What is my role as a University Hearing Board (UHB) Member

The University Hearing Board is a hearing and appellate board for students who have been charged with a violation of the Standards of Student Conduct.

When a student is charged with a violation of the Sexual Misconduct Policy and wants to have a UHB hear the case, members of the UHB are charged with:

◦ Conducting a fair and impartial evidentiary hearing;
◦ Making a determination whether the accused student is responsible for a violation of the University’s Sexual Misconduct Policy; and
◦ If the accused student is found responsible, determining the appropriate sanctions.

SUPPORT.REPORT.PREVENT
UHB Manual

2. Standards of Student Conduct
3. Sexual Misconduct Information for UHB Members
4. UHB Deadlines & Hearing
5. UHB Sexual Misconduct Hearing Guidelines
University of Richmond Sexual Misconduct Policy

We value a learning community in which all members feel secure physically and intellectually. Behavior that harms others or threatens campus security challenges our mission. Sexual misconduct is such behavior and is prohibited at the University of Richmond.

Additionally, we prohibit retaliation against anyone who reports or witnesses an incident of possible sexual misconduct.
Scope of Coverage

Title IX prohibition extends to:
- Gender Identity
- Gender Expression
- Sexuality

Applies to all members of the University of Richmond Community – Students, Faculty & Staff
Sexual Misconduct Offenses

- Non-Consensual Sexual Contact
- Non-Consensual Sexual Intercourse
- Sexual Exploitation
- Stalking
- Dating/Relationship Violence
- Domestic Violence
- Sexual Violence
- Hazing
- Sexual Harassment
What is Sexual Exploitation

Taking sexual advantage of another person without effective consent

◦ Electronically recording, photographing, or transmitting intimate or sexual utterances, sounds, or images of another person, including images of someone undressed or partially undressed;

◦ Allowing third parties to observe sexual acts;

◦ Engaging in voyeurism;

◦ Distributing intimate or sexual information about another person; and

◦ Knowingly transmitting a sexually transmitted infection, including HIV, to another person.
Sexual Misconduct Offenses

Non-consensual Sexual Contact
Non-consensual Sexual Intercourse
Sexual Exploitation
Stalking
Dating/Relationship Violence
Domestic Violence
Sexual Violence
Hazing
Sexual Harassment
Stalking is Defined as:

A course of conduct directed at a specific person that is unwelcome and would make a reasonable person fear for their safety or cause emotional distress.

Examples:
- Following a person or show up wherever you are
- Sending unwanted gifts, letters, cards, text messages
- Monitoring phone calls, text messages or computer use
- Threatening (directly or indirectly) a person
- Cyberstalking

Persons aged 18-24 Years experience the HIGHEST rates of stalking victimization.

https://www.victimsofcrime.org/our-programs/stalking-resource-center/stalking-information
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Warning Signs of Unhealthy/Abusive Relationships

• Checking your cell phone, social media or email without permission
• Constantly putting you down
• Extreme jealousy or insecurity
• Explosive temper
• Isolates you from family or friends
• Need to check in with your partner
• Partner does not take responsibility for their actions

• Making false accusations
• Extreme mood swings
• Physically hurting you in any way
• Possessiveness
• Telling you what you can/cannot do
• Pressuring or forcing you to have sex
• Apologize for partner’s behavior
• Partner is too serious about the relationship too quickly

http://www.loveisrespect.org/is-this-abuse/
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Virginia Law - Transcript Notation

The Registrar must include a prominent notation on the academic transcript of each student who:

◦ Is suspended for,
◦ Is permanently dismissed for, or
◦ Withdraws while under investigation for an offense involving sexual violence.
Sexual Misconduct Offenses

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Sexual Harassment

Unwelcome conduct of a sexual nature that:

Constitutes Quid Pro Quo Harassment

Submission to unwanted sexual conduct is an implicit or explicit term or condition of an individual's employment, academic standing, or participation in any University program or activity.

Creates a Hostile Environment

Unwelcome conduct of a sexual nature is sufficiently serious, persistent or pervasive and limits or denies an individual's employment, academic performance or ability to participate in or benefit from University programs or activities
## What Does Sexual Harassment Look Like?

<table>
<thead>
<tr>
<th>Physical</th>
<th>Verbal/Written</th>
<th>Visual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inappropriate touching of a person’s body or clothing</td>
<td>Communicating about a person’s clothing, personal behavior, romantic relationships or body</td>
<td>Sexually suggestive pictures, photos, screen savers</td>
</tr>
<tr>
<td>Lewd hand gestures</td>
<td>Making sexual or sex-based jokes or innuendos</td>
<td>Lewd emails or text messages</td>
</tr>
<tr>
<td>Fondling (touching someone against their will or without consent)</td>
<td>Requesting sexual favors or dates</td>
<td>Sexually suggestive posts on social media</td>
</tr>
<tr>
<td>Impeding or blocking someone’s movement</td>
<td>Spreading rumors about a person’s sex life</td>
<td>Social media pictures with sexual overtones</td>
</tr>
<tr>
<td></td>
<td>Threatening a person for rejecting or refusing sexual advances</td>
<td>Displaying or sharing posters, drawings, screensavers or emails of a sexual nature</td>
</tr>
</tbody>
</table>

**SUPPORT. REPORT. PREVENT.**
What is Consent?

Clear and unambiguous agreement to engage in sexual activity as evidenced by words or actions that demonstrate a knowing and voluntary willingness to engage in mutually-agreed-upon sexual activity.
Consent Is:

**KNOWING**
All individuals agree to:

**WHO** (partners involved)
**WHAT** (sexual acts)
**WHERE & WHEN** (same location & time)
**HOW** (the same way and under the same conditions)

Understanding that an individual that is incapacitated **CAN NOT CONSENT**

**ACTIVE**
Clear and unambiguous agreement to engage in sexual activity as evidenced by **words or actions**.

Silence/lack of verbal or physical resistance do not indicate consent
Consent Is:

**VOLUNTARY**
Consent must be freely given and cannot be obtained by:
- Force
- Threats
- Intimidation
- Coercion
- Ignoring someone’s objections
- Taking advantage of someone’s incapacitation

**PRESENT & ONGOING**
Consent to …
- previous activity does not mean consent to future activity
- one sexual act does not imply consent to other acts
- sexual activity with one person does not constitute consent for sexual activity with others.

*Consent can be withdrawn at any time during sexual activity*
Consent can not be given by:

• Individuals who are mentally incapacitated at the time of the sexual contact in a manner that prevents them from understanding the nature or consequences of the sexual act involved, including incapacitation as a result of alcohol or drug use;

• Individuals who are asleep, unconscious or otherwise physically helpless; and

• Minors.
Alcohol and Sexual Violence

Alcohol can:
- Create a false sense of confidence and/or security
- Cause us to take risks that could jeopardize our personal safety
- Compromise an individual’s ability to assess dangerous situations
- Increase aggression levels
- Decrease Impulse control
What is a standard drink?

1 Standard Drink = 0.6 fluid oz of 100% alcohol

- **Beer**: 12 oz, 5% alcohol
- **Wine**: 5 oz, 12% alcohol
- **Liquor**: 1.5 oz, 80 proof

Equivalency: 12 oz Beer* = 8 oz Malt Liquor* = 5 oz Wine* = 1 oz Liquor*

*Lines indicate approximate measurements

Alcohol percentage and package volume will determine number of standard drinks. Source: National Institute on Alcohol Abuse and Alcoholism

On average, it takes nearly 3 hours for most people to eliminate the alcohol in 2 drinks.
What factors affect someone’s response to alcohol?

- Time & Amount Drank
- Height & Weight
- Tolerance Level
- Food
- Total Body Fluid
- Medications
- Altitude
- Caffeine
- Gender
- Ethnicity
  - Asian decent—liver enzyme that processes alcohol not active
- Family History
  - First degree relative 7X greater chance alcoholism
- Stress/illness/lack of sleep
- Consumption of other drugs (legal or illegal)
What is Incapacitation?

Incapacitation is a state beyond drunkenness or intoxication.

Physical and/or mental inability to make informed, rational judgments or to understand the nature and consequences of the sexual act.

Voids an individual's ability to give consent; not knowing.
A person violates the sexual misconduct policy if they have sexual contact with someone they know or should know is mentally incapacitated or has reached the degree of intoxication that results in incapacitation.

Judged by whether a reasonable, sober person would know about the incapacitation.
Survivors Reaction to Sexual Violence

**Emotional Shock:** I feel numb. How can I be so calm? Why can't I cry?

**Disbelief and/or Denial:** Did it really happen? Why me? Maybe I just imagined it. It wasn't really rape.

**Embarrassment:** What will people think? I can't tell my family or friends.

**Shame:** I feel completely filthy, like there's something wrong with me. I can't get clean.

**Guilt:** I feel as if it's my fault, or I should've been able to stop it. If only I had...

**Depression:** How am I going get through the semester? I'm so tired! I feel so hopeless. Maybe I'd be better off dead.

**Powerlessness:** Will I ever feel in control again?

**Disorientation:** I don't even know what day it is, or what class I'm supposed to be in. I keep forgetting things.
Survivors Reaction to Sexual Violence

**Flashbacks:** I'm still reliving the assault! I keep seeing that face and feeling like it's happening all over again.

**Fear:** I'm scared of everything. What if I have herpes or I’m HIV positive? I can't sleep because I'll have nightmares. I'm afraid to go out. I'm afraid to be alone.

**Anxiety:** I'm having panic attacks. I can't breathe! I can't stop shaking. I feel overwhelmed.

**Anger:** I feel like killing the person who attacked me!

**Physical Stress:** My stomach (or head or back) aches all the time. I feel jittery and don't feel like eating.

http://cmhc.utexas.edu/booklets/maleassault/menassault.html#anchor1010018
Greater weight of the evidence
• Matter of quality not quantity
• The testimony of one witness whom you find credible can be greater than the testimony of two witnesses with no first-hand knowledge or poor recollection

Quality & nature of evidence for and against a finding of responsibility are equal, there is not a preponderance of the evidence, then the Respondent cannot be found responsible for the conduct charge

To find a Respondent Responsible, the UHB must find a preponderance of evidence support each element of the conduct charge

Preponderance of the Evidence
As you review the case materials, you notice the Complainant/Respondent’s account of the incident is incomplete or has changed. What does that mean?
Assessing Credibility

Assess credibility of all witnesses, including Respondent, Complainant and Title IX Investigator

• Appearance & manner of the witnesses
• Their opportunity for knowing the truth
• Observations about things about which they have testified
• Interest in outcome of the case
• Their bias
• Inconsistencies in their statements
• Whether they have knowingly testified untruthfully

UHB Members may accept or disregard all or part of a testimony of a witness

UHB may determine which witnesses are more credible and weigh their testimony accordingly
  ◦ Consideration needs to be given to the effects of trauma on memory
  ◦ Trauma from sexual assault can cause memories to be fragmented and recall to be slow and difficult
Decision Making

Complainant capable of giving consent?
- Was complainant asleep, unconscious or physically helpless?
- Was Complainant a minor?
- Was Complainant Incapacitated?

Was the Complainant Incapacitated?
- Did the Respondent know or should the Respondent have known?

Did the Complainant consent?
- Clear, unambiguous agreement by both parties evidenced by words or actions
  - Was consent voluntary?
  - Was consent withdrawn?
  - Did Respondent know or should Respondent Have known?

Pages 8 – 9 UHB Consent Guidelines
Next Steps

Full UHB Training October 17, 2019 from 1:00 – 4:00 pm
  ◦ To be considered to serve, must complete training

Complete on-line FERPA Training

If called for a UHB
  ◦ Provided with a Box folder containing the hearing materials as well as a binder with the hearing materials
    ◦ Folders contain confidential information protected by FERPA
  ◦ Attend Just-In Time Training with Hearing Officer
    ◦ Deputy Title IX Coordinator will email you information regarding pre-hearing deadlines
    ◦ UHB members should convene to determine who they would like to call as witnesses
      ◦ Discuss importance of Title IX investigator
Questions?????