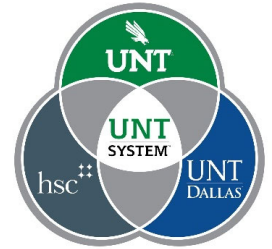


UNT System Title IX Hearing Officer & Hearing Panel Training



AGENDA

	DAY TWO: September 9, 2020	Presenter	Session Time
	Day Two Kickoff	Angela Brown	9:00a
4	<p>Preparing for the Hearing:</p> <ul style="list-style-type: none"> • Discuss Hearing preparation • Pre-hearing process • Discuss consent, credibility, & reliability • Weighing preponderance of the evidence • Walk through Rape Shield Laws • Relevance of Questions 	<p>Kory Levingston Adalyn Burger</p>	9:05a – 9:55a
5	<p>Managing the hearing process:</p> <ul style="list-style-type: none"> • Discuss use of technology and holding virtual meetings • Discuss Managing attorneys and advisors • Discuss Trauma informed hearings • Discuss relevance of questions & cross examination 	<p>Eve Shatteen Bell Maureen McGuinness</p>	10:00a – 10:50a
	BREAK		10:50a – 11:00a
6	<p>Making a Decision:</p> <ul style="list-style-type: none"> • Overview of the deliberation process • Discuss the analysis of information & making findings • Discuss the sanctioning process • Discuss the written determination • Discuss the notification process 	Jarrold Jenkins	11:00a – 11:25a
7	<p>Appeal & Record Keeping:</p> <ul style="list-style-type: none"> • Provide an overview of the appeal process following the decision (the bases of the appeal process) • Discuss important record-keeping practices and best tips for the hearing officer 	<p>LaToya Haynes Felicia Chism</p>	11:30a – 11:50a
	End of Session or Question & Answer	Angela Brown	11:50a - Noon



Your Presenters...

Module 4

Preparing for the Hearing

Kory Levingston

Title IX Compliance Manager,
UNTHSC

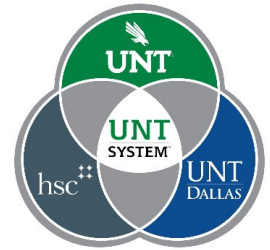


Decision Making Skills

Adalyn Burger

Assistant Director, Community
Standards & Title IX Coordinator, UNTD





Your Presenters...

Module 5

Managing the Hearing Process

Eve Shatteen Bell

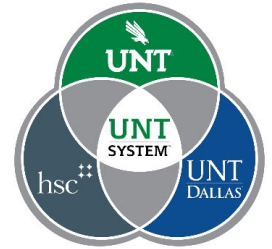
Assistant Vice President, Director of
Equal Opportunity and Title IX
Coordinator, UNT



Maureen “Moe” McGuinness

Dean of Students and Assistant
Vice President for Student
Affairs, UNT





Your Presenters...

Module 6

Making a Decision

Jarrod Jenkins

Assistant Director,
Equal Opportunity, UNT

Pronouns: he/him/his



Module 7

Appeal & Record Keeping

LaToya Haynes

Assistant Director,
Community Standards –
Housing & Res Life, UNT



Felicia Chism

Assistant Director,
Dean of Students, UNT





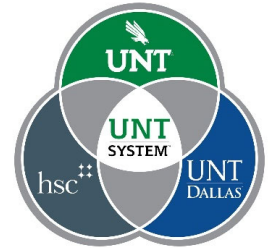
Preparing for the Hearing

UNT World Hearing Officer Training

September 9, 2020

Kory Levingston, UNTHSC Title IX Compliance Manager

Pre-hearing Meetings



- Pre-hearing meetings can provide an opportunity to:
 - Answer questions the parties and advisors have about the hearing and its procedures.
 - Clarify expectations regarding logistics, decorum, and technology (when applicable).
 - Clarify expectations regarding the limited role of advisors.
 - Discern whether parties intend to ask questions of any or all witnesses (in order to evaluate which witnesses should be invited to attend the hearing).
 - Invite parties to submit questions in advance, but don't not require it.
 - Discern any conflicts of interest/vet recusal requests.
 - Understand (and perhaps preliminarily field) any questions regarding relevance of evidence or questions.

Pre-Hearing Preparation



- Could include:
 - “Motions” hearing
 - Meeting of Panel
 - Review of Investigation Report
 - Review of file of “directly related” evidence that was not relied upon by investigators
 - Preparation of questions
- Must include:
 - Vetting of decision-maker/panel
 - Conflicts check
 - Recusal protocol

Must Do: Prep for the Hearing



All Decision-Makers Must Review:

- The Respondent's written notice (NOIA) to understand all allegations.
- Review the policy alleged to have been violated.
 - Parse all the policy elements (what does it take to establish a policy violation?)
 - Identify the elements of each offense alleged.
- Review all the material carefully and thoroughly – get a general overview of the complaint.
- Review it a second time and note all areas of consistency of information.
 - You don't need additional verification or questioning on these issues, of assuming the accuracy of consistent information (but beware of suspiciously consistent stories).
- Read it a third time to identify inconsistencies in the information.
 - Here is where you will concentrate your questions.

Preparing Questions



- Write down the following as a reminder:
 - What do I need to know?
 - Why do I need to know it?
 - If the answer to this is not that it will help you determine whether or not a policy violation occurred, and you can explain a rationale for that; then it is not something you need to know!
 - What is the best way to ask the question?
 - Who is the best person to get this information from? The investigator? A party? A witness?
- When dealing with conflicting or contested testimony apply a credibility analysis.

Preparing for the Hearing



- Dress professionally – Jeans, t-shirts, shorts, or sandals are not appropriate
- Arrive prepared and early
- Bring snacks and water/drinks
- Turn off your phone! And put it away!
- Bring a pen and paper or note-taking device
- Clear calendar after the hearing – deliberation could take 30 minutes or it could take much longer.
- Note-writing tips
 - Less is better; record what you need to make a determination.

General Logistics



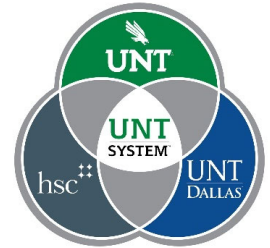
- Recording
 - how, by whom, etc.
- Attendance by parties and witnesses
- Location and Room set-up
 - Comfort items (water, tissues, meals if needed)
 - Privacy concerns; sound machine
- Seating arrangements
- Materials
- Access to administrative support if needed (phones, copiers)

General Logistics

- Advisors
- Parties and witnesses waiting to testify
- Breaks
- Use of A/V
- Waiting for a decision

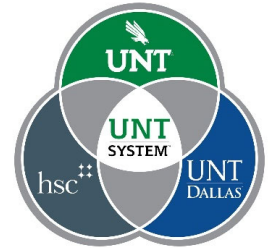


Hearing Decorum



- Be professional, but not lawyerly or judge-like
 - This is not *Law and Order* – this is an administrative process at a school.
 - You are not cross-examining or interrogating, you are striving to determine whether the Respondent(s) violated the University's policy.
- Be respectful
 - Tone, Manner, Questioning.
 - Sarcasm or being snide are never appropriate.
 - Maintain your composure: Never allow emotion or frustration to show.

Hearing Decorum



- Work to establish a baseline of relaxed conversation for everyone in the room.
- Maintain good eye contact; “listen with your eyes and your ears”
- Listen carefully to everything that is said.
 - Try not to write too much when people are talking
 - If questioning, focus on the answer, rather than thinking about your next question
- Nod affirmatively
- Do not fidget, roll your eyes, or give a “knowing” look to another panel member
- Do not look shocked, smug, stunned, or accusing



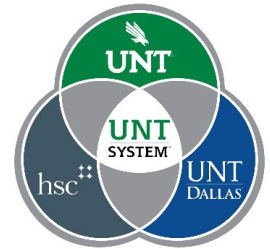
Decision-Making Skills

UNT World Hearing Officer Training

September 9, 2020

Adalyn Burger, UNTD Assistant Director, Student Services

Consent



Consent. “Consent” means words or actions that show an active, knowing and voluntary agreement to engage in sexual activity. Consent cannot be obtained by force, coercion, manipulation, threats, or when an individual administers any substance to another person, without the person’s knowledge, that intentionally impairs the ability of the person to voluntarily consent. Consent is absent when the sexual activity in question exceeds the scope of previously given consent. Consent may be revoked at any time.

Understanding Evidence



- If the information helps to prove or disprove a fact at issue, it should be admitted.
- If credible, it should be considered.
 - Evidence is any kind of information presented with the intent to prove what took place.
 - Certain types of evidence may be relevant to the credibility of the witness, but not to the alleged policy violation directly.

Evidence



- No restriction on parties discussing case or gathering evidence
- Equal opportunity to:
 - Present witnesses, including experts
 - Present evidence
 - Inspect all evidence, including evidence not used to support determination
- No limits on types/amount of evidence that may be offered except that it must be relevant.
- Parties may have access to all gathered evidence that “directly relates” to the allegations available for reference and use at the hearing, but they must make the case for its relevance.

Standard of Evidence



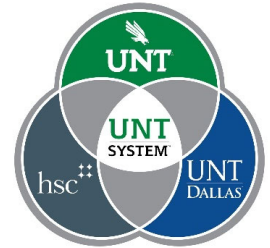
- Preponderance of the evidence: “More likely than not.”
- The only equitable standard
- 50.1% (50% plus a feather)
- The “tipped scale”

Ask Yourself



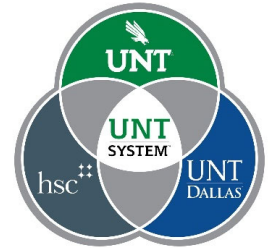
- Is it relevant?
- Is it reliable (credible)?
- Will we rely upon it as evidence supporting a rationale/the written determination?

Relevance



- Evidence is generally considered *relevant* if it has value in proving or disproving a fact at issue.
 - Regarding alleged policy violation and/or
 - Regarding a party or witness’s credibility
- The investigator will have made initial relevance “decisions” by including evidence in the investigation report
- But relevance is ultimately up to the decision-maker, who is not bound by the investigator’s judgment.
- **All** relevant evidence must be objectively evaluated and considered – inculpatory and exculpatory.

Understanding Evidence



- Decision-maker may consider and assign weight to different types of evidence, when relevant and credible:
 - Documentary evidence (e.g. supportive writings or documents).
 - Electronic evidence (e.g. photos, text messages, and videos).
 - Real evidence (i.e. physical objects).
 - Direct or testimonial evidence (e.g. personal observation or experience).
 - Circumstantial evidence (i.e. not eyewitness, but compelling).
 - Hearsay evidence (e.g. statement made outside the hearing but presented as important information).
 - Character evidence (subject to a relevance determination, but often does not prove or disprove the underlying allegation).
- Decision-makers should typically disregard:
 - Impact statements (typically only relevant in sanctioning).

Rape Shield Provision



- Evidence of the Complainant’s prior sexual behavior or predisposition is explicitly and categorically **not relevant** except for two limited exceptions:
 - Offered to prove that someone other than the Respondent committed the conduct alleged, or
 - Concerns specific incidents of the Complainant’s sexual behavior with respect to the Respondent and is offered to prove consent
- Even if admitted/introduced by the Complainant



Additional Evidence Restrictions

- Additional permissions required for:
- Records made or maintained by a:
 - Physician
 - Psychiatrist
 - Psychologist
- Questions or evidence that seek disclosure of information protected under a legally recognized privilege must not be asked without permission.

Break Out Groups



Group 1	Group 2	Group 3	Group 4
Wanda Boyd Leslie Crosdale Dolly Garcia Katy McDaniel Shaniece Miller Emily Mire Symone Osieko Tim Willette Elizabeth With	Angela Brown Adalyn Burger Kimony Carter Felicia Chism Michael Cuevas Curtis McDowell LaCresha Moore Alvin Roberts Michelle Williams Joanne Woodard	Lauren Carter Alexandria Cooper Jane Gray Anjela Guijosa LaToya Haynes Jarrod Jenkins Moe McGuinness Eve Shatteen Bell Renaldo Stowers	Rifeta Badic Alisha Harris Carter Francesqua Chapman Jamaica Chapple John Harrell Kory Levingston Ashley Spearman Alan Stucky Brandon Turner

Relevance Exercise

Scenario:

Juanita Morales, a freshman member of the women's soccer team, made a Title IX report directly to the Title IX Coordinator. On the morning of October 11, her teammate, who was checking her email in the computer lab, yelled for Juanita to come and look at something on the computer. Juanita saw an email sent from the men's soccer team email address, which said "greetings new freshman, meet the girl next door." The email included a photo of Juanita's face photoshopped onto a naked body with huge breasts.

Everyone in the lab knew it wasn't Juanita, but they all laughed anyway. Juanita ran from the room crying, embarrassed that others would think it was her. She immediately called Ivan, a member of the men's soccer team, who she believed sent the email. Earlier in the year, Ivan asked her out several times, but she didn't like him. She found him really annoying, and while she knows it wasn't nice, she called him a total loser in front of his friends. She knows that he sent the email to hurt and embarrass her.

Ivan told the investigator that he believes Juanita is blowing the whole matter out of proportion. He admits to creating the photo for a class project. He reports:

"It was only meant to be a joke. I never put her name on it, so what's the big deal? This is a work of art that I created for my class, not a porn picture or anything. I only showed my artwork, which by the way is protected by the First Amendment, to a few of my teammates. I know my rights very well, since my dad is a lawyer. In fact, the First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Ivan stated that he showed the photo to a couple of teammates but did not send the email. The email account is for official team business. The coaches and captains have the password; one captain has shared it broadly with all the seniors on the team. The investigator also consulted with John Wang, assistant director of information technology. John was able to confirm that someone using the computer lab computer sent the picture from the men's soccer team email account. The picture was inserted into the email via a flash drive and he was unable to determine which student had logged in. John received Ivan's consent to inspect his laptop. The photo was on his hard drive but was not sent out via email to anyone. He said that when he doesn't have his laptop with him, it is typically inside his locker. Ivan also told him that he hasn't given anyone else his laptop password.

Ivan was notified via the institution's NOIA letter that it is alleged that he violated the institution's sexual harassment policy, specifically the hostile environment provision.

The definition of Sexual Harassment is:

- unwelcome conduct,
- determined by a reasonable person,

- to be so severe, and
- pervasive, and,
- objectively offensive,
- that it effectively denies a person equal access to the Recipient’s education program or activity.

Relevance Ruling:

You are the Chair of the Hearing Panel. You must determine whether the following questions seek relevant information and/or whether the specific piece of evidence is relevant. Let’s start with some of the evidence from the investigation report. Is it relevant that:

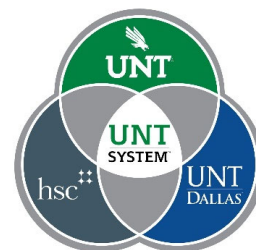
- Ivan is a member of the men’s soccer team?
- Juanita is a member of the women’s soccer team?
- There was “history” between Ivan and Juanita?
- Juanita called Ivan “a loser” earlier in the year in front of his friends?
- Ivan admitted to creating the image for his class?
- Ivan showed the image to a few teammates?
- The image was sent from a computer lab computer?
- Ivan consented to letting John from IT inspect his laptop?

Relevant or Related

Consider whether the following pieces of evidence, if part of the fact-pattern originally provided from the investigation report, would be relevant:

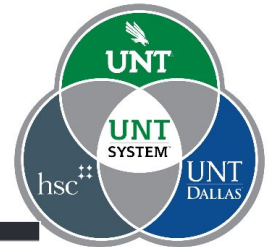
- Juanita’s advisor’s daughter is in the same art class with Ivan and stated that she never had an assignment like that for class.
- Ivan’s friend, Alan, states that Juanita really is not bothered by the photo because he has observed occasions where Juanita flashed her breasts at Ivan a few times before. Juanita also told Ivan and Alan that she wanted breast implants.
- Ivan’s high school soccer coach has prepared a written character reference for Ivan, which states that he was an upstanding member of his high school team and community, a four-year leader on the squad, and volunteered many times at the local YMCA youth program.

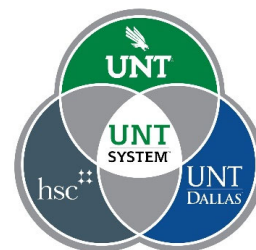
- Ivan stated that at the time that the email was sent, he was attending his poli-sci class, which had an in-class exam on that day.
- Juanita provided a screenshot of Ivan’s Twitter feed, which showed that he retweeted an announcement from his favorite band just two minutes prior to the precise time that the email was sent.
- Ivan’s advisor wants to ask Juanita about her academic progress during the fall term. Ivan and his advisor believe that Juanita was in danger of failing her chemistry course.



Title IX Hearing Process at UNT

Roles of Hearing Officer





Hearing Technology



Role of Hearing Officer

Roles of Hearing Officer – Pre-Hearing



Meet with parties/advisors pre-hearing to respond to their review/comment on report




Pre-rule on any pre-submitted questions, and share rulings with parties/advisors in advance of hearing




Clearly establish order of presentation/questioning for all testimony at hearing


Roles of Hearing Officer – at the hearing




Read hearing script sections at the hearing, as necessary



Preside over questioning at hearing




Rule on every question's relevance, on the record



Address any issues of fairness, evidence introduction, bias that are raised at hearing

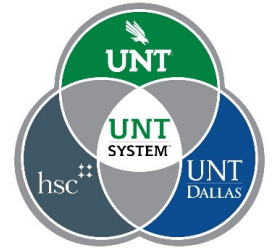


Guide deliberations



Take the lead on drafting the outcome rationale

Hearing Officer Considerations



It is not a question of right and wrong, but whether there has been a policy violation, proven by a preponderance of evidence.

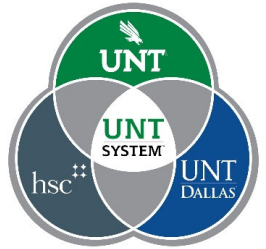


Your role is to impartially uphold the integrity of the process.



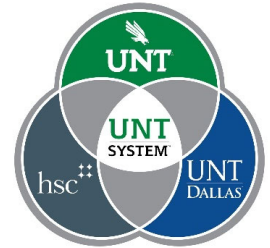
You may not agree with our policy, but you must be willing to uphold it.

Hearing Officer Considerations



Remember, you have no side other than the integrity of the process. You represent the process.

Advisors



- Advisor can be anyone; no restrictions in the regulations.
- If a party chooses an advisor who is also a witness, you will need to assess how that impacts their credibility as a witness.
- If a party does not have an advisor to conduct cross-examination at the live hearing, we must provide an advisor of the University's choice without fee or charge to the party.
- Not required to be an attorney, but may be.
- No prior training required.

Advisors



- Advisors must conduct thorough cross-examination.
- An advisor appointed for the party is required to conduct thorough cross-examination of the other party(ies):
 - Even if the party being advised doesn't want the advisor to do so, and is non-cooperative.
 - Expect that the advisor may be active and engaged or may solely ask prepared questions.

Hearing Decorum

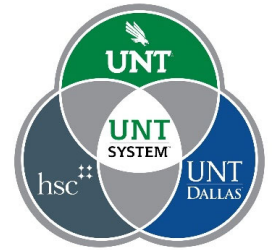


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- Do not look shocked, smug, stunned, or accusing



Trauma-Informed Hearings

What is “Trauma-Informed”



- The theory of trauma-informed care offers a neurobiologically based explanation as to why survivors might behave “oddly” in an interview, such as remembering only vivid details or describing them out of order when discussing their assault
- Chemicals may be released into the bloodstream as a result of trauma, and can interfere with the functioning of those portions of the brain that are involved with the encoding of memory
- Individuals who have experienced a traumatic event, therefore, may not be able to recall details of the event in a chronological manner; they may not be able to recall some details at all; their ability to recall details may improve over time; and their affect when describing the event may initially seem evasive or counterintuitive (*e.g.*, laughing, smiling, or seeming emotionless)
- Hormone-driven responses to traumatic situations may include fighting, fleeing, or freezing

What can we learn from Trauma-Informed theory?

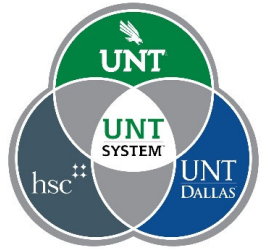
- a delay between the time of an event and when it is reported is common
- “counterintuitive” behaviors such as a reporting party’s continuing to have contact with the alleged perpetrator after a reported sexual assault or intimate partner violence incident is also common
- avoid phrasing questions in a victim-blaming manner (*e.g.*, “why didn’t you call for help, fight back or run away?”)
- questioning complainants in a respectful, professional, non-judgmental manner can result in their engaging more effectively in the hearing and adjudication process



Recent Criticism of Trauma-Informed Techniques for Campus Sexual Misconduct

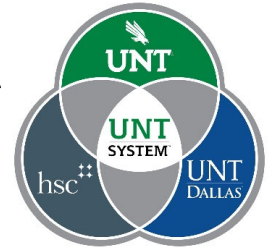
A well-known, though now out-of-print, treatise on sexual trauma, which has been incorporated into the sexual misconduct training manuals of various colleges and universities, states:

“Trauma leaves tracks on its victims. It is very difficult to fake or ‘act’ the sorts of symptoms [of trauma]. When someone displays these symptoms, this alone is evidence that they have been victimized.”



Recent Criticism of Trauma-Informed Techniques for Campus Sexual Misconduct

The Association of Title IX Administrators – ATIXA -- published a statement in August 2019 contending that officials have sometimes not conducted thorough investigations into sexual assault claims because they were following trauma informed principles.

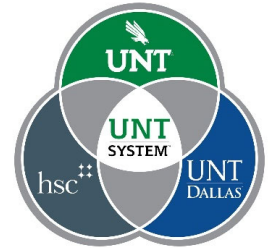


ATIXA asserts there is insufficient research to definitively prove that memory is affected by a sexual assault and how survivors respond to trauma long-term.

ATIXA says administrators have “extrapolated” from existing studies far too much.

“ATIXA wishes to reiterate the value of being trauma-informed in our sexual misconduct interview techniques, but encourages our members and the field to avoid the use of information on the neurobiology of trauma to substitute for evidence.”

How Trauma Can and Should be Used to Contextualize Evidence



- We do not need to determine scientifically whether a witness was traumatized or by what, or precisely what effects trauma may or may not have in a particular case.
- We need to understand the potential effects of trauma so we can check our personal biases and avoid the uncritical assumption that individuals who report sexual assault are necessarily “lying” if they cannot remember every detail of the incident in a chronological manner.
- If investigators and adjudicators understand that non-linear or partial recall **may be** related to potential trauma, we can avoid biased, snap judgments, move forward objectively, and gather information about what the reporting party is able to recall.
- However, if an investigation yields evidence of behaviors that **may be** related to trauma, that should not be understood as establishing that institutional policy was necessarily violated, nor should the presence of such issues cause fact-finders to accept everything a complainant is able to recall as absolutely “true,” or to fail to seek clarification of inconsistencies.

How to fairly employ trauma-informed techniques



- Remember the importance of neutrality.
- Police officers and prosecutors work to establish probable cause and advocate for criminal convictions, but they do not determine as ultimate fact-finders whether the law was violated.
- By contrast, campus fact-finders and decision-makers must maintain complete neutrality at all times in evaluating reported violations of institutional policies.
- It is both equitable and appropriate to use the same basic initial interview approach with complainants and respondents.

How Trauma Can and Should be Used to Contextualize Evidence



- Do not substitute scientific theories for evidence, and do not abdicate your fact-finding responsibility, when determining whether a policy violation occurred in a particular case.
- If information about the potential effects of trauma is applied only to this limited extent, decisions will ultimately be based on an objective assessment of the facts of each case, rather than presumptions derived from familiarity, or lack of familiarity, with scientific theories.

How to apply a trauma-informed interview approach in an even-handed, fair manner



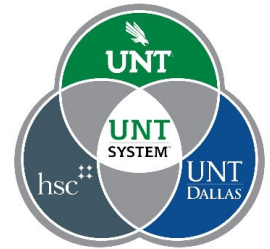
- Employ trauma-informed interview approaches that encourage witnesses to share what they are able to recall about their experience, including any available sensory impressions, without demanding that they recall every aspect in a chronological manner.
- These techniques can result in the creation of a fuller portrait of what occurred, while avoiding the frustration and withdrawal from the process that might occur if the complainant is initially asked to provide a seamless, richly detailed, chronological narrative.
- Approaching interviews in this manner initially would not prejudice respondents in any way, so long as investigators and adjudicators also **follow up** as necessary and seek appropriate clarification, as discussed below.

How to fairly employ trauma-informed techniques



- Questioning for clarification when necessary is crucial!
- Investigators and adjudicators must be vigilant to seek clarification of inconsistencies and “counterintuitive” behaviors from both parties.
- Keep in mind that not all inconsistencies and counterintuitive behaviors are necessarily driven by trauma-related hormones, or trauma-related memory issues; indeed, some inconsistencies and counterintuitive behaviors may bear on a witness’s credibility. While such behaviors may present in circumstances involving sexual assault or IPV, the existence of these behaviors neither warrants categorical dismissal of a complainant’s account nor an automatic finding of a policy violation.

How to fairly employ trauma-informed techniques

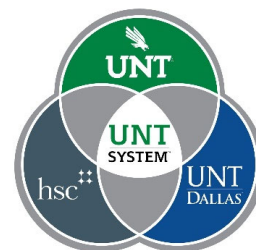


- This approach can also be used to inquire about differences in how a complainant has described the incident on different occasions, or about differences between a complainant's account and the observations of other witnesses.
- Fact-finders can then consider the evidence of potentially inconsistent accounts or counterintuitive behavior, and the complainant's explanation of that behavior, along with all of the other evidence gathered in the investigation.

What's the most important thing to remember about trauma-informed techniques?

General statements about how some complainants may behave as a result of trauma or related issues should not be substituted for a fact-finder's assessment of the specific evidence in a particular case.





Relevance

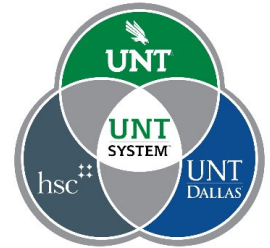
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- The investigator will have made initial relevance “decisions” by including evidence in the investigation report...
- But relevance is ultimately up to the hearing officer, who is not bound by the investigator’s judgment.
- **All** relevant evidence must be objectively evaluated and considered – inculpatory and exculpatory.



RELEVANCE

- If the investigator indicates an opinion on credibility, outcome, whether policy was violated, how evidence should be weighed, etc., that opinion or recommendation is not binding on the decision-maker.
- The decision-maker may consider it, but has to be objective and independent, and is free to accept or reject any recommendation of the investigator (or ask them not to make one)





Questioning & Cross Examination

QUESTIONING & CROSS-EXAMINATION



- The live hearing requirement allows the parties to ask (direct and) cross-examination questions of the other party and all witnesses through their advisor.
- Hearing Officer and panelists may question parties and witnesses.
- Cross-examination must be conducted directly, orally, and in real time by the party's advisor and never by a party personally.
- Permit relevant questions and follow-up questions, including those challenging credibility. You may want an advisor to explain why they think a question is relevant or will lead to a relevant answer.
- Hearing officer must first determine whether a question is relevant and direct party to answer.
 - Must explain any decision to exclude a question as not relevant.

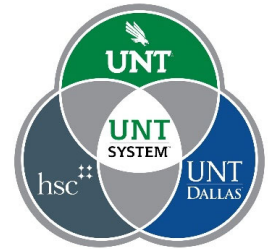
QUESTIONING & CROSS-EXAMINATION

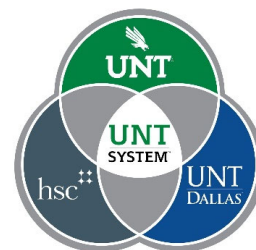
- If the advisor seeks to ask a question that is potentially answered in the investigation report, that question should typically be permitted if relevant.
- If the question has already been answered by a witness or party at the hearing, the decision-maker or chair may deny the question as “irrelevant because it has already been answered,” or may ask the advisor why posing the question again is expected to lead to relevant evidence.



QUESTIONING & CROSS-EXAMINATION

- If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness (from the investigation or hearing) in reaching a determination regarding responsibility.
 - This can be question-specific if a witness declines to answer questions about a particular statement, topic, or evidence.
- The decision-maker(s) cannot draw an inference about 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.





Thank You!



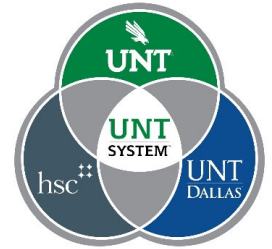
Hearing Officer Training: Making a Decision

September 9, 2020

Jarrod Jenkins (he, him, his)
Assistant Director, Equal Opportunity
UNT Denton

Agenda

1. Deliberation and Analysis
2. Writing Decisions
3. Sanctions, Remedies, Notifications





Deliberation and Analysis

Deliberation

- When are you going to do it?
 - Right after long hearing, next day, next week
 - Fatigue versus fresh impressions
- How are you going to do it?
 - Talk openly, secret ballot
 - Influence on each other
- Everyone should share and listen
- Majority vote determines responsibility
- Beware confirmation bias



Analysis



- Only question: Did Respondent violate UNT Policy?
- **Not** answering:
 - Is Respondent a bad/nice person
 - Is Complainant upset
 - Who do you like better
 - Would you have acted differently
- Policy states prohibitions
- Apply facts to elements within definitions
- Careful how you interpret emotions – yours and witnesses'





What is “Consent”?

(1) Words or actions that show (2) an active, knowing, and voluntary agreement to engage in (3) each instance of sexual activity

- Can be revoked at any time
- Absent when activity exceeds scope of previously given consent
- **Cannot** be gained by force, coercion, manipulation, threat, or administration of substances that impair ability to consent
- **Cannot** be given while incapacitated or unconscious (*e.g.*, passed out from drugs or alcohol)



Consent Analysis



1. Did Respondent use force, coercion, manipulation, or threat to gain consent?
 - a. Yes – no consent
 - b. No – go to next question
2. Was Complainant incapacitated (asleep, unconscious, lacked control over their body)?
 - a. Yes – Did Respondent know or should he have known of incapacitation?
 - i. Yes – no consent
 - ii. No – go to next question
 - b. No – go to next question
3. What clear words or actions by Complainant gave Respondent permission for specific sexual activity that occurred?



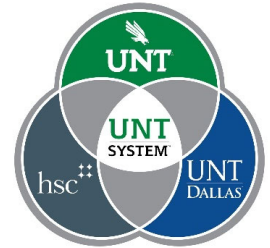
16.007 – Title IX Sexual Harassment



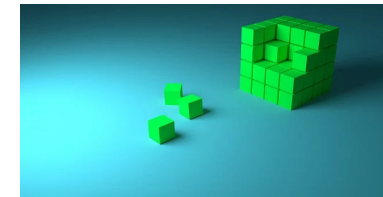
Conduct on the basis of sex that is one or more of:

- a. Quid pro quo – (1) an employee (2) conditioning an aid, benefit, or service of the University on an individual’s participation in (3) unwelcome (4) sexual conduct;
- b. (1) Unwelcome conduct (2) determined by a reasonable person to be (3) so severe, pervasive, and objectively offensive that it (4) effectively denies a person equal access to education program or activity;
- c. Sexual assault, dating violence, domestic violence, or stalking

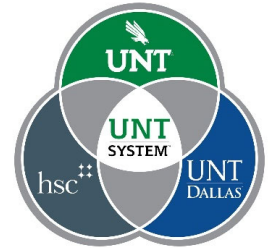
SPOO Analysis



1. Was the conduct on the basis of sex?
 - a. No – no sexual harassment
 - b. Yes – go to next question
2. Was the conduct unwelcome to Complainant?
 - a. No – no sexual harassment
 - b. Yes – go to next question
3. As determined by a reasonable person, was the conduct severe, pervasive, **and** objectively offensive?
 - a. No – no sexual harassment
 - b. Yes – go to next question
4. Did Respondent's actions effectively deny Complainant equal access to an education program or activity?
 - a. No – no sexual harassment
 - b. Yes – violation of UNT Policy



Sexual Assault



- **Rape** - 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** - touching private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or temporary or permanent mental incapacity
- **Incest** - sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
- **Statutory Rape** - sexual intercourse with a person who is under the statutory age of consent (17 in Texas)

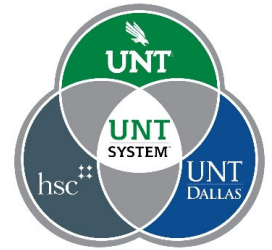


Fondling Analysis



1. Was there touching?
 - a. No – no fondling
 - b. Yes – go to next question
2. Of private body parts of another person?
 - a. No – no fondling
 - b. Yes – go to next question
3. For the purpose of sexual gratification?
 - a. No – no fondling
 - b. Yes – go to next question
4. Did Complainant consent?
 - a. Yes – no fondling
 - b. No – violation of UNT Policy





Writing Decisions

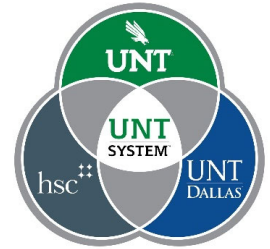


Tips

- Use the Decision Form
- Analyze elements in each allegation as above
- List facts that support conclusion
 - Strongest to weakest, weakest to strongest, or bookends
 - Address significant facts that weaken conclusion
- Lean on parties' agreements and objective facts
- Use T-charts for tricky decisions

C's incapacitation	
R should have known	R should not have known
C vomited	C answered questions about food coherently
R saw C drink two shots	R had not seen C drink alcohol for three hours before sexual activity
C stumbled	C said, "I'm not drunk, I'm just a clutz"
W3 thought C was "plastered"	W1, W2, W4 thought C was fine
C stated she did not remember anything after 1:30 a.m.	C danced to her "favorite song" while reciting the lyrics

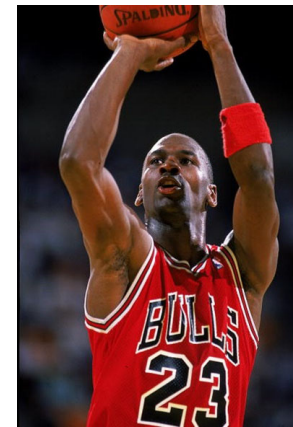
It's Not Easy



“Maybe I led you to believe it was easy when it wasn’t.”

— Michael Jordan

- Writing well is hard work
- It takes time and practice
- Easy reading follows difficult writing
- **Clear writing follows clear thinking**
- Know what you want to say
- Outline your thoughts



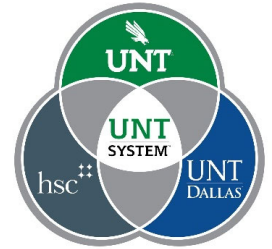
Do's



1. **Embrace clarity through simplicity**
 - a. use > utilize; but > however; before > prior to
2. Use active voice
 - a. Amy called Bob > Bob was called by Amy
3. Average less than 20 words per sentence
4. One topic per paragraph, one idea per sentence
5. Start some sentences with “but,” “and,” “or”
6. Write like you talk
7. Order your thoughts – by elements, chronology, strength of evidence
8. Know when to break the rules



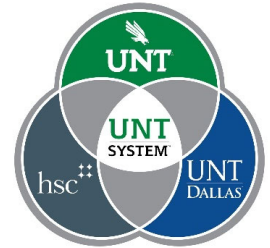
Don'ts



1. Make your readers worker harder than they have to
2. Write run-on sentences
 - a. Break them up
3. Use passive voice
 - a. Make the subject do the action
4. Decorate with adjectives and adverbs
 - a. Remove “very,” “really,” “angrily,” “hastily,” “extremely,” etc.
5. Allow ambiguities or vagaries
 - a. “Gnawing on the slipper, the man scolded the dog.”
 - b. “The man scolded the dog for gnawing on the slipper.”



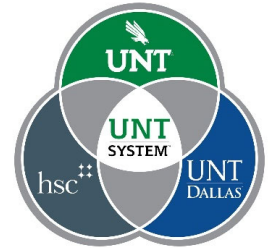
An Example



They agreed that Amy was called by Bobby, who utilized his mobile electronic device, at half past 12 to post pictures on Instagram to his friend Darren. At five before 1, two bottles of wine were opened, and Amy was very dizzy at that time, but she became even more dizzy at ten til 2, when they obtained another bottle of alcohol, which was drunk within the next half-hour. Amy said she was unsure what to do and did not know where she was, but she did not consent to kissing even though she had previously told her friend Charlotte that Bobby was cute, which she said two months before the start of spring break. When she woke up, she was very confused and extremely sleepy . . .

- Run-on sentences, passive voice, ambiguities, confusing timeline
- Who is doing what? How does this information fit into the big picture?

An Example



Bobby called Amy at 12:30 a.m. The parties agreed she told him something like, “If you want to come over, we can watch a movie.” He drove to her apartment and arrived at 12:55 a.m. She opened the door for him. As soon as he entered her apartment, he opened two bottles of wine that he had brought with him. Amy stated she was “very dizzy” even before Bobby arrived. Amy became more dizzy as she and Bobby drank wine for the next hour. The parties agreed that someone opened a third bottle of wine, but they disagreed about who opened it and when. Amy said Bobby opened it at 1:30 a.m. Bobby said Amy opened it at 2 a.m.

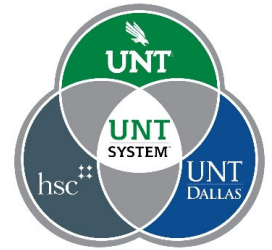
- Shorter sentences, active voice, chronological order
- Clearly states where parties agree and disagree
- Quotes exact statements to differentiate HO’s and HP’s thoughts from parties’

Last Bits of Advice



- Use the Decision Form
- Explain info as if for the first time
- Shorten, remove wherever possible
- Wait a day between drafts
- Revise and consult as needed
- Resources:
 - Elements of Style by Strunk and White; Grammarly
 - Dictionaries: Webster, Oxford English, Urban (for slang)





Sanctions, Remedies, Notifications

Sanctions and Remedies



- Hearing Panel decides sanctions
 - Severity of violation should match severity of sanction
 - Consider aggravating and mitigating factors
1. For students
 - a. Educational training
 - b. No shared classes or extra-curricular activities
 - c. Disciplinary probation
 - d. Withholding of grades, transcript, or degree
 - e. Bar readmission or reenrollment, drop class, withdrawal
 - f. Suspension of rights and privileges, including athletics
 - g. Suspension
 - h. Expulsion
 - i. Revocation of degree
 2. For staff
 - a. Written warning
 - b. Written reprimand
 - c. Job demotion or reassignment
 - d. Suspension with or without pay
 - e. Termination
 - f. Ineligible for rehire
 3. For faculty
 - a. Written warning
 - b. Written reprimand
 - c. Loss of rank
 - d. Reassignment
 - e. Suspension with or without pay
 - f. Termination
 - g. Revocation of tenure
 - h. Ineligible for rehire

UNT Policy 16.007, VII.L.

Notifications

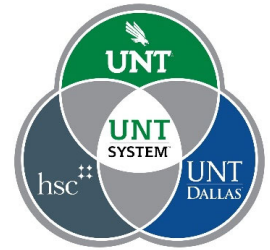


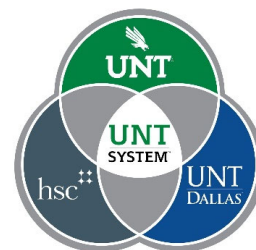
- Hearing Officer must notify parties of decision and right to appeal
- Hearing Officer concurrently sends Decision Form to:
 1. Parties and advisors,
 2. Title IX Coordinator, and
 3. One of the following:
 - a. Dean of Students (when Respondent is student)
 - b. Provost (when Respondent is faculty)
 - c. Divisional Vice President and Director of Human Resources (when Respondent is staff)



UNT Policy 16.007, VII.L.

Questions?





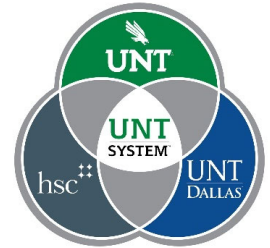
Appeal and Record Keeping

September 9 , 2020

Felicia Chism, Assistant Director, UNT Dean Of Students Office

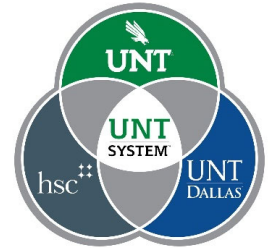
LaToya Haynes, Assistant Director, UNT Housing Office

Appeals



- Complainant and Respondent can appeal:
 - Determination of responsibility
 - The decision to dismiss a Formal Complaint
 - Any of the allegations within the Formal Complaint
- The appeal must be submitted in writing **within 10 days** of notice of the written determination
- Both parties will be notified in writing when an appeal is filed

Grounds for an Appeal



- A procedural irregularity occurred that affected the outcome
- New evidence that could affect the determination of responsibility that was not available at the time the determination was made
- New evidence that could affect the outcome of a decision to dismiss the Formal Complaint or an allegation in the complaint was not available at the time the decision was made
- A conflict of interest or bias against the parties involved

Appellate Officer



- Cannot be the Title IX Coordinator, investigator or hearing officer
(Joanne Woodard for findings, Elizabeth With for Student Sanctions, HR for Staff Sanctions, Provost for Faculty Sanctions)
- Any non-appealing party will have **7 days** from the notification of an appeal to submit a written statement in support of the outcome to the appellate officer
- Written decisions will be provided to all parties within **28 days** from the date of the appeal

FERPA for Student Records



UNT affords all students the rights and protections relating to their education records as provided in the Family Education Rights and Privacy Act (FERPA). Consistent with FERPA, students will be granted access to their education record and except in limited circumstances education records will not be disclosed without a student's consent.

[UNT Policy 07.018 FERPA Policy](#)

A screenshot of a web page titled "Authorization to Release Educational Records Student Guide". The page has a green header. Below the header, there is a section titled "About the Family Educational Rights and Privacy Act" with a paragraph of text and a link to "Register.unt.edu". Another section titled "Authorization to Release Educational Records" explains how to use myUNT to grant access to records. A third section titled "Directions for Authorizing Release of Records to 3rd Party" includes a link to log in to myUNT and an image of a laptop and smartphone displaying the myUNT interface. At the bottom left, there is a "Profile" section with a placeholder image of a person's profile and a green checkmark icon. Below the image is the text "Click on your Profile Tile." The page number "1" is visible in the bottom right corner.

Personally Identifiable Information



Direct Identifier's

- The student's name
- The name of the student's parent or family member
- The address of the student or family
- The student's social media account
- Student's school ID number

Indirect Identifier's

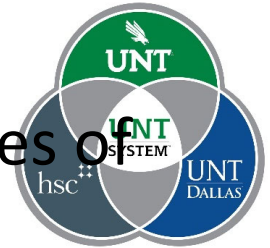
- The student's birthdate
- The student's place of birth
- The student's classification
- The student's race
- The student's religion

Parts of Educational Records in Title IX

Record Keeping- follow UNT record retention policy

- Records of each sexual harassment investigation.
- Records of any appeals and the results of the appeal.
- Records of any informal resolution and the results of the informal resolution.
- Records of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment.

- There are many forms of pieces of educational records.



- Handwritten notes
- Typed notes
- Emails
- Video/Audio recording
- Social Media Post (if used in files)

Maxient for Student Records



University of North Texas
Conduct Manager

Friday August 28, 2020

User: Felicia Chism
Access Level: 5



Create New Case

Open a new case

For a new matter involving one or more people, begin here.

Add people to an existing case

If a case has already been opened (i.e. 20180123) and you're simply adding additional people to it (-01, -02, etc.), you'll want to begin here.

Get started

The information contained on these pages is privileged and confidential information intended solely for the individual or entity who has accessed it for official purposes and by lawful means. Any dissemination, distribution, or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at (940) 565-2039, and return the original message to us via the U.S. Postal Service to the Dean of Students Office, University of North Texas, 1155 Union Circle #305008, Denton, TX 76203-5017, without retaining a copy.

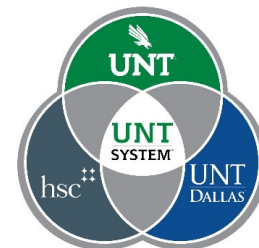
- Maxient is the software some universities and colleges use to manage behavior records of students.
 - Case notes are stored in Maxient.
 - Documents obtained for the purpose of the investigation are in Maxient, e.g. witness statements, screenshots of evidence, videos, text messages, cell phone call logs.
 - Notification letters investigators send a Complainant or Respondent are generated from Maxient.
 - Notes and any document that are associated with the investigation that includes the Complainant or Respondent's name is a part of that student's FERPA record.

Faculty & Staff Records



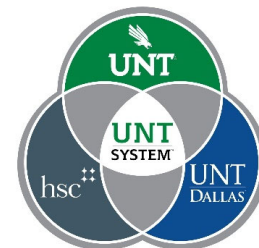
- Equal Opportunity will maintain a case record for at least seven years of all investigations conducted under Policy 16.007.
- Any disciplinary or corrective action taken will be placed in the employee's personnel file.
- Complainants and Respondents will have access to the evidence in accordance with the procedures outlined in Policy 16.007

Hearing Officer's Tips



- Arrive at the hearing early be prepared
- Take notes throughout the hearing and the deliberation
- Ask clarifying questions
- Remove all judgement and remain unbiased
- Take proceedings and duties seriously.
- Recognize that confidentiality is critical.
- Listen carefully to each person and keep an open mind
- Treat each person who appears before the panel with fairness and respect
- Recognize the burden of proof is the preponderance of the evidence. *That does not mean beyond a reasonable doubt. You can have reasonable doubts and find a respondent responsible.*

Hearing Officer's Tips



- When hearing is over, make sure all documentation is stored in both parties files this will include, but not limited to all video and audio recordings; list of individuals and their roles for the hearing (hearing panel members, advisors, witnesses, complainant and respondent, etc); any documentation shared at the hearing by any of the parties; final report with findings and any sanctions applied.
- Hearing officer will notify both parties of outcome and ability to appeal findings and/or sanctions along with timeframes and limits on appeals.

Questions

