

Title IX Hearing Officer Training

MARCH 2023

Why training?

It helps the parties and the process when you understand:

- ▶ Title IX Jurisdiction
- ▶ Title IX definition of sexual harassment
- ▶ Process
- ▶ Roles of the Title IX officials involved in the process

Title IX

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Purpose of Title IX

Prohibitions or limitations
on participation based
on sex

Unequal funding of
men's and women's
athletics

Pregnancy discrimination

Sexual harassment

- Sexual assault
- Stalking
- Domestic violence/Dating violence
- Verbal/expressive sexual harassment

Jurisdiction

Must be in US at time of incident

Must be in an educational program or activity, or on campus

- **Locations:** Residence halls, classrooms, campus grounds
- **Events:** School sporting events, sponsored trips
- **Circumstances:** Athletics, extracurriculars, clinics/internships

Doesn't include, for example:

- Off-campus housing
- Off-campus parties
- Personal travel

Title IX Sexual Harassment at WCU

- Check out Policy 129 and accompanying procedures.
- The same procedures apply to faculty, staff, and students.
 - Note: As hearing officers, you may be tasked with hearing a case involving employees.
- Maintain confidentiality

Definition of Sexual Harassment

Quid pro quo- an employee of the respondent conditioning the provision of an aid, benefit, or service of the respondent on an individual's participation in 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 as defined by relevant statutes.

Consent – WCU Procedure 129.3

I. Consent is the approval and permission to engage in mutually agreed upon sexual activity demonstrated by clear actions, words, or writing.

II. Consent cannot be granted when:

- a. The other party is under the age of legal consent;
- b. The other party is asleep;
- c. The other party is incapacitated, as that term is defined by the Policy and Procedures; and/or
- d. The other party was coerced; intimidated; or threatened with mental or physical force.

III. Consent is not to be inferred from:

- a. Silence, passivity, or lack of resistance; and/or
- b. An existing or previous dating or sexual relationship.

IV. Consent may be withdrawn at any time and requires an outward demonstration that clearly conveys through understandable words or actions that a party is no longer willing to engage in sexual activity. Once consent is withdrawn, the sexual activity must immediately cease.

Mandatory Response to Report

Contact	Contact Complainant to discuss supportive measures (whether they file formal complaint or not)
Consider	Consider Complainant's wishes with respect to supportive measures
Explain	Explain process for filing a formal complaint, the grievance process, and any informal resolution options

Supportive Measures

When are they provided?

What type of measures?

For whom should they be provided?

Interim Action



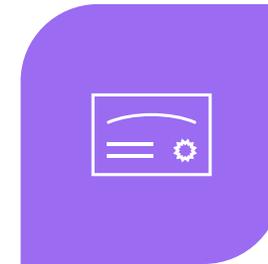
SUSPENSION



BAN FROM
HOUSING



BAN FROM
CERTAIN AREA ON-
CAMPUS

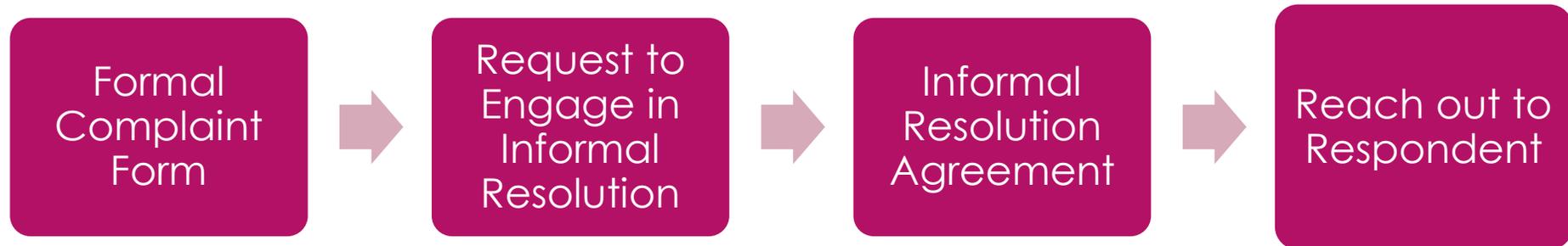


REGISTRATION
HOLDS

Formal Complaint

- Formal Complaint is required to engage in the Title IX grievance process.
- Can be filed and signed by the Complainant or Title IX Coordinator.

Informal Resolution



Informal Resolution

- Allowed in most cases if agreed upon by both parties
- Not allowed when the conduct is employee on student
- Examples:
 - Facilitated discussions
 - Restorative justice
 - Mediation
 - Respondent acceptance of responsibility

Formal Resolution

Formal
Complaint
(FC) Form



Send FC to
Title IX
Coordinator



Title IX
Coordinator
sends case to
Investigator



Investigator
starts their
investigation

Formal Investigation Process

1

NOTICE OF INVESTIGATION

2

INFORMATION GATHERING

3

INFORMATION REVIEW

Formal Investigation Process Continued...

4

FINAL REPORT

5

FINAL INVESTIGATORY PACKET

Hearing Logistics

Prehearing Tasks

01

Review parties/participants and check for conflicts.

02

Schedule hearing date

03

Review the investigative report, the "directly related" evidence, and WCU's Policy 129 Title IX Sexual Harassment and procedures.

04

Review the definition of Title IX Sexual Harassment.

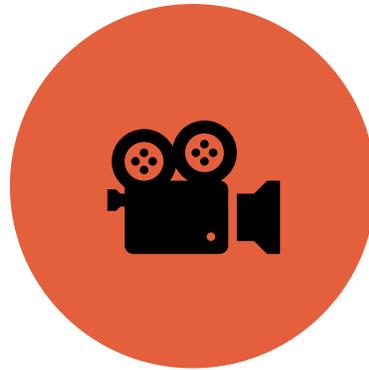
05

Identify any areas of ambiguity that go directly to the elements of the alleged wrongdoing and draft questions to resolve those areas only.

Live Hearing



HEARINGS MAY BE VIRTUAL



PARTIES MAY PARTICIPATE
FROM DIFFERENT ROOMS
USING VIDEO EQUIPMENT



WCU WILL RECORD THE
HEARING (AUDIO,
AUDIOVISUAL, OR TRANSCRIPT)

Hearing

- Opening remarks (a template will be provided to you)
- Opening statements, presentation of evidence and witnesses, concluding statements
- Cross-questioning cannot be conducted by the parties—it must be conducted by an advisor.
 - If the party does not have an advisor, the recipient must provide one at no cost
- May only exclude questions based on relevance
 - Not because they are unduly prejudicial, concerning prior bad acts, or constituting character evidence

Post Hearing

- Board will meet privately following the hearing and will base its determination solely on information presented as part of the complaint resolution process.
 - Info from final investigative report and info obtained during the hearing
 - Consider all inculpatory and exculpatory evidence
 - Majority Vote
- Determination of Sanctions
 - Consider totality of circumstances and other relevant considerations
 - Majority Vote
- Verbal notice of outcome after deliberation
- Notice of Action emailed within 14 days

Sanctions – see WCU Procedure 129.6

- Residence hall suspension or expulsion
- Social restrictions (excluded from participating in extracurriculars, campus social events, etc.)
- Suspension
- Expulsion
- Trespass (removal for a specified period of time from all University property)
- Probation (more severe disciplinary sanction if another violation within a stated period of time)
- Educational programming (alcohol/drug awareness and prevention, sexual harassment prevention training, reflection essays)

Notice of Action

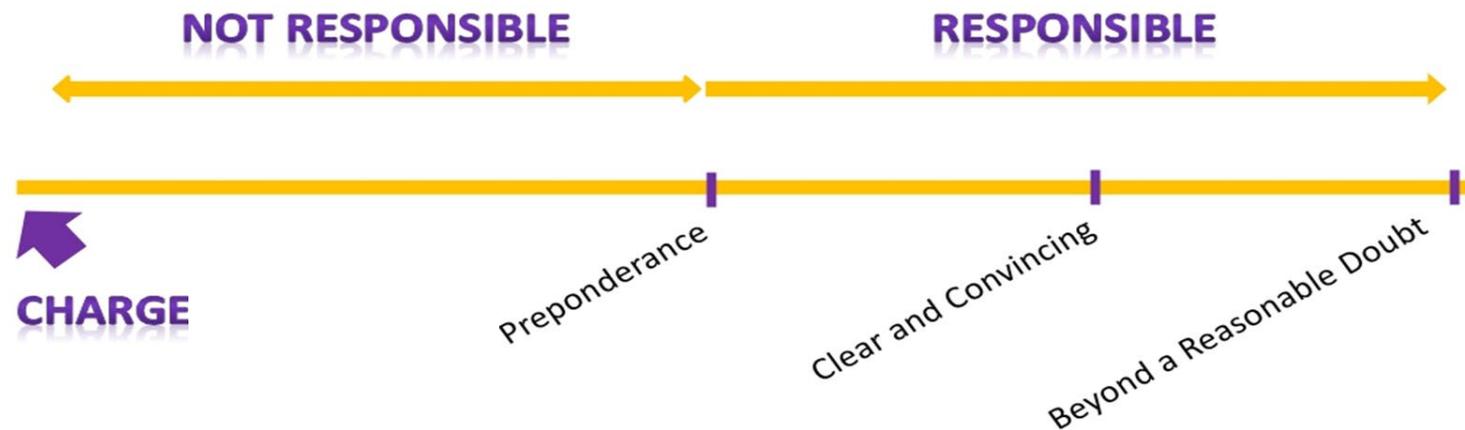
Must include:

- ▶ Identification of the allegations
- ▶ Description of the procedural steps taken
- ▶ Findings of fact
- ▶ Conclusions regarding application of school rules to the facts
- ▶ Statement of result as to each allegation
 - ▶ Determination of responsibility
 - ▶ Rationale
 - ▶ Disciplinary sanctions
 - ▶ Remedies to be provided to Complainant
- ▶ Appeal procedures

Adjudication

Standard of Evidence

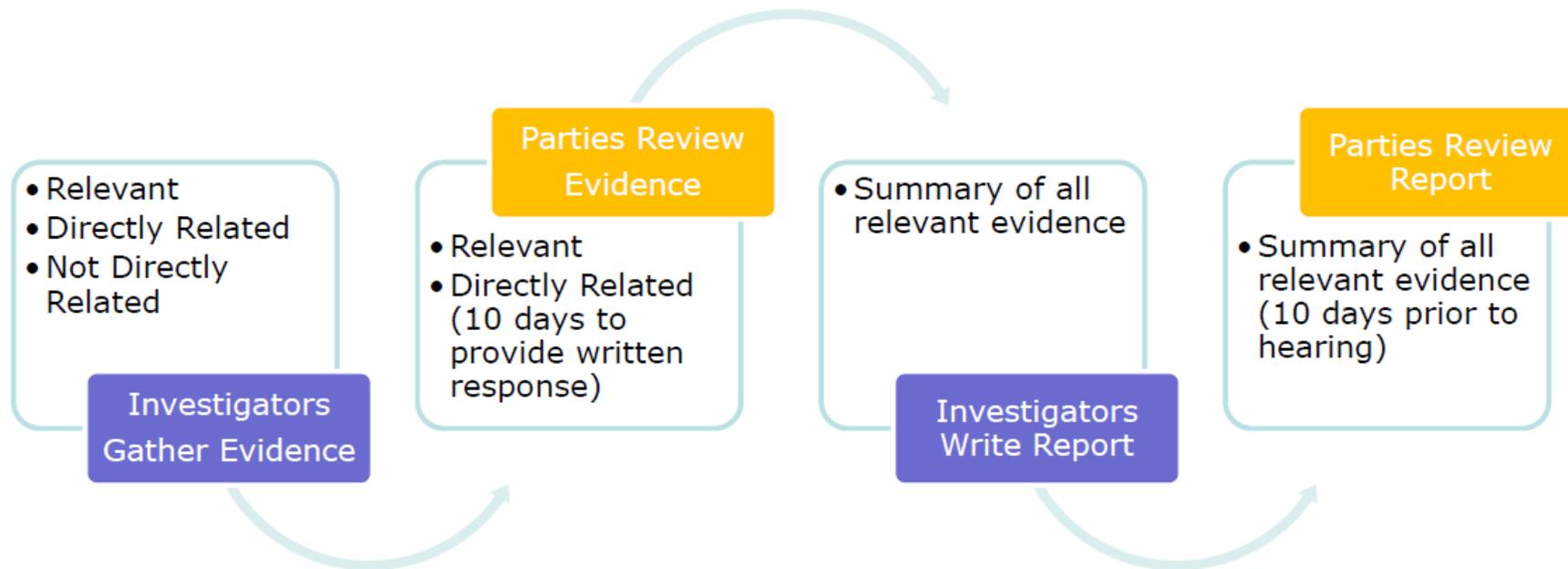
- Regulations allow University to choose between Preponderance of the Evidence and Clear and Convincing Evidence.
- WCU uses Preponderance of the Evidence standard



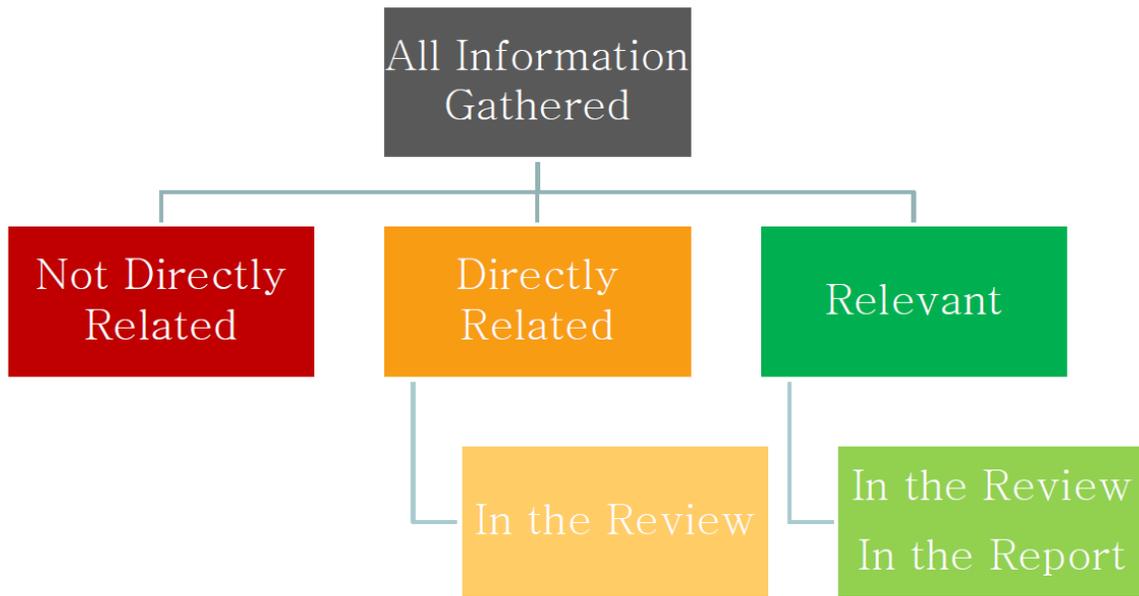
Impartiality Is Important



Parties Will Review Evidence in Advance



Sorting Information



Relevant

Evidence, whether inculpatory or exculpatory, on which the school will rely in reaching a determination regarding responsibility

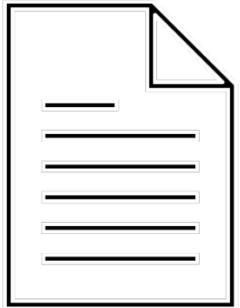
Directly Related

Information or evidence that has a clear relationship to the allegations at issue but is not necessary to reach a determination regarding responsibility

Not Directly Related

Information or evidence that has no clear relationship to the allegations at issue

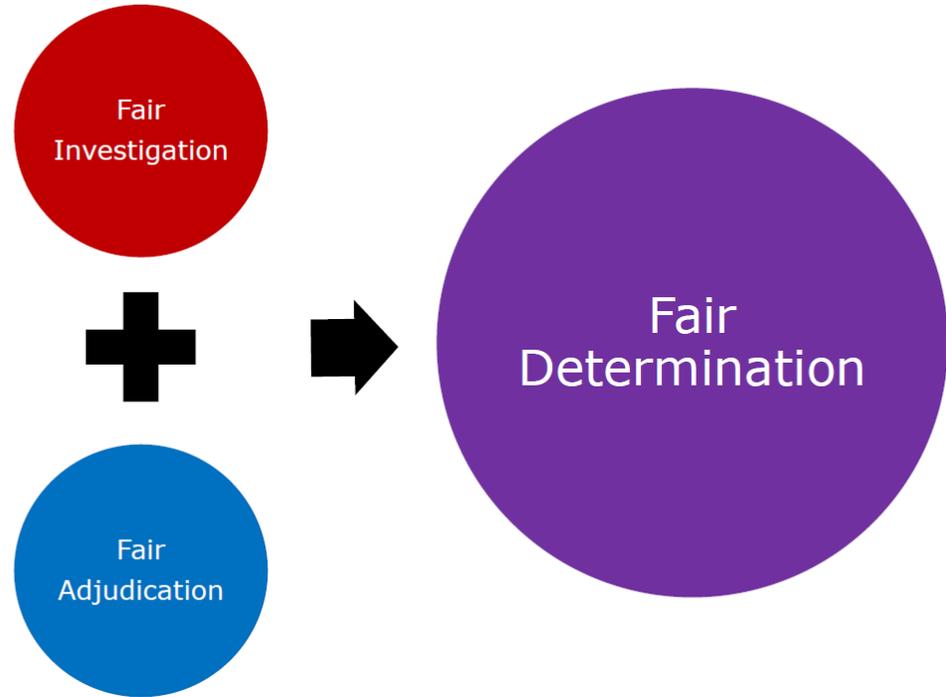
Investigative Report Summaries Relevant Evidence/Does Not Adjudicate



Evidence the investigators saw as relevant



Evidence the investigators saw as directly related



Live Questioning and On-The-Spot Relevancy Determinations

How does this work in an actual hearing?

1. Advisor poses question.
 2. Hearing officer decides if it is allowed.
 3. Witness answers question.
- Request questions in advance. Parties can't be required to provide or be limited from asking additional questions.
 - Think about likely questions
 - Ask questions yourself - explore sensitive ground, then further questions would be duplicative.
 - Take your time. Call a recess.
 - Err on the side of including evidence.

Relevancy of Questions

Determined by the hearing panel

- Duplicative
- Sexual history

Cross-questioning

- If a party or witness is not subject to cross-examination, then
 - Can rely on their statement and evidence in determining responsibility

Other exclusions

- Legally privileged information
- Treatment records cannot be used without voluntary, written consent

Shielded Information



Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant



1. Offered to prove that someone other than respondent committed the conduct



2. Concern specific incidents of prior sexual behavior with respondent and offered to prove consent



Questions/evidence about respondent's sexual predisposition or prior sexual behavior may be relevant

- Attorney-client communications
- Medical & psychological records
- "Rape shield information"