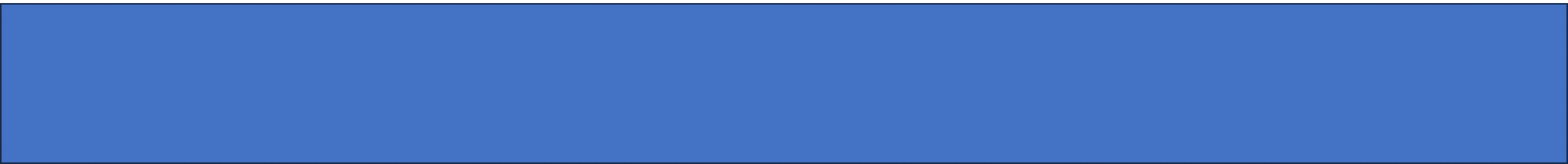


# Title IX Hearings & Decision Makers 2025 CCSNH



# TIX Hearings

- TIX Hearings are required for all cases that go through a full investigation
  - TIX Jurisdiction – Live hearing w/cross examination by advisors
  - Policy Jurisdiction – Live hearing w/ DM-led questions submitted by parties
- Parties & witnesses are not required to attend, but encouraged
- CCSNH does virtual hearings via Zoom that we record
- Who attends?
  - Complaint & Respondent
  - Witnesses
  - DM – TIX Coordinator – Advisors – Hearing Facilitator

# Formal Hearing Process

- Investigative report completed and sent to parties
- TIXC appoints a decision maker, and notifies parties of the decision maker's appointment
- TIXC sends the investigative report, relevant evidence, and any responses from the parties to the decision maker
- TIXC schedules the live virtual hearing
- Parties are invited to submit relevancy arguments to the decision maker, who will make a pre-hearing determination on them, may also submit to the decision maker a written statement that identifies the facts they dispute and questions they believe the decision maker should ask of the parties and/or witnesses
- Live virtual hearing occurs, parties may make closing statements
- DM deliberates and sends the TIXC a letter of outcome based on a preponderance of the relevant evidence.
- If the respondent is found responsible, sanctions will be assigned in letter of outcome by DM (or HR if employee respondent)
- TIXC will send outcome letter to all parties
- Parties may appeal, appeal process initiated

# What is Your Role – TIX Coordinator

- Appointing DM & sending out comprehensive hearing notifications
  - Including information about witness scheduling & pre-submitting questions
- Offering to meet with parties & their advisors pre-hearing to answer any questions if requested
- Sending out the Zoom Link & scheduling the hearing/witness times
- Overseeing hearing process with HF
- Providing support to DM on procedural questions or questions of policy during recess if needed
- Generally not an active role, only there for issues or if things get out of hand

# What is Your Role – Hearing Facilitator

- A member of the Title IX Team who facilitates the actual schedule of the hearing.
- This includes:
  - reviewing hearing procedures with parties and their advisors at the beginning of the hearing
  - Setting up the Zoom meeting & ensuring it is recorded (as well as pausing recording when necessary)
  - Turning off cameras/muting when necessary
  - Managing online meeting rooms
  - Otherwise assisting with the logistics/coordination of the hearing.

# What is Your Role – Decision Maker

- Anyone appointed & trained by TIXC – TIXC assigned to case or anyone consulting/working on the case cannot be decision maker.
- \*\*Appellate Decision Maker (if needed) would be separately appointed
- DM makes all decisions pre-hearing & during live hearing on questions
  - Questions should be submitted pre-hearing for most deliberation time, but live hearings can be unpredictable
  - Can ALWAYS call a recess to deliberate
- During TIX jurisdiction hearings, only overseeing questions. During Policy jurisdiction, asking the re-approved questions of all parties/witnesses
- Writing the letter of decision based on the investigative report & hearing, then assigning appropriate sanctions if applicable.

# What is Your Role – Advisor

- REQUIRED for hearings – TIXC will appoint if needed, but can be a friend, parent, professor...just someone who is unbiased.
- Conduct Cross-examination as legally required by regulation for TIX jurisdiction cases
- This role IS:
  - Helping your advisee understand the policy & ensure that your advisee is participating in the most effective way
  - Supporting your advisee during an emotionally difficult time
  - Ensuring the Title IX Staff are following procedure
  - This role is NOT Representing your advisee or telling their story for them
- Prepping your Advisee for the hearing
  - Have a way to communicate with your advisee set up prior to the hearing (text/email/messaging)
  - Help your advisee draft their questions to submit to the decision maker for the other party as well as any witnesses
  - Help your advisee strategize how they will react to having to answer difficult questions
  - Let your advisee know they are not required to participate in any/all of the hearing if they choose not to

# What is Your Role - Advisor

- Keep your advisee on track & relevant
- Stay focused on the facts, and on what is related to the policy
  - Ask questions that help a DM see if a policy element was/was not met
  - Ask questions that help a DM see whether or not a fact should have more or less weight due to the credibility of the party/witness/technology/source providing it
- If it seems like your advisee is in an emotionally turbulent place, potentially encourage them to reach out to the Counseling and Wellness Center – or connect them with the TIXC for additional resource connections
- Your advisee should be asking clarifying questions, they do not need to rehash the whole report

# Crafting Questions – DM or Advisor

- Focus on any inconsistencies/credibility issues seen from opposite party/witness in the investigative report or additional evidence they find to be compelling
- Focus on the policy & relevant definitions
- Closed vs. open ended questions
  - Did you know vs. How did you know?
  - Did you see that? vs. What happened?
- Usually helpful to avoid “why” questions, people may not know & struggle to answer. Instead ask “Please tell me more about that”
- Avoid compound questions “first, then second...” or multiple choice questions “were you a or b?” to avoid confusion
- Stick to relevant evidence, NOT impermissible evidence (next slide)
- Seek to clarify meaning – what does “hooking up” “sex” “drunk” “acting weird” mean to them?
- Be cognizant of what was actually heard/witnesses v. what is assumed/hearsay
- If you feel someone is resistant or being untruthful, avoid accusation & use phrases like “help me understand” “I think I’m missing something”

# Evidence – What is Appropriate in a Hearing Question?

- **Relevant evidence:**
  - Evidence which may aid in determining whether an allegation occurred or whether the behavior constitutes a violation of policy.
- **Impermissible evidence**
  - Questions and evidence about the complainant's sexual predisposition or prior sexual behavior (unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged or if questions/evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent)
  - Information protected under legally recognized privilege unless waived.
  - Previous disciplinary action of any kind involving the respondent may not be considered unless there is an allegation of a pattern of related misconduct. This information of pattern can also be considered when determining an appropriate sanction. Investigations and determinations can consider character evidence, if offered, but that type of evidence is unlikely to be relevant unless it is fact evidence or related to a pattern of conduct.

# Impermissible Evidence - Privileged Information

- Unless permission is given by relevant party, privileged information is impermissible
- Records made or maintained by a
  - Physician
  - Psychiatrist
  - Psychologist
- Questions or evidence that seek disclosure of information protected under a legally recognized privilege must not be asked without permission
- \*\*Advisor Note: Anything submitted can be seen & questioned by the opposing party, so think carefully about what evidence you want to submit

# Gathering Evidence

- Unauthorized Disclosure is NO LONGER a TIX policy violation
  - However, not recommended for parties to discuss their case more than is needed – could face outside legal action (ie defamation) or if they become harassing could face an additional TIX charge (ie sexual harassment, retaliation)
- Parties are never restricted from obtaining and presenting evidence or restricted from speaking to witnesses (as long as it does not constitute retaliation under this policy), consult with their family members, confidential resources or advisors, or otherwise prepare for or participate in the resolution process.

# Parties Not Attending the Hearing

- Any party or witness may choose not to offer evidence and/or answer questions at the hearing either because they do not attend or because they attend but refuse to participate in some or all of the questioning.
- The decision maker can only rely on whatever relevant evidence is available through the investigation and hearing in making ultimate determination of responsibility.
- The decision maker may not draw any inference solely from a party or witness's absence or refusal answer questions.

# Introduction of New Evidence

- Any witness scheduled to participate in the hearing must have been first interviewed by the investigator unless all parties and the decision maker agree to the new witness's participation in the hearing.
- The same holds true for any evidence that is first offered in the pre-hearing statement made to the decision maker.
- If both parties and the decision maker do not assent to the admission of a new witness or newly offered evidence at the hearing, DM has the discretion to delay the hearing to allow parties to review the new evidence or instruct that the investigation be re-opened to include that evidence if deemed relevant and permissible.

# Order of Hearing

1. HF will review rules & schedule
2. HF will ask for opening statements by complainant, then respondent (not advisors)
3. DM will ask complainant's advisor to ask their pre-submitted questions of the respondent.
  - a. If the DM has any questions/clarifications of their own, they will ask them after the cross-examination.
4. After questions are asked, HF will offer short recess to complainant to confer with advisor & submit any additional questions to the DM
  - a. DM will briefly deliberate during the recess to determine relevance
5. DM will ask respondent's advisor to ask their pre-submitted questions of the complainant.
  - a. If the DM has any questions/clarifications of their own, they will ask them after the cross-examination.
6. After questions are asked, HF will offer short recess to complainant to confer with advisor & submit any additional questions to the DM
  - a. DM will briefly deliberate during the recess to determine relevance

# Order of Hearing Cont.

7. DM will ask complainants advisor to ask pre-submitted questions to first scheduled witness (if any).
  - a. If the DM has any questions/clarifications of their own, they will ask them after the advisor asks their questions
8. DM will ask respondent's advisor to ask pre-submitted questions to first scheduled witness (if any).
  - a. If the DM has any questions/clarifications of their own, they will ask them after the advisor asks their questions
9. After questions are asked, HF will offer short recess to both parties to confer separately with advisors & submit any additional questions to the DM
  - a. DM will briefly deliberate during the recess to determine relevance
10. Repeat 7-9 for each scheduled witness

# Order of Hearing Cont.

11. HF will offer a brief recess if either party needs to meet with their advisor to craft a closing statement
12. HF will ask complainant, then respondent, to make closing statements (not advisors)

# Letter of Outcome

- Written by DM, sent out by TIXC
- Investigative reports do not contain conclusions as to whether or not a policy was violated or as to whether or not a party was or was not credible – this is what the LOO is for
- The LOO will contain a comprehensive breakdown of the investigative report & all information gathered from the hearing
- Facts will be outlined showing that someone's statements or provided evidence should be considered more or less credible, but that credibility is not about the person over all but should instead be considered on a fact-by-fact basis.
- If applicable, assign sanctions and/or remedies

# Letter of Outcome

- Preponderance of the Evidence
  - Whether its “more likely than not” that the respondent violated policy
  - This is not “beyond a reasonable doubt” as used in criminal court
  - Think of a tipping scale, or 50.1% (50% plus a feather)
- It’s possible that there’s not enough evidence to make a finding of responsibility – this is not saying that the complainant is untruthful, but that there’s not enough evidence to “tip the scale”

# Letter of Outcome

- Within ten (10) business days after the conclusion of the hearing, the decision maker will prepare and deliver to the Title IX Coordinator a written notice of outcome regarding whether the respondent is or is not responsible for the policy violations in question. The notice of outcome will include:
  - Identification of the sections of the Colleges policy alleged to have been violated;
  - A description & dates of the procedural steps taken from the receipt of the complaints through the determination;
  - Specified findings for each alleged policy violation;
  - A detailed rationale for the findings of each allegations including determination regarding responsibility;
  - All applicable sanctions;
  - Identification of the College's procedures and permissible bases for the parties to appeal (as outlined below). The determination regarding responsibility becomes final if an appeal is filed on the date the College provides the parties with the written determination of an appeal. If an appeal is not filed, the determination regarding responsibility becomes final on the date on which the appeal would no longer be considered timely; and
  - The determination will notify parties whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided to the complainant but will not provide details about such remedies.

# Assessing Credibility

- Sometimes a party or witness may say something that is not consistent with something else they have said
- Sometimes different witnesses will give different versions of what happened.
  - People may forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.
- However, if you decide that a party or witness has deliberately testified untruthfully about something important, you may choose not to believe anything the witness said.
- On the other hand, if you think the witness has testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.
- Number of witnesses who testify is not always significant - what is important is how believable the witnesses were, and how much weight you think their testimony deserves.
- Assessing eight of evidence – documentary, electronic, physical, eye witness testimony, circumstantial, hearsay

# Consent

- Requires **clear indication**, either through verbal or physical actions
- Must be made free of force, threat, intimidation or coercion and must be given actively and knowingly in a state of mind that is conscious, rational, and not compromised by alcohol or drug incapacitation.
- Only a person of legal age can consent.
- **Consent to one form of sexual contact does not constitute consent to all forms of sexual contact**, nor does consent to sexual activity with one person constitute consent to sexual activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant.
- Engaging in activities such as slapping, hitting, hair pulling, strangulations, or other physical roughness without obtaining consent may constitute dating violence or sexual assault.
  - Consent in the context of the relationship is considered. When parties consent to certain forms of kink, non-consent may be shown using a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and may be consensual. The totality of the circumstances will be evaluated.

# Consent Cont. Incapacitation & Coercion

- Incapacitation due to alcohol or drugs - cannot make an informed and rational decision to engage in sexual activity because they lack conscious knowledge
  - the who, what, when, where, why, or how of the sexual interaction and/or are physically helpless.
  - No consent when asleep, unconscious, or otherwise unaware that sexual activity is occurring.
- Beyond drunkenness or intoxication – 1 sip of alcohol does not negate consent
  - Everyone handles their alcohol differently
  - slurred speech, vomiting, unsteady gait, odor of alcohol, combativeness, or emotional volatility.
- Coercion is unreasonable pressure for sexual activity when someone makes it clear they do not want to engage or that they do not want to go past a certain point of sexual interaction and the continued pressure is sufficiently severe.
  - Frequency, intensity, isolation, and duration of the pressure involved.

# 3-Pronged Approach to Evaluating Consent

1. Was force used by the Respondent to obtain intimate access?
2. Was the Complainant incapacitated? If so, did the Respondent know or should have known?
  - Respondent didn't see Complainant drinking but Complainant is displaying clear signs of having consumed alcohol - stumbling, mumbling, vomiting, slipping in & out of consciousness etc.
  - Intoxication of the Respondent cannot be used as a reason they did not know the Complainant was incapacitated or defend unwelcome behavior/force
3. What clear words or actions by the Complainant gave the Respondent permission for each specific sexual/imitate action that took place?
  - Appropriate "level ups"
  - Clear non-verbal signals that show lack of consent
    - What a "reasonable person" could have interpreted
  - Unenthusiastic vs. non-consensual

# Case Review

- Review our current case
- Applicable Policy Violation:
  - **Fondling:** The touching of the private body parts of another person for the purposes of sexual gratification, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity (for the purpose of this definition, “private body parts” include breasts, buttocks, or genitals whether clothed or unclothed).
- Appropriate Sanctions/Remedies
- Current hearing party/witness updates

# Notes

- Remember – this is NOT a question of right or wrong, but whether there has been a policy violation that meets the evidence standard
- You may not agree with actions taken by either party – but we are upholding our policy
- DUE PROCESS: we are unbiased facilitators of this process – not on the “side” of the complainant. We’re ensuring rights are met for the respondent as well
- Unlike student conduct or even HR cases, a TIX hearing is not “building a case”, but gathering information to make a decision
- Always a presumption on not responsible until a final determination is made