

UNIVERSITY
OF MIAMI



Major Panelist/ Title IX Training

Fall 2020

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INTRODUCTIONS

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- Name
- Class Year
- Major
- Summer Fun Fact

Agenda

1. Student Conduct Philosophy at UM
2. Code of Conduct Overview
3. Major Disciplinary Policies and Procedures
4. Best Practices Panelists

-----BREAK-----

5. Title IX and Student Conduct
6. Title IX Policies and Procedures
7. A Trauma Informed Approach

1. Student Conduct Philosophy at UM

Student Conduct Objectives

- ✓ Keep the community safe
- ✓ Help students understand their role in the community
- ✓ Educational and developmental mission

2. Code of Conduct Overview

The Student Rights and Responsibilities Handbook

- All policies that students are expected to follow are listed and explained in the Student Rights and Responsibilities Handbook (SRR)
- Available online at www.miami.edu/SRR

When does the Code of Conduct apply?

“Any violation of University policies or procedures may result in disciplinary sanctions...

...whether an incident occurs on campus or in any location off campus...”

MOST COMMON POLICY VIOLATIONS

Alcohol Theft / Possession Smoking

Drugs / Drug Paraphernalia False Information

Complicity Damage / Vandalism

Residence Halls Policies Requests or Orders

Emergency Equipment / Procedures

Parking ID Cards Pets

Student Rights in the Disciplinary Process

1- Abstain from verbal participation

2- Right to an advisor

Must meet Handbook definition

Cross-examines (sexual misconduct hearings only)

3- Right to a Formal Disciplinary Hearing

4- Right to review related information and questions witnesses, and provide the same on her/his own behalf during a formal disciplinary hearing

Types of Discipline Cases

Individual vs. Organizational

(Determined by nature of parties involved)

University vs. Major Level

(Determined by the seriousness of the offence/ disciplinary history)

Sexual Misconduct

(Title IX Violations)

Who hears each case

UNIVERSITY LEVEL:

- Three person panel: 3 students
- Advised by Dean

MAJOR LEVEL OR TITLE IX:

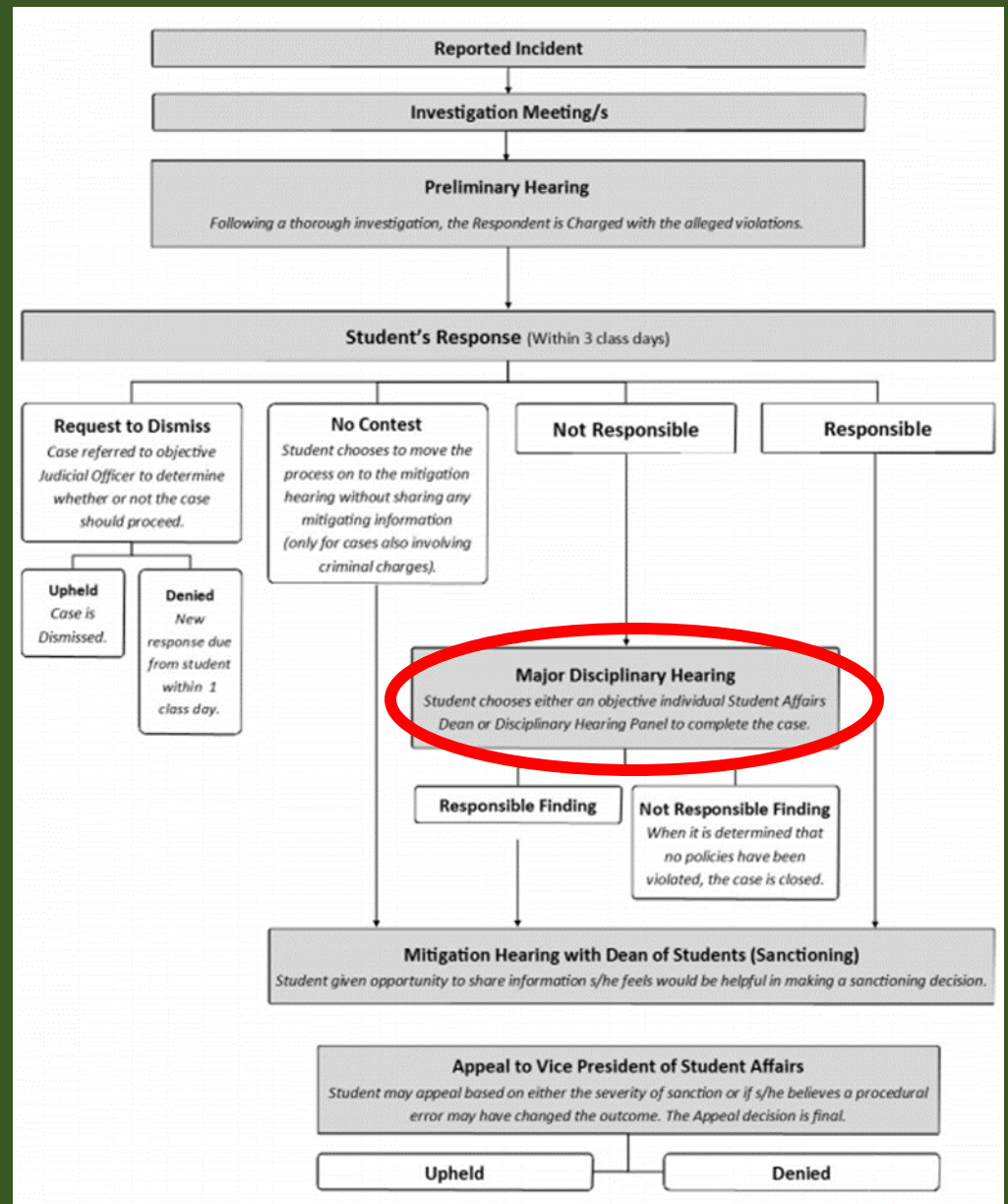
- Panel of: 1 Dean (Hearing Chair)
 - 1 Faculty Member
 - 1 Student (Junior/Senior if Respondent is undergrad;
Grad student if Respondent is Grad student; Med student if
Respondent is med student; Law student if Respondent is law
student)

3. Major Disciplinary Policies & Procedures

Common Major Policy Violations

- Drug Distribution and other drug policy violations
 - Physical Assault
- Harm or Harassment to Others
 - Vandalism
- Violation of Probation

Major Disciplinary Process



How the System Works

**INCIDENT ⇒ REPORT ⇒ INVESTIGATION ⇒
CHARGE/S ⇒ RESPONSE ⇒ HEARING ⇒ FINDING ⇒
APPEAL**

The same process **MUST** be followed in **EVERY** case that is brought to the attention of a discipline officer.

Major Disciplinary Panels

Responsibility:

- Objective adjudication based on factual information presented during the hearing

Standard of Proof:

- Preponderance of the Evidence Standard
- More likely than not/“50% and a feather”

Major Disciplinary Panels

Timeline for Decision:

- Must render decision within 3 class days of hearing

Unanimous decisions are not required but are strongly encouraged:

- Ensure all facts are carefully considered
- Ensure all viewpoints are considered

Major Disc. Hearing Outline

1- OPENING COMMENTS BY CHAIRPERSON

INTRODUCTIONS & APPROVAL OF PRESENCE

READING OF THE CHARGE(S)

RESPONSE TO THE CHARGE(S)

2- OPENING STATEMENTS (broad overview of the incident in question)

INVESTIGATOR

COMPLAINANT

CHARGED STUDENT/ RESPONDENT

3- PRESENTATION OF INFORMATION (Reports; own perspective; evidence; witnesses; etc.)

INVESTIGATOR

COMPLAINANT

CHARGED STUDENT/ RESPONDENT

4- FINAL REMARKS (Summary overview related to what decision the panel should reach and why)

INVESTIGATOR

COMPLAINANT

CHARGED STUDENT/ RESPONDENT

5- DISMISSAL FOR DELIBERATION

4. Best Practices for Panelists

Remember all Panel Hearings...

- ✓ Follow a Script
- ✓ Are Recorded
- ✓ Use Preponderance of the Evidence Standard
- ✓ Allow the Panelists to ask questions of everyone involved:
 - Complainant
 - Accused Student
 - Investigator
 - Witnesses
- ✓ Are Confidential

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

Fact Finding Questions

Good questions for panelists to ask are:

- Informed (it's clear you were listening)
- Provide Clarity for the panel and the student
- Focus on the Behavior and on the Policy

Impartiality & Conflicts of Interest

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

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

If you feel you cannot be an objective adjudicator:

- Notify the Investigator or Panel Chair as soon as possible, even if at the 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



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.

Anatomy of a Good Question

Good questions for panelists to ask are:

- Informed (it's clear you were listening):
 - Ex: 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
 - Ex: 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



BREAK (OPTIONAL DISMISSAL)

Upcoming Content Disclaimer

The next portion of this training addresses topics such as sexual assault and other forms of sexual misconduct and gender discrimination which may be emotionally upsetting or triggering to some people. Please, feel free to step out as needed.

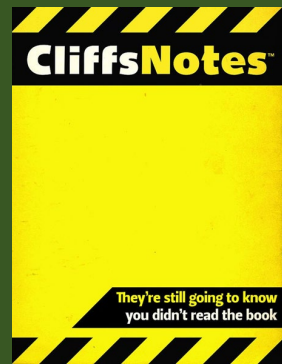
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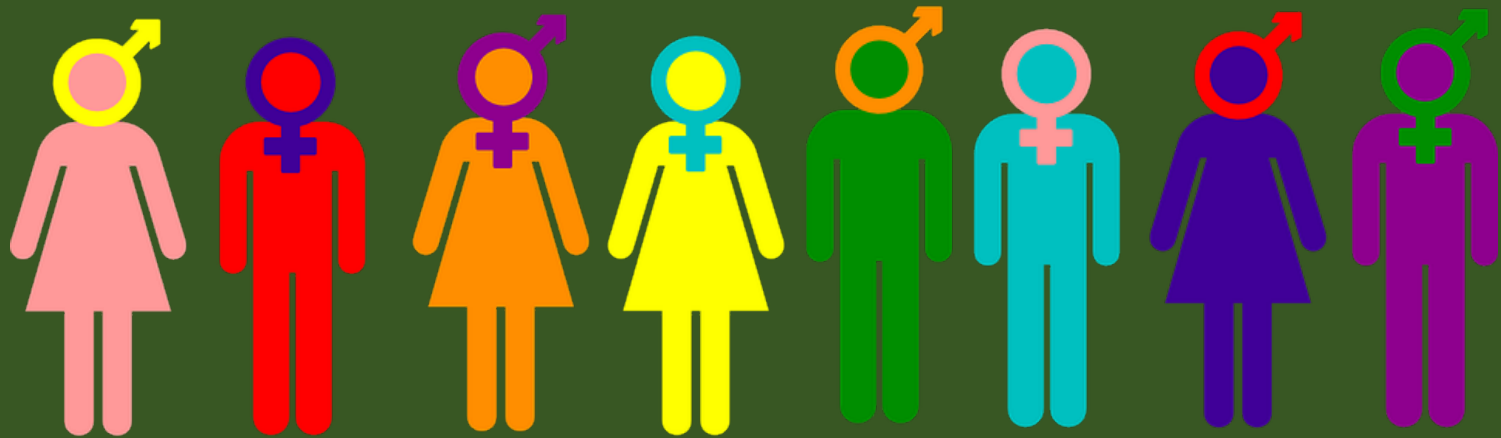
5. Title IX and Student Conduct

What is Title IX?

Title IX is a law that prohibits sex or gender discrimination in educational programs and activities (including campus experience)



It imposes a responsibility to create an environment of inclusion where every student can thrive, regardless of their sexual or gender identity



The UM Approach

Prevent – through awareness and education

- Orientation
- Floor programing
- Year-round events
- Policy and Procedure workshops



Stop – through empowerment

- Bystander Intervention

Address – responding in a caring and effective manner

- Support and self-care resources
- Disciplinary Policies and Procedures to hold perpetrators accountable

6. Title IX Policies and Procedures Unpacked

Sexual Misconduct Policies at UM:

Dating Violence

Domestic Violence

Sexual Assault/Battery

Sexual Harassment

Stalking

Dating Violence

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.

Domestic Violence

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.

Sexual Assault

- A. Rape – penetration, no matter how slight, of vagina or anus with any body part or object, or oral penetration by a sex organ of another person, w/o consent of the victim
- B. Fondling – touching of private parts of another person for the purposes of sexual gratification, w/o consent of the victim, including instances where victim is incapable of giving consent because of their age or their temporary or permanent mental incapacity.

Adjudicating Sexual Assault 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 means an intelligent, knowing, and voluntary agreement to engage in specific activity, and shall not be construed to include submission obtained by force, intimidation, threat, blackmail, extortion, or any other method of coercion or duress.

Consent is...

- Knowing: the person must have specific knowledge of each activity they are agreeing to engage in
- Intelligent: verbally or otherwise communicated
- Voluntary: one, given, or acting of one's own free will, and not through force, intimidation, threat, blackmail, extortion, or any other method of coercion or duress; "giving in" is not the same as providing consent.

Sexual Harassment

- A. 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.
- “This for that”

Sexual Harassment

B. 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.

Stalking

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 (electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used)

Retaliation

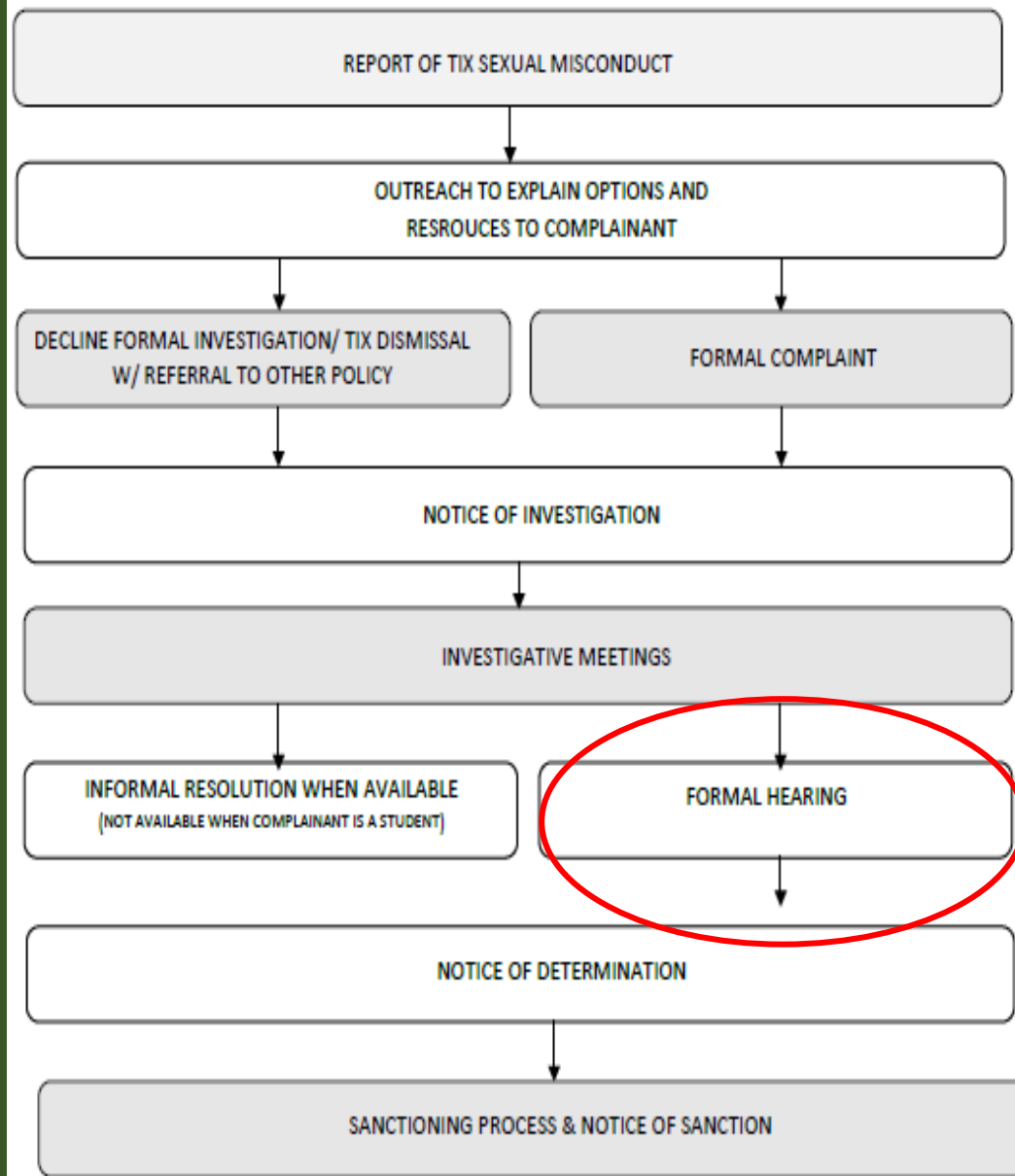
Any adverse action taken against an individual for making a good faith report of Sexual Misconduct or participating in any investigation or proceeding under this Policy.

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 **MUST** be dismissed under Title IX **BUT** can and will be reviewed under other applicable policies/ procedures.

Title IX Disciplinary Process



Title IX 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

Title IX Hearing Outline

OPENING COMMENTS BY CHAIRPERSON

READING OF CHARGE(S)

RESPONSE TO 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 by advisors 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 Complainant advisor and Respondent advisor, 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”

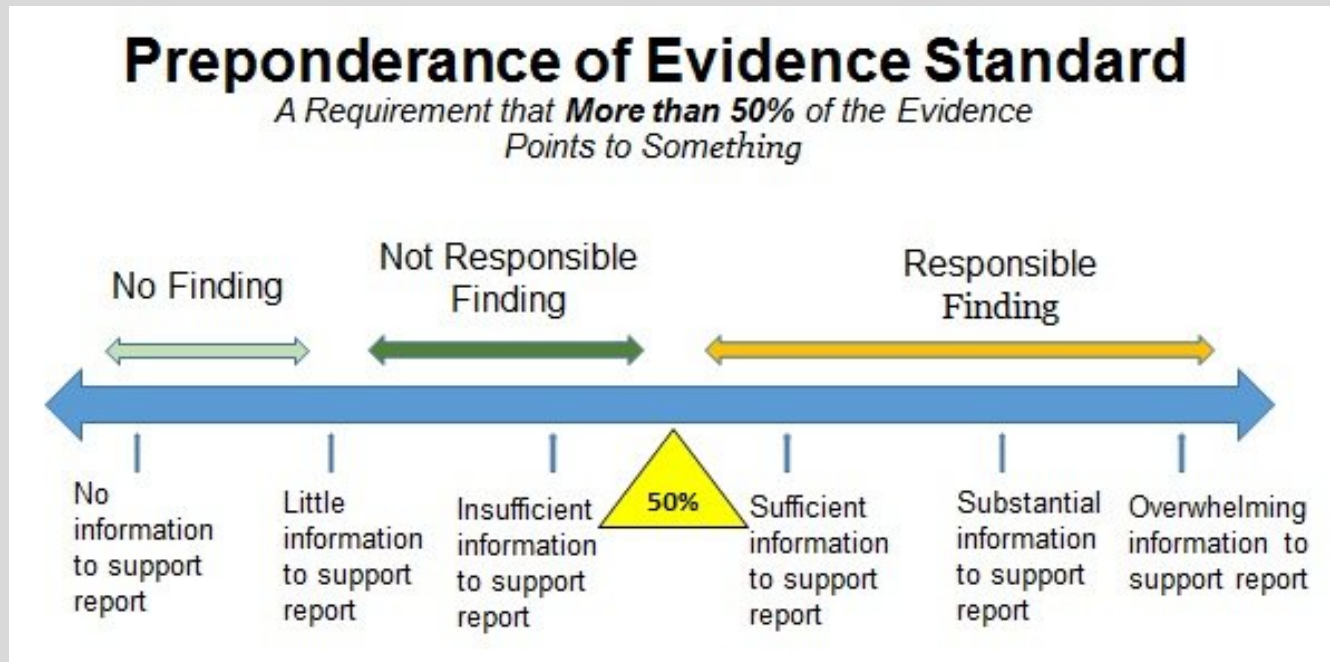
Should focus on the topicality and specificity of what is being evaluated

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

7. A Trauma Informed Approach

Trauma Informed Approach

- Someone who has experienced sexual violence or other violence may have experienced trauma
- This trauma may effect how they behave and/or interact with the panel during a hearing

A Trauma Informed Approach

- Trauma could affect complainants, respondents, or witnesses
- The fact that someone has experienced trauma does not necessarily mean a policy was violated
- The fact that someone may appear “fine” during a hearing does not necessarily mean a policy was not violated

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**Questions, comments,
suggestions?**

**Email Raquel McDowell at:
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