Emory University Hearing Officer Lunch and Learn

Emory University
Department of Title IX
October 16, 2020
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.
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.