

Sorting Through the Facts



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How do we use the facts?

- A good final decision is one that contains sufficient factual information to support a finding of responsibility or a finding of no responsibility
- This means MORE:
 - Facts that support the finding
 - Discussion of how credible the panel found those facts
 - Facts that the panel did not find credible
 - Facts that the panel considers mitigating or aggravating factors



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Equity and Title IX CRRs

- They tend to have many clauses or ways a respondent can violate our code of conduct
- Panel decisions must show the facts on which their decision rests.
- Limited discussion on one or more of the clauses means that the decision may have too few facts



Keeping the Question In Mind

- Is it more likely than not that the respondent violated the CRR that they are accused of violating?



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Worksheet Method

Design a document which separates the distinct clauses or conditions which must be met to make a responsibility determination.

1. Helps develop questions to ask the parties
2. Clearly pairs evidence with each part of the alleged violation
3. Ensures there is discussion in the deliberation room about each section
4. Helps create a fact specific decision document



1. Develop questions to ask the parties

- Use the allegations that come from the notice of hearing
- Add definitions directly from the CRRs
- Create a big note taking space after each clause within the CRR
 - You can delete clauses that are not at issue
- Develop your questions based on these clauses



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2. Clearly pair evidence with each part of the alleged violation

- You now have a worksheet to record statements and evidence as they are presented in the hearing.
- Ideally there would be some fact presented for each clause.
 - Sometimes there are points that are not contested, so I usually say that.
 - Think about how credible you find each piece of evidence and note this



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What about
when....

- The Respondent chooses to remain silent?
- The Complainant does not show up?
- Neither party attends?



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3. Ensures there is discussion in the deliberation room about each section

- Circle or highlight the points that the panel thought were salient
- Has each part of the CRR been discussed?



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4. Help create a fact specific decision document

- This is the step that has the most risk associated with it.
- The decision should include specific facts and credibility determinations for each component of the CRR
- Even on a finding of not responsible the Complainant deserves to understand how the panel came to its decision
- When the Chair circulates the decision you will have a document to allow you to provide helpful feed back.
- We are a team!



Let's give it a try

Here is the notice of hearing that would have come out of our hypo.

Applicable policy or policies alleged to have been violated

Student Respondent has been accused of engaging in behaviors that may have violated the following provisions of University policy.

- **Sexual Harassment.** Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 - **Sexual assault** - Any sexual act that constitutes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape, as defined below:
 - **Rape** is 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, or by a sex-related object, without the consent of the victim. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent. Attempted Rape is included. ([CRR 600.020.B.1.c.i](#))
 - **Sodomy** is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. ([CRR 600.020.B.1.c.ii](#))
 - **Sexual Assault with an Object** is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything used by the offender other than the offender's genitalia. ([CRR 600.020.B.1.c.iii](#))
 - **Fondling** is the touching of the 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 their age or because of their temporary or permanent mental or physical incapacity. ([CRR 600.020.B.1.c.iv](#))



Questions?

Do you have a process that you use already? If so, how does it work?



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