Appellate Officer Training

Equal Opportunity, Compliance & Conflict Management

Spring 2025

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Content Warning



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

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Equal Opportunity, Compliance, and Conflict Management

Our office aims to contribute to the success and excellence of Georgia Tech by creating a working and learning environment that reflects the principles of fairness, equality, and respect for all members of our community.

Through our services and educational outreach programs, our office helps ensure equity, uphold compliance with applicable civil rights laws and regulations, and proactively manage conflicts at Georgia Tech.

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Title IX Administration in Equal Opportunity, Compliance, and Conflict Management



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What is Title IX?

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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



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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

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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

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GEORGIA TECH'S SEXUAL MISCONDUCT POLICY

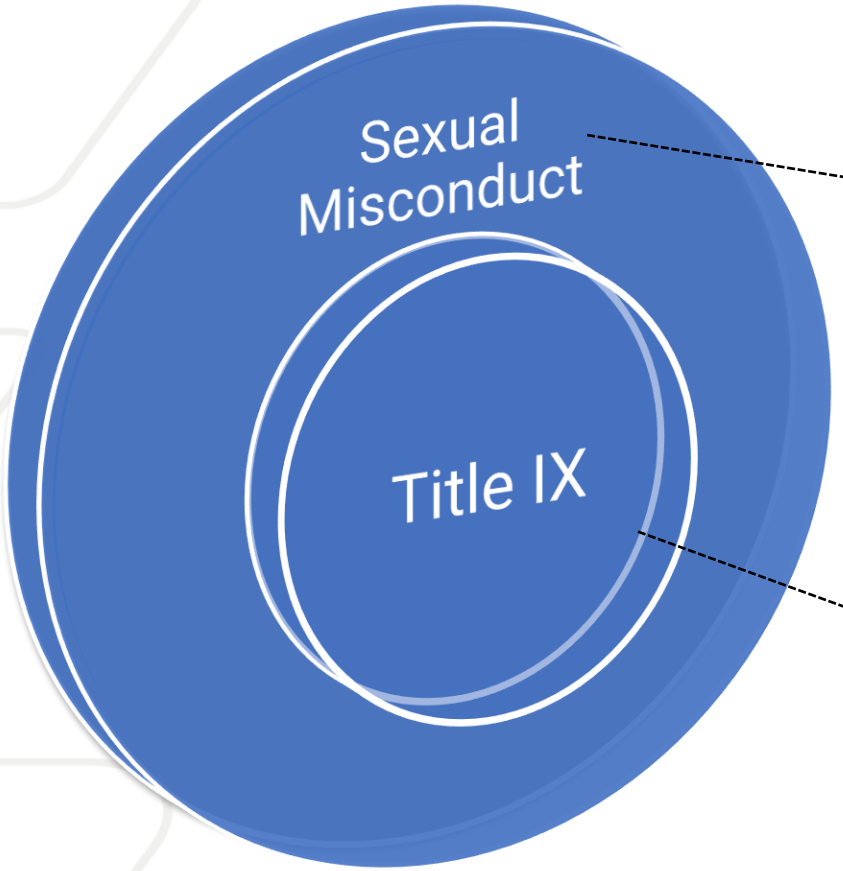
GT's Sexual Misconduct Policy prohibits **"sexual misconduct"**, an **umbrella term** for any unwanted sexual attention, contact, or activity that occurs without consent. Examples may include:



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

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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

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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)*

- *https://policylibrary.gatech.edu/student-life/sexual-misconduct*

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Sexual Misconduct Terms

Dating Violence & Domestic Violence

- Forms of violence between individuals who are married, share a child in common, or are in social relationship of a romantic or intimate nature.
- Examples of prohibited conduct include slapping, punching, choking, kicking as well as threats to exert physical violence.
- Existence of a social relationship of a romantic or intimate nature is determined on the totality of circumstances

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Sexual Misconduct Terms

Nonconsensual Sexual Contact

- Unwanted physical contact of a sexual nature with another person without their consent

Nonconsensual Sexual Penetration

- A specific form of nonconsensual contact that involves penetration of the vagina, anus, or mouth with a penis or another object without an individual's consent.

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Sexual Misconduct Terms

Sexual Exploitation

- Taking abusive sexual advantage of a person without their consent
- Examples: Peeping Tom, sending someone's nude picture (or someone being engaged in a sexual act) to another person without the consent of the person photographed, even if they consented to the taking of the picture; intentionally exposing oneself to others.

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Stalking

- Engaging in a course of conduct of two or more acts directed at a specific person that causes that person to be afraid or fear for their safety or the safety of others.
- Includes cyberstalking
- Includes repeated and unwanted calls and texts
- Includes following and surveilling someone



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.



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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:

(1) ***Quid Pro Quo Sexual Harassment***

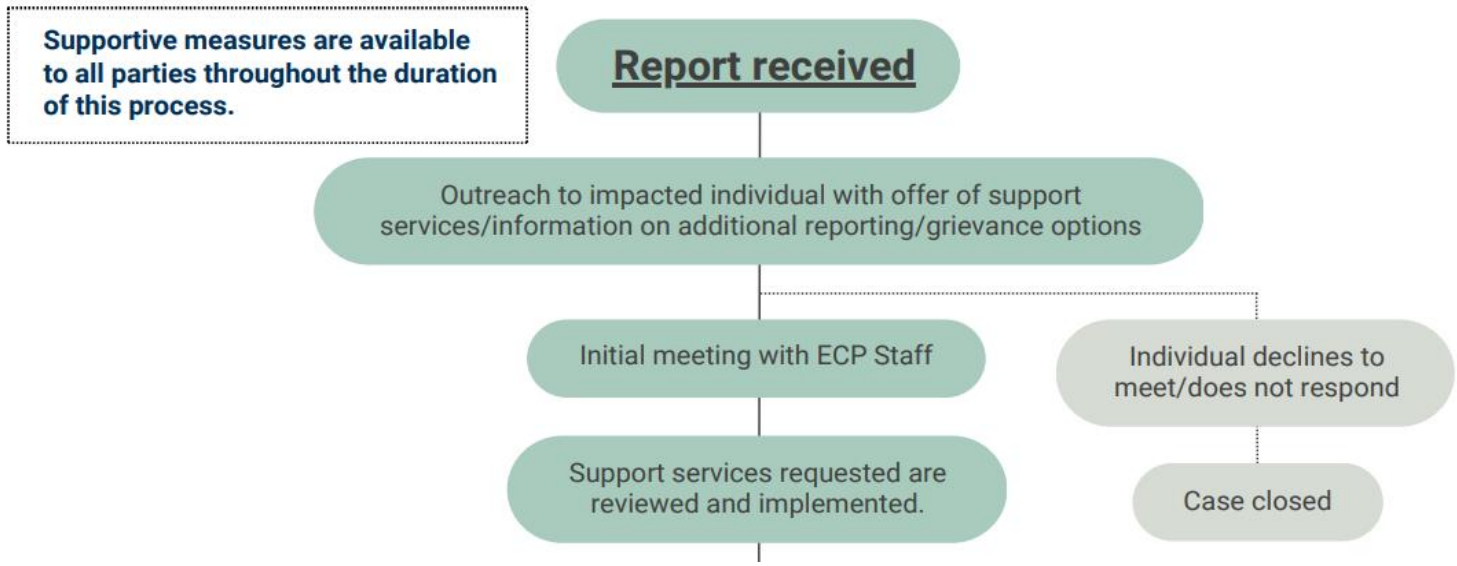
(2) ***Hostile Environment Sexual Harassment***

- Sufficiently severe, persistent, or pervasive to interfere with one's work or educational performance creating an intimidating, hostile, or offensive work environment

Initial Assessment Process

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Report Received



What Happens *AFTER* a Report Reaches the Title IX Coordinator?

- Title IX Coordinator contacts victim-survivor (if name and contact info is known) to

  (1) Offer support services and resources:

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

  (2) Describe the process and options for filing a formal complaint or initiating the grievance process

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Title IX/Sexual Misconduct Grievance Process

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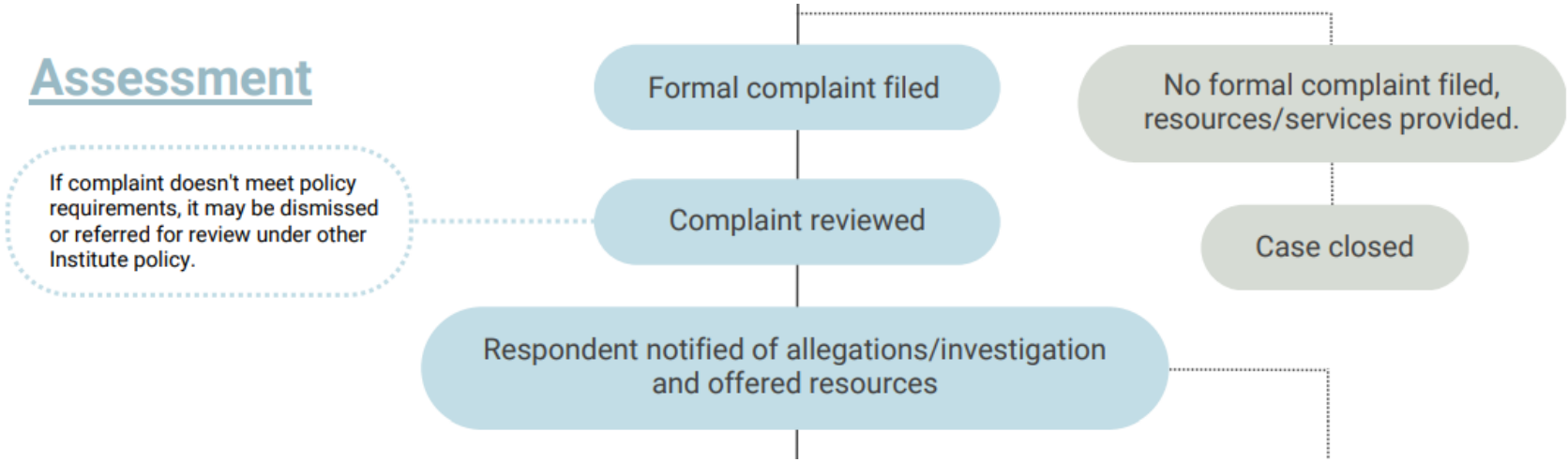
General Overview of Title IX/ Sexual Misconduct Grievance Process

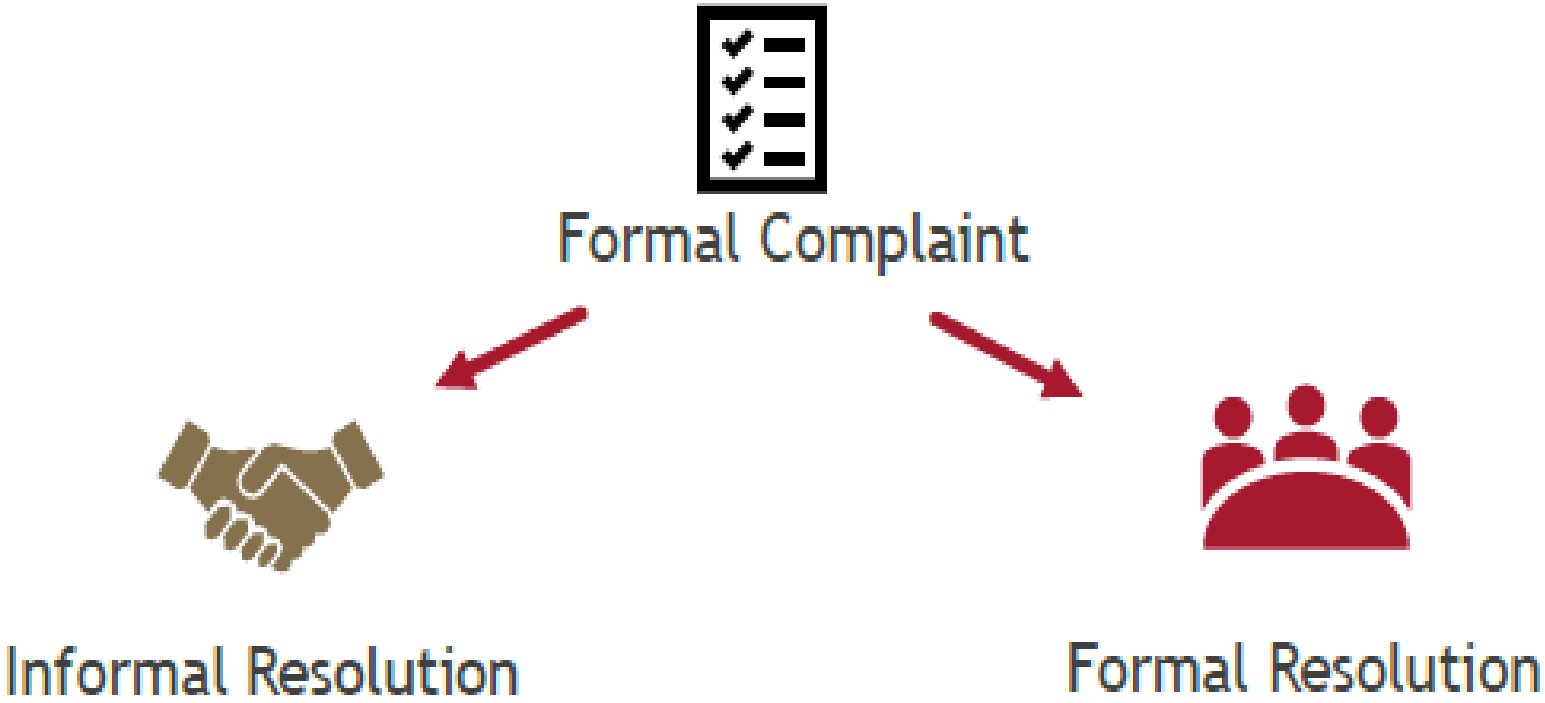
1. Individual files complaint *(Complainant)*
2. Complainant and Respondent notified of allegations *(Notice of Investigation)*
3. Investigator Assigned
4. Investigator questions Complainant, Respondent, Witnesses and gathers and examines evidence
5. Initial Investigation Report sent to parties and their 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. Our office manages the hearing process for employees -- A Single Decision maker
    2. Office of Student Integrity manages the hearing process for students – Panel of Decision-makers
10. Appeal

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

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Formal Complaint




Formal Complaint
Informal Resolution
Formal Resolution

Report v. Complaint

- A report is any information shared with the Office of Equal Opportunity, Compliance, and Conflict Management that involves suspected sexual misconduct, discrimination based on sex or retaliation.
- A report can be made directly by an impacted individual, or by anyone else who wants to share information with the Office, including a Witness or Responsible Employee. When we receive a report, we promptly send a letter to the complainant with information about supportive resources and investigation options, as well as an offer to meet.
- Only the impacted individual or the Title IX Coordinator can submit a FORMAL COMPLAINT. If the person then submits a complaint, and there could be a possible violation of the EEO Policy or the Sexual Misconduct Policy, we issue Notice of Allegations to all parties and initiate an investigation OR alternative resolution options.

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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

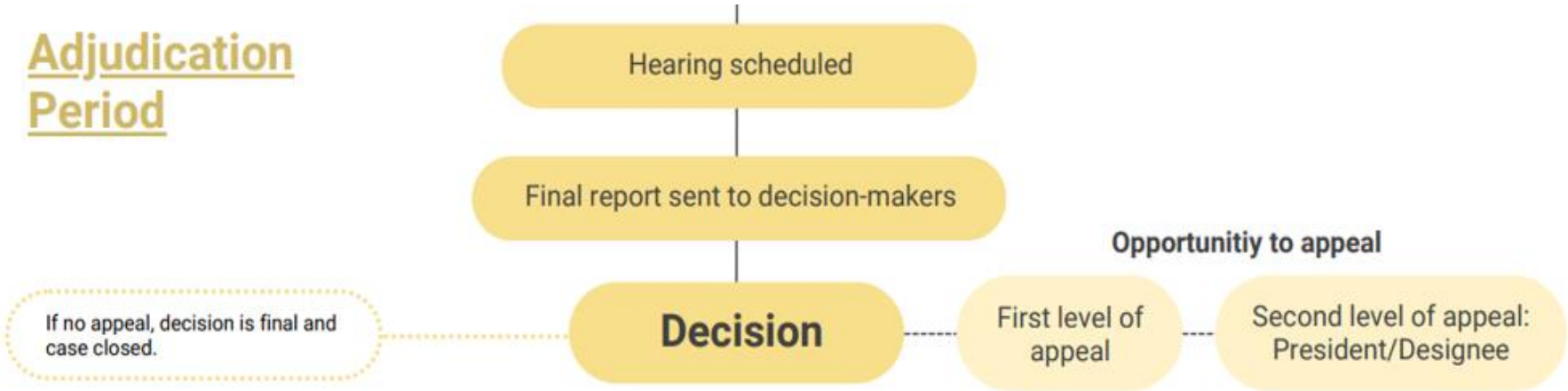


Investigation Report General Layout

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. Credibility Assessment
8. Discussion and Synthesis
    a) Undisputed/ Disputed Facts
    b) Allegation
    c) Assessment
9. Appendix

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Hearing / Adjudication



Who will be at the Hearing?

- Decision Maker(s)
- 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



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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 applicable Policy"



Adjudication Processes

STUDENTS	FACULTY/STAFF
• Facilitated through the Office of Student Integrity	• Facilitated through a Hearing Coordinator
• Decision maker is a hearing panel consisted of three trained institute administrators	• There is a single decision maker
• Live Hearing	• Live Hearing

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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

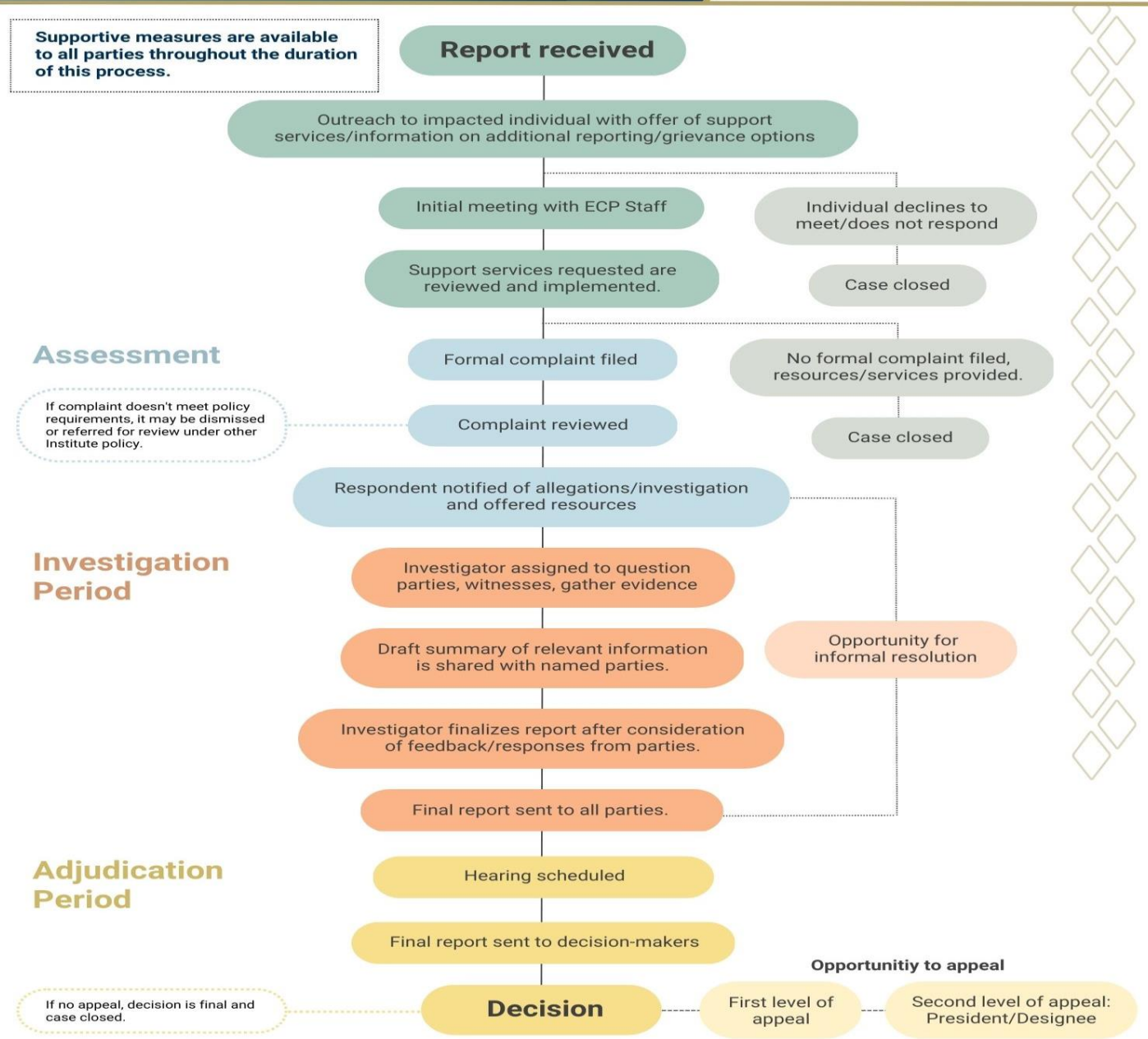
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The Appellate Process

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Formal Grievance Process

Equity and Compliance Programs



Primary Functions of an Appellate Officer

- Be a neutral decision maker who gives a fair and unbiased review of the matter
- Be familiar with the GT Sexual Misconduct Policy and Formal Grievance process
- Review the information provided in appeals packet
- Catch errors and ensure that the underlying investigation and adjudication process was fair and thorough.
- Write an appellate decision letter



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Avoiding prejudgment, bias and conflict of interest

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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.
- Bias/ Conflict of Interest for or against Complainants or Respondents generally or for or against an individual Complainant or Respondent.

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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.

- 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.

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What is a Conflict of Interest?

- When an individual has a material connection to a dispute, or the parties involved, such that a reasonable person would question the individual's ability to be impartial

- May be based on prior or existing relationships, professional interest, financial interest, prior involvement, and/or nature of position

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What happens when an appeal officer has a conflict?

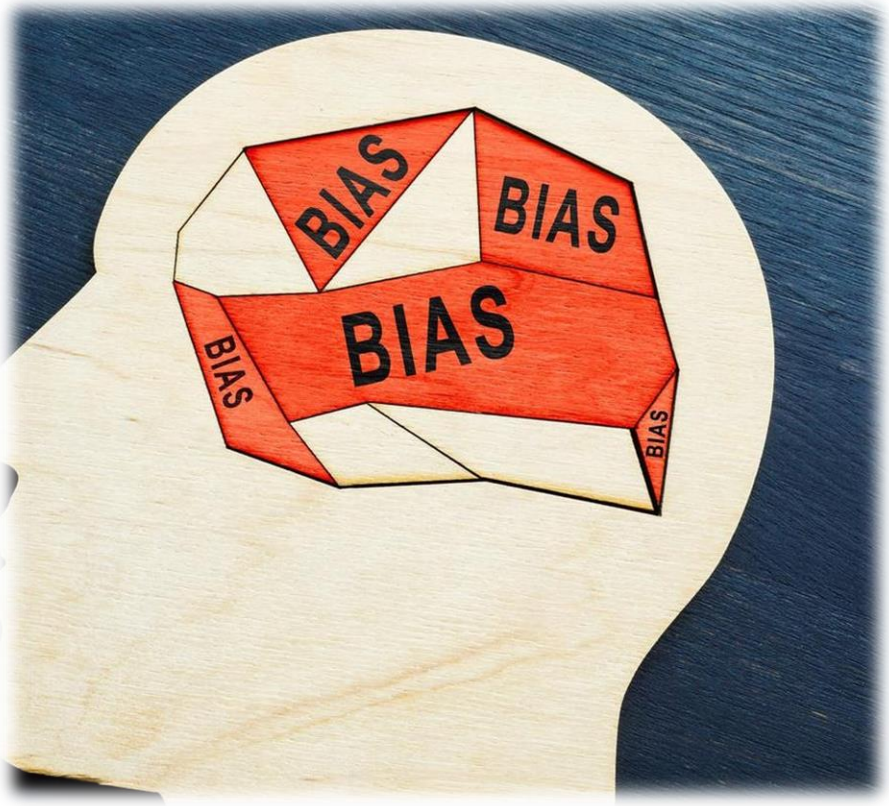
When does a Conflict of Interest Disqualify You?

- When it prevents you from being able to impartially participate.
- An appeal officer with a conflict should not hear the appeal.
- All perceived, actual, or potential conflicts of interest should be immediately disclosed to the Hearing Coordinator and Title IX Coordinator.

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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.



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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

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Appeal Process

The Institute must offer both parties an appeal from a determination regarding responsibility – Responsible/Not Responsible

- Offered to Complainant
- Offered to Respondent

The party seeking appeal must submit the appeal

- In writing
- within 5 business days of the written decision issued to the parties

34 CFR 106.45(b)(8)

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Student Appeals

- Appeal submitted to the Office of Student Integrity for processing
- OSI 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

1st Level:

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

2nd Level:

- Must be submitted within 5 business days of issuance of appellate decision
- OSI 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
- Appeal goes 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:

- Discretionary appeal to BOR

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	Faculty
1st Level: Chief Human Resources Officer	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 within 5 business days of 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

3rd Level:

- Discretionary appeal to BOR

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Appeal Packet (Student)

- Includes general information such as the student's name, the date the appeal was sent out, the date the appeal is due
- Student's Appeal
- Parties' response to Appeal (if applicable)
- Hearing Packet
- Student's Disciplinary History (if applicable)

Appeal Packet (Employees)

- Includes general information such as the Employee's name, the date the appeal was sent out, the date the appeal is due
- Employee's Appeal
- Parties' response to Appeal (if applicable)
- Hearing Packet
- Employee's Disciplinary History (if applicable)



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3 Basis for Appeals

(1) **To consider new information**, sufficient to alter the decision, or other relevant facts not brought out in the original hearing (or appeal), because such information was not known or knowable to the person appealing during the time of the hearing (or appeal);

(2) **To allege a procedural error** within the hearing process that may have substantially impacted the fairness of the hearing (or appeal), including but not limited to whether any hearing questions were improperly excluded or whether the decision was tainted by a conflict of interest or bias by the Title IX Coordinator, Conduct Officer, investigator(s), decision makers(s); or

(3) **To allege that the finding was inconsistent with the weight of the information.**

**Appeals are not a do-over. There are limited bases on which a party can appeal.

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(1) Grounds for Appeal: New Information/ Evidence

- Evidence or information that was **not known or knowable** to the person appealing **during the time of the investigation (or hearing);** and
- That could affect the outcome of the matter ("**new information that is sufficient to alter the decision")**
- Could include evidence not found by investigator

Appeal officers should determine:

(1) Was this information **not reasonably available at the time** of the hearing?
(2) Would the new information be **sufficient to alter the decision?**

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(2) Grounds for Appeal: Procedural Error

Procedural error within the **hearing process** that may have **substantially impacted** the fairness of the hearing (or appeal).

The procedural error must be material, meaning it had the potential to impact the outcome.

Examples:

- A failure to follow the Institute's procedures;
- A failure to objectively evaluate all relevant evidence, including inculpatory or exculpatory evidence;
- A determination regarding what evidence was excluded as irrelevant -- Did the Decision Maker improperly exclude any hearing questions that could have impacted the outcome?
- Conflict of interest or bias -- Was the decision tainted by a conflict of interest or bias on the part of the Title IX Coordinator, Conduct Officer, investigator(s), and/ or decision makers(s).

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(3) Grounds for Appeal: Finding is inconsistent

- The finding was inconsistent with the **weight of the information**.
- This is one of the most commonly used basis for an appeal.

Appellate officers should:

(1) Examine the information the appellant provides that addresses why the finding is inconsistent; and

(2) Keep in mind the appeals process is designed to ensure the investigation and adjudication process was fair and thorough and is not an opportunity to second guess a decision, absent material error.

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Drafting the Written Decision

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Drafting the Written Decision

Appeals are:

- a review of the record only
- no new meeting with the Respondent or any Complainant is required

Appellate Decision Maker's Options:

(1) **Affirm** the original sanction and finding

(2) **Affirm** the original finding but **issue a new sanction** of greater or lesser severity

(3) **Remand** the case back to any lower decision maker/investigator to correct a procedural or factual defect

(4) **Reverse or dismiss** the case if there was a procedural or factual defect that cannot be remedied by remand.

Appellate Decision Letter Sections

- Introduction
- Guidelines and Process for Appeal
- Basis for Appeal
  - Summarize the claims
- Analysis for the Appeals Claims
  - Address each claim
  - You may organize the claims by the basis for appeal
- Notification of Decision
- Second Appeal/ Discretionary Review



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Analysis for the Appeal Claims and Notification of Decision

Analysis of the Appeal Claims:

Introduction to the analysis

Appeal Basis #1

- Introduction of new information:
  - Analysis of each claim dealing with Introduction of New Information

Appeal Basis #2

- Procedural Error:
  - Analysis of each claim dealing with Procedural Error

Notification of Decision: affirm the original findings and decision/remand/change.

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Drafting Appeal Decisions

What should appellate decision makers be considering when reviewing and drafting appeal decisions?

- Understand the applicable grounds for appeal
- Have an open mind (objectively make a determination as to whether the grounds for appeal have been established)
- Address all claims raised (each point) and articulate why they did/did not necessitate the outcome requested (ex., new hearing, or the findings be overturned)
- Be guided by applicable policy and facts

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Sexual Harassment Cases are Confidential

- Sexual harassment cases should be treated as confidential by the Institute, with information shared only as necessary

> As an appellate Decision Maker, you must maintain the confidentiality of the process and not disclose information to any third-party except as the process itself requires

- Records containing student information are subject to FERPA protection
- The Title IX regulations contain an express preemption, permitting FERPA-protected material to be used only as required by Title IX itself

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When may you remand?

Appeals granted for **procedural error** or **new evidence** should be remanded back to the original investigator and/or decision-maker (hearing panel or adjudicator) for reconsideration.

Appellate Decision Maker should:

- Provide rationale and specific instructions defining the scope of the issues.
- Include instructions for returning the case to the appellate Decision Maker, if appropriate (e.g., revised findings)
- Appeal Decision Maker makes a final determination.

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When may you order a new hearing?

In rare cases where a procedural error cannot be cured (as in cases of bias) the appellate decision maker may order a new hearing.

- May prescribe a new decision-maker
- Decisions from any new hearing may be appealed

Note: Where an appeal results in reinstatement of privileges for a Respondent, all reasonable attempts should be made to restore the Respondent to his or her prior status.

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Complainant Barker appeals a finding that Respondent Shaw **did not** violate the GT Sexual Misconduct Policy. The decision letter stated that Respondent Shaw was “not responsible” for the charge of Stalking.

Complainant Barker appeals the finding on the following grounds:

- Complainant Barker states that the Title IX Coordinator failed to meet with them to discuss the availability of supportive measures and their request for academic modifications. Due to this oversight, Complainant Barker contends that they were unable to adequately prepare for the hearing as they were bogged down in academics.

- Complainant Barker states that the Hearing Panel was biased since the panel was compromised of two men and one woman. Additionally, the appeal stated that the hearing panel failed to address the group messages between the Complainant and two witnesses that discussed the effect the Respondent’s actions had on the complainant in their day-to-day life. The messages spoke to how the complainant was scared to be on campus and spent majority of the day in their apartment having panic attacks.

- Complainant Barker states that another student named “G” has stepped forward alleging that the Respondent displayed the same behaviors towards them. Complainant Barker would like to add G as a witness to the investigation as G has new evidence that was not available at the time of the investigation. Complainant Barker and G met after the hearing concluded. It was at that time G shared with Complainant Barker that the Respondent exhibited the same behaviors towards them as well.

QUESTIONS/CONTACT US!



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