



TITLE IX FOR HEARING BOARD PANELISTS

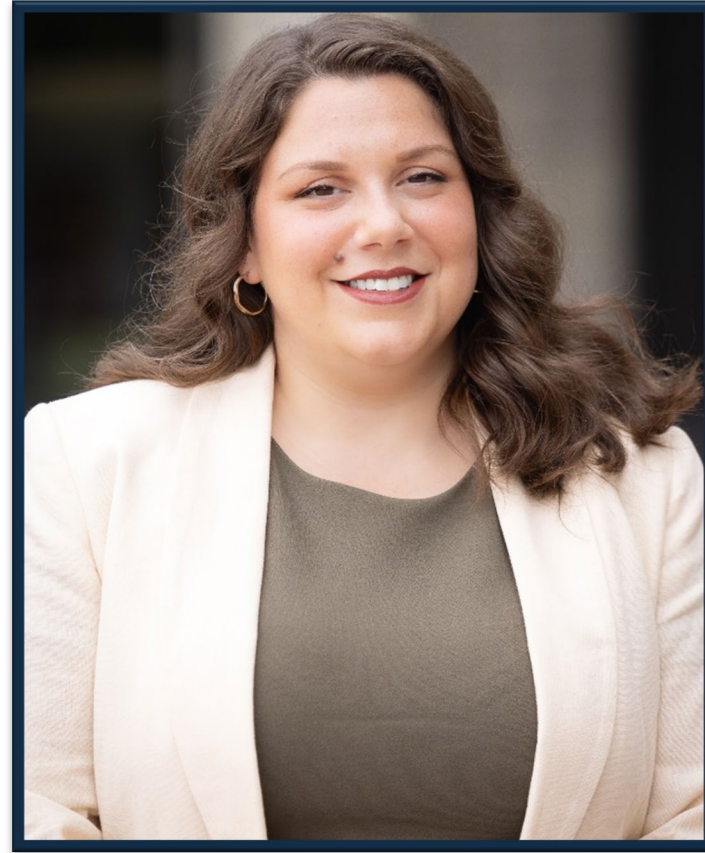
DAY 1: Legal Overview & Hearing Walkthrough



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RESOURCES TO SUPPORT YOUR PROCESS





Model Policies
Draft Notices
Checklists
Scripts
& More



THE SCI TOOLKIT

TODAY'S ROADMAP

- What is Title IX?
- **Compliance essentials** 
- Legal foundations for hearings
- **Ideal panelist characteristics**
- Common participants
- **Pre-hearing prep**
- Hearing walkthrough
- **Cultural awareness**



OBJECTIVES

By the end of today's session , you will be able to ...

1. ascertain whether an allegation of sexual harassment falls under the scope of misconduct identified under Title IX.
2. recognize sexual harassment, including but not limited to, quid pro quo harassment, sexual assault, stalking, dating violence, and domestic violence; as defined in Title IX.
3. identify the presence of possible conflicts of interest or bias for decision-makers in the Title IX grievance process.
4. explain the purpose and function of due process in the student conduct context.

DISCLAIMER

This presentation shall not constitute legal advice, nor create an attorney-client relationship. This presentation is for informational purposes only.

If you have any specific legal questions or require legal advice for specific situations, please contact or refer to your institutional, general, or outside counsel.



WHAT IS TITLE

IX?



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 educational program or activity
- Receiving federal financial assistance



- Denying admission in an educational program based on sex
- Disqualifying individuals from candidacy for opportunities on the basis of sex
- Providing unequal access to resources based on sex
- Engaging in gender -based or sexual harassment, such as unwelcome comments, advances, etc.

SEXUAL HARASSMENT = SEX
DISCRIMINATION IN EDUCATIONAL
PROGRAMS OR ACTIVITIES

EFFECTIVE IMPLEMENTATION
OF REMEDIES FOR VICTIMS

PROMPT & SUPPORTIVE
RESPONSES TO ALLEGED
VICTIMS

DUE PROCESS PROTECTIONS FOR
ALLEGED VICTIMS & ALLEGED
PERPETRATORS.

PROMPT RESOLUTIONS TO
ALLEGATIONS



PREDICTABLE & FAIR GRIEVANCE
PROCESSES

TITLE 34 OF THE CFR PART 106 SUBPART D

**TITLE IX DISCRIMINATION PROHIBITION
ON THE BASIS OF SEX IN EDUCATIONAL
PROGRAMS/ACTIVITIES**

SEXUAL HARASSMENT DEFINITIONS

QUID PRO QUO: A school employee conditioning educational benefits on participation in unwelcome sexual conduct; or

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; or

SEXUAL ASSAULT (as defined in the Clery Act), or



DATING VIOLENCE, DOMESTIC VIOLENCE, OR STALKING (as defined in the Clery Act as amended by the Violence Against Women Act (VAWA))

SEXUAL HARASSMENT SCOPE

SEXUAL ASSAULT

DATING VIOLENCE

DOMESTIC VIOLENCE

STALKING

SEX OFFENSES – any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of giving consent:

Rape - Sodomy – Fondling

Incest - Statutory Rape



SEXUAL HARASSMENT: KEY DEFINITIONS



“SEXUAL ASSAULT” – “forcible or nonforcible sex offense under the inform crime reporting system of the Federal Bureau of Investigation.”
- 20 U.S.C. 1092(f)(6)(A)(v)

“STALKING” – “engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress.”
- 34 U.S.C. 12291(a)(30)

Consult with Institutional Counsel regarding application of the FBI Uniform Crime Reporting System definitions for Rape, Sodomy, Fondling, Incest, and Statutory Rape

SEXUAL HARASSMENT: KEY DEFINITIONS



“DATING VIOLENCE” – “violence committed by a person who is or have been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such relationship shall be determined by on consideration of the following factors: (i) the length of the relationship, (ii) the type of relationship, (iii) the frequency of interaction between the persons involved in the relationship.”

- 34 U.S.C. 12291(a)(11), see also 12291(a)(10)

SEXUAL HARASSMENT: KEY DEFINITIONS



“DOMESTIC VIOLENCE” – “includes felony or misdemeanor crimes of 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 receiving grant monies, or 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.”

- 34 U.S.C. 12291(a)(8)

COMPLIANCE ESSENTIALS



NEUTRALITY

Fairness, equity, & ethics are at the forefront of all policy and decision making.

COMPETENCE

Know your policies & codes, particularly when related to student rights



BALANCE

Student rights & responsibilities,
employee rights & responsibilities, &
administrative efficiency is balanced





LEGAL FOUNDATIONS FOR HEARINGS



CONSISTENCY



**COMMUNICATION
&
TRANSPARENCY**

TIMELINESS

CLARITY

DUE PROCESS & COMPLIANCE

EQUITY

COMMUNITY

**CONFIDENTIALITY &
PRIVACY**



DUE PROCESS; **A CONSTITUTIONAL** **STANDARD**

No state shall “deprive any person of life, liberty, or property, without **due process** of law.”

14th Amendment, Section 1,
U.S. Constitution



DUE PROCESS: WHEN & HOW MUCH?

**GREATER
PROCESS
OWED**



**LESS
PROCESS
OWED**

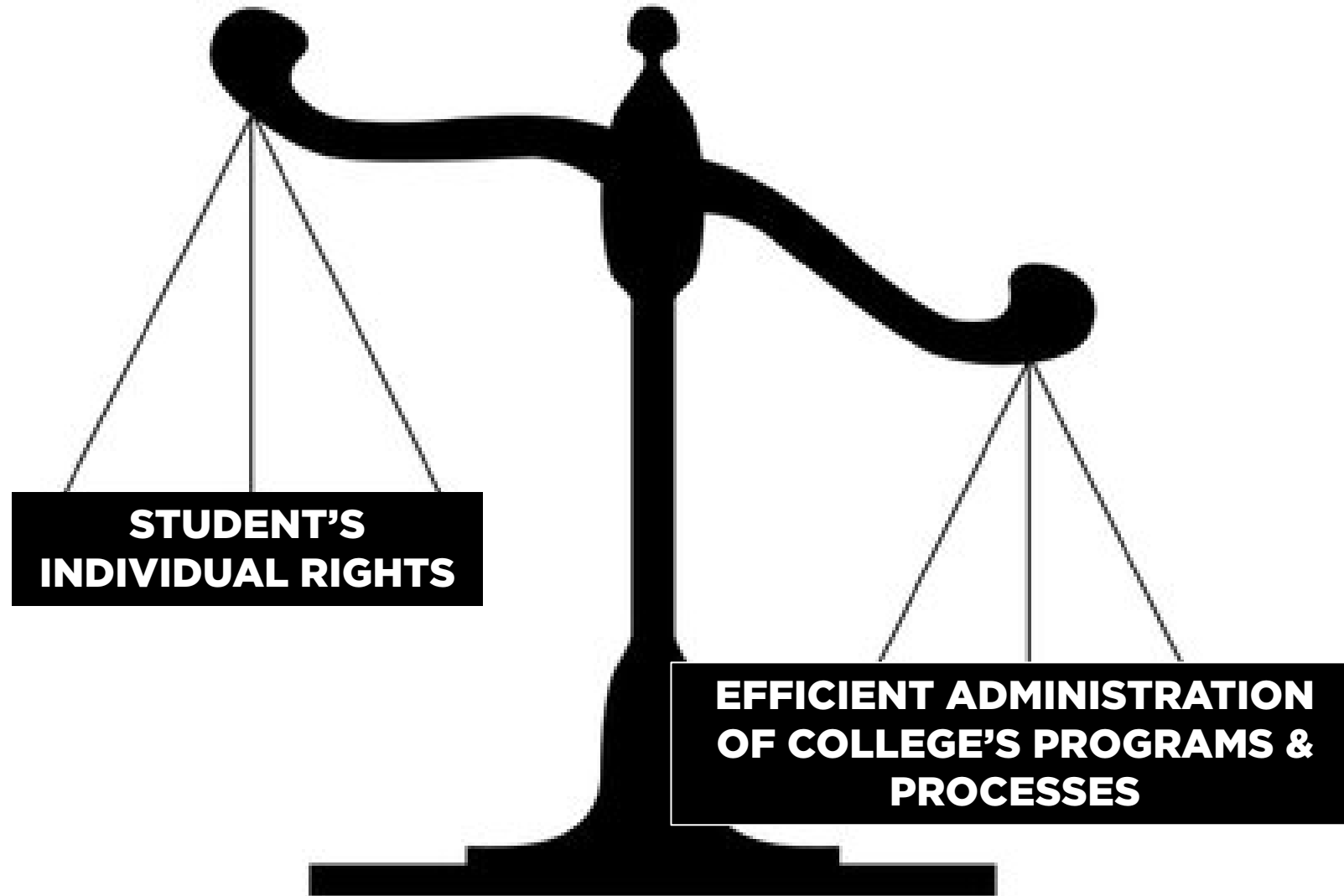
GENERAL CONDUCT CHARGE

ACADEMIC DISCIPLINARY
CHARGE (E.G., ACADEMIC
DISHONESTY)

LACK OF ACADEMIC PROGRESS
DISMISSAL (E.G., ACADEMIC
PERFORMANCE)



DUE PROCESS: A BALANCING ACT



FOUNDATIONAL DUE PROCESS: RIGHTS & PROTECTIONS

RIGHTS

- Confidentiality & privacy (with caveats)
- Advisor
- Access to disability accommodations
- Equitable treatment for complainants & respondents
- Evidence related to the complaint
- Fair hearing process with opportunity to be heard
- Appeal (under specified circumstances)

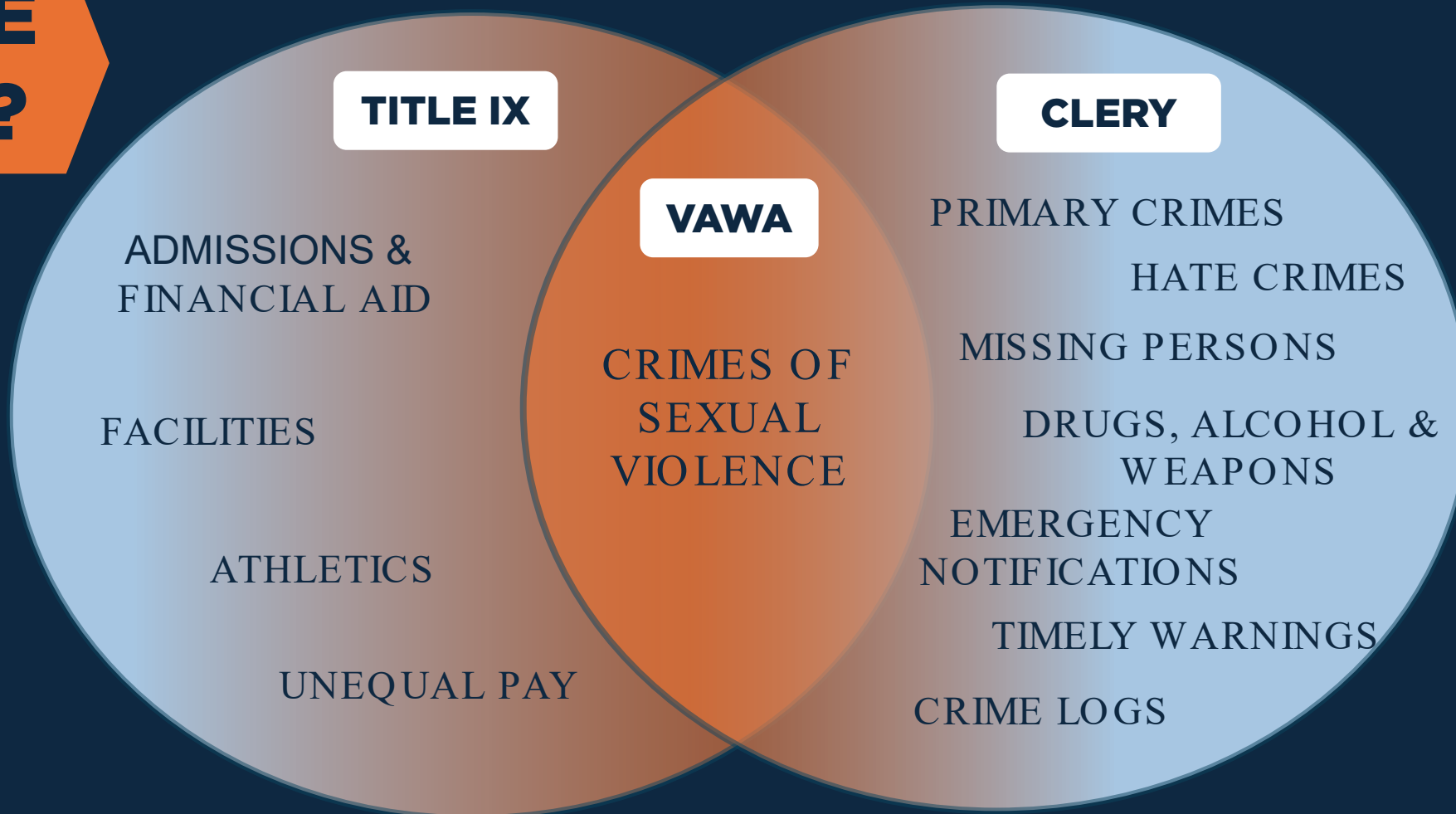
PROHIBITIONS:

- Conflicts of interest & bias
- Retaliation



THE VIOLENCE AGAINST WOMEN ACT (VAWA) & CLERY ACT

**STATE
LAW?**





FERPA & CONFIDENTIALITY



WHAT ARE “RECORDS?”

FERPA protects “education records” as

- directly related to a student, and
- maintained by an educational agency or institution or by a party acting for the agency or institution.

Student must be the focus of the record, not simply in the background or incidental to a report

Educational records include hearing transcripts, evidence submitted in the context of the case, the investigative report, etc.

There is an expectation that these records are kept as private as possible – disclosing information only as appropriate

CONFLICTS & BIAS IN TITLE IX



1. For or against complainants & respondents generally

- For example, a perception that all respondents are automatically responsible or that complainants are always credible and/or correct

2. For or against the specific parties in the case

3. Overlapping investigator, decisionmaker, & appeals roles



- Gender, research interests, work history of decisionmakers, investigators, or TIXC
- A background in advocacy
- Title IX Coordinator serving as investigator
- Title IX Coordinator serving as facilitator in informal resolution process

**NOT *NECESSARILY*
CONFLICTS & BIAS**

**ACTUAL BIAS IS A HIGH LEGAL STANDARD, BUT
PERCEPTION OF BIAS IS IN THE EYES OF THE PARTIES
TO THE PROCESS & SHOULD BE AVOIDED.**

THINGS TO AVOID:

- Truly lop -sided investigations & adjudications, or
- Statements of investigator or panelist showing presumption of responsibility based on sex stereotypes, or
- Misapplying trauma -informed practice to explain away all inconsistencies in complainant's statements



ACTUAL VS. PERCEPTION OF BIAS

WHAT IS RETALIATION?

- Intimidation,
- Threats,
- Coercion,
- Discrimination, and/or
- Charges for a code of conduct violation



WITH THE PURPOSE OF INTERFERING WITH
ANY RIGHT OR PRIVILEGE SECURED BY TITLE

IX

ZERO TOLERANCE!



TITLE IX **PROHIBITS RETALIATION**
AGAINST PEOPLE WHO SEEK TO
ASSERT THEIR TITLE IX RIGHTS, for
example:

- Where the individual has made a report or complaint
- Where the individual testified, assisted, or participated in the Title IX Grievance Process
- Where the individual refused to participate in any manner in the Title IX Grievance Process

DISABILITY RIGHTS CONSIDERATIONS



- **EQUITY vs. EQUALITY**
- Fundamental alteration of programming is not a required accommodation
- Disability cannot be the basis for discipline
- Disability does not excuse misconduct
- Individuals posing as a “direct threat” are not entitled to accommodation

Questions about what we've learned so far?

SUNY.EDU

`system.suny.edu/sci/news`

`SYSTEM.SUNY.EDU/SCI/TIX2020`

`system.suny.edu/sci/titleix`



BREAK!



The State University
of New York



SUNY SCI
STUDENT CONDUCT INSTITUTE

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TRAINING MATERIALS





WHO IS HERE?

WHEN INFORMAL RESOLUTIONS ARE ALLOWED UNDER THE FINAL RULE:

- After a formal complaint
- When all parties & TIXC Coordinator's consent
- Any party can withdraw at any time

NOT ALLOWED IN CASES INVOLVING EMPLOYEE RESPONDENTS

TIXC CAN RUN THE PROCESS, BUT IT IS NOT RECOMMENDED

EXAMPLES:

- Administrative resolution
- Restorative justice
- Mediation



INFORMAL RESOLUTIONS




WHO CAN SERVE ON HEARING BOARDS?

- Trained administrators or faculty
 - 2020 Title IX Final Rule (this training meets that qualification)
 - Employed by, or contracted on behalf of, a college or university
 - In good standing with the institution
 - Free from conflicts of interest or bias
 - Trained on how to serve impartially, issues of relevance, & technology used in hearing



VALUABLE CHARACTERISTICS OF A HEARING PANELIST

- 
- A middle-aged man with grey hair and glasses, wearing a dark blue suit, white shirt, and a striped tie, is seated and holding a large white sign. He is looking towards the sign with a thoughtful expression. The background is a solid orange color.
- Critical thinking skills
 - Grasps scope of Title IX
 - Comfortable discussing sensitive or upsetting content & topics
 - Unbiased, free of conflicts of interest

KEY ROLES OF THE HEARING BOARD/PANEL

HEARING CHAIR
NOTE-TAKER
RATIONALE WRITER
ADMINISTRATIVE
SUPPORT STAFF
DECISION-MAKERS



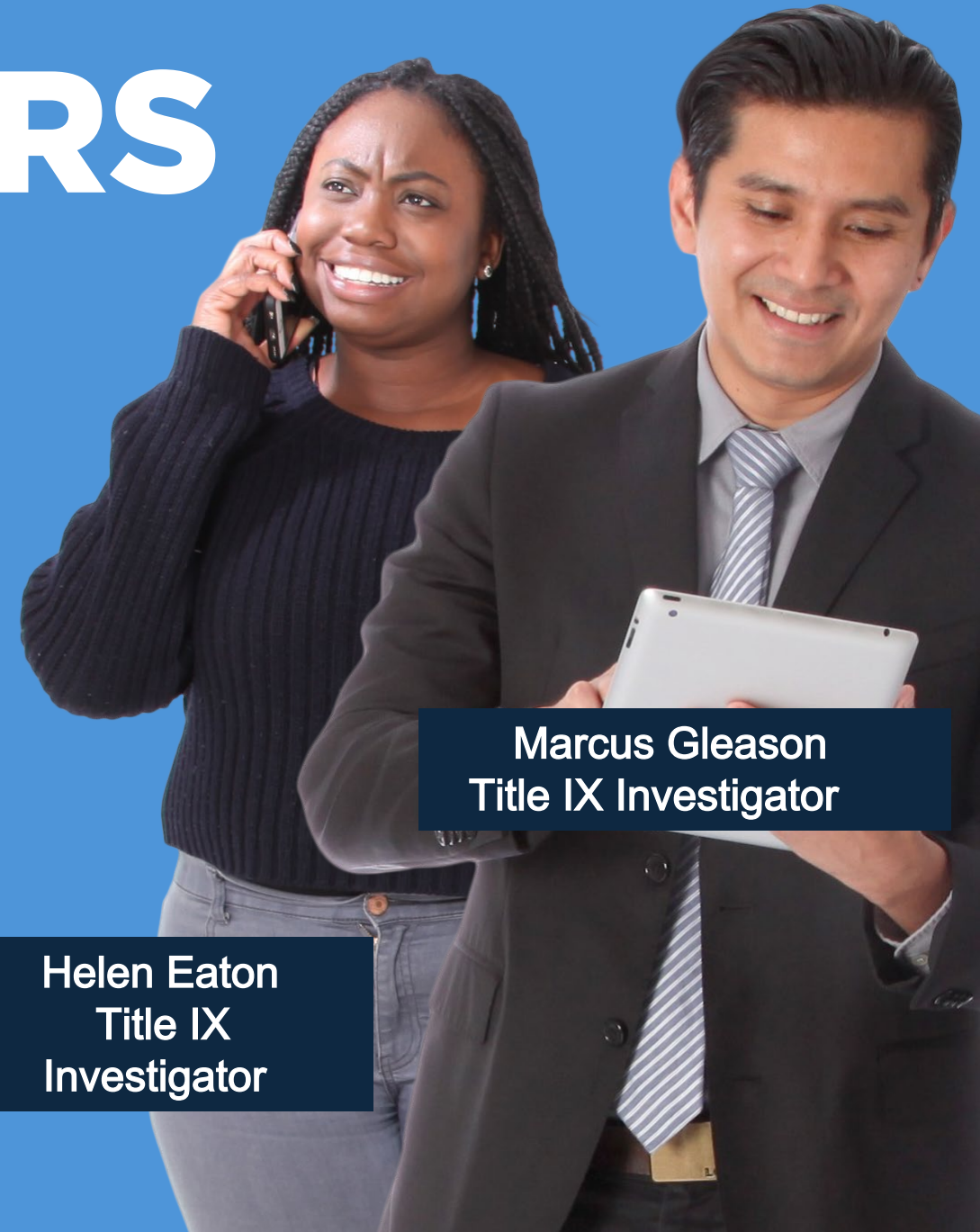


COMMON PARTICIPANTS

INVESTIGATORS

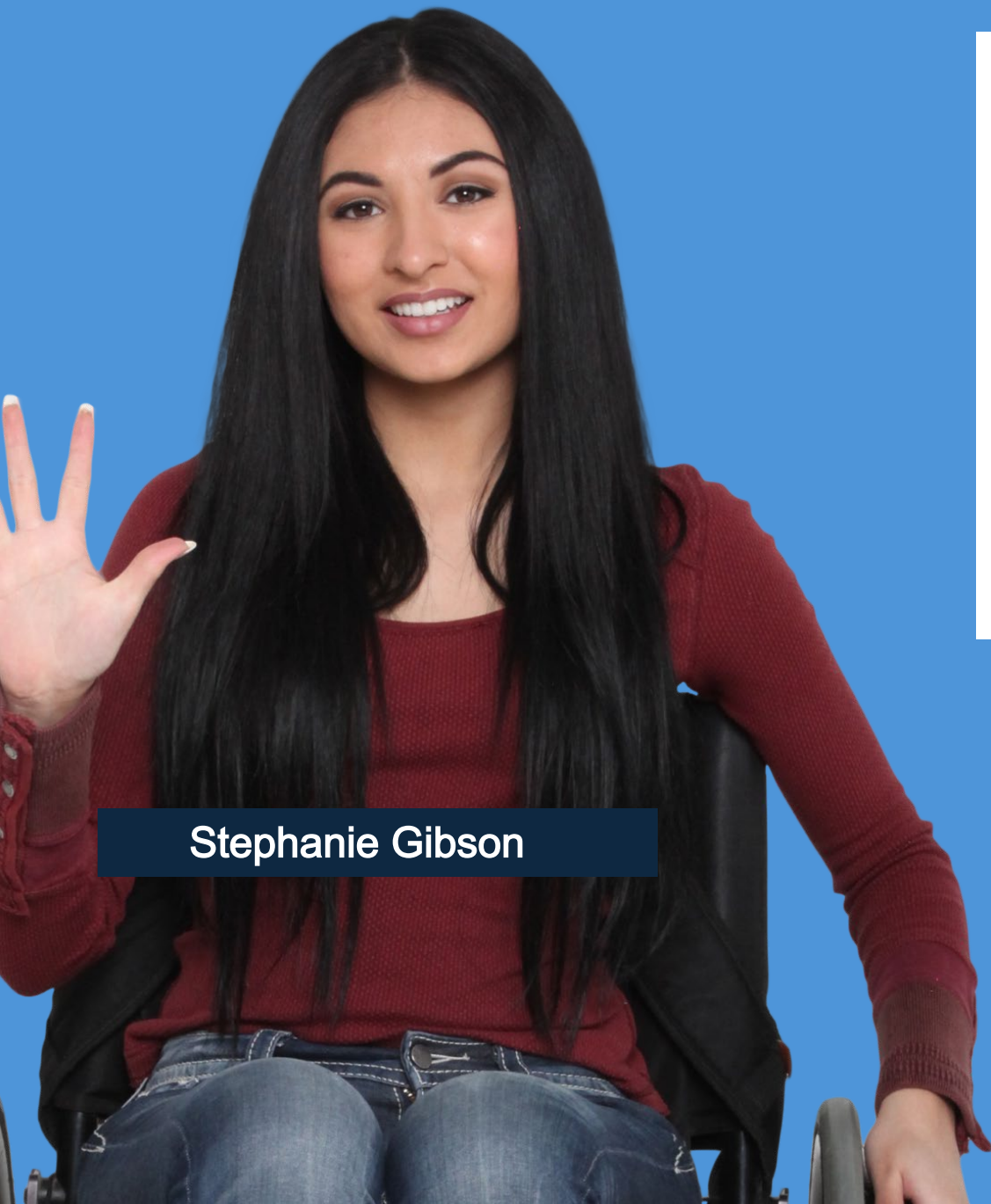
Investigators do just that: they investigate the allegations in the Formal Complaint and provide an investigative report for a hearing panel.

These individuals, like others involved in this process, must be free of conflicts of interest or bias.



Marcus Gleason
Title IX Investigator

Helen Eaton
Title IX
Investigator



Stephanie Gibson

The Title IX Coordinator is responsible for everything from the administration of the grievance process, intake, and overall maintenance of the Title IX policy at an institution.

TITLE IX COORDINATOR



Harriet Dejesus
Cody Norman's Advisor



Harvey O'Sullivan
Liana Jenkin's Advisor

Advisors serve two essential functions in the Title IX grievance space:

1. Support their student through this process, and
2. Ask questions through cross-examination

ADVISORS



Joyce Conceição

These individuals ensures the hearing runs smoothly, and that all procedures and processes are being followed.

They are likely a case manager or another kind of student conduct officer at your institution.

ADMINISTRATIVE HEARING OFFICER


The Panel Chair serves as the head
of the hearing panel for Title IX
cases.

They also serve as the individual
who makes relevancy
determinations after each question
asked by a party's advisor.

CHAIR



Benji Houser
Hearing Panel Chair

A pink silhouette of a person standing, facing away from the viewer, positioned on the left side of the slide.

Complainants are the individual(s)
allegedly harmed by the Title IX
violation

Respondents are the individual(s)
alleged to have committed the
Title IX violation

Both entitled to an appeal at the
conclusion of the hearing

Cody Norman
Respondent

COMPLAINANT & RESPONDENT

A green silhouette of a person standing, facing away from the viewer, positioned on the right side of the slide.

Liana Jenkins
Complainant

HOW DO YOU PREP?



1. Read through & digest your hearing materials
 - Familiarize yourself w/ alleged violation(s)
 - Review *Investigative Report* & evidence, appendices
2. **Examine the unexamined**
 - Develop questions that probe these areas
 - Ensure questions are relevant
3. Check your materials & space
 - Tech, physical space, printed material, visual aids

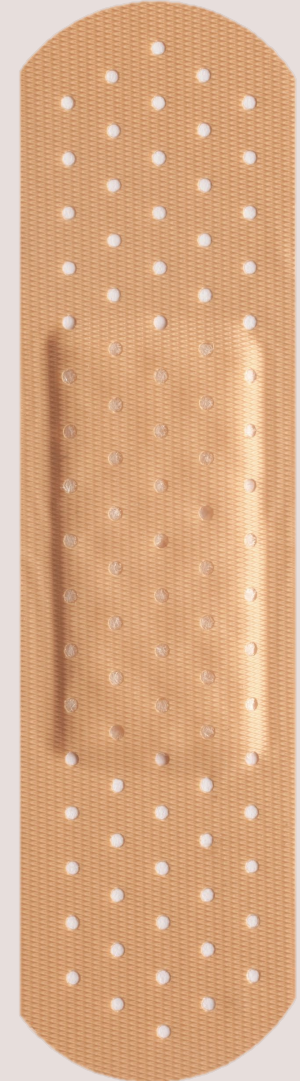
HOW TO SERVE IMPARTIALLY

- If you may have a bias or a conflict, admit it straight away
- Remember you are hearing a case made up of individuals
- Challenge your own perceptions by examining evidence
- Be open & transparent, leave no stone unturned
- Ensure everyone has opportunity to be heard, take your time
- Base decisions on evidence, facts, & established criteria



TRAUMA-INFORMED PRACTICES

- Avoid repeated disclosures
 - Consider impact of trauma:
 - Fragmented memory & non-linear order of events
 - Specific details about sensory events
 - Approach doesn't substitute for missing info, justify not doing a full investigation, or cause a biased belief in party's accuracy
 - No right nor wrong way to respond
-
- Training & procedure review
 - Check body language & demeanor
 - Questioning & word usage
 - “Help me understand” ...“and what are you able to tell me about what you experienced?”
 - Describing another individual's experience
 - Framing your questions, avoiding why questions



CULTURAL AWARENESS

STUDENT-CENTERED PROCESS

Individuals on hearing boards should be mindful that the participants may come from different backgrounds & cultures than their own

- Race
- Ethnicity
- Gender
- Religion
- Ability/disability
- Language (limited English proficiency)
- Immigration status
- Socioeconomic status
- Sexual orientation,
- Gender identity or expression
- Age



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BIAS & KNOWLEDGE

- Enhance cultural competency
- Adapt to **diverse** communication styles
- Address cultural **perceptions** of authority
- Implement **equitable** practices

HOW CULTURE CAN IMPACT TITLE IX ADJUDICATION

ADJUST COMMUNICATION STYLES:

- Frame questions to encourage open dialogue, ensuring students feel comfortable sharing their perspectives without cultural constraints.

AVOID OVERINTERPRETING BEHAVIOR:

- Limited eye contact or formality, for example, may be culturally influenced.

Do not allow cultural biases and/or prejudices to influence decision-making processes.



REFLECTION

Some questions that you can use to guide your reflection:

- What are my own areas of bias? (ex. Socioeconomic status, race, religion, etc.)
- What are some resources on or off campus that I could utilize to increase my cultural competencies?
- If I meet with someone from another culture who is involved in a Title IX process, what resources can I use to ensure a culturally inclusive experience?



- If you are virtual, make sure you have a quiet space to join the hearing
- Ensure there are no distractions or disruptions
- Ensure you are alone – privacy matters in these hearings
- Make sure you test your technology and plan to join the meeting at least 10 minutes early, even if you are held in a waiting room
- Physical Space
 - Get there early to ensure time to be seated and materials ready to go
 - Address any accessibility needs with the TIXC

PHYSICAL SPACE & TECHNOLOGY



- Gives best general overview of the incident
- Free of conflicts of interest or bias
- Investigators are identified with credentials & training
- Reviews prohibited conduct alleged, witnesses, overview of evidence
 - In-depth summaries of witness testimony
 - Evidence list, appendices
- Parties have been given at least 10 days to review and respond to this evidence earlier in the process
- You will heavily rely on this material
- Begin to think about what questions you may have



REVIEW INVESTIGATIVE REPORT



KNOWLEDGE CHECK!

QUESTIONS?

SUNY.EDU

system.suny.edu/sci/news

SYSTEM.SUNY.EDU/SCI/TIX2020

system.suny.edu/sci/ titleix





YOU MADE IT!





TITLE IX FOR HEARING BOARD PANELISTS

DAY 2: The Hearing

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TRAINING MATERIALS





DAY 2 PREVIEW

Overview of the hearing

Deliberation & evidence-based
decision-making

Questioning

KEY CONCEPTS & DEFINITIONS



STANDARD OF EVIDENCE

Which standard of evidence does your institution use?

1. PREPONDERANCE OF THE EVIDENCE

- More likely than not to be true
- 50 %, plus a feather

2. CLEAR & CONVINCING EVIDENCE

- Highly probable to be true



CRUCIAL: you will use this language and standard to determine the responsibility of your respondents. You may be telling students, for example, that they are **“more likely than not”** responsible for sexual assault.

SPECIFIC EXCLUSIONS for **TITLE IX HEARINGS**

RAPE SHIELD (with two exceptions) 32 C.F.R. § 106.45(6)(i)

- Offered to prove someone else committed alleged conduct
- Offered to prove consent

PRIVILEGED INFORMATION: 34 C.F.R. § 106.45(1)(x)

UNDISCLOSED MEDICAL RECORDS: See, 85 Fed. Reg. 30026, 30294

DUPLICATIVE QUESTIONS: See, 85 Fed. Reg. at 30331

CONSENT



NYS DEFINITION

“Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity.”



NY-129 B REQUIREMENT



F.R.I.E.S.



 Planned Parenthood®

FREELY GIVEN
REVERSIBLE
INFORMED
ENTHUSIASTIC
SPECIFIC

NYS SCHOOLS MUST REFLECT CERTAIN PRINCIPLES IN GUIDANCE:

- Consent to any act or prior act between any party does not imply or constitute consent to any other act
- Required regardless the person initiating is under the influence of drugs/alcohol
- Consent may be withdrawn as well as given
- Incapacitated individuals cannot give consent
- Consent cannot be coerced
- When consent is withdrawn or cannot be given, sexual activity must stop

COMMON QUESTIONS



- Does only verbal consent qualify as affirmative consent?
- Can you consent to sexual activity if you are under the influence of alcohol and/or drugs?
- How does the age of a party relate to the definition of affirmative consent?
- Are there limitations to what consent can cover?

... EVIDENCE THAT MUST BE INCLUDED ...

EXCULPATORY & INCULPATORY

Exculpatory evidence
increases the likelihood of
finding of **non-responsibility**
or **non-liability**

Inculpatory evidence
increases the probability of a
finding of **responsibility** or
liability.

PLEASE NOTE: investigations & findings of **INNOCENCE** and **GUILT** are not applicable to Title IX or student conduct grievances. These processes are administrative processes & are not civil or criminal in nature.



Testimony

Text Messages

Social Media Posts

Medical Records

Public Safety / Police Records

Videos / Surveillance Footage

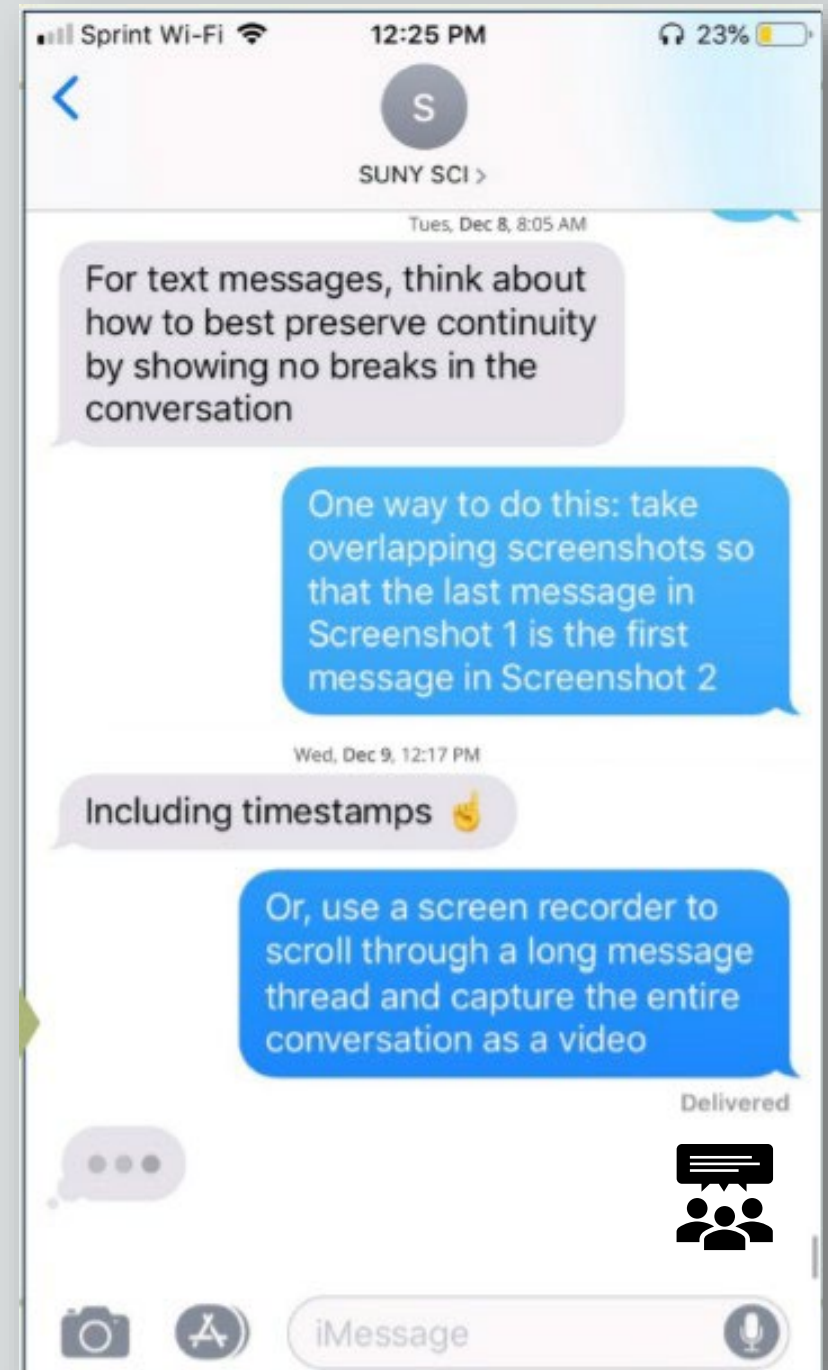
Pictures

ID Card Data / Network Usage Location Data

Email

Voice notes

POSSIBLE EVIDENCE





THE HEARING, AN OVERVIEW



MODEL CASE

Find the case materials for our model case in the “Course Materials” Section of this training



WHEN INFORMAL RESOLUTIONS ARE ALLOWED UNDER THE FINAL RULE:

- After a formal complaint
- When all parties & TIXC Coordinator's consent
- Any party can withdraw at any time

NOT ALLOWED IN CASES INVOLVING EMPLOYEE RESPONDENTS

TIXC CAN RUN THE PROCESS, BUT IT IS NOT RECOMMENDED

EXAMPLES:

- Administrative resolution
- Restorative justice
- Mediation



INFORMAL RESOLUTIONS





STICKING TO THE SCRIPT



1. Introductions
2. Purpose of Hearing, Review of Allegations
3. Privacy & Decorum Expectations
4. Due Process Rights
5. Notice of Allegations & Claims
6. Opening Statements
7. Presentation of Investigative Information
8. Cross Examination & Relevancy Determinations
9. Witnesses & Cross Examination
10. Closing Statements
11. End of Hearing

HEARING: INTRODUCTIONS

- Opportunity to review roles & participants in hearing
- Begins the recording – officially kicking off the hearing
- Reviewing basic expectations
 - Cell phone & device decorum
 - Notification of transcript
 - Rights to access
 - Ownership of recording
- Introduction of participants



Joyce Conceição
Administrative Hearing
Officer



PURPOSE OF HEARING

- Review objectives of the hearing
 - Not to find anyone responsible or not responsible
 - To have an equitable, fair process (not a perfect one)
- Obligation of truthfulness & transparency
- Reminder of educational philosophy of grievance process
- Not a criminal proceeding
- Discuss flow of meeting



PRIVACY

- Notice of privacy & confidentiality
- Reminder that sharing materials to non-participating individuals may be retaliatory & violation of conduct code
- Review of decorum (will review later)
- Review of cross-examination (will review later)
- Discuss role & obligations of advisors
- How to request breaks or troubleshooting needs
- Review of accommodations



DECORUM

Colleges and universities “ **are in a better position than the Department to craft rules of decorum best suited to their educational environment**” and build a hearing process that will reassure the parties that the institution “**is not throwing a party to the proverbial wolves.**”

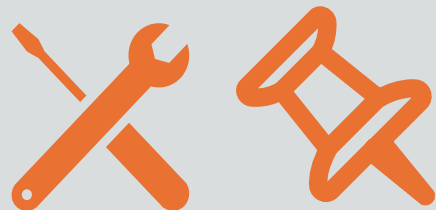
- See, 85 Fed. Reg. 30 026, 30 319

**ADVISORS WHO VIOLATE THE RULES
OF DECORUM MAY BE REMOVED**



Questions should be asked in a neutral tone.

- No accusatory questions
- No “duty of zealous advocacy” inferred or enforced, even for attorney -advisors
- No abusive behavior: yelling, screaming, badgering, leaning in, or approaching witnesses/parties without permission
- No use of profanity or personal attacks
- Repetitive questions are not allowed



DUE PROCESS RIGHTS

DO PARTIES UNDERSTAND THEIR DUE PROCESS RIGHTS AS WELL AS THEIR RIGHTS UNDER TITLE IX?

- Opportunity for parties to object to panelists participation
 - If yes, decisionmakers meet off record to discuss objection
 - If the objection is sustained, substitute an alternate decisionmaker & repeat
 - May delay hearing
 - If not, you can continue
- Opportunity for process questions
- Move towards **formally** beginning the hearing, turn over facilitation responsibilities to **hearing chair**



OPENING STATEMENTS



Acknowledge parties' opportunity to review investigative report
& to respond to elements within the report



Parties can provide opening statements



Move to questions





Overview of cross-examination, review rules & expectations of all parties & advisors

Questions for all parties by the alternate parties' advisor

Relevancy determinations

Board questions for all parties



CROSS-EXAMINATION & QUESTIONING



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BRE



Questions posed by advisors must be evaluated for relevance in real time by a decisionmaker.

Relevant questions ask whether facts material to allegations under investigation are more or less likely to be true.

Relevance decisions are made on a question-by-question basis.

Relevance decisions **should not** be based on:

- who asked the question,
- their possible (or clearly stated) motives,
- who the question is directed to,
- or the tone or style used to ask about the fact.

What about sensitive topics or issues?

QUESTION REGARDING PRIVILEGED INFORMATION

- The question is irrelevant because it calls for information shielded by a legally-recognized privilege **[identify the privilege]**
- The question is relevant because, although it calls for information shielded by a legally recognized privilege **[identify the privilege]**, that privilege has been waived in writing, and the question tends to prove that a material fact at issue is more or less likely to be true



QUESTION ABOUT COMPLAINANT'S PRIOR SEXUAL BEHAVIOR, OR SEXUAL PREDISPOSITION

The question is relevant because although it calls for prior sexual behavior information about the complainant, it meets one of the two expectations to the **rape shield** protections defined in 34 C.F.R. § 106.45(b)(6)(i), and it tends to prove that a material fact at issue is more or less likely to be true:

EXCEPTION 1: The question is asked to prove that someone other than the respondent committed the conduct alleged by the complainant.

EXCEPTION 2: The question concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is asked to prove consent

The question is irrelevant because it calls for prior sexual behavior information about the complainant without meeting one of the two exceptions



GENERAL PROBATIVE QUESTIONS

Determining whether a question is relevant because it asks whether a fact material to the allegations is more or less likely to be true

Determining whether a question is irrelevant because it asks about a detail that does not touch on whether a material fact concerning the allegations is more or less likely to be true

See, 85 Fed. Reg. 30026, 30343 (May 19, 2020)



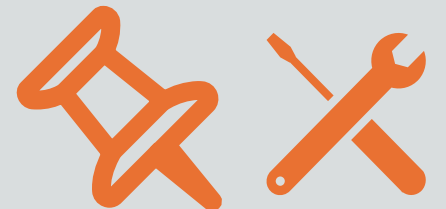
HOW DO YOU MAKE RELEVANCE DETERMINATIONS?

If decisionmaker is a single individual, they make the decision prior to the question being asked.

If decisionmaker is a panel, the panel chair will make that determination prior to the question being asked.

WHAT DOES THE RELEVANCE DETERMINATION CONSIST OF?

The Final Rule “does not require a decisionmaker to give a lengthy or complicated explanation.” It is sufficient to explain why a question is irrelevant



LET'S PRACTICE - RELEVANCE



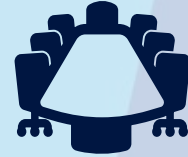
BREAKOUT!



WITNESSES

- Same process of cross-examination
- Reminiscent of the introduction stage
 - Introduce witness
 - Notice that the hearing is recorded
 - Expectation of truthfulness
 - Reminder of educational philosophy of institution
 - Not a criminal proceeding
- Review process of cross-examination
- Move to questions, then dismiss witnesses from hearing after testimony
- Repeat for every witness

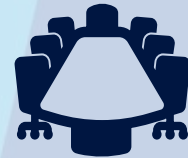
CLOSING STATEMENTS



Closing statements



Impact statement
submissions



Next steps



Decision making
process begins!



QUESTIONS?

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YOU MADE IT!





TITLE IX FOR HEARING BOARD PANELISTS

DAY 2: The Hearing

DISCLAIMER

This presentation shall not constitute legal advice, nor create an attorney-client relationship. This presentation is for informational purposes only.

If you have any specific legal questions or require legal advice for specific situations, please contact or refer to your institutional, general, or outside counsel.



THE DECISION



DELIBERATION



Establish roles, assess board member strengths



Review allegations, claims, evidence, hearing notes



Utilize tools for success, sanctioning guidelines, bias chart, etc.



Scheduling, flexibility



Seek consensus, or lack thereof

EVIDENCE-BASED DECISION MAKING



CREDIBILITY DETERMINATIONS: OBJECTIVITY

- Cannot be based on the party's status
- Cannot apply **“predictive behaviors”**
- But you may consider:
 - The party/witness' stake in the outcome
 - The potential conflict of interest where an advisor is also a witness
 - Possible motive to fabricate testimony
 - The possibility of coaching



EXCLUSION STATUS
RELEVANCY
AUTHENTICITY
CREDIBILITY
WEIGHT



RELEVANCE



- Relevant evidence makes a material fact **MORE OR LESS LIKELY TO BE TRUE**
- Relevant evidence will make a direct connection to the charge(s)
- Irrelevant evidence should be noted
- Authenticity

EVIDENCE REVIEW

How does the evidence compound to **CREATE**
OR INDICATE a narrative?

Ask yourself these fundamental questions:

1. Why or why not should evidence be excluded or included?
2. If evidence must be excluded, how has it been communicated?
3. What's the process to challenge these decisions?

**ALL DECISIONS SHOULD BE WRITTEN OUT IN A RATIONALE &
DETERMINATION.**



AUTHENTICITY

**TESTIMONY
CUSTODY
ELECTRONIC
AUTHENTICATION
ANALYSIS**



AUTHENTICITY

10:05



(120) 345-6789 >

Message
Sun 2 Jun at 17:00

10/7/2025 9:30 AM

god I want to take a bite outta
that 🍑

●●●○○ Verizon LTE 4:08 PM

< Messages (123) 456-7890



i hate you

i hate you

i hate you

i hate you

10:04

mail Inbox



checkmeout@gmail.com

21:20

to me ▾

i can hear you inside



CREDIBILITY

SPECIFICITY
CONSISTENCY
CONTRADICTION
MOTIVE TO DECEIVE
**DEMEANOR &
EVASION**

Credibility judgments may feel subjective - decisionmakers are asked to evaluate whether a person *they don't know* is being honest in an unfamiliar and stressful situation.

Many traditional approaches to assess credibility may **REINFORCE BIASES** rather than promote an effort to get at the truth.

The areas on the left can help decisionmakers determine credibility.

ASSESSING CREDIBILITY

SPECIFICITY	<ul style="list-style-type: none">• Some witnesses may have a lot of info• Others may have value even with less specific information
CONSISTENCY	<ul style="list-style-type: none">• Consistency of witness' testimony with prior statements• Corroborate with information provided by others
CONTRADICTION	<ul style="list-style-type: none">• Contradictions within testimony may reduce credibility• Be mindful of “perfect testimony”

ASSESSING CREDIBILITY

MOTIVE TO DECEIVE

- Is there a presence of a motivation to deceive?
- What factors play into credibility judgments?
- Conflicts of interest or bias
- Coaching
- Any information that has been intentionally destroyed?

DEMEANOR & EVASION

- **Exercise caution**
- Apply cultural competence when examining body language & demeanor to evaluate credibility
- Behaviors traditionally associated with evasion may not tell you what you think it does



KNOWLEDGE CHECK!



KINDS OF EVIDENCE



DIRECT

CORROBORATING



CIRCUMSTANTIAL





DIRECT

First-hand observations & evidence of incident or surrounding circumstances

CONSIDERABLE WEIGHT (e.g. witness testimony of first-hand account of incident).

CORROBORATING

Statements or tangible materials that confirm direct evidence regarding incident

SOME WEIGHT (e.g. video evidence, text message threads, security footage, swipe card records, business records, medical records).

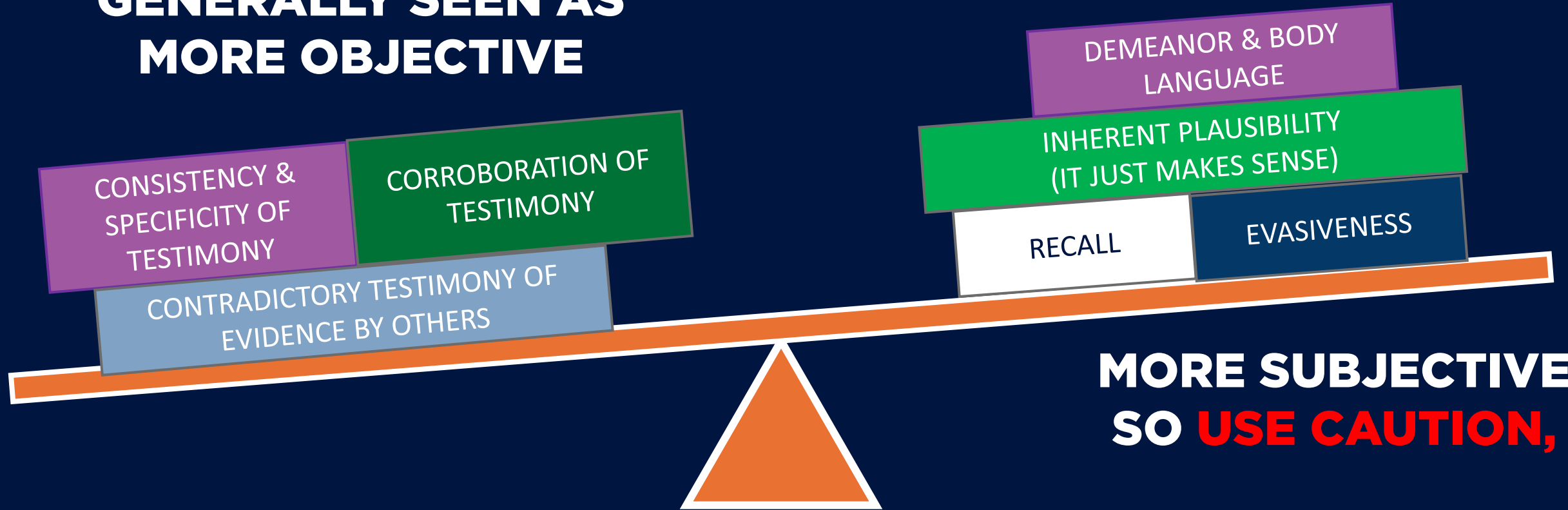
CIRCUMSTANTIAL

Statements or tangible materials that rely on inference to connect to a conclusion of fact

LEAST WEIGHT (e.g. photo of location of alleged sexual assault showing several empty vodka bottles & solo cups).

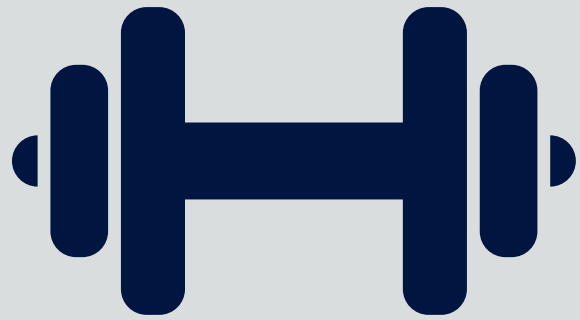
ASSESSING WEIGHT

**GENERALLY SEEN AS
MORE OBJECTIVE**

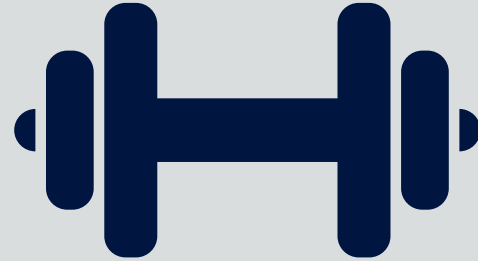


**MORE SUBJECTIVE,
SO **USE CAUTION,****

WEIGHING TESTIMONY & EVIDENCE



DIRECT



CORROBORATING



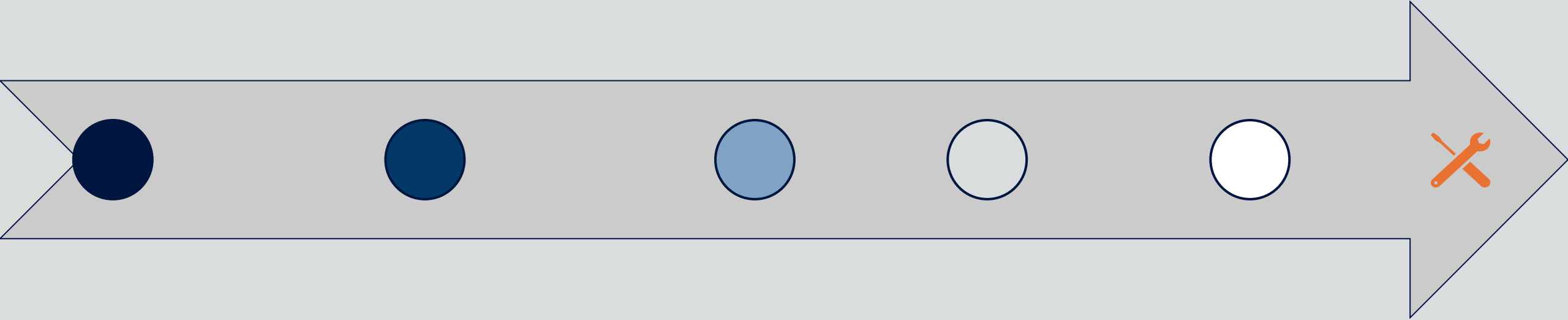
CIRCUMSTANTIAL

**WHAT KIND OF
EVIDENCE IS THIS?**

Charge &
Allegation

Describe
standard of
evidence used
to make
determination

Sanction(s)
~if responsible~



Review of
evidence relied
upon to decide

Finding
for each
specific
charge &
allegation

DETERMINATION & REMEDIES



Not Responsible/Not In Violation – revisiting restrictions



Responsible/In Violation – sanction guidelines, prior history, readmission



Considerations, resources, consistency, non-discrimination

BREAK!



SUNY SCI
STUDENT CONDUCT INSTITUTE



The State University
of New York

DETERMINING RESPONSIBILITY

- ☐ Identify the **allegations** potentially constituting sexual harassment
- ☐ Describe the **procedural steps** taken
- ☐ Identify **findings of fact** supporting the determination
- ☐ Identify which **section of the grievance policy** respondent has or has not violated
- ☐ For **each allegation**, provide a statement of and rationale for:
 - ☐ The result, including a determination regarding responsibility;
 - ☐ Any disciplinary sanctions imposed on the respondent; and
 - ☐ Whether remedies designed to restore or preserve equal access to recipient's education program or activity will be provided to the complainant; and
- ☐ Describe the recipient's **appeal procedures**

RATIONALE, IN PRACTICE

- DESCRIPTION OF EVIDENCE REVIEWED (i.e. written statements, report filed through TIX Investigator, screen shots of various message threads, & witness testimony)
- Description of relevant CODE OF CONDUCT / TITLE IX GRIEVANCE PROCESS section
- Description of STANDARD OF EVIDENCE
- RE-STATEMENT OF FINDING (not responsible/responsible)
- RATIONALE supporting finding, including evidence was relied on & what the substance of that evidence was, & if applicable, evidence that was not relied on
- Any DISCIPLINARY SANCTIONS imposed upon respondent
- Any REMEDIES DESIGNED TO RESTORE OR PRESERVE EQUAL ACCESS to the education program or activity will be provided to the complainant



STANDARD OF EVIDENCE DESCRIPTION

For each charge, state the standard of evidence being used

- Preponderance of the Evidence, *or*
- Clear & Convincing

*“By a **preponderance of the evidence** the hearing board has found the respondent, Cody Norman, is more likely than not...”*

DESCRIPTION OF EVIDENCE REVIEWED

Provide a **BRIEF SUMMARY** of the evidence used in making the decision

- **Witness testimony** – “Verbal testimony given by the complainant that observed ... “
- **Witness testimony** – “Verbal testimony given by witness #1 that stated ... corroborated ... ”
- **Text messages** – “Text messages sent between the respondent and complainant during the days of 09/23/25 and 10/10/25 ...”
- **Email Communications** – “Screenshots of emails sent to the complainant between the days of 09/23/25 and 10/10/25 ...”

DESCRIPTION OF EVIDENCE REVIEWED

Provide a **BRIEF SUMMARY** of the evidence **NOT USED** in making the decision

- **Witness testimony** – “Verbal testimony given by the complainant that was not relevant because ... “
- **Text messages** – “Text messages sent between the respondent and complainant during the days of 09/23/25 and 10/10/25 that did not provide additional context...”
- **Email Communications** – “Screenshots of emails sent to the complainant between the days of 09/23/25 and 10/10/25 that were not related to the charges...”

ALLEGATION(S) DESCRIPTION

- **RESTATE THE CHARGES**

Sample case:

- **Stalking:** Engaging in a course of conduct directed at a specific person (Complainant) that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress.
- **Sexual Assault:** Forcible or nonforcible sex offense under the informal crime reporting system of the Federal Bureau of Investigation

SANCTIONS AND/OR REMEDIES

- **Appropriate Sanctions:** If the student is found responsible, outline the sanctions.
- **Appropriate Remedies:** If remedies are being provided to the complainant, outline them here
- **Rationale for Sanctions/Remedies:** Explain why the chosen sanctions/remedies are appropriate, considering factors such as the severity of the offense, past conduct history, & educational outcomes or institutional obligations to the complainant

TONE & STYLE

- **Objective & Neutral:** Avoid personal opinions or emotional language.
- **Concise but Comprehensive:** Include enough detail for clarity but avoid unnecessary repetition.
- **Consistent with Institutional Policies:** Ensure alignment with the student conduct code.



BREAKOUT!

Using the information you have right now, what is your group's decision regarding responsibility, and why?

ODD NUMBERED GROUPS – Determine responsibility for Sexual Assault Charge

EVEN NUMBERED GROUPS – Determine responsibility for Stalking Charge

Page 4 on Sample Document 11
Page 60 from the Full Materials Document



DETERMINING SANCTIONS

**CLOSING STATEMENTS
IMPACT OF SANCTIONS
PROPORTIONALITY
CONSISTENCY
PRIOR DISCIPLINARY
HISTORY
EDUCATIONAL MISSION**




IMPACT STATEMENTS

BOTH PARTIES CAN SUBMIT IMPACT STATEMENTS

In these statements a party can:

- Provide context for their behavior
- Suggest possible options for the board to consider
- Describe the impact the process has had on them, the other party, or their community
- Suggest sanctioning or request leniency

A photograph of two people, a woman and a man, standing against a dark blue background. The woman, Joyce Conceição, is on the left, wearing a black top and a light-colored skirt, with her hand near her chin in a thoughtful pose. The man, Benji Houser, is on the right, wearing a grey plaid blazer over a white shirt and black tie, looking down at a blue folder he is holding. Both individuals are identified by text boxes as roles in an administrative hearing process.

Joyce Conceição
Administrative Hearing
Officer


Benji Houser
Hearing Panel Chair

IMPACT STATEMENTS

Cody, the respondent, submits an impact statement for the hearing, and acknowledges that there are things he could have done differently and indicates remorse for his behavior, however they request that he be allowed to maintain membership on the varsity table tennis team.

Cody states that before joining the team, he was very lonely and felt very detached from the community. Now, membership on the team provides some stability and community that would otherwise be missed. Cody also states that he has an athletic scholarship, and without that scholarship he would be unable to maintain enrollment at SCI University.

Cody has indicated some remorse and makes a request to avoid a sanction with a list of reasons as to why, which can be helpful for determining both why a sanction is being considered and what kind of sanction should be assigned.

A woman with long dark hair, wearing a black top and a light-colored skirt, is standing and looking thoughtfully at the camera with her hand near her chin. Next to her, a man with short brown hair, wearing a grey plaid blazer over a white shirt and black tie, is looking down at a blue folder he is holding, with a pen in his hand.

Joyce Conceição
Administrative Hearing
Officer

Benji Houser
Hearing Panel Chair

IMPACT OF SANCTIONS

SANCTIONS SHOULD ADDRESS ANY AGGRAVATING AND/OR MITIGATING FACTORS OF A CASE

Aggravating factors **INCREASE** severity of a violation

- EX: Lack of remorse or understanding, presence of weapons, premeditation

Mitigating factors **DECREASE** severity of a violation

- EX: Non-violent offense, demonstrated capacity or willingness to change behavior

Restorative measures rather than purely punitive sanctions

Disproportionate effect on student unrelated to the circumstances

PROPORTIONALITY

SANCTIONS **PROPORTIONAL** TO OFFENSE

Is sanctioning consistent with the kind of violation considered before the hearing panel?

Mitigating/Aggravating Factors

Rationale needed when deviating

Open Container of Alcohol	Violent Offense Under the Influence of Alcohol
Warning	??

CONSISTENCY

***DEVIATION FROM INTERNAL CONSISTENCY CAN BE
SEEN AS **ARBITRARY & CAPRICIOUS*****

Individual treatment of cases an imperative

Many cases may have similar circumstances & outcomes

- Colleges must have record keeping protocol

History & guidance can assist in sanction development

Disregarding consistent sanctioning response must be rationalized

Student 1	Cody?
Responsible for Stalking	Responsible for Stalking
Removal from Housing	Warning & Reprimand
Rationale	???

PRIOR DISCIPLINARY HISTORY

REMEMBER: PRIOR MISCONDUCT IS *NOT EVIDENCE OF RESPONSIBILITY* FOR NEW MISCONDUCT

Hearing panels can use prior findings of responsibility to assist in determining sanctions for new responsible findings

Prior similar violations with similar circumstances may indicate a need for more impactful sanctioning

- Frequency of violation, also

More punitive motivation than other considerations

Cody	
Responsible for Stalking	Responsible for Stalking
January 2025	December 2025
Probation, Counseling, Educational Sanctioning	???

INSTITUTIONAL MISSION

***WHAT DOES YOUR INSTITUTIONAL MISSION
HAVE TO SAY ABOUT **STUDENT MISCONDUCT?*****



Institutional philosophy may influence your office & practice

Scheduling systems for sanction, predetermined outcomes for responsible findings

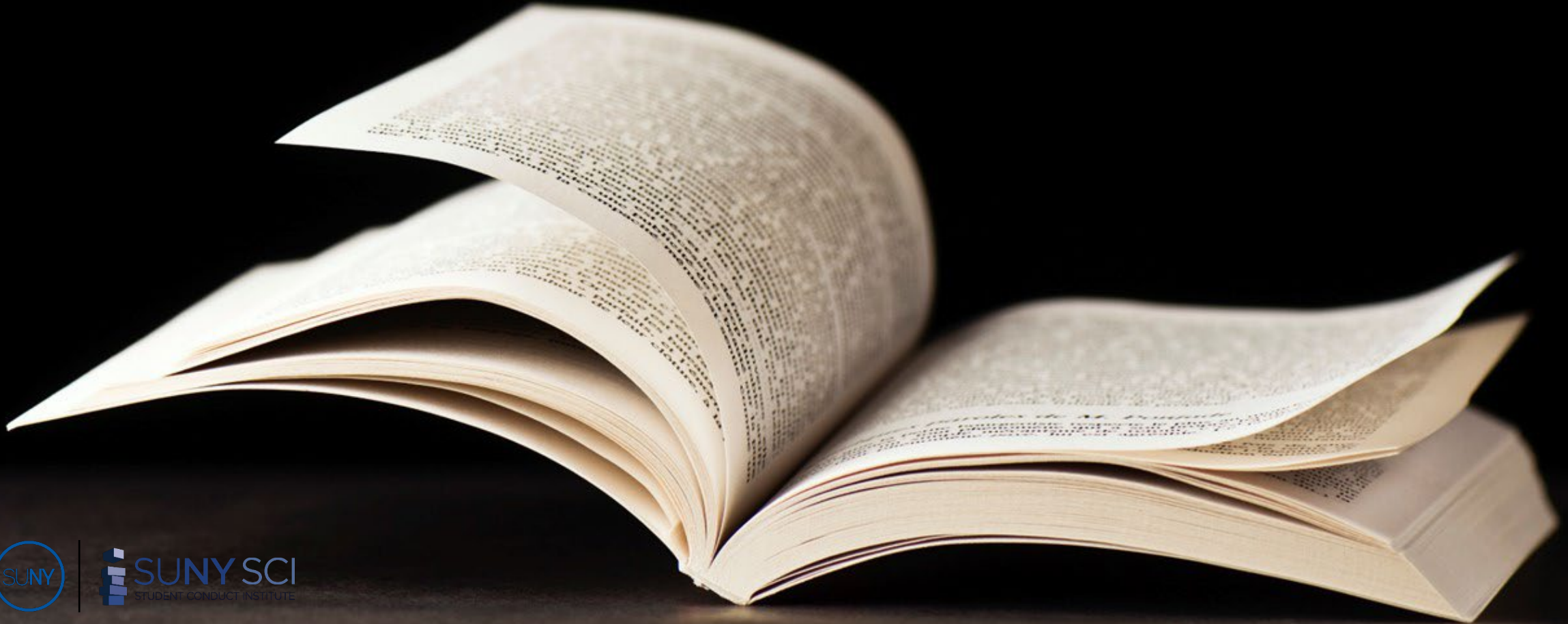
Collaborative approaches with other offices, or with responsible students

Performance plans or behavioral agreements

COMMON SANCTIONS

WARNINGS OR REPRIMANDS	Both written and/or verbal
CREATIVE OR EDUCATIONAL	Reflection papers, presentations, letters to future-selves, pre-made programs designed for specific circumstances
PUNITIVE MEASURES	Probation, suspension, or permanent separation from the institution
RESTORATIVE MEASURES	Intentional dialogues with community members, service dedicated to repairing harm or restoring relationships
ENGAGEMENT WITH RESOURCES OR SERVICE	Counseling, or wellness-related services, partnerships with on-campus offices to engage students with community & campus

KNOWLEDGE CHECK!



APPEALS PROCESS

3 MANDATED GROUNDS

1

PROCEDURAL IRREGULARITY that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures);

2

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;

3

The Title IX Coordinator, investigator(s), or decision-maker(s) had a **CONFLICT OF INTEREST OR BIAS** for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter

An opportunity for a student to bring forward specific concerns that may have impacted the result of the original hearing (as defined in your institution's code of conduct) (Kalagher, S.S. & Curran, R. D., 2020)



WHAT IS AN APPEAL?



- Appeals are not mulligans or do-overs
- No second-guessing or micro-management of hearings
- Cannot deviate from procedures
- All parties must be notified of appeals
- All new panel to hear appeals
- Conflicts of interest and/or bias prohibited
- Additional grounds for appeal may be considered, but only if publicly available & applicable to all

APPEAL CONSIDERATIONS



Harriet Dejesus
Cody's Advisor

A man with dark hair, wearing a grey blazer over a striped shirt, is holding a large white sign. The sign has the text 'WHEN CAN A PARTY APPEAL?' in bold, with 'WHEN' in blue and 'CAN' in orange. 'A PARTY' and 'APPEAL?' are in orange. The word 'WHEN' is underlined.

WHEN CAN A PARTY APPEAL?

Harvey O'Sullivan
Liana's Advisor

**APPEALS CAN TAKE PLACE ANY
TIME A DECISION IS MADE.**

This includes, but may not be limited to:

- Supportive measures (any kind)
- Emergency removals
- Relevance determinations
- Evidence or question exclusions
- Adjustments made throughout the process
- Decisions/determinations
- Dismissals of complaint

YOUR INSTITUTION **REQUIRES A
MECHANISM TO HEAR
CHALLENGES.**



Appeal decisions must be **in writing**.

Parties notified simultaneously through official communication.

The decision must include, **at minimum**:

- The grounds for appeal, or grounds considered;
- The rationale for granting or denying the appeal; &
- If the appeal is granted, what are the next steps for remedy and why?

What is a remedy?

- Example: increase or decrease the severity of sanction for the respondent



APPEAL DECISION

KNOWLEDGE CHECK!



QUESTIONS?

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**THANK YOU SO MUCH FOR
JOINING US! *WE ARE SO
GRATEFUL TO ALL OF OUR
MEMBERS JOINING US FOR OUR
TRAININGS.***

**PLEASE COMPLETE THE **POST-
TRAINING SURVEY** SO THAT WE
CAN ADJUST, IMPROVE, &
CREATE NEW TRAININGS FOR
ALL OF YOU.**

