



Student Conduct Hearings and Title IX

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Overview

- Definitions
- Dynamics of Sexual Assault
- SRC Hearings involving Sexual Violence
- Title IX Compliance (substitute for SafeColleges training)

Title IX

- Title IX is part of the Education Amendments of 1972
 - “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.”
 - 20 U.S.C. §§1681 et seq.
 - Just 37 words with a big impact

Institutional Response

- The mission of Title IX is to reduce or eliminate barriers to educational opportunity caused by sex discrimination
- Title IX is concerned with *institutional response* to discrimination
- Failure to respond appropriately can result in loss of Title IV funding
- UND's policies prohibit sex discrimination and guide our response when it occurs

Scope of Title IX & UND Policies

- Prohibit sex discrimination, sexual harassment & sexual violence in all University-sponsored activities
- Apply to students, employees & visitors participating in activities that are on-campus, off-campus, in-transit, and sponsored at other locations, etc.
- UND policies apply to students from the time they are accepted until they graduate or withdraw, regardless of location



DYNAMICS OF SEXUAL VIOLENCE

Dynamics of Sexual Violence

- Nature of victimization
- Counter-intuitive victim behaviors
- Delay in reporting
- Wavering level of cooperation/recantation
- Role of drugs and alcohol
- Most sexual assaults committed by someone known to the victim
- Most sexual assaults are achieved through threats, intimidation and exploiting vulnerabilities or incapacitation

Dynamics of Sexual Violence

- Likelihood of repeat offenders and undetected predators
- Concerns over false reports
- Little to no physical or forensic evidence
- Most common defense is consent
- Decisions based solely on credibility
- Inability to completely eliminate occurrence
- Emotionally charged and incendiary in nature

Trauma Victims and Witnesses

- May not experience trauma same way we experience non-traumatic event
- Body and brain react differently
 - Higher functioning parts of brain shut down
 - More primitive portions of brain take over
 - Record information differently
 - Record senses and experiences but not specific details we may expect someone to remember

Trauma Victims and Witnesses

- May be unable to accurately remember details
 - Color of shirt, hair color, location
- Or may provide inaccurate information and details
- May provide new or different information at later time
- Stress and trauma interrupt the memory process
- Can change memories in ways most people do not understand

Trauma Victims and Witnesses

- Physical reaction during interviews
 - Used to believe change in body language, lack of eye contact, flat affect, many pauses, were signs of deception
 - Research shows these occur naturally when people are highly stressed or traumatized
 - Does not mean the victim/witness is lying

Trauma Victims and Witnesses

- Forensic Experiential Trauma Interview
 - Process developed to interview victims of trauma
 - Reaches memories recorded in primitive parts of the brain
 - Focuses on victim's physical and emotional experience
 - Five senses
 - Emotional and physical reaction



UND POLICY DEFINITIONS

UND Policies

- Sexual and Gender-Based Misconduct Policy
 - General university policy prohibiting sexual harassment/discrimination, sexual violence and relationship violence
- Code of Student Life
 - Works in tandem with general policy
 - Procedures and process for student conduct

What is Prohibited

- Discrimination or harassment based upon sex, sexual orientation or gender identity
 - May be verbal, nonverbal or physical
 - May or may not be conduct of a sexual nature
 - May involve individuals of same or different sex or gender
- Domestic or dating violence
- Stalking
- Sexual exploitation
- Sexual violence
- Retaliation

Non-Verbal Sexual Harassment

- Sexually suggestive staring, leering, sounds or gestures
- Sexually suggestive or degrading images
 - Emails
 - Posters
 - Graffiti
- Use of such images to advertise events

Verbal Sexual Harassment

- Sexual slurs, insults or catcalls
- Sexual, sexist or heterosexist remarks or jokes about someone's body, clothing, activities or sexual orientation
- Unwelcome sexual propositions, demands or pressure for sexual favors
- Requests for romantic or sexual relations by a person in authority, combined with an implicit or explicit threat or reward

Physical Sexual Harassment

- Unnecessary and unwanted physical contact (touching, brushing, hugging, pinching)
- Unwelcome fondling or kissing
- Physical assault because of a person's sex, gender identity or sexual orientation
- Sexual exploitation

Sexual Violence

- Sexual violence is a physical sexual act perpetrated against a person's will or where a person is incapable of giving consent
- Includes rape, sexual assault, sexual battery, sexual coercion, domestic violence, dating or relationship violence and stalking

Hostile Environment Sexual Harassment

- Behavior that is objectively offensive and sufficiently severe, persistent or pervasive so as to interfere with or limit a student's ability to participate in or benefit from the university's programs or activities

Examples of Hostile Environment Sexual Harassment

- “Severe or pervasive” sexual harassment:
 - Persistent unwelcome remarks about someone’s body parts or looks (in person or on the internet)
 - Displaying pornography on a laptop in class so that others stop coming to class or cannot concentrate
 - Stalking
- One incident of harassment can create a hostile environment if sufficiently severe
 - Sexual violence

Quid Pro Quo Sexual Harassment

- Submission to or rejection of unwanted sexual advances or requests for sexual favors becomes a condition of a person's employment, academic standing, or participation in any university-sponsored programs or activities
- “If you have sex with me, then I’ll make sure you get an A . . .”

UND Definition of Consent

- For purposes of sexual misconduct, consent is defined as affirmative, informed, voluntary, and active permission to engage in a mutually agreed-upon sexual act or contact. Consent is expressed by clear and unambiguous words or actions that a reasonable person in the circumstances would believe communicate a willingness to participate in a sexual act or contact.

UND Definition of Consent

- It is the responsibility of each person who wishes to engage in a sexual act or contact to obtain consent.
- The use of drugs or alcohol does not eliminate a person's responsibility to obtain consent.

UND Definition of Consent

- Consent cannot be obtained:
 - By the use of physical force, threats, intimidation, deception or coercion;
 - From one who is incapacitated, such as due to mental or physical condition or the use of drugs or alcohol;
 - From one who is asleep or unconscious; or
 - From one who is not old enough to give consent under state law.

More on Consent

- Silence, the lack of protest, or the absence of resistance does not indicate consent.
- May be initially given but withdrawn at any time.
- Past consent does not imply future consent.
- Consent to one act does not imply consent to other acts.

More on Consent

- “Yes” in the past is not automatically “yes” today
- “Giving in” after threats of harm against the victim or others is not consent
- There is no consent if someone doesn’t have the capacity to consent

UND Definition of Incapacitation

- Incapacitation means that a person lacks the ability to make informed, rational judgments about whether or not to engage in a sexual act or contact.
- Common signs include but are not limited to:
 - Inability to walk unassisted
 - Inability to speak coherently
 - Confusion on basic information
 - Being passed out or passing out

More on Incapacitation

- State beyond drunkenness
- Outward signs are different for each person
- Common signs **may** be
 - Combativeness
 - Emotional volatility
 - Vomiting
 - Incontinence



SRC HEARINGS

Investigative Process

- Both parties informed of rights and responsibilities
 - Can choose to participate or not
- If this may be a case for which suspension is considered
 - Complainant and Accused Student assigned process advisors to help them navigate
 - Complainant and Accused Student may have advocate or advisor present for interviews and meetings

Investigative Process

- Before a hearing is scheduled, a trained investigator(s) has interviewed all parties and witnesses who have chosen to participate
 - If parties or witnesses choose not to participate, investigation goes forward without the benefit of that person's information
- Investigators prepare interview summaries, which both parties may review and offer addenda

Investigative Process

- Investigator(s) provide formal report to Director of Office of Student Rights & Responsibilities, who serves as Hearing Officer
- After reviewing all available information, Hearing Officer makes recommendation for finding and sanctions, as appropriate

Pre-Hearing Process

- Complainant and Accused may submit additional relevant information for SRC consideration
- Complainant and Accused provided with copies of all relevant information gathered
- Complainant, Accused, Hearing Officer and SRC members may call witnesses to appear at hearing

SRC Hearings

- Complainant and Accused Student allowed to each have fully participating advocate at hearing
 - Advocates allowed to present opening statement, question witnesses and present closing argument
- Hearing Chairperson is charged with keeping hearing running smoothly and in accordance with hearing rules

SRC Hearings

- Remember that the hearing is the highest student disciplinary process at UND
- Involve intensely personal, private and traumatic incidents
- Be aware of how you may be affected
- Cannot allow your own personal experiences to influence your decisions

Appropriate Questions

- You should only be asking questions to help you determine if the UND policy was violated
- Important to remember what is relevant to the particular hearing
 - What facts will help to prove or disprove the allegation?
 - For example, what facts will help to show whether or not consent was present?

Inappropriate Questions

- Information that is not relevant to decide if a policy violation occurred
- Sexual history or past sexual partners, etc.
- Clothing choices

However . . .

- There may be times when these questions are relevant
 - Sexual experiences with the same person may be important to show how consent was given in the past
 - Clothing may be important to show ease or difficulty of removing, etc.

Consent

- Often the key question to be determined in a sexual violence case
- Sex or sexual contact without consent is a policy violation

Evaluating Consent

- Was permission given for the sexual contact?
 - Affirmative through clear and unambiguous words or actions
 - Informed means they understood what was happening
 - Voluntary = no coercion, deception or threats
 - “Giving in” after threats of harm against the victim or others is not consent
 - Active, not passive or absence of “no”
 - “Yes” to one act is not automatically “yes” to another act
- Would a reasonable person in those circumstances have believed consent was given?

Incapacitation

- Another key issue to be determined
- If an individual is incapacitated, they cannot give consent
- Incapacitation is more than intoxication

Evaluating Incapacitation

- Was the Complainant's ability to make decisions impaired?
 - A person is not necessarily incapacitated as a result of using drugs or alcohol.
 - A person does not have to be sleeping or passed out to be incapacitated.
 - Incapacitation and its signs vary from person to person

Evaluating Incapacitation

- What facts did investigation reveal?
 - How much did they have to drink (if incapacitation by alcohol) and when?
 - How much did they have to eat and when?
 - Are there medical tests that show BAC?
 - Did Complainant exhibit other common signs?

Evaluating Incapacitation

- Did Complainant exhibit common signs such as
 - Incoherent speech
 - Inability to walk unassisted
 - Combativeness or emotional volatility
 - Vomiting
 - Person unable to understand where they are or how they got there

Evaluating Consent in Alleged Incapacitation Case

- Three questions:
 - Was the Complainant incapacitated?
 - Did the Accused Student know that the Complainant was incapacitated?
 - If not, should a reasonable person in the same situation have known that the Complainant was incapacitated?

Evaluating Consent in Alleged Incapacitation Case

- Did the Accused know, or should reasonably have known, the Complainant was incapacitated?
 - How much did the Complainant drink or eat in the presence of the Accused? In what time period?
 - Did Accused Student observe Complainant showing signs of incapacitation?
 - How much time did they spend together?
 - Had they spent time together under similar circumstances before?

Assessing Credibility

- Consistency in narrative
 - Are any changes rationally explained or explainable
- Motive to be untruthful
 - Self-interests
 - Bias
- Lack of detail provided
- Investigator also provides assessment of credibility in investigative summary
 - based upon personal observations

Assessing Credibility

- Witness who does not make eye contact, appears nervous, etc., is not necessarily being untruthful
 - Student is likely extremely nervous and frightened
- Changes in body language are generally more indicative of deception

Assessing Credibility

- If party provides testimony at hearing, be aware of
 - Changes in voice tone (generally higher tone indicates deception)
 - Repeating questions
 - Using qualifying language (to be honest ...)
 - Increased formality of language
 - Increased or decreased fillers or contractions
 - Change in eye contact or other demeanor

Assessing Credibility

- Ask yourself
 - Does this all make sense?
 - Were there unnatural gaps or omissions?
 - How does this narrative compare with other versions of events?
 - Was this narrative consistently told?



(Acting outside your role on the SRC)

TITLE IX COMPLIANCE

UND's Responsibilities

- Respond promptly and effectively if UND knows or reasonably should know about sexual harassment or sexual violence that creates a hostile environment
- Conduct a prompt investigation to determine what occurred and take appropriate steps to resolve the situation
 - Eliminate harassment
 - Prevent its recurrence
 - Address its effects

UND's Responsibilities

- Provide a balanced and fair process to both parties
 - Process is same for both parties
 - Support for both parties during investigation
 - Both parties receive equal access to information
 - Both have right to appeal outcome of hearing
 - Appeal result could change hearing decision or modify sanction to be more stringent or more lenient

UND's Responsibilities

- Use preponderance of evidence standard
 - More likely than not
- A criminal investigation does not relieve UND of its duty under Title IX to resolve complaints promptly and equitably
 - UND process could have different result than criminal investigation

UND's Responsibilities

- Provide appropriate interim measures to address safety and well-being of both parties prior to outcome of the investigation
 - Change in housing, class schedule, dining hall or work schedule
 - On-campus no-contact directive
 - Police escort
 - Re-assigned parking
 - Referral to University Counseling Center or outside provider
 - Withdrawal from class or University

UND's Responsibilities

- Whenever possible, UND respects a complainant's request to not take disciplinary action against the respondent
 - Must consider campus safety concerns
- Both parties will be notified if full investigation proceeds

Employee Responsibilities

- Those employees designated as Responsible Employees are obligated to share information regarding potential Title IX violations with the Title IX Coordinator
- All other employees are encouraged to share information with the Title IX Coordinator

If Complainant does not want full investigation

- UND is limited in ability to fully respond
- Interim measures still available
- Remedies such as education may be appropriate
- UND will support Complainant
- Complainant can request investigation or administrative action at a later date

Confidential Resources

- UND has options for a person who wants to receive confidential support following sexual violence
 - University Counseling Center – for students
 - Student Health Services– for students
 - Employee Assistance Program – for staff and faculty
 - CVIC at UND – for students, staff and faculty
- Off-Campus
 - Health care providers, mental health counselors, domestic violence advocates and religious or pastoral counselors can provide confidential services

Other Campus Resources

- While these may be required to report incidents of sexual harassment or violence, they provide support services
 - Office of Student Rights & Responsibilities
 - University Police Department
 - Title IX Coordinator
 - Human Resources

When someone seeks help from you

- Is this an emergency?
 - 911
 - UND Police
 - Emergency Room
- Do they feel safe?
 - Do they need new housing for tonight?
 - Is there a friend to stay with?
 - Is there someone they want to call?

When someone seeks help from you

- If you are a Responsible Employee explain that you can keep this information private but not confidential
 - Required to share with Title IX Coordinator
 - Will only tell those people who need to know to provide help

When someone seeks help from you

- Help them understand they still have choices about how to proceed
 - Reporting to the Title IX Coordinator doesn't necessarily mean there will be a formal investigation if the complainant doesn't want that
- Report incident as soon as possible to Title IX Coordinator or a Deputy Coordinator

When someone seeks help from you

- Tell Complainant about resources available
 - University Counseling Center – confidential
 - Employee Assistance Program – confidential
 - CVIC at UND - confidential
 - UND Police
 - OSRR
 - Human Resources
 - Title IX Coordinator

When someone seeks help from you

- Understand that it took a lot of courage to tell you
- Support them
- Listen without judging or giving advice
- Do not criticize their feelings
- Do not criticize their actions

Questions?

- For more info
 - Donna Smith
 - Equal Opportunity & Title IX
 - Twamley Hall, Room 102
 - 701.777.4172
 - www.UND.edu/title-ix

Thank you!