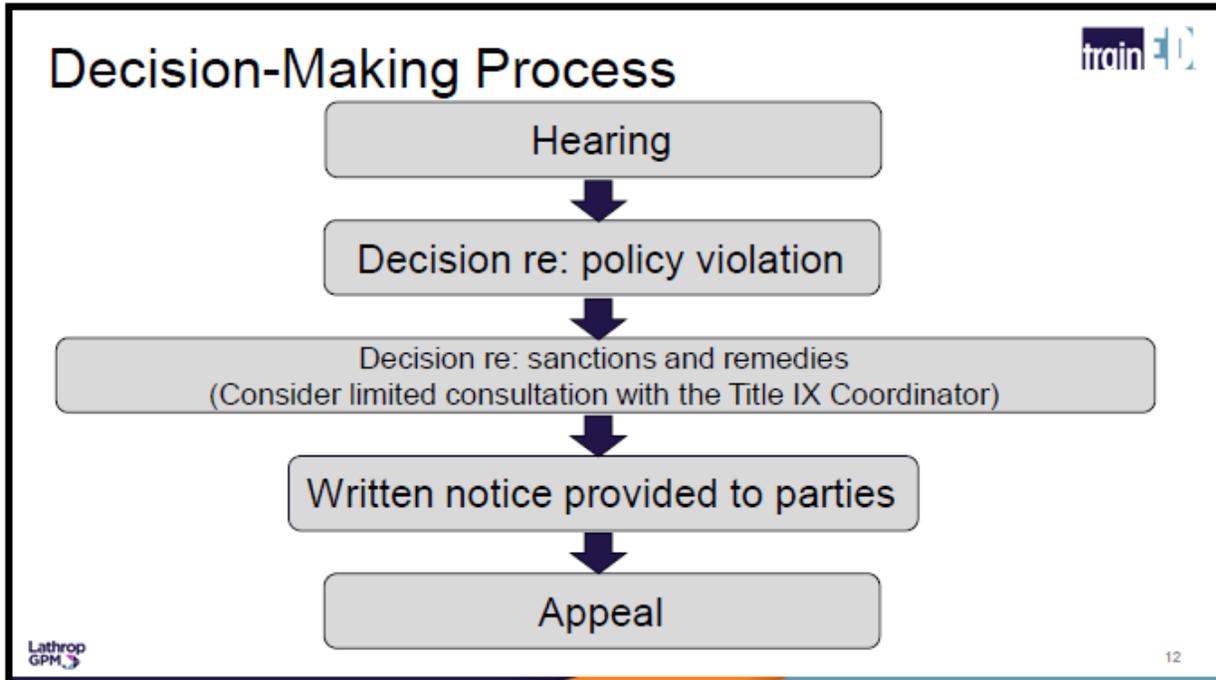


Adjudicator Training II – Spring 2025

Associated Slides



- ### Stages of Decision-Making Process
- Stage 1: Prepare for hearing
 - Stage 2: Conduct hearing
 - Stage 3: Deliberate and make determination
 - Stage 4: Determine sanctions and remedies
 - Stage 5: Draft notice of determination
- Lathrop GPM train

Decision-maker/Adjudicator Training (Updates & Review)

Hearing panel (panelists) that uses a majority vote, with the chair appointed from among the panelists and who has specific training for the role of the chair, including:

- managing advisors,
- controlling and understanding evidence,
- understanding relevance, and
- facilitating questioning.

Decision-makers may not have a conflict of interest or bias for or against any parties generally or a conflict of interest with any specific party.

They must also be trained on:

- The definitions of sexual harassment and other offenses;
- The scope of the recipient's education programs and activities;
- How to conduct fair and impartial investigations, and any and all of the recipient's grievance processes;
- Any technology to be used at a live hearing;
- Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. – again avoiding any materials that rely on sex stereotypes.

Lastly, as detailed below, live hearings require several procedural elements articulated by ED that will require the decision-maker, and especially the Chair (if you are using panels), to be specifically trained on how to make relevance determinations, how to effectively manage cross-examinations, and how to write detailed determinations after the hearing.

Title IX Background

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 education program or activity receiving Federal financial assistance.

20 U.S.C. § 1681(a).

In a Title IX case, what is the determination the Panel will make:

Whether the Respondent has engaged in “**sexual harassment**” in violation of Title IX and its regulations.

Sexual Harassment

Sexual Harassment is defined as being “severe, pervasive, and objectively offensive conduct that effectively denies a person equal educational access.” Therefore, it is a form of sex discrimination prohibited by Title IX.

The three types of misconduct, on the basis of sex, that encompass the sexual harassment definition include:

- 1. Quid Pro Quo Harassment:** An employee or Teaching Assistant (TA) of the school conditions the provision of an aid, benefit, or service of the school on an individual’s participation in unwelcome sexual conduct. This type of conduct is a violation of the NMT Sexual Misconduct Policy when (i.) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or academic advancement or (ii.) submission to or rejection of such conduct by an individual is used as the basis for employment decisions or academic decisions. This can include related situations where there is a power differential between the parties (e.g. supervisor and employee, instructor, or TA and student). It does not matter whether a person resists and suffers the threatened harm or submits to it and avoids the threatened harm for it to be considered sexual harassment
- 2. Hostile Environment Harassment:** Unwelcome conduct of a sexual nature determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies or limits a person equal access to the school’s education program, activity or employment. Mere offensiveness is not enough to create a hostile environment. Although repeated incidents increase the likelihood that this harassment has created a hostile environment. A serious incident such as sexual assault, even if isolated (see below), can be sufficient.
- 3. Any instance of Sexual Assault, Dating Violence, Domestic Violence or Stalking,** as defined by our policy or Violence Against Women Act (VAWA).

All these forms of sex discrimination jeopardize the equal access to education that Title IX is designed to protect.

Title IX Lingo/Terms

Recipients. School districts are now referred to as “recipients.”

Complainant. A person alleged to be the victim of conduct that could constitute sexual harassment.

Respondent. A person who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Supportive Measures. These are your “interim measures.”

Determination of Responsibility. This is your report/decision.

Informal Resolution

- The University may not offer an informal resolution process unless a formal complaint is filed.
- The University may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment.
- The University may not require the parties to participate in an informal resolution process.
- However, at any time prior to reaching a determination regarding responsibility the district may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient provides written notice disclosing certain items (next slide).
- Prior to informal resolution, the district must obtain the parties' voluntary, written consent to the informal resolution process.
- The University cannot offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

HEARING

Decision Maker Process-Allowing Questions

- The decision maker may only allow **relevant** questions.
- What is a relevant question?
- "Relevance" is not generally defined in the regulations.
- Under the Federal Rules of Evidence, evidence is relevant if:
- It has any tendency to make a fact more or less probable than it would be without the evidence; and
- The fact is of consequence in determining the action.

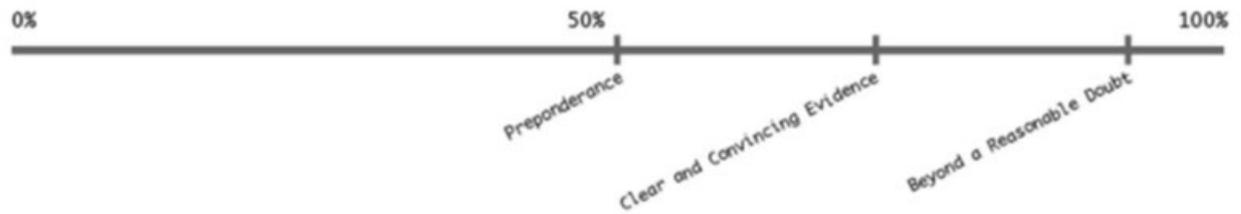
What is a relevant question?

- Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.
- Unless:
 - Offered to prove that someone other than the Respondent committed the conduct alleged by the Complaint; or
 - Concern specific incidents of the Complainant's prior behavior with respect to the Respondent and are offered to prove consent.
- "The grievance process may not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legally protected privilege, unless the person holding the privilege has waived it."
- Legal Privilege (See Ohio Revised Code section 2317.02).
 - Confidential communications between attorneys and clients.
 - Confidential communications between doctors and patients.
 - Confidential communications between counselors or therapists and clients.

- Confidential communications between religious clerics and parishioners.

Apply the Preponderance of the Evidence Standard

The Student and Faculty Conduct Committee Hearing Panel (“Panel”) must use a **preponderance of the evidence** standard when determining whether sexual misconduct occurred. (e.g., make a finding if it is more likely than not that sexual misconduct occurred)



The Hear Panel must decide either that:

- It was “more likely than not” (i.e., 50% and a Feather) that the Respondent violated the institution’s sexual misconduct policy OR
- That there was insufficient evidence to establish that it was “more likely than not” that the Respondent violated the institution’s sexual misconduct policy

Standard of Proof



- Beyond a reasonable doubt
- Clear and convincing evidence
- **Preponderance of the evidence***
- Some evidence

*This is the Standard that Tech utilizes in its Title IX cases.

DELIBERATION

The Burden of Proof is on the University

Investigative Report vs. Determination of Responsibility

Investigative Report

- The investigator should be a **fact finder**.
 - Gather the facts.
 - Provide sufficient details to provide context and information on the importance of specific evidence.
 - Explain what questions were asked, what evidence was reviewed, and why the investigator made the choices to ask those questions and review that evidence.
 - Explain what evidence the investigator believes is most important and why. Explain what evidence the investigator believes is unimportant and why.
 - Explain why the investigator thinks certain evidence or statements are more or less credible.

Determination of Responsibility

- The decision maker should be a **decision maker**.
 - Make credibility determinations, including whether parties and witnesses were telling the truth.
 - Make determinations about what happened and when.
 - Make determinations about the relative importance of facts and evidence.
 - *Make a determination regarding whether the Respondent sexually harassed the Complainant that is supported by the facts, as presented by the investigative report and reviewed by the decision maker.*
 - *Make determinations regarding appropriate sanctions and remedies.*

WHAT RULES APPLY TO THE DECISION MAKER'S CONSIDERATION OF THE EVIDENCE?

- Objectively evaluate all relevant evidence, both inculpatory and exculpatory.
 - “Inculpatory evidence” is evidence that shows, or tends to show, a person’s involvement in an act, or evidence that can establish responsibility.
 - “Exculpatory evidence” is evidence that tends to excuse, justify, or absolve the alleged fault or responsibility as a Respondent.

- Make credibility determinations that are not based on a person’s status as a complainant, respondent, or witness.
- Continue to presume that the Respondent is not responsible for the alleged conduct until a **final** determination regarding responsibility is made.
- Remember that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University, not the Complainant or Respondent.
- **Evidentiary Consideration**
 - **Always consider relevance and permissibility**
 - **Types of evidence**
 - Parties’ statements
 - Fact witnesses’ statements
 - Character witnesses’ statements
 - Other character evidence
 - Medical information (including mental health records)
 - ✓ Consider need for expert guidance in understanding and interpreting information
 - **Prior sexual history**
 - The complainant’s sexual history with anyone other than the respondent should not be considered or shared with the respondent
 - The mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of sexual violence
 - **Weighing Evidence / Assessing Credibility:**
 - Is information the witness provided accurate based on other evidence?
 - How did the witness learn the facts?
 - How well did he or she recall facts?
 - How forthcoming was the witness? Did the witness seem honest and sincere?
 - What are the possible motives for being less than truthful?
 - What is the witness’s relationship to the complainant and respondent?
 - Are there other factors that bear on the believability of the witness?

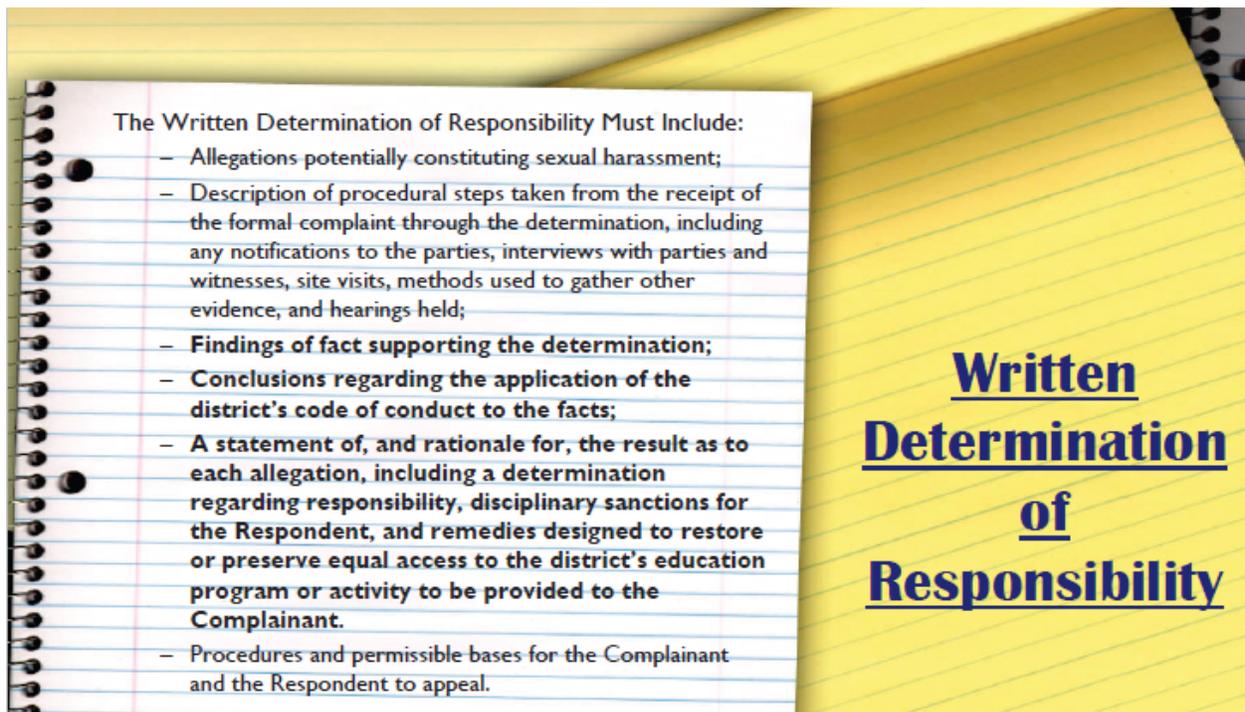
WHAT IS SEXUAL HARASSMENT?-review

“Sexual assault” as defined the Clery Act, or “dating violence,” “domestic violence,” or “stalking” as defined in the Violence Against Women Act (VAWA) or Tech’s policy.

- **“Sexual Assault”** means “any sexual act directed against another person, without the consent of the victim including instances when the victim is incapable of consent” or “unlawful, nonforcible sexual intercourse.” “Sexual act” includes forcible rape, forcible sodomy, sexual assault with an object, forcible fondling (the touching of private body parts of another person for the purpose of sexual gratification), incest, or statutory rape.
- **“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 is determined based on a consideration of the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in a relationship.

- “**Domestic Violence**” 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 applicable domestic or family violence laws, or by any other person against an adult or youth victim who is protected by applicable domestic violence laws.
- “**Stalking**” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

DETERMINATION



SANCTIONS

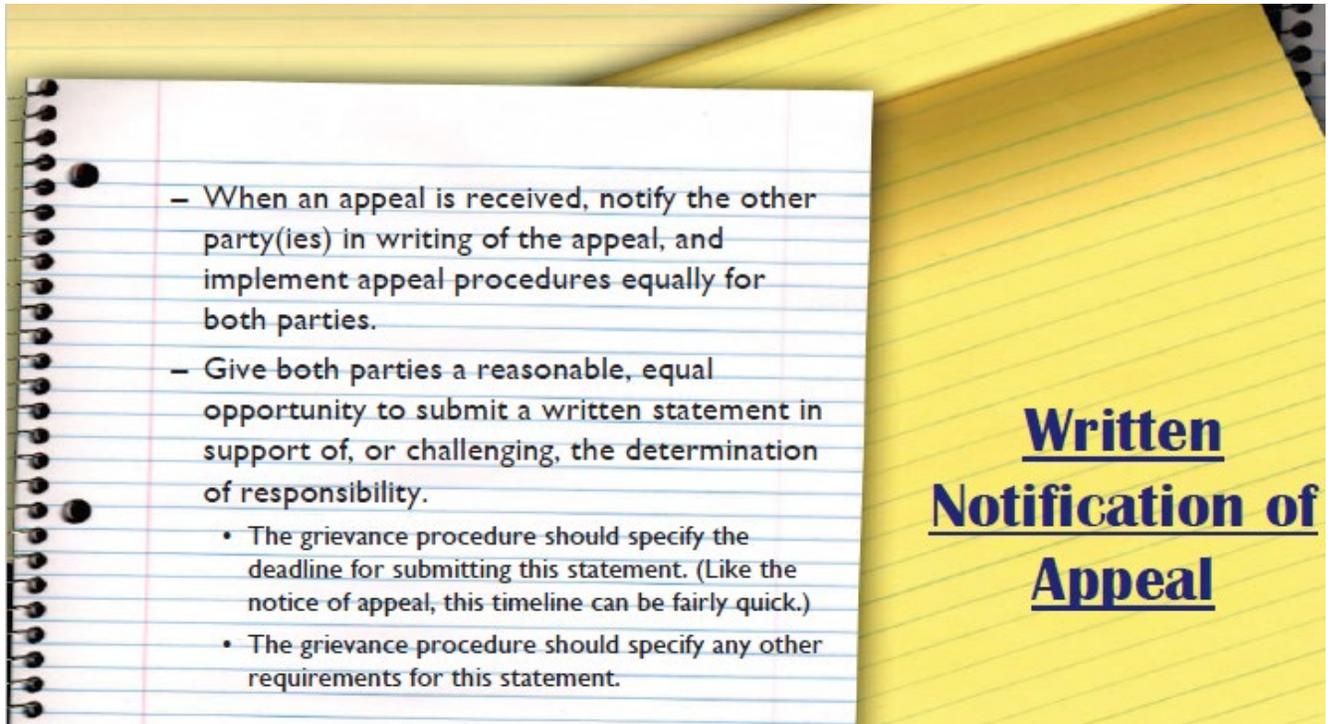
Considerations for determining sanctions:

- the healing and safety of victim-survivors
- the safety of the community
- holding perpetrators accountable for their conduct

Hand-out given previously

REMEDIES

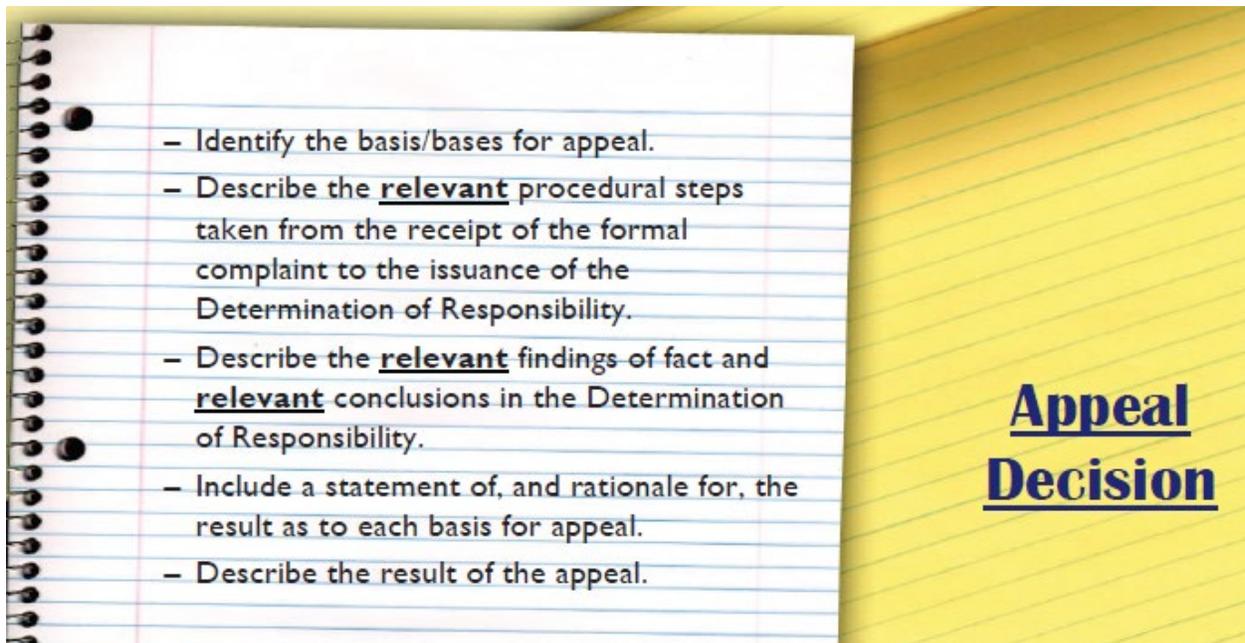
- The Determination of Responsibility must include a statement of whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the Complainant.
- Remedies may be the same as supportive measures, but after the Determination of Responsibility becomes final, need not be nondisciplinary or non-punitive, and need not avoid burdening the Respondent.



DECIDING THE APPEAL

The Appeal is not a Re-Do (De Novo), but a Review.

- Confine the review of the Determination of Responsibility to the specific issue raised in the Appeal and the statements the parties submitted in the Appeal.
- The Appeals Decision Maker should not substitute his/her judgment for that of the Decision Maker, especially regarding factual determinations.
- If no additional investigation is needed, the Appeals Decision Maker should identify the error and correct it, explaining how that changes the Determination of Responsibility, sanctions, and/or remedies.
- If additional investigation is needed, the Appeals Decision Maker should “remand” the Complaint to the Decision Maker, with instructions on how to correct the error and appropriately revise the Determination of Responsibility.



- Identify the basis/bases for appeal.
- Describe the relevant procedural steps taken from the receipt of the formal complaint to the issuance of the Determination of Responsibility.
- Describe the relevant findings of fact and relevant conclusions in the Determination of Responsibility.
- Include a statement of, and rationale for, the result as to each basis for appeal.
- Describe the result of the appeal.

Appeal Decision

THE WRITTEN APPEAL DECISION

What are possible results of the appeal?

- The Determination of Responsibility is “affirmed.”
- The Determination of Responsibility is completely or partially “reversed” and the Appeals Decision Maker comes to a different final conclusion.
- The complaint is “remanded” to the Investigator for limited further investigation in accordance with specific instructions from the Appeal Decision.

PROCEDURES FOR APPEALS – NOTIFYING PARTIES OF THE RESULT

- Issue a written appeal decision describing the result of the appeal and the rationale for the result.
- Simultaneously provide the written appeal decision to both parties.

QUESTIONS?