

Fall 2020 Title IX Hearing Officer

August 24, 2020

Title IX Hearing Officer & Decision Maker Meeting

Welcome Back Everyone!!

- Title IX Office
 - Center for Student Conduct & Conflict Resolution
 - Residence Life - Title IX Hearing Officers
 - Human Resources
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- **Introductions: Name, Title, Share experience with Title IX Hearings**

Agenda

- Welcome & Introductions
- Title IX New Regulations Overview of the Summer with Stacy DeRooy
- Presentation: Trauma Informed Questioning in a Zoom Hearing Environment by Dana Godfrey, Counselor/Victim's Advocate
- Training Updates: Student Conduct Institute -Feedback, Dates & Questions
- Upcoming: D19 & C27 Feedback, Advisors of Choice, Upcoming Meetings

Title IX - C27 Overview

- Encourage you to read through C27 - twice!

Effective Date and Immediate Action Required

- **Effective Date and Immediate Action Required**
- **Effective Date is of Title IX Regulations is August 14, 2020**
 - Immediate Action Necessary to Comply by August 14, 2020:
 - Policy changes
 - Change in training materials
 - New communication regarding new regulations and complainant's rights.

C27 - Overview - Scope of Duty

- Scope of Duty - ACTUAL KNOWLEDGE
- Education Program or Activity - “Education program or activity” includes locations, events, or circumstances over which the institution exercised substantial control over the accused student and the context in which the harassment occurs, as well as any buildings owned or controlled by an officially recognized student organization.

Supportive Measures

- Upon receipt of sexual harassment report, Title IX coordinator must contact victim to offer supportive measures
- •Supportive measures must be available to both parties
- •Supportive measures must be made available regardless of whether the victim decides to file a formal complaint.
- •Anyone can report a potential violation to the Title IX coordinator, and anonymous reports are permitted

Supportive Measures- continued

- Must be non-punitive, non-disciplinary
- •Individualized services to restore or preserve equal access without unreasonably burdening other party
- •May include counseling, extensions of deadlines or other course-related adjustments, and modifications of work/class schedules, leaves of absence, and mutual non-contact orders
- •One-way no contact orders are very limited and can't burden other party by requiring them to forego educational activities and requires fact-specific determinations

Formal Complaint

- Anyone can file a report of sexual harassment, but a formal complaint may only be filed by complainant or Title IX Coordinator under limited circumstances
- Formal complaints must be dismissed if alleged conduct does not meet the new definition of sexual harassment.
- An institution is still permitted to rely upon other policies (*e.g.*, student conduct code or employee policies) to respond to sexual misconduct that does not meet Title IX standards.

The Hearing

- Live hearings required with cross examination by Advisor of choice or appointed at cost of school *for purposes of cross-examination*
- Decision-maker must rule on relevancy before question is answered
- All relevant questions must be allowed, including those challenging credibility

The Hearing (continued)

- Failing to submit to cross examination means that individual's statements (in any form) cannot be considered for purposes of determining responsibility. No adverse inference can be drawn for failing to participate in cross-examination
- Non-participant may still have own advisor cross examine other party
- Must create an audio recording or transcript of the live hearing and make it available to the parties

The Outcome/Determination

- Written determination must include: Allegation of sexual harassment
- Summary of procedural steps from formal complaint to determination including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact to support the determination for each allegation with rationale
- Conclusions regarding application of policy to facts
- Sanctions (if any) with rationale
- Right to appeal and permissible grounds for appeal
- Remedies designed to restore or preserve complainant's equal access

Notice to the Parties

- University must provide both parties with: Notice of grievance process and informal resolution process
- Adequate information about the alleged misconduct, including, if known, identities of the parties involved, date and location of the alleged incident, and the conduct that allegedly constitutes a violation
- Notice of all interview, meetings or hearings, with sufficient time to prepare
- A statement that the respondent is presumed “not responsible”
- A statement informing them that they may have an advisor of their choice and may request disclosure of evidence
- All possible sanctions including but not limited to timelines for suspensions, educational requirements, transcript notations and removal from clubs or organizations

Trauma Informed in a Zoom Hearing

Welcome Dana Godfrey, Counselor/Victim's Advocate

Student Conduct Institute - Due August 14, 2020

- **For All By August 14:**
- TIX Final Rule Basics;
- Sexual Harassment Legal Definitions;
- No Contact Orders,
- Emergency Removal and Interim Suspension;
- NY Education Law 129-B basics

Hearing Officers - Decision Makers- Due October 1, 2020

Accountability

Appeals in Student Conduct
Process,

Cultural Relevance,

Disability Law

Due Process Part I &II;

Mock Hearing Parts I,II &III;

Online Harassment;

Pre Hearing Preparations;

Privacy, Confidentiality and
Privilege;

Supportive measures;

Neurobiology of Trauma;

Appeals Board Training

- **Appeal Board, Title IX Coordinator/Deputies and Hearing Officers:**
- 2020-2021: Relevance and Decorum in a Title IX Hearing
- 2020-2021: Cross-Examination in a Title IX Hearing
- 2020-2021: Understanding the Investigative Report Template for Investigations of Title IX Sexual Harassment
- 2020-2021: Legal Framework for Understanding Conflicts of Interest and Bias
- 2020-2021: Virtual Hearing Technology
- 2020-2021: Collecting and Understanding Specialized Evidence
- 2020-2021: Effective Interviewing of Parties and Witnesses
- 2020-2021: Trauma-Informed Practice - Legal Compliance Basics

Student Conduct Institute - Took Kit Resources

- Live Hearing Cross Examination and Advisors of Choice
- Guide for Determining Relevance
- Model Script for Title IX Hearings

UPCOMING Meetings & Trainings:

- Monday, September 14, 2020 at 10:00 a.m.- D19 Hearing Officer Training
- Monday, October 5, 2020 at 10:00 a.m. - Title IX C27 Hearing Officer Training
- ***Decision Maker - Feedback form - D19 & C27***
- ** TBA - C27 Mock Hearing
 - Each Assigned a Role
 - Investigation Report
 - Three Panel Decision (Two Hearing Officers & Attorney)
 - Complainant, Respondent, Witnesses, Advisor of Choice, P.S., Investigator
 - Those without a role will be assigned to provide feedback - form.

C27 Mock Hearing

- ** TBA -
- **EVERYONE WILL PARTICIPATE!!!☺**
- C27 Mock Hearing
 - Each Assigned a Role
 - Investigation Report
 - Three Panel Decision (Two Hearing Officers & Attorney)
 - Complainant, Respondent, Witnesses, Advisor of Choice, P.S., Investigator
 - Those without a role will be assigned to provide feedback - form.

QUESTIONS, THOUGHTS, FEEDBACK, CONCERNS.....

- Please ask or share we don't know if you don't tell us....
- Advisors of Choice for C27
- C27 - what are the next steps - Governance
- Will there be changes for D19 or D18

THANK YOU