



Association of
Title IX Administrators

Live Hearings for Higher Education

Training and Certification Course

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Strategic Risk
Management Solutions

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The content and discussion in this course will necessarily engage with sexual harassment, sex discrimination, violence, and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language. It is not used gratuitously, and no offense is intended.

Introduction



The primary focus of this course is to equip Title IX practitioners to prepare and run live hearings as required under Title IX Regulations.



Title IX Coordinators and Decision-makers must understand live hearing logistics, questioning best practices, relevance determinations, and due process protections.



Our goal is to help Title IX Coordinators and Decision-makers approach live hearings with confidence.

Decision-Making and the Title IX Grievance Process

Essential Compliance Elements

The requirements to **Stop, Prevent,** and **Remedy** guide institutions in their compliance work

1

STOP discriminatory conduct

2

PREVENT recurrence, on both individual and institutional levels

3

REMEDY the effects of discrimination for individuals, for the community, and on an institutional level

Title IX Grievance Process Overview

INCIDENT

- Formal Complaint/ Notice to TIXC

INITIAL ASSESSMENT

- Jurisdiction
- Dismissal
- Supportive Measures
- Emergency Removal
- Referral to Another Process
- Informal/ Formal Resolution

FORMAL INVESTIGATION

- Notice of Investigation and Allegations
- Interviews
- Evidence Collection
- Draft Report
- Party Review/ Comment
- Follow Up
- Final Report

HEARING

- Questioning
- Credibility Assessment
- Determination and Rationale
- Sanctions
- Remedies

APPEAL

- Appeal Grounds
- Determination and Rationale

Parties Rights

The Parties have the following rights during the Decision-making phase:

- Opportunity to propose relevant questions for other parties and witnesses
 - To Investigator(s) during the investigation
 - Through Advisor during a live hearing
- Reasonable expectation of privacy
- Respondent presumed not responsible until a determination is made
- Written outcome notification
- Opportunity to appeal the determination

Live Hearings

- Live hearings are required
- DM and Advisors can ask relevant questions of parties and witnesses
- DM makes relevance determinations
- DMs deliberate privately to reach a final determination
 - DMs may or may not be involved in determining sanctions and remedies
- Parties and witnesses may be in person or virtual



Title IX Regulatory Requirements for Decision-making

- Title IX Coordinator (TIXC) and/or Investigator may **not** serve as the Decision-maker (DM)
- DM must:
 - Operate without bias and/or conflicts of interest
 - Be trained on any hearing technology
- Hearings must be recorded
 - Parties must be permitted to have access to the recording or a transcript
- Rationale for all decisions/determinations prior to, during, or after a hearing
 - Relevance determinations, findings, final determinations, sanctions

Single Decision-Maker vs. Panel

Single Decision-Maker

- Simpler scheduling
- Easier to staff and train
- Streamlined deliberation
- Streamlined drafting process
- Only one perspective
- Bias concerns
- Can overtax a single person

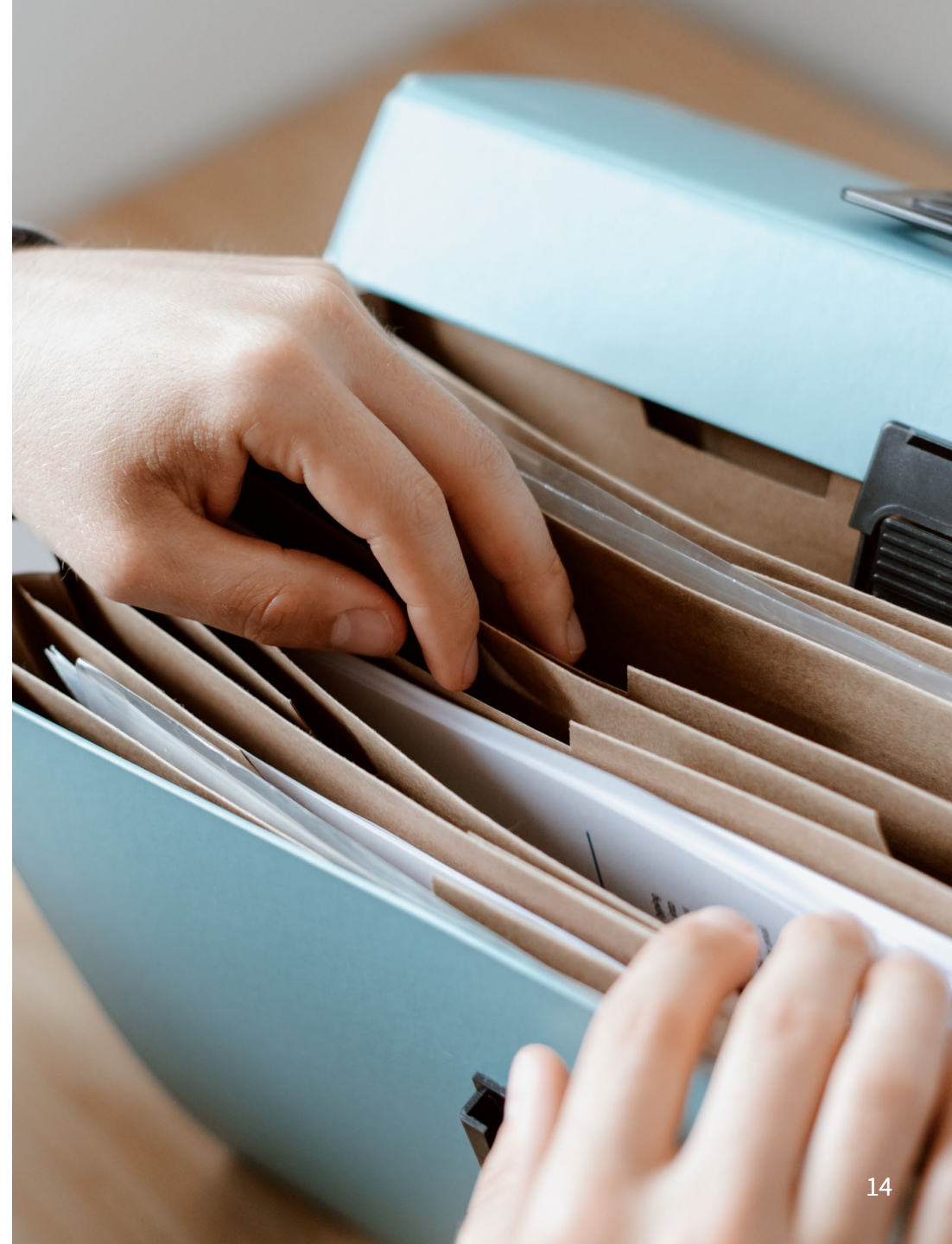
Panel

- Additional scheduling considerations
- Costs more to staff and train
- Deliberation and drafting may take longer
- Majority vote or consensus
- Diversity of perspective
- Reduce bias concerns

Hearing Participants

Who Will be Present at the Hearing?

- Parties
- Witnesses
- Advisors
- Investigator(s)
- DM(s)
- Hearing Facilitator



General Logistics

- Party and witness attendance
- Advisor attendance
- Location and physical space
 - Accessibility
 - Parking
 - Privacy
 - Restrooms
 - Waiting areas
 - Furniture



General Logistics, Cont.

- Recording
- Hearing technology
- Administrative, tech, or audiovisual support
- Evidence availability for parties, Advisors, and witnesses
- Breaks



Virtual Hearing Considerations

- Any party may request a virtual hearing
- Virtual hearings provide helpful flexibility
 - No travel required
 - No large physical space needed
- Choose software or platform to meet hearing needs
 - Zoom is a common option
 - Participants must be able to see and hear each other
- Prepare for Wi-Fi issues or other tech problems
- Individuals may need to participate virtually from campus
- Address any concerns related to privacy

Hearing Facilitator

- Not required by the Title IX Regulations, but a best practice
 - May be TIXC or a different person
- Responsibilities
 - Facilitate a smooth hearing and help problem-solve
 - Maintain hearing schedule and order of events
 - Communicate with parties, Advisors, and witnesses during the hearing
 - Manage in-person or virtual waiting rooms
 - Ensure recording; manage devices and files
 - Provide access to evidence during the hearing
 - Coordinate additional support (food, facilities, technology, materials)

Scheduling Considerations

- Agenda/schedule flexibility based on availability
- Availability of:
 - Parties, witnesses, and Advisors
 - DM(s)
 - Investigator(s)
 - Interpreter or other accommodations
 - Physical space
- Reasonable number of hours per day
- Multi-day hearings
- Breaks
- Finals/Graduation
- Employees on soon-to-be-expiring contracts

Hearing Preparation

Decision-Maker Review

Prior to the hearing, DMs must review:

- Notice of Investigation and Allegations (NOIA)
- Policies alleged to have been violated and their policy elements
- Applicable procedures
- Investigation report and evidence file
 - Review more than once, as needed
 - Identify facts in dispute and not in dispute
 - **Note:** DM annotations or notes may be subject to FERPA or discoverable
- If investigation insufficient, a DM may request it be reopened, with specific instructions

Question Preparation

- Prepare questions in advance of hearing
 - Helps DMs structure their questions in a logical, organized way
 - Ensures no significant disputed fact or inconsistency is missed
 - Helps DMs understand and analyze the evidence in the report
- Meet as a panel (if applicable)
 - Discuss investigation report and evidence file
 - Review questions for parties and witnesses
 - Determine questioning order

Hearing Script and Flow

Hearing Script and Flow Steps 1-4



TECHNOLOGY REVIEW

- Video requirement
- Party and Advisor communication



LOGISTICS

- Breakout/Waiting rooms
- Restrooms
- Breaks



INTRODUCTIONS

- Participant introductions
- Hearing purpose
- Rulings



RECORDING & CONFIDENTIALITY

- Confidentiality and privacy expectations
- Recording and post-hearing access

Hearing Script and Flow Steps 5-8



HEARING PROCEDURES

- Decorum expectations
- Roles
- Order of testimony



ALLEGATIONS

- Formal charges
- Confirmation of acceptance/non-acceptance of responsibility



INVESTIGATOR STATEMENT

- Complaint introduction
- Questions from DMs then Advisors



PARTY STATEMENTS

- Complainant then Respondent
- Statement then DM and Advisor Cross/Direct

Hearing Script and Flow Steps 9-12



WITNESS QUESTIONING

- Expectation of truthfulness/Honor Code
- Questions from DMs then Advisors



ADDITIONAL QUESTIONS

- DMs
- Advisors



CLOSING STATEMENTS

- Complainant then Respondent
- Hearing closure

Not
Recorded



DELIBERATION

- Deliberation guidelines and process
- Determine rationale and evidence relied upon

Recommended Best Practices

- Keep microphones muted when not speaking
- Use a different platform or breakouts for parties to actively communicate with Advisors
- Prevent distractions in video/audio backgrounds
- Facilitate DM, parties, Advisors, and other personnel introductions
- Establish confidentiality expectations
- Exclude impact/mitigation statements during hearing
 - Impact statements are considered after the responsibility determination

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Hearing Decorum

Setting the Tone

- The hearing is a significant event in the parties' lives at that time
- Formal, administrative process
- Decision-making is a neutral role
- Clear, direct communication
- Active listening
- De-escalate as needed
- Maintain control



Decorum Practices and Pitfalls

Practice

- Set a professional tone with your own behavior
- Maintain composure
- Evaluate the relevant evidence
- Minimize distractions

Avoid

- Escalate tensions or conflict
- Act like a judge
- Treat the hearing like a courtroom
- Use legal terms
- Interrogate parties or witnesses
- Make sarcastic comments or jokes
- Set out to prove or disprove allegations

Day of the Hearing

- Arrive early and prepared
 - Investigation report, evidence file, and preparation notes
 - Notetaking materials
 - Snacks and beverages
 - Comfort items
- Do not schedule anything else that day
- Turn off or silence technology



Decorum Rules

- Institutions may have reasonable decorum expectations
- Governs behavior for parties, witnesses, Advisors, and DMs
- Addresses disruptive, disrespectful, or other prohibited behaviors
- Promotes consistency across hearings



Party Expectations

- No party should address another party or witness directly
- During cross-examination, only a party's Advisor or the DM may speak to or address another party or witness
- No participants may interrupt the proceedings with applause, heckling, outbursts, or other disruptive behavior
- Any threat of violence will be addressed immediately
- No participants may act abusively or disrespectfully during the hearing

Advisor Expectations

An Advisor may not:

- Act abusively or disrespectfully during the hearing
- Yell, scream, badger, or physically invade the space of a party, witness, or DM
- Approach another party or a witness without obtaining permission from a DM
 - Should remain seated
- Make irrelevant personal attacks on a party or witness
- Ask repetitive questions or make accusations in their questions
- Intimidate a party, witness, or DM

Any relevant question that violates the decorum rules will be deemed not relevant, but may be rephrased

Warning and Removal

- DMs have sole discretion to determine if decorum expectations have been violated
- DMs should provide one warning prior to removal, unless decorum violation is egregious
- If an Advisor is removed, the party may select a different Advisor, or the institution will provide one
 - Reasonable delays may be appropriate to find a new Advisor
 - A party may not serve as their own Advisor
- Any removal will be documented

Chairperson/Single Decision-Maker Role and Responsibilities

Responsibilities in the Process

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	Pre-Hearing	Hearing	Deliberation
Panelists	<ul style="list-style-type: none"> Review investigation report and evidence file Ensure no conflict of interest Prepare questions 	<ul style="list-style-type: none"> Listen actively Ask/pose questions Assess credibility 	<ul style="list-style-type: none"> Analyze relevant evidence Balance credibility and reliability Determine outcome, sanctions, remedies
Chair/DM	<p>Panelists' tasks plus:</p> <ul style="list-style-type: none"> Pre-hearing meeting Technology training Witness list Evidence review and redaction (if applicable) 	<p>Panelists' tasks plus:</p> <ul style="list-style-type: none"> Follow procedures Manage questioning, including relevance determinations Consult with counsel/TIXC 	<p>Panelists' tasks plus:</p> <ul style="list-style-type: none"> Lead discussion Take notes Draft rationale/outcome letter

Chair/Single Decision-Maker Responsibilities

- Follow the hearing procedures
- Guide other DMs on procedures
 - Navigate issues that are not specified in policy
- Enforce decorum expectations
- Manage Advisors
- Make relevance determinations
 - Parties/witnesses pause before responding to a question
 - Chair makes relevance determination, states rationale

Chair/Single Decision-maker Responsibilities, Cont.

- Clarify with TIXC prior to hearing whether the Chair:
 - Determines relevance for questions from the DM panel and Advisors
 - Permits Advisors to “argue” whether a question should be deemed relevant or irrelevant
 - Asks questions of parties and witnesses before or after Advisor-led questioning
- Determine how to provide an opportunity for follow-up questions
- Facilitate the deliberation discussion
- Lead rationale writing/outcome letter process
- Address evidence that DMs should not rely upon

Pre-Hearing Meetings

Pre-Hearing Meetings: Purpose and Format

- ATIXA recommends **pre-hearing meetings**; not required by Title IX Regulations
 - Check whether institutional policy describes pre-hearing meetings
- Address questions, concerns, expectations prior to hearing
- May hold several separate meetings with each party and their Advisor
 - May hold combined meetings
 - Summarize decisions in a memo to the parties and Advisors, as needed
- May flow more efficiently if Advisors are able to speak freely with the Chair/DM
- May be virtual or in-person

Pre-Hearing Topics

- Address scheduling questions or concerns
- Answer questions about procedures, including cross-examination
- Discuss interpretation, translation, or accommodation needs
- Reinforce expectations and decorum rules
- Review:
 - Technology
 - Flow and logistics for before, during, and after the hearing



Pre-Hearing Meeting Discussions

Pre-hearing meetings can provide an opportunity to:

- Discern whether parties intend to ask questions of any or all witnesses, or whether a party intends not to testify at the hearing
- Invite parties to submit questions in advance, but this is not required
- Discern any conflicts of interest/vet recusal requests
- Consider any questions regarding relevance of evidence or proposed questions and may make pre-hearing rulings
- Whether to redact directly related or not relevant information
 - If redaction is necessary, may make a statement on the record that the DM(s) will not consider the evidence
- Address expectations or issues regarding new evidence consistent with institutional policy

Decision-Making Phase: Skills and Practical Application

Building Rapport

- Be hospitable, but small talk may come across as inappropriate
- Be clear about your role and transparent about the process
 - A hearing script may be helpful
- Maintain a calm demeanor
- Listen actively
- Monitor your body language
- Treat all participants with empathy and respect



Active Listening



PAY ATTENTION

- Focus on responses
- Avoid interrupting



SHOW YOU ARE LISTENING

- Communicate nonverbally
- Avoid distractions



PROVIDE FEEDBACK

- Speak with reflective tone
- Seek clarification

Skills: Working with Advisors

Party vs. Institution Appointed

- Title IX Regulations imagine two types of Advisors:

Party-Selected Advisor

- Title IX Regulations (and VAWA) specify that a party may select an “Advisor of choice”
- May accompany the party throughout grievance process
- May be present for every meeting, interview, and hearing
- Institution may not limit the choice

Institution-Appointed Advisor

- Required to appoint only for the hearing
- If appointed early enough, may accompany the party throughout grievance process and be present for every meeting, interview, and hearing
- Appointed if party has not chosen an Advisor by the hearing, if cross-examination to occur

Advisors Role

- Required under Title IX Regulations for purposes of cross-examination at a live hearing
- No training mandate
- Can be an attorney, but attorney not required
- May regulate Advisor participation, so long as applied equally to all parties



Advisor Engagement

The Advisor may support their advisee with:

- Understanding and navigating phases of the Title IX Grievance Process
- Strategic issues, such as whether to:
 - File a Formal Complaint
 - Participate in Informal Resolution (IR)
- Accessing supportive measures, community resources, and advocacy services
- Participating in the investigation, including review and comment on the investigation report
- Preparing for the hearing
- Conducting any questioning/cross-examination at the hearing (can only be done through Advisor)
- Appeal procedures and appeal support

Managing Advisors

- Advisors approach the role differently, depending on training and background
 - All Advisors need management, not just attorney Advisors
- Be firm, but flexible
- De-escalate conflicts
- Advisor may be removed if disruptive, after warning
- Decorum expectations
 - Generally, parties should speak for themselves
 - Hearings are not court processes

Skills: Handling New Evidence at the Hearing

New Witnesses or Information

- Parties should provide all evidence to the Investigator prior to the completion of the Final Investigation Report
- When new relevant evidence or witnesses are presented during the live hearing, they should only be admitted to the record, if:
 - All parties and DM assent to inclusion without remanding the Formal Complaint back to the Investigator;
 - Evidence is not duplicative of evidence already included; **and**
 - New evidence was either not reasonably available prior to the conclusion of the final investigation report; **or**
 - The failure to provide it in a timely manner was not the result of bad faith by the parties, witnesses, or others

New Witnesses or Information, Cont.

- If the criteria are not met, but the evidence is materially relevant, the DM has discretion to:
 - Delay the hearing
 - Remand the Formal Complaint back to the Investigator for further investigation or analysis
 - Allow the parties time to review and comment on the new evidence
- If the evidence is deemed not relevant, the DM may proceed with the hearing without allowing the new evidence

Skills: Questioning

Decision-maker Questioning

- May ask questions to ensure a **comprehensive** understanding of information and evidence gathered during the investigation:
 - Including asking additional questions about relevant evidence regarding what happened during the incident(s)
 - DM does not have to ask questions but must have the opportunity to do so
 - If necessary to assess credibility, DM should ask



Asking Questions

Appropriate Questions:

- Have clear intent
- Are relevant to the allegations or credibility
- Are thoughtfully phrased
- Are **not** multi-part or leading

Questioning Goals:

- Learn the facts
- Establish a timeline
- Understand each party and witness's perspective
- Eliminate vagueness and gaps

Questioning Strategies & Pitfalls

DO

- Ask short, precise questions
- Use open-ended questions
- Repeat and clarify the language the parties and witnesses use
- Prepare questions from policy definitions
- Listen carefully, ask related follow-ups
- Look for cued or rehearsed answers

DON'T

- Ask accusatory or argumentative questions
- Use a critical or sarcastic tone
- Develop compound or confusing questions
- Offer evaluative responses
- Sanitize participants' language
- Rely solely on closed-ended questions
- Chase “gotcha” moments

Questioning Tips

- Outline questions in advance, but remain flexible
 - Allows for comprehensive and thorough approach
 - If working with other DMs, consult on questions to reduce potential bias
- Prior to asking a question, consider:
 - Is the answer already available in the investigation report?
 - What are the relevant issues?
 - What do I need to know?
 - Why do I need to know it?
 - What is the best way to ask this question?

Asking Difficult Questions

- DMs will need to ask difficult questions about sensitive topics
- Acknowledge if a topic may be hard to discuss
 - DO NOT avoid asking questions because the topic is difficult to discuss
- Provide opportunities to take breaks
- DMs can show empathy **without** sacrificing their impartiality
 - Offer an empathetic response equitably to all parties and witnesses during the hearing, so that there is no appearance of favoritism

Trauma-Informed Questioning

ATIXA Position Statement: Application of trauma-informed practices in our field has gotten ahead of the actual science

- **ATIXA Recommends** incorporating trauma-informed **questioning** practices without allowing trauma to influence the evaluation of credible, relevant evidence
 - DM must only assess the available relevant evidence
 - DM must avoid substituting trauma indicators for evidence
 - Trauma is neutral; it neither enhances nor detracts from proof
- Assume that any party or witness could have trauma; therefore, treat everyone with sensitivity

Credibility in the Hearing

- A key purpose of a hearing is to afford an opportunity to assess credibility
- DMs and/or Advisors can explore credibility through questioning, to the extent credibility is in dispute and relevant to evaluating one or more allegations
- Fundamental to due process
- Distinguish performance or presentation skills from believability



Activity: Question Asking

- Using the **Sample NOIA** and **Sample Investigation Report** in the course lobby:
 - Work independently or in small groups
 - Review the relevant materials
 - Draft five questions a DM should ask the Complainant
 - Provide a rationale for asking each question
- This activity illustrates the process of developing questions prior to the hearing based on an independent review of the report

Spend no more than **half the allotted time** reading the activity materials – then move on to writing questions and their supporting rationales

Skills: Managing Questioning

Managing Questioning

- Advisors may ask relevant questions of parties and witnesses
 - **Direct questioning**
 - E.g., Respondent’s Advisor questioning Respondent
 - Valuable way to elicit important information
 - Check institutional policy to determine whether direct questioning permitted
 - **Cross-examination**
 - E.g., Respondent’s Advisor questioning Complainant
- All questions must elicit relevant information
- DMs and Advisors should ask all questions they have, even if a party/witness refuses to answer

Cross-Examination

- Parties may opt for their Advisor not to ask any questions
- Advisors may not refuse to ask relevant questions their advisee wishes for them to ask
 - Otherwise, the institution must appoint an Advisor who will ask those questions

Regulations Imagine:

Advisors will not do more than repeat or rephrase questions framed by the party

In Reality:

Advisors are much more active and engaged

Cross-Examination Challenges

- A party or witness may not attend the live hearing, despite participating in the investigation
- A party or witness may choose to not answer one or more questions
- DM(s) may not draw an inference regarding responsibility based **solely** on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions
 - Possible missed opportunity for corroborative or consistent testimony
 - Refusal to answer questions may impact credibility or reliability, but a DM may draw no inferences solely from non-participation

Cross-Examination Mechanics

- Advisor asks question; party/witness pauses before answering
- DM determines relevance, then party/witness answers
 - Permit relevant questions and follow-ups, including those challenging credibility
 - Disallow questions that are not relevant and state your rationale
- Unduly repetitive questions are not relevant
 - Reject questions already answered in the hearing unless expected to lead to additional relevant evidence
 - Advisors should not repeat questions already asked by DM
 - May ask questions answered in investigation report

Relevance Refresher

- Evidence is generally considered **relevant** when it helps determine:
 - Whether the Respondent violated policy, and/or
 - The credibility of any evidence, including a party or witness statement
- The Investigator initially evaluates relevance, but the DM ultimately decides
- All relevant evidence must be objectively evaluated and considered
 - **Inculpatory:** tending to suggest a finding of responsible
 - **Exculpatory:** tending to suggest a finding of not responsible
- In the decision-making phase, parties may dispute the Investigator's initial relevance determinations

Activity:

Relevance Determinations Part I

- Using the **Questions for Respondent** document in the lobby and following the directions in the document:
 - Work independently or in small groups
 - Review the **Sample NOIA Excerpts** or **Sample Investigation Report Excerpts** as needed
 - Make relevance determinations for each question in the **Questions for Respondent** document and explain your rationale

Activity:

Relevance Determinations Part II

- Course faculty will act as **Respondent's Advisor** posing questions to the **Complainant** aloud
 - Taking turns, participants will act as Chair and make relevance determinations aloud and explain rationale behind the decision
- This activity demonstrates the cross-examination mechanics

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Deliberation

What is Deliberation?

- Post-hearing discussion of relevant evidence
 - Analyze relevant evidence
 - Determine credibility
 - Assign evidentiary weight
 - Evaluate reliable, relevant evidence considering standard of evidence
- If using a panel, check policy to see if consensus or majority is required
- Assign sanctions, as appropriate

Finding

Whether the conduct occurred as alleged, by the standard of evidence

Final Determination

Whether the conduct that is proven to have occurred violates policy

Panel Considerations

- Develop deliberation guidelines
- Provide an opportunity for each DM to independently assess the evidence and share their viewpoint
 - Be aware of power dynamics within the panel
 - Avoid any outside influence or commentary
 - Select one DM to take notes
- Choose one DM, generally the Chair, to compose initial drafts
 - All DMs should approve of final draft
 - May seek limited input/feedback from TIXC or legal counsel
- May consult TIXC on process-related questions

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Communicating Outcomes

Communicating a Decision

- DMs communicate their decision to the TIXC in writing
- TIXC will then:
 - Deliver decision to sanctioning body, if process is bifurcated, or arrange for DM to meet with those who have sanctioning authority
 - Deliver decision to parties simultaneously in writing
 - Sharing the decision does not violate FERPA or employment record privacy
 - Inform relevant stakeholders, as appropriate
 - Residence Life
 - Campus Security/Police
 - Legal Counsel
 - Employee’s supervisor

Recordkeeping and Documentation

Recordkeeping

DM may need to compile all decision-making and hearing-related documentation to provide to the TIXC after the hearing

- **Timeline** of decision-making process
- **Interactions** and pre-hearing meetings with parties, other DMs, TIXC, etc.
- **Determination** with any associated sanctions
- **Rationales** for all determinations
- **All work product** from the DM and hearing process
- **Recording/transcription**



Decision-Maker Notes and Drafts

- A hearing creates opportunities to generate paperwork and paper trails
- Be judicious with notetaking, annotating, draft writing, and communication
- Anticipate that the parties (or others) could see your work product
 - Student FERPA rights
 - Employee personnel record rights
 - Litigation or agency investigations
- TIXC should provide guidance and clear expectations about saving work product, including personal notes



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Questions?

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