Decision-Makers: A Deep Dive into Serving in this Critical Role
Massachusetts Association of Community Colleges, Day 2

Jody Shipper
October 2021
Jody Shipper is a nationally-recognized subject-matter expert with more than 20 years of experience in Title IX and related fields. She is known for her insight into best-in-class programming, policies, and community outreach aimed at addressing sexual misconduct on campus. She lectures extensively at universities and conferences throughout the U.S. on Title IX, VAWA, harassment, and implementation of best and emerging practices. Jody received her J.D. from the University of California, Hastings College of Law and her bachelor’s degree from Georgetown University’s School of Foreign Service.
Pre-Hearing
It is time to schedule the hearing...

The investigation is complete!

Rapid Fire #1

Using the chat box, share your “To Do” List for coordinating the hearing.
<table>
<thead>
<tr>
<th>Rapid Fire Recap</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arranging for space</td>
</tr>
<tr>
<td>Arranging technology</td>
</tr>
<tr>
<td>Advisors assigned?</td>
</tr>
<tr>
<td>Scheduling pre-hearing meetings with parties &amp; advisors</td>
</tr>
<tr>
<td>Scheduling prehearing meetings of the panel</td>
</tr>
<tr>
<td>Providing report and record to panel and parties</td>
</tr>
<tr>
<td>Scheduling the hearing</td>
</tr>
<tr>
<td>Accommodations</td>
</tr>
<tr>
<td>Call for written submissions</td>
</tr>
<tr>
<td>Conflict checks</td>
</tr>
<tr>
<td>Other considerations?</td>
</tr>
</tbody>
</table>
Dear Decision-Maker,

It is now one week prior to the hearing. You have already received and reviewed the report and record and you will be meeting with the rest of the panel (or spending some quite time by yourself) to prepare for the hearing.

Use the chat box to share what you plan to discuss/think about during the prehearing meeting.

You and your team did a great job scheduling the hearing and arranging all the logistics!
Rapid Fire Recap

- Development of introductory comments
- Initial discussion of the evidence
- Areas for further exploration
- List of questions for the parties and the witnesses
- Anticipation of potential issues
- Logistics
- Review of any written submissions by the parties
- Other considerations?
Recap

Logical connection between the evidence and facts at issue

Assists in coming to the conclusion – it is “of consequence”

Tends to make a fact more or less probable than it would be without that evidence
Can You Have a General Rule About Evidence In Title IX Investigations?

No
Evidence That Will Not Be Considered

Rape Shield Protections

Privileged Information
Not a Court of Law

- Not making complex legal arguments
- Are not treating parties with hostility
- Rules of evidence outside of Title IX regulations do not apply
- Not looking for the “gotcha” moment
Decorum at the Hearing

A recipient may adopt rules of order or decorum to forbid badgering a witness, and may fairly deem repetition of the same question to be irrelevant.

A postsecondary institution recipient may adopt reasonable rules of order and decorum to govern the conduct of live hearings.

Schools “retain flexibility to adopt rules of decorum that prohibit any party advisor or decision-maker from questioning witnesses in an abusive, intimidating, or disrespectful manner.”
How do I Know which Questions to Ask?
Foundational Questions to Always Consider Asking

- Were you interviewed?
- Did you see the interview notes?
- Did the notes reflect your recollection at the time?
- As you sit here today, has anything changed?
- Did you review your notes before coming to this hearing?
Did You Also Cover . . . ?

- On campus?
- Program or Activity?
- In a building owned or controlled by a recognized student organization
- Substantial control over respondent and context
- Complainant was attempting to access program/activity
Samantha and Oliver
Break Out! #1

Say hi!

Pick a scribe

Discuss
- Develop Questions for Hearing Panel to ask...
  - Group 1: Complainant
  - Group 2: Respondent
  - Group 3: Witnesses

Come back prepared to discuss
- I will call on each group one by one
Report Out

Develop Questions for Hearing Panel to ask...

Group 1
- Complainant Samantha

Group 2
- Respondent Oliver

Group 3
- Witness 1 Emma
- Witness 2 Charlie
- Witness 3 Nancy McPhee
- Witness 4 Tom
Break Out! #2

Say hi again

Pick a scribe

Discuss

• Make determinations on questions and cite rationale
  • Group 1: Questions submitted by Complainant’s Advisor for Respondent, Tom, and Charlie
  • Group 2: Complainant’s questions for Emma and Professor McPhee, as well as Respondent’s questions for Complainant.
  • Group 3: Questions submitted by Respondent’s Advisor for Tom, Emma, and Professor McPhee

Prepare to report back
Questions for Respondent (Group 1)
1. How often do you stalk girls?
2. Isn’t it true that you do this all the time?
3. Do you keep stalking me because you’re OCD?
4. Have you ever been removed from another group project because you could not get along with others?
5. Do you enjoy scaring women?
6. How often do you imagine that women like you?
7. When you first talked to me about your girlfriend breaking up with you, who was your girlfriend or did you make that up just so you could talk to me?
8. Why did you keep offering to work with Emma in person instead of by Zoom?
9. Did you have a thing for Emma?
10. Did you and Emma ever end up hooking up?

Questions for Tom (Group 1)
1. Can you think of any reason for Oliver to be hanging out in the garage with flowers, other than to frighten Samantha?
2. Oliver was pretty creepy, wasn’t he?
3. Did you see him throw an object at Samantha?
4. Do you believe he was acting in self defense when he threw the object?
5. Do you think there was any good reason for him to throw anything at her?
6. You said Samantha is really pretty and guys hit on her a lot. Don’t you think someone who has had a lot of male attention would be in the best position to know which kind of male attention is acceptable, and when it is stalking?
Questions for Charlie (Group 1)

1. So are you the one you suggested he stalk her social media to find a food or drink she liked?
2. Is that your M.O. with girls?
3. Why do you think Samantha and Oliver had a plan to get together one night and talk?
4. Do you know for sure there was a confirmed plan?
5. What proof did Oliver give you to prove there was a real plan, and not an imaginary one?
6. You said Samantha was “rude” because you could not do a lot of work on the group project. What did you mean by that?
7. How long have you known Oliver?
8. Isn’t it true you just don’t like Samantha?
9. Have you ever been accused of sexual harassment or stalking?
10. Isn’t it true that you would say anything to support a guy who has been accused?
Report Out, Group 2

Questions for Emma (Group 2)
1. Did Oliver seem fixated on Samantha when you were all part of the class project?
2. Did Oliver insist that the two of you work together in person instead of online?
3. How often did he force you to work in person with him after classes?
4. Were you afraid of him?
5. Why did you lie to Emma and tell her that Samantha was “really troubled” and “having personal issues”?
6. What did you mean by that?
7. Do you often tell lies?

Questions for Professor McPhee (Group 2)
1. Why didn’t you tell him to stop stalking me?
2. Weren’t you supposed to forward my Title IX Complaint to the Coordinator and don’t you think that if you had done so, I would have been spared his stalking?
Questions for Complainant (Group 2)

1. Isn’t it true you found me attractive after we first met?
2. You wanted to hook up with me, didn’t you?
3. You made this complaint only because you wanted your boyfriend’s attention, isn’t that true?
4. You couldn’t complete your end of the project without me, right?
5. You kept calling me and asking me for help, isn’t that true?
6. You told the investigator you imagined seeing me everywhere. Where do you think you saw me?
7. Why were you always thinking of me?
8. And how often do you hallucinate?
9. Do you have any imaginary friends?
10. How often do you imagine seeing people who are not there?
11. How often has this happened in the past?
12. Why did you ask your boyfriend to walk you to your car when you knew you were supposed to meet me there?
13. You said you were frightened by seeing Oliver in the parking garage. Did he have a weapon? Did he try to touch you? Did he try to hit you? Describe each and every way he tried to attack you that night.
Questions for Tom (Group 3)
1. When you saw Oliver in the parking garage, were you frightened?
2. What, specifically, did Oliver do that was frightening?
3. Does Samantha always over-react?
4. Does Samantha over-react when she is trying to get attention from you?
5. What, specifically, did Oliver throw at her?

Questions for Emma (Group 3)
1. Were you frustrated when working on the group project?
2. Why?
3. Why did you think Oliver was more frustrated than others?
4. Why did you think he was “taking it out” on Samantha if he was frustrated with the whole group?
5. Are you and Samantha friends?
6. Did Samantha tell you what to say in the investigation?
7. Are you one of those “Believe all victims” people?
Questions for Professor McPhee (Group 3)

1. Isn’t it true that Samantha was doing poorly in class?
2. What grade did she have up to the project and what grade did she get on the project?
3. After she made this complaint, did she get some special treatment or accommodation in your class?
4. Isn’t it true that, once you told her she would have to do the work, she suddenly made up a story about Oliver to paint him in a bad light?
5. Isn’t it true that, before she told you this lie, you had no reason to think poorly of Oliver?
Evidentiary Issues
Evidence.
Is it . . .

Relevant

Reliable?

Does it matter (is it due any weight)?
Relevance
Is Not . . .

Strength of the evidence
Believability of the evidence

Based on type of evidence: circumstantial, direct
Based on complicated rules of court
What about Polygraph examination

Private investigator’s interview notes

Declarations submitted under penalty of perjury
What about

An expert report discussing low incidence of false reports

An expert report discussing bias against male complainants

An expert report on reasons why blackouts are not evidence of incapacitation
What about

- News article that colleges are failing complainants
- News article that colleges fail to provide due process, are biased
- News article about a related criminal case
©Grand River Solutions, Inc., 2021. Copyrighted material. Express permission to post training materials for those who attended a training provided by Grand River Solutions is granted to comply with 34 C.F.R. § 106.45(b)(10)(i)(D). These training materials are intended for use by licensees only. Use of this material for any other reason without permission is prohibited.