# What is Required under the Final Rule?

A recipient with actual knowledge of sexual harassment, in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent.

#### Title IX Sexual Harassment §106.30

- Conduct on the basis of sex that satisfies one or more of the following:
  - (i)An employee conditioning education benefits on participation in unwelcome sexual conduct ( i.e quid pro quo); or
  - (ii)Unwelcome conduct that a reasonable person would determine is so severe, pervasive, AND objectively3d [(i/a )0.-1.14 -1.0.2 i8o

#### Title IX Jurisdiction

- Institution's program or activity in the Unvi8Mi

### Adjudication Processes

#### **Students**

- All matters not informally resolved will be heard by a Hearing Panel
- Hearing Panels comprised of trained faculty and staff

#### **Employees**

 Title IX matters not informally resolved will be heard by a single decision-

### Advisors at Title IX Hearings §106.45(b)(6)

- Provide advice, counsel, and support to a party
  - Students or employees
- Perform cross examination of the other party and any witnesses
- Institutional advisors assigned at the hearing

#### What is Cross Examination?

 Questions raised to an opposing party or witness called by the opposing party

Used to advance claims or defenses of a party

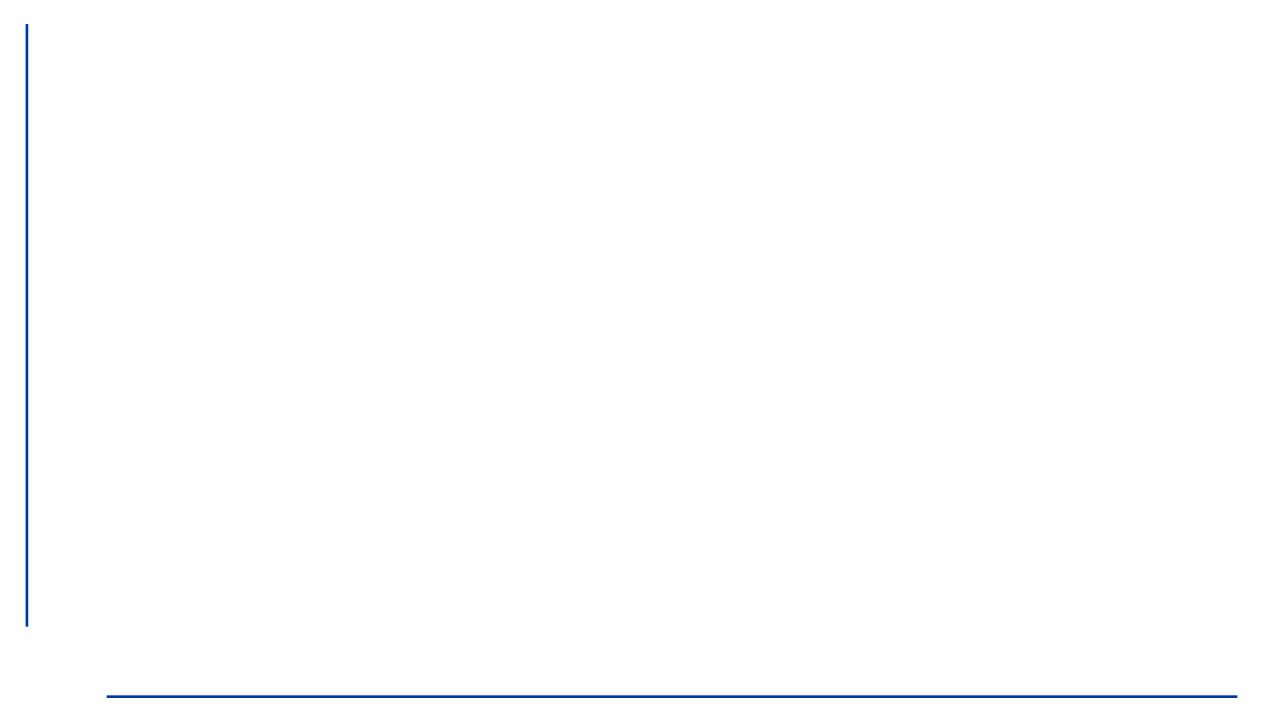
Used to assess the credibility of an individual

USG Expectation: Respect, dignity, decorum

# Typical Order of a Hearing

- Opening by Decision Maker
- Opening statements by both parties
- Questioning of the Complainant
  - By the decision maker or panel
  - By other party (through their advisor)
- Questioning of the Respondent
  - By the decision maker or panel
  - By other party (through their advisor)

- Questioning of any Witnesses
  - By the decision maker or panel
  - By the parties (through their advisor)
- Closing statements by both parties
- Closing by Decision Maker



# **Hearing Logistics**

- Hearings may be conducted in-person or via videoconferencing
  - Ensure you know how to use the technology as well
- At the request of either party, the parties must be permitted to be in separate rooms
- All directly related information will be available
- All hearings must be recorded

# **Evidentiary Considerations**

 The burden of proof AND burden of gathering evidence is on the institution

- Parties are permitted to present evidence and call witnesses to advance their claims and defenses
  - In Title IX Hearings that may include fact or expert witnesses
  - Permitted to establish the weight given to certain types of evidence

### Relevancy Determinations During Title IX Hearings

Prior to any question being

# Assessing Relevancy

#### Relevant

 Relevant information relates to the incident at issue

 Relevant information provides sufficient value in making the overall determination

#### Irrelevant

- Questions and information regarding the Complainant's sexual history or sexual predisposition unless to prove
  - Someone else other than the Respondent committed the alleged misconduct
  - Consent between the parties

# Other Evidentiary Exclusions

- Legally privileged information is protected
- A party's treatment records cannot be used without their voluntary, written consent
- Duplicative evidence may be deemed irrelevant
- If an individual does not submit to cross examination, at a Title IX hearing, their statements cannot be relied upon

#### Standard of Evidence

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# **Expectations of USG Advisors**

Be willing to advise any

#### Additional Concerns & Questions

