

Community Standards Board Training - Sexual Misconduct

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MIAMI
UNIVERSITY

STUDENT LIFE

WHO 
IS HERE

Code of Love and Honor

- » **I stand** for honesty, integrity, and the importance of moral conduct
- » **I respect** the dignity, rights, and property of others and their right to hold and express disparate beliefs
- » **I defend** the freedom of inquiry that is the heart of learning
- » **I exercise** good judgment and believe in personal responsibility
- » **I welcome** a diversity of people, ideas, and experiences
- » **I act** through my words and deeds in ways that reflect these values and beliefs

OCS Mission Statement

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The Office of Community Standards strives to resolve cases in a fair, equitable and educational manner while promoting both the holistic development of each student and the safety of the Miami community. We acknowledge students' ability to grow from their experiences and therefore seek to facilitate learning through reflective processes that uphold the values stated in Miami's Code of Love and Honor. While doing so, we are committed to maintaining a process that promotes the respect and dignity of all members of our community and that encourages students to accept responsibility for their actions and seek to repair harm.



Training Overview

- Definitions
- Jurisdiction
- Consent
- Review of student conduct formal grievance process
 - Investigations, hearings, and appeals
- How to serve impartially
- Technology used in the student conduct process
- Issues of relevance of questions and evidence
- Case studies



Definitions

Complainant

Any person who is reported to have experienced a sexual misconduct violation.

Respondent

Any student alleged to have engaged in conduct prohibited by this policy. A respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Student Conduct Process.

Definitions

Sexual Misconduct prohibited by Title IX and the University

Sexual Harassment

Conduct on the basis of sex including gender, gender identity or expression, or sexual orientation that meets one of the following:

1. An employee of the University conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct that a reasonable person would determine to be so severe and pervasive and objectively offensive that it effectively denies a person equal access to the University's education programs or activities; or
3. Cyber-Harassment-the use of the internet, email or other electronic communications to harass a person on the basis of their sex including communicating a threat of harm.

Definitions

Sexual Misconduct prohibited by Title IX and the University

Sexual Assault

Any sexual act directed against another person without their consent, including instances where the person is incapable of giving consent.

1. Non-consensual sexual intercourse, any sexual penetration however slight, with any body part or object by any person upon any person without consent (commonly referred to as rape.) Non-consensual sexual intercourse includes rape, incest and statutory rape.
2. Non-consensual sexual contact, any intentional sexual touching, with any body part or object by any person upon any person without consent including forcible fondling. Non-consensual sexual contact includes the touching of any body part for sexual gratification, without consent or where the person is incapable of giving consent because of age or temporary or permanent mental incapacity.

Definitions

Sexual Misconduct prohibited by Title IX and the University

Dating Violence

An act of violence committed by a person who is or has been in a social relationship of an intimate or romantic nature with the victim. The existence of such a relationship shall be determined based on consideration of the following factors:

1. Length of relationship.
2. Type of relationship.
3. Frequency of interaction between the persons involved in the relationship.

Domestic Violence

An act of violence committed by a current or former spouse or intimate partner of the victim or a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner or person similarly situated, or by a parent with whom the victim shares a child in common.

Definitions

Sexual Misconduct prohibited by Title IX and the University

Stalking

Engaging in a course of conduct 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 includes repeatedly following, harassing, threatening or intimidating another by telephone, mail, electronic communication, social media or any other action, device or method that purposely or knowingly causes substantial emotional distress or reasonable fear of bodily injury or death. For the purpose of this definition:

1. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly or through third parties, by any action, method, device or means follows, monitors, observes, surveils, threatens or communicates to or about a person, or interferes with a person's property.
2. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
3. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.

Definitions

Sexual Misconduct prohibited by the University

Sexual Harassment

Unwelcome conduct on the basis of sex, including gender, gender identity or expression, or sexual orientation, that is sufficiently severe or pervasive to adversely impact a term or condition of a person's ability to participate in the University's educational programs or activities. Sexual harassment includes conduct that unreasonably interferes with a person's work performance or creates an intimidating, hostile or offensive working, learning or living environment. This also includes cyber harassment as defined in II.B.3.

Definitions

Sexual Misconduct prohibited by the University

Sexual Assault

Any sexual conduct directed against someone without that person's consent. This includes non-consensual sexual intercourse or other sexual contact/touching.

Sexual Exploitation

Taking non-consensual, unjust or abusive sexual advantage of another person. Examples include voyeurism, non-consensual recording of sexual activity, going beyond the bounds of consent (e.g., allowing another to surreptitiously watch otherwise consensual sexual activity).

Indecent Exposure

The exposure of the private or intimate parts of the body in a lewd manner in public or in private when the respondent may be readily observed.

Definitions

Sexual Misconduct prohibited by the University

Dating Violence, Domestic Violence and Stalking

As defined in the earlier slide, but may also apply to allegations that fall outside of the Title IX jurisdiction.

Jurisdiction

Sexual Misconduct prohibited by Title IX and the University

- To constitute a Title IX sexual misconduct violation, the misconduct must have occurred:
 - Within the geographical territory of the United States of America; or
 - While the complainant was participating in or attempting to participate in an educational program or activity of the University, including locations, events or circumstances in which the University exercised substantial control over both the respondent and the context in which the misconduct occurred and includes any building owned or controlled by a recognized student organization (e.g. fraternity house).

Jurisdiction- Mandatory Dismissal

The formal complaint will be dismissed as a Title IX Sexual Misconduct Case if it did not occur while the complainant was participating or attempting to participate in an educational program or activity of the University, or did not occur within the geographical territory of the United States. Mandatory dismissals may be appealed in writing within 5 class days of the dismissal by either party to the Director of the Office of Community Standards.

Cases dismissed as Title IX Sexual Misconduct may be proceed as Non-Title IX Sexual Misconduct if the alleged misconduct meets one of the definitions therein.

Jurisdiction

Sexual Misconduct prohibited by the University

- Non-Title IX sexual misconduct need **Not** have occurred:
 - Within the geographical territory of the United States of America; or
 - While the complainant was participating in or attempting to participate in an educational program or activity of the University, including locations, events or circumstances in which the University exercised substantial control over both the respondent and the context in which the misconduct occurred and includes any building owned or controlled by a recognized student organization (e.g. fraternity house).

Definition of Consent

Consent is when a person agrees or gives permission to another person to engage in certain sexual acts.

- Consent is a knowing and voluntary verbal or non-verbal agreement between both parties to participate in each and every sexual act.
- Consent to one sexual act does not imply consent to other or all sexual acts.
- Conduct will be considered “non-consensual” if no clear consent, verbal or non-verbal, is given.
- The absence of “no” does not mean “yes.”
- A person has the right to change one’s mind at any time. In other words, consent can be withdrawn at any point, as long as the person clearly informs the other party of the withdrawal.
- Taking drugs or consuming alcohol does not relieve the obligation to obtain consent.
- A person is not required to physically or otherwise resist an aggressor.

Consent...

Effective Consent

- Effective consent can be given by words or actions so long as the words or actions create a mutual understanding between both parties regarding the conditions of the sexual activity. Ask: “do both of us understand and agree regarding the who, what, where, when, why, and how this sexual activity will take place?”
- When a person affirmatively demonstrates that (1) they do not want to have sex, (2) they want to stop any sort of sexual act, or (3) they do not want to go any further, the other party must stop completely. **Continued pressure after that point can be coercive.**

Consent...

Consent in Relationships

- Current or past sexual relationships or current or past dating relationships are not sufficient grounds to constitute consent.
- Regardless of past experiences with other partners or a current partner, consent must be obtained.
- Consent can never be assumed, even in the context of a relationship. A person has the right to say “no” and has the right to change their mind at any time.

Consent...

A person cannot legally give consent (no matter what they might say) when:

- The person is substantially impaired due to alcohol or drugs, incapacitated, or unconscious.
- The person is physically or mentally disabled or incapacitated.
- The person was coerced due to force, threat of force, or deception or when the person was beaten, threatened, isolated, or intimidated.

Impaired vs. Incapacitated

- » Incapacitation is not the same thing as “significantly impairment”, whether that impairment comes from alcohol, drugs, mental conditions or physical conditions.
 - » While incapacity and significant impairment may exist simultaneously, they are not the same thing; one may exist without the other.
- » Significant Impairment is not defined by the Ohio Revised Code.
 - » The phrase "substantially impaired," must be given the meaning generally understood in common usage... substantial impairment must be established by demonstrating a present reduction, diminution or decrease in the victim's ability, either to appraise the nature of his conduct or to control his conduct.” (State vs. Zeh, 31 Ohio St. 3d 99 (1987))

Blood alcohol concentration What does it mean?

	DRINKS	DRINKS
0%	0	Only safe level.
.01%-.02%	0.5-2	Impairment begins.
.03%-.07%	1-4	Reflexes, judgement, concentration and vision affected. Combined with fatigue, illness, stress, other drugs, or poor driving conditions increases the risk of having a crash.
.08%-.11%	3-10	Illegal in Utah. Greater levels of impairment in all of the above. Average risk of crash is 10 times normal for adult, 70-80 times greater for people under 21 years of age.
.12%-.15%	4-12	Motor skills, mental functions and vision are severely impaired.
.16%-.24%	6-14	Extreme health and crash risk.
.25%-.34%	8-18	Unconsciousness.
.35%-.45%	9-20	Death will occur.

Alcohol affects everyone differently. BAC may be affected by age, gender, physical condition, food consumption, medication and other factors. Also, mixed drinks contain different amounts of alcohol, so its important to know how much alcohol has been consumed, not just how many drinks a person has had.

Case study: Consent

- Sally Student and Sam Student both willingly begin to engage in sexual activity. Before intercourse, Sam ask Sally if it is ok to “go all the way.” Sally consents. After a few minutes of intercourse, Sally says “stop.” If Sam stops immediately, has he engaged in non-consensual intercourse with Sally?
- After they both consume alcohol at a party, Sally Student invites Sam Student back to her dorm room to have sexual intercourse. Sam’s speech is slurred and he stumbles when he walks. If Sam says nothing during intercourse, is Sally safe in assuming that Sam consented to intercourse?

Process Overview

Process Overview and Roles

- Report & Supportive Measures (Deputy Title IX Coordinator)
- Formal Complaint (Deputy Title IX Coordinator)
- Notice of Allegations (Title IX Investigator, OCS)
- Investigation (Title IX Investigator, OCS)
- Hearing (Decision-makers)
- Appeals (Appeal Decision-maker)

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Actual Knowledge

Response Obligations

- “Actual Knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has the authority to institute corrective measures on behalf of the recipient...”

Response Obligations

- To a report
 - Offer supportive measures
 - Explain formal complaint process
- To a formal complaint
 - Investigation followed by
 - Live hearing/complaint grievance process (unless facts require dismissal)

What are Supportive Measures?

- Non-disciplinary, non-punitive supports and accommodations designed to preserve access to education programs and activities
- Reasonably available without fee or charge
- Without unreasonably burdening the other party

Supportive Measures May Include:

- Academic support services and accommodations, including the ability to reschedule exams and assignments, change in class schedule, or tutoring;
- Short- and long-term housing accommodations (available to Oxford students);
- On-campus counseling services and/or assistance in connecting to community-based counseling services;
- Provide transportation/parking options;
- Assistance connecting to community-based medical services;
- Assistance with completing the process of protecting a student's directory information at Miami University;
- Work schedule or job assignment modifications (for University employment);
- Mutual No Contact Directive;
- Resource Referral;
- Providing information on obtaining personal protection orders; or
- A combination of any of these measures.

Available to complainant and respondent

Emergency Removal

- The respondent may be removed from the University's educational programs or activities on an emergency basis if the Assistant Dean of Students (Tim Parsons) determines that the respondent poses an immediate threat to the physical health and or safety of any student or other individual. This determination may be appealed to the Dean of Students.
- Criteria used to make a decision on emergency removal

Formal Complaint

- A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.
- At the time of filing a complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.
- A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under § 106.8(a), and by any additional method designated by the recipient.

Investigation Procedures

Upon receipt of a formal complaint alleging a sexual misconduct violation the University will initiate an investigation. Complainants or the Title IX Coordinator may file a formal complaint.

A Notice of Allegations will be sent to the parties to initiate an investigation. This notice includes:

- Notice of the investigation and hearing process, including any informal resolutions which may be available;
- A copy of the formal complaint received by Miami University;
- The identities of the parties involved in the incident, if known;
- The conduct allegedly constituting sexual misconduct and the specific sections of the Code of Student Conduct allegedly violated;
- The date and location of the alleged incident, if known;
- A copy of the Code of Student Conduct;

Investigation Procedures (ctd.)

- A statement that the respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility has been made at the conclusion of the hearing process;
- The potential sanction(s) which Miami University may implement following any determination of responsibility;
- A statement that the student may be accompanied throughout the process by an advisor of their choice who may be, but is not required to be, an attorney;
- A statement that the complainant and respondents may request to inspect and review evidence;
- A statement informing the parties that it is a violation of the "Dishonesty" section of the Code to knowingly make false statements or knowingly submit false information during the investigation or any resulting process under this Code;
- The date, time and location of the initial investigatory interview(s);

Investigation Procedures (ctd.)

- A statement informing the parties of the process which allows for the temporary delay of the investigation or any resulting process, or the limited extension of time frames for good cause. Good cause may include the absence of parties, a party's advisor, or witnesses, concurrent law enforcement activity, or the need to accommodate language assistance or accommodation of disabilities. The timeline may also be affected by the winter or spring break periods and summer or winter terms;
- A statement that if, in the course of an investigation, Miami University decides to investigate allegations of a Sexual Misconduct Violation or any other Code of Student Conduct violation about the complainant or respondent that are not included in the Notice of Allegations, Miami University will provide notice of the additional allegations to the parties whose identities are known; and
- The identity of the investigator.

At the conclusion of the investigation, a report summarizing the relevant evidence will be written which determine if the case shall proceed to a hearing and, if so, the specific sections allegedly violated to be listed as charges.

Title IX Investigation Process

- Separate from any legal process that may be occurring. *In some circumstances, this may be the ONLY current or past investigation.*
- Determines if reasonable basis exists to believe to proceed to a hearing and identify specific policy violations that may have occurred.
 - “Reasonable Basis” is not the same as finding someone responsible for a violation. An investigation resulting in a reasonable basis to proceed to a hearing means that sufficient information could be obtained during the investigation upon which a determination regarding responsibility could be made and that the University has not dismissed the complaint.
 - Interviews are conducted individually. The parties have been cross-examined by the opposing side during the investigation.

Title IX Investigation Process

- An investigation may last up to 45 business days, but may be longer depending on the amount of information that needs to be reviewed and the availability/access to the involved parties, witnesses, and other relevant information. There are multiple waiting periods built into the investigation process which provide the parties an opportunity to respond to allegations, reports, or new information.
- Once the investigator has gathered all relevant information that is reasonably available, that information is distributed in the form of a “Preliminary Investigation Report”

Title IX Investigation Process

- Complainant and Respondent have both been provided the “Preliminary Investigation Report” and had at least 10 days to make comments on the report for inclusion in the “Final Investigation Report”.
- The Final Investigation Report contains a summary of the relevant and permissible evidence and any resulting charges.
- Witness information will be carefully arranged within the Final Investigation Report and only provided to a board when that witness is present for the hearing.

The Final Investigation Report may contain more, less, or different information than the hearing panel is provided prior to a hearing.

IMPARTIAL

BREAK

EQUITABLE

NO STEREOTYPES

Legal Principles in the Grievance Process

General Principles that Govern Grievance Process

- Equitable treatment of parties
 - Approach the allegations with neutrality
 - Provide an equal opportunity to present evidence, witnesses, and their versions of the story.
- The Respondent is presumed not responsible for the alleged conduct
- No stereotypes based on a party's status
- Decision makers are free of conflict and bias

Impartiality, Bias, Conflict of Interest & Prejudgment

- **Impartiality** – basing a conclusion or decision on the facts rather than on a preference for one party over another; unbiased.
- **Bias** – a pre-disposition or pre-conceived opinion that prevents one from impartially evaluating facts

- **Conflict of Interest** – demonstrating bias or inability to be impartial because it will be to one's own personal benefit or other competing interest
- **Prejudgment** – reaching a conclusion before considering all relevant evidence

Conflict of Interest/Bias in Miami's Policy

- A Board member may not have a conflict of interest or bias for or against complainants or respondents generally or any individual complainant or respondent.
- If a party believes that any Board member has a conflict of interest or bias that party may within three (3) days of the Notice of Hearing, file a request with the Director of the Office of Community Standards, asking that a different Board member be assigned, setting forth in sufficient detail the basis for the request.
- The decision of the Director is final, subject to appeal under Section P. Appeals.

Most common standards of proof

The standard that applies depends on the type of case. The more serious the consequences, the higher the standard of proof is likely to be. Potential loss of liberty (jail or prison), for example, involves a higher standard of proof than a lawsuit for money.

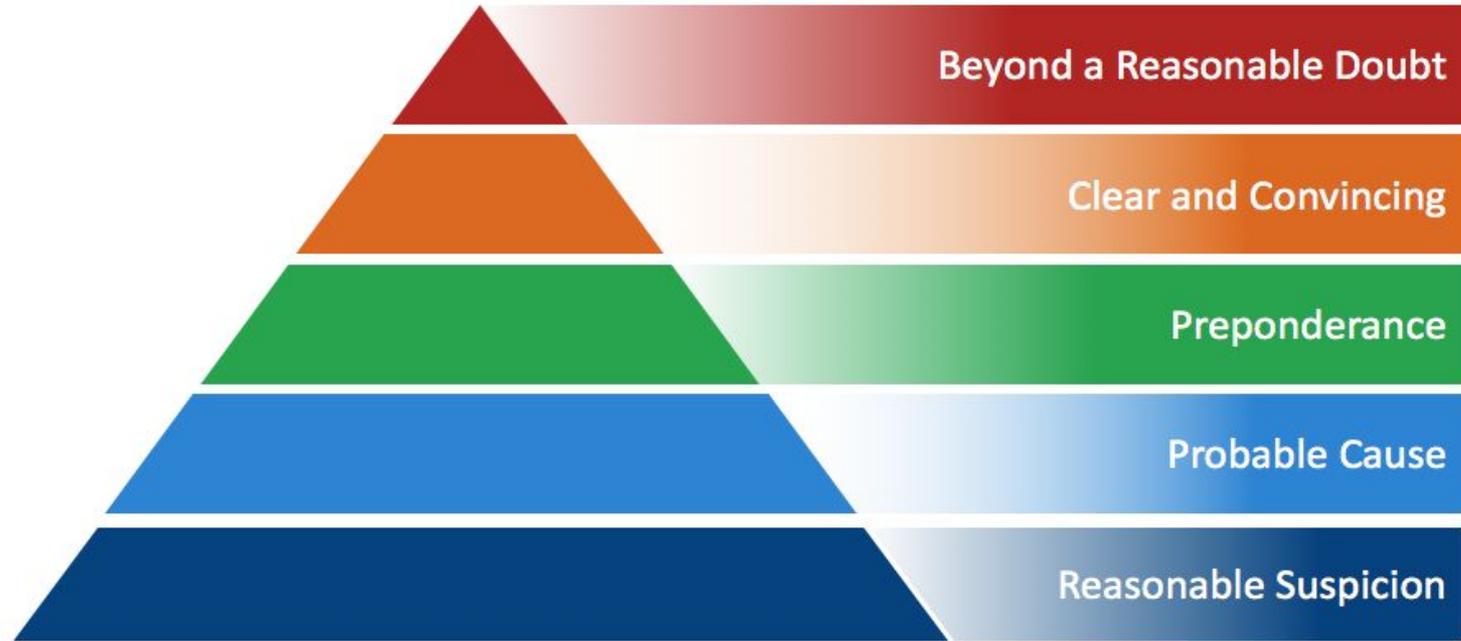
Reasonable Suspicion and Probable Cause This standard is most commonly utilized prior to a criminal trial and are most often at issue when responding to motions to suppress evidence. Preliminary hearings also involve a determination of probable cause and search warrants are issued using a probable cause standard.

Preponderance of the Evidence The preponderance-of-the-evidence standard is utilized for most civil lawsuits. Preponderance of the evidence is met if the decision-maker believes the evidence shows the person charged is more likely than not—more than 50% likely to be—responsible. This is Miami’s standard of proof for all student conduct matters, including Title IX misconduct.

Clear and Convincing Evidence The clear-and-convincing-evidence standard goes by descriptions such as “clear, cogent, unequivocal, satisfactory, convincing” evidence. “Clear and convincing” means the evidence is highly and substantially more likely to be true than untrue; the decision-maker must have an abiding conviction that the truth of the factual contention is highly probable. This standard requires that the evidence show that it is highly probable or probably certain that the thing alleged has occurred.

Beyond a Reasonable Doubt “Beyond a reasonable doubt” is the highest legal standard. This is the standard the U.S. Constitution requires the government to meet in order to prove a defendant guilty of a crime. The evidence must be so convincing that no reasonable person would ever question the defendant’s guilt. The standard requires that the evidence offer no logical explanation or conclusion other than that the defendant committed the crime. This highest of standards requires—after consideration of all facts—only one logical conclusion: that the defendant is indeed guilty. Courts sometimes describe this level of confidence in a verdict as a moral certainty.

Standard of proof does not increase with the severity of the incident/charges



Types of Evidence

Physical Evidence:

- Objects or things used to prove an incident occurred.

Documentary Evidence:

- Any evidence that is written down, on paper or electronically.

Demonstrative Evidence:

- Evidence that represents or preserves a piece of physical evidence.

Verbal Evidence:

- Oral report of memories of a individual's experiences or observations related to the time and place of the incident under investigation.
- Relevant hearsay evidence is included in an investigation report but cannot be considered unless submitted to cross-examination.

Evidence in a Title IX Sex Harassment investigation can be 'direct' or 'circumstantial'

Direct Evidence: Doesn't require drawing a conclusion/inference to show that something happened.

- *"I was in the bedroom and saw Nolan push Kelly into the corner and kiss Kelly. I heard Kelly say, "Stop," but Nolan just laughed. Then I saw Kelly smack Nolan and run out of the room crying."*
 - What the witness reports personally seeing and hearing is direct evidence that Nolan assaulted Kelly and was met with Kelly's self-defense.

Circumstantial Evidence: Requires drawing a conclusion/inference based the circumstances to show something happened.

- *"I was in the living room when I saw Nolan and Kelly go in the bedroom. A few minutes later, Kelly ran out of the bedroom crying. Then Nolan came out with a big red mark on their cheek."*
 - The witness didn't see/hear what happened in the bedroom, but we **could** conclude/infer from what the witness saw/heard in the living room that Nolan assaulted Kelly in the bedroom, and was struck in self defense.

Weighing the evidence

The Regs require the decision-maker to **objectively evaluate only relevant evidence** during the hearing and when reaching the determination regarding responsibility.

Considerations:

- Is it corroborated?
- Is there a reason the source might not be reliable?
- Is it logical given other established facts?

What is Relevant?

“The final regulations do not define relevance, and the ordinary meaning of the word should be understood and applied.”

Generally, 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 proving or disproving the allegations.

Exceptions to Relevance

Must consider all relevant evidence EXCEPT:

1. Complainant's sexual behavior (with two narrow exceptions)
2. Information protected by a legal privilege
3. Party's treatment records (absent voluntary written waiver by the party)
4. Statements that are not subjected to cross-examination

When is sexual behavior relevant?

Cross-examination must **EXCLUDE** evidence of the Complainant's "sexual behavior or predisposition" **UNLESS**

- its use is to prove that someone other than the Respondent committed the conduct, OR
- it concerns specific incidents of the complainant's sexual behavior with respect to the respondent and is offered to prove consent

Rape shield protections do not apply to Respondents

- "evidence of a pattern of inappropriate behavior by an alleged harasser must be judged for relevance as any other evidence must be."

Determining Relevance:

1. Review the evidence being offered.
2. Consider the allegations of the Title IX complaint.
3. Ask yourself whether the evidence being offered has the potential to prove or disprove an incident under investigation.

Determination of relevance requires you to apply your training, logic, experience, education, and expertise to your decision-making process.

Determining Relevance: Scenario A

A Complainant has reported that a classmate has sent them unwanted sexually explicit emails and text messages despite requests from the Complainant that the Respondent stop.

The Complainant presents evidence of the text messages and emails as part of their Title IX complaint.

Initial Relevancy Analysis of Scenario A

Step 1 (review the evidence):

Emails and text messages between the Respondent to the Complainant.

Step 2 (consider the Title IX complaint):

The Complainant reported that the Respondent was sending unwanted sexually explicit emails and text messages.

Step 3 (assess whether evidence potentially proves/disproves an incident of the Title IX Complaint):

Yes –the emails and text messages (which are documentary evidence) could either prove or disprove that the Respondent was sending sexually explicit communications to the Complainant, which are the key allegations of the complaint.

Determining Relevance: Scenario B

A Complainant has reported that a teaching assistant in one of their courses said that the teaching assistant offered an "A" in the course in exchange for the Complainant providing sexual favors throughout the semester.

In support of the complaint, the Complainant has submitted racially insensitive social media posts that the Respondent has shared on various social media accounts. The posts do not mention/relate to the Complainant but Complainant claims the posts show the Respondent has racist viewpoints and is the "the type" of person that would engage in the behavior reported in the Title IX complaint.

Initial Relevancy Analysis of Scenario B

Step 1 (review the evidence):

Racially insensitive social media posts purportedly shared by the Respondent.

Step 2 (consider the Title IX complaint):

The Complainant reported that the Respondent offered an "A" in a course in exchange for sexual favors.

Step 3 (assess whether the evidence potentially proves/disproves an incident of the Title IX complaint):

No –the social media posts have no bearing on the allegations of the complaint and would not prove (or disprove) whether the TA offered the Complainant an "A" in exchange for sexual favors throughout the semester.

That the TA may have shared racially insensitive material in the past does not make it more (or less likely) that the individual would have engaged in sexually harassing behavior.

The posts should therefore not be considered as part of the determination of the Title IX sexual harassment complaint.

IMPARTIAL

Hearing Logistics

TECHNOLOGY

Technology

- As we comply with health directives from the State of Ohio and the CDC, all meetings related to Title IX and other sexual misconduct will take place remotely via video or audio call.
- Hearings in these matters will take place via video using one of three platforms used by Miami University:
 - Google Meet
 - Zoom
 - WebEx
- Hearing officers will receive a calendar invitation for the hearing that will include a link to the video conference.

Technology

- The link to the video conference will take you directly to the hearing and will use the appropriate platform (Google Meet, Zoom, or WebEx).
- The only functions that the hearing board members will need to use are:
 - Muting your own video
 - Muting your own audio
- The OCS representative will be responsible for all other aspects of technology for the hearing.

Role of the Process Advisor

- Lawyer from the General Counsel's Office who is present during the hearing but does not play an active role in the hearing.
- Available to serve as a general resource to the Board during the hearing (process questions, challenging relevance questions, etc).
- Reviews decision letter to ensure legal requirements are met.

Order of Hearing Procedures

- Introductory statement by the Board chair
- Respondent's indication of responsibility
- Opening remarks by complainant and respondent
- Witness testimony and questions by the Board and parties' advisors
- Complainant questioned by the Board and the respondent's advisor
- Respondent questioned by the Board and the complainant's advisor
- Closing remarks by complainant and respondent
- Hearing concluded by the Board chair

Hearing logistics

Recording



- All hearings are audio recorded and are part of the case file.
- Can be subpoenaed and/or requested by the parties.

Parties Involved



- 1 advisor for each student
- Community Standards rep
- Process advisor

Support



- Breaks
- Questions
- Resources

Questioning & Cross-examination

- The Board asks questions first. Board questions do not require a relevance determination (still must be relevant questions).
- Cross-examination must be conducted directly, orally, and in real time by the **party's advisor** and never by a party personally.
- The Board Chair makes a determination of relevance for every question posed by an Advisor.
 - Parties/witnesses may not answer until a determination of relevance has been made.
- Parties, Advisors, and all others present at the hearing, are held to the rules of decorum at all times.

No cross-examination

- If a party or witness does not submit to cross-examination at the hearing, the Board must not rely on any statement of that party or witness in reaching a determination regarding responsibility.
 - Does not attend hearing
 - Does not answer any questions
 - Does not answer select questions
- Board cannot draw an inference regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

Rules of Decorum

- Follow directives given by the Board and/or process advisor with regard to relevance of questions, order of procedures, and any disruptive behavior.
- Treat other participants with courtesy and respect.
- Ensure that questioning is relevant, respectful, and not abusive.
- Participants will refrain from yelling, cursing, or otherwise disrupting the disciplinary process.
- Address all participants using their preferred gender pronouns and name.

Factors for assessing credibility

Demeanor

Logic/
Consistency

Corroborating
information

Circumstantial
information

Expertise

Bias

**Information in this section comes from the NCHERM Judicial Training Videoseminar - Training Manual

Purpose of asking questions

- Discern between relevant and irrelevant information for deliberation discussion and decision making
- Identify core issues informing decisions and potential sanctions
- Help give students a voice – they don't also know what to say, so you need to help bring that out
- Get a better picture of who the student is and how best to educate them when necessary

Purpose of asking questions

- Establish a timeline of events – what happened and when
- Get details
- Address inconsistencies
- Determine relevance

Asking good questions

- Read all the information related to the case prior to the hearing
- Prepare questions in advance of the hearing
 - Distinguish between what you WANT to know vs. what you NEED to know
 - Be careful not to ask leading questions; remain fact-based
- Be sure you aren't asking biased or blaming questions
- **Remember:** Your decisions will be based on information, not assumptions

Open vs. close ended

Open Ended

Questions that result in less- finite answers and can also provide an individual's perspectives/opinions on a matter

- Walk me through the events of that night
- Can you tell me about the situation?
- What was your plan for the night?
- Help me understand how you came to be in possession the marijuana.
- Why do you think the officer may have arrested you?
- Why do you think it was reasonable to punch the person?

Close Ended

Questions that result in short, finite answers

- Yes/no
- How many beers did you drink?
- Where were you when that happened?
- What time did that occur?
- Who was there?

Communication basics

Pay attention and
avoid distractions

Eye contact

Posture- sit up and
look engaged

Reflective listening

More nuanced
than active
listening

Adding meaning
through
reconstructing the
idea that has been
presented

Inconsistencies

Multiple parties
telling you roughly
the same details-
consistent and
believable

Different
narratives tend to
disrupt belief

Some
inconsistency is
expected- others
become
problematic

Have to determine what is more likely than
not in these cases.

Hearing phases

Finding phase



- Fact-based
- Preponderance of the Information
- Find responsible or not responsible for each charge
- Majority vote

Sanctioning phase



- Access to prior conduct history if responsible
- Sanctions up to suspension and dismissal



The finding

What goes on the scale?

- Relevant evidence received from credible sources

What does not go on the scale?

- A claim of ignorance about policies
- The student's motivation or intent
- A student choosing not to answer questions in a hearing
- Assumptions that are based on information that was not presented or available
- Your "gut feeling"



Purpose of sanctioning

Maintain
standards and
expectations

Modify future
behavior

Connect student to
something positive

Community
expectations

Identify risky
behavior

Protect the
community

Considering Appeals

- All appeals for Title IX and other Sexual Misconduct cases are heard by Dr. Jayne Brownell, VP for Student Life
- Grounds for appeal:
 - A conflict of interest or bias exists on the part of the investigator, Board member(s), or Title IX coordinator;
 - New information exists that was not reasonably available at the time the determination was made that is determined to be substantial enough to have changed the outcome of the hearing;
 - A procedural irregularity in the hearing of the case occurred that is found to be substantial enough to have changed the outcome of the hearing, including failure to objectively evaluate all relevant evidence or error(s) related to determination of relevance; or
 - Inappropriate sanction.

Case Studies

Case study: Consent/Coercion

- Sarah Student and Jane Doe are in a romantic relationship. One night Sarah tells Jane that she “just wants to be friends.” Jane urges that they have sex “one last time.” If they have sex, has Sarah been coerced? What if, instead, Jane says that she’ll “out” Sarah unless they spend one last night together?
- Sam and Sarah return to Sam’s dorm room after a night out. After some heavy petting, they fall asleep in Sam’s bed in their underwear. A few hours later, Sam awakes and begins kissing Sarah. Sarah kisses back. Sam then removes Sarah’s clothes and has sexual intercourse with Sarah. Sarah did not assist Sam in removing her clothes, but she also does not resist him or verbalize consent or objection. How would you evaluate consent?

Case study discussion

1

What are the unknown pieces of information that need to be gathered?
What questions need to be asked?

2

What are the relevant questions I have?

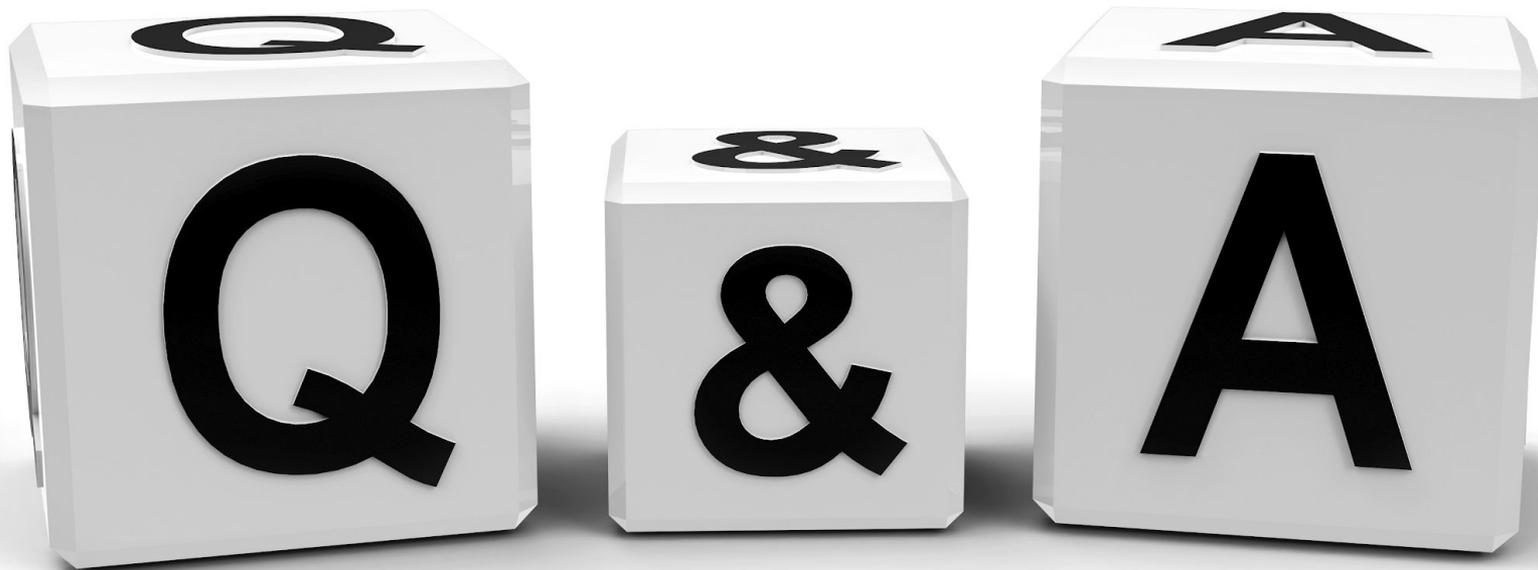
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Is this fair, equitable, and educational?



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STUDENT LIFE



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