The Hearing Process and Disciplinary Sanctions

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1:00 – 2:30 PM - Eastern

ACADEMIC IMPRESSIONS

Our Hopes…

Welcome & Introductions

What this workshop is:

1. Unpack legal requirements
2. Identify what needs to change in your policy
3. Networking/discussion with colleagues/expert faculty

What this workshop is not:

1. Not legal advice
2. Not a "how to" operationalize roles – focus is on integrating mandates into policy
3. Not a "one-size-fits-all" given institutional context

Agenda:

1. The hearing process and disciplinary sanctions within the Final Regulations

2. Questions from Attendees after each major section

Addressing the Hearing Process in the Policy

- Straight forward
- Easy to understand
- Transparent

a. Hearing Process

The hearing process is as follows:

A. The Title IX Coordinator will appoint a three-member Hearing Panel from a pool consisting of trained faculty, staff, and/or outside experts to hear the case and determine the outcome. The panel will consist of a Hearing Coordinator, who will run the hearing, and two panelists. All three panelists are voting members for purposes of deliberation.

B. The Title IX Coordinator will issue a Notice of Hearing to the Complainant and Respondent that provides the names of the hearing panelists. Within 24 hours of receipt of the notice, either party may assert to the Title IX Coordinator, in writing, that a panelist has a conflict of interest or perceived bias. If the Title IX Coordinator determines that such a conflict or bias exists, the Title IX Coordinator will replace that panelist with an alternate. The Title IX Coordinator's determination is final.

C. The Title IX Coordinator will coordinate with the panelists and parties to schedule a date and time for the Hearing. The parties are provided at least 10 days' notice prior to the convening of the Hearing.

D. The Hearing Panel will review the Investigative Report, along with the relevant evidence relied upon within the Investigative Report, prior to the hearing.

E. The Title IX Coordinator will arrange for all named witnesses, including the investigator, to be available for the hearing at prearranged times. Should the name of an individual arise at the hearing who was not previously disclosed during the investigation process, the Hearing Coordinator may temporarily adjourn the Hearing and request that the investigator interview the witness and provide the interview summary/transcript to the parties before reconvening the hearing, or continue the hearing and invite the witness to appear and submit to questions from the Hearing Panel and the parties advisors.

F. Hearings are audio recorded and will be made available to either party by request. The Hearing Panel's deliberations are not recorded.

G. Hearings are not open to the public.

H. If either the Complainant, Respondent, or witnesses fail to appear, the Hearing will continue as scheduled, unless for good cause the Hearing Coordinator determines otherwise.

I. The Complainant and Respondent will be able to view the testimony of each other and witnesses virtually. Witnesses will not be present for or hear the testimony of the parties or other witnesses. The parties will not be permitted in the same room during the course of the hearing, but video of the hearing will be streamed in real time to the room where the party who is not being questioned is located.

J.

K.

L.

Pre-hearing process

The Title IX Coordinator (or designee) will:

- Appoint decisionmaker(s) – hearing officer/hearing panel.
  - Explain who these decisionmaker(s) will be (i.e., faculty, staff, students, outside experts, etc.)

- Decisionmaker(s) must be free of bias and conflict of interest. §106.45(b)(1)(iii)

- Ensure decisionmaker(s) receives training on (§106.45(b)(1)(iii)):
  - Any technology to be utilized at the live hearing.
  - On issues of relevance of questions and evidence.

Pre-hearing process

The Title IX Coordinator (or designee) will:

- Provide written "Notice of Hearing" to the parties and include date, time, location, participants (including witnesses), purpose of the hearing with sufficient time for the parties to prepare (at least 10 days). §106.45(b)(5)(v)

- Allow both parties at least 24 hours to object to decisionmaker(s) in writing on grounds of perceived bias or conflict of interest.
  - Grounds of objection must be articulated in the writing. Title IX Coordinator decides whether to replace decision maker.

Pre-hearing process

The Title IX Coordinator (or designee) will:

- Provide decisionmaker(s) and parties/advisors the Investigative Report and all "relevant" evidence relied upon within the Investigative Report and the parties' responses thereto.
  - At least 10 days prior to the hearing. §106.45(b)(5)(vii)

- Arrange for all named witnesses, including investigator, to be available for the hearing at prearranged times.

- Ensure all participants are trained on the technology to be utilized during the hearing.

Pre-hearing process

The Title IX Coordinator (or designee) *may*:

- Coordinate a virtual pre-hearing conference for Hearing Officer or Chair of Hearing Panel and parties/advisors (optional).

- Hearing Officer/Chair will:
  - Hear and rule on any evidentiary challenges raised by parties
  - Review any pre-submitted cross-examination questions for relevance (optional for parties to pre-submit)
  - Conduct overview of rules and procedures for the hearing
  - Answer hearing process-related questions
  - Address requests for an accommodation due to a disability
  - Test technology

Conflicts of Interest and Biases

- Decisionmaker(s) must not have a conflict of interest or bias:
  - For or against complainants or respondents generally, or
  - An individual complainant or respondent.

  §106.45(b)(1)(iii)

Conflicts of Interest and Biases

- Examples of potential conflicts of interest:
  - Decisionmaker is faculty advisor for one of the parties.
  - Decisionmaker is friends with one of the party's parents/relatives.
  - Decisionmaker ruled on one of the party's academic appeals relating to an academic integrity issue.
  - Decisionmaker investigated/disciplined a party for non-Title IX conduct.

Conflicts of Interest and Biases

- Harmful/unlawful biases can be unconscious.
  - Unconscious bias is a person's preferences for objects and people at a subconscious level that unintentionally influence their behavior and decision making.

- How to recognize biases that impermissibly impact a determination:
  - Pre-judgment of the facts; pre-determined outcome
  - Partisan approach by decisionmaker in their questioning of the parties
  - Improper application of hearing procedures
  - Application of sex stereotypes

Conflicts of Interest and Biases

- The key is for a Title IX Coordinator to recognize any potentially harmful biases of decisionmaker(s) before a hearing.
- Hearings must be based on evidence, not on personal beliefs about a complaint or the parties/witnesses involved.

Conflicts of Interest and Biases

- The Final Regulations already provide some measures to prevent against conflicts of interest and potential biases that could inappropriately impact the outcome:
  - Separate the investigative and adjudication functions
  - Decisionmakers must be trained to serve impartially without prejudging the facts at issue
  - Require training materials that avoid sex stereotypes, including application of the rape shield protections.

QUESTIONS

Hearing Process

- Hearings must be “live.” §106.45(b)(6)(i)

- At the request of either party or in the school’s discretion, live hearing can occur with parties in separate rooms/locations. §106.45(b)(6)(i)
  - Hearings can be conducted virtually with participants in other geographic locations or on-campus.

- Must provide technology enabling the parties and decisionmaker(s) to simultaneously see and hear one another and any testifying witnesses. §106.45(b)(6)(i)

- Must record the hearing and provide the recording or transcript to the parties to review. §106.45(b)(6)(i)

Hearing Process

- Parties must have an advisor for purposes of conducting cross-examination.
  - "If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party." § 106.45(b)(6)(i).

- If an advisor refuses to cross-examine, Title IX Coordinator must appoint another advisor to do so. (Preamble, p.1186 (Federal Register version))

Hearing process

- Party opening/closing statements optional.

- The decisionmaker(s) are permitted to ask questions directly to the parties and witnesses.

- The parties' advisors are permitted to cross-examine the other party and witnesses (decisionmaker(s) must first determine whether each question posed by an advisor is relevant before the witness answers). §106.45(b)(6)(i)
  - "Relevance" is the decisionmaker(s) only evidentiary threshold for admissibility or exclusion of questions and evidence. (Preamble, p. 1190 (Federal Register version)).

Hearing process

- Decisionmaker(s) must enforce legally privileged information (i.e., Complainant's sexual history or behavior unless permitted by §106.45(b)(6)(i), and privileged information protected by federal law, unless person holding the privilege waives the privilege per §106.45(b)(1)(x)).

- If the decisionmaker(s) deems an advisor's question as not relevant, he/she/they must instruct the party/witness not to answer and verbally articulate why a question is not "relevant." § 106.45(b)(6)(i))

Hearing process

- The decisionmaker(s) will issue a written determination regarding responsibility, the rationale therefor and sanctions/remedies imposed, if applicable (within a specified timeframe). §106.45(b)(7)

- The timeframe for the hearing will depend upon how much evidence is involved, how many witnesses there are, and schedules of participants. The hearings can take one day to multiple days based on the foregoing.

ACTIVITY

Fact pattern

A hearing is taking place for the adjudication of the Complainant's formal complaint alleging that the Respondent raped the Complainant in the Complainant's dorm room a year ago.

While the Respondent's advisor is virtually cross-examining the Complainant, half-way into the advisor's questions, the Complainant bursts into tears and is unable to stop sobbing. The Complainant then declines to participate further and leaves the room. The Complainant's advisor remains.

Respondent, seeing the reaction of the Complainant, also declines to participate further and leaves the room.

ACTIVITY

How should your policy address this situation (i.e., what options are available to the parties)?

QUESTIONS

Cross-examination §106.45(b)(6)

- Post-secondary schools are required by the Final Regulations to provide cross-examination opportunities at a live-hearing.

- A party's advisor conducts cross-examination of the other party and witnesses at the live hearing and never the parties. § 106.45(b)(6)(i).

- Cross-examination must occur directly, orally, and in real time. §106.45(b)(6)(i)
  - Written submission of questions is no substitute for live cross-examination.

Cross-examination §106.45(b)(6)

The objective for cross-examination under the Final Regulations:

- To allow parties to probe/challenge the credibility, plausibility and reliability of statements asserted by parties/witnesses.

- To give the decisionmaker(s) the opportunity to observe parties and witnesses answer questions, including those challenging credibility, to serve the truth-seeking purpose of an adjudication.

- To permit parties to pose questions intended to promote the asking party's perspective with respect to the allegations at issue and bring out additional facts and details about the alleged incident.

Cross-examination §106.45(b)(6)

- Parties and witnesses must "submit to cross-examination" for their "statements" to be considered by the decisionmaker(s). §106.45(b)(6)(i)
  - "Statements" are intended assertions of fact. (Preamble p.1213 (Federal Register version))
  - "Statement" includes *any* statement made by a party or witness throughout the investigation, and statements made to the other party and witnesses during/around the alleged incident.

- "Submit to cross-examination" means answering those cross-examination questions that are relevant. (Preamble p.1213 (Federal Register version))

Cross-examination §106.45(b)(6)

- Schools can adopt rules within the hearing process to ensure cross-examination is performed in a respectful and non-abusive manner.
  - Examples of questioning that may be harassing or abusive:
    - Advisor yells or screams at the other party/witness
    - Advisors stands and physically leans into the party/witness' personal space.
    - Advisor asks questions in a manner designed to promote rape myths or sex-based stereotypes.

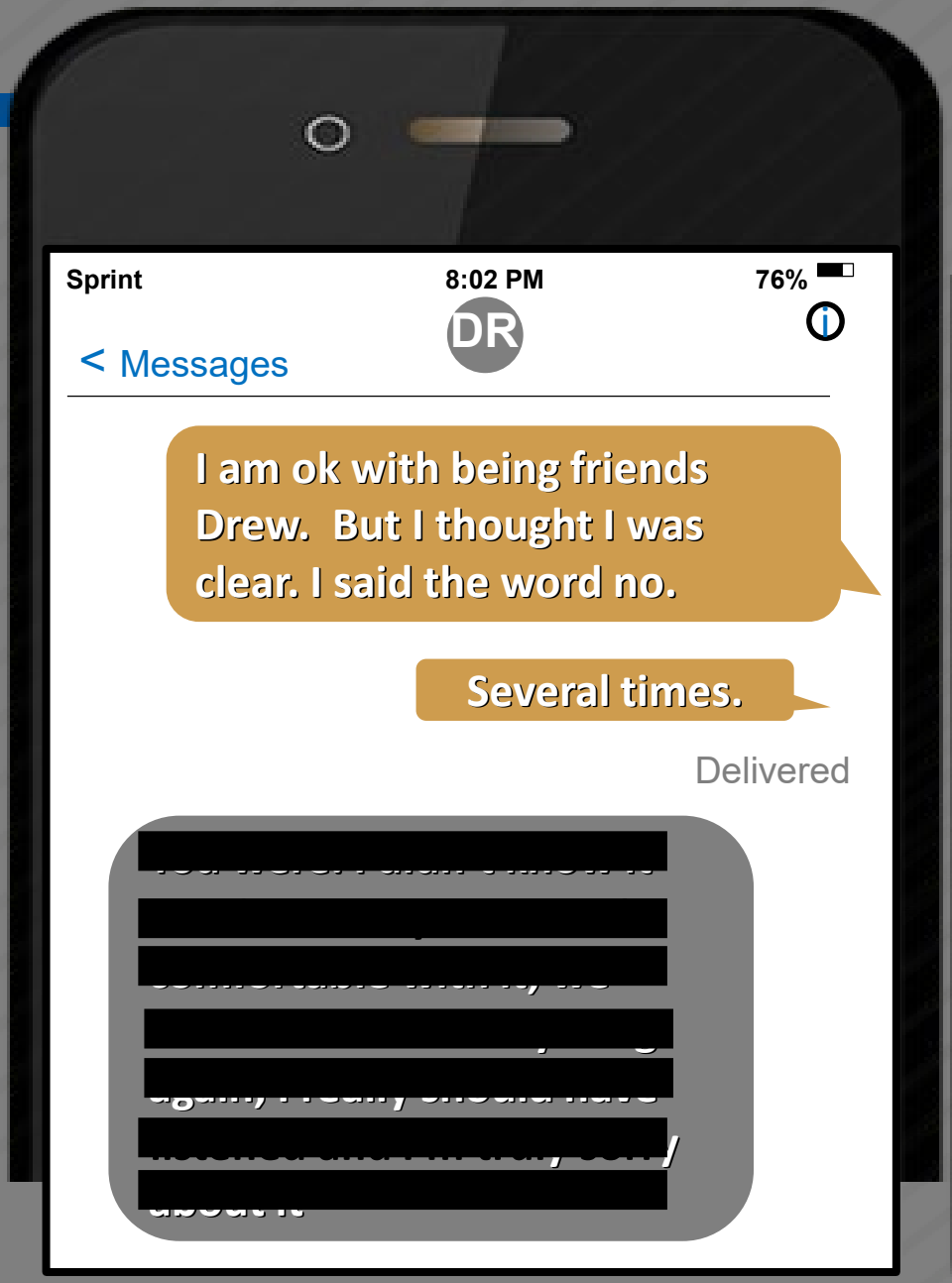
Cross-examination §106.45(b)(6)

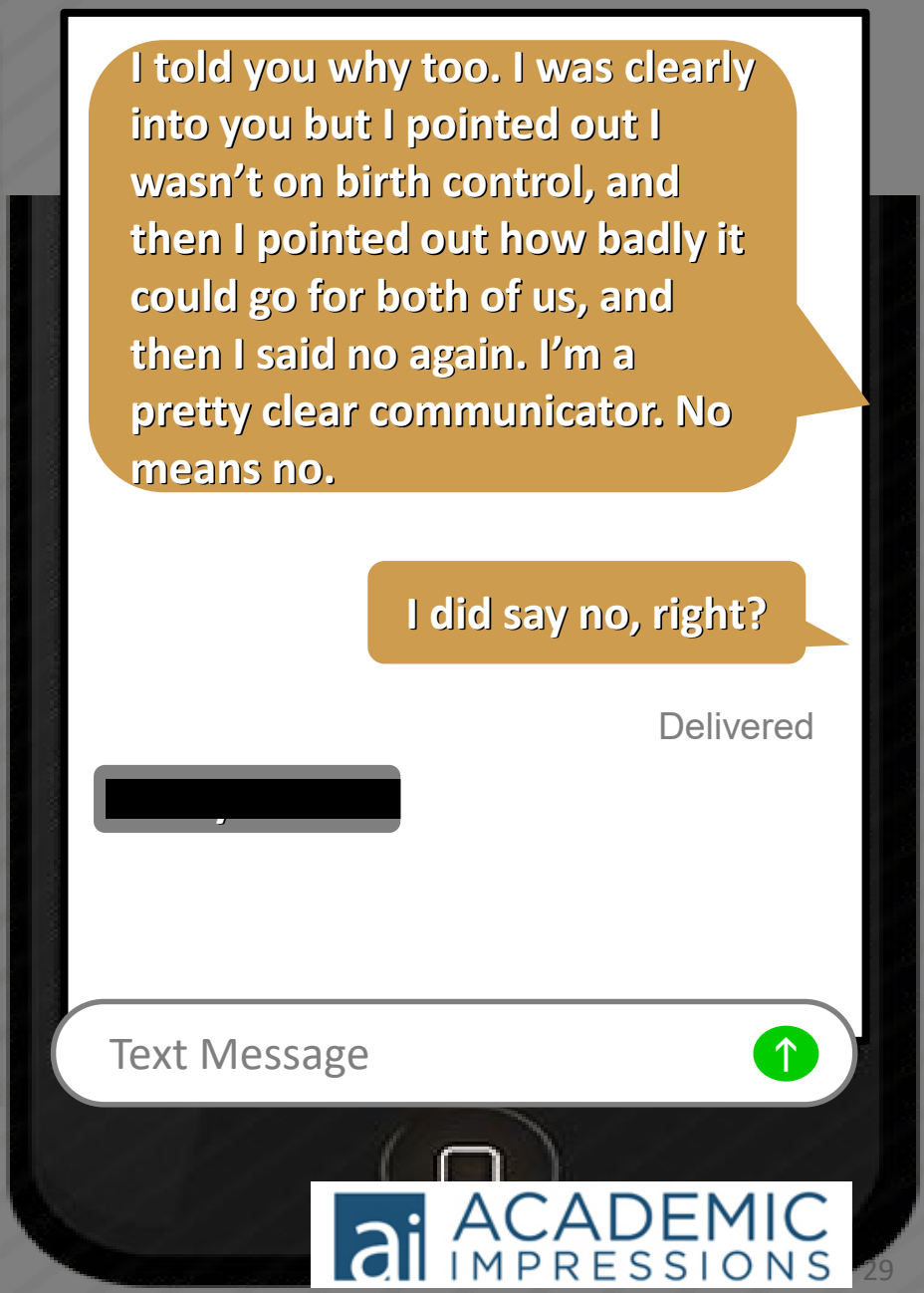
- Decisionmaker(s) must not rely on the statement of a party or witness who does not submit to cross-examination, resulting in exclusion of statements that remain untested by cross-examination.

- Decisionmaker(s) must not draw any inferences based on a party's failure to appear or submit to cross-examination. §106.45(b)(6)(i)

Consequence when a party or witness does not submit to cross-examination

Text messages


Sprint
8:02 PM
76%
DR
< Messages
I am ok with being friends Drew. But I thought I was clear. I said the word no.
Several times.
Delivered


I told you why too. I was clearly into you but I pointed out I wasn't on birth control, and then I pointed out how badly it could go for both of us, and then I said no again. I'm a pretty clear communicator. No means no.
I did say no, right?
Delivered
Text Message

QUESTIONS

Hearing Role of Advisor §106.45(b)(6)(i)

- The parties are entitled to have an advisor of their choice at the hearing, who may or may not be an attorney, to conduct cross-examination. §106.45(b)(2)(B).
  - Only one advisor/support person permitted at the hearing for each party, unless otherwise required by law. (Preamble, p. 1177-1178 (Federal Register version))

- Restrictions may be established regarding extent of advisor's participation in the hearing, as long as restrictions provided equally to both parties.

Hearing Role of Advisor §106.45(b)(6)(i)

Example of a restricted advisor role that may be imposed:

- Advisor acts as party's proxy during hearing; is not "representing" the party (Final Regulations preamble, p.1180, 1187 (Federal Register version))
    - "..the requirement for a party's advisor to conduct cross-examination need not be more extensive than simply relaying the party's desired questions..." (Preamble, p.1028 (Federal Register version))

Role of Advisor at the Hearing §106.45(b)(6)(i)

Example of a broader advisor role that may be permitted:

- Advisor serves to "represent" their party.
  - "A recipient may, but is not required to, allow advisors to 'represent' parties during the entire live hearing (or, for that matter, throughout the entire grievance process)." (Preamble, p. 1186-1187 (Federal Register version))
  - "Representation" could allow advisors to raise objections to questions asked and evidentiary rulings by decisionmaker(s), argue their party's position, instruct party not to answer a question, conduct direct examination of their party and witnesses in addition to cross-examination, etc.

QUESTIONS

Decisionmaker(s) Determination

- Decisionmaker(s) can deliberate right after the hearing, or at another date soon after the hearing.

- Decisionmaker(s) must objectively evaluate of all relevant evidence (inculpatory and exculpatory) and arrive at a finding of “responsible” or “not responsible” as to each allegation utilizing the preponderance of the evidence/clear and convincing standard of proof.

Decision and rationale §106.45(b)(7)

- Decisionmaker(s) will provide the decision and rationale for the decision in writing.

- Where credibility of the parties is an issue in determining preponderance of the/clear and convincing evidence, the rationale will include an explanation of how the decisionmaker(s) resolved questions of credibility.
    - Credibility determinations will not be based upon a person's status as Complainant or Respondent.

Decision and rationale §106.45(b)(7)

The written decision must include:

- The allegations of sexual harassment
- A description of the procedural steps taken from receipt of the formal complaint through determination (notifications to parties, interviews with parties and witnesses, etc.)
- Findings of fact supporting the determination (what happened?)

Decision and rationale §106.45(b)(7)

- Conclusions regarding the application of the policy to the facts (utilizing chosen standard of proof)
- The result of each allegation (responsible or not responsible), and rationale for it.
- If finding of responsibility, decision must include the disciplinary sanction imposed, and remedies to preserve/restore equal access for the Complainant.
- Provide process and permissible grounds for appeal (both parties have right to appeal)

QUESTIONS

Disciplinary Sanctions

- Schools must either *"describe the range of"* or *"list the possible"* disciplinary sanctions available under the grievance process.

- Disciplinary sanctions are imposed on a case-by-case basis and depend upon a variety of circumstances, including the severity and/or pervasiveness of the violation.

- Avoid arbitrary, disproportionate, or inconsistent disciplinary sanctions.

Disciplinary Sanctions

- While not required by the Final Regulations, if decisionmaker(s) is to consider certain factors when arriving on an appropriate sanction, list the factors for consideration in the policy. For example:

"In determining the appropriate sanction(s), the University must examine and consider a number of factors, including, but not limited to: 1) level of risk or harm to the community; 2) the nature and seriousness of the offense; 3) use of drugs or alcohol in the perpetration of the violation; 4) motivation underlying the Respondent's behavior; 5) the Respondent's record of past misconduct, including prior violations of the same or similar type."

Disciplinary Sanctions

- The range of disciplinary sanctions for students, faculty, and staff should, at a minimum, mirror the available sanctions within the school's:
  - Student conduct code
  - Employee handbook
  - Faculty handbook/statutes

- School has discretion to tailor disciplinary sanctions to address specific situations.
  - May use the disciplinary process as an educational tool rather than a punitive tool due to wide discretion to utilize informal resolution processes. (Preamble, p. 272 (Federal Register version))

Disciplinary Sanctions

Examples of *possible* Student sanctions:

- Warning
- Probation
- Suspension (results in transcript notation)
- Expulsion (results in transcript notation)
- Withholding Diploma
- Withholding Degree
- Other Actions, including limitations on residential or co-curricular engagement such as removal from or limitations on access to a specific residence hall, or a co-curricular program.

Disciplinary Sanctions

Examples of *possible* employee/staff sanctions:

- Corrective counseling including but not limited to warning through termination
- Behavioral Improvement Plan
- Referral to the Employee Assistance Program
- Required training or education
- Suspension without pay
- Suspension with pay
- Termination

Disciplinary Sanctions

Examples of *possible* faculty sanctions:

- Corrective counseling
- Written warning
- Written reprimand
- Loss of prospective benefits for a stated period (for instance, suspension of "regular" or "merit" increase in salary or suspension of promotion eligibility)
- Reassignment of duties
- Suspension without pay
- Suspension with pay
- Tenure non-renewal
- Termination of employment

RESOURCE

OCR's position on having a separate decisionmaker for determining responsibility and for the imposition of disciplinary sanctions

May have separate decisionmakers for determination and sanction (e.g., a tenure committee), but it cannot be a piecemeal process that is broken down into chronologically occurring subparts.

The written decision issued to the parties must include the determination on responsibility AND disciplinary sanction (if Respondent found responsible.) § 106.45(b)(7)(ii)(E)

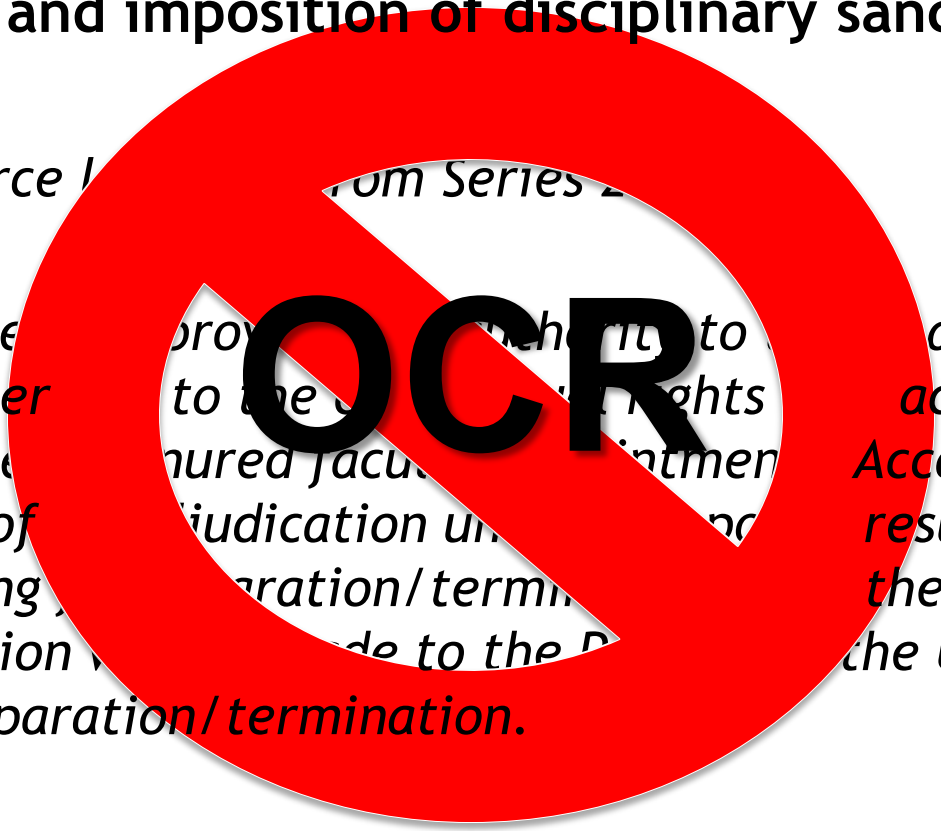
Schools should remain aware of their obligation to conclude the grievance process within the reasonably prompt timeframes designated in the school's grievance process.

RESOURCE

OCR's position on separate decisionmaker for responsibility and imposition of disciplinary sanctions

Sample resource l[illegible]om Series 2[illegible]

This policy doe[illegible]pro[illegible]ht to [illegible]ate a tenured faculty member [illegible] to the [illegible]ghts [illegible]accompany a faculty membe[illegible]nured facu[illegible]intmen[illegible] Accordingly, if the outcome of [illegible]iudication u[illegible]n[illegible] results in a sanction calling [illegible]aration/termi[illegible] the university, a recommendation [illegible]de to the P[illegible] the University to pursue the separation/termination.



CHAT

How will your policy address this potential conflict with employee contracts and desired policy?

RESOURCE

OCR on at-will or contractual employment agreements relating to employee misconduct:

"…[R]ecipients of Federal financial assistance agree to comply with Title IX obligations as a condition of receiving Federal funds. Recipients' contractual arrangements with employees must conform to Federal law, as a condition of receipt of Federal funds." (Preamble, p. 1296 (Federal Register version))

Remedies

- If a respondent is found responsible, the complainant is entitled to remedies designed to preserve or restore equal access to the school's education program and activity. §106.45(b)(1)(i).

- Schools must provide all students, faculty and staff a clear understanding of *possible* or *a range of* remedies available under the grievance process. §106.45(b)(1)(i).

- Remedies can be the same as or similar to the "support measures" listed in the policy, but do not need to be non-disciplinary or non-punitive and do not need to avoid burdening a respondent.

Remedies

Examples of *possible* remedies:

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual/individual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of campus
- "Other similar measures"

QUESTIONS

Hearing Rules and Procedures

Hearing Rules and Procedures

- The Final Regulations allow universities to proscribe rules and procedures for the hearing.
- Hearing rules and procedures should accurately illustrate the format and operation of the hearing for the involved participants.
- Recommend a link to the Hearing Rules and Procedures in the policy.
- The following provides a “sample” Hearing Rules and Procedures.

Hearing Rules and Procedures

- The hearing will begin at the pre-scheduled time provided in the Notice of Hearing/email/etc.

- Prior to the start of the hearing, the parties and their advisors will report to their individually assigned private conference rooms in the student union. The Hearing Panel will be in a separate conference room nearby.

- The parties and advisors will have access to technology to enable them to see and hear one another and the Hearing Panel in real-time.

- The hearing will be recorded, and the parties will be provided with the recording or a transcript thereof to review within *5 days* after the conclusion of the hearing.

Hearing Rules and Procedures

- At the prescheduled time, the Hearing Panel Chair will convene the hearing by virtually connecting the Hearing Panel with the parties and their advisors.

- The Hearing Panel Chair will provide to the parties and their advisors a brief overview of the hearing process and expectations for participants' conduct.

- The parties and their advisors must agree to abide by those expectations or risk removal from the hearing. If an advisor is removed for failure to abide by the hearing rules, the hearing will continue after a new advisor is appointed by the university, who may or may not be an attorney.

Hearing Rules and Procedures

- The Complainant and Respondent must each be accompanied by one advisor, unless required by law, who may or may not be an attorney, for the purpose of cross-examining (i.e., questioning) the other party and witnesses.
    - If a party does not choose an advisor or the chosen advisor becomes unavailable, the school will appoint an advisor for the party, who may or may not be an attorney.

- If a party's advisor is also a witness, the party may have an alternative advisor temporarily step-in to question the advisor/witness.

Hearing Rules and Procedures

- The purpose of allowing the parties, through their advisors, to question the other party and witnesses is to permit the parties:
  - To probe the credibility, plausibility and reliability of statements asserted by parties/witnesses, and
  - Provides an opportunity to bring out additional facts and details about the alleged incident(s).

- Advisors must engage in questioning that is relevant, respectful, non-intimidating and non-abusive.

Hearing Rules and Procedures

- If the Complainant, Respondent, or a witness fails to appear or stops participating before the conclusion of the hearing, the hearing will continue as scheduled, unless the Hearing Panel determines otherwise for good cause (define “good cause”).

- Once the hearing begins, the hearing will continue to completion except for breaks and other adjournments administered by the Hearing Panel. The hearing must not be unnecessarily delayed once it has begun.
    - Should a party or advisor leave their room without first requesting a break, the hearing will continue.

Hearing Rules and Procedures

- The Hearing Panel shall:
  - Facilitate the hearing,
  - Ask questions of the parties and witnesses,
  - Verbally exclude non-relevant questions and testimony.
    - Examples may include immaterial, extraneous, or unduly repetitious questioning or testimony, prior bad acts unrelated to the alleged incident(s), information regarding a party's character.

Hearing Rules and Procedures

- Take reasonable steps to maintain order and decorum, and
  - Includes ability to oversee advisor questioning in a manner that avoids aggressive, abusive questioning of any party or witness.

- Observe recognized legal privileges, such as:
  - Questions and evidence about the Complainant's sexual history or behavior are not permitted, unless asked offered to prove that someone other than Respondent committed the conduct, or to prove consent.
  - Privileged information protected under HIPAA, FERPA, or any other federal law, unless a written waiver from the owner of the privilege is provided.

Hearing Rules and Procedures

- The advisor's role within the hearing is limited.* Complainants and Respondents are expected to respond to questions from the Hearing Panel and the other party's advisor on their own behalf.

- The parties and their advisors may consult in private during the hearing, but not while a question is pending.

- The role of the advisor is to relay their party's desired questions to be asked of the other party and witnesses.

- Advisors are not permitted to raise objections to questions posed by the other party's advisor, argue in support of their party's position, or otherwise "represent" the party at the hearing.

**example of a very limited advisor role.*

Hearing Rules and Procedures

- The Hearing Panel will question the Complainant, Respondent, and witnesses directly.

- The Complainant and Respondent are prohibited from questioning each other and witnesses directly; rather, they must do so through their advisors.

Hearing Rules and Procedures

- The advisors will ask questions in the following manner: The advisors will pose each question verbally to the Hearing Panel Chair, who will determine whether the question is relevant.
  - If the Chair deems the question relevant, the Chair will instruct the party or witness to answer the question.
  - If the Chair deems the question as not relevant, the Chair will instruct the party or witness not to answer the question and provide an explanation for the decision.

- A question is "relevant" if it seeks an answer that has the tendency to make the existence of any fact that is of consequence to the determination more or less probable than it would be without it.

Hearing Rules and Procedures

- The Chair's decision on whether a question is relevant is final.
- The parties (accompanied by their advisors) and witnesses will testify in the same room as the Hearing Panel, or virtually at the Hearing Panel's discretion.
- The Complainant and Respondent will be able to view the testimony of each other and witnesses virtually.
- Witnesses will not be present for or hear the testimony of the parties or other witnesses.

Hearing Rules and Procedures

- The questioning of the parties and witnesses will *generally* take place as follows:
  - The Hearing Panel will ask the Complainant questions first, while the Respondent may view the hearing virtually. The Respondent's advisor may then ask questions of the Complainant.
  - The Hearing Panel will next address the Respondent in the same format as the Complainant. The Complainant's advisor may then ask questions of the Respondent.
  - The Hearing Panel will next question each witness. After the Hearing Panel questions a witness, the Complainant and then the Respondent's advisors may ask questions of the witness.

Hearing Rules and Procedures

- If a party or witness fails to submit to questioning from a party's advisor, the Hearing Panel may not rely on that individual's prior statements to the investigator or statements made by the individual within the relevant evidence before the Hearing Panel.

- If a party or witness fails to submit to questioning from a party's advisor, the Hearing Panel may not draw an inference about the decision regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer questions.

Hearing Rules and Procedures

- The parties and their advisors will return to their respective rooms after testifying before the Hearing Panel.
- Witnesses are permitted to leave the premises after testifying but remain available for re-call.
- If necessary, the Hearing Panel may recall the Complainant, Respondent, or any witness for further questioning.

Hearing Rules and Procedures

- Should the parties or Hearing Panelists wish to hear from a witness at the hearing who was not previously disclosed during the investigation process, the Hearing Chair may temporarily adjourn the hearing and request that the investigator interview the witness and provide the interview summary/transcript to the parties before reconvening the hearing, or continue the hearing and invite the witness to appear and submit to questions from the Hearing Panel and the parties advisors, if the testimony from that witness is relevant.

- The Hearing Panel shall have discretion whether to allow evidence to be presented at the hearing that was available during the investigatory process.

Hearing Rules and Procedures

- Each party, speaking on their own behalf, shall have 5 minutes to provide a closing statement. The Complainant will speak first followed by the Respondent.

- The Hearing Panel Chair will adjourn the hearing.

- The Hearing Panel has 10 business days to objectively evaluate and weigh the relevant evidence, both inculpatory and exculpatory, to determine the outcome. A majority vote is required for an outcome.

- The Title IX Coordinator will distribute the Hearing Panel's determination to the parties simultaneously through Maxient.

QUESTIONS

RESOURCE

Office for Civil Rights

https://www2.ed.gov/about/offices/list/ocr/newsroom.html

- Title IX Regulations Addressing Sexual Harassment (unofficial copy)
- Title IX Regulations Addressing Sexual Harassment (Federal Register)
- Title IX: Fact Sheet: Final Title IX Regulations
- Title IX: U.S. Department of Education Title IX Final Rule Overview
- Title IX: Summary of Major Provisions of the Department of Education's Title IX Final Rule
- OCR Blog

EVALUATION

Thank you!

Please remember to complete the event evaluation. Your comments will help us continually improve the quality of our programs.

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