



**UWM's Response to  
Sexual Harassment & Sexual  
Misconduct Concerns  
- Appeals -**

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## Resources

During this presentation we will discuss topics that can be distressing.

I ask that you keep this in mind as you engage with your colleagues regarding these topics.

Please also know that there are many resources to support you. We will discuss some of these throughout this presentation, but you can find additional information at [uwm.edu/titleix/get-help/](https://uwm.edu/titleix/get-help/).

# UWM Policies



- **SAAP 5-1: Discriminatory Conduct and Consensual Relationships Policy**
- **SAAP 5-2: Policy on Sexual Violence and Sexual Harassment**
- **SAAP 5-4: Policy on Investigation and Resolution of Formal Title IX Complaints**
- **UWS 17: Student Nonacademic Disciplinary Procedures**
- **UWM Code of Conduct - Faculty & Staff (UWS 4, 7, and 11)**

*All recently revised*

# Why These Issues?

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**1 in 5 college women and 1 in 16 college men  
experience sexual assault.**

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**SA is dramatically underreported:  
2% of incapacitated sexual assault survivors report  
13% of forcible rape survivors report**

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**1 in 3 women and 1 in 4 men will be in an  
abusive relationship in their lifetime**

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**1 in 6 women and 1 in 19 men  
will experience stalking in their lifetime**



What happens  
after someone  
reports?

# The Investigation and Report



After Sending notice, investigators will:

- ❑ Meet with the parties and all available witnesses
- ❑ Work to gather all available evidence
- ❑ Share evidence with both parties and their advisors (if any) for inspection and review
  - ❑ Parties will have 10 day to respond
- ❑ Issue a written report with **recommended findings**, using a **preponderance of evidence** standard (“more likely than not”)



# The Hearing

# Chapter 17

## Discipline Process

- ▶ Educational process, not a criminal/civil proceeding
- ▶ Both complainant and respondent have same rights.
- ▶ Hearing right for both parties
- ▶ Hearing Examiner and committee
- ▶ Both parties have right cross-examine witnesses through advisor
- ▶ UWM will provide advisors (if parties don't already have one)



# Due Process Considerations

- ▶ Notice of allegations
- ▶ Written notice of all anticipated witnesses and documentary evidence
- ▶ Allowed to review evidence against them
- ▶ Reasonable opportunity to prepare for hearing
- ▶ Opportunity to respond to allegations/concerns
- ▶ Hear all witness testimony and ability to conduct cross examination -through advisor
- ▶ Request witnesses on their behalf
- ▶ Appeal

## Irrelevant Questions:

- ▶ *Question about Complainant's Prior Sexual Behavior or Sexual Predisposition*
  - Unless offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or which pertain to specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- ▶ *Question regarding privileged information or undisclosed medical records*
- ▶ *Repetitive Questions - Already Asked*

What are your  
responsibilities?



# The Appeal

## **UWS 17.154 (17.19) Appeal for sexual misconduct.**

- ▶ The respondent or complainant may appeal in writing to the chief administrative officer within 14 days of the date of the written decision for a review, based on the record, of the following:
  - ▶ A dismissal of a formal Title IX complaint.
  - ▶ The written decision of the hearing examiner or committee.

When an appeal is filed, you must **notify the other party in writing** and give both the complainant and respondent a reasonable, equal opportunity to submit a written statement supporting or challenging the outcome.

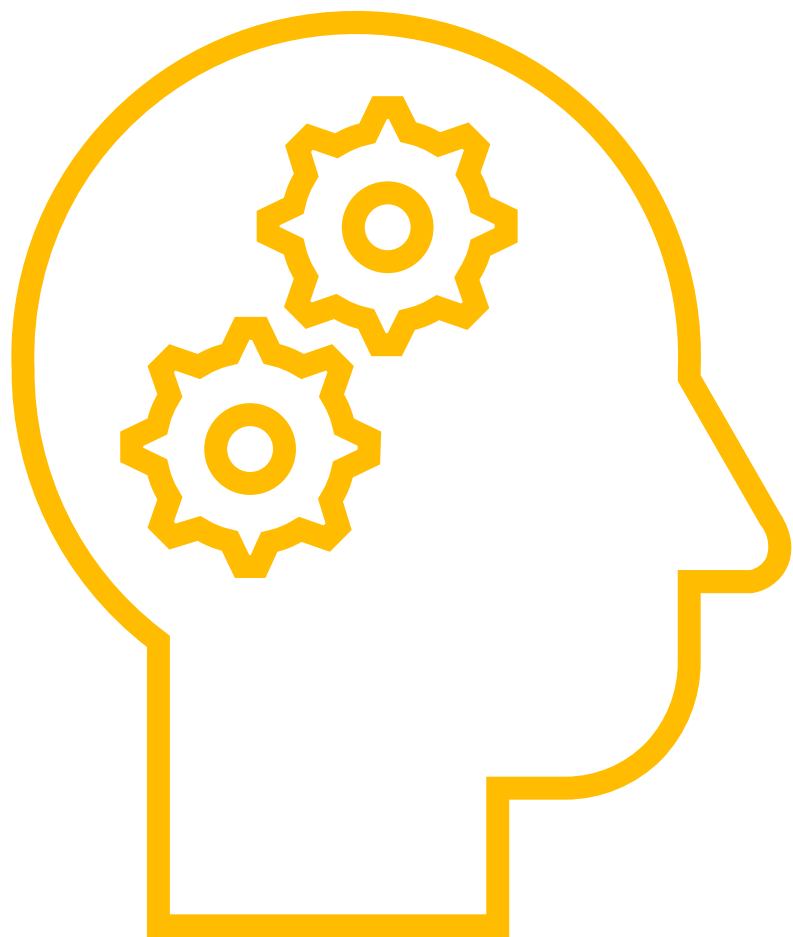
# Basis for Appeal

- ▶ You have 30 days from receipt of an appeal to respond in writing simultaneously to both the complainant and respondent and shall sustain the decision unless you find any of the following:
  - ▶ The information in the record does not support the findings or decision.
  - ▶ A procedural irregularity affected the outcome of the matter.
  - ▶ The decision was based on factors proscribed by state or federal law.
  - ▶ 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, hearing examiner, or a member of the hearing committee 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.

# Decision Regarding the Appeal

- ▶ You may decide to:
  - ▶ Return the matter for consideration, or
  - ▶ Invoke an appropriate remedy of your own.

Your written decision describing the **result of the appeal** and the **rationale** for the result shall be communicated **simultaneously** to the respondent and complainant.



**Keep in Mind**

# Unconscious/Implicit Bias

The attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.

Encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual's awareness or intentional control.

Everyone processes them, even people who swear to impartiality. (Rachinski, Johnson, Wistrich, & Guthrie, 2009)

Biases do not necessarily align with our declared beliefs or even reflect stances that we would endorse. (Graham & Lowery, 2004; Greenwald & Krieger, 2006; Kang et al., 2012)

Implicit biases are malleable and can be unlearned and replaced with new mental associations. (Blair, 2002; Blair, Ma, & Lenton, 2002; Dasgupta, 2013)



# Check Your Biases

- Acknowledge that all of us have implicit biases
- Seek out information on implicit bias. Learn about your own.
  - <https://implicit.harvard.edu/implicit/>
- Identify and consciously acknowledge real group and individual differences. (not “colorblind”)
- Be mindful of how implicit biases impact our judgment, decisions, and actions
- Reflect on your perceptions, judgments, behavior, decisions, and actions
- Recognize that we tend to act on our stereotypes when we have a lot of information to process – a shortcut. Take time to engage in thoughtful consideration
- Routinely check thought processes and decisions for bias.

# Conflict of Interest

Decision makers may not have a conflict of interest or bias for or against complainants or respondents generally or against an individual complainant or respondent.

Generally, this may include:

- Personal knowledge of the charges independent of their role as examiner or committee member
- Anything to gain personally from the outcome - financial, familial, professional benefit
- Personal knowledge of the parties such that it would prevent you from being impartial
- Other reasons that would prevent you from being impartial or if objective outsider might reasonably question your objectivity.

Disclose any conflict

# Standard of Proof

## Preponderance of the evidence

- ▶ Means information that would persuade a reasonable person that a proposition is **more probably true than not true**. It is a lower standard of proof than “clear and convincing evidence” and is the minimum standard for a finding of responsibility under this chapter.
  - ✓ More likely to be true than not
  - ✓ 50% plus a feather
  - ✓ Quality of evidence not quantity

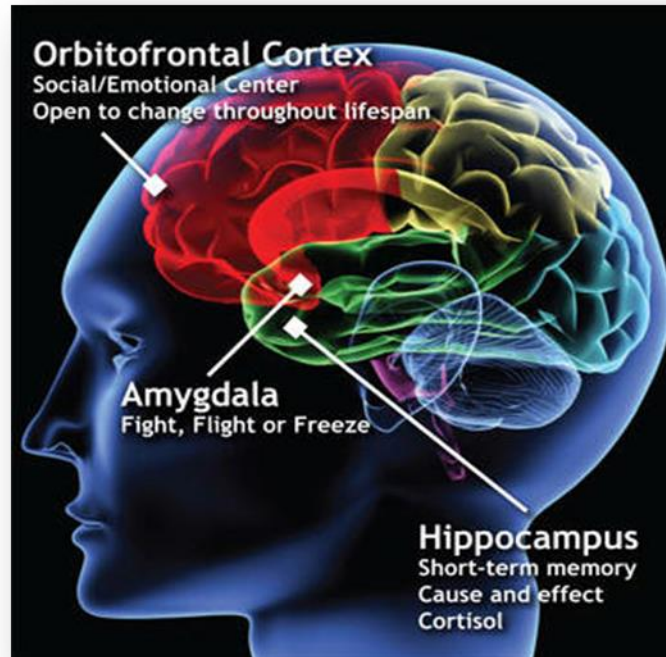
# Assessing Credibility:

Determining how much weight to give each witness' testimony. Factors to consider include:

- ▶ Inherent plausibility;
- ▶ The witness' ability and opportunity to see, hear, or know the things the witness testified about;
- ▶ The witness' memory;
- ▶ The witness' demeanor;
- ▶ Whether the witness had any bias, prejudice, or other reason to lie or slant the testimony;
- ▶ The truthfulness and accuracy of the witness' testimony in light of the other evidence presented; and
- ▶ Inconsistent [or consistent] statements or conduct by the witness.

# Impact of Trauma

- ▶ Prefrontal Cortex = complex cognition and decision-making
  - ▶ Shuts off during trauma
- ▶ Amygdala = process emotion reactions – constantly scanning for things that could harm you
- ▶ Hippocampus = memory



Credit: <http://www.slvtucasa.net/>

# Trauma Informed Processes

- ▶ Treat all individuals in the process with dignity and respect
- ▶ Be mindful of how wording questions – compassion – for both parties
- ▶ **A trauma informed process accounts for the impact of trauma, but does not recognize symptoms of trauma as evidence.**
- ▶ Recognize that no one way to respond to traumatic incident
  - ▶ “When trauma occurs, the prefrontal cortex will frequently shut down, leaving the less advanced portions of the brain to experience and record the event.”

# Evaluation of Evidence

Objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence

- ▶ Inculpatory: evidence that tends to prove the violation of a policy
- ▶ Exculpatory: evidence that tends to exonerate the accused

## Types of Evidence

- ▶ Emails, text messages, video and audio files
  - ▶ During the incident? Contemporaneous? Verified by parties?
- ▶ Medical records
- ▶ Police reports
- ▶ Written statements - when written? By whom?

# Definitions

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# Sexual Harassment Prohibited

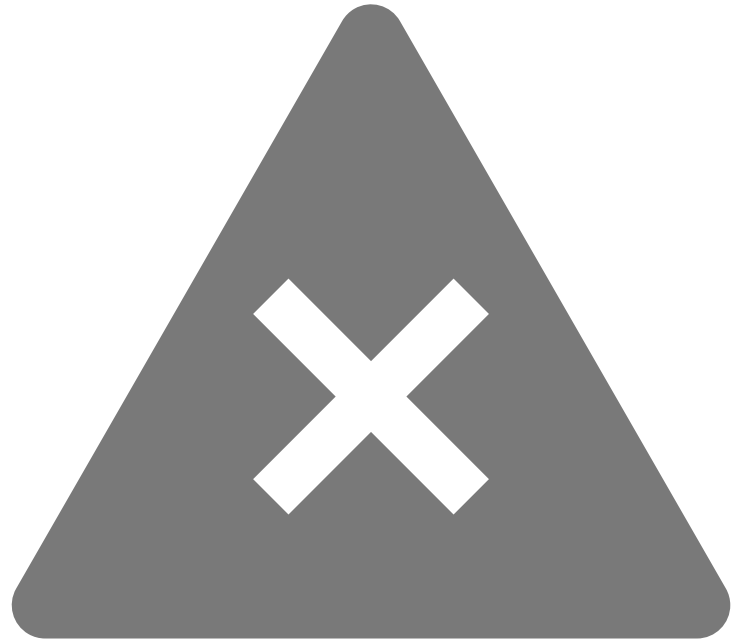
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## Hostile environment sexual harassment.

- ▶ Unwelcome conduct that a reasonable person would determine is *so severe, pervasive, and objectively offensive* that it *effectively denies* a person equal access to the educational institution's education program or activity; (Title IX Standard)    **OR**
- ▶ Unwelcome conduct...*so severe, pervasive, or objectively offensive* that it has the purpose or effect of unreasonably interfering with academic or work performance or participation in an institution sponsored or supported activity, or creates an intimidating, hostile, or offensive academic, working, or program or activity related environment.

## Sexual assault, dating violence, domestic violence, or stalking

+ *sexual exploitation* under UWM policy

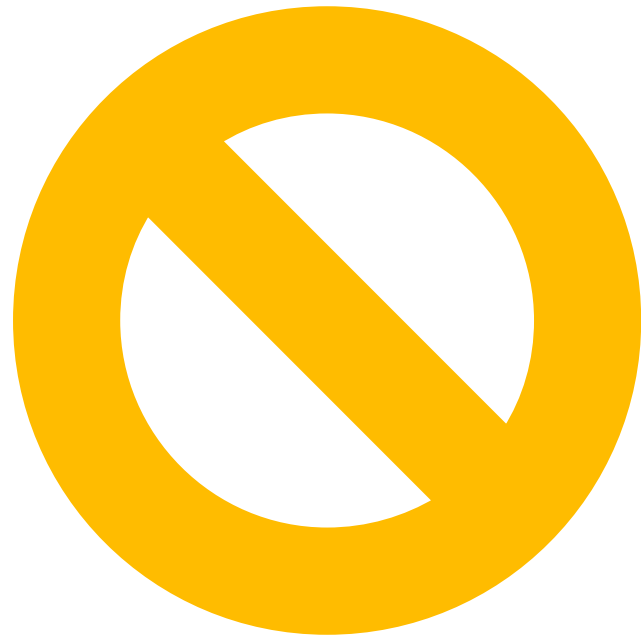


## Stalking

- ▶ Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - ▶ fear for their safety or the safety of others; or
  - ▶ suffer substantial emotional distress.

# Dating and Domestic Violence

- **DATING VIOLENCE.** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- **DOMESTIC VIOLENCE.** Felony or misdemeanor crimes 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 persons 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 or family violence laws of Wisconsin, **OR** by any other person against an adult or youth individual who is protected from that person's acts under the domestic or family violence laws of Wisconsin as per ss. 813.12(1)(am) and 968.075, Stats.



## **Sexual Assault:**

Sexual contact that lacks consent.

Often occurring between people who know each other.

# Sexual Assault

An offense that meets any of the following 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 the complainant, without the consent of the complainant.
- **Fondling:** The touching of the private body parts of the complainant for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of the complainant's age or because of the complainant's 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 as per s. 944.06, Stats.
- **Statutory Rape:** Sexual intercourse with a complainant who is under the statutory age of consent as per s. 948.02, Stats.

# Consent is:

*words or overt actions*



**CLEAR**



**KNOWING**



**VOLUNTARY**



**MUTUAL**

**Silence  $\neq$  Consent**

# Incapacitation

- ▶ When an individual is unable to physically and/or mentally make informed rational judgments and effectively communicating; may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs.
  - ▶ Consider:
    - ▶ Does the person know who, what, where, when, why and how?
    - ▶ Are they aware of the consequences?

# Sexual Exploitation

Attempting, taking, or threatening to take nonconsensual sexual advantage of another person.

Examples include:

- Engaging in the following conduct without the knowledge and consent of all participants:
  - Observing, recording, or photographing private body parts or sexual activity of the complainant(s).
  - Allowing another person to observe, record, or photograph sexual activity or private body parts of the complainant(s).
  - Otherwise distributing recordings, photographs, or other images of the same of the complainant(s).
- Masturbating, touching one's genitals, or **exposing** one's genitals in the complainant's presence without the consent of the complainant, or inducing the complainant to do the same.



## Examples of Sexual Exploitation – Cont'd

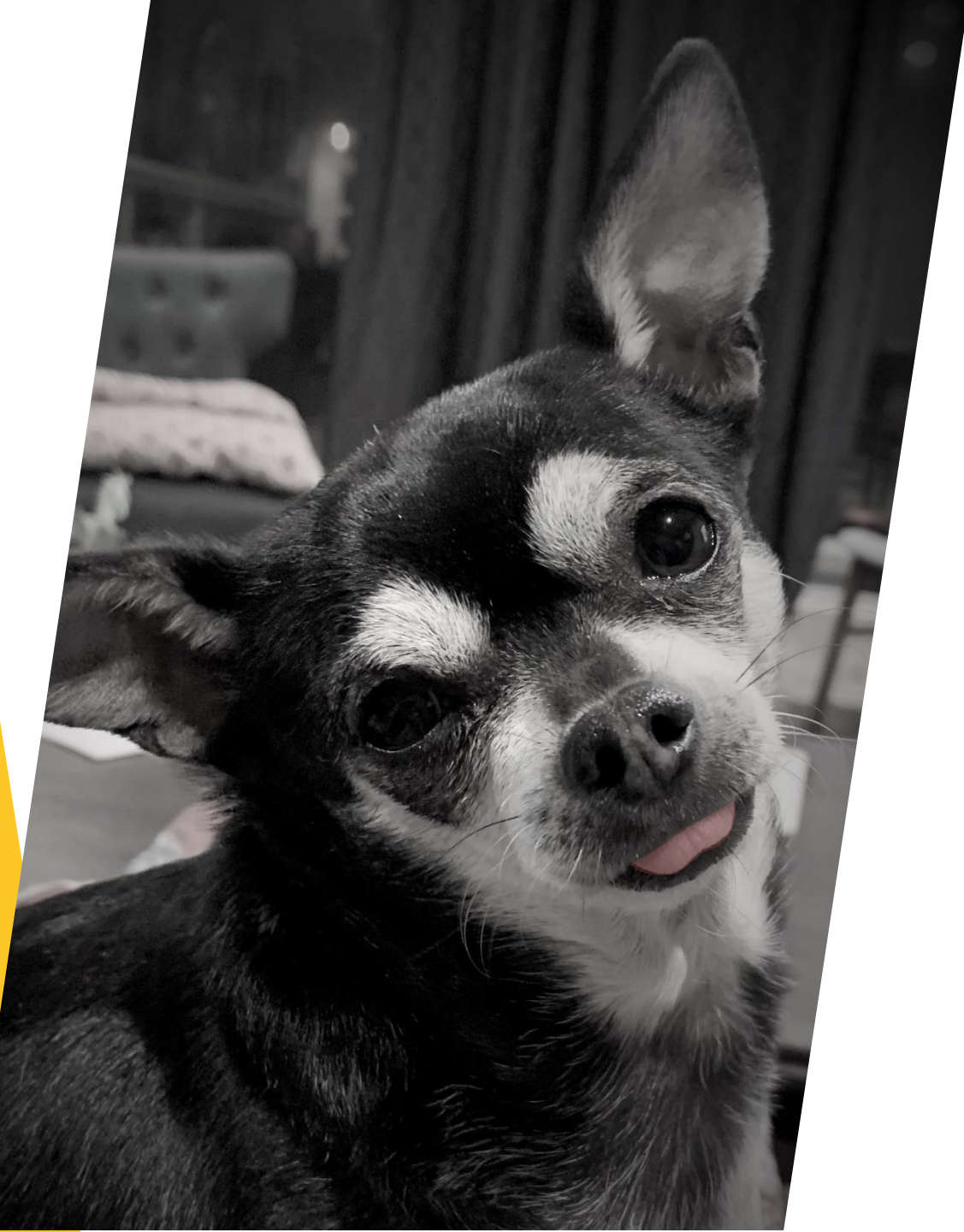
- Dishonesty or **deception** regarding the use of **contraceptives** or **condoms** during the course of sexual contact or sexual intercourse;
- Inducing incapacitation through deception for the purpose of making the complainant vulnerable to non-consensual sexual activity;
- Coercing the complainant to engage in sexual activity for money or anything of value;
- **Threatening distribution** of any of the following, to coerce someone into sexual activity or providing money or anything of value:
  - Photos, videos, or recordings depicting private body parts or sexual activity of the complainant, or
  - Other information of a sexual nature involving the complaint, including sexual history or sexual orientation.

# Special Aspects of Sexual Assault Cases

- ▶ Addressing **myths** and assumptions and biases
  - ▶ A victim will recognize immediately that the assault occurred and will likewise report it immediately
  - ▶ Sexual assault most often occurs between strangers
  - ▶ False reports are common
  - ▶ Only heterosexual women are victims of sexual assault
  - ▶ Previous consent to sexual intercourse implies later consent
  - ▶ Victims are responsible for sexual assault due to inappropriate clothing or use of alcohol or drugs
  - ▶ Individuals in relationships cannot be sexually assaulted
  - ▶ Victims of sexual assault will respond, heal, or tell their story in a particular way



Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured in, or because the 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 UWM policy.



Questions?