



TITLE IX HEARING BOARD
CERTIFICATION COURSE

March 8th & 9th, 2018 at East Carolina University

HOUSEKEEPING ITEMS



- Sign in both days of training for certification eligibility
- Access to certificates is delivered with ccc@nchem.org within 7-10 business days following the conclusion of this training
- CEUs are granted on an individual basis by your field's accrediting body
- Materials site will remain available for three months following this training
- Contact members@atixa.org to learn about complimentary trial membership eligibility



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Managing Partner

The NCHERM Group, LLC

Vice President, ATIXA

AGENDA



Agenda

- Hearing Board Competencies
- Hearing Board Overview
- Overview of Title IX
- Due Process: Legal Foundations
- Review of ATIXA Due Process Checklist
- VAWA Sec. 304: Institutional Disciplinary Policies and Procedures
- The Hearing
- Questioning
- Consent Construct

AGENDA



Agenda

- Bias, Prejudice & Cultural Competence
- Evaluation of Evidence and Decision-Making Skills
- Deliberations
- Neurobiology of Trauma
- Lessons from Caselaw
- Sanctioning in Sexual Misconduct Cases
- Appeals

HEARING BOARD COMPETENCIES



- The Legal Landscape
- The Conduct/Disciplinary Process
- Investigation and Resolution Procedures
- Title IX & VAWA requirements
- Critical Thinking Skills
- How to Prepare for a Hearing
- Hearing Decorum
- Questioning Skills
- Weighing Evidence
- Analyzing Policy
- Standards of Proof
- Sexual Misconduct/ Discrimination
- SANE and Police Reports
- Intimate Partner Violence
- Bias/Prejudice/Impartiality
- The Psychology/Sociology of the Parties
- Stalking/Bullying/Harassment
- Deliberation
- Sanctioning/remedies
- The Appeals Process

HEARING BOARD COMPETENCIES



Rank your Top 3 responsibilities as a Hearing Board member

	<u>Your Rank</u>	<u>Group Rank</u>
• Finding the truth	_____	_____
• Providing a just result	_____	_____
• Providing an educational process	_____	_____
• Making a safe community	_____	_____
• Upholding the college's policy	_____	_____
• Ensuring a fair process	_____	_____
• Protecting the college from liability	_____	_____
• Punishing wrongdoing	_____	_____

THE GOAL



Reliable

Remedy

Stop the Behavior

Effective

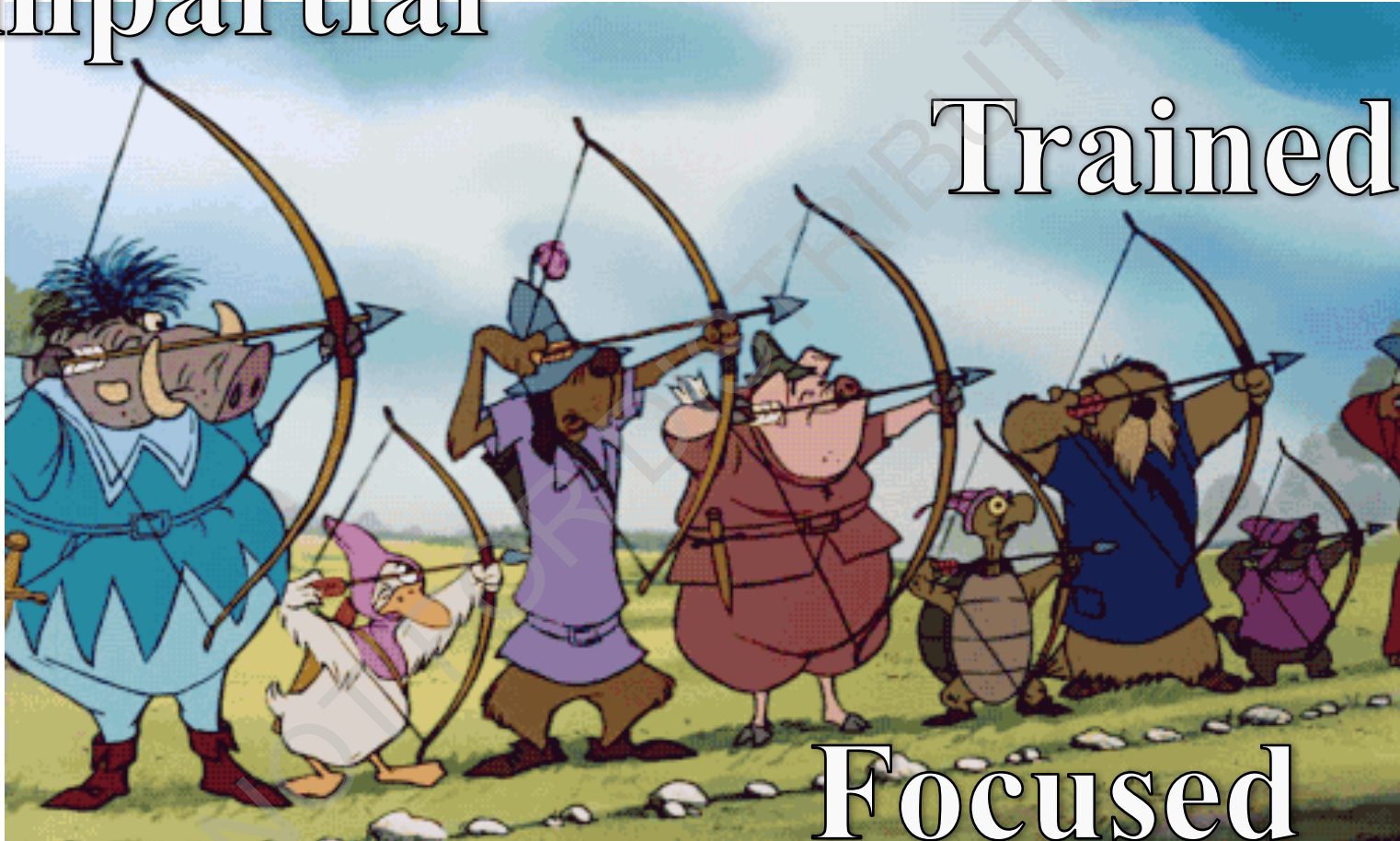
Prevent Recurrence



THE GOAL



Impartial



Trained

Focused

Competent

THE GOAL



MAKING THE APPROPRIATE DECISION

THE CHALLENGE FOR HEARING BOARD MEMBERS



- Community standards spell out what constitutes the offense of sexual misconduct within your community
 - The institutional response is impacted by Title IX requirements
- It is not a question of right and wrong, or If Something Happened-it's a question of “Is there a policy violation”
- Your role is to uphold the integrity of the process
- You may not agree with your policy, but you must be willing to uphold it

*Remember, you have no
side other than the
integrity of the process*

HEARING BOARD OVERVIEW

The Process

Confidentiality

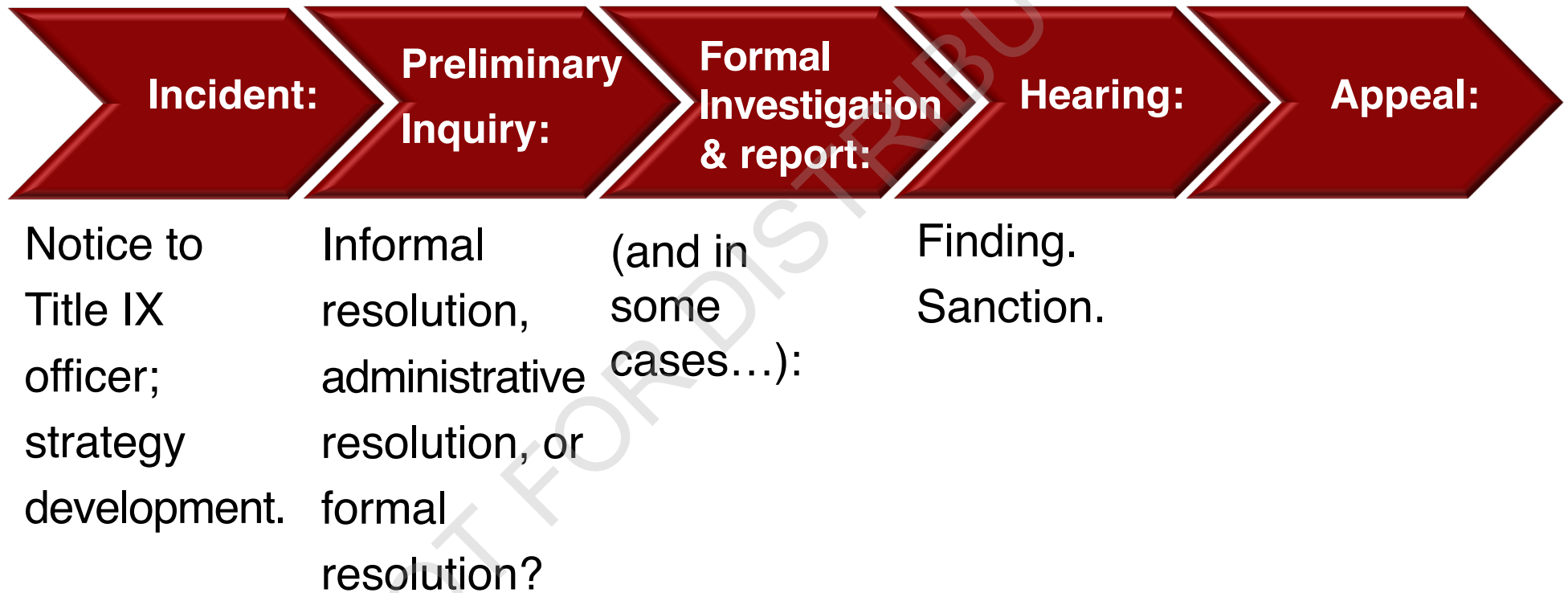
Preparing for the Hearing

Hearing Decorum

Jurisdiction

Standard of Review

OVERVIEW OF THE TITLE IX PROCESS

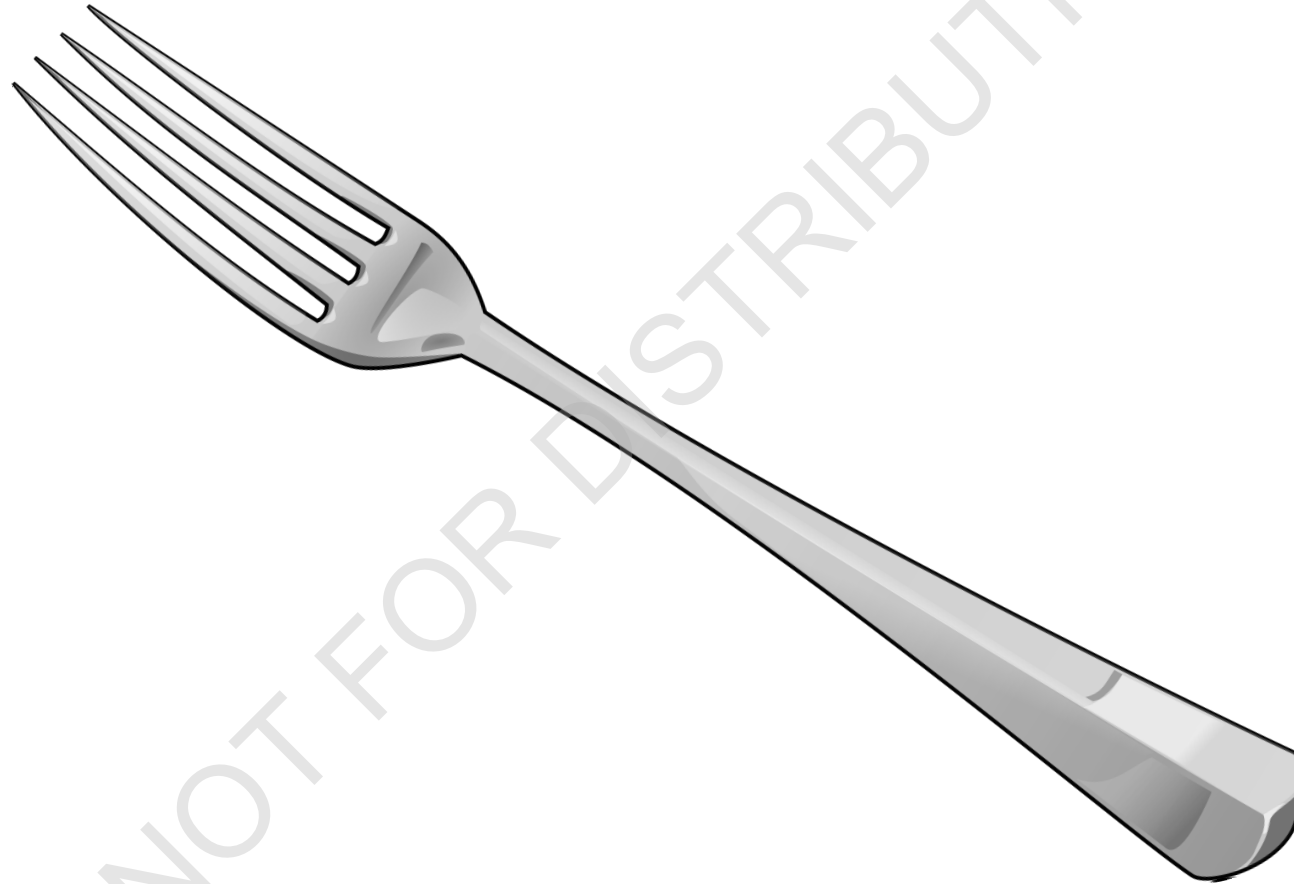


TEN STEPS

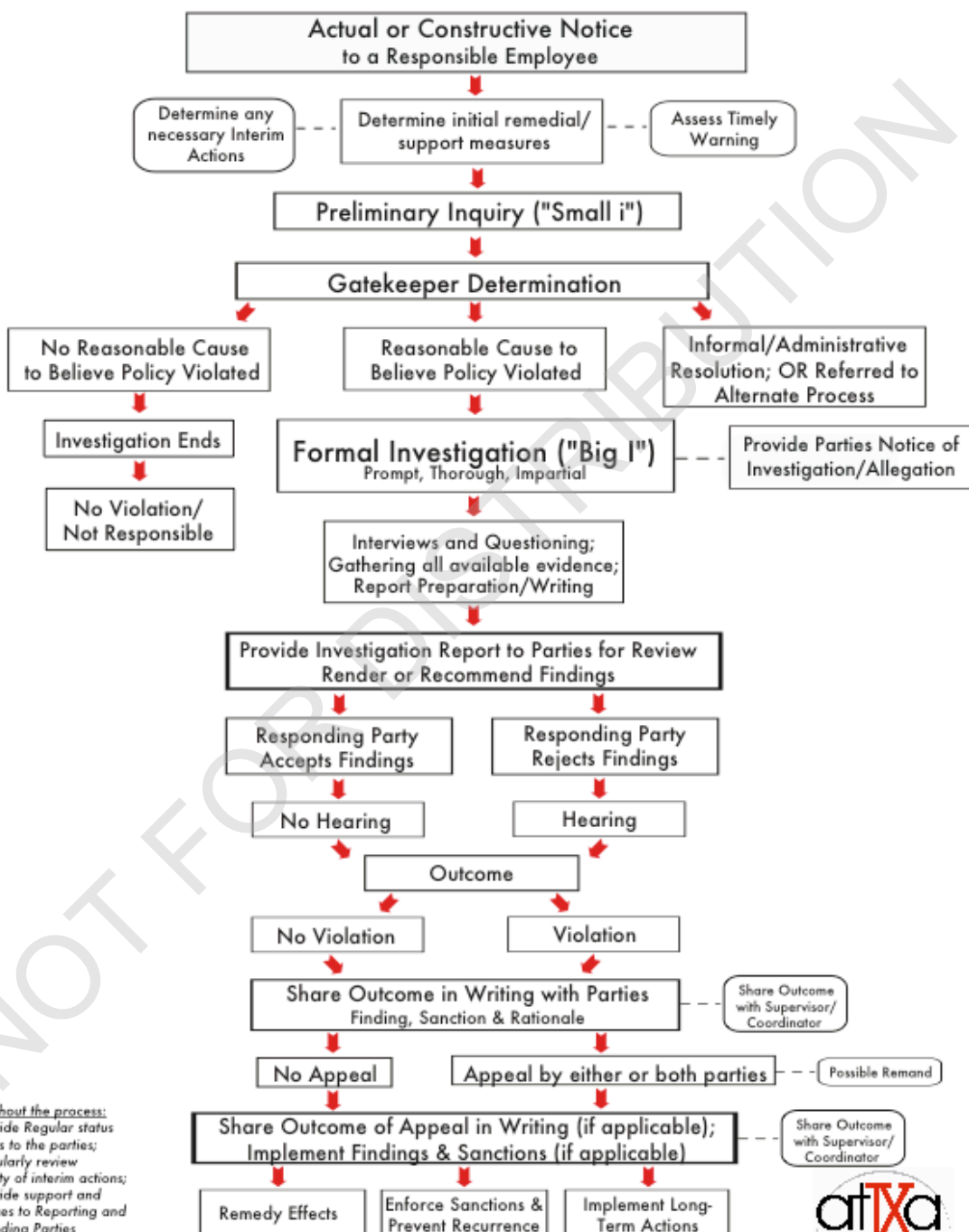


1. Complaint or notice
2. Preliminary inquiry (initial strategy)
3. Gatekeeper determination (earliest point)
4. Notice of allegation &/or Investigation (earliest point)
5. Strategize investigation
6. Formal comprehensive investigation
7. Witness interviews
8. Evidence gathering
9. Analysis
10. Finding

THE PROCESS



INVESTIGATION AND HEARING PANEL HYBRID MODEL FLOWCHART



NOT FOR PUBLICATION

Throughout the process:
 1: Provide Regular status updates to the parties;
 2: Regularly review necessity of interim actions;
 3: Provide support and resources to Reporting and Responding Parties



CONFIDENTIALITY



- It is critical that proceedings and cases remain confidential.
 - Do not discuss with anyone who is not involved
 - Only discuss cases in a private setting
 - Failure to maintain confidentiality should be grounds for dismissal from Hearing Pool or Appellate role
- FERPA
 - Education Records
 - Student has a right to review their Record
 - Exercise caution with what you put in writing or in your notes

PREPARING FOR THE HEARING



- Appropriate Dress
- Dress professionally – Jeans, t-shirts, shorts or sandals are not appropriate
- Arrive prepared and early
- Bring something to drink (non-alcoholic...)
- Turn off your phone!
- Bring a pen and paper
- Clear calendar after the hearing – it could take 30 minutes or it could take the entire afternoon
- Note-writing tips
 - Less is better

PREPARING FOR THE HEARING



SAMPLE PREPARATION PLAN

- Review and understand all charges
- Review all the material carefully and thoroughly – get a general overview of the complaint
- Review it a second time and note all areas of consistency of information
- You don't need additional verification or questioning on these issues, assuming the accuracy of consistent information – but beware suspiciously consistent stories
- Read it a third time to identify inconsistencies in the information
- This is the area you will need to concentrate your questions

PREPARING FOR THE HEARING



- Review the policy or section of the policy alleged to have been violated
 - Parse all the policy elements (what does it take to establish a policy violation?)
 - Identify the elements of each offense alleged
 - Break down the constituent elements of each relevant policy
- Identify all Key Elements (that may not be an independent policy violation)
 - Is there corroborating evidence?
- Have applicable policies in-hand

HEARING DECORUM



- Be professional, but not lawyerly or judge-like
 - This is not Law and Order and you are not a jury – this is an education-centric process
 - You are not cross-examining or interrogating, you are striving to determine whether the student violated the institutional policy
- Be respectful
 - Tone, Manner, Questioning
 - Sarcasm, snideness or a tenor of moral superiority are never appropriate
 - Maintain your composure: Never allow emotion or frustration to show

HEARING DECORUM



- Work to establish a baseline of relaxed conversation
- Maintain good eye contact “listen with your eyes and your ears”
- Listen carefully to the answers to your question
 - Try not to write much while they are talking
 - Focus on the testimony, rather than thinking about your next question
- Nod affirmatively to keep witness talking
- Do not fidget, roll your eyes or shake your head “no”
- Do not look shocked, smug, stunned or accusing

JURISDICTION



- Where: Geographic
 - On-Campus
 - Off-campus
- When: Temporal
 - “Statute of limitations”?
 - Summer or winter break? Spring break?
- Who: “Person”
 - Faculty, staff, student, guest, visitor, patient, medical residents, visiting teams/athletes, etc.
- What?
 - Scope of policies: All Title IX? Sexual Misconduct?
 - Concurrent/Ancillary Misconduct?

EVIDENTIARY STANDARD

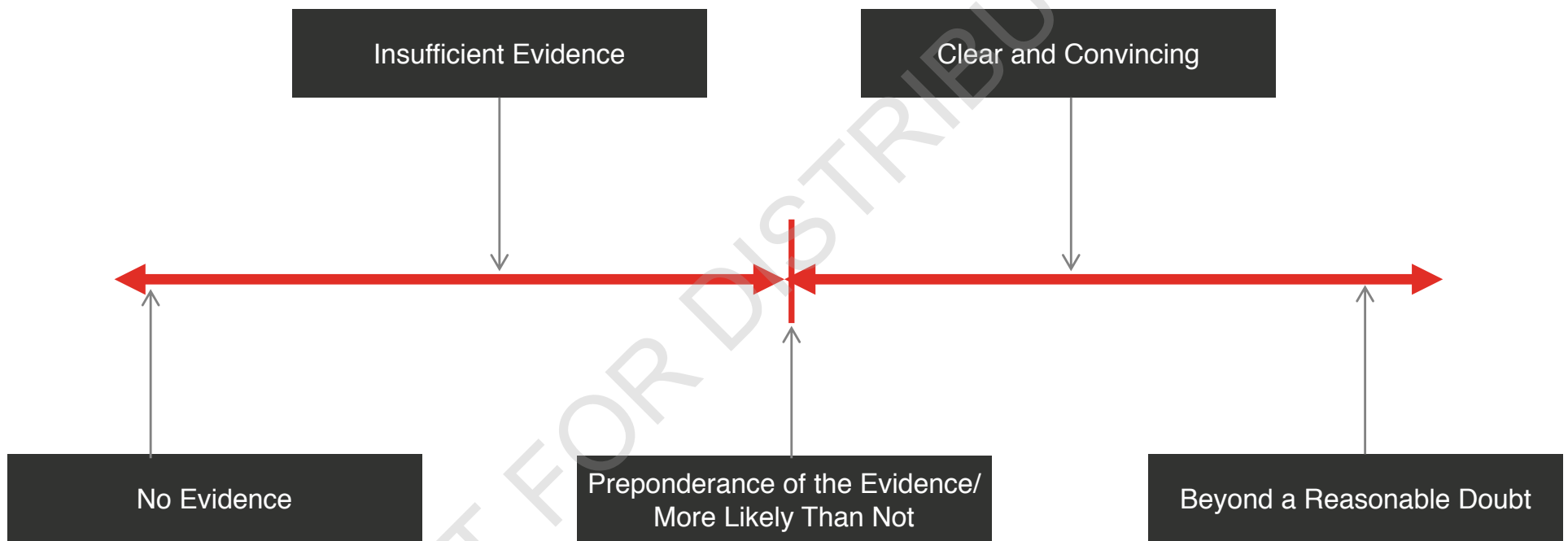


- Different Standards: What do they mean? Why do they exist?
 - Beyond a reasonable doubt
 - Clear and convincing
 - **Preponderance of the evidence.**
 - The only equitable standard
- Use language the community understands.
 - 50.1% (50% plus a feather)
 - “More likely than not”
 - The “tipped scale”

UNDERSTANDING EVIDENCE THRESHOLDS



EVIDENTIARY STANDARDS



OVERVIEW OF TITLE IX

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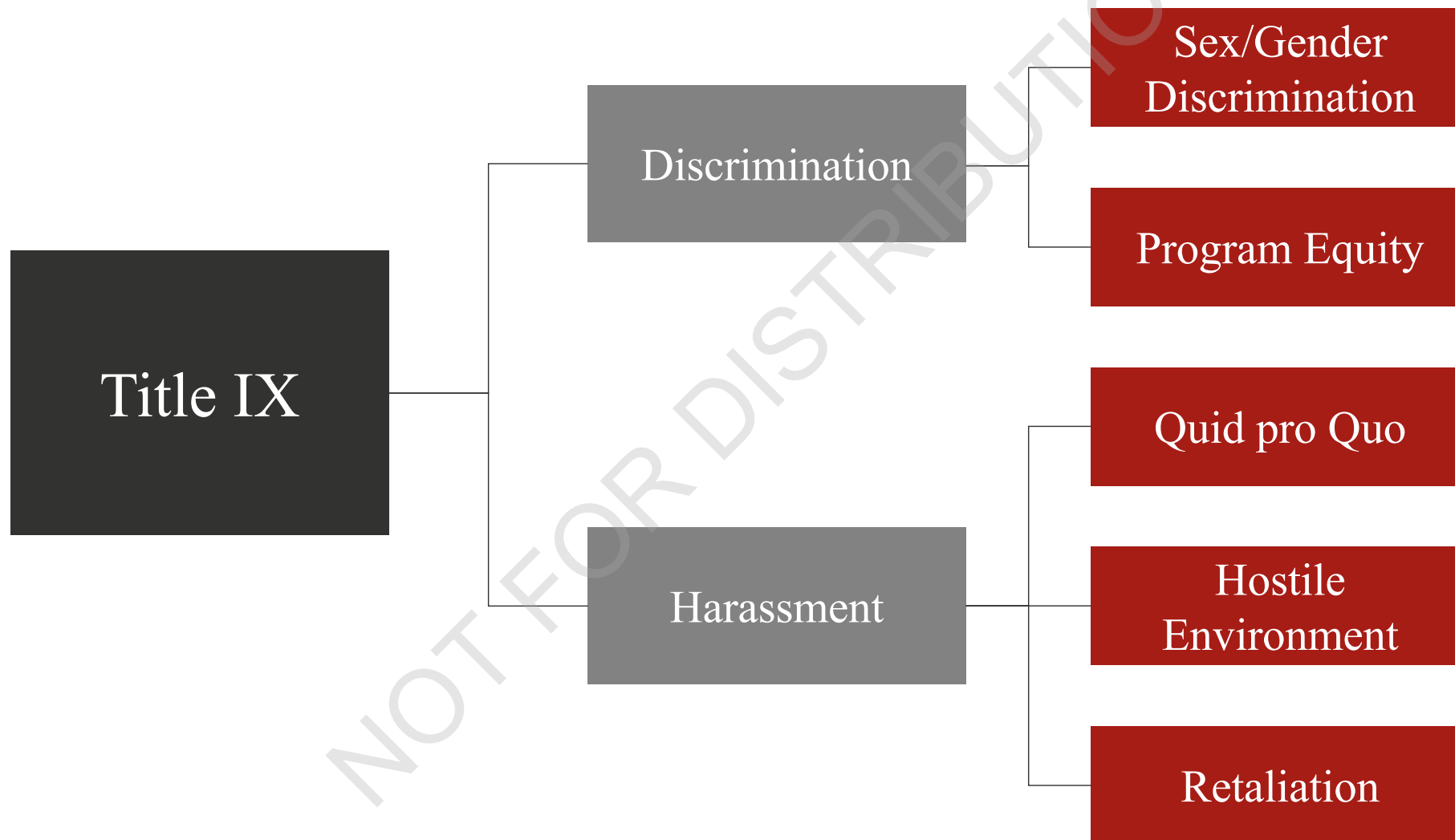
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TITLE IX



20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)

“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.”



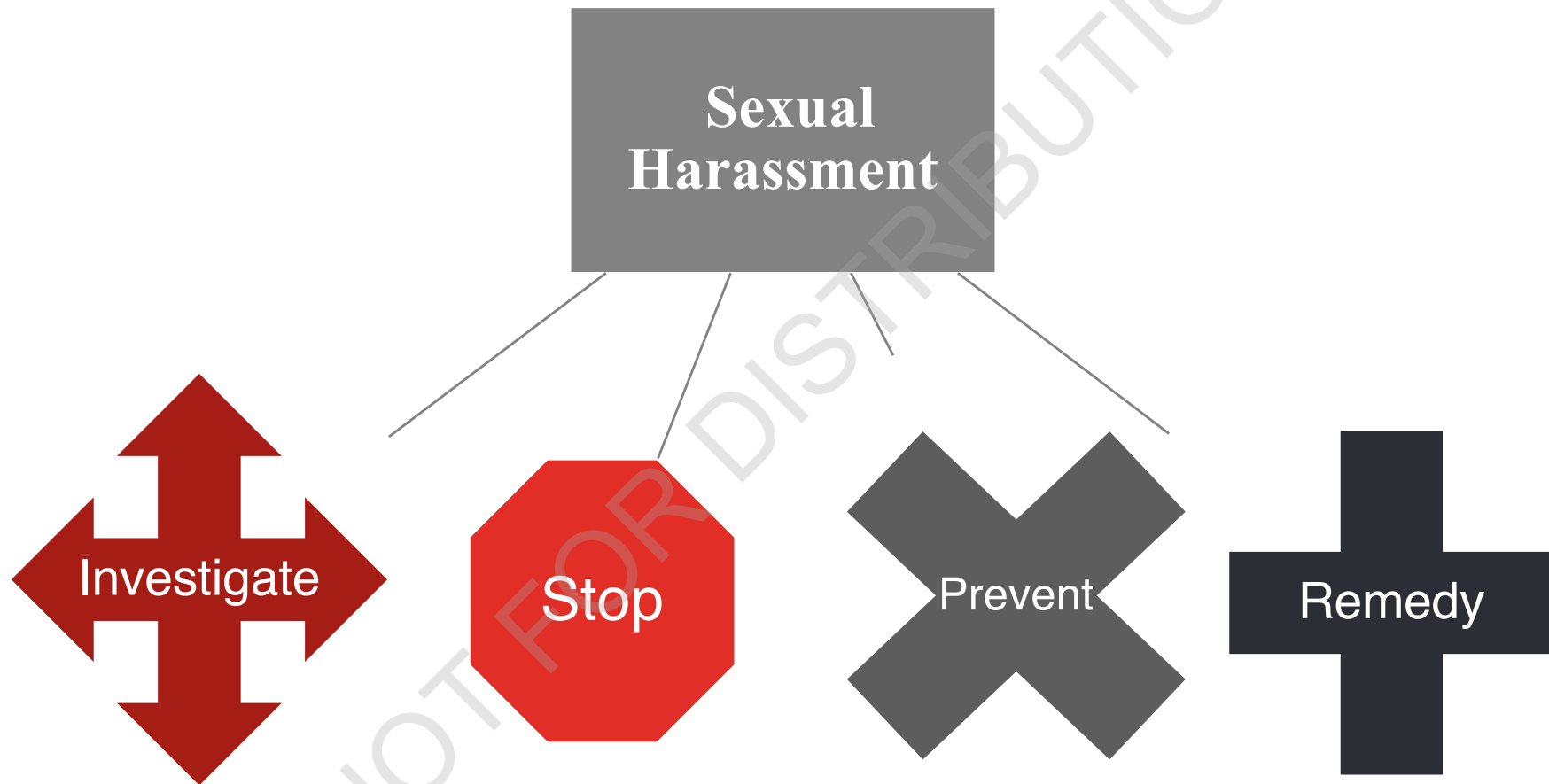
TITLE IX ESSENTIAL COMPLIANCE ELEMENTS



- Once a “responsible employee” has either actual or constructive notice of sexual harassment/ sexual misconduct, the school must:
 - Take immediate and appropriate steps to **investigate** what occurred
 - The obligation to investigate is absolute, even if just a preliminary inquiry (see *Davis*)
 - Take prompt and effective action to:
 - **Stop** the harassment;
 - **Prevent** the recurrence; and
 - **Remedy** the effects

NOTE: This is regardless of whether or not the victim makes a complaint or asks the school to take action

INSTITUTIONAL OBLIGATIONS UNDER TITLE IX



THE IX COMMANDMENTS



Thorough	Reliable	Impartial	Investigation (prompt & fair – VAWA Sec. 304)
Prompt	Effective	Equitable	Process
End the Discrimination	Prevent its Recurrence	Remedy the effects upon the victim & community	Remedies

DUE PROCESS: LEGAL FOUNDATIONS

- *Dixon v. Alabama* (1961)
- *Esteban v. Central Missouri State College* (1969)
- *Goss v. Lopez* (1975)

DIXON V. ALABAMA STATE BD. OF ED. *294 F. 2D 150 (5TH CIR., 1961)*



- In February of 1960, six black students sat in at a public (all white) lunch counter and were arrested
- Alabama State summarily expelled all of them without any notice of the charges or of a hearing, and no opportunity to provide evidence or defend themselves
- 5th Cir. Court decision established minimum due process (reiterated by U.S. Supreme Court in *Goss v. Lopez* (1975))
 - Students facing expulsion at public institutions must be provided with at least **notice of the charges** and an **opportunity to be heard**
 - Ushered in most campus disciplinary and hearing-based processes

DIXON V. ALABAMA STATE BD. OF ED. *294 F. 2D 150 (5TH CIR., 1961)*



- Specifically, the court set forth a number of due process-based guidelines, including:
 - Notice, with an outline of specific charges
 - A fair and impartial hearing
 - Providing names of witnesses to accused
 - Providing the content of witnesses' statements
 - Providing the accused an opportunity to speak in own defense
 - The results and findings of the hearing presented in a report open to the student's inspection

ESTEBAN V. CENTRAL MISSOURI STATE COLLEGE 415 F.2D 1077 (8TH CIR. 1969)



- Written charge statement, made available 10 days prior to hearing
- Hearing before a panel with authority to suspend or expel
- Charged student given opportunity to review information to be presented prior to hearing
- Right of charged student to bring counsel to furnish advice, but not to question witnesses
- Right of charged student to present a version of the facts through personal and written statements, including statements of witnesses

ESTEBAN V. CENTRAL MISSOURI STATE COLLEGE 415 F.2D 1077 (8TH CIR. 1969)



- An opportunity for the charged student to hear all information presented against him and to question adverse witnesses personally
- A determination of the facts of the case based solely on what is presented at the hearing by the authority that conducts the hearing
- A written statement of the finding of facts
- Right of charged student to make a record of the hearing

GOSS V. LOPEZ

419 U.S. 565 (1975)



- Nine high school students were suspended for 10 days for non-academic misconduct
- The court held that since K–12 education is a fundamental right, students were entitled to at least a modicum of “due process”
- Reiterating the 5th Circuit, it noted that the minimum due process is notice and an opportunity for a hearing

GOSS V. LOPEZ

419 U.S. 565 (1975)



- The court further stated that the hearing could be informal and need not provide students with an opportunity to obtain private counsel, cross-examine witnesses, or present witnesses on their behalf
- Potential suspensions beyond 10 days or expulsions, however, require a more formal procedure to protect against unfair deprivations of liberty and property interests

DUE PROCESS

- What is Due Process?
- Due Process in Procedure
- Due Process in Decision
- Comparative Due Process

WHAT IS DUE PROCESS?



- Due Process (public institutions):
 - Federal and state constitutional and legal protections against a state institution taking or depriving someone of education or employment
- “Fundamental Fairness” (private institutions):
 - Contractual guarantee that to impose discipline, the institution will abide substantially by its policies and procedures

WHAT IS DUE PROCESS?



- Ultimately, both are the set of rights-based protections that accompany disciplinary action by an institution with respect to students, employees, or others
 - Informed by law, history, public policy, culture etc.
- Due process in criminal and civil courts vs. due process within an institution
- Due process analysis and protections have historically focused on the rights of the responding party

WHAT IS DUE PROCESS?



- Two overarching forms of due process:
 - **Due Process in Procedure:**
 - Consistent, thorough, and procedurally sound handling of allegations
 - Institution substantially complied with its written policies and procedures
 - Policies and procedures afford sufficient Due Process rights and protections
 - **Due Process in Decision:**
 - Decision reached on the basis of the evidence presented
 - Decision on finding and sanction appropriately impartial and fair

WHAT IS DUE PROCESS?



- **Due Process in Procedure** - A school's process should include (at a minimum):
 - Notice: of charges and of the hearing/resolution process
 - Right to present witnesses
 - Right to present evidence
 - Opportunity to be heard and address the allegations and evidence
 - Right to decision made based on substantial compliance and adherence to institutional policies and procedures
 - Right to appeal (recommended)

WHAT IS DUE PROCESS?



- **Due Process in Decision** - A decision must:
 - Be based on a fundamentally fair rule or policy
 - Be made in good faith (i.e., without malice, ill-will, or bias)
 - Have a rational relationship to (be substantially based upon, and a reasonable conclusion from) the evidence
 - Not be arbitrary or capricious
- Sanctions must be reasonable and constitutionally permissible

COMPARATIVE DUE PROCESS



- Criminal Court
- Civil Court
- Regulatory Oversight
- Administrative Hearings
- School-based
 - K-12
 - Student – Undergraduate; Graduate/Professional
 - Faculty – Tenured vs. Non-tenured
 - Staff
 - At-will
 - Administrators
 - Unionized

REVIEW OF ATIXA DUE PROCESS CHECKLIST

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ATIXA DUE PROCESS CHECKLIST



- Right to notice of investigation that includes a reasonable description of the allegations
- Right to access to an advisor of your choice throughout the process
- Right to the least restrictive terms necessary if interim suspension is implemented, and a right to challenge the imposition of the interim suspension
- Right to uninfringed due process rights, as detailed in the college's procedures, if subject to interim actions
- Right to clear notice of any hearing in advance, if there is to be a hearing

ATIXA DUE PROCESS CHECKLIST



- Right to receive COPIES of all reports and access to other documents/evidence that will be used in the determination, reasonably prior to the determination (these may be provided in redacted form)
- Right to suggest witnesses to be questioned, and to suggest questions to be asked of them (excluding solely character witnesses)
- Right to decision-makers and a decision free of demonstrated bias/conflict of interest (and advance notice of who those decision-makers will be)

ATIXA DUE PROCESS CHECKLIST



- Right to clear policies and well-defined procedures that comply with state and federal mandates
- Right to a process free of (sex/gender/protected class, etc.) discrimination
- Right to an investigation interview conducted with the same procedural protections as a hearing would be (because the interview is an administrative hearing)
- Right to a fundamentally fair process (essential fairness)
- Right to know, fully and fairly defend all of the allegations, and respond to all evidence, on the record

ATIXA DUE PROCESS CHECKLIST



- Right to a copy of the investigation report prior to its finalization or prior to the hearing (if there is one)
- Right to know the identity of the reporting party and all witnesses (unless there is a significant safety concern or the identity of witnesses is irrelevant)
- Right to regular updates on the status of the investigation/resolution process
- Right to clear timelines for resolution
- Right to have procedures followed without material deviation
- Right to have only relevant past history/record considered as evidence

ATIXA DUE PROCESS CHECKLIST



- Right to a process that conforms to all pertinent legal mandates and applicable industry standards
- The right to have the burden of proving a violation of policy borne by the college
- Right to the privacy of the resolution/conduct process to the extent of and in line with the protections and exceptions provided under state and federal law
- Right to a finding that is based on the preponderance of the evidence
- Right to a finding that is neither arbitrary nor capricious

ATIXA DUE PROCESS CHECKLIST



- Right to be timely informed of meetings with each party, either before or reasonably soon thereafter (unless doing so would fundamentally alter or hamper the investigation strategy)
- Right to sanctions that are proportionate with the severity of the violation and the cumulative conduct record of the responding party
- Right to the outcome/final determination of the process in writing as per VAWA §304
- Right to a detailed rationale for the finding/sanctions
- Right to an appeal on limited, clearly identified grounds
- Right to competent and trained investigators and decision-makers
- Right to a written enumeration of these rights

VAWA SEC. 304: INSTITUTIONAL DISCIPLINARY POLICIES & PROCEDURES: ASR DISCLOSURES

- Disciplinary Procedures
- Annual Training for Officials
- Advisors
- Simultaneous Notification

VAWA 2013 SEC. 304 DISCIPLINARY PROCEDURES



- Prompt, Fair, and Impartial Process
 - Prompt, designated timeframes (can be extended for good cause with notice to parties)
 - Conducted by officials free from conflict of interest or bias for either party
 - Consistent with institution’s policies
 - Transparent to accuser and accused
 - Timely and equal access to parties “and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings”

VAWA 2013 SEC. 304 DISCIPLINARY PROCEDURES



- Proceedings must “be conducted by officials who, at a minimum, receive **annual** training” on:
 - Issues related to the four VAWA offenses
 - “How to conduct an investigation and a hearing process that:
 - Protects the safety of victims
 - Promotes accountability”
 - Caution: this does not mean the training should be biased or slanted in favor the reporting party
 - Ensure training is equitable and covers not just victim-based issues, but also those pertaining to a responding party

VAWA 2013 SEC. 304 ANNUAL TRAINING FOR OFFICIALS



- Institutions must describe the annual training
- The training should be “updated regularly to address the latest issues and techniques for conducting proceedings on these topics from beginning to end”
- Training “should include, but not be limited to:
 - Relevant evidence and how it should be used during a proceeding
 - Proper techniques for questioning witnesses
 - Basic procedural rules for conducting a proceeding
 - Avoiding actual and perceived conflicts of interest”

VAWA 2013 SEC. 304 ADVISORS



- Provide accuser and accused with the same opportunity to have others present including an advisor of their choice for “any institutional disciplinary proceedings” and “any related meetings”
 - An advisor is “any individual who provides the accuser or accused support, guidance or advice”
 - An advisor is optional and can be **anyone** (including an attorney or a parent)
 - Institutions can restrict role of advisors in proceedings as long as both parties’ advisors have the same restrictions
 - Institutions should notify parties of these restrictions prior to proceedings
 - Institutions can train a pool of advisors the parties can use, but cannot restrict advisors to just the pool
 - Advisors can serve as proxies if an institution so chooses

VAWA 2013 SEC. 304 SIMULTANEOUS NOTIFICATION



- Require simultaneous notification, in writing, to both accuser and accused, of:
 - The result of any institutional proceeding arising from allegations of VAWA offenses
 - Result “defined as any initial, interim and final decision by any official or entity authorized to resolve disciplinary matters within the institution”
 - Result = Finding, Sanction, and Rationale

Note: The Clery Handbook contains an explicit FERPA exclusion
 - Procedures for appeal (if any)
 - Any change to results
 - When such results become final

VAWA 2013 SEC. 304 SIMULTANEOUS NOTIFICATION



- What must be included in the rationale?
 - How evidence and information presented was weighed
 - How the evidence and information support the result and the sanctions (if applicable)
 - How the institution’s standard of evidence was applied
 - Simply stating the evidence did or did not meet the threshold is insufficient
- Simultaneous: “means that there can be no substantive discussion of the findings or conclusion of the decision maker, or discussion of the sanctions imposed, with either the accuser or the accused prior to simultaneous notification to both of the result”

VAWA 2013 SEC. 304 SIMULTANEOUS NOTIFICATION



- The ASR statement must include “a statement that when a student or employee reports they have been a victim” of any of the VAWA offenses (either on or off campus) the institution “will provide the student or employee a written explanation of the [their] rights and options”
 - ”Must be a prepared, standardized and written set of materials, including detailed information regarding a victim’s rights and options”
 - “This does not mean that you hand the student a copy of the [ASR] or the policy statements contained in the [ASR]”

THE HEARING



NOT FOR DISTRIBUTION

THE HEARING



General logistics

- Recording – how, by whom, etc.
- Attendance by parties and witnesses
- Location and Room set-up
- Seating arrangements
- Materials
- Advisors
- Parties and witnesses waiting to testify
- Breaks
- Use of A/V
- Waiting for a decision

Tips for hearing board members

- Use appropriate hearing decorum
- Recognize the need for flexibility with the order of witnesses and questioning, depending on the circumstances
- Be familiar with your institution's hearing board procedures
- Recognize the role and function of the Chair
- If a procedural question arises that must be addressed immediately, take a short break to seek clarification
- Treat the parties, their advisors, and witnesses with respect
- Apply all appropriate institutional policies, procedures and standards

Immediately prior to the hearing

- Gather at least 30 minutes in advance as a hearing board to review the investigation report and evidentiary materials
 - Hearing board should have already received and thoroughly reviewed all relevant information
- Chair answers any procedural questions by board members
- Review key questions pertaining to the allegations
- Determine key questions for the parties and witnesses
- Determine witness order (Chair has final discretion)
- Chair may greet parties and Advisors and answers any procedural questions prior to the hearing

Beginning the Hearing

- Start recording
- Welcome and introductions
- State the allegations (citing each alleged policy violation) and whether the Accused agrees or disagrees with each of the allegations
- Indicate, on the record, that all members of the hearing board have reviewed the investigation report and all relevant evidence provided by the investigator(s)
- Discuss Breaks
- Remind all parties and witnesses of expectation of honesty
- Discuss role of Advisors

Beginning the hearing

- Ask parties about any additional procedural questions and provide answers as appropriate
- Provide an overview of the proceedings
 - Who will testify when
 - Who will ask questions and when; indicate possible need to ask additional questions of witnesses or parties
 - Deliberations
 - Finding
 - Impact Statements
 - Sanction
 - Opportunities to appeal

Hearing Testimony

- Investigator(s) summarize their investigation and report first
 - Review of report & evidence provided
 - Questions from the hearing board
 - Questions from the parties (typically reporting party first)
- May allow reporting party and responding party provide brief opening statements
- Reporting Party provides information (typically)
 - Questions from the hearing board
 - Questions from the responding party – either through the Chair, or directly (if both parties agree to allow for direct questioning)

Order thereafter depends on the situation

Hearing Testimony

- Responding Party provides information
 - Questions from the hearing board
 - Questions from the reporting party – either through the Chair, or directly
- Witnesses provide information
 - Questions from the hearing board
 - Questions from the reporting party
 - Questions from the responding party
- If desired and consistent with your procedures, may provide both parties opportunity to provide closing statements – often provide a short break to prepare (e.g.: 10 minutes)
 - Reporting Party typically goes first, followed by Responding Party
- Deliberations

Hearing Testimony: The Role of the Chair

- Run the proceedings
- Ensure institutional procedures are substantively and materially followed
- Manage breaks
- Greet each witness, thank them for their participation, and ask them to share information
- Ensure board members and the parties are able to ask all relevant and appropriate questions
- Ensure hearing board, parties and witnesses apply appropriate policies and definitions in questioning
- Facilitate questioning between the parties (where applicable)

Hearing Testimony: The Role of the Chair

- Determine the relevance and appropriateness of questions
- When necessary, provide directives to the board to disregard a question or information deemed unfair or highly prejudicial
- Manage advisors as necessary
- Make determinations of the relevance of information
- Maintain the professionalism of the hearing board and its members
- Recognize your positional authority

QUESTIONING

- Challenging/Difficult Witnesses
- Lying Witnesses
- Remember to conduct your interviews of the parties as if they are a hearing, because they are

GENERAL QUESTIONING SKILLS



- What are the goals of questioning?
 - Learn the facts
 - Establish a timeline
 - Understand each party's perception:
 - Of the event and of the process
 - Try to learn the what is more likely than not what happened (is that the truth?)
 - Three sides to every story (or more)
- What are NOT the goals of questioning?
 - Curiosity
 - Chasing the rabbit into Wonderland
- Do not expect the “Gotcha” moment. Not your role. You are not prosecutorial

QUESTIONING



- Seek to discover:
 - Relevant facts about what happened during the incident
 - Any related events
 - Any corroborating information
 - Facts necessary to establish the timeline
 - Background information about the situation, the parties, the witnesses
- Use your questions to elicit details, eliminate vagueness, fill in the gaps where information seems to be missing

QUESTIONING



- Listen carefully and adapt follow-up questions
- Avoid evaluative responses to a person's answers
 - E.g.: that's too bad, I'm glad you said that
- Do not moralize
- Do not blame the reporting party (often called “victim-blaming”)
 - E.g.: Why didn't you hit him? Why didn't you leave? Why did you get so drunk?
 - Reporting parties' responses to trauma are quite varied
- Seek to clarify terms and conditions that can have multiple meanings or a spectrum of meanings such as “hooked up,” “drunk,” “sex,” “fooled around,” and “had a few drinks”

QUESTIONING



- Ascertain who each individual is and their relation to the other parties in the case
- Ensure you have a comfort level with explicit language and sensitive subjects
- Pay attention to alcohol / drug consumption and timing of consumption (it may be your cue to create a timeline)
- Be cognizant of the difference between what was “heard” (hearsay), what can be assumed (circumstantial) and what was “witnessed” (facts)

QUESTIONING



- Have a purpose for asking every question
- Try to frame questions neutrally
- Don't make questions too long or confusing
- Don't suggest an answer in your question
- Note discrepancies and ask questions based on them
- Be on the lookout for “cued” responses or rehearsed or memorized answers
- Handle emotions sensitively and tactfully
- Observe body language of the person you're interviewing
 - But don't read too much into it
- Be cognizant of your own body language

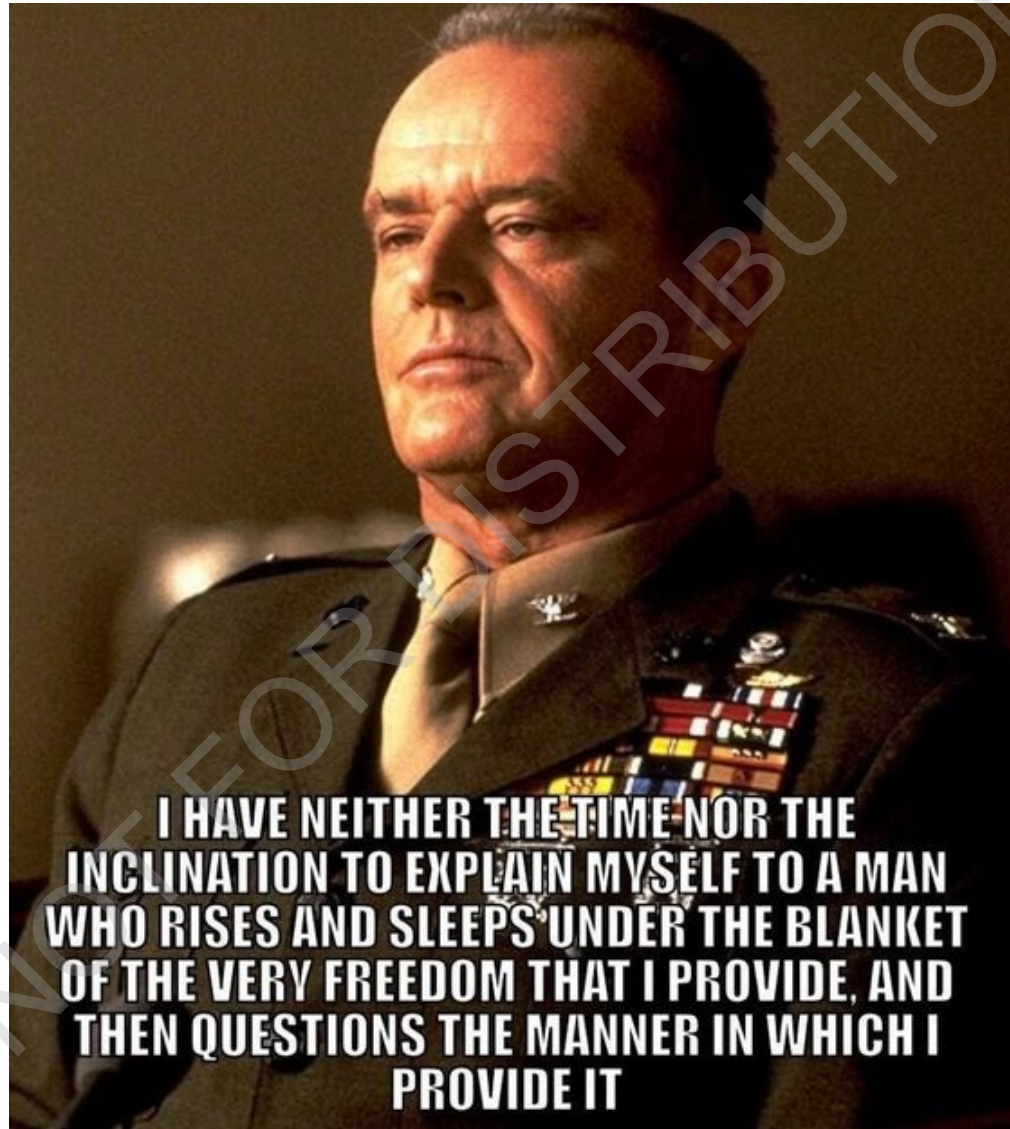
- Generally use open-ended questions - (tell us..., who, what, how)
- Try to avoid close-ended questions (Did you, were you)
 - Use infrequently, only when needed to drill down on a specific issue
- Don't ask Compound Questions
 - I have two questions, First..., Second...
- Don't ask Multiple Choice Questions – The “or” question
 - Were you a, or b?

CHALLENGING/DIFFICULT WITNESSES



- Allow opportunity for witness to restate
- Try to gauge the reason for the resistance– Fearful? Embarrassed? Protective?
- Gauge their resistance or hesitation and try to address their motivation individually
- Answer their questions about the process
- Back up when needed
- Calmly bring them back to the questions
- Advance preparation will help when open-ended questions don't work

DIFFICULT WITNESSES



LYING WITNESSES



- In a non-accusatory way, explain how their statements don't "make sense"
- Allow opportunity for witness to restate
- Try to gauge why they are lying – Fearful? Embarrassed? Protective? Try to address their motivation individually, with understanding
- If they continue to lie, confront and explain the repercussions for lying in an investigation
- Calmly bring them back to the questions
- If needed, leave the door open to follow up

RESISTANT AND QUIET WITNESSES



- Gauge their resistance or hesitation and try to address their motivation individually
- Answer their questions about the process
- Back up when needed
- If they open up, be responsive
- Explain expectations of the school and rationale for the duty to participate
- Advance preparation will help when open-ended questions don't work

OTHER CONSIDERATIONS



- Consider who should conduct the interview
- Ask open-ended questions first
- Allow time
- Utilize breaks
- Remain calm and professional
- If you ask a bad question, simply apologize, restate, correct, etc.

CONSENT CONSTRUCT

- Force
- Incapacity
- Consent

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CONSENT IS...



- Informed, knowing, and voluntary (freely given)
- Active (not passive)
- Affirmative action through clear words or actions
- That create mutually understandable permission regarding the conditions of sexual activity
- Cannot be obtained by use of:
 - Physical force, compelling threats, intimidating behavior, or coercion
- Cannot be given by someone known to be — or who should be known to be — mentally or physically incapacitated

OVERVIEW OF THE 3 CONSENT QUESTIONS



1. Was force used by the accused individual to obtain sexual access?
2. Was the reporting party incapacitated?
 - a. Did the accused individual know, or
 - b. Should s/he have known that the alleged victim was incapacitated (e.g., by alcohol, other drugs, sleep, etc.)?
3. What clear words or actions by the reporting party gave the accused individual permission for the specific sexual activity that took place?

FORCE



- Was force used by the individual to obtain sexual access?
- 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 others to do something they wouldn't ordinarily have done absent the threat

FORCE



- Types of force to consider (cont.)
 - Intimidation: an implied threat that menaces and/or causes reasonable fear
 - Coercion: the application of an unreasonable amount of pressure for sexual access
 - Consider:
 - Frequency
 - Intensity
 - Duration
 - Isolation

- Incapacitation is a state where individuals cannot make rational, reasonable decisions because they lack the capacity to give knowing consent
- Incapacitation is a determination that will be made after the incident in light of all the facts available
- Assessing incapacitation is very fact-dependent
- Blackouts are frequent issues
 - Blackout \neq incapacitation, automatically
 - Blackout = no working (form of short-term) memory for a consistent period, thus unable to understand who, what, when, where, why, or how
 - Partial blackout must be assessed as well
- What if the responding party was drunk too?

- What was the form of incapacity?
 - Alcohol or other drugs
 - Incapacity \neq Impaired, drunk, intoxicated, blacked out, or under the influence
 - Incapacity = an extreme form of intoxication (alcohol)
 - Administered voluntarily or without reporting party's knowledge
 - Rape drugs
 - Mental/cognitive impairment
 - Injury
 - Asleep or unconscious

- First, **was the reporting party incapacitated** at the time of sex?
 - Could the person make rational, reasonable decisions?
 - Could the reporting party appreciate the situation and address it consciously such that any consent was informed –
 - **Knowing who, what, when, where, why, and how**
- Second, **did the responding party know** of the incapacity (fact)?
- Or, **should the responding party have known** from all the circumstances (reasonable person)?

SOME FACTS ABOUT ALCOHOL



- Most abused drug on college campuses
- Most commonly used date rape drug
- Time – the **only** sobering tool
 - One “drink” per hour
 - “Myth of puking”
- Pace of consumption
- Food in the stomach
- Carbonation and alcohol
- Medications and alcohol

COMMON INTOXICATION FACTORS



- Rate of consumption
- Strength of drink
- Food in the stomach
- Body weight
- Body type – body fat percentage
- Gender:
 - E.g.: enzymes, hormones, body fat, and water in body
- Functional tolerance
- Medications
- Illness and dehydration
- Fatigue
- Caffeine
- Genetics
- Ethnicity

BAC/BAL

- One “drink” \approx .025 BAL
 - 12 oz.
 - 5 oz. wine
 - 1 5 oz. liquor (a typical “shot”)
- Metabolic rate – one drink per hour
 - .015/hr. (avg.).
 - Dependent on age, gender, height, weight, medications, genetics, experience with drinking, etc.



- .05-.07: Buzzed; feeling of well-being; minor memory and coordination impairment
- .07-.09: Slight impairment of coordination, vision, reaction time; judgment and self-control reduced
- .10 -.125: Significant impairment of coordination, reaction times, and judgment; possible slurred speech
- .13-.15: Severe motor impairment; blurred vision, loss of balance; judgment and perception severely impaired

- .16-.19: “Sloppy drunk;” increased negative feelings; possible nausea; blackout possible
- .20: Dazed and disoriented; possible difficulty standing or walking; possible nausea and vomiting; blackouts possible
- .25: Severe mental, physical, and sensory impairment; nausea and vomiting – asphyxiation concerns; blackouts possible
- .35: Possible coma; level of surgical anesthesia
- .40: Coma possible; death possible due to respiratory arrest

INCAPACITY ANALYSIS



- If the reporting party **was not** incapacitated, move on to the Consent analysis
- If the reporting party **was** incapacitated, but:
 - The responding party did not know it, **AND**
 - The responding party would not have reasonably known it = policy not violated. Move to Consent analysis
- If the reporting party **was** incapacitated, and:
 - The responding party **knew it or caused it** = policy violation. Sanction accordingly
 - The responding party **should have known it** = policy violation. Sanction accordingly

CREATE A TIMELINE



- First must determine by a “more likely than not” standard if the reporting party was incapacitated
 - This inquiry will likely be triggered by statements such as: “The next thing I remembered was.....”
“I woke up and.....”
“I don’t remember anything after.....”
 - That is your cue to start a timeline of the events during the incident to make the first-level analysis of whether the reporting party was incapacitated (using a preponderance of the evidence standard)

TIMELINE CONSTRUCT



- Begin the timeline at the time the incident began, starting at the time the reporting party began consuming alcohol/engaging in recreational drug use. Ask:
 - What were you drinking (e.g., wine, beer, or hard liquor)?
 - How much were you drinking (e.g., shot, 12 oz., or large cup)?
 - How many drinks did you have?
 - Were you using any recreational drugs?
 - When did you eat? What did you eat?
 - Are you on any personal medications?

TIMELINE CONSTRUCT



- Continue the first five questions up until the point in time that reporting party indicates he/she cannot remember anything
- **Note:** If reporting party did not have anything to drink, or only had a small amount, you need to consider if the individual was drugged. You will need to ask:
 - Where were you when you were drinking?
 - Did you leave your drink at any time then resume consuming?
 - Did anyone provide drinks for you?

TIMELINE CONSTRUCT



- You will need to make an assessment if, based on the preponderance of the evidence, the reporting party was more likely than not incapacitated
- If the answer is “No,” then you would proceed to the Consent analysis
- If the answer is “Yes,” then go to part two of your analysis
- Conduct the same timeline for the responding party, superimposed on the reporting party’s timeline

TIMELINE CONSTRUCT



You need to determine whether it was reasonable that the responding party knew the reporting party was incapacitated.

- Determine if responding party knew reporting party previously
- If so, ask if reporting party was acting differently from previous similar situations
- Review what the responding party observed the reporting party consuming (via your timeline)
- Determine if responding party provided any of the alcohol / drugs for the reporting party

CONSENT



- Question 3 is the Consent question: What clear words or actions by the reporting party gave the responding party permission for the specific sexual activity that took place?
- Equity demands a “pure” consent-based policy, defining what consent is rather than defining it by what it is not (e.g., force, resistance, against someone’s will, unwanted, someone unable to consent, etc.)

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RULES TO REMEMBER



- No means no, but nothing also means no. Silence and passivity do not equal consent
- To be valid, consent must be given prior to or contemporaneously with the sexual activity
- Consent can be withdrawn at any time, as long as that withdrawal is clearly communicated by the person withdrawing it

BIAS, PREJUDICE & CULTURAL COMPETENCE

—

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- Among the most significant problems for hearing boards
- Bias can represent any variable that improperly influences a finding and/or sanction
- There are many forms of bias and prejudice that can impact decisions and sanctions:
 - Pre-determined outcome
 - Partisan approach by investigators in questioning, findings, or report
 - Partisan approach by hearing board members in questioning, findings, or sanction
 - Intervention by senior-level institutional officials
 - Not staying in your lane
 - Improper application of institutional procedures
 - Improper application of institutional policies
- The focus of this section, however, is on the cultural competence-based bias and prejudice.

“BIAS” DEFINED



- “Biased”
 - A tendency to believe that some people, ideas, etc., are better than others that usually results in treating some people unfairly
 - An inclination of temperament or outlook; especially a personal and sometimes unreasoned judgment (merriam-webster.com)
- “Biased”
 - To cause partiality or favoritism; influence, especially unfairly (Dictionary.com)

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- People do not shed their values, beliefs and life experiences at the hearing room door. Nor should we expect them to
- While bias is inevitable, it does not necessarily undermine the fairness or appropriateness of a hearing board's decision
- The key is recognizing the bias and ensuring it does not impact one's decision because bias that serves as the basis for the outcome of the hearing is improper
- Hearings must be based on evidence, not on personal beliefs about a complaint

“PREJUDICE” DEFINED



- To “pre-judge”
- “Prejudice”
 - Any preconceived opinion or feeling, either favorable or unfavorable (dictionary.com)
 - Often based on things we have previously read, our own experiences
- Prejudice
 - An unfair feeling of dislike for a person or group because of race, sex, religion, etc.
 - A feeling of like or dislike for someone or something especially when it is not reasonable or logical (merriam-webster.com)

MULTI-PARTIALITY



- Multi-partiality: You can never be truly “neutral” or “impartial,” but you can work to neutralize your biases
 - Underrepresented populations
 - Religious concerns
 - Power and privilege
 - Adult and Non-traditional students
 - Sexual orientation
 - Disabilities
 - Race
 - Sex and Gender
 - Who is your community?

BIAS & PREJUDICE



- Conscious vs. Unconscious
- Positive vs. Negative
- Social & Cultural Capital
- Experiential
- Stereotyping
- Cultural Competence
- Multi-partiality
- Social Justice
- Relationships

BIAS & PREJUDICE: AREAS OF CONCERN



- Role of Alcohol
- Student Development...
- **Own experiences...**
- Student-Athletes
- Fraternity/Sorority Life
- Disabilities & Mental Illness
- International Students
- Sex/Gender
- Gender Identity
- Race
- Ethnicity
- Nature of the Violation
- Religion or Religious beliefs
- Academic Field of Study/Major
- Veteran Status
- Socioeconomic Status
- Politics
- Attitude
- Pre-disposition towards one party

EVALUATION OF EVIDENCE AND DECISION-MAKING SKILLS

-
- Understanding Evidence
 - Credibility
 - Analyzing the Information
 - Making a Finding

UNDERSTANDING EVIDENCE



- Formal rules of evidence do not apply. If the information is considered relevant to prove or disprove a fact at issue, it should be admitted. If credible, it should be considered
 - 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
- Consider if drugs or alcohol played a role
 - If so, do you know what you need to know about the role of alcohol on behavior? Timing? Incapacitation?
 - Look for evidence of prior planning

CREDIBILITY



- Credible is not synonymous with truthful
- Memory errors do not necessarily destroy witness credibility, nor does some evasion or misleading
- Refrain from focusing on irrelevant inaccuracies and inconsistencies
- Pay attention to the following factors...

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FACTORS TO CONSIDER FOR CREDIBILITY



- Demeanor
 - Nonverbal language
 - Demeanor issues should be cue to ask more questions
- Non-cooperation
 - Look for short, abrupt answers or refusal to answer
 - OK to ask, “You seem reluctant to answer these questions – can you tell me why?”
- Logic/consistency
 - Ask yourself, “Does this make sense?”
- Corroborating evidence
- Inherent plausibility – is the evidence more likely than the alternative?

MAKING CREDIBILITY DETERMINATIONS



- Look at consistency of story – substance and chronology of statements
- Consider inherent plausibility of all information given
- Look for the amount of detail (facts) provided. Factual detail should be assessed against general allegations, accusations, excuses, or denials that have no supporting detail
- Pay attention to non-verbal behavior, but don't read too much into it...this isn't Lie to Me

ANALYZING THE INFORMATION



- Examine only actions that have a direct relation to the situation under review or a pattern of incidents
- Explore motivation, attitude, and behavior of reporting party, responding party, and witnesses
- Apply relevant standards:
 - Force, incapacity, and consent
 - Unwelcomeness, reasonable person, and discriminatory effect
- Analyze the broadest, most serious violations first and make a determination of each and every violation alleged, element by element

ANALYZING THE INFORMATION (CONT.)

- Assessing each answer: for each piece of information you have as a result of your analysis and matching your need to assess its evidentiary value. Measure with the following questions:
 - Is the question answered with fact(s)?
 - Is the question answered with opinion(s)?
 - Is the question answered with circumstantial evidence?

! **Withhold judgment until all the evidence has been considered.**

FOCUS ON WHAT YOU DON'T KNOW, RATHER THAN WHAT YOU DO



- Find an opportunity to let your subconscious work on the gaps in information (e.g., yoga, meditation, etc.)
- If you are too busy analyzing what you know, you won't focus on the need to identify what is missing, what is yet to be obtained, or why certain witnesses have not told you things that it would have been logical or expected to hear from them
- Look for evidence that should be there that is not, for some reason

MAKING A FINDING



- Review the institutional policies in play
- Parse the policy
 - Specific findings for each policy and each responding party
- Pose key questions
- Review the evidence and what it shows (relevance)
- Assess credibility of evidence and statements as factual, opinion-based, or circumstantial
- Determine whether it is more likely than not policy has been violated
- Cite concretely the reasons for your conclusions

ENFORCING THE POLICY NON-CONSENSUAL SEXUAL INTERCOURSE



- **Non-consensual sexual intercourse is:**
 - Any sexual intercourse,
 - However slight,
 - With any object,
 - By a person upon another person,
 - That is without consent and/or by force

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PARSING THE POLICY INTERCOURSE DEFINED



- **Non-consensual sexual intercourse includes:**
 - Vaginal or anal penetration,
 - By a penis, object, tongue, or finger, and oral copulation (mouth to genital contact),
 - No matter how slight the penetration or contact.

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PARSING THE POLICY NON-CONSENSUAL SEXUAL CONTACT



1. Was there sexual intercourse by one person upon another, no matter how slight, as defined in the policy?
If yes →
2. Was it by force, as defined in policy? If yes, policy was violated. If no →
3. Was it without consent, as consent is defined in the policy? If yes, there is a policy violation. If no, there is no policy violation.

* Questions 2 & 3 are a summary of the 3 Consent Questions pertaining to Force, Incapacitation, and Affirmative Consent addressed earlier on slide 85

PARSING THE POLICY NON-CONSENSUAL SEXUAL CONTACT



- Non-consensual sexual contact is:
 - Any intentional sexual touching,
 - However slight,
 - With any object,
 - By one person upon another person,
 - That is without consent and/or by force.

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PARSING THE POLICY

SEXUAL CONTACT DEFINED



- Sexual contact includes:
 - Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
 - Any other intentional bodily contact in a sexual manner

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PARSING THE POLICY NON-CONSENSUAL SEXUAL CONTACT



1. Was there sexual contact by one person upon another, no matter how slight, as defined in the policy? If yes →
2. Was it intentional? If yes →
3. Was it by force, as defined in policy? If yes, policy was violated. If no →
4. Was it without consent, as consent is defined in the policy? If yes, there is a policy violation. If no, there is no policy violation.

DELIBERATIONS

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DELIBERATIONS



General Information

- Should be only board members present – witnesses, investigator and others excused
- Do not record deliberations; recommend board members to not take notes
- Chair can be voting or non-voting
- Typically, there is no specific order in which allegations must be addressed, so board can decide what makes sense in each case
- Recommend the Chair first obtain a sense as to where board members stand on each allegation
- Decisions must be based on the specific policy alleged to have been violated

Findings, Impact Information, and Sanctions

- Be sure to separate the "Finding" from the "Sanction."
 - Do not use impact-based rationales for findings (e.g.: intent; impact on the reporting party; impact on the responding party, etc.)
 - Use impact-based rationales for sanctions only.
- Reporting Party and Responding Party should be allowed to deliver an impact statement only if and after the Responding Party is found in violation
- Understand that the question of whether someone violated the policy should be distinct from factors that aggravate or mitigate the severity of the violation
- Be careful about not heightening the standard for a finding because the sanctions may be more severe

Relevance and Evidence

- Parsing the Policy
 - Look at each element to be assessed in the policy (e.g., intent, sexual contact, voluntary, etc.), separate it out and determine if you have evidence that supports that a violation of that component is more likely than not.
- Deliberate only on evidence that is relevant to the issue and the policy being charged in the hearing
- Decisions must be based only upon the facts, opinions, and circumstances provided in the investigation report or presented at the hearing
- Decisions must be based on the specific institutional policy alleged to have been violated

The Role of the Chair

- Ensure all viewpoints of board members are addressed
- Ensure board members apply appropriate standards and applicable policies
- Address and make findings for each alleged policy violation individually and parse the policies.
 - Can only address the policies with which the responding party was charged.
- Do not allow board members to consider evidence or allegations/charges not provided by investigators or during the hearing
- Neutralize any power imbalance between board members
- Ensure an impartial decision that is free of substantive bias
- Draft a rationale for the decision with the input of board members

NEUROBIOLOGY OF TRAUMA

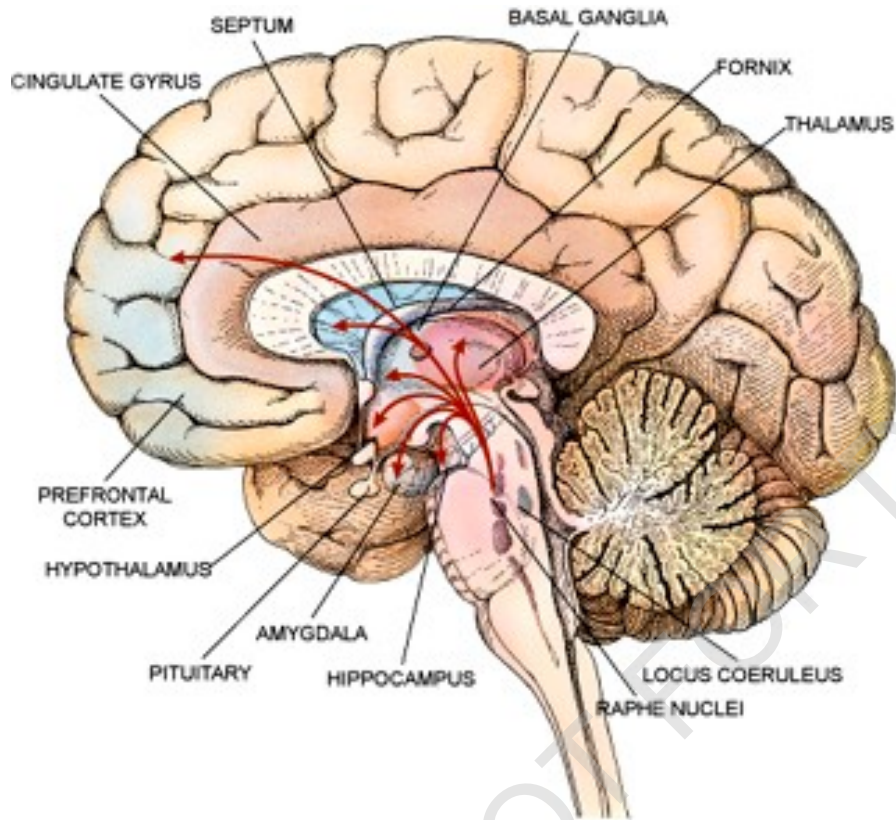
-
- Introduction to Trauma
 - Neurobiological Impact of Trauma
 - Considerations for Interviewing

WHAT IS TRAUMA?



- Exposure to an event or events that creates a real or perceived threat to life, safety, or sense of well being and bodily integrity.
- May result from:
 - War
 - Natural disasters
 - Severely distressing events
 - Violence
 - Including Intimate Partner Violence, Sexual Violence, Stalking, etc.

HOW THE BRAIN AND BODY RESPOND TO TRAUMA



- Hypothalamus
- Pituitary
- Hippocampus
- Amygdala

PERCEIVED THREAT



- When the amygdala senses a threat in the form of sexual assault, it signals to the hypothalamus, which signals to the pituitary gland, which signals to the adrenal gland, which releases hormones or chemicals throughout the body to help react to the threat and likely trauma
- The amygdala does not distinguish between “types” of sexual assault
 - E.g., stranger or acquaintance, but interprets them equally as threats to survival
- The amygdala also does not typically differentiate between an actual threat and a perceived or subjective threat
 - Sometimes also a function of prior experiences, rather than the immediate situation

HORMONAL FLOOD



- A release of a number hormones into the body to prompt survival and coping – can occur during an event perceived as traumatic
 - Catecholamine (adrenaline): responsible for fight or flight; creates mobilization, but impairs rational thought and decision-making
 - Opioids: to deal with pain; creates flattening affect
 - Cortisol: increases energy production during stressful situations; impairs blood sugar levels, immune system, and other bodily systems
 - Oxytocin: promotes good feelings to counterbalance sensation of pain

HORMONAL FLOOD



- The hormonal flood may last for 96 hours (four days) and may be reactivated by a triggering event
 - Physical toll on body: headaches, body ache, and GI issues
 - Compromised decision-making
 - Emotional swings
 - Self-medicating behaviors
- Yet we sometimes expect reporting parties to make major decisions and recount the incident during this time

EFFECTS OF FLOODING



Hormones are released in varying amounts and may result in behavioral differences among reporting parties:

- Fight, Flight, Freeze – not a choice
- Also impacted by chemical surge into prefrontal cortex, impairing ability to think rationally
- May present to you as confused, laughing, crying, flat, angry, irritable, or variable

TONIC IMMOBILITY

Some reporting parties may also experience tonic immobility; like being awake during surgery.

- Hormonal flood and dysregulation of the autonomic nervous system can cause the body to shut down
- “Rape-induced paralysis”
- Know what is happening, but can’t fight
- Biological response based on survival; think of the animal world

MEMORY AND TRAUMA



- Memory is formed in two steps:
 - Encoding: organizing sensory information coming into brain
 - Consolidation: grouping into memories and storing the stimulus
- Trauma can interfere with the encoding and/or the consolidation of memory
- May create fragmented memories
- Recall can be slow and difficult
- Alcohol may interfere further with memory
- However, sensory information (smell, sound, etc.), may still function properly

MEMORY AND TRAUMA



- Responses to Trauma Also Impacted by:
 - Personality
 - Coping strategies
 - Available support systems and resources
 - General resilience
 - Past history of traumatic experiences
 - Cultural differences in the perception and expression of trauma
 - Normalization/adaptation

- Expecting a reporting party to give a linear account in the days after an incident, or after having been triggered, is not always realistic
- Memory fragmentation can occur
- Having “inconsistent” memory, pausing, and stumbling to provide an account are not outside the bounds of what one could expect from a person who has experienced trauma
- Considerations for credibility assessment?

INTERVIEWING CONSIDERATIONS



- A non-linear account, with jumping around and scattered memories is not uncommon
- If alcohol is an additional factor, narrow and detailed questions will be difficult for reporting parties to access and may create additional stress
- Use open-ended questions where possible
- Don't interrupt or barrage with questions
- Be patient

QUESTIONING AND TRAUMA



- Empathy is critical.
 - However, remember to remain impartial.
- Tell me more about...
- Help me understand your thoughts when...
- What was going through your mind when...
- What are you able to remember about...?
 - 5 senses
- What were your reactions to this experience?
 - Physically
 - Emotionally
- What, if anything, can't you forget about this experience?

Source: Partially drawn from Russell Strand, Forensic Experiential Trauma Interview: A Trauma Informed Experience.

TRAUMA & CREDIBILITY



- Trauma can negatively impact a reporting party's credibility
- Trauma may help explain:
 - Inconsistencies in a reporting party's statement
 - Lack of linearity in a reporting party's account or statement
 - Reporting party's lack of memory about an incident
 - Memory errors by the reporting party
 - Reporting party's demeanor or affect
 - Reporting party's brief answers, or answers lacking in detail

- However, while trauma may help explain issues that impact credibility, it typically does NOT excuse them
 - An assessment of credibility must focus on issues such as the reliability, consistency and believability of the parties
 - If, for example, a reporting party's account is inconsistent or variable, lacking in detail, or has material memory gaps, it typically lacks credibility
 - An understanding of trauma and its impact will provide insight as to why some credibility deficits exist, but a trauma-informed understanding should not materially impact a credibility assessment
- Use caution because actual or perceived trauma may have little or nothing to do with consent

SANCTIONING IN SEXUAL MISCONDUCT CASES



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SANCTIONING IN SEXUAL MISCONDUCT CASES



- **Title IX and case law require:**
 - Bring an end to the discriminatory conduct (Stop)
 - Take steps reasonably calculated to prevent the future reoccurrence of the discriminatory conduct (Prevent)
 - Restore the reporting party as best you can to their pre-deprivation status (Remedy)
- Real clash with the typically educational and developmental sanctions of student conduct processes
- Sanctions for serious sexual misconduct should not be developmental as their primary purpose; they are intended to protect the reporting party and the community

COMMON STUDENT SANCTIONS



- Warning
- Probation
- Loss of privileges
- Counseling
- No contact
- Residence hall relocation, suspension, or expulsion
- Limited access to campus
- Service hours
- Online education
- Parental notification
- Alcohol and drug assessment, and counseling
- Discretionary sanctions
- College suspension
- College expulsion

WHAT SANCTIONS?



- A student is found responsible for non-consensual sexual intercourse involving another student; the panel determined the reporting party was incapacitated and the responding party should have known of this incapacity
 - The panel felt that part of the problem was the students' inexperience with sexual matters and poor communication
 - The responding party is an excellent student and is well-liked by campus community; he will graduate in a month
 - The reporting party indicates that she does not want the responding party to be suspended or expelled

WHAT SANCTIONS?



- The Hearing Board determines that five members of the men's soccer team (Students A, B, C, D, and E) subjected the first-year students to various hazing-related rituals, including paddling and pouring hot sauce on the first-year students' genitals
 - Four students (A, B, C, and D) engaged in the paddling
 - Two students (A and B) poured hot sauce on the genitals of first-year students
 - One student (E) was present throughout, but did not paddle or pour hot sauce on the first-year students

APPEALS

- Key Elements
- Where Appeals Go Off the Rails
- Grounds for Appeal
- Appeals Logistics
- Process Flowchart

APPEALS: KEY ELEMENTS



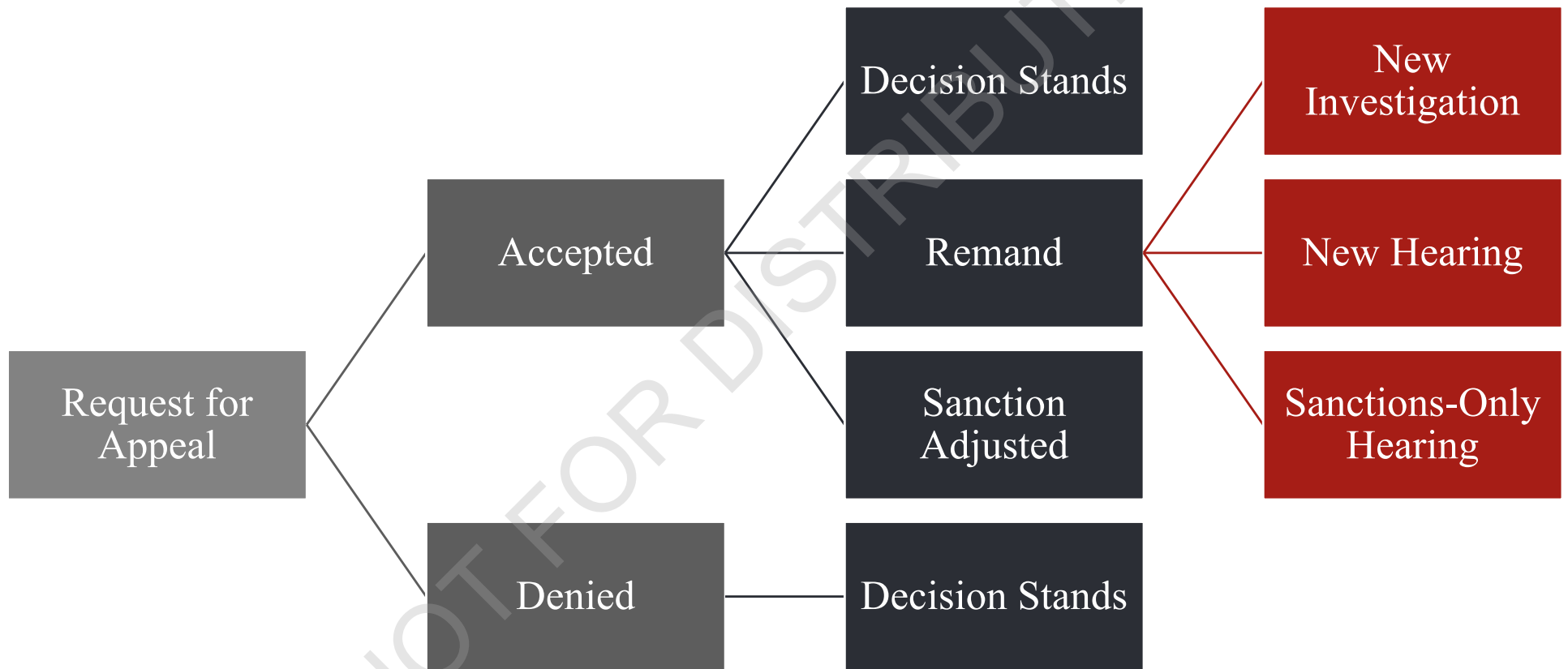
- One level of appeal
- Limited grounds for appeal (see next slide)
- Deference to original hearing authority
- Sanctions take effect immediately
- Short window to request an appeal
 - Can always grant an extension if necessary
- Document-based and recording review
 - NOT de novo
- Request for an appeal

APPEALS: GROUNDS FOR APPEAL



- A procedural error or omission occurred that significantly impacted the outcome of the hearing
 - E.g.: Insufficient evidence to warrant the finding, substantiated bias, material deviation from established procedures, etc.
- To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction
 - A summary of this new evidence and its potential impact must be included
- The sanctions imposed are substantially disproportionate to the severity of the violation (or: the sanctions fall outside the range of sanctions the university/college has designated for this offense)

APPEALS: THE PROCESS



QUESTIONS?



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