

Relevancy of Questions and Evidence



Important Considerations

- Fact-finders are not charged with finding a *particular* outcome.
- Fact-finders should avoid pre-conceived notions and consider *only* the information provided during the process.

Relevancy and Evidence

- Fact-finders should focus on evidence that is most relevant to making a determination.
- Fact-finders must address conflicting evidence that bears on the outcome of the proceeding.
- The Hearing Officer or Panel Chair ***has the discretion*** to determine the relevance of any witness or documentary evidence and may exclude information that is **irrelevant, immaterial, cumulative, or more prejudicial than informative**.
- The relevancy and admissibility of any evidence offered at the hearing shall be determined by the Hearing Officer, whose ruling shall be final. In equity proceedings, the Chair shall present the question to the Hearing Panel at the request of a member of the Hearing Panel, in which event, the ruling of the Hearing Panel by majority vote shall be final.

What Evidence Should be Considered?

- The formal rules of evidence do not apply; but the evidence must be relevant.
- Questions and evidence about the Complainant's pre-disposition or prior sexual behavior are not relevant, unless offered to prove that someone other than the Respondent committed the alleged conduct.
- Evidence concerning specific incidents of the Complainant's prior sexual behavior with respect to the Respondent is not relevant unless it is offered to prove consent.
- Character evidence is of limited utility and should not be admitted unless relevant.
- Incidents or behaviors of a party not directly related to the alleged conduct should not be considered unless it shows a pattern of related misconduct that is deemed relevant.
- Records of a party made or maintained by a physician or similar professional in connection with the provision of treatment to a party may not be used without the party's express consent.
- Information protected under a legally recognized privilege shall not be allowed, relied upon or otherwise used unless the person holding the privilege has waived that privilege.

Gathering Evidence

Cross-examination and questioning of parties and witnesses under 600.030

- No party or witness can be forced to participate in the 600.030 process, including testifying at a hearing.
- If a party or witness fails to submit to cross-examination at a hearing, the Hearing Panel shall not rely on any statement of that party or witness in reaching a determination regarding responsibility.
- The Hearing Panel shall not draw any inference about the determination regarding responsibility based solely on a party's or witness's failure to submit to cross-examination.

Gathering Evidence

Questioning of a Party under 600.040

- Under the 600.040 hearing process:
 - The parties will be provided the opportunity to present facts and arguments in full and question all present witnesses during the hearing.
 - The parties may submit questions for each other to the Hearing Panel Chair, who will determine if the questions are relevant and appropriate, and if so, will ask the questions on behalf of the submitting party.
 - If both parties request the opportunity, direct questioning between the parties will be permitted.
 - Advisors are present solely to advise their party, and may not participate directly in the hearing.
 - The Chair of the Hearing Panel, in consultation with the Parties and investigators, may decide in advance of the hearing that certain witnesses do not need to be physically present if their testimony can be adequately summarized by the Investigator(s) in the investigative report or during the hearing. All Parties will have ample opportunity to present facts and arguments in full and question all present witnesses during the hearing, though formal cross-examination is not used between the Parties.

Findings, Decision Writing, Sanctions and Remedial Actions



Findings of the Hearing Panel under 600.030 and 600.040

- Hearing panel will deliberate with no others present, except legal advisor.
- Majority decision required.
- Keep in mind standard of proof.
- Within 5 days of the end of deliberations the Hearing Officer or Panel Chair will prepare a written determination reflecting the decision of the Hearing Panel regarding responsibility, sanctions and remedial actions, if any (“Hearing Panel Decision”), and deliver it to the Title IX Coordinator (or Provost if faculty) detailing the following:
 - Identification of the allegations.
 - A description of the procedural steps;
 - Findings of fact supporting the determination;
 - Conclusions regarding the application of the policies to the facts;
 - Statement of and rationale for the result as to each on each allegation
 - If panel finds Respondent responsible, report should include sanctions and remedies, if any.
 - The procedures and permissible bases for the Complainant and the Respondent to appeal.

Possible Findings

- There is sufficient evidence to find Respondent responsible for the policy violation based on the preponderance of the evidence.
 - It is more likely than not that Respondent violated the policy.
- There is insufficient evidence to find Respondent responsible for the policy violation based on the preponderance of the evidence.
 - It is not more likely than not that Respondent violated the policy.

Sanctions and Remedial Actions

- Factors to consider when finding sanctions or remedial actions include:
 - The nature, severity of, and circumstances surrounding the violation;
 - The disciplinary history of the Respondent;
 - The need for sanctions/ remedial actions to bring an end to the conduct;
 - The need for sanctions/ remedial actions to prevent the future recurrence of the conduct; and
 - The need to remedy the effects of the conduct on the Complainant and the University community.
- Findings and sanctions are subject to appeal

Types of Sanctions for Student Respondents

- Warning
- Probation
- Loss of Privileges
- Restitution
- Discretionary Sanctions such as work assignments, services to the University or other related discretionary assignments
- Residence Hall Suspension
- Resident Hall Expulsion
- Campus Suspension
- University System Suspension
- University System Expulsion (not eligible for online courses)

Sanctions for Employees who are Respondents

- Warning
- Performance improvement Plan
- Required counseling
- Required training or education
- Loss of annual pay increase
- Loss of supervisory responsibility
- Recommendation of discipline in a training program
- For Non-Regular Faculty, immediate termination of term contract and employment;
- For Regular, Untenured Faculty, immediate termination of term contract and employment;
- Suspension without pay;
- Non-renewal of appointment;
- For Regular, Tenured faculty, suspension without pay, removal from campus and referral to the Chancellor to initiate dismissal for cause;
- For staff, demotion;
- For staff, termination.

Remedial Actions

- If Complainant is a student:
 - Permitting the student to retake courses;
 - Providing tuition reimbursement;
 - Providing additional academic support;
 - Removal of a disciplinary action; and
 - Providing educational and/or on-campus housing accommodations.
- If Complainant is an employee:
 - Removal of a disciplinary action;
 - Modification of a performance review;
 - Adjustment in pay;
 - Changes to the employee's reporting relationships; and
 - Workplace accommodations.

Questions?



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