LIVE@ DISTANCE BASIC COMPLIANCE TRAINING, PART 3
QUESTIONS FROM DAY ONE

Investigations

Review, tools, and legal requirements.

Pre-hearing prep

Review and legal requirements.

Hearing

Overview, tools, and legal requirements.

DAY 3 OVERVIEW
CASE PROCESS DECONSTRUCTED

1. Incident Reported
2. Student Conduct Process Initiated
3. Pre-Hearing Prep Investigation
4. Hearing
5. Appeal Process
6. Decision Implementation
Investigator
For the duration of the Investigation process.

Advisor
• Ideally assists the student throughout the entire process.

Student Conduct Administrator
Assists the student through the resolution of the process.

Informal Resolution Facilitator
• Can be any individual with significant training in this area.

Hearing Board Member
• Decision maker
• May also serve as the Hearing Chair.
3. PRE-HEARING PREP INVESTIGATION MODEL

**Key Players:**
- TIXC
- Conduct Staff
- UPD
- Hall Staff
- Hearing Board
- Appeals Board
- Registrar

**Initial Procedures Meeting Completed**
- Due process rights
- Advisor of choice
- Timeline for process
- Answer questions
- Provide resources
- Discuss evidence and witnesses
- Resolution options

**Investigation Begins**
- Investigation Report Template
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- Review of evidence by Respondent and Complainant
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**Post Investigation Procedures Meeting**
- Detail due process rights
- Indicate right to advisor of choice (advisor guide)
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- Retaliation policy reminder
- Describe potential sanction outcomes
- Decorum policy
- Determining relevance guide
- Share their appeal rights
- Correspondence communication

**Resolution Options**
- Informal Resolution
  - Complainant has agreed in writing.
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  - Facilitator reaches out to both parties.
  - Both parties agree to the resolution.
- Informal Resolution Model Policy
- Hearing
  - Managing all schedules
  - Notice of Hearing
  - Parties confirm attendance with advisors
  - Pre-Hearing preparation & logistics
  - Selection of Board Members
  - Order of Hearing
  - Determination
Case Rationale Map
Investigative Report Template
Conflict of Interest Chart
Model Script for Title IX Hearings
Model Decorum Policy
Guide for Determining Relevance

Reviewed today
Referenced today

Notice of Allegations Template
Notice of Removal to Conduct Process Template
Notice of Investigatory Interview (Respondent & Complainant)
Agreement Regarding Evidence Disclosure
File Sharing Platform Options and Pricing Guide
SCI Tech Guide
Virtual Hearing Options Comparison Chart
Determination Regarding Responsibility Template
INVESTIGATIONS
• Avoid repeated disclosures
• Consider the impact of trauma:
  o Fragmented memory and non-linear order of events
  o Specific details about sensory events
• Trauma-informed approach is not a substitute for missing info, justification for not doing a full investigation, or cause a biased belief in a party’s accuracy
• No right or wrong way to respond

• Training and procedure review
• Check your body language and demeanor
• Questioning and word usage (Help me understand… and what are you able to tell me about what you experienced?)
  o Describing another individual’s experience
  o Framing your questions, avoiding why questions
Evidence Collection

- Interviews of parties & witnesses after Notice of Allegations
- Both inculpatory & exculpatory evidence must be collected
- Evidence will be directly related to the allegations
- May include evidence that institution does not intend to rely on

Evidence Sharing

- Parties may review evidence with advisors present
- May set reasonable rules (e.g., confidentiality agreement)
- Redaction of “irrelevant” evidence
- Mandatory inspection process with 10-day min. review period

Investigative Report

- Summarizes relevant evidence directly related to allegations
- Cannot make determination regarding responsibility
- Parties have opportunity to review at least 10 days before hearing
• Prompt
  • Require publication of a time frame based on a specific number of days with room for “good cause” delay
  • Final Rules (and case law) anticipate balance between prompt resolution and adequate time to prepare and respond to charges

• Impartial
  • Must collect exculpatory and inculpatory evidence
  • Must follow code
  • Cannot have bias or conflict of interest

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**Action Items**

- Included in your policy
- Opportunity for assessment
- Evidence collection steps reviewed
- Policy related to reasonable delays in process
CONFLICTS OF INTEREST & BIAS

Prohibited Conflicts of Interest and Bias

• Conflict of interest/bias for or against complainants and respondents generally
  • CAUTION: “Believe All Women” (or All Men)

• Conflict of interest/bias for or against the specific parties

• Overlapping investigator, decision-maker, & appeals roles

Not a per se conflict or bias

• Gender, research interests, work history
• Advocacy background
• TIX Coordinator serving as TIX Investigator
• TIX Coordinator serving as facilitator in informal resolution process
# TITLE IX TOOLKIT

**Student Conduct Institute**

**Is it Bias? Guide**

<table>
<thead>
<tr>
<th>Student of the recipient</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td>No</td>
</tr>
<tr>
<td>Sexual assault survivor</td>
<td>No</td>
</tr>
<tr>
<td>Self-professed feminist</td>
<td>No</td>
</tr>
<tr>
<td>Supporting women’s or men’s rights</td>
<td>No</td>
</tr>
<tr>
<td>Having had personal, negative experiences with men or women</td>
<td>No</td>
</tr>
</tbody>
</table>

Determining whether bias exists is a fact-specific endeavor. See id. at 30.252. The Department encourages recipients to apply a common-sense and “objective” reasonable person standard when evaluating personnel. *Id.*

| **Grievance Process Participation** |
|-----------------------------------|------------------|
| Signing a formal complaint as the Title IX Coordinator | No |
| Participating in an emergency removal decision | No, unless it biases the employee |
| Serving as a party advisor | Exempt from requirement not to have bias |

| **Title IX coordinator serving as...** |
|--------------------------------------|------------------|
| ...investigator | No |
| ...informal resolution facilitator | No, but not recommended |
| ...decision-maker | Yes |

*The Department notes that the final regulations do not preclude a recipient from allowing student leaders to serve in Title IX roles so long as the recipient can meet all requirements in § 106.45 and these final regulations, and leaves it to a recipient’s judgment to decide under what circumstances, if any, a recipient wants to involve student leaders in Title IX roles.* *Id.* at 30.253.

*The Department cautions recipients not to apply generalizations when evaluating particular Title IX personnel for bias, warning that this may result in an unreasonable determination.* *Id.* at 30.252.

*Even where the Title IX Coordinator is also the investigator, the Title IX Coordinator must be trained to serve impartially, and the Title IX Coordinator does not lose impartiality solely due to signing a formal complaint on the recipient’s behalf.* *Id.* at 30.135.

*Section 106.45(c) does not preclude a recipient from using Title IX personnel trained under § 106.45(b)(1)(i) to make the emergency removal decision or conduct a post-removal challenge proceeding, but if involvement with the emergency removal process results in bias or conflict of interest for or against the complainant or respondent, § 106.45(b)(1)(i) would preclude such personnel from serving in those roles during a grievance process.* *Id.* at 30.235.

*The final regulations impose no prohibition of conflict of interest or bias for such advisors, or any training requirement for such advisors, in order to leave recipients as much flexibility as possible to comply with the requirement to provide those advisors.* *Id.* at 30.254 n. 1041.

*The final regulations would not remove the expertise of Title IX Coordinators from the grievance process. Section 106.45(b)(7)(i) does not prevent the Title IX Coordinator from serving as the investigator; rather, this provision only prohibits the decision-maker from being the same person as either the Title IX Coordinator or the investigator.* *Id.* at 30.370.

*These final regulations do not require a recipient to provide an informal resolution process pursuant to § 106.45(b)(9) and do not preclude the Title IX Coordinator from serving as the person designated by a recipient to facilitate an informal resolution process.* *Id.* at 30.558.

*Separating the functions of a Title IX Coordinator from those of the decision-maker is not reflection on the ability of Title IX Coordinators to serve impartially and with expertise. Rather, requiring different individuals to serve in those roles acknowledges that the different phases of a report and formal complaint of sexual harassment serve distinct purposes.* *Id.* at 30.370.

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# Title IX Toolkit

## Student Conduct Institute

### Case Rationale Map for Title IX Coordinators

<table>
<thead>
<tr>
<th>Investigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>16. Did the institution commence an investigation upon receipt of a formal complaint?</td>
</tr>
<tr>
<td>□ Yes □ No</td>
</tr>
<tr>
<td>Delays:</td>
</tr>
<tr>
<td>□ There were no delays in the investigative process</td>
</tr>
<tr>
<td>□ There was a delay in the investigative process</td>
</tr>
<tr>
<td>17.</td>
</tr>
<tr>
<td>Date: Click or tap here to enter text.</td>
</tr>
<tr>
<td>Length: Click or tap here to enter text.</td>
</tr>
<tr>
<td>Reason: Click or tap here to enter text.</td>
</tr>
<tr>
<td>Justification: Click or tap here to enter text.</td>
</tr>
<tr>
<td>□ Notice was sent to Complainant (attach documentation)</td>
</tr>
<tr>
<td>□ Notice was sent to Respondent (attach documentation)</td>
</tr>
<tr>
<td>Objection(s) (if any): Click or tap here to enter text.</td>
</tr>
<tr>
<td>Response to Objection(s) (if any): Click or tap here to enter text.</td>
</tr>
</tbody>
</table>
Summary of the Relevant Evidence
In this section, include a summary of all relevant evidence. This section can be organized in several ways. It is important that, however organized, the evidence is summarized clearly and accurately, and without opinion or bias. In this section, the writer should cite the evidence and information in the Appendices.

In a case involving one allegation, the report might be organized as follows:

1) History between the Parties
   a) The Reporting Party’s Account
   b) The Responding Party’s Account
   c) Witness A’s Account
2) The Hours Leading up to the Reported Incident
   a) The Reporting Party’s Account
   b) The Responding Party’s Account
   c) Witness B’s Account
   d) Witness C’s Account
# EVIDENCE COLLECTION

- Testimony
- Text Messages
- Social Media Posts
- Medical Records
- Public Safety/Police Records
- Videos / Surveillance Footage
- Pictures
- ID Card Data / Network Usage Location Data
- Email
- Voice notes
4. HEARING CASE PROCESS DECONSTRUCTED

Key Players:
- Conduct Staff
- Registrar
- TIXC UPD Hall Staff
- Hearing Board
- Appeals Board
3. PRE-HEARING PREP INVESTIGATION MODEL

**CASE PROCESS DECONSTRUCTED**

**Key Players:**
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- Due process rights
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- Answer questions
- Provide resources
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- Resolution options

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- **Informal Resolution**
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  - Facilitator reaches out to both parties.
  - Both parties agree to the resolution.
  - Informal Resolution Model Policy
- **Hearing**
  - Managing all schedules
  - Notice of Hearing
  - Parties confirm attendance with advisors
  - Pre-Hearing preparation & logistics
  - Selection of Board Members
  - Order of Hearing
  - Determination
POST-INVESTIGATION PROCEDURAL MEETING

Overview
• Detail due process rights
• Reminder - right to advisor of choice
• Describe timeline for process
• Review charges and allegations
• Answer questions & provide resources
• Discuss new evidence and witness procedures
• Offer resolution options (Informal Resolution & Hearing process detailed)
• Disability accommodations
• Retaliation policy reminder
• Decorum policy
• Relevance determination policy
• Describe potential sanction outcomes
• Share their appeal rights
• Correspondence clause

Action Items
✓ Virtual vs in-person meetings
  • Clear expectations and reminders in your meeting notices (e.g. Advisor of choice notice)
✓ Location of meeting and privacy concerns
✓ Preparation of materials in advance
  - Referral Packet
  - Visual of hearing space if in person
✓ Schedule with adequate time
✓ Build in flexibility and anticipate challenges
  • Emotional state of all parties
  • Breaks may be necessary
  • Working with the student’s advisor
3. PRE-HEARING PREP INVESTIGATION MODEL

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**Key Players:**
- TIXC
- Conduct Staff
- UPD
- Hall Staff
- Hearing Board
- Appeals Board
- Registrar
**Pre-Hearing Preparation**

**Technology**
- Accessibility needs
- Internet signal strength
- Party access to appropriate equipment
- Technology settings
- Recording ability (double check cloud space & storage)
- Double check provided links
- Back up plan & back up tech person role that does not wear other hats in the process
- Access to documents

**Hearing Space and Parties**
- Physical space for party and advisor
- Hearing board member location
- Your location
- Witness & Investigator invites
- All party and advisor confirmations (back up advisors)
- Confidentiality and privacy of communications

**In person**

**Technology**
- Accessibility needs
- Recording ability (double check cloud space & storage)
- Smart equipment (e.g. show evidence)
- Back up tech person role that does not wear other hats in the process

**Hearing Space and Parties**
- Space considerations for where students will be placed
- Space availability (multiple spaces)
- Masks and visitor policies
- Access to documents and evidence
- Proximity to restrooms
- Proximity to a printer
- Fire alarm plan
- Water, tissues, snacks, pens, paper (for all)
- Witness & Investigator invites
- All party and advisor confirmations (back up advisors)
- Training transcript check
- Confirm availability and availability expectations
- Conflict of Interest and Bias Check
- Access to evidence in advance of the hearing
- Select a method of communication for the Board for the Hearing (Virtual Hearing)
- Selection of chairperson
- Hearing script
- Reminder of relevant policies & tools
  - Title IX Grievance Policy
  - Code of Conduct (if applicable)
  - Decorum Policy
  - Guide for Determining Relevance
  - Determination Regarding Responsibility Template
  - Sanction Guidelines
• Date/Time/Location (or links)
• Consider multiple days for scheduling (depending on the case)
• Policy & Tool Reminders
  o Title IX Grievance Policy
  o Code of Conduct (if applicable)
  o Advisor Guide
  o Decorum Policy
  o Guide for Determining Relevance
  o Tech Guide (if applicable for how students and advisors can participate virtually)
• Order of the hearing
• Failure to appear clause
• New evidence and witness reminder
Model Hearing Script
Model Decorum Policy
Guide for Determining Relevance
I. Introduction:

Administrative Hearing Officer: We are officially on the record at [time] on Month, Day, Year for case number [number]. I would ask everyone to turn off cell phones for the duration of the hearing and please could you all present your phones to ensure this practice? Thank you. My name is [name], and I am serving as today’s hearing officer. Today’s hearing is being recorded, therefore please be reminded to speak clearly throughout the hearing. The recording of this hearing will be made to be used in any deliberations by the decision-maker(s) or appeal board, and may be accessed by the parties prior to any appeal. This recording represents the sole official verbatim record of today's Title IX Hearing and is the property of this institution.

Would each member of the hearing panel please introduce themselves? We will begin to my left. [introduction].

III. Privacy & Decorum Expectations

This is a closed hearing, and not open to the public. The individuals participating in this process can and should expect that the information discussed and the documents presented are to be kept to this hearing space in order to protect the privacy of all individuals involved. Providing materials to any other party not expressly participating in this process may be considered retaliatory and is not permitted.
Colleges and universities “are in a better position than the Department to craft rules of decorum best suited to their educational environment” and build a hearing process that will reassure the parties that the institution “is not throwing a party to the proverbial wolves.” See, 85 Fed. Reg. 30026, 30319.

Advisors who violate the rules of decorum may be removed
Rules to consider

• Questions in neutral tone
• No accusatory questions
• Require parties and advisors to refer to other persons by the name and gender pronoun used by that person
• No "duty of zealous advocacy" inferred or enforced, even for attorney-advisors
• No abusive behavior: yelling, screaming, badgering, leaning in, or approaching witnesses/parties without permission
• No use of profanity or personal attacks
• No use of repetitive questions
Questioning Process

• Decision-maker asks questions of the parties and witnesses
• Advisors ask “relevant” cross-examination questions
• Decision-maker decides if questions are relevant

Relevance Determination

• General rule: does the question make a fact at issue more or less likely to be true?
Specific exclusions governing Title IX hearings:

- “Rape Shield” (with two exceptions). 34 C.F.R. § 106.45(6)(i).
  - Offered to prove someone else committed alleged conduct
  - Offered to prove consent
- Privileged information. 34 C.F.R. § 106.45(1)(x).
- Undisclosed medical records. See, 85 Fed. Reg. 30026, 30294
**Student Conduct Institute**

**Guide for Determining Relevance**

*Question about Complainant’s Prior Sexual Behavior or Sexual Predisposition*

- The question is relevant because although it calls for prior sexual behavior information about the complainant, it meets *one of the two exceptions* to the rape shield protections defined in 34 C.F.R. § 106.45(b)(6)(i), and it tends to prove that a material fact at issue is more or less likely to be true. [denote which exception]
  - Exception one: The question is asked to prove that someone other than the respondent committed the conduct alleged by the complainant.
  - Exception two: The question concerns specific incidents of the complainant’s prior sexual behavior with respect to the respondent and is asked to prove consent.

- The question is relevant because it calls for prior sexual behavior information about the complainant without meeting one of the two exceptions to the rape shield protections defined in 34 C.F.R. § 106.45(b)(6)(i).

**Generally probative questions**

- The question is relevant because it asks whether a fact material to the allegations is more or less likely to be true.

- The question is irrelevant because it asks about a detail that does not touch on whether a material fact concerning the allegations is more or less likely to be true. See, 85 Fed. Reg. 30026, 30343 (May 19, 2020).

**Question regarding Privileged Information**

- The question is irrelevant because it calls for information shielded by a legally-recognized privilege [identify the privilege].

- The question is relevant because, although it calls for information shielded by a legally-recognized privilege [identify the privilege], that privilege has been waived in writing, and the question tends to prove that a material fact at issue is more or less likely to be true.
• Opportunity for advisor to cross-examine parties and witnesses is a Title IX mandate

• Title IX “Suppression Rule” has been VACATED
  • Victims Rights Law Center v. Cardona (D. Mass. 2021)
    • Check out SCItations Blog for more
  • OCR Letter, August 24, 2021
    • bit.ly/LetterVRLC

• Remember: “No Adverse Inference” Rule
  • No inference of responsibility from decision not to testify
• All parties, advisors, witnesses, and decision-makers may be physically present in same location, or

• They may participate remotely via secure technology, but

• Decision-makers must be able to see and hear parties and witnesses.
CASE PROCESS DECONSTRUCTED

4. HEARING

Key Players:
- Conduct Staff
- Registrar
- TIXC
- UPD
- Hall Staff
- Hearing Board
- Appeals Board
- Registrar

Introduction and Expectations

- Recording Made & Script
- Introduction
- Purpose of the Hearing
- Privacy and Decorum Expectations
- Due Process Rights Acknowledgement

Referral Information, Claims, Opening Statement

- Review of Referral information, submitted Evidence and Witnesses present
- Allegations and Claims
- Opening Statements

Hearing Board

- The Complainant
- The Respondent
- The Witness(es)
- Investigation, Expert, Character
- Board questions

Cross Examination & Board Questions

- Closing Statements
- Impact Statement Submission*
- Decision making process begins

Conclusion

*Submission

CODE WORD THREE: SOOKIE
QUESTIONS FROM DAY ONE

Hearing

Determination

Review, tools, and legal requirements.

*Determination letters.

Appeals

Decision

Implementation

Overview

Review and legal requirements.

Homework alert!
State Module Assignment
CASE PROCESS DECONSTRUCTED

1. Incident Reported
2. Student Conduct Process Initiated
3. Pre-Hearing Prep Investigation
4. Hearing
5. Appeal Process
6. Decision Implementation

CODE WORD THREE: SOOKIE