



TITLE IX VOLUNTEER TRAINING:

Preparing VSU faculty to carry out equitable and unbiased adjudication of Title IX cases.

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Content Advisory

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

SCOTIX staff 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.



The Office of Student Conduct & Title IX



Educate

Inform students on their rights and responsibilities as outlined in university policies.



Empower

Ensure those affected by the misconduct of others are aware of their options and are connected to resources.



Ensure Accountability

Individuals who violate the Student Code of Conduct and other university policies must be made aware of the consequences and must follow through on completing sanctions assigned accordingly.

SCOTIX Explained:

Two components to the Office of Student Conduct and Title IX

Student Conduct

- Addresses alleged violation(s) of the Student Code of Conduct.
 - Academic Integrity
 - Cheating, Plagiarism
 - Non-Academic
 - Alcohol/Drugs
 - Disorderly Conduct
 - Residence Halls Policies
 - Violation of outside law, etc.

Title IX

- Addresses alleged violation(s) of the Sexual Misconduct Policy.
 - Sexual harassment
 - Sexual assault
 - Sexual misconduct
 - Retaliation
 - Accommodations for Pregnancy and Related Conditions



Title IX

"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."

20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)



Key Categories of Prohibited Conduct

Dating Violence

Domestic Violence

Nonconsensual Sexual Contact

Nonconsensual Sexual Penetration

Sexual Exploitation

Sexual Harassment

Stalking

*See the handout:
TERMS DEFINED



Jurisdiction

Title IX requires Valdosta State University(VSU) to address all sex-based discrimination occurring under its education program or activity in the United States. Conduct that occurs under Valdosta State University's education program or activity includes, but is not limited to:

- Conduct that occurs in any building owned by or controlled by the institution and/or student organization and
- Conduct that is subject to VSU's disciplinary authority



Image of Hopper Residence Hall



Image of Georgia Residence Hall



Image of Odum Library

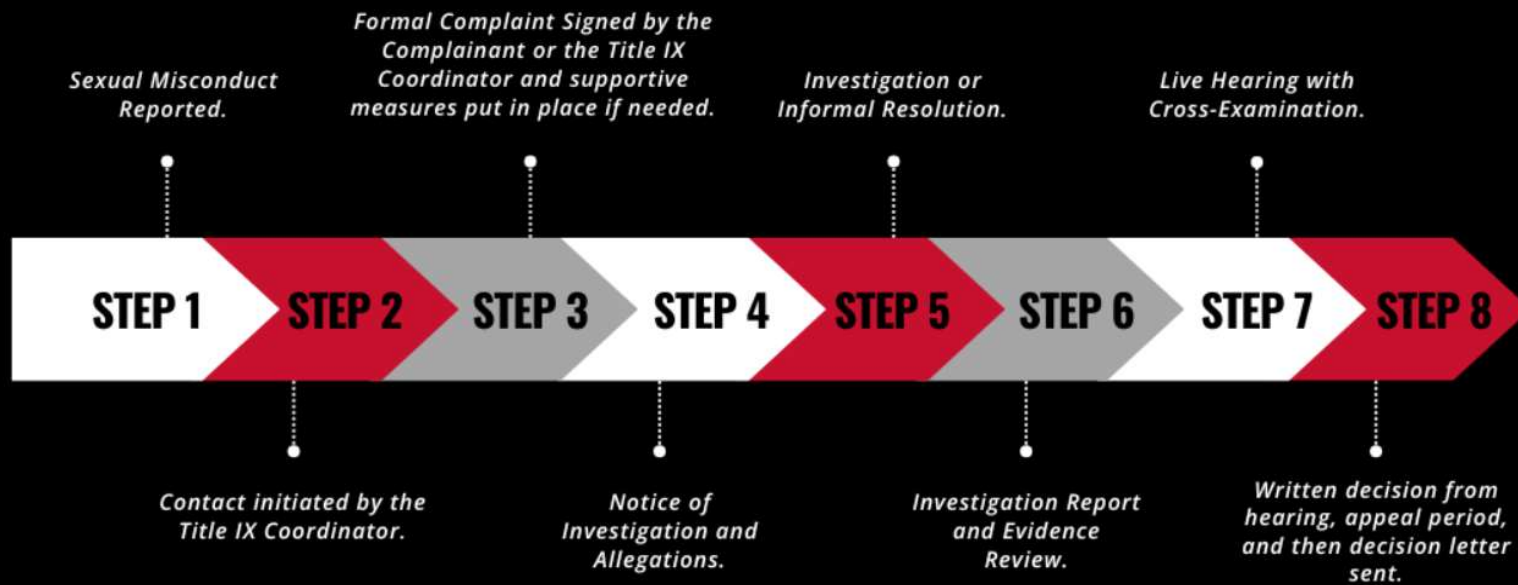
Team Players in the Title IX Process

- Reporter
- Title IX Coordinator
- Deputy Coordinators
- Complainant
- Respondent
- Witnesses
- Title IX Investigator
- Title IX Volunteers/Decision Makers (*advisors, hearing officer, hearing panelists, and volunteer investigators*)
- Appellate Officer



Title IX Process

TITLE IX GRIEVANCE PROCESS



Standards for Volunteer Participation

- Complete the Annual Volunteer Training
- Attend the Pre-Hearing Meeting
- Follow the Rules of Decorum for the Hearing
- Make a determination regarding the violation(s) and sanction(s)



Decide the Outcome

Hearing Decorum

- Before vs During Hearing

Roles of Hearing Participants

- Hearing Chair vs Hearing Panelists vs Advisors

Order of Hearing

- Opening | Questioning | Closing

Deliberation & Decision Making

Sanctions



Hearing Decorum

Before the Hearing

- Review the Investigation Report and evidence
- Review questions submitted by the parties
- Draft questions for all parties

During the Hearing

- Ask only relevant questions pertinent to the case, if unsure solicit guidance from the TIXC or Hearing Chair
- Listen and take notes
- Don't draw conclusions until all evidence and testimony are presented

Rules of Decorum Handout

RULES OF DECORUM FOR INTERVIEWS & HEARINGS

Title IX processes in the higher education setting are not civil or criminal proceedings. Institutions may provide reasonable rules of order and decorum to facilitate these processes, and such rules may be enforced through the removal of Advisors who refuse to comply with the rules, by postponements, and by the accountability of parties and witnesses to applicable codes of conduct. These rules and standards apply equally to all parties, their Advisors, and witnesses.

Decorum Expectations for Participants for In-Person Hearings

- To avoid disruption to the hearing, participants should not leave the room or the online meeting during hearing proceedings except during breaks. Breaks will be reasonably granted when requested.
- To alleviate security concerns, no party may bring purses, backpacks, briefcases, or other large bags to the hearing space unless advance permission is granted. An inspection may be required.
- Cell phones should be turned to the “OFF” setting during proceedings unless the Hearing Panel or Decision Maker grants permission for the use of a phone.
- Valdosta State University will record proceedings and make available hearing recordings or transcripts.



Rules of Decorum Handout

Decorum Expectations for the Parties During the Hearing

- No party will address the other for any reason unless given express permission by the Hearing Panelists.
- During cross-examination, only a party's Advisor or hearing official may speak to or address the other party or witnesses.
- No party or witness will interrupt the proceedings with applause, heckling, outbursts, or other disruptive behavior.
- Any threat of violence expressly made by any party will be immediately reported by the Hearing Officer to the appropriate office for review and/or to law enforcement.
- A party may be held accountable under the code of conduct for condoning, facilitating, and/or tacitly permitting misconduct by their Advisor, any witness, or other party.
- No participant may act abusively or disrespectfully during the hearing toward any other party, to witnesses, Advisors, the TIX Investigator, Hearing panelists, or the Hearing Officer.



Rules of Decorum Handout

Decorum Expectations for Advisors During the Hearing

- No Advisor may act abusively or disrespectfully during the hearing toward any other party or to witnesses, Advisors, or the TIX Investigator, Hearing panelists, or the Hearing Officer.
 - The Advisor may not yell, scream, badger, or physically invade a party, witness, or the TIX Investigator, Hearing panelists, or the Hearing Officer's personal space.
- Advisors may not approach the other party or witnesses without obtaining permission from the Hearing Officer and should remain seated.
- The Advisor may not use profanity or make irrelevant ad hominem attacks upon a party or witness.
 - Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
- The Advisor may not ask repetitive questions or questions that will elicit an answer that is repetitive. This includes questions that have already been asked by the panelists, hearing officer, or an Advisor during cross-examination.
 - When the Hearing Officer determines that a question is duplicative or is otherwise not relevant, the Advisor must move on to another question.
- Advisors may take no action during the hearing that a reasonable person would view as intended to intimidate a party, witness, or University official into not participating in the process or meaningfully modifying their participation in the process. This behavior may also be a form of retaliation.

Rules of Decorum Handout

Warning and Removal Process During the Hearing

- The Hearing Officer has the sole discretion to determine if the Rules of Decorum have been violated.
- The Hearing Officer will notify the offending person of any violation and has the discretion to remove the offending person or may allow them to continue participating in the hearing or another part of the process after a warning.
- When the Hearing Officer removes a party's Advisor, the party may select a different Advisor of their choice, or accept an Advisor provided by the University.
- Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an Advisor be removed.
- A party cannot serve as their own Advisor in this circumstance.
- The Hearing Officer shall document any decision to remove an Advisor in the written determination regarding responsibility.



Rules of Decorum Handout

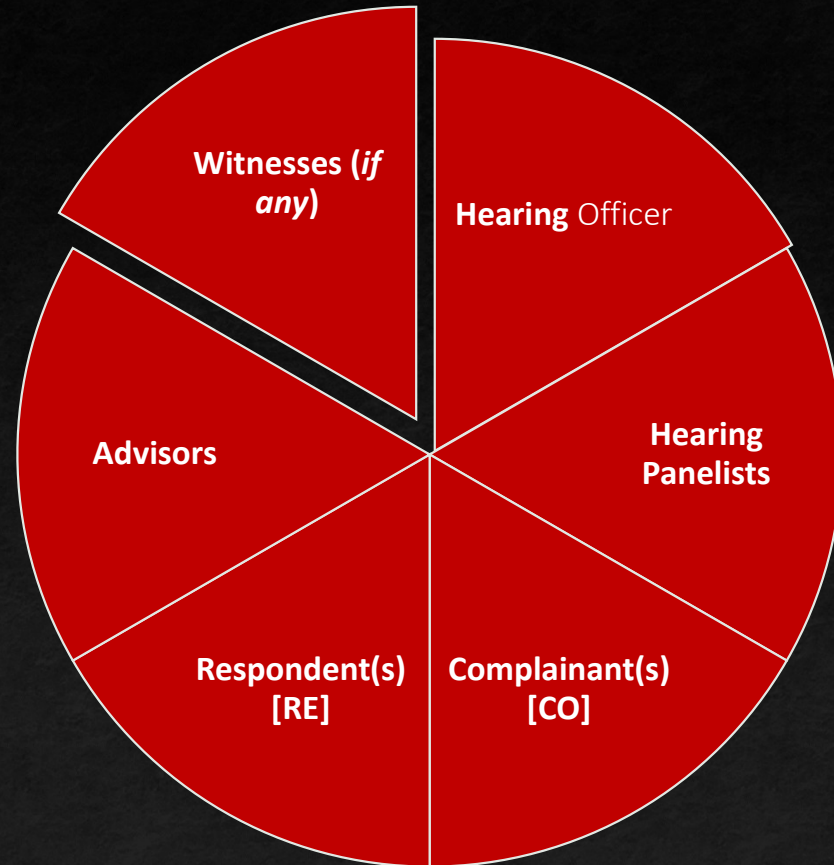
Relevant Questions Asked in Violation of the Rules of Decorum

- When an Advisor asks a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or invading the witness' or party's personal space, the question will be deemed not relevant by the hearing chair because it is abusive.
- Under that circumstance, the Hearing Officer will notify the Advisor of the violation of the Rules, and, if the question is relevant, will allow the Advisor (or by a replacement Advisor, should the Advisor be removed for violation of the Rules) to re-ask the question in a respectful, non-abusive manner.

Typical Order of Hearing

- Opening by Decision Maker
- Opening statements by both parties
- Questioning of the Complainant
 - By the hearing panel & hearing ofc.
 - By other party (through their advisor or hearing panel/chair)
- Questioning of the Respondent
 - By the hearing panel & hearing ofc.
 - By other party (through their advisor or hearing panel/chair)
- Questioning of any Witnesses
 - By the hearing panel or chair
 - By other party (through their advisor or hearing panel/chair)
- Closing statements by both parties
- Closing by Decision Maker

Hearing Participants & Their Roles



See the handouts:
Role of Conduct Hearing Participants

Understanding YOUR Role in the Title IX Hearing

- Advisor –
 - Responsible for assisting party (Complainant or Respondent) with preparation for the hearing;
 - Must be available to meet with the assigned party to prepare for the hearing;
 - Responsible for asking questions during the cross-examination portion of the live hearing on behalf of their assigned party;
 - Usually requires a 2–3-week time commitment per assigned case

- Hearing Officer –
 - Responsible for establishing breakout rooms needed for any virtual attendees.
 - Responsible for starting the recording of the hearing
 - Responsible for reading the Sexual Misconduct/Title IX Hearing Script
 - Responsible for reading each charge to Respondent and asking the Respondent if they accept responsibility for violating the Policy associated with each charge.
 - Responsible for ensuring both parties have the opportunity to make/read their opening and closing statement.
 - Review each written question asked by the Complainant and Respondent to determine relevancy.
 - Concludes the hearing and dismisses all parties in attendance.
 - Announces deliberation time for the panelists.
 - Completes the Statement of Finding, Final Determination, and Rationale Form.
 - Submits this form to the Title IX Coordinator.



Hearing Officer (only)

Valdosta State University Sexual Misconduct/Title IX Hearing Script

INTRO TO HEARING:

Hello all. Please note that recording has started.

This is the time set for the hearing of: _____

The date and time of the hearing is: _____

My name is _____, and I have been appointed as Hearing Officer for this Hearing. As mentioned, the proceedings are being recorded, and the recording will be made available upon request for appeal purposes. In addition, all documentation, materials, and notes provided by the Office of Student Conduct and Title IX, as well as any materials that you did not bring with you, must be left behind. Due to the possibility of an appeal, this includes all notes made during the hearing by panel members.

During this time, to protect the privacy of the Complainant and the Respondent, we will allow no cell phones, Air Pods, earphones, smart watches or any other electronics or personal recording devices. If any are currently in the room, please make sure they are turned off now.

In non-Title IX sexual misconduct hearings, we may hear from several people with different roles, including any witnesses named. If witnesses are called, they will introduce themselves and provide a brief statement of how they came to be associated with this incident.



Hearing Officer (only)

To the Respondent:

- Have the hearing procedures been explained to you?
- Do you understand the procedures? Before we begin the hearing, do you have any questions about the procedures?
- If we are to reach a fair decision, you must be truthful to all statements made at this hearing. Do you agree to be truthful?
- You are being charged with the following violation of the Valdosta State University Sexual Misconduct Policy. After each charge is read, please respond with a "YES" or "No" if you accept responsibility for violating the Policy

To the Complainant:

- Have the hearing procedures been explained to you?
- Do you understand the procedures? Before we begin the hearing, do you have any questions about the procedures?
- If we are to reach a fair decision, you must be truthful to all statements made at this hearing. Do you agree to be truthful?



Hearing Officer (only)

We will now proceed.

Would the Complainant like to make/read an opening statement?

Would the Respondent like to make/read an opening statement?

We will continue with questions, first of the Complainant.

- Panel Members, what questions do you have?
- To the Respondent's Advisor - have you all composed any questions for the Complainant?

Now of the Respondent:

- Panel Members, what questions do you have?
- To the Complainant's Advisor - have you all composed any questions?

Hearing Officer (only)

To Each Witness:

- Please tell us your name and your title.
 - If we are to reach a fair decision, you must be truthful to all statements made at this hearing. Do you agree to be truthful?
 - You have before you a copy of the summary that the Title IX investigator made of your interview. I will read that now for the record.
 - *(Hearing Officer will read interview Summary)*
 - The Respondent and the Complainant both have the right to have their Hearing Advisors ask questions of you.
 - The Panel Members, as the decision-making body, also have the right to ask questions of you.
 - If you as a witness are unavailable, unable, or otherwise unwilling to participate in the hearing, including being subject to cross examination, the Panel shall not draw an adverse inference against you based solely on your absence from the hearing or refusal to subject to cross examination.
 - Federal regulations specify what questions can be asked and what cannot. As Hearing Officer, I ask that you wait before you answer any question. I will listen to each question as it is asked to determine whether the question is relevant and can be allowed. If it is allowed, I will say, "Proceed," to signal that you may answer. If it is not allowed, I will promptly say, "Question is not relevant because "
- I will provide a reason for why the question is not allowed, and I will instruct you that you can ignore the question.

Allow Panel to ask questions of each witness.

Allow Advisors for Complainant to ask questions of each witness. Allow Advisors for Respondent to ask questions of each witness. Allow panel to ask any additional questions of each witness.

For the Complainant- would you like to make/read a closing statement?

For the Respondent- would you like to make/read a closing Statement?



Hearing Officer (only)

Instructions to the Panel:

- In this type of hearing, you are to begin your deliberations with the assumption that the Respondent is **not responsible** until and unless evidence shows you that the Respondent is **more likely than not to have committed this violation**. You will decide whether that is the case based on a review of all evidence, documentation, and testimony provided to you today.
- The definition of the alleged violation you are considering is included in the investigative report you have in your packet for review.
- Only if you determine that the Respondent **more likely than not committed this violation** will you determine appropriate sanctions. In determining the severity of sanctions or corrective actions the following should be considered: the frequency, severity, and or nature of the offense; history of past conduct; an offender's willingness to accept responsibility; previous institutional response to similar conduct; strength of the evidence; and the wellbeing of the college community.

As there are no more questions, this hearing will be ended, and the hearing panelists will be left to deliberate. Deliberations will not be recorded.

After the Panel has made its decision, parties will be informed of that decision, in writing, by the VSU Title IX Coordinator within 3 - 5 Business days.

Thank you all for your participation. The recording will now be stopped, and the hearing is adjourned.



Understanding YOUR Role in the Title IX Hearing

- Panelist -
 - Responsible for reviewing case materials and all relevant evidence;
 - Must be available to participate in the live hearing;
 - Responsible for asking questions during the live hearing;
 - Responsible for determining responsibility and recommending educational sanctions (if applicable);
 - Usually requires less than 24 hours of commitment per assigned case; neutral, unbiased
- Investigator –
 - Responsible for interviewing all involved parties;
 - Responsible for writing investigative report (drafts and final); usually takes anywhere between 4 -8 weeks per assigned case);
 - Requires the most time; neutral, unbiased



Forms & Handouts

- Confidentiality Statement
- Rules of Decorum for Interviews & Hearings
 - Hearing Script
- Statement of Finding, Final Determination, and Rationale Form
 - Hearing Wrap-up Checklist

Hearing Components

Discover the Language

Determine the Evidence

Decide the Outcome



Discover the Language

Consent Is...

- Elements of Consent
- Construct of Consent

Incapacitation

- Possible signs
- Analysis



Elements of Consent



- Consent must be informed (knowing)
- Consent must be voluntary (freely given)
- Consent must be active (not passive)
- Consent must have clear words or actions
- Consent indicates permission to engage in mutually agreed upon (sexual) activity

Construct of Consent

Consent = Permission

1. Was force used by the Respondent to engage in the sexual activity?
2. Was the Complainant Incapacitated? If so, did the Respondent know or should the Respondent have known that the Complainant was incapacitated? Here, we must look at the totality of the circumstances.
3. What clear words or actions by the Complainant gave the Respondent indication that the sexual activity was mutually agreed upon?
4. Was the Complainant's consent withdrawn during the sexual activity?



Construct of Force

- Was force used by the Respondent to engage in the sexual activity?
- Because consent must be voluntary
- Consent cannot be obtained through use of force
- Types of Force to consider: Physical violence or threats

Incapacitation

- Physical and/or mental inability to make informed, rational judgements
- More than mere intoxication or drunkenness
- Forms of Incapacity: Alcohol or other drugs, Mental/Cognitive impairment, Injury, or Sleep



Incapacitation
information
continues...



Possible Signs of Incapacitation

- Lack of control over physical movements
- Lack of awareness of circumstances or surroundings
- Inability to communicate coherently
- Vomiting
- Total of intermittent unconsciousness

Incapacitation Analysis

- If the Complainant was incapacitated, and: the Respondent actually knew it = violation of policy
- If the Complainant was incapacitated, and: the Respondent should have known it = violation of policy

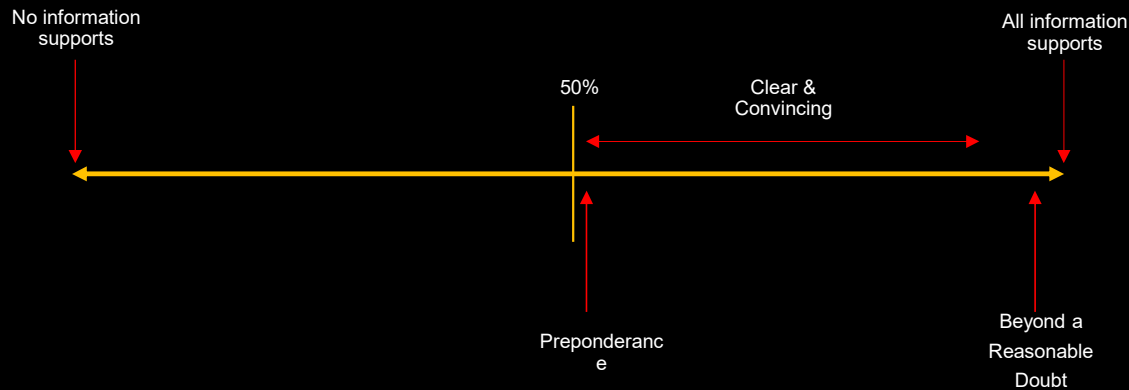
Determine the Evidence

Standard of Evidence (panelists)

- Types
- Preponderance
- Credibility

Questioning the Complainant, Respondent,
and witnesses (panelists)

Standard of Evidence



Credibility

Imagine credibility on a 100-point scale: most credible being 100% and least credible being 0%. In order for this to have an effect on the preponderance of evidence standard, credibility, realistically, should hit at least 50.01%

Preponderance of the Evidence

- “more likely than not”
- “50% plus a feather”
- 50.1%
- “tipping scale”

Credibility & Evidence

Handout:

Determining Relevance

Determining Relevance

Under the Title IX Final Rules, any question posed by the parties' advisors must be evaluated for "relevance" by the decision maker(s) or hearing officer. According to the Final Rules: "Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant."

At our institution, the hearing officer is tasked with determining and explaining the reasoning to the parties. A pre-hearing meeting should be scheduled to go over the hearing process, and any questions already developed by the parties. This will allow the hearing officer to review the questions ahead of time and make their relevancy determination in advance. This will not preclude parties from asking additional questions during the hearing. The Title IX Coordinator can be asked to attend the pre-hearing meeting, and when necessary, hold the meeting, to help determine relevancy. However, the hearing officer is the one who will make all determinations during the hearing.

What is a Relevant Question?

A question is relevant if it tends to make a fact at issue more or less likely to be true. A question not directly related to the allegations will generally be irrelevant. Advisors may ask about interesting or surprising things that have nothing to do with the case. Although one might be tempted to allow the questions due to their own curiosity, they cannot be allowed and must be deemed irrelevant. Relevance decisions should be made on a question-by-question basis, looking at whether the question seeks information that will aid the decision-maker(s) in making the underlying determination.

The relevance decision should not be based on who asked the question, their possible (or clearly stated) motives, who the question is directed to, or the tone or style used to ask about the fact. However, if the tone appears threatening in some way, that should be addressed.



Summary Effective Questioning

- Ask questions relevant to the case or violations:
 - *Have you and the complainant had arguments prior to the day of the alleged incident?*
- Ask for clarification; address conflicting statements:
 - *Earlier you stated you did not see (name of complainant) on the day of the incident. Just now you stated you did see (name of complainant) earlier that day. Could you explain this discrepancy?*
- Ask simple, open-ended questions:
 - *What were your feelings when you broke the window?*

Questioning



Post-Hearing Review

1. Deliberation and decision making
2. Sanctioning guide
3. Written notice of outcome
4. Statement of Final Determination and Rationale Form
5. Leave all material in the room

Deliberation

Testimony

- Listen carefully during the hearing to all evidence presented
- It is your duty to ask questions to the complainant, respondent, and all witnesses to discover the FACTS
- Determine relevancy of the witness testimony
 - Sticking to facts or giving opinion to show favor of party?
 - Did witness observe incident or heard from 3rd party?

Fact Finding

- Have the events, circumstances, incidents, or actions alleged been proven with evidence presented?
- Is the evidence clear? Any discrepancies? *(Refer to the preponderance standard)*

Determination

- Once facts are determined, panel should be able to determine if party is responsible for violation (s)



Findings

Responsible

- Policy violation found

Not Responsible

- Policy violation not proven

Rationale

- Summary of the facts used to make decision
- Specific evidence from hearing and case materials



Determining Appropriate Sanctions

- “Must be made as a proportionate response to the violation.”
- Should prevent the recurrence of sexual misconduct
- Should remedy the effects of the sexual misconduct



Common Student Sanctions

- **Service Hours (RJ Practice)**
 - **Online Education Course**
 - **Probation**
 - **Loss of Privileges**
 - **No Contact**
 - **Online Access to Classes - only**
 - **Alcohol & Drug Assessment and Counseling**
 - **Restriction from living-on campus/Relocation**
 - **Suspension***
 - **Expulsion***
- *Must be supported by substantial evidence at the hearing**



Common Employee Sanctions

- **Work schedule change**
- **Termination**
- **Loss of Tenure**
- **Loss of Pay**
- **Demotion**
- **Referral to EAP Services**
- **Required completion of a SIVRA or other evaluation that may be at the individual's expense**
- **Or any other discretionary sanctions directly related to the violation or conduct**



The Written Decision §106.45(b)(7)

- **Provided to both parties simultaneously must include:**
 - **The allegations**
 - **The procedural steps from the complaint through determination**
 - **Findings of fact supporting the determination**
 - **Determinations regarding responsibility, sanctions (and remedies) along with the supporting evidence and rationale**
 - **Information on the appeals process**



Appeals

- Parties will continue to have both institutional level and Board level appeal opportunities
- Grounds for an appeal:
 - New information
 - Procedural Error
 - Ex. Bias or conflict of interest of Title IX personnel
 - Finding inconsistent with the weight of the information



Your Turn



Course Evaluation

