WELCOME!

Title IX Council Retreat

Title IX and Gender Equity Office
Office of General Counsel
November 6, 2023
Session Agenda

- Overview of Revised Policies and Procedures
- Hearing Panels
  - Single Hearing Officer
  - Hearing format under the revised procedures
  - Appeals and Appeal Panels
- Role of Hearing Panelist
- Determining Discipline
- Appeals
Session Agenda

➔ Investigation Reports
➔ Weighing Evidence
➔ Determination Letters
➔ Confidentiality
➔ Litigation Holds
➔ Employee Defense and Indemnification Policy
➔ Case Studies
  ◆ Title IX Policy
  ◆ Sexual and Gender-Based Misconduct Policy
Policies and Procedures
Jurisdiction

Sexual Harassment, Sexual Assault, Relationship and Interpersonal Violence, and Stalking Policy (Title IX Policy)

- In the United States
- On-campus or location under the control of Brown
- Brown’s off-campus programs and activities (including virtual spaces)

Sexual and Gender-Based Misconduct Policy (University Conduct Policy)
What are examples of education programs and activities? (TIX)

- Admissions
- Hiring
- Workplace

- Academic Instruction
- Residence Life
- Amenities on campus

- Sports teams
- Work - study
- Games, concerts, and speeches on campus

- Off - campus trips or experiences organized by the institution
- Sponsored organization activities
- Anything else that happens on - campus
Jurisdiction

Sexual Harassment, Sexual Assault, Relationship and Interpersonal Violence, and Stalking Policy (Title IX Policy)

Sexual and Gender-Based Misconduct Policy (University Conduct Policy)

- In the U.S. & Abroad in University programs or activities
- Program or activity outside of the control of Brown that has an adverse effect at Brown (i.e. study abroad or off-campus student apartment)
- On-campus prohibited conduct not covered by Title IX (i.e. Sexual Exploitation)
Prohibited Conduct

Sexual Harassment, Sexual Assault, Relationship and Interpersonal Violence, and Stalking Policy (Title IX Policy)

Sexual and Gender-Based Misconduct Policy (University Conduct Policy)

- Sexual Harassment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking
- Retaliation
- Prohibited Intimate Relationships
Prohibited Conduct

Sexual Harassment, Sexual Assault, Relationship and Interpersonal Violence, and Stalking Policy (Title IX Policy)

- Sexual Harassment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking
- Gender-Based Harassment
- Retaliation
- Provision of Drugs and Alcohol
- Sexual Exploitation

Sexual and Gender-Based Misconduct Policy (University Conduct Policy)
Changes to the Policy

- Sexual Harassment, Sexual Assault, Relationship and Interpersonal Violence, and Stalking Policy
- Removal of Gender - Based Harassment from the name & Policy
- Addition of Deputy TIX Coordinators
- Updated VAWA definition for Domestic Violence
  - Economic Abuse
  - Technological Abuse
Changes to Procedures

- Time Formal Resolution
  - Hearings
    - Single Hearing Officer Model (Student Respondents)
    - Presiding Officer (TIX policy only)
    - Opening Statement
    - Verbal Closing Statement & Written Statement
    - Cross-examination now Cross-questioning
  - ***No Changes to Appeals***
Changes to Procedures

- Time Frame
  - Extended to approximately 90 days

- Prohibition on Recording

- Stronger Advisor Guidelines

- Complete List of Sanctions
Trauma - Informed
How do we approach Trauma?

● “Trauma - informed investigation techniques that bleed over into . . . bias detract from the fundamental tenets of fairness and impartiality that are [key to] disciplinary proceedings.”

- Candace Jackson, Acting Asst. Secretary of ED (2017)
<table>
<thead>
<tr>
<th>Definition of Trauma</th>
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<tbody>
<tr>
<td><strong>Merriam - Webster</strong></td>
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<td>A very difficult or unpleasant experience that causes someone to have mental or emotional problems usually for a long time</td>
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<td><strong>English Oxford</strong></td>
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<td>Deeply distressing or disturbing experience</td>
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<td><strong>Wikipedia</strong></td>
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<td>Is a type of damage to the psyche that occurs as a result of a severely distressing event. Trauma is often the result of an overwhelming amount of stress that exceeds one’s ability to cope, or integrate the emotions involved with that experience.</td>
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Possible Trauma Impact

People who have suffered trauma may, but may not, experience any or a mix of the following:

- Flashbacks
- Delayed recollection
- Inability to concentrate
- Non-linear recollection
- Self-blame
Trauma & Credibility

- Don’t assume information is not credible due to the manner delivered
- Understand memory may be clarified in time
- Address inconsistencies
Hearing Panel
Prep Meeting
Panelist meetings before the hearing is a great opportunity to prepare for the upcoming hearing.

The Chair can remind Panelists of key and core responsibilities:
  - Privacy and confidentiality issues; decorum; neutrality and equitable questioning; bias, conflicts of interest and recusal; the standard of evidence; and guidelines for recording, note taking, and recordkeeping.
Effective and Appropriate Questioning

- If any, questions should be specific and designed to elicit information that is relevant to the allegations.

- Questions should focus on areas of inconsistency, discrepancy, dispute, or gaps in the investigation report.
When Developing Questions

Consider the following:

- **What do I need to know?**
- **Is the answer already in the investigation report or documentation that has been provided? If so, do I need to re-confirm it?**
- **Am I the best person to ask this question? If not, who is the best person to ask it?**
- **Is this the best witness or party to ask this question of, or may another witness or party be a better source?**
- **Why do I need to know it? (If it is not going to help you decide whether a policy was violated, then it is probably not a good question.)**
- **What is the best, most succinct way to ask the question?**
Effective & Appropriate Questioning

Focus on:

- Relevant facts about what happened during the incident(s)
- Any relevant events
- Any corroborating information or other information that illuminate the credibility or validity of evidence and/or testimony
- Facts necessary to establish a timeline
- Background information about the situation, the parties, and the witnesses that provides relevant context.
Hearings & Appeals
Hearings

- The purpose of the hearing is to determine if a violation of the Title IX or Sexual and Gender Based Misconduct Policy has occurred.

- If the hearing panel finds that a violation of policy has occurred, the panel is authorized to sanction the Respondent.
Hearings

- A hearing exists for the purpose of resolving disputed facts.
- There will be the areas where you will need to concentrate your questions in the actual hearing.
- The hearing will give you the opportunity to evaluate which version of events seems most credible and upon which evidence you will rely.
Reviewing Materials and Preparing for the Hearing

- It is critically important for Panelists to be sufficiently prepared before the hearing begins.
- Panelists must carefully and thoughtfully review existing policies, procedures, the full investigation report, as well as all relevant evidence that will be considered during the hearing.
Reviewing Materials and Preparing for the Hearing

- Never plan to prepare only “an hour before the hearing;” this is nearly certain to be insufficient.

- You will want to dedicate sufficient time to evaluate issues that are likely to surface during the hearing and have considered how those will need to be addressed.
Reviewing Materials & Preparing for the Hearing

- You may also be given a directly related evidence file that was not included in the report.

- The parties may argue at the hearing that this evidence is relevant and should be considered. Thus, you should be familiar with directly related evidence.
Reviewing Materials & Preparing for the Hearing

● Peruse the appendices

● The important ones will be highlighted in the report itself. You might peruse the appendices to see what appears salient.

● Typically, if the report specifically refers to an item in an appendix, you should take the time to read that section prior to the hearing.
Determining Discipline
Determining Discipline

If the Panel/Hearing Officer determines that the Respondent is responsible for a policy violation, sanctions and/or remedies must be assigned.

- VAWA requires that the written determination provided to the parties include a statement of, and rationale for, any sanctions imposed on the Respondent.

- The Title IX Coordinator is not involved in sanctioning but has a role in overseeing the sanctioning process.
Consulting Campus Partners

- The identity of the Respondent as a student or employee will also come into play
  - Faculty disciplinary process and collective bargaining processes complicate the sanctioning of employees
    - The panel may need to consult with a faculty committee, dean of the faculty, department chair, provost, etc.
  - Students
    - The panel may need to collaborate with a dean of students or the Office of Student Conduct and Community Standard.
Remember the Key Tenets of Discipline

- **STOP.** Bring an end to the discriminatory conduct.

- **PREVENT.** Take steps reasonably calculated to prevent the future recurrence of the discriminatory conduct.

- **REMEDY.** Restore the Complainant (and community) as best you can to their pre-deprivation status.
Determining Discipline

- Discipline must be proportional to the severity of the violation(s), and, if applicable, the cumulative conduct record of the Respondent.

- It must align with any progressive discipline principles applicable to employees.

- Similarly, Discipline must bear a rational relationship to the nature of the misconduct. It can be neither arbitrary or capricious.
Be Consistent

● When considering consistency, the goal is to avoid being gratuitously inconsistent across or within cases.

● Consistency encompasses the added obligation of equitable Discipline imposed by Title IX.

● Discipline should not vary based on the sex (including sexual orientation) or gender of the Complainant or Respondent.

● Discipline should not be imposed based on the length of time the Complainant has left at the University.
Severity and Egregiousness

- The Panel/Hearing Officer will need to evaluate the inherent severity and egregiousness of each violation relative to other instances of the same violation, with a goal of sanctioning a Respondent in proportion to the severity of the conduct.
  - For instance: it would be reasonable for a Panel/Hearing Officer to consider an enhanced sanction for a student who deliberately and covertly plied someone with alcohol or drugs, when compared with a situation where the Complainant had self-incapacitated.
Considering Other Factors

- Cumulative Violations - more than one policy violation
- Prior Misconduct
- Patterns of Behavior
- Complainant’s Request for Enhanced/Lesser Discipline
Considering Other Factors

- **Respondent’s Attitude**
  - A Respondent’s attitude regarding a violation can also be considered as either a mitigating or aggravating factor.

- **Conditions For a Student’s Return**

- **Close Calls**
  - This manifest most commonly when the Panel/Hearing Officer have rightfully determined by the preponderance of the evidence that a violation occurred but feel like the finding was a “close call.”*
Considering Other Factors

- Impact Statements
  - An impact statement is an opportunity for the Parties to give the Panel/Hearing Officer some insight into how the incident in question (and/or the resolution process) has affected their lives.
  - It gives a more global account of how the Parties have been changed by the incident(s).
Procedural Guidelines

- When considering discipline, please refer to section 2.9.4.8 Determining the Appropriate Discipline in the Sexual and Gender-Based Misconduct Complaint Procedure or section 2.9.4.9 in the Title IX Grievance Procedure.
Discipline at Brown University

- A verbal or written warning
- A required letter of apology
- Probation (as defined in the Student Conduct Procedures)
- Probation with restrictions (as defined in the Student Conduct Procedures)
- Suspension
- Expulsion
- Recommendation to the University to withhold or revoke a degree
- Academic transcript notation
- Restitution for damage property
- Reflection or research papers or other academic assignments
- Letters of apology
- Restorative circles
- Attending or presenting educational programs or training

- Reflection or research papers or other academic assignments
- Letters of apology
- Restorative circles
- Attending or presenting educational programs or training
Discipline at Brown University

- No contact orders
- Referrals to other offices and resources on campus
- Administrative leave with or without pay
- Termination of employment
- Termination of relationship with the University
- A change in job description
Appeals
Appeals

- After the written determination is issued and relayed to the Parties, the Parties have a right to appeal the decision, in whole or in part.

- Written requests for appeal must be submitted to the appropriate personnel within five (5) business days following delivery of the written determination regarding responsibility.
Appeals

Appeals are heard by the following:

- Provost in cases with a Faculty Respondent
- Vice President of Human Resources in cases with a Staff Respondent
- Three (3) member appeal panel drawn from the Title IX Council in cases with a Student Respondent.
Grounds for Appeals

The Parties both have the right to appeal a determination of responsibility on the limited grounds of

1. A procedural irregularity that affected the outcome of the complaint;
2. New evidence that was not reasonably available at the time the determination regarding responsibility for the Formal Complaint was made that could affect the outcome of the matter;
3. The Title IX Coordinator, Investigator(s), or Decision Maker(s) 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; or
4. A determination regarding responsibility and/or Discipline that is clearly contrary to the weight of the evidence.
Granting an Appeal

Two possibilities in the event that an appeal is granted:

1. Remand the case to the original Hearing Officer/Panel and provide instructions regarding the nature and extent of its consideration; or

1. Modify the determination and/or Discipline consistent with the Appeal Decision - Maker’s findings