D. STAFFORD & ASSOCIATES

Westminster College

Privileged & Confidential

Mock Hearing Service

Debrief Report

Primary Facilitator:

Cathy Cocks

Supporting Facilitators:

Beth Devonshire

Adrienne Murray

Submitted by:

D. Stafford & Associates, LLC

July 23, 2021

Table of Contents

SCOPE AND METHODOLOGY

Scope

D. Stafford & Associates ("DSA") was contacted by Westminster ("Westminster" or "College") to provide an interactive simulation of the College's existing sexual misconduct policy by facilitating a mock hearing. The simulation was designed to assist the institution in meeting the requirements of the 2020 Title IX Regulations specific to conducting a hearing as well as training requirements that rest within the Clery Act at 34 C.F.R. §668.46(k)(2)(ii).

Facilitators (Primary and Support)

One primary facilitator worked in advance of the mock hearing to review the institution's publicly available policy as well as non-public internal hearing related materials, such as procedures, hearing scripts, and parties' rights statements. This facilitator held one pre-hearing meeting with the institution's Title IX Coordinator to discuss the institution's hearing structure, policy, and mock hearing logistics. This facilitator provided guidance as needed during the hearing and conducted the after hearing debrief with the institution.

The two support facilitators were appointed from the Title IX team to provide support during the mock hearing. They acted as the involved parties, party advisors, witnesses, and/or other parties during the hearing to provide for an interactive and engaging exercise.

The primary facilitator was Cathy Cocks and the two support facilitators were Adrienne Meador Murray and Beth Devonshire. Cathy Cocks is a seasoned higher education professional with expertise in higher education administration, student conduct, Title IX, threat assessment, and residential life. Adrienne Meador Murray is a 17-year law enforcement veteran who served most of her tenure in higher education and was a Chief of Police at two postsecondary institutions and is a nationally recognized expert in postsecondary mitigation of and response to sexual and intimate partner violence, including the roles of law enforcement, behavioral intervention teams, and HR. Beth Devonshire is an experienced student affairs professional with expertise in student conduct, Title IX, BIT teams, and understanding the impact legislative and legal decisions have on higher education.

The facilitators all work in the field of Title IX compliance for DSA and are primarily contracted by post-secondary institutions to assess and redevelop student and employee policies, procedures, and processes compliant with Title IX and the VAWA amendments to the Clery Act. Additionally, the facilitators conduct administrative investigations into allegations of sexual misconduct, review campus law enforcement's handling of incidents of sexual misconduct involving postsecondary students and employees, and conduct training on investigations of sexual misconduct around the country. The facilitators are all annually trained on issues related to sexual harassment, domestic violence, dating violence, sexual assault, and stalking as required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as amended by the Violence Against Women Reauthorization Act of 2013 and as required by the 2020 Title IX Regulations.

Acknowledgments

The facilitators wish to acknowledge the assistance and guidance of Westminster representatives with whom we worked with in conducting this exercise. Everyone was very helpful, insightful, and accommodating to our team throughout the process.

This report is not a critique of current policies, procedures, or practices in place at Westminster nor is it an evaluation of personnel or departments that currently play varying roles in the overall response to sexual misconduct on campus. This report is intended to serve as an internal resource for the institution summarizing areas of strengths and opportunities for continued growth in the conducting of hearings. Recommendations consist of both feedback from the mock hearing and general recommendations of good practice.

OVERVIEW OF EXERCISE

Participants

The mock hearing was conducted on Friday, July 16, 2021. An external decision-maker was identified by the institution and served in this capacity for the mock hearing. The other participants served as observers and provided insight during the debriefing.

The following institutional representatives were present at the exercise:

1. Gina Vance, Vice President for Student Affairs/Dean of Students and Title IX Coordinator
2. Thomas Burkhart, decision-maker for the exercise
3. Kimberlee Christofferson, observer
4. Matthew Mangino, observer
5. Melissa Spencer, observer
6. Tammy Swearingen, observer

Materials

The following materials were provided to the participants in advance of the mock hearing:

- Mock Investigative Report (provided by DSA)
- Hearing Script (provided by the institution)
- Institutional policy and procedures (provided by the institution)

Case Description

The mock case involved an allegation of sexual assault by a student respondent. The complainant was also a student. Both the complainant and respondent participated in the investigation and attended the hearing. They were accompanied by advisors. One witness was in attendance and one witness did not attend. There was also a potential witness identified in the report who did not participate in any aspect of the process. DSA staff served in the roles of the participating individuals.

Structure

The exercise consisted of three parts: Hearing Preparation, Live Hearing, and Debriefing. Hearing preparation was the responsibility of the Title IX Coordinator. The other two parts occurred during a four-hour timeframe on July 16th and were facilitated by DSA. Prior to the start of the mock hearing, the primary facilitator introduced herself and provided instruction to the group. To provide as realistic a simulation as possible, the DSA support facilitators were kept in a waiting room until the start of the hearing. The primary facilitator explained the purpose of the exercise and confirmed which attendee was serving as the decision-

maker for the exercise. The primary facilitator explained to the rest of the attendees that they were observers and should takes notes of their observations. The Zoom platform was explained, including how it would be used in facilitating the hearing, rules regarding use of cameras, microphones, and waiting rooms. Any questions posed by attendees were answered by the primary facilitator in advanced of the exercise beginning. The observers did not participate in the live hearing portion and kept their cameras and microphones off until the debriefing portion. The primary facilitator also turned off her camera and microphone. The primary facilitator did not conduct any portion of the live hearing.

The exercise was then handed over to the decision-maker to conduct the hearing.

At the conclusion of the mock hearing, the DSA support facilitators were introduced. To preserve the simulation exercise and create a comfortable environment for the attendees, the support facilitators did not participate in the debrief. After the mock hearing, the primary facilitator conducted a verbal debrief of the exercise with the attendees. The college had recently conducted a sexual misconduct hearing and a portion of the debrief was spent debriefing that experience.

OBSERVATIONS AND RECOMMENDATIONS

General Observations

Westminster utilizes attorneys who are alumni of the college to serve as decision-makers. This partnership demonstrates a commitment to providing a quality experience for the parties involved and is a positive reflection on the impact of Westminster on current and former students.

The decision-makers bring strong critical-thinking and communication skills to the Title IX process. Working with difficult or emotional parties is not a new experience for them. Their understanding of compliance issues may be greater than others.

Utilizing attorneys, particularly former prosecutors and defense attorneys, has its challenges. These are not courtroom proceedings and are not intended to mimic the criminal justice system. Courtroom proceedings are adversarial in nature and are not appropriate for an educational environment. First and foremost, the College is an education environment, and these processes are meant to resolve complaints regarding potential violation of institutional policies.

Institutions must be cautious as to not create proceedings that advantage or disadvantage a student because of the advisor they choose or the way a hearing is managed. A student's appearance, demeanor, or interpersonal skills are not elements in determining if a policy violation occurred.

As the College's policy states, in compliance with the Title IX regulations,

> "When investigating a formal complaint, the College must ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the College and not on the parties."[1]

The burden of gathering the evidence is on the investigator and therefore, is the central element of the decision. The decision-maker's role is to consider the summary of relevant evidence, the relevant evidence itself, and any additional information learned through the questioning at the hearing. The decision-maker

[1] Sexual Misconduct Policy for Westminster College (Effective August 14, 2020), page 13.

is not a prosecutor, and their role is not to make a case one way or the other. It is not the decision-maker's role to reinvestigate the case.

There are multiple opportunities for the parties to respond to the evidence and subsequent summary of relevant evidence. Per Westminster's policy, which quotes almost verbatim the Title IX regulations,

> "The College is required to create an investigative report that fairly summarizes relevant evidence. Prior to completion of an investigative report, the College must send each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format, or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.[2] The College must also provide a copy of the investigative report at least 10 days prior to a hearing or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.[3]"[4]

Advisors need not have any additional role beyond cross-examination. The College is not required, nor is it recommended, that advisors are allowed to conduct direct examination. Any information that a party wishes to stress can be contained in the written response to the final report. As discussed in the debrief, it is helpful to emphasize with the parties their ability to provide a written response prior to the hearing so it can be reviewed and considered by the decision-maker.

In addition, we strongly recommend against allowing an advisor to "object" during the hearing or to have any other active role in the hearing. We also caution against using courtroom language like "object", "counsel", and "testimony." We recommend explaining certain terms, particularly those that are used in courtrooms, to the parties to acclimate people to this being an institutional proceeding and not a courtroom. For example, even though this has been explained prior to a hearing, it is helpful to explain what the terms "complainant" and "respondent" mean. During the debrief, the facilitator gave the example of explaining that an "advisor" does not speak or represent a party. They are a support person who can provide guidance to their party and while they do conduct cross-examination, they have no additional role in the hearing.

Hearing Preparation

The decision-maker was prepared with a set of questions. Because the hearing was managed as if it was a courtroom proceeding, some of the questions may make it appear to a student that the decision-maker had not read the report. For example, the decision-maker asked questions about the students' class year and where they lived despite it being contained in the report. Though this confirmation is not unusual in a courtroom or deposition, this is neither of those. There is no requirement that all information considered must be verbally stated in the hearing "record." Unless a party raises a concern that information in the report, particularly background information, is incorrect, it should be considered accurate. A simple "Are your statements as summarized in the report accurate to the best of your knowledge?" is more than sufficient in a Title IX proceeding to allow the information to be considered by the decision-makers. The parties in the mock hearing gave an accurate depiction of the frustration parties have when they are asked the same questions that they have already been asked and answered. There is a difference between asking a clarifying question, which is appropriate, and asking repetitive questions about items that are not in dispute. Not only

---

[2] 34 CFR §106.45(b)(5)(vi).
[3] 34 CFR §106.45(b)(5)(vii).
[4] Sexual Misconduct Policy for Westminster College (Effective August 14, 2020), page 14.

does this add unnecessary length to the hearing, but it requires parties to repeat traumatizing information unnecessarily. It also creates a more "courtroom-like" atmosphere which can then trigger objections and legal arguments that have no place in a school conduct proceeding.

As noted earlier, hearings are not investigations. They are a review of the investigative report and evidence to decide on the alleged behaviors and whether institutional policy was violated. The decision-maker needs to be well-versed in the provided investigative report, evidence, and written responses from the parties so they can ask any clarifying questions from the report. Therefore, the decision-maker should identify questions prior to the hearing that are relevant to the elements of the alleged policy violations.

Recommendation(s):

1. Ensure that pre-hearing preparation is part of the standard hearing procedure. The decision-maker needs to review the report and evidence and determine what **additional** or **clarifying** information is needed so they can effectively decide on the alleged policy violations. This preparation is not to make a determination prior to the hearing.
2. Focus on the elements of a violation and what information is relevant for the decision-maker to decide whether or not the elements of the offenses have been met. It may be helpful for the College to create a standard set of questions for each offense that the decision-maker could use as a foundation and add or remove questions as needed. This would help ensure that questions from the decision-maker are focused on the elements and that there is a common understanding of policy definitions.

Use of Technology

Westminster offers the option of either in-person or virtual hearings. The mock hearing was conducted on the Zoom platform. Conducting virtual hearings allows for the parties to see each other, as required by the regulations, but not have to be in the same room. Virtual hearings do come with their own set of challenges, some of which were simulated at the mock hearing. For example, during the hearing the respondent ate eggs; used their cell phone; and turned off their camera. The complainant kissed her dog. There were also several hostile exchanges between the parties. The decision-maker needs to be aware of the behavior occurring even in the virtual environment, particularly if it is distracting or intimidating to persons involved. To mitigate this in the future, we offer the following recommendations:

Recommendation(s):

1. Implement a process for admitting the parties and witnesses. For example:
    a. The decision-maker is the host of the hearing Zoom room.
    b. The decision-maker sends a message through the chat indicating that the complainant and respondent will be admitted to the hearing room and then immediately sent to their respective breakout rooms so they can briefly connect with their advisor. The decision-maker will need to know the name of the advisors so they can be sent to the appropriate room.
    c. The decision-maker admits the parties and their advisors into the Zoom room and immediately assigns them to their breakout rooms. The complainant and advisor should be in one room, the respondent and advisor in the other. Witnesses can remain in the waiting

room until they are needed. The decision-maker should not have any conversation with a party without the other party present.

d. At this point, the recording of the hearing can begin, and the parties are brought into the main Zoom room for the hearing.

2. Develop a contingency plan in the case of a lost connection. For example, all individuals involved in the hearing need to provide a phone number where they can be reached. This will allow the decision-maker to call an individual if they have lost the connection to troubleshoot the situation. Please keep in mind that the parties must be seen and heard when they are being cross-examined. A participant who is having an audio problem may be able to call in via the direct dial method if they can also maintain their video feed. Every effort should be made to resolve the issue and not reschedule. If the technology problem cannot be remedied, the hearing will need to be stopped and rescheduled. The recording should be maintained, as required by law and institutional policy. When the group is reconvened, the hearing should start at the point where it was stopped.
3. Consider using the mute/unmute feature during questioning so that the individual asking the question does not start to answer prior to the determination on relevancy. By muting the advisor during the answer, it prevents an immediate back and forth between the individuals while the decision maker is pondering relevancy and allowing or disallowing the party to respond. Muting may be a useful tool if the parties are not waiting for the relevancy determination.
4. If using a platform like Zoom, turn off the chat feature so the participants cannot attempt to send messages to the decision-maker or other parties.
5. Have clear expectations regarding the use of technology during the hearing. Participants should not be using their phones or any other electronic device to prevent recordings or other people listening in.

Demeanor of the Decision-maker

Decision-makers need to maintain a professional demeanor throughout the hearing. Decision-makers should project confidence and not arrogance. They should treat both parties with respect. Decision-makers must avoid engaging in any kind of heightened verbal exchange with witnesses, parties, or advisors. If a party becomes argumentative, the decision-maker must maintain composure and not argue with a participant.

For the most part, the decision-maker in the mock hearing maintained a professional composure and even tone. There were no inappropriate facial expressions or signs of exasperation. However, the secondary facilitators shared with the primary facilitator that they both felt that the decision-maker treated the complainant in a more adversarial manner, seeming to question the complainant's credibility and treating the respondent with more deference.

Given that the decision-maker behaved in a manner consistent with a courtroom, the parties, particularly the complainant, felt attacked. The decision-maker has a difficult balance to maintain—a respectful but in-charge manner. At times, it was perceived that the decision-maker was an opposing attorney rather than a facilitator of the hearing. We cannot stress enough that these are not courtroom proceedings.

Recommendation(s):

1. For virtual hearings, ensure backgrounds are professional and not distracting.

2. Avoid using fillers or modifiers or making any verbal or non-verbal expression that could convey a decision-maker's opinion.
3. The decision-maker needs to stay focused on their role in the hearing. It is important to remember that their role in the hearing is not to investigate but to ask questions to clarify information and evidence contained in the investigative report. It could be easy for someone to fall into "investigative" or "prosecutorial" mode.

Hearing Management

The decision-maker needs to have control over the hearing, confront inappropriate behavior, and ensure they are holding both parties to the same behavioral standards. Failure to do so can cause distractions or result in harm or intimidation of the participants.

As stated above, the parties intentionally engaged in certain behaviors to see how the decision-maker would respond. The respondent ate a meal and used their cell phone during the hearing. The respondent also made faces as the complainant was speaking and at one point turned off the camera. The complainant kissed her dog multiple times and displayed a range of emotions and at times looked as if she could not proceed. There were several hostile exchanges between the parties. Except for a few of the hostile exchanges, none of the behaviors were addressed and of the hostile exchanges, some were addressed only after one of the parties called attention to it.

There were times when one of the parties asked the decision-maker to stop hostile behavior or an exchange between an advisor and one of the parties when the decision-maker could have interjected earlier. For example, the complainant's advisor kept referring to the complainant as "my daughter" and the respondent came back with beginning all of their responses with "your daughter…" This needed to stop immediately, and the advisor should have been told that for the purposes of this hearing, the complainant needs to be referred to as the complainant and the respondent needed to be told to cease the behavior as well.

Emotions cannot prevent the decision-maker from asking or allowing relevant yet difficult questions. The decision-maker needs to model appropriate questioning. If the decision-maker creates an interrogation-like atmosphere with their own questions that then creates the environment for the rest of the hearing.

A consideration for the decision-maker is to be cognizant of how parties and their advisors are addressed. Advisors are advisors whether they are attorneys or parents and should be addressed as such. Referring to an advisor as "counsel" is inaccurate and if one advisor happens to be an attorney and the other is not, referring to the attorney as "counsel" could be perceived as giving deference and great respect to one side.

Recommendation(s):

1. As an institution, work with the decision-makers to establish the environment of a hearing. The parties should not be allowed to control the setting.
2. Be consistent in how behavioral concerns are addressed. It may be helpful as a training tool for all decision-makers to discuss possible behavioral issues in a hearing and how to respond to each.
3. Reiterate behavioral expectations to the entire group and then to individuals as needed. Address issues immediately, or at an appropriate pause, so as not to lose control of the hearing.
4. Incorporate regular hearing debrief sessions with the decision-makers which will provide an opportunity for the decision-makers to identify areas of strength and opportunities for growth.

Questioning by the Decision-maker

The decision-maker asked the complainant "What prompted you to file the complaint?" to which the complainant responded, "Because Reed raped me." It is unclear as to the point of this question as the reason behind signing a formal complaint has nothing to do with the actual behavior that has been alleged to be a policy violation. This question, one of the first by the decision-maker, created an adversarial environment and put the complainant in a justification mode.

Given that this is not a courtroom proceeding, the decision-maker does not need to confirm every detail in the report item by item. The decision-maker could use the following approach:

- **Confirmation of Accuracy of statements and investigative interview.**
  1) *Have you read through the summary of your investigative interview?*
  2) *Do you have any corrections or changes to what you stated in your interview or in your written statement?*
  3) *Is it a fair and accurate representation of the truth as provided in your interview(s) with the investigators?*
- **Confirmation of Accuracy of evidence (walk through each type of evidence)**
  1) *What evidence was provided by you to the investigators?*
  2) *Are these emails/letters/texts a fair and accurate copy of the communication?*[5]

The decision-maker needs to focus on the elements of a policy violation. The parties expressed "frustration" over the decision-maker's excessive questioning of items already in the report and not in dispute. The decision-maker inadvertently gave the impression that he had not read the report and/or that he did not value the investigator's summary of relevant evidence. For example, the report explained how beer pong is played and yet, the decision-maker asked questions about how to play beer pong. This line of questioning, in turn, gave the impression that the decision-maker disregarded the report or was attempting to catch one of the parties in an inconsistency. It also opened the door for the party to be a bit flippant given that information was in the report. Another example was a line of questioning that suggested the decision-maker did not know about one of the witnesses identified in the report.

There will be times when one party has a family member or friend as their advisor and the other has an attorney as was the case here. The complainant, with a family member as an advisor, answered the questions and often became flustered with the granular detail of some of the questions, whether they were relevant to the actual behavior allegation, and got increasingly frustrated with the questions. The respondent, with an attorney advisor, made the conscious decision to not subject themselves to the interrogative nature of the decision-maker and simply stated that the report was a fair and accurate representation of their statement. Even though the respondent was not answering any questions, they appeared more cooperative which could impact a decision-maker's bias.

As discussed in the debrief, it is helpful to frame the questions within the context of the alleged violations. This organizes the questions in a way that is beneficial to the person answering it. It also ensures that the

[5] D. Stafford & Associates Title IX Hearing Script.

decision-maker is covering all of the elements of the policy violation. For example, regarding an allegation of sexual assault, the main questions, based on the definition in the College's policy, are:

- What were the sexual behaviors?
- Who was the initiator?
- What, if any, were the words and actions that indicated consent?
- For incapacitation:
    - Was the complainant incapacitated using the College's definition?
    - Would a reasonable person in similar circumstances know the person was incapacitated?

The decision-maker also needs to be aware of how a question is worded and the tone used. Questioning should not be aggressive, nor should it appear that the decision-maker is trying to "catch" the party in an inconsistency. "Why" questions or using phrases like "Did you really…" or "Did you actually…" can convey a judgment and suggest blame.

Recommendation(s):

1. When asking questions to determine if an element is met, consider organizing the questions within the context of each element.
2. Remain cognizant that "sex-based" can be sexual in nature or conduct that is directed at an individual's sexual or gender identity.
3. Minimize the use of modifiers which may indicate judgment. For example, asking "Did you actually say that?" could be perceived as having a judgmental tone. A better question would be "Did you say that?" The best question would be, "Please tell us about the conversation concerning…"
4. Avoid compound questions which can be confusing. Compound questions also allow the individual to answer only a portion of the question.

Cross-examination

Regarding cross-examination, the Preamble of the 2020 Title IX regulations states,

> "The Department reiterates, however, that the essential function of cross-examination is not to embarrass, blame, humiliate, or emotionally berate a party, but rather to ask questions that probe a party's narrative in order to give the decision-maker the fullest view possible of the evidence relevant to the allegations at issue."[6]

Allowing cross-examination by the parties' advisors is new for most institutions as is the need to determine relevancy for every cross-examination question. The Regulations state,

> "Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant."[7]

[6] The Preamble to the Title IX Regulations at 30319
[7] 34 CFR §106.45(b)(6)(i).

This was not done in the hearing. The decision-maker needs to ensure that relevancy is determined prior to an individual answering a question. By not allowing this built-in pause, the parties are more likely to begin to answer questions that are not relevant and there is more back and forth between the parties. There were times when the exchanges were of an attacking nature from both advisors.

If the decision-maker determines that a question is not relevant, an explanation must be provided as to why the question is deemed irrelevant. It does not need to be a lengthy explanation nor is the decision-maker required to allow the advisor to argue the decision.

An example of this is as follows:

- Advisor: Asks the question of the party.
- Party: The Party does not immediately answer because they know they must wait for the Decision Maker to state whether or not the question is relevant and if so, will direct the party to answer the question.
- Party: Answers the question after the Decision Maker has instructed them to. They will not answer the question if it is not deemed relevant, in which case the Advisor would move on to the next question.

As a reminder, the Regulations are clear that questions about the complainant's sexual history must be examined for relevancy every time. The Regulations state,

> "Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent are offered to prove consent."[8]

The respondent's advisor asked a question of the complainant regarding past sexual behavior and the decision-maker did not stop the question until after the complainant complained about it.

It is also important to note that any records maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party are not allowed unless that party has provided voluntary, written consent.

One of the advisors used the technique of pretending to ask a question when they were just making a statement to advance their argument. The advisor would make a statement and follow it with "yes or no?" or then ask a question. Advisors need to ask questions only and refrain from expressing their opinion or making an argument.

In reference to cross-examination, the Preamble to the Regulations states that "questions that are duplicative or repetitive may fairly be deemed not relevant and thus excluded." It is possible that an advisor will ask the same question of a party that was already posed by the decision-maker. Whether the person needs to

[8] 34 C.F.R. § 106.45(b)(6)(i)

answer again or if a response such as "asked and answered" is acceptable needs to be determined by the institution as to whether this is in compliance with the Regulations.

During the debrief, the group discussed whether the advisors could conduct direct examination to their own party. This is ultimately the College's decision, although we do not recommend direct examination as the investigative report is a party's direct statement, which they have had two opportunities to correct in written response to the evidence and the final investigative report. If the college does allow direct examination, that needs to be clearly stated in their policy and administered consistently.

Recommendations:

1. The decision-maker must determine relevancy of each question prior to a party answering the question. It may be useful to use the mute function as described in the technology section to allow for the built-in pause.
2. The decision-maker must address any attempts to use cross-examination to intimidate, abuse etc.
3. If an advisor is not behaving in accordance with expectations such as making statements rather than asking a question, the party and/or advisor should be addressed and warned that the behavior cannot continue.

Deliberation

Preparation and a well-managed hearing are keys to an effective deliberation. Reviewing all relevant evidence from the report and the hearing, and a careful review and understanding of the policy, allows for a full consideration of the matter. The decision-maker's deliberation should focus on the facts of the case and be absent of any bias which includes not confusing the evidence with party behavior in a hearing.

The decision-maker needs to write a determination. The Regulations, with the bolded items specific to the hearing, state:

> "The written determination must include—
>
> (A) Identification of the allegations potentially constituting sexual harassment as defined in § 106.30;
>
> (B) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
>
> **(C) Findings of fact supporting the determination;**
>
> **(D) Conclusions regarding the application of the recipient's code of conduct to the facts;**
>
> **(E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant**; and
>
> (F) The recipient's procedures and permissible bases for the complainant and respondent to appeal.[9]

[9] 34 C.F.R. § 106.45(b)(7)(ii)

Recommendations:

1. Follow consistent steps during deliberations, using the preponderance of the evidence.
    a. Consider one behavior at a time.
    b. Unpack all of the elements for the behavior.
    c. Determine if the behavior occurred based on the preponderance of the evidence.

CONCLUSION

We extend a deep gratitude to all participants in the mock hearing. The care and commitment of the College to provide a fair and impartial process is evident. If the College requires additional support in understanding this report or in seeking additional services from D. Stafford & Associates, please contact Dolores Stafford at dolores@dstaffordandassociates.com**.**