



TITLE IX FOR HEARING BOARD PANELISTS

RETURNING TO THE 2020 RULE (DAY 3)

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DISCLAIMER

This presentation shall not constitute legal advice, nor create an attorney-client relationship. This presentation is for informational purposes only.

If you have any specific legal questions or require legal advice for specific situations, please contact or refer to your institutional, general, or outside counsel.



The documents included in the training materials for & referenced in this training are purely fictional.

The case is not based on any real case that the SCI staff is aware of. The characters named are fictional & are not intended to represent any real person.

The details of this case & these documents should not be used to make decisions in similar cases, nor should they be considered precedent or advice from SUNY or the Student Conduct Institute.

TRAINING MATERIALS



RETURN TO 2020

**DURING THE LIVE@DISTANCE,
MEANINGFUL CHANGES FOR INSTITUTIONS
RETURNING TO THE 2020 RULE WILL BE
REFERENCED WITH THE FOLLOWING
SYMBOL:**



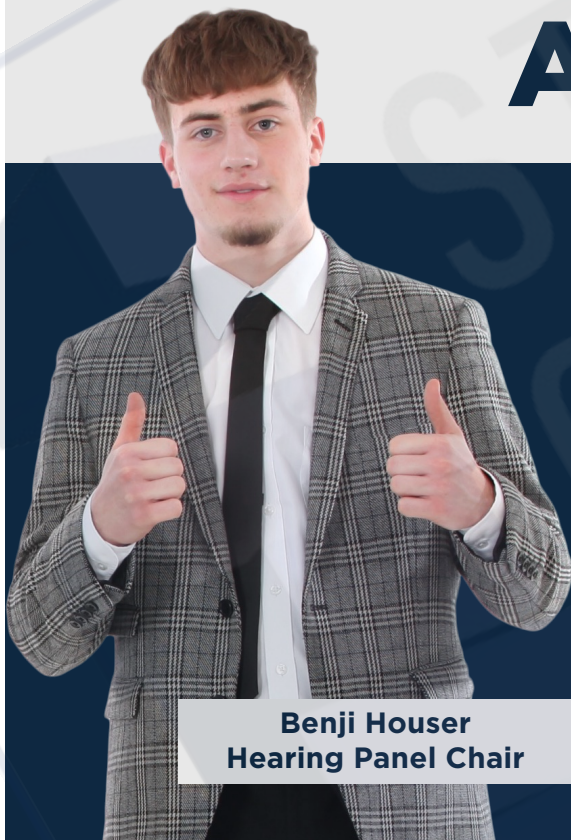
YESTERDAY, ON LIVE@DISTANCE

- Hearing boards & their structure
- **Common participants in the hearing process**
- Key concepts
- **Cultural humility & awareness**
- Kinds of evidence panelists can expect
- **Hearing script & investigative report**
- Cross-examination & determining relevance



Stephanie Gibson
Title IX Coordinator

AGENDA



Benji Houser
Hearing Panel Chair

- **EVIDENCE BASED DECISION MAKING**
- **WEIGHING & EVALUATING EVIDENCE**
- **ASSESSING CREDIBILITY**
- **DETERMINING RESPONSIBILITY**
- **DEVELOPING SANCTIONS, IN CASE OF RESPONSIBLE FINDING**
- **WRITING UP YOUR RATIONALE**
- **REVIEWING THE APPEALS PROCESS**

THE DECISION



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DELIBERATION



DETERMINATION



RATIONALE



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DELIBERATION



Establish roles, assess board member strengths



Review allegations, claims, evidence, hearing notes



Utilize tools for success, sanctioning guidelines, bias chart, etc.



Scheduling, flexibility



Seek consensus, or lack thereof

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EVIDENCE-BASED DECISION MAKING



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EXCLUSION STATUS
RELEVANCY
AUTHENTICITY
CREDIBILITY
RELIABILITY
WEIGHT



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... EVIDENCE YOU MUST INCLUDE ...

EXCULPATORY & INCULPATORY

Exculpatory evidence increases the likelihood of finding of **non-responsibility** or **non-liability**

Inculpatory evidence increases the probability of a finding of **responsibility** or **liability**.

PLEASE NOTE: investigations & findings of **INNOCENCE** and **GUILT** are not applicable to Title IX or student conduct grievances. These processes are administrative processes & are not civil or criminal in nature.



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RELEVANCE



- Relevant evidence makes a material fact **MORE OR LESS LIKELY TO BE TRUE**
- Relevant evidence will make a direct connection to the charge(s)
- Irrelevant evidence should be noted
- Authenticity

EVIDENCE REVIEW

How does the evidence compound to
CREATE OR INDICATE a narrative?

Ask yourself these fundamental questions:

1. Why or why not should evidence be excluded or included?
2. If evidence must be excluded, how has it been communicated?
3. What's the process to challenge these decisions?

ALL DECISIONS SHOULD BE WRITTEN OUT IN A RATIONALE & DETERMINATION.



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AUTHENTICITY

**TESTIMONY
CUSTODY
ELECTRONIC
AUTHENTICATION
ANALYSIS**

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10:05

Verizon LTE 4:08 PM

10:04

Messages (123) 456-7890



(120) 345-6789

Message
Sun 2 Jun at 17:00
10/7/2025 9:30 AM

god I want to take a bite outta
that 🍑

i hate you

i hate you

i hate you

i hate you

mail Inbox



checkmeout@gmail.com
21:20
to me

i can hear you inside



CREDIBILITY

SPECIFICITY
CONSISTENCY
CONTRADICTION
MOTIVE TO DECEIVE
DEMEANOR &
EVASION

Credibility judgments may feel subjective - decisionmakers are asked to evaluate whether a person *they don't know* is being honest in an unfamiliar and stressful situation.

Many traditional approaches to assess credibility may **REINFORCE BIASES** rather than promote an effort to get at the truth. The areas on the left can help decisionmakers determine credibility.



ASSESSING CREDIBILITY

SPECIFICITY	<ul style="list-style-type: none">• Some witnesses may have a lot of info• Others may have value even with less specific information
CONSISTENCY	<ul style="list-style-type: none">• Consistency of witness' testimony with prior statements• Corroborate with information provided by others
CONTRADICTION	<ul style="list-style-type: none">• Contradictions within testimony may reduce credibility• Be mindful of "perfect testimony"



ASSESSING CREDIBILITY

MOTIVE TO DECEIVE

- Is there a presence of a motivation to deceive?
- What factors play into credibility judgments?
- Conflicts of interest or bias
- Coaching
- Any information that has been intentionally destroyed?

DEMEANOR & EVASION

- **Exercise caution**
- Apply cultural competence when examining body language & demeanor to evaluate credibility
- Behaviors traditionally associated with evasion may not tell you what you think it does



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RELIABILITY



SOURCES
BIAS
RECALL
RELEVANCY
ACCURACY
PURPOSE

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KNOWLEDGE CHECK!



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BREAK!



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KINDS OF EVIDENCE



DIRECT

CORROBORATING



CIRCUMSTANTIAL



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DIRECT

CORROBORATING

CIRCUMSTANTIAL

First-hand observations & evidence of incident or surrounding circumstances

CONSIDERABLE WEIGHT (e.g. witness testimony of first-hand account of incident).

Statements or tangible materials that confirm direct evidence regarding incident

SOME WEIGHT (e.g. video evidence, text message threads, security footage, swipe card records, business records, medical records).

Statements or tangible materials that rely on inference to connect to a conclusion of fact

LEAST WEIGHT (e.g. photo of location of alleged sexual assault showing several empty vodka bottles & solo cups).

ASSESSING WEIGHT



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**GENERALLY SEEN AS
MORE OBJECTIVE**

CONSISTENCY &
SPECIFICITY OF
TESTIMONY

CORROBORATION
OF TESTIMONY

CONTRADICTORY TESTIMONY
OF EVIDENCE BY OTHERS

DEMEANOR & BODY
LANGUAGE

INHERENT PLAUSIBILITY
(IT JUST MAKES SENSE)

RECALL

EVASIVENESS

**MORE SUBJECTIVE,
SO USE CAUTION,**

WEIGHING TESTIMONY & EVIDENCE



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DIRECT



CORROBORATING



CIRCUMSTANTIAL

**WHAT KIND OF
EVIDENCE IS THIS?**



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Charge & Allegation

Describe standard of evidence used to make determination

Sanction(s)
~if responsible~



Review of evidence relied upon to decide

Finding for each specific charge & allegation



FINDINGS & RATIONALE

DETERMINATION & REMEDIES



Not Responsible/Not In Violation - revisiting restrictions



Responsible/In Violation - sanction guidelines, prior history, readmission



Considerations, resources, consistency, non-discrimination



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- **Finding of Responsibility**
- Policy Jurisdiction
- **Complaint Summary**
- Investigatory Procedures
- **Inspection & Review of Evidence**

- Delays & Adjournments
- **Procedural Summary**
- Appeal Rights
- **Findings & Rationale**
- Sanctions & Remedies

DETERMINING RESPONSIBILITY

- ❑ Identify the **allegations** potentially constituting sexual harassment
- ❑ Describe the **procedural steps** taken
- ❑ Identify **findings of fact** supporting the determination
- ❑ Identify which **section of the grievance policy** respondent has or has not violated
- ❑ For **each allegation**, provide a statement of and rationale for:
 - ❑ The result, including a determination regarding responsibility;
 - ❑ Any disciplinary sanctions imposed on the respondent; and
 - ❑ Whether remedies designed to restore or preserve equal access to recipient's education program or activity will be provided to the complainant; and
- ❑ Describe the recipient's **appeal procedures**

RATIONALE, IN PRACTICE

- **DESCRIPTION OF EVIDENCE REVIEWED** (i.e. written statements, report filed through TIX Investigator, screen shots of various message threads, & witness testimony)
- Description of relevant **CODE OF CONDUCT / TITLE IX GRIEVANCE PROCESS** section
- Description of **STANDARD OF EVIDENCE**
- **RE-STATEMENT OF FINDING** (not responsible/responsible)
- **RATIONALE** supporting finding, including evidence was relied on & what the substance of that evidence was, & if applicable, evidence that was not relied on
- Any **DISCIPLINARY SANCTIONS** imposed upon respondent
- Any **REMEDIES DESIGNED TO RESTORE OR PRESERVE EQUAL ACCESS** to the education program or activity will be provided to the complainant



STANDARD OF EVIDENCE DESCRIPTION

For each charge, state the standard of evidence being used

- Preponderance of the Evidence, **or**
- Clear & Convincing

*“By a **preponderance of the evidence** the hearing board has found the respondent, Cody Norman, is more likely than not...”*

DESCRIPTION OF EVIDENCE REVIEWED

Provide a **BRIEF SUMMARY** of the evidence used in making the decision

- **Witness testimony** - “Verbal testimony given by the complainant that observed ... “
- **Witness testimony** - “Verbal testimony given by witness #1 that stated ... corroborated ... ”
- **Text messages** - “Text messages sent between the respondent and complainant during the days of 09/23/25 and 10/10/25 ...”
- **Email Communications** - “Screenshots of emails sent to the complainant between the days of 09/23/25 and 10/10/25 ...”

DESCRIPTION OF EVIDENCE REVIEWED

Provide a **BRIEF SUMMARY** of the evidence **NOT USED** in making the decision

- **Witness testimony** - “Verbal testimony given by the complainant that was not relevant because ... “
- **Text messages** - “Text messages sent between the respondent and complainant during the days of 09/23/25 and 10/10/25 that did not provide additional context...”
- **Email Communications** - “Screenshots of emails sent to the complainant between the days of 09/23/25 and 10/10/25 that were not related to the charges...”

ALLEGATION(S) DESCRIPTION

- **RESTATE THE CHARGES**

Sample case:

- **Stalking:** Engaging in a course of conduct directed at a specific person (Complainant) that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress.
- **Sexual Assault:** Forcible or nonforcible sex offense under the informal crime reporting system of the Federal Bureau of Investigation

SANCTIONS AND/OR REMEDIES

- **Appropriate Sanctions:** If the student is found responsible, outline the sanctions.
- **Appropriate Remedies:** If remedies are being provided to the complainant, outline them here
- **Rationale for Sanctions/Remedies:** Explain why the chosen sanctions/remedies are appropriate, considering factors such as the severity of the offense, past conduct history, & educational outcomes or institutional obligations to the complainant

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• TONE & STYLE

- **Objective & Neutral:** Avoid personal opinions or emotional language.
- **Concise but Comprehensive:** Include enough detail for clarity but avoid unnecessary repetition.
- **Consistent with Institutional Policies:** Ensure alignment with the student conduct code.



BREAKOUT!

Using the information you have right now, what is your group's decision regarding responsibility, and why?

ODD NUMBERED GROUPS - Determine responsibility for Sexual Assault Charge

EVEN NUMBERED GROUPS - Determine responsibility for Stalking Charge

Page 4 on Sample Document 11
Page 60 from the Full Materials Document



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DETERMINING SANCTIONS

CLOSING STATEMENTS
IMPACT OF SANCTIONS
PROPORTIONALITY
CONSISTENCY
PRIOR DISCIPLINARY
HISTORY
EDUCATIONAL MISSION




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IMPACT STATEMENTS

PARTIES INVOLVED CAN SUBMIT IMPACT STATEMENTS

- In these statements the party can:
- Provide context for their behavior
 - Suggest possible options for the board to consider
 - Describe the impact the process has had on them, the other party, or their community
 - Request suggested sanctioning



Joyce Conceição
Administrative
Hearing Officer

Benji Houser
Hearing Panel Chair

IMPACT STATEMENTS

Cody, the respondent, submits an impact statement for the hearing, and acknowledges that there are things he could have done differently and indicates remorse for his behavior, however they request that he be allowed to maintain membership on the varsity table tennis team.

Cody states that before joining the team, he was very lonely and felt very detached from the community. Now, membership on the team provides some stability and community that would otherwise be missed. Cody also states that he has an athletic scholarship, and without that scholarship he would be unable to maintain enrollment at SCI University.

Cody has indicated some remorse and makes a request to avoid a sanction with a list of reasons as to why, which can be helpful for determining both why a sanction is being considered and what kind of sanction should be assigned.



Joyce Conceição
Administrative
Hearing Officer

Benji Houser
Hearing Panel Chair

IMPACT OF SANCTIONS

SANCTIONS SHOULD ADDRESS ANY AGGRAVATING AND/OR MITIGATING FACTORS OF A CASE

Aggravating factors **INCREASE** severity of a violation

- EX: Lack of remorse or understanding, presence of weapons, premeditation

Mitigating factors **DECREASE** severity of a violation

- EX: Non-violent offense, demonstrated capacity or willingness to change behavior

Restorative measures rather than purely punitive sanctions

Disproportionate effect on student unrelated to the circumstances

PROPORTIONALITY

SANCTIONS PROPORTIONAL TO OFFENSE

Is sanctioning consistent with the kind of violation considered before the hearing panel?

Mitigating/Aggravating Factors

Rationale needed when deviating

Open Container of Alcohol	Violent Offense Under the Influence of Alcohol
Warning	??

CONSISTENCY

DEVIATION FROM INTERNAL CONSISTENCY CAN BE SEEN AS ARBITRARY & CAPRICIOUS

Individual treatment of cases an imperative

Many cases may have similar circumstances & outcomes

- Colleges must have record keeping protocol

History & guidance can assist in sanction development

Disregarding consistent sanctioning response must be rationalized

Student 1	Cody?
Responsible for Stalking	Responsible for Stalking
Removal from Housing	Warning & Reprimand
Rationale	???

PRIOR DISCIPLINARY HISTORY

REMEMBER: PRIOR MISCONDUCT IS NOT EVIDENCE OF RESPONSIBILITY FOR NEW MISCONDUCT

Hearing panels can use prior findings of responsibility to assist in determining sanctions for new responsible findings

Prior similar violations with similar circumstances may indicate a need for more impactful sanctioning

- Frequency of violation, also

More punitive motivation than other considerations

Cody	
Responsible for Stalking	Responsible for Stalking
January 2025	December 2025
Probation, Counseling, Educational Sanctioning	???

INSTITUTIONAL MISSION

***WHAT DOES YOUR INSTITUTIONAL MISSION
HAVE TO SAY ABOUT STUDENT MISCONDUCT?***



Institutional philosophy may influence your office & practice

Scheduling systems for sanction, predetermined outcomes for responsible findings

Collaborative approaches with other offices, or with responsible students

Performance plans or behavioral agreements

COMMON SANCTIONS

WARNINGS OR REPRIMANDS	Both written and/or verbal
CREATIVE OR EDUCATIONAL	Reflection papers, presentations, letters to future-selves, pre-made programs designed for specific circumstances
PUNITIVE MEASURES	Probation, suspension, or permanent separation from the institution
RESTORATIVE MEASURES	Intentional dialogues with community members, service dedicated to repairing harm or restoring relationships
ENGAGEMENT WITH RESOURCES OR SERVICE	Counseling, or wellness-related services, partnerships with on-campus offices to engage students with community & campus

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BREAK TIME!



APPEALS PROCESS

3 MANDATED GROUNDS

1 **PROCEDURAL IRREGULARITY** that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures);

2 **NEW EVIDENCE** that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;

3 The Title IX Coordinator, investigator(s), or decision-maker(s) had a **CONFLICT OF INTEREST OR BIAS** for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter

An opportunity for a student to bring forward specific concerns that may have impacted the result of the original hearing (as defined in your institution's code of conduct) (Kalagher, S.S. & Curran, R. D., 2020)



WHAT IS AN APPEAL?

- Appeals are not mulligans or do-overs
- No second-guessing or micro-management of hearings
- Cannot deviate from your procedures
- All parties must be notified of appeals
- All new panelists to hear appeals
- Conflicts of interest and/or bias prohibited
- Additional grounds for appeal may be considered, but only if publicly available & applicable to all

APPEAL CONSIDERATIONS



Harriet Dejesus
Cody's Advisor

A man in a grey suit and striped shirt is holding a white sign with bold text. The background is dark blue with a large, faint watermark of 'THE STATE UNIVERSITY OF NEW YORK' and 'STUDENT' in the background.

WHEN CAN A PARTY APPEAL?

Harvey O'Sullivan
Liana's Advisor

**APPEALS CAN TAKE PLACE ANY
TIME A DECISION IS MADE.**

This includes, but may not be limited to:

- Supportive measures (any kind)
- Emergency removals
- Relevance determinations
- Evidence or question exclusions
- Adjustments made throughout the process
- Decisions/determinations
- Dismissals of complaint

YOUR INSTITUTION **REQUIRES A
MECHANISM TO HEAR
CHALLENGES.**



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Appeal decisions must be in writing.

Parties notified simultaneously through official communication.

Your letter must include, **at minimum:**

- The grounds for appeal, or grounds considered;
- The rationale for granting or denying the appeal; &
- If the appeal is granted, what are the next steps for remedy and why?

What is a remedy?

- Example: increase or decrease the severity of sanction for the respondent



KNOWLEDGE CHECK!



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QUESTIONS?

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system.suny.edu/sci/news

SYSTEM.SUNY.EDU/SCI/TIX2020

system.suny.edu/sci/titleix



COMING UP ...

2/18	Clery Center: CSA Train-the-Trainer
2/19	Stalking 2.0: The Use of Technology to Stalk
2/20	Stop Campus Hazing Act: What are your compliance responsibilities?
2/25	Stop Campus Hazing Act: Counting Hazing Incidents for Clery Reporting
2/27	Annual Security Reports : A Guide for Creating the "Campus Safety Handbook"
3/4 & 6	Organizational Conduct
3/11 & 12	The Neurobiology of Sexual Assault
3/18	Risk Assessment in Stalking Cases & Safety Planning with Victims`
3/19	ResLife Inservice - Conflict Resolution Outside of the Conduct Model

THANK YOU SO MUCH FOR JOINING US! WE ARE SO GRATEFUL TO ALL OF OUR MEMBERS JOINING US FOR OUR TRAININGS.

PLEASE COMPLETE THE POST-TRAINING SURVEY SO THAT WE CAN ADJUST, IMPROVE, & CREATE NEW TRAININGS FOR ALL OF YOU.