

Questions from Class 2

- Can gender discrimination ever meet the Title IX severe, pervasive, or objectively offensive standard?
- You mentioned that we can instruct complainant NOT to speak with the respondent (and respondent NOT to speak with the complainant?). How do you square that with the regulation's prohibition on "gag orders"?

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Relevance



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Relevance Redux

The Title IX regulations do *not*:

- Adopt the Federal Rules of Evidence.
- Define "relevance."
- Permit excluding evidence that is
 - Unduly repetitious
 - Concern prior bad acts
 - Constitute character evidence.



What is Relevant?

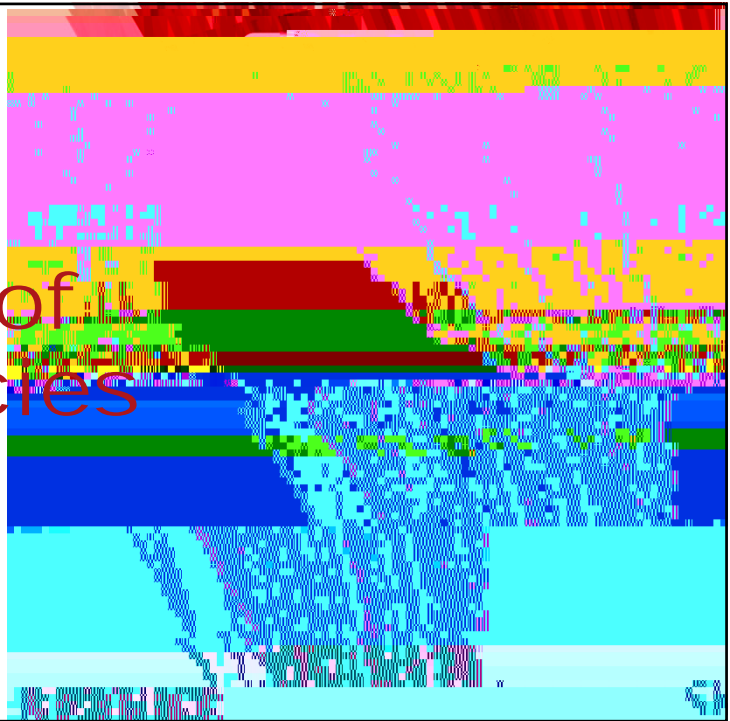
Evidence *is* relevant if:

- It has any tendency to make a fact more or less probable than it would be without the evidence; *and*
- The fact is of consequence in proving

- There is a difference between the admission of relevant evidence, and the weight, credibility, or persuasiveness of particular evidence.
- Because § 106.45 does not address how relevant evidence must be evaluated for weight or credibility by a decision-maker, an IHE can adopt and apply its own rules so long as:



Violations of Other Policies

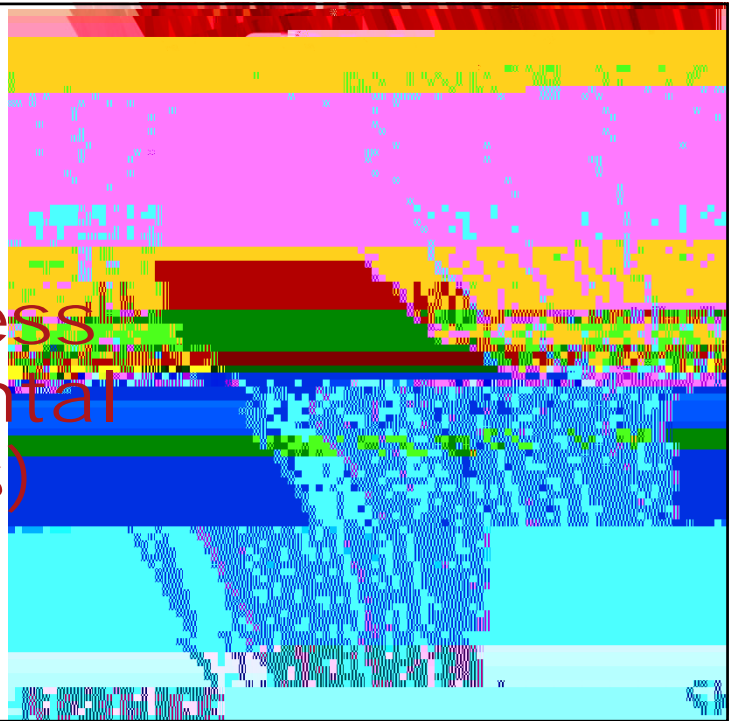


Violations of Other Policies

- Knowingly making false statements or submitting false information
- Sexual Harassment not covered in the regulations but violating campus policies
 - Violations occurring in programs or at locations outside the current definition
 - Violations that don't meet the standards under the regulations
- Student Conduct at 1w.eD1.07m.0001 T9m.00m2 sidesid1B5T.5(S)-.6(tngeet Condu



Due Process (Fundamental Fairness)



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The Process
That Is Due

A Fair Process:

that follows the law,

is implemented without bias, stereotypes
or pre judgment, and

provides an equal opportunity for parties
to be heard and present evidence,

allows the decision maker(s) to reach a
determination consistent with the
standard of evidence.

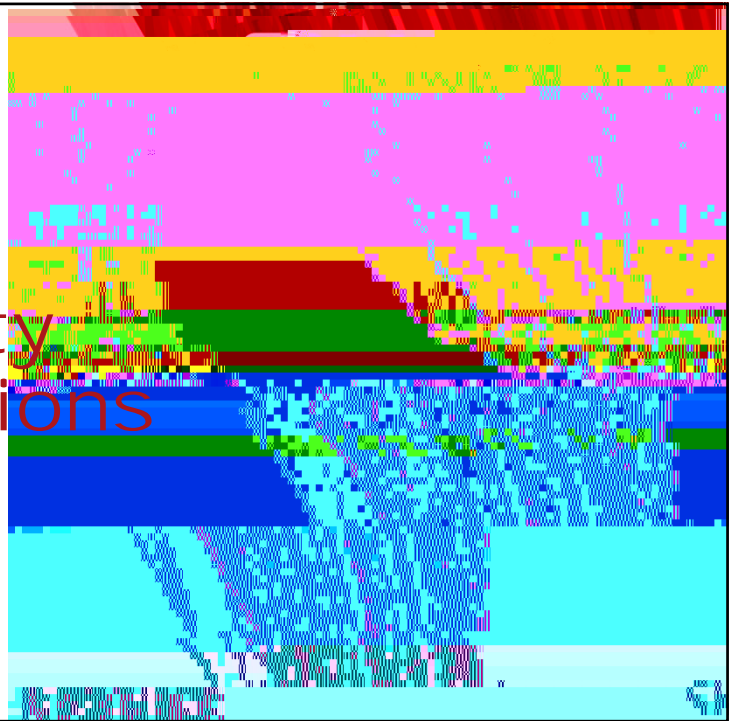
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Title IX Sexual Harassment Grievance Process: Elements of "Due Process"

- Notice to the Respondent of the allegations
 - Opportunity to respond
 - Adequate opportunity to prepare before responding
- Notice to the Parties of the process that will be used, including appeals
- Opportunity to present evidence and witnesses
- Cross examination, including questioning of witnesses
- Live qu(e)11.3(t)TT11Tf3.10TD0Tc@003Tj/TT212.2250T
 - Opportunity to



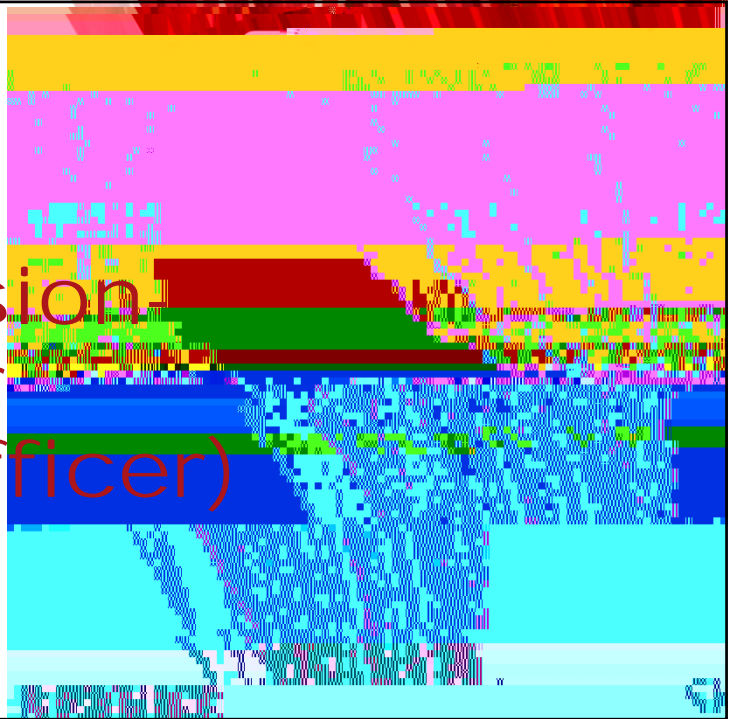
Credibility Determinations



- What evidence is most believable?
- Corroborating evidence
 - Other testimony
 - Physical evidence
- Consider faulty memories
- Explore reasons for inconsistencies
- There are no “perfect” witnesses, complainants or respondents



The Decision-Maker (Hearing Officer)



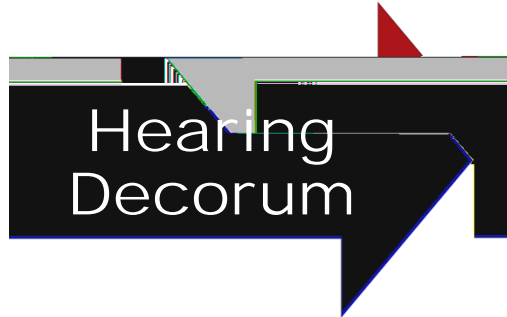
Getting Ready

- Self identify any conflict of interest or bias.
- Prepare, prepare, prepare.
- Read the report carefully and repeatedly, but don't prejudge.
- Understand the conduct at issue and the elements of the alleged violations.
- Identify areas of agreement and disagreement.
- Determine if there are areas that require further inquiry, further



Points to Consider: May have rules that:

- Require advisors be respectful and



Working with the Parties' Attorneys



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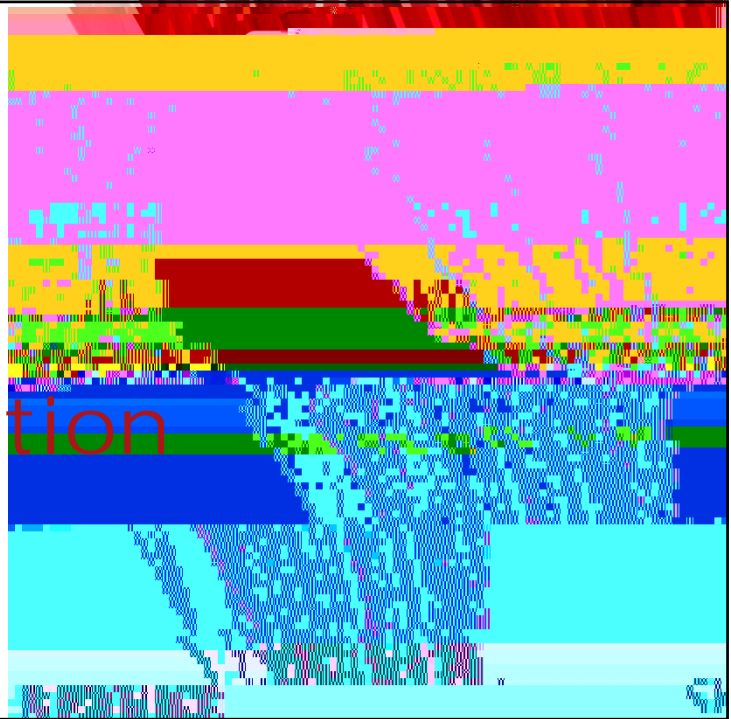
Advisor or Legal Representative

- Clarify procedures and role in advance.
- Distinguish between advisor and legal representative.
- Emphasize the “ground rules” provide any rules of decorum.
- Establish lines of communication and points of contact.



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Written Determination



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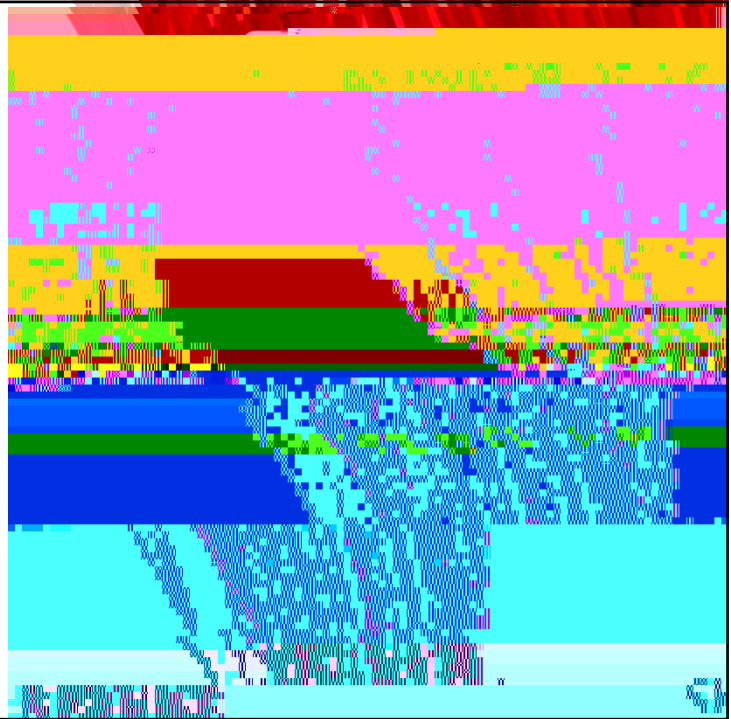
Written Determination

- Identification of allegations potentially constituting sexual harassment
- Description of the procedural steps
- Findings of fact supporting the determination
- Conclusions regarding the application of the code of conduct/policy to the facts
- Statement of and rationale for the result as to each allegation, including sanctions and whether remedies will be provided
- Appeal procedures and grounds



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Appeals



Must provide an appeal from a determination of responsibility and dismissal of a formal complaint,



Appeal Process



- Notify other party upon receipt of appeal.
- Appeal decision maker can't be Title IX Coordinator, investigator or hearing decision maker.
- Opportunity for both parties to submit written statement.
- Written decision with the result and rationale simultaneously to both parties.

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Questions?



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Note

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