

HEARING PANEL MEMBER TRAINING

Alice Jones, MA

Columbia College Chicago

Inclusion Consultant Network, LLC

Outline

- Section 1 -Guidance Review
- Section 2- Appendix A Title IX and Appendix B Student Sexual Misconduct: What is the difference?
- Section 3- Hearing Panel Questions & Cross Examination

Introductions

- Name
- Department
- Returning or new Hearing Panel Member?
- What made you interested in serving as a hearing panel member?

GUIDANCE REVIEW

From 2011-2021

What is Title IX?

Title IX, 1972:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational programs or activity receiving federal financial assistance."

Timeline since 2011:

- **Obama administration:**
 - DCL, 2011: Reminded schools of their obligations under Title IX
 - 2014: Obama administration lists 55 schools under investigation by the Office for Civil Rights (OCR)
- **Trump administration:**
 - Rescinds 2011 DCL, Sept. 2017
 - Spring/Summer 2020- Trump/DeVos guidance put in place



<https://i.stack.imgur.com/6oxzW.jpg>

	Obama Guidance:	Trump Guidance:
Definition of Harassment:	"Unwelcome conduct of a sexual nature."	"Unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies a person equal access to the school's education program or activity" or "sexual assault, dating violence, domestic violence, and stalking."
Standard of Proof:	Preponderance of Evidence <u>(51% sure the event occurred)</u>	Preponderance of Evidence OR Clear and Convincing Evidence <u>(75% sure the event occurred)</u>
University jurisdiction defined as:	Anything that <i>could</i> come into the educational environment	Only on-campus incidents
Hearing Format	Trauma informed, neurobiology of trauma, no cross examination	Live hearings, cross examination

Grayer, A. & Stracqualursi, V. (May 6, 2020).

Brown, S. (April, 2, 2019).

So...where are we now??

- Many institutions have maneuvered so they can still respond to wide array of situations as they could during Obama-era guidance.
 - CCC-
 - Appendix A Title IX Sexual Harassment Policy/Procedure
 - Appendix B Student Sexual Misconduct Policy/Procedure
- Key considerations
 - Support for complaining party while maintaining due process of responding party
 - Uptick in respondents suing saying their due process rights were not considered
- March 2021- President Biden directs his Education Secretary to review DeVos' policy and evaluate next steps
 - Language of EO directs Ed Secretary to consider "suspending, revising, or rescinding" DeVos/Trump policy
 - Some want Obama-era guidance put back in place, others think the landscape has changed and policy needs re-evaluated

APPENDIX A TITLE IX & APPENDIX B STUDENT SEXUAL MISCONDUCT

Key differences of CCC's 2 policies

Defining Sexual Harassment

Appendix A Title IX Sexual Harassment

- Sexual Harassment definition
- Conduct on the basis of sex that satisfies one or more of the following:
 - (1) Quid pro quo
 - (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's Education Program Or Activity; or
 - (3) "Sexual Assault" and subject to this Policy's definition of "Consent," "Dating Violence", "Domestic Violence" or "Stalking"

Appendix B Student Sexual Misconduct

- Sexual harassment definition
 - Any Unwelcome Conduct of a sexual nature or that based on gender identity – perceived or actual – or gender stereotypes. It can occur by or between individuals of any – including the same – sex or gender. Sexual Harassment can also take place between individuals who have been or are currently in an intimate relationship

Appendix A Title IX

- Live hearings
- “Fact and Expert witnesses” p. 18
- Cross examinations in a, “respectful, non-abusive manner.” p. 25
- Can include CCC employees as complainant or respondent
- Must have advisors, if student does not name one, CCC must (do not have to be attorneys)
- On campus and/or “College Education Program or Activity” which includes, “locations, events or circumstances over which the College exercised substantial control over [involved parties] and includes any building owned or controlled by a student org that is officially recognized by the College.”
- Can offer informal resolutions (not in cases involving employees)

Appendix B Student Sexual Misconduct

- Live hearings
- No live cross examination
- “This policy addresses unwelcome sexual behavior perpetrated by students that is outside the scope of Title IX.” p. 1.
- “The college may initiate an investigation under this policy regardless of where the incident took place.” p. 1
- “In an event of a conflict between this and Title IX, Title IX will control.”
- Specific to students, not employees
- Can offer informal resolutions
- Examples- Alumni, off campus

Appendix A (Title IX) or Appendix B (Student Sexual Misconduct)

- A student comes forward to file a claim of sexual assault. The respondent graduated the semester prior.
- A student accuses an employee of quid-pro-quo sexual harassment
- A student reports sexual assault/dating violence against another student, both live on campus

TITLE IX HEARING PANEL QUESTIONS & CROSS EXAMINATION

Policy and Strategies

Pre-hearing/Hearing Facts

- Pre-hearing Conference
 - All matters should be resolved in the Pre-hearing
- Hearing
 - “Each Hearing shall consist of-”
 - an explanation of the Sexual Harassment allegations and the Hearing rules by the Lead;
 - an opportunity for each party to give short, opening statements;
 - questions from the Panel to each party and witness;
 - cross-examination by each party’s advisor of the other party and the witnesses; follow-up questions as necessary by the Hearing Panel;
 - An opportunity for any brief, closing remarks by the parties. The Lead shall determine when to take a recess or to adjourn.” (Appendix A, p. 24).
- Roles- 1 Lead Hearing Officer and 2 Hearing Officers
 - “Lead shall preside over the hearing in an orderly, non-adversarial manner” (Appendix A, p. 24)
- Time limits-
 - No hearing shall exceed more than 6 hours per day, or 18 hours per week
- Attendees-
 - Parties, Coordinator, Advisors, Hearing Panel, Witnesses, other CCC employees at Coordinator’s discretion

Pre-Hearing

- Refresh yourself on the procedures
- Refresh yourself on the policy
- Review the final investigative report
- Focus on the charge

Hearing Panel Questioning

- Be intentional
- Be mindful of your personal feelings
- Be professional towards all parties
- Be thorough with your review of documentation
- Be prepared and informed
- Be clear and articulate
- Be patient
- Be neutral

Avoiding Common Mistakes

- The hearing is not about you
- Test out your Zoom, audio, camera
- MUTE!
- Requires computer, not phone
- Mindful of facial expressions
- Preparation/planning is key
- Time consuming process- Ensure you allow enough time for prep and day-of responsibilities
- Appropriately prepare
- Recognize critical crossroads
- Avoid the pit-falls of re-investigation

Questioning- General Guidelines

- Appropriate questions:
 - Who, what, where, when, why and how?
 - Open-ended questions
 - Clearly stated in a neutral tone
 - Fact specific
 - Relevant to the complaint at hand
 - Directed toward the overall development of the student
 - Pertinent to the determination of if a policy violation occurred

Questioning- General Guidelines

- Inappropriate questions
 - Unnecessarily antagonistic
 - Addresses irrelevant or protected information
 - Messy or loaded questions
 - Directed toward unimportant details
 - Repetitive or re-worded questions
 - Redirects responsibility for misconduct inappropriately

Questioning the Reporting Party

- Present yourself in a manner which allows trust to be built
- Be patient with your approach
- Do not reframe the incident, allow them to choose terms that describe the incident and the impact
- Use their language and phrasing, repeat the phrase to establish, “permission” for use.
- Use the Hearing as an opportunity to seek relevant clarifications
- Remember: What do you need to know in order to determine responsibility?
- Is there more information you need to fill out the context of the incident?

Common Themes

- “I wish I didn’t have to keep talking about this.”
- “When do I get to find out how they were punished?”
- “I wish the College could just make this go away.”
- “I don’t want to ruin anyone’s life.”
- “I’m tired of talking about this.”

Questioning Witnesses

- Keep in mind that witnesses often will not know the full story.
- Do not expect them to know everything, they can only share the portion they know about.
- Ask open-ended questions to verify existing reports
- Be cautious about revealing information
- Be mindful of “planted” information.

Common Themes

- “I really don’t want to get in the middle of this.”
- “They are both my friends.”
- “I didn’t see/hear/know anything until you called me in.”

Questioning the Responding Party

- Present yourself in a manner that allows trust to be built
- Be patient, allow respondent to fill the space
- Ask broad questions, “Please walk me through...”
- Use clarifying questions
 - “If you could please explain further why/how...”
 - Help me understand why/how...”
- Before challenging, consider the cost/benefit to the process
- Ask questions that address critical details:
 - “What facts did you use to establish if you had consent?”

Common Themes

- Deny the allegation
- Blame their own inadequacy:
 - “I’m just a kid.”
 - “I’m only a freshman.”
 - “I didn’t know that was a rule.”
- Blame the reporting party
 - “The RA is out to get me.”
 - “The police had no reason to stop me.” etc.

Weighing Information

- Consider all relevant and factual information
- Give greater weight to:
 - Facts established in investigative report
- Evaluate the reliability of the source:
 - Evidence of deception
 - Statements change over time?

Evaluating Credibility

- Consider all relevant and factual information
- Give greater weight to:
 - Information supported by investigative report
- Evaluate the reliability of the source:
 - Evidence of impact from trauma
 - Evidence of deception
 - Statements change over time?

New Regulations on Cross Examination

- Live Hearing
- Advisors must be allowed to cross-examine other parties and witnesses in live hearing
 - “Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party’s advisor of choice and never by a party personally...”
- No party can ever be allowed to personally question or cross-examine anyone, only through advisors
- If any party requests, entire hearing must be held with parties located in separate rooms, using technology to see/hear all

Determining Relevant Questions

- Real-time
- The Hearing Panel must exclude irrelevant questions
- Makes relevance determination on the spot before party/witness answers
- Regulation language: "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."
- Questions cannot probe reporting party's sexual past ("Rape Shield")

Cross Examination

- Probe witnesses on:
 - Credibility/trustworthiness
 - Memory and ability to remember facts of case
 - Background
 - Bias/conflicts of witness

Cross Examination & Credibility

- Listen for conflicts, discrepancies
- Situational surroundings that align with facts from investigative report
- Motive
- Mindset

QUESTIONS

Comments

Activity

- The Complainant met the Respondent at a party. They hit it off and spend the entire evening dancing and getting to know each other. The Respondent convinced the Complainant to come to their apartment, and the Complainant agrees to go as friends. The Respondent agrees, but as they spend time together at the Respondent's apartment, the Respondent tries to convince the Complainant to have sex with them. The Complainant reiterates that they don't want to do anything sexual. Despite the Complainant's clear communication, the Respondent continues to try and convince the Complainant to have sex by calling them names and making comments such as being a prude. Due to the pressure of the Respondent, the Complainant gives in and decides to have sex with the Respondent. The Complainant stated that they would have never had sex with the Respondent if the Respondent was not incessant with their advances. The Respondent believes they have not done anything wrong. The Respondent insists that they received the Complainant's consent to have sex.
- As a Hearing Officer what would you ask of both parties?
- What information do you need to know?

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