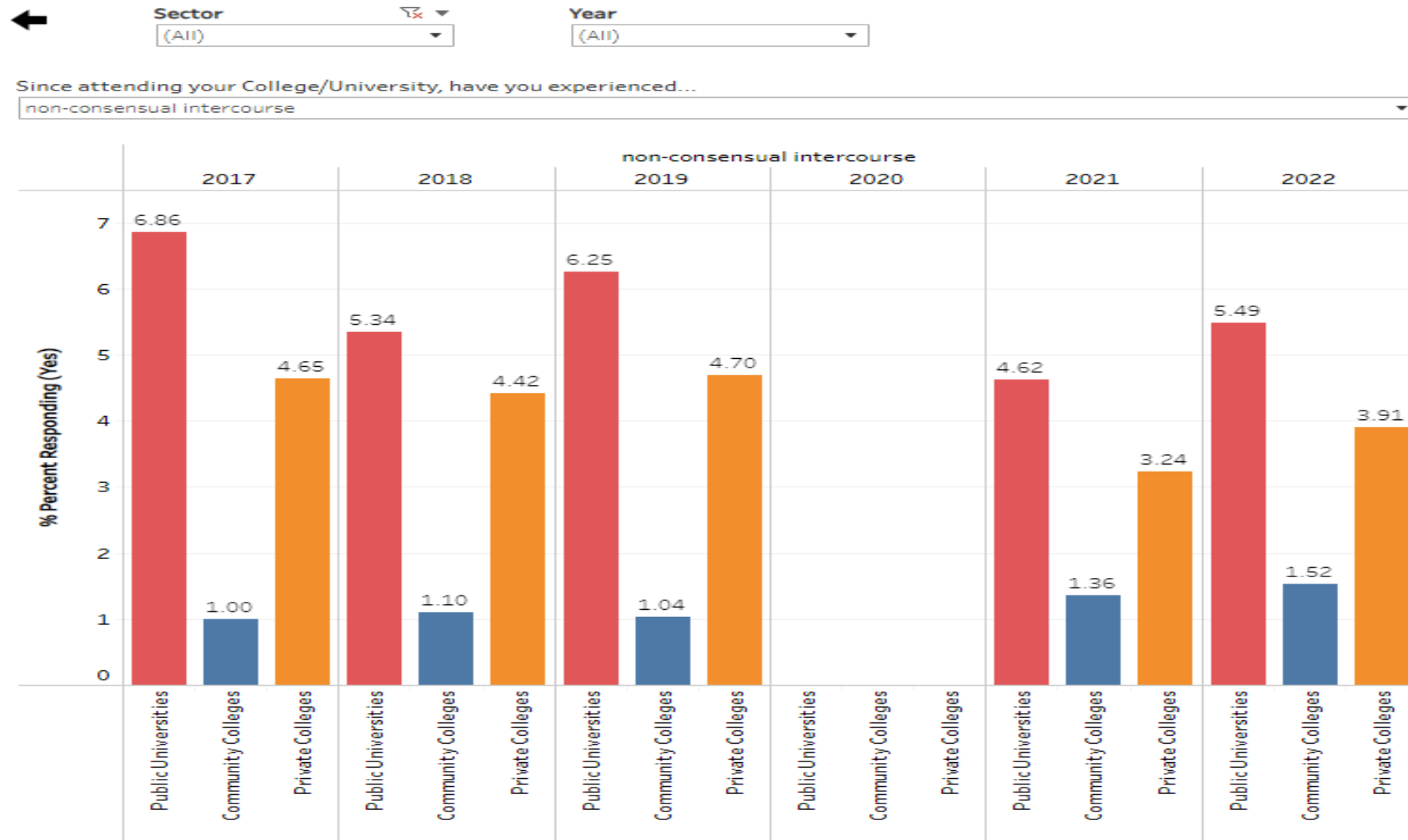
- Do the following count as sexual assault, if there is no consent?
 - Kissing
 - French kissing
 - Grinding on a dance floor
 - Slap on the butt on the way out to the football field
 - Slap on the butt on the way onto the dance floor
 - Mouth-to-vagina oral sex

CDC Statistics: Sexual Assault

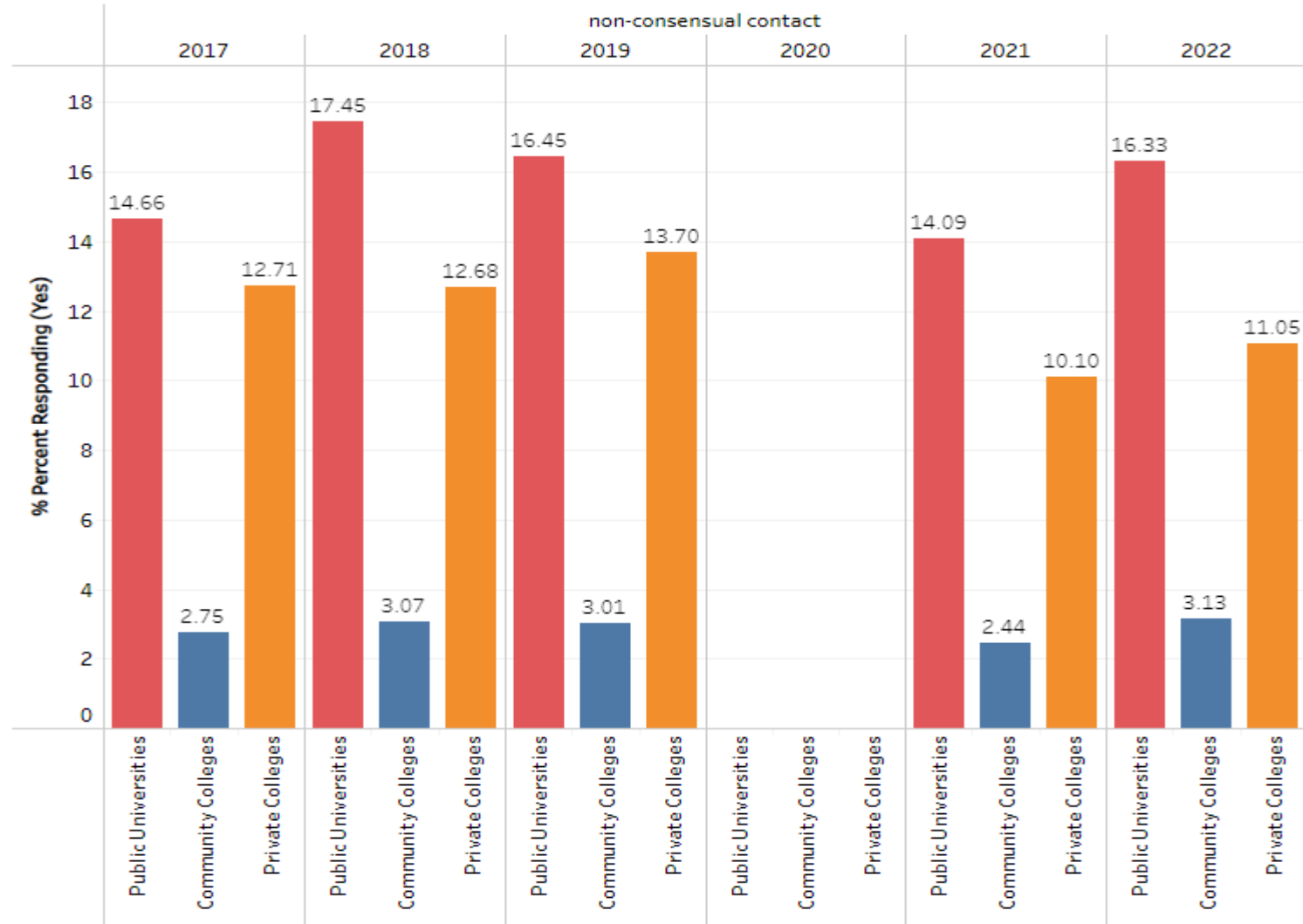


- Statistics from CDC Quick Facts and Stats (accessed August 11, 2026):
- Nearly **half of women** and more than **1 in 6** men experienced some form of contact sexual violence in their lifetimes.
- More than **1 in 5 women** and **1 in 31** men have experienced completed or attempted rape in their lifetimes.
- **1 in 26** men were made to penetrate someone during his lifetime.
- More than **4 in 5 female** rape survivors reported that they were first raped before age 25 and **almost half** were first raped as a minor.
- Nearly **8 in 10 male** rape survivors reported they were made to penetrate someone before age 25 and about **four in 10** were first made to penetrate as a minor.
- <https://www.cdc.gov/sexual-violence/about/>

ODHE – Non-Consensual Sexual Intercourse



ODHE – Non-Consensual Sexual Contact

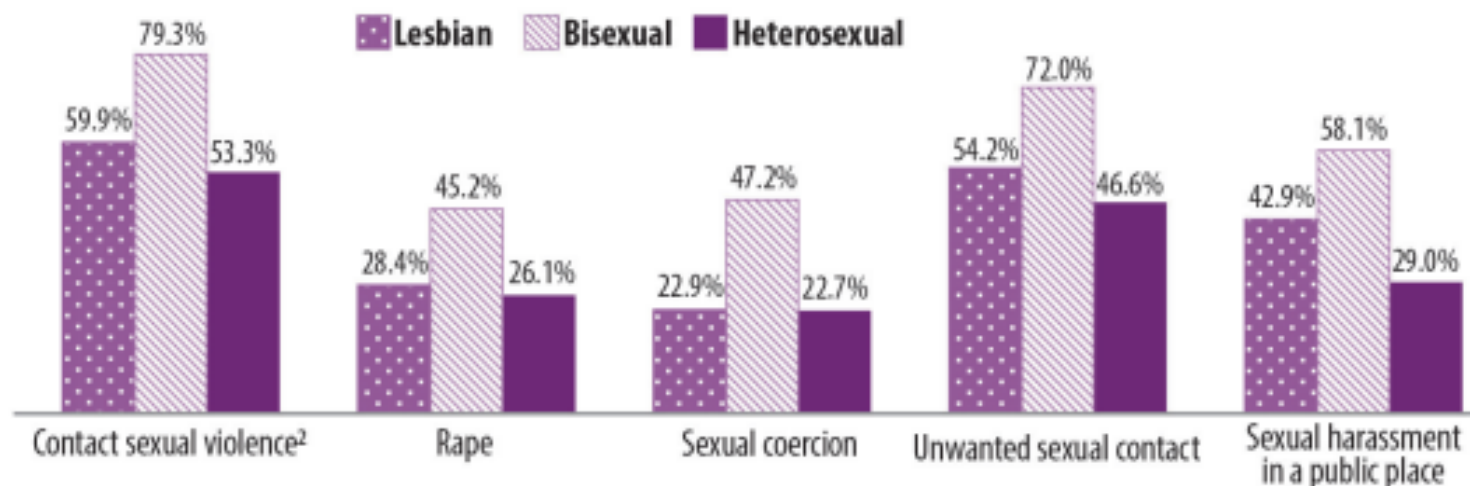


Sexual Assault Data – Lifetime Prevalence by Sexual Identity (Women)

- Statistics from: *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Sexual Identity*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. (last visited Oct. 2024), located at: <https://www.cdc.gov/nisvs/documentation/nisvsReportonSexualIdentity.pdf>

Figure 1

Lifetime Prevalence of Sexual Violence by Sexual Identity — U.S. Women, National Intimate Partner and Sexual Violence Survey (NISVS), 2016/2017 Annualized Estimates¹



¹ All percentages are weighted to the U.S. adult population.

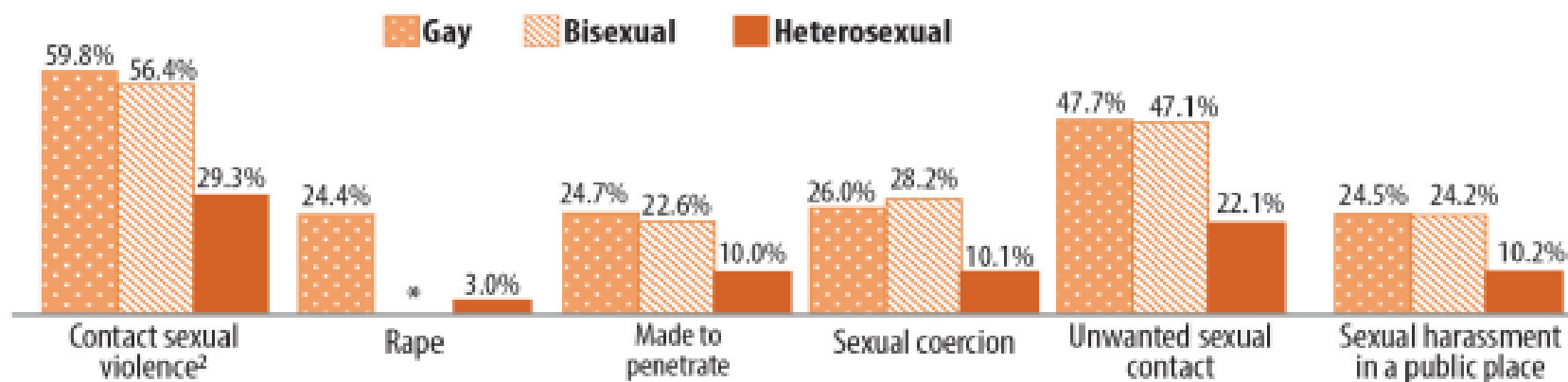
² Contact sexual violence includes rape, sexual coercion, and/or unwanted sexual contact.

Sexual Assault Data – Lifetime Prevalence by Sexual Identity (Men)

- Statistics from: *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Sexual Identity*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. (last visited Oct. 2024), located at: <https://www.cdc.gov/nisvs/documentation/nisvsReportonSexualIdentity.pdf>

Figure 2

Lifetime Prevalence of Sexual Violence by Sexual Identity — U.S. Men, National Intimate Partner and Sexual Violence Survey (NISVS), 2016/2017 Annualized Estimates¹

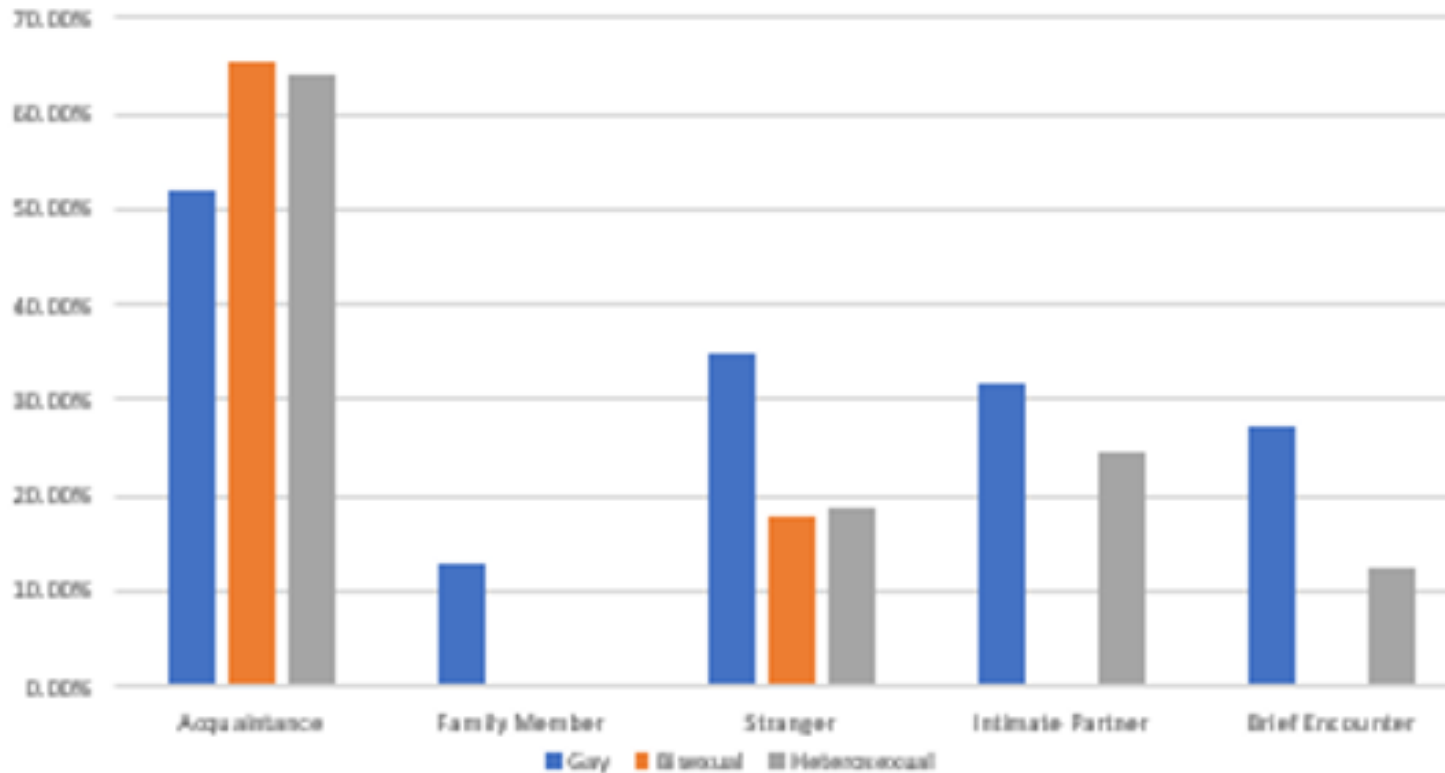


¹ All percentages are weighted to the U.S. adult population.

² Contact sexual violence includes rape, being made to penetrate, sexual coercion, and/or unwanted sexual contact.

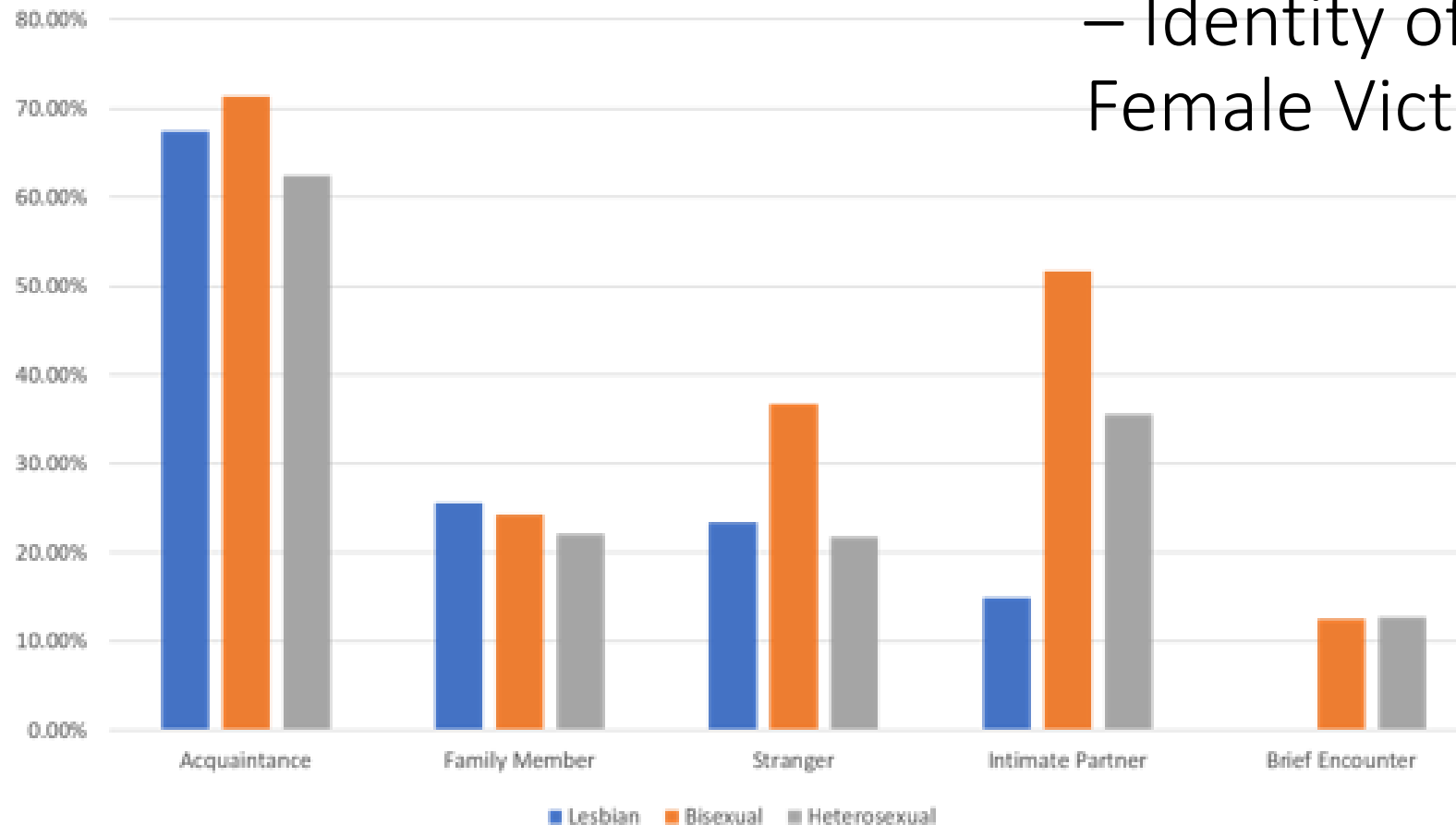
* Estimate is not reported; relative standard error > 30% or cell size ≤ 20.

Contact Sexual Violence Data – Identity of Perpetrators – Male Victims



Statistics from: *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Sexual Identity*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. (last visited Oct. 2024), located at: <https://www.cdc.gov/nisvs/documentation/nisvsReportonSexualIdentity.pdf>

Contact Sexual Violence Data – Identity of Perpetrators – Female Victims



Statistics from: *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Sexual Identity*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. (last visited Oct. 2024), located at: <https://www.cdc.gov/nisvs/documentation/nisvsReportonSexualIdentity.pdf>

Sexual Violence and Gender Identity



Past-Year Sexual Violence statistics - From *Physical, Sexual, and Intimate Partner Violence Among Transgender and Gender-Diverse Individuals*, JAMA, June 25, 2024

	Transgender
Transgender Women	14%
Transgender Men	42%
Non-Binary	56%

From *Global Burden of Violence and Transgender and Gender-Diverse Adults*, JAMA, January 21, 2026:

- 32.70% experience sexual violence in their lifetimes

Sexual Assault: Common Concerns



- Be cautious of questions that appear to blame the party for what happened or they will shut down and stop engaging.
- Better options:
 - Explain why you need information on alcohol/drug use, what the party was wearing, etc. before you ask the questions.
 - Explain the concept of consent to the parties so that they can understand why you need detailed information on the sexual encounter.
 - Check your tone constantly so as to encourage continued sharing of information.

Dating Violence – OSU Definition



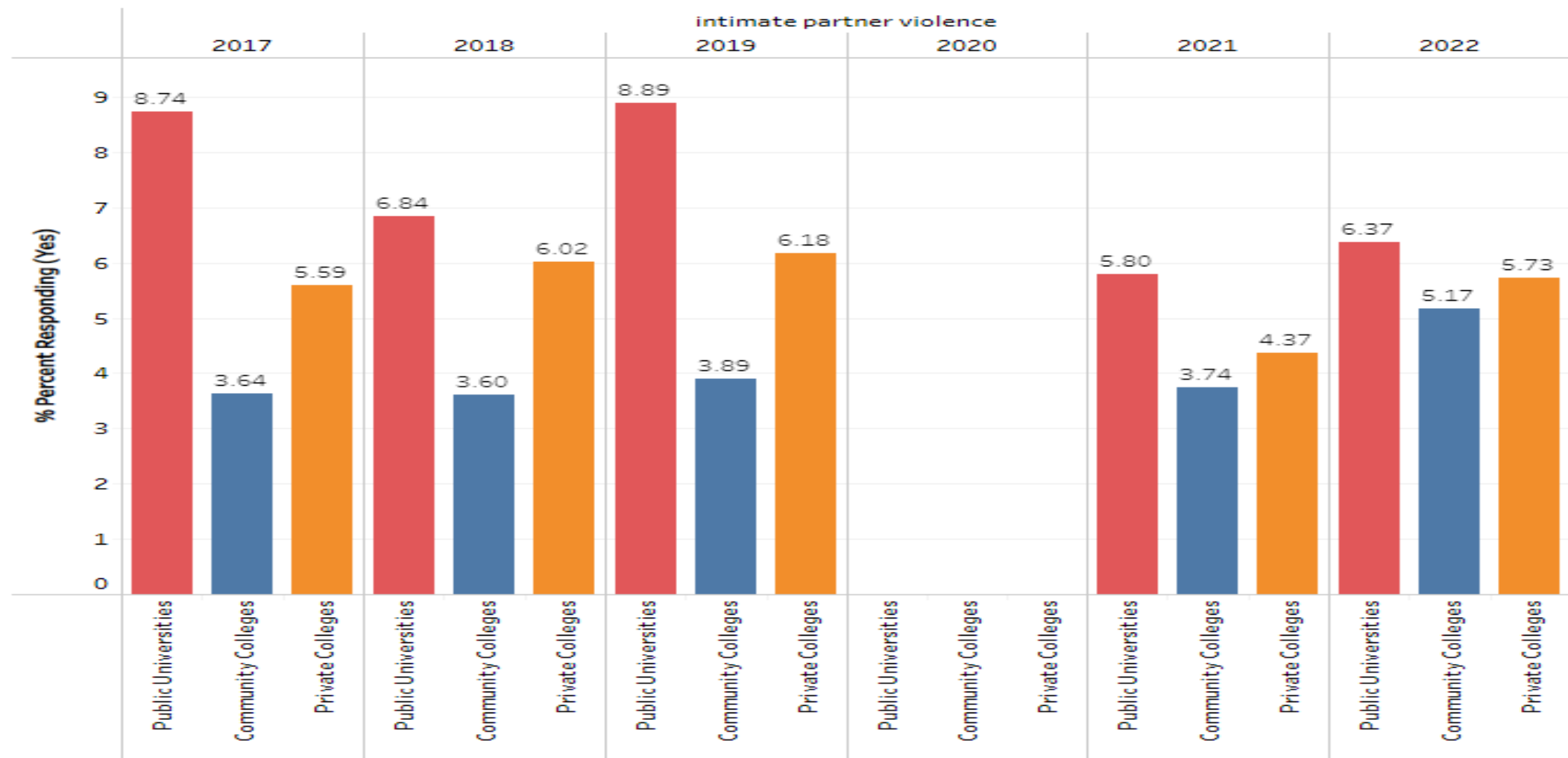
- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant.
 - The existence of such a relationship will be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 - For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence – OSU Definition



- Conduct that would meet the definition of a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic and family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Relationship Violence – ODHE Data



OAG Domestic Violence Stats – Number of Victims



Jurisdiction	2020	2021	2022	2023	2024	2025
Columbus	5,272	5,261	4,669	4,181	3,973	4,221
OSU	7	9	4	19	23	19
All Franklin Co.	6,735	6,682	6,105	5,571	5,261	5,621

Common Concerns in RV Situations



- Supportive measures are important to ensure the parties can be separate and feel safe
- Retaliation is often a critical concern – parties may still have a relationship
- Consider whether parties need contingency plans as part of their supportive measures if safety concerns arise
- Balancing third-party reports of violence and safety concerns with complainant's refusal to participate in the process
- No contact order violations as continued evidence of underlying policy violation allegation
- It is not uncommon for both parties to be complainants and respondents. Watch for this scenario and ensure you provide appropriate intake for both.

Common Concerns in RV Situations (cont.)



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Stalking – OSU Definition

- A course of conduct directed at a specific individual that would cause a reasonable person under similar circumstances and with similar identities to the complainant to fear for their own or others' safety, or to suffer substantial emotional distress.

Course of Conduct – OSU Definition



- A course of conduct includes two or more acts, including but not limited to, those in which the alleged directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about the complainant, or interferes with the complainant's property.

Stalking (cont.) – OSU Definition



- When stalking is not based on sex or gender, it may violate other university policies including but not limited to the Code of Student Conduct or the Workplace Violence 7.05 policy.

CDC Data: Stalking



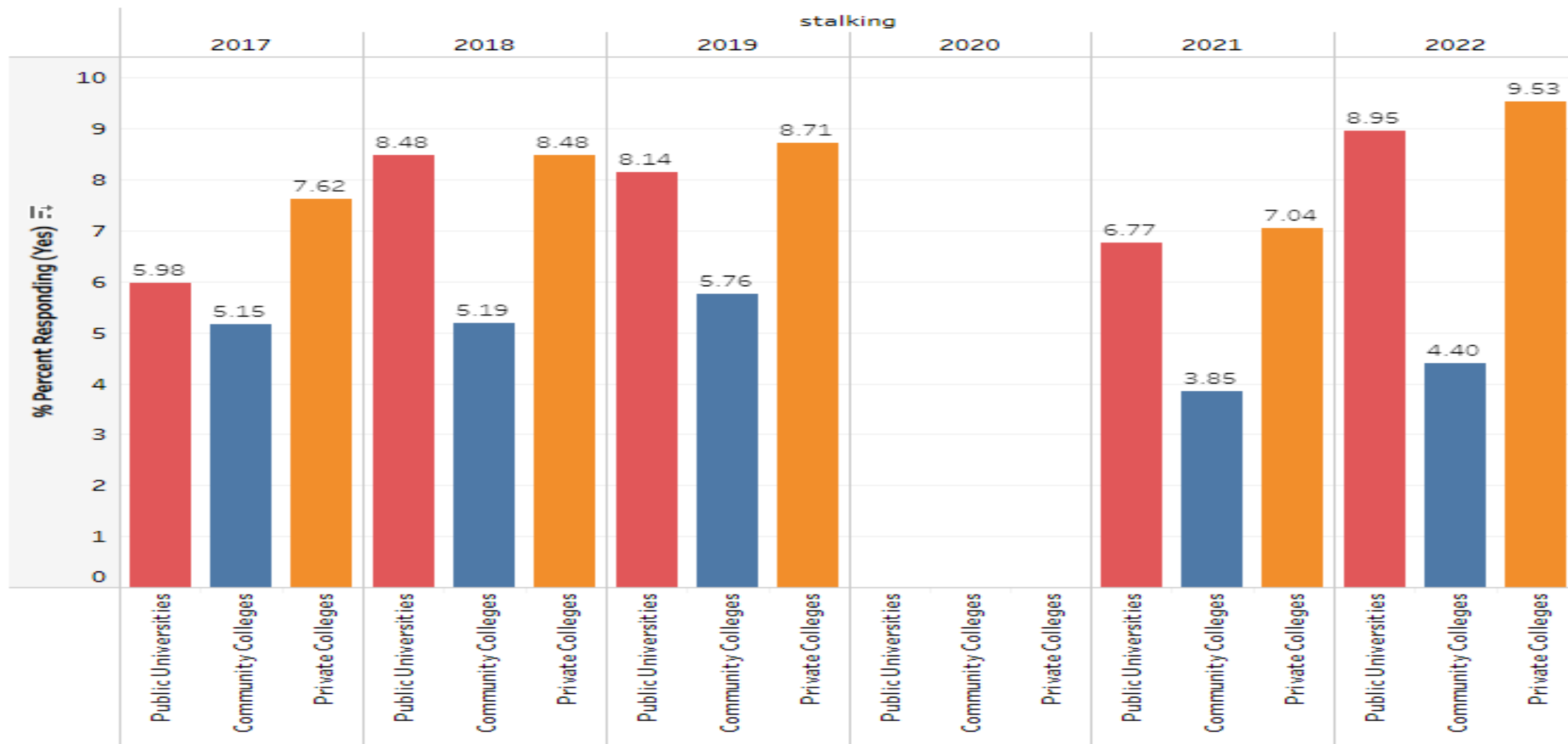
- About 1 in 5 women and 1 in 10 men have been stalked at some point in their lives.
- 24% of female victims and 19% of male victims reported being stalked as minors.
- Nearly 58% of female victims and 49% of male victims experienced stalking before the age of 25.
- 78% of female victims and 76% of male victims report having been followed, watched, or spied on.
- The most common perpetrators are intimate partners or acquaintances for both female and male victims.
- <https://www.cdc.gov/intimate-partner-violence/about/about-stalking.html>
(accessed August 11, 2026)

Impacts of Stalking: CDC



- 69% of female victims and 80% of male victims experienced threats of physical harm from the stalker during their lifetimes.
- There is a relationship between stalking victimization and posttraumatic stress symptoms, feelings of hopelessness, depression, and anxiety.
- <https://www.cdc.gov/intimate-partner-violence/about/about-stalking.html> (accessed August 11, 2026)

Stalking – ODHE Data



Stalking: Common Concerns



- Clearly defined no-contact orders can be helpful to keep the parties apart and help calm the situation.
- Complainants are often concerned that the respondent may not respect no-contact orders, especially if they have already asked the respondent to stand down. Think of ways to help address this concern through supportive measures.
- Stalking after a no contact order may constitute additional instances of the underlying alleged policy violation, which may mean you need to run it through your Title IX process.

Stalking: Considerations

- Outline a timeline of the “course of conduct” aspect of the allegations
- Cases are often documentation-heavy
- May have multiple contacts and multiple witnesses that must be considered
- Have you asked questions of parties and witnesses regarding the potential impact of the conduct on the complainant?

Non-Clery: Sexual Harassment (Title IX)



- Conduct on the basis of sex that satisfies one or more of the following:
 - An employee of the university conditioning the provision of an aid, benefit, or service of the university on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo)
 - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the education program or activity, or
 - Sexual assault, dating violence, domestic violence, or stalking

Non-Clery: Sexual Harassment (University)



- Harassment on the basis of sex
- Employment context: Unwelcome verbal or physical conduct based on a protected class that unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment.
- Education context: Unwelcome verbal or physical conduct based on a protected class that interferes with, denies, or limits an individual's ability to participate in or benefit from the university's educational programs and activities.

Non-Clery: Sexual Harassment (University) (2)



- Quid Pro Quo
- Hostile environment:
 - Employment – severe or pervasive
 - Education – severe, persistent, or pervasive
- See Policy page 3 for extended definitions

Non-Clery: Sexual Exploitation



- Occurs when an individual takes non-consensual or abusive sexual advantage of another for that individual's own advantage or benefit, or to benefit or advantage anyone other than the individual being exploited.
- Examples (see page 5 of Policy): Voyeurism, exposing genitals, going beyond the boundaries of consent, drug-facilitated sexual assault, prostituting another, knowingly transmitting an STI, etc.

Questions & Break #1

Intake & Support

Reporting Sexual Harassment



- Who: Complainants, respondents, third parties – to the Title IX Coordinator
 - Institutions can choose which employees are required to report and which employees are confidential resources
- When: Reporting is encouraged as soon as possible, but delays are common and occur for many different reasons
- How: Preferably, in writing, but reports can be submitted by phone or in person
 - Anonymous reports may limit the institution's ability to respond

What Happens When A Report Is Made?



- Outreach from a member of the Title IX Team:
 - Link to the policy
 - Offer to speak about options
 - Availability of supportive measures
 - Prohibition on retaliation
- How many times does your campus do outreach to a party?

Intake Meetings with Complainants



- Information about the resolution process
- Discussion of Title IX jurisdiction
- Potential discussion of definitions
- Information about the interactions between the parties
- Supportive measures
- Protection from retaliation
- “I need to provide you with information, and it would be helpful for you to provide me with information. Would you like me to talk about the process first? Or would you like to share your concerns with me first? Either is fine, and if you can’t decide, I’m happy to help.”

Initial Assessment



- Goal: Get enough information to determine if they are speaking to the right office.
- If the person wishes to move forward with a Formal Complaint under the Title IX process, what are the appropriate charges?
- If they don't want to move forward with a Formal Complaint under the Title IX process, should the Title IX Coordinator file a complaint?

What is Trauma?



- The Substance Abuse and Mental Health Services Administration (SAMHSA) defines trauma as “a result from an event, series of events or set of circumstances that is experienced by an individual as physically or emotionally harmful or life-threatening and that has lasting adverse effects on the individual’s functioning and mental, physical, social, emotional or spiritual well-being.”
- The CDC defines trauma as "a physical, cognitive, and emotional response caused by a traumatic event, series of events, or set of circumstances that is experienced as harmful or life-threatening.”
- Virtually everyone has experienced some trauma at some point in their lives

Trauma and Its Effects



- Trauma can affect the way an individual responds in the moment while an incident is occurring
- Trauma can affect the way an individual encodes memories while an incident is occurring
- Trauma can affect the way an individual decodes memories when trying to relate what happened
- Presence of signs of trauma $\neq$ policy violation
- No signs of trauma $\neq$ no policy violation

Intake: Being Trauma-Informed



- Encourage them to bring an advisor.
- Limit the number of times a person is required to tell their story. Initial assessment doesn't require all the details.
- Offer autonomy whenever possible.
- Take breaks when needed.
- If the meeting is in person, have water, snacks, and tissues available.
- Take excellent notes and give the person the opportunity to review and suggest revisions after the meeting.
- Document what is discussed and send it in a follow-up email to the person.

Supportive Measures



- Non-disciplinary, non-punitive individualized services
- Offered as appropriate, as reasonably available, and without fee or charge
- Available before or after the filing of a formal complaint or where no formal complaint has been filed
- Designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party
- Includes measures designed to protect the safety of all parties or the educational environment, or deter sexual harassment
- Kept confidential except as necessary to provide the support

Supportive Measures: Examples

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Other similar measures

Protection from Retaliation



- Protecting parties and witnesses from retaliation is important to ensure the integrity of the process

Retaliation – OSU Definition



- Any adverse action against any person by any other, such as intimidation, threats, coercion, or discrimination against any individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.
- Full definition on Policy page 4

Options to Discuss



- Make a report
 - Title IX
 - Law enforcement (if potentially criminal)
 - Both or neither
- Get supportive measures
- Formal Complaint
 - Informal Resolution
 - Formal Resolution
- Does any other policy apply?
- The choice that you make now can change later.

Intake for Respondents?



- Yes – this typically occurs once Respondents are aware of the situation. (They are not usually notified until a no-contact order or notice of allegations is issued.)
- What is the difference between intake for complainants and respondents?
There isn't any difference!
 - Respondents may have experienced trauma as a result of the same incident.
 - Respondents may have prior trauma that affects the way they respond to this incident.
 - Respondents may have claims against the Complainant for sexual harassment.
 - Respondents may have claims that can be reported to law enforcement.
 - Etc.

Hypothetical for Discussion



- Student alleges sexual harassment by faculty member, who is teaching a class and also is their supervisor for a research position.
- What type of support might be appropriate for this student?

Questions & Break #2

Formal Complaints & Dismissals

Title IX Complaint – OSU Definition



- A document filed by a complainant or signed by the Title IX coordinator alleging sexual harassment (Title IX) against a respondent and requesting that the university investigate the allegation of sexual harassment.

Mandatory Dismissal



- Alleged conduct:
 - Would not constitute sexual harassment under Title IX even if proved; or
 - Did not occur in the University's education program or activity; or
 - Did not occur against a person in the United States; or
- Complainant is not an individual participating in or attempting to participate in the education program or activity of the university
- Can send it through another process!

Discretionary Dismissal



- Complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the complaint or any allegations therein
- Respondent is no longer enrolled at or employed by the university;
- Specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the complaint or allegations therein

Informal Resolution Under Title IX

Will You Offer Informal Resolution?



- Can **not** offer it in cases involving allegations of an employee sexually harassing a student
- Otherwise, you “may” offer it at any time between when you have a Formal Complaint and when you reach a determination

Can't Require Informal Resolution



- Can **not** require parties to participate in informal resolution
- Can **not** require students or employees to **waive their right** to investigation and adjudication of a formal complaint as a condition of becoming or continuing as a student or employee.
- Can **not offer** informal resolution until there is a formal complaint

Written Notice to the Parties



- Must include:
 - Allegations
 - Requirements of the informal resolution process (precludes formal complaint from same allegations)
 - Party may withdraw from process at any time prior to resolution
 - Consequences of participation, including what records will be maintained/shared

Consent to Informal Resolution



- Must obtain the parties' **voluntary written consent** to initiate informal complaint process
- Regulations do not require use of a particular form for this consent
- Consent can be provided electronically if your institution chooses to accept electronic consent

Investigations

Investigation: Role of the Coordinator



- Ensure compliance with the policy
- Answer process questions
- Track the case to ensure it is moving forward appropriately
- Continue to provide supportive measures, the need for which may change over time
- Monitor case to determine whether additional allegations should be added to the Notice of Allegations
- Assist external investigators in obtaining information from other parts of the institution where appropriate

Investigation: Role of the Investigator



- Offer the parties an opportunity to sit for an interview, suggest witnesses, provide evidence, and suggest questions for witnesses
- Interview witnesses
- Gather evidence from the parties and witnesses as they may be willing to provide it
- Gather evidence from other sources: surveillance footage, card swipes, class schedules/rosters, grades, medical/counseling records (with written consent from the patient for use in the Title IX case), police records, court proceedings
- Prepare an investigative report that fairly summarizes the relevant evidence gathered
- Stay curious – predetermining a case will result in asking fewer questions than necessary to gather all relevant evidence!

Initial Outreach



- Introduction
- Advisor of Choice
- Scheduling an interview (complainant only, for now)
- Start thinking about evidence, witnesses, questions you may want asked
- Remember: supportive measures, no retaliation

Preparing for an Interview



- Bring with you:
 - Policy
 - Notice of Allegations
 - Formal Complaint
 - Any evidence provided to you in advance
- What questions must you ask regarding each element of the policy violations that are alleged?
 - Do not forget to ask about impact!
- In person: snacks, water, tissues.
- If you are not recording, plan to take prodigious notes.

Interview Format



- Reminders
- Monologue
- Follow-up questions
- Sensory specific questions
- Reflection and paraphrasing

Reminders (1 of 2)



- Who are you, and what is your role?
- Do you make a decision in this case?
- What happens to the information they give you today?
- Who will see what they say today?
- After they talk to you, is there more to the process?
- Retaliation protections

Monologue

- “Do you know what I called you in to speak about today?”
- “Where do you feel comfortable starting?”
- “What happened next?”
- “And then what happened?”
- “Tell me more about that.”

Follow-Up Questions



- Establish a chronology
- Get more details
- Explore evidence and witness regarding particular portions of the incident
- Clarify things that were unclear during the monologue
- Get a good understanding of where things happened, room layout, building layout, etc.
- If you were a camera in the room, could you describe what you saw?

Sensory Specific Questions

- Sensory questions can be helpful when a person is having difficulty recalling a particular portion of an interaction.
- What did you see, hear, taste, smell, or feel?
 - Where were your arms?
 - Where was their body weight?
 - Could you feel anything on your legs?

Reflections and Paraphrasing

- Reflect information back to the person to make sure you understand it.
 - This is particularly helpful for establishing a chronology.
- Paraphrase what they have said and see if they agree. If they don't, it suggests that you have more questions to ask so that your understanding is complete.

Relevance

- Does it help to better understand what happened and the context surrounding it?
- Does it help to better evaluate credibility?
- Is it permissible? (Impermissible evidence is not relevant.)

Impermissible Topics



- Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence:
 - Are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - If the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- Privileged information, where such privilege has not been waived by the holder. (Example: Attorney-client privileged information)
- Medical or counseling records for which the patient has not signed specific consent for the records to be included in the evidence for the case

Using Relevancy To Guide An Investigation



- What do you do if someone hands you irrelevant evidence?
- What do you do if someone wants you to gather evidence and you don't know if it is relevant?
- What do you do if someone asks you to interview a witness and you don't know how they could be relevant?

Questions about Verbal Consent



- Before that started, was there any conversation about it?
- Did they ask you if you wanted to do that? Did you ask if you could do that?
- Did they tell you they were going to do that? Did you tell them you were going to do that?
- Did they say anything in response?
- Was there any conversation while it was occurring?
- Did you say anything to them? Did they say anything to you?
- Did they say [whatever they alleged they said]?
- Did you say [whatever they alleged you said]?

Questions about Non-Verbal Consent



- When they started to do that, how did you respond?
- When you started to do that, how did they respond?
- When they started to do that, did you move your body in any way?
- When you started to do that, did they move their body in any way?
- Did you move your body to help them do that?
- Did they move their body to help you do that?
- How did they know they liked what you were doing?
- How did you show you didn't like what they were doing?
- Did it seem like they were into it? Why or why not?
- Was there any kissing during this? Were they kissing you back?
- Who was controlling the speed of what was happening?

Questions about Positioning

- How were you positioned? How were they?
- While they were on top of you, where was their body weight?
- Where were your arms, legs, hands, head? Where were theirs?
- Were the lights on or off? Could you see their facial expressions?
- Did you change positions at all? How did you get from one position to the next?
- Were you still wearing clothes? What clothes had been taken off? Do you remember how and when they came off?

Questions about Alcohol/Drugs



- Reason for asking + amnesty reminder
- Had you consumed alcohol or drugs? When? How much? Over what period of time?
- Had you eaten? If so, what, when, and how much?
- Were you taking any medication that interacted with alcohol/drugs? What effect does that medication typically have on you, if you know?
- Can you describe the impact the drugs/alcohol had on you at that point in the evening?
- Do you think that alcohol/drugs played a role in what you can remember from that night? Why?

Questions about Intoxication



- Did the person appear to be intoxicated? How did you know?
- Was the person unconscious at any point?
- Did the person vomit?
- Was the person's speech slurred? Could you understand them?
- Were they able to walk and balance? Did they need help walking?
- Did they seem confused about who they were with, what they were doing, or where they were?
- Were you worried about them?
- Was the person able to text and use their smartphone?
- Was the person able to pour their own drinks?
- Was the person able to remove their own clothing?
- What clues did you see that made you believe that the person was not intoxicated?
- Did Respondent see Complainant [describe symptom of intoxication]?

Investigators: Being Trauma Informed



- Remember your ABCs: Advisor, Breaks, Comfort
- Be curious, not judgmental.
- If you sense a question may be misread, explain why you are interested before you pose the question.
 - What were you wearing?
 - Had you been drinking or doing drugs?
- Not asking the difficult questions now may make the process harder down the road.
- If information doesn't make sense, ask more questions.

Writing an Investigative Report

Writing Interview Summaries (1 of 2)



- No magic formula
- Try to draft them near the time of the interview
- Summarize the discussion with as much detail as possible
 - Include policy and procedure discussions
 - Include questions asked and answered
 - Use quotations when possible

Writing Interview Summaries (2 of 2)



- Must be readable
- Must be accurate
- Incorporate feedback promptly
 - Otherwise you might forget what was said or what the feedback is referencing
- Put the work in
 - If your summaries are accurate and readable, they may become the bulk of your report (depending on your institution's report format)
 - Putting the work in now may save you time later

Writing Investigation Reports



- The 2020 Regulations provide that the investigator must create a report that:
 - Fairly summarizes relevant evidence
 - 34 C.F.R. §106.45(b)(5)(vii)
- What does this mean?

Things to Keep in Mind



- Each case includes at least TWO stories, maybe more
 - (1) The underlying case
 - (2) The investigation of the underlying case – this is how you show your work

Different Ways to Tell These Stories



- Template
- Typical practice for your institution
- Common structural tools
 - Chronology
 - Topic or allegation
 - Perhaps by chronology within each topic or allegations
 - Chronology of how the information came into the investigation
 - By Witness Summary

Typical Introduction Structure



- Should preview both stories
 - How did the underlying “story” get to the Title IX Office?
 - What about the underlying story was reported?
- Identify relevant individuals with just factual information
 - Complainant
 - Respondent
 - Investigator
 - Witnesses

Allegations in Investigation Report



- Refer back to the Notice when drafting your descriptions of the allegations
 - Do they match your description?
 - If not – why?
- Did both parties receive Notice of the issues you've investigated?
- Did something come up during the investigations that requires further notice or charges?
- Remember to use the names and definitions of violations as they existed when the conduct is reported to have occurred
 - Same policy for definitions and procedure? Or a split?

Allegations in Investigation Report (cont.)



- Refer back to the Notice when drafting your descriptions of the allegations
 - Do they match your description?
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- Did something come up during the investigations that requires further notice or charges?
- Remember to use the names and definitions of violations as they existed when the conduct is reported to have occurred
 - Same policy for definitions and procedure? Or a split?

Policy Language



- Include definitions of prohibited conduct alleged from applicable policy
- Include related definitions as appropriate (e.g. consent, incapacitation) or any code of conduct included if done together
- This will take up space but it's worth it
 - Acts as a check on the process to ensure accuracy
 - Gives the parties and advisors a reference point within the report itself
 - Makes it easier to apply later in the process

Procedural Steps



- Procedural Steps beginning with Formal Complaint:
 - Can work well between the introduction and discussion of facts
 - Pieces of this description may need to be repeated later
 - Include the following for your Decision-Maker(s):
 - Formal Complaint
 - Notifications to the parties
 - Interviews with parties and witnesses
 - Site visits
 - Methods used to gather other evidence

Procedural Steps – What You Didn't Do and Why



- Witnesses you tried to contact but never responded
- Witnesses you tried to contact but they declined
- Witnesses you were asked to contact but didn't, and why
- Evidence you tried to gather but weren't provided
- Evidence you tried to gather but it doesn't exist
- Evidence you were asked to gather but didn't, and why

Procedural Steps – Anomalies?



- If there are any procedural anomalies, does it make sense to explain them?

Explaining Your Structure: Example



- “The information in this report is a summary of facts provided by the participating parties and witnesses. Where there is a difference in the accounts, it is noted in the report. For the sake of clarity, the report is organized chronologically and by subject matter when appropriate.”

When to Synthesize?

- When everyone agrees on something
- When most people agree on something but there are others that disagree
- Ways to synthesize:
 - Umbrella paragraphs under a particular heading
 - Undisputed timeline at the outside of the summary
 - List of undisputed facts

10 and 10

-
- Parties get to review the evidence for 10 days and provide a written response
 - Investigator considers responses, integrates feedback, takes appropriate action, and provides finalized report
 - Parties get another 10 days to review the final report and provide a written response

Watch for Inconsistent Terminology



- Referring to individuals or locations differently in different places in the report
- May leave the reader with the impression that you are talking about different places or people
 - Tom, Tom Smith, Mr. Smith, Thomas
 - Tom's room, Room 4A, Hubbard Hall

Use Precise Wording

- Be as precise as possible
- This can add time to the writing process, but can pay off in terms of clarity
- Pronouns may be unclear
- Adjectives and adverbs – should these be in quotes from a witness, or are they your judgment?

Watch for Tone



- Some words carry suggestion of judgment
 - “Innocent” and “guilty”
 - “Clearly” and “obviously”
 - “Victim” and “survivor” and “perpetrator”
- Recognizes the impact of your words

Cite Sources



- Your decision-makers will love you for this
- It underscores your neutrality as an investigator, and that you are fairly summarizing the relevant evidence
- “Bob stated this happened” versus “This happened”

Outlining Your Structure

- Roadmap paragraph at the start?
- Headings and subheadings
- This helps people who know nothing about the case (your decision-maker) understand what is happening

Typos and Grammar

- Spell check and grammar check
 - Make sure your grammar check is within your IT system – no sending files outside of what you protect!
- Make sure clauses are in the right order
 - After the picnic, Bob stated that Stacy came home drunk.
 - Bob stated that after the picnic, Stacy came home drunk.
 - Bob stated that Stacy came home drunk after the picnic.

Questions & Break #3

Hearing Procedures

Hearings: Role of the Title IX Coordinator



- Ensure compliance with the policy
- Answer process questions
- Track the case to ensure it is moving forward appropriately
- Continue to provide supportive measures, the need for which may change over time
- Facilitate the simultaneous provision of decision to both parties

Hearings: Role of the Decision-Maker



- Review the file thoroughly, and stay curious. You won't have all the evidence until the end of the hearing, so don't make up your mind yet!
- Hold pre-hearing conferences
- Conduct hearing
 - Make relevancy determinations
 - Ask questions
- Prepare written decision using the appropriate standard of evidence to determine whether respondent violated the policy as to each charge in the Notice of Allegations
- Assign sanctions using the factors in your policy

Hearings: Role of the Advisor



- Support your party
- Attend pre-hearing conference (if part of the process)
- Attend hearing
- Say nothing at the hearing except to ask relevant questions of the other* party and witnesses from the perspective of your party
 - Help the decision-maker better understand things from your party's perspective
- Maintain decorum standards
- If your party wishes, they may want:
 - Assistance determining which witnesses to call
 - Assistance drafting questions
 - Assisting preparing an opening/closing statement (if permitted by policy)

Pre-Hearing Conferences

- Pre-hearing conferences can help reduce the anxiety of the parties/advisors and prepare better for the hearing.
- Use this time to explain the procedure, what to expect on the day of the hearing, and discuss witnesses they wish to call.
- Answer procedural questions and address procedural disputes.
- Separate vs. Joint pre-hearing conferences?

Using Zoom for Hearings: Tips



- When setting up the Zoom link, ensure the waiting room is turned on.
- The parties and advisors will log into the hearing.
- Create breakout rooms: hearing officer, complainant/advisor, respondent/advisor, witness
- Admit each side separately to do a tech check, then assign to the correct breakout room and open the rooms.
- Close the breakout rooms and begin recording to the cloud.
- Make sure closed captioning is available for those who wish to use it.
- Pause recordings on breaks. (Stopping the recording creates multiple files.)
- Evidence can be shared on-screen by the hearing administrator or decision-maker.
- Witnesses should be let in only during their turn to testify, then they log off.
- Messages can be broadcast to the breakout rooms and waiting room if needed.

Asking Good Questions



- Hearing officers should try to ensure they have enough information on every element of every charge to make a decision.
- Be careful of rabbit holes. How is this relevant? How will this help evaluate credibility?
- Open-ended questions are helpful to give more context and detail.
- Close-ended questions are helpful to clarify ambiguities.
- Remember: if you don't ask it, no one will. This is the last opportunity to get the best evidence out on the table for consideration.

Challenging Questions



- “You told the investigator X, but today you said not X. Can you help me understand this?”
- “You said X, but the witness said Y. Can you help me understand why that might be?”

“Help me understand” is a great way to frame a neutral question that seeks to resolve disputed information.

Relevancy Determinations



- Must be made orally after every advisor-posed question.
- Options:
 - “Relevant”
 - “Can you help me understand why that’s relevant?”
 - “Not relevant.” (Give very brief explanation.)

Writing a Decision

What Goes Into Credibility?



- 2001 Revised Sexual Harassment Guidance (withdrawn) – page 9
 - Level of detail and consistency
 - Corroborative evidence is lacking where it should logically exist
 - Evidence that the respondent has been found to have harassed others
 - Evidence that the complainant has been found to have made false allegations against other individuals
 - Reaction after the incident
 - Complainant took steps to report the conduct soon after
 - Complainant writes down the conduct soon after it occurred
 - Complainant tells others about the conduct soon after it occurred

Boiling It Down



- **Plausibility** – Is the story possible, accounting for potential effects of trauma?
- **Consistency** – Is the story consistent over multiple retellings?
- **Corroboration** – Can the story be corroborated by other evidence?
- **Reliability** – Was the person in a good position to witness what they are sharing, and to remember it accurately?

Credibility is a determination that can be made statement by statement.
It is not necessary to call someone a liar to make a credibility determination.

Plausibility

- This is foundational. If it's not plausible, it can't be credible.
- Think: laws of physics.
- Consider:
 - Body positions, relative height/weight
 - Distribution of body weight
 - Transition from one position to the other
 - Who was in control of the rhythm and movement
- Does it make sense, accounting for potential trauma? If not, is there anything that would make it make sense?

Plausibility – Bias Check

- “It’s not plausible because I wouldn’t have done that in this situation.”
 - You are using your own self as a standard by which you are measuring the evidence. Is this because you are the reasonable person, or is this an effect of bias? Is this even fair?
- Be careful of substituting rape myths for plausibility analysis.
 - E.g. “They were in love, so it couldn’t be rape. That wouldn’t be plausible.”

Consistency - Considerations

- To whom is the telling?
 - Friend
 - Parent
 - Police
 - School authority
- What is the purpose of the telling?
 - To receive sympathy and support
 - To make a formal report
- In what mode is the listener?
 - Supportive
 - Investigating

Consistency - Concerns

- Is the telling getting more specific and detailed over time, and if so, why might that be?
- Are details that are inconsistent across retellings important, or are they minor in nature?
- Is the person leaving out information that would be reasonable to include in their retelling?

Consistency and Outcry Witness(es)



- Who is the first person that the party told?
- Under what circumstances?
 - Do those circumstances affect credibility? (Motive)
- More witnesses mean more chances to show consistency – or inconsistency.
 - In other words, these witnesses don't tell us whether the allegations are true. They tell us whether the party is credible in their retelling due to consistency.

Considering Consistency



- Look at the retellings in the order of earliest to latest.
- Is there a reasonable explanation for any differences?
- Does the story evolve over time into something else?
- 2020 Regulations Preamble: “Because decision-makers must be trained to serve impartially without prejudging the facts at issue, the final regulations protect against a party being unfairly judged due to inability to recount each specific detail of an incident in sequence, whether such inability is due to **trauma**, the effects of **drugs or alcohol**, or **simple fallibility of human memory**.” 85 FR 30026, 30323 (May 19, 2020)

Corroboration



- Is there any objective evidence in this case? If so, what does it tell us?
- Are there any eyewitnesses to corroborate an assertion by a party?

Reliability

- How much time has passed?
 - Is there any reason this particular occasion might have “stuck out” to someone?
- Was the person intoxicated or high?
- Was the person in a position to observe the conduct?
- Has the person’s story been influenced by another party/witness, or by social situations?
- Does the person have a motive to lie?
- Does the person have special training such that their information might be given more weight on a particular point?

Reliability – Bias Check



- Are we assigning a reliability value based on the identity of the party?
 - Complainant vs. respondent
 - Status as a police officer or school administrator
- Are we assigning a reliability value based on a person's:
 - Alcohol/drug problems
 - Mental health issues
 - Cognitive/intellectual disabilities
 - Age
 - And if so – is that supportable under the circumstances?

Check for Other Bias



- Switch the race, sex, or other protected characteristic of the parties. Would your decision come out the same? If so, is that appropriate?
 - This is particularly important when allegations go against the “stereotypical norms” for a situation. We know that complainants and respondents can be of any sex, gender, sexual orientation, etc.
- Are you making any assumptions that are not based on the evidence, and if so, are those fair under the circumstances?
 - Compare “They are carrying a wet umbrella so it’s probably raining” with “They look sad today so it’s probably raining”

Weighing the Evidence



- What is the most important? What are the rocks upon which you can build a solid foundation?
- What is less important? What can be reasonably explained?

Each fact is found using the standard of evidence your institution has chosen (e.g. preponderance of the evidence).

Each element of a policy violation is analyzed using that same standard.

Things Not To Consider



- Impermissible evidence (e.g., medical records without consent)
- Irrelevant evidence
- But what about:
 - Demeanor?
 - Pattern evidence?
 - Character evidence?

Let It Go

- You don't have to resolve every factual dispute.
- Consider whether it is important for credibility purposes or necessary to your findings. If not, do we need to go there?
- If you aren't considering something, particularly if the parties thought it was important, explain why.

Reminders for Decisions



- **Show your work. Get credit for your good work.**
- You cannot base a determination of responsibility solely on whether someone declined to participate in the process.
- Do not consider the impact of your determination on the parties when determining whether a policy was violated.
- Do not use sex stereotypes to resolve a case. Base your decision only on the evidence before you.
- “Gut feelings” are a sign you need to ask more questions, not something you put on the scale.

Written Decision (1 of 2)



- Allegations potentially constituting sexual harassment
- Description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
- Findings of fact supporting the determination
- Conclusions regarding the application of the recipient's code of conduct to the facts

Written Decision (2 of 2)



- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant
- Recipient's procedures and permissible bases for the parties to appeal

Note: This is provided to both parties simultaneously.

Sanctions

- Check policy for factors, but here are some to consider:
 - Prior disciplinary history of respondent
 - How the institution has sanctioned similar incidents in the past
 - Nature and violence of the conduct at issue
 - Impact of the conduct on the complainant
 - Impact of the conduct on the community
 - Whether respondent accepted responsibility for their actions
 - Any other mitigating or aggravating circumstances

Appeals Officer Perspective

Bases for Appeal – OSU Policy



- Procedural irregularity that affected the outcome of the matter
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter
- Additional bases available for matters involving faculty respondents

Appeal Decisions

- These are not typically as long as the original decision.
- Must address arguments if they are appropriate bases for appeal.
- If arguments do not meet the requirements to be an appropriate basis for appeal, the decision should explain that.
- Typically include:
 - Very short procedural history of the case and the appeal.
 - Outline of the bases for appeal raised in the appeal.
 - Evaluation of each basis for appeal, in whatever order makes sense.
 - Next steps: Remand for new hearing or more investigation? Affirm decision? Overturn decision? (What makes sense to ensure that we have a fair, equitable process?)

Questions & Break #4

Thank You

