



Grievance Pool Training

August 20, 2024



Welcome

Amy Pennington

Associate Vice President of Student
Affairs/Dean of Students and
Title IX Coordinator

Annual Training Roadmap



01

Foundations

EON Policy, Title IX Basics and History, Due Process

02

Intakes

Notice, confidentiality, reporting requirements, resources, supportive measures, options, terminology, advisor role, NOIA

03

Investigations

Criminal vs Title IX, interviews, evidence, bias, relevance


04

Resolutions

Pre-Hearing: Consent construct, questioning, relevance

Hearing: Hearing decorum & procedures, credibility, weighing evidence

Post-Hearing: Rendering a finding, sanctioning, deliberation statements



Pool members will be able to...

01

Questioning

Formulate appropriate questions at a hearing

02

Relevance

Categorize evidence as relevant or irrelevant to a determination

03

Determinations

Evaluate investigation reports to determine if a policy violation occurred and contribute to a rationale statement

04

Sanctions

Issue appropriate sanctions for a finding of responsibility

05

Advising

Serve as an advisor to either a complainant or respondent



Content Advisory

Discussions of Violence
Gendered Scenarios
Obscene/Profane Language
Humor





01

Foundations

Amy Pennington



Title IX Landscape

- May 6, 2020, the U.S. Department of Education issued new Title IX regulations.
 - Officially published on May 19, 2020, the new regulations were effective and enforceable on August 14, 2020.
 - On August 4, 2020, the ATU Board of Trustees approved a revised Title IX policy that is currently in effect today, as amended, named the Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures.
 - On April 19, 2024, the U.S. Department of Education released revised regulations governing campus compliance with Title IX.
 - The new regulations are effective and enforceable on August 1, 2024.
 - On May 2, 2024, Governor Sanders issued Executive Order 24 -06: Executive Order to Protect Arkansas Students, Women, and Girls. This Executive Order instructs educational institutions in Arkansas to continue to enforce state laws.
 - On May 7, 2024, Arkansas Attorney General Griffin filed suit in the U.S. District Court for the Eastern District of Missouri against the U.S. Department of Education challenging the legality of the new regulations.
 - On July 24, 2024, a preliminary injunction was issued blocking Arkansas from implementation of the 2024 regulations.
 - On August 15, 2024, ATU Board of Trustees approved updated EON Policy and Procedures in compliance with 2020 regulations.
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EON Policy and Procedures



Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures

Policy on Nondiscrimination:

- ATU does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of: color, sex, sexual orientation, gender identity, race, age, national origin, religion, veteran status, genetic information, disability, or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus or with the Equal Employment Opportunity Commission.
- Policy covers nondiscrimination in both employment and access to educational opportunities.

Policy on Disability Discrimination and Accommodation:

- ATU is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.
- The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by ATU, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

Policy on Sex-Based Discrimination and Harassment



Title IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”

20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)

Title IX Umbrella

Sex-Based
Discrimination

Sexual Misconduct

Retaliation



Athletics
Program Equity
Pregnancy
SOGI
Sex-Based Harassment
(Sexual Misconduct)



Sexual Harassment
Sexual Assault
Dating/Domestic Violence
Stalking
Sexual Exploitation*



Reporting Incidents
Participating in the Process
Integrity of the Process
"Good Faith" Reports & Information

Who's Who of the TIX Team?



TIX Coordinator
Amy Pennington



Deputy Coordinators
Ashlee Leavell, Mitzi
Reano, Melissa Riffle



Investigators
William Titsworth (Lead)



Advisors
“Advisor of Choice”
ATU-Trained Advisors



Decision-Makers
Three-Person Panel
chaired by Will Cooper



Appeals Officers
Employees: Division VP/AD
Students: Dr. Nichols

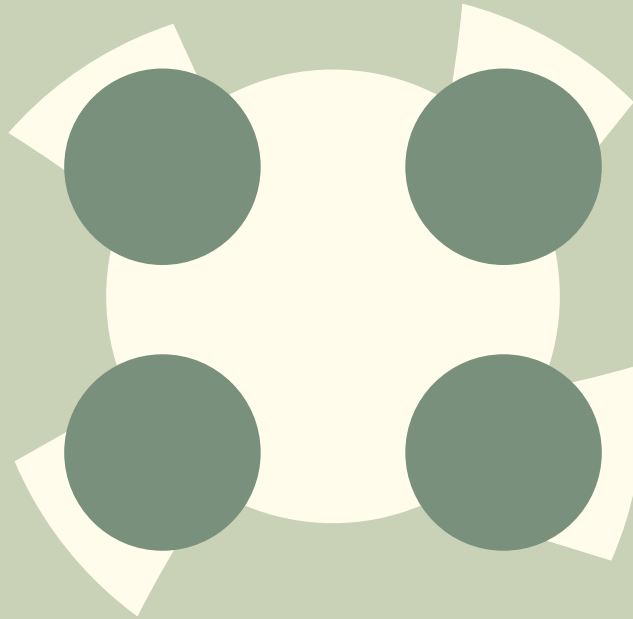
Reporting Overlap

OWAs

“Officials with Authority”
to take corrective action;
actual notice (TIX Team)

Responsible Employees

Must report TIX -related
issues, including student
disclosures



CSAs

Campus Safety Authorities
report certain crimes to
DPS for Clery/timely
warning purposes

Mandated Reporters

Reporting abuse and
neglect of minors

Confidential Resources



Counselors

HWC can see students and refer employees to off-campus counselors



Medical Staff

STI/pregnancy screening, anxiety/depression medication




ORCC

24/7 hotline, hospital accompaniment, ongoing case management



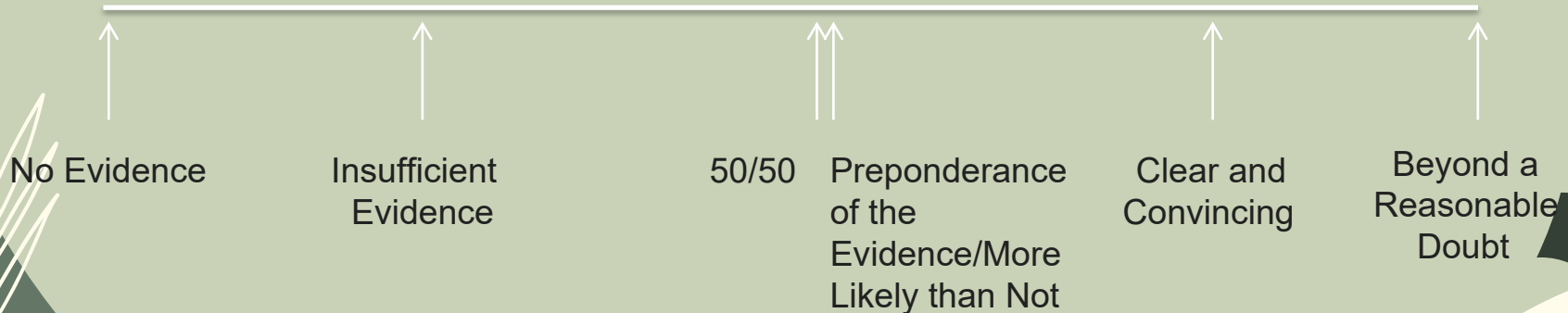
RV Outreach

24/7 hotline, emergency shelter, ongoing case management and safety planning



Title IX and Criminal Complaints

- A complainant has the ability to pursue a Title IX complaint through ATU, a criminal complaint through the appropriate law enforcement agency, neither, or both.
- A criminal investigation is conducted by police or law enforcement with subpoena power, while Title IX investigations are conducted by university employees.
- A standard of evidence known as “beyond a reasonable doubt” is applied to criminal cases, while “preponderance of the evidence” applies to Title IX cases.
- The two cases may run parallel.
- Sanctions, such as expulsion or suspension, apply to Title IX, while criminal penalties can include prison and sex offender registration.



The IX Commandments

Investigation

Thorough
Reliable
Impartial
(Prompt & Fair per VAWA Sec. 304)

Process



Prompt
Effective
Equitable

Remedies

Stop Discrimination/Harassment
Prevent Recurrence
Remedy Effects





Due Process

- Federal and state constitutional and legal protections ensuring no public entity deprives someone of education or employment without substantive and procedural fairness
 - The set of rights -based protections that accompany disciplinary action by a school, college, or university
 - Informed by law, history, public policy, culture, etc.
 - Historically focused on the rights of the Respondent
 - Perceptions of “due process” can be connected to perceptions of legitimacy of a process’s outcome.
 - Act 470 and state -level changes
 - Disparate **treatment** refers to policies, practices, rules, or other systems that are intentionally discriminatory.
 - Disparate **impact** refers to policies, practices, rules, or other systems that appear to be neutral, but result in a disproportionate impact on protected groups.
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Due Process



- **Procedural:**
 - Detailed and specific Notice of Allegation and/or Investigation
 - Notice of Hearing
 - Right to present witnesses
 - Right to present evidence
 - Right to an advisor of their choice
 - Opportunity to be heard and address the allegations and evidence
 - Right to cross -examination
 - Right to review all relevant evidence AND the investigation report prior to a decision
 - Right to appeal
 - **A decision must:**
 - Be appropriately impartial and fair (both finding and sanction).
 - Be neither arbitrary nor capricious.
 - Be based on a fundamentally fair rule or policy.
 - Be made on good faith (i.e. without malice, ill -will, conflict, or bias).
 - Have a rational relationship to (be substantially based upon, and a reasonable conclusion from) the evidence.
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Title IX Process

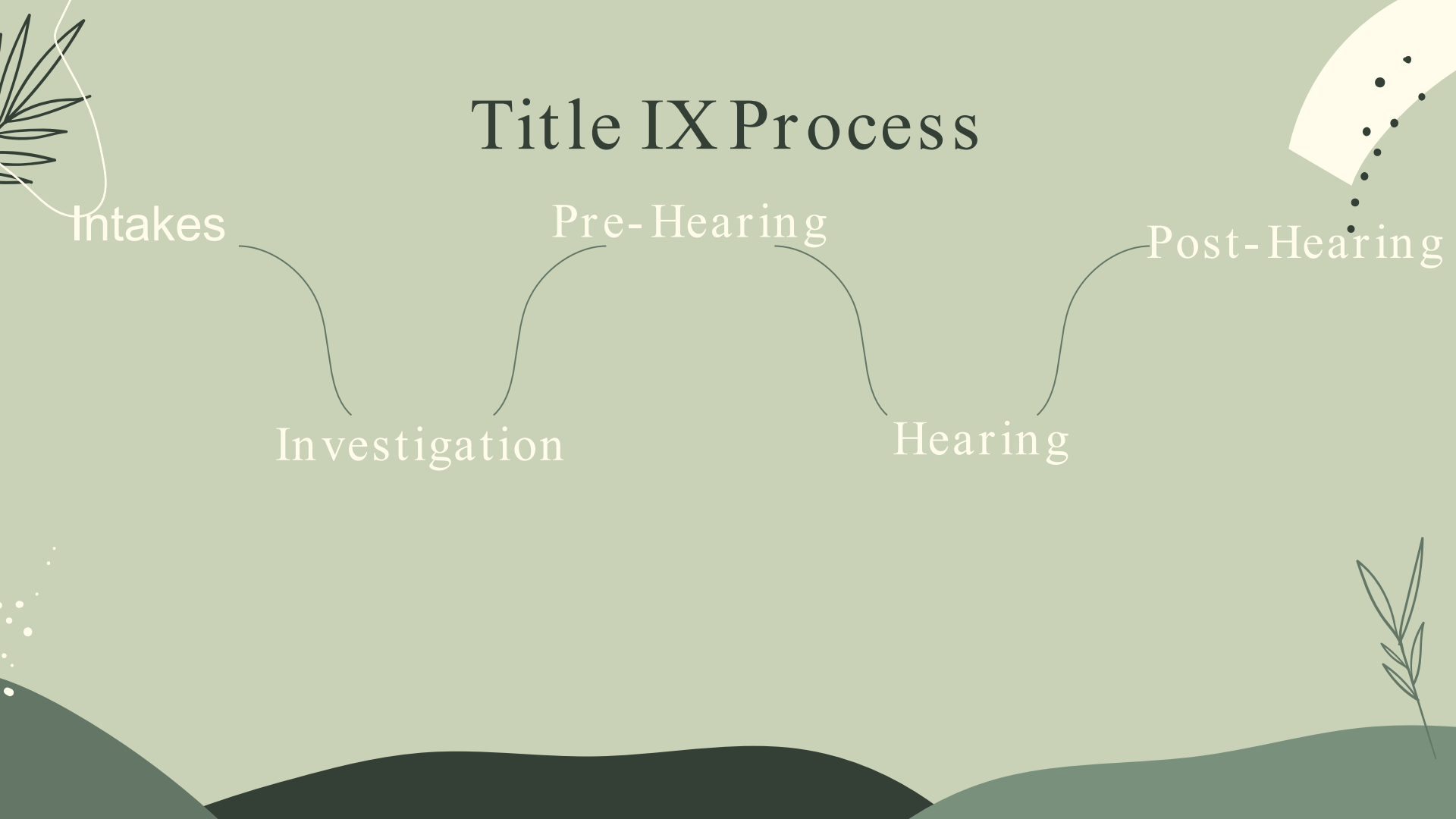
Intakes

Pre-Hearing

Post-Hearing

Investigation

Hearing





02

Intakes

Amy Pennington

Assistant Dean for Student Conduct/
Deputy Title IX Coordinator/Investigator

Title IX Referrals

When to Refer to TIX

- You witness the behavior
- The behavior is widespread, openly visible, or well -known to students, faculty, and staff
- An individual discloses to you
 - Third party reports
 - Descriptive vs. labels
 - Unrelated (or related) policy violation
 - “They didn’t disclose, but...”

Responding to Disclosures

- Be transparent about your reporting obligations
- Be open and empathetic
- **Listen** and thank them for their courage
- Make referrals to resources
- Report all information to TIX staff
- Online form
 - Anonymous reports

Reluctant Complainants

Might say they're afraid to report because...

- They don't really remember what happened...
- They were drinking/smoking/engaged in another policy violation...
- They don't want the Respondent to find out they told someone...
- It would out them if word got out...
- Distrust of first responders, systems, administrators, Title IX offices, conduct officials...
- Immigration status...
- Sexist stereotypes and heightened stigma for male survivors...
- They don't have any evidence...

Intake Timeline



Outreach

TIX staff will email and/or call the impacted party to schedule a meeting



Meet

TIX staff reviews options, supportive measures, and safety concerns



Assess

Conduct initial assessment: if everything reported is true...



Proceed

Supportive measures only vs. informal vs. formal resolution



The Initial Report

Amy Pennington

Supportive Measures

Non-disciplinary, non-punitive, both parties

- Referral to resources
- Safety planning
- Campus escorts
- No contact directives
- Housing/work/class adjustments
- Academic support
- Campus ban
- Educational conversations
- Visa and Immigration Assistance
- Timely warnings
- Increased security/monitoring of certain areas of campus
- Enforcing Contact Limitations
 - 5th JD Victim Assistance
 - Failure to Comply
 - Court orders
- Due process friction and presumption of non-responsibility
- **Supportive measures are available no matter how they want to move forward (if at all)**

Intake Timeline



Outreach

TIX staff will email and/or call the impacted party to schedule a meeting



Meet

TIX staff reviews options, supportive measures, and safety concerns



Assess

Conduct initial assessment: if everything reported is true...



Proceed

Supportive measures only vs. informal vs. formal resolution

Initial Assessment

Who?

Are the parties
members of the ATU
community?

Where?

On/off campus?
Online?
Study Abroad?



What?

What policy, if any,
governs the reported
behavior?

How?

If everything
reported is true, does
it violate policy?
Which policy?

Terminology and Analysis


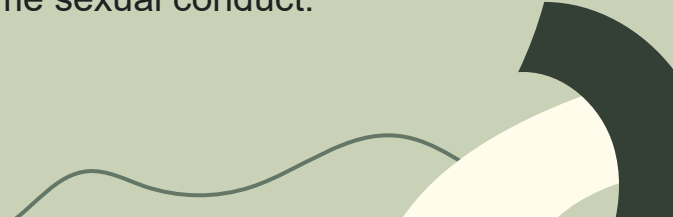
Independent Review





Terminology and Analysis





- Sexual Harassment (Sexual Misconduct):
 - Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.
 - Sexual harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking.
 - Sexual Harassment, at ATU, is defined as follows:
 - Conduct on the basis of sex/gender or that is sexual satisfies one or more of the following:
 1. Quid pro quo:
 - an employee of ATU,
 - conditions the provision of an employment or educational benefit, aid, or service of ATU,
 - on an individual's participation in unwelcome sexual conduct.
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Terminology and Analysis





2. Sexual Harassment (Hostile Environment):

- Unwelcome conduct,
 - determined by a reasonable person,
 - to be so severe, and
 - pervasive, and
 - objectively offensive,
 - that it effectively denies a Complainant equal access to ATU's education program or activity.
 - **Unwelcomeness** is subjective and determined by the Complainant (unless the Complainant is younger than the age of consent).
 - 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 (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.
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Terminology and Analysis



- **Severe**
 - Physical conduct is more likely to be severe
 - Accompanied by threats or violence
 - Consider the circumstances (e.g., ability of the Complainant to remove themselves from the harassment)
 - **Pervasive**
 - Widespread
 - Openly practiced
 - Well-known among students or employees – reputation of a department, person, etc.
 - Occurring in public spaces (more likely to be pervasive)
 - Frequency of the conduct is often a variable in assessing pervasiveness (look to intensity and duration)
 - Unreasonable interference with school or job
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Terminology and Analysis



Objectively Offensive

- Reasonable person standard in context
- “I know it when I see it...”
- Relationship of Complainant/Respondent
- Number of people involved
- Frequency
- Severity
- Physically threatening
- Humiliating
- Intimidating
- Ridiculing
- Abusive

Totality of the Circumstances to Consider:

- Frequency, nature, and severity of the conduct (see factors previously discussed)
 - Identity of and relationship between the parties
 - Age of the parties
 - Size of the school, location of the incidents, and context in which they occurred
 - Whether the conduct unreasonably interfered with the Complainant’s educational/work performance
 - Effect on the Complainant’s mental or emotional state
 - Whether the statement was an utterance of an epithet which was offensive or offended by discourtesy or rudeness
 - Whether the speech or conduct deserves the protections of academic freedom or First Amendment protection
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Terminology and Analysis





Sexual Assault, any sexual act directed against a Complainant, defined as:

- **Rape**

- 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 Complainant.

- **Sodomy:**

- Oral or anal sexual intercourse with another person,
 - forcibly,
 - and/or against that person's will (non - consensually), or
 - not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
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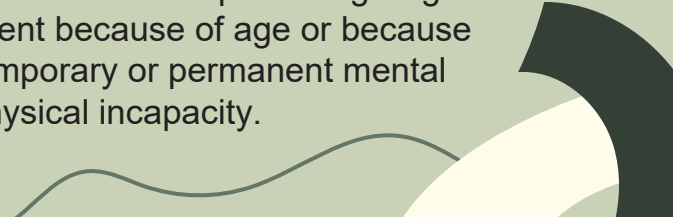
Terminology and Analysis

Sexual Assault, any sexual act directed against a Complainant, defined as:

- **Sexual Assault with an Object:**

- the use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of another person,
- forcibly, and/or
- against that person's will (non - consensually), or
- not forcibly or against the person's will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.



- **Fondling:**

- the touching of the private body parts of another person (buttocks, groin, breasts),
 - for the purpose of sexual gratification,
 - forcibly, and/or
 - against that person's will (non - consensually), or
 - not forcibly or against the person's will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
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Terminology and Analysis

Sex Offenses, Non-Forcible:



- **Incest:**
 - Non-forcible sexual intercourse,
 - between persons who are related to each other,
 - within the degrees wherein marriage is prohibited by Arkansas law.
 - **Statutory Rape:**
 - Non-forcible sexual intercourse,
 - with a person who is under the statutory age of consent of 14.
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Terminology and Analysis



Dating Violence, defined as:



- Violence,
 - On the basis of sex,
 - Committed by a person,
 - Who is in or has been in a social relationship of a romantic or intimate nature with the complainant.
 - The existence of such a relationship shall be determined based on the complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- **For the purposes of this definition —**
 - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating violence does not include acts covered under the definition of domestic violence.
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Terminology and Analysis




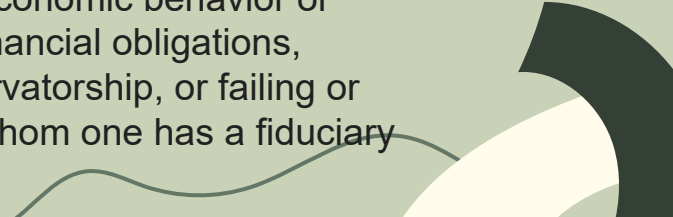
Domestic Violence, defined as:

- Violence,
 - on the basis of sex,
 - committed by a current or former spouse or intimate partner of the Complainant under family or domestic violence laws of Arkansas, and
 - 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 Complainant, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who —
 - is a current or former spouse or intimate partner of the Complainant, or person similarly situated to a spouse of the Complainant;
 - is cohabitating, or has cohabitated, with the Complainant as a spouse or intimate partner;
 - shares a child in common with the Complainant;
 - commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of the jurisdiction.
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Terminology and Analysis





- To categorize an incident as **Domestic Violence** under this Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.
 - **Economic Abuse**
 - Economic abuse, in the context of domestic violence, dating violence, and abuse in later life, means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to —
 - Restrict a person's access to money, assets, credit, or financial information;
 - Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or
 - Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.
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Terminology and Analysis



- **Technological abuse** means an act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology, including but not limited to: internet-enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.
 - **Abuse later in life** means neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim or domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual. This definition does not include self-neglect.
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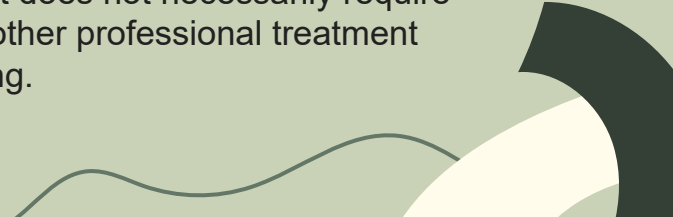
Terminology and Analysis



Stalking, defined as:

- engaging in a course of conduct,
- on the basis of sex,
- directed at the Complainant, that
- would cause a reasonable person to fear for the person's safety, or
- the safety of others; or
- 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 respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 - Reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant.
 - Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.
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Terminology and Analysis



Sexual Exploitation (Process B), defined as:

- an individual taking non -consensual or abusive sexual advantage of another,
 - for their own benefit or for the benefit of anyone other than the person being exploited, and
 - that conduct does not otherwise constitute sexual harassment under this Policy.
- Sexual voyeurism
 - Indecent exposure
 - Invasion of sexual privacy
 - Taking pictures, video, or audio without knowledge or permission
 - Sharing pictures, video, or audio without knowledge or permission
 - Prostituting another person
 - Using private photos/video/audio to blackmail an individual
 - Child pornography (creation, possession, or dissemination)
 - More examples in the EON Policy and Procedures
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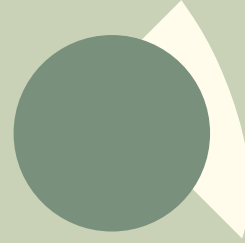


Non-Formal Resolution Options



Supportive Measures Only

Complainant elects to not move forward with a formal or informal resolution, but they can change their mind at any time.*



Informal Resolution

Both parties must agree; no finding or sanctions; variety of methods

Assess for: Pattern, Predation, Threat, Violence/Weapon, Minors



Formal Resolution

Written Formal Complaint
Respondent Intake
Written Response
Advisor(s) Assigned
NOIA

Advisors

ATU Advisors

- Assistance navigating the process
- Advisee is not your “client”
- Not governed by any “privilege”
- Keep information private
- May not like or believe an advisee
- Offer a compassionate listening ear when the advisee needs to vent
- Be aware of resources for your advisee
- Be aware of and advise your advisee to follow any supportive measures that have been put into place
- Advisees can have very different needs and may want different levels of involvement from you

Advising the Parties



- Keep an eye open for procedural errors and biases as the resolution process unfolds and contact the Title IX Coordinator or other appropriate administrator as warranted to raise your concerns.
- Each party **must** have an Advisor at the hearing for cross -examination
- Parties have the right to not attend or participate in any or all steps in the process, but you want to discuss with them how non -participation will affect the process.



Advisors

Advising in the Intake Stage



- Help your advisee to understand the ATU process and prepare them for next steps along the way
 - Discuss how involved your advisee wants you to be
 - Discuss and weigh resolution options if a decision has not been made
 - Assist Complainants with submitting a formal complaint
 - Assist Respondents with submitting a written response to the complaint
 - Discuss possible witnesses, lines of questioning, and evidence with your advisee
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- Help your advisee to identify, gather, review, organize, and present any evidence they may wish to submit (photographs, screenshots, texts, etc.)
 - Make sure your advisee brings any devices that contain evidence so that investigators can see originals when possible.
 - Make sure your advisee does not alter or omit any evidence as this will likely be quickly discovered and would be harmful to their credibility.
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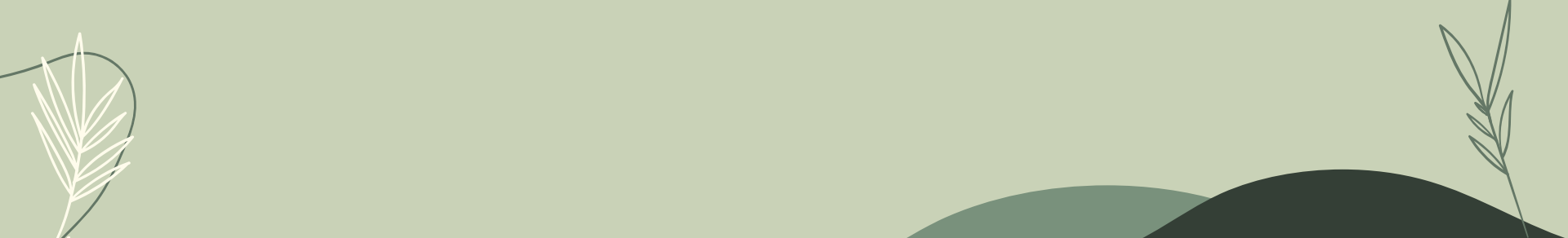


A Caring Professional...

Does:

- Listen compassionately.
- Answer questions about the process.
- Help students identify concerns (safety or otherwise).
- Connect the advisee/student/client with resources and problem solve to address those concerns.
- Practice self care and ask for help.

Does NOT:

- Offer legal advice.*
 - Provide therapy.*
 - Make decisions and choices for the advisee.
 - Tell the advisee/student/client how they should feel about what has happened or what is happening.
 - Expect to know all the answers.
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Investigations

William Titsworth

Assistant Dean for Student
Conduct & Lead Investigator

03

Title IX Process



Incident
Reported
to TIX

Initial Meeting
Supports
Advisor
Complaint
Response
NOIA


Investigation
Stones
Unturned

Pre-Hearing

Hearing

Post-Hearing





Bias, Impartiality, and Objectivity

William Titsworth

Bias, Impartiality, and Objectivity

Prejudice

- To “pre-judge”
- “Prejudice” – Any preconceived opinion or feeling, either favorable or unfavorable (dictionary.com) § Often based on things we have previously read, our own experiences
- Prejudice – An unfair feeling of dislike for a person or group because of race, sex, religion, etc. – A feeling of like or dislike for someone or something especially when it is not reasonable or logical (merriam -webster.com)



Bias

- People do not shed their values, beliefs and life experiences at the hearing room door. Nor should we expect them to
- While bias is inevitable, it does not necessarily undermine the fairness or appropriateness of a hearing board’s decision
- The key is recognizing the bias and ensuring it does not impact one’s decision because bias that serves as the basis for the outcome of the hearing is improper
- Hearings must be based on evidence, not on personal beliefs about a complaint



Bias, Impartiality, and Objectivity

Common Issues

- Role of Alcohol
 - Personal experiences
 - Student -Athletes
 - Fraternity/Sorority Life
 - Disabilities
 - Mental Health Conditions
 - International Students
 - Sex/Gender
 - Gender Identity
 - Race
 - Ethnicity
 - Religion or Religious beliefs
 - Academic Field of Study/Major
 - Veteran Status
 - Socioeconomic Status
 - Politics
 - Attitude
 - Pre-disposition towards one party
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Bias, Impartiality, and Objectivity

Implicit Bias

- Implicit bias (also called unconscious bias) refers to attitudes and beliefs that occur outside of our conscious awareness and control.
- Implicit biases are unconscious attitudes and stereotypes that can manifest in the grievance process.
- Explicit biases are biases we are aware of on a conscious level.
- There are many different examples of implicit biases, ranging from categories of race, gender, and sexuality.
- These biases often arise as a result of trying to find patterns and navigate the overwhelming stimuli in this very complicated world. Culture, media, and upbringing can also contribute to the development of such biases.
- [https:// www.simplypsychology.org /implicit -bias.html](https://www.simplypsychology.org/implicit-bias.html)

Bias, Impartiality, and Objectivity


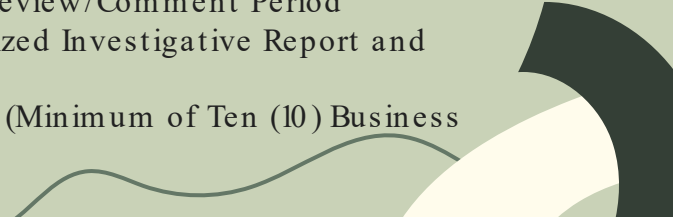
Ways to Reduce Implicit Bias

- Looking beyond your own point of view, so that you can consider how someone else may think or feel about something.
- Understanding what implicit biases are, how they can arise, how, and how to recognize them in yourself and others are all incredibly important in working towards overcoming such biases.
- Learning about other cultures or outgroups and what language and behaviors may come off as offensive are critical as well.
- [https:// www.simplypsychology.org /implicit -bias.html](https://www.simplypsychology.org/implicit-bias.html)





10 Steps of an Investigation



1. *Notice/Complaint Received*
 2. *Initial Assessment*
 3. *Investigation Basis and Appointment of Investigators*
 4. *Notice of Investigation and Allegations*
 5. Develop Strategic Investigation Plan
 - Witness list
 - Evidence list
 - Investigation timeframe
 - Order of party/witness interviews
 6. Conduct Investigation (thorough, reliable, and impartial)
 - Interview witnesses
 - First Conversation Checklist
 - Dishonesty during the process
 - Gather relevant evidence
 7. Complete Investigative Report (Draft)
 8. Investigative Report Provided to Parties/Advisors & Ten (10) Day Review/Comment Period
 9. Incorporation of Relevant Elements/Evidence/Revisions into Finalized Investigative Report and Presented to Title IX Coordinator for Review and Feedback
 10. Final Investigative Report Provided to Parties/Advisors for Review (Minimum of Ten (10) Business Days Before Hearing Date)
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Types of Evidence

- Documentary evidence (supportive writings or documents)
 - Electronic evidence (photos, text messages, and videos)
 - Real evidence (physical objects)
 - Direct or testimonial evidence (personal observation or experience)
 - Circumstantial evidence (requires inference)
 - Hearsay evidence (Stacy told me that William took a two -hour lunch)
 - Character evidence (rarely useful)
 - Only assign weight to these when relevant and credible
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Advisors

Advising in the Interview Stage

- Help your advisee to understand the ATU process and prepare them for next steps along the way
- Accompany your advisee to meetings and interviews
- Assist your advisee in presenting information clearly during interviews (taking breaks during the interview)
- Help your advisee to identify the names of witnesses and lines of questions that are relevant to the issues at hand (get contact information beforehand if possible)
- Help your advisee to identify, gather, review, organize, and present any evidence they may wish to submit (photographs, screenshots, texts, etc.)
- Make sure your advisee brings any devices that contain evidence so that investigators can see originals when possible
- Make sure your advisee does not alter or omit any evidence as this will likely be quickly discovered and would be harmful to their credibility



Advisors

Advising in the Review Stage

- Help your advisee to review the investigative report and case file documents and respond as needed
- Help your advisee identify gaps in the investigation and suggest additional relevant questions or areas of focus.
- Is there any additional evidence they may wish to submit (photographs, screenshots, texts, etc.)?
- Remind your advisee that they can review any redacted portions of the Draft Investigation Report and make arguments for/against redaction
- Remind your advisee of the deadline to review and comment
- Encourage them to let us know if they do not plan to submit anything
- Reading the Draft Investigation Report may be extremely emotional for them. It's the first time they've seen everything that was said and submitted during the investigation, and there will likely be parts that are difficult for them to read




Questioning & Relevance

William Titsworth



Questioning



- Have a purpose for asking every question.
 - Be sure to ask a question, not make a speech.
 - Ask questions about the allegations and the evidence and the policy elements.
 - Don't be accusing or argumentative.
 - Don't make questions too long or confusing.
 - Listen carefully and adapt follow-up questions.
 - Focus on areas of conflicting evidence or gaps of information.
 - Avoid evaluative responses to a person's answers (that's too bad; I'm glad you said that...).
 - Do not moralize.
 - Do not blame the Complainant (often called "victim-blaming") such as, "Why didn't you hit them?" "Why didn't you leave?" "Why did you get so drunk?"
 - Complainants' responses to trauma are quite varied.
 - Seek to clarify terms and conditions that can have multiple meanings or a spectrum of meanings such as "hooked up," "drunk," "sex," "fooled around," "had a few drinks, etc."
- 

Relevance

- Evidence that is relevant helps to prove or disprove whether or not a policy violation occurred or speaks to the credibility of the complainant, respondent, or witness.
- Investigators have already done some preliminary assessment of relevance based on what is included in the investigative report.
- Ultimately, relevance at the hearing will be determined by the decision makers.
- Relevant evidence must be evaluated impartially.
- Character evidence is of little to no value.
- Impact statements may be useful during sanctioning but are of little evidentiary value during the hearing (outside of SPOO analysis).



04

Pre-Hearing

Will Cooper

Associate Dean for Student Conduct
Honorable Chair

Title IX Process

Incident
Reported
to TIX

Initial Meeting
Supports
Advisor
Complaint
Response
NOIA

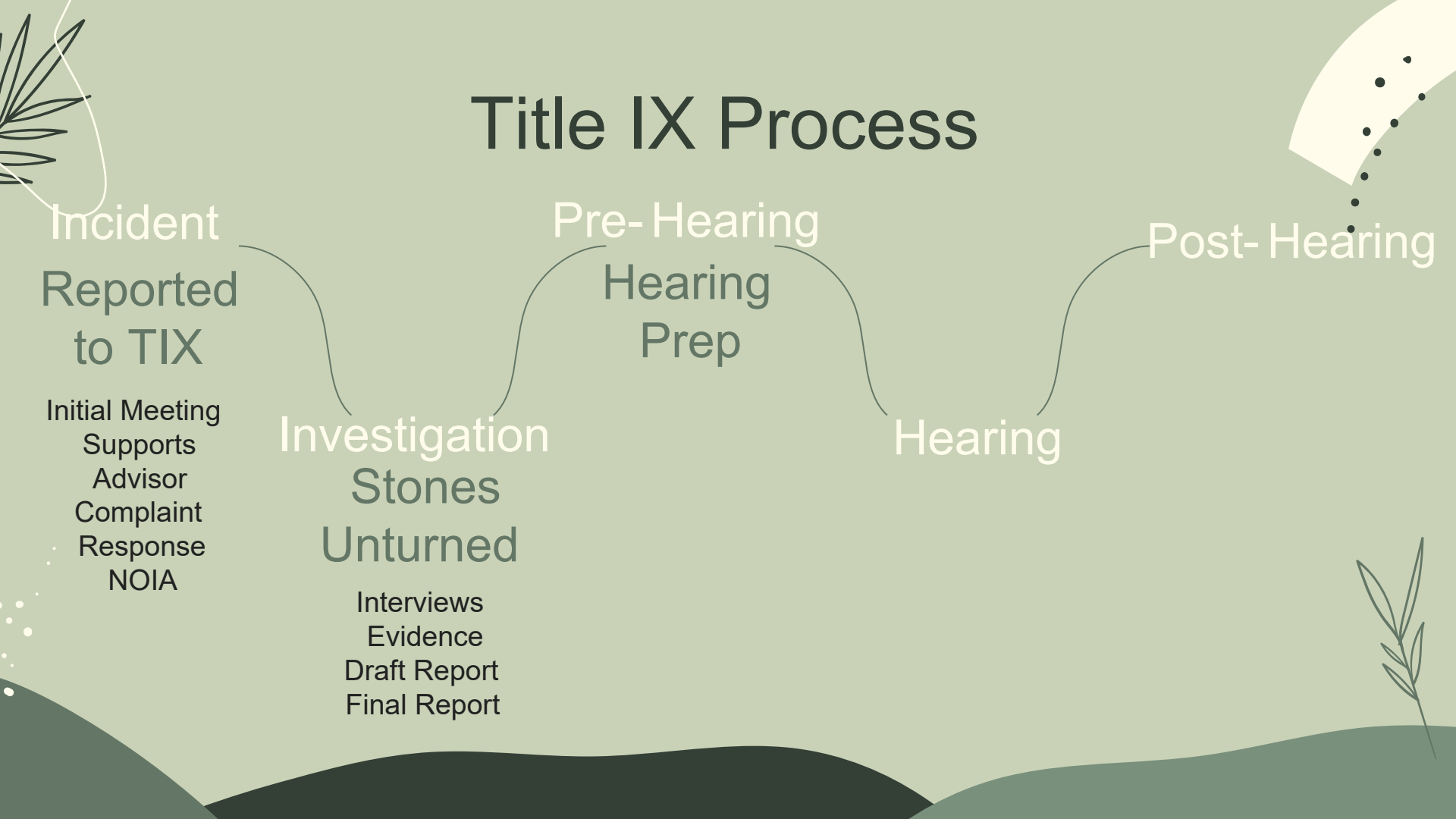
Investigation
Stones
Unturned

Interviews
Evidence
Draft Report
Final Report

Pre-Hearing
Hearing
Prep

Hearing

Post-Hearing





You do not have a side.

You represent the
process.







Preparing for the Hearing



Decision-Makers

- The Hearing Panel will most likely meet prior to the scheduled hearing.
 - The Panel will review the investigative report.
 - The Panel will compile relevant questions for the parties and any witnesses.
 - The Panel will discuss anticipated relevance issues.
- 

Advisors

- Meet with Advisee to review the final report (pay attention to changes), evidence, and relevant policies.
 - Discuss cross-examination/your role
 - Ultimately, you are asking the questions your Advisee wants you to ask. It's helpful to meet before the hearing to draft questions.
 - Encourage a pre-hearing meeting with the Chair to discuss logistics and relevancy of questions they want asked in the hearing.
 - Discuss submitting an impact or mitigation statement.
- 

Consent Construct: The Three Questions



Force

Was force used by the Respondent to obtain sexual access?



Incapacity

Did the Respondent know, or should they have known, that the Complainant was incapacitated?



Consent

What clear words or actions by the Complainant gave the Respondent permission for the sexual activity?

The Three Questions

Was force used by the Respondent to obtain sexual access?

- Physical violence
- Threats—anything that gets the other person to do something they wouldn't ordinarily have done absent the threat
- Intimidation —an implied threat that menaces and/or causes reasonable fear
- Coercion—the application of an unreasonable amount of pressure for sexual access. Consider:
 - Frequency
 - Intensity
 - Isolation
 - Duration
- If force was used, the policy was violated.

The Three Questions

Did the Respondent know, or should they have known, that the Complainant was incapacitated?

- Alcohol and/or other drugs administered **voluntarily or without** Complainant's knowledge
- Drug-facilitated SA
 - #1: Alcohol*
 - Prescription Drugs
 - Ambien, Valium, Xanax
 - Interactions with Alcohol
 - Other Drugs
- Mental/cognitive impairment
- Injury
- Asleep

Common Vocabulary: Impaired, Stoned, Wasted, Under the Influence, Drunk vs. Incapacitated

- First, was the Complainant incapacitated at the time of contact?
- Could the Complainant make rational, reasonable decisions?
- Could the Complainant appreciate the situation and address it consciously such that any consent was informed (knowing who, what, when, where, why and how)
- Second, did the Respondent know of the incapacity (fact)?
- Or, should the Respondent have known from all the circumstances (reasonable person)?

The Three Questions

Did the Respondent know, or should they have known, that the Complainant was incapacitated?

- Incapacitation is a determination that will be made after the incident in light of all the facts available.
- Assessing incapacitation is very fact - dependent.
- Blackouts are frequent issues
 - Blackout = incapacitation
 - Blackout = no working (form of short term) memory, thus unable to understand who, what, when, where, why, or how
 - Partial blackout must be assessed as well
- What if the Respondent was drunk too?
- If the Complainant was **not** incapacitated, move on to the third question.
- If the Complainant **was** incapacitated but the Respondent **did not know** and **should not have known** , policy was not violated. Move on to third question.
- If the Complainant **was** incapacitated, and the Respondent **knew** or **should have known** , policy was violated. Sanction accordingly.*



The Three Questions

What clear words or actions by the Complainant gave the Respondent permission for the specific sexual activity that took place?

- Consent is the idea that every person has a right not to be acted upon by someone else in a sexual manner unless he or she gives clear permission to do so.
- With this idea comes the understanding that consent can be broad or narrow, and can be limited, such as in cases where someone is willing to engage in some forms of sexual activity, but not in others.
- Consent means people deciding together to do the same thing, at the same time, in the same way, with one another.

The Three Questions

What clear words or actions by the Complainant gave the Respondent permission for the specific sexual activity that took place?

Consent:

- Knowing
- Voluntary
- Clear permission
- By word or action
- To engage in sexual activity*

What is Consent?

- Consent may be given verbally or nonverbally, but it must be communicated clearly in whatever form
- Silence and/or passivity is not consent
- Must be a verbal or non-verbal “Yes”

- Consent is in doubt when a party to a sexual interaction is making assumptions about what their partner does or does not want.
- Absence of clear signals means no consent, not try it and see if they like it or object.
- The idea of pure, autonomous consent completely rules out any requirement to show the use of force, or any type of resistance.
- Yet, the use of force or the showing of resistance would demonstrate non-consent.



The Three Questions

What clear words or actions by the Complainant gave the Respondent permission for the specific sexual activity that took place?

Who Must Consent?

- All parties to a sexual interaction
- Consent requires that the person initiating the sexual activity “get permission” to do so, and that permission does not exist in the absence of resistance.
- Passively allowing someone to touch you in a sexual manner is not consent.

“Consent” is Not Always Valid

- There are circumstances where even if the person says “yes,” consent is not valid.
- Consent would be invalid when:
 - forced, threatened, intimidated, coerced,
 - when given by a mentally or physically incapacitated person,
 - or when given by a minor.





The Three Questions

What clear words or actions by the Complainant gave the Respondent permission for the specific sexual activity that took place?

- To be valid, consent must be given prior to or contemporaneously with the sexual activity.
 - Consent can be withdrawn at any time, as long as that withdrawal is clearly communicated by the person withdrawing it.
 - You can place any conditions you want on your willingness to consent.
- If the Respondent can answer this question with evidence of sufficient words or actions, you are done. There is no policy violation.



The Hearing

Will Cooper

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Evidence
Draft Report
Final Report

Pre- Hearing Hearing Prep

Consent Framework
Questioning
Technology
Collaborate

Hearing Procedures & Decisions

Post- Hearing





Hearing Logistics

Hearing Decorum

- Demeanor
- Business casual attire
- Alertness
- Cell phone etiquette


Hearing Technology

- Hearing Technology
 - Webex will be used when a virtual option is needed.
 - Each hearing is recorded and there is one verbatim record.
 - Any technology needed to review evidence will be provided, i.e. videos, photos, card swipes, etc.
- 
- 



Hearing Procedures



- Chair calls the meeting to order...
 - Investigator presents the history of the case and reads the executive summary into the record.
 - Opening statements
 - Complainant is questioned by the panel and then Respondent's Advisor
 - Respondent is questioned by the panel and then Complainant's Advisor
 - Witnesses are questioned by the panel, Complainant's Advisor, and Respondent's Advisor
 - Witnesses are sometimes called prior to the Respondent due to tight schedules or unforeseen delays such as technology issues
 - Advisors are asked to pause after questions and before the question is answered. The decision-makers will make a relevancy determination.
 - Closing statements
- 



Advisors

Advising During the Hearing

- Primary role at the hearing is to conduct the cross examination of witnesses on behalf of the party.
- Ask the questions the party wants to be asked of each witness (this likely will require collaboration prior to the hearing).
- Questions must be relevant subject to assessment by the Chair
- Maintain composure (advisors do not need strong emotional reactions/responses during the hearing)
- Advisors do not answer questions on behalf of their advisee or make opening or closing statements.
- Advisors can consult with their advisee, but do not speak on their behalf.

Weighing Evidence

Credibility

- Credibility—the process of weighing the accuracy and reliability of evidence.
- Primary factors: corroboration and consistency.
- To assess credibility, evaluate the:
 - **Source**—where is the information coming from?
 - **Content**—could the witness hear what they say they heard?
 - **Plausibility**—does the information even make sense to a reasonable person?
- When all three are strong, credibility is strong.

Think of credibility on a 100% scale:



- If it dips below 50% the witness or evidence doesn't weight the scale.
- If the witness or evidence is more credible than not it does weight the scale for determining a preponderance.
- Credibility weighted on neutrality, impartiality, and objectivity:
- The more loyal a witness is based on relationship to one party, the more biased their evidence could be.
- Neutral witnesses may be more objective than partisan witnesses.



Weighing Evidence

Credibility



- Avoid micro-expression analysis and gestures.
 - Major inconsistencies would likely detract from credibility.
 - If established, continuation of harassing behavior after the responding party was informed it was unwelcomed would be corroborating.
 - Documents such as diaries, calendar entries, journals, notes, or letters describing the incident(s) can add to credibility but can also be manufactured after-the-fact. The adage, “trust, but verify,” applies.
 - Telling another person about the harassment may add to credibility, but if the accounts provided to others vary meaningfully, that can also undermine credibility
 - Motivation to lie, exaggerate, or distort information should be assessed when there are differences in what was reported or questions about veracity or accuracy.
- 
- 

Weighing Evidence

Credibility

Questions to consider in assessing credibility:

- How might a reasonable person react to the incident(s)?
- What was the effect of the behavior on the Complainant?
- A preponderance can be established simply because you believe one party and not the other, based on assessment of credibility of the party and the evidence provided.

Weighing Evidence

The following do not add or detract from credibility of the responding party because they are irrelevant:

- Character witnesses. (“He is such a good kid; I know he would never do that.”)
- Popularity with staff and other students. (“Everybody likes him; I just don’t believe he would do that.”)
- No history of past problems. (“She’s never been in trouble before.”)
- Academic performance. (“But he’s a really good student. His professors really like him.”)

The following do not add or detract from credibility of the Complainant:

- Clothing. (“Just look at what she was wearing.”) Clothing does not cause sexual harassment, nor does it give anyone permission to touch or make sexual remarks.
- Appearance. (“They are so pretty; no wonder he did it,” or, “she is so unattractive! I don’t believe anyone would do that to her.”)
- Flirting behavior. (“He’s always flirting with the boys, what did he expect?”)
- Males being Complainants. (“He should have realized she meant it as a compliment.”)
- Sexual orientation of Complainant (“Listen, he came out of the closet and told everyone. He should have expected that people would act like this.”)
- Finally, politics, including athletics participation, concern about the team, concern about “getting a good student in trouble,” whether someone is a last semester senior, etc., **cannot impact decisions about whether a policy has been violated.**

After the Hearing

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Weighing Evidence


Post- Hearing Outcomes & Appeals



Making a Determination




Rendering a Finding

- Decisions must be based on the facts in the investigative report and presented at the hearing, not any outside evidence.
 - The Panel must first determine whether or not the policy was violated. The sanction discussion will take place **if they reach a finding of responsibility.**
 - Don't let the severity of the case change your standard of evidence.
 - A preponderance of the evidence
- 

Due Process in Decision

A decision must:

- Be appropriately impartial and fair (both finding and sanction).
 - Be neither arbitrary nor capricious.
 - Be based on a fundamentally fair rule or policy.
 - Be made on good faith (i.e. without malice, ill -will, conflict, or bias).
 - Have a rational relationship to (be substantially based upon, and a reasonable conclusion from) the evidence.
- 




Making a Determination




Sanctioning

Sanction appropriately to:

- Bring an end to the discrimination
 - Prevent its future recurrence
 - Remedy the effects on the Complainant
 - Sanctions for serious misconduct should be aimed at protecting the Complainant and the community.
 - Progressive discipline when appropriate
- 

Sanctioning Spectrum



- Warning
 - Probation
 - Loss of Privileges (ban from library)
 - Educational Sanction (Judicial Educator Module, policy reviews, etc.)
 - Discretionary Sanctions
 - Monetary Fine
 - Housing Suspension
 - University Suspension
 - Expulsion
 - Termination of Employment
- 



Making a Determination



Generating a Rationale

- Once the Panel has a finding and determined any appropriate sanctions, a written determination is composed.
 - The determination includes a deliberation statement.
 - The Notice of Outcome letter is shared with both parties.
- 
- 



Notice of Outcome

1. Deliberate and determine if the Respondent is responsible or not responsible for violating the policy(ies).
2. If determined to be responsible, consider any submitted impact/mitigation statements then sanction accordingly.
3. Write a deliberation statement outlining your rationale for your decision(s).





Appeals

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Appeals



- Any party may file a request for appeal, but it must be submitted in writing to the Title IX Coordinator within **25 calendar days** (for “serious violations”) of the delivery of the Notice of Outcome.
 - Student appeals will be decided by the Vice President for Student Affairs. Employee appeals will be decided by the appropriate Vice President, Athletic Director, or President.
 - If the Respondent is a faculty member with tenure or with a special or probationary appointment, the procedures set forth in the Academic Termination Policies and Procedures section of the Faculty Handbook shall govern the Respondent’s appeal.
 - All parties will be kept informed of any appeals and be given an opportunity to respond.
 - Sanctions will be stayed during the appeal **unless removed on an emergency basis** after safety and risk analysis.
 - Not intended to provide for a full re-hearing.
 - Advisors: Talk through the grounds for appeal and assist them with submitting their request for appeal
- 
- 

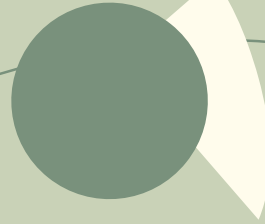
Grounds for Appeal

Procedural irregularity
that affected the
outcome of the matter



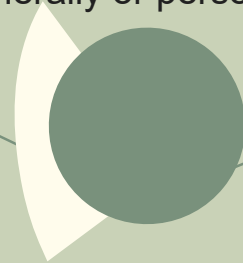
Procedure

New evidence that was
not reasonably
available and could
affect the outcome



Evidence

TIXC, DM, and/or
investigator(s) biased
for/against a party
generally or personally

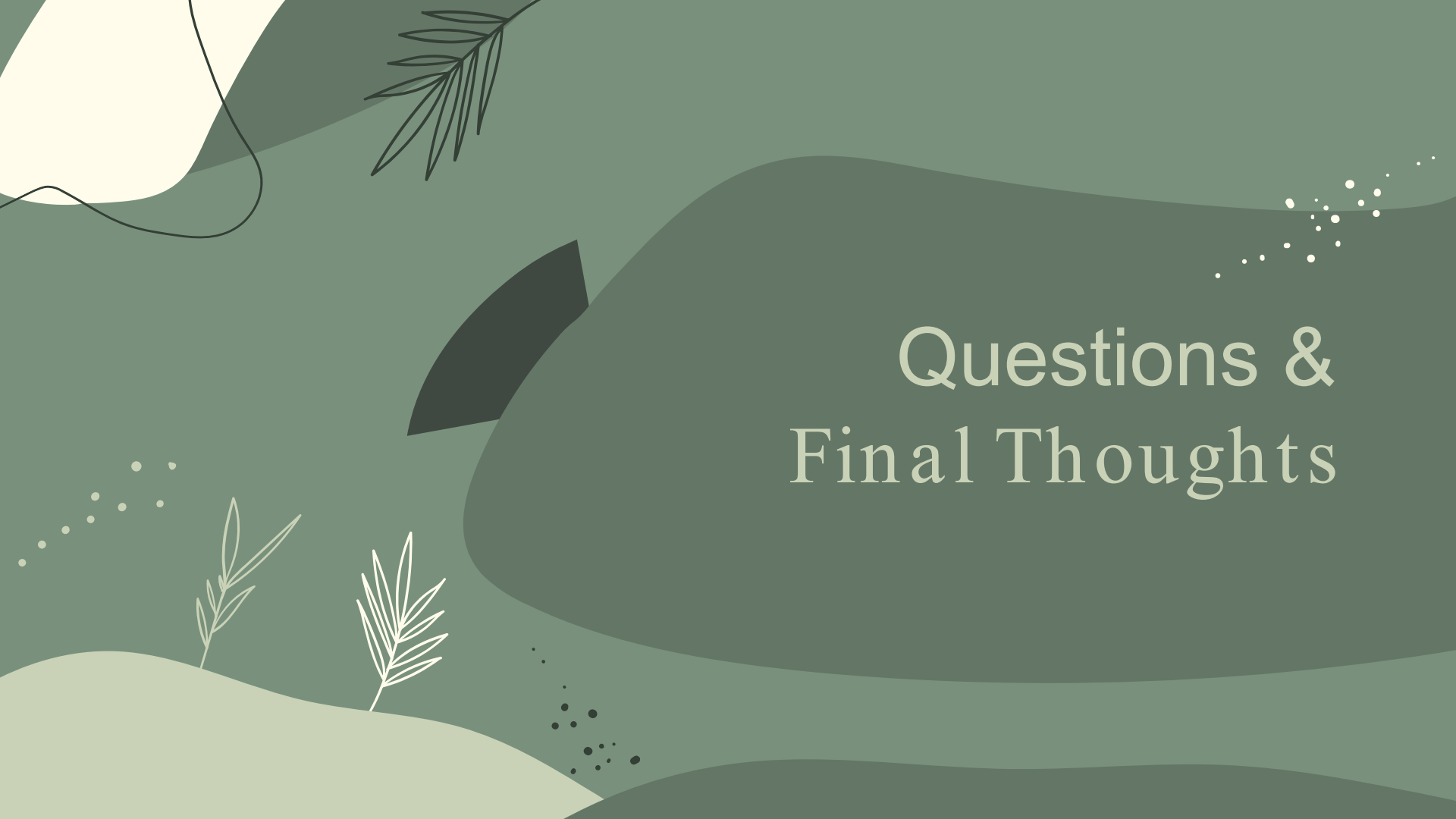


Bias



Questioning Activity

Pair off in three person panel and review the Executive Summary. As a panel, identify three (3) relevant questions to ask at a hearing (it can be directed at any party or witness). As a panel, determine whether or not the policy was violated then list a few rationale bullet points for your determination. If applicable, include



Questions & Final Thoughts



Looking Ahead...



Thanks!

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