



TITLE IX FOR HEARING BOARD PANELISTS

DAY 1: Legal Overview & Hearing Walkthrough



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I N T R O S



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RESOURCES TO SUPPORT YOUR PROCESS





Model Policies
Draft Notices
Checklists
Scripts
& More



THE SCI TOOLKIT

AGENDA

- What is Title IX?
- Compliance essentials
- Legal foundations for hearings
- Ideal panelist characteristics
- Common participants
- Pre-hearing prep
- Hearing walkthrough
- Cultural awareness





OBJECTIVES

By the end of today's session, you will be able to ...

1. ascertain whether an allegation of sexual harassment falls under the scope of misconduct identified under Title IX.
2. recognize sexual harassment, including but not limited to, quid pro quo harassment, sexual assault, stalking, dating violence, and domestic violence; as defined in Title IX.
3. identify presence of possible conflicts of interest or bias for decision-makers in the Title IX grievance process.
4. explain the purpose and function of due process in the student conduct context.



DISCLAIMER

This presentation shall not constitute legal advice, nor create an attorney-client relationship. This presentation is for informational purposes only.

If you have any specific legal questions or require legal advice for specific situations, please contact or refer to your institutional, general, or outside counsel.



WHAT IS TITLE

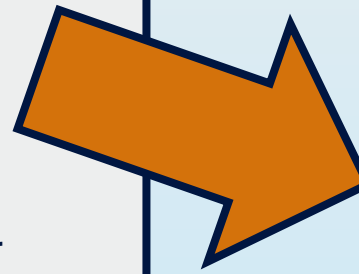
IX?



TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

NO PERSON IN THE
UNITED STATES SHALL ...

- On the basis of sex,
- Be excluded from participation in,
- Be denied the benefits of, or
- Be subjected to discrimination under
- Any educational program or activity
- Receiving federal financial assistance



- Denying admission in an educational program based on sex
- Disqualifying individuals from candidacy for opportunities on the basis of sex
- Providing unequal access to resources based on sex
- Engaging in gender-based or sexual harassment, such as unwelcome comments, advances, etc.

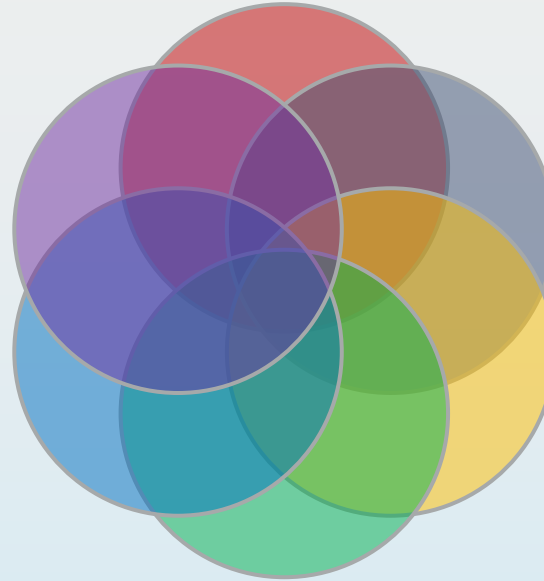
SEXUAL HARASSMENT = SEX
DISCRIMINATION IN EDUCATIONAL
PROGRAMS OR ACTIVITIES

EFFECTIVE IMPLEMENTATION
OF REMEDIES FOR VICTIMS

PROMPT & SUPPORTIVE
RESPONSES TO ALLEGED
VICTIMS

DUE PROCESS PROTECTIONS FOR
ALLEGED VICTIMS & ALLEGED
PERPETRATORS.

PROMPT RESOLUTIONS TO
ALLEGATIONS



PREDICTABLE & FAIR GRIEVANCE
PROCESSES

TITLE 34 OF THE CFR PART 106 SUBPART D

TITLE IX DISCRIMINATION PROHIBITION ON THE BASIS OF SEX IN EDUCATIONAL PROGRAMS/ACTIVITIES

SEXUAL HARASSMENT DEFINITIONS



QUID PRO QUO: A school employee conditioning educational benefits on participation in unwelcome sexual conduct; or

UNWELCOME CONDUCT that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity; or

SEXUAL ASSAULT (as defined in the Clery Act), or

DATING VIOLENCE, DOMESTIC VIOLENCE, OR STALKING (as defined in the Clery Act as amended by the Violence Against Women Act (VAWA))

SEXUAL HARASSMENT SCOPE

SEXUAL ASSAULT

DATING VIOLENCE

DOMESTIC VIOLENCE

STALKING

SEX OFFENSES - any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of giving consent:

RAPE - CRIMINAL SEXUAL CONTACT

INCEST - STATUTORY RAPE



SEXUAL HARASSMENT: KEY DEFINITIONS



“**SEXUAL ASSAULT**” - “forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.”
- 20 U.S.C. 1092(f)(6)(A)(v)

“**STALKING**” - “engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress.”
- 34 U.S.C. 12291(a)(30)

Consult with Institutional Counsel regarding application of the FBI Uniform Crime Reporting System definitions for Rape, Criminal Sexual Contact, Incest, and Statutory Rape

SEXUAL HARASSMENT: KEY DEFINITIONS, 2



“**DATING VIOLENCE**” – “violence committed by a person who is or have been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such relationship shall be determined by on consideration of the following factors: (i) the length of the relationship, (ii) the type of relationship, (iii) the frequency of interaction between the persons involved in the relationship.”

- 34 U.S.C. 12291(a)(11), see also 12291(a)(10)

SEXUAL HARASSMENT: KEY DEFINITIONS, 3



“DOMESTIC VIOLENCE” - “includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.”

- 34 U.S.C. 12291(a)(8)

COMPLIANCE ESSENTIALS



NEUTRALITY

Fairness, equity, & ethics are at the forefront of all policy and decision making.

COMPETENCE

Know your policies & codes, particularly when related to student rights

CONSISTENCY

Policies & codes are maintained & routinely updated across facilities, departments, & programs

ACCURACY

Media (incl. websites, social media, etc.) reflects current institutional policies, procedures, etc.

BALANCE

Student rights & responsibilities, employee rights & responsibilities, & administrative efficiency is balanced



LAYING THE LEGAL FOUNDATIONS FOR STUDENT CONDUCT HEARINGS



DUE PROCESS & COMPLIANCE

CONSISTENCY

CLARITY

COMMUNICATION

TRANSPARENCY

COMMUNITY

CONFIDENTIALITY &

PRIVACY

EQUITY

TIMELINESS



DUE PROCESS: A CONSTITUTIONAL STANDARD

No state shall “deprive any person of life, liberty, or property, without due process of law.”

*14th Amendment, Section 1,
U.S. Constitution*



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DUE PROCESS: WHEN & HOW MUCH?

LACK OF
ACADEMIC
PROGRESS
DISMISSAL (e.g.
ACADEMIC
PERFORMANCE)

ACADEMIC
DISCIPLINARY
CHARGE (e.g.
ACADEMIC
DISHONESTY)

GENERAL
CONDUCT
CHARGE



**LESS
PROCESS
OWED**

**GREATER
PROCESS
OWED**

**STUDENT'S INDIVIDUAL
RIGHTS**

**EFFICIENT ADMINISTRATION OF
COLLEGE'S PROGRAMS &
PROCESSES**



DUE PROCESS: A BALANCING ACT

FOUNDATIONAL DUE PROCESS: RIGHTS & PROTECTIONS

- Confidentiality & privacy (with caveats)
- Advisor (also with caveats)
- Access to disability accommodations
- Freedom to participate or abstain
- Equitable treatment for all parties
- Presumption of not responsibility
- Fair hearing process with opportunity to be heard
- Appeal (under specified circumstances)

AVOID

- Conflicts of interest & bias
- Retaliation



THE VIOLENCE AGAINST WOMEN ACT (VAWA), TITLE IX, & CLERY ACT

**STATE
LAW?**



TITLE IX

ADMISSIONS &
FINANCIAL AID
FACILITIES
ATHLETICS
UNEQUAL PAY

VAWA

CRIMES OF
SEXUAL
VIOLENCE

CLERY

PRIMARY CRIMES
MISSING PERSONS
DRUGS, ALCOHOL
& WEAPONS
EMERGENCY
NOTIFICATIONS
TIMELY WARNINGS
CRIME LOGS



FERPA & CONFIDENTIALITY



WHAT ARE “RECORDS?”

FERPA protects “education records” as

- directly related to a student, &
- maintained by an educational agency or institution or by a party acting for the agency or institution.

Student must be the focus of the record, not simply in the background or incidental to a report

Educational records include hearing transcripts, evidence submitted in the context of the case, any investigative report, etc.

There is an expectation that these records are kept as private as possible – disclosing information only as appropriate

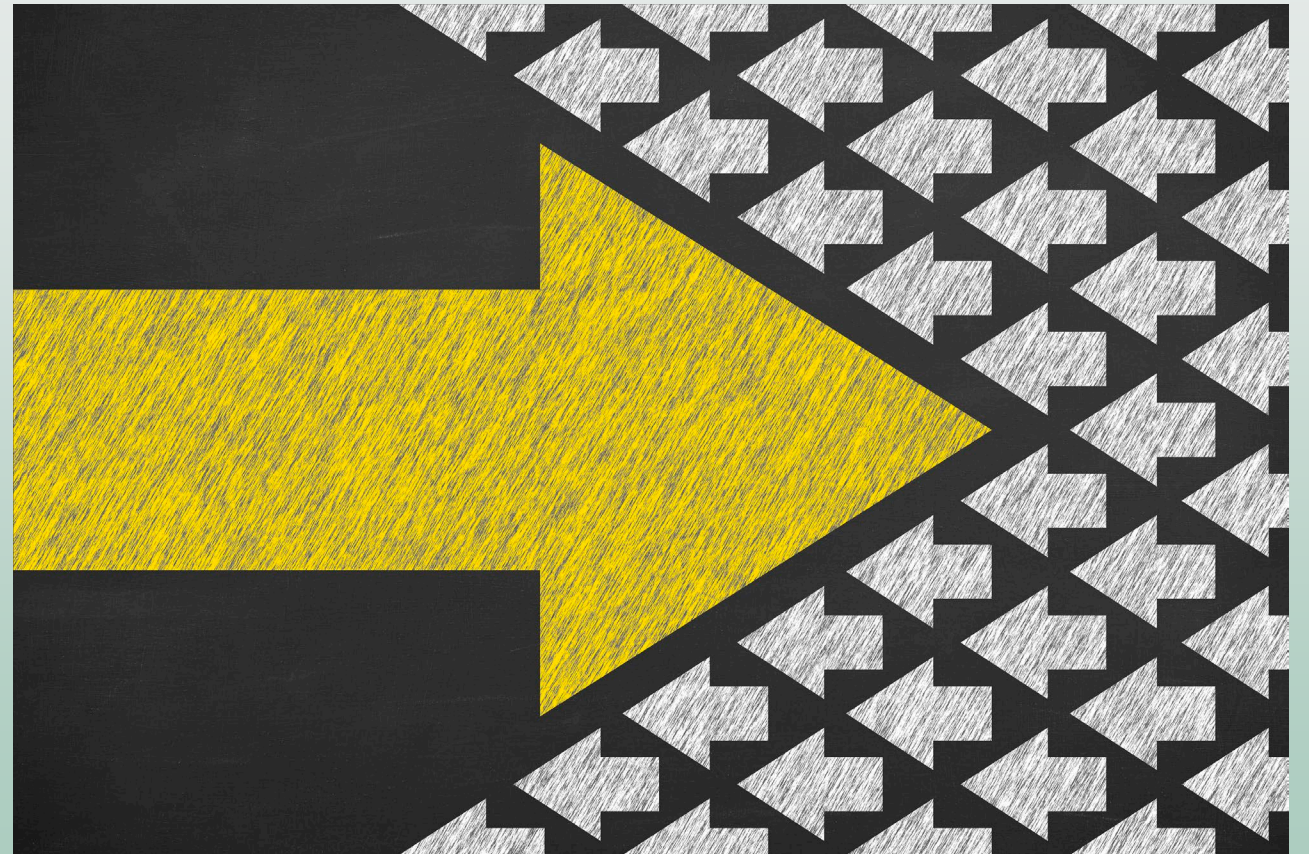
CONFLICTS & BIAS

For or against accusers & accused students generally

- “all accused are automatically responsible”
- “reporters/accusers are always credible and/or correct”

For or against the specific parties in the case

Overlapping investigator, decisionmaker, & appeals roles



“In the intimate setting of a college or university, prior contact between the participants is likely and does not per se indicate bias or partiality.”

Gorman v. Univ. of Rhode Island,
837 F.2d 7, 15 (1st Cir. 1988).

**NOT *NECESSARILY*
CONFLICT OR BIAS**

ACTUAL BIAS

ACTUAL BIAS IS A HIGH LEGAL STANDARD, BUT PERCEPTION OF BIAS IS IN THE EYES OF THE PARTIES TO THE PROCESS & SHOULD BE AVOIDED.

THINGS TO AVOID:

- Truly lop-sided investigations & adjudications, or
- Statements of investigator or panelist showing presumption of responsibility based on stereotypes, or
- Misapplying trauma-informed practice to explain away all inconsistencies in statements



WHAT IS RETALIATION?

- Intimidation,
- Threats,
- Coercion,
- Discrimination, and/or
- Charges for a code of conduct violation



WITH THE PURPOSE OF INTERFERING WITH ANY
RIGHT OR PRIVILEGE SECURED BY TITLE IX

ZERO TOLERANCE!



TITLE IX PROHIBITS RETALIATION AGAINST PEOPLE WHO SEEK TO ASSERT THEIR TITLE IX RIGHTS

For example:

- Where the individual has made a report or complaint
- Where the individual testified, assisted, or participated in the Title IX Grievance Process
- Where the individual refused to participate in any manner in the Title IX Grievance Process

DISABILITY RIGHTS CONSIDERATIONS



- **EQUITY vs. EQUALITY**
- Fundamental alteration of “programming” is not a required accommodation
- Disability cannot be the basis for discipline
- Disability does not excuse misconduct
- Individuals posing as a “direct threat” are not entitled to accommodation

Questions about what we've learned so far?

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system.suny.edu/sci/news

SYSTEM.SUNY.EDU/SCI/TIX2020

system.suny.edu/sci/titleix



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**ATTENDANCE QUIZ APPEARS DURING THE TRAINING BREAK *FOR A LIMITED TIME.*
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The documents included in the training materials for & referenced in this training are purely fictional.

The case is not based on any real case that the SCI staff is aware of. The characters named are fictional & are not intended to represent any real person.

The details of this case & these documents should not be used to make decisions in similar cases, nor should they be considered precedent or advice from SUNY or the Student Conduct Institute.

TRAINING MATERIALS





**WHO IS
HERE?**

WHEN INFORMAL RESOLUTIONS ARE ALLOWED UNDER THE FINAL RULE:

- After a formal complaint
- When all parties & TIXC Coordinator's consent
- Any party can withdraw at any time

NOT ALLOWED IN CASES INVOLVING EMPLOYEE RESPONDENTS

TIXC CAN RUN THE PROCESS, BUT IT IS NOT RECOMMENDED

EXAMPLES:

- Administrative resolution
- Restorative justice
- Mediation




INFORMAL RESOLUTIONS

WHO CAN SERVE ON HEARING BOARDS?

- Trained administrators or faculty
 - 2020 Title IX Final Rule (this training meets that qualification)
 - Employed by, or contracted on behalf of, a college or university
 - In good standing with the institution
 - Free from conflicts of interest or bias
 - Trained on how to serve impartially, issues of relevance, & technology used in hearing



VALUABLE CHARACTERISTICS OF A HEARING PANELIST

- 
- Critical **thinking** skills
 - Grasps **scope** of Title IX
 - Comfortable discussing **sensitive** or **upsetting** content & topics
 - **Unbiased**, free of conflicts of interest

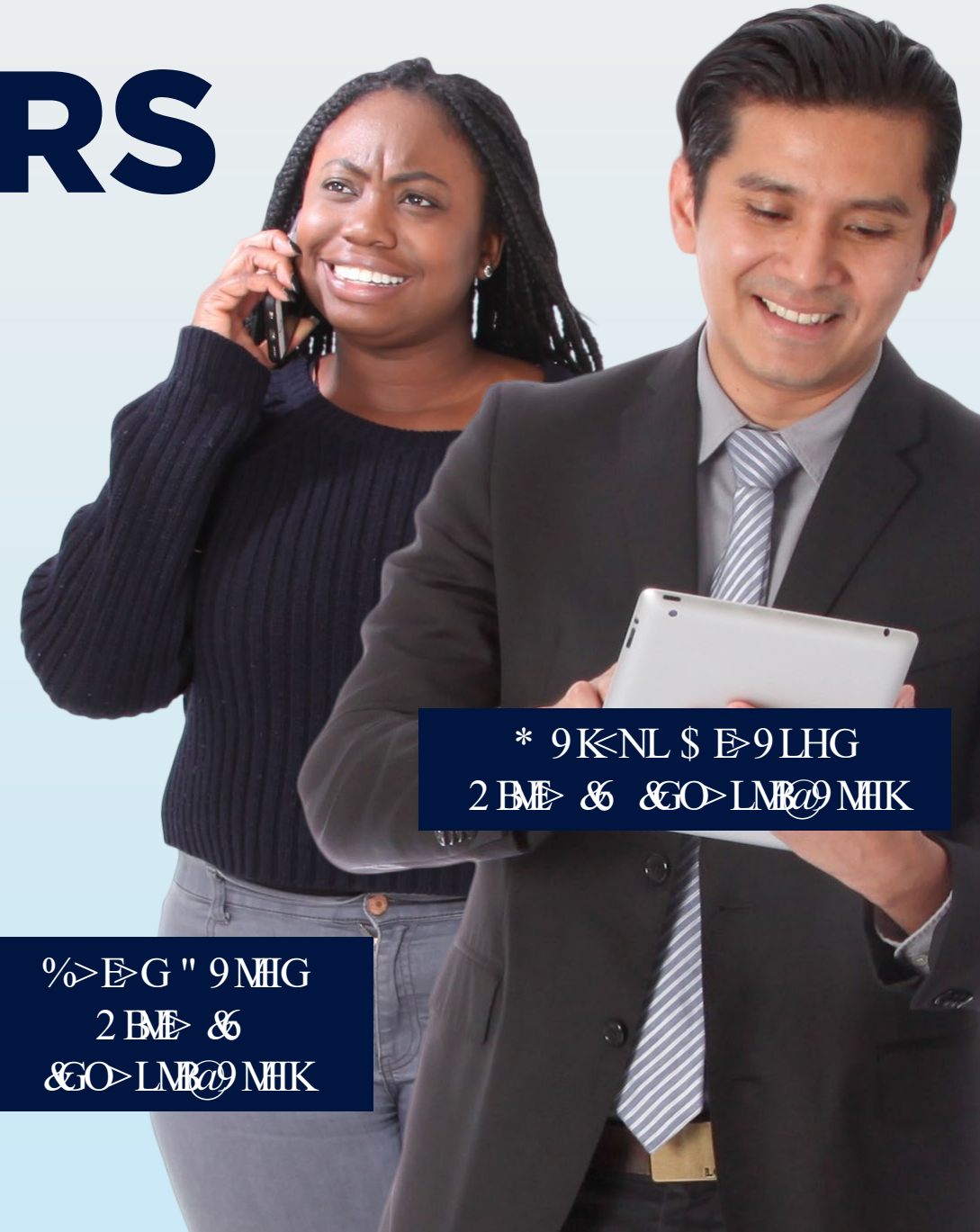


COMMON PARTICIPANTS

INVESTIGATORS

Investigators do just that: they investigate the allegations in the Formal Complaint and provide an investigative report for a hearing panel.

These individuals, like others involved in this process, must be free of conflicts of interest or bias.



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The Title IX Coordinator is responsible for everything from the administration of the grievance process, intake, and overall maintenance of the Title IX policy at an institution.

TITLE IX COORDINATOR



Advisors serve two essential functions in the Title IX grievance space:

1. Support their student through this process, and
2. Ask questions through cross-examination

ADVISORS

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These individuals ensures the hearing runs smoothly, and that all procedures and processes are being followed.

They are likely a case manager or another kind of student conduct officer at your institution.

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ADMINISTRATIVE HEARING OFFICER

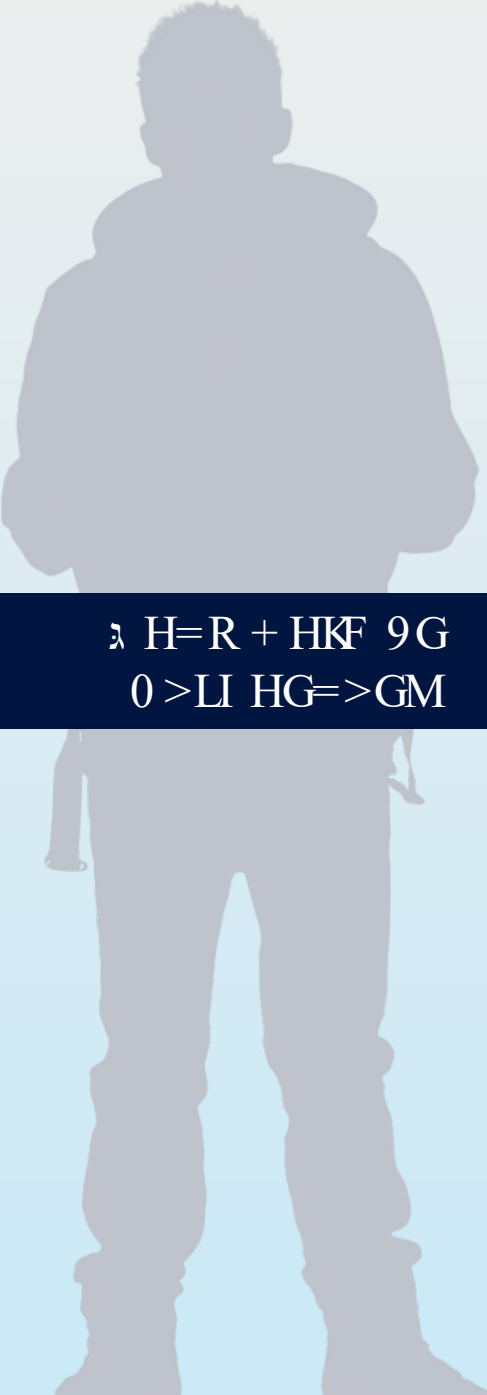
The Panel Chair serves as the head of the hearing panel for Title IX cases.

They also serve as the individual who makes relevancy determinations after each question asked by a party's advisor.

CHAIR



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Complainants are the individual(s)
allegedly harmed by the Title IX
violation

Respondents are the individual(s)
alleged to have committed the
Title IX violation

Both entitled to an appeal at the
conclusion of the hearing

COMPLAINANT & RESPONDENT



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KEY ROLES OF THE HEARING BOARD/PANEL

HEARING CHAIR

NOTE-TAKER

RATIONALE WRITER

ADMINISTRATIVE

SUPPORT STAFF

DECISION-MAKERS



HOW DO YOU PREP?



1. Read through & digest your hearing materials
 - Familiarize yourself w/ alleged violation(s)
 - Review *Investigative Report* & evidence, appendices
2. **Examine** the **unexamined**
 - Develop questions that probe these areas
 - Ensure questions are relevant
3. Check your materials & space
 - Tech, physical space, printed material, visual aids

HOW TO SERVE IMPARTIALLY

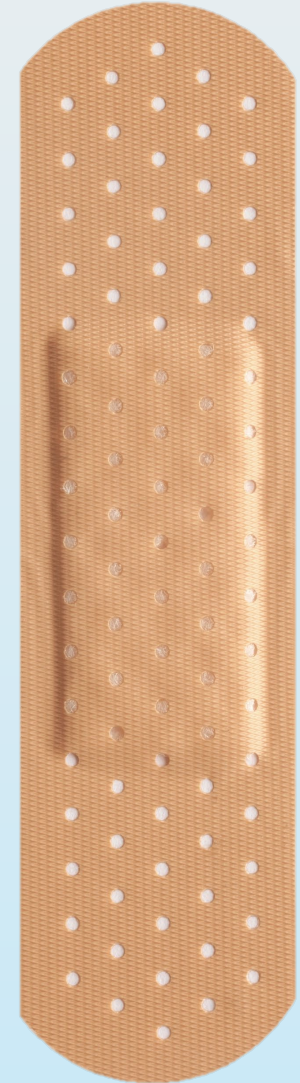
- If you may have a bias or a conflict, admit it straight away
- Remember you are hearing a case made up of individuals
- Challenge your own perceptions by examining evidence
- Be open & transparent, leave no stone unturned
- Ensure everyone has opportunity to be heard, take your time
- Base decisions on evidence, facts, & established criteria



TRAUMA-INFORMED PRACTICES

- Avoid repeated disclosures
- Consider impact of trauma:
 - Fragmented memory & non-linear order of events
 - Specific details about sensory events
- Approach doesn't substitute for missing info, justify not doing a full investigation, or cause a biased belief in party's accuracy
- No right nor wrong way to respond

- Training & procedure review
- Check body language & demeanor
- Questioning & word usage
 - “Help me understand” ...“and what are you able to tell me about what you experienced?”
 - Describing another individual's experience
 - Framing your questions, avoiding why questions





CULTURAL AWARENESS



STUDENT-CENTERED PROCESS

Individuals on hearing boards should be mindful that the participants may come from different backgrounds & cultures than their own

- Race
- Ethnicity
- Gender
- Religion
- Ability/disability
- Language (limited English proficiency)
- Immigration status
- Socioeconomic status
- Sexual orientation,
- Gender identity or expression
- Age



BIAS & KNOWLEDGE

- Enhance cultural competency
- Adapt to diverse communication styles
- Address cultural perceptions of authority
- Implement equitable practices
- Exercise cultural humility



HOW CULTURE CAN IMPACT STUDENT CONDUCT ADJUDICATION

**COMMUNICATION
STYLES &
APPREHENSION**

**OPEN
DISCUSSION AS
CULTURAL
TABOO**

**CULTURAL OR
COMMUNITY
NORMS**

**VARIED
PERSPECTIVES
ON AUTHORITY**



HOW PANELISTS CAN NAVIGATE THESE SPACES

**RECOGNIZE
CULTURAL
NORMS**

**ADJUST COMMS
STYLE**

**AVOID OVER-
INTERPRETING
BEHAVIOR**

**PROVIDE
CONTEXTUAL
SUPPORT**



REFLECTION

Some questions that you can use to guide your reflection:

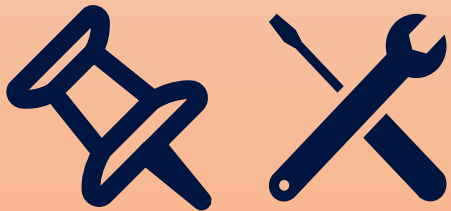
- What are my own areas of bias? (ex. Socioeconomic status, race, religion, etc.)
- What are some resources on or off campus that I could utilize to increase my cultural competencies?
- If I meet with someone from another culture who is involved in a Title IX process, what resources can I use to ensure a culturally inclusive experience?

PRE-HEARING CONSIDERATIONS: PHYSICAL SPACE & TECHNOLOGY

- Accessibility needs
- Reliable internet access
- Physical space for parties & advisors, hearing board members
- Access to appropriate equipment
- Technology settings
 - All parties must be able to see & hear each other (cameras must be on)
 - decisionmakers must be comfortable with any tech used*
- Are you recording?
- Double check provided links & access to documents
- Back up plan & back up tech person
- Witness invites
- All party & advisor confirmations
- Confidentiality & privacy of communications



- Gives best general overview of the incident
- Free of conflicts of interest or bias
- Investigators are identified with credentials & training
- Reviews prohibited conduct alleged, witnesses, overview of evidence
 - In-depth summaries of witness testimony
 - Evidence list, appendices
- Parties have been given at least 10 days to review and respond to this evidence earlier in the process
- You will heavily rely on this material
- Begin to think about what questions you may have



REVIEW INVESTIGATIVE REPORT

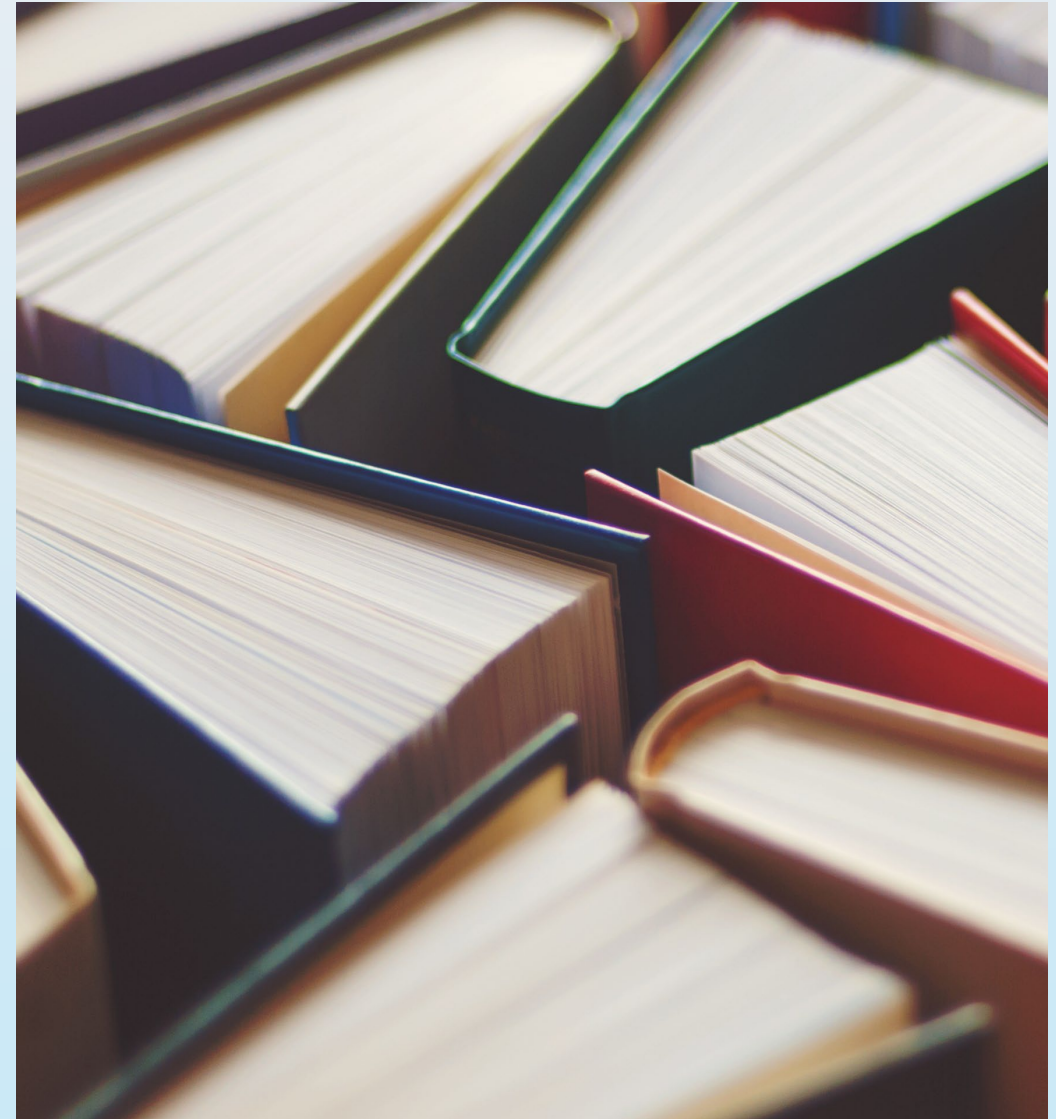


CONSENT



NYS DEFINITION

“Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity.”



NY-129 B REQUIREMENT



F.R.I.E.S.



 Planned Parenthood

FREELY GIVEN
REVERSIBLE
INFORMED
ENTHUSIASTIC
SPECIFIC

NYS SCHOOLS MUST REFLECT CERTAIN PRINCIPLES IN GUIDANCE:

- Consent to any act or prior act between any party does not imply or constitute consent to any other act
- Required regardless the person initiating is under the influence of drugs/alcohol
- Consent may be withdrawn as well as given
- Incapacitated individuals cannot give consent
- Consent cannot be coerced
- When consent is withdrawn or cannot be given, sexual activity must stop

COMMON QUESTIONS



- Does only verbal consent qualify as affirmative consent?
- Can you consent to sexual activity if you are under the influence of alcohol and/or drugs?
- How does the age of a party relate to the definition of affirmative consent?
- Are there limitations to what consent can cover?

KNOWLEDGE CHECK!



QUESTIONS?

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