

SEXUAL MISCONDUCT HEARING BOARD

Fall 2023 Training



The Sexual Misconduct Hearing Board

hears cases involving alleged student, student organization, or employee sexual misconduct. A subset of faculty and staff representatives participate in each hearing.

Members of the Hearing Board may also serve as advisors in such hearings.



THE TITLE IX TEAM

Title IX Coordinator - Katie Rallojaj

Deputy Coordinators

- Shelley Story, Dean of Students and Director of Residence Life
- Julie Cowley, Associate Vice President for Academic Affairs

Deputies - step in when Katie is away, and to coordinate Hearings.

Annual & ongoing training; any full-time employee may be on the committee

Hearing Board Committee

Prohibited Conduct

OVERVIEW OF PROHIBITED CONDUCT



The following definitions are an abbreviation of the type of behavior that is prohibited, and will be adjudicated by this hearing board. For the full definition visit the Policy Prohibiting Sex Discrimination and Sexual Misconduct.

Prohibited Conduct

SEX/GENDER DISCRIMINATION



different treatment of an individual based on sex or gender including:

- sexual orientation
- gender identity
- gender expression
- pregnancy status

Prohibited Conduct

INTERPERSONAL VIOLENCE



Domestic/Family & Dating Violence:
an act, other than a defensive measure, that is intended to result in physical harm, bodily injury, assault or sexual assault, or that reasonably places the person in fear of imminent harm.

Relationship Abuse:
any act, threat, or pattern of behavior, including verbal, physical, psychological, sexual, academic, technological and economic, that one person uses to attempt to gain or maintain power or control over another.

Prohibited Conduct

SEXUAL ASSAULT



Rape:
penetration, no matter how slight, of the vagina or anus,
with any body part or object, or oral penetration by a sex
organ of another person **without consent**.

Fondling:
the touching of the private body parts of another person
for the purpose of sexual gratification, **without consent**.

Also...
Statutory Rape – involving minors
Incest – involving family relation

Prohibited Conduct

SEXUAL EXPLOITATION



any act or attempted action that threatens or takes non-consensual sexual advantage of another person for the actors own benefit, or to benefit anyone other than the affected person.

Prohibited Conduct

SEXUAL HARASSMENT



unwelcome, sex-based or gender-based verbal or physical conduct that interferes with a person's work performance, or creates an intimidating, hostile, or offensive work environment;

or in the education context is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities.

Prohibited Conduct

STALKING



engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

Prohibited Conduct

INAPPROPRIATE CONDUCT OF A SEXUAL NATURE



behavior that occurs in an educational program or activity, including online conduct, that substantially affects the employment and educational environment.

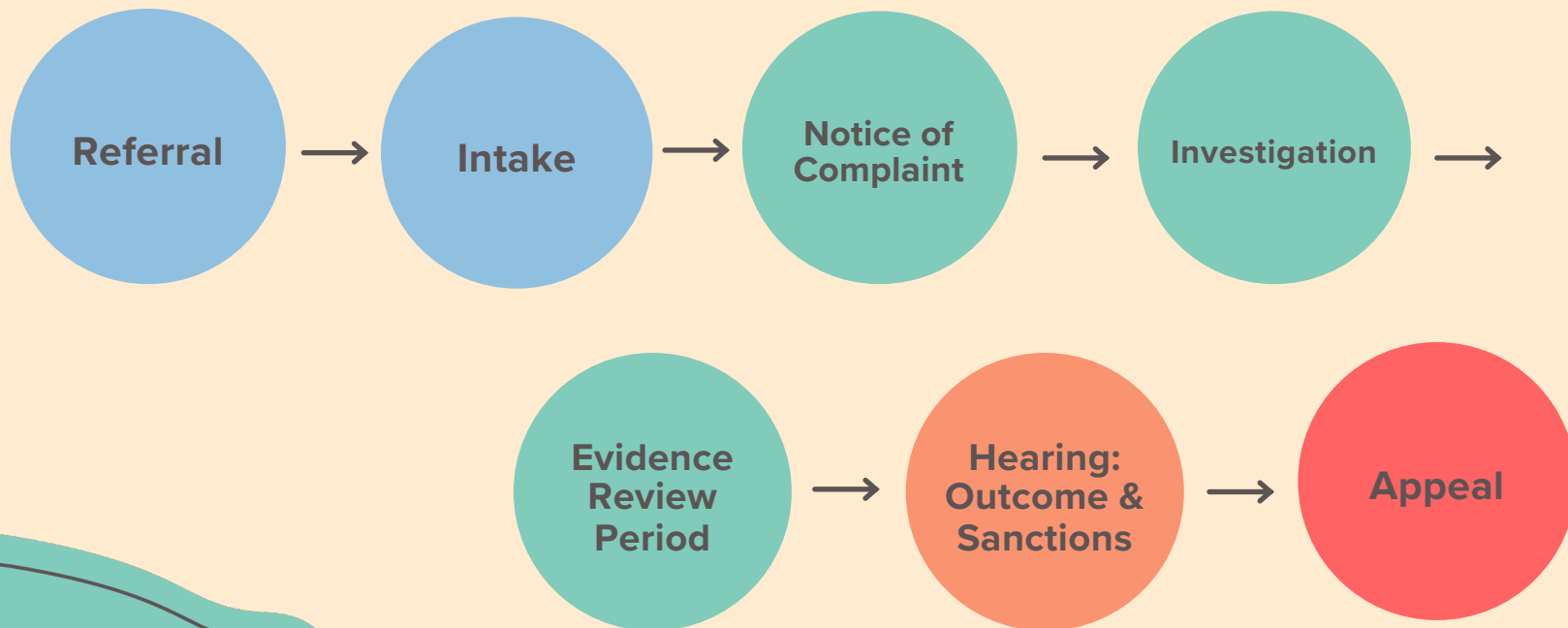
Prohibited Conduct

RETALIATION



intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with their rights or privileges.

POLICY PROHIBITING SEX DISCRIMINATION AND SEXUAL MISCONDUCT



WHAT PROCESS IS DUE?

NEUTRALITY & CONFIDENTIALITY

- FERPA protections
- Choice to exclude Board Members
- Decision Makers are trained

ADVISOR OF CHOICE

May choose their own advisor; when one must be appointed the University must be clear about policy.

PRESUME “NOT RESPONSIBLE”

It must be presumed that the Respondent is not responsible, unless the preponderance of the evidence is met, during deliberation.

ACCESS TO EVIDENCE

Respondent must have the opportunity to inspect all evidence used in the hearing, prior to the hear.

CHOICE OF PARTICIPATION

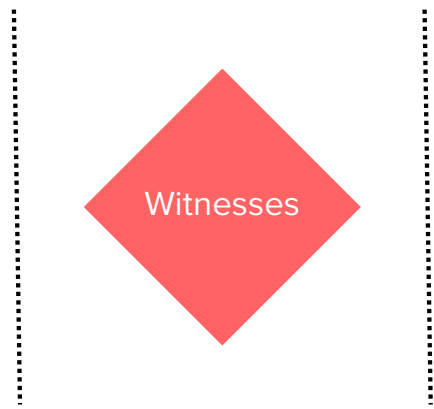
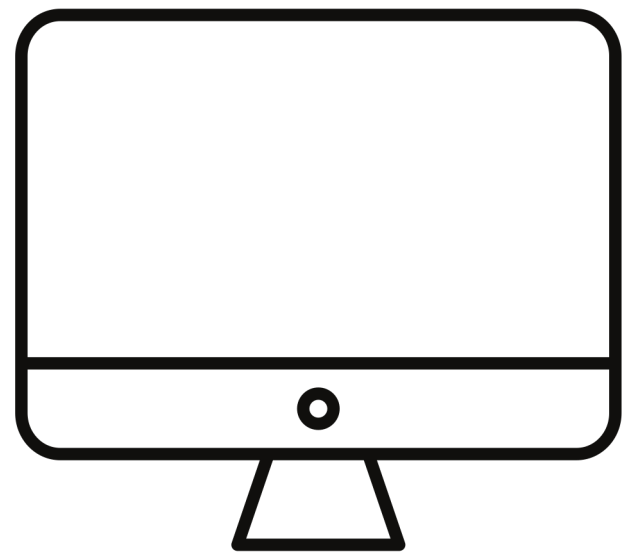
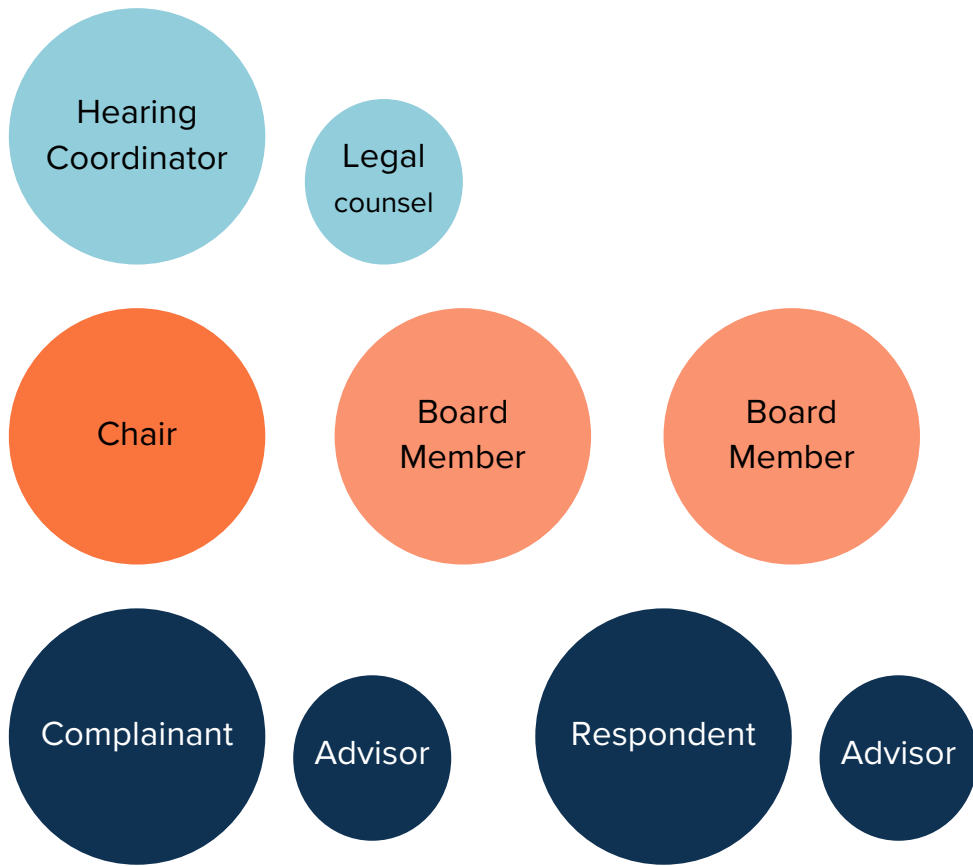
A Respondent may chose to not speak, or not participate in a hearing. The presumption of “not responsible” must be maintained.

ALL POLICIES AND PROCEDURES MUST BE FOLLOWED

THE HEARING

The purpose of the hearing is to render a determination of “responsible” or “not responsible” based on the preponderance of the evidence. If “Responsible” then sanctions are determined.





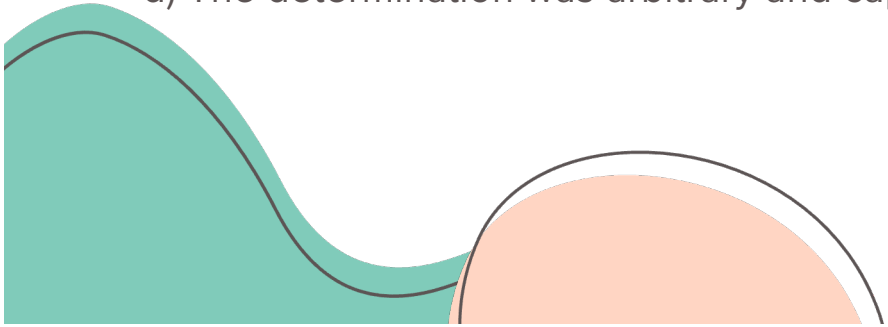
Elements of a Hearing

Hearing Preparation
Hearing Day - Managing the room and using the script
Live Examining / Cross Examination
Breaks and Pauses
Deliberation & Sanctions
Rendering the Decision - writing the letter



THE APPEAL

If a party submits an appeal, and it meets the criteria for any one of the “grounds for appeal”, then a Senior Staff member will coordinate the appeal board’s rendering of a determination:

- a) A procedural irregularity affected the outcome;
 - b) There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;
 - c) The Title IX Coordinator, investigator, hearing officer, or administrative officer had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that affected the outcome;
 - d) The determination was arbitrary and capricious.
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Appeal
Coordinator

Legal
counsel

Chair

Board
Member

Board
Member

Title IX
Coordinator



Elements of an Appeal

Assembling the Appellate Board

Appeal Preparation

Reviewing the Case

Deliberation

Rendering the Decision - writing the letter

THE ROLE OF AN ADVISOR

The Advisors role is to support the party through their participation in the grievance process, and except for the questioning of witnesses during the Track A hearing, the advisor will play a passive role and is not permitted to communicate on behalf of a party.



STANDARD OF PROOF

Preponderance of the Evidence



Trauma and the brain

<https://www.youtube.com/watch?v=4-tcKYx24aA>

This video is meant to serve as an example of how trauma impacts the brain, and is not a reflection of how the University will weigh evidence, or make assumptions about gender and the impact of trauma.

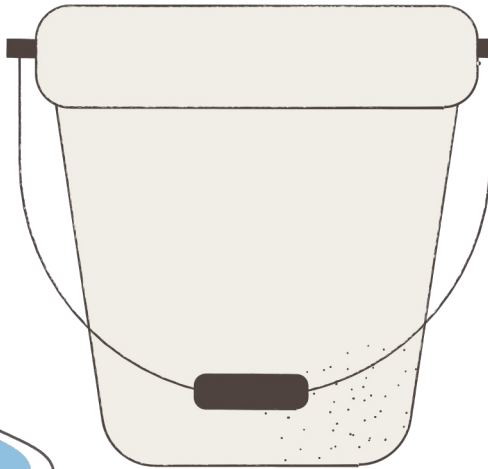
Funnel Technique

- **Open ended**
 - Tell me more about the music you heard.
- **Clarification**
 - You didn't know where you were, and you didn't hear music anymore, is that right?
- **Pinning down**
 - Tell me about what you saw when you didn't hear the music?

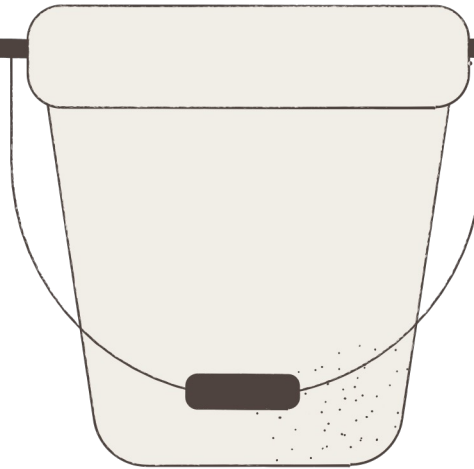


Evaluating Evidence

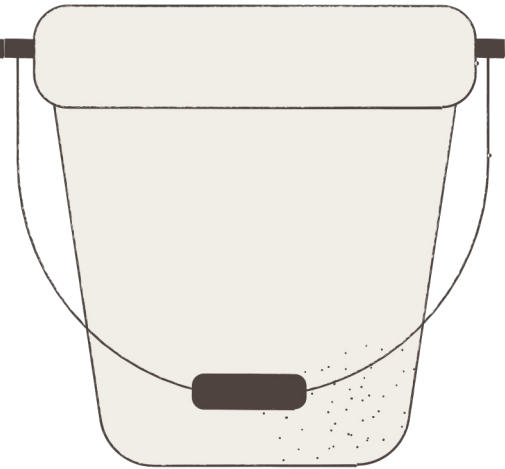
Direct



Circumstantial

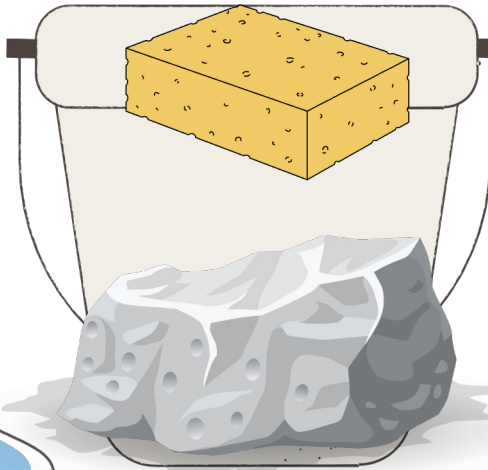


Not Relevant

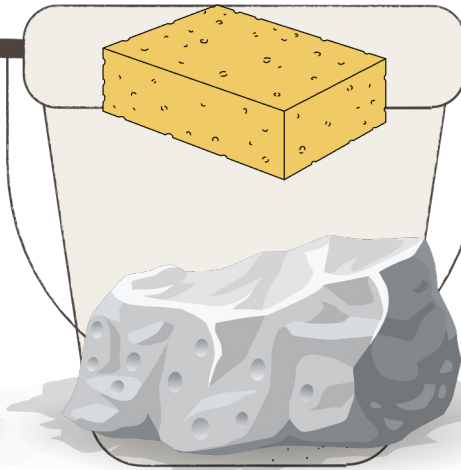


Evaluating “Weight”

Direct

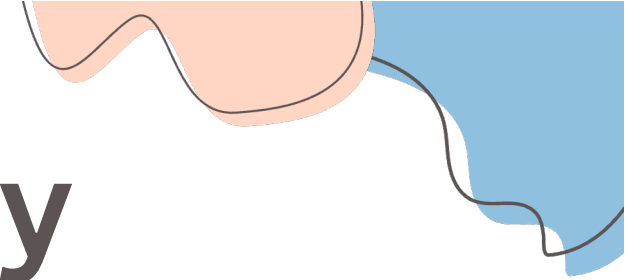


Circumstantial



Not Relevant





Evaluating Credibility

Direct

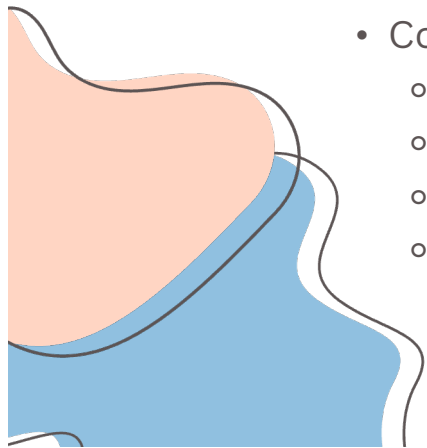


Circumstantial



***If you discard evidence as “not relevant” or “not credible” explain why.**

- Keep it focused on the evidence presented, not the person.
 - Example: “A person’s perspective of what they observed doesn’t align with the facts.”
- Consider the following:
 - inherent plausibility or logic of the statement
 - Consistent statements (caution: consider the impact of trauma)
 - Consider limited level of detail, or if the answer is evasive.
 - Cross-corroboration of witness accounts: independent observations vs. inferring or colluding statements.



Practice Scenario

- Review case scenario
- What is the allegation?
- Fill out the Policy Guide
- What do you want to know more about?
- Formulate a non-biased, and trauma-informed way to ask questions.

**WELCOME TO THE
TITLE IX TEAM!**

