



UNIVERSITY SYSTEM OF GEORGIA

Title IX Training

Na'Tasha Webb-Prather

System Director for Equity & Investigations

Stephanie Hogue

Equity Compliance Investigator



UNIVERSITY SYSTEM OF GEORGIA

- Title IX Overview
- USG Sexual Misconduct Policy
- Force-Incapacity-Consent Construct
- Trauma Informed Practices
- Case Studies

Who's Here in the Room?

- What's your day job?
- What do you believe it means to be a Hearing Panelist or Investigator?
- What has been your experience as a Panelist or Investigator?



Primary Function of the Investigator

- Be a neutral fact finder
 - Hear the facts and circumstances of an alleged policy violation
 - Gather additional relevant information
- Determine whether the evidence supports a charge of a policy violation
- Communicate findings in a clear and concise manner

Primary Function of the Hearing Panel

- Be a neutral decision maker
 - Hear the facts and circumstances of an alleged policy violation
 - Review the information provided
- Determine whether a policy violation has occurred
- Decide whether/what sanctions and remedial actions are appropriate



UNIVERSITY SYSTEM OF GEORGIA

Title IX Overview

Title IX

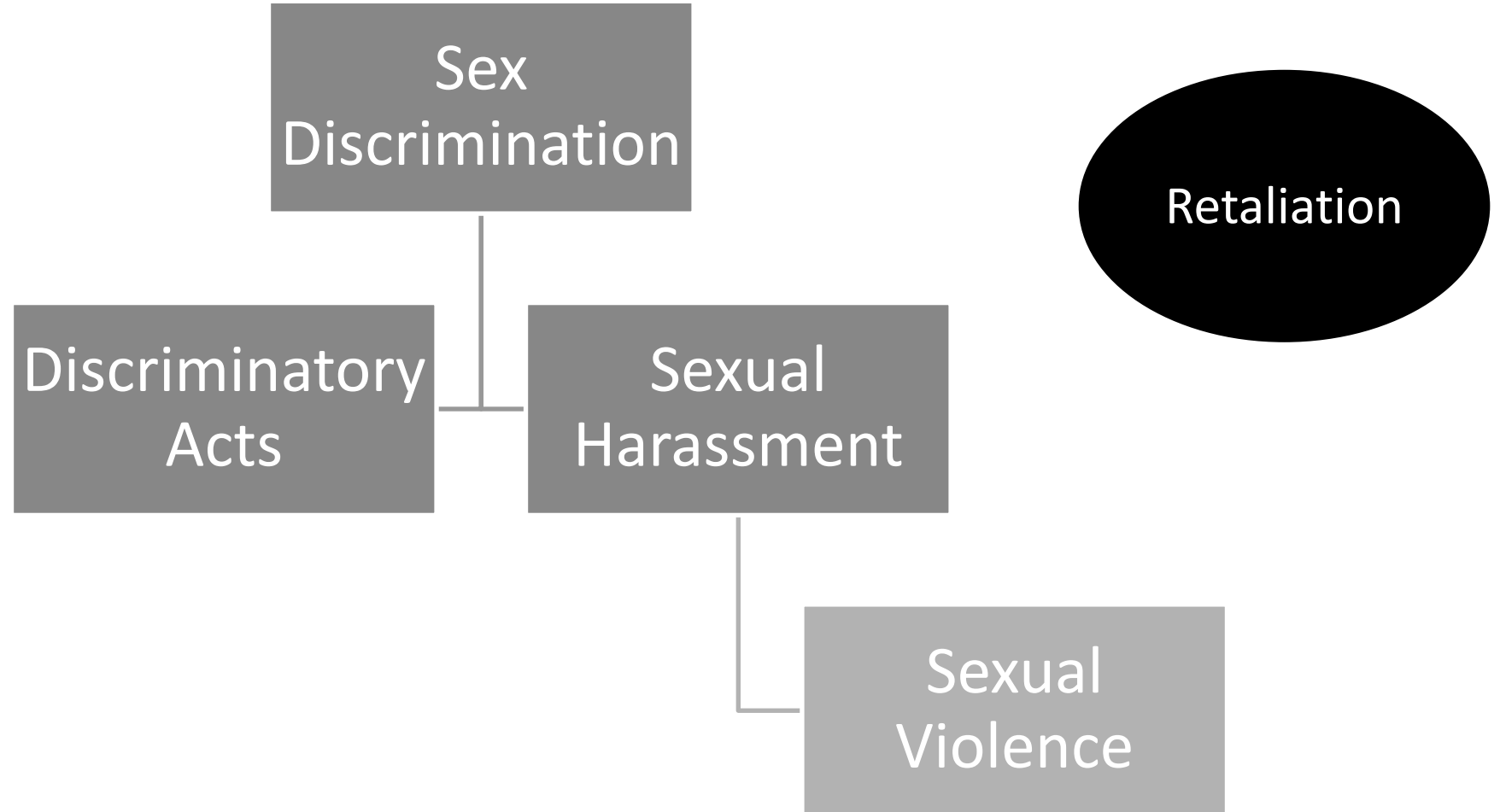
The law states that:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance..."

—United States Code



What is Sex Discrimination?

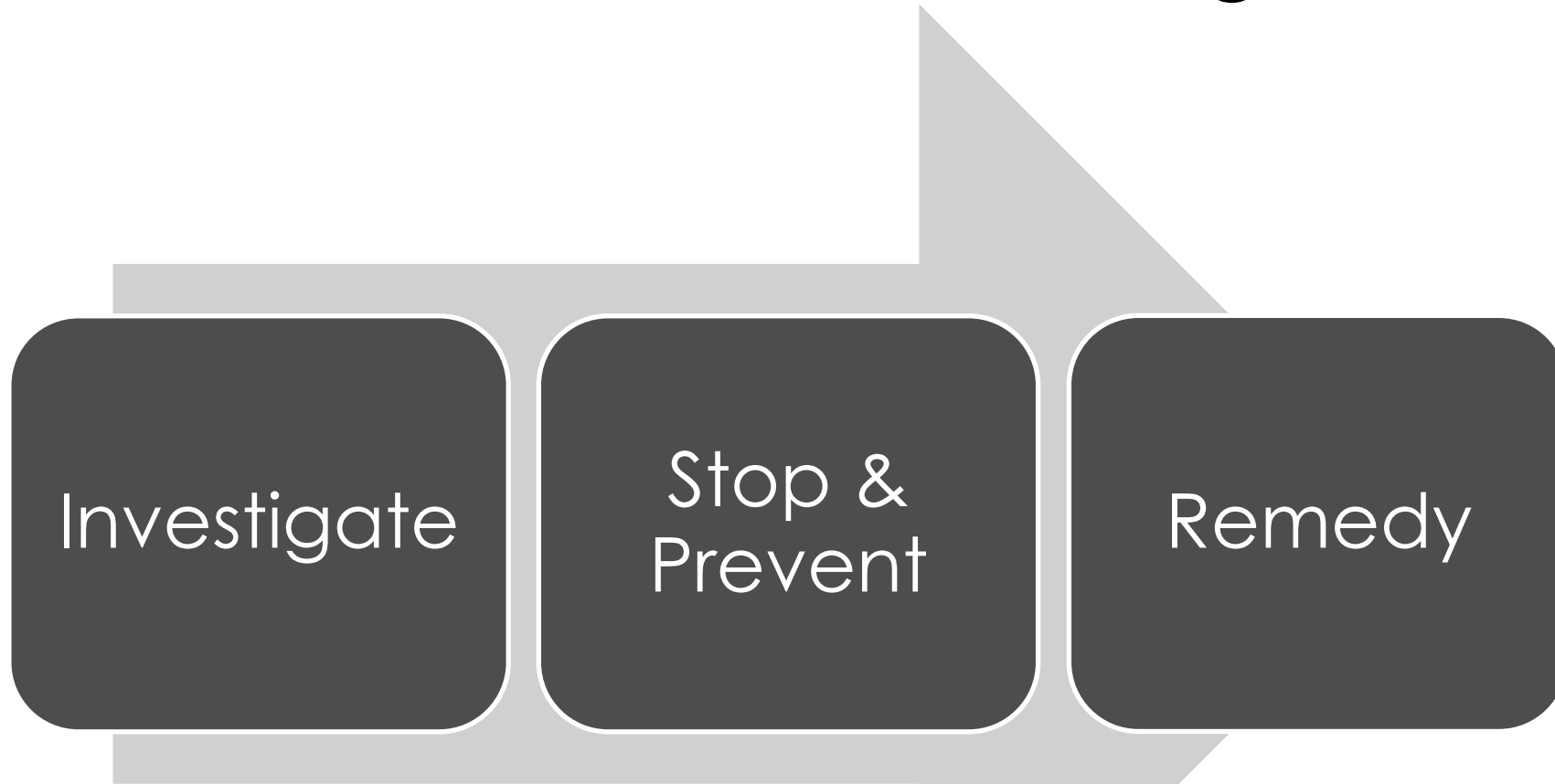


OCR Guidance

- 2001 Guidance
- 2011 Dear Colleague Letter
- April 4, 2014 (Questions and Answers)
- “Not Alone” White House Taskforce to Protect Students from Sexual Assault
- September 2017 (Withdrawal of the 2011 Dear Colleague Letter)
- September 2017 (Questions and Answers on Title IX)
- Proposed Regulations 2018



Overall Institutional Obligations



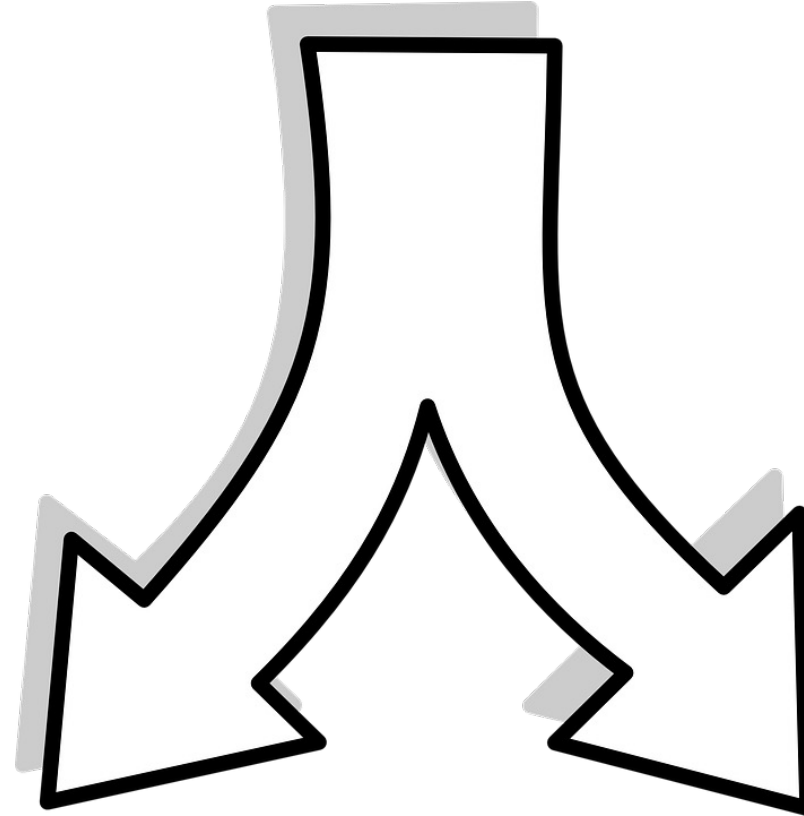


UNIVERSITY SYSTEM OF GEORGIA

System Wide Sexual Misconduct Policy

Policy Updates: A Bifurcated Process

- No longer a single investigator model
- Title IX Coordinators are NOT investigators
- Initial and final investigation reports



Additional Policy Updates

- Notice to System Director
 - Possibility of suspension or expulsion
 - Request for interim measures
- A Reasonable Timeframe for Completion
- Updated Definitions



Key Categories of Prohibited Conduct

Sexual
Misconduct

Dating Violence

Domestic Violence

Sexual Exploitation

Sexual Harassment

Stalking

Nonconsensual Sexual Contact



Dating Violence

Violence committed by a person who is or has been in a **social relationship of a romantic or intimate nature** with the alleged victim.

- Includes sexual or physical abuse
- Includes threats of such abuse

Domestic Violence

Violence committed by:

- a current **spouse**, former spouse or **intimate partner**
- a person whom **shares a child**
- a person who is **cohabiting** with or cohabitated with the alleged victim as a spouse or intimate partner

Sexual Exploitation

Taking non-consensual or abusive sexual advantage of another for **one's own advantage or benefit**, or for the benefit or advantage of anyone other than the one being exploited.

Examples include:

- Non-consensual photos, videos, or audio of sexual activity
- Non-consensual distribution of photo, video, or audio of sexual activity, even if the sexual activity was consensual
- Intentionally and inappropriately exposing one's breast, buttocks, groin, or genitals in non-consensual circumstances

Stalking

Engaging in a **course of conduct** directed at a specific person that **would cause a reasonable person to fear for his or her safety** or the safety of others OR 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

Sexual Harassment

Unwelcome verbal, nonverbal, or physical conduct, based on sex or on gender stereotypes, that is

- 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

Examples of Sexual Harassment*

- Making sexual propositions or pressuring students for sexual favors;
- Touching of sexual nature;
- Using derogatory gender-specific slang, even if joking;
- Telling sexual or “dirty” jokes;
- Spreading sexual rumors or rating other students as to sexual activity or performance;
- and
- Circulating or showing emails or websites of a sexual nature.

*Note: this list is NOT exhaustive

Nonconsensual Sexual Contact

Any **physical contact** with another person of a **sexual nature without the person's consent**.

Includes:

- Touching (or penetrating) of another's intimate parts (genitalia, groin, breasts, buttocks)
- Touching (or penetrating) a person with one's own intimate parts; or
- Forcing a person to touch his or her own or another person's intimate parts



UNIVERSITY SYSTEM OF GEORGIA

Case Study



UNIVERSITY SYSTEM OF GEORGIA

Understanding The Force-Incapacity-Consent Construct

Consent

- **Words or actions** that show a **knowing** and **voluntary willingness** to engage in a **mutually agreed upon sexual activity**
- Past consent ≠ Present consent
- The scope of consent matters
- Can be invalidated by: force, intimidation, incapacitation, or withdrawal



Overview of the Construct

1. Was **force** used by the Respondent to engage in the sexual activity?
2. Was the Complainant **Incapacitated**?
 1. Did the Respondent know OR
 2. Should the Respondent have known that the Complainant was incapacitated?
3. What **clear words or actions** by the Complainant gave the Respondent indication that the **sexual activity was mutually agreed upon**?
4. Was consent ever **withdrawn** during the sexual activity?

Force

- Was force used by the Respondent to engage in the sexual activity?
- Because consent must be voluntary (an act of free will) consent cannot be obtained through use of force
- Types of Force to consider:
 - Physical violence -- hitting, restraint, pushing, kicking, etc.
 - Threats -- anything that gets the other person to do something they wouldn't ordinarily have done absent the threat

Force Continued

- **Intimidation** - an implied threat that menaces and/or causes reasonable fear
- **Coercion** – the application of an unreasonable amount of pressure for sexual access
 - Consider:
 - Frequency
 - Intensity
 - Duration
 - Isolation

Force Analysis

- Did the Respondent utilize force or intimidation to engage in the sexual activity with the Complainant?
 - If yes = policy violation
 - If no = Continue with the analysis

Consent and the Role of Alcohol and Drugs



Incapacitation

- Physical and/or mental inability to make informed, rational judgments
 - Could the Complainant make rational, reasonable decisions ?
 - Could the Complainant appreciate the situation and address it consciously?
- More than mere intoxication or drunkenness



Impairment

- “Under the influence”

Intoxication

- “Drunkenness”

Incapacitated

- Incapable of understanding

Determining Incapacitation

- Incapacitation is a determination that will be made after the incident in light of all the facts available
- Assessing incapacitation is very fact dependent analysis of the incident in question
- Various forms of incapacity
 - Alcohol or other drugs
 - Mental/cognitive impairment
 - Injury
 - Sleep

Two-Part Incapacitation Analysis

Part One

- Was the Complainant incapacitated?

Subjective analysis based on the facts surrounding the incident

Part Two

- Did the Respondent know of the Complainant's incapacity?
 - Or would a Reasonable Person have known?

Objective analysis based on the facts surrounding the incident

Common Intoxication Factors

- Rate of consumption
- Strength of drink
- Food in the stomach
- Body Weight
- Body Type – body fat percentage
- Gender
- Enzymes, hormones, water in body
- Medications
- Illness & dehydration
- Fatigue
- Caffeine
- Genetics

Possible Signs of Incapacitation

- Lack of control over physical movements
 - Ex. Inability to dress or walk without assistance
- Lack of awareness of circumstances or surroundings
- Inability to communicate coherently
- Vomiting
- Total or intermittent unconsciousness



Respondent's Awareness

- The Respondent [or a Reasonable Person] must have been aware of the Complainant's incapacity
- The Respondent's own intoxication does not negate their obligation to comply with policy standards

Incapacitation Analysis

- If the Complainant was not incapacitated, move on to the 3rd question.
- If the Complainant was incapacitated, but:
 - The Respondent did not know it AND should not have known = incapacitation analysis fails. Move on to 3rd question.
- If the Complainant was incapacitated, and:
 - The Respondent individual knew it = policy violation.
 - The Respondent should have known it = policy violation.

Consent

- Question 3 is the Consent question:

What clear words or actions by the Complainant expressed a willingness to engage in the specific sexual activity with the Respondent?



Consent Is...

- Informed (knowing)
- Voluntary (freely given)
- Active (not passive)
- Clear words or actions
- Indicates permission to engage in mutually agreed upon (sexual) activity

Rules to Remember

- No means no, but nothing also means no
Silence and passivity do not equal permission
- To be valid, consent must be given prior to or contemporaneously with the sexual activity
- Consent can be withdrawn at any time, as long as that withdrawal is clearly communicated by the person withdrawing it

Withdrawal

- Consent can be withdrawn at any time
- Clearly communicated by the person withdrawing it [words or actions]
- Other person is required to cease sexual activity until consent is regained



Understanding the Impact of Trauma



How Trauma Can Impact Functioning



Hormonal Flood

- A release of a number of hormones into the body to prompt survival and coping- can occur during an event perceived as traumatic
 - Adrenaline- responsible for fight or flight; creates mobilization, but impairs rational thought and decision-making
 - Opioids- to deal with pain; creates flattening affect
 - Cortisol- increases energy production during stressful situations; impairs blood sugar levels, and other bodily systems
 - Oxytocin- promotes good feelings to counterbalance sensations of pain

Effects of Hormonal Flooding

- Hormones are released in varying amounts and may result in behavioral differences among reporting parties:
 - Fight, Flight, Freeze
 - Impaired ability to think rationally because of chemical surge to frontal cortex
 - May outwardly present as confused, laughing, crying, flat, angry, irritable, or variable

Tonic Immobility

- Biological response based on survival
- Hormonal flood and dysregulation of the autonomic nervous system can cause the body to shut down
- “Rape-induced paralysis”
- A person can know what is happening, but can’t fight

Memory and Trauma

- Memory is formed in two steps:
 - Encoding- organizing sensory information coming into the brain
 - Consolidation- grouping into memories and storing the stimulus
- Trauma can interfere with the encoding and/or the consolidation of memories
 - May create fragmented memories
 - Recall can be slow and difficult
- Alcohol may increase the negative impact on memory

Factors that May Impact Responses to Trauma

- Personality
- Coping strategies
- Available support and resources
- General resilience
- Genetics
- Past history of traumatic experiences
- Cultural differences in the perception and expression of trauma
- Normalization or adaptation

Investigation & Hearing Considerations

- When questioning parties remember:
 - Have empathy and respect throughout
 - Be patient
 - Use open-ended questions when possible
 - Tell me more about....
 - Help me understand your thoughts when....
 - What are you able to remember about...?
 - What were your reactions to this experience?



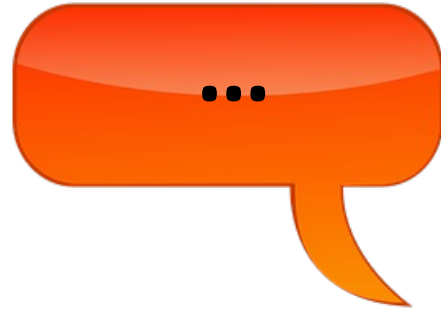
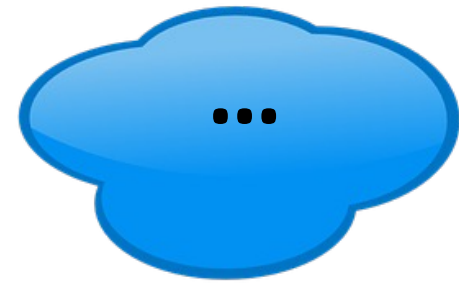
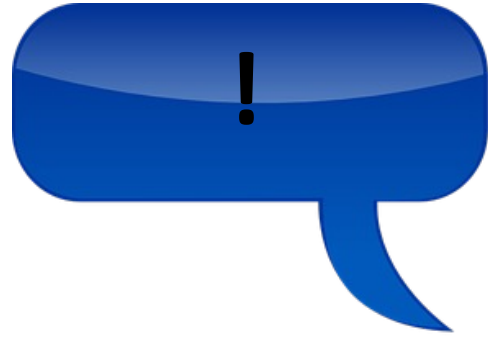
Trauma & Credibility

- Trauma may help explain:
 - Inconsistencies in a Complainant's statement
 - Lack of linearity in a Complainant's account or statement
 - Complainant's lack of memory about an incident
 - Complainant's demeanor or affect during and following the incident
- **HOWEVER, trauma typically DOES NOT excuse credibility issues**
 - Still keep in mind that you must assess credibility [look at reliability of the evidence provided, the consistency and overall believability of the parties]
- Use caution because actual or perceived trauma may have little or nothing to do with consent



Case Study







UNIVERSITY SYSTEM OF GEORGIA





UNIVERSITY SYSTEM OF GEORGIA

Overview of Title IX Investigator Responsibilities

Role of the Investigator

- Fair and unbiased review of matter
- Follow the Policy
 - Standard of proof
 - Avoid burden shifting
- Make a preliminary determination regarding the violation(s) and possibly recommend sanction(s)



Recognize and Avoid Your Own Bias

- Role of Alcohol
- Own experiences...
- Student-Athletes
- Fraternity/Sorority Life
- International Students
- Sex/Gender
- Gender Identity
- Race
- Ethnicity
- Nature of the Violation
- Religion or religious beliefs
- Academic Field of Study/Major
- Politics
- Attitude
- Others?





UNIVERSITY SYSTEM OF GEORGIA

Title IX Investigation Overview

Steps in the Investigation Process

- Complaint Intake
- Consideration of Interim Measures*
- Assignment to the Investigator
- Development of an Investigation Plan
- Fact Gathering
- Analysis of Information & Report Writing
- Case Resolution/Adjudication



Complaint Intake

- Typically handled by the Title IX Coordinator
- Determination that the alleged conduct falls within the Sexual Misconduct Policy
- Identifies the involved parties
- IS NOT THE INVESTIGATION



Developing an Investigation Plan

- Review the Complaint Intake and any available information
- Review the Sexual Misconduct Policy
- Determine order of interviews
- Gather preliminary evidence
- Develop preliminary questions

Key Aspects in the Investigation Process

- Written notice to parties
 - Pending investigation
 - Possible charges
 - Possible sanctions
 - Available support resources
 - Identify the assigned investigator
- Opportunity for written response



Key Aspects in the Investigation Process

- Parties' right to an Advisor
 - May be an attorney
 - Purpose: provide advice and counsel
- Parties' right to remain silent or otherwise not participate
 - Non-response = general denial
 - Non-response ≠ adverse inference

Fact Gathering

Provided
Evidence

Interviews

Additional
Evidence



Interview Strategies

- Set a professional non-accusatory tone
- Introduce yourself and outline your role
- Acknowledge what emotions they may be experiencing
- Review the amnesty and retaliation policies
- Outline an expectation of truthfulness
- Discuss confidentiality
- Reminder that there may be follow-up interviews

Effective Questioning

- Questions should be used to determine:
 - Who
 - What
 - When
 - Where
 - How
- Be mindful of how a question could be perceived and develop them with caution



Effective Questioning

- Ask open-ended questions to start the conversation
- LISTEN, ask follow-up questions at the end
- Don't be afraid of silence
- Don't be afraid to ask for clarification
- Take breaks if necessary
- Maintain your professionalism at all times

Effective Questioning

What are your goals?

- Learn the facts
- Establish a timeline
- Determine what is more likely than not to have occurred [if possible]

What are NOT your goals?

- Satisfying your curiosity
- Answering every unknown to get the “Truth”

How to Deal With...

A Challenging/Reluctant Participant

- Address their concerns
- Remain calm and professional
- Explain the advantages of cooperating

A Lying Participant

- Ask them to reconcile inconsistent statements
- Try to determine motivation for lying [fearful, protecting a friend, embarrassed etc.]

Note-Taking

- Handwritten or electronic record of the interview
 - Remember you are creating a publicly available record
 - Try to include verbatim statements
- Include date and names of all those present



Note-Taking Considerations

- Use of audio recordings
- Sending an interview summary for the participant to review and edit

Tip: Schedule time after an interview to review and type narrative summary

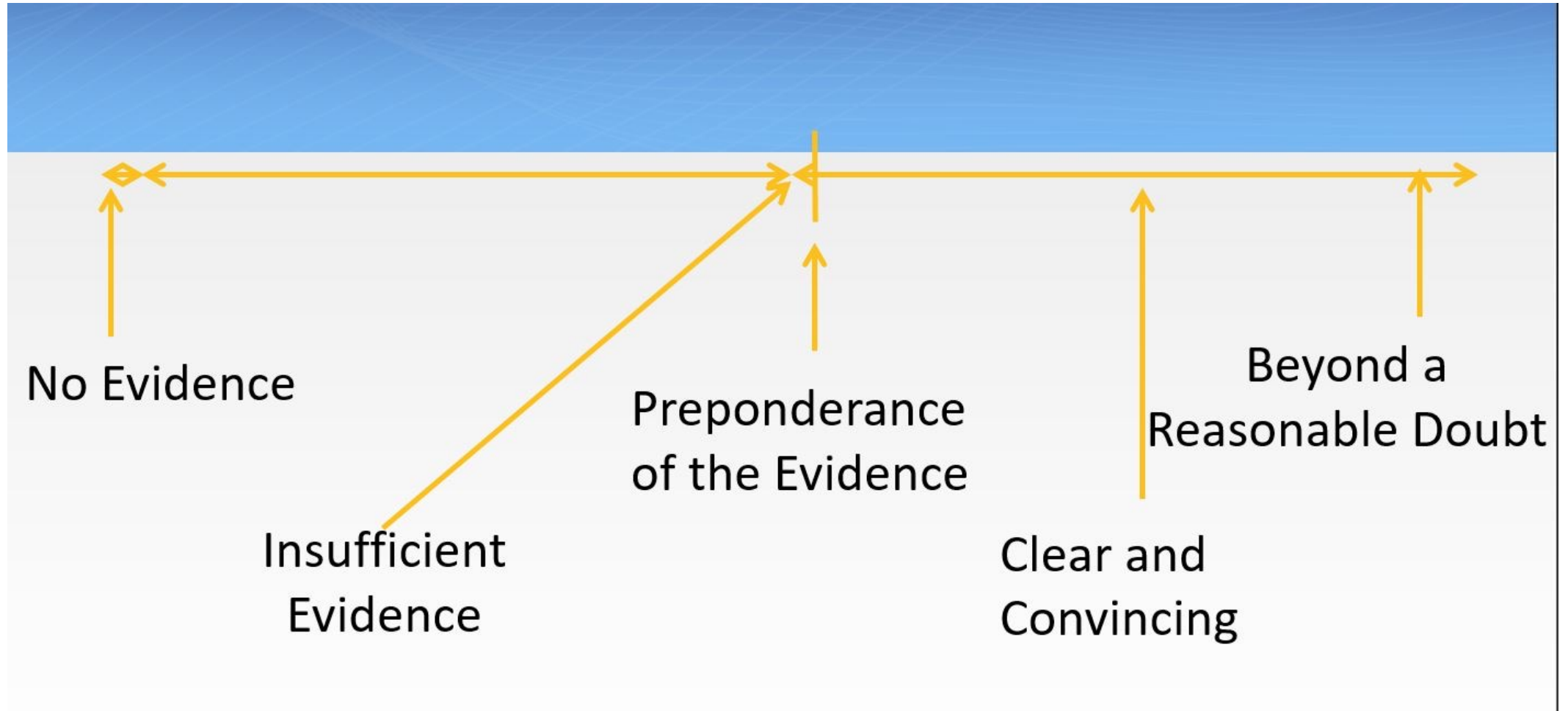
Evidence Gathering

- Think of all the places and sources of information
 - Involved parties, witnesses, physical locations, social media etc.
 - Be timely
- Document who provided what and when
- Consider verifying the evidence provided
 - Phone numbers, social media accounts, etc.

Understanding Evidence

- **Formal rules of evidence do not apply.** If the information is considered **relevant** 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 charges

Understanding Evidence Thresholds



Types of Evidence

- **Documentary** evidence (supportive writings or documents)
- **Electronic** evidence (photos, text messages, videos)
- **Real** evidence (physical object)
- **Direct** or testimonial evidence (personal observation or experience)
- **Circumstantial** Evidence (not eyewitness, but compelling)
- **Hearsay** Evidence (statement made outside the hearing, but presented as important information)
- **Character** Evidence (generally of little value or relevance)

Weighing Evidence

- Weighing evidence means assessing the impact of the information
- The following factors impact the assessment:
 - Persuasiveness
 - Relevance
 - Reliability
 - Bias



Weighing Evidence: Impact Factors

- **Relevance**

- Must relate to the incident at issue and be of sufficient value in the overall determination
- Must be offered by an individual with actual knowledge of the event

- **Reliability**

- Information that can be trusted
- Comes from individuals who are able to have assumed the role they claimed to have or those with actual training or experience to support their claim of expertise

Weighing Evidence: Impact Factors

- **Persuasiveness**

- Induces others to believe through understanding; tries to convince
- Must be believable, consistent, and establishes a dependable narrative
- **Note:** be mindful of the rehearsed narrative

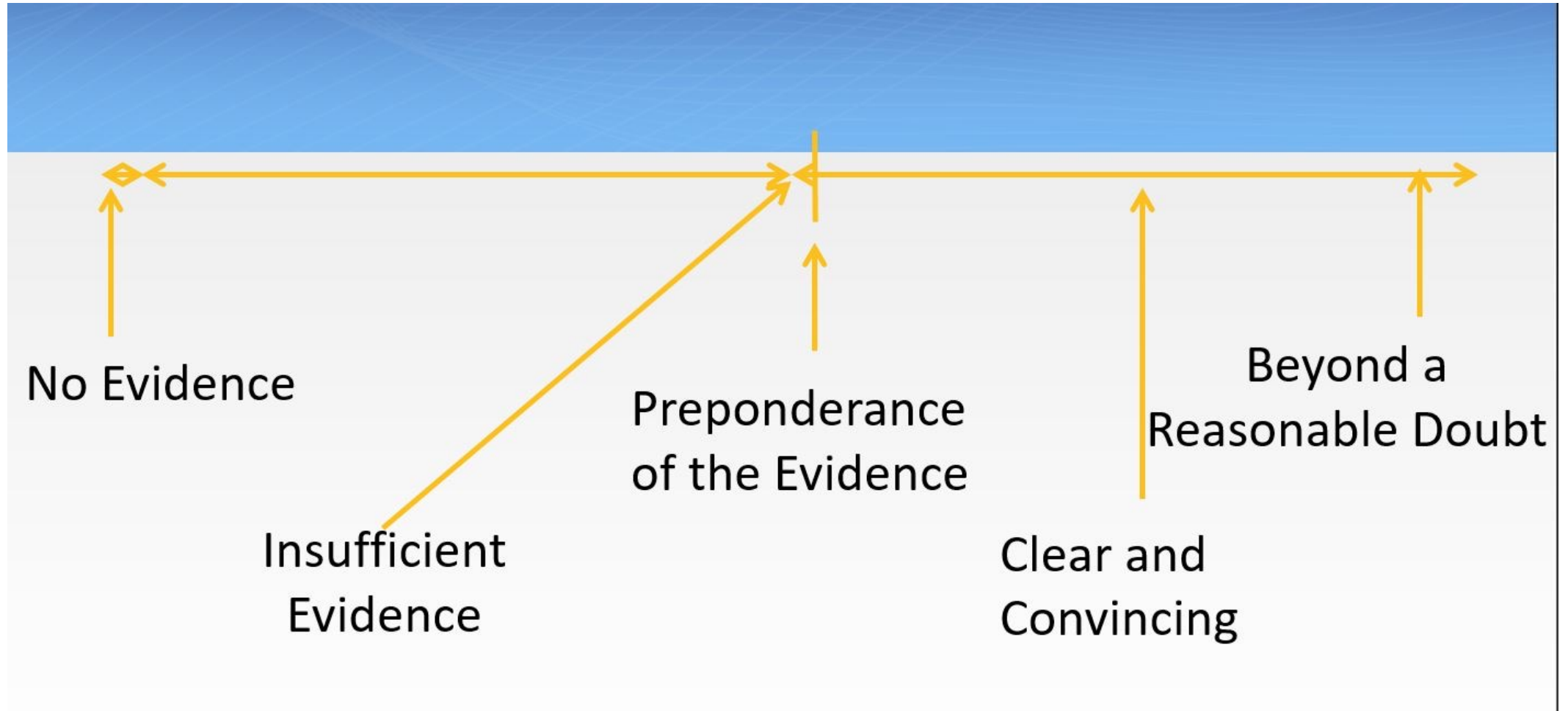
- **Bias**

- Understand who the person is and their relationship to the parties and incident at issue
- Bias can manifest in multiple ways:
 - Towards the parties
 - Towards the incident
 - Towards the process

Credibility

- “To assess credibility is to assess the extent to which you can rely on a witness’ testimony to be accurate and helpful in your understanding of the case”
 - Credible is not synonymous with absolute truthfulness
 - Memory errors do not necessarily destroy a witness’ credibility, nor does some evasion or misleading
 - Refrain from focusing on irrelevant inaccuracies and inconsistencies
- Demeanor
- Non-cooperation
- Logic/Consistency
- Corroborating evidence

Understanding Evidence Thresholds



Avoid Common Pitfalls

- Interview each party separately
- Apply the correct policy
- Maintain your sensibilities
 - Difficult parties
 - Attorneys





UNIVERSITY SYSTEM OF GEORGIA

Case Study

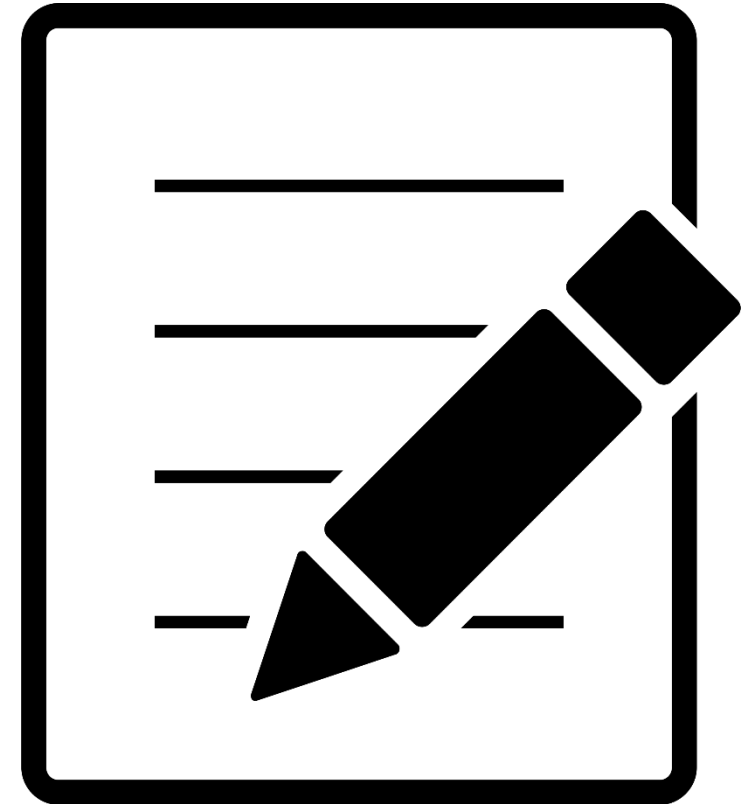


UNIVERSITY SYSTEM OF GEORGIA

Writing the Investigation Report

The Investigation Report

- Executive Summary
- Relevant Policy Provisions
- Information Gathered During the Investigation
- An Analysis of the Information Gathered
- Recommendations for Informal Resolution OR Conclusion
- Investigation Timeline
- Necessary Attachments



Basic Formatting

- University Letterhead
- Date
- Title of Document
- Investigator Name(s)
- Names of the Involved Parties

Office of Title IX

14 March 2018



PERSONAL AND CONFIDENTIAL

INVESTIGATION REPORT
Alleged Conduct Violations by Respondent's Name |

Investigator: Na'Tasha Webb-Prather

Date of Incident: Between March 4, 2018 and March 5, 2018

Start of Investigation: March 14, 2018



Executive Summary

- Big picture investigation information
 - Who reported the incident?
 - To whom did they report?
 - When did they report?
 - Who was assigned to investigate?
 - How was the investigation conducted?
 - What were the overall findings of the investigation?
- Noteworthy occurrences

Relevant Policy Provisions

- Copy and paste verbatim RELEVANT portions
- Footnote link to full policy or provide as attachment



Information Gathered During The Investigation

- Narrative summaries of information NOT transcriptions
 - Laid out in a logical manner
 - Limit witness portions to information relevant to analysis
- Include quotes where deemed appropriate
- Adopt one writing style
- Discuss individuals not interviewed

Information Gathered During The Investigation

- Discuss individuals not interviewed
- Discuss any other evidence gathered and the source even failed attempts
- **TIP:** Schedule time after each interview to begin writing narrative summary



Investigative Findings/Analysis

- A synthesis of the information gathered in light of our policy
- Walk through the policy violation
- Remember: You're a NEUTRAL fact-finder
 - Include not only corroborating information but also exculpatory information
- Credibility Assessments



Walking Through Policy Violations

Nonconsensual Sexual Contact

- Was there physical contact of a sexual nature?
- Was there consent?
- Was the consent invalid because of:
 - Force
 - Intimidation or Coercion
 - Incapacitation
- Was the consent withdrawn?

Walking Through Policy Violations

Incapacitation

- Part One = Subjective Test
 - Physical and/or mental inability to make informed decisions
 - SOME Signs: unconsciousness, lack of control of physical movements, inability to communicate clearly
- Part Two = Objective Test
 - Judged from a Reasonable Person's perspective

Part One: Incapacitation Analysis

- Create a timeline starting when the Complainant began consuming alcohol
- Timeline should include:
 - What was consumed (e.g. wine, beer, or hard liquor)
 - How much was consumed
 - If any recreational or prescription drugs were used
 - Food consumption and sleep
- If witnesses:
 - What time did they see Complainant and how was Complainant acting at that time?

Behavioral Cues

- Evidence of incapacity may be:
 - Slurred speech
 - The smell of alcohol on the breath
 - Shaky equilibrium; stumbling
 - Outrageous or unusual behavior
 - Passing out
 - Throwing up
 - Appearing Disoriented
 - Unconsciousness
 - Periods of blackout

Part Two: Respondent's Awareness Analysis

- Did the Respondent know Complainant previously?
 - Had the Respondent and Complainant consumed alcohol together before?
 - Was Complainant acting very differently from previous similar situations?
- If the Respondent did not know Complainant previously,
 - Did the Complainant's behavior indicate incapacitation?
 - Did the Respondent provide Complainant with alcohol or watch Complainant's consumption?

Recommendations for Informal Resolution/ Conclusion

- Short and sweet
- Based on the totality of the evidence a preponderance of the evidence supports/does not support a charge of (insert policy violation)
- Remember: NOT ISSUING FINDINGS OF RESPONSIBILITY
- Broad range of sanctions at play



Determining Appropriate Sanctions

- “Must be made as a proportionate response to the violation.”
- Should prevent the recurrence of sexual misconduct
- Should remedy the effects of the sexual misconduct



Common Student Sanctions

- Warning
 - Probation
 - Loss of Privileges
 - Counseling
 - No Contact
 - Residence Hall Relocation, Suspension or Expulsion
 - Limited Access to Campus
 - Service Hours
 - Online Education
 - Alcohol & Drug Assessment and Counseling
 - Discretionary Sanctions
 - Suspension*
 - Expulsion*
- *Must be supported by **substantial evidence** at the hearing



Understanding Substantial Evidence

- Required to suspend or expel a student
- Panel **MUST** be able to clearly state what evidence exists to support the finding
- Cannot be merely a feeling!



Investigation Timeline

- Procedural History
- Key dates and events throughout the process
- Does not have to be a narrative

Investigation Timeline

+	
December 7, 2017	Initial meeting with the Complainant
December 8, 2017	Meeting with the Respondent [Respondent requests to reschedule initial meeting due to illness]
December 8, 2017	Meeting with Witness 1
December 8, 2017	Meeting with Witness 2 [via phone]
December 8, 2017	Meeting with Resident Hall Director
December 11, 2017	Initial meeting with the Respondent
December 11, 2017	Meeting with Witness 3
December 11, 2017	Meeting with Witness 4
December 18, 2017	Notice to parties that investigation will resume once classes begin for the Spring 2018 semester
December 25, 2017 until January 1, 2018	University closed for the holidays
January 10, 2018	University classes resume
January 16, 2018	Meeting with Witness 5

Necessary Attachments

- Documentary Evidence
- Written Statements
- Optional: Full Policy

List of Attachments

Attachment 1	Pictures taken by Investigator Webb-Prather of Witness 1's apartment on December 10, 2017
Attachment 2	<u>SnapChat</u> messages between the Complainant and Respondent
Attachment 3	University Sexual Misconduct Policy

Optional Aspects of the Investigative Report

- Incident Timeline
- Incapacitation Timeline
- Chart of Involved Parties
- Disputed v. Undisputed Facts



Key Aspects in the Investigation Process

- Parties right to review and respond to the investigation report
 - Provide adequate and equitable time
- Sharing the final investigation report
 - Hearing Officer or Hearing Panel
 - The parties

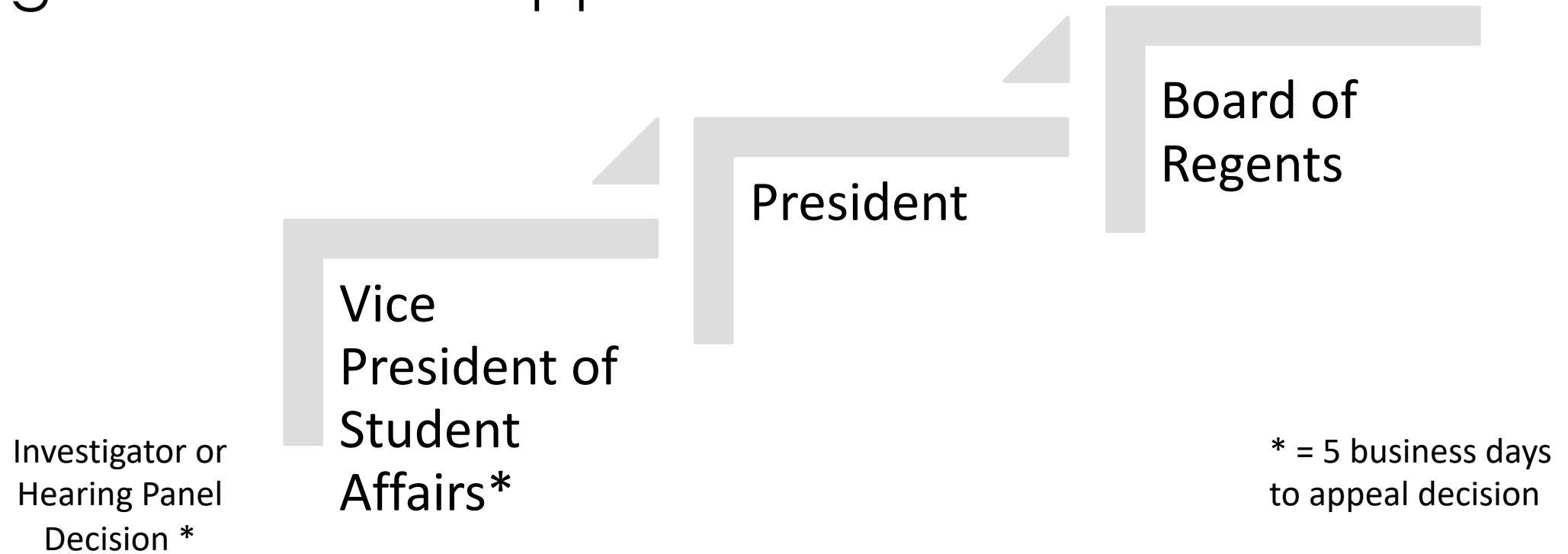
Things to Avoid

- Merely transcribing interviews
- Writing a one-sided report
- Steering or otherwise influencing the hearing proceedings
- Assuming reader knowledge



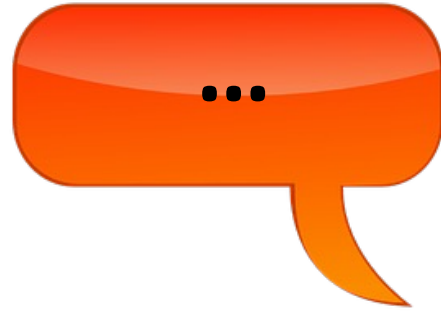
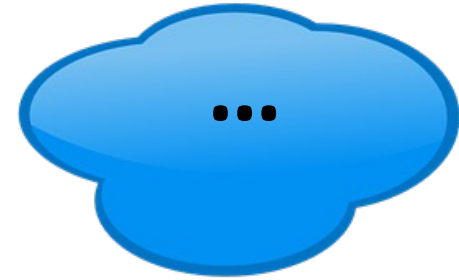
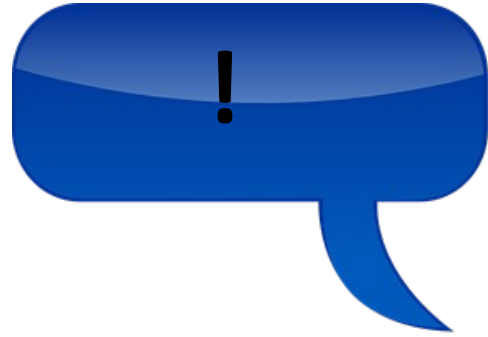
The Appeals Process

- Appeals must be made in writing setting forth the grounds of the appeal to the:



The Appeals Process

- Both parties have an equal right to appeal
- Grounds for appeal:
 - To consider new information
 - To allege procedural error that substantially impacted the fairness of the proceeding
 - To allege that the finding was inconsistent with the weight of the information



Thank you to our contributors

Baker Donelson (Dan
Cohen)

NCHERM (Daniel Swinton)

Hierophant Enterprises
(Peter Lake)

**BAKER
DONELSON**

**THE
NCHERM
GROUP LLC**

**HIEROPHANT
ENTERPRISES, INC.**





UNIVERSITY SYSTEM OF GEORGIA



Title IX Investigation Overview

Hearing Panel: Roles & Responsibilities

Weighing & Evaluating Information

Hearing Logistics



UNIVERSITY SYSTEM OF GEORGIA

Title IX Investigation Overview

Key Steps in the Title IX Investigation

- Complaint allegation
- Fact gathering by Investigator
 - Interview with parties* and witnesses
 - Collection of other evidence as available
- Analysis and determination by Investigator
- Party acceptance or rejection of outcome
 - Informal Resolution or Hearing Panel
- Appeal

Key Aspects in the Title IX Process

- Parties' right to an Advisor
 - May be an attorney
 - Purpose: provide advice and counsel
- Parties' right to remain silent or otherwise not participate
 - Non-response = general denial
 - Non-response ≠ adverse inference

The Investigative Report

- Summary of Allegations
- Identifies Applicable Policies and Procedures
- Statement and Explanation of the Evidentiary Standard
- Describe/Explain Evidence Obtained & Reviewed
- Investigative Findings





UNIVERSITY SYSTEM OF GEORGIA

Hearing Panel Roles & Responsibilities

Role of Hearing Panel

- Fair and unbiased review of matter
- Follow the Policy
 - Standard of proof
 - Avoid burden shifting
- Make a determination regarding the violation(s) and sanction(s)



Hearing Panel Roles

- Chair
 - Designated leader of the Hearing
 - Should be the voice of the Hearing Panel (unless Hearing Coordinator)
- Other Panel Members
 - Active listening participants who come to their own logical and reasoned decision

Recognize and Avoid Your Own Bias

- Role of Alcohol
- Own experiences...
- Student-Athletes
- Fraternity/Sorority Life
- International Students
- Sex/Gender
- Gender Identity
- Race
- Ethnicity
- Nature of the Violation
- Religion or religious beliefs
- Academic Field of Study/Major
- Politics
- Attitude
- Others?





UNIVERSITY SYSTEM OF GEORGIA

Evaluation of Evidence and Decision-Making Skills

Effective Questioning

- Questions should be used to determine:
 - Who
 - What
 - When
 - Where
 - How
- Be mindful of how a question could be perceived and develop them with caution



Effective Questioning

- Ask open-ended questions to start the conversation
- LISTEN, ask follow-up questions at the end
- Don't be afraid of silence
- Don't be afraid to ask for clarification
- Take breaks if necessary
- Maintain your professionalism at all times

Effective Questioning

What are your goals?

- Learn the facts
- Establish a timeline
- Determine what is more likely than not to have occurred [if possible]

What are NOT your goals?

- Satisfying your curiosity
- Answering every unknown to get the “Truth”

How to Deal With...

A Challenging/Reluctant Participant

- Address their concerns
- Remain calm and professional
- Explain the advantages of cooperating

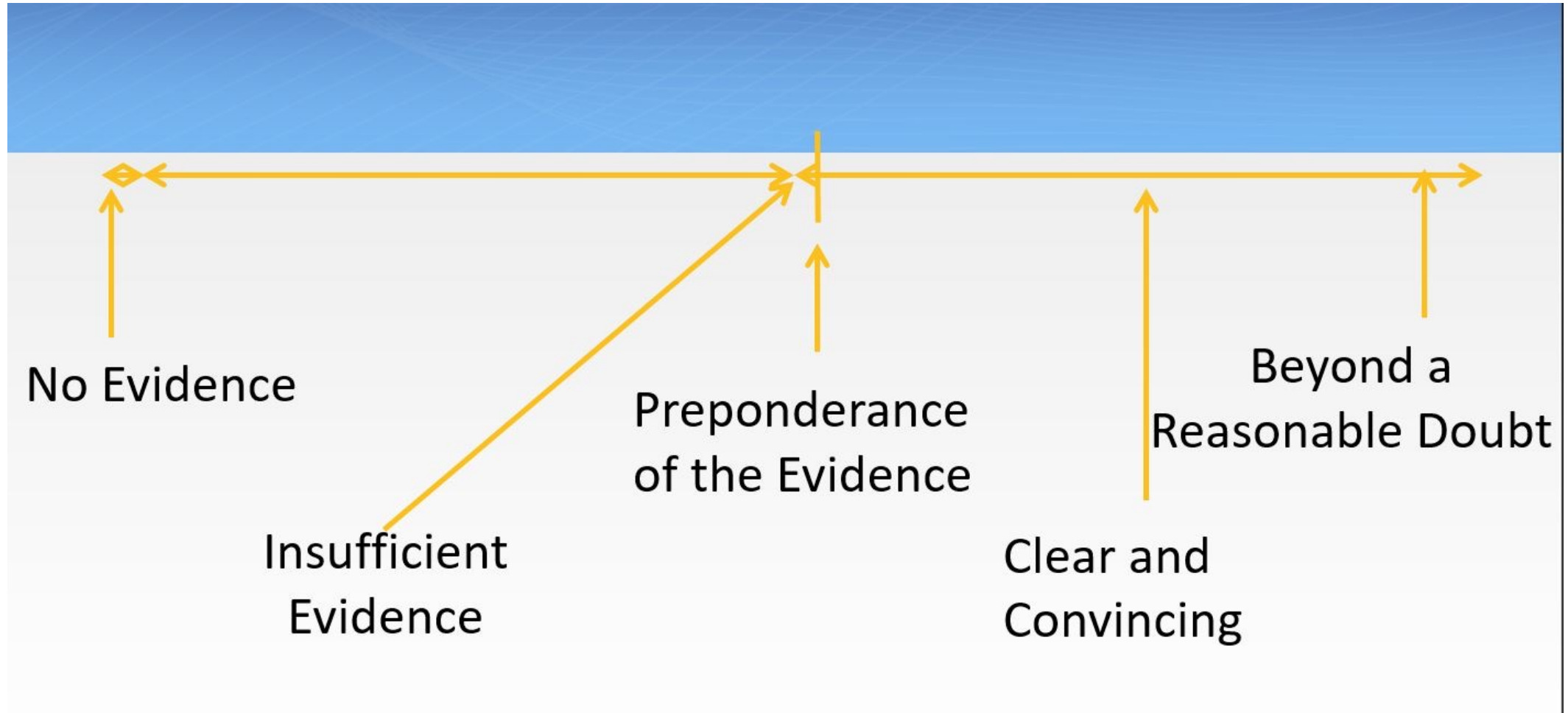
A Lying Participant

- Ask them to reconcile inconsistent statements
- Try to determine motivation for lying [fearful, protecting a friend, embarrassed etc.]

Understanding Evidence

- **Formal rules of evidence do not apply.** If the information is considered **relevant** 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 charges

Understanding Evidence Thresholds



Types of Evidence

- **Documentary** evidence (supportive writings or documents)
- **Electronic** evidence (photos, text messages, videos)
- **Real** evidence (physical object)
- **Direct** or testimonial evidence (personal observation or experience)
- **Circumstantial** Evidence (not eyewitness, but compelling)
- **Hearsay** Evidence (statement made outside the hearing, but presented as important information)
- **Character** Evidence (generally of little value or relevance)

Weighing Evidence

- Weighing evidence means assessing the impact of the information
- The following factors impact the assessment:
 - Relevance
 - Reliability
 - Persuasiveness
 - Bias



Weighing Evidence: Impact Factors

- **Relevance**

- Must relate to the incident at issue and be of sufficient value in the overall determination
- Must be offered by an individual with actual knowledge of the event

- **Reliability**

- Information that can be trusted
- Comes from individuals who are able to have assumed the role they claimed to have or those with actual training or experience to support their claim of expertise

Weighing Evidence: Impact Factors

- **Persuasiveness**

- Induces others to believe through understanding; tries to convince
- Must be believable, consistent, and establishes a dependable narrative
- **Note:** be mindful of the rehearsed narrative

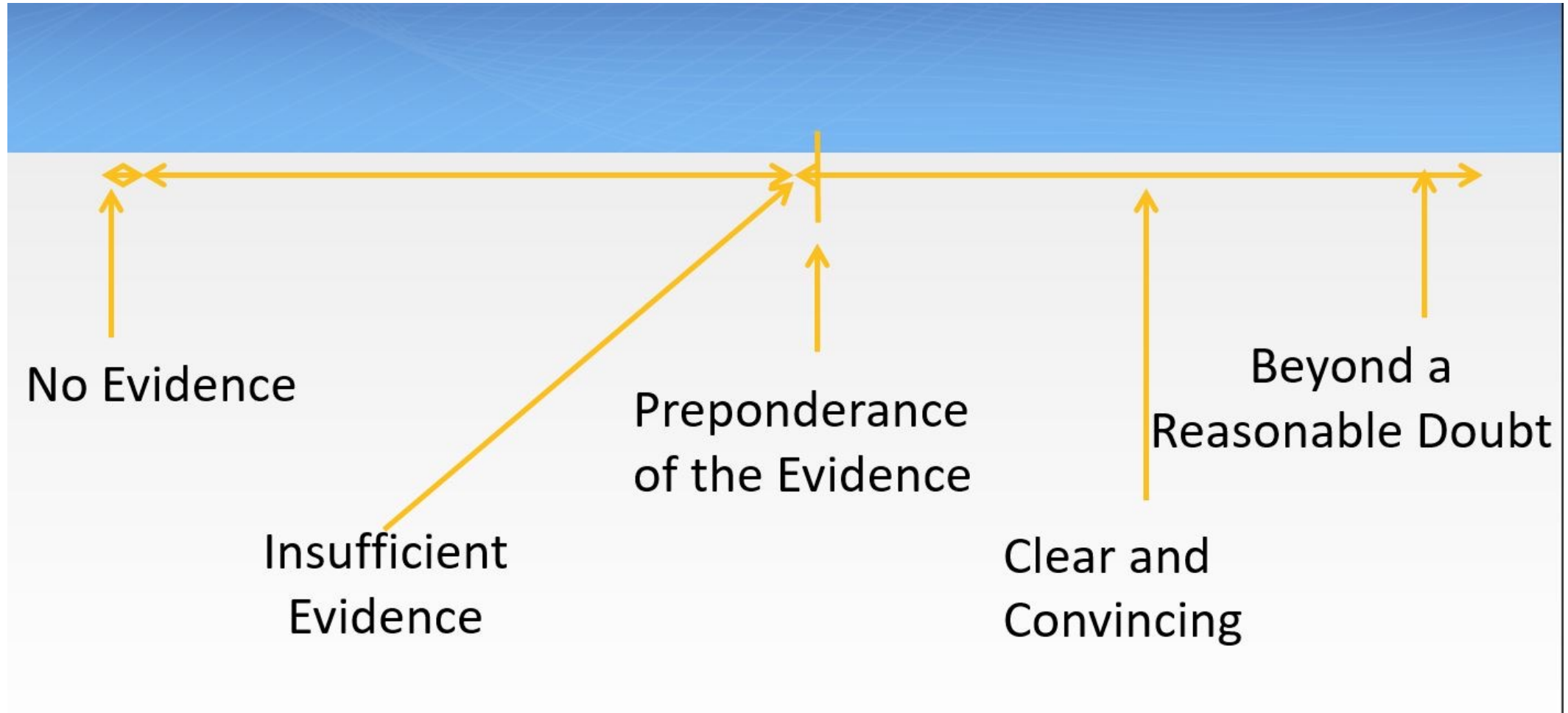
- **Bias**

- Understand who the person is and their relationship to the parties and incident at issue
- Bias can manifest in multiple ways:
 - Towards the parties
 - Towards the incident
 - Towards the process

Credibility

- “To assess credibility is to assess overall the **extent to which you can rely** on a witness’ testimony to be accurate and helpful in your understanding of the case”
 - Credible is not synonymous with the absolute truth
 - Memory errors do not necessarily destroy a witness’ credibility, nor does some evasion or misleading
 - Refrain from focusing on irrelevant inaccuracies and inconsistencies
- Potential Assessment Factors
 - Demeanor
 - Non-cooperation
 - Logic/Consistency
 - Corroborating evidence

Understanding Evidence Thresholds



Determining Appropriate Sanctions

- “Must be made as a proportionate response to the violation.”
- Should prevent the recurrence of sexual misconduct
- Should remedy the effects of the sexual misconduct



Common Student Sanctions

- Warning
 - Probation
 - Loss of Privileges
 - Counseling
 - No Contact
 - Residence Hall Relocation, Suspension or Expulsion
 - Limited Access to Campus
 - Service Hours
 - Online Education
 - Alcohol & Drug Assessment and Counseling
 - Discretionary Sanctions
 - Suspension*
 - Expulsion*
- *Must be supported by **substantial evidence** at the hearing



Understanding Substantial Evidence

- Required to suspend or expel a student
- Panel **MUST** be able to clearly state what evidence exists to support the finding
- Cannot be merely a feeling!





UNIVERSITY SYSTEM OF GEORGIA

Case Study



UNIVERSITY SYSTEM OF GEORGIA

Hearing Logistics

Things to Keep in Mind

- Before the Hearing
 - Review all available materials i.e. Title IX policy, police reports, investigative report and supplemental documentation
 - Get prepared for anything
 - Parents
 - Attorneys
 - Party non-participation
- During the Hearing
 - Be patient
 - Listen
 - Don't draw conclusions until all evidence and testimony are presented
 - Be mindful of the seriousness of the situation

Hearing Location & Logistics

- Likely a conference room – somewhere on campus
- Parties will likely not be in the room together, depending upon the circumstances
- Hearing will be recorded!
- Also, parties may be viewing on closed circuit TV

Order of the Day

- Opening statements by both parties
- Questioning of the Complainant
 - By other party (through the hearing coordinator or chair)
 - By the panel (through the hearing coordinator or chair)
- Questioning of the Respondent
 - By other party (through the hearing coordinator or chair)
 - By the panel (through the hearing coordinator or chair)
- Witnesses
 - Questioned by the parties (through the hearing coordinator or Chair)
 - Questioned by the panel (through the hearing coordinator or Chair)
- Closing statements by both parties
- Deliberations

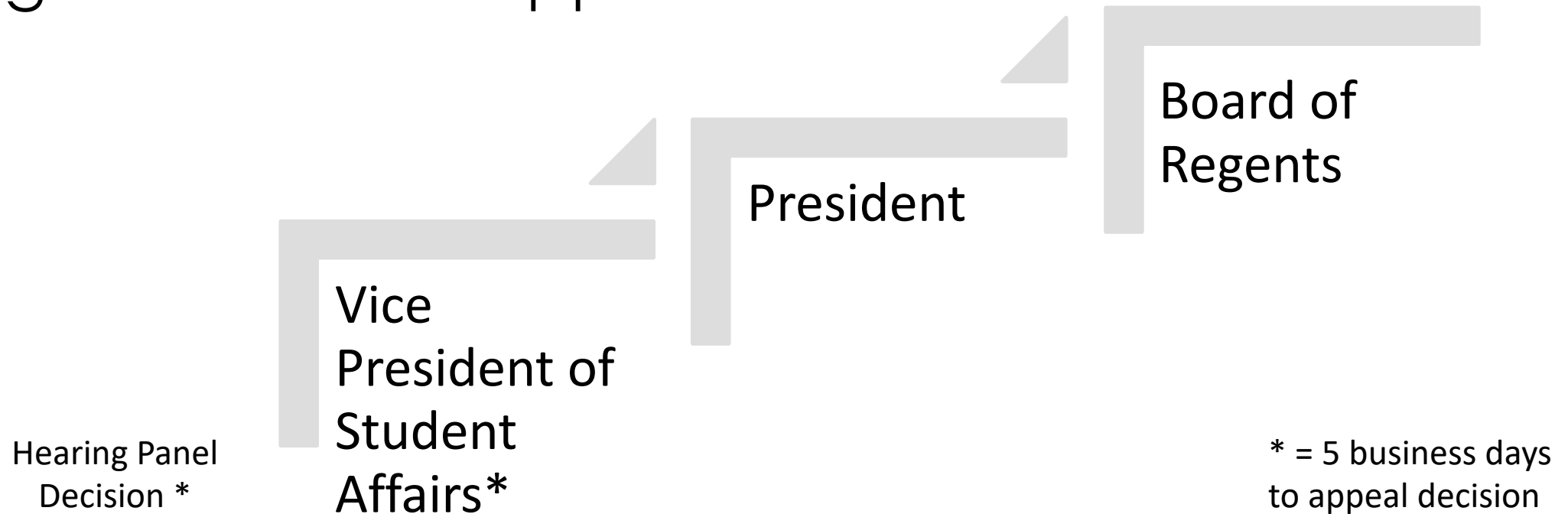
Deliberations & Decision-Making

- Private deliberations with only the panelists
- Not required to make a unanimous decision
- Required to issue a written decision of findings
 - Summarize evidence supporting the decision
 - Explain the substantial evidence to support sanction of suspension or expulsion



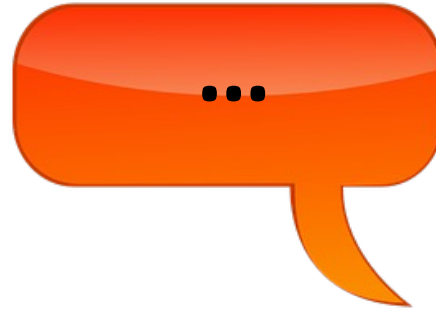
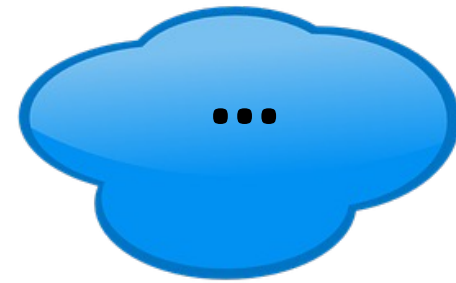
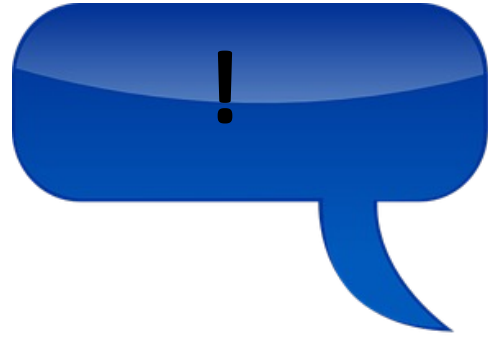
The Appeals Process

- Appeals must be made in writing setting forth the grounds of the appeal to the:



The Appeals Process

- Both parties have an equal right to appeal
- Grounds for appeal:
 - To consider new information
 - To allege procedural error that substantially impacted the fairness of the proceeding
 - To allege that the finding was inconsistent with the weight of the information



Thank you to our contributors

Baker Donelson (Dan
Cohen)

NCHERM (Daniel Swinton)

Hierophant Enterprises
(Peter Lake)

**BAKER
DONELSON**

**THE
NCHERM
GROUP LLC**

**HIEROPHANT
ENTERPRISES, INC.**

