



**D. STAFFORD**  
& ASSOCIATES

# **Sexual Misconduct Decision Maker Class**

**Presented by:**

**A D. Stafford & Associates  
Title IX Team Member**

D. Stafford & Associates, LLC, 179 Rehoboth Avenue, #1121, Rehoboth Beach, DE 19971  
302-344-5809

Dolores Stafford, President & CEO

Dolores@DStaffordandAssociates.com

[www.dstaffordandassociates.com](http://www.dstaffordandassociates.com)



Have you joined NACCOP yet? If not, go to [www.naccop.org](http://www.naccop.org) to become a member of this professional association supporting Clergy Compliance Officers.

Once an institution is a member, individual membership is \$50.00. You can sign up your entire Clergy Compliance Committee for membership!

©All rights reserved by DSA

*(Limited permission is granted to each attendee of this class to make training materials available per the requirements outlined in the Title IX Regulations published on May 19, 2020)*





# D. STAFFORD & ASSOCIATES

## Decision-Maker

- **Title IX for Decision-Makers**
  - Statute
  - Scope and Jurisdiction
  - People Definitions
  - Grievance Process
- **Sex-Based Harassment**
  - Sample Definitions
  - Unwelcome Conduct & Consent
- **The Hearing Process**
  - Pre-Hearing Activity
  - The Hearing
  - The Deliberation
  - The Written Outcome
  - The Appeal





## **TITLE IX**

### **Copyright**

*(Limited permission is granted to each attendee of this class to make training materials available per the requirements outlined in the Title IX Regulations published on May 19, 2020)*

*These materials are copyright of D. Stafford & Associates, LLC © 2020 D. STAFFORD & ASSOCIATES. All rights reserved.*

*Any distribution or reproduction of part or all of the contents in any form is prohibited other than the following:*

- As required by 34 C.F.R. § 106.45(b)(1)(iii) and § 106.45(B)(10)(i)(D), this material in its entirety may be posted to the website of the institution in which you were associated with at the time in which you were enrolled in this training.*
- Public inspection upon request.*

*You may not, except with our express written permission, distribute or commercially exploit the content. Nor may you transmit it or store it in any other website or other form of electronic retrieval system.*





---

## **ISSUANCE OF CERTIFICATES FOR COMPLETION OF DSA/NACCOP CLASSES**

To receive a certificate for classes held by D. Stafford & Associates, LLC or the National Association of Clerly Compliance Officers and Professionals (NACCOP), attendees must attend the majority of the class. This includes in-person classes and virtual classes. DSA and NACCOP understands 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. That said, our general rule of thumb for our 4 and 5 day classes is that if an attendee misses more than 1 hour of class time, they will not be issued a certificate of completion for the class. If the class is a 1, 2 or 3 day class, the amount of time that can be missed may be less, as classes of those lengths are more condensed.

**For virtual classes**, because we can't see all of the attendees all of the time like we can in an in-person class (based on the attendee controlling whether they have their camera turned on or not), the criteria for receipt of a certificate is determined based on missed class time (no more than 1 hour or less, depending on the length of the class) 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 before doing so, to ensure that everyone who is there can/will respond to the poll. If there is an issue with responding to the attendance poll, the attendee would need to **immediately notify the Administrative Support person** in the course via the chat function in the zoom platform. That way we can immediately resolve any issues and give the attendee credit for being in attendance for the poll. Notifying us hours or days after having an issue with not being able to complete the attendance poll will not allow us to give the attendee credit for being in class during the poll.

Our classes qualify for credit toward a Master's Degree at New England College (and regardless if you decide to seek credit or not, but 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, which equates to verification that the participant attended the complete class. For DSA and NACCOP, issuance of a Certificate of Completion is verification of that fact.

If the attendee missed class for a legitimate reason, that doesn't mean that an attendee wasn't there for much of the class and that they didn't benefit from that attendance. It just means that based on the missed time and/or attendance polls (in virtual classes only), we aren't able to issue you a certificate of completion.

If an attendee has to miss time in class, the instructions attendees receive before the class provide instructions for notifying the Administrative Support person about the time that will be missed **IN ADVANCE**, so we can jointly identify what blocks of instruction will be missed, and the DSA/NACCOP team will then work with the attendee to see if we can get them in a future class module to make up that material, which would result in us being able to issue the attendee a certificate. We provide this service and opportunity at no additional cost, as we want each attendee to finish the class and get a certificate of completion. Effective communication by each attendee is the key to this option.







## 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



# D. STAFFORD & ASSOCIATES

P.O. Box 1121  
Rehoboth Beach, DE 19971  
Phone: (202) 438-5929  
[dolores@dstaffordandassociates.com](mailto:dolores@dstaffordandassociates.com)

---

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



# D. STAFFORD & ASSOCIATES

179 Rehoboth Avenue, #1121  
Rehoboth Beach, DE 19971  
Phone: (202) 438-5929  
[dolores@dstaffordandassociates.com](mailto:dolores@dstaffordandassociates.com)

---

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.



1

---

---

---

---

---

---

---

---



2

---

---

---

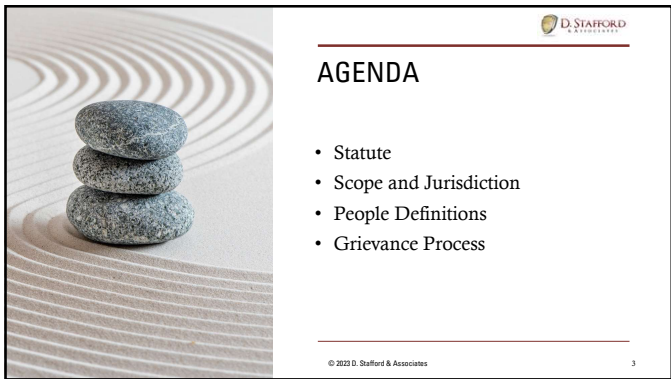
---

---

---

---

---



3

---

---

---

---





---

---

---

---

**FEDERAL LAW**

 <b>Statutes</b> 20 U.S.C.D. §1681-1688	 <b>Regulatory Guidance</b> 34 C.F.R. § 106	 <b>Sub-Regulatory Guidance</b> DCLs Preamble to Regs Executive Orders OCR Website	 <b>Case Law</b> Circuit courts District courts
---	--	--	---

© 2023 D. Stafford & Associates 4

---

---

---

---

---

---

---

---

4

**STATUTE**



© 2023 D. Stafford & Associates 5

---

---

---

---

---

---

---

---

5

**TITLE IX, EDUCATION AMENDMENTS OF 1972,  
20 U.S.C. § 1681**

*No person in the United States 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.*

© 2023 D. Stafford & Associates 6

---

---

---

---

---

---

---

---

6



### § 1681(a) - EXCEPTIONS

- Admission policies
- Institutions changing from single-sex status
- Religious institutions
- Military services or merchant marines
- Public traditional single-sex institutions
- Social fraternities or sororities
- Voluntary youth organizations
- Boy or girl conferences
- Father-son/mother-daughter activities
- "Beauty" pageants

7

---

---

---

---

---

---

---

---

### § 1681(c) - "EDUCATIONAL INSTITUTION"

*Any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.*

8

---

---

---

---

---

---

---

---

### SCOPE AND JURISDICTION



9

---

---

---


---

---

---

---

---



## DEFINITION OF TITLE IX SEXUAL HARASSMENT

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. 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 recipient's education program or activity;
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

© 2023 D. Stafford & Associates 10

10

---

---

---

---

---


---

---


---

---


---



## TITLE IX JURISDICTION - PERSON



*"At the time of filing a formal complaint...the complainant must be participating in or attempting to participate in the education program or activity." (§106.30(a))*



*The recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs.*

© 2023 D. Stafford & Associates 11

11

---

---

---

---

---


---

---

---

---

---



## "ATTEMPTING TO PARTICIPATE"

- Has withdrawn due to alleged harassment and has desire to re-enroll
- Has graduated but intends to apply to new program or participate in alumni programs
- Is on a leave of absence and still enrolled or intends to re-apply
- Has applied for admission

© 2023 D. Stafford & Associates 12

12

---

---

---

---

---

---

---

---

---

---

## TITLE IX JURISDICTION – CONTEXT OF EDUCATIONAL PROGRAMS OR ACTIVITIES

Locations, events or circumstances in which the institution has control over the respondent AND context

Or

Any building owned or controlled by a student organization that is officially recognized

And

Occurred in the United States

© 2023 D. Stafford & Associates 13

13

---

---

---

---

---

---

---

---

## PEOPLE DEFINITIONS



© 2023 D. Stafford & Associates 14

14

---

---

---

---

---

---

---

---

## § 106.30(a) - DEFINITIONS

**Complainant**

- An individual who is alleged to be the victim of conduct that could constitute sexual harassment*

**Respondent**

- An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment*

© 2023 D. Stafford & Associates 15

15

---

---

---

---

---

---

---

---

**TITLE IX PERSONNEL**

© 2023 D. Stafford & Associates 16

---

---

---

---

---

---

---

---

16

**TITLE IX - ADVISOR OF CHOICE**

© 2023 D. Stafford & Associates 17

---

---

---

---

---

---

---

---

17

**TIMEOUT FOR CLERY! ADVISORS**

- Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice
- Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties § 668.46(k)(2)(iii-iv)

© 2023 D. Stafford & Associates

---

---

---

---

---

---

---

---

18

D. STAFFORD & ASSOCIATES

**§ 106.45 - GRIEVANCE  
PROCESS FOR FORMAL  
COMPLAINTS OF  
SEXUAL HARASSMENT**

© 2023 D. Stafford & Associates 19

19

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

**§ 106.45(a) - RECIPIENT'S TREATMENT OF PARTIES**

*A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.*

© 2023 D. Stafford & Associates 20

20

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

**§ 106.45 (b)(1)(i-iii) - GRIEVANCE PROCESS**

Equitable

Objective Evaluation  
(inculpatory and  
exculpatory)

No conflict of  
interest or bias

© 2023 D. Stafford & Associates 21

21

---

---

---

---

---

---

---

---

**D. STAFFORD & ASSOCIATES**

## CONFLICT OF INTEREST OR BIAS

**Generally**



**Individually**



© 2023 D. Stafford & Associates 22

---

---

---

---

---

---

---

---

22

**D. STAFFORD & ASSOCIATES**

## § 106.45 (b)(1)(iv-x) - GRIEVANCE PROCESS

Presumption of not responsible

Prompt time frames

Range of sanctions

Standard of evidence

Appeal Procedures

Range of supportive measures

Limits on privileged evidence

© 2023 D. Stafford & Associates 23

---

---

---

---

---

---

---

---

23

**D. STAFFORD & ASSOCIATES**

## § 106.45(b)(2) - NOTICE OF ALLEGATIONS

Grievance process

Sufficient details and sufficient time to prepare

Identities of the parties, alleged conduct

Date and location of incident

Presumed not responsible

Advisor of choice

False statements

© 2023 D. Stafford & Associates 24

---

---

---

---

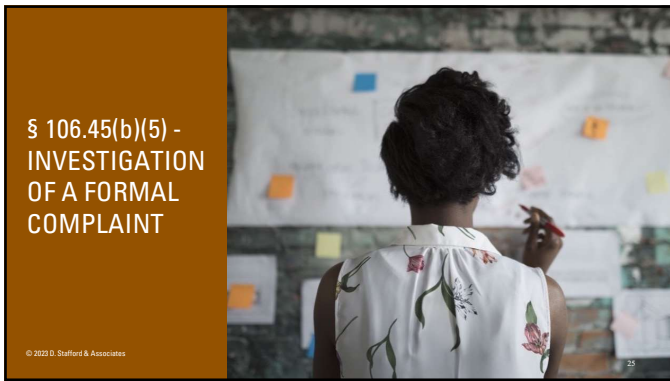
---

---

---

---

24



25

---

---

---

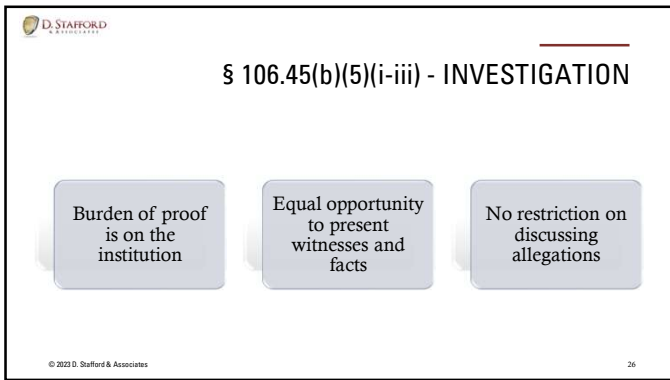
---

---

---

---

---



26

---

---

---

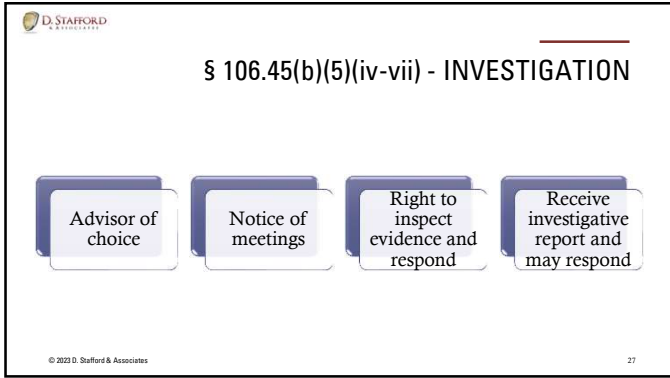
---

---

---

---

---



27

---

---

---

---

---

---

---

---



28

---

---

---

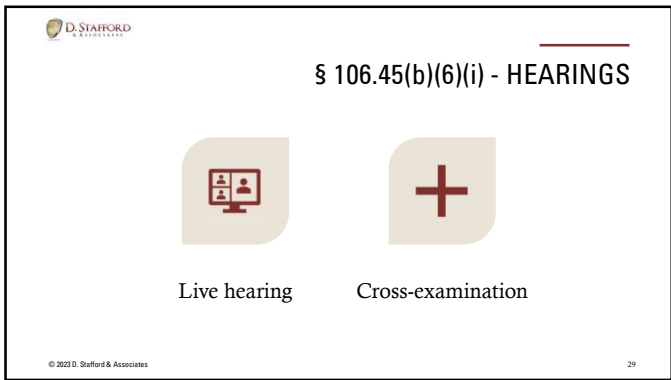
---

---

---

---

---



29

---

---

---

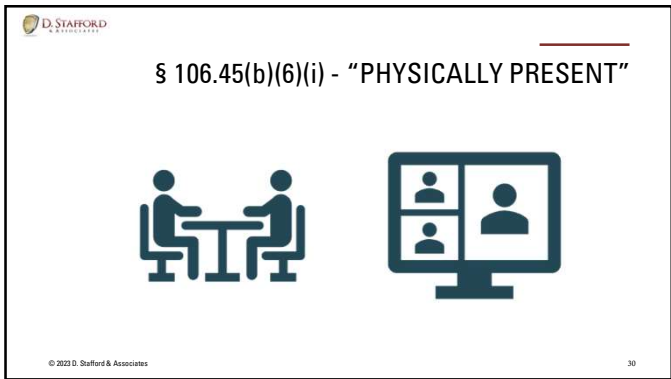
---

---

---

---

---



30

---

---

---

---

---

---

---

---



 § 106.45(b)(6)(i) - HEARING RECORDING



Audio



Video



Transcript

© 2023 D. Stafford & Associates 31

---

---

---

---


---

---

---

---

31

 § 106.45(b)(6)(i) - CROSS-EXAMINATION BY ADVISOR OF CHOICE

- *Directly, orally, and in real time by the party's advisor of choice*
- *If a party does not have an advisor, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.*

© 2023 D. Stafford & Associates 32

---

---

---

---


---


---

---

---

32



 § 106.45(b)(6)(i) - RELEVANCY DETERMINATION

*Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.*

© 2023 D. Stafford & Associates 33

---

---

---

---

---

---

---

---

33

### § 106.45(b)(6)(i) - RELEVANCY - SEXUAL PREDISPOSITION AND HISTORY

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless

- offered to prove that someone other than the respondent committed the conduct, 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.

34

---

---

---

---

---

---

---

---

### § 106.45 (b)(7)(i) - DETERMINATION REGARDING RESPONSIBILITY



Made by the decision-maker



Decision-maker can have no other role



Applying the standard of evidence

35

---

---

---

---

---

---

---

---

### § 106.45(b)(8) - APPEALS



36

---

---

---

---

---

---

---

---

### § 106.45(b)(8) - APPEALS

- Mandatory grounds
  - Procedural irregularity that affected the outcome
  - New evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome
  - The Title IX Coordinator, investigator, or decision-maker had a general or specific conflict of interest or bias against the complainant or respondent that affected the outcome
- Additional grounds are permitted

37

---

---

---

---

---

---

---

---

### § 106.45(b)(8)(iii) - APPEALS

- Notification to both parties of an appeal submission
- Appeal officer cannot be the hearing decision-maker
- Appeal officer must be trained and be without bias/conflict
- Give both parties an opportunity to respond
- Notification of decision to both parties

38

---

---

---

---

---

---

---

---

### TIMEOUT FOR CLERY! APPEALS

- *Not required (but must provide notice if allowed along with appeal procedures)*
- *Simultaneous written decision describing result, sanction, any changes to the result, when it becomes final*



39

---

---

---

---

---

---

---

---



40

---

---

---

---

---

---

---

---



41

---

---

---

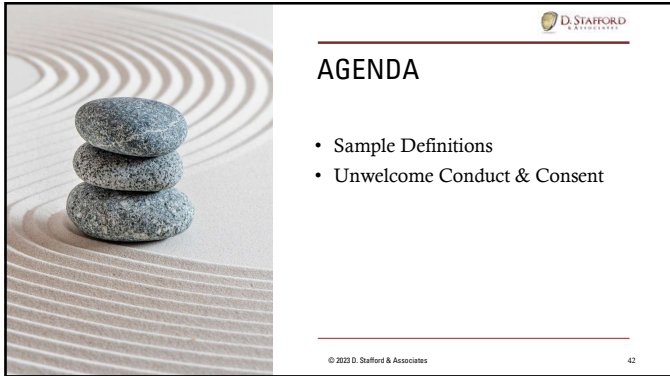
---

---

---

---

---



42

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

## UNDERSTANDING THE ELEMENTS

```

    graph LR
      Behavior[Behavior] --> Condition[Condition]
    
```

© 2023 D. Stafford & Associates 43

43

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

## DECISION-MAKER'S PATH

- What was the conduct?
  - Was the conduct on the basis of sex?
  - Was the conduct unwelcome or without consent?
- Does the conduct meet the definition of a violation of institutional policy?

© 2023 D. Stafford & Associates 44

44

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

## SAMPLE DEFINITIONS

**definitive** /dɪˈfɪnɪtɪv/ *adj.*  
 answer, verdict, etc.) decisive  
 final 2 (of a book)

© 2023 D. Stafford & Associates 45

45

---

---

---

---

---

---

---

---



46

---

---

---

---

---

---

---

---

### QUID PRO QUO - SAMPLE DEFINITION

An employee, agent, or other person authorized to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

© 2023 D. Stafford & Associates 47

47

---

---

---

---

---

---

---

---

### QUID PRO QUO INVESTIGATIVE REPORT

Respondent	Aid, Benefit, or Service	Sexual Conduct
<ul style="list-style-type: none"> <li>• Is the respondent an employee?</li> <li>• What is the relationship to the complainant?</li> <li>• What, if any, perceived or actual power exists?</li> </ul>	<ul style="list-style-type: none"> <li>• What was offered?</li> <li>• How was it communicated?</li> </ul>	<ul style="list-style-type: none"> <li>• What was the conduct requested?</li> <li>• Was it sex-based?</li> <li>• How was it unwelcome?</li> <li>• How was it communicated?</li> </ul>

© 2023 D. Stafford & Associates 48

48

---

---

---

---

---

---

---

---



49

---

---

---


---

---

---

---

---



### HOSTILE ENVIRONMENT - SAMPLE DEFINITION

Unwelcome sex-based conduct that is sufficiently severe or pervasive, that, based on the totality of the circumstances and evaluated subjectively and objectively, denies or limits a person's ability to participate in or benefit from the recipient's education program or activity.

© 2023 D. Stafford & Associates 50

50

---

---

---


---

---

---

---

---



### HOSTILE ENVIRONMENT INVESTIGATIVE REPORT

Type, frequency, and duration of the conduct	Location of the conduct, context, and control
Parties' ages, roles, previous interactions, other factors	Impact on ability to access program or activity

© 2023 D. Stafford & Associates 51

51

---

---

---

---

---

---

---

---



52

---

---

---

---

---

---

---

---

### SEXUAL ASSAULT - SAMPLE DEFINITIONS

- **Rape** - The 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, without the consent of the victim. This offense includes the rape of both males and females.
- **Fondling** - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental incapacity.
- **Incest** - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape** - Sexual intercourse with a person who is under the statutory age of consent.

© 2023 D. Stafford & Associates 53

53

---

---

---

---

---

---

---

---

### SEXUAL ASSAULT INVESTIGATIVE REPORT

What was the sexual behavior?

Who was the initiator?

What, if any, were the words or actions to indicate consent?

- Is there an issue of incapacitation or force?

© 2023 D. Stafford & Associates 54

54

---

---

---

---

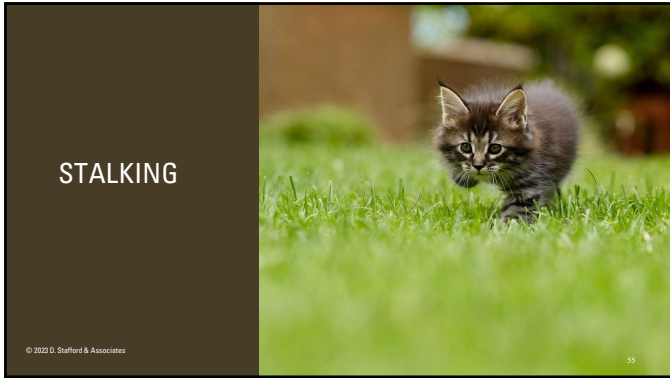
---

---

---

---





55

---

---

---

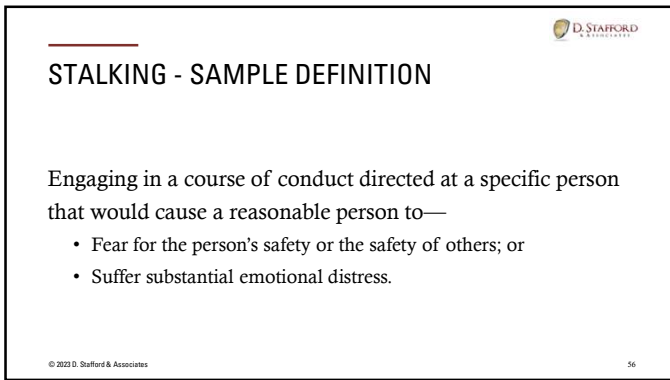
---

---

---

---

---



56

---

---

---

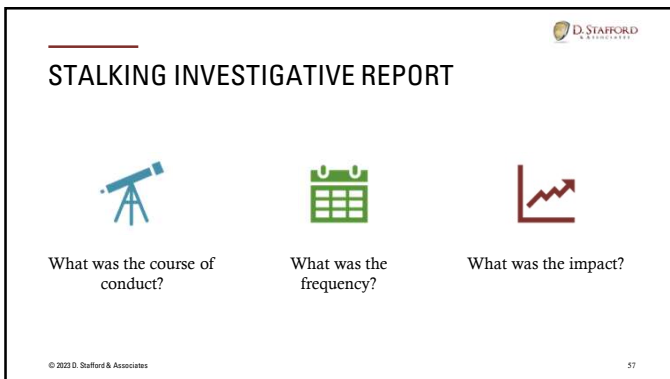
---

---

---

---

---



57

---

---

---

---

---

---

---

---



## INTIMATE PARTNER VIOLENCE

© 2023 D. Stafford & Associates

58

58

---

---

---

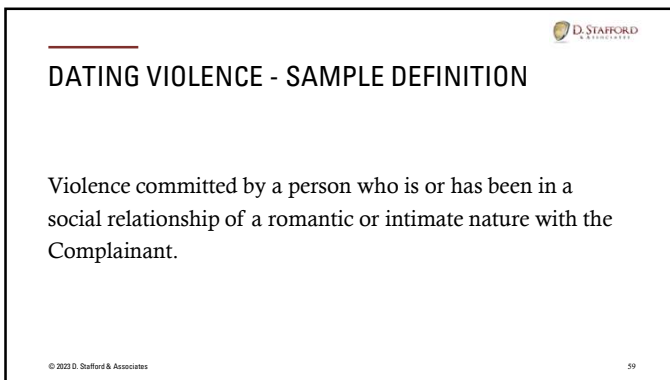
---

---

---

---

---



### DATING VIOLENCE - SAMPLE DEFINITION

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant.

© 2023 D. Stafford & Associates

59

59

---

---

---

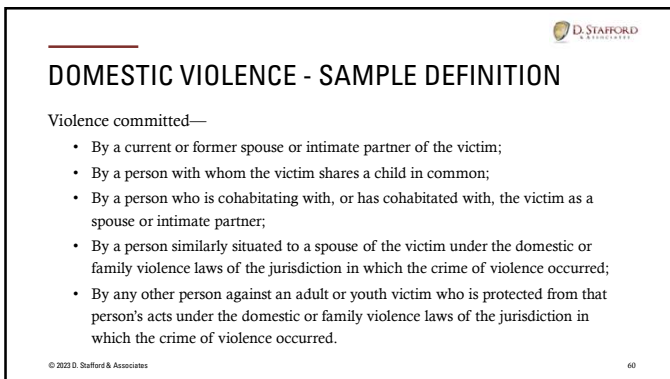
---

---

---

---

---



### DOMESTIC VIOLENCE - SAMPLE DEFINITION

Violence committed—

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
- By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

© 2023 D. Stafford & Associates

60

60

---

---

---


---

---

---

---

---



## INTIMATE PARTNER VIOLENCE INVESTIGATIVE REPORT

<p><b>Parties</b></p> <ul style="list-style-type: none"> <li>• Type of relationship</li> <li>• Length of the relationship</li> <li>• Frequency of interaction between the persons</li> </ul>	<p><b>Behaviors</b></p> <ul style="list-style-type: none"> <li>• Type of violence</li> <li>• Possible patterns of behaviors</li> <li>• Other behaviors that may fall under other policy definitions</li> </ul>
--	--

© 2023 D. Stafford & Associates 61

61

---

---

---


---

---

---

---

---



## UNWELCOME CONDUCT & CONSENT



© 2023 D. Stafford & Associates 62

62

---

---

---

---

---

---

---

---

**“Unwelcome conduct”  
vs. “without consent”**



© 2023 D. Stafford & Associates 63

63

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

# UNWELCOME CONDUCT



© 2023 D. Stafford & Associates 64

64

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

## WHEN DOES CONDUCT BECOME UNWELCOME?

- Invited
- Uninvited but welcome
- Offensive but tolerated
- Flatly rejected

© 2023 D. Stafford & Associates 65

65

---

---

---

---

---

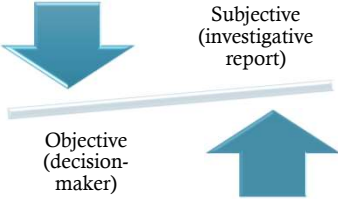
---

---

---

D. STAFFORD & ASSOCIATES

## TESTING FOR UNWELCOMENESS



Objective (decision-maker)

Subjective (investigative report)

© 2023 D. Stafford & Associates 66

66

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

# CONSENT



© 2023 D. Stafford & Associates 67

67

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

# CONSENT

- Sexual Permission
- Verbal or Nonverbal
- Absent if force or incapacitation

© 2023 D. Stafford & Associates 68

68

---

---

---

---


---

---

---

---

# FORCE



© 2023 D. Stafford & Associates 69

69

---

---

---

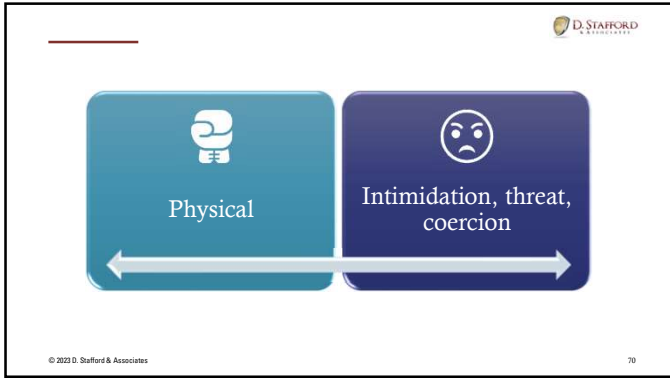
---

---

---

---

---



70

---

---

---

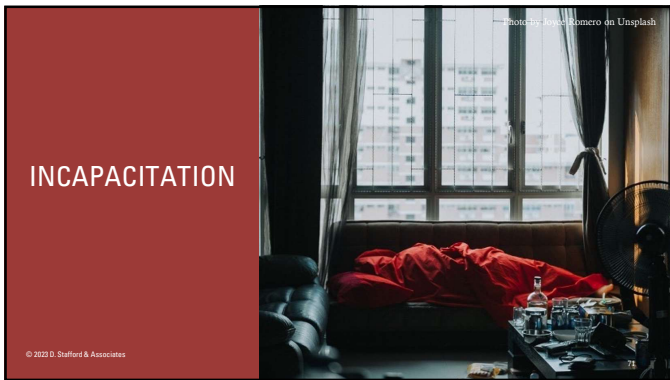
---

---

---

---

---



71

---

---

---

---

---


---


---


---


**INCAPACITATION - SAMPLE DEFINITION**

*Incapacitation is the physical and/or mental inability, whether temporary or permanent, of an individual to make rational, reasonable decisions, or judgments regarding one's well-being or welfare.*

  
 Alcohol

  
 Drugs

  
 Disability

  
 Other

The D. STAFFORD & ASSOCIATES logo is in the top left corner, and the number 72 is in the bottom right corner.

72

---

---

---


---

---

---

---

---



## TWO-STEP DETERMINATION

Was the complainant incapacitated?

➔

Did the respondent (or would a reasonable person) know?

© 2023 D. Stafford & Associates 73

---

---

---

---

---

---

---

---

73



## ALCOHOL & OTHER DRUGS

---

---

---

---


---

---

---

---

74



## SUBSTANCE USE AND SEX

*“...analysis of SHIFT survey data showed that two-thirds of sexually active students who had sex in the prior three months reported some substance use prior to or during sex.”*

Jennifer S. Hirsch & Shamus Khan. “Sexual Citizens: A Landmark Study of Sex, Power, and Assault on Campus.”  
 SHIFT survey = Alexander Wamboldt et al., “Wine Nights, ‘Bro-Dinners,’ and Jungle Juice: Disaggregating Practices of Undergraduate Binge Drinking,” *Journal of Drug Issues*, 2019, 49(4): 643-67.

© 2023 D. Stafford & Associates 75

---

---

---

---

---

---

---

---

75



76

---

---

---

---

---

---

---

---

**IMPAIRMENT**

- The state of being diminished or weakened due to the consumption of alcohol
- Begins as soon as alcohol enters the bloodstream
- Increases with consumption of alcohol

77

---

---

---

---

---

---

---

---

**INTOXICATION**

- An act or instance of inebriation, drunkenness
- Intoxication is legally met when an individual's blood alcohol level reaches .08 or greater

78

---

---

---

---

---

---

---

---





## INCAPACITATION

- So impaired as to be incapable of giving consent
- Lacking the capacity to consent
- If a person cannot understand the nature of the proposed act or cannot understand they have a right to refuse or are otherwise unaware that the activity is occurring

79

---

---

---

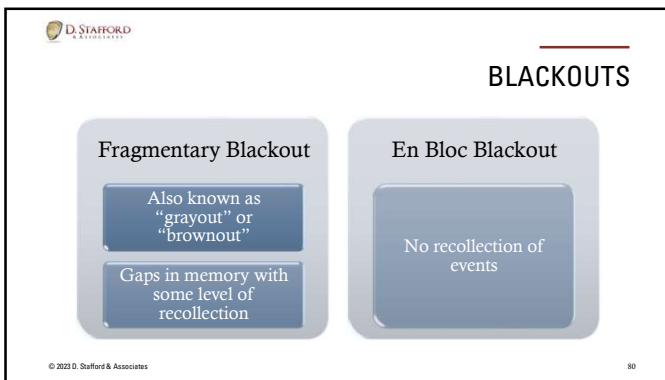
---

---

---

---

---



80

---

---

---

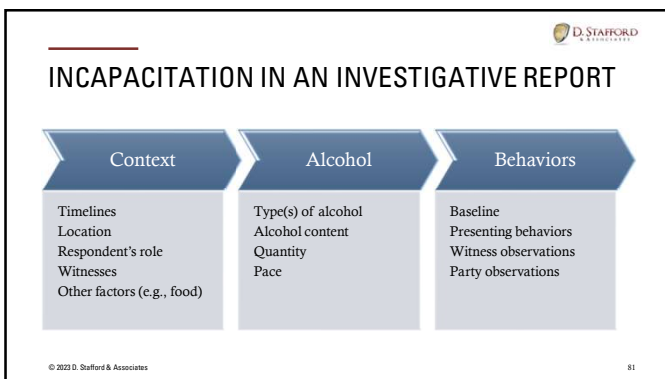
---

---

---

---

---



81

---

---

---

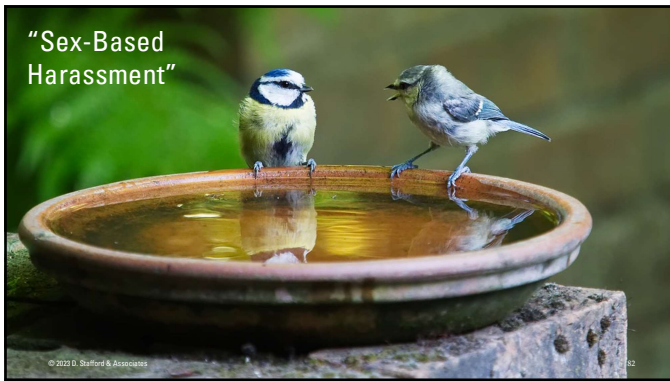
---

---

---

---

---



82

---

---

---

---

---

---

---

---



83

---

---

---

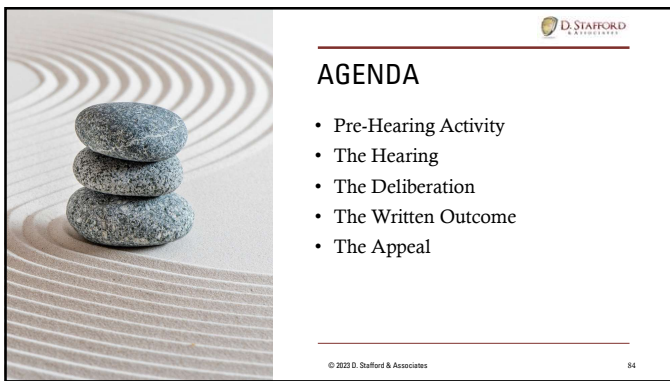
---

---

---

---

---



84

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

## PRE-HEARING ACTIVITY



© 2023 D. Stafford & Associates 85

---

---

---

---

---

---

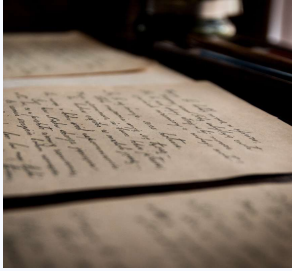
---

---

85

D. STAFFORD & ASSOCIATES

## INVESTIGATIVE REPORT & HEARING NOTICE



© 2023 D. Stafford & Associates 86

---

---

---

---

---

---


---

---


86

D. STAFFORD & ASSOCIATES


### INVESTIGATIVE REPORT




Written report summarizing relevant evidence



Sent to each party and the party's advisor (if one)



Sent at least 10 days prior to the hearing



Each party can provide a written response for the hearing

§ 106.45(b)(5)(vii) 87

© 2023 D. Stafford & Associates

---

---

---

---

---


---

---


---

87


## HEARING NOTICE



Written



Date, time, location,  
names of the decision-  
makers and participants,  
and purpose



Sufficient time to prepare

§ 106.45(b)(5)(v)

© 2023 D. Stafford & Associates 88

---

---

---

---

---

---

---

---

88

## HEARING DECISION- MAKER PREPARATION



© 2023 D. Stafford & Associates 89

---

---

---

---

---


---

---


---

89


## PRE-HEARING PREP



Review notice of  
allegation and  
complaint



Review policy  
and procedures



Review final  
investigative  
report

© 2023 D. Stafford & Associates 90

---

---

---

---


---

---


---

---


90




## PRE-HEARING PREP



Review party responses



Develop clarifying questions related to relevant evidence summary



Identify potential challenges and responses

© 2023 D. Stafford & Associates 91

---

---

---

---

---

---

---

---

91

## Staying Focused



© 2023 D. Stafford & Associates 92

---

---

---

---

---

---

---

---

92



## THE HEARING



© 2023 D. Stafford & Associates 93

---

---

---

---

---

---

---

---

93



94

---

---

---

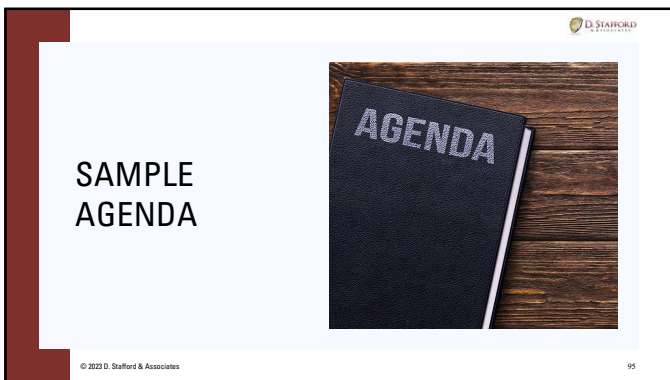
---

---

---

---

---



95

---

---

---

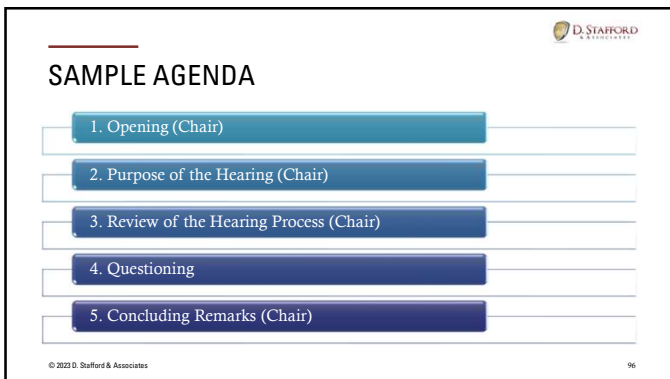
---

---

---

---

---



96

---

---

---


---

---

---

---

---



D. STAFFORD & ASSOCIATES

## 1. OPENING

- Convening date and case identifier
- Hearing is being recorded
- Introductions

97

97

---

---

---


---

---

---

---

---



D. STAFFORD & ASSOCIATES

## 2. PURPOSE OF THE HEARING

- Administrative hearing to determine if a policy violation was committed
- Decision-Maker's role
- Not a court of law
- Behavior statement
- Acknowledgement of documents
- New evidence statement
- No determination of responsibility

98

98

---

---

---


---

---

---

---

---



D. STAFFORD & ASSOCIATES

## 3. REVIEW OF THE HEARING PROCESS

- Virtual logistics, if applicable
- Advisor's role
- Order of questioning
- Review relevancy of question determination process

99

99

---

---

---


---

---

---

---

---



D. STAFFORD & ASSOCIATES

### 4. QUESTIONING

- Determine the order of questioning
- Example:
  - Questions asked of the complainant (decision-maker and then respondent's advisor)
  - Questions asked of the respondent (decision-maker and then complainant's advisor)
  - Questions asked of the witnesses (decision-maker and then advisors)

100

100

---

---

---

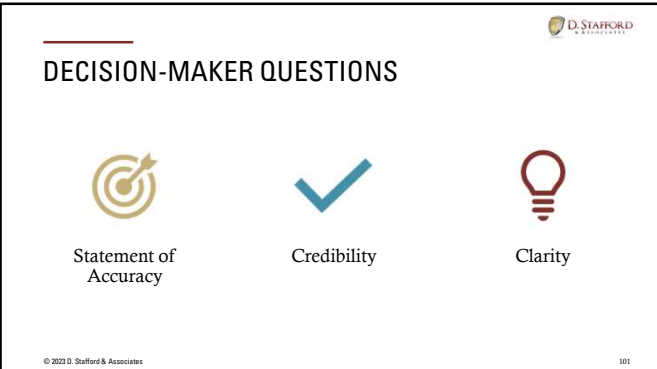
---

---

---


---

---




D. STAFFORD & ASSOCIATES


### DECISION-MAKER QUESTIONS



Statement of Accuracy



Credibility



Clarity

© 2023 D. Stafford & Associates 101

101

---

---

---

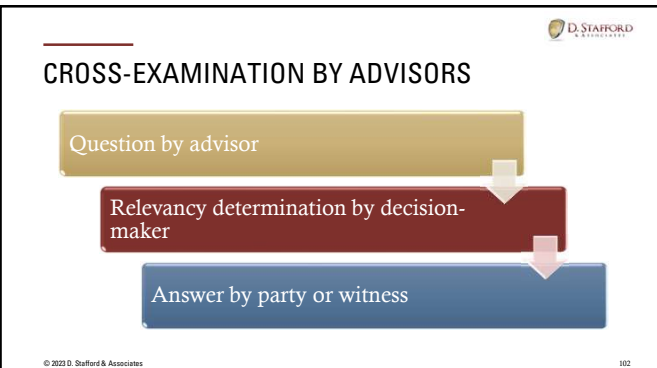
---

---

---

---

---



D. STAFFORD & ASSOCIATES

### CROSS-EXAMINATION BY ADVISORS

Question by advisor

Relevancy determination by decision-maker

Answer by party or witness

© 2023 D. Stafford & Associates 102

102

---

---

---

---

---


---

---

---



D. STAFFORD & ASSOCIATES



### IRRELEVANT QUESTIONS

- Past sexual history
- Privileged information
- Repetitive question
- Not probative of material fact

© 2023 D. Stafford & Associates 103

103

---

---

---

---

---


---

---

---

D. STAFFORD & ASSOCIATES

### RELEVANCY DETERMINATIONS



- Use logic and common sense
- Maintain a neutral, objective position
- A lengthy or complicated explanation is not needed

© 2023 D. Stafford & Associates 104

104

---

---

---

---


---

---

---

---

D. STAFFORD & ASSOCIATES



### 5. CONCLUDING REMARKS

- Explain that the decision-maker will deliberate in private
- Explain that parties will receive the written decision
- Explain if the sanctions will arrive with the written decision or be decided by someone else
- Dismiss the participants

© 2023 D. Stafford & Associates 105

105

---

---

---

---

---

---

---

---

HEARING  
MANAGEMENT  
ISSUES



© 2023 D. Stafford & Associates 106

106

---

---

---

---

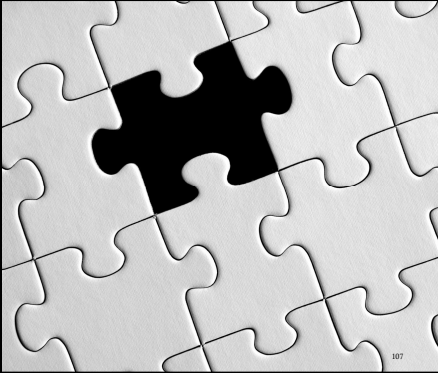
---

---

---

---

PARTICIPATION



© 2023 D. Stafford & Associates 107

107

---

---

---

---

---

---

---

---

ABSENCE OR REFUSAL TO ANSWER CROSS

“The decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross – examination or other questions.”

§ 106.45(b)(6)(i)

© 2023 D. Stafford & Associates 108

108

---

---

---

---

---

---

---

---



109

---

---

---

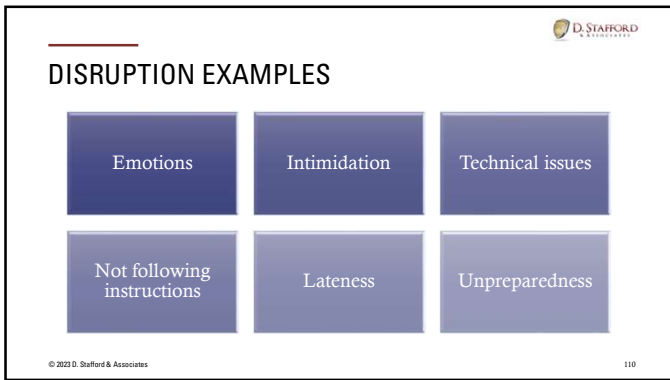
---

---

---

---

---



110

---

---

---

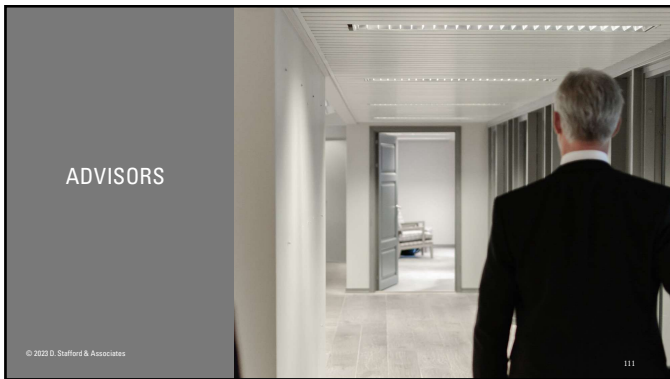
---

---

---

---

---



111

---

---

---


---

---

---

---

---



## POTENTIAL ADVISOR ISSUES

Relationship with party	Relationship with case
Disruptive	Inappropriate cross-examination

© 2023 D. Stafford & Associates 112

112

---

---

---

---

---


---

---

---

## NEW EVIDENCE

© 2023 D. Stafford & Associates



113

113

---

---

---


---

---

---

---

---



## NEW EVIDENCE - APPELLATE GROUND

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.

§ 106.45(b)(8)(i)(B)

© 2023 D. Stafford & Associates 114

114

---

---

---


---

---

---

---

---



## DECISION-MAKER CONSIDERATIONS

<p><b>What does the policy state?</b></p> <ul style="list-style-type: none"> <li>• Review your policy!</li> </ul>	<p><b>Is it truly new evidence?</b></p> <ul style="list-style-type: none"> <li>• Evidence that has recently become known</li> <li>• Evidence that has recently come into existence</li> <li>• New is not withheld evidence</li> </ul>	<p><b>Why was it not available?</b></p> <ul style="list-style-type: none"> <li>• Example: Requested by the party during the investigation but not produced (e.g., logs, records)</li> <li>• Example: Witness's identity not previously known</li> </ul>	<p><b>Could it affect the outcome?</b></p> <ul style="list-style-type: none"> <li>• Relevancy - Does it help to prove or disprove the allegation(s)?</li> </ul>
---	---	---	---

© 2023 D. Stafford & Associates 115

115

---

---

---

---

---

---

---

---

---

---



**NOW WHAT?**

Responding in the hearing

© 2023 D. Stafford & Associates 116

116

---

---

---

---

---

---

---

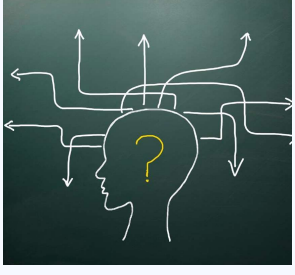
---

---

---



## THE DELIBERATION



© 2023 D. Stafford & Associates 117

117

---

---

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

# WEIGHING THE EVIDENCE



© 2023 D. Stafford & Associates 118

118

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

## EVALUATORS OF EVIDENCE

<p><b>Investigators</b></p> <ul style="list-style-type: none"> <li>• Develop lines of questioning</li> <li>• Determine additional witnesses and evidence needed</li> <li>• Utilize evidence around credibility</li> <li>• Identify relevant evidence</li> </ul>	<p><b>Decision-makers</b></p> <ul style="list-style-type: none"> <li>• Review the investigator's summary of relevant evidence</li> <li>• Assess credibility of the parties and witnesses</li> </ul>
---	---

© 2023 D. Stafford & Associates 119

119

---

---

---

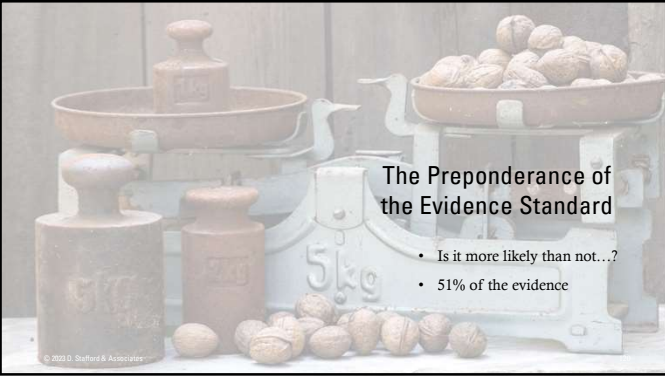
---

---

---

---

---



**The Preponderance of the Evidence Standard**

- Is it more likely than not...?
- 51% of the evidence

© 2023 D. Stafford & Associates

120

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

# CREDIBILITY



© 2023 D. Stafford & Associates 121

121

---

---

---

---

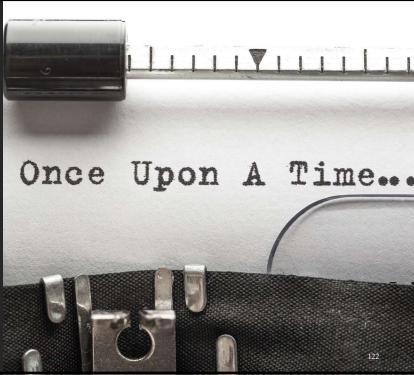
---

---

---

---

# CREDIBILITY OF THE STORY



© 2023 D. Stafford & Associates 122

122

---

---

---

---

---







---

---

---

D. STAFFORD & ASSOCIATES

# CORROBORATING EVIDENCE

 Physical	 Contemporaneous Documentation	 Personal Documents
 Admissions	 Eyewitness	 Outcry

© 2023 D. Stafford & Associates 123

123

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

# PLAUSIBILITY

?

Possible

😊

Believable

© 2023 D. Stafford & Associates 124

124

---

---

---

---

---


---

---

---

D. STAFFORD & ASSOCIATES

# CREDIBILITY OF THE STORYTELLER



© 2023 D. Stafford & Associates 125

125

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

# MOTIVATION

Afraid Pressured Revenge History

© 2023 D. Stafford & Associates 126

126

---

---

---

---

---


---

---


---




## BIAS



Past Relationship



Identity



Internal Biases

© 2023 D. Stafford & Associates 127

127

---

---

---

---

---

---

---

---

## ABILITY TO PERCEIVE

Distance

Knowledge

Credentials

Competence

© 2023 D. Stafford & Associates 128

128

---

---

---

---


---

---


---

---


## ABILITY TO REMEMBER




Passage of Time




Alcohol



Trauma



Peripheral Details



History of Memory

© 2023 D. Stafford & Associates 129

129

---

---

---

---

---

---

---

---



130

---

---

---

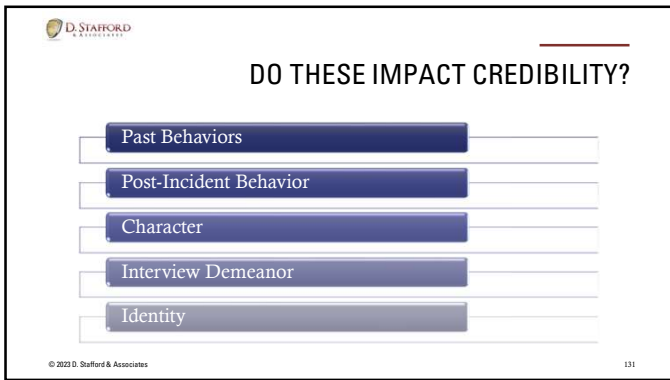
---

---

---

---

---



131

---

---

---

---

---

---

---

---



132

---

---

---

---

---

---

---

---



133

---

---

---

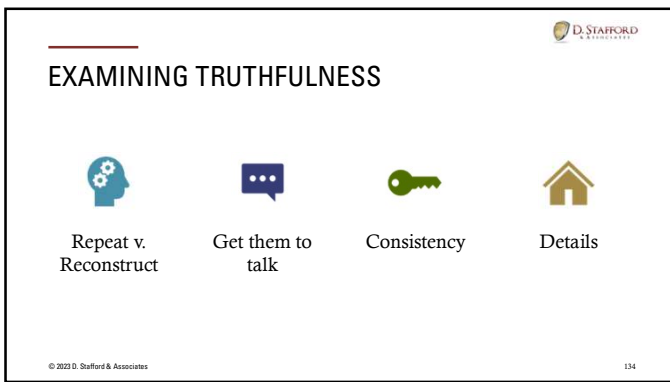
---

---

---

---

---



134

---

---

---

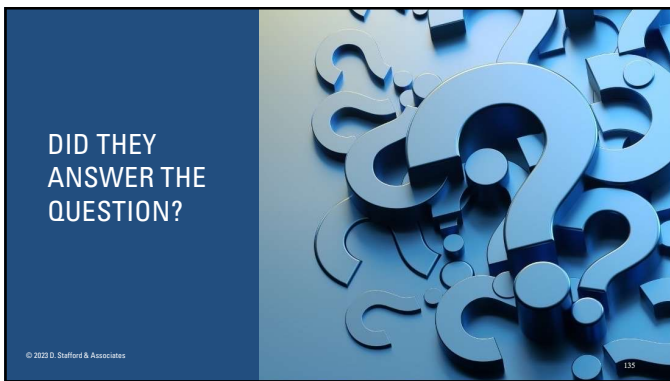
---

---

---

---

---



135

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

# RELEVANCY



© 2023 D. Stafford & Associates 136

136

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

## WHEN IS EVIDENCE RELEVANT?

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

- (Federal Rules of Evidence)

© 2023 D. Stafford & Associates 137

137

---

---

---

---

---

---

---

---

D. STAFFORD & ASSOCIATES

## KEY RELEVANCY POINTS

1

The evidence does not need to be conclusive

2

Is sufficient if it constitutes a link in the chain

3

Enough if in connection with other evidence, helps "a little"

© 2023 D. Stafford & Associates 138

138

---

---

---

---

---

---

---

---

## NOT RELEVANT (PER TITLE IX REGULATIONS)

### Past Sexual Behavior

Complainant's sexual predisposition or prior sexual behavior unless...

- 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

### Privileged Information

Physician, psychiatrist, psychologist records in connection with the provision of treatment to the party unless there is voluntary, written consent from the party whose record it is

---

---

---

---

---

---

---

---

139

## THE DECISION



---

---

---

---

---

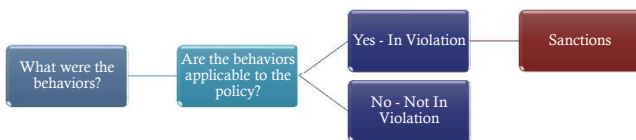
---

---

---

140

## DECISION-MAKING STEPS



---

---

---

---

---

---

---

---

141



142

---

---

---

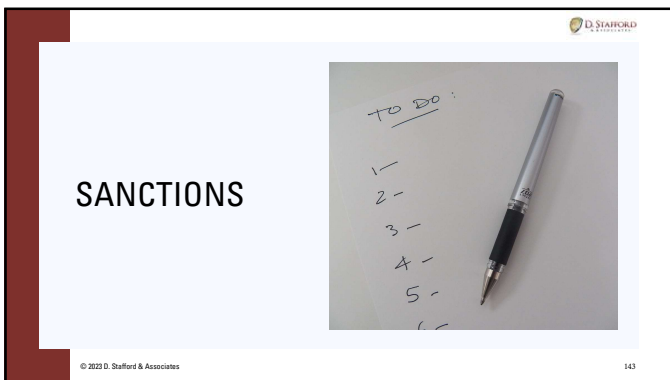
---

---

---

---

---



143

---

---

---

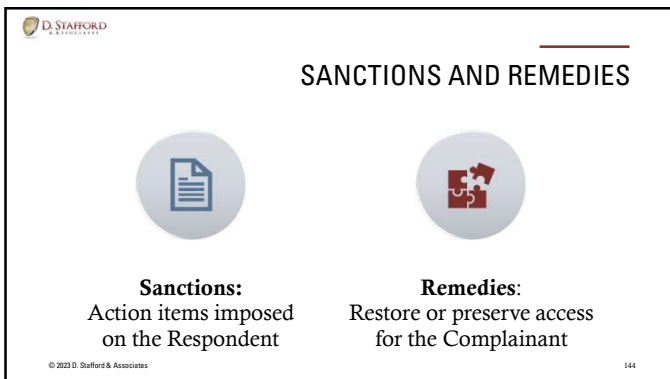
---

---

---

---

---



144

---

---

---

---

---

---

---

---

**TYPES OF SANCTIONS**

- Status**
  - Expulsion, separation, probation
- Prevention**
  - Protective measures, restrictions, no contact
- Educational**
  - Action plans

© 2023 D. Stafford & Associates 145

---

---

---

---

---

---

---

---

145

**SANCTION DEVELOPMENT**

© 2023 D. Stafford & Associates 146

---

---

---

---

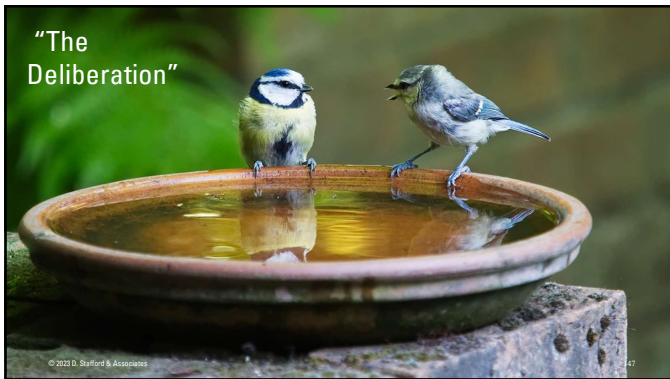
---

---

---

---

146




---

---

---

---

---

---

---

---

147



# THE WRITTEN OUTCOME



© 2023 D. Stafford & Associates 148

148

---

---

---


---

---


---

---


---



## NOTIFICATION - TITLE IX REGULATIONS



Parties must be notified  
simultaneously



Final on the date the parties of  
notified of an appeal decision

§ 106.45(b)(7) 149

© 2023 D. Stafford & Associates

149

---

---

---


---

---

---

---

---



## § 106.45 (b)(7)(ii) - DETERMINATION REGARDING RESPONSIBILITY

- Allegations
- Procedural steps
- Findings of fact
- Conclusion/application
- Rationale
- Appeal procedures

© 2023 D. Stafford & Associates 150

150

---

---

---

---


---

---

---

---





## THE DETERMINATION

<p><b>Previously Shared Information</b></p> <ul style="list-style-type: none"> <li>• Alleged allegations</li> <li>• Procedural steps up to the hearing             <ul style="list-style-type: none"> <li>• Notifications</li> <li>• Interviews with parties and witnesses</li> <li>• Site visits</li> <li>• Methods used to gather other evidence</li> </ul> </li> </ul>	<p><b>New Information</b></p> <ul style="list-style-type: none"> <li>• Procedural steps from the actual hearing</li> <li>• Findings of fact</li> <li>• Conclusions regarding the application of the policy</li> <li>• Statement regarding responsibility and rationale for each allegation</li> <li>• Any sanctions imposed</li> <li>• Any remedies for the Complainant imposed</li> <li>• Appeal procedures, including the grounds</li> </ul>
---	--

© 2023 D. Stafford & Associates 151

151

---

---

---

---

---

---

---

---


---

---

**TIMEOUT FOR CLERY!  
WRITTEN OUTCOME**

- *Result (include any sanctions and rationale for results and sanction)*
- *Appeals procedures*
- *Any change to the result*
- *When such results become final*

§ 668.46(3)(3)



© 2023 D. Stafford & Associates

152

---

---

---

---

---

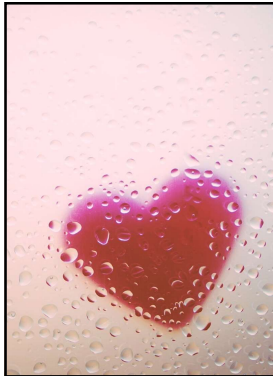
---


---

---

---

---





## HEART OF THE DECISION LETTER

- Findings of fact
  - What were the behaviors?
- Conclusions regarding the application of the policy
  - Are the behaviors applicable to the policy?
- Statement regarding responsibility and rationale for each allegation
  - Why is it or is not a policy violation?

153

153

---

---

---

---

---

---

---

---

---

---



154

---

---

---

---

---

---

---

---



155

---

---

---

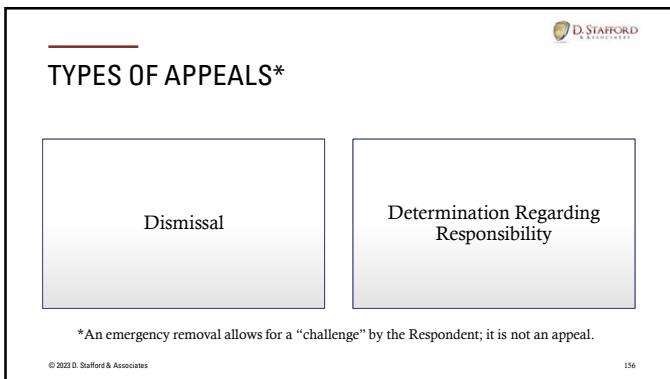
---

---

---

---

---



156

---

---

---


---

---


---

---


---




## APPEAL GROUNDS




Procedural irregularity that **affected outcome**



New evidence that **could affect the outcome**



Conflict of interest or bias that **affected the outcome**



Does your policy allow for additional grounds?

© 2023 D. Stafford & Associates 157

---

---

---

---


---

---

---

---


157



## PROCEDURAL IRREGULARITY

Was there a procedural error?

What was the alleged error?  
 What does the policy say?  
 Was it an error?  
 What should have happened?



Did it affect the outcome?

Did this error limit the full consideration of all relevant information?  
 How did this error affect the outcome?

© 2023 D. Stafford & Associates 158

---

---

---

---


---

---

---

---


158



## NEW EVIDENCE

Is this new evidence?

Is it relevant evidence?  
 Was the party aware of its potential existence?  
 How was it not reasonably available?  
 When was it introduced?



Could it affect the outcome?

How does this evidence affect the decision?  
 Does this lead to further questions?

© 2023 D. Stafford & Associates 159

---

---

---

---


---

---

---

---

159



## CONFLICT OF INTEREST

Was there a conflict of interest or bias?	What is the alleged conflict or bias? What is the evidence that there was a conflict or a bias? Was it previously raised? Is it an actual conflict or bias?
Did it affect the outcome?	How did the conflict or bias affect the decision?

© 2023 D. Stafford & Associates 160

160

---

---

---


---

---

---

---

---



## THE APPEAL DECISION LETTER

State what the appeal asserted

Explain the analysis and rationale

Describe the action to be taken

© 2023 D. Stafford & Associates 161

161

---

---

---


---

---


---

---


---



## APPEALS ARE NOT...



A substitute for another's judgment



Political decisions

© 2022 NACCP 162

162

---

---

---

---

---

---

---

---

D. STAFFORD  
A PROFESSIONAL CORPORATION

## KEY POINTS TO REMEMBER ABOUT APPEALS



Not a substitute for the decision-maker's judgment



Not political decisions



Not personal to you

© 2023 D. Stafford & Associates 163

---

---

---

---

---

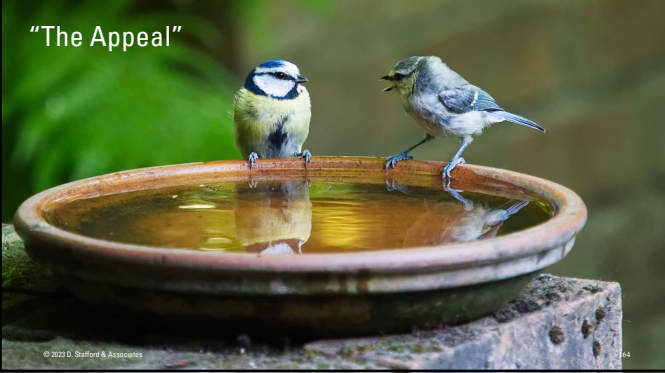
---

---

---

163

"The Appeal"



© 2023 D. Stafford & Associates 164

---

---

---

---

---

---

---

---

164



© 2023 D. Stafford & Associates 165

---

---

---

---

---

---

---

---

165



166

---

---

---

---

---

---

---

---