

# James Madison University: Panel Member Training

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## Meet your Directors!



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## Disclaimers



- I am not giving you legal advice
- Consult with your legal counsel regarding how best to address a specific situation
- Feel free to ask general questions and hypotheticals
- You will receive your slides by email. Please download and save them!

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## Presentation Rules

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- Seriously – questions are encouraged!
- “For the sake of argument...”
- Be aware of your own responses and experiences
- Follow-up with someone if you have questions and concerns
- Take breaks as needed

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## Topics for This Training

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- The Role of the Hearing Panel
- Planning Questions
- Conducting Live Hearing
- How to make a “Good” Decision
- Conflicts of Interest/Bias

*Note:* This training touches on the hearing process for Title IX and NON-Title IX matters.

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# Role of the Hearing Panel

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## Overarching Themes



- “Follow your policies. Follow your process.”
- Monitor the emotional temperature of the case.
- Be mindful of any language (used by the panel) that might suggest predetermination (e.g. perpetrator, victim).

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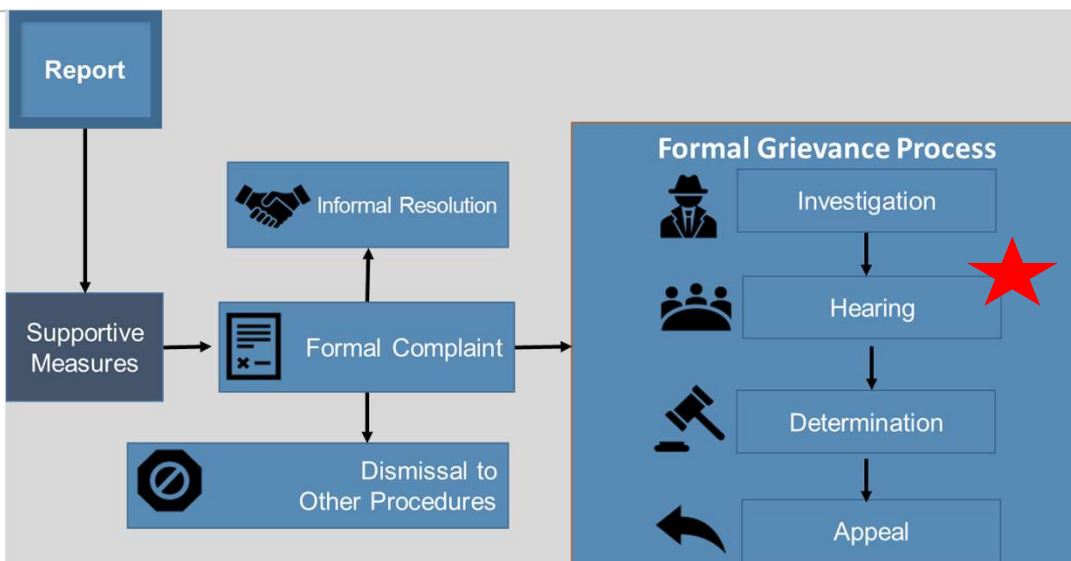
## Ethic of Care for the Process



- Prompt
- Equitable
- Confidential
- Accessible
- Retaliation-Free

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## The Process (Generally)



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## JMU Policies



- EEO/Non-Discrimination
  - Policy 1302 – Equal Opportunity and Non-Discrimination
  - Policy 1324 - Discrimination and Retaliation Complaint Procedures (Other than Title IX Sexual Harassment (Policy 1346) and Sexual Misconduct (Policy 1340))
- Sexual Misconduct/Harassment
  - Policy 1340 – Sexual Misconduct Policy
  - Policy 1346 – Title IX Sexual Harassment

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## Title IX and Sexual Harassment Process



- Processes for Student Respondents
  - If the allegations that are the focus of the complaint fall under [Policy 1340](#), then the [Sexual Misconduct Accountability Process administered by OSARP](#) will be used.
  - If the allegations that are the focus of the complaint fall under [Policy 1346](#), then the [Title IX Sexual Harassment Adjudication Process administered by OSARP](#) will be used.
- Employee Respondents
  - Academic Affairs will use the process detailed [on their website](#).
  - Human Resources will use the process detailed [on their website](#).

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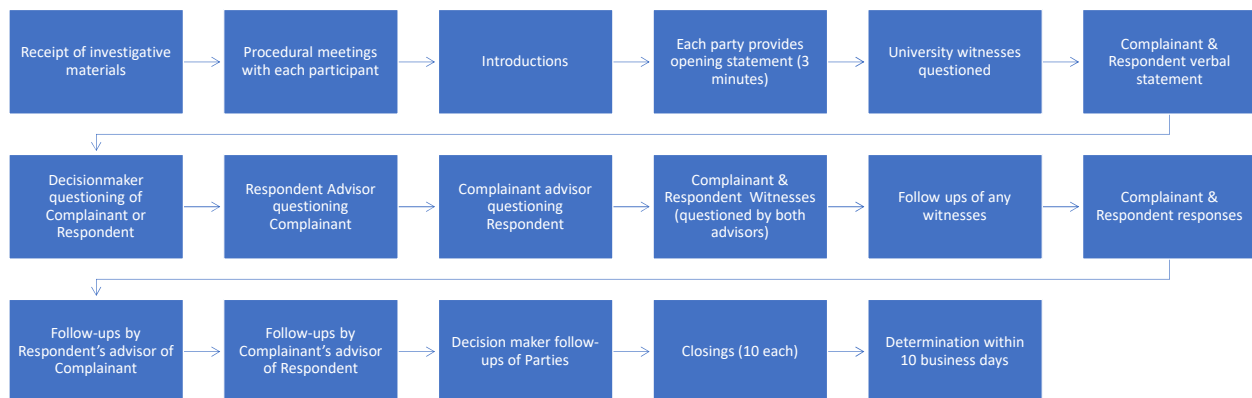
## Title IX Sexual Harassment (1346)



- Sexual Assault (including: Rape, fondling, incest, statutory rape)
- Sexual Harassment (including: Quid pro quo, unwelcome conduct, and sexual assault, dating violence, domestic violence, stalking)
- Retaliation

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## Title IX Sexual Harassment



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## Title IX Process Takeaways



- MUST allow for cross exam of the other party and witnesses
- MUST be done live, orally, and in real time
- MUST allow the parties to have an advisor of their choosing
- Advisor MUST be permitted to ask questions of the other party
- MUST be done by someone other than the investigator/Title IX Coordinator
- MUST Provide a Written Determination
- CAN permit opening and closing statements

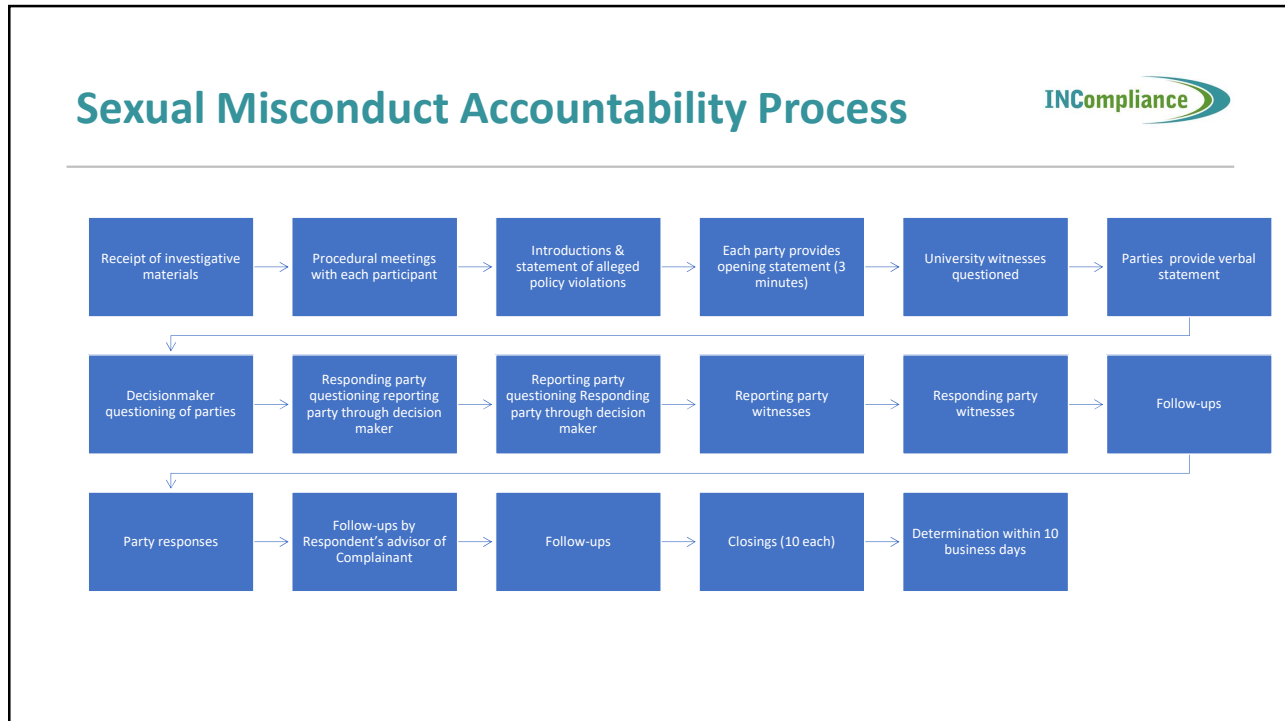
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## Sexual Misconduct (Policy 1340)



- Sexual Assault (including: Rape, fondling, incest, statutory rape)
- Sexual Harassment (including: Quid pro quo, unwelcome conduct, and sexual assault, dating violence, domestic violence, stalking)
- Non-consensual sexual relationships
- Sexual exploitation
- Sexual violence
- Retaliation

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## Title IX and Sexual Misconduct: Process differences

Questioning of the other party (i.e. Cross – Examination)

Title IX: through advisor

Sexual misconduct: Through decision-maker

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## Title IX & Sexual Misconduct Processes: Similarities



Opportunity to  
meet with panel  
first

Opening  
statements

Closing statements

Questioning of  
parties, witnesses,  
and university  
witnesses

Follow-ups as  
needed

Both parties get  
chance to call  
witnesses

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## OEO Process



“Adjudication Process Student Respondent: Adjudication of alleged discrimination or retaliation for student respondents will be handled by the panel under procedures published on the OEO website.

Employee, Affiliate, and Visitor Respondent: Adjudication of alleged discrimination or retaliation for employee, affiliate, and visitor respondents will be handled by the panel under procedures published on the OEO website.”

Policies:

[Policy 1302: Equal Opportunity and Non-Discrimination – JMU](#)

[Policy 1324: Discrimination and Retaliation Complaint Procedures \(Other than Title IX Sexual Harassment \(Policy 1346\) and Sexual Misconduct \(Policy 1340\)\) - JMU](#)

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## OEO Policy



James Madison University **does not discriminate** and prohibits discrimination in its employment, educational programs, activities, and admissions on the basis of: age, color, disability, gender expression, gender identity, genetic information (including family medical history), marital status, military status (including veteran status), national origin (including ethnicity), parental status, political affiliation, pregnancy (including childbirth or related medical conditions), race, religion, sex, sexual orientation, or on any basis protected by law, unless otherwise permitted or required by law. James Madison University prohibits **retaliation** directed against a person for making a good faith complaint of discrimination or retaliation, or participating in a complaint process. This retaliation prohibition applies regardless of the ultimate disposition of the underlying complaint. The university reserves the right to investigate any allegation of discrimination or retaliation. In the event that a student, employee, or third party engaged in prohibited discrimination or retaliation, the university will take steps to prevent recurrence of any discrimination and retaliation and to correct its effects.

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## OEO Policy – Prohibited Conduct



- Discrimination
- Harassment (including hostile environment and term or condition)
- Retaliation

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## OEO Process



Panel Designation: “The panel consists of three members, and selects a chair from among the three members. The chair serves as an administrator for the panel, receiving and sending communication, scheduling meetings, and other administrative duties as needed. Otherwise, the chair is the equal of the other panel members.”

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## OEO Hearing Process



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# Role of the Panel

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## Role: Hearing Panel Member



- Reviews the evidence file, final investigation report, and responses of the parties
- Considers what is missing, what is unclear, and what elements are disputed
- Asks relevant questions at hearing, adjusting as other questions are asked
- Is neutral in both the manner they act and the questions they asked

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## Hearing Panel Member: Your Goal



- Have enough information on every element of every charge so that you can render a decision by a preponderance of the evidence
- Have enough information to make decisions regarding the credibility of the parties and witnesses
- Make relevancy determinations after every question asked by the advisors
- Maintain decorum at all times, by all participants

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## Hearing Panel Checklist - Formation



- Convene the **Panel**
- Ensure the Panel has not been directly involved in the matter.
  - Parties can also challenge
- Receive all evidence and the investigation report, including formal complaint, notices, and a copy of the applicable policy or policies.

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## Hearing Panel Checklist – Preparing for the Hearing



- Review all notices, policies, investigation materials (evidence, report)
  - Do you know which policy/procedure you are operating under?
- Begin identifying areas of disagreement/conflict/credibility
- Identify areas of agreement
- Identify areas where information is missing
- Start drafting questions you, as panel member, want to ask of parties, witnesses, and university witnesses.
- Meet as a panel.

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## Hearing Panel Checklist – During the Hearing



- Keep an eye on decorum (more on this later)
- Ensure process is followed
- Do you need to record? Who is responsible for that?
- Who is managing relevancy determinations?
- Who is asking questions?
- Do you have information that speaks to each element of each policy violation alleged?

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## Hearing Panel Checklist – After the Hearing

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- Draft the decision in accordance with the applicable policy
- Proofread the decision
- Distribute the decision within the allotted period of time

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## Post-Hearing Procedures – Deliberating and Voting

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- Hearing Panel votes – must be a majority if no consensus
- This is not a recorded discussion or vote
  
- So how do you do this?

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## What is Relevant? Same in each policy.



Evidence is relevant if it has any **tendency to make a fact more or less probable** than it would be without the evidence, and **the fact is of consequence** in determining the outcome of the case. Relevant evidence includes **evidence concerning the credibility** of a party or witness.

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## What is Relevant?



### Preponderance of the Evidence

- Does this question, topic, evidence help **move the dial** under the standard of evidence?
- Does this help me in deciding if a fact is more likely than not true?
- Does it make it more or less likely to be true?
- Why or why not?



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## Title IX - A Note on Relevancy Determinations



- After every single question asked (unless by a Panel member) the Panel must make a relevancy determination before a party or witness (including the Investigator) can answer the question
- Generally, questions are relevant if they help the Panel understand if a violation was more or less likely to have occurred (this is your standard of review, which will discuss more in a moment)
- The Panel Chair takes point on making relevancy determinations.

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## Another Note on Title IX Relevancy Determinations



Questions that tend to come up that are NOT relevant:

- Prior sexual history (sexual predisposition or prior sexual behavior) of the **Complainant** is NOT relevant unless:
  1. It is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
  2. It is offered to provide evidence of prior sexual history between the parties (so Complainant and Respondent) and offered to prove consent.
- Privileged information (attorney-client, counselor or spiritual leader communications)
- Medical records of a party without the party's written waiver

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## Relevancy Recap



- Does the evidence speak to a fact in dispute?
- Does the evidence speak to credibility/consistency/plausibility?
- Does the witness have personal knowledge?
  - If no personal knowledge, is the witness an outcry witness (i.e., did Complainant or Respondent speak to the witness about their experience)? Or does the witness speak to credibility/consistency/plausibility?
- Is the evidence repetitive or duplicative, but still relevant? i.e., is there a possibility that the evidence could provide an account that corroborates or refutes another account? Does the evidence show that the party has been consistent or inconsistent over time?
- **Must** the evidence be excluded?

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## Relevancy Recap




Relevance

The diagram consists of two blue circles. The left circle contains the word "Relevance" and the right circle contains the word "Weight". Between the two circles is a large teal not-equal sign. A horizontal line is positioned above the circles.


Weight

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# How Do You Choose Questions?

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## What Don't You Know? What do you know?

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- If you need to know it to make a determination, you have the obligation to ask the question.
- It can be helpful to ask questions when you think you already know the answer, to ensure that you are able to sequence events correctly and that you understand nuances in the testimony.
- Question on disputed facts so that you can weigh credibility, make a determination, and explain your rationale.

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## Goals for Questions



- Have enough information on every element of every charge so that you can render a decision by a preponderance of the evidence
- Have enough information to make decisions regarding the credibility of the parties and witnesses
- If you need to know it to make a determination, you have the obligation to ask the question to get the information.

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## Asking Your Questions



- Prepare an outline ahead of time for each party and witness
- Review the elements of the allegations
  - What evidence do you have that speaks to each element?
  - Do you need *more* information on any element?
- What do you need to resolve to decide the case?
  - What facts are undisputed between the parties?
  - What facts are disputed?
  - Which of those disputed facts are necessary to resolve in order to be able to make a determination about an element?
  - Which of those disputed facts are necessary to resolve in order to be able to evaluate credibility appropriately?
  - What answers are missing or unclear?

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## What does this look like?



- Break down each policy provision into sub parts (“elements”).
- You must have information that is relevant to each element of that policy provision.
- If you don’t, then you need to ask questions to help get that information.
- Let’s practice...

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## Discrimination



Inequitable treatment that conditions any element of a person’s employment, enrollment as a student, receipt of student financial aid, or participation in university activities on that person's Protected Characteristics in violation of applicable law. Discrimination also includes denial of a reasonable accommodation for a disability. As used in this policy, discrimination includes harassment and hostile environment

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## Elements Exercise: Discrimination



At the hearing you need to know:

- Was there inequitable treatment?
- Did the treatment condition education/employment participation on a protected characteristic?

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## Retaliation



Intimidation, interference, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege under this policy, or because the individual has made a report or complaint, or has participated or refused to participate in any manner under this policy.

Retaliation also includes bringing charges against an individual for policy violations that do not involve discrimination or retaliation, but arise out of the same facts or circumstances as a report or complaint of discrimination or retaliation, or a report or complaint of discrimination or retaliation, for the purpose of interfering with any right or privilege under this policy

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## Elements Exercise: Retaliation



At the hearing you need to know:

- Was there threats, intimidation, coercion or discrimination?
- Was the purpose of that conduct to a) interfere with a right under the policy OR b) because the person participated/did not participate in this process?

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## Elements Exercise: Title IX Sexual Harassment (Unwelcome Conduct)



Conduct on the **basis of sex** that satisfies one or more of the following:

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**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 university's education program or activity; or

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## Elements Exercise: Unwelcome Conduct



At the Hearing you need to know :

1. Was the conduct on the basis of sex?
2. Was the conduct unwelcome?
3. From the perspective of a reasonable person was the conduct:
  1. Severe
  2. Pervasive
  3. Objectively offensive
4. Was Complainant's access limited or denied?

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## Practice - Discrimination



Allegation:

- Anges reported that Joshua denied her a job, despite her being the best qualified.

Information corroborated by others:

- Agnes did not get the job.
- Agnes had the most experience of the hired candidate.
- Agnes performed well in her interviews.

Do you have information that speaks to every element?

What questions would you ask?

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## Practice - Retaliation



- Allegations:
  - Agnes reported that she feels that Rosa is intimidating her.
  - Agnes said Rosa asked her why she had time blocked off on her calendar. Agnes was participating in an interview with OEO and blocked her calendar off with a private appointment.
  - Rosa and Joshua are close friends.

Do you have information that speaks to every element?

What questions would you ask?

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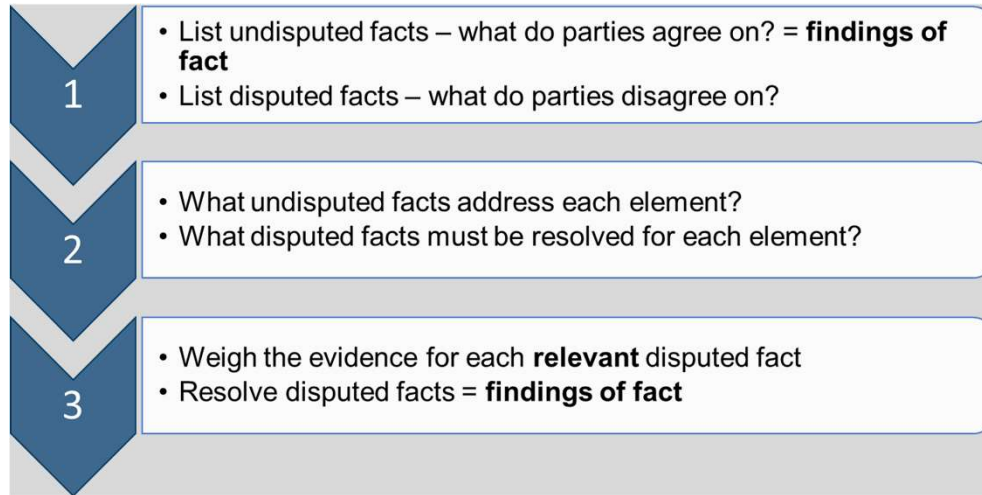
## Phrasing Questions (Inconsistencies)



- Tip: Maintain a neutral tone.
  - “You said X, then you said not X. Help me understand how to resolve those two statements.” (Not, “Were you lying then or are you lying now?”)
  - “You said this happened but another witness said that this did not happen. Help me understand...”
  - “You said X, I want to ensure I understand. Can you provide a little more information about X” (consider, pulling up the section of the report/evidence).

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## Resolving Factual Disputes



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## Cross Tools: What are the goals of cross-examination?



- Obtain **factual admissions** helpful to a party's case.
- **Corroborate the testimony** of a party's witnesses.
- Minimize the other party's case by *impeachment of witness* being questioned.
- Minimize the other party's case by *impeachment of other witnesses* through the witnesses being questioned.
- Reduce **confusion and seek truth**.

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## Credibility Factors



Credibility is determined based on a “totality of the circumstances.” Factors to consider:

- Witness statements
- Detail and consistency of accounts
- Corroborating evidence or the lack thereof, if it should logically exist
- Information about how the reporting person acted following the incident, both immediately and over time
- Information about whether the complainant told others about the incident soon after it occurred
- Other contemporaneous evidence of accounts
- Credible reports of similar incidents by the respondent (careful here!)
- Whether the reporting person has been shown to make false reports (again, careful here!)

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## Cross Tools: Impeachment (1 of 5)



- Bias: (a) lay witnesses and (b) experts.
- Relationships (friendship and romantic)
- Experts: getting paid for testimony
  - You charge fees based on an hourly rate?
  - You were paid to produce a written report?
  - Based on this report, you’re testifying today?
  - You’re charging money for each hour you’re here?

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## Cross Tools: Impeachment (2 of 5)



- Perception and Recall
  - What is the witness's perception of the facts?
    - Has Time impacted recall or ability to remember clearly?
    - How many times has the witnesses talked to the other party about this case?
    - Was there anything that impacts the person's physical or mental ability to perceive or recall facts accurately?
  - Is the expert limited by the information provided to inform the expert report?
  - Does the witness form a conclusion without knowing certain information?

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## Cross Tools: Impeachment (3 of 5)



- Example: Intoxication level information from witness.
  - You did not see the consumption, or keep track of how long the party was consuming alcohol?
  - You did not measure the alcohol poured by \_\_\_\_ or the party?
  - Your statements are based on information provided by others? the other party?
  - Party's statements were made after they had been drinking alcohol (consuming other drugs, etc.)?
- Remember: Delineate whether the party or witness is speaking from personal knowledge.

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## Cross Tools: Impeachment (4 of 5)



- Inconsistency in statements
  - If a fact was very important, why is the hearing the first time it has come up?
  - What possible reasons might the witness have for changing their testimony?
  - Did a witness receive coaching from the party or others between making one statement and another?
  - Has the witness's perspective or motive changed between statements?
  - Does changing this fact help the other party's case?

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## Cross Tools: Impeachment (5 of 5)



- Lack of Corroborating Evidence
  - Example: Missing receipts...
    - You testified that you were drinking with the Complainant on the night of the incident?
    - You testified that you paid for the alcohol?
    - You paid with your credit card?
    - But you did not provide the receipt to the investigator?
    - You didn't even provide access to your credit card statement?  
Remember: If a party elects not to provide information, it is an empty spot on the table.

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## Questioning by the Decision-Maker



- The neutrality of the decision-maker role is and the role of the advisor to ask adversarial questions, protects the decision-maker from having to be neutral while also taking on an adversarial role
- “[P]recisely because the recipient must provide a neutral, impartial decision-maker, the function of adversarial questioning must be undertaken by persons who owe no duty of impartiality to the parties” (2020 Title IX Preamble, 30330)
- Decision-maker has the right & responsibility to ask questions.

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## Hearing Toolbox: Questions



- Do you have the information you need on each element to be able to evaluate the claims?
- Consider neutral phrasing of questions:
  - “In the report you said... Help me understand...”
  - “You stated... Tell me more about that.”
  - “Could you give more information about what happened before/after...”

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## Hearing Toolbox: Use Scripts! Prehearing Conference & Hearing



- Prehearing conference – helps inform parties and set expectations – have one separate with each party and the party’s advisor; use to address any witness/evidentiary issues and answer procedural questions.
- Use scripts for the hearing and for the pre-hearing meetings
  - Consistency
  - Transparency
  - Accuracy of Policy/Rights/responsibilities.
  - Use as a checklist – review allegations, rights responsibilities, etc.
  - Reminders about Decorum (next slide)

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## Hearing Toolbox: Decorum



- Evaluating each question for relevancy before a party or witness can answer can help set the tone (or by having questions run through the decision-maker)
- Remind parties about expectations of decorum

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## Hearing Toolbox: Breaks



- The use of breaks to allow parties to recover from panic attacks or emotional questioning
- \*\*\*These are built into JMU's processes.\*\*\*
- Also helpful to reset tone and reduce emotion and tension
  - Can use to review policy and procedures to address relevancy issues that arise

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## Hearing Toolbox: Considerations for Panels



- Hearing panel:
- Identify one person on the panel to make relevancy rulings
- Identify one person to draft the decision (for review of other panel members)
- Determine how panel members will ask questions (e.g., will only one person ask the questions or will panelists take turns? )

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## How to Make a Good Decision: Follow the Policy & Process

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### Standard of Evidence



- Standard of Evidence: Preponderance of the Evidence
  - Use this standard to make every factual determination!
- Must begin with a presumption of no violation by Respondent.
- If the case is truly “50-50,” the tie goes to the Respondent.
  
- *Tip when discussing and voting – go through each element of each allegation considering the standard of evidence*

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## Deliberating Reminders (1 of 3)



- Individual cases are not about statistics!
- Decision in every case must be based on preponderance of evidence
- Cannot fill in evidentiary gaps with statistics, personal beliefs or information about trauma.
- Process must be fair and impartial to each party
- Institution may proceed without active involvement of one or both parties; base conclusions on impartial view of evidence presented

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## Deliberating Reminders (2 of 3)



- **Withhold pre-judgment:** The parties may not act as you expect them to
- Be aware of your own biases as well as those of the complainant, respondent, and witnesses
- Let the available facts and standard of proof guide your role in overseeing the live cross-examination hearing, not unfair victim-blaming or societal/personal biases

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## Deliberating Reminders (3 of 3)



- Burden of gathering the evidence on the recipient, not the parties (30333)
  - Don't penalize a party for the questions no one asked them.

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## #1 Keep An Open Mind



- Keep an open mind until you've exhausted your inquiry
- Don't come to any judgment, opinion, conclusion or belief about any aspect of this matter until you've reviewed or heard all of the evidence

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## #2 Sound, Reasoned Decision

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- You must render a sound, reasoned decision on every charge
- You must determine the facts in this case based on the information presented
- You must determine what evidence to believe, the importance of the evidence, and the conclusions to draw from that evidence

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## #3 Consider All/Only Evidence

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- You must make a decision based solely on the relevant evidence obtained in this matter
- You may consider nothing but this evidence

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## #4 Be Reasonable and Impartial



- You must be impartial when considering evidence and weighing the credibility of parties and witnesses
- You should not be swayed by prejudice, sympathy, or a personal view that you may have of the claim or any party
- Identify any actual or perceived conflict of interest

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## #5 Weight of Evidence



- The quality of evidence is not determined by the volume of evidence or the number of witnesses or exhibits.
- It is the weight of the evidence, or its strength in tending to prove the issue at stake that is important.
- You must evaluate the evidence as a whole based on your own judgment.

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## #6 Evaluate Witness Credibility (1 of 3)



- You must give the testimony and information of each party or witness the degree of importance you reasonably believe it is entitled to receive.
- Identify all conflicts and attempt to resolve those conflicts and determine where the truth (standard or review/proof) lies.

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## #6 Evaluate Witness Credibility (2 of 3)



- Consider the reasonableness or unreasonableness, or probability or improbability, of the testimony.
- Does the witness have any motive?
- Is there any bias?

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## #6 Evaluate Witness Credibility (3 of 3)



- Credibility is determined fact by fact, not witness by witness
  - The most earnest and honest witness may share information that turns out not to be true

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## #7 Draw Reasonable Inferences



- Inferences are sometimes called “circumstantial evidence.”
- It is the evidence that you infer from direct evidence that you reviewed during the course of reviewing the evidence.

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## #8 Standard of Evidence (1 of 2)



- Use your standard of evidence as defined by your policy when evaluating whether someone is responsible for each policy violation and ALWAYS start with presumption of no violation.
- Preponderance of the Evidence.

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## #8 Standard of Evidence (2 of 2)



- Look to all the evidence in total, and make judgments about the weight and credibility, and then determine whether or not the burden has been met.
- Any time you make a decision, use your standard of evidence

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## #9 Don't Consider Impact of the Outcome



- Focus only on the charge or charges brought in the case and whether the evidence presented to you is sufficient.
- Do not consider the impact of your decision on the parties.

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## If you are having trouble




- Consider making a list of what you are sure about that relates to the question you are considering.
- Make a list of what facts are disputed.
- Focus on resolving the disputed facts by a preponderance of the evidence.
- When you have the facts decided, the policy language should be much easier to apply.

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# Conflicts/Bias

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## Impartiality

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- Be Neutral (Avoid Bias and Conflict)
- Be Objective (Avoid Prejudgment)
- Treat each party equally

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## Bias



“Prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair” (Oxford Languages).

Bias is not always overt. This could be unconscious bias.

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## Avoiding Sex Stereotypes (From the Regulations)



- “Must” not rely on sex stereotypes
- Examples of sex stereotypes in comments (30253):
  - Women have regret sex and lie about sexual assaults
  - Men are sexually aggressive or likely to perpetrate sexual assault
  - Consideration of marginalized groups: people with disabilities, people of color, people who identify in the “LGBTQ” community (30259-30260)

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## Training & Bias



- “[T]he **very training required by 106.45(b)(1)(iii)** [that you are sitting in right now] is intended to
  - provide Title IX personnel with the tools needed to serve impartially and without bias
  - such that the prior professional experience of a person whom a recipient would like to have in a Title IX role
  - need not disqualify the person from obtaining the requisite training to serve impartially in a Title IX role.”

(2020 Regulations Preamble, 30252)

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## Outcomes & Bias



- Department also **cautioned** parties and recipients from **concluding bias** or possible bias “based **solely on the outcomes of grievance processes** decided under the final regulations.” (30252)
- Explained that this means, **the “mere fact that a certain number of outcomes result in determinations of responsibility, or non-responsibility, does not necessarily indicate bias.”** (30252)

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## Prejudgment



Prejudgment: “an opinion about a situation or a person that is formed before knowing or considering all of the facts” (Cambridge).

How do you avoid it?

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## Prejudgment (2)



- Do NOT form opinions about the case before you and the panel deliberate.
- Always treat the parties equitably.
- Do not consider outside factors (societal issues, protected status, etc.)
- Evaluate and weigh all facts neutrally.
- Base your findings on the evidence...and nothing else.
- Identify any conflicts and take appropriate steps to mitigate them.

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## Examples of Bias & Prejudgment



- Respondents who don't respond and participate are responsible for policy violations.
- Complainants who participated must be telling the truth.
- Men are inherently violent, therefore when they are accused of misconduct, it must be true.
- Women have regret sex, and must be lying.
- Complainants and Respondent were in a sexual relationship so there cannot be sexual harassment.
- Complainant and Respondent were friends, therefore comments based on protected status were welcomed.
- Parties who dress up for hearings must be taking this seriously, therefore they are telling the truth.
- Respondents have something to lose so they must be lying.
- Men cannot be victims of domestic violence because women are not violent.

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## Conflict of Interest



- No per se conflicts of interest in the Title IX regulations
- Decision Maker cannot be same person as the Coordinator
- Cannot have any conflicts or bias for or against Complaints or Respondents generally or specific people in the process
- Department gives DISCRETION to universities to determine how to establish whether a bias/conflict exists.
- Usually some process for parties to also raise bias/conflict.
- Actual (a direct conflict) and Perceived conflicts (observations that a competing interest exists)

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## Reminders



- Individual cases are not about statistics
- Decision in every case must be based on preponderance of evidence
- Cannot fill in evidentiary gaps with statistics, personal beliefs or information about trauma
- Process must be fair and impartial *to each party*
- Institution may proceed without active involvement of one or both parties; base conclusions on impartial view of evidence presented
- Withhold pre-judgment
- Be aware of your own biases
- Let the facts & evidentiary standard guide your role

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## At JMU – OEO Process



### OEO Process for Panelists:

- The OEO will work with each panelist regarding conflicts of interest concerns.
- Both the complainant and respondent are notified of the names and roles of the panelist
  - To provide feedback regarding perceived conflict of interest.
  - Each party can communicate with the OEO to ask for a panelist to be removed from adjudicating their case.
  - If asked to remove a panelist, the OEO would select a new panelist.
- A panelist can recuse themselves if there's a potential, direct or perceived conflict of interest within the case.

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## At JMU – Title IX/Sexual Misconduct Process



Parties have the right to question bias & conflict  
Panelists must not have direct involvement

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# Sanctioning

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## OEO - Sanctions



- To balance consistency and fairness in sanctioning, **guidelines have been developed as a starting point for Hearing Panelists** in student adjudication, Supervisors for **employee adjudication or the appropriate Vice Presidents to consider when determining sanctioning for a Respondent found responsible for a policy violation.** However, the totality of the evidence, **the severity of the incident and the perspectives of the participants involved may result in the severity of the sanction being higher or lower than the guidelines listed below.** Hearing Panelists in student adjudication, Supervisors for employee adjudication or the appropriate Vice President have the **ability to increase or decrease the severity of the sanction when making a decision in a case;** however, suspension or expulsion from the university may only be assigned if the case was deemed eligible for that potential outcome when the email notification of alleged policy violation(s) was sent to the Complainant/Respondent.

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## OEO - Sanctions (2)



Sanctions are permitted only when the final determination is that the respondent engaged in the alleged discriminatory or retaliatory conduct. Sanctions shall be commensurate with the severity and/or frequency of the conduct.

- **Student Respondent:** Sanctions for students are determined by the panel following the panel's determination that the student is responsible for the alleged policy violation(s), and will be handled in accordance with procedures published on the OEO website. Sanctions may include, but are not limited to *suspension or expulsion from the university and/or issuance of a no-trespass notice. Educational sanctions may be imposed for students found responsible for violations of this policy instead of, or in addition to, the applicable sanctions listed above.* Determination of sanctions for students shall generally align with the OSARP Student Handbook: Sanctioning and General Case Outcomes.
- **Employee, Affiliate and Visitor Respondent:** The respondent's supervisor will determine appropriate sanctions in accordance with procedures published on the OEO website. *Sanctions may include but are not limited to, termination of employment, removal of affiliate status, exclusion from working opportunities at the university and/or issuance of a no-trespass notice.*

\*All parties will be provided the Notice of Outcomes determined by the hearing panel. The OEO will provide the Notice of Outcomes to OSARP for the implementation of sanctions and accountability when applicable.\*

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## Policy 1340 / 1346



### Disciplinary Actions

- a. A classified employee who is found to have violated this policy may be disciplined or discharged under the terms of Policy 1317-Standards of Conduct and Performance for Classified Employees.
- b. A wage employee who is found to have violated this policy may be disciplined or discharged under the terms of Policy 1325-Wage Employment.
- c. An A&P faculty member without tenure who is found to have violated this policy may be disciplined or discharged under the terms of Policy 1335-Terms and Conditions of Employment for Administrative & Professional Faculty.
- d. An affiliate who is found to have violated this policy may have his/her status as affiliate removed under the terms of Policy 1337-Affiliates.
- e. A faculty member who is found to have violated this policy may be disciplined or discharged under the terms of the Faculty Handbook, Section III.A.26.
- f. A student who is found to have violated this policy may be disciplined, suspended or expelled under the terms of the Student Handbook.

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## Closing

**Thank you again for your time and service!**

- The Teams site will continue to be our primary method of communication.
- Please review the Teams site regularly for updates and opportunities.
- You may hear from the OEO or TIX throughout the year regarding your participation as a panelist. You will generally be notified of this through email.

***Please note:** If anyone has interest in learning more about opportunities to serve as a hearing chair, please stay on the call for a few minutes or contact us directly.*

○ JAMES MADISON UNIVERSITY ○

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