

Hearing Board Training for Sexual Misconduct Proceedings

August 2022

Content Advisory

This training will involve discussion of sex- and gender-based harassment, domestic and dating violence, stalking, and sexual assault. These topics can elicit strong feelings. Please excuse yourself from the training if needed, and consider contacting CARE for support:

Center for Advocacy, Response, and Education

<https://care.unl.edu>

(402) 472-3553

Agenda

Part 1: Title IX / Sexual Misconduct Overview

Part 2: Hearing Process Overview

Part 3: Sexual Misconduct Charges

Part 4: Hearing Specifics

Part 5: Decision-Making, Sanctions, and Drafting

Thursday's session will focus on practice: we will do hearing prep, a simulated hearing, and decision letter drafting

Title IX / Sexual Misconduct Overview

Part 1

Part 1 Contents

Overview of TIX process (Required by Title IX)

- Jurisdiction
- Report
- Complaint
- Investigation / Informal resolution
- Hearing process
- Appeals

Essentials NOT Covered in this Training

Separate trainings required

- U Got This! U Got This 2! & Report=Support
 - Cover mandatory prevention topics under Clery/VAWA:
 - Description of primary prevention and awareness programs
 - Bystander intervention and risk reduction strategies
- Technology training
 - Mandatory for decision-makers under TIX
 - BRIDGE Learning Management System

Jurisdiction

- Title IX (TIX) and the U of N Sexual Misconduct Procedures set forth jurisdictional limits.
- TIX jurisdiction is slightly narrower than UN procedures' jurisdiction.
- Process is the same under both TIX and UN, so focus here is on UN procedures.

Jurisdiction Under UN Procedures (EM 38 - Students)

- Procedures apply to alleged sexual misconduct that occurs in the university's education program or activity.
- On-Campus Conduct
- Off-Campus Conduct

Jurisdiction Under UN Procedures (EM 39-Employees)

- Procedures apply to alleged sexual misconduct that occurs in the university's education program or activity.

AND

- To misconduct that occurs outside the education program or activity in certain situations:
 1. To protect health or safety of UN community
 2. Effects interfere with person's ability to participate in an education program or activity
 3. Misconduct is related to employee performance
 4. Misconduct occurs when faculty or staff member is serving in the role of a university employee

Reports

- All university students, faculty and staff (except confidential resources) are expected to report sexual misconduct to the TIXC.
- Report by person who experienced misconduct triggers TIX intake process.
- Third-party report to TIXC triggers initial outreach to person who reportedly experienced sexual misconduct.
 - This person is offered supportive measures and reporting options but is not obligated to pursue the matter.

Formal Complaint

- Person who experienced misconduct is the complainant.
- Accused person is the respondent.
- Notice of allegations sent to both parties.
- If complaint is not dismissed, investigation commences / informal resolution available

Investigation

- University has the burden to gather evidence sufficient to allow the Hearing Board to reach a determination regarding responsibility.
- Meeting notices to parties.
- Advisors
- Parties have opportunity to identify witnesses, documents, emails, texts, recordings, or other information they deem relevant.
- Investigator can review all pertinent evidence including things not identified by the parties (exceptions exist).

Investigative Report

- Summarizes relevant evidence.
- May include facts and interview statements.
- Provided to parties and advisors for review and written response.
- Provided to Hearing Board in packet.

Informal Resolution

- IR is available any time *after* formal complaint is filed and *before* a determination of responsibility is made.
- IR is not available in cases involving a student Complainant and University Employee Respondent.
- IR only used if parties agree to participate; parties can opt out of IR at any time before an agreement is reached.
- No finding of responsibility, but parties can concede responsibility/apologize.
- Statements made by parties during IR cannot be used in a hearing if IR agreement is not reached.

Hearing Process (summary)

- Hearing is to determine whether Respondent is responsible for violating sexual misconduct policy.
- Parties and Investigator have opportunity to discuss and explain their position, present documents and witnesses, and cross-examine witnesses (parties do so via advisor).
- If Hearing Board finds the Respondent responsible, it also determines sanctions and remedies for Complainant.

Appeal

- May be brought by Complainant or Respondent within 7 days after hearing decision is shared with parties.
- Bases for appeal (most are within control of the Hearing Board):
 - **Procedural irregularity**
 - New evidence
 - **Conflict of interest**
 - **Sanctions were arbitrary & capricious or abuse of discretion**
 - **Finding of fact was clearly erroneous (without factual support in the record)**

Hearing Process Overview

Part 2

Hearing Preparation

- After the investigation report is completed and has been reviewed by the parties, a hearing will be scheduled to determine responsibility.
- You will receive the investigation report in a hearing packet prior to the hearing. Study the report carefully, paying special attention to the charges and the facts in the report that could indicate whether the elements of the charges are met.
- Consider meeting with the Hearing Board Chair prior to the hearing.

Hearing Format

The hearing will be held via Zoom.

- A hearing facilitator will handle the technology, but you are all required to complete a hearing technology training course in Bridge LMS.

Hearing Participants

The people attending the hearing will typically be:

1. The investigator
2. Complainant / advisor(s)
3. Respondent / advisors(s)
4. Hearing Board and Chair
5. Witnesses
6. University Presenter
7. Hearing Facilitator
8. TIXC
9. General Counsel

Hearing Logistics

Chair directs the course of the hearing and covers basic logistical issues.

- Video must remain on. Ensure no unauthorized persons are present.
- Introduce participants.
- Do conflict of interest check / allow parties to challenge board members.
- Review procedures.

Hearing Procedures

- Rules of decorum enforced.
- One designated advisor conducts cross-examination; no objections to questions permitted.
- University presenter presents evidence first, followed by Complainant and Respondent (in that order).
- Hearing is not intended to review everything in the investigation report; rather, the purpose is to focus on facts in dispute and issues of credibility.
- Chair determines if questions are relevant before answer is given.

The Presentation of the Complaint and Evidence

- University presenter reads complaint; Hearing Board chair asks Respondent if they admit to the complaint. Assuming no admission:
- Presentation of evidence
 - Opening statement by Complainant
 - Opening statement by Respondent
 - Order of witnesses called by University Presenter:
 - Investigator
 - Complainant
 - Respondent
 - Other witnesses
 - Order of questioning of each witness: Hearing Board, Complainant, Respondent
 - Additional witnesses called by Complainant
 - Additional witnesses called by Respondent

After Presentation of Evidence

Closing statement by Complainant.

Closing statement by Respondent.

- Chair should watch for closing statement issues:
 - Parties speaking directly to one another
 - Impact statements that are not relevant to responsibility

Hearing concludes; Board retires to deliberate and determine responsibility and, if necessary, sanctions.

Impact statements submitted by parties reviewed only if Respondent is found responsible.

Hearing Board Chair drafts decision letter and submits it within 7 university days.

Hearing Board / Chair Functions

The preceding overview provides context, but how does the Hearing Board complete its duty?

- How does the Board determine responsibility?
- How does the Chair govern the presentation of evidence?
- How does the Board document its findings in the decision letter?
- How does the Board determine a sanction if there is a finding of responsibility?

The next three Parts will help prepare you.

Sexual Misconduct Charges

Part 3

Sexual Misconduct

“Sexual Misconduct” includes dating violence, domestic violence, rape, sexual assault, sexual harassment, sexual exploitation, and stalking.

Sexual Harassment

“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

- a) An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual misconduct;

Sexual Harassment

“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

- b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity;

Sexual Harassment

“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

c) Sexual assault [Four Types];

1. Rape—the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Sexual Harassment

“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

c) Sexual assault [Four Types];

1. Rape—the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the **consent** of the victim.

Consent

“Consent” is a freely and affirmatively communicated willingness to participate in particular sexual activity or behavior, expressed either by words or clear, unambiguous actions.

- a) Consent can be withdrawn at any time, as long as the withdrawal of consent is clearly communicated by words or actions.
- b) Consent cannot be coerced or compelled by force, threat, deception, or intimidation.
- c) Consent cannot be given by someone who is incapacitated or does not have the legal capacity to consent, as defined . . . in the definition of “incapacitated.”
- d) Consent cannot be assumed based on silence, the absence of “no” or “stop,” the existence of a prior or current relationship, or prior sexual activity.

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- d) Consent cannot be assumed based on silence, the absence of “no” or “stop,” the existence of a prior or current relationship, or prior sexual activity.

Incapacitated

“Incapacitated” means an individual is unable to understand the facts, nature, extent, or implications of the situation due to drugs, alcohol, a mental disability, being asleep, unconscious or in any other state where the individual is unaware that sexual contact is occurring, or based on their age (pursuant to NE law). With respect to alcohol and drugs, intoxication and/or impairment is not presumptively equivalent to incapacitation. Consent does not exist when the individual initiating sexual activity knew or should have known of the other individual’s incapacitation.

Sexual Harassment

“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

c) Sexual assault [Four Types];

1. Rape—the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Sexual Harassment

“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

c) Sexual assault [Four Types];

2. 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 the victim’s age or because of the victim’s temporary or permanent mental incapacity.

Sexual Harassment

“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

c) Sexual assault [Four Types];

2. 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 the victim’s age or because of the victim’s temporary or permanent mental **incapacity**.

Private Body Parts

“Private body parts” means the genital area, groin, inner thighs, buttocks, or breasts.

Sexual Harassment

“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

- c) Sexual assault [Four Types];
 - 3. Incest—sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - 4. Statutory Rape—sexual intercourse with a person who is under the statutory age of consent.

Sexual Harassment

“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

- d) Dating violence—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 a consideration of the following factors: 1) the length of the relationship; 2) the type of relationship; and 3) the frequency of interaction between the persons involved in the relationship.

Sexual Harassment

“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

- e) 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..., 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.

Sexual Harassment

“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

e) More on domestic violence:

- Domestic violence includes domestic assault—a person commits domestic assault if the person intentionally and knowingly causes bodily injury to their intimate partner; threatens an intimate partner with imminent bodily injury; or threatens an intimate partner in a menacing manner.
- Intimate partner means spouse; former spouse; persons who have a child in common whether or not they have been married or lived together at any time; and persons who are or were involved in a dating relationship.

Sexual Harassment

“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

- f) Stalking—engaging in a course of conduct directed at a specific person that would cause a reasonable person to 1) fear for their safety or the safety of others, or 2) suffer substantial emotional distress.

Additional Sexual Harassment Definitions

To be considered sexual harassment under **Title IX**, the conduct must meet two additional requirements:

1. It must have occurred in the University's education program or activity; and
2. It must have occurred against a person in the United States.

“Education program or activity” includes locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the sexual misconduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

- But remember, University procedures cover misconduct that may not meet one or more of those two criteria under certain circumstances.

Additional Sexual Harassment Definitions

For employees, sexual harassment also means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment, sufficiently severe or pervasive to alter the conditions of the individual's employment and create an abusive working environment.

Sexual Misconduct

Recall that “Sexual Misconduct” includes dating violence, domestic violence, rape, sexual assault, sexual harassment, sexual exploitation, and stalking.

All of these except **sexual exploitation** are included within the definition of sexual harassment.

Sexual Exploitation

“Sexual exploitation” includes, but is not limited to: prostituting another person; non-consensual visual or audio recording of sexual activity; non-consensual display or distribution of photos, images or information of an individual’s sexual activity or intimate body parts; non-consensual voyeurism; coercing someone against their will to engage in sexual activity; or knowingly transmitting sexually transmitted disease (STD) without disclosing STD status.

How Should You Use These Definitions?

You must determine whether all elements of the applicable definitions are established by a preponderance of the evidence.

Before the hearing:

- Study the definitions carefully;
- Break the definitions down into separate components (elements);
- As you read the investigation report, make notes about what facts tend to make each element more or less likely to be established.
- At the hearing, ask questions to clarify disputed facts or help you determine credibility so that you can make a conclusion whether or not each element was established by a preponderance of the evidence.

Practice Working With Charges

A Complainant (who lives in another state) and Respondent (who is an employee) have a child together from a one-time hookup ten years ago. They have had very little contact since then. Complainant reports that Respondent added a comment on Complainant's public Facebook post stating, "I will f-you up if you ever come back to Nebraska." The Respondent did this during work hours using their work computer.

What charge or charges (if any) could the University bring against Respondent under the sexual misconduct policy?

Practice Working With Charges

Consider possibilities:

1. Stalking
2. Dating violence
3. Domestic violence

Others?

Practice Working With Charges

1. Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to 1) fear for their safety or the safety of others, or 2) suffer substantial emotional distress.

Elements:

1. Course of conduct
2. Directed at a specific person
3. That would cause a reasonable person to:
 - a) Fear for their safety or the safety of others; OR
 - b) Suffer substantial emotional distress

Practice Working With Charges

2. Dating Violence

- a. Violence committed by a person
- b. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- c. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - 1) the length of the relationship;
 - 2) the type of relationship; and
 - 3) the frequency of interaction between the persons involved in the relationship.

Practice Working With Charges

3. Domestic Violence
 - a. Includes felony or misdemeanor crimes of violence
 - b. committed by a current or former spouse or intimate partner of the victim,
 - c. by a person with whom the victim shares a child in common,
 - d. by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
 - e. by a person similarly situated to a spouse of the victim...,
or
 - f. 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.

Practice Working With Charges

3. Domestic Violence

Domestic violence includes domestic assault—a person commits domestic assault if

- a. the person intentionally and knowingly causes bodily injury to their intimate partner;
- b. threatens an intimate partner with imminent bodily injury; **or**
- c. threatens an intimate partner in a menacing manner.

Intimate partner means spouse; former spouse; persons who have a child in common whether or not they have been married or lived together at any time; and persons who are or were involved in a dating relationship.

Practice Working With Charges

Perhaps the best fit is domestic violence (specifically, domestic assault).

Hearing Specifics

Part 4

Hearing Specifics

A. Preparing for the hearing

B. Hearing Ethics

- Conflict of interest
- Bias
- Impartiality
- Confidentiality

C. Evidentiary Principles

- Relevance
- Evidence about the complainant's sexual predisposition or prior sexual behavior

D. Cross-Examination

Preparing for the Hearing

Review the investigation report carefully.

Study the charges and their definitions carefully.

Break the definitions down into separate elements.

Reread the investigation report and make notes about what facts tend to make each element more or less likely to be established.

Meet with Chair before the hearing to identify questions/issues to focus on. Do not prejudge.

Consider making a chart/checklist, using the report to fill in as much as possible and identify open questions.

Hearing Ethics: Conflict of Interest

A conflict of interests exists when there is tension between the private interests of a person and that person's official or professional responsibilities.

Generally, merely knowing a party or witness is not sufficient to create a conflict unless objectivity is compromised.

Consider whether a reasonable person would believe that a conflict of interest or bias exists.

A conflict of interest is a basis for reversal on appeal.

Hearing Ethics: Bias

Examples of impermissible biases:

- Favoring Complainants in general or Respondents in general.
- Favoring the particular Complainant or particular Respondent in this case.
- Pressure from outside the Board to reach a particular decision (e.g., University Administrators; public opinion).
- Discriminatory animus.

Biases can be explicit or implicit.

Bias affecting the decision can also result in reversal on appeal.

Hearing Ethics: Impartiality

All participants must be treated equitably.

- Equitable time allowed to present information.
- Equitable treatment of the parties/advisors.
- Apply rules and procedures equitably.
- Do not prejudge until you have obtained and evaluated all relevant information (preparing thoroughly in advance and organizing evidence into facts that tend to prove or disprove an element can help).
 - Respondent is presumed not responsible unless the Hearing Board determines responsibility by a preponderance of the evidence.

Hearing Ethics: Confidentiality

The University will not disclose the names of individuals involved in sexual misconduct cases (Complainant, Respondent, Reporter, Witness) to others except on a need to know basis or as required by law.

Supportive measures provided to either party are confidential to the extent confidentiality would not impair the ability of the University to provide them.

Evidence Issues: Relevance

Relevance means evidence that has any tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action.

Before a party or witness answers a question, the chair must first determine whether the question is relevant and explain a decision to exclude a question as not relevant.

Evidence Issues: Relevance

Evidence that generally may not be used:

- Information protected by a legally recognized privilege (and the privilege is not waived)
- Medical/psychological records in the absence of voluntary, written consent.
- Complainant's sexual predisposition.
- Complainant's past sexual behavior, unless:
 - Offered to prove that someone other than the Respondent committed the alleged conduct, or
 - Related to past sexual behavior with respect to Respondent and offered to prove consent.

Questioning/Cross-Examination

Live hearings are currently required.

- The hearing allows the parties (through their advisors) and Hearing Board to ask questions of the parties and witnesses.
- This questioning is conducted orally and in real-time during the hearing.

Questioning/Cross-Examination by Hearing Board

First, consider: Is the answer to my question already in the investigation report?

- If yes, it is okay to ask the investigator about it if you need to clarify.
 - The goal is not to repeat everything in the report during the hearing. Focus on matters that are unclear, disputed, or depend on credibility.
- If no, proceed to the next step. (You can also ask the investigator why that information is not available.)

Questioning/Cross-Examination by Hearing Board

Second, consider: Why do I want to know this information?

- If the information is not going to help you determine whether an element of a misconduct charge is more or less likely true, it is probably not a question to ask.

Questioning/Cross-Examination by Hearing Board

Questioning tips:

- Check your biases. If you are interrogating one party or witness aggressively but not another (or using different tones with different parties), it gives the appearance of bias.
- Avoid compound questions and questions that lead the party or witness to a specific answer.
- Prepare questions in advance.
- Do not assume you and a party/witness think certain terms mean the same thing.

Questioning/Cross-Examination by Advisors

Chairs may need to check advisors who believe everything in the report must be covered orally during the hearing.

- If an advisor asks a question that is answered in the investigation report, and the question is relevant, it should generally be permitted.
- However, if the advisor seems to be repeating everything in the report without emphasizing particular parts, challenging credibility, or clarifying ambiguities, the chair should ask why posing the question is expected to lead to additional relevant evidence.

Decision Making, Sanctioning, and Drafting

Part 5

Considering the Evidence

The decision-maker cannot draw an inference about responsibility solely because a party or witness is absent.

Nor can a decision-maker draw an inference about responsibility solely because a party or witness refuses to answer a specific question.

Considering the Evidence

Apply facts to the definitions and explain why each element of each charge is met or not met by a preponderance of the evidence, citing the facts for each.

To do this, you may need to assign weight to the evidence and/or determine credibility of parties or witnesses.

Weighing the Evidence

Evidence can be relevant, but that does not mean you must rely on it.

What factors make evidence reliable?

- Consistency with other evidence.
- Supporting documents, electronic evidence, or physical evidence.
- Information from eyewitness (consider potential biases).
- Circumstantial evidence.
- Is the evidence conveying a fact or an opinion?

Determining Credibility

Decision-makers must determine who / what to believe.

Credibility must not be based on party's status as a Complainant, Respondent, or witness.

Consider:

- Does this information make sense?
- Does this person (or the creator of this document) have a bias?
- Is this information consistent with other evidence/testimony?
- Although credibility is for the Board to determine, you can ask the investigator the foregoing questions.
- Being a polished speaker or skilled presenter should be separated from believability.

Deliberations

Decision must be:

- impartial,
- based on policy,
- made in good faith (not biased)
- based on the evidence

Decision cannot be arbitrary or capricious

Deliberations

Remember that you will need to provide a detailed explanation of your decision that includes references to evidence that shows that each element of the charge is either established or not established by the preponderance of the evidence.

Assess the credibility and weight of the evidence to determine if standard of proof is met.

Focus on the question of responsibility first; focus on outcomes/supportive measures/sanctions after determining responsibility.

Deliberations

Do not consider outside information: only base your decision on the evidence in the investigation report and/or presented in the hearing.

Deliberations

Only decision-makers can participate in the deliberations.

Chair must ensure that all Board members' voices are heard. Power imbalances should be equalized (e.g., student voices should not count any less than employee voices).

Chair may take notes; if other members have notes, turn them in to the Student Conduct or Title IX office.

Sanctioning

If the Respondent is deemed not responsible, there is no deliberation of sanctions. Move on to drafting the decision.

If the Respondent is deemed responsible, request from the Hearing Facilitator any impact statements that the parties may have submitted.

Sanctioning Principles

- The University must take reasonable actions to stop the conduct that violates policy.
- The University must take reasonable actions to prevent the recurrence of the discriminatory conduct.
- The University must strive to provide remedies to restore the Complainant to the position they were in before the misconduct occurred.
- The sanction should be proportional to the seriousness of the misconduct.

Sanctioning Factors (Students)

- Nature and severity of the misconduct.
 - NOTE: The sanction should NOT be reduced because the question of responsibility is close. If the Respondent is found responsible for severe misconduct, do not lessen the sanction because the proof is not overwhelming. If there is a violation, sanction accordingly.
- Harm that the conduct caused or might have caused (impact statements available after finding of responsibility).
- Student's academic progress or experience.
- Acceptance of responsibility.
- Efforts to conceal or avoid responsibility.
- Explanations for the conduct.
- Respondent's disciplinary history (available only after finding of responsibility).
- The interests of the University and whether other sanctions outside this process have been imposed.
- Any other relevant information.

Sanctioning Options (Students)

Options may include one or more of the following:

1. Written warning
2. Probation for a specified period of time
3. Expulsion from university housing
4. Suspension from university housing
5. Mandatory relocation
6. Loss of privileges for a specified period of time
7. Restitution
8. Performance of service to the university community
9. Completion of educational programs, assignments, or behavioral evaluations reasonably related to the violation
10. Employment restrictions
11. Revocation of admission and/or degree
12. Withholding of degree
13. No contact
14. Loss of status as a Recognized Student Organization
15. Suspension for a specified period
16. Expulsion

Sanctioning Factors (Employees)

- Severity, persistence, or pervasiveness of the prohibited conduct.
 - NOTE: The sanction should NOT be reduced because the question of responsibility is close. If the Respondent is found responsible for severe misconduct, do not lessen the sanction because the proof is not overwhelming. If there is a violation, sanction accordingly.
- Nature of the prohibited conduct.
- Whether the prohibited conduct threatened physical safety.
- Any incidents of prior misconduct by a Respondent, including disciplinary history, at the University or elsewhere (available after finding of responsibility)
- Impact of the prohibited conduct on other members of the University community (impact statements available after finding of responsibility)
- Assessment of Respondent's potential for development, including acceptance of responsibility.
- Maintenance of safe, nondiscriminatory, and respectful work and learning environment.
- Any other mitigating, aggravating, or compelling factors.

Sanctioning Options (Employees)

Possible options include one or more of the following:

1. Coaching or education
2. Mentoring
3. Verbal warning
4. Written warning
5. Changes to work duties or location
6. Probation or transfer of position
7. Completion of mandatory conditions
8. Suspension without pay
9. Nonrenewal or non-reappointment
10. Loss of rank or position
11. Denial of salary increase
12. Activity termination
13. Demotion in rank or pay
14. Termination of employment
15. Ban on University re-employment

Remedies for Complainants

University must provide remedies to Complainant when a finding of responsibility for sexual misconduct is made against a respondent.

Remedies are designed to restore or preserve equal access to the University's education program or activity.

Remedies can include supportive measures already being provided to the Complainant.

At this stage, remedies can be disciplinary, punitive, or burdensome on Respondent.

Examples of Supportive Measures

1. Transfer or reassignment of living space within University residence halls.
2. Assistance from University in completing relocation if transferred or reassigned.
3. Mutual restrictions on contact between the parties.
4. Cancelling a university housing contract and/or adjusting a student account balance for a refund.
5. Coordinating a course-related adjustment (excused absences, flexible attendance, revised deadlines, reschedules, substitutions).
6. Endorsing or authorizing a grade change (incomplete, P/NP).
7. Transferring between class sections.
8. Endorsing or authorizing a withdrawal after a deadline has passed, with or without a refund of tuition and fees.
9. Alternative course completion options.
10. Arranging to complete a course or lectures via distance education methods or with the assistance of technology.
11. Providing increased security at location or activities (escort, surveillance, monitoring).
12. Modifying work schedules, job responsibilities, supervision, or re-assignment to a different work site.
13. Counseling at a campus clinic or center.

Decision Drafting

Requirements of the written decision (due 7 University Days after the hearing):

1. Identify the allegations potentially constituting sexual misconduct.
2. Describe procedural steps taken from the receipt of the formal complaint through the determination, including notifications to parties, interviews with parties and witnesses, methods used to gather evidence, and hearings held.
3. **Findings of fact supporting the determination.**
4. **Conclusions regarding the application of the University's Student Code of Conduct to the facts.**
5. **A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the Hearing Board imposes on the Respondent, and 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.**
6. The University's procedures and permissible bases for the Complainant and Respondent to appeal.

Decision Drafting

A template covering standard terms will be provided for the Hearing Board to refer to, but the Hearing Board (led by Chair) will author the written determination.

When finished, return the decision to the Hearing Facilitator.

Decision Drafting Tips

Use plain language and an organized format.

Identify not only evidence that supports your findings on each element, but also evidence that detracts from your findings—and explain why you are persuaded to make the finding you did.

Explain the sanctions objectively given the factors provided here. You can obtain information from TIXC about sanctions that have been imposed for violations of the same charges in the past.

Plan for Thursday Session

- Review simulated investigation report.
- Meet in small groups to discuss allegations, review the charges, deconstruct the elements of the charge, and plan questions for the hearing.
- Simulated hearing.
- Deliberation, decision-making, and sanctioning discussions.
- Written decision drafting.