
TITLE IX GRIEVANCE PROCESS TRAINING

Dickinson College

Title IX and Sexual Respect Office

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This document has been produced as an introduction to the Title IX grievance process. Nothing in this document supersedes any College policy and in the event of any conflict, College policy shall apply. Much of the guidance in this document is generic and therefore not universally applicable.

USING THIS MANUAL

This training manual is intended to provide an introduction to the procedures and techniques which will be used in the Title IX grievance process. Before reading this manual, it is expected that you have read and understood Dickinson’s *Sexual Harassment and Misconduct Policy (SHMP)*, which is available in the Campus Policies Manual, under College Wide Policies in the Dickinson Gateway:

https://www.dickinson.edu/download/downloads/id/10502/sexual_harassment_and_misconduct_policy.pdf

During the course of a Title IX grievance process, you may find it necessary to review specific aspects of the policy to refresh your memory. It is advisable to continue to access the policy directly through the Gateway, rather than saving the file locally. This will ensure that you are always reviewing the most up-to-date version of the policy. For those who prefer printed copies, there is an “updated” date on the first page of the policy that could be checked against a paper record.

This manual is divided into two sections. The first section outlines the grievance process generally. The second section contains specific guidance for each of the three distinct roles covered by this training.

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INTRODUCTION TO THE PURPOSE AND BACKGROUND OF A TITLE IX GRIEVANCE

An investigation is the process used to examine an allegation or complaint of sexual or gender-based misconduct including (but not limited to) sexual assault, fondling, dating violence, domestic violence, stalking, and retaliation, in order to determine whether the College's SHMP has been violated. At the conclusion of the formal investigation and hearing process, the College will make a determination as to whether a violation(s) occurred, and then decide how best to address any violation, including the imposition of sanctions and/or remedies as appropriate. The College's investigation is an administrative proceeding and not a legal one. This means that the investigation determines whether college policy has been violated, not whether the law has been violated.

As such, many of the rules and procedures which would govern a legal procedure will not be applicable to an investigation in this process. The Investigator the College assigns to conduct the investigation, whether an internal or external investigator, does not act as an Advisor or an advocate. Neither will they provide advice to the College with respect to what disciplinary actions, if any, should be taken as a result of the allegation. The Investigator is an impartial, objective and neutral fact-finder, and not an agent for another interest.

The process used for a Title IX investigation is unique. Parts of the process have been designed by College Officials, with input from representatives from various employee and student groups. But much of the process is the result of regulations and guidance issued by the U.S. Department of Education's Office for Civil Rights.

A GUIDE TO THE ROLES AND TITLES

Complainant: An individual(s) who is reported to have been subject to alleged sexual or gender-based misconduct and seeks a resolution process.

For people more familiar with legal proceedings than Title IX proceedings, it may be tempting to call the Complainant the "victim." However, that is not an appropriate term for this process. It is important to avoid using terminology which could pre-dispose anyone to or even suggest a bias.

Respondent: The individual(s) or organization(s) who is alleged to have violated the Sexual Harassment and Misconduct policy and against whom a complaint has been brought to the attention of the College.

As noted in the definition, a Respondent can be an individual, multiple individuals, or an entire group, such as a student organization or a College department. Respondents are always presumed not responsible until proven otherwise.

The Complainant and Respondent are often referred to collectively as "**the parties.**"

Investigators: Investigators are tasked with interviewing parties and Witnesses, gathering facts, collecting evidence, and assembling an investigation packet. Investigators do not favor any particular party and do not make determinations about whether the Respondent is or should be found responsible for violating policy.

In most cases, the Investigation and Research Specialist will act as the lead Investigator, and the Title IX Coordinator may appoint a second Investigator. In some cases, the Title IX Coordinator may decide to engage an outside party as the lead and/or second Investigator.

Advisors: An Advisor is an individual chosen by the Complainant or Respondent to provide support and guidance during the review of a report of prohibited conduct. An Advisor can be anyone of the party's choosing. This includes friends, College faculty and staff, attorneys, advocates, family members, and anyone else who is not a Witness or otherwise has a conflicting role in the investigation. If a Complainant or Respondent does not have an Advisor for the Hearing, the College will select an Advisor of the College's choice.

Advisors can accompany their party to any part of the process to which the party would normally be present. While parties are not required to have Advisors until the Hearing, in order to provide the most support, it is recommended that Advisors attend all interviews with the party. The Advisor to each party will have the responsibility to conduct cross-examination of the other party during the live hearing.

Official: An Official is a College employee empowered to render a decision pursuant to the SHMP. These decisions may be related to emergency removals of parties, hearing or appeal decisions, sanctions, and any other aspect of the process that necessitates a formal decision that will impact one or more parties or participants to any particular case.

Hearing Panelist: A Panelist is a College employee specifically charged with presiding over and making decisions relative to the Title IX hearing process.

A GUIDE TO THE PRINCIPLES OF A TITLE IX GRIEVANCE PROCESS

There are specific principles which will guide and inform steps taken throughout the Title IX grievance process.

Equity

Parties must be treated equitably throughout the grievance process. For example, if one party is provided with a brochure outlining the Title IX grievance process, it would be inequitable to fail to provide the same general information to the other party. However, equity and equality are not interchangeable terms. It is not necessary to treat parties precisely equally in all situations regardless of their circumstances. For example, if one party asks for information about licensed counselors in their home-city, and is provided with a printout identifying licensed counselors, it is not necessary to provide the other party with the same information when it would be neither helpful nor relevant to them.

Freedom from Bias

Parties can expect the grievance process to be free from any bias which would be prohibited by Title IX regulations. Anyone participating in the grievance process as a hearing panelist or Investigator should have only one interest: ensuring the integrity of the process. If someone is assigned to a matter but believes that the identity of a party or Witness presents an issue of potential bias, they should contact the Title IX Coordinator. Note that this is a continuing responsibility. The Title IX Coordinator is unlikely

to know the identity of every person who possesses relevant information to a situation before assigning an Investigator or hearing panelist, so the individual would need to contact the Title IX Coordinator as soon as an issue of potential-bias presents itself.

Advisors have an interest in supporting their party. While this may seem like a “bias,” it is actually an important function of the Advisor role. This interest notwithstanding, the Advisor role is still expected to be free from bias prohibited by Title IX. This would include a bias against their own party and could include a bias against a particular Witness.

The question of bias should be clear in the event of a specific bias, such as a situation where one of the parties was an athlete on a team coached by someone called as a hearing panelist. But bias can be based on nearly any aspect of the party’s identity, including their status as a party. For example, someone who is a sexual assault survivor and volunteers as a victim’s advocate at a sexual assault non-profit, might be pre-disposed to a bias against Respondents generally. However, this does not automatically signify bias, and a bias assessment should be made on a case-by-case basis.

Bias could also be based upon an individual’s sex or gender-identity. All complaints are expected to be handled fairly and without the application of sex or gender-based stereotypes.

Even when there is no reason to believe that a person is pre-disposed to a particular bias, there are steps that can be taken to reduce the possibility of bias playing a role in the grievance process.

- 1) Practice humility: Understand the limits of your role in this process, and do not allow your ego to play a part. A detective who seeks to prove a “gut feeling” might make for great television, but in practice it allows subconscious bias to play a role in the process.
- 2) Approach the process with continuous curiosity: Do not allow assumptions to fill logical gaps in a statement. When such gaps exist, ask about them. Assumptions are limited by the life experiences of the person making them.
- 3) Be respectful: Do not consider only whether your words are objectively offensive, but instead consider how they are likely to be received by the specific audience. Avoid defensive body language postures, such as folding your arms or guarding your face.

Retaliation

Anyone who participates in reporting an alleged violation under the Title IX grievance process can expect to be free from prohibited retaliation. This protection includes everyone: Witnesses, Reporting parties, Complainants and Respondents. This also includes any good-faith reporting, even if a subsequent investigation determines that no violation occurred or if the Complainant decides to withdraw the complaint. This prohibition does not end with the conclusion of the grievance process. Anyone who becomes aware of retaliation should promptly notify the Title IX Coordinator.

Confidentiality

Anyone who has a role in the Title IX grievance process must maintain all information learned through the process in confidence, and any disclosure must be specifically authorized by an appropriate College administrator. The information is highly personal, but also is often specifically protected by regulations such as FERPA. Therefore, disclosing this information could violate both College policy, and federal law. If you have any questions about confidentiality, contact the Title IX Coordinator.

THE PROCESS

Notice of Investigation

After a formal grievance complaint has been filed and an investigation has been initiated, the Title IX Coordinator or designee will send a Notice of Investigation to the Complainant and Respondent informing both parties of the allegation and confirming that an investigation has been initiated.

Interviews

The Investigators will interview the Complainant, Respondent, and Witnesses to gather evidence. They may also attempt to collect physical evidence.

Advisors cannot speak on behalf of a party and should not suggest answers to questions. Advisors cannot “object” to a question the way an attorney would in a court of law. Advisors are expected to maintain proper decorum and could be removed from an interview for failing to do so.

Investigators are attempting to gather the facts. At the interview, parties will be able to explain their accounts. Parties also have the opportunity at the interview to name Witnesses they believe should be interviewed, or evidence they think Investigators should gather. It is important to note that, for the purposes of the investigation, Witnesses are expected to be factual Witnesses who have information regarding the allegation, and not character Witnesses. Witnesses do not need to be physically present at the location of the allegation to have relevant information. For example, in some instances, a party might provide the name of someone they spoke to immediately before or after the alleged incident occurred. If Investigators determine that a Witness’s name was provided as a character Witness, and the Witness has no information relevant to the facts of the case, then it is not necessary for Investigators to complete a full interview of that Witness. Instead, Investigators will simply document that the Witness had no relevant information to provide.

After the interviews and gathering of information, Investigators will prepare a draft Investigation packet. The Complainant and Respondent, and their Advisors will receive a copy of the draft Investigation Packet and the Complainant and Respondent will have the opportunity to identify errors and suggest edits. They will also have the opportunity to add statements that will be included in the final Investigation Packet. Both parties will be provided a copy of the final Investigation packet.

The Complainant and Respondent are both given the option to receive weekly updates on the progress of the investigation. These updates provide a sense of the investigation’s timeline and progression, but do not include substantive information about facts gathered. For example, an Investigator may tell the parties that Investigators were able to complete the Witness interviews and are drafting summaries for the Investigation packet. But the Investigator would not tell the parties, in the weekly update, that, for example one of the Witnesses contradicted information, or that the facts aligned with the party’s statement. The parties will learn about the substantive developments of the investigation during interviews if there are additional questions to verify or clarify accounts and when the draft Investigation packet is sent to them.

Investigators may interview anyone who they believe to have relevant information, whether or not their names were suggested by the parties, including individuals who have no affiliation to the college. Complainants, Respondents and Witnesses who have an affiliation with Dickinson College will be advised that they are prohibited from retaliating against parties involved in the investigation. Expert Witnesses can be contacted if Investigators determine it is necessary in understanding the facts of the case.

In order for a Witness's statement to be considered by the hearing panel, the Witness must attend the hearing and be subject to cross-examination. When a Witness declines an invitation to make a statement at the hearing, or simply fails to attend on the day of the hearing, the hearing panel will be unable to consider the Witness's previous statements.

Investigators may visit relevant sites or locations. Observations made during a site visit will be documented in the Investigation packet.

Evidence Collection

Evidence collection is among the most dynamic responsibilities in a Title IX grievance process. It is impossible for any training to enumerate potential sources of relevant evidence, but some examples are provided here as a way to understand the process. For the time surrounding the allegation, Investigators will want to think about what documents, video footage, computer logs, or other information could potentially prove or disprove the allegation(s) and statements. There is an important distinction between evidence which would speak to the allegations and evidence which would speak to the statements. For example, if Alex states that Jordan was in Alex's apartment at the time of the allegation, but Jordan denies this, Investigators will look for evidence that speaks to whether Jordan was in Alex's apartment. This evidence could include security footage from the apartment complex or a neighboring building, social media activity, communications such as text messages, receipts from a transportation service such as Uber, swipe card access records, and/or interviews with additional Witnesses. This evidence may not have any bearing on proving or disproving the allegation(s) but could help prove whether or not Jordan was in Alex's apartment during the time of the allegation.

Evidence which contradicts a Witness or party statement is not an indictment of all statements made by that person. However, it is something to which the person should have the opportunity to respond. Jordan could have denied visiting Alex's apartment because Jordan thought the apartment belonged to Sawyer, Alex's roommate. Jordan also could have intentionally misrepresented Jordan's whereabouts, but for a reason unrelated to the allegation. Perhaps Jordan only went to Alex's apartment to purchase drugs, but was trying to avoid admitting this to Investigators.

The Investigator training section will include more detail about questioning techniques, which would be helpful in the Jordan/Alex scenario described above. But this scenario is included here, because it is important for all roles to understand that inconsistent or inaccurate statements are areas for further inquiry and not something to take personally or which should be used to assume that the statement came from someone with no credibility. When a statement is inconsistent or inaccurate, it is important to consider why and provide the party an opportunity to respond to inconsistent or inaccurate information.

In efforts to collect evidence and conduct interviews, Investigators are looking to acquire information that is both related and relevant to the allegation. In the event that evidence is clearly irrelevant or highly prejudicial, that evidence can be excluded. When in doubt, Investigators will generally want to collect the evidence and then make a relevance determine later when more facts are available.

Evidence and Policy

In general, medical records, including counseling records, are not available to Investigators. An individual may decide voluntarily to waive this privilege. If such a waiver occurs, these records, or a relevant subset thereof, may be included in the investigation packet. (SHMP page 38-39)

Investigators and Advisors should be aware of Dickinson's amnesty policy, which ensures that students generally will not be punished for drug and alcohol use when they admit to such during an interview in this process. This will remove a potential barrier to an honest and complete reporting of the situation surrounding an allegation. (SHMP page 19)

The sexual history of a Complainant or Respondent may be brought up during an interview. Sexual history can never be used to prove character or reputation. An investigation may consider prior or subsequent sexual history between the parties if it is determined that there was a prior or ongoing relationship between the Complainant and the Respondent and the Investigators are attempting to determine whether consent was sought and given. (SHMP page 38-39)

However, whether someone consented on a prior or subsequent occasion is not evidence that the person consented on this occasion, and consent must be sought and given each time. Any prior or subsequent sexual history between the parties will only be used to help understand the manner and nature of communications between the parties and the context of the relationship.

Investigation packet

In general, the Investigators may redact information that speaks to character and not facts, is more prejudicial than probative, or immaterial. The Investigator may also redact statements that a reasonably prudent person would deem not germane to the ultimate goal of determining the facts of a potential policy violation.

The packet will be sent to the Complainant, Respondent and their Advisors. The parties will have ten days to review the packet and provide a written response. In the written response, they can submit any additional comment or information to the Investigators, request changes to the packet, request further investigation and submit any additional questions they believe should be asked of the other parties or Witnesses. The written responses will be added to the Investigation Packet in order for the Hearing Panel to objectively evaluate.

Hearing Panel

The hearing panel is comprised of one Chair and two other members.

The Chair will make determinations regarding relevance, including the relevance of evidence and whether the statements of particular Witnesses is relevant to the hearing process. In considering relevance, the Chair will consider whether the information would be useful in making a responsibility determination, and whether it is appropriate considering the limits on evidence (such as sexual history).

The Chair will also make determinations regarding participant decorum. The topic of participant decorum, is covered more fully below.

The hearing panel will receive the investigation packet and have 10 days to review the packet before the hearing.

Hearings will always be in real-time and can occur in person, via video-conference, or with only some participants in-person and some participants available via video-conference. Either party can request a hearing be moved to video-conference, or the Title IX Coordinator can make the decision to move to video-conference absent any request.

Questioning and Cross-Examination

During the Hearing, each party's Advisor will be able to ask the other party and any Witnesses all relevant questions and follow-up questions.

Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's Advisor and never by a party personally. A Complainant or Respondent may not question each other or other Witnesses' directly but may raise questions to be asked of that party through their Advisors. (SHMP pages 41-44)

Before an individual answers a cross-examination or other question, the Hearing Panel Chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. In determining relevance, the Chair can strike questions that have already been asked and answered, questions that are not likely to yield relevant information, and questions that are prejudicial or argumentative. Once the Chair has approved the question as relevant, the question can be answered.

Advisors may discuss the relevance determination with the Chair during the hearing, but ultimately the Chair's decision is final. The hearing Chair should seek to admit only relevant statements and evidence.

Decorum

The Chair and the Title IX Coordinator both have the authority to stop the hearing process at any time if participants are engaging in conduct they deem to be disruptive. (SHMP page 44)

Disruptive behavior includes, but is not limited to:

- Name-calling, using harassing or intimidating language
- Yelling, banging a table, kicking, stomping, or other similar acts of aggression/anger
- Repeating a question deemed irrelevant by the Chair
- Asking an irrelevant question for the purpose of humiliating, intimidating or otherwise insulting an individual
- Engaging in loud or disruptive side-conversations, including an Advisor and Party
- Interrupting the flow of the hearing process

If a party's Advisor refuses to comply with the College's behavioral expectations so as not to unduly disrupt the proceedings, the Chair of the Hearing Panel and/or Title IX Coordinator may stop the hearing

process and require the party to use a different Advisor. The College may reschedule the Hearing in such circumstances.

Decision

At the conclusion of the hearing, the members of the hearing panel will deliberate. Neither the parties nor their Advisors are permitted to attend deliberations.

The hearing panel will use a “preponderance of the evidence” standard to determine responsibility. This standard is often described as requiring “50% plus a feather” to reach a determination that a Respondent is responsible. It is notably different than the “beyond a reasonable doubt” standard used in criminal courts.

The Hearing Panel shall find that the Respondent(s) is/are:

Not Responsible for Policy Violation: If the Hearing Panel determines that there is insufficient information to find, by a preponderance of the evidence, that a policy violation occurred, the Hearing Panel will render this decision, and both parties will receive notice of the decision in writing.

Or

Responsible for Policy Violation(s) & Imposition of Sanction(s): If the Hearing Panel determines that there is sufficient information to find, by a preponderance of the evidence, that the Respondent/Organization committed a policy violation(s), the Hearing Panel will render this decision. (SHMP page 44)

Typically within five business days of the Hearing, the Chair of the Hearing Panel will issue the written Decision letter; the opinion will be simultaneously sent to the Complainant and Respondent.

The Decision letter will include a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the College’s education program or activity will be provided by the College to the Complainant.

An outline of sanctions available is found in the Sexual Harassment and Misconduct Policy.

Appeals

Either party may appeal the decision and/or the sanctions by writing to the Title IX Coordinator within five business days of the date of the decision letter. The parties will receive notice of the appeal and have five business days to provide a written response.

Appeals are not a “do-over” and do not reconsider all of the questions raised in the original hearing. Rather, the Appeal Official will review the merits of an appeal based solely on the grounds in the appeal letter. The Appeal Official can alter the decision, the sanctions, a combination of both, or affirm the original decision and sanctions. In appeals based on the process, the Appeal Official can request additional investigative steps.

The Appeal Official will notify the parties of their decision typically within ten business days of receiving the appeal documents from the parties.

Investigator Training

Plan the work together

In a two Investigator model, it is important that both Investigators are on the same page. This is often accomplished by meeting before/after interviews to discuss the next steps. Outside of the agreed upon investigative steps, Investigators would need to communicate before reaching out to a party or Witness, or scheduling a site visit. Investigators working as team will want to designate one person as responsible for specific tasks, such as scheduling, note-taking, or taking the lead during questioning. These roles can certainly change, but communication is key in ensuring that Investigators do not trip over each other, or fail to perform a necessary action because of an assumption that the other Investigator was managing that task. While there are times when it will be important for both Investigators to be present for a particular party or Witness interview, both Investigators attending all interviews together is not required.

Before an interview, secure an appropriate setting and plan the space. If the interview will be conducted by video-conference, be mindful of your background and the message it conveys. While there is no dress code, neutral attire is best. Avoid clothing with a message or statement, including expressions of support for student groups or Dickinson athletic teams, unless it is truly neutral. For example, the word “Dickinson” or the college seal would be acceptable while “Dickinson Football” should be avoided. Something as insignificant as a professional sports team insignia could be off-putting to a party who knows that the other party plays the same sport.

Some Investigators find it helpful to write out an investigative plan. This plan can include the people who need to be contacted, potential sources of evidence identified/collected, and a timeline of events. All elements of the plan will need to be revisited after every interview or evidence collection to determine how the new information fits in with the old. The timeline can be helpful in identifying discrepancies. Investigators will want to review discrepancies to determine their significance. For example, if Alex says they left the apartment at 11:30pm and Sawyer says they left at 11:15pm, this is likely just a difference in their recollections and sense of time. However, if Alex and Sawyer both say they went to Peyton’s parents’ house in Hershey before returning to campus at midnight, this would be a significant discrepancy because it does not seem possible.

Investigators may also want to maintain a timeline of their interviews conducted, including any relevant dates and times when they received relevant information from parties. The timeline can be included in the Investigation Packet and the timeline may become relevant as information is gathered.

Interview Technique

During an interview, it is important to be mindful that the tone of a question can have an impact on the interviewee’s answer. Avoid questions that can be perceived as judgmental or argumentative, to the extent possible. These will alienate the interviewee and may cause them to answer less completely or cease answering altogether. Try to phrase the question in a way that will elicit the desired information without offending the interviewee. This is a balance, and there will surely be times when it is necessary to ask a direct question.

It is often better to utilize an open-ended question, that solicits a narrative response, than a closed-ended question that leaves the interviewee with limited answers. For example, asking someone “what happened next?” is generally better than asking “And then you drove to Alex’s apartment?” This is because the open-ended question does not limit the answer to a specific assumption that is built into the question. Perhaps the Investigator is right, that the next dot on the timeline is Alex’s apartment. But if the interviewee was the passenger, and not the driver, they could accurately answer the question by simply saying “no.” This could confuse the Investigator about the facts, waste time and lower the interviewee’s opinion of the Investigator and their willingness to cooperate.

Avoid suggesting probable answers for an interviewee. Many Investigators utilize a questioning technique called the funnel, in which broad questions are gradually narrowed to more specific clarification questions. In the beginning, the Investigator is trying to get the interviewee to tell the story. But after that is complete, it may be necessary for Investigators to circle back to specific elements of the story and drill down for more information.

Be willing to accept “I don’t know” or “I can’t remember” as an answer. There are countless theories about accessing memories which have been repressed or forgotten. However, it is not appropriate for Investigators to engage in techniques which should be reserved for a counseling/mental health setting. It may be apropos to ask a question a second time later in an interview, but ask it a different way, if it is a critical question and the Investigator believes the interviewee is being evasive or later may be ready to answer. But this must be balanced and Investigators must be careful not to appear to be attacking or badgering.

An interviewee might use slang terminology when referring to sexual acts or body parts. Do not direct the interviewee to use different terms, as doing so could make them uncomfortable or cause them to feel chastised. However, it is important to be sure that your definition of the slang term is what the interviewee meant. One way to handle this is to repeat back their answer and ask for clarification of what occurred. For example, “I want to make sure I get the details right, so I’m going to summarize some of what you just said...” Some slang terminology is ambiguous, and it will be important to clarify. Rather than correcting the term, simply ask the interviewee for clarification. The term “hooked up” can be used to describe everything from kissing to sexual intercourse. This is the type of term that will require a follow-up question. You can either specifically ask for clarification regarding the term or frame the question broadly to elicit a more detailed response. For example: “You mentioned that you hooked up with Jordan in Alex’s apartment. Tell me about that.”

Do not forget to take breaks, especially if an interview is time-consuming. Breaks are not only an opportunity for the interviewee to relax and drink water, but will also provide Investigators with an opportunity to consider if they have additional questions. If one Investigator is designated as the lead for the interview, this is a good opportunity for the second Investigator to ask about specific questions or topics they expect to be covered. Breaks can also be taken by either Investigator if they believe that the questioning is getting off-track, or to pause in the event of an emotional response and check-in with the party if they would need support. For parties with an Advisor, a break will give them an opportunity to consult with each other.

It is not permissible to direct a party not to communicate with others about the allegation. However, it is advisable to explain how disseminating information may be detrimental to the investigation and to the party’s own interests. Of course, parties should never be discouraged from sharing information with

anyone with whom they have a relationship where confidentiality is expected, including counselors, clergy, attorneys, and Advisors.

Generally, interviews should not be audio or video recorded by either the interviewer, interviewee or anyone else present during or involved in any way with the interview.

Trauma

Parties could be expected to recount one of the most traumatic experiences in their life, or could be experiencing the most traumatic experience by participating in the grievance process. For these reasons, it is important the Investigators approach all parties with care. Questions will be difficult, uncomfortable, and could lead to an emotional response. One way to reduce the traumatic effects of these reactions is to acknowledge them before they happen. Investigators often prepare an introduction which includes an acknowledgment like: "Some of the things we talk about will be personal and sensitive in nature, but it is important that we understand your account clearly, and I want you to know that we can take a break anytime you want."

In addition to the introduction, you can use your body language and responses to affirm that you are listening. The party will probably be staring at you, even if you are taking notes and looking away, so be thoughtful of facial expressions and body language. You should maintain a calm and respectful demeanor throughout the interviews. You can thank the party for answering a difficult question and acknowledge that it was difficult, as long as your response does not grade an answer's substance.

It is not abnormal for a party to have thoughts that are out of order, or scattered, when recalling an event, or an event that occurred some time ago, or an event that occurred while a party may have been under the influence of a substance(s). Let the party recall the information in any order, take diligent notes, and organize the information and repeat it back to them later in the interview. Do not attempt to suggest possible solutions, like "You didn't tell me how you got home, did you take the bus?" Do not suggest that it is strange that they cannot remember something simple. Simply note that they cannot remember for the report. It will be up to the hearing panel to determine how the information, or lack of information is/is not relevant.

Some research has suggested that trauma can cause effect memory in a way that there are gaps in events, or the information is disorganized. Consumption of alcohol or other drugs can also cause memory issues in both Complainants and Respondents. Open-ended questions are best for this situation, as close-ended questions are likely to suggest an answer to which the party might agree to avoid the embarrassment of admitting that they forgot something simple – like how they got home. If a party appears to have memory issues, be careful that their answers are from their memory and are not a guess. For example, if you ask Alex how Alex and Sawyer got home and Alex says "We must have taken the bus," it is important to realize that Alex appears to be guessing about taking the bus and may not actually remember. You'll want to circle back to this answer for clarification on Alex's memory here.

Writing Reports and the Investigation packet

The investigation packet should be thorough. A reader should feel as though the packet logically walks through the investigation, without leaving gaps in the logic of how Investigators got from one step to the next.

An Investigation Packet will become part of the evidence the hearing panel will use to make a determination regarding responsibility. It is important that the report document the interviews without the Investigators' thoughts or editorial comments. Think of the report as evidence, and not as a piece of your own writing. Generally, writers are taught to vary sentence structure and not use the same word(s) repeatedly, but in writing an Investigative Report, repetition can be absolutely necessary. In writing Investigation reports, it is useful not to revise language parties used, but rather use direct quotes and maintain the information as it was shared with you.

The Hearing

At the hearing, you may be asked a variety of questions about the evidence in the investigation packet. Some Advisors may attempt to get an Investigator to offer an opinion on whether the Respondent should be found responsible or not. Just as before the hearing, Investigators are expected to remain impartial and neutral. Investigators should expect to explain and present the facts and evidence, but should not engage in passing judgment, as this is the role of the hearing panel.

You will not be expected to memorize the Investigation packet, but you will want to be familiar with it. If someone asks a question and you believe the answer is in the Investigation packet but cannot recall it specifically, then refer to the packet.

Advisor Training

Supportive Role

The role of the Advisor helps a party by taking some of the burden of navigating the procedural landscape of the investigative process. A good Advisor will want to be familiar with the SHMP and the investigative procedures, to help prepare the party for the road ahead. It is also a good idea to be cognizant of the requests the party may have, to help determine whether those goals can be accomplished and how.

Advisors should consider whether their party's goals are more aligned with an informal/conciliation process than a formal investigation and hearing. This process can resolve allegations in a shorter timetable, without involving additional Witnesses.

Advisors should be generally aware of the types of supportive measures available to parties. These measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security, and other similar accommodations. If an Advisor believes that one or more of these measures may be appropriate and helpful to a party, the Advisor and party can contact the Title IX Coordinator for more information.

While Advisors are not prohibited from assisting their party with investigating the facts and circumstances surrounding a particular case or complaint, they will want to be aware of the retaliation policy. Although an Advisor might not intend for any questions asked of a Witness or any other individual to be harassing, intimidating or otherwise problematic, this could be the perception of the individual being questioned and could result in a retaliation allegation being made against the Advisor or

their party. Also, if any acts of retaliation are identified by the Advisor they should be reported to the Title IX Coordinator.

Limitations on Advisors

Any action taken by an Advisor which frustrates the investigative process should be brought to the attention of the Title IX Coordinator. Such an action could cause the Advisor to be removed from the process. Advisors must also maintain proper decorum. This applies to interviews and the hearing. If an Advisor disrupts the interview process, Investigators can remind the Advisor of appropriate decorum and explain that if such behavior continues, the interview may need to be stopped and rescheduled. In such a circumstance, Investigators should notify the Title IX Coordinator.

In some instances, a complaint alleges an act that is both a violation of the SHMP and an applicable state law. The role of the Advisor is limited to the administrative grievance process. Except in situations where the Advisor is an attorney retained by the party, Advisors should not offer advice regarding any criminal investigation, aside from suggesting that the party may wish to seek the advice of legal counsel.

Hearing Panel Training

The Hearing

Members of the hearing panel are able and encouraged to ask relevant questions of those making statements. This is your opportunity to seek clarity on anything that was confusing in the Investigation packet or in an earlier statement.

The Title IX Coordinator is available as a resource on Title IX and the SHMP. If a term or applicable policy is a source of confusion, the Title IX Coordinator can provide an explanation of the policy. The Coordinator is not a voting member of the panel and it would therefore not be appropriate to ask the Coordinator's opinion as to whether the Respondent is responsible or not, or whether a particular Witness or party was credible.

Decision Making

Members of the hearing panel need to be able to separate the two distinct decisions they may be tasked with making: responsibility and sanctions/remedies. The question of responsibility is a question of whether the Respondent violated the Sexual Harassment and Misconduct policy. The panel will need to objectively determine whether there is a preponderance of the evidence to find the Respondent responsible or not. Put another way, if the evidence was being weighed on a scale, with all of the evidence proving the allegation on one side, and all of the evidence disproving on the other, which side would be heavier? It is not a question of the number of discreet pieces of evidence, but the sum of their weight. For example, a video-recording is only one piece of evidence. But that single thing could definitively prove or disprove an allegation.

If a preponderance of the evidence is met, the panel will then be asked to identify appropriate sanctions and remedies. During this phase, the panel should consider the mitigating and aggravating circumstances of the violation. These are things that make the Respondent more or less culpable. For example, a Respondent who provided an honest account of their actions and offered an apology to the

Complainant, could receive a lesser sanction than a Respondent who consistently denied responsibility, sent threatening text messages to the Complainant and suggested that Witnesses who spoke with Investigators were “snitches.” The panel is not limited to the Respondent’s actions during the process – they can consider any of the facts available to them.

If you would like more information about Dickinson College’s Sexual Harassment and Misconduct policy and procedures, please visit the webpage at: Dickinson.edu/titleix. If you have questions about the Sexual Harassment policies or procedures, you may contact Kat Matic, Title IX Coordinator at matick@dickinson.edu.