

Hearing Panelist Refresher Training

Equity and Compliance Programs and
Office of Student Integrity
Spring 2023

Overview

In this training, we will learn about:

- Title IX and Georgia Tech's Sexual Misconduct Policy
- The Formal Grievance Process
- Hearing Panel Member Responsibilities
 - Avoiding prejudgment, bias and conflict of interest
- The Force Incapacity Consent Construct
- Hearing Process and Procedure
- Appeals

Introductions



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Introductions



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Content Warning

The presentation content contains scenarios, topics and descriptions that may be offensive or triggering.



slido



Tell us about your experiences and/or challenges regarding your participation as a hearing panelist.

① Start presenting to display the poll results on this slide.

What is Title IX ?

37 words...

Title IX of the Education Amendments of 1972

“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 educational program or activity receiving federal financial assistance. . . . ”



Title IX Sexual Harassment § 106.30

- Conduct on the basis of sex that satisfies one or more of the following:
 - (i) An **employee** conditioning education benefits on participation in unwelcome sexual conduct (i.e quid pro quo); or
 - (ii) **Unwelcome conduct that a reasonable person would determine is so severe, pervasive, AND objectively offensive that it effectively denies a person equal access to the school's education program or activity; or**
 - (iii) Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in VAWA

Title IX Jurisdiction

- The complaint falls within Title IX when:
- It alleges sexual harassment, sexual assault, domestic violence, dating violence, and/or stalking (VAWA violations)

AND the conduct

- Institution's program or activity in the United States
 - Institution property
 - Institution sponsored or affiliated events [**substantial control** is key]
 - Buildings owned or controlled by officially recognized student organizations

Georgia Tech's Sexual Misconduct Policy

Prohibits Sexual Misconduct, an **Umbrella term** for any unwanted sexual attention, contact, or activity that occurs without consent

Georgia Tech's Sexual Misconduct Policy applies to Students, Faculty, Staff Contractors, Vendors, Visitors and Guests.



Sexual Misconduct Policy

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graph TD; A[Sexual Misconduct Policy] --- B[Title IX]; A --- C[Other Sexually Based Behavior]
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Title IX

Other Sexually
Based Behavior

Georgia Tech's Sexual Misconduct Policy

- Dating Violence and Domestic Violence;
- Nonconsensual Sexual Contact;
- Nonconsensual Sexual Penetration;
- Sexual Exploitation;
- Stalking;
- Sexual Harassment (*student on student, other than student on student*)

Comparing Jurisdiction

Title IX

- Institution's program or activity the United States
- Institution property
- Institution sponsored or affiliated events [substantial control is key]
- Buildings owned or controlled by officially recognized student organizations

Sexual Misconduct

- Institution property
- Institution-sponsored or affiliated events
- Off campus as defined by the institution policies
- Domestic or abroad

Prohibited Conduct: Definitions

Dating Violence

Violence committed by a person who is or has been in a **social relationship of a romantic or intimate nature** with the alleged victim.

- Includes sexual or physical abuse
- Includes threats of such abuse
- The existence of a covered relationship is based on the totality of the circumstances

Prohibited Conduct: Definitions

Domestic Violence

Violence committed by:

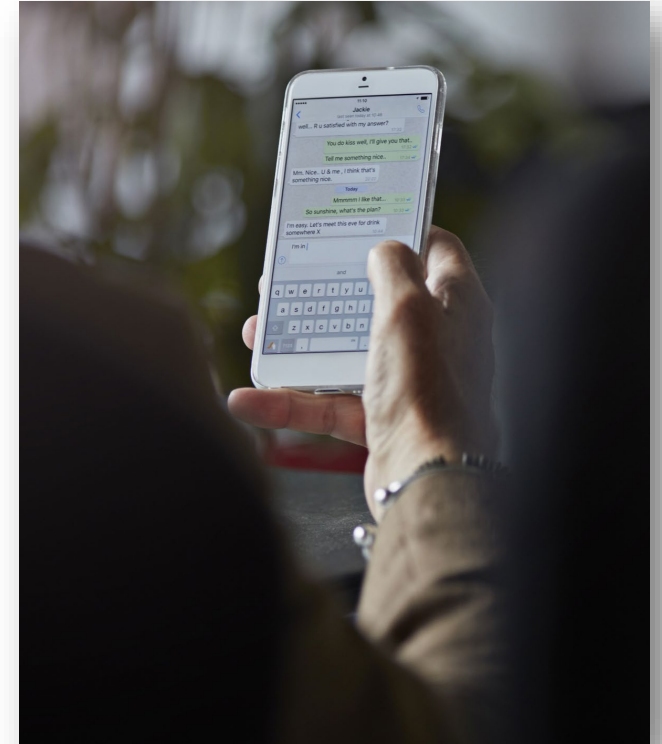
- a current **spouse**, former spouse or **intimate partner**
- a person whom the alleged victim/survivor **shares a child in common**
- a person who is **cohabiting** with or cohabitated with the alleged victim/ survivor as a spouse or intimate partner, or
- a person similarly situated to a spouse of the alleged victim/ survivor

Prohibited Conduct: Definitions

Stalking

Engaging in a **course of conduct** directed at a specific person that **would cause a reasonable person to fear for his or her safety or the safety of others OR suffer substantial emotional distress.**

- Can be direct actions or through third parties
- Could include the use of devices or other methods
- Includes following, monitoring, observing, surveilling, threatening, communicating to or about a person, or interfering with a person's property





Tammy has a crush on Deion. Deion let Tammy know they are not interested. Tammy leaves a love note on Deion's car. Later, she draws hearts on the dry erase board outside his dorm room. Deion is concerned because Tammy is not respecting personal boundaries.

Prohibited Conduct: Definitions

Sexual Exploitation

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

Examples of sexual exploitation may include, but are not limited to, the following:

1. Invasion of sexual privacy;
2. Prostituting another individual;
3. Non-consensual photos, video, or audio of sexual activity;
4. Non-consensual distribution of photo, video, or audio of sexual activity, even if the sexual activity or capturing of the sexual activity was consensual;
5. Intentional observation of nonconsenting individuals who are partially undressed, naked, or engaged in sexual acts;
6. Knowingly transmitting an STD or HIV to another individual through sexual activity;
7. Intentionally and inappropriately exposing one's breasts, buttocks, groin, or genitals in non-consensual circumstances; and/or
8. Sexually-based bullying.

Prohibited Conduct: Definitions

Nonconsensual Sexual Contact

Any **physical contact** with another person of a **sexual nature without the person's consent**.

Includes:

- Touching of another's intimate parts (genitalia, groin, breasts, buttocks)
- Touching a person with one's own intimate parts; or
- Forcing a person to touch his or her own or another person's intimate parts

Prohibited Conduct: Definitions

Nonconsensual Penetration

- Any penetration of another's body parts without the person's consent.

Includes:

- Penetration of the vagina, anus, or mouth by a penis, object, tongue, finger, or other body part
- Contact between the mouth of one person and the genitals or anus of another person

Sexual Harassment (Student on Student)

- Unwelcome
- Verbal, nonverbal, or physical conduct
- Based on sex (including gender stereotypes),
- **Determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access** to participate in or to benefit from an institutional education program or activity in violation of Title IX.





Which of the following is likely to constitute severe, pervasive, and objectively offensive conduct such that it is covered under Title IX?

Sexual Harassment (Other than Student on Student)

Unwelcome verbal, nonverbal, or physical conduct, based on sex (including gender stereotypes) that may be any of the following:

- Implicitly or explicitly a **term or condition of** employment status in a course program or activity
- **A basis for** employment or education decisions; OR
- Sufficiently severe, persistent, or pervasive to interfere with one's work or educational performance creating an **intimidating, hostile, or offensive** work environment or learning environment, or interfering with or limiting one's ability to participate in or to benefit from an institutional program or activity.
- Note: Behavior may rise to the level of a Title IX violation



Examples of Sexually Harassing behaviors

Verbal	Physical	Nonverbal
<ul style="list-style-type: none">○ Telling jokes○ Using profanity○ Threats○ Sexual comments○ Whistling○ Asking about one's sexual fantasies○ Using terms of endearment	<ul style="list-style-type: none">○ Touching○ Patting○ Pinching○ “Accidentally” bumping○ Grabbing○ Blocking a passageway○ Kissing○ Providing unsolicited back or neck rubs	<ul style="list-style-type: none">○ Staring at someone○ Blowing kisses○ Winking○ Licking one's lips in a suggestive manner○ Displaying sexually oriented pictures or screensavers○ Sexually oriented notes, letters, faxes, or email

The Grievance Process

General Overview of Title IX/ Sexual Misconduct Complaint Process

- Individual files complaint (Complainant)
- Complainant and Respondent notified of allegations (notice of investigation)
- Investigator Assigned
- Questions Complainant, Respondent, Witnesses and gathers and examines evidence
- Initial Investigation Report
- 10-day review period
- Final Investigation Report submitted to parties and Hearing Panel
- Informal Resolution (not available in student versus employee cases) OR
- Hearing – Student Integrity manages the hearing process
- Appeal

Primary Functions of the Hearing Panel

- Be a neutral decision maker
 - Hear the facts and circumstances of an alleged policy violation
 - Review the information provided
- Determine whether a policy violation has occurred
- Decide whether/what sanctions and remedial actions are appropriate



Serving Impartially

- Impartiality is essential to the sexual misconduct grievance process. To serve impartially means to:
 - ❖ **Avoid prejudging** the facts at issue;
 - ❖ Be free from actual, perceived or potential **conflicts of interest**; and
 - ❖ Recognize and **avoid bias** that can cause prejudgments and lead to improper decisions.

Avoid Prejudgment of the Facts at Issue

- Prejudgment refers to forming an opinion about a situation or person before knowing or considering all the facts. It often occurs when allegations involve sexual conduct, sexual history, and alcohol or other drug use.
 - Example: Complainant and Respondent were in a previous sexual relationship which was consensual, so a Hearing Panelist assumes consent to the sexual activity at issue was given.
- Sex stereotypes often lead to prejudgment and are to be avoided. An example of a sex stereotype is a belief men cannot be sexually assaulted.

Conflicts of Interest

Three Types

Actual:

- a direct conflict between one's official duties and responsibilities, and a competing personal interest or obligation (Ex: The hearing panelist's niece is the Respondent in a sexual assault case).

Perceived:

- a situation where it could reasonably be perceived that a competing interest could improperly influence the performance of one's official duties and responsibilities (Ex: The hearing panelist previously had a friendship with the Complainant's father).

Potential:

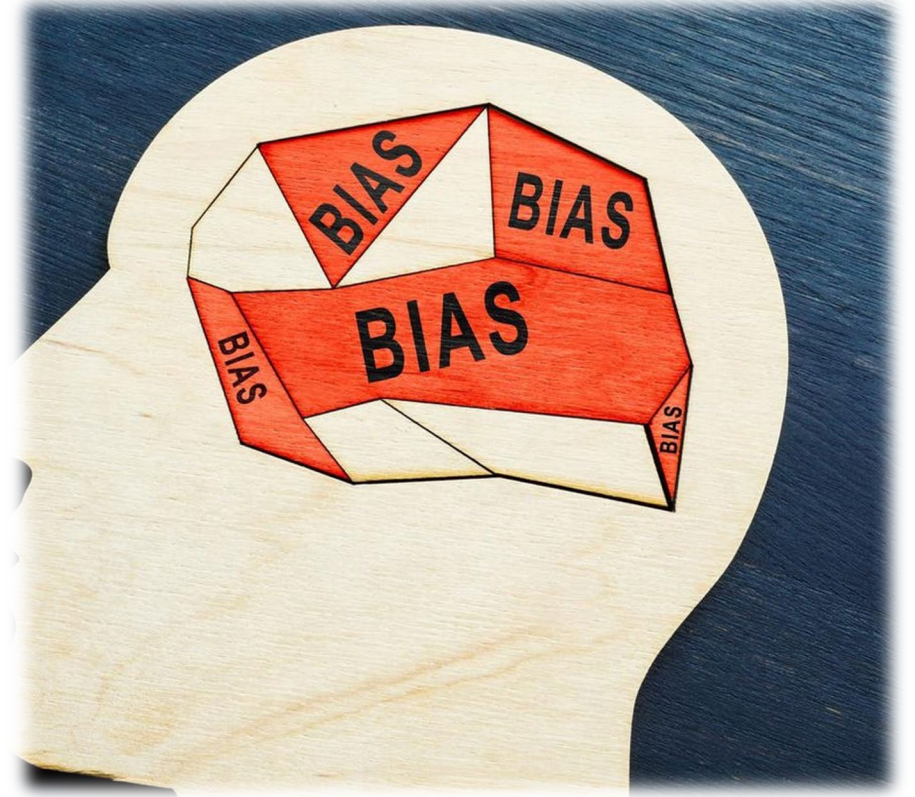
- a personal interest or obligation could conflict with one's official duties and responsibilities in the future (Ex: The hearing panelist and Complainant serve on a nonprofit board which meets and socializes once a quarter).

When does a Conflict of Interest Disqualify You?

- When it prevents you from being able to impartially participate.
- All perceived, actual, or potential conflicts of interest should be immediately disclosed to the Title IX Coordinator.

What is Bias in the TIX Context?

A "bias" is a prejudice or tendency of belief in favor of or against someone. Biases are based on stereotypes and not actual knowledge of the individual or a particular circumstance. Biases are harmful because they can lead to prejudgments and discriminatory practices.



Recognizing Bias

- Biases are often “implicit,” meaning we have attitudes towards people or associate stereotypes with them without our conscious knowledge. You cannot rely on sex stereotypes – typical notions of what men or women do or do not do – when serving on a hearing panel.
- Understanding bias is particularly important in the Title IX/Sexual Misconduct context because:
 - Most evidence is circumstantial rather than direct
 - There are stigmas associated with sex, alcohol, and drugs
 - Improper sex-based bias prevents reliable outcomes
 - There are also potential biases related to economic status, gender, race/ethnicity, and academic standing

Tips for Avoiding Bias



- Avoid generalizations
- Question your thinking and challenge your assumptions by considering whether you would draw the same conclusions if the situation involved other people (of a different sex, race, sexual orientation, socio-economic status and so on); and
- Listen to the whole story and gather all relevant facts before making any conclusions

Understanding The Force-Incapacity- Consent Construct

Overview of the Force-Incapacity-Consent Construct

1. Was **force** used by the Respondent to engage in the sexual activity?
 - If yes = violation of policy
 - If no = Move on with the analysis
2. Was the Complainant **Incapacitated**?
 - a) Did the Respondent know OR
 - b) Should the Respondent have known that the Complainant was incapacitated?
3. What **clear words or actions** by the Complainant gave the Respondent indication that the **sexual activity was mutually agreed upon**?
4. Was the Complainant's consent **withdrawn** during the sexual activity?

Force

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

Coercion, Intimidation & Force

- **Intimidation** – an implied threat that menaces and/or causes reasonable fear – Consider whether the facts lead to intimidation, what words are used, is there a power dynamic?
- **Coercion** – the application of an unreasonable amount of pressure for sexual access
 - Consider:
 - Frequency
 - Intensity
 - Duration
 - Isolation
 - Is Force associated with the coercion?

Force Analysis

- Did the Respondent utilize force or intimidation to engage in the sexual activity with the Complainant?
 - If yes = violation of policy
 - If no = Move on with the analysis

Incapacitation

The physical and/or mental inability to make informed, rational judgments

- Could the Complainant make rational, reasonable decisions?
- Could the Complainant appreciate the situation and address it consciously?

Incapacitation is determined through consideration of all relevant indicators of an individual's state. Whether someone is incapacitated is to be judged from the perspective of an objectively reasonable person.

**** Incapacitation is more than mere intoxication or drunkenness**

Determining Incapacitation

Incapacitation is a determination that will be made after the incident in light of all the facts available

Assessing incapacitation is very fact dependent analysis of the incident in question

Various forms of incapacity

- Alcohol or other drugs
- Mental/cognitive impairment
- Injury
- Sleep

Possible Signs of Incapacitation

- Lack of control over physical movements
 - Ex. Inability to dress or walk without assistance
- Lack of awareness of circumstances or surroundings
- Inability to communicate coherently
- Vomiting
- Total or intermittent unconsciousness

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Respondent's Awareness

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

Two-Part Incapacitation Analysis

Part One

- Was the Complainant incapacitated?

Based on the facts surrounding the incident.

Part Two

- Did the Respondent know of the Complainant's incapacity?
 - Or would a Reasonable Person have known?

Objective analysis based on the facts surrounding the incident.

Incapacitation Analysis

- If the Complainant was not incapacitated, move on to the 3rd question.
- If the Complainant was incapacitated, but:
 - The Respondent did not know it = analysis fails. Move on to the 3rd question.
 - The Respondent should not have known it = analysis fails. Move on to 3rd question.
- If the Complainant was incapacitated, and:
 - The Respondent actually knew it = violation of policy
 - The Respondent should have known it = violation of policy

Consent

- **Words or actions** that show a **knowing and voluntary** willingness to engage in a **mutually agreed upon** sexual activity



What words or actions of Complainant gave Respondent permission for the specific sexual activity that took place?

- Can be invalidated by: force, intimidation, incapacitation, or withdrawal

Persons Unable to Give Consent

- Persons asleep or unconscious
- Persons incapacitated by drugs, alcohol, or medication
- Persons who are unable to communicate consent due to a physical or mental impairment
- Persons who have been threatened or coerced into giving their consent
- Persons under the age of 16

Withdrawal of Consent

- Consent can be withdrawn at any time
- The person withdrawing consent is expected to clearly communicate with words or actions they are withdrawing consent
- Other person must cease sexual activity unless/ until consent is regained





Sexual Misconduct/Title IX Hearing Panel Training

Overview

- Pre-Hearing Preparation
- Live Hearing Requirement
- Decorum
- Hearing Script
- Decision Maker Responsibilities
 - Chair
 - Hearing Panel
- Questioning
 - Sexual Misconduct
 - Title IX
- Decision Maker Responsibilities
 - Review of the Evidence
 - Determining Sanctions
- Appeal Process
- Questions



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Pre-Hearing Preparation

- Scheduling
 - Hearing
 - Pre-Hearing Meeting
 - Hearing Notification
 - Please identify if you have a conflict of interest
- Receipt of Documents (Review All)
 - Investigative Report and Attachments
 - Hearing Script
 - Relevant Policies (Title IX and/or Sexual Misconduct)
- Pre-Hearing Meeting
 - Hearing Overview
 - Parties: Complainant, Respondent, Investigator, Witness(es); Advisors
 - Document Review
 - Prepare Questions

**Additional Information*

- *Prior to the hearing, please do not discuss case information with others or amongst yourselves OR attempt to look up (via social media, Google, etc.) any parties/participants of the hearing*

Live Hearing Requirement

- All hearings shall be held via virtual conference or in-person
- An audiovisual recording will be made of any live-hearing



Microsoft Teams

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Decorum

- Panel

- Be respectful
- Listen carefully/actively
- Be unbiased
- Be aware of the seriousness and emotional nature of the situation and involved parties
- Request clarification, as necessary
- Avoid distractions
- Reserve conclusions until all testimony/evidence has been presented

- Participants

- Refer to involved parties using appropriate name/gender preferred by the person
- No party can act abusively, disrespectfully or intimidatingly during the hearing to any other participant or decision-maker
- Advisor may not ask repetitive questions



Hearing Script

- Call to Order (**facilitated by Hearing Panel Chair*)
 - Introductions
 - Order of Events
 - Allegations
- Hearing Proceedings
 - Prohibited Conduct Definitions
 - Response to Allegations (Respondent)
 - Opening Statements (Complainant then Respondent)
 - Questioning
 - Panel's Question's
 - Questions from party calling witness (in Title IX, cross-examination by Advisor)
 - Questions from opposing party – (in Title IX, cross-examination by Advisor)
 - Closing Statement (Respondent then Complainant)
- Order of Appearance
 - Investigator (**does not apply to Sanction only hearings*)
 - Complainant
 - Complainant's Witness(es) – if applicable
 - Respondent
 - Respondent's Witness(es) – if applicable
- Deliberation (*Hearing Panel Only*)

Decision Maker Responsibilities (Chair)



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- Chair
 - Call Hearing to Order (Adhere to Hearing Script) – Maintain decorum
 - Ask Questions on behalf of parties (Sexual Misconduct)
 - Determine relevancy of questions asked (in writing for Sexual Misconduct; via Advisor for Title IX) prior to them being answered
 - Rape Shield
 - Ensure reason for unallowed questions is documented
 - Draft Hearing Outcome Write-up (w/ Assistance from Advisor to the panel)

Relevant and Directly Related Evidence

- Evidence is **relevant** when it tends to prove or disprove an issue in the complaint.
- Evidence is **directly related** when it is connected to the complaint but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report.

Directly Related, Not Relevant Scenario

Complainant wants to introduce evidence that she is an officer in a conservative Christian campus organization and is outspoken about the need to remain a virgin until marriage. She took a purity pledge witnessed by those in her organization. Complainant seeks to bolster her credibility regarding her claim of not being inclined to consent because of her religious beliefs, NOT to prove that she is a virgin. She also argues that while the policy prohibits introduction of sexual history, it does not prohibit introducing non-history.

Is this relevant?

Rape Shield Protection

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, shall be deemed irrelevant, unless such questions and evidence are offered to prove:

1. that someone other than the Respondent committed the alleged conduct or
2. consent between the parties during the alleged incident.

Decision Maker Responsibilities (Hearing Panel)

- Hearing Panel

- Ask relevant questions
- Participate in deliberation to determine outcome:
 - Panel is typically granted 5 business days to determine outcome and provide hearing outcome write-up to the Advisor to the panel
 - Majority decision will determine outcome (i.e. 2/3 or more)
 - **Preponderance of the Evidence**
 - Available Outcomes include:
 - Not Responsible – No Sanctions
 - Responsible – Sanctions
 - Warning
 - Disciplinary Probation
 - Suspension
 - Expulsion
 - Educational/Developmental Sanctions (i.e. Sexual Misconduct Workshop)



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Questioning of Participants (Sexual Misconduct)

- Sexual Misconduct

- Hearing Panel may ask questions directly (to all participants)
- All questions from Complainant or Respondent must be submitted in writing to the Hearing Panel Chair:
 - Questions will then be asked by the Hearing Panel Chair, after determining relevancy
 - Hearing Panel Chair shall limit questions that are irrelevant to determining the veracity of the allegations against the Respondent.
 - Should err on the side of permitting all raised questions and must document reason for not permitting
 - Questions or evidence about the Complainant's sexual predisposition or prior sexual behavior are irrelevant, unless used to offer proof that someone other than the Respondent committed the alleged act OR consent between the parties during the alleged incident. (Rape Shield)
 - Panel shall not access, consider, disclose or use medical records or records protected by a legally recognized privilege unless party has provided voluntary written consent.

Questioning of Participants (Title IX)

- Title IX

- Hearing Panel may ask questions directly (to all participants)
- Advisors can conduct cross-examination (on behalf of their party) for Investigator, opposing party and witnesses
 - All questions may be asked directly to the party being questioned
- Relevancy is determined by the Hearing Officer/Hearing Panel Chair:
 - Hearing Panel Chair shall limit questions that are irrelevant to determining the veracity of the allegations against the Respondent.
 - Relevancy is determined by the Hearing Officer/Hearing Panel Chair prior to party providing a response to the question
 - Should err on the side of permitting all raised questions and must document reason for not permitting
 - Questions or evidence about the Complainant's sexual predisposition or prior sexual behavior are irrelevant, unless used to offer proof that someone other than the Respondent committed the alleged act OR consent between the parties during the alleged incident. (Rape Shield)
 - Panel shall not access, consider, disclose or use medical records or records protected by a legally recognized privilege unless party has provided voluntary written consent.

Decision Maker Responsibilities – Review of the Evidence

- Preponderance of the Evidence
 - Whether Respondent is more likely than not to have violated the Sexual Misconduct Policy.
- Weight of the Evidence:
 - Does information make a fact more or less likely to be true; prove or disprove allegation(s)?
 - Attempt to identify the best possible information available
 - Look for accuracy, consistency and plausibility
 - Highlight differences related to relevant facts
 - Separate opinion and facts
 - Identify potential motives
 - Assess credibility of party providing the information
 - Be aware of potential bias from participants
 - Remain impartial as a decision-maker
 - Inculpatory (favors Complainant) vs. Exculpatory evidence (favors Respondent)

Decision Maker Responsibilities – Determining Sanctions

- In determining the severity of sanctions or corrective actions the following should be considered:
 - the frequency, severity, and/or nature of the offense
 - history of past conduct
 - Respondent's willingness to accept responsibility
 - previous institutional response to similar conduct
 - strength of the evidence
 - the well-being of the Institute community

Appeal Process

- Appeals must be submitted within 5 business days of the decision
- Both parties can appeal the finding on the following grounds (*abbreviated*):
 1. New information, not available at the time of the original hearing...
 2. Procedural Error that may have substantially impacted fairness...
 3. Finding inconsistent with weight of information...
- Appeals are submitted:
 - First, to the AVP/Dean of Students
 - Second, to the President or designee (* only for matters resulting in suspension or expulsion)
 - This represents the final Institutional decision
 - Additional, request can be sent to the Board of Regents for Discretionary Review (of final Institutional decision)

Questions



Scenario

Cierra and Taylor have been “talking to” each other for about four months. Recently Cierra and Taylor have begun to engage intimately with each other. In their intimate time Cierra and Taylor also engage in submission and domination practices or BDSM. On Saturday, Cierra and Taylor went to some bars to hang with friends. Cierra drank three Truly Seltzers and a shot of vodka while Taylor drank two Truly Seltzers and three shots of Tequila. At this point in the night Cierra laughs and tells Taylor that she thinks she is drunk, while Taylor replies in a slurred state “I’m only a little lit.” After going to another bar, Taylor runs into her ex and Cierra becomes instantly jealous. In a fit of jealous rage Cierra runs out of the bar and Taylor follows her. While walking back to Taylor’s apartment, Cierra and Taylor begin to argue and yell loudly at one another. When they arrive at the apartment Cierra tries to unlock the door and drops the key on the floor. In that moment both begin to laugh at one another as they realize how silly the argument was. When Taylor and Cierra enter the apartment, they sit on the couch to talk and begin kissing each other intermittently between conversations. While they are kissing Cierra’s mood changes and she begins to kiss Taylor aggressively by grabbing her throat and saying, “ I hate that we saw your ex and I hate that you are friends.” Taylor began to get uncomfortable as she believes this was not apart of there normal domination practices and instead was personal. Taylor in a shocked state did not know what to say to Cierra and instead continued to kiss Cierra hoping it would be over soon. Cierra then continues to murmur comments out loud about Taylor’s ex and forcefully throws Taylor to the ground and squeezes Taylor’s breasts. Cierra then begins to yell out loud, but Taylor ignores this and begins to engage in rough sex with Taylor. The next day when Taylor examines her body, she sees that she has many bruises on her body. Taylor feels violated and that Cierra went to far.

Scenario (additional facts)

Other facts:

- Taylor and Cierra do not live together.
- Taylor reported that when she woke up the next morning she did not remember much about the incident after she yelled because she was in and out of consciousness.
- Taylor and Cierra have a safe word when they engage in BDSM however, they do not consistently use the word.
- Cierra and Taylor agree that Taylor would yell while they would hook up to show that she was enjoying it.
- Taylor reported that, during that instance the yell meant that they were uncomfortable, and they wanted Cierra to stop.