

Part 1: Title IX Advisor/Hearing Board Workshop

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Goals for Today's Workshop

1. Familiarize partners with the applicable policies and laws related to the Title IX grievance procedures
2. Continue to develop your understanding of the investigation and adjudication processes for Title IX matters
3. Develop skills and knowledge to needed for the roles
4. Practicing issue spotting

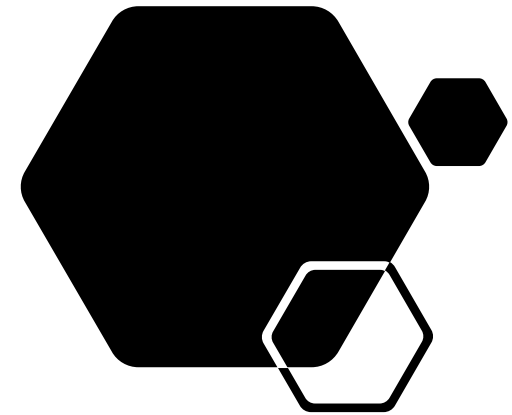


Agenda

- I. Terminology
- II. Jurisdiction
- III. Title IX Grievance Process
- IV. Sexual Offenses
- V. Rules of Evidence



Terminology



Terminology

Complainant

The party who is the alleged victim, regardless of whether or not that individual reported the incident or situation themselves.

Respondent

The party who is accused of alleged misconduct



Terminology

Title IX Coordinator

- An individual employed by the school who has authority over and responsibility for Title IX matters within the school.
- The Coordinator is not a decision-maker on whether policy has been violated but may make some preliminary decisions in the resolution process.



Terminology

Investigator

- An individual who conducts an administrative investigation into alleged policy violations.
- This role is not a substantive decision-maker on whether policy was violated and may or may not make recommended findings as part of the investigation report or process.



Terminology

Advisor

- An advisor may be a friend, mentor, family member, attorney, advocate, or any other individual a party chooses.
- A party may choose an advisor from inside or outside the school community.
- A complainant or respondent may choose anyone to serve as their advisor as long as the advisor is eligible and available.
 - Eligible means that the advisor is not conflicted out of the process in some way.
 - Available means the advisor is willing and able to take on the advising task.
- The 2020 Title IX regulations delegate some questioning duties ("cross-examination") to advisors during a hearing for institutions of higher education



Terminology

Hearing Chair, Decision-maker, or Hearing Panel

- Individuals (a part of the school community or external third-party neutrals) who are trained to make substantive decisions on the evidence and/or conduct administrative hearings subsequent to an investigation.
- The hearing officer, decisionmaker, or hearing panel makes a determination regarding alleged policy violations and is considered the “decision-maker” having responsibility for findings, sanctioning, and remedies.
- Hearing panels have a designated chair to determine relevancy.



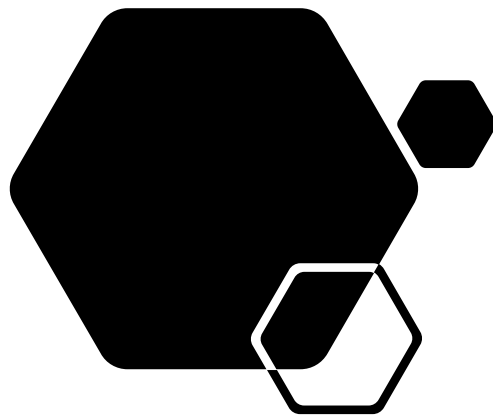
Terminology

Appeal Officer, Appeal Decision-maker, or Executive Committee

- Individuals who are a part of the school community who are trained to review cases for error upon the request of a party following determinations regarding alleged policy violations.
- Three grounds (procedural error, new evidence, bias) and must be available equitably to all parties.



Jurisdiction



Title IX Jurisdiction

Sexual Offenses

- Forcible Rape
- Forcible Sodomy
- Sexual Assault with an Object
- Forcible Fondling
- Incest
- Statutory Rape
- Domestic Violence
- Dating Violence
- Sexual Harassment
- Quid Pro Quo
- Stalking
- Retaliation

Scope

- Did it occur in the University's education program or activity?
- Did it occur against a person in the United States?
- Was the complainant participating in or attempting to participate in the education program or activity of the University at the time of filing?



Education Program or Activity



Includes locations, events, or circumstances over which the University exercised substantial control over **both the respondent and the context in which the sexual misconduct occurs**, and also includes any building owned or controlled by a student organization that is officially recognized by the University.



Examples of Participating in or Attempting to Participate

A complainant who

- has graduated may desire to apply to a graduate program or desire to remain involved in alumni events and organizations.
- is on a leave of absence may still be enrolled as a student even while on leave of absence or may intend to re-apply after a leave of absence.
- has left school because of sexual harassment but expresses a desire to re-enroll if WSSU appropriately responds to the sexual harassment.



Student Sexual Misconduct Jurisdiction

Sexual Offenses

- Sexual Assault
- Sexual Harassment
- Gender-Based Discrimination or Harassment
- Sexual Exploitation
- Dating and Domestic Violence
- Stalking
- Retaliation

Scope

- Does it fall outside of Title IX Jurisdiction?
- Is the Respondent a member of WSSU's community and has the Coordinator determined that the conduct affects a substantial WSSU's interest?



Scenario

A female student requests that you act as her advisor. Her Title IX formal complaint read "I was sexually assaulted in August 2022 at party off of Bahama Breeze Street in downtown Winston-Salem by WSSU junior, Billy G."

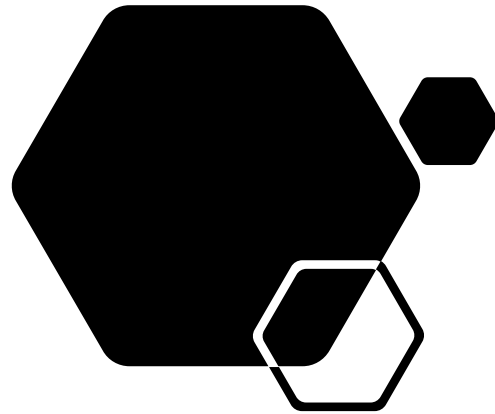
Two days after you were assigned to the case, the Title IX Formal Complaint was dismissed. The Title IX Coordinator has dismissed her formal complaint citing that Title IX does not apply to this matter.

1. Was the dismissal an error?

BONUS: What if assault took place on a plane when the students were leaving for London? Is the matter Title IX?

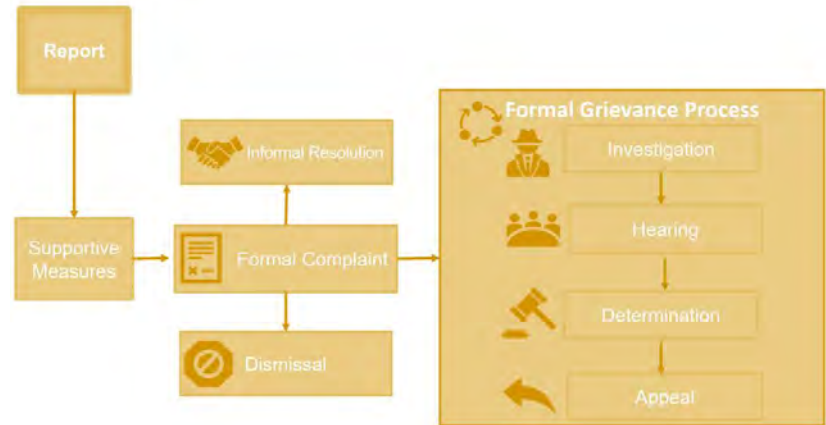



Title IX Grievance Process





Statute of Limitation


A report or complaint may be reported at any time, regardless of the length of time between the alleged offense and the decision to report or file a complaint.



 File formal complaint

 Initial Intake Meetings with Complainant and the Respondent

 Consider both parties' wishes with respect to supportive measures

 Send Notice of Investigation and Allegations to both parties





Investigator gathers and fact-finds, interviews parties/witnesses, gathers evidence, and conducts corroboration assessment




Impartial, Fair, Thorough, Reliable, Prompt



 Title IX investigation report

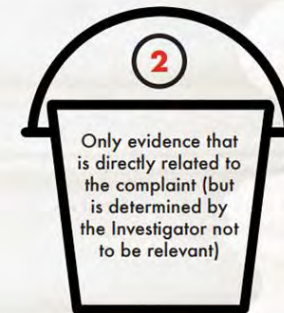
 Relevant evidence goes in the investigation report

 All directly related evidence that is not relevant goes into an appendix



Parties may make case to Investigators/Decision-makers that this evidence should be shifted to Bucket 2 or 3

Once finalized, this evidence should be provided to the Parties/Advisors/Decision-makers within the investigation report via secure technology



Parties may make case to Investigators/Decision-makers that this evidence should be shifted to Bucket 1 or 3

Once finalized, this evidence should be provided to the Parties/Advisors/Chair in a separate file via secure technology



Evidence should be maintained by the Investigator(s), but disregarded for purposes of the process. Parties/Advisors/Decision-makers don't get to see or know about it



The parties have 10 days to provide a response, which the investigator will consider prior to completion of the investigative report



Title IX Coordinator will send the final investigation report and appendix to the parties and Hearing Board



Notification of hearing date, time, and link



The Hearing Board will take place between 7 to 21 calendars days after the parties receive their final copy of the investigation report.



Live virtual hearing



Cross-examination



Relevancy considerations



Title IX Hearing Example

- Complainant opening
- Respondent opening
- Hearing Board questions to Complainant → Respondent advisor questions
- Hearing Board questions to Respondent → Complainant advisor questions
- Hearing Board questions to witnesses → Complainant/Respondent advisor questions
- Recall parties or witnesses
- Complainant closing
- Respondent closing



Draft Outcome Letter

- Identification of the allegations potentially constituting sexual offense
- A description of the procedural steps taken
- Findings of fact supporting the determination
 - Conclusions regarding the application of WSSU's code of conduct to the facts
 - A statement of, and rationale for, the result as to each allegation, including determination regarding responsibility, any disciplinary sanctions and whether remedies designed to restore or preserve equal access to the WSSU's education program or activity will be provided by the recipient to the complainant; and
 - WSSU's procedures and permissible bases for the complainant and respondent to appeal.



Sanctions/Remedies

- Sanctions are designed to hold individuals accountable for their actions and to protect the safety of the university community.
- Remedies are designed to restore or preserve the Complainant's equal access to the University's education program or activity.



Appeals

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

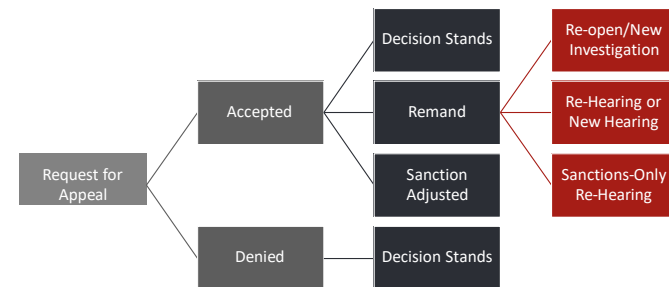


Appeal Outcomes

- Affirm the outcome;
- Return the matter to the original or a newly constituted Title IX Hearing Board with instructions to cure the procedural error, perceived conflict of interest/bias, or to consider the new evidence;
- Return the matter to the original or a new investigator with instructions to cure the procedural error, perceived conflict of interest/bias, or to consider the new evidence;
- Change the sanction(s); or
- Overturn the dismissal.



THE APPEALS PROCESS



Mandatory Dismissals

- It would not constitute sexual harassment/misconduct as defined under Title IX even if proved,
- It did not occur in the University's education program or activity,
- It did not occur against a person in the United States, or if
- The complainant was not participating in or attempting to participate in the education program or activity of the University at the time of filing.



Discretionary Dismissal

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint or any allegations in the complaint,
- The respondent is no longer enrolled or employed by the University, or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations in the complaint.



Informal Resolution Process

- The IRP process is voluntary, and **both the complainant and respondent** must consent in writing to participating in the IRP process.
- Any resolution through IRP must be mutually agreed upon in writing by the parties involved, and this written agreement will become the final outcome of the case.
- At any time prior to agreeing to a resolution in writing, any party has the right to withdraw from IRP and resume the formal complaint process.



Removals

Emergency Removal

- An immediate threat to the physical health or safety of any student or other individual based on individualized safety or risk analysis
- Provide the respondent with notice and an opportunity to challenge the decision immediately following the removal

Administrative leave

Non-student employee respondent can be placed on administrative leave during the pendency of a grievance process



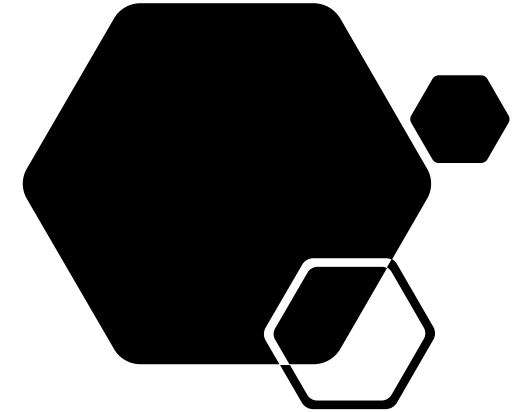
Rights and Opportunities

Any rights or opportunities that the University makes available to one party during the investigation will be made available to the other party

- All rights and opportunities will be made available to parties on equal terms
- Right to an Advisor
- Right to Notice of Investigation and Allegations
- Right to Present Evidence
- Right to Notification of Outcome
- Right to Appeal



Sexual Offenses



Consent is

- voluntary,
- informed,
- clear permission
- by word or action,
- revocable at any time
- to engage in sexual activity.



Force

Incapacitation

Coercion



Scenario

Justin is a junior. Hadley is a sophomore. Justin comes to Hadley's room with some mutual friends to watch a movie. Justin and Hadley, who have never met before, are attracted to each other. After the movie, everyone leaves, and Justin and Hadley are alone. They soon become more intimate. They start to make out. Justin verbally expresses his desire to have sex with Hadley, but she isn't ready to have sex with Justin since they just met. At the same time, she likes him and doesn't want to scare him off, so she decides to satisfy him with oral sex, hoping they can get to know one another better in the future before engaging in vaginal intercourse. Perceiving the oral sex to be foreplay, Justin stops Hadley during the consensual oral sex, lays her back on the bed, takes off her clothes, and engages in intercourse with her. Hadley is unresponsive during the intercourse.



Scenario

On Friday night, Sofia told her roommate Maya that she was going out. Maya asked her where she was going, and Sofia said, "I'm going out to get drunk enough to do the whole hockey team." Sofia went alone to the local pub where the college athletes liked to hang out. She polished off two pitchers of beer at the bar. As it got later, and the bar became more crowded, Sofia flirted with many men, including a group of hockey players. Sofia and one of the hockey players snuck off into the back room of the bar, which was usually reserved for private parties but was not in use that night. They were soon having sex with each other on one of the tables. Suddenly, six other hockey players came into the room, and they joined their teammate in "pulling a train" on Sofia. She did not physically resist them, but she was pretty groggy and limp during the incident. Afterward, Sofia alleged that six of the men had sexually assaulted her. She did not allege sex with the first man with whom she went into the back of the bar was non-consensual.

At the hearing, Maya testified that earlier in the evening on the date of the reported incident, Sofia told her that she was going out to get drunk enough to have sex with the whole hockey team. Sofia admitted that she might have said that, but that it was only an expression.



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 the consent of the Complainant.



Forcible Sodomy

- Oral or anal sexual intercourse with another person,
- Forcibly and/or against that person's will (non-consensually), or
- not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age
- or because of temporary or permanent mental or physical incapacity.



Sexual Assault with an Object

- The use of an object or instrument to penetrate
- however slightly
- the genital or anal opening of the body of another person
- forcibly
- and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.



Fondling

- The touching of the private body parts of another person (buttocks, groin, breasts, inner thigh etc.)
- for the purpose of sexual gratification
- forcibly
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.



Incest

- Non-forcible sexual intercourse with the person's
- (i) grandparent or grandchild, (ii) parent or child or stepchild or legally adopted child, (iii) brother or sister of the half or whole blood, or (iv) uncle, aunt, nephew, or niece.



Statutory Rape

- Non-forcible sexual intercourse
- with a person who is under the statutory age of consent of North Carolina.



Scenario

Linh and Garrett meet at a party. They spend the evening dancing and getting to know each other. Garrett convinces Linh to come up to his room. From 11:00 p.m. until 3:00 a.m., Garrett uses every line he can think of to convince Linh to have sex with him, but she adamantly refuses. Finally, it seems to Garrett that her resolve is weakening, and he convinces her to give him a "hand job" (hand-to-genital contact). Linh would never have done it but for Garrett's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. Linh alleges it was sexual assault.



Scenario

Tarik and Veronica are best friends. Tarik has always been attracted to Veronica, but he was already in a relationship with Ruby. Shortly after he broke up with Ruby, Tarik was despondent. He went to Veronica, telling her that what he really needed to get over his pain was some "rebound sex." Veronica told Tarik that she did not want to have sex with him due to the problems it would cause in their friendship. Tarik maneuvered Veronica into the corner, using his large body size to pin her against the wall, but he did not touch her. Tarik expressed his attraction to her, and Veronica felt he would never let her go if she didn't have sex with him, so she consented.



Scenario

Amanda is a second-year student at the College of Knowledge. She is in a sorority and hangs out a lot at the Beta house, her favorite fraternity. She knows most of the brothers and is good friends with many of them. One night, the brothers informed her that they wanted her to be a little sister in their house. They also told her that Asia, a classmate of Amanda's, was also being considered. It was made clear to both women that the one who had sex with the most brothers would be made the little sister. Amanda seemed hesitant but was eventually persuaded by the brothers and both Amanda and Asia competed for this prize. Many nights, after wild parties at the fraternity house, and with much alcohol and drug use, Amanda and Asia would spend the night at the Beta house having sex with the brothers. After a month, Asia was declared the winner of the contest, and was made the Beta Little Sister. Hurt and feeling used, Amanda charged the entire fraternity with sexual assault. Is there a policy violation?



Domestic Violence

- Violence,
- on the basis of sex
- committed by a current or former spouse or intimate partner of the Complainant,
- by a person with whom the Complainant shares a child in common, or
- by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of North Carolina or
- by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of North Carolina.



Dating Violence

- Violence
- on the basis of sex
- committed by a person
- who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition –
 - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating violence does not include acts covered under the definition of domestic violence.



Domestic/Dating Violence

- Attempting to cause bodily injury, or intentionally causing bodily injury
- Placing the complainant or a member of the complainant's family or household in fear of serious bodily injury or continued harassment, that rises to such a level as to inflict substantial emotional distress
- Non-consensual sexual activity



Domestic/Dating Violence

Continued Harassment

Conduct directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.

Substantial Emotional Distress

Significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.



Scenario

When Leroy and Benita first met, their relationship was tumultuous. At first, Leroy didn't want to have sex with Benita because he felt like too many people would find out. She kept trying to convince him. She suggested that if Leroy didn't have sex with her, she would break up with him. Leroy finally gave in and had sex with Benita. Several months later, he realized what had happened.



Scenario

Shawn and some of his teammates played Xbox in Shawn's room and began drinking a few beers (Shawn is 22 years old). At about 1:00 a.m., Shawn made his way over to Courtney and her roommate Jenna's on-campus apartment, banged on the living room window, and yelled that he wanted to talk to Courtney. Courtney refused to let him in because he was both drunk and angry. Shawn threatened to break down the door if she did not let him in. Courtney told him to go home and go to bed, and that they could talk in the morning. Shawn yelled and cursed, then started to cry, saying that he couldn't live without Courtney, and he just needed to talk. Courtney still refused to let him in, and Shawn became very angry, punching a window near the door and breaking it. Courtney told Shawn that he was out of control, and she was going to call the police. He told her that a phone call to the police would end his baseball career and his time at the school. Courtney, sobbing, screamed at Shawn that he needed help and that he could not keep doing this. Shawn, also sobbing, apologized again and left.



Sexual Harassment

- Unwelcome conduct
- determined by a reasonable person to be
- so severe, pervasive, and objectively offensive
- that it effectively denies a person equal access to the WSSU's education program or activity.



Sexual Harassment – Factors to Consider

- Pervasive → Existing in or spreading through most part of something
- How often, and over what period of time, the conduct occurred
- The extent to which the conduct denies a Complainant equal access to the WSSU's education program or activity.



Sexual Harassment – Factors to Consider

- Severe → Something very great, extreme, harsh, or intense.
- Hostile, aggressive, or invasive and offends a reasonable person's sense of personal dignity or autonomy



Sexual Harassment – Factors to Consider

- Objectively offensive
- Reasonable person given the circumstances
- Causing someone to feel deeply hurt, upset or anger



Sexual Harassment – Factors to Consider

Effectively denies a person equal access to the WSSU education program or activity.

- Skipping class to avoid a harasser, a decline in a student's grade point average, or having difficulty concentrating in class or at work
- Effective denial of equal access to education does not require "that a person's total or entire educational access has been denied."



Scenario

While in Complainant's residence hall room, Respondent allegedly engaged in unwelcome touching, kissing, and taking pictures of Complainant's feet all while Complainant was intoxicated and asleep. Respondent allegedly promised to provide alcohol to the Complainant in order to gain access to Complainant's room. Respondent then over-served Complainant alcohol until he passed out. The Respondent has also been the subject of complaints about several incidents of touching others' feet in public without consent.



Scenario

A female student used SnapChat to ask a male student to have sex with her. He refused. She then responded that she would rape him if he did not have sex with her. He took a screenshot and brought a complaint against her. As a result of the exchange, he is avoiding her on campus and dropped the class in which they were both enrolled.



Scenario

One day while drinking at a bar, Assistant Athletic Director Kelly divulged to Coach Scott that she often has sexual fantasies that begin with female students having a water balloon fight. The next semester, Coach Scott found out that Director Kelly had scheduled a charity water balloon fight between the girls' volleyball team and the girls' softball team. Director Kelly had even purchased team shirts for both teams, and Coach Scott noted that the shirts were all white tank tops. The water balloon fight took place, raised \$2,000, and all the participants seemed to have a great time. Two months later, Coach Scott divulged to one of the participants what he believes were the true motives behind the fight, and that participant subsequently filed a Title IX complaint as a result. During the preliminary assessment, the TIXC uncovered that Director Kelly also recorded a video of the water balloon fight that may or may not have been sent to others over the university email system.



Quid Pro Quo

- An employee of the WSSU
- conditions the provision of an aid, benefit, or service of WSSU
- on an individual's participation in unwelcome sexual conduct.



Stalking

- Engaging in a course of conduct,
- on the basis of sex,
- directed at a specific person, that
- would cause a reasonable person to fear for the person's safety or
- the safety of others or
- suffer substantial emotional distress.



Stalking

- Course of conduct means two or more acts
- Reasonable person means a reasonable person under similar circumstances
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

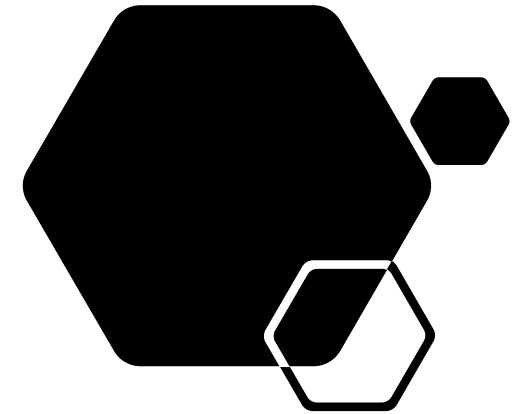


Retaliation

No institution or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX.



Rules of Evidence



Preponderance of Evidence



- The Heard Board renders a determination based on the preponderance of evidence, whether it is more likely than not that the Respondent violated WSSU Policy.
- The Respondent is presumed to be not responsible. The presumption may be overcome only where there is sufficient evidence by a preponderance of evidence to support a finding that the respondent is responsible for violating University policy.



Rules of Evidence Only Relevant Evidence

Evidence is relevant if:

- it has any tendency to make a fact more or less probable than it would be without the evidence; and
- the fact is of consequence in determining the action.



Scenario

- Complainant alleged that her boyfriend of two years physically abused her (punching, slapping, and pushing) periodically over the last 12 months – on average once or twice a month. Complainant wants to introduce a text message between them from 15 months ago with the following exchange:

- C – “hey now! Rude. You best watch urself, u know I can beat you up!”
- R – “psh, I boxed all through high school, u wouldn’t stand a chance... better not make me mad! [winky-face]”



Scenario

Respondent testifies that about an hour prior to (allegedly non-consensual) sexual intercourse with Complainant, Complainant performed consensual oral sex on him. Setting aside prior sexual history issues for a moment, would this evidence be relevant, directly related, or neither?



Scenario

Respondent testifies that the morning after (allegedly non-consensual) sexual intercourse with Complainant, the Complainant performed consensual oral sex on the Respondent. Respondent alleges that Complainant filed a complaint because the Respondent won an elected student leadership position for which the Complainant was also running. Respondent believes that the consensual oral sex provides context to demonstrate that sexual intercourse the previous evening was consensual.



Scenario

Respondent wants to introduce evidence that the Complainant has only alleged sexual assault because she was failing three of her four classes and used the allegation as an excuse to obtain supportive measures to offset her bad grades. Should the investigator determine this evidence is relevant, directly related, or neither?



Submitting to Questioning

The board members cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions.



Complainant's Sexual Predisposition Or Prior Sexual Behavior

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant unless

- such questions and evidence about the complainant's prior sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by complainant,
- or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.



Scenario

Complainant wants to introduce that she is an officer in the College Christian Students Club and has always been outspoken in word and writing about the need to remain a virgin until marriage, including reminding Respondent of this on the evening in question. Complainant wants to introduce this club status and writings to bolster her credibility regarding her claim of not being inclined to consent because of her religious beliefs, NOT to prove that she is a virgin. She also argues that while introduction of sexual history is prohibited by the college's policy, she is not prohibited from introducing non-history.



Protected Records

- No access to a party's protected records or information without the voluntary, written consent of the relevant party or individual.
- Examples of protected records:
 - Treatment records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional
 - Information protected under a legally recognized privilege (e.g. attorney-client, married individuals, clergy and communicant, psychotherapist and patient, physician and patient, etc.)

