






- Attendees:
 - Name
 - Position on Campus
 - Role in SGBM Process
 - Initial Questions & Logistics
 - Terminology
 - Asking Questions & Open Discussion Throughout
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- Throughout our time together, we may reference past cases.
- Please do not use names of people involved in cases.
- Please do not share information outside of this group.




- Briefly review the policies and statutes that guide our work
 - Review Sexual and Gender-Based Misconduct Policy and Procedures as they relate to our case study
 - Review general roles & responsibilities
 - Start reviewing adjudication process and analysis
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- Title IX of the Education Amendments of 1972
 - “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.”
 - Thorough, Unbiased, Fundamentally Fair Response Process:
 - End the discrimination
 - Prevent its reoccurrence
 - Remedy the effects upon the victim & community
 - Regulations, Guidance, and Dear Colleague Letters from Office of Civil Rights—2011, 2014, 2015, 2017, and 2019 (?)
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- CampusSaVEAct and VAWA of CleryAct
 - Federal law signed in March 2013
 - Clery



- Prior to formally filing a report with the College, who could a Reporting Individual speak to that is confidential?
 - Confidential: cannot disclose any information without written permission from the student
 - On-campus
 - Health Services
 - Counseling Center
 - SGA attorney consultation
 - Off-
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- Health Services can provide:
 - General wellness check
 - STI/HIV Testing & Retesting
 - STI Prophylaxis
 - Plan B

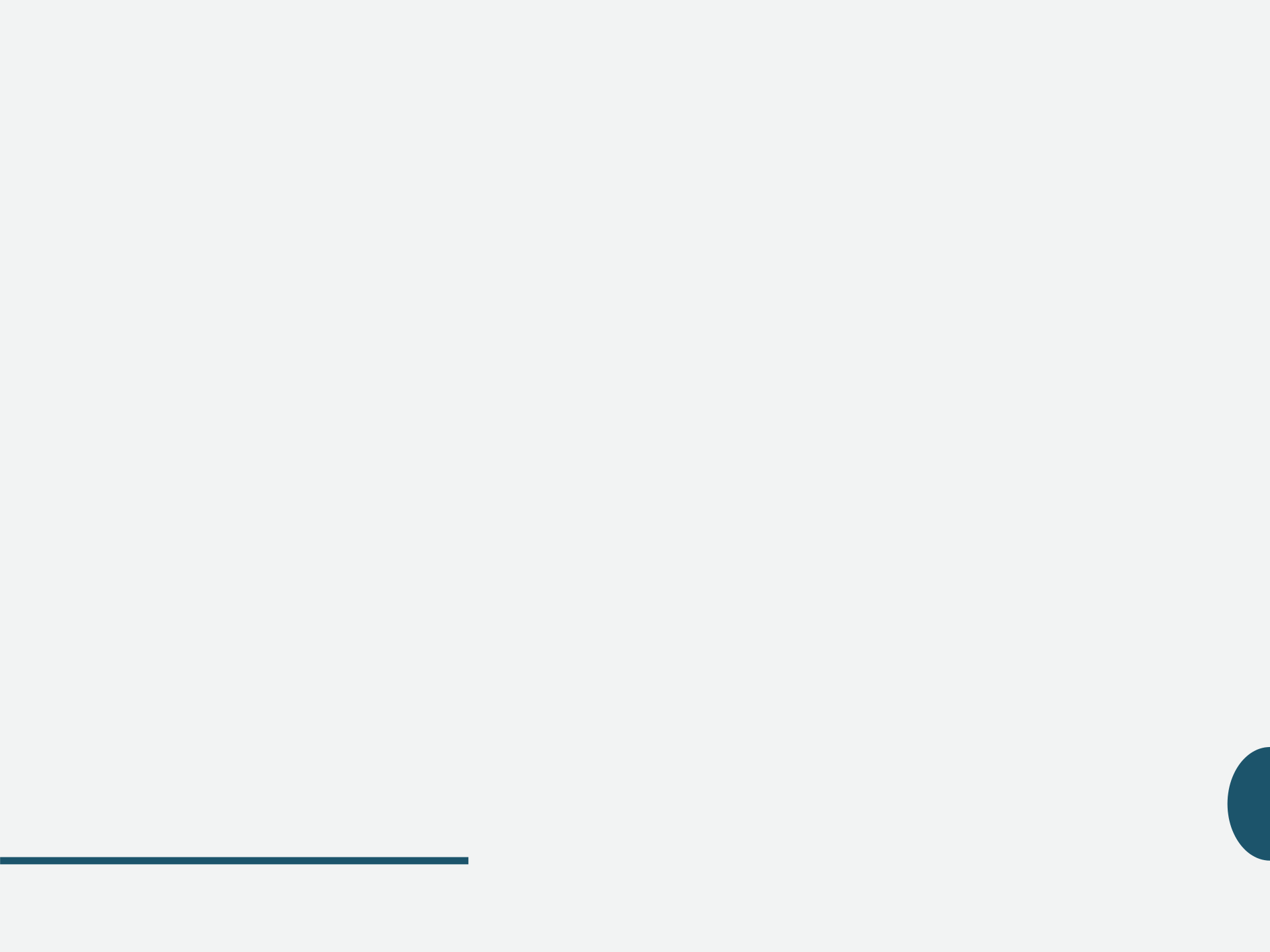
All services listed are free for Reporting Individuals

- Counseling Center can provide:
 - Individual Counseling
 - After hours emergency counseling
 - Victim support services
 - Consultation, Education & Training
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- Wellspring Advocate can provide:
 - Safety planning
 - Shelter
 - Crisis counseling
 - Legal Advocacy
 - Accompaniment

 - Saratoga Hospital Emergency Room can provide:
 - Sexual Assault Forensic Exam with Sexual Assault Nurse Examiner
 - General wellness check
 - STI/HIV Testing
 - STI/HIV Prophylaxis
 - Plan B
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- Who could a Reporting Individual 3NW8d [(I)-.ed [3 (nkgroc)-2 (o-





- Who could the Reporting Individual speak to that is private?
 - Private:





- Title IX Coordinator ~~Joel Aure~~
 - Case Manager: Intakes, Investigation Oversight, Accommodations & Interim Measures
 - Adjudication Panel Logistics
 - Restrictions Tracking & Maintenance (Pre and Post-Adjudication)
 - Title IX Deputy Coordinator ~~Gabriela Melillo~~
 - Primary investigator of SGBM cases
 - Campus Safety
 - May receive initial reports of SGBM
 - Duty to respond to safety concerns
 - Provide emergency services such as, transport to hospital, immediate room change, etc.
 - Provide list of reso-2 (i)16 36(c)-4 (e)-4 (s)2 ((t)-5 (o)1 ()10 Rk)20 (e)-
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- Who could the Reporting Individual speak to that is not private and nonconfidential?
 - Required by federal law to report all information to Title IX Coordinator
 - Student Affairs Staff (except Counseling Center, Health

- All Reporting Individuals have the right to the same information and resources.
 - TIXC acts as a catalyst to make sure all students receive the same information and that we can document when and what information was shared.
 - TIXC provides information about resources, interim measures, and reporting options.
 - TIXC has information about other reports that may be important in regards to trends and patterns.
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- If the Reporting Individual wanted to report to someone outside of the College, who could they speak to?
 - Saratoga Springs Police Department
 - New York State Police Campus Sexual Assault Victims Unit
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- The main components:
 1. Jurisdiction
 2. Affirmative Consent
 3. Prohibited Conduct
 4. Reporting Options
 5. Investigation and Adjudication Process
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- Jurisdiction defined:
 - Complaints when a student is the accused are handled by the Title IX Coordinator or Title IX Deputy Coordinator
 - Complaints when a staff or faculty member is the accused are handled by Saytra Green, Assistant Director of Employment & Workforce Diversity in Human Resources
 - Complaints when a third party/individual not affiliated with Skidmore is accused cannot be handled through our adjudication process but the same resources and accommodations will be offered to the Reporting Individual
 - Reporting Individuals can be a student, staff member, faculty member, or third party/individual not affiliated with Skidmore. Reporting Individuals may be of any gender identity/expression or sexual orientation.
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- Skidmore policy applies to conduct occurring on Skidmore college property or at College functions events or programs that take place off campus, including study abroad and internship programs.
- Skidmore policy also applies to off campus conduct that is likely to have a substantial adverse effect on any member of the Skidmore College community or Skidmore College.



- RI would meet with TIXC to receive all options and decide whether to file a formal complaint to the College
 - What would the next steps be?
 - Interim measures and accommodations
 - No Contact Order issued
 - TIXC meets with Responding Student to inform them of
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- What factors would we consider if the Reporting Individual requested no further action?
 - Past complaints about Responding Student; pattern of perpetration; history of Responding Student; multiple Responding Students
 - Use of a weapon or violence
 - If Reporting Individual is a minor
 - If conduct represents an escalation in behavior by the Responding Student
 - The risk of the Responding Student committing future acts
 - Threat to greater community
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- What violations should the Responding Student be charged with based on the Reporting Individual's statement?
 - Sexual Harassment
 - Sexual Assault
 - Sexual penetration
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- What violations should the Responding Student be charged with based on the Reporting Individual's statement?

- Sexual Harassment


- Sexual Assault

- Sexual penetration

- Court





- A state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction)
 - Incapacitation can also occur because of an individual’s physical or mental condition or disability that impairs the individual’s ability to provide consent. Incapacitation as a result of a physical or mental condition includes, but is not limited to, being: (i) asleep or in a state of unconsciousness; (ii) physically helpless; or (iii) involuntarily restrained.
 - Depending on the degree of intoxication, someone who is under the influence of alcohol or drugs may be incapacitated and unable to consent to sexual activity. Being drunk or intoxicated, however, does not necessarily render someone incapacitated. The impact of alcohol or drugs varies from person to person.
 - Whether sexual activity with an incapacitated person
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Role of SGBM Advisors for Reporting Individuals and Responding Students

- Help students to understand the SGBM process
- Counsel and support student throughout the process
- Provide advice on procedural matters
- Assist student as they prepare for the panel review
- Attend any and all investigation meetings and panel review
- Assist with available accommodations
- Help students to understand the outcome and sanctions (if applicable)
- Provide support after the formal process concludes

Trained Advisors:

Denise McQuade

Brenda Pashley

Jamin Totino

Andrew Krzystyniak

Eun-sil Lee

Victim Advocates:

Kim Golemboski

Jen McDonald

Wendy Walker

Wellspring





Roles & Responsibilities of the SGBM Conduct Administrator

- Schedule, manage logistics, and administer Commenting Session
 - Conflict checks
 - Set up recording equipment
 - Monitor statements made by the parties and warn parties as needed
 - Drafting outcome letter at the direction of panel
 - Notify both RS and RI of Panel's final outcome, in writing, simultaneously
 - Coordinates appeal process
 - Ensure/track non
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- Panel MakeUp
 - Pool of trained administrative staff members appointed by DoS



- Review packet
 - Submit questions to SGBM Conduct Administrator
 - 30-minute commenting session
 - Reporting Individual and Responding Student in attendance
 - No new information allowed
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- After commenting session, panel makes decision of responsibility using preponderance of evidence
 - If in violation, impact statement is read and prior conduct history is given to the panel; move onto sanctioning
 - If no violation, panel members are dismissed pending rationale
 - All decision, regardless of outcome, require a written rationale for each charge and sanctions
 - Written rationales are included in the outcome letter that both RI/RS receive via email, simultaneously
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- Current Policy & Best Practices

- Trauma • ^ ‘ ” • ‡ † ´ ‹ f •

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- Department of Education Proposed Regulations
 - Live Hearing
 - CrossExamination by Trained Advisors
 - Hearing Participation Require to Proceed
 - Jurisdiction
 - The Senate’s Reauthorization of the Higher Education Act
 - Sixth Circuit–Doe v. Baum (2018)
 - “... ifa public university has to choose between competing narratives to resolve a case, the university must give the accused student or his agent an
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SGBM Adjudication Training

SESSIONS 1 & 2

SEPTEMBER 6 & 13, 2019

Outline

- x How to Review the Investigation Packet
- x Determining Credibility
- x Assessing Capacity When Alcohol/Drugs Are Involved
- x Determining Responsibility & Understanding Preponderance of the Evidence
- x Determining Sanctions
- x Writing Rationales for Findings
- x Appeal Process
- x Evaluating Non- SGBM Social Conduct Charges



Reviewing the Investigation Packet

UNDERSTANDING THE INFORMATION

Submitting Questions

- x All questions should be submitted in writing to the Title IX Coordinator & Conduct Administrator to communicate with the Investigators.
- x Investigators will evaluate whether or not questions have already been answered in information given
 - x If not, Investigators will contact RI, RS, or witnesses to acquire additional info to provide answers
- x Additional information collected will be given to RI, RS, and Panel prior to 30- minute commenting session



Determining Credibility

HOW TO ADDRESS CONFLICTING EVIDENCE

Determining Credibility

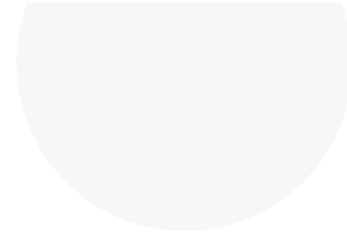
- x How do you weigh credibility when you can't question the parties?
 - x Accuracy/Clarity – If you don't understand something you have read, consider why.
 - x Corroboration/Contradictions in the timeline or facts (look for gaps in the story)
 - x Information/ materials that should logically be available/present
 - x Admissions and Denials
 - x Motivation and Bias
 - x Evasiveness/Ambiguity in answering questions
 - x Statements of other witnesses or evidence that corroborates or undermines the contentions of the parties.

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On-Campus Locations & Movement



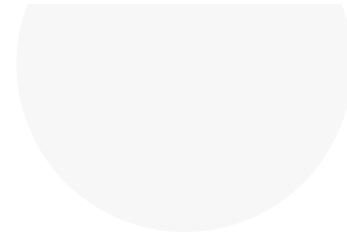
Determining Credibility



x Questions to consider when weighing credibility:

x

Determining Credibility



x Inconsistent Statements

x Consider whether and to what extent inconsistent statements affect the truthfulness or accuracy of that participant's testimony

Alcohol and Credibility

- x Alcohol can impact ability for parties and witnesses to remember events clearly or chronologically
 - x Statements can change over time because memory comes back gradually.
- x



Assessing Capacity

UNDERSTANDING AOD USE IN SGBM
CASES

Intoxication vs. Incapacitation

- X Intoxication: a state of drunkenness
 - X 60% of college students (nationally) drank alcohol within the past month; 2 out of 3 of them engaged in binge drinking*
 - X At least 50% of all violent crimes involve alcohol consumption by the perpetrator, victim or both**
 - X One can engage in consensual sex after drinking alcohol, but when one person becomes incapacitated, they are unable to give affirmative consent.

*Data comes from study by SAMSHA in 2014

**Data from study by Collins and Messerschmidt 1993

Intoxication vs. Incapacitation

- X Incapacitation: a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
- X Incapacitation may occur because of the individual’s age. Under New York law, the age of consent is 17 years of age and, therefore, a person under the age of 17 lacks the capacity to provide affirmative consent .



Intoxication vs. Incapacitation

x Incapacitation can also occur because of an individual's

Intoxication vs. Incapacitation

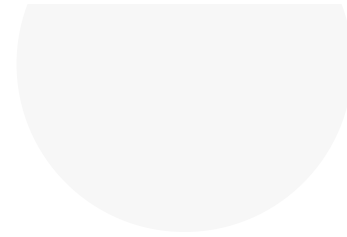
- X Depending on the degree of intoxication, someone who is under the influence of alcohol or drugs may be incapacitated and unable to consent to sexual activity.
- X Being drunk or intoxicated, however, does not necessarily re 0.675 0.-n76Td t Td [(nec)-2.7/t.7 3 -1.2 Td [(nec)H.7 (t)0.7 ((i)

Intoxication vs. Incapacitation

- x Did the Responding Student know or should have known of the Reporting Individual's ()6.5563t784 13.68 2 Td 4 (s)-n6c [(R)-2a7 (ep)ac [(R)-

Evaluating Capacity

x



Evaluating Capacity

x Is it more likely than not s 2 .

CONTENT OMITTED

PROPRIETARY TO BOND, SCHOENECK &
KING

