



EMORY
UNIVERSITY

Department of Title IX
Office of Diversity, Equity,
and Inclusion

Emory University Hearing Officer Lunch and Learn

Emory University
Department of Title IX
October 16, 2020

Agenda

- Welcome/Overview of Agenda: Yolanda Buckner
- Zoom Videoconferencing Platform: Judith Pannell
- Live Hearings: Nicole Babcock
 - Emory Box
 - Pre-Hearing Conference
 - Hearing Script and Rules of Decorum
 - Relevance Determinations
- Sanctioning & Remedies: Judith Pannell
- Q & A

Zoom Video Conferencing Platform

- Crystal Anderson, DTIX Administrative Assistant
 - Serves as Zoom Administrator during hearing
 - Responsible for
 - Starting the Zoom meeting
 - The record function
 - Placing individuals into breakout rooms
 - Any technical issues that may arise
 - Closing the Zoom meeting
 - Can also assist with muting participants
- Other Features:
 - Chat Function – enabled during the hearing
 - Participants cannot send documents or files via chat function
 - Participants should send documents, if you deem appropriate, to you via email

Other Related Concepts and Definitions

- Affirmative Consent
- Force
- Incapacitation
- Coercion
- Intimidation
- (See Pgs. 13-15 of Policy)

Role of the Hearing Officer

- Serve impartially
- Preside over the hearing
- Objectively evaluate all relevant evidence (inculpatory and exculpatory)
 - Requires an understanding of Emory's Policy definitions
- Independently reach a determination regarding responsibility

Prior to the Hearing

- Emory Box
 - Report of Investigation (“ROI”) and Appendices
 - “Directly Related Evidence”
 - Review of the above prior to hearing
- Witnesses
 - Prior to hearing, determine which witnesses will be called to give testimony
 - Title IX Coordinator will notify witness(es)
- Pre-Hearing Conference with Parties

Live Hearings

- Hearing Script
 - Outlines flow of hearing
- Hearing Decorum
 - Rules outline expectations of decorum for all participants
 - Provided to parties, witnesses, and advisors prior to hearing
- Administrative Support During Hearing
 - Title IX Coordinator and DTIX Administrative Assistant available

Relevance Determinations

- The Hearing Officer will make relevance determinations throughout the course of the hearing.
 - Format:
 - Question posed by Complainant's or Respondent's Advisor
 - Determination regarding relevance by Hearing Officer
 - Must include reason for determination if question is determined to be not relevant
 - Question can then be answered by Party or Witness
- The Hearing Officer can make their own relevance determinations prior to the hearing BUT cannot prohibit parties from revisiting those determinations at the hearing.

Relevance Determinations (Cont'd)

- Remember that some types of evidence are per se not relevant
 - Medical, psychological and other treatment records without party's voluntary, written consent
 - Information protected by a legally recognized privilege without a waiver
 - Complainant's sexual predisposition or prior sexual behavior (two exceptions)
 - Party or Witness statements that have not been subjected to cross-examination at a live hearing (review Hearsay)
- Remember that “procedural irregularity” as a basis for appeal includes challenges to relevance determinations.

Rendering a Finding

- Review the Sex and Gender-Based Harassment and Discrimination Policy, 8.2.
- Review the evidence and consider its relevance.
 - Ask yourself: Why am I considering this?
 - Relevant evidence should substantiate a KEY element of the policy violation.
- Assess credibility of the evidence and witness statements as factual, opinion-based or circumstantial.
- Make a determination regarding whether a Policy violation is more likely than not.
 - Determine a finding for each alleged Policy violation and for each responding party.
 - Cite concretely the reasons for your conclusion and the evidence you used to support the conclusion.

Sanctions

- In cases in which the Respondent is a student, the Hearing Officer also determines the appropriate sanction.
- In cases in which the Respondent is a faculty or staff member, the “appropriate authority” will determine the appropriate sanction and will communicate that to the TIX Coordinator, who will inform the Hearing Officer.
- Purpose of sanctions:
 - Stop, Prevent and Remedy!
 - Uphold Emory’s values and principles
- Sanctions must be determined as a proportionate response to the Policy violation.

Sanctions (Cont'd)

- Emory may impose a range of sanctions and protective measures following a final determination of a violation of Policy, 8.2.
- The sanctioning decision should be informed by the degree to which the behavior was intentional, irresponsible or without knowledge.
- Factors pertinent to the sanctioning decision include, but are not limited to:
 - the nature (severity) of the conduct at issue;
 - prior disciplinary history of the Respondent (shared with the decision-maker and/or sanctioning authority only upon a finding of responsibility for the particular allegation);

Sanctions (Cont'd)

- Factors pertinent to the determination of what sanction or disciplinary action applies include, but are not limited to:
 - the Respondent's willingness to accept responsibility for their actions;
 - previous University response to similar conduct;
 - Respondent's understanding of role in stopping violence;
 - the impact of Respondent's behavior on Complainant;
 - the wishes of the Complainant;
 - the impact of separating Respondent from their education/employment;
 - the interest of the University and its community.

Key Points to Remember...

- Degree of Confidence in the determination of responsibility is not a relevant factor.
- Weighing the Relevant Factors is not intended to be mathematical.
- “Equitable” Does Not Necessarily Mean “Equal”.
- There is More Than One Interest to Consider
- Mitigating, Aggravating, or Compelling Circumstances.
- Be wary of adding “extra” requirements to sanctions that do not need them.
- The Hearing Officer retains sole discretion to impose sanctions on students but may consult with DTIX about the severity of the sanction.

Remedies

- The University shall provide remedies to a Complainant where a determination for Prohibited Conduct has been made against the Respondent.
- Remedies are designed to restore or preserve equal access to the University's education program or activity.
- Remedies may include the same individualized services as supportive measures
 - Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

Types of Remedies

- Possible remedies include, but are not limited to:
 - Academic support services and accommodations;
 - including the ability to reschedule classes, exams and assignments, transfer course sections, or withdraw from courses without penalty;
 - Academic schedule modifications (typically to separate Complainant and Respondent);
 - Changes in work or housing location;
 - An escort to ensure safe movement on campus;

Types of Remedies (Cont'd)

- Possible remedies include, but are not limited to:
 - On-campus counseling services and/or assistance in connecting to community-based counseling services;
 - No contact directives (to instruct individuals to stop all attempts at communication or other interaction with one another);
 - Limiting an individual's access to certain University facilities or activities.

Written Determination

- The Hearing Officer shall issue a written determination (Hearing Outcome Form) regarding responsibility within 15 business days of the conclusion of the hearing.
- Hearing Outcome Form Includes:
 - Identification of the allegations potentially constituting Title IX Misconduct;
 - A description of the procedural steps taken from the receipt of the Formal Complaint through the determination;
 - Findings of fact supporting determination;
 - Conclusions regarding application of the Policy to the facts;
 - The rationale for the result as to each allegation;
 - Any disciplinary sanctions imposed on the Respondent;
 - Whether Remedies will be provided to the Complainant; and
 - Information about how to file an appeal.
- Hearing Officer emails completed form to Title IX Coordinator, who issues form to parties.



Questions?