

TITLE IX DECISION- MAKER AND APPEALS TRAINING

August 2026





Role of the Decision-Maker



The Role Of The Decision-Maker



**Maintaining
neutrality and
impartiality**



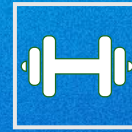
**Conducting a
fair hearing**



**Reviewing all
relevant
evidence**



**Determining
relevance of
questions
and evidence**



**Evaluating
the reliability
and weights
of evidence**



**Making credibility
determinations
based on
evidence, not
assumptions**



**Using the
preponderance
of the evidence
standard**



**Issuing a
reasoned
written
determinatio
n**

Importance Of Impartiality

- Approach every case with an open mind.
- Do not prejudge the facts or outcome.
- Evaluate all relevant evidence objectively.
- Consider both inculpatory and exculpatory evidence.
- Make credibility determinations based on evidence – not assumptions, stereotypes, or personal beliefs.
- Avoid actual bias, perceived bias, or conflict of interest.
- Base decisions solely on the hearing record and applicable University policy.

The fairness and integrity of the process depend on impartial decision-making.





Conflict of Interest and Bias



Decision-Makers and Appeal Officers Must

- Serve impartially
- Avoid prejudging the facts
- Avoid actual bias
- Avoid conflicts of interest
- Evaluate each matter based solely on the evidence and applicable policy



Potential Conflicts of Interest

- Personal relationship with a party or witness
- Prior involvement in the matter
- Supervisory or reporting relationship
- Financial or professional interest in the outcome



Potential Indicators of Bias

- Statements suggesting a predetermined outcome
- Favoring one party's evidence without objective justification
- Applying different standards to the parties



What is Not Bias?

- Receiving Title IX training
- Receiving trauma-informed training
- Prior service as a decision-maker or appeal officer
- Making credibility determinations
- Excluding irrelevant questions
- Finding one party more persuasive than another
- Reaching an outcome unfavorable to a party



Avoiding Sex-Based Stereotypes

- Decision makers must avoid assumptions based on sex, gender, gender identity, or sexual orientation
- Examples of prohibited assumptions
 - Men are always initiators
 - Women always resist unwanted conduct
 - One gender is inherently more credible
 - LGBTQ= individuals behave in predictable ways
 - Victims always react the same way





Legal Framework



Title IX

Patsy Takemoto Mink Equal Opportunity in Education Act

- A federal civil rights law that prohibits sex discrimination in educational programs and activities receiving federal financial assistance.
- Ensures individuals have equal access to educational opportunities regardless of sex.
- Prohibits discrimination on the basis of sex, including certain forms of sexual harassment and sexual violence.
- Requires institutions to respond promptly and equitably to reports of sex discrimination and sexual harassment.
- Establishes rights and protections for complainants and respondents through the grievance process.



VAWA Amendments to the Clery Act

Campus SaVE Act

- Addresses sexual assault, dating violence, domestic violence, and stalking.
- Requires prevention education and institutional response procedures.

Equitable Proceedings

- Proceedings must be prompt, fair, and impartial.
- Officials must receive proper training.
- Both parties must be treated equitably.

Rights of Complainants and Respondents

- Equal opportunity to participate in the process.
- Equal opportunity to have an advisor.
- Written notice of outcomes and appeals.

UNF Regulation 1.0050

- Governs reports of Sexual Misconduct and Title IX Sexual Harassment involving students, employees, and other members of the University committee.
- Applies when allegations fall within the University's jurisdiction.
- Prohibited Conduct
 - Sexual Harassment
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking
 - Sexual Exploitation
 - Retaliation



Consent

- Must be voluntary
- Must be informed
- Must be mutual
- May be withdrawn at any time
- Silence alone does not constitute consent
- Incapacitation may prevent a person from giving consent



Title IX Jurisdiction

- In the United States
- Within UNF's education program or activity
- Against a person participating in or attempting to participate in a UNF education program or activity.

An education program or activity includes

- On-campus locations
- University-sponsored events
- Academic and athletic programs
- Recognized student organization activities
- Circumstances where UNF exercises substantial control over the respondent and the context of the conduct



The Process





Definitions and Prohibited Conduct Under Title IX



Sexual Harassment

- Quid Pro Quo
 - An employee of the University conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.
- Key elements
 - University employee
 - Unwelcome sexual conduct
 - Explicit or implied condition
 - Educational or employment benefit at issue
- Examples
 - An employee offers a student a favorable opportunity in exchange for a date.
 - A supervisor suggests that an employee's promotion depends on engaging in sexual conduct.
 - An employee threatens negative consequences if sexual advances are rejected.



Sexual Harassment

- Hostile Environment
 - Unwelcome conduct based on sex that is:
 - Severe,
 - Pervasive, and
 - Objectively offensive
- Key elements
 - Unwelcome conduct
 - Based on sex
 - Severe, pervasive, **and** objectively offensive
 - Denies equal access to an educational program or activity
- Examples
 - Repeated sexually explicit comments directed toward a student.
 - Persistent sexual harassment that causes a student to avoid classes or campus activities.
 - Ongoing sex-based conduct that significantly interferes with a person's educational experience.



Sexual Assault

- Rape
- Fondling
- Incest
- Statutory rape



Dating Violence

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant.
- Elements
 - A current or former romantic or intimate relationship exists.
 - The relationship and its nature are assessed based on:
 - Length of the relationship
 - Type of relationship
 - Frequency of interaction
 - The conduct involved violence, threats, intimidation, or abusive behavior.
- Examples
 - Physical assault during an intimate relationship
 - Threatening or intimidating a dating partner
 - Destruction of property to exert control or fear



Domestic Violence

A felony or misdemeanor crime of violence committed by a person who:

- Is a current or former spouse or intimate partner;
- Shares a child with the victim;
- Is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
or
- Is similarly situated to a spouse under applicable law.

Examples

- Physical assault by a current or former spouse
- Threats of violence against an intimate partner
- Physical violence between individuals who share a child
- Violence occurring between individuals who live or formerly lived together in an intimate relationship



Stalking

A course of conduct directed at a specific person that would cause a **reasonable person** to:

- Fear for their safety or the safety of others; **or**
- Suffer substantial emotional distress.

Reasonable Person Standard

- Evaluated using an objective standard.
- Focuses on how a reasonable person in the same circumstances would react.
- Does not depend solely on the respondent's intent or the complainant's subjective perception.

Substantial Emotional Distress

Distress that is significant and more than minor annoyance or inconvenience.

Examples may include:

- Anxiety or fear
- Sleep disruption
- Changes in routine or behavior
- Avoidance of locations or activities
- Difficulty concentrating or participating in daily activities

Examples

- Repeated unwanted texts, calls, emails, or direct messages
- Following or monitoring an individual
- Showing up repeatedly at a person's residence, workplace, or classes





Understanding VAWA Dynamics



Domestic Violence, Dating Violence, Sexual Assault, and Stalking Often Involve

- Power and control
- Fear of Retaliation
- Manipulation
- Isolation
- Coercion
- Shame or self-blame
- Delayed reporting

*Individuals may respond to victimization in many ways. There is no “correct” victim response.



Domestic Violence: Common Dynamics

- Pattern of coercive, controlling, or abusive behavior
- May involve physical, emotional, psychological, financial, technological, or sexual abuse
- Not all abuse results in visible injuries
- Victims may remain in or return to relationships for many reasons
- Incidents often escalate over time in frequency or severity
- Separation may increase risk of harm



Dating Violence: Key Considerations

- Can occur in casual, serious, short-term, or long-term relationships
- Often involve attempts to gain power or control over a partner
- May include
 - Physical violence
 - Threats or intimidation
 - Sexual coercion
 - Monitoring communications or location



Sexual Assault: Common Misconceptions

- Most sexual assaults are committed by someone known to the victim
- Lack of physical injury does not mean an assault did not occur
- Trauma affects memory, behavior, and reporting decisions
- Resistance is not required to establish lack of consent
- Delayed reporting is common
- Victim reactions vary significantly



Stalking: Pattern-Based Conduct

- Often consists of behavior that may appear harmless when viewed individually
- Requires evaluation of conduct as a pattern
- May involve
 - Repeated communication
 - Following or surveillance
 - Gifts or unwanted contact
 - Social media monitoring
 - GPS or technology-facilitated tracking

Impact on the targeted individual is an important consideration



Avoiding Myths and Stereotypes

- Avoid Assumptions that
 - A victim would always report immediately
 - Lack of injury means no misconduct occurred
 - Continued contact disproves victimization
 - Emotional reactions should look a certain way
 - Credibility can be determined by stereotypes
- Focus on evidence, policy definitions, and findings in the record





Standard of Evidence



Preponderance Of The Evidence

- A finding of responsibility is warranted when the evidence shows that it is **more likely than not** that a policy violation occurred.
- Examples
 - 51% vs. 49%
 - If the evidence slightly favors one conclusion over another, the standard is met.
 - The evidence does not need to eliminate all doubt.
 - More Likely Than Not
 - Is it more likely than not that the alleged conduct occurred?
 - Is it more likely than not that the conduct meets the policy definition?





Presumption of Non-Responsibility



Presumption of Non-Responsibility

- Respondents are presumed not responsible unless a determination is made at the conclusion of the grievance process.
- The burden of proof and burden of gathering evidence rests on the institution, not the parties.
- The presumption remains throughout the investigation and hearing.





Understanding Evidence



Types of Evidence

Direct Evidence

- Firsthand observations
- Admissions or statements
- Video capturing an incident

Circumstantial Evidence

- Facts that allow reasonable inferences
- Patterns of behavior
- Changes in conduct before or after an event

Documentary Evidence

- Written records
- Medical records
- Reports, emails, and letters

Digital Evidence

- Text messages
- Social media posts
- Photos
- Videos

Witness Evidence

- Complainant testimony
- Respondent testimony
- Eyewitness accounts
- Witness observations





Credibility Assessments



Appropriate Factors

Consistency

Plausibility

Level of detail

Corroboration

Memory
limitations

Bias or motive

Inappropriate Factors

Gender
stereotypes

Trauma
myths

Victim-
blaming
assumptions

Race-based
assumptions

Cultural
stereotypes

Relationship
status

Sexual
history

Athletic
status

Popularity

- Position or authority



Trauma-Informed Decision Making



Trauma May Affect

Recall

Memory sequencing

Emotional presentation

Reporting delays

Behavior after an incident

Trauma responses vary. There is no “right” way for a person to react to trauma.

Trauma-Informed Does Not Mean

**Automatically
believing one
party**

**Presuming
Responsibility**

**Lowering the
burden of
proof**

**Ignoring
Conflicting
evidence**

Trauma-Informed Means

**Understanding
trauma
responses**

**Avoiding
inappropriate
assumptions**

**Evaluating
evidence
objectively**

**Conducting a
fair and
impartial
process**



Relevance



What is Relevant

Relevant evidence is evidence that tends to prove or disprove a fact of consequence in determining whether a policy violation occurred.



Key Questions

Does the evidence help establish what happened?

Does it make a fact more or less likely?

Is it connected to an issue being decided?

Relevance Determinations

When evaluating evidence, ask:

1. What fact is the evidence trying to prove or disprove?
2. How does it relate to the allegation?
3. Does it make a material fact more or less likely?
4. Is the connection direct or merely speculative?



Practical Relevance Determinations

- Generally Relevant
 - Timeline inconsistencies
 - Communication regarding consent
 - Witness observations
 - Facts related to policy elements
- Generally Not Relevant
 - Sexual reputation evidence
 - Unrelated misconduct
 - Questions designed to embarrass or harass



Examples of Relevant Evidence

- Communication between the parties
 - Text messages
 - Emails
 - Social media messages
- Witness observations
 - Direct observations
 - Statements about behavior or disclosures
- Timeline evidence
 - Location data
 - Swipe card records
 - Event attendance
 - Time-stamped communications



Potentially Irrelevant Evidence

- Character attacks
 - “They’re a bad person”
 - “Everyone knows they’re dishonest”
- Rumors
 - Secondhand information
 - Unverified statements
- Speculation
 - Guesses
 - Assumptions
 - Personal theories unsupported by evidence





Sexual History Evidence



General Rule

- Evidence or questions regarding a complainant's:
 - Sexual predisposition
 - Sexual reputation
 - Prior sexual behavior

are generally not relevant and should not be considered.

Why?

The purpose of the hearing is to determine what happened in the incident being investigated – not to evaluate a person's history or reputation.



Sexual Predisposition v. Sexual Behavior

Sexual Predisposition

- Mode of dress
- Lifestyle choices
- Dating history
- Reputation
- Sexual Orientation

Prior Sexual Behavior

- Previous sexual relationships
- Prior sexual encounters
- Sexual conduct with others



Limited Exceptions

1. Demonstrate Prior Sexual Conduct Between the Parties

OR

2. Establish That Someone Other Than the Respondent Was the Source of the Physical Evidence

Examples:

Injury

DNA evidence

Pregnancy

STI transmission





Conducting the Hearing



Before the Hearing

Review

Review All Materials

- Investigation report
- Exhibits
- Witness Statements
- Relevant Policies

Prepare

Prepare Questions

- Clarify disputed facts
- Address inconsistencies
- Fill evidentiary gaps

Identify

Identify Relevancy Issues

- Potentially irrelevant evidence
- Sexual history evidence
- Character evidence
- Duplicate or cumulative information

Technology Used During a Live Hearing

Technology may be used to

- Facilitate remoted participation
- Display exhibits and evidence
- Share documents during the hearing
- Create and preserve the hearing record
- Maintain separate participation when required

Decision-Maker Responsibilities

- Ensure all participants can hear and be heard
- Confirm access to exhibits and evidence
- Address technical disruptions promptly
- Maintain fairness and equal participation opportunities
- Ensure the integrity and security of the hearing process



During the Hearing

Key Responsibilities

- Maintain order and professionalism.
- Ensure both parties are treated equitably.
- Rule on the relevance of questions before they are answered.
- Allow advisors to conduct cross-examination.
- Ask clarifying questions when necessary.
- Ensure the hearing record remains complete and focused.

Best Practices

- Listen actively.
- Keep questions neutral.
- Avoid argumentative exchanges.
- Focus on facts, not personalities.
- Permit parties a full and fair opportunity to respond.



Advisor Cross-Examination

- 2020 Title IX Requirement
 - Advisors ask questions on behalf of parties.
 - Advisors may question:
 - Complainant
 - Respondent
 - Witnesses
- Decision-Maker Responsibilities
 - Determine relevance before a question is answered.
 - Explain the basis for excluding questions.
- Important Principle
 - Cross-examination is intended to test the reliability, credibility, and completeness of evidence.



Relevance Determinations During Cross-Examination

- Ask:
 - Does the question relate to a disputed fact?
 - Does it make a material fact more or less likely?
 - Is it seeking admissible information?
 - Is it unnecessarily repetitive?
- Examples of Relevant Questions
 - Clarification of statements
 - Inconsistencies in testimony
 - Timeline questions
 - Identification of individuals or communication
- Examples of Irrelevant Questions
 - Character attacks
 - Speculation
 - Questions unrelated to allegations
 - Questions designed solely to embarrass

Decision-makers must articulate why questions are excluded.



Privileged Records

- Generally Excluded Unless Waived
 - Attorney-client communications
 - Medical records
 - Treatment records
 - Psychological counseling records
- Rule
 - The University cannot access, consider, or otherwise privileged information unless voluntary written consent is provided by the privilege holder.



Deliberations

- Review:
 - All relevant evidence
 - Hearing testimony
 - Applicable policy definitions
 - Standard of proof
- Avoid:
 - Personal opinions
 - Outside information
 - Biases and assumptions
 - Information excluded during the hearing
- Apply policy definitions to facts established by the evidence.



Weighing Evidence

- Questions to Consider
 - Is the evidence relevant?
 - Is it reliable?
 - Is it consistent with other evidence?
 - Is it corroborated?
 - Is it contradicted by other evidence?
 - How persuasive is it when viewed with the entire record?

*No single type of evidence automatically receives greater weight.

*What does the totality of the evidence establish?



Written Determination Requirements

- The Determination Must Include
 - Identification of allegations
 - Procedural history
 - Findings of fact
 - Conclusions regarding policy violations
 - Application of facts to policy
 - Rationale for each determination
 - Any sanctions
 - Any remedies provided to the complainant
 - Appeal procedures
- The written determination must clearly explain how the decision-maker reached the outcome.



Making Findings of Fact

- A Finding of Fact Should
 - Identify the fact being determined
 - Cite the evidence supporting the finding
 - Explain why the evidence was persuasive
- Example
 - Weak Finding
 - “I found the complainant credible.”
 - Stronger Finding
 - “I found the complainant’s account persuasive because it remained consistent throughout the investigation and hearing and was corroborated by contemporaneous text messages and witness observations.”



Building a Defensible Determination

- Effective Analysis
 1. Identify the disputed fact
 2. Review relevant evidence
 3. Assess reliability and credibility
 4. Determine what is more likely than not
 5. Apply the policy elements
 6. Explain the rationale

“If someone unfamiliar with this case read my decision, would they understand how I reached my conclusion?”





Appeals



Appeals

- Grounds for Appeal
 - Procedural irregularity affecting the outcome.
 - New evidence not reasonable available at the time of determination.
 - Conflict of interest or bias by:
 - Title IX Coordinator
 - Investigator
 - Decision-Maker
- Appeals are not opportunities to re-argue the case simply because a party disagrees with the outcome.



Role of the Appeal Officer

Key Responsibilities

- Review appeals impartially
- Apply the permitted grounds for appeal
- Determine whether the original outcome should stand
- Determine whether corrective action is necessary
- Issue a written appeal decision

The Appeals Officer Does Not

- Conduct a new hearing
- Re-investigate the allegations
- Substitute Personal judgement merely because a different conclusion could have been reached
- Re-weigh evidence absence a valid appeal ground

Understanding the Scope of Review

- Appeals Are Not
 - A “do-over”
 - A second investigation
 - A second hearing
 - An opportunity to present arguments that could have been raised earlier
- Appeals Are
 - A review of specific claimed errors
 - An evaluation of whether an appeal ground exists
 - A safeguard for fairness and accuracy



Ground One: Procedural Irregularity

- Questions to Ask
 - Did a procedural error occur?
 - Was the procedure required by policy?
 - Did the procedural error affect the outcome?
- Examples
 - Required notice not provided
 - Relevant witness improperly excluded
 - Party denied opportunity to review evidence
 - Incorrect policy applied



Case Example

- Appeal claim
 - “The hearing officer excluded my witness.”
- Analysis
 - Was the witness relevant?
 - What information would the witness have provided?
 - Was the exclusion improper?
 - Could the testimony have affected the outcome?
- Possible Result
 - No impact on outcome = Affirm
 - Potential impact on outcome = Remand



Ground Two: Newly Discovered Evidence

- Questions to Ask
 - Is the evidence actually new?
 - Was it reasonably unavailable at the time?
 - Is it relevant?
 - Could it reasonably affect the outcome?
- Examples
 - Newly discovered video
 - Previously unavailable witness
 - Newly obtained documentary evidence



Example

- Appeal Claim
 - “After the hearing, I found text messages supporting my position.”
- Questions
 - Did the party possess or have access to the texts earlier?
 - Could they reasonably have been obtained before the hearing?
 - Would they likely impact the outcome?
- Possible Results
 - Evidence available earlier = Deny appeal
 - Evidence genuinely unavailable and material = Remand



Ground Three: Conflict of Interest or Bias

- Potential Sources
 - Title IX Coordinator
 - Investigator
 - Decision-Maker
- Questions
 - Is there evidence of actual bias or conflict?
 - Is the allegation supported by facts?
 - Could the conflict have affected the outcome?



Evaluating Claims of Bias

- Potentially Relevant
 - Personal relationship with a party
 - Prior involvement in the matter
 - Statement showing prejudgment
 - Undisclosed conflicts
- Generally Not Sufficient Alone
 - Adverse findings
 - Credibility determinations
 - Enforcement of hearing rules
 - Disagreement with outcome



Drafting the Appeal Decision

- Include
 - Result of the appeal
 - Any changes to the result of the disciplinary hearing
 - Rationale for the result



Final Takeaways

- Remember
 - Remain impartial.
 - Evaluate all relevant evidence.
 - Consider inculpatory and exculpatory evidence equally.
 - Make credibility determinations based on evidence.
 - Apply the preponderance of the evidence standard.
 - Base findings on the hearing record
 - Articulate clear reasoning
- The Goal
 - A fair, equitable, and reliable determination grounded in the evidence and University policy.





Questions?

