

# Intro to Hearing Panel and Decision Maker

A Review of MC Policy

# Title IX Regs call for a live hearing

- A live hearing is required to take place if an incident falls under the Title IX grievance process.
- The live hearing panel is required to consist of individuals trained with knowledge of Title IX.
- Those who are selected for the hearing/decision maker panel are not allowed to be an investigator or advisor in the incident they are about to review. The Title IX Coordinator is never allowed to be the decision maker.
- Let's take a look at MC Policy FFDA (Legal) that covers Title IX

# MC Policy FFDA (Legal)

## Hearings

- Live hearings may be conducted with all parties physically present in the same geographic location, or at the recipient's discretion, or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other
- Either party can request the live hearing occur with the parties located in separate rooms with technology enabling the hearing panel/decision maker(s) and parties to see and hear the party or the witness answering questions.
- All hearings are to be recorded either audio or audio visually, transcribed and made available to each party and their advisor. Each party has the right to review the recording, but may not have a copy of it. The recording is considered a part of their educational record.

# Hearing's cont.

## Questions – Cross-Examination

- Only relevant cross-examination and other questions may be asked of a party or witness.
- The hearing panel is allowed to request a list of questions prior to the hearing from each party's advisor.
- The Hearing Panel is allowed to determine whether or not the questions are relevant and explain any decision to exclude a question as not relevant.
- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, UNLESS such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant OR with respect to the respondent and are offered as proof of consent.
- Statements made by those who do not attend the live hearing, are allowed in the determination of responsibility.

# Determination Regarding Responsibility

The Decision Maker(s) must issue a written determination regarding responsibility. To reach this determination, the preponderance of the evidence standard must be applied. The written determination must include:

- 1) Identification of the allegations as defined in 34 C.F.R. 106.30
- 2) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- 3) Findings of fact supporting the determination;
- 4) Conclusions regarding the application of the recipient's code of conduct to the facts;
- 5) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
- 6) The recipient's procedures and permissible bases for the complainant and respondent to appeal.

The written determination must be provided to both parties simultaneously.

Determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The Title IX Coordinator is responsible for effective implementation of any remedies

# Appeals

We are required to offer appeals to both parties from a determination regarding responsibility on the following bases:

- 1) Procedural irregularity that affected the outcome of the matter;
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter; ad
- 3) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents general or the individual complainant or respondent that affected the outcome of the matter.



QUESTIONS?