Handouts that we will be using throughout this training

• Pre-Training Handout
• Grievance Process Timeline
• Hearing Outline
• Hearing Script

Please refer to the policy for the definitions of the prohibited behaviors that violate Title IX Sexual Harassment policy
Types of Cases
Allegations of the following behaviors involving students, employees or a combination of both

- Sexual Harassment
- Sexual Assault
- Stalking
- Interpersonal Violence
- Quid Pro Quo
- NOT for Discrimination or Gender-Based Harassment
Title IX Resolution Process

- **Complaint**: Title IX Policy
  - Investigative Report does not recommend finding or sanctions
- **Investigation & Report**: 10 Days for Draft & 10 Days for Final
- **Review**
  - Required
- **Hearing**
  - Required
- **NOO**
  - Written responses allowed
- **Appeal**
  - New Policy
  - 90 Days
Decision-Maker Process Involvement

- **COMPLAINT**: Title IX Policy
- **INVESTIGATION & REPORT**: Investigative Report does not recommend finding or sanctions
- **REVIEW**: 10 Days for Draft & 10 Days for Final
- **HEARING**: Required
- **NOO**: Written responses allowed
- **APPEAL**: 90 Days

New Policy
Pre-Hearing Responsibilities

- Review investigation report
- Draft questions that you may want to ask the investigator, both parties and witnesses at the hearing
- Review the hearing outline and hearing script
- Attend the pre-hearing conference scheduled by the Equity Office
Pre-Hearing Conference

• Held on-campus, virtually
• Parties will be in attendance
• Advisors should be present
• Discuss hearing procedures and decorum
• Discuss what witnesses need to attend
• Resolve any other matters raised in the party’s written response to the investigation report
Hearing

• Call to order
• Facilitate flow of hearing
• Ask any relevant questions of investigator, parties and/or witnesses
• Wrap up *(share next steps and closing comments)*
Deliberation & Determination

- Complete Title IX Deliberation Statement Form within five business days from the date of the hearing
  - One form must be completed for each allegation being adjudicated
  - Provide rationale for each allegation
  - Provide evidence used to support and evidence not relied upon
  - Assess credibility of all parties
  - Determine sanctions, as needed
  - Recommend a need for remedies to restore/preserve equal access (in general)
    - Specific remedies must be provided by Title IX Coordinator

Title IX Deliberation Statement Form

This form is to be completed by the Decision-Maker at the conclusion of a hearing to document and submit the final determination to the Equity Office.

Please note a new form must be completed for each allegation.
Written Decision (NOO)

• Equity Office will use the Deliberation Statement to draft the Notice of Outcomes (NOO)
  o Equity Office will provide draft letters for your review
  o You will have 24 hours to provide your approval
  o Inform the Equity Office to request any changes
  o Most information must stay based on the regulation and to provide consistency
What is Cross-Examination?

- “the essential function of cross-examination is not to embarrass, blame, humiliate, or emotionally berate a party, but rather to ask questions that probe a party’s narrative in order to give the decision-maker the fullest view possible of the evidence relevant to the allegations at issue.” (30319)
What is Cross-Examination?

Questioning Preparation

- Intended to advance the asking party’s perspective with respect to specific allegation at issue
- Questions must be relevant to the complaint
  - Irrelevant questions will not be able to be answered
- For sexual assault cases, information that would be prohibited under rape shield laws will not be permitted
What is Cross-Examination?

**Questioning Preparation**

- Review the nature of the allegations
- Review the definitions of alleged type of harassment
- Consider facts that support the parties position that are given elements of whether the harassment is either met or not met
- Prioritize your questioning to focus on most compelling points
- Consider questions that will bear on credibility
Relevance

Before a party or witness may answer a question, the Decision-Maker must first determine whether the question is relevant and explain the reason if determined irrelevant.
Relevance

DOE did not define relevance

- “Ordinary meaning of relevance should be applied throughout the grievance process”
- “Can be made by layperson recipient officials impartially applying logic and common sense”
- “Cross-examination must focus only on questions that are relevant to the allegations in dispute”
- “Ensure that questioning is relevant, respectful and non-abusive”
- Must include inculpatory and exculpatory evidence

Merriam-Webster’s Definition: Related to the matter at hand
Relevance

**Relevant Evidence**

- Tends to make a fact more or less probable that it would be without the evidence
- Must be determined by considering the form of alleged harassment
Relevance

Always Irrelevant

“The Department reiterates that the rape shield language...does not pertain to the sexual predisposition or sexual behavior of respondents, so evidence of a pattern of inappropriate behavior by an alleged harasser must be judged for relevance as any other evidence must be.”
Relevance

Always Irrelevant

Definitions:

• **Predisposition**: *the complainant’s dress, lifestyle or speech*
• **Sexual Behavior**: *all activities that involve actual physical conduct or that imply sexual intercourse/conduct*
  - Unless it is to prove that someone else other than the respondent committed the alleged misconduct
  - Unless to show consent between the parties
    • **Consent**: *knowing, voluntary and clear permission by word or action to engage in sexual activity*
Relevance

**Always Irrelevant**

- Evidence of a complainant’s sexual behavior with anyone other than the respondent is not permitted
- Questions/evidence about a respondent’s sexual predisposition or prior sexual behavior are not subject to any special consideration and should be evaluated based on relevancy.
- Cannot use information from a physician, psychiatrist, psychologist or other recognized professional without the voluntary and written consent
- Cannot use information protected by a legally recognized privilege without a waiver
- Party or witness statements not subjected to cross-examination at the hearing
- Duplicative evidence may be deemed irrelevant
Relevancy Conclusions

At the hearing, the decision-maker must apply logic and common sense to reach relevancy conclusions and must explain their rationale

- No lengthy or complicated explanation is required
  - “The question is irrelevant because it calls for prior sexual behavior and does not meet the exceptions.”
  - “The question is irrelevant because it is not probative of any material fact concerning the allegations.”

- Parties (not advisors) must be afforded the opportunity to challenge the relevance determinations
Advisors have been informed of the following if their question was deemed irrelevant:

- If they understand the scope of the decision, move on to another question
- If they do not understand the scope of the decision, they can respectfully request an explanation
Hearing Decorum

- Cannot forbid a party from conferring with their advisor
- Should adopt rules for conduct during hearings to ensure the process is professional and respectful
Hearing Decorum

Manner of Asking Questions

• Address parties respectfully using a preferred title of courtesy (Mr., Ms., Mrs., Dr., Professor…)
• Use an even and appropriate tone of voice
  o No shouting, snide tones, sarcasm or dramatics
• Do not use intimidating physical actions
  o No finger pointing, fist pounding or exasperated gestures
• See Hearing Decorum Handout on the Portal
Hearsay

• Cannot rely upon or use any statements made by a party or witness who does not submit to cross-examination at the hearing

• Cannot draw an inference as to the responsibility based on a party or witness’ refusal to answer

• Statements:
  o Do not include evidence (such as videos)
  o Does not pertain to evidence that does not contain statements
  o Not limited to statements made during the hearing
  o Hearsay prohibition does not apply if the respondent’s statement, itself, constitutes the sexual harassment
Decision-Maker Expectations

Maintain impartiality by avoiding biases, conflicts of interest and prejudgments

- **Bias**: an inclination or prejudice toward/against someone or a group of people.

- **Conflict of Interest**: an actual, perceived or potential personal interest that may influence an individual's duties or obligations in the resolution process.

- **Prejudgment**: the act of prematurely making a judgment before the completion of a fair investigation or making a judgement without sufficient reflection on the facts obtained from a fair investigation.
Decision-Maker Expectations

Prejudgment Examples

- Assuming that because alcohol was involved, the complainant’s account of events is inaccurate
- Assuming that because the parties had been in a previous consensual relationship, consent was given
- Utilizing sex stereotypes; men can’t be sexually assaulted, etc.

Avoiding Prejudgment

- Keep an open mind throughout the process
- Wait to hear ALL of the facts
- Seek out additional information before jumping to conclusions
- Be cautious about checking your assumptions
Decision-Maker Expectations

Conflict of Interest Examples

- **Actual:** a direct conflict between one’s official duties and responsibilities, and a competing interest or obligation.
  
  *An advisor is friends with the complainant’s family*

- **Perceived:** a situation where it could be perceived that a competing interest could improperly influence the performance of one’s official duties and responsibilities.
  
  *The decision-maker previously had a relationship with the family member of the respondent*

- **Potential:** where a personal interest or obligation could conflict with one’s official duties and responsibilities in the future.
  
  *The Title IX Coordinator and a faculty complainant co-chaired a committee and socialize outside of work on occasion.*
Decision-Maker Expectations

**Bias Examples**
- Assuming that all respondents are male
- Assuming that because a complainant isn’t crying when talking about her sexual assault, that it probably didn’t happen

**Ways to Combat Bias**
- Pay attention to your language
- Avoid generalizations
- Question your thinking and challenge your assumptions
- Listen!
Decision-Maker Expectations

Tips for Impartiality

• Treat all informal reports of sexual harassment equally
• Make no assumptions about the allegations based on demographics of the parties
• Keep an open mind and actively listen
• View all relevant evidence objectively
• Remember each case is unique
Decision-Maker Expectations

- Complete the Declaration of Impartiality for each case
- Review all evidence before making a decision
- Maintain confidentiality
- Follow all deadlines
- Complete Deliberation Statement
- Review Notice of Outcome drafts
Concerns & Questions

If you have questions about your role, please contact the Equity Office ASAP

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989-686-9547