

- Easy to read (e.g., use the active voice, good grammar, etc.).
- No typos.

Use consistent terminology.

- Look professional (e.g., professional font, formatting, etc.).
- Follow consistent structure and format

Advisor-Led Cross-Examination

Cross-examination is designed to probe the credibility of the parties and witnesses and, according to OCR, is a critical element of due process.

OCR states that the level of training is required to conduct cross-

[REDACTED]

[REDACTED]

[REDACTED]

- Use pre-hearing procedures to evaluate proposed questions and determine whether they are relevant/missible.
- Questions not submitted in advance may still be asked in hearing if relevant.

Hearing officer may ask advisor to explain relevance of a question before ruling.

Hearing officer may ask the advisor to re-frame question if it violates rules of decorum (abusive, hostile)

- Parties may choose not to attend the hearing or submit to cross-examination but are still entitled to University-appointed advisors in hearing

If question is deemed by Hearing Officer to be irrelevant / subject to exclusionary rules (rape shield or privilege), Hearing Officer will state basis for disallowing the question:

- Irrelevant because the question calls for prior sexual history of Complainant without meeting one of the two exceptions.
- Irrelevant because the question calls for information protected by a legally held privilege or contained in a medical/psychological record.
- Irrelevant because the question asks about an issue that does not tend to prove/disprove any material fact about the allegation(s).
- The question is repetitive/has already been asked and answered.

If a party or witness does not submit to cross-examination at the live hearing, Decision makers accept relevant oral statements of that party,

[REDACTED]

witnesses in reaching a determination of responsibility.

Before asking a question, consider:

Will the answer to this particular question help me to understand if a violation of the policy occurred?

- How will the answer to this question illuminate whether or not a person's behavior meets the definition of a violation?

Does the information I am attempting to elicit serve my curiosity about the person or the incident? Or, does it help the panel make a decision?

Does the question probe the credibility of the person's narrative?

Body language, tone, and mannerisms are important in conducting the

Derrick's attorney advisor, Alice B. Payne, requests that you, the hearing officer, ask Carlos the following questions:

- Did you and Antwon have intercourse earlier in the week leading up to the incident and/or on the day of the incident?

What is your mental health diagnosis?

Could your mental health diagnosis have impacted your experience with Derrick?

How many sexual partners have you had at the university?

Did you experience childhood sexual abuse/trauma that may have been triggered by the encounter with Derrick?

College graduate, a social worker from a local district, etc.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Assessing Credibility

- Credibility assessments are necessary to resolve material issues in

dispute between parties' accounts.

Credibility is different than "honesty."

Evaluation of source, content, and plausibility of evidence presented

- Specificity v. vagueness in accounts.

Corroboration through witness testimony and evidence.

Corroboration

= Sufficient independent evidence to support the facts at issue.

- Corroboration ≠ second witness who agrees with the first.
- Corroboration = evidentiary support for what a witness contends after evaluating source, context, and credibility.

- Witnesses, electronic evidence, physical/medical evidence, police reports, video surveillance

BERNSTEIN SHUR

Communications between parties (pre and post incident)

- Behavior of the parties (pre and post incident)

Statements against interest/ admissions

Disclosures about the incident

Motive / Bias

- Understand parties' and witnesses' relationship(s) to one another.
- Understand Complainant's decision to disclose/report when they did.
- Be curious and explore theories of potential motive (those offered by the parties/witnesses and those revealed by the evidence).
- Understand the difference between a false report v. good faith report that is not supported by evidence.

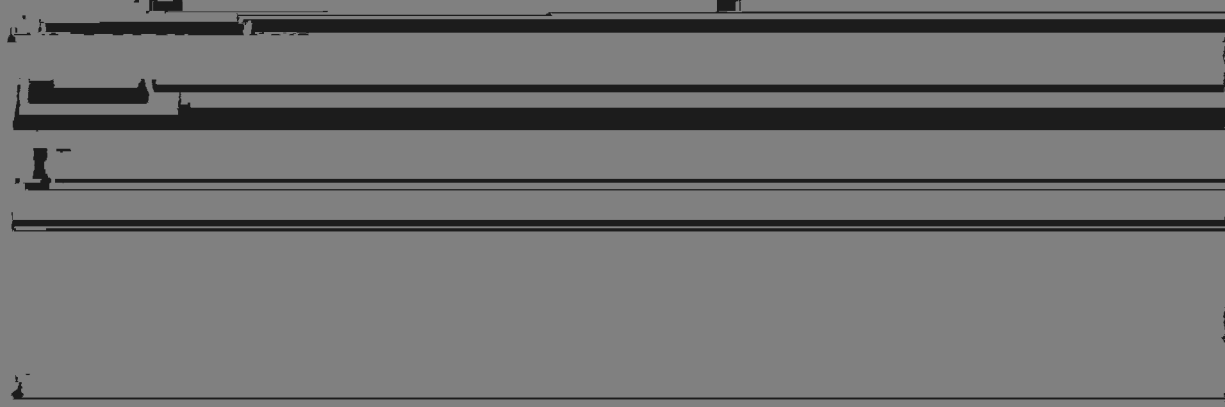
Demeanor

- Consider person's reaction to certain lines of questioning, cooperativeness, candor, defensiveness, argumentativeness, etc

Consider potential trauma, shame, blame, fear, nervousness, heightened emotions.

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- More likely than not.



- Remember though, evidentiary burden is not on the parties.

Final Determination List

Clearly articulates the policy elements at issue

[Redacted]

[Redacted]

- Clearly articulates how a determination of responsibility/ no

[Redacted]

Appeal Process

- Procedural irregularity that affected the outcome of the matter;

New evidence that was not reasonably available at the time of the decision that could affect the outcome of the matter; or

The Title IX Coordinator, investigator or a decision maker had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent that affected the outcome of the matter.

Appendix

1. Deny the appeal and affirm the original decision;
2. Grant the appeal and order previously dismissed Formal Complaint

to be reinstated;

3. Grant the appeal and remand to the Hearing Officer/Panel for further consideration;
4. Grant the appeal and remand for a new live hearing before new Hearing Officer/Panel or

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Questions?