

University Conduct Board Training

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Xavier's Approach to Student Conduct

Philosophy:

- Developmental
- Educational
- Compassionate
- Transparent
- Balanced response to the student(s) and community

Xavier Vision & Values

Vision Statement:

“Xavier men and women become people of learning and reflection, integrity and achievement, in solidarity for and with others.”

Jesuit Values:

- Magis
- Reflection
- Discernment
- Cura Personalis
- Solidarity and Kinship
- Service Rooted in Justice & Love

Legal Implications

FERPA

“A Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.”

--Family Compliance Office, U.S. Department of Education

Clery Act

The purpose of this act is to inform parents, students and employees about campus security and crimes. Amended FERPA to require notification of student conduct outcomes in crimes of violence and sexual assault.

Legal Implications

Title IX/Campus SaVE/VAWA

Federal law that prohibits college campuses from discriminating on the basis of sex in any service or program, academic or athletic and requires campuses to respond to sex discrimination in particular ways.

Due Process? Follow our process!

Logistics

Canvas Site

- Review materials
- Additional training information
- Assessment

Please note...

- Friday hearing times
- Respond!

The UCB Hearing: Pre-Hearing

Pre-Hearing Preparation:

- Read all materials
- Review charges and associated policies
 - Consider the elements of each charge
- Determine incident timeline
- Decide primary issues which need determination (elements of charges)
- Think about questions you'll want to ask
- Consider witness information

UCB Hearing Participants

- Chair/Panelists
- Dean of Students
- Respondent
- Complainant

UCB Hearing Participants

- Advisors:
 - Student Conduct Advisor (Xavier community member)
 - “Advisor of Choice” (Sex Discrimination cases only)
 - Student Rights Representative
 - Integritas Advisor
 - Advocate
- Title IX Coordinator (when applicable)
- Witnesses (witnesses with direct knowledge NOT character witnesses)

Who is the Advisor of Choice?

- Confidential advocate
- Non-confidential Integritas Advisor
- Non-confidential faculty/staff
- Parent
- Attorney
 - Student's Right
 - Reflected in Investigation Report
 - Impact on hearing

Role of Advisor of Choice

- Assist in preparing position
- May attend the hearing
- Does not speak or present on behalf of the student

The UCB Hearing: During the Hearing

Hearing Procedures

1. Introductions/Opening Statements
2. Questioning:
 - UCB to Title IX Coordinator
 - UCB to Respondent/Complainant
 - UCB to Witnesses
 - Complainant/Respondent to Witnesses
 - Complainant/Respondent to each other
 - UCB to Respondent/Complainant
3. Character Witness Statements
4. Closing Statements
5. Hearing Concludes
6. Deliberation/Decision Making
7. Sanctioning
8. Outcome Communication
9. Appeal

Questioning:

- Guidelines
- Techniques
 - Open vs. Closed
 - Avoid offering multiple choice options
 - Clarify conflicting information before deliberation
 - Work together to maintain flow of conversation
- Managing respondent/complainant/witness questioning
- Special Considerations for Sex Discrimination cases

Activity: Let's Practice Asking Questions

- As we review sample questions, let's discuss...
 - What are the pros/cons of the question?
 - What are we trying to ask?
 - How can you re-word this to ask it better?

Question 1:

Were you upset when this incident happened?

Can you tell us how you felt when this incident happened?

Question 2:

Were you sad, mad, or afraid when this happened?

Can you tell us how you felt when this incident happened?

Question 3:

One of the witnesses in the report states they saw you drinking. Is this true?

One of the witnesses in the report states they saw you drinking but you have said you were not. Please explain for us the discrepancy.

Question 4:

What happened?

Please tell us your perspective on the events that took place the night of the reported incident.

Question 5:

Do you think your actions had an impact on the community?

How might your actions have had an impact on the community?

Witness Information

- Witnesses may be called by the Dean of Students as well as the complainant/respondent
- Witness information specific to the incident
- Witness information will be shared prior to the hearing in most cases.
- Witness statements will generally be included in the Incident and/or investigation reports
- Character Witness Statements

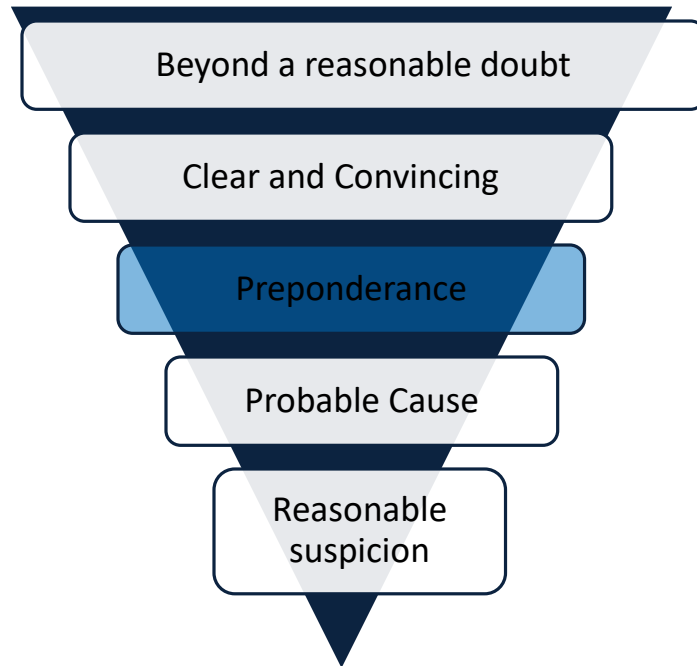
Witness Information

- Special Expert Witnesses:
 - Sexual Assault Nurse Examiner (SANE program)
 - Other medical professionals
 - Campus Police/external enforcement

The UCB Hearing: Deliberation & Decision Making

“Preponderance” of Evidence

Continuum of evidentiary standards



Based on the **totality** of the evidence it is **more likely than not** that the respondent has violated Xavier’s Code of Student Conduct.

- Best practice & Xavier policy for all student conduct hearings
- Only standard that guarantees equity in the process
- Burden is neither placed more on respondent or complainant

Evaluating Information:

Evidence/Information

- Direct
- Indirect/Circumstantial
- Third party

Consideration & weighing of **all** information is essential

Weighing the Information

To weigh information is to:

- Evaluate the accuracy of the information
- Assess the certainty and/or probability of truthfulness
- Make a determination of its relevancy and or usefulness
- Place a value upon the information

Association of Student Conduct Administrators

Weighing the Information

- Greatest weight is to be assigned to that
 - Which can be supported by physical evidence and verbal accounts
 - Which is either not in dispute entirely or
 - Which is determined to be more likely accurate than not
- One need not weigh the information against any greater standard than articulated by policy

Association of Student Conduct Administrators

Weighing the Information

- Relevance
- Direct vs. Circumstantial
- Do the pieces of the story fit together
- Outcry witnesses (received first disclosure)
- Credibility

Credibility Assessment

- Credibility may be granted to those whom
 - Engage the process honestly, without deceit
 - Cooperate and are complete
 - Lack motive to be anything other than credible
- Credibility may not be granted to those whom
 - Deceive, fabricate, and/or facilitate dishonesty or interference
 - Act upon a motive to manipulate the process

Credibility Factors to Consider

Consistency/inconsistency

Witnesses

Claimed lack of knowledge

Demeanor

Motive/malice

Detail

Cultural factors

Corroboration

Common sense

Character information

Explanations for
inconsistencies

Deliberation & Decision Making

- Based on the totality of the evaluated information – what happened (more likely than not)?
- Does it violate our Code of Student Conduct?
 - Policy element analysis
- Group Discussion considerations
 - Consensus

Elemental Analysis

Policy Element Analysis

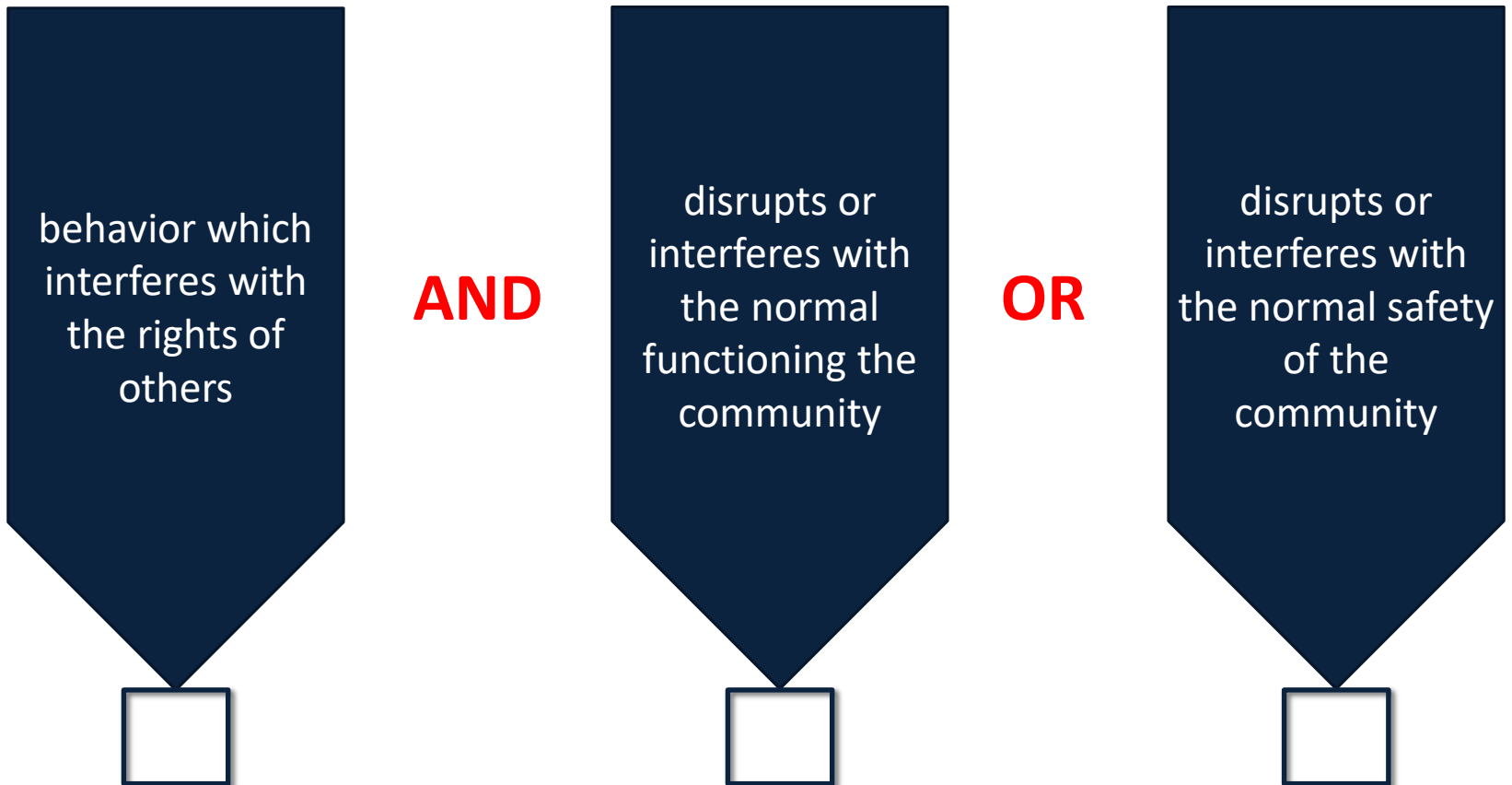
Most effective, thorough and fair approach to evaluating policy language:

- Break the policy down into sections
- Evaluate the information you've received via the investigation & hearing process against each element
- In many cases if your analysis leads you to determine that one element of the policy was violated – your evaluation of that particular charge may be complete.

Disruptive Behavior

Any behavior which interferes with the rights of others and disrupts or interferes with the normal functioning or safety of the community.

Disruptive Behavior: elemental approach



Stalking

A pattern of conduct by a person with a sexual, romantic or gender-based motivation that causes or is intended to cause another person to believe that the offender will cause physical harm or mental distress to the other.

What does elemental analysis look like for this?

Stalking: elemental approach

A pattern of
conduct by a
person

AND

With a sexual,
romantic, or
gender-based
motivation

AND

That causes or
is intended to
cause another
person to
believe that
the offender
will cause
physical harm

OR

That causes or
is intended to
cause another
person to
believe that
the offender
will cause
mental distress



Your Turn...

Non-Consensual Sexual Contact

In the course of your deliberation, you have determined it is more likely than not there has been unwanted touching and several witnesses saw the complainant stumbling after a few drinks. How do you use elemental analysis to process these facts and determine an outcome?

What definitions are needed?

What policy language?

How do you break it down into sections to determine if a violation occurred according to the policy?

Non-Consensual Sexual Contact

Non-Consensual Sexual Contact is:

- Any intentional sexual touching, however slight,
- By a person upon another person,
- That is without Consent and/or when Coercion is used.

Sexual Contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals, or
- Touching another of with any of these body parts or
- Making another touch you or themselves with or on any of these body parts or
- Any other intentional bodily contact in a sexual manner.

Non-Consensual Sexual Contact: elemental approach

Any intentional
sexual
touching,
however slight,



OR

By a person
upon
another
person



OR

That is
without
Consent
and/or when
Coercion is
used



Sanctioning

Sanctioning

Sanctioning

- Most important educational tool
- Impact of prior conduct history
- Precedent
- Benchmarks

Outcome Communication

Notification

- Sanction Recommendation to Dean of Students
- Role of Title IX Coordinator
- Notification by Dean of Students to student(s)
- Simultaneous communication

Appeals

Appeal process

- Request for an Appeal (not a guarantee)
- Timeline – 5 days from receipt of outcome
- Respondent and/or Complainant appeal
- Request made to Dean of Students
- UCB members eligible to serve on appeal boards

Grounds for an appeal

Based on the following grounds:

- Denial of the elements of a fair hearing
- Finding not supportive by the evidence
- Sanctions are arbitrary or capricious or disproportionate to the circumstances
- New information that was not available at the time of the hearing that may have bearing on the original decision

Title IX & Sex Discrimination

Types of Cases

Sexual Harassment

Non-Consensual Sexual Contact

Non-Consensual Sexual Intercourse

Dating Violence

Stalking

Title IX

- **Prohibits** sex discrimination
- **Protects** students all gender identities & sexual orientations
- **Requires** fair, equitable complaint resolution process
- **Separate** from criminal process

Title IX Office Role

- Conduct investigation
- Assess reasonable cause for potential policy violation
- Recommend (or not) conduct action be taken to determine if student has violated policies

TIXO Role cont'd

- Investigation Reports
- Role in hearing

Taking a Closer Look

Exploring the Unique Social and
Cultural Position of Sex Discrimination
& Its Impact on Our Work



Key Issues

Consent

Coercion

Intoxication

Types of abusive behavior in relationships

Cycle of dating violence

Intent v effect

Consent

Clear, knowing and voluntary words or actions that demonstrate agreement for specific sexual activity

- Active & ongoing- can be withdrawn any time
- Physical resistance NOT required to show lack of consent
- Silence does NOT automatically mean consent
- Responsibility of person initiating sexual act to obtain consent

Consent cont'd

Consent is **invalidated** when it is forced, coerced or when a person is physically and/or mentally incapable of giving Consent.

- Ex: a person who is **substantially impaired** by drugs or alcohol may not be able to Consent.
- **Signs of substantial impairment**

Key investigation/UCB questions:

- Whether **responding** party believed they had obtained Consent and
- Whether a **reasonable** person would have believed that they had obtained Consent

Dating Violence

Scope of behavior

Key policy components- pattern of abusive behaviors over time used to exert power/control and/or one instance of severe abusive behavior

Typically escalates over time

Cycle of violence

- Tension building
- Abusive incident
- “Honeymoon” phase

Why might someone stay in an abusive relationship?

Additional Key Issues

Response of parties to experience

Response to trauma

Response of those around parties

Sexual history of parties

Mental health of parties



Common Reporting Party Responses

- ✓ Normalizing
- ✓ Minimizing
- ✓ Flat affect
- ✓ Avoidance
- ✓ Depressed
- ✓ Anger
- ✓ Withdrawn
- ✓ Isolated
- ✓ Guilt/shame
- ✓ Substance abuse
- ✓ Distrust of self and others
- ✓ Can't concentrate
- ✓ Hyper vigilance
- ✓ PTSD
- ✓ Big appearance +/- or behavior change

Impact on Responding Student

Fear of telling family, friends

A lot at risk

Loss of social support

Shock

Confusion about process

Impact of potential sanction

Memory may be impaired by alcohol

Impact of concurrent criminal process



Records & Documentation

Maxient

Police

Sexual Assault Nurse Exam (SANE)

Electronic communications

Your Role

- Apply specific policy language to entirety of information in report + hearing
- Be vigilant around bias, stereotypes, assumptions
- Outcome data supports equitability

Wrap-up and Final Thoughts

Thank you!

- Questions, comments, concerns?
- Please reach out with questions!