

Title IX and Clery Compliance

Faculty & Staff Sexual Harassment Hearing Board

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Office of Title IX and Clery Compliance



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Campus Safety

Title IX of the Education Amendments of 1972



- Sexual Harassment
 - Sexual Discrimination
 - Sexual Violence
- Sexual Orientation & Gender Identity
- Pregnancy & Parenting

Jeanne Clery Disclosure of Campus Security Policy & Campus Crime Statistics Act of 1990-



- Certain Clery Crimes
- Transparency with Campus Community & the Public
- Violence Against Women Act (VAWA)
- Timely & Emergency Notifications
- Annual Security & Fire Safety Report
 - Safety Policies
 - Crime Statistics

2020 Title IX Regulations Sexual Harassment

Conduct on the basis of sex that satisfies one or more of the following:

- ❖ A UNCP employee conditioning the provision of an aid, benefit, or service of the university on an individual's participation in unwelcome sexual conduct (quid pro quo);
- ❖ Unwelcome conduct determined by a reasonable person to be **so severe, pervasive AND objectionably offensive** that it effectively denies a person equal access to a UNCP education program or activity; or
- ❖ Dating violence, domestic violence, and stalking, and sexual assault as defined by the Clery Act (VAWA).

Jurisdiction

The locations, events, or circumstances of UNCP's education programs and activities, which UNCP exercises substantial control over both the respondent and the context in which the sexual harassment occurs

What is required under the 2020 Title IX Regulations?

A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent.

Mandatory Reporters

Officials with Authority Title IX

- Authority to resolve student/employee issues

Mandated Reporters UNCP Policy

- Teach and/or have supervisory duties
- Officials with significant contact with students & campus activities

Campus Security Authorities Clery Act

- Campus Police & Security
- Title IX Office & Student Conduct Office
- Officials with significant contact with students and campus activities

Medical and/or
Mental Health Services

Supportive
Measures

Academic
Accommodation

Mutual No-
Contact Order

Modification to Campus
Housing or Work Environment

Reasonableness
Standard

Best Interest of the
Student/Employee

- Not the Professor or
Supervisor

Informal Resolution

- ❖ The parties agree to resolve a report informally rather than through a formal investigation and adjudication
- ❖ The Title IX Coordinator is able to support the resolution informally by providing agreed-upon remedies and supportive measures to resolve the situation
- ❖ Examples:
 - ❖ Mediation
 - ❖ Restorative practices

UNCP Sexual Harassment Investigation

vs.

Criminal Investigation

Civil Rights Investigation vs. Criminal Investigation

Policy vs. Laws

Complainant vs. Victim

Respondent vs. Accused

Hearing vs. Trial

Hearing Board vs. Judge or Jury

Responsible or Not Responsible vs. Guilty or Not Guilty

University Sanctions vs. Criminal Sentencing

Complaint Resolution Process

For faculty, staff, and student cases

Title IX Cases: Formal Grievance Process

All other sex-based harassment/discrimination and sexual violence cases: Inclusive Complaint Process

Major Gatekeeping Guideposts

NOTICE

Initial
Assessment

Notice of
Investigation
& Allegation

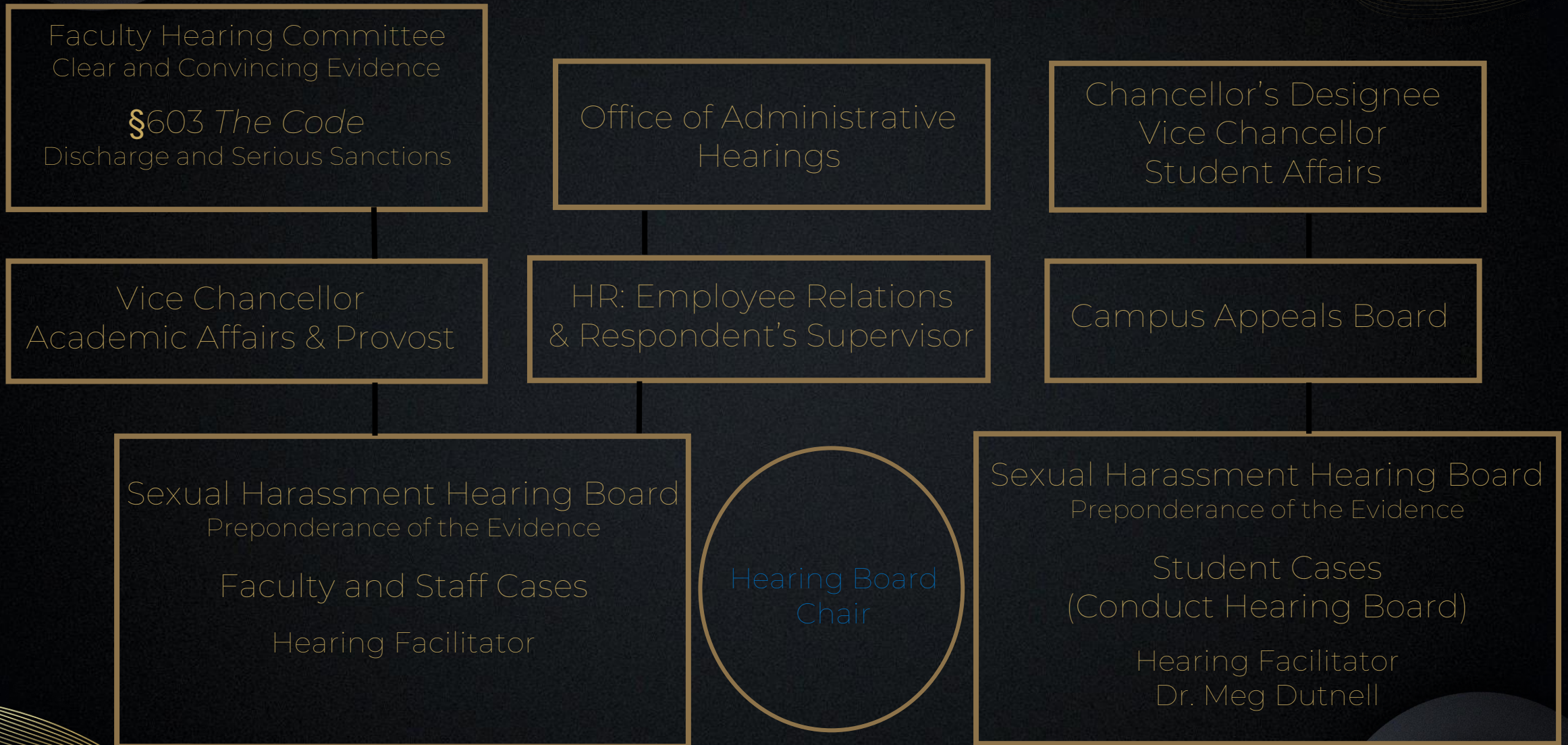
Comprehensive
Investigation

Hearing and
Determination
of Responsibility

Sanction(s)
(Provost/HR)

Appeal(s)

Hearing Boards and Appeal Boards





Retaliation

Prohibited Conduct: Definitions & Jurisdiction

- ❖ Sexual Harassment
- ❖ Sexual Discrimination
- ❖ Dating Violence
- ❖ Domestic Violence
- ❖ Stalking
- ❖ Sexual Assault ~ Fondling
- ❖ Sexual Assault ~ Rape

Sexual Harassment

Unwelcome verbal, nonverbal, or physical conduct, based on sex (including gender stereotypes) that may be any of the following:

- ❖ Implicitly or explicitly a term or condition of employment status in a course program or activity
- ❖ A basis for employment or education decisions; OR
- ❖ Sufficiently severe, persistent, or pervasive to interfere with one's work or educational performance creating an intimidating, hostile, or offensive work environment.
- ❖ Note: Behavior may rise to the level of a Title IX violation

Sexual Discrimination

The unlawful distinction, preference, or detriment to someone (e.g., student, employee, applicant for admission or employment) as compared to others, similarly situated, that is based on that person's sex or gender.

Domestic Violence (to include Dating Violence)

A felony or misdemeanor crime of violence committed by:

- ❖ A current or former spouse or intimate partner of the victim,
- ❖ By a person with whom the victim shares a child in common,
- ❖ By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner,
- ❖ By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred,
- ❖ By a person who is or has been in a dating relationship of a romantic nature with the victim
- ❖ By any other person against an adult or youth victim who is protected from that person's act under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- ❖ Dating Violence includes, but is not limited to, **sexual or physical abuse or the threat of such abuse**

Stalking

Engaging in a *course of conduct* directed at a specific person that would cause a reasonable person to:

1. Fear for the person's safety or the safety of others; or
 2. Suffer substantial emotional distress
- ❖ Can be direct actions or through third parties
 - ❖ Could include the use of devices or other methods
 - ❖ Includes following, monitoring, observing, surveilling, threatening, communicating to or about a person, or interfering with a person's property

Stalking...

- ❖ Does not have to be sex/gender related
- ❖ Most people, especially students, do not recognize stalking behaviors and may not realize they are within a “course of conduct.”

Sexual Assault ~ Fondling

- ❖ Touching the private body parts of another person
- ❖ For the purpose of sexual gratification
- ❖ Without consent

Sexual Assault ~ Rape

- ❖ Any sexual act directed against another person
- ❖ Without consent
- ❖ Rape: The 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 consent

UNCP Obligations under Title IX & Title VII

Title IX Standard

- Quid pro quo sexual harassment
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive, AND objectively offensive that it effectively denies a person equal access to the school's education program or activity

Title VII Standard

- Quid pro quo sexual harassment
- Unwelcome conduct that is sufficiently severe, persistent, OR pervasive to interfere with one's work or educational performance creating an intimidating, hostile, or offensive work or learning environment, or interfering with or limiting one's ability to participate in or to benefit from an institutional program or activity

Hearing



Cross-Examination of Parties
by Advisors



Advisor
Support Person

Hearing Panel Chair: decides all relevancy issues in real time

Advisors §106.45(b)(6)

Title IX

- ❖ Provide advice, counsel, and support to a party
- ❖ Perform cross examination of other party and other witnesses
- Note: Institution required to provide if party does not have their own

Sexual Misconduct

- ❖ Provide advice, counsel, and support to a party
- ❖ May not actively participate in the hearing process
- ❖ May provide written questions to the Hearing Panel to read aloud

Hearing Logistics

- ❖ At the request of either party, the parties must be permitted to be in separate rooms
- ❖ Hearings may be conducted in-person or via videoconferencing
- ❖ Have available all directly related information
- ❖ Institutions permitted to establish rules of decorum
- ❖ All hearings must be recorded

Things to Keep in Mind

Before the Hearing

- ❖ Provide confidentiality
- ❖ Review all available materials (i.e., Sexual Misconduct policy, investigative report and supplemental documentation)
- ❖ Prepare questions in advance
- ❖ Get prepared for anything
 - ❖ Advisors and/or Attorneys
 - ❖ Party non-participation

During the Hearing

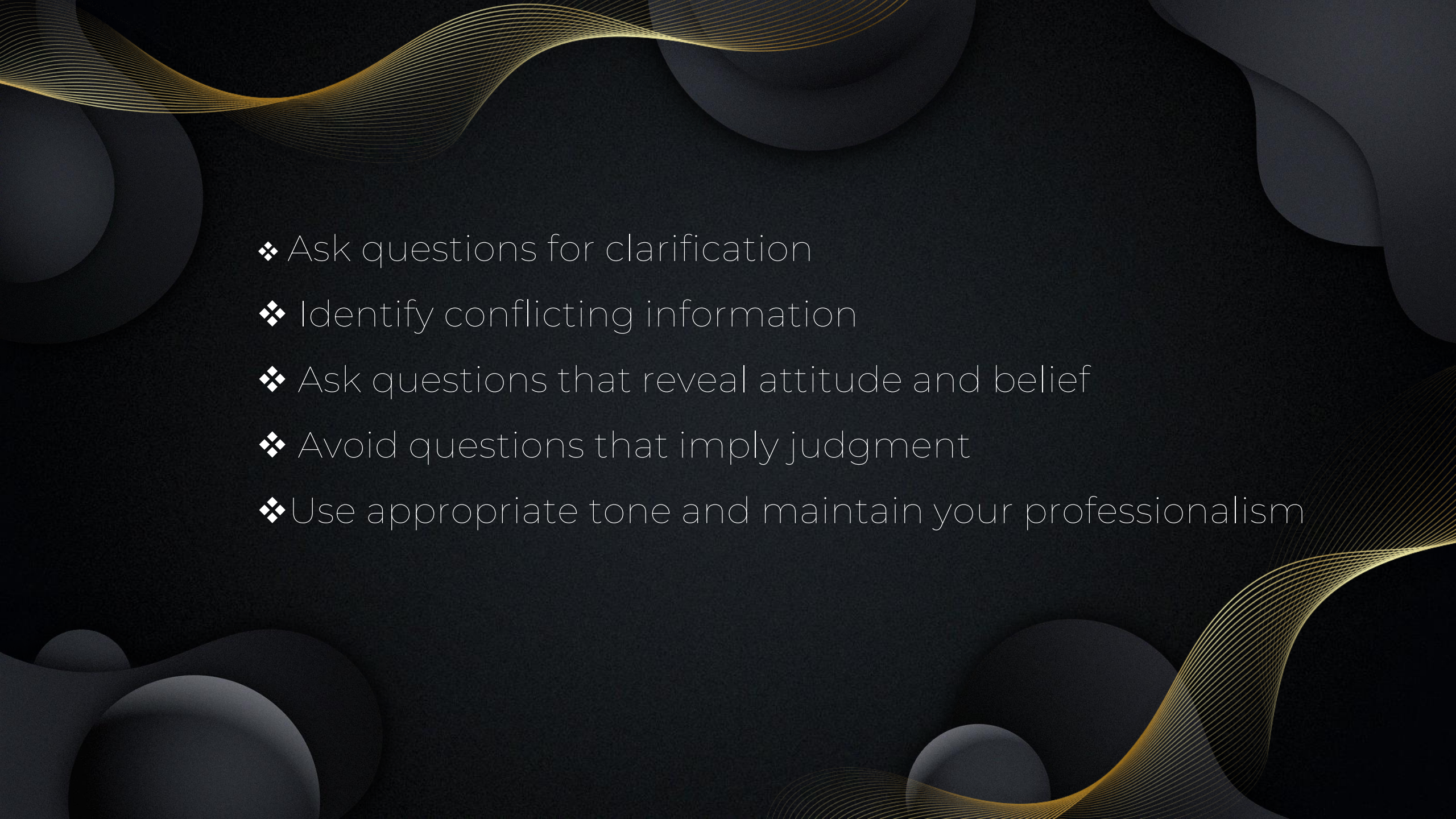
- ❖ Be patient
- ❖ Listen and take notes
- ❖ Don't draw conclusions until all evidence and testimony are presented
- ❖ Be mindful of the seriousness of the situation
- ❖ Take breaks if necessary

Procedures: Hearing Panel Chair

- ❖ General authority over conduct of hearing
- ❖ Determines whether information is relevant
- ❖ Determines, in real time, the relevancy of each question posed by the Advisors
- ❖ Can remove an Advisor for disruption or bad behavior
- ❖ Can have meeting with party and Advisor to determine relevancy pre-hearing

Effective Questioning

- ❖ Ask open-ended questions
- ❖ Avoid leading questions
- ❖ Listen more than you speak—Be comfortable with silence
- ❖ Allow time for people to answer your questions
- ❖ Ask follow-up questions

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- ❖ Ask questions for clarification
 - ❖ Identify conflicting information
 - ❖ Ask questions that reveal attitude and belief
 - ❖ Avoid questions that imply judgment
 - ❖ Use appropriate tone and maintain your professionalism

To Ask or Not to Ask . . .

- ❖ In framing questions, be sensitive to the emotional states of both Complainant and Respondent.
- ❖ Do not make assumptions about Complainant's fragility or vulnerability.
- ❖ Do not make assumptions about Respondent's guilt
- ❖ Important/relevant questions should always be asked.

Useful Phrases

- ❖ Would you be willing to tell me more about ... ?
- ❖ How did you feel about ... ?
- ❖ Help me understand...
- ❖ What did you do after ... ? What happened then?
- ❖ What did you mean when you said ... ?
- ❖ What was your reaction to ... ?
- ❖ How did you become involved in ... ?
- ❖ What is your understanding of ... ?

What to Ask When

- ❖ “What” questions ask for facts and details
- ❖ “How” questions ask about the process, sequence of events, or focus on emotions
- ❖ Closed “Who/When/Where” questions ask for the specifics of the situation
- ❖ Avoid “Why” questions that could be perceived as judgmental
- ❖ Avoid multiple choice questions; they are leading

Leading Questions...

Leading Questions

- ❖ Did you talk to your Department Chair after this incident?
- ❖ Were you upset when Dr. Smith told you your pregnancy was inconvenient?

❖

Proper Questions

- ❖ Who did you talk to after this incident?
- ❖ How did you feel after your conversation with Dr. Smith?

Evaluating Information

- ❖ Oral and/or written statements
- ❖ Physical objects and other kinds of records and documents
- ❖ Is the information relevant?
- ❖ Is the information credible?
- ❖ Is the information convincing?

Relevance

- ❖ Information is relevant when it tends to prove or disprove an issue raised in the allegation.
- ❖ At times, irrelevant or non-relevant information may be considered, but there are limits – particularly as to prejudicial information.

Evidentiary Considerations

- ❖ The burden of proof AND burden of gathering evidence is on the institution
- ❖ Parties are permitted to present evidence and call witnesses to advance their claims and defenses
 - ❖ In Title IX Hearings that may include fact or expert witnesses
 - ❖ Permitted to establish the weight given to certain types of evidence

Other Evidentiary Exclusions

- ❖ Legally privileged information is protected
- ❖ A party's treatment records cannot be used without their voluntary, written consent
- ❖ Duplicative evidence may be deemed irrelevant
- ~~❖ If an individual does not submit to cross examination, at a Title IX hearing, their statements cannot be relied upon~~

Standard of Proof Preponderance of the Evidence and Clear and Convincing

Evidence which shows that the fact to be proven is more probable than not (50.1%)



Evidence presented must be highly and substantially more probable to be true than not

Grounds for Appeal

- ❖ Procedural irregularity that affected the outcome of the matter
- ❖ New evidence not reasonably available at the time of the determination and that could affect the outcome
- ❖ Conflict of interest or bias
- ❖ Violation of due process
- ❖ Material deviation from substantive and procedural standards adopted by UNC Board of Governors in UNC Policy 700.4.1



Thank You!

Questions?