

SEXUAL MISCONDUCT HEARING PANEL

Stacy Andes

Director of Health
Promotion

Bebe Kivitz

Attorney at Law –
Chairperson

Ryan Rost

Title IX Coordinator

Dave Tedjeske

Chief of Police and
Director of Public
Safety

Nick Tumolo

Assistant Dean of
Students



VILLANOVA
UNIVERSITY



INTRODUCTIONS

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AGENDA

- Introductory Information
- Investigation
- Emotional and relational considerations
- Hearing Process and Procedures
- Q & A

Learning Outcomes

Become knowledgeable in the University's policies and procedures used to address incidents of alleged sexual misconduct

Comprehend the complex and sensitive nature of cases of alleged sexual misconduct, as well as key considerations

Possess the knowledge and skills required to serve as a Hearing Panel Member in cases of alleged sexual misconduct

Expectations & Responsibilities of Board Members

Board Members determine if there is or is not responsibility for alleged violation(s) by participating in a formal hearing and following process.

Board Members do not investigate, determine sanctions, hear appeals, nor are otherwise involved outside of the formal hearing process

Provide the utmost confidentiality and sensitivity

Understand the policies and follow the process

Give serious thoughtfulness

Consider Villanova's mission and values

Remain open minded, fair and balanced

Recognize your emotions. Prioritize self-care

Common Terms

Sexual Misconduct | Sexual Violence

Complainant | Respondent | Advisor

Responsible | Not Responsible

Conduct Review Officer (Students/Law Students)

Grievance Officer (Faculty)

Human Resources Officer (Staff)

Board | Panel | Hearing | Proceedings



Policy Review

Sexual Assault

Sexual
Exploitation

Stalking

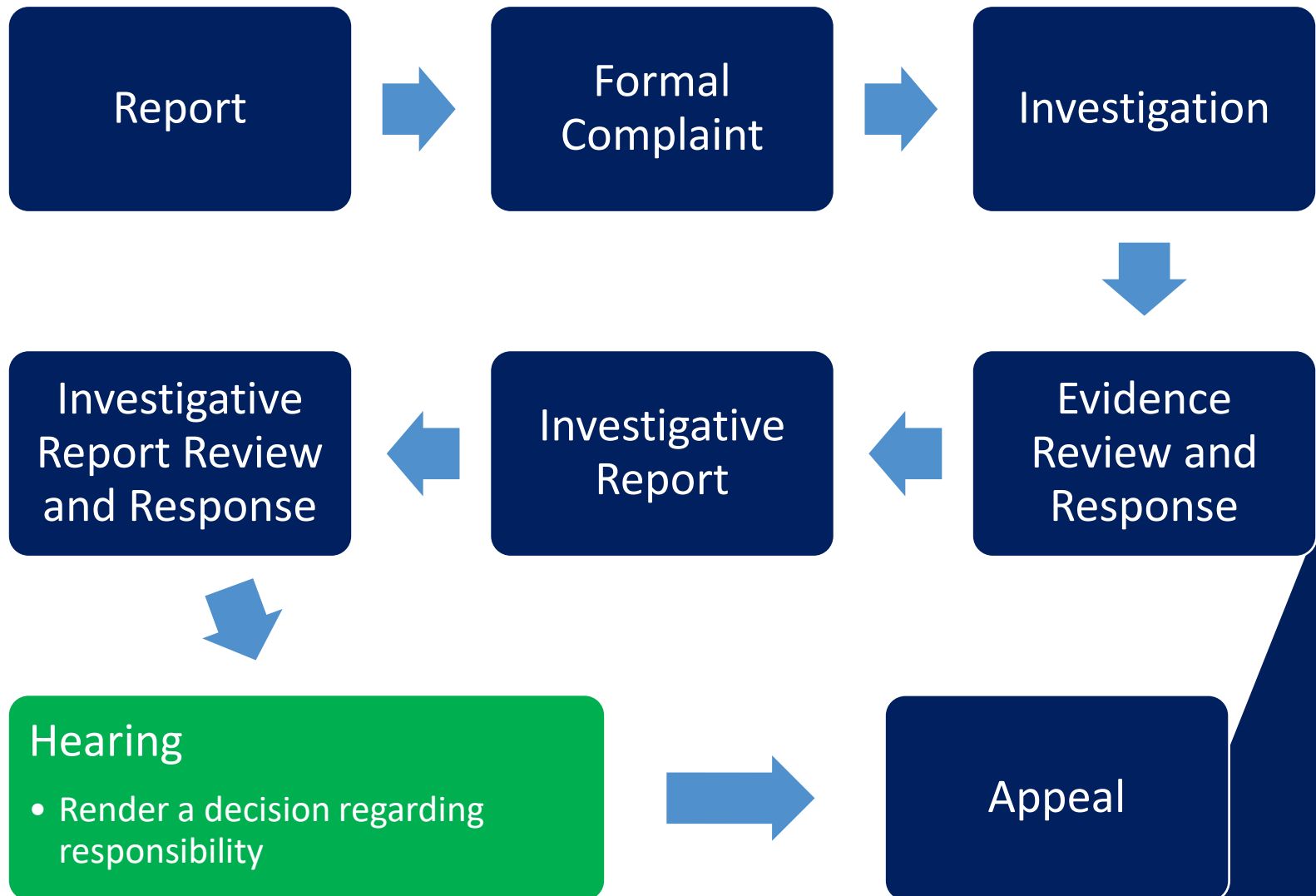
Sexual
Harassment

Dating Violence/
Domestic
Violence

Retaliation

Consent

Formal Complaint Process



****Supportive measures offered to parties throughout process****

Investigation

Determine Jurisdiction

- Does the University have standing to undertake an investigation?
- Is there a concurrent criminal investigation?

If there is a concurrent criminal investigation

- Definitions of crimes vs. Policy violations are different
- Evidence collection process is different
- Rights of the parties are different
- Evidence gathered during a criminal investigation may be shared with the Title IX Investigator

Witness Interviews

- All witnesses with direct information are interviewed.
- Significance of "Outcry" witness
- Witnesses with relevant information are asked to complete a written statement.
- Participating in the interview and/or writing a statement are voluntary.

Compile full evidence packet which includes: Initial report, written statements, interview summaries, electronic evidence, physical evidence, and other supporting documentation

Evidence packet review and response (10 days)

Compile Investigative Report and send to parties and department overseeing hearing process

Emotional and Relational Considerations: Complainant and Respondent Shared Experiences

Depression

Anger

A sense of loss
of control

Uncertainty of
incident

Academic
difficulty and
disorganization

Physical
problems

Practical life
changes

Community
and/or family
reaction

Embarrassment

Post-traumatic Stress Disorder

Reliving the event – including flashbacks and upsetting memories, nightmares, and strong reactions to anything reminding the person of the event.

Avoidance – emotional numbing, apathy, detachment, loss of memory, reduced interest, avoidance of places, people or thoughts reminiscent of the event

Arousal - difficulty concentrating, startling easily, hyper vigilance, irritability, and sleep difficulty

General Information – The Hearing

Administrative in nature and designed to determine responsibility for alleged violations

- Governed by University policies, not processes associated with the criminal justice system.

One Chairperson

- Attorney who may or may not be an employee of the University.
- Runs the hearing, actively participates, advises on procedural issues, makes relevance determinations, addresses decorum issues, drafts the Board's findings and decision.
NON-VOTING.

Three Board Members

- Trained faculty/staff members who are impartial and free of any conflict-of-interest.
- Votes on a finding of responsibility.
- Parties can challenge composition of the Board prior to hearing, but cannot contact the Board.

Conduct Review Officer/Grievance Officer/Human Resources Officer

- Facilitates administrative needs of the Board and is present during hearing to provide assistance.
- Does not participate and is non-voting.

Respondent Rights

1. The right to choose whether or not to participate in the grievance procedures, with the understanding that findings and sanctions/discipline may be imposed with or without such participation;
2. The right to notice of the allegation that a violation of the Sexual Misconduct Policy has taken place;
3. The right to notification of the grievance procedures;
4. The right to be notified of the availability of Supportive Measures as outlined in the University's Sexual Misconduct Policy;
5. The right to review all evidence and the investigative report;
6. The right to a prompt and impartial response and resolution of complaints;
7. The right to be presumed not responsible until found otherwise;
8. The right to have the University bear the burden of proof by a preponderance of the evidence;
9. The right to present relevant statements, materials and witnesses during grievance procedures;
10. The right to have an advisor of choice throughout the process or appointed by the University for a hearing;
11. The right to have available at the hearing all relevant evidence and the investigative report;
12. The right to have an advisor ask questions of any witnesses and/or the Complainant at designated times during a hearing;
13. The right to written notification of:
 - A. any finding of responsibility
 - B. findings of fact supporting the determination
 - C. statement of and rationale for the result as to each allegation
 - D. any disciplinary sanctions/action imposed
 - E. any remedies provided to the Complainant
14. The right to be free from retaliation regardless of participation in the University's grievance process; and
15. The right of appeal consistent with these Special Procedures.

Complainant Rights

1. The right to choose whether or not to participate in grievance procedures;
2. The right to notification of the grievance procedures;
3. The right to be notified of the availability of Supportive Measures as outlined in the University's Sexual Misconduct Policy;
4. The right to review all evidence and the investigative report;
5. The right to a prompt and impartial response and resolution of the complaint;
6. The right to present relevant statements, materials and witnesses during the grievance procedures;
7. The right to have an advisor of choice throughout the process or appointed by the University for a hearing;
8. The right to have available at the hearing all relevant evidence and the investigative report;
9. The right to have an advisor ask questions of any witnesses and/or the Respondent at designated times during a hearing;
10. The right to written notification of:
 - A. any finding of responsibility
 - B. findings of fact supporting the determination
 - C. statement of and rationale for the result as to each allegation
 - D. any disciplinary sanctions/action imposed
 - E. any remedies provided
11. The right to be free from retaliation for filing a complaint or participating in the University's grievance process; and
12. The right of appeal consistent with the provisions of these Special Procedures.

Pre-Hearing

If asked to serve on a Board, you will be provided with:

- Date, time, location
- Names of the complainant, respondent and possible witnesses
- Alleged violations and associated policies
- Parties' procedural rights
- Special procedures governing the hearing
- Evidence packet / investigative report (and any written responses) for thorough review. *This can be lengthy!*
- After reviewing the packet, the Board can request witnesses to appear

The Board will meet with the administrative officer and chairperson prior to the hearing for additional training and review

Hearing Details

Order of the hearing

Introductions and opening remarks by the Chair

Opening statements (complainant then respondent)

Questioning

Witnesses

Final questioning

Closing statements (complainant then respondent)

- Allow an entire day for the proceedings and deliberation. May be longer.
- A transcript of hearings will be created – likely through use of a stenographer
- Board Members and the parties can call for a break whenever needed – as is practical and appropriate.
- Parties will have private “waiting rooms” nearby (if in person) or private breakout rooms if virtual.
- Advisor is present for support and to conduct questioning of opposing party and witnesses.

Breaking Down the Proceedings

Standard of Proof

- Preponderance of the Evidence

Witnesses

- Factual – witnesses who have some knowledge concerning the events or issues
- Expert witnesses can be called, but typically have not been called

Evidence

- All evidence reviewed in advance by parties and advisors
- Relevance
- Credibility
- Character Evidence
- Consent/incapacitation
- Prior Sexual, Medical, or Psychiatric History
- Opinions re: someone else's credibility or the truth of the allegations
- Determinations re: admissibility shall be made by the Chair

Fair and balanced

Questioning and Testimony

Types of questions and how to ask

- Attempt not to ask questions suggesting blame

Board will have to ask uncomfortable questions

- Strive to do so in a sensitive manner

Must be thorough in asking questions in order to obtain all information

- Essential to rendering a decision

All comments and responses are directed to the Board

- The Chair will ask questions requested by the students other than cross-examination undertaken by the Advisor

Testimony considerations

- Is a witness credible, forthcoming, evasive?
- Does other testimony corroborate or contradict?
- Does the story have the “ring of truth?”

Deliberation

Deliberation process

- Takes place in private, may take a few hours up to a few days

Board considers only the evidence deemed relevant and admissible

- What can and cannot be considered if a party does not submit to cross-examination

Must review elements of EACH alleged violation and the definition of consent

- Using the preponderance standard, may find responsible for all, none, or some of the alleged violations

Must make judgments concerning the credibility of parties and witnesses

- Board must resolve issues concerning credibility and the sufficiency of the evidence

Each member shares thoughts – the group collectively deliberates

- Using logic, reason, common sense

Voting

- Majority

Findings of Fact and Conclusions

After the Decision

Board will sign off on determinations and findings of fact. Administrative Officer will then simultaneously provide the determinations to all parties

- Statement of and rationale for determination of responsibility for each alleged violation, sanctions/discipline imposed, and whether remedies will be provided to the complainant
- Appeal procedures

Parties have the right to appeal on the following grounds:

- Appeal for New Proceedings
 - Due to Material Procedural Defect or New Evidence
 - Conflict of interest or bias
- Disproportionate Sanction/Discipline
- The Board's decision itself is final and binding – cannot appeal

Appeals are heard by:

- Dean of Students (or designee)– Undergraduate and Graduate Students
- Provost – Faculty
- Associate VP for HR (or designee) – Staff
- Vice Dean (or designee) – Law Students

Take Aways

We use the guidance of federal regulations along with Villanova's core mission and values to resolve these complex and difficult cases in the best possible way.

These situations involve our community members and their families, and have tremendous impact on them and our larger community. Therefore, thoughtfulness, sensitivity, balance, and process are critical.

Board members must use a strong ethic of care along with our community policies and procedures to get to the outcome that may not be easy, but the outcome that is right.

Q & A

Thank You