

# Basic Investigator Training; Title IX



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Title IX of the Education Amendments of 1972  
20 U.S.C. §1681 et seq.,

“No person in the United States shall, on the basis of sex, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any education programs or activity receiving Federal Financial Assistance.”



# Law, Cont.

## The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“The Clery Act”)

- Requires policies and procedures for sexual assault
- Requires timely warning and external reporting of crimes
- Requires annual publication of an Annual Security Report for public review
- Requires supportive measures to be offered to all parties

## Section 304 of the Violence Against Women Reauthorization Act of 2013 (“VAWA”)

- Requires response to allegations of sexual misconduct
- Extends Clery to include dating violence, domestic violence and stalking
- Requires training of campus personnel involved in sexual misconduct adjudication
- Entitles parties to advisor of their choice



# Title IX

Prohibits *sex-based discrimination* “**sexual harassment**”

- includes all forms of sexual misconduct\*:
  - sexual harassment
  - stalking
  - domestic violence
  - assault

Prohibits gender-based discrimination

- includes bullying and discriminatory sex stereotyping
- harassment of gender non-conforming students

Prohibits retaliation



## Title IX; cont.

- Student-on-student harassment if conduct is sufficiently serious that it interferes with or limits a student or employee's ability to participate in or benefit from the school's program
  - The more severe the conduct, the less repetition needed for a hostile environment*
- Protects others from sexual harassment or violence in an institution's programs and activities
- Prohibits discrimination/harassment by or against faculty & staff



# Title IX; Definitions

**Sexual Harassment (Student on Student):** Unwelcome verbal, nonverbal, or physical conduct based on sex (including gender stereotypes), determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to participate in or to benefit from an institutional education program or activity.

**Sexual Harassment (Other Than Student on Student):** Unwelcome verbal, nonverbal, or physical conduct, based on sex (including gender stereotypes), that may be any of the following:

- Implicitly or explicitly a term or condition of employment or status in a course, program, or activity;
- A basis for employment or educational decisions; or
- Is sufficiently severe, persistent, or pervasive to interfere with one's work or educational performance creating an intimidating, hostile, or offensive work or learning environment, or interfering with or limiting one's ability to participate in or to benefit from an institutional program or activity.



# Title IX; Definitions

**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.

For the purposes of this definition:

- Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with person's property.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily, require medical or other professional treatment or counseling.



# Title IX; Definitions

**Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the alleged victim. The existence of such relationship shall be determined based on the totality of the circumstances including, without limitation to: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Domestic Violence.

**Domestic Violence:** Violence committed by a current or former spouse or intimate partner of the alleged victim; by a person with whom the alleged 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, or by a person similarly situated to a spouse of the alleged victim.





# Sexual Misconduct; Definitions

- **Nonconsensual Sexual Contact:** Any physical contact with another person of a sexual nature without the person's consent. It includes but is not limited to the touching of a person's intimate parts (for example, genitalia, groin, breasts, or buttocks); touching a person with one's own intimate parts; or forcing a person to touch his or her own or another person's intimate parts. This provision also includes "Fondling" as defined by the Clery Act.
- **Nonconsensual Sexual Penetration:** Any penetration of the vagina, anus, or mouth by a penis, object, tongue, finger, or other body part; or contact between the mouth of one person and the genitals or anus of another person. This provision also includes "Rape, Incest, and Statutory Rape" as defined by the Clery Act.



# Sexual Misconduct; Definitions

**Sexual Exploitation:** Taking non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited.

- Examples of sexual exploitation may include, but are not limited to, the following:
- Invasion of sexual privacy;
- Prostituting another individual;
- Non-consensual photos, video, or audio of sexual activity;
- Non-consensual distribution of photo, video, or audio of sexual activity, even if the sexual activity or capturing of the activity was consensual;
- Intentional observation of nonconsenting individuals who are partially undressed, naked, or engaged in sexual acts;
- Knowingly transmitting an STD or HIV to another individual through sexual activity;
- Intentionally and inappropriately exposing one's breasts, buttocks, groin, or genitals in non-consensual circumstances; and/or
- Sexually-based bullying.



# Sexual Misconduct; Definitions

**Consent:** Words or actions that show a knowing and voluntary willingness to engage in mutually agreed-upon sexual activity. Consent cannot be gained by force, intimidation or coercion; by ignoring or acting in spite of objections of another; or by taking advantage of the incapacitation of another where the respondent knows or reasonably should have known of such incapacitation. Minors under the age of 16 cannot legally consent under Georgia law.

- Consent is also absent when the activity in question exceeds the scope of consent previously given. Past consent does not imply present or future consent. Silence or an absence of resistance does not imply consent.
- Consent can be withdrawn at any time by a party by using clear words or actions.



# Sexual Misconduct; Definitions

**Incapacitation:** The physical and/or mental inability to make informed, rational judgments. It can result from mental disability, sleep or any state of unconsciousness, involuntary physical restraint, status as a minor under the age of 16, or from intentional or unintentional taking of alcohol and/or other drugs. Whether someone is incapacitated is to be judged from the perspective of an objectively reasonable person.



# Duty Respond/Investigate

- Institutional response obligation regardless of law enforcement action  
→ *two can co-occur*
- Once Institution **has direct knowledge of** sexual harassment, the University must take **immediate and corrective action**
  - eliminate harassment
  - prevent recurrence
  - address effects of harassment



# Institutional Response to Reports

## **Title IX Coordinator**

- will assess whether alleged conduct falls under the Sexual Misconduct Policy or another policy;

## **Apply Supportive Measures**

- Available to any party in order to support their access to education. These can include academic forgiveness, classroom reassignments, grade forgiveness, residence relocation, security measures including no contact orders, etc.

## **Assign Investigators**

- Where the Title IX Coordinator determines it appropriate, will assign investigators to begin their fair and impartial investigation.



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- Available to any party in order to support their access to education. These can include academic forgiveness, classroom reassignments, grade forgiveness, residence relocation, security measures including no contact orders, etc.

## **Assign investigators**

- Where the Title IX Coordinator determines it appropriate, will assign trained investigators to begin their fair, impartial and trauma-informed investigation.



## Process/Investigation

- Process all complaints of sexual misconduct, to determine whether the conduct:
  - Occurred in the context of an education program or activity;
  - Occurred between students;
  - Occurred on campus-controlled property; “Title IX ‘jurisdiction’”;
  - Had continuing effects on campus or in an off-campus education program or activity; or
  - Even if there are no continuing effects of the off-campus sexual violence, the school still should handle these incidents as it would handle other off-campus incidents or misconduct or violence.
- Investigators must be adequately and regularly trained and must be free from bias





# Conducting an Investigation



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# Requirements of an Adequate Investigation

- Provisions for adequate, reliable, impartial and prompt investigation of complaints require:
  - the opportunity for both parties to present witnesses and evidence;
  - supportive measures to be implemented before the final outcome of the investigation;
  - periodic updates on the status of the investigation to be presented to the parties;
  - a fair and unbiased approach to questioning
  - **Stick to the Notice of Allegations!**



## Example - Workshop

\*Import redacted NOA for Example – distribute in packet and work through scenarios about “what we’re looking for” – as we set up our interview plan.

## Requirements of an Adequate Investigation, Cont.

- Important to have a clear understanding of what is to be accomplished with an investigation.
  - Aim is to gather as complete a set of facts as possible.
  - Go into an interview with the intent of gaining a better understanding of the issues at hand.
  - Do not go into a meeting with assumptions.
  - Listen to what is being said. Focus on the answer, not the next question.
  - Provide any assistance needed to the individual.
  - While gathering facts, look for information to corroborate other testimony.
  - Assess the credibility of the witness.



# Credibility

- Assess credibility of statements; whether the account is probable and could realistically occur
- NOT an assessment of the person's character – (i.e., they did something I don't approve of = they're lying)
- Trauma impacts recall; if account is non-linear, jumps around or has gaps does not automatically mean it's a lie
- If the account contradicts itself on major items or is not substantiated by witness accounts, could be false.
- Usually it takes multiple iterations of questions of parties and witnesses will bring forth most accurate account

# Sources of Information

- Conduct interviews of the complainant, the respondent, and any witnesses, including first responders;
- Review law enforcement investigation documents, if applicable and available;
- Review student and personnel files;
- Gather and examine other relevant documents or evidence;
- Use checklists of the various sources of evidence to be considered.



# Investigation

- Establish a timeline for the investigation to ensure that the investigation is completed within 120 days (or longer depending on the complexity of the complaint). The timeline should include:
  - Factual investigation
    - interviewing complainant(s) and respondent(s)
    - interviewing witnesses
    - follow up interviews with complainant(s) and respondent(s)
  - Coordination with any other ongoing school or criminal investigations of the incident, if applicable
    - Review of law enforcement documents, if applicable
  - Gathering evidence
    - Reviewing student and personnel files
  - Drafting a report of findings
  - Factor in extra time for unforeseen delays



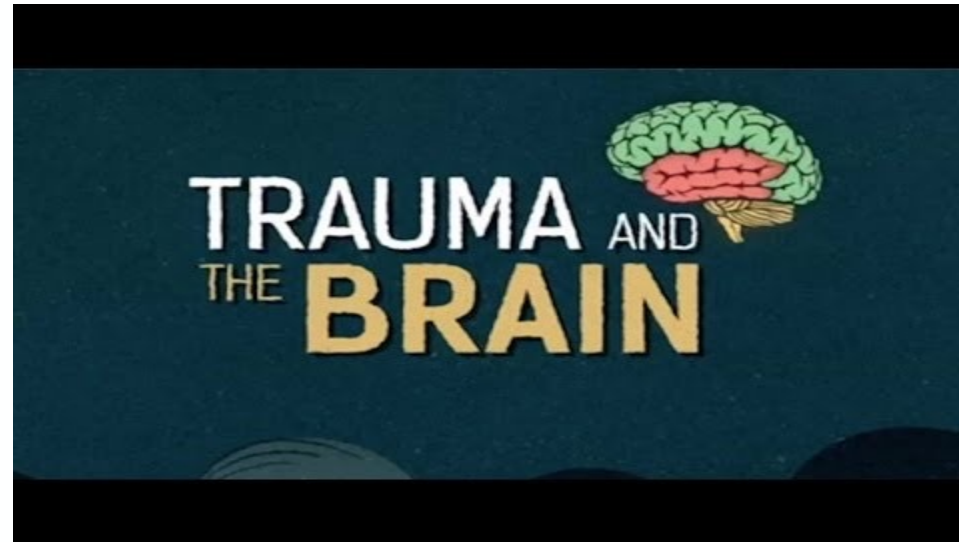
# Interviews



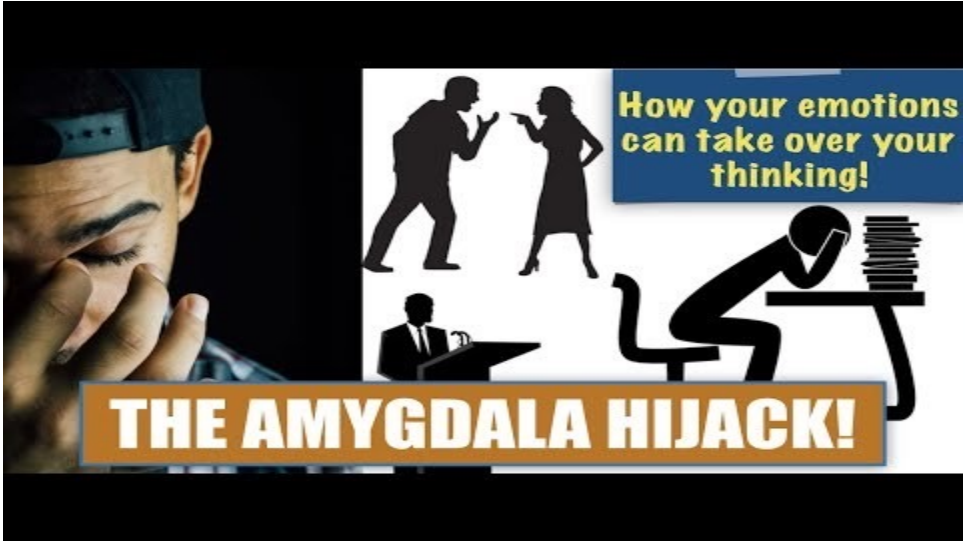
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# Trauma Responses and Impact



# Trauma and Your Brain



# Explore Facts, Don't Prosecute

- Allegations usually highly charged, with emotions running high on both sides.
  - Set the tone for the investigation, and to ensure that all parties are treated with fairness, sensitivity, and compassion.
  - Not prosecutorial in manner, but rather as an impartial and reliable process that is intended, as best as possible, to determine what actually occurred.
- Must be comfortable asking questions about sexual matters, and who does not reflect or feel negative judgments or disdain for either party. An effective investigator, is someone who is:
  - respectful,
  - personable,
  - neutral,
  - and calm.
- The investigator should be able to put any witness at ease, establish a rapport, and elicit information thoroughly, efficiently, and comfortably.



# Prepare

- Review the particular portions of the code of conduct or policies that are alleged to have been violated, and understand the elements of any violation
- Review relevant documents (e.g., any statements from the parties, law enforcement documents, relevant student files, text messages)
- Determine whether there were witnesses to the incident
- Determine whether prior similar incidents have occurred or been alleged
- Identify the subjects about which the complainant and respondent are believed to agree and disagree
- Prepare an investigative plan, determining who will be interviewed and in what order
- Determine sources of additional evidence and how to get it
- Determine what questions will be asked of each witness
- Allegations usually highly charged, with emotions running high on both sides.
  - Set the tone for the investigation, and to ensure that all parties are treated with fairness, sensitivity, and compassion.
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# Ask Good Questions

- Provide the witness sufficient context for the questions
- Explain, in general fashion, why the information is being gathered
- Explain the degree of confidentiality that applies to the information gathered, and how it will be used
- Emphasize the importance of honesty
- Explain the institution's anti-retaliation policy
- Begin by asking neutral, non-judgmental, and open-ended questions relating to the incident
- Ask questions about the same subject in slightly different manners to determine whether the party provides a similar response, provides different or conflicting information, or provides what appears to be a rehearsed or "canned" response
- Raise questions about inconsistencies in a curious but non-confrontational manner
- Save tough questions (e.g., those that bring to light inconsistencies) for later in the interview so the witness does not get defensive
- Refrain from asking questions about complainant's "character" or "reputation," or about sexual encounters with anyone other than the respondent
- Consider exploring the nature of any current or prior sexual relationship between the complainant and respondent





# Questioning Complainant

## **Avoid questions that imply fault or that suggest victim blaming:**

- Why didn't you tell him directly to stop commenting on your body?
- Why did you wait so long to report this?
- If you were sexually assaulted, why didn't you go to the hospital right away?
- You had the chance to report this incident to the police, why didn't you choose to do that?
- How did the respondent get your clothes off without a struggle?
- Did he/she say "no" like she/he meant it?
- Was the complainant flirting with the respondent that evening?
- What was the complainant wearing that evening?
- If you don't remember everything that happened that night, how are we supposed to know what happened?

## Questioning Complainant, Cont.

To help frame the questions, ask yourself the following:

- Will the answer to this particular question help me understand if a violation of policy occurred?
- How will the answer to this question illuminate whether or not a person's behavior meets the definition of a violation?
- Does the information I am attempting to elicit serve my curiosity about the person or the incident? Or, does it help the panel make a decision?



# Good Questions

- “It says in the investigative report that you felt drunk and were wobbly. Can you elaborate on that?”
- “The investigative report indicates that the respondent kept buying you shots. Can you tell me what you remember about that?”
- “I understand you told X that you had a lot to drink that night. I think it may be helpful to get a clearer picture of how much you drank and how you felt it affected you. Can you tell me about that?”
- “I want to understand the dynamic between you and your partner better.”
- “You mention that your friend said you could stay with her after your partner hit you. You said that you decided to go home with your partner. I am hoping you could tell me more about that decision.”







# Interview of Respondent

- Respondent deserves the same level of respect as Complainant
- Fairness and equity are key
- Not a court of law, “guilt” will not, and may not be determined
- Likely under a similar amount of stress as Complainant
- In some situations, the complaint may be a surprise to Respondent

# Interviewing Witnesses

- Prepare a list of questions you plan to ask in advance of meeting each witness.
- Ask the witness if he or she has spoken with anyone about the matter or investigation.
- Only share with the witness the details of the investigation and the complainant that are needed to conduct the interview.
- After explaining the reason for the interview, ask the witness if he or she feels that you should speak with anyone else.
- Request documents or other evidence that may be helpful in your investigation.
- Explain to the witness why confidentiality is important and the privacy of those involved should be protected.
- Explain that retaliation is prohibited both against someone for participating in an investigation and against someone for filing a complaint.
- Explain to the respondent that a complaint has been filed and set forth the process involved in an investigation of this nature
- Provide the respondent with a copy of the policy
- Explain that the investigator's task is simply to gather the facts
- Describe the basis for the complaint and the behaviors alleged
  - and by whom (confidentiality permitting)
- Ask about the specifics of the complaint and allow the respondent to respond to any of the allegations in the complaint



# Other Tips

- During all of the interviews take detailed notes
  - Of what each person says. Use quotes to signify the exact words spoke by the interviewee
  - Note their demeanor, as this will help determine credibility (nervous, provide a lot of detail, parts of their story contradicts what they previously said, etc.)
  - Keep notes in the file, but know that it may be disclosed
- Do not suggest answers or appear biased in any way
- Remember that the goal of an interview is to gather information
- Actively participate and be sure to listen to what is being said



## Other Tips

- Stay in contact with both the complainant and the respondent throughout the process
  - If there is going to be a delay in the investigation, let the parties know
  - Clearly document the reasons for any delay
- Stay in contact with local law enforcement, if applicable
- If gather evidence, be sure to preserve that evidence and document how the evidence is maintained (chain of custody)



# Writing A Report



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# The Importance of a Good Report

- Show thoughtful consideration given to evaluating the evidence
- Come to a fair and well-advised conclusion
- Document the process
  - Like a math problem
  - Not enough to simply include findings
  - Must show how you got there



# The Importance of a Good Report

- Take notes as you interview, and type/write up your notes soon after your interview
- Create a timeline
  - Helps to identify inconsistencies
  - Have in front of you while writing the report
- Organize as you go along
- Show thoughtful consideration given to evaluating the evidence
- Come to a fair and well-advised conclusion



# Basis of Good Report

1. Summary of Allegations
2. Procedural History
3. Applicable Policies/Procedures
4. Information Considered
5. Evidentiary Standard
6. Undisputed Facts
7. Factual Findings
8. Analysis and Conclusion





## Example - Workshop

\*Review report template and walk through each component and the why/goal of each component in law.

# Summary of Allegations

- Be clear about what was alleged and what is the specific policy violation at issue
  - Important to frame allegations at the beginning of the investigation within the context of the policy
  - Focus on who, what, where, when, why, how
- Clarify any ambiguous terms
  - “Making out” – what does it mean?
- Work with the complainant to be sure that what occurred is captured
  - Do not want there to be any ambiguity about what has been alleged



# Procedural History

- How and when did the complaint come in
  - By whom and his/her relationship to complainant
- Interim actions taken by the institution
- When, where, and how witnesses were interviewed
  - (name) was interviewed on (date).
  - Any accommodations?
  - Note any witnesses that were not available or were not necessary.



# Applicable Policies and Procedures

- List the applicable policies and procedures
  - What version or year is applicable?
  - Is there more than one applicable policy and procedure?
- There should be no lack of clarity about which policy and procedure is appropriate
  - Use full copies as attachments
- Be familiar with Title IX policy and other relevant policies
  - Faculty or Staff Handbooks
  - Retaliation
  - Violations related to social media policy or hazing



# Information Considered

- Essential to show that you obtained and considered all critical evidence
- Better to be over inclusive
- If called to testify, this section will provide you with a thorough summary of what you collected and reviewed
- It is crucial that the report identifies all relevant information and material that was received and gathered
- Identify who it was submitted by or whether it was obtained from the University
- It can be listed in the report OR
- It can be included in an attachment OR
- A combination of listing in the report and including other things in an attachment



# Undisputed Facts

- Decide what will go into the report.
- To determine what **material and relevant** facts are undisputed, ask:
  - How do we know these facts?
  - Why are we including these facts?
  - Are they really material and relevant?
  - Are they really undisputed?



# Tips for Writing Undisputed Facts

- Use quotes whenever possible.
- If cannot use quotes, must be very precise in your summation
- Examples:
  - Both Emily and Michael agree they *met* at *the party* around 10 pm on Saturday.
    - Did they meet for the first time or did they both arrive at the same time?  
Did they intent to meet there?
    - Was it a party? A few friends hanging out? Who said party – you or them?
  - Both Emily and Michael agreed that they each arrived around 10 pm on Saturday at the off-campus house.



# Resolution of Disputed Facts



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# Disputed Facts

- Go point by point for disputed key facts:
  - What do you think happened?
  - Why?
  - Based on what evidence?
    - If based on a witness, why was that person more credible?
    - Inconsistencies?
    - Corroborating evidence?
- If you have corroborating evidence, attach as an exhibit
  - Don't rely on the reader to do the analysis



# Disputed Facts, Cont.

- Is there:
  - Corroborating evidence?
  - Inconsistencies?
  - Inadequate explanation of inconsistencies?
- Consider:
  - The logic of the person's narrative
  - The impact of the trauma

**Must show your credibility assessment**



# Accounting for Credibility in Report

- Which account makes most sense?
- Could the individuals have seen or heard what they claimed?
- Should the individuals have seen or heard more than they claimed?
- Does one account offer reasoned explanations for the major inconsistencies between the versions?
- How general or detailed were the statements and testimony?
- What reasons might either party have to lie or exaggerate?
- Has either party offered a plausible explanation of why the other might be lying?
- Does any individual have special loyalty to, or special grudge against, the complainant or respondent?
- What corroboration exists?



# Accounting for Credibility in Report

- Factors to consider in assessing credibility:
  - Behavior of the parties/witness
    - Aggressiveness, laughter, emotional
    - Note any changes in demeanor during interview(s)
  - Potential bias or interest in outcome
    - Previous relationship, motive to act a certain way
    - Relationship of witness to parties
  - Detail
    - Even small details may be important
    - Amount of detail can be important
  - Corroborating facts
    - Keep track of facts across parties and witnesses
    - Compare observations of first responders



# Factual Findings

- Group factual findings by allegation or issue:
  - Factual Findings with Respect to Sexual Misconduct
  - Factual Findings with Respect to Retaliation
- Chronology is not as useful when making conclusions
- Preference to repeat factual findings rather than stating, “see above.”



# Analysis & Conclusion

- NOT for those who are only fact finders
- Start to connect the dots, and put it all together
- Looking for policy violations, NOT law
- Analyze factual findings under the applicable policy/policies
- Go allegation by allegation
- Explain your reasoning (SHOW YOUR WORK)



# Analysis & Conclusion; Areas of Dispute

## CONSENT:

- How was it communicated?
- Do the facts support consent as defined in the policy?

## INTOXICATION v. INCAPACITATION:

- Consumption (how much did the drink, do drugs, timing, etc.)
- Conscious (black out, pass out)
- Coordination (need assistance walking, taking clothes off, dialing phone)
- Communications (speaking clearly, responding to questions, expressing confusion)
- Corroboration



# Analysis & Conclusion

- Repeat the allegation from the allegation section
- Include definitions
- Make findings very specific
- Analysis must bring in factual findings
- If you frame it up well, it is then easier to do the analysis
- It can be helpful to number facts
  - You can see what you have used
  - If you don't use a fact, you can go back and see why you have included it in the facts and if it should be removed





# The Hearing

Advisors, Hearing Panel, and Hearing  
Chair



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# Live Hearing

- The Final Rule mandates a bifurcated process
- Final determinations of responsibility and sanctions are made by decision-makers - **HEARING PANEL with CHAIR**
  - CANNOT be the Title IX Coordinator or assigned investigator
  - Informal resolution not permissible for student allegations against an employee
- New due process considerations
  - Cross examination by a party's advisor
  - Relevancy determinations
- Institutions must provide an advisor if a party does not have one



# Evidence – Inculpatory and Exculpatory

- The burden of proof AND burden of gathering evidence is on the institution
- Parties are permitted to present evidence and call witnesses to advance their claims and defenses
  - may include fact or expert witnesses
  - Permitted to establish the weight given to certain types of evidence
  - **NO** character witnesses – credibility v. character



# Relevant and Directly Related

- Evidence is considered relevant if it “has the tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action. Fed. R. Evid. 401
- Evidence is considered directly related if it is evidence that is directly related to the allegations in the formal complaint. This includes evidence that the institution does not intend to rely upon in reaching a determination regarding responsibility, including inculpatory and exculpatory evidence, whether obtained from a party or other source. 85 Fed. Reg. 30438 (May 19, 2020)



# Admit or Deny? Relevancy

## Relevant

- Relevant information relates to the incident at issue
- Relevant information provides sufficient value in making the overall determination

## Irrelevant

- Questions and information regarding the Complainant's sexual history or sexual predisposition unless to prove
  - Someone else other than the Respondent committed the alleged misconduct
  - Consent between the parties



# Admit or Deny? *Protected Information*

- Evidence that is protected by a legally recognized privilege, such as medical records and legal records (or communications). **Professional privilege** protects all communications between a professional legal advisor and his or her clients from being disclosed without the permission of the client. The privilege is that of the client and not of the lawyer.
- **Marital/Spousal Privilege** is the term used to describe two separate privileges that apply to spouses: the spousal communications privilege and the spousal testimonial privilege.
- Protected by **Rape Shield Laws** limit the ability to introduce evidence or cross-examine rape complainants about their past sexual behavior.



# Workshop – Asking Questions

\*Practice admitting/denying questions giving rationale as to why they will be allowed in or denied

## Workshop – Hearing Panel Decision

\*Work through your packet including your NOI/NOA, investigative report, review of testimonies and witness statements, and questions/answers on cross. What does the preponderance of the evidence support?

- You must be able to articulate your decision as to each individual charge, with rationale



# Appeal



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## Both Parties = Right to Appeal

After the finding and sanctions (if any) are determined by the Panel, they are delivered, with rationale to the parties and their advisors through the Title IX Coordinator.

Within five business days, both parties have a right to appeal the determination and/or sanction in writing. The appeal will be heard by the Presidents' designee, Dr. Alyson Paul.

# Grounds – Not De Novo Review

The Appeal must be plead one of the following reasons, with supporting rationale:

1. to consider new information, sufficient to alter the decision, or other relevant facts not brought out in the original hearing (or appeal), because such information was not known or knowable to the person appealing during the time of the hearing (or appeal);
2. to allege a procedural error within the hearing process that may have substantially impacted the fairness of the hearing (or appeal), including but not limited to whether any hearing questions were improperly excluded or whether the decision was tainted by a conflict of interest or bias by the Title IX Coordinator, Conduct Officer, investigator(s), decision makers(s); or
3. to allege that the finding was inconsistent with the weight of the information.