Sexual Misconduct
Hearing Procedures
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Institutional Equity and Compliance (IEC)
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Introduce yourself

Major(s)/Department

Why did you decide to be on the University Conduct Board?
Important: In most circumstances, attorneys from the Office of General Council and the Title IX Coordinator will be available during trainings for questions.

General Council is there to advise the University Conduct Board. They give legal advice, I just provide information.
This training may include frank discussions of relationships and sexuality, including relationship violence, sexual violence and other potentially disturbing topics.

These are challenging topics.

https://care.unl.edu
Title IX and Sexual Misconduct

Hearing Requirements

Evidence and Findings

Decision Letters

*We will take a short break around 5:30*
Sexual Misconduct
What is Title IX?

- Federal Law
- Gender equity in education
- Applies to institutions receiving Federal funds
Changes to Title IX Regulations

- New TIX Regulations went into effect in August
- University of Nebraska Responded with New Policies and procedures
- Ask if something contradicts what you think it should be
Sexual Misconduct Policy
Procedures for Students
Procedures for Staff

Available on the Institutional Equity and Compliance Website: www.unl.edu/equity.
Sexual Harassment

To ensure gender equity, UNL must prevent and address sexual harassment.

1. Quid pro Quo
2. VAWA Categories
3. Hostile Environment
Quid pro Quo – “This for that”

Giving a benefit in exchange for a sexual favor

Punishing someone for not granting a sexual favor

In QPQ cases, Respondents are university employees. Complainants can be anyone.
Violence Against Women Act

- Sexual Assault
- Stalking
- Domestic Violence
- Dating Violence
• Unwelcome Behavior
• Sexual Nature
• Severe, Pervasive, AND objectively offensive (SPOO)
• Reasonable person standard
• Denies a person access to an educational program, work, etc.
• Title IX applies in student cases.

*Title VII
Title IX and Sexual Misconduct

Sexual Misconduct
- Behavior prohibited by the Sexual Misconduct Policy
- Has a nexus to the campus community

Title IX
- Actual Notice
- Sexual Harassment (QPQ, VAWA, Hostile Environment)
- In and educational program
- Against a person in the United States

All Title IX sexual misconduct is prohibited by the Sexual Misconduct Policy, but not all sexual misconduct prohibited by the Sexual Misconduct Policy is Title IX.
A person’s sexual orientation and gender identity are linked to sex, so discrimination or harassment based on sexual orientation or gender identity are prohibited.

- *Bostock vs. Clayton County*
- OCR Guidance
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Hearing Requirements
Who is Involved in a Hearing?

The Complainant
The Respondent
The Parties’ Advisors
The Board and The Board Chair
The Investigator (as a witness)
Other Witnesses
Hearing Officer
The Title IX Coordinator
An attorney from the Office of General Counsel
Student Conduct Staff

Collectively, the Parties
• Complaint filed by Complainant or TIX Coordinator

• Neutral Investigation by IEC

• Complainant and Respondent given equitable opportunity to provide info and review draft investigative report
• Final investigative report sent to Student Conduct

• IEC does not make finding or sanction

• The University Conduct Board makes a finding and sanctions as appropriate, delivered in writing.
The parties are present to hear and respond to the information provided to the Board.

The board can also ask questions.

The regs ensure the right to cross examination.

The parties do not ask the questions, rather the questions are asked by advisors.
The Chair facilitates the hearing

The Hearing Officer states the charges

The IEC Investigator answers questions about the report
The parties are cross examined

Other witnesses are called and cross examined

Non-witness information (documents, screenshots, etc.) is presented and cross examined
If a party or witness does not appear for the hearing, or does not submit to cross examination, the Board may not base decisions about findings or sanctions on any statements made by that person in the investigative report or in other evidence.

No conclusion can be drawn from someone choosing to participate or not participate.
Making determinations about whether a party or witness has submitted or failed to submit to cross examination and what information may need to be discarded are difficult.

You can ask the attorney from the Office of General Council for assistance.
Hearing may occur in-person or virtually

The Parties and Advisors and the Board must be able to see and hear each other and witnesses

Board Members must complete a technology training
Responsibilities of Board Members

Determine whether university policy was violated by the respondent

Ensure that university policy and procedure are followed
Responsibilities of the Board Chair

Facilitates hearing

Determines relevance of questions

Enforces rules about decorum and order

Writes determination letter
Neutrality

Bias

Conflicts of Interest

Confidentiality
Preparing for the Hearing

Be familiar with policy and procedures

Review the investigation report and other information carefully

Figure out what information you still need

Do not make any decisions about the outcome of the case before the hearing
The parties (through their advisors) need to be given the same opportunity to ask questions and examine evidence.
Only relevant questions can be asked by advisors or the board

Can you articulate why an answer to the question would impact the finding?

The Chair decides

Example: What color was the car?
The regulations require cross examination

Must occur directly, orally*, and in real time

Advisors ask the questions

*This can be accommodated in the event of disability
Cross Examination Pattern

Advisor asks a question

Pause for Chair to consider relevance

Chair asks about relevance OR lets the party/witness answer

People cannot unhear answer to an irrelevant question
Because an advisor must be present to ask questions, the parties will identify an advisor OR the university will provide one.

An advisor may be, but does not have to be, an attorney.
Evidence and Findings
Relevance

- Shows the likelihood that something is true
- That “something” is relevant to the question of whether the Respondent violated university policy
Credibility
• Is this believable?

Reliable
• How accurate is this?

Weight
• How much consideration should this be given?
Establish relevance with logic and common sense.
Relevance is NOT

- The strength of the evidence
- The type of evidence (direct/circumstantial)
- Determined by the Rules of Evidence that a Court would use
Relevance

• Gets to how likely something is
• The way that facts are connected to one another
• Gets to the central question of whether the respondent violated a particular university policy
Previous sexual history or predisposition is irrelevant, except:

Patterns of behavior with the respondent

To demonstrate that the respondent was not the person who did something
Information protected by a legal privilege

Victim Advocate (CARE Advocate)
Attorney
Medical, psychological and similar records cannot be used without consent of the person to whom they refer.
Credibility Guidelines from the EEOC
Inherent plausibility
Demeanor (Caution)
Motive to falsify
Corroboration
Past record
Credibility Guidelines from the EEOC
Inherent plausibility
Demeanor (Caution)
Motive to falsify
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Past record
More considerations

Relationship to parties
Interest – What does the person gain or lose?
Bias or prejudice
Inconsistency (Caution)
More considerations

Relationship to parties
Interest – What does the person gain or lose?
Bias or prejudice
Inconsistency (Caution)
List of questions.
Two parts:

1) Determine the facts

2) Compare the facts to the policy violation charged
Two parts:

1) Determine the facts

2) Compare the facts to the policy violation charged
What does everyone agree happened?

What is disputed?

What evidence is available to clear up the disputed facts?
“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

a. fear for their safety or the safety of others; or
b. suffer substantial emotional distress.
**Stalking Elements**

<table>
<thead>
<tr>
<th>Course of conduct</th>
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Chuck talks to a resident assistant (RA) about a situation that scares Chuck. Chuck used to date Rolanda. Rolanda has been stalking Chuck after they broke up. Early on Saturday morning, Rolonda texted Chuck 82 times between 2AM and 4AM, and knocked on his door at 5AM. Chuck did not respond to the texts and was afraid to answer the door.
Rolanda talks to an investigator. Chuck and Rolanda never dated. On Saturday morning, Rolanda was trying to get a ride home from Chuck like they discussed Friday afternoon, but Chuck did not respond to her 4 text messages. Rolanda went to Chuck’s door because she was mad that she had to find her own way home, was a little drunk, and wanted to yell at Chuck. Chuck did not answer his door, so Rolanda left.
## Stalking Elements

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Undisputed Facts

Disputed Facts

Are any of the undisputed or disputed facts irrelevant?

What information would clarify disputed facts?
How would you weigh this evidence?

- A statement from Rolanda’s mom about her character
- Security video of Rolanda knocking on the door
- Screenshots of the messages
- Information from Chuck’s roommate about Chuck and Rolanda’s relationship
- Statements from Chuck and Rolanda about their relationship
Weight of the Evidence 2 of 4

Stronger Evidence

Physical Evidence
Video
Screenshots of Direct Info
Text messages between parties talking about what happened
Text message between others talking about what happened
Character Statements
Stronger Evidence

Physical Evidence
Video
Screenshots of Direct Info
Text messages between parties talking about what happened
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Character Statements
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<td>Beyond a reasonable doubt</td>
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<td>Preponderance</td>
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<tr>
<td>Probable Cause</td>
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Starting from a position of “Not Responsible”

Does the evidence support the complainant’s description of what happened?

Based on the evidence is complainant’s description of what happened more likely to have occurred?
The following statement is a problem:

The evidence supported the complainant’s description of what happened, but we are not 100% sure, so we find the respondent not responsible.

Being 100% sure is not the standard, being 50+% sure is.
It is more likely than not that the respondent violated the policy, but...

- This will look bad for the university.
- I do not like the complainant, and the complaint is just to hurt the respondent.
- I do not agree with the policy
- I do not want to “ruin” the respondent’s future
It is more likely than not that the respondent did NOT violate the policy, but...

- I think the respondent is a jerk
- I feel bad for the complainant, who is having a strong reaction to this
- This is a high-profile case and people will question the university’s decision
It is more likely than not that the respondent did NOT violate the policy, but...

- I think the respondent is a jerk
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Consistency

Proportionality

Explanation
• The type of behavior
• How did the behavior impact the Complainant?
• How did the behavior impact the community or the university?
• Does the Respondent have prior university, criminal or other disciplinary history relevant to this matter?
• Does the behavior look like a risk to maintaining a safe and respectful learning environment, where people can learn?
Decision Letters
About Decision Letters

There is a template

The Title IX Coordinator is available for questions

Parties must receive the decision letters at the same time
Finding of fact to support determination

Conclusions about applying university policy to the facts

A statement on the determination for each charge (violated/did not violate)

A rationale for each determination
Any disciplinary sanctions the Hearing Board imposes on the Respondent

Whether remedies designed to restore or preserve equal access to the University’s education program or activity will be provided by the University to the Complainant
There are additional requirements, but the template will prompt you to address them.
Identify what information showed the respondent was responsible and what showed that the respondent was not responsible.

If there is a significant piece of evidence contrary to what you found, explain why it did not persuade you.
• Procedural irregularity that affects the outcome
• New evidence that was not reasonably available at the time of the determination that affects the outcome
• Bias or conflict of interest that affects the outcome
• See policy for additional bases
Bases for Appeal 2 of 2

• Procedural irregularity **that affects the outcome**
• New evidence that was not reasonably available at the time of the determination **that affects the outcome**
• Bias or conflict of interest **that affects the outcome**
• See policy for additional bases
Questions?

Thank you!