

# Title IX Advisor Training

# Title IX 101

# The Law

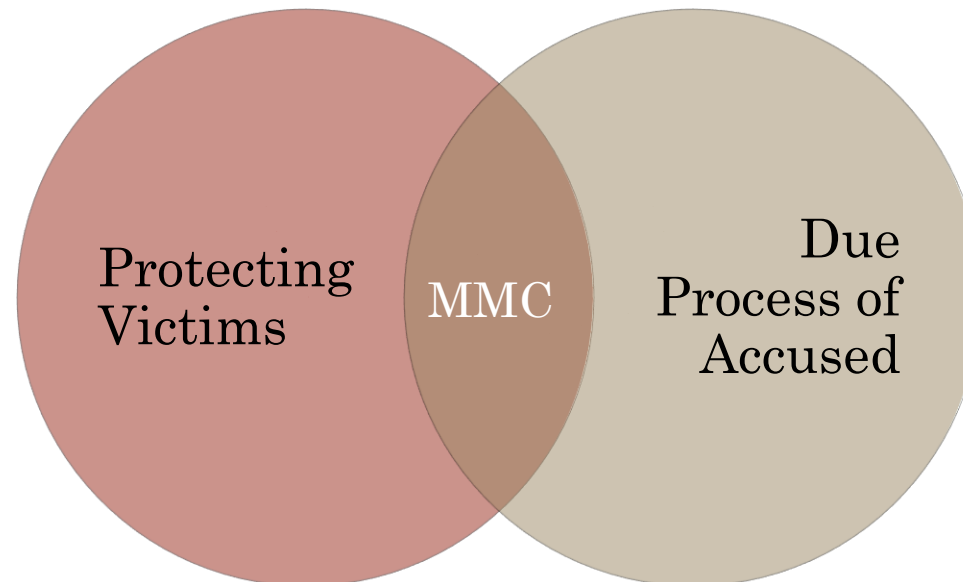
Title IX of the Education Amendments of 1972 is a federal law that prohibits sex discrimination in education.

*"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."*

-Title IX of the Education Amendments of 1972, and its implementing regulation at 34 C.F.R. Part 106 (Title IX)

# 2020 Final Rule

- Sexual Harassment now includes Sexual Assault & VAWA definitions.
- Colleges must investigate allegations of Sexual Harassment and take appropriate disciplinary action.
- Obama-Era Dept. of Ed = focus on protecting victims
- Trump/DeVos Dept. of Ed = focus on due process of accused



# New Regulations = Advisors

- U.S. Department of Education Title IX *Final Rule*, 2020
  - Every institution must provide **live hearings** for Title IX grievance proceedings. Trained hearing officers must oversee the hearing and exclude any question or evidence deemed to be irrelevant.
  - At the live hearing, the decision-maker(s) must permit each party's **advisor to ask the other party and any witnesses all relevant questions and follow-up questions**, including those challenging credibility.
    - Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
  - If a party does not have an advisor present at the live hearing, **the College must provide without fee or charge to that party, an advisor of the school's choice** to conduct cross-examination on behalf of that party.
  - The hearing officer must **decide whether a question is "relevant" before it is answered** and must explain any decision to bar a question as irrelevant.

# What is/is not Title IX

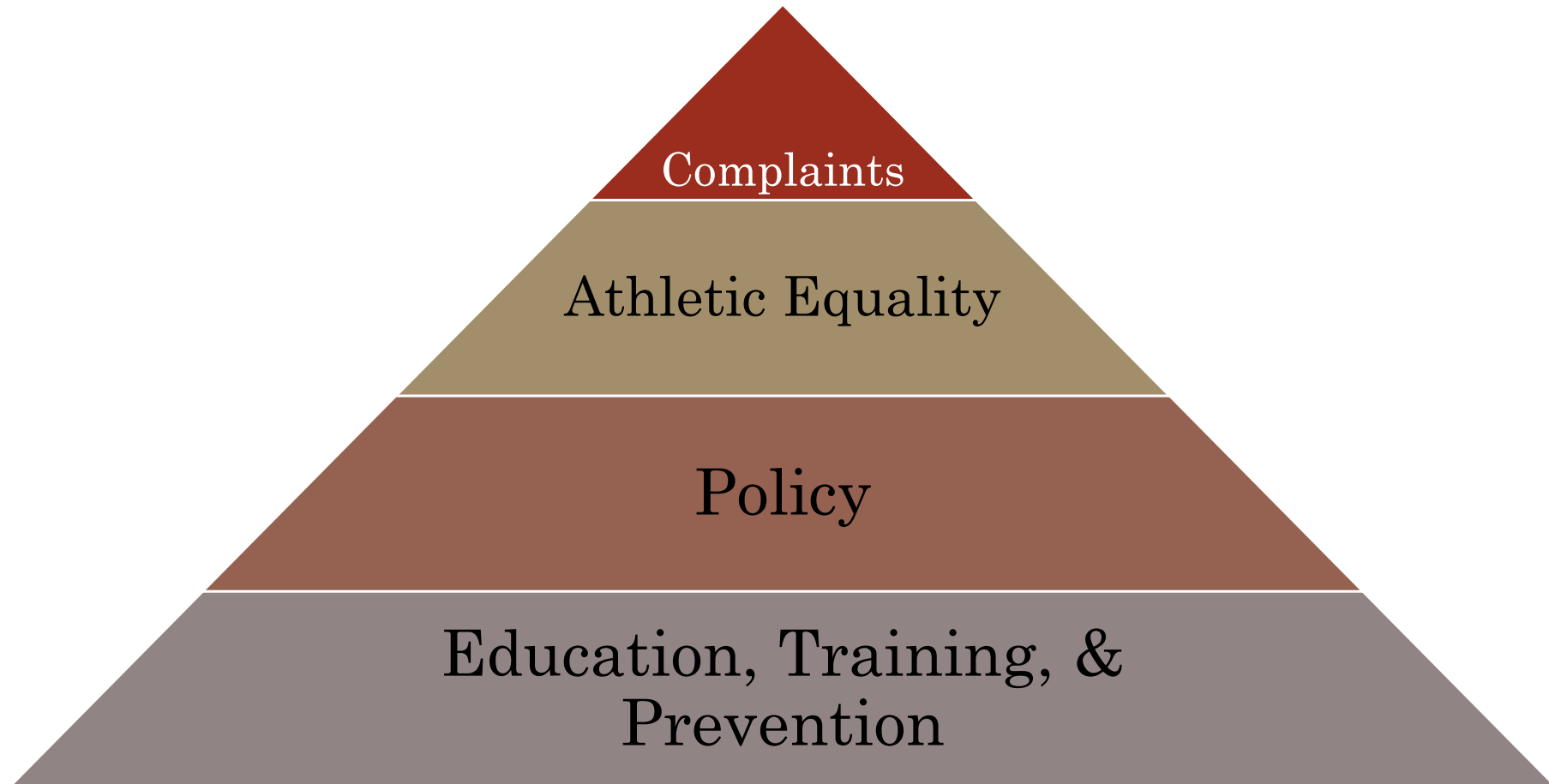
## Is/May Be

- Discrimination based on gender (including gender-identity)
- Discrimination based on sexuality
- Sexual Harassment
- Pregnancy discrimination
- Retaliation (in regards to sex-based harassment)
- Bullying & Cyber-bullying (in regards to sex-based harassment)
- Hazing (when it involves sex-based harassment)

## Is NOT

- Disability discrimination (ADA)
- Employment discrimination based on race, religion, or national origin (Title VII)
  - Title VII includes sex-based discrimination, which does fall under Title IX
- Student discrimination based on race, religion, or national origin (Title VI)
- Age discrimination (ADEA)

# Compliance



# Parties Involved

## From the Institution

- Title IX Coordinator
  - Investigator
  - Decision Maker
  - Council Members (Panel)
  - Appellate Decision Makers
  - Informal Resolution Facilitators
  - Responsible Employees

## From the Incident

- Complainant (Reporter)
- Respondent (Accused)
- **Advisors**
- Witnesses



# Language



# Basis of Title IX

Everyone deserves educational access.  
Discrimination and harassment inherently deny access to education  
(including employment).

Did the conduct violate our policy?

- Did it happen within our jurisdiction?
- Is each qualifying part of a definition met?
- Is it more likely than not to have happened?



# Title IX & FERPA

- If FERPA is preventing the College's effort to prevent sex-based discrimination, Title IX wins...
- ...at least as of 2001...
  - *"FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between requirements of FERPA and requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions."*
  - Has not been revoked as part of Final Rule, but has not been commented upon either.
- ...but will always be coordinated by the Title IX Coordinator.
- **You will never discuss a Title IX case with anyone not directly involved in that case with you.**
  - If you have concerns about a timely warning, contact the Title IX Coordinator.

# Serving as an Advisor

# Advisor's Role

## Federally Mandated

- Be present at live hearings
- Ask questions of parties during live hearings

## Student Support

- Be present at meetings/interviews
- Walk student through process
- Encourage support services & resources
- Request breaks when needed
- Assist in processing
- Advocate for student well-being & a timely process

# Role in Title IX Policy

- Complainants and Respondents are entitled to be accompanied and assisted by one Advisor of their choosing at any meetings or investigation interviews.
- **Advisors are required for hearings.**
- Complainants and Respondents may choose any person to serve as their Advisor, but accommodations, including scheduling of interviews or hearings will not be made for any advisers, including parents, guardians, or attorneys, if they unduly delay the process.
- No training or qualification is necessary for a person to serve as an Advisor.
- A party may elect to change Advisors during the process, and is not obligated to use the same Advisor throughout.
- The parties are expected to inform the investigators of the identity of their Advisor at least 1 business day before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties are expected to provide timely notice to investigators if they change Advisors at any time.
- **If a party does not have an Advisor present at the live hearing, the College will provide an appropriate Advisor, free of charge to the party.**

# Role in Title IX Policy

## 1. In Interviews and Investigations:

- Advisors may not participate in the process or speak on behalf of the Complainant or Respondent during interviews, although they may ask to suspend any meetings or interviews briefly to provide consultation.
- Advisors are expected to refrain from interference with the College's investigation and resolution.
- Any Advisor who steps out of their role will be warned once and only once. Advisors disrupting the interview will be asked to leave. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the Advisor will be asked to leave the meeting.
- When an Advisor is removed from a meeting, that meeting will typically continue without the Advisor present.
- Subsequently, the Title IX Coordinator will determine whether the Advisor may be reinstated or replaced by a different Advisor.

## 2. In Live Hearings:

- Advisors may ask either party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's Advisor of choice and never by a party personally.
- Only relevant cross-examination and other questions may be asked of a party or witness.

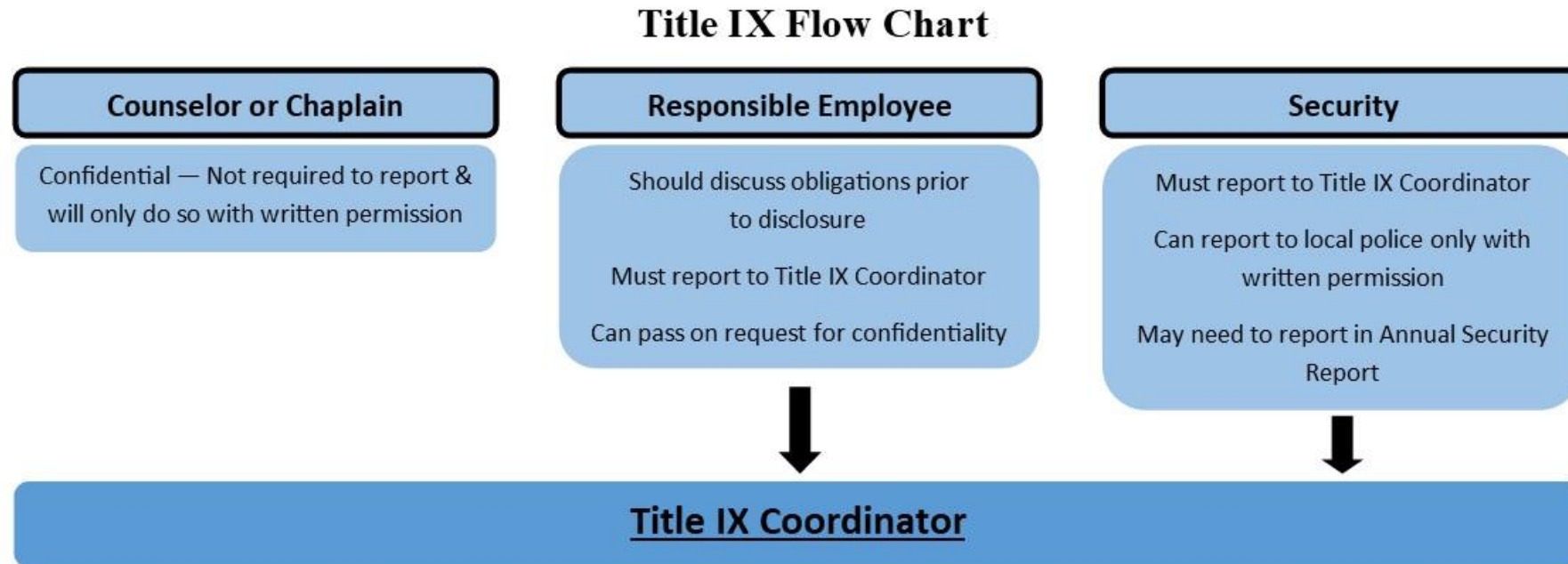
# Supporting Students

- Be present at meetings/interviews
- Walk student through process
- Encourage support services & resources
  - Supportive Measures are available to (a) restore/preserve educational access, (b) protect safety, and (c) deter sexual harassment. These are not punitive or disciplinary, and are as confidential as possible.
- Request breaks when needed
- Assist in processing
- Advocate for student well-being & a timely process



# Title IX Policy

# Martin Methodist Title IX Policy



# Martin Methodist Title IX Policy

## *Responsible Employees*

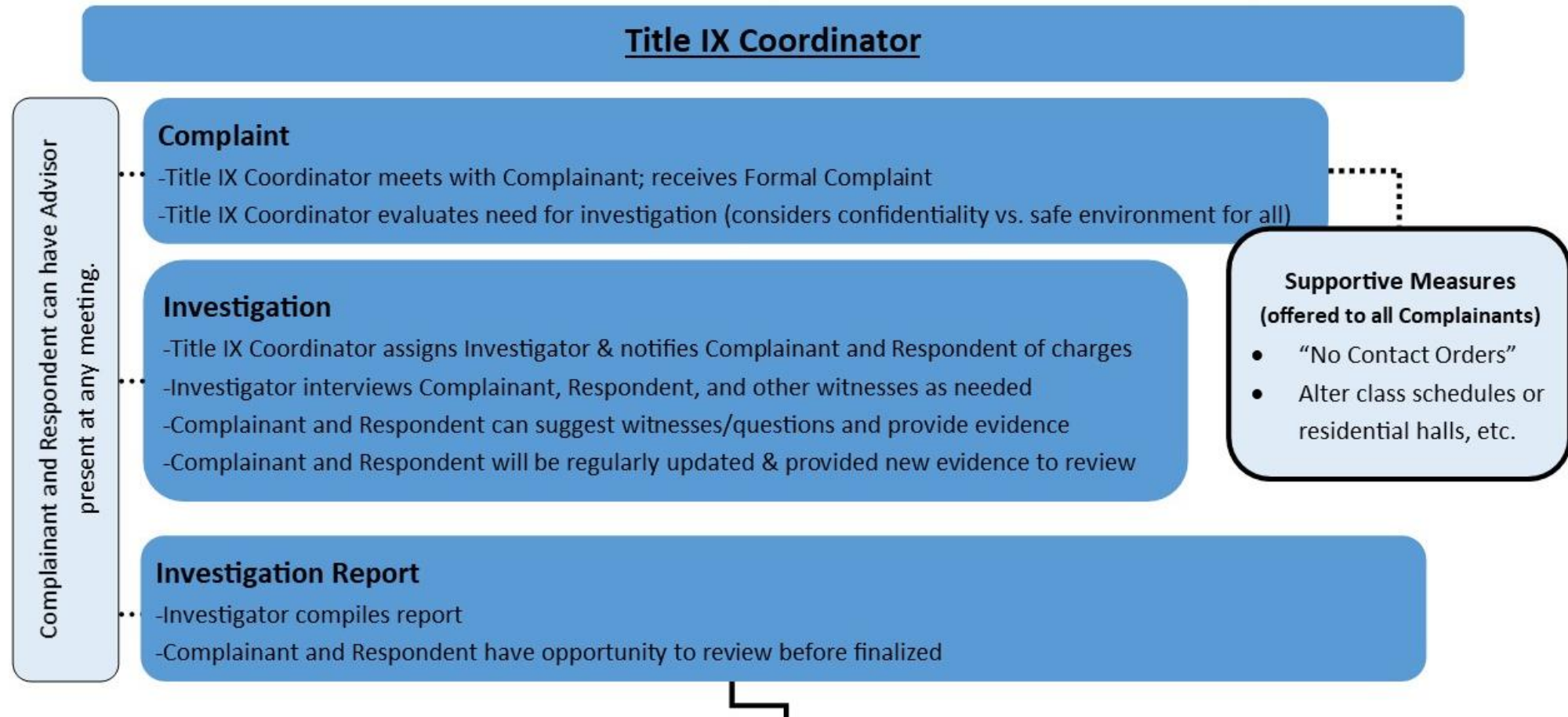
- Title IX Coordinator, Title IX Deputy Coordinators, and designees;
- President, Provost, Vice Presidents, Associate Vice Presidents, Assistant Vice Presidents,
- Directors, Associate Directors, Assistant Directors,
- Faculty;
  - Department Chairs/Heads;
  - Academic Advisors;
- Advisors for student organizations;
- Resident directors and resident assistants;
- Athletic coaches and trainers;
- College Security Authorities, as required by the Clery Act;
- Director of Safety and Security and any security officers employed in any capacity by the College

# Martin Methodist Title IX Policy

## *Reporting*

- The College shall not share personally identifiable information with law enforcement without the Consent of the person who has experienced Sexual Harassment.
- Public awareness events, candlelight vigils, protests, survivor speak outs, or other forums, including social media and class discussions, are not considered notice to MMC of Sexual Discrimination and/or Sexual Harassment for purposes of triggering its obligation to investigate any particular incident(s).
- Anonymous reports may be made online at <https://www.martinmethodist.edu/academics/registrars-office/title-ix-information>.

# Martin Methodist Title IX Policy



# Martin Methodist Title IX Policy

## *Evaluating Need for Investigation*

- **Always Yes**
  - If the Complainant requests an investigation and the initial information meets jurisdictional requirements
  - Risk factors (multiple complaints about the same alleged perpetrator, patterns, threats of additional harassment, use of weapons, etc.)
- **Sometimes Yes**
  - If the Complainant does not request an investigation
  - If the information is anonymous/from a third party
- **Never Yes**
  - When jurisdictional requirements are not met (may be referred to Conduct/HR):
    - The conduct alleged in the Formal Complaint would not constitute Sexual Harassment even if proved;
    - The conduct alleged in the Formal Complaint did not occur in the recipient's education program or activity;
    - The conduct alleged in the Formal Complaint did not occur against a person in the United States

# Martin Methodist Title IX Policy

## *Jurisdiction*

1. Any **employee or student**, including **applicants** for employment or admission as a student, who has been a victim of Sexual Discrimination and/or Harassment, (regardless of sexual orientation or gender identity/expression) **during the person's participation in** or attempt to participate in **the educational program(s) or activities of Martin Methodist College in the United States;**
2. Any **former employee or student** who has been a victim of Sexual Discrimination and/or Harassment, **if the conduct took place within the United States during the time of employment or enrollment at MMC**, and the conduct has a **reasonable connection to the institution;**
3. All **third parties** with whom MMC has an **educational or business relationship** who have been a victim of Sexual Discrimination and/or Harassment **when the conduct has a reasonable connection to the institution.**

# Martin Methodist Title IX Policy

## *Jurisdiction*

- This policy applies to alleged violations that occur in the United States in locations, events, or circumstances over which the College exercised, at the time of the alleged incident, substantial control over both the Respondent and the context in which the Sexual Harassment occurs, including any building owned, leased, or controlled by the College or by a student organization that is officially recognized by the College.
- This policy allows the consolidation of Formal Complaints arising out of the same factual circumstances in instances where there is more than one Complainant or Respondent, or where a cross-complaint has been filed by a Respondent against a Complainant.
- There is no time limit or statute of limitations on a Complainant's decision to file a formal Title IX Complaint with the College.



# Martin Methodist Title IX Policy

## *Dismissing a Complaint*

- When the Title IX Coordinator evaluates a complaint and does not find an allegation of Sexual Discrimination and/or Harassment that is so severe, perverse, or objectionably offensive so as to deny access to the Complainant to MMC's educational programs or activities, the Title IX Coordinator will terminate all Title IX grievance procedures and promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
- Appeal of Dismissal
  - Any party can appeal the dismissal of the complaint directly to the Executive Vice-President by submitting a written to the Executive Vice-President within 3 business days of receiving the notification of dismissal.
  - The Executive Vice-President will determine if the facts warrant a Title IX investigation and will respond to the party in writing within 3 business days.
  - The decision of the Executive Vice-President on this matter shall be final.

# Martin Methodist Title IX Policy

## *Offering Supportive Measures*

- Supportive measures are reasonable administrative actions that are appropriate to provide equal access to education, offered to every Complainant, implemented by the Title IX Coordinator.  
Examples:
  - Restrictions on contact between the parties
  - Modifications of work or class schedules
  - Changes in work or housing locations
  - Providing or assistance with counseling and/or medical services
  - Providing academic support services, such as tutoring
  - Extensions of time or other course-related adjustments
  - Campus escort services
  - Increased security and monitoring of certain areas of campus
  - Leaves of absence
  - Arranging for the Complainant to re-take a course or withdraw from a class. (Withdrawal may have financial aid implications. Students are encouraged to contact Financial Aid prior to withdrawing.)
- Supportive Measures may be applied to one, both, or multiple parties involved with considerable attention paid to providing students, faculty, and staff members reasonable educational access pending the outcome of the investigation. MMC will not place undue burden on any one party and will seek to make Supportive Measures as equitable as possible.

# Martin Methodist Title IX Policy

## *Beginning an Investigation*

- The Title IX Coordinator will (a) provide written notice to the Complainant of their rights with regard to this process in advance of the interview with sufficient time to prepare for meaningful participation, (b) request a meeting, (c) attempt to get a Formal Complaint.
  - Formal Complaint:
    - A Formal Complaint should include information related to the circumstances giving rise to the complaint, the dates of the alleged occurrences, names of witnesses, a request that the College investigate the allegation, and the Complainant's physical or digital signature. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail.
  - In the Absence of a Formal Complaint:
    - When the Complainant chooses not to provide a Formal Complaint but the Title IX Coordinator determines an investigation to be necessary, the Title IX Coordinator will sign and file a complaint alleging Sexual Discrimination and/or Harassment against a Respondent and requesting that the College investigate the allegation. When a Title IX Coordinator signs a Formal Complaint, such action is not taken on behalf of a Complainant, and the Title IX Coordinator does not become a party. The Title IX Coordinator must comply with requirements to be free from conflicts and bias.

# Martin Methodist Title IX Policy

## *Investigations*

- MMC will conduct an adequate, reliable and impartial investigation in a timely manner, providing the Respondent and Complainant equitable rights during the investigative process.
- During the course of the investigation, MMC will endeavor to gather sufficient evidence to reach a fair and impartial determination as to whether Sexual Discrimination or Sexual Harassment occurred and, if so, whether a hostile environment has been created that must be redressed.
- No parties involved in the investigation will be required by MMC to sign a non-disclosure agreement.
- The burden of collecting evidence and proving a violation of policy is on the College, not on either party.

# Martin Methodist Title IX Policy

## *Investigations*

- The investigation shall include interviews with both the Complainant and Respondent, unless either declines an in-person interview.
  - No audio or video recording of any kind is permitted during investigation meetings.
- The investigator is expected to request a list of relevant witnesses and evidence from the Complainant and Respondent and take such into consideration.
- Both the Complainant and the Respondent are permitted to provide other relevant evidence to the investigator.
- The Complainant and the Respondent both have the right to propose questions to one another and to any witnesses. Questions deemed by the investigator as inappropriate will not be asked, and the requesting party (Complainant or Respondent) will be notified of why those questions were not asked.
- Any documentation shared by the Complainant or the Respondent with the investigator will be provided to the other party via the Title IX Coordinator's periodic updates.

# Martin Methodist Title IX Policy

## *Investigation Report*

- Upon completion of the investigation, the investigator shall prepare a written report that fairly summarizes the evidence, including both inculpatory and exculpatory evidence. **Relevant evidence** gathered during the investigation, as appropriate, may be attached as appendices.
- Upon the receipt of the initial report by the Title IX Coordinator, both the Complainant and the Respondent will be notified via their MMC email address. Parties may review the investigation report
- No parts of the investigation report or case file shall be made available for copy.

# The Investigation Report

1. The allegations
2. How & when the allegations were reported
  - Will be a presentation of the facts only
3. Relevant policy
4. Who investigated
  - Will include facts that are disputed and inconsistencies
5. Timeline of investigation, including delays
  - Will include details of information not provided
6. Timeline of events
7. Information from parties & witnesses
  - Should never include analysis
8. Information or witnesses not included/considered + why
  - Should never include credibility assertions
9. Physical evidence
10. Summary of relevant information

# Allegations

Any change in date, time, or location is (usually) a new allegation

1. On October 10, 2020, beginning at approximately 10:00 PM, in Upperman Hall,
  - Blake planned to provide and did provide alcohol to Elizabeth and pressured her to drink it to cause incapacitation in order to gain a sexual advantage,
    - in violation of Student Conduct Code 25: Sexual Exploitation.
2. On October 11, 2020, at approximately 1:45 AM, in Upperman Hall,
  - Blake forced Elizabeth to perform oral sex on him against her will by holding Elizabeth's head down so that she could not stop performing oral sex,
    - in violation of Student Conduct Code 25: Rape.
  - Blake and Elizabeth engaged in vaginal intercourse after Elizabeth had been drinking excessively and did not have the capacity to consent,
    - in violation of Student Conduct Code 25: Rape.

One incident can involve multiple allegations



# Allegations

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    - in violation of Student Conduct Code 25: Rape.

One allegation can contain multiple elements we must consider in determining a violation



Definition of Incapacitation?



Definition of Consent?

# Relevancy

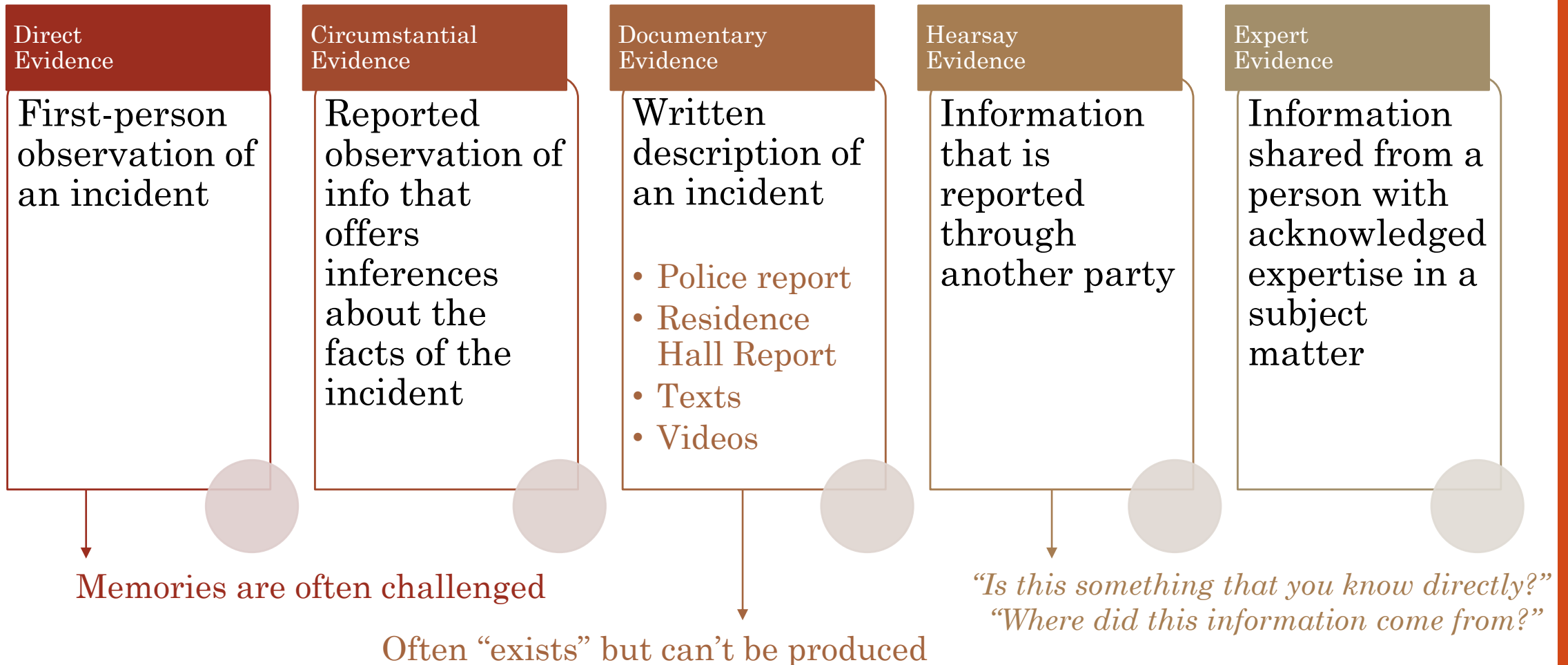
- Not Relevant Information:
  - Treatment history (unless party agrees in writing)
  - Privileged information
    - Hired attorney
    - Medical provider
  - Questions/evidence about the Complainant's sexual predisposition or prior sexual behavior\* unless they are offered to prove that someone other than the Respondent committed the sexual harassment, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove consent
  - Information that does not directly relate to the facts at issue, but instead reflects upon the reputation, personality, qualities, or habits of an individual is character evidence and is not Relevant.

\*Where the parties have a prior sexual relationship, and the existence of Consent is at issue, the sexual history between the parties *may* be Relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have bearing on whether Consent was sought and given during the incident in question. However, this does not assume that the prior sexual history was consensual and this should be a factor in considering relevance.

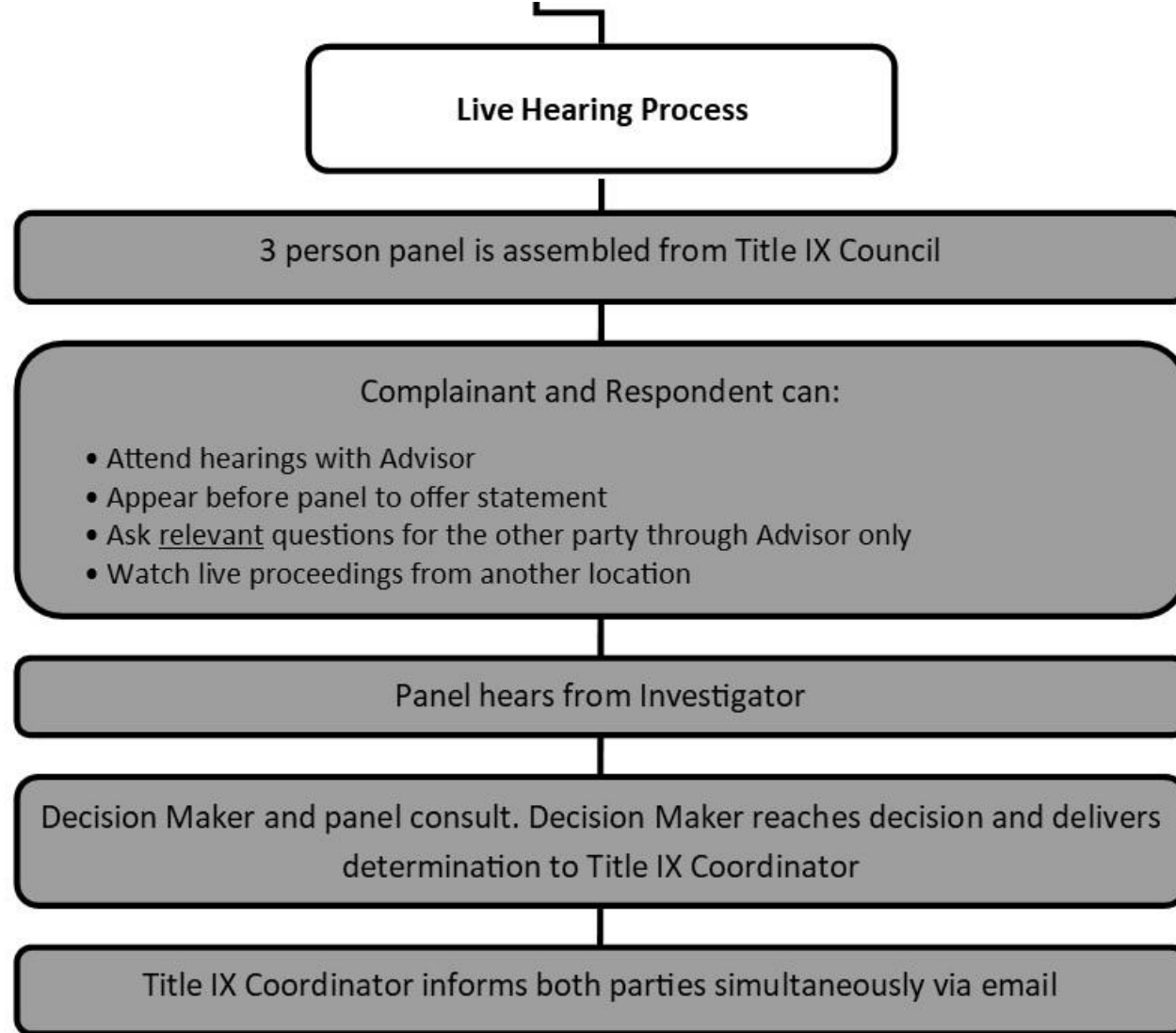
(The investigation shall not consider any evidence about the Complainant's prior sexual conduct with anyone other than the Respondent. An individual's character or reputation with respect to other sexual activity is not Relevant and will not be considered as evidence.)

Evidence of occurrences of prohibited conduct so distinctive and so closely resembling either party's version of the alleged encounter as to tend to prove a material fact ("*pattern evidence*") may be considered.

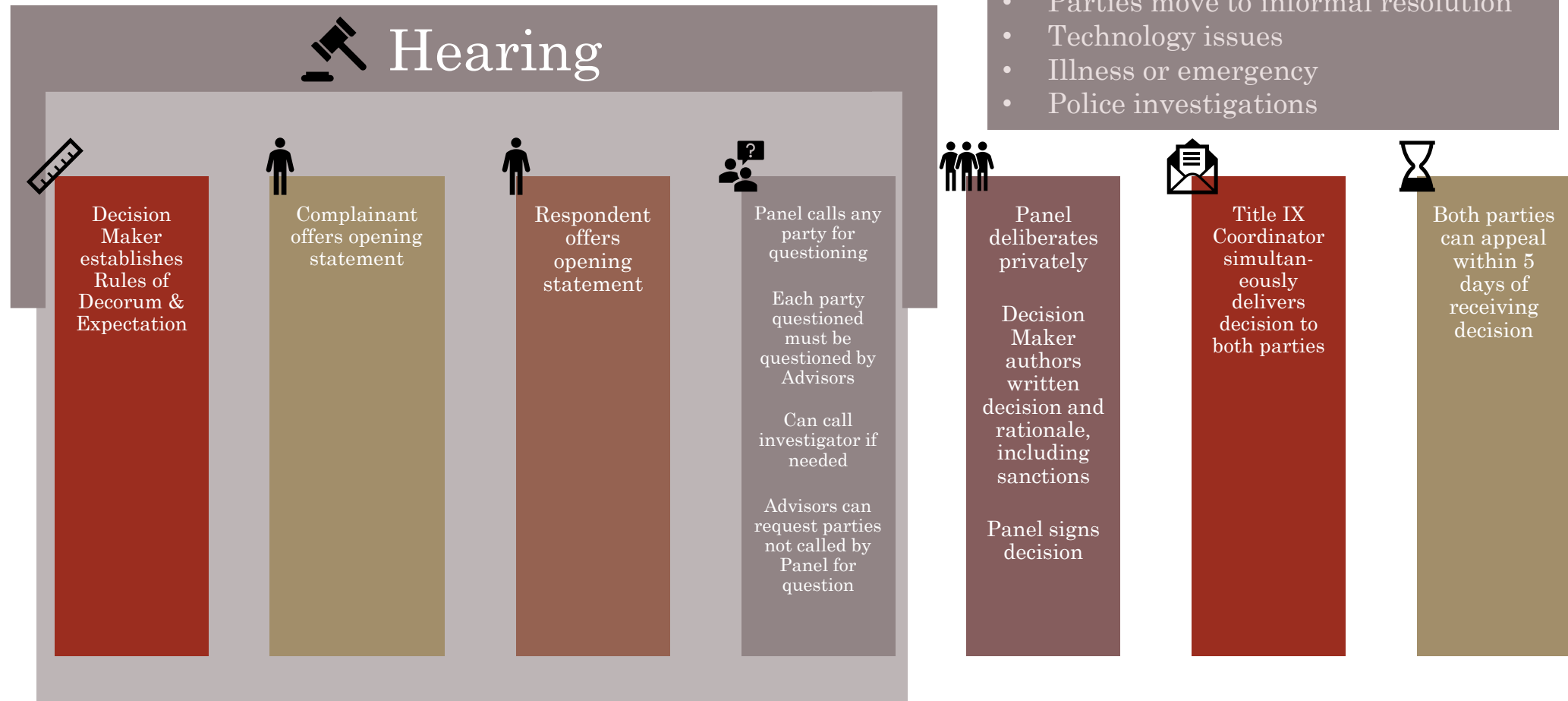
# Evidence



# Martin Methodist Title IX Policy



# Procedure



# Questioning Parties & Witnesses

- Panel members will ask questions first
- Panel members can ask pre-approved questions from Advisors
- Advisors are permitted to ask relevant questions (including follow-up questions and questions challenging credibility)
- Decision Maker must decide **before the question is answered** whether the question is relevant
  - If the Decision Maker deems the question to be irrelevant, (s)he must explain rationale live and in real time
  - Decision Maker can ask the question-asker clarifying/follow-up questions
    - *“What is the purpose of that question?”*
    - *“Can you rephrase that question/make it more clear or concise?”*

# Your Role in the Hearing

- Advisors of Complainants and Respondents have the right to ask questions and follow-up questions to, or “cross-examine”, the other party and all witnesses during the live hearing.
  1. Any cross-examination at the live hearing must be conducted directly, orally, and in real time by the party’s Advisor of choice and never by a party personally.
  2. All questions must adhere to guidelines outlined in *Section IX. E. 1*.
  3. If a party does not have an Advisor present at the live hearing, the College will provide an appropriate Advisor, free of charge to the party.

# Section IX. E. 1.

- Only **Relevant** cross-examination and other questions may be asked of a party or witness.
- Questions that test credibility will be allowed, but intimidating questioning tactics will not be allowed.
- Before any question is answered, the Decision Maker must first determine whether the question is Relevant and explain any decision to exclude a question as not Relevant.
- Questions and evidence about the Complainant's sexual predisposition, prior sexual behavior, or similar questions are not Relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.

## **From Title IX Policy, *Relevant Questions:***

- Extended statements or questioning is unnecessary.
- Questions that test credibility will be allowed, but intimidating questioning tactics will not be allowed.



# Relevancy

- No federal definition, but the guidance says “ordinary meaning”
- Relevant. Tending to make a fact more or less likely to be true.
  - Examples of information not deemed relevant include but are not limited to privileged information, including treatment information, unless parties agree to the disclosure of such information, and information regarding a Complainant’s sexual predisposition or prior sexual behavior unless they are offered to prove that someone other than the Respondent committed the Sexual Harassment, or if the information concerns specific incidents of the Complainant’s prior sexual behavior with the Respondent and are offered to prove Consent.

# Relevancy

- Not Relevant Information:
  - Treatment history (unless party agrees in writing)
  - Privileged information
    - Hired attorney
    - Medical provider
  - Questions/evidence about:
    - the Complainant's sexual predisposition, or
    - the Complainant's prior sexual behavior
      - **UNLESS**
        - they are offered to prove that someone other than the Respondent committed the sexual harassment, or
        - if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent **AND** are offered to prove consent

## Not-Privileged Information:

- MMC Advisor
- Attorney, medical professional, counselor, etc. not serving in that capacity

*"Consent to some sexual acts does not constitute Consent to others, nor does past Consent to a given act constitute present or future Consent. Consent must be ongoing throughout a sexual encounter and can be revoked by any participant at any time."*

# When a Witness Doesn't Appear

...or when (s)he refuses to answer questions

- We will reschedule/allow for reasonable delays as much as possible, but only to a certain limit
- If a party does not appear before the panel when called, the panel must not rely on any statement of that person in reaching a determination
  - Does not include evidence (i.e. videos) that do not constitute a person's intent to make factual assertions or to the extent that such evidence does not contain a person's statements
- Panel cannot draw an inference (positive or negative) about the determination based solely on a person's absence from the live hearing

# Martin Methodist Title IX Policy

## *Live Hearings*

- The hearing panel will convene to deliberate and render a decision regarding **whether or not the Respondent has violated College policy by a preponderance of the evidence**, though the final determination is at the sole discretion of the Decision Maker. The panel shall use a preponderance of the evidence standard when reaching a decision.
- The Decision Maker prepares the hearing panel's written decision and rationale, including:
  - the specific sections of the code alleged to have been violated;
  - a description of all the steps taken from the receipt of the Formal Complaint through the hearing;
  - specific descriptions of all findings of fact that support the determination;
  - a statement and rationale with respect to each allegation, including determination (finding of responsibility or non-responsibility);
  - sanctions.
- The written determination will be returned to the Title IX Coordinator, who will provide simultaneous written notification of the outcome to the Complainant and the Respondent via MMC email. The Decision Maker's determination will be filed with the investigation report.

# Reaching a Determination

## Fondling.

The touching

of the **private body parts**

of another person

for the **purpose of sexual gratification**

without **consent** of the victim

Show that touching occurred.

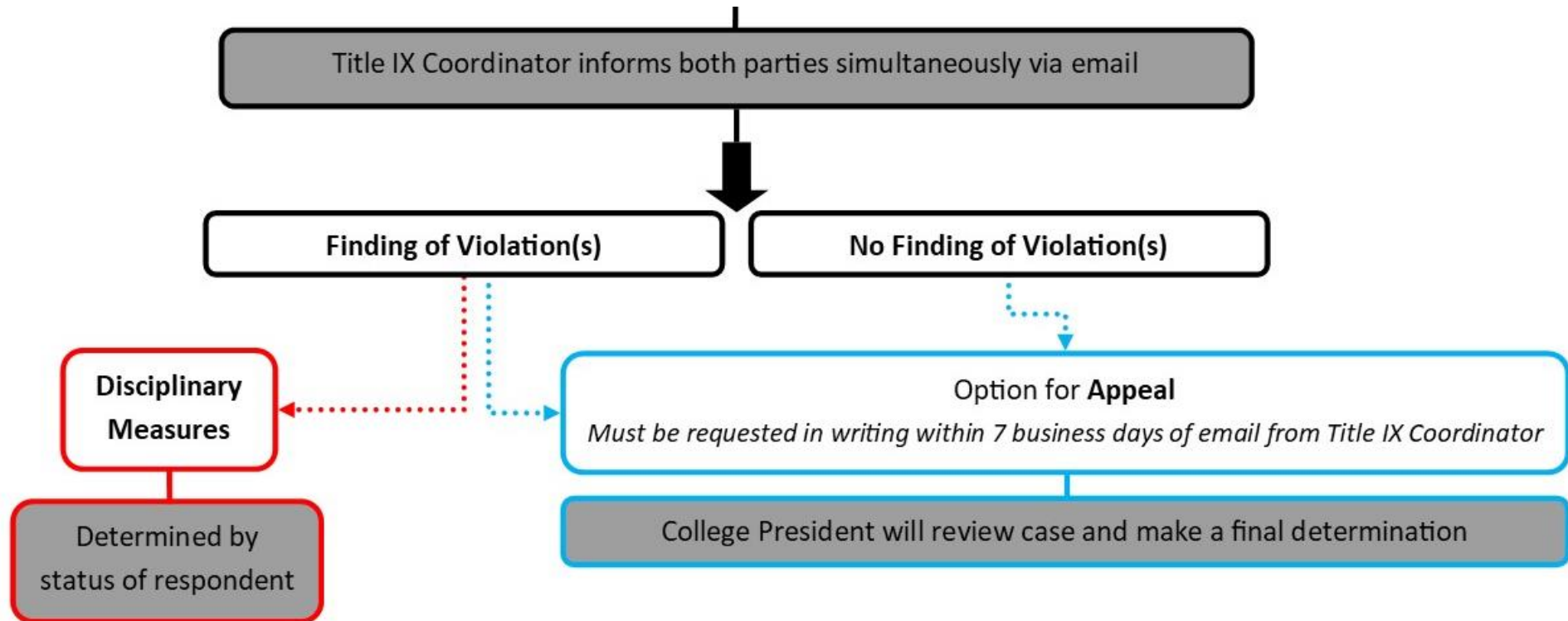
Show where it happened.

Show that it happened to another person.

Show how you know the purpose.

Show how you determined there was not consent.

# Martin Methodist Title IX Policy



# Disciplinary Measures

## Supportive Measures

- For both parties
- Instituted by Title IX Coordinator
- Must end when determination is reached

## Remedies

- For Complainant only
- Designed to restore educational access

## Sanctions

- Against Respondent only

# Martin Methodist Title IX Policy

## *Appeal of Decision*

- If either party is dissatisfied with the panel's determination, that determination may be appealed to the President by explaining in writing, the basis on which the party appeals, i.e.:
  - A procedural irregularity that affected the outcome of the matter;
  - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
  - Evidence that Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome of the matter; or
  - Additional grounds as provided by the appealing party to all parties.
- If a written request for appeal is not received within 5 business days, the determination is final.



# Title IX Policy

## *Definitions*

# Martin Methodist Title IX Policy

## *Definitions*

Sexual Harassment. Conduct on the basis of sex that satisfies one or more of the following:

- An employee of the College conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- **Sexual Assault, Dating Violence, Domestic Violence, or Stalking**

Sexual Harassment, including Sexual Assault, can involve persons of the same or opposite sex. Sexual Harassment includes harassment based on sexuality, gender non-conformity, stereotypical notions of what is female/feminine versus male/masculine, or a failure to conform to those gender stereotypes. Harassment does not have to include intent to harm, be directed at a specific person or group of people, or involve repeated incidents.

# Martin Methodist Title IX Policy

## *Definitions*

- Sexual Assault. An offense that meets the definition of **Rape**, **Fondling**, **Incest** or **Statutory Rape** as used in the FBI's Uniform Crime Reporting system. A sex offense is any sexual act directed against another person, without the **Consent** of the victim, including instances where the victim is incapable of giving Consent.

# Martin Methodist Title IX Policy

## *Definitions*

- Rape. The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the **Consent** of the victim.

# Martin Methodist Title IX Policy

## *Definitions*

- Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, without the **Consent** of the victim, including instances where the victim is incapable of giving Consent because of his/her age or because of his/her temporary or permanent **Incapacity**.

# Martin Methodist Title IX Policy

## *Definitions*

- Incest. Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

# Martin Methodist Title IX Policy

## *Definitions*

- Statutory Rape. Sexual intercourse with a person who is under the statutory age of Consent (which is 18 in the State of Tennessee).

# Martin Methodist Title IX Policy

## *Definitions*

- Dating Violence. Violence against a person when the accuser and accused are **dating, or who have dated, or who have or had a sexual relationship**. “Dating” and “dated” do not include fraternization between two individuals solely in a business or non-romantic social context, but includes social relationships of a romantic or intimate nature as determined by the length and type of relationship and the frequency of interactions between the persons in the relationship. Violence includes, but is not necessarily limited to:
  - Inflicting, or attempting to inflict, physical injury on the accuser by other than accidental means;
  - Placing the accuser in fear of physical harm;
  - Physical restraint;
  - Malicious damage to the personal property of the accuser, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by the accuser; or,
  - Placing the accuser in fear of physical harm to any animal owned, possessed, leased, kept, or held by the accuser.



# Martin Methodist Title IX Policy

## *Definitions*

- Domestic Violence. Felony or misdemeanor crimes of violence committed under the following conditions:
  - Violence against a person when the accuser and accused:
    - Are current or former spouses;
    - Live or have lived together as a spouse or intimate partner;
    - Are related by blood or adoption;
    - Are related or were formally, or similarly situated to being, related by marriage;
    - Are adult or minor children of a person in a relationship described above; or
    - Shares a child in common.
  - Violence includes, but is not necessarily limited to:
    - Inflicting, or attempting to inflict, physical injury on the accuser by other than accidental means;
    - Placing the accuser in fear of physical harm;
    - Physical restraint;
    - Malicious damage to the personal property of the accuser, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by the accuser; or,
    - Placing the accuser in fear of physical harm to any animal owned, possessed, leased, kept, or held by the accuser.

# Martin Methodist Title IX Policy

## *Definitions*

- 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**. Stalking includes any willful **course of conduct** involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the accuser to feel terrorized, frightened, intimidated, threatened, harassed, or molested. Conduct includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable person to suffer emotional distress, and that actually causes the accuser to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.
  - *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.
  - *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

# Martin Methodist Title IX Policy

## *Definitions*

- Sexual Discrimination. Treating individuals less favorably because of their sex (including pregnancy or sexual orientation/gender identity/expression) or having a policy or practice that has a disproportionately adverse impact on protected class members.

# Martin Methodist Title IX Policy

## *Definitions*

- Consent. The positive, unambiguous, and voluntary agreement to engage in specific sexual activity throughout a sexual encounter. Consent must be an informed decision, freely given made through mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. A clear “yes,” verbal or otherwise, is necessary.
- When "no" to a form of sexual activity is communicated by word or action, that sexual activity must cease immediately. Repeated requests to engage in a form of sexual activity may amount to Coercion. However, there is no requirement that a person express non-Consent, i.e. someone might not Consent to sexual activity even though they do not say “no” or physically resist. As such, Consent cannot be inferred merely from the absence of a “no.” Some behaviors and statements do not indicate Consent, including the following:
  - “I don’t know.”
  - "Maybe.”
  - Without more, ambiguous responses such as “uh huh” or “mm hmm.”
  - A verbal “no,” even if it may sound indecisive or insincere.
  - Moving away.

# Martin Methodist Title IX Policy

## *Definitions*

- Consent to some sexual acts does not constitute Consent to others, nor does past Consent to a given act constitute present or future Consent. Consent must be ongoing throughout a sexual encounter and can be revoked by any participant at any time.
- Consent cannot be given by an individual who is asleep, unconscious, or mentally or physically Incapacitated, either through the effect of drugs or alcohol or for any other reason. Engaging in sexual activity with a person whom you know—or reasonably should know—to be Incapacitated constitutes Sexual Harassment. Effective Consent is deemed withdrawn at any point during sexual activity when an individual knows or reasonably should know that the other person has become or is Incapacitated. Consent cannot be obtained by Coercion, including threat or force. Agreement under such circumstances does not constitute Consent.
- The College recognizes that there are a wide variety of sexual interactions, that there is no single way to communicate Consent, and that context matters. When evaluating whether sexual activity was consensual, the College will consider the entirety of the sexual interaction and the relevant circumstances. A factor that may be considered when evaluating Consent is whether, under similar circumstances as the person initiating the sexual activity, a sober reasonable person would have concluded that there was effective Consent. Previous sexual relationships of the Complainant and the Respondent with others are generally irrelevant to the existence of effective Consent, but a previous, current, and/or subsequent sexual relationship between the Complainant and the Respondent may or may not be relevant to demonstrating or establishing, depending on the facts and circumstances, whether effective Consent was sought or obtained. Relevancy of a previous, current, and/or subsequent sexual relationship between the Complainant and Respondent or others will be evaluated on a case-by-case basis.

# Martin Methodist Title IX Policy

## *Definitions*

- Coercion. The attempt to exert power or control over another person by use of force, pressure, manipulation, threats, or intimidation in an effort to compel participation in sexual activity. Determinations regarding whether actions or statements amount to Coercion will be made on a case-by-case basis. For example, repeated advances or requests to engage in sexual activity may amount to Coercion depending on all of the relevant facts and circumstances.

# Martin Methodist Title IX Policy

## *Definitions*

- Intoxication. A state of stupefaction, exhilaration or euphoria resulting from the ingestion of alcohol or other chemical substances.

# Martin Methodist Title IX Policy

## *Definitions*

- Incapacitation. The inability to make or carry out a rational, reasonable decision. An Incapacitated person lacks the ability to actively agree to sexual activity because the person is asleep, unconscious, under the influence of alcohol or other drugs such that the person does not have control over their body, is unaware that sexual activity is occurring, or their mental, physical or developmental abilities render them incapable of making rational informed decisions. Incapacitation is not the same as legal Intoxication. A person violates this policy when they engage in sexual activity with a person who is Incapacitated and a reasonable person in the same situation would have known that the person is Incapacitated. Incapacitation can result from the voluntary or involuntary use of alcohol, marijuana, or other drugs, including, but not limited to, sedatives or "date-rape" drugs. Evidence of Incapacitation may include, but is not limited to, one or more of the following:
  - slurred speech
  - bloodshot eyes
  - dilated pupils
  - the smell of alcohol on the breath
  - shaky equilibrium
  - unsteady gait
  - vomiting
  - outrageous or unusual behavior
  - unconsciousness
  - elevated blood alcohol level
  - sleeping
  - blacking out (amnesia-like state that may be brought on by drugs, heavy drinking, or Intoxication; blacking out is not necessarily incompatible with the ability to engage in simple or even complex behavior)



# Determining Intoxication vs. Incapacitation

- **Consumption**

- What was consumed?
- How much was consumed?
- Over what period of time?

- **Conscious**

- Was the person aware?
- Did the person blackout?

- **Coordinated**

- Did the person use their phone?
- Was the person okay to drive?
- Could the person walk without assistance?
- Could the person key into building/room?

- **Communications**

- Could the person speak clearly?
- Could the person respond to questions?
- Was the person confused in their responses?
- Did the person send coherent text/digital messages?

- **Corroboration**

- Who saw the person?
- Was there footage?

# Martin Methodist Title IX Policy

## *Definitions*

- Preponderance of Evidence. The evidentiary standard used by the College. Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true.

# Martin Methodist Title IX Policy

## *Using Definitions*



## 150 Preposition List

➤ Abroad  
➤ About  
➤ Above  
➤ According to  
➤ Across  
➤ After  
➤ Against  
➤ Ago  
➤ Ahead of  
➤ Along  
➤ Amidst  
➤ Among  
➤ Amongst  
➤ Apart  
➤ Around

➤ As  
➤ As far as  
➤ As well as  
➤ Aside  
➤ At  
➤ Away  
➤ Barring  
➤ Because of  
➤ Before  
➤ Behind  
➤ Below  
➤ Beneath  
➤ Beside  
➤ Besides  
➤ Between

➤ Beyond  
➤ But  
➤ By  
➤ By means of  
➤ Circa  
➤ Concerning  
➤ Despite  
➤ Down  
➤ Due to  
➤ During  
➤ In  
➤ In accordance with  
➤ In addition to  
➤ In case of  
➤ In front of

➤ In lieu of  
➤ In place of  
➤ In spite of  
➤ In to  
➤ Inside  
➤ Instead of  
➤ Into  
➤ Except  
➤ Except for  
➤ Excluding  
➤ For  
➤ Following  
➤ From  
➤ Hence  
➤ Like

➤ Minus  
➤ Near  
➤ Next  
➤ Next to  
➤ Past  
➤ Per  
➤ Prior to  
➤ Round  
➤ Off  
➤ On  
➤ On account of  
➤ On behalf of  
➤ On to  
➤ On top of  
➤ Onto

# Martin Methodist Title IX Policy

## *Using Definitions*

### Rape.

The penetration,  
no matter how slight,  
of the vagina or anus  
with any body part or object,

or

oral penetration  
by a sex organ of another person,

without the **consent** of the victim.

# Title IX Policy

# Martin Methodist Title IX Policy

## *Withdrawal of Complaint*

- The Complainant may request to withdraw a Complaint at any time. The College reserves the right to make a determination whether to approve or deny this request, but will strongly consider the Complainant's wishes.
- **Students:** Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution.
  - Should a student **Respondent permanently withdraw from the College**, the resolution process ends, as the College no longer has disciplinary jurisdiction over the withdrawn student.
    - The student who withdraws or leaves while the process is pending may not return to the College. A hold will be placed on their ability to be readmitted.
    - If the student only withdraws or takes a leave for a specified period of time (e.g. one semester or term), the resolution process will continue and that student is not permitted to return to the College unless and until all sanctions have been satisfied.

# Martin Methodist Title IX Policy

## *Withdrawal of Complaint*

- **Employees:** Should an **employee resign** with unresolved allegations pending, the process ends, as the College no longer has disciplinary jurisdiction over the resigned employee.
  - The employee who resigns with unresolved allegations pending is not eligible for rehire with the College, and the records retained by the Title IX Coordinator will reflect that status.
- **Third Parties:** Should a third party **discontinue their relationship** with the College with unresolved allegations pending, the process ends, as the College no longer has disciplinary jurisdiction over the third party.

# Martin Methodist Title IX Policy

## *False Reports*

- Because of its strong desire to prevent and remedy Sexual Harassment, the College encourages all good faith complaints of Sexual Harassment. However, the College also has a duty to balance the rights of all parties. Accordingly, if the College's investigation reveals that a complaint of Sexual Harassment was knowingly false, the complaint will be dismissed and **the person who filed the knowingly false complaint may be subject to discipline.**
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.



# Martin Methodist Title IX Policy

## *Relationships between Individuals of Different College Status*

- A sexual or romantic relationship involving individuals of different College status is not, in and of itself, Sexual Harassment as defined by this policy and will not be investigated or adjudicated under this policy. Such an interaction may be a violation of another College policy and subject to separate disciplinary procedures.
- A sexual or romantic relationship between students and teachers, supervisors or mentors violates both College and professional standards, and potentially violates state and federal anti-discrimination laws.  
**The College prohibits all sexual and romantic relationships between faculty members and students (both undergraduate and graduate students).**
- A conflict of interest also exists if there is a consensual romantic or sexual relationship in the context of employment supervision or evaluation. Therefore, a supervisor may not influence, directly or indirectly, salary, promotion, performance appraisals, work assignments or other working conditions for an employee with whom such a relationship exists.

Technology

# Technology Policies

- Investigations are never recorded.
- All hearings are recorded (audio and visual) in their entirety.
  - All recordings are stopped for breaks.
  - Panel deliberations are never recorded.
- Parties will never be in the same room at the same time. Access will be via live audio/visual feed.
- Access to recordings is strictly restricted to participants for review only, never copy or note-taking.

# Zoom Tutorial for Beginners: How to Use Zoom Video Conferencing



[https://www.youtube.com/watch?v=U\\_JohBDMur4](https://www.youtube.com/watch?v=U_JohBDMur4)

# Sanctions

# Student Life Code of Conduct

- **College Jurisdiction**

- College jurisdiction and the Student Code of Conduct is limited to conduct which occurs on College premises, at College-sponsored events, or which adversely affects the College community and/or the pursuit of the College's mission. This includes violations of local, state, or federal laws which could take place off-campus but could have a negative impact on the college community. Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. The Student Code of Conduct shall apply to a student's conduct even if the student withdraws from school while a conduct matter is pending.

# Student Life Code of Conduct

## *Sanctions*

- Written Warning
  - Written warnings are issued to warn students that further misconduct may result in more severe conduct status or higher-level educational sanctions. Since a student's conduct history is cumulative, a student who is on a Written Warning status and allegedly violates the Student Code of Conduct may have the violation handled as if it were a higher level than listed in the Student Code of Conduct (i.e. a second Level 1 Alcoholic Beverages violation may be handled like a Level 2 case). Written Warnings are in place for an indefinite amount of time. (*Level 1*)
- Conduct Probation
  - Conduct probation may be issued for any violation of college policy. Conduct probation is for a specified period of time. Any violation that occurs during this probationary period will result in a more severe sanction up to and including separation from the college. (*Level 2 or Level 3*)

# Student Life Code of Conduct

## *Sanctions*

- There are multiple ways a student could be separated from Martin Methodist College. If any of the following apply, a suspension or expulsion could occur:
  - being found responsible for a Level 3 violation of *any* kind;
  - being found responsible for multiple violations in one incident or over the course of several incidents;
  - being found responsible for a second controlled substances violation; and/or,
  - failure to comply with an educational sanction by the due date.



# Student Life Code of Conduct

## *Educational Sanctions*

- Counseling Referral

- A counseling assessment may be required in an effort to help the student address issues he/she may be facing. The student may utilize counseling services available at Martin Methodist College or, at the student's own expense, through other licensed mental health care professionals. Proper release paperwork must be signed by the student to allow the Office of Student Affairs to verify the assessment has taken place. The counselor may recommend further sessions with the student and it is the choice of the student whether they continue with those services. (*Level 1 or Level 2 or Level 3*)

- Education Workshop

- The College offers several educational workshops that aim at educating students about certain topics, including alcohol, conflict management, anger issues, and decision-making. (*Level 1 or Level 2 or Level 3*)

# Student Life Code of Conduct

## *Educational Sanctions*

- Loss of Privileges
  - A student may forfeit certain privileges for a specified amount of time due to a failure to properly utilize those privileges. Examples of privileges include but are not limited to: housing, visitation; parking; participating in campus activities, intramurals, athletic events; and utilizing campus facilities. (*Level 2 or Level 3*)
- Fines and Restitution
  - The student is required to make payments to the College or other persons, groups, or organizations for damages incurred as a result of an act of prohibited conduct, or for non-compliance with college policies. Any restitution assessed to student accounts must be paid in full prior to the release of grades or transcripts. Unpaid restitution is subject to collections as allowed by law. Students should note that financial aid *cannot* be used to pay restitution assessed due to a student conduct action. (*Level 1 or Level 2 or Level 3*)

# Student Life Code of Conduct

## *Educational Sanctions*

- Restorative Justice

- A restorative justice experience will focus on restoring to the victim what was taken and/or repairing harm imposed on a community. The victim could be an entire community or specific students, staff or faculty. Examples of restorative justice include restorative justice circle (discussion between the student and victims), community service related to nature of the incident (up to 40 hours), community commitment, presenting a program related to the nature of the incident, establishing a mentoring relationship with a faculty or staff member, or shadowing staff/faculty during specified activities. (*Level 1 or Level 2 or Level 3*)

- Discretionary sanctions

- Students may be assigned community service hours up to 40 hours (e.g., with a charitable organization, church ministry, or campus office), required to see a counselor or attend programs, or given other assignments, as deemed appropriate to the particular violation of the standards of conduct. (*Level 1 or Level 2 or Level 3*)

- Written Reflection

- This sanction may be imposed on a student with an expectation that the student will take time to reflect on their choices and the consequences associated with those choices through written reflection. (*Level 1 or Level 2 or Level 3*)

# Trauma & Memory