Title IX Advisor Training
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Na’Tasha Webb-Prather
System Director for Equity & Investigations
Legal Counsel
What is Required under the Final Rule?

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

• Conduct on the basis of sex that satisfies one or more of the following:
  – (i) An employee conditioning education benefits on participation in unwelcome sexual conduct (i.e. quid pro quo); or
  
  – (ii) Unwelcome conduct that a reasonable person would determine is so severe, pervasive, AND objectively offensive that it effectively denies a person equal access to the school’s education program or activity; or
  
  – (iii) Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in VAWA
Title IX Jurisdiction

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

• A report of misconduct has been made

• The Complainant or the Title IX Coordinator has initiated the formal investigation process

• Notice of the investigation has been sent to the parties

• The assigned investigator(s) have made preliminary determinations

• The parties and the institution have been unable to reach an informal resolution
The Live Hearing Requirement §106.45(b)(6)

• The Final Rule mandates a bifurcated process

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

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

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

**Students**

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

**Employees**

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

• Provide advice, counsel, and support to a party
  – Students or employees

• Perform cross examination of the other party and any witnesses

• Institutional advisors assigned at the hearing stage

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What is Cross Examination?

• Questions raised to an opposing party or witness called by the opposing party

• Used to advance claims or defenses of a party

• Used to assess the credibility of an individual

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

• Opening by Decision Maker

• Opening statements by both parties

• Questioning of the Complainant
  – By the decision maker or panel
  – By other party (through their advisor)

• Questioning of the Respondent
  – By the decision maker or panel
  – By other party (through their advisor)

• Questioning of any Witnesses
  – By the decision maker or panel
  – By the parties (through their advisor)

• Closing statements by both parties

• Closing by Decision Maker
Preparing for the Hearing

• Review the Sexual Misconduct Policy and appropriate procedures

• Review the investigation report and provided materials

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

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

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

• All directly related information will be available

• All hearings must be recorded
Evidentiary Considerations

• The burden of proof AND burden of gathering evidence is on the institution

• Parties are permitted to present evidence and call witnesses to advance their claims and defenses
  – In Title IX Hearings that may include fact or expert witnesses
  – Permitted to establish the weight given to certain types of evidence
Relevancy Determinations During Title IX Hearings

• Prior to any question being answered, relevancy will be determined.

• The Hearing Officer will provide the reason for excluding the question or evidence.

• Rebuttals may not be permitted.
Assessing Relevancy

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

**Irrelevant**
- Questions and information regarding the Complainant’s sexual history or sexual predisposition unless to prove
  - Someone else other than the Respondent committed the alleged misconduct
  - Consent between the parties
Other Evidentiary Exclusions

• Legally privileged information is protected

• A party’s treatment records cannot be used without their voluntary, written consent

• Duplicative evidence may be deemed irrelevant

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

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

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

• Be willing to advise any party, Respondent or Complainant

• Actively engage and be attentive during the hearing

• Adhere to Board and institutional policies and procedures
Additional Concerns & Questions