

# Title IX *for* Investigators and Decision Makers

Presented by: Catlin Wells, M.Ed., J.D.  
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**Catlin Wells, M.Ed., J.D.**  
**Executive Director of Equity and  
Compliance/Title IX Coordinator**

Pronouns: She/Her/Hers

Wentworth Institute of Technology  
550 Huntington Avenue  
Boston, MA 02115-5998

Image: Photo of Title IX Coordinator



# Expectations for Engagement

# Agenda

## Law and Policies

- Title IX Overview
- Jurisdiction
- Policies
- Overview of Processes

## Obligations of Title IX Team Members

- Protecting the Privacy of Parties
- Promptness
- Thoroughness
- Impartiality

## Relevance

- Understanding policy elements
- Identifying relevant evidence

## Title IX Process

- Reports/Complaints
- Informal Resolutions
- Investigations
- Hearings
- Appeals

## Practice!

- Mock Investigation
- Mock Hearing



# Law and Policies



# What is Title IX?

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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 education program or activity** receiving Federal financial assistance

-Title IX applies to ANY participant who stands to benefit from a University program or activity

# Jurisdiction

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**Title IX Jurisdiction:** locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the [alleged conduct] occurs.”

**Jurisdiction under the Student Code of Conduct:** **This policy applies to conduct that occurs** on University property (i.e., **on campus**) and in the local vicinity. This policy also applies to conduct that occurs off University property (i.e., **off campus**)

- when the conduct is associated with a University-sponsored program or activity, such as travel, research, or internship programs OR**
- when such conduct may have a continuing adverse effect or could create a hostile environment on campus**

# Title IX Policies

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- Discrimination:
  - Disparate Treatment
  - Disparate Impact
- Sexual Harassment:
  - Quid Pro Quo Sexual Harassment
  - Hostile Environment Sexual Harassment
  - Sexual Assault
  - Dating and Domestic Violence
  - Stalking



# Related Policies

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- Gender Based Discriminatory Harassment
- Sexual Exploitation

***Allegations containing any element of sex discrimination or sexual misconduct, including sexual exploitation or gender based discriminatory harassment, shall be investigated and adjudicated pursuant to the procedures outlined in the University's Policy on Sex Discrimination and Sexual Misconduct.***



# Obligations of Title IX Team Members



# Privacy and Confidentiality

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The school must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding.

Information may only be shared with individuals who have a legitimate educational need to know.

- Fair process requires that both parties know the identity of any witnesses as well as the contents of their testimony or statements.
- Fair process requires that the Respondent know the identity of the Complainant, as well as the contents of their testimony or statements.

# Promptness *Regulations*

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A [school] shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

# Promptness: *University Policy*

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The university will make every effort to complete this process within 90 days of receiving a complaint

- The investigator will:
  - complete the investigation in a reasonably timely manner, without unnecessary deviation from the intended timeline;
  - document and communicate to parties the source of any reasonable delays, including absence of a party, a party's Advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;

# Thoroughness: *Regulations*

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- ❑ The burden of gathering evidence and burden of proof must remain on schools, not on the parties. Schools must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
- ❑ Schools must not restrict the ability of the parties to discuss the allegations or gather evidence

# Impartiality: *Regulations*

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Title IX personnel must be free from conflicts of interest or bias against complainants or respondents generally or an individual complainant or respondent

# Impartiality: *Presumption that the Respondent is “Not Responsible”*

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Under both the law and University policy, Respondents have the right to be presumed “not responsible” throughout the Title IX process.



Discussion:

## *Conflicts of Interest Hypothetical*

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When Professor H is assigned to serve as an investigator for a Title IX case, they realize that the Complainant was a student in a course that they taught about three years ago. The class had about 100 students in it. Professor H did not stay in contact with the student after the course.

**Does Professor H have a conflict that prevents them from serving as an investigator?**

# Discussion

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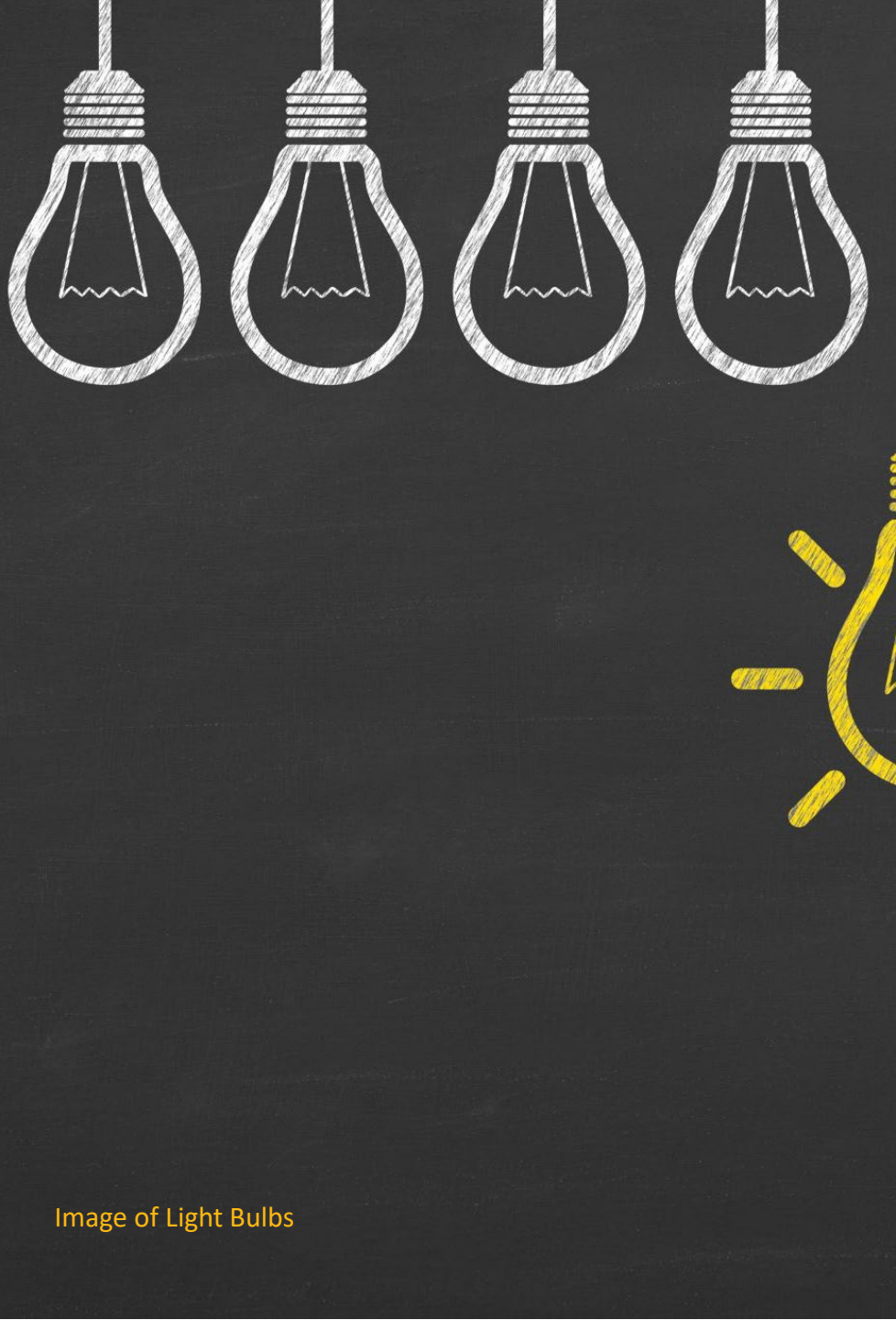
Does your answer change if Professor H taught the student last semester?

Does your answer change if the class was smaller than 100 students?

Does your answer change if Professor H served as a job reference for the student?



# Title IX Process



# Cognitive Bias

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Cognitive bias is a systematic error in thinking that impacts one's choices and judgments

Cognitive biases increase mental efficiency by enabling people to make quick decisions without any conscious deliberation

**Why is reliance on cognitive biases incompatible with a fair Title IX process?**



## Discussion

Do any of these biases impact how a person might perceive someone based on their identity? (race, gender, nationality, etc?)

- “Affinity Bias” is a bias towards people with identities similar to your own.

How might an anchoring bias influence the investigation or adjudication of a complaint?

How might a confirmation bias influence the investigation or adjudication of a complaint?

# Strategies to avoid unconscious bias

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- Challenge stereotypes related to identity characteristics
- Be aware of your own biases
- Look for alternative points of view
- Challenge assumptions by asking yourself, “why do I believe that?”
- Rely on factual evidence in making decisions

# Discussion on Biases

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How might the anchoring bias show up in a Title IX investigation or hearing?

- What steps could you take to avoid this type of bias?

How might the confirmation bias show up in a Title IX investigation or hearing?

- What steps could you take to avoid this type of bias?





Relevance



# Defining Relevant Evidence

**relevance** [rel-uh-vuhns] [SHOW IPA](#) 

[SEE SYNONYMS FOR relevance ON THESAURUS.COM](#)

Dictionary  
Definition

*noun*

- 1 the condition of being **relevant**, or connected with the matter at hand:  
*Some traditional institutions of the media lack relevance in this digital age.*

## Rule 401. Test for Relevant Evidence

Evidence is relevant if:

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

Legal  
Definition

# Relevance in Plain Language

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Evidence is relevant if it would help a decision maker better understand:

1. whether the alleged conduct occurred *and/or*
  2. whether the conduct violated a University policy.
- Evidence is relevant if it relates to any individual element of a policy.

# Understanding Policy Elements

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All policies break down into smaller elements

For example:

- **Stalking is:**
  - A course of conduct (more than one incident)
  - 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.

**A person may be found responsible ONLY if**

- 1)The evidence supports a finding that the alleged conduct occurred and
- 2)Such conduct satisfies each of those policy elements

# Identifying Relevant Evidence

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Marti and Cris have been dating for three years. Marti plays the cello. Cris does not play any instruments.

Last week, Marti sent Cris a text that said “Hey. I think we should break up.

Cris’s teachers say that Cris seemed very upset.

Cris’s roommate said Cris is “just a really over dramatic person.” Cris’s roommate also stated that Cris “literally cried once over the series finale of Dawson’s creek.” Cris’s roommate stated that Cris “weirdly writes in a journal all the time.”

In a Title IX report, Marti indicated that Cris has sent 30 text messages, made 2 phone calls, and shown up outside Marti’s dorm on two occasions.

**What policy would be implicated by the alleged conduct?**

**What are the elements of that policy?**

**Of the information you have, what evidence is relevant to the case? Why?**

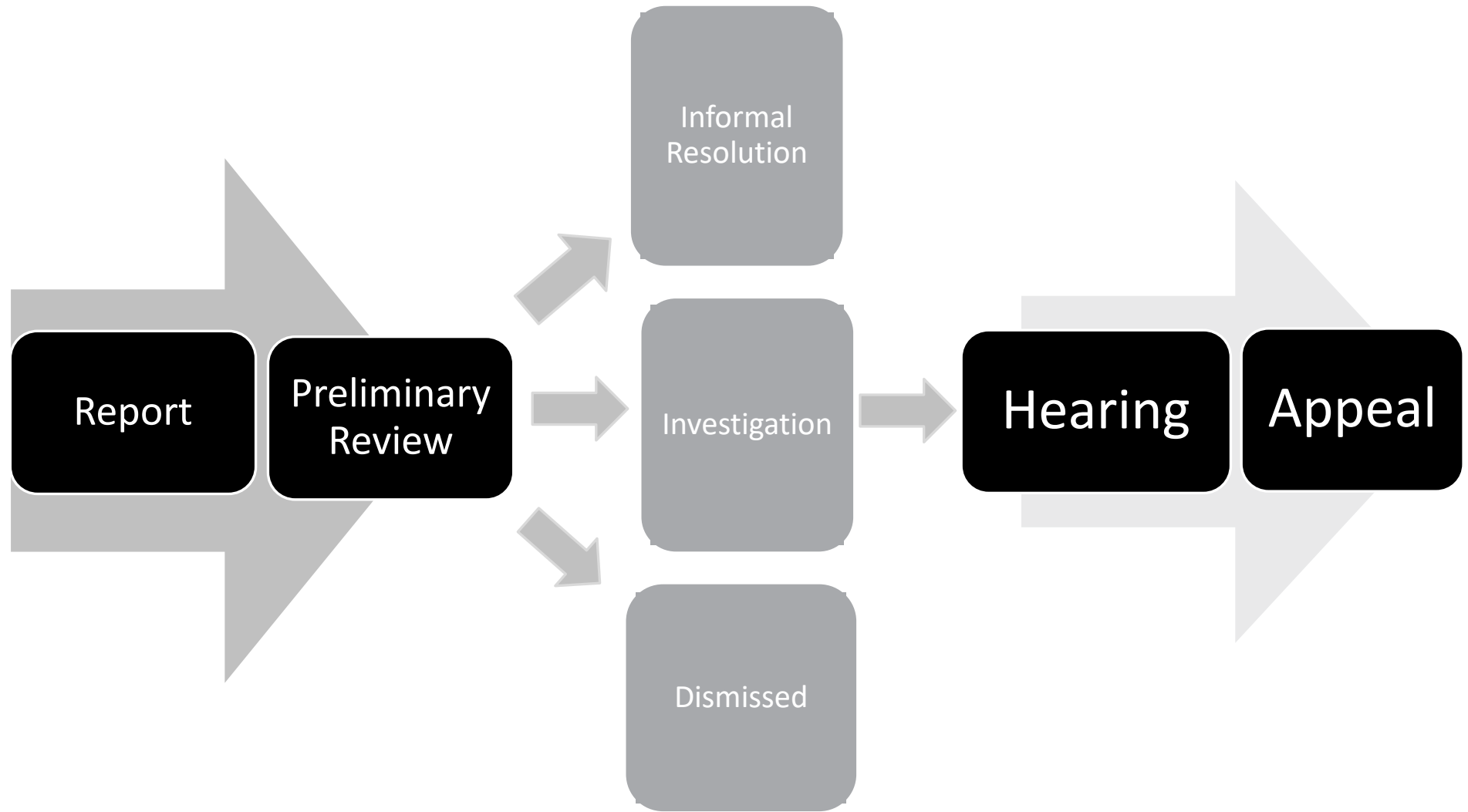


# Formal Grievance Process



# Investigations

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The university must send a written letter to the Complainant and to the Respondent prior to moving forward with a Title IX process. The letter includes:

- A summary of the alleged conduct, including date and location
- A description of the policy that the alleged conduct implicates
- Information about grievance process, including a copy of the University's Policies and Procedures
- Contact information for public safety
- Contact information for confidential resources

Investigators will be provided with a template for these letters

## Notice Letters/Introduction Letters

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Your investigative plan should include a timeline for notifying parties, speaking to witnesses, gathering evidence, and completing the investigative summary.

An investigative plan is an outline of the steps you will take to complete the investigation. In making your plan, ask:

- What information was reported?
  - *You can find this in the incident report or initial police reports.*
- Which policy does the alleged conduct implicate?
- What information would a panel need to determine whether the alleged conduct occurred?
- What information would a panel need in order to determine whether this policy was or was not violated?
  - *Think about the elements of the policy you are working with.*
- Who do I need to speak with in order to get this information?
- Is there any documentary evidence or physical evidence that I need to gather?
  - *Documentary evidence may include text messages, video surveillance, social media posts, receipts, snapchat messages, phone records, pictures, etc.*

## Generating an Investigative Plan

Under the regulations, you must provide the parties with written notice of any meetings.

Parties may have an Advisor of choice in the meeting with them.

Begin each meeting by reviewing the rights of parties and by providing an overview of the Title IX Grievance Process

Review applicable policy and summarize the allegations

Invite the party to provide information relating to the allegations

During the interview, you will likely ask questions related to

- whether the alleged conduct occurred
- elements of the policy
- Credibility

You may also need to ask clarification questions

## Interviewing Parties

# When asking question to a party:

Avoid	Avoid using language that is indicative of fault or blame <ul style="list-style-type: none"><li>• Ex: What were you thinking getting drunk</li><li>• Ex: Why would you wear something like that out?</li></ul>
Avoid	Avoid making promises about a specific outcome Ex: There's no way anyone could find you responsible for this OR "We'll make it right."
Avoid	Avoid questions that assume responsibility. <ul style="list-style-type: none"><li>• Ex: Why did you hurt that person?</li><li>• Ex: Where were you when you violated our policy?</li></ul>
Ask	Ask only relevant questions. <ul style="list-style-type: none"><li>• BE PREPARED TO EXPLAIN WHY YOU ARE ASKING A SPECIFIC QUESTION</li></ul>

# Amnesty Policy

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The University has a special concern for incidents of Prohibited Conduct. Such incidents damage not only individuals, but also the free and open academic environment of the University. The University is aware that individuals may not report Prohibited Conduct out of concern that they, or witnesses, might be charged with violations of the Universities' policies. Accordingly, the University will not pursue discipline violations related to drug or alcohol use against an individual who, in good faith, reports, witnesses or possesses personal knowledge of Prohibited Conduct. While amnesty is typically limited to violations involving the use of alcohol and drugs and any policies related to Covid-19, determinations regarding amnesty for other forms of prohibited conduct will be made on a case-by-case basis.

***When might you, as an investigator, tell a student about this policy?***

# Gathering Evidence

Documentary evidence is any documentation that is relevant to the investigation.

Physical evidence refers to tangible items related to the allegations. For the purpose of a Title IX investigation, parties generally provide images of the physical evidence.

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# Gathering Evidence

Parties and witnesses may provide evidence to the investigator.

The investigator must, as necessary and feasible, seek relevant documentary information.



# Gathering Evidence- Privileged Information

In writing the report, the investigator may not include a party's medical, psychological, and other treatment records without the party's ***voluntary, written consent***

# Hypothetical

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You are interviewing Dani, who is a student at WIT. Dani alleged that another student, Blayke, sexually assaulted them while they were incapacitated. After you review Dani's rights, provide a summary of the Title IX process, and discuss the allegations/policy, Dani provides the following statement.

*I was at my friend's house. We had some drinks. Nothing crazy. There was some pot, I think? I don't remember. Anyway. I got really sick. Blayke offered to take me home, I think. Or I asked? I called an uber, which I know I threw up in. When we got back to my dorm, I went to bed. When I woke up, Blayke was still there. We were both naked. I think we had sex.*

# Discussion

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Does this complaint fall under Title IX?

What policy does this Complaint implicate?

What questions would you ask the Complainant?

Who else would you need to talk to?

Is there any evidence you might ask Complainant to provide?

Overview

Policy Basis For Jurisdiction

Standard of Evidence

Investigator and Scope of the Investigation

- Investigator's Name/Role
- Parties and interview dates
- Scope of the investigation

Summary of the investigation

- Facts as set forth by parties
- Undisputed facts

Application of facts to policy

Credibility Assessment: Template language ONLY

Appendices

- Statements
- Exhibits

# Drafting an Investigative Report

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Investigators will be provided with a template that can be used in drafting this report.

# Procedures for Report Review

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Parties have 10 days to review a draft version of the report. During this time, parties may provide changes, additions, and corrections to the report.

- Report must be provided to BOTH parties and their Advisors.

The investigator must incorporate changes into the final report and provide a finalized copy to parties and their Advisors.

Once parties have received the report, the Title IX Coordinator will schedule a hearing.

- Parties have a minimum of 10 days to prepare for the hearing after they receive the report.

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# Hearings



# Scope of Decision Makers' Authority

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Decision-maker(s) are annually trained and authorized to determine emergency removals, conduct hearings, and/or review appeals. Decision-maker(s) may only serve one role within a case and are free from conflict of interest or bias.

The decision maker(s) have the authority to adjudicate alleged violations of the Student Code of Conduct or the Employee Handbook that are related to the same incident under review, though may not be directly related to gender-based conduct.



# Requirements of the Decision Maker(s)

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The decision maker(s) are independent decision maker.

The Chair of the Hearing is responsible for conducting an administrative hearing, pursuant to an established hearing script.

Through the administrative hearing, the decision makers are required to objectively evaluate all relevant evidence, both inculpatory and exculpatory.

Any individual who serves as a decision maker shall be trained annually pursuant to the training requirements under applicable state and federal law.

The decision makers are expected to serve impartially, avoid prejudgment of facts at issue avoiding prejudgment of the facts at issue, and be free of conflicts of interest, and bias.

The decision makers must avoid credibility determinations based on a person's status as a complainant, respondent or witness

# Requirements of Hearing Chair

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- ❑ The Chair of the Hearing is appointed by the Title IX Coordinator
- ❑ The Chair is responsible for conducting the hearing, pursuant to an established hearing script
- ❑ The Chair is responsible for synthesizing the decision of the panel into a written decision letter
- ❑ The Chair is responsible for screening pre-submitted questions for relevance and for asking pre-submitted relevant questions during the Hearing
- ❑ The Chair is responsible for making relevancy determinations throughout the Hearing

# Who may be present at the hearing?

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- A panel of three decision-maker(s), including the Chair of the hearing
- Advisor for Complainant(s)
- Advisor for Respondent(s)
- Witnesses (only one at any one time)
- Title IX Coordinator (if not an investigator)
- University Counsel

# Structure of the Hearing

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- Preliminary matters
- Hearing
- Findings and Impact Statements
- Sanctions (as applicable)

# Preliminary Matters

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- I. Purpose of the Hearing
- II. Introductions of Decision Maker(s)
- III. Introduction of Coordinator
- IV. Introduction of Title IX Investigator
- V. Review of Procedural Matters
  - a. Scope of the Hearing
  - b. Review of Rights
  - c. Expectations for Conduct of Parties During the Hearing
  - d. Review of Advisor's Role in the Title IX Process
  - e. Notification of Advisors
  - f. Opportunity to ask Procedural Questions
- VI. Reading of Charges
- VII. Entry of plea (responsible or not responsible):

# Conducting the Hearing

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- I. Opening Statements
- II. Questions from the hearing officer for Investigators, Complainant, and Respondent:
  - a. Cross examination through Advisors, as requested
- III. Questions from the hearing officer for Witnesses
  - a. Cross examination through Advisors, as requested
- IV. Additional Questions from the hearing officer, as necessary

# Asking Questions of Parties and Witnesses

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Ask clarifying questions, as needed

- Ex: What did you mean when you said \_\_\_\_\_?

Ask questions related to:

- whether the alleged conduct occurred
- elements of the policy
- credibility

If someone were to ask, “Why do you need to know that?” You should be able to tell them that your question relates to one of the above reasons.

# When asking question to a party:

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Avoid using language that is indicative of fault or blame

- Ex: What were you thinking getting drunk
- Ex: Why would you wear something like that out?

Avoid making promises about a specific outcome

- Ex: There's no way anyone could find you responsible for this.
- Ex: We'll make it right.

Avoid questions that assume responsibility.

- Ex: Why did you hurt that person?
- Ex: Where were you when you violated our policy?

Ask only relevant questions.



# Findings and Impact Statements

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- I. Announcement of the hearing officer's Decision
- II. Submission of Impact Statements
  - a. Impact Statement from Complainant
  - b. Impact Statement from Respondent
- III. Presentation of prior conduct code violations involving the Respondent, as applicable

If the Respondent is found “Not responsible,” the hearing ends here.

# Sanctioning (as applicable)

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- I. Specification of sanctioning parameters
- II. Announcement of Sanctions
- III. Conclusion

# Range of Sanctions

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- ❑ Warning: A written notice that the Respondent has violated the Policy and a warning that another violation will likely result in a more severe sanction, which could include University Probation, Temporary or Permanent Residence Hall Suspension, University Suspension, or University Expulsion.
- ❑ University Probation: A set period of time during which the Respondent is given the opportunity to modify behavior to complete specific assignments, meet with designated persons, and demonstrate a positive contribution to the University community in an effort to regain privileges within the University community.
- ❑ University Suspension: A separation from the University for a designated period. Students who are suspended from the University are restricted from all University premises and activities, including, but not limited to, course registration, class attendance, participation in co-curricular activities and University
- ❑ iv. University Expulsion: A permanent separation from the University. Students are prevented and prohibited from completing any academic progress towards a Wentworth degree including registering for coursework, attending classes, or being present in or on Wentworth property.

# Additional Sanctions

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- ❑ Loss of Privileges: Denial of specified privileges for a designated period of time.
- ❑ Restitution: Compensation for loss of or damage to University property or services rendered. This may take the form of appropriate service and/or monetary or material replacement.
- ❑ Educational Initiatives: Projects; participation in health or safety programs, including restorative justice workshops (the student may be required to pay a fee); service to the University or to the larger community; seminars; and other assignments as warranted.

# Managing a Cross Examination

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Under the regulations, parties have a right to cross examination.

Parties are allowed to ask RELEVANT questions of the other party through their Advisor.

- The party will submit a question to the decision maker. The decision maker must determine whether or not that question is relevant.
- If the question IS relevant, the Advisor may ask it.
- If the question is NOT relevant, the Advisor may not ask it.

If the decision maker deems a question to be irrelevant, they must document why they made that decision.

- **Preserve this documentation and submit it to the Title IX Coordinator.**

# Questions pertaining to sexual predisposition or prior sexual behavior

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Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, 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, or
- if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent

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If a party does not submit to cross examination, the decision maker may not rely on their statement or testimony.

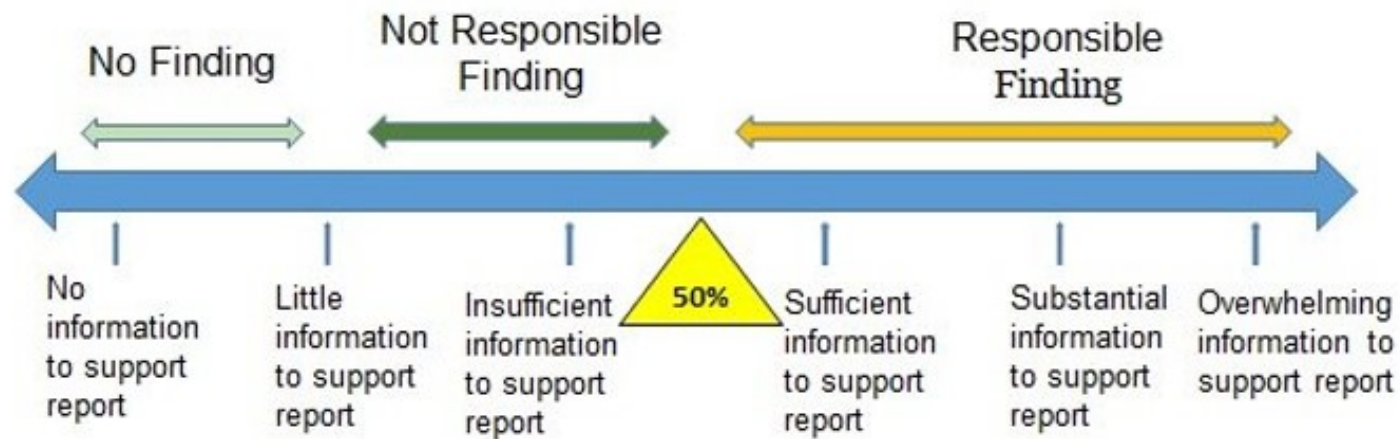
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# Making a Determination



# Preponderance of Evidence Standard

*A Requirement that **More than 50%** of the Evidence Points to Something*



In determining whether or not a policy was violated, the University uses the "Preponderance Standard" Preponderance= "More likely than not" or more than 50 percent.

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# Weighing Evidence

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## **DO Consider:**

Is the evidence direct or circumstantial?

Relevant evidence

Source of the information  
(Credibility)

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## **DO NOT Consider:**

- Evidence about character
- Prior Conduct Violations
- Irrelevant Evidence
- The source's authority or position
- Whether the party is a Complainant or a Respondent

# Credibility Assessment

Credibility is the process of weighing the accuracy and veracity of evidence. To assess credibility, you have to evaluate the source, the content, and the plausibility of what is offered. (Atixa, 2019)

Credibility is best established through corroboration, which is provided through sufficient independent evidence to support the fact at issue.

- Contemporaneous reports to the institution, law enforcement, or medical professionals, etc. (Complainant's credibility)
- Statements from eyewitnesses that corroborate the contents of a given statement
- Documentary evidence (Videos, photographs, text messages, phone call records, etc.)

Consider the inherent plausibility of the narrative

- **Time Travel Example**

Consistency of narrative

- Minor or irrelevant inconsistencies do not necessarily detract from credibility

Relationship of witness to parties

The decision of the Hearing Panel will be reached by a majority vote.

# Writing the Outcome Letter

**The chair is responsible for writing the letter.**

State your name and affiliation with the University

State the alleged conduct

State the policy implicated by the alleged conduct

State the finding (responsible or not responsible)

State the rationale

- The rationale should consider each policy element
- The rationale should include specific evidence to show why each element of the policy was or was not satisfied

State the sanction

Include information about how to appeal

**You will be provided with a template for this letter**

# Practice!

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Oli reported that Ani engaged in conduct that violated the University's policy on sexual exploitation. The University conducted an investigation and hearing into the matter.

The record contains the following information:

Oli sent Ani a picture of their genitals. Oli provided a copy of the photo for the record. Oli stated that they only sent the photo to Ani, at Ani's request.

Witness, Mav, stated that they received a copy of the photo from Ani with a caption that said "lol." Three other witnesses confirmed the same. Mav submitted a copy of the text message. The other witnesses stated that they deleted the image upon receipt.

Ani stated that they are "really a good person." Ani stated they may have shown the picture to Mav as a joke, but stated that they never sent the picture to anyone.

# Discussion

What policy does this implicate?

Would this case be decided through the Title IX process or the administratively established process?

Based on the evidence, is it more likely than not that the conduct occurred?

What evidence did you rely on in making that decision?

Are there any facts that are irrelevant?

How would you use the credibility assessment on these facts?

# Discussion continued

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## **The elements of sexual exploitation are as follows:**

- Complainant did not consent to Respondent's conduct
- Respondent committed these acts through exploitation of Complainant's sexuality
- Respondent engaged in such conduct for the purpose of sexual gratification, financial gain, personal benefit or advantage, or for the purpose of causing harm to another's reputation.

The evidence supports a finding that Ani sent Oli's picture to Mav and to 3 other witnesses.

**Does that conduct violate this policy?**

**Which facts were relevant in making your decision on each element?**



# Sample

The hearing officer weighed all evidence presented using a preponderance of evidence standard. In consideration of all available evidence, the hearing officer concluded as follows:

Where Mav and three additional witnesses stated that Complainant sent them a picture of Respondent, where Respondent stated that they only sent the picture to Complainant, where Respondent stated that they did not give permission to share the picture, and where Complainant stated that Respondent did not invite them to share the picture, the evidence supports a finding that the picture was sent without Complainant's consent

Where the picture provided by Respondent shows Respondent's genitals, where witnesses stated that they received a picture of Respondent's genitals, and where Complainant stated that they received a picture of Respondent's genitals, the evidence supports a finding that the conduct was sexual in nature.

Where Mav and three witnesses stated that they received a text message of the image with a caption that said "lol," and where Mav provided a copy of this text, the evidence supports a finding that the image was shared for the purpose of harming Respondent's reputation or for the Complainant's social benefit.

Upon review of all evidence, including but not limited to Complainant's statement, Respondent's statement, Mav's witness statement, the text message submitted by witness Mav, and the photograph submitted by Complainant, **the hearing officer determined that the evidence supported a finding of Responsibility.**

Element 1

Element 2

Element 3

Conclusion

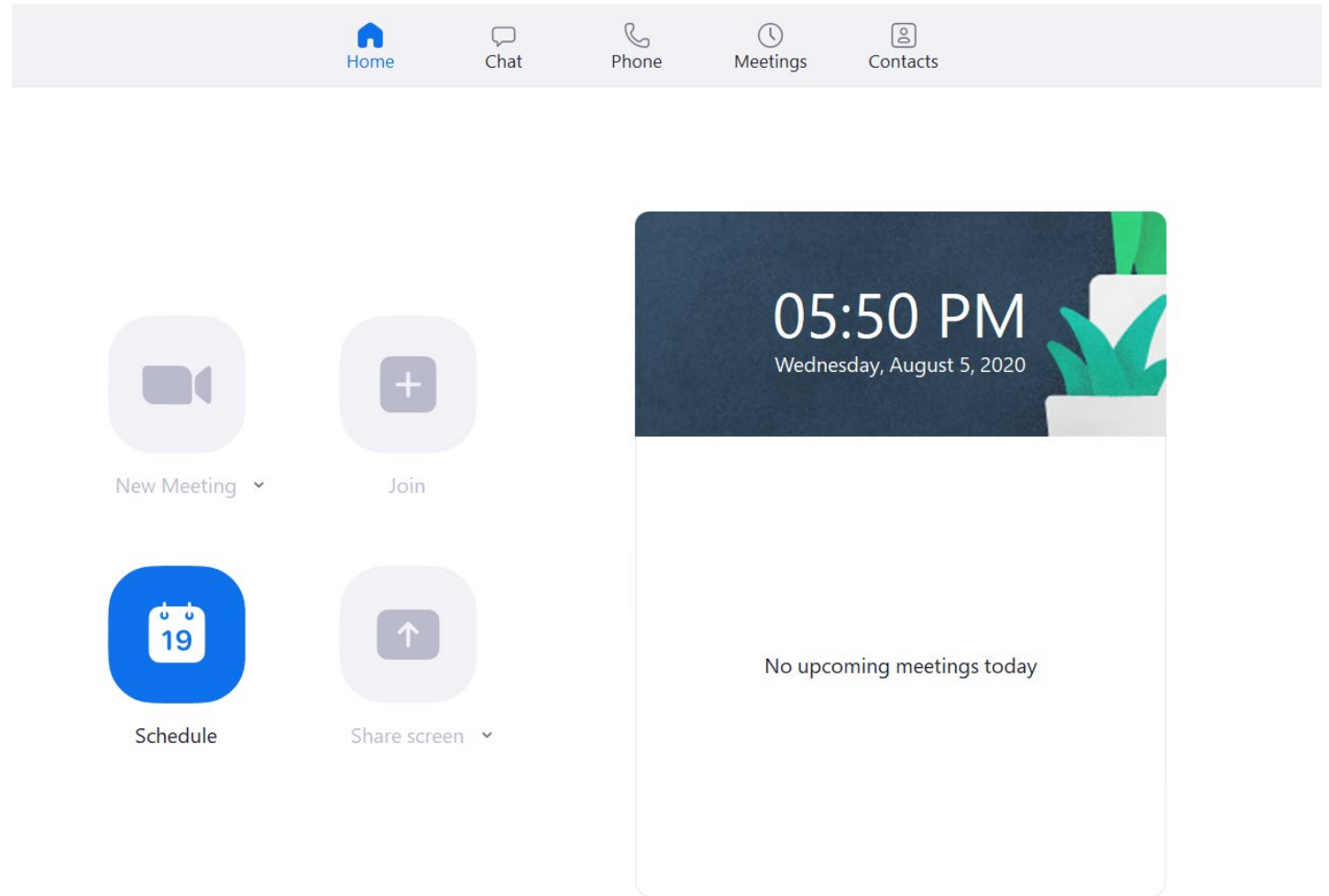
# Technology

Parties have a right to participate in person or remotely

Remote hearings are conducted via ZOOM

To add a party to the hearing, send a **PASSWORDED** meeting invitation to the party's university email

The University will provide a laptop to the decision maker for use in the hearing



# Audio Recording of Hearings

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Under the regulations, all hearings must be recorded or fully transcribed.

If parties are participating remotely, you will record the hearing using the scheduled Zoom meeting.

If neither party is participating remotely, you will set up a ZOOM meeting without any additional participants and record the meeting.

You **MUST** send the recording to the Title IX Coordinator following the hearing.

\*Recording is not required for Non-Title IX Hearings.

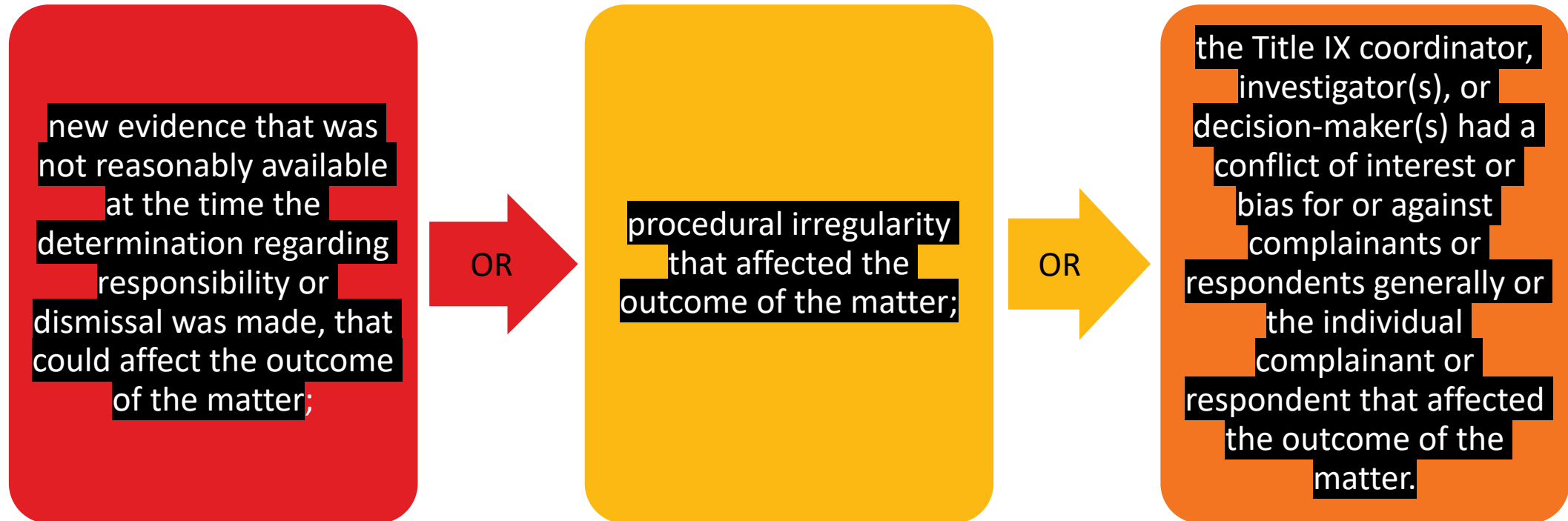
\*\*Recording methods are subject to change. You will be notified if these methods change.

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# Appeals

# Grounds for Appeal

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# Method for Filing Appeal

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After receiving notification of the hearing officer's decision, both complainant and respondent have **five business days** to submit an appeal.

A formal letter of appeal specifying the grounds upon which the appeal is based ***and*** supporting information must be submitted within five days of notification of the Hearing Panel's decision or notification of dismissal.

# Specifications for the Appeal Letter

The letter of appeal specifies the grounds upon which the appeal is based, *and* how those grounds materially affected the outcome (responsibility or sanctions) of the original meeting.

**Sanction(s) imposed by the decision maker(s) will remain in effect while the appeal is pending.**



# Summary of Appeal Process

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Upon receipt of the appeal letter, the Title IX Coordinator assigns the matter to a trained appeal officer.

Both parties shall be given equal opportunity to submit a written statement in support of, or challenging, the outcome

The officer reviews the decision and any documentation provided by the parties.

## **Law:**

“Both parties shall be given equal opportunity to submit a written statement in support of, or challenging, the outcome.”

## **What the appeal officer needs to do:**

Send a letter to BOTH parties, inviting them to provide a written statement, for consideration by the appeal officer.

The party who is appealing may choose to defer to the contents of their appeal letter.

# Preliminary Review

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Review the appeal letter to determine whether the appealing party raises sufficient grounds for appeal.

# Determination of Appeal

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If the appeal officer determines that there ARE grounds to appeal, the appeal officer must determine:

- whether there is a preponderance of evidence to support the claims made in the appeal ***and***
- whether the reported procedural error materially affected the outcome of the case

# Review on the Merits

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The appeal officer should review:

- The appeal letter
- Written statements provided by both parties
- The full investigative record, including exhibits
- The hearing officer's decision letter
- Any documentation provided during the hearing
- Any notes or documentation created by the hearing officer
- Any other relevant information, as necessary and appropriate

**The appeal officer may request follow up information from the investigator(s) or from either party, as necessary to make a fair determination.**

# Considerations

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Is there a preponderance of the evidence to support the Appealing Party's Claim?

- **EXAMPLE:** Consider: Is there a preponderance of the evidence to support a finding that there is new evidence that was not available at the time of the hearing?
- **EXAMPLE:** Consider: Is there a preponderance of the evidence to support a finding that there was a procedural regularity?
- **EXAMPLE:** Consider: Is there a preponderance of the evidence to support a finding that an involved Title IX official had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.; or

If there is not a preponderance of the evidence to support the claim, the case is dismissed.

The appeal officer must affirm the decision of the hearing officer.

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If there is a preponderance of evidence to support the claim, the appeal officer must determine whether the error materially impacted the outcome.

*But for this error, the outcome would be different.*



# Upon review of the appeal, the appeal officer may:

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**Affirm**

affirm the decision of the hearing officer. In this case, the initial decision is final;

**Remand**

remand the matter to the Hearing Board for reconsideration OR

**Change**

change the sanction to correct the procedural error

# Decision Letter

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Upon completion of the appeal process, the decision maker must communicate the outcome of the appeal to both parties within 5 days.

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# The Decision Letter should include:

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The name of the appeal officer

A description of the appeal officer's role at the institution

A clear articulation of the appeal officer's decision

A rationale for the appeal officer's decision

- If the case is dismissed prior to a consideration on the merits, the letter should note that the party did not raise sufficient grounds to appeal
- If the appeal officer reviews the case on the merits, the letter should contain a consideration as to whether there is a preponderance of evidence to supports the claim raised and, if appropriate, a consideration as to whether the matter materially impacted the outcome.

# Mock Investigation

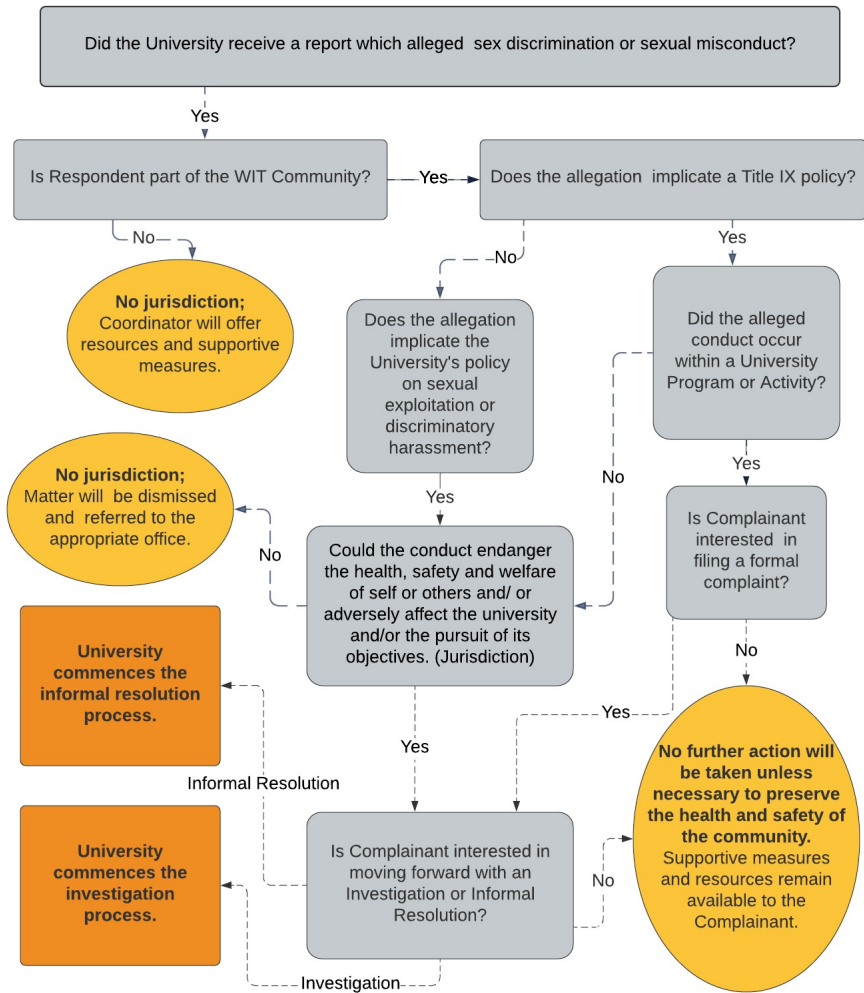
# EXHIBIT A: Copy of Report

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Resident Hall Director, Sam Smith (hereinafter “Smith”) called Title IX Coordinator, Catlin Wells, on May 25, 2019. Smith stated that student, Tina Jones (hereinafter “Complainant”) came to his office and asked to talk to him. Smith stated that Complainant said she was feeling worried about another student and that she would like for the University to issue a no contact order.

Smith stated that Complainant said she had broken up with her ex-girlfriend, Sara Hartford (hereinafter “Respondent”) on May 23, 2019. Smith stated that Complainant said Respondent “wouldn’t leave her alone.” Smith stated that Complainant said Respondent called her 15 times, that Respondent sent 4 unwanted messages via Facebook, and that Respondent came to Complainant’s work uninvited.

Smith stated that Complainant said she does not want to file a police report. Smith stated that Complainant said she would like to talk to the Title IX Coordinator.



# Preliminary Review

# Complainant, Tina Jones, files a formal Complaint.

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- Does the University have Jurisdiction?
- What policy does this implicate?
- What is the first thing the investigator needs to do?
- What evidence might you need to gather?
- Who do you need to speak with?



# Complainant's Statement

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- Complainant stated that she and Respondent went to dinner on May 22, that she broke up with Respondent, and that Respondent “cried, screamed, and pounded the table with her fists.”
- Complainant stated that Respondent called her 12 times on May 23, 2019.
- Complainant stated that Respondent called her 3 times on May 24, 2019, and that Complainant left a voicemail.
- Complainant stated that Respondent messaged her on Facebook.
- Complainant stated that Respondent came to her work on May 25, 2019.
- Complainant stated that Respondent left her a voicemail that said, “I’m so sorry. Please take me back. I love you so much. I can’t live without you.”
- Complainant stated that, after she blocked Respondent’s text messages, Respondent contacted her via Facebook.
- Complainant stated that she felt “Freaked out” by the phone calls and the Facebook messages, and that she asked her coworker, Marc Jacobs, to walk her to her car on May 25, 2019, because of that feeling.
- Complainant stated that she works at the library. Complainant stated that she saw Respondent in the parking lot of the library on May 25, 2019, and that Respondent yelled, “Oh. I see you already found my replacement.”

# Questions:

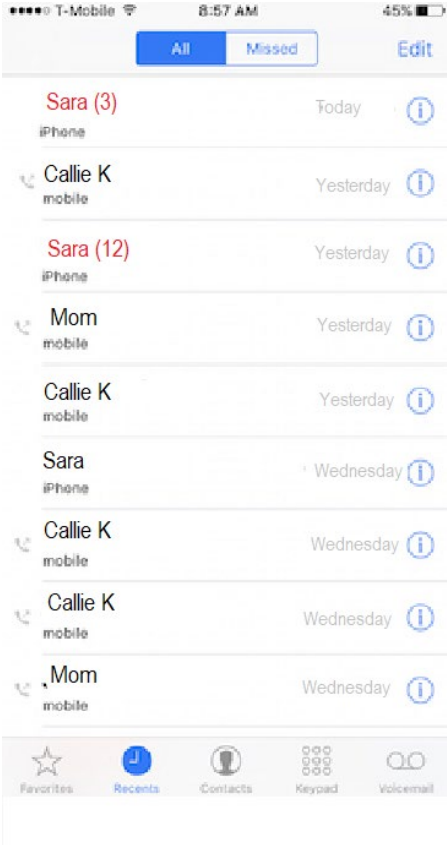
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- Are there any undisputed facts at this point?
- What else do you need to know?
- Who else do you need to talk to?
- What documentary evidence should you ask for?

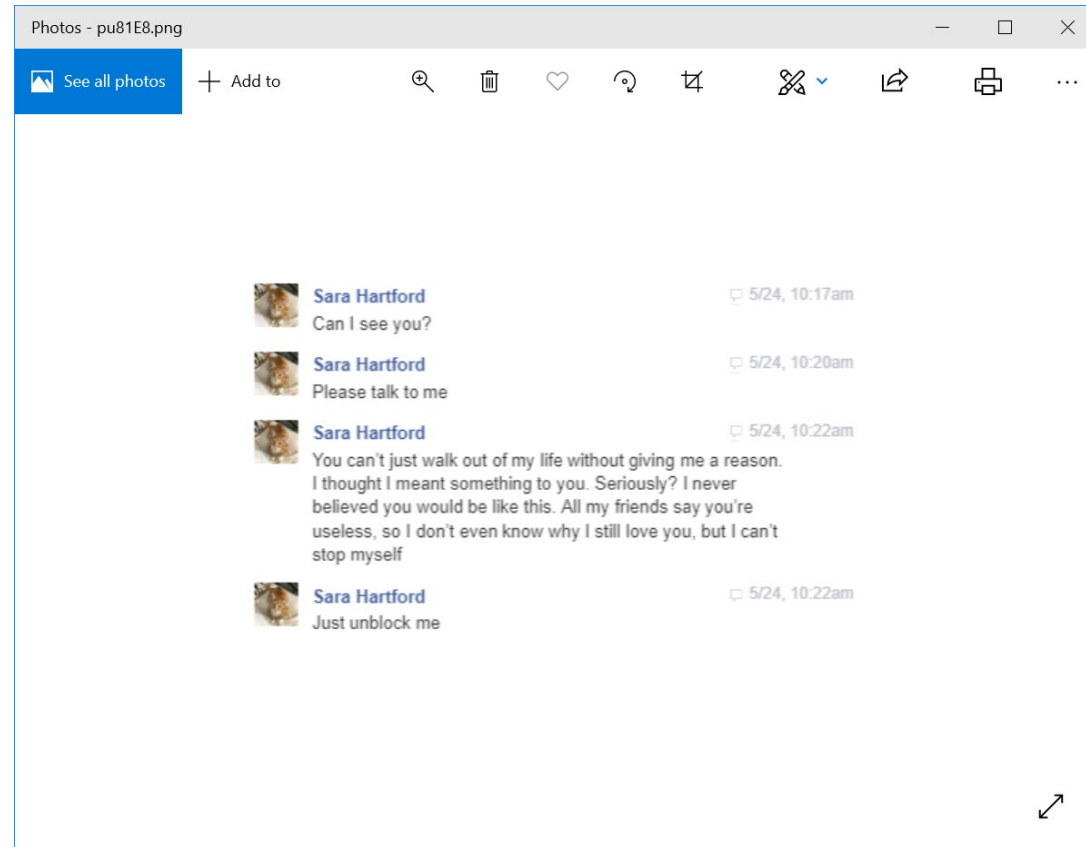
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Complainant provided the following  
documentary evidence:

# EXHIBIT B: Phone Records



# Exhibit C: Facebook Messages



●●●○○ Sprint LTE 5:04 AM 75% 

[← Messages](#) Tina <3 <3 [Details](#)

hahahaha



I love you

I miss you

I miss you too. I just need a little time to myself. Maybe we can talk later

Are you ready to talk?

Please talk to me

# Exhibit D: Text Messages

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# Respondent's Statement

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- Respondent stated that she went to dinner with Complainant on May 21, 2019. Respondent stated that she and Complainant had “a little fight.” Respondent stated that Complainant said “let’s break up.” Respondent stated that she did not believe Complainant meant it.
- Respondent stated that she called Complainant’s cell phone “a few times,” that she sent Facebook messages to Respondent, and that she went to see Complainant at the library “like one time.”
- Respondent stated that Complainant sent her a text message that said “I miss you too. I just need a little time to myself. Maybe we can talk later.”
- Respondent stated that she responded to Complainant’s texts, and that she sent Complainant Facebook messages because she believed that Complainant did not have a working phone.
- Respondent stated that she did not yell anything at Complainant in the parking lot on May 25, 2019. Respondent said she never yelled.
- Respondent stated that she did not mean to upset Complainant.
- **Do you have any other questions for Respondent?**

# Jacobs's Statement

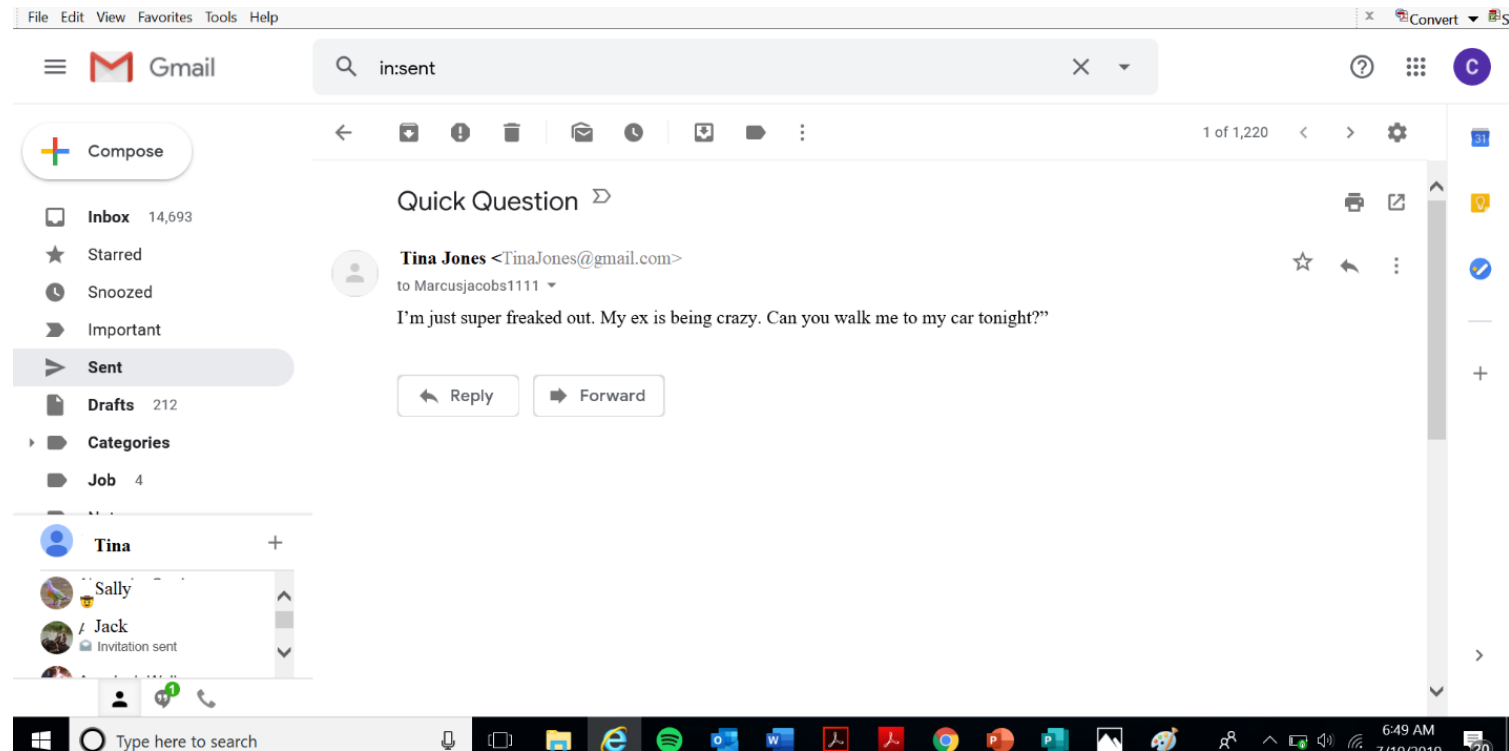
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- Jacobs stated that Complainant asked him to walk her to her car because she was “freaked out.”
- Jacobs stated that he saw Respondent in the parking lot on May 25, 2019.
- Jacobs stated that he saw Respondent yell something at Complainant.
- Jacobs stated that he saw Respondent in the parking lot, and that he saw Respondent yell something at Complainant.
- Jacobs stated that Complainant said, “I can’t freaking believe she’s doing this. I don’t think she’s ever going to stop.”
- **Do you have any other questions for Jacobs?**



# Exhibit E: Message to Coworker

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# Breakout Room Questions:

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What are the  
disputed  
facts?

What are the  
undisputed  
facts?

# Mock Hearing

# Preliminary Matters

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**Hearing Chair:** The purpose of this hearing is to review relevant information concerning alleged violations of the University's Sexual Misconduct policy, which have been filed by Complainant, Tina Jones, against Respondent, Sarah Hartford. At this time, all panel members will introduce themselves.

**Hearing Chair:** At this time, the Title IX Coordinator or designee will introduce themselves and state their affiliation with the University.

**Hearing Chair:** At this time, the Investigator(s) will introduce themselves and state their affiliation with the University.

**Hearing Chair:** "The purpose of this hearing is to review relevant information concerning alleged violations of the University's Policy on Stalking. This administrative proceeding is not a criminal trial, nor is it intended to resemble one. The decision maker will use a preponderance of the evidence standard to determine whether the alleged conduct occurred. If the evidence supports a finding that the alleged conduct occurred, the decision maker will rely on established University policy in determining whether such conduct constitutes a policy violation. The University need not observe formal rules of evidence and may exclude evidence that is repetitious or irrelevant, including information sought during a cross examination.

# Review of Rights, Role of Advisors, and Procedural Questions

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**Hearing Chair:** Complainants and Respondents in this process have the right to review all evidence considered by the Decision Maker, to be assisted by an Advisor, and appeal the outcome of this hearing, as permitted by University policy. Providing false information during this hearing constitutes a violation under both the student code of conduct and the employee handbook. All people who appear at this hearing shall present information that is true and correct to the best of their knowledge. Participants have a right to be treated with dignity and respect by all parties. Any person who disrupts the hearing or fails to comply with requests made by the Decision Maker maybe excluded from the proceedings. Any person may attend this meeting in the role of an Advisor. Advisors serve as a moral and emotional support person for students during the grievance process and can participate in meeting preparation. Advisors are not permitted to advocate for students and are only permitted to speak as necessary to conduct a cross examination of relevant parties. Individuals who are witnesses may not serve as Advisors.

**Hearing Chair:** At this time, I will ask each of the parties whether they are supported by an Advisor in these processes. If you are supported by an Advisor, please state their name.

Tina Jones, Are you supported by an Advisor today?

Sara Hartford, Are you supported by an Advisor today?

**Hearing Chair:** Tina Jones, Do you have any questions regarding the procedure that will be used during this hearing? Sara Hartford, Do you have any questions regarding the procedure that will be used during this hearing?

**Hearing Chair:** At this time, I will review a summary of the allegations and identify the policy that was allegedly violated. It is alleged that you engaged in conduct that implicated the University's policy on sex or gender-based misconduct. Specifically, it is alleged that you sent unwanted message, made unwanted phone calls, and visited Complainant's workplace on three occasions, in violation of the University's policy on Stalking.

**Hearing Chair:** At this time, you may enter a plea of "Responsible" or "Not Responsible." As a reminder, you are not required to participate in this process. As such, you may choose to stay silent.

# Hearing

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**Hearing Chair:** At this time, each party may provide an opening statement. As a reminder, your opening statement may be provided orally or in writing.

# Tina Jones's Statement:

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Sarah Hartford harassed me and stalked me when I tried to break up with her. I was very scared. I would like the University to make this right.

# Sarah Hartford

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I did not stalk Tina. I loved her very much. She says we broke up, but I had no idea. I meant no harm. I would never scare her on purpose. I am not responsible.



# Hearing Continued:

## Questions: Questions from the Decision Maker for Investigators, Complainant, and Respondent:

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Hearing Chair: At this time, the hearing officers will ask questions of the Complainant and of the Respondent. The parties may cross examine the investigators or the parties through their advisor. As a remind, advisors must submit any relevant questions to the Hearing Chair before they may be asked. Questions will only be asked if they are relevant.

- \_\_\_\_\_ **Questions from the Decision Maker to the Complainant**
- \_\_\_\_\_ Cross Examination by Respondent

- \_\_\_\_\_ **Questions from the Decision Maker to the Respondent**
- \_\_\_\_\_ Cross Examination by Complainant

# Hearing Continued... Questions of Witnesses

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Request to call witnesses:

**Hearing Officer :** Does either party request that the University call witnesses named in the report for cross examination?

*For today's hearing, neither party has requested to call a witness*

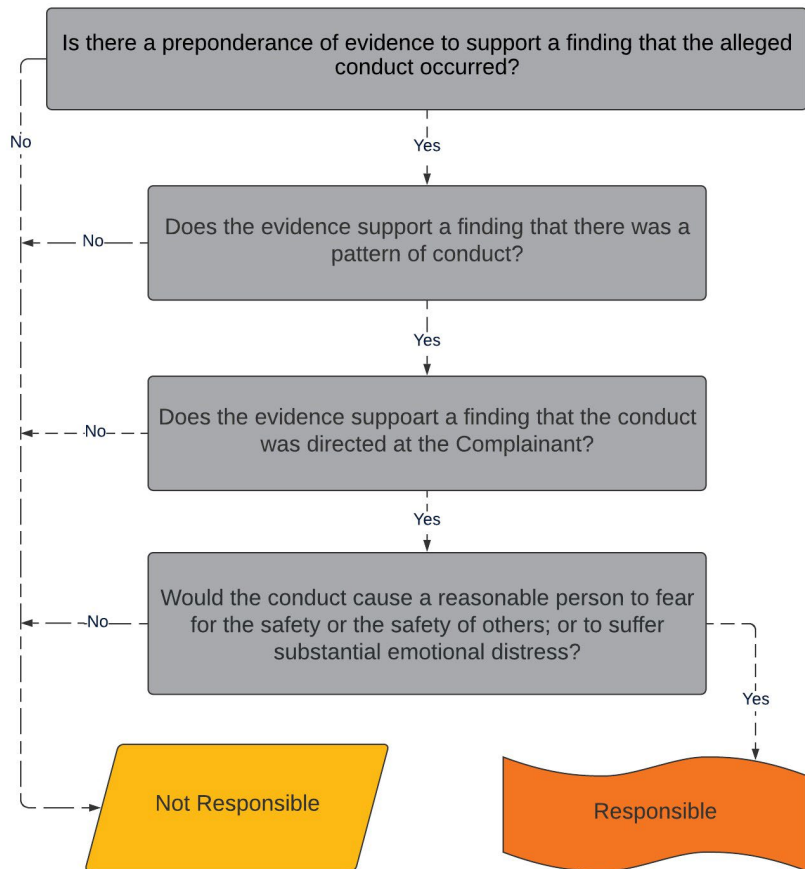
# Hearing Continued... Additional

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Hearing Chair: At this time, the hearing officers will ask any additional questions of the Investigators, of the Complainant, of the Respondent, and of any witnesses.

- \_\_\_\_\_ Questions from the Decision Maker to the Investigators
- \_\_\_\_\_ Questions from the Decision Maker to the Complainant
- \_\_\_\_\_ Questions from the Decision Maker to the Respondent
- \_\_\_\_\_ Questions from the Decision Maker to the Witnesses

# Deliberations



# Questions to Consider

- Is there a preponderance of the evidence to support a finding that the alleged conduct occurred?
- What facts support or refute a finding for each element?

# Findings

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**Hearing Chair:** The hearing panel has thoroughly reviewed all evidence presented in the record, including evidence in today's hearing. Accordingly, the panel has determined that the Respondent, Sarah Hartford, is \_\_\_\_\_ for the alleged policy violation.

# Sanctions- Submission of Impact Statements

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**Hearing Officer:** At this time, each party may provide an impact statement. As a reminder, your impact statement may be provided orally or in writing.

*Both parties waived reading of impact statements.*

## Determination of Sanctions:

What is the  
appropriate  
sanction for this  
case?

When a Respondent has been found “responsible” for violating the Policy, the Decisionmaker(s) shall consider the final investigation report and all exhibits as well as the statements and testimony provided at the live hearing in determining the appropriate sanction. The Decision-maker(s) reserves the right to increase or decrease the recommended sanction guidelines listed above in the case of significant mitigating or aggravating factors. The Decision-maker(s) may consider the Respondents student conduct history in determining the appropriate sanction.

- Warning
- University Probation
- University Suspension
- University Expulsion
- Loss of Privileges
- Restitution
- Educational Initiatives

*Note: In this case, Respondent does not have a conduct record.*



# Announcement of Sanctions

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**Hearing Chair:** Based on a consideration of the final investigation report and all exhibits, the statements and testimony provided at the live hearing, and all other relevant information or factors, the University has determined that the following sanctions are appropriate:

# Conclusory Remarks

## Conclusory Remarks

*This Title IX Grievance Decision Maker hearing is now closed. The hearing Officer has five days from the close of the hearing to produce a written decision letter to both parties. The letter will be delivered to each party by the Coordinator.*

*At that time, the Coordinator will discuss the appeal process with each party. Regardless of the result of this hearing, the Coordinator or designee retains the authority to make or change supportive measures either party, including but not limited to housing, academic, employment and communications that are in the best interests of each party and the University.*

# Questions?

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Thank You!



