

# Hearing Officer and Hearing Panel Training

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# Today's Agenda-Day 1

Prerequisite's: Title IX Regulation Changes

- Intro & Being Impartial: 9:00-10:30
- Avoiding Bias, and Conflict of Interest: 10:30-10:45
- Break: 10:45-12:00
- Live Cross-Examination Theory & Practice
- Issues of Relevancy 12:00-12:30
- Break 12:30-12:45
- Issues of Relevancy, Hypotheticals 12:45-1:45

# Today's Agenda-Day 2

- Debrief/Hearing: 10:30-10:45
- Break: 10:30-11:00
- Hearing/Objectively Evaluating Evidence/Written Decision: 11:00-12:00
- Case Study:12:00-1:00

# “BIAS” DEFINED

- “Biased” – A tendency to believe that some people, ideas, etc., are better than others that usually results in treating some people unfairly
- An inclination of temperament or outlook; especially a personal and sometimes unreasoned judgment (merriam-webster.com)
- “Biased” – To cause partiality or favoritism; influence, especially unfairly (Dictionary.com)

# BIAS

- Bias can represent any variable that improperly influences a finding and/or sanction
- There are many forms of bias and prejudice that can impact decisions and sanctions: – Pre-determined

The focus of this section, however, is on the cultural competence-based bias and prejudice.

# BIAS & PREJUDICE: COMMON ISSUES

## Role of Alcohol

- Your own experiences...
- Student-Athletes
- Disabilities & Mental Illness
- International Students
- Sex/Gender
  - Gender Identity
- Race
- Ethnicity
- Nature of the Violation
- Religion or Religious beliefs
- Veteran Status • Socioeconomic Status
- Politics
- Pre-disposition towards one

# Bias? Conflict of Interest

The investigator once took a women's studies course

The appeals officer wrote on Facebook last week that if a boy is accused, he definitely did at least something wrong

The Hearing Officer went to the same college as the Complainant's mother

A Hearing Panelist's daughter works for the Complainant's mother

# “PREJUDICE” DEFINED

- To “pre-judge”
- “Prejudice” – Any preconceived opinion or feeling, either favorable or unfavorable (dictionary.com)
- Often based on things we have previously read, our own experiences
- Prejudice – An unfair feeling of dislike for a person or group because of race, sex, religion, etc. – A feeling of like or dislike for someone or something especially when it is not reasonable or logical (merriam-webster.com)

# Avoiding Pre-Judgment of Facts at Issue

A good way to avoid bias and ensure impartiality: avoiding prejudgment of facts

Remember:

- Keep an open mind as a decision-maker and actively listen to all the facts presented as subjected to cross-examination
- If a party or witness does not submit to cross-examination, may not be able to consider statements in the record
- Each case is unique and different

# Being Impartial

The hearing officer and panelists need to recognize that a party should not be “unfairly judged due to inability to recount each specific detail of an incident in sequence, whether such inability is due to trauma, the effects of drugs or alcohol, or simple fallibility of human memory.”

# BIAS & PREJUDICE

- People do not shed their values, beliefs and life experiences at the hearing room door. Nor should we expect them to
  - While bias is inevitable, it does not necessarily undermine the fairness or appropriateness of a hearing board's decision
  - The key is recognizing the bias and ensuring it does not impact one's decision because bias that serves as the basis for the outcome of the hearing is improper
  - Hearings must be based on evidence, not on personal beliefs about a complaint

# The Infrastructure for Compliance

- Review and Assess Facts
- Make Findings of Facts
- Determine Responsibility / Findings of Responsibility
- Determine Sanction and Remedy

# Hearing Participants

**Complainant** the person bringing the complaint

**Respondent** the person against whom the complaint has been filed

**Advisor** will conduct cross examination;

**Hearing Panelists** determines whether policy was violated

**Investigator** summarizes the investigation, answers questions

**Witnesses** present in the room only when answering questions

**Hearing Coordinator** coordinates all aspects of the hearing, ensures a fair and equitable hearing

**Support person** process, acts as a resource for all participants

**Decision-Maker** makes decision as to whether policy was violated

**Administrative Staff** assists with the logistical coordination of the people, the space, technol

# Live Cross-Examination: Theory

- According to the Department of Education, the process in 106.45 best achieves the purposes of:
- (1) effectuating Title IX's non-discrimination mandate by ensuring fair, reliable outcomes viewed as legitimate in resolution of formal complaints of sexual harassment so that victims receive remedies
- (2) reducing and preventing sex bias from affecting outcomes; and
- (3) ensuring that Title IX regulations are consistent with constitutional due process and fundamental fairness

# PREPARING FOR THE HEARING (cont.)

- Arrive prepared and early
- Bring snacks and water/drinks
- Turn off your phone! And put it away!
- Note-writing tips

# PREPARING FOR THE HEARING (cont.)

- Review and understand all charges
- Review all the material carefully and thoroughly – get a general overview of the complaint
- Review it a second time and note all areas of consistency of information
- Read it a third time to identify inconsistencies in the information – This is the area you will need to concentrate your questions

# PREPARING FOR THE HEARING (cont.)

- Review the policy or section of the policy alleged to have been violated
- All of the policy elements (what does it take to establish a policy violation?)
- Identify the elements of each offense alleged
- Break down the constituent elements of each relevant policy
- Identify all Key Elements (that may not be an independent policy violation) – Is there corroborating evidence?
- Have applicable policies in-hand

# PREPARING QUESTIONS

- Write down the following as a reminder to you: – What do I need to know?
- Why do I need to know it?
- If the answer to this is not that it will help you determine whether or not a policy violation occurred and you can explain a rationale for that; then it is not something you need to know!
- What is the best way to ask the question?

# HEARING DECORUM

- Be professional, but not lawyerly or judge-like – This is not Law and Order – this is an administrative process at a school.
- You are not cross-examining or interrogating, you are striving to determine whether the Responding Party(s) violated the institutional policy.

# THE HEARING

- Start recording
- Welcome, introductions, and establishing ground rules
- State the allegations (citing each alleged policy violation) and whether the Respondent agrees or disagrees with each of the allegations
- Indicate, on the record, that all Hearing Officer and Hearing panelist have reviewed the investigation report and all relevant evidence provided by the Investigator(s)
- Discuss Breaks