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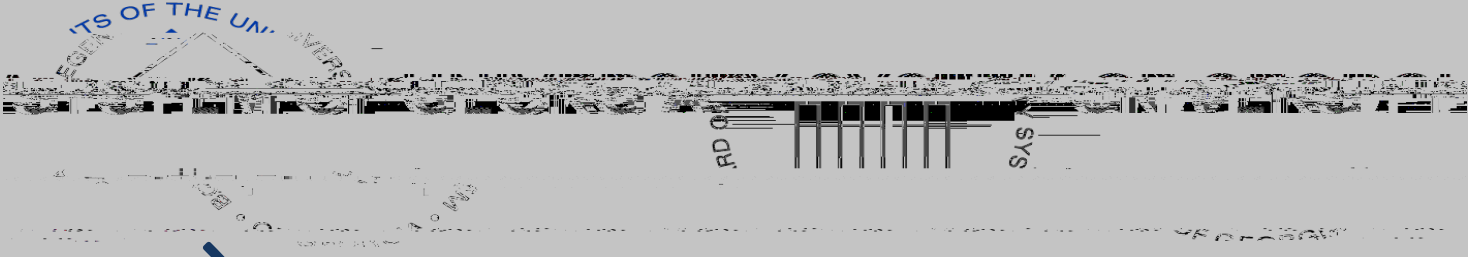
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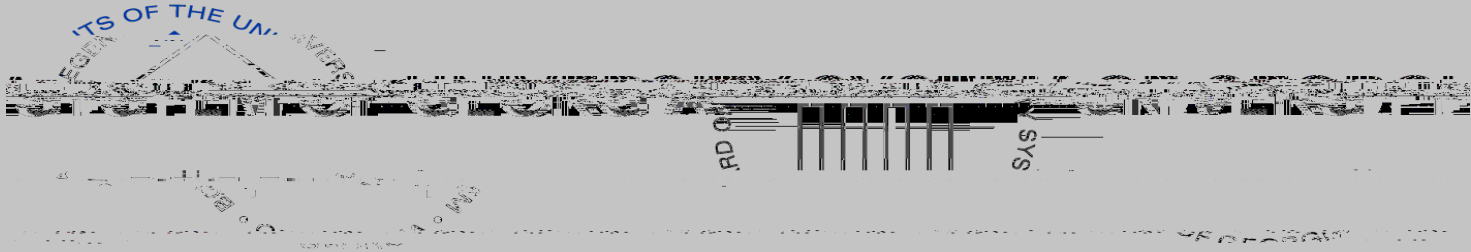
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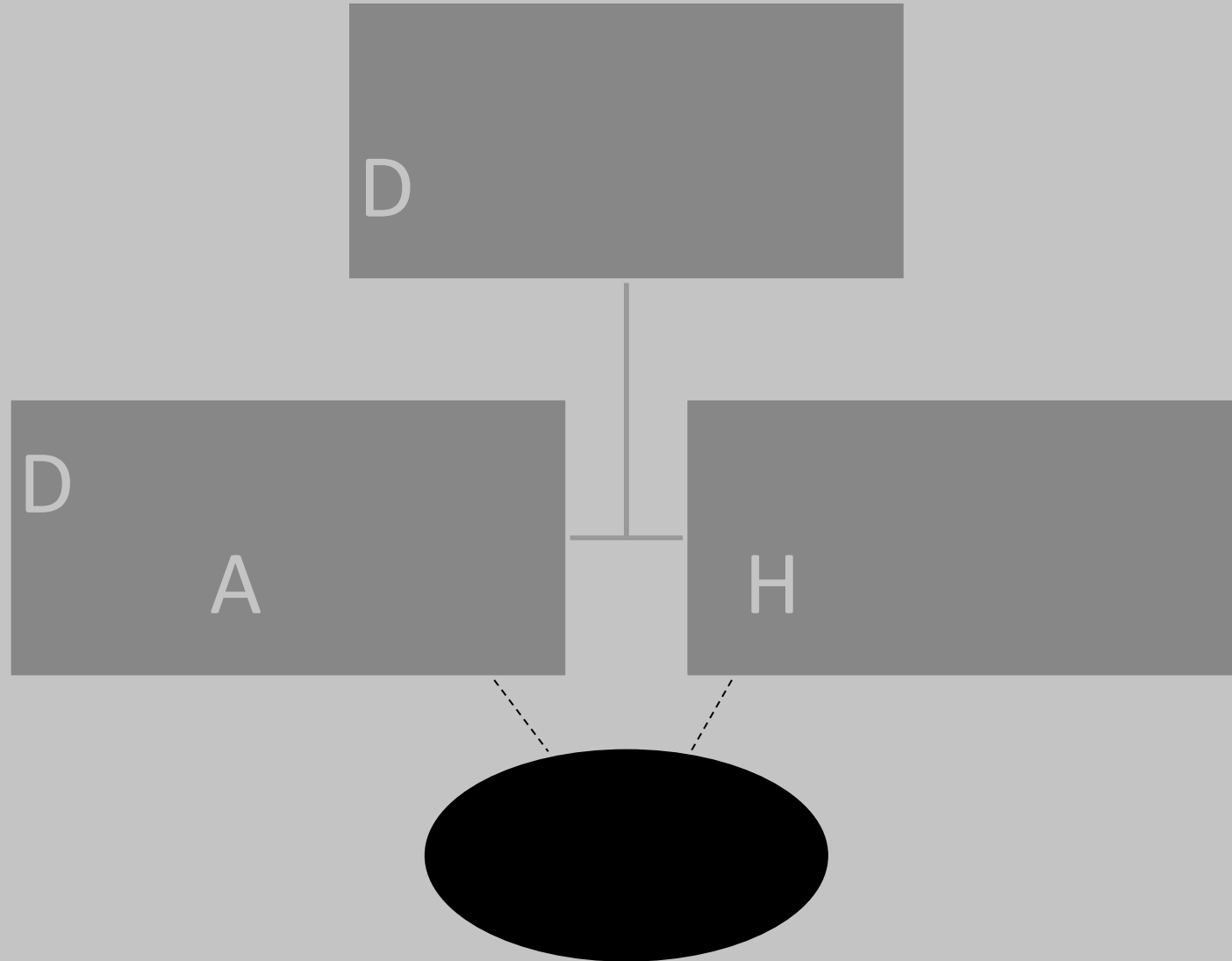


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The law states that:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance..."

—United States Code

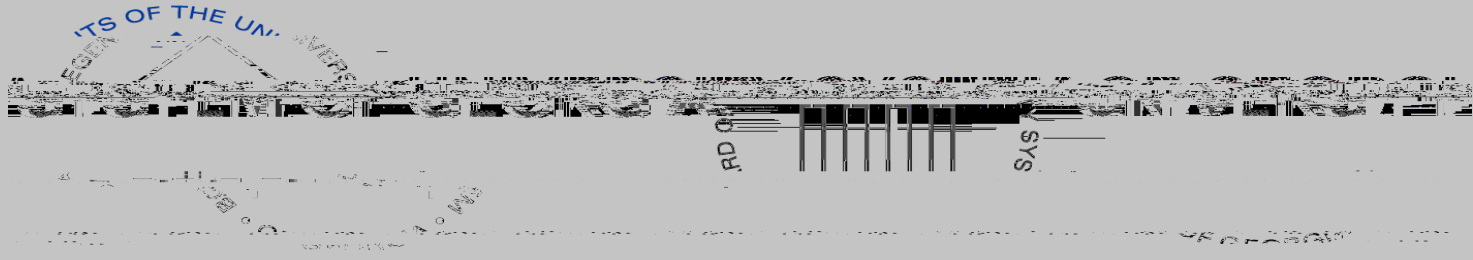


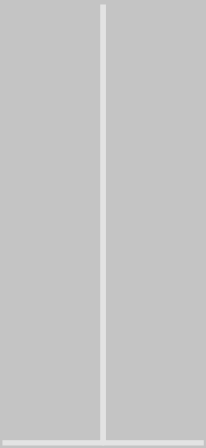
§106.30



- Institution's program or activity in the United States
 - Institution property
 - Institution sponsored or affiliated events [substantial control]





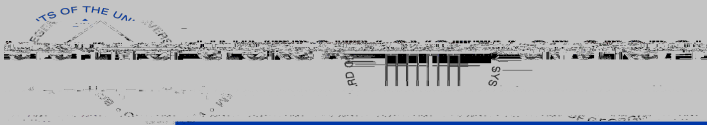




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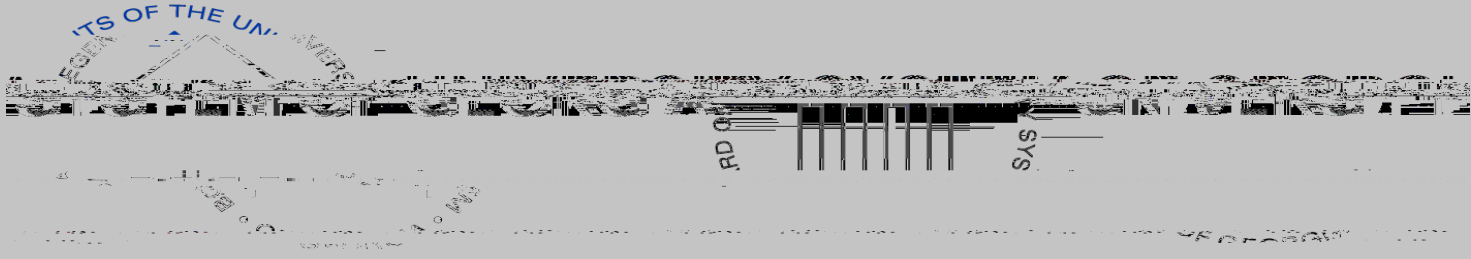
- All matters not informally resolved will be heard by a Hearing Panel
- Hearing Panels comprised of trained faculty and staff
- Title IX matters not informally resolved will be heard by a designated decision-maker
 - Single decision-maker OR panel
- Sexual Misconduct matters not informally resolved will be resolved according to previously established procedures
 - Institutions may choose to offer a hearing



- Advisors required to conduct cross examination
- Relevancy determinations must be made before a question may be answered
- If an individual does not submit to cross examination panelists may not rely on their statements
- Hearing Panelist or Officer performs all questioning
- Relevancy determinations are made before and during the hearing
- Panelists permitted to rely on statements provided during the hearing and in the investigation report



”



Fair and unbiased review
of matter

Follow the Policy

- ! Standard of proof
- ! Avoid burden shifting

Make a determination
regarding the violation(s)
and sanction(s)



- Chair or Hearing Officer

 - Designated leader of the Hearing

 - Should be the voice of the Hearing Panel (unless Hearing Officer is utilized)

 - May make determinations of relevancy

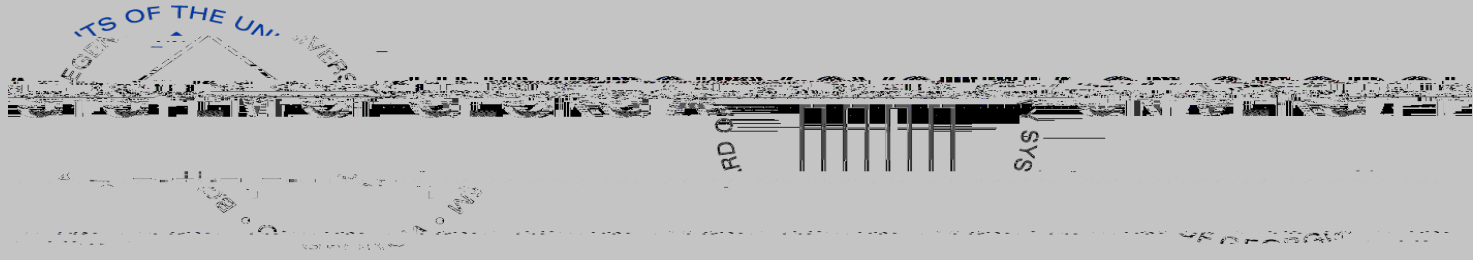
- Other Panel Members

 - Active listening participants who come to their own logical and reasoned decision

! Role of Alcohol

! Own experiences...

!





Violence

:

- spouse, intimate partner
- shares a child
- cohabiting

Taking non-consensual or abusive sexual advantage
one's own advantage or benefit

physical contact
the person's consent

sexual nature without

"

"

"

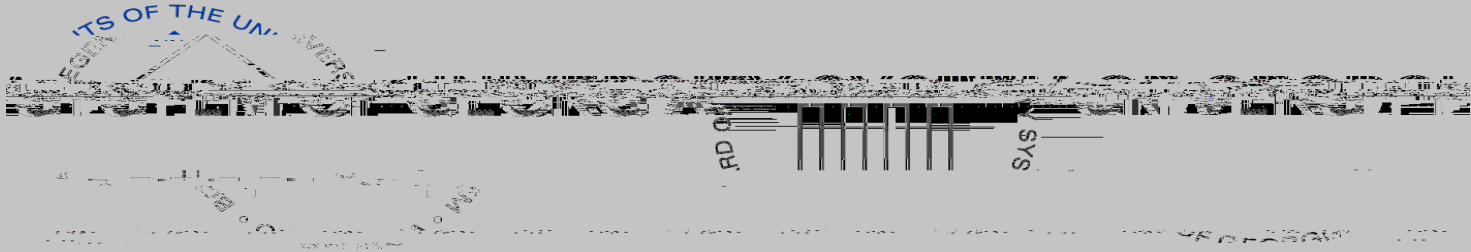
penetration

"

"



Unwelcome verbal, nonverbal, or physical conduct

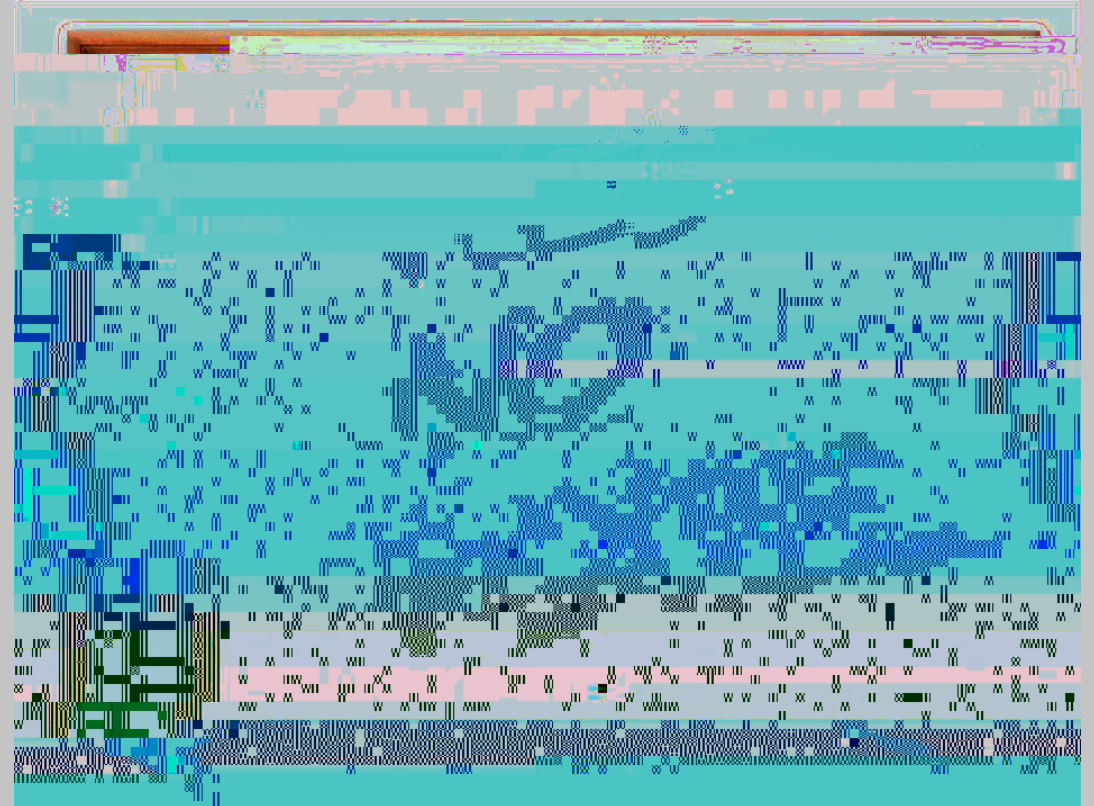


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- " Words or actions that show a knowing and willingness to engage in a mutually agreed upon sexual activity
- " Past consent Present consent
- " The scope of consent matters
- " Can be invalidated by: force, intimidation, incapacitation, or withdrawal



Intimidation - an implied threat that menaces and/or causes reasonable fear

Coercion – the application of an unreasonable amount of pressure for sexual access

" Consider:

-
-
-
-

- Did the Respondent utilize force or intimidation to engage in the sexual activity with the Complainant?

If yes = violation of policy

- Incapacitation is a determination that will be made after the incident in light of all the facts available

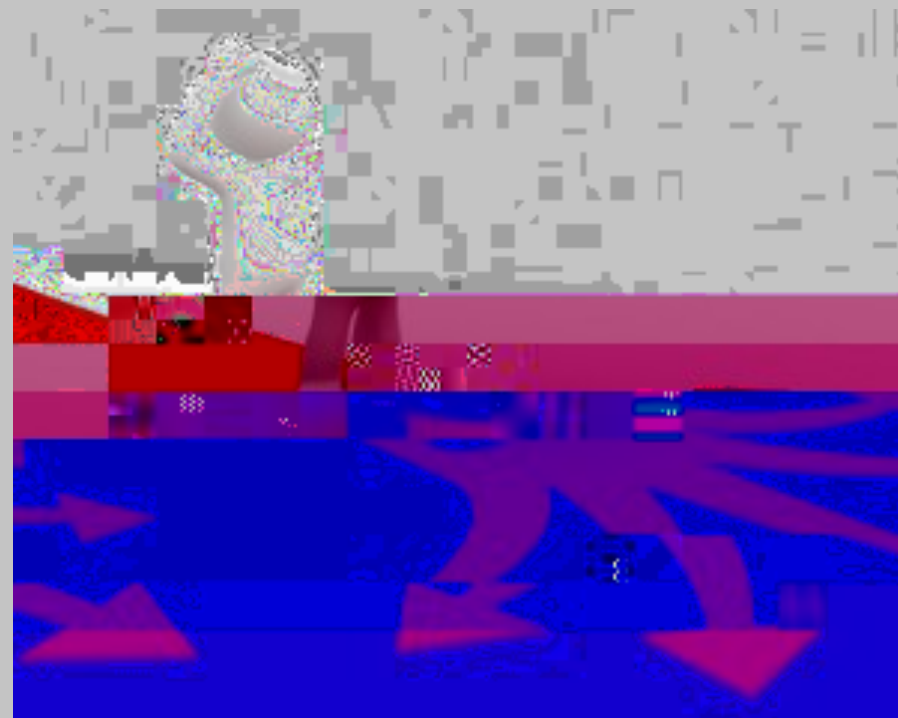
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Part One

Was the Complainant
incapacitated?



-
- Ex. Inability to dress or walk without assistance
-
-
-
-



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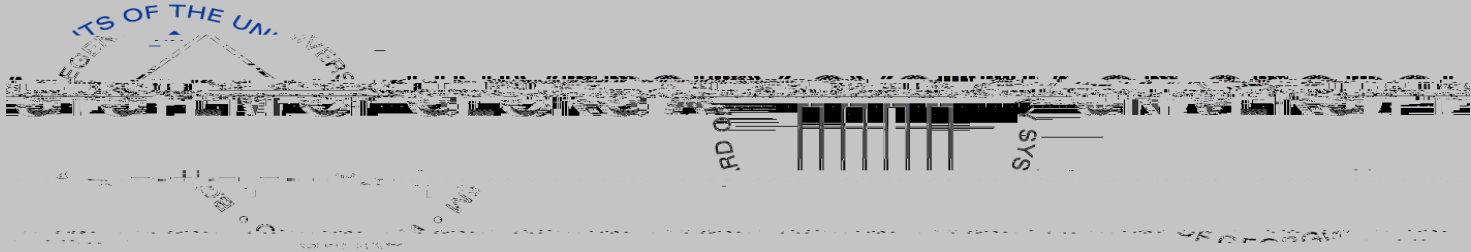
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What clear words or actions by the Complainant gave the Respondent permission for the specific sexual activity that took place?



- Remember consent can be withdrawn at any time
- The person withdrawing consent is expected to clearly communicate with words or actions they are withdrawing consent
- Other person is required to cease sexual activity until consent is regained





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- Questions should be used to determine:

- " Who

- " What

- " When

- " Where

- " How

- Ask open-ended questions to start the conversation
- LISTEN, ask follow-up questions at the end
- Don't be afraid of silence
- Don't be afraid to ask for clarification
- Take breaks if necessary
- Maintain your professionalism at all times

- If the information is considered relevant to prove or disprove a fact at issue, it is admissible.
- If the information is not relevant, it is inadmissible.

Understanding Evidence Thresholds

Types of Evidence

- " Documentary evidence (supportive writings or documents)
- " Electronic evidence (photos, text messages, videos)
- " Real evidence (physical object)
- " Direct or testimonial evidence (personal observation or experience)
- " Circumstantial Evidence (not eyewitness, but compelling)
- " Hearsay Evidence (statement made outside the hearing, but presented as important information)
- " Character Evidence (generally of little value or relevance)

Weighing Evidence

Weighing evidence
means assessing the
impact of the
information

Weighing Evidence: Impact Factors

- - Must relate to the incident at issue and be of sufficient value in the overall determination
 - Must be offered by an individual with actual knowledge of the event
- Questions and information regarding the Complainant's sexual history or sexual predisposition unless to prove
 - Someone else other than the Respondent committed the alleged misconduct
 - Consent between the parties



Weighing Evidence: Impact Factors

- **Bia**

—



Credibility

” “

Other Evidentiary Exclusions

- Legally privileged information is protected
- A party's treatment records cannot be used without their voluntary, written consent
- Duplicative evidence may be deemed irrelevant
- If an individual does not submit to cross examination, at a Title IX hearing, their statements cannot be relied upon



Determining Appropriate Sanctions

“Must be made as a proportionate response to the violation.”

Should prevent the recurrence of sexual misconduct

Should remedy the effects of the sexual misconduct



Common Student Sanctions

- ! Warning
- ! Probation
- ! Loss of Privileges
- ! Counseling
- ! No Contact Directives
- ! Residence Hall Relocation,
Suspension or Expulsion
- ! Limited Access to Campus
- ! Service Hours
- ! Online Education
- ! Alcohol & Drug Assessment and
Counseling
- ! Discretionary Sanctions
- ! Suspension*
- !

Understanding Substantial Evidence

Required to suspend or expel
a student



The Written Decision §106.45(b)(7)

Provided to both parties simultaneously must include:

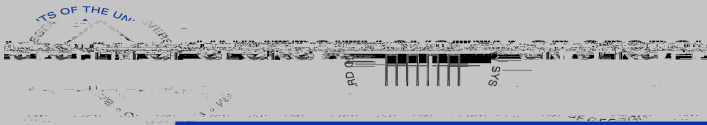
- The allegations

- The procedural steps from the complaint through determination

- Findings of fact supporting the determination

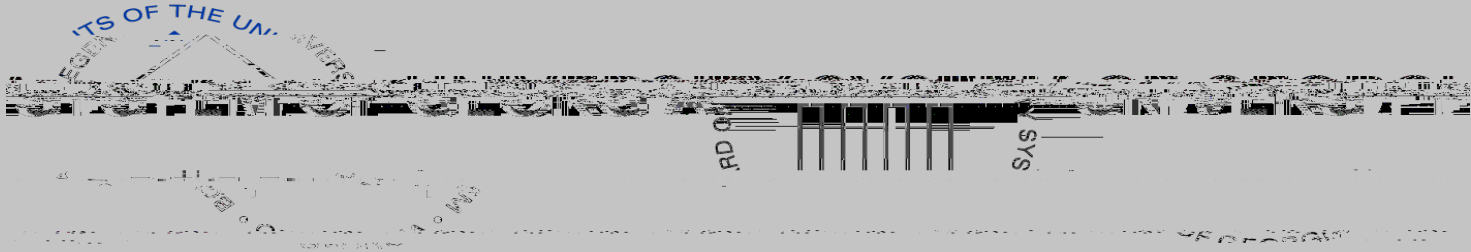
- Determinations regarding responsibility, sanctions (and remedies) along with the supporting evidence and rationale

- Information on the appeals process



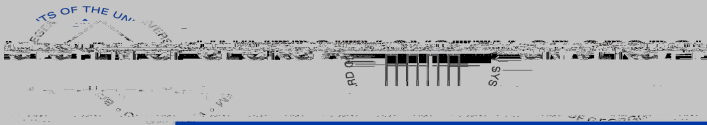
Appeals

- Parties will continue to have both institutional level and Board level appeal opportunities
- Grounds for an appeal:
 - New information
 - Procedural Error
 -
 - Finding inconsistent with the weight of the information



Hearing Logistics

- At the request of either party, the parties must be permitted to be in separate rooms
- Hearings may be conducted in-person or via videoconferencing
 - As panelists you should be familiar with any technology utilized
- All directly related information will be available
- Institutions will establish rules of decorum which everyone is expected to adhere to
- All hearings must be recorded



Things to Keep in Mind

Before the Hearing

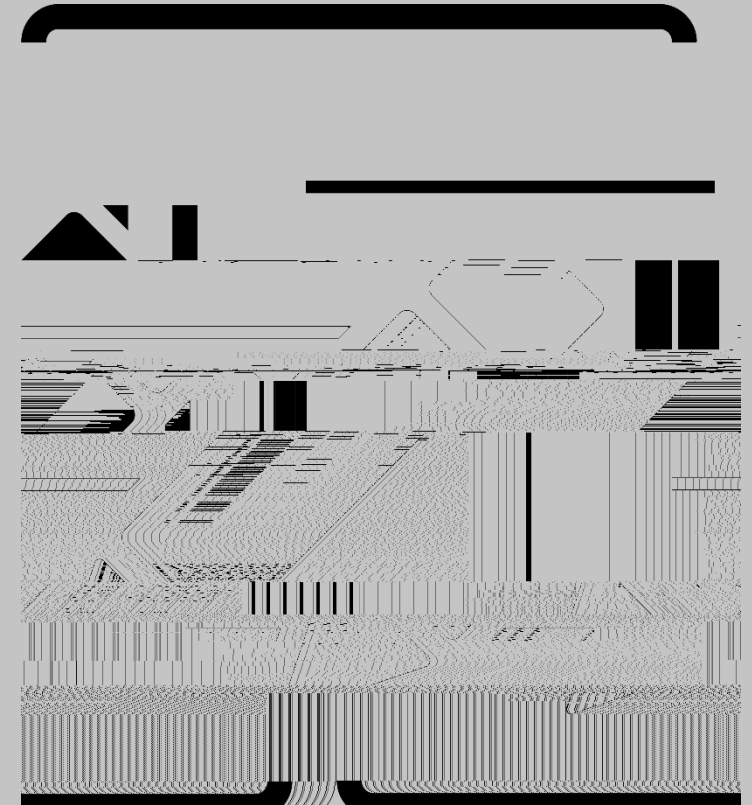
- " Review all available materials:
 -
 -
 -
- " Determine whether you are participating in a Title IX or Sexual Misconduct Hearing
- " Prepare questions in advance

During the Hearing

- " Be patient
- " Listen
- " Don't draw conclusions until all evidence and testimony are presented
- " Be mindful of the seriousness of the situation

The Investigative Report

- Summary of Allegations
- Identifies Applicable Policies and Procedures
- Statement and Explanation of the Evidentiary Standard
- Describe/Explain Evidence Obtained & Reviewed
- Investigative Findings





Record Keeping §106.45(b)(10)

7-year records retention
mandate:

! Reports

! Investigations [determinations,
recording of hearing, sanctions and
remedies implemented]

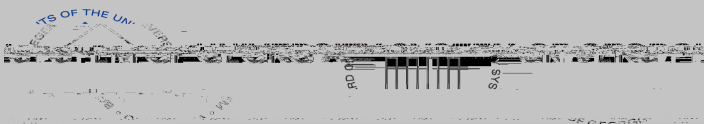
! Appeals

! Informal resolutions [results]

! Training materials



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