

Decision Maker Training



Spring 2025

Thank You!!

This week -

Foundations

Next week -

Sexual Violence

01	Introductions
02	Title IX History
03	Policy
04	Role & Responsibilities

05	Process Overview
06	Hearing Overview
07	Determination/ Sanctioning
08	Appeals

Acknowledgements

Content

Language

Examples

**I'm going to tell you a
lot of stuff....**

Decision Maker =

Panelist =

Hearing Board member

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 subjected to discrimination under any education program or activity receiving Federal financial assistance."

Who do we get reports from?

Friends &
Family

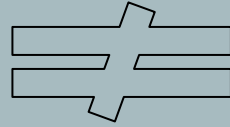
Housing

Public
Safety

Faculty &
Staff

Impacted
Parties

Report



Complaint

Flowchart of Process

Report
received &
reviewed

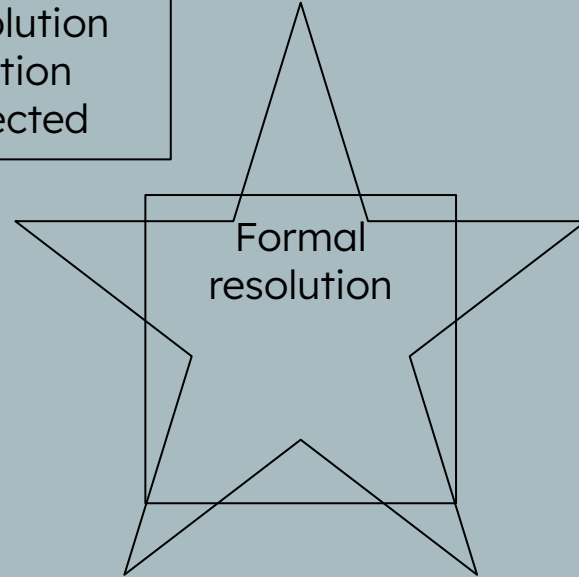
Resolution
option
selected

No action -
only requests
supportive
measures

Informal
resolution

Formal
resolution

Alternative
resolution



Supportive Measures

Available for both parties

- Safety Measures
 - a. NCD
 - b. BOLO
 - c. Adjust schedule/living situation
- Academic Measures
 - a. Notifications
- Referrals
 - a. CAPS
 - b. Off-campus

Our Policy

Title IX vs. Sexual Misconduct

Sexual Misconduct

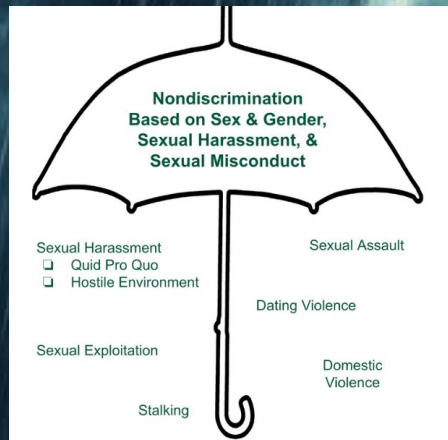
- Off campus
- Study abroad
- Non-Student complainant
- California definition might apply
- Anything not covered by Title IX

Title IX

- Occurs on campus
- Occurs in university education program or activity
- Occurs in the US
- The complainant is a student

We worry about this, you don't have to!!

USF Policy



Cases you may hear

- Sexual Misconduct/Title IX
- Appeals

About the panel

- Required by federal law to have live hearings
- Single Decision Maker or 3 person panel
- Required annual training
- Training materials must be public

Panel

Chair

Member

Member

Competencies

- Scope of USF's discrimination and harassment based on sex and gender policy and procedures
- How to conduct hearings to protect the safety of the Complainants and Respondents
- Navigating bias
- Disparate treatment and impact
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- How to remain impartial and objective
- How to render findings
- Understand relevance

Materials

- This training
- Canvas course
- Live hearing video

Role & Responsibilities

Your role as a DM

Finding the truth

Providing a just
result

Upholding USF
policy

Ensuring a fair
process

Making a safe
community

- The goal is to have an equitable result from an equitable process
- You have no “side” other than integrity of the process and your role represents the process

Ethical Standards

Maintain
confidentiality

Refrain from making
accusations that cannot
be supported

All Panel decisions
must be upheld by the
entire Panel, even if
there are dissenting
opinions

Do not participate
in a hearing where
you feel you
cannot be fair and
impartial

Your Responsibilities – Before the Hearing

- Review all hearing materials in advance
 - a. You receive all hearing materials 10 days before the hearing
- Do not research students in advance
 - a. Banner/Social Media/Google

Tips for Reviewing Materials

- Read through materials more than once
- Write down
 - a. What do I need to know?
 - b. Why do I need to know it?
 - c. Does the question elicit information relevant to whether a policy violation occurred?
 - d. What is the best way to ask the question?
 - e. Who is the best person to get this info from?

Your Responsibilities – Day of Hearing

- Ensure Zoom is functioning
- Silence or turn off phone/email notifications

During the Hearing

- Listen carefully to each person and withhold judgement
- Engage in meaningful discussion of the facts
- Determine the relevance and appropriateness of questions

Your Responsibilities – Hearing Decorum

- Be professional, but not lawyerly or judge-like
- Be respectful
- Be mindful of tone, manner, questioning
- Sarcasm or being snide is never appropriate
- Maintain your composure, don't allow emotion or frustration to show
- De-escalate or take breaks if emotions or frustration is showing
- Use active listening skills
- Nod affirmatively, or indicate you are listening
- Don't roll eyes
- Don't look shocked, stunned

Your Responsibilities – Zoom

- All hearings are on Zoom
- TIX will set up and moderate Zoom functions
- Please use standard Zoom etiquette
 - Mute when not speaking
 - Use a confidential space
 - Have an appropriate background
- Chat function is enabled – be sure you chat the right person
- Utilize breaks and breakout rooms should you need to talk to a fellow panelist
- Use “gallery view” so you can see the complainant and respondent throughout the hearing

Your Responsibilities – After the Hearing

- Actively participate in deliberations but refrain from dominating
- Chair should lead the discussion and oversee written decision
- Be creative and thorough in your discussion related to sanctioning
- Assist in the development of a written opinion
- Remain confidential and united in the panel's decision

Selection & Notification of Upcoming Hearing

- To avoid bias, we consider
 - Division, organization involvement, gender balance
- We will email or call to ask if you can serve at a certain date/time
 - Please respond ASAP. We will pick someone new within 24 hours
- We schedule 4 hours for a hearing

Bias

Bias

- Bias can represent any variable that improperly influences a decision
- A respondent is presumed not responsible until a final determination is made
- Forms of Bias
 - Predetermined outcome
 - Partisan approach in questioning/finding/sanction
 - Improper application of policies
 - Implicit bias
 - Motivation to have a specific outcome

Conflict of Interest

- Simply knowing a student is typically not sufficient to create a conflict of interest
- Tell me if you see an issue!

Process Overview



Initial Assessment

- If the initial complaint is taken as complete truth, is the allegation a policy violation?
- Interim actions

Complaint is Filed

- Done in writing, submitted to Title IX office
- Complaint can be adjusted throughout the investigation, if additional allegations present themselves

Investigation



Investigation Timeline

- Investigations can take 60–90 days
- Once the investigation interviews conclude, parties have 10 days to fill in any gaps in the report
- Parties receive 10 days of notice before the hearing



State System vs. University System

Legal System	University Student Conduct Process
Prosecutes criminals who violate the law	Discipline students who violate institutional rules
Higher standard of proof – “beyond a reasonable doubt”	Lower standard of proof – “more likely than not” Also referred to as the <u>preponderance of evidence</u>
More severe punishment	Educational and corrective accountability
Can imprison people	Maximum consequence is expulsion
State and federal laws set minimum standards for the safe and orderly operation of society	Set standards requiring ethical and moral behavior of students to create and maintain a productive university living and learning community
Legal system may choose not to prosecute a certain action or behavior	Campus resolution may proceed before, during, or after civil or criminal actions are concluded. Civil and criminal processes do not affect the Student Conduct process.
Punishment	Sanctions/Assignments
Guilty or not guilty	Responsible or Not Responsible
Plaintiff vs. Defendant	Complainant and Respondent

Due Process

Procedural Due Process

Are we following our Process?

- Consistent and Thorough
- Have appropriate notice
- Hear evidence
- Be heard by an unbiased person
- Opportunity to appeal

Substantive Due Process

Decision must

- Be impartial and fair
- Not arbitrary or capricious
- Made without malice, ill-will, conflict or bias
- Be based on the evidence

Rights in the Title IX Process

- Written notice of the allegation
- Explanation of the process
- Have no violation assumed
- A prompt investigation/hearing
- Be accompanied by an advisor
- Have access to the information and documents
- Be present during the entire proceeding, except deliberation
- Parties can question each other
- Can present witnesses
- Written notification of the outcome (for both parties)
- Appeal process available (for both parties)

Hearing Overview

Who is there?



Complainant



Respondent



Complainant Advisor



Respondent Advisor



Witnesses



Panel Members

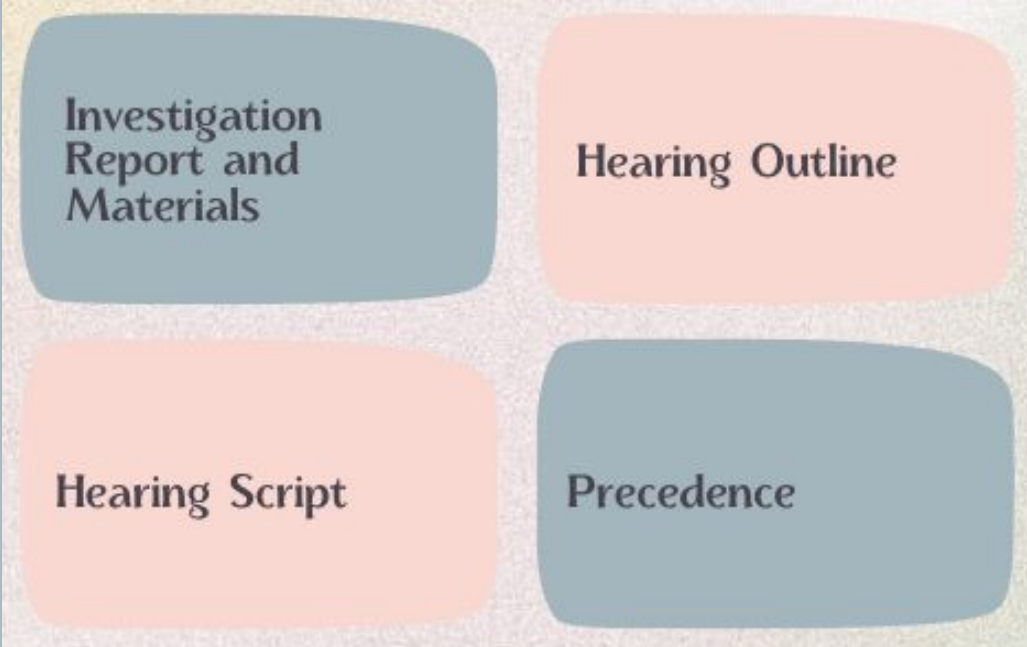


Investigator



Hearing Facilitator (Title IX Coordinator)

What info do you get? (aka Hearing File)



Investigation
Report and
Materials

Hearing Outline

Hearing Script

Precedence

Participate Involvement

- Must rely on whatever information is gathered in the investigation/hearing to make a decision
- If someone does not attend or doesn't participate, you cannot draw any inference solely from a party's lack of participation
 - "They aren't answering, they must be guilty."

Advisors Involvement

- Parties can choose advisor of their choice
- Role:
 - Support the party
 - Consult with the party
 - Suggest questions for the party to ask
 - Assist the party with clarifying their response
 - Participate to the extent that the party may
 - Required to ask questions on behalf of the party in Title IX cases
 - i. If it is NOT a Title IX case, questioning cannot be led by advisors

Advisors Involvement

- If a party doesn't have an advisor for the hearing...
 - USF will appoint an advisor for them
 - i. Required to ask questions on behalf of the party
 - ii. Support the party, but not to advise on strategy
 - iii. AKA university appointed “parrot”

Hearing Schedule

- Moderator calls to order
- Introductions
- Opening statements
- Presentation of information
 - Investigative Report
 - Complainant presents information
 - Respondent presents information
- Closing statements
- Panel deliberation

Presentation of Information

- Investigator presents report
- Complainant presents information
 - Panel asks questions
 - Respondent asks questions
- Respondent presents information
 - Panel asks questions
 - Complainant asks questions
- Witnesses
 - Panel asks questions
 - Complainant asks questions
 - Respondent asks questions

Cross-Examination

- Participant must be there/participate for information to be included
- Cross-examination must be directed to the Chair, not to the opposing party
- The Chair must determine relevance of the questions
 - Is this related to the incident?
 - Additional Training on Relevance on Canvas

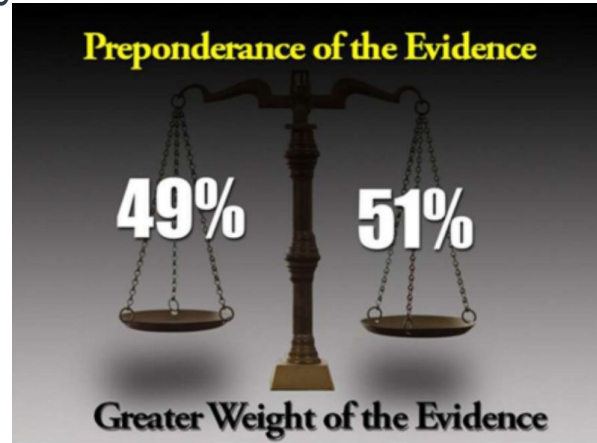
Post Hearing

Deliberation

- Can be done directly after hearing, or within a day or two
- Assess credibility of evidence
- Assess statements as factual, opinion-based, or circumstantial
- Apply standard of evidence to determine if policy has been violated
- Decisions must be based only upon information from the investigation report or the hearing

Standard of Proof – Preponderance of the Evidence

- “More likely than not”
- 50.01%
- 50% and a feather
- Different than the law
 - Clear and Convincing
 - Beyond a Reasonable Doubt
- Be careful – do not heighten the evidentiary standard because the sanctions might be more severe



Fact Finding

- The evidence considered must be related to making a determination regarding responsibility
- First question should be “What happened?”
- List numerically the facts that were agreed upon
- State these facts as concretely as possible, eliminating personal opinion

Determination



Sanctioning

- Once the respondent has been found responsible, you will be informed of any history they have with the University
 - History is used to determine most efficient and educational sanctions
- You will receive a Precedence document
 - Similar cases in which the respondent was suspended
 - Provides insight on consistency of suspension

Sexual Misconduct	Spring 2018	None	Student was found responsible for exposing self to pizza delivery person.	Suspended for one year.
Sexual Harassment	Spring 2018	None	Student was found responsible for sexually harassing/harassing 11 women.	Suspended for two years.
Sexual Misconduct	Spring 2018	None	Student was found responsible for engaging in sex with an incapacitated person (sleeping pill).	Suspended for one year.

Rationale Statement

- The “thinking portion” of why you made the decision you did
- The facts and rationale become part of the person’s permanent record and is provided to all parties in the outcome letter
- A rationale is provided for the outcome and sanctions
- Do not use impact-based rationales for findings
 - Intent, impact on the complainant, etc.
 - Impact-based rationales are used for sanctions only

Why do we need to write one?

- Serves as an educational tool
- Violence Against Women Act & Clery Act require that a rationale is included
- Encourages critical thinking
- Used in an appeal proceeding

Sanctions

- Warning/Disciplinary Probation/Suspension/Expulsion
- Housing Suspension/Expulsion
- Loss of Privileges
- Restitution
- Required Counseling

In cases involving sexual violence –
USF precedence is suspension

Self Care

- Secondary Trauma
- Who you can talk to:
 - EAP
 - Other panel members



Appeals

Step 1 – Demonstrate
that the Appeal Criteria
has been met

Appeal Criteria #1

- Procedural irregularity that affected the outcome of the matter
- If met, the matter may be remanded to a new hearing

Appeal Criteria #2

- New evidence that was not reasonably available at the time of the hearing that could affect the outcome of the matter
- If met, the matter may be resubmitted to the original hearing body

Appeal Criteria #3

- The Title IX Coordinator, Investigators, or Decision Makers had a conflict of interest or bias for or against Complainants or Respondents that affected the outcome
- If met, a new hearing will be conducted

Part Two – Welcome Back!

01 Policies

02 Alcohol & Title IX

03 Brain Trauma

04 Sexual Violence
Considerations

Sexual Harassment

Sexual Harassment is a form of sex discrimination within the forms of:

1. *Quid Pro Quo* Harassment
2. Hostile Environment Harassment

1. *Quid Pro Quo* - relies on a power, or authority, imbalance between the persons involved, such as an intimate relationship between a supervisor and a supervisee, or a faculty member and a student. *Quid Pro Quo* literally means "something for something," or "this for that" in Latin.

This behavior may include:

- unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
- by a person having power or authority over another
- when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating, evaluating, or providing a benefit to an individual's educational or employment development or performance.

Sexual Harassment (continued)

2. Hostile Environment – Title IX applies when the conduct or speech reaches a level of creating a hostile environment.

Sexual Harassment is:

- unwelcome,
- sexual, sex-based and/or gender-based,
- verbal, written, online, and/or physical conduct

and *Hostile Environment* is created when the sexual harassment is:

- **severe**, and
- **persistent or pervasive**, and
- **objectively offensive**, such that it:
 - unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the institution's education or employment programs.

Sexual Harassment

- Does not include verbal expressions or written materials that are relevant and appropriately related to course subject matter or curriculum
- This policy shall not abridge academic freedom or the university's educational mission

SPOO

Severe

- Physical
 - Sexual assault or forcible fondling cases are almost always sufficiently severe
- Assess whether accompanied by threats or violence
- Assess whether there was a degree of embarrassment or humiliation

Pervasive

- Widespread
- Openly practiced
- Well-known among students/employees
- Reputation of a person or department
- Occuring in public spaces
- Intensity and duration
- Unreasonable interference with school/job

Objectively Offensive

- Reasonable person standard
- “I know it when I see it...”
 - Age and relationship of complainant & respondent
 - Number of persons involved
 - Frequency
 - Physically threatening
 - Intimidating

What SH might look like

- Student hangs nude male photos in her room that are visible to all of her roommates
- Resident consistently has their significant other spend the night and they use the shower together and engage in intercourse
- Repeatedly asking for a date from a person who is not interested
- Stating or implying that benefits will be gained or lost based on someone's response to sexual advances
- Asking about someone's sexual life or sexual fantasies, preferences or history, or discussing your own
- Offensive physical contact:
 - Massages, touching, stroking, touching yourself in view of another person

Sexual Assault

- Any sexual act directed against a Complainant,
 - Without their consent, or
 - Instances in which the Complainant is incapable of giving consent
 - Sexual Act includes
 - Rape
 - Sodomy
 - Sexual Assault with an Object
 - Fondling
- Incest
- Statutory Rape

Sexual Exploitation

Sexual Exploitation is when one person takes non-consensual, or abusive, sexual advantage of another person for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses.

This is behavior where circumstance information is extremely important to gather. At the moment, examples included in our policy include, but is not limited to:

Sexual Exploitation (continued)

- Sexual voyeurism (such as watching a person undressing, using the bathroom, or engaging in sexual activity without the consent of the person(s) observed)
- Prostitution of another person
- Taking pictures, video, or audio recording of another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent).
- Engaging in sexual activity with another person(s) while knowingly infected with human immunodeficiency virus (HIV), or other sexually transmitted infections (STI), and without informing the other person(s) of the infection
- Administering alcohol or drugs (such as "date rape" drugs) to another person without their consent

Sexual Exploitation (continued)

Other examples include:

- Invasion of sexual privacy,
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances
- Inducing another to expose their genitals

While we don't have an exhaustive list of the behaviors included in exploitation, since new things are being created by people all the time, we would assess the reported conduct and if it did not fit into the other sexual conduct categories, we would assess if exploitation was the appropriate violation to allege.

Dating Violence

- Committed by a person who is or has been in a social relationship of a romantic or intimate nature with another person
- Factors to consider
 - Length of relationship
 - Type of relationship

Dating violence includes sexual or physical abuse, or threats of such abuse

Does not cover what meets the definition of domestic violence

Domestic Violence

Domestic Violence is a pattern of abusive behavior that could include gaining or maintaining power and control over the other intimate partner. This can be done physically, sexually, emotionally, economically, or psychologically.

- Committed by
 - Current or former spouse or intimate partner of the Complainant
 - Someone that the Complainant shares a child with
 - Someone who is cohabitating with, or has cohabitated with

What DV might look like

- Controlling behavior
 - Not letting victim spend time with friends
 - Calling or texting frequently to find out location, who they are with
 - Telling the victim what to wear
 - Having to be with the victim all the time
 - Checking phone/social media
 - Deprivation of physical/economic resources
- Verbal and emotional abuse
 - Calling names
 - Jealousy
 - Belittling
 - Threats to harm the victim or their family

What DV might look like

- Physical Abuse
 - Shoving
 - Punching
 - Slapping
 - Pinching
 - Hitting
 - Kicking
 - Hair pulling
 - Strangling
- Sexual Abuse
 - Unwanted touching and kissing
 - Forcing victim to have sex or engage in sexual acts
 - Not letting victim use birth control

Choking vs. Strangulation

Choking

- Obstruction of a person's airway, caused by an internal object within the body.

Strangulation

- A form of asphyxia characterized by closure of the blood vessels and air passages of the neck and as a result of external pressure on the neck.

Stalking

Stalking is a course of conduct directed at a specific person that is unwelcome and would cause a reasonable person to feel fear. This includes, but is not limited to, repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other action, device, or method that purposely, or knowingly, causes substantial emotional distress.

- being watched or followed;
- being spied on with a listening device, camera, or GPS system;
- being approached in unwelcome places (e.g., home, school, or work);
- receiving unwelcome voice, text, or computer (social media or instant) messages;
- receiving unwelcome telephone calls, including hang ups.

Facts about Stalking

- 78% of stalkers use more than one means of approach
- CDC reports that 1 in 6 women have been stalked during their lifetime and 1 in 19 men
- Stalking can occur by anyone, someone that is known casually, a current boyfriend or girlfriend, someone dated in the past or a stranger

What stalking might look like

- Following
- Unsolicited visits or communication
- Using online social media inappropriately
- Damaging property
- Showing up at places an intended victim frequents
- Sending unsolicited mail, emails, gifts, texts and pictures
- Creating a website about a target or stalking
- Stealing things that belonged to an intended victim
- Calling repeatedly

Considerations

- What was the course of conduct and the frequency?
- How and why did the victim fear for their safety?
- How and why did the victim suffer emotional distress?
- Would a reasonable person feel the same?
- Does the preponderance of the evidence support the fear or emotional distress?

Important Considerations

Force

Incapacity

Consent

Consent

- Effective consent is informed, freely and actively given, using mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual activity
- Initiators of sexual activity are responsible for obtaining effective consent
- Silence or passivity is not effective consent
- The use of intimidation, coercion, threats, forces, or violence negates consent
- Not effective if obtained from an individual who is incapable of giving consent due to lack of consciousness, age, mental disability, or incapacitation due to drugs or alcohol

- Was force used by the respondent to obtain sexual access?
- What clear words or actions by the complainant gave the respondent permission for the specific sexual/intimate act that took place?
- Was the complainant incapacitated?
 - If so, did the respondent know, or
 - Should the respondent have known that the complainant was incapacitated?

The intoxication of the respondent can not be used as a reason they did not know of the complainant's incapacity.

Force

- Consent must be voluntary (act of free will)
- Types of force to consider
 - Physical Violence
 - Threats
 - Intimidation
 - Coercion

Incapacitation

- What was the form of incapacity?
 - Mental/cognitive impairment
 - Injury
 - Asleep or unconscious
 - Alcohol or Drugs
 - Not impaired, not under the influence, not drunk, but incapacitated
 - Administered voluntarily or without the victim's knowledge
 - Rape drugs involved

Incapacitation due to AOD

- Was the complainant incapacitated at the time of sexual contact?
- Could they make rational, reasonable decisions?
- Could they appreciate the situation and address it consciously? (Who, what, where, when, why, and how)
- Did the respondent know of the incapacity?
 - Or should they have known due to the circumstances?
 - Would a reasonable person know?

Incapacitation due to AOD

Factors

- Body weight
- Tolerance
- Amount and type consumed
- Amount of food/water prior
- Genetics

We don't use BAC charts

Context Clues

- Slurred speech
- Vomiting
- Bloodshot eyes
- Smell of alcohol on breath
- Outrageous or unusual behavior
- Unconsciousness

Incapacitation due to AOD

- Incapacitation is a determination that will be made after the incident in light of all available facts
- You will see cases where the complainant has done things that would be clear indications of consent had they not been incapacitated

Incapacitation Analysis

- If the Complainant was incapacitated, but:
 - The Respondent did not know, AND
 - The Respondent would not have reasonably known
 - = No policy violation due to incapacitation
- If the Complainant was incapacitated, and:
 - The Respondent knew it or caused it = policy violation
 - The Respondent should have known it = policy violation

Consent Analysis

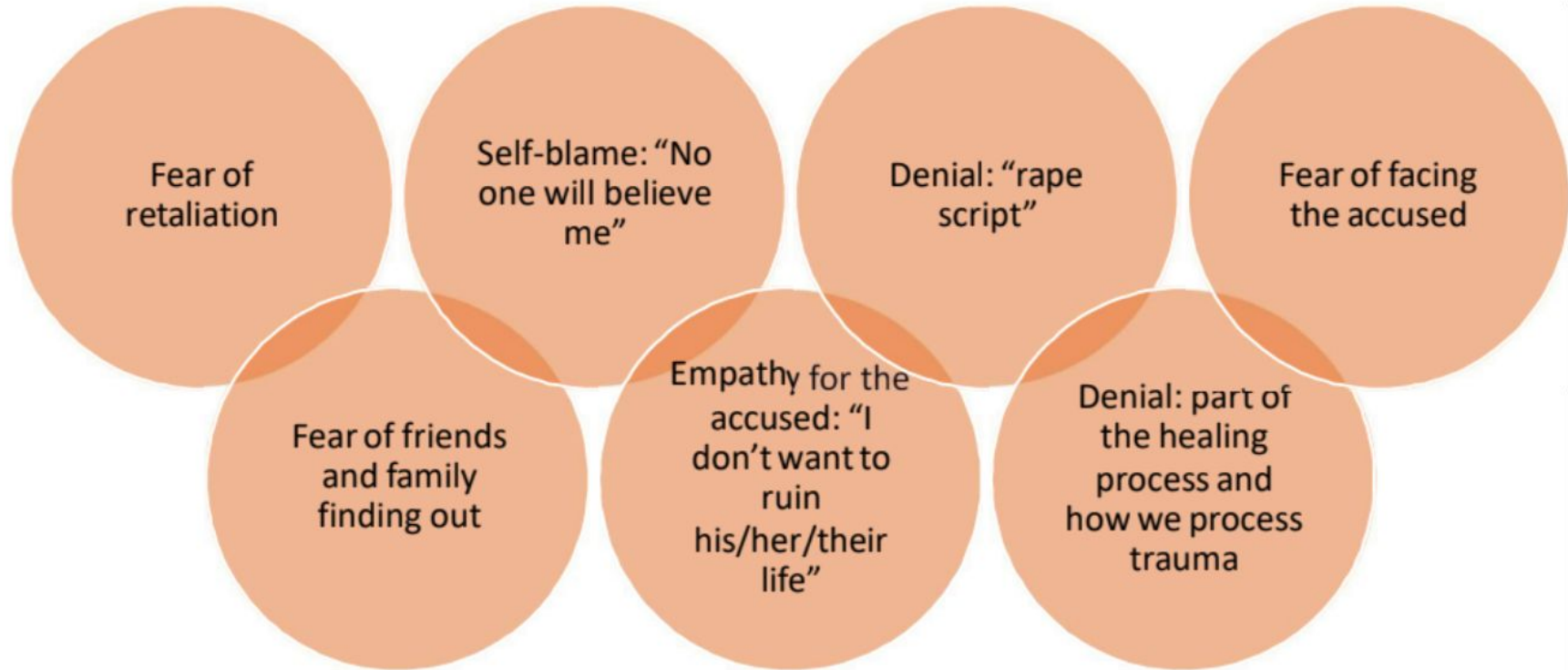
- What mutually understandable words or actions by the complainant gave the respondent permission for the specific sexual act?
 - Is there any sexual or intimate pattern or history between the parties?
 - What verbal or non-verbal cues were present during any acts?
 - Getting details and specifics is critical

Trauma- Informed Considerations

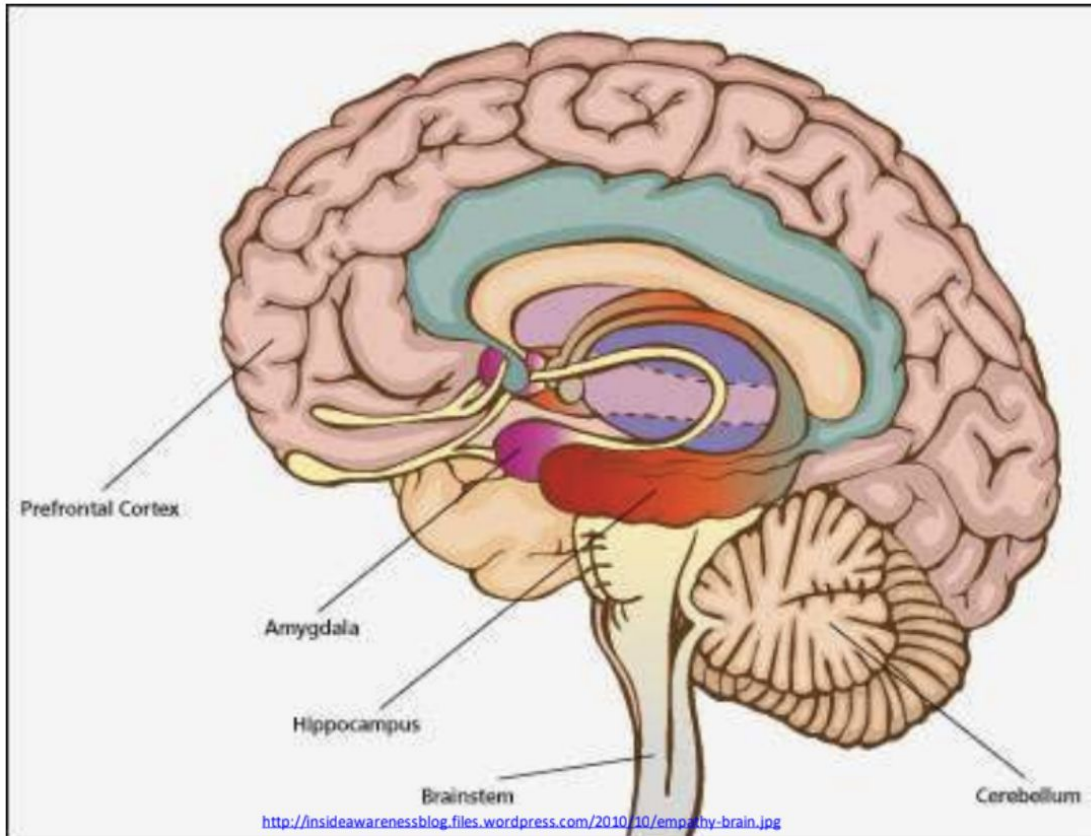
Reactions to Sexual Violence

- There is no “normal” reaction to sexual violence
- You cannot evaluate their reaction on what you would do
- Coping mechanisms do not always make sense and are not always logical
- Sometimes victims do things to maintain denial
 - Continuing a friendship/relationship

Reasons for Not Reporting



Brain Trauma



Prefrontal Cortex

- Cognitive part of the brain that includes higher order mental processes
 - Attention
 - Language
 - Memory
 - Reasoning
 - Problem solving
- When trauma occurs:
 - Prefrontal cortex shuts down and the more primitive portions of the brain take over and record the event in memory

The Amygdala

- Stores emotional memories
- Responsible for regulating safety:
 - Heart rate
 - Blood pressure
 - Nervous system
- Large release of cortisol
- Activates “Fight-Flight-Freeze”
 - Fawn?



The Hippocampus

- Stores cognitive memory
- Highly sensitive to the stress hormone Cortisol
- Hippocampus shuts down during traumatic events or trauma reminders
- When it shuts down, it is hard for an individual to remember details
- Memory might be disjointed, or come back in fragments
 - This may not be a sign of dishonesty

Victim Blaming

- Language surrounding abuse and sexual assault immediately puts our attention on the victim instead of the perpetrator
- Common Victim Blaming Statements:
 - “She provoked him”
 - “They both have problems”
 - “She shouldn’t have continued to date him”
 - “They were drunk”

<https://www.youtube.com/watch?v=Op14XhETfBw>

Don't Ask

- What were you wearing?
- Did you try to run away?
- Why didn't you fight back?"

Ask

- What did you do then?
- How did you respond when they kissed you?

Victim Blaming – Relevance

- It is appropriate and necessary to ask participants on the relevance of their questions
 - The chair determines relevance before each question is answered
- Any panel member can ask for relevance clarification
- The Chair makes the final decision on relevance
- Disregard testimony if you discover it is irrelevant after it is said

Relevance – Past Sexual History

- Panelists cannot consider:
 - The past sexual history of a Complainant or Respondent
 - The existence of prior consensual sexual relations between the Complainant and anyone other than the Respondent
 - The only exception is when it is done to prove that the physical injuries were actually caused by someone other than the respondent (see full footnote and/or pg. 47 of Policy)