LIVE@ DISTANCE BASIC COMPLIANCE TRAINING, WEEK 6

CASE PROCESS DECONSTRUCTED

1. Incident Reported
2. Student Conduct Process Initiated
3. Pre-Hearing Prep Investigation
4. Hearing
5. Appeal Process
6. Decision Implementation
• All parties, advisors, witnesses, and decision-makers may be physically present in the same location, or

• They may participate remotely via secure technology, but

• All parties, advisors, witnesses, and decision-makers must be able to see and hear one another.

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**CASE PROCESS DECONSTRUCTED**

4. HEARING

Hearing begins
Both parties have same opportunities throughout the hearing
  • Opening and closing statements, to ask questions of one another, to bring witness, to question witnesses, to have an advisor, to submit evidence, to review submitted evidence

Recording made

Witnesses appear
Cross Examination
Evidence reviewed
Decision making process
Outcome determination begins to be formulated

Key Players:

- TIXC
- Conduct Staff
- UPD
- Hall Staff
- Hearing Board
- Appeals Board
- Registrar
• Model Hearing Script
• Model Decorum Policy
• Guide for Determining Relevance
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**
- "Incentivizes" parties to work with advisors who follow the rules
- "Incentivizes" colleges and universities to appoint advisors who follow the rules
- So that hearings are conducted with respect for all. Id., 30320.

YOU MAY NOT BE A POTTED PLANT

BUT YOU CANNOT BE A CACTUS
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

All parties & witnesses must “submit” to cross-examination for their statements to be considered
- Decisions can be made in the absence of a party or witnesses, but cannot be based on their out-of-hearing statements
- No inference of responsibility from decision not to testify

Applies in all Title IX cases, including those not necessarily resting on credibility

“Submit” means answering all questions posed
- Where party or witness does not answer a relevant question, none of their statements can be used in determination of responsibility
What are some words that come to mind when you think about trauma informed hearing?

CASE PROCESS DECONSTRUCTED

4. HEARING

Weighing Testimony & Evidence

Digital Age Discussion

Trauma Informed Hearing Process
- repeated disclosure
- language
- memory formation

Alcohol, Drugs, Intoxication and Incapacitation
- counterintuitive responses
- order of events
- no right or wrong way to respond

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