



D. STAFFORD
& ASSOCIATES

Sexual Misconduct Advisor Class

Presented by:

**A D. Stafford & Associates
Title IX Team Member**

D. Stafford & Associates, LLC, 179 Rehoboth Avenue, #1121, Rehoboth Beach, DE 19971
302-344-5809

Dolores Stafford, President & CEO

Dolores@DStaffordandAssociates.com

www.dstaffordandassociates.com



Have you joined NACCOP yet? If not, go to www.naccop.org to become a member of this professional association supporting Clergy Compliance Officers.

Once an institution is a member, individual membership is \$50.00. You can sign up your entire Clergy Compliance Committee for membership!

©All rights reserved by DSA

(Limited permission is granted to each attendee of this class to make training materials available per the requirements outlined in the Title IX Regulations published on May 19, 2020)



Advisor Agenda

Module 1: The Law and the Hearing Process

- The Title IX Grievance Process
 - Legal Overview
 - Definitions
 - Jurisdiction
 - Investigation Overview
 - Hearing Basics

Module 2: Advisor's Role in the Process

- Role
- Policy and Procedures
- Meetings
- Evidence and Relevancy
- Reports
- The Hearing
- After the Hearing



TITLE IX

Copyright

(Limited permission is granted to each attendee of this class to make training materials available per the requirements outlined in the Title IX Regulations published on May 19, 2020)

These materials are copyright of D. Stafford & Associates, LLC © 2020 D. STAFFORD & ASSOCIATES. All rights reserved.

Any distribution or reproduction of part or all of the contents in any form is prohibited other than the following:

- As required by 34 C.F.R. § 106.45(b)(1)(iii) and § 106.45(B)(10)(i)(D), this material in its entirety may be posted to the website of the institution in which you were associated with at the time in which you were enrolled in this training.*
- Public inspection upon request.*

You may not, except with our express written permission, distribute or commercially exploit the content. Nor may you transmit it or store it in any other website or other form of electronic retrieval system.



ISSUANCE OF CERTIFICATES FOR COMPLETION OF DSA/NACCOP CLASSES

To receive a certificate for classes held by D. Stafford & Associates, LLC or the National Association of Clerly Compliance Officers and Professionals (NACCOP), attendees must attend the majority of the class. This includes in-person classes and virtual classes. DSA and NACCOP understands that attendees may need to miss class for a legitimate reason for longer periods of time or may need to leave the room during a class for a few minutes to take a phone call or attend to other business. That said, our general rule of thumb for our 4 and 5 day classes is that if an attendee misses more than 1 hour of class time, they will not be issued a certificate of completion for the class. If the class is a 1, 2 or 3 day class, the amount of time that can be missed may be less, as classes of those lengths are more condensed.

For virtual classes, because we can't see all of the attendees all of the time like we can in an in-person class (based on the attendee controlling whether they have their camera turned on or not), the criteria for receipt of a certificate is determined based on missed class time (no more than 1 hour or less, depending on the length of the class) and participation in the Attendance Polls that will be launched throughout each day of class. Attendance polls are left up for approximately 5 minutes and the instructor notifies the attendees that a poll is being launched before doing so, to ensure that everyone who is there can/will respond to the poll. If there is an issue with responding to the attendance poll, the attendee would need to **immediately notify the Administrative Support person** in the course via the chat function in the zoom platform. That way we can immediately resolve any issues and give the attendee credit for being in attendance for the poll. Notifying us hours or days after having an issue with not being able to complete the attendance poll will not allow us to give the attendee credit for being in class during the poll.

Our classes qualify for credit toward a Master's Degree at New England College (and regardless if you decide to seek credit or not, but accreditation requirements mandate that we follow the same standards for all class attendees), so we have strict attendance standards that we follow for issuance of a certificate, which equates to verification that the participant attended the complete class. For DSA and NACCOP, issuance of a Certificate of Completion is verification of that fact.

If the attendee missed class for a legitimate reason, that doesn't mean that an attendee wasn't there for much of the class and that they didn't benefit from that attendance. It just means that based on the missed time and/or attendance polls (in virtual classes only), we aren't able to issue you a certificate of completion.

If an attendee has to miss time in class, the instructions attendees receive before the class provide instructions for notifying the Administrative Support person about the time that will be missed **IN ADVANCE**, so we can jointly identify what blocks of instruction will be missed, and the DSA/NACCOP team will then work with the attendee to see if we can get them in a future class module to make up that material, which would result in us being able to issue the attendee a certificate. We provide this service and opportunity at no additional cost, as we want each attendee to finish the class and get a certificate of completion. Effective communication by each attendee is the key to this option.



D. STAFFORD
& ASSOCIATES

P.O. Box 1121
Rehoboth Beach, DE 19971
Phone: (202) 438-5929
dolores@dstaffordandassociates.com

Catherine Cocks, M.A.
Consultant, Student Affairs, Title IX, and
Equity Compliance Services



Ms. Cocks has been a higher education professional for over thirty years. Her work with D. Stafford & Associates focuses on Title IX investigations and training; assessment of student affairs policies, practices and services; and behavioral threat assessment. Cathy was the Director of Community Standards for the University of Connecticut for 14 years where she managed the student conduct process, which included managing all Title IX cases involving student respondents and chaired the University's student threat assessment team. Prior to that, she held several positions within Residential Life at the University of Connecticut and Roger Williams University.

She is a faculty member for the Association for Student Conduct Administration's (ASCA) Donald D. Gehring Academy teaching on subjects such as ethics, governance, threat assessment, media relations, and higher education trends. She was an affiliated faculty

member for many years in the University of Connecticut's Higher Education and Student Affairs Master's program teaching "The Law, Ethics, and Decision-Making in Student Affairs."

Cathy has co-authored the "Philosophy of Student Conduct" chapter in the 2nd edition of "Student Conduct Practice" (2020) and was a member of the writing team for CAS Standards' Cross-functional Framework for Identifying and Responding to Behavioral Concerns.

Cathy is a Past President of ASCA. She has also served as a Circuit representative, co-chair of the Public Policy and Legislative Issues Committee, and as a member of the ASCA Expectations of Members Task Force. Cathy has served in a variety of leadership roles in NASPA Region I.

She was the 2015 recipient of ASCA's Donald D. Gehring Award. She is a past recipient of the NASPA Region I Mid-Level Student Affairs Professional Award and the NASPA Region I Continuous Service Award.

She earned her Master's degree in Higher Education Administration from the University of Connecticut and Bachelor's degree in Communications/Media from Fitchburg State University.



Beth Devonshire, Consultant
Equity Compliance and
Title IX/Civil Rights Training



Beth Devonshire, Esq., has been an Associate with DSA since 2012 and she became a full-time consultant in August of 2018. She was the Associate Dean of Students at UMass Boston from November 2016 to July 2018. In that role, Beth administered the student conduct system, chaired the CARE and BIT Teams, served as the Deputy Title IX Coordinator, oversaw the U-Access (an office dedicated to assisting students who are dealing with a multitude of issues such as food insecurity, homelessness, emancipation from foster care, and chronic poverty), and acted as a liaison with the various constituencies around the University. Additionally, Beth was responsible drafting the policies and procedures related to students. Prior to that, Beth was the Director of Student Conduct at Bridgewater State University and the Director of Community Standards Stonehill College. Before beginning her career in Higher Education, Beth served as a clerk for the Justices of the Superior

Court, and in various positions for the Massachusetts House of Representatives. Beth has also presented extensively on Title IX including presentations to Colleges, State Wide Organizations, Regional Conferences, and at the OCR Title IX Conference in March of 2011.

Additionally, Beth has given multiple presentations on other legislation and legal issues effecting higher education, including FERPA, Clery and Alcohol and Other Drug Prevention. Beth is the former National Knowledge Community Public Policy Liaison for NASPA, and also the former Massachusetts Public Policy Liaison for MA NASPA. Beth also served as the Director of the Legislative Committee for The Association for Student Conduct Administrators (ASCA) for two years. In those roles, Beth was charged with keeping abreast of proposed and passed legislation and cases impacting higher education and communicating those changes to the membership.

Before beginning her career in Higher Education, Beth served as a clerk for the Justices of the Superior Court from 2006-2007. Prior to that, Beth worked at the Massachusetts State House as Deputy Attorney for House Ways and Means, Chief of Staff for the Committee on Election Laws and as a Researcher for the Committee on Local Affairs.



D. STAFFORD
& ASSOCIATES

P.O. Box 1121
Rehoboth Beach, DE 19971
Phone: (202) 438-5929
dolores@dstaffordandassociates.com

Devonshire currently serves as an Associate for D. Stafford & Associates, a highly reputable consulting firm specializing in delivering on organizational, physical security, vulnerability and arming assessments; Clery Act compliance audits; assessments of Title IX compliance; Behavioral Intervention Team and Student Conduct Assessments and Training; and a host of other services related to security, safety and compliance for institutions of higher education.



D. STAFFORD
& ASSOCIATES

P.O. Box 1121
Rehoboth Beach, DE 19971
Phone: (202) 438-5929
dolores@dstaffordandassociates.com

Adrienne Meador Murray, Executive Director of Training and Compliance Activities



Adrienne Meador Murray began her career in municipal law enforcement as a civilian employee with the City of Richmond Police Department (Virginia). She graduated from the Virginia Commonwealth University Police Training Academy and began her career as a sworn police officer for the University of Richmond (UR) Police Department (Virginia). At UR, Murray progressed through the ranks from a night shift patrol officer to Operations Lieutenant (overseeing criminal investigations, crime prevention and patrol) over the span of a decade before becoming the Chief of Police at Davidson College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.). In January 2014, Murray joined the National Association of Clergy Compliance Officers & Professionals (NACCOP) and D. Stafford & Associates where she currently serves as Executive Director of Training and Compliance Activities after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012.

As the Executive Director, Equity Compliance and Civil Rights Services, Murray builds on her 17-year career in law enforcement in which she became a nationally recognized expert in the field of best practice postsecondary institutional response to the sexual victimization of college women in the United States and in Canada. She is also a trained civil rights investigator and is well respected throughout the country for her ability to aid institutions in understating how to do best practice criminal and civil rights investigations concurrently. She is well known for her work in having provided support, advocacy and criminal investigative services for victims of sexual assault, stalking and intimate partner violence and is a sought-out speaker and investigator. She has expertise in the construction of best practice law enforcement standard operating procedures and training police officers to respond in best practice and trauma-informed ways to victims of sexual assault and intimate partner violence. In her current role, Murray coordinates curriculum development and instruction for national classes, including basic and advanced sexual misconduct investigation classes; an investigation of dating violence, domestic violence and stalking class; and a Title IX Coordinator/Investigator class offered through D. Stafford & Associates. To date, Murray has trained more than 3,500 criminal and civil rights investigators throughout the U.S.

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based



D. STAFFORD & ASSOCIATES

P.O. Box 1121
Rehoboth Beach, DE 19971
Phone: (202) 438-5929
dolores@dstaffordandassociates.com

trainings pertaining to the resolution of sexual misconduct offenses on college and university campuses. Murray frequently presents at regional and national conferences on topics such as the *Sexual Victimization of College Women*, *Understanding Consent and Incapacitation*, and *Responding to Sexual Assault on Campus: Clery Act and Title IX Implications*. Murray also conducts provincially specific sexual misconduct trainings throughout Canada.

Murray is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management and of New England College, where she received her Master's Degree in Campus Public Safety Administration. Murray is also a graduate of the 235th session of the prestigious FBI National Academy where she was awarded a graduate certificate in Criminal Justice from the University of Virginia. She has authored numerous journal articles.



D. STAFFORD
& ASSOCIATES

179 Rehoboth Avenue, #1121
Rehoboth Beach, DE 19971
Phone: (202) 438-5929
dolores@dstaffordandassociates.com

Ann Todd

Consultant, Equity Compliance and Civil Rights Investigations



Ann Todd, Esq is a seasoned civil rights investigator in higher education for D. Stafford & Associates (DSA). Ms. Todd is a graduate of Davidson College with a degree in psychology and holds a JD from the University of Nebraska. Prior to joining DSA, she practiced law in Charlotte, NC, specializing in employment and civil rights and worked for a number of non-profit organizations. She returned to her alma mater (Davidson College) in 2008 and worked there through March of 2016 serving as the Assistant Director of Human Resources with the responsibility of managing employee relations and the learning and development function.

Ms. Todd joined the DSA in 2015 and currently serves as the Consultant, Equity Compliance and Civil Rights Investigations. She is the Senior Investigator for the DSA Title IX Investigation Team. She conducts external investigations on behalf of colleges and universities, specializing in investigating student allegations of sex discrimination, sexual assault, intimate partner violence, and stalking. Additionally, she brings a strong Human Resources

background to investigating a range of employee misconduct—from performance issues to discrimination.

In addition to conducting investigations, Ms. Todd is a frequent speaker and consultant on Title IX investigations, conducting 20-30 courses every year on best practices for investigating sex discrimination and sex crimes on campus. She works with schools to draft policies and processes that provide equity and fairness to all parties involved and is adept at facilitating discussions with institutions to ensure the end product represents the values of the campus community.

Ms. Todd is a member of the NC Bar and a Certified Clery Compliance Officer through the National Association of Clery Compliance Officers and Professionals (NACCOP). She is also a certified 360 facilitator through the Center for Creative Leadership. She lives in Davidson, NC where she volunteers on a number of local and town boards.



Decision-Makers in Title IX Hearings

1



COURSE AGENDA

- Module 1: The Law and the Hearing Process
- Module 2: Advisor's Role in the Process

© 2020 D. STAFFORD & ASSOCIATES

2

2

Introduction



Name



Role on Campus

© 2020 D. STAFFORD & ASSOCIATES

3

3

Course Logistics

- Camera
- Breaks
- Interact
- Attendance

© 2020 D. STAFFORD & ASSOCIATES

4

4



The Law and the Hearing Process

The 2020 Title IX Regulations and the Formal Process

5



Agenda

- The Title IX Grievance Process
 - Legal Overview
 - Definitions
 - Jurisdiction
 - Hearing Basics
- Conflict of Interest and Bias

© 2020 D. STAFFORD & ASSOCIATES

6

6

Interpreting Laws



Law



Regulations



Substantive
guidance



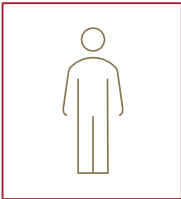
Case law

© 2020 D. STAFFORD & ASSOCIATES

7

7

Definitions: Parties/Witnesses



Complainant

Respondent

Witnesses

© 2020 D. STAFFORD & ASSOCIATES

8

8

Definitions: Key Terms



Actual Knowledge

Formal Complaint

Supportive Measures

© 2020 D. STAFFORD & ASSOCIATES

9

9

Definitions: Title IX Personnel



Title IX Coordinator

Investigator

Decision-Maker

Informal Resolution Facilitator

© 2020 D. STAFFORD & ASSOCIATES

10

10

New Regulations

For it to be covered under Title IX, it must meet:

- New Definitions
- Jurisdiction of person
- Jurisdiction of activity



If it does NOT meet these requirements...

- Mandatory dismissal
- Can go to different resolution process

© 2020 D. STAFFORD & ASSOCIATES

11

11

Jurisdiction of Person



"At the time of filing a formal complaint...the complainant must be participating in or attempting to participate in the education program or activity"



The institution must exercise control over the Respondent



All regulations apply to students and employees

© 2020 D. STAFFORD & ASSOCIATES

12

12

Jurisdiction of Activity

- Behavior must occur as part of the “education program or activity”
 - Locations, events, or circumstances over which the recipient exercised substantial control over the context in which the sexual harassment occurs
 - And any building owned or controlled by a student organization that is officially recognized
- Must occur in the United States (including US territories)

13

© 2020 D. STAFFORD & ASSOCIATES

13

Definition of Sexual Harassment under Title IX

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
3. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

© 2020 D. STAFFORD & ASSOCIATES

14

14

PRONG 1: Quid Pro Quo



Must be an employee (not volunteer, visitor, student)



“This for that” harassment



When favorable professional or educational treatment is conditioned on a sexual activity

© 2020 D. STAFFORD & ASSOCIATES

15

15

PRONG 2: Hostile Environment+ (The *Davis* Standard)



Not the same Title VII "hostile environment" or 2001 Guidance



First Amendment protections



Not a zero tolerance policy

© 2020 D. STAFFORD & ASSOCIATES

16

16

PRONG 3: The VAWA Offenses



Sexual Assault

Rape
Fondling
Incest
Statutory Rape



Intimate Partner Violence

Dating Violence
Domestic Violence



Stalking

© 2020 D. STAFFORD & ASSOCIATES

17

17

§106.30 Definitions - CONSENT

*The Assistant Secretary
will not require recipients to
adopt a particular definition
of consent with respect to
sexual assault*



© 2020 D. STAFFORD & ASSOCIATES

18

18



Definitions/consent/jurisdiction at your institution:
Where do the non-Title IX sexual misconduct cases go?

19

Other Considerations



First Amendment



Retaliation



Bias/Conflict of
Interest



State Laws

© 2020 D. STAFFORD & ASSOCIATES

20

20

Three Primary Stages



Intake



Investigation

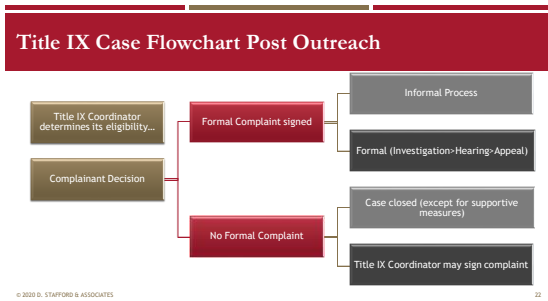


Resolution

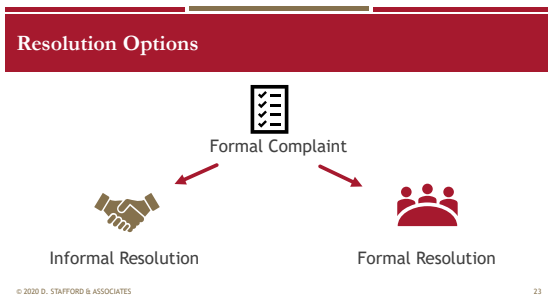
© 2020 D. STAFFORD & ASSOCIATES

21

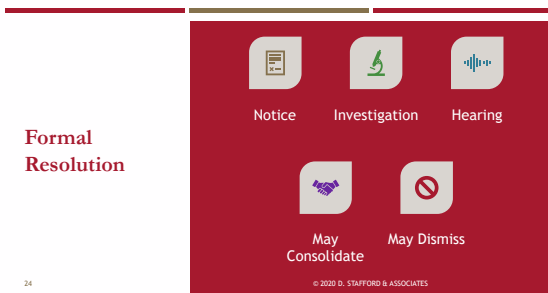
21



22



23



24



25

Hearing Basics



Live



Cross Examination



Advisors

© 2020 D. STAFFORD & ASSOCIATES

26

Standard of Evidence

Preponderance

Clear and Convincing

27

Conclusions

Sanctions/Remedies

Written
Determination

Options for Appeal

© 2020 D. STAFFORD & ASSOCIATES

28

28



29

Conflicts of Interest



Roles on
campus



Past
employment



Volunteering



Interactions
with parties

© 2020 D. STAFFORD & ASSOCIATES

30

30

Recognizing Bias

© 2020 D. STAFFORD & ASSOCIATES

31

31

Bias--From Regs

- Bias against Complainants or Respondents
- Bias against THIS Complainant or Respondent
- Sex Stereotyping

32

© 2020 D. STAFFORD & ASSOCIATES

32

Bias

Parties

Race

Gender

Gender identity

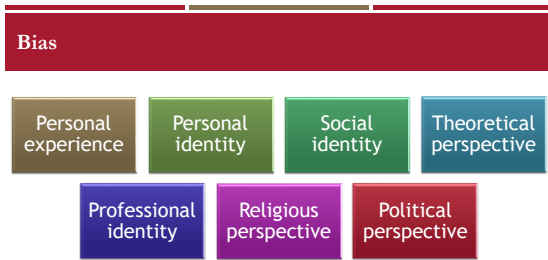
Sexual orientation

Nationality

© 2020 D. STAFFORD & ASSOCIATES

33

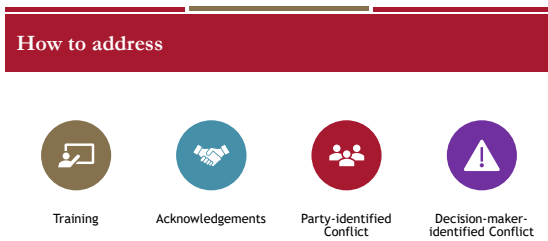
33



© 2020 D. STAFFORD & ASSOCIATES

34

34



© 2020 D. STAFFORD & ASSOCIATES

35

35



© 2020 D. STAFFORD & ASSOCIATES

36

36



The Advisor's Role in the Process

© 2020 D. STAFFORD & ASSOCIATES

1



Agenda

- Role
- Policy and Procedures
- Meetings
- Evidence and Relevancy
- Reports
- The Hearing
- After the Hearing

© 2020 D. STAFFORD & ASSOCIATES

2

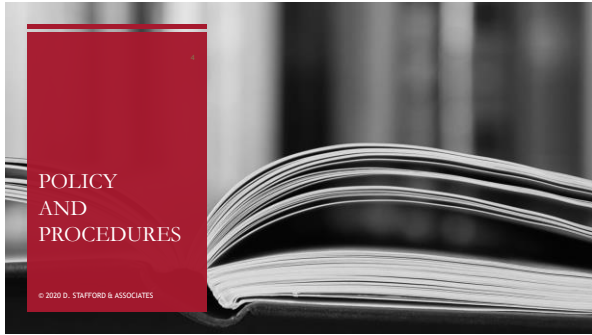
Role

Institutional expectations
Know the Rules

© 2020 D. STAFFORD & ASSOCIATES



3



4

Policy vs Procedure



Policy

What are the rules, why they exist, when they apply



External Process Information

Information through a notice letter or information sheet explaining the process and steps for the involved parties

© 2020 D. STAFFORD & ASSOCIATES

5



6

Logistics

Selection

Notification

In person and virtual considerations

© 2020 D. STAFFORD & ASSOCIATES

7

7

Meetings

Attendance

Preparation

Participation

© 2020 D. STAFFORD & ASSOCIATES

8

8

Types of Meetings

Intake meeting

Investigation meeting(s)

Pre-hearing meeting

Hearing

© 2020 D. STAFFORD & ASSOCIATES

9

9



10

Types of Evidence



Real evidence



Demonstrative



Documentary



Testimonial

© 2020 D. STAFFORD & ASSOCIATES

11

11

Statements



Investigator
Interviews



Written
Statements



Formal
Complaint



Other

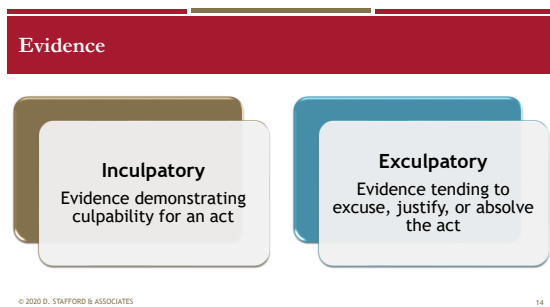
© 2020 D. STAFFORD & ASSOCIATES

12

12



13



14



15

The Regulations on Relevancy



Relevant Evidence in Investigation



Relevant Questions at Hearing

© 2020 D. STAFFORD & ASSOCIATES

16

16

What Does Relevancy Mean?



- Directly related to the issue and helps prove or disprove the issue
- Fact must be material to an issue in the case
- Makes something more/less true or more/less false

© 2020 D. STAFFORD & ASSOCIATES

17

17

Other Ways to Put It...

The evidence does not need to be conclusive

The evidence constitutes a link in the chain of proof

The evidence, in connection with other evidence, helps "a little"

© 2020 D. STAFFORD & ASSOCIATES

18

18

Relevancy Examples



Admissions



Eyewitness



Credibility

© 2020 D. STAFFORD & ASSOCIATES

19

19

Relevancy Examples



Background



Charts



Floorplans

© 2020 D. STAFFORD & ASSOCIATES

20

20

Relevant Examples



Research



Character and
Character Traits



Expert Testimony

© 2020 D. STAFFORD & ASSOCIATES

21

21



22

NOT RELEVANT (from the Regulations)

Past Sexual Behavior

- Complainant's sexual predisposition or prior sexual behavior unless...
 - 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

Privileged Information

- Physician, psychiatrist, psychologist records in connection with the provision of treatment to the party unless
 - Voluntary, written consent

© 2020 D. STAFFORD & ASSOCIATES
23

23

Not Relevant - Hearing

Repetitive

Related By Not Relevant

New Evidence - Is It Relevant?

© 2020 D. STAFFORD & ASSOCIATES
24

24



25

Versions of the Report



Preliminary

Scope
Methodology
Evidence Obtained



Final

Scope
Methodology (edited)
Evidence obtained
Summary of relevant evidence

© 2020 D. STAFFORD & ASSOCIATES

26

26

§106.45(b)(5)(vi) Preliminary Report

Prior to the completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider proper to the completion of the investigative report.

© 2020 D. STAFFORD & ASSOCIATES

27

27

Do You Have a Role in the Response?



- Read it?
- Written response?

© 2020 D. STAFFORD & ASSOCIATES

28

28

§106.45(b)(5)(vii) Investigative Report

Create an investigative report that fairly summarized relevant evidence and, at least 10 days prior to a hearing . . . Send to each party and the party's advisor, if any, the investigative report in an electronic format or hard copy, for their review and written response.

© 2020 D. STAFFORD & ASSOCIATES

29

29

Do you Have a Role in the Response?

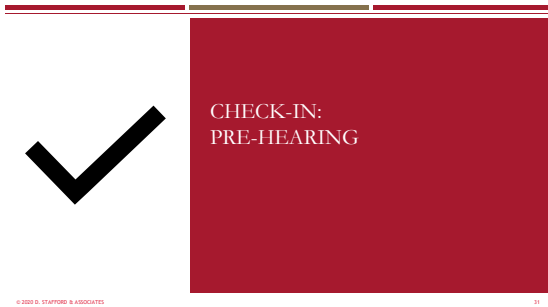


- Read it?
- Written response?
- Hearing preparation?

© 2020 D. STAFFORD & ASSOCIATES

30

30



31



32



33

Advisor



- Recipient must appoint an Advisor
- YOU are asking the relevant and follow-up questions
- *Simply of posing questions intended to advance the asking party's perspective with respect to the specific allegations at issue*

© 2020 D. STAFFORD & ASSOCIATES

34

34



HEARING -
LIVE

© 2020 D. STAFFORD & ASSOCIATES

35

35

Cross-examination



The Department does not believe that the final regulations' expectation for an advisor to "conduct cross-examination on behalf of a party" constitutes the practice of law; a Title IX adjudication is not a civil or criminal trial so the advisor is not representing a party in a court of law, and the advisor is not required to perform any function beyond relaying a party's desired questions to the other party and witnesses. . . (Fed. Reg. 30341)

© 2020 D. STAFFORD & ASSOCIATES

36

36

Participation



"If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility."

EXCEPTON - QUESTIONS ASKED BY
DECISION-MAKER QUESTIONS

© 2020 D. STAFFORD & ASSOCIATES

37

37

"New Evidence" at the Hearing

APPEAL GROUND: "New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter."



Allow



Disallow



Stop Hearing

© 2020 D. STAFFORD & ASSOCIATES

38

38

Relevancy



Pre-screened?



Decision-maker determines
and provides explanation

© 2020 D. STAFFORD & ASSOCIATES

39

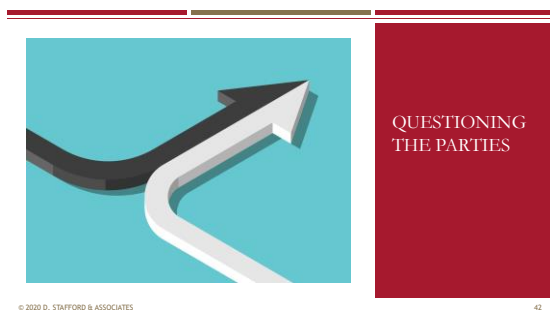
39



40



41



42

Questioning – Helpful Hints

One
question at
a time

"Your cross
doesn't have
to be cross"

Phrasing
questions

© 2020 D. STAFFORD & ASSOCIATES

43

43



CHECK-IN:
THE HEARING

© 2020 D. STAFFORD & ASSOCIATES

44

44

AFTER THE
HEARING

© 2020 D. STAFFORD & ASSOCIATES

45

Responsibilities

Institution

■ Determination of responsibility

■ Appeal

Advisor

■ None

■ But you are human . . .

© 2020 D. STAFFORD & ASSOCIATES

46

46



47



HELPFUL HINTS – ADVISOR

What is my role in the hearing process?

You, and not your advisee, is charged with asking the other party and all witnesses all relevant questions and follow-up questions. You are not allowed to speak or otherwise represent your advisee throughout the process, including opening or closing statements, object to questions, or engage in any advocacy. Advisors present for non-Title IX related hearings are not required to play any role in the hearing.

You are also expected to comply with the Rules of Decorum and will only direct questions to the other party or witnesses after a relevancy determination is made by the decision-maker. You cannot speak on behalf of your advisee, including answering questions on their behalf if that party does not attend a meeting or hearing. Limited communication between you and advisee will be allowed, including passing notes. However, if you need to meet with your advisee for a longer period of time, your advisee can make this request to the decision-makers. The hearing will be paused, and you may either meet outside of the hearing room, or in a zoom breakout room.

Failure to adhere to these expectations will result in the Advisor being removed from the meeting and/or hearing. If this removal occurs at a hearing, UNIVERSITY will provide an Advisor for that party for the sole purpose of conducting cross-examination on behalf of that party.

What is cross-examination?

Advisors are permitted to ask the other party and any witness all relevant questions and follow-up questions, including those challenging credibility. Cross-examination is conducted directly, orally and in real time. Questions are intended to advance the advisee's perspective with respect to the allegations.

All questions must first be directed to the decision-maker who will make a relevancy determination. If the question is deemed relevant, the Advisor will then direct that question to the other party or witness.

What questions are relevant?

- Directly related to the issue and helps prove or disprove the issue AND fact must be material to an issue in the case
- Makes something more/less true or more/less false
- The tendency to make a fact more or less probable than the fact would be without the evidence
- Questions are irrelevant when they are not related to the issue at hand
- Examples or relevancy: "Pretty certain this occurred"; is a link in the chain of evidence; "helps a little"

Are there any relevancy exceptions?

Yes, questions regarding a complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior

- offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
-



- if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent

Questions and information protected by legally protected privilege (including medical and counseling records, communications with an attorney) unless there is signed written consent from that party.

Decision-makers may also determine that repetitive questions (asking the same question more than once) are not relevant. This does not apply if the question was asked previously by the decision-maker.

Finally, if the question is duplicative of other evidence, it may be deemed not relevant.

What if my advisee does not attend?

If your advisee does not attend, you are not allowed to answer questions on their behalf. Also, if the other Advisor directs relevant questions to your advisee, none of their prior statements will be allowed for consideration as they have not "submitted to cross."

What if my advisee does not answer all questions posed to them?

A party or witnesses' prior statements can only be considered if that party or witness answers ALL relevant questions that have been posed to them. Similarly, parties are not allowed to waive questions as they will not be "submitting to cross." Also, if the decision-maker directs questions to your advisee and your advisee only answers those questions, their prior statements (and answers provided to the decision-makers) will not be allowed for consideration as they have "not submitted to cross."

If no relevant questions are asked by an Advisor or decision-maker, all prior statements of the parties are allowed to be considered.

Are there other helpful reminders?

- You are not responsible for drafting questions. You are only responsible for posing questions and helping your advisee understand what questions are relevant.
- Ask one question at a time.
- Wait until the decision-maker has determined relevancy before directing your question at a party or witness
- Be respectful - your cross doesn't have to be "cross"



Role of the Advisors

GENERAL EXPECTATIONS

What is an Advisor?

Advisors are those who accompany a Respondent or Complainant in any meeting or grievance proceeding. Except for conducting cross-examination at a live hearing for a Title IX-related violation at a Title IX-related grievance proceeding, the Advisor's role is limited to providing support and guidance to their advisee.

Requests to have more than one Advisor will be considered on case-by-case basis, and the final decision is the sole discretion of the Title IX Coordinator. For example, a party may elect to have one Advisor accompany them to meetings but choose a separate Advisor to conduct cross-examination.

Who can serve as an Advisor?

The parties are able to choose whomever they want to serve as an Advisor, including friends, family members, and attorneys. However, those employed by UNIVERSITY/COLLEGE do have the right **not** to serve in this role. The parties must inform the Title IX Coordinator the name of the Advisor prior to any meeting or hearing described in this Policy.

If a Complainant or a Respondent does not have an Advisor for the hearing, UNIVERSITY/COLLEGE will provide an Advisor for the sole purpose of conducting cross-examination at the hearing.

Are Advisor's required to abide by institutional policies?

Yes, regardless of the Advisor's affiliation with UNIVERSITY/COLLEGE, all Advisors are required to abide by UNIVERSITY's/COLLEGE'S policies. This includes not copying or distributing any documentation (including preliminary and finals reports) in whole or in part. Copying or distributing by an Advisor will result in disciplinary action for the party and disciplinary action against the advisor should they be a member of the University community.

Do Advisors have other expectations?

Yes, Advisors are expected to make changes to their own schedules to attend meetings and hearings. Only reasonable requests to change proposed meetings to accommodate an Advisor's schedule will be considered.



EXPECTATIONS WITHIN THE RESOLUTION PROCESS

Do Advisors attend pre-hearing meetings?

Advisors are allowed to attend all pre-hearing meetings. However, they may not participate in these meetings in any manner. Additionally, only reasonable requests to change the time of these meetings due to an Advisor's schedule will be considered.

Please note that UNIVERSITY/COLLEGE appointed Advisors will not attend pre-hearing meetings and will only attend Title IX related hearings for the sole purpose of providing cross-examination.

Do Advisors assist in drafting written responses to the preliminary report and the final report?

Advisors not appointed by UNIVERSITY/COLLEGE may play a role in drafting a written response.

UNIVERSITY/COLLEGE appointed Advisors do not play any role in helping a party in their written response to a preliminary or final report.

Do Advisors assist in drafting questions that will be asked during the Title IX related hearing?

Advisors not appointed by UNIVERSITY/COLLEGE may play a role in drafting questions to be asked at the hearing.

UNIVERSITY/COLLEGE appointed Advisors do not play any role in drafting questions other to assist that party in understanding relevancy determinations.

What is the role of the Advisor at Title IX-related hearing?

Yes, at the hearing, the Advisor, and not the parties, will ask the other party and all witnesses all relevant questions and follow-up questions. The Advisor may not speak or otherwise represent their advisee throughout the process, including opening or closing statements, object to questions, or engage in any advocacy. Advisors present for non-Title IX related hearings do not play any role in the hearing.

Advisors are also expected to comply with the Rule of Decorum and will only direct questions to the other party or witnesses after a relevancy determination is made by the decision-maker. An Advisor cannot speak on behalf of their advisee, including answering questions on their behalf if that party does not attend a meeting or hearing. Limited communication between the Advisor and the advisee, such as passing notes, will be allowed. Requests for breaks to allow the Advisor to confer with their advisee will be granted, including use of breakout rooms.



Failure to adhere to these expectations will result in the Advisor being removed from the meeting and/or hearing. If this removal occurs at a hearing, UNIVERSITY/COLLEGE will provide an Advisor for that party for the sole purpose of conducting cross-examination on behalf of that party.

Do Advisors assist in the drafting of an appeal?

Advisors not appointed by UNIVERSITY/COLLEGE may play a role in drafting an appeal.

UNIVERSITY/COLLEGE appointed Advisors do not play any role in the appeals process.