

October 28-29, 2021

Title IX for Investigators and Decision Makers



Presented by
Catlin Wells, M.Ed., J.D.,
Executive Director of Equity
and Compliance





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

1 Skill Building

- Defining Title IX
- Understanding Bias
- Understanding policy elements
- Identifying relevant evidence

2 Law and Policies

- Jurisdiction
- Policies
- Overview of Processes

3 Obligations of Title IX Team Members

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

4 Title IX Process

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

5 Practice!

- Mock Investigation
- Mock Hearing

Agenda



Skill Building

What is Title IX?

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

What is Title IX?

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

This includes...

- Sex assigned at birth
- Gender identity
- Gender expression
- Sexual Orientation
- Pregnancy Related Conditions

What is Title IX?

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

- A program or activity is defined as

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

- Conduct that falls outside the scope of this definition may be addressed through the code of conduct or the employee handbook

What is Title IX?

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

An intentional or unintentional act that adversely affects employment and/or educational opportunities because of a person's membership in a protected class or association with a member(s) of a protected class that is based on sex

- Disparate Treatment
- Disparate Impact
- Sexual Harassment, including Sexual Misconduct, as defined by the DOE

Institutional Obligations Under Title IX

- Institutions are obligated to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any form of prohibited sex discrimination occurring against a person in the United States. 34 CFR 106.8(c)-(d).
- Title IX Sexual Harassment: With or without a formal complaint, institutions with actual knowledge of Title IX sexual harassment occurring in an education program or activity of the school against a person in the United States must respond promptly in a manner that is not deliberately indifferent and complies with 34 CFR 106.44(a).



Understanding Bias

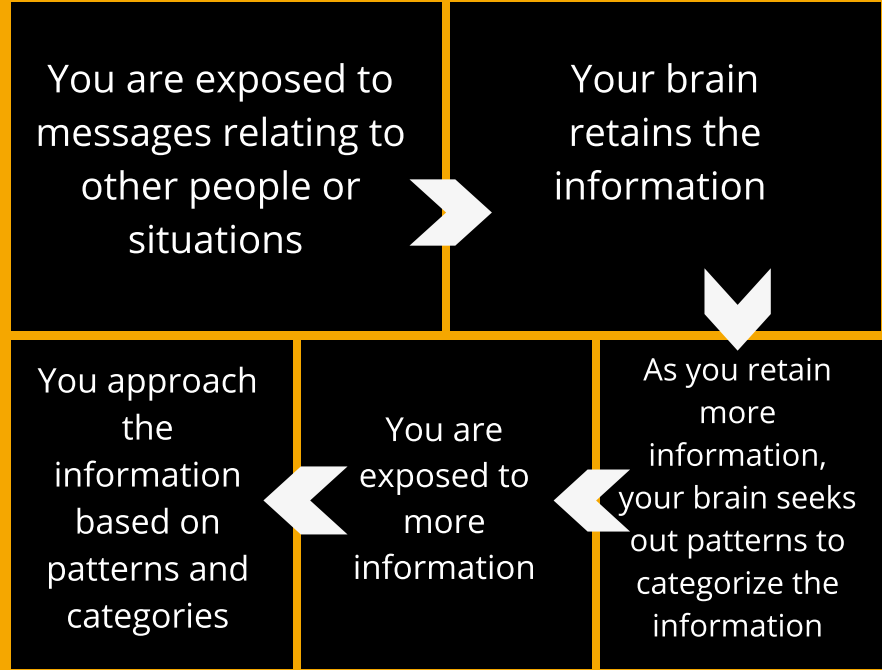


Exploring Bias

- Which two categories did you pick?
Why?
- Would you have categorized differently if you were allowed to use more than 2 categories?
- If I hadn't referred to them as "common household items?"

What is Bias?

Bias: A human trait resulting from our tendency and need to classify individuals into categories as we strive to quickly process information and make sense of the world, i.e., schemas, unconscious beliefs





Implicit Bias

- **Implicit Bias:** Involves all the subconscious feelings, perceptions, attitudes, and stereotypes that have developed as a result of prior influences and imprints
 - **Example:** You treated all items as either cooking and cleaning because I told you that you could only pick two categories (Availability bias)
 - **Example:** You picked cooking and cleaning because I called these items as “common household items” (Stereotyping)
 - **Example:** You picked these categories because I told you that everyone had to agree, so you went along with the group). (Bandwagon)

Exploring Bias

- Group 1: Write down all the cooking supplies.
- Group 2: Write down all the cleaning supplies.
- Group 3: Split the supplies between cooking and cleaning.



Explicit Bias

- Attitudes and beliefs that we have about a person or group on a conscious level.
- Example: “I put the baking soda with the cooking items because I use it to make cookies yesterday.” (Recency Bias)
- Example: I put the baking soda in the cleaning category because I was supposed to be finding things that go in the kitchen (confirmation bias)

Types of Bias



Anchoring Bias
and Contrast
Bias




Stereotyping
Bias




Availability
Bias



Confirmation
Bias



Similarity
Bias/Affinity
Bias



Primacy and
Recency Bias



Bandwagon
Effect



Halo Effect



Discussion on Biases

- 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?

Strategies to Avoid Unconscious Bias

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



Identifying Policy Elements

Policy

- A policy is a rule or expectation:
 - Example: I am prohibited from eating ice cream.
- Policy definitions are used to better understand specific expectations.
 - Example: Ice cream is defined as a frozen desert, made of sugar and cream, which may be eaten on a cone or in a bowl.

Policy Elements

- Policies are broken down into smaller elements.
- Elements of ice cream:
 - Frozen AND
 - Made of sugar AND
 - Made of cream
 - Able to be eaten out of a cone OR bowl
- To constitute ice cream, a desert must have all of these elements

Elements Continued

A person may be found responsible for violating a policy ONLY if

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

Hypotheticals

Consider the following policy: I am prohibited from eating ice cream. Ice cream is defined as a frozen desert, made of sugar and cream, which may be eaten on a cone or in a bowl.

- It is alleged, and a photo confirms, that I ate a piece of cake. Did I violate this policy?
 - Did the alleged conduct occur?
 - Does the cake constitute ice cream?
 - Is it a desert? and
 - Is it frozen? and
 - Is it made of cream and sugar? and
 - Can it be eaten in a cone or a bowl?

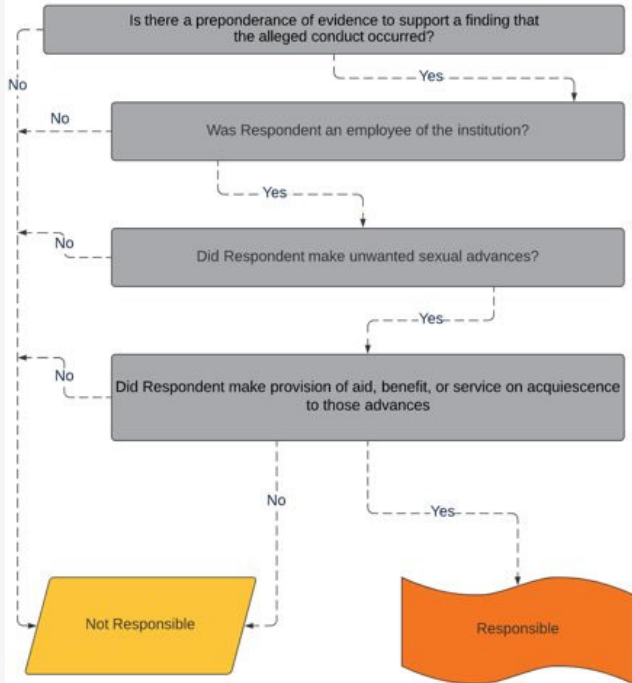


Elements of Title IX Policies

Sexual Harassment

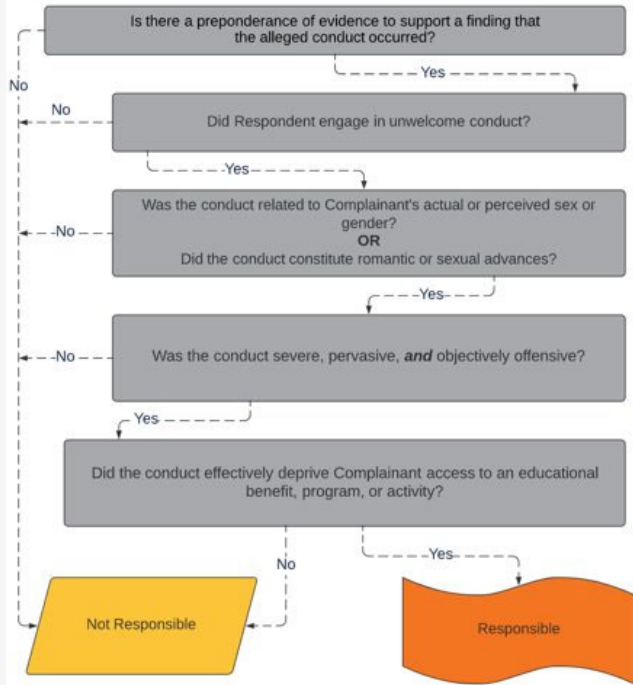
Conduct on the basis of sex that satisfies one or more of the following:

- An employee conditioning the provision of an aid, benefit, or service on the individual's participation in unwelcome conduct (**Quid Pro Quo**)
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to their education (**Hostile Environment**)
- Sexual assault, dating violence, domestic violence, or stalking, as defined by University Policy. (**Sexual Misconduct**)



Elements of Quid Pro Quo Sexual Harassment:

- Respondent was an employee of the institution
- Respondent made unwanted sexual advances
- Respondent conditioned provision of aid, benefit, or service on acquiescence to those advances



Elements of Hostile Environment Sexual Harassment:

- Respondent made unwanted sexual advances
- The alleged conduct was objectively severe and pervasive, such that a reasonable person would regard the environment as hostile
- The alleged conduct denied Complainant access to University programs or activities



Sexual Assault

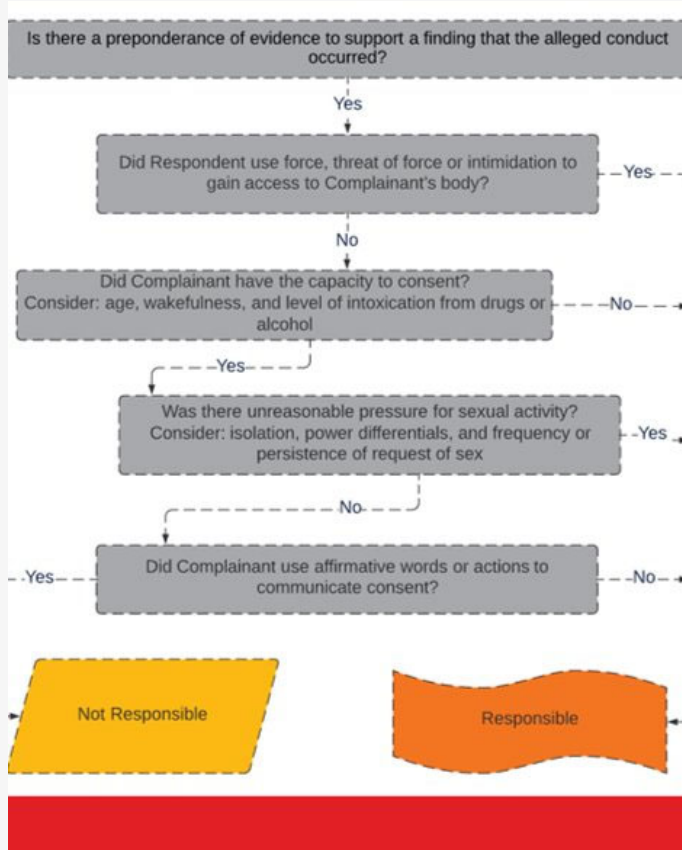
- **Sexual Assault – Non-Consensual Sexual Penetration:** The penetration, no matter how slight, of the vagina, anus, with any body part or object, or oral penetration by a sex organ of another person without the consent of the victim. This includes any gender of victim or Respondent.
- **Sexual Assault – Non-Consensual Sexual Contact:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances in which the victim is incapable of giving consent because of their age or temporary or permanent mental incapacity.

● Understanding Consent

- An understandable exchange of **affirmative words or actions, which indicate a willingness to participate in a mutually agreed upon sexual activity at a mutually agreed upon time.** Consent must be informed, freely and actively given.
- It is the responsibility of the initiator to obtain clear and affirmative responses at each stage of sexual involvement.
- Silence, previous sexual relationships or experiences, and/or a current relationship may not, in themselves, be taken to imply consent. While nonverbal consent is possible (through active participation), it is best to obtain verbal consent. Similarly, consent to one form of sexual activity does not imply consent to other forms of sexual activity. **An individual who is incapacitated cannot consent.** Consent to sexual activity may be withdrawn at any time through clear communication.
- **Sexual conduct in the presence of force, coercion, and/or incapacitation is not consensual.**

Elements of Sexual Assault

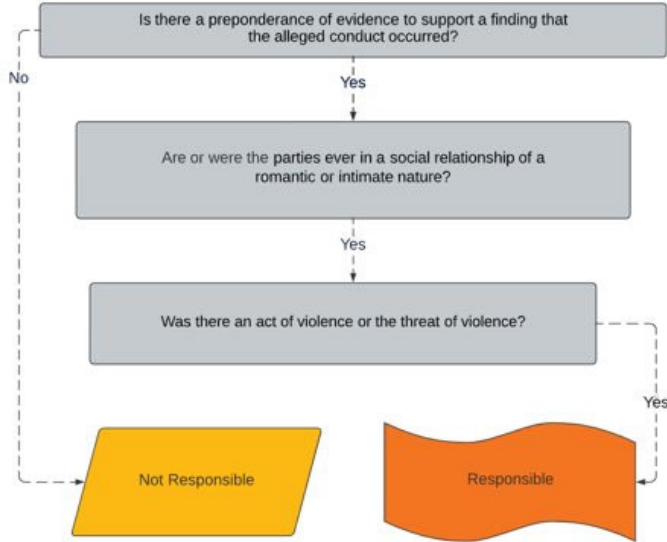
- Respondent engaged in a sexual act
- Complainant did not consent to the sexual act
 - Respondent used force or coercion to gain sexual access to Complainant's body OR
 - Complainant did not have capacity to consent OR
 - Respondent used coercion to gain sexual access to Complainant's body OR
 - Complainant did not use words or actions to communicate consent





Dating Violence

Any act of violence or threatened violence against a person who is, or has been in, a social relationship of a romantic or intimate nature with that person. The existence of such a relationship shall be determined based on the reporting Party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition dating violence includes, but is not limited to, sexual or physical abuse, or the threat of such abuse.



Elements of Dating Violence

- There is/was a romantic or intimate relationship between parties
- There is/was presence of violence, including threat of violence, in that relationship

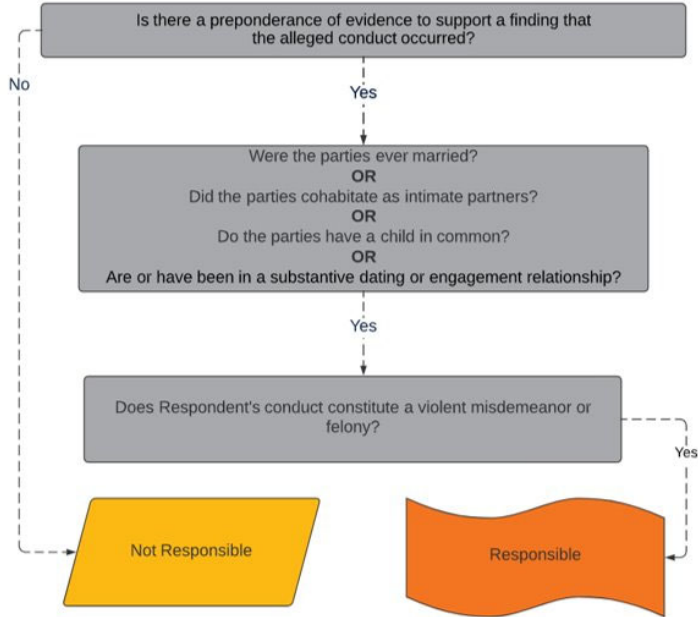


Domestic Violence

Any felony or misdemeanor crime of violence committed by those who:

- are or were married to one another;
- are or were residing together in the same household;
- are or were related by...marriage;
- have a child in common regardless of whether they have ever married or lived together; or
- are or have been in a substantive dating or engagement relationship

Elements of Domestic Violence



- There is/was a qualifying relationship between the parties (marriage, cohabitation, dating, etc.)
- Respondent engaged in conduct that constituted a violent felony or misdemeanor (assault, battery, etc.)

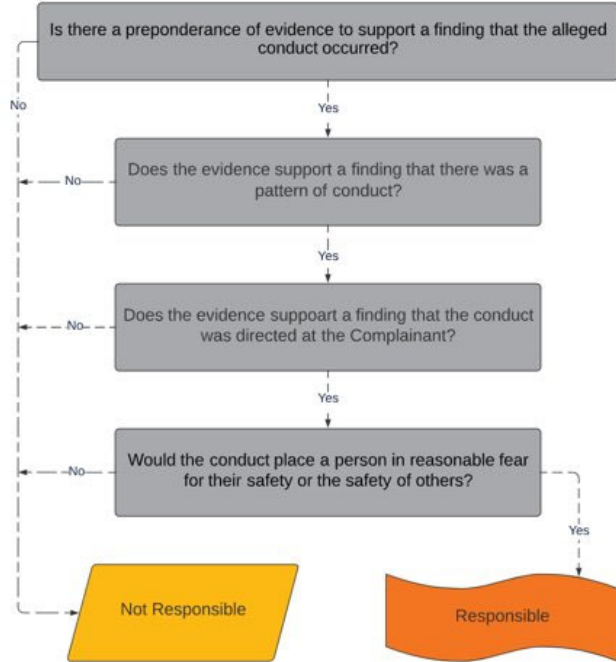


Stalking

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.

Elements of Stalking

- Course of conduct (more than one incident)
- Directed at a specific person
- Conduct would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.



Retaliation

- Any attempt to seek retribution against an individual or group of individuals involved in making a good faith report, filing a Complaint, participating in a disciplinary process, or opposing in a reasonable manner an action believed to constitute a violation of this policy.
- Retaliation can take many forms, including abuse or violence, threats, coercion, and intimidation.
- Actions in response to a good faith report or response under this policy are considered retaliatory if they have a materially adverse effect on the working, academic or University-controlled living environment of an individual or if they hinder or prevent the individual from effectively carrying out their University responsibilities.
- Any individual or group of individuals can engage in retaliation and will be held accountable under this policy.

Elements of Retaliation

- The Complainant participated in a Title IX related proceeding
- The Respondent engaged in conduct that constituted retribution (intimidation, harassment, etc)
- Respondent's conduct was related to Complainant's participation in the Title IX process
- Respondent's conduct had a materially adverse effect on the working, academic or University-controlled living environment of Complainant OR hindered/prevented the Complainant from effectively carrying out their University responsibilities.

Case Study

- Marti and Cris have been friends for years. Marti plays the cello. Cris does not play any instruments.
- Last week, Cris sent Marti a text that said, “heard you’re gay. Are you really?”
- Cris sent Marti several jokes about Harvey Milk, via text. At a party later in the week, witnesses reported that Cris called Marti a slur relating to gender identity.
- Marti’s teachers say that Marti seemed very upset in class.
- Cris’s roommate said Cris is “just a joker.”
- Marti’s roommate stated that Marti is dramatic and “literally cried while watching Ted Lasso.”
- In a Title IX report, Marti indicated that Cris “won’t leave [Marti] alone about [Marti’s sexuality].”

What policy would be implicated by the alleged conduct? What are the elements of that policy?



Understanding Relevance

Defining Relevant Evidence

1 Dictionary Definition

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

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

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.

2 Legal Definition

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.

Relevance in Plain Language

Evidence is relevant if it relates to any individual element of a policy.

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.

Identifying Relevant Evidence

- Catlin went home last night around 7:00 P.M. She was VERY tired. She stopped at the store to pick up some groceries. She bought some vegetables, some cleaning supplies, and a pint of ice cream.
- When Catlin got home, she put the ice cream on the counter and grabbed a bowl.
- Singing a childhood song about an ice cream man who came to town when spring began, Catlin put the bowl aside and dipped her spoon right into the carton.
- **Thinking of the policy that prohibits the consumption of ice cream, which facts are relevant to whether the policy was violated?**

Case Study

- Marti and Cris have been friends for years. Marti plays the cello. Cris does not play any instruments.
- Last week, Cris sent Marti a text that said, “heard you’re gay. Are you really?”
- Cris sent Marti several jokes about Harvey Milk, via text. At a party later in the week, witnesses reported that Cris called Marti a slur relating to gender identity.
- Marti’s teachers say that Marti seemed very upset in class.
- Cris’s roommate said Cris is “just a joker.”
- Marti’s roommate stated that Marti is dramatic and “literally cried while watching Ted Lasso.”
- In a Title IX report, Marti indicated that Cris “won’t leave [Marti] alone about [Marti’s sexuality].”

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



Obligations of Title IX Team Members

Respect Privacy and Confidentiality

- 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.



Transparency

- Transparency in Title IX processes allows participants to:
 - Manage expectations
 - Know what to expect from the process
 - Meaningfully participate
 - Trust the outcome of the process

Promptness

Regulations

- 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.

University Policy

- 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

- 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

- Title IX personnel must be free from conflicts of interest or bias against complainants or respondents generally or an individual complainant or respondent
- Any provisions, rules, or practices, other than those in the regulations, must apply equally to both parties.
- Title IX personnel must treat Complainants and Respondent's equitably throughout the process
- Under both the law and University policy, Respondents have the right to be presumed "not responsible" throughout the Title IX process.
 - The University will only impose any disciplinary sanctions against a respondent after grievance process followed

Discussion: Conflicts of Interest Hypothetical

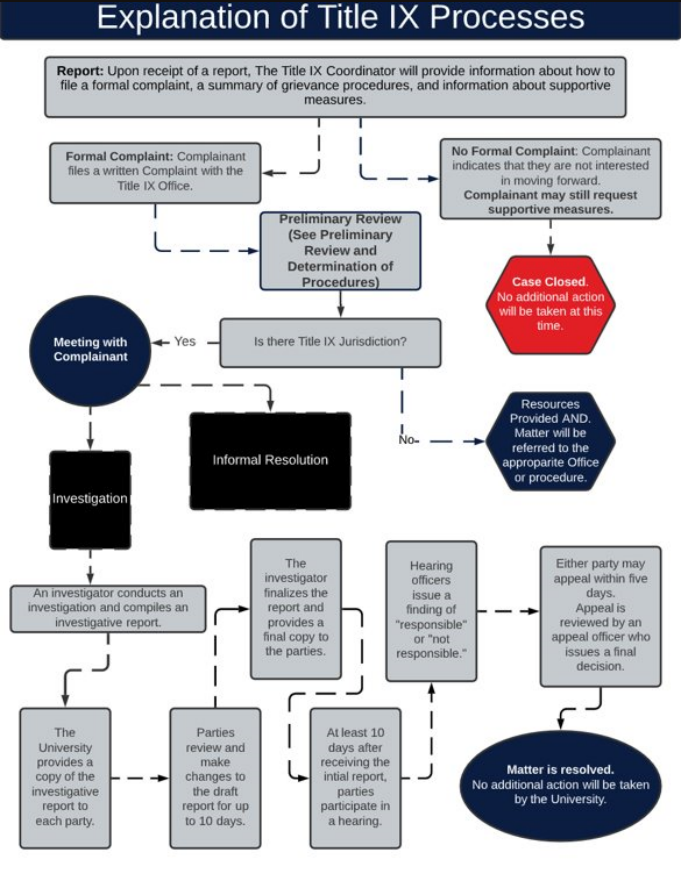
- The Title IX Coordinator asked Professor H to join the Title IX team as a hearing officer. In 1989, Professor H started their career as a Victim advocate at a crises center that provides service to individuals who have been impacted by Dating and Domestic Violence. Professor H earned a PhD in criminal justice in 1994, and has been a professor ever since. H teaches about restorative justice and wrongful convictions. Professor H often wears a “Got Consent?” tee shirt to the gym.

Is there a conflict of interest?

Would your answer change if Professor H were currently serving as a victim advocate?

Would your answer change if Professor H wore a shirt that said, “Title IX Is A Witch Hunt”?

Grievance Procedures

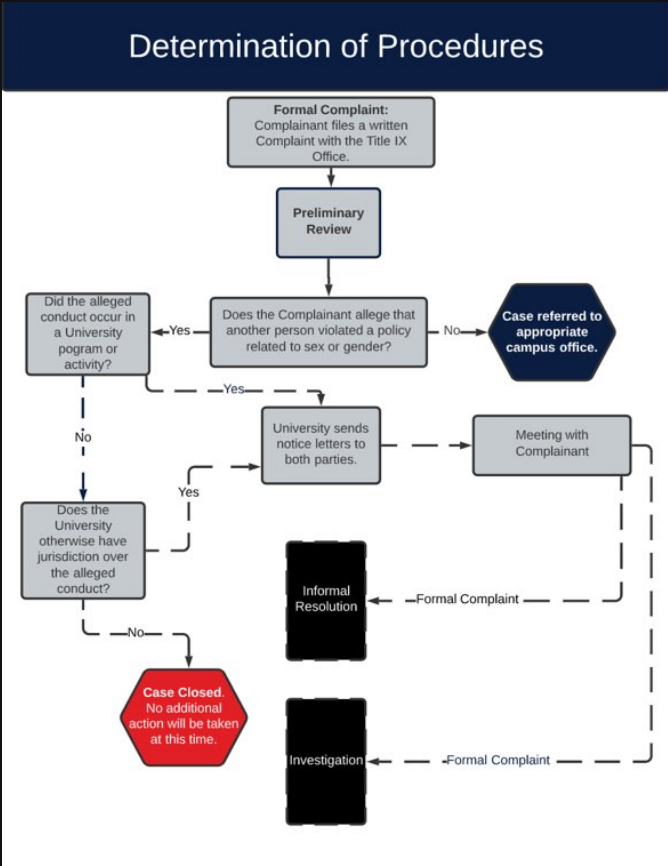


Process
begins upon
receipt of a
report.

Reports may be made:

- By phone
- By email
- Through the US postal service
- Through in person meetings, including walk in meetings
- Through the online reporting form
- Through disclosure to a responsible employee
- Through a Mandated Reporter
 - Mandated reporters must report all relevant details of the incident including the name of the Complainant and Respondent, if known, dates, times, locations, and the names of witnesses.

Formal Complaints

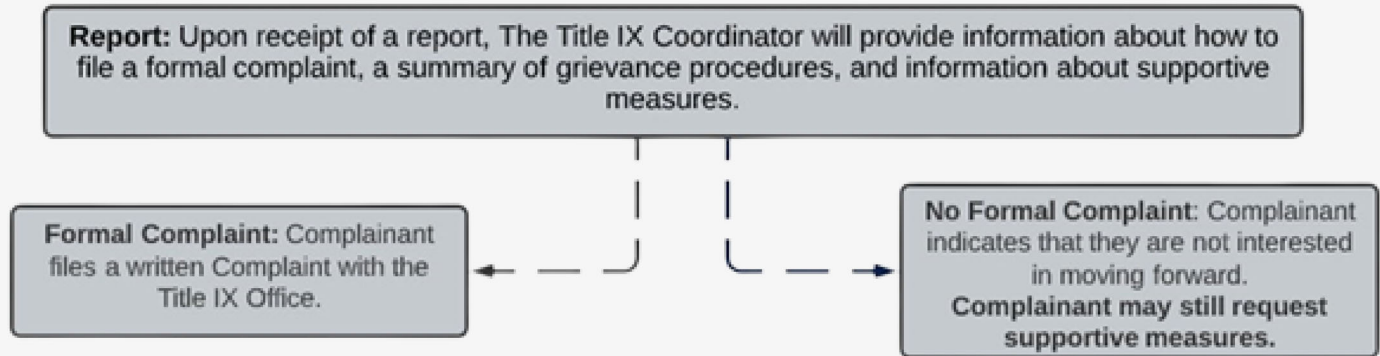


Title IX Grievance Process vs. Institutionally Established Grievance Process

For allegations of discrimination that **DO NOT implicate a Title IX Policy** or which are alleged to have occurred outside the Department of Education's definition of "**Programs or Activities,**" the University will conduct a hearing, pursuant to established grievance procedures.

- There are no procedural differences between a Title IX investigation and an investigation for non-Title IX cases.
- Title IX hearings are recorded. Hearings for non-Title IX cases are not recorded.
- Students have a right to cross examine parties and witnesses through an Advisor in Title IX hearings. Students may submit questions to the hearing officer but are not permitted to conduct a cross examination in a non-Title IX process.

Upon receipt of the report, the Title IX Coordinator sends a letter to the Complainant. The Complainant may file a formal complaint or may choose not to file a formal complaint.



● No Formal Complaint

No Formal Complaint: Complainant indicates that they are not interested in moving forward.
Complainant may still request supportive measures.

Case Closed.
No additional action will be taken at this time.

With or without a formal complaint, institutions with actual knowledge of Title IX sexual harassment occurring in an education program or activity of the school against a person in the United States must respond promptly in a manner that is not deliberately indifferent and complies with 34 CFR 106.44(a)

A Note on Supportive Measures

- Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to complainant or respondent **before or after the filing of a formal complaint or where no formal complaint has been filed.**
- Such measures are designed to restore or preserve equal access to the university's education program or activity without unreasonably burdening the other party
- Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

● Formal Complaints

Formal Complaint:
Complainant files a written Complaint with the Title IX Office.

- Formal Complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting the recipient investigate the allegation of sexual harassment
- In response to a formal complaint, a recipient must follow a grievance process (set by 106.45)
- Title IX Coordinator must offer complainant supportive measures regardless of whether Complainant files formal complaint

Note on Emergency Removal

The university may, in emergency circumstances, limit or prohibit a respondent from accessing campus during the Title IX investigative process.

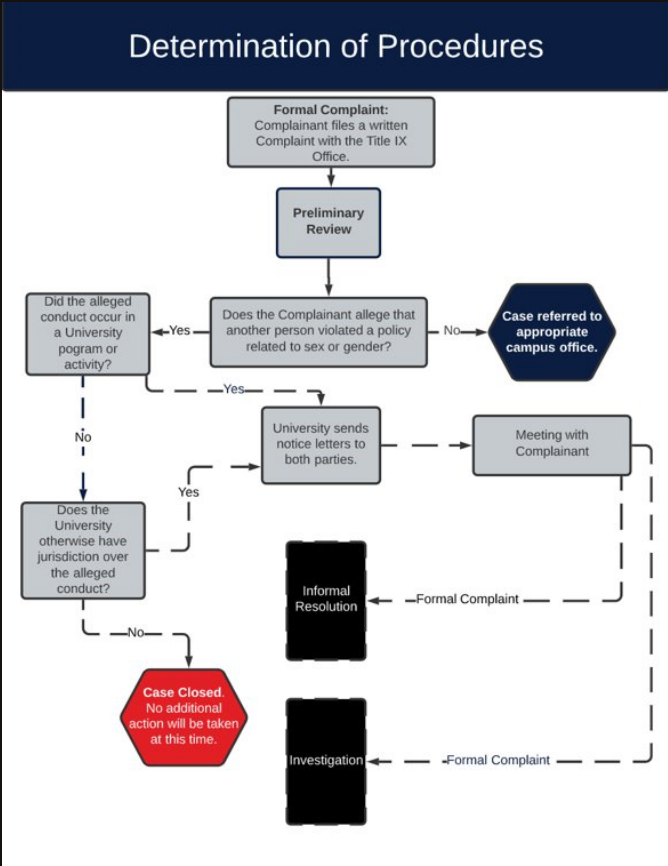
Prior to issuing an interim removal of a respondent, the Title IX coordinator or designee must:

undertake an individualized safety and risk analysis, which determines whether the presence of respondent poses an immediate threat to the physical health or safety of any individual within the Wentworth community;

provide respondent with notice of alleged conduct; and

provide respondent with notice of removal and information about how to challenge the removal

Determination of Procedures



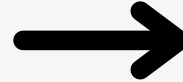
```
graph LR; A[Formal Complaint] --> B[Title IX Preliminary Review  
Does the University have Title IX jurisdiction?]; B -- No --> C[Dismissed, referred to another campus office/procedure, as appropriate];
```

Formal
Complaint

**Title IX Preliminary
Review**

Does the University
have Title IX
jurisdiction?

No



Dismissed,
referred to
another campus
office/procedure,
as appropriate

Dismissal of Complaints

Schools may dismiss a formal complaint of sexual harassment if, at any time:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw;
- The respondent is no longer enrolled or employed by the school; or
- Specific circumstances prevent the school from gathering sufficient evidence to reach a determination.

Upon a required or optional dismissal, schools must promptly and simultaneously send written notice to the parties.

Formal
Complaint

Preliminary Review

Did the alleged conduct occur
in a University
Program/Activity

AND

Did the complainant allege
that another person violated a
policy relating to sex or
gender?

Yes →

Informal
Resolution *or*
Investigation

Notice Letters/Introduction Letters

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

Advisors

- Advisors serve as a moral and emotional support for students during the grievance procedures and can assist with meeting preparation.
- Advisors are not permitted to advocate for a student or speak on their behalf during a hearing, except for the purpose of conducting a cross examination on relevant evidence.
- Parties who intend to conduct a cross examination of the opposite party or any witnesses must bring an advisor to the hearing.
- If a party does not have an Advisor, the university will, upon request, provide a trained Advisor to conduct any cross examinations.

Parties have a right to an Advisor of their choice throughout the entire process.

Informal Resolutions

Formal
Complaint

**Title IX Preliminary
Review**

Does the University
have Title IX
jurisdiction?

Yes →

Informal
Resolution

Informal Resolution

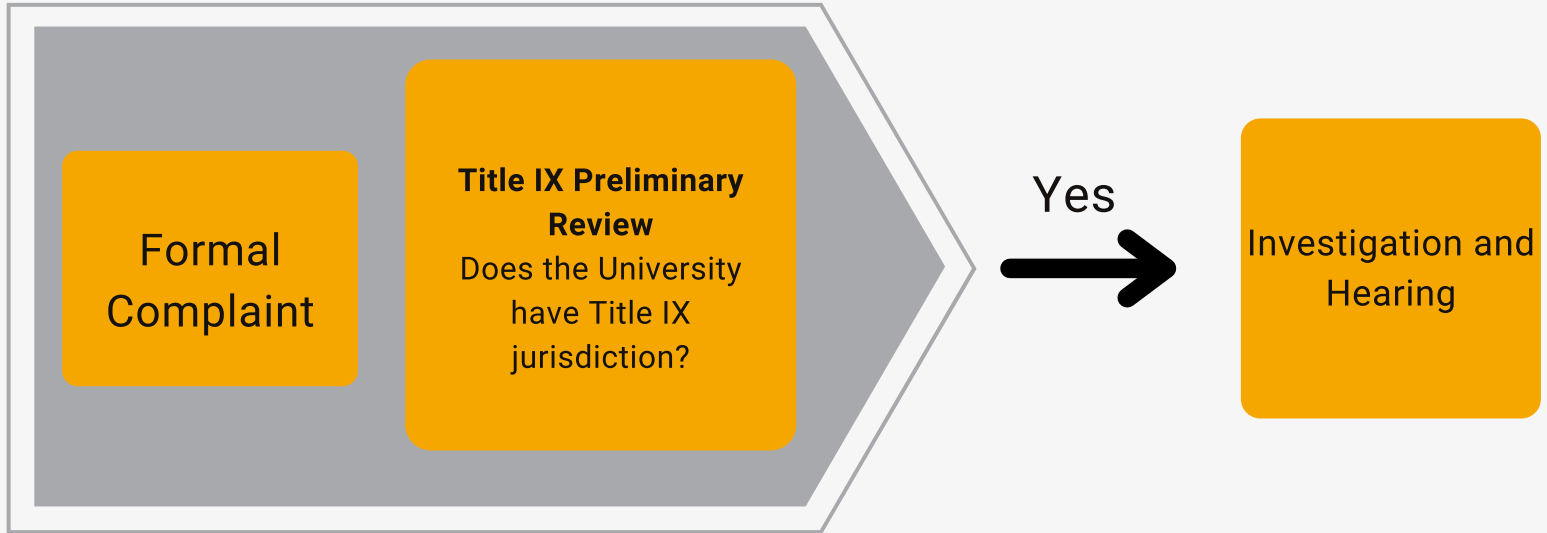
- At any time prior to reaching a determination regarding responsibility, the university may suggest to the parties the possibility of facilitating an informal resolution process.
- Upon request and written agreement by the Parties and the Title IX Coordinator that the IRP is appropriate, the Title IX Coordinator will provide to the parties a written notice disclosing the allegations, and the requirements of the IRP, including when the Parties are precluded from resuming a Formal Resolution Process and any consequences resulting from participating in the IRP. Parties may withdraw from the IRP at any time prior to agreeing to a resolution an
- Participation in this process does not constitute a finding of responsibility for a policy violation, but will be included as part of the student's conduct file and an employee's personnel file
- All agreements reached during the IRP, which outline the requirements of the Complainant and Respondent, must be approved by the Title IX Coordinator and signed by the Respondent and Complainant.
- Failure to reach an agreement may result in the case being referred to a formal resolution process;
- Failure to fulfill the requirements of the signed agreement may result in subsequent policy violations or the case being referred to formal resolution;
- Successful completion of requirements contained in the signed agreement will preclude the parties from resuming any formal complaint arising from the same allegations;
- If either party withdraws from the IRP process and requests resolution through a formal process, the information obtained during this process will not be available without signed written consent of both parties;

Informal Resolution Options

Informal Resolution options are designed to address the harm that has been caused, and what is needed to repair the harm and restore trust

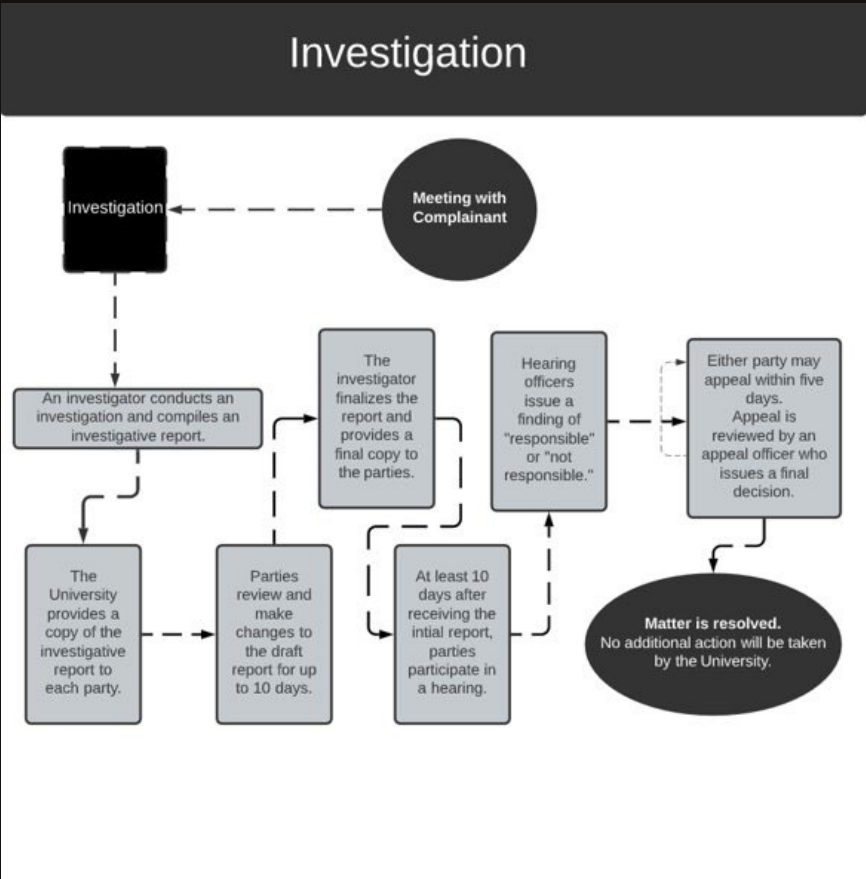
- Placing a Respondent on notice that, if such behavior has occurred or is occurring, such conduct should cease immediately
- A written warning;
- Education and/or training for a Respondent and/or department;
- Permanent Supportive Measures for Complainant;
- Mediation, Restorative Justice, or other informal communication between the Complainant and Respondent;
- Messaging to the campus community;
- Events and/or trainings offered to the campus community or particular departments;
- Referral and/or collaboration with another University department in order to address the allegations and eliminate any potential Prohibited Conduct.

Investigations and Hearings



Investigations

Investigation Flow Chart



Generating an Investigative Plan

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.*

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

Interviewing Parties

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

When asking questions...

Avoid

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

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.

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

Ask

Ask only relevant questions.

- **BE PREPARED TO EXPLAIN WHY YOU ARE ASKING A SPECIFIC QUESTION**

Amnesty Policy


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.
- 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
-

You are interviewing Sam, who is a student at WIT.

After you review Sam's rights, provide a summary of the Title IX process, and discuss the allegations/policy, Sam provides the following statement.

"I came here from a party at my friend Chase's house. I was there with this person I've been talking to. Their name is Tee. Tee got really mad at me because I was giving my other friend a hug. Tee started acting all wild. I think Tee pushed me into a wall, but everything's just blurry. They told me that I was being... you know. Tee said a bad word- it's a slur. Tee busted up my phone too".

Discussion:

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

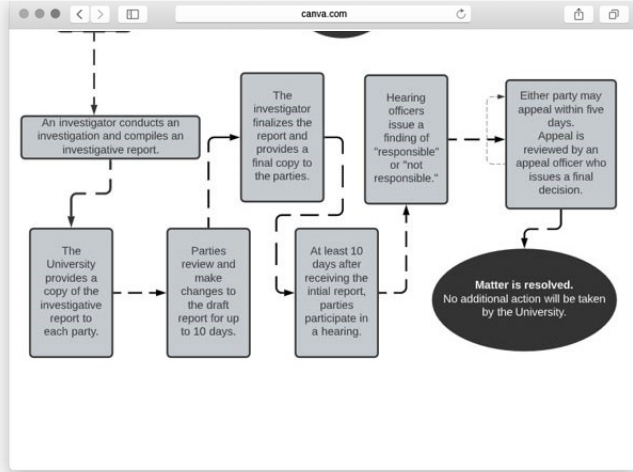
- Overview
- Policy Basis For Jurisdiction
- Standard of Evidence
- Investigator and Scope of the Investigation
 - Investigator's Name/Role
 - Parties and interview dates
 - Scope of the investigation
- Summary of the investigation
 - Facts as set forth by parties
 - Undisputed facts
- Application of facts to policy
- Credibility Assessment: Template language ONLY
- Appendices
 - Statements
 - Exhibits

Drafting an Investigative Report

Investigators must include all evidence provided.

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

Procedures for Report Review



- 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.

Hearings

Scope of Decision Makers' Authority

- 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
 - 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 of bias.



Requirements of the Decision Maker

- 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 the Decision Maker

- 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
- With support of the panel, the Chair or designee is responsible for synthesizing the decision of the panel into a written decision letter
- With support of the panel, the Chair is responsible for screening pre-submitted questions for relevance and for asking pre-submitted relevant questions during the Hearing
- With support of the panel, the Chair is responsible for documenting and communicating relevancy determinations throughout the Hearing.



Parties at the Hearing

- •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
- •Investigators, as necessary
- •University Counsel



Structure of the Hearing

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



Structure of the Hearing

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

- Scope of the Hearing
- Review of Rights
- Expectations for Conduct of Parties During the Hearing
- Review of Advisor's Role in the Title IX Process
- Notification of Advisors
- Opportunity to ask Procedural Questions

VI. Reading of Charges

VII. Entry of plea (responsible or not responsible):



Conducting the Hearing

I. Opening Statements


II. Questions from the hearing officer for Investigators, Complainant, and Respondent:

- Cross examination through Advisors, as requested

III. Questions from the hearing officer for Witnesses

- Cross examination through Advisors, as requested

IV. Additional Questions from the hearing officer, as necessary



Decision Makers' Questions Parties and Witnesses

- 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.

Avoid

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

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.

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

Ask

Ask only relevant questions.

- **BE PREPARED TO EXPLAIN WHY YOU ARE ASKING A SPECIFIC QUESTION**

When asking questions
of the parties...

Managing a Cross Examination

- Under the regulations, parties have a right to cross examination. - *Note evidence may be considered whether or not parties participate in a 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

- 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



Findings and Impact Statements

I. Announcement of the hearing officer's Decision

II. Submission of Impact Statements

- Impact Statement from Complainant
- Impact Statement from Respondent
-

III. Communication of prior conduct code violations involving the Respondent, as applicable

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



Sanctions

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



Range of Sanctions- Students

- **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
- **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

- 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.

Note: Remedies involving employees may include mandatory education or professional development, formal written warnings, temporary separation, or termination of employment.

October 28-29, 2021

Title IX for Investigators and Decision Makers



Presented by
Catlin Wells, M.Ed., J.D.,
Executive Director of Equity
and Compliance



1 Skill Building

- Defining Title IX
- Understanding Bias
- Understanding policy elements
- Identifying relevant evidence

2 Law and Policies

- Jurisdiction
- Policies
- Overview of Processes

3 Obligations of Title IX Team Members

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

4 Title IX Process

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

5 Practice!

- Mock Investigation
- Mock Hearing

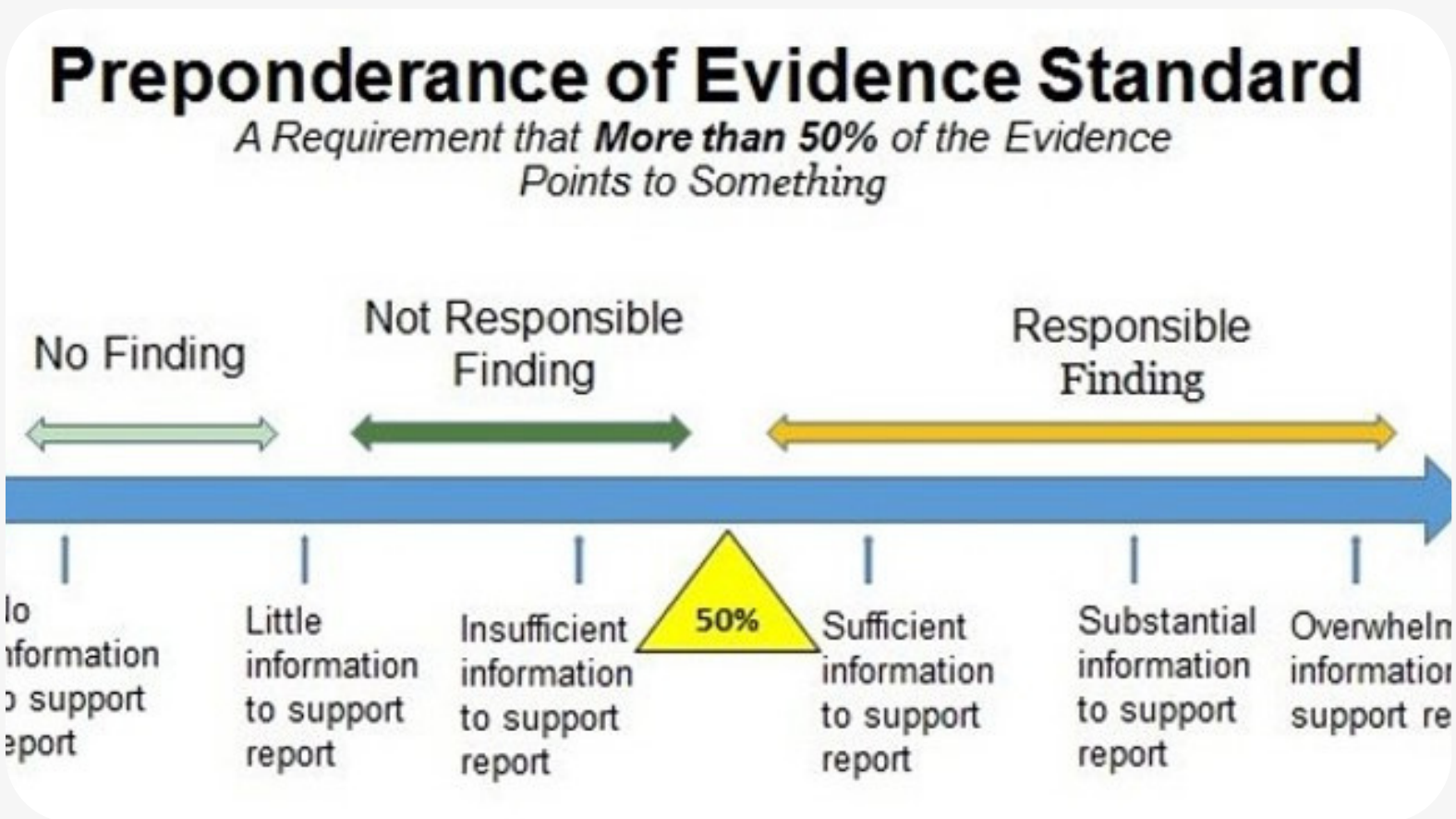
Agenda



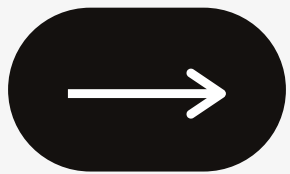
Making a Determination

Preponderance of the Evidence

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.



Weighing Evidence

Do Consider:

- Is the evidence direct or circumstantial?
- Relevant evidence
- Credibility

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.

Outcome Letter

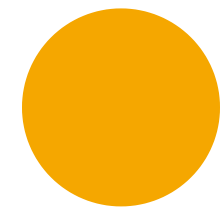
- The chair is responsible for writing the letter.
- State your name and affiliation with the University
- State the alleged conduct
- State the policy implicated by the alleged conduct
- State the finding (responsible or not responsible)
- State the rationale
 - The rationale should consider each policy 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

- Oli reported that Ani engaged in conduct that violated the University's policy on stalking. The University conducted an investigation and hearing into the matter.
- The record contains the following information: WIT students, Oli and Ani, met on Hinge and went on three dates. After date three, Oli sent Ani a text that said "hey- I don't think this is going to work out." Ani responded with five text messages and four phone calls in the span of fifteen minutes. One of the text messages said, "Say you're sorry or you'll be sorry later..."
- Witness, Mav, stated that they received text from Ani that said "Do you know why Oli won't talk to me." Three other witnesses reported receiving the same text. Mav submitted a copy of the text message. The other witnesses stated that they deleted the message upon receipt.
- Security footage from two days after the text shows Ani sitting outside of Oli's residence hall for an hour, holding flowers and a large heart shaped balloon.
- Mav also stated that Oli stayed at their house for three nights because Oli was "super freaked."
- Ani stated that they are "really a good person." Ani stated that they didn't mean any harm.

Discussion

- Does this case fall under Title IX?
- What policy does this implicate?
- 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

- The elements of stalking are as follows:
 - 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.
- **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 the record shows that Respondent engaged in three separate forms of contact and that Respondent texted four people about Complainant, the evidence supports a finding that there was a course of conduct.

Where the Respondent texted Complainant, called Complainant, appeared outside of Complainant's house and asked four witnesses about the Complainant, the evidence supports a finding that the reported conduct was directed at the Complainant.

Where Mav stated that Complainant was "super freaked," where Complainant provided a text message that said "you'll be sorry," and where Respondent waited outside of Complainant's residence without an invitation, the evidence supports a finding that the conduct would cause a reasonable person to experience fear for their safety or substantial distress.

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

Element 1

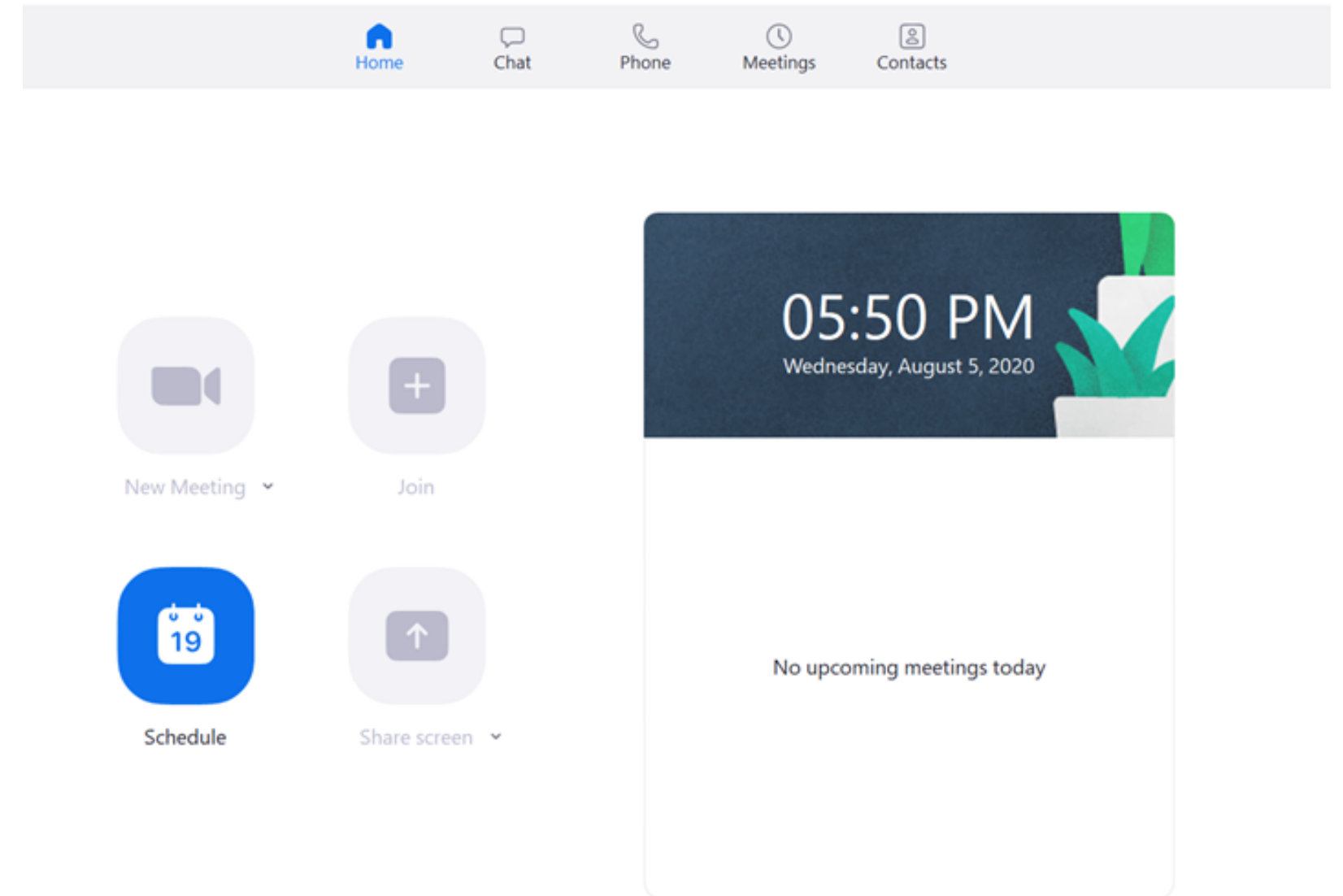
Element 2

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



Recording

- 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.



Appeals

Grounds for Appeal

1

new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;

2

procedural irregularity that affected the outcome of the matter;

3

The Title IX coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Method for Filing an Appeal

- After receiving notification of the hearing officer's decision, both complainant and respondent have five business days to request an appeal in writing.
 - Instructions for this are included in the outcome letter.
- The notice of appeal specifies the grounds upon which the appeal is based, and how those grounds materially affected the outcome (responsibility or sanctions)
- Upon receipt of the notice of appeal, the appeal will be assigned to a decision maker, who has had no other role in the process.
- Parties are notified in writing when the appeal is submitted.

Method for Filing an Appeal

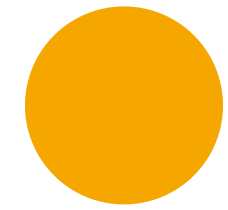
- Both parties shall be given equal opportunity to submit a written statement in support of, or challenging, the outcome
- The officer reviews the decision and any documentation/statements provided by the parties.

Law:

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

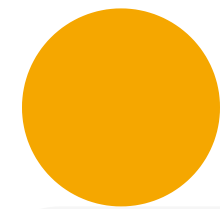
What the appeal officer needs to do:

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



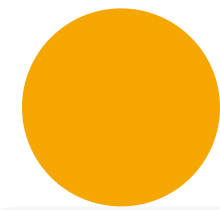
Preliminary Review

- Review the appeal letter to determine whether the appealing party raises sufficient grounds for appeal.
- If the appealing party does not raise an appeal on permissible grounds, the appeal will be dismissed.



Review of the Appeal

- 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.

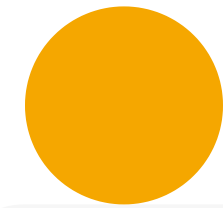


Determination of Appeal

- 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

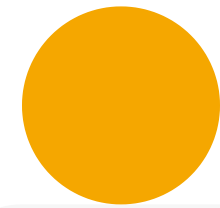
Is there a preponderance of the evidence to support the Appealing Party's Claim?

- **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



Dismissal of Appeal

- 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.



Determination of Appeal

- 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**

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 decision maker may...

Affirm

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

Remand

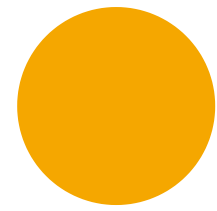
remand the matter to the Hearing Board for reconsideration

Change

change the sanction to correct the procedural error



Decision Letter



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

The Decision letter Should Include:

- 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: Report

My name is Marty Doe and I am the RA at Dorm Hall. Jo Jones is my resident. Jo's roommate, Peyton Smith, sent me a text message this morning at 8 A.M. that said "Jo is in a bad way. I don't know what to do, will you come help?"

I knocked on Jo's door. Jo was vomiting into a trashcan. I said, "Are you okay?" Jo said, "I don't think I'm ever going to be okay again."

I asked Jo what was wrong and they started crying. Jo said, "I just really...I was very drunk. I don't know. It's fine, it's fine."

Peyton said, "Do you want me to tell?" Jo nodded.

Peyton said the following:

"Jo and I went to a party last night. Me and Jo were both drinking a little before we left. Just like...white claw cocktails. Nothing wild. We didn't drink them in the dorms...we like never have alcohol in the room or anything. Someone else brought them.

When we got to the party, lots of people were already there. We went down to the basement and played three or four games of flip cup. Jo was killing it.

There was this junior, Tee. Tee brought over jello shots that tasted like straight up gasoline. We kind of both had a crush on Tee and didn't want to look stupid, so we took them. I was just done for at that point, so I went next door to my friend's house to crash for awhile. I felt really bad leaving Jo but like they said they were fine. Jo drinks more than me, so I assumed they just weren't as drunk.

I got some weird texts from Jo later, but I didn't see them. When I got home this morning, Jo told me that Tee came back to our dorm last night. Jo said that Tee was actually really nice in the uber and didn't get mad or anything when Jo threw up in the cup holder."

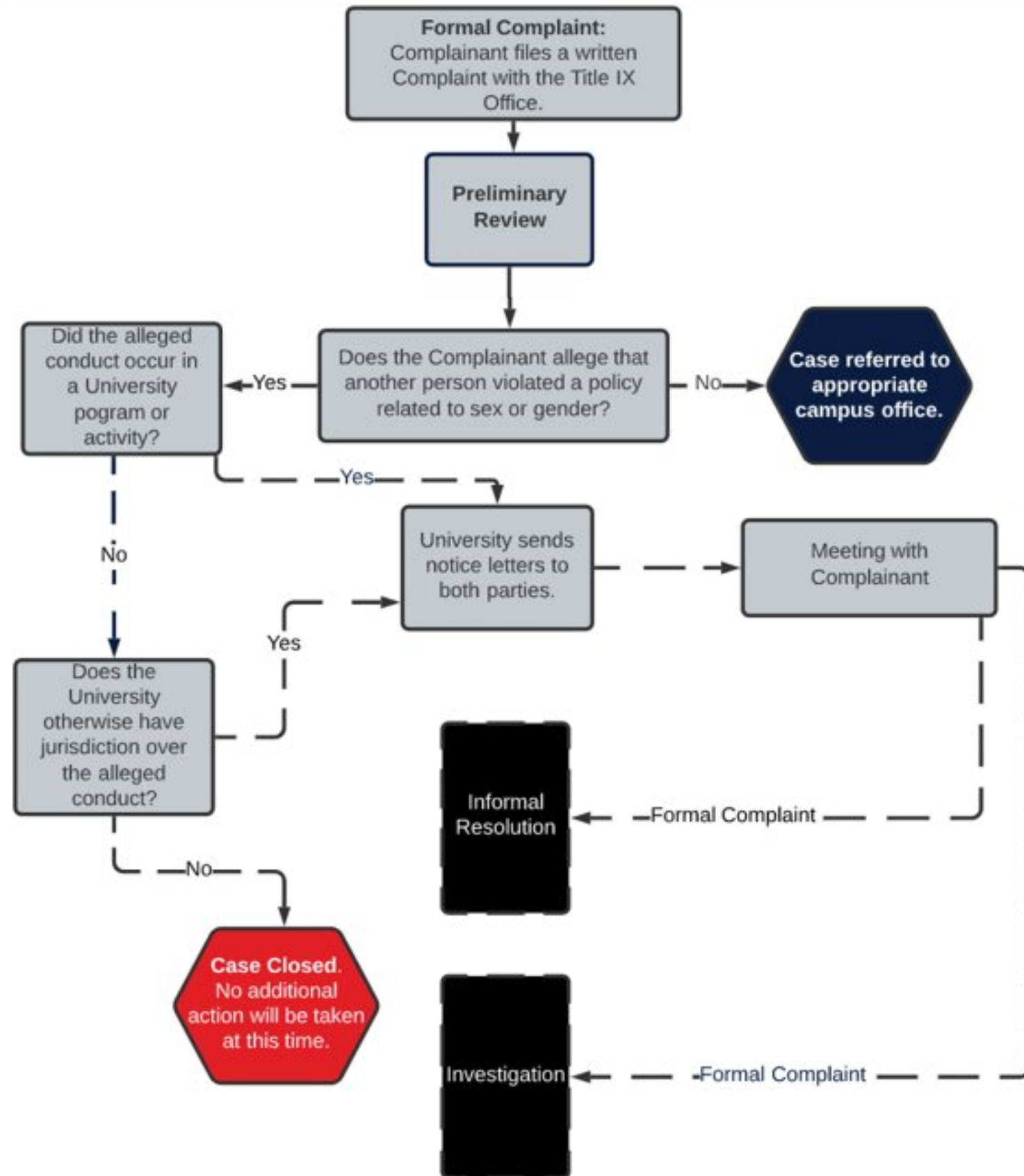
At this point in the conversation, Jo told Peyton, "I can finish." Jo said the following:

"I remember getting back. I remember that I couldn't get the key to go in the lock for a little bit and that Tee got me some water, but I don't really remember anything else. There was a packet of lube by my bed this morning. It's definitely the kind that I buy, but I don't remember using it. I just... I feel gross. Tee texted me a kissy face this morning and some other stuff. I know it probably sounds mean, but I literally never want to talk to that person again."

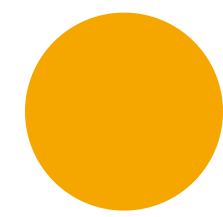
I accidentally forgot to tell Jo that I am a mandatory reporter until the end of the conversation, but Jo said it was okay for me to talk to you, as long as Jo's mom isn't going to find out. Jo said they're mom is really religious and doesn't know that Jo drinks or anything like that.

Peyton said that they were going to take Jo to the hospital, but I don't know if they went or not.

Determination of Procedures



Preliminary Review



Complainant Jo Jones files a formal Complaint

- **Does the University have Jurisdiction?**
- **What policy does this implicate?**
- **What is the first thing the investigator needs to do?**

My name is Marty Doe and I am the RA at Dorm Hall. Jo Jones is my resident. Jo's roommate, Peyton Smith, sent me a text message this morning at 8 A.M. that said "Jo is in a bad way. I don't know what to do, will you come help?"

I knocked on Jo's door. Jo was vomiting into a trashcan. I said, "Are you okay?" Jo said, "I don't think I'm ever going to be okay again."
I asked Jo what was wrong and they started crying. Jo said, "I just really...I was very drunk. I don't know. It's fine, it's fine."
Peyton said, "Do you want me to tell?" Jo nodded.

Peyton said the following:

"Jo and I went to a party last night. Me and Jo were both drinking a little before we left. Just like...white claw cocktails. Nothing wild. We didn't drink them in the dorms...we like never have alcohol in the room or anything. Someone else brought them.

When we got to the party, lots of people were already there. We went down to the basement and played three or four games of flip cup. Jo was killing it.

There was this junior, Tee. Tee brought over jello shots that tasted like straight up gasoline. We kind of both had a crush on Tee and didn't want to look stupid, so we took them. I was just done for at that point, so I went next door to my friend's house to crash for awhile. I felt really bad leaving Jo but like they said they were fine. Jo drinks more than me, so I assumed they just weren't as drunk.

I got some weird texts from Jo later, but I didn't see them. When I got home this morning, Jo told me that Tee came back to our dorm last night. Jo said that Tee was actually really nice in the uber and didn't get mad or anything when Jo threw up in the cup holder."

At this point in the conversation, Jo told Peyton, "I can finish." Jo said the following:

"I remember getting back. I remember that I couldn't get the key to go in the lock for a little bit and that Tee got me some water, but I don't really remember anything else. There was a packet of lube by my bed this morning. It's definitely the kind that I buy, but I don't remember using it. I just... I feel gross. Tee texted me a kissy face this morning and some other stuff. I know it probably sounds mean, but I literally never want to talk to that person again."

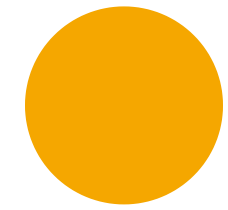
I accidentally forgot to tell Jo that I am a mandatory reporter until the end of the conversation, but Jo said it was okay for me to talk to you, as long as Jo's mom isn't going to find out. Jo said they're mom is really religious and doesn't know that Jo drinks or anything like that.

Peyton said that they were going to take Jo to the hospital, but I don't know if they went or not.

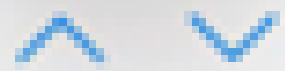
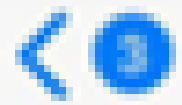
What questions do you have for the Complainant?

Complainant's Statement

- Jo Jones (hereinafter "Complainant") stated that they went to a party at 9:00 PM. Complainant stated that prior to leaving for the party, Complainant and Peyton Smith drank three white claws, with one-two shots of vodka in each. Complainant stated that they went with Smith to an off campus party.
-
- Complainant stated that Tee McGhee (hereinafter "Respondent") provided Complainant with a Jello shot. Complainant stated that the shot tasted like "gasoline." Complainant stated that they played two games of either beer pong or flip-cup, using a pumpkin stout.
- Complainant stated that Respondent offered to take them home. Complainant stated that Respondent said, "I want to make sure you get home okay." Complainant stated that they felt dizzy when they went to the car. Complainant stated that they remember throwing up in the cup holder of the uber. Complainant stated that they were charged an 100 dollar cleaning fee.
- Complainant stated that they could not find their keys when they got home. Complainant stated that they dropped their keys when they were trying to get it in the lock. Complainant stated that Respondent brought them water. Complainant stated that they do not remember the rest of the night.
- Complainant stated that they found a packet of lube by their bed this morning. Complainant stated that they believe the lube belonged to them. Complainant stated that the sheets were sticky and that their body felt sore.
- Complainant stated that Respondent sent a text that said, "I had fun last night," and "let's do that again." Complainant stated that Respondent also sent a kissing face emoji
-



Complainant provided the following documentary evidence:



\$148.32

Just a quick update,



- 10:00pm | 100 East St., Boston MA
NV
- 10:37pm | 550 Huntington Ave, Boston MA
NV

You rode with Charles

4.42 miles	00:36:59 Trip time	uberX Car
---------------	-----------------------	--------------

Exhibit C: Uber Receipt

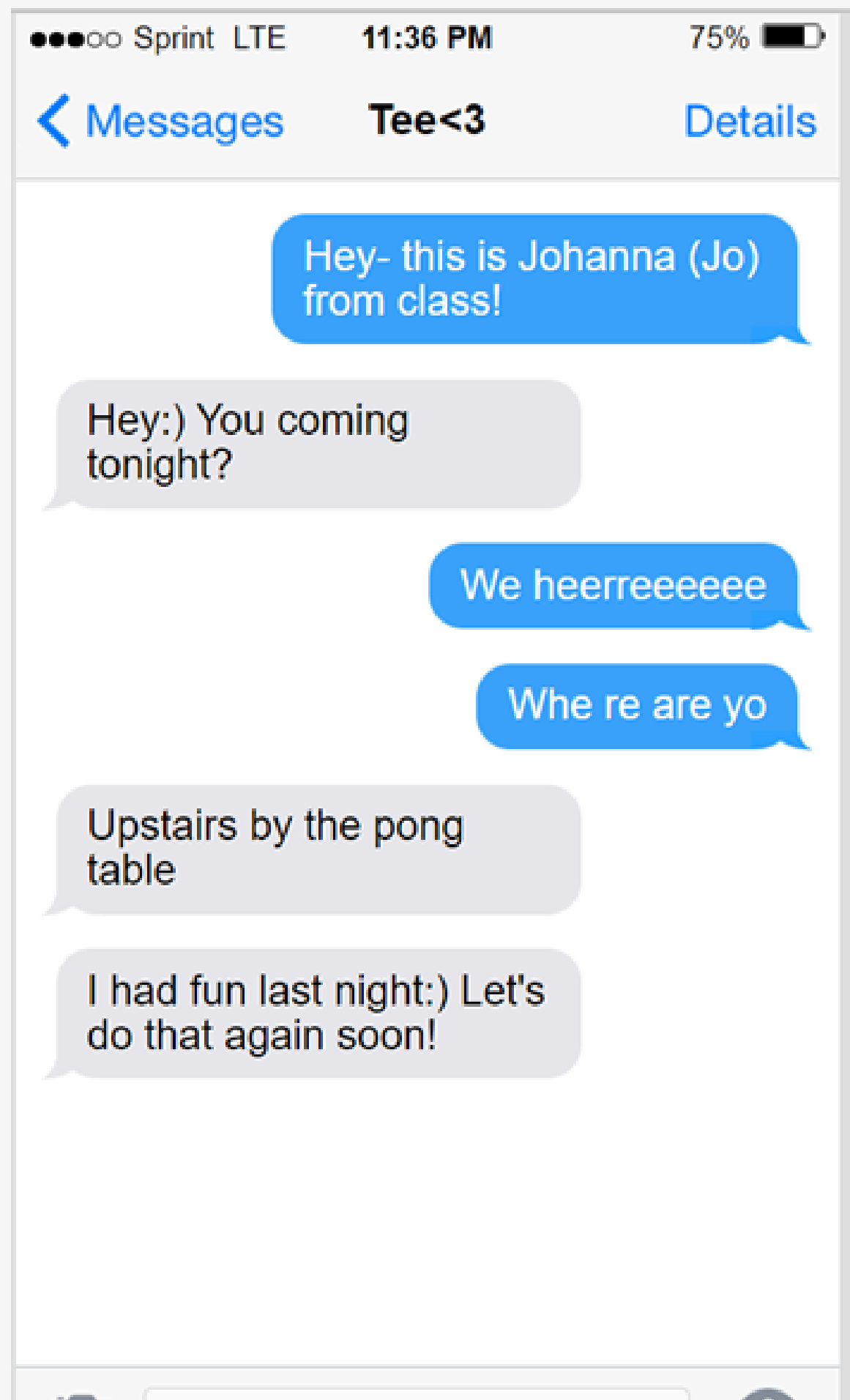


Exhibit D: Text messages between Complainant and Respondent, submitted by Complainant

Respondent's Interview:

- What questions do you have for the Respondent?
- What documentary evidence do you need to ask Respondent to provide?

Respondent's Statement

- Respondent stated that they met Complainant at a party.
- Respondent stated that Complainant seemed “really chill.”
- Respondent stated that they danced a “little bit” and played three-four games of flip cup. Respondent stated that they had given Complainant 2 imperial pumpkin ales to play with.
- Respondent stated that people were taking jello shots made from everclear. Respondent stated that Complainant asked “where can I get some of those jellos?” Respondent stated that they brought Complainant a jello shot.
- Respondent stated that Complainant said that they were scared to go home along. Respondent stated that they told Complainant “I’ll take you so you’re safe.”
- Respondent stated that Complainant threw up in the Uber. Respondent stated that Complainant shrugged after and said “food poisoning.”
- Respondent stated that they did not remember Complainant fumbling for a key.
- Respondent stated that they went inside the house with Complainant and got Complainant some water.
- Respondent stated that they planned on leaving, but stated that Complainant said, “Come upstairs.” Respondent state that they talked to Complainant for 20 minutes. Respondent stated that Complainant fell asleep mid thought. Respondent stated that they stood up to go. Respondent stated that Complainant woke up. Respondent stated that Complainant said, “No, stay.” Respondent stated that Complainant told Respondent where Complainant keeps a package of lubricant. Respondent stated that Respondent got the lubricant from the bedside table. Respondent stated that they digitally penetrated Complainant, but that they stopped when Complainant fell back asleep.

Smith's Statement

- Smith stated that they were with Complainant from 8:00 PM to about 10:00 PM. Smith stated that Complainant played flip cup with Respondent. Smith stated that Complainant seemed “pretty drunk.” Smith stated that Complainant was slurring their words and laughing really loud. Smith stated Complainant said, “I’m gonna ask Tee Rex to be my dinosaur friend.”
- Smith state that hey left the party at 10:00.
- Smith stated that Complainant sent texts around 11:00 PM that said, “pey, I’m ded,” and “sickkkkkk”
- Smith stated that Complainant called Smith the next morning. Smith stated that Complainant was “crying a lot.”

← Messages **Bestie (Jojo)** Details

Are you ready yet????

Be over in like five. Do you have chasers?

Just THE CLAW
hahahahah

Okay. better put my big girl pants on lol

peyyyyy i'm ded

sickkkkkkk

kelp

*kelp

HELP

Exhibit E: Text messages between Smith and Complainant

Breakout Room

- What are the disputed facts?**
- What are the undisputed facts?**

Mock Hearing

Preliminary Matters

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, Jo Jones, against Respondent, Tee McGhee. 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.

Preliminary Matters

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.

Jo Jones, Are you supported by an Advisor today?

Tee McGhee, Are you supported by an Advisor today?

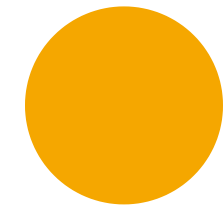
Hearing Chair: Jo Jones, Do you have any questions regarding the procedure that will be used during this hearing? Tee McGhee Do you have any questions regarding the procedure that will be used during this hearing?

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 Respondent used their fingers to penetrate Complainant without Complainant's consent, in violation of the University's policy on Sexual Assault.

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.

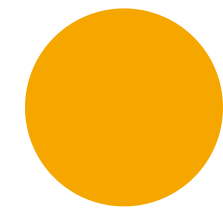
Hearing

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.



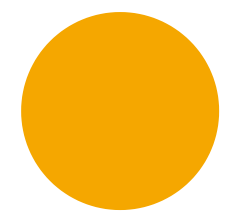
Jo Jones's Statement

"Tee McGhee assaulted me when I was too drunk to consent. I originally was afraid to tell anyone because I didn't want to get in trouble, but I'm not scared anymore. I would like the University to make this right."



Ted McGhee's Statement

I did not sexually assault anyone. I am not that kind of person. I was just trying to get to know someone who I thought was really cool. I am not responsible.



Hearing Continued:

Questions from the Decision Maker for Complainant and Respondent:

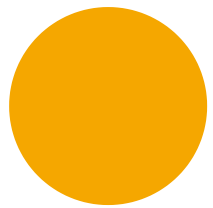
Hearing Chair: At this time, the hearing officers will ask questions of the Complainant and of the Respondent. The parties may cross examine the parties through their advisor. As a remind, advisors must submit any relevant questions to the Hearing Chair before they may be asked. Questions will only be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

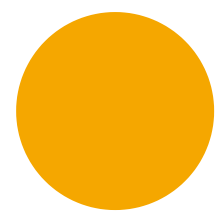


Complainant requests to ask the following

- Did you know that the jello shot I asked for had everclear in it?
- Did you know the alcohol content of the pumpkin beer?
- Why did you assault me?
- **Are these questions relevant?**

***REMINDER:**

- A question is relevant if it can be used to understand whether the alleged conduct occurred *or* whether the alleged conduct violated a policy.
- 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



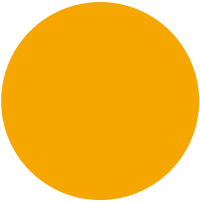
Respondent requests to ask the following

- Isn't it true you had a crush on me?
- Have you hooked up with someone before?
- Do you remember telling me you had food poisoning?

Are these questions relevant?

***REMINDER:**

- A question is relevant if it can be used to understand whether the alleged conduct occurred or whether the alleged conduct violated a policy.
- 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

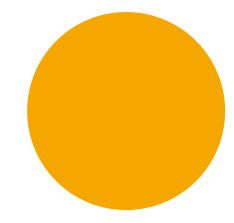


Hearing Continued... Questions of Witnesses

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

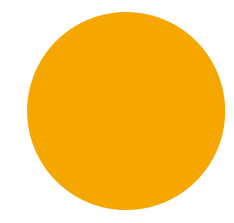
Hearing Chair: At this time, the hearing officers will ask any additional questions of the Investigators, of the Complainant, of the Respondent, and of any witnesses.

_____ Questions from the Decision Maker to the Complainant

_____ Questions from the Decision Maker to the Respondent

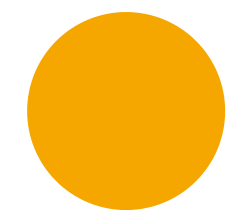
_____ Questions from the Decision Maker to the Witnesses

Deliberations



Questions to Consider

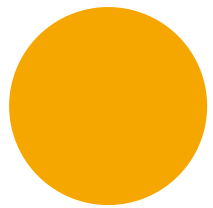
- oIs there a preponderance of the evidence to support a finding that the alleged conduct occurred?
- oWhat facts support or refute a finding for each element?



Findings

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, Tee McGhee, is _____ for the alleged policy violation.





Sanctions- Submission of Impact Statements

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.



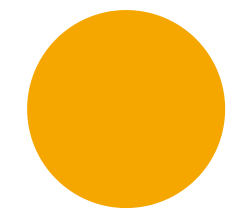
Determination of Sanctions:

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

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?

Thank you!