

***Sexual Misconduct  
Hearing Procedures***



**Ryan Fette**  
**Education and Outreach Coordinator**  
**Institutional Equity and Compliance (IEC)**  
**[rfette2@unl.edu](mailto:rfette2@unl.edu)**





**Introduce yourself**

**Major(s)/Department**

**Why did you decide to be on the University  
Conduct Board?**





**Important: In most circumstances, attorneys from the Office of General Council and the Title IX Coordinator will be available during trainings for questions.**

**General Council is there to advise the University Conduct Board. They give legal advice, I just provide information.**



**This training may include frank discussions of relationships and sexuality, including relationship violence, sexual violence and other potentially disturbing topics**

**These are challenging topics**

**<https://care.unl.edu>**

## **Title IX and Sexual Misconduct**

### **Hearing Requirements**

### **Evidence and Findings**

### **Decision Letters**

**\*We will take a short break around 5:30\***





# Title IX and Sexual Misconduct



## What is Title IX?

- **Federal Law**
- **Gender equity in education**
- **Applies to institutions receiving Federal funds**



## Changes to Title IX Regulations

- **New TIX Regulations went into effect in August**
- **University of Nebraska Responded with New Policies and procedures**
- **Ask if something contradicts what you think it should be**



**Sexual Misconduct Policy  
Procedures for Students  
Procedures for Staff**

**Available on the Institutional Equity and  
Compliance Website: [www.unl.edu/equity](http://www.unl.edu/equity).**



**To ensure gender equity, UNL must prevent and address sexual harassment.**

- 1. Quid pro Quo**
- 2. VAWA Categories**
- 3. Hostile Environment**



**Quid pro Quo – “This for that”**

**Giving a benefit in exchange for a sexual favor**

**Punishing someone for not granting a sexual favor**

**In QPQ cases, Respondents are university employees. Complainants can be anyone.**



## **Violence Against Women Act**

- **Sexual Assault**
- **Stalking**
- **Domestic Violence**
- **Dating Violence**



- **Unwelcome Behavior**
- **Sexual Nature**
- **Severe, Pervasive, AND objectively offensive (SPOO)**



- **Reasonable person standard**
- **Denies a person access to an educational program, work, etc.**
- **Title IX applies in student cases.**

**\*Title VII**



## Sexual Misconduct

- Behavior prohibited by the Sexual Misconduct Policy
- Has a nexus to the campus community

## Title IX

- Actual Notice
- Sexual Harassment (QPQ, VAWA, Hostile Environment)
- In and educational program
- Against a person in the United States



**A person's sexual orientation and gender identity are linked to sex, so discrimination or harassment based on sexual orientation or gender identity are prohibited.**

- ***Bostock vs. Clayton County***
- **OCR Guidance**



**A person's sexual orientation and gender identity are linked to sex, so discrimination or harassment based on sexual orientation or gender identity are prohibited.**

- ***Bostock vs. Clayton County***
- **OCR Guidance**





# Hearing Requirements

## Who is Involved in a Hearing?

**The Complainant**  
**The Respondent**  
**The Parties' Advisors**  
**The Board and The Board Chair**  
**The Investigator (as a witness)**  
**Other Witnesses**  
**Hearing Officer**  
**The Title IX Coordinator**  
**An attorney from the Office of General Counsel**  
**Student Conduct Staff**



- **Complaint filed by Complainant or TIX Coordinator**
- **Neutral Investigation by IEC**
- **Complainant and Respondent given equitable opportunity to provide info and review draft investigative report**



- **Final investigative report sent to Student Conduct**
- **IEC does not make finding or sanction**
- **The University Conduct Board makes a finding and sanctions as appropriate, delivered in writing.**



**The parties are present to hear and respond to the information provided to the Board.**

**The board can also ask questions.**

**The regs ensure the right to cross examination.**

**The parties do not ask the questions, rather the questions are asked by advisors.**



**The Chair facilitates the hearing**

**The Hearing Officer states the charges**

**The IEC Investigator answers questions about the report**



**The parties are cross examined**

**Other witnesses are called and cross examined**

**Non-witness information (documents, screenshots, etc.) is presented and cross examined**



**If a party or witness does not appear for the hearing, or does not submit to cross examination, the Board may not base decisions about findings or sanctions on any statements made by that person in the investigative report or in other evidence**

**No conclusion can be drawn from someone choosing to participate or not participate**



**Making determinations about whether a party or witness has submitted or failed to submit to cross examination and what information may need to be discarded are difficult.**

**You can ask the attorney from the Office of General Council for assistance.**



**Hearing may occur in-person or virtually**

**The Parties and Advisors and the Board must be able to see and hear each other and witnesses**

**Board Members must complete a technology training**



**Determine whether university policy was violated by the respondent**

**Ensure that university policy and procedure are followed**



**Facilitates hearing**

**Determines relevance of questions**

**Enforces rules about decorum and order**

**Writes determination letter**





**Neutrality**

**Bias**

**Conflicts of Interest**

**Confidentiality**



**Be familiar with policy and procedures**

**Review the investigation report and other information carefully**

**Figure out what information you still need**

**Do not make any decisions about the outcome of the case before the hearing**





**The parties (through their advisors) need to be given the same opportunity to ask questions and examine evidence.**



**Only relevant questions can be asked by advisors or the board**

**Can you articulate why an answer to the question would impact the finding?**

**The Chair decides**

**Example: What color was the car?**



**The regulations require cross examination**

**Must occur directly, orally\*, and in real time**

**Advisors ask the questions**

**\*This can be accommodated in the event of disability**



**Advisor asks a question**

**Pause for Chair to consider relevance**

**Chair asks about relevance OR lets the party/witness answer**

**People cannot unhear answer to an irrelevant question**



**Because an advisor must be present to ask questions, the parties will identify an advisor OR the university will provide one**

**An advisor may be, but does not have to be, an attorney**





# Evidence and Findings

## Relevance

- Shows the likelihood that something is true
- That “something” is relevant to the question of whether the Respondent violated university policy



## **Credibility**

- **Is this believable?**

## **Reliable**

- **How accurate is this?**

## **Weight**

- **How much consideration should this be given?**





**Establish relevance with logic and common sense.**



## **Relevance is NOT**

- **The strength of the evidence**
- **The type of evidence (direct/circumstantial)**
- **Determined by the Rules of Evidence that a Court would use**





## Relevance

- **Gets to how likely something is**
- **The way that facts are connected to one another**
- **Gets to the central question of whether the respondent violated a particular university policy**



**Previous sexual history or predisposition is irrelevant, except:**

**Patterns of behavior with the respondent**

**To demonstrate that the respondent was not the person who did something**



**Information protected by a legal privilege**

**Victim Advocate (CARE Advocate)  
Attorney**





**Medical, psychological and similar records cannot be used without consent of the person to whom they refer.**



## **Credibility Guidelines from the EEOC**

**Inherent plausibility**

**Demeanor (Caution)**

**Motive to falsify**

**Corroboration**

**Past record**





## **Credibility Guidelines from the EEOC**

**Inherent plausibility**

**Demeanor (Caution)**

**Motive to falsify**

**Corroboration**

**Past record**





## **More considerations**

**Relationship to parties**

**Interest – What does the person gain or lose?**

**Bias or prejudice**

**Inconsistency (Caution)**



## **More considerations**

**Relationship to parties**

**Interest – What does the person gain or lose?**

**Bias or prejudice**

**Inconsistency (Caution)**



How is this relevant?



**List of questions.**



**Two parts:**

- 1) Determine the facts**
- 2) Compare the facts to the policy violation charged**





**Two parts:**

- 1) Determine the facts**
- 2) Compare the facts to the policy violation charged**





**What does everyone agree happened?**

**What is disputed?**

**What evidence is available to clear up the disputed facts?**



“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

- a. fear for their safety or the safety of others; or
- b. suffer substantial emotional distress.





## Stalking Elements

Course of conduct

Directed at a specific person

That would cause a reasonable person to

Fear for their safety or the safety of others

Suffer substantial emotional distress

**Chuck talks to a resident assistant (RA) about a situation that scares Chuck. Chuck used to date Rolanda. Rolanda has been stalking Chuck after they broke up. Early on Saturday morning, Rolanda texted Chuck 82 times between 2AM and 4AM, and knocked on his door at 5AM. Chuck did not respond to the texts and was afraid to answer the door.**



**Rolanda talks to an investigator. Chuck and Rolanda never dated. On Saturday morning, Rolanda was trying to get a ride home from Chuck like they discussed Friday afternoon, but Chuck did not respond to her 4 text messages. Rolanda went to Chuck's door because she was mad that she had to find her own way home, was a little drunk, and wanted to yell at Chuck. Chuck did not answer his door, so Rolanda left.**





## Stalking Elements

Course of conduct

Directed at a specific person

That would cause a reasonable person to

Fear for their safety or the safety of others

Suffer substantial emotional distress



**Undisputed Facts**

**Disputed Facts**

**Are any of the undisputed or disputed facts irrelevant?**

**What information would clarify disputed facts?**



## How would you weigh this evidence?

- **A statement from Rolanda's mom about her character**
- **Security video of Rolanda knocking on the door**
- **Screenshots of the messages**
- **Information from Chuck's roommate about Chuck and Rolanda's relationship**
- **Statements from Chuck and Rolanda about their relationship**





## **Stronger Evidence**

**Physical Evidence**

**Video**

**Screenshots of Direct Info**

**Text messages between parties talking about what happened**

**Text message between others talking about what happened**

**Character Statements**





## **Stronger Evidence**

**Physical Evidence**

**Video**

**Screenshots of Direct Info**

**Text messages between parties talking about what happened**

**Text message between others talking about what happened**

**Character Statements**





## **Stronger Evidence**

**Physical Evidence**

**Video**

**Screenshots of Direct Info**

**Text messages between parties talking about what happened**

**Text message between others talking about what happened**

**Character Statements**



## Standards of Proof

Beyond a reasonable doubt

Preponderance

Probable Cause





Preponderance 

## Standards of Proof

Beyond a reasonable doubt

Preponderance

Probable Cause

**Starting from a position of “Not Responsible”**

**Does the evidence support the complainant’s description of what happened?**

**Based on the evidence is complainant’s description of what happened more likely to have occurred?**



**The following statement is a problem:**

**The evidence supported the complainant's description of what happened, but we are not 100% sure, so we find the respondent not responsible.**

**Being 100% sure is not the standard, being 50+% sure is.**



**It is more likely than not that the respondent violated the policy, but...**

- **This will look bad for the university.**
- **I do not like the complainant, and the complaint is just to hurt the respondent.**
- **I do not agree with the policy**
- **I do not want to “ruin” the respondent’s future**



**It is more likely than not that the respondent did NOT violate the policy, but...**

- **I think the respondent is a jerk**
- **I feel bad for the complainant, who is having a strong reaction to this**
- **This is a high-profile case and people will question the university's decision**



**It is more likely than not that the respondent did NOT violate the policy, but...**

- **I think the respondent is a jerk**
- **I feel bad for the complainant, who is having a strong reaction to this**
- **This is a high-profile case and people will question the university's decision**



**Consistency**

**Proportionality**

**Explanation**





- **The type of behavior**
- **How did the behavior impact the Complainant?**
- **How did the behavior impact the community or the university?**
- **Does the Respondent have prior university, criminal or other disciplinary history relevant to this matter?**
- **Does the behavior look like a risk to maintaining a safe and respectful learning environment, where people can learn?**



# Decision Letters



**There is a template**

**The Title IX Coordinator is available for questions**

**Parties must receive the decision letters at the same time**



**Finding of fact to support determination**

**Conclusions about applying university policy to the facts**

**A statement on the determination for each charge (violated/did not violate)**

**A rationale for each determination**



**Any disciplinary sanctions the Hearing Board imposes on the Respondent**

**Whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant**





**There are additional requirements, but the template will prompt you to address them.**

**Identify what information showed the respondent was responsible and what showed that the respondent was not responsible**

**If there is a significant piece of evidence contrary to what you found, explain why it did not persuade you**





- Procedural irregularity that affects the outcome
- New evidence that was not reasonably available at the time of the determination that affects the outcome
- Bias or conflict of interest that affects the outcome
- See policy for additional bases



- Procedural irregularity that affects the outcome
- New evidence that was not reasonably available at the time of the determination that affects the outcome
- Bias or conflict of interest that affects the outcome
- See policy for additional bases



**Questions?**

**Thank you!**