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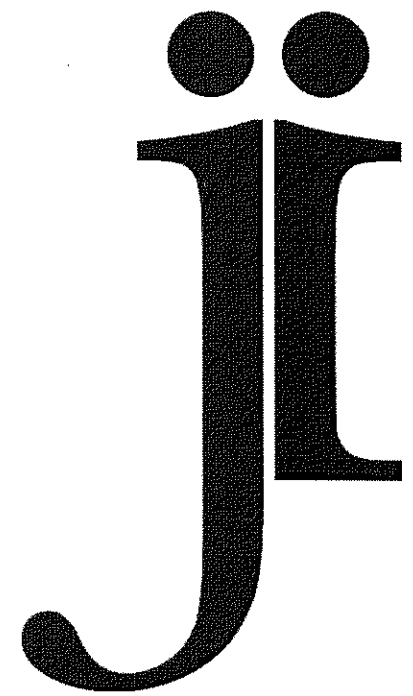
EQUITY THROUGH RESOLUTION

Competency, fairness, and transparency

OVW TTI

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Accompanying Materials



SELF CARE

“Hear the case before you decide it.”

-Alfred P. Murrah, Chief Judge of the U.S. Court of Appeals for the Tenth Circuit and Director of the Federal Judicial Center

My Lenses

- Expertise
- Institutional types
- Roles
- Research
- Life experience
- Language

EXPECTATIONS

Learning Outcomes

As a result of completing the two-part educational session, participants will be able to:

- identify characteristics of an effective panel member
- demonstrate appropriate questioning techniques
- demonstrate effective decision-making techniques
- use institutional policy to evaluate reported conduct
- write an investigative report

PEOPLE IN THE PROCESS

People in the Process

- Title IX Coordinator
- Investigators
- Decisionmakers
 - Administrators
 - Panel Members
- Process facilitator
- Administrative support
- Reviews
- Complainant
- Respondent
- Witnesses
- Advisor

Investigator

List five (5) traits of an ideal investigator

Decisionmaker

List five (5) traits of an ideal decisionmaker

COMPETENCY-BASED MODEL

Investigator Competency-Based Model

- Philosophy/History of conduct
- The Resolution Process
- Procedural Expertise
- Critical Thinking Skills
- Analyzing Policy
- Cultural/Community Competency
- Note Taking
- Report Writing
- Questioning/Listening Skills
- Processing Information
- Standard of Proof
- Title IX Response Elements
- Statement Analysis
- Responsiveness
- Relevance
- Expert Sources
- Gender-based Misconduct
 - Sexual Misconduct
 - Relationship/Domestic Violence
 - Stalking
- Psychology/Sociology of:
 - Respondent
 - Complainant
- Credibility Determination
- Sanctioning
- The Appeal Process
- Role Play
- Reasoning
- Non-Heteronormative Education
- Rapport Building

Decisionmaker Competency-Based Model

- Philosophy/History of conduct
- The Resolution Process
- Critical Thinking Skills
- Analyzing Policy
- Cultural/Community Competency
- Note Taking
- Report Reading
- Questioning/Listening Skills
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- Deliberation Skills
- Hearing Decorum
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- Non-Heteronormative Education
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THE RESOLUTION PROCESS

Addressing reported behavior

Elements of the Process

- Gather
- Explore
- Evaluate

Experience in the Process

- Consistent
- Planned
- Documented

Consistent

- Information
- Evaluation
- Opportunity

-Dependability of undeviating processes and procedures for all participants in a resolution process, regardless of any defining or identifying characteristics.

-Consistency should not determine the outcome of a situation, rather it should be the foundation for processing information

Consistent

- Initial meeting
- Choices/Where exist?
 - Not everyone will make the same choices, but everyone should have the same opportunity to make a choice
 - Information for the choices should be consistent
 - Avoid giving advice

Planned

- Work with the Title IX Coordinator
- Be aware of other entities
- Establish a timeline

Documented

- Case file
- Documents
- Interactions
- Communication
- Results
- Participant informed
- Standard Report
- Formal
- Alternative Resolution

Procedural Elements in Investigation

- Notice to both parties
- Equal opportunity to provide information
- Written notification of meetings and sufficient time to prepare
- Ability to see and respond to all information prior to final report
- Access to report (advisor)

POST-INVESTIGATION

An Investigation

- Neutral in gathering information
- Looks at all sides
- Burden is on the institution
- Approaches every possibility
- The information drives the outcome
- Avoid judgement

A Report

- Comprehensive view of the information
- Consistent
- Clear language
- Thorough
- Accessible

Elements of a Report

Elements of a Report

- Introduction
- Involved parties
- Date(s) of reported incident
- History of the case
- Allegations
- Jurisdiction
- Standard of Proof
- Complainant information
- Respondent information
- Witness summaries
- Additional information
- Negative inquiries

YOUR PROCESS

Standard of Proof

- Standard slide
- Determination of violation
 - Character role

Experience in the Process

- An individual's experience in the process may impact your reporting numbers (Katel, 2011)
- It is likely that most individuals that file a complaint are not given information on what to expect (Sabina, 2014)

Cultural Competency

- Cultural competence is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals and enables that system, agency, or those professionals to work effectively in cross-cultural situations.

Cross T., Bazron B., Dennis K. & Isaacs M. (1989)

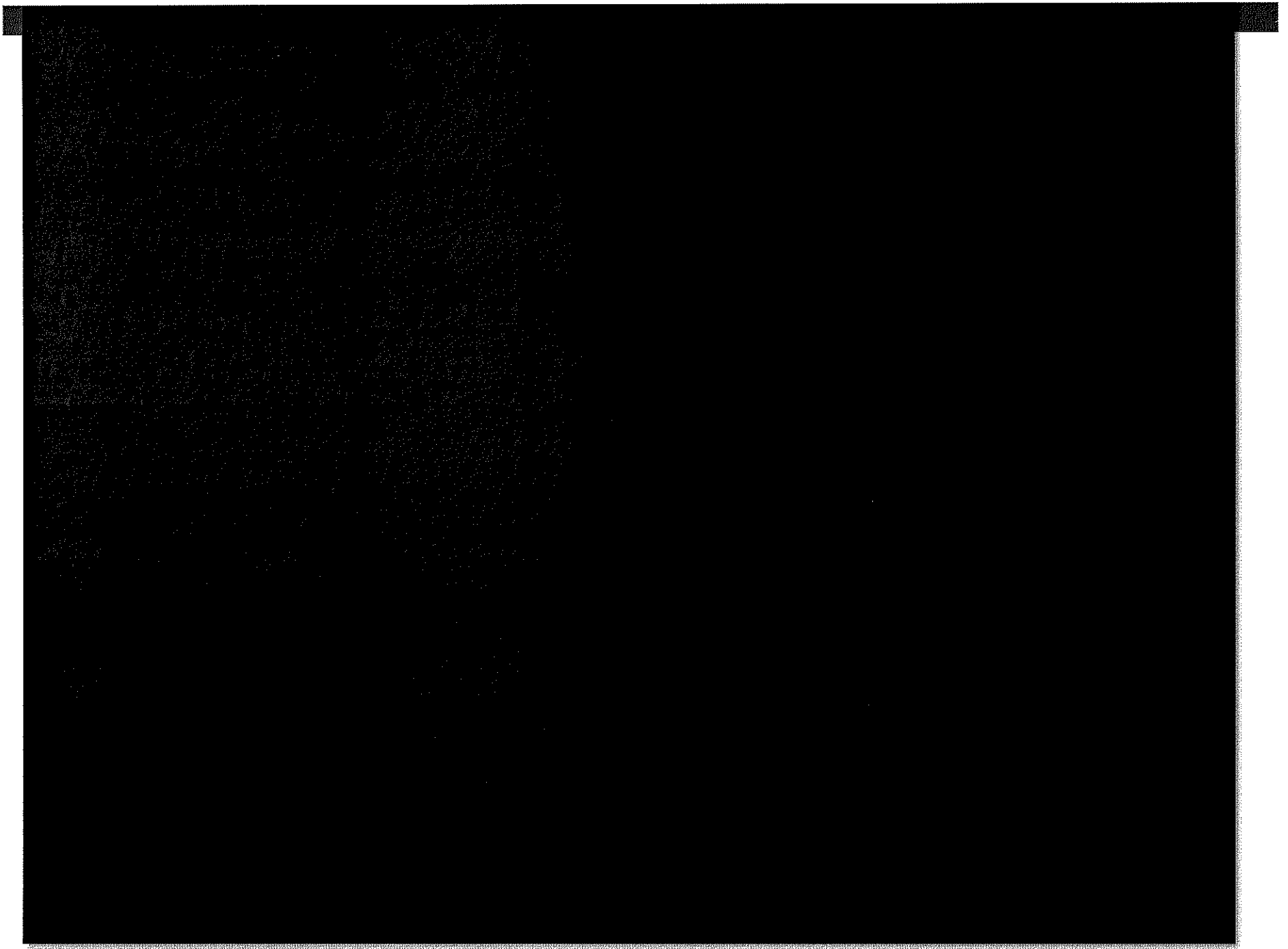
Gender-based Misconduct

- Unique social environments
 - small community
 - shared friends
 - teams
 - clubs
- Peer pressure
- Closed social networks
- Student development
 - identities still in flux
 - fear of backlash for “siding with” an individual

Responses

- Avoid prejudice
- Be warm and compassionate with all parties
- Likeability should not influence objectives
- Information drives the process

video



Bias

- Implicit
- Explicit
- Anchoring
- Observer Expectancy
- Confirmation

Once people form an impression they unwittingly seek, interpret, and create behavioral data that verify it.

(McNatte, 2000)

Conflict of Interest

- Actual
- Perceived
- Requests
- Reasonable person
- Recusal
- Assess ahead of time

EXERCISE

Opening information

- Prepared
- Consistent
- Personable
- Humanize

Opening information

- Rapport Building
- Care
- Policy and Compliance Requirements
- Institutional Response Process
- Other Considerations

(promises, advice, visuals, follow-up, expectations, responsibilities, documented)

QUESTIONING SKILLS

Questioning Skills

Ground Rules

Lens of gathering more information

General Questioning Skills

Questioning Skills

Context of asking questions based on

- Role
- System
- Previous Training

Questioning Skills

Why do we ask questions?

- To gather information to assist in
 - Determining responsibility
 - Determining credibility
 - Determining sanctions
 - Assessing the information
 - To come to conclusions
 - Educating
 - Assessing awareness and understanding
 - To ask more questions

Questioning Skills

- Types of questions
 - Open
 - Closed

Questioning Skills

- WHAT questions
 - Detail
 - Specifics
 - Clarifying
 - “What happened next?”
 - “What were you drinking that night?”
- HOW questions
 - Elicit emotional understanding
 - Clarify sequence of events
 - “How did that make you feel?”
 - “How did you two meet?”

Questioning Skills

- *non* questions
 - “Tell me about...”
 - “Help me understand...”
- *could* questions
- *why* questions
- *Didn't you* and *what were*
- *You don't*
- Language continuum
 - Connotative
 - Denotative

Questioning Skills

- What are the goals of questioning?
 - Understand each individual's experience
 - Gather information
 - Identify facts
 - Establish what is more likely than not what happened
 - Be appropriately curious

The Role of the Investigator

- Neutral
- Work through the process
- Open
- Thorough
- Understand the person's experience
- Investigative
- Determine relevance

The Role of the Decisionmaker

- Neutral
- Work within the scope
- Open
- Deliberative
- Weigh information
- Determine credibility

Questioning Skills

- Investigative report:
 - Information about what happened during the incident
 - Any related events
 - Information necessary to understand the timeline
 - A compilation of all information presented
 - Background information about the situation, the parties, the witnesses
 - Additional documentation
- Use your questions to:
 - elicit details
 - eliminate vagueness
 - fill in the gaps where information seems to be missing

Questioning Skills

- What do I need to know?
- Why do I need to know it?
 - Is the answer relevant to the allegation or just because I want to know?
 - Will this information affect the outcome or substantially affect the witness' s credibility?
- What is the best way to **ask** or word the question?
- When is the best time to ask this question?
- Am I the best person to ask this question?*

Questioning Skills

Guiding Principles

- Let the information drive the process
- Pre plan, but be flexible
- Move from broad to narrow questions
- Focus on areas of conflicting information or gaps of information
- Have a purpose for asking every question/be intentional
- Be appropriately curious

Questioning Skills

Behavioral Considerations

- Maintain good eye contact
- Be in the moment
- Attentive behavior
- Be aware of body language
- How we set up our questions (witnesses)
- Stay in line
- Note taking

Questioning Guidelines

Areas of Caution

- Asking compound questions (always listen for the conjunction)
- Being accusatory or argumentative
- Making questions too long or confusing
- Asking the question in the best way to get the information you know exists
- Suggesting an answer in your question
- Silence speaks volumes (5 to 7 seconds)
- Grandstanding
- Shiny nickels
- Poisonous pronouns

Questioning Skills

Managing Responses

- Watch and listen (what is not being said)
- Check for understanding (Be cautious of naming emotion)
- Follow up “Doesn’t sound like something I would do...”
- Getting the answer to your question
- “Cued” responses or rehearsed/memorized answers
- Emotion may appear (anger, fear, sadness...)
- Being questioned

Questioning

- Make the strange seem familiar
- Location
 - $B=f(p,e)$
- Preparation
- Environment
 - Waiting, location, hospitality, where, seat of people
- Previous messages (AV, reports, amnesty, legal)
- Role
- Process
- Timelines (when to interview)
- Gender lenses
- Snowball technique

Interview/Questioning Skills

I didn't say you were stupid.

Questioning Skills

- Reasons for asking questions:
 - Understanding
 - Clarification
 - Fill in a gap
 - Potential questions from the other party

Goals in the process

- Gather
- Explore
- Evaluate
- Communicate
- Create a timeline
- Establish facts
- Fill in picture

WORKING WITH DIFFERENT PARTIES

Witness-Centered Approach

- Complainant
- Respondent
- Witnesses

Witnesses

- Flowcharts
 - Relationships
 - How identified
- Text messages and other documents
 - Look with
 - Ask for copies (know how to screenshot)
- Initial outreach to witness
- Try not to label the incident
- Not looking for anything in particular
- No right/wrong answers, be honest
- Conversations with the complainant/respondent
- Open invitation
- Anticipate questions

Other Items

- Pictures
- Diagrams
- Physical location

Hearing Decorum

- $B=f(p,e)$
- Handling disruption
 - Acknowledge
 - Warn
 - Follow through
- Who is in Charge
- Relevance
- Attire

Hearing Decorum

- Work to establish a baseline of relaxed conversation
- Maintain good eye contact
- Listen carefully to the answers to your question
 - Try not write while they are talking
 - Try not to think about your next question while they are talking
- Nod affirmatively to keep individual talking
- Try not to fidget, roll your eyes or shake your head “no”
- Do not look shocked, smug, stunned or accusing
 - Hearing language
 - Unfiltered
- Watch all individuals
- Be aware of how you talk to all individuals in the process

Questioning by Advisor

- Relevance
- Decorum
- Guidelines

ANALYSIS AND THE INVESTIGATION

Incapacitation, credibility, consent, IPV, and stalking

Processing Information

- Look at the totality of the information
 - Possible
 - Plausible
 - Credible
 - Supporting information
 - Behavior and information
 - Corroboration
 - Strikingly similar information
 - Fact, opinion, circumstance

CONSENT

Understanding and evaluation

Consent at Your Institution

Example:

Consent is a verbal agreement or action that must be active, voluntary, informed, and mutual.

- All sexual activities
- Withdrawal
- Previous consent

Consent

- But, consent is not where we start, because
- Consent cannot be given when it is the result of any coercion, intimidation, force or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

Consent

- Force
- Incapacity

Force

- Physical
 - Choking, pinning down, slapping, punching, etc.
 - Intimidation
 - Threats
 - Outing, spreading rumors
 - Coercion
 - Unreasonable pressure, occurs when advances not welcome
-
- The presence of force, nullifies any consent

Incapacity

- Occurs when and individual lacks the ability to knowingly choose to participate in sexual activity.

Incapacity

- Gather information during the investigation to make a reasoned conclusion based on the same standard of proof
- Applies regardless if the incapacitation is a result of voluntary or involuntary action

Incapacity

- Cause of the incapacitation
 - Alcohol
 - Drugs
 - Mental
 - Injury
 - Sleep
 - Unconscious
 - Involuntarily restrained

Incapacity

- Listen and look for clues for possible incapacitation
 - “The next thing I remember was...”
 - “I remember bits and pieces...”
 - “I can’t remember what happened next...”
 - “Things start to become cloudy...”
 - “I was more drunk than I have ever been...”
- Work backwards from the point of concern

Incapacity

- Take note of and get clarification on
 - Alcohol consumption
 - What
 - How much
 - Size of drinks
 - Source
 - Timeline
 - Other drugs
 - Medication
 - Recreational
 - Unknowing
- Build a timeline

Incapacity

- Alcohol
 - What is alcohol
 - Standard drinks
 - How alcohol gets in the system
 - Rate of absorption
 - How it leaves the system
 - BAC/BAL
 - Influences on BAC
 - Myopia
 - Difference between sexes

Incapacity

- Observed behavior
 - Speech
 - Movement
 - Actions
 - Consciousness
 - Clarify ambiguous statements
- Observer of behavior
 - Ability to observe
 - Reliability of information
 - Potential bias

Incapacity

- Incapacitation due to alcohol or drug use is a state beyond “mere” intoxication or even being drunk.
- It exists when a person lacks the ability to make or act on a considered decision to engage in sexual activity.
- Indicators of incapacitation may include inability to communicate, lack of control over physical movements, and/or lack of awareness of circumstances.
- An incapacitated person can also experience a blackout state during which the person appears to give consent but does not have conscious awareness or the capacity to consent.

Incapacity

- Blackout
 - Incapacitay
 - Effect is on short term memory
 - Muscle memory can continue

Incapacity

- If it is concluded (more likely than not) the complainant was incapacitated, determine
 - At what point in time (as it relates to sexual activity)
 - Did the respondent know, or
 - Should the respondent have known (reasonable sober person)
- Knew or should have known
 - Amount of interaction
 - Corroborating information
 - Supplier of anything
 - Past experience with complainant
 - Respondent's own level of capacity

Incapacity

- Does your policy indicate there is a violation if:
 - The respondent knew; or
 - The respondent caused; or
 - The respondent should have known.
- Proceed to analyze consent if:
 - The complainant was not incapacitated; or
 - The complainant was incapacitated, the respondent did not know, and a reasonable sober person would not have known.

Consent

- Look for the presence of clear words or mutually understandable actions that signaled consent
 - They must be present for each level of sexual activity
- No means no (but does not need to be present)
- Consent can be withdrawn, but must be communicated clearly by the person withdrawing consent
- Ask the respondent:
 - How did you know what you were doing was consensual?

IPV

Circle of Violence

- Honeymoon phase
- Build up phase
- Episode
- Repeat

Controlling Tactics

- Emotional abuse
- Economic abuse
- Isolation
- Privilege of status
- Using children
- Minimizing, denying, blaming
- Intimidation and threats
- Violence

IPV

- Predominate aggressor (struck more, most injures, reasonable)
- Who reported?
- Is there fear?
- How do they talk about each other?
- Does someone wrongly accept the blame?
- Written demands/expectations?
- Damaged property?
- Substance abuse?
- Other issues (vandalism, pets, other)?

IPV

Listen to language does the person:

- Refer to the partner in critical/demeaning terms
- Seem overly calm
- Covey any of the following:
 - Entitlement
 - Ownership
 - Privilege
- Sound authentic
- Make excuses for the abuser (drinking, stress)
- Describe avoidance tactics

STALKING

Stalking

- Course of conduct
- Escalates
- Lethality
- Stalking Resource Center
- Technology

Stages of Stalking

- Rejection
 - The trigger (real or perceived)
 - Insecure individuals seeking control
- Pursuit
 - Attempt to (re)claim object of obsession
 - Calls, email, text, gifts, notes
 - Win back (with the belief it will happen)
- Revenge
 - After continued rejection
 - Blames victim for ruining their life

Stalking Manifested

- Emotional Violence
 - Destroy reputation
 - Reveal personal information
 - Sabotage job/school
- Property Damage
 - Vandalism
 - Harm to pets
- Physical Violence
 - Threats
 - Articulation of plans

DECISIONS

Processing Information

- No formal rules of evidence
- Relevant information able to help clarify what happened

Processing Information

- Policy
- Standard of proof
- Go from broad to narrow
- Add up the information
- Deliberative discussions
- Using information available to everyone
- Come to a conclusion
- Responsibility
- Sanction, if applicable

Credibility

- Reliability of information
- Ability to have information
- Not the same as truthful
- Motivation of person
- Interest in outcome
- Contested and uncontested information
- Corroboration

Standard of Proof

- Standard slide
- Determination of violation
 - Character role

POST-INVESTIGATION

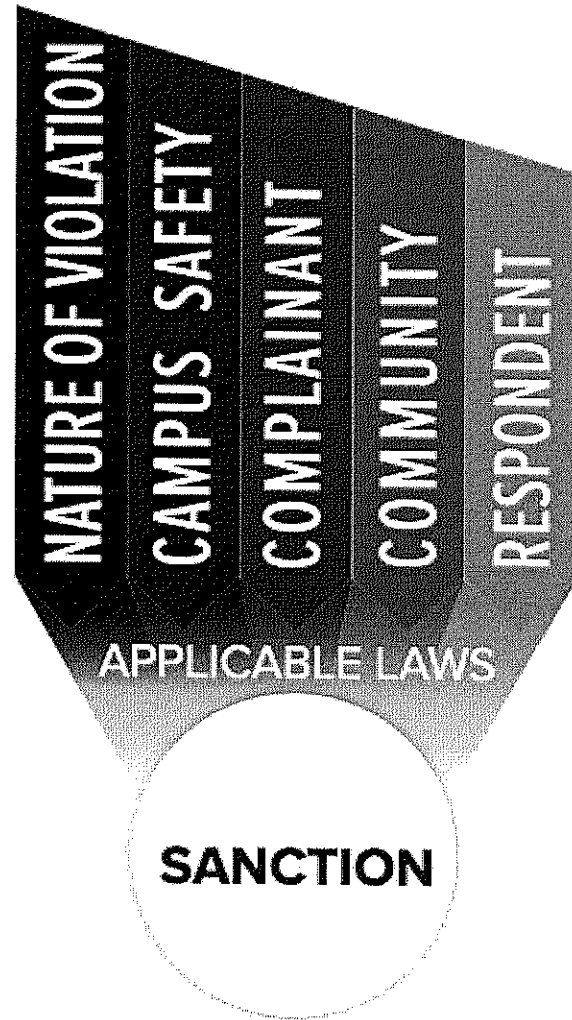
Resolutions

- Match the sanction with the seriousness of the violation
- Impact Statements
- Prevent reoccurrence
- Rationale (Clear decision)

Resolution

- Elements to consider, by weight
 - Nature of Violation
 - Campus Safety
 - Complainant
 - Community
 - Respondent
- Precedent
- Previous conduct

Resolution

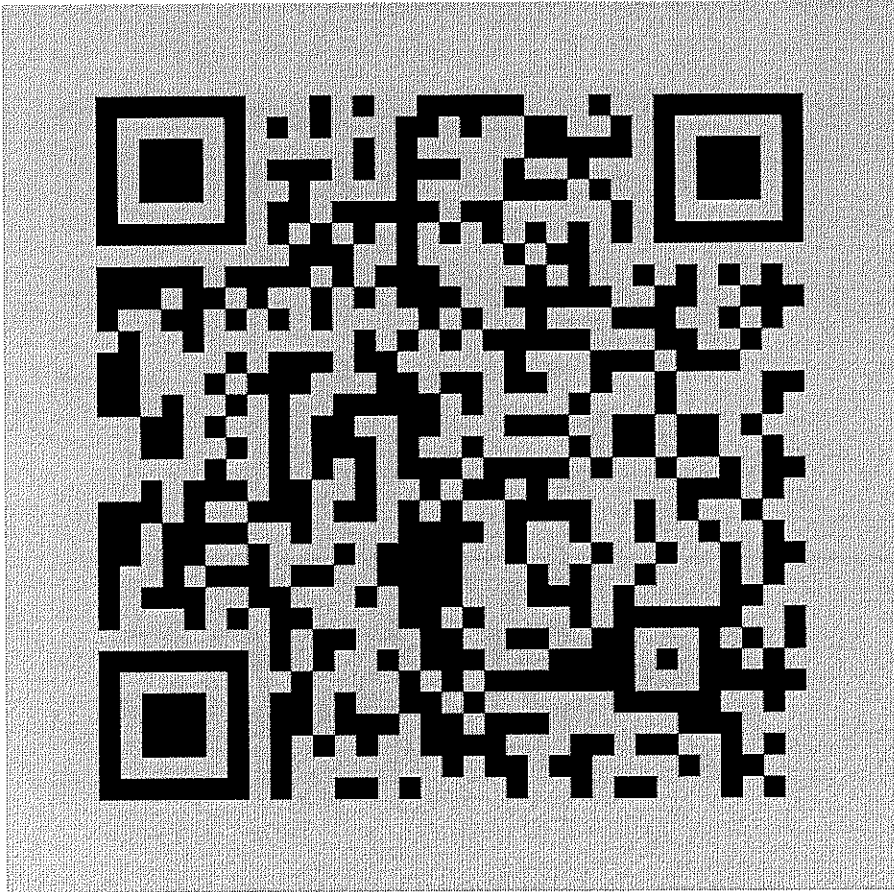


CONCLUSION



QUESTIONS

TTI II FY 23 Grantees June 2024



Your feedback is important.
Please take a moment to provide
us with some feedback about this
session using the session.

Su opinión es importante. Por
favor, dedique un momento para
enviarnos sus comentarios sobre
la presentación utilizando la
sesión de evaluación.



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