



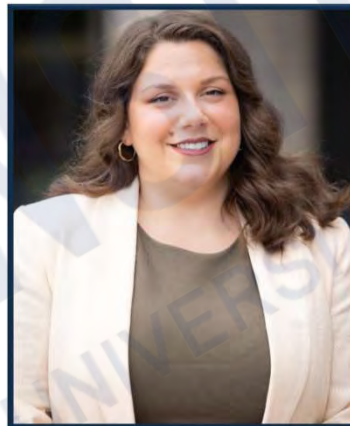
# TITLE IX FOR HEARING BOARD PANELISTS

## RETURNING TO THE 2020 RULE (DAY 1)

1



**ANDREW STAMMEL**  
Associate Counsel  
Student Affairs Practice Group  
SUNY Office of General Counsel



**REBECCA NOVICK**  
Staff Attorney  
Student Affairs Practice Group  
SUNY Office of General Counsel

I  
N  
T  
R  
O  
S

2

**I  
N  
T  
R  
O  
S**



**ALEXANDER WHEELER, M.S.ED.**  
Assistant Director  
SUNY Student Conduct Institute



**RYAN RIBEIRO, M.A.**  
Assistant Director  
SUNY Student Conduct Institute

3

**DISCLAIMER**

This presentation shall not constitute legal advice, nor create an attorney-client relationship. This presentation is for informational purposes only.

If you have any specific legal questions or require legal advice for specific situations, please contact or refer to your institutional, general, or outside counsel.



4

# DISCUSSION ROADMAP

- Tennessee v. Cardona – what happened?
- **Returning from 2024 to 2020**
- What is Title IX?
- **Compliance essentials**
- Legal foundations for hearings
- **From concepts to practice**

5

# WHAT HAPPENED?

## *Tennessee v. Cardona*

January 9, 2025 Decision

U.S. District Court – E.D. Kentucky

6

**TENNESSEE**  
**v.**  
**CARDONA**  
*Sixth Circuit*  
 January 9, 2025  
 Decision

## 2024 RULE IS GONE.

DoE cannot utilize Title IX to prohibit discrimination based on gender identity  
 DoE overstepped when it reinterpreted the law through federal rule-making  
 Violated free speech rights of educators & students in mandating use pronouns associated with others' gender identity  
 Rejected utilization of Bostock decision to apply Title VII employment law to Title IX

7

**HIGHLIGHTED  
 DIFFERENCES  
 2020 v 2024**

8

# RETURN TO 2020

**DURING THE LIVE@DISTANCE, MEANINGFUL CHANGES FOR INSTITUTIONS RETURNING TO THE 2020 RULE WILL BE REFERENCED WITH THE FOLLOWING SYMBOL:**



9

## RETURN TO 2020 - SCOPE

2024	RETURN TO 2020
Sex-based harassment included harassment using “sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity”	Sexual harassment uses a binary understanding of sex by aligning it with sex assigned at birth
All sex discrimination in the program or activity in the US was covered by the Rule and grievance procedures	Other sex discrimination outside of sexual harassment is not covered in grievance procedures
Subjectively and objectively offensive and severe or pervasive conduct that limits access is considered hostile environment harassment	“Severe, pervasive, and objectively offensive” conduct effectively “denies or bars access”
Extensive section on discrimination related to parental, family, or marital status, pregnancy or related conditions	This is not addressed in the 2020 Rule.

10

## RETURN TO 2020 - JURISDICTION

2024	RETURN TO 2020
Conduct occurring in an institution's program or activity included conduct <b>occurring in a building owned or controlled by a student organization that is officially recognized by the institution</b> and conduct subject to the institution's disciplinary authority	Locations, events, or circumstances when institution <b>exercised substantial control</b> over the respondent and the context in which conduct occurred
Most conduct, including off-campus conduct, <b>fell under the institution's disciplinary authority and Title IX</b>	Other conduct may be subject to other areas, including 129-B, codes of conduct, and other policies as designed, but <b>NOT Title IX</b>

11

## RETURN TO 2020 - NOTICE & INTAKE

2024	RETURN TO 2020
Detailed guidelines for employee notification, including of confidential employees. Requirements for notification around public awareness events	"Clearly unreasonable" when institutions have actual notice of sexual harassment & respondent in manner that was deliberately indifferent
An 8-factor analysis designed to assist TIXC in determining whether to initiate a complaint. "Is there an imminent and serious threat?"	There is no detailed analysis to assist TIXC determine whether to initiate a complaint
Sex discrimination complaints other than sex-based harassment could also be filed by any student or employee or anyone else participating or attempting to participate in the program or activity	Complainants must participate or attempt to participate in program or activity of institution

12

## RETURN TO 2020 – SUPPORT & TIMEFRAME

2024	RETURN TO 2020
TWO PROCEDURES: one for sex-based harassment involving students, the other for all other covered sex discrimination	One singular procedure, applies to both student & employee respondents
Flexible timeframes: institutions could establish “reasonably prompt timeframes for the major stages”	Strict timeframes: parties have 10 days to provide responses to evidence for an investigative report, and must be created at least 10 days prior to hearing
CLEAR PROCESS for modification or termination of supportive measures	NO PROCESS detailed for modification or termination of supportive measures
Imminent and serious threat to health and safety was the parameter for an emergency removal (included non-physical threats)	Immediate threat to the physical health or safety of any individual is the parameter for emergency removals

13

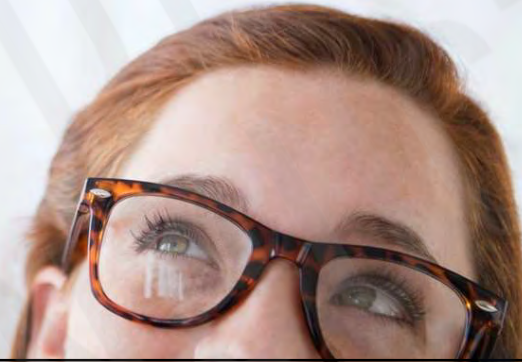
## RETURN TO 2020 – EVIDENCE, HEARINGS, & ROLES

2024	RETURN TO 2020
Flexible process to review evidence – equal opportunity to access either the relevant permissible evidence, or an accurate description of evidence. Reasonable opportunity to respond	Relevant evidence must be sent to each party & advisor prior to completion of investigation report
No formal complaint requirement: complaint may be provided verbally or written	Formal complaint requirement: complaint must be written and signed by complainant or TIXC
Live hearing only required for sexual violence cases w/ student respondent; cross examination not required. Single investigator and live meeting(s) in other cases allowed. Complex rules for transcripts, proposed follow-up questions, etc.	Live hearing w/ cross-examination by advisor required in all covered Title IX cases. Institution must provide advisor if one not available
Flexible rules for the role of the decision-maker	Decision maker cannot be the same person as the TIXC or investigator

14

# WHAT DOES THIS MEAN FOR HEARING BOARD PANELISTS?

- **Make sure you're following the correct policies & procedures for the case you are hearing**
- **Ensure accurate definitions are utilized when determining responsibility**
- **Ask your Title IX Coordinator or Panel Chair for assistance when issues arise**



15

# WHAT IS TITLE IX?



16



# TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

## NO PERSON IN THE UNITED STATES SHALL ...

- On the basis of sex,
- Be excluded from participation in,
- Be denied the benefits of, or
- Be subjected to discrimination under
- Any educational program or activity
- Receiving federal financial assistance



- Denying admission in an educational program based on sex
- Disqualifying individuals from candidacy for opportunities on the basis of sex
- Providing unequal access to resources based on sex
- Engaging in gender-based or sexual harassment, such as unwelcome comments, advances, etc.

17



18

## SEXUAL HARASSMENT DEFINITIONS

**QUID PRO QUO:** A school employee conditioning educational benefits on participation in unwelcome sexual conduct; or

**UNWELCOME CONDUCT** that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity; or

**SEXUAL ASSAULT** (as defined in the Clery Act), or

**DATING VIOLENCE, DOMESTIC VIOLENCE, OR STALKING** (as defined in the Clery Act as amended by the Violence Against Women Act (VAWA))



19

## SEXUAL HARASSMENT SCOPE

**SEXUAL ASSAULT**

**DATING VIOLENCE**

**DOMESTIC VIOLENCE**

**STALKING**

**SEX OFFENSES** - any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of giving consent:

Rape - Sodomy - Fondling

Incest - Statutory Rape



20

## SEXUAL HARASSMENT: KEY DEFINITIONS



**“SEXUAL ASSAULT”** - “forcible or nonforcible sex offense under the inform crime reporting system of the Federal Bureau of Investigation.”  
- 20 U.S.C. 1092(f)(6)(A)(v)

**“STALKING”** - “engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress.”  
- 34 U.S.C. 12291(a)(30)

Consult with Institutional Counsel regarding application of the FBI Uniform Crime Reporting System definitions for Rape, Sodomy, Fondling, Incest, and Statutory Rape

21

## SEXUAL HARASSMENT: KEY DEFINITIONS



**“DATING VIOLENCE”** - “violence committed by a person who is or have been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such relationship shall be determined by on consideration of the following factors: (i) the length of the relationship, (ii) the type of relationship, (iii) the frequency of interaction between the persons involved in the relationship.”

- 34 U.S.C. 12291(a)(11), see also 12291(a)(10)

22

## SEXUAL HARASSMENT: KEY DEFINITIONS



**“DOMESTIC VIOLENCE”** - “includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.”

- 34 U.S.C. 12291(a)(8)

23

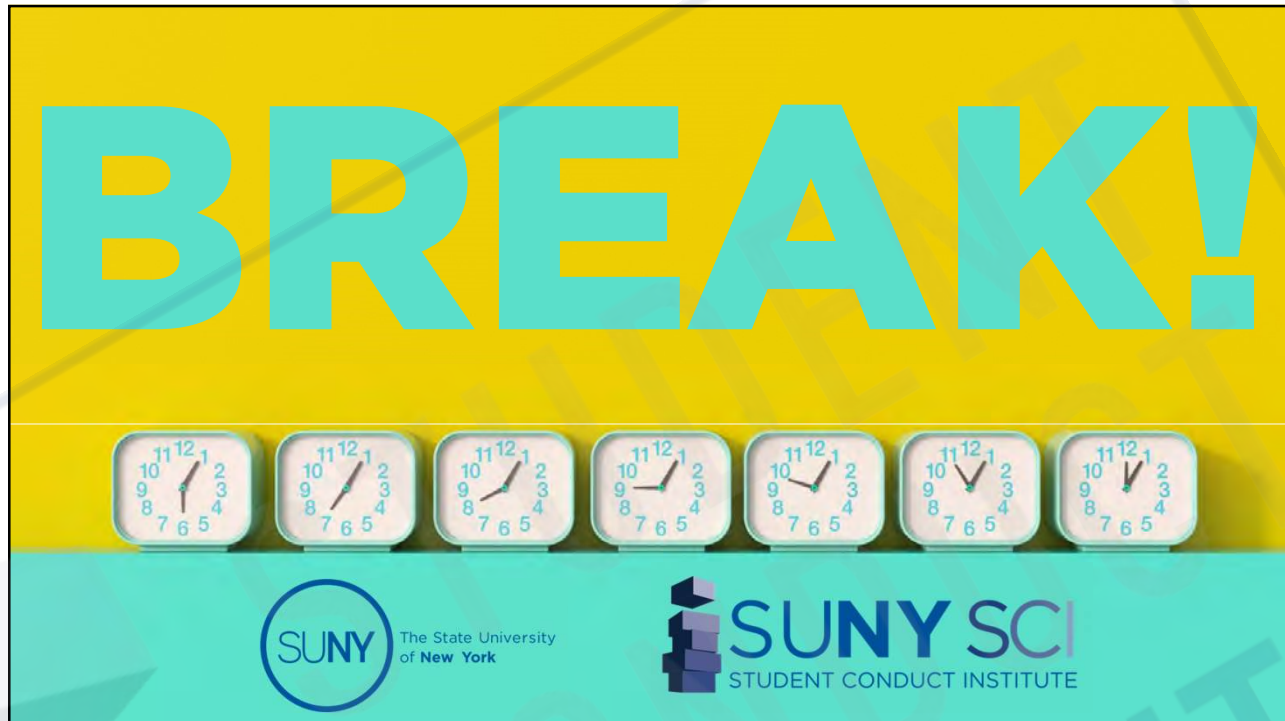
- ACTUAL KNOWLEDGE
- THE CONDUCT MUST FALL WITHIN THE SCOPE OF THE TITLE IX SEXUAL HARASSMENT DEFINITIONS
- JURISDICTION



- EDUCATIONAL PROGRAMS & ACTIVITIES
- INSTITUTIONAL CONTROL (RESPONDENT & CONTEXT IN WHICH THE HARASSMENT OCCURS)
- FORMAL COMPLAINT

## TITLE IX REQUIREMENTS: *KEY CONSIDERATIONS*

24



25



26

## NEUTRALITY

Fairness, equity, & ethics are at the forefront of all policy and decision making

## COMPETENCE

Know your policies & codes, particularly when related to student rights



27

## CONSISTENCY

Policies & codes are maintained & routinely updated across facilities, departments, & programs

## ACCURACY

Media (incl. websites, social media, etc.) reflects current institutional policies, procedures, etc.



28

# BALANCE

Student rights & responsibilities, employee rights & responsibilities, & administrative efficiency is balanced



29

# LEGAL FOUNDATIONS FOR HEARINGS

30



31

**DUE PROCESS;  
A CONSTITUTIONAL  
STANDARD**

No state shall “deprive any person of life, liberty, or property, without **due process** of law.”

14th Amendment, Section 1,  
U.S. Constitution

32



## DUE PROCESS: WHEN & HOW MUCH?

**GREATER  
PROCESS  
OWED**



**LESS  
PROCESS  
OWED**

GENERAL CONDUCT CHARGE

ACADEMIC DISCIPLINARY  
CHARGE (E.G., ACADEMIC  
DISHONESTY)

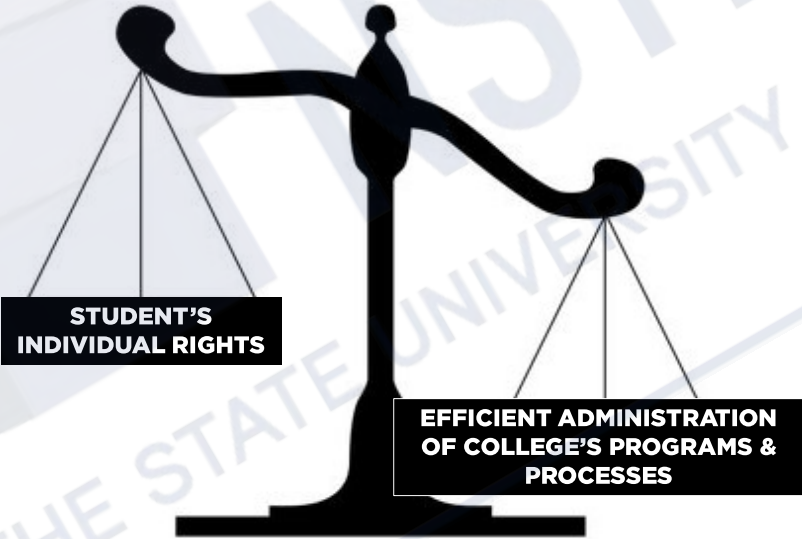
  
  

LACK OF ACADEMIC PROGRESS  
DISMISSAL (E.G., ACADEMIC  
PERFORMANCE )



33

## DUE PROCESS: A BALANCING ACT



**STUDENT'S  
INDIVIDUAL RIGHTS**

**EFFICIENT ADMINISTRATION  
OF COLLEGE'S PROGRAMS &  
PROCESSES**

34

# FOUNDATIONAL DUE PROCESS: RIGHTS & PROTECTIONS

## RIGHTS

- Confidentiality & privacy (with caveats)
- Advisor
- Access to disability accommodations
- Equitable treatment for complainants & respondents
- Evidence related to the complaint
- Fair hearing process with opportunity to be heard
- Appeal (under specified circumstances)

## PROHIBITIONS:

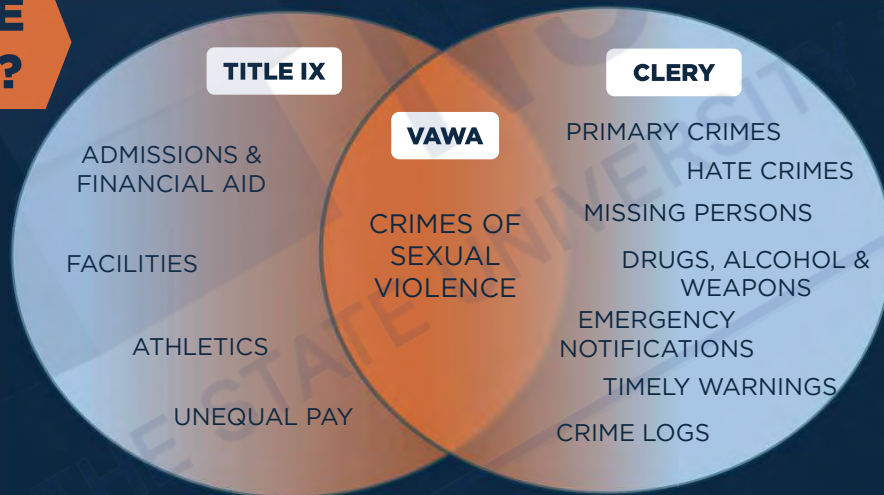
- Conflicts of interest & bias
- Retaliation



35

# THE VIOLENCE AGAINST WOMEN ACT (VAWA) & CLERY ACT

**STATE  
LAW?**



36

# CASE LAW SUMMARY

CASE	COURT	KEY CONCEPT
DIXON V. ALABAMA	5 <sup>th</sup> Circuit	Notice & Opportunity to be heard
GOSS V. LOPEZ	SCOTUS	Public education is a property interest
GOLDBERG V. KELLY	SCOTUS	Right to a full hearing & confront witnesses
MATHEWS V. ELDRIDGE	SCOTUS	Balancing individual interests & gov't interests
WISCONSIN V. CONSTANTINEAU	SCOTUS	Right to be heard to defend reputation

37



## FERPA & CONFIDENTIALITY

38



# WHAT ARE “RECORDS?”

FERPA protects “education records” as

- directly related to a student, and
- maintained by an educational agency or institution or by a party acting for the agency or institution.

Student must be the focus of the record, not simply in the background or incidental to a report

Educational records include hearing transcripts, evidence submitted in the context of the case, the investigative report, etc.

39

## CONFLICTS & DISCLOSURES

Institutions are **REQUIRED** to share relevant evidence with the parties.

*Students have “a right to inspect and review any witness statement that is directly related to the student, even if that statement contains information that is also directly related to another student, if the information cannot be segregated and redacted without destroying its meaning.”*

When conflict exists, institutions are required to comply with Title IX regulations - **this FERPA override is known as “GEPA override”**

- Title IX includes federally protected due process rights-constitutional override

**MAY NOT USE FERPA** to avoid complying with Title IX



40

# CONFLICTS & BIAS IN TITLE IX



1. For or against complainants & respondents generally
  - For example, a perception that all respondents are automatically responsible or that complainants are always credible and/or correct
2. For or against the specific parties in the case
3. Overlapping investigator, decisionmaker, & appeals roles

41



- Gender, research interests, work history of decisionmakers, investigators, or TIXC
- A background in advocacy
- Title IX Coordinator serving as investigator
- Title IX Coordinator serving as facilitator in informal resolution process

**NOT NECESSARILY  
CONFLICTS & BIAS**

42

**ACTUAL BIAS IS A HIGH LEGAL STANDARD, BUT PERCEPTION OF BIAS IS IN THE EYES OF THE PARTIES TO THE PROCESS & SHOULD BE AVOIDED.**

**THINGS TO AVOID:**

- Truly lop-sided investigations & adjudications, or
- Statements of investigator or panelist showing presumption of responsibility based on sex stereotypes, or
- Misapplying trauma-informed practice to explain away all inconsistencies in complainant's statements



**ACTUAL VS. PERCEPTION OF BIAS**

43

**RETALIATION**

44

# WHAT IS RETALIATION?

- Intimidation,
- Threats,
- Coercion,
- Discrimination, and/or
- Charges for a code of conduct violation



WITH THE PURPOSE OF INTERFERING WITH  
ANY RIGHT OR PRIVILEGE SECURED BY TITLE

IX

45

# ZERO TOLERANCE!



TITLE IX **PROHIBITS RETALIATION**  
AGAINST PEOPLE WHO SEEK TO  
ASSERT THEIR TITLE IX RIGHTS, for  
example:

- Where the individual has made a report or complaint
- Where the individual testified, assisted, or participated in the Title IX Grievance Process
- Where the individual refused to participate in any manner in the Title IX Grievance Process

46

# TITLE IX: JURISDICTION

**ONLY** within the United States -  
Educational programs & activities: (on- or off-campus)

- Locations, Events, or Circumstances

Over which the school exercises substantial control over both:

- The respondent and
- The context in which the sexual harassment occurs.

**NOTE:** includes any building owned or controlled by institution & used by officially-recognized campus organization.



47

## DISABILITY RIGHTS CONSIDERATIONS



- **EQUITY vs. EQUALITY**

- Fundamental alteration of programming is not a required accommodation
- Disability cannot be the basis for discipline
- Disability does not excuse misconduct
- Individuals posing as a “direct threat” are not entitled to accommodation

48





49

## IMPARTIAL PROCESS

**PLEASE NOTE:** Findings of innocence & guilt are not applicable to Title IX or student conduct grievances. These processes are administrative processes & are not civil or criminal in nature.



50

# FUNDAMENTALS



Zoom

All parties, advisors, witnesses, and decision-makers **must be present** at the same time either **physically or remotely** via secure technology.

## DECISION MAKERS

- Must be able to see & hear parties & witnesses (either physically or via secure technology)
- Ask questions of the parties & witnesses
- Decide whether or not question is relevant

## ADVISORS

- Ask relevant cross-examination questions

**“NO ADVERSE INFERENCE” RULE** - No inference of responsibility from a student’s decision to not testify

51

# STANDARD OF EVIDENCE

Institutions must use one of two standard of evidence to utilize in their grievance process:

## 1. PREPONDERANCE OF THE EVIDENCE

- More likely than not to be true
- 50%, plus a feather

## 2. CLEAR & CONVINCING EVIDENCE

- Highly probably to be true
- Neither standard requires corroborating evidence
- Institutions use the same burden of proof or standard of evidence, for all cases of sexual harassment



52

- **Parties must undergo live, relevant questions; as determined by decision-maker “in real time”**
- If question is refused, decision-makers can still rely on non-statement evidence & cannot **DRAW INFERENCE** about responsibility from party’s refusal
- **Institutions can “adopt rules to govern a Title IX grievance process” so long as they apply “equally to both parties”**



## CROSS-EXAMINATION

53

## DECORUM

Colleges and universities “**are in a better position than the Department to craft rules of decorum best suited to their educational environment**” and build a hearing process that will reassure the parties that the institution “**is not throwing a party to the proverbial wolves.**”

- See, 85 Fed. Reg. 30026, 30319

**ADVISORS WHO VIOLATE THE RULES OF DECORUM MAY BE REMOVED**



54

# SPECIFIC EXCLUSIONS for TITLE IX HEARINGS

**RAPE SHIELD** (with two exceptions) 32 C.F.R. § 106.45(6)(i)

- Offered to prove someone else committed alleged conduct
- Offered to prove consent

**PRIVILEGED INFORMATION:** 34 C.F.R. § 106.45(1)(x)

**UNDISCLOSED MEDICAL RECORDS:** See, 85 Fed. Reg. 30026, 30294

**DUPLICATIVE QUESTIONS:** See, 85 Fed. Reg. at 30331

55



56

## CREDIBILITY DETERMINATIONS: OBJECTIVITY

- Cannot be based on the party's status
- Cannot apply **“predictive behaviors”**
- But you may consider:
  - The party/witness' stake in the outcome
  - The potential conflict of interest where an advisor is also a witness
  - Possible motive to fabricate testimony
  - The possibility of coaching



57

## Questions about what we've learned so far?

SUNY.EDU

[system.suny.edu/sci/news](http://system.suny.edu/sci/news)


[SYSTEM.SUNY.EDU/SCI/TIX2020](http://SYSTEM.SUNY.EDU/SCI/TIX2020)


[system.suny.edu/sci/titleix](http://system.suny.edu/sci/titleix)



58

**BREAK!**

 **SUNY SCI**  
STUDENT CONDUCT INSTITUTE

 **SUNY** The State University  
of New York

59

**TITLE IX  
HEARING BOARD  
PANELISTS**

**PUTTING LEGAL FOUNDATIONS  
INTO PRACTICE**

60

**back to  
2020**

**SUNY SCI** checklist  
STUDENT CONDUCT INSTITUTE

**RETURNING TO  
2020 RULE  
CHECKLIST**

This document just reminds you of what exactly you should do to ensure that your institution is compliant regarding the switch from the 2024 to the 2020 Title IX Final Rule

61

**SCU UNIVERSITY INCIDENT REPORT**

INCIDENT REPORT #: 101225RD  
 COMPLETED BY: Frankie Nicholson (RD)  
 DATE OF SUBMISSION: 10/10/2025  
 TIME OF SUBMISSION: 1:15 ET

**BACKGROUND INFORMATION**

INCIDENT DATE: 10/9/2025  
 INCIDENT TIME: ~2:00 AM ET

**INVOLVED PERSONS**

Frankie Nicholson – Resident Director, Courtin Hall  
 Dawson Cooper – Resident Assistant, 2<sup>nd</sup> floor, Courtin Hall  
 Liana Jenkins – Complainant  
 Cody Norman – Respondent  
 Rahul Crawford – Witness

**DESCRIPTION OF INCIDENT**

On Friday, October 10<sup>th</sup>, 2025, I, Resident Director (RD) Frankie Nicholson, was in my office in Courtin Hall when I heard a knock at my door around 12:30 PM. When I opened the door, Resident Assistant Dawson Cooper was at my door. I greeted RA Dawson and asked how I could help him and he shared that one of his residents, Liana Jenkins, had come to him upset and crying asking to speak with someone about something that had happened the night before. I agreed to speak with Liana, and went to the 2<sup>nd</sup> floor to RA Dawson's room.

Upon entering RA Dawson's room, I could see that Liana was sitting on the floor in sweatpants and a hoodie and that her eyes looked red and bloodshot. Liana had a box of tissues on the bed next to her, along with her phone and laptop. I introduced myself and asked how I could help, and Liana replied that she wasn't sure.

I asked if Liana had gone out the previous night, and Liana nodded. She then asked, "if something happened last night, would I get into trouble?" I asked Liana what she was concerned about and informed her that her safety was my top priority. It was at that time that Liana began to share an incident that occurred at a party she had attended the night prior, and that she thought she was sexually assaulted. At that time, I told Liana that I was required to report any incident of sexual misconduct to the Title IX Coordinator, and Liana said that she understood but wanted to tell someone responsible and that Dawson said that Liana could trust me.

Liana stated that she had gone to an off-campus party on Thursday, October 9<sup>th</sup>, at a house known as the "soccer house," and that she had been drinking throughout the night. There were also green Jell-O shots and "jungle juice" given out in solo cups at the party. She stated that she had consumed "at least two Jell-O shots" and "two full red solo cups of Jungle Juice." She could not tell me what type of alcohol was in the drinks but stated that it seemed like everyone had a solo cup in their hands and was drinking. She then stated that she ran into a person at the party that she had been avoiding for a while, Cody Norman, who had been sending her text and direct messages repeatedly

over the course of the past month. Cody had asked Liana to go out, and while Liana initially agreed to go out, they never went out on a date. When Liana said that she was no longer interested in going out, Cody began messaging Liana once a day through various means, including text messages from various numbers, email, written notes in their shared biology class, and direct messages on Instagram, Snapchat, and TikTok. Liana also received a daily message including a picture of her room door with a caption, saying "where r u?". Liana just blocked all the messages and never replied.


Liana said at the party, Cody asked why Liana wouldn't go out with him, and Liana stated that "she wasn't looking to date right now," and that she "was sorry about the whole thing." Cody stated that Liana "could make it up to" him that night and asked her to dance. Liana declined, but said that Cody kept asking, and would "follow her around the party." Liana stated that she had asked a friend, Rahul Crawford, to keep her company at the party until they left. Over the course of the night, though, Liana said that she kept drinking and got a "little too lit," and Rahul and Liana were separated at some point in the night.

Liana said she left the party alone around 1:00 AM and started walking back to Courtin Hall, where she lives. She said she felt sick as she got off the elevator on her floor and went into the bathroom to throw up. It was then that she felt someone grab her hair out of her face to help her vomit, and wiped her mouth with something. As she got up, she realized that it was Cody, and that Cody said that he was "gonna help her to her room." Liana said she couldn't remember what exactly happened next, but said around 2:00 AM she was in her bed with Cody and they were both naked. Liana said that Cody had one hand on her vagina and was "jerking off" with the other. Liana said that she didn't know what to do, but stayed still while Cody "finished up and wiped himself up." After that, she said that Cody got dressed, put a wastebasket by the bed for Liana to throw up in, and left the room without saying anything. Liana said she started crying until she fell asleep and then when she woke up, she texted her friend Rahul, who had gotten drunk himself and fell asleep at the soccer house. Rahul told Liana to talk to RA Dawson, and that's when Dawson asked me to come to his room.

After Liana finished speaking, I told her that she had the right to supportive measures and to utilize the College's grievance process. I told Liana that I have to report this incident to the Title IX Coordinator, Stephanie Gibson. Liana asked if she could go to the Title IX Coordinator that day, and I said I could go with her to Stephanie's office. At that time, I returned to my office while Liana changed clothes and after she came to my office, we walked to the Title IX Coordinator together.


**SAMPLE DOCUMENT 1  
- INCIDENT REPORT**

62



## TITLE IX TOOLKIT

SCI UNIVERSITY - INTAKE FORM  
TITLE IX REPORT INFORMATION




**SAMPLE DOCUMENT  
2 - INTAKE FORM**

Use this form to record information needed for Title IX reporting purposes. This form and the accompanying Title IX Information Checklist must be completed by the College Official when meeting with the reporting individual.

**NY campuses only: Read the following statement to the reporting individual:** "You have the right to make a report to university police or campus security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution."


INCIDENT INFORMATION	
Reporting Individual Name: <b>Liana Jenkins</b>	Reporting Individual Status: <input checked="" type="checkbox"/> Student <input type="checkbox"/> Employee <input type="checkbox"/> Other
Reporting Individual Local Address: <b>Courtin Hall, 204</b>	Telephone (Home): <b>N/A</b> (Cell): <b>315.222.3409</b>

63



## TITLE IX TOOLKIT

NOTIFICATION OF MUTUAL NO CONTACT ORDER



**SAMPLE DOCUMENT 3  
- MUTUAL NCO**

October 10, 2025

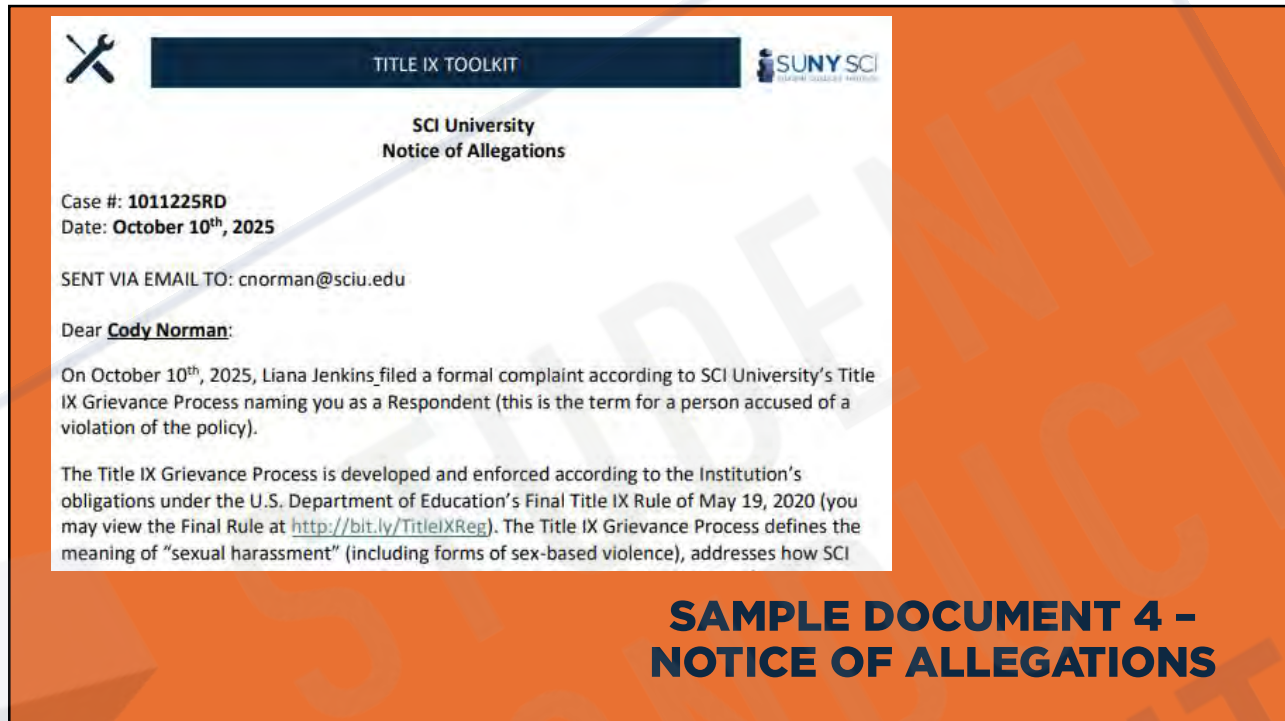
Liana Jenkins  
Cody Norman  
Case No.: 101225RD


**SENT VIA EMAIL**

On October 10<sup>th</sup>, 2025, Liana Jenkins filed a formal complaint under SCI University's Title IX Grievance Process regarding an incident of sexual harassment that allegedly occurred on October 9<sup>th</sup>, 2025. The Title IX Coordinator issued a Notice of Allegations on October 10<sup>th</sup>, 2025, identifying Cody Norman as the Respondent to that allegation, which was sent to the Respondent and Complainant via email on October 10<sup>th</sup>, 2025. The Office of Student Conduct then issued the Respondent a Notice of Allegations on October 10<sup>th</sup>, 2025, charging the Respondent with Stalking and Sexual Assault.

64





**TITLE IX TOOLKIT** 

**SCI University  
Notice of Allegations**

Case #: **1011225RD**  
Date: **October 10<sup>th</sup>, 2025**

SENT VIA EMAIL TO: **cnorman@sciu.edu**

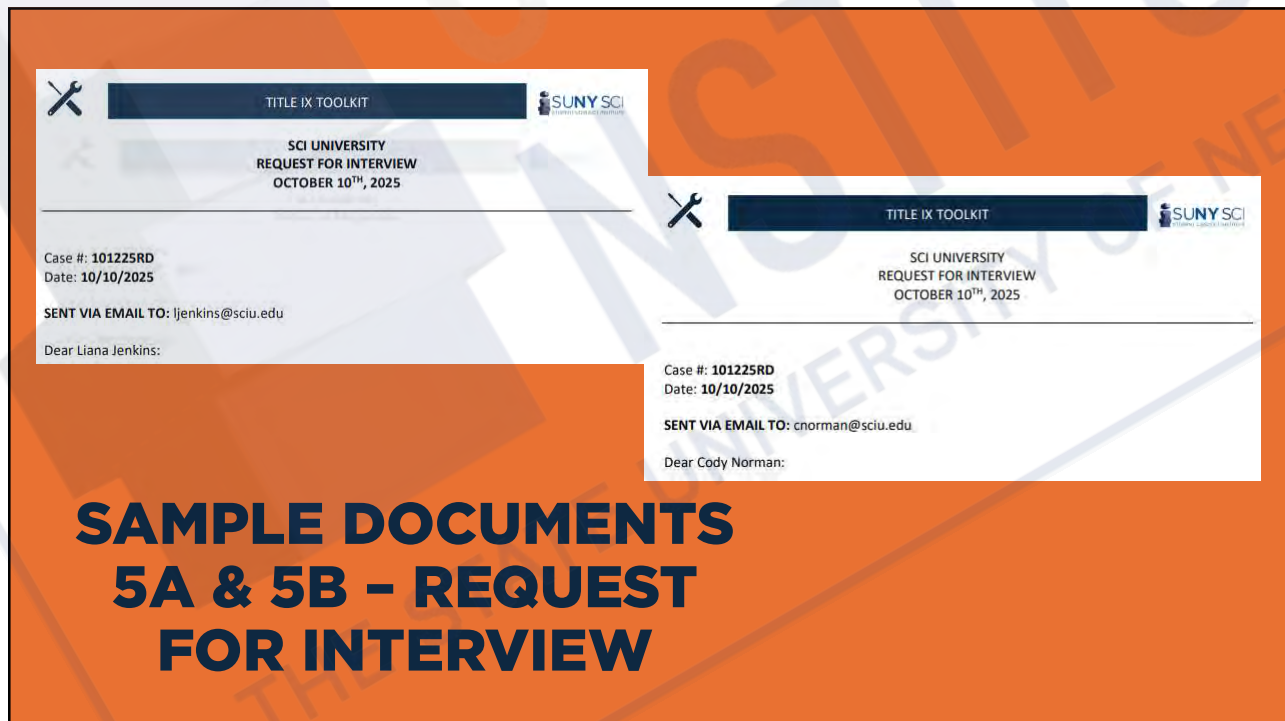
Dear **Cody Norman**:


On October 10<sup>th</sup>, 2025, Liana Jenkins filed a formal complaint according to SCI University's Title IX Grievance Process naming you as a Respondent (this is the term for a person accused of a violation of the policy).

The Title IX Grievance Process is developed and enforced according to the Institution's obligations under the U.S. Department of Education's Final Title IX Rule of May 19, 2020 (you may view the Final Rule at <http://bit.ly/TitleIXReg>). The Title IX Grievance Process defines the meaning of "sexual harassment" (including forms of sex-based violence), addresses how SCI

**SAMPLE DOCUMENT 4 -  
NOTICE OF ALLEGATIONS**

65



**TITLE IX TOOLKIT** 


**SCI UNIVERSITY  
REQUEST FOR INTERVIEW  
OCTOBER 10<sup>th</sup>, 2025**

---

Case #: **101225RD**  
Date: **10/10/2025**

SENT VIA EMAIL TO: **ljenkins@sciu.edu**

Dear Liana Jenkins:

**TITLE IX TOOLKIT** 

**SCI UNIVERSITY  
REQUEST FOR INTERVIEW  
OCTOBER 10<sup>th</sup>, 2025**

---


Case #: **101225RD**  
Date: **10/10/2025**

SENT VIA EMAIL TO: **cnorman@sciu.edu**


Dear Cody Norman:

**SAMPLE DOCUMENTS  
5A & 5B - REQUEST  
FOR INTERVIEW**

66



TITLE IX TOOLKIT



### SCI UNIVERSITY INVESTIGATIVE REPORT

**OVERVIEW OF THE INVESTIGATION**

The following investigative report summarizes the relevant evidence obtained in an investigation conducted in response to a report that Cody Norman (herein after "Respondent") violated certain provisions of the SCI University's Title IX Policy.

On or about October 10<sup>th</sup>, 2025, SCI University student Liana Jenkins (herein after "Complainant") filed a Formal Complaint with SCI University's Title IX Coordinator, wherein it is alleged that Respondent engaged in stalking behavior and sexual assault against the Complainant.


**JURISDICTION**


SCI University has jurisdiction to investigate this matter because the Respondent is a student and


1. The conduct is alleged to have occurred after August 14, 2020.
2. The conduct is alleged to have occurred in the United States,
3. The conduct is alleged to have occurred in on-campus premises (Courtin Hall).
4. The alleged conduct, if true, would constitute covered sexual harassment.

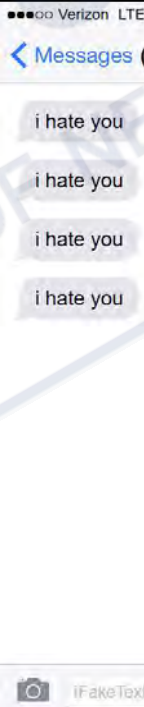
## SAMPLE DOCUMENT 6 - INVESTIGATIVE REPORT

67











## SAMPLE DOCUMENT 7 - EVIDENCE APPENDIX

68

## SAMPLE DOCUMENT 8 - HEARING SCRIPT



TITLE IX TOOLKIT



SCI UNIVERSITY HEARING SCRIPT

**I. INTRODUCTION:**

**Administrative Hearing Officer:** We are officially on the record at 9:00 AM on November 24, 2025 for case number 101225RD. I would ask everyone to turn off cell phones for the duration of the hearing and please could you all present your phones to ensure this practice? Thank you. My name is Joyce Conceição, and I am serving as today's hearing officer. Today's hearing is being recorded, therefore please be reminded to speak clearly throughout the hearing. The recording of this hearing will be made to be used in any deliberations by the decision-maker(s) or appeal board, and may be accessed by the parties prior to any appeal. This recording represents the sole official verbatim record of today's Title IX Hearing and is the property of this institution.

Would each member of the hearing panel please introduce themselves? We will begin to my left. *[introduction].*


Would the Respondent(s) introduce himself? *[introduction].*

Would the Respondent's advisor introduce herself? *[introduction].*


Would the Complainant introduce herself? *[introduction].*

Would the Complainant's advisor introduce himself? *[introduction].*

69



TITLE IX TOOLKIT



SCI UNIVERSITY DECORUM POLICY

**PURPOSE OF THE RULES OF DECORUM**

Title IX hearings are not civil or criminal proceedings and are not designed to mimic formal trial proceedings. They are primarily educational in nature, and the U.S. Department of Education, writing about Title IX in the Final Rule "purposefully designed these final regulations to allow recipients to retain flexibility to adopt rules of decorum that prohibit any party advisor or decision-maker from questioning witnesses in an abusive, intimidating, or disrespectful manner." 85 Fed. Reg. 30026, 30319 (May 19, 2020). The Department has determined that institutions "are in a better position than the Department to craft rules of decorum best suited to their educational environment" and build a hearing process that will reassure the parties that the institution "is not throwing a party to the proverbial wolves." Id.

## SAMPLE DOCUMENT 9 - DECORUM POLICY

70

## SAMPLE DOCUMENT 10 – SAMPLE QUESTIONS



### TITLE IX TOOLKIT



## RELEVANCY DETERMINATIONS

1. **Are these questions relevant?** Determine whether the questions below for the complainant and respondent are relevant or not.
2. **Why or why not?**
  - a. **Remember:** Questions are not relevant if:
    - i. It is about privileged information that has not been waived or is legally recognized
    - ii. The question is about complainant's prior sexual behavior, or sexual predisposition
    - iii. It does not ask whether a fact material to the allegations is more or less likely to be true

### Questions for Complainant:

1. At the soccer house party, you told Cody that you weren't "looking to date right now." Have you been on dates with other men?
2. At the soccer house party, you told Cody that you weren't "looking to date right now." Have you told other men that you weren't dating right now?
3. At the soccer house party, you told Cody that you weren't "looking to date right now." Was that a lie?

71

## SAMPLE DOCUMENT 11 – RATIONALE

### FINDINGS & RATIONALE

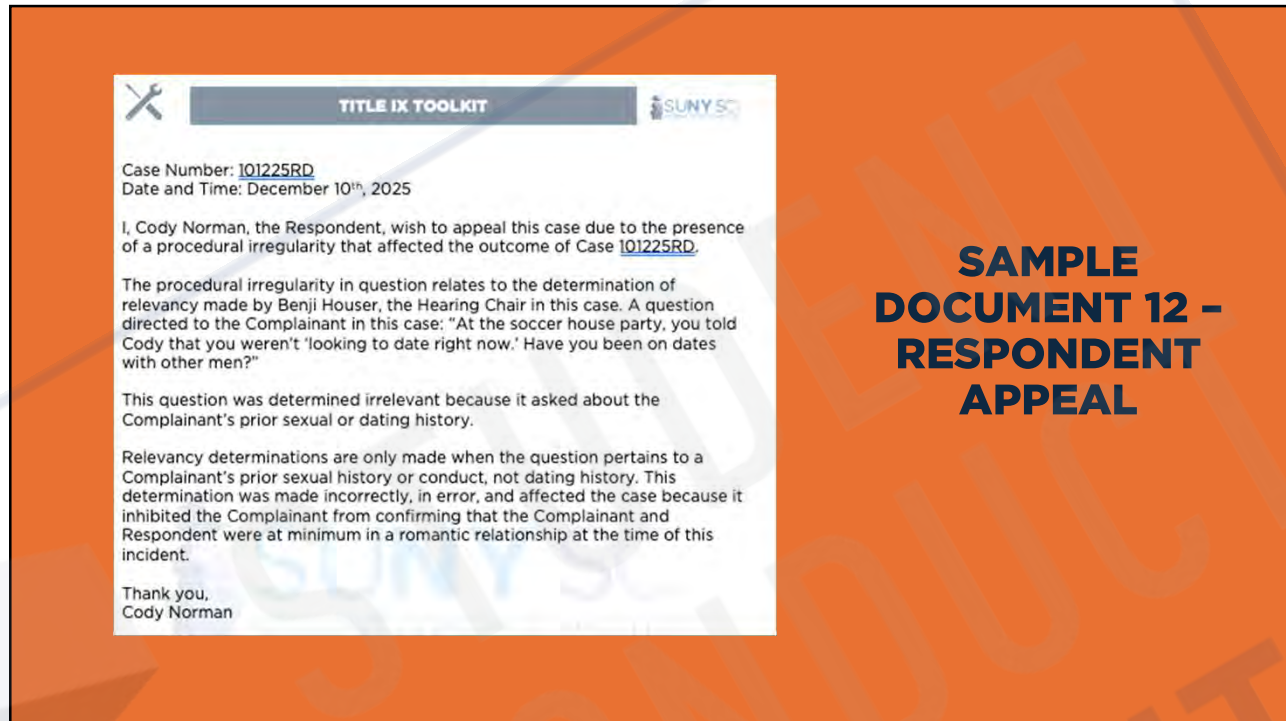
{For each allegation):

- *Description of evidence reviewed (i.e. written statements, report filed through the Title IX Investigator, screen shots of various text message and social media conversations, as well as verbal testimony from witnesses)*
- *Description of relevant section of Code of Conduct / Title IX Grievance Process*
- *Description of standard of evidence*

{NB: The following sections should be filled in by your hearing decision-maker}

- *Re-statement of finding (not responsible/responsible)*
- *Description of rationale supporting that finding, including which evidence was relied on and what the substance of that evidence was, and if applicable, evidence that was not relied on.*
- *Any disciplinary sanctions imposed upon respondent*
- *A statement of whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant;*

72



**TITLE IX TOOLKIT** SUNY STATE UNIVERSITY OF NEW YORK

Case Number: [101225RD](#)  
Date and Time: December 10<sup>th</sup>, 2025

I, Cody Norman, the Respondent, wish to appeal this case due to the presence of a procedural irregularity that affected the outcome of Case [101225RD](#).

The procedural irregularity in question relates to the determination of relevancy made by Benji Houser, the Hearing Chair in this case. A question directed to the Complainant in this case: "At the soccer house party, you told Cody that you weren't 'looking to date right now.' Have you been on dates with other men?"

This question was determined irrelevant because it asked about the Complainant's prior sexual or dating history.

Relevancy determinations are only made when the question pertains to a Complainant's prior sexual history or conduct, not dating history. This determination was made incorrectly, in error, and affected the case because it inhibited the Complainant from confirming that the Complainant and Respondent were at minimum in a romantic relationship at the time of this incident.

Thank you,  
Cody Norman

**SAMPLE DOCUMENT 12 - RESPONDENT APPEAL**



# TITLE IX FOR HEAR BOARD PANELIST

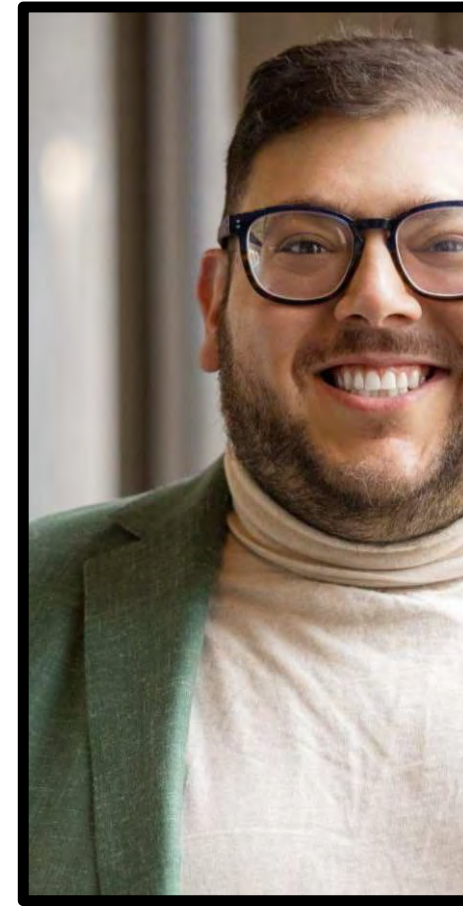
RETURNING TO THE 2020 RULE (DAY

# I N T R O S



**ALEXANDER WHEELER, M.S.ED.**

Assistant Director  
SUNY Student Conduct Institute



**RYAN RIBEIRO**

Assistant Director  
SUNY Student Conduct Institute

# DISCLAIMER

This presentation shall not constitute legal advice, create an attorney-client relationship. This presentation is for informational purposes only.

If you have any specific questions or require legal advice for specific situations, please contact or refer to your institutional, general, or personal counsel.



The documents included in the training materials for & referenced in this training are purely fictional.

The case is not based on any real case that the SCI staff is aware of. The characters named are fictional & are not intended to represent any real person.

The details of this case & these documents should not be used to make decisions in similar cases, nor should they be considered precedent or advice from SUNY or the Student Conduct Institute.

# TRAINING MATERIALS

# RETURN TO 20

**DURING THE LIVE@DISTANCE, MEANING  
CHANGES FOR INSTITUTIONS RETURN  
TO THE 2020 RULE WILL BE REFERRED  
WITH THE FOLLOWING SYMBOL**



# STEP-BY-STEP PROGRESS OF THE GRIEVANCE PRO

1. Incident R

2. Title IX Grievance Process

3. Investigation & Pre-Hear

4.

5. Appeal

6. Decision Implem

# LEARNING OBJECTIVE

- Identify Key Players in this process on their campus
- Identify components of different Procedures Meetings with P
- Recall who can file Formal Complaints
- Compare Evidence Types
- Make Relevancy Determinations
- Prepare campus/team for Hearing
- Facilitate a Hearing Board for Title IX cases, including Appeal
- Understand and implement Decisionmaking processes & reco

# RESOURCES TO SUPPORT YOUR PROCESS





Model Po  
Draft No  
Chec  
S  
&



**THE SCI TOOL**

## CLERY ACT

- Annual training on issues relating to sexual violence, domestic violence, sexual assault & stalking
- How to investigate & hearing process that protects the safety of victims & promotes accountability
- Consent
- Sexual assault definitions

## VAWA

- Continuous & ongoing training for board members that does not promote bias for victims or offenders.
- Confidentiality issues
- Working with law enforcement
- Viewing information without bias
- Consent
- Investigations
- How to conduct a hearing
- Definitions of sexual assault

## NYS- “ENO ENO

- Conflicts of interest
- Conducting investigations
- Investigative practices
- Cultural Awareness
- Consent
- Sexual assault
- Trauma-Informed practices



# ALL ABOUT HEARING BOARDS



SUNY SCI



# WHO CAN SERVE ON HEARING BOARDS?

- Trained administrators or faculty
  - 2020 Title IX Final Rule (this training meets that qualification)
  - Employed by, or contracted on behalf of, a college or university
  - In good standing with the institution
  - Free from conflicts of interest or bias
  - Trained on how to serve impartially, issues of relevance, & technology used in hearing

- 
- Title IX coordi
  - Investi



# VALUABLE CHARACTERISTICS OF HEARING PANELIST

- Critical thinking skills
- Understands the scope  
Title IX
- Comfortable discussing  
sensitive or upsetting  
content & topics
- Unbiased, free of conflict  
of interest

# KEY ROLES OF THE HEARING BOARD/PANEL

HEARING CHAIR  
NOTE-TAKER  
RATIONALE WRITER  
ADMINISTRATIVE  
SUPPORT STAFF  
DECISION-MAKERS





**WHO IS HERE**



**COMMON PARTICIPA**

# INVESTIGATORS

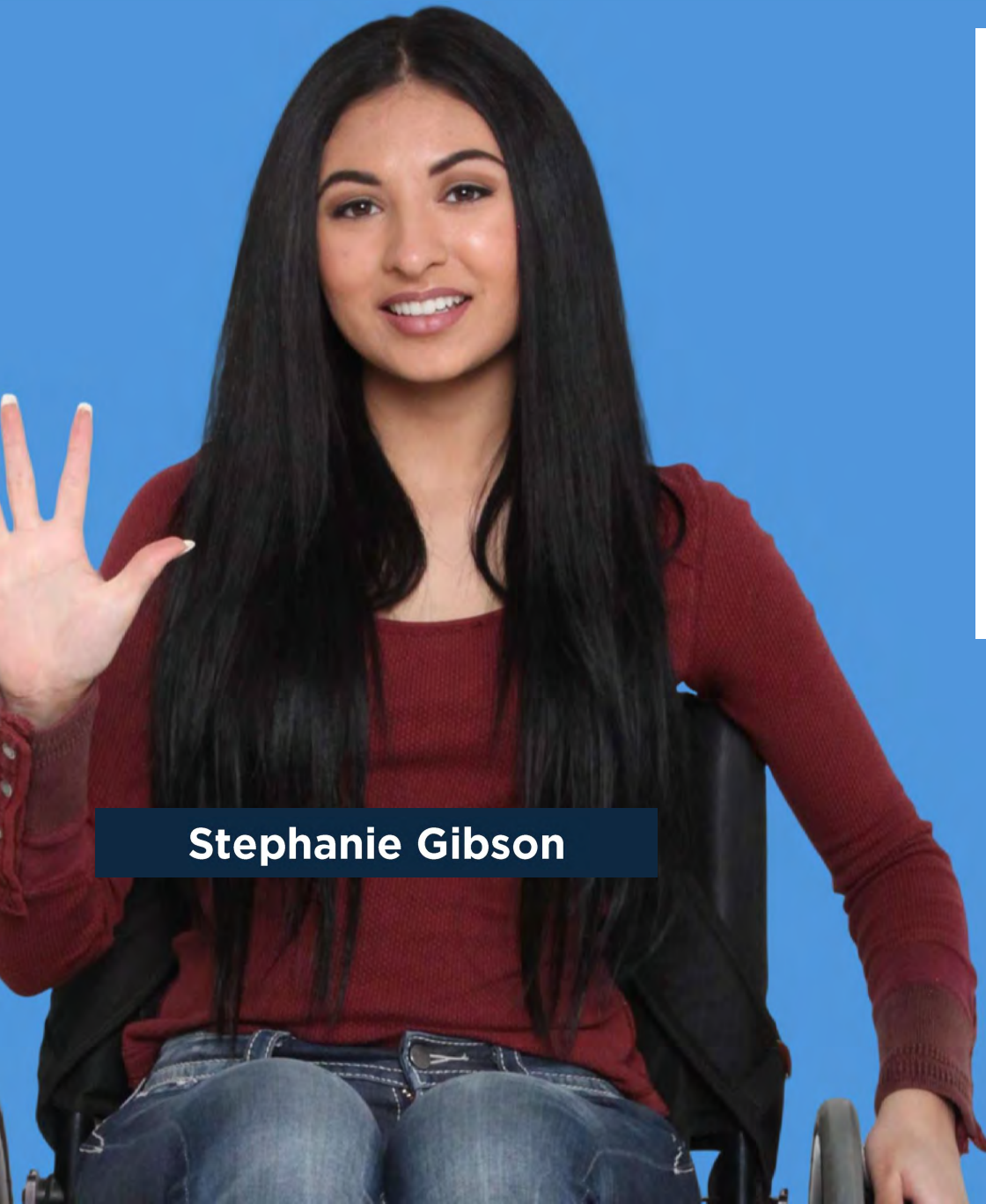
Investigators do just that: they investigate the allegations in the Formal Complaint and provide an investigative report for a hearing panel.

These individuals, like others involved in this process, must be free of conflicts of interest or bias.



Ma  
Title

**Helen Eaton**  
**Title IX**  
**Investigator**



**Stephanie Gibson**

The Title IX Coordinator is responsible for everything from the administration of the grievance process, intake, to the overall maintenance of the policy at an institution.

**TITLE IX  
COORDINATOR**



**Harriet Dejesus**  
**Cody Norman's Advisor**

**Harvey O'Sullivan**  
**Liana Jenkin's Advisor**

Advisors serve two essential functions in Title IX grievance

1. Support their... through this p... and
2. Ask questions... cross-examina...

# ADVISO





Joyce Conceição

These individuals ensures the hearing runs smoothly, and that all procedures and processes are being followed.

They are likely a case manager or another kind of student conduct officer at your institution.

# ADMINISTRATIVE HEARING OFFICER

The Panel Chair serves as the head of the hearing panel for Title IX cases.

They also serve as the individual who makes relevancy determinations after each question asked by a party's advisor.

# CHAIR



**Benji H**  
**Hearing Pa**

# KEY CONCEPT & DEFINITION



SUNY SCI

# TITLE IX: FORMAL COMPLAINTS

Institutions must investigate all “formal complaints” filed with the Title IX Coordinator

## WHO CAN FILE A FORMAL COMPLAINT?

- A person who is currently participating in the education programs or activities of the institution
- A person who is **ATTEMPTING** to participate in those programs or activities
- The Title IX Coordinator

**MULTIPLE COMPLAINTS ARISING FROM THE SAME INCIDENT CAN BE CONSOLIDATED**



# CONFIDENTIAL

Worth revisiting from yesterday's chat:

- FERPA protects “education records”
- Directly related to a student
- Maintained by an educational agency or institution, or by a person acting for the agency or institution

The hearing testimony, investigation reports, interviews, etc. - **this is all material that should be considered confidential.**

# HOW TO SERVE IMPARTIAL

- If you may have a bias or a conflict, admit it straight a
- **Remember you are hearing a case made up of indiv**
- Challenge your own perceptions by examining eviden
- **Be open & transparent, leave no stone unturned**
- Ensure everyone has opportunity to be heard, take yo
- **Base decisions on evidence, facts, & established crit**

# STANDARD OF EVIDENCE

Which standard of evidence does your institution use?:

## 1. PREPONDERANCE OF THE EVIDENCE

- More likely than not to be true
- 50%, plus a feather

## 2. CLEAR & CONVINCING EVIDENCE

- Highly probable to be true



CRUCIAL: you will use this language and standard to determine the responsibility of your respondents. You may be telling students, faculty, or staff that they are **“more likely than not”** responsible for sexual assault.

Questions posed by advisors **MUST BE EVALUATED FOR RELEVANCE** in real life by a decisionmaker.

Relevant questions ask whether facts material to allegations under investigation are **MORE OR LESS LIKELY TO BE TRUE**

**RELEVA**



# KNOWLEDGE CHECK!





**BREA  
TIME**



**SUNY SCI**  
STUDENT CONDUCT INSTITUTE

# CONSENT





A definition of consent as an affirmative indication of willingness to engage in sexual activity was adopted in criminal law in many countries.

In the US, the Federal Bureau of Investigation changed the Crime Report's definition of sexual assault in 2013 to include "lack of consent of the victim" rather than requiring force.

**CONTEXT**  
**CRIMINAL**

# NYS DEFINITION

“Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity.”



# NY-129 B REQUIREMENTS

**F.R.I.E.S.**



 Planned Parenthood

**FREELY GIVEN**  
**REVERSIBLE**  
**INFORMED**  
**ENTHUSIASTIC**  
**SPECIFIC**

## NYS SCHOOLS MUST REFLECT PRINCIPLES IN GUIDANCE

- Consent to any act or prior act between two parties does not imply or constitute consent to any other act
- Required regardless of the person initiating the act or the influence of drugs/alcohol
- Consent may be withdrawn as well
- Incapacitated individuals cannot give consent
- Consent cannot be coerced
- When consent is withdrawn or can be withdrawn, sexual activity must stop

# COMMON QUESTIONS

- Does only verbal consent qualify as affirmative consent?
- Can you consent to sexual activity if you are under the influence of alcohol and/or drugs?
- How does the age of a party relate to the definition of affirmative consent?
- Are there limitations to what consent can





# CULTURAL AWARENES





# STUDENT-CENTERED PROCESS

Individuals on hearing boards should be mindful that the participants may come from different backgrounds & cultures than their own

- Race
- Ethnicity
- Gender
- Religion
- Ability/disability
- Language (limited English p
- Immigration status
- Socioeconomic status
- Sexual orientation,
- Gender identity or expressio
- Age



# C H U U L M T I U L R I A T L Y

## BIAS & KNOWLEDGE

- **ENHANCE CULTURAL COMPETENCY:** Recognize importance of integrating cultural awareness & sensitivity into student approach to conduct addressing implicit biases & ensure equitable treatment.
- **ADAPT TO DIVERSE COMMUNICATION STYLES:** Adapt to direct & indirect communication, influenced by cultural backgrounds, affect perceptions of credibility & engagement in adjudication process.
- **ADDRESS CULTURAL PERCEPTIONS OF AUTHORITY:** Differentiate how different cultural attitudes toward societal norms, influence student behavior in conduct process.
- **IMPLEMENT EQUITABLE PRACTICES:** Apply strategies to adjust communication styles, recognize cultural norms, provide contextual support to foster fairness & inclusivity in conduct process.

# HOW CULTURE CAN IMPACT TITLE ADJUDICATION

- **ADJUST COMMUNICATION STYLES:** Frame questions to encourage open dialogue, ensuring students feel comfortable sharing their perspectives without cultural constraints.
- **AVOID OVERINTERPRETING BEHAVIOR:** Limited eye contact and formality, for example, may be culturally influenced.
- Avoid letting cultural differences influence decision-making processes.

# REFLECTION

Some questions that you can use to guide your reflection

- What are my own areas of bias? (ex. Socioeconomic status, race, religion, etc.)
- What are some resources on or off campus that I could use to increase my cultural competencies?
- If I meet with someone from another culture who is involved in a Title IX process, what resources can I use to ensure a culturally inclusive experience?



# PRE-HEARING PREP



SUNY SCI

- Accessibility needs
- Reliable internet access
- Access to appropriate equipment (*don't make assumptions*)
- Technology settings
  - All parties must be able to see and hear each other (cameras must be on)
  - Req\* - Hearing panelists must be comfortable with tech
- Recording ability (*double check storage & voice pick-up*)
- Double check provided links
- Back up plan & back up tech person
- Access to documents



# TECHNO

- Physical space for party & advisor
- Hearing board member location
- Your location
- Witness & Investigator invites
- All party & advisor confirmations
  - *back up advisors?*
- Confidentiality & privacy of communications
  - *tip pan the room*

# PHYS SPAC FACIL



# TRAUMA-INFORMED PRACTICE

- Avoid repeated disclosures
- Consider impact of trauma:
  - Fragmented memory & non-linear order of events
  - Specific details about sensory events
- Approach doesn't substitute for missing info, justify not doing a full investigation, or cause a biased belief in party's accuracy
- No right nor wrong way to respond



- 
- Training & procedure review
  - Check body language & demeanor
  - Questioning & word usage
    - “Help me understand” ... “and what are you able to tell me about what you experienced?”
    - Describing another individual's experience
    - Framing your questions, avoiding why questions





# HOW DO YOU PREPARE

1. Read through & digest your hearing materials
  - Familiarize yourself with alleged violation(s)
  - Review Investigative Report & evidence, appendices
2. Examine the unexamined
  - Develop questions that probe these areas
  - Ensure questions are relevant (we'll cover relevance later)
3. Check your materials
  - Tech, physical space, printed material, visual aids



- Gives best general overview of the incident
- As unvarnished as possible, free of conflicts of interest or bias
- Investigators are identified with credentials & training
- Reviews prohibited conduct alleged, witnesses, overview of evidence
  - In-depth summaries of witness testimony
  - Evidence list, appendices
- Parties **required** to be given 10 days to respond to evidence in report must be created at least 10 days prior to hearing
  - All parties will have seen relevant evidence prior to report's completion
- Panel will heavily rely on this material



# REVIEW INVESTIGATIVE REPORT



---

Testimony

---

Text Messages

---

Social Media Posts

---

Medical Records

---

Public Safety / Police Records

---

Videos / Surveillance Footage

---

Pictures

---

ID Card Data / Network Usage Location Data

---

Email

---

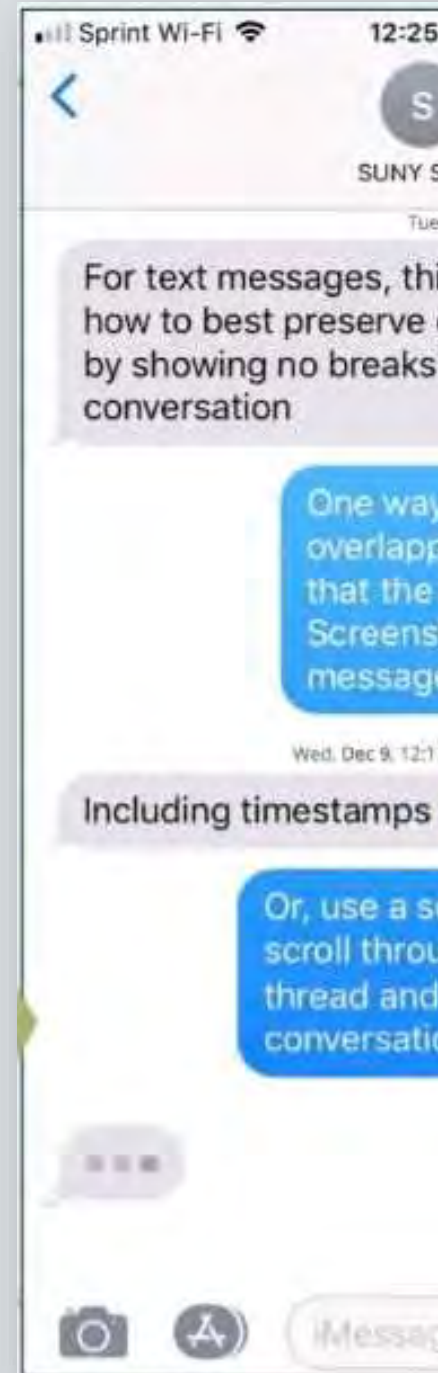
Voice notes

---

# POSSIBLE EVIDENCE



**KEEP IN MIND:** Institutions should collect **BOTH** exculpatory & inculpatory evidence.





# THE HEARIN AN OVERVIE



SUNY SCI

## WHEN INFORMAL RESOLUTIONS ARE ALLOWED UNDER THE FINAL RULE:

- After a formal complaint
- When all parties & TIXC Coordinator's consent
- Any party can withdraw at any time

## NOT ALLOWED IN CASES INVOLVING EMPLOYEE RESPONDENTS

## TIXC CAN RUN THE PROCESS, BUT IT IS NOT RECOMMENDED

### EXAMPLES:

- Administrative resolution
- Restorative justice
- Mediation



# INFORMAL RESOLUTION





# STICKING TO THE SCRIPT



1. Introductions
2. **Purpose of Hearing, Review Allegations**
3. Privacy & Decorum Expectations
4. **Due Process Rights**
5. Notice of Allegations & Clarification
6. **Opening Statements**
7. Presentation of Investigative Information
8. **Cross Examination & Relevant Determinations**
9. Witnesses & Cross Examination
10. **Closing Statements**
11. End of Hearing



SUNY SCI

# HEARING: INTRODUCTION

- Opportunity to review roles & participants in hearing
- Begins the recording - officially kicking off the hearing
- Reviewing basic expectations
  - Cell phone & device decorum
  - Notification of transcript
  - Rights to access
  - Ownership of recording
- Introduction of participants



**Joyce Conceição**  
**Administrative Hearing**  
**Officer**



# PURPOSE OF HEARING

- Review objectives of the hearing
  - Not to find anyone responsible or responsible
  - To have an equitable, fair process (not a perfect one)
- Obligation of truthfulness & transparency
- Reminder of educational philosophy and the grievance process
- **Not a criminal proceeding**
- Discuss flow of meeting



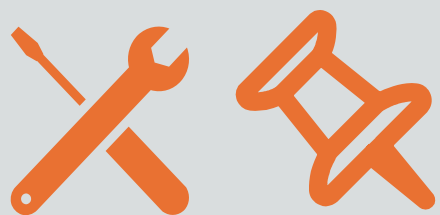
# PRIVACY

- Notice of privacy & confidentiality
- Reminder that sharing materials to non-participating individuals may be retaliatory & violation of conduct
- Review of decorum (will review later)
- Review of cross-examination (will review later)
- Discuss role & obligations of advisors
- How to request breaks or troubleshooting needs
- Review of accommodations



# Questions should be asked in a neutral

- No accusatory questions
- No “duty of zealous advocacy” inferred or enforced, even for attorney-advisors
- No abusive behavior: yelling, screaming, badgering, leaning over, or approaching witnesses/parties without permission
- No use of profanity or personal attacks
- Repetitive questions are not allowed



# DECOR



# DUE PROCESS RIGHTS

DO PARTIES UNDERSTAND THEIR DUE PROCESS RIGHTS  
WELL AS THEIR RIGHTS UNDER TITLE IX?

- Opportunity for parties to object to panelists participating
  - If yes, decisionmakers meet off record to discuss objection
    - If the objection is sustained, substitute an alternate decisionmaker
    - May delay hearing
  - If not, you can continue
- Opportunity for process questions
- Move towards **formally** beginning the hearing, turn over facilitation responsibilities to **hearing chair**



# NOTICE OF ALLEGATIONS & CLAIMS

- **Hearing chair** reviews allegations
- Opportunity for respondent to enter claims of **“in violation/responsible”** or **“not in violation/not responsible”**
  - Respondent can also enter **“decline to respond on record”**
- Repeat for each claim
- If responsible is the claim, hearing would still be required to determine possible sanctioning



## MUST INCLUDE:

NY1

Date/Time of Formal Complaint & Who Filed the Complaint

References to Policies & Procedures

Conduct Alleged (Including Possible Sanctions if Found Responsible)

Date/Location of the Alleged Conduct

Upcoming Meeting Date/Time/Location

Notice of Advisor of Choice

Presumed NOT RESPONSIBLE Until Determination is Made

Copy Sent to Complainant



break



# OPENING STATEMENT



Acknowledge parties' opportunity to review investigation & to respond to elements within the report



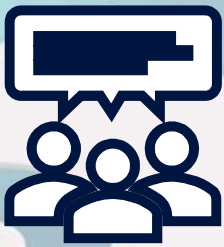
Parties can provide opening statements



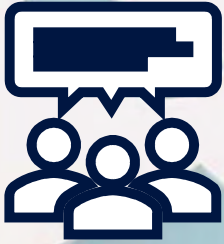
Move to questions



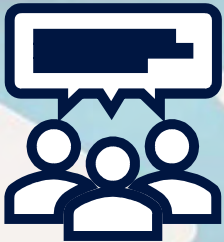




Overview of cross-examination, review rules & expectations of all parties & advisors



Questions for all parties by the alternate parties' advisors



Relevancy determinations



Board questions for all parties



**CROSS-EXAMINATION & QUESTION**

Questions posed by advisors must be evaluated for relevance in  
by a decisionmaker.

Relevant questions ask whether facts material to allegations under  
investigation are more or less likely to be true.

Relevance decisions are made on a question-by-question basis.

Relevance decisions **should not** be based on:

- who asked the question,
- their possible (or clearly stated) motives,
- who the question is directed to,
- or the tone or style used to ask about the fact.

*What about sensitive topics or issues?*

# QUESTION REGARDING PRIVILEGED INFORMATION

- The question is irrelevant because it calls for information shielded by a legally-recognized privilege **[identify the privilege]**
- The question is relevant because, although it calls for information shielded by a legally recognized privilege **[identify the privilege]**, the privilege has been waived in writing, and the question tends to show that a material fact at issue is more or less likely to be true



**GUIDE**  
**DETERMINING RELEVANCE**

# QUESTION ABOUT COMPLAINANT'S PRIOR SEXUAL BEHAVIOR, OR SEXUAL PREDISPOSITION

The question is relevant because although it calls for prior sexual behavior information about the complainant, it meets one of the two expectations to the **rape shield** protections defined in 34 C.F.R. § 106.45(b)(6)(i), and it tends to prove that a fact at issue is more or less likely to be true:

**EXCEPTION 1:** The question is asked to prove that someone other than the respondent committed the conduct alleged by the complainant.

**EXCEPTION 2:** The question concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is asked to prove consent

**The question is irrelevant because it calls for prior sexual information about the complainant without meeting either exception**



**GUIDE  
DETERMINING RELEVANCE**

# GENERAL PROBATIVE QUESTIONS

Determining whether a question is relevant because it asks whether material to the allegations is more or less likely to be true

Determining whether a question is irrelevant because it asks about detail that does not touch on whether a material fact concerning the allegations is more or less likely to be true

See, 85 Fed. Reg. 30026, 30343 (May 19, 2020)



# HOW DO YOU MAKE RELEVANCE DETERMINATIONS?

If decisionmaker is a single individual, they make the decision prior to the question

If decisionmaker is a panel, the panel chair will make that determination prior to the question asked.

# WHAT DOES THE RELEVANCE DETERMINATION CONSIST OF?

The Final Rule “does not require a decisionmaker to give a lengthy or complicated explanation. A brief explanation is sufficient to explain why a question is irrelevant”



# LET'S PRACTICE - RELEVANT



**BREAKOUT!**





# WITNESSES

- Same process of cross-examination
- Reminiscent of the introduction stage
  - Introduce witness
  - Notice that the hearing is recorded
  - Expectation of truthfulness
  - Reminder of educational philosophy of institution
  - Not a criminal proceeding
- Review process of cross-examination
- Move to questions, then dismiss witnesses from hearing after
- Repeat for every witness



# CLOSING STATEMENTS



Closing statements



Impact statement submissions



Next steps



Decision making process begins





**YOU MADE IT**



# QUESTIONS?

**SUNY.EDU**

[system.suny.edu/sci/news](https://system.suny.edu/sci/news)

**SYSTEM.SUNY.EDU/SCI/TIX2020**

[system.suny.edu/sci/titleix](https://system.suny.edu/sci/titleix)



# COMING UP ...

<b>2/18</b>	Clery Center: CSA Train-the-Trainer
<b>2/19</b>	Stalking 2.0: The Use of Technology to Stalk
<b>2/20</b>	Stop Campus Hazing Act: What are your compliance responsibilities?
<b>2/25</b>	Stop Campus Hazing Act: Counting Hazing Incidents for Clery Reporting
<b>2/27</b>	Annual Security Reports : A Guide for Creating the "Campus Safety Handbook"
<b>3/4 &amp; 6</b>	Organizational Conduct
<b>3/11 &amp; 12</b>	The Neurobiology of Sexual Assault
<b>3/18</b>	Risk Assessment in Stalking Cases & Safety Planning with Victims`
<b>3/19</b>	ResLife Inservice - Conflict Resolution Outside of the Conduct Model





**SUNY SCI**  
STUDENT CONDUCT INSTITUTE

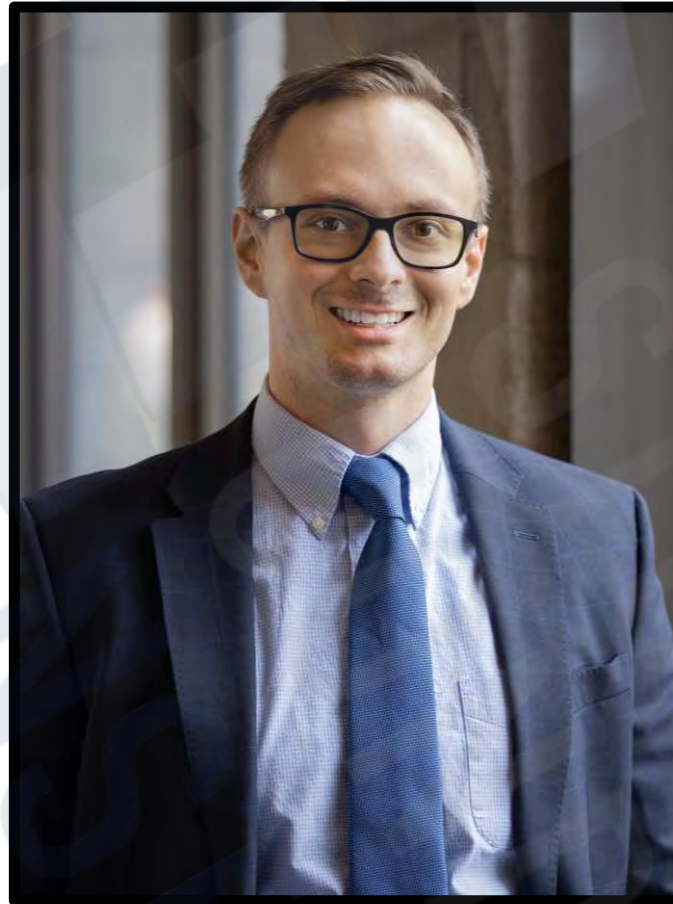


The State  
of New York

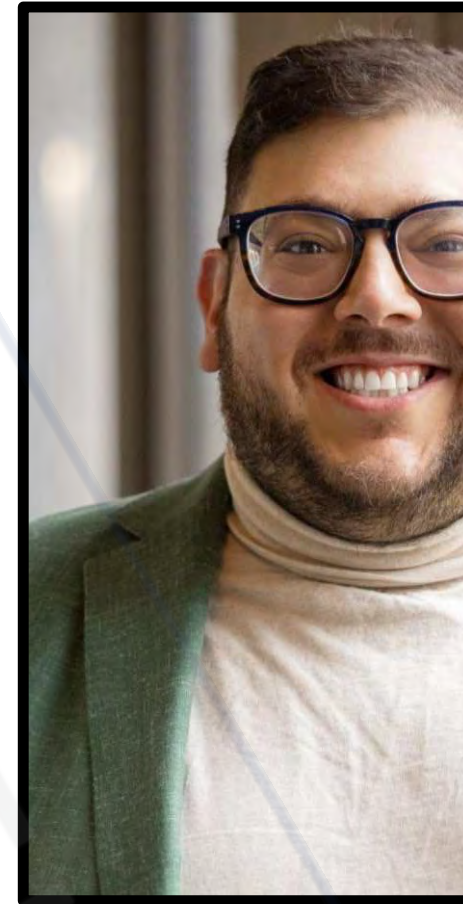
# TITLE IX FOR HEARING BOARD PANELISTS

RETURNING TO THE 2020 RULE (DAY 3)

# I N T R O S



**ALEXANDER WHEELER, M.S.ED.**  
Assistant Director  
SUNY Student Conduct Institute



**RYAN RIBEIRO,**  
Assistant Director  
SUNY Student Conduct Institute

# DISCLAIMER

This presentation shall not constitute legal advice, nor create an attorney-client relationship. This presentation is for informational purposes only.

If you have any specific legal questions or require legal advice for your situation, please contact your institutional, general, or individual counsel.



The documents included in the training materials for & referenced in this training are purely fictional.

The case is not based on any real case that the SCI staff is aware of. The characters named are fictional & are not intended to represent any real person.

The details of this case & these documents should not be used to make decisions in similar cases, nor should they be considered precedent or advice from SUNY or the Student Conduct Institute.

# TRAINING MATERIALS

# RETURN TO 2020

DURING THE LIVE@DISTANCE, MEANINGFUL C  
FOR INSTITUTIONS **RETURNING TO THE 2020 R**  
BE REFERENCED WITH THE FOLLOWING SYM



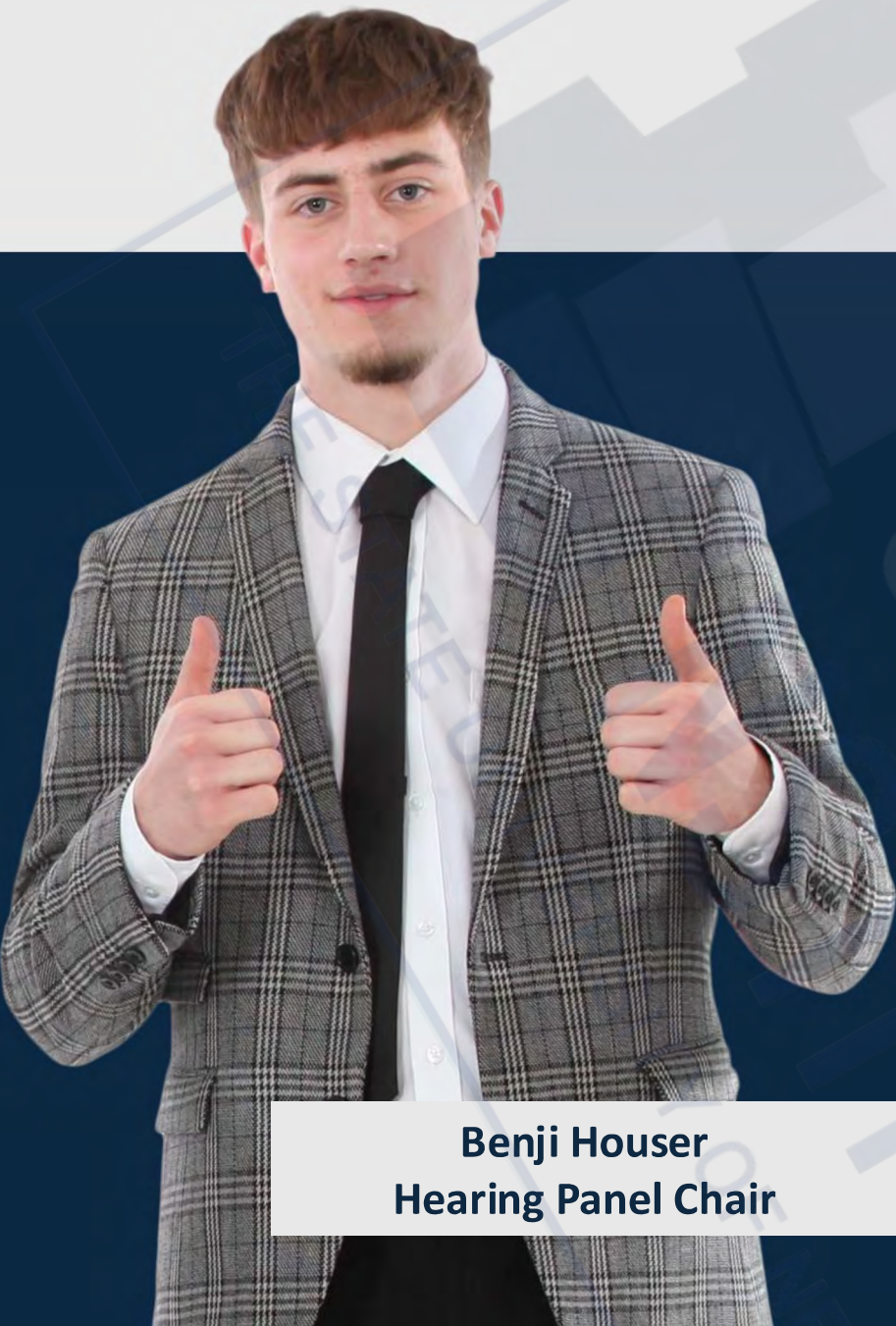
# YESTERDAY, ON LIVE@DISTANCE

- Hearing boards & their structure
- **Common participants in the hearing process**
- Key concepts
- **Cultural humility & awareness**
- Kinds of evidence panelists can expect
- **Hearing script & investigative report**
- Cross-examination & determining relevance



Step  
Title I

# AGENDA



**Benji Houser**  
Hearing Panel Chair

- EVIDENCE BASED DECISION MAKING
- WEIGHING & EVALUATING EVIDENCE
- ASSESSING CREDIBILITY
- DETERMINING RESPONSIBILITY
- DEVELOPING SANCTIONS, IN CASE OF RESPONSIBLE FINDING
- WRITING UP YOUR RATIONALE
- REVIEWING THE APPEALS PROCESS

# THE DECISION



# ROAD TO RATIONAL



DELIBERATION



DETERMINATION

RATION



# DELIBERATION



Establish roles, assess board member strengths



Review allegations, claims, evidence, hearing



Utilize tools for success, sanctioning guidelines, bias



Scheduling, flexibility



Seek consensus, or lack thereof



# EVIDENCE-BASED DECISION MAKING



SUNY SCI

**EXCLUSION STATUS**

**RELEVANCY**

**AUTHENTICITY**

**CREDIBILITY**

**RELIABILITY**

**WEIGHT**



# ... EVIDENCE YOU MUST INCLUDE ...

## EXCULPATORY & INCULPATORY

Exculpatory evidence increases the likelihood of finding of **non-responsibility or non-liability**

Inculpatory evidence increases the probability of a finding of **responsibility or liability**

**PLEASE NOTE:** investigations & findings of **INNOCENCE** and **GUILT** are not applicable to Title IX or conduct grievances. These processes are administrative processes & are not civil or criminal in nature.



# RELEVANCE



- Relevant evidence makes a matter MORE OR LESS LIKELY TO BE TRUE
- Relevant evidence will make a direct connection to the charge(s)
- Irrelevant evidence should be not
- Authenticity

# EVIDENCE REVIEW

How does the evidence compound to CRE  
INDICATE a narrative?

Ask yourself these fundamental questions:

1. Why or why not should evidence be excluded or included?
2. If evidence must be excluded, how has it been communicated?
3. What's the process to challenge these decisions?

ALL DECISIONS SHOULD BE WRITTEN OUT IN A RATIONALE & DETERMINATION

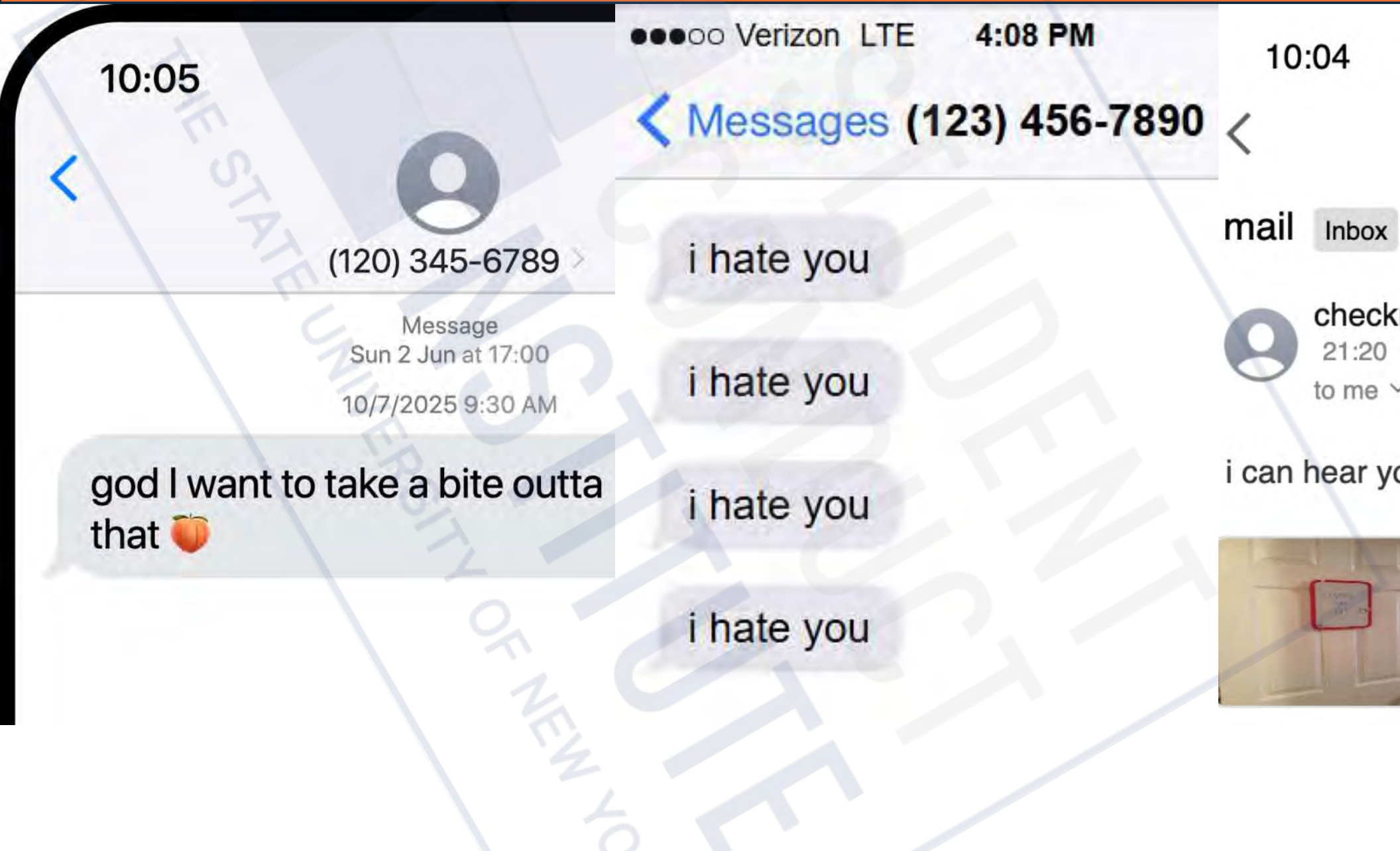


# AUTHENTICITY

TESTIMONY  
CUSTODY  
ELECTRONIC  
AUTHENTICATION  
ANALYSIS



# AUTHENTICITY



# CREDIBILITY

SPECIFICITY  
CONSISTENCY  
CONTRADICTION  
MOTIVE TO DECEIVE  
DEMEANOR & EVASION

Credibility judgments may be made when decisionmakers are asked whether a person *they don't know* is honest in an unfamiliar situation.

Many traditional approaches to assessing credibility may **REINFORCE** negative perceptions rather than promote an effort to understand the person.

The areas on the left of the diagram are the areas that decisionmakers determine to be most important in making a credibility judgment.



# ASSESSING CREDIBILITY

<b>SPECIFICITY</b>	<ul style="list-style-type: none"><li>• Some witnesses may have a lot of info</li><li>• Others may have value even with less specific information</li></ul>
<b>CONSISTENCY</b>	<ul style="list-style-type: none"><li>• Consistency of witness' testimony with prior statements</li><li>• Corroborate with information provided by others</li></ul>
<b>CONTRADICTION</b>	<ul style="list-style-type: none"><li>• Contradictions within testimony may reduce credibility</li><li>• Be mindful of "perfect testimony"</li></ul>



# ASSESSING CREDIBILITY

## MOTIVE TO DECEIVE

- Is there a presence of a motivation to deceive?
- What factors play into credibility judgments?
- Conflicts of interest or bias
- Coaching
- Any information that has been intentionally destroyed

## DEMEANOR & EVASION

- **Exercise caution**
- Apply cultural competence when examining body language and demeanor to evaluate credibility
- Behaviors traditionally associated with evasion may not always be what you think it does



# RELIABILITY



SOURCES

BIAS

RECALL RELEVANCE

ACCURACY

PURPOSE

# KNOWLEDGE CHECK!





# BREAK



**SUNY**  
STUDENT CONDUCT



The  
of

# KINDS OF EVIDENCE



DIRECT

CORROBORATING



CIRCUMSTANTIAL



SUNY SCI



## DIRECT

First-hand observations & evidence of incident or surrounding circumstances

**CONSIDERABLE WEIGHT** (e.g. witness testimony of first-hand account of incident).

## CORROBORATING

Statements or tangible materials that confirm direct evidence regarding incident

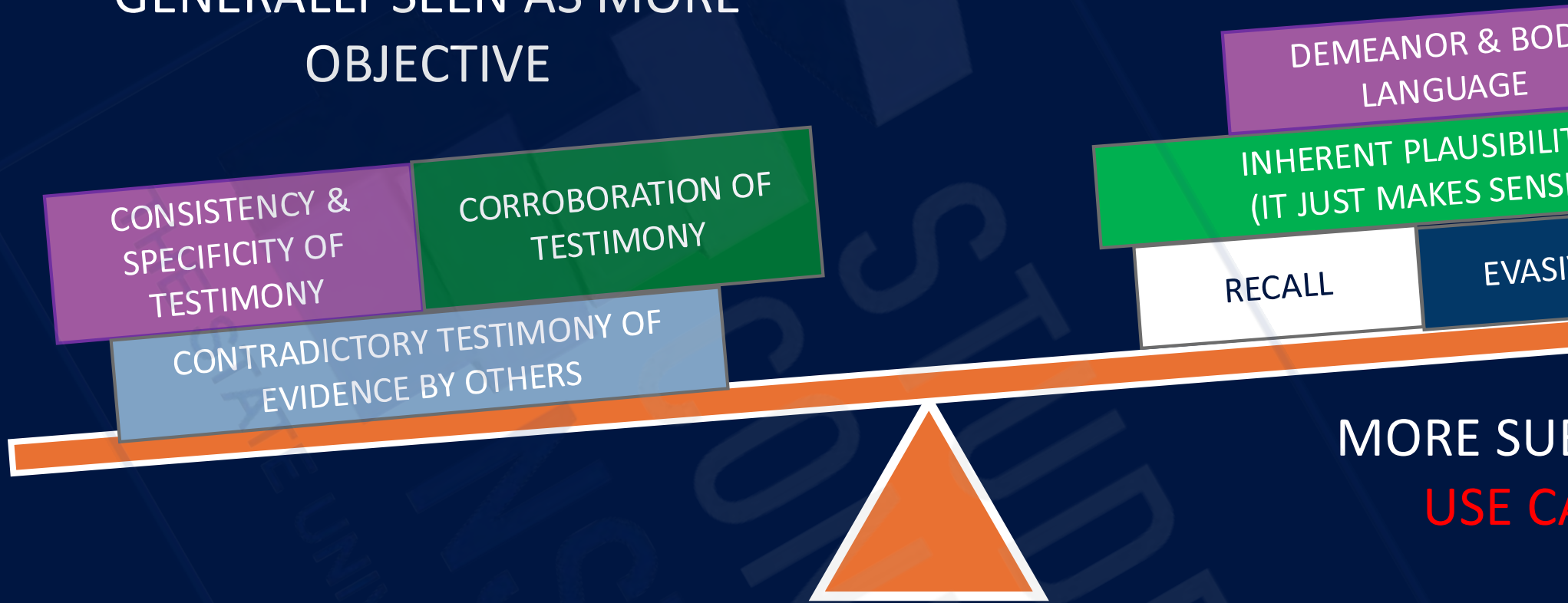
**SOME WEIGHT** (e.g. video evidence, text message threads, security footage, swipe card records, business records, medical records).

## CIRCUMS

Statements or ta  
that rely on infer  
to a conclus

**LEAST WEIGHT**  
location of allege  
showing severa  
bottles & s

GENERALLY SEEN AS MORE  
OBJECTIVE

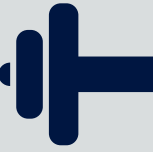


# WEIGHING TESTIMONY & EVIDENCE



SUNY SCI





DIRECT

CORROBORATING

CIRCUMS

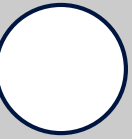
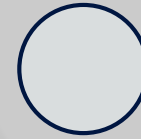
WHAT KIND OF EVIDENCE  
IS THIS?



Charge & Allegation

Describe standard of evidence used to make determination

Sanction  
*~if responsive*



Review of evidence relied upon to decide

Finding for each specific charge & allegation



# FINDINGS & RATI

# DETERMINATION & REMEDIES



Not Responsible/Not In Violation – revisiting restriction



Responsible/In Violation – sanction guidelines, prior history, rea



Considerations, resources, consistency, non-discrimination



- **Finding of Responsibility**

- Policy Jurisdiction

- **Complaint Summary**

- Investigatory Procedures

- **Inspection & Review of Evidence**

- Delays & Adjournments

- **Procedural Summary**

- Appeal Rights

- **Findings & Rationale**

- Sanctions & Remedies

# DETERMINATION



# DETERMINING RESPONSIBILITY

- ❑ Identify the **allegations** potentially constituting sexual harassment
- ❑ Describe the **procedural steps** taken
- ❑ Identify **findings of fact** supporting the determination
- ❑ Identify which **section of the grievance policy** respondent has or has not violated
- ❑ For **each allegation**, provide a 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 be provided to the complainant; and
- ❑ Describe the recipient's **appeal procedures**

# RATIONALE, IN PRACTICE

- **DESCRIPTION OF EVIDENCE REVIEWED** (i.e. written statements, report filed through TIX Investigator, screen shots of various message threads, & witness testimony)
- Description of relevant **CODE OF CONDUCT / TITLE IX GRIEVANCE PROCESS** section
- Description of **STANDARD OF EVIDENCE**
- **RE-STATEMENT OF FINDING** (not responsible/responsible)
- **RATIONALE** supporting finding, including evidence was relied on & what the substance of that evidence was, & if applicable, evidence that was not relied on
- Any **DISCIPLINARY SANCTIONS** imposed upon respondent
- Any **REMEDIES DESIGNED TO RESTORE OR PRESERVE EQUAL ACCESS** to the education program or activity will be provided to the complainant

# STANDARD OF EVIDENCE DESCRIPTION

For each charge, state the standard of evidence being used

- Preponderance of the Evidence, *or*
- Clear & Convincing

*“By a **preponderance of the evidence** the hearing board has found the respondent, Cody Norman, more likely than not...”*

# DESCRIPTION OF EVIDENCE REVIEWED

Provide a **BRIEF SUMMARY** of the evidence used in making the decision

- **Witness testimony** – “Verbal testimony given by the complainant that observed ...”
- **Witness testimony** – “Verbal testimony given by witness #1 that stated ...”
- **Text messages** – “Text messages sent between the respondent and complainant on the days of 09/23/25 and 10/10/25 ...”
- **Email Communications** – “Screenshots of emails sent to the complainant between the days of 09/23/25 and 10/10/25 ...”



# DESCRIPTION OF EVIDENCE REVIEWED

Provide a **BRIEF SUMMARY** of the evidence **NOT USED** in making the decision

- **Witness testimony** – “Verbal testimony given by the complainant that was not used because ...”
- **Text messages** – “Text messages sent between the respondent and complainant on the days of 09/23/25 and 10/10/25 that did not provide additional context...”
- **Email Communications** – “Screenshots of emails sent to the complainant between the days of 09/23/25 and 10/10/25 that were not related to the charges...”

# ALLEGATION(S) DESCRIPTION

- RESTATE THE CHARGES

Sample case:

- **Stalking:** Engaging in a course of conduct directed at a specific person (Com that would cause a reasonable person to (a) fear for his or her safety or the others; or (b) suffer substantial emotional distress.
- **Sexual Assault:** Forcible or nonforcible sex offense under the informal criminal system of the Federal Bureau of Investigation

# SANCTIONS AND/OR REMEDIES

- **Appropriate Sanctions:** If the student is found responsible, outline the sanctions.
- **Appropriate Remedies:** If remedies are being provided to the complainant, outline them here.
- **Rationale for Sanctions/Remedies:** Explain why the chosen sanctions/remedies are appropriate, considering factors such as the severity of the offense, past conduct, & educational outcomes or institutional obligations to the complainant.

# TONE & STYLE

- **Objective & Neutral:** Avoid personal opinions or emotional language.
- **Concise but Comprehensive:** Include enough detail for clarity but avoid unnecessary repetition.
- **Consistent with Institutional Policies:** Ensure alignment with the student conduct code.



# BREAKOUT!

Using the information you have right now, what is your group's decision regarding responsibility, and why?

ODD NUMBERED GROUPS – Determine responsibility for Sexual Assault Charge

EVEN NUMBERED GROUPS – Determine responsibility for Stalking Charge

Page 4 on Sample Document 11

Page 60 from the Full Materials Document



# DETERMINING SANCTIONS

CLOSING STATEMENTS  
IMPACT OF SANCTIONS  
PROPORTIONALITY  
CONSISTENCY  
PRIOR DISCIPLINARY HISTORY  
EDUCATIONAL MISSION




# IMPACT STATEMENTS

## BOTH PARTIES CAN SUBMIT IMPACT STATEMENTS

In these statements a party can:

- Provide context for their behavior
- Suggest possible options for the board to consider
- Describe the impact the process has had on them, the other party, or their community
- Suggest sanctioning or request leniency



Joyce Conceição  
Administrative Hearing  
Officer


B  
Hea

# IMPACT STATEMENTS

Cody, the respondent, submits an impact statement for the hearing, and acknowledges that there are things he could have done differently and indicates remorse for his behavior, however they request that he be allowed to maintain membership on the varsity table tennis team.

Cody states that before joining the team, he was very lonely and felt very detached from the community. Now, membership on the team provides some stability and community that would otherwise be missed. Cody also states that he has an athletic scholarship, and without that scholarship he would be unable to maintain enrollment at SCI University.

Cody has indicated some remorse and makes a request to avoid a sanction with a list of reasons as to why, which can be helpful for determining both why a sanction is being considered and what kind of sanction should be assigned.



**Joyce Conceição**  
Administrative Hearing  
Officer

**Hea**



# IMPACT OF SANCTION

*SANCTIONS SHOULD ADDRESS ANY **AGGRAVATING** AND/OR **MITIGATING** FACTORS OF A CASE*

Aggravating factors **INCREASE** severity of a violation

- EX: Lack of remorse or understanding, presence of weapons, premeditation

Mitigating factors **DECREASE** severity of a violation

- EX: Non-violent offense, demonstrated capacity or willingness to change behavior

Restorative measures rather than purely punitive sanctions

Disproportionate effect on student unrelated to the circumstances

# PROPORTIONALITY

## *SANCTIONS PROPORTIONAL TO OFFENSE*

Is sanctioning consistent with the kind of violation considered before the hearing panel?

Mitigating/Aggravating Factors

Rationale needed when deviating

Open Container of Alcohol	Viol Under o
Warning	

# CONSISTENCY

*DEVIATION FROM INTERNAL CONSISTENCY CAN BE SEEN AS  
& CAPRICIOUS*

Individual treatment of cases an imperative

Many cases may have similar circumstances & outcomes

- Colleges must have record keeping protocol

History & guidance can assist in sanction development

Disregarding consistent sanctioning response must be rationalized

Student 1	
Responsible for Stalking	Respon
Removal from Housing	Warni
Rationale	

# PRIOR DISCIPLINARY HISTORY

*REMEMBER: PRIOR MISCONDUCT IS **NOT EVIDENCE OF RESPONSIBLE** MISCONDUCT*

Hearing panels can use prior findings of responsibility to assist in determining sanctions for new responsible findings

Prior similar violations with similar circumstances may indicate a need for more impactful sanctioning

- Frequency of violation, also

More punitive motivation than other considerations

Cody	
Responsible for Stalking	Respon
January 2025	De
Probation, Counseling, Educational Sanctioning	

# INSTITUTIONAL MISSION

*WHAT DOES YOUR INSTITUTIONAL MISSION HAVE TO SAY ABOUT **STUDENT MISCONDUCT**?*



Institutional philosophy may influence your practice

Scheduling systems for sanction, predetermined outcomes for responsible findings

Collaborative approaches with other offices responsible students

Performance plans or behavioral agreement

# COMMON SANCTION

WARNINGS OR REPRIMANDS	Both written and/or verbal
CREATIVE OR EDUCATIONAL	Reflection papers, presentations, letters to future-selves, programs designed for specific circumstances
PUNITIVE MEASURES	Probation, suspension, or permanent separation from the university
RESTORATIVE MEASURES	Intentional dialogues with community members, service repairing harm or restoring relationships
ENGAGEMENT WITH RESOURCES OR SERVICE	Counseling, or wellness-related services, partnerships with offices to engage students with community & campus

# KNOWLEDGE CHECK



# BREAK TIME!



 **SUNY SCI**  
STUDENT CONDUCT INSTITUTE



# APPEALS PROCESS

## 3 MANDATED GROUNDS

1

PROCEDURAL IRREGULARITY that affected the outcome of the matter (i.e., failure to follow the institution's own procedures);

2

NEW EVIDENCE that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;

3

The Title IX Coordinator, investigator(s), or decision-maker(s) had a CONFLICT OF INTEREST OR BIAS for or against an individual party, or for or against community members or respondents in general, that affected the outcome of the matter

*An opportunity for a student to bring forward specific concerns that may have impacted the result of the original hearing (as defined in your institution's code of conduct) (Kalagher, S.S. & Curran, R. D., 2020)*



- Appeals are not mulligans or do-overs
- No second-guessing or micro-management of hearings
- Cannot deviate from procedures
- All parties must be notified of appeals
- All new panel to hear appeals
- Conflicts of interest and/or bias prohibited
- Additional grounds for appeal may be considered, but only if publicly available & applicable to all

## APPEAL CONSIDERATIONS



APPEALS CAN TAKE PLACE  
DECISION IS MADE

This includes, but may not be limited to:

- Supportive measures (any kind)
- Emergency removals
- Relevance determinations
- Evidence or question exclusions
- Adjustments made throughout the process
- Decisions/determinations
- Dismissals of complaint

YOUR INSTITUTION REQUIRES  
MECHANISM TO HEAR C

# WHEN CAN A PARTY APPEAL?

Harvey O'Sullivan  
Liana's Advisor



SUNY SC

Appeal decisions must be **in writing**.

Parties notified simultaneously through official communication.

The decision must include, at minimum:

- The grounds for appeal, or grounds considered;
- The rationale for granting or denying the appeal; &
- If the appeal is granted, what are the next steps for remedy and why?

What is a remedy?

- Example: increase or decrease the severity of sanction for the respondent



# APPEAL DECISION

# KNOWLEDGE CHECK!



# QUESTIONS?

**SUNY.EDU**

[system.suny.edu/sci/news](http://system.suny.edu/sci/news)

**SYSTEM.SUNY.EDU/SCI/TIX2020**

[system.suny.edu/sci/titleix](http://system.suny.edu/sci/titleix)



# COMING UP ...

2/18	Clery Center: CSA Train-the-Trainer
2/19	Stalking 2.0: The Use of Technology to Stalk
2/20	Stop Campus Hazing Act: What are your compliance responsibilities?
2/25	Stop Campus Hazing Act: Counting Hazing Incidents for Clery Reporting
2/27	Annual Security Reports : A Guide for Creating the "Campus Safety Handbook"
3/4 & 6	Organizational Conduct
3/11 & 12	The Neurobiology of Sexual Assault
3/18	Risk Assessment in Stalking Cases & Safety Planning with Victims`
3/19	ResLife Inservice – Conflict Resolution Outside of the Conduct Model

THANK YOU SO MUCH FOR

*WE ARE SO GRATEFUL TO A*

*MEMBERS JOINING US I*

*TRAININGS.*

PLEASE COMPLETE THE POS

**SURVEY** SO THAT WE CAN

IMPROVE, & CREATE NEW

FOR ALL OF YOU

