ATIXA Association of Title IX Administrators

Live Hearings for Higher Education

Training and Certification Course

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Introduction

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The primary focus of this course is to equip Title IX practitioners to prepare and run live hearings as required under Title IX Regulations.

Title IX Coordinators and Decision-makers must understand live hearing logistics, questioning best practices, relevance determinations, and due process protections.

Our goal is to help Title IX Coordinators and Decision-makers approach live hearings with confidence.

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Decision-Making and the Title IX Grievance Process

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Essential Compliance Elements

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The requirements to **Stop, Prevent,** and **Remedy** guide institutions in their compliance work

1

STOP discriminatory conduct

2

PREVENT recurrence, on both individual and institutional levels

3

REMEDY the effects of discrimination for individuals, for the community, and on an institutional level

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Title IX Grievance Process Overview

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INCIDENT

- Formal Complaint/ Notice to Title IX Coordinator (TIXC)

INITIAL ASSESSMENT

- Jurisdiction
- Dismissal
- Supportive Measures
- Emergency Removal
- Referral to Another Process
- Informal/ Formal Resolution

FORMAL INVESTIGATION

- Notice of Investigation and Allegations
- Interviews
- Evidence Collection
- Draft Report
- Party Review/ Comment
- Follow Up
- Final Report

HEARING

- Questioning
- Credibility Assessment
- Determination and Rationale
- Sanctions
- Remedies

APPEAL

- Appeal Grounds
- Determination and Rationale

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Parties Rights

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The Parties have the following rights during the decision-making phase:

- Opportunity to propose relevant questions for other parties and witnesses
  - To Investigator(s) during the investigation
  - Through Advisor during a live hearing
- Reasonable expectation of privacy
- Respondent presumed not responsible until a determination is made
- Written outcome notification
- Opportunity to appeal the determination

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Live Hearings

- Live hearings are required
- Decision-maker (DM) and Advisors can ask relevant questions of parties and witnesses
- DM makes relevance determinations
- DMs deliberate privately to reach a final determination
  - DMs may or may not be involved in determining sanctions and remedies
- Parties and witnesses may be in person or virtual

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Title IX Regulatory Requirements for Decision-Making

- Title IX Coordinator and/or Investigator may **not** serve as the Decision-maker
- DM must:
  - Operate without bias and/or conflicts of interest
  - Be trained on any hearing technology
- Hearings must be recorded
  - Parties must be permitted to have access to the recording or a transcript
- Rationale for all decisions/determinations prior to, during, or after a hearing
  - Relevance determinations, findings, final determinations, sanctions

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Single Decision-Maker vs. Panel

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Single Decision-Maker

- Simpler scheduling
- Easier to staff and train
- Streamlined deliberation
- Streamlined drafting process
- Only one perspective
- Bias concerns
- Can overtax a single person

Panel

- Additional scheduling considerations
- Costs more to staff and train
- Deliberation and drafting may take longer
- Majority vote or consensus
- Diversity of perspective
- Reduce bias concerns

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Hearing Participants

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Who Will be Present at the Hearing?

- Parties
- Witnesses
- Advisors
- Investigator(s)
- DM(s)
- Hearing Facilitator

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General Logistics

- Party and witness attendance
- Advisor attendance
- Location and physical space
  - Accessibility
  - Parking
  - Privacy
  - Restrooms
  - Waiting areas
  - Furniture

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General Logistics (Cont.)

- Recording
- Hearing technology
- Administrative, tech, or audiovisual support
- Evidence availability for parties, Advisors, and witnesses
- Breaks

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Virtual Hearing Considerations

- Any party may request a virtual hearing
- Virtual hearings provide helpful flexibility
  - No travel required
  - No large physical space needed
- Choose software or platform to meet hearing needs
  - Zoom is a common option
  - Participants must be able to see and hear each other
- Prepare for Wi-Fi issues or other tech problems
- Individuals may need to participate virtually from campus
- Address any concerns related to privacy

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Hearing Facilitator

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- Not required by the Title IX Regulations, but a best practice
  - May be TIXC or a different person
- Responsibilities
  - Facilitate a smooth hearing and help problem-solve
  - Maintain hearing schedule and order of events
  - Communicate with parties, Advisors, and witnesses during the hearing
  - Manage in-person or virtual waiting rooms
  - Ensure recording; manage devices and files
  - Provide access to evidence during the hearing
  - Coordinate additional support (food, facilities, technology, materials)

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Scheduling Considerations

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- Agenda/schedule flexibility based on availability
- Availability of:
  - Parties, witnesses, and Advisors
  - DM(s)
  - Investigator(s)
  - Interpreter or other accommodations
  - Physical space
- Reasonable number of hours per day
- Multi-day hearings
- Breaks
- Finals/Graduation
- Employees on soon-to-be-expiring contracts

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Hearing Preparation

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Decision-Maker Review

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Prior to the hearing, DMs must review:

- Notice of Investigation and Allegations (NOIA)
- Policies alleged to have been violated and their policy elements
- Applicable procedures
- Investigation report and evidence file
  - Review more than once, as needed
  - Identify facts in dispute and not in dispute
  - **Note:** DM annotations or notes may be subject to FERPA or discoverable
- If investigation insufficient, a DM may request it be reopened, with specific instructions

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Question Preparation

- Prepare questions in advance of hearing
  - Helps DMs structure their questions in a logical, organized way
  - Ensures no significant disputed fact or inconsistency is missed
  - Helps DMs understand and analyze the evidence in the report
- Meet as a panel (if applicable)
  - Discuss investigation report and evidence file
  - Review questions for parties and witnesses
  - Determine questioning order

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Hearing Script and Flow

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Hearing Script and Flow Steps 1-4

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1

TECHNOLOGY REVIEW

- Video requirement
- Party and Advisor communication

2

LOGISTICS

- Breakout/Waiting rooms
- Restrooms
- Breaks

3

INTRODUCTIONS

- Participant introductions
- Hearing purpose
- Rulings

4

RECORDING AND CONFIDENTIALITY

- Confidentiality and privacy expectations
- Recording and post-hearing access

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Hearing Script and Flow Steps 5-8

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5

HEARING PROCEDURES

- Decorum expectations
- Roles
- Order of testimony

6

ALLEGATIONS

- Formal charges
- Confirmation of acceptance/non-acceptance of responsibility

7

INVESTIGATOR STATEMENT

- Complaint introduction
- Questions from DMs then Advisors

8

PARTY STATEMENTS

- Complainant then Respondent
- Statement then DM and Advisor Cross/Direct

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Hearing Script and Flow Steps 9-12

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9

WITNESS QUESTIONING

- Expectation of truthfulness/Honor Code
- Questions from DMs then Advisors

10

ADDITIONAL QUESTIONS

- DMs
- Advisors

11

CLOSING STATEMENTS

- Complainant then Respondent
- Hearing closure

Not Recorded

12

DELIBERATION

- Deliberation guidelines and process
- Determine rationale and evidence relied upon

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Recommended Best Practices

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- Keep microphones muted when not speaking
- Use a different platform or breakouts for parties to actively communicate with Advisors
- Prevent distractions in video/audio backgrounds
- Facilitate DM, parties, Advisors, and other personnel introductions
- Establish confidentiality expectations
- Exclude impact/mitigation statements during hearing
  - Impact statements are considered after the responsibility determination

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Hearing Decorum

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Setting the Tone

- The hearing is a significant event in the parties' lives at that time
- Formal, administrative process
- Decision-making is a neutral role
- Clear, direct communication
- Active listening
- De-escalate as needed
- Maintain control

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Decorum Practices and Pitfalls

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Practice

- Setting a professional tone with your own behavior
- Maintaining composure
- Evaluating the relevant evidence
- Minimizing distractions

Avoid

- Escalating tensions or conflict
- Acting like a judge
- Treating the hearing like a courtroom
- Using legal terms
- Interrogating parties or witnesses
- Making sarcastic comments or jokes
- Setting out to prove or disprove allegations

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Day of the Hearing

- Arrive early and prepared
  - Investigation report, evidence file, and preparation notes
  - Notetaking materials
  - Snacks and beverages
  - Comfort items
- Do not schedule anything else that day
- Turn off or silence technology

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Decorum Rules

- Institutions may have reasonable decorum expectations
- Governs behavior for parties, witnesses, Advisors, and DMs
- Addresses disruptive, disrespectful, or other prohibited behaviors
- Promotes consistency across hearings

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Party Expectations

- No party should address another party or witness directly
- During cross-examination, only a party's Advisor or the DM may speak to or address another party or witness
- No participants may interrupt the proceedings with applause, heckling, outbursts, or other disruptive behavior
- Any threat of violence will be addressed immediately
- No participants may act abusively or disrespectfully during the hearing

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Advisor Expectations

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An Advisor may not:

- Act abusively or disrespectfully during the hearing
- Yell, scream, badger, or physically invade the space of a party, witness, or DM
- Approach another party or a witness without obtaining permission from a DM
  - Should remain seated
- Make irrelevant personal attacks on a party or witness
- Ask repetitive questions or make accusations in their questions
- Intimidate a party, witness, or DM

Any relevant question that violates the decorum rules will be deemed not relevant, but may be rephrased

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Warning and Removal

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- DMs have sole discretion to determine if decorum expectations have been violated
- DMs should provide one warning prior to removal, unless decorum violation is egregious
- If an Advisor is removed, the party may select a different Advisor, or the institution will provide one
  - Reasonable delays may be appropriate to find a new Advisor
  - A party may not serve as their own Advisor
- Any removal will be documented

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Chairperson/Single Decision-Maker Role and Responsibilities

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Responsibilities in the Process

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	Pre-Hearing	Hearing	Deliberation
Panelists	▪ Review investigation report and evidence file ▪ Ensure no conflict of interest ▪ Prepare questions	▪ Listen actively ▪ Ask/pose questions ▪ Assess credibility	▪ Analyze relevant evidence ▪ Balance credibility and reliability ▪ Determine outcome, sanctions, remedies
Chair/DM	**Panelists' tasks plus:** ▪ Pre-hearing meeting ▪ Technology training ▪ Witness list ▪ Evidence review and redaction (if applicable)	**Panelists' tasks plus:** ▪ Follow procedures ▪ Manage questioning, including relevance determinations ▪ Consult with counsel/TIXC	**Panelists' tasks plus:** ▪ Lead discussion ▪ Take notes ▪ Draft rationale/outcome letter

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Chair/Single Decision-Maker Responsibilities

- Follow the hearing procedures
- Guide other DMs on procedures
  - Navigate issues that are not specified in policy
- Enforce decorum expectations
- Manage Advisors
- Make relevance determinations
  - Parties/witnesses pause before responding to a question
  - Chair makes relevance determination, states rationale

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Chair/Single Decision-Maker Responsibilities (Cont.)

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- Clarify with TIXC prior to hearing whether the Chair:
  - Determines relevance for questions from the DM panel and Advisors
  - Permits Advisors to “argue” whether a question should be deemed relevant or irrelevant
  - Asks questions of parties and witnesses before or after Advisor-led questioning
- Determine how to provide an opportunity for follow-up questions
- Facilitate the deliberation discussion
- Lead rationale writing/outcome letter process
- Address evidence that DMs should not rely upon

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Pre-Hearing Meetings

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Pre-Hearing Meetings: Purpose and Format

- ATIXA recommends **pre-hearing meetings**; not required by Title IX Regulations
  - Check whether institutional policy describes pre-hearing meetings
- Address questions, concerns, expectations prior to hearing
- May hold several separate meetings with each party and their Advisor
  - May hold combined meetings
  - Summarize decisions in a memo to the parties and Advisors, as needed
- May flow more efficiently if Advisors are able to speak freely with the Chair/DM
- May be virtual or in-person

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Pre-Hearing Topics

- Address scheduling questions or concerns
- Answer questions about procedures, including cross-examination
- Discuss interpretation, translation, or accommodation needs
- Reinforce expectations and decorum rules
- Review:
  - Technology
  - Flow and logistics for before, during, and after the hearing

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Pre-Hearing Meeting Discussions

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Pre-hearing meetings can provide an opportunity to:

- Discern whether parties intend to ask questions of any or all witnesses, or whether a party intends not to testify at the hearing
- Invite parties to submit questions in advance, but this is not required
- Discern any conflicts of interest/vet recusal requests
- Consider any questions regarding relevance of evidence or proposed questions and may make pre-hearing rulings
- Whether to redact directly related or not relevant information
  - If redaction is necessary, may make a statement on the record that the DM(s) will not consider the evidence
- Address expectations or issues regarding new evidence consistent with institutional policy

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Decision-Making Phase: Skills and Practical Application

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Building Rapport

- Be hospitable, but small talk may come across as inappropriate
- Be clear about your role and transparent about the process
  - A hearing script may be helpful
- Maintain a calm demeanor
- Listen actively
- Monitor your body language
- Treat all participants with empathy and respect

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Active Listening

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PAY ATTENTION
- Focus on responses
- Avoid interrupting

SHOW YOU ARE LISTENING
- Communicate nonverbally
- Avoid distractions

PROVIDE FEEDBACK
- Speak with reflective tone
- Seek clarification

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Skills: Working with Advisors

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Party vs. Institution Appointed

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- Title IX Regulations imagine two types of Advisors:

Party-Selected Advisor

- Title IX Regulations (and VAWA) specify that a party may select an "Advisor of choice"
- May accompany the party throughout grievance process
- May be present for every meeting, interview, and hearing
- Institution may not limit the choice

Institution-Appointed Advisor

- Required to appoint only for the hearing
- If appointed early enough, may accompany the party throughout grievance process and be present for every meeting, interview, and hearing
- Appointed if party has not chosen an Advisor by the hearing, if cross-examination to occur

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Advisors Role

- Required under Title IX Regulations for purposes of cross-examination at a live hearing
- No training mandate
- Can be an attorney, but attorney not required
- May regulate Advisor participation, so long as applied equally to all parties

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Advisor Engagement

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The Advisor may support their advisee with:

- Understanding and navigating phases of the Title IX Grievance Process
- Strategic issues, such as whether to:
  - File a Formal Complaint
  - Participate in Informal Resolution (IR)
- Accessing supportive measures, community resources, and advocacy services
- Participating in the investigation, including review and comment on the investigation report
- Preparing for the hearing
- Conducting any questioning/cross-examination at the hearing (can only be done through Advisor)
- Appeal procedures and appeal support

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Managing Advisors

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- Advisors approach the role differently, depending on training and background
  - All Advisors need management, not just attorney Advisors
- Be firm, but flexible
- De-escalate conflicts
- Advisor may be removed if disruptive, after warning
- Decorum expectations
  - Generally, parties should speak for themselves
  - Hearings are not court processes

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Skills: Handling New Evidence at the Hearing

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New Witnesses or Information

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- Parties should provide all evidence to the Investigator prior to the completion of the Final Investigation Report
- When new relevant evidence or witnesses are presented during the live hearing, they should only be admitted to the record, if:
  - All parties and DM assent to inclusion without remanding the Formal Complaint back to the Investigator;
  - Evidence is not duplicative of evidence already included; **and**
    - New evidence was either not reasonably available prior to the conclusion of the final investigation report; **or**
    - The failure to provide it in a timely manner was not the result of bad faith by the parties, witnesses, or others

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New Witnesses or Information (Cont.)

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- If the criteria are not met, but the evidence is materially relevant, the DM has discretion to:
  - Delay the hearing
  - Remand the Formal Complaint back to the Investigator for further investigation or analysis
  - Allow the parties time to review and comment on the new evidence
- If the evidence is deemed not relevant, the DM may proceed with the hearing without allowing the new evidence

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Skills: Questioning

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Decision-Maker Questioning

- May ask questions to ensure a **comprehensive** understanding of information and evidence gathered during the investigation:
  - Including asking additional questions about relevant evidence regarding what happened during the incident(s)
  - DM does not have to ask questions but must have the opportunity to do so
    - If necessary to assess credibility, DM should ask

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Asking Questions

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Appropriate Questions:

- Have clear intent
- Are relevant to the allegations or credibility
- Are thoughtfully phrased
- Are **not** multi-part or leading

Questioning Goals:

- Learn the facts
- Establish a timeline
- Understand each party and witness's perspective
- Eliminate vagueness and gaps

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Questioning Strategies and Pitfalls

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DO

- Ask short, precise questions
- Use open-ended questions
- Repeat and clarify the language the parties and witnesses use
- Prepare questions from policy definitions
- Listen carefully, ask related follow-ups
- Look for cued or rehearsed answers

DON'T

- Ask accusatory or argumentative questions
- Use a critical or sarcastic tone
- Develop compound or confusing questions
- Offer evaluative responses
- Sanitize participants' language
- Rely solely on closed-ended questions
- Chase "gotcha" moments

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Questioning Tips

- Outline questions in advance, but remain flexible
  - Allows for comprehensive and thorough approach
  - If working with other DMs, consult on questions to reduce potential bias
- Prior to asking a question, consider:
  - Is the answer already available in the investigation report?
  - What are the relevant issues?
  - What do I need to know?
  - Why do I need to know it?
  - What is the best way to ask this question?

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Asking Difficult Questions

- DMs will need to ask difficult questions about sensitive topics
- Acknowledge if a topic may be hard to discuss
  - DO NOT avoid asking questions because the topic is difficult to discuss
- Provide opportunities to take breaks
- DMs can show empathy **without** sacrificing their impartiality
  - Offer an empathetic response equitably to all parties and witnesses during the hearing, so that there is no appearance of favoritism

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Trauma-Informed Questioning

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ATIXA Position Statement: Application of trauma-informed practices in our field has gotten ahead of the actual science

- **ATIXA Recommends** incorporating trauma-informed **questioning** practices without allowing trauma to influence the evaluation of credible, relevant evidence
  - DM must only assess the available relevant evidence
  - DM must avoid substituting trauma indicators for evidence
  - Trauma is neutral; it neither enhances nor detracts from proof
- Assume that any party or witness could have trauma; therefore, treat everyone with sensitivity

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Credibility in the Hearing

- A key purpose of a hearing is to afford an opportunity to assess credibility
- DMs and/or Advisors can explore credibility through questioning, to the extent credibility is in dispute and relevant to evaluating one or more allegations
- Fundamental to due process
- Distinguish performance or presentation skills from believability

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Activity: Question Asking

- Using the **Sample NOIA** and **Sample Investigation Report** in the course lobby:
  - Work independently or in small groups
  - Review the relevant materials
  - Draft five questions a DM should ask the Complainant
  - Provide a rationale for asking each question
- This activity illustrates the process of developing questions prior to the hearing based on an independent review of the report

Spend no more than **half the allotted time** reading the activity materials – then move on to writing questions and their supporting rationales

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Skills: Managing Questioning

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Managing Questioning

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- Advisors may ask relevant questions of parties and witnesses
  - **Direct questioning**
    - E.g., Respondent's Advisor questioning Respondent
    - Valuable way to elicit important information
    - Check institutional policy to determine whether direct questioning permitted
  - **Cross-examination**
    - E.g., Respondent's Advisor questioning Complainant
- All questions must elicit relevant information
- DMs and Advisors should ask all questions they have, even if a party/witness refuses to answer

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Cross-Examination

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- Parties may opt for their Advisor not to ask any questions
- Advisors may not refuse to ask relevant questions their advisee wishes for them to ask
  - Otherwise, the institution must appoint an Advisor who will ask those questions

Regulations Imagine:

Advisors will not do more than repeat or rephrase questions framed by the party

In Reality:

Advisors are much more active and engaged

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Cross-Examination Challenges

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- A party or witness may not attend the live hearing, despite participating in the investigation
- A party or witness may choose to not answer one or more questions
- DM(s) may not draw an inference regarding responsibility based **solely** on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions
  - Possible missed opportunity for corroborative or consistent testimony
  - Refusal to answer questions may impact credibility or reliability, but a DM may draw no inferences solely from non-participation

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Cross-Examination Mechanics

- Advisor asks question; party/witness pauses before answering
- DM determines relevance, then party/witness answers
  - Permit relevant questions and follow-ups, including those challenging credibility
  - Disallow questions that are not relevant and state your rationale
- Unduly repetitive questions are not relevant
  - Reject questions already answered in the hearing unless expected to lead to additional relevant evidence
  - Advisors should not repeat questions already asked by DM
  - May ask questions answered in investigation report

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Relevance Refresher

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- Evidence is generally considered **relevant** when it helps determine:
  - Whether the Respondent violated policy, and/or
  - The credibility of any evidence, including a party or witness statement
- The Investigator initially evaluates relevance, but the DM ultimately decides
- All relevant evidence must be objectively evaluated and considered
  - **Inculpatory:** tending to suggest a finding of responsible
  - **Exculpatory:** tending to suggest a finding of not responsible
- In the decision-making phase, parties may dispute the Investigator's initial relevance determinations

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Activity: Relevance Determinations Part I

- Using the **Questions for Respondent** document in the lobby and following the directions in the document:
  - Work independently or in small groups
  - Review the **Sample NOIA Excerpts** or **Sample Investigation Report Excerpts** as needed
  - Make relevance determinations for each question in the **Questions for Respondent** document and explain your rationale

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Activity: Relevance Determinations Part II

- Course faculty will act as **Respondent's Advisor** posing questions to the **Complainant** aloud
  - Taking turns, participants will act as Chair and make relevance determinations aloud and explain rationale behind the decision
- This activity demonstrates the cross-examination mechanics

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Deliberation

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What is Deliberation?

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- Post-hearing discussion of relevant evidence
  - Analyze relevant evidence
  - Determine credibility
  - Assign evidentiary weight
  - Evaluate reliable, relevant evidence considering standard of evidence
- If using a panel, check policy to see if consensus or majority is required
- Assign sanctions, as appropriate

Finding
Whether the conduct occurred as alleged, by the standard of evidence

Final Determination
Whether the conduct that is proven to have occurred violates policy

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Panel Considerations

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- Develop deliberation guidelines
- Provide an opportunity for each DM to independently assess the evidence and share their viewpoint
  - Be aware of power dynamics within the panel
  - Avoid any outside influence or commentary
  - Select one DM to take notes
- Choose one DM, generally the Chair, to compose initial drafts
  - All DMs should approve of final draft
  - May seek limited input/feedback from TIXC or legal counsel
- May consult TIXC on process-related questions

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Communicating Outcomes

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Communicating a Decision

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- DMs communicate their decision to the TIXC in writing
- TIXC will then:
  - Deliver decision to sanctioning body, if process is bifurcated, or arrange for DM to meet with those who have sanctioning authority
  - Deliver decision to parties simultaneously in writing
    - Sharing the decision does not violate FERPA or employment record privacy
  - Inform relevant stakeholders, as appropriate
    - Residence Life
    - Campus Security/Police
    - Legal Counsel
    - Employee's supervisor

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Recordkeeping and Documentation

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Recordkeeping

DM may need to compile all decision-making and hearing-related documentation to provide to the TIXC after the hearing

- **Timeline** of decision-making process
- **Interactions** and pre-hearing meetings with parties, other DMs, TIXC, etc.
- **Determination** with any associated sanctions
- **Rationales** for all determinations
- **All work product** from the DM and hearing process
- **Recording/transcription**

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Decision-Maker Notes and Drafts

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- A hearing creates opportunities to generate paperwork and paper trails
- Be judicious with notetaking, annotating, draft writing, and communication
- Anticipate that the parties (or others) could see your work product
  - Student FERPA rights
  - Employee personnel record rights
  - Litigation or agency investigations
- TIXC should provide guidance and clear expectations about saving work product, including personal notes

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Questions?

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Stay Connected to ATIXA's Community

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- Exchange ideas through the **ATIXA Listserv**
- Build skills with **20-Minutes-to…Trained** videos
- Get practical guidance at **Time with IX**
- Streamline your work with **TIXKit** templates
- Schedule a **Training and Certification course**
- Expand your network with **Mentor Match** and **Community Connections**
- Explore **Thought Leadership** from ATIXA experts
- Stay informed with **ATIXA's "More Likely Than Not" Podcast**
- Refer Members. Earn **Rewards**.

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