

# Title IX Decision Maker Training

MMC Policy, Relevancy, & Hearings

# 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)

# What is/is not Title IX

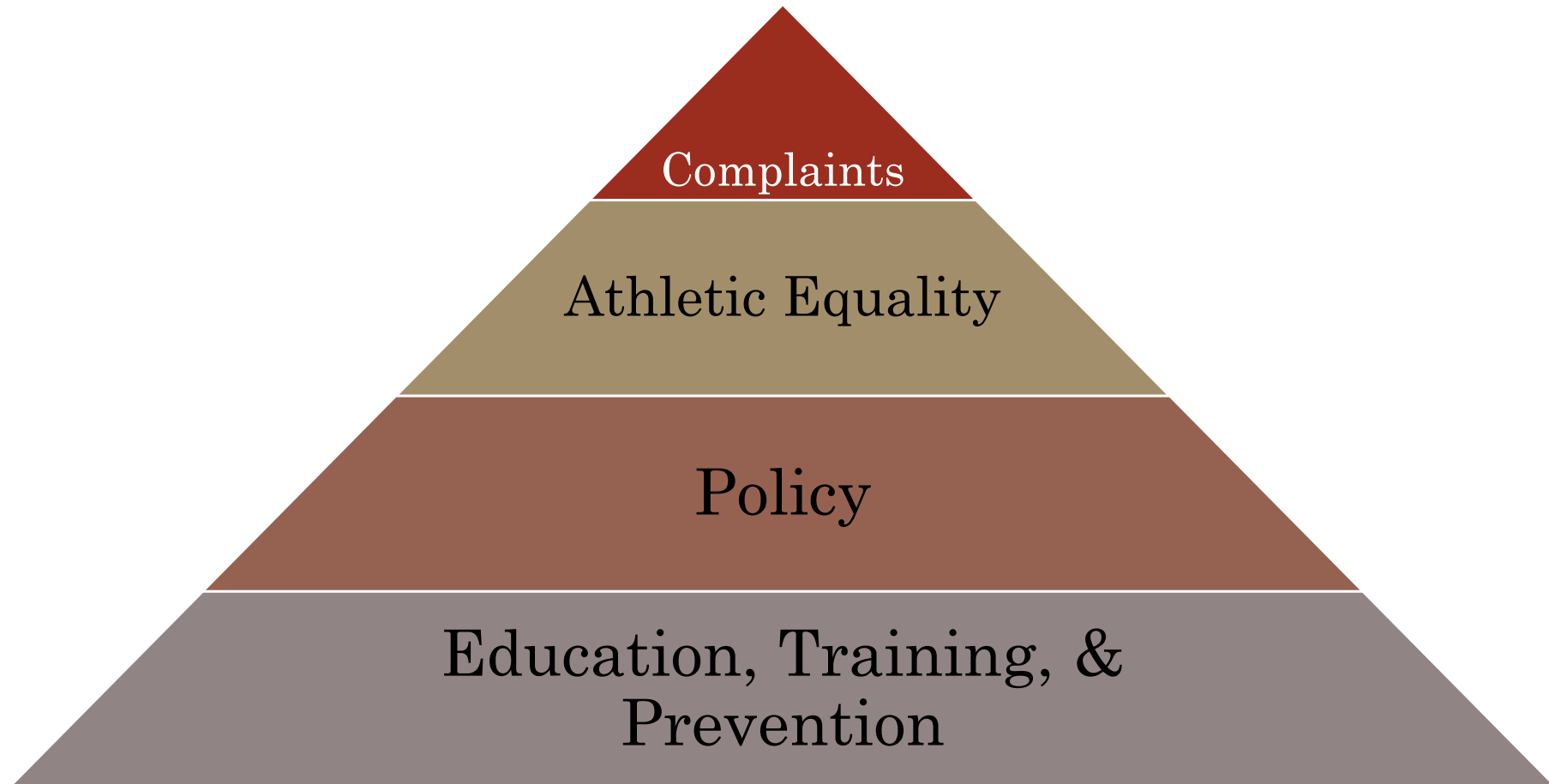
## Is/May Be

- 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



# Prohibited Conduct

Did the conduct violate our policy?

- Our policy only applies to our jurisdiction.
- Attempts are not violations.
- Each qualifying part of a definition must be met.



# Title IX Policy

# Martin Methodist Title IX Policy

## Title IX Flow Chart

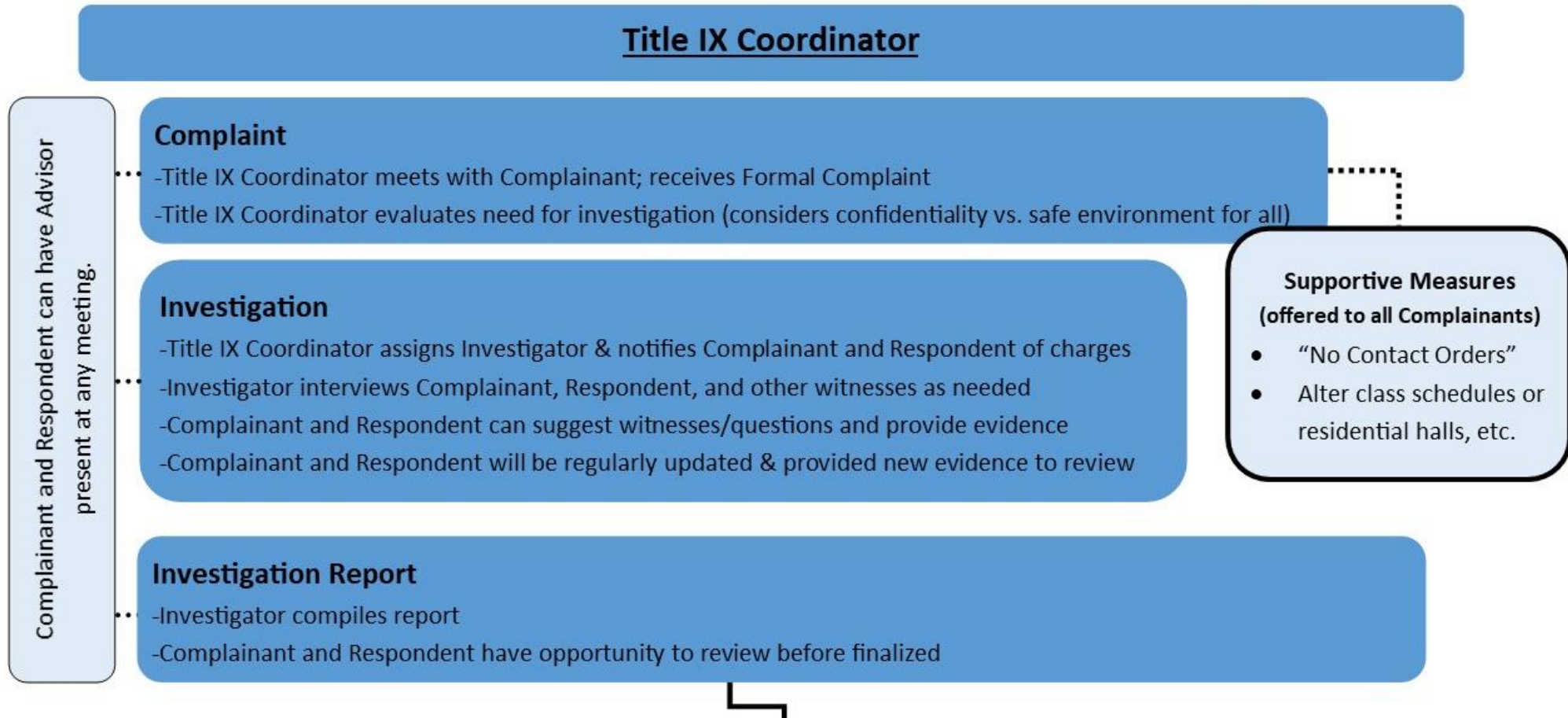


# Martin Methodist Title IX Policy

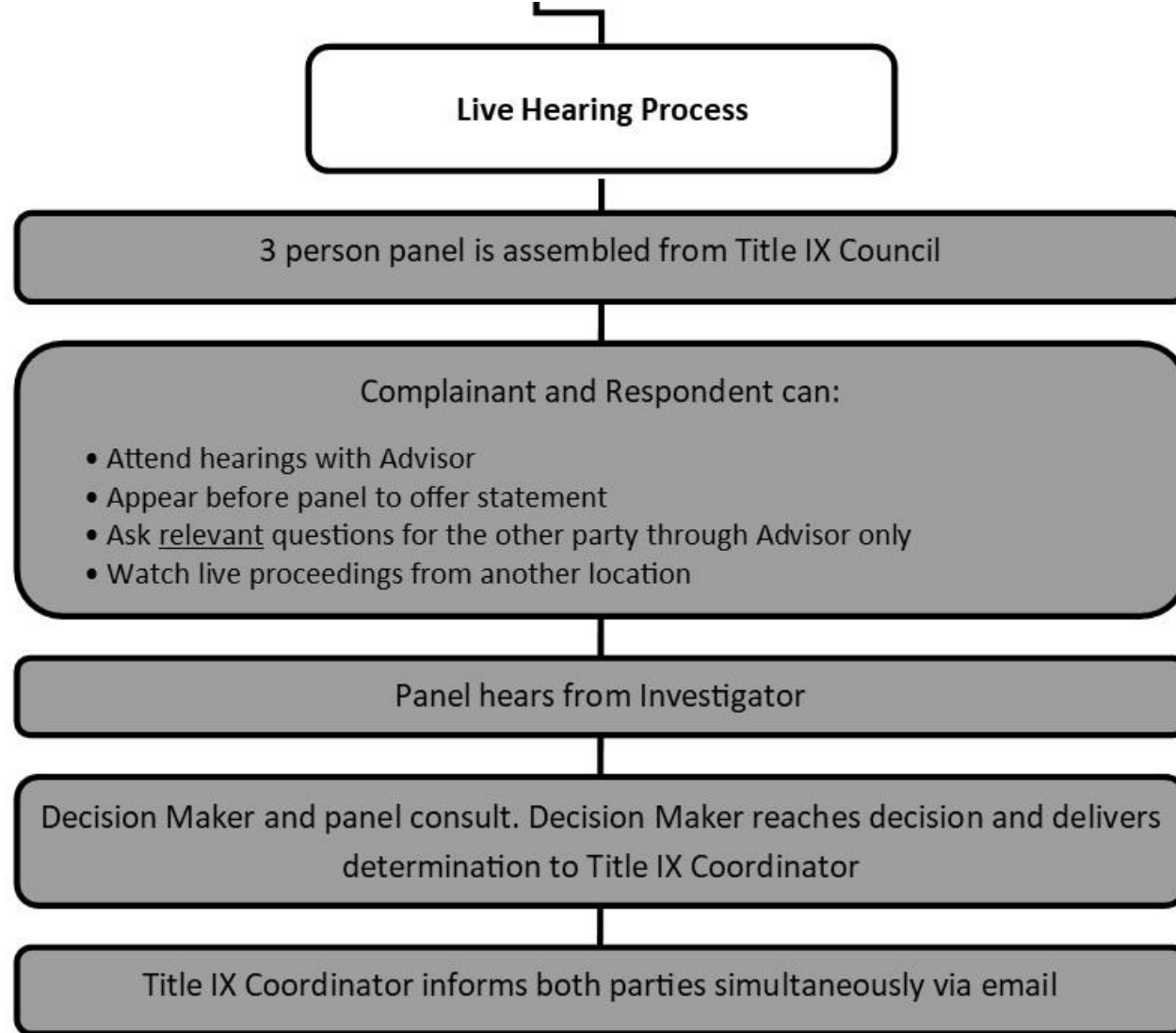
## *Responsible Employees*

- Title IX Coordinator, Title IX Deputy Coordinators, and designees;
- President, Provost, Vice Presidents, Associate Vice Presidents, Assistant Vice Presidents,
- Directors, Associate Directors, Assistant Directors,
- Department Chairs/Heads;
- Faculty;
- 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

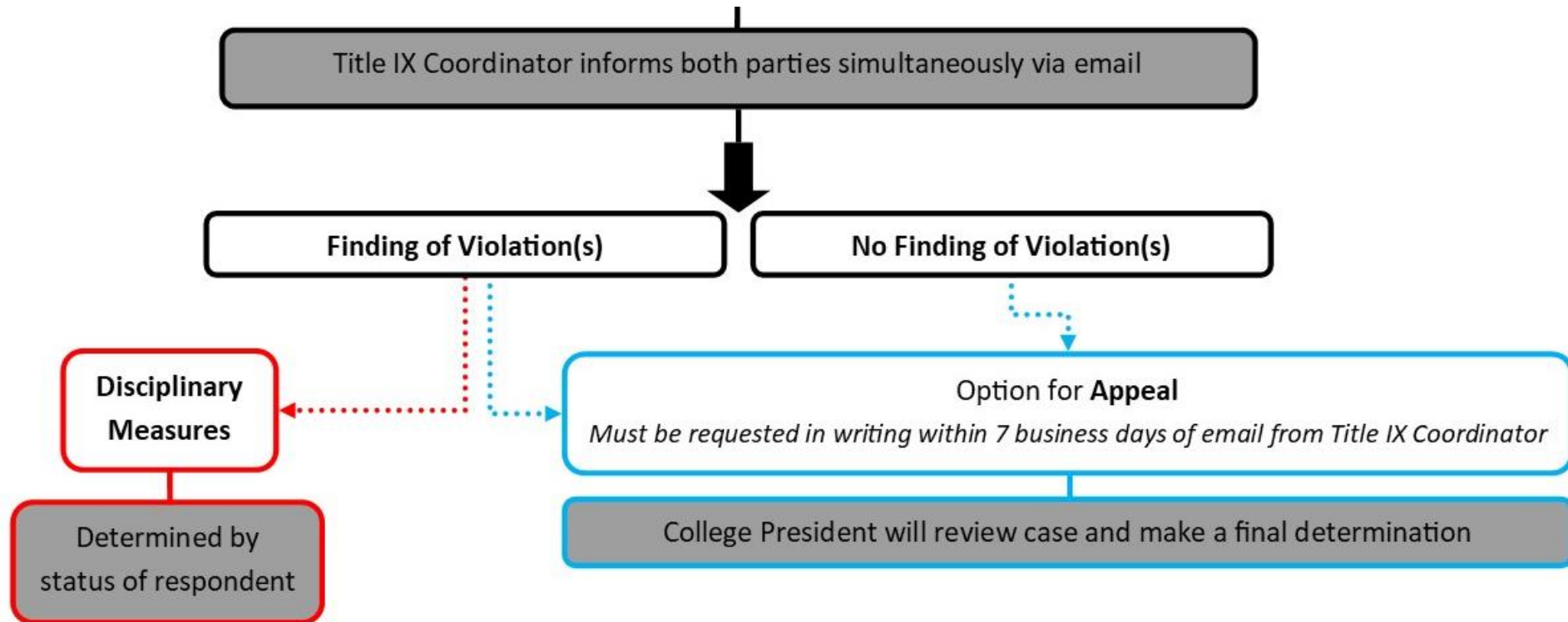
# Martin Methodist Title IX Policy



# Martin Methodist Title IX Policy



# Martin Methodist Title IX Policy



# 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** (as defined in the Clery Act), **Dating Violence**, **Domestic Violence**, or **Stalking** as defined in the Violence Against Women Act (VAWA).

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)

# 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

## *Definitions*

- 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.

# 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 all College programs and activities, including, but not limited to, Sexual Discrimination and Sexual Harassment in athletics, instruction, grading, College housing, and College employment.
- 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

## *Retaliation*

- It is central to the values of this College that any individual who believes he/she may have been the target of unlawful Sexual Discrimination or Sexual Harassment feel free to report his/her concerns for appropriate investigation and response, without fear of retaliation or retribution.
- The law prohibits retaliation against an individual for:
  - opposing any practices forbidden under this policy;
  - for bringing a complaint of Sexual Discrimination or Sexual Harassment;
  - for assisting someone with such a complaint;
  - for attempting to stop such conduct;
  - for participating in any manner in an investigation or resolution of a complaint of Sexual Discrimination or Sexual Harassment.
- MMC faculty, employees, and students are strictly prohibited from retaliating, intimidating, threatening, coercing, or otherwise discriminating against any individual for exercising their rights or responsibilities under any provision of this policy. Retaliation will result in disciplinary measures, up to and including termination or expulsion.

# Martin Methodist Title IX Policy

## *Reporting*

- Do not wait to report conduct of concern until the conduct becomes sufficiently serious (i.e., severe, pervasive, or persistent) to create a hostile environment. The Title IX Coordinator can take proactive steps to prevent the conduct from continuing and perhaps escalating, and to protect or otherwise assist the person who has experienced Sexual Harassment.
- MMC encourages persons who have experienced Sexual Discrimination and Sexual Harassment to talk to somebody about what happened so they can get the support they need and so that MMC can respond appropriately.
- A student who experiences Sexual Harassment and who was under the influence of alcohol or drugs during the Sexual Harassment incident should not be reluctant to seek assistance for fear of being sanctioned for his/her improper use of alcohol or drugs. Under the Amnesty policy, the College will generally not pursue disciplinary violations against the person who has experienced Sexual Harassment.

# Martin Methodist Title IX Policy

## *Reporting*

- **Confidential Reports:**

Reports to professional licensed counselors (including MMC Counseling personnel) or to professional ministers (including the MMC Chaplain) are confidential in every respect, to the extent allowed by law. For example, Tennessee's mandatory reporting law related to abuse of minors, imminent harm to others, or subpoenas for testimony may require disclosure of all information received.

- **Private, Not Necessarily Confidential Reports:**

Reports to a Responsible Employee will not be absolutely confidential but will be handled in as confidential a manner as possible.

# Martin Methodist Title IX Policy

## *Reporting*

- **Responsible Employees**

- When a Complainant tells a Responsible Employee about an incident of Sexual Discrimination or Sexual Harassment, the Responsible Employee must report to the Title IX Coordinator all relevant details about the alleged Sexual Discrimination or Sexual Harassment. Information reported to a Responsible Employee will be shared only with the Title IX Coordinator.
- A Responsible Employee shall not share information with law enforcement without the Complainant's Consent.
- Employees in the following list are designated as Responsible Employees:
  1. Title IX Coordinator, Title IX Deputy Coordinators, and designees;
  2. President, Provost, Vice Presidents, Associate Vice Presidents, Assistant Vice Presidents,
  3. Directors, Associate Directors, Assistant Directors,
  4. Department Chairs/Heads;
  5. Faculty;
  6. Academic Advisors;
  7. Advisors for student organizations;
  8. Resident directors and resident assistants;
  9. Athletic coaches and trainers;
  10. College Security Authorities, as required by the Clery Act;
  11. 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, or unless the person who has experienced Sexual Harassment has also reported the incident to law enforcement and has confirmed this with the College.
- Public awareness events, candlelight vigils, protests, survivor speak outs, or other forums, including social media and class discussions, in which students disclose incidents of Sexual Discrimination and/or Sexual Harassment 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

## *Confidentiality*

- The Title IX Coordinator will evaluate requests for confidentiality. When weighing a Complainant's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator will consider a range of factors, including the increased risk that the alleged perpetrator will commit additional acts of sexual or other misconduct, such as:
  - Whether there have been other Sexual Discrimination and/or Harassment complaints about the same alleged perpetrator;
  - Whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of Sexual Discrimination and/or Harassment;
  - Whether the alleged perpetrator threatened further Sexual Discrimination and/or Harassment or other misconduct against the Complainant or others;
  - Whether the Sexual Discrimination and/or Harassment was committed by multiple perpetrators;
  - Whether the Sexual Discrimination and/or Harassment was perpetrated with a weapon;
  - Whether the victim is a minor;
  - Whether MMC possesses other means to obtain Relevant evidence of the Sexual Discrimination and/or harassment; or
  - Whether the Complainant's report reveals a pattern of perpetration at a given location or by a particular group.
- The presence of one or more of these factors could lead MMC to investigate and, if appropriate, pursue disciplinary actions. If none of these factors are present, MMC will likely respect the Complainant's request for confidentiality.

# Martin Methodist Title IX Policy

## *Informal Resolutions*

- With the voluntary, informed, and written Consent of both parties, informal resolution may be attempted at any point prior to reaching a determination of responsibility in cases alleging violations of this policy.
- Prior to any attempted informal resolution, both parties shall receive a written notice disclosing the allegations, the requirements of the informal resolution process including the preclusion of the parties from resuming a Formal Complaint arising from the same allegations, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
- The College will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Complaints.
- The College will not require the parties to participate in informal resolution, and may not offer informal resolution unless a Formal Complaint is filed.
- All facilitators of informal resolutions will be properly trained.
- At any time prior to agreeing to a resolution, any party has the right to withdraw from informal resolution and resume the grievance process with respect to the Formal Complaint.
- The College will not allow an informal resolution process to resolve allegations that an employee sexually harassed a student.



# 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

## *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

## *Evaluating Need for Investigation*

- **Always Yes**
  - If the Complainant requests an investigation and the initial information meets jurisdictional requirements
  - Risk factors outlined in confidentiality request (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

## *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

## *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.

# Martin Methodist Title IX Policy

## *Investigations*

- Both parties will be provided with a pre-investigation notice with sufficient details and with sufficient time to prepare a response before any initial interview, including the extent to which the College will allow an Advisor.
- The investigation shall include interviews with both the Complainant and Respondent, unless either declines an in-person interview.
- 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.

# 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.

# Martin Methodist Title IX Policy

## *Live Hearings*

- The Title IX Coordinator will call together a live hearing panel of the appropriate Decision Maker and two members of the Title IX Council. The Decision Maker will serve as the Chair of the panel.
- Decision Maker:
  - If the Respondent is a student, the Decision Maker is the Vice President for Student Affairs.
  - If the Respondent is a tenure-track/tenured faculty member, the Decision Maker is the Provost.
  - If the Respondent is a non-tenured faculty member, the Decision Maker is Vice President for Human Resources.
  - If the Respondent is a staff member, the Decision Maker is Vice President for Human Resources.
  - If the Respondent is a third party, the Decision Maker is the Vice President for Student Affairs.



# Martin Methodist Title IX Policy

## *Live Hearings*

- Title IX Council
  - Members of the panel, including Decision Makers, must disclose a **conflict of interest with either party that could create a perception of bias**. Conflicts of interest will result in the member being removed from the panel and replaced.
  - Complaints of Panel Conflict of Interest:
    - If the Complainant or Respondent believes a panel member or the Decision Maker has a conflict of interest, that party must submit a written explanation of the reason for that belief to the Executive Vice-President.
    - The explanation must be submitted within 3 business days of the time when the party knew or should have known the facts that would give rise to the alleged conflict of interest.
    - The Executive Vice-President, in consultation with necessary counsel, will determine if a conflict of interest exists.
    - The decision of the Executive Vice-President shall be final.

# Martin Methodist Title IX Policy

## *Live Hearings*

- The panel will receive the investigation report in advance of the live hearing.
- The Complainant and Respondent shall receive sufficient notice of (including date, time, location, participants, and purpose). The Complainant, Respondent, and each party's Advisor shall be allowed access to any evidence presented during any disciplinary hearing or other proceeding during the disciplinary process.
- Both the Complainant and Respondent will be granted live video and audio access to the entirety of the proceedings upon request, but both parties will never be present in the same location at the same time during the hearings.
- Hearings will consist of the panel, including the Decision Maker, requesting the presence of individuals including the Complainant, the Respondent, the investigator, and any witnesses.

# Martin Methodist Title IX Policy

## *Live Hearings*

- All hearings will be recorded by transcript or audio/audiovisual recording. Parties may view proceedings live from a remote location. The Complainant and Respondent will both have access to this record for inspection and review, but never for copy.
- Order of Proceedings:
  1. Decision Maker establishes rules of decorum.
  2. Complainant presents opening statement.
  3. Respondent presents opening statement.
  4. Panel calls individuals for questions.
    - Panel members may ask relevant questions.
    - Advisors may ask relevant questions.
  5. Panel may call Investigator for questions, with the assumption that all relevant information is included in the Investigation Report.

# Martin Methodist Title IX Policy

## *Relevant Questions*

- Extended statements or questioning is unnecessary.
- 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.

# Martin Methodist Title IX Policy

## *Cross-Examination*

- 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.
- All questions must adhere to guidelines outlined in P Title IX Policy.
- 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.
- If a party or witness does not submit to cross-examination at the live hearing, the Panel **must not rely on any statement of that party or witness in reaching a determination regarding responsibility**; provided, however, that the Decision Maker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

# 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.

# 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.

# 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.
- **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

## *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 (faculty members, staff members, or other students) 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.

# Hearings 101

# Procedure



Title IX  
Coordinator  
calls Council  
members for  
Panel

- Provide names, dates, and summary of allegations



Panel  
members  
evaluate  
own bias/  
conflict of  
interest

- Recuse themselves if necessary



Title IX  
Coordinator  
sends  
Investigation  
Report for  
review

- Review facts
- Avoid pre-judgement



Hearing

# 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.
  - 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 allegation can contain multiple elements we must consider in determining a violation

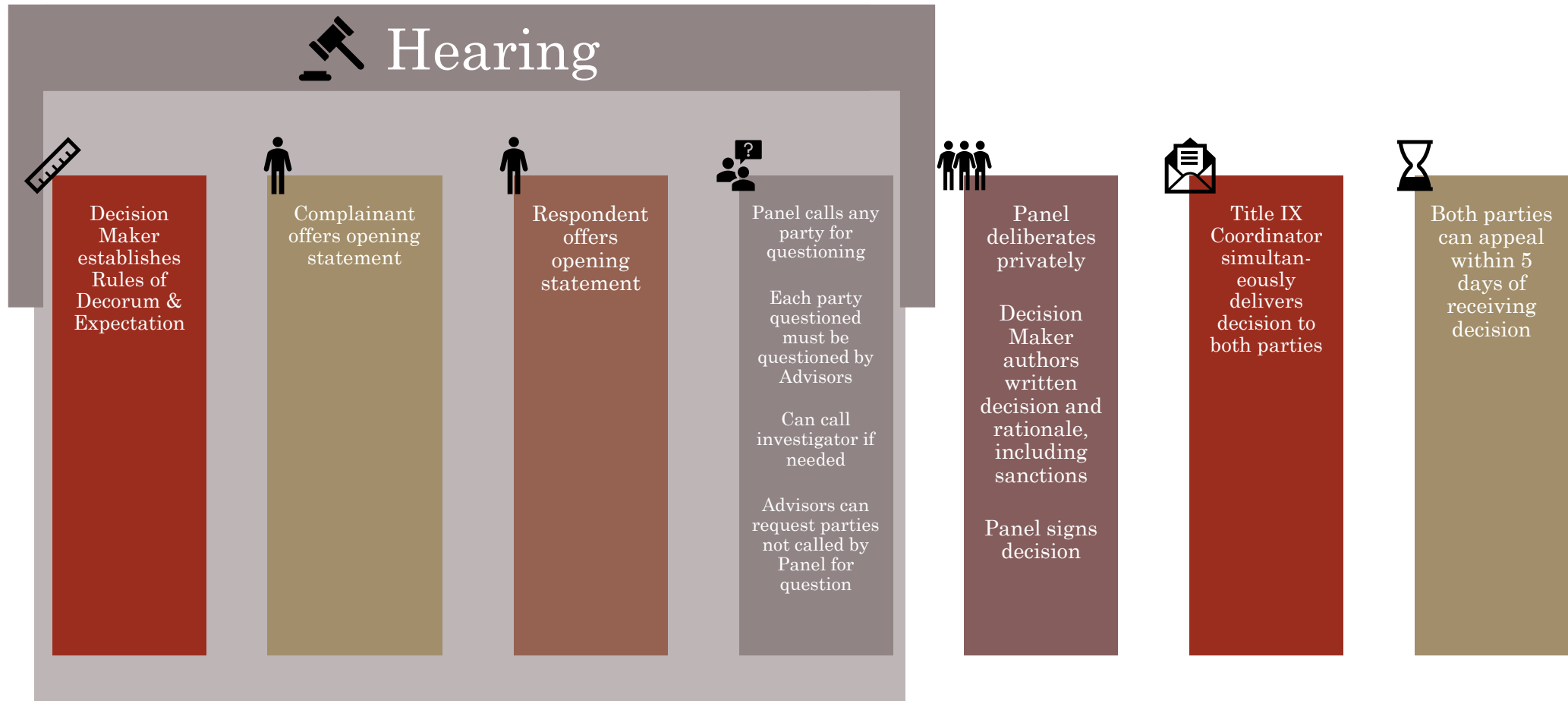


Definition of Incapacitation?



Definition of Consent?

# Procedure



# Procedure



## Hearing



Decision Maker establishes Rules of Decorum & Expectation



Complainant offers opening statement



Respondent offers opening statement



Panel calls any party for questioning

Each party questioned must be questioned by Advisors

Can call investigator if needed

Advisors can request parties not called by Panel for question



Panel deliberates privately

Decision Maker authors written decision and rationale, including sanctions

Panel signs decision



Title IX Coordinator simultaneously delivers decision to both parties



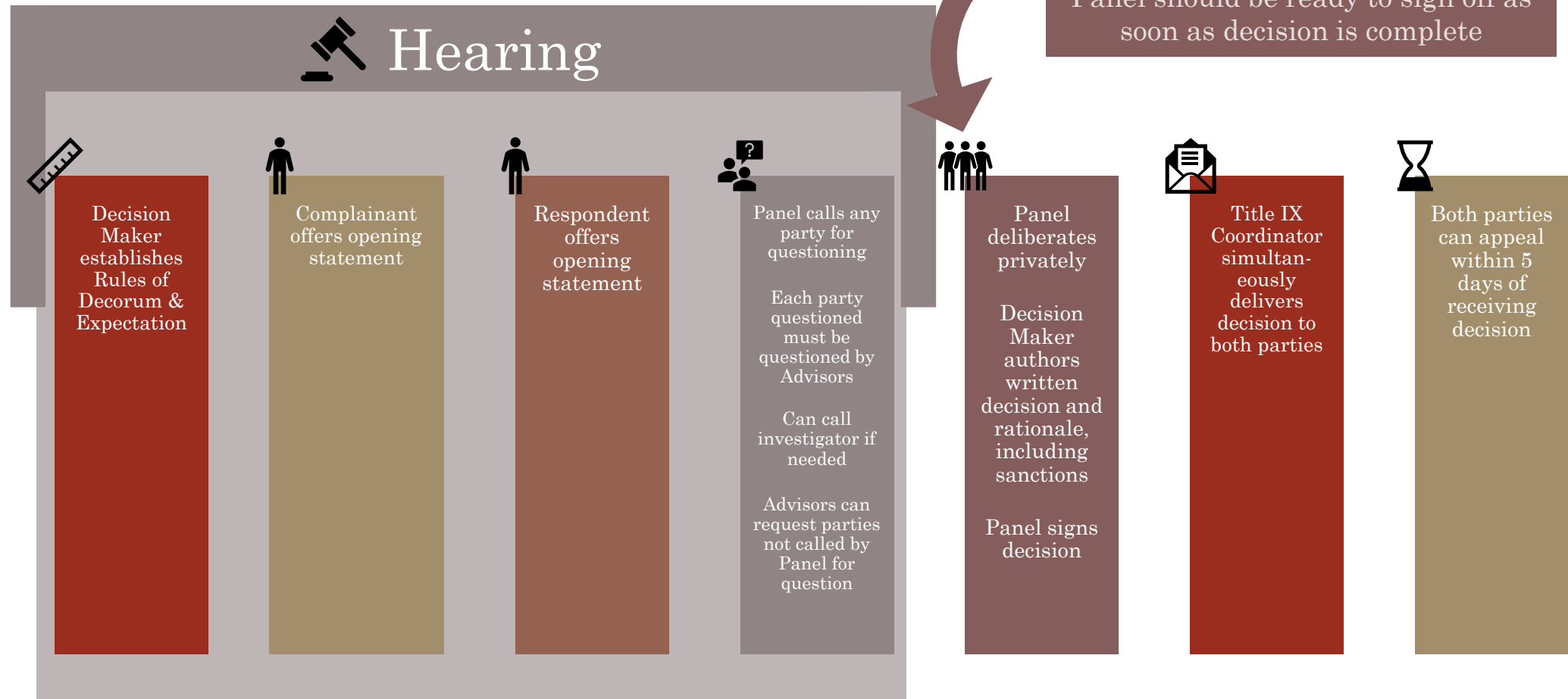
Both parties can appeal within 5 days of receiving decision

Almost always experiences delays

- Breaks
- A party or advisor isn't present
- Advisor is dismissed
- Witnesses don't appear
- Parties move to informal resolution
- Technology issues
- Illness or emergency
- Police investigations



# Procedure



# Evidence

## Direct Evidence

First-person observation of an incident

## Circumstantial Evidence

Reported observation of info that offers inferences about the facts of the incident

## Documentary Evidence

Written description of an incident

- Police report
- Residence Hall Report
- Texts
- Videos

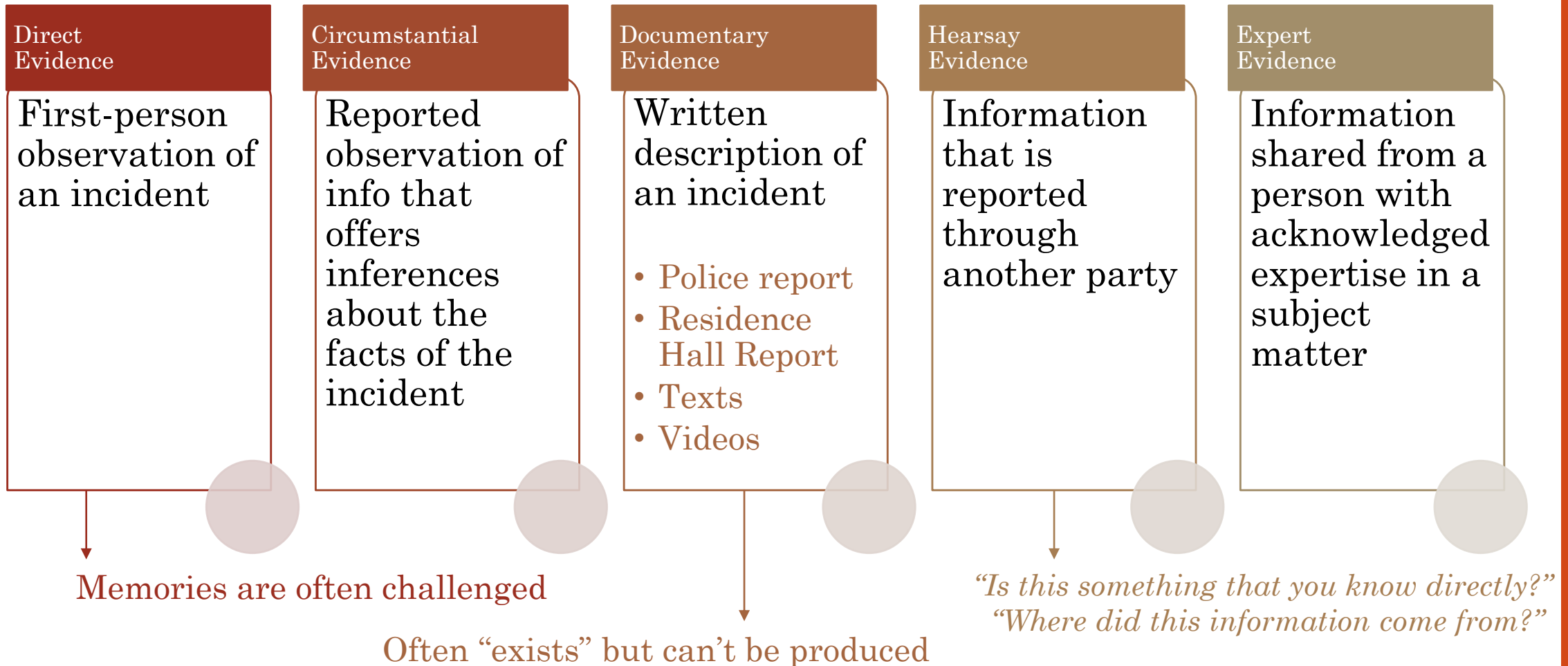
## Hearsay Evidence

Information that is reported through another party

## Expert Evidence

Information shared from a person with acknowledged expertise in a subject matter

# Evidence



# Questioning Witnesses

- Panel members will ask questions first
  - A panel member should test veracity of statements
    - *“Did you make this statement to the investigator?”*
    - *“Were your statements to the investigator truthful?”*
    - *“Is there anything you would like to verify?”*
- Panel member can ask pre-approved questions from parties/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?”*

# 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?

# 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

# Evaluating Witnesses & Evidence

- Focus on **behavior**, not character
- What information is known?
- What information is unknown?
- What questions could clarify the unknowns?

Preponderance of Evidence  
There is a greater than 50% chance that the claim is true.



# Reaching a Determination

- Consider each allegation individually
- Review the policy alleged to have been broken and relevant definitions
- Be able to articulate:
  1. Facts that support your determination
    - Include admissions that occurred during the hearing
  2. How the facts demonstrate a policy violation
    - Elements of alleged violation
    - Connect rationale to each element
    - Refer to facts that support each element
    - Note facts that do not support each element
  3. Why someone/thing was considered not credible or relevant
    - What if someone watching the hearing asked, “But what about what X said?”
  4. What will be needed, if anything, to restore educational access



# 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

Which parts?  
What made them private?

How do you understand the purpose?

Was there force/an age or capacity  
issue?  
Was there general consent?

# 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.

# Reaching a Determination

## 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

# Determining Relevancy

# 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 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

# 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

Not-Privileged  
Information:

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


# 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



# 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



*“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.”*

**Hypothetical**

# Evaluating & Eliminating Bias

# “Free from Conflict of Interest or Bias”

- For or against Complainants or Respondents, generally
- Related to a Complainant or Respondent
- Whether a reasonable person believes a bias/conflict of interest exists
  - *Would someone else reasonably think I would have a bias/conflict of interest here?*

# Conflicts of Interest

1. A conflict between the private interests and the official or professional responsibilities of a person in a position of trust
2. A conflict between competing duties (as in an attorney's representation of clients with adverse interests)

# Explicit Bias

- Attitudes and beliefs we have about a person or group on a conscious level:
  - Expressed directly
  - Aware of bias
  - Operates consciously

*“I don’t think a women would make a good CEO because they’re too emotional.”*

# Implicit Bias

- Attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner
  - Expressed indirectly
  - Unaware of bias
  - Operates subconsciously

A father and son are in a horrible car crash that kills the dad. The son is rushed to the hospital; just as he's about to go under the knife, the surgeon says, "*I can't operate—that boy is my son!*"

# Recuse Yourself

*“I don’t think a women would make a good CEO because they’re too emotional.”*

A father and son are in a horrible car crash that kills the dad. The son is rushed to the hospital; just as he’s about to go under the knife, the surgeon says, *“I can’t operate—that boy is my son!”*

Bias against women

- Bias/conflict of interest is basis for appeal.
- Do your behaviors indicate a bias/conflict of interest?
  - Social media
  - Office decor
- If there is any question about your bias/conflict of interest, recuse yourself from the case.
  - *Would someone else reasonably think I would have a bias/conflict of interest here?*



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

## *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*

- Suspension/Deferred Suspension or Expulsion
- 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*)