



INVESTIGATOR TRAINING



USC University of
Southern California

September 2, 2022



PRESENTER INTRODUCTIONS

WHAT WE WILL COVER

- Brief Overview: Title IX Landscape
- USC Policy and Prohibited Conduct
- USC Prohibited Conduct Resolution Process
- Fact Gathering
- Report Writing





A BRIEF LEGAL OVERVIEW



The Law:

No person in the United States 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.

20 U.S.C. § 1681

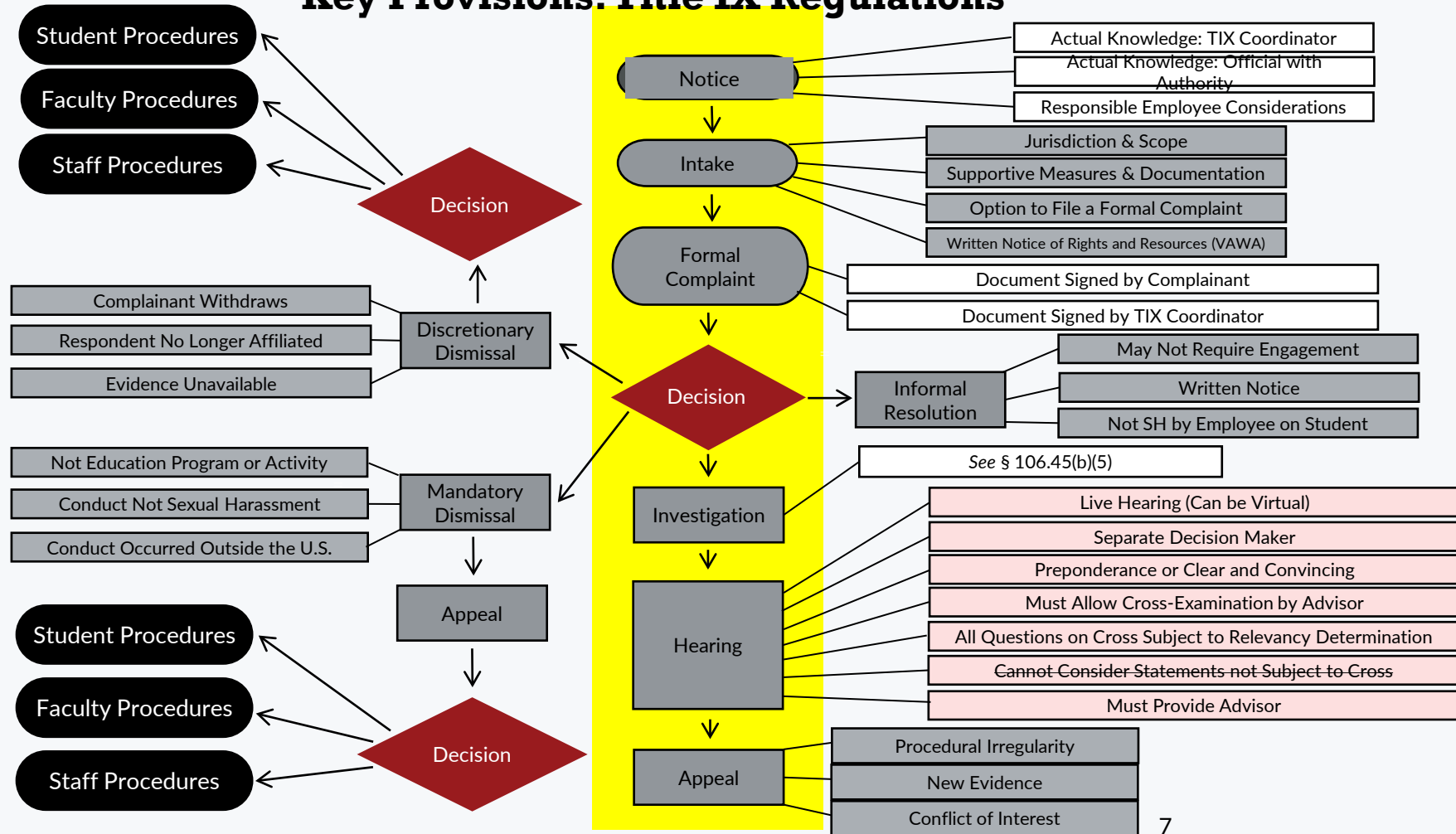
Understanding Title VI of the Civil Rights Act of 1964

The Law:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d et
seq.

Key Provisions: Title IX Regulations



Core Tenets:

Definition of Sexual Harassment

SEXUAL HARASSMENT means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) 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
- (3) "Sexual assault" as defined in 20 U.S.C. § 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. § 12291(a)(10), "domestic violence" as defined in 34 U.S.C. § 12291(a)(8), or "stalking" as defined in 34 U.S.C. § 12291(a)(30).

Title IX Regulations, May 19, 2020, § 106.30 (a)

Core Tenets:

Response to Sexual Harassment

A recipient with actual knowledge of sexual harassment in an **education program or activity** of the recipient against a person **in the United States**, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances ... A recipient's response must treat complainants and respondents equitably by offering **supportive measures** as defined in § 106.30 to a complainant, and by following a **grievance process** that complies with § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent.

Title IX Regulations, May 19, 2020, § 106.44 (a)

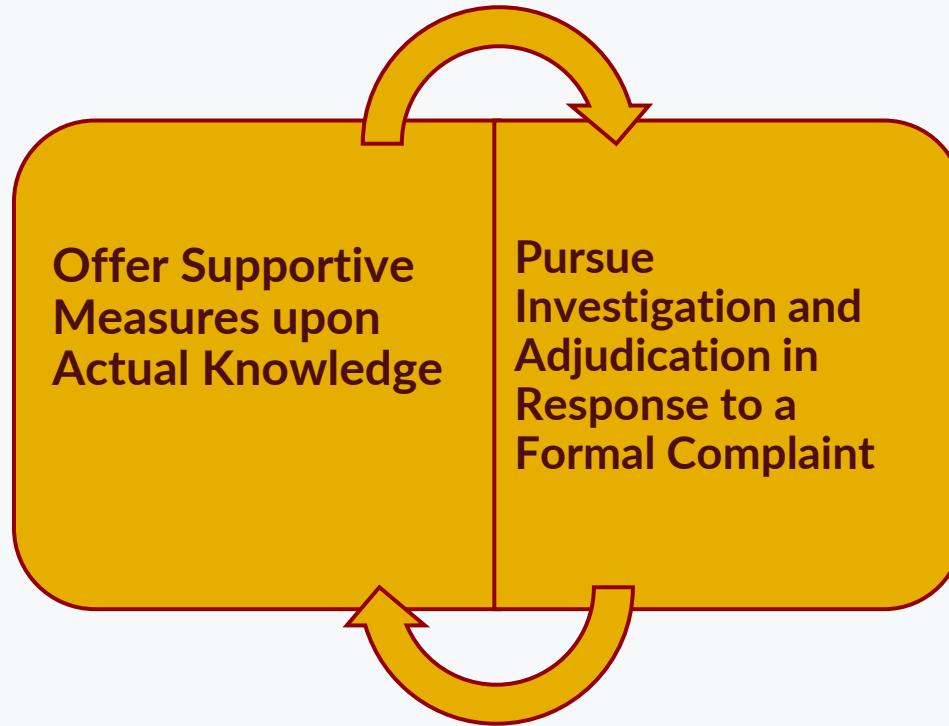
Core Tenets:

Education Program or Activity

For the purposes of this section, §§ 106.30 and 106.45, “education program or activity” includes locations, events, or circumstances over which the recipient exercised **substantial control over both the respondent and the context** in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

Title IX Regulations, May 19, 2020, § 106.44(a)

Understanding Key Provisions

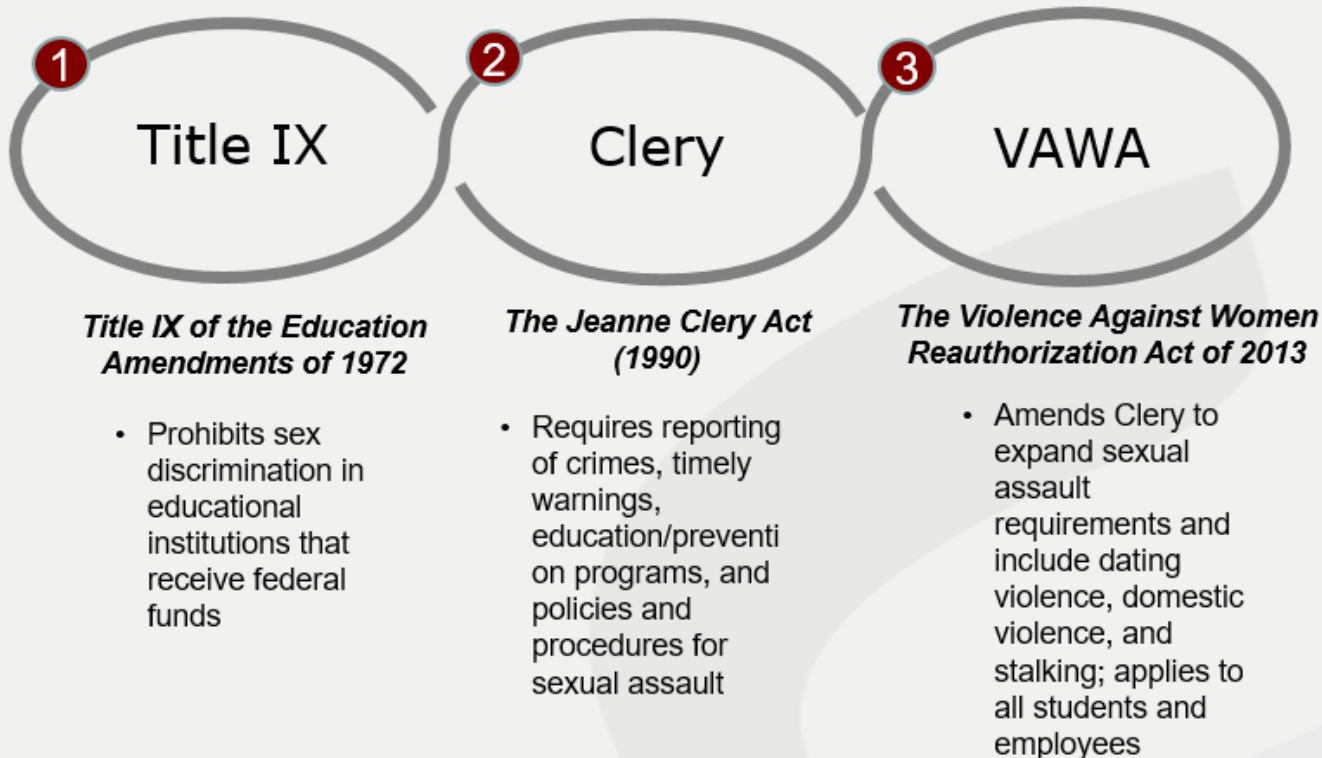


Core Tenets:

Treat reporting parties and respondents equitably by providing **remedies** to a reporting party where a determination of responsibility for sexual harassment has been made against the respondent, and by following a **grievance process** that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures, as defined in § 106.30, against a respondent.

Title IX Regulations, May 19, 2020, §§ 106.44 (a) and 106.45 (b)(1)(i)

Federal Regulatory Framework





USC POLICY ON PROHIBITED DISCRIMINATION,
HARASSMENT, AND RETALIAION

To Whom the Policy Applies

SCOPE:



Students



Staff



Faculty



Third Parties

Two Formal Resolution Tracks

If the **Formal Complaint** alleges **only** Discrimination (either Disparate Treatment or Disparate Impact), Hostile Environment Harassment (based on a protected class other than sex or gender), Quid Pro Quo Harassment (based on a protected class other than sex or gender), and/or Retaliation not relating to Sexual Harassment.

Investigation by a trained investigator free of conflict of interest or bias. During the investigation, both parties provided an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

Evidence Review: Parties may review and respond to all information gathered in the investigation that is directly related to the allegations.

Investigative Report issued to both parties, which includes a determination regarding responsibility.

Sanctioning Panel convenes if there is a finding of responsibility to determine an appropriate sanction. Panel determined by status of Respondent.

Appeal for: (1) procedural irregularity, (2) new evidence, or (3) conflict of interest or bias. Appellate authority determined by status of Respondent.

If the **Formal Complaint** alleges any of the following Prohibited Conduct:

- Title IX Sexual Harassment, including Sexual Assault, Dating and Domestic Violence, and Stalking; Sexual and Gender-Based Harassment; Nonconsensual Viewing, Recording and Dissemination; Exposure; Other Forms of Dating and Domestic Violence; and/or Retaliation relating to Sexual Harassment.

Evidence Review: Parties may review and respond to all information gathered in the investigation that is directly related to the allegations.

Investigative Report issued to both parties, which includes a determination whether the conduct alleged, if substantiated, requires a hearing with cross-examination.

Live Hearing with: (1) cross-examination by the parties' advisors, and (2) rules that limit what evidence that may be considered in making a determination of responsibility.

Notice of outcome issued to the parties that includes a determination regarding responsibility.

Sanctioning Panel convenes if there is a finding of responsibility to determine an appropriate sanction. Panel determined by status of Respondent.

Appeal for: (1) procedural irregularity, (2) new evidence, or (3) conflict of interest or bias. Appellate authority determined by status of Respondent.

Title IX's implementing regulations define Sexual Harassment as conduct on the basis of sex that satisfies one or more of the following:

A University employee conditions the provision of an aid, benefit, or service of the University 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 University's education program or activity; or

Sexual Assault, Dating Violence, Domestic Violence, Stalking, and Retaliation.

Prohibited Conduct: California Education Code

Sexual Harassment

- Unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions.

Quid Pro Quo

- Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress; submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual; and/or submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution

Hostile Environment

- The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment

Sexual Violence

- Physical sexual acts perpetrated against a person without the person's affirmative consent, including rape (penetration without consent) and sexual battery (intentional touching without consent).

Sexual Exploitation

- A person taking sexual advantage of another person for the benefit of anyone other than that person without that person's consent, including, but not limited to, prostituting, trafficking, recording, distributing images, and viewing another person's sexual activity or intimate parts without consent.

Sexual Harassment

- **Sexual Harassment** also includes any sexual advance, request for sexual favors, or other unwelcome conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, electronic, or otherwise when one or more of the following conditions are present:

Quid Pro Quo

- Submission to or rejection of such conduct is either an explicit or implicit term or condition of, or is used as the basis for decisions affecting, an individual's educational environment, employment, living environment, appointment, admission, or academic evaluation.

Hostile Environment

- The conduct is sufficiently severe, pervasive, or persistent that it has the purpose or effect of unreasonably interfering with, limiting or depriving an individual from participating in or benefiting from the University's learning, working, or living programs under both a subjective and objective perspective.

Prohibited Conduct: Other Forms of Sexual Misconduct

Gender-Based Harassment

- **Gender-Based Harassment** is any act of intimidation or hostility, whether verbal or non-verbal, graphic, physical, or otherwise based on sex or gender, sexual orientation, gender identity, or gender expression, even if the acts do not involve conduct of a sexual nature; when one or more of the following conditions are present:

Quid Pro Quo

- Submission to or rejection of such conduct is either an explicit or implicit term or condition of, or is used as the basis for decisions affecting, an individual's educational environment, employment, living environment, appointment, admission, or academic evaluation.

Hostile Environment

- The conduct is sufficiently severe, pervasive, or persistent that it has the purpose or effect of unreasonably interfering with, limiting or depriving an individual from participating in or benefiting from the University's learning, working, or living programs under both a subjective and objective perspective.

Sexual assault is having or attempting to have sexual contact with another individual without consent or where the individual cannot consent because of age or temporary or permanent mental incapacity (see below for definition of consent and incapacitation).

Sexual contact includes:

- a. sexual intercourse (anal, oral, or vaginal), including penetration with a body part (e.g., penis, finger, hand, tongue) or an object, or requiring another to penetrate themselves with a body part or an object, however slight; or
- b. sexual touching of the private body parts, including, but not limited to, contact with the breasts, buttocks, groin, genitals, or other intimate part of an individual's body for the purpose of sexual gratification.

Consent must be affirmative. “Affirmative consent” means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is positive cooperation in act and attitude made with knowledge and agreement to the nature of the act.

Consent cannot be obtained through physical force, threats, or coercion, or by taking advantage of another person’s incapacitation. Coercion is conduct, including intimidation or express/implied threats of immediate or future physical, emotional, financial, or reputational harm to the Reporting Party or another, which would place a reasonable person in fear they will be injured or harmed if they do not submit.

It is the responsibility of each individual involved to ensure they have the affirmative consent of the other(s) to engage in each act of sexual activity.

Domestic Violence includes any act of violence committed by a current or former spouse or intimate partner of the Reporting Party, by an individual with whom the Reporting Party shares a child in common, by a person who is cohabitating with, or has cohabitated with, the Reporting Party as a spouse or intimate partner, by a person similarly situated to a spouse of the Reporting Party under California state law, or by any other individual against an adult or minor Reporting Party who is protected from that individual's acts under California state law.

Dating Violence includes any act of violence committed by an individual:

- a. who is or has been in a social relationship of a romantic or intimate nature with the Reporting Party; and
- b. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship;
 - ii. The type of relationship; and
 - iii. The frequency of interaction between the individuals involved in the relationship.

Other Forms of Dating and Domestic Violence: In addition to the definitions above, which require an act of violence to establish Dating Violence or Domestic Violence, the University also prohibits non-physical conduct that would cause a reasonable person to be fearful for their safety. Examples include economic abuse and behavior that intimidates, frightens, or isolates; conduct can involve one act or an ongoing pattern of conduct.

In evaluating non-physical conduct, the University considers whether the conduct is sufficiently severe, persistent or pervasive that it:

- (i) unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from the university's education or employment programs, activities, or living environment or
- (ii) causes substantial emotional distress.

The totality of known circumstances, including the nature, frequency, intensity, location, context, and duration of the conduct, will be considered from both a subjective and objective perspective.

Stalking occurs when an individual engages in a course of conduct directed at a specific individual under circumstances that would cause a reasonable person to fear for their own safety or the safety of others or suffer substantial emotional distress.

“Course of conduct” means two or more instances, including but not limited to unwelcome acts in which an individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about an individual, or interferes with an individual’s property.

“Substantial emotional distress” means significant mental suffering or anguish.

Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

Nonconsensual Viewing, Recording, and Dissemination:

This type of conduct involves one or more of the following behaviors committed for any purpose, including sexual arousal or gratification, financial gain, or other personal benefit:

- i. Observing or recording by any means the nudity or sexual activity of another without the knowledge and consent of all individuals involved;
- ii. Allowing another to observe or record the nudity or sexual activity of another without that person's knowledge and consent;
- iii. Sharing images or recordings of the nudity or sexual activity of another without that person's knowledge and consent.

Exposure: Exposure of the genitals to another without that individual's consent under circumstances where there is not a reasonable expectation of privacy.

Disparate Treatment Discrimination:

Disparate Treatment Discrimination is any unlawful distinction, preference, or detriment to an individual as compared to others that is based on an individual's Protected Characteristic(s) and that:

- 1) excludes an individual from participation in;
- 2) denies the individual benefits of;
- 3) treats the individual differently; or
- 4) otherwise adversely affects a term, condition, or benefit of an individual's employment, education, living environment, or participation in a University program or activity.

Disparate Impact Discrimination:

Employment: In the employment context, Disparate Impact Discrimination occurs when there is sufficient evidence that policies, tests, or practices that are neutral on their face disproportionately exclude or adversely impact a group of individuals within the class of individuals with Protected Characteristics, where the policies, tests, or practices are not job-related and consistent with business necessity.

Student/Educational Program or Activity: In the student or educational context, Disparate Impact Discrimination occurs when there is sufficient evidence that facially-neutral policies, tests, or practices, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of disproportionately excluding or adversely impacting Students or Third Parties on the basis of Protected Characteristics.

Discrimination includes failing to provide reasonable accommodations, consistent with state and federal law, to a qualified individual with a disability or to accommodate the religious beliefs of students, staff, and faculty.

Hostile Environment: Harassment occurs when verbal, physical, written, electronic, or other conduct based on an individual's Protected Characteristics is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or denies that individual's ability to participate in or benefit from the University's educational program or activity, employment access, benefits, or opportunities, or other University programs and activities (e.g., campus housing, official University list-servs, University-sponsored platforms), when viewed from both a subjective and objective perspective. Specific factors to evaluate and examples of conduct that may constitute Hostile Environment Harassment are included in the Policy definition.

Quid Pro Quo: Quid pro quo harassment occurs when submission to or rejection of unwelcome conduct is used, explicitly or implicitly, as the basis for decisions affecting an individual's education (e.g., admission, academic standing, grades, assignment); employment (e.g., hiring, advancement, assignment); or participation in a University program or activity (e.g., campus housing).

Retaliation means any adverse action, intimidation, threat, coercion, or discrimination against an individual taken for the purpose of interfering with any right or privilege secured by this Policy or federal, state, or local laws or ordinances, and their implementing regulations (e.g., protesting, making a report), or because the individual has made a report or Formal Complaint of Prohibited Conduct, testified, assisted, or participated or refused to participate in any manner in any investigation, proceeding or hearing under this policy.

Retaliation includes such conduct through associates or agents of a Reporting Party, Respondent, or participant in any investigation or proceeding related to this Policy.

Complicity:

Complicity is any act that knowingly aids, facilitates, promotes, or encourages the commission of Prohibited Conduct by another person.

Violation of a University Directive:

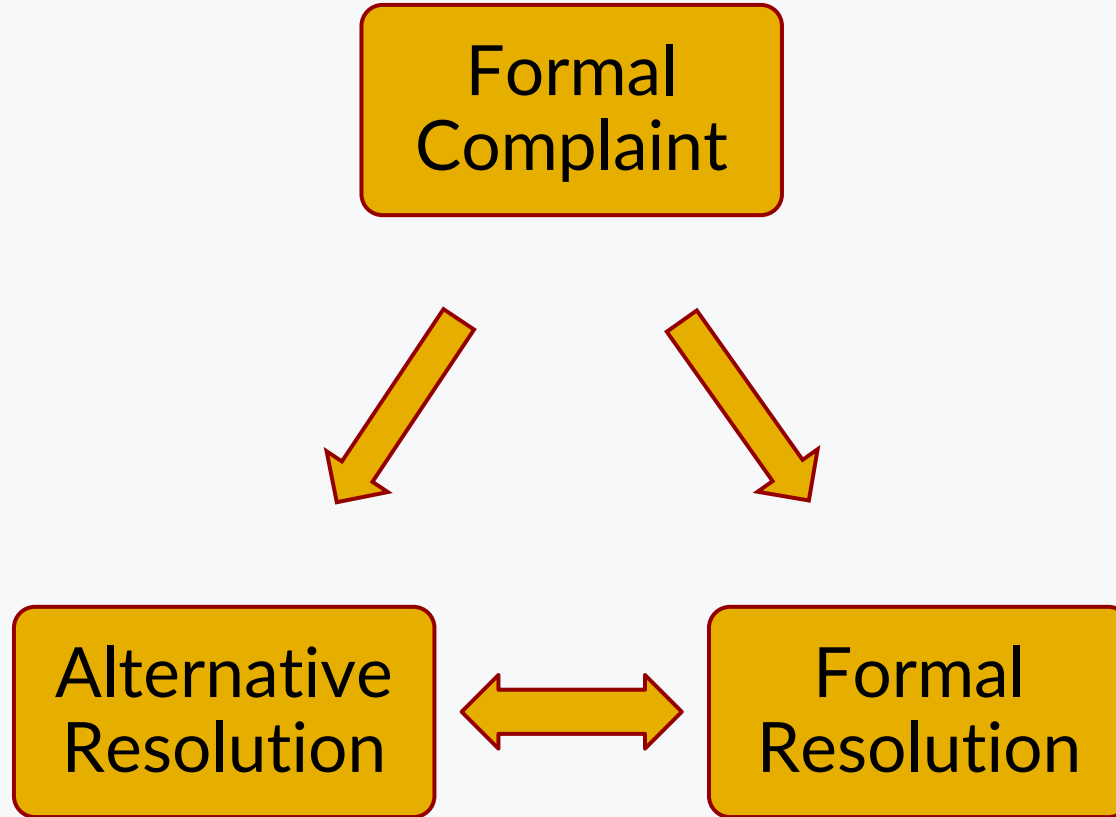
Any individual may be found in violation for failure to comply with a University directive regarding a restrictive supportive measure (e.g., violating the terms of an Avoidance of Contact Directive).



USC PROHIBITED CONDUCT RESOLUTION PROCESS



Resolution Process



Basic Requirements



Treat reporting parties and respondents equitably by providing **remedies** to a [Reporting Party] where a determination of responsibility for sexual harassment has been made against the respondent, and by following a **grievance process** that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent.

Relevant Regulations Sections:

Equitable Treatment: §§ 106.44(a) and 106.45(b)(1)(i)

Supportive Measures Only

- Parties may receive supportive measures **with or without** the filing of a Formal Complaint
- **Non-disciplinary**, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to either party.
- Designed to restore or preserve equal access to the University's education program or activity **without unreasonably burdening** the other party.

Alternative Resolution

- Initiated with the filing of a **Formal Complaint**
- Must give **written notice** to the parties as described in the Policy and § 106.45(b)(9)
- Both parties must give **voluntary written consent**
- Administered by trained facilitators who are free from conflicts of interest or bias
- Not available to address allegations that an employee sexually harassed a student

Formal Resolution

- Initiated with the filing of a **Formal Complaint**
- Must give **written notice** to the parties as described in the Policy and § 106.45(b)(2)(i)
- Follows **prescribed grievance process** described in the Procedures and § 106.45
- Administered by trained investigators and decision-makers who are free from conflicts of interest or bias



INVESTIGATIONS



- Open-ended and thorough inquiry
- Equitable opportunities for the parties to participate
- The conduct of the investigation matters
- Separating intake/support from investigation
- Maintaining and reinforcing impartiality
 - Screening for conflicts of interest or bias
 - Attention to language and communications
- Trained and experienced investigators

Overview of Investigation Requirements



WRITTEN NOTICE: Must provide written notice of the allegations with sufficient time to prepare a response before any initial interview, and with sufficient details known at the time



SUPPLEMENTAL NOTICE: Must provide supplemental notice of additional allegations and policy violations



Checkpoints for additional policy violations:

- Post complainant interview
- Post respondent interview
- Post evidence review

Burden of Gathering Evidence

Ensure that the burden of proof and the burden of gathering evidence rests on the recipient and not on the parties. The recipient's burden **is to gather evidence sufficient to reach a determination** regarding responsibility.

- Title IX Regulations §106.45(b)(5)(i); 85 F.R. 30127, FN 562

Undertake **a thorough search for relevant facts and evidence** pertaining to a particular case, while operating under the constraints of conducting and concluding the investigation under designated, reasonably prompt time frames and without powers of subpoena.

- Title IX Regulations; Preamble 85 F.R. 30292.

The investigator is obligated to **gather evidence directly related to the allegations** whether or not the recipient intends to rely on such evidence (for instance, where evidence is directly related to the allegations but the recipient's investigator does not believe the evidence to be credible and thus does not intend to rely on it).

- Title IX Regulations; Preamble 85 F.R. 30248-49.

Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

- Title IX Regulations §106.45(b)(5)(ii) ; 85 F.R. 30422-23.

Scope of investigation:

- What are the allegations?
What are the potential policy violations?
- Do notices need to be updated?

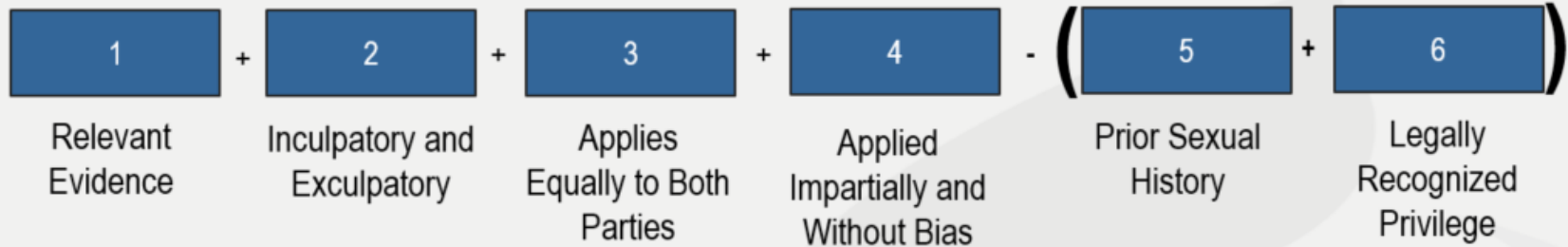
Witnesses:

- Parties
- Individuals identified by the parties
- Individuals identified by the Investigator
 - Who else was present?
 - Who did the parties talk with about the incident?
 - Who can corroborate the accounts?

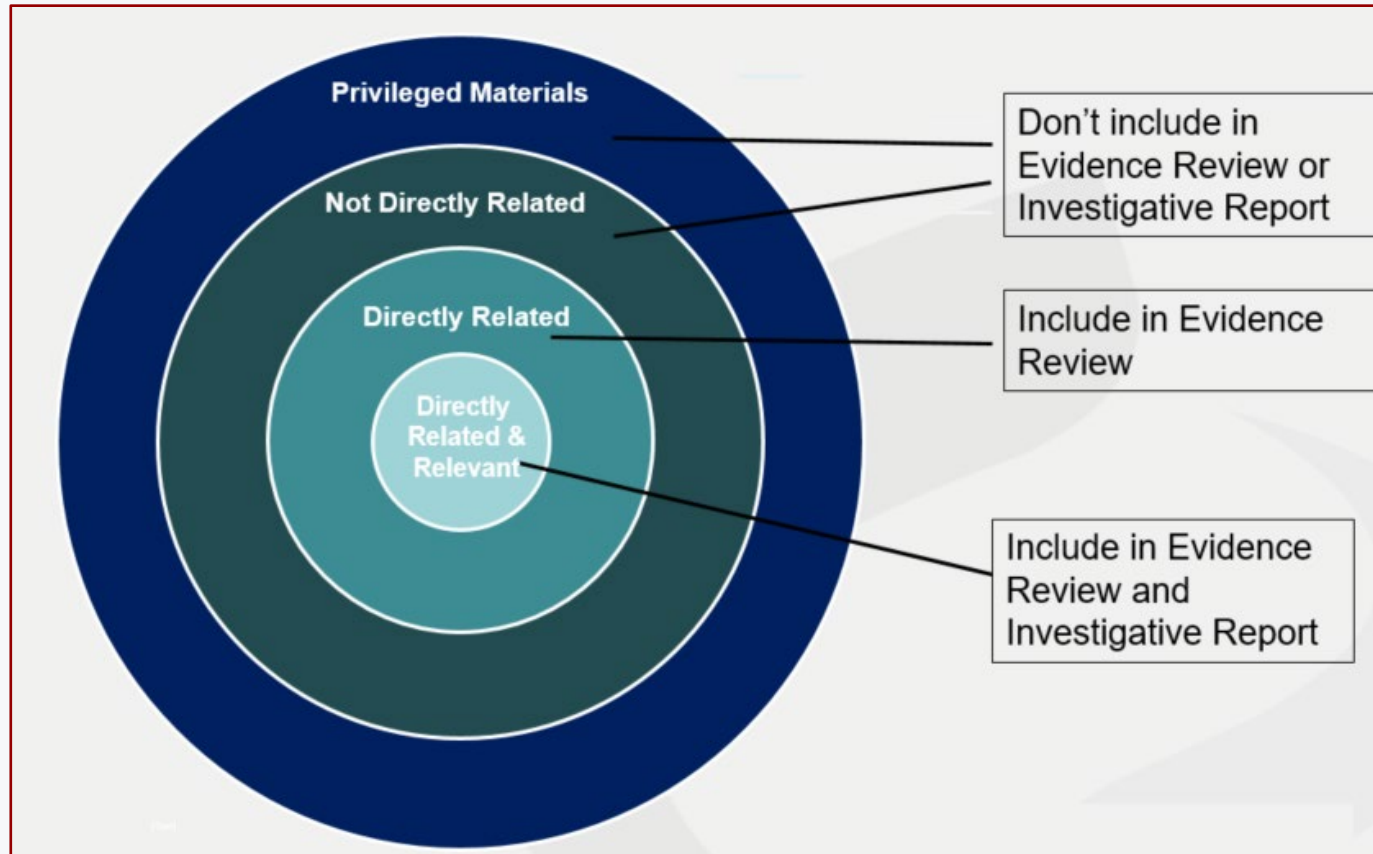
Other evidence:

- Texts, emails, social media, pictures, video surveillance, 911 tape, voicemails

Evidentiary Rules You Must Consider



Evidentiary Levels for Inclusion



May not seek or obtain
legally-privileged
documents or
information, unless:

The person holding such
privilege has waived the
privilege by:

Signing a written
consent, acknowledging
that any record provided
to the Investigator will be
available for review by
the other party.

Prior Sexual History of Either Party

A Party's prior sexual history is generally not relevant, although evidence **may be admitted** if determined relevant in the following **two circumstances only**:

(1) where the evidence of prior or subsequent dating relationship or consensual sexual relations is offered as to the manner and nature of how the parties communicated consent in the past, as relevant in assessing whether consent occurred with respect to the alleged Sexual Misconduct at issue, recognizing, however, that the mere fact of a current or previous dating or sexual relationship or activity between the parties, by itself, is not sufficient to constitute consent; and

(2) where the evidence of prior or subsequent sexual history between the Reporting Party and anyone other than the Respondent is directly relevant to prove that physical injuries alleged to have been inflicted by the Respondent were inflicted by another individual; or

(3) Where the evidence of prior or subsequent sexual history is offered to show that someone other than the Respondent committed the alleged Sexual Misconduct.

Prior Sexual History ≠ Existing Dating Relationship



“Scenarios described by commenters, where a respondent might wish to prove the [Reporting Party] had a motive to fabricate or conceal a sexual interaction, do not require admission or consideration of the [Reporting Party’s] sexual behavior.”

“Respondents in that scenario could probe a [Reporting Party’s] motive by, for example, inquiring whether a [Reporting Party] had a dating or romantic relationship with a person other than the respondent, without delving into a [Reporting Party’s] sexual behavior; sexual behavior evidence would remain irrelevant in such circumstances.”

Title IX Regulations, May 19, 2020, §§ 106.45(b)(1)(iii) and 106.45(b)(6), Preamble at p. 30351



Prior or Subsequent Conduct of the Parties May be Relevant

In gathering information, the Investigator may also consider other reports of, or findings of responsibility for, the same or substantially similar conduct by the **Respondent** to the extent such information is relevant and available.

Such information may be relevant in determining motive, intent, absence of mistake, pattern, or another material fact.

For example, where there is evidence of a pattern of conduct the same or substantially similar in nature by the Respondent, either prior to or subsequent to the conduct in question, **regardless of whether there has been a finding of responsibility**, this information may be relevant and probative to the determination of responsibility and/or sanctioning, as applicable.

Similarly, prior or subsequent conduct of a **Reporting Party**, even when it involves conduct that may violate University policy, may be considered when relevant.

Scope of investigation:

- ☐ What are the allegations?
- ☐ What are the potential policy violations?
- ☐ Do notices need to be updated?

Witnesses:

- ☐ Parties
- ☐ Individuals identified by the parties
- ☐ Individuals identified by the Investigator

Other evidence:

- ☐ Texts, emails, social media, pictures, video surveillance, 911 tape, voicemails

Privileged information:

- ☐ Medical records
- ☐ Written waiver

- Sexual Assault
- Dating Violence
- Discrimination

- Understand what happened
- Understand what did not happen
- Understand how or why events happened as they did
- Understand how or why events did not happen as perhaps one might expect
- Information related to credibility factors
- Information related to impact



Credibility



- Assessing credibility factors:
 - Demeanor
 - Interest
 - Detail
 - Corroboration
 - Common sense
- Testing inherent plausibility in light of the known information, relationships, and circumstances of the disclosure

- Demeanor may be informative, not determinative
- Assessing demeanor requires individual assessment as to how demeanor supports or detracts from overall reliability of information
- Fact-finders should not place undue reliance on demeanor as an indicator of candor or evasion
- Demeanor is one factor to observe in the context of the totality of the information

- Reporting Party/Respondent may be affected by emotional component of sexual assault allegations
- Range of behaviors and emotional reactions vary
- Elicit and consider information from witnesses as to demeanor after the reported incident, during the disclosure, and in response to the report
- Note changes in demeanor and explanations for significant changes
- Consider demeanor during proceedings

- If parties know each other:
 - Understand the context and history of any prior relationships
 - Understand significant events or markers in relationship
- Explore effects of incident:
 - Emotional: fear, intimidation, worry, anxiety
 - Actual: financial, time, participation in the process
- Is there any particular animus/motive/ill will for/or against any party or witness?

- How will the party/witness be impacted by their participation in the process?
 - Was information provided “against” interests?
- How will the party/witness be impacted by any particular outcome?
 - Will information shared impact current or future relationships?

- Freeze frame and explore critical junctures
- Cross-reference Reporting Party and Respondent accounts with all other evidence and witnesses' statements
- Look to attendant details and behavior pre- and post-incident by both parties
- Focus on resolution of conflicts through believable evidence and common sense
- Outline case by issue and cross reference with all available evidence, including timelines

- Consider other attendant details such as:
 - Size, age, power, authority and/or social status differential for Reporting Party and Respondent
 - Location of incident
 - Isolation of Reporting Party
 - Potential witnesses or reasons for lack of witnesses
 - Any change in either party's demeanor, personality, or routine after the incident

- Explore all circumstances of each account
- Understand the who, what, and where of the interview
- Ask the “why” (without asking why); questions to explore:
 - State of mind
 - Life circumstances at the time
 - Perception of interviewer/process
 - Changes in interest or motivation
- Inquire directly about inconsistencies
- Attempt to reconcile where possible

- A process where an individual reveals abuse or assault
- On-going, not a one time event
- Stages of Disclosure:
 - Denial
 - Tentative
 - Active
 - Recantation
 - Reaffirmation
- Triggers for Disclosure
 - Accidental – e.g., person's secret is found out
 - Purposeful – e.g., person makes decision to tell

- Testing inherent plausibility of the conflicting accounts in light of the known information
- How does it all fit together?
- Does it make sense in the context of:
 - These individuals?
 - The setting?
 - The community?
 - The activity?
 - The relationships?

Dynamics of Sexual Assault	Informed understanding of dynamics of sexual and gender-based harassment and interpersonal violence.
Demeanor	<p>Did the witness speak in a convincing manner? Was he/she uncertain, confused, self-contradictory or evasive?</p> <p>How did he/she look, act and speak while testifying / reporting?</p>
Interest / Motive / Bias	Did the witness have any interest in the outcome of the case, bias, prejudice, or other motive that might affect his/her testimony?
Detail	<p>Use direct quotes from testimony or statements.</p> <p>How well could the witness remember and describe the things about which he/she testified?</p> <p>Was the ability of the witness to see, hear, know, remember, or describe those things affected by youth or old age or by any physical, mental or intellectual deficiency?</p>
Corroboration	<p>How well did the testimony of the witness square with the other evidence in the case, including the testimony of other witnesses?</p> <p>Was it contradicted or supported by the other testimony and evidence?</p>
Common Sense	<p>Does it all add up? (Gut check)</p> <p>Is there something missing?</p>

- Was the witness able to see, hear, or know the things about which they testified?
- How well could the witness remember and describe the things about which they testified?
- Was the ability of the witness to see, hear, know, remember, or describe those things affected by youth or old age or by any physical, mental, or intellectual deficiency?
- Were there inconsistencies or discrepancies in the witness's testimony?

- Did the witness have any interest in the outcome of the case, bias, prejudice, or other motive that might affect their testimony?
- Did the witness stand to receive any benefit from a particular outcome?

- Did the witness testify in a convincing manner?
- How did the witness look, act, and speak while testifying?
- How did the witness's nonverbal communications (posture, gestures, facial expressions, eye contact) match their verbal communications (voice, expression)?
- Was the testimony uncertain, confused, self-contradictory, or evasive?

- How well did the testimony of the witness square with the other evidence in the case, including the testimony of other witnesses?
- Was it contradicted or supported by the other testimony and evidence?

Does it make sense?

(i.e., Does it have the ring of truth?)

Interview Checklist on Credibility: Reporting Party

- ☐ Reports are consistent over time?
 - ☐ Is the complainant's account consistent?
 - ☐ Is timeline consistent?
 - ☐ Do allegations change? If so, is there a reasonable explanation?
 - ☐ Over time?
 - ☐ With different interviewers?
 - ☐ Are changes material?
 - ☐ In terms of content?
- ☐ Circumstances at time of report?
 - ☐ Where?
 - ☐ To whom?
 - ☐ When?
 - ☐ Why?
 - ☐ Demeanor?
 - ☐ Corroborated by witness?

- ☐ Any change in behavior/demeanor/routine after alleged incident?
- ☐ Explore past relationship:
 - ☐ Whether and how long he or she had known the accused?
 - ☐ Circumstances of their meeting
 - ☐ Extent of any previous relationship
 - ☐ Details of any relevant prior sexual contact with respondent
- ☐ Circumstances at time of prior disclosure(s)?
 - ☐ Where?
 - ☐ To Whom?
 - ☐ When?
 - ☐ Why?
 - ☐ Demeanor?

Investigation Checklist on Credibility: Respondent

☐ Overall Credibility

☐ Detail about incident?

☐ Demeanor?

☐ Interest or bias?

☐ Corroboration?

☐ Evidence of fabrication in record
(not limited to allegation)?

☐ Do facts fit together? Why or Why
not?

☐ Facts related to disclosure/after
incident communications?

☐ Other acts/behaviors relevant to
intent?

☐ Other acts/behaviors relevant to
pattern?

☐ Other witnesses?

☐ Any witness intimidation?

☐ Past History

☐ Evidence of other misconduct or
disciplinary action?

☐ Evidence of problematic behavior?

☐ Troubled relationships?

☐ History of previous sanctions?

☐ History of treatment/intervention of
inappropriate or concerning
behaviors?

☐ Previous concerns re: protection of
others?



ALCOHOL, DRUGS, AND INCAPACITATION



The Role of Alcohol

- Central nervous system depressant
- Impairs cognition and psychomotor skills
- Progressively impairs all body functions
- Decreases inhibitions
- Impairs perceptions
- May cause blackouts or loss of consciousness
- May cause memory loss
- Effects exacerbated when mixed with other drugs

- Intoxication breeds vulnerability
- A person may be less likely to think someone is trying to sexually assault him/her
- A person intent on harming another may not need to use physical force
- A person may not realize incident has occurred
- A person may delay in reporting for multiple reasons
- No toxicological evidence of BAC/impairment level due to delay in report

- Lack of memory
- Inability to give detail
- Person may have been unconscious or in and out of consciousness
- Delay in reporting because:
 - May not know event occurred
 - May not recognize it as lack of consent
 - Feeling of “contributory negligence”
 - Concerns over conduct policy consequences

Incapacitation: Consent cannot be obtained by taking advantage of another individual's incapacitation. Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. An individual who is incapacitated is not capable of giving valid, affirmative consent.

Incapacitation means an individual cannot understand the fact, nature, or extent of the sexual activity. An incapacitated individual lacks the physical and mental capacity to make informed, reasonable judgments about whether or not to engage in sexual activity. An individual who is incapacitated may not be able to understand where they are, whom they are with, how they got there, or what is happening.

In evaluating affirmative consent in cases involving incapacitation, the University considers the totality of available information in determining two issues:

1. Did the Respondent know the Reporting Party was incapacitated? or, if not,
2. Would a sober, reasonable individual in a similar set of circumstances as the Respondent have known that the Reporting Party was incapacitated?

- Be aware that questions about drugs and alcohol are often subject to misinterpretation
- Explain amnesty
- Commit to clarity on why you are asking
- Explain the reasons for your questions
 - Assessing for incapacitation
 - Evaluating the “lens” through which the party or witness observed the events (opportunity to see, hear, understand, and remember)
- Explain that you will ask similar questions of all witnesses
- Invite the witness to ask questions before you go further

- Timeframe of consumption (first drink, last drink, spacing)
- Number of drinks
- For each drink:
 - Type (beer, wine, liquor – with specific brand, if possible)
 - Was it mixed with anything? Who mixed it?
 - How was it served? (Bar or restaurant will lead to more available information)

- List of others present and when they were there
- Other factors that affect the impact of alcohol:
 - Food consumed before, during, and after and whether food intake was normal or abnormal for the person
 - Height and weight
 - Medications
 - Different sleep patterns
 - Illness
 - Low hydration
 - History of blackouts

- Reporting Party's experience of their own intoxication (subjective):
 - Loss of consciousness/lack of memory – get the “bookends” of memory
 - Physical impairments – walking, standing, sitting, grasping, keeping head upright, ability to text, ability to remove one's own clothing, incontinence, vomiting
 - Cognitive impairments – dizzy, foggy, sleepy, giggly, hyperactive, sluggish, nonsensical
 - Verbal impairments – slurring, inability to talk, volume regulation
 - Any other effects

- Others' observations of Reporting Party (objective):
 - Observations of Reporting Party's consumption – when, where, what, who else was there?
 - Physical impairments
 - Cognitive impairments
 - Verbal impairments
 - Any other effects

Other information that can establish timeline, assist in assessing level of impairment, and provide corroboration of either party's account:

- History of relationship between the parties
- Witness's knowledge of Reporting Party's sober behavior
- Parties' communications or interactions with each other (compare pre- and post-incident)
- Parties' descriptions of the incident to others – context, content, demeanor
- Text/social media messages sent before, during, and after the incident

Considerations

Avoid	Why?	Try this instead
Asking about intoxication on a scale (e.g. "from 1-10")	There is no universal understanding of what the numbers on the scale mean	Asking about the impacts of alcohol on a person physically, cognitively, verbally, and otherwise; Asking for specific observations regarding conduct
Committing to a determining a specific BAC	It is very difficult to pinpoint a person's BAC after the fact. Additionally, BAC is only one data point and does not correlate precisely to a person's subjective experience or objective indicia of intoxication/incapacitation.	Use BAC when it is available in medical records. Otherwise, avoid attempting to pinpoint the BAC and rely instead on the subjective and objective indicia of intoxication/incapacitation.
Failing to obtain or ignoring medical evidence or observations of first responders, when they are available	Such witnesses are (generally) sober, trained observers who are paying close attention to the parties and surroundings. Their observations are critical, but it may necessitate coordination with external law enforcement or medical personnel.	Be attendant to mentions of first responders or medical personnel and try to obtain as much information about them as you can. Witnesses may remember, for example, that the EMT was female and had short brown hair. Work with your local agencies to identify such personnel and ascertain whether they can be made available for an interview.
Failing to fully contextualize witnesses' observations through use of a timeline	Witness statements taken out of context do not help answer the critical question: whether the Respondent knew or should have known that the Complainant was incapacitated.	Create a visual timeline of events that shows the parties' alcohol consumption, witness observations, and the alleged incident. Circle or highlight the timeframe when the parties were in each other's presences.

Let's review the incapacitation report



Report Writing



- Create an **investigative report** that fairly summarizes relevant evidence and
- Send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response, **at least 10 days prior** to the determination of responsibility (hearing)
 - This opportunity allows the parties to “effectively provide context to the evidence included in the report” and to “advance their own interests for consideration by the decision-maker.”
 - Title IX Regulations §§ 106.45(b)(5)(vii); Preamble 85 F.R. 30254, 30307, 30309

- Begin with introduction of parties, relationship to one another relationship to the institution
- Describe when and how report was received
- Outline basic nature of report as presented by the complainant
- Outline response to the report by the respondent
- Specify policy violations at issue
- Outline information gathered
 - Tell the story

- He said he told him that she told her that she did not remember.
 - Who said what?
 - According to Respondent, witness 1 learned from witness 2 that Complainant said she did not remember what happened the previous evening.

- Them, there, this, these
 - Respondent agreed with them.
 - The parties left there and went next door.
 - Complainant did not agree with this.
 - The witness wanted these things.

- Review sample reports
 - Orderly presentation of information
 - Clarity in procedural history, potential policy violations, relationship between parties
 - Facts gathered presented differently
 - Witness summaries (incapacitation)
 - Incidents/allegations (dating violence)

- Review for Mandatory Dismissal
 - The conduct alleged, even if substantiated, would not constitute Title IX Sexual Harassment,
 - The conduct did not occur within the University's education program or activity (which requires substantial control over both the Respondent and the context, or where the conduct occurred in a building controlled by recognized student organizations); and/or
 - the conduct did not occur against an individual in the United States.
- Review for Discretionary Dismissal
 - The Reporting Party notifies the VP for EEO-TIX in writing that the Reporting Party would like to withdraw the Formal Complaint or any of its allegations;
 - The Respondent is no longer enrolled or employed by the University; or
 - Specific circumstances, including a Reporting Party's decision not to respond to outreach by the EEO-TIX Office, prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or its allegations.

- “The Investigator will apply the preponderance of the evidence standard in making a determination of responsibility. This means that the Investigator, in consultation with the delegate of the VP for EEO-TIX, will decide whether it is more likely than not, based upon the information provided, that the Respondent is responsible for the alleged violation(s).”

- Include:
 - All factual findings
 - Credibility determinations
 - Finding, by a preponderance of the evidence, of whether the conduct occurred
 - Finding of whether the conduct violated any institution policies

- Frame the information and issues that are relevant to analysis
 - “Complainant stated...”
 - “Respondent stated...”
- Outline disputed/undisputed information
 - “The parties’ accounts are aligned on ...”
 - “The parties’ accounts are not aligned on...”

- If accounts are in dispute:
 - “To resolve the disputed accounts, the investigator evaluated the credibility of the parties’ accounts...”
 - Factors
 - “In crediting [name of party’s account], the investigator finds the following facts...”
- If accounts are not in dispute:
 - “In evaluating the undisputed accounts, the investigator finds the following facts...”

- Apply the facts to the policy
 - “Respondent is responsible for discrimination if there is sufficient evidence, by a preponderance of the evidence, that respondent engaged in...”
 - “Here, in crediting [name of party’s account], there is sufficient/insufficient evidence that Respondent”
 - “Here, in evaluating the undisputed facts, there is sufficient/insufficient evidence that Respondent...”

- “In assessing whether conduct involved disparate treatment discrimination, the investigator will determine whether there was different treatment and whether there was a legitimate, non-discriminatory reason.”
- “In assessing whether conduct involves disparate treatment discrimination, the investigator will determine whether the respondent’s actions were the result of a discriminatory motive. Factors involved in that assessment will include the reason provided for the conduct as well as the response to other evidence of discriminatory treatment.”

- Outline areas of agreement/disagreement (areas where the information is contested/not contested)
- Include timeline for synthesis and analysis of facts
- If making determinations of credibility or findings of fact:
 - Tie discussion and rationale to the elements of the potential policy violations
 - Identify the elements
 - Identify the evidence that supports/rebutts the establishment of the elements
 - Evaluate and analyze credibility factors

- When making the determination of responsibility
 - Make finding as to sufficiency, by a preponderance, to support finding of responsibility
 - Sufficient or insufficient
 - NOT a finding by a preponderance that event did not occur
 - Must provide rationale
 - Can be concise, but must communicate salient elements of finding
 - Again, comment on evidence, not the people
 - Avoid extraneous and tangential comments
- Remain closely tied to the facts and reasonable inferences



THE LIVE HEARING



What to Expect Before the Hearing



The Investigative Report includes a recommendation by the Investigator whether the alleged conduct falls within the scope of the Policy and the definitions of Prohibited Conduct.

Review for Mandatory Dismissal by the VP of EEO-TIX (opportunity for appeal if any charges dismissed).

The VP of EEO-TIX will simultaneously provide the Report and a Notice of Hearing to the parties, advisors, and the Hearing Officer at least 10 days before the hearing.

The parties have 10 days to submit a written response to the report for the Hearing Officer. The response may address the assessment of scope, determinations of relevance, or any other information in the report.

The Notice of Hearing

1

- The specific Policy violations that will be the subject of the hearing

2

- The date, time, and location of the hearing

3

- The name of the Hearing Officer with instructions on how to challenge participation of the Hearing Officer on the basis of conflict of interest or bias

4

- A statement that all evidence that is directly related to the allegations, as shared in evidence review, will be available to enable each party an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination

5

- A statement that the parties have the right to have an advisor present at the hearing, who will conduct questioning on the party's behalf

6

- A statement that the University will provide a hearing advisor, without fee or charge, to conduct questioning on behalf of the party at the hearing, if the party does not already have an advisor present for the hearing

7

- Information regarding how to request that witnesses be present at the hearing

8

- Information about the hearing format

9

- Information regarding the right to request reasonable accommodations for disability or language diversity at the hearing

The Hearing Officer

The Hearing Officer is typically an external, trained professional, although it may be a campus administrator.

A Hearing Officer is a fair and impartial decision-maker free of conflict of interest or bias for or against either party.*

The Hearing Officer must be trained on:

- how to serve as an informed and impartial decision-maker,
- any training content provided to investigators,
- any technology to be used at a live hearing, and
- issues of relevance of questions and evidence.

*The Reporting Party and Respondent will be provided the name of the Hearing Officer in advance and have the opportunity to raise a challenge for bias or conflict of interest to the VP of EEO-TIX prior to the hearing. The VP of EEO-TIX will render a determination in writing on any such challenge.

Advance Hearing Preparation is Critical



Carefully review the Investigative Report

Review all of the evidence gathered during the investigation










Read the parties' responses to the Investigative Report to anticipate the arguments they will make at the hearing

Know the elements of all of the Policy violations at issue



Identify gaps, issues, necessary witnesses, and prepare questions in advance of the hearing.

The Role of the Hearing Officer

- 
- Review the investigative report and any written statements provided by the parties in response to the investigative report, all exhibits, and any additional relevant evidence introduced at the hearing.
- 
- Determine the format of the hearing.
- 
- Provide all parties with an equitable opportunity to be heard and to reach a full and fair determination as to responsibility and imposition of any sanction, should there be a finding of responsibility.
- 
- Determine the relevance of every question posed by the parties' advisors and briefly explain any decision to exclude a question as not relevant.
- 
- Determine whether there is sufficient evidence, by a preponderance of the evidence, to support a finding of responsibility as to each element of each Policy violation at issue.
- 
- Reach credibility determinations if appropriate, but do not base credibility determinations on a person's status as a Reporting Party, Respondent, or witness.
- 
- Prepare a written decision, which includes the finding of responsibility or non-responsibility and rationale for your decision.

Hearing Logistics



The hearing will be live and require the participants to simultaneously see and hear each other.

A hearing may be conducted with all parties physically present in the same geographic location.

- Alternatively, at the discretion of the VP of EEO-TIX, any or all parties, witnesses, or other participants may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other.

Either party may request that the parties be located in separate rooms or locations for the hearing, with technology enabling the Hearing Officer and parties to simultaneously see and hear the party or witness answering questions.

- Such a request should be submitted to the VP of EEO-TIX at least two (2) calendar days prior to the hearing.

Nothing in this section requires the parties to appear in-person before the Hearing Officer and the hearing may proceed with all parties participating virtually as appropriate and necessary.

The hearing will be **audio-recorded** by the University.

The Hearing Format, Generally

1

- Opening statements from the Reporting Party and Respondent.

2

- The Reporting Party will respond to relevant questions from the Hearing Officer and then the Respondent's advisor.

3

- The Respondent will respond to relevant questions from the Hearing Officer and then the Reporting Party's advisor.

4

- The Hearing Officer will also hear from relevant witnesses, including the Investigator.

5

- Each party will have the opportunity to question the witnesses, including the Investigator, through their advisor of choice.

6

- After all parties and witnesses have been heard, the parties will have an opportunity to provide a closing statement.

The parties are permitted to have an advisor of their choice accompany them to a meeting or hearing pursuant to the University's Policy on Prohibited Discrimination, Harassment, and Retaliation (Policy).

The advisor may be any person, including an attorney, but need not be an attorney.

A party may decline to use an advisor for all stages of the formal or alternative resolution process, with the exception of the hearing, where any questioning of the other party must be conducted by the party's advisor.

If a party does not have an advisor for the hearing, the University will provide an advisor, free of charge.

This University-appointed advisor may be, but is not required to be, an attorney, and will attend the hearing and conduct questioning on behalf of that party.

The Role of the Advisor of Choice

1

Accompany their advisee to all meetings or proceedings related to the investigation and resolution of a report under the University's Policy.

2

May provide support and advice to the advisee at any Sexual Misconduct Process-related meetings and proceedings.

3

May receive copies of all correspondence from the EEO-TIX office to the advisee with consent from the advisee.

4

May not speak on behalf of the advisee during any interview or meeting, except at hearing and only in capacity of conducting cross-exam on behalf of advisee.

5

May not submit written position statements on behalf of the advisee to be included in the record. All statements must be made directly by the advisee.

6

May not disrupt meetings or proceedings or fail to follow the rules of the hearing, and, in such cases, the advisor can be asked to leave.

7

Must have sufficient flexibility to attend interviews, receive documentation, and attend the hearing (if desired by the advisee).

8

Should be knowledgeable about the University's relevant policies and procedures.

The Role of the USC-Appointed Hearing Advisor

1	Accompany their advisee to all meetings or proceedings related to the hearing (approximately 10 days out from hearing).
2	May provide support and advice to the advisee at any meetings related to the hearing (e.g., pre-hearing conference).
3	May receive copies of all correspondence from the EEO-TIX Title IX office to the advisee with consent from the advisee.
4	May not speak on behalf of the advisee during any interview or meeting, except at hearing and only in capacity of conducting cross-exam on behalf of advisee.
5	May not submit written position statements on behalf of the advisee to be included in the record. All statements must be made directly by the advisee.
6	May not disrupt meetings or proceedings or fail to follow the rules of the hearing, and, in such cases, the advisor can be asked to leave.
7	Must have sufficient flexibility to receive documentation and attend the hearing (if desired by the advisee).
8	Should be knowledgeable about the University's relevant policies and procedures.



The Mechanics of Cross-Examination at the Hearing

Each party will have the opportunity to question the other party, the witnesses, and the Investigator through their advisor of choice – or hearing advisor provided by the University – directly, verbally, and in real-time.

The University will make all evidence directly related to the allegations, as shared in the evidence review, available to the parties at the hearing to give each party an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

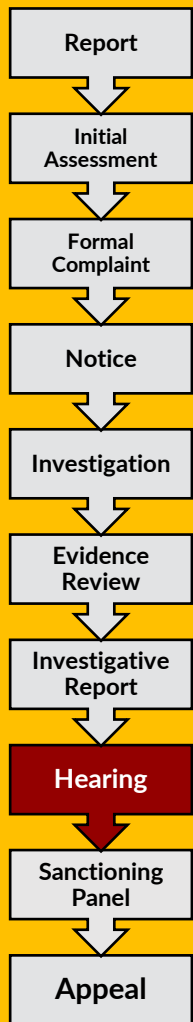
The cadence of cross-examination at the Hearing:

Only relevant questions may be asked of a party or witness. Before a Reporting Party, Respondent, or witness responds to a question, the Hearing Officer will first determine whether the question is relevant and briefly explain any decision to exclude a question as not relevant, as defined in the Sexual Misconduct Resolution Process.

Advisor to perform cross-examination:

If a party does not have an advisor present at the live hearing, the University will provide an advisor, free of charge, who may be, but is not required to be, an attorney, for questioning on behalf of that party.

Post-Hearing



The Hearing Officer will deliberate to determine whether there is sufficient evidence, by a **preponderance of the evidence**, that Respondent engaged in conduct that violated the Policy.

The Hearing Officer will draft a written notice of determination and provide to the VP of EEO-TIX/Title IX Coordinator:

Where there is a finding of non-responsibility, the VP of EEO-TIX/Title IX Coordinator will issue a written notice of determination.

Where there is a finding of responsibility for a Policy violation, the VP of EEO-TIX/Title IX Coordinator will initiate the sanctioning process.

The Written Notice of Outcome Must Include:

1

- Identification of the allegations potentially constituting Sexual Misconduct;

2

- A description of all procedural steps, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

3

- Findings of fact supporting the determination;

4

- Conclusions regarding the application of the Policy to the facts;

5

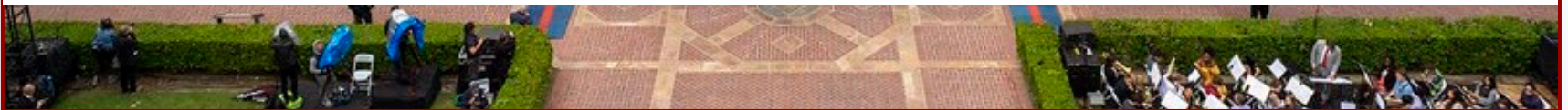
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;

6

- The procedures and permissible bases for the Reporting Party and Respondent to appeal.



THE SANCTIONING PANEL



The Sanctioning Panel



Student Respondents:

The Sanctioning Panel will be composed of two employees appointed by the Provost and Senior Vice President for Academic Affairs, and one student appointed by the Vice President for Student Affairs.

Faculty Respondents:

The Committee on Professional Responsibility will serve as the Sanctioning Panel.

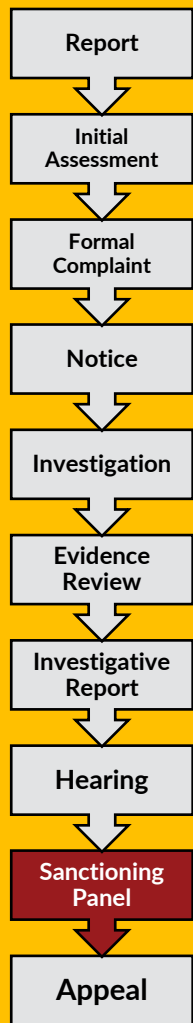
Staff Respondents:

The Sanctioning Officer is a delegate of the Senior Vice President of Human Resources, Ethics, and Compliance.

Timing:

The Sanctioning Panel/Officer will draft a written sanctioning determination that will include the sanction and the rationale for the sanction, and forward it to the EEO-TIX Office within five (5) calendar days for inclusion in the written notice of determination

Impact and Mitigation Statements



Impact Statement: The Reporting Party may submit a written statement describing the impact of the prohibited conduct on the Reporting Party.

Mitigation Statement: The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed.

The VP of EEO-TIX will provide any statements to the Sanctioning Panel/Officer. Each party has the opportunity to view the other party's statement prior to the imposition of sanctions.



Factors for Consideration

- the nature and severity of the conduct;
- the impact of the conduct on the Reporting Party;
- the impact or implications of the conduct on the community or the University;
- prior misconduct for which the Respondent has been found responsible, including the Respondent's relevant prior discipline history, both at the University or elsewhere (if available), including criminal convictions;
- whether the Respondent has accepted responsibility for the conduct;
- maintenance of a safe and respectful environment conducive to learning, including whether there is a continued hostile environment on campus caused by the Respondent's conduct;
- presence or absence of bias as a motivation for the Respondent's conduct;
- protection of the University community requiring extended protective measures or other sanctions; and
- any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in each case.

The Written Notice of Outcome Must Include:

- 1 • Identification of the allegations potentially constituting Prohibited Conduct;
- 2 • A description of all procedural steps, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- 3 • Findings of fact supporting the determination;
- 4 • Conclusions regarding the application of the Policy to the facts;
- 5 • A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- 6 • Any disciplinary sanctions imposed on the Respondent, and any remedies to the Reporting Party;
- 7 • The procedures and permissible bases for the Reporting Party and Respondent to appeal.



THE APPEAL PROCESS



What to Expect Before the Appeal



The appeal must be submitted to the VP of EEO-TIX/Title IX Coordinator within seven (7) calendar days following delivery of the written notice of outcome.

Written requests for appeal submitted by one party will be shared with the other party.

The non-appealing party has seven (7) calendar days to respond in writing to any appeal submitted by the other party.

Grounds for Appeal by Either Party



1

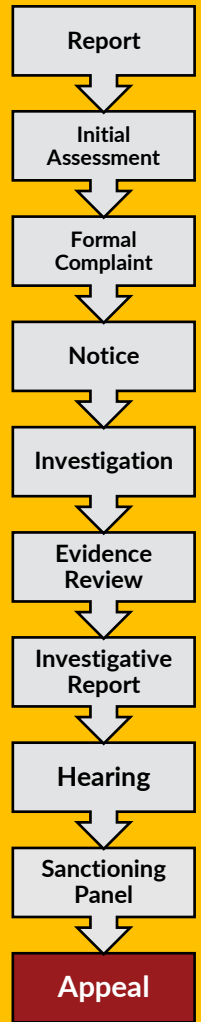
- **Procedural irregularity** that affected the outcome of the matter.

2

- **New evidence**, not reasonably available at the time of the hearing, regarding responsibility or dismissal of the Formal Complaint, that could affect the outcome of the matter.

3

- The VP of EEO-TIX/Title IX Coordinator, Investigator(s), Hearing Officer, or Sanctioning Officer/Panel had a **conflict of interest or bias** for or against Reporting Parties or Respondents generally, or the individual Reporting Party or Respondent, that affected the outcome of the matter.



The Appellate Authority Depends on Status of Respondent

Student Respondent	<ul style="list-style-type: none">• A delegate of the Vice President of Student Affairs who is not otherwise involved in any step of the process, or an external professional.
Faculty Respondent	<ul style="list-style-type: none">• A delegate of the Provost who is not otherwise involved in any step of the process, or an external professional.
Staff Respondent	<ul style="list-style-type: none">• A delegate of the Senior Vice President of Human Resources, Ethics, and Compliance who is not otherwise involved in any step of the process, or an external professional.

The Scope of the Appellate Review



The Appellate Authority will review:

- (1) the written appeal submissions by the parties,
- (2) the investigative report (including all exhibits and related materials), and
- (3) the written notice of outcome.

In reaching a decision, the Appellate Authority has the discretion to consult with relevant stakeholders.

The Appellate Authority may:

- (1) affirm the findings or determination of responsibility;
- (2) affirm or modify the sanction(s); or
- (3) remand the matter for reevaluation or further investigation.

The decision by the Appellate Authority is final.

Possible Outcomes Following the Appeal



Appeal granted due to procedural irregularity:

- The matter may be remanded for further process to remedy the error (based on the nature of the procedural error).

Appeal granted due to the discovery of new evidence:

- The matter may be returned to the same Hearing Officer for reconsideration in light of the new evidence.

Appeal granted due to bias or conflict of interest:

- The matter should be remanded for further action consistent with the appellate finding.

Appeal denied:

- The Appellate Authority issues its written decision and the determination regarding responsibility becomes final.

The Timing of the Appeal



The Appellate Authority will issue a simultaneous written decision to the parties within 10 calendar days of receipt of the appeal.

The time frame for filing an appeal based on newly-discovered information may be extended at the discretion of the VP of EEO-TIX where the evidence could not reasonably have been discovered within the time frame and a compelling justification exists for its consideration.



INFORMAL RESOLUTION PROCESS



- At the discretion of the VP for EEO-TIX.
- May involve:
 - Agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training;
 - Supported direct conversation or interaction with the Respondent;
 - Mediation (except for cases involving sexual violence);
 - Indirect action by the EEO-TIX Office or other appropriate University officials; and
 - Other forms of resolution that can be tailored to the needs of the parties.
- Must have:
 - Voluntary consent of the parties,
 - A person who facilitates an Alternative Resolution will be trained and free from conflicts of interest or bias for or against either party.
- Not available in cases in which an employee (faculty or staff) is alleged to have sexual harassed a student.

Catherine Spear

Vice President and Title IX Coordinator
USC Office for Equity, Equal Opportunity, and Title IX
(EEO-TIX)

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