HEARING OFFICER/DECISION MAKER
OBJECTIVITY AND NEUTRALITY

• Each party must be treated equitably throughout the process

• All grievance administrators must:
  • Review all evidence objectively
  • NOT have any bias or conflict of interest for either party
    • This is grounds for appeal
    • Promptly notify the Title IX Coordinator if you believe there is bias or conflict of interest present before continuing to participate in the case!
CHOOSING AN ADVISOR

• Either party may choose any advisor,
  • This could be an attorney, but does not have to be
  • The University will provide an advisor if they cannot provide one for themself at no cost to the party
    • An advisor is mandatory for the purpose of the live hearing
• The advisor will question both parties during the hearing on behalf of their advisee
  • This includes direct and cross examination
INVESTIGATION

Parties have the right to

• Assemble and provide a list of potential witnesses
• Assemble and provide different kinds of relevant evidence
  • e.g. text messages, photographs, videos, social media posts, etc.
• Talk about the allegations being investigated without constraint
  • The University cannot put a gag order on any party participating in an investigation, but we can request that they maintain the confidentiality of the process
• Review evidence and the preliminary report before finalized and submit responses for inclusion in report
  • Including inculpatory and exculpatory evidence
HEARING

• Advisor will ask relevant questions during direct- and cross-examination to parties and witnesses
  • This includes questions that challenge one's credibility
  • What makes someone credible?
• Technology that allows each party to see and hear the witness answering questions on cross-exam simultaneously will be provided by the University
EVIDENCE

- **All** related evidence should be analyzed objectively
- Do **NOT** make conclusions about one's credibility based on a person's party status
  - I.e. complainant, respondent, or witness
  - Why?
  - Remember to let the evidence lead you to a determination
SAMPLE EVIDENCE
INVESTIGATION AND REPORT

• Parties will be given a draft of the investigation report, which includes all evidence relevant to allegations, prior to the hearing
• Parties will each have separate ten-day periods to evaluate and submit their responses
• All evidence relevant to allegations must be available at the hearing to give each party equal chances to discuss such evidence during the hearing
SAMPLE INVESTIGATION REPORT
LIVE HEARING/QUESTIONING

• Hearings will provide an opportunity for direct- and cross-examination of all parties and witnesses
  • Questioning will be administered by each party’s advisor
  • Mandated live hearing for higher education; K-12 live cross-examination not required
RELEVANCE

• The decision-maker will decide if questions are related to the case and disclose any exclusion of a question before the posed question gets answered.

• Evidence is usually deemed relevant if it has value in proving or disproving a fact of the case in question.

• Questions regarding the sexual behavior or disposition of the complainant are irrelevant unless:
  • to prove that another person besides the respondent committed the conduct alleged, or
  • regards specific instances with respect to the respondent and is presented to prove consent.
HEARING LOGISTICS

• Hearing Structure
• Hearing Preparation
• Technology and cross-examination
• Upon request, separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party answering questions is provided
  • We will automatically create a separated hearing process
• Scheduling and administrative tasks
  • This will be managed by the office
• Recorded and/or transcribed via Zoom
• Note-taking
ROLE OF THE INVESTIGATOR

• The investigator is often the key witness at any hearing
  • The investigation report is submitted as evidence
  • The investigator can be questioned and undergo cross-examination
  • The investigator’s opinions about a finding should not persuade the decision-maker
    • Refrain from questions regarding the investigator’s opinions
DETERMINATION OF CREDIBILITY

• Credibility is:
  • trustworthiness, dependability, accuracy, and believability of testimony or evidence
  • Corroboration, plausibility

• Do not make determinations
  • (About responsibility) based on party’s presence or absence at hearing or refusal to answer questions
  • (About Credibility) based on status of any kind
    • I.e. complainant, respondent, witness
MAKING A DETERMINATION

• Standard of Evidence: **Preponderance of the Evidence**
  • The best practice and an equitable standard
  • This standard applies for all formal complaints of sexual misconduct
  • The standard applies for complaints against students as well as complaints against employees
MAKING A DETERMINATION

• Determine if the standard of evidence is met for each aspect of the definition.
• Consider all the evidence and decide its value
• Use evidence, facts, policy, definitions, and standards of evidence for the decision.
• Avoid using instincts or "gut feeling" as a basis for the finding.
SANCTIONS AND REMEDIES

• Sanctions are disciplinary actions for respondent
• Remedies are for the complainant
• Any sanction must be reasonable and proportionate to the severity of the behavior
  • May consider prior misconduct
  • The role of precedent
  • May consider attitude, aggravation, mitigation, contrition, etc.
  • May be educational, but safety is primary consideration
  • Remedy for loss or injury to school or persons
  • Compliant with laws and regulations
• Same panel/officer who decides finding should also decide sanctions
SANCTIONING IN SEXUAL MISCONDUCT CASES

• What is appropriate?
  • Separation/expulsion
  • Suspension
  • Lesser sanctions

• Can utilize educational components in sanctions
DETERMINATION REPORT

- Decision-maker must issue written determination that will be shared with the parties:
  - The Allegations
  - All steps taken throughout the process
  - Facts that support the Finding
  - A determination of responsibility for each allegation
  - Any disciplinary sanctions, remedies provided to complainant
  - Procedures and permissible bases for appeal for both parties
  - Delivered simultaneously to all parties
APPEALS

• Appeal option must be offered to all parties:
  • From a determination regarding responsibility
  • From a recipient’s dismissal of a formal complaint or any allegation therein

• Three grounds for appeal, with additional grounds optional

• Each party will receive a notification if an appeal was filed

• Decision-maker for appeal must be different from former decision-maker

• Opportunity for parties to support or oppose outcome with a written statement

• Written appeal decision and rationale will be sent to all parties simultaneously
FINALITY OF DETERMINATION

- If an appeal is filed, the finding of responsibility becomes final on the date that the recipient provides the parties with the written determination of the results of the appeal.
- If an appeal is not filed, the determination regarding responsibility becomes final on the date on which an appeal would no longer be considered timely.
QUESTIONS