



Title IX and SGD Hearing Panel Training for Chairs

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Title IX and SGD Hearing Panel Training for Chairs

Content Warning

This presentation will discuss sexual violence, sexual harassment, and other acts of sex and gender discrimination (SGD). If those topics can be triggering for you, please practice self-care and/or reach out to your support system as needed.

If you need someone to talk to confidentially, you can contact the Guadalupe Valley Family Violence Shelter at outreach@safesequin.org or

830-372-2780 or 800-834-2033 (24/7)

or the RAINN National Sexual Assault Hotline at 800-656-HOPE (24/7)



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Review of Part I

- **What's New with Title IX (TIX) and Sex/Gender Discrimination (SGD)?**
 - New Personnel; New Definitions; New Requirements; New Processes
- **TLU Policies and Processes**
 - Definitions; Investigation Process; Disciplinary Process
- **Advising Basics**
 - Expectations; Role in Meetings; Role in Hearing Panels



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Review of Part II

- **Roles and Responsibilities of Panel Members**
 - Understanding Implicit Bias and Objectivity
 - Understanding Trauma-Informed Processes
 - Questioning
 - Assessing Credibility
 - Evaluating Evidence
- **Resolution/Disciplinary Hearings**
 - Hearing Process
 - Preponderance of the Evidence
 - Deliberation and Determination
 - Appropriate Remedies
- **Appeals**
- **Remaining Training Schedule**



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Training for Chairs**

Overview of Part III (Chairs Only)

- **Resolution/Disciplinary Hearings**
 - Title IX vs. SGD Hearings
 - **Pre-Hearing Meeting (TIX Only)**
 - Hearing Process
- **Evaluating and Ruling on Evidence**
 - Categories of Evidence
 - **Definition of Relevant Evidence**
 - When Evidence Should Be Excluded
 - **When Evidence Should Not Be Excluded**

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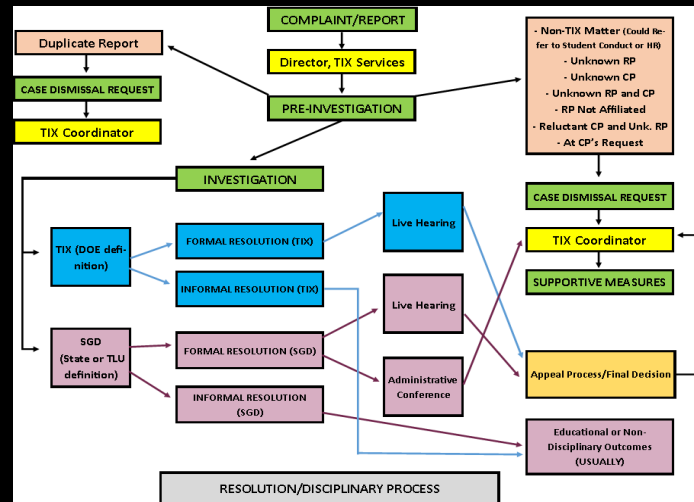


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Resolution/Disciplinary Hearings

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TIX Hearings vs. SGD Hearings

- **TIX Hearings = Formal complaint that meets Title IX criteria**
 - **Advisors Required**
 - **Pre-Hearing Meeting**
 - **Cross-Examination Questions**
 - **Can't use testimony of parties that don't submit to cross-examination**
- **SGD Hearings = Formal complaint that doesn't meet Title IX criteria**
 - **No Advisors Required**
 - **No Pre-Hearing Meeting**
 - **No Cross-Examination Questions, but parties may submit questions that panel may ask (at their discretion)**
 - **Can use any testimony from hearing or investigation process**

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Pre-Hearing Meeting (TIX Hearings Only)

- **Will be held prior to hearing (via Zoom, but not recorded)**
- **May include Advisors only (or parties may choose to attend, as well)**
- **Steps**
 - **1) Discuss hearing procedures and answer procedural questions**
 - **Advisors may only cross-examine other party, witnesses, and Investigators**
 - Cross-examination questions will be directed to the Chair via Chat (virtual hearing) or in-writing (non-virtual). If the question is permitted, the Chair will then read the question to the party or witness and direct them to answer. If the question is not permitted, the Chair will state that the question is disallowed and the reason (irrelevant, repetitive, abusive, or asks for privileged information)
 - **Advisors will not make arguments to the hearing panel**
 - Advisors may not object. The parties themselves must object to a question or answer
 - **2) Discuss any stipulations that may be made to expedite the hearing**
- **3) Ask advisors and/or parties if they wish to argue that any evidence included in the final investigation report is not relevant or should not be considered**
 - **Rule on relevance of evidence (MAY wait and submit ruling in writing, prior to hearing)**
- **4) Resolve other matters raised in the party's written responses to the final investigation report**
- **5) Discuss witnesses (including Investigators) one-by-one**
 - **Does this witness need to appear (relevant testimony)?** Investigators may summarize a witness's testimony if neither party has cross-examination questions
 - **What questions do you plan to ask this witness?**
 - **Rule on relevance of questions or provide guidance to phrasing of questions (MAY wait and submit ruling in writing, prior to hearing)**
- **6) Discuss the other involved party (CP or RP)**
 - **What questions do you plan to ask this party?**
 - **Rule on relevance of questions or provide guidance to phrasing of questions (MAY wait and submit ruling in writing, prior to hearing)**

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TIX/SGD Hearing Process

- **Opening**
 - **Introductions, Respondent's Rights**
- **Review of the Process**
 - **Purpose of the Panel**
 - **Honesty Statement**
- **Policy Violation Charges**
 - **RP's Plea for Charges**
- **Investigators' Testimony**
 - **Summary of Report**
 - **Panel Questions**
 - **Cross-Examination Questions (CP Adv; RP Adv)***
- **Complainant's Testimony**
 - **Panel Questions**
 - **Cross-Examination Questions (RP Adv)***
- **Witness(es)' Testimony**
 - **Panel Questions**
 - **Cross-Examination Questions (CP Adv; RP Adv)***
- **BREAK**
- **Respondent's Testimony**
 - **Panel Questions**
 - **Cross-Examination Questions (CP Adv)***
- **Closing Statements**
 - **Administrative Hearing Officer**
 - **Complainant**
 - **Respondent**
- **BREAK**
- **Deliberations**

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Questions on Hearing Process?

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Evaluating and Ruling on Evidence

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Evaluating and Ruling on Evidence

■ Categories of Evidence

■ Inculpatory vs. Exculpatory

- **Inculpatory** - evidence which purports to show that a Respondent is responsible for a violation/incident
- **Exculpatory** – evidence which purports to show that a Respondent is NOT responsible for a violation/incident

(Source: ATIXA Whitepaper “The Seven Deadly Sins of Title IX Investigations, 2016)



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Evaluating and Ruling on Evidence

■ Definition of Relevant Evidence

- “Evidence is relevant if:
 - a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
 - b) the fact is of consequence in determining the action.”

(Source: *Federal Rules of Evidence*, Rule 401)

- **Probative Evidence** – makes a fact more likely (or less likely) to be true
- **Material Evidence** – sheds light on what matters in deciding the case
 - **My Cousin Vinny** “grits” scene (<https://www.youtube.com/watch?v=T24HnB7N8>)
 - The question about instant grits is **probative** (makes the “five minutes” he said elapsed from the defendants entering the store until hearing shots less likely to be true) and **material** (showing it possible that two other individuals entered the store and shot the clerk)



(Source: “Hiring and Training Competent Title IX Hearing Officers” (Draft), *Missouri Law Review*, 85(Winter 20-21))



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Evaluating and Ruling on Evidence

- **When Evidence Should Be Excluded**
 - **Rape Shield** – questions regarding CP’s sexual history or prior sexual behavior are NOT relevant, unless: 1) offered to prove someone else other than RP committed conduct; or 2) previous history with RP specifically offered to show/prove consent
 - **Legally Recognized Privilege** – communications with: 1) someone in a privileged occupation (lawyer, doctor, priest); 2) made in confidence; and 3) made to facilitate that professional service are excluded, unless party waives that right

(Source: “Hiring and Training Competent Title IX Hearing Officers” (Draft), *Missouri Law Review*, 85(Winter 20-21))



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Evaluating and Ruling on Evidence

- **All Other Evidence May Not Be Excluded * ***
 - **** But Panel may decide the proper weight to give to such evidence**
- Including:
- 1) **Prior bad acts or evidence of a party’s general character**
 - 2) **Party statements made during mediation discussions**
 - 3) **Out-of-court statements that constitute hearsay**
 - 4) **Evidence that is cumulative, duplicative, or unduly prejudicial**

(Source: “Hiring and Training Competent Title IX Hearing Officers” (Draft), *Missouri Law Review*, 85(Winter 20-21))



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Questions on Evaluating and Ruling on Evidence?

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How to Report a TIX or SGD Allegation?

- **By Phone (24/7): Campus Conduct Hotline 866-943-5787**
- **Online (24/7): MyTLU > Public > File a Complaint > Incident Reporting Form**
or
my.tlu.edu/TIXreport
- **In-Person (Email/Voicemail 24/7): titleix@tlu.edu; Title IX Coordinator; Deputy Title IX Coordinators; Director, TIX Services**

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To Contact TIX Services

- **Email: mhunt@tlu.edu**
- **Call: 830-372-6327**

