
Office for Civil Rights and Title IX Overview

Agenda

- Title IX Overview
- Title IX Scope
- Title IX Personnel Roles & Responsibilities
- Title IX Process Overview
- Investigation and Adjudication
- Trauma-Informed Considerations
- Evidence and Assessing Credibility
- Hearing or Questioning Opportunities
- Making a Determination
- Appeals Process

Goals of the Training

- Understand the applicable policies and procedures
 - Conflicts of interest
 - Recusals
 - Avoiding Bias
- Formal Grievance Process
- Preparing for the Hearing
- Pre-Hearing Meetings
- Hearing
- Difference between Investigators and Decision-Makers
- Evidence and Questions
- Written Decisions and Rationales

Who Are We?



The Office for Civil Rights (OCR) and Title IX is a resource for all students, staff, and faculty for addressing concerns related to discrimination, harassment, dating/domestic violence, stalking, and sexual misconduct, including related retaliation.



The Office for Civil Rights (OCR) and Title IX also addresses compliance with Title VI, Title VII, the ADA and the ADEA.

Office of Civil Rights (OCR)

Role	Guidance
• Establishes compliance standards and guidance	• Regulatory and sub-regulatory guidance
• Enforces Title IX through investigations and compliance reviews	• Dear Colleague Letters, Amendments to Title IX Regulations, Q&As, Notices of Interpretation

OCR v. OCR

Department of Education Office of Civil Rights

- Sub-agency of Dept. of Education that is focused on enforcing civil rights
- Denver, Colorado office

Colorado College Office of Civil Rights & Title IX

- Focused on the training, compliance and enforcement of Colorado College policy

Title IX Overview



No person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

OCR & Title IX Basics



- Prohibits discrimination in any program or activity
- Applies to students, employees, volunteers, etc.

Scope of Federal Regulations

Sex-Based Discrimination

- Discrimination based on sex or gender is still prohibited under the 2020 Title IX regulations.
- Colorado College is not obligated but has chosen to handle all grievances through the regulations established by the 2020 regulations.
- Additionally, Colorado College will continue to provide protection for gender identity, sexual orientation, and pregnancy and parenting.

Gender Equity

- Title IX Coordinator is responsible for oversight of gender equity in Athletics.
- Also responsible for equal opportunity with other departments, including gender equity gaps or concerns.
- Gender equity means ensuring fairness and justice in the treatment of all genders.
 - Focus is on equal treatment and recognizing need for equitable changes to achieve equal outcome.

Gender Identity

In the circumstances where it is okay to separate or treat differently on the basis of sex, institutions cannot do so by subjecting a person to more than a de minimis harm.

- “De minimis harm” means the harm is so trivial that it is not worthy of addressing

“Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person’s gender identity subjects a person to more than de minimis harm on the basis of sex.”

Protected by Colorado College policy and Colorado State Law

Pregnancy and Parenting

Pregnancy or related conditions = pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.



Institutions must treat pregnancy or related conditions in the same way and under same policies as other temporary medical conditions.



Cannot discriminate on the basis of current, potential, or past pregnancy or related conditions, or on the basis of current, potential, or past parental, family or marital status.

Sexual harassment is conduct based on sex that satisfies at least one of the following:

Quid Pro Quo	Hostile Environment	Violence Against Women Act (VAWA) Crimes
Conditioning an outcome on an individual's participation in conduct.	Unwelcome conduct that is so severe, pervasive, and objectively offensive that it denies a person equal access to a program or activity.	- Sexual assault - Dating Violence - Domestic Violence - Stalking

Hostile Environment Considerations*

- Perspective of a “reasonable person” (consider age, abilities, positions of authority, etc.)
- Does it meet the definition?
- Does the conduct deny “equal access?” Does not need to be a total or complete loss of access, but equal.
- Consider the type of misconduct, how often it happened, where it took place, etc.

** Applies to Title VI, Title VII, Title IX, & ADA*

Retaliation

- Mistreatment directed at employee/student who has:
 - Complained about discrimination
 - Participated in an investigation, hearing or other proceeding
 - Refused to participate in an investigation, hearing or other proceeding
- Also includes mistreatment for raising discrimination concerns that affect others.
- Conduct that would dissuade a reasonable person from bringing a complaint or participating in an investigation.
- Must be part of the Civil Rights and Title IX grievance process.

Sexual Assault

- Any sexual contact with any body part of another person without the recipient's active consent, or when the recipient is incapable of giving active consent. Sexual assault falls into three subcategories:
- Penetrative Sexual Assault: Any anal, or vaginal penetration, no matter how slight, of another person with any body part or object, without that person's active consent. Oral penetration, or contact with a sex organ of another person, without the active consent of the other constitutes penetrative sexual assault.
- Groping/Fondling: Any physical touching of the intimate body parts of another person without that person's active consent.
- Statutory Rape: Any sexual act conducted with an individual under the age of legal consent. Colorado law sets the age of consent at 17 with an exception for individuals who are 15 or 16 who have consensual relationships with individuals up to 10 years older than them. Age of consent varies from state to state and individuals who are interested in a consensual relationship with someone under the age of 18 should familiarize themselves with age of consent laws in the state they are present in.

Intimate Partner Violence

Any form of physical violence committed by a person who is, or has been, in a relationship of a romantic or intimate nature with the individual the violence is perpetrated against. This also includes any violence committed against a current or former legal partner, any person whom the individual shares a child with, or any child of the individual.

Stalking

Any course of conduct directed at a specific person which would cause a reasonable person to fear for their safety or the safety of another, or which causes substantial emotional distress. Stalking requires that an individual engage in two or more actions which involve following, monitoring, observing, surveilling, threatening, or interfering with the property of the other. These actions may be conducted directly by the stalker, through a third party at the direction of the stalker, or via any indirect contact. This includes the use of the internet, mobile applications, social networks, cell phones, texts, or other similar devices.

Sexual Exploitation

Taking sexual advantage of another person without that person's active *consent* for any purpose. This includes photographing, videotaping, or audio taping any sexual activity without the other's active *consent*; sharing consensually obtained photographs, videotapes, or audiotapes with others without the active *consent* of those involved (also known as revenge porn); invasion of sexual privacy (such as hiding to observe others in a state of undress or in sexual situations, live-streaming a sexual activity without the

active *consent* of those involved, or allowing another to physically observe sexual encounters without the active *consent* of those involved); exposing one's intimate parts, such as genitalia, groin, breasts, or buttocks to someone without their active *consent* (also referred to as indecent exposure); and prostituting another individual for personal gain. Producing sexually explicit images of another person using artificial intelligence or image editing software or intentionally distributing such images without the consent of the individual depicted also constitutes sexual harassment.

Obstruction

Intentionally deterring, interfering, or hindering the College's ability to complete a *formal resolution process*. (e.g., the destruction or request to destroy *relevant evidence* after notice of the College's investigation). Instructing another person to engage in obstruction, as well as engaging in obstruction on behalf of another person are also considered to be a violation of this policy.

Prohibition on Knowingly Making False Statements

CC community members are expected to provide truthful information in any *report*, meeting or proceeding under this Policy. Providing or submitting false or misleading information in bad faith is prohibited and such conduct may be disciplined under the relevant College policies and procedures. *Reports* made or information provided in *good faith*, even if the facts are later *unsubstantiated*, will not be subject to disciplinary consequences.

This clause shall not be implemented in a manner intended to deter *CC community members* from *reporting*. It is a requirement that all *CC community members* engage in *good faith* when seeking to *report* acts that violate the behavior and institutional standards outlined in this policy or when serving as a witness in a *formal resolution process*. Actions made in *good faith* shall not be punishable in accordance with the totality and intention of this policy and CC's commitment to creating a safe environment where *reporting* is encouraged. A *determination* that an allegation is *unsubstantiated* does not mean that a *report* was not made in *good faith*.

Consent

Consent is the clear, unambiguous, and voluntary agreement to engage in a specific sexual activity. *Consent* may be demonstrated through mutually understood words or actions. A person who initiates sexual activity or moves an encounter from one sexual activity to another is responsible for obtaining the *consent* of the other before proceeding. *Consent* cannot be obtained through use of *force* or *coercion* or when a party is *incapacitated*, as defined below. When evaluating whether *consent* was present in any given circumstance the College will look to whether a reasonable person who is unimpaired by alcohol or drugs would have been able to determine whether *consent* was present.

Consent cont'd

Consent is an affirmative process and silence, passivity, or lack of resistance does not constitute *consent*. For this reason, relying on non-verbal communication alone may not be sufficient to determine if *consent* is present in all circumstances. *Consent* may not be inferred from any existing or previous dating or sexual relationship. Even in the context of an on-going romantic or marital relationship, mutual *consent* must be obtained every time sexual activity occurs. In cases involving existing or previous sexual relationships, the nature and manner of prior communications between the parties about *consent* within the context of the relationship may have a bearing on evaluating whether *consent* was present.

Consent cont'd

Consent to engage in a particular sexual act at one point may not be used to establish the presence of *consent* for the same sexual act at a separate point in time.

Consent to engage in a particular sexual act may not be used to establish the presence of *consent* for a different sexual act within the same sexual encounter.

Consent can be withdrawn by any party at any time. When an individual wishes to withdraw *consent* for a previously agreed to act, they must communicate through clear words or actions a decision to end the sexual activity. Once *consent* is withdrawn, the sexual activity must end immediately.

Consent cont'd

Given the inherent power differential in the context of faculty-*student*, staff- *student*, or supervisor-supervisee relationships, the College prohibits all such consensual. The only exception granted is for recently graduated *employees* and *students* when a romantic or sexual relationship pre-dates the *employee's* hire by the College.

Incapacitation

A person who lacks the ability to make informed, deliberate choices about whether to engage in sexual activity is considered incapacitated for the purposes of evaluating the presence of *consent* under this policy. A person may be incapacitated due to mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity was requested, suggested, or initiated. *Incapacitation* may result from the consumption of alcohol or other drugs or due to a temporary or permanent *disability*.

Incapacitation (cont'd)

- When alcohol or other drugs are involved, *incapacitation* is more than drunkenness or intoxication and requires a level of impairment significant enough to prevent an individual from making informed and deliberate choices. In determining whether someone has become incapacitated due to the consumption of alcohol or other drugs, the College will look to common signs of *incapacitation* such as: the amount of alcohol or drugs consumed; slurred or incomprehensible speech; instability standing or walking; combativeness or emotional volatility; vomiting; unconsciousness; or incontinence.
- Someone who is incapacitated may not be able to understand or reasonably respond to the following questions: Do you know where you are? Do you know how you got here? Do you know what is happening? Do you know who you are here with?
- The College urges caution when engaging in any type of sexual activity when one or both parties have engaged in alcohol or drug usage. The usage of alcohol or drugs may impair an individual's ability to determine whether *consent* is present. When there is any doubt about an individual's level of *incapacitation*, the safest thing to do is to refrain from engaging in sexual activity.
- Being impaired by alcohol or drugs is never a defense for a failure to obtain or properly evaluate the presence of *consent*.

Coercion

The use of an unreasonable amount of pressure designed to overcome the will of *Coercion* requires more than a simple effort to entice or attract another person into engaging in sexual activity; however, when a person communicates a clear decision to not engage in or stop sexual activity, continued pressure may become coercive. The use of explicit or implicit threats to cause academic, employment, reputational, or financial damage to another may also constitute *coercion*. It is not a defense that a party could not actually enact any threats, provided the other party reasonably believed them to be valid in the moment. In evaluating the presence of *coercion*, the College will look to (1) the frequency, intensity, and duration of the pressure; (2) the degree of isolation of the person being pressured; and (3) any actual or perceived power differentials between the parties in the moment and within the context of their respective roles within the College.

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse
- Dating violence does not include acts covered under the definition of domestic violence

Domestic Violence

A felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the Complainant;
- By a person with whom the Complainant shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
- By a person similarly situated to a spouse of the Complainant under domestic or family violence laws;
- By any other person against an adult or youth Complainant who is protected from that person's acts under domestic or family violence laws.

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Sexual Exploitation

Taking sexual advantage of another person without that person's active *consent* for any purpose. This includes photographing, videotaping, or audio taping any sexual activity without the other's active *consent*; sharing consensually obtained photographs, videotapes, or audiotapes with others without the active *consent* of those involved (also known as revenge porn); invasion of sexual privacy (such as hiding to observe others in a state of undress or in sexual situations, live-streaming a sexual activity without the active *consent* of those involved, or allowing another to physically observe sexual encounters without the active *consent* of those involved); exposing one's intimate parts, such as genitalia, groin, breasts, or buttocks to someone without their active *consent* (also referred to as indecent exposure); and prostituting another individual for personal gain. Producing sexually explicit images of another person using artificial intelligence or image editing software or intentionally distributing such images without the consent of the individual depicted also constitutes sexual harassment.

Nondiscrimination Policy

Colorado College (CC, or the College) values the individual diversity and contributions of all *students, employees, applicants, volunteers, and external community members*. We are committed to creating an environment where our intersecting identities allow us to grow and thrive as an educational institution free from discrimination and harassment based on *protected classes* and identities.

It is vital to the protection of our community that all *CC community members* understand both their responsibility to contribute to an environment free from discrimination and harassment, and the College's responsibility to respond to *reported* incidents. The Assistant Vice President for Civil Rights/Title IX Coordinator and Assistant Director for Civil Rights/Title IX Coordinator (hereafter AVP for Civil Rights/Title IX Coordinator or their designee, are responsible for receiving and responding to *reports* of discrimination, harassment, and retaliation as required by law.

Title VI & Title VII

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, and national origin in programs and activities that receive federal financial assistance. This means that if an organization receives federal funding, it cannot discriminate against individuals in its programs or activities based on these protected characteristics.

Title VII of the Civil Rights Act of 1964 is a federal law that prohibits employment discrimination based on race, color, religion, sex, and national origin. It applies to employers, labor unions, and employment agencies, and prohibits discrimination in various aspects of employment, including hiring, firing, compensation, and other terms and conditions of employment.



ADA, ADEA, POWR Act

ADA - The Americans with Disabilities Act (ADA) is a U.S. civil rights law that prohibits discrimination based on disability in everyday activities. It ensures equal opportunities for individuals with disabilities in areas like employment, state and local government services, public accommodations, transportation and telecommunications.

ADEA - The Age Discrimination in Employment Act (ADEA) is a federal law that prohibits discrimination in the workplace based on age, specifically for individuals 40 years of age or older. It aims to protect older workers from unfair treatment, such as in hiring, promotion, firing, or other terms and conditions of employment, solely because of their age.

POWR Act - The protecting opportunities and workers' rights act (POWR Act), Colorado law, which became effective on August 7, 2023, significantly changes state employment law. It expands protections against discrimination and harassment, focusing on marital status, workplace harassment, and record-keeping.



Title IX Personnel Roles and Responsibilities

Title IX Coordinator: Role and Responsibilities

Colorado College has designated a Title IX Coordinator and two Deputy Title IX Coordinators.

Title IX/OCR operates with autonomy.

Title IX/OCR responsible for:

- Creating and implementing legally compliant policy and procedures
- Overseeing response to reports and formal complaints as well as informal and grievance procedures
- Ensuring sanction and remedy compliance
- Training oversight
- Recordkeeping

Investigator: Role and Responsibilities

- **Michelle LeFlore**, Colorado College Investigator
- Burden to collect sufficient evidence
- Conducts fair, prompt, and impartial investigations
 - Identifies witnesses and evidence
 - Provides parties opportunity to submit evidence
 - Identifies factual issues
 - Maintains records, recordings, etc.
 - Creates an investigation report
- Works in coordination with the Title IX Coordinator, particularly around evidence and report review
- Maintains impartiality and avoids bias
- Receives annual training

Decision-makers: Roles and Responsibilities

- Hearing panel members – cannot be Title IX Coordinator or Investigator
- Attends and conducts a live hearing
- Determines whether the Colorado College policy has been violated under the appropriate standard of evidence
- Writes a Notice of Decision that includes a rationale for the finding
- Avoids bias and conflicts of interest
- Receives annual training

Appeals Officer: Role and Responsibilities

- Determines party's appeal under relevant appeal process and reviews appropriate investigation/adjudication materials
 - Not a “re-do” of the investigation
 - *New and relevant information*
 - *Failure of Investigative or Decision-Making Process*
 - *Bias*
- Provides written determination that includes a rationale for the outcome
- Avoids bias and conflicts of interest
- Dean of College/Chief of Staff or a designee without a conflict of interest

Conflicts of Interest

- Baises for or against Complainant or Respondent individually or generally
- A material connection to the parties, witnesses or issues that would cause a reasonable person to question partiality
- Immediately disclose any potential conflicts of interest to the Title IX Coordinator
- Failure to recuse when a known conflict of interest may be a basis for appeal

Mitigating Bias

- Cultivate self-awareness and knowledge
 - Acknowledge and Recognize Biases
- Seek Diverse Perspectives
 - Engage with Different Viewpoints
 - Diversify your Information Sources
 - Challenge Assumptions
- Practice critical thinking and skepticism
 - Question Everything
 - Base Decisions on Logic and Data

Frequent Implicit Biases

- Race
- Gender
- Gender Identity
- Gender Expression
- Sexual Orientation
- Religion
- National Origin
- Ethnicity
- Age
- Disability
- Marital Status
- Veteran Status

Avoiding Prejudgment of Facts

- Start from a presumption of non-responsibility
- Allow facts and evidence to guide decisions
- Acknowledge and challenge any implicit biases you may carry
- Do not let the titles of the parties exert an undue influence
- Don't rush to a decision
- Be mindful about keeping an open mind
- Stay rooted in your role
- Step back and check yourself

Advisors

- Help parties understand and navigate the processes
- Advisors assist parties throughout the process; can be attorneys, advocates, friends, family members, mentors, etc.
- Parties have the right to an advisor of their choice
- Advisors may attend meetings and interviews with the party
- If a party does not have an advisor, CC must provide an advisor to conduct cross-examination on the party's behalf during the hearing. These advisors are not required to be trained
- Advisors do not conduct cross-examination in non-Title IX cases
 - May assist in developing questions for panel members to ask

Title IX Process Overview

Key Terms

- **Complainant:** individual who experienced the harassment/discrimination.
 - **Third-party report:** A report from someone else about an individual who experienced harassment/discrimination.
 - **Witness:** An individual who may have knowledge about the incident.
- **Respondent:** individual accused of harassment/discrimination.
- **Grievance Process:** the investigation process and/or informal process used by an institution to address complaints of harassment/discrimination.
- **Formal Complaint:** document requesting the institution to move forward with the grievance process. Can be filed by either the reporting party or the Title IX Coordinator.
- **Supportive Measures:** resources or accommodations that help either party in the aftermath of a report and/or during a grievance process. Access to supportive measures is not contingent upon pursuing a grievance process. a

Informal Resolution Process



Can take the shape of shuttle diplomacy, mediation, etc.



The opportunity to pursue Informal Resolution can be available up until a responsibility determination is made.



It is possible that an investigator would need to pause/stop their investigation while the parties attempt Informal Resolution OR that an investigation would follow an unsuccessful Informal Resolution.



Investigators should not utilize any information that may have been gleaned by the Informal Process facilitator as part of the investigation – keep these processes separate.

Due Process

Due process is a concept that flows from the U.S. Constitution.

- Fourteenth Amendment is the "Due Process Clause" which requires the government not to deny any person "life, liberty or property, without due process of law."
- A student, faculty or staff member must have a form of "process" before any sort of disciplinary action from Colorado College.
 - Notice and hearing
 - CC is not a court but must provide a fair process
 - *Value is in the procedures*

Fundamental Concepts of Fairness

Provide parties written notice of the complaint with clear and thorough information about the investigation process

Allow the parties to present witnesses and evidence

Provide parties the opportunity to be heard and address allegations

Permit the parties to navigate the process with the support of an Advisor

In reaching a decision, CC must substantially comply with its policies and procedures

Make an appeal available to all parties based on the grounds established in the policy

Provide a written notice of outcome of all parties that specifies the rationale for the final determination

Sanctions should be reasonable and proportionate

Grievance Process

- Sex Discrimination (general)
- Sex-based harassment involving student(s) (heightened)
- Discrimination based upon Title VI, Title VII, ADA & POWR Act

Notice of Allegations

- All General Notice requirements
- Allegations potentially constituting harassment, discrimination and/or retaliation
- Respondent presumed not responsible
- Parties will have opportunity to present evidence to a trained impartial decision-maker
- May have an advisor who may be an attorney
- Will have access to relevant evidence or an investigation report (with evidence available upon request)
- Notice of prohibition against knowingly making false statements/submitting false information

Mandatory Reporting



All employees of the College, with the exception of confidential resources, are mandatory reporters per CC Policies.



Mandatory reporters have an obligation to inform the Title IX Coordinator of any instance of discrimination or harassment they become aware of.

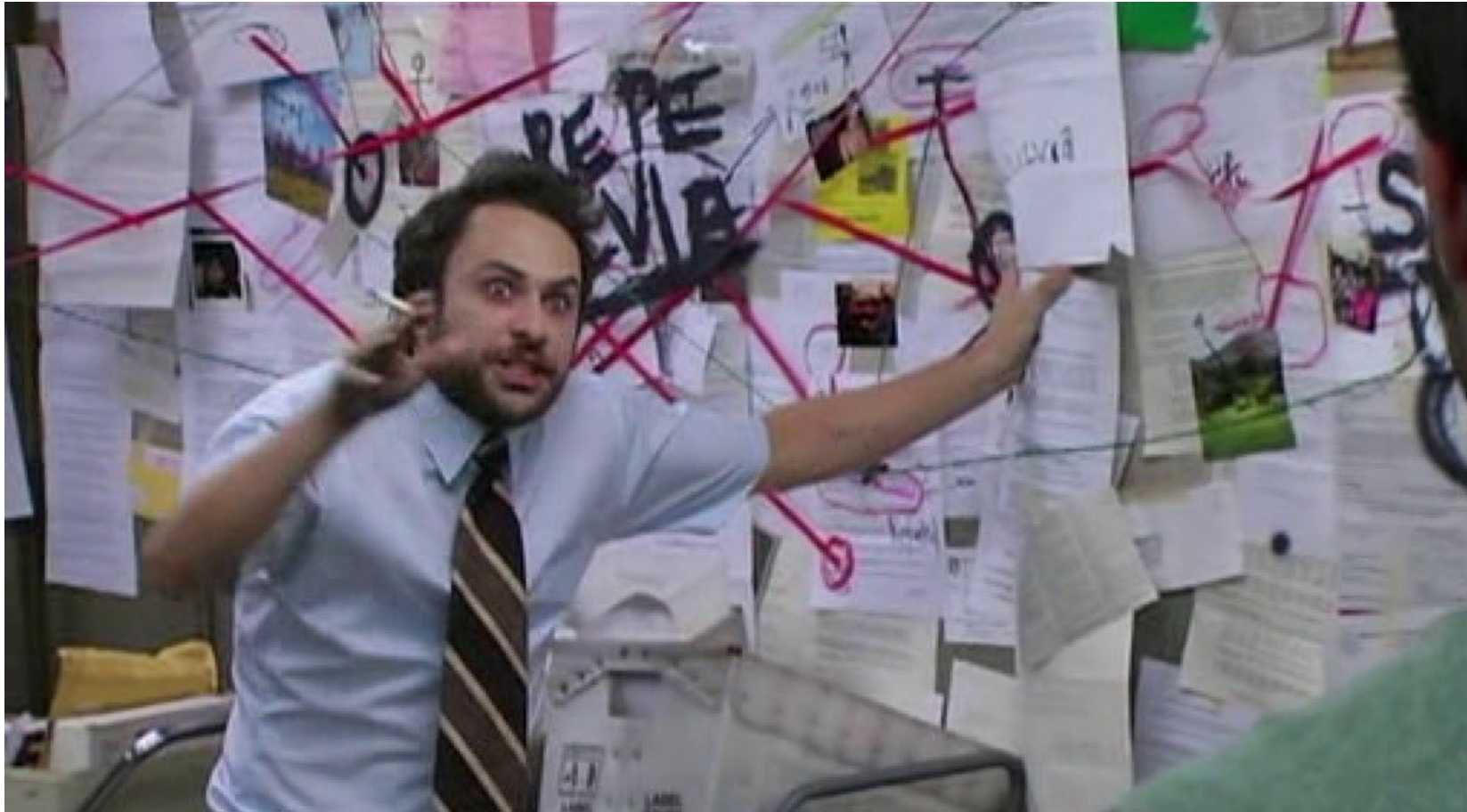


“Officials With Authority”



Title IX states that when an official with authority to institute corrective measures on the College’s behalf is made aware of a report, the school is deemed to have actual knowledge which triggers the school’s response obligations.

Investigation and Adjudication



The Investigation



- CC in-house investigator
 - TIX/OCR and Cabinet will have outside investigator
- Investigator determines the investigation strategy (in coordination with TIXC)
- Witness and party interviews
- Evidence collection

Investigation Report and Review

- Summary of relevant evidence written by the Investigator
- Must be made available for parties and advisors to review (in hard copy or electronic format) 10 days prior to hearing
- Written responses to the report are permitted and provided to the hearing panel

What about....

- Evidence related to sexual history?
- Privileged information?
 - Privileged information refers to certain confidential communications that are legally protected and cannot be disclosed in legal proceedings, even if relevant.
 - Cannot require or allow this unless privilege has been waived by the party
- Treatment/health records?
 - Only permissible if party provides voluntary, written consent to include
- Redactions?

Complainant's Sexual Behavior

Information about a reporting party's sexual behavior or predisposition is not permitted in the Investigation Report or during the hearing unless:

- The information is being used to prove someone other than the respondent committed the misconduct

OR

- The information concerns specific prior incidents between the parties and are offered to prove a pattern of consent within the context of the relationship.

The Hearing

- Needs to be live with the default being virtual
- Parties will have access to an advisor, specifically for the questioning portion
- Parties will have the opportunity to present a set of questions to the hearing panel for the parties and witnesses
 - Chairperson will review all questions in advance and will remove any proposed questions that are not relevant or otherwise impermissible
 - Parties will have the opportunity to review or clarify any struck question
 - Panel will limit considerations to information presented in the report
- Opening and closing statements
 - Brief in nature and limited to relevant information
- TIXC or another individual may be present to enforce hearing decorum and process
- Must be recorded

Who Attends the Hearing?

- Hearing Panel Members
- The parties and their advisors
- Witnesses who the parties or the decision-makers have identified as needing to be present for questioning
- Title IX Coordinator may attend (to help with logistics, decorum issues, hearing process, etc.)
- General counsel may attend (or be on standby for questions)
- Investigator may attend

Hearing Technology

- Title IX/Office of Civil Rights responsible for the hearing technology
- Decision-makers need to be trained in how to use the technology, but a member of the Title IX/OCR will be present and responsible
- Remember that hearings must be recorded

Hearing Preparation

- TIXC assists in determining hearing format and structure (breaks, length, etc.)
- Decision-makers should review the Investigation Report and evidence and determine:
 - Which questions do they plan to ask parties/witnesses during the hearing?
 - Which witnesses do they want present, if any, during the hearing?
- Which witnesses do the parties want present, if any, during the hearing?

Pre-Hearing Meetings

- Not required, but Colorado College implements it as good practice to meet with each party and their advisor in advance of the hearing to discuss:
 - The hearing process and what to expect
 - Expectations regarding decorum, Advisors participation, how any technology will be used during the hearing
 - Review the cross-examination phase of the hearing
 - Whether the parties want any witnesses present at the hearing
 - Does a party need an assigned advisor?

Role of the Hearing Panel Chair

- Title IX Coordinator or Deputy Title IX Coordinator
- Make relevancy determinations for all questions asked during the hearing.
- Make determinations about appropriateness of questions or information provided (cannot be irrelevant, abusive, or overly repetitive)
- Ensure advisors stay in line with decorum guidelines

Hearing Decorum and Other Rules

- OK for hearing panel to take breaks to deliberate or to confer with counsel.
- Be professional at all times. Maintain an awareness of tone, body language, facial expressions, etc.
- Expectation that all individuals present at the hearing demonstrate respect toward others.
- Advisors only speak during questioning and opening statements.

Trauma Informed Considerations

The Impact of Trauma on the Brain and Body

Trauma overwhelms our normal coping responses, which provide a sense of control and safety.

Trauma can impact individuals in multiple, significant ways:

- Neurologically
- Emotionally
- Psychologically
- Socially
- Biologically

Neurobiology of Trauma

- Growing body of research on this, specifically within the context of sexual assault.
- During a traumatic event, an individual's ability to control their physical movements, to think rationally, and to encode memories may be significantly impaired.
- This is a hard-wired response that is meant to offer protection.
- This mainly has to do with the release of specific hormones during a traumatic event.

Interviewing Through a Trauma-Informed Lens

- Helps for a better investigation
- Puts interviewees at ease
- May provide context for counterintuitive reactions or occurrences
- Does NOT mean that there isn't probing for credibility

Tips for Being Trauma-Informed

- Be an authentic, non-judgmental human. Work on fostering trust, especially during an initial interview.
- Slow down; silence is ok. Remember that memory recall may be slow or out of order.
- Be thoughtful about the language that you use and phrasing of questions.
- Emphasize transparency to the extent that you are able.
- Help parties understand what to expect, ideally in advance of the interview.
- Consider the physical environment of the interview.
- Don't automatically draw negative inferences based on a behavior or reaction that may be related to trauma.
- Don't use evidence of trauma as evidence that a policy violation has occurred
- A trauma-informed approach should not unfairly favor the Complainant OR prejudice against Respondent

Cultural Implications

- Cultural norms and background may impact the way parties react during an incident and how they present during the investigation process.
- Be aware of these potential influences; however, ...
- Beware of biases and stereotypes.
- Consider additional training and seek out appropriate expertise if necessary.

Evidence & Assessing Credibility

Types of Evidence

Direct or Testimonial Evidence	Documentary Evidence	Real Evidence
Circumstantial evidence	Hearsay evidence	Character evidence

Relevancy determinations

- | | |
|---|--|
| <ul style="list-style-type: none">• Does the information help me in deciding if there was a policy violation?• Does it “move the dial” in proving or disproving the allegations? | <ul style="list-style-type: none">• Know where the line is regarding evidence or questioning intended only to harass or embarrass other party.• What about Responding Party’s prior or subsequent misconduct?• What about evidence or questioning that is duplicative or repetitive? |
|---|--|

Off Limits:

- Medical or treatment records without voluntary, written consent
- Reporting party’s prior sexual history (with two exceptions)
- Legally privileged information unless party waives privilege

Relevant vs. Related Evidence

Relevant	Directly Related
Evidence is considered relevant “if it has the tendency to make a fact more or less probable than it would be without the evidence: and the fact is of consequence in determining the action.”	Directly related evidence “includes evidence that the institution does not intend to rely upon in reaching a determination regarding responsibility, including inculpatory and exculpatory evidence, whether obtained from a party or other source.”

Evidence Examples

Interviews or Statements

Texts

Emails

Social media posts

Journal entries or letters

Dating apps

Videos

Photographs

Public Safety Reports

Expert reports

Medical reports

Keycard swipes

Voicemails

Wi-Fi pings

Phone records

Polygraph results

Clothing

Physical terms (weapons,
trash, etc.)

Weighing the Evidence

Weight of evidence is the believability or persuasiveness of evidence in probative value, not the quantity or amount of evidence. Weight of evidence is not determined by mathematics but depends on its effect in inducing belief.

Parties may argue about the weight of certain evidence during the hearing or in written statements.

Assessing Credibility

Credibility: The extent to which the decision-maker can rely on a witnesses' testimony to be accurate and helpful in the understanding of the case.

Assessing Credibility, cont'd

Possible Factors:

- Logic/consistency of information provided
- Corroborating evidence
- Consistency of information – substance of statements
- Plausibility of all information given
- Amount of detail provided. Factual detail assessed against assertions that have no supporting detail. (But consider whether there may be other reasons.)

EEOC Statement on Credibility in Harassment Cases

Inherent plausibility

- Is the testimony believable on its face? Does it make sense?
- Demeanor
- Did the person seem to be lying or telling the truth?

Motive to falsify

- Did the person have a reason to lie?

Past record

- Did the alleged harasser have a history of similar past behavior?

Corroboration

- Is there witness testimony or physical evidence that corroborates the testimony?

Remember!

None of these factors are determinative as to credibility.

For example:

- The fact that there are no eye-witnesses to the alleged harassment by no means necessarily defeats the complainant's credibility.
- The fact that the alleged harasser engaged in similar behavior in the past does not necessarily mean that they do so again.

A Note About Demeanor

Be careful about relying on demeanor when it comes to credibility.

Much of what you hear about “how to tell if someone is lying” is not based upon actual research and has been debunked or is considered pseudoscience.

It's Not Easy To Spot A Liar

 Associated with lying
  No significant relationship
  Associated with truth-telling

CUES	ASSUMED RELATIONSHIP	ACTUAL RELATIONSHIP
VOCAL		
Hesitations (use of speech fillers, e.g., “ah,” “um,” “er,” “uh,” and “hmmm”)		
Speech errors (grammatical errors, word or sentence repetition, false starts, sentence change, sentence incompletions, slips of the tongue, etc.)		
High-pitched voice		
Speech rate (number of spoken words in a certain period of time)		
Latency period (period of silence between question and answer)		
Pauses (silent, filled, or mixed)		

 Associated with lying
  No significant relationship
  Associated with truth-telling

CUES	ASSUMED RELATIONSHIP	ACTUAL RELATIONSHIP
VISUAL		
Gaze aversion (looking away from the conversation partner)		
Smiles (smiling and laughing)		
Facial fidgeting (face touching or rubbing hair)		
Self-fidgeting (touching, rubbing, or scratching body or face)		
Fidgeting (undifferentiated)		
Illustrators (hand and arm movements designed to modify or supplement what is being said verbally)		
Leg and foot movements		
Posture shifts (movements made to change seating position)		
Head movements (head nods and head shakes)		
Eye blinks (blinking of the eyes)		

A Note About Memory

- Memory errors do not necessarily destroy credibility
- Most people's memories are not that great
- Trauma affects memory
- Substance abuse may affect memory

A Note About Eyewitnesses

Can be powerful

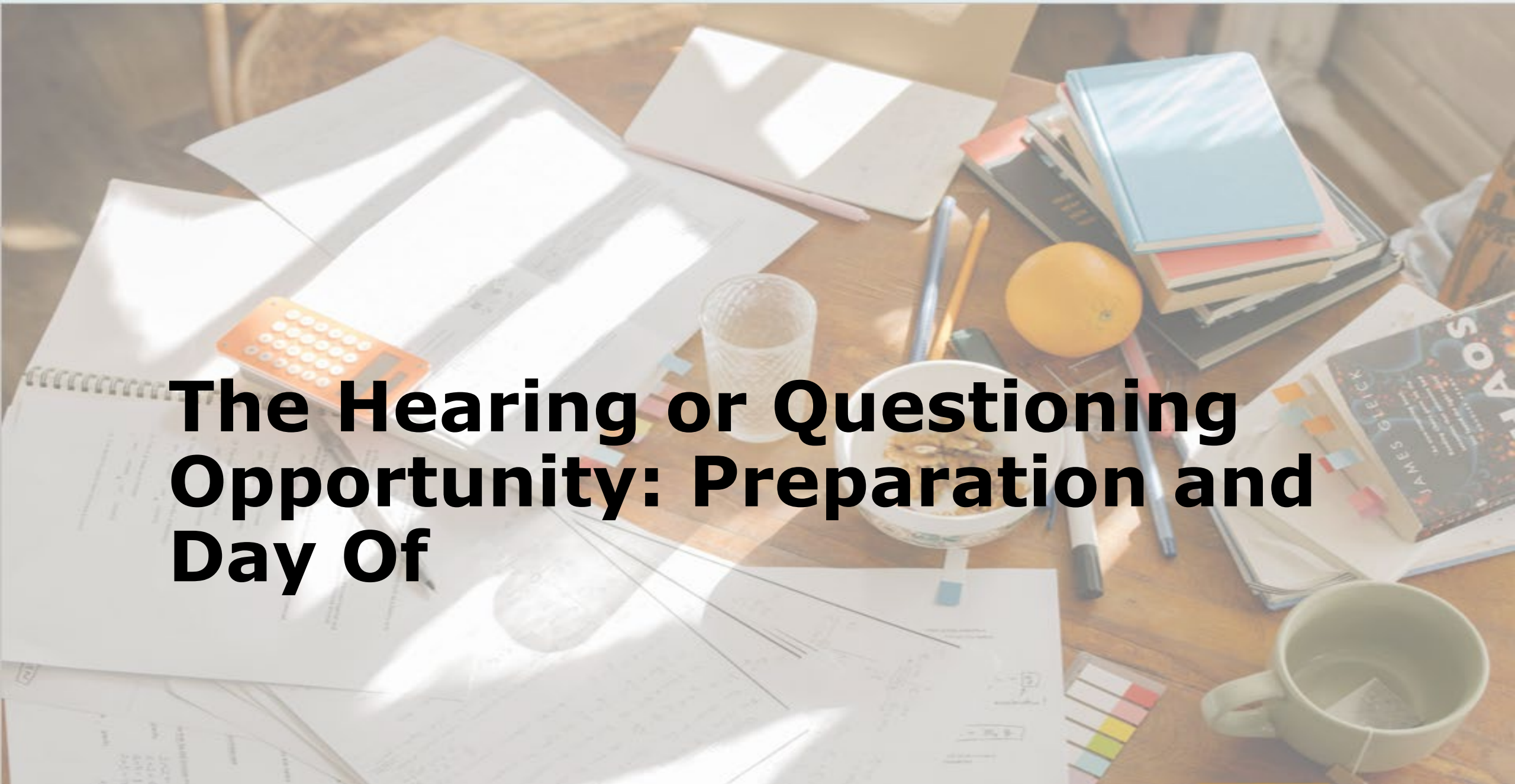
HOWEVER,...

Well-intentioned eyewitness testimony can be problematic because our brains are not always great at accurately interpreting and remembering what we see.

And eyewitness testimony can be “contaminated.”

Assessing Credibility: Final Thoughts

- It's important to have reasons supporting credibility decisions.
- Remember that unlikable is not the same as not credible.
- Credibility determinations should not be based on gender, sexual orientation, race, ethnicity, nationality, ability, religion, etc.
- Reach your conclusions based on the evidence/information provided, NOT based on speculation, rumors, character assessment, etc.



The Hearing or Questioning Opportunity: Preparation and Day Of

Evidence Review

- Review and re-review the Investigation Report, Notice of Allegations, and relevant policy definitions.
 - If needed, go back to specific evidence relating to areas in the Report that could provide useful clarity for you.
- Note areas of consistency and undisputed facts and information.
- Note areas of inconsistency and disputed facts and information.
- Remember to stay focused on the information that matters.

Developing Questions

Consider lingering questions you have after reviewing the evidence and whether to raise those during the hearing/questioning meetings

- Ensure the answer to potential questions isn't already available in the report/evidence
- Ensure your question is clear, neutral, and easily understood
- Questions should help clarify any vague details or fill in gaps
- Consider your approach with the question: How will you phrase it? Who is it directed towards? Who should ask it?

Cross-Examination and Advisors

Cross-Examination	Direct-Examination	Relevancy Decisions
Parties, through their advisors, are permitted to ask questions of the other party and any witnesses.	Advisors may also question their own advisee.	The Hearing Panel Chair is responsible for determining whether each question asked is relevant.

Relevancy Determinations

Does the information help me in deciding if there was a policy violation?

Does it "move the dial" in proving or disproving the allegations?

Off limits:

- Medical or treatment records without voluntary, written consent
- Reporting party's prior sexual history (with two exceptions)
- Legally privileged information unless party waives privilege
- Know where the line is regarding evidence or questioning intended only to harass or embarrass other party
- What about Respondent's prior or subsequent misconduct?
- What about evidence or questioning that is duplicative?

Questioning Skills & Tips

- Even if you hear something surprising, try to remain neutral.
- Stay flexible, both in terms of your questioning but also regarding the flow of the hearing/meeting.
- Practice active listening.



Making a Determination

Overview of the Deliberation Process

Standard of Evidence

Colorado College requires that the standard of evidence used is that of preponderance of the evidence

- More likely than not/50.1 percent likely

Process

Apply the applicable policy definitions to the evidence provided.

Decision-Makers will work with the TIX office to write the determination, including the rationale for the decision.

Questions to Think Through

- What are the undisputed facts and what are the disputed facts?
- What does the evidence show regarding the disputed facts? Which evidence is most credible? Why?
- What is the weight of the evidence provided?
- Using the appropriate standard of evidence, did a policy violation occur? Analyze each element of a policy definition under the evidence standard.
- What is the rationale for your decision?

Deliberation Process

- Must provide a detailed, written rationale for the decision; must include evidence supporting the conclusions.
- Have the policy definitions close at hand for reference.
- Assess the weight of the evidence provided.
- Determine the finding(s) about the allegation(s)
 - Provide a rationale for each finding/allegation.

Notice of Decision Requirements

- Allegations
- Procedural Steps
- Findings of Fact
- Decision regarding responsibility
- Rationale for each allegation/decision
- Appeal process information

Other Notice Requirements

- Deliver written notice simultaneously to the parties.
- Decision becomes final when parties are notified of the appeal decision OR when the deadline to submit an appeal has passed.

Appeal Process

Appeals

- Available to both parties for determination of responsibility and dismissal of formal complaints.
- Required reasons for appeal:
 - Procedural irregularity that affected the outcome
 - New evidence that was not reasonably available at the time of the decision was made that could affect the outcome
 - Conflicts of interest or bias from an official involved in the case that affected the outcome

Appeals Process

Requirements	Possible Appeal Determinations
• Appeal decision-maker cannot have been previously involved in the process • No conflict of interest or bias • Required training • Timeframe for appeals • Let parties know if an appeal was received and that the other party has an opportunity to respond • Must send appeal decision and rationale to parties simultaneously • Determination of responsibility becomes final either on date CC notifies parties of appeal decision or date when an appeal would no longer be timely	• Affirm previous decision • Reverse previous decision • Return for further investigation or adjudication

Recordkeeping

- Must maintain all records for at least 7 years
- All training materials made available to the public
- Records of efforts to prevent discrimination on basis of pregnancy and related conditions
- All documentation surrounding grievance process including any investigation report, witness interviews, evidence gathered, and correspondence relating to grievance process
- Decision reached by adjudicator(s) including whether respondent found responsible, notice of decision, what actions taken in response to the determination including remedies taken

Recordkeeping cont'd

- Additional records for each report of sex discrimination:
 - Efforts to encourage alleged victims to meet the TIXC
 - If crime alleged, efforts to encourage alleged victim to notify law enforcement;
 - If meeting with TIXC, notes of intake meeting, including whether complainant decided to proceed with grievance process, informal resolution process, or no process;
 - Supportive measures offered and received by complainant (and respondent if applicable), and any documentation relating to concerns raised or challenges to supportive measures.
 - Information about each incident;
 - Where the incident(s) took place;
 - Names of the individuals involved and whether alleged victim, alleged perpetrator or witness;
 - When the incident(s) occurred.

Questions?

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