



FLORIDA STATE
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FSU Student Conduct: Beyond Discipline



The Visitor Responsible for enacting the will and endowment of our founders. Intent untouchable by law. Arbiter of disputes at the institution.

Power & Prerogative Issues handled through the prerogative of administrators who exercised judgment and assessed the character of individual students. Think: “Fat, drunk, and stupid is no way to go through College, son” or “Double Secret Probation”

Age of Legalisms Legalistic discipline systems are seen as as the solution to issues of fairness. Where we succeed in fairness, we sacrifice academic integrity, safety, and student wellness.

Beyond Discipline Facilitator University. Processes to manage the educational environment should operate to create conditions under which students can make reasonable and responsible choices for themselves.



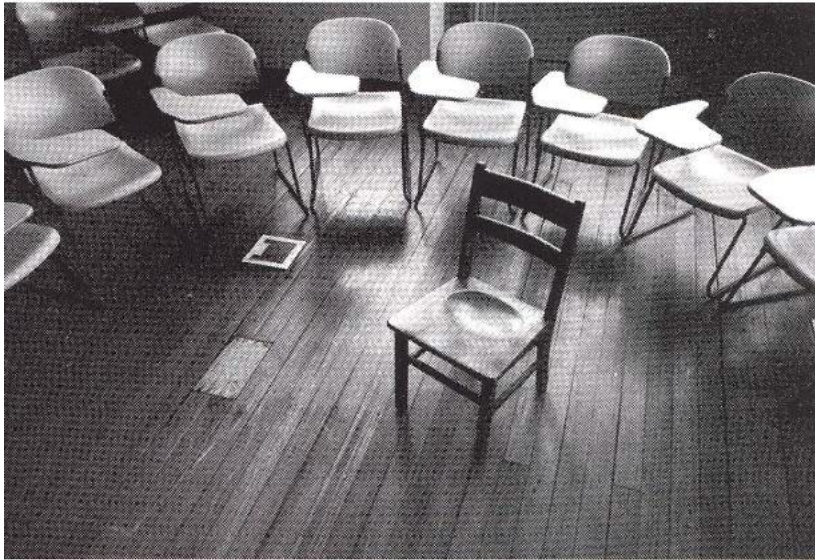
The Top 10...

1. 90's the love affair ended
2. Lawyers are even advocated for less process.
3. We were making mistakes
4. Our processes were bad.
5. Our processes were slow.
6. Culture of passive incident management
7. At odds with our developmental ethos
8. Positivism
9. Larger than life
10. Meta-Process



Beyond Discipline

Managing the
Modern Higher Education Environment



Peter F. Lake

Facilitator University

From Discipline to Pre/Pro-
-vention

Planning, Mentoring ,
Intentionality & self-
assessment



1. Community Rules
2. Rules for Self
3. Civic Engagement
4. Inspiration & Engagement

	General	Individual
Objective	Quadrant 1— <i>The Rights and Responsibilities Quadrant</i>	Quadrant 2— <i>The Individual Achievement Quadrant</i>
Subjective	Quadrant 3— <i>The Community Values Quadrant</i>	Quadrant 4— <i>The Engagement Quadrant</i>



How can we do this?






Move to Educational Due Process

- Language
- Articulation of Mission/Value/Standards
- Educational process
- Role of contrition, character, meaning, reconciliation
- Restorative justice
- Alternative processes for resolution
- Rewards – judicial clearance
- Instructional design
- Evolution of the courts – will IHE's get a break?



Take Aways

- Structured Subjectivity
- Opportunities for students to be an active participant
- In a highly regulated area – double down on alternative resolution
- Embed our values and talk about them early and often
- We need rules and legalisms.
- But we need other tools too.



Cross-Examination and Relevancy in 2-2a

Live
Hearing
Required
for Post-
Secondary
Institutions

A live hearing required under the Title IX grievance process complies with the requirements for a fair hearing and an opportunity for direct or indirect cross-examination before a neutral adjudicator who has independent power to find facts and make credibility assessments.

Role of Hearing Officer



- Facilitates “live cross-examination” for parties through the parties’ advisors.
- Makes conclusions about whether alleged conduct occurred and the decision about responsibility for a policy violation.
- Prepares written determination with findings of fact, conclusions, and rationale for the result as to each allegation.
- Recommends sanctions., if applicable.

Live Hearing With Cross-Examination

- Each party's advisor may ask the other party and any witnesses all relevant, follow-up, and questions challenging credibility.
- Cross-examination must be conducted directly, orally, and in real time by the party's advisor of choice and not by a party personally.
- Before a party or witness answers the cross-examination or other question, the decision-maker must first determine whether the question is relevant.
- The decision-maker must explain any decision to exclude a question as not relevant.
- The decisionmaker cannot draw an inference about responsibility based *solely* on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Exclusionary Examples

- Complainant gives an emotional account of sexual assault and answers questions from the decisionmaker. Complainant then answers only one question from respondent's advisor before breaking down and refusing to answer any more. After the break, complainant tells the decisionmaker that complainant cannot endure cross-examination. Complainant leaves the hearing.

Inclusionary Examples

- Witness answers questions from decisionmaker. After consulting with complainant, advisor for complainant says that the advisor has no questions for the witness. Advisor for respondent then proceeds to cross-examine witness.

Relevance

Relevance requires that the evidence or testimony directly relate to the issues disputed or discussed.

- Evidence is relevant if: (1) it has a tendency to make a fact more or less probable than it would be without the evidence; and (2) the fact is of consequence in determining the action.
- Inculpatory and exculpatory evidence is considered relevant.
 - Inculpatory evidence is evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish guilt.
 - Exculpatory evidence is evidence that tends to show a person's innocence is considered exculpatory evidence.

Relevance

Relevance requires that the evidence or testimony directly relate to the issues disputed or discussed.

- Information protected by a legally recognized privilege is not relevant.
- Questions about a complainant's prior sexual behavior or sexual predisposition are not relevant, unless:
 - Offered to prove someone other than respondent committed the alleged sexual harassment
 - If the evidence offered concerns sexual behavior between the parties and is offered to prove prior consent

Decisionmaker Duties

Decisionmaker must screen questions for relevance and resolve relevance objections.

Decisionmaker must explain any decision to exclude a question as not-relevant.

Relevancy Example

- Student A has accused Student B of sexual assault by engaging in sexual activity with Student A who was incapacitated by alcohol consumption after a party. The advisor for Student B asks Student A: “Did you send any text messages or make any phone calls during the party?”

Non- Relevancy Example

- Complainant alleges respondent engaged in dating violence by punching complainant during an argument. The advisor for respondent asks complainant: “Isn’t it true that you are only dating respondent because of his family’s money?”

Credibility

- Credibility is the quality in a witness which renders their testimony worthy of belief.
- Factors used to assess credibility:
 - Observation of a witness or participant's general demeanor.
 - Opportunity for the witness/ participant to observe and provide the information they are giving.
 - Noting consistencies or inconsistencies in their narrative by comparing or documenting any prior inconsistent statements.
 - Any bias or motive to lie.
 - Probability or improbability of the person's description of the event.

“A decision-maker may judge credibility based on, for example, factors of plausibility and consistency in party and witness statements. Specialized legal training is not a prerequisite for evaluating credibility, as evidenced by the fact that many criminal and civil court trials rely on jurors (for whom no legal training is required) to determine the facts of the case including the credibility of witnesses.” (pg. 1238)

How does the hearing work?

- Title IX regs are largely silent on specific elements.
- However, the decisionmaker must independently evaluate questions for relevance and resolve relevancy objections.
- Party's advisors must be allowed to conduct live questioning of other party and witnesses.



Party provided opportunity to provide narrative first

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graph TD; A[Party provided opportunity to provide narrative first] --> B[Next comes questioning from decisionmaker]; B --> C[Last comes questioning, including cross-examination, from advisor for other party];
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Next comes questioning from decisionmaker

Last comes questioning, including cross-examination, from advisor for other party

How does the hearing work?



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I Am Biased, and So Are You! How to Outsmart Your Implicit Bias

Robyn Blank, Chief Compliance and Ethics Officer, FSU



--Today's Objectives

- Define and understand implicit/unconscious bias
- Explain where implicit bias comes from
- Create strategies to manage implicit bias
- Utilize these strategies to improve service



--What is Implicit Bias?

--aka Unconscious Bias

--aka Implicit Social Cognition

--An unconscious preference for, or prejudice against, a person, group, idea, or thing.



--What makes it implicit?

Operates outside of our awareness.

May run contrary to our stated, conscious beliefs about who we are and what our values are.

Triggered through rapid and automatic mental associations we make about people, ideas, and objects.

- What is NOT implicit bias?
- Racism
- Misogyny/sexism
- Overt discrimination



Clearing up some assumptions about implicit bias and setting the stage for our conversation

Implicit Bias is not inherently negative

We all have it (more on that in a minute)

We are not trying to eliminate the existence of implicit bias

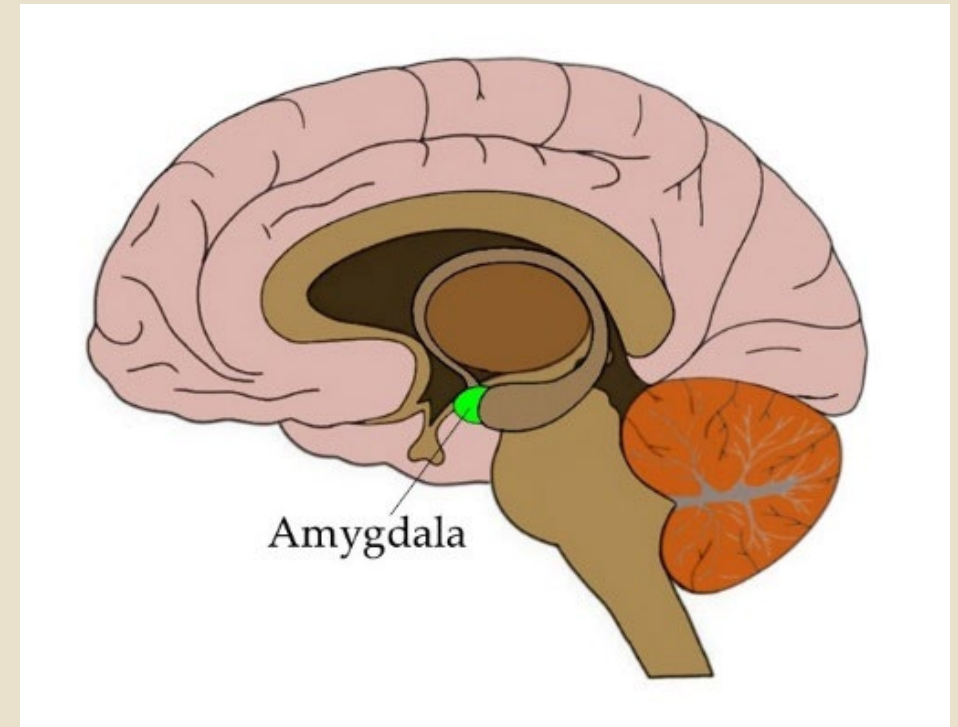


SCIENCE CLASS

Amygdala—Part of the limbic system, associated with fear responses

“Fight or Flight”

90% of our decisions are unconscious





Brain takes “shortcuts” to solve problems based on familiarity
Can include use of stereotypes

RED
ORANGE
YELLOW
GREEN
BLUE
INDIGO
VIOLET



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The Amygdala in Action: A Dramatization in Four Scenes

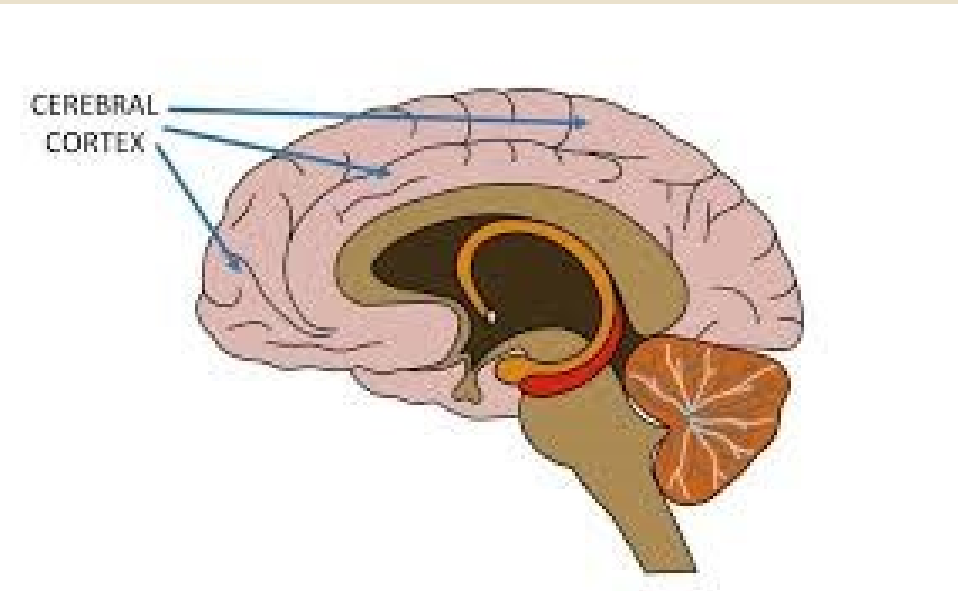


SCIENCE CLASS, con't.

Cerebral cortex—Outer layer of the brain in humans and other mammals

Critical thinking skills

More folds/wrinkles = more surface area = more capacity for thought



Cerebral Cortex, con't

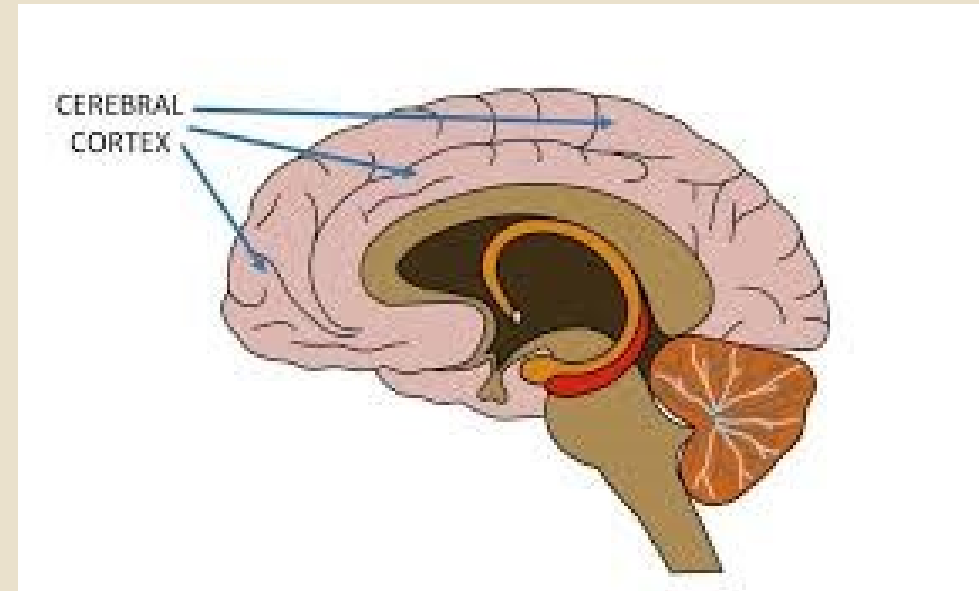
What goes on in your cerebral cortex related to bias?

Creation of belief systems, including egalitarian ones

Value systems, decisionmaking about how to demonstrate values

“Am I racist?” “Am I sexist?”

Matching beliefs and values to words and actions





Implicit Bias in Higher Education

What are some of the things you have heard or read about disparities in higher education related to immutable characteristics?

Related to treatment of students?

Related to employment opportunities?

Related to collaborative opportunities in the workplace or classroom?



Outsmarting Your Implicit Bias

AHEAD OF TIME:

- Put yourself in situations that make the unfamiliar more familiar
- Normalize previously unusual situations to reduce unexpectedness
- “Growth mindset”—believe in the elasticity of your brain
- Take tests—Project Implicit, Implicit Association Test (IAT)



Outsmarting Your Implicit Bias

WHEN INTERACTING WITH PEOPLE:

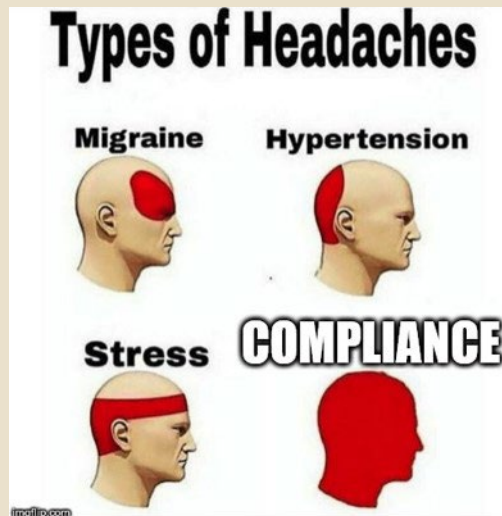
- Compartmentalize or reduce assumptions upon first meeting

- Asking difficult questions

 - “Flip it” and see if it feels weird

Questions now?

If not, here are some memes:





Thank you!

Questions later?

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Serving Impartially:

Reducing Actual Bias, Perceived Bias, and Conflicts of Interest



Robyn Blank, Chief Compliance and Ethics Officer

Objectives

- Describe types of bias
- Identify policy sections at play
- Create and utilize strategies to address potential claims of bias/conflict of interest
- Identify and minimize other sources of challenges to impartiality





Types of bias

- Actual Bias—Genuine prejudice by a person (e.g., judge or juror) against another person or subject; existence of a state of mind that leads to the inference that the person will not act impartially.
- Perceived Bias—in the absence of actual bias, when a reasonable, disinterested observer would have concerns about a person's ability to be impartial



Conflict of Interest

- Situationally based
- Generally, a circumstance in which one's personal beliefs or fortunes are in opposition to one's job, assignment, or appointment
 - How do we determine which should prevail?



Student Conduct Code

Bases for Appeal. Appeal reviews are not a “re-hearing” of a student conduct matter, rather, a review of process and submitted information to ensure stated procedural standards were followed. Appeal considerations are limited to one or more of the following bases...

b. Bias Review. That the proceedings were not conducted without bias or prejudice on the part of the hearing body. May include but is not limited to demonstration of a conflict of interest, or failure to objectively evaluate all relevant information.



Title IX Compliance Policy

- c. Grounds for Appeal. The appeal must state one or more of the following grounds...
 - iii. Actual conflict of interest or actual bias by an administrator or decisionmaker that affected the outcome.



What does it mean?

- Demonstration of actual bias or actual COI on the part of a decisionmaker = new hearing (for both processes)
 - Possibility of a whole new hearing or a portion (e.g., sanctioning process)
- Demonstration of something less in a student conduct process = possibility of a new hearing



COI/Actual Bias Avoidance

- Do you have a stake in the outcome?
- Do you know any of the parties?
 - (and what does it mean to “know” a party?)
- Do you know something about the case already?



Sources of Perceived Bias Claims

- Discovery of social media or public support of a group, event, or movement the party perceives as adverse
- Discovery of an undisclosed COI, or undisclosed prior history with a party or witness
- Belief of not being treated fairly (subjective or objective)



Pre-Hearing

- Social Media check
- Review case materials
 - Develop a process for reviewing case materials
 - Use this process every time you serve
 - Identities of parties and witnesses, courses of study, context of incident(s)
 - Alert administrator/facilitator of any issues ahead of time
 - What could happen as a result?
 - Create questions ahead of time



During the Hearing

- “I treat everyone the same.” Ok, but...
- Manner of asking questions
- Body language (even on Zoom)
- Reduce or eliminate table talk
- Use implicit bias-outsmarting techniques to improve questioning
- Assume every case will be appealed, by everyone
 - Creation of transcripts



After the Hearing

- Maintain confidentiality
- Respond to inquiries if there are appeals
- Ask for debrief or Q&A opportunities, especially for the first few hearings
- Review transcripts, if they are made, to identify areas of improvement



Questions?

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Thank you!





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Restorative Resolution Process





Session Structure

- Purpose
- Principles
- Process



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Purpose





Purpose

Restorative resolutions provide an opportunity for students to address harmful behavior in a process that explores **harms**, **needs**, **obligations**, and necessary **engagement**.



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Principles





Principles

- Voluntary
- Accountability
- Participatory
- No Conduct Record



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Process





Process

- Information Meeting
- Planning Meeting
- Restorative Resolution Meeting



More Information

- website: conflictresolution.fsu.edu
- Student Conduct Code
- email: conflictresolution@fsu.edu



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Title IX Training

Tricia Buchholz

Title IX Coordinator and Director



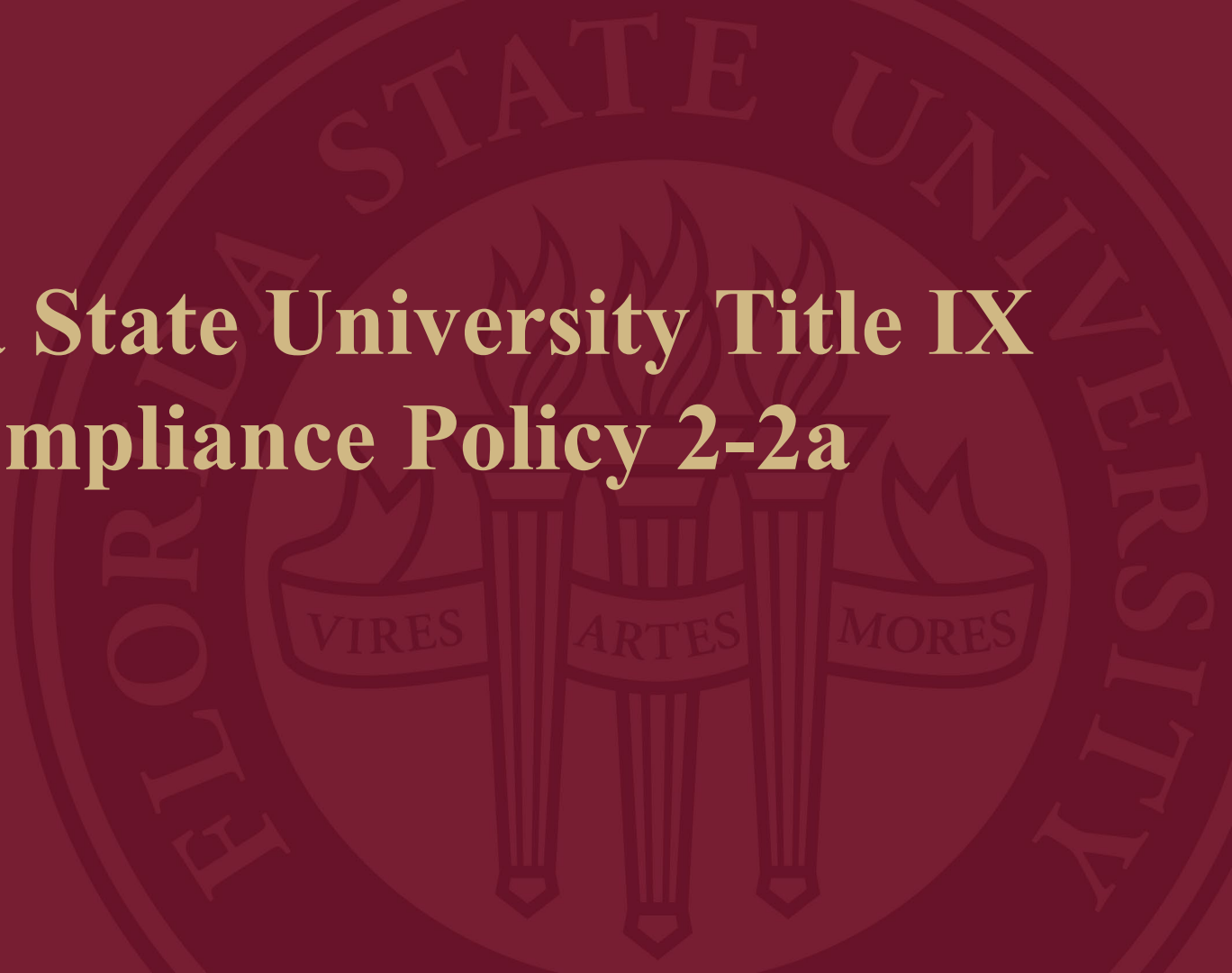
Objectives

- Explain the scope of Florida State University's educational programs and activities
- Define sexual harassment and prohibited conduct
- Explain the investigation process



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Florida State University Title IX Compliance Policy 2-2a





Scope

- This policy prohibits sexual harassment in all educational programs or activities of FSU **within the United States**, including:
 - Locations, events, and circumstances in which FSU exercises **substantial control** over:
 - The respondent; and
 - The context in which the sexual harassment occurs;
- Buildings owned or controlled by recognized student organizations; or
- – On FSU Campuses



Scope

- Within FSU's educational programs and activities, this policy applies to the following individuals:
 - University employees, including faculty, full-time staff and part-time staff
 - Students
 - Vendors
 - Third-party contractors
 - Visitors/guests



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Prohibited Conduct





According to the *Summary of Major Provisions of the Department of Education's Title IX Final Rule*

“The Final Rule defines sexual harassment broadly to include any of three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect: Any instance of *quid pro quo* harassment by a school’s employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence against Women Act (VAWA).”



Sexual Harassment

- Quid Pro Quo

An employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.



Sexual Harassment

- Hostile Environment

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person the ability to perform their job functions or denies a person equal access to the relevant education program or activity.



Sexual Assault

- Forcible Rape

Penetration **or attempted 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 complainant.



Sexual Assault

- Forcible Sodomy

Oral or anal sexual intercourse or attempted intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will (non-consensually) in instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.



Sexual Assault

- Sexual Assault With An Object

To use or attempt 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 or not forcibly or against the person's will (non-consensually) in instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.



Sexual Assault

- **Forcible Fondling**

The touching or attempted touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will (non-consensually) in instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.



Sexual Assault

- Incest

Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by state law.



Sexual Assault

- Statutory Rape

Nonforcible sexual intercourse with a person who is under the statutory age of consent.



Dating Violence

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the complainant'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. For purposes of this definition:
 - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating violence does not include acts covered under the definition of Domestic Violence.



Domestic Violence

- A felony or misdemeanor crime of violence, including those listed in section 741.28, Florida Statutes, 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;
 - By a person who is cohabitating with, or who has cohabitated with, the complainant as a spouse or intimate partner;
 - By a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the state; or
 - By any other person against an adult or youth complainant who is protected from that person's acts under domestic or family violence laws of the state.



Stalking

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - Fear for the person's safety or the safety of others; or
 - Suffer substantial emotional distress



Stalking

- For the purposes of this definition,
 - “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.
 - “Reasonable person” means a reasonable person under similar circumstances and with similar identities to the complainant.
 - “Substantial emotional distress” means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.



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Investigations





Investigation Process

- Formal Complaint
 - Signed by the Complainant or the Title IX Coordinator
- Notice of Investigation and Allegations
 - Sent to both parties simultaneously
 - Includes a presumption that Respondent is not responsible
- Information Sessions
 - Offered to both parties
- Interview Complainant and Respondent
 - Option to provide written statement



Investigation Process

- Interview Witnesses
 - Identified by:
 - Parties
 - Investigator
- Collect Evidence
 - Text Messages
 - Images
 - Videos
 - Reports
 - Documents
- Share all evidence directly related to allegation(s)
 - Shared with both parties for 10 days
 - Parties may provide a written response within 10 days
- Consider responses to evidence



Investigation Process

- Compile investigative report that summarizes all relevant evidence
- Share investigative report
 - Shared with both parties for 10 days
 - Parties may provide a written response within 10 days
- Forward investigative report to Student Conduct and Community Standards



Investigator Expectations

- Fair
- Equitable
- Neutral
- Impartial
- Unbiased
- Objective



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Hearing Officers: What to Expect

Amy Haggard, Assistant Director for Student Conduct and
Community Standards

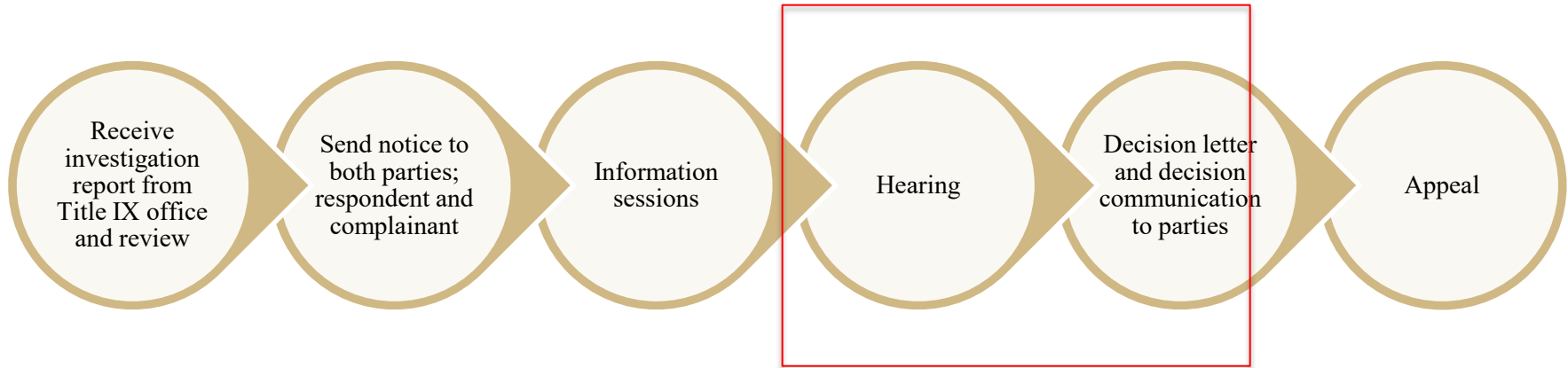


Objectives

- Basic procedural rules and understanding of a hearing proceeding
- Questioning witnesses effectively
- Weighing of evidence/standard of proof
- Decisions and appeals
- Expectations



Conduct Process





Elements of a Hearing

Preliminaries

- Introductions, the rights of the participants, roles of those present
- Two parties: respondent and complainant

Introduction

- Review of formal charges, opening remarks, parties can deliver introductory remarks

Witness Portion

- Time for hearing officer, participants, and advisors to ask witnesses questions

Presentation

- Both parties and their advisor's will have opportunity to present information that is relevant to whether the alleged violation occurred. Opportunity to explain the incident from their perspective. Hearing officer, parties and advisors will have opportunity to ask follow up questions

Closing Statements

- Opportunity for parties to re-emphasize, clarify, or respond to things that have been presented



Hearing Officer's Role

- Fact Finds
- Assess Credibility
- Determine Relevance
- Preponderance of Information



Questioning

- Questioning is the **most important aspect** of the hearing process
- Good questions elicit good (useful) information
- Formulate questions before asking them
- Allow students time to formulate an answer
- Avoid interrupting the student
- Ask the same questions/attempt to elicit the same information of all involved parties



Ineffective Questioning

Leading questions

- Questions that prompt or encourage a desired answer

Multiple choice questions

- Questions which ask participants to select the best possible answer out of the choices from a list

Implied assumptions

- Questions that indicate the thoughts or feelings of the questioner in the absence of supporting information from the individual responding to the questions

Repeat questions

- Question sequencing that repeats questions that have previously been asked or answered



Weighing Evidence

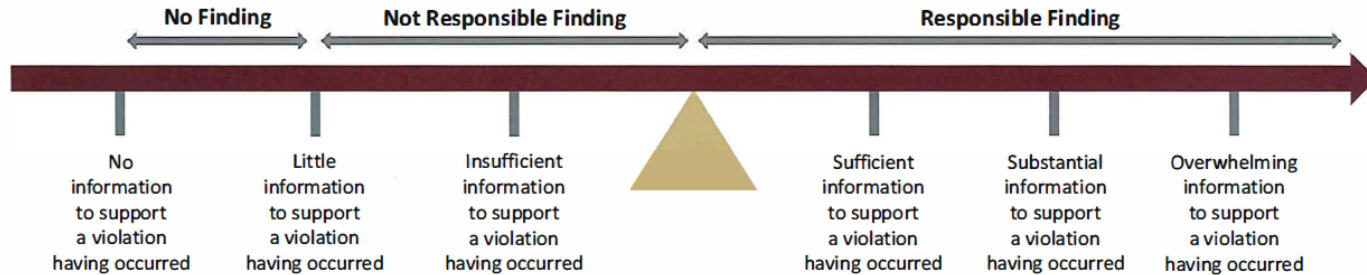
- Not all testimony and evidence is equal in “weight”
 - A part of your responsibility as a hearing officer is to justify the weight you attribute to statements.
- Is the information relevant?
- Is the information reasonable?
- Is the source credible?
- Is the information itself credible?
- Was the information presented so that the Responding Student could respond, if so, how did they respond?



Standard of Proof

Preponderance of the Information

A standard of proof which demonstrates that something is more likely than not to have happened. In other words, more than 50% of the evidence points to something happened.





Decisions

How to make a decision:

- Weighing the information, documentation, and testimony against the Standard of proof
- Assessing credibility of student and/or witnesses
- Establish a timeline and what is most likely to have occurred
- Consider the plausibility of the account
- **Review the language of the alleged code violation**



Appeals

- An appellate review is initiated when a student submits a written appeal in response to a student conduct decision issued by the Department of Student Conduct and Community Standards
- "Both a complainant (if applicable) and a respondent are afforded a single opportunity to appeal decisions and/or any outcomes issued by a hearing body within five business days of the date of the written decision and outcomes. Only complainants who are students are eligible to submit an appeal request with the exception of cases of sex discrimination or sexual misconduct or Title IX Policy violations in which a complainant may submit an appeal regardless of student status."
- Involved parties must submit appeal request in writing to the University within five (5) business days of their decision letter being sent to them.
- An appeal will generally be limited to a review of the record of the hearing and supporting documents. Appeal reviews are not a "re-hearing" of a student conduct matter, rather, a review of process and submitted information to ensure stated procedural standards were followed.



Appeal Grounds

- Process Review
- Bias Review
- Information Review
- Outcome Review
- New Information



Hearing Officer Expectations

- Open to possibility of responsible *and* not responsible
- Comfort level
- Timeline for decision letters
- Check-in before scheduled hearings
- Comfort level with attorneys
- Relevancy