

Title IX Hearing Panel Training

Spring 2024



PennState

Agenda



Introductory
Exercise



Trauma Informed
Practice



Title IX: State of
the Regulations;
Policy Review



Checking Bias
Activity



Process Review:
Investigations



Process Review:
Hearings

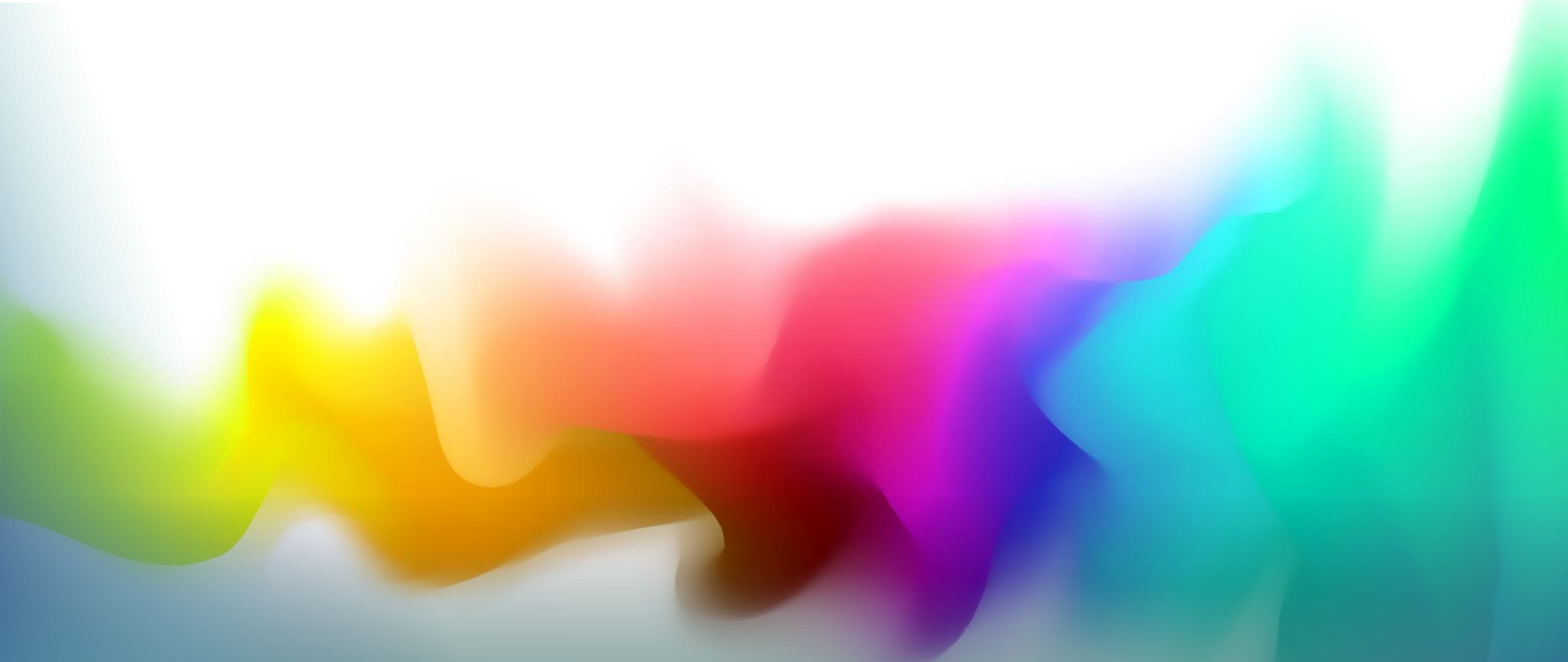


Outcome
Documentation



Welcome

Introductory Exercise: Name,
Campus, Role



Trauma Informed Practices

Break



Title IX: State of the Regulations

Updated Release: Expected
publication moved to March 2024.



Anticipated Changes

Policy merger of AD 85 and AD 91 with broadening of harassment definition and change in jurisdictional parameters

Hearing availability for all misconduct cases (with some projected alternatives depending on the case)

Increased focus on pregnancy-related protection

Memorialization of protections related to gender identity and sexual orientation

Potential broadening of reporting requirements

Policy Definitions

AD 85 Jurisdiction



Applies to all students, faculty, staff, affiliates, and other individuals participating or attempting to participate in University programs or activities



Covers conducts in the United States either on Penn State property or off campus in a Penn State-sanctioned education program or activity

AD 91 Jurisdiction

Covers all other forms of discrimination, harassment, and prohibited conduct not covered by AD 85

Sexual Assault

Any nonconsensual sexual act proscribed by Federal, tribal, or State law.

Sexual Assault includes sexual contact or intercourse with an individual without that individual's consent, including sexual contact or intercourse against an individual's will or in a circumstance in which an individual is incapable of consenting to the contact or intercourse.

Sexual Assault: Nonconsensual Sexual Contact

(A) Nonconsensual Sexual Contact.

Intentional sexual touching, however slight, with any object or part of one's body of another's private areas without consent.

Sexual Contact includes:

- (1) intentional contact with the breasts, buttock, groin, or genitals;
- (2) touching another with any of these body parts;
- (3) making another touch you or themselves with or on any of these body parts; or
- (4) any other intentional bodily contact in a sexual manner.

Sexual Assault: Nonconsensual Sexual Intercourse

(B) *Nonconsensual Sexual Intercourse.*
Sexual penetration or intercourse, however slight, with a penis, tongue, finger, or any object, and without consent. Penetration can be oral, anal, or vaginal.

Sexual Assault: Fondling

(C) *Fondling*. The touching of the private body parts of another individual for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of the Complainant's age or because of the Complainant's temporary or permanent mental incapacity.

Dating Violence

The term “[dating violence](#)” means violence committed by a person:

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and,

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- (i) the length of the relationship;
- (ii) the type of relationship; and,
- (iii) the frequency of interaction between the persons involved in the relationship.

Domestic Violence

The term “[domestic violence](#)” includes felony or misdemeanor crimes of violence committed by:

- a current or former spouse or intimate partner of the victim
- by a person with whom the victim shares a child in common
- by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

Stalking

Stalking Defined

- A course of conduct directed at a specific person that would cause a reasonable person to:
 - Fear for their safety or the safety of others; or
 - Suffer substantial emotional distress

“Reasonable Person” Standard

- Amount of care that an ordinary person would use in a given situation
- Objective, uniform evaluation of behavior that applies to people in society



Retaliation

Retaliation means any adverse action taken by a member of the University faculty, staff, or student body against any individual on the basis of a complaint made by such individual, or on the basis of such individual's participation in an investigation, hearing, or inquiry by the University, or participation in a court proceeding relating to suspected Prohibited Conduct at the University. Retaliation shall include, but not be limited to, harassment, discrimination, threats of physical harm, job termination, punitive work schedule or research assignments, decrease in pay or responsibilities, or negative impact on academic progress.




AD 85 Sexual Harassment (Generally)

Conduct on the basis of sex, gender-identity, and/or sexual orientation



**AD 85 Sexual
Harassment
(Hostile
Environment)**



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 University's Education Program or Activity.

AD 85 Sexual Harassment (Hostile Environment Examples)

Unwelcome sexual advances,

Requests for sexual favors,

Verbal or physical conduct of a sexual nature,

Sexual exploitation (including dishonesty or deception regarding the use of contraceptives or condoms during the course of sexual contact or sexual activity),

Sexual coercion,

Sexual touching and fondling,

The touching of an unwilling person's intimate parts, and

Forcing an unwilling person to touch another's intimate parts.



AD 85 Sexual Harassment (Quid Pro Quo)

An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.

AD 91: Sex-Based Harassment

Unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic, or physical conduct of a sexual nature, when: (1) submission to or rejection of such conduct is made either explicitly or implicitly a condition of an individual's employment or academic standing or is used as the basis for employment decisions or for academic evaluation, grades, or advancement (quid pro quo)...



AD 91: Sex-Based Harassment (*continued*)

...or (2) such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the University's education or work programs or activities (hostile environment).

AD 91: Gender-Based Harassment

Verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on actual or perceived sex, sex-stereotyping, sexual orientation, or gender identity, but not involving conduct of a sexual nature, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the University's education or work programs or activities.

AD 91: Gender-Based Harassment *(continued)*

For example, persistent disparagement of a person based on a perceived lack of stereotypical masculinity or femininity or exclusion from an activity based on sexual orientation or gender identity also may violate this Policy.

AD 91: Discrimination

Conduct of any nature that denies an individual the opportunity to participate in or benefit from a University program or activity, or otherwise adversely affects a term or condition of an individual's employment, education, or living environment, because of the individual's actual or perceived age, race, color, ancestry, national origin, sex, sexual orientation, gender, gender identity, physical or mental disability, religion, creed, service in the uniformed services (as defined in state and federal law), veteran status, marital or family status, pregnancy, pregnancy-related conditions, genetic information or political ideas.



AD-91: Sexual Exploitation

Taking sexual advantage of another for one's benefit or to benefit or advantage anyone other than the one being exploited

AD-91: Sexual Exploitation Examples

- (a) Viewing, possessing, producing, or distributing child pornography;
- (b) non-consensual recording, disseminating, or copying of images, photography, video, or audio recording of sexual activity or nudity conducted in a private space;
- (c) knowingly exposing another person to a sexually transmitted infection, or sexually transmitted disease, without their awareness;
- (d) prostituting, or promoting or soliciting the prostitution of, another person; or
- (e) use of dishonesty or deception regarding the use of contraceptives or condoms during the course of sexual contact or sexual activity.



Questions?

Checking Bias Activity



Bias Defined

Oxford Languages defines bias as “prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair.”

The regulations hone in on both generalized bias against parties and specific bias against a particular, named party.



Types of Bias



Conscious Bias

Cognitive Bias

Unconscious Bias

Conscious Bias



Cognitive Bias

- Brain's attempt to simplify
- Repeated errors of thinking
- Happen when information is misinterpreted
- Affect rationality of judgment
- Can lead to inaccurate or unreasonable conclusions



Types of Cognitive Bias

Anchoring Bias

Attentional
Bias

Confirmation
Bias

Dunning-
Kruger Effect

False
Consensus
Effect

Misinformation
Effect

Optimism
Effect

Self-Serving
Bias

Unconscious Bias

- Implicit
- Beliefs and attitudes happening outside of an individual's control
- Difficult to identify



Types of Unconscious Bias

Affinity Bias

Attribution
Bias

Confirmation
Bias

Conformity
Bias

Contrast
Effect

Gender Bias

Circle of Trust

- On the left side of the paper, write down the initials of the six to ten most trusted people (preferably non-family members) you know.
- Draw a line under the last set of initials. Now write three to five more sets of initials of folks you are acquainted with.

Circle of Trust

Diversity Dimensions

- Gender
- Age
- Race
- Ethnicity
- Native Language
- Religion
- Political Affiliation
- Professional Background/Education
- Marital Status
- Income



Affinity or In-Group Bias

People extend greater trust, positive regard, cooperation, and empathy to in-group members.

This is instinctive and unconscious and may cause negative interactions with members of the out-group.



What are the implications?

How could this impact hearings?

Anti-Bias Techniques

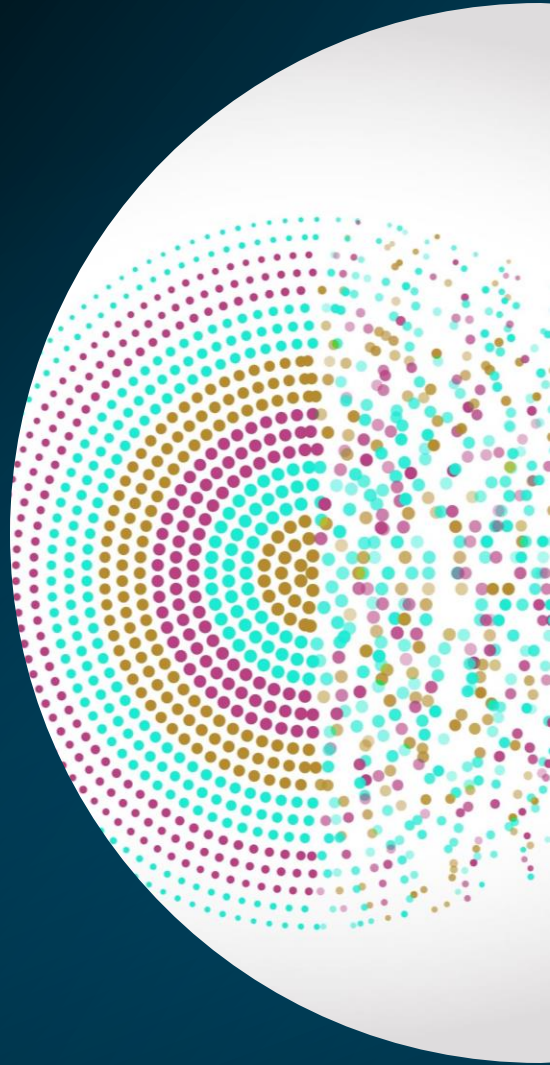
- Self-reflection
- Counterstereotype
- Negation
- Perspective-taking



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A close-up photograph of a breakfast table. In the foreground, a white coffee cup sits on a saucer to the left. Next to it is a stack of folded newspapers. To the right, a white plate holds two golden-brown, flaky pastries. The background is softly blurred, showing another white cup and some greenery, suggesting a bright, airy setting like a cafe or a breakfast room.

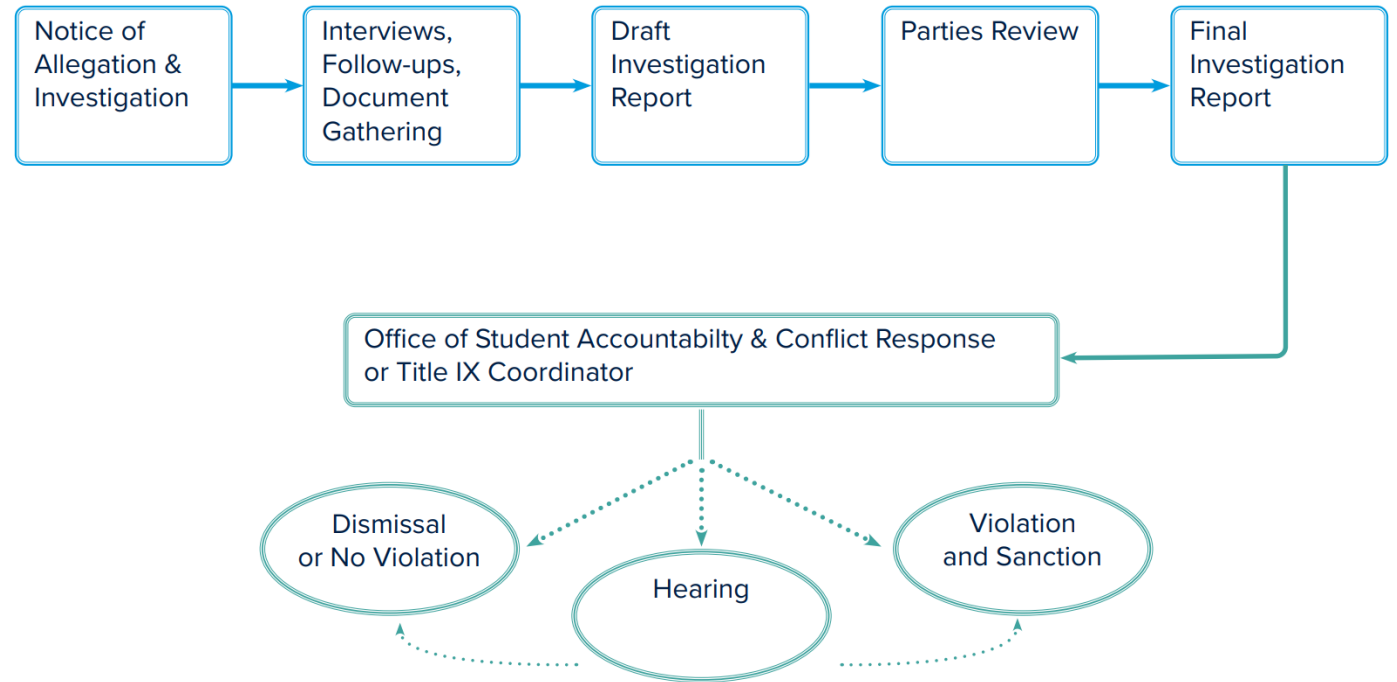
Break 2



Process Review:

Investigations

Investigation Flow





Process Review:

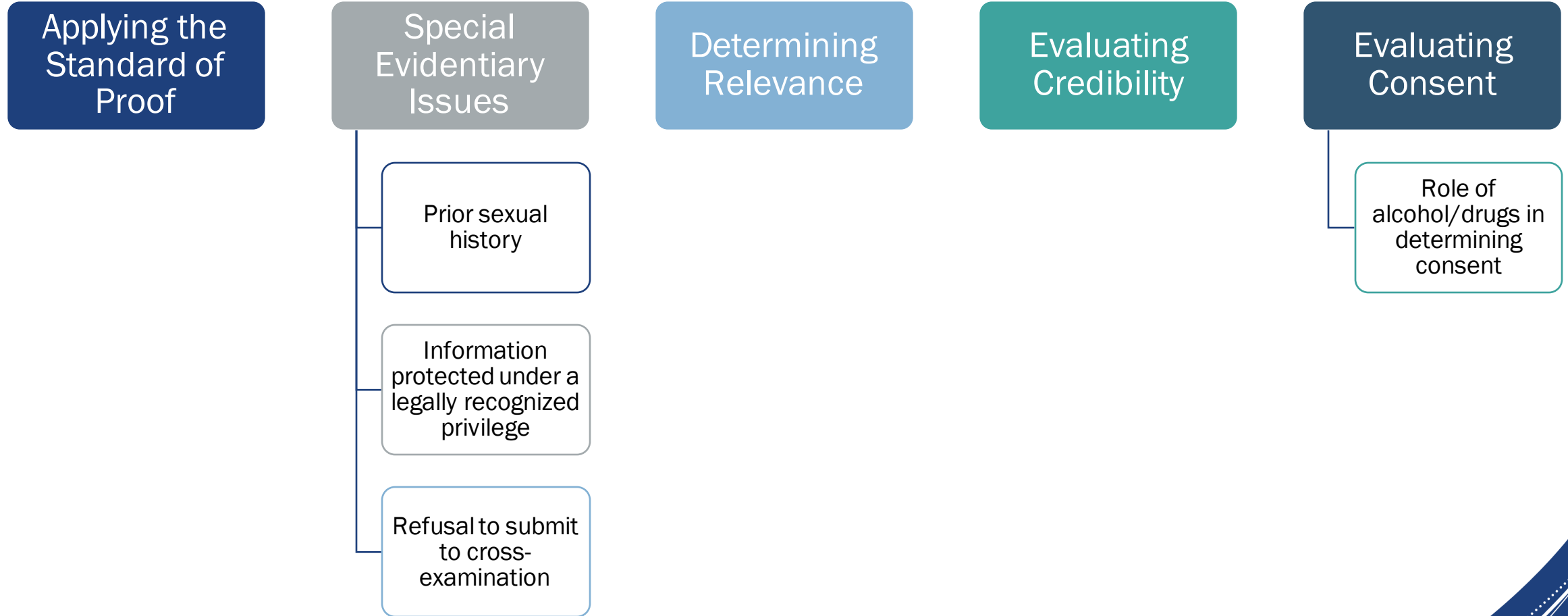
Hearings

The background features a complex network of thin, light-colored lines connecting various sized circles. The circles are primarily in shades of blue and green, with some yellow and orange tones at the bottom. The overall effect is a dense, interconnected web of nodes and edges, suggesting a network or a complex system.

Laying the Groundwork

Hearing Manual

Walking Through the Hearing Manual: Part 1



Walking Through the Hearing Manual: Part 2

Types of Supporting Facts

- Direct Evidence
- Circumstantial Evidence
- Documentary Evidence
- Expert Witness Testimony
- Hearsay Evidence

Evaluating Information Presented

Weighing Information Presented

Trauma Informed Practices

- Evidentiary Issues
- Prior Sexual History (continued)
- Pattern Evidence
 - Establish factual finding



Walking Through the Hearing Manual: Part 3

Confidentiality of the Process

Rules of Decorum/Objections to Relevance

Limiting the Scope of the Opening Statement

Witness Introduction and Testimony

Closing Statements by Parties

Introduction of Additional Information/Documents by Parties



Walking Through the Hearing Manual: Part 4

- Deliberations and Decision
 - Elements of charge must be met
 - Severe and pervasive defined
 - Letter of Finding
 - Considered testimony and documentation
 - Decision
 - Responsible or not responsible
 - Rationale
 - Must be clear
 - Do not use “we feel,” “we think”



Evidentiary Considerations

Standard of Proof

Grievance procedures must use the **preponderance of evidence** standard to resolve complaints, which must be more than 50% sure (51% or 50.1%).

If sufficient doubt remains after considering all information, give the Respondent the benefit of the doubt.



Requirement for Findings

- To establish a violation has occurred, the University must provide information which:
 - Constitutes a violation of AD85 or the Student Code of Conduct or other policy;
 - Corroborates the alleged behavior charged; and
 - Determines the accused party's responsibility for the behavior reported.

Requirement for Findings (continued)

If prior 3 criteria are met by a preponderance of evidence, then:

- Must find that a violation has occurred; and
- Must find Respondent responsible for the violation

Board members **MAY NOT** consider:

- Whether or not a party knew that they were violating a policy. Ignorance is not an excuse.
- If a party makes a claim of diminished capacity due to alcohol or other drugs.
- A claim that behavior was motivated by the unsubstantiated behavior of another as a legitimate defense.

Special Evidentiary Issues: Prior Sexual History

- Questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
 - Such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant; or
 - Concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent

Special Evidentiary Issues: Legally Recognized Privilege

Information protected under a legally recognized privilege are not considered unless the information is relevant and the person holding the privilege has waived the privilege.

This includes privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity or privileged communications between a party and their attorney.



Special Evidentiary Issues: Refusal to Submit to Cross-Examination

- Hearing panel members will not draw an inference about the determination regarding responsibility based solely on a party or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Determining Relevance: Part 1

- Information is *relevant* when, if true, it supports/proves, or undermines/disproves, any disputed fact that is of consequence to the determination of the case.

Determining Relevance: Part 2

- Information can be:
 - Relevant to an actual issue or action
 - Relevant to credibility of a witness or information
- Important considerations:
 - Efficiency
 - Fairness

Determining Relevance:

Part 3

- Useful information in a hearing to help separate relevant from irrelevant information:
 - Motivation
 - Ability
 - Malice
 - Threats, expressions, or earlier similar acts implying or denoting intent
 - Other behavior that tends to shake belief in a person's testimony



Test for Relevance

- A) What facts are you trying to prove/determine?
- B) Does the information help prove or disprove a fact?
- C) Is the fact important in deciding a case?

Evaluating Credibility

- “Credibility determination is neither an exact science nor a purely rational process.”
- Even in a situation where it appears to be one person’s word against another’s, it is very rarely a “draw,” as one person usually comes across as more credible than the other, or there is some kind of corroborative information.
 - If it IS a complete draw, then need to fall back on the fact that the party is presumed not responsible unless proven “in violation,” and that the University has the burden of proof.

Evaluating Credibility: Part 2

- Don't jump to conclusions based on your expectations. The decision is not based on your experiences.
- Remember, the credibility of both parties and all witnesses is at issue, not just the reporting party.
 - Review the behavior and statements of the witnesses and respondent as well as those of the reporting party.

Evaluating Credibility: Part 3

- Inconsistency may or may not be important, depending on several factors:
 - Is there is a reasonable explanation?
 - Is the point significant or trivial?
- Just because a witness's statement may vary over time, that does not compel a conclusion that the witness is lying.
 - The variation might have resulted from memory lapse.
- On the flip side, too much consistency could mean the story is rehearsed or memorized.

Evaluating Credibility: Part 4



There are no “perfect” victims (or witnesses) who say all the right things, know all the right answers, or fulfill the stereotype of what a “victim” should be.

There are no “perfect” perpetrators who fulfill every stereotype of what a rapist or predator or “perpetrator” is.

General Guidelines for Evaluating Credibility



Weighing one person's word against another

- Barring other forms of evidence, the testimony of the unbiased person is given more weight.

When the party claims to have not known they were breaking a rule

- An attempt to get the Panel to accept the party's failure to assume responsibility for their role in the alleged violation
- Only in rare cases should this type of testimony be given any value

Multiple witnesses corroborating the same set of facts

- It is only in a very rare situation that the number of witnesses be considered as a factor in determining responsibility.

When the party introduces character witnesses

- The testimony of these witnesses will be of minimal value in determining responsibility
- Only exception would be if witness has information which suggests the party was physically unable to commit the violation



Evaluating Consent:

Consent Defined

- “Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent must be informed, freely given and mutual. If intimidation, threats, or physical force are used there is no consent. If a person is mentally or physically incapacitated so that such person cannot understand the fact, nature or extent of the sexual situation, there is no consent. This includes incapacitation due to alcohol or drug consumption, or being asleep or unconscious, where the respondent knew or reasonably should have known that the person was incapacitated. Inducement of incapacitation of another with the intent to affect the ability of an individual to consent or refuse to consent to sexual contact almost always, if not always, negates consent.”



Evaluating Consent: Consent Defined (continued)

- “Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions consist of an affirmative, unambiguous, conscious decision by each participant to engage in mutually agreed-upon sexual activity. Consent can be limited, meaning consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Consent is revocable, meaning consent can be withdrawn at any time. Thus, consent must be ongoing throughout a sexual encounter. Whether a person has taken advantage of a position of influence over an alleged victim may be a factor in determining consent.”

Evaluating Consent (continued)

Avoid misconceptions about responses to assault

- Why did they wait to report the assault?
- Why did they first say they did not want us to take action but now they do?
- Why do they describe events in a piecemeal fashion, rather than in a neat chronology?
- Why did they come forward and state that they now remember more about an event that they didn't tell in their first interview?

Reactions of those who experience sexual assault may appear counter-intuitive but in fact are quite common

- Reaction to trauma should not be misinterpreted as reflecting a lack of credibility about consent



Evaluating Consent: Role of Alcohol/Drugs

Evaluating intoxication vs. incapacitation and avoid bias related to alcohol consumption

Gauge the impact of alcohol consumption by asking questions such as:

- What type of alcohol did you consume?
- Over what period of time did you consume the alcohol?
- How quickly was the alcohol consumed?
- Did you consume any food? How much? When?
- Were you taking any medication that has any restrictions regarding consumption with alcohol?
- Can you describe the impact that the consumption of alcohol had on you?

Evaluating Consent: Incapacitation

- Was individual incapacitated? Important to help distinguish sexual assault from a consensual (albeit intoxicated) sexual encounter.
Possible factors to consider:
 - Was the complainant conscious or unconscious? Did they regain consciousness during the incident? If so, what did the respondent do?
 - Did the complainant black out at any point?
 - Did the complainant vomit at any point?
 - What was the complainant's condition when last seen by reliable third-party witnesses?
 - Did the complainant seem to understand where they were and where they might be going?
 - Could the complainant walk, or did someone have to assist or carry the complainant?
 - Could the complainant speak or communicate clearly? Were they slurring?

Evaluating Consent: Incapacitation (continued)

- What physical tasks did the complainant perform, and how well did they perform them?
 - For example, was the complainant using a Smartphone and did their coordination seem impaired? If the complainant was smoking, could they light their own cigarette?
- Could the complainant make and maintain eye contact with others?
- Was the complainant able to remove their own clothes?
- Is there anything to suggest that a complainant may have been less inclined to participate in consensual intercourse at the time of the incident?

Evaluating Consent (continued)

- In many sexual assaults, only the complainant and respondent were present. Pursue and evaluate other evidence to make an informed judgment call on the question of consent:
 - Witness accounts
 - Social Media postings
 - Student ID card swipes
 - Surveillance videos

Types of Evidence

Oral Statements

- Eyewitness, other witnesses, experts, investigators, character witnesses

Written statements

Physical objects and other kinds of records

- Text messages, voicemails, results of a medical exam

Documents

- Court or medical records, diagrams



Classifications of Evidence

Direct Evidence (based on personal observation or experience)

- Eyewitness testimony, photograph, other “direct” proof
- If credible, establishes the fact one is trying to prove

Circumstantial Evidence

- Requires an inference; one must infer the fact one is trying to prove

Documentary Evidence

- Any supportive writings or documents including statements, reports, etc. that support or deny a fact at issue

Hearsay or “secondhand” Evidence

- Permitted in conduct hearings
- Statements made by one person about statements they heard from someone else



Classifications of Evidence (part 2)

- Expert Witness Testimony: Qualified by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
 - (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
 - (b) the testimony is based on sufficient facts or data;
 - (c) the testimony is the product of reliable principles and methods;
 - (d) the expert has reliably applied the principles and methods to the facts of the case.

Classifications of Evidence (part 3)

- Pattern Evidence
 - Prior bad acts/pattern evidence
 - May be relevant and probative
 - Use at fact-finding
 - Consider relevance to determine:
 - Intent/state of mind/motive
 - Absence of mistake
 - Pattern
 - Identity

Evaluating Information

- To evaluate information, ask three questions:
 - Is the information relevant?
 - Is it related to the matter at issue and to what the party is trying to prove?
 - Is the information credible?
 - How believable is it?
 - Is the information convincing?
 - How strongly does it convince you of what the party is trying to prove?



Weighing Evidence Presented

Weighing one person's word against another's

- Unbiased party given more weight

When the party claims to have not known they were breaking a rule

- Should rarely be given value
 - Act occurred before it was prohibited

Multiple witnesses corroborating the same set of facts

- Single, unbiased, disinterested witness is worth more than biased testimonies



Weighing Evidence Presented (part 2)

When a person admits responsibility during the hearing

- Less need for questioning unless panel needs clarification on what happened

When the party introduces character witnesses

- Of minimal value in determining responsibility
- Exception:
 - Witness has information which suggests the respondent was physically unable to commit the violation

Hearing Script

Confidentiality of the
Process

Rules of
Decorum/Objections to
Relevance

Limiting the scope of
the opening statement

Witness introduction
and testimony

Closing Statements by
the parties

Introduction of
additional
information/documents
by parties



The background features a repeating pattern of speech bubbles in various colors (red, yellow, pink, grey, white) against a teal gradient. Each bubble contains a dark blue question mark. A solid blue horizontal bar is positioned at the bottom of the image.

Initial Questions?



Additional Process Discussion

The Art of Questioning



General Hearing Preparation

- Report Review and Assessment
 - Determine the universe the case is situated in
 - Policy dissection and dissection
 - Determine what is known and what needs additional clarity
 - Prepare questions to gather on record relevant evidence

Preparation of Questions



Relevance: “Why do I want to know this information?”



Relevance: “How will it lead me to a greater understanding of the situation at hand?”



Neutrality: “What’s the best possible way to ask this question?”



Questioning Techniques

Use open-ended questions

- Who, what, how, etc.
- Will allow the party/witness to answer as they desire, sometimes yielding more information than requested

Close-ended questions often result in a “yes/no” response, not offering much information/exposition

- Did you?
- Were you?

Questioning Techniques (part 2)

Who was involved in the incident?

What was the violation?

- **What** were you doing when the police approached you? **What** would you do differently if you could do this again? **What** amount of alcohol had you consumed in how much time?

Where were you when this happened?
Where were you walking/driving to?

When did this happen?

Why were you approached by the police?
Why were you engaging in the behavior?





Questioning Techniques (part 3)

- Avoid multiple choice questions.
 - This type of question provides the individual with the answer the hearing panel members wish to hear and often does not bring out the most relevant information.
 - Example: “What were your feelings when you broke the window? It was around final exams; were you stressed, frustrated, or maybe letting off steam?”
- Ask the question and stop to allow a response.





Questioning Techniques (part 4)

- Technical or specific, directed questions should be saved for when open-ended questions are exhausted.
- If more information is needed about a response, good follow-ups include “tell me more about...” or “I’d like to go back to when you said...”



Questioning Techniques (part 5)

- Respond to inconsistencies with curiosity, rather than interrogation:
 - “What are you able to tell me about that?”
 - “Can you help me understand...”
 - “Can you tell me more about that?”



Questioning Techniques: Silence is Golden

- Do not be alarmed when a question is asked, and the person does not respond immediately.
- Allow the person ample time to think without undue pressure to respond quickly.
- If the person needs clarification, allow them to ask for it; don't assume that they do not understand the question.



Tips for the Hearing

- Carefully listen to everything that is said.
- Watch for non-verbal behaviors which may indicate attitudes, true feelings, or emotions.
- Carefully examine the time/date sequence of the incident.
- Follow-up on contradictions when questioning.
- Continue to ask questions until all necessary facts regarding the incident are obtained.
- Clarify any conflicting information before heading into deliberation. Do not wait until deliberation and then start guessing at reasons for conflicting information.

Tips for the Hearing (part 2)

Never utilize an accusatory or blaming tone with any individual in the hearing. Maintain your composure even if others do not.

Carefully prepare questions in advance. Do not prepare or ask questions that are not relevant to the hearing.





Tips for the Hearing (part 3)

- Do not leave a question on the table. If there is information you need to know to make a decision, ask the question. If you're not sure how to phrase it, ask for a breakout session.

Deliberations and Decision- Making



Conclusion of Hearing: Deliberations and Decision

- Elements of charge must be met
- Letter of Finding should contain:
 - Considered testimony and documentation
 - Decision
 - Responsible or not responsible
 - Rationale
 - Must be clear
 - Avoid subjective language



Decision-Making Process

- During deliberation, it is the responsibility of all Panel members to:
 - Encourage every other member's contributions without embarrassing the other members or putting them on the spot.
 - Help the group make full use of everyone's contributions.
 - Express your own opinions.
 - Listen to everyone else's opinions.
 - Recognize and practice the qualities of effective *consensus-seeking groups*.



Qualities of Effective Consensus Seeking Groups

- Use synergistic thinking as opposed to either/or thinking.
- Generate more ideas collectively than individuals generate alone.
- Have a high level of engagement and participation.
- Develop a climate in which members can be relaxed, open and direct, and task oriented.



Attitudes that Support Consensus During Deliberation

Cooperation (NOT competition)

Common ownership of ideas (NOT individually owning ideas)

Value conflict and constructive discussion as a cooperative effort to bring out all perspectives (NOT suppressing feelings and avoiding conflict)

Value the contributions of all members (NOT allowing social prejudices or other implicit bias to reflect in the group's dynamics)

Make an effort to equalize power (NOT relying on authority status)



Drafting an Outcome Determination



**Additional
Questions?**

Case Study





Initial Information

- A faculty member reports being followed repeatedly by another person on campus who was previously unknown to them. They observe this person, Respondent (R), following them in the building where they teach class; in particular, they observe R following them up the stairs on a few occasions after they are done teaching and proceed up the stairs to their office.

First Considerations

- What policy violation is potentially at play here?
- What information do you know that supports a potential policy violation?
- What other information do you want to know to help you reach a determination one way or the other?





Follow Up Information

- Complainant faculty member (C) reports the issue after talking with a friend who encouraged reporting. C reports to police and to OEOA. They engage in an investigation process with both entities and a criminal case is ongoing at the time of the Title IX hearing.



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Additional Questions

- What impact could the criminal process have on the Title IX hearing process, potentially?
- If someone chooses not to testify at the Title IX hearing, what does that mean for the decision-making process?
- What other information would you need based on these batches of information?
- What questions could you ask during the hearing to gain clarity?

Additional Facts

- During the hearing, C indicates that there were portions of the investigative report that they wished to clarify. In the report, it indicates that the report was sent to both C and R for review, but C did not respond with feedback and R actively declined to participate or provide feedback. C states that this situation was overwhelming, triggered their anxiety, and as a result, was difficult to manage. C provides clarity to the report and is responsive to questions about the incidents. R declines to provide information as the criminal process is ongoing. The investigator provides their summary, but no other witnesses attend.



Final Questions

- Which facts, if any, influence your decision-making process for this case?
- Is there other information you would like to know or ask about?
- What items should you include in your outcome?



Final Discussion and Questions

Final Overarching Concepts



Utilize the space for consultation between the Panel and counsel for decisions, discussions of relevance, questioning, etc.



Take whatever time is necessary to deliberate and get things right.



Allow adequate time for the hearing, including breaks for the Panel and for the individuals involved in the hearing.





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