

# **Institute Advisor Training**

**Office of Equal Opportunity,  
Compliance, and Conflict  
Management**

**October 2024**

A large, semi-transparent warning sign graphic is centered on the slide. It consists of a yellow triangle with a black exclamation mark inside, all enclosed within a grey border. The text 'CONTENT WARNING' is overlaid on the top portion of this graphic.

# CONTENT WARNING

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

# OVERVIEW

## TRAINING GOALS:

1. Discuss the Role of the Advisor and Expectations
2. Review Title IX and Georgia Tech's Sexual Misconduct Policy
3. Review the Sexual Misconduct Grievance Process
4. Practice Scenarios

# Title IX Administration in the Office of Equal Opportunity, Compliance, and Conflict Management



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# ROLE OF THE ADVISOR

# WHAT IS THE ROLE OF THE ADVISOR?

## THE ADVISOR MAY:

- Accompany the party to all meetings, and
- May provide advice to their respective party throughout the Sexual Misconduct process, including providing questions, suggestions and guidance to the party, but
- May not actively participate in the process except in a Title IX hearing.

# Institute Advisor Expectations



Advise Complainants **and** Respondents



Advise Students, Faculty, **and** Staff



Hold an appointment for **One Academic Year**



Be **well-versed** in the GT Sexual Misconduct Policy and Grievance Process



Acknowledge **any** Bias

# RECOGNIZE and AVOID Your Own Bias

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. Treat all participants equally; make no assumptions about the allegations based on the demographics or circumstances of participants.

- Role of alcohol
- Own experiences
- Student-Athletes
- Fraternity/ Sorority Life
- International Students
- Sex/Gender
- Gender Identity
- Race
- Ethnicity
- Nature of the Violation
- Religion or religious beliefs
- Academic Field of Study/ Major
- Politics
- Attitude
- Other



# ADVISING WITH CARE

- Actively listen to the party
- Exercise patience and understanding
- Avoid any “why” questions
- Be respectful of pronouns
- Assist in forwarding them support resources
- Schedule regular check-ins



# Advisor Communication Decorum



*“The advisor may accompany the party to all meetings and may provide advice to their respective party throughout the Sexual Misconduct process, including providing questions, suggestions and guidance to the party, but may not actively participate in the process except in a Title IX hearing.”*

*- BOR Sexual Misconduct Policy*

- Communication will be between EOCCM and the parties, **not** EOCCM and the advisor
- You will be cc'd on communication if the party consents to it

# WHAT IS TITLE IX?

# WHAT IS TITLE IX ?

**37 WORDS...**

**“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 of the Education Amendments of 1972***



# TITLE IX SEXUAL HARASSMENT § 106.30

**Title IX prohibits conduct that, on the basis of sex, 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

A complaint falls within Title IX when:

- It alleges sexual harassment, sexual assault, domestic violence, dating violence, and/or stalking (VAWA violations)

## **AND** the conduct occurs

- Within the Institution's program or activity in the United States, including:
  - On Institution property
  - During Institution sponsored or affiliated events [**substantial control** is key]
  - In buildings owned or controlled by officially recognized student organizations
- Complaining party must be participating or attempting to participate in an education program or activity
  - Institution must have substantial control over the accused

# GEORGIA TECH'S SEXUAL MISCONDUCT POLICY

GT's Sexual Misconduct Policy prohibits “**sexual misconduct**”, an **umbrella term** for any unwanted sexual attention, contact, or activity that occurs without consent. Examples may include:

- 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 TITLE IX & SEXUAL MISCONDUCT



Sexual  
Misconduct

Prohibited Conduct as defined in the Georgia Tech Sexual Misconduct Policy:

- Includes conduct that occurs on or off campus
- Accused must be a current GT Student or Employee

Title  
IX

Prohibited Conduct defined as Title IX Sexual Harassment:

- Includes conduct that occurs in (1) an Institution's educational program or activity, (2) Institution sponsored or affiliated events (substantial control), or (3) Buildings owned or controlled by officially recognized student organizations
  - Must occur in the United States
- Complaining party must be participating or attempting to participate in an education program or activity at Georgia Tech
- Georgia Tech must have substantial control over the accused/ and location where incident occurred



# **GEORGIA TECH SEXUAL MISCONDUCT POLICY RECAP**

# Prohibited Conduct under the 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*)

# CONSENT

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



**CONSENT** can be invalidated by:

- **Force** (physical violence, threats)
- **Intimidation** (an implied threat that menaces and/or causes reasonable fear)
- **Coercion** (the application of an unreasonable amount of pressure for sexual access)
- **Incapacitation**
- **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** that they are withdrawing consent
- Other person **must cease** sexual activity unless and until consent is regained



# INCAPACITATION

## **Incapacitation:**

- The physical and/or mental inability to make informed, rational judgments
- Whether someone is incapacitated is to be judged from the perspective of an objectively reasonable person

Important to remember is that 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 a very fact dependent analysis of the incident in question and all relevant indicators of an individual's state.

Forms of incapacity can include:

- 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



# Respondent's Awareness

- The Respondent either must have been aware or, like a reasonable person, should have been aware of the Complainant's incapacity
- The Respondent's own intoxication does **not** negate their obligation to comply with policy standards

# **Title IX/Sexual Misconduct Grievance Process**

# General Overview of Title IX/ Sexual Misconduct Grievance Process

1. Individual files complaint (*Complainant*)
2. Complainant and Respondent notified of allegations (*Notice of Investigation*)
3. Investigator Assigned
4. Investigator questions Complainant, Respondent, Witnesses and gathers and examines evidence
5. Initial Investigation Report sent to parties and their advisors
6. Review period (*ten business days*)
7. Final Investigation Report submitted to parties, their advisors, and the Hearing Panel
8. Informal Resolution (***not available in student versus employee cases***)
9. Hearing
  1. A Single Decision maker manages the hearing process for employees
  2. Office of Student Integrity Manages the hearing process for student
10. Appeal

**Final determinations of responsibility and sanctions are made by decision-makers, NOT the Title IX Coordinator or assigned investigator.**

# Report Received

Where the  
Institute Advisor  
role may begin

Supportive measures are available  
to all parties throughout the duration  
of this process.

Report received

Outreach to impacted individual with offer of support  
services/information on additional reporting/grievance options

Initial meeting with ECP Staff

Support services requested are  
reviewed and implemented.

Individual declines to  
meet/does not respond

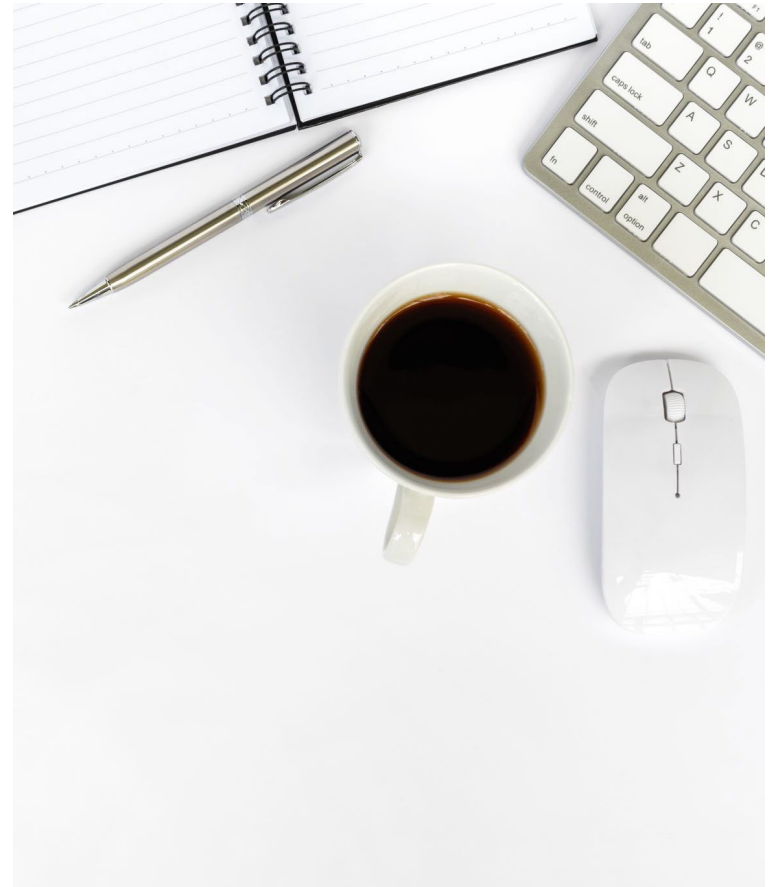
Case closed

# Selection of Advisors

- After an incident report is received, the TIX Coordinator will inform the Complainant(s) and Respondent(s) of their right to have an advisor present during any meeting or hearing.
- The Title IX Coordinator will send the Complainant(s) and Respondent(s) the link to Institute Advisors.
- All Institute Advisors contact information will be available on the Equity & Compliance website. <https://eoc.gatech.edu/title-ix-sexual-misconduct/resources>
- Parties will send an email to an advisor of their choice. It is **your responsibility** to respond to the party and schedule an initial meeting.
- Parties have the right to request a new advisor at any point in the process.

# Advisor Selected

- Schedule a meeting with party.  
Meeting can be via Zoom, teams, or in-person, or over the phone.
- Discuss expectations and your role
- Discuss that you are not obligated to keep the conversations confidential
- Determine communication style (email, phone)
  - Follow-up and turn around time
- Review the Sexual Misconduct Policy and Grievance Process
- Review any previous communication and documents (if applicable)
- Discuss supportive measures
- Discuss cross-complaints (if applicable)



# Supportive Measures

- Referrals to Counseling
- Extensions of time to complete course work or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Restrictions on contact between the parties (no-contact directive)
- Changes in work or housing locations

# Formal Complaint

## Assessment

If complaint doesn't meet policy requirements, it may be dismissed or referred for review under other Institute policy.

If you are the Respondent's advisor this is where your role will likely begin.

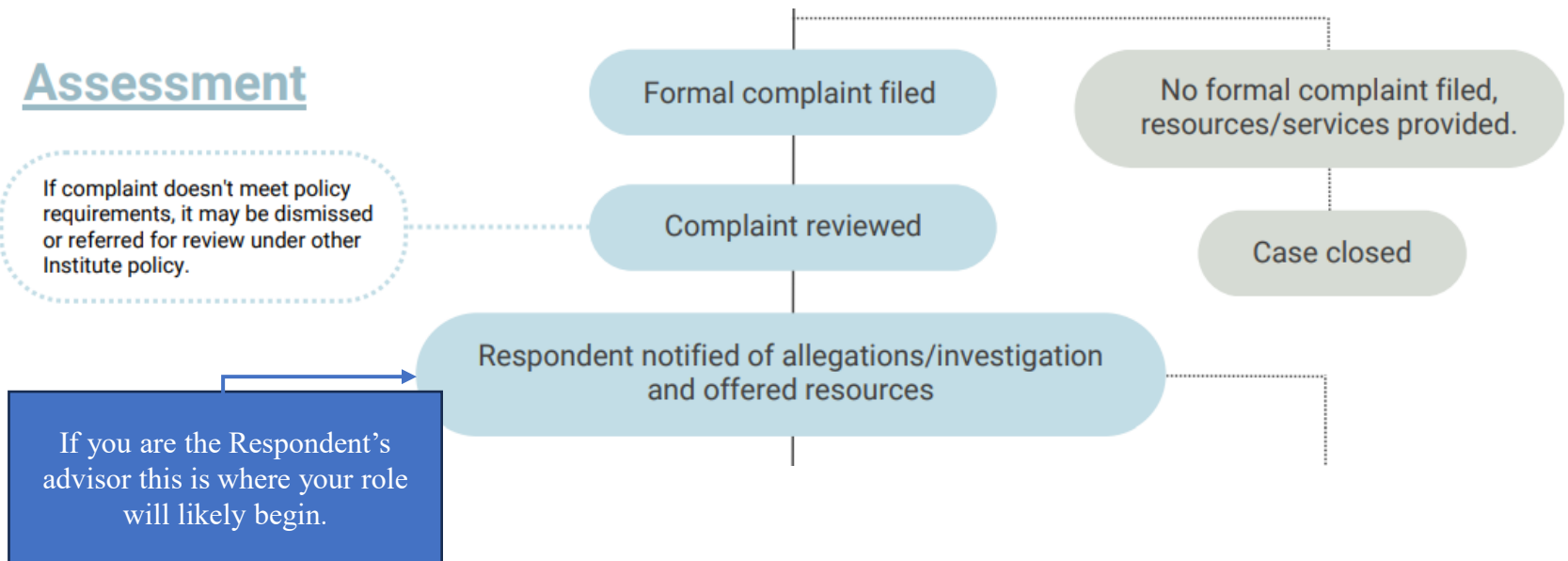
Formal complaint filed

Complaint reviewed

Respondent notified of allegations/investigation and offered resources

No formal complaint filed, resources/services provided.

Case closed





# Formal Complaint

- Assist party in filing a Formal Complaint
- Determine if a party wants to proceed with an Informal Resolution or the Formal Resolution Process
- Discuss the advantages and disadvantages of each process
- Discuss timelines
- Discuss options to withdraw a formal complaint



Formal Complaint



Informal Resolution



Formal Resolution

# Informal Resolution Process

- The Informal Resolution Process is a **structured, voluntary, confidential** process between the parties, their advisors, and a facilitator. **This is an alternative to the formal grievance process.**
- This process is held via zoom, where the Complainant and Respondent are in separate zoom rooms. ***At no point are the parties required to confront each other or be present in the same room during the informal resolution process.***
- The Informal Resolution Process is **not** available in cases where the Complainant is a student, and the Respondent is a faculty/ staff member.
- **All** parties must agree to engage in an informal resolution
- Informal Resolution Agreement is signed by both parties and the Institute.

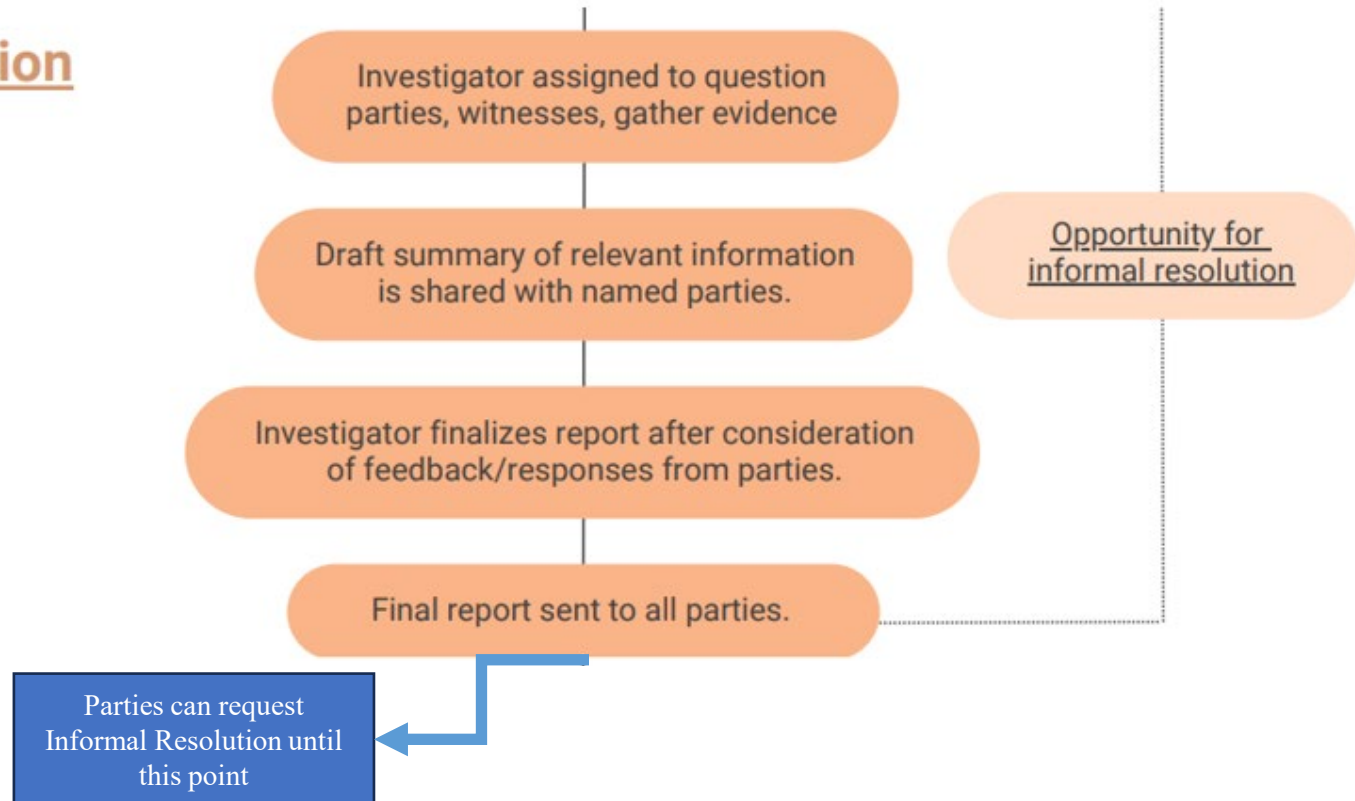
# Informal Resolution Agreement

*An agreement **may include but is not limited to:***

- Restrictions on contact, communication, and/or interaction between the parties
- Restrictions on parties' movements or access to locations on campus
- Educational remedies
- An admission of responsibility
- Written apologies
- Training and/or coaching
- Involvement in an educational program; and community service.

# Investigation

## Investigation Period



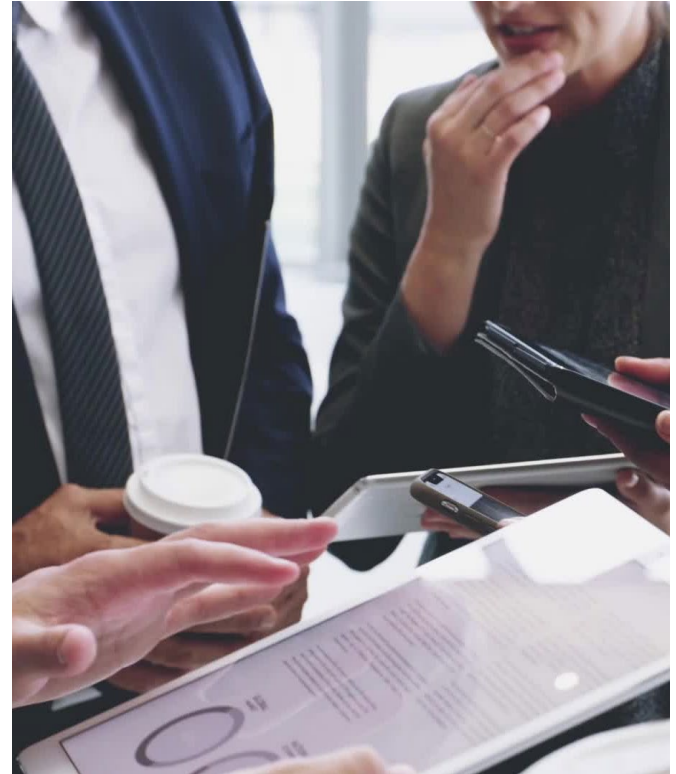
**As an advisor, how can you help a party prepare for an investigative interview?**

# BEFORE the Interview

- Review the Notice of Allegation (NOA)
- Review the Sexual Misconduct Policy
- Help draft a timeline of events
- Encourage party to gather evidence
- Advise party to create a list of potential witnesses
- Determine communication style for interview(s)

# DURING the Interview

- Encourage party to take breaks as needed
- Take notes
- Do not intervene or address the Investigator
- Do not speak for party





# AFTER the Interview



- Review interview summary with party for accuracy
- Anticipate another interview
- Check in with party
- Review the Initial Investigative Summary and Evidence and help party draft comments to the report.
- Review final report and prepare for hearing

# Investigation Report General Layout

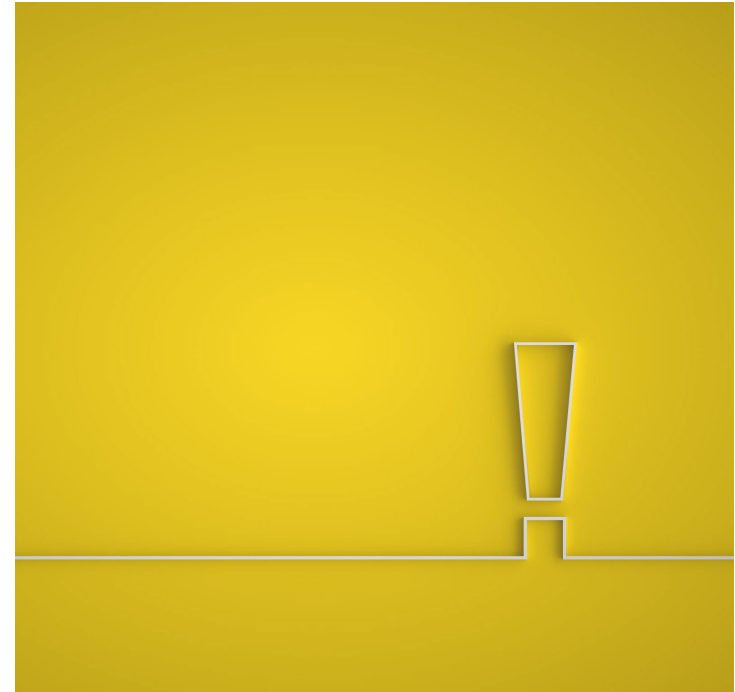
1. Executive Summary
2. Allegation
3. Applicable Georgia Tech and the Board of Regents University System of Georgia Policies and Relevant Definitions
4. Standard of Proof
5. List of Parties and Witnesses (Interviewed / Not Interviewed)
6. Summary of Relevant Evidence
  - a) Complainant's Summary(s)
  - b) Respondent's Summary(s)
  - c) Witness Summary(s)
7. Discussion and Synthesis
  - a) Allegation
  - b) Undisputed/ Disputed Facts
  - c) Assessment
8. Appendix

# Potential Comments to Add to the Initial Investigative Summary and Evidence

- Information missing or not included (either that a party provided or from a witness)
- If anything provided was not accurately reflected and/or attributed in draft report (this includes all summaries and evidence)
- Information that is included that should not be included in the report and why it should not be included in the report (ex: medical records)
- If the investigator did not answer or provide information needed for the allegations stated in the complaint
- If any of the pictures, texts, videos, appendix are not accessible or visible as part of the draft report
- If anyone fabricated any evidence submitted (i.e., text messages, photos, screenshots)
- If there is any additional evidence that a party would like to add to the report

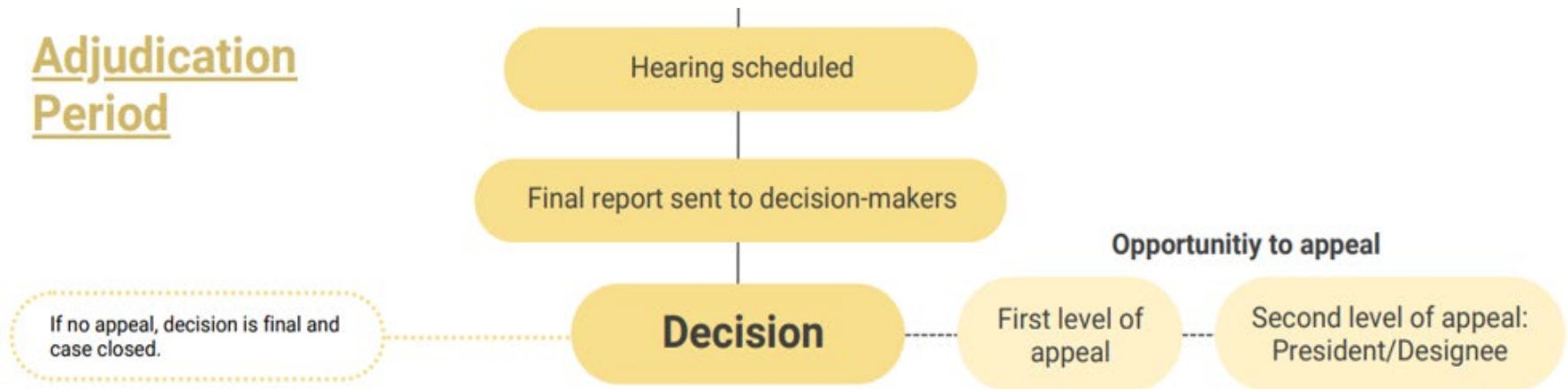
# EXAMPLES

- On page 17, you indicated that I live in Brown. I reside in Cloudman.
- On page 22, I told you that I only had two drinks of alcohol, you indicated that I had six.
- On page 42, I would like to add an additional text messages to this section.
- On page 44, the Complainant only provided a screenshot of some of our text messages from the night of the fraternity party. I would like to provide a copy of our messages before the party and the next morning.
- I do not see the medical documentation I provided in the appendices.
- On page 222, I cannot access the video link



# Hearing / Adjudication

## Adjudication Period



# Office of Student Integrity Staff



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# WHO will be at the Hearing?

- Hearing Panelist (3)
- Parties and Advisors
- Witnesses and Investigator(s) (when called)
- Hearing Coordinator

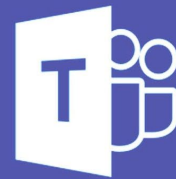


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# LIVE HEARING REQUIREMENT

- 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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# Standard of Evidence

- Decisions regarding student and employee alleged misconduct are based on a **PREPONDERANCE OF THE EVIDENCE** standard.
- Overarching Question in Misconduct cases:
  - “Whether the Respondent is *more likely than not* to have violated the Sexual Misconduct Policy”



# Adjudication Processes

<b>STUDENTS</b>	<b>FACULTY/STAFF</b>
<ul style="list-style-type: none"><li>Facilitated through the Office of Student Integrity</li></ul>	<ul style="list-style-type: none"><li>Facilitated through Employee Relations</li></ul>
<ul style="list-style-type: none"><li>Decision maker is a hearing panel consisted of three trained institute administrators</li></ul>	<ul style="list-style-type: none"><li>There is a single decision maker</li></ul>
<ul style="list-style-type: none"><li>Live Hearing</li></ul>	<ul style="list-style-type: none"><li>Live Hearing</li></ul>

# HEARING DECORUM

- Be respectful.
- 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.



# Typical Order of Hearing

1. Call to Order (*\*facilitated by Decision Maker or Hearing Panel Chair*)
  - a) Introductions
  - b) Order of Events
  - c) Allegations
2. Hearing Proceedings
3. Prohibited Conduct Definitions
  - a) Response to Allegations (Respondent)
  - b) Opening Statements (Complainant then Respondent)
  - c) Questioning
    - i. Decision Maker/ Panel's Question's
    - ii. Questioning of Complainant and Respondent (in Title IX, cross-examination by Advisor)
    - iii. Questioning of Witnesses – (in Title IX, cross-examination by Advisor)
  - d) Closing Statement (by both parties)
4. Deliberation/ Decision Making

**As an advisor, how can you help a party prepare for the hearing?**

# BEFORE the Hearing

- Review Final Investigation report with party
- Review the Policy and Allegations
- Highlight areas you want to clarify or expand upon
- Highlight inconsistencies in the report
- Anticipate questions of others
- Develop questions for the Investigator, witnesses, and opposing party.
- Prepare questions to submit to hearing panel/ for cross-examination
- Prepare opening and closing statements
- Discuss breaks and communication style

# Role DURING the Hearing

## Sexual Misconduct Hearings:

- Provide advice, counsel, and support to party
- Take notes
- Recommend breaks
- Submit created questions to hearing chair
- May not actively participate in the hearing

## Title IX Hearings:

- Provide advice, counsel, and support to party
- Take notes
- Recommend breaks
- Perform cross examination of other party and witnesses

In both Sexual Misconduct Hearings and Title IX Hearings the Hearing Chair or Decision Maker **will rule on relevancy before the question is answered** (*in Title IX cases*) or asked by the decision maker/hearing panelist (*in Sexual Misconduct Cases*).

# Conducting Cross Examination in Title IX Hearings



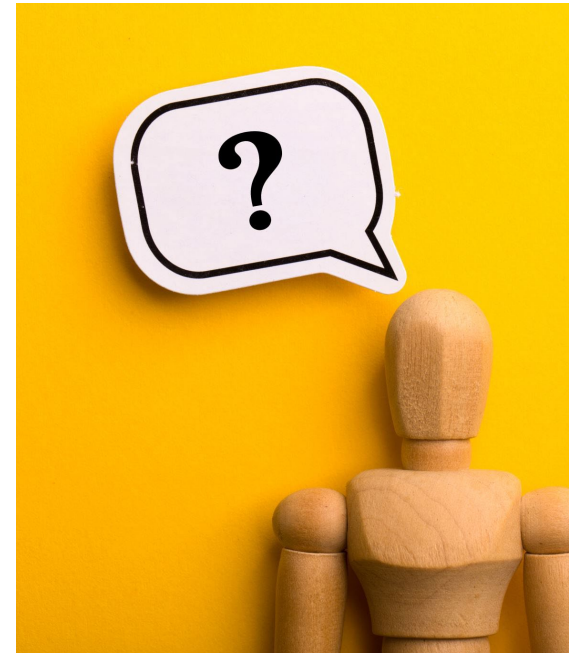
# What is Cross Examination?

## Cross Examination:

- Formal interrogation of a party or witness called by the opposing party to challenge or extend testimony already given

## Purpose of Cross Examinations:

- Used to advance claims or defenses of a party
- Used to clarify unclear or confusing testimony
- Used to assess the credibility of an individual



# How Does Cross Examination Work in TIX Hearings?

- Each party's advisor may ask the other party and any witnesses questions that are **relevant**, intended to **follow-up on previous testimony**, or intended to **challenge an individual's credibility**.
- Cross-examination **must** be conducted directly, orally, and in real time **by the party's advisor of choice** and not by a party personally.
- Before a party or witness answers the question, the decision-maker must first determine whether the question is relevant.
- The order of the questions will proceed as follows: **(1)** Question by the Advisor, **(2)** Determination of relevance made by decision maker or hearing chair, **(3)** The individual is instructed on whether to respond based on the relevance determination, and **(4)** If relevant, the individual answers the question.
- The decision-maker must explain any decision to exclude a question as not relevant.

# Title IX Hearings: Relevancy Determinations

Prior to *any* question being answered, relevancy of the question must be determined by the hearing chair.

If the question is determined to be *irrelevant*,

- The hearing chair must provide the *reason* for excluding the question or evidence
- The hearing chair is *not required* to permit a rebuttal, but *allowed to* if they feel the situation warrants it.

# Title IX Hearings: Assessing Relevancy

## ***RELEVANT***

- Relevant information **relates to the incident at issue**
- Relevant information provides *“sufficient value in making the overall determination”*
- When the hearing panelist is making their relevancy determination, they are looking to see whether the question (and potential answer) is likely to provide sufficient value in making the overall determination.

## ***IRRELEVANT***

- Irrelevant information is ***anything*** protected by an unwaivable privilege
- Duplicative questions are also considered irrelevant
- Rape Shield Protection: Questions and information regarding the Complainant’s sexual history or sexual predisposition are considered irrelevant **unless** to prove:
  - Someone else other than the Respondent committed the alleged misconduct, or
  - Consent between the parties

# Preparing Questions for Cross Examination

## What should you consider in drafting your questions?

- What are the charges? – review the policy and review the evidence
- Identify the elements of each charge – what are the facts at issue?
- What facts bolster or go against your position?

## What kind of questions should you draft?

- Open-ended questions
- Questions that are relevant (meaning they relate to the incident at hand and provide sufficient value in making the overall determination)



# Preparing Questions for Cross Examination

## Investigator

- Authenticity about the evidence submitted
- Witnesses not interviewed by the investigator
- Inconsistencies in stories
- Missing information not included in final report

## Parties/ Witness

- Information about the allegation
- Inconsistencies in stories
- Evidence submitted
- Timeline of events
- Alcohol or drug consumption

# The Hearing Outcome Letter

The Hearing Outcome Letter is provided to **both parties *simultaneously*** and includes:

1. The allegations
2. The procedural steps from the complaint through determination
3. Findings of fact supporting the determination
4. Determinations regarding responsibility, sanctions
5. Information on the appellate process



# AFTER Receiving the Hearing Outcome Letter

1. Review the Hearing Outcome Letter with the party you are advising
2. Assist with the decision to appeal. Parties can appeal on three grounds:
  - a) **Procedural irregularity** that affected the outcome of the matter
  - b) **New evidence** that was not reasonably available at the time the determination regarding dismissal was made, that could affect the outcome of the matter
  - c) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a **conflict of interest or bias** for or against
    - a) Complainant or Respondent generally that affected the outcome of the matter, or
    - b) The specific Complainant or Respondent that affected the outcome of the matter
3. Assist with continued supportive measures



# STUDENT APPEALS

Appeal submitted to the Office of Student Integrity for processing.

## ***1st Level of Appeal:***

- Associate Vice President/Dean of Students or Designee
- Decision issued within a "reasonable time period," typically 10 business days

## ***2nd Level of Appeal:***

ONLY FOR MATTERS THAT RESULTED IN/COULD HAVE RESULTED IN SUSPENSION OR EXPULSION

- Must be submitted within 5 business days of issuance of appellate decision
- To the President or Designee
- Designee is normally the Vice President for Student Engagement and Well-Being but can be others in case of conflict or unavailability
- Decision issued within a "reasonable time period," typically 10 business days.
- This represents the final Institutional Decision.
- Sanctions, if imposed and upheld, take effect

## ***3rd Level of Appeal:***

- Discretionary appeal to Georgia Board Of Regents

# EMPLOYEE APPEALS

## Appeal submitted to Hearing Coordinator for Processing.

HC notifies non-appealing party of appeal and provides copy of appeal to non-appealing party  
Non-appealing party is given 5 business days to submit a response.

### Staff

1st Level:  
Chief Human Resources Officer

### Faculty

1st Level:  
Provost

Appellate decision shall be simultaneously issued in writing to the Complainant and the Respondent within a reasonable period, usually not exceeding twenty (20) business days, with a copy to the Title IX Coordinator.

### 2nd Level: President

- Appeal must be submitted to HC w/in 5 business days of the 1st Level decision
  - HC notifies non-appealing party of appeal and provides copy of appeal to non-appealing party
  - Non-appealing party is given 5 business days to submit a response
- President's decision shall be simultaneously issued in writing to the parties within a reasonable period, usually not exceeding twenty (20) business days, with a copy to the Title IX Coordinator.
    - Final Decision of the Institute is issued by GT's President

### 3rd Level:

- Discretionary appeal to BOR

# Protection from Retaliation

Anyone who:

- made a report or complaint,
- provided information, and/or
- assisted, participated, or refused to participate in any manner

is protected from retaliation.

**Any person found to have engaged in retaliation in violation of this Georgia Tech's Non-Retaliation Policy "shall be subject to disciplinary action."**



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# Scenarios

# SCENARIO 1

On August 14, 2023, student Complainant Naomi emailed you with a request for you to be her advisor. Naomi tells you that on July 1, 2023, she was intoxicated after a fraternity party and went to Respondent Ashley's home and spent the night. Naomi alleges Ashley performed oral sex on her without her consent.

During your first meeting with Naomi, she shares with you that this incident has impacted her academics and that she is concerned about her test next Friday. She also tells you that she experiences anxiety when she sees Ashley on campus. Naomi stated she is trying her best to avoid Ashley, but it is hard because they have mutual friends.

# Questions

1. What do you advise to Naomi?
2. Can Naomi request an Informal Resolution? If so, what do you share with her about the process?
3. Before deciding on an Informal resolution, Naomi wants to know more about the next steps in the formal grievance process. What do you share?
4. If Naomi wants to move forward with the formal grievance process, what evidence do you suggest Naomi gathers for the investigation?

# **Investigation Report**

# Scenario 2 (Mock Report)

Complainant alleges that on July 1, 2023, Respondent performed oral sex on her without her consent. Complainant stated she was intoxicated the night of the party and spent the night at Complainant's home.

Complainant and Respondent met at new student orientation on August 14, 2022. The two are close friends and never had a romantic relationship.

- On June 30, 2023, Respondent went to Complainant's home around 5:00 pm to pregame before a GT football game.
- After pregameing at Complainant's home, Respondent drove them to the football game around 6:00 pm.
- Complainant and Respondent took shots right before entering the football game.
- Complainant and Respondent left the football game around 8:00 pm and went to a fraternity party, hosted by Apple Phi Apple.
- At the party, Complainant and Respondent had several cups of punch served by Apple Phi Apple.
- Complainant also had three shots of vodka throughout the night.
- Respondent and Complainant separated from each other around 11:30 pm to 12:00 am
- At 12:00 am, Complainant threw up in one of the fraternity members bathroom.
- Witness 1, an Apple Phi Apple member helped Complainant as she threw up and grabbed her some water.
- Witness 1 reported that Complainant was having trouble standing
- Witness 2, a mutual friend of Complainant and Respondent, grabbed Respondent to tell her Complainant threw up.
- Complainant told Respondent and Witness 2 that she was fine and wanted to go back to the party.
- Complainant, Respondent, and Witness 2 went back to the party and danced.
- Complainant then began kissing Respondent in the mouth.
- Complainant and Respondent participated in mutual kissing.
- Around 12:30 am, Respondent and Complainant left the party.
- Respondent drove her and the Complainant back to her apartment in Midtown.
- Complainant and Respondent continued to kiss at Respondent's apartment.
- Respondent then performed oral sex on the Complainant, and they went to sleep.
- The next morning, Respondent told Complainant everything that happened
- Complainant did not remember anything after going into Respondent's apartment



# Questions

## Charges: Non-Consensual Sexual Contact/ Non-Consensual Sexual Penetration

- You are the advisor of the Complainant. Prepare two questions you would ask the Respondent and Witness 1.
- You are the advisor of the Respondent. Prepare two questions you would ask the Complainant and Witness 2.
- Relevant or Irrelevant: As the advisor to the Respondent, you ask the Complainant about their alcohol consumption that day.
- Relevant or Irrelevant: As the advisor to the Complainant, you ask the Respondent their sexual orientation.

# Questions to think through when dealing with Force, Incapacity and Consent

- Are there any facts to show that Respondent used Force, Intimidation or Coercion to engage in the sexual activity?
- Is incapacity at issue? (The physical and/or mental inability to make informed, rational judgments.)
- Are there any facts that show whether incapacity is at issue?
  - Could the Complainant make rational, reasonable decisions?
  - Could the Complainant appreciate the situation and address it consciously?
- Did the Respondent know of the incapacitation?
- Should the Respondent (reasonable person) have known that the Complainant was incapacitated?
- Is consent at issue?
- Are there facts to show whether consent was given? (**words or actions** that show **knowing and voluntary** willingness to engage in a **mutually agreed upon** sexual activity)
- Was consent withdrawn? (how was that/ was not shown through the facts)

# CONTACT US!

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