

# University Conduct Board Training Fall 2020

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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/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

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



# 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 and Panelists
- Dean of Students or Director of Student Integrity
- Responding Party
- Reporting Party
- 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 Sexual Harassment Hearings only)
  - Student Rights Representative
  - Integritas Advisor
  - Advocate



# UCB Hearing Participants

- Title IX & Interpersonal Violence Response Coordinator/Program Director (**Sex Discrimination only**)
- Witnesses with direct knowledge (NOT character witnesses)



# Who is the Advisor of Choice?

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



# Final Note on Advisors

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



# The UCB Hearing: During the Hearing



# Hearing Procedures

1. Introductions/Opening Statements
2. Questioning:
  - UCB to Responding Party, Reporting Party
  - UCB to Witnesses
  - Reporting/Responding to Witnesses
  - Reporting/Responding to each other
  - UCB to Reporting/Responding
  - UCB, Reporting Party, and Responding Party to Title IX & Interpersonal Violence Coordinator (IPV and Title IX Sexual Harassment Hearings)
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 Sexual Harassment
  - Cases that involve an allegation of Interpersonal Violence
  - Cases that involve allegations under Title IX Sexual Harassment
  - Guidelines for the UCB
- Managing Respondent, Complainant, 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 respondent'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 respondent is attempting to communicate
- Gathering information from respondents who seem to be holding back information

Examples:

- Tell me what you mean by...
- Give me an example of a time when you...
- 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 respondent's understanding of complex situations
- Helping the respondent 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.
- How would you respond if...



# 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 were your intentions in going there?



# 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 at 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



# Let's Look at Questioning...

- Review the question – how would you re-word it?





# Questioning Process in TIXSH

- 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 unless:
    - Information's use is to prove that someone other than the respondent party committed the conduct, OR
    - Information concerns specific incidents of the reporting party's sexual behavior with respect to the responding party and is offered to prove consent
  - Information is 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



# Party/Witness Absent or Declines to Answer Advisor-Posed Question

- Title IX Sexual Harassment Hearings ONLY
- Rule
- Policy/Process



# Witness Information

- Witnesses may be called by the Dean of Students 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



# Witness Information

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



# The UCB Hearing: Deliberation and Decision Making



# UCB 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)



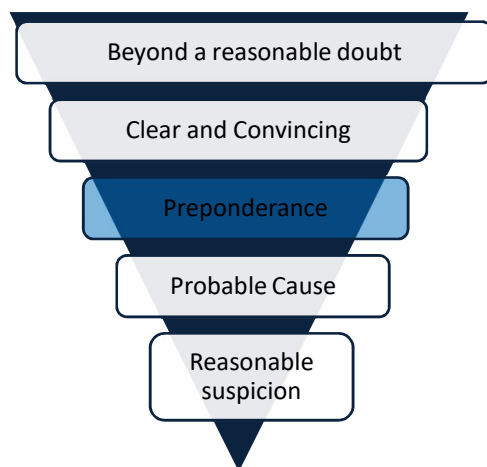
# Avoiding Prejudgment of Information at Issue

- 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
  - If a party or witness does not submit to cross-examination, may not be able to consider statements in the record
  - 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’s Code of Student Conduct.

- Best practice & Xavier policy for all student conduct hearings
- Only standard that guarantees equity in the process
- Title IX (in Sex Discrimination cases)/DOSI conduct thorough, information-gathering investigation; UCB 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 (the decision-makers) 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 Title IX cases



# Evaluating Information

- Bricker and Eckler, LLP offer 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



# 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

- 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
- 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 – 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.

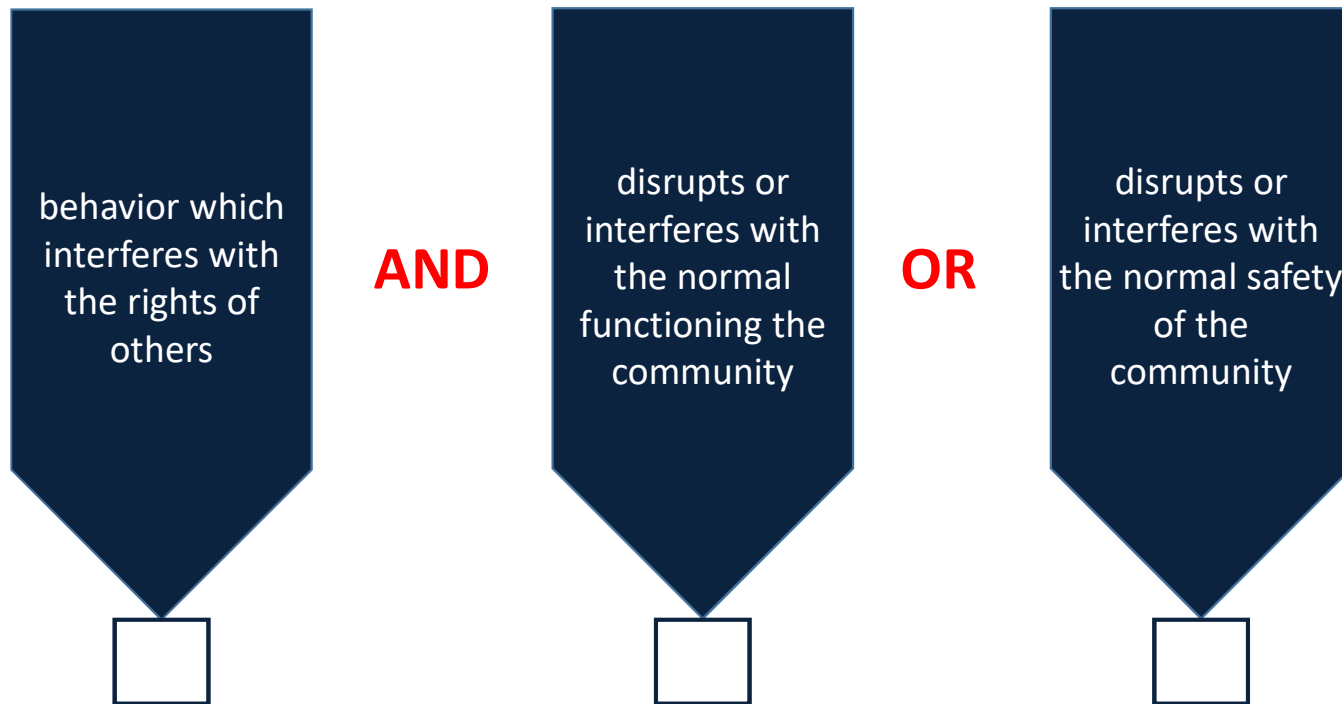


# Disruptive Behavior

- 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

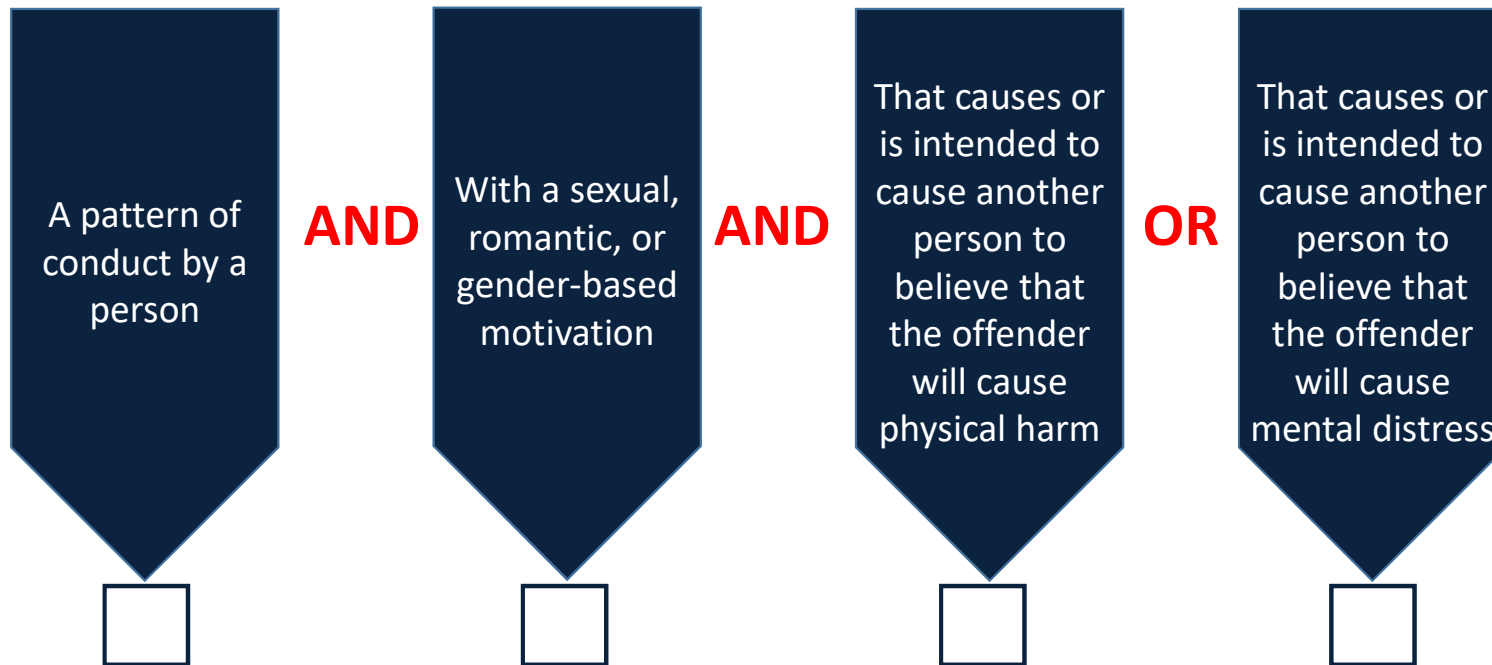


# Interpersonal Violence: Stalking

- 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.
- What does elemental analysis look like for this?



# Stalking: Elemental Approach



# Your Turn...

- Interpersonal Violence: Sexual Assault
- 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?



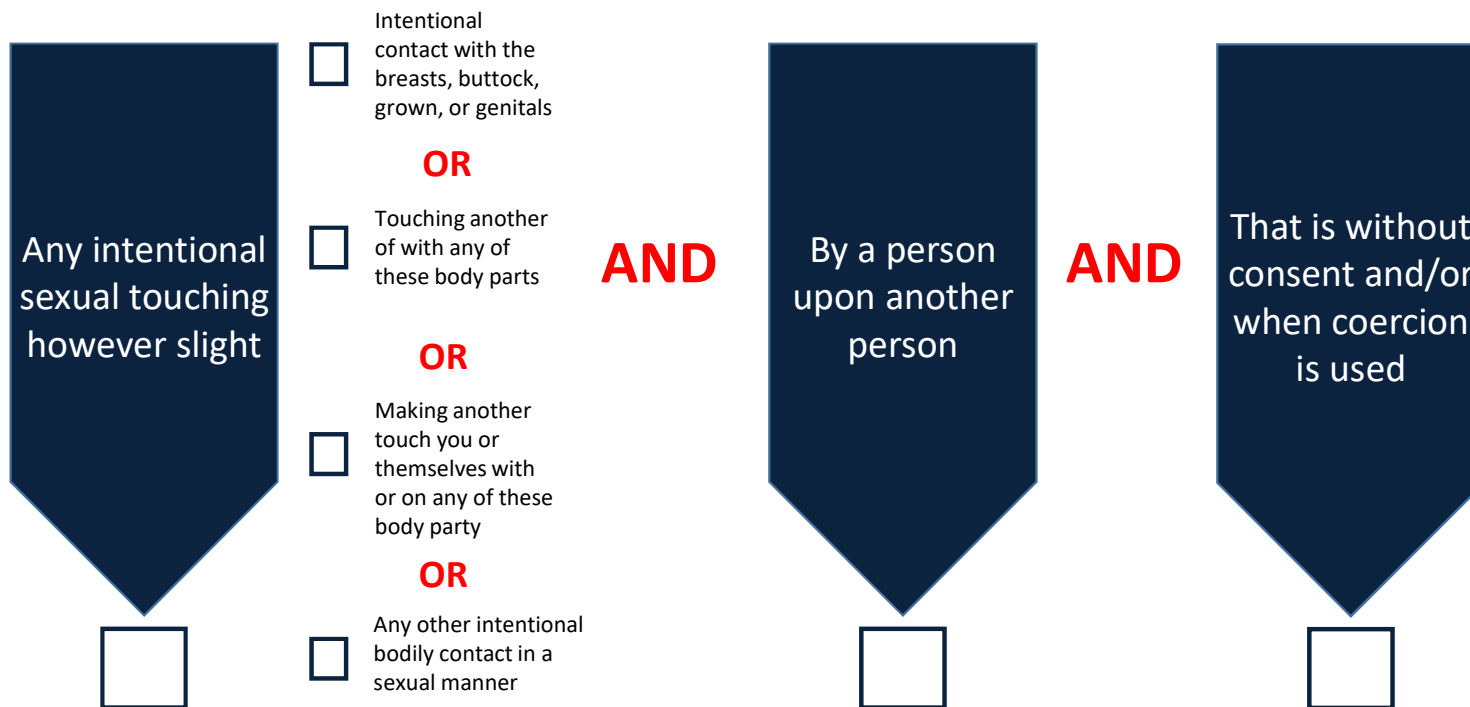
# Interpersonal Violence: Sexual Assault

- 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.





# Sexual Assault: Elemental Approach

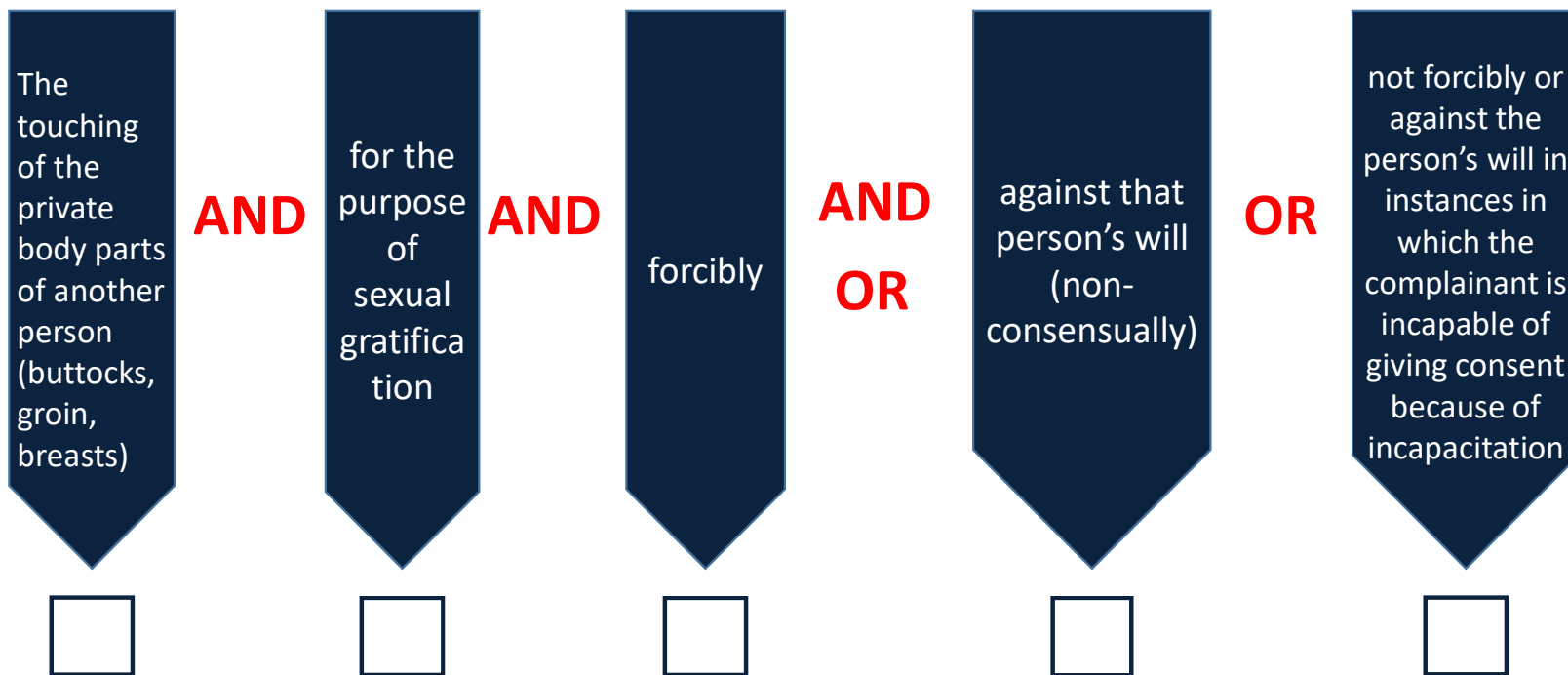


# Title IX Sexual Harassment: Sexual Assault- Forcible Fondling

- The 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 the complainant is incapable of giving consent because of incapacitation.



# Sexual Assault- Forcible Fondling: Elemental Approach



# 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



# Title IX Sexual Harassment Notification

- Written determination provided and signed by UCB
- Dean of Students provides written determination to parties
- 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 Sexual Harassment 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;
  - Title IX and Interpersonal Violence Response Office staff conducting the investigation or a UCB 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



# Remote Hearings



# Option for Remote Hearings

- COVID-19 Considerations
- Title IX Sexual Harassment Considerations
- Other types of hearings
- How will this work?
  - When necessary, additional training will be provided!



# Sex Discrimination



# Types of Cases

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





# Two Sets of Policies

- Title IX Sexual Harassment
- Interpersonal Violence



# Title IX

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



# Title IX & Interpersonal Violence Office (TIXO) Role

- Determine if report falls under Title IX Sexual Harassment
- 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 has violated policies



# TIXO Role, Continued

- Investigation Reports
- Role in hearing



# Title IX Sexual Harassment

- Sexual harassment is conduct on the basis of sex that satisfies one or more of the following:
  - 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 Sets of Policies

- 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.
    - 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



# 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



# Key Issues

- Stereotypes
- Bias
- Cultural implications
- Consent
- Intoxication
- Scope of Dating Violence
- Parties' Responses to Experience
- Relevant Information
- Types of Witnesses/Records



# Challenging Sex/Gender Stereotypes



# Understanding Sex Discrimination Realities

- Can happen to and by anyone
- Happens between people who know, trust, like, love each other
- Delayed reporting common
- Intimate partner violence dynamics
- Impact of engagement/lack of engagement with law enforcement



# 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





# 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?



# Realities

- Consent assumed
- Social/psychological pressure rather than physical threats
- Black/brown outs by one or both parties
- Verbal, emotional dating violence not always physical



# Dating Violence: Dynamics

- 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



# 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 +/- behavior change



# Common Responding Party Responses

- Anger
- Shock
- Fear of telling family, friends
- 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 groups
- Impact on friend/mutual friend group



# Potential Dynamics of Sex Discrimination

- Response to trauma
- Trauma impact on memory





# Types of Information in Hearing



# 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



# 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



# Statements of Parties/Witnesses Absent or Declining to Respond to Other Party Questions

- Title IX Sexual Harassment Hearings ONLY
- UCB may not consider any prior statement of the party or witness in this case
- UCB cannot draw an inference about the determination regarding responsibility based solely on a party's absence or declining to answer a question



# Expert Witnesses, Records, Documentation

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



# Wrap-up and Final Thoughts



# Thank you!

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

