HEARINGS IN A POST REGULATORY WORLD

Day One

San Jose Evergreen Community College District
Davis Crow
January 2024
MEET YOUR FACILITATOR

Davis Crow
Senior Solutions Specialist
He/him/his

Grand River Solutions
ABOUT US

Vision
We exist to create safe and equitable work and educational environments.

Mission
To bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

Core Values
• Responsive Partnership
• Innovation
• Accountability
• Transformation
• Integrity
TITLE IX REQUIREMENTS FOR HEARINGS
Title IX of the Education Amendments Act of 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 education program or activity receiving Federal financial assistance.”

SEXUAL HARASSMENT: SECTION 106.30

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;

- (2) 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 recipient’s education program or activity; or

AND... ONLY COVERED, IF:

**Place of Conduct**
- On campus OR
- Campus Program, Activity, Building, AND
- In the United States

**Required Identity**
- Complainant participating/attempting to participate in Program or Activity, AND
- Control over Respondent
PROCEDURAL REQUIREMENTS FOR INVESTIGATIONS

- Notice to BOTH parties
- Written notification of meetings, etc., and sufficient time to prepare
- Equal Opportunity to Present Evidence
- Opportunity to review all directly related evidence, and 10 days to submit a written response to the evidence prior to completion of the report
- An advisor of choice
- Report summarizing relevant evidence and 10-day review of report prior to hearing
<table>
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<tr>
<th>PROCEDURAL REQUIREMENTS FOR HEARINGS</th>
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<tr>
<td><strong>Must be live, but can be conducted remotely</strong></td>
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<td><strong>No Compelling participation</strong></td>
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<td><strong>Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters</strong></td>
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<tr>
<td><strong>Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution</strong></td>
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<td><strong>Decision maker determines relevancy of questions and evidence offered</strong></td>
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<td><strong>Written decision must be issued that includes finding and sanction</strong></td>
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HEARING TECHNOLOGY: REQUIREMENTS AND CONSIDERATIONS

If hearings cannot be in person, or if someone chooses to participate remotely, must have a remote participation platform available.

All hearings must be recorded.

Participants must be able to communicate with decision makers and advisors during the hearing.
THE REQUIREMENT OF IMPARTIALITY
The grievance process must require that any individual designated by the recipient as Title IX Coordinator, investigator, decision-maker, or facilitator of informal resolution not to have a conflict of interest or bias:

- For or against complaints or respondents generally, or
- An individual complainant or respondent
ACTIVITY: IS THERE A CONFLICT OF INTEREST?

Complainant: Alex, a senior student and President of the Student Government Association (SGA) at a small liberal arts college.

Respondent: Jack, a junior student, and member of the college's basketball team.

Hearing Officer: Dean Thompson, who is the Dean of Students but also Alex's direct supervisor as the SGA advisor.

Additional Context: Dean Thompson has a close professional and mentoring relationship with Alex, having worked with them extensively on SGA projects and initiatives. Additionally, Dean Thompson has a vested interest in maintaining a positive relationship with Alex, as the SGA President plays a crucial role in representing student interests and collaborating with college administrators.
HEARING OVERVIEW
WHAT IS THE PURPOSE OF A HEARING?
PURPOSE OF THE HEARING

1. Review and Assess Evidence

2. Make Findings of Fact

3. Determine Responsibility/Findings of Responsibility

4. Determine Sanction and Remedy
PROCESS PARTICIPANTS

• The Parties:
  o Complainant and Respondent
• Advisors
• Hearing Facilitator/Coordinator
• Decision Maker(s)
  o Hearing Chair
• Investigator
PRE-HEARING TASKS: HEARING PANEL & CHAIR

What should be done in advance of the hearing
THE INVESTIGATION IS COMPLETE!

Rapid Fire #1

It is time to schedule the hearing...

Using the chat box: share your “To Do” List for coordinating the hearing.
RAPID FIRE RECAP

- Arranging for space
- Arranging technology
- Scheduling pre-hearing meetings with parties & advisors
- Scheduling prehearing meetings of the panel
- Providing report and record to panel and parties
- Scheduling the hearing
- Conflict checks
- Call for written submissions
- Accommodations

Other considerations?
PRE-HEARING MEETINGS

• Review the Logistics for the Hearing
• Set expectations
  • Format
  • Roles of the parties
  • Participation
• Decorum
• Impact of not following rules
• Cross Examination/Questioning
  Format & Expectations
DECISION MAKER OR HEARING PANEL AS A WHOLE

- Review evidence and report
- Review applicable policy and procedures
- Preliminary analysis of the evidence
- Determine areas for further exploration
- Develop questions of your own
Compile questions on behalf of the Panel

May convene a pre-hearing meeting

Review questions submitted by the parties

Anticipate challenges or issues

Become familiar with the script
YOU AND YOUR TEAM DID A GREAT JOB SCHEDULING THE HEARING AND ARRANGING ALL THE LOGISTICS!

• It is now one week prior to the hearing. You have already received and reviewed the report and record and you will be meeting with the rest of the panel (or spending some quite time by yourself) to prepare for the hearing.

Rapid Fire #2

Use the chat box to share what you plan to discuss/think about during the prehearing meeting.
RAPID FIRE RECAP

- Development of introductory comments
- Initial discussion of the evidence
- Areas for further exploration
- List of questions for the parties and the witnesses
- Anticipation of potential issues
- Logistics
- Review of any written submissions by the parties
- Other considerations?
PRE-HEARING TASKS: DEVELOPING QUESTIONS
COMMON AREAS OF EXPLORATION

Credibility/Reliability

Clarification on timeline

Thought process

Inconsistencies

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COMMON AREAS OF WHERE CLARITY OR ADDITIONAL INFORMATION IS NEEDED

- Credibility
- Reliability
- Timeliness
- Inconsistencies
- Details about the alleged misconduct
- Facts related to the elements of the alleged policy violation
- Relevancy of certain items of evidence
- Factual basis for opinions
CHARLIE AND RAMONA HYPOTHETICAL ACTIVITY

You will read a short hypothetical & policy definition and then answer:

• What are the elements of the policy?
• Develop questions addressing each of the policy elements based upon the facts you know and what you need to find out at the hearing.
• What areas of concern/exploration do you have? Why are you asking?
  • Credibility?
  • Reliability?
  • Missing information?
WHAT FACTS DO I KNOW?

The investigative report indicates:

- Student Jane was a TA for Prof. John Doe. Due to Jane’s position, she and Prof. Doe spent a lot of time alone in Prof. Doe’s office and lab.

- Jane reported that “on more than one occasion” while alone with Prof. Doe in his office, Prof. Doe hugged her for “longer than [she] was comfortable with.”

- Prof. Doe told Investigator: “I’m a huggy guy.” I treat my students like family, but there is never anything sexual implied when I hug a friend or student.

- Jane said that in October and November Prof. Doe touched her knee and moved his hand up her leg touching her thigh while they were working alone in the lab. Jane said she “froze” in the moment, but after each instance she went home and cried.

- Prof. Doe denied that this happened and said “at most” he may have accidentally grazed Jane’s leg while they were working.
POLICY ANALYSIS

- Break down the policy into elements
- Organize the facts by the element to which they relate
POLICY DEFINITION: SEXUAL HARASSMENT

• Conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies the Complainant equal access to the recipient's education program or activity.

• Was it on the basis of sex?
• Was it severe?
• Was it pervasive?
• Was it objectively offensive?
• Did it deny equal access to education program or activity?
SAMPLE QUESTIONS FOR HEARING

• Complainant: About how many occasions were you alone with Respondent?
• Complainant: Approximately how many times did Respondent hug you?
• Complainant: Can you help me understand why you are no longer a teaching assistant for Respondent?
• Respondent: Can you elaborate on what you meant when you told the Investigator, "I'm a huggy guy?"
• Respondent: You told the investigator you may have accidentally grazed Complainant's leg. Can you recall the time that happened?
ORDER OF PROCEEDINGS

1. Introductions and instructions by the Chair; Opening Statements

2. Presentation by Investigator

3. Presentation of information and questioning of the parties and witnesses

4. Closing Statements

5. Deliberation & Determination
PRESENTATION OF INFORMATION & QUESTIONING OF THE PARTIES

01. The Hearing Panel will question Complainant first

02. Cross examination of Complainant will occur next

03. Follow up by the Hearing Panel

04. The Hearing Panel will question Respondent second

05. Cross examination of Respondent will occur next

06. Follow up by the Hearing Panel
QUESTIONING OF THE WITNESSES

01 The Chair will determine the order of questioning of witnesses

02 The Hearing Panel will question first

03 Advisor cross-examination will occur next (suggested: Complainant’s advisor followed by Respondent’s advisor)

04 Follow up by the Hearing Panel
GENERAL QUESTIONING GUIDELINES
The Hearing Panel or the advisor will remain seated during questioning.

Questions will be posed orally.

Questions must be relevant.
WHEN QUESTIONING....

• Be efficient
• Be prepared to go down a road that you hadn’t considered or anticipated exploring.
• Explore areas where additional information or clarity is needed.
• Take your time. Be thoughtful. Take breaks if you need it.
• Listen to the answers.
FOUNDATIONAL QUESTIONS TO ALWAYS CONSIDER ASKING

- Were you interviewed?
- Did you see the interview notes?
- Did the notes reflect your recollection at the time?
- As you sit here today, has anything changed?
- Did you review your notes before coming to this hearing?
- Did you speak with any one about your testimony today prior to this hearing?
EVIDENTIARY CONSIDERATIONS DURING QUESTIONING

Is it relevant?
Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.

Is it authentic?
Is the item what it purports to be?

Is it credible?
Is it convincing?

Is it reliable?
Can you trust it or rely on it?

What weight, if any, should it be given?

Weight is determined by the finder of fact!
WHAT CONSTITUTES A RELEVANT QUESTION?

• The Department declines to define “relevant”, indicating that term “should be interpreted using [its] plain and ordinary meaning.”

• See, e.g., Federal Rule of Evidence 401 Test for Relevant Evidence:

  “Evidence is relevant if:
  • (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
  • (b) the fact is of consequence in determining the action.”
WHEN ARE QUESTIONS RELEVANT?

• Logical connection between the evidence and facts at issue
• Assists in coming to the conclusion – it is “of consequence”
• Tends to make a fact more or less probable than it would be without that evidence
IRRELEVANT AND IMPERMISSIBLE QUESTIONS

- Information protected by an un-waived legal privilege
- Medical treatment and care
- Unduly repetitious or duplicative questions
- Information that otherwise irrelevant
- Complainant’s prior sexual history, with limited exceptions.
QUESTIONING TO ASSESS RELIABILITY

- Inherent plausibility
- Logic
- Corroboration
- Other indication of reliability
QUESTIONING TO ASSESS CREDIBILITY

NO FORMULA EXISTS, BUT CONSIDER ASKING QUESTIONS ABOUT THE FOLLOWING:

- Opportunity to view
- Ability to recall
- Motive to fabricate
- Plausibility
- Consistency
- Coaching
CREDIBILITY VERSUS RELIABILITY

• **Reliability**
  • I can trust the consistency of the person’s account of their truth.
  • It is probably true and I can rely on it.

• **Credibility**
  • I trust their account based on their tone and reliability.
  • They are honest and believable.
  • It might not be true, but it is worthy of belief.
  • It is convincingly true.
  • The witness is sincere and speaking their real truth.
OPINION EVIDENCE

When might it be relevant?
How do you establish a foundation for opinion evidence so that the reliability of the opinion can be assessed?
IS IT AUTHENTIC?

1. Question the person who offered the evidence.
2. Have others review and comment on authenticity.
3. Are there other records that would corroborate?
TRAUMA-INFORMED PRACTICES PROVIDE TOOLS & TECHNIQUES FOR ENGAGING WITH THE COMPLAINANT, RESPONDENT, AND WITNESSES.
WHAT ARE SOME DIFFICULT QUESTIONS YOU STRUGGLE WITH ASKING?
THE "HARD" QUESTIONS

- Details about the sexual conduct
- Seemingly inconsistent behaviors
- Inconsistent evidence/information
- What they were wearing
- Alcohol or drug consumption
- Probing into reports of lack of memory
HOW TO ASK THE HARD QUESTIONS

• Lay a foundation for the questions
  • Explain why you are asking it
  • Share the evidence that you are asking about, or that you are seeking a response to

• Be deliberate and mindful in your questions
  • “Can you tell me what you were thinking when…”
  • “Help me understand what you were feeling when…”
  • “Are you able to tell me more about…”
SPECIAL CONSIDERATIONS FOR QUESTIONING THE INVESTIGATOR

• The Investigator’s participation in the hearing is as a fact witness;
• Questions directed towards the Investigator shall be limited to facts collected by the Investigator pertinent to the Investigation;
• Neither the Advisors nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations;
• The Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.
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<th>Special Considerations for Panels</th>
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<tr>
<td>If a panel, decide in advance who will take the lead on questioning</td>
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<tr>
<td>Do not speak over each other</td>
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<td>Go topic by topic</td>
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<td>Pay attention to the questions of other panelists</td>
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<tr>
<td>Ask other panelists if they have questions before moving on</td>
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<tr>
<td>Ok to take breaks to consult with each other, to reflect, to consult with the TIXC or counsel</td>
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STEVIE AND ALEX BREAK OUT! #1

All groups: Areas or topics that you would like to explore further in the hearing

 Say hi! Pick a scribe Discuss

Group 1: Questions for Complainant and Witnesses Professor McPhee
Group 2: Questions for Respondent and Witness Taylor
Group 3: Questions for Witnesses Tom and Witnesses Charlie
**GROUP 1:** Questions for Complainant and Witnesses Professor McPhee

**GROUP 2:** Questions for Respondent and Witness Taylor

**GROUP 3:** Questions for Witness Tom and Witness Charlie
TITLE IX HEARINGS IN A POST REGULATORY WORLD

Day 2
OUTSTANDING QUESTIONS FROM DAY ONE
OVERVIEW OF DAY TWO

- Advisor Questioning
- Deliberations
- Practical Application
- Questions
THE DECISION MAKER’S ROLE IN ADVISOR QUESTIONING
CROSS EXAMINATION
WHO DOES IT?

1. Must be conducted by the advisor

2. If party does not appear or does not participate, advisor can appear and cross

3. If party does not have an advisor, institution must provide one
THE ROLE OF THE DECISION MAKER DURING QUESTIONING BY THE ADVISORS

• After the Advisor poses a question, the proceeding will pause to allow the Chair to consider it.

• Chair will determine whether the question will be permitted, disallowed, or rephrased. The Chair may explore arguments regarding relevance with the Advisors.

• The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive.

• The Chair will state their decision on the question for the record and advise the Party/Witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

• The Chair has final say on all questions and determinations of relevance. The parties and their advisors are not permitted to make objections during the hearing. If they feel that ruling is incorrect, the proper forum to raise that objection is on appeal.
An Advisor who oversteps their role as defined by the policy should be warned once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting may be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator has the ability determine how to address the Advisor’s non-compliance and future role.
WHEN ASSESSING RELEVANCE, THE DECISION MAKER CAN:

• Ask the person who posed the question why their question is relevant
• Take a break
• Ask their own questions of the party/witness
RELEVANT VS. IRRELEVANT

Logical connection between the evidence and facts at issue

Assists in coming to the conclusion – it is “of consequence”

Tends to make a fact more or less probable than it would be without that evidence
STEVIE AND ALEX BREAK OUT! #2

All groups: Review questions and determine whether they are relevant and allowed to be asked or irrelevant/impermissible

Say hi again! Pick a scribe Discuss

Group 1: Questions for Complainant and Witnesses Professor McPhee
Group 2: Questions for Respondent and Witness Taylor
Group 3: Questions for Witness Tom and Witness Charlie
REPORT OUT
QUESTIONS SUBMITTED BY RESPONDENT'S ADVISOR

Questions for Complainant

1. Isn’t it true you found Alex attractive after you first met?
2. You wanted to hook up with Alex, didn’t you?
3. You made this complaint only because you wanted your boyfriend’s attention, isn’t that true?
4. You kept calling Alex and asking him for help because you couldn’t finish your part of the project without him, isn’t that true?
5. You told the investigator you imagined seeing Alex everywhere. Where do you think you saw him?
6. Why were you always thinking of Alex?
7. And how often do you hallucinate?
8. How often has this happened in the past?
9. Why did you ask your boyfriend to walk you to your car when you knew you were supposed to meet Alex there?
10. You said you were frightened by seeing Alex in the parking garage. Did he have a weapon? Did he try to touch you? Did he try to hit you? Describe each and every way he tried to attack you that night.
Questions Submitted by Complainant's Advisor

Questions for Respondent

1. Do you keep stalking Stevie because you’re OCD?
2. Have you ever been removed from another group project because you could not get along with others?
3. When you first talked to Stevie about your girlfriend breaking up with you, who was your girlfriend, or did you make that up just so you could talk to Stevie?
4. Why did you keep offering to work with Taylor in person instead of by Zoom?
5. Did you have a thing for Taylor?
6. Did you and Taylor ever end up hooking up?
Questions for Tom

1. Can you think of any reason for Alex to be hanging out in the garage with flowers, other than to frighten Stevie?

2. Alex was pretty creepy, wasn’t he?

3. Did you see him throw an object at Stevie?

4. Do you believe he was acting in self-defense when he threw the object?

5. You said Stevie is really pretty and guys hit on her a lot. Don’t you think someone who has had a lot of male attention would be in the best position to know which kind of male attention is acceptable, and when it is stalking?
1. Why didn’t you tell Alex to stop stalking Stevie?

2. Weren’t you supposed to forward Stevie’s Title IX Complaint to the Coordinator, and don’t you think that if you had done so, she would have been spared his stalking?
QUESTIONS SUBMITTED BY COMPLAINANT'S ADVISOR

Questions for Taylor

1. Did Alex seem fixated on Stevie when you were all part of the class project?
2. Did Alex insist that the two of you work together in person instead of online?
3. How often did he force you to work in person with him after classes?
4. Were you afraid of him?
Questions for Tom

1. When you saw Alex in the parking garage, were you frightened?
2. What, specifically, did Alex do that was frightening?
3. Does Stevie always overreact?
4. What, specifically, did Alex throw at her?
QUESTIONS SUBMITTED BY RESPONDENT’S ADVISOR

Questions for Witness Professor McPhee

1. What grade did she have up to the project and what grade did she get on the project?
2. Isn’t it true that Stevie was doing poorly in class?
3. After she made this complaint, did she get some special treatment or accommodation in your class?
4. Isn’t it true that, once you told her she would have to do the work, she suddenly made up a story about Alex to paint him in a bad light?
5. Isn’t it true that, before she told you this lie, you had no reason to think poorly of Alex?
QUESTIONS SUBMITTED BY RESPONDENT'S ADVISOR

Questions for Taylor

1. Were you frustrated when working on the group project? Why?
2. Why did you think Alex was more frustrated than others?
3. Why did you think he was “taking it out” on Stevie if he was frustrated with the whole group?
4. Are you and Stevie friends?
5. Did Stevie tell you what to say in the investigation? If so, what?
6. Are you one of those “Believe all victims” people?
QUESTIONS SUBMITTED BY COMPLAINANT'S ADVISOR

Questions for Witness Charlie

1. So are you the one who suggested Alex stalk Stevie’s social media to find a food or drink she liked?
2. Why do you think Stevie and Alex had a plan to get together one night and talk? Do you know for sure that there were confirmed plans?
3. What proof did Alex give you to prove there was a real plan, and not an imaginary one?
4. You said Stevie was “rude” because you could not do a lot of work on the group project. What did you mean by that?
5. How long have you known Alex?
6. Isn’t it true you just don’t like Stevie?
7. Have you ever been accused of sexual harassment or stalking?
8. Isn’t it true that you would say anything to support a guy who has been accused?
QUESTIONS SUBMITTED BY RESPONDENT’S ADVISOR

Questions for Witness Charlie

• No Questions
AFTER THE HEARING
Deliberations
PREPONDERANCE OF THE EVIDENCE

• Standard of proof by which determinations of responsibility are made

  “More likely than not”

• It does not mean that an allegation must be found to be 100% true or accurate

• A finding of responsibility =
  • There was sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated

• A finding of not responsible =
  • There was not sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated
WEIGHING THE EVIDENCE & MAKING A DETERMINATION

1. Evaluate the relevant evidence collected to determine what weight, if any, you will afford that item of evidence in your final determination;

2. Apply the standard of proof and the evidence to each element of the alleged policy violation;

3. Make a determination as to whether or not there has been a policy violation.
FINDINGS OF FACT

• A "finding of fact"
  • The decision whether events, actions, or conduct occurred, or a piece of evidence is what it purports to be
  • Based on available evidence and information
  • Determined by a preponderance of evidence standard
  • Determined by the fact finder(s)

• For example...
  • Complainant reports that they and Respondent ate ice cream prior to the incident
  • Respondent says that they did not eat ice cream
  • Witness 1 produces a timestamped photo of Respondent eating ice cream

• Next steps?
POLICY ANALYSIS

• Break down the policy into elements
• Organize the facts by the element to which they relate
ALLEGATION: FONDLING

Fondling is the:
- touching of the private body parts of another person
- for the purpose of sexual gratification,
- Forcibly and/or without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
<table>
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<tr>
<th>Touching of the private body parts of another person</th>
<th>For the purpose of sexual gratification</th>
<th>Without consent due to lack of capacity</th>
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</thead>
</table>
| **Undisputed:** Complainant and Respondent agree that there was contact between Respondent’s hand and Complainant’s vagina. | Respondent acknowledges and admits this element in their statement with investigators. | **Complainant:** drank more than 12 drinks, vomited, no recall  
**Respondent:** C was aware and participating  
**Witness 1:** observed C vomit  
**Witness 2:** C was playing beer pong and could barely stand  
**Witness 3:** C was drunk but seemed fine  
**Witness 4:** carried C to the basement couch and left her there to sleep it off. |

“We were hooking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants...”
ANALYSIS GRID

**Touching of the private body parts of another person**

*Undisputed:*
Complainant and Respondent agree that there was contact between Respondent’s hand and Complainant’s vagina.

**For the purpose of sexual gratification**

Respondent acknowledges and admits this element in their statement with investigators.

“We were hooking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants...”

**Without consent due to lack of capacity**

*Complainant:* drank more than 12 drinks, vomited, no recall

*Respondent:* C was aware and participating

*Witness 1:* observed C vomit

*Witness 2:* C was playing beer pong and could barely stand

*Witness 3:* C was drunk but seemed fine

*Witness 4:* carried C to the basement couch and left her there to sleep it off.
DID YOU ALSO ANALYZE...?

On campus?

Program or Activity?

In a building owned/controlled by a recognized student organization?

Substantial control over respondent and context?

Complainant was attempting to access program/activity?
GOALS OF SANCTIONS/DISCIPLINE

1. End the harassment
2. Prevent its recurrence
3. Remedy the harm
   • What steps would be reasonably calculated to end harassment and prevent recurrence?
SANCTIONING

State Law

System Policy

Learning Environment

Measures Available
THE SANCTION DOES NOT Undo THE FINDING

• No lesser sanction if you disagree with findings
• Sanctioning officer must assume findings are correct
DETERMINING THE PROPER SANCTION

• Consistency
• Foreseeability of repeated conduct
• Past conduct
• Does bias creep in?
• Remorse?
• Victim impact?
AGGRAVATING CIRCUMSTANCES

- Premeditation
- Predation
- Physical violence
- Repeated violation
- Multiple policy violations in one incident
- Harm to others, impact on complainant and/or community
- Did the behavior continue after intervention?
- Effort to conceal or hide the incident?
- Refusal to attend past trainings
- Past failures to comply with directives
FINAL REPORT

• The allegations
• Description of all procedural steps
• Findings of fact
• Conclusion of application of facts to the policy
• Rationale for each allegation
• Sanctions and remedies
• Procedure for appeal
THE FINAL DETERMINATION SHOULD STAND ON ITS OWN

- Simple and Easy to Comprehend
- Transparent/Clear
- Accurate
- Neutral/Unbiased
- Draw Attention to Significant Evidence and Issues
ADVISOR’S ROLE POST-HEARING

• May meet with their advisee to review decision and respond to procedural questions.

• Institutionally-appointed advisors typically do not advise nor assist the party in developing an appeal.

• Advisor of choice may assist in advising party whether or not to appeal and in the drafting of an appeal.
PRACTICAL APPLICATION
SCENARIO 1

Respondent provides a polygraph report to investigators wherein it is concluded that Respondent is not being deceptive when denying the allegations.

• **The Investigator determines the report is irrelevant.** Must the Investigator share the report with the decision maker?
SCENARIO 2

- Respondent appears at the hearing with Witness 7. Respondent would like Witness 7 to provide information testimony about text messages between them and Complainant that indicate that Complainant has made the allegations up.

- Can the HP hear from Witness 7 at the hearing?
SCENARIO 3

Respondent provides a polygraph report to Investigators wherein it is concluded that Respondent is not being deceptive when denying the allegations. The polygrapher appears and answers all relevant questions on cross.

Must the Hearing Panel find Respondent not responsible because of the findings in the report?
During the hearing, the Complainant becomes upset, shuts down, and stops answering question.

If you are the Hearing Chair, how do you respond?
THANK YOU!

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