LIVE @ DISTANCE BASIC COMPLIANCE TRAINING, PART 4
Day 4 Overview

- Hearing Determination
- Appeals
- Decision Implementation

Review, tools, and legal requirements.
*Determination letters.

Review and legal requirements.

Homework alert!
State Module Assignment
CASE PROCESS DECONSTRUCTED

1. Incident Reported
2. Student Conduct Process Initiated
3. Pre-Hearing Prep Investigation
4. Hearing
5. Appeal Process
6. Decision Implementation
Option #1: Text Voting

To: 37607

SUNYSCI

Option #2: Web Voting

pollev.com/SUNYSCI
It is important to have an understanding of the impact of trauma when conducting an investigation into sexual or related misconduct because:

The impact of trauma may explain aspects of the disclosure that are seemingly inconsistent.

Evidence of a traumatic response is proof that the reporting party was sexually assaulted.
What is NOT the goal of the Investigative Report?

- summarize relevant evidence related to the allegations
- indicate witnesses interviewed
- describe inconsistencies identified within testimony
- draw credibility judgments about witnesses
What are some considerations in preparing for a virtual hearing?
Which of these individuals CANNOT serve on a hearing board?

- An athletic team coach
- A librarian from your University library
- A member of the appeal panel for that specific case
- A residential life staff member

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app
ROLES IN THE PROCESS

**Student Conduct Administrator**

Assists the student through the resolution of the process.

**Hearing Board Member**

- Decision maker
- May also serve as the Hearing Chair.

**Appeal Panel Member**

- Reviews appeals and makes a determination utilizing the appropriate appeal grounds.

**Other Offices/Units**

- Staff that assist with supportive measures and decision implementation.
CASE PROCESS DECONSTRUCTED
POST HEARING OVERVIEW (4,5,6)

Deliberation → Sanction Determination (if applicable) and Remedies → Rationale Writing → Appeal → Decision Implementation → Ongoing Support
Deliberation
- Roles
  - The Conduct Administrator
  - Decision maker(s)
  - Note taker
  - Rationale writer
- Consideration
  - Checking bias
  - Clear expectations as to who is a voting member

Determination & Remedy
- Not-Responsible
  - Revisiting restrictions
- Responsible
  - Sanction Guidelines
  - Prior history
  - Re-admission components
- Consideration
  - Complainant resources
  - Respondent resources
  - Consistency
  - Non-discriminatory

Rationale
Evidence-Based Decision Making

- Must it be excluded?
- If no, is it relevant?
  - Plain and ordinary meaning. Does it tend to make a material fact more or less likely to be true?
- If yes, is it authentic?
- If yes, is it credible and reliable?
  - Why (or why not) is it worthy of belief?
- If yes, does the evidence have weight?
  - Consider: Specialized evidence types
Credibility Determinations: "Objective" evaluation

- Cannot be based on the party's status
- Cannot apply "predictive behaviors"
- But you may consider:
  - The potential conflict of interest where advisor is also witness. Id., 30299.
  - Possible motive to fabricate testimony
  - Possible coaching
Credibility Determinations: "Objective" evaluation

- Generally more objective
  - Consistency and specificity of testimony
  - Corroboration of testimony
  - Contradictory testimony or evidence by others
- Especially for experts: character, background, experience, and training
- Caution: more subjective
  - Demeanor and body language (permissible under Final Rules @ p. 30321)
  - Inherent plausibility ("It just makes sense")
  - Evasiveness
  - Recall
<table>
<thead>
<tr>
<th>Direct Evidence:</th>
<th>Corroborating Evidence:</th>
<th>Circumstantial Evidence:</th>
</tr>
</thead>
<tbody>
<tr>
<td>First-hand observations and evidence of the incident or its surrounding circumstances are direct evidence. This evidence is often given considerable weight at a hearing. This includes:</td>
<td>Statements or tangible materials that tend to confirm direct evidence regarding the incident may serve as corroborating evidence. This may include:</td>
<td>Statements or tangible materials that rely on an inference to connect it to a conclusion of fact. The weight that the decision-maker gives to circumstantial evidence will vary greatly depending on the surrounding evidence.</td>
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<td>- Direct statements from the parties. For example:</td>
<td>- Video evidence</td>
<td>- Example: Investigators may obtain photographs of the scene of the alleged sexual assault which show several empty vodka bottles and overturned Solo cups. The presence of these items may be suggestive, though not determinative, of the parties’ level of intoxication.</td>
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<td></td>
<td>- Text message threads</td>
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<td></td>
<td>- Security Footage</td>
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</tr>
<tr>
<td></td>
<td>- Swipe Card Records</td>
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<tr>
<td></td>
<td>- Business Records</td>
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<td></td>
<td>- Medical Records</td>
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<tr>
<td>- A witness who provides testimony that they walked into a room at the party and observed the respondent engaging in sexual activity with the complainant, who was unresponsive, not moving, and had their eyes closed.</td>
<td></td>
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</tr>
<tr>
<td>- A witness who provides testimony that they did three shots of vodka with the parties.</td>
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</tr>
</tbody>
</table>
Identify the **allegations** potentially constituting sexual harassment;

Describe the **procedural steps** taken;

Identify **findings of fact** supporting the determination;

Identify which **section of the Code of Conduct** respondent has/has not violated.

For **each allegation**, provide statement of and rationale for:
- the result, including a determination regarding responsibility;
- any disciplinary sanctions imposed on the respondent; and
- whether remedies designed to restore or preserve equal access to recipient’s education program or activity will be provided to complainant; and

Describe the recipient’s **appeal procedures**
DETERMINATION REGARDING RESPONSIBILITY

Case #: 1B8K62
Date: 05/25/2020

SENT VIA EMAIL TO LSVANO@SCIUNIV.EDU

Dear Lis Svano,

This letter is to inform you of the decision of the Administrative Hearing Panel regarding your hearing held on May 22, 2020 at 2:00pm. At the hearing, you entered a claim of “Not Responsible.”

After carefully reviewing all the information presented at the hearing, you have been found Responsible for Sexual Assault.

- Sexual Assault/ Section B9: Any penetration of the sex organs or anus of another person without affirmative consent. This includes penetration, however slight, of the sex organs or anus of another person by an object or any part of the body. This also includes knowingly touching or fondling a person’s genitals, breasts, or anus, or knowingly touching a person with one’s own genitals without affirmative consent. This action occurred on March 15, 2020 around 5:00am against Astrid Havsten (hereafter referred to as the Reporting Individual).

A description of our rationale for this decision and associated sanctions, as well as the procedural steps followed, are indicated below.

- Finding of Not Responsible or Responsible
- Policy Jurisdiction and Formal Complaint Summary
- Investigatory Procedures
- Inspection and Review of Evidence and Investigative Report
- Delays and Adjournments
- Live Hearing Procedures Summary
- Findings and Rationale
- Sanctions and Remedies
- Appeal Rights
**FINDINGS AND RATIONALE**

Charge and Allegation: Review of evidence relied upon to make a determination for a specific charge and allegation.

Describe Standard of Evidence: Finding for each specific charge and allegation.

Sanction(s): (if Responsible, consider readmission components)
<table>
<thead>
<tr>
<th>Area</th>
<th>Considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Student Centered</strong></td>
<td>Create a <strong>summary letter</strong> that highlights the charge, allegations, finding (responsible or not responsible), sanction summary, appeal rights, records retention and directs the student to see attached rationale</td>
</tr>
<tr>
<td><strong>Capacity</strong></td>
<td>Consider board member or staff member schedules, set clear deadlines, and meet time frames set by policy</td>
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<tr>
<td><strong>Skillsets</strong></td>
<td>Attention to detail, analytical and strong writing skills (proofreading)</td>
</tr>
<tr>
<td><strong>Style</strong></td>
<td>Findings section may vary depending on the type of case; create an outline with your analysis mapped-out before drafting</td>
</tr>
<tr>
<td><strong>Technology and Privacy</strong></td>
<td>Plan in place on how to share the working document and who has access throughout the writing stages. Use student names, witness names once in the introduction of the document and then refer to them as (Complainant, Respondent, Witness 1)</td>
</tr>
<tr>
<td><strong>Training</strong></td>
<td>Senior board members may be better equipped to write rationales</td>
</tr>
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</table>
• Simultaneous notification to the parties, their advisors, Title IX Office or Investigator. Consideration for the time/day.

• Supportive measures or interim restrictions remain in place through appeal

• Either party can appeal (same timeline)

• Preparation for any reactions during this time period
Case Process Deconstructed
Post Hearing Overview (4,5,6)
BREAK
Title IX Final Rules mandate both parties have access to an appeal:

- For (1) dismissal of formal complaint and (2) determination regarding responsibility
- On three appeal grounds:
  - **Procedural irregularity** that affected the outcome of the matter (i.e. failure to follow institution’s own procedures);
  - **New evidence** that was not reasonably available at the time the determination or dismissal was made, that could affect the outcome of the matter;
  - TIX Coordinator, investigator, or decision-maker had a **conflict of interest or bias** for/against an individual party or complainants or respondents in general, that affected the outcome of the matter.
5. APPEAL PROCESS

CASE PROCESS DECONSTRUCTED

Confirm Criteria: Appeal Grounds

Both parties may submit an appeal

Coordination of appeal review panel

Appeal review panel access to documents
  - Hearing Outcome Letter
  - Investigation Report
  - Appeal(s)

Appeal review and determination process

Final outcome letter to all parties

Key Players:

- TIXC
- Conduct Staff
- UPD
- Hall Staff
- Hearing Board
- Appeals Board
- Registrar
CASE PROCESS DECONSTRUCTED

6. DECISION IMPLEMENTATION

Key Players:
- TIXC
- Conduct Staff
- UPD
- Hall Staff
- Hearing Board
- Appeals Board
- Registrar

Appeal Response
- Who is sending this?
- Who is cc’d?
- Managing reactions during this time

Final Outcome Notification to Students
- Student Conduct Administrator sends to the parties and their advisors
- CC: Title IX office or Investigator

Notification to other Offices/Units
- VPSA
- Registrar (Transcript)
- Financial Aid
- Res Life
- Public Safety/UPD
- ITS
- Hold placed on account

Follow-Up Services
- Coordinating moves
- Offering resources
- Lifting restrictions

Record Keeping
- Records retention and disposition policy (7 Years for Title IX)
- Updates to database
- Updates to file
- Correspondence included
- Hearing recording
- Full file maintenance

Record Request or Readmission
- Record Request
- What information will you share?
- Readmission
- Ensure this is detailed in outcome letter
- Process in place
- Notification to TIX office for measures assessment
WRAPPING UP
Thank you so much for joining us!

Please enter the code word in the link provided.