Emory University Hearing Officer Lunch and Learn
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?