



CONDUCTING HEARINGS

How to conduct hearings including conducting cross-examination and determining relevance and reaching determinations, remedies and sanctions.

Learning Objectives:

- determining relevance in cross-examination
- understand rights and options related to hearing
- identify roles and responsibilities of decision-maker(s)
-

CONDUCTING HEARINGS

"LIVE" HEARINGS

CREATING A RECORDING:

- VIDEO
- AUDIOVISUAL
- TRANSCRIPT

VIRTUAL HEARINGS:

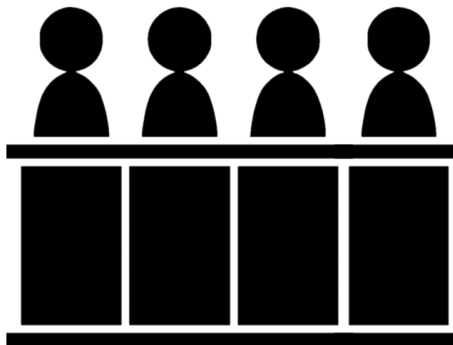
WRITTEN NOTICE OF HEARING:

SCHEDULING HEARING:

SINGLE DECISION-MAKER MODEL:



DECISION-MAKER(S) PANEL:



DECISION-MAKER(S):

- Can't be Title IX Coordinator
- Can't be investigator

ADVISOR OF CHOICE:

“[NOTWITHSTANDING THE DISCRETION OF THE RECIPIENT... TO OTHERWISE RESTRICT THE EXTENT TO WHICH ADVISORS MAY PARTICIPATE IN THE PROCEEDINGS.]”

If party doesn't have advisor at hearing:

- Institution must provide free of charge
- advisor of institution's choice
- May be but does NOT need to be attorney
- Party can NOT waive having an advisor

SEPERATION OF PARTIES:

EVIDENCE:

Make all evidence subject to the parties' inspection and review available at the hearing to give parties opportunity to refer to evidence during hearing.

Exception to evidence:

- Medical or psychological records can only be used with the party's voluntary consent.
- Privileged materials

INVESTIGATIVE REPORT:

“The Department notes... [the regs] contemplates parties’ equal right to cross-examine any witness, which could include an investigator and.... Grants parties equal opportunity to present witnesses including fact and expert witnesses, which may include investigators.”

CROSS-EXAMINATION:

“[A]ll relevant questions and follow-up questions, including those challenging credibility.”

- Question asked of parties and witnesses
- Directly, orally and in real time
- By party’s advisor of choice – NEVER by party
- “relevant, respectful and non-abusive”

RULES OF DECORUM:

RETALIATION:

RELEVANCE:

A question that goes to prove or disprove an
outcome determinate fact.

REDUNDANCY:

"RAPE SHIELD":

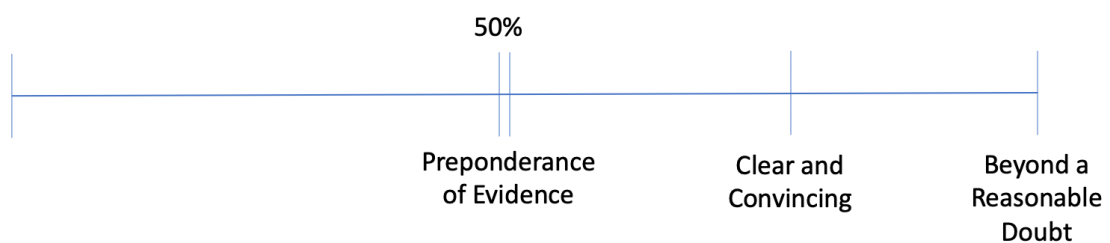
Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are offered to prove that:

- someone other than the respondent committed the conduct alleged (OR)
- complainant's prior sexual behavior with respect to the respondent and are offered to prove consent

DETERMINATION OF RESPONSIBILITY:

STANDARD OF EVIDENCE:

Standard of evidence:



DECISION-MAKER(S) REPORT:

- Allegations
- Procedural steps taken from receipt of complaint– determination
 - Notifications to parties
 - Interviews with parties
 - Methods used to gather evidence
 - Hearings held
- Findings of fact that support determination
- Conclusions regarding application of institution's code of conduct to the facts
- Statement of rationale for result of each allegation
 - Sanctions
 - Remedies
- Permissible bases for appeal available