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# Equity & Compliance

## Hearing Panel and Advisor Training

*2023/2024*

**Presented by:**  
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# Equity & Compliance



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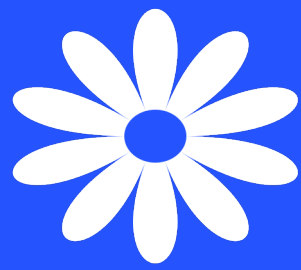


# TODAY'S Schedule

- 10:00 - 11:30 Review Policies and Definitions
- 11:30 - 11:45 Scenario - Groups
- 11:45 - 12:15 Lunch Break
- 12:15 - 12:45 Investigation Report - Groups
- 12:45 - 1:30 Hearing and Deliberation - Groups
- 1:30 - 2:00 Closing Remarks/Discussion







# Definitions Overview

- ◆ **Complainant:** an individual who is alleged to be the victim/impacted party of conduct that could constitute sexual harassment
- ◆ **Respondent:** an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment  
Recipient:



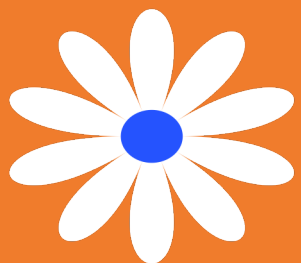
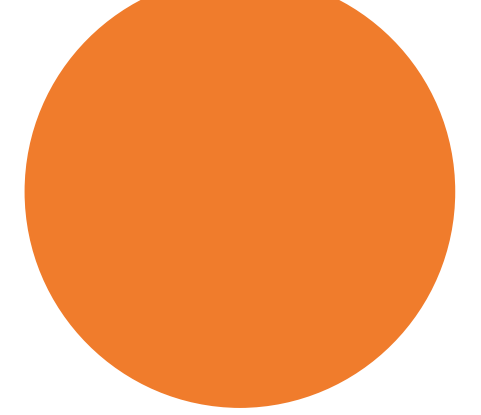


# Policies Overview

**Equity & Compliance Oversees these Policies:**

- ◆ Title IX Policy and Procedures (“Title IX Policy”)
- ◆ Discrimination and Discriminatory Harassment Policy and Procedure (“RISD Policy”)

**Burden of Proof Under All Policies is Preponderance of Evidence (More Likely than Not)**



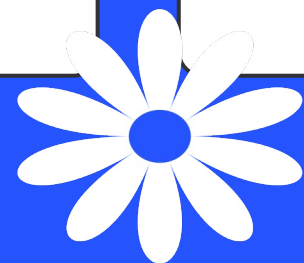


# Scope Under Title IX

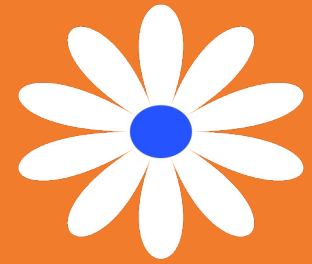
- In "education program or activity"
  - includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any, building owned or controlled by, a student organization that is officially recognized by a post-secondary institution
- Must have occurred when Respondent was in the United States

# Scope Under RISD Policy

- Whether RISD has Jurisdiction over the Respondent







# Initial

## Under TIX

- 1. Whether RISD has jurisdiction over the Respondent and the location or context in which the alleged conduct occurred; and
- 2. Whether the alleged conduct, if proven as stated in the complaint, would constitute a violation of applicable Title IX prohibited conduct under this Policy.

*If no to either, Equity & Compliance must dismiss any Complaint made under the Title IX process.*

# Assessment

## Under RISD



- 1. Whether RISD has jurisdiction over the Respondent; and
- 2. Whether the alleged conduct, if proven as stated in the complaint, would constitute a violation of applicable conduct under this Policy.

*If no to either, Equity & Compliance may refer the matter to another Campus Partner or may offer other resources*





## EQUITY & COMPLIANCE PROCESS

RECEIVE COMPLETED REPORT FORM



INTAKE MEETING + OFFER RESOURCES & SUPPORT



CHECK FOR A HISTORY OF SIMILAR BEHAVIOR



TRACK INFORMATION



EXPLAIN OPTIONS MOVING FORWARD



FORMAL RESOLUTION



INVESTIGATION



HEARING



DETERMINATION OF POLICY VIOLATION



SANCTIONS IF FOUND RESPONSIBLE



OPTIONAL APPEAL



INFORMAL RESOLUTION

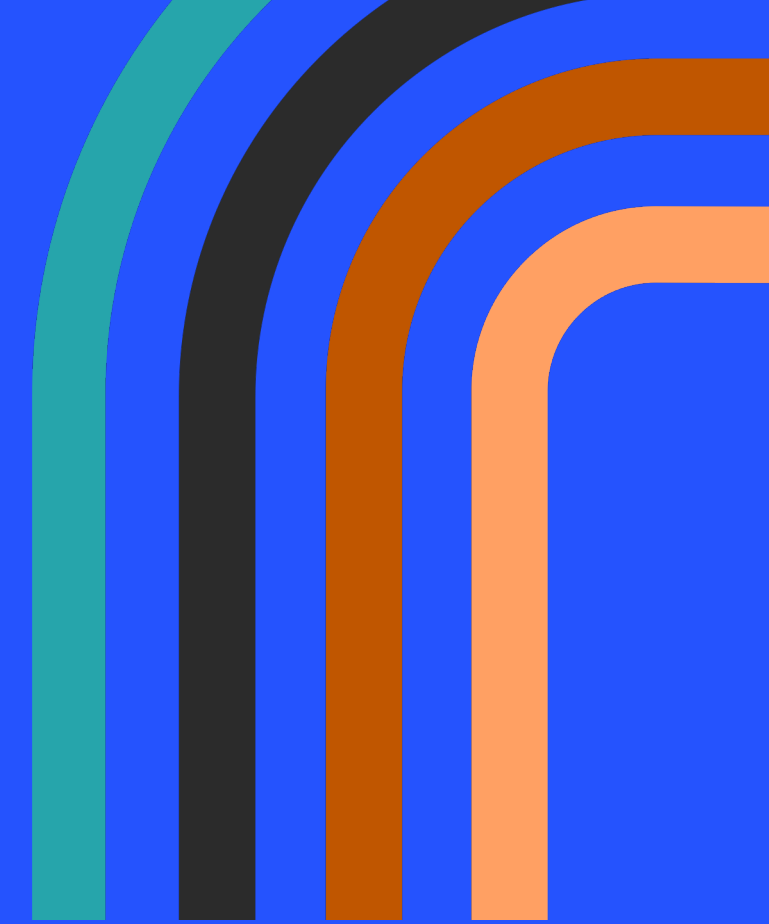
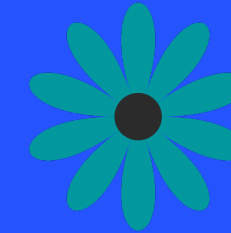


ACTION STEPS TO STOP BEHAVIOR + PREVENT ITS REOCCURRENCE

Informal resolution is a remedies-based, structured interaction between or among affected parties that balances support & accountability that is offered in various forms, but is generally designed to allow acknowledgment, responsibility, and/or repairing of harm (to the extent possible).

Informal Resolution can include:

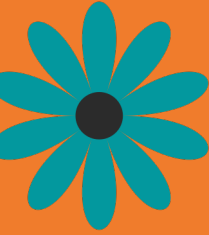
- Supportive Measures
- Bias Response Protocol
- Mediation
- Restorative Dialogue / Circles
- In-Part or Fully Accepted Responsibility by Respondent with appropriate sanction(s)



# Informal or Formal Processes







# Investigation Objectives

To allow RISD:

- To collect relevant inculpatory and exculpatory evidence
- To be sufficient enough to permit an impartial decision-maker to determine if it was more likely than not that a policy violation occurred



# What does an investigation look like?

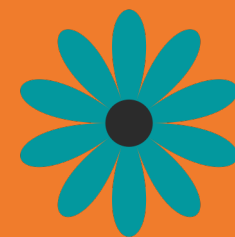


## **Investigation Report:**

Investigator prepares an Investigation Report which synthesizes the information collected in the Investigation for the parties to review in draft form. Parties can submit additional information, clarifications, comments, or questions as a response. The report is finalized and provided to parties and to the Hearing Panel in preparation for the Hearing.

## **Interviews:**

Investigator interviews Complainant, Respondent, any Witnesses identified by parties or other relevant information. Investigator provides summaries to participants for their review and comment.



## **Documentary Evidence:**

Investigator collects evidence from Parties, Witnesses, and whatever means reasonably available. Documentary Evidence can be screenshots, emails, texts, videos, photos, audio,

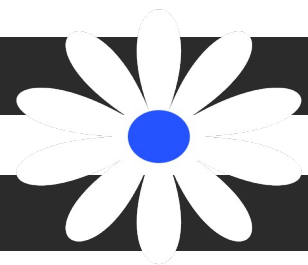




# Definitions Of Policy

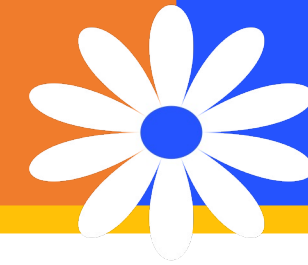
We have two sets of definitions because we have two policies!

Keep in mind: Title IX is limited to sexual and gender-based misconduct & specific jurisdiction.





# Title IX on Retaliation:



## *TITLE IX: § 106.71(a) Retaliation Prohibited*

No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

# RISD on Retaliation

Any conduct, whether or not workplace, employment, or education-related, that is directed at a person because they are, in good faith, opposing a discriminatory practice, initiating a complaint of discrimination, or participating in such an inquiry/investigation, which is intended to deter a person from making or supporting a charge of discrimination and/or discriminatory harassment.

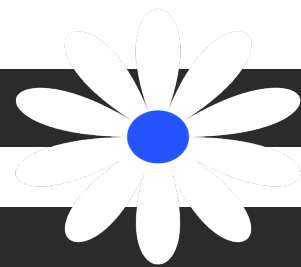
Retaliation can take many forms and may consist of any adverse action taken against said person. Actions in response to a good faith report or response under this Policy are considered retaliatory if they have a materially adverse effect on the working, living, or academic environment of an individual and could dissuade a reasonable person from participating in or supporting a charge of discrimination and/or discriminatory harassment.



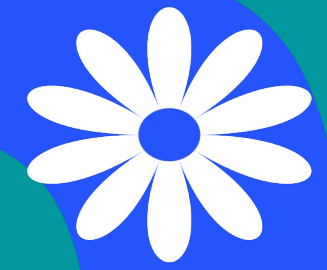
# Sexual Misconduct Investigation Definitions

Definitions for Title IX Policy

Definitions for Sexual Misconduct within the Discrimination and  
Discriminatory Harassment Policy



# Title IX Definitions:



Hostile Environment Sexual Harassment occurs when unwelcome conduct is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to RISD's education program or activity.

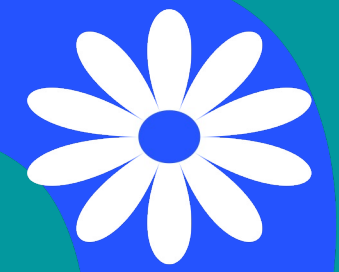
## §106.30(A) DEFINITION OF SEXUAL HARASSMENT

BASED ON A REASONABLE PERSON STANDARD IN THE SHOES OF THE COMPLAINANT	<b>S</b> SEVERE	<b>P</b> PERVASIVE	<b>OO</b> OBJECTIVELY OFFENSIVE	<b>DE</b> DENIED EQUAL ACCESS
YES	☑	☑	☑	☑
NO				
NEED MORE INFO				





# Title IX Definitions:



*Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances.*

**Severe:** Consider the circumstances (e.g., the ability for Complainant to remove themselves from the harassment.) Physical violence or threats more likely to be reasonably considered severe.

**Pervasive:** Frequency of conduct, how publicly practiced or widespread or known

**Objectively Offensive:** Remember reasonable person standard. Consider, number of persons involved, severity, frequency, whether physical threats, humiliation, intimidation, ridicule or otherwise abusive

**Denied Equal Access?:** Did it deny equal access? Would a reasonable person in similar circumstance be effectively denied equal access to their programs or activities?





# Title IX Definitions:

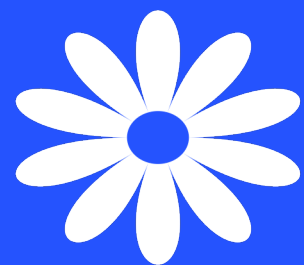
Rape is the carnal knowledge of a person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

## §106.30(A) DEFINITION OF SEXUAL HARASSMENT SEXUAL ASSAULT: RAPE

RAPE:	CARNAL KNOWLEDGE	WITHOUT CONSENT; OR	INCAPABLE OF GIVING CONSENT B/C OF AGE ; OR	INCAPABLE OF GIVING CONSENT B/C OF INCAPACITY
YES	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
NO				
NEED MORE INFO				

# Title IX Definitions:

Sodomy is oral or anal sexual intercourse with another person, without the consent of that person, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.



## §106.30(A) DEFINITION OF SEXUAL HARASSMENT SEXUAL ASSAULT: SODOMY

SODOMY	ORAL OR ANAL SEXUAL INTERCOURSE	WITH ANOTHER PERSON	WITHOUT CONSENT; OR	INCAPABLE OF GIVING CONSENT B/C OF AGE ; OR	INCAPABLE OF GIVING CONSENT B/C OF INCAPACITY
YES	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
NO					
NEED MORE INFO					

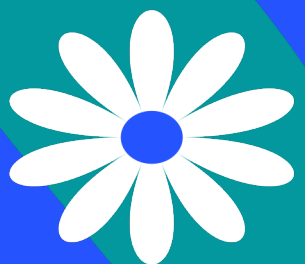


# Title IX Definitions:

Sexual Assault with an Object is the use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

## §106.30(A) DEFINITION OF SEXUAL HARASSMENT SEXUAL ASSAULT: SEXUAL ASSAULT W/ AN OBJECT

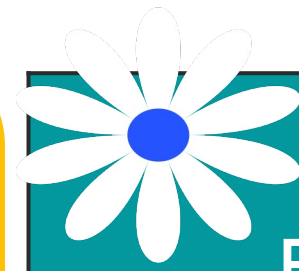
SEXUAL ASSAULT W/ AN OBJECT	OBJECT OR INSTRUMENT USED TO UNLAWFULLY PENETRATE	GENITAL OR ANAL OPENING	OF ANOTHER PERSON	WITHOUT CONSENT; OR	INCAPABLE OF GIVING CONSENT B/C OF AGE ; OR	INCAPABLE OF GIVING CONSENT B/C OF INCAPACITY
YES	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
NO						
NEED MORE INFO						



# Title IX and RISD Definition:

Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress.

*For the purposes of this definition, “course of conduct” means two or more acts, including, but not limited to, acts in which the reported party directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, pursues, harasses, observes, surveils, threatens, communicates to or about a person, interferes with a person’s property, gives unwanted attention or unwanted physical, verbal or electronic contact, threatens by use of words and/or conduct, or any exhibits other course of conduct that is repetitive and menacing, directed at a specific person(s) which interferes with their peace, or would otherwise cause a reasonable person to fear for their safety; or safety of others; or suffer substantial emotional distress.*



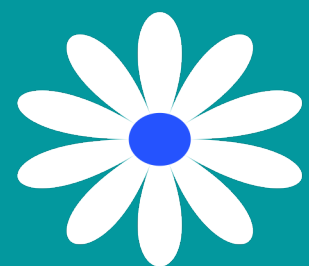
<u>Factor Met?</u>	<u>Yes/No? Why?</u>
Course of Conduct (2 or more acts)	
Directed at a specific person	
That would cause a reasonable person to fear for their safety or safety of others, or suffer substantial emotional distress	



# Title IX and RISD Definition:

**Dating Violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based 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.



# Title IX and RISD Definition:

**Domestic Violence:** includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who:

- i. is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;
- ii. is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- iii. shares a child in common with the victim; or
- iv. commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

# RISD



# Definitions

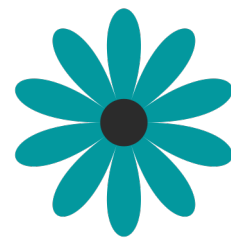
**Nonconsensual Sexual Contact** is any physical contact with another person that is of a sexual nature, without effective consent, including but not limited to: touching someone's intimate parts (such as genitalia, groin, breast, or buttocks, either over or under clothing); touching a person with one's own intimate parts; or forcing a person to touch another's intimate parts.

*Nonconsensual sexual contact includes the Clery Act definition of fondling: the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental incapacity.*

<u>Factor Met?</u>	<u>Yes/No?</u> <u>Why</u>
Physical Contact with another	
Sexual in nature	
Without effective consent	



# RISD



## Definitions

**Nonconsensual Sexual Intercourse** is any sexual penetration or attempted sexual penetration, however slight, of any bodily opening with any object or body part, by a person upon another person, that is without effective consent and/or by force (expressed or implied, violence, duress, menace, fear, or fraud); or when a person is incapacitated or unaware of the nature of the act, due to unconsciousness, sleep, and/or intoxicating substances.

*Includes: rape, incest, or statutory rape (age of consent is 16 in RI)*

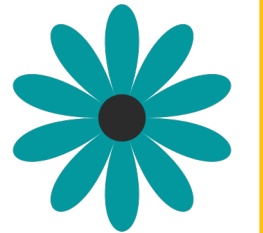
<u>Factor Met?</u>	<u>Yes/No? Why?</u>
Sexual penetration or attempted sexual penetration	
Of any bodily opening	
With any object or body part	
By a person upon another person	
Without effective consent or force OR when person is incapacitated	

# RISD Definitions

Sexual Exploitation is when an individual(s) takes non-consensual or abusive sexual advantage of another, for their own advantage or benefit, or to benefit or advantage anyone other than the person being exploited. Can look like:

- providing alcohol or other drugs to someone without that person's knowledge,
- or unreasonably pressuring the person to consume alcohol or drugs, with the purpose of causing incapacitation in order for one to take sexual advantage of the person;

- recording, photographing, transmitting, or allowing another to view images of private sexual activity and/or the intimate parts of another person without effective consent;
- allowing third parties to observe private sexual acts without effective consent (can be electronic)
- Voyeurism
- Indecent exposure



- knowing or recklessly exposing another person to a significant risk of sexually transmitted infection, including HIV, without their knowledge; or
- the unauthorized dissemination of indecent materials under Rhode Island General Law § 11-64-3

# Non-Sexual Misconduct Investigations

Discrimination and Discriminatory Harassment based on  
other protected Categories





# What are the other Protected Classes in RISD's Policy?

Protected classes include, but are not limited to:

- Age
- Color
- Disability
- Gender Identity & Expression
- Genetics
- National Origin
- Race
- Religion
- Sex
- Sexual Orientation
- Veteran Status
- or any other protected characteristic as established by law.



# Protected Classes Continued

## **Age**

Discrimination against people who are age 40 or older.

## **Arrests/Convictions (RI State Law - Employment)**

Employers are prohibited from inquiring, either on a written job application or orally, into whether a job candidate has been arrested, charged, or convicted of any crime.

## **Color**

Discrimination on the basis of skin color and/or complexion.

## **Disability**

Discrimination on the basis of disability, history of disability, or medical condition that substantially limits a major life activity

## **Genetics**

Includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as family medical history

## **HIV/AIDS Status (RI State Law - Employment)**

Discrimination against employees and job applicants on the basis of an actual or perceived positive HIV/AIDS test result.

## **National Origin**

Discrimination on the basis of being from a particular country or part of the world, ethnicity, language or accent, or because they appear to be of a certain ethnic background (even if they are not); may include discrimination because of a person's looks, customs, or language.

## **Race**

Discrimination on the basis of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features).

## **Religion**

Discrimination on the basis of a person's religious observances, practices, and/or sincere religious, ethical, or moral beliefs

## **Sex**

Discrimination with a sex-based nature or on the basis of sex, including sexual orientation, gender identity & expression, pregnancy and pregnancy-related conditions, as well as sexual misconduct.

## **Veteran Status**

Discrimination based on status as a disabled veteran, veteran who served in which a campaign badge was authorized, recently separated veteran, or Armed Forces Service Medal Veteran.



# RISD on Discrimination



**Discrimination** is unwelcome verbal, written, graphic, and/or physical conduct that unreasonably interferes with an individual or class of individuals' learning, working, or living environment by use of demeaning expressions concerning an individual's or group of individuals' membership or perceived membership to a protected class.

Discrimination can occur when an individual or class of individuals is treated unfairly or unfavorably, based on their membership or perceived membership in a legally protected class such that it adversely impacts a term or condition of an individual's employment, educational, or living environment when similarly situated individuals, outside of the same protected class, received more favorable treatment.





# Discrimination Continued

Unwelcome verbal, written, graphic, and/or physical conduct related to a protected class may include, but is not limited to:

1. Epithets, slurs, jokes, negative stereotyping, demeaning depictions or treatment, or intimidating or hostile acts;
2. Written, digital, or graphic material that shows hostility;
3. Instigating, threatening or actual physical assault or acts of violence, or enabling an environment that is unwelcoming or hostile; and/or
4. Displaying or transmitting negative or offensive content.

# Discriminatory Harassment

Discriminatory harassment is conduct that is severe, persistent, and/or pervasive such that it has the purpose or effect of unreasonably interfering, limiting, or denying an individual's or class of individuals' access to an educational, employment, or living activity by creating an environment that is intimidating, hostile, or offensive.

Protected classes include, but are not limited to: race, color, religion, sex, age, national origin, disability, veteran status, sexual orientation, gender identity or expression, genetics, or any other protected characteristic as established by law.



# Discriminatory Harassment

Whether conduct is severe, persistent, and/or pervasive is determined by using a reasonable person standard.

When determining whether conduct is severe, persistent, and/or pervasive, the following factors may be considered:

- a) the severity of the conduct;
- b) the frequency of the prohibited conduct;
- c) the widespread nature of the conduct; and
- d) whether the unwelcome conduct, based on a reasonable person standard, unreasonably interfered with an individual's or class of individuals' educational, employment, or living environment.

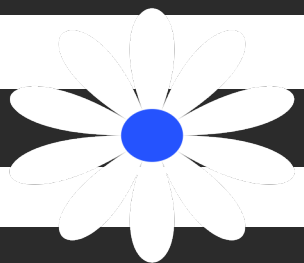
*The College's academic and research settings necessarily accommodate themes, topics, and materials that are germane to the subject matter and that, in other settings, may not be appropriate; policies forbidding discriminatory harassment do not threaten such academic freedoms.*





# Information for Hearing Panelists & Advisors

Ethics Concerns  
Prejudgment and Biases



# Advisors' Role

*Advisors have a passive role in the formal process. They are not able to speak, advocate for, or participate in on behalf of their advisee.*

*Advisors provide critical support and knowledge for parties as they navigate the formal process.*



*For Title IX Only*

## **Ask Questions on behalf of Party:**

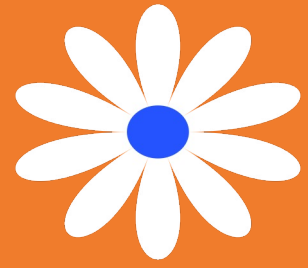
Advisors have the opportunity to ask questions on behalf of the Complainant or Respondent, of their advisee and of the other party.

## **Communicate Expectations:**

Setting expectations for an Advisee, by understanding what to expect at Hearing.

Being able to work with Advisee in understanding how to navigate process.





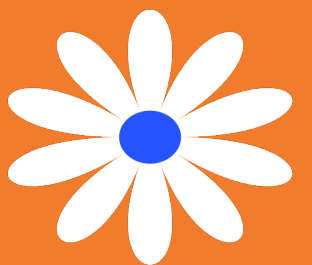
# Conflict of Interest

*A conflict of interest which prevents impartial participation = disqualified from the Title IX process*

A situation or relationship that prevents one from acting impartially.

- Can be a personal or professional interest, such as family, friendships, faculty member relationships, financial investments, or other social factors.
- Remember – the regulations do not define conflict of interest and instead, leaves it in the discretion of the recipient.

**A conflict of interest which prevents impartial participation = disqualified from the Title IX process**







# Presumption that Respondent is Not Responsible

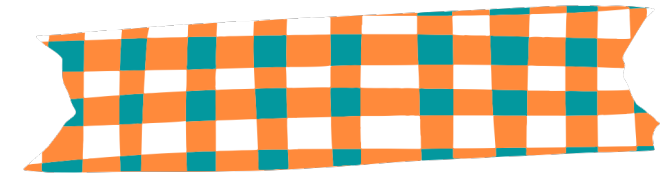
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## § 106.45(b)(1)(iv)

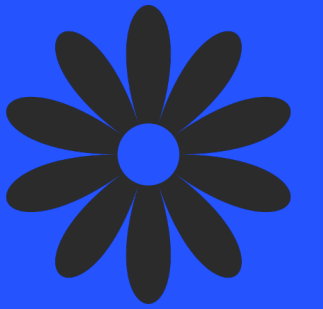
- Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process . . .

*From when notice of allegations is issued until the final determination is issued, we (as Hearing Panelists, Investigators, Title IX Coordinators, etc.) must operate in our roles with the presumption that that Respondent is not responsible for the alleged conduct.*

# Prejudgment and Biases



- ◆ Avoid passing judgment prematurely or without sufficient reflection or investigation.
- ◆ Prejudgments are assumptions of fact, that tend to show up in:
  - Allegations involving sexual history, drugs, and / or alcohol use.
  - Stereotypes
- ◆ *You cannot make credibility determinations until all relevant evidence is reviewed.*





# Checking Biases



- Be aware of any and all stereotypes that you may hold'
- Take the implicit association test.
- Review your past performances and decisions for evidence of possible implicit bias.
- Avoid prejudging facts and keep an open mind
- Provide parties with equal opportunity to present their narrative and equal access to supportive measures
- Use the “more likely than not” preponderance of evidence standard in your own mind. Does it pass the test? Based on what evidence?
- Do you make assumptions about drug and alcohol use based on your own lived experiences?
- Do you make assumptions about how people engage in sexual activities? What grounds that assumption?

**Follow the procedures laid out in the appropriate policy! There are small but mighty differences in what we need to do for Title IX Proceedings.**





# Scenario #1

Sam said that they were drunk and high on mushrooms when their roommate Beth came home from her work-study job. Sam said that Beth took advantage of their incapacitation and inappropriately touched them on their buttocks and chest while they slept.

Beth said that Sam was passed out on her bed and had urinated on her sheets. Beth said she was moving Sam so she could get into her own bed.

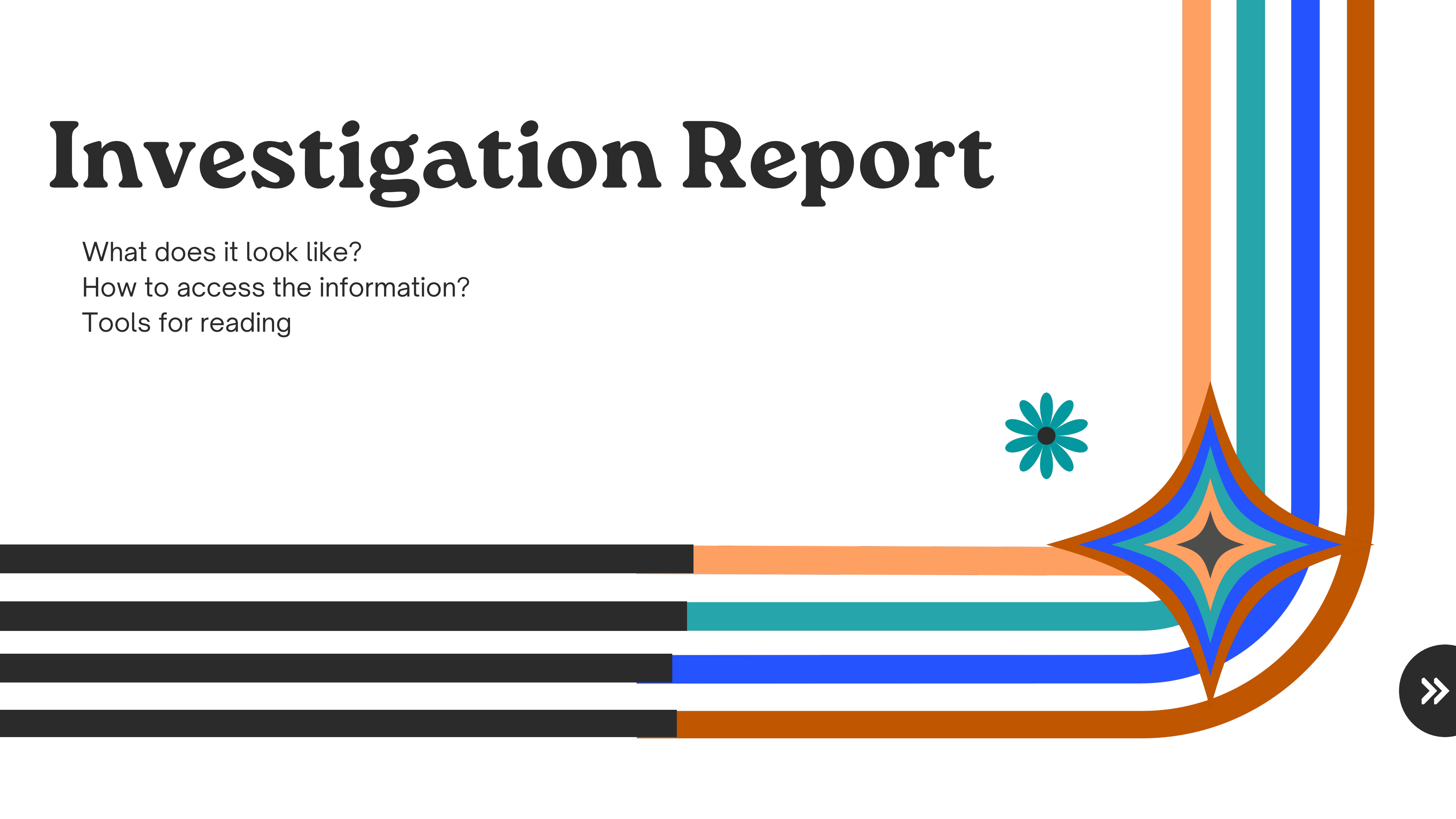
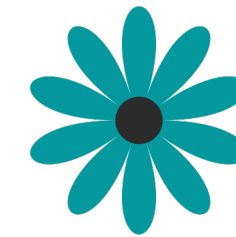
- What information supports Sam's allegations against Beth?
- What information supports Beth's innocence or lack of responsibility?
- What information are you relying on to determine any finding?
- Are there any cultural morays or stereotypes that are you relying upon?
- What information would be helpful for you to know about their prior relationship?
- What information would be helpful for you to know about Sam's intoxication?

# Investigation Report

What does it look like?

How to access the information?

Tools for reading





# Review the Investigation Report

In TIX, parties will have 10 business days to view a draft investigation report. They have the opportunity to comment on or clarify any of the evidence, including submission of additional evidence.

Investigator will share a final investigation report with parties after receiving any notes, comments, or additional information

The Hearing Panel, once finalized, will be given access to the Final Investigation Report on Digify\* before the hearing and any pre-hearing conferences.

*\*Digify is an online platform that allows us to confidentially transmit documents for viewing. You will receive an email from Digify directly sharing access to its online location.*



# Parts of the Investigation Report



Our Investigation Reports under either policies, look roughly the same.

I. Executive Summary	What to expect in the document
II. Background for Reader	Procedural History Involved Parties Alleged Violations Jurisdiction, Status & Standard of Evidence Investigation Methodology
III. Summaries of Evidence	Summary of Information Gathered Discussion of Facts
IV. Recommendations for Findings	Any recommendations for whether Respondent violated policy

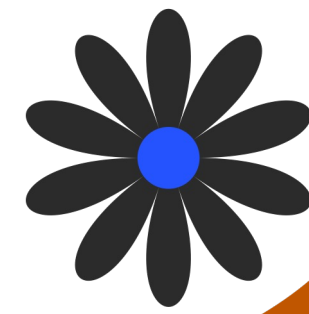


# The Hearing

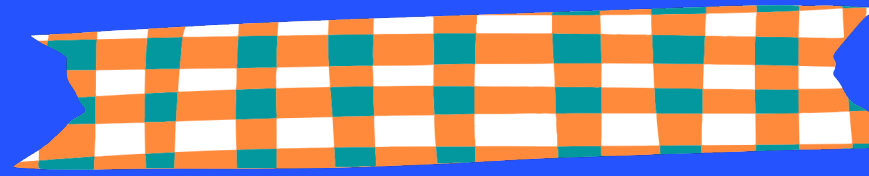
What does it look like?

What do I need to know about evidence?

How



# Before the Title IX Hearing



## **Pre-Hearing Conference**

*Title IX Coordinator  
and Parties,  
respectively*



## **Pre-Hearing Panel Conference**

*Title IX Coordinator  
and the  
Hearing Panel*



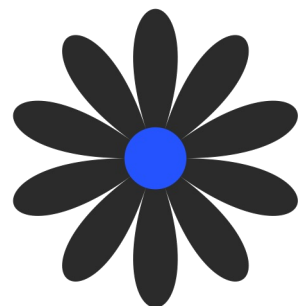
# What Happens at the Hearing



Introductions and Parties  
Opportunity to make Opening  
Statements

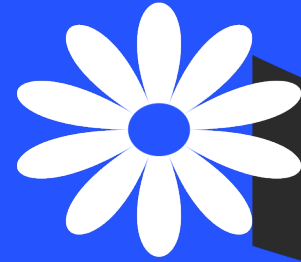
Hearing Panel Asks Questions  
of Parties, Witnesses  
Parties/Advisors ask Questions  
of Parties, Witnesses

Closing Statements  
and Final Questions



*There are two hearing scripts: for Title IX and for Discrimination and Discriminatory Harassment proceedings in your packet. Review for more detailed overview of what to expect in a hearing agenda.*



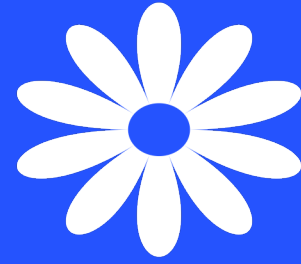


# Trauma Informed Questions

*Discuss as a Hearing Panel how you internally want to communicate questions during the Hearing*

- Frame questions in advance of hearing as much as possible. Think of the language you use. Is it partial to any party? Frame questions neutrally and open-ended if possible. Do not frame questions with any presumptions of responsibility.
- Think of whether what you are asking is in the scope of the investigation. Would including it be more prejudicial in impact than substantively important?
- What info do you need to know in order to make a determination of whether policy was violated?
- If you see someone struggling emotionally with your question, offer to provide a break. Directly or in the private chat.
- If you're curious about an inconsistency, state that directly and give the party an opportunity to explain while specifically pointing to the inconsistency:
  - E.g., "In the report, on page 3, you state X, however, during the hearing you have stated y, I'm trying to wrap my head around these two statements, can you explain further"





# Trauma Informed Questions

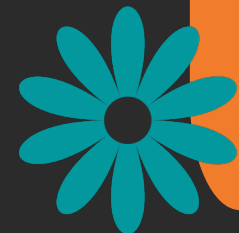
- Sometimes framing questions from “before incident, incident itself, and impact” can inform questionee of where you are going and lets them get ready for talking about the hard parts
- Don’t meander when you ask a question. Get to the point. Draft it in a word document, if you need a moment to word it properly.
- If you don’t know how a factor impacts another factor, ask about it.
- If you are asking probing questions about sex, explaining why you are asking can help ease tension.
- Never seek to “ah-ha” a proceeding by taking questioning out of scope of investigation
  - If Investigator neglected to collect facts for a specific allegation, ask relevant questions
- Has this question been asked and answered before? If so, don’t ask again.
- Don’t ask multi-part questions. Break it down if you need to.
- Mirror their language in your questions, if possible.

# Inculpatory v. Exculpatory Evidence

- ✦ **106.45(b)(1)(ii)** - Require and objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence-and provide that credibility determinations may not be based on a person’s status as a Complainant, Respondent, or witness.

## What does this look like:

- Texts admitting fault
- Statements from witnesses that Respondent recognized fault
- Statements from witnesses that Complainant disclosed conduct



### Inculpatory Evidence

*Information tending to support the proposition a respondent committed the misconduct as alleged*

## What does this look like:

- Texts reflecting a different narrative from alleged conduct
- Statements from witnesses with firsthand knowledge



### Exculpatory Evidence

*Information tending to support that the respondent did not commit the misconduct as alleged*



# Determining



# Relevancy



*Your elected Hearing Chair will determine Relevancy during the Hearing. During Title IX Hearings, they also need to provide explanations to Advisors and Parties about why their question has been rejected or determined irrelevant*

## Step 1

Review the evidence being offered

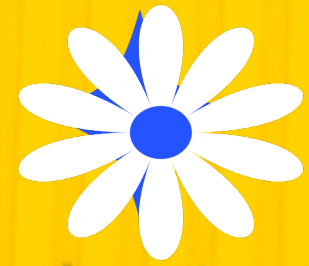
## Step 2

Consider Allegations in Formal Complaint and Notice

## Step 3

Does evidence being offered have the potential to prove, disprove or excuse an incident under investigation?

***If you say yes by step 3, then the evidence is likely relevant!***



# Title IX Rape Shield and Relevancy

Title IX's rape shield protections provide that questions and/or evidence about the Complainant's sexual predisposition or prior sexual behavior are presumptively *not relevant*, unless they are offered under two limited exceptions:

## Exception 1:

The questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant;

or

## Exception 2

The questions and evidence relate to specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent





# Relevancy

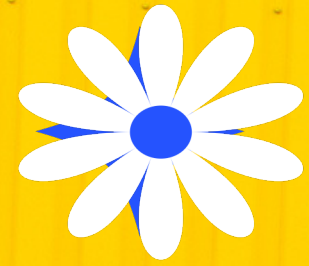
# Matters

The purpose of having restrictions placed on evidence that can be introduced is to prevent the decision-maker from making decisions based on factors other than what is relevant.

Calls on Relevancy happens by Investigators and Hearing Chair: The Information that the decision-makers rely upon in making their decision can be shaped by the Hearing Chair's calls on what is relevant and what is not.

WHY?





# Guide To Relevancy Objections

Parties may object to why you have deemed one of their questions irrelevant.

Here are some brief and common explanations for why you might make the call that questions are not relevant

Already asked  
and  
Answered

Not Relevant

Panel does not feel  
we need to know  
that to make a  
determination

Not permitted  
Under Rape  
Shield Law

# Hearing Technology

What do you need to know about Zoom during a hearing?

For Title IX, regardless of whether we have the hearing in person, on Zoom, or in person with the parties separated...

The parties and the Hearing Panel need to be able to simultaneously see and hear the parties and witnesses during relevant times.

A live transcript, recording, or audio must also be taken and made available for inspection by parties.

*When possible, have closed captioning enabled on your participant screen.*

## Breakout Rooms

- for parties to take breaks or be able to convene with their advisors
- If the hearing panel also needs a moment to quietly confer
- during breaks, parties can control when they re-enter the space.

## Mute/Screen Off

- Parties are asked to mute themselves on Zoom unless speaking
- During non-Title IX processes, parties can turn their screen off during times when they are not speaking.

## Chat

- Parties can submit questions to the hearing panel during non-Title IX Hearings
- Parties can DM the hearing administrator to request breaks
- Transcript must be made available along with any other recording of the hearing

# Advisors' Role in Hearings

*For Title IX Only*

## **Ask Questions on behalf of party:**

Advisors have the opportunity to ask questions on behalf of the Complainant or Respondent, of their advisee and of the other party.

*Advisors can help parties form questions, at their discretion.*

## **Check in with Party:**

Advisors are encouraged to use the private chat to DM their Advisee to check-in on them during the Hearing.

*Please note that chat transcript will be maintained by Equity & Compliance.*

**TITLE IX ONLY:** *If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. § 106.45(b)(6)(i)*





# Considering Sanctions

**Sanctions are generally meant to be educational in nature. To ensure no recurrence, to redress harm to the extent possible, and may be punitive.**

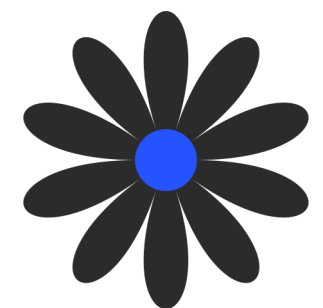
- ◆ Consider the Factors to the left
- ◆ Consider precedence (Has anyone found in violation of a similar occurrence received a similar sentence?)
- ◆ Consider whether status as faculty, staff, or student is taken into account. If so, why?



- **Seriousness of violation:** single or repeated acts; multiple policy violations in connection with the incident; verbal or physical intimidation; use of authority to abuse trust or confidence; use of force or violence; physical injury; menace; duress; deliberately causing or taking advantage of a person's incapacitation; and recording, photographing, transmitting, viewing, or distributing intimate or sexual images without consent.
- **Intent or motivation behind violation:** no intent to cause harm; passive role in violation; pressured or induced by others to participate in the violation; planned or predatory conduct;
- **Response following violation:** voluntarily acknowledged wrongdoing in the process; failure to follow no contact order;
- **Disciplinary history:** unrelated prior violations; related prior violations.
- **Impact on others:** consider protection or safety of the Complainant or the community.

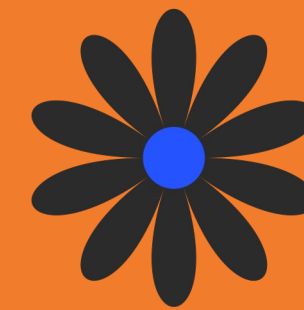
# After the hearing

- Letters of Outcome
  - Respondent with rationale for findings and Sanctions
  - Complainant with information on findings and sanctions within FERPA limits
- Both parties have rights to appeal, see applicable policy for timeline for appeal
  - If you are an advisor, it is entirely in your discretion to decide if you will support an advisee through the appeals process
- Appeals Officer (who was not involved anywhere else in the process) will decide on appeal whether it is denied, granted, or modified
- Determinations finalized and sanctions go into place immediately, if applicable, unless otherwise stipulated
- Union Members have a right to navigate a grievance process



# Title IX Grounds for Appeal

- 1. **Procedural irregularity** that affected the outcome of the matter;
- 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; or
- 3. The Title IX Coordinator, Investigator(s), Panelist(s), or Decision-Maker(s) had a **conflict of interest or bias** for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.



# RISD Grounds for Appeal

- 1. **Procedural irregularity** that affected the outcome of the matter;
- 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; or
- 3. The Executive Director, Investigator(s), Panelist(s) or Decision-Maker(s) had a **conflict of interest or bias** for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

# Resources & Support

## CONNECT WITH US!



Prov Wash, 3rd Floor



401 454-6666



[equitycompliance@risd.edu](mailto:equitycompliance@risd.edu)



[equitycompliance.risd.edu](http://equitycompliance.risd.edu)



SCAN THE QR CODE  
FOR MORE  
RESOURCES!

Follow us on Instagram!



## CONFIDENTIAL RISD RESOURCES

<a href="#">RISD Counseling &amp; Psychological Services (CAPS)</a> - students only	72 Pine Street, 2 <sup>nd</sup> Floor Providence, RI 02903 Available 24/7: 401 454-6637
<a href="#">RISD Health Services</a> - students only	72 Pine Street, 2 <sup>nd</sup> Floor Providence, RI 02903 401 454-6625
<a href="#">Employee Assistance Program (EAP)</a> - employees only	Coastline EAP Available 24/7: 1-800-445-1195

## ADDITIONAL REPORTING, RESOURCES & SUPPORT



<a href="#">RISD Public Safety</a>	South Hall 30 Waterman Street, Providence Office hours: 8 am – 4 pm 24/7: 401 454-6666
<a href="#">Human Resources</a>	20 Washington Place (Prov Wash), 3rd Floor <a href="mailto:humres@risd.edu">humres@risd.edu</a> 401 454-6606
	Alison Douglas Interim Associate Director, Employment Operations; Sr. Human Resources Partner; Deputy Title IX Coordinator for Employees <a href="mailto:adouglas@risd.edu">adouglas@risd.edu</a> 401 454-6720
	Elizabeth Rainone Interim Vice President, Human Resources; Deputy Title IX Coordinator for Employees <a href="mailto:erainone@risd.edu">erainone@risd.edu</a> 401 454-6427

