



Sex-Based Misconduct Appeals Training for VPs/Deans

February 2025
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Agenda:

- Purpose of Appeals
- Applicable Policies
- Prohibited Behaviors
- Jurisdiction
- Grounds for appeal
- Issues of relevance
- Avoiding pre-judgement of facts, conflict of interest, and bias

Purpose of Appeals:

Process Errors

- Did a process error take place?
- What is the appropriate way to address it?

Title IX

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance."

Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 & 34 C.F.R. Part 106)

Sexual harassment is a form of sex discrimination

Title IX Scope

- **Jurisdiction**
 - Complainant was participating or attempting to participate at the time of filing the complaint.
 - In the U.S.
 - In Reed Programs, Activities, or on campus
 - Control over Respondent

Title IX Prohibited Behaviors

Quid Pro Quo Harassment — Title IX

- An employee, agent, or other person authorized by the College to provide an aid, benefit, or service under the College's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

Title IX Prohibited Behaviors

Hostile Environment Harassment — Title IX

- Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to Reed's education program or activity.

Title IX Prohibited Behaviors

Sex-Based Harassment Assessment

Fact-specific inquiry that includes consideration of:

- The degree to which the conduct affected the Complainant's ability to access the College's education program or activity;
- The type, frequency, and duration of the conduct;
- The parties' ages, roles within the College's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct, the context in which the conduct occurred, and the control the College has over the Respondent; and
- Other sex-based harassment in the College's education program or activity.

Title IX Prohibited Behaviors

Sexual Assault — Title IX

- Engaging or attempting to engage in one of the following directed against a Complainant without their consent or in instances in which the Complainant cannot give consent because of age or temporary or permanent incapacity:
 - Non-consensual sexual intercourse
 - Non-consensual sexual contact
 - Incest
 - Statutory rape

Title IX Prohibited Behaviors

Dating Violence — Title IX

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:

- (i) The length of the relationship.
- (ii) The type of relationship.
- (iii) The frequency of interaction between the persons involved in the relationship.

Title IX Prohibited Behaviors

Domestic Violence — Title IX

- Includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Oregon receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Oregon (ORS §135.230).

Title IX Prohibited Behaviors

Stalking — Title IX

- Engaging in a course of conduct on the basis of sex directed at a specific person that would cause a Reasonable Person to:
 - (A) fear for their safety or the safety of others; or
 - (B) suffer substantial emotional distress.

Additional Sex-based Prohibited Behaviors Scope

- Complainant was participating or attempting to participate at the time the violation occurred

Additional Sex-based Prohibited Behaviors Scope

- Substantial College Interest:
 - Any action that constitutes a criminal offense as defined by local, state, or federal law
 - Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety to any member of the College community
 - Any situation that significantly impinges upon the rights, property, or achievements of others
 - Any situation that substantially interferes with the educational interests or mission of the College.

Additional Sex-based Prohibited Behaviors

Sex-Based Discrimination

- Differential Treatment on the basis of sex.

Additional Sex-based Prohibited Behaviors

Hostile Environment Harassment — Not Title IX

- Unwelcome sex-based conduct that, based on the totality of the circumstances, is **subjectively and objectively offensive and is so severe or pervasive** that it limits or denies a person's ability to participate in or benefit from the College's education program or activity.
- Includes sexual harassment: Unwelcome conduct of a sexual nature.

Additional Sex-based Prohibited Behaviors

Sexual Assault — Not Title IX

Dating Violence — Not Title IX

Domestic Violence — Not Title IX

Stalking — Not Title IX

Additional Sex-based Prohibited Behaviors

Sexual Exploitation

Taking non-consensual or abusive sexual advantage of another for one's own benefit or for the benefit of anyone other than the person being exploited

Relationship abuse

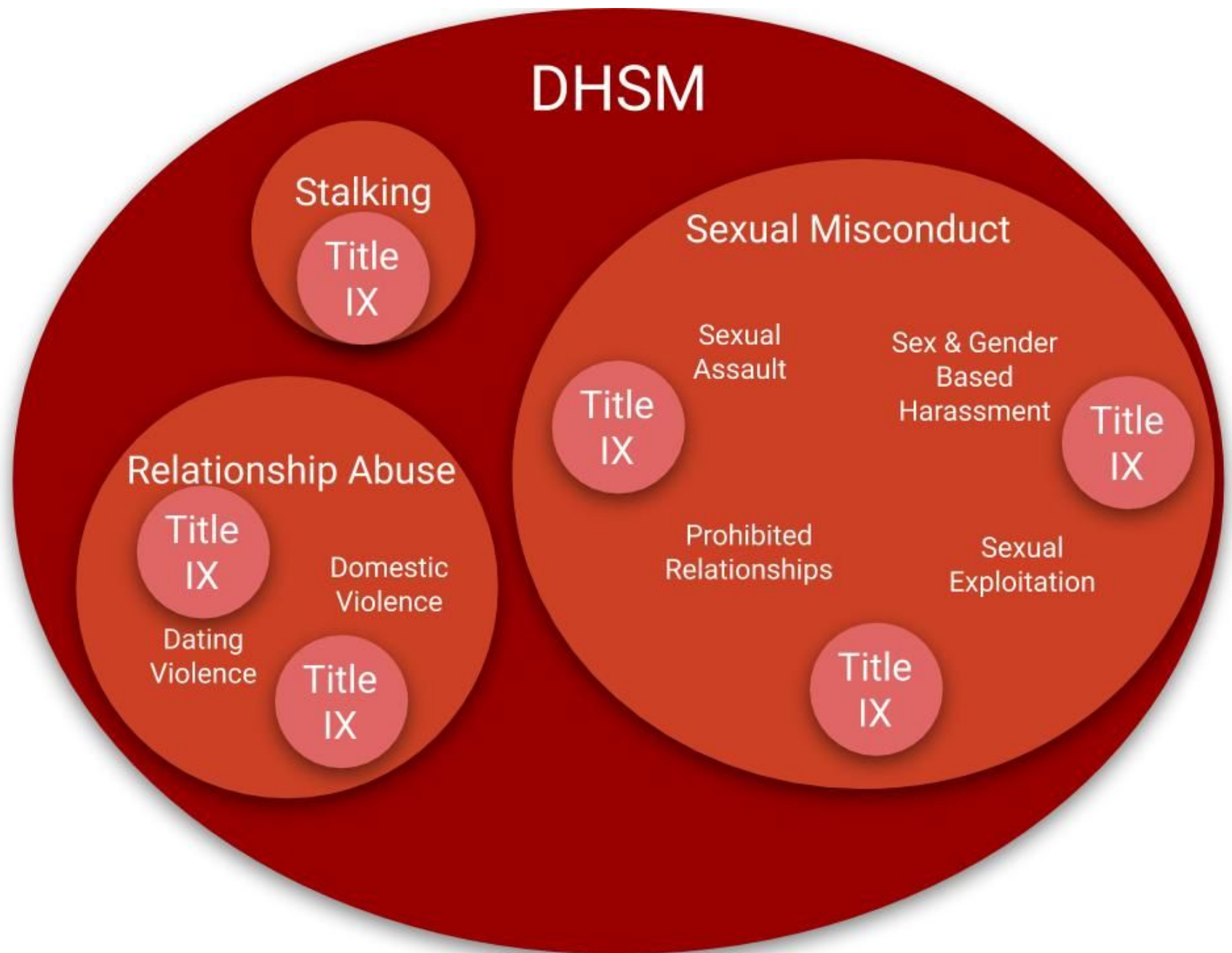
Verbal, emotional, psychological, or economic abuse by a current or former romantic or intimate partner that threatens or endangers the health or safety of any person, when that conduct does not otherwise constitute sex-based harassment under this policy.

Additional Sex-based Prohibited Behaviors

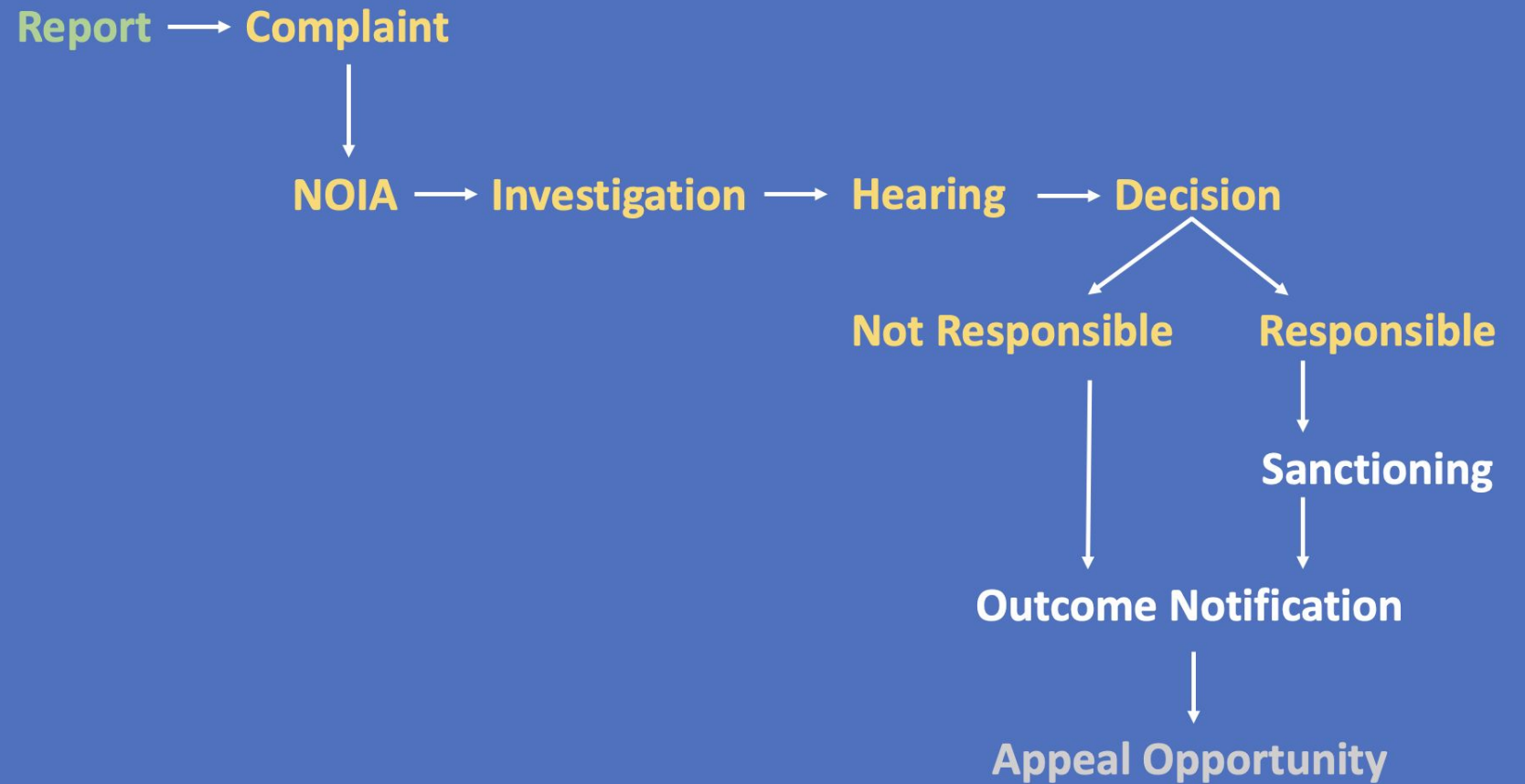
Retaliation

Intimidation, threats, coercion, or discrimination against any individual by the College, a student, an employee, or any other person authorized by the College to provide aid, benefit, or service under the College's education program or activity, for the purpose of interfering with any right or privilege secured by this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, hearing, or grievance procedures under this policy.

Title IX & DHSM



The Process



Sex-Based Misconduct Sanctioning

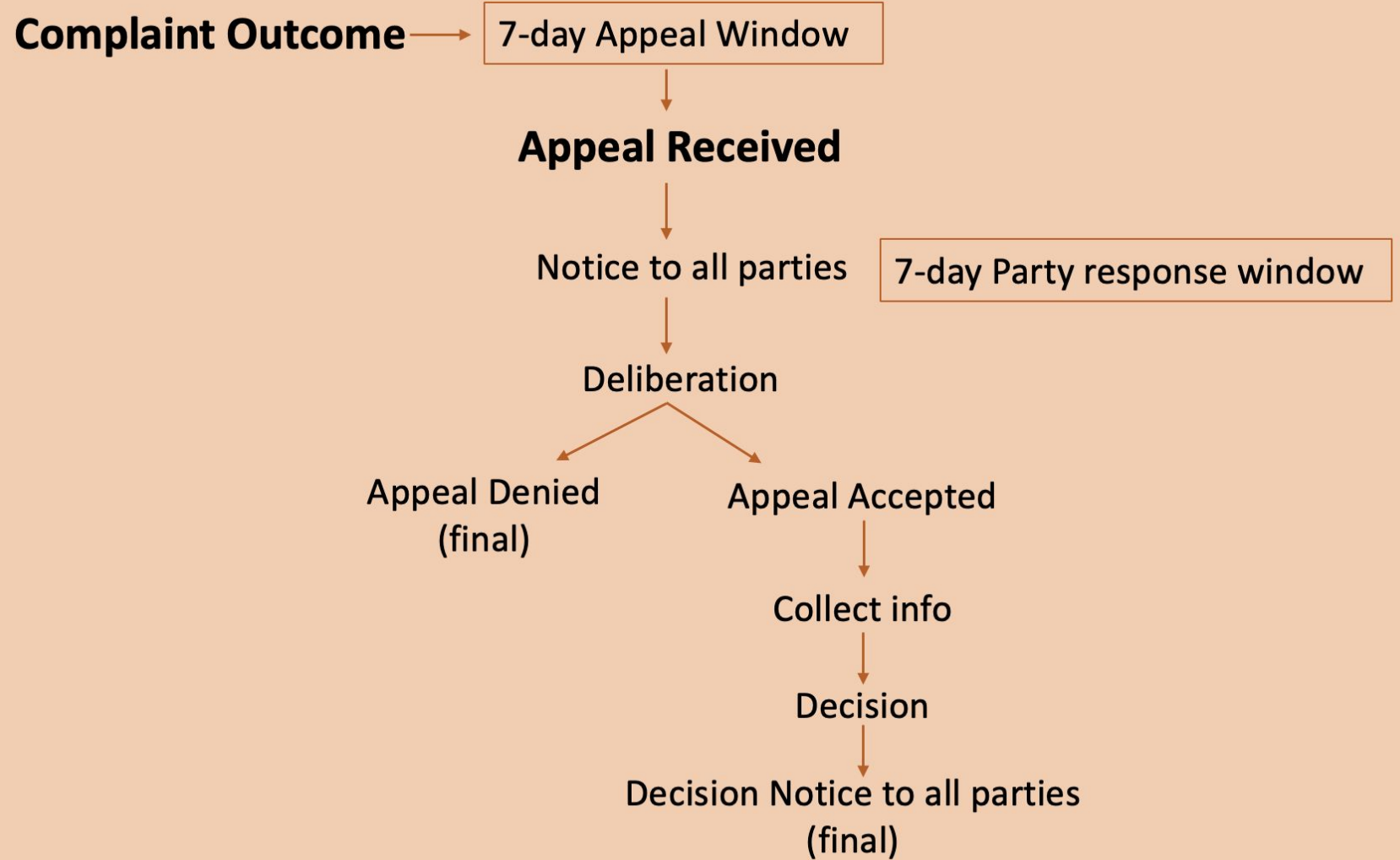
Who Does Sanctioning?

- Student Respondents: VPSL (with recommendations from Judicial Board)
- Staff Respondents: The Complainant's VP or Dean and the Respondent's VP or Dean (in consultation with Director of HR)
- Faculty Respondents: President (with recommendations from the Faculty Investigation Committee)

Sex-Based
Misconduct
Appeals

APPEALS

Sex-Based Misconduct Appeals



Sexual Misconduct Appeal Grounds

- Procedural irregularity that affected the outcome of the matter;
- Newly discovered evidence that could affect the outcome of the matter; and/or
- Conflict of interest or bias by the Title IX Coordinator, deputy Coordinator, investigator, Hearing Officer, or other decision-makers that affected the outcome of the matter.
- The sanctions are believed to be excessively lenient or severe.

Sexual Misconduct Appeal Grounds

- **Procedural irregularity**
 - Was there an error in process?
 - I was found responsible for a policy violation for which I was not provided prior notice.
 - My advisor was not allowed to ask questions of witnesses during the hearing.
 - The determination was based on a clear and convincing standard of evidence.

Sexual Misconduct Appeal Grounds

- **Procedural irregularity**
 - Limited to the processes that are provided
 - The procedure provides for 10 business days to respond to investigative information
 - The procedure does not provide for advisors to participate in investigative meetings on behalf of a party

Sexual Misconduct Appeal Grounds

- **Procedural irregularity**

- What does the process allow for? What does it require?
 - “If either the Complainant or Respondent does not have an Advisor for the live hearing, an Advisor of the College’s choosing will be assigned at no cost to the Party.”

“The live hearing may be conducted virtually or with all Parties physically present in the same location.”

“The Hearing Officer reserves the right to remove an Advisor who treats a Party or Witness in an abusive, intimidating, harassing, or disrespectful manner.”

Sexual Misconduct Appeal Grounds

- **Procedural irregularity**
 - If there was a procedural error, did it affect the outcome?

Sexual Misconduct Appeal Grounds

- **New evidence**

- What constitutes “new” evidence?
 - What reasons are offered for it not having been previously provided or available?
- If it is new, would it affect the outcome?

Sexual Misconduct Appeal Grounds

- **Conflict of interest or bias**
 - Was there conflict of interest or bias?
 - The Deputy Title IX Coordinator had a conflict of interest because...
 - The investigator was biased against me because...
 - The hearing officer was biased against complainants in general because...
 - If yes, did it affect the outcome?

Sexual Misconduct Appeal Grounds

- **Error in Sanction Severity**
 - Excessive
 - Consider Mitigating and Aggravating factors
- Appropriate sanctions should factor in
 - Nature of the case
 - Fact pattern
 - Respondent's previous conduct history

Issues of Relevance

Some evidence must be deemed irrelevant:
Complainant's sexual predisposition or prior sexual behavior.

- Not relevant, unless
 - offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - 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.

Appeal Burden of Proof

- Parties bear responsibility for providing support for their assertions

If Appeal is Accepted

- If the appeal is accepted, you need to determine an appropriate response.
 - What needs to be addressed?
 - How?
 - By whom?

What?

What needs to be addressed?

- What part of the process didn't work?
- What are the boundaries on what's being reconsidered?

How?

What would be an appropriate way to address it?

- Often: Sending back for review
- Other times: Appeal board deliberations

By Whom?

Who needs to do the work?

- Investigator?
- Outcome Decision-maker?
- Sanction Decision-maker?
- Appeal Board itself?

Prejudgment
of facts,
conflict of
interest, & bias

Appeal Boards must:

- Avoiding a prejudgment of the facts
- Conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent

Other Policies

Similar appeals processes may apply to other policies at Reed as well.

Getting “tapped”

You may get tapped!

- Appeal Decision-makers should not be someone who was another kind of Decision-maker in the case.
- You may be needed in some other process.



Questions & Discussion