



MOUNT HOLYOKE

# Title IX: Hearing Panelist Training

2020 Regulations  
Civil Rights & Compliance

# Our Time Together Today:

1. Content Warning
2. Title IX Basics
3. General Vocabulary
4. Your Role
5. Due Process
6. Policy and Procedure
7. Bias, Conflict of Interest, and Recusal
8. Hearing Steps and Preparation
9. Evidence
10. Questioning Parties and Witnesses
11. Making the Decision

The logo for Mound Holyoke, featuring the name in a white, serif font with a thin white line underlining the text. The background is a dark blue-tinted photograph of a building's ornate archway and clock tower.

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Content Warning

# Content Warning

Throughout today's training we will discuss different scenarios and engage with content that is sex- and gender-based. This content may include matters of harassment, discrimination, and violence.

Today's training may include information or vocabulary that is triggering or unfamiliar to you. Please let us know if you need to take a minute away from the training or if you would like clarification on any of the content being presented.

The logo for Mountholyoke, featuring the word "MOUNTHOLYOKE" in a white, serif font. The letter "H" is significantly larger and more ornate than the other letters, with decorative flourishes extending from its top and bottom. A thin white line underlines the letters "O", "L", "Y", and "O".

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The background of the slide is a photograph of a clock tower, likely the one at Mountholyoke. The image is heavily filtered with a dark blue color. The clock tower is the central focus, with its clock face clearly visible. The tower is surrounded by ornate, wrought-iron arches and railings. The overall scene is a low-angle shot looking up at the tower.

What is Title IX?

# What is Title IX?

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”

*20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)*

# Allegations that may fall under TIX:

1. Sexual Harassment
  - a. Discrimination on the Basis of Sex
  - b. Hostile Environment and Quid Pro Quo
2. Sexual Assault
  - a. Fondling
  - b. Rape
3. Dating Violence
  - a. Emotional, Physical, and Mental Abuse
4. Domestic Violence
  - a. Emotional, Physical, and Mental Abuse
5. Stalking
6. Coercion - Add on Allegation
7. Retaliation

# Purpose of a Title IX Process:

1. Investigation → thorough, reliable and impartial
2. Process → prompt, equitable, and fair
3. Remedies → act reasonably to stop discrimination/harassment, act reasonably to prevent recurrence, and act equitable to remedy effects

The background of the slide is a photograph of the Mound Holyoke clock tower, featuring a large, ornate archway with intricate scrollwork. The entire image is overlaid with a semi-transparent blue filter. The text 'MOUND HOLYOKE' is centered at the top in a white, serif font, with a thin white line underlining the word 'MOUND'.

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# General Vocabulary

# Terms Used in a Title IX Process:

1. Complainant:
2. Respondent:
3. Witness:
  - a. Eye Witness:
  - b. Character Witness:
4. Advisor:
5. Evidence:



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Your Role

# Being a Hearing Panelist:

1. 2020 Regulations require the “Decision-maker” to determine whether the Respondent has violated the College policy at hand
  - a. MHC uses a Hearing Panel for their “Decision-maker” model.
  - b. The panel is made up of two-to-three employees of the College and possible one expert in the field depending on the severity and complexity of the matter.
2. Required separation of the role between the Title IX Coordinator and the Decision-maker
3. Appellate Officer is a separate Decision-making role
  - a. Cannot be anyone previously engaged in the process
  - b. MHC uses a singular individual decision-maker for this role

# The Live Hearing:

Required Live Hearing for all allegations that took place from August 14, 2020 through July 31, 2024.

- a. Live hearing means it may take place in-person or virtually but must take place in real time.
- b. Parties may cross-examine each other and witnesses through their advisors
- c. Advisors are required at the time of the hearing

# Challenges of Decision-making

1. The charges that you are assessing have already been determined.
2. It is not a question of right or wrong, but whether the policy has been violated, proven by the evidentiary standard.
3. You must impartially uphold the integrity of the process.
4. You may not agree with MHC policy, the charges given, or the evidentiary standard, but you must be willing to uphold it.

# Challenges of Decision-making

You cannot take a “side.” You represent the process and following the procedures that are laid out by MHC policy.

If you find yourself taking a side, or think that you might based on the parties or subject matter, you should think about recusal. We will discuss this in more detail later in this training.

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# Due Process

# Due Process can be:

## Procedural

- a. Consistent, thorough, and procedurally sound review of all allegations
- b. Compliance with written policies and procedures
- c. Clear written notice of all allegations and opportunity to present witnesses and evidence to be heard

## Substantive

- a. Appropriately impartial and fair for findings and sanctions
- b. Fundamentally fair rule and/or policy
- c. Be made in good faith (without malice, ill-will, bias, or conflict)
- d. Decision must have a rational relationship to the allegations and evidence

## Parties must have the right to:

1. Present witnesses, including expert and fact witnesses
2. Present and know inculpatory and exculpatory evidence
3. Discuss the allegations under investigation without restriction
4. Be accompanied to any related meeting or proceeding by an Advisor of their choice, who may be, but isn't required to be an attorney

# Evidentiary Standard

MHC uses the Preponderance of the Evidence standard: it is “more likely than not” the policy was violated

- 50.1% (50% plus a feather)
- The “Tipped Scale” Model

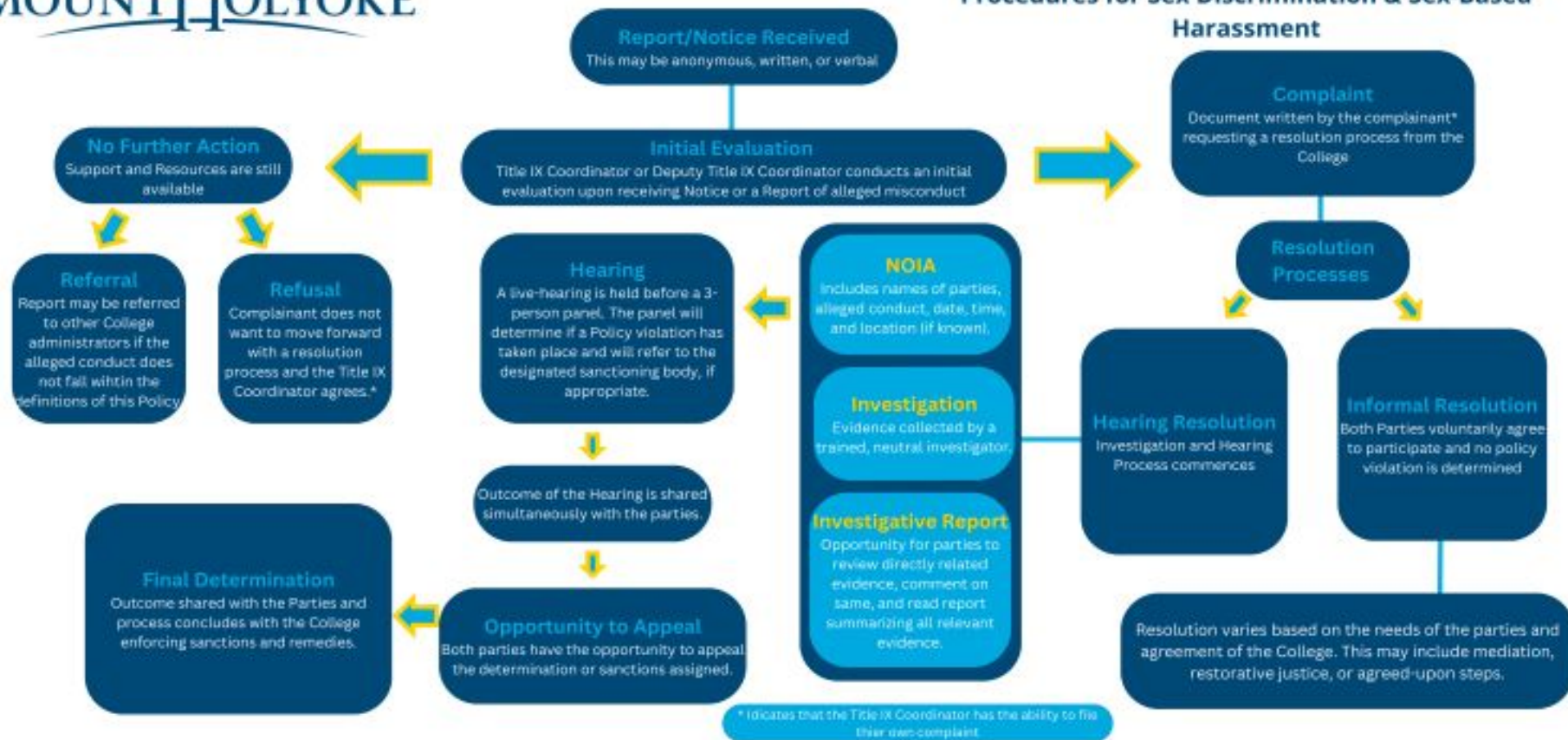
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# Policy and Procedure



Procedures for Sex Discrimination & Sex-Based Harassment



# The Investigation: Broken Down

1. Receive the Formal Complaint
2. Evaluation and Jurisdiction Determination
3. Establish a Basis (Incident, Pattern, and/or Climate)
4. NOIA (Notice of Investigation and Allegations) to Parties
5. Establish and Begin Investigation and Interviews
6. Investigation Report is Drafted
7. Title IX Coordinator Reviews Report
8. TIXC Provides report and all relevant evidence to parties and their advisors for inspection and review
9. Parties have 10 days to respond to the Investigative Report
10. Investigator finalizes report based on responses.
11. Parties have 10 days prior to the date of the hearing to respond to the final report (Impact/Mitigation Statements)

# The Live Hearing Described

1. Live-Hearings are mandated for Higher Education
2. Must create an audio/audiovisual recording, or transcript, of the hearing (regardless of form) and make it available to the parties for inspection and review
3. Must allow live cross-examination to be conducted exclusively by each parties Advisors
4. Questions will only come from Panel, Advisor, and Chair
5. Title IX Coordinator will serve as the Hearing Facilitator

# Links to Policy and Procedure:

2020 Policy:

<https://www.mtholyoke.edu/policies/sexual-harassment-policy>

2020 Procedure:

<https://www.mtholyoke.edu/policies/formal-grievance-procedure-sexual-harassment-policy>

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# Bias, Conflict of Interest, and Recusal

# Conflicts of Interest, Objectivity, and Bias

2020 Regulations mandate impartial resolutions with fair procedures

- Explicitly prohibiting conflicts of interest or bias with Coordinators, Investigators, Decision-makers/Chairs, against parties generally or individually

# Bias/Conflict of Interest

- Bias can represent any variable that improperly influences a decision
- Knowing a student or an employee is typically not sufficient to create a conflict of interest if objectivity is not compromised
- Having previously disciplined a party is also typically not enough to create a conflict of interest

# Recusal

- A conflict may necessitate recusal, or a party may request a recusal or reassignment of panel members
- The Title IX Coordinator is responsible for determining if the recusal is necessary
- If you feel that you have a bias or conflict in a matter, please inform the Title IX Coordinator immediately.

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# Hearing Steps and Preparation

## All Decision-Makers Must Review:

1. Written Notice of Investigation and Allegations (NOIA)
2. Policy alleged to have been violated
  - a. Identify the elements of each alleged offense
3. All materials carefully and thoroughly
4. Review and re-review the investigation report
  - a. Note areas of inconsistency, disputed information, or questions
5. Prepare questions in advance based on materials

# Pre-Hearing Meetings

The hearing panel will conduct pre-hearing meetings amongst themselves with or without the facilitator, to answer any questions they may have, clarify expectations, discuss witness participation and cross-examination, discern any potential conflicts or recusal requests, and consider any relevancy determinations that may need to be made in regard to evidence.

The panel can make pre-hearing rulings on evidence relevance.

## Day of Hearing:

1. Dress Professionally but be comfortable
2. Put phone or any other distractions away
3. Bring a note-taking device - note when you need to make a determination
4. Clear Calendar for after the meeting - deliberation may take 30 minutes or much longer depending on case.

# Hearing Decorum

- Be professional, but do not try to have a lawyer-like approach
  - You are not interrogating or cross-examining, but asking questions for your own understanding
- Be respectful
  - Tone, manner, and use of language all matter
  - Sarcasm is never appropriate and will not be tolerated
  - Maintain your composure - never let frustration or emotion show
  - De-escalate or take breaks if tensions are running high. You can message the facilitator at any point in time to request a break or check-in on the timing of the next break scheduled

# Hearing Testimony

- Determine the relevance and appropriateness of questions prior to them being answered . The Panel must “rule” on questions prior to a response being given. If denied, rationale must be stated for the record.
- Panel may provide directives to disregard a questions or information if deemed irrelevant, abusive, or unduly repetitive.
- Recognize positional authority



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Evidence

# Evidence

- No restriction on parties discussing case or gathering evidence
- Institution cannot limit types/amount of evidence that may be offered except that it must be relevant
- Evidence must “directly relate” to the the allegations available for reference and use at at the hearing

Relevance → Admissibility of the evidence

Credibility → how much weight admissible evidence is given

# Types of Evidence

- Documentary Evidence - supportive writings and documents
- Electronic Evidence - photos, texts, and videos
- Real Evidence - physical objects
- Direct or Testimonial Evidence - personal observation
- Circumstantial Evidence - not eyewitness, but compelling
- Hearsay Evidence - statement made outside of the hearing but presented as important information
- Character Evidence - subject to relevance determination; often not probative of the underlying allegation

# Title IX Specific Evidence Issues

- Evidence of Complainants sexual predisposition is never relevant
- Evidence of Complainant's prior sexual behavior is explicitly and categorically not relevant except when:
  - Offered to prove that someone other than Respondent committed the conduct alleged; or
  - Specific incidents of Complainant's sexual behavior with Respondent are offered to prove consent

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# Questioning Parties and Witnesses

# Questioning

- The Goal is to ensure that the Panel understands all information and evidence contained in the report
- Use questions to gain details, eliminate vagueness, and fill in any gaps that you may have
- Do not expect a “Gotcha” moment.

Things to think about before asking a question:

1. Do you need to know to make a determination?
2. Is the answer already in the report or documentation?

# Asking Good Questions

- Generally use open-ended questions (tell us... who... what... how?)
- Try to avoid close-ended questions
- Do not ask compound questions
- Avoid suggesting an answer in your question

Clarify any terms that may have a spectrum of meanings: “hooked up,” “drunk,” “sex,” “buzzed,” “assaulted,” etc.

# Questioning Tips

1. Restate/summarize what was said. Helps validate that you are listening and ensures you understand what has been said.
2. Frame questions neutrally.
3. Be on the lookout for rehearsed or memorized responses.
4. Handle emotions sensitively and tactfully.
5. Observe body language, but do not rely on it as concrete evidence.

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# Making the Decision

# Overview

- Only Decision-makers attend and participate in the deliberations (facilitator will be available for questions)
- Do not record or take notes during the process
- Go through each element of each allegation
- Assess the credibility of the evidence and assess statements as factual, opinion-based, or circumstantial
- Apply evidentiary standard to determine if policy has been violated

# Deliberation

- Must provide detailed, written rationale for and evidence supporting its conclusion
- No order that allegations have to be addressed in, can always start with the most serious
- Neutralize any power imbalances among panel members, particularly based upon their position at the institution
- Ensure that an impartial decision is free of bias

# Findings and Impact Information

- Separate the “Finding” from the “Sanction”
- Impact/Mitigation statement(s) should only be considered if Respondent is found in violation
- The written determination must include:
  - Policy alleged to be violated
  - Description of procedural steps taken up to this point
  - Statement of and rationale for for the result for each allegation

# Written Determination

- Title IX Coordinator will review prior to disseminating to the parties
- FERPA cannot be constructed to conflict with or prevent compliance with Title IX
- Written Determination can be appealed and the determination should include all appeal information from the applicable policy



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Questions?

# Thank you!

Shannon Lynch, J.D.  
Assistant Vice President  
Civil Rights & Compliance  
3 Mary Woolley Hall  
413-538-2273

[Shannonlynch@mtholyoke.edu](mailto:Shannonlynch@mtholyoke.edu)