

Advisements to the Panel in the Matter of Bob Smith

- 1) The evidence must show by a preponderance of the evidence¹ that a charge is true. That is, it's more likely than not that the alleged Prohibited Conduct occurred.
- 2) The Responding Student has been charged with Sexual Assault under the Student Title IX process, specifically Administrative Guide 1.2.

Policy Definitions

Sexual Misconduct (Administrative Guide 1.2)

Sexual Misconduct is the commission of a sexual act, whether by a stranger or non-stranger and regardless of the gender of any party, which occurs without indication of consent.

1. The following acts or attempted acts can be the subject of Sexual Misconduct or Sexual Assault Charge:
 - a) vaginal or anal intercourse;
 - b) digital penetration;
 - c) oral copulation
 - d) penetration with a foreign object
2. Additional Acts of Sexual Misconduct
The following completed acts can be the subject of a Sexual Misconduct charge:
 - a) Unwanted touching or kissing of an intimate body part (whether directly or through clothing); or
 - b) Recording, photographing, transmitting, viewing, or distributing intimate or sexual images without the knowledge and consent of all parties involved.

Consent is defined as follows (Administrative Guide 1.2 Section 2b):

Consent is an affirmative nonverbal act or verbal statement expressing consent to sexual activity by a person that is informed, freely given and mutually understood. It is the responsibility of person(s) involved in sexual activity to ensure that he/she/they have the

¹ To find the RS responsible, it means you must be persuaded by the evidence that the policy violation allegation is more probably true than not true. You should base your decision on all of the evidence, regardless of which party presented it.

affirmative consent of the other or others to engage in the sexual activity. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. Lack of protest or resistance does not mean consent, nor does silence mean consent. Consent to one act by itself does not constitute consent to another act. The existence of a dating relationship between the persons involved, or the fact of past sexual relations, should never by itself be assumed to be an indicator of consent. Whether one has taken advantage of a position of influence over another may be a factor in determining consent.

Direct and Circumstantial Evidence

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It's for you to decide how much weight to give to any evidence.

Credibility of Witnesses

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the witness's opportunity and ability to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence; and
- (8) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it. What is important is how believable the witnesses are, and how much weight you think their testimony deserves.

Special Instructions

Numbering and Cosmetics

You are advised that any non-numerical order of exhibits is of no consequence to your consideration and deliberation. It is an administrative matter that is irrelevant. Similarly, if you see a cosmetic correction, for example, a date that was handwritten or other handwritten interlineations, please excuse the cosmetic defect and only attribute that defect to the Title IX Office and not to any party. Likewise, if there is a date discrepancy on Title IX notices and responses thereto, please disregard. It's of no consequence to your findings. Lastly, the investigative report is revised as necessary throughout the investigation and only the original date remains on the report.