

Administrative Hearing Panel Training



Title IX Office - Concordia University, Inc. ©

Remember these words

**“Hear the case
before you
decide it”**

**Alfred P. Murrah , Chief Judge
U.S. Court of Appeals - 10th Circuit**



**Why are you
here?**



There Are 2 Major Reasons why you are here!

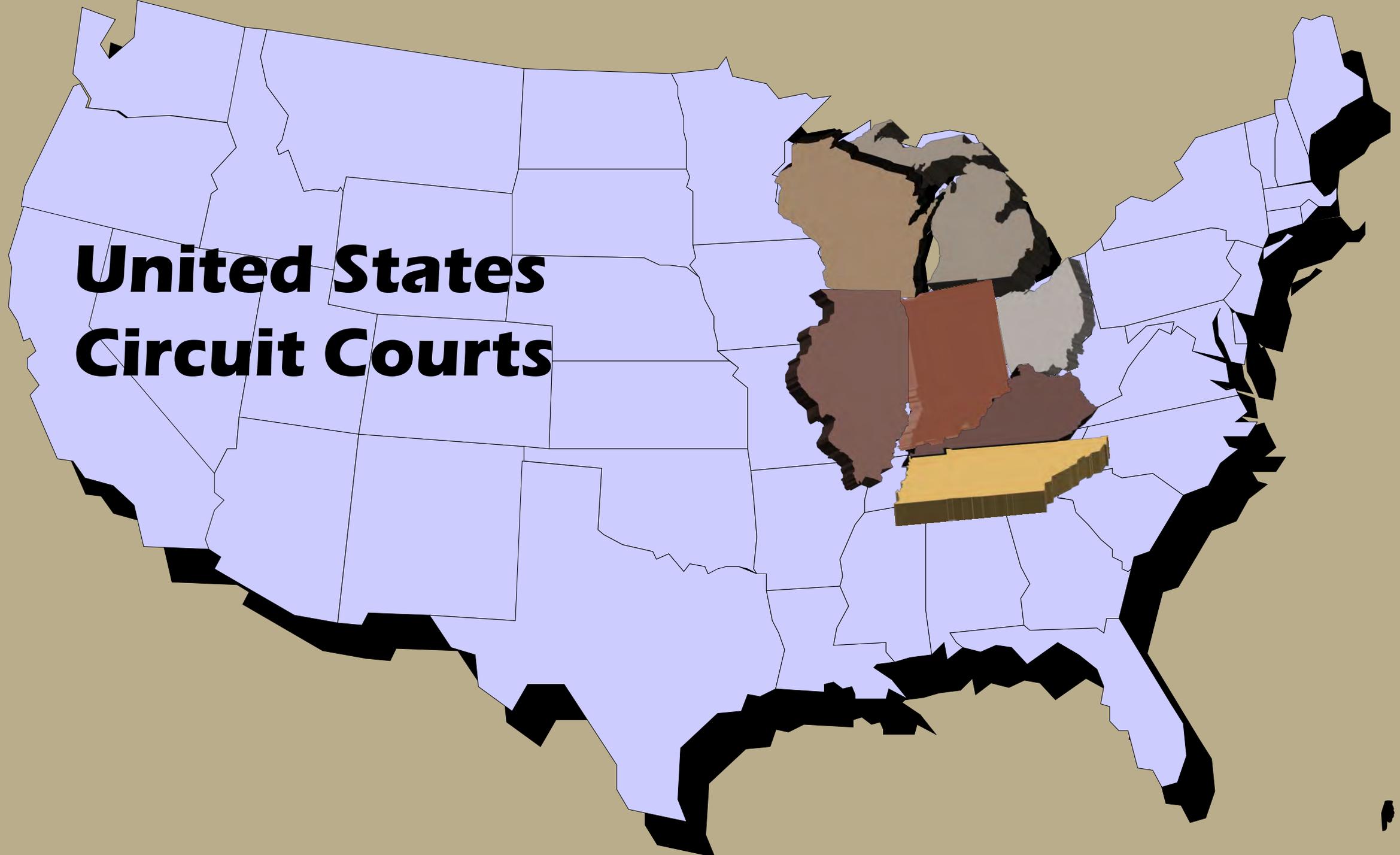
1 The Courts say so!

Doe v. Baum (6th Circuit, 2018, U. Michigan case)

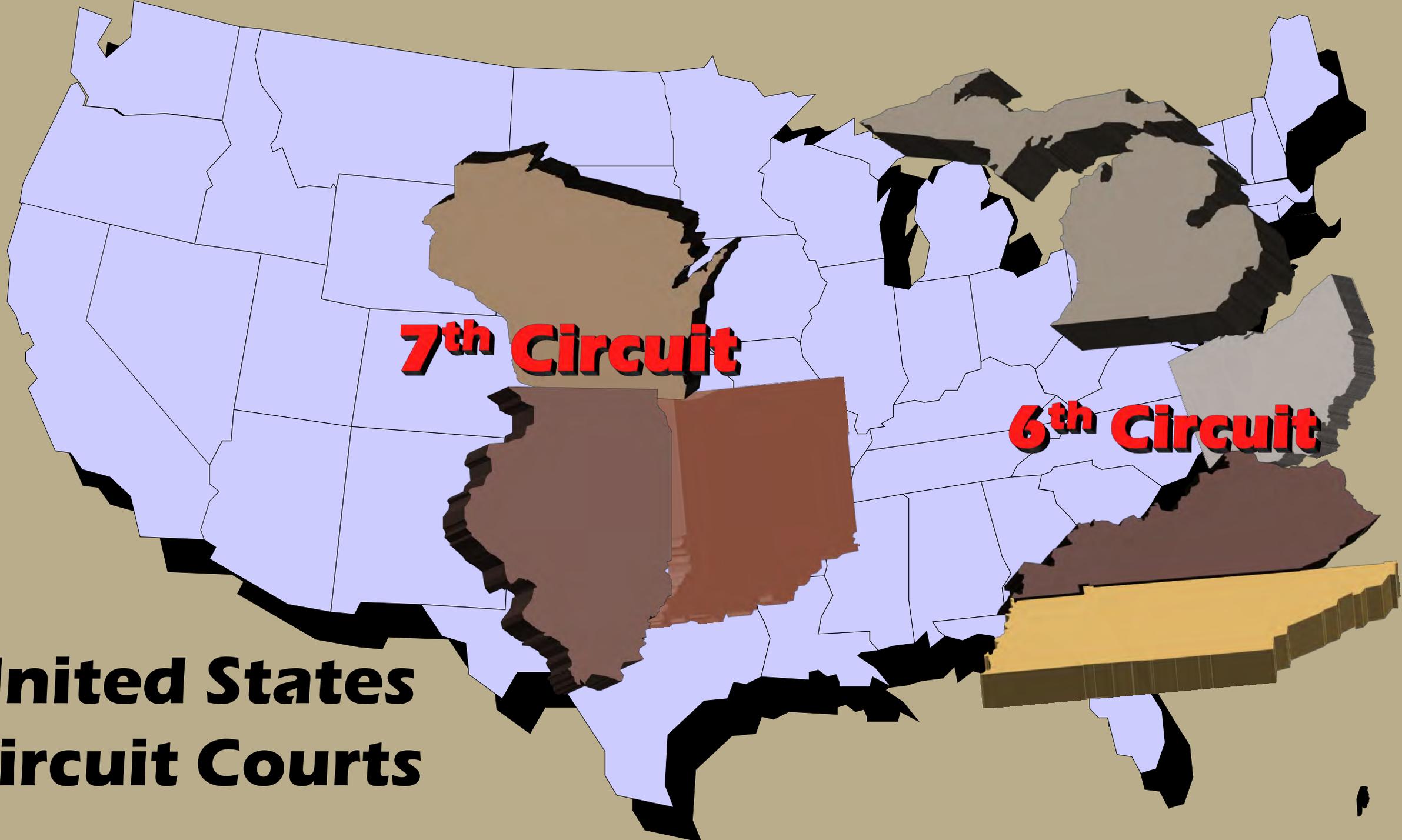
*“So, consistent with this command, our circuit has made two things clear: (1) if a student is accused of misconduct, the university must **hold some sort of hearing** before **imposing a sanction as serious as expulsion or suspension**, and (2) when the university’s determination turns on the credibility of the accuser, the accused, or witnesses, that **hearing must include an opportunity for cross-examination.**”*

<https://cases.justia.com/federal/appellate-courts/ca6/17-2213/17-2213-2018-09-07.pdf?ts=1536334215>

United States Circuit Courts



United States Circuit Courts



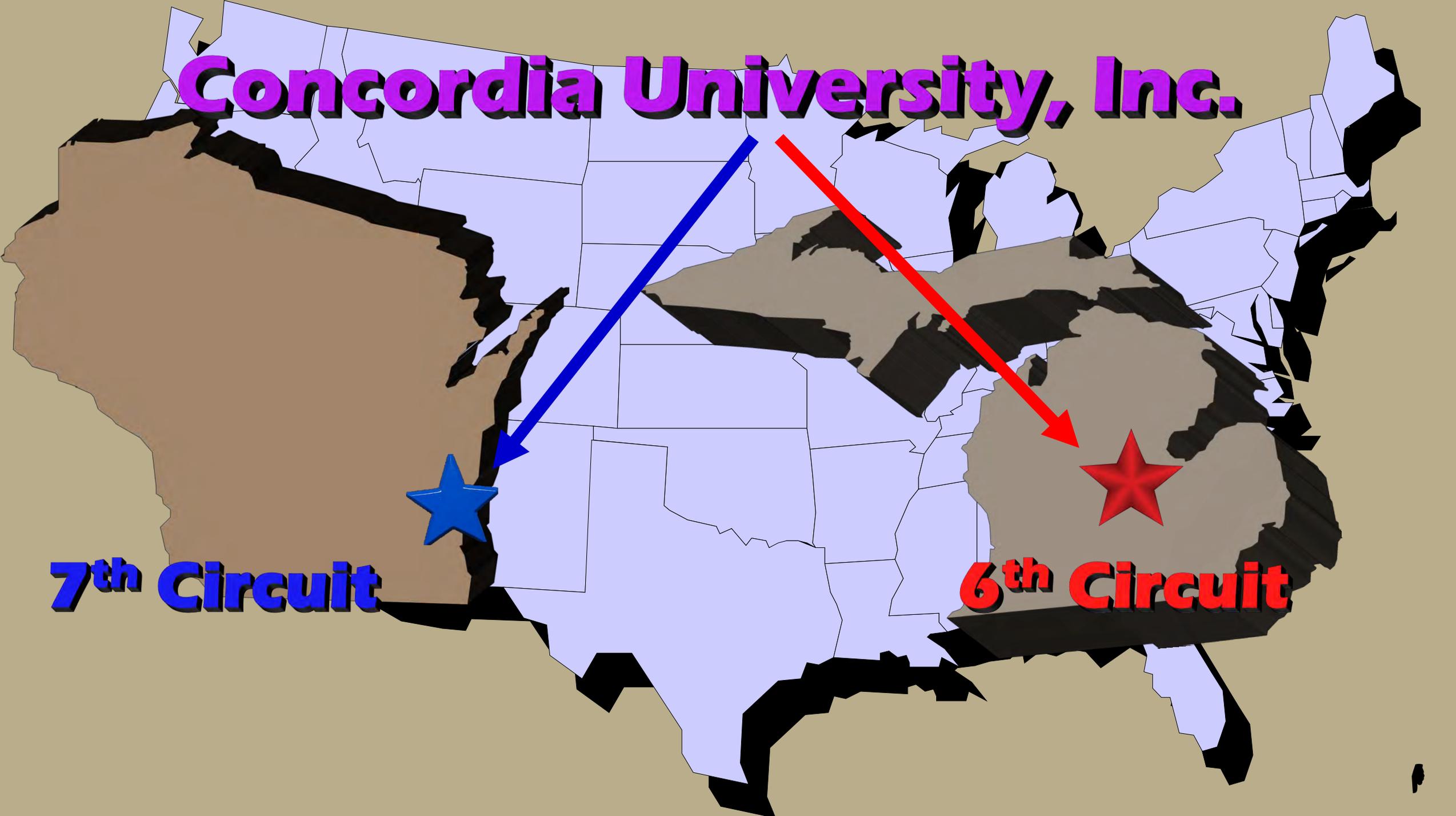
7th Circuit

6th Circuit

Concordia University, Inc.

7th Circuit

6th Circuit



2



**Office of Civil Rights (OCR)
United States Department of Education**

DEPARTMENT OF EDUCATION

34 CFR Part 106

[Docket ID ED-2018-OCR-0064]

RIN 1870-AA14

**Nondiscrimination on the Basis of Sex in Education Programs or Activities
Receiving Federal Financial Assistance**

AGENCY: Office for Civil Rights, Department of Education.

ACTION: *Final rule.*



What did the OCR say . . .

*“For institutions of higher education, the recipient's grievance procedure must provide for a **live hearing**. At the hearing, the decision-maker must permit each party to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility . . .”*

<https://www.regulations.gov/document?D=ED-2018-OCR-0064-0001>

Term & Definition

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Recipient: A postsecondary educational institution that receives Federal financial assistance.

Decision-Maker: A member of the Administrative Hearing Panel or an Appeal Officer.

Complainant: A person who alleges that she/he has been the subject of behavior that violates the University Sexual Misconduct Policy and wishes to report the allegations to a Title IX Coordinator.

Respondent: A person who is alleged to have violated the University Sexual Misconduct policy.

Grievance Process: The process by which allegations of sexual misconduct are resolved.

Aggravating Factors: Facts and/or circumstances that increases the severity or culpability of a respondent when determining the sanction(s) for a violation of the Sexual Misconduct Policy.

Mitigating Factors: Facts and/or circumstances that do not excuse or tend to justify a violation of misconduct, but are taken into consideration when considering the sanction(s) for a violation of the Sexual Misconduct Policy and the culpability of the respondent.

Standard of Proof: The level of certainty and the degree of evidence necessary to establish that a violation of University policy has occurred.

Protected Status: includes Age, Disability, Gender, Genetic Information, Gender Identity or Expression, Nationality, Marital Status, Race or Ethnicity, Religion, Sexual Orientation, and Veteran or Military Status.



Overview of the Title IX Process

The Title IX Staff

Coordinators

Andy Luptak (CUWAA)

Title IX Coordinator

Kimberly Masenthin (CUWAA)

Assistant Coordinator for Employees

Marie Terlinden (CUW)

Assist. Coordinator for Students

Stacey Brunner Jones (CUW)

Assoc. Dir. of Athletics for Title IX

Suzy Siegle (CUAA)

Assoc. Coordinator

John Rathje (CUAA)

Assistant Coordinator

Investigators (CUW)

Doug Borys

Leah Dvorak

Kate Liesener

Matt Mac Kelly

Eugene Pitchford

Sarah Gartman

Investigators (CUAA)

Theodore Hopkins

Alex Martin

Earl Schumake

Christopher Stark

Julia Cassell

Sandra Harris

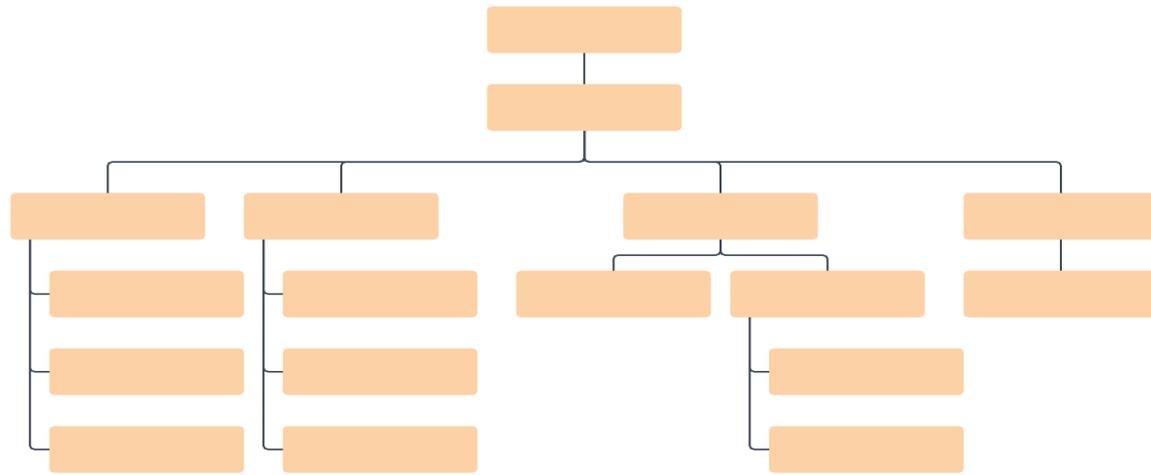
Tori Negash

Elizabeth Peckham

Cassidy Tirmenstein



Understanding the Process



§ 106.45 identifies provisions that are intended to provide a standardized framework that governs recipients' responses to formal complaints of sexual harassment under Title IX. (p. 96)

Two of these are . . .

- ***presumes the non-responsibility of respondents until conclusion of the grievance process . . .***
- ***keeps the burden of proof and burden of gathering evidence on the recipient . . .***

The New Process



- Notice to TIX C
- Strategy Development

- Jurisdiction?
- Policy violation?
- Non-formal, administrative, resolution?

- Notice
- Identification of witnesses
- Interview scheduling
- Evidence collection
- Evidence & Inv. Report Shared
- Inv. report finalized

- Determination
- Sanction(s)

- Standing?
- Deny?
- Uphold?
 - Vacate?
 - Remand?
 - Substitute?



Ability to Offer an Informal Resolution Process (IRP)

*Section 106.45(b)(9) allows recipients to offer and facilitate informal resolution processes, within certain parameters to ensure such informal resolution only occurs with the **voluntary, written consent of both parties**; informal resolution is not permitted to resolve allegations that an employee sexually harassed a student. (p. 99)*

<u>Complainant</u>	<u>Respondent</u>	<u>Can Offer IRP?</u>
Student	Employee	No

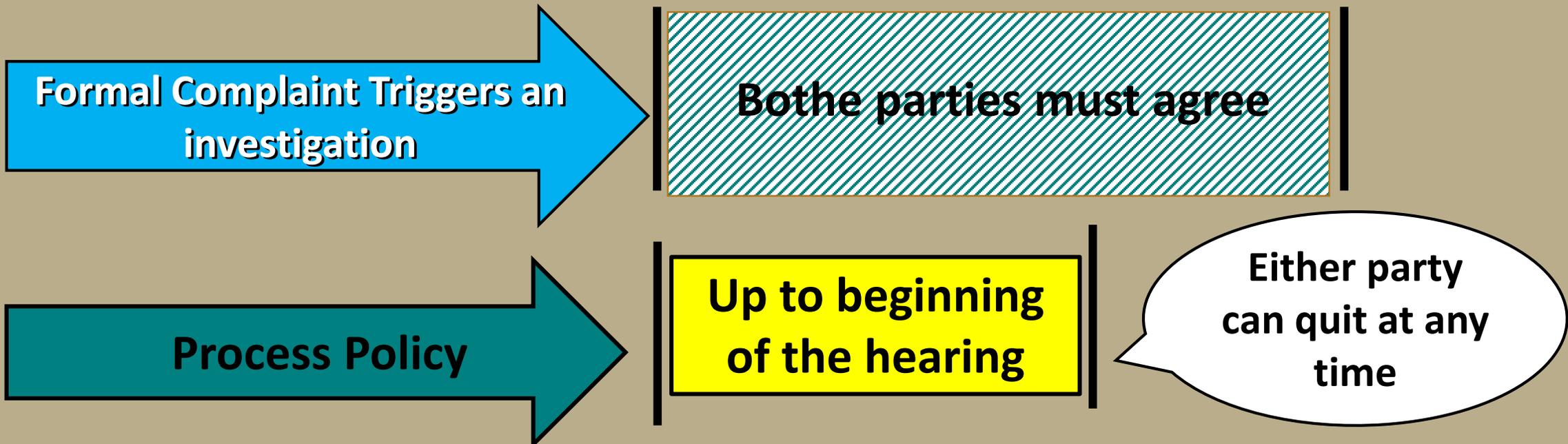
Finally, § 106.45(b)(9) allows recipients the option of facilitating informal resolution processes (except as to allegations that an employee sexually harassed a student) p. 103

Student	Student	Yes
Employee	Student	Yes
Employee	Employee	Yes

When can an Informal Resolution be Offered?



A recipient could use [an informal resolution] after a determination of responsibility finds a respondent responsible . . . (p. 1388)

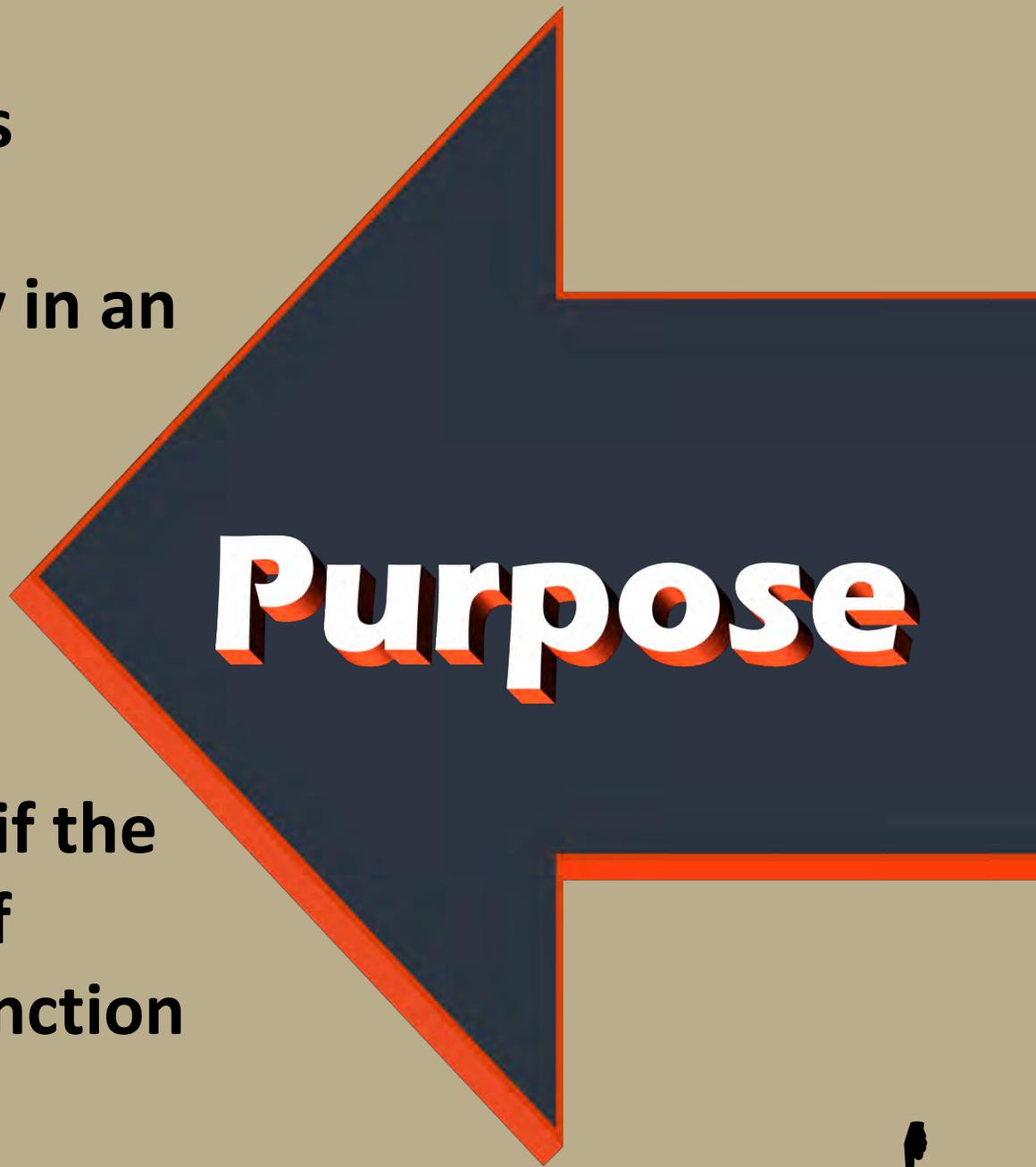




The Administrative Hearing Panel (AHP)

A respondent has the right to address allegations the he/she violated the University's Sexual Misconduct Policy in an Administrative Panel Hearing.

Therefore, the purpose of an Administrative Panel Hearing is to determine if a violation of the Sexual Misconduct Policy has occurred and, if the hearing panel finds that a violation of policy has occurred, the panel will sanction the respondent.



Composition of the Administrative Hearing Panel (AHP)

The hearing will occur following an investigation by University sanctioned investigator(s). The hearing panel will consist of three Administrative Hearing Officers (AHO), one of which will be the Chair of the panel as outlined below.

<u>Name</u>	<u>Campus Location</u>
Bill Cario	CUW
Leah Dvorak	CUW
Cindy Fenske	CUAA
Ryan Peterson	CUAA
Liz Polzin	CUW
Al Prochnow	CUW
Steve Taylor	CUW



The AHP for a Specific Case by Position Title

Resp.	Chair	PM (CUW)	PM (CUAA)	AO
Student	VPSL	Provost AAVP	VPAd TBD	XVP
Staff	XVP	VPSL AAVP	VPAd TBD	Provost
Faculty	Provost	XVP AAVP	XVP TBD	VPro

Key: Resr. = Respondent
 AO = Appeal Officer
 AAVP = Assistant Academic VP
 XVP = Executive VP

PM = Panel member
 VPSL = VP Student Life
 VPAd = VP of Administration
 VPro = Vice Provost for Academics



AHP for a Specific Case by Name

<u>Respondent</u>	<u>Chair</u>	Members <u>CUW</u>	Members <u>CUAA</u>	<u>Appeal Officer</u>
Student	Steve Taylor	Bill Cario Liz Polzin	Ryan Peterson Cindy Fenske	Al Prochnow
Staff	Al Prochnow	Liz Polzin Steve Taylor	Ryan Peterson Cindy Fenske	Bill Cario
Faculty	Bill Cario	Al Prochnow Liz Polzin	Al Prochnow Cindy Fenske	Leah Dvorak



Conflicts of Interests

Bias and Prejudice

Statement of Principles



An Administrative Hearing Officer (AHO) must *“be free from conflicts of interest and bias and trained to serve impartially without prejudging the facts at issue . . .”* (p. 97)

**Become Aware
of
Personal Bias**



Bias and Prejudice

- **Everyone holds biases; many are unconscious.**
- **Unconscious bias is a person's preferences for objects and people at a subconscious level that unintentionally influence their behavior and decision making.**
- **As humans, we make decisions based on what we know and have experienced.**
- **Knowledge and experiences comes from those we meet, the books we read, our upbringing, our education, family/friend influences, etc.**



- **Do not let any biases unlawfully influence conduct in the workplace or educational environment or obstruct another's civil rights. Examples are:**
 - **Partisan approach by hearing board members in questioning, findings, or sanction.**
 - **Intervention by senior-level institutional officials.**
 - **Improper application of institutional procedures and/or policies.**
- **While bias is inevitable, it does not necessarily undermine the fairness or appropriateness of a decision-maker's findings.**
- **The key is recognizing the bias and ensuring it does not impact one's decision.**
- **Hearings must be based on evidence, not on personal beliefs about a complaint, respondent, or witness (p. 5).**

Examples of Gender Bias

- ✓ **Women should not be awarded chair or dean positions until their children are grown.**
- ✓ **Assuming the student who reported being a victim of relationship violence is female.**
- ✓ **Unequal pay among the sexes.**
- ✓ **Phrases indicating gender bias:**
 - ***“Don’t be such a drama queen.”***
 - ***“You need to man up.”***
 - ***“In this office, it’s every man for himself.”***



Other Examples

Law Schools

Law School Posts Job Listing Seeking 'Wives' of Students

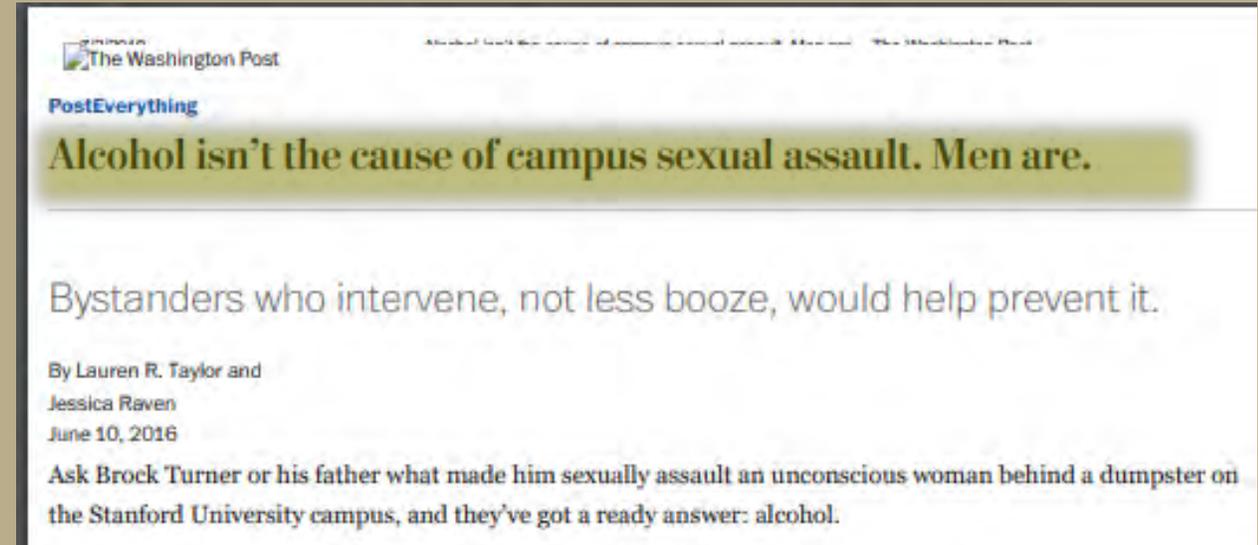
Yes, this is from 2017

Above the Law

By KATHRYN RUBINO



Fulbright Winniford is looking for a part-time receptionist/clerical worker. Our firm would like to reach out to Baylor Law School to fill this position.



John Doe v. Purdue University, et. al:

Purdue student claims university violated his Title IX rights by discriminating against him based on his sex: presumed the woman's story was true rather than presuming him innocent.

Court found that "Sexual Violence Prevention Office" posting this article showed, in part, university biased against males.

What if I realize that I can't be unbiased on a given case?

Examples:

- You know one of the involved parties
- You are, will, or have supervised one of the parties
- You have the student in class
- You have socialized with one of the parties
- Others?????

Conflict of Interest or Bias Recusal Process

Title IX Staff Member (Coordinator, Investigator, Hearing Panel Member, or Appeal Officer) believes that he/she has a conflict of interest or is biased.

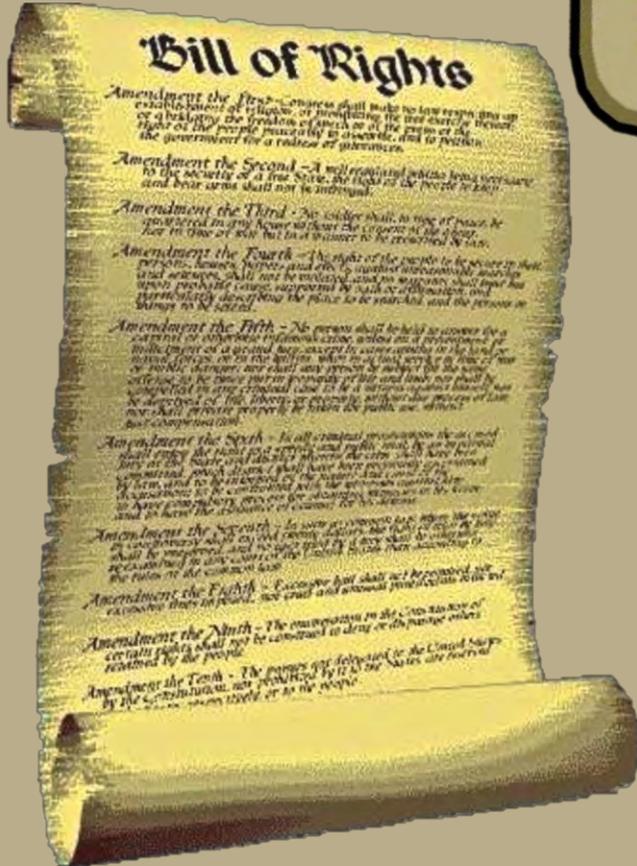
The Staff member . . .

- is obligated to recuse him/her self to the Title IX Coordinator.**
- will be replaced by the Title IX Coordinator.**
- is the panel chair and recuses him/her self, the Coordinator will ask one of the other chairs to take the case.**
- does not recuse him/her self, and the panel chair becomes aware that a panel member cannot serve in an unbiased capacity, the chair is authorized to replace the member.**

Complainant or Respondent Believes a Case Member May be Biased or Has a Conflict of Interest

If a complainant or respondent believes that an assistant/ associate coordinator, investigator, hearing panel member, or Appeal officer assigned to his/her case cannot conduct a fair/unbiased investigation or adjudication of the case, the party may petition the Title IX Coordinator to replace that individual. However, if the allegation is that The Title IX Coordinator cannot serve in an unbiased manner, the party may petition the Administrative Hearing Panel Chair to replace the Title IX Coordinator.

This must be done in writing (email) within 3 business days of being notified of the assigned member and include supporting evidence.



Rights and Responsibilities of the AHP

The following, as described below, are the rights & responsibilities of the Administrative Hearing Panel (AHP).

- **The AHP will not conform to state or federal rules of criminal or civil procedure.**
- **The case brought before the AHP is the University's case and the burden to prove that a violation of the Sexual Misconduct Policy has occurred is upon the University.**
- **The AHP will presume the non-responsibility of the respondent until the conclusion of the hearing and a finding is made.**
- **The AHP Chair will take reasonable steps to maintain order. The Chair is empowered to dismiss those who exhibit unruly or inappropriate behavior.**

- The AHP is empowered to sanction the respondent following a finding that the respondent is responsible for violating the Sexual Misconduct Policy.



- **Advisors/Support Persons:** The hearing is closed to all persons except for the hearing panel members, complainant and respondent, one advisor for each party, any witnesses while they are testifying, the Title IX Coordinator/designee, one or both investigators, any support(s) persons of Coordinators choice, and any other person deemed appropriate or necessary by the AHP Chair.

Note: An Advisor cannot be a witness in the proceeding



Standard of Proof

*American Bar Association Criminal Justice
Section Task Force on College Due Process
Rights of the Victim Protections:
Recommendations for College and University
in Resolving Allegations of Campus Sexual
Misconduct*

June, 2017





Remember!

- *presumes the non-responsibility of respondents until conclusion of the grievance process . . .*
- *keeps the burden of proof and burden of gathering evidence on the recipient [Concordia University] . . .*



Standard of Proof The Scales of Justice



The level of certainty and the degree of evidence necessary to establish that a violation of University policy occurred is called the *Standard of Proof*. The *Standard of Proof* for all Title IX cases will be the *Preponderance of the Evidence*

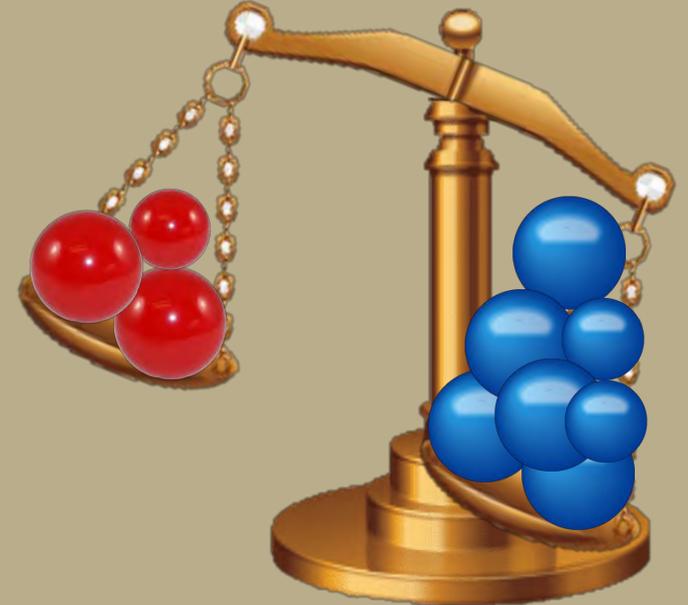
Standards of Proof



***Preponderance
of the Evidence***



***Clear and Convincing
Evidence***



**The evidence is . . .
*Beyond a Reasonable Doubt***

Your Task

- ✓ *The decision-makers should first evaluate the quality of the evidence.*
 - *The decision-makers should consider all of the [admissible] evidence regardless of who provided it.*
 - *Any evidence the decision-makers find to be of high quality should be given more weight than any evidence the decision-makers find to be of low quality.*
- ✓ *Quality may, or may not be identical with quantity, and sheer quantity alone should not be the basis for a finding of responsibility.*
- ✓ *The testimony of a single party or witness may be sufficient to establish a fact.*





Preponderance of the Evidence: Making the Decision

- ✓ *After assessing the quality of the evidence, the decision-makers should only find the respondent responsible for alleged misconduct if . . .*
 - *. . . the evidence convinces a [majority] of the decision-makers to reasonably conclude that a finding of responsibility is justified.*
 - *. . . [t]hat is, the decision-makers should find that there is sufficient evidence that is relevant, probable, and persuasive to convince them that the respondent engaged in the alleged misconduct,*
 - *and that the evidence supporting a finding of responsibility outweighs any evidence that the respondent is not responsible for the alleged misconduct.*



The Sexual Misconduct Policy

Concordia University Sexual Misconduct Policy: Two [2] Components



*“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”*

Section 106.45(b)(3). *Similarly, **nothing in these final regulations prevents** a recipient from **addressing conduct that is outside the Department’s jurisdiction** due to the conduct constituting sexual harassment occurring outside the recipient’s education program or activity, or occurring against a person who is not located in the United States.*



Prohibited Conduct

Sexual Misconduct, as defined below, is prohibited. Any violation of the Student Code of Conduct Article 2 Section D or Employee Handbook, Section 4.3.7 will be charged and adjudicated by the Title IX Office.

- ✓ ***Title IX Sexual Misconduct: The Department of Education's (DOE) Title IX regulations requires that when an alleged victim of one or more of the following offenses files a formal complaint with the Title IX Office, the Office must investigate and adjudicate the allegations. According to the DOE, Title IX violations only apply to conduct within a Concordia University educational program or activity against a person in the United States.***
- ✓ ***University Sexual Misconduct: Formal complaints that do not fall under the above Title IX Offenses but meet the definitions described below will be investigated and adjudicated by the Title IX Office including conduct occurring off campus and outside of the United States.***



Violation Terminology: **SAME DEFINITION** vs DIFFERENT DEFINITION

Title IX Offenses

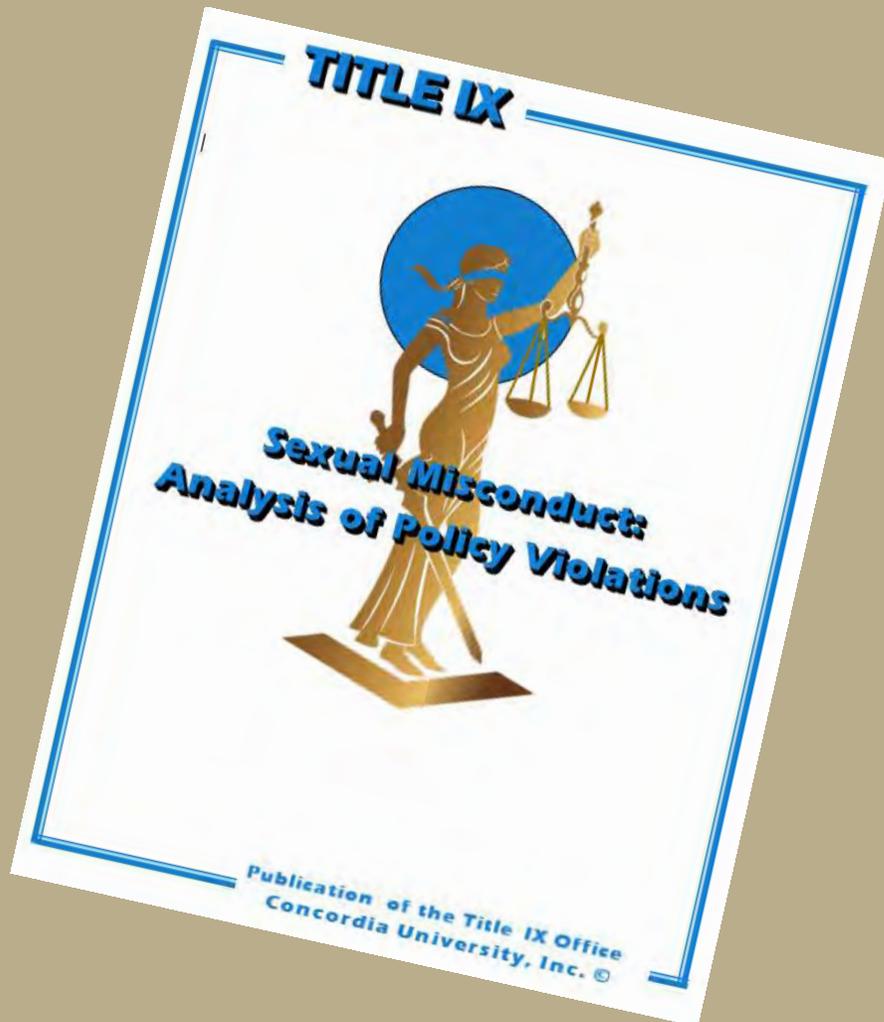
1. **Sexual Harassment**
 2. **Clery Sexual Assault Offenses**
 - 2a Forcible Rape
 - 2b Forcible Sodomy
 - 2c Sexual Assault w/an object
 - 2d Incest
 - 2e Statutory Rape
 - 2f Fondling
 3. **Dating Violence**
 4. **Domestic Violence**
 5. **Stalking**
 6. **Retaliation**
- } VAWA
Offenses

University Offenses

7. **Sexual Harassment**
8. **Non-Consensual Sexual Intercourse**
9. **Non-Consensual Sexual Contact**
10. **Sexual Exploitation**
11. **Stalking**
12. **Dating Violence**
13. **Domestic Violence**
14. **Retaliation**
15. **Improper Restraint or Detention**
16. **Fraud and Lying**



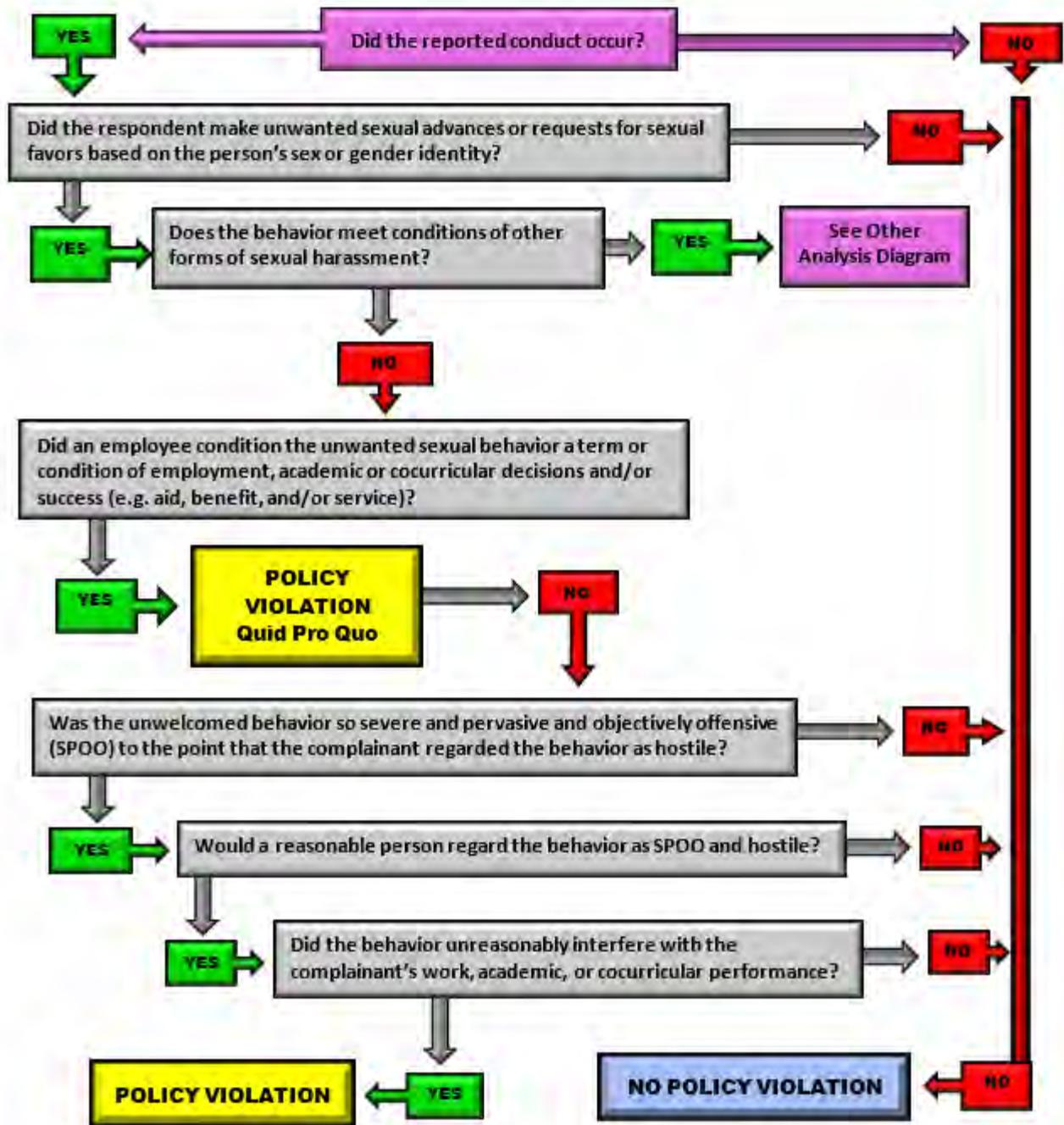
Flow charts to assist in determining if a policy violation has occurred.



Prohibited Conduct: Sexual Misconduct, as defined below, is prohibited. Any violation of the Student Code of Conduct Article 2 Section D or Employee Handbook, Section 4.3.7 will be charged and adjudicated by the Title IX Office.

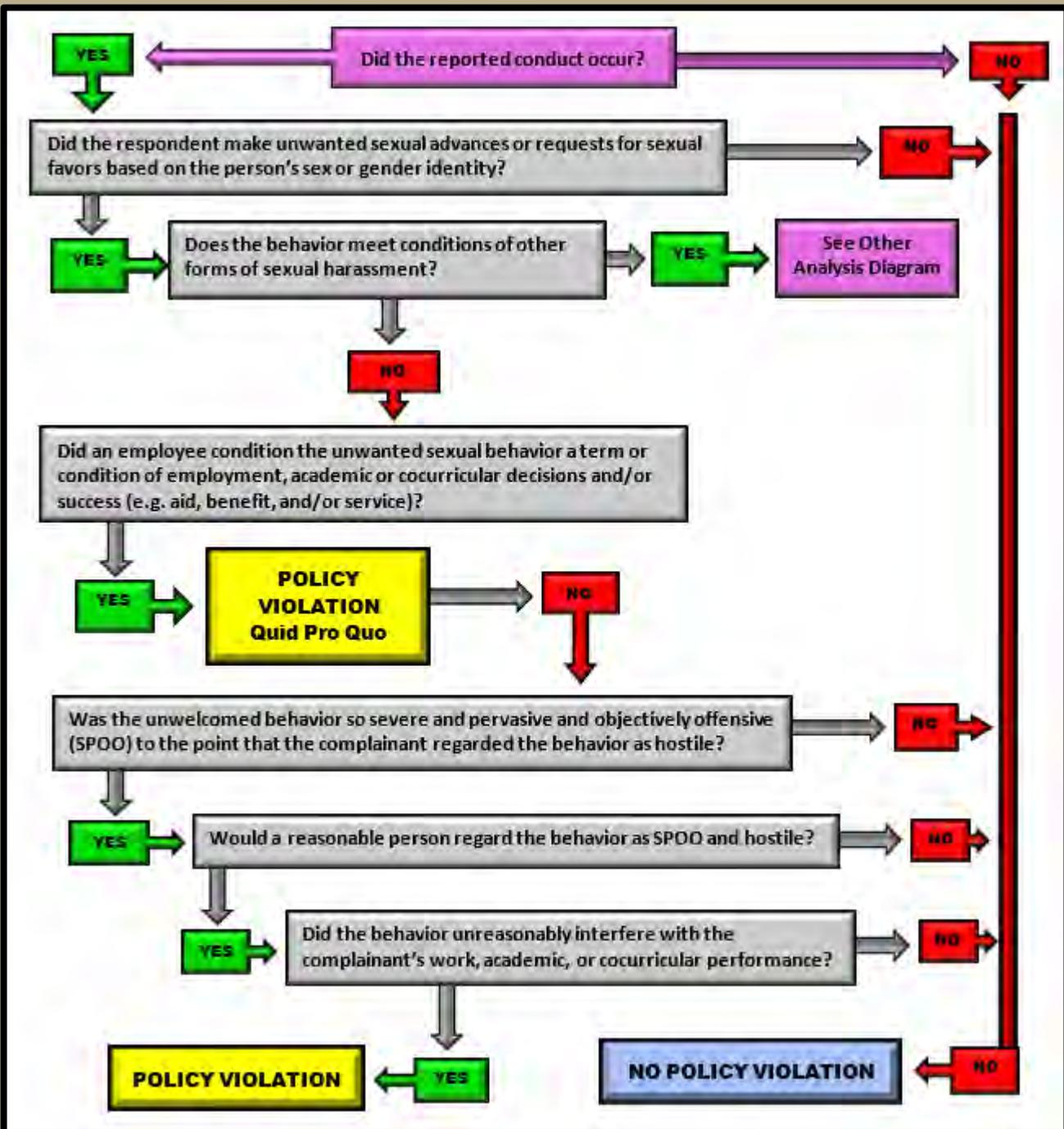
**Special Thanks to:
Becca Wallace
Assist. Dir. of Student Conduct
University of Cincinnati**





Sexual Harassment is
Refer to p. 12





Key Words

- ✓ Unwelcomed
- ✓ Severe
- ✓ Pervasive
- ✓ Offensive
- ✓ Hostile Environment



Gender Based Violence [Title IX]

2. Sexual Assault is any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. This violation includes attempting a sexual assault and/or one or more of the following types of sexual assault.
 - a) **Forcible Rape** is the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person (male or female), without the consent of the victim.
 - b) **Forcible Sodomy** is oral or anal sexual intercourse with another person, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

- c) Sexual Assault With An Object:** To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- d) Forcible Fondling** is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- e) Incest** is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- f) Statutory Rape** is sexual intercourse with a person who is under the statutory age of consent.

Gender Based Violence [University Policy]

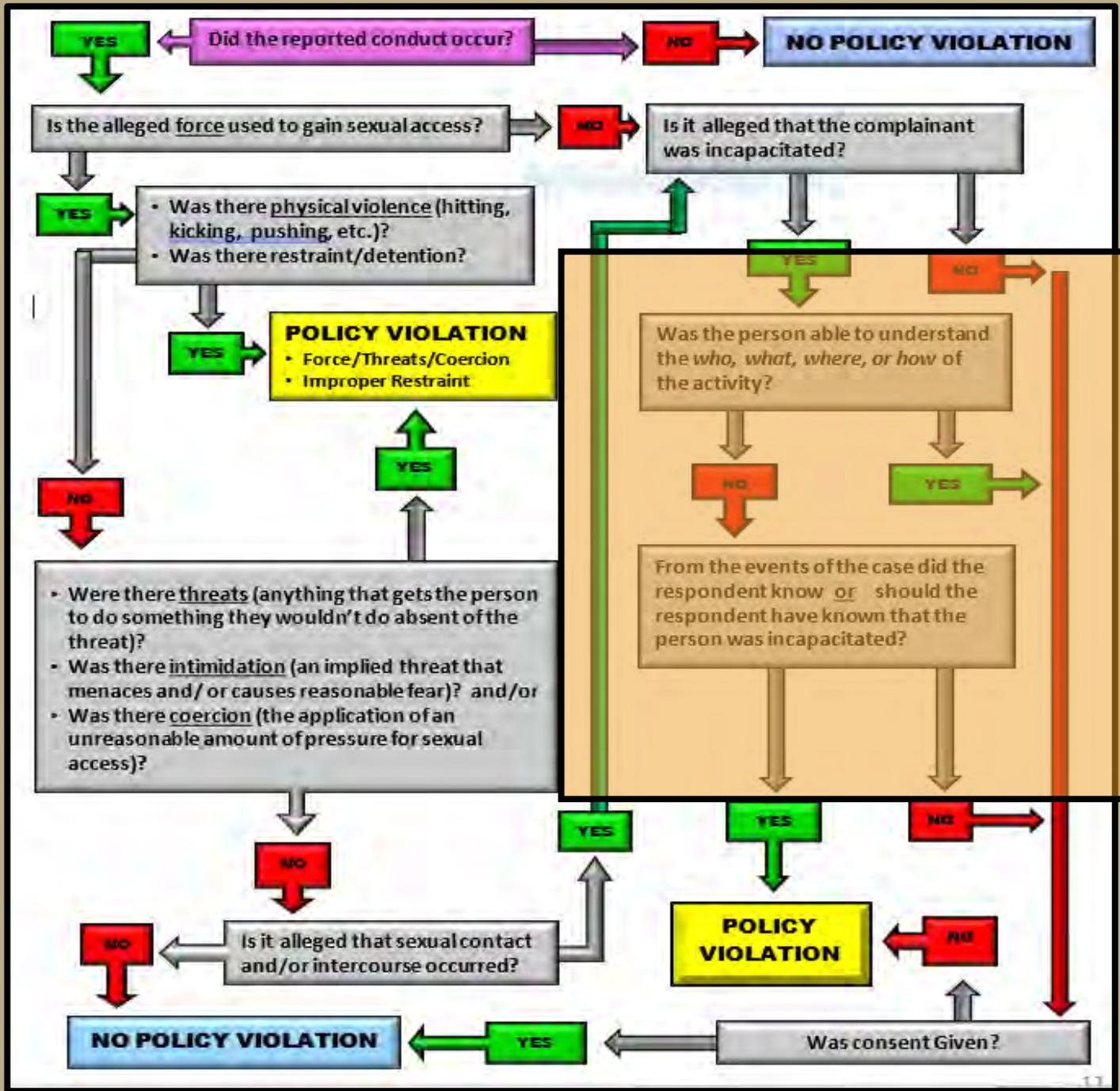
Non-Consensual Sexual Intercourse is defined as any sexual penetration or intercourse (anal, oral or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force.

Note: “Sexual penetration” includes actual or attempted vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth-to-genital contact or genital-to-mouth contact (see Statement on Consent below).



Non-Consensual Sexual Contact is defined as any intentional sexual touching or attempts, however slight, with any object, by a person upon another person that is without consent and/or by force.

Note: “Sexual touching” includes any actual or attempted bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner (see Statement on Consent below).



A large percentage of sexual violence cases we have addressed, involve alcohol.



Note: The Title IX Office subscribes to the University “Alcohol and Drug Amnesty Policy.”



Consent is knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated/lacks capacity has violated this policy. It is not an excuse that the individual respondent of sexual misconduct was intoxicated and, therefore, did not realize the incapacity/lack of capacity of the other.

Incapacitation/lack of capacity is defined as a state where someone cannot make rational reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from the taking of incapacitating drugs.

Consent to some sexual contact, such as kissing or fondling, cannot be presumed to be consent for other sexual activity, such as intercourse. A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced. Silence or the absence of resistance alone is not consent.

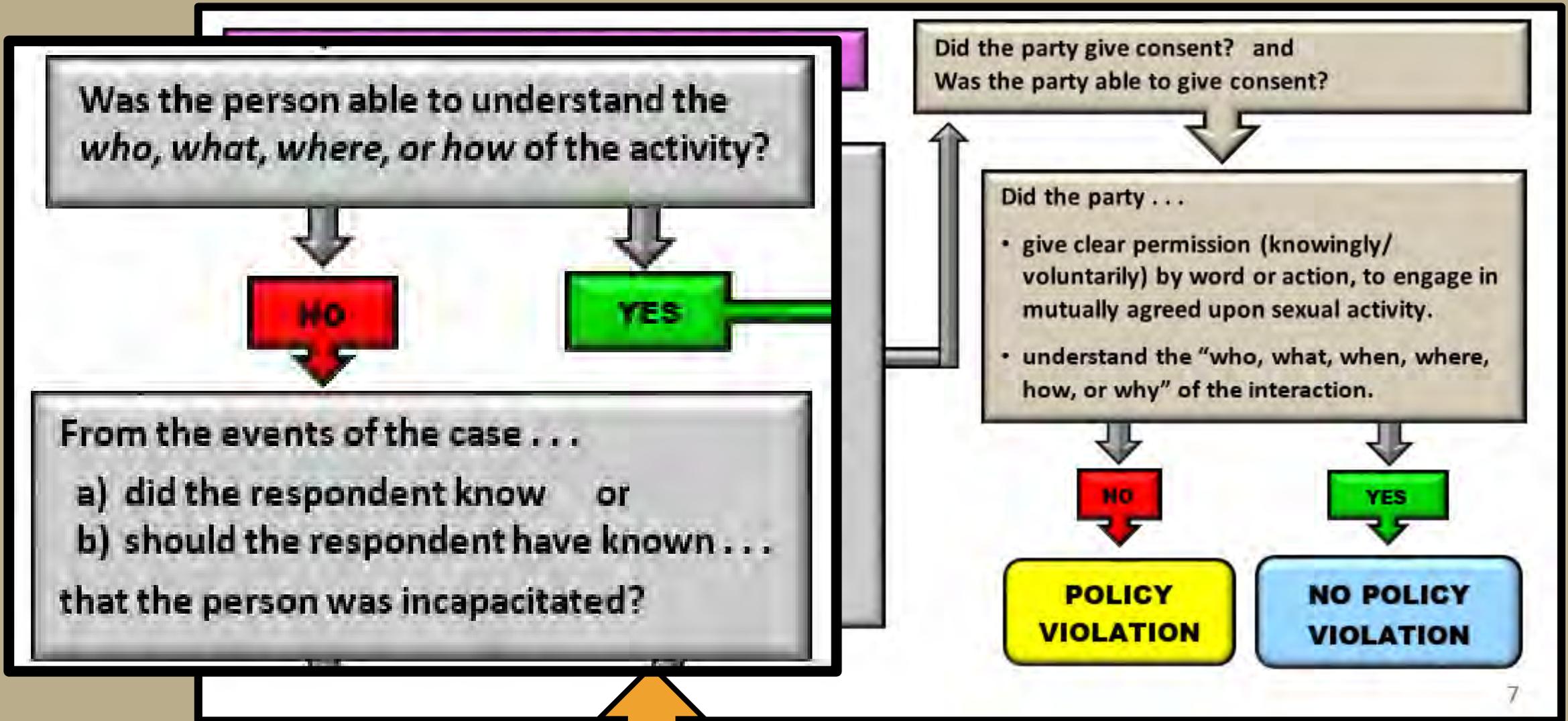


Incapacitation (continued)

A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately.



A minor below the age of consent according to state law cannot consent to sexual activity. This means that sexual contact by an adult with a person below the age of consent is a crime as well as a violation of this policy, even if the minor appeared to have wanted to engage in the act.



How would we [Coordinators & Investigators] know that the complainant was incapacitated? Our responsibility!

Scenario 2: Consent

Read Scenario 2 – front side only



Process

Was the party incapacitated? Incapacitation is . . .

- a state beyond drunkenness or intoxication.
- a state where a person cannot make rationale, reasonable decisions because they lack the mental capacity to do so.
- caused by alcohol, drugs, developmental disability, sleep or blackout.
- cannot be given if the party is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs or is underage.
- to some sexual contact cannot be presumed to be consent for other sexual activity.

Did the party give consent? and Was the party able to give consent?

Did the party . . .

- give clear permission (knowingly/voluntarily) by word or action, to engage in mutually agreed upon sexual activity.
- understand the "who, what, when, where, how, or why" of the interaction.

NO

POLICY VIOLATION

YES

NO POLICY VIOLATION

Q 1: By res

➤ Now, turn the paper over and read the rest of the story.

Jane's and Person X's Testimony

Jane's Reasons for Charging Person X

- She would not have sex with someone she did not have a strong relationship with.
- Does not practice “hook-ups”

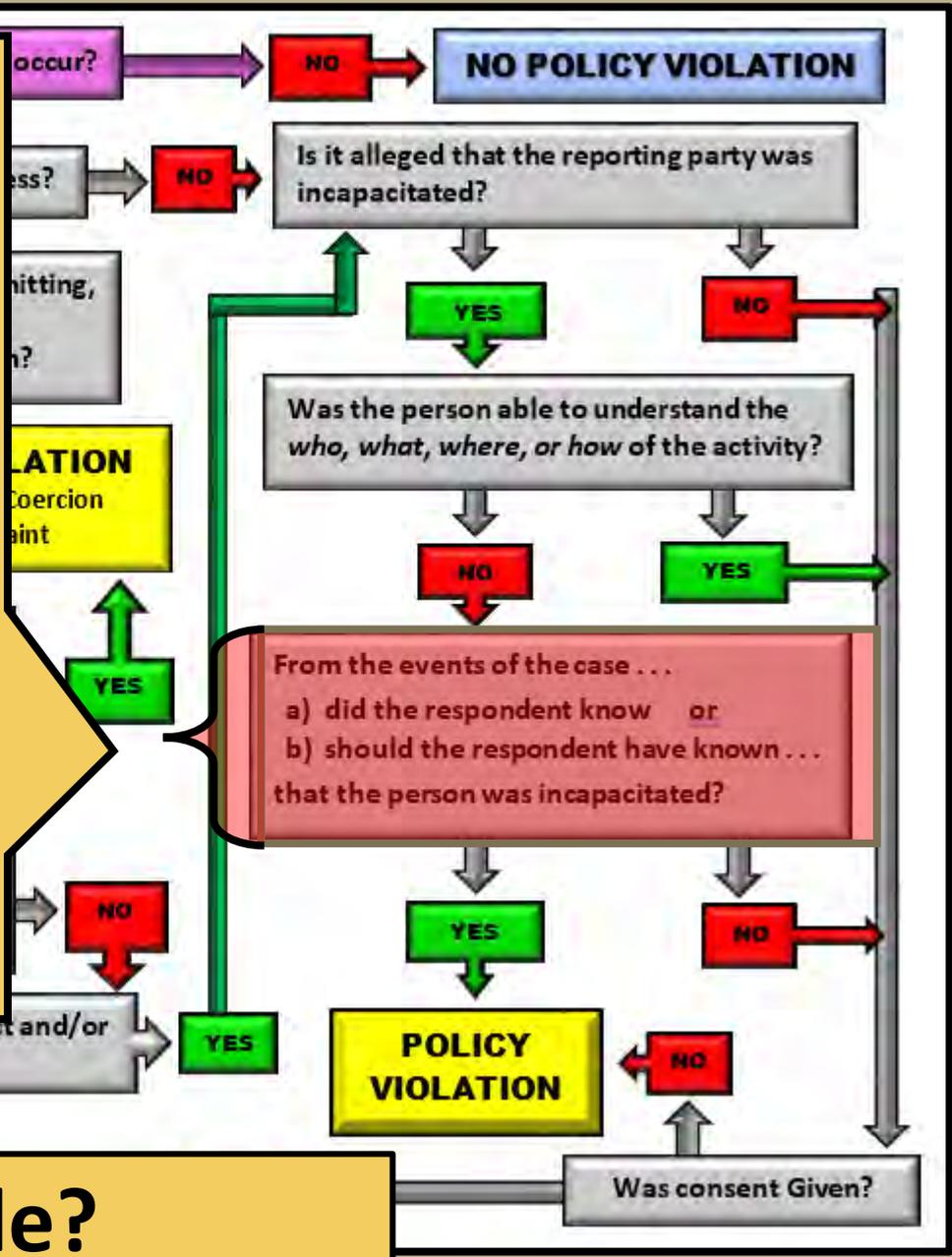
Person X's Defense

- Did not feel she was “blasted”.
- She wanted to have sex (actions)
- She initiated things when they got back to the room (e.g. kissing & petting)
- She took off her own clothes – first!!

You now must determine the finding (responsible or not responsible) for Person X!!

8:00 pm Had one beer in Jane's Room
 8:15+ pm Had gulp(s) of Grey Goose
 ≈ 8:40 pm Arrived at the Party
 30 minutes Beer Pong (amount of beer unknown)
 Later Solo cup of alcohol punch (16 oz)
 ≈ 10:25 pm Left party, 2nd Solo cup of punch
 10:42 pm Arrived at res hall

Other Observables
Slurring her words a little when she left
Stumble somewhat



Is Will responsible or not responsible?

30 minutes Beer Pong (Alex did not see Jane play)

Later First S

10:00 pm Second

Alex h

10:30 pm Arrive

Other Observables

Slurring her words a

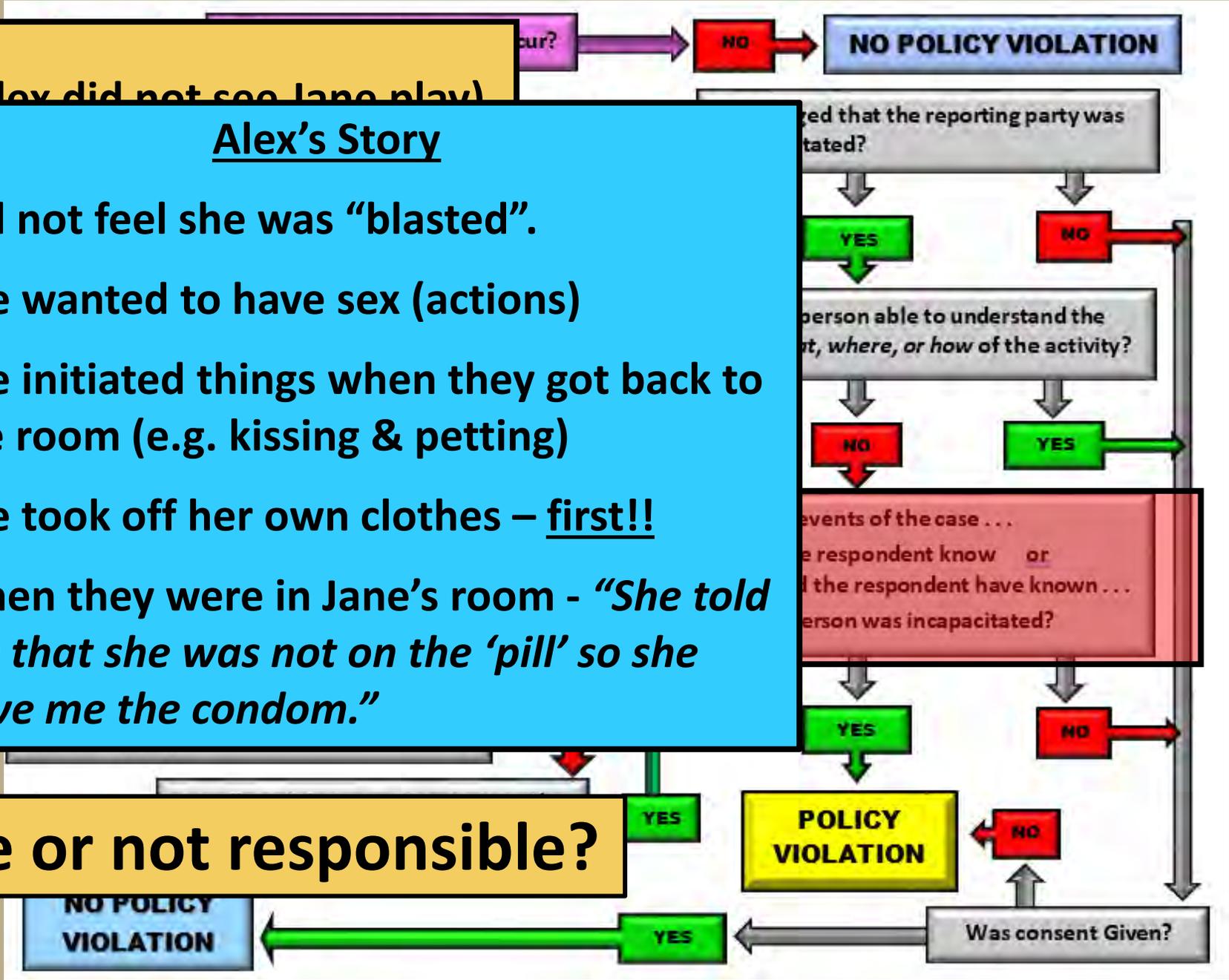
Stumble somewhat

Alex Redfor

Is Alex responsible or not responsible?

Alex's Story

- Did not feel she was "blasted".
- She wanted to have sex (actions)
- She initiated things when they got back to the room (e.g. kissing & petting)
- She took off her own clothes – first!!
- When they were in Jane's room - "She told me that she was not on the 'pill' so she gave me the condom."





The Sexual Misconduct Policy

Continued

Sexual Exploitation:

***Sexual Exploitation* occurs when one person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute sexual harassment.**

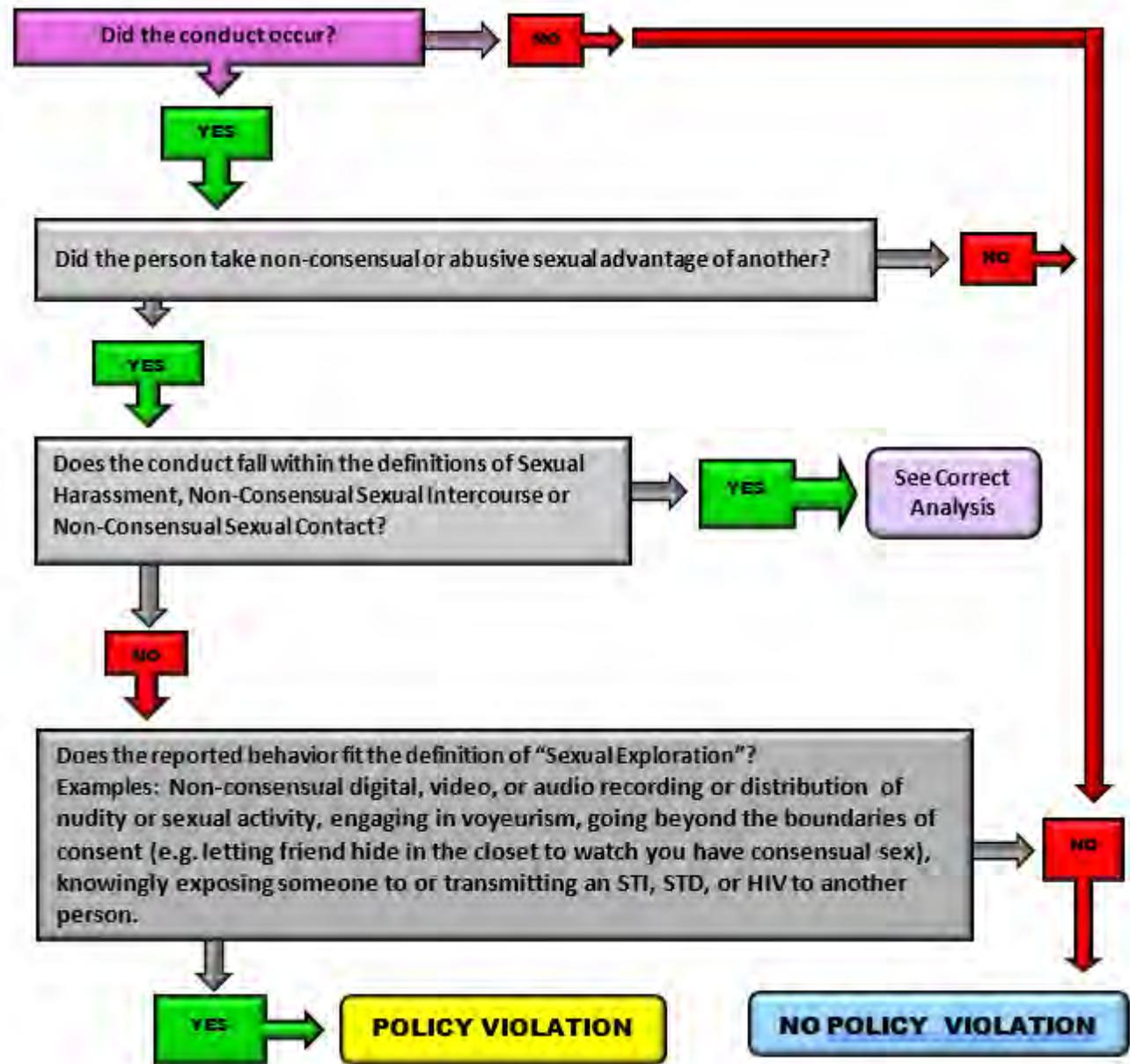
Examples of sexual exploitation include, but not limited to . . .

- **Invasion of sexual privacy.**
- **Non-consensual digital, video, or audio recording of nudity or sexual activity.**
- **Unauthorized sharing or distribution of digital, video, or audio recording of nudity or sexual activity.**

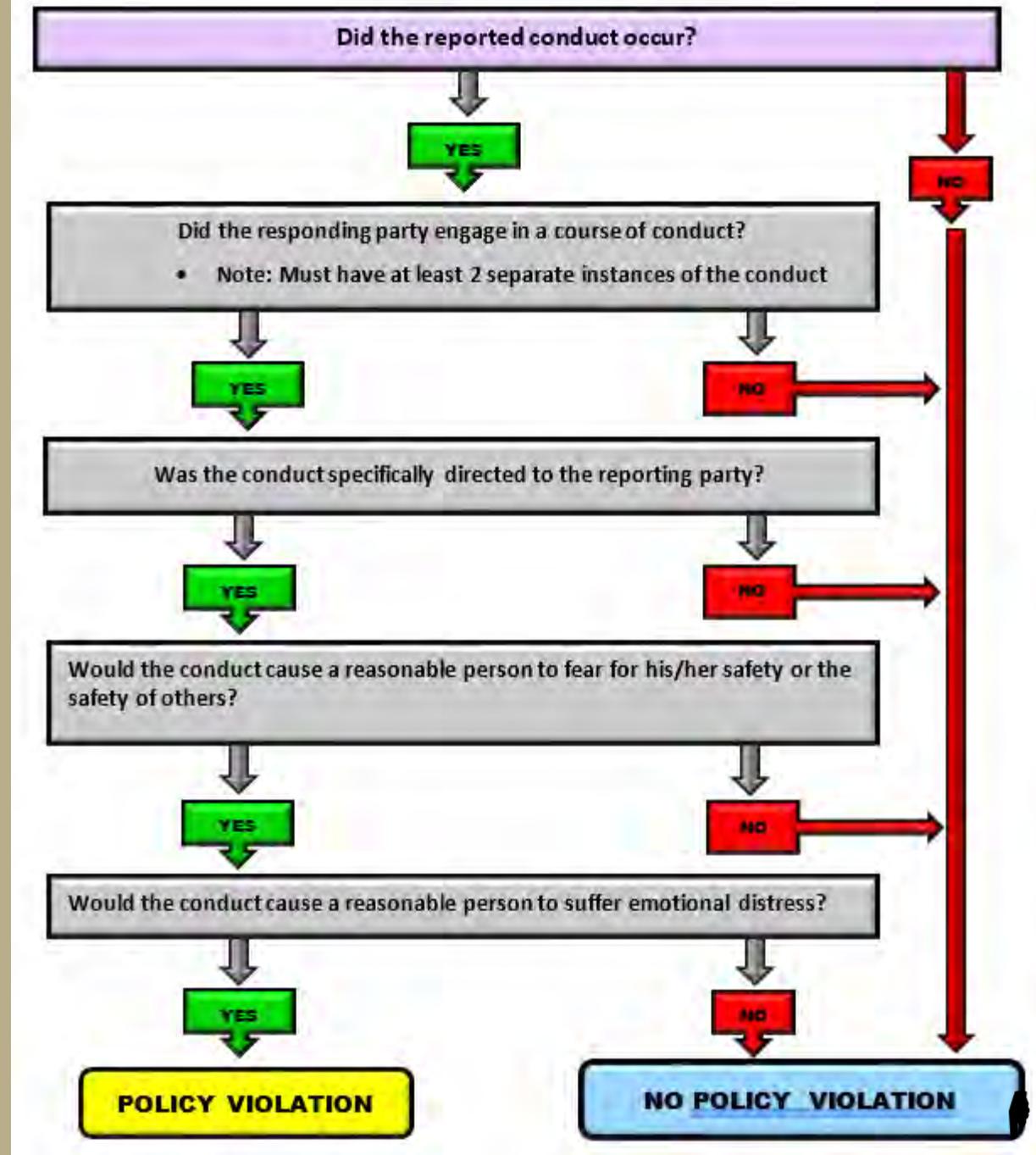


Examples continued

- **Engaging in voyeurism.**
- **Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you have consensual sex).**
- **Knowingly exposing someone to or transmitting an STI, STD, or HIV to another person.**
- **Intentionally or recklessly exposing one's genitals in nonconsensual circumstances or inducing another to expose their genitals.**
- **Sexually-based stalking and/or bullying may also be forms of sexual exploitation.**



Stalking is engaging in a course of conduct composed of a series of 2 or more separate non-continuous acts directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others and suffer emotional distress.



Intimate Partner Violence

Domestic Violence includes asserted violent behavior committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

Dating Violence means violence (physical, verbal, and/or emotional) committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

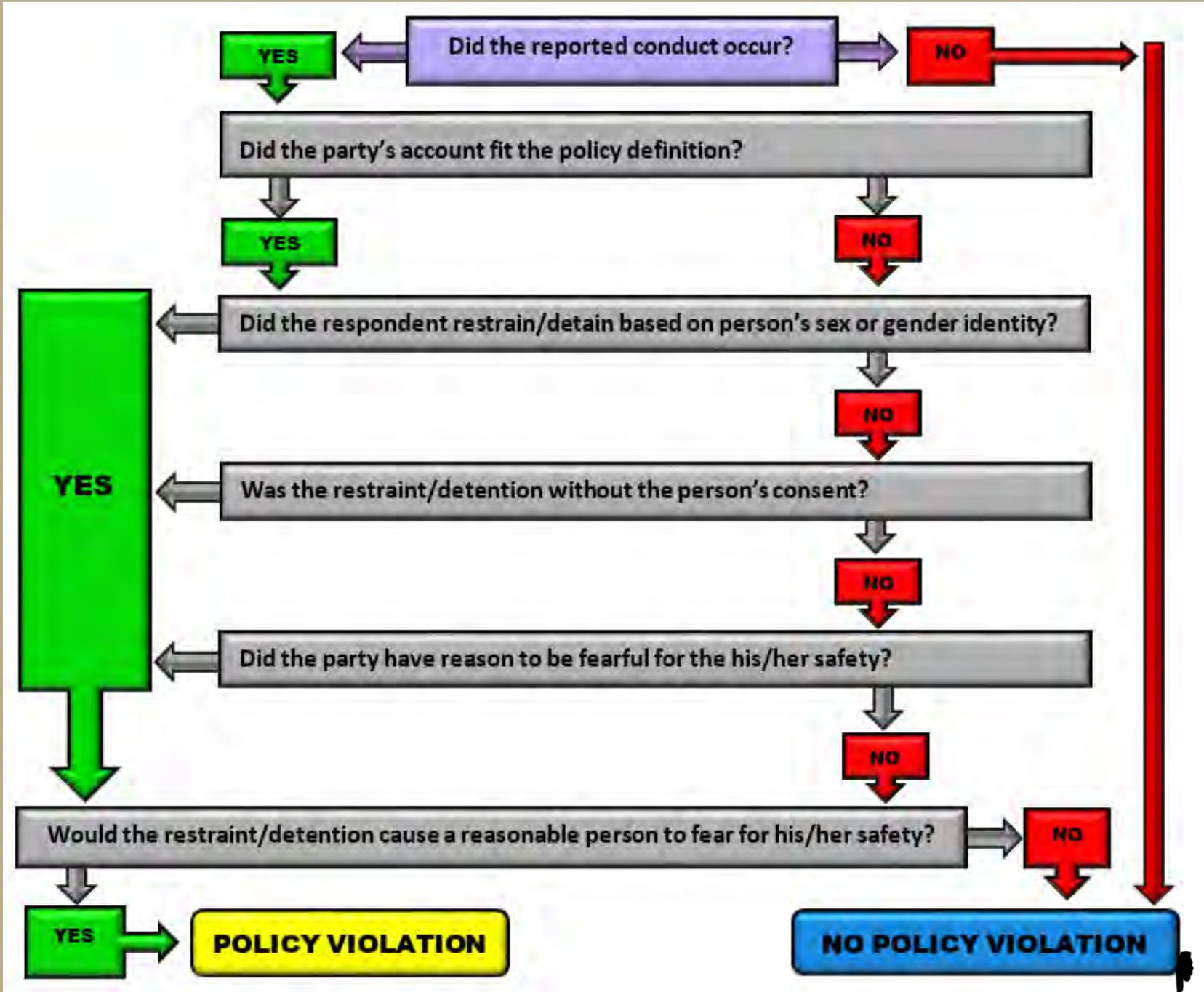
- **Note:** The states of Michigan and Wisconsin have defined stalking and domestic violence as violations of state law. The University will consider stalking behavior, domestic violence behavior, and dating violence behavior as violations of this sexual misconduct policy.

Domestic Violence is defined as a felony or misdemeanor crime of violence committed:

- by a current or former spouse or intimate partner of the complainant;
- by a person with whom the complainant shares a child in common;

Improper Restraint or Detention: The detaining of a person without the person's consent and/or against the person's will to leave is prohibited. Therefore, "Improper Restraint or Detention" can apply to any act in which a person intentionally restricts another person's freedom or liberty to move or to leave without consent. This can occur on or off campus, in a building, on the streets, in a vehicle, or any other place in which a person is restrained, against their will, from moving, whether physically, by threat, or intimidation. This can also include but is not limited to, removing that person's means of leaving (e.g. taking and/or holding someone's keys, wallet, phone, or other means that would provide that individual with the means to leave the vicinity).

- **Note:** This policy applies to restricting a person from leaving a resident hall room and/or failing to leave a resident's room when requested to do so. However, this policy does not apply to authorized personnel acting within the scope of their responsibilities (e.g. Campus Safety Officers, Resident Hall Staff).

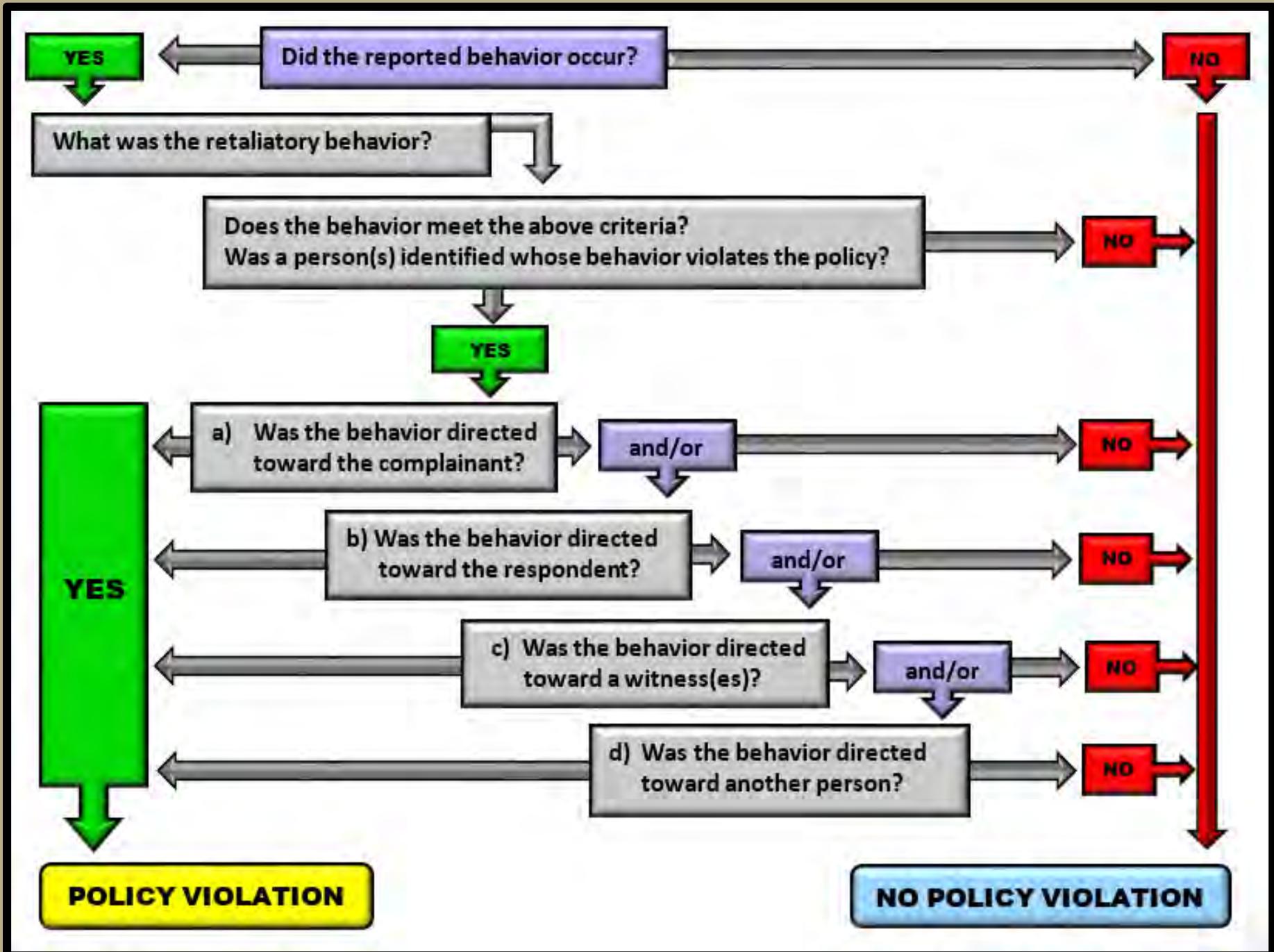


Retaliation:

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or other University policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation or other University investigation, proceeding, or hearing.

- Note 1: Acts of alleged retaliation should be reported immediately to the Title IX Coordinator, the Chief Student Affairs Officer, Dean of Students, Human Resources, or Campus Safety and will be promptly investigated. The University will take all appropriate actions to protect individuals who fear that they may be subjected to retaliation.**

- **Note 2: Charges against an individual for code of conduct/employee handbook violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.**
- **Note 3: Charging an individual with a code of conduct/employee handbook violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.**



YES

Did the reported behavior occur?

NO

What was the retaliatory behavior?

Does the behavior meet the above criteria?
Was a person(s) identified whose behavior violates the policy?

NO

YES

YES

a) Was the behavior directed toward the complainant?

and/or

NO

b) Was the behavior directed toward the respondent?

and/or

NO

c) Was the behavior directed toward a witness(es)?

and/or

NO

d) Was the behavior directed toward another person?

NO

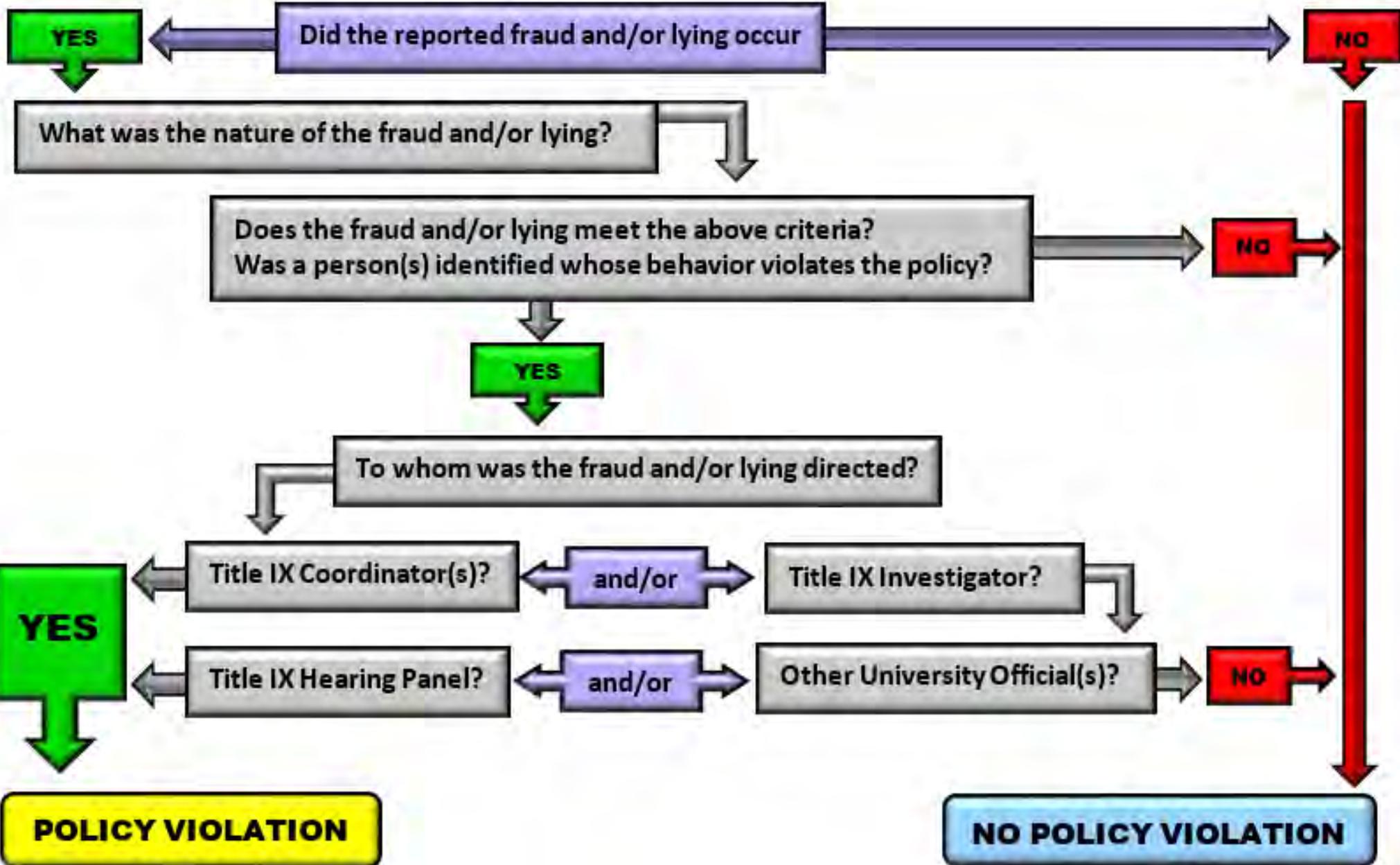
POLICY VIOLATION

NO POLICY VIOLATION

Fraud/Lying:

Lying or fraudulent behavior in, or with regard to, any transaction with the University, whether oral or written, is prohibited, . . .

. . . including but not limited to misrepresenting the truth before a hearing of the University or knowingly making a false statement orally or in writing to any University official.





**Admissibility
of
Evidence**

“Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker [AHP Chair] must first determine whether the question is relevant and explain to the party’s advisor asking cross-examination questions any decision to exclude a question as not relevant.”



Summary of Major Provisions of the Department of Education’s Title IX Final Rule, p. 7
https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=



There are two basic factors that should be considered when determining whether evidence is admissible or not. Is the evidence . . .



- **Relevant:** The evidence must prove or disprove an important fact in the case at hand. If the evidence doesn't relate to a particular fact, it is considered "irrelevant" and is therefore inadmissible.
- **Reliable:** Reliability refers to the credibility of a source that is being used as evidence. This usually applies to witness testimony.

✓ **Note:** The Title IX Coordinator, Complainant's Advisor or Respondent's Advisor may challenge any question posed to a witness asking the chair to rule on the relevance or reliability of the question.



Essentials in Determining If Evidence Is Inadmissible



- **Hearsay:** Testimony which is obtained from a third party source is not admissible.
- **Unfairly Prejudicial:** Evidence that arouses a panel member's outrage without adding any material information. For example, identifying the respondent as a member of the football team suggesting that football players often violate rules is inadmissible.
- **Wastes Time:** Several character witnesses who testify to the same character trait wastes time. Therefore, individuals wishing to speak to the character of either the complainant or respondent will not be allowed to testify.

- **Misleading:** Evidence that could draw the panel's attention away from the main issues of the case is misleading. For example, the respondent's homosexuality in a case of consensual sex with an underage person is misleading since the issue is whether the respondent had sex with a minor. The gender of the minor is irrelevant.
- **Privileges:** Evidence is often excluded if it came from a privileged source of information. The most important privileges are between attorneys, clients, licensed counselors and clergy. The parties also have the right against self-incrimination.

- **Testimony Concerning the Complainant, Respondent, or Witnesses**
- **Prior Student/Employer Misconduct:** Prior misconduct by a student or employee will not be admissible during the hearing phase. However, if the respondent is found responsible, his/her previous documented misconduct may be taken into account by the AHP during the sanctioning phase.
- **Previous Sexual Activity:** All questioning of those testifying must exclude evidence of the complainant's or respondent's previous sexual behavior or predisposition, unless such evidence is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the evidence concerns specific incidents of the complainant's sexual behavior with respect to the respondent and is offered to prove consent.

- **Alcohol and Drugs:** The Title IX Office has a long standing tradition of applying the University's "Medical Amnesty Policy" to all parties, including witnesses, in a sexual misconduct case. However, the amount of alcohol and/or drugs consumed may be very relevant in determining if a given party was incapacitated.
- **Nonparticipation:** If a party or witness does not submit to questioning at the hearing, the Administrative Hearing Panel must not rely on any statements (written or verbal) of that party or witness in reaching a determination regarding responsibility and therefore these statements are inadmissible.
- **Treatment Records:** Only admissible with written consent of the party.

Source.htm: Legal Match, <https://www.legalmatch.com/law-library/article/what-is-admissible-evidencel>



He said . . .
. . . She said



Assessing Credibility

Evaluating the Credibility of Sources



- **He Said/She Said Cases:** Because the parties have provided two different accounts of what happened during their sexual encounter and they were the only two present during the alleged incident, this case presents a situation where one person's word must be evaluated against the other's.
- **Reminder:** If a party or witness does not submit to questioning at the hearing, the Administrative Hearing Panel must not rely on any statements (written or verbal) of that party or witness in reaching a determination regarding responsibility and therefore these statements are inadmissible.

Credibility Analysis

- Weigh the evidence and credibility taking the following into account:
 - Detail and Consistency
 - Demeanor
 - Action Taken
 - Other Contemporaneous Evidence
- Credibility is the process of weighing the accuracy and the truthfulness of the evidence.



- **When assessing credibility, you must evaluate the . . .**
 - **source**
 - **plausibility of what is offered**
 - **corroborating evidence (supporting or refuting)**
 - **motive to lie (where appropriate)**
- **Panel members need to rely on their own set of experiences when assessing credibility (avoid bias and stereotyping)**
- **Ask yourself this question:**
 - **Can I explain why I believe someone or something more than another someone or something?**

- **Detail and Consistency**

- **The level of detail and consistency of each party's account should be compared in attempt to determine honesty and/or reliability.**

- **Detail**

- **Consistency**

Note: Intoxication and/or trauma can impact a person's recall.

**Process:
Getting to the
Hearing**

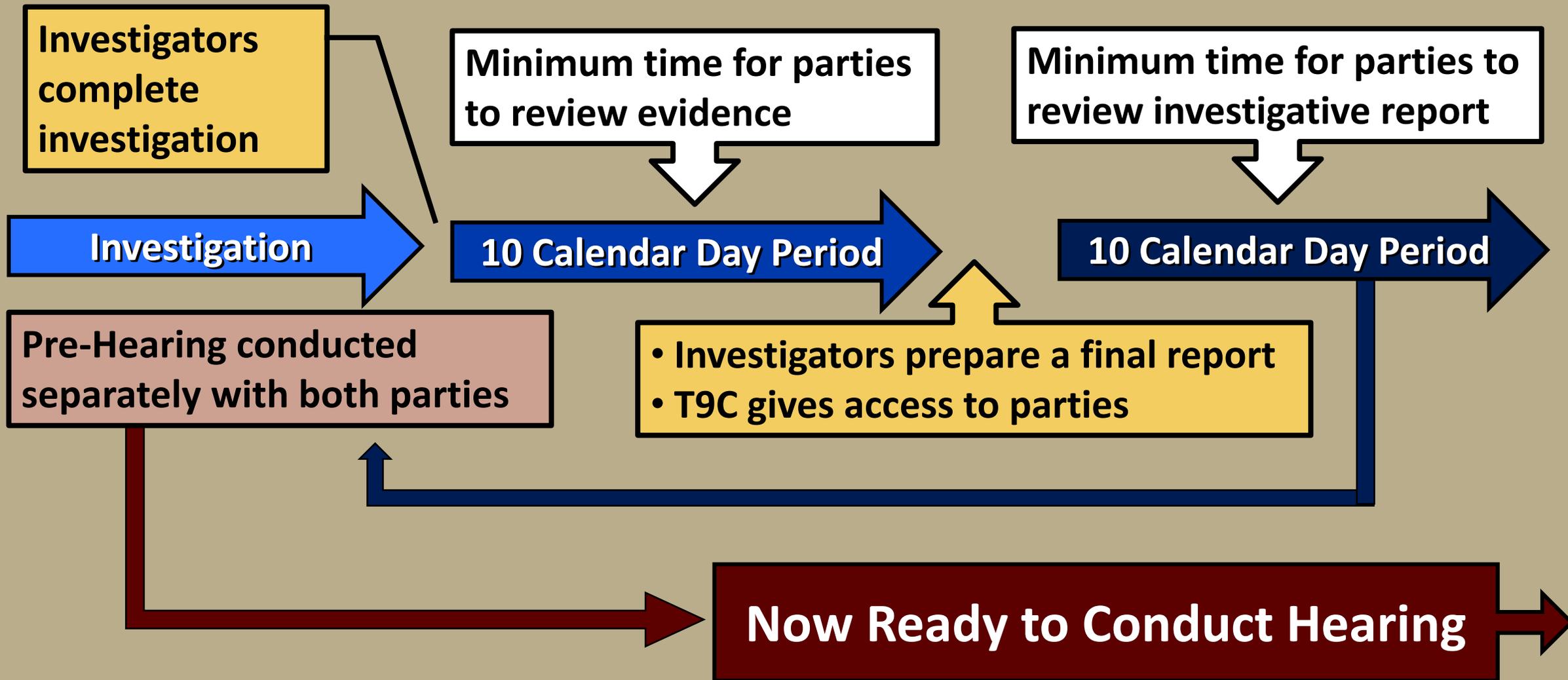




The OCR requires the University to provide a reasonable time to digest the evidence and prepare for a hearing.

§ 106.45 requires a reasonable amount of time (for example, the parties must be given an initial written notice of the allegations, the recipient must gather evidence, give the parties ten days to review the evidence, prepare an investigative report, and give the parties ten days to review the investigative report), and therefore it is unlikely that a complainant would ever be required to “immediately” undergo cross-examination following a sexual assault covered by Title IX. (p. 1090)

The Time Line





Conducting a Hearing

Hearing Decorum

- **Be professional, but not lawyerly or judge-like**
 - This is not *Law and Order* – this is an administrative process at this University.
 - You are not interrogating the parties and witnesses; you are striving to determine whether the Respondent(s) violated the institutional policy.
- **Be respectful**
 - Tone, Manner, Questioning.
 - Sarcasm or being snide are never appropriate.
 - Maintain your composure: Never allow emotion or frustration to show.

- **Work to establish a baseline of relaxed conversation for everyone in the room.**
- **Maintain good eye contact; “listen with your eyes and your ears”**
- **Listen carefully to everything that is said.**
 - **Try not to write too much when people are talking**
 - **If questioning, focus on the answer, rather than thinking about your next question**
- **Nod affirmatively**
- **Do not fidget, roll your eyes, or give a “knowing” look to another panel member**
- **Do not look shocked, smug, stunned, or accusing**



Responsibilities of the AHP Chair

- 1. Conduct a meeting with the Reporting and Responding Parties (separately) to educate the party on the process of the hearing.**
- 2. Appoint the other 2 members of the Administrative Hearing Panel (AHP)**
- 3. Notify the reporting and responding parties, and Title IX Coordinator of the date, time, and location of the hearing. Include in this notification the names of hearing panel members.**

Note: It is the responsibility of the T9C and responding party to notify their witnesses of the date, time, & location of the hearing.

- 4. Book room for the Hearing**

Note: It must be University policy to allow a Title IX Hearing to “bump out” any previous scheduled use of room.

- 5. Arrange for the video taping of the hearing.**
- 6. Notify the reporting party, responding party, and Title IX Coordinator of the date time and location of the meeting (not less than 10 days before the hearing).**
- 7. Conduct the hearing in accord with the “Administrative Hearing Panel Script”**
- 8. The hearing is closed to all persons except for the hearing panel members, complainant and respondent, one advisor for each party, any witnesses while they are testifying, the Title IX Coordinator, and any other person deemed appropriate or necessary by the Title IX Coordinator or the AHP.**

- 9. The chair will ensure that the respondent's advisor and Title IX Coordinator/designee are allowed to effectively question the witness.**
 - If the respondent does not have an advisor, the Chair will appoint an advisor to question witnesses.**

- 10. The panel chair will ensure that panel members, the respondent's advisor, and the Title IX Coordinator/designee will have the opportunity to put forth questions of those testifying. The panel chair may determine which questions are relevant and/or which are duplicative in nature. Therefore the panel chair will rule on the admissibility of evidence and may confer with panel members when making a decision.**

11. The AHP will use the “Preponderance of the Evidence” as a standard of proof.

12. Following the conclusion of the hearing, the panel will deliberate on the facts of the case and cast a vote to determine a finding. The majority opinion (2 or 3 votes) will determine the finding for the case. The AHP shall make one the following findings (findings phase):

- The respondent is not responsible for violating the Sexual Misconduct Policy,**
- The respondent is responsible for violating the Sexual Misconduct Policy, or No finding: there is not enough evidence to reach a decision.**

13. If the AHP determines that a violation has occurred, the panel will determine the appropriate sanction(s) using



the established sanctioning matrix (sanctioning phase). The panel is authorized to, when finding that aggravating or mitigating factors exist, exceed/deceed the established sanctioning parameters.

Note: Panel members may not disclose each panel member's vote or sanctioning preference. The panel speaks as one voice.

14. Within 3 business days following the hearing, do the following:

- Write Administrative Hearing Panel final report (see form).**
- Notify Reporting and Responding Parties, and Title IX Coordinator of the finding and, if found responsible, the assigned sanctions.**
- Send all pertinent exhibits not previously archived on the “S Drive” to the Title IX Coordinator for archiving purposes including video tape of the hearing.**

See Document 2: Administrative Hearing Panel Procedure: General Outline

Duties of Hearing Board Members

- ✓ **Not less than 5 days before the hearing, access the secure case file.**

Directions:

- ✓ **Read the material therein**
 - **Interview Notes**
 - **Investigator's Final Report**
 - **Any Exhibits (e.g. emails, text messages, video tapes, social media posts)**

The Hearing: Order of the Process



Now go to . . .



Document 1



Document 2



Document 3 and

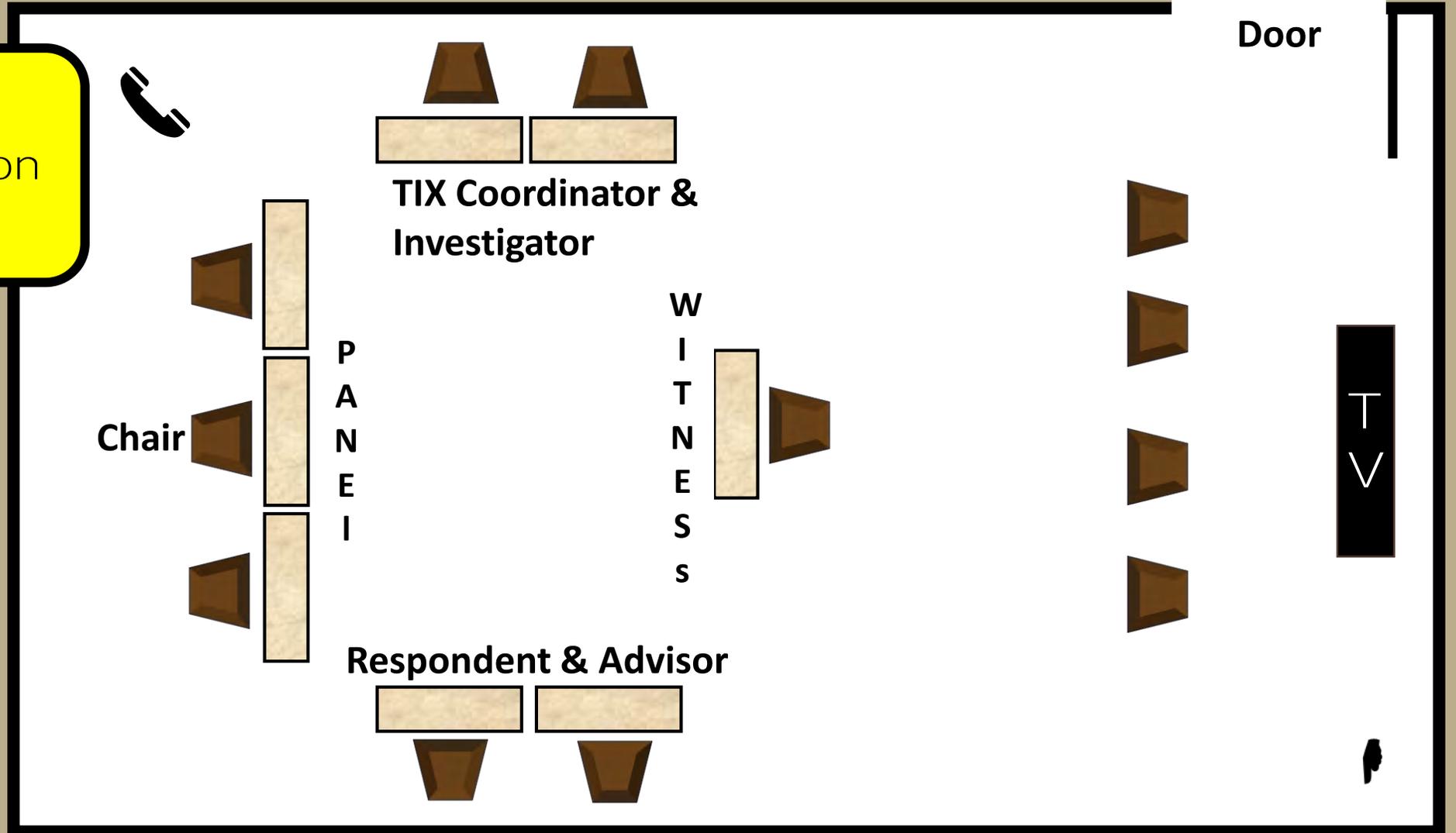


Document 4

The Room Set - Up

Note: The Reporting party will join the hearing via Zoom from another conference room or Title IX staff office. Place a sign outside the room reading **“Closed Meeting in Progress”**.

Document 1
Recommendation
for AHP Chair



The Hearing

Administrative Hearing Panel Procedures

1. Call to Order
 - a. Introduction of Administrative Hearing Panel (AHP) and Title IX Staff
 - b. Introduction of participants (complainant, respondent, witnesses)

2. Opening Remarks

- a. Hearing Proceeding**
- b. Disruptive Behavior**
- c. Confidentiality and FERPA**
- d. Hearing Records**
- e. Advisor Responsibilities**
- f. False and Misleading Statements**



3. Witnesses Are Dismissed

4. Presentation of Formal Allegations – Title IX Coordinator

- Allegations read into the record**

Rules on Questioning

All questions must be first directed to the AHP Chair so that the Chair may determine if the question is relevant to the issues at hand.

Office for Civil Rights
U.S. Department of Education



Witness Questioning by Respondent Side

*Such cross-examination at a hearing **must be conducted by the party's advisor of choice**, notwithstanding the discretion of the recipient under subsection 106.45(b)(3)(iv) to otherwise restrict the extent to which advisors may participate in the proceedings. **If a party does not have an advisor present at the hearing, the recipient must provide that party an advisor aligned with that party for to conduct cross-examination.***

Dept of Education, Office for Civil Rights
Notice of proposed rulemaking

<https://www2.ed.gov/about/offices/list/ocr/docs/title-ix-nprm.pdf>

5. Presentation of Investigative Facts by Investigator(s)

- a. Questions by Complainant**
- b. Questions by Respondent**
- c. Questions by AHP**
- d. Questions by AHP of Complainant**
- e. Questions by AHP of Respondent**
- f. Follow-Up Questions by any of the above**

6. Witnesses

- a. Questions by AHP**
- b. Questions by Complainant**
- c. Questions by Respondent**
- d. Follow-Up Questions by any of the above**



7. Questioning by the Parties

a. Questions by Complainant

b. Questions by Respondent

c. Questions by AHP

d. Follow-Up Questions by any of the above

8. Final Statements (limit of 5 minutes per party)

a. Complainant

b. Respondent

9. AHP Moves Into Executive Session

a. Statement on Deliberations

b. All persons dismissed from the hearing

10. Deliberations by AHP



The Deliberation:

- The panel may take a brief recess before beginning deliberations.

Note: *The panel chair will remind panel members that they are bound not to disclose their vote or the vote of the other members of the panel regarding anything that took place in deliberations (findings and sanctions). The AHP speaks as one.*

- **Finding of Fact:** The panel chair will lead the discussion on facts of the case. When all have had an opportunity to discuss the facts of the case, a vote of the 3 member panel will be taken. The finding of the AHP will be the majority of the panel members. If the finding is for “*not responsible*”, the panel may choose to render a “*no finding*” decision. If the finding is “*responsible*” the panel members will determine the sanctions.

Sanctions

Elements of this section taken from:
ATIXA 2018 Whitepaper
*The ATIXA Guide to Student Sexual
Misconduct Violations*



A Sanctioning Philosophy



“Rarely are two incidents of sexual misconduct identical, thus requiring [Concordia U.] to tailor sanctions to the context and circumstances of the particular behavior . . .

[E]ach sexual misconduct violation should allow for a range of sanctions, where a violation that is more egregious receives more severe sanctions within the allotted range and a less egregious violation results in less severe sanctions within the same range.”



5 MINUTE
TIME-OUT

ATIXA
Sanctioning Guide



Determining the Appropriate Sanction



The Goal:



The objective is to sanction a responding party in proportion to the severity of the conduct.

Severity and Egregiousness: The first thing for a hearing panel to consider is whether any extraordinary, flagrant, or blatant factor(s) are present in this case.

Examples:

- **Deliberately pressured a person to consume alcohol vs the person had self-incapacitated**
- **Use of physical violence, threats, a weapon to engage in sexual activity**

Consistency: The hearing panel, when considering a sanction, should assess the behavior relative to previous violation(s) of the same type.

Example:

- John is a freshman and you find him responsible, in October, for violating Non-Consensual Sexual Intercourse and sanction him with a one year suspension.
- Months Later you find Robert responsible for the same violation (similar circumstances). How would you sanction him if . . .
 - It is May 1
 - Robert is a Senior graduating in 2 weeks

Previous History: Previous misconduct may be taken into consideration when the panel sanctions a responsible party.

- Title IX Coordinator gives this envelope to Hearing Panel Chair before hearing begins. If the finding is . . .

NOT RESPONSIBLE

Chair returns the envelope to T9C unopened.



*Do Not Open Until
Sanctioning Phase*

John Doe

RESPONSIBLE: chair opens envelope

Mr./Ms.[Name] has no previous violations

Mr./Ms. [Name] has the following previous violations . . .

Mitigating & Aggravating Factors: Sexual misconduct cases may contain “mitigating” and/or “aggravating” factors. These are factors which tend to render a violation either more or less egregious than other violations of the same policy.

- Sanctioning is not an exact science but it is not entirely subjective. A panel’s meticulous evaluation of each circumstantial factor should provide the panel with the ability to articulate a sound, **evidence-based**, and **situation-specific rationale** in support of the sanction(s) they impose for a particular violation.

Mitigating & Aggravating Factors (cont'd.)

Example:

Stalking behavior may take different types of behavior. The AHP should differentiate menacing from non-menacing behavior. Where the former embodies a more severe and intentionally malicious type of behavior, the latter represents a more benign and often inadvertent, “lurking” type of behavior. Though both may constitute a violation of the same stalking policy the inherent severity of these different types of stalking behaviors are notably different.

Cumulative Violations: Incidents of sexual misconduct can also include violations which are outside of the sexual misconduct policy (in the “Code of Student Conduct”/“Employee Handbook”) but will fall under the sexual misconduct umbrella, such as (non-sexual) physical assault, threats, bullying, theft, hazing, etc.

- The general rule for sanctioning cumulative violations is to sanction per violation. In other words, each violation must first be assessed independently, then considered within the broader context. Cumulative violations should be considered as an aggravating factor, but, depending on the circumstances, they can also constitute a compounding factor, serving to bump the sanctioning range.

Cumulative Violations (cont'd.) R = Respondent

Examples of these scenarios include, but are not limited to:

- R engages in multiple violations of the **same policy** in a **single incident**,
- R engages in multiple violations of **different policies** in a **single incident**,
- R engages in multiple violations involving the **same complainant** over **multiple incidents**, either of the same policy or of different policies,
- R engages in violations of the **same policy** involving **different complainants**, either in a **single incident** or over **multiple incidents**, or
- R engages in violations of **multiple policies** involving **different complainants**, either in a **single incident** or over **multiple incidents**.



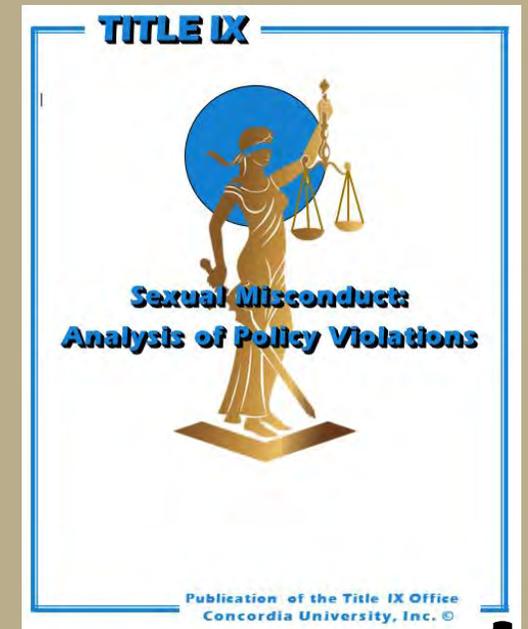
Sexual Misconduct Sanctions for Students



The sanctions below apply to individuals who have been found responsible for violating the University Sexual Misconduct Policy. Therefore, the general University Code

of Student Conduct adjudication process and sanctions do not apply to the Sexual Misconduct Policy.

p. 22 →



Note 1: Because sexual misconduct can manifest itself in a range of severity, the University has established 3 levels of severity. The Title IX Coordinator or Administrative Hearing Panel reserves the right to evaluate the gravity of the student's behavior and impose any of the sanctions listed below.

Note 2: Individuals with previous violations of the Sexual Misconduct Policy or previous Code of Conduct/Academic violations will be sanctioned at a higher level. Sexual Misconduct violations accumulate over the student's entire academic career. The Title IX Coordinator or Administrative Hearing Panel has the authority to sanction outside the parameters of this matrix for mitigating or aggravating case factors. Fines and points will not be assessed for suspension or expulsion sanctions.



Definition of Sanctioning Terms

Reprimand: An official written notice that the student has violated University policies and that more severe conduct action will result should the student engage in additional violations while enrolled at the University.

University Probation: Any subsequent violation of the University Sexual Misconduct Policy during the specified probationary period will result in suspension or expulsion.

Education or Remediation: Assigned action intended to educate or correct behavior that resulted in a violation of the University Sexual Misconduct Policy. The assigned action may include, but is not limited to, online education program; counseling; and/or mediation.

Points: Points are awarded for violations as listed in the “Sexual Misconduct Sanction Matrix for Students”. Yearly points awarded for violations occurring after room selection of the current year carry over to the next academic year. Current resident students who accumulate more than 19 points in the current year are not eligible to participate in the following year's room selection process. All accumulated points affect a student's housing priority. All students who accumulate a yearly student conduct point total of more than 24 points (including Code of Student Conduct points) are subject to immediate resident hall suspension or expulsion or University suspension or expulsion.

Note: It will not be necessary for points to be awarded when the sanction results in either suspension or expulsion from the University.



No Contact Order (NCO): A NCO requires that both parties refrain from contacting the other party through any means (e.g. fact-to-face, in writing, through friends or other persons, electronically/ social media). A NCO will stay in effect until such time as both parties are officially notified in writing that the NCO has been terminated. Violations of the NCO will be considered a form of retaliation.

Relocation: Relocation, for resident students, to another resident hall floor or hall; Assignment to another academic class section.

Facility Ban: The inability to enter, use, or access a specific building, facility, or area of campus or off campus activity/event for a specified period of time.



Campus Employment Termination: This sanction is a separation from all campus employment for a specific period of time.

Suspension: Separation from the University for a specified period of time after which the student is eligible to return subject to the satisfaction of specific conditions noted at the time of suspension. The student is typically required to vacate the campus within 24 hours of notification of the action, though this deadline may be extended upon application to the Title IX Coordinator. During the suspension period, the individual is banned from University property, University functions (on and off campus), events, and activities unless the individual receives prior written approval from the Title IX Coordinator.



Expulsion (only for students): This sanction is a permanent separation from the University. The student is typically required to vacate the campus within 24 hours of notification of the action, though this deadline may be extended upon application to the Title IX Coordinator. The student is banned from University property and the student's presence at any University-sponsored activity or event (on or off campus) is prohibited. This action may be enforced with a trespass action, as necessary.



Sanction Matrix for Students Conduct (Code Article 2)

Policy Violation Article 2	Level	Fee	Points	Probation	Education/Remediation/Other
§ D1 (a,b) Sexual Harassment or § D7 Sexual Harassment	1	\$50 - \$100	2-5	Up to 6 months	<ul style="list-style-type: none"> • Education or Remediation • Relocation • No Contact Order
	2	\$100 - \$200	4-6	6 – 9 Months	
§ D2 (a,b,c,e,f) Sexual Assault or § D8 Non-Consensual Intercourse	2	\$100 - \$200	6-9	12 months	<ul style="list-style-type: none"> • Education or Remediation • Relocation • No Contact Order • Facility Ban
	3	<ul style="list-style-type: none"> • Suspension: Minimum 12 months, complete counseling before return, probation for 12 months upon return; No Contact Order or • Expulsion 			
§ D2 (d) Forcible Fondling or § D9 Non-Consensual Sexual Contact	2	\$100 - \$200	6-9	12 months	<ul style="list-style-type: none"> • Education or Remediation • Relocation • No Contact Order • Facility Ban
	3	Suspension: Minimum 6 months, complete counseling before return, probation for 12 months upon return; No Contact Order			
§ D3 or D12 Dating Violence § D4 or D13 Domestic Violence	1	\$50 - \$100	2-5	Up to 6 months	<ul style="list-style-type: none"> • Education or Remediation • Relocation • No Contact Order • Facility Ban
	2	\$100 - \$200	4-6	6 – 9 Months	
	3	Suspension: Minimum 6 months, complete counseling before return, probation for 12 months upon return; no contact order to complainant during time as a student			
§ D5 Stalking or § D11 Stalking	1	\$50 - \$100	2-5	Up to 6 months	<ul style="list-style-type: none"> • Education or Remediation • Relocation • No Contact Order • Facility Ban
	2	\$100 - \$200	6-9	12 months	
	3	Suspension: Minimum 6 months, complete counseling before return, probation for 12 months upon return; No Contact Order			

Policy Violation Article 2	Level	Fee	Points	Probation	Education/Remediation/Other
§ D6 Retaliation or § D14 Retaliation	1	\$50 - \$100	2-5	Up to 6 months	No contact order (minimum 6 months)
	2	\$100 - \$200	4-6	6 – 9 Months	<ul style="list-style-type: none"> • Education or Remediation • Relocation • No Contact Order • Facility Ban
	3	Suspension: Minimum 6 months, complete counseling before return, probation for 12 months upon return; no contact order to complainant during time as a student			
§ D 10 Sexual Exploitation	1	\$50 - \$100	2-5	Up to 6 months	<ul style="list-style-type: none"> • Education or Remediation • Relocation • No Contact Order • Facility Ban
	2	\$100 - \$200	4-6	6 – 9 Months	
	3	Suspension: Minimum 6 months, complete counseling before return, probation for 12 months upon return; no contact order to complainant during time as a student			
§ D15 Improper Restraint or Detention	1	\$50 - \$100	2-5	Up to 6 months	<ul style="list-style-type: none"> • Education or Remediation • Relocation • No Contact Order • Facility Ban
	2	\$100 - \$200	4-6	6 – 9 Months	
	3	Suspension: Minimum 6 months, complete counseling before return, probation for 12 months upon return; No Contact Order			
§ 16 Fraud/Lying	1	\$50 - \$100	2-5	Up to 6 months	No Contact Order to complainant, respondent, or witness
	2	\$100 - \$200	4-6	6 – 9 Months	



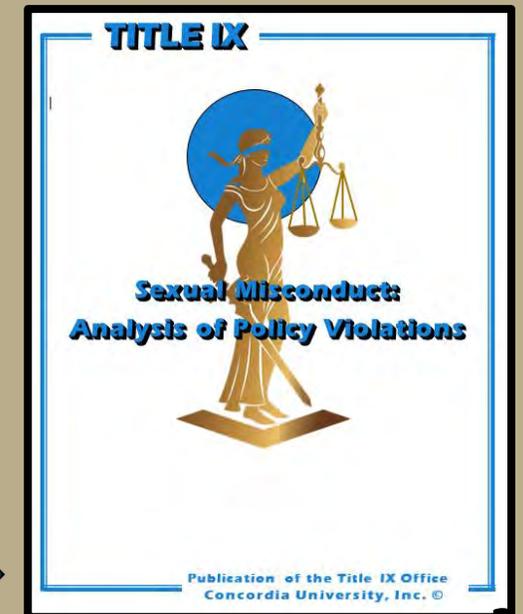
Sexual Misconduct Sanctions For Employees

The sanctions below apply to employees who have been found responsible for violating the University Sexual Misconduct Policy.

Note 1: Because sexual misconduct can manifest itself in a range of severity, the University has established 3 levels of severity. The Title IX Coordinator or Administrative Hearing Panel reserves the right to evaluate the gravity of the student's behavior and impose any of the sanctions listed below.

Note 2: Individuals with previous violations of the Sexual Misconduct Policy or previous Employee Handbook violations will be sanctioned at a higher level. The Title IX Coordinator or Administrative Hearing Panel has the authority to sanction outside the parameters of this matrix for mitigating or aggravating case factors.

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Definition of Sanctioning Terms

Reprimand: An official written notice that the employee has violated University policies and that more severe action will result should the employee engage in additional violations while employed by the University.

University Probation: Notice that any subsequent violation of the University Sexual Misconduct Policy during the specified probationary period will result in employment termination.

Education or Remediation: Assigned action intended to educate or correct behavior that resulted in a violation of the University Sexual Misconduct Policy. The assigned action may include, but is not limited to, online education program; counseling; and/or mediation.

No Contact Order (NCO): A NCO requires that both parties refrain from contacting the other party through any means (e.g. fact-to-face, in writing, through friends or other persons, electronically/ social media). A NCO will stay in effect until such time as both parties are officially notified in writing that the NCO has been terminated. Violations of the NCO will be considered a form of retaliation.

Facility Ban: The inability to enter, use, or access a specific building, facility, or area of campus or off campus activity/event for a specified period of time.

Suspension: Separation from the University for a specified period of time after which the employee is eligible to return subject to the satisfaction of specific conditions noted at the time of suspension. The employee is typically required to immediately vacate the campus upon notification of the action, though this deadline may be extended upon application to the Title IX Coordinator. During the suspension period, the employee is banned from University property, functions (on and off campus), events, and activities unless the employee receives prior written approval from the Title IX Coordinator.

Employment Termination: This sanction is a permanent separation from the University. The employee is banned from University property and the employee's presence at any University-sponsored activity or event (on or off campus) is prohibited. This action may be enforced with a trespass action, as necessary.

Sanction Matrix for Employees (Employee Handbook)

Policy Violation	Level	Sanction (some or all listed below)
§ 4.3.7.1 <u>Sexual Harassment</u> or § 4.3.7.7 <u>Sexual Harassment</u>	1	Verbal Warning
	2	<ul style="list-style-type: none"> • Reprimand • Education or Remediation • No Contact Order • Facility Ban
	3	Employment Termination
§ 4.3.7.2 (a,b,c,e,f) <u>Sexual Assault</u> or § 4.3.7.8 <u>Non-Consensual Sexual Intercourse</u>	3	Employment Termination
§ 4.3.7.2d <u>Sexual Assault - Forcible Fondling</u> or § D9 <u>Non-Consensual Sexual Contact</u>	2	<ul style="list-style-type: none"> • Reprimand • Education or Remediation • No Contact Order • Facility Ban
	3	Employment Termination
§ 4.3.7.3 <u>Dating Violence</u> or § 4.3.7.12 <u>Dating Violence</u> § 4.3.7.4 <u>Domestic Violence</u> or § 4.3.7.13 <u>Domestic Violence</u>	2	<ul style="list-style-type: none"> • Reprimand • Education or Remediation • No Contact Order • Facility Ban
	3	Employment Termination
§ 4.3.7.5 <u>Stalking</u> or § 4.3.7.11 <u>Stalking</u>	1	Reprimand
	2	<ul style="list-style-type: none"> • Reprimand • Education or Remediation • No Contact Order • Facility Ban
	3	Employment Termination

Policy Violation	Level	Sanction (some or all listed below)
§4.3.7.6 <u>Retaliation</u> or § 4.3.7.14 <u>Retaliation</u>	1	Verbal Warning
	2	<ul style="list-style-type: none"> • Reprimand • Education or Remediation • No Contact Order • Facility Ban
	3	Employment Termination
§ 4.3.7.15 <u>Improper Restraint/ Detention</u>	2	<ul style="list-style-type: none"> • Reprimand • Education or Remediation • No Contact Order • Facility Ban
	3	Employment Termination
	3	Employment Termination
§4.3.7.16 <u>Fraud/Lying</u>	2	<ul style="list-style-type: none"> • Reprimand • Education or Remediation • No Contact Order Facility Ban
	3	Employment Termination



Writing the Final Report

A Template Form Is Available

CONCORDIA UNIVERSITY
— WISCONSIN & ANN ARBOR —

**ADMINISTRATIVE HEARING PANEL'S (AHP)
REPORT OF HEARING FINDINGS**

Date of Hearing: 10/8/2020 Beginning Time: 3:00 pm Room: AL 109

Those Present for the Hearing

AHP Chair: Steve Taylor AHP Member: Elizabeth Polzin

AHP Member: William Cario

Title IX Coordinator: Andrew Luptak Title IX Coordinator: Marie Terlinden

Reporting Party: Jane Roe Responding Party: John Doe

Witnesses: Type all witness Names

You already have a lot of material that you can use in this report.

- ✓ Investigator's Interview Notes
- ✓ Investigator's Final Report
- ✓ Any Exhibits (e.g. emails, text messages, video tapes, social media posts)
- ✓ Questioning in Hearing (your notes)
- ✓ Verbal and Non-verbal responses (your recollections)

- Rephrase or quote in your final report
- Remember, you cannot consider any evidence that was not able to be cross-examined

See

Document 4

Document 5

The Deliberation

- ✓ *The panel chair will remind panel members that they are bound not to disclose their vote or the vote of the other members of the panel regarding anything that took place in deliberations (findings and sanctions).*

[Finding of Fact]: The panel chair will lead the discussion on facts of the case.

- ✓ **The finding will be determined by a majority vote of the panel members.**
- ✓ **Sanctions**



The Appeal

Appeal Requirements

- 1. The Complainant (party) or Respondent (party) may submit a written appeal using the Request for Appeal form (hereafter “RFA”) to the Appeal Officer through the Title IX Coordinator.**
- 2. The written appeal will be sent to the Title IX Coordinator who will forward the appeal to the appropriate Appeal Officer and the other parties.**
- 3. Any party to a complaint may only file one appeal per incident, exigent circumstances notwithstanding.**
- 4. Sanctions instituted by the Administrative Hearing Panel are to be implemented following the appeal determination.**



- 5. The presumptive stance of the Appeal Officer is that the Administrative Hearing Panel (hereafter AHP) finding(s) and sanction(s) were correct in their finding. The burden is on the party to show that an error occurred as outlined below in the Grounds for Appeal.**
- 6. Appeals are not intended to be re-interviews of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original investigation and adjudication of the case. Interviewing of or testimony by the parties is not appropriate - exigent circumstances notwithstanding.**
- 7. The Appeal Officer may, at his/her discretion, request information regarding procedure from the Investigator, Title IX Coordinator, or Hearing Panel Chair. Ideally, this information would not be necessary, as it should be included in the written requests and/or responses.**



Procedures for Appeals

1. Following the conclusion of an AHP, both parties are required to daily check their University email for the notification of the AHP findings.
2. The RFA must be submitted within 3 business days of notification of the AHP's findings and include all evidence substantiating the appeal. The appeal form can be found on the Portal as follows:
Log onto the Portal: Resources Tab > Title IX Compliance > Click Here > Appeal Form
3. Any RFA not filed in a timely fashion will be denied. No exceptions to this timeline are permissible without the express permission of the Appeal Officer.



- 4. Any RFA will be shared with all parties (Complainant, Respondent, Title IX Coordinator, and AHP Chair) who may respond in writing to the Appeal Officer.**
- All responses must be submitted to the Appeal Officer within three (3) business days of the notification that an appeal has been filed and all responses will be shared with all parties. Any RFA will be shared with all parties (Complainant, Respondent, Title IX Coordinator, and AHP Chair) who may respond in writing to the Appeal Officer.**

Grounds for Appeal

1. A procedural error or omission occurred that significantly impacted the outcome of the process (e.g. material deviation from established procedures).
2. To consider new evidence, unavailable during the original investigation or adjudication, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
 - **NOTE:** When a party fails to provide a statement/evidence (e.g. under advice of counsel/advisor) during an investigation, and subsequent to the interview/hearing decides to provide the statement/evidence, it will not be considered “new evidence” for the purposes of this ground. Additionally, subsequent findings of a criminal or civil court (e.g. dismissals, plea bargains, settlements) alone do not constitute sufficient grounds for appeal, but may be considered if new evidence was the grounds for said finding.



- 3. A conflict of interest or bias by an investigator, coordinator, or AHP member that substantially impacted the outcome of the investigation or adjudication.**
 - NOTE: Parties have the ability to address an investigator's, coordinator's, or AHP member's potential conflict of interest or bias for or against a given party at the time of notification of the individual's involvement in the case. Therefore, in the appeal, the party must explain why the party did not exercise this opportunity at the time the investigator, coordinator, or AHP member's name was disclosed.**

Appeals Under Consideration

1. The Appeal Officer, after considering the original appeal and all associated responses, will make a decision on the appeal and communicate one of the following determinations within three (3) business days of receiving the final response - exigent circumstances notwithstanding.

The decisions are limited to the following:

- a. Affirming the decision of the original AHP.

- b. In cases where it is determined that the procedural error did significantly impact the finding or sanction, the Appeal Officer will require one of the following two remedies:**
- Remand the case back to the original coordinators, investigators and/or AHP with instruction to repair the procedural error.**
 - Remand the case back to be reinvestigated by new investigators, new coordinator, and/or new AHP. This is typically done in cases where the procedural error is so profound as to render the original investigation and/or adjudication too biased or influenced.**



- 2. In cases where it is determined that the new evidence, unavailable during the original investigation, is now available and could substantially impact the original finding or sanctions of the AHP, the Appeal Officer will remand the case back to the original AHP with instruction to consider the new evidence.**
 - In this cases, the original AHP will convene solely to consider the new evidence.**

And Now . . .



**It's your turn to
practice what you
know . . .
have learned!**



Scenario 3:

Read Scenario 2 – front side only



I Have A
Question



**You are Now a member
of the Title IX Staff**



That's all Folks!