



# Sexual Misconduct

## ▶ Panel Training

The Office for Student Civil Rights & Sexual Misconduct  
Fall 2020

# Office for Student Civil Rights & Sexual Misconduct

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- ▶ Meredith Holden, Case Manager
- ▶ Glenn Mellinger, Investigator
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# SCRSM Office Overview



Title IX



System Regulation



Section D: Title IX Procedures for  
Students



Title IX/ Non-Title IX Flowchart

# Alcohol & Other

## ▶ Drugs

Dr. George Comiskey

- ▶ The university will not take any disciplinary action against a student who in good faith reports being the victim of, or witness to, an incident of sexual harassment, sexual assault, dating violence, or stalking, for a violation of the Code of Student Conduct occurring at or near the time of the incident, regardless of the location at which the incident occurred or the outcome of the disciplinary process regarding the incident.
- ▶ Amnesty will be extended to the Complainant, Respondent, and witnesses who provide statements during an investigation and disclose their own personal drug or alcohol use. The university may provide educational options to students to address any concerning behavior as part of the afforded amnesty or in lieu of conduct proceedings.

# Amnesty

# SCRSM Process Documents



Sexual Misconduct  
Flowchart



Title IX FAQ



Rights &  
Responsibilities  
Document



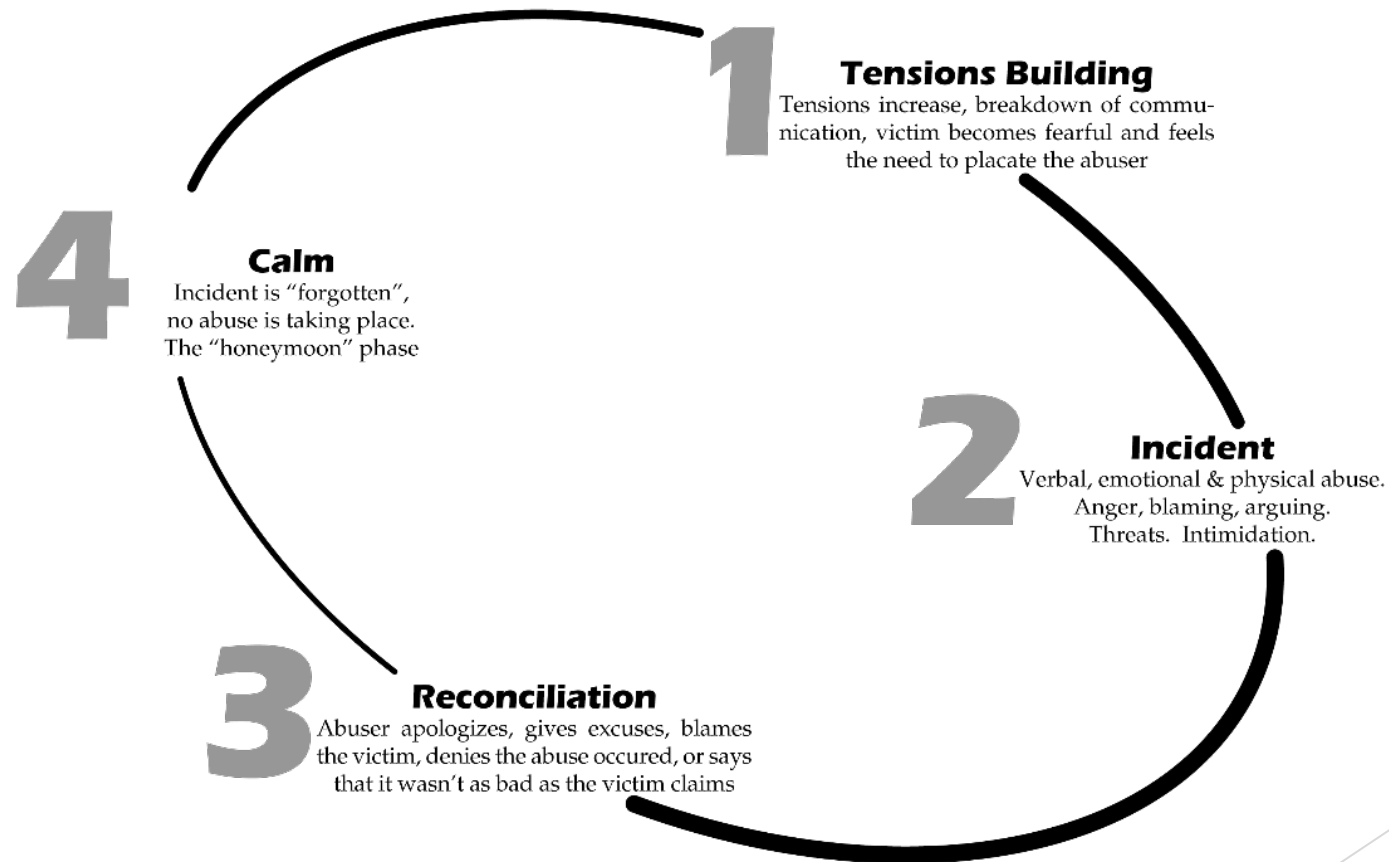
Investigation  
Report Example

- ▶ Always demands partners attention
- ▶ Jealousy
- ▶ Humiliation in public
- ▶ Name calling
- ▶ “If I lose you, I will kill myself”
- ▶ Threats
- ▶ Cutting off family and friends
- ▶ Strangling
- ▶ Restraining by force
- ▶ Slapping/ hitting
- ▶ Destruction of Property
- ▶ Yelling

## Activity: Break Out Rooms

# Dating/ Domestic Violence

## Cycle of Abuse







# Consent

Must have clear, knowing, and voluntary consent from their sexual partner *prior to and during each* sexual activity

- ▶ The following factors must all be fulfilled in order to have valid consent:
  - ▶ Consent has been expressed by each partner through clear words or actions.
  - ▶ Consent is actively expressed by each partner. Consent is not passive or implied.
  - ▶ Each partner is informed about each sexual activity and knowingly consents to participate in each sexual activity.
  - ▶ Consent is given voluntarily and freely by each partner for each sexual activity.
  - ▶ Each partner has *legal capacity* to consent to engage in sexual activities.

# Revocation of Consent

- One partner can revoke consent **at any time**, so long as it's **clearly communicated** to the other partner: can be verbal or non-verbal.
- Once consent is revoked, the sexual activity **must stop**. If it continues, a sexual assault has occurred.
  - ▶ Examples of *verbal* communication revoking consent:
    - ▶ “Can we slow down a little?”
    - ▶ “I’m not ready.”
    - ▶ “I’m not sure if I want to ...”
    - ▶ “This doesn’t feel right.”
  - ▶ Examples of *non-verbal* communication revoking consent:
    - ▶ Reluctance to take clothes off or putting clothes back on
    - ▶ Pushing partner away or pulling away from partner
    - ▶ Turning away from partner’s kiss or turning body away from partner
    - ▶ Suddenly freezing or going limp after previously being an active participant
    - ▶ Suddenly going silent after previously talking or moaning

# Incapacitation



A state of being that prevents an individual from having capacity to give consent.



**Age:** A minor cannot consent to engage in sexual activity. In Texas, the legal age of consent is 17.



**Intellectual or other Disability:** A person with a mental disorder or other cognitive issue which prohibits them from making an informed decision lacks capacity to consent to engage in sexual activity.



**Physical Incapacitation:** A person who is asleep, unconscious, and/or intoxicated to the point of no longer understanding or controlling their actions cannot consent to engage in sexual activity.

# Trauma

Dr. Tom Kimball

# Hearing Documents



Pre-Hearing Checklist



Panel List



Hearing Script



Statement Examples

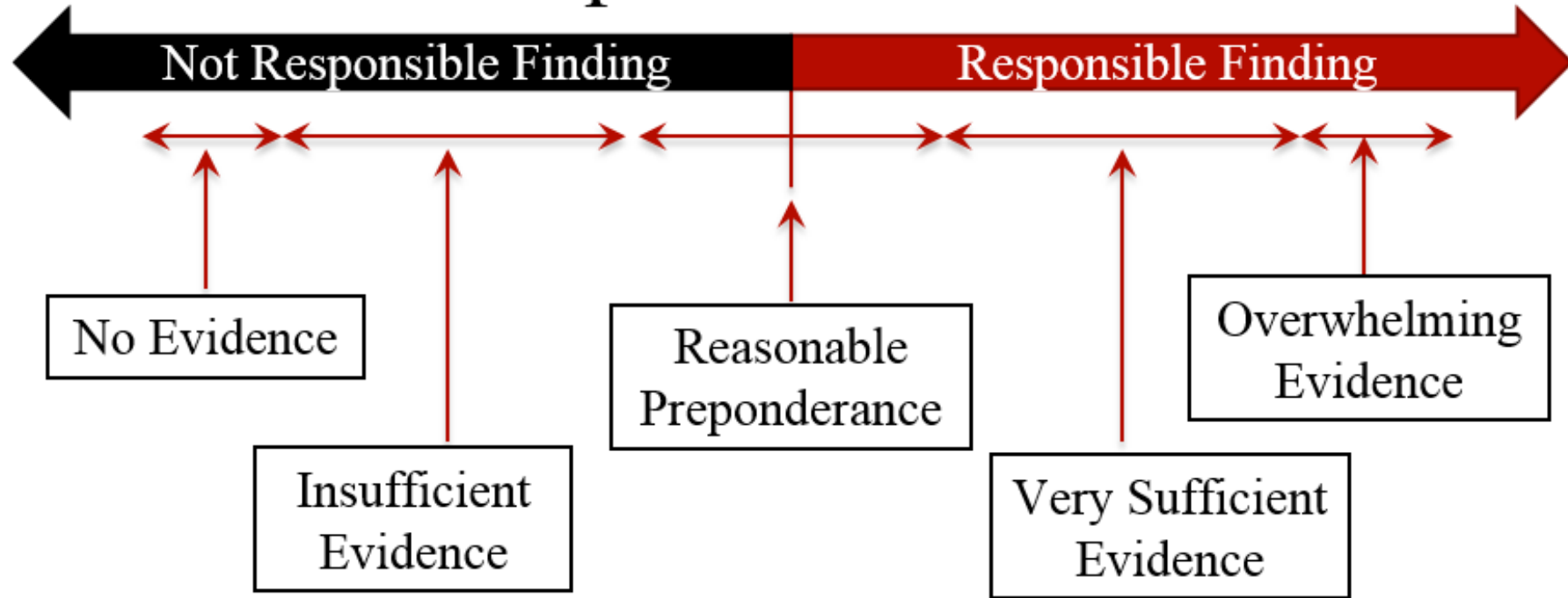


Allegation Document

# Information-Gathering in the Hearing

- ▶ Have questions prepared
- ▶ Be direct
  - ▶ Some questions are awkward; ask them anyway
- ▶ Ask even if the student is not present
  - ▶ The Investigator may be able to answer based on the information they gathered
- ▶ The Chairperson/Title IX Hearing Officer will stop any inappropriate/irrelevant questions

# The Preponderance Standard





# Examples of Evidence

- ▶ Complainant and Respondent statements
- ▶ Witness statements
- ▶ Police reports
- ▶ Pictures/screenshots
- ▶ Text messages
- ▶ Videos
  - ▶ Personal or surveillance
- ▶ Alcohol Behavior Checklist
- ▶ Medical records
- ▶ SANE exams
- ▶ Bank statements
- ▶ Uber receipts
- ▶ ID card logs (Raider Card)
- ▶ Apartment floorplans/layouts
- ▶ Social Media content
- ▶ Tutorials

# Common Types of Evidence

- ▶ Direct (first-hand) information
- ▶ Documentary information
- ▶ Circumstantial information
- ▶ Hearsay information
- ▶ “Expert” information
- ▶ Character information

- ▶ Direct information is a first-person observation of an event/incident
  - ▶ Example: A police officer observed the event and wrote a report. If necessary, the officer could be present at the hearing to answer questions.
- ▶ Strengths
  - ▶ Drawn from direct observation
  - ▶ Observer may be present at the hearing to answer questions about the event
- ▶ Weaknesses
  - ▶ Subject to observer's accuracy and/or interpretation
  - ▶ Subject to bias based on relationships to parties involved

# Direct (First-hand) Information

# Documentary Information

- ▶ Direct information is a written description of an incident that took place. This can be an official report, like a police or an University Student Housing (USH) report, or it can be a written statement by a witness.
  - ▶ Example: A CA wrote a report documenting a conversation with a student who reported a sexual assault. The report serves as the original basis for the allegations being reviewed by the panel.
- ▶ Strengths
  - ▶ Drawn from direct observation and/or initial reporting
  - ▶ Serve as a basis from which the panel may develop questions
- ▶ Weaknesses
  - ▶ Without a witness present, direct questions cannot be answered about the document's contents
  - ▶ Subject to bias based on relationships to parties involved

# Circumstantial Information

- ▶ Circumstantial information is a reported observation of information that offers inferences about the facts of the event.
  - ▶ Example: Witness information and written reports state that a student was visibly intoxicated, with glassy, bloodshot eyes, and a smell of alcohol on their breath. The student was also observed to be slurring their words, and, in the eyes of the witness, seemed to be having a hard time maintaining balance.
- ▶ Strengths
  - ▶ Drawn from direct observation and/or initial reporting
  - ▶ multiple pieces of circumstantial information can often create compelling conclusions
  - ▶ Serve as a basis from which the panel may develop questions
- ▶ Weaknesses
  - ▶ Pieces of information may be subject to multiple interpretations

# Hearsay Information

- ▶ Hearsay information is information that is reported through another party (second-hand information).
  - ▶ Example: Lauren, a student witness, tells the panel that within minutes of the alleged fight at Chimy's, Jordan told her that he saw Michael running away from Chimy's toward The Suites apartments.
- ▶ Strengths
  - ▶ Can be useful as a means for determining what an involved party said or did following an event.
- ▶ Weaknesses
  - ▶ Information may not be consistent with fact
  - ▶ Subject to bias based on relationships to parties involved
  - ▶ May not be relevant to the issues in dispute

# “Expert” Information

- ▶ “Expert” information is information that is shared from a person who has an acknowledged expertise in related subject matter.
  - ▶ Example: A police investigator notes that the placement of wounds sustained in a fight demonstrate multiple blows to the individual, despite the respondent asserting that they only struck the complainant in self-defense.
- ▶ Strengths
  - ▶ Can assist in making credibility decisions between people providing disparate information
  - ▶ Can aid the panel in understanding pieces of information that should be present
- ▶ Weaknesses
  - ▶ People are often given the benefit of expertise with insufficient training and/or experience
  - ▶ Opinions can sometimes be couched as information

# Character Information

- ▶ Character information is information provided by an individual about a student's past, most often used to assure the panel that a person is of good character and judgment.
  - ▶ Example: The respondent provides character statements from a family friend, a high school coach, and their CA. These statements speak to the relationships with the respondent, and how, given what they know about them, they could not have possibly stalked another student.
- ▶ Strengths
  - ▶ Can provide a more holistic view of an individual to consider in the sanctioning phase of deliberations after a violation is found to have occurred.
- ▶ Weaknesses
  - ▶ Does not relate to the incident and is not relevant in determining a finding of fact



# Phase 1: Fact Finding

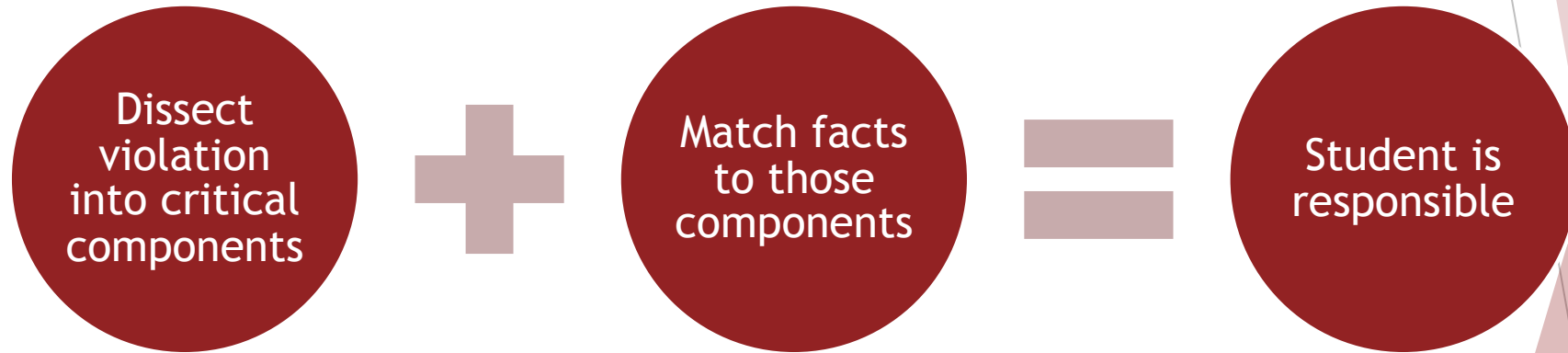
- ▶ What evidence do we have?
- ▶ Of that evidence, what is a fact/undisputed?
- ▶ What evidence is unproven but relevant? What insight does it provide?
- ▶ Of the evidence that is disputed, which pieces are more likely true? Which pieces are more likely false?
- ▶ Which pieces of evidence are most impactful?

# Phase 2: Determining Responsibility

- ▶ Preponderance of the evidence
- ▶ Majority v. Consensus
  - ▶ Majority rule
- ▶ Reviewing evidence
  - ▶ Focus on *behavior* not *character*
  - ▶ What types of evidence have been made available for this case?
  - ▶ What are the facts of the case that relate to the alleged violation(s)?
  - ▶ What evidence/information is **not** relevant to the alleged violation(s) in this case?
  - ▶ Do the facts support a finding of responsible?
    - ▶ Consider each charge individually

# Phase 2: Determining Responsibility

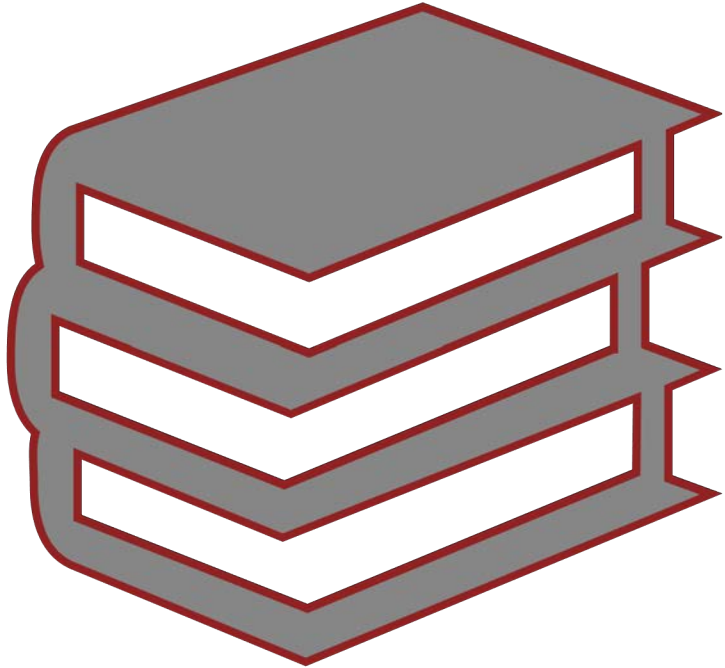
▶ Key word dissection



If the equation is incomplete, then the student is not responsible for the violation.

# Title IX Hearing Process

Darren Gibson, Littler Mendelson Higher Education Group



# Case Study

Break Out Rooms



- ▶ Articulate what the panel believes happened
- ▶ Identify the elements of the violation which are supported by facts
- ▶ List the facts which support each element
- ▶ May address sanctions, particularly if varying from the matrix

# The Rationale

# Good Rationales

Include facts of the case that led to the finding

- “It is undisputed that...”

Specific examples of evidence that support the facts

- “On page 56 of the report...”
- “In the hearing, the respondent stated...”

Points of discussion the panel used in making the decision

- Were there credibility concerns?
- Did the panel find inconsistencies in statements (in the report, hearing, or both) that led to the decision?



# Sanction Considerations

What are the core issues in this case?

What is appropriate for our community's behavior standards and expectations?

Is there a continuing threat to health or safety?

Did the student(s) provide any compelling information regarding sanction severity or impact?

Is this a first offense or part of a pattern?

# Primary Sanctions

- ▶ Reprimand
  - ▶ Formal warning
- ▶ Probation
  - ▶ Monitoring behavior for that period of time
  - ▶ Student is considered in bad disciplinary standing
- ▶ Suspension
  - ▶ Time-limited removal from the institution
  - ▶ Typically 1 to 3 years
    - ▶ Anything past that time frame and it may be appropriate to expel
- ▶ Expulsion
  - ▶ Permanent removal from the institution

# Sanctioning Considerations

Cumulative  
Conduct history

Was the behavior  
severe, persistent,  
or pervasive?

Impact statements

- Impact on the respondent?
- Impact on the complainant?

Impact to the  
greater campus  
community

Consistency with  
common practice

Staying on the grid

Mitigating or  
aggravating factors

# Mitigating vs. Aggravating Factors

## Mitigating Factors

- Is there convincing evidence of a lack of intent to deceive and/or harm?
- Has the student clearly accepted responsibility for the violation?
- Is there evidence that the student has taken steps to address/remedy personal issues that may have contributed to the violation?
- Is there evidence to support that the student's ability to think rationally was impaired even though they made a conscious effort to participate in the violation?

## Aggravating Factors

- Is there evidence to support that the behavior was premeditated?
- Was there physical/emotional damage to another student?
- Is this repeated behavior on the part of the respondent?
- Was blame deflected by the respondent?
- Was there an attempt to conceal or hide evidence of the violation by the respondent or by parties on behalf of the respondent?

