

Concurrent Criminal and Civil Rights Investigations

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Agenda

- Regulatory Implications
- Investigative Roles and Responsibilities
- Process Distinctions
- Final Thoughts

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Concurrent Investigations

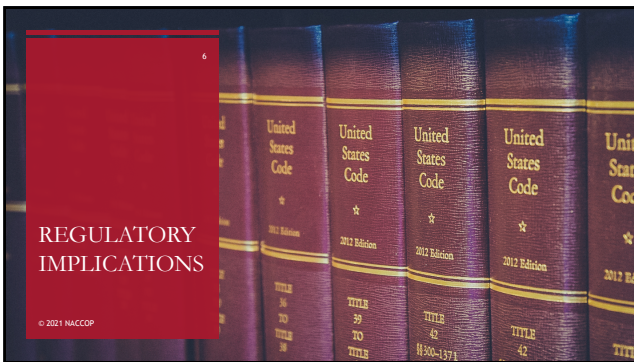


“Prompt response to campus misconduct reinforces our values and delay does not. Deferral to criminal law process does not create campus conduct standards that support a quality living/learning environment. Instead, delay creates standards that mimic the environment in the society at large, and the quality of life on campus will suffer by being reduced to ‘the law of the street.’ By contrast, prompt response to campus misconduct helps to convince students that the institution is, indeed, committed to creating a quality environment for them.”

- Edward N. Stoner, *Reviewing Your Student Discipline Policy: A Project Worth The Investment*, 9-10 (2000)

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REGULATORY IMPLICATIONS

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Notice 


“[t]he Department reiterates that a § 106.45 grievance process occurs independently of any criminal investigation that may occur concurrently, and the recipient’s obligation to inform the parties of the allegations under investigation is a necessary procedural benefit for both parties . . .”
 (Federal Register 30280)



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Notice Considerations



Timing of Notice




Delaying of Title IX Investigation



MOUs

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Conflict of Interest or Bias 

“Require that any individual designated by a recipient as a Title IX Coordinator, investigator, decisionmaker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.”
 (Federal Register 30575)

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Witnesses



"If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that 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."

(Federal Register 30577)

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CASE STUDY: CONCURRENT INVESTIGATIONS



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Case Study: Who Does What, When, and How?



JT is a student in the nursing program at your institution. While walking in Rogers Hall from Classroom A to Laboratory B for a patient care class, Public Safety Officer #1 (PSO1), a sworn police officer, sees a person walk up to JT and strike her in the face. Witnessing JT's assault and the heated exchange between the two, PSO1 approaches JT and the other person, identified as student RS, and detains the two. JT denies injury and refuses an ambulance. JT states that RS is an intimate partner who they have recently broken up with. JT states that RS just "isn't taking the split well" and JT doesn't want to "press charges." (The laws of this state do not consider dating partners protected as persons who can be victims of domestic violence, so without the cooperation of the victim, the officer is in no way mandated to effect an arrest.) Nevertheless, the PSO informs JT and RS that she will construct a report, which is completed and subsequently sent to the institution's Title IX Coordinator.

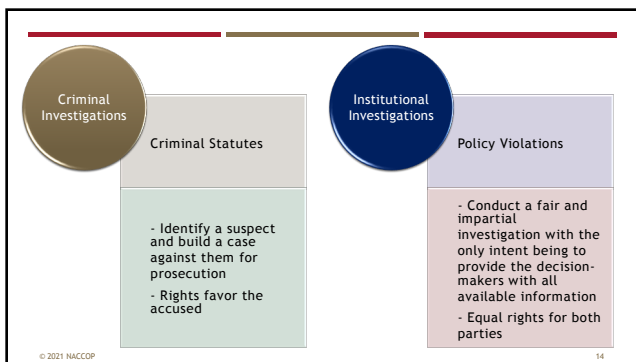
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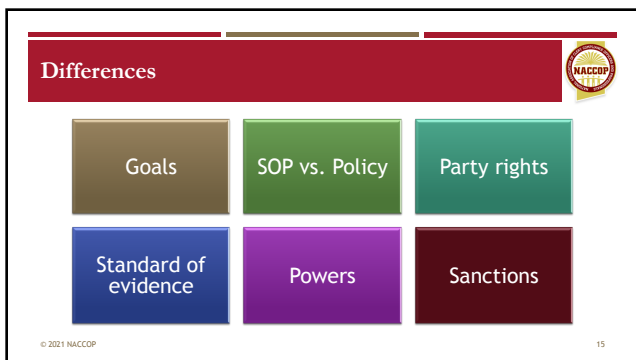
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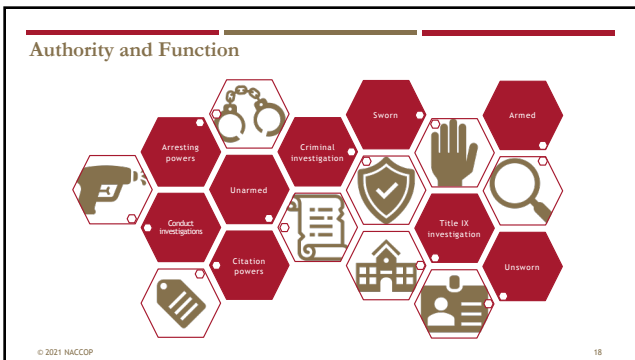
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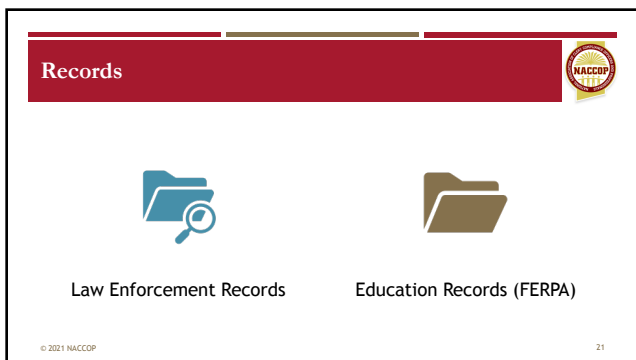
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Sharing Information

A diagram consisting of two arrows pointing towards each other. The left arrow is brown and contains the text "Police / Public Safety". The right arrow is blue and contains the text "Title IX Investigator".

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Case Study

JT is a student in the nursing program at your institution. While walking in Rogers Hall from Classroom A to Laboratory B for a patient care class, Public Safety Officer #1 (PSO1), a sworn police officer, sees a person walk up to JT and strike her in the face. Witnessing JT's assault and the heated exchange between the two, PSO1 approaches JT and the other person, identified as student RS, and detains the two. JT denies injury and refuses an ambulance. JT states that RS is an intimate partner who they have recently broken up with. JT states that RS just "isn't taking the split well" and JT doesn't want to "press charges." (The laws of this state do not consider dating partners protected as persons who can be victims of domestic violence, so without the cooperation of the victim, the officer is in no way mandated to effect an arrest.) Nevertheless, the PSO informs JT and RS that she will construct a report, which is completed and subsequently sent to the institution's Title IX Coordinator.

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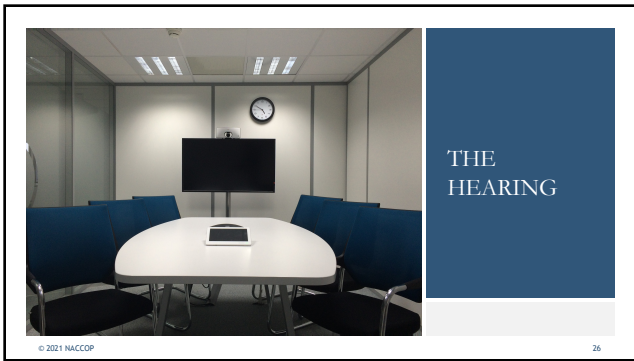
A photograph of a person's feet wearing orange sneakers, walking on a blue metal staircase. To the right of the image is a dark red rectangular box containing the text "INITIAL STEPS" in white, all-caps font.

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Final Thoughts

- Make a plan BEFORE an incident occurs.
- Adrienne and Cathy's advice only - Campus Police should not conduct Title IX investigations. Stay in your lane.

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Upcoming D. Stafford Virtual Classes

- Title IX Coordinator (11:00 AM - 5:00 PM Eastern)
 - May 3 - 7, 2021
 - October 4 - 8, 2021
- Combined Sexual Misconduct and Domestic/Dating Violence and Stalking Investigation (11:00 AM - 5:00 PM Eastern)
 - April 12 - 16, 2021
 - August 23 - 27, 2021
- Advanced Investigations (9:00 AM - 5:00 PM (Eastern Time))
 - June 7 - 11, 2021
 - November 8 - 12, 2021

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- Behavioral Intervention Team/Threat Assessment Team Training (10:00 AM - 5:30 PM Eastern)
 - April 7 - 9, 2021
 - June 22 - 24, 2021
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- NACCOP is offering a comprehensive webinar presented by experts with practical experience analyzing and updating student conduct and employee policies and procedures to ensure Title IX and Clery Act compliance, fair and equitable processes, and the ability to manage an evolving higher education landscape.
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