




Training on the Sexual Misconduct Policy and Procedures for Title IX Grievance Committee
March 10, 2022
Part 1



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STATE UNIVERSITY
EST. 1900

1



SAVE THE DATE: Next Training

Thursday, March 31
1 PM – 3 PM
Virtual Meeting

All trainings (SUNY SCI online programs and two virtual programs) must be completed to participate in a Title IX case.

2

Agenda

- Title IX Fundamentals
- ***Definitions of Prohibited Conduct***
- University's Response to Sexual Misconduct
- ***Investigations***
- ***Hearings***
- ***Appeals***
- Informal Resolution

**These materials have been adapted from "Title IX & Sexual Harassment Response" training at the University of Maryland, College Park in Winter 2021.



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3

Confidentiality

- Information in Title IX cases should be kept confidential and only discussed as necessary during the grievance process.
- Parties to an incident are free to discuss the allegations under investigation and gather or present evidence.
- First Amendment limits Coppin State's ability to restrict speech about a case.



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4

Title IX Fundamentals

What is Title IX?

“[N]o 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.”

32 C.F.R. §106.31

5

Scope of Title IX Coverage

- Recruitment, Admissions, Hiring in workplace
- Academic instruction, Financial aid, Workplace, Work-Study
- Sport teams, Clubs and Organizations sponsored activities, Residence life,
- Off-campus trips or experiences organized by Coppin,
- Anything else that happens on-campus



6

Does Title IX apply to off-campus sexual harassment?



Yes, if the conduct at issue occurs in the context of an education program or activity



Yes, if the conduct at issue occurs in a house owned or controlled by an officially-recognized Greek organization or other student organization



No, if it occurs in a private location and is NOT part of an institution's education program or activity
No, if it occurs in an international program



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7

Key Terms

- ✓ Complainant = Reporting Party; Victim or Survivor
- ✓ Respondent = Responding Party; Accused or Perpetrator
- ✓ Alleged incident



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8

What is Sexual Harassment?

Conduct on the basis of sex that is:

Quid pro quo
harassment

Hostile
environment
harassment

Sexual
assault

Dating
Violence

Domestic
violence

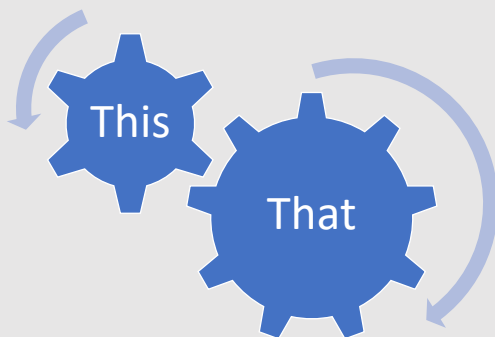
Stalking



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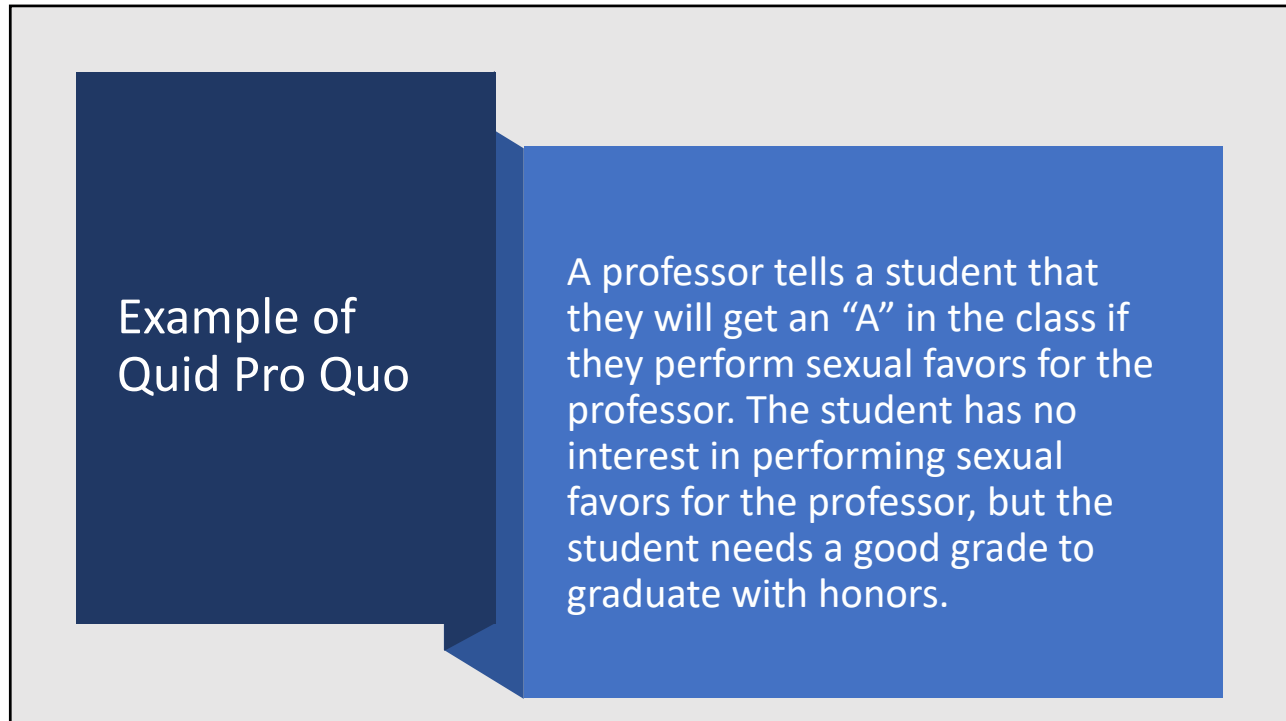
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What is Quid Pro Quo?



- An employee of the institution conditions the provision of some aid, benefit or service on another person's participation in unwelcome sexual conduct
- Often arises in the employment context or where an employee holds a position of authority over a student

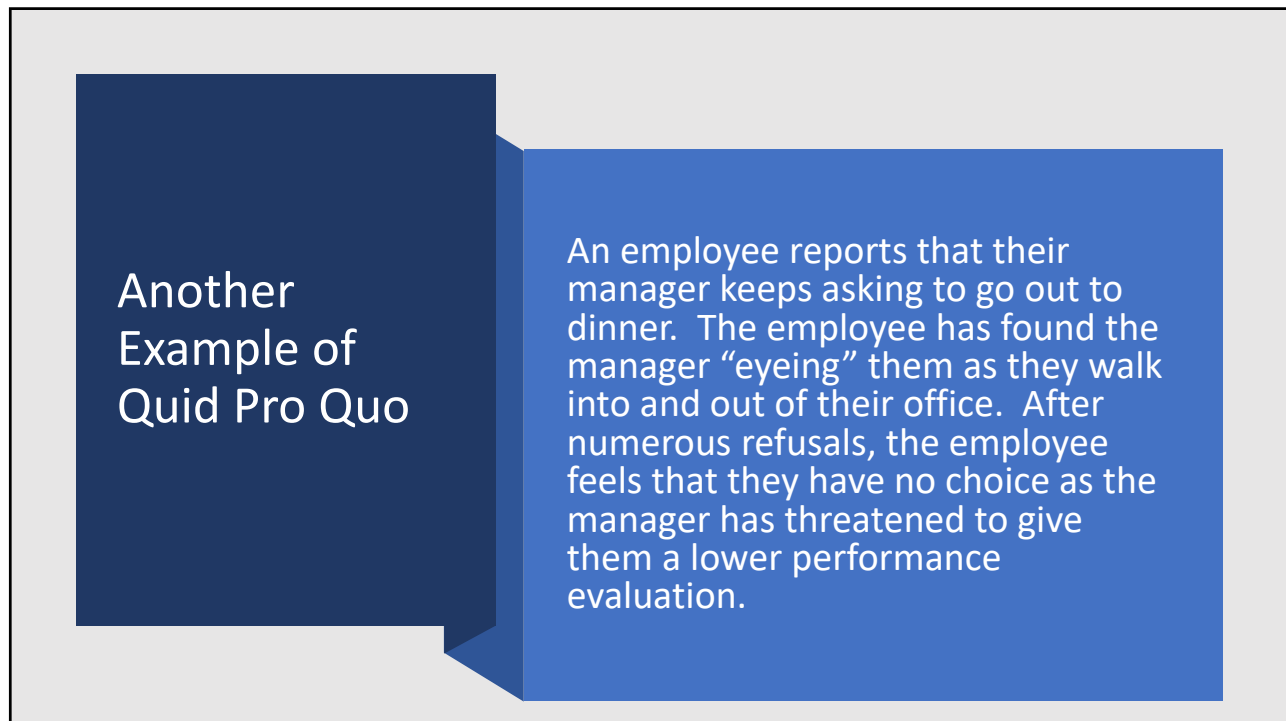
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Example of Quid Pro Quo

A professor tells a student that they will get an “A” in the class if they perform sexual favors for the professor. The student has no interest in performing sexual favors for the professor, but the student needs a good grade to graduate with honors.

11



Another Example of Quid Pro Quo

An employee reports that their manager keeps asking to go out to dinner. The employee has found the manager “eyeing” them as they walk into and out of their office. After numerous refusals, the employee feels that they have no choice as the manager has threatened to give them a lower performance evaluation.

12

A hostile environment is defined as ...

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.



13

How do we determine if a hostile environment exists?

Consider all the facts and circumstances, such as:

- Type of misconduct
- Frequency of the misconduct
- Where the misconduct occurs
- Whether a power differential exists, etc.
- From the perspective of a reasonable person



14

Example of hostile environment

Terry repeatedly gropes Alex's buttocks when the two are in the elevator of their residence hall. Alex has no romantic interest in Terry. Alex has told Terry to stop, but Terry continues to make Alex feel uncomfortable. Alex uses the stairs instead of the elevator to avoid Terry.

15

Another example of hostile environment

Terry asks Alex to go on a date, and Alex says, "no." Terry then repeatedly sends Alex text messages using various vulgar and sexual terms that make Alex feel uncomfortable. When Terry and Alex attend the same math class, Terry whispers these vulgar terms toward Alex loud enough for others to hear. Alex blocks Terry's phone number and drops the class.

16

What is sexual assault?

Title IX regulations define “sexual assault” as the following types of conduct:

Rape

Sodomy

Sexual Assault
with an object

Fondling

Incest

Statutory Rape

17

Rape is defined as...

Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.

18

What is Consent?

- Words or actions that a reasonable person in the Respondent's perspective would understand as agreement to engage in the sexual conduct.
- A person who is incapacitated is not capable of giving consent.
- Consent cannot be obtained by coercion.
- Be aware of the minimum age of consent (16 years old)

19

What is incapacity?

Incapacity refers to a state where a person does not appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition or disability, or due to a state of unconsciousness or sleep.

20

Example of incapacitation

Alex has had ten shots of whiskey and 5 silo cups of beer over the course of two hours. Sam takes Alex home. Alex can't walk without support, forgets Sam's name, and passes out when Sam places Alex on the bed. Sam then has sex with Alex.

21

What is sodomy?

Oral or anal sexual intercourse with another person without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

22

What is sexual assault with an object?

Using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the perpetrator other than the perpetrator’s genitalia.

23

Fondling is defined as ...

Touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

24

Example of fondling

Alex and Terry attend a concert held in the James Weldon Johnson auditorium. While attending the concert, Terry gropes Alex's groin without permission. Alex feels very uncomfortable and tells Terry to stop but it happens several times during the concert.

25

What is incest?

Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

26

What is statutory rape?

Sexual intercourse with a person who is under the statutory age of consent as defined by law. In Maryland, any person who is 15 years of old and younger is not capable of consenting to sexual activity.

27

Domestic violence

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 state, 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 state.

28

Dating violence

“Dating Violence” is violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- Where the existence of such a relationship will be determined based on 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.

29

Example of dating violence

Employee Carey and Employee Shane are engaged to be married but live separately and have no children in common. Carey and Shane get into an argument in Carey’s car that is parked in the University’s parking lot. During the argument, Shane slaps Carey’s face and tells Carey to “shut your mouth.”

30

What is stalking?

Engage 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.

31

Example of stalking

Terry is infatuated with Alex who has refused Terry's romantic advances. Terry dresses in black and sneaks up to the window of Alex's off-campus apartment at night in order to see Alex. Terry does this twice before being caught in the act during Terry's third attempt.

32

Other Sexual Misconduct

Sexual Coercion: unreasonable pressure to compel another person to initiate or continue sexual activity against the person's will

Sexual Exploitation: Taking non-consensual or abusive sexual advantage of another person for one's own advantage or benefit or for someone else's advantage or benefit other than exploited person

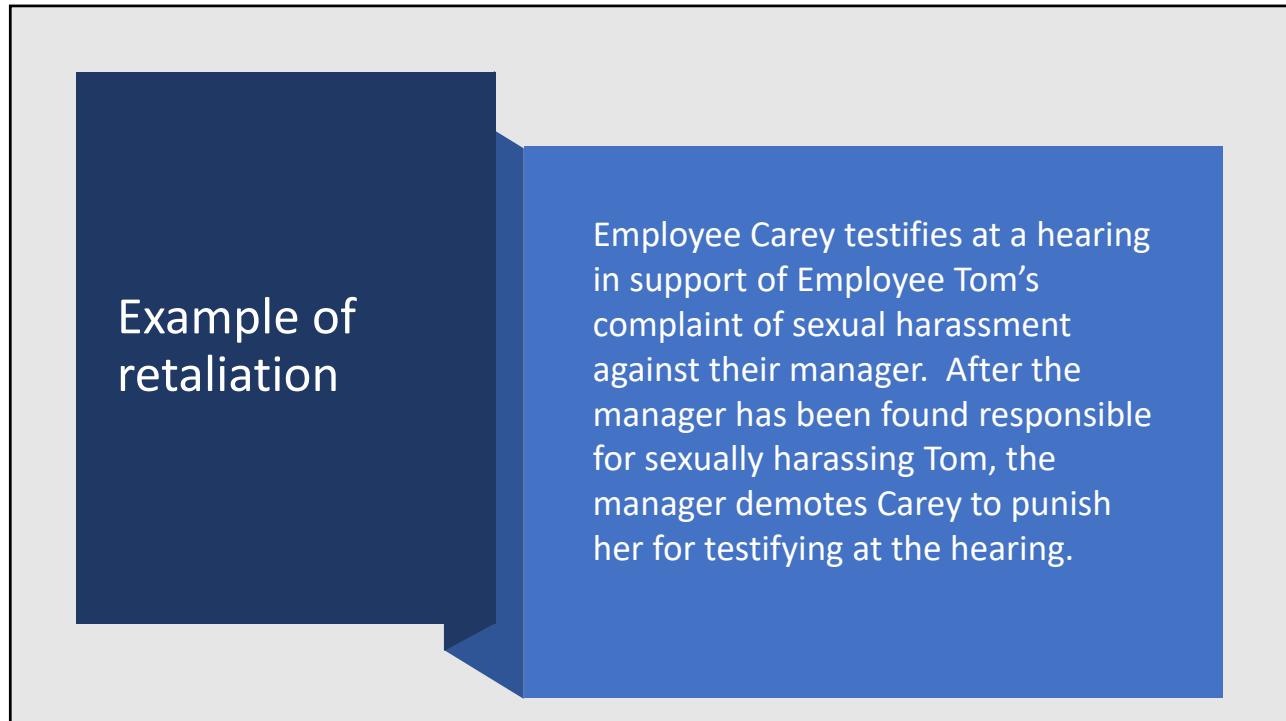
Sexual Intimidation: Threatening behavior of a sexual nature directed another person (ie, threaten to sexually assault or engaging in indecent exposure)

33

Does Title IX also prohibit retaliation?

Yes - Title IX prohibits intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, testified, assisted, participated in or refused to participate in any manner in an investigation, proceeding, or hearing under the institution's policy.

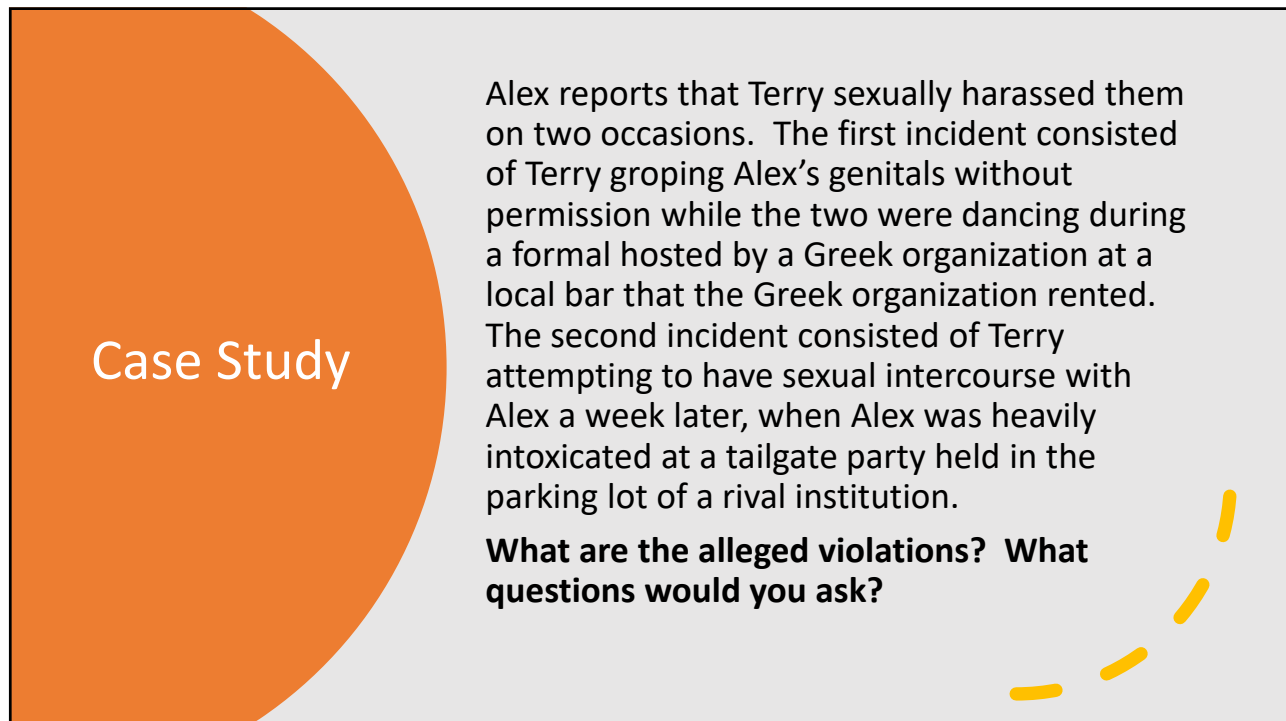
34



Example of retaliation

Employee Carey testifies at a hearing in support of Employee Tom's complaint of sexual harassment against their manager. After the manager has been found responsible for sexually harassing Tom, the manager demotes Carey to punish her for testifying at the hearing.

35



Case Study

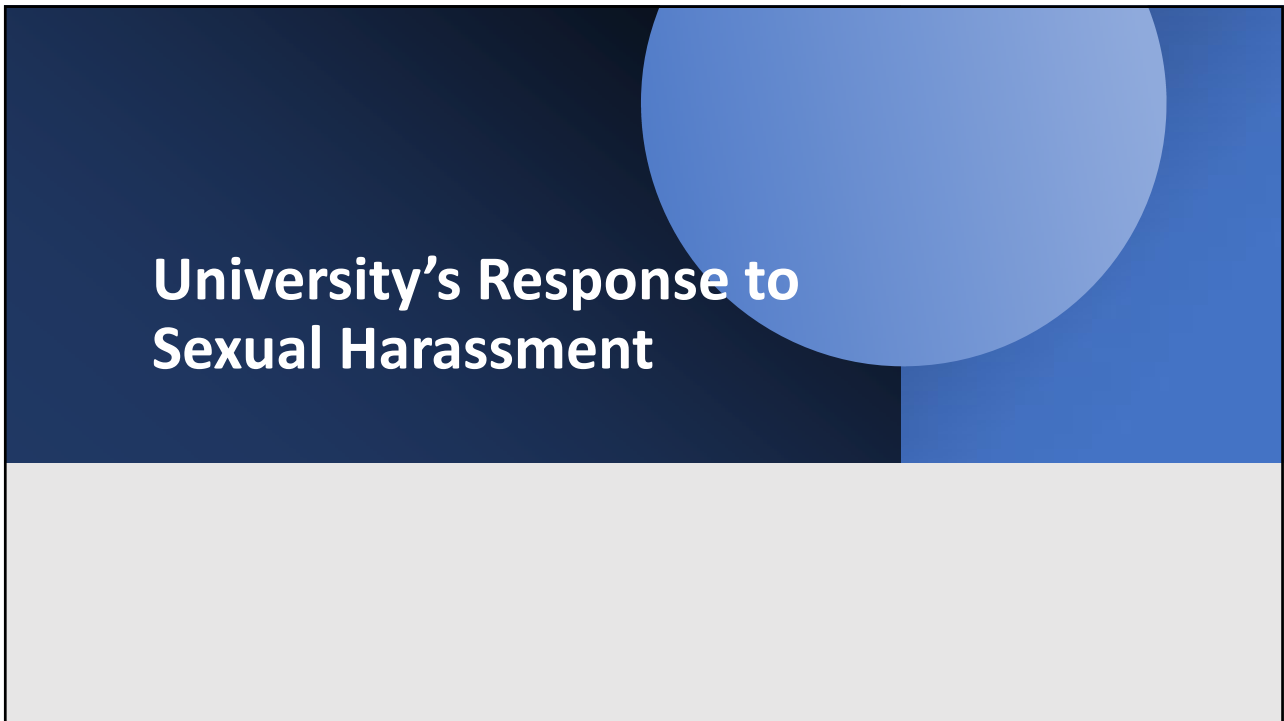
Alex reports that Terry sexually harassed them on two occasions. The first incident consisted of Terry groping Alex's genitals without permission while the two were dancing during a formal hosted by a Greek organization at a local bar that the Greek organization rented. The second incident consisted of Terry attempting to have sexual intercourse with Alex a week later, when Alex was heavily intoxicated at a tailgate party held in the parking lot of a rival institution.

What are the alleged violations? What questions would you ask?

36

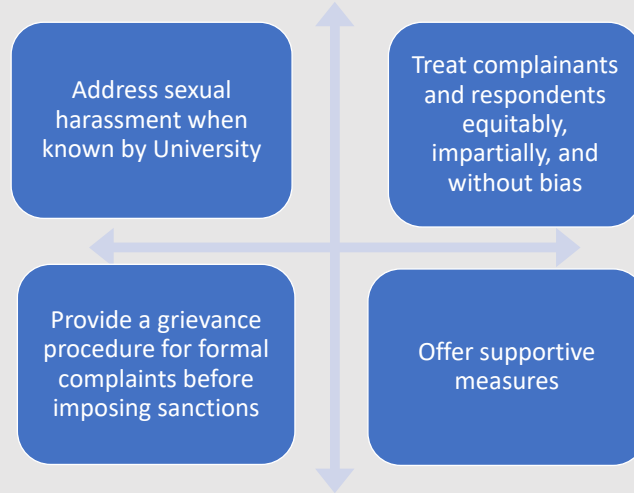


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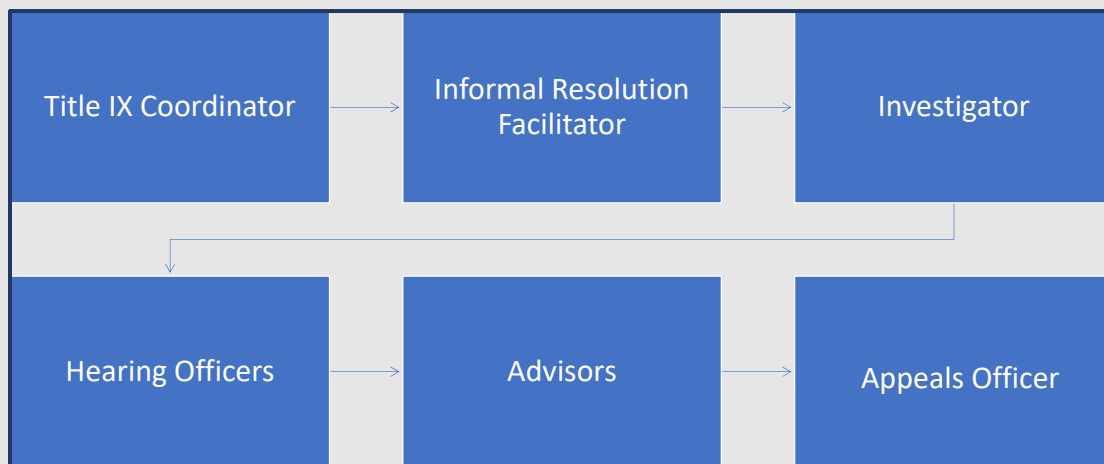
What are the University's overall duties?



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Who are the key actors in the grievance process?



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40

When is an institution “on notice” of sexual harassment?

- Sexual harassment response is triggered when institution has **“actual knowledge”** of potential sexual harassment.
 - “Actual knowledge” is when
 - An institutional official, with the authority to take corrective action (different from “Responsible Employees”)
 - Observes or receives a report
 - Of sexual harassment occurring in the institution’s education programs or activities.



After Title IX Coordinator has “actual knowledge” of alleged sexual harassment,

- Title IX Coordinator must contact alleged victim.
- Provide information about supportive measures, explain the grievance process, and how to file a formal complaint, and discuss the alleged victim’s wishes.

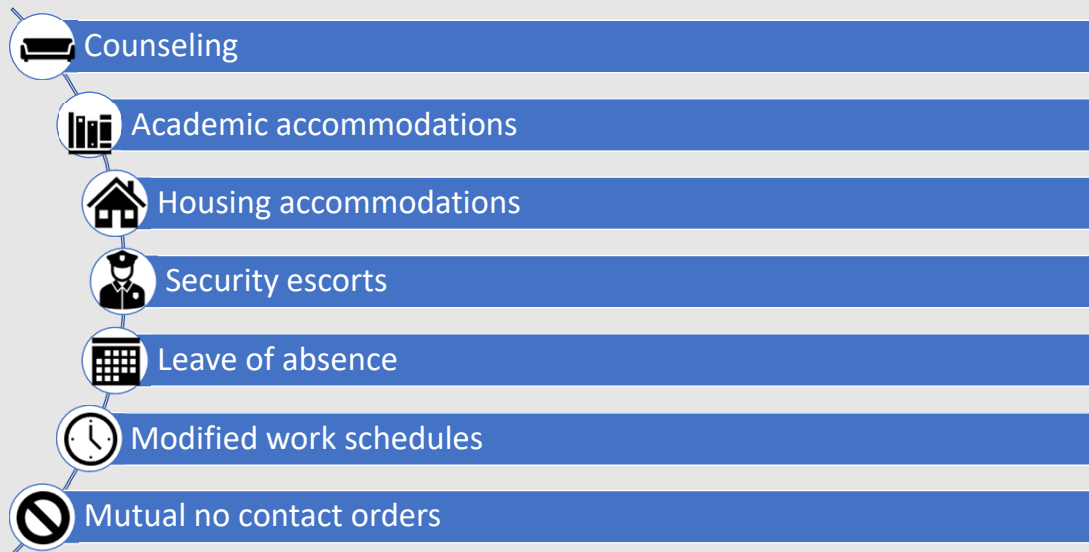


What are supportive measures?

- Non-disciplinary, non-punitive supports and accommodations designed to preserve access to education programs and activities
- Reasonably available without fee or charge
- Without unreasonably burdening the other party

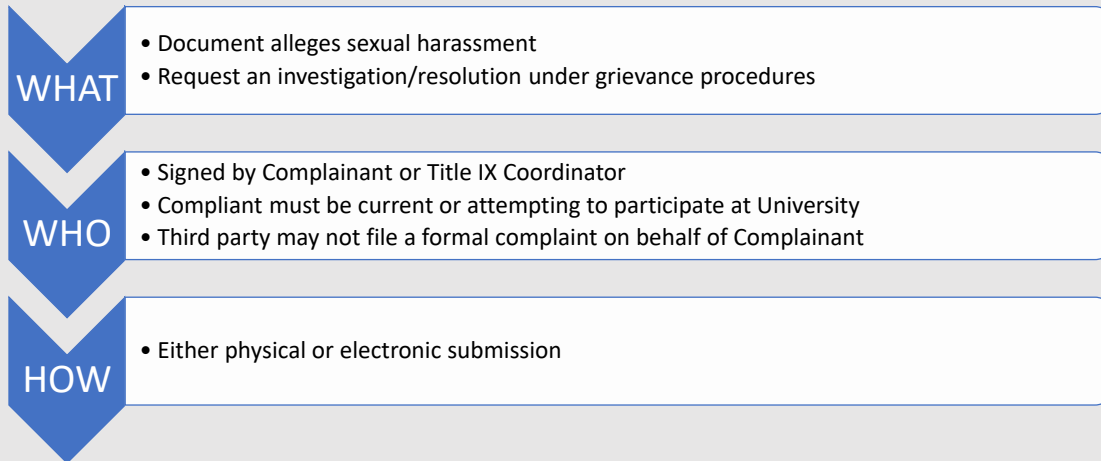
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Examples of Supportive Measures



44

A Formal Complaint starts Grievance Process



Mandatory Dismissal v. Permissive Dismissal of Formal Complaint

Mandatory Dismissal	Permissive Dismissal
<ul style="list-style-type: none"> • Complainant is not current student/employee or attempting to enroll • Complaint does not allege sexual harassment in Coppin's education programs or activities • Complaint alleges sexual harassment abroad • Conduct alleged would not amount to sexual harassment even if it occurred as reported 	<ul style="list-style-type: none"> • Complainant wants to withdraw the complaint (or particular allegations) • Respondent is no longer enrolled in or employed by the institution. • Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination

Can we consolidate the complaints?

Yes – complaints can be consolidated if they arise out of the **same facts and circumstances**.



Multiple
respondents



Multiple
complainants

✓ May also include multiple allegations against a respondent



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47

What is the grievance process?

Investigation to collect
relevant inculpatory and
exculpatory evidence

Live hearing before hearing
officers who find facts
under a preponderance of
evidence standard and
determine if a policy was
violated or not violated and
any resulting sanctions

Appeal



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48

Important Factors in a Grievance Process

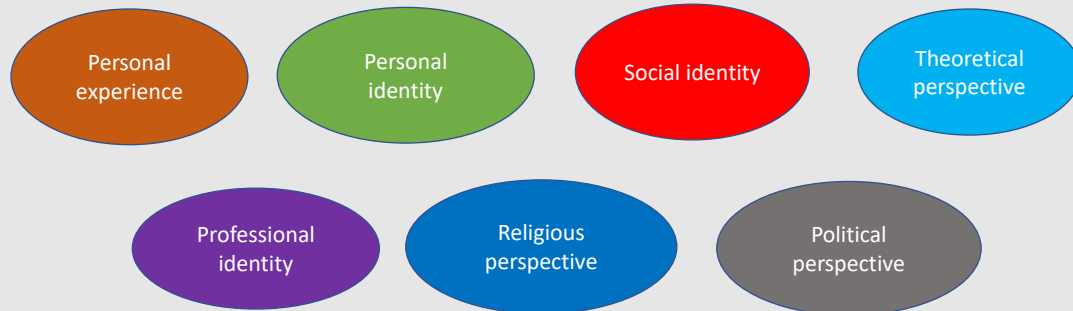
- Equitable, fair and **impartial** treatment of all parties and witnesses
- Avoid stereotypes based on the person's status as a complainant or respondent
- Presumption respondent is **not responsible** until a determination is made at a hearing
- Conflict and bias-free Title IX Grievance Committee members



What is a conflict of interest?

- ✓ Do I know either party and/or have a pre-existing relationship that will impact my ability to be an impartial actor in this process?
- ✓ Have I served in a different role in this specific process already?

How to recognize bias?



51

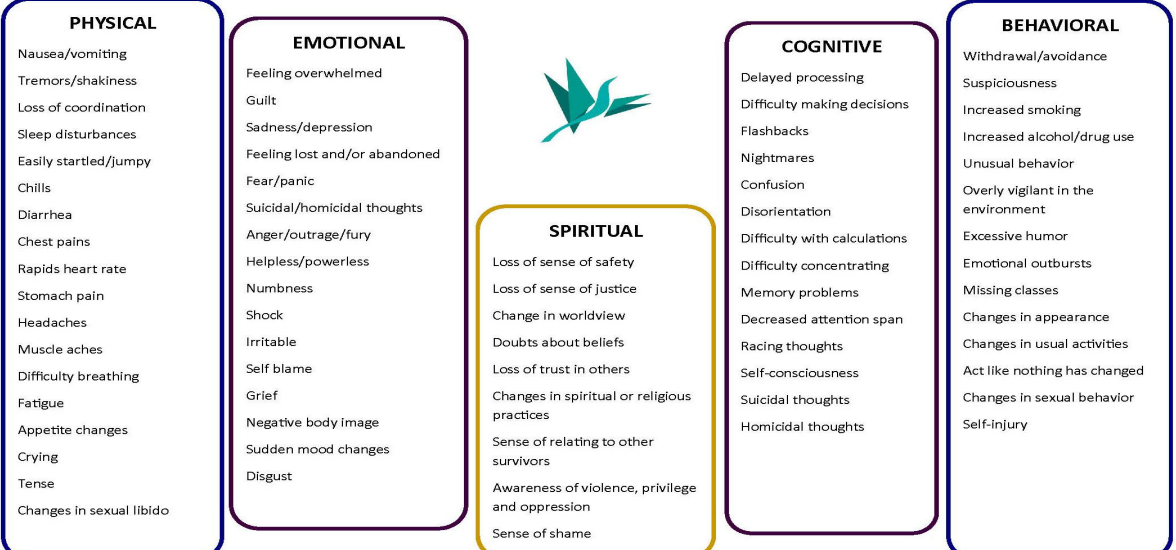
Trauma-informed practices require balance

“Trauma-informed investigation techniques that bleed over into ... bias detract from the fundamental tenets of fairness and impartiality that are [key to] disciplinary proceedings.”


- Candace Jackson, Acting Asst. Secretary of ED
(2017)

52

Common Reactions to Trauma and Sexual Assault




PHYSICAL	EMOTIONAL	SPIRITUAL	COGNITIVE	BEHAVIORAL
<ul style="list-style-type: none"> Nausea/vomiting Tremors/shakiness Loss of coordination Sleep disturbances Easily startled/jumpy Chills Diarrhea Chest pains Rapids heart rate Stomach pain Headaches Muscle aches Difficulty breathing Fatigue Appetite changes Crying Tense Changes in sexual libido 	<ul style="list-style-type: none"> Feeling overwhelmed Guilt Sadness/depression Feeling lost and/or abandoned Fear/panic Suicidal/homicidal thoughts Anger/outrage/fury Helpless/powerless Numbness Shock Irritable Self blame Grief Negative body image Sudden mood changes Disgust 	<ul style="list-style-type: none"> Loss of sense of safety Loss of sense of justice Change in worldview Doubts about beliefs Loss of trust in others Changes in spiritual or religious practices Sense of relating to other survivors Awareness of violence, privilege and oppression Sense of shame 	<ul style="list-style-type: none"> Delayed processing Difficulty making decisions Flashbacks Nightmares Confusion Disorientation Difficulty with calculations Difficulty concentrating Memory problems Decreased attention span Racing thoughts Self-consciousness Suicidal thoughts Homicidal thoughts 	<ul style="list-style-type: none"> Withdrawal/avoidance Suspiciousness Increased smoking Increased alcohol/drug use Unusual behavior Overly vigilant in the environment Excessive humor Emotional outbursts Missing classes Changes in appearance Changes in usual activities Act like nothing has changed Changes in sexual behavior Self-injury

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53

Impact of Trauma on a Party is Variable

- Don't assume information is not credible due to the manner delivered.
- Understand that memory may become clearer over time.
- Never assume that anyone participating in a hearing has suffered any trauma.
- Trauma is not isolated to complainants. Respondents may also experience trauma.

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54

Case Study

Alex reports that Terry stalked Alex by peeping in the shower stall of the locker rooms by the gym, and by stealing Alex's underwear from the laundry room in the residence hall. Alex seek supportive measures but does not want to file a formal complaint and is concerned that Terry may retaliate if Terry learns of the report. Alex graduates in two months, while Terry will not graduate for another year. It is unclear whether Alex will testify at the hearing.

What are the alleged violations? What do you need to find out?

55



Questions

56

Investigations

57

What is the purpose of an investigation?

- To collect relevant evidence
 - inculpatory – supports allegation that a respondent committed the violation
 - exculpatory evidence – supports that respondent did not commit alleged violation
- Sufficient to permit impartial decision-makers to determine
- If a policy violation of sexual harassment has occurred



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58

How do we tell the parties about an investigation?

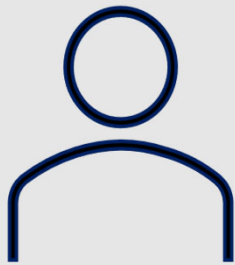
- University provides written notice of a formal complaint, including the Judicial Complaint Form includes “who, what, when where, and how.”
- Presumption that the Respondent is **not responsible** until a determination is made at the end of the process
- That parties have the right to **two advisors of their choice**
- That parties have the right to inspect and review evidence
- Prohibition on knowingly providing false statements or information



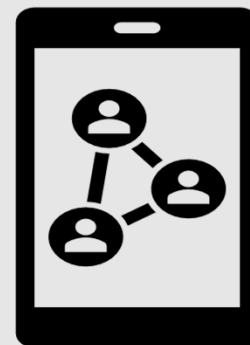
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59

How do we collect evidence in an investigation?



Interviews of parties
and witnesses



Collection of non-
testimonial evidence



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60

Structure of the Interview

Introductions & Building Rapport

- Explain the nature of the investigation, your role, and the rules of the interview (Advisors are not permitted to speak for party or act in a disruptive manner.)
- Explain why you need accurate and detailed information
- Acknowledge the stress of the process and refer to Sexual Misconduct Policy and Procedures documents
- Make sure that you collect any non-testimonial evidence (ie, text messages, voicemails, photos, social media posts, etc.)
- Wrap up and let them know that you may follow up with additional questions.



Helpful Questions to ask at every interview...

- “I want to get as much information as possible, so please provide as much detail as possible. And please let me know if I don’t ask about something that you think is important.”
- “As an investigator, I need accurate information. So, I always remind everyone that it’s important to tell the truth.”
- “If you don’t understand the question, please let me.”
- “If you don’t know an answer to a question, it’s okay to say you don’t know.”
- “If you think I’ve misunderstood anything you say today, please tell me.”



Effective Interviewing Techniques



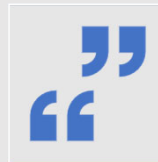
Use open-ended and neutral questions

“Tell me what happened that night?”

“Will you walk me through what you remember?”

“Tell me more about that.”

“What happened next.”



Follow up on certain topics by asking

“You mentioned that... Can you tell me more?”

“You said that... What did you mean?”

“You used the work ‘uncomfortable’ to describe... Can you be more specific about how you felt?”

“If I heard you correctly, you said that after... Did anything happen in between?”



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63

Effective Interviewing Techniques con't

- Actively listen and use cues such as “Uh-huh,” “Ok,” “I follow you...,” “Go on” to keep conversation going.
- Ask direct questions to get clarification (ie, “What did she say?” “What day did that happen?”)
- Avoid suggestive or leading questions (ie, “If I experienced what you did, I would probably feel threatened. Did you?”)
- Save questions that you learned in a separate interview for last

64

Examples of non-testimonial evidence

- Email
- Video from cameras
- Card swipes
- Timesheets
- Social media
- Institution-owned computers, networks, servers
- Public Safety
- Cellphone text messages, voicemails, photos
- Physical evidence – objects or material



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Is evidence of prior sexual history permitted?

Generally no. Evidence of prior sexual history between the Parties may be relevant under the following limited circumstances.

Evidence of a complainant's prior sexual behavior is relevant only if offered only to prove that someone other than the respondent committed the conduct.

Evidence of specific incidents of the complainant's prior sexual behavior with the respondent are offered to prove consent.

66

Privileged records are not accessible.

Documents made or maintained by a physician, psychiatrist, psychologist or other recognized professional are not accessible by the University unless the party waives the privilege.

Must be waived in voluntarily and in writing.

University cannot access its own counseling and health files for investigation purposes.



67

Draft and Final Investigation Report

- Draft Investigation Report will be provided to both Parties and Advisors for review and written comment for 10 days.
 - Errors
 - Questions for Investigator
 - Suggestion for additional witnesses or evidence that should be obtained
 - Argue for or against evidence that was gathered
 - Raise any issues of bias or conflict of interest that must be addressed
 - Raise concerns about the evidence that is contained in the report or that there is evidence that was not considered directly relevant by the Investigator and should be in the report.
- After all comments are reviewed and addressed by the Investigator, then the Final Investigation Report is issued and sent to the Parties and Advisors. Parties will have another 10 days to provide written comments and after that period of time, the Final Investigation Report and any written comments are share with the Office of Student Conduct and Community Standards for a hearing.



68

Important Role of Advisors

- Parties may have up to **2 Advisors of their choice** during any meeting, interview, or hearing.
- Advisor may be an attorney, but not required. The other is a support person.
- Advisors play a passive/silent role during the investigation.
- Advisor plays an active role during a hearing as they are allowed to ***cross-examine parties and witnesses***.
- If a party does not have an advisor for a hearing, University **MUST** provide one for the purpose of questioning the other party and witnesses.
- Advisors must maintain decorum during the grievance process. Disruptive advisor may be asked to leave.
- Advisors must keep information private and are not permitted to disclose outside of the grievance process.



69

Hearings

70

Purpose of Hearings

- Hear testimony by the investigator, complainant, respondent, and witnesses, and review all non-testimonial evidence to determine the facts of case
- Determine by a preponderance of evidence whether those facts have resulted a policy violation as outlined in Formal Complaint
- Issue a written determination including a rationale for the findings and sanctions, if appropriate



71

Logistics of Hearings

- Usually, 3 hearing panel members for each case
- All hearing panel members will be emailed at least a week in advance of the hearing to see whether they are available. Please respond promptly with availability.
- Materials will be shared in advance of the hearing. Please read through them prior to the hearing.
- At least 3 hours are allocated for a hearing, but they can be longer.
- After hearing ends, deliberations among hearing panel members will occur on a separate day.



72

Technology Overview at Hearings

- Hearings must be recorded (audio or video) or transcribed
- Hearings must be “live” meaning parties must be able to be seen and heard when answering questions in Title IX cases
- Hearings will be conducted via Teams, but hearing panel members must be in same room so that you can communicate with each other.
- Parties may communicate with their advisors by phone in a virtual setting.



Agenda for Title IX Hearings



Introduction

- Panel, parties, and advisors introduce themselves
 - Rights and responsibilities are reviewed
 - Charges are read and respondent pleads responsible or not responsible
 - Investigator will present a summary of the investigation and questions by hearing officers
 - Cross-examinations by parties' advisor (complainant, then respondent)
 - Respondent opening statement and questions by hearing officers
 - Cross-examination by complainant advisor
 - Complainant opening statement and questions by panel
 - Cross-examination by respondent advisor
 - Witness testimony and questions by hearing officers
 - Cross-examination by parties' advisors
 - Closing statement by respondent
 - Closing statement by complainant
- Closed deliberation for hearing officers

What is relevance and who determines it?

Evidence is relevant

- (1) if it has the tendency to make a fact more or less probable than it would be without the evidence; and
- (2) the fact is of consequence in determining the action.

Hearing Chair determines relevance.



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75

What evidence is not relevant?

The following is **irrelevant**:

- Sexual predisposition or prior sexual behavior (rape shield law)

Unless such questions and evidence about the complainant's prior sexual behavior are offered to prove:

- That someone other than the respondent committed the conduct alleged by the complainant
- Consent when the questions and evidence concern specific incidents of the complainant's prior sexual behavior **with the respondent**

Unless such questions or evidence about the respondent's prior sexual history with an individual other than a Party may only be considered if it:

- Proves prior sexual misconduct
- Supports a claim that a Party has an ulterior motive
- Impeaches a Party's credibility after that Party has put their own prior sexual conduct at issue.
- Privileged information: Medical Records
- Duplicative or abusive questions
- New information (can be remanded to investigation)
- **Panels should not ask questions about irrelevant information.**



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76

Exercise on Relevancy

Is the question relevant or irrelevant?

- Terry is accused of sexually assaulting Alex when Alex was incapacitated by alcohol at a party. Advisor for Terry asks Alex: “Did you send any text messages or make any phone calls during the party?”
- Advisor for Alex asks Terry: “Isn’t it true that you are only interested in dating Alex because she comes from a lot of money?”
- Advisor for Terry asks Alex: “How many guys have you slept with and that you have accused of sexual assault?”

77

Questioning Guidelines – Hearing Officers and Advisors

- Take the complaint from start to finish through a process of broad to narrow questions and issues that need to be addressed
- Engage in a matching process
 - Ask questions about the allegations and the evidence and the policy elements
 - Focus on areas of conflicting evidence or gaps of information
- Don’t try for the “Perry Mason” moment – you won’t get it
- Ask questions in a straightforward, non-accusatory manner
- When dealing with conflicting testimony, ask questions that would confirm or deny sexual misconduct occurred.
- Is conflicting testimony a result of credibility concerns?



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78

Weighing Evidence & Decision-making

- Must weigh evidence from all sources such as the Final Investigation Report, testimony and in non-testimonial evidence.
- Not all evidence/facts have equal value
- Some evidence may be more reliable and sufficiently useful to prove or disprove the allegations
- Weight depends on- credibility; corroboration; consistency; level of detail; whether witness is disinterested, etc.



Written Decision of Outcome

The outcome is delivered as close to simultaneously to the parties.

- Identifies the allegations of sexual harassment
- Describes the various procedural steps taken from the time the formal complaint was made
- States findings of facts supporting the determination
- Reaches conclusions regarding application of relevant policy definitions to the facts
- Includes a rationale for each finding for each allegation
- States the disciplinary sanctions and remedies, if implicated by the determination made, and
- Explains the procedures and grounds for appeal



Rationale is important

- Findings of fact
- Analysis of what findings of fact support the determination of responsibility or non-responsibility
- Detailed description of the major components
- How evidence and information presented was weighed
- How the evidence and information support the result and the sanctions (if applicable)
- How preponderance of the evidence was applied to facts and outcome



81

Sanctions

Consider:

- Read and review Impact Statements from Parties, if submitted.
- Interests of the University community
- The impact of the violations on the victim(s)
- Previous documented conduct history
- Any mitigating or aggravating circumstances (severity of offense, nature of offense, harm to complainant, etc.)
- Precedent
- Should be designed to restore access for complainant
- If responsible, start with most severe sanction (ie, Expulsion or Termination) and then go to less severe if applicable
- Determine rationale with each step



82

Case Study

Alex has filed a Formal Complaint against Terry for sexual assault. Chris, a witness for the complainant, stated that just before the alleged sexual assault, they believe that Alex was “really trashed” because Alex had a hard time walking and couldn’t stand up. Chris is a bit fuzzy on the details because Chris pre-gamed before the party and then continued to drink after arrival. Another witness, Bob, confirmed that Chris was really drunk that evening and that Alex was having a “good time.” Alex has been traumatized and has been going to counseling for PTSD.

What questions would you ask?

83

Appeals

84

Purpose and Ground for Appeal

- Either Party or both may appeal dismissal of complaint or hearing outcome
- Not able to re-argue an outcome
- Appeals are paper reviews only
- Grounds for an appeal:
 - Procedural irregularity that affected the outcome of the matter
 - New Evidence, not reasonably available at the time of determination of responsibility or dismissal was made, that could affect the outcome of the case
 - Title IX Coordinator or Deputies, investigators, or hearing panel had a conflict of interest or bias for or against the complainant(s) or respondent(s) generally, or the individual complainant or respondent that affected the outcome of the matter.
 - The party alleges that the sanctions imposed are grossly disproportionate to the findings of responsibility.



Role of Appellate Hearing Board Member

- Appellate hearing officer's review is **limited in scope** to the grounds stated in the appeal
- Appellate hearing officer does NOT hold a new hearing
- Review the appeal, response, and hearing record (to the extent necessary depending on the grounds for appeal)
- Appeal outcome must be made in writing that states the outcome and rationale.



Possible Outcomes of Appeal

- Affirm the original decision
- Affirm the original decision of responsibility for some or all charges and change the sanction
 - Sanction may be reduced or increased
- Reverse the original decision of responsibility for some or all charges and change the sanction
 - Sanction may be reduced or increased
- Remand to original hearing panel
 - Cases of new evidence



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87

Informal Resolution

88

Informal Resolution Process

A voluntary process to resolve Formal Complaints as an alternative to the formal investigation and adjudication process.

May be requested by either party, any time after a Formal Complaint is filed.

Both parties must agree to the Informal Resolution

Either party may withdraw from Informal Resolution up until the point it is final.

Cannot be used where an employee is accused of sexually harassing student

Cannot be used in cases of sexual assault or sexual coercion.

89

Examples of Informal Resolution

- Trained facilitators, including Title IX Coordinator, may conduct informal resolution.
- May be third party mediators or alternative dispute resolution specialist

Examples include:

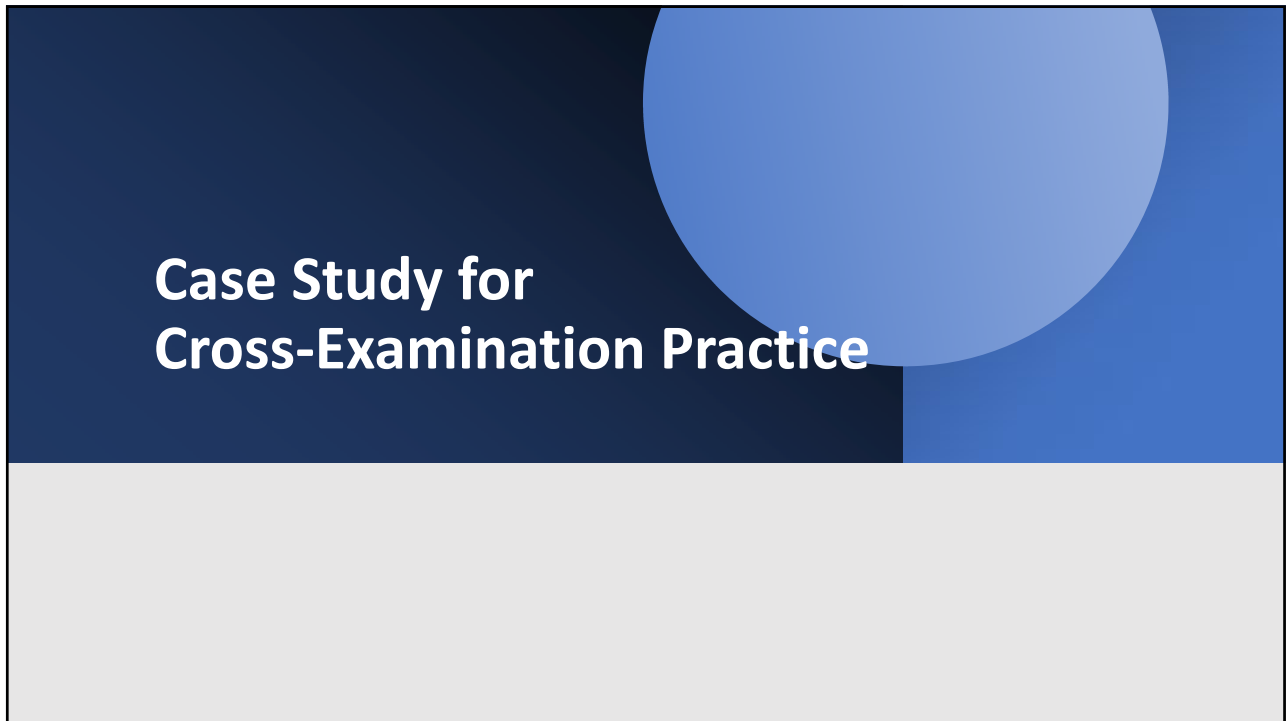
- Facilitated exchange of resolution offers
- Mediation
- Arbitration
- Restorative Justice



90



91



92

Alex and Terry

Please read Case Study and Judicial Complaint Form.

- Hearing Officers will ask questions to the Respondent, Terry.
- Then Advisors (to the Complainant, Alex) will cross-examine Terry.

[Please practice asking relevant questions.]

