

Title IX **DECISION-MAKERS**

2021 Training

Review

Role

Hearing

Relevance

Expectations

Questions?

TRAINING AGENDA



Title IX DECISION-MAKERS

2021 Training

Review

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

Review

Types of Cases

Allegations of the following behaviors involving students, employees or a combination of both

Sexual Harassment

Interpersonal
Violence

Sexual Assault

Quid Pro Quo

Stalking

**NOT for Discrimination or
Gender-Based Harassment**

Title IX Resolution Process



Decision-Maker Process Involvement



Pre-Hearing Responsibilities

Role

- 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

Role

- 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

Role

- 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*)

HEARING SCRIPT

Title IX Formal Grievance Process



Additional information for the Decision-Maker, not intended to be read aloud.
Read aloud by Decision-Maker.
Response/action by the Decision-Maker.
Response/action by someone other than the Decision-Maker.

I. Call to Order

The hearing begins with all participants in the (virtual) room, including witnesses, so that the Decision-Maker may make introductions and explain the procedures. All participants will have already been provided with the Hearing File (hard copy if on campus; electronic if virtual).

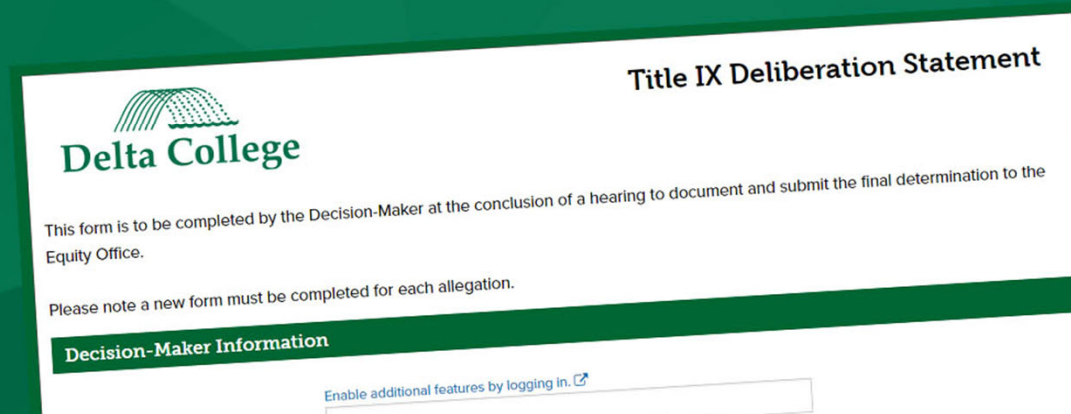
Recording Starts (Equity Office)

Today is [DATE] and it is [TIME]. We are in [LOCATION]. Each of you have been provided with the Hearing File which includes the investigate report and supporting evidence that we receive and had the opportunity to review at least 10 days prior to this hearing. The hearing will now begin. Good afternoon, my name is [DECISION-MAKER NAME], and I will be serving as the Decision-Maker of this Title IX Formal Grievance Process Hearing. My role is to oversee the Hearing that will be conducted today and to make a final determination regarding the [REDACTED] - please note that today's hearing is being recorded by the Equity Office, so please [REDACTED] represents the sole official verbatim record of the [REDACTED] permitted.

Deliberation & Determination

Role

- 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



Delta College

Title IX Deliberation Statement

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.

Decision-Maker Information

Enable additional features by logging in. [↗](#)

Written Decision (NOO)

Role

- Equity Office will use the Deliberation Statement to draft the Notice of Outcomes (NOO)
 - Equity Office will provide draft letters for your review
 - You will have 24 hours to provide your approval
 - Inform the Equity Office to request any changes
 - 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)*

Hearing

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

Hearing

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

Hearing

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

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

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

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

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

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

Relevance

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

Relevance

Relevancy Conclusions

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

Relevance

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

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
 - No shouting, snide tones, sarcasm or dramatics
- Do not use intimidating physical actions
 - No finger pointing, fist pounding or exasperated gestures
- See Hearing Decorum Handout on the Portal

Hearing

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

Hearing

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.

Expectations

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

Expectations

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.

Expectations

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!

Expectations

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

Expectations

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

Expectations

Concerns & Questions

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

equityoffice@delta.edu

989-686-9547

Questions?