TITLE IX HEARING PANEL TRAINING

Presented by Katsura Kurita and David Tiscione



OVERVIEW OF TRAININGS

- Hearing Panel Member, Advisor, and Title IX Intake Officer Training (Friday, September 18- 11 AM – 12:30 PM)
- Title IX Intake Officer Training (Friday, September 25- 10 AM –12 PM)
- Advisor Training (Thursday, October 1- 2 4 PM)
- Hearing Panel Member Training (Friday, October 16- 2-4 PM)
- Combined case study (Friday, October 30- 2-4 PM)
- SUNY SCI online trainings due October 30.
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OVERVIEW OF TODAY

- Investigation overview
- Definitions
- Technology
- Hearing Agenda
- Relevance
- Questioning
- Cross examination
- Rationale
- Sanctions

INTRODUCTIONS

- Share Name, Title & Office
- Name ONE responsibility or expectation of hearing panel member

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SHARING ROLE OF HEARING PANEL MEMBER

- Determining whether a student is responsible or not responsible for an alleged violation
- Cross examining the people that are involved in the case
- Listening intently throughout the process and looking for available information in an effective and compassionate way
- Questioning process through lens for both complainant and respondent and due process
- Make sure everyone feels heard
- Navigating decorum in the hearing process; staying calm and polite

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SHARING ROLE OF HEARING PANEL MEMBER

- Trying to approach case from trauma informed perspective while being impartial in decision making
- · Approaching the process as an open, compassionate listener
- Be supportive of all parties as possible; do no harm
- Being well trained and up to date on recent developments and nuances
- · Be familiar with and apply the policy
- Be engaged and challenge each other to ensure appropriate decision
- Trained in and approach hearing with cultural sensitivity
- · Weighing the evidence very carefully in an unbiased manner
- De-escalating tensions in the room

OVERVIEW OF INVESTIGATION PROCESS

Title IX Deputy Coordinator is responsible for scheduling all meetings with Investigator and will provide:

- Notice of date, time & location of interview with investigator(s)
- Request names and contact info for all witnesses
- Request that the party provide all evidence (ie, photos, screen shots, text messages, voicemails, social media posts, etc.) to investigator(s)
- During meeting with investigator(s), Advisors may not speak for party. • Party is permitted to submit questions for the Investigator(s) to ask others.

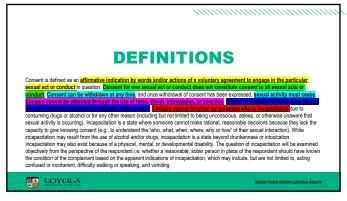
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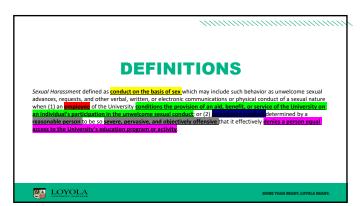
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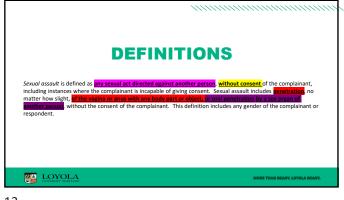
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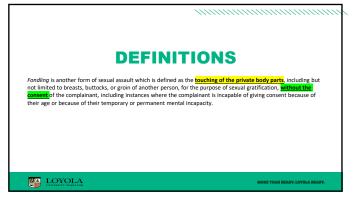
OVERVIEW OF INVESTIGATION PROCESS Preliminary Investigation Summary Report will be provided to both Parties and Advisors for review and comment for 10 days. Note errors Note any questions for the investigator(s) Suggest additional witnesses or evidence that should be obtained Argue for or against any findings made Raise any issues of bias or conflict of interest that must be addressed Raise concerns about the evidence that is contained in the report or that there is evidence that was not considered directly relevant by the Investigator(s) and should be in the report. After all comments are reviewed and addressed by Investigator(s), then the Investigation Summary Report is issued and sent to the Parties, Advisors and Office of Student Conduct for a hearing before a hearing panel or to external decisionmakers for Employee cases.

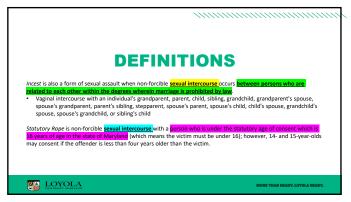


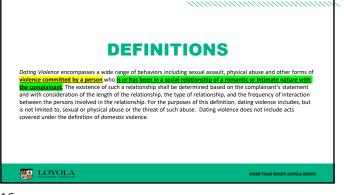


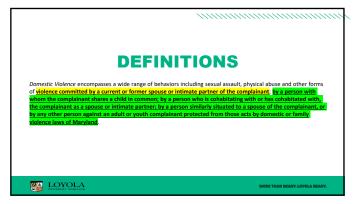


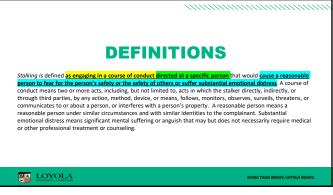


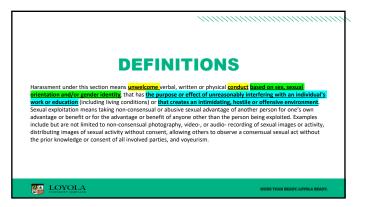


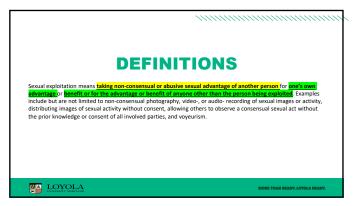


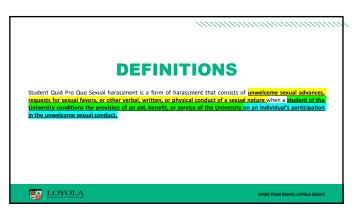










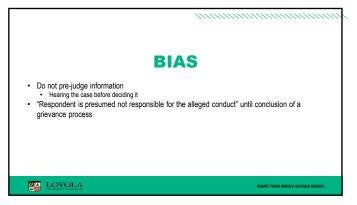


BIAS

- "Could not be objective toward them based on previous interactions" (Community Standards, "Could not be objective toward upon operations with the parties or witnesses
 p. 47)
 Notify us if you have had any interactions with the parties or witnesses
 Bad grade
 A previous disagreement with the party
 A positive relationship with the party
 Advise a party student group
 Supervises the party
 Social media posts that parties should or should not be believed
 Others?

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TECHNOLOGY OVERVIEW

- Regulations require parties to be seen and heard when answering questions in Title IX cases
 Regulations do not require parties to watch or listen
 We will utilize Zoom or similar platforms to conduct the hearings
 Parties not answering questions may be asked to turn off their cameras and mute themselves
 Parties and their advisors will be able to connect via phone or breakout room
 A practice session may be conducted in the pre-hearing conference
- Regulations do not apply to non-Title IX cases
 We are only required for parties to be heard
 This may be done through phone and/or a combination of zoom and breakout rooms





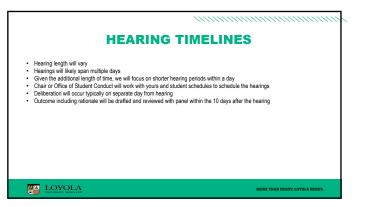


PRE-HEARING PREPARATION

- Review and understand all charges
 Review all material carefully and check with chair for questions or concerns
 Ensure you have all information referenced
 Review it a second time and note all consistencies between parties
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 Prepare your questions tasked on the inconsistencies
 Be mindful of not unnecessarily repeating questions or asking questions to which we already know the answers
 Prepare questions tasked
 Review it a second time and note all inconsistencies
 Be mindful of not unnecessarily repeating questions or asking questions to which we already know the answers
 Prepare questions for:
 Investigator
 Respondent
 Complement
 Witnesses

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HEARING AGENDA	
	Cross examination by parties' advisors Suggested questions by parties (non-Title IX hearing) All witnesses will be called in title IX hearings Only witnesses the panel or parties call will be called for non-Title IX hearings Cosing statement by complainant Closing statement by respondent Closed deliberation

MORE THAN READY, LOYOLA READ

RELEVANCE

- Chair determines relevance
 Relevance can be defined as directly related to the issue and helps prove (inculpatory) or disprove (exculpatory) the allegation
 The following is irrelevant:
 Sexual predisposition or prior sexual behavior (rape shield law)
 Unless such questions and evidence about the complainant's prior sexual behavior are offered to prove:
 That someon other than the respondent committed the conduct alleged by the complainant
 Consent when the questions and evidence concern specific incidents of the complainant's prior sexual behavior with
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 - respect to the respondent

- respect to the respondent Privileged information Medical Records Duplicative or abusive questions New information (can be remanded to investigation) Panels should not ask questions about irrelevant information

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RELEVANCE

- Relevance of crosses examination questions should not be based on:

- Relevance of crosses examination questions should not be based on: Who asked the question Their possible (or clearly stated) motives Who the question is directed to The tone or style used to ask about the fact The sex or gender of the party for whom it is asked or to whom it is asked Their status as complainant or respondent Past status as complainant or respondent Any organizations of which they are a member Any organizations of which they are nember

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RELEVANCE DETERMINATIONS BY CHAIR:

Question regarding Privileged Information
 The question is relevant because it asks whether a fact material to the allegations is more or less likely to be true.
 The question is irrelevant because it asks about a detail that does not touch on whether a material fact concerning
the allegations is more or less likely to be true.

- Question regarding Privileged Information
 The question is relevant because although it calls for prior sexual behavior information about the complainant, it meets one of the two exceptions to the rape shield protections defined in 34 C.F.R. § 106.45(b)(6)(i), and it tends to prove that a material fact at issue is more or less likely to be true (denote which exception).
 The question is irrelevant because it calls for prior sexual behavior information about the complainant without meeting one of the two exceptions to the rape shield protections defined in 34 C.F.R. § 106.45(b)(6)(i).

RELEVANCE

Question regarding Privileged Information

 The question is irrelevant because it calls for information shielded by a legally-recognized privilege [identify the

privilege].
The question is relevant because, although it calls for information shielded by a legally-recognized privilege [identify the privilege], that privilege has been waived in writing, and the question tends to prove that a material fact at issue is more or less likely to be true.

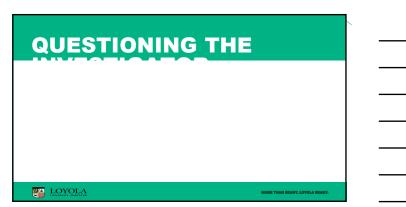
- Questions about Undisclosed Medical Records
 The question is irrelevant because it calls for information regarding a party's medical, psychological, or similar record without that party's voluntary, written consent. 85 Fed. Reg. 30026, 30294.
 This question is relevant because although it calls for a party's medical, psychological, or similar records, that party has given their voluntary, written consent to including this material, and it tends to prove that a material fact at issue is more or less likely to be true. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

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RELEVANCE Duplicative Questions The question is irrelevant because it is duplicative of a question that was asked and answered.

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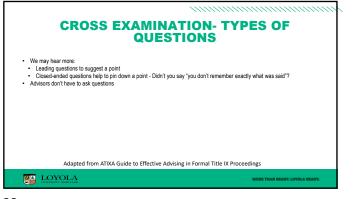


CROSS EXAMINATION

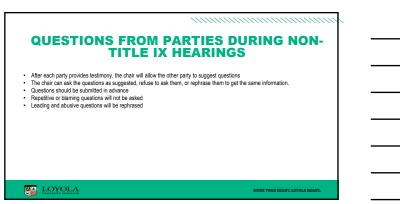
- Advisors will have the opportunity to cross examine the investigator, other party, and all witnesses during Title IX hearings
 If someone does not submit to cross examination, no statement of theirs can be relied upon for sexual misconduct charges
 'Statements' has its ordinary meaning, but would not include evidence (such as videos) that do not constitute a person's intent
 to make factual assertions, or to the excent that such evidence does not contain a person's statements
 Anything with words may not be relied upon except video evidence
 Their statements cannot be part of decision making or rationale
 Cannot make determination solely on someone's absence
 We cannot compel anyone to participate
 If there is no advisor or an advisor has been removed, an advisor will be provided
 Advisor will ask question verbally and live
 Chair will determine and state if the question is relevant or ask the advisor to rephrase
 If the guestion is relevant, the person will be asked not to answer

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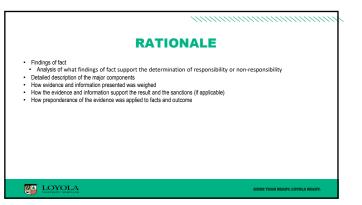


OUTCOME

- Normally within 10 business days of hearing
 Be prepared for any outcome and to manage response to any outcome
 Outcome is usually an 'in person' meeting
 Outcome iter will include:
 Whether the respondent was responsible or not for each charge
 A detailed rationale for the findings
 Sanctions for the outcome, if any
 A dist of procedural steps taken from formal complaint to determination
 Whether tor appaiant received remedies
 Procedures for appeal
 Chair will review outcome and answer questions

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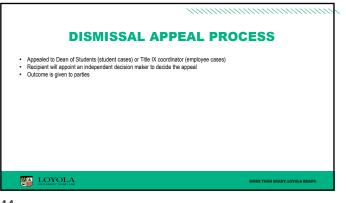


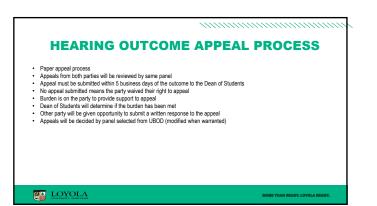
APPEAL PROCESS

- Parties may appeal dismissal or hearing outcome
 Grounds for appeals
 The party alleges that there were procedural irregularities that affected the outcome of the matter;
 The party alleges is new evidence that was not reasonably available when the determination of responsibility or dismissal of the
 complaint was made that could affect the outcome of the matter;
 The party alleges the Table X Coordinator or Deputies, investigators, or hearing panel had a conflict of interest or bias for or
 against the complainant(s) or respondent(s) generally, or the individual complainant or respondent that affected the outcome of
 the matter.
 The party alleges that the sanctions imposed are grossly disproportionate to the findings of responsibility.

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POSSIBLE OUTCOMES OF APPEAL

- Affirm the original decision
 Affirm the original decision of responsibility for some or all charges and change the sanction
 Sanction may be reduced or increased
 Reverse the original decision of responsibility for some or all charges and change the sanction
 Sanction may be reduced or increased
 Remand to original hearing panel
 Cases of new evidence

- Outcome will be communicated in writing within 5 days of the panel meeting

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WRAP UP

- ✤ Please raise any concerns or issues during the process, don't assume that is the "new way." We're all learning the "new way."
- ✤ Hearings will take longer so deliberations may also take longer.
- Thank you for your time, hard work and commitment.

Questions or Concerns

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