CASE PROCESS DECONSTRUCTED

1. Incident Reported
2. Student Conduct Process Initiated
3. Pre-Hearing Prep Investigation
4. Hearing Process
5. Appeal Process
6. Decision Implementation
3. PRE-HEARING PREP: INVESTIGATION MODEL

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

**Logistics** *(physical set up, zoom, teleconference, etc.)*

Meeting with both parties regarding hearing process *(as needed)*

Continue with Case Rationale Map

Technology (see Tech Guide)

Coordination of Schedules

Relationship with Investigator

INVESTIGATIONS & PRE-HEARING PREP:
RECAP OF LEGAL REQUIREMENTS
INVESTIGATIVE PROCESS

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

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

• Final Rules
  • Require publication of a time frame based on a specific number of days with room for “good cause” delay
  • Final Rules anticipate balance between prompt resolution and adequate time to prepare and respond to charges

• Case Law:
  • Standard is “reasonableness”
  • Cannot be “lengthy and unjustified,” or in breach of code

PROMPT INVESTIGATION
Final Rules:

- Reasonable search expected, but cases may be dismissed where “specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.” 34 C.F.R. 106.45 (3) (ii).

Courts:

- Concerns where investigators appear to be ignoring critical evidence or do not live up to their own representations or the guarantees within the code of conduct.

### IMPARTIAL INVESTIGATION

**BIAS AS DUE PROCESS VIOLATION**

- Courts assume investigators & decision-makers are honest "unless actual bias, such as personal animosity, illegal prejudice, or a personal or financial stake in the outcome can be proven." Doe v. Trustees of Boston College, 892 F.3d 67, 84 (1st Cir. 2018).

- Student would have to prove:
  1. Investigator/decision-maker was biased against them because of their gender identity, race, or status as a member of another protected class
  2. Investigator/decision-maker’s adverse actions “flowed” from that bias
**TITLE IX FINAL RULE**

**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

**HELPFUL RESOURCES**
- Case Rationale Map
- Investigative Report Template
- Confidentiality Agreement
- Conflict of Interest Chart
3. PRE-HEARING PREP INVESTIGATION MODEL

Continue with Case Rationale Map
Witness information
Compiling evidence
Evidence and witness lists shared (10 day clock)
Title IX Investigation & Investigative Report (10 day clock)
Pre-hearing review of case by hearing body

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