

University Conduct Board Harassment Hearing Board

Molly Dugan, Director of Student Integrity

Kate Lawson, Chief Title IX Officer



Xavier's Approach

- Philosophy:
 - Mission-centered
 - Equitable
 - Developmental (students)
 - Educational
 - Compassionate
 - Transparent
 - Balanced



Xavier Mission & Values

- Mission Statement:

- Xavier is a Jesuit Catholic university rooted in the liberal arts tradition. **Our mission is to educate each student intellectually, morally and spiritually.** We create learning opportunities through rigorous academic and professional programs integrated with co-curricular engagement. In an inclusive environment of open and free inquiry, we prepare students for a world that is increasingly diverse, complex and interdependent. Driven by our commitment to educating the whole person, promoting the common good, and serving others, the Xavier community challenges and supports all our members as we cultivate lives of reflection, compassion and informed action.

- 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

Confidentiality of Employee Records

Employee records are confidential and will be shared only as required with those that have a need to access such information.



Legal Implications

Clery Act

- Amended FERPA to require notification of student conduct outcomes in crimes of violence and sexual assault.

Title IX/VAWA

Due Process? Follow our process! (Fundamental Fairness)



Logistics

- Hearing Dates/Times
- Please Respond!
- Confidentiality
- Conflicts of Interest



Types of Cases

- Non-Sex Discrimination – Broader Student Handbook or HCAP (employees)
 - Physical Assault, Drug Distribution, Harassment/Discrimination (particularly employees)
- Sex Discrimination
- Disability-related Discrimination



Title IX + XU Sex Discrimination Policies

- Prohibits sex discrimination in education institutions
- Protect students, employees, third parties, visitors of all gender identities & sexual orientations
- Requires fair, equitable complaint resolution process
- Separate from criminal process



Two Sets of Policies

- Title IX
- Interpersonal Violence



Types of Sex Discrimination Cases

- Sexual Harassment
- Sexual Assault
- Rape
- Dating Violence
- Stalking



Title IX Office (TIXO) Role

- Determine if report falls under Title IX
- If not, assess under Interpersonal Violence policies
- If proceeding under either set of policies, conduct a prompt, thorough, impartial investigation
- For Interpersonal Violence reports, assess reasonable cause for potential policy violation
- Recommend (or not) conduct action be taken to determine if student or employee has violated policies



TIXO Role, Continued

- Investigation Reports
- Role in hearing



Our Responsibility/Your Overarching Goal

- Ask and answer, based on the Report and all information gathered during the conduct hearing:
 - **Is there sufficient evidence to conclude, by a preponderance of the evidence (more likely than not), that the student or employee violated the policy?**



Pre-Hearing



Pre-Hearing Preparation:

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



UCB Hearing Participants

- Chair and Panelists
- Dean of Students or Director of Student Integrity
- Responding Party
- Reporting Party
- Chief Title IX Officer (**Sex Discrimination only**)
- Witnesses with direct knowledge (NOT character witnesses)
- Advisor(s) for Each Party (optional):
 - Student Conduct Advisor (Xavier community member)
 - “Advisor of Choice” (Sex Discrimination cases only)
 - Xavier-assigned Questioning Advisor (**Title IX only**)
 - Student Rights Representative
 - Integritas Advisor
 - Advocate



HHB Hearing Participants

- Chair and Panelists
- Affirmative Action Officer
- General Counsel
- Responding Party
- Reporting Party
- Chief Title IX Officer (**Sex Discrimination only**)
- Witnesses with direct knowledge (NOT character witnesses)
- Advisor(s) for Each Party (optional):
 - “Advisor of Choice” (Sex Discrimination cases only)
 - Xavier-assigned Questioning Advisor (**Title IX only**)
 - Advocate



Who is the Advisor of Choice?

- Applies only to cases of Interpersonal Violence or Title IX
- Confidential advocate
- Non-confidential Integritas Advisor
- Non-confidential faculty/staff
- Parent
- Attorney (Sex Discrimination only)
- Xavier-assigned Questioning Advisor (Title IX only)



Final Note on Advisors

- In cases that fall under Xavier's Interpersonal Violence policies for students, parties are allowed 2 advisors:
 - Advisor of Choice
 - Xavier support person – i.e.: Campus Advocacy Coordinator, Integritas Advisor
- In all other cases, students and employees are allowed 1 advisor



During the Hearing



Hearing Procedures

1. Introductions/Opening Statements
2. Questioning:
 - UCB/HHB to Responding Party, Reporting Party
 - Reporting/Responding Parties to Witnesses
 - UCB/HHB to Witnesses
 - Reporting/Responding Parties to each other
 - UCB/HHB to Reporting/Responding Parties
 - UCB/HHB, Reporting Party, and Responding Party to TIXO (**Sex Discrimination**)
3. Closing Statements
4. Hearing Concludes
5. Deliberation/Decision Making
6. Sanctioning
7. Outcome Communication
8. Appeal



Questioning:

- Asking good questions is key to gathering all needed information!
- Guidelines and Considerations
 - Cases when there is NOT an allegation of Interpersonal Violence or Title IX
 - Cases that involve an allegation of Interpersonal Violence
 - Cases that involve allegations under Title IX
 - Guidelines for the UCB and HHB
- Managing reporting and responding party, and witness questioning
- Maintaining flow through questioning



Effective Questioning Techniques



OPEN-ENDED



CLOSED-ENDED



PROBING



FUNNEL



HYPOTHETICAL



TIMELINES

Open-Ended Questions

Questions that are designed to elicit more than a one-word answer

Appropriate for:

- Eliciting longer, more complete answers
- Gauging the party's knowledge, opinion, or feelings about a topic

Examples:

- How would you define your relationship with the responding party?
- What happened when you arrived at the party?



Closed-Ended Questions*

Questions that are designed to elicit a one-word answer

Appropriate for:

- Clarification of specific points
- Gathering specific information (i.e.: number of drinks)

Examples:

- You stated you attended the party on Friday, correct?
- How many drinks did you have that night?

*Use closed-ended questions with caution as they do not draw out information and will likely require follow-up.



Probing Questions

Questions that attempt to clarify previously presented information or dig deeper on a topic

Appropriate for:

- Gaining a full understanding of what the party is attempting to communicate
- Gathering information from parties who seem to be holding back information
- Getting a party to elaborate on information

Examples:

- Tell me what you mean by...
- Is there anything else that the Board should know about...?



Hypothetical Questions

Questions that allow you to question similar concepts rather than the specific facts of the case

Appropriate for:

- Exploring a party's understanding of complex situations
- Helping the party see their behavior in another context

Example:

- You stated you drank a normal amount of alcohol. Tell me more about what you mean by normal.



Funnel Questions

Question sequencing that allows the questioner(s) to drill down on a specific topic

Tips/Reminders:

- Each question depends upon the previous answer
- Begin with closed-ended questions and then transition to more open-ended questions as you begin to funnel information

Example:

- Did you go to Dana's on September 15?
- Had you ever been there before? When?
- How did you get there?
- What did you do once you arrived?



Establishing Timelines

Question sequencing designed to help understand the order of events and transitions from one event to another

Tips/Reminders:

- Work timelines forward and backward; this will help establish credibility, as we rarely practice lies backward
- Establish timelines with ALL involved persons to look for (in)consistency

Examples:

- What happened prior to/after...?
- What happened between...and...?



Ineffective Questioning Techniques



Leading: questions used to elicit a desired answer



Multiple Choice: questions that ask the person to select the “best” answer from a list of options



Compound: questions phrased as one question that ask multiple questions as once



Repeats: questions that are a repeat of previous questions; if used intentionally with a caveat, can be effective



Implied Assumptions: questions that imply YOUR thoughts/feelings in the absence of established facts/information

Questioning Process in TIX Hearing

- Chair must assess relevance of every question posed by party's advisor to the other party before they respond
- Questions will be deemed irrelevant/not permitted if concerning:
 - Reporting party's sexual behavior (2 exceptions)
 - Information protected by a legal privilege
 - Party's treatment records (absent voluntary, written waiver)
 - Harassing, threatening, abusive, repetitive
- Chair may consult with UCB panel in making assessment



Sexual History of Parties

- Reporting party
 - Not relevant unless:
 - to prove that someone other than respondent party committed the conduct
 - Concerns specific incidents of the reporting party's sexual behavior with respect to the responding party and is offered to prove consent
- Responding party



Legally Privileged Information

- Unless a party provides a voluntary, written release, info of this nature will not be permitted:
 - Attorney-client communications
 - Implicating oneself in a crime
 - Confessions to a clergy member or other religious figures
 - Spousal testimony in criminal matters
 - Conversations between a doctor, dentist, nurse, or other health care provider and a patient about medical care
 - Conversations between a counselor, therapist, or social worker
- What if info of this nature is raised by the party themselves?



Parties' Treatment Records

Unless party provides voluntary, written release, records made/maintained by a

- Physician
- Psychiatrist
- psychologist, or
- other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or
- assisting in that capacity, and
- which are made and maintained in connection with the provision of treatment to the party

Then those types of records will not be permitted



Expert Witnesses, Records, Documentation

- Maxient
- Law enforcement
- Sexual Assault Nurse Exam (SANE)
- Electronic communications



Witness Information

- Witnesses may be called by the Dean of Students/AAO as well as the parties
- 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



Deliberation & Decision Making



UCB/HHB Hallmarks: Impartial & Objective

From the Title IX Regulations:

- Must objectively evaluate all relevant evidence, including inculpatory and exculpatory and make decisions on relevancy(30320)
 - Inculpatory: evidence that tends to prove the violation of a policy
 - Exculpatory: evidence that tends to exonerate the accused
- A party should not be “unfairly judged due to inability to recount each specific detail of an incident in sequence, whether such inability is due to trauma, the effects of drugs or alcohol, or simple fallibility of human memory.” (30323)



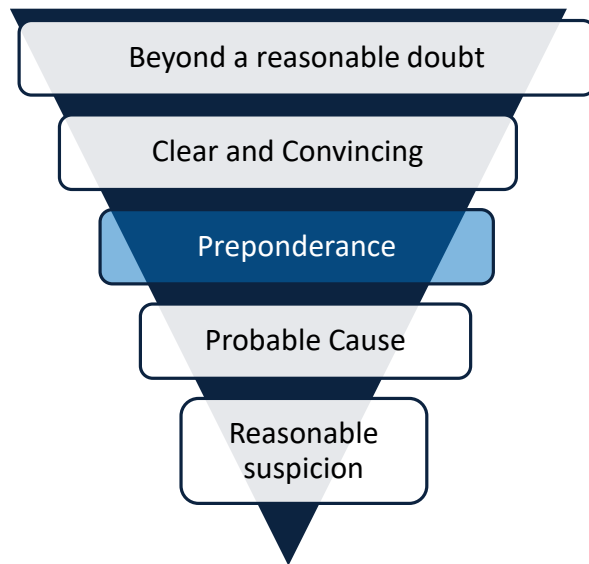
Avoiding Prejudgment of Information at Issue

- A good way to avoid bias and ensure impartiality: avoiding prejudgment of facts
- Remember:
 - Keep an open mind as a decision-maker and actively listen to all the facts presented as subjected to cross-examination
 - Each case is unique and different



Preponderance of Evidence

- Must begin with a presumption of no violation by responding party
- Continuum of evidentiary standards



Based on the **totality** of the evidence it is **more likely than not** that the respondent has violated Xavier policy.



- Best practice & Xavier policy for all student and employee conduct hearings
- Only standard that guarantees equity in the process
- Title IX (in Sex Discrimination cases)/DOSI/OHR conduct thorough, information-gathering investigation; UCB/HHB weighs all gathered/heard in hearing to determine if sufficient evidence to tip scale

Evaluating Information

- Evidence/Information
 - Direct
 - Indirect/Circumstantial
 - Third party
- Consideration & weighing of all information is essential
- Be attentive to challenging our own and each other's potential biases



Evaluating Information

- Per the Title IX Regulations, the UCB/HHB should evaluate:
 - Consistency, accuracy, memory, credibility
 - Implausibility, inconsistency, unreliability, ulterior motives, and lack of credibility
 - Use the standard of proof (more likely than not) as a guide in making a decision
- Generally applicable beyond Sex Discrimination cases



Evaluating Information

- Bricker Graydon offers some considerations for objectively weighing the evidence, making credibility assessments, and resolving credibility disputes that may arise



Evaluating Information

1. Keep an open mind
2. Sound, Reasoned Decision
3. Consider All (only) Evidence
4. Be Reasonable and Impartial
5. Weight of Evidence
6. Evaluate Witness Credibility
7. Draw Reasonable Inferences
8. Standard of Evidence
9. Don't Consider Impact (for both parties)



A Bit More on 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
- 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



Credibility Assessment

- You may choose to give greater credibility to those whom
 - Engage the process honestly, without deceit
 - Cooperate and are complete
 - Lack motive to be anything other than credible
- You may choose to give less credibility 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
- Claimed lack of knowledge
- Motive/malice
- Cultural factors
- Common sense
- Resolving/reconciling timelines
- Witnesses
- Demeanor
- Detail
- Corroboration
- Character information
- Explanations for inconsistencies



Deliberation & Decision Making

- Based on the totality of the evaluated information, is it more likely than not that the policy was violated?
- Does it violate our Code of Student Conduct/HCAP?
 - Policy element analysis
- Group Discussion considerations
 - Consensus preferred, but majority rule



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: Elemental Approach

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

behavior which
interferes with
the rights of
others

AND

disrupts or
interferes with
the normal
functioning the
community

OR

disrupts or
interferes with
the normal safety
of the
community



Sanctioning



Sanctioning

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



Sanctioning

- Title IX/IPV
 - DOS Office/OHR confirm sanctions with TIXO to ensure compliance with laws, policies, and precedent
- Non-Sex Discrimination
 - The Hearing Panel makes a recommendation to the Dean of Students of Designee
 - If there is a change to the sanction, the DOS/designee must provide an explanation to the parties (and panel)



Outcome Communication



Notification

- Title IX Hearing Notifications
 - Written determination (including sanction) provided and signed by UCB/HHB
 - DOS/AAO provides to parties simultaneously (required)
- Non-TIX Hearing Notifications
 - Rationale provided by UCB/HHB
 - Sanction recommendation to DOS/AAO
 - Simultaneous communication as best possible
 - Role of Chief Title IX Officer



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/President's Office
- UCB/HHB members eligible to serve on appeal boards



UCB Grounds for an appeal

- Based on the following grounds:
 - Denial of the elements of a fair hearing
 - Finding not supportive by the evidence
 - Sanctions imposed are substantially outside the parameters or guidelines set by the University for the type of offense or the cumulative conduct record of the Responding student
 - New information that was not available at the time of the hearing that may have bearing on the original decision



HHB Grounds for an appeal

- Based on the following grounds:
 - Denial of the elements of a fair hearing.
 - Insufficient evidence to establish responsibility for the alleged harassment.
 - Sanctions imposed can be shown to be arbitrary or capricious.
 - New information to present that was not available at the time of the hearing, and that may have a bearing on the Hearing Panel's decision or sanctions.



Title IX grounds for an appeal

- Appeal allowed if request provides sufficient factual basis for at least one of the following grounds:
 - Procedural irregularity that affected the outcome of the matter;
 - New evidence that was not reasonably available at the time of the determination of the Harassment Hearing Panel regarding responsibility that could affect the outcome of the matter;
 - TIXO staff conducting the investigation or a UCB/HHB member(s) in the hearing had a conflict of interest or bias for or against Reporting or Responding Parties generally or the individual Reporting Party or Responding Party that affected the outcome of the matter



Non-Sex Discrimination HCAP



Non-Sex Discrimination HCAP Policy

- **Harassment:** the creation of a hostile or intimidating environment, in which conduct, because of its severity and/or persistence, is likely to interfere significantly with an individual's life by affecting the person physically or emotionally.
 - Can be uninvited or unwelcome verbal, physical or visual conduct
 - Often, but not always, in reference to the individual's or a group of individuals' sex, gender identity, race, color, economic status, class, religion, culture, national origin, citizenship, veteran status, ethnicity, sexual orientation, position, age, handicap, or disability.
- Verbal conduct may be either oral or written words, such as epithets.
- Physical conduct may include assault or battery, physically interfering with, blocking or impeding an individual's normal movement.
- Visual conduct may include drawings, pictures, cartoons or derogatory posters.



Sex Discrimination

Applying specific policy language



Title IX Sexual Harassment

- Sexual harassment is conduct on the basis of sex that satisfies one or more of the following:
 - An employee of XU conditioning the provision of an aid, benefit, or service of Xavier on an individual's participation in unwelcome sexual conduct
 - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
 - Sexual assault, dating violence, domestic violence, or stalking



TIX Sexual Harassment: Key Issues

- Severe, persistent, and objectively offensive
- Does not require intent
- Reasonable person standard



Severe, Pervasive, Objectively Offensive, Reasonable Person

- A reasonable person = reasonable person in shoes of the reporting party
 - Accounts for circumstances facing the particular reporting party
 - Analysis is both subjective (whether conduct is unwelcome according to reporting party) AND objective (objectively offensive)
- Pervasiveness- not required in sexual assault, domestic violence, dating violence, stalking



Title IX Sexual Harassment- Sexual Assault

- Sex Offenses, Forcible: any sexual act directed against another person, without the consent of the person, including instances in which they are incapable of giving consent because of incapacitation
 - Forcible Rape
 - Forcible Sodomy
 - Sexual Assault with an Object
 - Forcible Fondling
- Sex Offenses, Non-forcible:
 - Incest
 - Statutory Rape



Specific Types of Sexual Assault

- **Forcible 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 consent
- **Forcible Sodomy:** 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 in which they are incapable of giving consent because of incapacitation
- **Sexual Assault with an Object:** use of 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 in which they were incapable of giving consent because of incapacitation



Specific Types cont'd

- **Forcible Fondling:** 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 (non-consensually), or not forcibly or against the person's will in instances in which they are incapable of giving consent because of incapacitation
- **Incest:** non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by OH law
- **Statutory Rape:** non-forcible sexual intercourse, with a person who is under the statutory age of consent of 16.



Title IX- 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
 - 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 frequency of interaction between the persons involved in the relationship
- Including, but not limited to, sexual or physical abuse or the threat of such abuse.
- Does not include acts covered under the definition of domestic violence.



Title IX- Domestic Violence

- A felony or misdemeanor crime 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 the domestic or family violence laws of the jurisdiction in which the crime of violence occurred
- 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 the jurisdiction in which the crime of violence occurred



Title IX- 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.



Title IX- Stalking Breakdown

- “Course of Conduct”
 - Two or more acts, including, but not limited to, acts in which the stalking individual 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
- “Substantial emotional distress”: significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling



Interpersonal Violence- Sexual Harassment

- Unwelcome, gender-based verbal or physical conduct that is
- Sufficiently severe, persistent **or** pervasive that it
- Unreasonably interferes with, denies or limits someone's ability to participate in or benefit from Xavier's educational programs, services, and/or activities, and
- is based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.



Interpersonal Violence- Rape (or attempts to commit the same)

- Rape is:
 - Any sexual intercourse, however slight,
 - With any body part or object,
 - By a person upon another person,
 - That is without Consent and/or when Coercion is used.
- Intercourse includes:
 - Vaginal or anal penetration by body part or object Oral (mouth to genital or anal)
 - No matter how slight the penetration or contact.



Interpersonal Violence- Sexual Assault (or attempts to commit the same)

- Sexual Assault 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.



Interpersonal Violence- Dating Violence

- A pattern of abusive behavior committed by a person who is or has been in a relationship of a romantic or intimate nature with the victim where
 - The behavior is used to exert power and control over another party in the relationship.
 - OR
 - One instance of severe abusive behavior committed by a person who is or has been in a relationship of a romantic or intimate nature with the victim where
 - The behavior is used to exert power and control over another party in the relationship.



Interpersonal Violence- Domestic Violence

- A pattern of abusive behavior in an intimate or family relationship where
 - The behavior is used to exert power and control over another party in the relationship.
 - OR
 - One instance of severe abusive behavior in an intimate or family relationship where
 - The behavior is used to exert power and control over another party in the relationship.



Interpersonal Violence- 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



Interpersonal Violence- Public Indecency

- Masturbating or flashing/exposing breasts or genitals to others in a public and/or uninvited manner
- Includes engaging in an activity in public appearing to an ordinary observer to be sexual conduct or masturbation



Interpersonal Violence- Sexual Exploitation

- 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 one of other sexual misconduct offenses
- Examples:
 - Prostituting another person
 - 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
 - Voyeurism
 - Knowingly exposing someone to or transmitting an STI, STD or HIV to another person
 - Intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals



Policy Language Applying to BOTH TIX & IPV

- Coercion
- Consent



Coercion

- Compelling another person to do something through:
 - Emotional or physical pressure
 - Threats or other forms of intimidation
- Real or perceived power differentials between individuals also may create an atmosphere of Coercion that can significantly impair a person's ability to Consent



Consent

- Clear, knowing and voluntary words or actions that demonstrate agreement for specific sexual activity
 - Must be informed and freely given
 - 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.
 - Substantial impairment may include, but are not limited to, loss of balance/inability to walk without stumbling, slurred speech, inability to focus their vision, vomiting, erratic or extreme behavior, knowledge of person's significant use of drugs or alcohol, or passing out.
- Key questions:
 - Whether responding party believed they had obtained Consent and
 - Whether a reasonable person would have believed that they had obtained Consent



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



Your Role

- Be vigilant around bias, stereotypes, assumptions
- Objectively and impartially apply specific policy language to entirety of information in report + hearing
- Begin with not responsible then assess all info/evidence on preponderance of evidence scale



Realities

- Sex discrimination happens by and to anyone
- Usually between people who know each other
- Delayed reporting common
- Nature of intimate partner relationship violence
- Self blame/Societal blame
- Social stigma
- Potential power differentials
- Fear of retaliation



Realities, cont'd

- Consent assumed
- Impact of alcohol
- Realities of false reporting
- Perceptions and impact of poor judgment/decision-making
- Use of psychological/social coercion, drugs/alcohol, body weight vs force, threat of force, weapon
- Individuals who perpetrate sex discrimination vs stereotype
- Impact of engagement/lack of engagement with law enforcement



Potential Dynamics of Sex Discrimination

- Response to trauma
- Trauma impact on memory

Challenging Sex/Gender Stereotypes



Cultural Implications

- Hesitant to “air dirty laundry”
- Individual and/or community fear of police due to systemic racism
- Not out as LGBTQ to family, friends
- Different cultural norms re: intimate and sexual relationships
- Cultural communication styles/norms and impact on process



Parties' Response to Experience

- Individualized
- Wide-ranging
- Not conclusory of truth/responsible or not



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



Common Responding Party Responses

- Anger
- Shock
- Concern about personal and professional reputation
- Fear of telling colleagues, family, friends
- Fear of colleagues'/supervisor's response
- Loss of social support
- Confusion about process
- Impact of potential sanction
- Memory may be impaired by alcohol
- Impact of concurrent criminal process



Impact on Witnesses

- Difficult experience for witnesses as well
- Small campus, insular student groups and employee spaces
- Impact on friend/mutual friend group and/or co-workers



Understanding Implicit Bias



Adapted from The Kirwin Institute for the Study of Race & Ethnicity at The Ohio State University: <https://kirwaninstitute.osu.edu/implicit-bias-training>

What is Implicit Bias?

- Implicit bias is defined as the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.
- Can be neutral, positive, or negative
- It is unconscious, automatic, and relies on associations that we form over time.



Origins of Implicit Bias

- We can form bias toward groups of people based on what we see in the media, our background, and life experiences.
- Our biases reflect how we internalize messages about our society rather than our intent. Nevertheless, we can still act on our biases in ways that can harm others.
- Implicit bias can turn our best intentions into unwanted outcomes.



Self-Awareness/Reflection Tools

- Is my assessment based on my culture, theirs, both?
- Is my assessment based on stereotypes I hold?
- Is my assessment based on their specific role as reporting or responding party?
- Is my assessment based on my identifying with and/or feeling a connection with the individual?
- Is my assessment based on a person “acting guiltily” by not making eye contact or fidgeting?



Mitigating Bias in the Conduct/HHB Process

- Making decisions as a group – goal is to reach consensus about those decisions.
- Listening to the perspectives of others, especially during deliberation.
- Give all panel members the opportunity to speak; ask those who are not to share their thoughts.
- Use definitions, benchmarks, and precedent to guide decision making!



Wrap-up and Final Thoughts



Thank you!

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

