

OFFICE FOR EQUITY & COMPLIANCE

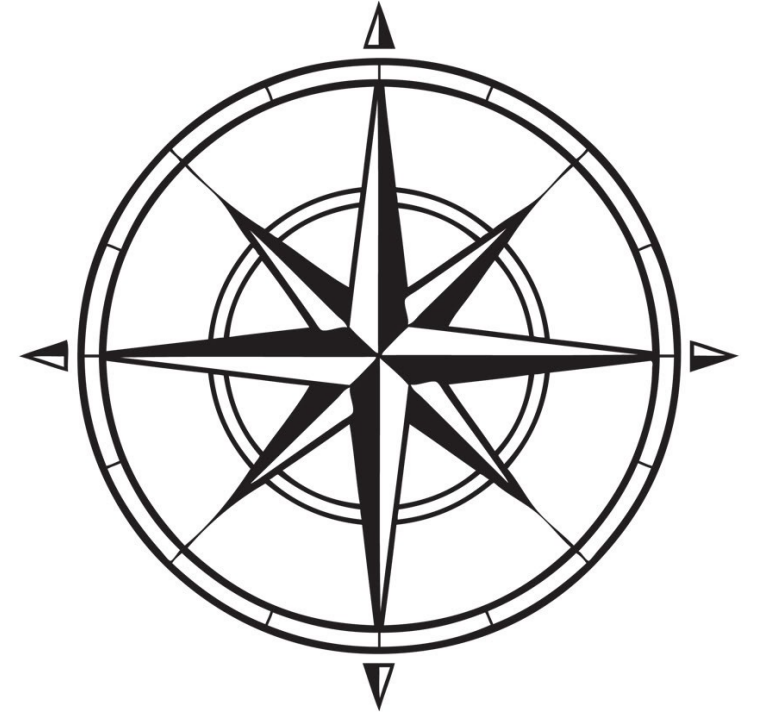
GRIEVANCE PROCESS HEARING ADMINISTRATOR TRAINING

*Tim Love, Executive Director for Equity & Compliance, Title IX Coordinator
April 22, 2021*



OVERVIEW

- Who's Who
- Pre-Hearing
- Conflicts of Interest & Bias
- Rules & Procedures
- Questioning & Cross-Examination
- Deliberation & Determination
- Sanctions & Remedies
- Delivering the Written Determination



GRIEVANCE PROCESS HEARING ADMINISTRATOR TRAINING

WHO'S WHO

WHO'S WHO

- Hearing Board
- Complainant
- Respondent
- Advisors
- Witnesses (Fact and Expert)
- Title IX Coordinator (?)
- Investigator (?)

GRIEVANCE PROCESS HEARING ADMINISTRATOR TRAINING

PREHEARING

PREHEARING

- Title IX Coordinator (or designee) will:
 - Appoint Hearing Board (no bias, conflict)
 - Provide Notice of Hearing (10 days out)
 - Provide Investigative Report
 - Schedule with parties, witnesses
 - Address disability accommodations
 - Arrange Technology
 - Organize Pre-Hearing Conference*

PREHEARING CONFERENCE

- Hearing Board Chair will:
 - Hear and rule on evidentiary challenges
 - Review pre-submitted questions (optional)
 - Review Hearing Rules & Procedures
 - Answer hearing process-related questions
 - Test tech

GRIEVANCE PROCESS HEARING ADMINISTRATOR TRAINING

CONFLICTS OF INTEREST & BIAS

CONFLICTS OF INTEREST & BIASES

- Hearing Board must not have conflict of interest or bias
 - For or against complainants or respondents generally, or
 - An individual complainant or respondent
- Harmful/unlawful biases can be unconscious
- ✘ **Red flags:**
 - Pre-judgment of the facts; pre-determined outcome
 - Partisan approach by Hearing Board in their questioning of the parties
 - Improper application of hearing procedures
 - Application of sex stereotypes



QUESTIONS?

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RULES & PROCEDURES

HEARING PROCESS

- Hearings must be “five” (may be fully or partially remote/virtual)
- Parties and Hearing Board must be able to simultaneously see and hear one another and any testifying participants.
- Must record the hearing and provide access to the recording or transcript to the parties for review upon request.

HEARING PROCESS

- Maintain order and decorum (Hearing Board responsibility)
 - De-escalate whenever possible; participation favored
 - 3 strikes: may remove on third offense
- Trauma-informed, person-centered
- Impartiality and equity

HEARING PROCESS & FLOW/ORDER

1. Opening Remarks (Board Chair)
2. Call Complainant
3. Call Respondent
4. Call Witnesses
5. Closing Statements
6. Adjourn

HEARING PROCESS

The timeframe for the hearing will depend upon how much evidence is involved, how many witnesses there are, and schedules of participants. Hearings can take one day to multiple days.

HYPOTHESIS

A virtual hearing is taking place for the adjudication of the Complainant's formal complaint alleging that the Respondent raped the Complainant in the Complainant's residence hall room a year ago.

While the Respondent's advisor is cross-examining the Complainant, half-way into the advisor's questions, the Complainant bursts into tears and is unable to stop sobbing. The Complainant then declines to participate further and logs off. The Complainant's advisor remains.

Respondent, seeing the reaction of the Complainant, also declines to participate further and logs off.

HOW SHOULD YOU ADDRESS THIS? WHAT OPTIONS ARE AVAILABLE?

GRIEVANCE PROCESS HEARING ADMINISTRATOR TRAINING

QUESTIONING & CROSS EXAMINATION

QUESTIONING & CROSS EXAMINATION

The objective for cross examination under the Final Regulations (N106.45(b)(6)):

- To allow parties to probe/challenge the credibility, plausibility, and reliability of statements asserted by parties/witnesses.
- To give the [Hearing Board] the opportunity to observe parties and witnesses answer questions, including those challenging credibility, to serve the truth-seeking purpose of an adjudication.
- To permit parties to pose questions intended to promote the asking party's perspective with respect to the allegations at issue and bring out additional facts and details about the alleged incident.

Schools may adopt rules of decorum, prohibiting abusive or intimidating questioning, etc.

QUESTIONING & CROSS EXAMINATION FLOW

1. Hearing Board begins by asking questions directly to party/witness.
2. For *Parties*
 - a. Advisor of other party cross-examines.
3. For *Witnesses*
 - a. Advisor of party who “presents” the witness questions next.
 - b. Other Advisor cross-examines.
4. Hearing Board may question again (optional).

QUESTIONING & CROSS EXAMINATION PROTOCOL

1. Advisor presents each question to Hearing Board Chair (or designee)
2. Chair determines whether each question is **relevant** and **permissible**.
 - ✓ Relevant
 - Solicits information that would tend to prove or disprove the truth of a matter of consequence to the allegation
 - ✗ Impermissible
 - Disallowed (rape-shield protections)
 - Privileged

QUESTIONING & CROSS EXAMINATION PROTOCOL

- Rapesield protections:
 - ✗ Questions about prior sexual activity
 - ✗ Questions about sexual predisposition
 - ✓ UNLESS:
 - ✓ prove someone other than Respondent engaged in the conduct, or
 - ✓ specific instances of Complainant & Respondent's prior experiences offered to prove consent
- Privileged
 - ✗ May not seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege

QUESTIONING & CROSS EXAMINATION PROTOCOL

3. If question **relevant** and **permissible**, Chair invites response
4. If question disallowed, Chair explains rationale
 - Chair may ask advisor to rephrase the question to maintain decorum, clarify, or to avoid being disallowed

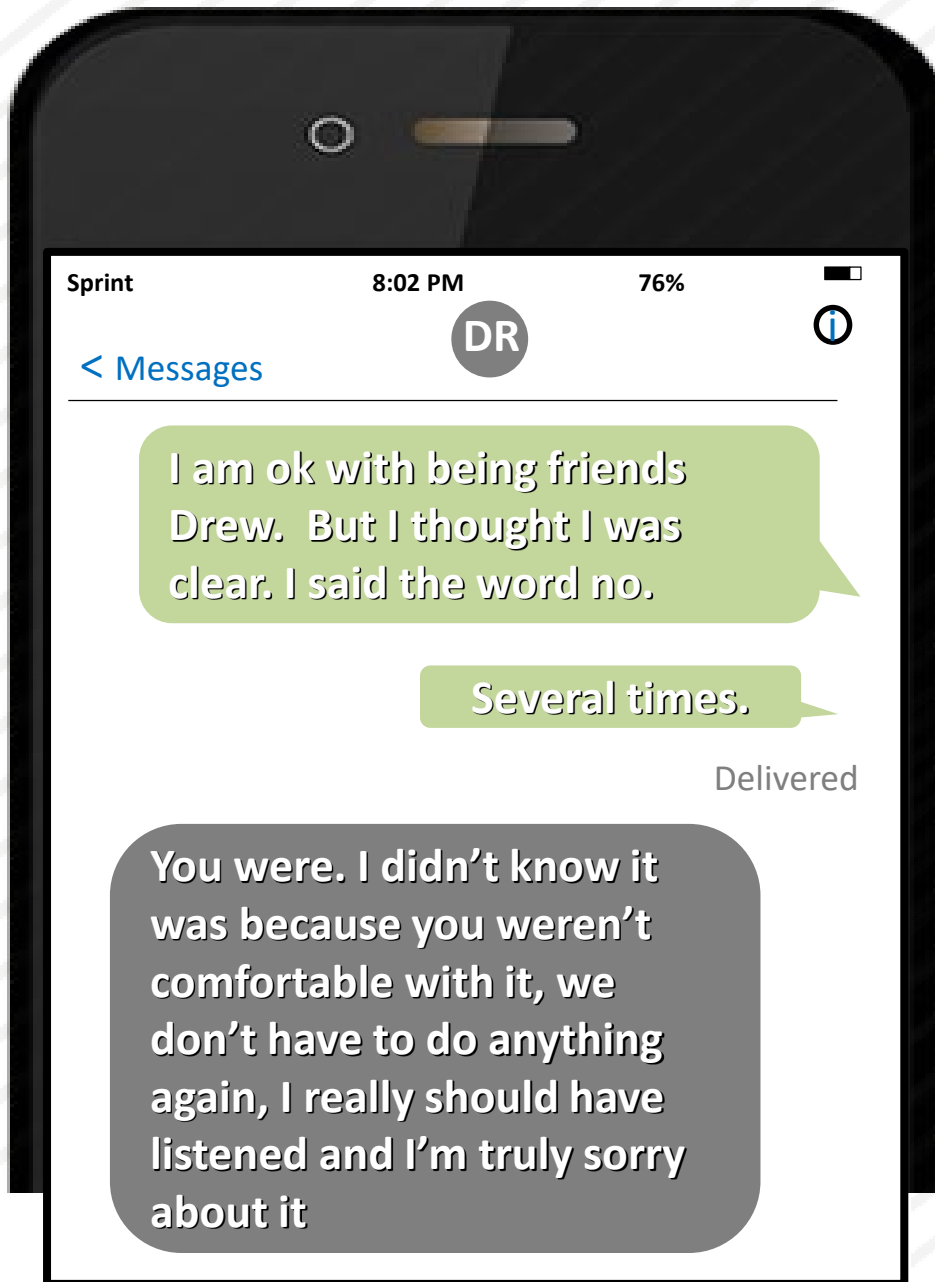
Remember, breaks, de-escalation tactics, etc. are your friends.

QUESTIONING & CROSS EXAMINATION

Parties and witnesses must “submit to cross examination” for their “statements” to be considered by the Hearing Board(s).

- “Statements” are intended assertions of fact.
 - Inclusive, broad definition
- “Submit to cross-examination” means answer **all** relevant questions.

ACTIVITY!



Sprint

8:02 PM

76%

DR

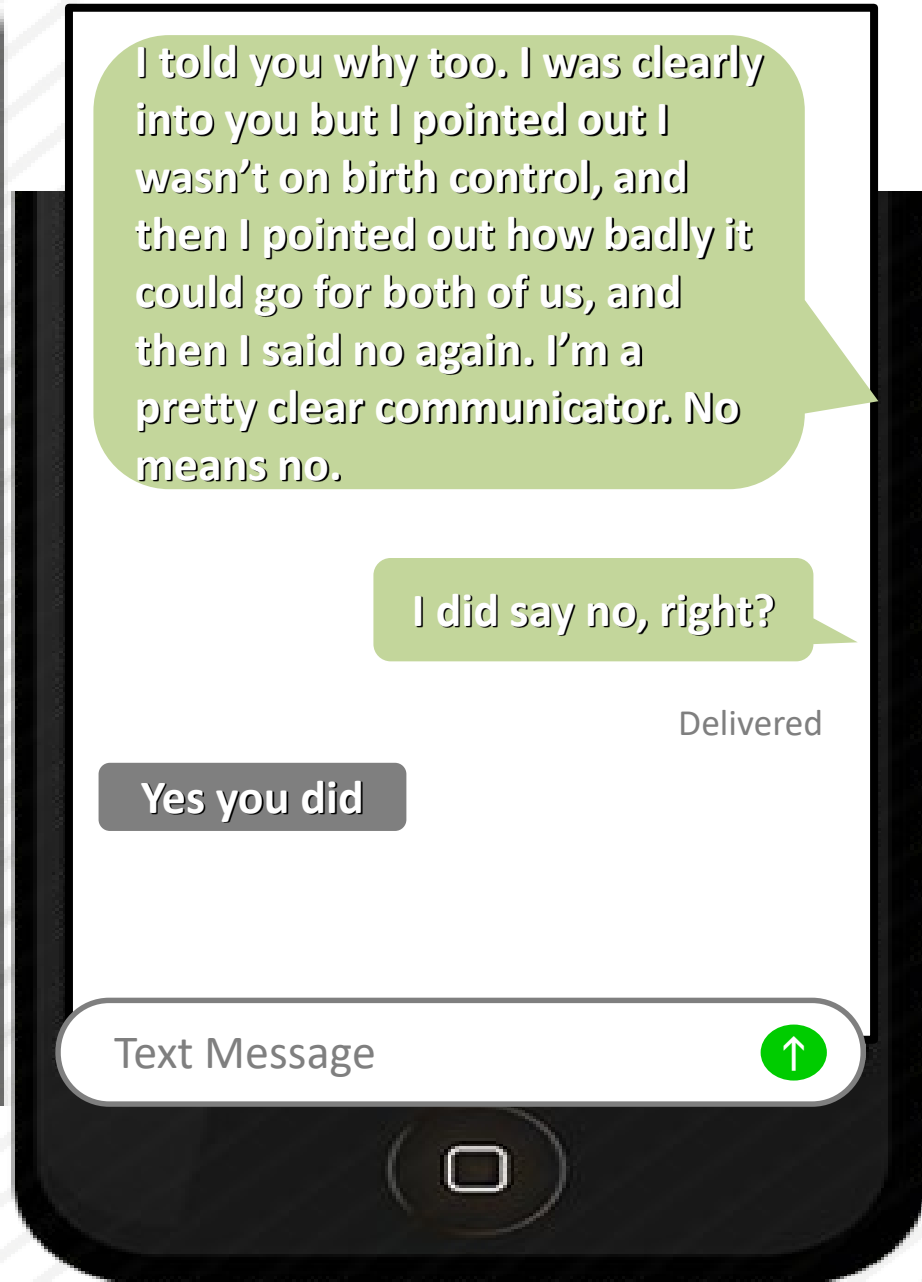
< Messages

I am ok with being friends Drew. But I thought I was clear. I said the word no.

Several times.

Delivered

You were. I didn't know it was because you weren't comfortable with it, we don't have to do anything again, I really should have listened and I'm truly sorry about it



I told you why too. I was clearly into you but I pointed out I wasn't on birth control, and then I pointed out how badly it could go for both of us, and then I said no again. I'm a pretty clear communicator. No means no.

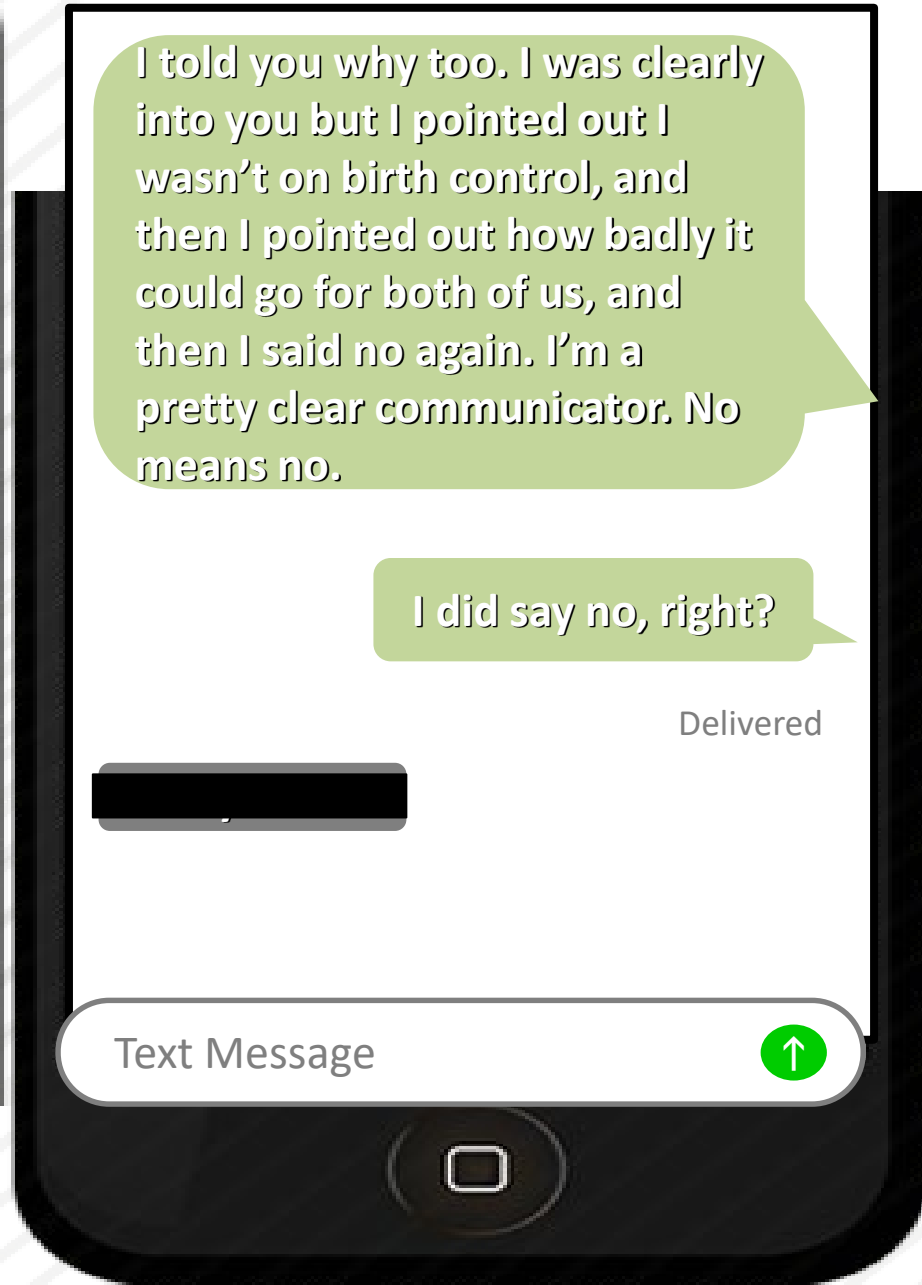
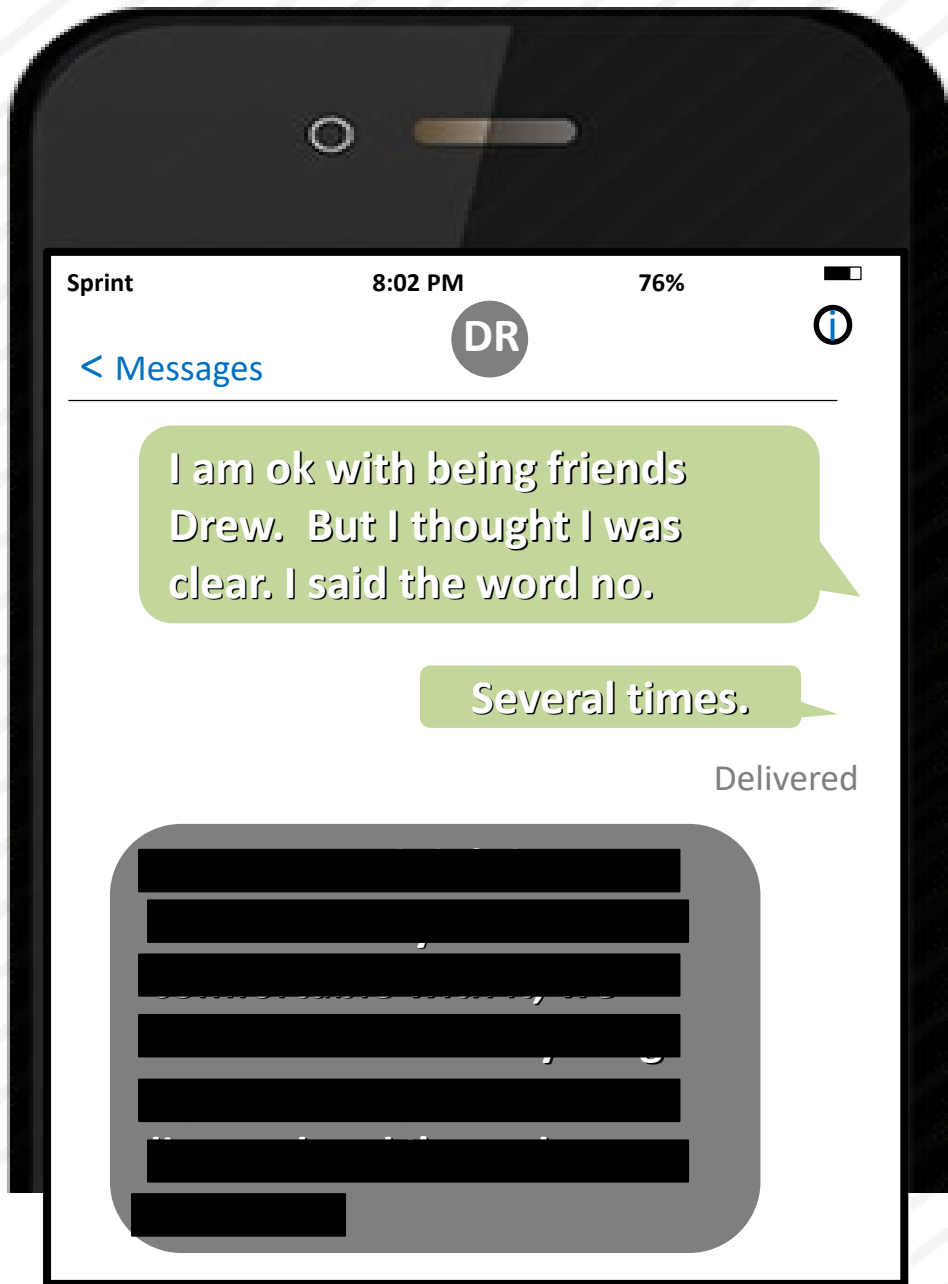
I did say no, right?

Delivered

Yes you did

Text Message





GRIEVANCE PROCESS HEARING ADMINISTRATOR TRAINING

DELIBERATION & DETERMINATION

DELIBERATION & DETERMINATION

- Set expectation that deliberation will take place in ~~the~~ ^{days} (not hours) following the hearing
- Determination will not be sent until at least 3 business days
- Hearing Board must objectively evaluate all relevant evidence (inculpatory and exculpatory) and arrive at finding of responsibility as to each allegation utilizing the preponderance of the evidence standard of proof

DELIBERATION & DETERMINATION

- Decision should be presented as a consensus (even if majority rule needed, still presented as the Board's decision – no “dissenting opinions”)
- Written determination presented to Title IX Coordinator for compliance check
- Board Chair sends written determination once finalized

WRITTEN DETERMINATION (MUST INCLUDE)

- Allegations of sexual harassment
 - Include definitions verbatim from policy
- Description of procedural steps
- Findings of fact/analysis
- Conclusions from applying facts to policy
- Result (R or NR)
- Sanctions (if R) and rationale for sanctions
- Statement that remedies were provided (if R)
 - Need not name/list them
- Permissible appeal grounds

GRIEVANCE PROCESS HEARING ADMINISTRATOR TRAINING

SANCTIONS & REMEDIES

SANCTIONS

- Caseby-case, factspecific
- May not be arbitrary, capricious, disproportionate, inconsistent with policy (out of range)
- Best to explain rationale

“In determining the appropriate sanction(s), the University examine and consider a number of factors, including, but limited to: 1) level of risk or harm to the community; 2) the nature and seriousness of the offense; 3) use of drugs or alcohol in the perpetration of the violation; 4) motivation underlying the Respondent’s behavior; 5) the Respondent’s record of misconduct, including prior violations of the same or similar type”

REMEDIES EXAMPLES

- Counseling
- Extensions of deadlines or academic adjustments
- Modifications of work or class schedules (restrict R from enrolling in same course as C)
- Mutual (or not) NCD, extended
- LUAA
- Changes in housing or work
- Leaves of absence*

Thank you / Questions / Discussion

