



Sexual Misconduct Hearing Administrator Training

Following System Procedure 1B.3.1

Equal Opportunity and Compliance

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Welcome

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Housekeeping

- » Training pre-req
 - Foundations (policies and procedures)
 - Every 12 months
 - Read policy, procedure, and operating instructions
- » Shared Services
 - Hearing administrators (decision-makers) for 1B.3.1

MN State Promise

Minnesota State promises to provide an extraordinary education that is affordable, accessible, enhances quality of life, and ensures prosperous communities.

Minnesota State is a highly supportive resource for students of all ages, walks of life, and all their different college, career, and community dreams. Our network of universities, community colleges, technical colleges, and certificate programs helps you meet your educational goals so you can meet your life goals.

Sexual Misconduct

- » Is a continuum of conduct that includes:
 - Sexual assault
 - Non-forcible sex acts
 - Dating, intimate partner, and relationship violence
 - Sexual exploitation
 - Stalking
 - Title IX sexual harassment
 - Aiding acts of sexual misconduct

Due Process Principles

- » The 2020 Title IX Regulations are rooted in the due process principles of:
 - notice,
 - a meaningful opportunity to be heard, and
 - the importance of an impartial process before unbiased officials.
- » The focus is to ensure sexual misconduct allegations are resolved:
 - Fairly and reliably,
 - Free from intentional or unintentional sex-based biases/stereotypes
 - Promote accurate, reliable outcomes, which effectuate the purpose of Title IX.

Resolution Process

- » The resolution process must include the following:
 - Ensure both parties are treated equitably;
 - Objectively evaluates all relevant information (both inculpatory and exculpatory);
 - Requires process participants to be free of conflicts of interest, bias, and be trained to serve impartially;
 - Presumes the non-responsibility of respondents until conclusion of the process;
 - Reasonably prompt timelines for resolution;
 - Informs all parties of critical information;
 - Protects any legally recognized privilege during a resolution process.

Formal Resolution Process

- » The formal resolution process requires:
 - **Written notice of the allegations** to both parties;
 - including the parties' right to select an advisor of their choosing.
 - An **investigation** of formal complaints that:
 - Keeps the burden of proof on Minnesota State;
 - Provides the parties equal opportunity to present information and witnesses; including inculpatory and exculpatory information;
 - Does not restrict the parties from discussing the allegations or gathering information
 - Gives parties equal opportunity to choose an advisor;
 - Requires written notice when a party's participation is invited or expected;
 - Provides both parties equal opportunity to review and respond to information;
 - Sends both parties the investigation report summarizing the relevant information.
 - A **live hearing with cross-examination** conducted by the parties' advisors.
 - A decision-maker who is not the Title IX Coordinator or investigator.
 - The offering of appeals equally to both parties

Additional Process

» The system procedure allows:

- The offering and facilitation of informal resolution within certain parameters.
 - Participation must be voluntary with written consent from both parties
 - Participants may withdraw their consent at any point in the process

» The system procedure requires:

- Maintaining of records and documentation for all sexual misconduct reports, formal complaints, investigations, and formal hearings;
- The publication of materials used to train Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators.

Hearing Administrators

- » Hearing Administrators have a critical role in supporting the due process and resolution requirements by:
 - Serving as the live hearing facilitator for allegations of sexual misconduct, and;
 - Making an impartial decision based on the facts of the case.
- » Hearing Administrators do not conduct their own investigation through the hearing process.
- » The Hearing Administrator's role is to review all the relevant and otherwise impermissible information to reach their decision.

Formal Hearing Preparation

- » Meet with the Title IX Coordinator, or designee
- » Hearing Outline
- » Advisor Guide

Formal Hearing Preparation, continued

- » Read through the investigation report and relevant information
 - The complaint,
 - The notice of investigation and allegations,
 - The applicable policies and procedures,
 - The relevant and not otherwise impermissible evidence, and
 - The investigation report.
- » Prepare **relevant questions** for parties and witnesses.

Question Development Tips

- » The objective is to review and evaluate the available information to reach a fair, reliable, and factual determination.
- » Your questions should be specific and designed to elicit information that is relevant to the specifics of the allegations.
- » Create your questions based on the available information and the information that may still be needed.

Question Development Tips, continued

- » Focus on areas of inconsistency, discrepancy, disputes, or gaps.
- » Create questions that:
 - Establish a sequence and narrative of events,
 - Clarify conflicting information, and
 - Assist you in understanding how all parties perceived events.
- » Word questions in a non-adversarial manner.
- » Phrase your questions as open-ended to elicit better information.

Formal Hearing

- » The Hearing Administrator ensures parties have the benefit of a consistent, fair, and transparent resolution process; regardless of their role.
- » Hearing Participants may include:
 - The complainant and their advisor
 - The respondent and their advisor
 - Title IX Coordinator or Designee
 - Investigator(s)
 - Witnesses (present only during their portion of testimony)

Formal Hearing: Decorum

- » Maintain a professional, neutral, and respectful demeanor.
 - Consider how to keep discussion professional, yet conversational.
 - Practice active and careful listening while remaining emotionally neutral
- » Avoid excessive note-taking when individuals are speaking.
 - The hearing will be recorded, and you will have access, if needed.
- » Any potential disruptive behavior(s) should be addressed and kept to a minimum.
- » Decorum extends to before and after the hearing.

Formal Hearing: Language

- » Be comfortable with the language and information being discussed
 - Hearing and speaking words such as "penis" or "vagina"
- » Participants may use non-technical or slang terms
 - Never assume. You will need to be comfortable asking for clarification
- » Avoid bias in the language you use
- » Prepare yourself to hear difficult things and have your emotional boundaries tested.
- » Avoid using legalistic language

Decorum: Overseeing Advisors

- » The advisor role is limited to advising their advisee and asking questions of the other parties during cross-examination.
- » Oversee the questioning to ensure questions are appropriate and relevant.
 - If not, you must articulate the reason for restricting the question and direct person being cross-examined to disregard.
- » Be equitable in enforcement of advisor expectations.

Effective Hearing Tips

- » Clarify conflicting information before deliberation;
- » Carefully examine the time/date sequence;
- » Avoid jumping from one line of questioning to another;
- » Maintain concentration and attention;
- » The hearing is about the actions of the respondent;
 - Avoid irrelevant information about the actions of others unless it directly impacts whether the respondent violated policy.
- » Speak directly and plainly when addressing procedure or errors;
- » Mistakes happen. Correct it, apologize if needed, and move on.

Questioning Guidance

- » Open-ended questions
- » Informed interviewing
- » Be equitable in enforcement of advisor expectations.

Evaluating the Information

The Hearing Administrator is responsible for conducting an objective evaluation of all relevant information.

- » **Objective Evaluation:** evaluating all evidence and testimony without any preconceived notions.
- » **Relevant Evidence:** tends to prove or disprove any element of an offense, or any issue of materials used in resolving a complaint.
- » **Credibility:** a cumulative result of accuracy, consistency, corroboration, and reliability of information.

Standard of Proof

Preponderance of the Evidence

- » 50 percent + a feather
- » a real feather or a cinder block
- » a feather must be there or there is no policy violation

Policy Analysis

- » Force
- » Coercion
- » Incapacitation
- » Relationship status
- » Reasonable person standard

Policy Analysis, continued

- » Board Policy 1B.3: Table of Elements and Evaluating Considerations

Determination of Responsibility

- » Other key factors
 - Sexual social norms
 - Bias and stereotypes
 - Jumping to conclusions
 - Reasonably should have known
- » Determining responsibility for sexual assault
- » Disciplinary Actions

Post Hearing

- » Confidentiality
- » Decision Letters
 - Required elements
 - Provided templates

Technology

- In-person considerations
- Virtual consideration

Activity

Scenario: determining relevancy

Thank you.



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