



**HUSCH BLACKWELL**

# **Title IX**

# **Hearings Training**

Indiana University Participants in Sexual Harassment  
Policy Process – Hearing Panel Members  
Fall 2020: Day 2

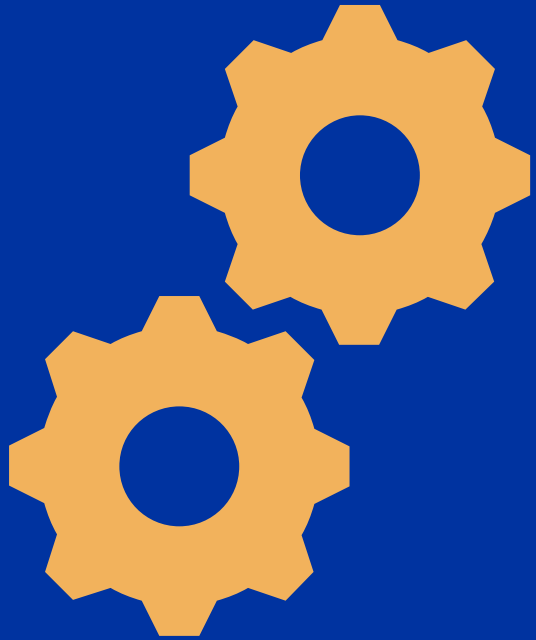


# Housekeeping

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- **Recording is not permitted**
- Slides will be provided by email after the training concludes
- Change Zoom name to match registration
- Please list your institution (if desired)
- Raise hand or use chat function to ask questions
- Other breaks—take individually as needed

## Group Scenarios



# Breakout Groups

- Scenarios discussed in Breakout Groups
- Introduce yourselves and select a spokesperson
- Scenario and questions for each Group Scenario will be posted in the Chat Box
- Presenters will randomly call on Breakout Groups to provide your responses – be ready!
- Cameras on for breakouts



# Goals

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- Refresh on Title IX
- Understand how Title IX rules impact hearings
- Learn how to prepare for and conduct a hearing
- Provide effective cross-examination
- Identify and avoid common pitfalls and problems
- Apply mitigating and aggravating factors in sanctioning decision
- Understand method for making-decisions and preparing decision

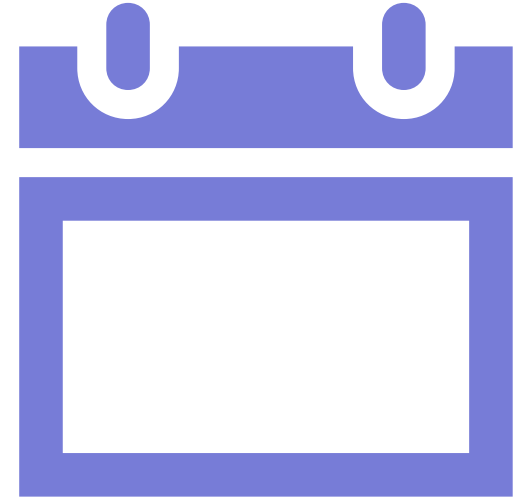




# Agenda



- Module 1: Key Legal Principles & Considerations
- Module 2: Applicable Policy Requirements
- Module 3: Complaints
- Module 4: Bias, Stereotypes & Conflicts of Interest
- Module 5: Trauma
- Module 6: Hearings, Cross Examination & Questioning
- Module 7: Decision-Making & Evidentiary Concepts
- Module 8: Sanctioning
- Module 9: Decision-Making and Writing



# Trauma



Module 5



# Balance

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- “Trauma-informed investigation techniques that bleed over into ... bias detract from the fundamental tenets of fairness and impartiality that are [key to] disciplinary proceedings.”
  - Candace Jackson, Acting Asst. Secretary of Ed (2017)



# Trauma might affect a party

- Not in every case
- Not just one party
- Never assume anyone participating in a hearing has suffered any trauma



# Possible trauma impact

People who have suffered trauma may, but may not, experience any or a mix of the following:

Flashbacks

Delayed recollection

Inability to concentrate

Non-linear recollection

Self-blame



# Trauma & credibility

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- Don't assume information is not credible due to the manner delivered
- Understand memory may be clarified in time
- Address inconsistencies
- Ascertain fair and impartial assessment of the facts and give appropriate weight to party and witness statements

# What is the definition of trauma?



**Merriam-Webster**: a very difficult or unpleasant experience that causes someone to have mental or emotional problems usually for a long time



**English Oxford**: Deeply distressing or disturbing experience



**Wikipedia**: is a type of damage to the psyche that occurs as a result of a severely distressing event. Trauma is often the result of an overwhelming amount of stress that exceeds one's ability to cope, or integrate the emotions involved with that experience



## Physical reaction

- Brain—Trauma triggers chemical reaction which impacts
  - Perception
  - Ability to React
  - Memory
- Each individual reacts differently



# Addressing trauma

- Avoid judgment, impatience, disrespect, misuse of power
- Emphasize
  - Safety/comfort
  - Choices
  - Support for person
    - Personal support
    - Available services
    - Remain objective on facts
  - Trustworthiness/transparency





# Trauma-informed questioning

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- Provide information to the party
- Acknowledge the difficult situation
- Provide as many options as possible
- For hearing panel, avoid requiring recitation of information already provided if possible
- The process
  - Your role
  - Policy
  - Communication



# Awareness of respondent trauma

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- Own experience
- Around event
- Around accusations
- Thoughts in the respondent's mind:
  - Will this be a criminal investigation?
  - Could I go to jail?
  - Could I get kicked out of school?
  - Should I have a lawyer?
  - Should I tell my parents?
  - You can't answer these questions but must give time and options
- Institution should always offer interim measures and counseling

# Hearings, Cross Examination & Questioning

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Module 6





# What happens before a hearing?

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- Notice of allegations
- Investigation & report
- Notice of hearing
- Name decision maker(s)
- Share hearing procedures
- \*Optional pre-hearing meeting to
- \*May allow raising/ consideration of evidentiary/  
relevance arguments



# What is the purpose of the hearing?

- To hear testimony and receive non-testimonial evidence so that
- The decision-maker can determine facts under a standard of evidence
- Apply those facts to the policy, and
- Issue a written determination resolving the formal complaint and imposing discipline/remedial measures as necessary



# Who runs the hearing?

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- Regulation requires hearing to be administered by “decision-maker(s)”
- Means institution can use a single hearing officer or a hearing panel (presumably, with a chairperson)





## Who are the “decision makers”

- ***Student cases:*** A three-member panel, which includes a hearing officer
- ***Employee cases:*** “Decisional Official,” who will be accompanied by a hearing officer to manage the hearing



# Can we set standards of behavior for hearings?

Yes, provided they are applied equally to participants and do not violate explicit guarantees from the Title IX regulation.

# Example #1 (permissible)



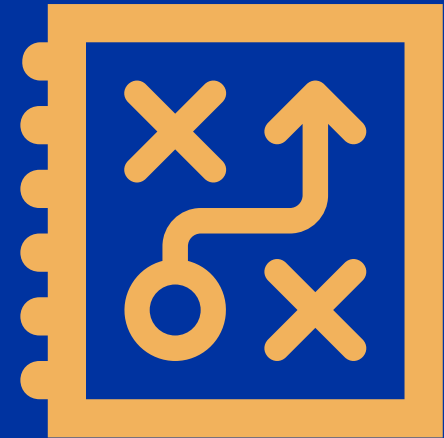
Institution's hearing procedures require all participants to maintain decorum, remain at their respective assigned table at all times, and direct all communications to the hearing officer with the exception of questions posed to the other party and witnesses by each party's respective advisor.



# Example #1 (impermissible)

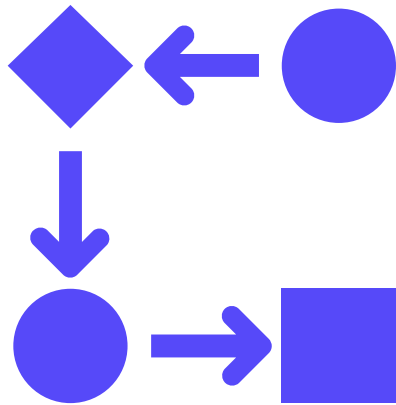
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Institution's policy prohibits a party or advisor from "doing anything that would make another party uncomfortable or suffer anxiety, including asking questions that may cause a party to relive an experience in a traumatizing way."





# What are the logistics of a hearing?



- Hearing must be recorded (audio or video) or transcribed
- Hearing must have “live”– (i.e., contemporaneous participation by parties and their advisors)
- Hearing can be held in a single room or with the parties separated in different rooms
- Hearing can be held virtually using suitable software





# Who attends a hearing?

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- The decision-maker(s)
- Other necessary institutional personnel or institutional advisors (i.e., attorneys)
- The parties
- Each party's advisor
- Witnesses as they are called to testify
- Other support persons for parties, if permitted by institution



## Do we provide a party's advisor?

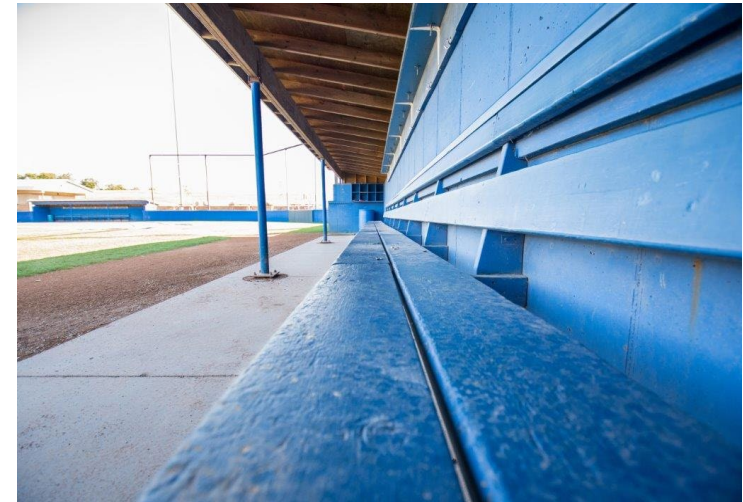
- Default rule is that a party selects and brings an advisor of their choice to the hearing
- Advisor can be, but does not have to be, an attorney
- If a party does not have an advisor, institution must supply one for the purpose of questioning the other party and witnesses on behalf of the student in question



# What is the Role of Adjudicators?

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- Conduct hearing (if applicable)
- Make a finding
- Determine sanction
- Explain decision
- Ensure clear record



# How does the hearing actually work?

- Title IX regulation is largely silent on specific elements
- Required elements include:

Decision-maker(s) must independently evaluate questions for relevance and resolve relevancy objections

Party's advisors must be allowed to conduct live questioning of other party and witnesses

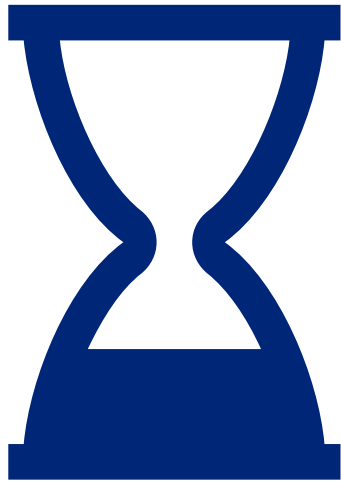
Party or witness who refuses to submit to live questioning from other party's advisor must have their testimony excluded

Questioning of sexual history generally not permitted



# How long does a hearing last?

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- Decision-maker(s) have the ability to set reasonable time limits on the hearing and its constituent parts
- Parties must have a reasonable opportunity to conduct questioning/cross-examination, but do not have the right to question/cross-examine witnesses as long as they want
- Decision-maker(s) should set an overall length to the hearing in advance and keep parties on schedule

# Structural requirements for hearings (*students*)

- A three-person hearing panel will be assembled to make a determination of Respondent's responsibility as to the specific charge(s) set forth in the Final Investigation Report.
- Hearing panel members **will be drawn from the pool of faculty, staff, graduate students**, and/or hearing officers retained by the university for purposes of adjudicating these hearings.
- At a minimum, at least one panel member **shall be a student affairs administrator**.
- The sexual misconduct hearing is **recorded**.
- Deliberations by the panel, following the hearing, are not recorded.

# Participation of Advisors

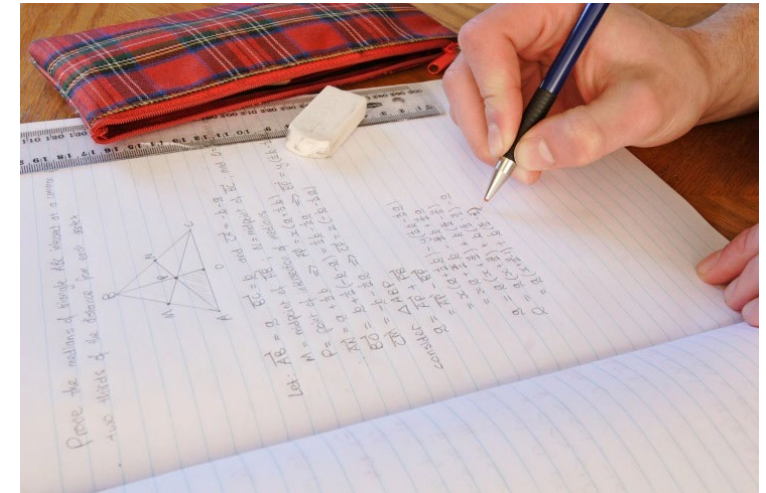
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- No one other than the hearing panel members, and the Hearing Advisor(s) may pose questions during the hearing.
- Parties may not directly question each other, but may provide questions to their Hearing Advisor to be asked of the other party on their behalf.
- If Complainant or Respondent do not appear at the hearing, a Hearing Advisor may still ask questions of other parties on their behalf.



# Pre-Hearing Homework

- Know who's coming (parties, witnesses, support persons)
- Consider potential conflicts of interest
- Review relevant policies
- Review investigative report
- Review hearing procedures
- Review any responses to report by parties
- Prepare "must ask" questions
- Anticipate questions and issues







# Consider Other Potential Policies in Play

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- Student Code of Conduct
- Staff Handbook
- Faculty Handbook
- Specific policies related to inappropriate use of computers, hazing, etc.



# Lesson for Panel Members: *Doe v. Purdue University, et al. (2019)*

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- Denied MTD on due process and Title IX claims
- Student suspended with conditions; later expelled
- Student claimed due process was inadequate, e.g.:
  - Not provided with investigative report
  - No opportunity for cross-examination
  - Complainant & witnesses found credible by committee, but not interviewed in person by fact-finder
- Court found material issues of fact and denied MTD, noting:
  - ***“... two of the three panel members candidly admitted that they had not read the investigative report ...”***



# Typical Hearing Structure

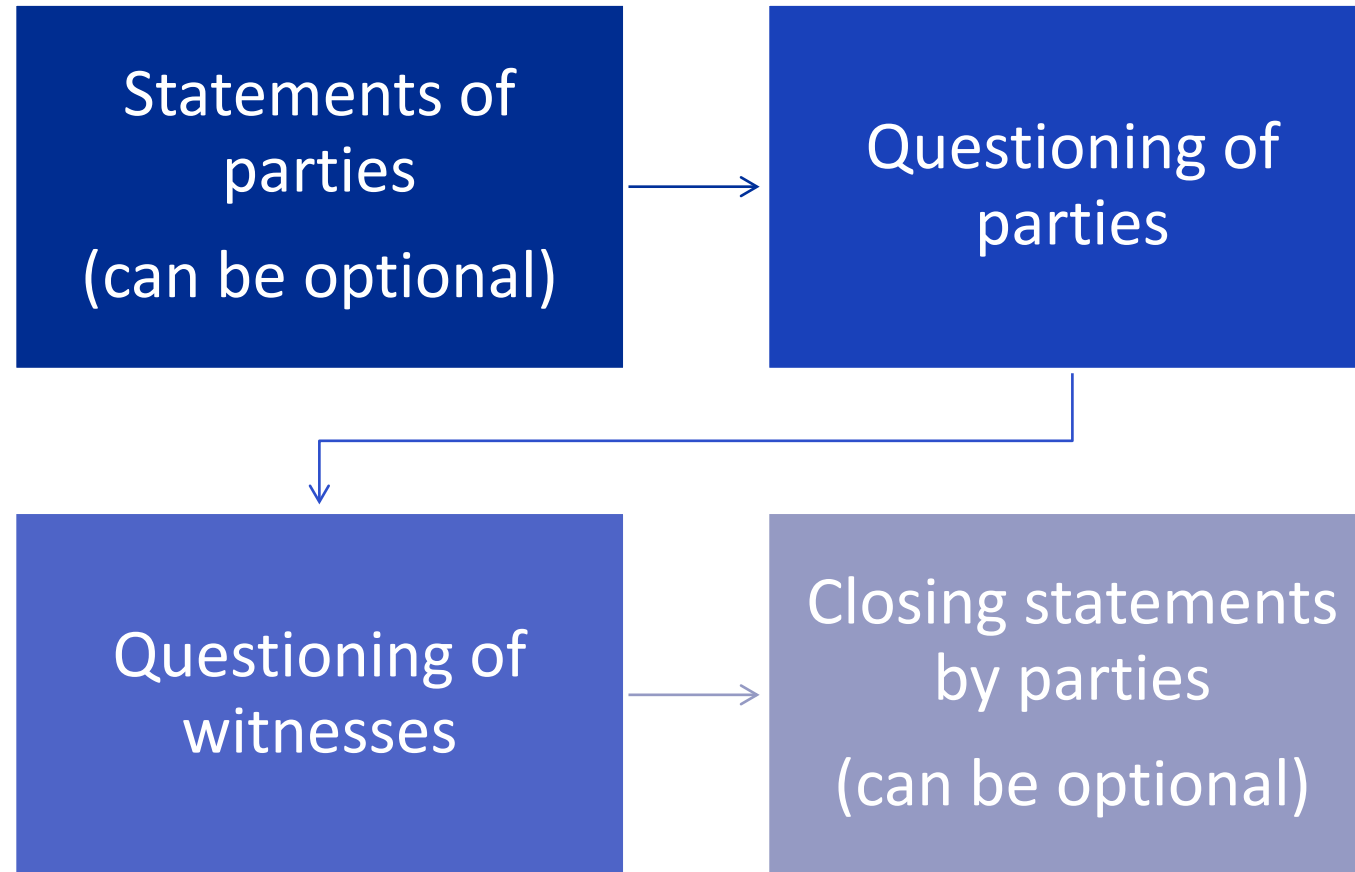
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- Chair/leader provides opening remarks
- Consider investigation report/summary
- Parties have opportunity to respond to investigation report
- Cross-examination of parties
- Cross-examination of other witnesses
- Questions by panel (anytime)
- Deliberation
- Written determination



# What is a potential sequence?

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# Starting the Hearing: Setting the Tone

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- Affirm notice
- Discuss purpose of hearing/goals
- Discuss role of hearing panel/ administrator
- Explain ground rules
- Set expectations of what hearing is for/not for
- Address standard of evidence
- Welcome questions
- Stress telling the truth
- Take breaks as needed



# Common Ground Rules

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- Allowances (or not) on video/ audio recording
- Expectation of truthfulness
- Role of advisor/support person(s)
- Reasonable time limits
- Explain that if presentation goes beyond scope/time limits, a party may be interrupted



# Separating the Parties

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- Video/ audio conferencing
- Separate rooms
- Screens





# Unavailable Witnesses

- For Title IX proceedings, if a witness previously interviewed does not testify at hearing cannot rely on that testimony
  - No finding (unless other evidence supports finding)
  - Dismissed, or
  - May transfer to other policy
    - All information gathered during investigation and hearing can be considered
    - Includes statements from witnesses who did not testify at hearing





# Be Ready to Field Curveballs

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- When curve balls arise during a hearing, ADDRESS THEM.
  - Late/new evidence
  - Conflicts of interest
  - Heightened emotions
  - Potential trauma-impact





# The Art of Fielding

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*Be ready to respond to curveballs with questions (or recess to regroup)*



Late/new evidence → Why wasn't this presented during the investigation?



Conflicts of interest → Why are these being raised now? What changed?



Heightened emotions → Take a break so hearing can proceed productively



Potential trauma-impact →

Take breaks, rely on support persons, and give opportunity to party potentially impacted to participate in the manner they are most comfortable



# And Fastballs!

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- **Character witnesses/ statements**
  - Character evidence does not often hold much weight as to whether a policy violation occurred
  - May or may not be allowable, based on policy
  - If allowed, best practice is to impose reasonable limits, and
  - Explain that these are generally considered only as part of sanctioning





# More Curveballs: Advisors

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- Need to allow advisor to conduct cross-examination, but can enforce reasonable expectations of professionalism
- Need to establish appropriate boundaries with advisors
- Role should be set by policy
- Hearing panel serves as umpire: 3 strikes your out rule
- If ejected from game, generally allow for party to find new support person/advisor





# Cross-examination

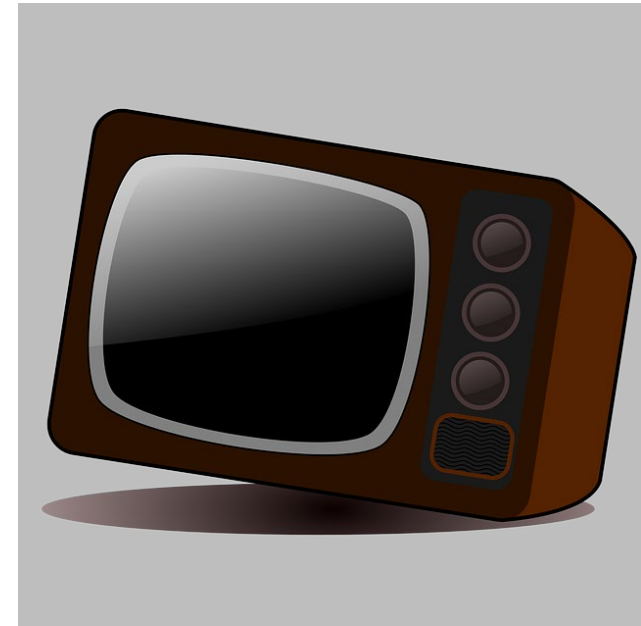
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# Facilitating Effective Cross Examination

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- Different than live cross examination in court (or on TV)!
- The goal is to ensure that each party has an opportunity to hear what the other party and witnesses are offering
- Does not automatically make the process an adversarial one





# Who determines relevance?

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- Decision-maker(s) must **screen** questions for relevance and resolve relevance objections
- Decision-maker(s) must **explain** any decision to exclude a question as not-relevant



# What is relevance?

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Evidence is relevant if:

- It has a 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

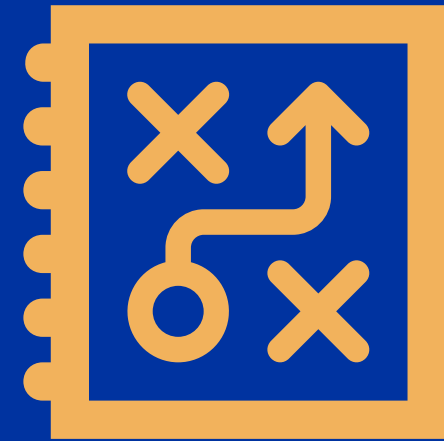




# Example #1 (relevant)

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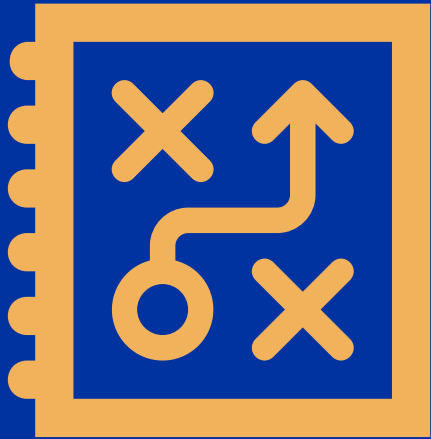
Nursing student has accused Physical Therapy student of sexual assault by having sex with Nursing student while Nursing student was incapacitated by alcohol after a happy hour. Advisor for P.T. student asks Nursing student: “Did you send any text messages or make any phone calls during the happy hour?”





## Example #2 (relevant)

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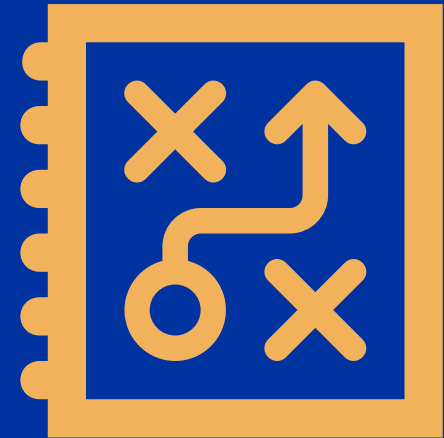


Coach is accused of sexually propositioning Player in exchange for more playing time. Advisor for Player asks the Coach: “Didn’t you tell one of the trainers that Player is ‘extremely attractive?’”



# Example #1 (not relevant)

Complainant alleges Significant Other engaged in dating violence by kicking complainant during an argument. Advisor for Significant Other asks complainant: “Isn’t it true that you are only dating Significant Other because of the Other family’s money?”





## Example #2 (not relevant)

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Journalism student has accused Professor of sexual harassment. Advisor for Professor asks Journalist: “Were you convicted for driving under the influence when you were a sophomore in high school?”



# Is sexual history considered?

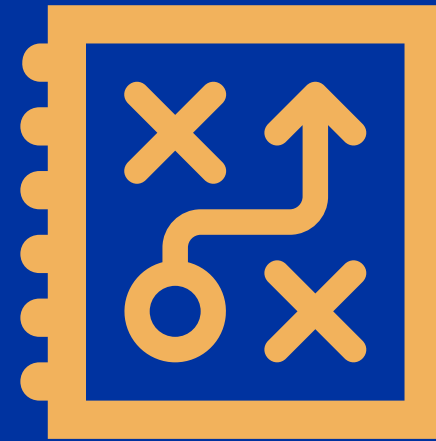
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- Generally, no – Evidence of a complainant’s prior sexual behavior is relevant only if:
  - Offered to prove that someone other than the respondent committed the conduct, or
  - If evidence of specific incidents of the complainant’s prior sexual behavior with the respondent are offered to prove consent
- If determined relevant, explain basis for allowing questions



## Example #2 (impermissible)

—  
Law student has accused a faculty member of sexual harassment. Advisor for the faculty member asks law student: “How many men did you sleep with in the month before you claimed the faculty member sexually harassed you?”



# Example #2 (permissible)

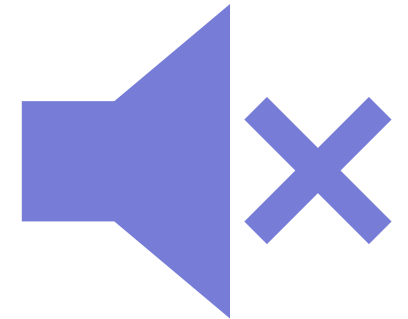


Engineering student has accused Fine Arts student of sexual assault. Engineer testified that Artist had intercourse with Engineer without using a condom without Engineer's agreement--Engineer always requires protection. Advisor for Artist asks Student A: "But didn't you have unprotected sex with Artist a week prior? And didn't you tell Artist it was 'okay' that the two of you didn't use protection?"



# Does any testimony get excluded?

- Yes – Decision-maker(s) must **exclude** the statements of any party or witness who refuses to submit to cross-examination from the other party’s advisor
- “[P]rovided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.” (34 C.F.R. § 106.45)







# Example #1 (excluded)

Complainant gives emotional account of sexual assault and answers questions from hearing panel chair. Complainant then answers only one question from respondent's advisor before breaking down and refusing to answer any more. After a break is taken, complainant tells hearing panel chair complainant cannot endure cross-examination. Complainant leaves the hearing.





## Example #2 (excluded)

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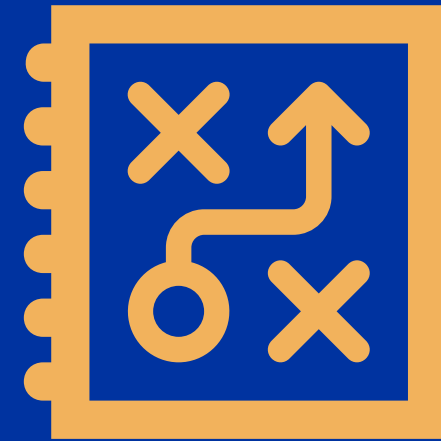


Witness gives statement to investigator that witness observed complainant right before alleged sexual assault. Witness told the investigator that complainant was too drunk to stand up. Witness fails to attend hearing. Investigator is prepared to relay what witness told investigator.



# Example (not-excluded)

—  
Witness answers questions from hearing officer. After consulting with complainant, advisor for complainant says that the advisor has no questions for witnesses. Advisor for respondent then proceeds to cross-examine witness.





# Questioning



# Questioning . . .

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- Often one of the most critical parts of any hearing
- Provides an opportunity to further clarify facts and evidence, if needed
- The wrong question—or the right question asked the wrong way—can open the door for challenges





# General Questioning Guidelines

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- Open-ended questions generate more information while closed-ended questions will clarify specifics.
- Close-ended questions result in yes/no responses that often don't offer much additional information. Use close-ended questions to obtain specifics and clarify information you have already received.
- Silence is ok: Give the witness time to answer.



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## General Questioning Guidelines (more)

- **Credibility:** If you have concerns that a witness is not providing complete and accurate testimony, respectfully explain the reason for your concern and indicate that you are interested in hearing the individual's response to your concern (e.g., "Help me understand...") and address inconsistencies.
- **Be professional and respectful:** Keep in mind that questioning, while sometimes necessary, may put a party or witness on the defensive.
- **Ask the difficult but relevant questions:** Give both parties an opportunity to address your concerns.





# When Asking Questions . . .

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- **Non-verbal communication**
  - Convey care, concern, and interest to both sides
  - Make eye-contact
- **Verbal communication**
  - Avoid questions that imply the alleged conduct occurred or did not occur
  - Avoid questions that blame or judge the complainant
  - Avoid question that blame or presume violation by respondent
  - Use medical terms for clarification





# Some Common Questions by Hearing Panel

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- What do you want to have happen?
- Is there something you feel we should take into consideration that is not already before us?
- Is there any evidence that the [other party] provided or anything they said that you feel you haven't had an opportunity to respond to?
- Are there specific questions you feel should be presented to the other party or witnesses that have not been asked?



# Some (More) Common Questions by Hearing Panel

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- Were you given an opportunity to review the investigative report?
- Were you given an opportunity to respond to the report? In your own words, can you describe your response to the report?
- What fact or circumstance about this matter do you feel we should concentrate on in our deliberations?
- Is there anything else you wish to add?



# Decision-Making and Evidentiary Concepts

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Module 7



# Panel decision-making

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- Evaluating relevance
- Factual and credibility analysis in support of conclusion
- Consideration and exclusion of statements and evidence
- Deliberating



# Key Principles

- Direct vs. circumstantial
  - Hearsay
- Weight of evidence
- Assessment of credibility



## **Direct v. Circumstantial (Direct)**

- **Direct** — Actual evidence of a fact, circumstance, or occurrence; proves a fact in question without presumption or inference
  - e.g.: testimony of a witness who actually observed and perceived event in question (see, hear, touch)



# Direct v. Circumstantial (Circumstantial)

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- **Circumstantial (indirect)** — Series of facts which, based on logic or reason, is so closely associated with the fact to be provided that proof may be inferred.
  - e.g.: witness testimony saw student alleged to have hit someone with bat, with bloody bat an hour after the assault



# Hearsay

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- **Hearsay** — Statement (written or oral) made by a non-available witness offered to prove fact in question
- Longstanding evidentiary principle of when courts can rely on hearsay
- Some hearsay is more reliable
  - Statement contemporaneous with the event in question
  - Excitable statement uttered in the moment being perceived





# Credibility

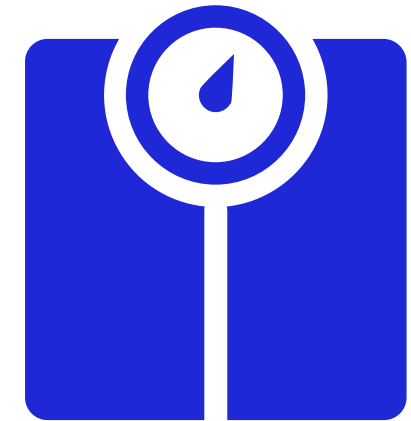
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- To be determined by hearing panel, following hearing and examination of investigative report, evidence and hearing testimony
- Common factors:
  - Consistency
  - Corroboration
  - Plausibility
  - Motive
  - Demeanor



# What does it mean to weigh evidence?

- Not all evidence has equal value
- Some evidence may be more reliable and probative than other evidence
- Weight may vary depending on a range of factors, such as credibility; corroboration; consistency; level of detail; expertise of the witness; whether a witness is disinterested, etc.





# Example of considerable weight

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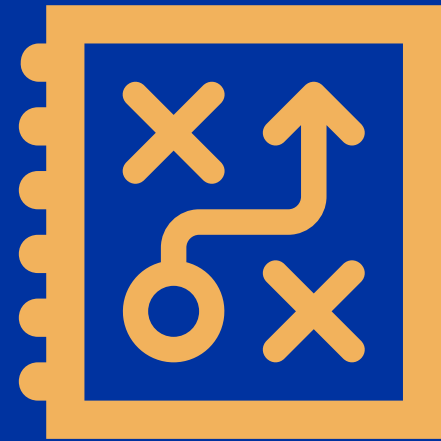
Witness testified he saw complainant and respondent leave the bar at 11:05 pm as witness was arriving. Witness states he clearly saw their faces and remarked to a friend about a particular t-shirt the complainant was wearing and how respondent had a nose ring. Witness testified he knows the time was exactly 11:05 pm because witness remembers receiving a phone call right as witness entered the bar, and witness's call log indicates the call was received at 11:05 pm.





# Example of less weight

—  
Witness says he saw a couple leaving the bar “sometime after ten but before midnight” but witness is not “sure exactly” when. Witness testified they “sort of looked” like complainant and respondent and witness is “pretty sure” it was them. But witness also says witness had spent two hours at a different bar before that and was “pretty drunk at the time I saw them.”



# How do(es) the decision-maker(s) decide a case?



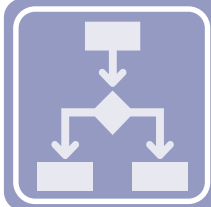
After hearing, decision-maker(s) must deliberate and consider all the admissible testimony and admissible non-testimonial evidence



Evaluate evidence for weight and credibility



Resolve disputed issues of fact under the standard of evidence adopted by the institution



Using the facts as found, apply the policy's definitions to those facts to determine whether sexual harassment occurred



# How do(es) the decision-maker(s) issue a decision?

- In a written document, provided contemporaneously to the parties that:
  - Identifies the allegations of sexual harassment
  - Describes the various procedural steps taken from the time the formal complaint was made
  - States findings of facts supporting the determination
  - Reaches conclusions regarding application of relevant policy definitions to the facts
  - Includes a rationale for each finding for each allegation
  - States the disciplinary sanctions and remedies, if implicated by the determination made, and
  - Explains the procedures and grounds for appeal

# Sanctioning



Module 8



# What principles do we use to determine discipline?

- Discipline should vary depending on the nature of the violation found considering aggravating and mitigating factors
- All things being equal, like violations should have like punishments
- Discipline has educational, punitive, and protective elements





# What principles do we use to determine remediation?

- If a violation is found, institution must take steps to restore or preserve the complainant's access to education
- Various types of supportive measures may be utilized after the determination to restore or preserve access
- Institution is not required to provide the exact remedy requested, but must provide a remedy that is not clearly unreasonable



# Disciplinary Philosophy

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- Violations of the policy by an individual will be addressed in accordance with applicable university policies and procedures, which may include disciplinary actions up to and including expulsion or termination from the university.
- When determining appropriate sanctions, the university may consider prior findings of misconduct.
- Violations of law will be addressed by law enforcement and may result in criminal penalties.



# Sanctioning Goals

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- Punitive
- Safety
- Reduce recidivism / recurrence
- Advance educational and developmental growth of offender (learning from one's mistake)
- Appropriate fit for circumstances



# IU Sanctioning Policy

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- Possible sanctions for cases in which students are found in violation of the policy and the Student Code for acts of sexual misconduct include, but are not limited to:
  - Formal warnings
  - Behavioral assessment and/or counseling
  - Required educational training
  - Disciplinary probation
  - Suspension
  - Permanent expulsion



# Determining Sanctions

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- When determining the appropriate sanctions, consideration shall be given to the nature and severity of the behavior and the existence of any prior incidents or violations



# Avoid Sanctioning Problems

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- Common problems:
  - Ambiguity in sanction
  - Lack of clear explanation (and written record) of why sanctions should differ in similar circumstances
  - Failure to address expectations for returning students and/or employees following disciplinary action (e.g., participation in athletics/extra-curriculars)



# Applying aggravating and mitigating factors

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# Aggravating and Mitigating Factors

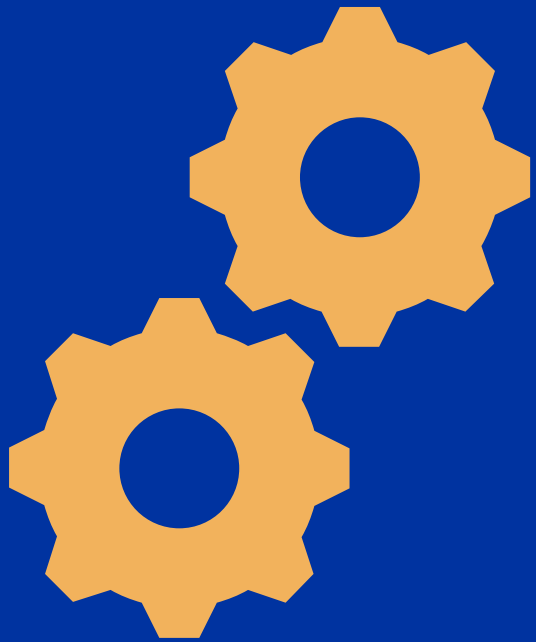
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- Common factors:
  - Egregiousness of misconduct (e.g., act of violence, use of a weapon, use of drug)
  - State of mind of respondent (bias-motivated, reckless or negligence)
  - Safety risk to the broader community
  - Impact statement
  - Conduct during the investigation and adjudication (cooperative or less than cooperative)
  - Circumstances relating to a lack of consent, force, threat, coercion, intentional incapacitation)
  - Position of trust / power differential





## Group Scenario



Athlete reports that Chemist stalked Athlete on three occasions. The first incident involved several evening where Chemist followed Athlete after practice to his car, tailgated his car back to dorm, and standing outside of dorm room for hours watching through the window while Athlete undressed. The second incident consisted of Chemist changing class schedules to be near Athlete in attempt to create a relationship with Athlete. In hearing, Chemist explains “friendly signals” that support that she did not know her conduct was unwelcome. Athlete presents evidence that Chemist talked to others that she wanted to hurt athlete for reporting.

# Questions





# Increased Detail in Sanction Term

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- Ambiguity in sanctions can lead to questions later
- Example:
  - Following an investigation, student is suspended for stalking following a break up with her boyfriend. Sanctioning panel issues a no-contact directive on both students. The respondent returns to campus following her suspension to learn that the complainant ex-boyfriend is enrolled in the same lab course, which is only offered at that time
- Prevent the problem:
  - Sanctioning official should have addressed the no-contact directive in more detail





# Increased Detail in Sanction Term, Part 2

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- Recommended details:
  - Duration of an ongoing restriction (e.g., how long will a no-contact directive apply)
  - Foreseeable exceptions, if any, and expectations (e.g., work environment, academic classes, athletic teammates, residential etc.)
  - How to handle unforeseeable circumstances that may arise
- It is recommended that restrictions have some endpoint, and not be imposed in perpetuity unless there is an ongoing safety risk



# Addressing Expectations Upon Return from Suspensions

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- An emerging best practice is to set expectations for returning students and employees at the sanctioning stage
- **Example:**
  - Student suspended for engaging in dating violence will not be permitted to participate in band upon their return (participation and representing institution is a privilege, not a right)
- **Benefit:**
  - Eliminates confusion or vagueness as to whether individual has full privileges upon return



# Decision-Making & Writing

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Module 9



# What Is a Determination?

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- The decision as to whether or not sexual harassment occurred
- Results in a finding of “violation” or a finding of “no violation”





# Purpose of a Decision

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- Sparks some sort of action
- Record of following process
- Documents fair process
- Provides parties and subsequent decision-makers with information







# Documenting the Decision

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- Each decision should be explained in writing in as careful detail as a finding of responsibility. Why?
  - The act of documenting helps a decision-maker consider all relevant issues
  - Demonstrates that the decision was informed and not based on actual or perceived bias
  - Demonstrates that the decision was not without thought, arbitrary, or capricious
  - Demonstrates alignment with institution's disciplinary philosophy
  - Provides appeals official and any reviewing court with a reason to grant the sanctioning official discretion in his/her decision
- The decision need not be lengthy



# Critical Elements

*\*May incorporate investigative report for some or much of the following:*

- Preliminary case information
- History of the case
- Allegations
- Applicable policies/procedures
- Standard of evidence
- Evidence considered
- Factual findings
- Analysis and conclusion
- Sanctions

Periodic Table of the Elements

1 H Hydrogen 1.008																	2 He Helium 4.003
3 Li Lithium 6.941	4 Be Beryllium 9.012											5 B Boron 10.811	6 C Carbon 12.011	7 N Nitrogen 14.007	8 O Oxygen 15.999	9 F Fluorine 18.998	10 Ne Neon 20.180
11 Na Sodium 22.990	12 Mg Magnesium 24.305											13 Al Aluminum 26.982	14 Si Silicon 28.086	15 P Phosphorus 30.974	16 S Sulfur 32.066	17 Cl Chlorine 35.453	18 Ar Argon 39.948
19 K Potassium 39.098	20 Ca Calcium 40.078	21 Sc Scandium 44.956	22 Ti Titanium 47.867	23 V Vanadium 50.942	24 Cr Chromium 51.996	25 Mn Manganese 54.938	26 Fe Iron 55.845	27 Co Cobalt 58.933	28 Ni Nickel 58.693	29 Cu Copper 63.546	30 Zn Zinc 65.38	31 Ga Gallium 69.723	32 Ge Germanium 72.631	33 As Arsenic 74.922	34 Se Selenium 78.971	35 Br Bromine 79.904	36 Kr Krypton 84.798
37 Rb Rubidium 84.468	38 Sr Strontium 87.62	39 Y Yttrium 88.906	40 Zr Zirconium 91.224	41 Nb Niobium 92.906	42 Mo Molybdenum 95.96	43 Tc Technetium 98.907	44 Ru Ruthenium 101.07	45 Rh Rhodium 102.905	46 Pd Palladium 106.42	47 Ag Silver 107.868	48 Cd Cadmium 112.414	49 In Indium 114.818	50 Sn Tin 118.710	51 Sb Antimony 121.760	52 Te Tellurium 127.6	53 I Iodine 126.904	54 Xe Xenon 131.294
55 Cs Cesium 132.905	56 Ba Barium 137.327	57-71 Lanthanides	72 Hf Hafnium 178.49	73 Ta Tantalum 180.948	74 W Tungsten 183.84	75 Re Rhenium 186.207	76 Os Osmium 190.23	77 Ir Iridium 192.222	78 Pt Platinum 195.085	79 Au Gold 196.967	80 Hg Mercury 200.592	81 Tl Thallium 204.383	82 Pb Lead 207.2	83 Bi Bismuth 208.980	84 Po Polonium [209]	85 At Astatine [209]	86 Rn Radon [222]
87 Fr Francium 223.020	88 Ra Radium 226.025	89-103 Actinides	104 Rf Rutherfordium [261]	105 Db Dubnium [262]	106 Sg Seaborgium [266]	107 Bh Bohrium [264]	108 Hs Hassium [269]	109 Mt Meitnerium [268]	110 Ds Darmstadtium [285]	111 Rg Roentgenium [272]	112 Cn Copernicium [285]	113 Nh Nihonium [284]	114 Fl Flerovium [289]	115 Mc Moscovium [288]	116 Lv Livermorium [293]	117 Ts Tennessine [294]	118 Og Oganesson [294]
57 La Lanthanum 138.905	58 Ce Cerium 140.116	59 Pr Praseodymium 140.908	60 Nd Neodymium 144.242	61 Pm Promethium 144.913	62 Sm Samarium 150.36	63 Eu Europium 151.964	64 Gd Gadolinium 157.25	65 Tb Terbium 158.925	66 Dy Dysprosium 162.500	67 Ho Holmium 164.930	68 Er Erbium 167.259	69 Tm Thulium 168.934	70 Yb Ytterbium 173.054	71 Lu Lutetium 174.967			
89 Ac Actinium 227.028	90 Th Thorium 232.038	91 Pa Protactinium 231.036	92 U Uranium 238.029	93 Np Neptunium 237.045	94 Pu Plutonium 244.064	95 Am Americium 243.061	96 Cm Curium 247.070	97 Bk Berkelium 247.070	98 Cf Californium 251.080	99 Es Einsteinium [254]	100 Fm Fermium 257.095	101 Md Mendelevium 258.1	102 No Nobelium 259.103	103 Lr Lawrencium [262]			
Alkali Metal		Alkaline Earth		Transition Metal			Basic Metal		Semimetal	Nonmetal		Halogen	Noble Gas	Lanthanide		Actinide	©2015 TSI Worldwide tsiworldwide.org



# Preliminary Case Information

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- Names of the parties
- Investigators name(s)
- Adjudicator(s) names
- When and how the case was received and assigned
- Key dates



# History of the Case

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- How did the institution respond to the report?  
*e.g., rights and options provided, notification of respondent*
- Investigation
- When, how, and where were parties and witnesses interviewed?
- Subsequent adjudication
- Explain delays



# Summarizing Allegations

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**Goal:** identify and articulate what part of complainant's story, if true, is a violation of the institution's policy

- Focus on who, what, where, when, how
- Should match notice!





# Factual Findings

Acceptance of undisputed facts?

Goal: Reach conclusion of disputed facts

Relevant?

Weight?

Persuasive?

Show your work

Explain your decisions





# Factual Findings (cont.)

## *Resolving credibility*

Is there corroborating evidence?

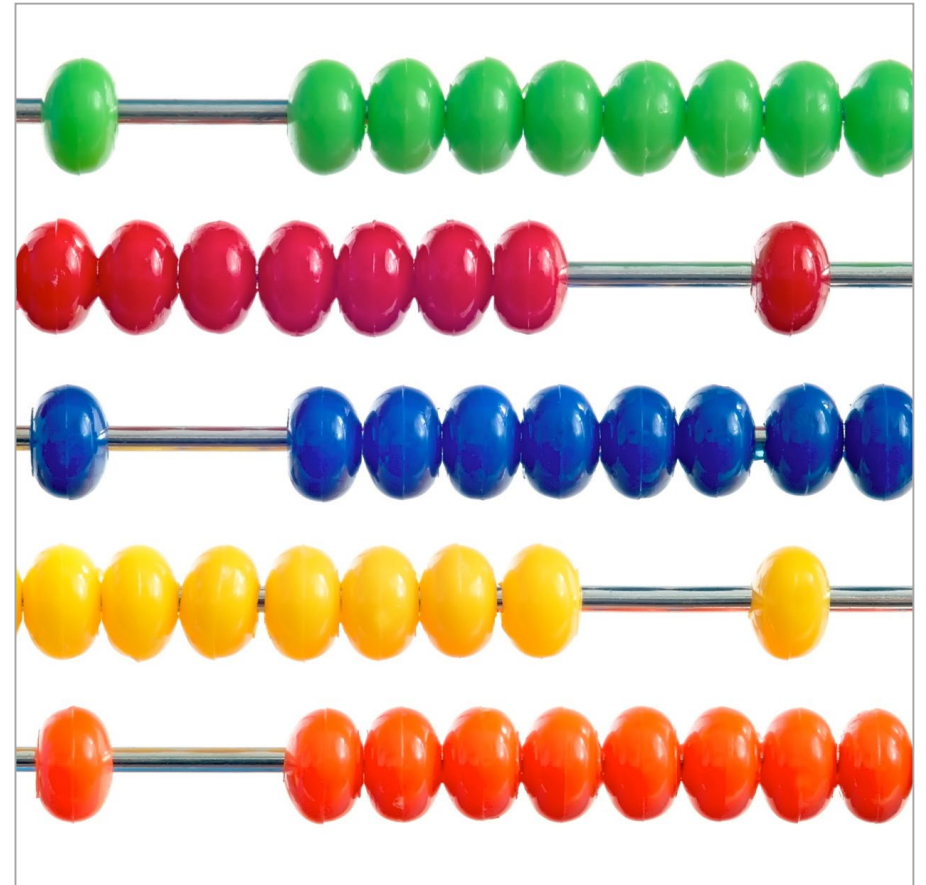
Are there inconsistencies?

Insufficient explanation of inconsistencies?

Consider the logic of a person's narrative

Consider the impact of trauma

Don't assume that a delay in reporting detracts from credibility





# Important Language Considerations

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Use objective terms

“Complainant” and “respondent” rather than “victim” and “perpetrator”

“Violation of policy” not “guilty” or violation of “law”

Generally, credibility of **facts**, not **witnesses**, as a whole, but-for specific circumstances

Do not include speculation

Do not include irrelevant points and discussion

Be thoughtful about pronouns

Avoid vague phrasing like “had sex”





# Be Specific

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“Jane alleges that Sara had sex with her without her consent.”

VS.

“Jane alleges that Sara laid on top of her, pulled her underwear down with one hand, while pressing her elbow on her other hand, penetrated her vagina with a vibrator, and held her down so she could not move.”



# Analysis and Conclusion

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- Put everything together
- Analyzing whether a violation of policy occurred (not the law)
- Discuss each allegation and your decision on each
- Explain your reasoning
- Deal with inconvenient facts and inconsistencies
- Phone a (need-to-know) friend if necessary





# Language for Findings

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-Adjudicator's task is to determine if preponderance of the evidence supports a finding

-Unless there is an assertion of bad faith or clear error, task is not to determine that conduct did not occur

-Absent clear evidence an allegation is false, **avoid** language such as:

“No violation”

“Innocent”

## Sample language:

“The preponderance of the evidence does not support a finding of a policy violation.”

“The preponderance of the evidence falls short of demonstrating that it is more likely than not the alleged conduct occurred.”



## Check Your Work

- The decision must be able to stand on its own
- Spelling and punctuation matter—have proofread
- Double check that the allegations decided match the notice
- Include the good, the bad, and the ugly
  - Procedural errors  
(inconsequential or corrected)
  - Delays





# Documenting Sanction: Rules of Thumb

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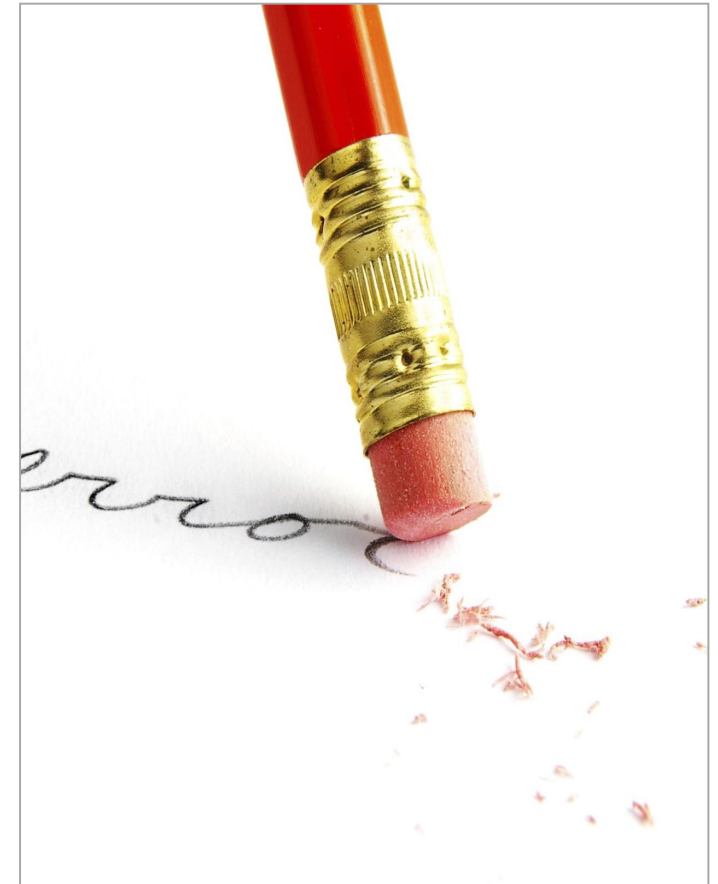
- Should generally address the following factors, where applicable:
  - Impact statement of complainant and respondent, if any
  - Acknowledgment of wrongdoing or impact of conduct by respondent
  - Alignment of sanction to institution's disciplinary philosophy
  - Potential ongoing safety risk to community (or not)
  - Any continuation of no-contact directive, and duration and parameters of that directive



# Avoid Common “Mistakes” with Decision-Writing

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- Conclusory determinations
- Chronology of events is hard to follow
- Failing to spell out the allegations and relevant policies
- Speculation
- General lack of clarity/coherence
- Including too much information about irrelevant details
- Including insufficient information on important issues
- Not clearly or adequately explaining basis for decision



**HUSCH BLACKWELL**