

The background features a dark teal color. On the left side, there are several overlapping geometric shapes: a vertical orange bar, a white semi-circle, a pink triangle, and three overlapping circles in a gradient from orange to light pink. A large white semi-circle is on the right side. The bottom left has a large orange shape with a rounded corner.

January 2023

Adjudicator Town Hall

Agenda



- Icebreaker
- Important Information and Updates
- Questions
- Tips from a Seasoned Adjudicator
- Final Thoughts and Questions

Icebreakers



**Why do you
want to be an
adjudicator?**



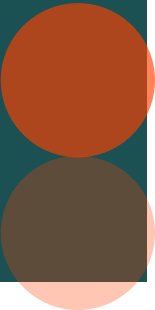
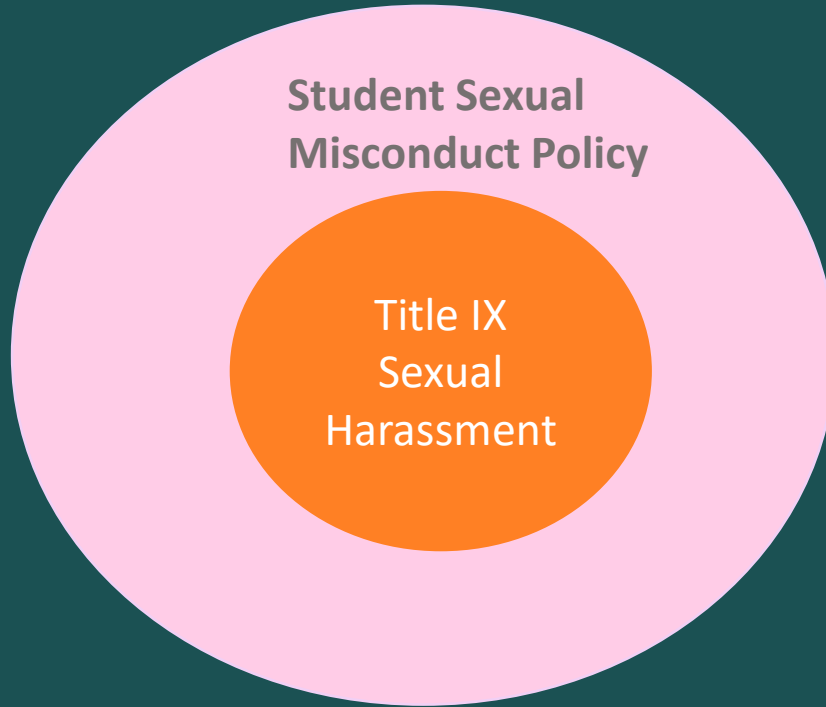
**Do you have any concerns
about serving as an
adjudicator?**

Questions

Based upon the material you've covered as part of your training, what questions or concerns do you have?



Title IX Versus Sexual Misconduct Jurisdiction



Investigation Report

- Reports are generally now shared via Teams
- You will get a team invitation if you agree to serve as an adjudicator and the team will include all relevant files subject to redaction
- In SSMP cases, a sanctioning file with relevant materials will be placed in Teams upon written confirmation that a finding of "in violation" has been reached
- If you prefer a physical file, ODOS can prepare one for you.
- Video and audio files are not uncommon and might only be accessible via Teams
- You may also add files to Teams to share among adjudicators. Please be mindful that these files could be subject to discovery during litigation
- Protect the privacy of any digital or physical copies of the report. Do not leave materials where others can view them and secure them when they are not with you. This is particularly true if you have an office where others are often present ex. Office hours for students or student workers.

Hearing Timelines and Steps

These flowcharts will also be sent to you as a resource



Hearing Day Tips

- Have your binders and questions prepared. We encourage at least one person having a digital copy of the report to allow key word searches.
- If you are on Zoom, ask everyone to identify themselves and confirm who is in the room with them.
- Remind those participating that the hearing is being recorded by the College and they are not allowed to create their own recording to avoid duplicate records or recordings being used improperly (e.g. harassment).
- Turn off your phone or put it on silent mode.
- Take breaks as needed.
- If you plan to reference any materials in questioning, have it open and ready to go.



Questioning and Relevance in Title IX Hearings



At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. (16.1). Determinations about the relevancy of evidence at the hearing shall be made by the decision-maker(s). The decision-maker(s) will provide a brief explanation for decisions about excluding evidence or questions based on relevancy. (16.2) So what is automatically irrelevant?

Source | [Office of Equal Opportunity Programs](#)

1 Privileged

Information that is protected by a legally recognized privilege that has not been waived. Example: conversations with an attorney or clergy member.



2 "Rape Shield" Rule

Evidence about a complainant's prior sexual behavior or predisposition are not relevant unless offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with the respondent and are offered to prove consent

3 Records

Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.



4 Statements with No Cross-Examination Allowed*



Per recent case law and guidance from the Department of Education, this is now allowed. You may afford relevant statements not subject to cross-examination the weight that you deems appropriate, taking into consideration factors such as the nature of the statement, the context in which the statement was made, and any other factor. You may not draw an inference regarding responsibility based solely on someone's absence from the hearing or refusal to testify or submit to cross examination.

More Guidance on Questioning:

- Redactions: information in the reports are often redacted to protect privacy in addition to being redacted to remove potentially prejudicial information. If a party asks questions related to redacted information, AND those questions would otherwise be appropriate, you may allow it.
- You may ask for more information: if you're unsure whether a questions is relevant or not you may ask the party/advisor to explain to you why they believe it is relevant.
- Remember that the Title IX conduct process is unfamiliar to many students and advisors. They often do not understand the distinction between our process and a law enforcement proceeding. Questions that have nothing to do with the matter at hand, or our campus conduct process, are irrelevant.
- When in doubt remember the definition of relevant: evidence or information that has any tendency to prove or disprove one of the essential elements of a matter.



Decorum:

- Emotions are often high during the hearing and controlling the room is essential for an effective hearing. You may also step in before someone acts inappropriately if you can see their behavior is starting to become disruptive.
- If the hearing is occurring on Zoom, you may mute participants who are becoming unruly, combative, or otherwise inappropriate. Note that you are muting them and why for the record.
- If there are attorneys as advisors, they are often serving as an advisor in a Title IX matter for the first time and are used to a courtroom. Remember , their role is limited to:
 - Asking relevant questions of parties and witnesses during cross-examination
 - Addressing the panel only as necessary to conduct cross-examination (ex. “ can you remind the witness of the rules of decorum.”)
 - Quietly conferring with their client
 - Given their limited role, you do not have to:
 - Defend relevancy determinations (though you must provide a brief explanation for your determination)
 - Unnecessarily explain we do not follow federal or state evidence rules. This is not a legal proceeding and our procedures are consistent with federal regulations and DOE guidance

The Q-TIP Rule:

Quit Taking it Personally



See the Big Picture and Extend Empathy

A hearing is the culmination of a process that has already been stressful for many involved. Additionally, parties are very aware that the outcome of this hearing can impact their education, professional careers, and potentially their status within their communities or organizations. That stress can manifest in many ways from tearful behavior, suspicion, anger, stoicism, etc. Do not tolerate abuse or disrespect in the hearing but also try to empathize with their experiences and not view their emotions as a reflection on you and your abilities as an adjudicator.



ADVISORS

Advisors, particularly if they are attorneys, are in the room for their advisee. Despite knowing the rules of decorum, they may push boundaries in an effort to advocate for their advisee as strongly as possible. Enforce boundaries consistently for the good of the hearing and all involved. This may feel uncomfortable as many of you may be used to a restorative justice or other dispute resolution model based on consensus and collaboration. Remember, attorneys are trained in an adversarial model and can bring that mindset to the hearing.



Self-Care

A hearing can be emotionally and intellectually draining. Schedule time for self-care, whatever that looks like for you, to protect your own wellness. See our self-care resources for ideas.

Post Hearing Tips:

- Schedule dates to confer on your decision as a panel (if you are not serving as a single administrator).
- Calendar the due date of your decision and plan to have a draft done a few days earlier in case you'd like to take extra time to review or edit.
- After you issue your decision, destroy any sensitive materials related to the hearing such as the report and exhibits. These should be deleted or shredded.



Title IX Adjudications

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Requirements of a Written Determination

Infographic by: Office of Equal Opportunity Programs



An identification of the allegations that would, if true, constitute Title IX sexual harassment



A general description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence and information about any hearings

Conclusions regarding the application of the Title IX Sexual Harassment Policy to the facts



Findings of fact supporting any determination of responsibility

A statement of and rationale for, the result as to *each allegation*, including a determination regarding responsibility, any disciplinary sanction(s) or recommendation(s), and any remedies for the complainant

The process and bases for the complainant and respondent to appeal the written determination of responsibility



Scenario # 1

Blair and Carlos met at a movie. They started to date on and off. One night, Blair and Carlos went out drinking. After the bars closed, they went to Blair's room in Liberty Residence Hall. Blair was very drunk, and engaged in sex with Carlos, despite Carlos's protests. Carlos was not as drunk as Blair. Blair argues that even if she might have had non-consensual sex with Carlos, it's not her fault because of how drunk she was. She believes she was so drunk that she didn't even know she was having sex with Carlos, let alone that it was something Carlos didn't want. Carlos later filed a complaint with EOP alleging non-consensual sexual intercourse as he told Blair he was not consenting to the intercourse.

What policy would this be adjudicated under?

What additional considerations would there be under the other policy?

Is this a policy violation?

Source: adapted from ATIXA



Scenario # 2

Tarik and Veronica are best friends. Tarik has always been attracted to Veronica, but he was already in a relationship with Ruby. Shortly after he broke up with Ruby, Tarik was despondent. He went to Veronica, at her off-campus apartment where she lives alone, telling her that what he really needed to get over his pain was some “rebound sex.” Veronica told Tarik that she did not want to have sex with him due to the problems it would cause in their friendship. Tarik maneuvered Veronica into the corner, using his large body size to pin her against the wall, but he did not otherwise touch her. Tarik expressed his attraction to her, and Veronica felt he would never let her go if she didn't have sex with him and thought he may physically harm her if she refused to have sex, so she had sex with him.

Which policy would this scenario be adjudicated under?

Is this a policy violation?

Source: adapted from ATIXA



Words of Wisdom from Seasoned Adjudicator

What are some of the challenges that you've faced as an adjudicator and how did you work through them?

What are several things that you know now that you wish you knew then?

Tips or words of wisdom?



Suggestions for Adjudicators

- Carefully review the investigative report and related materials.
- Consider using a hearing introductory script.
- Draft out questions that you have for the parties and witnesses prior to the hearing.
- Remember Rules of Decorum and control the hearing.
- Examine the applicable policy section and evidence that supports and does not support each alleged policy violation.





Office of Equal Opportunity Programs

Thank You

Reach out to us for any questions

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