

Hearing Officer and Appeals Officer Training

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Office of the Provost

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Title IX

Title IX prohibits sexual misconduct and requires TTUHSC to take action to stop the misconduct, provide supportive measures, and prevent reoccurrence.



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Sexual Misconduct

Sexual Misconduct is a broad term encompassing all forms of gender-based harassment or discrimination and unwelcome behavior of a sexual nature.

The term includes sexual harassment, nonconsensual sexual contact, nonconsensual sexual intercourse, sexual assault, sexual exploitation, stalking, public indecency, interpersonal violence, sexual violence, and other misconduct based on sex.



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Regulation 07.06.A v. 07.06.B

- Two distinct policies: “Title IX” and “Non-Title IX” Sexual Misconduct
- Policy A – Title IX Sexual Misconduct
 - Severe, pervasive, and objectionably offensive
 - Quid Pro Quo
 - Jurisdictional considerations - Educational Program or Activity
 - Formal Complaint
 - Hearing specifications



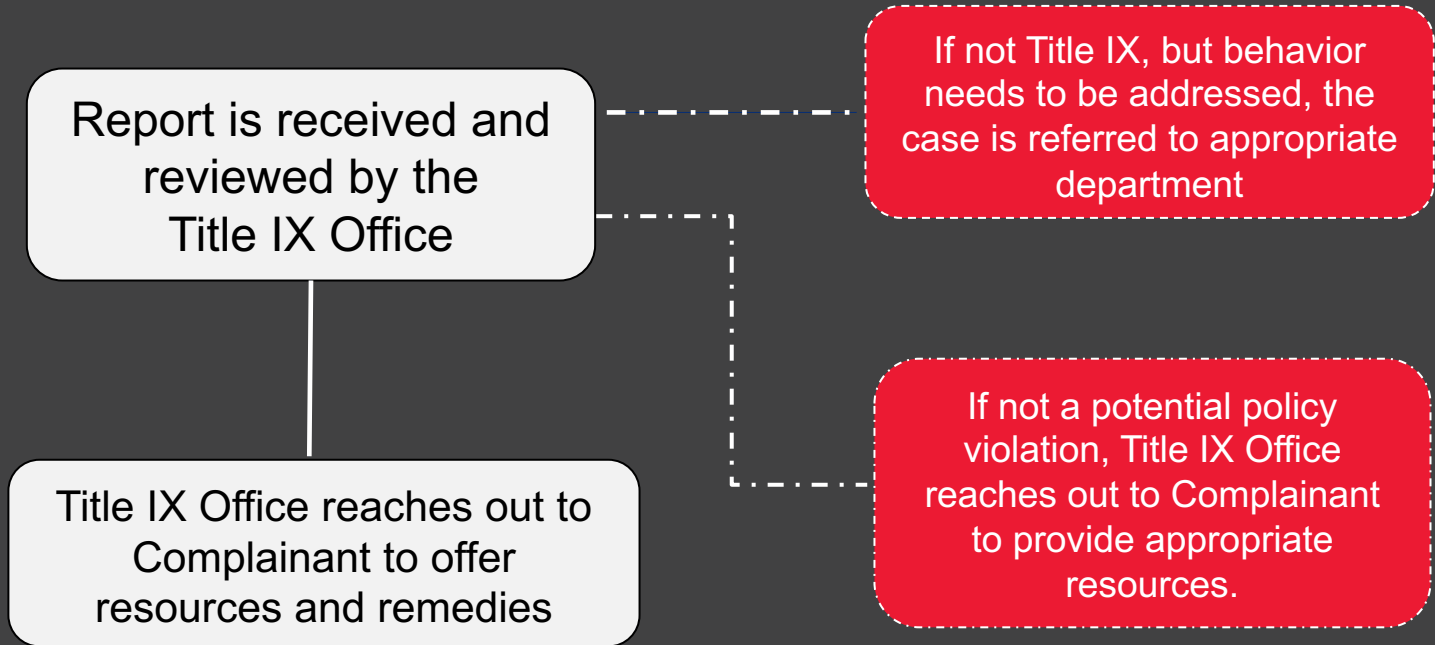
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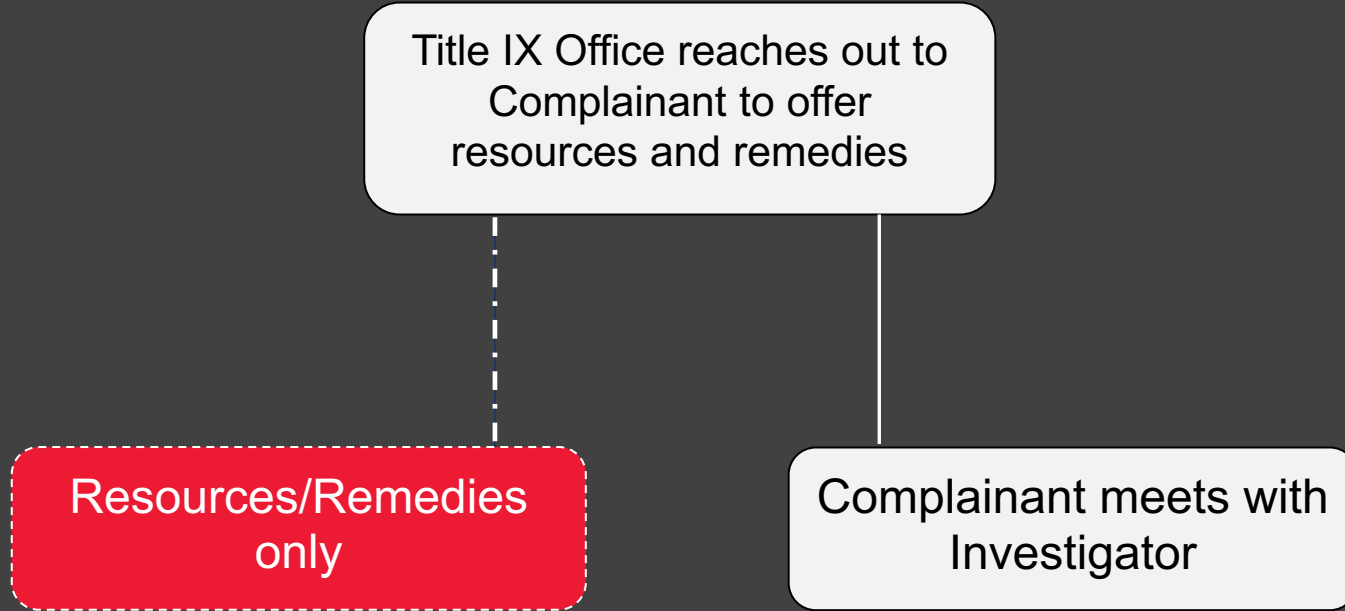


Sexual Misconduct Adjudication Process

Sexual Misconduct Adjudication Process



Sexual Misconduct Adjudication Process



Sexual Misconduct Adjudication Process

Complainant provides statement only and requests University not to investigate

Investigator takes statement, collects evidence, obtains witness list

Title IX Office sends Notice to Respondent to take statement, collect evidence, and obtain witness list

Investigator reaches out to witnesses

Investigator conducts thorough investigation and develops an Investigative Report



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Sexual Misconduct Adjudication Process

Investigator conducts thorough investigation and compiles an Investigative Report

Employee Respondents

Investigator determines whether a policy has been violated. Discipline is determined by the appropriate Dean/VP/Supervisor.

Student Respondents

Hearing Panel determines whether a policy has been violated and sanctions, if applicable.



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Sexual Misconduct Adjudication Process

- Case assigned to an Investigator
- Notice of Formal Complaint sent to involved parties and initial interviews scheduled
- Student *Rights and Responsibilities* document reviewed and signed
- Interview meetings held
- Additional evidence gathered/meetings held, if necessary
 - Includes interviews of witnesses
- If behavior is deemed not to have violated policy, process ends
- Formal allegations issued



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Investigation Report

- Executive Summary
- Background
 - Investigator, Date of Incident, Case History, Involved Parties
- Party Statements/Interviews
- Evidence
- Allegations
- Optional – Points for Deliberation



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Pre-Hearing Process

- Notification of all Formal Allegations
- Sign-off on Investigation Report
- Hearing Date/Time/Location
- Review and striking (if necessary) of Hearing Panel Members
- Review copy of Hearing Script
- Review Opening/Closing/Impact Statements
- Review of Appeals Procedures



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Less Common Hearing Processes

- Decision in Absentia
 - Made only after sufficient notice has been provided and student has failed to respond
 - Atypical in removable offenses
 - Can still be appealed
- Sanctions Only Hearing
 - When student accepts responsibility for the allegation
 - Panel determines appropriate sanctions



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Non-Title IX Sexual Misconduct Hearing

- 3 (or 4 to include a Hearing Officer) -person Panel issues both a Finding and Sanctions
 - Composition of panel is determined by the Provost or designee
- Complainant, Respondent, and Witnesses may be present
- Advisors allowed, but cannot participate
- Formal in Nature
- Follows a Script



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Title IX Sexual Misconduct Hearing

- 4-person Panel issues both a Finding and Sanctions
 - Composition of panel is determined by the Provost or designee
- Complainant, Respondent, and Witnesses *must be present for statements to be considered*
- Advisors allowed, but cannot participate
- Formal in Nature
- *Advisors conduct cross-examination*
- *Title IX Hearing Officer makes determinations on relevance of evidence and questions presented*



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Best Practices

Title IX Sexual Misconduct Hearing

- 4-person Panel issues both a Finding and Sanctions
 - Composition of panel is determined by the Provost or designee
- Complainant, Respondent, and Witnesses *must be present for statements to be considered*
- Advisors allowed, but cannot participate
- Formal in Nature
- *Advisors conduct cross-examination*
- *Title IX Hearing Officer makes determinations on relevance of evidence and questions presented*



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Amnesty

The university will not take any disciplinary action against a student who in good faith reports being the victim of, or witness to, an incident of sexual harassment, sexual assault, dating violence, or stalking, for a violation of the Code of Student Conduct occurring at or near the time of the incident, regardless of the location at which the incident occurred or the outcome of the disciplinary process regarding the incident.

In Sexual Misconduct cases- amnesty will be extended to the Complainant, Respondent, and witnesses who provide statements during an investigation and disclose their own personal drug or alcohol use. The university may provide educational options to students to address any concerning behavior as part of the afforded amnesty or in lieu of conduct proceedings.

Evidence

Common Types of Evidence:

- Police Report
- Party's Statement
- Pictures/Videos
- Text Messages
- Social Media
- Medical Records
- Existence of/lack of physical evidence
- Credit Card/Venmo/Uber Records

Extraneous Evidence:

- What students were wearing
- Sexual orientation, gender, gender identity, gender expression
- Organizational involvement
- Prior relationships and sexual histories
- Intentional drug and/or alcohol use

Weighing Evidence

- When we weigh information, we are seeking to assess the impact of the information presented to us.
- What factors impact our assessment?
 - Persuasiveness
 - Relevance
 - Reliability
 - Bias



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Bias

- For Sexual Misconduct hearing purposes, we are concerned about bias from the hearing panel
- What might bias sound like?
 - “I definitely wouldn’t have done that in graduate school.”
 - “I just find it hard to believe that they would actually feel that way.”
 - “[Student] doesn’t seem like the type to...”

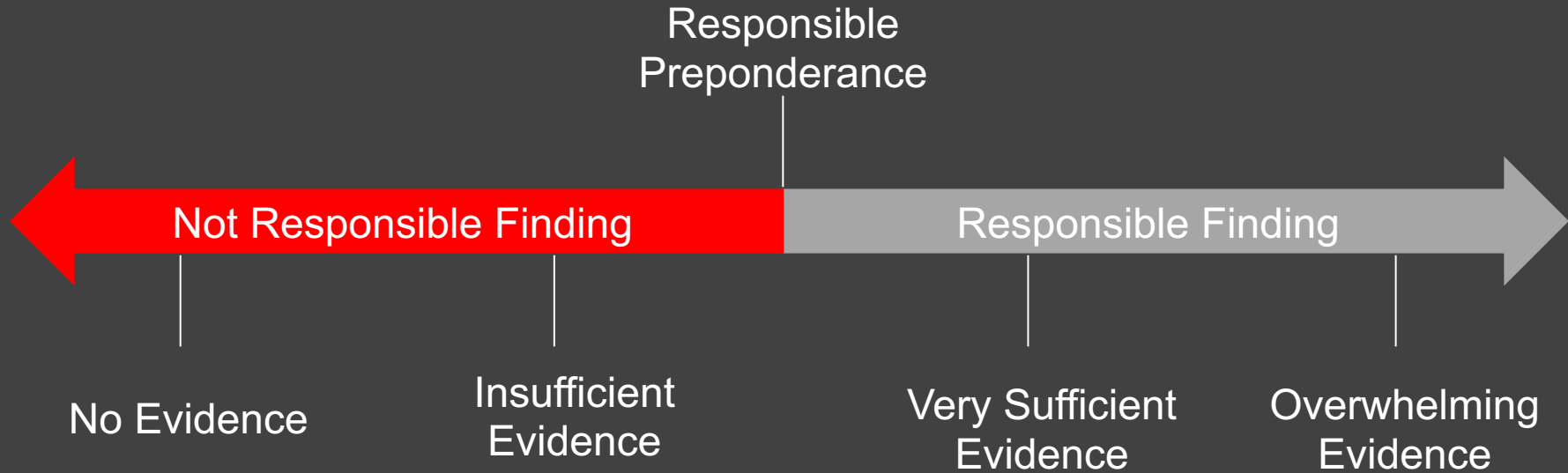


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Preponderance of the Evidence



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Preponderance of the Evidence

- More likely than not
- 50.01%
- “50% and a feather”

- Based on the available and presented evidence, is it more likely than not that the *TTUHSC Student Handbook: Code of Professional Conduct* was violated?



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Sanctioning Considerations

- Cumulative conduct history
- Was the behavior severe, persistent, or pervasive
- Impact Statements
- Impact to the greater campus community
- Consistency with sanctioning matrix
- Mitigating or aggravating factors



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Appeal Procedure

Due Process Considerations

- Prompt, fair, and equitable resolution
- Notice Provided to Student
- Opportunity to be heard
- Rights and Responsibilities
 - Signed prior to reviewing the case, taking statements



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Dismissal of Formal Complaint

- When a Formal Complaint is received, the Title IX Coordinator will evaluate jurisdiction, assess appropriate supportive measures, evaluate the need for Emergency Removal, and initiate the grievance process.
- The Title IX Coordinator shall dismiss a Formal Complaint of Non-Title IX Sexual Misconduct when:
 - *The allegation describes conduct that would not constitute Non-Title IX Sexual Misconduct as defined, even if proven*
 - *The Respondent is not a member of the TTUHSC community*



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Dismissal of Formal Complaint

- The Title IX Coordinator may dismiss a Formal Complaint of Non-Title IX Sexual Misconduct when:
 - *The Complainant withdraws the Formal Complaint*
 - *Circumstances exist that prevent the University from gathering sufficient evidence to reach a determination as to the Formal Complaint or the allegations*

Any party can appeal the dismissal of Formal Complaint.



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Appeal of Hearing Panel Decision

- Either the Complainant or Respondent can appeal:
 - The decision of responsibility
 - Sanctions, conditions, and restrictions imposed by the Hearing Officers



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Grounds for Appeal

- A disagreement with the decision alone shall not constitute grounds for appeal. The only proper grounds for appeal and the only issues that may be considered for appeal are:
 1. A procedural irregularity that affected the outcome of the matter
 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



Grounds for Appeal

3. The Title IX Coordinator, Investigator(s), or Hearing Panel Members 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
4. The sanctions imposed substantially vary from the range of sanctions normally imposed for similar infractions



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Appeals Procedure

- The appeal process is initiated upon a party's written appeal within 3 business days after the delivery of written decision regarding responsibility
- The written appeal must be filed with the Title IX Coordinator and must set forth the grounds for the appeal
 - If these requirements are not met, the appeal will be dismissed and the original decision of the Hearing Officers will be final



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Appeals Procedure

- If the grounds for appeal are determined to be proper by the Provost or their designee, the Title IX Coordinator will provide the request for appeal to the other party and provide opportunity for response
 - Responses must be received within 5 business days



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Appeals Procedure

- If the Provost or their designee determines that a procedural or substantive error occurred that significantly impacted the outcome of the hearing, they may order a new hearing
- If the Provost or their designee determines that new evidence should be considered, they may return the complaint to the original Hearing Officers to reconsider new the new evidence or may order a new hearing



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Appeals Procedure

- If the Provost or their designee determines that the sanctions imposed substantially vary from the range of sanctions normally imposed for similar infractions, they may then increase, decrease, or otherwise modify the sanctions. They can also return the case to the original Hearing Officers to modify the sanctions.



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Appeals Procedure

- The Title IX Coordinator will notify the Complainant and Respondent of the outcome within 5 business days
- The decision of the Provost or their designee (or Hearing Officers if sent back) is final and may not be appealed



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