



Title IX- Training for Title IX Team Members

Title IX, August 7, 2020 and August 10, 2020

Quinnipiac
UNIVERSITY



Title IX Coordinator



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Expectations for Engagement



Law and Policies

- Law
- Jurisdiction
- Policies

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

Agenda





Law and Policies

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**



Jurisdiction: Title IX vs. Code of Conduct

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: Quinnipiac reserves the right to address, through the Student Code of Conduct process, incidents that occur off campus that may endanger the health, safety and welfare of self or others and/ or adversely affect the university and/or the pursuit of its objectives.

Allegations containing any element of sex discrimination or sexual misconduct... shall be investigated and adjudicated pursuant to the procedures outlined in the Title IX Policy.



Title IX Policies

Discrimination:

- Disparate Treatment

- Disparate Impact

Sexual Harassment:

- Quid Pro Quo Sexual Harassment

- Hostile Environment Sexual Harassment

- Sexual Assault

- Dating and Domestic Violence

- Stalking



Other policies related to sex or gender

Gender Based 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 Title IX Policy.





Obligations of Title IX Team Members

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.



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.

Promptness: *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 adviser, or a witness;
- concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;



Thoroughness: *Regulations*

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*

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

Impartiality: *University Policy*

All parties have the right...to a Title IX coordinator, investigator, decision-maker and facilitator of an informal resolution process that does not have a conflict of interest or bias.



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

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

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. 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

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

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





Title IX Process



Cognitive Bias

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?

Dwyer, C. (2018, September 07). 12 Common Biases That Affect How We Make Everyday Decisions. Retrieved August 05, 2020, from <https://www.psychologytoday.com/us/blog/thoughts-thinking/201809/12-common-biases-affect-how-we-make-everyday-decisions>



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



- 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



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?



Defining Relevant Evidence

relevance noun

 Save Word

rel-e-vance | \ 're-lə-vən(t)s  \

Definition of *relevance*

- 1 **a** : relation to the matter at hand
 - b** : practical and especially social applicability : PERTINENCE
// giving *relevance* to college courses
- 2 : the ability (as of an information retrieval system) to retrieve material that satisfies the needs of the user

Dictionary
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.

Legal
Definition



Relevance in Plain Language

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

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



Stalking

Did the reported conduct occur?

0

Was there more than one incident of conduct?

Was the conduct directed at the Complainant?

0

Did the conduct collectively instill fear in the Complainant?

If YES: Also consider whether the conduct threatened **Complainant's safety, mental health, and/or physical health.**

0

Did the conduct threaten the Complainant's safety, mental health, and/or physical health?

0

Did the conduct interfere with Complainant's ability to participate **in or benefit from University** programs or activities?

NO POLICY VIOLATION

it is not a stalking

POLICY VIOLATION

Stalking



Identifying Relevant Evidence

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’ teachers say that Cris seemed very upset.

Cris’ roommate said Cris is “just a really over dramatic person.” Cris’ roommate also stated that Cris “literally cried once over the series finale of Dawson’s Creek.” Cris’ 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?

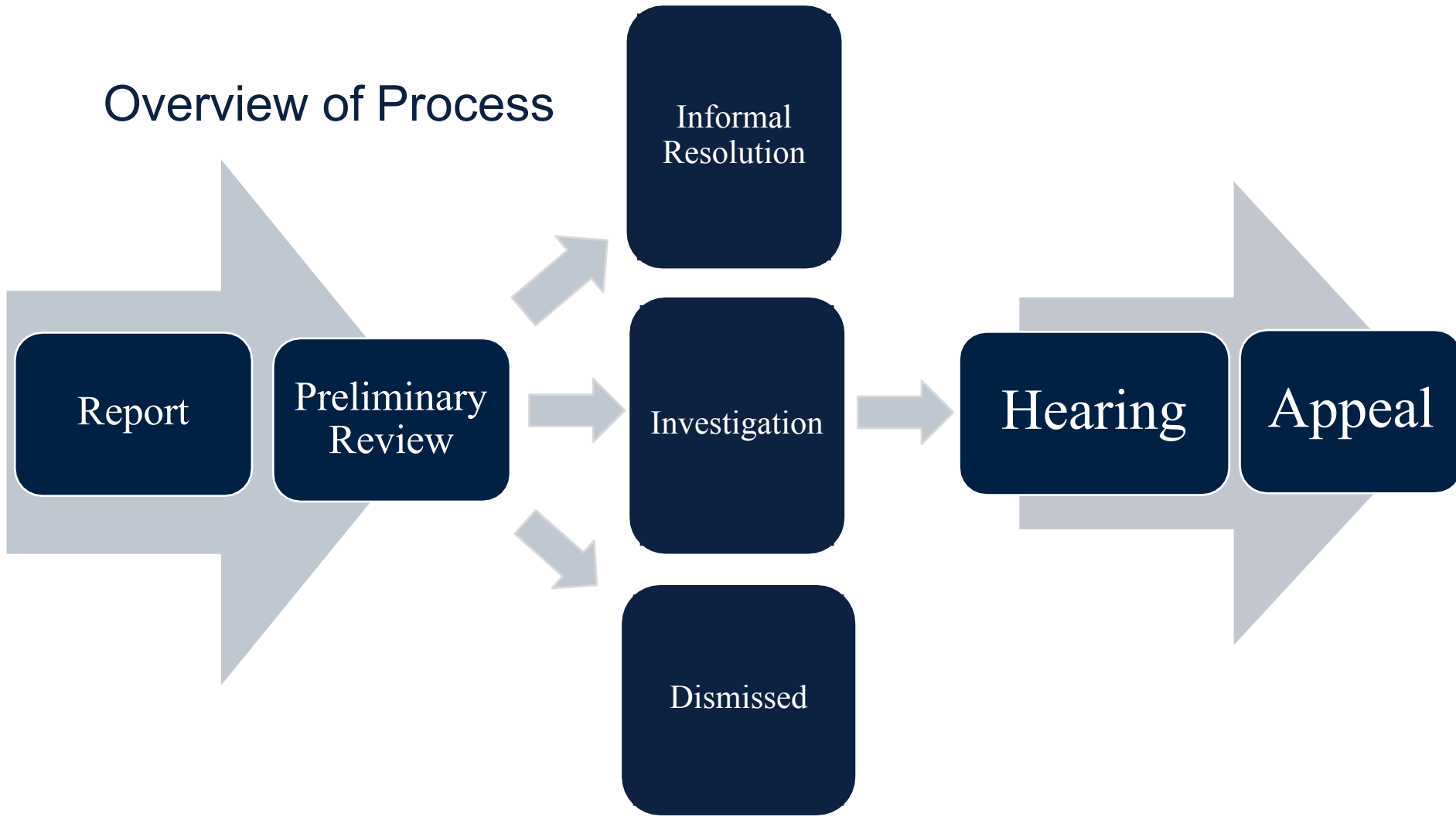
Of the information you have, what evidence is relevant to the case? Why?





Title IX Process

Overview of Process





Investigations

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



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 adviser 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 question to a party:

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.

BEPREPARED TO EXPLAIN WHY YOU ARE ASKING A SPECIFIC QUESTION



Amnesty Policy

The university will not pursue disciplinary action against students for disclosure of personal consumption of alcohol or other drugs where the disclosure is made in connection with a good faith report or investigation of sexual misconduct. The university may initiate an assessment or educational discussion or pursue other non-disciplinary options regarding alcohol or other drug use.

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.
- 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

You are interviewing Dani, who is a student at QU. 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

- 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 and Analysis of policies
- Credibility Assessment: Template language **ONLY**
- Appendices
 - Statements
 - Exhibits

Drafting an Investigative Report





**You will be provided
with a template
you can use 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 advisers.
- The investigator must incorporate changes into the final report and provide a finalized copy to parties and their advisers.
- 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 Hearing Officer's Authority

The hearing officer has 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 Hearing Officer

- The hearing officer is an independent decision maker.
- The hearing officer is responsible for conducting an administrative hearing, pursuant to an established hearing script.
- Through the administrative hearing, the hearing officer is required to objectively evaluate all relevant evidence, both inculpatory and exculpatory.
- Any individual who serves as a hearing officer shall be trained annually pursuant to the training requirements under applicable state and federal law.
- The hearing officer is 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 hearing officer must avoid credibility determinations based on a person's status as a complainant, respondent or witness



Who may be present at the hearing?

- Adviser for Complainant(s)
- Adviser for Respondent(s)
- Witnesses (only one at any one time)
- Title IX Coordinator and/or Deputy Coordinator (if not an investigator)
- University Counsel



Structure of the Hearing

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

Preliminary Matters

- I. Purpose of the Hearing
- II. Introductions of Hearing Officer
- 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 Adviser'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

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

Asking Questions of 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.



When asking question to a party:

- 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

- 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)

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

Sanctioning Guidelines

- Students found responsible for violating this policy in regard to fondling, dating violence, domestic violence, or stalking will likely receive a sanction ranging from probation to expulsion, depending upon the severity of the incident and any previous violations of the Student Code of Conduct.
- Students found responsible for violating this policy in regard to sexual assault that meets the definition of rape will likely receive a sanction of suspension, dismissal or expulsion.
- Students found responsible for violating this policy in regard to sexual harassment that creates a hostile environment will likely receive a sanction ranging from an official reprimand to expulsion, depending upon the severity of the incident and any previous violations of the Student Code of Conduct.
- The hearing officer will sanction students found responsible for violations of the Student Code of Conduct not related to this policy in accordance with sanctions used in the general Student Conduct Process.



Managing a Cross Examination

- Under the regulations, parties have a right to cross examination.
- Parties are allowed to ask **RELEVANT** questions of the other party through their adviser.
 - 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 adviser may ask it.
 - If the question is **NOT** relevant, the adviser 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





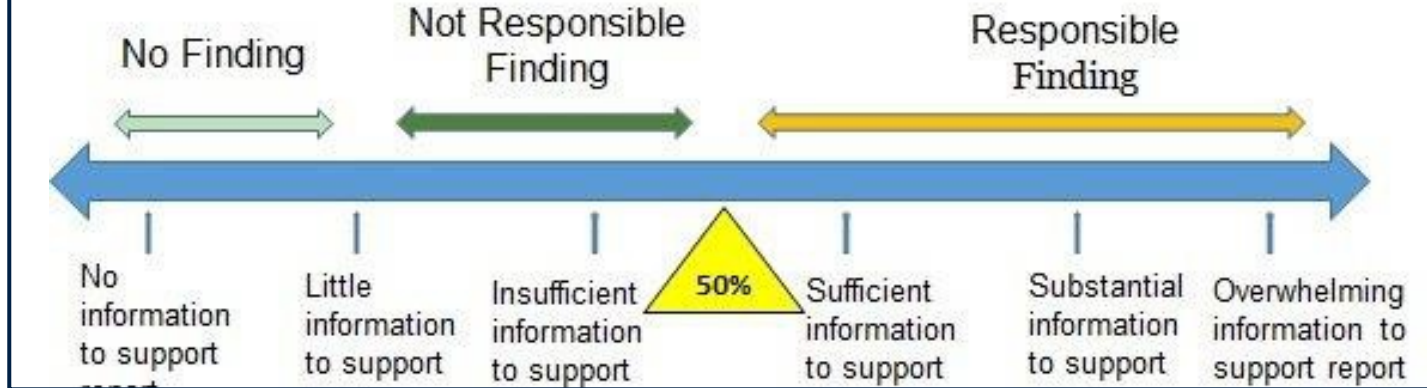
If a party does not
submit to cross
examination, the
decision maker may not
rely on their statement or
testimony.



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.

Weighing Evidence

DO Consider:

- Is the evidence direct or circumstantial?
- Relevant evidence
- Source of the information (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



Writing the Outcome 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 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

- 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 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

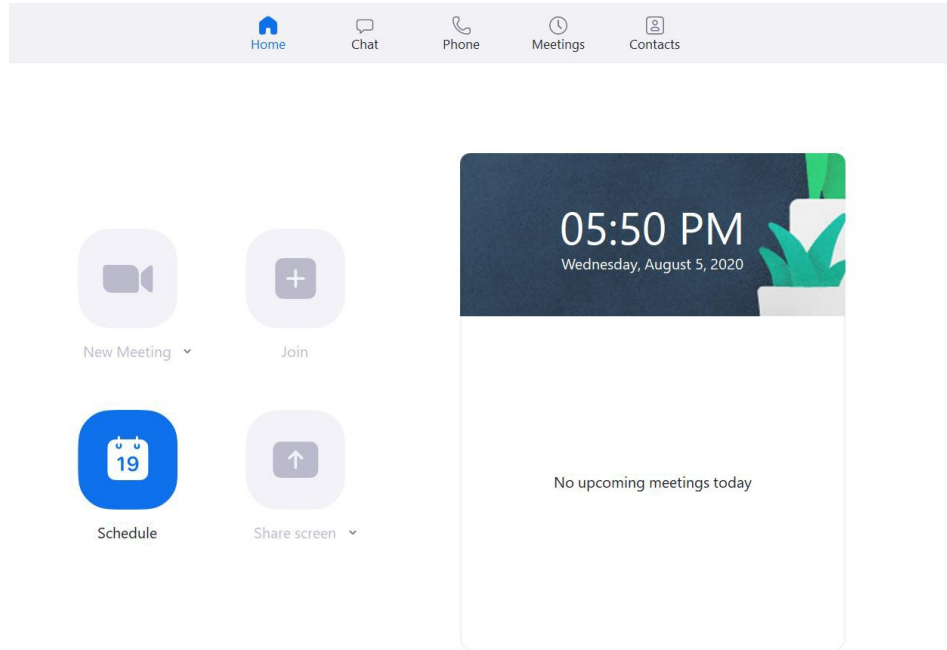
Element 3

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

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



The left side of the slide features a dark blue background with several geometric elements: a light blue triangle at the top left, a yellow triangle at the bottom left, and a grey square with a white grid pattern in the center. A stylized, light blue 'Q' logo is positioned to the left of the grid square.

Appeals

Method for Filing Appeal

After receiving notification of the hearing officer's decision, both complainant and respondent have five business days to notify the Title IX coordinator of their intent to appeal the decision.

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 officer's decision or notification of dismissal.



Grounds for Appeal

- 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;
- procedural irregularity that affected the outcome of the matter;
- 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.; **or**
- the sanction(s) assigned by the hearing officer did not adhere to the sanction guidelines stated in this policy.



Summary of Appeal Process

- 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.



Determination of Appeal

- The appeal officer first determines whether the party has grounds to 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

Upon review of the appeal, the appeal officer may:

- affirm the decision of the hearing officer. In this case, the initial decision is final;
- remand the matter for re-investigation or re-hearing, depending on which is necessary to absolve the grievance process of error or irregularity; **and/or**
- initiate a new Title IX administrative hearing.





Questions?