



Sexual Misconduct Hearing Administrator Training

Following System Procedure 1B.3.1

Equal Opportunity and Compliance

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Welcome

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Sexual Misconduct

- » Is a continuum of conduct that includes:
 - Sexual assault
 - Non-forcible sex acts
 - Dating, intimate partner, and relationship violence
 - Sexual exploitation
 - Stalking
 - Title IX sexual harassment
 - Aiding acts of sexual misconduct

Due Process Principles

- » The 2020 Title IX Regulations are rooted in the due process principles of:
 - notice,
 - a meaningful opportunity to be heard, and
 - the importance of an impartial process before unbiased officials.
- » The focus is to ensure sexual misconduct allegations are resolved:
 - Fairly and reliably,
 - Free from intentional or unintentional sex-based biases/stereotypes
 - Promote accurate, reliable outcomes, which effectuate the purpose of Title IX.

Resolution Process

- » The resolution process must include the following:
 - Ensure both parties are treated equitably;
 - Objectively evaluates all relevant information (both inculpatory and exculpatory);
 - Requires process participants to be free of conflicts of interest, bias, and be trained to serve impartially;
 - Presumes the non-responsibility of respondents until conclusion of the process;
 - Reasonably prompt timelines for resolution;
 - Informs all parties of critical information;
 - Protects any legally recognized privilege during a resolution process.

Formal Resolution Process

- » The formal resolution process requires:
 - **Written notice of the allegations** to both parties;
 - including the parties' right to select an advisor of their choosing.
 - An **investigation** of formal complaints that:
 - A **live hearing with cross-examination** conducted by the parties' advisors.
 - A decision-maker who is not the Title IX Coordinator or investigator.
 - The offering of appeals equally to both parties

Additional Process

- » The system procedure allows:
 - The offering and facilitation of informal resolution within certain parameters.
 - Participation must be voluntary with written consent from both parties
 - Participants may withdraw their consent at any point in the process
- » The system procedure requires:
 - Maintaining of records and documentation for all sexual misconduct reports, formal complaints, investigations, and formal hearings;
 - The publication of materials used to train Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators.

Hearing Administrators

- » Hearing Administrators have a critical role in supporting the due process and resolution requirements by:
 - Serving as the live hearing facilitator for allegations of sexual misconduct, and;
 - Making an impartial decision based on the facts of the case.
- » Hearing Administrators do not conduct their own investigation through the hearing process.
- » The Hearing Administrator's role is to review all the relevant and otherwise impermissible information to reach their decision.

Formal Hearing Preparation

- » Meet with the Title IX Coordinator, or designee
- » Hearing Outline
- » Advisor Guide

Formal Hearing Preparation, continued

- » Read through the investigation report and relevant information
 - The complaint,
 - The notice of investigation and allegations,
 - The applicable policies and procedures,
 - The relevant and not otherwise impermissible evidence, and
 - The investigation report.
- » Prepare **relevant questions** for parties and witnesses.

Question Development Tips

- » The objective is to review and evaluate the available information to reach a fair, reliable, and factual determination.
- » Your questions should be specific and designed to elicit information that is relevant to the specifics of the allegations.
- » Create your questions based on the available information and the information that may still be needed.

Question Development Tips, continued

- » Focus on areas of inconsistency, discrepancy, disputes, or gaps.
- » Create questions that:
 - Establish a sequence and narrative of events,
 - Clarify conflicting information, and
 - Assist you in understanding how all parties perceived events.
- » Word questions in a non-adversarial manner.
- » Phrase your questions as open-ended to elicit better information.

Formal Hearing

- » The Hearing Administrator ensures parties have the benefit of a consistent, fair, and transparent resolution process; regardless of their role.
- » Hearing Participants may include:
 - The complainant and their advisor
 - The respondent and their advisor
 - Title IX Coordinator or Designee
 - Investigator(s)
 - Witnesses (present only during their portion of testimony)

Formal Hearing: Decorum

- » Maintain a professional, neutral, and respectful demeanor.
 - Consider how to keep discussion professional, yet conversational.
 - Practice active and careful listening while remaining emotionally neutral
- » Avoid excessive note-taking when individuals are speaking.
 - The hearing will be recorded, and you will have access, if needed.
- » Any potential disruptive behavior(s) should be addressed and kept to a minimum.
- » Decorum extends to before and after the hearing.

Formal Hearing: Language

- » Be comfortable with the language and information being discussed
- » Participants may use non-technical or slang terms
- » Avoid bias in the language you use
- » Prepare yourself to hear difficult things and have your emotional boundaries tested.
- » Avoid using legalistic language

Decorum: Overseeing Advisors

- » The advisor role is limited to advising their advisee and asking questions of the other parties during cross-examination.
- » Oversee the questioning to ensure questions are appropriate and relevant.
 - If not, you must articulate the reason for restricting the question and direct person being cross-examined to disregard.
- » Be equitable in enforcement of advisor expectations.

Effective Hearing Tips

- » Clarify conflicting information before deliberation;
- » Carefully examine the time/date sequence;
- » Avoid jumping from one line of questioning to another;
- » Maintain concentration and attention;
- » The hearing is about the actions of the respondent;
 - Avoid irrelevant information about the actions of others unless it directly impacts whether the respondent violated policy.
- » Speak directly and plainly when addressing procedure or errors;
- » Mistakes happen. Correct it, apologize if needed, and move on.

Questioning Guidance

- » Open-ended questions
- » Informed interviewing
- » Be equitable in enforcement of advisor expectations.

Evaluating the Information

The Hearing Administrator is responsible for conducting an objective evaluation of all relevant information.

- » **Objective Evaluation:** evaluating all evidence and testimony without any preconceived notions.
- » **Relevant Evidence:** tends to prove or disprove any element of an offense, or any issue of materials used in resolving a complaint.
- » **Credibility:** a cumulative result of accuracy, consistency, corroboration, and reliability of information.

Standard of Proof

Preponderance of the Evidence

- » 50 percent + a feather
- » a real feather or a cinder block
- » a feather must be there or there is no policy violation

Policy Analysis

- » Force
- » Coercion
- » Incapacitation
- » Relationship status
- » Reasonable person standard

Determination of Responsibility

- » Other key factors
 - Sexual social norms
 - Bias and stereotypes
 - Jumping to conclusions
 - Reasonably should have known
- » Determining responsibility for sexual assault
- » Disciplinary Actions

Post Hearing

- » Confidentiality
- » Decision Letters
 - Required elements
 - Provided templates

Technology

- In-person considerations
- Virtual consideration

Thank you.



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