

RESOLVING CAMPUS COMPLAINTS

Addressing gender-based misconduct

The University of Chicago

December 8, 2020

SELF CARE

Overview

- Cameras/mics
- Breaks
- Chat usage

Introductions

- Name
- Role on campus
- Time at UChicago
- Role in the resolution process

THE POLICY ON TITLE IX SEXUAL HARASSMENT

A closer look

Parking Lot

Based on your review of the provided information, what questions do you have?

Title IX Regulations and University Policy

- Title IX Sexual Harassment
- Educational Program or Activity
- Formal Title IX Complaint
- University Policy on Harassment, Discrimination, and Sexual Misconduct
- Overlap in Responsibilities
- Committee on Sexual Misconduct Policies & Procedures

Resolution Structure

- Equal Opportunities Programs
- University Disciplinary Affairs
- Human Resources
- Dean of Students in the University
- Office of the Provost

People in the Process

- Title IX Coordinator
- Investigators
- Decisionmakers
 - Administrators
 - Panel Members
- Support and Resources
- Review Officer
- Complainant
- Respondent
- Witnesses
- Advisor

THE BIG PICTURE

“Hear the case before you decide it.”

-Alfred P. Murrah, Chief Judge of the U.S. Court of Appeals for the Tenth Circuit and Director of the Federal Judicial Center

Question

What makes a process fair?

Question

What are the traits of an ideal investigator?

Question

What are the traits of an ideal decisionmaker?

Question

What are your expectations of the support staff?

COMPETENCY-BASED MODEL

Competency-Based Model

- Philosophy/History of discipline
- The Resolution Process
- Procedural Expertise
- Critical Thinking Skills
- Analyzing Policy
- Cultural/Community Competency
- Note Taking
- Report Writing/Reading
- Questioning/Listening Skills
- Processing Information
- Standard of Proof
- Title IX Response Elements
- Statement Analysis
- Deliberation Skills
- Responsiveness
- Relevance
- Expert Sources
- Trauma-informed
- Gender-based Misconduct
 - Sexual Misconduct
 - Relationship/Domestic Violence
 - Stalking
- Psychology/Sociology of:
 - Respondent
 - Complainant
- Credibility Determination
- Sanctioning
- The Review Process
- Role Play
- Reasoning
- Hearing Decorum
- Non-Heteronormative Education
- Rapport Building

Ongoing Education

- Role specific
- Role play
- Requested areas
- Observed areas

Items of note

- Recall
- Known person and place
- Impact
- Evidence of trauma is not synonymous with a policy violation
- Gender identity
- Care for all participants
- Likability

PROCESS AND POLICY

Elements of the Process

- Gather
- Explore
- Evaluate

Experience in the Process

- Consistent
- Planned
- Documented

Consistent

- Information
- Evaluation
- Opportunity

-Dependability of undeviating processes and procedures for all participants in a resolution process, regardless of any defining or identifying characteristics.

-Consistency should not determine the outcome of a situation, rather it should be the foundation for processing information

Consistent

- Initial meeting
- Choices/Where exist?
 - Not everyone will make the same choices, but everyone should have the same opportunity to make a choice
 - Information for the choices should be consistent
 - Avoid giving advice

Procedural Elements in Investigation

- Notice to both parties
- Equal opportunity to present evidence
- Written notification of meetings and sufficient time to prepare
- Ability to see and respond to all information prior to final report
- Access to report (advisor)

A Report

- Comprehensive view of the information
- Consistent
- Clear language
- Thorough
- Accessible

A Report

- Neutral in gathering information
- Looks at all sides
- Burden is on the institution
- Approaches every possibility
- The information drives the outcome
- Avoid judgement

Elements of a Report

- Introduction
- Involved parties
- Date(s) of reported incident
- History of the case
- Allegations
- Jurisdiction
- Standard of Proof
- Complainant information
- Respondent information
- Witness summaries
- Additional information
- Negative inquiries

Hearing Preparation

- Materials Received
 - Order of documents
 - Origin of documents
- Confidentiality
- Committee Selection

Experience in the Process

- An individual's experience in the process may impact your reporting numbers (Katel, 2011)

Bias

- Implicit
- Explicit
- Anchoring
- Observer Expectancy
- Confirmation

Once people form an impression they unwittingly seek, interpret, and create behavioral data that verify it.

(McNatte, 2000)

Conflict of Interest

- Actual
- Perceived
- Requests
- Reasonable person
- Recusal
- Assess ahead of time

Hearing Decorum

- $B=f(p,e)$
- Handling disruption
 - Acknowledge
 - Warn
 - Follow through
- Who is in Charge
- Relevance
- Attire

Hearing Decorum

- Work to establish a baseline of relaxed conversation
- Maintain good eye contact
- Listen carefully to the answers to your question
 - Try not write while they are talking
 - Try not to think about your next question while they are talking
- Nod affirmatively to keep individual talking
- Try not to fidget, roll your eyes or shake your head “no”
- Do not look shocked, smug, stunned or accusing
 - Hearing language
 - Unfiltered
- Watch all individuals
- Be aware of how you talk to all individuals in the process

Analyzing Policy and Procedure

- Allegations
 - Deciding
 - Only those present

Standard of Proof

- Preponderance of the information
 - Standard slide
- Determination of violation
 - Character role

Hearing Preparation

- Review and understand all charges
- Review all the material carefully & thoroughly – get a general overview of the complaint
- Review it a second time and note all areas of consistency of information
 - You do not need additional verification or questioning on these issues, assuming the accuracy of consistent information – but beware suspiciously consistent stories
- Read it a third time to identify inconsistencies in the information
 - This is the area you will need to concentrate your questions

Hearing Preparation

- Identify additional questions for complainant, respondent and witnesses
 - Is there corroborating information?
- Review the policy or section of the policy alleged to have been violated
 - Note any words that are unfamiliar and discuss
 - Parse all the policy elements (what does it take to establish a policy violation?)
 - Identify the elements of each offense alleged
 - Break down the constituent elements of each relevant policy

ANALYSIS AND THE INVESTIGATION

Incapacitation, credibility, and consent

Processing Information

- Look at the totality of the information
 - Possible
 - Plausible
 - Credible
 - Supporting information
 - Behavior and information
 - Corroboration
 - Strikingly similar information
 - Fact, opinion, circumstance

CONSENT

Understanding and evaluation

Consent

- Consent is clear, knowing and voluntary.
- Consent is active, not passive.
- Silence, in and of itself, cannot be interpreted as consent.
- Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.

Consent

- But, consent is not where we start, because

Consent

- But, consent is not where we start, because
- Sexual activity with someone by use of force or with someone who another knows to be – or based on the circumstances should reasonably have known to be – mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), nullifies any consent

Consent

- Force
- Incapacity

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Force

- Physical
 - Choking, pinning down, slapping, punching, etc.
- Intimidation
- Threats
 - Outing, spreading rumors
- Coercion
 - Unreasonable pressure, occurs when advances not welcome
- The presence of force, nullifies any consent

Incapacity

- Gather information during the investigation to make a reasoned conclusion based on the same standard of proof
- Applies regardless if the incapacitation is a result of voluntary or involuntary action

Incapacity

- Cause of the incapacitation
 - Alcohol
 - Drugs
 - Mental
 - Injury
 - Sleep

Incapacity

- Listen and look for clues for possible incapacitation
 - “The next thing I remember was...”
 - “I remember bits and pieces...”
 - “I can’t remember what happened next...”
 - “Things start to become cloudy...”
 - “I was more drunk than I have ever been...”
- Work backwards from the point of concern

Incapacity

- Take note of and get clarification on
 - Alcohol consumption
 - What
 - How much
 - Size of drinks
 - Source
 - Timeline
 - Other drugs
 - Medication
 - Recreational
 - Unknowing
- Build a timeline

Incapacity

- Alcohol

- What is alcohol
- Standard drinks
- How alcohol gets in the system
- Rate of absorption
- How it leaves the system
- BAC/BAL
- Influences on BAC (Quantity, Rate, Weight, Time, Sex)
- Myopia
- Difference between men and women

Incapacity

- Observed behavior
 - Speech
 - Movement
 - Actions
 - Consciousness
 - Clarify ambiguous statements
- Observer of behavior
 - Ability to observe
 - Reliability of information
 - Potential bias
- Blackout

Incapacity

- Incapacitation due to alcohol or drug use is a state beyond “mere” intoxication or even being drunk.
- It exists when a person lacks the ability to make or act on a considered decision to engage in sexual activity.
- Indicators of incapacitation may include inability to communicate, lack of control over physical movements, and/or lack of awareness of circumstances.
- An incapacitated person can also experience a blackout state during which he or she appears to give consent but does not have conscious awareness or the capacity to consent.

Incapacity

- If it is concluded (more likely than not) the complainant was incapacitated, determine
 - At what point in time (as it relates to sexual activity)
 - Did the respondent know, or
 - Should the respondent have known (reasonable person standard)
- Knew or should have known
 - Amount of interaction (cross reference with your notes)
 - Supplier of anything
 - Past experience with complainant
 - Respondent's own level of capacity

Incapacity

- The policy has been violated if the complainant was incapacitated and:
 - The respondent knew; or
 - The respondent caused; or
 - The respondent should have known.
- Proceed to analyze consent if:
 - The complainant was not incapacitated; or
 - The complainant was incapacitated, the respondent did not know, and a reasonable person would not have known.

Incapacity

And the “I’s” Have It

- Under the influence
- Impaired
- Inebriated
- Intoxicated
- Incapacitated

Student Language

- Drunk, buzzed, blitzed, hammered, smashed, tore up, tipsy, sloshed...

Consent

- Look for the presence of clear words or mutually understandable actions that signaled consent
 - They must be present for each level of sexual activity
- No means no (but does not need to be present)
- Consent can be withdrawn, but must be communicated clearly by the person withdrawing consent
- Ask the respondent:
 - How did you know what you were doing was consensual?

DECISIONS

Processing Information

- No formal rules of evidence
- Relevant information able to help clarify what happened

Processing Information

- Policy
- Standard of proof
- Go from broad to narrow
- Add up the information
- Deliberative discussions
- Using information available to everyone
- Come to a conclusion
- Responsibility
- Sanction, if applicable

Credibility

- Reliability of information
- Ability to have information
- Not the same as truthful
- Motivation of person
- Interest in outcome
- Contested and uncontested information
- Corroboration

Resolutions

- Match the sanction with the seriousness of the violation
- Impact Statements
- Prevent reoccurrence
- Rationale (Clear decision)

Resolution

- Elements to consider, by weight
 - Nature of Violation
 - Campus Safety
 - Complainant
 - Community
 - Respondent
- Precedent
- Previous conduct

Resolution



Resolutions

- Request for Review
 - Options
 - New information
 - Procedural error
 - Inconsistent sanction
 - Stay within scope
 - Not a rehearing
 - Narrow

QUESTIONS

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