



Spelman College®

A Choice to Change the World

Sexual Misconduct, Relationship Violence and Stalking

Process Pool Training 2022

Welcome & Introductions

Dr. Jaray Mazique

Director of Title IX & Compliance

Kristin Couch

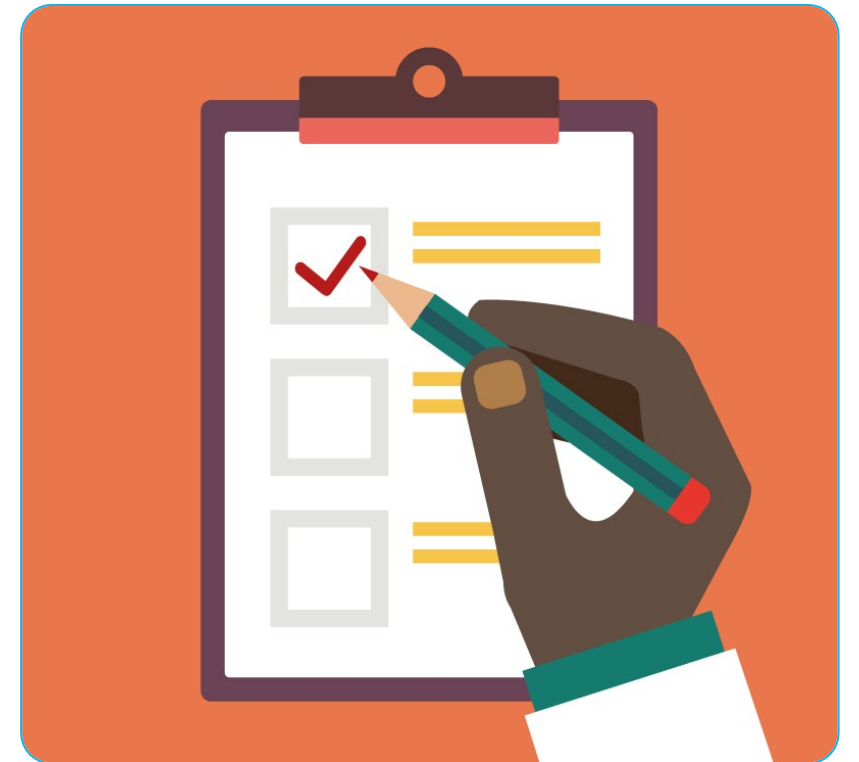
Associate Director of Title IX & Compliance

Now, Your Introduction...

Name, Title, Year on Panel, What is Your Motivation

Training Objectives

- Explain Role of the Process Pool
- Review the Grievance & Resolution Process
- Enhance Questioning Skills & Evidence Review
- Increase Dialectical Skill Building
- Discuss Relevancy



TITLE IX & COMPLIANCE

  @spelmantitleix



Spelman College is committed to cultivating a campus community free from sex and gender-based discrimination and harassment, including sexual misconduct and relationship violence.

Dedicated to delivering the Spelman Promise, the Title IX & Compliance Office supports this commitment through compliance efforts, promoting community accountability, responding to incidents, education and encouraging student leadership.

Evolution of Campus Response

1972- Title IX of the Educational Amendments:
athletics and admissions

1970s

1990 Clery Act
1992 Campus Sexual Assault Victims Bill of Rights
1994 Violence Against Women Act
1997 DOE Sexual Harassment Guidelines

1990s

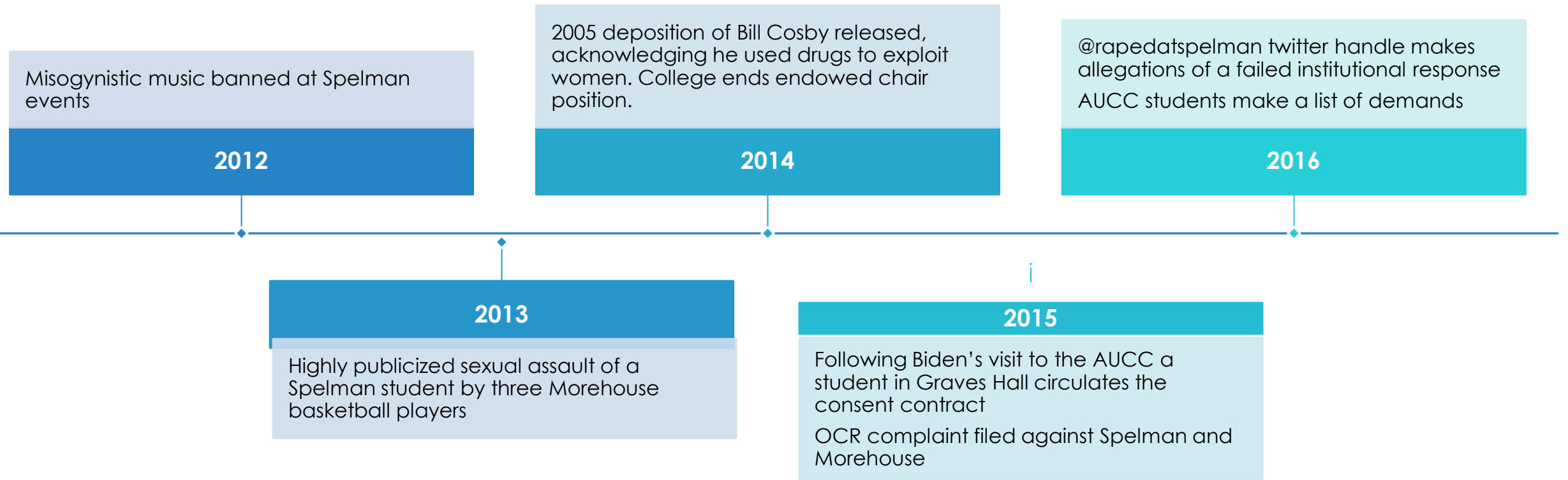
US Department of Education established
Title VII - Sexual harassment as a form of sex
discrimination

1980s

2001 DOE Revised Sexual harassment
2006 Dear Colleague Letter
2011 Dear Colleague Letter
2013 VAWA Amendments to Clery
2014 Dear Colleague Letter
2016 Transgender Student Guidance (Rescinded)
2020 Title IX Sexual Harassment Regulations
2022 – Title IX Proposed Regulations

2000s

AUCC Activism Timeline



AUCC Activism Timeline

#weknowwhatyoudid campaign posted names of alleged rapists and abusers on campus and online

2017

Multiple Morehouse students use social media and local new stories to lodge allegations against College administrators

2019

2018

Spelman revised admission and enrollment policy
Trans* students and their partners receive transphobic notes under their door
#metooHBCUTour

2020

#whyididnotreport students from all schools post stories of sexual assault, dating violence and stalking on social media

Title IX Overview

"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 education program or activity receiving Federal financial assistance. "

Clery Act & Campus SaVE Act (VAWA)

- A consumer protection law to provide the campus community with information about crime and the safety of campuses
- Crime alerts
- Annual report
- Training & awareness programs
- Rights to victims of sexual assault, dating violence, domestic violence and stalking

CLERY ACT &
Campus Security Authorities

FERPA

Student education records are official and confidential documents protected by one of the nation's strongest privacy protection laws, the Family Educational Rights and Privacy Act (FERPA).

OCR in an April 4, 2011, *Dear Colleague Letter* regarding sexual harassment of students, FERPA permits a school to disclose to the harassed student information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student.

Policy Prohibiting Sexual Misconduct, Relationship Violence & Stalking

Policy Jurisdiction

Applies to all

- Students/ Student Organizations
- Employees (including faculty)
- Contractors and Third-party visitors

Applies to all behavior

- Occurring within our education program/ activity (Title IX)
- Conduct that affects our living, learning and working environment. (Clery)

Reporting Incidents

- **Who can report:** Anyone, **most employees** are required to report suspected policy violations.
- **What to report:** Policy violations that affect the College's working, living or learning environment.
- **When to Report:** *immediately, however there are no limitations.* The college's ability to take action is determined by the accused's status at time of the report.
- **Confidential Disclosure:** Disclosures made to personnel in health services, religious life, counseling center, and/or our Magellan EAP do not constitute reporting to the College.



Prohibited Conduct

Sexual Harassment

Definition: A range of behaviors based on sex

1. (Quid Pro Quo) An **employee** of the college **conditioning service, benefit or aide** on participation in unwanted sexual activity;
2. (Hostile Environment) **Unwelcome conduct** (by anyone), **determined by a reasonable person** to be so **severe, and/or pervasive and objectively offensive** that it effectively **denies access** to the education program/activity;
3. Sexual Assault, dating violence, domestic violence and stalking

Severe, Pervasive & Objectively Offensive

Severe

The severity of an incident depends largely on the nature and scope of the conduct, although you can also consider impact.

Pervasive

How widespread, openly-practiced, prevalent, and/or distributed the conduct is.

Objectively Offensive

Would a reasonable person in the context in which the conduct occurred deem the conduct to be offensive?

Gender-Based Discrimination

Unwelcome conduct based on an individual actual or perceived sex, sexual orientation, gender identity/ expression, or pregnancy status:

- Threatening or causing harm, extreme verbal abuse
- Discrimination
- Intimidation
- Bullying/ Cyberbullying
- Hazing



Sexual Exploitation

Sexual exploitation occurs when:

One person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit,

or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses.

Sexual Assault (Fondling or attempts)

- The touching of the private body parts of another individual (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly;
- without the consent or against the individual's will, or when an individual lacks the capacity to give consent.

Sexual Assault

Rape, Sodomy or attempts

- Penetration, no matter how slight, by a tongue, penis, finger or inanimate object, of the vagina or anus;
- Oral penetration by a sex organ of another individual,
- Without the consent or against the individual's will, or when an individual lacks the capacity to give consent.

Sex Offenses (Statutory Rape & Incest)

Statutory Rape

Non-forcible sexual intercourse, with a person who is under the statutory age of consent of 16 years old.

Incest

Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Georgia law.

Consent

- Words or actions that show a knowing and voluntary agreement to engage in mutually agreed, specific, sexual activity.
- No always means no
- Yes does not always mean yes

Force & Coercion

Force

- **Physical force**- hitting, pushing, holding, pinching, leaning on, or display or use of a weapon
- **Threats** of physical violence or threats of an overt act
- **Intimidation** - implied threat, using physical presence

Coercion

Unreasonable pressure for sexual activity. What was the ...

- frequency
 - duration
 - intensity
- of the request for sexual access?

Incapacitation



A person can not consent if they are unable to understand what is happening.

Someone who can not make rational, reasonable decisions because they lack the capacity to give knowing and informed consent

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant.

**LOVE
IS NOT
ABUSE**

Domestic Violence



Felony or misdemeanor crime of violence committed by a current or former spouse or intimate partners

(ii) a person who shares a child in common with the complainant

(iii) a person who is cohabitating or has cohabitated with the complainant as a spouse or intimate partner.

(iv) a person similarly situation to a spouse of the complainant.

Stalking

A course of conduct (two or more acts) directed at a specific person, that would cause a reasonable person to (1) fear for their own safety or the safety of others or suffer substantial emotional distress.

Technology is the #1 facilitator of stalking among college students.



Retaliation

- Anyone who submits a good faith report is protected against retaliation.
- Retaliation is:
 - Any adverse action, taken against a person participating in a protected activity, because of their participation in that protected activity.
- The College is expected to keep private the identities of individuals involved in a complaint.

Other Offenses (when sex or Gender based)

- Threatening or causing physical harm
- Discrimination
- Bullying/ Cyberbullying
- Intimidation
- Hazing

Policy Provisions

- Amnesty
- Attempted Violations
- False Reports
- Parent/ Guardian Notification
(Minors)
- Past Sexual History Exclusion

Two Process Model



Complaint Resolution Requirements

Process A (Title IX)

- Title IX Sexual Harassment Regulation Complaint
- In the United States
- Within the College's jurisdiction/within scope of educational program/activity
- Spelman has control over Respondent

Process B

- Violation of Spelman's policy
- Not in the United States
- Outside of the College's scope of educational program/activity
- Limited control over a Respondent

Complaint Resolution Process Overview



INITIAL INTAKE



INITIAL
ASSESSMENT



SUPPORTIVE
MEASURES



INVESTIGATION



COMPLAINT
RESOLUTION

Complaint Resolution Procedures

Process A

- ❓ Formal Complaint, signed by Complainant or Title IX Coordinator
- ❓ Investigation
- ❓ Investigative Report Review
- ❓ Advisor of Choice Identification
- ❓ Live, in real time hearing with cross-examination through advisor of choice
- ❓ Appeals & Informal Resolution

Process B

- Complaints dismissed under Process A can be investigated & adjudicated by Process B.
- Where appropriate, Process B is consistent with Process A requirements.
- No cross-examination

The Hearing Process



Complainant & Respondent Rights in the Process

- ❑ Right to an advisor of choice
- ❑ Right to timely access to review all the evidence related to the complaint
- ❑ Right to present witnesses and evidence
- ❑ Timely notice of meetings at which the accuser and accused, or both, may be present

Complainant & Respondent Rights in the Process

- ❑ Conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused
- ❑ Proceedings must be conducted by official who receive annual training
 - ❑ issues related to these offenses
 - ❑ how to conduct processes that protect the safety of the victim and promotes accountability
- ❑ Right to Appeal the outcome

Complaint Resolution Hearing

Title IX Coordinator

Involved Parties

- Complainant
- Respondent
- Witness(es)
 - Investigator

Decision-maker(s)

- One or Three

Advisors

Assistive Services

Hearing Procedures



One Decision-maker will serve as chair, two others as panelists



The hearing facilitator will notify parties of the date for the hearing, parties have three days to object to the date, time or location.

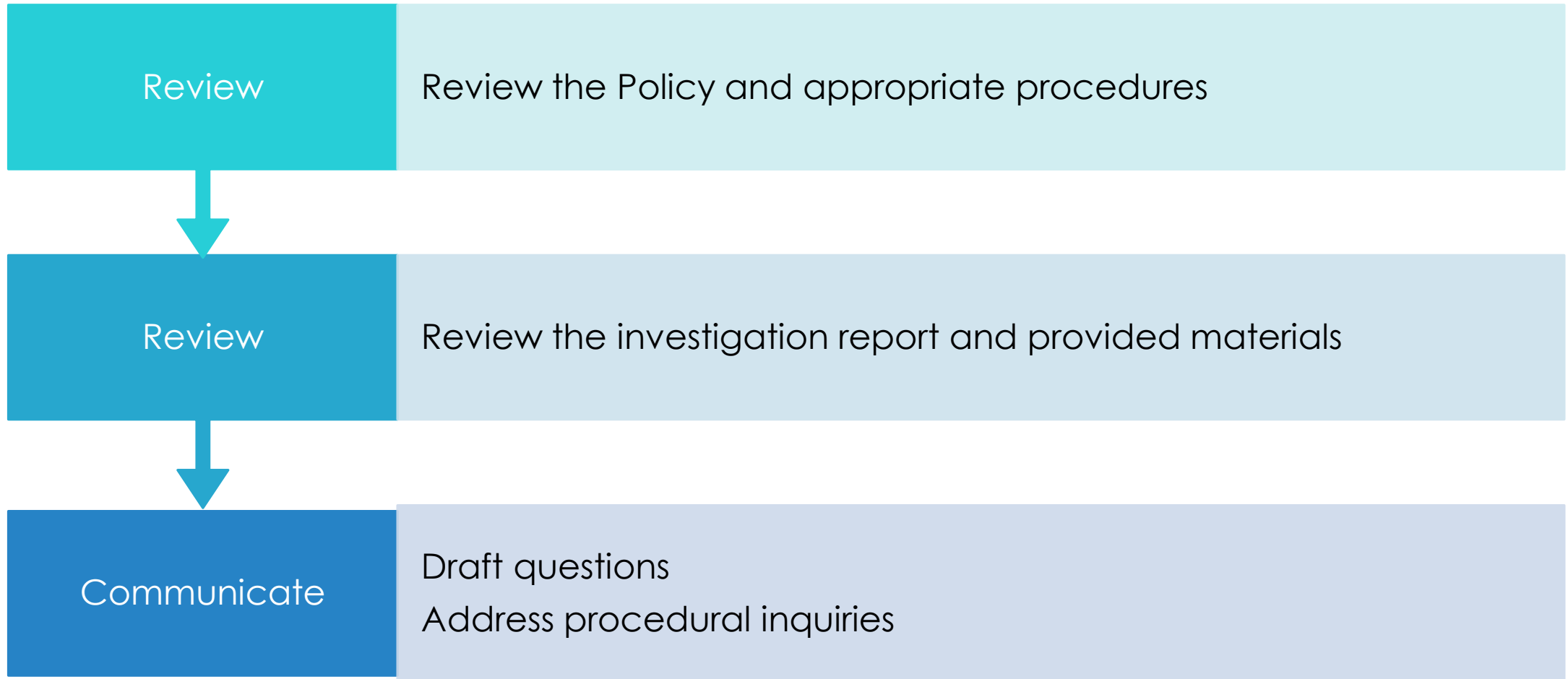


Parties can contest any decision makers participation in the hearing on basis of conflict of interest/bias



Hearings are closed to the public.

PREPARING FOR THE HEARING



HEARING ORDER

- Introduction by Decision Maker/ Panel Chair
- Brief overview of Hearing purpose and procedures for hearing
- Complainant Opening Statement, if any
- Respondent Opening Statement, if any
- Decision Maker Questioning
- Cross-Examination (Process A)
- Direct-Examination by Advisor (Process A)
- Complainant Closing Statement, if any
- Respondent Closing Statement, if any

Advisors at Title IX Hearings

- Provide advice, counsel, and support to a party
 - Students or employees
- Perform cross examination of the other party and any witnesses
- Institutional advisors assigned at the hearing stage

Cross-Examination

- Questions raised to an opposing party or witness called by the opposing party
- Used to advance claims or defenses of a party
- Used to assess the credibility of an individual
- Expectation: Respect, dignity, decorum

Components of an investigation report

- Executive Summary
- Procedural Timeline
- Applicable Policy (ies)
- Executive Summary/Jurisdictional statement
- Incident Report
- Complainant Interview Summary
- Complainant's witnesses Interview Summary
- Respondent's Interview summary
- Respondent's statement
- Respondent's witnesses interview summary
- Related Evidence
- Investigator summary: Consistencies, inconsistencies, and credibility assessments

Questioning, Evidence & Relevancy

Evidentiary Considerations

The burden of proof
AND burden of
gathering evidence is
on the institution

Parties are permitted
to present evidence
and call witnesses to
advance their claims
and defenses

In Title IX Hearings that
may include fact or
expert witnesses

Permitted to establish
the weight given to
certain types of
evidence



Standard Evidence

Preponderance of the evidence

Preponderance of the Information

A reasonable person would conclude that the events in question occurred (or did not occur).

- In other words, 50% and a feather
- If the evidence is 50/50, the finding must be not responsible
- It is not what you feel, but what is documented through reliable and credible evidence

RELEVANCY DETERMINATIONS DURING TITLE IX HEARINGS



PRIOR TO ANY QUESTION
BEING ANSWERED, RELEVANCY
WILL BE DETERMINED



THE HEARING OFFICER WILL
PROVIDE THE REASON FOR
EXCLUDING THE QUESTION OR
EVIDENCE



REBUTTALS MAY
NOT BE PERMITTED

Assessing Relevancy

Irrelevant

- Questions and information regarding the Complainant's sexual history or sexual predisposition unless to prove someone else other than the Respondent committed the alleged misconduct
- Consent between the parties

Relevant

- Relevant information relates to the incident at issue
- Relevant information provides sufficient value in making the overall determination

Other Evidentiary Exclusions

Legally privileged information is protected

A party's treatment records cannot be used without their voluntary, written consent

Duplicative evidence may be deemed irrelevant

Questioning

Gathering information is a basic human activity – we use information to learn, to help us solve problems, to aid our decision-making processes and to understand each other more clearly.

Questioning is the key to gaining more information and without it interpersonal communications can fail. Questioning is fundamental to successful communication.

OPEN & CLOSED Ended Questions

| Closed-Ended Questions | Open-Ended Questions |
|--|---|
| Do you know who your target customer is? | Who is your target customer? |
| Are you open on the weekends? | What are your store hours? |
| Are you planning to launch the new software in the second quarter? | When are you planning to launch the new software? |
| Is your warehouse in the area? | Where is your warehouse located? |
| Are you considering a change? | Why are you considering a change? |

Active Listening



Deliberations – Dialectical Skill Building/ Parsing the Policy

SEXUAL HARASSMENT is committed when there is... “Unwelcome conduct on the basis of sex that satisfies one or more of the following:

- 1) Quid Pro Quo: a. an employee of the College, b. conditions the provision of an aid, benefit, or service of the College, c. on an individual’s participation in unwelcome sexual conduct;
- 2) Hostile Environment: a. Unwelcome verbal, nonverbal, or physical conduct, based on sex (including gender stereotypes), that may be any of the following: i. Implicitly or explicitly a term or condition of employment or status in a course, program, or activity; ii. A basis for employment or educational decisions; and/or iii. Is sufficiently severe, persistent, and/or pervasive to interfere with one’s work or educational performance creating an intimidating, hostile, or offensive work or learning environment, or interfering with or limiting one’s ability to participate in or to benefit from an institutional program or activity.

Each of these policy elements is then put into play in a process of issue-spotting.

Deliberations – Dialectical Skill Building/ Parsing the Policy

SEXUAL HARASSMENT

Was there - Unwelcome conduct on the basis of sex that:

1) Quid Pro Quo:

a. an employee of the College

b. Conditions the provision of an aid OR Conditions of the Benefit OR

Conditions service of the College,

c. on an individual's participation in unwelcome sexual conduct;

2) Hostile Environment:

Unwelcome verbal based on sex (including gender stereotypes OR

Unwelcome nonverbal based on sex (including gender stereotypes OR

physical conduct based on sex (including gender stereotypes

that may be any of the following:

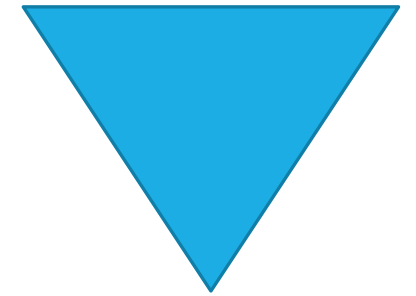
i. Implicitly OR explicitly a term OR condition of employment OR status in a course, program, OR activity; ii.

A basis for employment OR educational decisions; **and/or** iii. Is sufficiently severe, pervasive, **and**

objectiveley offensive that it interferes with one's work or educational performance creating an

intimidating, hostile, OR offensive work or learning environment, or interfering with or limiting one's ability

to participate in OR to benefit from an institutional program OR activity.



Yes or No?
(By evidence
sufficient to meet the
standard of proof)

Sanctioning

When determining an appropriate sanction, the decision maker should consider the following:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Aggravating, mitigating, and compounding factors
- Previous allegations or allegations involving similar conduct

SANCTIONS

Sanctions

- The need for sanctions/ responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the complainant and community
- The impact on the Parties
- Any other information deemed relevant by the Decision-maker(s)

SANCTIONS

Commonly Used Sanctions

The following are the typical sanctions that may be imposed upon students or organizations singly or in combination:

- Letter of Warning
- Disciplinary Probation
- Suspension
- Expulsion/ Dismissal
- Revocation
- Withholding Diploma of Degree
- Transcript Notation
- Educational Project
- Suspension from Housing
- Restitution
- Restricted Access

SANCTIONS

Commonly Used Sanctions

The following are the typical sanctions that may be imposed upon employees singly or in combination:

- Verbal Warning
- Written Warning
- Performance Improvement Plan
- Required Counseling
- Required Training or Education
- Loss of Annual Pay Increase
- Suspension with Pay
- Suspension without Pay
- Demotion
- Revocation of Tenure
- Termination

SANCTIONS

Outcome Letters

- ✓ Allegations;
- ✓ Procedural steps from complaint to hearing;
- ✓ Facts & conclusion related to each allegation;
- ✓ Statement and rationale for decision;
- ✓ Sanctions imposed, if applicable;
- ✓ Remedies offered or provided to the complainant;
- ✓ Statement of when determination will be final; and
- ✓ Rights and procedure for appeal.

Appeals Overview



- Appeals are offered to the Complainant & Respondent
 - Determination regarding responsibility, or
 - Dismissal of a formal complaint or any allegation(s) within the complaint
- The other party is notified upon receipt of an appeal and permitted to submit a written statement in support of or to challenging the outcome.
- The assigned Appellate officer must be neutral, with no significant prior role in the process (Title IX Coordinator, Decision-maker, or Investigator prohibited).
- The Appellate officer must issue a written decision regarding the outcome of the appeal and notify both parties simultaneously.

Generally, appeals are not a new hearing, nor should they be submitted based on dissatisfaction with the outcome

Basis for Appeals



- ✓ Procedural irregularity (ies) that affected the outcome;
- ✓ New evidence, not reasonably available at the time the determination was made; and
- ✓ Title IX Coordinator, Decision-Maker(s), or Investigator(s) had a bias or conflict of interest, for or against complainants or respondents, generally or in the particular matter that affected the outcome

Continuing Education

- Questioning
- Effective Hearing Report
- Dialectical Skill-Building
- Chairing a Hearing
- Trauma-Informed Response

Basis for Appeals



Wrap Up & Questions?