



Adjudicator Training
Elizabeth H. Canning, Esq.




EHC
Campus and Workplace Solutions

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Agenda

- 1 The End in Mind
- 2 Relevance
- 3 Preparation
- 4 Managing a Hearing
- 5 Decision-Making and Writing




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Section 1

The End in Mind



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Preponderance of the Evidence




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Keep the End in Mind

Title IX Regulations Require the Determination of Responsibility to Include:

- Identification of allegations potentially constituting sexual harassment as defined in regs
- Description of procedural steps taken throughout
- Findings of fact used to support the determination
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- Statement of and rationale for:
 - The result as to each allegation, including a determination regarding responsibility
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Section 2

Relevance



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Relevance- Title IX

Investigators must create an investigative report that fairly summarizes relevant evidence.

Hearing officers must also focus on relevance.

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Relevant and Probative?

<p>Relevance</p> <p>the tendency of a given item of evidence to prove or disprove one of the elements of the case, or to have probative value to make one of the elements of the case likelier or not.</p>	<p>Probative</p> <p>"tending to prove." Probative evidence "seeks the truth." Tends to prove the proposition for which it is proffered.</p>
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Credibility Determinations

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Exercise



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Section 3

Preparation



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Preparing for a Hearing

- 1 Get your policy out
- 2 Report review
- 3 It's elemental....
- 4 Questions

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1. Prepping


- Policy
- Definition
- Elements

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Elements



Parts of a whole.

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2. Report Review- It's Elemental

- What are you looking for?
- Relevance
- Consistency, credibility
- Objective evaluation
- Inculpatory and exculpatory
- What is missing?

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3. Element

- (*noun*) a component or constituent of a whole or one of the parts into which a whole may be resolved by analysis.

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4. Questions. Curiouser and curiouser.

- What is missing?
- What do you want to know?
- What do you want to test?
- What do you need to test?

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Keep the End in Mind

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Exercise



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Section 4 Managing a Hearing



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Hearing- Live with Cross Examination

- The decision-maker must explain to the party's advisor asking questions any decision to exclude questions as not-relevant (include relevant).
- If a party or witness does not submit to cross examination at the hearing, the decision maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility the investigation.
- Provide both parties equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including evidence that the recipient does not intend to rely upon in reaching a determination regarding responsibility.

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Parties, advisors, hearing officers, and panelists.
What happens if someone shows up without an advisor?

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Hearing Prep

- 1 Technical set up
- 2 Evidence availability
- 3 Housekeeping & agenda
- 4 Ground rules & expectations of behavior


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Off we go

- 1 Introduction
- 2 Sequence
- 3 Assessing questions
- 4 Your checklist and outline
- 5 What ifs.....?



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Title IX Quiz: relevant or permissible?

- Questions and evidence about complainant's sexual predisposition or prior sexual behavior
- Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege
- Expert witnesses

EH C

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Exercise

EH C

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Section 5

Decision-Making and Writing



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Preponderance of the Evidence



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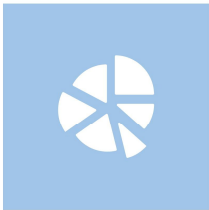
Putting it Together. Making a Decision



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Let's Talk about...



Elements

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Relevant and Probative?

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Credibility Determinations



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Credibility Determinations

The EEOC recommends using the following information to assess credibility:

- **Plausibility.** Is the witness's version of the facts believable? Does it make sense?
- **Demeanor.** Does the witness seem to be telling the truth?
- **Motive.** Does the person have a reason to lie?
- **Corroboration.** Are there documents or other witnesses that support the witness's version of events?
- **Past record.** Does the alleged wrongdoer have a past record of inappropriate conduct?
Use appropriately.

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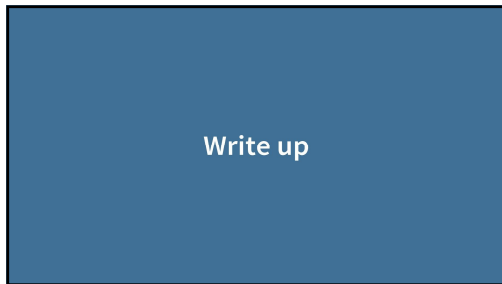
Determination of Responsibility

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Appeals

- **Parties may appeal:**
Determination regarding responsibility and
Dismissal of a formal complaint or an allegation
thereof

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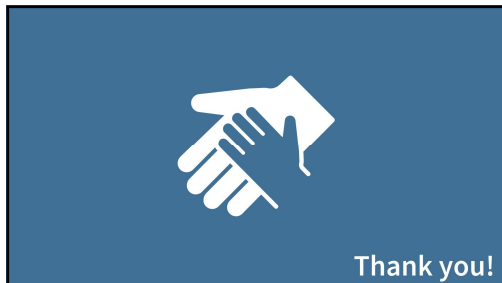
Appeal grounds

- 1 Procedural irregularity
- 2 New evidence that was not reasonably available at the time of determination regarding responsibility or dismissal was made, that would affect the outcome of the matter
- 3 The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against parties generally or the individual party that affected the outcome of the matter
- 4 Other bases determined by the school, provided offered to both parties

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