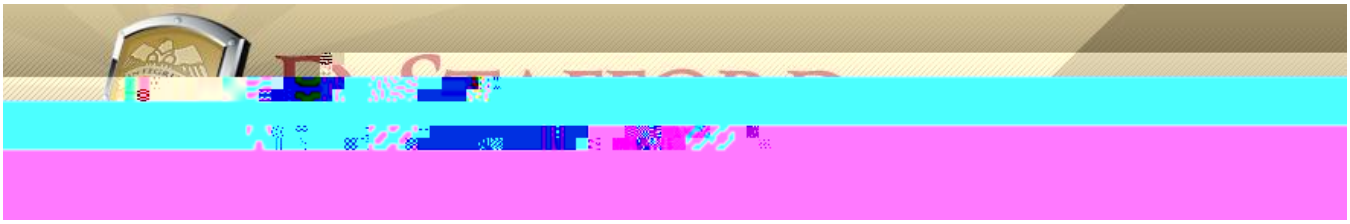

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# TITLE IX

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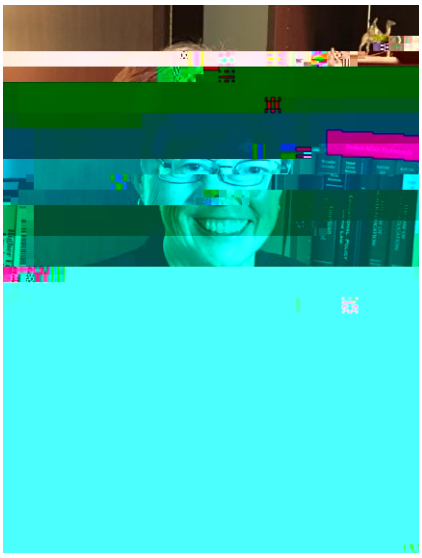

Ms. Cocks has been a higher education professional for over thirty years. Her work with D. Stafford & Associates focuses on Title IX investigations and training; assessment of student affairs policies, practices and services; and behavioral threat assessment. Cathy was the Director of Community Standards for the University of Connecticut for 14 years where she managed the student conduct process, which included managing all Title IX cases involving student respondents
assessment team. Prior to that, she held several positions within Residential Life at the University of Connecticut and Roger Williams University.

She is a faculty member for the Association for Student Conduct

subjects such as ethics, governance, threat assessment, media relations, and higher education trends. She was an affiliated faculty

-

Cathy has co-
Conduct Practice -functional
Framework for Identifying and Responding to Behavioral Concerns.

Cathy is a Past President of ASCA. She has also served as a Circuit representative, co-chair of the Public Policy and Legislative Issues Committee, and as a member of the ASCA Expectations of Members Task Force. Cathy has served in a variety of leadership roles in NASPA Region I.

Region I Mid-Level Student Affairs Professional Award and the NASPA Region I Continuous Service Award.

egree in Higher Education Administration from the University of Connecticut

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# Ann Todd
## Consultant, Equity Compliance and Civil Rights Investigations

**Ann Todd, Esq** is a seasoned civil rights investigator in higher education for D. Stafford & Associates (DSA). Ms. Todd is a graduate of Davidson College with a degree in psychology and holds a JD from the University of Nebraska. Prior to joining DSA, she practiced law in Charlotte, NC, specializing in employment and civil rights and worked for a number of non-profit organizations. She returned to her alma mater (Davidson College) in 2008 and worked there through March of 2016 serving as the Assistant Director of Human Resources with the responsibility of managing employee relations and the learning and development function.

Ms. Todd joined the DSA in 2015 and currently serves as the Consultant, Equity Compliance and Civil Rights Investigations. She is the Senior Investigator for the DSA Title IX Investigation Team. She conducts external investigations on behalf of colleges and universities, specializing in investigating student allegations of sex discrimination, sexual assault, intimate partner violence, and stalking. Additionally, she brings a strong Human Resources background to investigating a range of employee misconduct—from performance issues to discrimination.

In addition to conducting investigations, Ms. Todd is a frequent speaker and consultant on Title IX investigations, conducting 20-30 courses every year on best practices for investigating sex discrimination and sex crimes on campus. She works with

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## Law - Federal

| | |
|---|---|
| Title IX<br><br>20 USCA § 1681 | 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, except that: |

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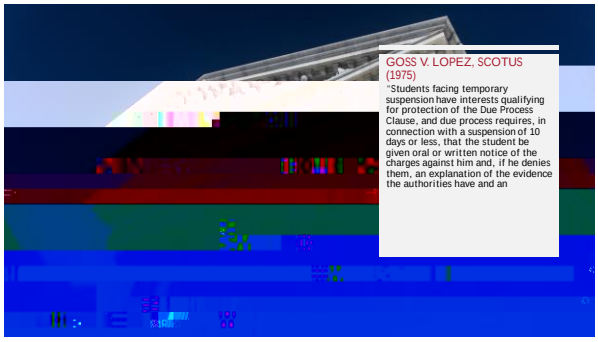

GOSS V. LOPEZ, SCOTUS (1975)

"Students facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an

## PRONG 1: Quid Pro Quo

- Must be an employee (not volunteer, visitor, student)

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## §106.30 Definitions - CONSENT

*The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault*

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## Jurisdiction of Person

- *At the time of filing a formal complaint…the complainant must be participating in or attempting to participate in the education program or activity"*
- The institution must exercise control over the Respondent
- All regulations apply to students and employees

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## Jurisdiction of Activity

- Behavior must occur as part of the "education program or activity"
  - Locations, events, or circumstances over which the recipient exercised substantial control over the context in which the sexual harassment occurs
  - And any building owned or controlled by a student organization that is officially recognized
- Must occur in the United States

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## Other Considerations

First Amendment

Retaliation

Bias/Conflict of Interest

State Laws

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## Resolution Options

Formal Complaint

Informal Resolution

Formal Resolution

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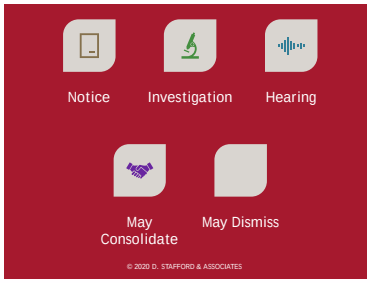
## Formal Resolution




## Types of Meetings

## Hearing ñ LIVE

Cross-examination - directly, oralC /P ƹ s

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## Advisor

"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."

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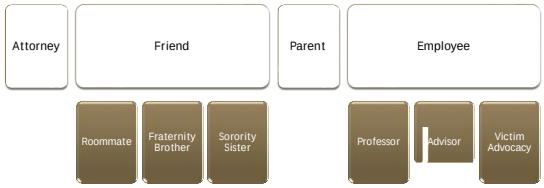
## Advisors

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## Participation

"If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility."

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## Attendance

"The decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions."

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# Bias

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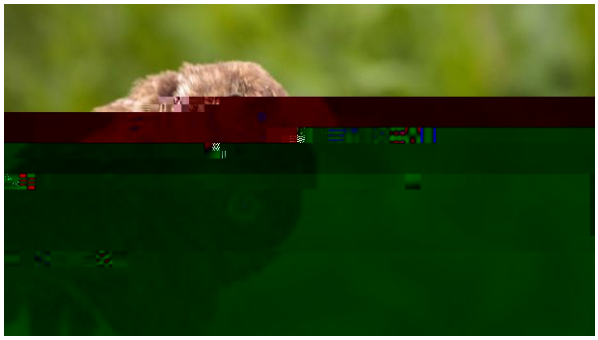

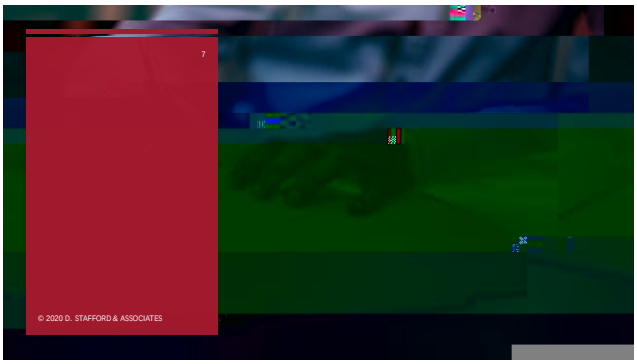
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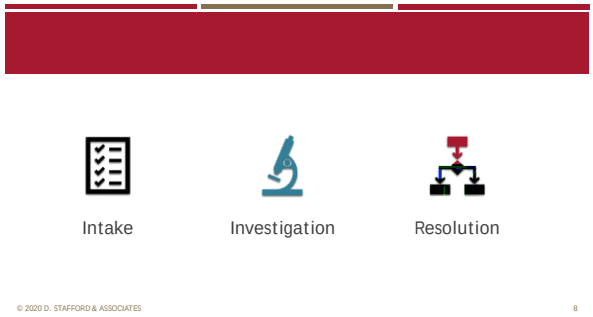
Intake
Investigation
Resolution
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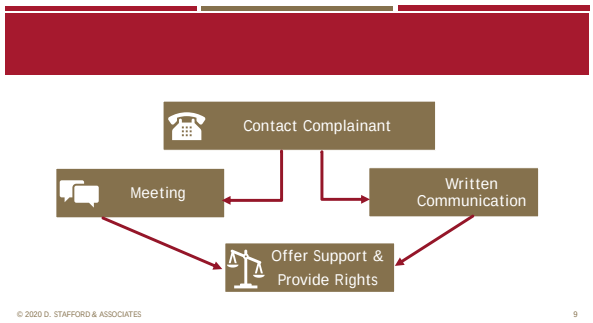
Contact Complainant
Meeting
Written Communication
Offer Support & Provide Rights
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- Title IX Definition
- Eligible Complainant
- Education Activity or Program
- Wishes of the Complainant

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- Student Code of Conduct
- Employee Guide



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Complainant Decision

Formal Complaint signed

Notice

Assign to Investigator

Investigation

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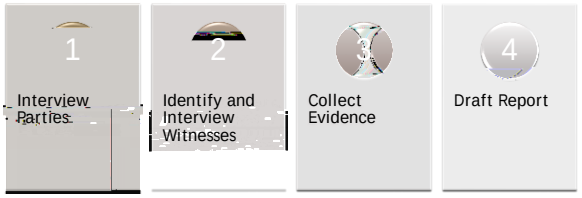


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Preliminary Report:

Scope

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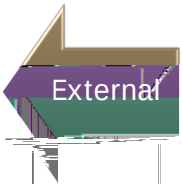


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No previous role

Requests for removal for bias/conflict

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When required

Who to appoint

How to train

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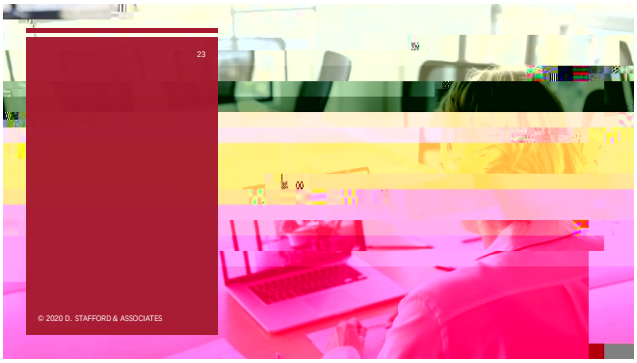


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"…enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions"

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Decision-maker(s)

Parties and Advisors

- Complainant & Advisor
- Respondent & Advisor

Witness (when called)

Other



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"Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate"

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"At the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions"

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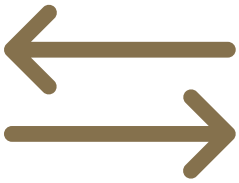
Name and contact information for Decision-makers with options for stating bias or conflict of interest



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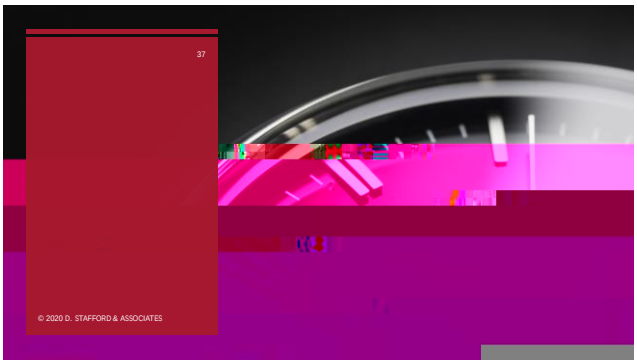


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Pre-hearing Meeting

Rules of Decorum

Hearing Script

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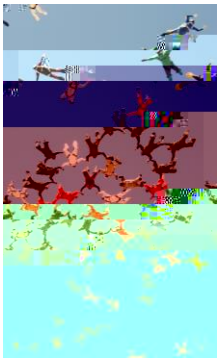

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Review Report

Review Allegations

Review Policy

Draft Relevant Questions

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Unrelated

Related but not relevant

[redacted]

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Credibility

Corroboration



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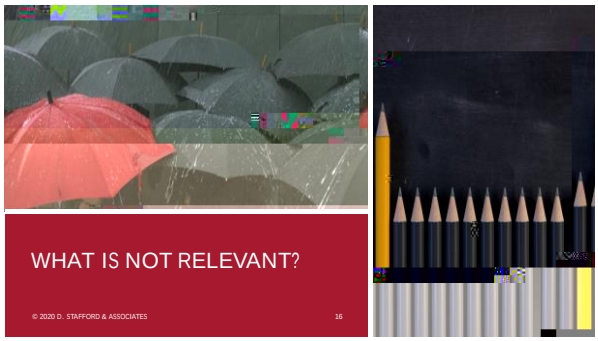
# Welcome to the Show

The Hearing, the Findings, and the Appeal



## WHAT IS NOT RELEVANT?

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## Not Relevant

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## Tasks at the Hearing

- Recording
- Introductions
- Order Of Questioning
- Witness Management
- Assigning If Advisor Absent
- Enforcing Rules Of Decorum

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## Other Persons in Attendance

GENERAL COUNSEL

- Advise On Process

- [illegible] Needed If Not Recording

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## Mandatory Components

# Discussion

Should you allow a Party to explain why a question is relevant?

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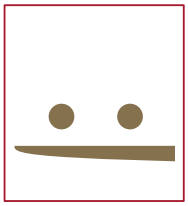
## Decision-maker Questions *from the Regs*



*Permit the decision-maker on the decision-maker's own initiative to ask questions and elicit testimony from parties and witnesses, as part of the recipient's burden to reach a determination regarding responsibility based on objective evaluation of all relevant evidence including inculpatory and exculpatory evidence*

*Thus, the skill of a party's advisor is not the only factor in bringing evidence to light for a decision-maker's consideration*

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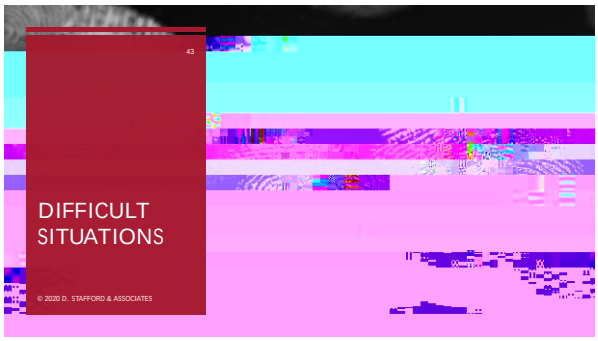


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## Party Issues

- Disruptive
- Emotional
- Inappropriate Question
- Not Participating
- No Show

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## Advisor Issues

- Disruptive
- [redacted]
- Inappropriate cross
- Relationship with party
- [redacted]

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## Removal of an Advisor (Regulations)…

*"If a party's advisor of choice refuses to comply with a*

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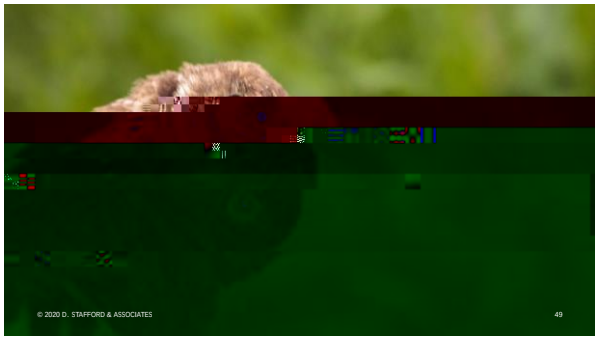


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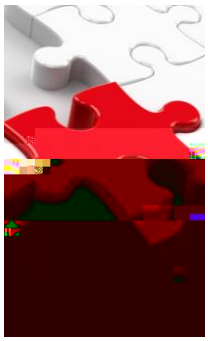

*From the Regs…*

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## Fact Considerations

Weight

Credibility

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## Weight / Relevance

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## Ability to Remember

- Passage of time
- Alcohol
- Blackout
- Peripheral details
- History of memory

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## Decision-maker Bias *from the Regs*

[redacted]

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## Impact on Memory

Elements of the Policy Violations

## Sex Act



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## Formal Resolution – Disciplinary Sanctions

A recipient may impose disciplinary sanctions upon a respondent after a grievance process that complies with §

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## Formal Resolution – Disciplinary Sanction

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## Formal Resolution – Remedies

Make permanent supportive measures | One-sided no contact orders | Restrictions from locations | Restrictions from activities

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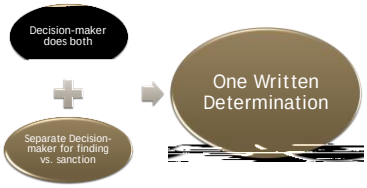
## Options for Making Findings

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## Other Decision-Maker

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## Appeals

- Notification
- Equal opportunity to respond
- Written determination
- Provided simultaneously to parties

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## Role of Appellate Decision

# TITLE IX HEARING SCRIPT

Everyone has their own style. This script is to provide guidance on the hearing and the key areas that need to be covered. The italicized portions of the script are examples as to how to word these statements. They do not need to be read verbatim.

## OPENING

*Good morning/afternoon, I am [NAME/TITLE/ROLE]. This hearing has convened on DATE to review the case CASE IDENTIFIER. Please note that today's hearing is being recorded and either party may review the recording upon request.*

## INTRODUCTIONS

*At this time I would ask that everyone present introduce themselves and their role in today's hearing."*

- Decision-maker(s)
- Complainant
- Complainant Advisor
- Respondent
- Respondent Advisor
- Other
    - Title IX Coordinator
    - Support person(s)
    - Interpreters
    - Stenographer (if not recorded)
    - General Counsel
    - Technology Staff (ideally outside room or only on call or Zoom)

## STATEMENT OF RIGHTS AND PROCESS

*I will now go over the rights of the parties in the hearing and the process.*

1) *Other than the parties, their advisors, the decision-makers and _____, no other persons will be permitted into the hearing except for witnesses. Each witness invited to the hearing will be allowed in only for their interview.*
2) *FOR ZOOM: We are using waiting rooms and only persons that have been invited to the hearing will be admitted from the waiting room.*
3) *This is an administrative hearing—it is not a court of law. Judicial rules of evidence do not apply. Questions will be asked by the decision-maker and the advisors will be allowed to cross examine the other party and witnesses.*

4) *The Decision-makers have been given a copy of the report and have reviewed it. They will be asking for you to confirm the accuracy of your statements in the report and may ask follow-up questions from the summary of relevant evidence.*
5) *Only relevant evidence will be considered in making a finding of responsibility and the decision-makers will not rely on any evidence in making a finding of responsibility that is not permissible either by policy or by law.*
6) *This is a formal administrative hearing and rules of decorum will apply. We expect professionalism and respect for all parties and participants. Failure to follow these rules will result in your removal.*
7) *The decision-maker has made no predetermination of responsibility. At the conclusion of the hearing, after weighing relevant evidence, the decision-makers will make a finding of responsibility based on the (insert standard of evidence).*
8) *This determination will be provided to both parties within _____ days of the hearing.*

*I will now address a few items to the parties.*

1) *FOR ZOOM: Must keep camera on for us to see you for the duration of the hearing unless prompted to do otherwise by the decision-maker. What you choose to listen to or watch is up to you although we ask your advisor be able to hear to full testimony. If you decide to mute the hearing at any point, your advisor is responsible for letting you know when to rejo-4(et)/F3 1u k,.0000.00000912 0 612 792 reW*nB/F3 11.*

3) *FOR IN PERSON: If you need to take a break or talk privately, you may do so by letting the decision-maker know. While this will be permitted, excessive requests that unduly delay the process will not be allowed.*
4) *You may only ask relevant questions. These are questions regarding the facts outlined in the "Summary of Relevant Evidence" in the Investigative Report.*
5) *If your party pre-submitted questions, we will provide those that have been approved for relevancy to you to ask at the appointed time.*
6) *New evidence, not in the investigative report, will generally not be allowed unless it was not reasonably available at the time of the investigation and only at the discretion of the Decision-maker.*
7) *All cross-examination questions will be reviewed first by the Decision-maker who will review the question to determine if it is relevant and will explain any decision to exclude a question as not relevant.*
8) *Any questions or evidence about privileged information such as medical or psychological records is not permitted wicisie20nB/F4 11.04 Tf1 0 09.49 Tm1 4W*neW*nB/F3 11.04 0 G 0 0 s wi(ques)Tm0 g0 G[(re)-3(l)-4(e*

**DECISION-MAKER QUESTIONS  CONFIRMATION OF ACCURACY**

- **Confirmation of Accuracy of statements and investigative interview.**

    1) *Have you read through the summary of your investigative interview?*
    2) *Do you have any corrections or changes to what you stated in your interview or in your written statement?*
    3) *Is it a fair and accurate representation of the truth as provided in your interview(s) with the investigators?*

- **Confirmation of Accuracy of evidence (walk through each type of evidence)**

    1) *What evidence was provided by you to the Investigators?*
    0 Glk t2) *Are these emai*

*acce* *e*

**Relevancy**

- **Past Sexual History of Complainant:** *That question is not relevant per the policy and the Title IX Regulations. If you can show why an exception applies, you may explain that, otherwise that question is not permitted, and any further questions of this type may result in the advisor being removed.*
  - Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant

    **Exceptions:** unless such questions and evidence about the complainant's prior sexual behavior 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.

- **Privileged Information:** *That information is privileged and not considered not relevant per the policy and the Title IX Regulations.*
  - **From** Cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party

    **Exception:** unless the recipient obtains that party's voluntary, written consent to do so for a grievance process under this section

- **Repetitive question:** *You have already asked that question/pursued that topic.*
  - nothing in the final regulations precludes a recipient from adopting and enforcing (so long as it is applied clearly, consistently, and equally to the parties a rule that deems duplicative questions to be irrelevant

- **New information:** *That information is not in the investigative report and has not been previously raised. Why is that information only being shared now?*

- **Not relevant:** *That information is not probative of any material fact concerning the allegations. Can you explain why that topic is relevant?*