

ANNUAL PANEL TRAINING: DAY 1

The Offices of Student
Conduct & Student Civil
Rights and Sexual
Misconduct

September 28-29, 2020

**As you enter the Zoom
call, please share your
name, title, and
department in the chat
feature!**

Content Warning

The content of this training can be challenging. We will be talking about sex, sexual violence/misconduct, interpersonal violence, other actions against and between people, bias, and other topics that may be disturbing. If you find yourself getting overwhelmed, please feel free to take a break. While we have scheduled breaks, we understand that some topics may impact various panel members in a way that requires a quick moment away. If, at any point during training or after, you feel like serving on a panel is not going to work for you, please contact JaWana, Mairead, or Kim.

THE OFFICE OF STUDENT CONDUCT

The Office of Student Conduct

JaWana Green, Managing Director

Mairead Kiernan, Associate Director

Annette Sawadogo, Associate Director

Che Chavez, Assistant Director

Peyton Scott, Assistant Director

VACANT, Assistant Director

Gail Moore, Administrative Business Assistant

Referral Sources

- Texas Tech Police Department
- University Student Housing
- Student Organizations
- Office for Student Civil Rights & Sexual Misconduct
- Behavioral Intervention Team
- Community members
- Anonymous reports

Investigation Process

- Case assigned to Investigator
- Notice of Investigation letter sent to involved parties; meetings scheduled
 - All communication occurs via student's Texas Tech email
 - During the academic year, meetings are scheduled for the student
- Rights & Responsibilities signed/acknowledged
- Investigation meeting held
- Additional evidence gathered/meetings held, if necessary
 - If behavior is not deemed a violation, process ends
- If allegations are issued, move into hearing process

The Investigation Report

- Background
 - Investigator
 - Date of incident/timeline
 - Case history
 - Involved parties
- Executive Summary
- Statements
- Evidence
- Allegations/Points for Deliberation

Who's in a Report

- Complainant: The person/party reporting (or being reported on behalf of) the alleged violation of the *Code of Student Conduct*
- Respondent: The person/party alleged to have violated the *Code of Student Conduct*
- Investigator: Assigned to investigate the alleged violation
- Advisor: Non-participating person of the student's choosing
 - Cannot be a witness in the case or a student who's been suspended or expelled from TTU
 - Title IX: Can be anyone

Pre-hearing Process



Sign off on final
Investigation Report



Notification of all
allegations



Availability for final
Hearing



Review and striking (if
applicable) of panel
members



Review copy of
Hearing script



Review
opening/closing/impa
ct statements



Review of appeal and
intent to appeal
procedures

Hearing Processes (Less Common)

Informal Conference

- Typically used with Student Organizations
- Used in cases with two or more students
- Student(s) or Org agrees that a violation occurred and agrees to all sanctions
- Cannot be appealed

Decision in Absentia

- Made only after sufficient notice has been provided and student has failed to respond
- Atypical in removable offenses
- Can still be appealed

Hearing Processes (Less Common)

Sanctions Only Hearing

- Student accepts responsibility for allegation
 - Cannot appeal the responsible finding
- Administrative Hearing Officer or Panel decides appropriate sanctions

Informal Resolution

- Cases handled by SCRSM
- Must be agreed upon by all parties through voluntary, written consent
 - Including any restrictions or conditions
- Binding and final; no opportunity to appeal

Hearing Processes (Most Common)

Sanctions Only Hearing

- Single Hearing Officer issues a finding and sanctions
- The Hearing Officer and Investigator are often the same person
- Typically is informal in nature
- Sexual Misconduct Sanctions Only Hearings will utilize a Hearing Panel

Hearing Panel (everything but TIX misconduct)

- Three-person panel issues a finding and sanctions
 - Composition is determined by the nature of the violation
- Respondent, Complainant, and witnesses (if applicable) can be present
- Formal in nature
- Follows a script

- OSC will also investigate and adjudicate incidents of hazing/Student Org. misconduct
- Investigations may happen in a partnership process
- For the purpose of the panel, this is handled in the same manner of a general conduct matter
 - More information/interviews
 - Often a synopsis

Student Organization/Hazing

THE OFFICE OF STUDENT CIVIL RIGHTS & SEXUAL MISCONDUCT

The Office of Student Civil Rights & Sexual Misconduct

- Dr. Kimberly Simón, Title IX Coordinator
- Meredith Holden, Assistant TIX Coordinator, Case Manager
- Glenn Mellinger, Investigator
- Meghan Rogers, Investigator
- Tyler Patrick, Investigator
- Gloria Baron, Administrative Business Assistant
- Training & Outreach Coordinator
- CARE Coordinators

What is Title IX?

Under the United States Code of Federal Regulations, Title IX states that, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 USCA § 1681.

<https://www.depts.ttu.edu/titleix/>

2020 Changes to Title IX/Conduct Process

- Two distinct policies:
 - Title IX Sexual Misconduct Policy
 - Non-Title IX Sexual Misconduct Policy
- Jurisdictional Considerations
 - Education Program or Activity
- *Timeline: Entire Grievance Process must conclude in 120 days*
- Formal Complaint Process
- Notice of Formal Complaint to Parties
- Dismissal of Formal Complaint
 - Appeal Process
- Investigation Process
- Investigation Report/Evidence Review

2020 Changes to Title IX/Conduct Process

- Resolution
 - All Sexual Misconduct cases will be adjudicated through SCRSM utilizing a Hearing Panel
 - Non-Title IX Sexual Misconduct process will mirror previous years
- Hearing
 - Written Determination vs Decision Letter
- Sanctioning (if appropriate)
- Remedies to the Complainant (if appropriate)
- Appeal Process
- Changes to Title IX Hearings
 - Advisors
 - Title IX Hearing Officer
 - Direct Examination
 - Cross Examination
 - Considering Evidence
 - Written Determination of Responsibility

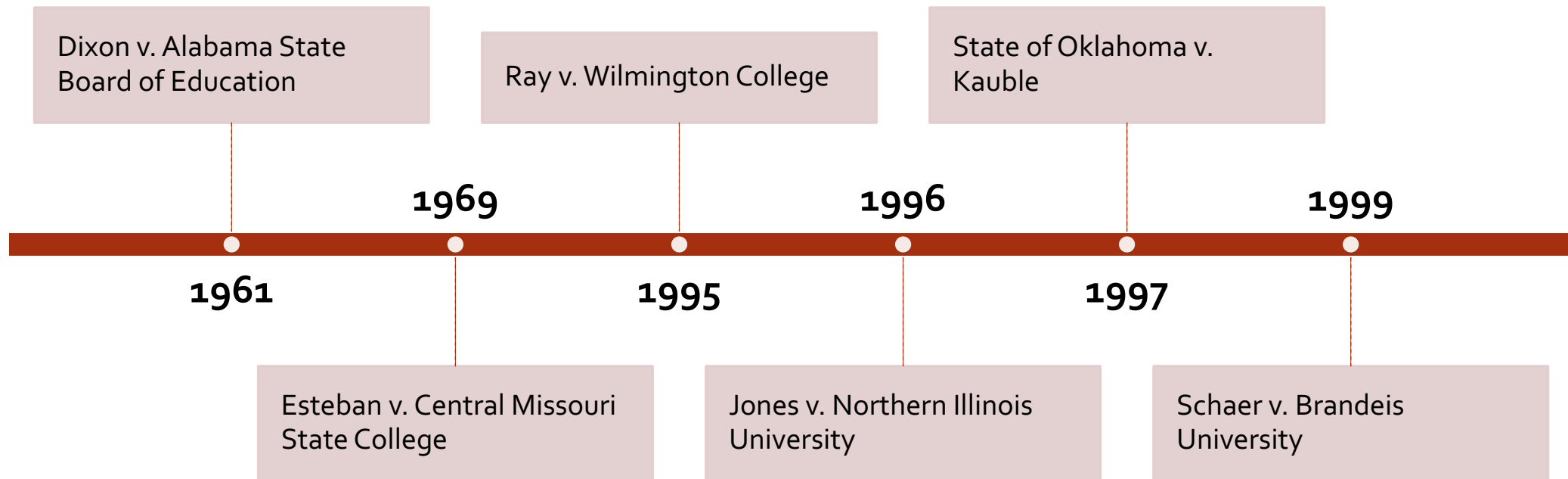
Hearing Processes

Title IX Sexual Misconduct

Title IX Hearing

- Four-person panel issues a finding and sanctions
 - Composition is determined by the nature of the violation
- Respondent, Complainant, and witnesses (if applicable) must be present for statements to be considered
- Formal in nature
- Follows a script
- Advisors conduct cross-examination
- Title IX Hearing Officer makes determinations on relevance of evidence and questions presented

Landmarks in Student Conduct



Landmarks in Student Conduct

- Dixon v. Alabama State Board of Education
 - **Due process**
 - Only private associations have the right to obtain a waiver of notice and hearing before depriving a member of a valuable right. And even here, the right to notice and a hearing is so fundamental to the conduct of our society that the waiver must be clear and explicit."
- Esteban v. Central Missouri State College
 - **Burden of proof**
 - " School regulations are not to be measured by the standards which prevail for criminal law and for criminal procedures."
- Ray v. Wilmington College
 - **Jurisdiction**
 - " An educational institution's authority to discipline its students does not necessarily stop at the physical boundaries of the institution's premises. The institution has the prerogative to decide that certain types of off campus conduct are detrimental to the institution and to discipline a student who engages in that conduct."

Landmarks in Student Conduct

- Jones v. Northern Illinois University
 - **Role of advisors**
 - Courts held due process does not require participation of counsel as Perry Mason during a disciplinary hearing, approving limited role as an advisor.
- State of Oklahoma v. Kauble
 - **Double jeopardy**
 - Purpose of University sanctions were not to punish but were remedial in nature and its purposes were to "protect the integrity of the University and its resources" and to rehabilitate the responsible student, to help the responsible student to graduate, and to protect other students.
- Schaer v. Brandeis University
 - **Legal interference**
 - "Courts are chary about interfering with academic and disciplinary decisions made by colleges and universities. A university is not required to adhere to the standards of due process guaranteed to criminal defendants or to abide by rules of evidence adopted by courts."

DUE PROCESS

Due Process Considerations



Prompt, fair, and equitable resolution



Notice provided to student

Typically 2-4 business days in advance



Opportunity to be heard



Flexible but firm with student schedules



Rights & Responsibilities

Signed prior to reviewing the case/taking statements

AMNESTY

Amnesty

- The university will not take any disciplinary action against a student who in good faith reports being the victim of, or witness to, an incident of sexual harassment, sexual assault, dating violence, or stalking, for a violation of the Code of Student Conduct occurring at or near the time of the incident, regardless of the location at which the incident occurred or the outcome of the disciplinary process regarding the incident.
- In Sexual Misconduct cases- amnesty will be extended to the Complainant, Respondent, and witnesses who provide statements during an investigation and disclose their own personal drug or alcohol use. The university may provide educational options to students to address any concerning behavior as part of the afforded amnesty or in lieu of conduct proceedings.

EVIDENCE

Common Types of Evidence

- Police Report
- Party's statement
- Pictures
- Text Messages
- Video/Surveillance
- Social Media
- Medical Records
- Existence of/lack of physical evidence
- Credit card/Venmo/uber records
- ID Card Swipe information
- Circumstantial or situational factors

Extraneous Evidence

- What the students were wearing
- Sexual orientation, gender, gender identity, gender expression
- Organizational involvement/extracurricular activities
- Prior relationships/sexual history
 - With each other or anyone else
- Intentional alcohol/drug use

These can and should be discussed if they provide context for a case

Weighing Evidence

- When we weigh information, we are seeking to assess the impact of the information presented to us.
- What factors impact our assessment?
 - Persuasiveness
 - Relevance
 - Reliability
 - Bias

Persuasiveness

- To be persuasive, information must
 - Be believable
 - Be consistent
 - Sustain itself upon being challenged
 - Establish a dependable narrative that outweighs any deficits (ex: lack of complete memory as a result of time between the event and the hearing)
- Persuasiveness is not about the number of witnesses supporting a particular point of view
- Quality is more important than quantity

Relevance

- To be relevant, information must
 - Actually relate to the incident being reviewed
 - Be of sufficient value to matter in the determination of a finding of fact
 - Be offered by an individual with actual knowledge of the event, preferably from their own involvement and/or observation
- For information to help in developing a finding of fact, it must relate directly to the incident in question and not just to incidents similar to the incident in question

Reliability

- To be reliable, the person providing information must
 - Provide a substantively consistent telling of the story over time
 - Be able to have assumed the role they claimed to assume as participant or observer in the event
 - Have appropriate training and/or experience to be able to sustain any claim of expertise
 - Not come from a source who can be objectively discredited
- Reliability is objectified in a person's honest recollections, substantively consistent memories, and the degree to which they demonstrate their training and experience
- Reliable people recognize the limitations of their memories, training, and experience, and are honest about these limitations

Bias

- It is important to recognize that bias is present and minimize its impact on the relaying of information
- For conduct purposes, we are concerned about three types of bias:
 - Bias toward or against people involved in the incident by a person reporting information
 - Bias toward or against subject matter involved in the incident by a person reporting information
 - Bias brought into a conduct hearing by a member of a panel

Bias: Against/Toward Involved by Reporting Party

- What is the relationship between the person reporting information and the parties involved in the incident?
- What is the relationship between the person reporting information and the institution?
- While having a relationship with parties involved in an incident does not suggest that the person will be deceitful to aid or hurt the person's case, it may well influence the person's recollection of the incident.
- Panel members can and should inquire about the role of the relationship in the reporting person's testimony
- Address bias by asking questions about portions of the incident that people did not likely prepare in advance in order to understand actual events instead of what may have shaped a person's bias.

Bias: Against/Toward Involved by Reporting Party

Example

- CA was physically assaulted by a resident and reports the incident. It is then reported by the respondent that the CA writes this room up every Thursday, Friday, and Saturday for noise complaints without addressing noise from anyone else on the floor.
 - Could the incident have started from a place of bias?
 - Is there then bias in the report submitted by the CA who was assaulted?

Bias: Against/Toward Subject Matter by Reporting Party

- People's perceptions may be impacted by a bias regarding conditions of an incident. Rather than trying to mislead a panel, some reporters of information rely on assumptions about the people or circumstances involved in an incident, based on their own biases.
- When members of panels hear people speaking in general terms about a situation, they should test the person's re-telling with more specific questions.
- It is important to seek definitions on terms such as:
 - Always
 - Disrespectful
 - Obviously drunk
 - Those people
- When people reporting information express strong feelings about a topic, it is important to try to differentiate their feelings from their observations and/or involvement.

Bias: Against/Toward Subject Matter by Reporting Party

Example

- A student discloses to a faculty member that they were sexually groped during a BDSM scene. The faculty, knowing they are a mandated reporter, reports the incident but ends the report with, “I have a hard time believing that the student was actually groped. They got themselves into BDSM; they should’ve known the risks beforehand.”
 - What is the faculty member’s knowledge of BDSM as it relates to consent?
 - Not a fair assessment to be put into a report

Bias: By a Member of the Panel

- Panel members are supposed to be impartial, so it is important to be aware of the issues that serve as “hot buttons” for you and provoke emotional responses
- Be cognizant of your bias as you read the report before the hearing
 - If need be, you can recuse yourself from a case
- One common issue is when panel members create possible alternatives in attempting to arrive at a finding of fact. Instead of listening to the information presented and weighing it appropriately, a temptation is to suppose information by introducing facts not offered at the hearing. It is critical that panel members only use the information provided in reaching a finding.

Bias: By a Member of the Panel

Examples

- Imposing your personal values on the behavior of the student(s)
 - Judgement of “deviant” sexual behavior, alcohol/drug consumption, reckless behavior
 - “Well I wouldn’t have done that...”
- Inability to move past minute details
 - “But she allowed him to [XYZ]...” when both students agree that [XYZ] part of the sex was consensual

THE PANEL HEARING

Panel Composition

- 3-person panel
 - One alternate scheduled
- Actions Against Members of the University Community & Others
 - Campus administrators
- Title IX Sexual Misconduct
 - All panels will include an outside TIX hearing officer with the other panel members being:
 - Campus administrators (student respondent)
 - Faculty members (faculty respondent)
 - Staff members (staff respondent)
- General Conduct
 - Staff, faculty, and student
- Academic Integrity
 - Faculty and students

Scheduling and Committing to the Hearing

- Email from an Associate Director in The Office of Student Conduct or the Title IX Outreach Coordinator
 - Date & time of Hearing
 - Involved student(s)
 - Any special circumstances (should they exist)
- Follow up calendar request
 - Private appointment
 - Report attached
 - Often blocked for full day

Pre-Hearing Expectations

- Clear schedule for the day
 - Panels typically scheduled 1-2 weeks in advance
- Thoroughly read through the report
 - Print/mark-up your copy of the report
- Prepare questions
 - Call OSC/SCRSM if there are pressing questions beforehand
- Recuse yourself (if necessary)

Day of Hearing Expectations

- Please be prompt
- Be prepared
 - Snacks, water, etc.
 - Logged in/connected/report open
- Check your pre-conceived notions at the door
- Be engaged
- Ask for breaks, if needed
 - Either for you or the student(s)

Who's Who in the Hearing

- Complaint/Respondent/Witness/Advisor/Investigator
- Chairperson
- Resource Person
 - Non-voting staff member from the Office of Student Conduct/SCRSM
 - Ensures procedural soundness of the hearing
 - Records the hearing
 - Assists in composing rationale
 - Delivers post-hearing notification to students
 - Provides clarification on policies, procedures, and sanctions

Information Gathering Portion of the Hearing

- The Complainant and Respondent may give opening statements
 - Facts of the case only
- The Complainant and Respondent may ask questions of one another
- The Panel may ask questions of the Complainant and Respondent
- The Complainant and Respondent may call witnesses
- If applicable and present
- Panel may also ask to speak to these witnesses
- The Complainant and Respondent may give closing statements
- Again, facts of the case only

Information Gathering Portion of the Hearing

- The longest part of the hearing
- Can be exceptionally emotional and tough for the student(s)
 - And for you as panel members
- Challenging (in some cases) if student(s) are not present
 - Questions should still be asked for the record
- Breaks are often required throughout this portion of the hearing
- Chairperson facilitates; Resource Person steps in as needed

Not Responsible Finding

- Students are free to go
- Panel members and resource person craft rationale
- Decision letter, including rationale, is sent to complainant and respondent
- Students have 3 business days to appeal
- If either student appeals, the appeal will be sent to the panel chairperson, who will respond on behalf of the panel

Responsible Finding

- Delivery of impact statements
 - How the decision will impact the complainant and respondent moving forward
- Panel members and resource person craft rationale for the finding(s) first
- Reference sanction grid and cumulative conduct history, if applicable, to determine appropriate sanction(s)
 - Add to rationale regarding the sanction, if necessary

ANNUAL PANEL TRAINING: DAY 2

The Offices of Student
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Rights and Sexual
Misconduct

September 28-29, 2020

***Remember, if you're
willing and able to serve
on TIX Sexual Misconduct
panels, please email
titleix@ttu.edu.***

Rice Activity

- Everyone knows what rice is
- Unlikely someone has not eaten rice
- We all interact with and experience rice differently
 - Do you cook on the stovetop? In a rice cooker?
 - Do you season your rice?
 - What do you eat with it?
 - What happens to leftovers?

BIAS/ CONFLICT OF INTEREST

What might bias sound like?

- "I definitely wouldn't have done that in college."
- "Why are these students acting like that?"
- "I just find it hard to believe that they would actually feel that way."
- "S/he doesn't seem like the type..."
- "

What would you consider conflicts of interest? Or what may be perceived as a conflict of interest, even if it is not?

CREDIBILITY DETERMINATIONS

Credibility Questions

Peter Lake©

Assess demeanor: Appear credible- body language, eye contact, nervous, defensive, evasive?

Is the person's account inherently believable? Plausible? What is their potential bias?

Does the person have a motive to be untruthful?

Pay attention to inconsistencies, while balancing understanding that some inconsistencies can be normal.

Look for attempts to derail the hearing, deflect away from questions, and bog down the proceedings with irrelevant information.

Check your own bias at the door.



Credibility- the quality of being convincing or believable

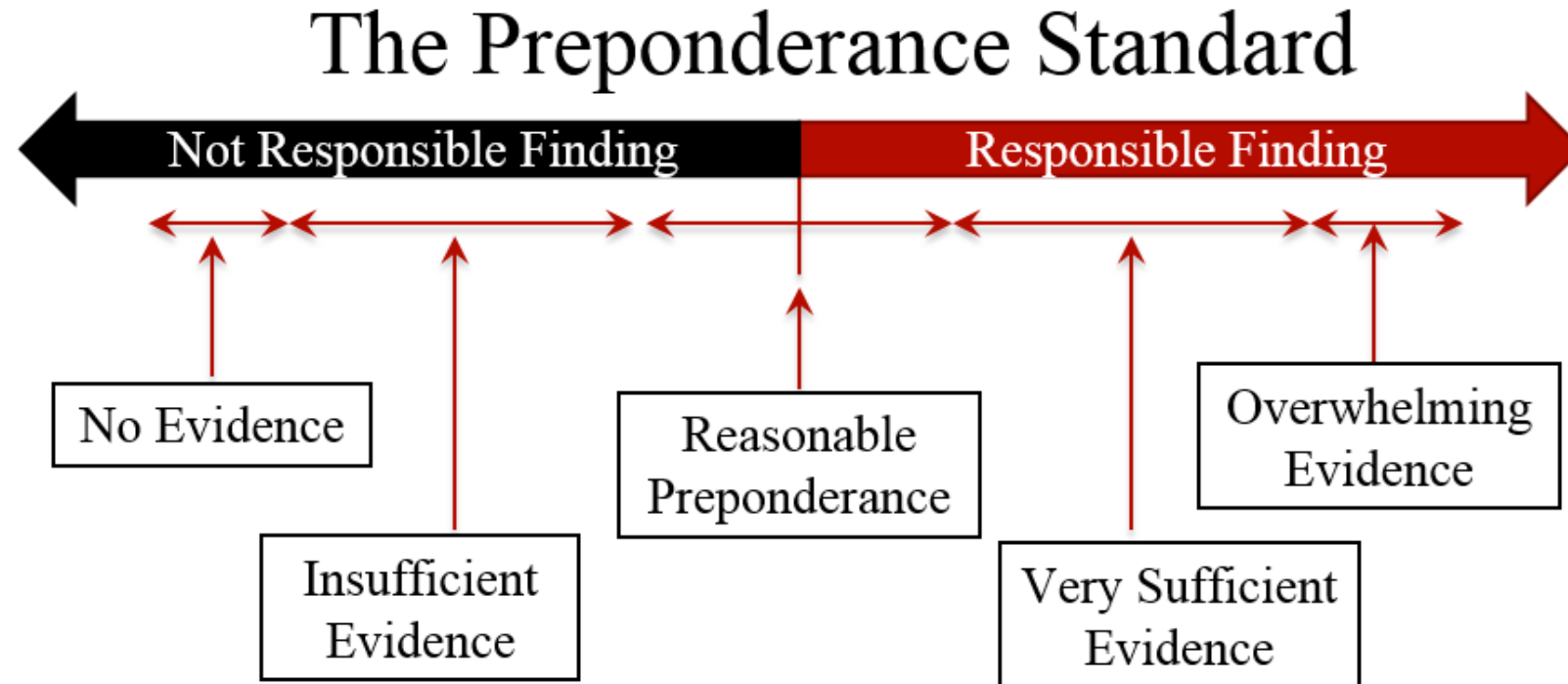


Reliability- The quality of being trustworthy or of performing consistently well.

Either, or,
or both?

DETERMINATION OF RESPONSIBILITY

Preponderance of the Evidence



Preponderance of the Evidence

- Based on the available and presented evidence, is it more likely than not that the *Code of Student Conduct* was violated?
- Preponderance is 50.01%
- Preponderance is NOT
 - Beyond a reasonable doubt
 - Clear and convincing
 - What you personally would have done
 - What you believe may have possibly happened
- "Intentionally, knowingly, or recklessly..."
- "However slight..."

Why Do We Write Decisions/Rationales?

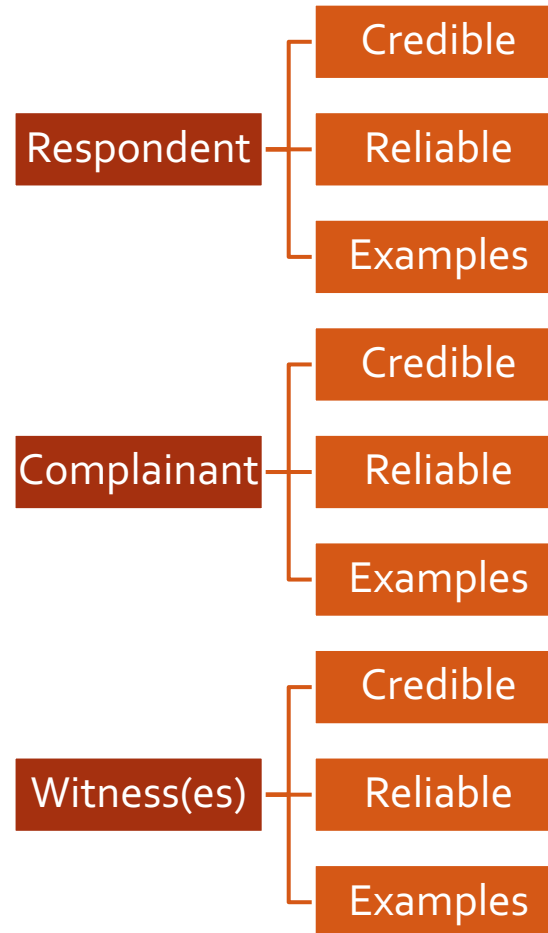
- First documentation about a case anyone sees
- Justification for your decision
- What evidence was (or was not) heavily considered? Were there areas of concern? Was a student particularly credible? Were there inconsistencies between statements in the report and in person?
- Explanation of why the behavior was (or was not) a violation
- Outline any special circumstances regarding sanctioning
 - Example: A three-year suspension vs. one year because the other student has three years left at Tech
- Mitigating/aggravating factors in the case

Expectations

- Thorough, impartial, and impersonal
- Roadmap to the panel's finding
- Third person
- Include policy that was or was not violated
- Note any special sanctioning conditions
 - If removing, address why removal is appropriate and the reason for the duration of the removal
- Address any “atypical” sanctioning
 - Ex: Counseling intake for an Academic Integrity case

Remember, the Resource Person/Title IX Hearing Officer will be present to assist with this process

Writing Your Analysis



"We do not want to
victim-blame..."

- What are the facts?
- What is undisputed?
- What did the student(s)—
complainant or respondent—
say or do that led to a not
responsible finding?
- You can be factual but gentle

****The facts that are presented
are the facts you need to use****

"We found the respondent responsible, but we think there's some culpability on the complainant..."

- Rationale does not need to note significant aggravating factors if they didn't exist
- What were the specific behavior that led to the finding?
- Behavior focused vs. feelings focused
- Should not be included in the rationale explicitly

****The complainant's culpability or responsibility isn't your decision to make****

Sanctioning Considerations

- Cumulative Conduct history
- Was the behavior severe, persistent, or pervasive?
- Impact statements
 - Impact on the respondent?
 - Impact on the complainant?
 - Impact to the greater campus community
- Consistency with common practice in the Office of Student Conduct
- Staying on the grid
- Mitigating or aggravating factors

Mitigating vs. Aggravating Factors

Mitigating Factors

- Is there convincing evidence of a lack of intent to deceive and/or harm?
- Has the student clearly accepted responsibility for the violation?
- Is there evidence that the student has taken steps to address/remedy personal issues that may have contributed to the violation?
- Is there evidence to support that the student's ability to think rationally was impaired even though they made a conscious effort to participate in the violation?

Aggravating Factors

- Is there evidence to support that the behavior was premeditated?
- Was there physical/emotional damage to another student?
- Is this repeated behavior on the part of the respondent?
- Was blame deflected by the respondent?
- Was there an attempt to conceal or hide evidence of the violation by the respondent or by parties on behalf of the respondent?

Things NOT to Consider when Sanctioning

- The likeability of the student(s)
- Charges that are not included in the report
 - With some exception for alcohol- and drug-related behavior
- Extraneous details
- Your feelings about a student's behavior that are not rooted in fact

CASE STUDIES

Casy Study #1

- Jim & Bryan
- Reported off-campus fight
- Allegations
 - 02.b.01.a. Harmful, Threatening or Endangering Behavior – Assault
Intentionally, recklessly, or knowingly causing physical harm to another individual.
 - 03. Alcoholic Beverages
Unlawful or unauthorized possession, use, distribution, delivery, or sale of alcohol and/or public intoxication; consumption that endangers oneself; or operating a vehicle while intoxicated or under the influence of alcohol.

Casy Study #2

- Student Organization

- Report of hazing of PNMs

- Allegations

- 02.d.01. Hazing

Any type of physical brutality, such as whipping, beating, using a harmful substance on the body or similar activity.

- 02.d.02. Hazing

Any type of activity that subjects the student to an unreasonable risk of harm or that adversely affects the mental or physical health or safety of a student, such as humiliation, sleep deprivation, exposure to the elements, confinement, personal servitude, or calisthenics.

- 02.d.05. Hazing

Any activity in which a person solicits, encourages, directs, aids or attempts to aid another in engaging in hazing; intentionally, knowingly or recklessly permits hazing to occur; has firsthand knowledge of the planning of a specific hazing incident which has occurred or may occur; witnesses or participates in a specific hazing incident, and knowingly fails to report the incident in writing to the Office of Student Conduct.

- 02.d.07. Hazing

Any activity that involves coercing a student to consume an alcoholic beverage, liquor, or drug, or creates an environment in which the student reasonably feels coerced to consume any of those substances.