



FURMAN

TITLE IX HEARING BOARD TRAINING
AUGUST 28, 2020 AND SEPTEMBER 8, 2020

OBJECTIVES

- Understand new policy and process
- Be aware of differences from prior policy
- Learn new policy definitions and how to break definitions into elements
- Complete Parker Poe Training Videos Separately

SEXUAL MISCONDUCT TEAM

Title IX Deputy Coordinators

- **Jason Cassidy**, AVP for Student Life and Dean of Students
- **Stephanie Boyd**, Assistant Dean of Students/Alcohol and Drug Education Coordinator
- **Rachael Simpson**, Assistant Athletic Director/Compliance & Student-Athlete Development
- **Kristen Davis**, Employee Relations Manager

SEXUAL MISCONDUCT TEAM

Investigators

- Jason Cassidy
- Stephanie Boyd
- Rachael Simpson
- Kristen Davis
- Ron Thompson
- Teddi Walker
- Curt Nash
- Bernie Stanton
- Neil Jamerson
- Jenny Colvin

SEXUAL MISCONDUCT TEAM

Hearing Board Members

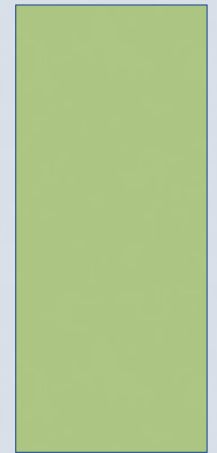
- Deputies and Investigators
- Owen McFadden
- Stephanie Hesbacher
- Susan Cooper
- Brad Harmon
- Laura Williams Sanders
- Rob Carson
- Connie Carson
- Jenny Colvin
- Ron Friis
- Mark Stone
- Harry Kuoshu
- Christopher Manganaro
- Nancy Sloan
- Steve Richardson
- David Gandolfo
- Michael May
- Sandy Roberson

ADVISORS

- Pool of advisors who will be available to both complainants and respondents as needed
- Provide support and advise on process
- Question other party and witnesses

SEXUAL MISCONDUCT POLICY

OVERVIEW OF POLICY STRUCTURE AND PROCESS



TITLE IX

Title IX of the Education Amendments of 1972 states, "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 educational program or activity receiving federal financial assistance."

The diagram consists of two concentric circles on a dark blue background. The outer circle is a light blue color and contains the text 'Sexual Misconduct'. The inner circle is a slightly darker shade of blue and contains the text 'Title IX Sexual Harassment'. The inner circle is centered within the outer circle, illustrating that Title IX Sexual Harassment is a subset of Sexual Misconduct.

Sexual Misconduct

Title IX Sexual
Harassment

SEXUAL MISCONDUCT POLICY: FOUR PARTS

Part 1—Generally Applicable Provisions

Part 2—Grievance Procedures for Title IX Sexual Misconduct


Part 3—Grievance Procedures for Non-Title IX Sexual Misconduct

Part 4—Alternative Resolution Process

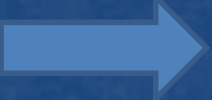
REPORT OF SEXUAL
MISCONDUCT

WHAT HAPPENS WHEN SOMEONE REPORTS?

Deputies or TIXC  Designated to receive reports

Officials with Authority: President, VPs, Dean of Students, Dean of Faculty, Assistant VP for Human Resources  Actual Knowledge


Mandated Reporters: Include RAs, faculty, Student Life employees, anyone who supervises or advises students, all previous responsible employees

 obligation to report to TIXC

AFTER REPORT COMES TO TIXC

- Initial outreach and meeting with Complainant
 - Provide Supportive measures
 - Advise regarding reporting options
 - Initial jurisdictional assessment
- Complainant decides whether to proceed with formal grievance process, alternative resolution process or supportive measures only
 - Examples of supportive measures
 - Can change mind at later time
 - TIXC and/or deputy TIXC conduct risk assessment for campus

COMPLAINT/FORMAL COMPLAINT



Allegations
only
proceed to
formal
grievance
process or
alternative
resolution if:

- Complainant files
Formal
Complaint/Complaint
- TIXC signs
Complaint/Formal
Complaint

NOTICE OF ALLEGATIONS TO BOTH PARTIES

Upon receipt of a Formal Complaint, the Title IX Coordinator will provide the following written notice of allegations to the Complainant and the Respondent, if known:

In addition, if, in the course of the investigation, additional allegations are made, supplement with notice of those allegations

Notice of the Grievance Procedures

Notice of the allegations of conduct potentially constituting Sexual Harassment

Sufficient time to prepare a response before any initial interview

Presumption of non-responsibility

Advisor of choice

Provision in policy that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

ACADEMIC FREEDOM

Nothing in the Sexual Misconduct Policy shall be interpreted to prohibit bona fide academic requirements for a specific University program, course, or activity.

When investigating Complaints that a party or the Title IX Coordinator believes may involve issues of academic freedom, the Title IX Coordinator will consult with the Dean of Faculty with respect to contemporary academic practices and standards.

DISMISSAL (TIX PROCESS)

Mandatory Dismissal

- the conduct alleged in the Formal Complaint, even if proved, would not constitute Sexual Harassment;
- at the time of filing the Formal Complaint, the Complainant was not participating in or attempting to participate in the University's Education Program or Activity;
- the conduct did not occur in Furman's Education Program or Activity;
- the conduct did not occur against a person in the United States

Permissive Dismissal

- the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- the Respondent is no longer enrolled or employed at the University;
- specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein

PROCEDURAL QUESTIONS

Is there a time limit on reporting?

What if the complainant requests that Furman not investigate, or refuses to file a complaint?

What if other violations of policy are alleged to have been violated?

What if the complainant was drinking underage?

How long does will the process typically take?

SEXUAL MISCONDUCT POLICY

DEFINITIONS

SEXUAL HARASSMENT

“Sexual Harassment” means conduct on the basis of sex that satisfies one or more of the following:

- **Quid Pro Quo Sexual Harassment,**
- **Hostile Environment Sexual Harassment,**
- **Sexual Assault**
- **Dating Violence**
- **Domestic Violence; or**
- **Stalking**

QUID PRO QUO SEXUAL HARASSMENT

the conditioning by a University employee of the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct

HOSTILE ENVIRONMENT SEXUAL HARASSMENT

unwelcome conduct on the basis of sex 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.

SEXUAL ASSAULT

“Sexual Assault” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI.

1. Forcible sex offense: any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent. (forcible rape, forcible sodomy, sexual assault with an object, forcible fondling)

2. Nonforcible sex offense: unlawful, nonforcible sexual intercourse. (incest, statutory rape)

DATING VIOLENCE

“Dating Violence” means violence committed by a person

- who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- where the existence of such a relationship shall be determined based on a consideration of the following factors:

(A) the length of the relationship;

(B) the type of relationship; and

(C) the frequency of interaction between the persons involved in the relationship.

STALKING

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for his or her safety or the safety of others; or (ii) suffer substantial emotional distress.

When based on person’s sex, stalking constitutes TIX Sexual Harassment (still need to confirm other jurisdictional requirements).

UNWELCOME SEXUAL CONDUCT

unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, graphic, or physical conduct of a sexual nature when (i) such conduct does not constitute Sexual Harassment and (ii) either (1) or (2) below applies:

- Submission to, consent to, or rejection of the behavior carries or is reasonably believed to carry consequences for the individual's education, employment, on-campus living environment, or participation in a University activity.
- The behavior is both (i) severe, persistent, or pervasive and (ii) objectively offensive, such that it unreasonably limits or interferes with the individual's ability to participate in or benefit from the University's education, on-campus living, or employment programs or activities by creating an intimidating, hostile, offensive, or demeaning environment. Whether the conduct creates an intimidating, hostile, offensive, or demeaning environment may depend on a variety of factors, including: the degree to which the conduct affected the education or employment of another person; the type, frequency and duration of the conduct; the relationship between the parties; the number of people involved; and the context in which the conduct occurred.

SEXUAL EXPLOITATION

Any act of taking non-Consensual, unjust or abusive sexual advantage of another person for one's own advantage or benefit or to benefit or advantage anyone other than the person being exploited

Example is recording sexual activity without permission

INTOXICATION V.
INCAPACITATION

DEFINITION OF INCAPACITATED

“Incapacitated” means lacking the physical and/or mental ability to make informed, rational judgments. A person may be Incapacitated for a variety of reasons, including but not limited to being asleep or unconscious, having consumed alcohol or taken drugs, or experiencing blackouts or flashbacks.

INTOXICATION V. INCAPACITATION

Was the complainant incapacitated at the time of sex?

- Could s/he make rational, reasonable decisions?
- Could s/he appreciate the situation and address it consciously such that any consent was informed
 - knowing who, what, when, where, why and how

EVIDENCE OF INCAPACITATION

Evidence of incapacity will come from context clues, such as:

- A witness or the respondent may know how much the other party has consumed;
- Slurred speech;
- Bloodshot eyes;
- The smell of alcohol on the breath;
- Shaky equilibrium;
- Vomiting;
- Outrageous or unusual behavior
- Unconsciousness (including blackout).

INVESTIGATION AND PRE- HEARING

OVERVIEW OF PROCESS

INVESTIGATION

Two investigators assigned, conflict check

Parties and witnesses interviewed

Investigators begin working on investigative report

Follow-up interviews if needed

All related evidence shared with all parties and advisors

- Minimum of 10 days
- Opportunity to submit written response

Finalize report, incorporating party feedback

Report shared with parties and advisors minimum of 10 days prior to hearing

PRE-HEARING

Notice of charges to both parties

Parties may submit written response to investigative report
(shared with hearing board)

Hearing panel selected, conflict check

Hearing scheduled

Hearing chair makes pre-hearing relevancy determinations

PRE-HEARING PROCESS

The Hearing Board and any alternates will read the Investigation Report.

The Board and alternate(s) will meet with the TIXC to review policy, definitions, standard of evidence, documentation and confidentiality.

The Board and alternate(s) will meet together to discuss the Investigation Report, review the witness list, review the position statement(s), and prepare questions for the Investigators, witnesses and parties.

WHAT IF THE RESPONDENT ACCEPTS RESPONSIBILITY?

At any time prior to the hearing, the Respondent may elect to accept responsibility for the alleged Sexual Misconduct.

- The Title IX Coordinator will propose sanction(s) for the Respondent.
- If the Complainant and the Respondent agree to such proposed sanction(s), then the Complaint will be resolved without a hearing and without any further rights of appeal by any party.
- If either party objects to sanctions, proceed to hearing solely on sanctions

HEARING

ATTENDEES AND ROLES

Complainant

Respondent

Title IX Coordinator

Title IX Deputy Coordinator

Investigators

Hearing Board

Hearing Board Chair

Witnesses

Advisors

LOGISTICS

Remote hearings

Breaks and conferences

Evidentiary decisions

Scheduling parties and advisors

Scheduling witnesses

What to do if party or witness does not attend

What to do if party does not have advisor at hearing

QUESTIONING – TIX PROCESS

Hearing board may question the Complainant, the Respondent, investigators and witnesses

Advisors for the Complainant and the Respondent may also question the investigators, witnesses, and the other party

During cross-examination, hearing chair must determine relevancy of question before party/witness answers

Hearing chair must provide rationale for excluding any question as not relevant

QUESTIONING – NON-TIX PROCESS

Hearing board may question the Complainant, the Respondent, investigators and witnesses

Complainant and the Respondent may submit written questions for the investigators, witnesses, and the other party

During cross-examination, hearing board must determine relevancy of question before asking it

QUESTIONING REVIEW

TIX Process

Hearing board may question the Complainant, the Respondent, investigators and witnesses

Advisors for the Complainant and the Respondent may also question the investigators, witnesses, and the other party

During cross-examination, hearing chair must determine relevancy of question before party/witness answers

Hearing chair must provide rationale for excluding any question as not relevant

Non-TIX Process

Hearing board may question the Complainant, the Respondent, investigators and witnesses

Complainant and the Respondent may submit written questions for the investigators, witnesses, and the other party

During cross-examination, hearing board must determine relevancy of question before asking it

Advisors do not have speaking role

WITNESSES

Title IX Process

A party and/or any witness may choose not to submit to cross-examination at the hearing

however, the hearing board will not rely on any statement of that party or witness (whether made during the investigation or in the hearing) in reaching a determination regarding responsibility

Non-Title IX Process

A party and/or any witness may choose not to submit to cross-examination at the hearing

Hearing board determines which witnesses to call

If witness/party does not attend/submit to questioning, determine weight to give any statements

EVIDENCE

The chair of the hearing board will resolve any questions concerning the admission of evidence or testimony (including the relevancy and reliability of the evidence and testimony)

The hearing board will notify the parties of any evidence in the investigative report that will be excluded as not relevant and/or any previously submitted evidence excluded from the investigative report that will be included as relevant and the reasons therefore.

Parties should not attempt to introduce at the hearing any evidence that the chair determines is not relevant, and the hearing board will not consider any such evidence in making its decision.

EVIDENCE OF PAST SEXUAL HISTORY: GENERALLY NOT RELEVANT AND NOT PERMITTED AT HEARING, WITH THE FOLLOWING EXCEPTIONS

Regarding the Complainant:

- (A) if the questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; and
- (B) if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.

Regarding the Respondent:

- Regardless of whether the Respondent was formally investigated or found responsible for such conduct, such evidence may be permitted if it is relevant to show that the Respondent has engaged in a pattern of behavior similar to the alleged Sexual Harassment at issue before the hearing board, provided that
 - (A) the Respondent has not been found "not responsible" by the University in a proceeding related to such conduct; and
 - (B) the chair of the hearing board has found both that the evidence is reliable and trustworthy and that the conduct is sufficiently and substantially similar to the conduct at issue before the hearing board to suggest a pattern of behavior. Such evidence may include, but is not limited to, evidence that the Respondent has in the past been either convicted in a criminal proceeding or formally disciplined by the University for conduct constituting Sexual Harassment.

EVIDENCE

Character evidence

- Character evidence is generally not relevant and is therefore generally inadmissible.

Privilege

- Questions and/or evidence that constitute or seek disclosure of information protected under a legally recognized privilege are not permitted unless the person holding the privilege has waived the privilege in writing.

Treatment records

- The University will not access, consider, disclose, or otherwise use a party's Treatment Records unless the party provides voluntary, written consent for it to do so.

RELEVANCY DETERMINATION

The decision-maker is the final arbiter of whether evidence is relevant and admissible

EVIDENCE QUESTIONS: WHAT DO YOU DO?

The Complainant seeks to introduce evidence about prior incidents that the investigators determined was not relevant and excluded from the investigation report

EVIDENCE QUESTIONS: WHAT DO YOU DO?

In a dating violence case, the Respondent seeks to introduce evidence that the Complainant has been seeing a psychiatrist and taking prescription medication for bi-polar disorder

CONDUCT OF THE HEARING

Opening remarks by parties

Questioning of parties

Questioning of witnesses

Closing remarks by parties

DECISION OF THE HEARING BOARD

The hearing board will confer and by majority vote determine whether the evidence establishes that it is more likely than not that the Respondent committed Sexual Harassment. (preponderance of the evidence)

The hearing board will render a finding of "Responsible" or "Not Responsible" and will provide the rationale for its decision.

If the Respondent is found "Responsible," the hearing board will specify the specific type(s) of Sexual Harassment or Sexual Misconduct for which the Respondent is found "Responsible" (e.g., Sexual Assault, Stalking).

SANCTIONS

If the hearing board determines that the Respondent is "Responsible," it will recommend appropriate sanctions to be imposed on the Respondent.

Forward
recommendation to TIXC

- For students: Review by Dean of Students
- For Faculty: Review by Dean of Faculty
- For staff: Review by Assistant VP for HR
- In cases involving more than one type of party, review by multiple individuals

Sanctions generally become final either on the date that the University provides the parties with the written determination of the result of any appeal, or if an appeal is not filed, on the date on which an appeal would no longer be considered to be timely filed.

WRITTEN DETERMINATION

Within seven business days following the conclusion of the hearing, the Title IX Coordinator will issue a final outcome letter simultaneously to the Respondent and the Complainant.

- (i) name of the Respondent;
- (ii) identify the allegations potentially constituting Sexual Harassment;
- (iii) describe procedural steps taken from the filing of the Formal Complainant through the determination, including any notifications to the parties, interviews of parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- (iv) provide findings of fact that support the hearing board's determination;
- (v) provide conclusions regarding the application of this Policy to the facts,
- (vi) provide a statement of, and the rationale for, the result as to each allegation, including a determination regarding responsibility and any disciplinary sanctions imposed, and whether remedies designed to restore or preserve equal access to the Education Program or Activity will be provided to the Complainant, and
- (vii) explain the procedures and permissible bases for the Complainant and the Respondent to appeal.

APPEAL

GROUNDS FOR APPEAL: RESPONSIBILITY DETERMINATION

The following
are the only
permissible
grounds for an
appeal of the
hearing
board's
responsibility
determination:

- (i) a procedural irregularity affected the outcome of the matter;
- (ii) new evidence is available that was not reasonably available at the time the determination regarding responsibility was made that could affect the outcome of the matter; and
- (iii) the Title IX Coordinator, an investigator, or a hearing board member had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

GROUNDS FOR APPEAL: SANCTIONS DETERMINATION

The following is the only permissible grounds for an appeal of the sanctions imposed on the Respondent: the severity of the sanction imposed is incommensurate to the gravity of the Sexual Misconduct for which the Respondent was found responsible.

APPEAL

Appeal
submitted in
writing to Title
IX
Coordinator
within seven
calendar
days of final
outcome
letter

- Appeals board reviews appeal grounds for sufficiency
- If sufficient, appeals board reviews hearing and appeals materials
- If appeal is granted, generally, case should be remanded for further proceedings before the same or a different hearing board (and if appropriate for further investigation)
- Appeals board should not substitute their judgment for the hearing board's
- Appellate review should be based on the grounds for appeal

QUESTIONS

How to handle a case with allegations of both TIX Sexual Harassment and Non-Title IX Sexual Misconduct?

How to handle determination at hearing under TIX grievance process that conduct does not meet definition of TIX Sexual Harassment but is other sexual misconduct?

RESPONSIBILITIES OF HEARING BOARD MEMBERS

Responsible for ensuring a fair and impartial process

Neutrals

Review definitions, standard of proof and procedure before each hearing

Evidence of prior sexual conduct is generally not admissible

- prior sexual conduct between parties is admissible but should be given weight it is due (does not prove Complainant was not assaulted)
- Pattern of conduct evidence

Anything prejudicial should not be considered (such as irrelevant medical history, particularly if evidence was not properly obtained)

If allow one side to present a type of evidence, allow both sides to do so

FORMAL RESOLUTION

HEARING SCRIPT

PROCEDURAL QUESTIONS

What can the Hearing Board expect from the investigators?

What if the Respondent acknowledges responsibility prior to a hearing?

Who serves on the Hearing Board?

Who appoints the Board?

What if there is a conflict of interest?

How will witnesses be determined?

PROCEDURAL QUESTIONS

Who can serve as an advisor?

Can legal counsel or parents serve as an advisor?

Is evidence of past sexual histories permitted?

Will the Respondent and Complainant be in the room together?

Will the hearing be recorded?

PROCEDURAL QUESTIONS--REVIEW

How is the outcome determined?

How are sanctions determined?

What are the grounds for an appeal?

Who serves on the Appeals Board?

Who appoints the Appeals Board?

How is the outcome of an appeal determined?

SANCTIONING

Furman's SMP requires that a given sanction:

- will bring an end to the violation in question,
- reasonably prevent a recurrence of a similar violation, and
- remedy the effects of the violation.

Sanctions for serious sexual misconduct should not be developmental/educational as their primary purpose. They are intended to protect the complainant and the community.

QUESTIONS

