

# UNG Sexual Misconduct Panelist Training



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# Prohibited Conduct

- Sexual Harassment
- Dating Violence
- Domestic Violence
- Stalking
- Sexual Exploitation
- Non-Consensual Sexual Contact
- Non-Consensual Sexual Penetration

# Scope: Title IX vs. Non-Title IX

## Title IX Scope

- Location: In the United States, on University property, or at University-sponsored or affiliated events.
- Control: The University exercises substantial control over both the Respondent and the context or in buildings owned or controlled by an officially recognized student organization

## Non-Title IX Scope

- Location: Domestic or abroad, University property, institution-sponsored or affiliated events, or off-campus.
- Control: Consideration is given as to if the Complainant and Respondent are students or employees at the time of the incident or report.

Note: Within the Title IX regulations are additional pieces to the scope. However, the University has incorporated those elements into the overall UNG Sexual Misconduct Policy. The above differences will determine (1) if an alternative or informal resolution process is used, (2) if an employee Respondent case can be resolved informally, and (3) the role of an advisor in a hearing.

# Grievance Process Prior to Hearing

1. A report was submitted outlining the allegation(s).
2. A Formal Complaint was filed alleging sexual misconduct against a Respondent and requesting that the University open an investigation. The Respondent received a notice of allegations.
3. An Alternative/Informal resolution was not attempted, or it failed.
4. The Title IX Coordinator assigned the case to investigators, and the parties were notified of the investigation.
5. The investigation was conducted.
6. The initial investigation report was distributed for response and review.
7. The Parties either did not want to attempt an alternative/informal resolution, or it failed.

# Investigation Report

- Names of parties and witnesses
- Names of the investigator(s)
- Summary of allegations (pulled from formal complaint)
- Potential charges (copy and paste relevant pieces from the Policy)
- Summary of statements
- Evidence
- Considerations for decision-makers
- Chronology

# Points of Information

The investigator(s) do not analyze the information obtained during the investigation, nor do they make recommendations for findings and sanctions. They will provide “considerations” that identify areas of the report that you could review when determining responsibility. This could include a specific series of text messages or pieces of the parties’ statements.

The Respondent has the right to remain silent during the Sexual Misconduct grievance process without an adverse inference. If the Respondent chooses to remain silent, the investigation may proceed, and policy violation charges may still result, which may be resolved against the Respondent.

# Live Hearing

# Hearing Logistics

- Hearings may be conducted in person or via videoconferencing
- All hearings must be recorded
- If in person, at the request of either party, the parties must be permitted to be in separate rooms
- Use Rules of Decorum to maintain order



# Hearing Chair's Role

- Oversees and administers the prehearing procedures, hearing, deliberation, and determination. Present to provide answers to questions and assist in hearing flow.
- The Chair shall resolve any procedural questions identified in the hearing. The Chair, in consultation with the Title IX Coordinator, may stop the hearing and postpone it to a future date.
- The Chair reserves the right to remove any participant from the hearing environment if the participant refuses to adhere to the University's established Rules of Decorum.

# Expectations at the Hearing

- Turn off/silence your phone and put away any potential distractions. Active listening is important during the hearing.
- Respect all participants in the process.
- Refrain from side conversations or questions while someone is speaking.
- Ask focused questions and avoid making premature judgments, as students may interpret bias before all the evidence is examined.
- Avoid legalistic terms (guilty, jury, trial, innocent, etc.).
- Information about the student and their post-hearing status should not be discussed outside the hearing. Confidentiality is very important!

# Rules of Decorum

- Questions must be conveyed in a neutral, respectful tone.
- Do not act abusively or disrespectfully. This includes threatening or abusive language, outbursts, interruptions, or ridicule of any Party or witness.
- Do not use profanity or make irrelevant ad hominem attacks upon a Party or witness. Questions are meant to be investigative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
- Do not ask repetitive questions.
- Do not engage in demonstrations supporting or opposing the speaker or statement (e.g., someone rolling their eyes or hitting the table with the hand when another person is speaking).
- Do not hold conversations, interrupt, or conduct themselves in a way that causes undue delay to the hearing or disturbs anyone recognized to speak.

# Prepare for Hearing

- Read the report and review the evidence – **Rule of Three!**
- Review the hearing outline
- Prepare questions for each party and all witnesses
- If the panelists will not be together for the hearing, ensure Zoom is set up on your computer and the video and microphone work. Familiarize yourself with the functions of Zoom.
- Cameras should remain on during the entirety of the hearing. Please contact the Chair if you need a break.

# Hearing Outline

1. Open hearing by the Chair
2. Opening statements by both parties
3. Questioning of the Complainant
4. Questioning of the Respondent
5. Questioning of any witnesses
6. Closing statements by both parties
7. Close hearing by the Chair

\*The Hearing Panel shall not draw an adverse inference against the Party or witness based solely on their absence from the hearing.

# Hearing Rights of the Parties

**Present Case:** Right to present witnesses and relevant evidence at the hearing. Witness testimony, if provided, shall pertain to knowledge and facts directly associated with the case being heard.

**Advisor:** Right to use an Advisor (who may or may not be an attorney) of their choosing and at their expense. The Advisor can attend all meetings and provide advice and counsel throughout the grievance process, including providing questions, suggestions, and guidance.

**Questioning:** The Parties shall have the right to ask the other Party and any witness relevant and follow-up questions, including those that challenge credibility. The Chair will limit questions only if they are irrelevant to determining the veracity of the allegations against the Respondent(s).

**Support Person:** A party's right to have their support person available to them at all times during the hearing (in addition to their advisor); and a hearing participant's ability to request a break during the hearing, except when a question is pending.

# Questioning

- The Parties shall have the right to ask the other Party and any witness relevant and follow-up questions, including those that challenge credibility.
- The Chair will limit questions only if they are irrelevant to determining the veracity of the allegations against the Respondent(s).
- In any such event, the Chair shall err on the side of permitting all the questions raised and must document the reason for not allowing a particular question to be raised.

# Questioning

## **Non-Title IX Hearing:**

Questions for consideration will be submitted to the Chair in writing (before or during the hearing). The Party's Advisor may actively assist in drafting questions. The Chair shall ask the questions as written if they are relevant.

**Title IX-Only Hearing:** Questions can be asked live. Before a Complainant, Respondent, or witness answers a question, the Chair must determine whether a question is relevant and explain any decision to exclude a question as irrelevant before a Party or witness answers.



# Consent

# Consent

Consent must be:

- Informed (knowing)
- Voluntary willingness (freely given)
- Active (not passive)
- Clear words or actions
- Indicates permission to engage in mutually agreed upon (sexual) activity
- Cannot be obtained by force, intimidation, coercion, incapacitation, or withdrawal

# Rules to Remember

- Past consent ≠ Present consent
- The scope of consent matters
- Silence and passivity do not equal permission
- To be valid, consent must be given prior to or contemporaneously with the sexual activity
- Consent can be withdrawn at any time
  - \*The person withdrawing consent is expected to communicate with words or actions clearly they are withdrawing consent
  - \*Other person is required to cease sexual activity until consent is regained

# Consent (Force and Intimidation)

- Consent **cannot** be gained by force, intimidation, or coercion.
- Was force used by the Respondent to engage in the alleged sexual activity?
- Because we know that consent must be voluntary (an act of free will), consent cannot be obtained through use of force or intimidation.
- Types of force to consider:
  1. Physical violence – hitting, restraint, pushing, kicking, etc.
  2. Threats – anything that gets the other person to do something they wouldn't usually have done absent of the threat.

# Coercion

**Coercion – the application of an unreasonable amount of pressure for sexual access. Coercion may include:**

- Frequency
- Intensity
- Duration
- Isolation

# Incapacitation

- Inability to make rational, reasonable decisions because they lack the capacity to give knowing/informed consent or make rational judgements.
- More than intoxication or drunkenness.
- Forms of incapacitation include (but are not limited to):
  1. Alcohol or other drugs
  2. Mental/cognitive impairment
  3. Injury
  4. Unconsciousness
  5. Sleep

# Incapacitation Analysis

## **Step One:** Was the Complainant incapacitated?

- Consumption (how much did they drink, do drugs, timing, etc.)
- Conscious (lack of awareness of circumstances or surroundings, black out, pass out)
- Coordination (need assistance walking, taking clothes off, dialing phone)
- Physical Signs (vomiting, flushed skin, slow response time, bloodshot/glassy eyes, smell of alcohol)
- Communications (slurring words, responding to questions, expressing confusion)

## **Step Two:** Respondent's Awareness

- Did the Respondent know of the Complainant's incapacity? OR
- Should the Respondent have known? Judged from a Reasonable Person's perspective

\*Analysis has to be based on the facts surrounding the incident.

## Incapacitation Analysis – Respondent's Awareness

- The Respondent (or a Reasonable Person) must have been aware of the Complainant's incapacity.
- The Respondent's own intoxication does not negate their obligation to comply with policy standards.



# Consent & Incapacitation Analysis

When analyzing consent and incapacitation, the questions must be asked...

- Does a preponderance of the evidence support that consent was not given? If yes, proceed to next question. If no, there is no policy violation.
- Does a preponderance of the evidence support that consent was valid?
  - ✓ Was the complainant of legal age to consent (above 16)?
  - ✓ Did actions exceed scope of consent previously given?
  - ✓ Was consent withdrawn by clear words or actions?
  - ✓ Was force, intimidation, coercion, or ignoring objections present to gain access?
- Was the Complainant incapacitated? If yes, was the Respondent aware of the Complainant's incapacitation or would a *REASONABLE PERSON* have been aware?

# Adjudication

# Deliberation of Responsibility

- The Hearing Chair will walk you through the deliberation process.
- Listen to the other decision-makers and their viewpoint. Decision must be majority, not unanimous.
- Analyze statements and evidence presented at the hearing
- Review the investigation report
- Make a determination of the relevancy and weight of the evidence presented
- Assess credibility
- Use the preponderance of evidence standard (more likely than not) to determine responsibility

# Goal of Sanctioning

**Sanctions are imposed as a response to violations and aim to achieve several objectives:**

- Accountability
- Deterrence
- Protection
- Education and Awareness

**Sanctions must:**

- Be a proportionate response to the violation.
- Be equitable and fair in relation to similar cases

# Remedies

The hearing panel may include remedies with sanctions. Remedies are individualized services provided to a Complainant where a determination of responsibility for Sexual Misconduct has been made against the Respondent. These services are designed to restore or preserve equal access to the University's education program or activity.

Such remedies may include the same services as supportive measures (counseling, health services, modifications of work or class schedules, mutual restrictions on contact between the parties, changes in work or housing locations, etc.). However, Remedies may be disciplinary or punitive and may burden the Respondent, whereas supportive measures may not.

# Considerations for Higher Level Sanctions

- A higher threshold of evidence (substantial evidence) should be used when consideration is being made for suspension, expulsion, or termination.
- MUST be able to clearly state what evidence exists to support the finding
- Cannot be merely a feeling!

# Possible Disciplinary Sanctions

- Expulsion/Termination
- Suspension/Administrative Leave
- Probation
- Reprimand
- Coaching/Educational Conversation
- Restrictions
- Restitution
- Education/Training
- Separation of Parties
- Academic Penalty (Students Only)

# Right to Appeal

After the findings 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 for an Appeal

1. Consider new information, sufficient to alter the decision, or other relevant facts not brought out in the hearing, because such information was not known or knowable to the person appealing during the time of the hearing.
2. Allege a procedural error within the hearing process that may have substantially impacted the fairness of the hearing. Including whether the decision was tainted by a conflict of interest or bias by the TIX Coordinator, Conduct Officer, Investigator(s), decision maker(s).
3. The finding of responsible or not responsible and/or the imposed or recommended sanction(s) was inconsistent with the weight of the information.

# Questions or Comments?

