

# EQUITY THROUGH RESOLUTION

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Competency, fairness, and transparency

OVW TTI

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# SELF CARE

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“Hear the case before you decide it.”

*-Alfred P. Murrah, Chief Judge of the U.S. Court of Appeals for the Tenth Circuit and Director of the Federal Judicial Center*

# My Lenses

- Expertise
- Institutional types
- Roles
- Research
- Life experience
- Language

# EXPECTATIONS

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# Learning Outcomes

As a result of completing the two-part educational session, participants will be able to:

- identify characteristics of an effective panel member
- demonstrate appropriate questioning techniques
- demonstrate effective decision-making techniques
- use institutional policy to evaluate reported conduct
- write an investigative report

# PEOPLE IN THE PROCESS

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# People in the Process

- Title IX Coordinator
- Investigators
- Decisionmakers
  - Administrators
  - Panel Members
- Process facilitator
- Appellate officer
- Complainant
- Respondent
- Witnesses
- Advisor



# Investigator

List five (5) traits of an ideal investigator

# Decisionmaker

List five (5) traits of an ideal decisionmaker

# COMPETENCY-BASED MODEL

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# Investigator Competency-Based Model

- Philosophy/History of conduct
- The Resolution Process
- Procedural Expertise
- Critical Thinking Skills
- Analyzing Policy
- Cultural/Community Competency
- Note Taking
- Report Writing
- Questioning/Listening Skills
- Processing Information
- Standard of Proof
- Title IX Response Elements
- Statement Analysis
- Responsiveness
- Relevance
- Expert Sources
- Gender-based Misconduct
  - Sexual Misconduct
  - Relationship/Domestic Violence
  - Stalking
- Psychology/Sociology of:
  - Respondent
  - Complainant
- Credibility Determination
- Sanctioning
- The Appeal Process
- Role Play
- Reasoning
- Non-Heteronormative Education
- Rapport Building

# Decisionmaker Competency-Based Model

- Philosophy/History of conduct
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- Deliberation Skills
- Hearing Decorum
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# THE RESOLUTION PROCESS

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Addressing reported behavior

# Elements of the Process

- Gather
- Explore
- Evaluate

# Experience in the Process

- Consistent
- Planned
- Documented



# Consistent

- Information
- Evaluation
- Opportunity

-Dependability of undeviating processes and procedures for all participants in a resolution process, regardless of any defining or identifying characteristics.

-Consistency should not determine the outcome of a situation, rather it should be the foundation for processing information

# Consistent

- Initial meeting
- Choices/Where exist?
  - Not everyone will make the same choices, but everyone should have the same opportunity to make a choice
  - Information for the choices should be consistent
  - Avoid giving advice

# Planned

- Work with the Title IX Coordinator
- Be aware of other entities
- Establish a timeline

# Documented

- Case file
- Documents
- Interactions
- Communication
- Results
- Participant informed
- Standard Report
- Formal
- Informal

# Procedural Elements in Investigation

- Notice to both parties
- Equal opportunity to present evidence
- Written notification of meetings and sufficient time to prepare
- Ability to see and respond to all information prior to final report
- Access to report (advisor)

# POST-INVESTIGATION

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# A Report

- Comprehensive view of the information
- Consistent
- Clear language
- Thorough
- Accessible

# A Report

- Neutral in gathering information
- Looks at all sides
- Burden is on the institution
- Approaches every possibility
- The information drives the outcome
- Avoid judgement



# Elements of a Report

- Introduction
- Involved parties
- Date(s) of reported incident
- History of the case
- Allegations
- Jurisdiction
- Standard of Proof
- Complainant information
- Respondent information
- Witness summaries
- Additional information
- Negative inquiries

# YOUR PROCESS

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# Standard of Proof

- Standard slide
- Determination of violation
  - Character role

# Experience in the Process

- An individual's experience in the process may impact your reporting numbers (Katel, 2011)
- It is likely that most individuals that file a complaint are not given information on what to expect (Sabina, 2014)

# Cultural Competency

- Cultural competence is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals and enables that system, agency, or those professionals to work effectively in cross-cultural situations.

Cross T., Bazron B., Dennis K. & Isaacs M. (1989)

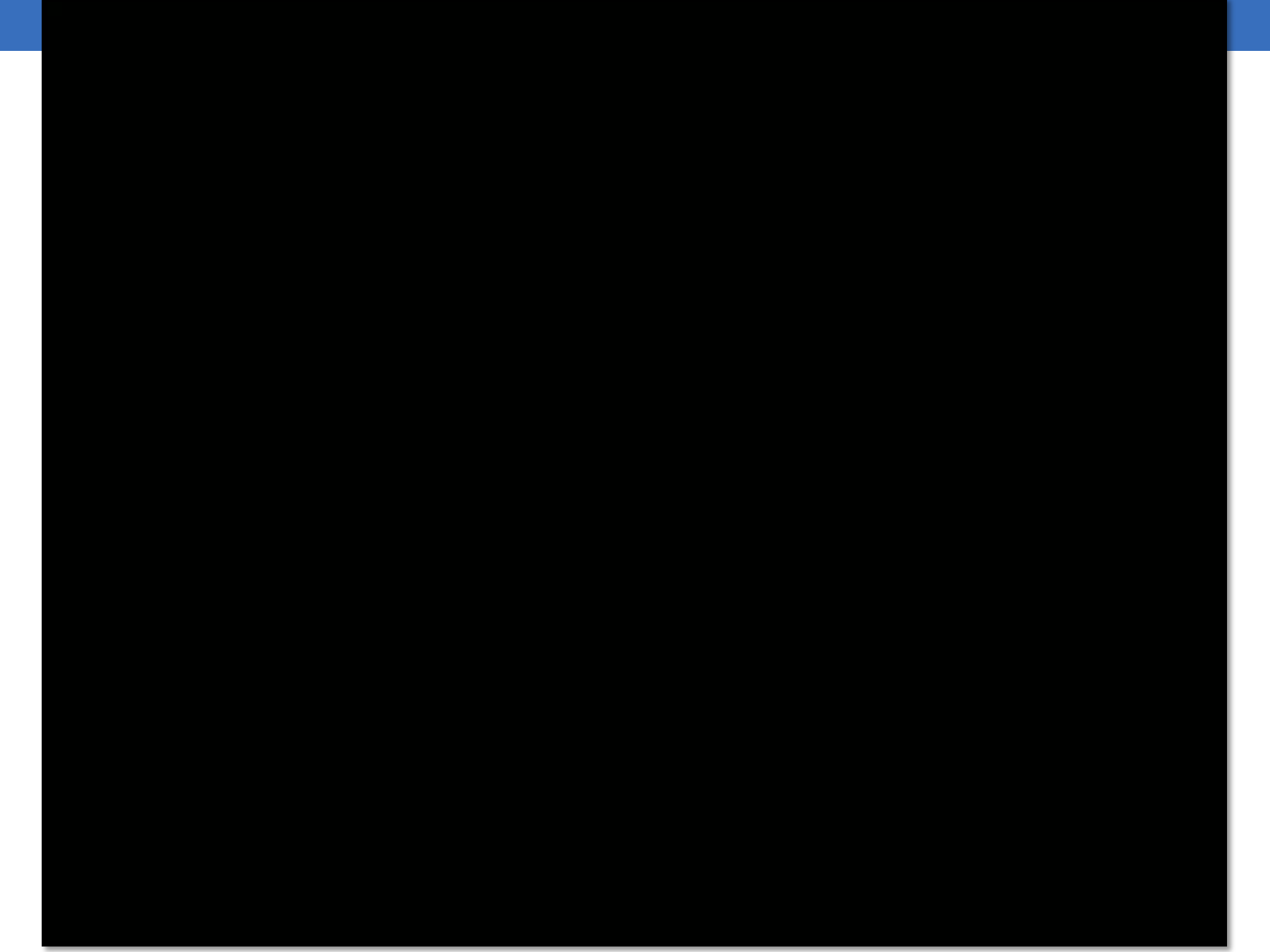
# Gender-based Misconduct

- Unique social environments
  - small community
  - shared friends
  - teams
  - clubs
- Peer pressure
- Closed social networks
- Student development
  - identities still in flux
  - fear of backlash for “siding with” an individual

# Responses

- Avoid prejudice
- Be warm and compassionate with all parties
- Likeability should not influence objectives
- Information drives the process

video





# Bias

- Implicit
- Explicit
- Anchoring
- Observer Expectancy
- Confirmation

Once people form an impression they unwittingly seek, interpret, and create behavioral data that verify it.

(McNatte, 2000)

# Conflict of Interest

- Actual
- Perceived
- Requests
- Reasonable person
- Recusal
- Assess ahead of time

# EXERCISE

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# Opening information

- Prepared
- Consistent
- Personable
- Humanize

# QUESTIONING SKILLS

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# Questioning Skills

## Ground Rules

Lens of gathering more information

General Questioning Skills

# Questioning Skills

Context of asking questions based on

- Role
- System
- Previous Training

# Questioning Skills

Why do we ask questions?

- To gather information to assist in
  - Determining responsibility
  - Determining credibility
  - Determining sanctions
  - Assessing the information
  - To come to conclusions
  - Educating
  - Assessing awareness and understanding
  - To ask more questions



# Questioning Skills

- Types of questions
  - Open
  - Closed

# Questioning Skills

- WHAT questions
  - Detail
  - Specifics
  - Clarifying
  - “What happened next?”
  - “What were you drinking that night?”
- HOW questions
  - Elicit emotional understanding
  - Clarify sequence of events
  - “How did that make you feel?”
  - “How did you two meet?”

# Questioning Skills

- *non* questions
  - “Tell me about...”
  - “Help me understand...”
- *could* questions
- *why* questions
- *Didn't you* and *what were*
- *You don't*
- Language continuum
  - Connotative
  - Denotative

# Questioning Skills

- What are the goals of questioning?
  - Understand each individual's experience
  - Gather information
  - Identify facts
  - Establish what is more likely than not what happened
  - Be appropriately curious

# The Role of the Investigator

- Neutral
- Work through the process
- Open
- Thorough
- Understand the person's experience
- Investigative
- Determine relevance

# The Role of the Decisionmaker

- Neutral
- Work within the scope
- Open
- Deliberative
- Weigh information
- Determine credibility

# Questioning Skills

- Investigative report:
  - Information about what happened during the incident
  - Any related events
  - Information necessary to understand the timeline
  - A compilation of all information presented
  - Background information about the situation, the parties, the witnesses
  - Additional documentation
- Use your questions to:
  - elicit details
  - eliminate vagueness
  - fill in the gaps where information seems to be missing

# Questioning Skills

- What do I need to know?
- Why do I need to know it?
  - Is the answer relevant to the allegation or just because I want to know?
  - Will this information affect the outcome or substantially affect the witness's credibility?
- What is the best way to **ask** or word the question?
- When is the best time to ask this question?
- Am I the best person to ask this question?\*



# Questioning Skills

- Use a process of broad to narrow questions
- Pre plan, but be flexible
- Engage in a matching process
  - Ask questions about the allegations, the evidence, and the policy elements
  - Focus on areas of conflicting evidence or gaps of information
- Have a purpose for asking every question
- Be appropriately curious
- Work to establish a baseline of relaxed conversation
- Maintain good eye contact
- Listen carefully to the answers to your question
- Be in the moment
- Attentive behavior
- Be aware of body language
- How we set up our questions (witnesses)

# Questioning Guidelines

## Areas of Caution

- Asking compound questions (always listen for the conjunction)
- Being accusatory or argumentative
- Making questions too long or confusing
- Suggesting an answer in your question
- Grandstanding
- Getting the answer to your question
- Shiny nickels
- “Cued” responses or rehearsed/memorized answers
- Emotion may appear (anger, fear, sadness...)
- Leading with “what were....” and “didn’t you...”
- Being questioned

# Questioning Skills

- Silence speaks volumes (5 to 7 seconds)
- Watch and listen (what is not being said)
- Be clear on the information
- Stay in line
- Note taking
- Asking the question in the best way to get the information you know exists
- Poisonous pronouns
- Check for understanding (Be cautious of naming emotion)
- Follow up “Doesn’t sound like something I would do...”
- Let the information drive the process

# Questioning

- Make the strange seem familiar
- Location
  - $B=f(p,e)$
- Preparation
- Environment
  - Waiting, location, hospitality, where, seat of people
- Previous messages (AV, reports, amnesty, legal)
- Role
- Process
- Timelines (when to interview)
- Gender lenses
- Snowball technique

# Interview/Questioning Skills

I didn't say you were stupid.

# Questioning Skills

- Reasons for asking questions:
  - Understanding
  - Clarification
  - Fill in a gap
  - Potential questions from the other party

# Goals in the process

- Gather
- Explore
- Evaluate
- Communicate
- Create a timeline
- Establish facts
- Fill in picture

# WORKING WITH DIFFERENT PARTIES

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# Witness-Centered Approach

- Complainant
- Respondent
- Witnesses

# Witnesses

- Flowcharts
  - Relationships
  - How identified
- Text messages and other documents
  - Look with
  - Ask for copies (know how to screenshot)
- Initial outreach to witness
- Try not to label the incident
- Not looking for anything in particular
- No right/wrong answers, be honest
- Conversations with the complainant/respondent
- Open invitation
- Anticipate questions

# Other Items

- Pictures
- Diagrams
- Physical location

# Hearing Decorum

- $B=f(p,e)$
- Handling disruption
  - Acknowledge
  - Warn
  - Follow through
- Who is in Charge
- Relevance
- Attire

# Hearing Decorum

- Work to establish a baseline of relaxed conversation
- Maintain good eye contact
- Listen carefully to the answers to your question
  - Try not write while they are talking
  - Try not to think about your next question while they are talking
- Nod affirmatively to keep individual talking
- Try not to fidget, roll your eyes or shake your head “no”
- Do not look shocked, smug, stunned or accusing
  - Hearing language
  - Unfiltered
- Watch all individuals
- Be aware of how you talk to all individuals in the process

# Questioning by Advisor

- Relevance
- Decorum
- Guidelines

# ANALYSIS AND THE INVESTIGATION

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Incapacitation, credibility, consent, IPV, and stalking

# Processing Information

- Look at the totality of the information
  - Possible
  - Plausible
  - Credible
  - Supporting information
  - Behavior and information
  - Corroboration
  - Strikingly similar information
  - Fact, opinion, circumstance



# CONSENT

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Understanding and evaluation

# Consent at Your Institution

Example:

Consent is a verbal agreement or action that must be active, voluntary, informed, and mutual.

- All sexual activities
- Withdrawal
- Previous consent

# Consent

- But, consent is not where we start, because
- Consent cannot be given when it is the result of any coercion, intimidation, force or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

# Consent

- Force
- Incapacity

# Force

- Physical
    - Choking, pinning down, slapping, punching, etc.
  - Intimidation
  - Threats
    - Outing, spreading rumors
  - Coercion
    - Unreasonable pressure, occurs when advances not welcome
- 
- The presence of force, nullifies any consent

# Incapacity

- Occurs when an individual lacks the ability to knowingly choose to participate in sexual activity.

# Incapacity

- Gather information during the investigation to make a reasoned conclusion based on the same standard of proof
- Applies regardless if the incapacitation is a result of voluntary or involuntary action

# Incapacity

- Cause of the incapacitation
  - Alcohol
  - Drugs
  - Mental
  - Injury
  - Sleep
  - Unconscious
  - Involuntarily restrained



# Incapacity

- Listen and look for clues for possible incapacitation
  - “The next thing I remember was...”
  - “I remember bits and pieces...”
  - “I can’t remember what happened next...”
  - “Things start to become cloudy...”
  - “I was more drunk than I have ever been...”
- Work backwards from the point of concern

# Incapacity

- Take note of and get clarification on
  - Alcohol consumption
    - What
    - How much
    - Size of drinks
    - Source
    - Timeline
  - Other drugs
    - Medication
    - Recreational
    - Unknowing
- Build a timeline

# Incapacity

- Alcohol
  - What is alcohol
  - Standard drinks
  - How alcohol gets in the system
  - Rate of absorption
  - How it leaves the system
  - BAC/BAL
  - Influences on BAC
  - Myopia
  - Difference between men and women

# Incapacity

- Observed behavior
  - Speech
  - Movement
  - Actions
  - Consciousness
  - Clarify ambiguous statements
- Observer of behavior
  - Ability to observe
  - Reliability of information
  - Potential bias

# Incapacity

- Incapacitation due to alcohol or drug use is a state beyond “mere” intoxication or even being drunk.
- It exists when a person lacks the ability to make or act on a considered decision to engage in sexual activity.
- Indicators of incapacitation may include inability to communicate, lack of control over physical movements, and/or lack of awareness of circumstances.
- An incapacitated person can also experience a blackout state during which the person appears to give consent but does not have conscious awareness or the capacity to consent.

# Incapacity

- Blackout
  - Incapacitated
  - Effect is on short term memory
  - Muscle memory can continue

# Incapacity

- If it is concluded (more likely than not) the complainant was incapacitated, determine
  - At what point in time (as it relates to sexual activity)
  - Did the respondent know, or
  - Should the respondent have known (reasonable person standard)
- Knew or should have known
  - Amount of interaction (cross reference with your notes)
  - Supplier of anything
  - Past experience with complainant
  - Respondent's own level of capacity

# Incapacity

- The policy has been violated if the complainant was incapacitated and:
  - The respondent knew; or
  - The respondent caused; or
  - The respondent should have known.
- Proceed to analyze consent if:
  - The complainant was not incapacitated; or
  - The complainant was incapacitated, the respondent did not know, and a reasonable person would not have known.



# Consent

- Look for the presence of clear words or mutually understandable actions that signaled consent
  - They must be present for each level of sexual activity
- No means no (but does not need to be present)
- Consent can be withdrawn, but must be communicated clearly by the person withdrawing consent
- Ask the respondent:
  - How did you know what you were doing was consensual?

# IPV

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# Circle of Violence

- Honeymoon phase
- Build up phase
- Episode
- Repeat

# Controlling Tactics

- Emotional abuse
- Economic abuse
- Isolation
- Privilege of status
- Using children
- Minimizing, denying, blaming
- Intimidation and threats
- Violence

# IPV

- Predominate aggressor (struck more, most injures, reasonable)
- Who reported?
- Is there fear?
- How do they talk about each other?
- Does someone wrongly accept the blame?
- Written demands/expectations?
- Damaged property?
- Substance abuse?
- Other issues (vandalism, pets, other)?

# IPV

Listen to language does the person:

- Refer to the partner in critical/demeaning terms
- Seem overly calm
- Covey any of the following:
  - Entitlement
  - Ownership
  - Privilege
- Sound authentic
- Make excuses for the abuser (drinking, stress)
- Describe avoidance tactics

# STALKING

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# Stalking

- Course of conduct
- Escalates
- Lethality
- Stalking Resource Center
- Technology



# Stages of Stalking

- Rejection
  - The trigger (real or perceived)
  - Insecure individuals seeking control
- Pursuit
  - Attempt to (re)claim object of obsession
    - Calls, email, text, gifts, notes
  - Win back (with the belief it will happen)
- Revenge
  - After continued rejection
  - Blames victim for ruining their life

# Stalking Manifested

- Emotional Violence
  - Destroy reputation
  - Reveal personal information
  - Sabotage job/school
- Property Damage
  - Vandalism
  - Harm to pets
- Physical Violence
  - Threats
  - Articulation of plans

# DECISIONS

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# Processing Information

- No formal rules of evidence
- Relevant information able to help clarify what happened

# Processing Information

- Policy
- Standard of proof
- Go from broad to narrow
- Add up the information
- Deliberative discussions
- Using information available to everyone
- Come to a conclusion
- Responsibility
- Sanction, if applicable

# Credibility

- Reliability of information
- Ability to have information
- Not the same as truthful
- Motivation of person
- Interest in outcome
- Contested and uncontested information
- Corroboration

# Standard of Proof

- Standard slide
- Determination of violation
  - Character role

# POST-INVESTIGATION

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# Resolutions

- Match the sanction with the seriousness of the violation
- Impact Statements
- Prevent reoccurrence
- Rationale (Clear decision)

# Resolution

- Elements to consider, by weight
  - Nature of Violation
  - Campus Safety
  - Complainant
  - Community
  - Respondent
- Precedent
- Previous conduct

# Resolution



# CONCLUSION

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# QUESTIONS

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