

UNIVERSITY
OF MIAMI



Title IX Training: HR & Faculty Affairs Decision-Maker

The University's Title IX Office works to prevent, stop, and address sexual misconduct across all university campuses and for all university community members.

You can reach the Title IX Office by calling 305-284-8624 or emailing titleixcoordinator@miami.edu

WELCOME



UNIVERSITY
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Training Agenda

1. About the Presenters
2. Title IX Background
3. Reporting Misconduct, Initial Response, and Investigative Process Overview
4. Title IX Prohibited Conduct Unpacked
5. The Formal Hearing
6. Panelist Skills and Best Practices
7. Questions

1. About the Presenters



Maria Sevilla, Esq.
Deputy TIX Coordinator



Jessica Pacheco, Esq.
Workplace, Equity, & Inclusion,
Executive Director
Area TIX Coordinator
for Staff



Cecelia Smith

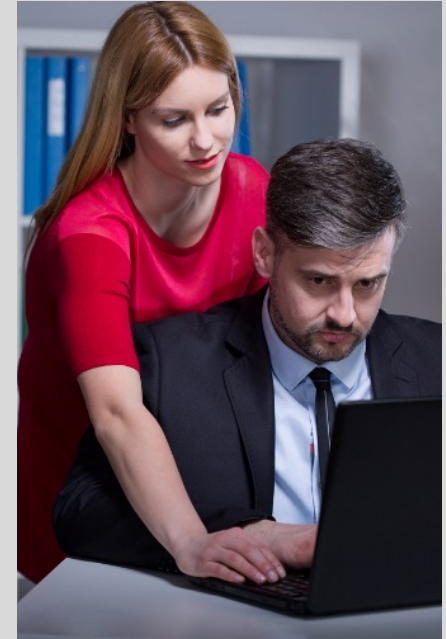
Faculty Affairs, Director
Area TIX Coordinator for Faculty

2. Title IX Background

Title IX of the Education Amendment of 1972

“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 educational program or activity receiving federal financial assistance.”

GENDER GAP IN SPORTS



UM's Sexual Misconduct Policy @ a Glance

www.miami.edu/titleix

- Scope
- Confidentiality
- Prohibited Conduct:
 - Relationship Violence
 - Sexual Assault
 - Sex- or Gender- Based Discrimination
 - Sexual Harassment
 - Stalking
 - Retaliation

Title IX, Title VII & Other Policies

Title IX	Title VII	Clery Act/ VAWA	Institutional Codes of Conduct
In the United States In an educational program or activity	Discretion to set boundaries based on impact on campus	Clery Geography	Discretion to set boundaries based on institution's expectations (private university= contract)
Meet TIX Definition (except for Sexual Harassment, same as Clery Definitions)	Meet TVII Definition (broader than TIX and Clery)	Meet Clery Definitions (meet criminal behavior definition –not limited to sexual misconduct; does not include, for example, sexual harassment but covers fondling)	Discretion to set definitions based on institution's expectations (private university= contract)
Respondent must be UM and complainant must be UM	Respondent must be UM and complainant need not be UM	Neither party needs to be UM	Respondent must be UM and complainant need not be UM

3. Reporting Misconduct, Initial Response, and Investigative Process Overview

Reporting Misconduct

Students and employees can report sexual assault, domestic violence, dating violence, and stalking to the University through:

A report made/filed through the University's Title IX Website
(www.miami.edu/titleix) or the University Hotline System;

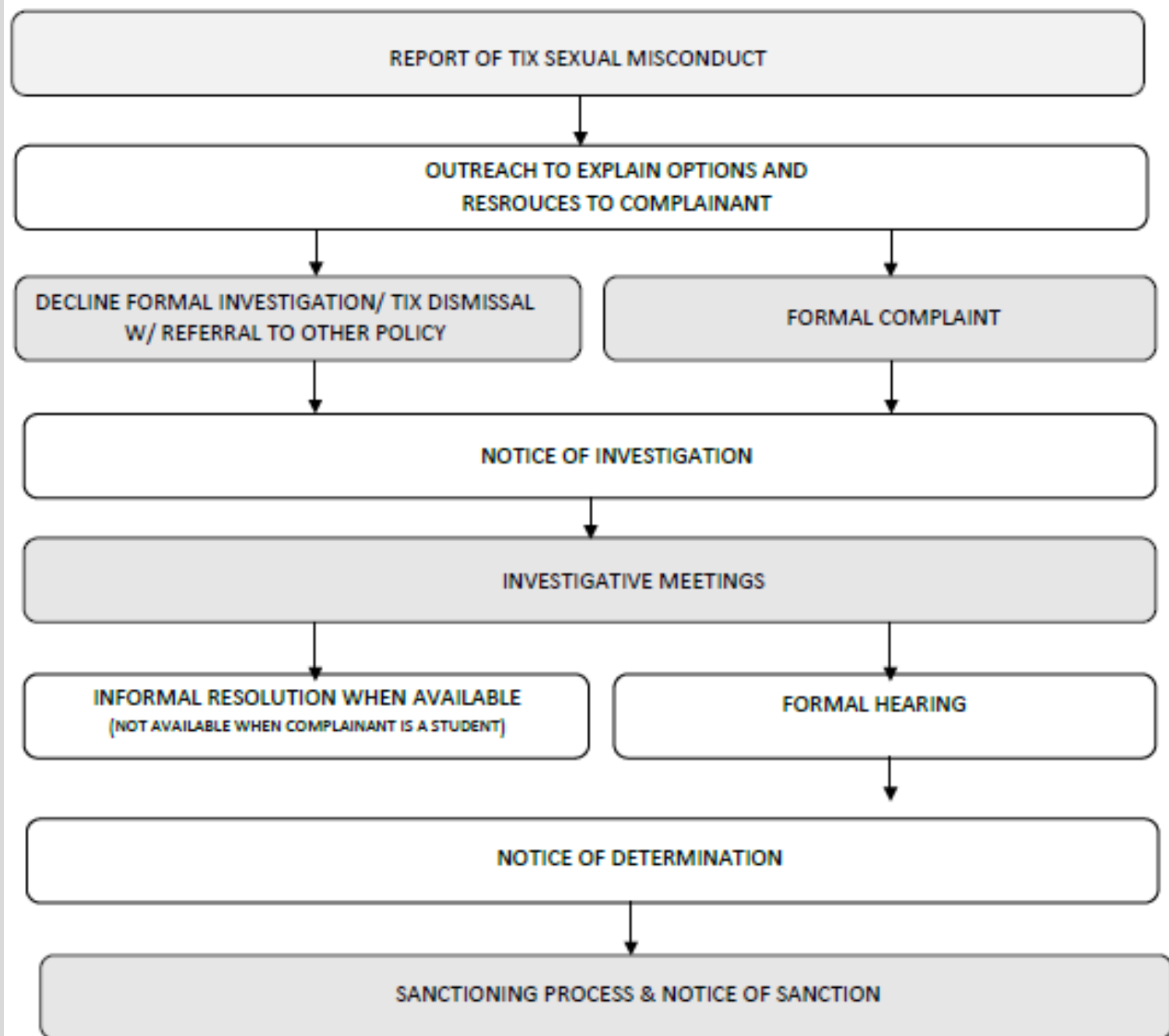
A report made by calling (305-284-8624) or emailing the Title IX Office
(titleixcoordinator@miami.edu);

A report mailed to the Title IX Office at 1320 South Dixie Highway, Ste. 100,
Coral Gables, FL 33146

A report made by contacting the Title IX Coordinator, Deputy Title IX
Coordinator, or an Area Deputy Title IX Coordinator directly; or

A report made by contacting a Title IX Liaison.

A report as outlined above may be made at any time (including during non-business hours). Note that this does not mean that an individual will be available to take a report in real time during non-business hours; however, all reports received during non-business hours will be acknowledged shortly after business hours have resumed.



A Trauma Informed Approach

- According to the National Council for Behavioral Health “70% of adults in the U.S. have experienced some type of traumatic event at least once in their lives. That's **223.4 million people.**”
- Trauma could affect complainants, respondents, or others
- The fact that someone has experienced trauma does not necessarily mean a policy was violated
- A TIA informed how we engage with individuals throughout our process

The Effects of Trauma



Trauma impairs: memory, concentration, new learning and focus.



Trauma has been correlated to: heart disease, obesity, addiction, pulmonary illness, diabetes, autoimmune disorders, cancer.



Trauma impacts an individual's ability to: trust, cope, form healthy relationships.



Trauma disrupts: emotion identification; ability to self-soothe or control expression of emotions; one's ability to distinguish between what's safe and unsafe.



Trauma shapes: a person's belief about self and others; one's ability to hope; one's outlook on life.

The effects of trauma may sometimes present obstacle to fact finding. A trauma informed approach recognizes trauma and provides an empowering environment for everyone involved; it does not use trauma to fill factual gaps



WHAT HELPS?



Creating a Trauma-Informed environment using the following five principles:

SAFETY

CHOICE

EMPOWERMENT

COLLABORATION

TRUSTWORTHINESS



**CREATING
AREAS THAT
ARE CALM AND
COMFORTABLE**

**PROVIDING AN
INDIVIDUAL
OPTIONS IN
THEIR
TREATMENT**

**NOTICING
CAPABILITIES IN
AN INDIVIDUAL**

**MAKING
DECISIONS
TOGETHER**

**PROVIDING
CLEAR AND
CONSISTENT
INFORMATION**

4. Title IX Prohibited Conduct Unpacked

Relationship Violence:

- i. Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such a relationship will be gauged by its length, type, and frequency of interaction.
- ii. Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

Sex - or Gender-Based Discrimination means unlawful discrimination against an individual because of the individual's actual or perceived sex or gender in regard to hiring, termination, promotion, compensation, training, admission, dismissal, advancement, graduation or any other term, condition or privilege of employment or student status. Prohibited sex discrimination under Title IX includes, but is not limited to: (1) harassment based on gender identity or nonconformity with sex stereotypes, and not necessarily involving conduct of a sexual nature; (2) applying any rule concerning parental, family, or marital status that treats persons differently on the basis of sex; and (3) discriminating against or excluding any student from its education program or activity, including any class or extracurricular activity on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

Sexual Assault:

Rape

Fondling

Incest

Statutory Rape

Sexual Assault (cont'd):

Rape is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling is defined as the touching of the private parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/ her age or because of his/her temporary or permanent mental incapacity.

Sexual Assault (cont'd):

Incest is defined as non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape is defined as non-forcible sexual intercourse with a person who is under the statutory age of consent.

Adjudicating Rape and Fondling Violations:

- 1) Could consent be given?
- 2) If yes, was consent given?

1) Could consent be given?

Consent cannot be given by:

- Complainant who Respondent knew or should have known was under 18 years old
- Complainant who Respondent knew or should have known was incapacitated
- Complainant who Respondent knew or should have known was intoxicated

2) If consent could be given, was it?

Consent must be:

- Knowing
- Intelligent
- Voluntary

Sexual Harassment means:

Quid pro quo harassment: conditioning the provision of an aid, benefit, or service of the University on the individual's participation in unwelcome sexual conduct.

Hostile Environment Harassment: unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it adversely affects an individual's ability to participate in or benefit from the University's education programs or activity and/or effectively denies an individual equal access to the University's education programs or activities.

(For TIX purposes, the key distinction is that the alleged conduct must be severe, pervasive, and objectively offensive. All three factors must be present; this is not the case under TVII or other University policies.)

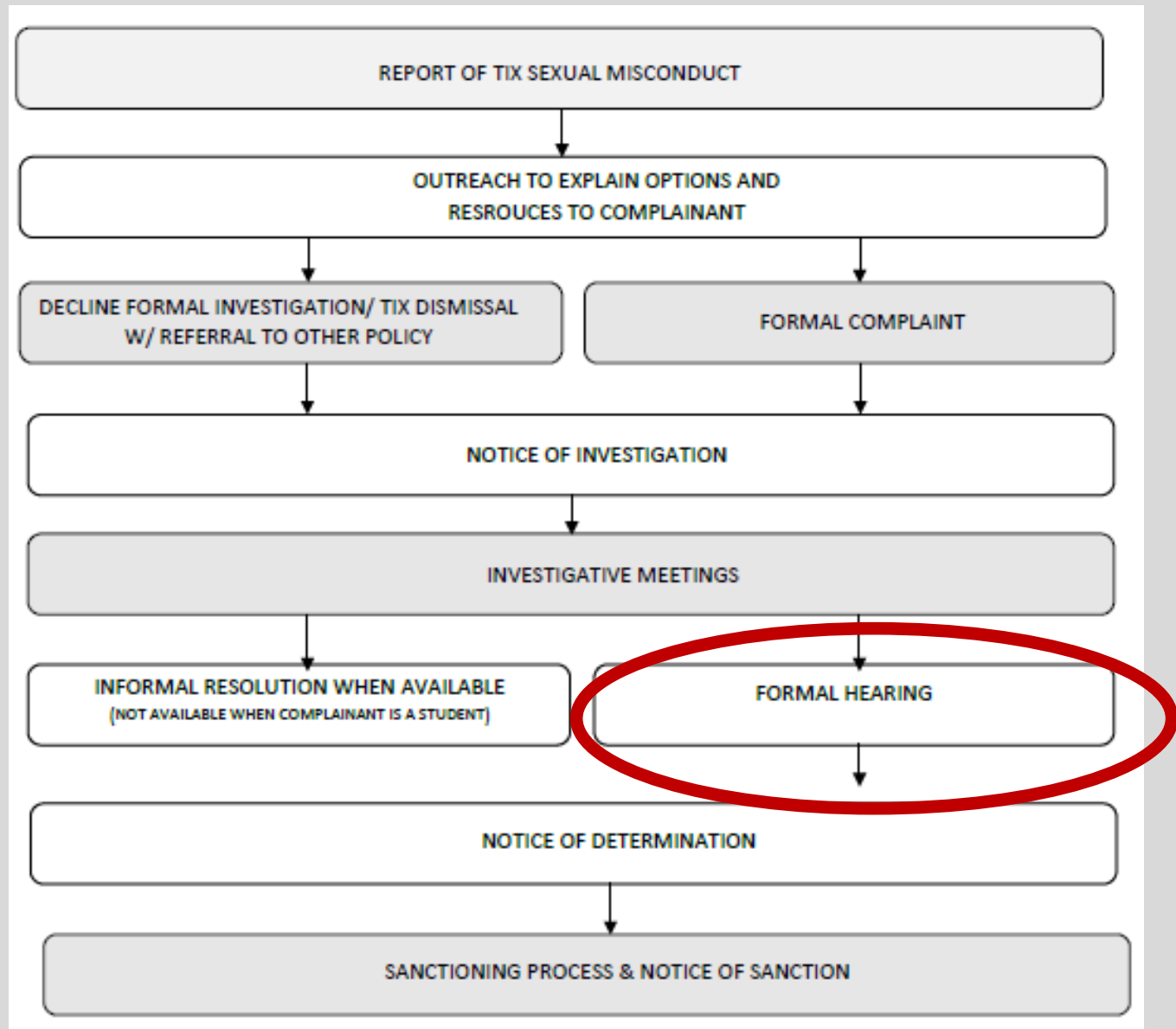
Stalking means a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress. Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

Retaliation means any adverse action taken against an individual for making a good faith report of Sexual Misconduct or participating in any investigation or proceeding under this Policy. Retaliation includes threatening, coercing, discriminating, intimidating, harassing or any other conduct that would discourage a reasonable person from engaging in activity protected under this Policy.

Remember! Prohibited Conduct that falls outside of these narrow definitions (or outside of other TIX boundaries on slide 10) MUST be dismissed under Title IX BUT can and will be reviewed under other applicable policies/ procedures.

5. The Formal Hearing

Review



The Formal Hearing

- During the formal disciplinary hearing, a panel, consisting of three individuals hears, from different parties to determine whether a policy has been violated

 - Panel Chair will be responsible for leading the hearing.

- Adjudication (objective) - Responsible v. Not Responsible

 - Fact dependent; specific to the TIX policy at issue

 - Not a moral judgment or judgement based on other University Policies or Procedures

- Standard of Proof: Preponderance of the Evidence

 - “50% and a feather”

 - 50-50= NOT RESPONSIBLE

 - Presumption of Innocence

- While unanimous decisions are not required, they are highly encouraged

 - The parties will not be provided with a panel breakdown of the decision

Hearing Outline

OPENING COMMENTS BY THE CHAIRPERSON

READING OF THE CHARGE (S)

RESPONSE TO THE CHARGE(S)

OPENING STATEMENTS

A broad overview of the incident in question.

INVESTIGATOR

COMPLAINANT

RESPONDENT

WITNESS/EXHIBITS

First by the **INVESTIGATOR**

Investigative report; photographs; reports; witnesses; etc. & Questioning

Next by the **COMPLAINANT**

Next by the **RESPONDENT**

Presentation of information & Questioning. Cross examination will be conducted after each individual presents; parties/ witnesses will not be re-called for cross-examination.

FINAL REMARKS

This statement should be a summary of why the panel should reach a specific decision

INVESTIGATOR

COMPLAINANT

RESPONDENT

END OF HEARING- DELIBERATION PERIOD

NOTICE OF DETERMINATION

Cross Examination

- Cross examination as a “truth-seeking” tool
- Cross examination MUST be conducted by advisor and NOT directly by the parties
- “You cannot un-ring a rung bell”
- Keeping decorum and a respectful environment during cross examination
 - Question structure
 - Repetitive questions
 - Tone

Relevance

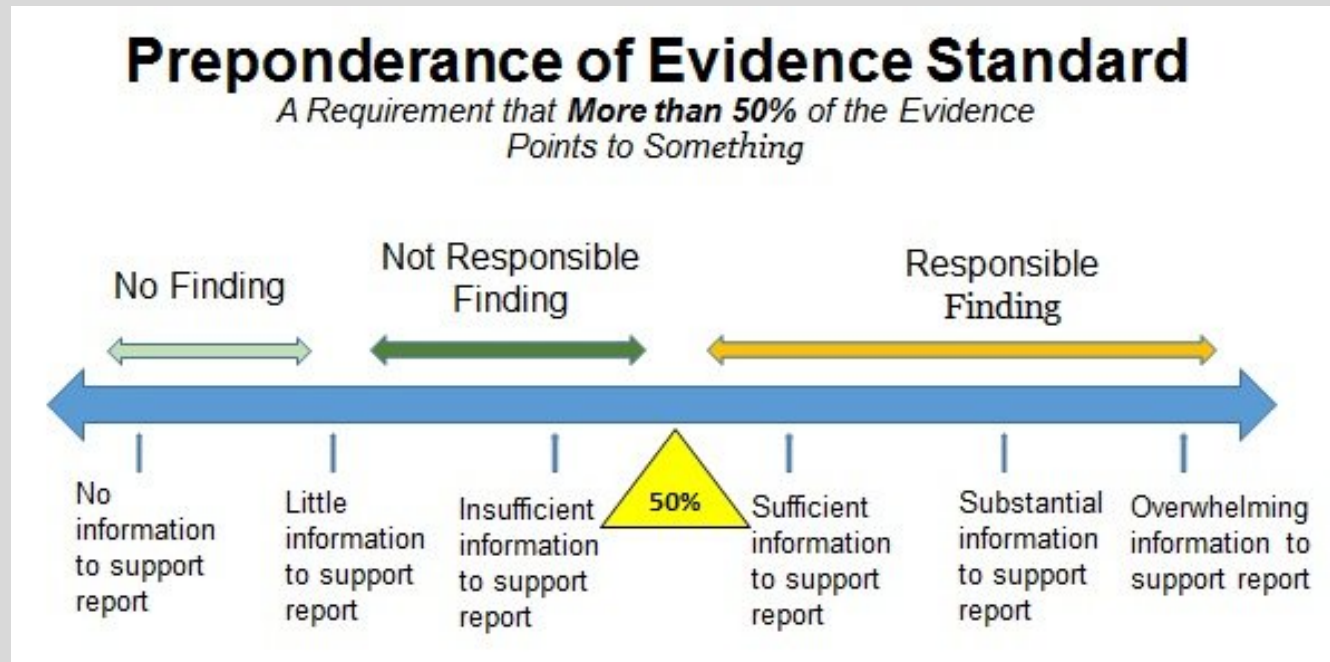
- “Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant”
- Should focus on the topicality and specificity of what is being evaluated

Rape Shield Protections

- Section 106.45(b)(6)(i)-(ii) protects complainants (but not respondents) from questions or evidence about the complainant's prior sexual behavior or sexual predisposition, mirroring rape shield protections applied in Federal Courts
- Section 106.45(b)(6) prohibits all evidence (and not just questions) about the complainant's sexual behavior or predisposition unless such evidence is offered to prove that someone other than the respondent committed the conduct alleged by the complainant or if the questions or evidence concern specific incidents of the complainant's previous sexual behavior with respect to the respondent and are offered to prove consent (prior sexual activity does not automatically equal consent but it could be relevant information).
- Avoiding victim blaming

Preponderance of the Evidence

“More likely than not” or 50% and a feather



50-50= not responsible

All Panel Hearings...

- ✓ Are Recorded (deliberations are not recorded)
- ✓ Use Preponderance of the Evidence Standard
- ✓ Allow the Panelists to ask questions of everyone involved:
 - Accused Student
 - Investigator
 - Witnesses
- ✓ Are Confidential

6. Panelist Skills & Best Practices

- Confidentiality
- Impartially & Conflicts of Interest
- Avoiding bias
- Avoiding prejudgment of the facts
- Assessing Credibility
- The Anatomy of a Good Question
- Examining Documents
- Avoid Common “Sympathy” Pitfalls
- Compassion Fatigue and Secondary Trauma

Confidentiality

- Information regarding the behavior of any individual is not to be disclosed or discussed outside of the hearing
- Information regarding an individual's disciplinary status should not be discussed outside of the hearing
- The vote of each individual panelist is confidential
- If you need to debrief, you are welcome to schedule a time to speak with Maria Sevilla or your fellow panelists in that hearing.

Impartiality & Conflicts of Interest

A hearing board member should not participate in a hearing where they feel they are unable to be fair and impartial:

- Connection to the person/ org
- Connection to the subject matter

If you feel you cannot be an objective adjudicator:

- Notify the chair of the panel as soon as possible, even if in the middle of a hearing
- If necessary, we will re-schedule the hearing; always preferable to a complete re-do because of an appeal

Avoiding Bias

1. Anchoring bias.

People are **over-reliant** on the first piece of information they hear. In a salary negotiation, whoever makes the first offer establishes a range of reasonable possibilities in each person's mind.



2. Availability heuristic.

People **overestimate the importance** of information that is available to them. A person might argue that smoking is not unhealthy because they know someone who lived to 100 and smoked three packs a day.



3. Bandwagon effect.

The probability of one person adopting a belief increases based on the number of people who hold that belief. This is a powerful form of **groupthink** and is reason why meetings are often unproductive.



4. Blind-spot bias.

Failing to recognize your own cognitive biases is a bias in itself. People notice cognitive and motivational biases much more in others than in themselves.



5. Choice-supportive bias.

When you choose something, you tend to feel positive about it, even if that **choice has flaws**. Like how you think your dog is awesome — even if it bites people every once in a while.



6. Clustering illusion.

This is the tendency to **see patterns in random events**. It is key to various gambling fallacies, like the idea that red is more or less likely to turn up on a roulette table after a string of reds.



7. Confirmation bias.

We tend to listen only to information that confirms our **preconceptions** — one of the many reasons it's so hard to have an intelligent conversation about climate change.

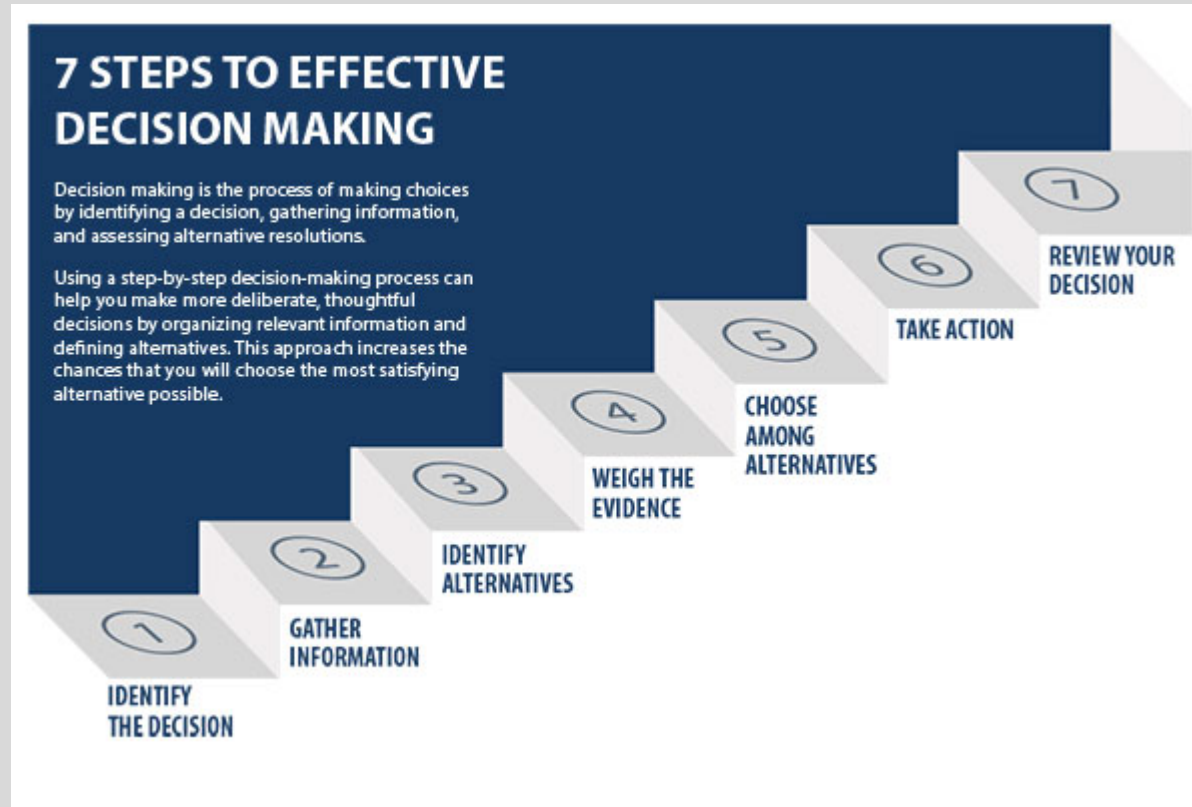


8. Conservatism bias.

Where people favor prior evidence over new evidence or information that has emerged. People were **slow to accept** that the Earth was round because they maintained their earlier understanding that the planet was flat.



Avoiding prejudice of the Facts



REMEMBER! While not required, unanimous decisions are highly encouraged

Assessing Credibility

Factors to consider in assessing credibility:

Role: What is the role of the person at the hearing

Witnesses: What is the relation of this witness to the parties?

Motive: Does the speaker have a motive to provide misleading information?

Relevance: Is the person focusing on the question at hand, or are they distracting the panel?

Documentary evidence: Is there any documentation supporting the testimony?

Delivery & Demeanor: Do the statements appear prepared/ rehearsed?

The testimony of a single, unbiased, disinterested witness may outweigh several biased, interested testimonies.

The Anatomy of a Good Question

Good questions for panelists to ask are:

- Informed (it's clear you were listening):
 - If an individual says they went to Wynwood on Tuesday, asking them when they went to Wynwood might give the impression you were not paying attention, even if your intent was just to get clarification on the time at which they went; instead ask: At what time on Tuesday?
- Provide Clarity for the panel and the parties
 - If an individual says they do not remember the time, ask questions that provide clarity for all: Was it before or after dinner? Was it dark out?
- Focus on the Behavior and on the Policy
 - Ask questions about the incident at hand, rather than general behavior

Examining Documents

- Read through the document or ask for summary
- Ask the person to guide your attention to the most relevant parts they want you to consider
- Ask for the necessary time to silently review the materials
- Take notes/ underline issues that are unclear or important
- Evaluate/ inquire about relevance



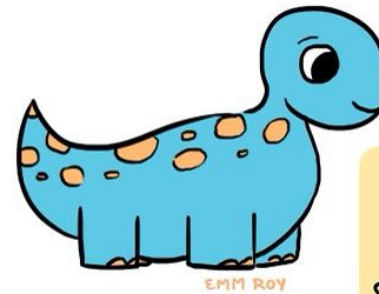
Avoiding Common “Sympathy” Pitfalls

- Remember our Trauma Informed Approach!
- Stick to the facts

Compassion Fatigue & Secondary Trauma

Trauma related stress reactions and symptoms resulting from exposure to another individuals' traumatic experiences, rather than from exposure directly to a traumatic event.

IT'S A GOOD DAY TO
TAKE CARE OF YOURSELF
(SO IS EVERY OTHER DAY).



SELF-CARE IS NOT
LAZY OR SELFISH.
SELF-CARE IS HEALTHY.
SELF-CARE IS IMPORTANT.
SELF-CARE IS NECESSARY.



YOU DESERVE TO
BE AS NICE TO
YOURSELF AS YOU
ARE TO OTHER
PEOPLE.

7. Final Questions

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Questions, comments, or feedback?

Email: titleixcoordinator@miami.edu

Phone: (305) 284-8624