

# The University of Scranton

## Title IX Training for Coordinators, Investigators, Advisors and Adjudicators

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# Agenda

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## **Title IX Regulatory Framework**

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### **Formal Resolution Process**

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# 2020 Title IX Regulatory Framework

# Threshold / Jurisdictional Topics

**Application to students and employees.**

## **Jurisdiction:**

**WHAT:** Quid pro quo sexual harassment; unwelcomed sexual conduct that is so severe, pervasive and objectively offensive that it effectively denies equal access to the university's programs or activities; sexual assault; dating violence; domestic violence; and stalking.

**WHERE:** Occurs in

- A university's programs or activities, defined as locations, events or circumstances over which the university exercised substantial control.
- Any building owned or controlled by an officially recognized student organization.
- The U.S.

# Grievance Procedure Topics

## **Requirements for investigations and live hearings:**

Parties must have access to *all* evidence related to the allegations.

The decision-maker cannot be the investigator.

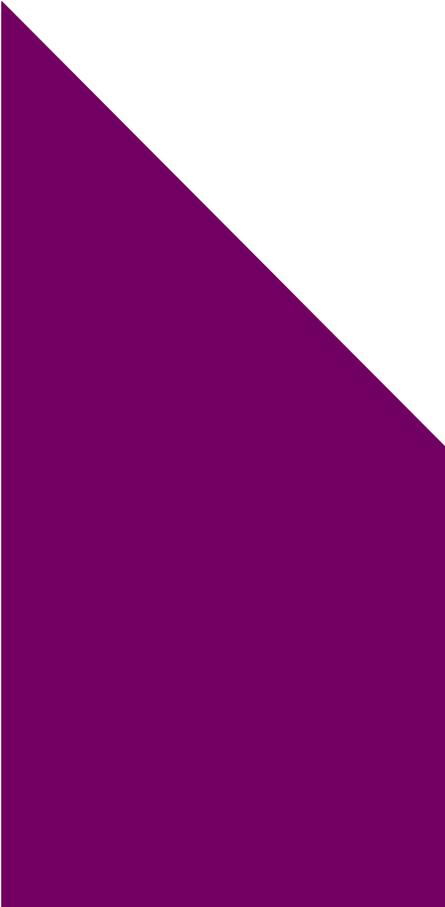
Cross-examination must be conducted by advisors.

Decision-makers must make relevance decisions.

The standard of evidence is clear and convincing at the University of Scranton.

## **Appeals**

Including for bias.



# **The University of Scranton's Sexual Harassment and Sexual Misconduct Policy**

## Definitions – Title IX Sexual Harassment

**Title IX Quid Pro Quo Sexual Harassment:** An employee of the University conditioning the provision of an aid, benefit, or service of the University on a complainant's participation in unwelcome sexual conduct. Unwelcome sexual conduct includes, but is not limited to: any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, or otherwise.

**Title IX Sexual Harassment:** Unwelcome conduct of a sexual nature 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.

## Definitions – Title IX Sexual Harassment

**Title IX Sexual Assault:** Any attempted or actual sexual act directed against another person, without the consent of the Complainant, including instances where the victim is incapable of giving consent. Sexual assault is the penetration, no matter how slight, of the vagina or anus, with a body part (e.g., finger, hand or penis), or object, or oral penetration by a sex organ of another person, without consent.

- Title IX sexual assault also includes sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law, and sexual intercourse with a person who is under the statutory age of consent.

**Title IX Sexual Exploitation:** The touching of the private body parts (breasts, buttocks, groin, genitals, or other intimate part of a body) of another person for the purpose of sexual gratification, without consent, including instances where the individual is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.

## Definitions – Title IX Sexual Harassment

**Title IX Dating Violence:** Violence committed by a person who is 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 purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse, or the threat of such abuse.

**Title IX Domestic Violence:** Violence committed by a current or former spouse or intimate partner of the complainant; by a person with whom the complainant shares a child; by a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner; by a person similarly situated to a spouse of the complainant under the domestic violence laws of the jurisdiction in which the crime of violence occurred; or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

# Definitions – Title IX Sexual Harassment

**Title IX Stalking:** Engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to fear for that person's safety or the safety of others, or suffer substantial emotional distress.

- Course of conduct means two or more acts, including but not limited to, acts in which the stalker directly, indirectly, or through third parties, by an 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 person under the similar circumstances and with similar identities as the complainant.
- Substantial emotional distress means significant mental suffering or anguish that may not necessarily require medical or other professional treatment or counseling.

Stalking also includes the concept of cyber stalking.

# Definitions – Title IX Sexual Harassment

## **But, must meet Title IX jurisdictional requirements:**

In order to constitute Title IX Sexual Harassment, the alleged misconduct must have occurred:

- In the United States, and
- In Scranton's education program or activity, which is defined as locations, events or circumstances over which the University exercised substantial control over both Respondent and the context in which the misconduct occurred, or any building owned or controlled by a student organization officially recognized by the University.

# Definitions – University Sexual Misconduct

## University Sexual Harassment:

## University Gender-Based Harassment

**University Sexual Exploitation:** Conduct that exploits another person in a sexual and non-consensual way, including:

- a. non-consensual touching, fondling, or kissing,
- b. causing the incapacitation of another person for the purpose of compromising that person's ability to give consent to sexual activity,
- c. non-consensual voyeurism,
- d. allowing others to view sexual activities without the consent of all of the participants,
- e. non-consensual recording or photographing of private sexual activity and/or a person's intimate parts (audio or visual),
- f. non-consensual dissemination or posting of images or recordings of private sexual activity and/or a person's intimate parts,
- g. exposure of one's body in an indecent or lewd manner,
- h. sexual activity in public or semi-public places,
- i. prostituting another person, or
- j. knowingly exposing another person to a sexually transmitted infection or virus without the other's knowledge

## University Intimate Partner Violence

## University Stalking

# Consent at The University of Scranton

In order for individuals to engage in sexual activity of any type with each other, there must be **clear, knowing, and voluntary consent** prior to and during sexual activity. Consent is an **active and positive exchange of words or actions** that indicate a willingness to participate freely and voluntarily in mutually agreed upon sexual activity.

Effective consent cannot be given when:

- A person is physically or mentally incapacitated, including when the incapacitation stems from alcohol or other drugs.
- A person is unconscious.
- A person is asleep.
- A person is under the age of consent.

## More on Consent at The University of Scranton

- Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage in sexual activity.
- Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity.
- The existence of a dating relationship between persons (including past sexual relations), by itself, is not sufficient to constitute consent.
- Any party may withdraw consent at any time, demonstrated by words or actions that clearly indicate a desire to end sexual activity.

# More on Consent at The University of Scranton

**Consent is not effective if it results from the use (or threat) physical force, intimidation, coercion, incapacitation or any other factor that would impact an individual's ability to exercise their own free will to choose whether or not to have sexual contact.**

**Coercion:** The use or attempted use of pressure and/or oppressive behavior, including expressed or implied threats, intimidation, or physical force, which places a person in fear of immediate harm or physical injury or causes a person to engage in unwelcome sexual activity.

**Incapacitation:** The inability, temporarily or permanently, to give consent, communicate consent, or express unwillingness, because an individual is mentally and/or physically helpless, unconscious, asleep, or unaware that the sexual activity is occurring.

- Where alcohol or other drugs are involved, incapacitation is a state beyond drunkenness, intoxication or impairment.
- In assessing the impact of incapacitation, the University will consider whether a Respondent knew or should have known that the Complainant was incapacitated based on objectively and reasonably apparent indicators of incapacitation.

# Reporting Potential Prohibited Conduct

## Anonymous Reporting

### Reports to Authorized and Responsible Employees

A disclosure or report of prohibited conduct made to an official with authority to institute corrective measures (regardless of whether the disclosure is made by the Complainant or a third party):

- Constitutes a report to the University (*i.e.*, actual knowledge), triggering a response under this Policy.
- Must be promptly reported to the Title IX Coordinator.

A disclosure or report of prohibited conduct made to a Responsible Employee (regardless of whether the disclosure is made by the Complainant or a third party):

- Does not constitute a report to the University (*i.e.*, is not “actual knowledge”) triggering a response under this Policy.
- Must be promptly reported to the Title IX Coordinator.

# Supportive Measures

## **What are supportive measures?**

Non-disciplinary, non-punitive individualized services that may be provided to Complainants or Respondents, either upon request (when deemed by the Title IX Coordinator to be appropriate and reasonably available) or at the initiative and in the sole discretion of the Title IX Coordinator.

## **What is the purpose of supportive measures?**

To restore or preserve equal access to Scranton's educational programs and activities, without unreasonably burdening the other party.

## **When are supportive measures available?**

Beginning at any time after the submission of a report of Prohibited Conduct.

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# Emergency Removals

At any point following the receipt of a report of prohibited conduct, the University may remove the Respondent from any or all of its programs or activities where it is determined there is an immediate threat to the **physical health or safety** of the Complainant or any other person(s), which may include the Respondent.

- Before imposing an emergency removal, the University will undertake an individualized safety and risk analysis.
- Emergency removal will be imposed only if the threat to physical health or safety arises from the allegations of prohibited conduct and warrants removal.
- Respondent may appeal the removal.
- Non-punitive actions taken as Supportive Measures do not constitute an emergency removal.

# Formal Complaint and Resolution Process

# Formal Complaint

## What is a Formal Complaint?

A document submitted by a Complainant and bearing the Complainant's physical or digital signature, or otherwise indicating that the Complainant is the one filing the Formal Complaint, requesting that the University investigate allegations that may constitute Sexual Harassment or Sexual Misconduct.

- The Title IX Coordinator also may sign a Formal Complaint, but does not become the Complainant by doing so.

# Formal Complaints – Notice of Allegations and Investigation

**Upon the submission of a Formal Complaint, the Title IX Coordinator will provide written notice to the Parties, including the following:**

- The Policy.
- Notice of the allegations of conduct that may constitute prohibited conduct, with sufficient detail for the Respondent to prepare a response before any initial interview.
- The presumption that the Respondent is not responsible for the alleged prohibited conduct unless a determination of responsibility is reached at the conclusion of the Formal Resolution Process.
- Notice of the Parties' entitlement to an Advisor of choice.
- The identity of the Investigator.
- Notice that the Parties may inspect and review evidence gathered during the investigation.
- Notice that the University's policies prohibit knowingly making false statements or knowingly submitting false information.

**Update notice of allegations throughout investigation, if necessary.**

# Mandatory and Discretionary Dismissals

## **Mandatory Dismissal for purposes of Title IX Sexual Harassment:**

- Even if proved, the alleged misconduct would not constitute Title IX Sexual Harassment;
- The alleged misconduct did not occur in the University's education program or activity; or
- The alleged misconduct did not occur in the United States.

## **Discretionary Dismissal for purposes of Title IX Sexual Harassment:**

- Complainant notifies the Title IX Coordinator in writing that Complainant wishes to withdraw the Formal Complaint or any allegation in it;
- Respondent is no longer enrolled or employed at the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegation.

**Dismissal is subject to appeal.**

**BUT, the formal complaint may proceed as possible University Sexual Misconduct.**

# Informal Resolution

## Available only when:

- Formal Complaint has been filed;
- Parties agree (in writing) – and the Title IX Coordinator agrees – to use informal resolution; and
- Formal Complaint does not involve students and employees.

**Prior to initiating Informal Resolution, the Title IX Coordinator will provide the Parties with written notice disclosing the allegations, the requirements of the process, the right to withdraw from Informal Resolution to pursue formal resolution, the permitted use of any information exchanged in the Informal Resolution, and any consequences of participation (e.g., as it relates to any subsequent formal resolution if Informal Resolution is not achieved).**

**Informal Resolution can be commenced at any point prior to the conclusion of a Hearing and may be terminated by the Complainant, Respondent, Title IX Coordinator or Facilitator at any time prior to its completion. If Informal Resolution is terminated, the formal process will promptly commence or resume, as appropriate.**

# Informal Resolution

- Facilitator should focus on resolving the matter through a **negotiated agreement** that will **provide the parties and University Community with a safe educational environment**.
- Facilitator should work with both parties to ascertain specific remedies and/or sanctions that will preserve their access to educational opportunities, and will address the underlying matter.
- The Resolution Agreement must contain the names of the Complainant, Respondent, the policy violations that it is intended to resolve, and the agreed upon terms, with a timeline for those actions.
- Respondent can agree to sanctions such as withdrawal, self-suspend (take a leave of absence), and/or other restrictions, to ensure the safety/educational access of the Complainant, in lieu of formal sanctions that would create a formal record for the Respondent.
- A Resolution Agreement must, however, address all potential violations or the Title IX Coordinator will not accept it as a resolution.
- Title IX Coordinator must approve the Resolution Agreement, which is enforceable by the University.
- Any evidence or admissions provided during the Informal Resolution Process is not automatically provided to the Investigator.

# Conducting the Investigation – The University of Scranton’s Policy

**The University seeks to resolve Formal Complaints within 75-90 calendar days of the Formal Complaint, excluding the appeal period and period of informal resolution.**

**Investigator will not have a conflict of interest or bias against complainants or respondents generally, or the particular complainant or respondent involved.**

**The Investigator will conduct an investigation of the allegations in the Formal Complaint, and is responsible for interviewing the Parties and witnesses, and gathering relevant inculpatory and exculpatory evidence.**

- Parties will be provided with written notice of the date, time, location, participants and purpose of all investigative interviews in which they are expected to participate.
- Parties may be accompanied by an Advisor of their choice at any investigative interview.
- The Investigator may not access, consider or use records that are made or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional in connection with the provision of treatment to a party without that party’s voluntary written consent.

# Speaking of Advisors ...

## Advisor of Choice v. Provided Advisor

- Party's Advisor may accompany them to all interviews, hearings, and other meetings held in connection with a Formal Complaint.
- Parties are responsible for identifying their own Advisor, if they wish to have one, **but** parties must have an Advisor for purposes of conducting cross-examination at a Hearing. If a Party has not identified an Advisor, the University will provide one for that limited purpose.
- Advisors may not speak aloud during any meeting, interview or hearing, but may confer with the individual whom they are advising quietly, by means of written notes or during brief recesses at the sole discretion of the University representative conducting the meeting, interview or hearing.
- Advisor whose presence is deemed improperly disruptive or inconsistent with established rules of decorum will be required to leave and may be prohibited from participating in future proceedings.
- While the University may consider short delays in scheduling to reasonably accommodate an Advisor's availability, doing so is in the sole discretion of the University representative responsible for the event.

# Role of the Investigator

## **An investigator must:**

Be objective and unbiased.

Be free of conflict of interest.

Avoid any prejudging of the parties or responsibility.

Take the lead in seeking evidence related to the allegations (inculpatory and exculpatory), because it is not the responsibility of the parties to investigate the matter.

# The Initial Interviews (Complainant and Respondent)

## **Before the interview:**

Provide sufficient notice.

Communicate the availability of supportive measures / resources.

Explain the right to an advisor.

Allow sufficient time.

## **At the start of the interview:**

Communicate the availability of supportive measures/resources.

Discuss policy and process.

Reiterate the role of the advisor.

Invite questions.

# Conducting the Interview: The Fundamentals

**Develop rapport with an open and conversational style.**

**Demonstrate respect.**

**Be alert to your non-verbal communications.**

**Avoid stereotypes and bias.**

**Explore areas of inquiry that can be corroborated.**

**Focus on sensory details.**

**Ask what the other might say.**

**Don't shy away from the uncomfortable questions.**

**Be OK with breaks and stretches of silence.**

# Conducting the Interview: The Funnel

**Start as general as possible – “tell me what happened.”**

**Refrain from interrupting the initial narrative with clarifying or follow up questions.**

**Continue to return to the narrative to get all details.**

**Use reflective listening.**

**Ask varied questions on the same topic.**

**Save tough or uncomfortable questions for later in the interview.**

**Avoid questions that imply a value judgment.**

**Question inconsistencies in a non-confrontational manner.**

**Be persistent and thorough.**



# Conducting the Interview: The Closing

**Give the interviewee a final (for that meeting) opportunity to provide information.**

“Is there anything I haven’t asked that you think I should know?”

“If you were me who would you interview? What would you want to see?”

“It’s not uncommon to think of something after you leave. If you think of something, will you please contact me?”

**Ask if they have questions.**

**Discuss supportive measures/resources.**

**Thank the interviewee for their time.**

# The Report

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To: [elizabeth.garcia2@Scranton.edu](mailto:elizabeth.garcia2@Scranton.edu)

From: Student

Date: October 1, 2020

John came over to my suite after a party back in early September. He knew I was drunk. I told him I didn't want to have sex. He slept over and when I woke up the next morning, I realized he raped me. The university needs to do something so he doesn't do this to anyone else.

## Student's Initial Interview Narrative

I was at a party downtown with a group of friends in early September when I saw John. I don't really know him, but we had a class together last year. He came over and was hanging out with me and my friends. We were all talking, drinking and dancing in a big group. At some point, John and I started kissing.

I was feeling pretty buzzed and decided to leave around midnight. My roommate, Suzie, didn't want to leave the party yet so John offered to walk me back to my suite. We just talked about our classes while we walked. When we got there, he followed me into my bedroom and sat down on my bed. I really just wanted to go to sleep, but I didn't want to be rude. We talked for a bit. I started to feel a little sick and told him I wanted to go to sleep. He laid down next to me on my bed.

I think I fell asleep for a bit, but woke up when John started kissing me. We made out for awhile but then I rolled away from him. He rolled me back over. We made out a bit longer and he unbuttoned my shirt. I let him take my shirt off. At that point, I was really uncomfortable but was scared of what he'd do if I told him to leave. I told him that I didn't want to have sex.

The rest is fuzzy for me. He left sometime early in the morning. When I woke up around 7 a.m., I saw a condom wrapper on the floor and remembered us having sex.

# Developing the (“Living”) Investigation Plan

**Who should be interviewed?**

**What other (non-witness) evidence may be available?**

## John's Initial Interview Narrative

I got to the party around 11 p.m. and saw Student dancing with friends. She waved me over. We had an Econ class together in the spring. I knew she was interested in me at the time, but I had a girlfriend. We hung out for maybe an hour at the party and kissed a couple times. I think we were both buzzed, but not bad. Around midnight, she said she was going home. Her friend didn't want to leave yet, so I offered to walk her.

When we got to Student's building, we ran into my friend Steve in the stairwell and talked with him for a couple minutes. When we got to Student's suite, we walked straight back to her bedroom and sat on her bed. She asked for my cell number and put it into her phone.

After a few minutes, we laid down and started kissing. At first she said she didn't want to hook up, but then she took her shirt off and helped me take off my jeans. We had sex and fell asleep. I woke up and left around 5 a.m.

Student sent me a text later that day wanting to talk. I didn't respond right away because I'm trying to get back together with my ex-girlfriend and felt bad about hooking up with Student. Student and I texted a couple times over the next couple days, but then I stopped responding.

## Steve's Initial Interview Narrative

I was in the stairwell of my dorm heading back down to my room at around 1 a.m., when John and Student came running through. We talked for a couple minutes. John and I hung out with a group of guys at the beach back in June, but I hadn't seen him yet this year. So, we just talked about how the rest of our summers went and what our schedules look like this fall. Student was going on and on about her summer job.

The whole run-in with Student was kind of awkward. She and I were both orientation advisors back in August, so I got to know her a bit. We were both at a party downtown one of the nights of orientation. Everyone was pretty drunk. Student's roommate, Suzie, was there and we were dancing. Out of nowhere, Suzie stuck her hand down my shorts, pretty much right there in the middle of the basement. I'm not into her and told her so right there – I was really bothered by it. Student got in my face and said I was making a big deal out of nothing. There was way too much drama.



# The Investigation Report



**Prior to completing the investigation report, the Investigator will send to the parties and their advisors all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, regardless of whether it is anticipated that the evidence will be used at the hearing.**

- Parties will have 10 calendar days to provide a written response, including identifying additional evidence for the Investigator's consideration prior to completing the investigation report.

**At least 10 calendar days before the hearing, the Investigator will provide the parties and their advisors a copy of the investigation report.**

- Parties will again have the opportunity to respond.

# Hearing – The Decision-Making Panel

## How do members of the Panel get ready?

Self-identify conflict of interest and bias.

Prepare, prepare, prepare.

Read the report carefully and repeatedly.

Understand the conduct at issue and the elements of the alleged violations.

Identify the areas of agreement and disagreement.

Did the investigator explore and consider all the relevant evidence – what areas require further inquiry?

# Hearing – The Decision-Making Panel

## What is the Panel's role at the hearing?

- Ask relevant questions of parties and witnesses and review relevant evidence to aid in reaching an unbiased conclusion, based on available inculpatory and exculpatory evidence.
- Ensure the parties have equal opportunities to present and challenge evidence.
- Manage the hearing and enforce the rules of decorum.
- Make relevancy determinations.
- Evaluate credibility.
- Weigh the evidence.
- Make a decision on responsibility using a clear and convincing standard and, if appropriate, issue sanctions.

# Hearing – Advisors

## What is the Advisor's role?

- Provide support and advice to the party.
- Understand the purpose and scope of cross-examination.
- Ask questions on cross-examination that elicit relevant information.
- Wait for relevancy determinations.
- Adhere to rules of decorum.

# The Hearing

## **Hear from the Complainant, Respondent and witnesses.**

Each Party will have the opportunity to provide relevant evidence to the Decision-Making Panel.

The Decision-Making Panel may ask relevant questions of each Party and witness, either before, during, or in follow-up to their testimony .

The Decision-Making Panel will facilitate each Party's advisor asking relevant cross-examination questions.

- The Panel will determine whether questions are relevant prior to the Party or witness answering the question.
  - If the question is deemed not relevant, provide a brief explanation and the question will be precluded.
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# Is it Relevant?

**Ask: Is it probative of any material fact?**

**Certain evidence is specifically deemed not relevant:**

Questions and evidence about complainant's sexual predisposition or prior sexual behavior, **unless to prove that someone other than respondent committed the conduct alleged or, if concerning specific incidents of complainant's conduct with respondent, offered to prove consent.**

Records that are made or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional in connection with the provision of treatment to a party, **except where the party has consented to their access and use.**

**Questions also may be deemed not relevant when they are duplicative of other evidence already in the record.**

## Student's Testimony

I saw John at a party downtown in early September. I was there with a group of friends. He came over and was hanging out with me and my friends. We were all talking, drinking and dancing in a big group. At some point, he started kissing me.

The party was boring. Plus, I was really drunk and wanted to leave. I thought I was going to throw up. My roommate, Suzie, didn't want to leave the party yet so John offered to walk me back to my suite. He practically had to carry me back. When we got there, he followed me into my bedroom and sat down on my bed. I really just wanted to go to sleep, but he wouldn't leave. We talked for a bit. I started to feel sick and told him so. He laid down next to me on my bed.

I think I fell asleep for a bit, but woke up when John started kissing me. We made out for awhile but then I rolled away. I was clearly done with what was happening. I just wanted to sleep. He forced me back over. We made out a bit longer and he unbuttoned my shirt. I let him take my shirt off. At that point, I was really scared. I told him that I didn't want to have sex.

I don't remember anything else. He left sometime early in the morning. When I woke up around 7 a.m., I saw a condom wrapper on the floor and remembered us having sex.

## John's Testimony

I got to the party around 11 p.m. and saw student dancing with friends. Student waved me over. She was really flirty and started kissing me. I was buzzed. She seemed fine. Around midnight, she said she was going home. Her friend didn't want to leave yet, so I offered to walk her.

When we got to Student's building, we ran into my friend Steve in the stairwell. The three of us talked about our summer internships for quite awhile. Student said she wanted us to get going, so we wrapped it up. When Student and I got to her suite, she led me back to her bedroom. We sat down on her bed. She asked for my cell number and put it into her phone.

After a few minutes, we laid down and started kissing. At first Student said she didn't want to hook up – she just wanted us to go to sleep. But then she kept kissing me, took her shirt off and helped me take off my jeans. We had sex and fell asleep. I woke up and left around 5 a.m.

Student sent me a text later that day wanting to talk. I didn't respond right away because I wanted to get back together with my ex-girlfriend and felt bad about hooking up with Student. Student and I texted a couple times over the next couple days, but that was it.

# Is it Credible?

Even where it appears to be a “draw,” it seldom is – one person is usually more credible than the other.

Everyone’s credibility is at issue – there are no “perfect” Complainants, Respondents or witnesses

Consider the following to determine credibility:

- Is the testimony believable?
- Does it make sense?
- Is it convincing?
- Is there a level of detail and specificity?
- Does the testimony feel rehearsed/memorized?

Look to

- Demeanor
- Corroboration

**Inconsistencies may or may not be important**

- Is there a reasonable explanation?
- Is the point significant or trivial?
- Is the variation something that might result from memory lapse?

# Standard of Evidence – Clear and Convincing Evidence

Question isn't who has more witnesses.

It's the quality of the evidence, not the quantity.

## The different standards of evidence

- Beyond a reasonable doubt
- **Clear and convincing evidence**
- Preponderance of the evidence
- Some evidence

# Advisors Code of Decorum

- Advise advisees without disrupting proceedings.
- Do not address University Title IX and Deputy Title IX Coordinators or investigators in a meeting or during investigation interviews unless invited to do so (e.g., asking procedural questions).
- Cross-examine the other party and all witnesses at the hearing and address questions to the Decision-Making Panel.
- Do not make a presentation, argue for, speak on behalf of or represent the advisee during any meeting or proceeding.
- During the investigation phase of the process, may consult with the advisee (privately as needed, by conferring or passing notes) during any non-hearing process meeting or interview.
- Any breaks or time to confer must be requested by the party, not the advisor.
- During hearing, do not use cross-examination to intimidate or abuse a party or witness.

# Hearing Outcome Letter

## The Hearing Outcome Letter will include:

- A description of the allegations that led to the Hearing, as potentially constituting Prohibited Conduct;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination;
- A statement of factual findings supporting the determination;
- A statement of the conclusions regarding the application of the policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- An explanation of the disciplinary sanctions imposed on the Respondent, if any;
- Statement of whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant; and
- The procedures and grounds for appeal.

# Appeals

**Either Party may appeal a determination of responsibility (or non-responsibility) based on only one of the following:**

- A procedural irregularity that affected the determination of responsibility;
- The existence of new evidence that was not reasonably available at the time of the Hearing that could affect the outcome of the matter; and
- The Title IX Coordinator, Investigator or Decision-Making Panel had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent, that affected the outcome of the matter.
- Dismissal of a Formal Complaint alleging Title IX Sexual Harassment.

**Non-appealing party may respond, but no further exchange of positions is permitted.**

**In most cases, appeals are confined to a review of the written documentation or record of the original investigation and determination, and relevant documentation regarding the grounds for Appeal.**

