



# **TITLE IX FOR HEARING BOARD PANELISTS**

**DAY 3: The Hearing**



# 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



# EVIDENCE-BASED DECISION MAKING

# 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

# CREDIBILITY DETERMINATIONS: *OBJECTIVITY*

- Cannot be based on the party's status
- Cannot apply "*predictive behaviors*"
- But you may consider:
  - The party/witness' stake in the outcome
  - The potential conflict of interest where an advisor is also a witness
  - Possible motive to fabricate testimony
  - The possibility of coaching



**EXCLUSION STATUS**

**RELEVANCY**

**AUTHENTICITY**

**CREDIBILITY**

**WEIGHT**



# 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 COME TOGETHER 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.



# AUTHENTICITY

**TESTIMONY**  
**CUSTODY**  
**ELECTRONIC**  
**AUTHENTICATION**  
**ANALYSIS**



# CONFIRMING AUTHENTICITY

10:05



(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 🍑

Verizon LTE 4:08 PM

< Messages (123) 456-7890

i hate you

i hate you

i hate you

i hate you

10:04



mail Inbox



checkmeout@gmail.com  
21:20  
to me v

i can hear you inside



# CREDIBILITY

**SPECIFICITY**  
**CONSISTENCY**  
**CONTRADICTION**  
**MOTIVE TO DECEIVE**  
**DEMEANOR &**  
**EVASION**

## QUICK NOTE:

Credibility judgments  
may feel subjective

Many traditional  
approaches to assess  
credibility may  
**REINFORCE BIASES**

# ASSESSING CREDIBILITY

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

# 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?

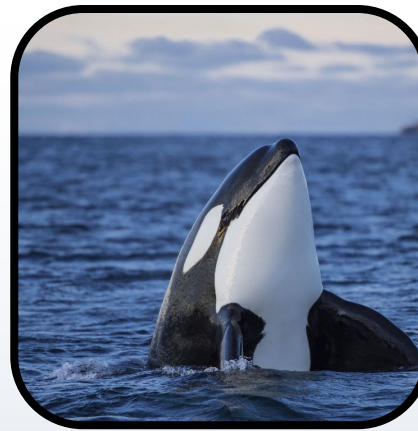
## DEMEANOR & EVASION

- **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

# KNOWLEDGE CHECK!



# WEIGING EVIDENCE



**DIRECT**

**CORROBORATING**



**CIRCUMSTANTIAL**



## **DIRECT**

First-hand observations & evidence of incident or surrounding circumstances

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

## **CORROBORATING**

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).

## **CIRCUMSTANTIAL**

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).

# WEIGHING TESTIMONY & EVIDENCE

**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.**



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

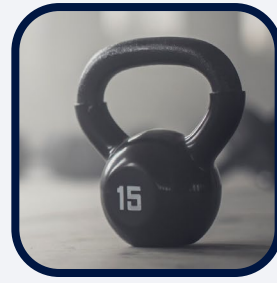
# DETERMINATION & REMEDIES

Not Responsible/Not In Violation – revisiting restrictions

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

Considerations, resources, consistency, non-discrimination





**DIRECT**

**CORROBORATING**

**CIRCUMSTANTIAL**

**WHAT KIND OF  
EVIDENCE IS THIS?**

# TIME FOR AN ATTENDANCE CHECK

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# DETERMINING RESPONSIBILITY

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



# RATIONALE, IN PRACTICE



- DESCRIPTION OF EVIDENCE REVIEWED
- 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
  - 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

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

- PREPONDERANCE OF THE EVIDENCE
- CLEAR & CONVINCING

# SUMMARIZE THE EVIDENCE USED FOR DECISION



## 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 ...”

## WITNESS TESTIMONY

“Verbal testimony given by the complainant that observed ...”

# SUMMARIZE THE EVIDENCE NOT USED FOR DECISION



## 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...”

## WITNESS TESTIMONY

“Verbal testimony given by the complainant that is not relevant because ...”

# RESTATE THE CHARGES

Include allegations with their description:

- 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



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# SANCTIONS AND/OR REMEDIES

<b>APPROPRIATE SANCTIONS</b>	<b>APPROPRIATE REMEDIES</b>	<b>RATIONALE FOR SANCTION/REMEDIES</b>
<p>If the student is found responsible, outline the sanctions.</p>	<p>If remedies are being provided to the complainant, outline them here</p>	<p>Explain why the chosen sanctions/remedies are appropriate, considering factors such as the severity of the offense, past conduct history, &amp; educational outcomes or institutional obligations to the complainant</p>

# 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

# DETERMINING SANCTIONS



- Closing statements
- Impact of sanctions
- Proportionality
- Consistency
- Prior disciplinary history
- Educational mission

# IMPACT STATEMENTS

## BOTH PARTIES CAN SUBMIT IMPACT STATEMENTS

In these statements a 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
- Suggest sanctioning or request leniency



JOYCE  
CONCEIÇÃO  
Administrative  
Hearing Officer

BENJI HOUSER  
Hearing Panel Chair

# IMPACT STATEMENTS

Cody, the respondent, acknowledges that there are things he could have done differently and indicates remorse for his behavior, however they request that he be allowed to stay 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, the team provides some stability and camaraderie 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 NORMAN**  
Respondent

# SANCTION SEVERITY

*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

## **CONSIDER!**

Restorative measures rather than purely punitive sanctions

Disproportionate effect on student unrelated to the circumstances

# CONSIDER THE PROPORTIONALITY OF THE SANCTION TO THE OFFENSE

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

Mitigating/Aggravating Factors

Rationale needed when deviating

<b>Open Container of Alcohol</b>	<b>Violent Offense Under the Influence of Alcohol</b>
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

<b>Student 1</b>	<b>Cody?</b>
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

<b>Cody</b>	
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

# APPEALS PROCESS

3 MANDATED GROUNDS (THAT AFFECTED THE OUTCOME)

**PROCEDURAL  
IRREGULARITY**

THAT AFFECTED THE  
OUTCOME OF THE MATTER  
(I.E. A FAILURE TO FOLLOW  
THE INSTITUTION'S OWN  
PROCEDURES

**NEW  
EVIDENCE**

THAT WAS NOT REASONABLY  
AVAILABLE AT THE TIME THE  
DETERMINATION REGARDING  
RESPONSIBILITY OR  
DISMISSAL WAS MADE

**CONFLICTS  
OF INTEREST  
OR BIAS**

FROM THE TIXC,  
INVESTIGATOR, OR  
DECISION-MAKER, FOR OR  
AGAINST AN INDIVIDUAL  
PARTY, OR FOR OR AGAINST  
COMPLAINANTS OR  
RESPONDENTS IN GENERAL

*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 procedures
- All parties must be notified of appeals
- All new panel 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



Harriet Dejesus  
Cody's Advisor

# APPEAL CONSIDERATIONS



**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.**



# APPEAL DECISION



Appeal decisions must be in writing.

Parties notified simultaneously through official communication.

The decision 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

# QUESTIONS?

SUNY.EDU

[system.suny.edu/sci/news](https://system.suny.edu/sci/news)

[SYSTEM.SUNY.EDU/SCI/TIX2020](https://SYSTEM.SUNY.EDU/SCI/TIX2020)

[system.suny.edu/sci/titleix](https://system.suny.edu/sci/titleix)



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