Interim Policy Update

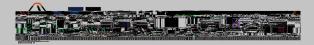
2020-21 Training for the Grievance Process Pool August 28, 2020 - PART ONE



Big Picture Overview

- New regulations were significant
 - We recognize the training you have done has covered a LOT
- Summer timeline was tight
 - We'll review what we updated for the Interim policy
- Interim Policy is in place

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Core Title IX Regulation Changes

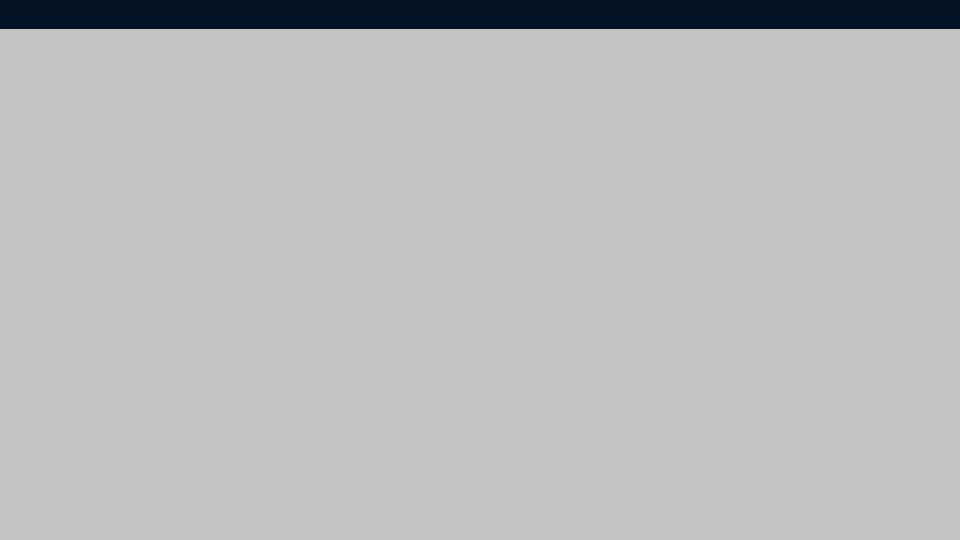
- Definition of Sexual Harassment
 - Use of Clery definitions
- Specific jurisdiction limitations
 - Inside the US
 - On campus or part of a college program/activity
 - "Dismissal" under Title IX
- Requirement for direct cross examination
 - Must be completed by Advisor
- Application to employees
- Change/addition of roles
- Significant focus on bias
 - Please do some self evaluation/reflection

Reminder...Title IX holds the institution accountable. Our policy holds individuals accountable.

Summer Updates

- Edited policy to be in compliance with requirements of regulations
 - One policy, two processes
 - Approved as Interim Policy
 - Will do full review this year
 - Culture of Respect Core Evaluation
 - Updated web to show their roles, posted training we are all doing, etc.
- Anything "optional" we left for further review
 - Mandatory reporting
 - "Actual knowledge" versus "mandatory reporting"
 - Evidentiary standard
 - One policy or split





Policy Coverage

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Sexual Assault:

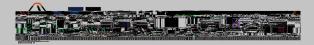
- Sex Offenses, Forcible
- Rape
 - Penetration, no matter how slight, without consent (including attempted rape)
- Sodomy
- Sexual Assault with an object
- Fondling
- Other Sex Offenses
 - Incest
 - Statutory Rape
- Dating Violence
- Domestic Violence
- Stalking
- Sexual Exploitation



Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action

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For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.



Incapacitation

A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard which assumes that a reasonable person has the capacity to and is exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.



Process A

- Same as past four years
- Investigation



Process B

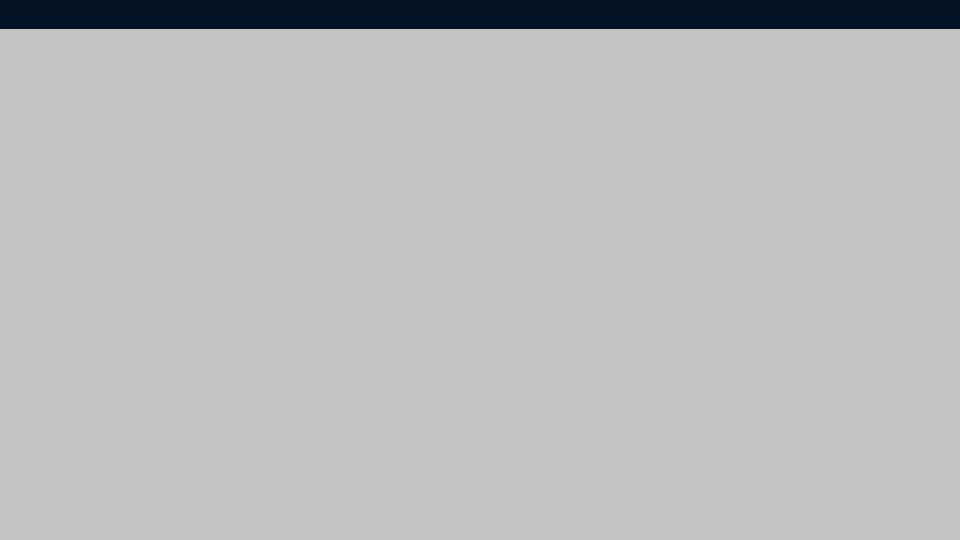
- Investigation remains the same until report writing
 - No credibility analysis, no recommended finding
 - Parties review ALL evidence submitted/collected
 - Have 10 days to respond
 - Parties receive report for review
 - Have 10 days to review before Hearing
- Hearing Panel
 - Three members, with one being the chair
 - Parties allowed Advisor AND support person (if desired)
 - Panel evaluates credibility
 - After hearing, panel deliberates and makes finding
 - If responsible, determines sanctions
 - HR and/or Provost involved in employee cases
- Same appeal option available



Hearing Process (cont.)

- No one "right" way to do this
 - Lots of different opinions and advice currently
- Panel will ask questions before direct cross
- Currently not likely to allow for "objections"





A few final thoughts

- B&T training noted some of their preferences that we plan to do different
 - We will record investigation meetings
 - Hearings will be recorded audio only
- If anyone feels they need to be released from role now that they know about the new regulations OR because feel a bias (feel more like an advocate versus a neutral party) please inform Sara or Jill



Other Questions?

