

TITLE IX AND SEXUAL MISCONDUCT TRAINING

SAVANNAH COLLEGE OF ART AND DESIGN

August 2020

Title IX – Background:

- Title IX prohibits **sex discrimination** (it does not mention sexual harassment or sexual assault).
- The prior Title IX regulations were issued in 1975, before the courts addressed **sexual harassment**.
- **Prior regulations required:**
 - Designation of at least **one employee to coordinate** the University's efforts to comply with and carry out its responsibilities under Title IX, including any investigation of any complaint.
 - Dissemination of **a Title IX policy**.
 - **Grievance procedures** providing for **prompt and equitable resolution** of student and employee complaints alleging any action which would be prohibited by the law.

New Title IX Regulations Change the following:

- **New Definition of Sexual Harassment**
- **New Mandatory Procedures Related to**
 - Live hearings
 - Cross-examination by advisors
 - Advisors of choice or provided by the University
 - Dismissal of cases under Title IX
- **New Requirements Related to**
 - Supportive measures
 - Informal resolution
 - Training
 - Standard of evidence
 - Institutional accountability – deliberate indifference
- **Preemption** of conflicting state law.

Training Requirements:

- TIX Coordinator(s), Investigator(s), Decision Maker(s), and any person who facilitates an Informal Resolution process, **will receive training on:**
 - The definition of Sexual Misconduct, Title IX Sexual Harassment, and other terms;
 - The scope of the University's Education Program or Activity;
 - How to conduct an investigation and grievance process; and
 - How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- The University also will ensure that Investigators receive training on issues of **relevance** to create an investigative report that **fairly summarizes** relevant evidence.
- Decision Maker(s) will receive training on any **technology** to be used at a hearing, and on 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.
- Any materials used to train TIX Coordinator(s), Investigator(s), Decision Maker(s), and any person who facilitates an Informal Resolution process, **will not rely on sex or gender stereotypes and will promote impartial investigations and adjudications** of Complaints of Sexual Misconduct.
- Training materials must be published on the University's website.

OVERVIEW

Policies and Procedures

SCAD's New Sexual Misconduct Policy:

- It is the policy of the Savannah College of Art and Design (the “University”) to maintain an environment for students, faculty, and staff that is **free of sex-based discrimination and harassment**, including sexual harassment prohibited by Title IX of the Education Amendments of 1972 (“Title IX”).
- The Sexual Misconduct Policy (the “Policy”) addresses sexual harassment that is prohibited by Title IX (“***Title IX Sexual Harassment***”) and sexual misconduct that occurs outside of the U.S. and/or outside an Education Program or Activity.

SCAD's New Grievance Process:

- The new Grievance Process complies with the new Title IX regulations.
- SCAD's Grievance Process provides for the **prompt and equitable** resolution of Student and Employee Complaints.
- As required by the Violence Against Women Act ("VAWA"), the University provides **prompt, fair, and impartial** Proceedings that are completed within reasonably prompt timeframes.
- The Grievance Process is **transparent**.
 - **timely notice of meetings**.
 - **timely and equal access to information** used during informal and formal disciplinary meetings and hearings.
 - conducted by officials **who do not have a conflict of interest or bias**.

Retaliation Prohibited:

- **No individual may intimidate, threaten, coerce, or discriminate** against any individual for the purpose of interfering with any right or privilege secured by Title IX, the Policy, or the Grievance Process for the Sexual Misconduct Policy (the “*Grievance Process*”), or because the individual has made a Report or Complaint, testified, assisted, participated or refused to participate in any manner in an investigation, Proceeding, or hearing under this Policy or the Grievance Process.
 - SCAD protects the identity of all individuals involved.
- Complaints regarding retaliation may be filed under the Grievance Process.

Workplace Harassment Policy:

- Title IX and Title VII define sexual harassment differently and hold organizations to different standards.
- SCAD has developed a new **Workplace Harassment Policy** to address sexual harassment that is prohibited under Title VII, but not covered by Title IX.
- **Key differences between Title VII and Title IX:**
 - “**severe or pervasive**” vs. “**severe, pervasive, and objectively offensive**”
 - Title VII covers conduct that impacts the workplace regardless of where it occurs.
 - Title IX only covers conduct that occurs in the U.S. and in an Education Program or Activity.

False Reports:

- It is a violation of the Policy to file a **knowingly false or malicious** Report or Complaint of Sexual Misconduct, or knowingly making false statements or knowingly submitting false information during the Grievance Process.
- A Report or Complaint alleging false reporting or false information by another individual may be pursued pursuant to the process outlined in the Policy.
- A Complaint filed in good faith will not be considered as retaliation.
- Charging an individual with a violation of the Policy for making a materially false statement in bad faith in the course of the Grievance Process does not constitute retaliation.
- A determination regarding responsibility, alone, is not sufficient to charge a party with making a materially false statement in bad faith.

Effect on Other Codes of Conduct:

- The charge of “**sexual exploitation**” has been added to the Student Code of Conduct, because this conduct does not fall under the definition of Title IX Sexual Harassment.
- Allegations of sex discrimination against students will be addressed under the Nondiscrimination policy.

Questions?

New Sexual Misconduct Policy

Title IX Coordinator:

- Has the authority to coordinate the University's efforts to comply with its responsibilities under Title IX and oversee the administration of the Policy. The University has also designated Deputy Title IX Coordinator(s) as follows.
- Title IX Coordinator
912.525.5529
titleixcoordinator@scad.edu
- Deputy Title IX Coordinator
Keys Hall 308
912.525.6810
titleixcoordinator@scad.edu
- In Lacoste, students may report Sexual Misconduct to the Coordinator of Student Services, 33(0)6.07.21.99.93.

Title IX Coordinator (cont'd):

- Responsible for **oversight** of the assessment, investigation, hearing process, and resolution of all Reports of Sexual Misconduct;
- Knowledgeable and trained in this Policy, the Grievance Process, and Title IX;
- Available to **advise any individual** associated with potential Sexual Misconduct about the care and support resources, Supportive Measures, reporting options, and other resources available at the University, both informally and formally, and in the community;
- Available to **provide assistance to any University Employee** regarding how to respond appropriately to a Report of Sexual Misconduct;
- Responsible for **monitoring full compliance** with all procedural requirements and time frames outlined in this Policy and the Grievance Process;
- Responsible for **training, prevention and education efforts**, and periodic reviews of climate and culture related to the conduct prohibited under this Policy.

Scope of Policy:

- **Applies to all University community members** — including faculty, staff, and students — as well as to third parties (including, but not limited to, vendors, alumni/ae, visitors, volunteers, and local residents) who may have contact with members of the University community.
 - A third party may report a violation of the Policy committed by a member of the University community.
 - A third party may also be barred permanently from the University or subject to other restrictions for failing to comply with this Policy.
- **Title IX Sexual Harassment can only occur in the United States and in an Education Program or Activity.**

Definitions

Sexual Misconduct:

- Based on the Title IX definition of sexual harassment.
- Conduct **on the basis of sex** that satisfies one or more of the following:
 1. An Employee of the University **conditioning** the provision of a University aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
 2. Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively **denies a person equal access** to the University's education program or activity;
 3. "Sexual assault"- an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
 4. Dating Violence;
 5. Domestic Violence;
 6. Stalking.

Sexual Assault:

- Includes:
 - Rape – penetration without Consent
 - Attempted Rape
 - Fondling – touching private body parts without Consent
 - Incest
 - Statutory Rape

Consent:

- No substantive changes. Title IX does not define consent.
- Effective consent consists of an **affirmative, voluntary, conscious** decision by each participant to engage in **mutually agreed upon** (and the conditions of) sexual activity. In order to give effective consent, one must not be incapacitated and must be of legal age and have the capacity to give consent. The age of consent for this Policy is 16 years, which is the legal age of consent in the State of Georgia.
 - Informed and reciprocal
 - Freely and actively given
 - Mutually understandable
 - Revocable
 - Specific
 - Not valid if obtained through force or coercion

Title IX Sexual Harassment:

- Sexual Misconduct that occurs **in the United States** and in an **Education program or activity**.
- At the time of filing a Complaint alleging Title IX Sexual Harassment, a Complainant must be participating in or attempting to participate in the University's education program or activity.

Education Program or Activity:

- **Education program or activity** means the locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which alleged Title IX Sexual Harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a University.
- At SCAD, this includes (but is not limited to): all property owned or operated by SCAD and events hosted by SCAD at off-campus properties since SCAD pays for and organizes those events (e.g., field trips, off-site educational experiences hosted by SCAD, Career Fair, Sidewalk Art Fest, Fashion Show, Film Fest, etc.).
- SCAD does not have buildings owned or controlled by student organizations.

Report and Reporting Party:

- **Report:** a verbal or written (including electronic) communication from an individual alleging conduct that could constitute Sexual Misconduct, whether or not the individual is alleged to be the victim or target of the conduct. *A Report is not a Complaint.*
- **Reporting Party:** an individual who is alleged to be the victim of Sexual Misconduct but who has not filed, and desires not to file, a Complaint.

Complaint:

- **Document filed by a Complainant or signed by the TIX Coordinator** alleging Sexual Misconduct against a Respondent and **requesting that the University investigate** the allegation of Sexual Misconduct.
- May be filed with the TIX Coordinator in person, by mail, or by electronic mail, and by any additional method designated by the University.
- “Document filed by a Complainant” means a document or electronic submission that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Complaint.
- Where the TIX Coordinator signs a Complaint, the TIX Coordinator is not a complainant or otherwise a party.

Complainant and Respondent:

- A Complainant is an individual **who is alleged to be the victim** of conduct that could constitute Sexual Misconduct and **who files a formal complaint**.
- A Respondent is an individual who has been **alleged in a Complaint as a perpetrator of conduct** that could constitute Sexual Misconduct.
- It is **presumed that the Respondent is not responsible** for the alleged conduct until such a determination regarding responsibility is made at the conclusion of the grievance process.

Advisor:

- An individual who accompanies a party to any meeting or Proceeding under this Policy.
- The parties have the opportunity to be accompanied by one (1) Advisor of their choice, who may be, but is not required to be, an attorney.
- The University will not limit the choice or presence of an Advisor for either party in any meeting or Proceeding, except that the Advisor may not be a party or witness or an individual who would otherwise create a conflict of interest.
- The Grievance Process addresses the role of Advisors in live hearings.

Reporting Sexual Misconduct:

- SCAD **strongly encourages** all individuals who are the subject of potential Sexual Misconduct to seek Supportive Measures and consider filing a Complaint.
- **Supportive Measures** will be provided whether or not a Complaint is filed.
- All members of the University community are strongly encouraged to report information regarding any potential incident of Sexual Misconduct to the TIX Coordinator.
- Report Sexual Misconduct to the TIX Coordinator in person, by phone, by mail, or by electronic submission (such as by e-mail or through an online portal provided by the University for reporting purposes).
- A Report of Sexual Misconduct is not a Complaint.
- Anonymous Reports are permitted, but the University's ability to respond to an anonymous Report may be limited.

Supportive Measures:

- **Non-disciplinary, non-punitive individualized services offered to the Complainant or the Respondent** before or after the filing of a Complaint or where no Complaint has been filed.
- Designed to **restore or preserve equal access** to the University's education program or activity without unreasonably burdening the other party.
- May include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- The University will maintain as confidential any Supportive Measures provided to individuals to the extent that maintaining such confidentiality would not impair the ability of the University to provide the Supportive Measures.
- TIX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

Amnesty:

- No change in policy.
- To encourage truthfulness in reporting, an individual who reports Sexual Misconduct or participates in this Grievance Process, either as a Complainant, a Respondent, or a witness, will not be subject to disciplinary action by the University for their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. Educational options will be explored, but no conduct proceedings or record will result. However, records regarding the provision of amnesty will be maintained.

Questions?

The Grievance Process

Title IX Requires:

- A Grievance Process that **protects safety and promotes accountability**.
- Specific **procedural rights and protections** for both parties to a formal complaint, ensuring both sides a fair grievance process.
- Respondents are **presumed to be not responsible** for the alleged conduct and not subject to disciplinary sanctions before the conclusion of the grievance process. The burden of proof rests on the University and not the parties.
- All school personnel handling the process must be **free from conflicts of interest and bias**.
- **Reasonably prompt timeframes**.
- Rights to critical information about how schools handle complaints.

No Conflicts of Interest or Bias:

- Any individual designated as an Investigator, Decision Maker(s) (including Hearing Officers, Sanctioning Officers, and Appeal Officers), or any person designated to facilitate the Informal Resolution process, may not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.
- Do not prejudge the facts at issue.
- Do not rely on sex, race, ethnicity, disability, or other stereotypes.
- Bias based on any personal characteristic is prohibited.
- No party should be ignored or met with judgment or disbelief.
- Treat all parties with dignity, respect, and sensitivity without bias.
- Any person can be a Complainant or Respondent, regardless of sex or gender.
- Respondents should not be treated as responsible until a determination regarding responsibility is made at the conclusion of the Grievance Process.

Implicit Bias:

- An **unconscious association, belief or attitude** about any **group**.
- Leads to **stereotyping** – attributing certain qualities to all members of a group.
- Be aware of biases and stereotypes.
- Focus on individuals and not on stereotypes.
- Engage in deliberate, thoughtful decision-making, relying on facts and objective criteria.
- Eliminate distraction when making decisions.
- Deliberately and consciously **treat the parties equitably**.

The Grievance Process from Complaint through Resolution

Filing a Complaint:

- A Complainant may file a Complaint of Sexual Misconduct with the TIX Coordinator (in person, by mail, or e-mail), or by any additional method designated by the University.
- If the Respondent is not a member of the University community, or is no longer a member of the University community, the ability of the University to take disciplinary or other remedial action against the Respondent will be limited. If the Respondent is a staff member, faculty member, or student and leaves the University with a pending Complaint, the Respondent will not be permitted to return to the University until the Complaint is resolved pursuant to the Grievance Process.
- **Once a Complaint is filed, the Grievance Process is activated.**

Notice of Complaint:

- Upon receipt of a Complaint, the University will provide the following **written notice** to the parties identified in the Complaint:
 - The University's Grievance Process, including the Informal Resolution process.
 - The allegations of Sexual Misconduct (identities of the parties, the conduct alleged, the date and location of the alleged incident).
 - The Respondent is not treated as responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Grievance Process.
 - The parties may have an Advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.
 - The Grievance Process prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- The University will provide an **amended notice** of the allegations to the parties if additional allegations arise in the course of an investigation about the Complainant or Respondent that were not included in the original notice or remove charges that were included in the original notice.

Dismissal of Complaint:

- If the conduct alleged in the Complaint **would not constitute Sexual Misconduct** or **did not occur in the University's Education Program or Activity** or **did not occur against a person in the United States** then the Complaint **must be dismissed** by the TIX Coordinator, but the University **may still address the conduct** under other policies.
- The University **may dismiss** a Complaint or any allegations therein, if at any time during the investigation or hearing: a Complainant notifies the TIX Coordinator in writing that the Complainant would like to withdraw the Complaint or any allegations therein; the Respondent is no longer enrolled or employed by the University; or specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Complaint or allegations therein.
- Upon dismissal, the University will promptly send written notice of the dismissal and the reason(s) simultaneously to the parties as well as procedures related to **appeal**.

Informal Resolution:

- **Not permitted when an Employee is alleged to have engaged in Sexual Misconduct against a Student.**
- In other cases, the University may, at any time prior to reaching a determination regarding responsibility after the filing of a Complaint, facilitate Informal Resolution with the following requirements:
 - **Notice** of the allegations; circumstances under which Informal Resolution precludes the parties from resuming a Complaint arising from the same allegations; the right of any party to withdraw and resume the Grievance Process; and any consequences, including the records that will be maintained or could be shared.
 - **Timely and Equal Access** to the parties and appropriate officials to any information.
 - **Voluntary Consent** of the parties.
 - **Timeframe** - Completed within approximately 60 business days.

Notice of Meetings and Timeframes:

- The University will provide **sufficient written notice** of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings.
- The University will establish **reasonably prompt timeframes** for conclusion of the grievance process.
- The University seeks to resolve all Complaints generally within **120 business days** of the filing of the Complaint.
- All timeframes expressly outlined in the Policy and this Grievance Process are meant as guidelines rather than rigid requirements.

Investigation Process:

- An **objective** evaluation of all **relevant** evidence, including both **inculpatory and exculpatory** evidence.
- Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
- The parties will have an equal opportunity to present witnesses and other inculpatory and exculpatory evidence.
- The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence, as long as such conduct is not harassing or retaliatory.

How to Conduct an Investigation:

- Investigations must be **fair and impartial**.
- Investigations are conducted to gather evidence and determine the truth.
- Treat the Complainant and Respondent equitably.
 - Provide both parties the **same advisements** at the beginning of the interview.
 - Provide the same notice periods.
 - Provide the same opportunities to identify witnesses, bring an advisor, request and receive extensions, etc.
- Create an investigation plan (identify witnesses and potential evidence).
- Conduct interviews.
- Collect evidence.

Trauma Informed Techniques:

- Sexual violence is a traumatic experience.
- There are **neurological effects** of trauma.
- Chemicals in the brain released during a trauma can interfere with **memory**.
 - Individuals who experience trauma may not be able to recall details; may not recall in chronological order; and memory may improve over time.
- Both the Complainant and the Respondent may have experienced trauma.
- Treat all parties with dignity, respect, and sensitivity.
- Avoid bias and snap judgments.
- Don't assume someone is lying or telling the truth if they can't remember certain details.

Review of Evidence:

- Both parties have an **equal opportunity** to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Complaint, including evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence.
- Prior to completion of the investigative report, the University will make available to each party and each party's Advisor the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have **10 calendar days to submit a written response**, which the Investigator will consider prior to completion of the investigative report.
- The Investigator may take additional investigative steps in light of these responses.

Investigative Report:

- At the conclusion of the investigation, the Investigator will create an **investigative report** that fairly summarizes **relevant** evidence.
- The investigative report must contain:
 - The allegations
 - A description of the procedural steps taken from the receipt of the formal complaint, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, etc.
 - A summary of the relevant evidence.
- Ten (10) days prior to the hearing, the University will send to each party and each party's Advisor, the investigative report in an electronic format or a hard copy, for their review and written response.

Relevance:

- Evidence is relevant if it has a tendency to make an allegation or fact more or less probable than it would be without the evidence; and
- The fact or evidence is of consequence in determining whether the Policy was violated.
- Relevance determinations must be applied equally to both parties.
- Investigators cannot impose rules of evidence that exclude relevant evidence.
- Where evidence is duplicative, it can be deemed irrelevant.

Special Evidentiary Issues:

- **Past Sexual History:** Evidence about the Complainant's sexual predisposition or prior sexual behavior is not relevant, unless:
 1. questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
 2. 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.
- **Medical Records:** No questions or evidence related to treatment records, unless the University obtains that party's voluntary, written consent.
- **Privilege:** No questions or evidence that constitute information protected under a legally recognized privilege, unless it is properly waived.

Questions?

Decision-Making Process:

- After an Investigation is complete:
 - **Notice of Decision-Making Process.** The TIX Coordinator(s) will send to each party and each party's Advisor a notice and description of this decision-making process.
 - **Standard of Evidence.** Preponderance of the evidence (more likely than not).
 - **Production of Evidence.** All evidence subject to the parties' inspection and review at the conclusion of the investigation will be available at any hearing.

Live Hearings:

- Live hearings will occur with the parties located in separate rooms with technology enabling the Hearing Officer(s) and parties to simultaneously see and hear the party or the witness answering questions. The University retains discretion to conduct the live hearing with all parties physically present in the same location.
- Hearings are conducted by Hearing Officer(s) who are independent and free from bias.
- At the live hearing, the Hearing Officer(s) will provide the parties with an opportunity to make opening and closing statements, including statements about the impact of the matter on them and the requested sanctions or remedies, as applicable. The Hearing Officer(s) will also ask questions of the parties and witnesses prior to cross-examination by the parties' Advisors.
- The Investigator(s) will be a witness at the hearing.
- The University will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties and the Decision Maker(s) for inspection and review.
- Training is provided on technology used at the live hearing.

Cross-Examination:

- After questioning by the Hearing Officer(s), each party's **Advisor** can ask the other party and any witnesses **relevant** questions, including those challenging the credibility of each party or witness.
- If a party does not have an Advisor present at the live hearing, **the University will provide without fee or charge to that party, an Advisor** of the University's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
- Cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's Advisor of choice and never by a party personally, notwithstanding the discretion of the University to otherwise restrict the extent to which Advisors may participate in the Proceedings.
- Advisors must comply with any rules of decorum set forth by the University.
- **If a party or witness does not submit to cross-examination at the live hearing, the Hearing Officer(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility.** The Hearing Officer(s) cannot draw an inference relevant to the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- Before a Complainant, Respondent, or witness answers a cross-examination or other question, **the Hearing Officer(s) will first determine whether the question is relevant** and explain any decision to exclude a question as not relevant.

Determination Regarding Responsibility, Sanctions, and Remedies:

- After the live hearing, the Hearing Officer(s) will draw conclusions regarding the application of the Policy and the University's code of conduct, as applicable, to the facts, and will make **determinations regarding responsibility**.
- If there is a finding of responsibility, the Hearing Officer(s) will refer the matter to the Sanctioning Officer(s).
- The Sanctioning Officer(s) will determine sanctions and remedies. Sanction(s) will be structured to **end the conduct and prevent its recurrence** by the Respondent. Remedies will be designed to **remedy the effects** on the Complainant and the University community. Not all violations will be deemed equally serious offenses, and the University reserves the right to impose different sanctions and remedies depending on the severity of the offense. A list of sanctions is provided in the Grievance Process.

Relevance (recap):

- Evidence is relevant if it has a tendency to make an allegation or fact more or less probable than it would be without the evidence; and
- The fact or evidence is of consequence in determining whether the Policy was violated.
- Relevance determinations must be applied equally to both parties.
- Hearing Officer(s) cannot impose rules of evidence that exclude relevant evidence.
- Where evidence is duplicative, it can be deemed irrelevant.

Special Evidentiary Issues (recap):

- **Past Sexual History:** Evidence about the Complainant's sexual predisposition or prior sexual behavior is not relevant, unless:
 1. questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
 2. 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.
- **Medical Records:** No questions or evidence related to treatment records, unless the University obtains that party's voluntary, written consent.
- **Privilege:** No questions or evidence that constitute information protected under a legally recognized privilege, unless it is properly waived.

Credibility and Weight of Evidence:

- The Hearing Officer(s) determine the **weight and credibility** of evidence.
- Example: Where a cross-examination question or piece of evidence is relevant, but concerns a party's character or prior bad acts, under the final regulations the decision maker cannot exclude or refuse to consider the relevant evidence, but may proceed to objectively evaluate that relevant evidence by analyzing whether that evidence warrants a high or low level of weight or credibility, so long as the decision maker's evaluation treats both parties equally by not, for instance, automatically assigning higher weight to exculpatory character evidence than to inculpatory character evidence.

Written Determinations:

- The Decision Maker(s) will issue a **written determination regarding responsibility**, using the preponderance of the evidence standard.
- The University will provide the written determination to the parties simultaneously.
- If an appeal is filed, the determination regarding responsibility becomes final on the date that the University provides the parties with the written determination of the result of the appeal. If an appeal is not filed, the determination regarding responsibility becomes final on the date on which an appeal would no longer be considered timely.

Written Determinations (cont'd):

- The written determination must include:
 - Identification of the **allegations** potentially constituting Sexual Misconduct;
 - A description of the **procedural steps** taken from the receipt of the Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - **Findings of fact** supporting the determination;
 - **Conclusions** regarding the application of the Policy and the University's code of conduct, as applicable, to the facts;
 - A statement of, and rationale for, **the result as to each allegation**, including a determination regarding responsibility;
 - Any **disciplinary sanctions** the University will impose on the Respondent, and whether remedies designed to restore or preserve equal access to the Education Program or Activity will be provided to the Complainant.
 - The procedures and permissible bases for the Complainant and Respondent to **appeal**.

Appeals:

- The University will offer both parties an appeal from a determination regarding responsibility, and from a dismissal of a Complaint or any allegations therein.
- The opportunity to submit an Appeal is not provided to simply refute or express dissatisfaction with the outcome of the hearing.
- An appeal may be made on the following bases that **affected or could have affected the outcome**:
 1. **Procedural irregularity**;
 2. **New evidence** that was not reasonably available at the time the determination regarding responsibility or dismissal was made; and
 3. **Conflict of interest or bias** by the TIX Coordinator(s), Investigator(s), Hearing Officer(s), or Sanctioning Officer(s).

Appeal Process:

- The TIX Coordinator(s) will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
- The Appeal Officer will not be the same person as the Hearing Officer(s), Sanctioning Officer(s), the Investigator(s), or the TIX Coordinator(s). The Appeal Officer must be free of conflict of interest or bias and will receive training as Decision Maker.
- Both parties will have a **reasonable, equal opportunity to submit a written statement** in support of, or challenging, the outcome. A party desiring to appeal the outcome may submit a written appeal to the TIX Coordinator within three (3) days of the party's receipt of the written determination regarding responsibility, and the non-appealing party may submit his or her response to the TIX Coordinator within three (3) days of receipt of the appealing party's response. The TIX Coordinator will forward the parties' written statements to the Appeal Officer.
- The Appeal Officer will issue a **written decision** describing the result of the appeal and the rationale for the result, and the written decision will be provided simultaneously to both parties and the TIX Coordinator. The Appeal Officer's decision is final and is not subject to further appeal.
- The appellant and appellee will generally be notified in writing of the outcome of the appeal within ten (10) business days of receipt of the appellee's response statement, but the University may extend the timeframe for good cause.

Confidentiality:

- Complaints and investigations under the Policy are treated as confidential by the University.
- The University complies with the Family Educational Rights & Privacy Act (FERPA) and other applicable privacy laws at all times in the course of investigations.
- The University will keep confidential the identity of any individual who has made a Report or Complaint of Sexual Misconduct, any Complainant, any individual who has been reported to be the perpetrator of Sexual Misconduct, any Respondent, and any witness, except as may be permitted by FERPA, or as required by law, or in order to conduct any investigation, hearing, or judicial Proceeding arising from the Policy.
- The University complies with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act and the Violence Against Women Act with respect to reporting and disclosure of campus security information.
- The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence, as long as such conduct is not harassing or retaliatory.
- The investigation, investigation report, and Proceedings are considered confidential.