

TWU Student Conduct Hearing Officer, Appeals Officer, Investigator and Decision Maker Training

Texas Woman's University
Office of Civility and Community Standards



PART ONE

All about the Process

Applicability of the Process

What is the SCOPE of the University's Educational Programs and Services?

The University's policies and procedures apply to all of our educational programs and activities. This is defined by TWU as any program or activity that occurs on or off campus that supports the educational mission of the institution. This includes incidents which take place on University grounds, are sponsored or affiliated with the University, or where the party is representing the university in an official capacity or earning credit for any degree or non degree seeking program.

Applicability of the Process (continued)

Procedures apply in the following circumstances:

- Actions which take place on “University Premises” means buildings or grounds owned, leased, operated, controlled, or supervised by the University.
- Actions which occur at an “University-Sponsored Activity” means any activity on- or off-campus which is initiated, funded, authorized, or supervised by the University.
- Actions which occur off campus or online when it affects the substantial University interest:
 - Any situation where it appears that the affiliated party’s behavior may present a danger or threat to the health or safety of themselves or others; and/or
 - Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
 - Any situation that is detrimental to the educational mission and or interests of the University

Applicability of the Process (continued)

These processes apply to the following parties:

“Student” means any individual who, at the time of the incident, has accepted an offer of admission to the University; has an open academic program; is taking courses at the University, either full-time or part-time and pursuing undergraduate, graduate, or professional studies; is auditing a class; or has any other continuing relationship with the University. This includes, but is not limited to, new students at Orientation, individuals not currently enrolled but who are still seeking a degree from the University, dual credit students, non-degree seeking students, individuals who have 6 completed coursework but are awaiting conferral of a degree, and any other individual enrolled in a course offered by Texas Woman’s University. For the purposes of this Code, an individual who allegedly provided false information or omitted information on an application shall be considered a student. Generally speaking, academic programs close for undergraduate students after one year of non-enrollment and up to two years for graduate students

“Student Organization” means any group of students who have complied with University requirements for registration or recognition as a Student Organization.

“University Official and/or Employee” means an employee of the University. This includes any individual who is a student employee, faculty member, staff member, or other individual employed by or volunteering for the University.



The Title IX Grievance Process

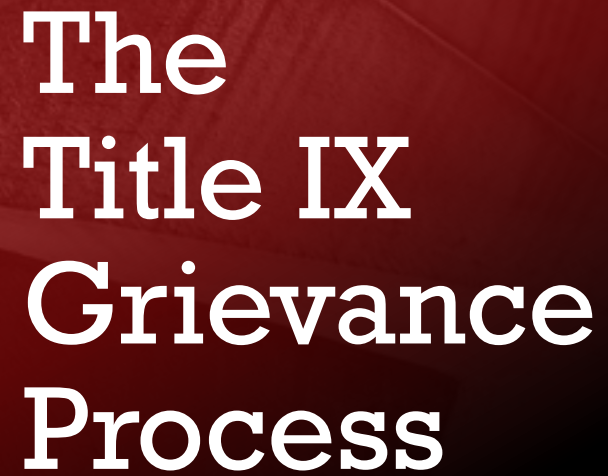
The Grievance process is the process by which a formal complaint of sexual harassment is addressed equitably and promptly under Title IX and in a manner that ensures due process for the complainant and the respondent.

On the following slides we break the process down into 7 steps. Each of you will play a role in one or multiple steps dependent upon your role as an informal decision maker, investigator, hearing officer or appeal official.



The Title IX Grievance Process

1. Incident
2. Report
3. Investigation
4. Charges
5. Response
6. Hearing
7. Appeal



The Title IX Grievance Process

1. Incident

Any incident occurs that falls within the applicable process (location, impact, by an affiliated party) and potentially violates TWU Policy (Title IX/Sexual misconduct or Code of Conduct)


2. Report

Anyone may file a report with the University regarding an alleged violation of our Student Code of Conduct or Employee Prohibited Standards of Conduct.

The University accepts reports via email or through our incident management system, Maxient.

Filing an Incident Report

- The university has procedures in place that aim to be aware of the needs of those who make an institutional report of sexual assault, domestic violence, dating violence, and stalking. Procedures include informing individuals about their right to file criminal charges as well as the availability of counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance and other services on and/or off campus, as well as additional remedies to prevent contact between a complainant and a respondent, such as housing, academic, transportation and working accommodations, if reasonably available. The university will make such accommodations, if the victim requests them and if they are reasonably available, regardless of whether the complainant chooses to report the crime to the TWU Department of Public Safety or local law enforcement.
- Any incidents or concerns regarding Sexual Misconduct should be reported immediately, even if the person(s) concerned about or harmed by the misconduct are unsure about pursuing a formal complaint. Anyone can report prohibited conduct by notifying the following:
 - [Office of Civility and Community Standards](#) 940-898-2968
 - [TWU Department of Public Safety](#) 940-898-2911
 - Online using our [incident reports](#)



The TWU Title IX Grievance Process

1. Incident
2. Report
3. Investigation
4. Charges
5. Response
6. Hearing
7. Appeal


The TWU Title IX Process

The procedures for steps three, four and five (*Investigation, Charge and Response*) of the Title IX process are outlined in full within the following documents which are **required pre-reading for this training**:

- [TWU Sexual Violence Resource Book](#)
- [TWU Resolution Process for Complaints](#)
- [TWU Student Code of Conduct](#)
- [TWU Sexual Misconduct Policy](#)
- [URP Prohibition of Sexual Misconduct Policy](#)

All Title IX Investigators must complete a separate Investigator Training regarding how to conduct a thorough investigation with ATIXA* on an annual basis.

*Proprietary information not able to be posted publicly



The Decision Making Process

1. Incident
2. Report
3. Investigation
4. Charges
5. Response
6. Hearing
7. Appeal

What technology platform do we use for hearings?

- Zoom is a web conferencing and recording solution that is available in Canvas. Your instructor will use Zoom to meet with your class online, share an application, demonstrate a new concept, hold office hours, watch student presentations, and more. [Learn about Zoom system requirements.](#)
- Ensure that you have consistent and reliable Internet access – since our hearings are conducted virtually it is critical that you verify the reliability of your internet. Any hearing participant who needs a reliable place to participate in the hearing process can let us know.
- Take some time to become familiar with Zoom now before you need to use it for a hearing. Explore the application to ensure that the technology works on the computer you will be using.
- If you are not yet trained in the use of Zoom you can learn more about the platform and sign up for additional training here:

[Knowledge Base - Zoom \(twu.edu\)](#)

Who's present during the hearing? Now online!

1. **Hearing Chair** – facilitates (reads a script)
2. **Hearing Board members** – you and 2 or 4 others
3. **Case investigator**
4. **Reporting party** – the evidence is self-sustaining
5. **Responding party** – the student facing charges
6. **Witnesses** – could be from either side or neutral
7. **Advocate** – they don't participate
8. **Who else** may be present?



What happens during the hearing?



1. Everyone joins (recording starts)
2. Hearing Chair welcome and introductions
3. Investigation summary, presentation of hearing documents, and list of charges
 - Hearing Board Questions
4. Respondent statements (student).
 - Hearing Board Questions
5. Witness statements
 - Hearing Board Questions
6. Optional closing statements from Reporting party or Investigator
7. Respondent closing statements.
8. Everyone leaves (recording stops)
9. Deliberations!

What is the role of the Advocate?

Allowed:

- Being present at the Hearing
- Talking with the Responding party (they usually whisper or pass notes)

Not Allowed:

- Speaking on the Responding party's behalf
- Addressing anyone in the room other the person they are supporting
- Being disruptive or distracting

Advocates

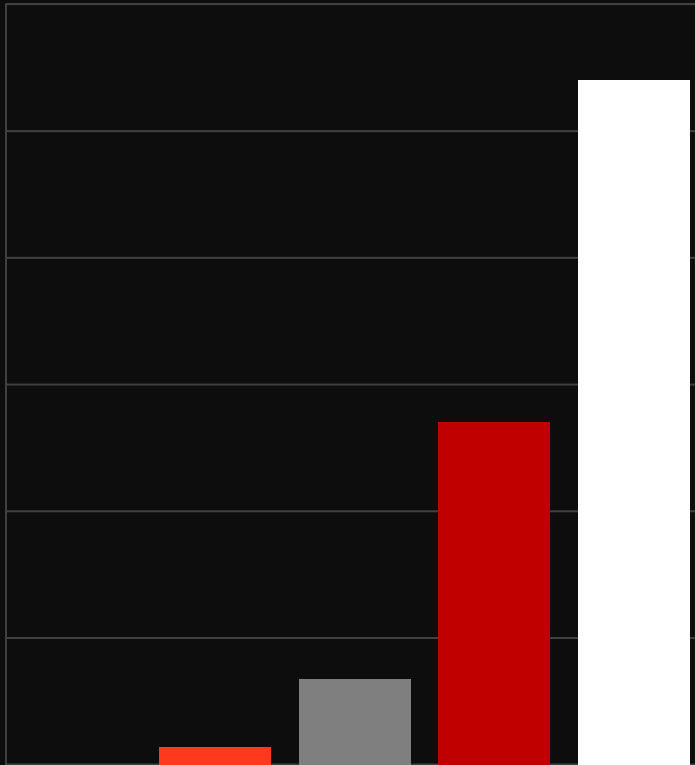
Can be any person of the party's choosing:

Friend
Parent
Attorney
University appointed advocate

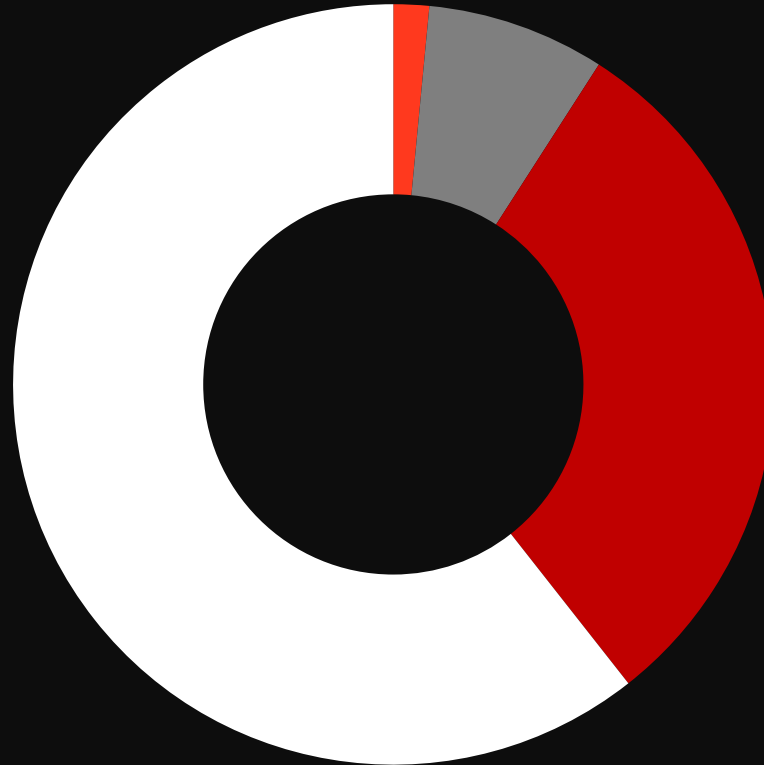
Official Hearing Documents. No more, no less.

Anything that is relevant to the case can be submitted as hearing documents three days before the hearing.
All parties receive all hearing documents two days before the hearing.
No surprises on hearing day.

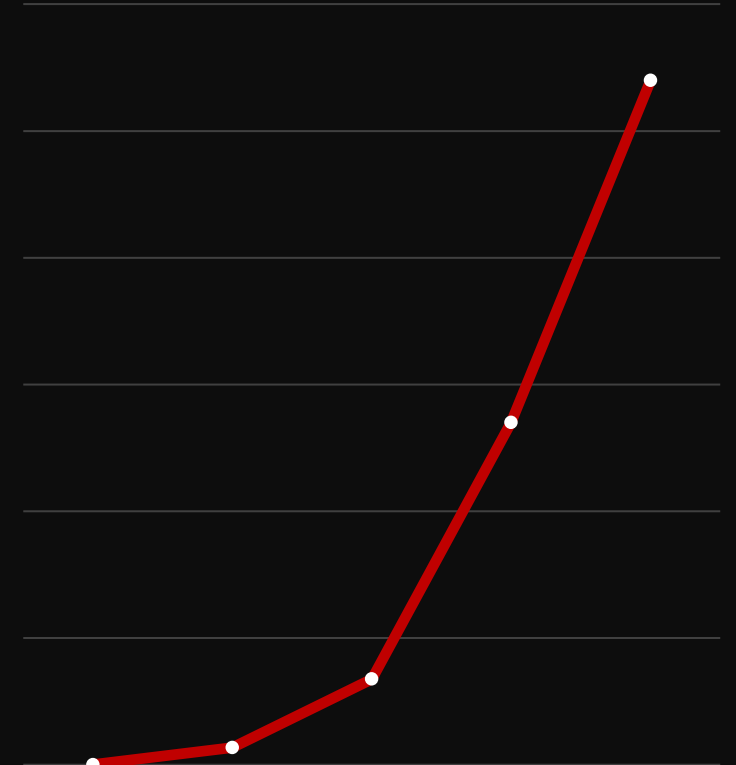
Pictures and Videos



Documents and Statements



Relevant or Not





PART TWO

How To

Be an Objective and Unbiased
Decision Maker



What is Bias in a Title IX Process

What is BIAS?

Beliefs, Ideas, Assumptions, Stories

Two Kinds of Bias:

Conscious Bias (explicit bias)

Unconscious Bias (implicit bias)

It is important to note that not all biases are ones we are aware of.

All TWU Decision makers should complete the Academic Impressions training entitled “Overcoming Bias in your Title IX Investigative Process”

[Overcoming Bias in Your Title IX Investigative Process - Academic Impressions](#)

- Conflicts of Interest-occurs when a decision makers' personal interests compromises their ability to make judgements, decisions or take reasonable and appropriate actions in a case.
 - We attempt to prevent this in advance
 - Either party may request an exclusion
 - The hearing chair has final decision regarding recusal
- Examples
 - Pre-judgement of the facts at issue
 - Previous Professional Relationship
 - Previous Personal Relationship
 - Issues regarding Protected Classes
 - Pre-conceived notions about parties
 - Shared community

Conflicts of Interest and Bias

Even the perception of bias could be grounds for an appeal.

“Failure in due process”

Conflicts of Interest can take the following forms:

Potential Conflict of Interest: occurs when a personal interest or obligation could possibly influence or conflict one's responsibilities as a decision maker

Example: The Investigator and Complainant are members of the same church and occasionally socialize off campus.

Actual Conflict of Interest: occurs when there is a direct conflict that can't be mitigated.

Example: The Decision maker's family member is the respondent in a sexual harassment case.

Perceived Conflict of Interest: occurs when a reasonable person might perceive there to be an improper influence on the decision maker's ability to perform their duties without influence even when the decision maker indicates they are without Conflict of Interest.

Example: The decision maker is a faculty member and so is the respondent.

Conflicts of Interest

- It is critical to the process that no decision makers have preconceived notions as to the credibility or believability of any party:
 - Complainant
 - Respondent
 - Witnesses
- If you believe you have a BIAS or any preconceived notions about any party you should not serve as the Title IX decision maker and you have an obligation to recuse yourself.

Conflicts of Interest and Bias

Questioning

Using appropriate and reasonable questioning processes is one way of assuring bias and prejudice doesn't find it's way into our process.

Questioning

Is used to better understand the evidence, allegations, and position of the parties.

Reasonable Questions

- How far away was person X from the incident?
- Who is in this photograph?
- In regards to “the responding party struck me multiple times”, How many is multiple?
- Did you share this information with anyone before the incident took place?
- Who all was present at the party?
- How many drinks did you witness either party consume that evening?

Problematic Questions

- Why did you choose to attend the party?
- Why did you choose to drink so much if you knew something like this could happen?
- Didn't you have a previous relationship with the respondent?
- How would you feel if someone did this to you?
- How will your actions change if this situation were to occur again in the future?

Evidence and Questioning in Title IX Cases

In Title IX cases we must be cautious to assure the questions are relevant and focused only on the allegations at hand.

Reasonable Questions

- What time did you meet up that night?
- Do you recall if X was present?
- Was alcohol being consumed?
- Did you witness any interactions between X and Y?

Problematic Questions

- Does X frequently drink?
- Have you seen X flirt with Y previously?
- Have you had sexual relations before?
- How many partners have you had?
- What's X's reputation?

Both the investigator and the hearing panel have a responsibility to assure that only relevant evidence is considered and that no questions or information pertaining to any party's prior sexual behavior or sexual predisposition are included in the investigation report or hearing process.

The investigative report must fairly summarize relevant evidence and ONLY contain findings of fact arrived at through witness testimony and reasonable questions outlined above.

In live hearings the board must review the questions to assure that these questions are not allowed to be asked. Only relevant cross-examination and other questions, Hearing officer must determine relevance and explain decisions to exclude questions.

Assessing the credibility and weight of evidence

All TWU Decision makers should consider all evidence and questioning/responses to assign weight to different types of evidence and determine when it is relevant and credible.

Decision makers will typically want to consider the following as more credible:

- Third party documented evidence (surveillance/security videos, posts on social media, reports)
- Electronic evidence (photos, text messages and videos taken by parties)
- Real evidence (physical objects)
- Witness Testimony when not associated with either party

Decision makers will also have evidence they will need to consider the weight and credibility such as:

- Circumstantial evidence or Affiliated witness testimony
- Character evidence that does not prove or disprove the specific incident in question
- Hearsay evidence

Decision makers should typically exclude the following evidence

- Impact statements (only considered when determining sanctions AFTER a finding of responsibility)
- Evidence or statements regarding prior behaviors, sexual relationships, etc...



Responsibilities of Hearing Officer

- Review info & prepare questions beforehand
- Remain focused & attentive
- Ask fair & appropriate questions
- Determine if there was a violation of TWU policies
- If responsible, determine appropriate sanctioning
- **Apply preponderance of evidence standard**
- Provide an environment conducive to information sharing for all parties involved
- Focus on policies and facts
- All Hearing Officers are to adhere to the “Live Hearing” protocols established under federal Title IX policy. These protocols are clearly defined in the Hearing officer script.



Responsibilities of Hearing Officer

- Hearing officers have an obligation to determine relevancy of evidence. How do you do this?
 - Review all evidence and/or question
 - Consider the allegations and ask the following:
 - Does the evidence help to prove or disprove anything that is specific to the investigation or complaint?
 - Is the evidence or question helpful in making a determination of fact?
 - Does the evidence or question speak to events/circumstances of the specific incident under review?
- Evidence and questions should be excluded when:
 - They aren't relevant to the specific incident under review
 - Calls into question the prior sexual behavior or relationships of either party.



Responsibilities of an Investigator

- Review the incident report thoroughly
- Consider if the case constitutes a potential violation of TWU policy
- Interview all parties and witnesses:
 - Ask fair & appropriate questions
 - Determine if the evidence supports a violation of TWU policies
- Write and submit investigation report to Title IX Coordinator
 - Title IX Investigation reports should include:
 - Names of complainant and respondent
 - Specific allegations
 - Date investigation began
 - Summary of the investigation process
 - Policies in question
 - Witness names and contact information
 - Summary of evidence collected during the investigation
- Focus on policies and facts



Responsibilities of an Appeal Official

- Consider if the appeal meets the criteria for appeal:
 - Material, procedural or substantive error occurred (bias, conflict of interest, deviation from published procedures)
 - New Evidence is available that wasn't available during original hearing or investigation
 - Evidence doesn't support the finding
 - Sanctions disproportionate to the violation
- Appeals are NOT to be a full-rehearing and should be a review of written documentation, hearing record and pertinent evidence and documentation.
- Appeal officials must follow the responsibilities of the hearing officer in reviewing the resolution of the case and then;
- Determine whether to
 - Uphold the finding and sanctions
 - Uphold the finding but reduce the sanction
 - Remand the case back to a Rehearing



NOT Responsibilities

- Finding teachable moments during the hearing
 - Helping the student see the other side
- Playing devil's advocate
- Judging or moralizing a person's behavior
- Using sarcasm or cynicism
- Being a therapist or diagnosing
- Making determinations before the hearing is complete
- Embarrassing, humiliating or making someone feel inferior
- Punishing students
- Criticizing professors
- Chasing hypotheticals
- Predicting future behavior



Preponderance of Evidence Standard

Apply this standard to each charge based on information and evidence presented in this case only.

Responsibility for policy violations are determined BEFORE sanctions

If you are at 50% or can't decide, it leans in favor of the Respondent.

Aka: Greater weight of the credible evidence

Aka: More likely than not.

Aka: 51% certainty

Sanctioning

ONLY AFTER RESPONSIBILITY IS DETERMINED FOR ALL CHARGES

Things to consider:

- Pre-Meditation or Intent
- Severity or Extent
- Prior Violations
- Safety/Rights of Others

Sanctions Menu

- Letter of Concern
- Disciplinary Warning
- Disciplinary Hold
- Disciplinary Probation
- Disciplinary Suspension
- Disciplinary Expulsion
- Loss of Privileges
- No Contact Order
- Revocation of Admission
- Revocation of Degree
- Withholding Degree
- Educational Sanctions

Title IX Specific Information

Sexual harassment means unwelcome, sex-based verbal or physical conduct that:

- a. in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
- b. in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.

Sexual Harassment

What is the Title IX Definition?

Sexual harassment may include:

1. Sexual violence, as defined under state law, which includes rape, sexual assault, sexual battery, and sexual coercion;
2. Physical conduct that, depending on the totality of the circumstances present, including frequency and severity, may constitute sexual harassment includes, but is not limited to unwelcome intentional touching; or deliberate physical interference with or restriction of movement;
3. Verbal conduct, whether oral, written, or symbolic expression, that depending on the totality of the circumstances present, including frequency and severity, may constitute sexual harassment includes, but is not limited to explicit or implicit propositions to engage in sexual activity;
4. Gratuitous comments, jokes, questions, anecdotes, or remarks of a sexual nature about clothing or bodies;
5. Gratuitous remarks about sexual activities or speculation about sexual experiences;
6. Persistent, unwanted sexual or romantic attention;
7. Subtle or overt pressure for sexual favors;
8. Exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars, or other materials;
9. deliberate, repeated humiliation or intimidation based upon sex;
10. repeated and unwanted requests for dates, sexual flirtations, or propositions of a sexual nature;
11. subtle pressure for a sexual relationship;
12. sexist remarks about a person's clothing, body or sexual activities;
13. unnecessary touching, patting, hugging, or brushing against a person's body;
14. direct or implied threats that submission to sexual advances will affect or be a condition of employment, work status, grades, or letter of recommendation; or
15. conduct of a sexual nature that causes humiliation or discomfort, such as use of inappropriate terms of address, and g. sexually explicit or sexist comments, questions or jokes.

The Sexual Misconduct Policy states that TWU will not tolerate any form of sexual misconduct including, but not limited to, sexual harassment, dating/domestic violence, and acquaintance or date rape. This policy is available online at [1745730 \(powerdms.com\)](#)

Other policies that may be relevant to a situation of sexual misconduct include the following and can be found at twu.edu/policy:

- Student Code of Conduct [1745742 \(powerdms.com\)](#)
- Faculty Standards of Conduct Corrective Action Guidelines [1745832 \(powerdms.com\)](#)
- [TWU Nondiscrimination Statement | University Policy | TWU](#)

Sexual Harassment

TWU Decision makers have a responsibility to uphold the integrity of the formal and informal resolution processes for the University. If you ever have a question about the role you play, how to address issues you encounter in serving as a decision maker or Title IX in general it is your responsibility to ask.

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Questions?