

Hearing Panelist Training

Office of Equal Opportunity,
Compliance, and Conflict
Management

October 2024

Overview

In this training, we will learn about:

- The role of a Hearing Panelist
 - Avoiding prejudgment and bias
- Title IX and Georgia Tech's Sexual Misconduct Policy
- The Title IX/ Sexual Misconduct Grievance Process
- Understanding the Force Incapacity Consent Construct
- Sexual Misconduct/ Title IX Hearing Process and Procedure
- Effective Questioning and Decision Making
- Appeals
- Scenario



CONTENT WARNING

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

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



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The Role of the Hearing Panelist

Primary Functions of a Hearing Panelist

- Be a **neutral decision maker** for student hearings
 - Hear the facts and circumstances of an alleged policy violation
 - Fair and unbiased review of the information provided
 - Ask questions to parties and witnesses
 - Write decision letter (hearing chair)
- Determine whether a policy violation has occurred
- Decide whether/what sanctions and remedial actions are appropriate



Hearing Panelist Expectations



Hold an Appointment for **One Academic Year**



Actively Participate as a Hearing Panelist when selected



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



Attend Initial **and** Annual Refresher Training



Serve **Impartially**

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.

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

Recognizing *Implicit 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

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.
 - **Example:** A belief that men cannot be sexually assaulted.

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

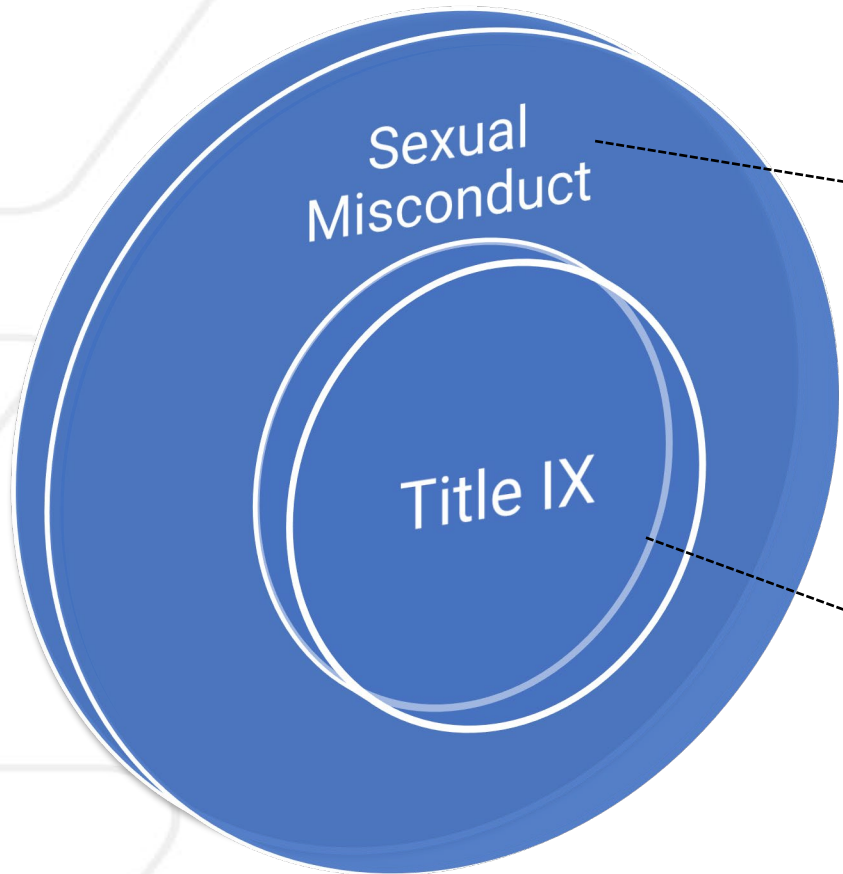
GEORGIA TECH'S SEXUAL MISCONDUCT POLICY

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



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

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*)

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**?
 - Did the Respondent know that the Complainant was incapacitated?
 - 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
 - Were there facts indicating intimidation?
 - What words were used?
 - Is there a power dynamic?
- **Coercion** – the application of an unreasonable amount of pressure for sexual access
 - Consider the frequency
 - Consider the intensity
 - Consider the duration
 - Was there 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?

YES: violation of policy

NO: Move on with the analysis

Incapacitation

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.

Forms of incapacity can include:

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

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.

COMMON FACTORS THAT IMPACT THE EFFECT OF ALCOHOL

- Rate of consumption
- Strength of drink
- Food in the stomach
- Body Weight
- Body Type – body fat percentage
- Gender
- Enzymes, hormones, water in body
- Medications
- Illness & dehydration
- Fatigue
- Caffeine
- Genetics



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 [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

INCAPACITATION ANALYSIS

1. If the Complainant was **not** incapacitated, stop the analysis here.
2. If the Complainant **was** incapacitated, but:
 - a) The Respondent **did not know** it = analysis **fails**. Move on to the 3rd question.
 - b) The Respondent **should not have known** it = analysis **fails**. Move on to 3rd question.
3. If the Complainant **was** incapacitated, and:
 - a) The Respondent **actually knew it** = VIOLATION of policy
 - b) 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”



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



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. Employee Relations manages the hearing process for employees
 2. Office of Student Integrity Manages the hearing process for student
10. Appeal

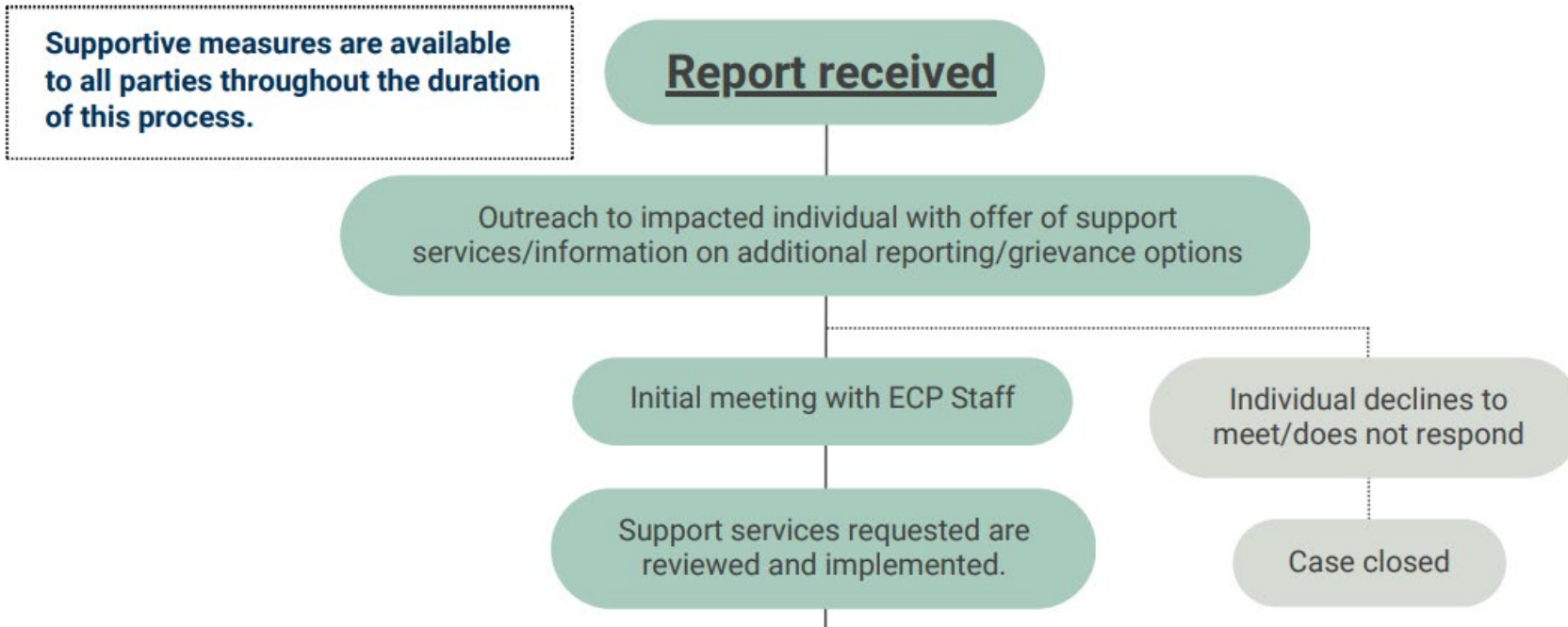
Final determinations of responsibility and sanctions are made by decision-makers, NOT the Title IX Coordinator or assigned investigator.

WHO IS INVOLVED?



- Title IX Coordinator and Assistant Title IX Coordinator
- Investigator(s)
- Parties (Complainant and Respondent)
- Advisor(s)
- Witnesses

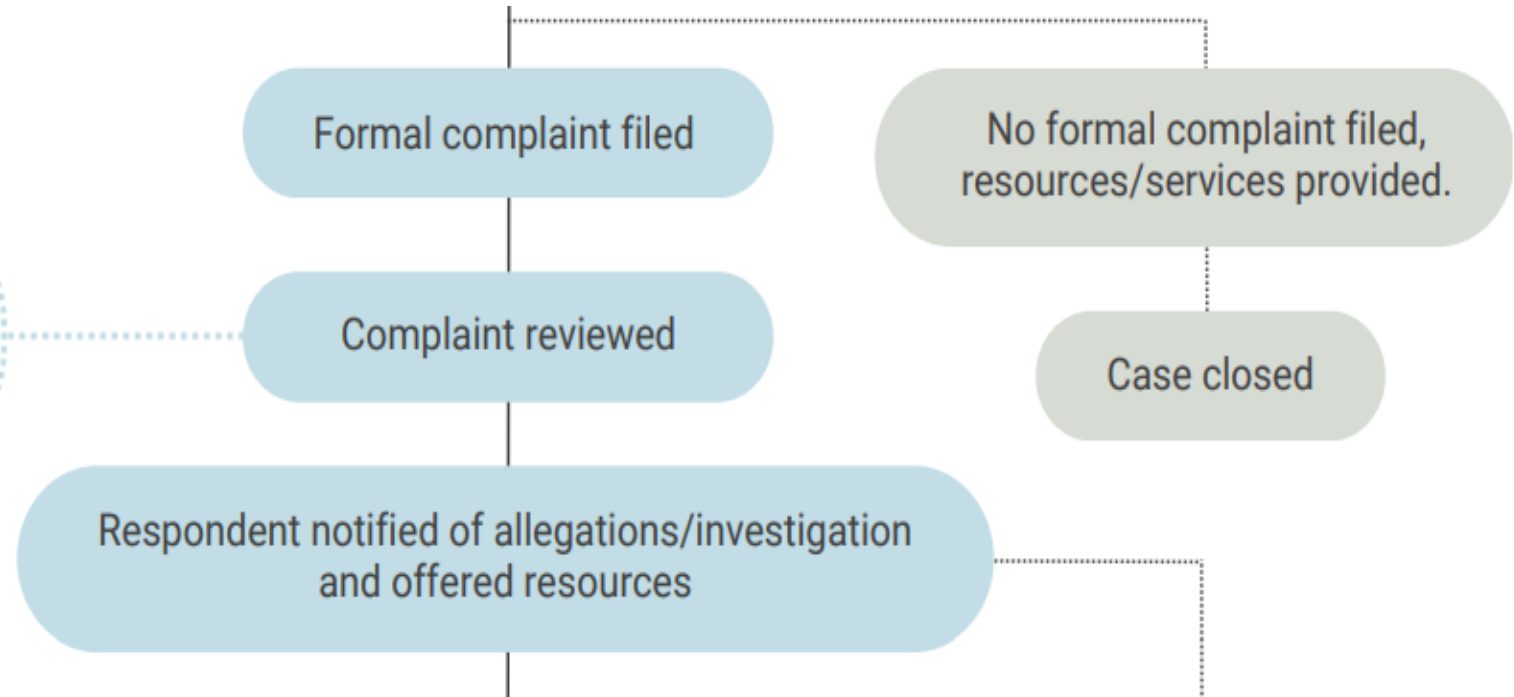
Report Received

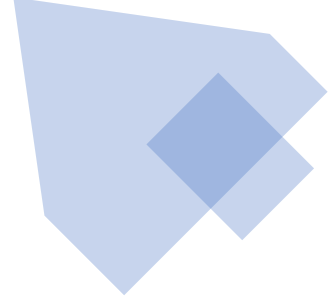


ASSESSMENT

Assessment

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





Formal Complaint



Informal Resolution



Formal Resolution

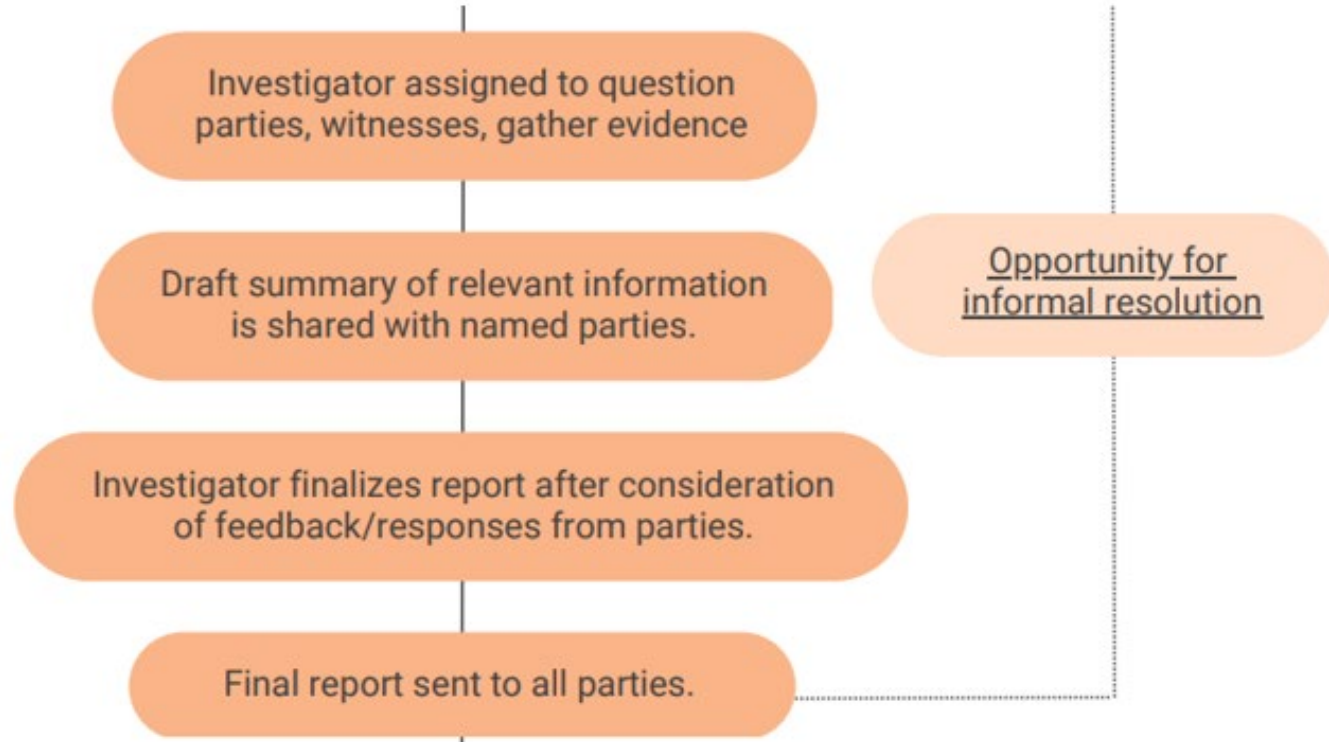


Informal Resolution Process

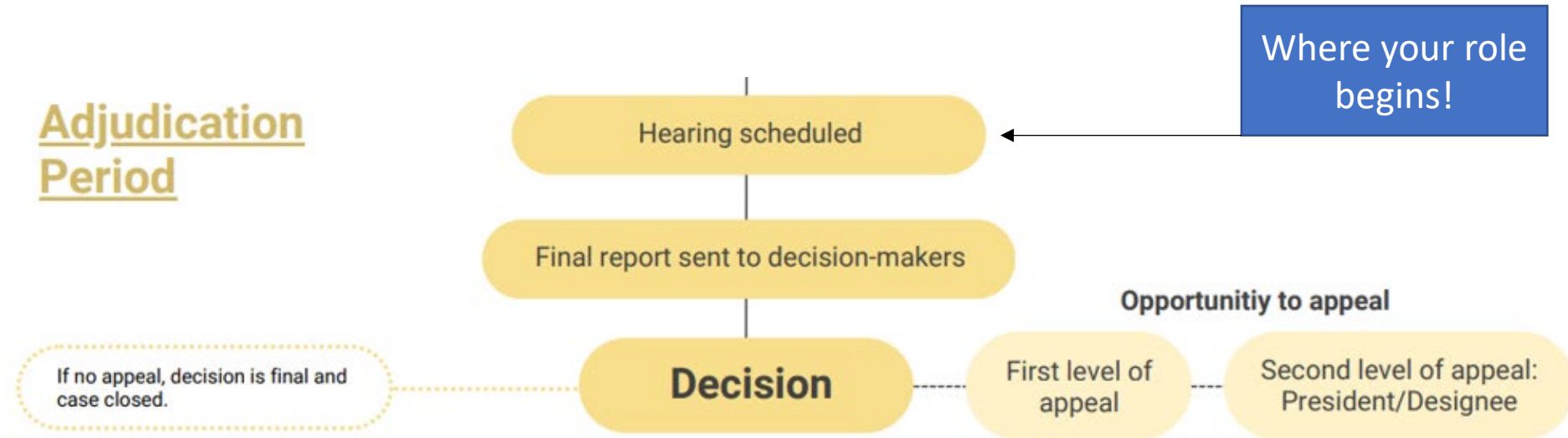
- The Informal Resolution Process is a **structured, voluntary, confidential** process between the parties, their advisors, and a facilitator. **This is an alternative to the formal grievance process.**
- This process is held via zoom, where the Complainant and Respondent are in separate zoom rooms. ***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.

INVESTIGATION

Investigation Period



HEARING / ADJUDICATION



Sexual Misconduct/Title IX Hearing Procedure

Adjudication Processes

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

In your role, you will participate in the Student Adjudication Process.

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 & RECORD KEEPING

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



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Record Keeping §106.45(b)(10)

- 7-year records retention mandate: Reports, Investigations, recording of hearings, appeals, results of informal resolutions, training materials

Hearing PANEL Responsibilities

- **Respond** to OSI Hearing scheduling request
- If selected, **read the investigative report** and information provided in Hearing packet
- Ask **relevant questions** during hearing
- **Participate in deliberation** to determine outcome:
 - Panel is typically granted **5 business days to determine outcome** and provide hearing outcome write-up to the Hearing Chair
 - **Majority decision** will determine outcome (2/3 or more)



Hearing CHAIR Responsibilities

- One hearing panelist will be **randomly selected** as the “**Hearing Chair**”
- The Hearing Chair will **call Hearing to order**
 - Adhere to Hearing Script
 - Maintain decorum
- Ask questions on **behalf of parties** (Sexual Misconduct)
- May ask questions on **behalf of hearing panel**
- **Determine relevancy** of questions asked prior to them being answered
 - Questions in written form for Sexual Misconduct Hearings
 - Questions asked live by Advisor for Title IX Hearings
- Ensure **reason** for unallowed questions **is documented**
- **Draft Hearing Outcome** Write-up

Adjudication Processes

TITLE IX HEARINGS

- Advisors required to conduct cross examination
- Hearing Chair can still ask questions to parties, investigator(s), and witnesses
- Relevancy determinations must be made by the hearing chair before a question may be answered
- The hearing chair must explain and document any decision to exclude a question as not relevant

SEXUAL MISCONDUCT HEARINGS

- Hearing Panelist or decision maker performs all questioning
- Questions are submitted by parties as well as questions from hearing panel
- Relevancy determinations are made before and during the hearing
- The hearing chair must explain/document any decision to exclude a question as not relevant

Procedure BEFORE the Hearing

1. SCHEDULING

- The final report has been submitted and OSI will begin scheduling for the hearing
- Emails will be sent for hearing panelist availability
- Hearing Notification- (conflict of interest)
- Pre-Hearing Meeting

2. RECEIPT AND REVIEW OF DOCUMENTS

- Once you confirm your ability to be a hearing panelist you will receive a hearing packet.
- Read the Investigative Report and Attachments
- Hearing Script will be included in the hearing packet
- Relevant Policies (Title IX and/or Sexual Misconduct)

3. PRE-HEARING MEETING

- Hearing Overview
- Parties: Complainant, Respondent, Investigator, Witness(es); Advisors
- Document Review
- Prepare Questions

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.

SCHEDULING: Understanding Conflicts of Interest

ACTUAL:

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

PERCEIVED:

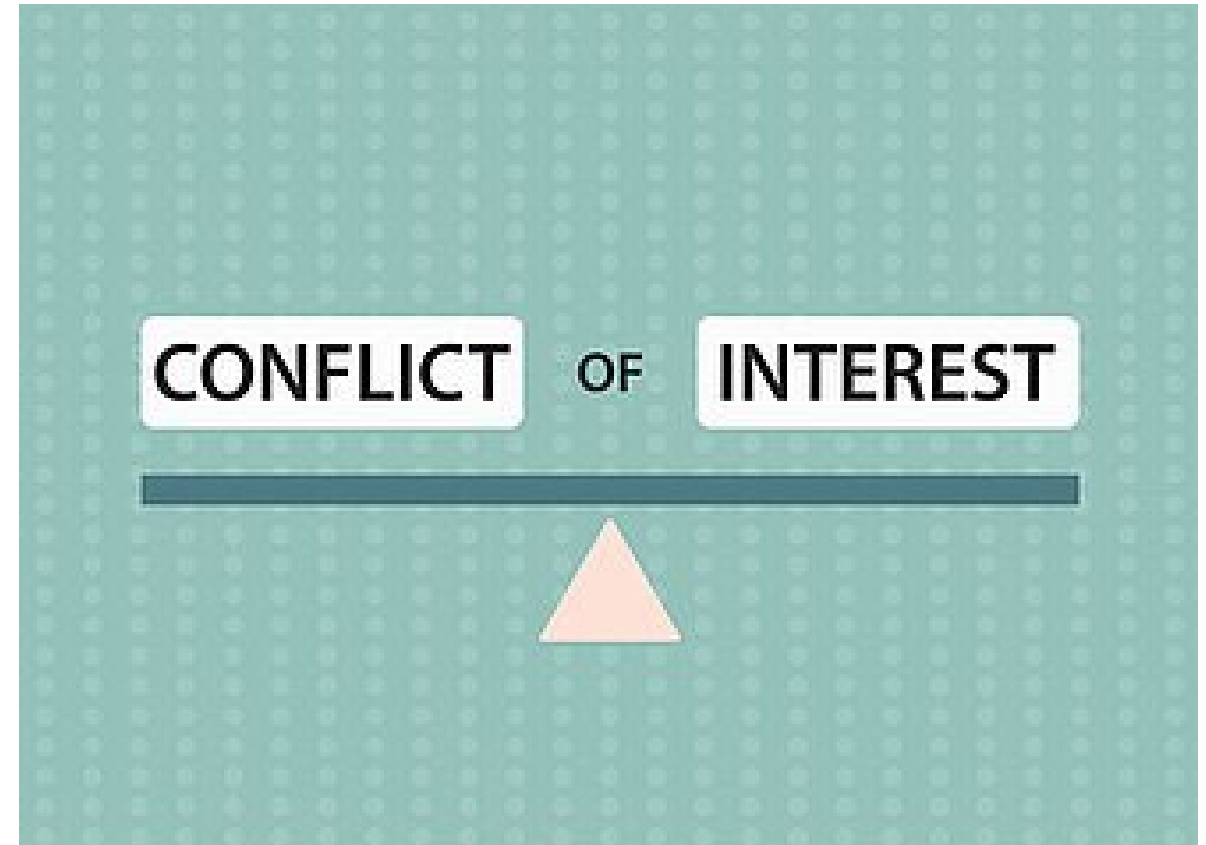
- A situation where it could reasonably be perceived that a competing interest could improperly influence the performance of one's official duties and responsibilities
- Example: The hearing panelist previously had a friendship with the Complainant's father.

POTENTIAL:

- A personal interest or obligation could conflict with one's official duties and responsibilities in the future
- Example: 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?

- You are disqualified from serving as a hearing panelist when a conflict of interest prevents you from being able to impartially participate in the hearing.
- **ALL** perceived, actual, or potential conflicts of interest should be **immediately** disclosed to the Hearing Coordinator.



Reviewing the Investigation Report

- Executive Summary
- Allegation
- Applicable Georgia Tech and the Board of Regents University System of Georgia Policies and Relevant Definitions
- Standard of Proof
- List of Parties and Witnesses (Interviewed / Not Interviewed)
- Summary of Relevant Evidence
 - Complainant's Summary(s)
 - Respondent's Summary(s)
 - Witness Summary(s)
- Discussion and Synthesis
 - Allegation
 - Undisputed/ Disputed Facts
 - Assessment
- Appendix

Effective Questioning and Decision-Making Skills

Typical Order of Hearing

1. **Call to Order** (**facilitated by Hearing Panel Chair*)
 - a) Introductions
 - b) Order of Events
 - c) Allegations
2. **Hearing Proceedings**
 - a) Prohibited Conduct Definitions
 - b) Response to Allegations (Respondent)
 - c) Opening Statements (Complainant then Respondent)
 - d) Questioning
 - i. Panel's Question's
 - ii. Questions from party calling witness (in Title IX, cross-examination by Advisor)
 - iii. Questions from opposing party – (in Title IX, cross-examination by Advisor)
 - e) Closing Statement (Respondent then Complainant)
3. **Order of Appearance**
 - a) Investigator (*does not apply to Sanctions, only hearings*)
 - b) Complainant
 - c) Complainant's Witness(es) – if applicable
 - d) Respondent
 - e) Respondent's Witness(es) – if applicable
4. **Deliberation** (*Hearing Panel Only*)

HEARING DECORUM

Hearing Panel Decorum

- Be respectful
- Refer to involved parties using appropriate name/gender preferred by the person
- 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

Participant Decorum

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



QUESTIONING OF PARTICIPANTS

Sexual Misconduct Hearings

- 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 Hearings

- 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 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.
 - 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***.

Effective Questioning

Questions should be used to determine:

- Who
- What
- When
- Where
- How
- Learn the facts
- Establish a timeline
- Determine what is more likely than not to have occurred



DO NOT ask questions merely to satisfy curiosity!

Effective Questioning

- Ask open-ended questions
- LISTEN, ask follow-up questions
 - Don't be afraid of silence
- Don't be afraid to ask for clarification
 - Take breaks if necessary
- Maintain your professionalism at all times

Preparing Questions for the Hearing

INVESTIGATOR

- Ask questions to determine the authenticity of the evidence submitted
- Ask about witnesses not interviewed by the investigator
- Ask about inconsistencies in stories
- Ask about missing information not included in final report

PARTIES / WITNESS

- Identify the elements of each charge – what are the facts at issue?
- Ask about disputed Facts/Inconsistencies in stories
- Evidence submitted
- Timeline of events
- Alcohol or drug consumption
- Information about the sexual contact

EXAMPLES OF QUESTIONS (Complainant)

Course of Conduct

- Tell me more about the contact from the Respondent?
- How many times did the Respondent contact you?
- How did you know the contact was from the Respondent?
- Could the contact have been from someone else?

Directed at a specific person

- Who was this contact directed at?
- Where you the only person the messages were addressed to?
- Was there any reason for the Respondent to contact you?

Fear for their safety or the safety of others or suffer substantial emotional distress

- How did those communications make you feel?
- What was in the content of those messages?
- How has this impacted you?

Relevancy Determinations

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

Relevancy Determinations During Hearings

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.

Relevant or Irrelevant?

Do you think that these questions are relevant or irrelevant?

- What time did you make it to the Respondent's home?
- How many drinks did you have that night?
- During a hearing regarding a sexual harassment allegation the advisor asks the complainant "Don't you have several academic dishonesty violations from OSI?"

Weighing of Evidence and Impacts

Weighing evidence means assessing the impact of the information.

The following factors impact the assessment: Relevance, Reliability, Persuasiveness, Bias

Reliability

- Information that can be trusted
- Comes from individuals who are able to have assumed the role they claimed to have or those with actual training or experience to support their claim of expertise

Persuasiveness

- Induces others to believe through understanding; tries to convince
- Must be believable, consistent, and establishes a dependable narrative

Bias

- Understand who the person is and their relationship to the parties and incident at issue
- Bias can manifest in multiple ways:
 - Towards the parties
 - Towards the incident
 - Towards the process

Credibility

“To assess credibility is to assess ***overall the extent to which you can rely on a witness’ testimony to be accurate and helpful*** in your understanding of the case”

- Credible is *not synonymous* with the absolute truth
- Memory errors do not *necessarily* destroy a witness’ credibility, nor does *some* evasion or misleading
- Refrain from focusing on ***irrelevant inaccuracies and inconsistencies***

Potential Assessment Factors

- Non-cooperation
- Logic/Consistency
- Corroborating evidence
- Demeanor

Understanding the Evidence & Evidence Thresholds

- “Evidence” is *any* kind of information presented with the intent to prove what took place
- Certain types of evidence may be relevant to the credibility of the witness, but not to the charges
- If the information is considered **relevant** to prove or disprove a fact at issue, it should be ***admitted***.
- If **credible**, it should be ***considered***

TYPES OF EVIDENCE

- **Documentary evidence** (supportive writings or documents)
- **Electronic evidence** (photos, text messages, videos)
- **Real evidence** (physical object)
- **Direct or testimonial evidence** (personal observation or experience)
- **Circumstantial Evidence** (not eyewitness, but compelling)
- **Hearsay Evidence** (statement made outside the hearing, but presented as important information)
- **Character Evidence** (generally of little value or relevance)

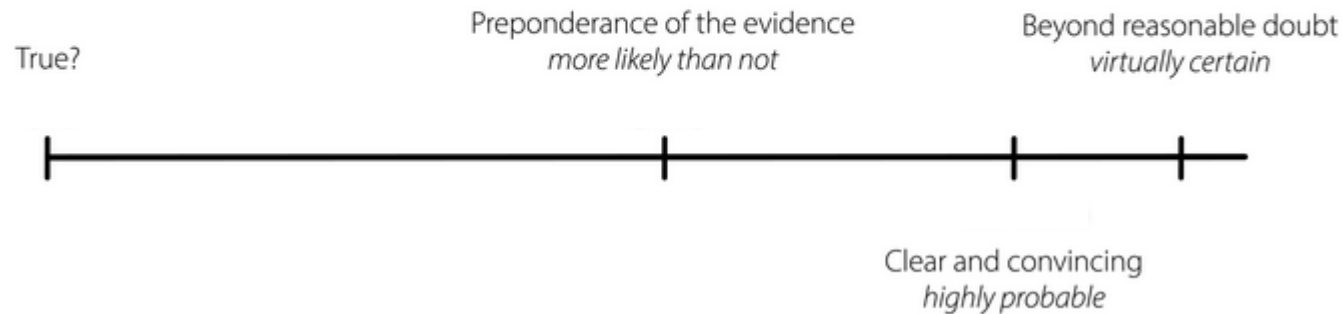


Deliberation

Standard of Evidence

- Decisions regarding student and employee alleged misconduct are based on a ***Preponderance of the Evidence***
- Preponderance of the Evidence: asks whether the Respondent is ***more likely than not*** to have violated the Sexual Misconduct Policy.

Standards of Proof



Review of the Information in Deliberation

- **Private** deliberation with the panelists
- **Majority decision** will determine outcome (2/3 or more)
- Preponderance of the evidence standard

- **Review the facts:** Do they align with elements of the prohibited conduct, and **how** or **how not**?

- **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

Available Outcomes

At the end of the deliberation an outcome **must** be determined by majority vote, or 2/3 of the hearing panel.

The Hearing Panel must determine:

1. Did the Respondent **violate** the GT Sexual Misconduct Policy?
2. If yes, what appropriate **sanctions** are so rendered?

Not Responsible – No Sanctions

Responsible – Sanctions

Possible Sanctions

- Warning
- Disciplinary Probation
- Educational/Developmental Sanctions (i.e., Sexual Misconduct Workshop)
- Service Hours
- No Contact directives
- Suspension
- Expulsion

Determining Sanctions

Sanctions “must be made as a proportionate response to the violation.”

They should prevent the recurrence of sexual misconduct and should remedy the effects of the sexual misconduct.

- In determining the **severity** of sanctions, the following should be considered:
 - The frequency, severity, and/or nature of the offense
 - History of past conduct
 - Previous institutional response to similar conduct
 - Strength of the evidence
 - The well-being of the Institute community



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



Regardless of whether the final determination is “responsible” or “not responsible”, a hearing outcome letter *must* be written.

Tips for Writing the Hearing Outcome Letter

1. State the *allegations* and *relevant policies*
2. Assess **each** allegation and explain whether a violation of the policy occurred
 1. Explain your reasonings, findings of facts, elements, and findings of credibility
3. Describe the *procedural steps* starting with the complaint all the way through determination.
4. Show your work – **no** conclusory statements!
5. Explain your rationale!

Appeal Process

Parties can appeal on **three** grounds:

1. **Procedural irregularity** that affected the outcome of the matter
2. New evidence that was **not reasonably available** at the time the determination regarding dismissal was made, that could affect the outcome of the matter
3. The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a **conflict of interest** or bias for or against Complainant or Respondent generally or the specific Complainant or Respondent that affected the outcome of the matter

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

Scenario

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

1. What are the facts that show or disprove whether Respondent engaged in Non-Consensual Sexual Contact/ Non-Consensual Sexual Penetration?
2. The Complainant alleges that they were incapacitated therefore they could not consent. What questions should you ask/ are you missing any information to make a determination?

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?

Protection from Retaliation

For anyone who:
made a report or complaint
provided information
assisted, participated, or
refused to participate in any
manner

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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CONTACT US!

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