



DECISIONAL OFFICIALS AND ADJUDICATION COMMITTEES

CUNY Spring 2025

AGENDA

● | Title IX Requirements for Hearings

● | Hearing Overview

● | Pre-Hearing Tasks

● | Developing Questions

● | The Hearing

● | After the Hearing

TITLE IX REQUIREMENTS FOR HEARINGS

Title IX of the Education Amendments Act of 1972

"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 (1972).



TITLE IX APPLICATION (POST-MAY 2020)

Type of Conduct

- Hostile Environment
- Sexual Harassment
- Quid Pro Quo
- Sexual Assault
- Dating/Domestic Violence
- Stalking

Ed Program or Activity

- On campus
- Campus Program, Activity, or Building
- In the United States

Required Identity

- Complainant is participating or attempting to participate in the Ed Program or activity
- Institution has control over Respondent

Apply 106.45 Procedures

Required Response:

Section 106.45 Procedures

TITLE IX APPLIES TO ALL FORMS OF SEX DISCRIMINATION

- Sexual Harassment
- Achievement Awards
- Athletics
- Benefits
- Financial Aid
- Leaves of absence and re-entry policies
- Opportunities to join groups
- Pay rates
- Recruitment
- Retention Rates
- Safety
- Screening Exams
- Sign-on Bonuses
- Student and Employee Benefits
- Thesis Approvals
- Vocational or College Counseling
- Research opportunities

THE TITLE IX REGULATIONS

SEXUAL HARASSMENT ONLY

1

Narrows the definition of sexual harassment;

2

Narrows the scope of the institution's educational program or activity;

3

Narrows eligibility to file a complaint;

4

Develops procedural requirements for the investigation and adjudication of sexual harassment complaints, only.

SEXUAL HARASSMENT: SECTION 106.30

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).

CUNY DEFINITIONS (SECTION III)

- Example g.
- **Title IX Sexual Harassment** is a subset of the broader definition of Sexual Harassment above. It is defined by the USDOE to mean conduct on the basis of sex that occurs in CUNY's education program or activity against a person in the United States and that satisfies one or more of the following:
 - (1) a CUNY employee conditioning the provision of an aid, benefit, or service of CUNY 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 CUNY's education program or activity; or
 - (3) Sexual Assault, Dating Violence, Domestic Violence, or Stalking as defined in this Policy.

CUNY SPECIFIC POLICY

The City University of New York Policy on Sexual Misconduct

Section XI. Title IX Sexual Harassment Matters

- TIXC makes determination if qualifies for TIX
- Notice to Parties
- Informal Resolution options
- Dismissal Options (mandatory and discretionary, process)
- Formal Resolution: Investigation and live hearing for finding

Section XII. Non-Title IX Sexual Misconduct Matters

- Investigation Notice to Parties and 120 days
- Informal Resolution options
- Dismissal Options (mandatory and discretionary, process)
- Formal Resolution: Investigation with fact finding of investigator, appeal to committee and president makes disciplinary referral to SAO, determination or panel

X. Rights and Procedures that Apply to all Sexual Misconduct Matters

PROCEDURAL REQUIREMENTS FOR INVESTIGATIONS

Notice to BOTH parties

Equal Opportunity to Present Evidence

An advisor of choice (who may be an attorney) is allowed but not required during interviews

Written notification of meetings, etc., and sufficient time to prepare

Equal opportunity to access relevant evidence or an accurate description of this evidence, and a reasonable opportunity to respond to the evidence prior to completion of the report

Only relevant evidence that is not otherwise "impermissible" may be considered

PROCEDURAL REQUIREMENTS FOR HEARINGS

Must give the decision-maker the opportunity to question parties and witnesses to assess credibility

Cannot compel participation

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Either decision-maker will ask all questions or advisors may be allowed to ask questions

Decision-maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

HEARING TECHNOLOGY: REQUIREMENTS AND CONSIDERATIONS



If hearings cannot be in person, or if someone chooses to participate remotely, must have a remote participation platform available.

All hearings must be recorded.

Participants must be able to communicate with decision makers and advisors during the hearing

THE REQUIREMENT OF IMPARTIALITY



REGS SECTION 106.45(b)(2)

CUNY SECTION X.D.

Require that any person designated as a Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias:

- For or against complaints or respondents generally, or
- An individual complainant or respondent



ACTIVITY: IS THERE A CONFLICT OF INTEREST?

Complainant: Alex, a senior student and President of the Student Government Association (SGA) at a small liberal arts college.

Respondent: Jack, a junior student, and member of the college's basketball team.

Hearing Officer: Dean Thompson, who is the Dean of Students but also Alex's direct supervisor as the SGA advisor.

Additional Context: Dean Thompson has a close professional and mentoring relationship with Alex, having worked with them extensively on SGA projects and initiatives. Additionally, Dean Thompson has a vested interest in maintaining a positive relationship with Alex, as the SGA President plays a crucial role in representing student interests and collaborating with college administrators.

LIVE HEARING OVERVIEW



WHAT IS THE PURPOSE OF A LIVE HEARING?



PURPOSE OF THE LIVE HEARING

1. Review and Assess Evidence

2. Make Findings of Fact

3. Determine Responsibility/ Findings of Responsibility

4. Determine Sanction and Remedy

SEX-BASED HARASSMENT: HEARINGS INVOLVING POSTSECONDARY STUDENTS

Option 1:

- Recorded live hearing, where Decision Maker, not the Advisor, can ask questions proposed by parties.

Option 2: CUNY Model (Section XI.E.c. and XII.E.b&c)

- Recorded live hearing, where Parties' Advisors can question any party or witness.
- Parties cannot do the questioning, and advisor of institution's choice must be provided if needed.

PROCESS PARTICIPANTS

- The Parties:
 - Complainant
 - Respondent
- Advisors
- Hearing Facilitator/Coordinator
- Decision Maker (s)
 - Hearing Chair
- Investigator



THE PARTICIPANTS

The Parties

Complainant

An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

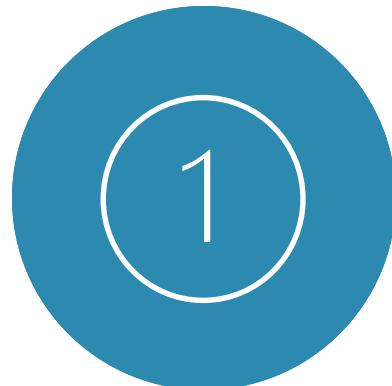
Respondent

An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

THE PARTICIPANTS

Advisors

There are two types of Advisors



Advisor: throughout the
whole process

Hearing Advisor: hearing,
for purposes of asking
questions

THE PARTICIPANTS

Advisors

- Can be anyone, including a lawyer, a parent, a friend, and a witness
- No particular training or experience required (institutionally appointed advisors should be trained)
- Can accompany their advisees at all meetings, interviews, and the hearing
- Advisors should help the Parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith
- May not speak on behalf of their advisee or otherwise participate, except that the advisor may conduct cross examination at the hearing
- Advisors are expected to advise their advisees without disrupting proceedings



THE PARTICIPANTS

Advisors: Prohibited Behavior

An Advisor who oversteps their role as defined by the policy should be warned once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting may be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator has the ability determine how to address the Advisor's non-compliance and future role.



THE PARTICIPANTS

The Hearing Facilitator/Coordinator

- Manages the recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process
- Non-Voting
- Optional, not required



THE PARTICIPANTS

Decision Maker or Adjudication Committee

Decision Maker

SEX-BASED DISCRIMINATION AND RELATED MISCONDUCT (Section IX)

One-person.

Adjudication Committee

SEX-BASED HARASSMENT (Section VIII).

A panel.
Requires a hearing chair.

THE PARTICIPANTS

The Decision-Makers

- **Adjudication Committee of 3**
 - Faculty
 - Student
 - Chair (faculty or HEO)
- Questions the parties and witnesses at the hearing
- Determines responsibility
 - Majority Vote
- Determines sanction, where appropriate



THE PARTICIPANTS

The Hearing Chair (Faculty or HEO)

- Is a decision-maker
- Answers all procedural questions
- Makes rulings regarding relevancy of evidence, questions posed during cross examination
- Maintains decorum
- Prepares the written deliberation statement
- Assists in preparing the Notice of Outcome



THE PARTICIPANTS

The Investigator

- Can present a summary of the final investigation report, including items that are contested and those that are not;
- Submits to questioning by the Decisionmaker(s) and the parties (through their Advisors).
- Can be present during the entire hearing process, but not during deliberations.
- Questions about their opinions on credibility, recommended findings, or determinations, are prohibited. If such information is introduced, the Chair will direct that it be disregarded.



PRE-HEARING TASKS: ADJUDICATION COMMITTEE & CHAIR

What should be done in advance of the hearing?

WHAT IS BEING PREPARED

Arranging for space

Arranging
technology

Scheduling pre-
hearing meetings
with parties &
advisors

Scheduling
prehearing
meetings of
the panel

Providing
report and
record to
panel and
parties

Scheduling
the hearing

Conflict
checks

Call for
written
submissions

Accommodations

Other considerations?

RECOMMENDED PRE-HEARING MEETINGS

- Review the Logistics for the Hearing
- Set expectations
 - Format
 - Roles of the parties
 - Participation
- Decorum
- Impact of not following rules
- Cross Examination/Questioning Format & Expectations



Pre-Hearing Meeting Topics



Development
of
introductory
comments

Initial discussion of
the evidence

Areas for
further
exploration

List of
questions for
the parties
and the
witnesses

Anticipation
of potential
issues

Logistics

Review of
any written
submissions
by the
parties

Other
considerations?

HEARING PANEL PREPARATION



Review
evidence
and report

Review applicable policy
and procedures

Preliminary
analysis of
the
evidence

Determine
areas for
further
exploration

Develop
questions
of your
own

PRE-HEARING TASKS: DEVELOPING QUESTIONS



COMMON AREAS OF EXPLORATION

Credibility
/Reliability

Clarification
on timeline

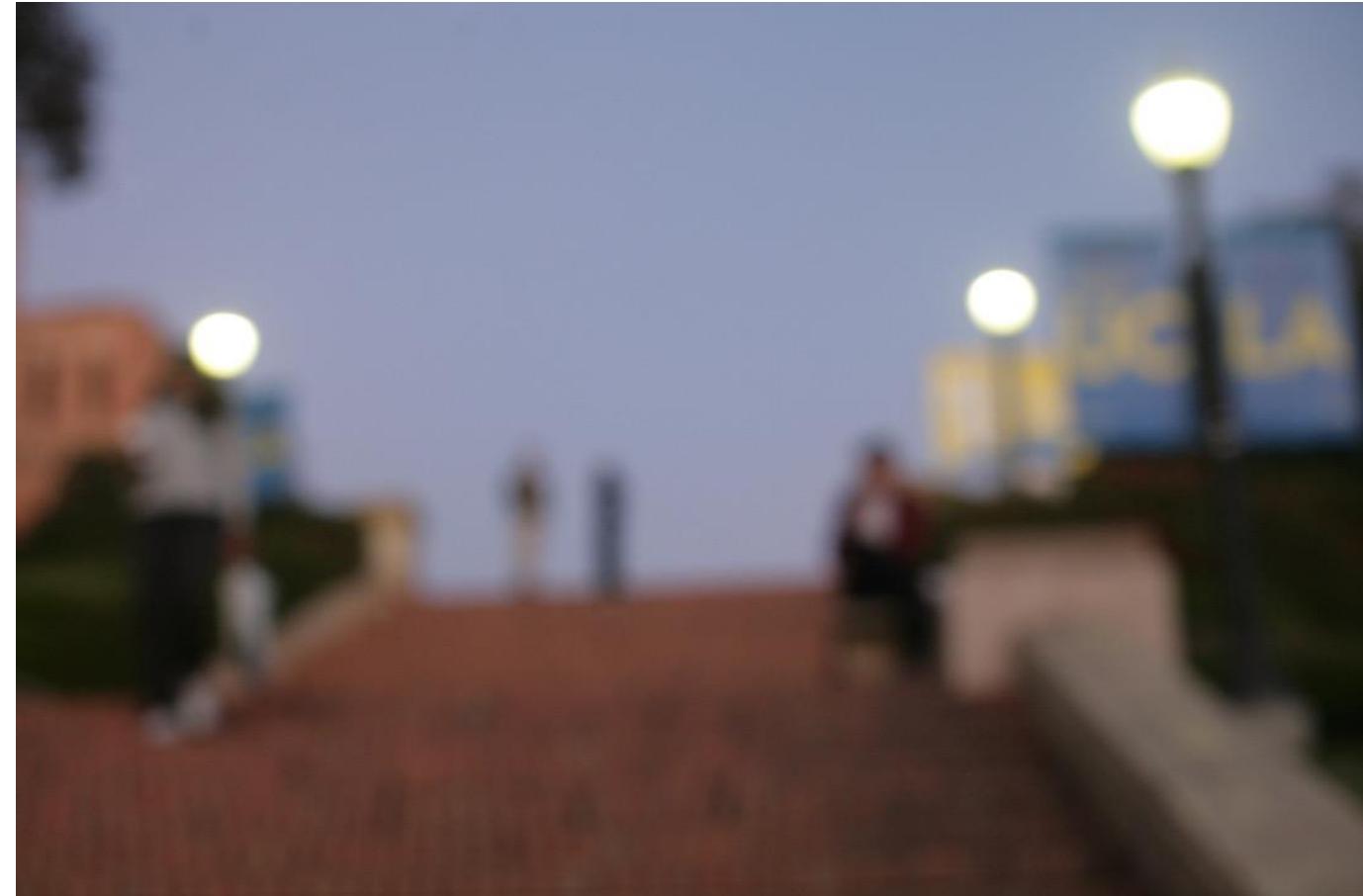
Thought
process

Inconsistencies



COMMON AREAS OF WHERE CLARITY OR ADDITIONAL INFORMATION IS NEEDED

- Credibility
- Reliability
- Timeliness
- Inconsistencies
- Details about the alleged misconduct
- Facts related to the elements of the alleged policy violation
- Relevancy of certain items of evidence
- Factual basis for opinions



POLICY ANALYSIS

- Break down the policy into elements
- Organize the facts by the element to which they relate



EXAMPLE POLICY DEFINITION: SEXUAL HARASSMENT

- Title IX Sexual Harassment is a subset of the broader definition of Sexual Harassment above. It is defined by the USDOE to mean conduct on the basis of sex⁷ that occurs in CUNY's education program or activity against a person in the United States and that satisfies one or more of the following: (1) a CUNY employee conditioning the provision of an aid, benefit, or service of CUNY 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 CUNY's education program or activity; or (3) Sexual Assault, Dating Violence, Domestic Violence, or Stalking as defined in this Policy.

Basic Line of Policy Questions:

- Was it on the basis of sex?
- Was it severe?
- Was it pervasive?
- Was it objectively offensive?
- Did it deny equal access to ed program or activity?

THE HEARING

ORDER OF PROCEEDINGS

1. Introductions and instructions by the Chair; Opening Statements

2. Presentation by Investigator/Presenter

3. Presentation of information and questioning of the parties and witnesses

4. Closing Statements

5. Deliberation & Determination

OPENING INTRODUCTIONS AND INSTRUCTIONS BY THE CHAIR

- The University has a script for this portion of the proceedings, and it should be used.
- Introduction of the participants.
- Overview of the procedures.
- Overall goal: manage expectations.
- Be prepared to answer questions.



OPENING STATEMENTS

Optional: Not required by the regulations; institution may choose to allow.

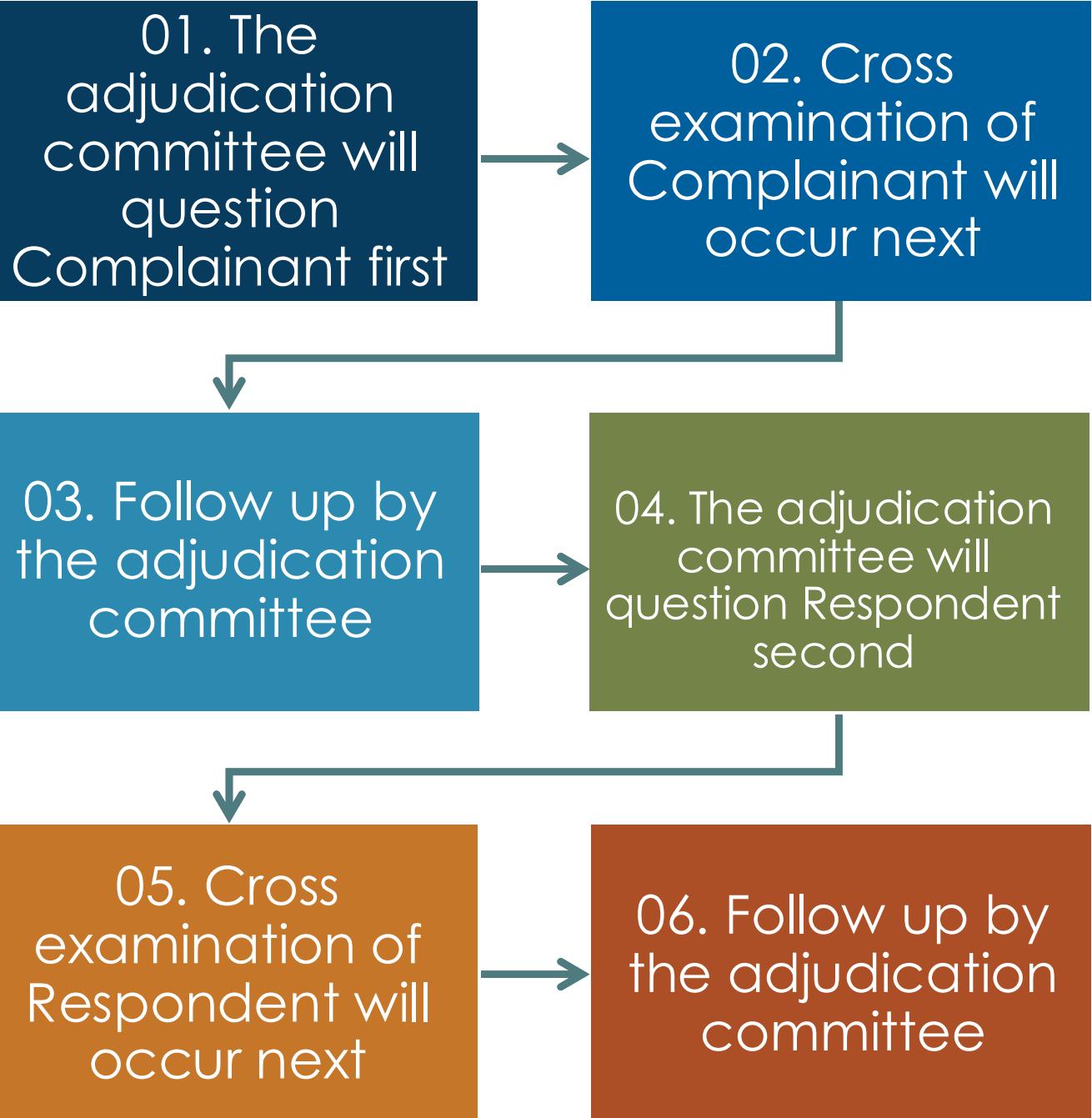
- Prior to questioning beginning during the hearing, the presenter and each party may be given the opportunity to make an opening statement.
- Intended to be a brief summary of the points the party would like to highlight.
- Directed to the Decision Maker and only the Decision Maker.
- Both parties should give opening statement before either is questioned.
- Typically, the complainant goes first.



PRESENTATION OF INFORMATION

PRESENTATION OF INFORMATION & QUESTIONING OF THE PARTIES

Presenter provides case summary and is cross examined



QUESTIONING OF THE WITNESSES

01

The Chair will determine the order of questioning of witnesses

02

The Hearing Panel will question first

03

Cross-examination will occur next
(suggested:
Complainant first
followed by
Respondent)

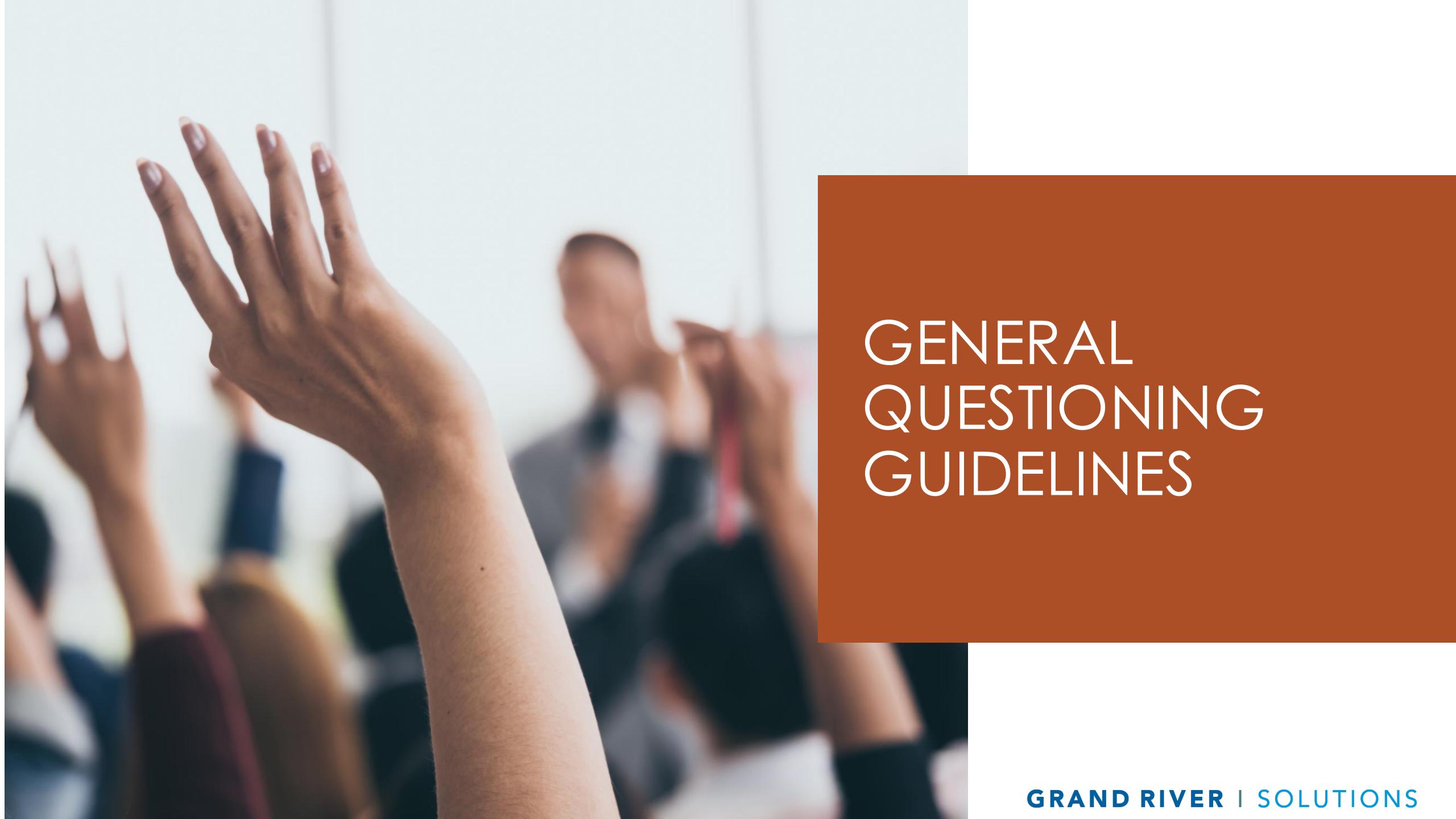
04

Follow up by the Hearing Panel

CLOSING STATEMENTS

Prior to the conclusion of the hearing, each party will have the opportunity to make a closing statement.

- Intended to be a brief summary of the points the party would like to highlight.
- Directed to the Decision Maker and only the Decision Maker
- Not time to introduce new information or evidence.



GENERAL QUESTIONING GUIDELINES

FORMAT OF QUESTIONING



The Hearing Panel or the advisor will remain seated during questioning

Questions will be posed orally

Questions must be relevant

WHEN QUESTIONING....

- Be efficient
- Be prepared to go down a road that you hadn't considered or anticipated exploring.
- Explore areas where additional information or clarity is needed.
- Take your time. Be thoughtful. Take breaks if you need it.
- Listen to the answers.



FOUNDATIONAL QUESTIONS TO ALWAYS CONSIDER ASKING

Were you
interviewed?

Did you see the
interview notes?

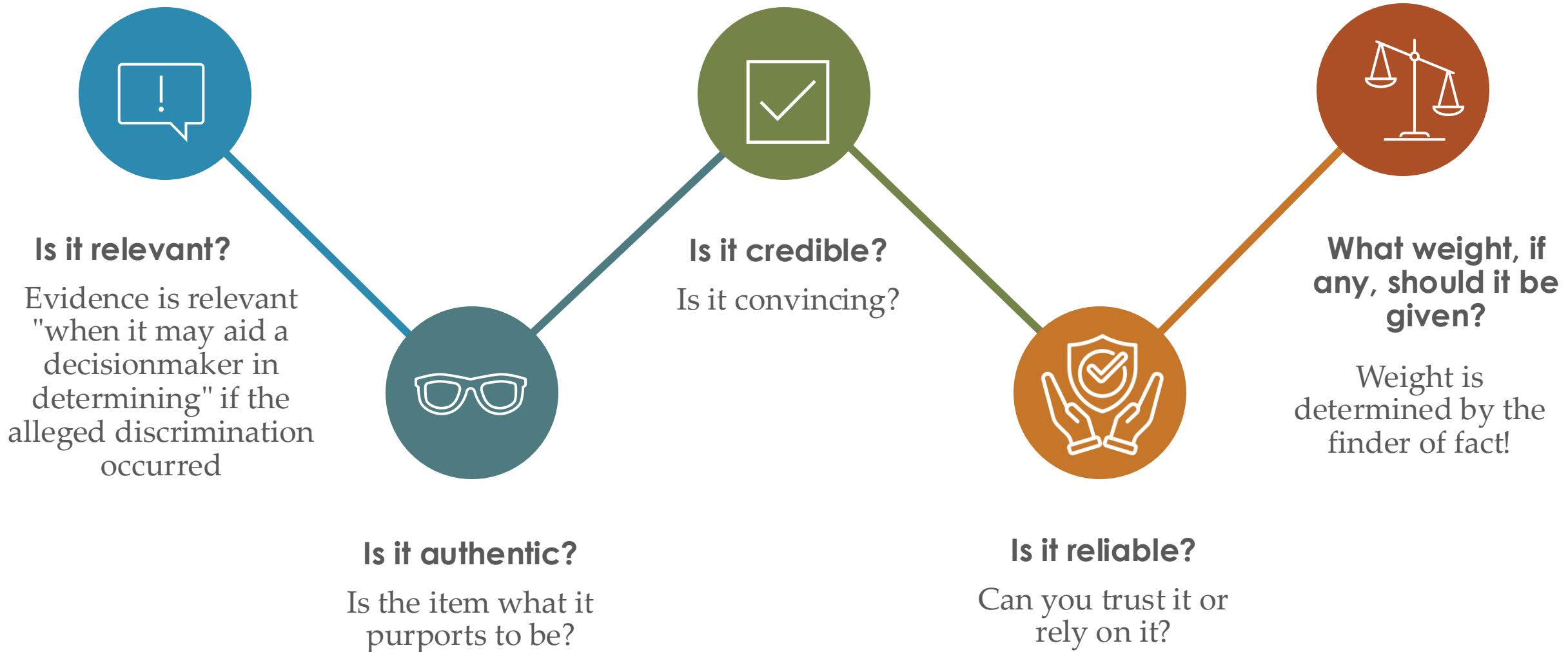
Did the notes reflect
your recollection at
the time?

As you sit here
today, has anything
changed?

Did you review your
notes before coming
to this hearing?

Did you speak with
any one about your
testimony today
prior to this hearing?

EVIDENTIARY CONSIDERATIONS DURING QUESTIONING



RELEVANCE

- "Relevant" means "related to" the allegations of discrimination.
- **Questions** are relevant "when they seek evidence that may aid in showing" if the alleged discrimination occurred.
- **Evidence** is relevant "when it may aid a decisionmaker in determining" if the alleged discrimination occurred.
- "Not relevant" evidence from 2020 is now called "impermissible."
- "Sexual interests" of Complainant added to familiar 2020 exclusions.

IRRELEVANT AND IMPERMISSIBLE QUESTIONS



Information protected by an un-waived legal privilege

Medical treatment and care

Unduly repetitious or duplicative questions

Information that is otherwise irrelevant

Complainant's prior sexual history, with limited exceptions.

QUESTIONING TO ASSESS RELIABILITY

- Inherent plausibility
- Demeanor
- Motive to falsify
- Corroboration



QUESTIONING TO ASSESS CREDIBILITY

NO FORMULA EXISTS, BUT CONSIDER ASKING QUESTIONS ABOUT THE FOLLOWING:

Opportunity to view

Ability to recall

Motive to fabricate

Plausibility

Consistency

Coaching

CREDIBILITY VERSUS RELIABILITY

- **Reliability**

- I can trust the consistency of the person's account of their truth.
- It is probably true and I can rely on it.

- **Credibility**

- I trust their account based on their tone and reliability.
- They are honest and believable.
- It might not be true, but it is worthy of belief.
- It is convincingly true.
- The witness is sincere and speaking their real truth.

OPINION EVIDENCE

When might it be relevant?

How do you establish a foundation for opinion evidence so that the reliability of the opinion can be assessed?



IS IT AUTHENTIC?



Question the person who offered the evidence.

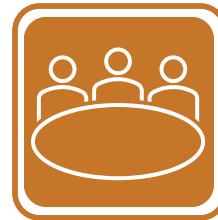


Have others review and comment on authenticity.



Are there other records that would corroborate?

TRAUMA-INFORMED
PRACTICES PROVIDE
TOOLS & TECHNIQUES
FOR ENGAGING WITH
THE COMPLAINANT,
RESPONDENT, AND
WITNESSES.



Format/Structure of the
Hearing



Format of Questions



Approach to
Clarification

THE “HARD” QUESTIONS

Details about the sexual conduct

Seemingly inconsistent behaviors

Inconsistent evidence/information

What they were wearing

Alcohol or drug consumption

Probing into reports of lack of memory

HOW TO ASK THE HARD QUESTIONS

- **Lay a foundation for the questions**
 - Explain why you are asking it
 - Share the evidence that you are asking about, or that you are seeking a response to
- **Be deliberate and mindful in your questions**
 - “Can you tell me what you were thinking when...”
 - “Help me understand what you were feeling when...”
 - “Are you able to tell me more about...”



SPECIAL CONSIDERATIONS FOR QUESTIONING THE INVESTIGATOR

- The Investigator's participation in the hearing is as a fact witness;
- Questions directed towards the Investigator shall be limited to facts collected by the Investigator pertinent to the Investigation;
- Neither the Advisors nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations;
- The Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

SPECIAL CONSIDERATIONS FOR COMMITTEES

If a panel, decide in advance who will take the lead on questioning

Go topic by topic

Ask other panelists if they have questions before moving on

Do not speak over each other

Pay attention to the questions of other panelists

Ok to take breaks to consult with each other, to reflect, to consult with the TIXC or counsel

THE DECISION MAKER'S ROLE IN QUESTIONING



CROSS EXAMINATION

WHO DOES IT?



May be conducted by the decision maker OR the advisor



If party does not appear or does not participate, advisor OR decision maker can appear and cross



If party does not have an advisor, institution must provide one

WHEN ASSESSING RELEVANCE, THE DECISION MAKER CAN:

- Ask the person who posed the question why their question is relevant
- Take a break
- Ask their own questions of the party/witness



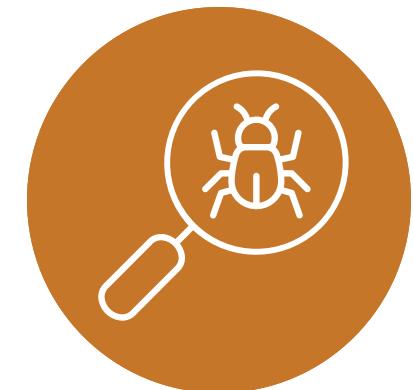
RELEVANT VS. IRRELEVANT



Logical connection
between the
evidence and facts
at issue



Assists in coming to
the conclusion – it is
“of consequence”



Evidence is relevant when
it may aid a decisionmaker
in determining if the
alleged discrimination
occurred

AFTER THE HEARING



Deliberations

PREPONDERANCE OF THE EVIDENCE

- Standard of proof by which determinations of responsibility are made
- **"More likely than not"**
- It does not mean that an allegation must be found to be 100% true or accurate
- **A finding of responsibility =**
 - There was sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated
- **A finding of not responsible =**
 - There was not sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated

WEIGHING THE EVIDENCE & MAKING A DETERMINATION

1. Evaluate the relevant evidence collected to determine what weight, if any, you will afford that item of evidence in your final determination;
2. Apply the standard of proof and the evidence to each element of the alleged policy violation;
3. Make a determination as to whether or not there has been a policy violation.



FINDINGS OF FACT

- **A "finding of fact"**
 - The decision whether events, actions, or conduct occurred, **or** a piece of evidence is what it purports to be
 - Based on available evidence and information
 - Determined by a preponderance of evidence standard
 - Determined by the fact finder(s)
- **For example...**
 - Complainant reports that they and Respondent ate ice cream prior to the incident
 - Respondent says that they did not eat ice cream
 - Witness 1 produces a timestamped photo of Respondent eating ice cream
- **Next steps?**

POLICY ANALYSIS

- Break down the policy into elements
- Organize the facts by the element to which they relate



EXAMPLE ALLEGATION: FONDLING

Fondling is the:

- touching of the private body parts of another person
- for the purpose of sexual gratification,
- Forcibly and/or without the consent of the Complainant,
 - including instances where the Complainant is incapable of giving consent because of their age or **because of their temporary or permanent mental or physical incapacity.**

ANALYSIS GRID

Touching of the private body parts of another person

Undisputed:
Complainant and Respondent agree that there was contact between Respondent's hand and Complainant's vagina.

For the purpose of sexual gratification

Respondent acknowledges and admits this element in their statement with investigators.

"We were hooking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants..."

Without consent due to lack of capacity

Complainant: drank more than 12 drinks, vomited, no recall

Respondent: C was aware and participating

Witness 1: observed C vomit

Witness 2: C was playing beer pong and could barely stand

Witness 3: C was drunk but seemed fine

Witness 4: carried C to the basement couch and left her there to sleep it off.

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Witness 3: C drank but seemed fine

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DID YOU ALSO ANALYZE...?

What is the status of the complainant?

Have an impact on a program or activity?

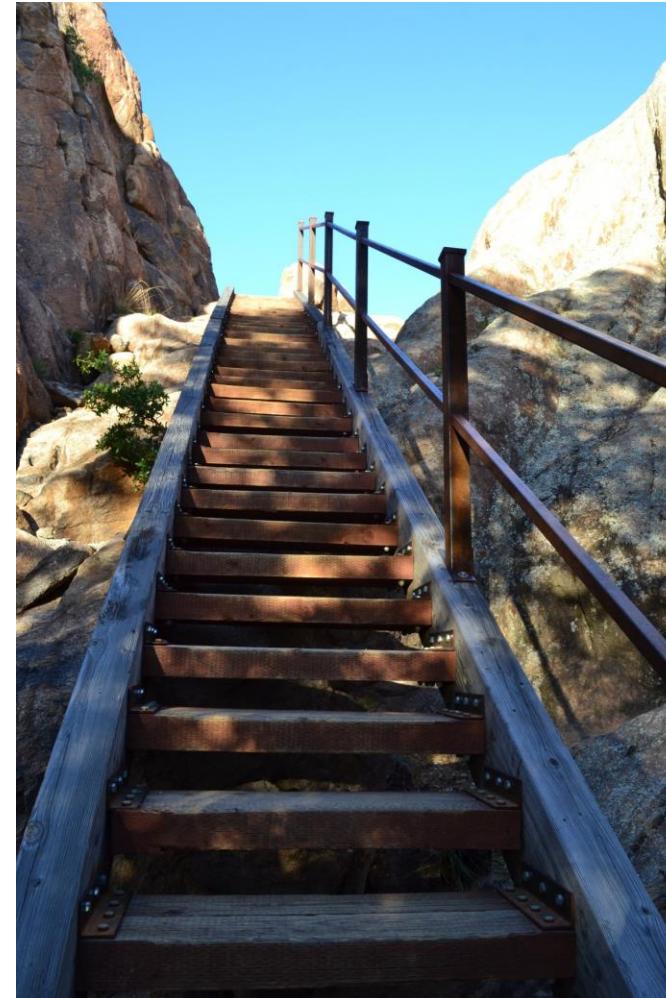
Substantial control over respondent?

Complainant was attempting to access program/activity?

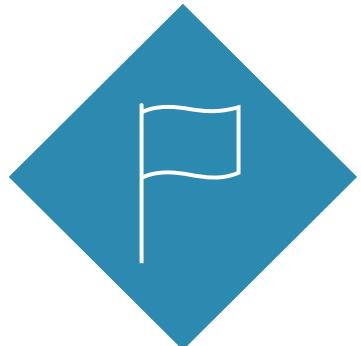
GOALS OF SANCTIONS/DISCIPLINE

- 1. End the harassment**
- 2. Prevent its recurrence**
- 3. Remedy the harm**

- What steps would be reasonably calculated to end harassment and prevent recurrence?



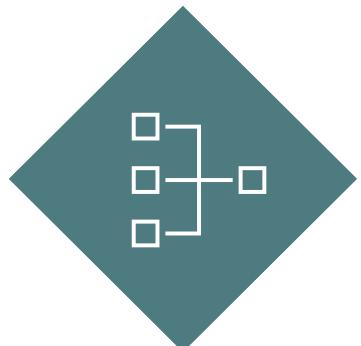
SANCTIONING: SEE CUNY SECTION XI.E.3.d and SECTION XII.E.ii-iv.



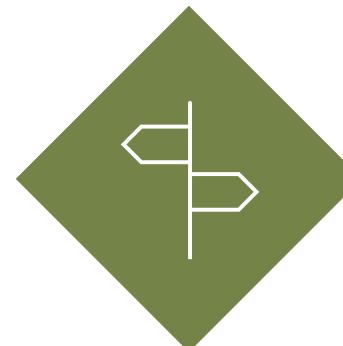
State Law



Learning Environment



System Policy



Measures Available

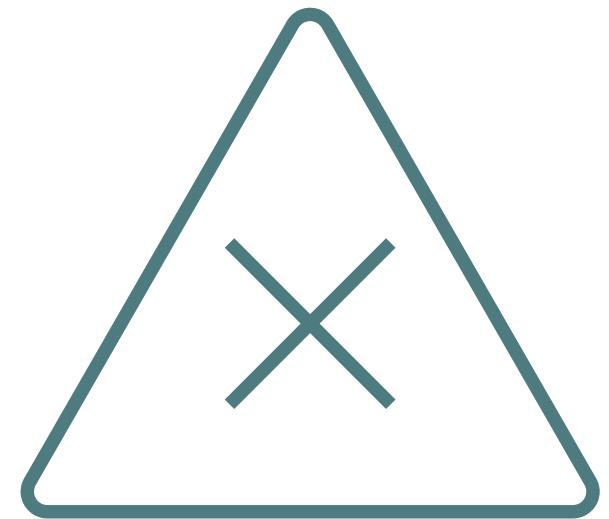
DETERMINING THE PROPER SANCTION

- Consistency
- Foreseeability of repeated conduct
- Past conduct
- Does bias creep in?
- Remorse?
- Victim impact?



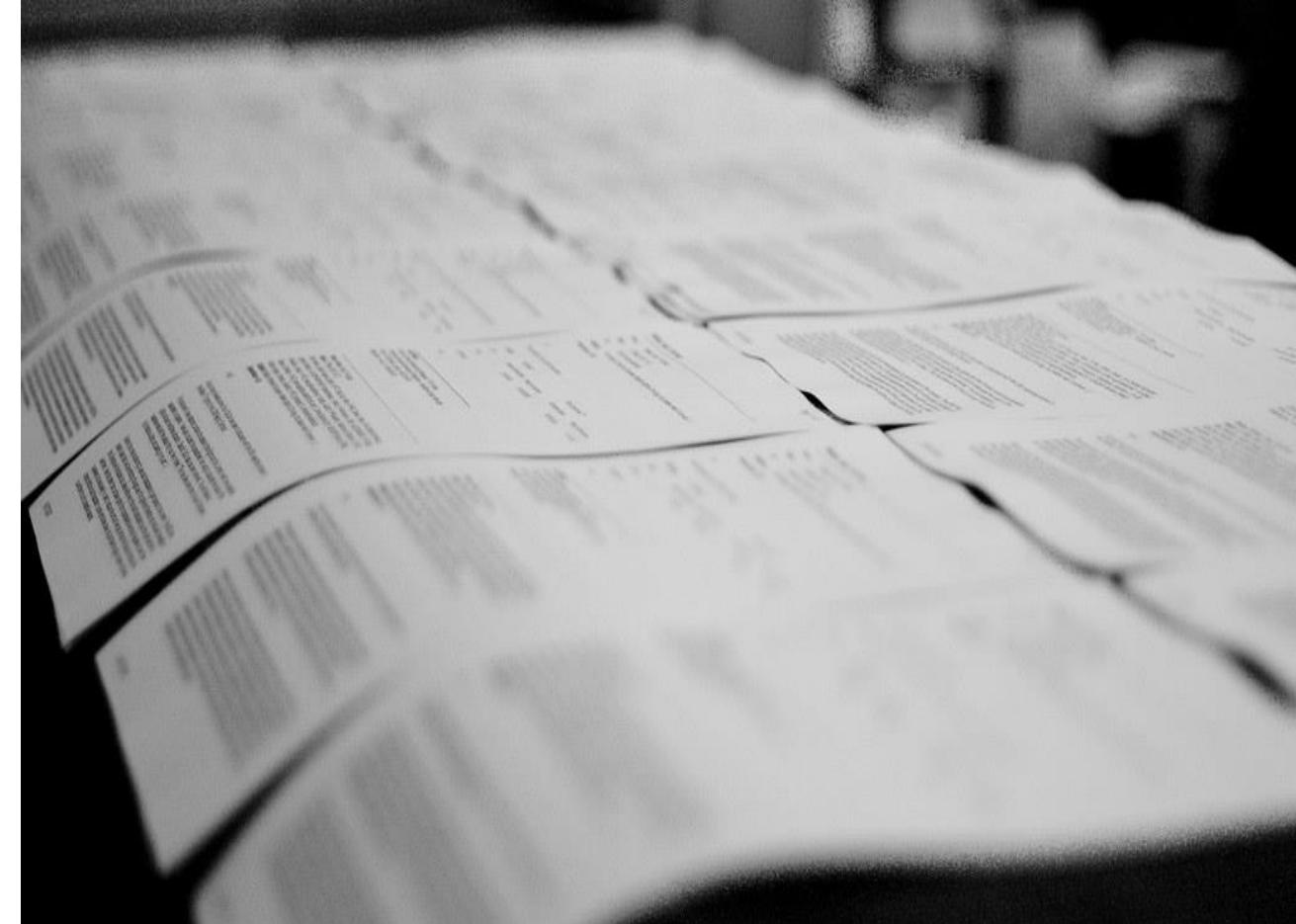
AGGRAVATING CIRCUMSTANCES

- Premeditation
- Predation
- Physical violence
- Repeated violation
- Multiple policy violations in one incident
- Harm to others, impact on complainant and/or community
- Did the behavior continue after intervention?
- Effort to conceal or hide the incident?
- Refusal to attend past trainings
- Past failures to comply with directives



FINAL REPORT: SEE CUNY SECTION XI.E.3.d AND SECTION XII.E.iv.

- The allegations
- Description of all procedural steps
- Findings of fact
- Conclusion of application of facts to the policy
- Rationale for each allegation
- Sanctions and remedies
- Procedure for appeal



THE FINAL DETERMINATION SHOULD STAND ON ITS OWN



- S** Simple and Easy to Comprehend
- T** Transparent/Clear
- A** Accurate
- N** Neutral/Unbiased
- D** Draw Attention to Significant Evidence and Issues



QUESTIONS??

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