

An aerial photograph of the Hampden-Sydney College campus during autumn. The image shows several large, multi-story brick buildings with blue roofs, surrounded by lush green lawns and numerous trees with vibrant yellow and orange foliage. A winding road and a parking lot are visible on the left side of the image. The overall scene is bright and scenic, capturing the beauty of the college grounds in the fall.

***Grievance Committee
Training #3: Harassment
& Discrimination - 2024***

**Dr. Saranna Thornton:
Hampden-Sydney College**

TOPICS TO BE COVERED – INVESTIGATIONS

SESSION 3: APRIL 4, 2024

- Timing of an investigation in Grievance Resolution Process
- Government and HDSM Policy Requirements applicable to Investigations
- Steps of an Investigation
- The Investigative Report
- What Happens after the Investigation

ROLE OF INVESTIGATIONS IN THE COMPLAINT RESOLUTION PROCESS

- Notice of policy violation received by Title IX Coordinator (T9C)
- T9C Intake Interview with Complainant/submission of a Complaint
- T9C Intake Interview with Respondent/submission of a Response
- **T9C assigns investigators to conduct an investigation and write report**
- Review of Investigative Report by Complainant and Respondent
- Choice to pursue informal resolution (mediation) or formal resolution (hearing)
- Purpose of the Hearing: make a determination regarding the Complaint
- T9C determines sanctions based on Hearing Report

REQUIREMENTS FOR INVESTIGATIONS

- **Prompt** => no unreasonable delays, including for school breaks or local law enforcement investigations
- **Thorough** => seek out all relevant evidence directly related to the allegations in the Complaint, including interviews with Complainant, Respondent, Witnesses (identified by either party or by the investigators) and physical evidence (e.g., photos, videos, text messages)
- **Fair** => investigators free of conflicts of interest and bias

STEPS OF AN INVESTIGATION

- 1. Prepare
- 2. Gather Evidence
- 3. Compile Evidence
- 4. Assess Evidence for Relevance
- 5. Summarize Relevant Evidence in an Investigative Report

INVESTIGATION STEPS: #1 PREPARE

- Thoroughly review the Notice of Allegations from the T9C
- Who is involved in the Complaint? Students, Faculty? Staff? Visitors to Campus?
- What are the specific Title IX or other HDSM violations are being investigated?
- Investigators seek evidence which may be inculpatory -- shows allegations are true. What facts would support the allegations?
- Investigators seek evidence which may be exculpatory -- shows allegations are not true. What facts would not support the allegations?
-

SEXUAL MISCONDUCT INVESTIGATION

STEPS: #1 PREPARE

- What is the typology of the Sexual Misconduct Complaint being investigated?
- **Force** – Did sexual misconduct occur through force: including, physical force, threats, intimidation (implied threat) and/or coercion. Sexual contact achieved through force is by definition without consent.
- **Consent** – is shared sexual permission for a specific action at a specific time. Consent can be verbal or non-verbal. Consent to one sexual activity is **NOT** consent to another sexual activity. Consent **CANNOT** be inferred by the lack of a “no”.
- **Incapacitation** – refers to an individual’s physical and cognitive ability for self-care. A person who is incapacitated **CANNOT** give consent. Incapacity can be caused by drugs, alcohol, illness, being asleep, being a minor, or a physical or cognitive disability. Importance of: **Known or Should Have Known**.

INVESTIGATION STEPS: #1 PREPARE

- MAKE AN INVESTIGATION PLAN
- An Investigation Plan is based on strategy for obtaining evidence needed to make a finding in subsequent steps of the Complaint resolution process.
- Who to interview? All potential witnesses, including Complainant and Respondent. Those who might possess physical evidence -- surveillance video?
- In which order to interview witnesses?
- Where to interview witnesses? In person and if so in a neutral, comfortable location? Virtually?
- What questions to ask each interviewee?

INVESTIGATION STEPS: #2 GATHER TESTIMONIAL EVIDENCE

- Three ways to think about Witnesses:
 - Willing to cooperate
 - Reluctant to cooperate => fear of retaliation, fear of not being believed, mistrust of the College/investigator, fear of re-traumatization, fear of getting in trouble for other offenses (e.g., alcohol or drug violations)
 - Refuse to cooperate => all of the above, plus advice of an attorney.

INVESTIGATION STEPS: #2 GATHER TESTIMONIAL EVIDENCE

- Interviewing Parties to a Complaint and Witnesses
- Build rapport.
- Explain the investigation process and the investigator's role in it.
- Ask open-ended questions.
- Funnel Technique: move from general questions to more specific questions.
- Establish a time line for events under investigation.
- Recognize it is acceptable to return to a previously made statement to clarify what a witness said or clarify the time line.
- Ask interviewees if there is information they want to share with you.

INVESTIGATION STEPS: #2 GATHER TESTIMONIAL EVIDENCE

- Interviewing Pitfalls to Avoid
- Don't ask leading questions -- e.g., "Why didn't you ..."
- Avoid compound questions – e.g., "Describe what you saw, what you heard, and what you did."
- Don't interrupt the interviewee.
- Don't assume you know what an interviewee means. Words or phrases may need clarification – e.g., "hook-up".
- Be mindful of your body language while conducting interviews.

INVESTIGATION STEPS: #2 GATHER PHYSICAL EVIDENCE

- Ask parties/witnesses about evidence from text messages or social media posts and if they will share it with you. Screenshots.
- Check with Campus Security for surveillance video, key card access records, police reports, etc.

INVESTIGATION STEPS: #3 & #4 COMPILE & ASSESS EVIDENCE DIRECTLY RELATED TO ALLEGATIONS

- Put all evidence directly related to the allegations in an Investigative File.
- Share the Investigative File with both parties to the Complaint, and their respective advisors. Allow at least 10 days for them to review and respond.
- Response may include corrections and submission of new evidence not available at time of interview.
- After parties' review of evidence directly related to the allegations, compile evidence that is relevant to the allegations. This will be the basis for the Investigative Report.

INVESTIGATION STEPS: #3 & 4 COMPILE AND ASSESS RELEVANT EVIDENCE

- Relevant Evidence?

- Does an item of evidence tend to prove or disprove a fact that impacts the determination of responsibility for the allegations? If yes, then the evidence is relevant.
- Relevant evidence provides context surrounding the allegations.
- Relevant evidence serves to bolster or diminish a person's credibility when a party or witnesses' credibility is an issue in the allegations.
- Past sexual history is rarely relevant to a Complaint. There are 2 exceptions.

INVESTIGATION STEPS: #5 DRAFT THE INVESTIGATION REPORT

- Outline of an Investigative Report
- Names of Investigators
- Date submitted
- Names of the Complainant(s) and Respondent(s)
- Allegations in the Complaint
- Definitions of Misconduct per the HDSM policy
- Investigation Timeline – start date and end date.
- Summary of Testimonial evidence gathered, along with dates of interviews.

INVESTIGATION STEPS: #5 DRAFT THE INVESTIGATION REPORT

- Outline of an Investigative Report (continued)
- Description of other evidence obtained.
- Analysis of Evidence:
 - Undisputed facts, corroborated facts and contested/disputed facts.
 - Credibility analysis of testimonial and physical evidence.
- Conclusion – a factual summary of the evidence gathered. Per the College's HDSM policy investigators do NOT make a preliminary finding of responsibility regarding allegations in a Complaint.

AFTER THE INVESTIGATION

- Investigators submit their report to the Title IX Coordinator who reviews it to determine next steps.
- Potential outcomes of the T9C Review:
 - Dismiss the entire Complaint or just a subset of allegations.
 - Proceed to informal resolution process – Mediation.
 - Proceed to formal resolution process – Hearing.
- Investigators may be called upon to testify at a Hearing.

QUESTIONS: MOCK COMPLAINT BY JULIA AGAINST HUDSON

- (1) What type of sexual misconduct case does this appear to be?
Force case? Consent case? Incapacitation Case?
- (2) Depending on your answer to #1, what primary questions do you want to try to answer using evidence?
- (3) Who will you interview to gather evidence and in what order?
- (4) What physical evidence will you attempt to gather?

TALK TO A TITLE IX TEAM MEMBER

- Dr. Melissa Wood – Title IX Coordinator
mwood@hsc.edu - 434.223.6061
- Mrs. Sue Carter (staff and students)
svcarter@hsc.edu – 434.223.6220
- Dr. Rebecca Jayne (faculty)
rjayne@hsc.edu – 434.223.6118