

UConn

HEARING BODY TRAINING

June 2022



AGENDA

- Introductions (brief)
- Updates
- Review of Basics
- Hearing Deep Dive
- Letter Writing
- Appeals



INVESTIGATIVE REPORT UPDATE

CREATING THE JOB DESCRIPTION

COMMITMENT

Time (pre, during, post-deliberation,
letter writing, approx 10-20 hrs per
hearing)
Emotional and Intellectual Energy

SKILLS

Humility
Evaluate Evidence (relevance &
weight)
Curiosity
Problem Solving
Questioning/Active Listening
Educational/restorative perspective

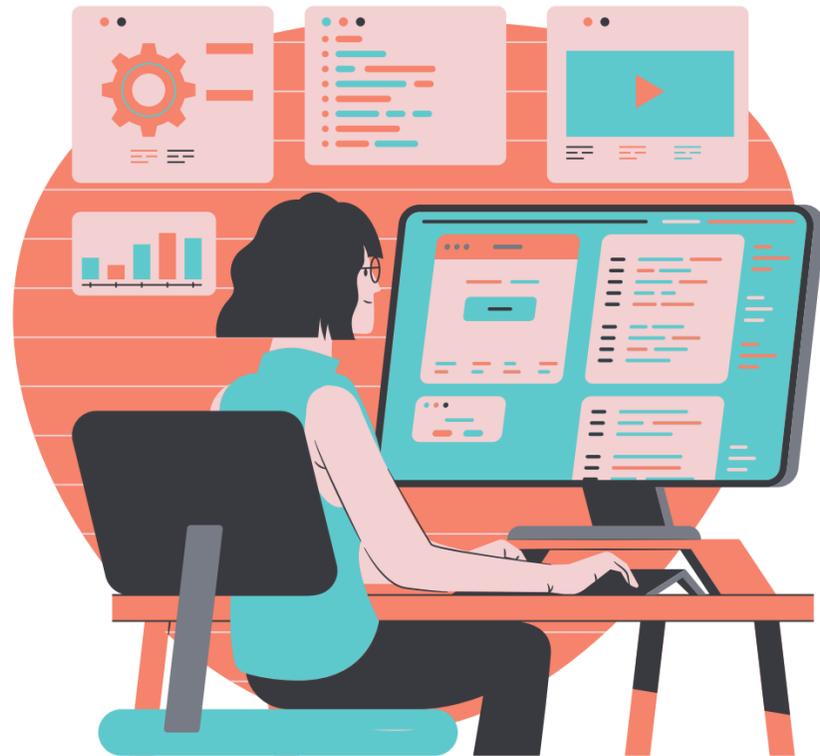
ADAPTABILITY

Change mind based on evidence
Self-reflection/awareness of biases
Resilience: Professional and Personal

COMMUNICATION

Verbal and Written
Ability to Work Effectively as Team

RESPONSIBILITIES



The role of a Hearing Officer is to attend hearings and listen to the information presented by the complainant, respondent, and witnesses. By objectively looking at the evidence and statements presented at the hearing, Hearing Officers will determine whether or not the respondent is found, or not found, in violation of the Policy using the preponderance standard.

If a respondent is found in violation, the Hearing Officers discuss and issuing appropriate sanctions and remedial measures.

The role of the Hearing Chair is to control the ebb and flow of a case.



REVIEW

REQUIRED TRAINING COMPONENTS

Definitions

Assumption of not in violation

Unbiased investigators, decision makers,
TIXCs

Must follow our own policies/processes (in
addition to the law)

TIX DEFINITIONS

TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 (20 U.S.C. §1681, ET SEQ.) AND ITS IMPLEMENTING REGULATIONS (34 C.F.R. PART 106) PROHIBIT DISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES:

“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.”

TIX DEFINITIONS**

Conduct:

§ On the basis of sex,

§ that occurs within the institution's education program or activity,

§ within the United States, and

§ Involves

Title IX sexual harassment

- An institution's employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct OR
- Unwelcome conduct that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity;

TIX DEFINITIONS**

UConn's Educational Program of Activity

- locations, events, or circumstances
- over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred,
- and also includes any building owned or controlled by a student organization that is officially recognized by a post secondary institution (such as a fraternity or sorority house).
- Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off-campus (but not internationally). A school may address sexual harassment affecting its students or employees that falls outside Title IX's jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.

TIX DEFINITIONS**



Sexual Assault
Domestic Violence
Dating violence
Stalking

SEXUAL ASSAULT

RAPE: 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, without the consent of the victim.

FONDLING: 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 or physical incapacity.

INCEST: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

STATUTORY RAPE: Non-forcible sexual intercourse with a person who is under the statutory age of consent. (Age of consent is 16 in CT, so anyone 15 or younger cannot consent; slightly more complicated.)

CONSENT

"Affirmative consent" means an active, clear and voluntary agreement by a person to engage in sexual activity with another person

Consent is an understandable exchange of affirmative words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity.

Consent must be informed, freely and actively given. It is the responsibility of the initiator to obtain clear and affirmative responses at each stage of sexual involvement. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. The lack of a negative response is not consent.

An individual who is incapacitated by alcohol and/or other drugs both voluntarily or involuntarily consumed may not give consent. Past consent of sexual activity does not imply ongoing future consent.

CONSENT

Force: is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and/or coercion that overcome resistance.

Coercion: is unreasonable pressure for sexual activity. Coercion is more than an effort to persuade, entice, or attract another person to have sex. Conduct does not constitute coercion unless it wrongfully impairs an individual's freedom of will to choose whether to participate in the sexual activity.

Incapacitation: is a state where an individual cannot make rational, reasonable decisions due to the debilitating use of alcohol and/or other drugs, sleep, unconsciousness, or because of a disability that prevents the individual from having the capacity to give consent. Intoxication is not incapacitation and a person is not incapacitated merely because the person has been drinking or using drugs. Incapacitation due to alcohol and/or drug consumption results from ingestion that is more severe than impairment, being under the influence, drunkenness, or intoxication. The question of incapacitation will be determined on a case-by-case basis. Being intoxicated or incapacitated by drugs, alcohol, or other medication is not a defense to any violation of this Policy.

DATING VIOLENCE

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and

(i) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(ii) For the purposes of this definition—

(A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(B) Dating violence does not include acts covered under the definition of domestic violence.

DOMESTIC VIOLENCE

- Any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under Connecticut domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Connecticut.

STALKING

(i) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(A) Fear for the person's safety or the safety of others; or

(B) Suffer substantial emotional distress.

(ii) For the purposes of this definition—

(A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

(C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

HEARING PREP: 99% OF THE JOB

GOALS

- Understanding of non-contested facts/timeline
- Identification of missing information that is necessary to make a determination
- Developing questions and questioning strategy
- Technology



HEARING PREP MEETING

Hearing Body Members

- read entire file prior to meeting
- come with questions, ideas, concerns

Director of Community Standards/Hearing Coordinator

- ensure file is appropriately prepped and shared



PREP MEETING



REVIEW

Policy Implicated (broken down)

Hearing Officer agreement regarding information still needed to make a determination about the policy ?

Hearing Chair: Need to make any adjustments to hearing script?

QUESTION DEVELOPMENT

What questions will illicit information necessary to make a determination about the policy?

For each party and witness:

Strategy (big to small, open to closed, chronological, not)

Who is taking the lead on what?

TECHNOLOGY (HEARING CHAIR)

WHO
WHEN
WHERE
HOW
WHAT
WHY



FOCUS ON QUESTIONING!

STRATEGIES

OPEN VS CLOSED

DIFFICULT QUESTIONS

QUESTIONS TO BREAK DOWN POLICY

Hearing officers ask questions first

PREP TOOL

THE HEARING



TIX HEARING SCRIPT

TIX HEARINGS: MAKING RELEVANCE DETERMINATIONS**

ACCORDING TO FINAL RULE §106.45(B)(6)(I):

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(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

TIX HEARINGS: MAKING RELEVANCE DETERMINATIONS**

[HTTPS://WWW.LAW.CORNELL.EDU/WEX/RELEVANT](https://www.law.cornell.edu/wex/relevant)

Relevant means having some value or tendency to prove a matter of fact significant to the case.

Federal Rule of Evidence 401 states that “evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.”

The Committee Notes on Rule 401 clarify that “[r]elevancy is not an inherent characteristic of any item of evidence but exists only as a relation between an item of evidence and a matter properly provable in a case.” That is, it is only an item’s relationship to what a party seeks to prove [] that makes it relevant.

TIX HEARINGS: MAKING RELEVANCE DETERMINATIONS**

In order to be relevant, a question should be about:

- The encounter(s)
- The surrounding circumstances, such that they inform whether the facts of the encounter(s) are more or less likely to be true
- The relevant policy definitions of the prohibited conduct, including affirmative consent, sexual activity, the standard or severe, pervasive, and objectively offensive, etc.

A question is irrelevant when:

- It concerns a complainant's sexual predisposition or prior sexual behavior, **UNLESS**
 - Such questions are offered to prove that **someone else** committed the conduct alleged, or
 - Such questions concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove affirmative consent.
- It seeks disclosure of information protected under a legally-recognized privilege or restriction, e.g. **HIPAA UNLESS**
 - the party has given voluntary consent to disclose this information

TIX HEARINGS: CROSS EXAMINATION

1. Advisor asks question of the party or witness

2. Chair makes a ruling with explanation:

- General Questions

- You may answer the question.
- The question is irrelevant because it asks about information unrelated to facts materials to the allegation or the surrounding circumstances. Please move to your next question, advisor.

- Duplicative questions

- The question is duplicative of a question previously asked by the Hearing Body.
- Advisor, is the question different than the question previously asked?
 - If yes, please explain or rephrase, and evaluate for relevance
 - If no, [party/witness] do you have anything to add to your previous response?
 - If yes, allow to respond
 - If no, “For the record, this question was asked during direct examination by the Hearing Body and answered. It is asked again during cross-examination, and deemed asked and answered.”

TIX HEARINGS: CROSS EXAMINATION

**PRESS
PAUSE**

If question is about:

- prior sexual activity/sexual predisposition
- privileged information: communication with attorney, communication/records within professional health care relationship (dr, nurse, dentist, podiatrist, chiropractor, psychologist, licensed social worker or mental health counselor) or clergy or other person acting in that capacity
- undisclosed medical records

TIX HEARINGS: CROSS EXAMINATION**

Rape Shield

Prior sexual activity/sexual pre-disposition

- The question is relevant because although it calls for prior sexual behavior information, it meets one of the two exceptions to the rape shield protections. [say which exception it meets]
 - Exception one: the question is asked to prove that someone other than the respondent committed the conduct alleged by the complainant. You may answer the question.
 - Exception two: the question concerns specific incidents of the Complainant's prior sexual activity with respect to the Respondent and is asked to prove consent between these specific individuals. You may answer the question.
- The question is irrelevant because it calls for prior sexual activity information without meeting one of the two exceptions to the rape shield protections. Please move to your next question, Advisor.

TIX HEARINGS: SPECIAL RULES

- No party is EVER allowed to personally question anyone, including cross-examine anyone, parties cannot serve as their own advisors.
- Decision maker must make relevancy determination “live”

TIX HEARINGS: WHAT IF...

DELIBERATIONS



1. Credibility

2. Timeline

3. Critical Facts (connected to policy)

4. Determination of Responsibility

5. Review of Prior Discipline (if in violation)

6. Sanction and Remedial Measures (if in violation)

SANCTIONS

Warning

University Probation

University Suspension

University Expulsion

Additional Sanctions (loss of privileges, restitution, removal from housing,
UConn Compass, Educational Initiatives)

Penetration of Any Kind = EXPULSION

SANCTIONING CONSIDERATIONS

Aggravating

- Physical Force
- Repeat Violations
- Motivated by Hate- behavior was directed toward an individual or group due to race, ethnicity, ancestry, national origin, religion, gender, sexual orientation, gender identity or expression, age, physical or mental disabilities, including learning disabilities, intellectual development disorders, and past/present history of a mental disorder

Mitigating Factors

- Influence of alleged drugs and/or alcohol on a student's judgment or behavior will not be accepted as a mitigating factor with respect to the resolution of an act of misconduct.
- Joint Responsibility

REMEDIAL MEASURES

Designed to restore or preserve equal access to University's Education Program or Activity
May be temporary or permanent

- No Contact Directive
- On-campus Residence Modifications
- Academic Modifications
- Support
- Other Restrictions
- Schedule modifications (work-UConn only, student leader, athletic, club sports & rec)

WRITING THE TIX DECISION LETTER

TITLE IX (PG 2026; §106.45(7)(II)) NOTICE OF OUTCOME REQUIREMENTS

- Allegations potentially constituting sexual harassment
- Description of the procedural steps taken from the receipt of formal complaint through determination, including any notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held
- Findings of Fact supporting the determination
- Conclusions regarding application of the policy to the facts
- Statement of and rationale for the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on respondent, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant
- Procedures and permitted reasons for appeal

WRITING THE LETTER



PREPARE

Hearing Prep
Spreadsheet

TAKE NOTES

Note where key
statements are
made during the
hearing, for ease
of reference
during letter
writing

STORYTELLING

Write the story as
you have
determined it
happened.

SUPPORT

Go back to the
record for
support, or if you
can't find it,
reflect and edit.

FINALIZE

Check for key
components
required for each
letter type.

DECISION LETTER TEMPLATE

TIX DECISION LETTER

Introductory

- Basic Information
- Relevant Policy Provisions and Import. Definitions
- Procedural Steps/Timeline
- Standard of Review

Findings of Fact

Credibility Determinations

Rationale for Finding of Fact

Information Not Considered (if applicable)

Determination of Responsibility

Rationale for Determination of Responsibility

Sanction and Rationale for Sanction

Remedies Provided to Complainant

Appeal



Appeal

APPEAL

§106.45(8)

(i) must offer both parties an appeal from a determination regarding responsibility (or dismissal of formal complaint)

(ii) Grounds-next slides

(iii) recipient must

A. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

B. Ensure that decision-maker for appeal is not the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigators or the TIXC

C. Ensure that the decision-maker for the appeal complies with (b)(1)(ii)

D. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome

E. Issue a written decision describing the result of the appeal and the rationale for the result

F. Provide the written decision simultaneously to both parties.

APPEAL PROCESS

Parties may appeal the hearing outcome by submitting an electronic appeal form (included in the written notification of outcome) with any supplemental documentation (if necessary) within five (5) business days of the written notification of the decision, indicating the grounds for the appeal.

Should a party submit an appeal, they receive written confirmation of receipt. The appeal and any other information submitted is shared with the other party.

When an appeal is submitted an appellate officer reviews the appeal and case information and renders a decision. Parties receive a written notice of the decision at the conclusion of the appeal deliberations.

GROUNDS FOR APPEAL

- 1.To determine whether the administrative hearing was conducted in conformity with prescribed procedures giving the complainant and investigating student conduct officer a reasonable opportunity to prepare and to present information that The Student Code was violated and giving the respondent a reasonable opportunity to prepare and to present a response to those allegations.
- 2.To determine whether the sanction(s) imposed were appropriate for the determined violation(s) of The Student Code.
- 3.To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original administrative hearing.
- 4.The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

**The submission of appeal stays any sanctions for the pendency of an appeal.
Supportive measures and remote learning opportunities remain available to parties.**

APPEAL OUTCOME

Appeal officer reviews all of the information (hearing recording, all documentation)

Appeal decision letter includes:

- Determine whether appeal reason applies.
- Rationale for denial or approval.
- Next Steps (if any)

