Hearings in a Post Regulatory World

Day One

Jessica Brown September 2022
Jessica Brown is a Senior Solutions Specialist with Grand River Solutions. Prior to joining Grand River, Jessica served as Director of Educational Equity, Title IX & Section 504 at Lafayette College in Easton, Pennsylvania and as a Civil Rights Investigator at Baylor University in Waco, Texas. In her previous roles, Jessica conducted investigations of complaints alleging sexual harassment, sexual assault, or discrimination on the basis of a protected characteristic, as well as oversaw campus-wide prevention education and policy development. Jessica has extensive experience in development and management of Sexual Misconduct, Sexual Harassment, and Section 504 grievance policies and processes from intake and investigation through resolution. In addition, she has also been responsible for sexual violence education and training for campus partners and community.
About Us

Vision
We exist to help create safe and equitable work and educational environments.

Mission
Bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

Core Values
- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity
Agenda

1. Title IX Requirements for Hearings
2. Process Participants
3. Pre-Hearing Tasks
4. The Hearing
5. After The Hearing
6. Practical Application
Title IX Requirements For Hearings
Title IX of the Education Amendments Act of 1972

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”
Section 106.30: Sexual Harassment

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; or

AND... Only Covered, IF:

<table>
<thead>
<tr>
<th>Place of Conduct</th>
<th>Required Identity</th>
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<tr>
<td>• On campus <strong>OR</strong></td>
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<tr>
<td>• Campus Program, Activity, Building, <strong>AND</strong></td>
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<tr>
<td>• In the United States</td>
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<tr>
<td>• Complainant participating/attempting to participate in Program or Activity, <strong>AND</strong></td>
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<tr>
<td>• Control over Respondent</td>
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Procedural Requirements for Investigations

Notice to both parties
Equal opportunity to present evidence
An advisor of choice
Written notification of meetings, etc., and sufficient time to prepare
Opportunity to review all evidence, and 10 days to submit a written response to the evidence prior to completion of the report
Report summarizing relevant evidence and 10 day review of report prior to hearing
# Procedural Requirements for Hearings

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<th>Requirement</th>
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<tr>
<td>Must be live, but can be conducted remotely</td>
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<tr>
<td>Cannot compel participation of parties or witnesses</td>
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<td>Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters</td>
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<tr>
<td>Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution</td>
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<tr>
<td>Decision maker determines relevancy of questions and evidence offered</td>
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<td>Written decision must be issued that includes finding and sanction</td>
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The Requirement of Impartiality
Section 106.45(b)(1)(iii)

The grievance process must require that any individual designated by the recipient as Title IX Coordinator, investigator, or facilitator of informal resolution not to have a conflict of interest or bias:

- For or against complaints or respondents generally, or
- An individual complainant or respondent
Section 106.45(b)(1)(iii)

"Title IX Coordinator, investigator, **decision maker**, or facilitator of informal resolution must receive training on...how to serve impartially, including avoiding prejudgment of the facts at issue, conflict of interest, and bias. This training material may not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment."
Hearing Technology: Requirements and Considerations

If hearings cannot be in person, or if someone chooses to participate remotely, must have a remote participation platform available.

All hearings must be recorded.

Participants must be able to communicate during the hearing
  - The parties with the decision maker(s)
  - The parties with their advisors
Purpose of the Hearing

1. Review and Assess Evidence
2. Make Findings of Fact
3. Determine Responsibility/Findings of Responsibility
4. Determine Sanction and Remedy
Evaluating the Evidence

Is it relevant?
Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.

Is it authentic?
Is the item what it purports to be?

Is it credible?
Is it convincing?

Is it reliable?
Can you trust it or rely on it?

What weight, if any, should it be given?
Weight is determined by the finder of fact!
Trauma-informed practices provide tools/techniques for engaging with the Complainant, Respondent, and Witnesses.

Format/Structure of the Hearing

Format of Questions

Approach to Clarification
Process Participants
The Participants

The Parties

<table>
<thead>
<tr>
<th>Complainant</th>
<th>Respondent</th>
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<tr>
<td>An individual who is alleged to be the victim of conduct that could constitute sexual harassment.</td>
<td>An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.</td>
</tr>
</tbody>
</table>
The Participants

The Investigator

- Can present a summary of the final investigation report, including items that are contested and those that are not;
- Submits to questioning by the Decisionmaker(s) and the parties (through their Advisors).
- Can be present during the entire hearing process, but not during deliberations.
- Questions about their opinions on credibility, recommended findings, or determinations, are prohibited. If such information is introduced, the Chair will direct that it be disregarded.
There are two types of advisors:

- Advisor (throughout whole process)
- Hearing Advisor (hearing, for purposes of asking questions)
- Can be anyone, including a lawyer, a parent, a friend, and a witness
- No particular training or experience required (institutionally appointed advisors should be trained)
- Can accompany their advisees at all meetings, interviews, and the hearing
- Advisors should help the Parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith
- May not speak on behalf of their advisee or otherwise participate, except that the advisor will conduct cross examination at the hearing.
- Advisors are expected to advise their advisees without disrupting proceedings
An Advisor who oversteps their role as defined by the policy should be warned once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting may be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator has the ability determine how to address the Advisor’s non-compliance and future role.
The Participants
The Hearing
Facilitator/Coordinator

- Manages the recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process
- Non-Voting
- Optional, not required
The Participants
The Decision-Makers

- A panel
- Questions the parties and witnesses at the hearing
- Determines responsibility
- Determines sanction, where appropriate
The Participants
The Hearing Chair

- Is a decision-maker
- Answers all procedural questions
- Makes rulings regarding relevancy of evidence, questions posed during cross examination
- Maintains decorum
- Prepares the written deliberation statement
- Assists in preparing the Notice of Outcome
Pre-Hearing Tasks: Hearing Panel & Chair

What should be done in advance of the hearing
Pre-Hearing Meetings

Review the Logistics for the Hearing

Set expectations

• Format
• Roles of the parties
• Participation
• Decorum
• Impact of not following rules

Cross Examination/Questioning Format & Expectations
Hearing Panel as a Whole

- Review evidence and report
- Review applicable policy and procedures
- Preliminary analysis of the evidence
- Determine areas for further exploration
- Develop questions of your own
Hearing Panel Chair

- Compile questions on behalf of the Panel
- May convene a pre-hearing meeting
- Review questions submitted by the parties
- Anticipate challenges or issues
- Become familiar with the script
Common Areas of Exploration

- Credibility?
- Clarification on timeline?
- Thought process?
- Inconsistencies?
The Hearing
Order of the Proceedings

01. Introductions and instructions by the Chair; Opening Statements
02. Presentation by Investigator
03. Presentation of information and questioning of the parties and witnesses
04. Closing Statements
05. Deliberation & Determination
Opening Statements

*Optional: Not required by the regulations; institution may choose to allow.*

- Prior to questioning beginning during the hearing, each party may be given the opportunity to make an opening statement.
- Intended to be a brief summary of the points the party would like to highlight.
- Directed to the Decision Maker and only the Decision Maker.
- Both parties should give opening statement before either is questioned.
- Typically, the complainant goes first.
Opening Introductions and Instructions by the Chair

The University has a script for this portion of the proceedings, and it should be used. Introduction of the participants. Overview of the procedures. Overall goal: manage expectations. Be prepared to answer questions.
Presentation of Information
Presentation of Information & Questioning of the Parties

01 The Hearing Panel will question Complainant first

02 Cross examination of Complainant will occur next

03 Follow up by the Hearing Panel

04 The Hearing Panel will question Respondent second

05 Cross examination of Respondent will occur next

06 Follow up by the Hearing Panel
# Questioning of the Witnesses

<table>
<thead>
<tr>
<th>01</th>
<th>The Chair will determine the order of questioning of witnesses</th>
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<tbody>
<tr>
<td>02</td>
<td>The Hearing Panel will question first</td>
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<tr>
<td>03</td>
<td>Advisor cross-examination will occur next (suggested: Complainant’s advisor followed by Respondent’s advisor)</td>
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<tr>
<td>04</td>
<td>Follow up by the Hearing Panel</td>
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</tbody>
</table>
Closing Statements

Prior to the conclusion of the hearing, each party will have the opportunity to make a closing statement.

- Directed to the Decision Maker and only the Decision Maker.
- Not time to introduce new information or evidence.
- Intended to be a brief summary of the points the party would like to highlight.
- Prior to the conclusion of the hearing, each party will have the opportunity to make a closing statement.
General Questioning Guidelines
Format of Questioning

- The Hearing Panel or the advisor will remain seated during questioning.
- Questions will be posed orally.
- Questions must be relevant.
What constitutes a relevant question?

The Department declines to define “relevant”, indicating that term “should be interpreted using [its] plain and ordinary meaning.”

See, e.g., Federal Rule of Evidence 401 Test for Relevant Evidence:

“Evidence is relevant if:
• (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
• (b) the fact is of consequence in determining the action.”
When is evidence relevant?

- Logical connection between the evidence and facts at issue
- Assists in coming to the conclusion – it is “of consequence”
- Tends to make a fact more or less probable than it would be without that evidence
Irrelevant and Impermissible Questions

- Information protected by an un-waived legal privilege
- Unduly repetitious or duplicative questions
- Medical treatment and care
- Information that otherwise irrelevant
- Complainant’s prior sexual history, with limited exceptions.
When Questioning….

- Be efficient.
- Explore areas where additional information or clarity is needed.
- Be prepared to go down a road that you hadn’t considered or anticipated exploring.
- Listen to the answers.
- Take your time. Be thoughtful. Take breaks if you need it.
Foundational Questions to Always Consider Asking

- Were you interviewed?
- Did you see the interview notes?
- Did the notes reflect your recollection at the time?
- As you sit here today, has anything changed?
- Did you review your notes before coming to this hearing?
- Did you speak with any one about your testimony today prior to this hearing?
Common Areas of Where Clarity or Additional Information is Needed

- Credibility
- Reliability
- Timelines
- Inconsistencies

- Details about the alleged misconduct
- Facts related to the elements of the alleged policy violation
- Relevancy of Certain Items of Evidence
- Factual Basis for Opinions
Questioning to Assess Reliability

- Inherent plausibility
- Logic
- Corroboration
- Other indicia of reliability
Questioning to Assess Credibility

No formula exists, but consider asking questions about the following:

- opportunity to view
- ability to recall
- motive to fabricate
- plausibility
- consistency
- character, background, experience, and training
- coaching
Credibility Versus Reliability

**Reliability**
- I can trust the consistency of the person’s account of their truth.
- It is probably true and I can rely on it.

**Credibility**
- I trust their account based on their tone and reliability.
- They are honest and believable.
- It might not be true, but it is worthy of belief.
- It is convincingly true.
- The witness is sincere and speaking their real truth.
Opinion Evidence

When might it be relevant?

How do you establish a foundation for opinion evidence so that the reliability of the opinion can be assessed?
Is it authentic?

- Question the person who offered the evidence.
- Request originals.
- Obtain originals from the source.
- Have others review and comment on authenticity.
- Are there other records that would corroborate?

Never assume that an item of evidence is authentic.
What are the “Hard” Questions

- Details about the sexual contact
- Seemingly inconsistent behaviors
- Inconsistent evidence/information
- What they were wearing
- Alcohol or drug consumption
- Probing into reports of lack of memory
How to Ask the Hard Questions

Lay a foundation for the questions

• Explain why you are asking it
• Share the evidence that you are asking about, or that you are seeking a response to

Be deliberate and mindful in your questions:

• Can you tell me what you were thinking when....
• Help me understand what you were feeling when...
• Are you able to tell me more about...
Special Considerations for Questioning the Investigator

- The Investigator’s participation in the hearing is as a fact witness;
- Questions directed towards the Investigator shall be limited to facts collected by the Investigator pertinent to the Investigation;
- Neither the Advisors nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations;
- The Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.
## Special Considerations for Questioning the Investigator

<table>
<thead>
<tr>
<th>Question</th>
<th>Detail</th>
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<tbody>
<tr>
<td>Ask questions about how they conducted their investigation</td>
<td>(if not in the report)</td>
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<tr>
<td>Explore the investigator’s decision making</td>
<td>(if not in the report)</td>
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<tr>
<td>Seek clarity about evidence collected</td>
<td>Where it came from</td>
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<tr>
<td></td>
<td>Authenticity of the evidence</td>
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<tr>
<td>Ask factual questions that will assist in evaluation of the evidence</td>
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</tr>
<tr>
<td>If bias is not in issue at the hearing</td>
<td>the Chair should not permit irrelevant questions of the investigator</td>
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<td>that probe for bias.</td>
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Special Considerations for Panels

- If a panel, decide in advance who will take the lead on questioning
- Go topic by topic
- Ask other panelists if they have questions before moving on
- Do not speak over each other
- Pay attention to the questions of other panelists
- Ok to take breaks to consult with each other, to reflect, to consult with the TIXC or counsel
The Decision Maker’s Role in Advisor Questioning
Cross Examination

Who does it?

Must be conducted by the advisor

If party does not appear or does not participate, advisor can appear and cross

If party does not have an advisor, institution must provide one
The Role of the Decision Maker During Questioning by the Advisors

After the Advisor poses a question, the proceeding will pause to allow the Chair to consider it.

Chair will determine whether the question will be permitted, disallowed, or rephrased. The Chair may explore arguments regarding relevance with the Advisors.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive.

The Chair will state their decision on the question for the record and advise the Party/Witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair has final say on all questions and determinations of relevance. The parties and their advisors are not permitted to make objections during the hearing. If they feel that ruling is incorrect, the proper forum to raise that objection is on appeal.
When Assessing Relevance, the Decision Maker Can:

- Ask the Advisor why their question is relevant
- Take a break
- Ask their own questions of the party/witness
- Review the hearing record
After the Hearing
Deliberations
Weighing the Evidence & Making a Determination

1. Evaluate the relevant evidence collected to determine what weight, if any, you will afford that item of evidence in your final determination;

2. Apply the standard of proof and the evidence to each element of the alleged policy violation;

3. Make a determination as to whether or not there has been a policy violation.
Preponderance of the Evidence

More likely than not
Does not mean 100% true or accurate

A finding of responsibility = There was sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated
A finding of not responsible = There was not sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated
Findings of Fact

• A "finding of fact"
  • The decision whether events, actions, or conduct occurred or a piece of evidence is what it purports to be
  • Based on available evidence and information
  • Determined by a preponderance of evidence standard
  • Determined by the fact finder(s)

• For example...
  • Complainant reports that they and Respondent ate ice cream prior to the incident
  • Respondent says that they did not eat ice cream
  • Witness 1 produces a timestamped photo of Respondent eating ice cream

• Next steps?
Policy Analysis

- Break down the policy into elements
- Organize the facts by the element to which they relate
Allegation: Fondling

Fondling is the:

- touching of the private body parts of another person
- for the purpose of sexual gratification,
- Forcibly and/or without the consent of the Complainant,
  - including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
### Analysis Grid

<table>
<thead>
<tr>
<th>Touching of the private body parts of another person</th>
<th>For the purpose of sexual gratification</th>
<th>Without consent due to lack of capacity</th>
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| Undisputed: Complainant and Respondent agree that there was contact between Respondent's hand and Complainant's vagina. | Respondent acknowledges and admits this element in their statement with investigators.  
“We were hooking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants…” | Complainant: drank more than 12 drinks, vomited, no recall  
Respondent: C was aware and participating  
Witness 1: observed C vomit  
Witness 2: C was playing beer pong and could barely stand  
Witness 3: C was drunk but seemed fine  
Witness 4: carried C to the basement couch and left her there to sleep it off. |
Apply Preponderance Standard to Each Element

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Did You Also Analyze...? (if required by policy)

- On campus?
- Program or Activity?
- In a building owned/controlled by a recognized student organization?
- Substantial control over respondent and context?
- Complainant was attempting to access program/activity?
Final Report

- The allegations
- Description of all procedural steps
- Findings of fact
- Conclusion of application of facts to the policy
- Rationale for each allegation
- Sanctions and remedies
- Procedure for appeal
The Final Determination Should **STAND** On Its Own

- **S**imple and Easy to Comprehend
- **T**ransparent/Clear
- **A**ccurate
- **N**eutral/Unbiased
- **D**raw Attention to Significant Evidence and Issues
Goals of Sanctions/Discipline

End the harassment, prevent its recurrence, remedy the harm

What steps would be reasonably calculated to end harassment and prevent recurrence?
Sanctioning

- State law
- System policy
- Learning environment
- Measures available
The Sanction Does Not Undo the Finding

No lesser sanction if you disagree with findings

Sanctioning officer must assume findings are correct
Determining the Proper Sanction

- Consistency
- Foreseeability of repeated conduct
- Past conduct
- Does bias creep in?
- Remorse?
- Victim impact?
Aggravating Circumstances

- Premeditation
- Predation
- Physical violence
- Repeated violation
- Multiple policy violations in one incident
- Harm to others, impact on complainant and/or community
- Did the behavior continue after intervention?
- Effort to conceal or hide the incident?
- Refusal to attend past trainings
- Past failures to comply with directives
Advisor’s Role Post-Hearing

- May meet with their advisee to review decision and respond to procedural questions.
- Institutionally-appointed advisors typically do not advise nor assist the party in developing an appeal.

Advisor of choice may assist in advising party whether or not to appeal and in the drafting of an appeal.
Practical Application
Scenario 1

Respondent appears at the hearing with Witness 7. Respondent would like Witness 7 to provide information testimony about text messages between them and Complainant that indicate that Complainant has made the allegations up.

• Can the HP hear from Witness 7 at the hearing?
Scenario 2A

Respondent provides a polygraph report to investigators wherein it is concluded that Respondent is not being deceptive when denying the allegations.

- The Investigator determines the report is irrelevant. Must the Investigator share the report with the decision maker?
Scenario 2B

Respondent provides a polygraph report to Investigators wherein it is concluded that Respondent is not being deceptive when denying the allegations. The polygrapher appears and answers all relevant questions on cross.

- Must the Hearing Panel find Respondent not responsible because of the findings in the report?
Case Study

The Formal Complaint charges Respondent with sexual assault for engaging in sexual contact with Complainant when she was incapacitated by alcohol. Specifically, Complainant alleges that she was at a party with friends when they met Respondent. Complainant reported that prior to the party she pre-gamed with Witness 1 and they split a bottle of prosecco. Complainant stated that while at the party, Respondent and Witness 2 approached her and her friend, Witness 3, and asked if they would be their partners in a round of beer pong. Complainant reported that she paired up with Respondent and they played several rounds. She further alleged that that Respondent was the one who filled their cups. Complainant stated that she “got drunk fast” and her last memory was of Respondent handing her a celebratory shot because they had won the tournament. Her next memory was waking up on a couch in a bedroom that was unfamiliar to her, naked from the waist down. Respondent was on the floor next to her, asleep. He was under a blanket but was also naked.
Witness 1 was interviewed by the investigator and reported that she and Complainant are roommates, but they are not close. Witness 1 is an athlete and tends to hang out with her teammates. She stated that for this reason, they rarely hang-out, but that the night of the alleged incident they did because they were planning on going to the same party. Witness 1 stated that they split a bottle of prosecco, but that Complainant drank most of it because Witness 1 had an early practice the next morning and didn’t want to get “too messed up.” Witness 1 said that they went to the party together, but then went their separate ways. Witness 1 stated that towards the end of the night, she saw Complainant and described her as “a disaster.” She also reported that Respondent was “practically carrying her” and she approached them and offered to take Complainant home. According to Witness 1, Complainant said she was fine, but her words were slurred, and she could barely stand. Witness 1 told Respondent to take care of her and he said, “I’m just going to put her to bed.” She didn’t see either party again that night.

At the hearing, Witness 1 gave testimony that was substantially the same as what she told the investigator.
Witness 2 told the investigators that he is Respondent’s best friend and teammate. Witness 2 stated that when looking for partners for the beer pong tournament, Respondent saw Complainant and Witness 3 and suggested that they approach them because Complainant “was hot” and Witness 3 “looked drunk enough to be a good time.” Witness 2 said that Complainant was fine and didn’t appear to be that drunk. He also stated that she made most of the winning shots after several rounds of the game so she couldn’t have been too messed up. When asked who was filling the cups, he said that he wasn’t sure who did it each round, but he definitely saw Complainant fill them on two occasions. After the tournament was over, he helped Witness 3 get home and so didn’t see Complainant and Respondent again that night. He also mentioned that he and Witness 3 are now dating.

At the hearing, Witness 2 testified that Complainant was fine. He also stated that Respondent never filled Complainant’s cup and that Complainant was all over Respondent the entire night.
Witness 3

Witness 3 was Complainant’s best friend at the time of the incident. They are no longer close and Witness 3 is now dating Witness 2.

Immediately following the alleged incident, Witness 3 told the investigators that Complainant was already drunk when she got to the party. She stated that Respondent and Witness 2 asked them to play beer pong and they agreed. She stated that the parties seemed to hit it off immediately. She stated that they won the tournament and so played at least five rounds and that by the end of the game Complainant was the “drunkest she had ever seen her.” Witness 3 stated that Complainant was slurring her words, couldn’t stand on her own, and was really loud, which is not like her. Witness 3 stated that that she was pretty drunk too, but not as bad as Complainant. Witness 3 stated that she left the party with Witness 2.

At the hearing, Witness 3 stated that she may have exaggerated her description of Complainant when she spoke to the investigators. She told the decision makers that although Complainant drank a lot, she wasn't that out of it, because she had a high tolerance and drank a lot all the time.
Questions?

Email Us
info@grandriversolutions.com

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Grand River Solutions
Title IX Hearings in a Post Regulatory World

Day 2

Jessica Brown | September 2022
Meet Your Facilitator

Jessica Brown is a Senior Solutions Specialist with Grand River Solutions. Prior to joining Grand River, Jessica served as Director of Educational Equity, Title IX & Section 504 at Lafayette College in Easton, Pennsylvania and as a Civil Rights Investigator at Baylor University in Waco, Texas. In her previous roles, Jessica conducted investigations of complaints alleging sexual harassment, sexual assault, or discrimination on the basis of a protected characteristic, as well as oversaw campus-wide prevention education and policy development. Jessica has extensive experience in development and management of Sexual Misconduct, Sexual Harassment, and Section 504 grievance policies and processes from intake and investigation through resolution. In addition, she has also been responsible for sexual violence education and training for campus partners and community.
Overview of Day Two

Let’s Practice!

- Pre-Hearing Preparation
- Testimony and Cross Examination
Pre-Hearing
The investigation is complete!

Rapid Fire #1

It is time to schedule the hearing...

Using the chat box:
share your “To Do” List for coordinating the hearing.
Rapid Fire Recap

- Arranging for space
- Arranging technology
- Scheduling pre-hearing meetings with parties & advisors
- Scheduling prehearing meetings of the panel
- Providing report and record to panel and parties
- Scheduling the hearing
- Accommodations
- Call for written submissions
- Conflict checks
- Other considerations?
Rapid Fire #2

You and your team did a great job scheduling the hearing and arranging all the logistics!

It is now one week prior to the hearing. You have already received and reviewed the report and record and you will be meeting with the rest of the panel (or spending some quite time by yourself) to prepare for the hearing.

Use the chat box to share what you plan to discuss/think about during the prehearing meeting.
<table>
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<tr>
<th>Rapid Fire Recap</th>
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<tr>
<td>Development of introductory comments</td>
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<tr>
<td>Initial discussion of the evidence</td>
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<tr>
<td>Areas for further exploration</td>
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<tr>
<td>List of questions for the parties and the witnesses</td>
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<tr>
<td>Anticipation of potential issues</td>
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<tr>
<td>Logistics</td>
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<tr>
<td>Review of any written submissions by the parties</td>
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<tr>
<td>Other considerations?</td>
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How do I Know which Questions to Ask?
Common Areas of Where Clarity or Additional Information is Needed

- Details about the alleged misconduct
- Facts related to the elements of the alleged policy violation
- Relevancy of Certain Items of Evidence
- Factual Basis for Opinions
- Credibility
- Reliability
- Timelines
- Inconsistencies
Did You Also Cover . . . ?

- On campus?
- Program or Activity?
- In a building owned or controlled by a recognized student organization
- Substantial control over respondent and context
- Complainant was attempting to access program/activity
Break Out!

#1

Say hi!

Pick a scribe

Discuss

• All groups: Areas or topics that you would like to explore further in the hearing
• Group 1: Questions for Respondent and Witnesses Bob
• Group 2: Questions for Witnesses Dylan, Stevie
• Groups 3: Questions for Complainant and Witnesses Nick
• Group 4: Questions for Witnesses Kayla and Caitlyn
Report Out

Group 1: Questions for Respondent and Witnesses Bob
Group 2: Questions for Witnesses Dylan, Stevie
Groups 3: Questions for Complainant and Witnesses Nick
Group 4: Questions for Witnesses Kayla and Caitlyn
The Hearing
Logical connection between the evidence and facts at issue

Assists in coming to the conclusion – it is “of consequence”

Tends to make a fact more or less probable than it would be without that evidence
Irrelevant and Impermissible Questions

- Information protected by an un-waived legal privilege
- Unduly repetitious or duplicative questions
- Medical treatment and care
- Information that otherwise irrelevant
- Complainant’s prior sexual history, with limited exceptions.
Decorum at the Hearing

A recipient may adopt rules of order or decorum to forbid badgering a witness, and may fairly deem repetition of the same question to be irrelevant.

A postsecondary institution recipient may adopt reasonable rules of order and decorum to govern the conduct of live hearings.

Schools “retain flexibility to adopt rules of decorum that prohibit any party advisor or decision-maker from questioning witnesses in an abusive, intimidating, or disrespectful manner.”
Break Out!

#2

Say hi again

Select a member of your group to take notes and to report out to the whole group

Discuss the list of proposed questions for:

Group 1: Questions for Respondent and Witnesses Bob
Group 2: Questions for Witnesses Dylan, Stevie
Group 3: Questions for Complainant and Witnesses Nick
Group 4: Questions for Witnesses Kayla and Caitlyn
Report Out
These questions are submitted by Complainant for Respondent

1. How many drinks did you have at Kayla’s before going to TKE?
2. How big were those drinks?
3. Who mixed those drinks?
4. Were you drunk when you got to TKE?
5. How often do you go to parties?
6. How often do you get drunk at parties?
7. Why didn’t you stay with your friends when you got to TKE?
8. When you got to TKE, did you intend to have sex with Angel that night?
9. What else do you remember from that night?
10. Did you play darts?
11. Isn’t it true that you were easily able to throw darts and hit the bullseye that night?
12. When Angel was “hugging” you, as you called it, he was actually just holding on to you for support because he could not stand up, isn’t that right?
13. How many times did he fall on to you when the two of you were on the couch?
14. Who got up first from the couch?
15. Isn’t it true that you got up first and pulled Angel to his feet?
16. You told the investigator the two of you were drunk sloppy kissing? It seems you are admitting that Angel was drunk, isn’t that correct?
17. Given all that you recall, it seems that you have a really good recollection of that night, no impaired memory, were easily able to play darts, and never fell down, so for you to act as if you were too drunk to give him a blow job and that your real victim here is nothing less than highly offensive, isn’t that right?
18. If someone were sexually assaulted and the other person said it was the victim’s fault, that is victim blaming, isn’t it?
19. Are you alleging you were sexually assaulted?
20. Why would you make that up?
21. If you are saying that you were sexually assaulted, why didn’t you file a complaint? Is that because you know you’ll lose and be expelled for a false complaint and retaliation if you do that?
22. Are you making an allegation in order to retaliate against complainant?
23. Did you ever drink from Angel’s water bottle?
24. Did you ever smell alcohol on Angel’s breath while at the TKE party?
25. Have you seen the video of you giving Angel a blow job?
26. Did you initiate sex with Angel in order to get back at your boyfriend?
27. He wasn’t restraining you, why didn’t you just pull away?
28. Do you often give blowjobs to boys at parties?

Questions submitted by Respondent for Complainant

1. You said you do not remember anyone drinking from your water bottle. How can you remember that?
2. Did you file a report with the police?
3. Why not?
4. Did you get a medical exam?
5. Why not?
6. Is it true that you are hoping to go to medical school?
7. Isn’t it true that you are really worried about your grades this semester?
8. Isn’t it true you were struggling with inorganic chemistry class?
9. And isn’t it true that you wanted to drop the class, but you would have had a “W” on your transcript?
10. Did you end up withdrawing from that class?
11. And isn’t it true that there is no notation on the transcript because you were given the gift of being pulled from the class without any transcript notation?
12. And is that why you filed this claim, so you could get out of taking the class without anything showing up on your transcript?
13. You said to the investigator that you “could not believe anyone would film” the sex act that occurred at the TKE party, isn’t that correct?
14. Have you ever watched any porn videos?
15. Didn’t you take a video last year of some of your friends, including Bob and Dylan, playing a game that involved simulating sex acts?
16. During your interview with the investigator, isn’t it true that you had to be reminded by your own advisor that your “story” is that you were too drunk to remember anything, right?
17. How many times did you and your advisor rehearse your interview?
18. You said you had no information or memories about what happened at the party, but also claim to remember how her hands were moving, when the two of you were sitting on the couch in the basement. Which one of those statements is the lies?
Questions for Bob

By Complainant
1. When you were describing the vodka your poured into your water bottle, what exactly do you consider to be 2 or 3 shots?
2. Did you use shot glasses, red solo cups, or did you eyeball it?
3. What do you remember about Barb’s Tinder profile?
4. Did it suggest what type of relationship she was looking for?
5. Did you match?
6. Why were you looking at Tinder?
7. How often do you troll on Tinder?
8. You said Barb took a huge gulp out of your water bottle toward the end of the evening. What did you mean by “huge gulp?”
9. How much of the vodka/orange juice in your bottle did you drink that night?
10. How much was left in the morning?

By Respondent
1. Doesn’t your frat have a reputation on campus of getting girls drunk at parties?
2. Isn’t true when you say you take care of people at parties, that you actually just get them more drunk so they will have sex with one of your friends or brothers? That is what you were doing to the respondent, correct?
3. Didn’t you have to retake Measuring Science 101 where they teach you how to measure liquids?
4. How many times did you watch that video before deleting it?
5. Do you still have the video?
6. Will you get in trouble with your fraternity for bringing in illicit alcohol to the party?
7. Isn’t it a violation of fraternity rules for you to drink, particularly when you were supposed to stay sober and prevent people from getting too drunk or harming themselves or others?
8. Do you feel bad that, by drinking so much, you were unable to do your job well that night?
9. Do you feel bad that, by drinking so much, you basically allowed the sex assault in the basement to occur, because you weren’t keeping a watchful eye?

Questions for Dylan

By Complainant
1. You told the investigator you saw Angel spill beer on Barb, isn’t that correct?
2. And didn’t you tell the investigator that you also saw Angel stumbling and falling?
3. So basically, he was acting like he was so drunk that he could barely function, right?

By Respondent
1. You made a water bottle of vodka and orange juice correct?
2. How much did you drink?
3. Do you remember how much of it you had left at the end of the night?
4. How strong was your orange juice and vodka?
5. You bought beer. How old are you?
6. Why do you have a fake ID?
7. You said you saw Angel at the party, and that he was so drunk he could barely stand up; did you take any action to protect your drunk friend from drinking more?
8. Is that because your friend was not really that drunk, or because you don’t really care about someone being so drunk they can barely stand?
9. Your friend passed out at the end of the night; which emergency number did you call for help?
10. You said you put a trash can by him when you saw him passed out, but you didn’t roll him on to his side? Is that because he was sleeping, and not really because he was drunk?
11. Have you ever tried to hit on Barb?
12. Didn’t she reject your advances?
13. Is that why you’re exaggerating your supposed observations that Angel was so drunk?
14. Respondent does better than you in all your classes, correct?
15. And you said you once caught her cheating off of you, but isn’t it actually true that you were the one referred to student conduct for a plagiarism charge?
16. If you have a fake ID, what else is fake? Your testimony, for example?
Questions for Stevie

By Complainant
1. How much did you have to drink?
2. How drunk did you feel that night?
3. Do you think you were close to blacking out?
4. Given how drunk you were, isn’t it likely that you don’t really have a good memory of that night?
5. You said Angel stumbles even when he is not drinking, yet you know he is an athlete, so how is it that an athlete stumbles and is as uncoordinated even when sober, as you described to the investigator?
6. Do you have a crush on Barb?
7. How long have you wanted to have sex with her?
8. Are you minimizing how very drunk Angel was in order for her to like you more?

By Respondent
1. Did you see Barb and Angel playing darts?
2. Was Angel able to play darts?
3. Was he hanging on to Barb for dear life or standing up and throwing darts?

Questions for Nick

By Complainant
1. Isn’t true you have no real friends?
2. You don’t get good grades, correct?
3. That is because you are always smoking weed, correct?
4. How much weed did you smoke that night?
5. Does smoking weed impact your ability to remember things?
6. Isn’t it true that the reason you started smoking weed was because you got a card for medical marijuana, for your anxiety and ADHD?
7. Did you imagine the conversation about Angel wanting to hook up with a girl?
8. Does your anxiety or ADHD make you imagine things that did not happen?
9. Why did you presume Angel was “cheating” when he was actually the victim of a sexual assault?
10. Did you watch the video?
11. Isn’t it obvious to you that Angel is swaying and can barely stand up while he gives him a blow job?
12. Do you still have the video of that night on your phone?
13. If I were to call the police on you and tell them that that you have evidence of a crime on your phone, aren’t you scared they will find it?

By Respondent
1. So, the complainant seemed desperate to hook-up with a girl that night?
2. Are you certain you remember that conversation?
3. What else do you recall from that night?
4. Can you remember what you ate for breakfast that day?
5. And isn’t it true that you are a really honest person who would never lie?

Questions for Kayla

By Complainant
1. Did you notice the complainant stumbling or falling over, once he was in the basement?
2. Did you feel drunk that night?
3. Was the amount you had to drink that night a lot for you?
4. Given how much you had to drink, do you think you can even trust your memories from that night?
5. Barb is a good friend of yours, isn’t she?
6. You would say anything to support her, wouldn’t you?
7. Did you tell the investigator that Barb was mad at herself?
8. Is it possible she was mad at herself for violating Angel?
9. You said Barb and Angel were “drunk sloppy kissing.” Did you get that phrase from Barb, or did she get it from you?
10. Did she tell you what to say here today?
11. Do you know that, if you are caught lying for her, you will be disciplined and might be suspended or expelled?

By Respondent
1. Would you categorize Angel as the initiator of all the contact between him and Barb?
2. So you would call him the aggressor, is that right?
3. How many times did you see Angel fill Barb’s beer that night?
4. And you saw him keep topping it off, is that right?
5. Did that feel predatory to you?
6. Have you seen Angel or any of his friends like Bob, Dylan, Stevie, or Nick try to get a girl really drunk at a party, on any other occasion?
Questions for Caitlyn

By Complainant
1. You would consider complainant a good guy, right?
2. Barb wanted to “have a good time” right?
3. Did she tell you she planned to have sex with Angel that night?
4. You saw her intentionally move down to give a blow job?
5. How often has she done this at other parties? Is giving blow jobs something she casually does at parties?
6. And she is a good friend, right?
7. So this is particularly painful for you, your telling the truth about her sexually assaulting him, right?
8. And would you agree that it does not matter if the victim is a man or a woman, but rape is rape, right?
9. You said Barb had her arm around Angel’s waist when people were in the basement that night. Is that so that she could control him?

By Respondent
1. You told the investigator you had 4-5 bears and 2-3 swigs of from Bob’s vodka, correct?
2. Is that a lot for you?
3. Were you feeling drunk that night?
4. How drunk?
5. Was the drink in Bob’s water bottle strong?
6. Given how drunk you were, why should we trust your recollections of that night?
7. You said you were cheering on the sex act in the video; were you surprised to see yourself doing that?
8. Do you remember cheering?
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