


# Title IX Resolution Pool Training

Title IX 2020 Regulations
Civil Rights & Compliance

# Our Time Together Today:

## Foundations

1 Content Warning

2 Title IX Basics

3 General Vocabulary

4 The Resolution Process

## Roles & Procedures

5 Your Role: Decision Makers

6 Your Role: Advisors

7 Due Process

8 Conflict of Interest, Bias, & Recusal

## Evaluation & Decision

9 Hearing Steps and Preparation

10 Evidence

11 Questioning of Parties and Witnesses

12 Making the Decision




# Content Warning

# Content Warning

## Scope of Discussion

Throughout today's training we will discuss different scenarios and engage with content that are based on protected categories. This content may include matters of harassment, discrimination, and violence on the basis of race, religion, national origin/ancestry, sex, and/or gender.

## Your Well-Being

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.




# 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

- Hostile Environment
- Quid Pro Quo

### 2. Sexual Assault

- Rape
- Fondling

### 3. Stalking

- Course of Actions (2+)

### 4. Dating Violence

- Emotional, Physical, and Mental Abuse

### 5. Domestic Violence

- Emotional, Physical, and Mental Abuse

### 6. Coercion

- Add-on Allegation: Another Offense has to be completed for Coercion to be added

### 7. Retaliation

- Must have already been engaging with the Title IX Process

# Purpose of a Resolution Processes:

### 1. Investigation

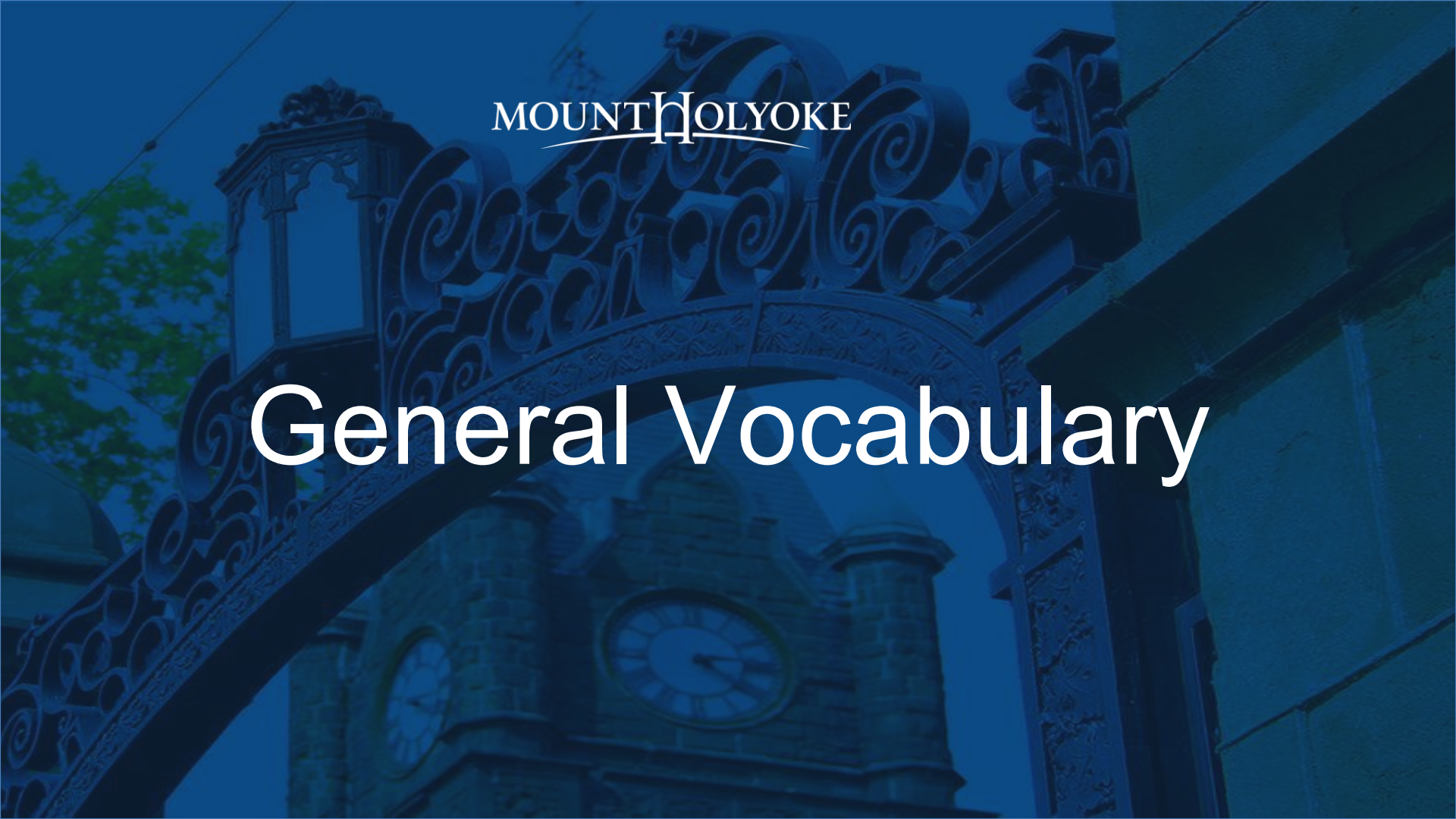
- Thorough
- Reliable
- Impartial

### 2. Process

- Prompt
- Equitable
- Fair

### 3. Remedies

- Act reasonably to stop discrimination & harassment
- Act reasonably to prevent recurrence
- Act equitably to remedy effects




# General Vocabulary

# Terms Used in a Title IX Process:

### 1. Complainant

Individuals who are the alleged victims of the allegations

### 2. Respondent

Individuals accused of committing the allegations

### 3. Witness

- **Eye Witness:** Witnessed allegations or aftermath take place
- **Character:** Speaks to habits, traits, and demeanor

### 4. Advisor

A support individual necessary at the Hearing

### 5. Evidence

Any and all documents, files, testimony, or information related to allegations




# The Resolution Process

# The Investigation: Broken Down

**1**
Receive Formal Complaint and determine jurisdiction.

**2**
Establish incident basis (Incident, Pattern, and/or Climate).

**3**
Issue Notice of Investigation and Allegations (NOIA) to parties.

**4**
Conduct investigation and interviews; draft initial report.

**5**
Title IX Coordinator reviews report and shares all relevant evidence with parties/advisors.

**6**
Parties have 10 business days to respond to the investigative report.

**7**
Investigator finalizes report based on responses.

**8**
Parties can submit Impact/Mitigation statements regarding the final report prior to the start of the hearing.

# 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




# Your Role: Decision Makers

# Being a Hearing Panelist:

## 1. The Decision-Maker

2020 Regulations require the “Decision-maker” to determine whether the Respondent has violated the College policy.

- **MHC Panel Model:**
  MHC uses a Hearing Panel.
- **Panel Composition:**
  Two-to-three College employees and potentially an expert.

## 2. Role Separation

There is a strict, required separation of roles between the Title IX Coordinator and the Decision-maker to guarantee an impartial, conflict-free resolution process.

## 3. Appellate Officer

The Appellate Officer serves in a separate, independent decision-making role.

- **Prior Engagement Limit:**
  Cannot be anyone previously engaged in the process.
- **MHC Model:**
  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 onward.**

### 1. Real-Time Format

Live hearing means it may take place in-person or virtually but must take place in real time.

### 2. Cross-Examination

Parties may cross-examine each other and witnesses through their advisors.

### 3. Advisors Required

Advisors are required at the time of the hearing.

# Challenges of Decision-making

### 1. Charges Set

The charges that you are assessing have already been determined.

### 2. Policy Focus

It is not a question of right or wrong, but whether the policy has been violated, proven by the evidentiary standard.

### 3. Impartiality

You must impartially uphold the integrity of the process.

### 4. Uphold Rules

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

### 1. Neutral Process Representation

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

### 2. Recusal Consideration

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.




# Your Role: Advisors

# Being an Advisor:

### 1. Appointed Advisors

If a party does not have their own advisor of choice, the College must provide them an Advisor for the live hearing.

### 2. Limits of the Role

The hearing advisor’s role is limited to asking questions for the purposes of cross-examination and redirect.

### 3. Preparation

It is important to know your party's position on the allegations and evidence. You should review the investigative report and evidence and assist your party to develop any questions to ask the opposing party.

# What to Ask?

1. **Were you interviewed about the allegations in the NOIA?**
2. **Did you see and have a meaningful opportunity to respond to the Investigative Report?**
3. **Did your notes reflect your recollection at that time?**
4. **Did you review your notes before coming to this hearing?**
5. **As we are here today, has your recollection or thoughts changed?**
6. **Did you speak with anyone about your testimony today prior to this hearing?**

# Cross Examination

### 1. Narrative

You want to be telling your parties story. Use the version of events that best fit the story that your party wants to illustrate to the Decision-makers.

### 2. Identify Facts

Always remember the facts at issue and the findings of fact that your party wants the Decision-maker to decide.

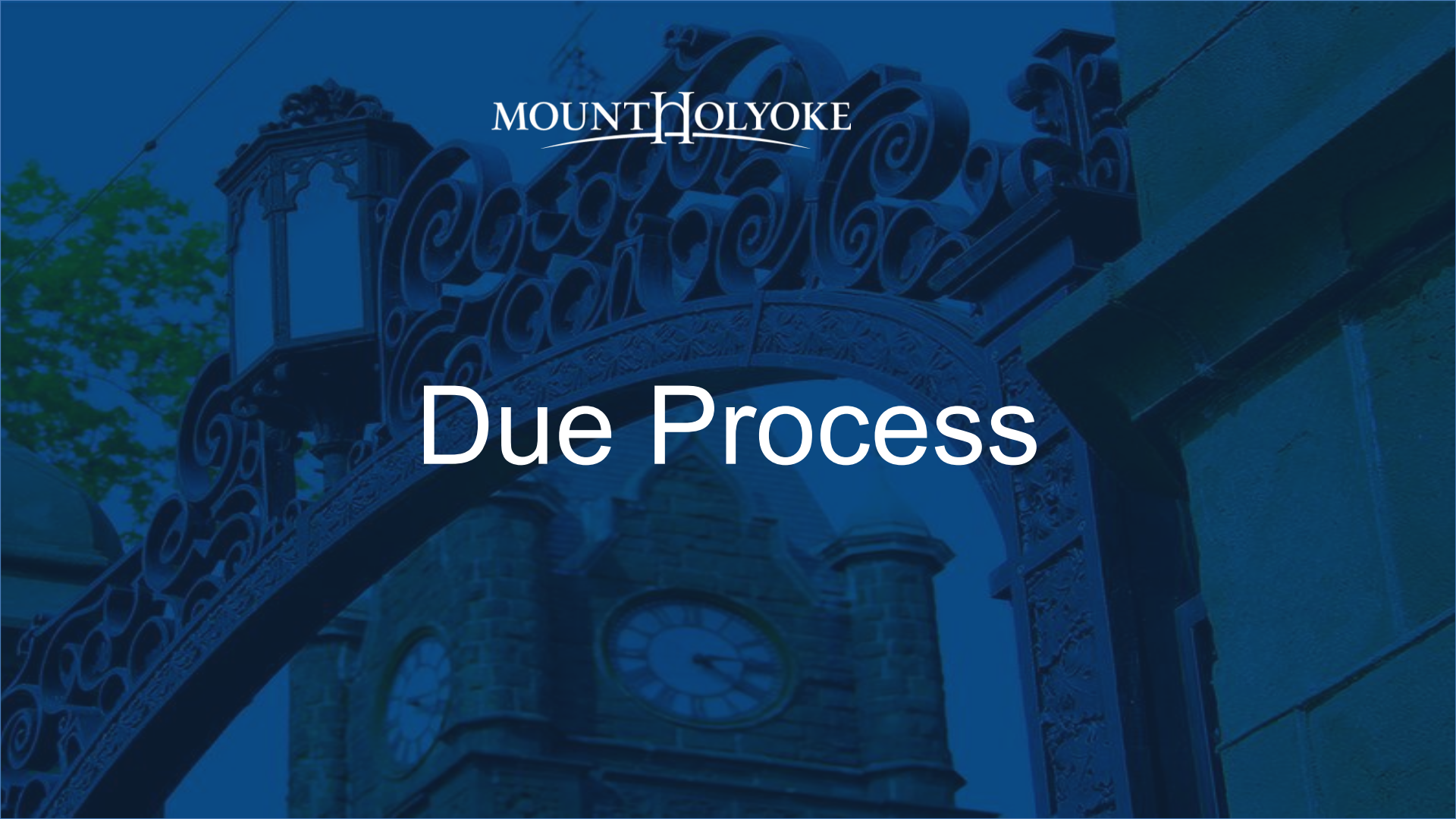
### 3. Spot Inconsistency

Highlight any inconsistencies that the opposing party makes.

* Additionally, on redirect, you have the opportunity to clean up any inconsistencies that your party may have made in their own testimony.

# How to Help

1. **Ask your party if they need help reviewing evidence or proposing questions**
2. **See if your party needs assistance preparing their opening or closing statement**
3. **Ask if your party plans to submit an impact statement**
4. **Ask if there is any area of the evidence that your party would like you to focus on**
5. **Be a listening ear and a supportive partner**
6. **Keep them upbeat during the hearing! You are their virtual champion**




# 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**

## Witnesses

Present witnesses, including expert and fact witnesses.

**2**

## Evidence

Present and know inculpatory and exculpatory evidence.

**3**

## Discussion

Discuss the allegations under investigation without restriction.

**4**

## Advisor

Be accompanied by an Advisor of choice, who is not required to be an attorney.

# Evidentiary Standard

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

## percent

**50.1%**

50% plus a feather to tip the scale.

## balance

**The “Tipped Scale”**

A model showing visual burden of proof.




# Bias, Conflict of Interest, and Recusal

# Conflicts of Interest, Objectivity, and Bias

## 1. Core Mandate

### Impartial Resolutions & Fair Procedures

The 2020 Regulations establish a rigorous framework requiring all Title IX proceedings to be executed impartially, securing fair outcomes and unbiased processes for all involved parties.

## 2. Scope of Prohibition

### Conflict & Bias Restrictions

Expressly prohibits any form of conflict of interest or bias against parties, either generally or on an individual basis.

**Applies Strictly To:**

**Coordinators, Investigators, Decision-Makers & Chairs**

# Bias/Conflict of Interest

### 1. Definition

## Nature of Bias

Bias can represent any variable that improperly influences a decision.

### 2. Relationships

## Knowing a Party

Knowing a student or an employee is typically not sufficient to create a conflict of interest if objectivity is not compromised.

### 3. Prior History

## Past Discipline

Having previously disciplined a party is also typically not enough to create a conflict of interest.

# Recusal

### 1. Process

## Conflict or Request

A conflict may necessitate recusal, or a party may request a recusal or reassignment of panel members.

### 2. Determination

## Coordinator's Role

The Title IX Coordinator is responsible for determining if the recusal is necessary.

### 3. Obligation

## Immediate Disclosure

If you feel that you have a bias or conflict in a matter, please inform the Title IX Coordinator immediately.




# Hearing Steps and Preparation

# All Pool Members Must Review:

1. **Written Notice of Investigation and Allegations (NOIA)**
2. **Policy Alleged to Have Been Violated**
   Identify the elements of each alleged offense
3. **All Materials Carefully and Thoroughly**
4. **Review and Re-Review the Investigation Report**
   Note areas of inconsistency, disputed information, or questions
5. **Prepare Questions in Advance Based on Materials**

# Pre-Hearing Meetings

## Meeting Objectives

The hearing panel may conduct pre-hearing meetings amongst themselves (with or without the facilitator) to:

- **Answer Questions & Clarify Expectations**
  Resolve panel queries and align on procedural expectations.
- **Discuss Witnesses & Cross-Examination**
  Plan witness participation and coordinate cross-examination parameters.
- **Discern Conflicts & Recusals**
  Identify potential conflicts of interest or recusal requests early.

**Key Authority**

## Evidence Relevance

The panel has the explicit authority to make **pre-hearing rulings** on the relevance of proposed evidence.

# 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 Panel Decorum

## Be Professional

### Avoid a “lawyer”-like approach

You are not interrogating or cross-examining, but asking questions for your own understanding.

## Be Respectful

- **Tone & Manner:** Tone, manner, and use of language all matter.
- **No Sarcasm:** Sarcasm is never appropriate and will not be tolerated.
- **Composure:** Maintain your composure - never let frustration or emotion show.
- **De-escalation:** De-escalate or take breaks if tensions run high. You can message the facilitator at any point to request a break or check-in on the next scheduled break.

# Hearing Testimony

Rule on Questions

## 1. Relevance

Determine the relevance and appropriateness of questions prior to them being answered. The Panel must “rule” on questions. If denied, rationale must be stated for the record.

Directives

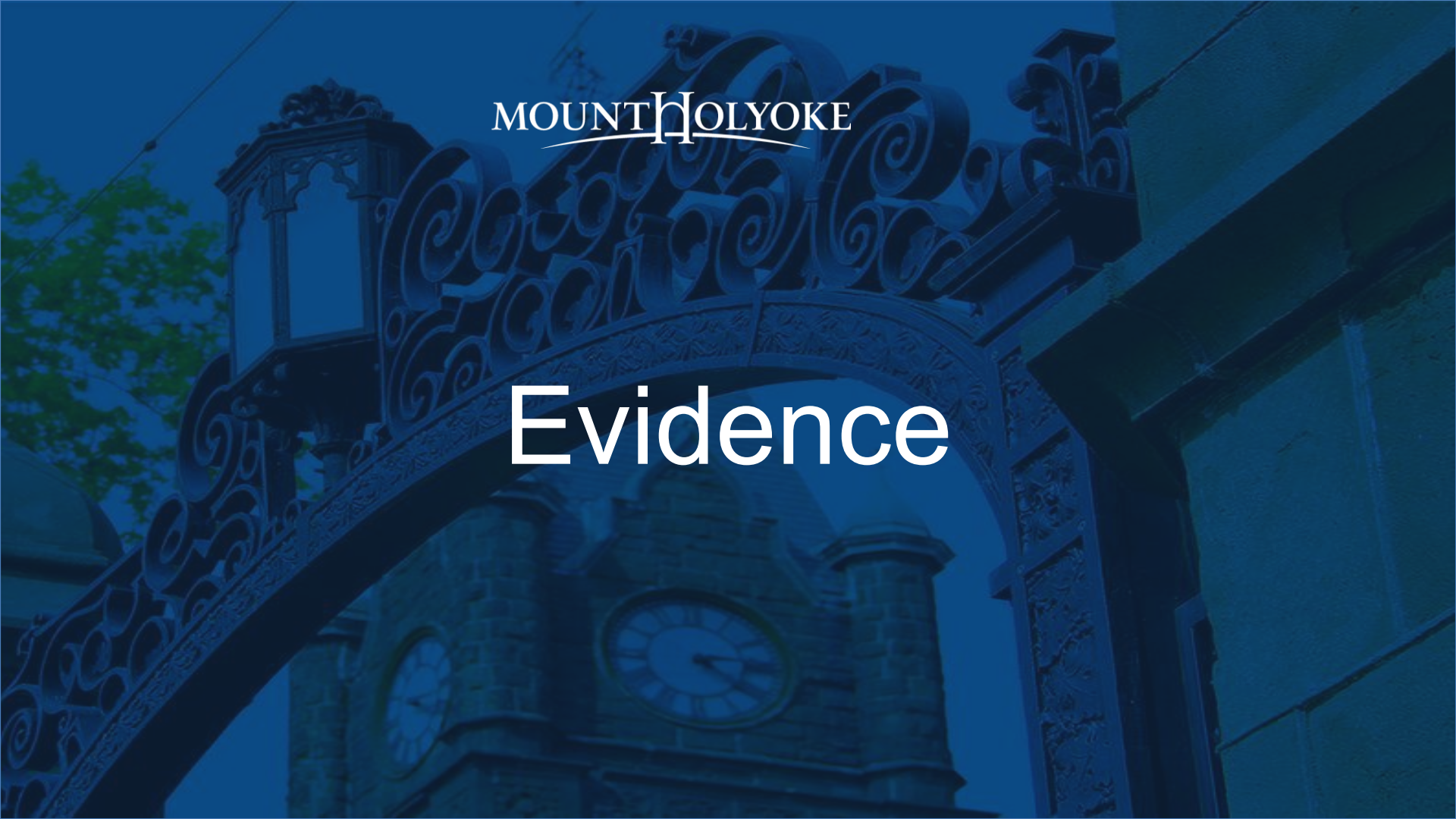
## 2. Disregard

Panel may provide directives to disregard questions or information if deemed irrelevant, abusive, or unduly repetitive.

Authority

## 3. Positional

Recognize positional authority throughout the hearing process to maintain order and structure.




# Evidence

# Evidence

Case Preparation

## 1. Gathering & Discussion

No restriction on parties discussing the case or gathering evidence.

Limits & Scope

## 2. Relevance Requirement

Institution cannot limit the types or amount of evidence offered, except that it must be relevant.

Hearing Use

## 3. Direct Relation

Evidence must "directly relate" to the allegations, and be available for reference and use at the hearing.

Evaluation

## 4. Credibility & Weight

Credibility dictates how much weight admissible evidence is given during overall determination.

# Types of Evidence

**1. Documentary Evidence**
Supportive writings and documents

**2. Electronic Evidence**
Photos, texts, and videos

**3. Real Evidence**
Physical objects

**4. Direct or Testimonial Evidence**
Personal observation

**5. Circumstantial Evidence**
Not eyewitness, but compelling

**6. Hearsay Evidence**
Statement made outside of the hearing but presented as important information

**7. Character Evidence**
Subject to relevance determination; often not probative of the underlying allegation

# Relevancy

Regulations

**The Regulations do not define “Relevant.”**

Federal Rules of Evidence

## 01. Probability

It has a tendency to make a fact more or less probable than it would be without the evidence.

Federal Rules of Evidence

## 02. Consequence

The fact is of consequence in determining the action.

# Title IX Specific Evidence Issues

General Rules

## Predisposition & prior behavior are not relevant.

Evidence of Complainants' sexual predisposition is never relevant. Prior sexual behavior is categorically excluded except under two narrow exceptions.

Prior Behavior Exception

### 01. Alternative Source

Offered to prove that someone other than Respondent committed the conduct alleged.

Prior Behavior Exception

### 02. Consent

Specific incidents of Complainant's sexual behavior with Respondent are offered to prove consent.




# Questioning of Parties and Witnesses

# Questioning

Core Approach

## Seek clarity, not a "Gotcha" moment.

- Ensure the Panel understands all information and evidence contained in the report.
- Use questions to gain details, eliminate vagueness, and fill in any gaps.
- Do not expect or try to engineer a "Gotcha" moment.

Pre-Question Checklist

## Things to think about before asking:

**1. Determination:** Do you need to know this to make a determination?

**2. Documentation:** Is the answer already in the report or documentation?

# Asking Good Questions

Questioning Guidelines

## Prioritize open-ended, neutral structures.

- 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

Clarifying Language

## Define terms with a spectrum of meanings.

Clarify any terms that may have multiple subjective interpretations rather than assuming a standard definition. These include:

- **“hooked up”** or **“sex”**
- **“drunk”** or **“buzzed”**
- **“assaulted”**

# Questioning Tips

Active Listening & Framing

## Formulate and guide the dialogue constructively.

- **Restating:** Restate/summarize what was said to validate listening and ensure understanding.
- **Neutrality:** Frame questions neutrally.
- **Sensitivity:** Handle emotions sensitively and tactfully.

Critical Observation

## Evaluate witness responses and behavior with care.

- **Rehearsed Answers:** Be on the lookout for rehearsed or memorized responses.
- **Body Language:** Observe body language, but do not rely on it as concrete evidence.




# Making the Decision

# Overview

PROCESS & ATTENDANCE

## Maintain strict focused participation and confidentiality.

- **Attendance:** Only Decision-makers attend and participate in the deliberations (facilitator will be available for questions).
- **No Records:** Do not record or take notes during the process.

EVALUATION & DECISION

## Systematically analyze and weigh all available proof.

- **Allegations:** Go through each element of each allegation.
- **Evidence:** Assess credibility and classify statements as factual, opinion-based, or circumstantial.
- **Standard:** Apply evidentiary standard to determine if policy has been violated.

# Deliberation

RATIONALE & PROCESS

## Support conclusions with clear, structured evidence.

- **Written Rationale:** Must provide detailed, written rationale for and evidence supporting its conclusion.
- **Flexibility in Order:** No order that allegations have to be addressed in, can always start with the most serious.

PANEL DYNAMICS & IMPARTIALITY

## Maintain absolute equality and objectivity.

- **Neutralize Imbalances:** Neutralize any power imbalances among panel members, particularly based upon their position at the institution.
- **Free of Bias:** Ensure that an impartial decision is free of bias.

# Findings and Impact Information

Findings & Sanctions

## Clearly separate findings from subsequent sanctions.

- **Separate Findings:** Separate the "Finding" from the "Sanction".
- **Impact/Mitigation:** Statements should only be considered if Respondent is found in violation.

Written Determination

## Ensure all mandatory details are explicitly documented.

- **Policy Violations:** Specify the exact policy alleged to be violated.
- **Procedural Steps:** Describe all procedural steps taken up to this point.
- **Rationale:** Provide a statement of and rationale for the result of each allegation.

# Written Determination

Review & Compliance

## Ensure oversight and regulatory alignment.

- **Coordinator Review:** Title IX Coordinator will review prior to disseminating to the parties.
- **FERPA Alignment:** FERPA cannot be construed to conflict with or prevent compliance with Title IX.

Appeals Process

## Provide clear pathways for resolution.

- **Right to Appeal:** Written Determination can be appealed by either party.
- **Policy Information:** Determination must include all appeal procedures and options from applicable policy.


MOUNT HOLYOKE
Questions?

MOUNT HOLYOKE



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