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
Evidence-Based Decision Making

- Must it be excluded?
- If no, is it relevant?
  - Plain and ordinary meaning. Does it tend to make a material fact more or less likely to be true?
- If yes, is it authentic?
- If yes, is it credible and reliable?
  - Why (or why not) is it worthy of belief?
- If yes, does the evidence have weight?
  - Consider: Specialized evidence types

Credibility Determinations: "Objective" evaluation

- Cannot be based on the party's status
- Cannot apply "predictive behaviors"
- But you may consider:
  - The potential conflict of interest where advisor is also witness. Id., 30299.
  - Possible motive to fabricate testimony
  - Possible coaching
Credibility Determinations: "Objective" evaluation

- Generally more objective
  - Consistency and specificity of testimony
  - Corroboration of testimony
  - Contradictory testimony or evidence by others
  - Especially for experts: character, background, experience, and training
- Caution: more subjective
  - Demeanor and body language (permissible under Title IX Final Rules @ p. 30321)
  - Inherent plausibility ("It just makes sense")
  - Evasiveness
  - Recall

Review
Sample Case
Determination Regarding Responsibility Letters
• Identify the allegations potentially constituting sexual harassment;
• Describe the procedural steps taken;
• Identify findings of fact supporting the determination;
• Identify which section of the Code of Conduct respondent has/has not violated.
• For each allegation, provide statement of and rationale for:
  • the result, including a determination regarding responsibility;
  • any disciplinary sanctions imposed on the respondent; and
  • whether remedies designed to restore or preserve equal access to recipient’s education program or activity will be provided to complainant; and
• Describe the recipient’s appeal procedures

Detail & Specificity
• Direct
  • Based on personal knowledge or observation
  • Proves a fact without inference or presumption
• Circumstantial
  • Evidence based on inference (not on personal knowledge or observation)
  • May or may not have equivalent weight to direct
• Corroborating
  • Evidence that differs from, but bolsters, what other evidence shows
• Boilerplate & Board content
• Simultaneous notification of the parties
• Supportive Measures remain in place through appeal
• Either party can appeal (same timeline)

DETERMINATION REGARDING RESPONSIBILITY

Title IX Final Rules mandate both parties have access to an appeal:
• For (1) dismissal of formal complaint and (2) determination regarding responsibility
• On three appeal grounds:
  • **Procedural irregularity** that affected the outcome of the matter (i.e. failure to follow institution’s own procedures);
  • **New evidence** that was not reasonably available at the time the determination or dismissal was made, that could affect the outcome of the matter;
  • TIX Coordinator, investigator, or decision-maker had a **conflict of interest or bias** for/against an individual party or complainants or respondents in general, that affected the outcome of the matter.

APPEAL
5. APPEAL PROCESS

Confirm criteria/grounds for appeal
Appeal from both/either
Both parties made aware of appeal
Logistics for appeal review (recording access, copies)
Hearing outcome reviewed
Appeal reviewed
Final decision-making process initiated *(NOT a re-hearing)*
Final outcome letter to all parties

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

6. DECISION IMPLEMENTATION

Outcome to all parties
- Notification to financial aid/VPSA/registrar/TIXC/ResLife/UPD
- Appropriate transcript notation if applicable (VA, NY)
- PNG if applicable
- Follow-up services for either party
- Any changes to supportive measures
- Notify TIX Coordinator of outcome for record-keeping

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