

Module 2: Formal Complaints,

r, Melinda Grier Consulting
e, Partner, Holland & Knight LLPLP

The Formal Complaint – Consolidation

- **May** consolidate formal complaints if sexual harassment allegations:
 - Are against more than one respondent, or
 - Are by more than one complainant against one or more respondents, or
 - Are by one party against the other party (*i.e.*, "counterclaim").
- **As long as** the allegations of sexual harassment arise out of the same facts or circumstances and are so intertwined that the allegations directly relate to all of the parties.

§106.45(b)(4)

Written Notice of Allegations

Written notice of the allegations to the parties must include:

- Notice of the to the parties

Mandatory Dismissal of a Formal Complaint



If the conduct alleged:

- Would not constitute Title IX sexual harassment even if proved,
- Did not occur in the IHE's education program or activity, or
- Did not occur in the United States.

§106.45(b)(3)(i)

Discretionary Dismissal of a Formal Complaint

If:

- Complainant notifies the Title IX Coordinator in writing of their wish to withdraw the complaint or any allegations in it,
- Respondent is no longer enrolled or employed by the IHE, *or*
- Specific circumstances prevent sufficient gathering of evidence to reach a determination.

§106.45(b)(3)(ii)

INVESTIGATIONS &
GRIEVANCE
PROCEDURES

InvestigG Tf1c009 (Soc 2) TT01f02.000 E02203/C (consider) Tf1c009 (Soc 2) TT01f02.000 E02203/C2disclose Tf1c009 (Soc 2) TT01f02.000 E02203/C



Investigative Report

- Must fairly summarize relevant evidence.
- IHE must send the investigative report to the parties (and their advisors) at least 10 days before the hearing for their review and



Relevancy Determinations

- Before a party or witness answers a question, the decision maker must determine whether it is relevant and explain any decision to exclude the question as not relevant.
- Questions and evidence about complainant's sexual predisposition or prior sexual behavior, unless to prove that someone other than respondent committed the conduct alleged or, if concerning specific incidents of complainant's conduct with respondent, offered to prove consent, are not relevant.

§106.45(b)(6)(i)

Relevancy Determinations (cont.)

Preamble:

- It is enough for the decision maker to say the question is not probative of any material fact.
- The decision maker may not require questions in writing in advance of hearing.
- IHE may have rules precluding the parties (or advisors) from challenging relevancy decisions during the hearing.
- May only exclude questions based on relevance.
 - Not because they are unduly prejudicial, concern prior bad acts or seek character evidence.
 - Questions may be deemed not relevant when they are duplicative of other evidence already in the record.
 - But, the decision maker must exclude (a) medical, etc. records if the party has not consented in writing; and (b) statements when the party/witness is not subject to cross.

Excluding Statements from Consideration

If a party or witness is not subject to cross examination, the decision maker may not rely on their statement in determining responsibility.

- But, the decision maker may not draw any inferences as to responsibility as a result

Hearing Decorum

May have rules that, *e.g.*:

- Require advisors be respectful and prohibit abusive/intimidating questioning.
- Limit or prohibit objections to relevancy determinations.
- Govern the timing and length of breaks to confer, and prohibit disruption.
- Require that *parties* make openings and closings, if any, and set time limits.

Standard of Evidence

May use ifse brEMay

Hearing Outcome / Written Determination (cont.)

The determination becomes final on the date the IHE provides the parties with the written determination of the appeal if any, or the date on which an appeal would no longer be timely, if there is no appeal.

§106.45(b)(7)



of 01/11/2017 10:26:08 AM

of

S

IHEe the

Ac IHE the lonj /C2_y7 aw3 0 Td (the)Tj /C2_1 1 Tf 0 Tc 1.361 0 Td <0003>Tj /TT1 1 Tf -0.0008 Tc -26.809Td [(lonj /C2_y)f nob1 Tf 0 Tc 1.361 0 Td <0 25 Tj /TT1 1 Tf -0.0008 Tc 0.23 04T

Note

The content of this presentation is to provide news and information on legal issues and all content is provided for informational purposes only and should not

