



ADELPHI
UNIVERSITY
NEW YORK

Anti-Discrimination Panel Training

2022

Agenda:

- *The Conduct Process Training* by Brian Glick, Director of Student Conduct and Community Standards

- *Trauma Response Training* by April McCarthy, Campus Education & Outreach Coordinator-
The Safe Center Long Island

- *Title IX and other non-discrimination laws Training* by Lance Houston, Title IX Coordinator
and Director of Equity and Compliance

Connecting the dots: Similarities and differences in the student conduct and anti-discrimination processes

Brian M. Glick, Ed.D.

Director

**Student Conduct and Community
Standards**

March 2022



Learning objectives

1. Understand from where the student conduct process originated
2. Articulate how the student conduct and anti—discrimination panel processes operate in a federal/state atmosphere
3. Understand and articulate the connection and interplay between the criminal justice or civil court processes and the student conduct and anti-discrimination panel processes
4. Articulate the differences between the student conduct process and the anti-discrimination process

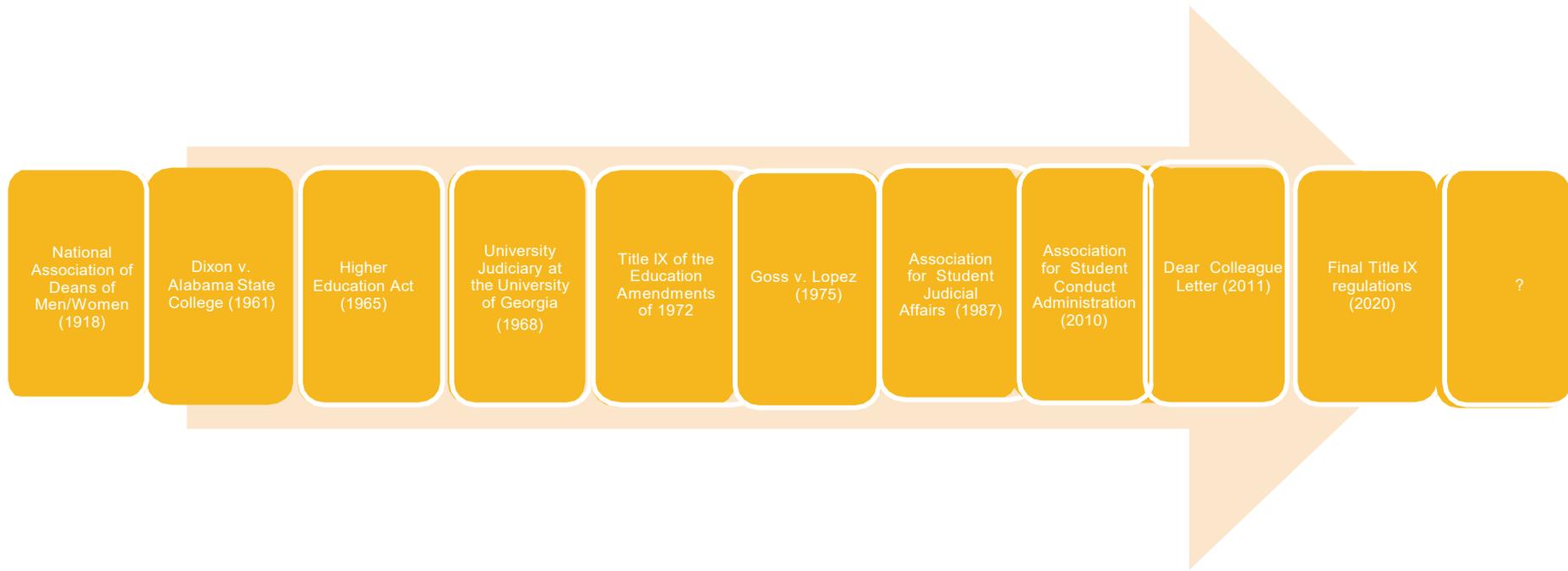
The history of student conduct

1. Responsibility of the university president
2. Responsibility of the faculty
3. Development of the Deans of Men and Deans of Women
4. Modern-day student conduct processes

The "modern-day" student conduct system

1. Based on the criminal justice process
2. Public/private dichotomy
3. Landmark court cases
4. Regulation/education struggle

A timeline of the "modern-day" student conduct system



Student conduct operations in a federal/state atmosphere

1. Laws, regulations, accreditation, and policies
2. Supremacy clause
3. Federal/state tug-of-war
4. Lack of understanding by lawmakers

Landmark court cases

1. Dixon v. Alabama State College (5th Cir., 1961) (Due process)
2. United States District Court for the Western District of Missouri (1969) (Due process)
3. Goss v. Lopez (419 U.S. 565) (1975)) (Due process)
4. Osteen v. Henley (13 F.3d 221)(7th Cir., 1993) (Support person)
5. Doe v. University of the Sciences (961 F. 3d 203)(3d Cir., 2020)) (Breach of contract)

What is Student Conduct and Community Standards responsible for?

1. Non-academic misconduct violations
2. Repeat offenses of academic misconduct
3. Prevention

How Student Conduct and Community Standards operates?

1. Educational process
2. Incorporation of restorative practices
3. Mix of both legal/regulatory and educational responses

The Code of Conduct

- The Code of Conduct is available online

What is the overlap between Student Conduct and Community Standards and the criminal or civil court process?

1. Why participate?
2. Jurisdiction
3. Standard of proof
4. Evidence
5. Outcome

Questions

Thank you

Your role:

- advisor
- investigator
- hearing panel
- appeals panel





Advisor - A person chosen by a party or appointed by the University to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing. *Complainant* and *respondent* have the right to have an advisor of choice present during the grievance proceeding and any related meetings under Process A.

Investigator- A person who conducts a formal inquiry into a matter.

Possible violations of the Adelphi University Policy and/or Code of Conduct
<https://www.adelphi.edu/policies/anti-discrimination-harassment-and-retaliation-policy/>

[Code of Conduct for Adelphi University](#)

Hearing Panel Member- Listen and review evidence in relation to a possible policy violation. Make a decision with regard to responsibility/sanctions

Appeals Panel Member- Review Hearing Board's decision/or decision regarding dismissal of formal complaint or any allegations therein



Relevant Statutes

ADA-	Americans with Disabilities Act
ADEA-	Age Discrimination in Employment Act
GINA-	Genetic Information Non-disclosure Act
PDA-	Pregnancy Discrimination Act
Title VI-	Discrimination based on race, color, national origin in programs or activities receiving Federal financial assistance
Title VII-	Discrimination in employment based on race, color, sex, religion, national origin
Title IX-	Discrimination in education based on sex > gender, gender identity, gender expression, sexual violence, sexual harassment
Veteran Status-	Vietnam Era Veterans' Readjustment Act of 1974 (VEVRAA), the Veterans' Employment Uniformed Services Employment and Reemployment Rights Act (USERRA)

DEFINITIONS

Complainant - an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on protected class; or retaliation for engaging in a protected activity.

Complaint (formal) - a document filed/signed by a complainant or the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the recipient investigate the allegation.

Final Determination - A conclusion by the preponderance of the evidence that the alleged conduct occurred and whether it did or did not violate University policy.

Finding - A conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged

Formal Grievance Process - means Process “A”, a method of formal resolution designated by the recipient to address conduct that falls within the policies and which complies with the requirements of the Title IX regulations (34 CFR Part 106.45)

DEFINITIONS

Notice - An employee, student, or third party informs the Title IX Coordinator, Responsible Employee or other Official with Authority (OWA) of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.

Process “A” - The *Title IX* Sexual Harassment Grievance Process

Process “B” - The Process for resolution of allegations of discrimination, harassment (including sexual misconduct), and/or retaliation not including Title IX sexual harassment

Respondent - an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.

Resolution - the result of an informal or formal grievance process.

DEFINITIONS

Retaliation- an intentional action taken by an accused individual or allied third party, absent legitimate non-discriminatory purposes, that harms or attempts to harm an individual as reprisal for filing a complaint, supporting a complainant or otherwise participating in a proceeding pursuant to the Anti-Discrimination, Harassment (Including Sexual Misconduct/Title IX) and Retaliation Policy. Retaliation includes intimidating, threatening, coercing or in any way discriminating against an individual because of the individual's complaint or participation in an investigation or proceeding.

Sanction - a consequence imposed on a Respondent who is found to have violated the University policy.

Sexual Harassment - the umbrella category of sexual offenses including sexual harassment, sexual assault, stalking, dating violence and domestic violence.

Title IX of the Educational Amendments of 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 subjected to discrimination under any educational program or activity receiving federal financial assistance.”

Our Policy Influenced by Federal & State

TITLE IX



NYS 129b





Title IX Sexual Harassment

Quid Pro Quo:

an employee of the university,
conditions the provision of an aid, benefit, or service of the university,
on an individual's participation in unwelcome sexual conduct

Sexual Harassment:

unwelcome conduct,
determined by a reasonable person,
to be so **severe**, and
pervasive, and,
objectively offensive,
that it effectively denies a person equal access to the university's education program or
activity

[Reasonable Person Standard](#) means an objective test to determine if a reasonably prudent person who exercises an average degree of care, skill, and judgment would be justified in drawing the same conclusions under the same circumstances having knowledge of the same facts.



Title IX Sexual Harassment (sexual assault; dating violence; domestic violence; stalking)

Sexual Assault: (Under NYS Education Law Article 129b) “Enough is Enough”

Any sexual act directed against another person, **without** the **consent** of the Complainant, including instances in which the complainant is incapable of giving consent (asleep/unconscious/intoxicated to the point of incapacitation/underage)

Affirmative Consent is defined as permission to engage in sexual activity- must be **knowing** (able to understand), **voluntary** and mutual decision among all participants. Consent can be given by words OR actions, as long as those words or actions create **Clear** permission regarding willingness to engage in sexual activity.

*silence or lack of resistance, in and of itself, does not demonstrate consent.

*consent can be withdrawn at any time/ consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs or other intoxicants may be incapacitated- meaning they lack the ability to knowingly choose to participate in sexual activity- therefore they would be unable to consent

*consent cannot be given if it is the result of any coercion, intimidation, force or threat of harm.



Dating Violence- as defined by VAWA at 34 U.S.C. section 12291(a)(10), means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and 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 the relationship, and (iii) the frequency of interaction between the persons involved in the relationship.

Domestic Violence- as defined by VAWA at 34 U.S.C section 12291(a)(8), 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 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- as defined by VAWA at 34 U.S.C. section 12291(a)(30), means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for their safety or the safety of others; or (2) suffer substantial emotional distress.



Discrimination: *actions that deprive individuals of educational or employment access, benefits or opportunities on the basis of the individual's actual or perceived protected status*

Elements of a Prima facie case

- 1.) Membership in a protected class
- 2.) Adverse action - some harm occurred
- 3.) Discriminatory animus - the discriminator knew of the complainant's protected status
- 4.) Causation - the harm that occurred was the result of the adverse action

Title VI

Title VI is part of the Civil Rights Act of 1964, which is a critical federal law that prohibits discrimination on the basis of race, color or national origin by any program or activity (including institutions of higher education) that receives federal financial assistance.

Institutions must take care to monitor their practices and policies to be sure that they do not exclude racial, ethnic or minority students, even if the intention of the policy was not to exclude minorities.



Title VII

Title VII is part of the Civil Rights Act of 1964, which is a critical federal law that protects employees from discrimination on the basis of race, color, sex, religion and national origin.

Context:

- Hiring
- Firing
- Compensation
- Terms, Conditions,
or privileges of
employment

Protected Status:

- Race
- Color
- Religion
- Sex
- National Origin

Conduct:

- discrimination
- harassment
- retaliation



Title VII

Types of Discrimination:

1. *Disparate treatment*- intentional discrimination in which some individuals are treated less favorably because of a protected status
2. *Disparate Impact*- employment practices that impact individuals differently based on a protected status, even though the practices are facially neutral

Types of Harassment:

1. *Quid pro quo*

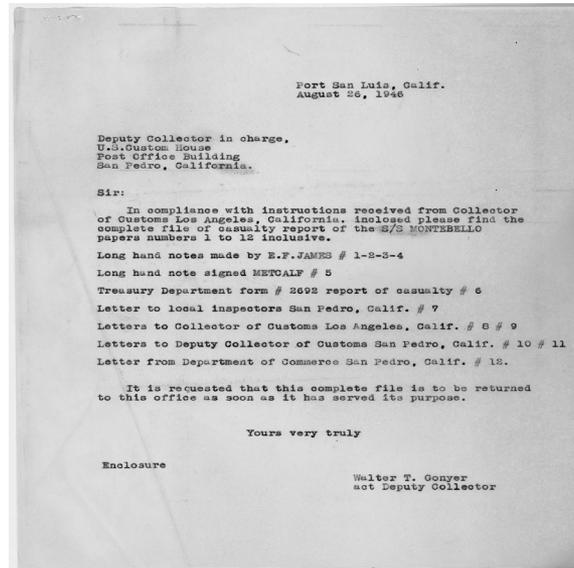
1. May occur as a form of sexual harassment- trading one thing for another

2. *Hostile environment*

- unwelcome conduct that is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Information/Evidence Gathering

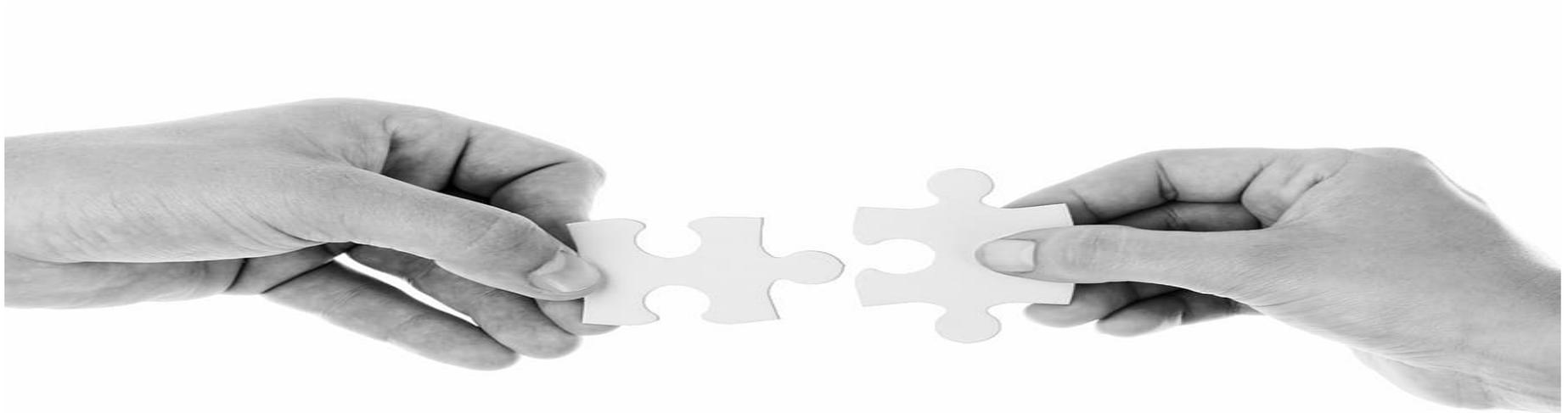
*gather relevant facts to assist the ultimate decision-maker/finder-of-fact with their determination regarding responsibility





Relevant Evidence - probative and “material”. Evidence that has a tendency to prove or disprove a fact AND that fact *MUST* be of consequence in determining the action.

Will the evidence help the decision-maker(s) in some small way to reach a good decision, either by itself or in conjunction with other evidence?



The Difference between Relevance and Irrelevance

<https://www.youtube.com/watch?v=Nn4qRE8uYL8>

Common Relevancy Issues:

Remoteness in time or place: reduces relevancy - events taking place at times or locations distant from the event at issue are of little or no relevance



Types of Evidence

Best Evidence: Evidence which proves itself

Examples: the *original* document, photograph, recording, the contract, audio recordings - voicemail messages, video recordings, etc.

Physical Evidence: real, material, tangible things such as photos, medical records, DNA evidence, injuries, clothing, bedding, video surveillance, and communication records such as telephone, email, voicemail, texts, and social media

Direct Evidence: Based on personal knowledge or first-hand observations of the incident or its surrounding circumstances. If true it is probative without inference or presumption.

Examples: Direct statements from the parties

Circumstantial Evidence: evidence based on inference and not on personal knowledge or observation also known as indirect evidence. Facts from which one may infer intent or motive.

Example: cookie jar

Documentary - written material which is generated during the course of normal business activity

Testimonial - given orally by parties and witnesses. Offered to prove the truth of the matter asserted.



WITNESSES



Direct - Those who observed or who might have observed or who have knowledge of the incident

Outcry - Those who know details of the incident from the parties from the period immediately thereafter

Indirect - Those who were later told about the incident by the reporting or responding party

After-the-fact - Those who observed the reporting party's reactions or changes in behavior by either party



Interviewing Witnesses/Victims/Respondents

-be mindful of the language you are using:

Examples:

complainant/ accuser

respondent/ perpetrator

-other things to consider:

-make sure that your space is comfortable

-be aware of your own biases and set them aside/ listen without judging

-give the witness, complainant or respondent space to ask questions they may have

- check in with them frequently to ensure that they understand the process

-body language

-do not touch the person to comfort or calm them

-listen and empathize

-acknowledge their feelings even when you disagree

Treat the parties the way you want to be treated.

Help me understand....

Trauma Response Training

Presentation Given by April McCarthy, Campus Education & Outreach Coordinator- The Safe Center Long Island

Trauma Response Training briefly overviews the definition of trauma, the neurobiology of trauma, and the effects of trauma. In addition, the training reviews:

How trauma impacts survivor response,
How trauma impacts investigations & provision of services,
Strategies when speaking to/interviewing a survivor of trauma,
How to avoid victim blaming,
How to follow-up a survivor interview,
and documenting the survivor's experience.



Asking the Questions

Ask broad open-ended questions first then narrow the questions from the answers given, finish with a close-ended question.

*Open-ended questions - who, what, when
where, why, how*

These questions give the interviewee the opportunity to narrate, tell a story - **Do not interrupt**

Close-ended questions - can be used effectively to verify and pin down key points or to get a party or witness to commit to a statement.

Generally, requires a “yes” or “no” response.

Examples:

You didn't see what happened did you?

Isn't it true that you were drinking?

You've seen the complainant since the incident haven't you?

Multiple Questions

Asking more than one question at a time can cause confusion for the investigator and the interviewee and can also lead to incomplete or overlapping information.



Allow the person you are interviewing time to gather their thoughts and respond without undue pressure. If clarification is needed, let the interviewee request it. Do not assume they do not understand.





Evaluating the Evidence- Is it Credible?

Trustworthy? Reliable? Plausible? Believable?

Inherent plausibility - Is the testimony believable at face value? Does it make sense? Are there materials to corroborate the story?

Demeanor - Did the person seem to be telling the truth? How was their demeanor while testifying

Motive to falsify - Did the person have reason to lie? Does the person feel threatened for any reason?

Opportunity to observe - the opportunity of the witness to see or hear or know the things testified to.

Internal consistency - has the witness's testimony been consistent from direct examination to cross-examination? Or has their story changed? A witness who changes their story on some essential points in cross-examination – may undermine credibility. Is the witness's testimony consistent with statements made during the investigation?

External consistency - Is the testimony of the witness consistent with other external facts?

Consistent with documentation that exists in the case?

Is it consistent with the testimony of other witnesses who the hearing panel considers truthful?

Corroboration - Is there a witness or physical evidence that **validates** the party's testimony?

*It is important to remember that throughout the process, the respondent is presumed "not responsible" until a finding of responsibility (by a preponderance of the evidence) is made by the hearing panel

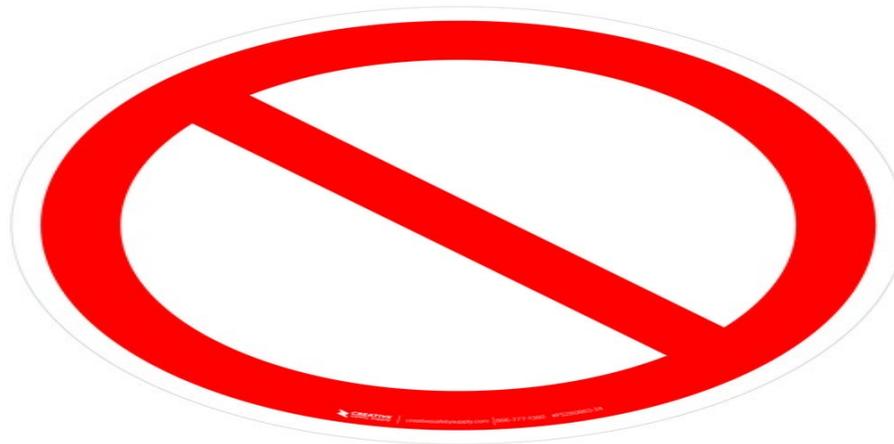


Keep Bias Out

Studies show that people who *know* they have biases and admit them show **less** implicit bias.

Preferences and stereotypes can affect the way we interact with people.

Unconscious bias/implicit bias - beliefs that reflect attitudes and stereotypes that inform our subconscious information processing - we are not necessarily aware of these biases



Confirmation bias - the tendency to interpret new evidence or information as confirmation of one's existing beliefs or theories.

<https://www.youtube.com/watch?v=Kho5KvPBDSw>

Memory bias - factors that influence how well we remember, or don't remember, or how quickly we are able to recall certain events. *TAKE NOTES*

“Like Me” bias/affinity bias - investigator tends to favor information received from witnesses who are, in some respect, “like” the investigator.

More Information on biases:

<https://mediasonar.com/2019/07/24/cognitive-biases-investigations/>

Bias/Conflict of Interest Chart in Title IX Cases:

<https://online.suny.edu/scicasebook/wp-content/uploads/Is-it-Bias-Chart.pdf>

Investigation
→



Investigative Report
→



Hearing
→



Appeal(s)



The Hearing

Who will decide responsibility? The hearing panel- comprised of members of the Anti-Discrimination Panel or a Hearing Panel external to the University (cannot be the Title IX Coordinator or investigator(s))

Burden of proof standard: preponderance of the evidence → more likely than not. Requires more than 50%. If all evidence is “equal” or “in equipoise,” then the standard results in a finding that respondent is not responsible. *the burden of proof rests with the recipient

Presumption that respondent not responsible for the alleged prohibited conduct.

The Hearing

Cross Examination: Advisors will question witnesses at the hearing. Parties NEVER personally ask questions. A party could decide not to submit to cross examination. A party could also decide not to ask their advisor to conduct cross-examination of the other party or any witness.

We cross examine to:

Test the credibility of parties and witnesses,
Test the memory of parties and witnesses,
Check biases and conflicts of parties and witnesses,
Probe the background of parties and witnesses
Highlight important facts, facts that corroborate





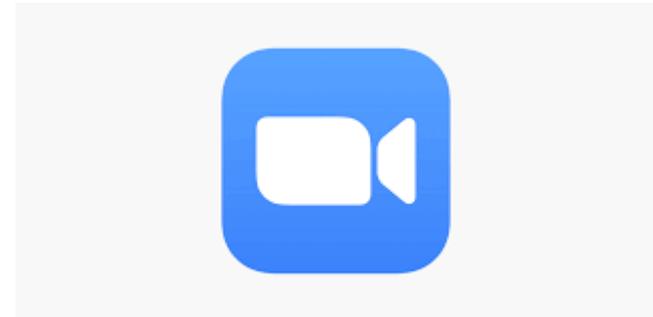
The Hearing

Rape Shield: Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.



Technology During the Hearing

- Hearings may be held virtually with technology enabling participants to see and hear each other. §106.45(b)(6)(i)
- Recording or Transcript is Required and be made available to the parties for inspection and review. §106.45(b)(6)(i)





Appeals

Both parties can appeal a finding regarding responsibility, dismissal of a formal complaint or any allegations therein.

Grounds for Appeal:

- (A) Procedural irregularity that affected the outcome of the matter
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Sources

Reasonable Person Standard Definition | Law Insider

<https://online.suny.edu/scicasebook/wp-content/uploads/Decision-Tree.pdf>

<https://online.suny.edu/scicasebook/wp-content/uploads/Is-it-Bias-Chart.pdf>

International Broth. Of Teamsters v. U.S., 431 U.S. 324, 335, fn.15 (1977), citing *Griggs v. Duke Power Co.*, 401 U.S. 424, 430-432 (1971).

Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57 (1986); *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).

Black's Law Dictionary (9th ed. 2005)

<https://www.natlawreview.com/article/i-can-t-prove-it-yes-you-can-circumstantial-evidence>

Sources

Atixa 2020 One Policy, Two Procedures Model

Use and Adaptation of this model with citation to Atixa is permitted through a Limited License to Adelphi University.

ALL OTHER RIGHTS RESERVED © 2020. ATIXA

<https://www.acslpa.ca/wp-content/uploads/2020/02/Video-10-Assessing-Credibility-of-Witnesses.pdf>

<https://online.suny.edu/scicasebook/wp-content/uploads/Decision-Tree.pdf>

<https://online.suny.edu/scicasebook/wp-content/uploads/Is-it-Bias-Chart.pdf>

<http://i-sight.com/eliminating-bias-in-investigations/>

<https://i-sight.com/resources/investigatio-interview-questions-determine-credibility/>

<https://www.cohenseglias.com/event/surviving-the-new-title-ix-regulations-how-to-successfully-implement-new-policies-and-navigate-the-live-hearing-requirement/>