Effective Methods for Hearing Sexual Assault Violations (Training the Trainer)

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The College of New Jersey

Project STOP NOW!
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Disclaimers

- I am NOT an ATTORNEY
  - The information and comments provided here are designed to encourage discussion and analysis
  - Nothing I say should be construed to constitute legal advice.
  - For legal advice the services of your campus counsel or an attorney in your jurisdiction should be sought.

- Specific Codes and Procedure Vary
  - Representative institutions have many intricacies and variations in codes, policies, procedures

- I attempt to cite sources where applicable, my apologies if I miss a few
Agenda

- Philosophy of Student Discipline
- Disciplinary Process Overview
  - Various Clarification Exercises (small/large group)
- Marketing Strategies (Recruitment)
- Mock Hearing (Part 2 Tomorrow)
  - Incident Re-Enactment
  - YOU are the Board! (large group)
  - Deliberation & Sanctions (small group)
- Our Findings (Yours/Mine)
- Resources & Acknowledgements
Philosophy of Student Discipline

- Disciplinary systems reflect the diversity of campus cultures
- Common Values should be identified and affirmed
- Cases must be Heard before they are Decided
- Educational Aims and Progressive Discipline should guide the imposition of sanctions
- Progressive Discipline should encompass the Interests of people Seen an Unseen

- Perfection of Human Nature is not the aim.
- Hearing Board members are Role models
- Hearing Board members, and hearing bodies are Learners
- Privacy Rights must be Respected
- The disciplinary process should promote Ethical Dialogue and Critical Thinking


Dr. Golden’s Rule:
“Treat all students with equal care, concern, respect, and dignity.”
Role of a Judicial Hearing Officer

- **KNOW YOUR CONDUCT CODE!!!**
- Be aware of judicial philosophy
- Be aware of special considerations.
- Know college policies & be able to explain.
- Confidentiality always!
- Encourage proper use of the system.

- Dispel rumors regarding process.
- Communicate with appropriate staff when issues arise.
- Keep appropriate records/notes
- Review/revise process as appropriate
- Be aware of referral resources/policies
Disciplinary Process Overview

- Confrontation
- Documentation
- Notification
- Investigation
- **Hearing**
- **Adjudication**
- Disposition
Role of the Board

- Serve as an *Impartial* Hearing Body
- Evaluate Evidence Presented
- Review, Understand and Consider listed charges
- Ask Relevant Probing Questions
- Deliberate on the Question of Responsibility
- Assign Appropriate and Developmental Sanctions

Alfred P. Murrah: “Hear the Case before you decide it.”
Board Training

- Educational Institutions & Student Development Theory
- Evidentiary standard – preponderance of evidence
  - Questioning
  - Listening
  - Body Language
  - Facial Expressions
- Due Process Rights
  - Procedures for fairness
  - Right to face accuser
  - Timely notice
  - Notification of Outcome (& FERPA exception for victims)
  - Confidentiality
  - Advisors / Appeals
  - Present factual defense
- College Policy vs. Federal, State & Local law

Dr. Golden’s Rule: “Treat all students with equal care, concern, respect, and dignity.”
Accommodations

- Never **solely** for SA,DV,S cases!
- **No Contact** Orders (College/Court Issued)
- Advocate as an Advisor
- CC-TV
- Conference call
- Physical separation
- Other Ways?
Questions about anything before Mock Hearing?
Mock Hearing: Ground Rules

- Ask Open-Ended questions
- Board Chair may not allow a question
  - Please remember these for later discussion
- Dr. Golden’s Rule
Many thanks
to our BRAVE Volunteers
Mock Hearing: Alleged Violations

- **Personal Property**
  - Attempting or completing entry into or use of another person's facilities, property or equipment without authorization.

- **Sexual Assault**
  - Includes, but is not limited to rape, attempted rape, and/or inappropriate touching of another person.

- **Obscene Conduct**
  - Any lewd and/or offensive behavior likely to be observed by non-consenting persons.

- **Alcohol, Underage consumption**
  - Consumption, sale and/or distribution of alcohol by, to or in the presence of persons under the age of twenty-one.
Mock Hearing: Deliberation & Sanctioning

- Deliberation
  - Closed Door
  - Majority Vote – (chair votes in a tie)

- Assigning Sanctions
  - Disciplinary – Warning, Probation, Removal from Housing, Suspension, Expulsion
  - Administrative – No Contact Directives, Room Change, Restitution for Damages, etc.
  - Educational - opportunity to be creative
Mock Hearing: Your Findings Regarding Alleged Violations

- Personal Property
- Sexual Assault
- Obscene Conduct
- Alcohol, Underage consumption
- Others?
Mock Hearing: Your Sanctions
Sanctions (TCNJ)

- **No Contact Order** *(Campus Directive)*
  - Administrative Room Change
  - Academic course/section changes

- **Suspension from Campus** *(temp/perm)*

- **Other Possibilities**
  - Not Responsible – Dismissal of Charges
  - Alternate Charges / Sanction *(w/ consent)*
  - *(No Fines or Community Service @ TCNJ)*
Hearing Board Training Resources for SA, DV, and S

- Your Existing Campus Staff
  - Office of Anti-Violence Initiatives
- Community / Outside Advocate(s)
- Campus Police / Security
- SART / SANE trained personnel
- Handouts
  - (may reproduce with permission within CALCASA / AJSA institutions with citation)
Acknowledgements

- Jason D. Neely
  - Community Standards, Coordinator
- Jackie Deitch-Stackhouse
  - TCNJ Office of Anti-Violence Initiatives
- WomanSpace, Inc
  - Brett A. Sokolow, JD
    - Nat. Center for Higher Ed. Risk Management
  - Gary Pavela
    - ASJA Law and Policy Report & Univ. of MD
  - Ed Stoner
    - National Association of College and University Attorneys
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Addtl. Resources for Disciplinary Hearing Boards

- CALCASA Institute
- ASJA yahoo group
  - Hearing scripts
  - Discussion forums
  - ASJA Home Office http://www.asjaonline.org/
- Other Local / Peer Institutions
- Brett Sokolow, NCHERM (http://www.ncherm.org)
THE END
Other Slides
Legal Definitions

- **Statutory law** -- Laws, or statutes, enacted by legislatures, such as the New Jersey State Legislature or the United States Congress.

- **case law** -- The body of law created by judges' written opinions.

- **Opinion** -- The written explanation of a court’s decision in a matter.

- **Grand Jury** -- Twenty-three people empanelled to hear evidence presented by a prosecutor to determine if there is enough evidence to bring a person to trial for a crime.

- **Bench trial** -- A trial decided by a judge instead of a jury.

- **Settlement** -- An agreement between the plaintiff and defendant in a *civil* case to resolve the dispute *without* a trial.

- **Damages** -- Money awarded to a plaintiff in a civil case. Damages are assessed against the defendant who is found by the jury or judge to have been responsible for the plaintiff's injuries.
Standards of Evidence

- **Proof Beyond a Reasonable Doubt**

- **Clear and Convincing Evidence**
  - “evidence that produces in your minds a firm belief or conviction that the allegations sought to be proved by the evidence are true. It is evidence so clear, direct, weighty in terms of quality, and convincing as to cause you to come to a clear conviction of the truth of the precise facts in issue.

  The clear and convincing standard of proof requires that the result shall not be reached by a mere balancing of doubts or probabilities, but rather by clear evidence which causes you to be convinced that the allegations sought to be proved are true.”

- **Preponderance of Evidence**
  - greater than 50%
  - “more likely, than not”

*New Jersey Civil Charges: http://www.judiciary.state.nj.us/charges/civindx.htm*
On Campus Resources

**Psychological Counseling Services** - Victim can speak with a counselor for crisis intervention and / or additional resources. Victim can enroll in confidential, brief individual counseling.

**Health Services** - Victim can speak with a Nurse Practitioner or Registered Nurse for information regarding immediate medical needs / concerns and receive information regarding additional resources.

**Planned Parenthood** - Victim can receive emergency contraception and STD testing / treatment.

**Campus Police** - Victim can file a report with Campus Police. Filing a report with Campus Police will not initiate any criminal charges or legal action – the decision to press charges remains with the victim.

**TCNJ Judicial Process** - Victim can file a report with Campus Police. If the victim chooses, the report can be forwarded to the Director of The Office of Community Standards, in order for the assault to be addressed by The College. The Director will meet with the victim, and based on the victim’s wishes, determine the appropriate level of response.

**Residence Life Professional Staff Member** - Victim can speak with a professional residence life staff member. Residence life staff can provide information regarding resources and provide assistance with accessing those resources.

- **Office of Anti-Violence Initiatives** - The Office of Anti-Violence Initiatives addresses sexual assault/dating violence issues on campus by raising awareness through prevention and education efforts.
Off Campus Resources

Womanspace – Sexual Assault Victims’ Services – 24 hour Crisis Hotline - The 24 hour crisis hotline is staffed by counselor advocates who are trained in providing information and resources to recent victims of sexual assault.

Womanspace – Sexual Assault Victims’ Services – Sexual Assault Victim Advocate - By calling the 24 hour Hotline, a victim can request a Sexual Assault Advocate. The Advocate can offer accompaniment to a hospital, police department and / or court. The Advocate can provide initial support, information and referral information. The Sexual Assault Advocate can assist in accessing the Sexual Assault Response Team (SART) and provide information regarding the SART process.

Womanspace – Additional Resources - Womanspace offers individual counseling for victims and significant others, and a support group for victims. For more information contact Womanspace Counseling and Support Services office at 609-394-2532.

Local Hospital Emergency Room – Victim may still receive medical attention. Capital Health System Fuld Campus, Capital Health Systems Mercer Medical Campus and Robert Wood Johnson University Hospital at Hamilton are the three most local hospitals. Campus Police may be contacted for transportation if needed. This option will result in either a bill or insurance charge.
Sexual Assault Response Team (SART)

The SART can be activated if:
- victim is age 13 years or older
- the assault occurred within the past 5 days
- the victim agrees to evidence collection

The collection of evidence does not initiate any form of criminal charges or legal action.

The SART can be activated by calling the Womanspace 24 hour hotline (609-394-9000), calling the police or going to the emergency room at Fuld Trauma Center, Mercer Medical Center, or Robert Wood Johnson at Hamilton.

There is no charge for activating the SART – the victim will not receive a bill nor will the victim’s insurance company.

The SART consists of a Sexual Assault Nurse Examiner (SANE), a Rape Care Advocate and, if the victim wishes to report the assault, a law enforcement officer.

The process entails a brief medical screening by an ER physician to detect any injuries or conditions that may require immediate treatment. Evidence collection and physical exam conducted by a Sexual Assault Nurse Examiner (SANE). The SANE will offer medications to prevent sexually transmitted infections and/or pregnancy.

If the victim is not sure about reporting the sexual assault, evidence can still be collected by the SANE. The evidence will be held for 90 days while the victim makes a decision. Since forensic testing of evidence is only done by the Police Crime Lab, evidence will only be tested if the victim wishes to pursue prosecution.
Lynette N. Harris

- A proud product of Camden, New Jersey, Lynette Harris holds a Bachelor of Arts in Sociology and a Masters of Arts in Counseling in Higher Education, both from Montclair State University.

- In 2000, Lynette joined the Office of the Dean (now Vice President) of Student Life as Assistant Dean/College Disciplinary Officer. Believing that the judicial process is more educational than punitive, Lynette requested that her title be changed to remove the word “disciplinary”. At the conclusion of the reorganization of the Student Life area, Lynette currently serves as the Director of Community Standards. Within this role, Lynette manages the responsibility for providing innovative leadership for a student centered campus judicial system, as well as the implementation of educational processes for helping members of the College community fully understand their individual and group rights and responsibilities. Lynette has presented for both the Association for Student Judicial Affairs (ASJA); an international conference held annually in Clearwater, Florida and the California Coalition Against Sexual Assault (CALCASA); the only statewide organization in California whose sole purpose is to promote public policy, advocacy, training and technical assistance on the issue of sexual assault, as well as a host of colleges and universities on the East Coast.

- Since arriving at TCNJ in 1995, Lynette has also worked professionally in the area of Residence Education and Housing and Student Support Services.

- Always a strong advocate for student rights and issues, Lynette presents workshops on various topics (included but not limited to Conflict Resolution, Multiculturalism, Stress Management, Study Skills, Confrontation, Crisis Management, Supervision, Test Taking, Relationships, Self-Esteem and Time Management) and serves as campus advisor to her undergraduate sisters in the Omicron Epsilon chapter of Zeta Phi Beta Sorority, Inc. at TCNJ.

- In recognition and appreciation of her outstanding contributions to her colleagues and the students at The College of New Jersey, Lynette was awarded the National Council of Negro Women’s Woman of the Year Award in both 1996 and 2001.

- While she consistently instills the importance of education to all her students, Lynette continues to learn from them as well.