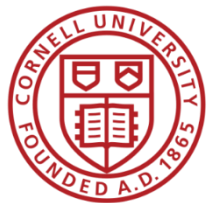
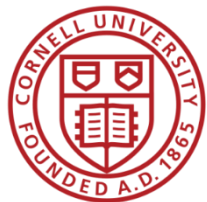


Policy 6.4 Hearing/Appeal Panel and Co-Investigator Training

Office of Institutional Equity and Title IX
January 28-29, 2021



Introductions



Part I: Thursday, January 28 from 10:00 a.m. to 1:00 p.m.

- Welcome and Introductions - Laura Rugless
- Updates and Highlights - Laura Rugless, Lauren Branchini & Joel Atlas
 - o 2020 Title IX Regs and Interim Policy 6.4/Procedures
 - o Questions (10 Minutes – Not Recorded)
 - o 10-Minute Break
 - o New Oral Cross-Examination
 - o Questions (10 Minutes - Not Recorded)
- Evidence - Joel Atlas
 - o Questions (10 Minutes - Not Recorded)

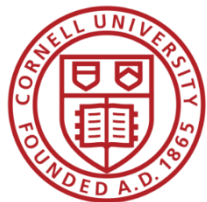


Part II: Friday, January 29 from 10:00 a.m. to 2:00 p.m.

- Welcome Back and Panel Discussion on Sanctions – Laura Rugless (Facilitator)

Sandy Dhimitri, Director of Human Resources, Academic Human Resources and Assistant Dean for Human Resources, College of Human Ecology (Employee Sanctions); Vin Ciampolillo, Associate Judicial Administrator, Office of the Judicial Administrator (Student Sanctions); Jamie Sorrentino, Counselor, Cornell Health (Student Counseling); Lauren Branchini, Asst Director and Deputy Title IX Coordinator, OIETIX (Student Educational Sanctions)

- 10-Minute Break
- Fact Pattern Activity – Lauren Branchini
- 30-Minute Break
- Learning about Investigations and the Co-Investigator Model - Nasser Siadat, Equity and Title IX Investigator, Dane Cruz, Director of CITE & Adara Alston, Instructional Designer, eCornell and Adjunct Actor, CITE
- Opportunity for Reflection and Questions (*time permitting) – Laura Rugless (Facilitator)
- Closing and Final Q&A



Updates and Highlights: Federal

- Title IX Regulations
- *Doe v. Rensselaer Polytechnic*
 - Northern District of NY court decision – October 16, 2020
- New Administration
 - Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (*Bostock v. Clayton County, Georgia*)
 - Title IX Regulations remain in effect for now

Race and Title IX

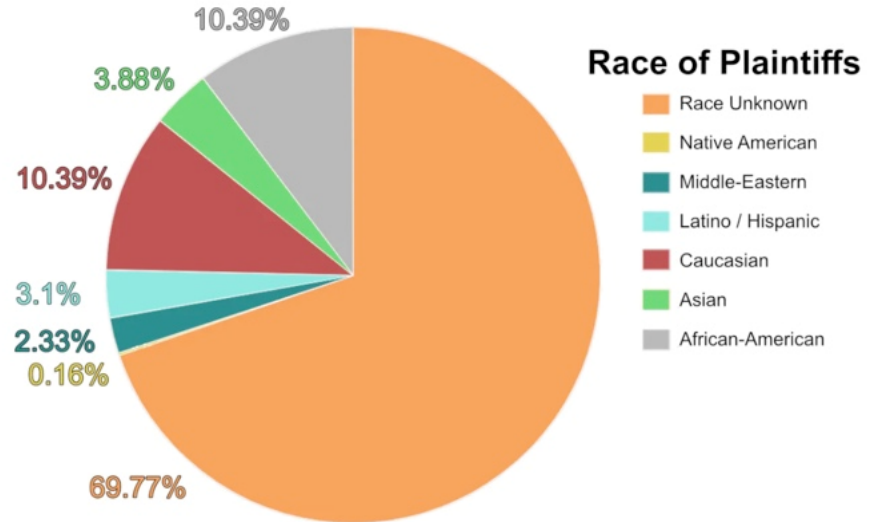
Among plaintiffs whose races are known and when adjusted for student population, black students are four times as likely as white students to file lawsuits alleging their rights were violated in higher ed Title IX disciplinary proceedings. This data, sourced from lawsuits in our [Title IX Legal Database](#), is based on Title IX For All's [recent research](#) analyzing plaintiff demographic data from the ~650 lawsuits filed against higher-ed institutions since 2011.

<https://www.titleixforall.com/black-students-four-times-as-likely-to-allege-due-process-violations-and-discrimination-in-title-ix-proceedings/>

Black students four times as likely to allege rights violations in Title IX proceedings

POSTED ON 07/07/2020 BY JONATHAN TAYLOR

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Jul






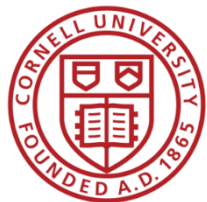
Updates and Highlights: University/OIETIX

- Interim Policy 6.4 and Procedures
 - From 4 sets to 3 sets of Procedures
 - Staff Co-Investigator
 - Hearing Process A = live oral cross-examination conducted by advisors
- 2 Hearing Process A cases to date

slido

What do you think will happen to the Title IX
Regulations?

 Start presenting to display the poll results on this slide.



When do the Title IX Regulations apply?

A. Based on the alleged incident/report, at least one of the regulatory definitions of sexual harassment is met.

+

B. All of the jurisdictional conditions are met.

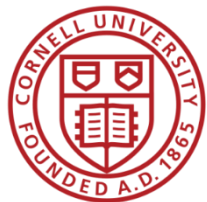
Definitions and Jurisdictional Conditions

At least one:

1. Quid Pro Quo by Employee
2. Hostile Environment that is Severe, Pervasive, and Objectively Offensive
3. Sexual Assault
4. Stalking
5. Dating or Domestic Violence

+ All:

1. Respondent and context under control of the university
2. Alleged incident occurred in the “Education Program or Activity”
3. Complainant participating in or attempting to participate in Education Program or Activity, at time of filing formal complaint
4. Incident/conduct reportedly occurred against a person in the U.S. on or after Aug. 14, 2020



Definition of “Education Program or Activity”

Locations, events or circumstances over which the university exercised substantial control over both the respondent and the context in which the prohibited conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the university.



Title IX Regulations: Advisors

- Must be provided free of cost to parties by the institution
- Can be, but does not have to be, an attorney
- Cannot restrict a party's choice of advisor
- Conduct oral cross-examination at the hearings
- Except for conducting cross-examination, advisors' participation in proceedings can be restricted; such restrictions must be applied equally to both parties' advisors



Title IX Regulations: Proceedings

- Requires opportunity for live, oral cross-examination by advisors (**more in next session*)
- Preponderance of Evidence or Clear and Convincing Evidence standard is permitted
- Encouragement of alternate/alternative resolution; cannot informally resolve a student complaint of sexual harassment against an employee
- Allows for hearings with parties in separate rooms able to be seen and heard by one another via technology
- Sanctions cannot take effect until appeal is concluded or appeal period is exhausted

slido

What Title IX regulatory requirement interests
you the most?

 Start presenting to display the poll results on this slide.



Interim Changes to Policy 6.4 / Procedures

- Change from broad employee duty to consult to smaller group of Designated Reporters
- Initial assessment whether Title IX applies
- New hearing process with advisor-led cross-examination
- Expansion of alternate resolution opportunities
- 3 sets of procedures applicable to faculty and staff collapsed into 2 sets (Employee Title IX and Employee Non-Title IX)



Roles and Responsibilities Discussion

OIETIX Staff

Party's Advisor

OIETIX Investigator

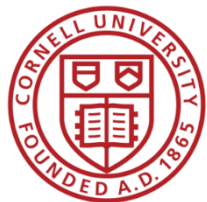
Co-Investigator

Hearing Panel Member

Hearing Panel Chair

Appeal Panel Member

Office of the Judicial Administrator



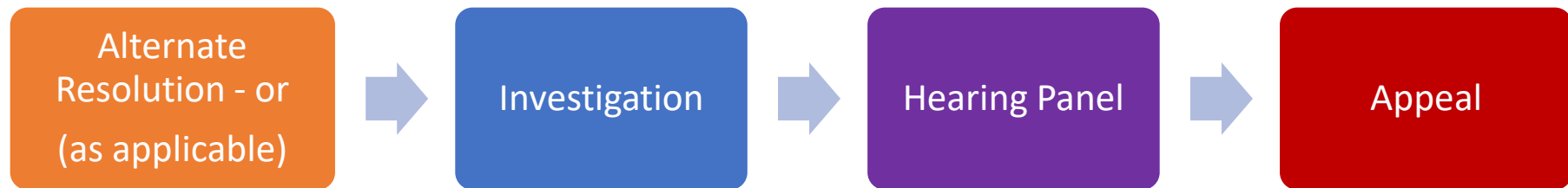
Office of Institutional Equity and Title IX (OIETIX)

- Works to prevent and address sexual and related misconduct, prohibited discrimination, and protected status harassment through data collection and analysis, incident response and resolution, and training and education.
- Part of University central administration
- Neutral = not aligned with one party v. another
- “Advocates” for the fair and correct application of Policy 6.4 and the accompanying procedures

Procedural Steps



Procedural Steps (Contd)



Student Adjudication Processes

Hearing Process A	Hearing Process B
Title IX definition of sexual harassment + jurisdictional conditions	Non-Title IX prohibited conduct without potential sanction of suspension or dismissal
Non-Title IX prohibited conduct with potential sanction of suspension or dismissal	
Investigation by OIETIX investigator, no co-investigator	Investigation by OIETIX investigator, no co-investigator
Hearing panel determination of facts, responsibility for policy violation, and as applicable, sanctions and remedies	Hearing panel determination of facts, responsibility for policy violation, and as applicable sanctions and remedies
Real-time, oral cross-examination conducted by parties' advisors; rulings on relevance by chair; exclusion of statements when party/witness does not submit to cross-examination	Written submission of cross-examination by parties
Sanctions don't take effect until conclusion of process (i.e., exhaustion of appeal/appeal period)	Sanctions take effect upon issuance of hearing panel decision
Appeal panel	Appeal panel

Employee Adjudication Processes

Title IX Prohibited Conduct	Non-Title IX Prohibited Conduct
Title IX definition of sexual harassment + jurisdictional conditions	Other sexual harassment, sexual misconduct, prohibited discrimination, protected-status harassment
Investigation w/ co-investigator	Investigation w/ co-investigator
Hearing panel (Process A)	No hearing panel
Hearing panel determines facts, responsibility for policy violation, and as applicable, sanctions and remedies	Investigator makes findings and provides recommendation to dean/unit head in investigative report
Appeal panel	Party right of review/response

slido

This has all been brilliant and informative!
However, I still have questions about...

 Start presenting to display the poll results on this slide.



Q&A Check-in

Break

Kindly return in 10 min. Zoom will remain open, so please mute and stop your video.



New Oral Cross- Examination





Q&A Check-in

Evidence



CORNELL UNIVERSITY POLICY 6.4 TRAINING:
EVALUATING EVIDENCE

Joel Atlas
Hearing Panel Chair
Cornell University

STANDARD OF PROOF

In Policy 6.4 cases, a respondent is presumed not responsible.

A respondent may be found responsible only if a “preponderance of the evidence” proves all of the elements of the prohibited conduct alleged – i.e., it must be “more likely than not” that the respondent committed all of those elements.

The elements of each type of prohibited conduct are included in the Policy 6.4 Procedures.

RELEVANCE OF EVIDENCE

The hearing panel should consider only the relevant evidence.

To be relevant, evidence must tend to make a material fact more or less likely to be true.

The materiality of a fact will depend on the elements of the prohibited conduct charged.

Takeaway: to evaluate the relevant evidence, be sure to study the elements of the prohibited conduct charged.

CREDIBILITY OF RELEVANT EVIDENCE

The hearing panel must evaluate the credibility of the relevant evidence and determine how much weight, if any, to give to it.

Two components to credibility:

- Is the evidence truthful?
- Is the evidence accurate/reliable?

The hearing panel may accept a person's testimony in whole or in part.

EVALUATING CREDIBILITY

No formula exists, but consider the following:

- opportunity to view (distance, duration, lighting, angle, obstructions, etc.)
- ability to recall (consider passage of time, influence of alcohol/drugs, impact of alleged incident)
- motive to fabricate (e.g., bias, hostility, expectation of benefit) – but cannot evaluate based solely on party status
- plausibility (logical, consistent with experience/common sense?)
- consistency (internal and external)
- corroboration
- character
- background, experience, and training
- coaching

ADDITIONAL CONSIDERATIONS

Consider your own possible biases
(both implied and actual).

When evaluating another person's conduct or words, consider the limitations of your own life experience.

FACTS V. OPINIONS/CONCLUSIONS

In determining the likely facts, focus on factual assertions rather than opinions/conclusions (except for expert witnesses).

For example, consider the value of statements that a person was “very drunk,” that a glass was “large,” that a car was moving “fast,” or that people were “far away” from each other.

AUTHENTICITY OF EVIDENCE

An investigative record often includes non-testimonial evidence, such as text messages, e-mails, photographs, videos, and other records.

The hearing panel must evaluate the authenticity of this evidence (and the weight, if any, to be given to it).

APPLYING THE FACTS TO THE PROCEDURES

In addition to determining the likely facts, the hearing panel must apply those likely facts to the elements of the prohibited conduct alleged – i.e., the hearing panel must decide whether the likely facts prove the allegation by a preponderance of the evidence.

The fact application may be complex/nuanced – e.g., the hearing panel may need to apply the likely facts to terms such as “affirmative consent,” “coercion,” “good faith,” and “reasonable person.”

CONTACT INFORMATION

Joel Atlas
Hearing Chair

jba23@cornell.edu

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Q&A Check-in

End of Part I



Welcome Back!

Part II: Friday, January 29 from 10:00 a.m. to 2:00 p.m.

- Welcome Back and Panel Discussion on Sanctions – Laura Rugless (Facilitator)

Sandy Dhimitri, Director of Human Resources, Academic Human Resources and Assistant Dean for Human Resources, College of Human Ecology (Employee Sanctions); Vin Ciampolillo, Associate Judicial Administrator, Office of the Judicial Administrator (Student Sanctions); Jamie Sorrentino, Counselor, Cornell Health (Student Counseling); Lauren Branchini, Asst Director and Deputy Title IX Coordinator, OIETIX (Student Educational Sanctions)

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- Closing and Final Q&A

Overview: Sanctions and Remedies

- Determined after and only where there is a finding of responsibility.
- For employee respondents under the Title IX Procedures, panelists now determine sanctions.
- In student hearing process A and employee Title IX cases, sanctions now do not take effect until after the appeal (or exhaustion of appeal period).



Our Sanctions Panelists

- *Employee Sanctions:* Sandy Dhimitri, Director of Human Resources, Academic Human Resources and Assistant Dean for Human Resources, College of Human Ecology
- *Student Sanctions:* Vin Ciampolillo, Associate Judicial Administrator, Office of the Judicial Administrator
- *Student Counseling:* Jamie Sorrentino, Counselor, Cornell Health
- *Student Educational Sanctions:* Lauren Branchini, Asst Director and Deputy Title IX Coordinator, OIETIX

Procedures for Determining Sanctions and Remedies

- If Panel finds respondent responsible, Panel will continue deliberations to consider sanctions and remedies.
- Findings on responsibility and sanctions/remedies are issued simultaneously.
- Chair will distribute to Panel:
 - any written or recorded Impact/Mitigation Statements previously submitted by the parties, subject to any redactions required by law
 - STUDENTS - Cornell non-academic disciplinary record, known non-academic disciplinary record from another institution, and/or known criminal conviction
 - EMPLOYEES - the information provided to the Hearing Chair concerning respondent's prior and subsequent conduct and/ or criminal record
- Deliberations will be in private and they will not be audio-recorded.
- Deliberations will be completed as expeditiously as possible.
- Chair may participate in deliberations but may not vote.
- Panel will determine sanctions and remedies by a majority vote.

Considerations in Determining Sanctions and Remedies

In determining sanctions and remedies, the Hearing Panel will consider:

- the severity of the prohibited conduct
- the circumstances of the prohibited conduct
- the impact of the prohibited conduct and sanctions and remedies on the complainant, on the community, and on the respondent
- STUDENTS - prior misconduct by the respondent, including the respondent's previous school disciplinary record, both at Cornell University and elsewhere, and any criminal convictions
- EMPLOYEES - prior discipline related to sexual misconduct by the respondent and any criminal convictions related to sexual misconduct
- the goals of Policy 6.4 and these procedures
- any other mitigating, aggravating, or compelling factors

The hearing panel process A determination that a student respondent, if found responsible may face a sanction of suspension or dismissal, must not be considered in determining the sanction. However, in hearing panel process B cases, a sanction of suspension or dismissal cannot be issued.

Options for Student Sanctions and Remedies (1/2)

The Hearing Panel may impose one or more of the following sanctions and remedies:

- Measures designed to restore or preserve equal access to the University's educational program or activity, similar in kind to the Supportive Measures specified under these procedures
- Appropriate educational steps (such as alcohol or drug education, reflection papers, counseling, or directed study)
- Restrictions or loss of specified privileges at the University for a specified period of time
- Oral warnings
- Written reprimands
- Disciplinary probation for a stated period

Options for Student Sanctions and Remedies (2/2)

- Suspension from the University for a stated period not to exceed five (5) years, or indefinitely with the right to petition the Hearing Panel in writing at any time for readmission after the academic term following the academic term in which the suspension occurred.*
 - *Such petition will be submitted to the Title IX Coordinator no later than April 1 if the petition is for readmission for the fall semester and by November 1 if the petition is for readmission for the spring semester.*
 - *If the Title IX Coordinator agrees with the respondent's petition, after consulting with appropriate professional colleagues and receiving approval of the Hearing Chair, the Title IX Coordinator may permit the readmission without the petition being considered by the Hearing Panel.*
 - *If the Hearing Panel denies the petition, the respondent may not petition again until the next semester and, in any event, may not petition for readmission for the same semester denied by the Hearing Panel.*
 - *While on such suspension, the student may not obtain academic credit at Cornell or elsewhere toward the completion of a Cornell degree.*
- Dismissal (i.e., expulsion) from the University*
- The Hearing Panel may also recommend to the Title IX Coordinator that the University take measures on campus to remedy the effect or prevent the reoccurrence of such prohibited conduct

*Suspension and dismissal are not available sanctions in hearing panel process B.

Options for Employee Sanctions and Remedies (1/2)

The Hearing Panel may impose one or more of the following sanctions and remedies:

- Measures designed to restore or preserve equal access to the University's educational program or activity, similar in kind to the Supportive Measures specified under these procedures
- Appropriate educational steps (such as alcohol or drug education, reflection papers, counseling, or directed study)
- Restrictions or loss of specified privileges at the University for a specified period of time
- Oral warnings
- Written reprimands
- Disciplinary probation for a stated period

Options for Employee Sanctions and Remedies (2/2)

- Demotion*
- Removal from administrative or other position held in addition to primary position
- Salary reduction or other monetary penalty
- Unpaid suspension of employment*
- Termination of employment*
- The Hearing Panel may also recommend to the Title IX Coordinator that the University take measures on campus to remedy the effect or prevent the reoccurrence of such prohibited conduct.

* For a faculty respondent, the panel will impose a sanction of mandatory referral to the trustee suspension/dismissal procedures for the specific sanction.

Break

Kindly return in 10 min. Zoom will remain open, so please mute and stop your video.



Scenario: Casey and Regan

- Casey (Complainant) and Regan (Respondent) and are two undergraduate students.
- They had a yearlong “situationship” from August 2019 to August 2020.
- Casey gives the following testimony:
 - On February 28, 2020, Casey went to Regan’s Collegetown apartment to “Netflix and chill.” The two drank heavily and Casey remembers consensually engaging in non-penetrative sexual acts with Regan on the couch in Regan’s apartment. Casey states the parties then went to bed. Casey states they remember “mostly everything” about the evening, including falling asleep in bed.
 - Casey’s next memory is waking up in Regan’s bed the next morning. Casey woke up the next morning feeling like they had sex. Casey says Regan said to them, “thank you for finally letting me try that thing I’ve wanted to try.” Casey said they assumed this meant anal penetration.
 - Casey says they don’t like to hook up when they’ve had too much to drink and Regan knows this.

Scenario: Casey and Regan

Regan gives the following testimony:

- Regan states the parties each drank 2 beers on the night of the reported incident. Regan states their roommate was home at the time and can testify to seeing the parties and there being only four beer cans in the recycling bin the next day.
- They state that they've seen Casey drink a lot more than that and not become intoxicated. Regan corroborates the non-penetrative sexual acts with Casey on the couch and that the parties went to bed shortly after.
- Regan then states that, during the middle of the night, Casey woke up and started to initiate sex. Regan states this was unusual for Casey. Regan states they began touching Casey and that Casey moaned in pleasure, which Regan took as an invitation to continue. Regan states they touched and rubbed Casey's buttocks then touched and penetrated Casey's anus.

Scenario: Casey and Regan

Appendix B contains several documents, including copies of these electronic communications:

- Memes and texts from the fall of 2019 where the parties are joking about anal penetration
- Texts from Casey dated the day after the reported incident in which Casey tells their friend “I think something weird happened to me last night...”
- Texts between Casey and Regan from August 2020 in which Casey “confronts” Regan and Regan asks to call Casey so the two can discuss the situation over the phone
- A phone call log from August 2020 that shows a 24 minute phone call from Casey to Regan, directly following the above text messages

Scenario: Casey and Regan

The charges before the Hearing Panel are:

It is alleged that Regan: (1) touched their hand to Casey's buttocks, (2) touched their finger to Casey's anus; and (3) penetrated Casey's anus with their finger without affirmative consent, including lack of affirmative consent due to incapacitation.

Scenario: Casey and Regan

Relevant parts of the definition of sexual assault: Sexual assault is (1) sexual intercourse or (2) sexual contact (3) without affirmative consent.

1. Sexual intercourse: Sexual intercourse means any penetration, however slight, with any object or body part, as follows: (a) penetration of the vulva by a penis, object, tongue, or finger; (b) anal penetration by a penis, object, tongue, or finger; and (c) any contact, no matter how slight, between the mouth of one person and the genitalia of another person.

2. Sexual contact: Sexual contact means intentional sexual touching, however slight, with any object or body part, whether directly or through clothing, as follows: (a) intentional touching of the lips, breasts, buttocks, groin, genitals, inner thigh, or anus or intentionally touching another with any of these body parts; (b) making another touch anyone or themselves with or on any of these body parts; and (c) intentional touching of another's body part for the purpose of sexual gratification, arousal, humiliation, or degradation.

3. Affirmative consent: Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

Scenario: Casey and Regan

A person is incapable of affirmative consent when they are:

- Less than seventeen years of age;
 - Mentally disabled (a person is mentally disabled when their normal cognitive, emotional, or behavioral functioning renders them incapable of appraising their conduct); or
 - Incapacitated.
- A person is incapacitated when they lack the ability to choose knowingly to participate in sexual activity.
 - A person is incapacitated when they are unconscious, asleep, involuntarily restrained, physically helpless, or otherwise unable to provide consent.
 - Someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent depending on the level of intoxication.
 - Affirmative consent cannot be gained by taking advantage of the incapacitation of another. In evaluating responsibility in cases of alleged incapacitation, the fact finder asks two questions:

(1) did the respondent know that the complainant was incapacitated? If not,

(2) should a sober, reasonable person in the respondent's situation have known that the complainant was incapacitated? If the answer to either of these questions is "yes," affirmative consent was absent. o If the fact finder determines based on a preponderance of the evidence that both parties were incapacitated, the person who initiated the sexual activity alleged to be nonconsensual due to incapacity is at fault.

Scenario: Casey and Regan

Casey's impact statement reads:

- The parties are members of several clubs and both currently live in the same affinity house. Casey says they haven't been able to attend club meetings or eating in the nearest dining hall since the incident.
- This incident happened during Casey's first year at Cornell. Casey considered Regan to be a mentor and one of the few people Casey knew and trusted at Cornell.
- Casey wants Regan to be suspended for the duration of Casey's time at Cornell.

Regan's mitigation statement reads:

- Regan loves and respects Casey and feels horrible about what they did. Regan genuinely thought Casey was awake and consenting.
- Regan has already suffered social repercussions, including being excluded from the parties' mutual groups, either by choice or because Casey told the group leaders what had happened and the group leaders sided with Casey.
- Regan is currently in their third of four years at Cornell.
- Regan just wants to find a way to make this right for Casey.

There is a letter regarding Regan's student conduct record:

- Regan was found responsible for two drinking violations during their first year at Cornell.

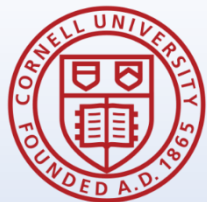
Break

Kindly return in 30 min. Zoom will remain open, so please mute and stop your video.



30:00

Opportunity for Reflection and Questions



Agenda Overview

- (1) The Employee Procedures: What You Need to Know
- (2) The Reporting Process
- (3) Co-Investigators: Best Practices



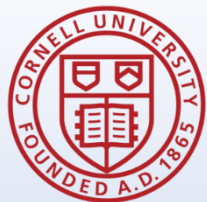
Two Sets of Employee Procedures



Title IX Procedures

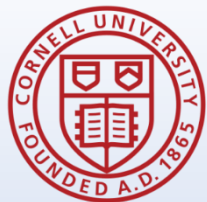


Non-Title IX Procedures



Title IX Procedures

- Dating and Domestic Violence
- Stalking
- Sexual Assault
- Sexual and Sex/Gender-Based Harassment (“Hostile Environment”)
- Retaliation



Non-Title IX Procedures

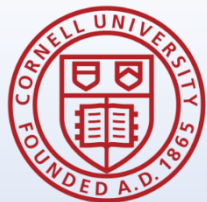
- Prohibited Discrimination
- Sexual and Sex/Gender-Based Discrimination
("More than a Petty Slight or Trivial Inconvenience")
- Non-Title IX Sexual Misconduct
- Retaliation
- Violating a Supportive Measure



Employee Procedures

- Title IX Procedures: Co-Investigator, Investigators do not make findings, Hearing Panel
- Non-Title IX Procedures: Co-Investigator, Investigators make finding + Recommendations
- Both Procedures: Presumption of Non-Responsibility

The full text of these Procedures can be found on our website: titleix.cornell.edu/procedures



How Are Reports Received?

- 400-500 reports of Policy 6.4 violations each year
- Consulting with campus partners
- Informational Intake offered to Reporter
- Potential Resolution
- Co-Investigator Identified – Conflicts or Bias?



Best Practices for Co-Investigators

Time Commitment

- Connect with the Investigator
- All interviews are audio-recorded and transcribed – you can review these
- Aim to complete investigation within 50 days (the Title IX Procedures) or 30 days (the non-Title IX Procedures)

Interview Questions

- The “One Question” Rule: Avoid compound questions.
- Funnel structure: start broad, proceed narrowly
- Ask open-ended questions
- Questions must be relevant, not straying into impermissible topics

Reviewing the Written Investigative Report

- Feedback: substance or formatting
- Feedback due within 5 business days of the report being shared with you

Closing and Final Q&A