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TITLE IX

AGENDA

1. Specific Considerations for Title IX Related UCB Hearings
 - * Consent
 - * Relevancy
 - * Trauma Informed Questioning
2. Reading an ESU Title IX Report
3. Questions

CONSENT

The aspect of consent is the main issue when dealing with allegations of:

Sexual Assault (Sexual Penetration) w/out Consent

Sexual Assault (Sexual Contact) w/out Consent

Statutory Sexual Assault

Sexual Exploitation

CONSENT (Definition - Part 1)

Consent - A knowing and voluntary agreement to engage in specific sexual activity at the time of the activity communicated through clear actions and/or words that are mutually understood. In order to be valid, Consent must be active, present and ongoing.

A. Consent is not present when it is the result of coercion, intimidation, force, or threat of harm.

B. Consent is not present when an individual is incapacitated due to alcohol, drugs, or sleep, or otherwise without capacity to provide Consent due to intellectual or other disability or other condition. Consent can be withdrawn at any time and consent to one form of sexual activity is not necessarily consent to other forms of sexual activity.

CONSENT (Definition - Part 2)

C. When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence of or impaired by the use of the drug. Alcohol and other drugs impact each individual differently.

D. Determining whether an individual is incapacitated requires an individualized determination. When determining whether a person has the capacity to provide Consent, the University will consider whether a sober, reasonable person in the same position knew or should have known that the other party could or could not consent to the sexual activity.

E. When determining whether Consent has been provided, all the circumstances of the relationship between the parties will be considered.

RELEVANCY (Definition - Part 1)

Relevant Evidence and Questions - Evidence and questions that tend to make an allegation of sexual misconduct more or less likely to be true. “Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of any process initiated under this Policy:

A) Evidence and questions about the Complainant’s sexual predisposition or prior sexual behavior unless:

- 1) They are offered to prove that someone other than the Respondent committed conduct alleged by the Complainant, or
- 2) They concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove Consent.

RELEVANCY (Definition - Part 2)

B) Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege including attorney-client privilege; or

C) Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.

RELEVANCY

Relevancy in the Final Report

Relevancy of Questions During Cross Examination

Documenting Relevancy Decisions

TRAUMA-INFORMED

Refer to SUNY SCI Training

Neurobiological Reasons for Memory Gaps and Slow Recall

Reframe Questions when Necessary

Avoid Retraumatizing

Trauma Does Not Necessarily Prove a Policy Violation

Guardian Case		Complainant	
Investigator		Respondent	
Investigator		Date of Report	

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QUESTIONS?