Title IX Advisor Training
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What is Required under the Final Rule?

A recipient with *actual knowledge* of *sexual harassment*, in an *education program or activity* of the *recipient* against a person *in the United States*, must respond promptly in a manner that is not deliberately indifferent.
Title IX Sexual Harassment §106.30

• Conduct on the basis of sex that satisfies one or more of the following:
  – (i) An employee conditioning education benefits on participation in unwelcome sexual conduct (i.e. quid pro quo); or

  – (ii) Unwelcome conduct that a reasonable person would determine is so severe, pervasive, AND objectively offensive that it effectively denies a person equal access to the school’s education program or activity; or

  – (iii) Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in VAWA
Title IX Jurisdiction

- Institution’s program or activity in the United States
  - Institution property
  - Institution sponsored or affiliated events [substantial control is key]
  - Buildings owned or controlled by officially recognized student organizations

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USG Complaint Process

- A report of misconduct has been made
- The Complainant or the Title IX Coordinator has initiated the formal investigation process
- Notice of the investigation has been sent to the parties
- The assigned investigator(s) have made preliminary determinations
- The parties and the institution have been unable to reach an informal resolution
The Live Hearing Requirement §106.45(b)(6)

- The Final Rule mandates a bifurcated process

- Final determinations of responsibility and sanctions are made by decision-makers
  - CANNOT be the Title IX Coordinator or assigned investigator
  - Informal resolution not permissible for student allegations against an employee

- New due process considerations
  - Cross examination by a party’s advisor
  - Relevancy determinations
  - Impact of party or witness refusal to submit to cross-examination

- Institutions must provide an advisor if a party does not have one
Adjudication Processes

**Students**
- All matters not informally resolved will be heard by a Hearing Panel
- Hearing Panels comprised of trained faculty and staff

**Employees**
- Title IX matters not informally resolved will be heard by a single decision-maker or panel
- Sexual Misconduct matters not informally resolved will be resolved according to established institutional procedures
  - Institutions may choose to offer a hearing or utilize single decision-maker
Advisors at Title IX Hearings §106.45(b)(6)

• 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

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What is 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

• USG Expectation: Respect, dignity, decorum
Typical Order of a Hearing

- Opening by Decision Maker
- Opening statements by both parties
- Questioning of the Complainant
  - By the decision maker or panel
  - By other party (through their advisor)
- Questioning of the Respondent
  - By the decision maker or panel
  - By other party (through their advisor)
- Questioning of any Witnesses
  - By the decision maker or panel
  - By the parties (through their advisor)
- Closing statements by both parties
- Closing by Decision Maker
Preparing for the Hearing

- Review the Sexual Misconduct Policy and appropriate procedures

- Review the investigation report and provided materials

- Communicate with your assigned party
  - Drafting questions
  - Addressing procedural inquiries
Hearing Logistics

• Hearings may be conducted in-person or via videoconferencing
  – Ensure you know how to use the technology as well

• At the request of either party, the parties must be permitted to be in separate rooms

• All directly related information will be available

• All hearings must be recorded
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
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

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

**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
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

- If an individual does not submit to cross examination, at a Title IX hearing, their statements cannot be relied upon
Standard of Evidence

Decisions regarding student and employee alleged misconduct are based on a preponderance of the evidence.
The Written Decision §106.45(b)(7)

- Provided to both parties simultaneously must include:
  - The allegations
  - The procedural steps from the complaint through determination
  - Findings of fact supporting the determination
  - Determinations regarding responsibility, sanctions (and remedies) along with the supporting evidence and rationale
  - Information on the appeals process
Expectations of USG Advisors

- Be willing to advise any party, Respondent or Complainant
- Actively engage and be attentive during the hearing
- Adhere to Board and institutional policies and procedures
Additional Concerns & Questions