



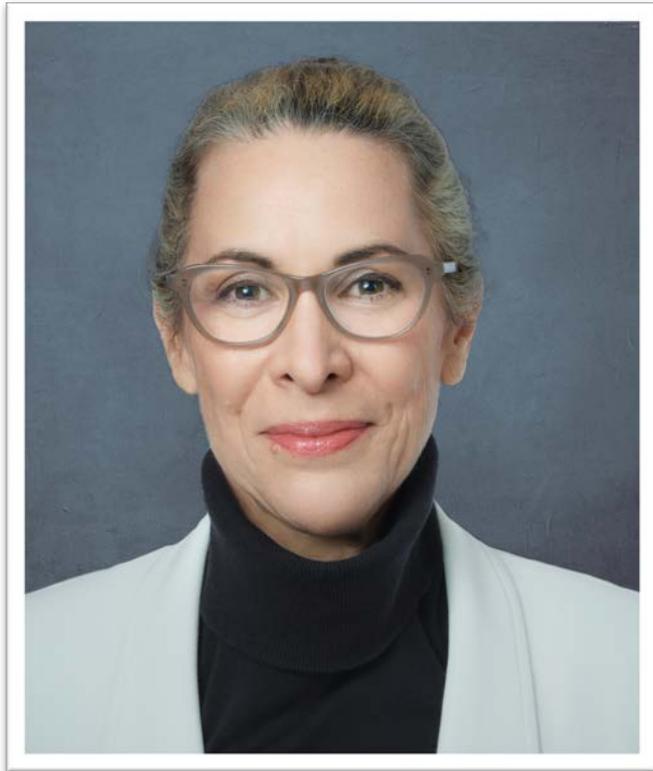
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# Decision-Makers: A Deep Dive into Serving in this Critical Role

Massachusetts Association  
of Community Colleges, Day 2

**Jody Shipper**  
October 2021

## Your Facilitator



**Jody Shipper, J.D.**

Co-Founder and Managing Director

Jody Shipper is a nationally-recognized subject-matter expert with more than 20 years of experience in Title IX and related fields. She is known for her insight into best-in-class programming, policies, and community outreach aimed at addressing sexual misconduct on campus. She lectures extensively at universities and conferences throughout the U.S. on Title IX, VAWA, harassment, and implementation of best and emerging practices. Jody received her J.D. from the University of California, Hastings College of Law and her bachelor's degree from Georgetown University's School of Foreign Service.



# Pre-Hearing

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The investigation is complete!

It is time to schedule the hearing...

# ||| Rapid Fire #1

Using the chat box, share your “To Do” List for coordinating the hearing.

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# Rapid Fire Recap

Arranging for space

Arranging technology

Advisors assigned?

Scheduling pre-hearing meetings with parties & advisors

Scheduling prehearing meetings of the panel

Providing report and record to panel and parties

Scheduling the hearing

Accommodations

Call for written submissions

Conflict checks

Other considerations?

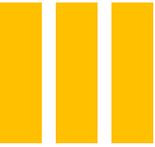
You and your team did a great job scheduling the hearing and arranging all the logistics!

## ||| Rapid Fire #2

Dear Decision-Maker,

It is now one week prior to the hearing. You have already received and reviewed the report and record and you will be meeting with the rest of the panel (or spending some quite time by yourself) to prepare for the hearing.

*Use the chat box to share what you plan to discuss/think about during the prehearing meeting.*



# Rapid Fire Recap

Development of introductory comments

Initial discussion of the evidence

Areas for further exploration

List of questions for the parties and the witnesses

Anticipation of potential issues

Logistics

Review of any written submissions by the parties

Other considerations?

# Recap

Logical connection between the evidence and facts at issue

Assists in coming to the conclusion – it is “of consequence”

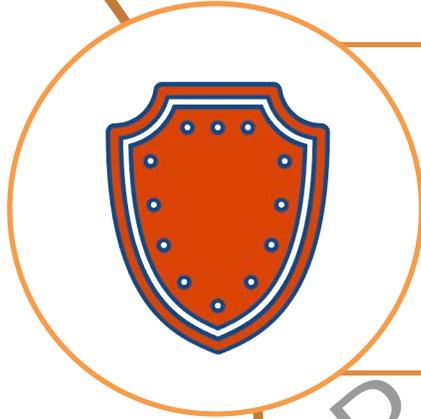
Tends to make a fact more or less probable than it would be without that evidence



# Can You Have a General Rule About Evidence In Title IX Investigations?



# Evidence That Will Not Be Considered



Rape Shield Protections



Privileged Information

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# Not a Court of Law

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Not making complex legal arguments

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Are not treating parties with hostility

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Rules of evidence outside of Title IX regulations do not apply

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Not looking for the “gotcha” moment

# Decorum at the Hearing

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A recipient may adopt rules of order or decorum to forbid badgering a witness, and may fairly deem repetition of the same question to be irrelevant

A postsecondary institution recipient may adopt reasonable rules of order and decorum to govern the conduct of live hearings

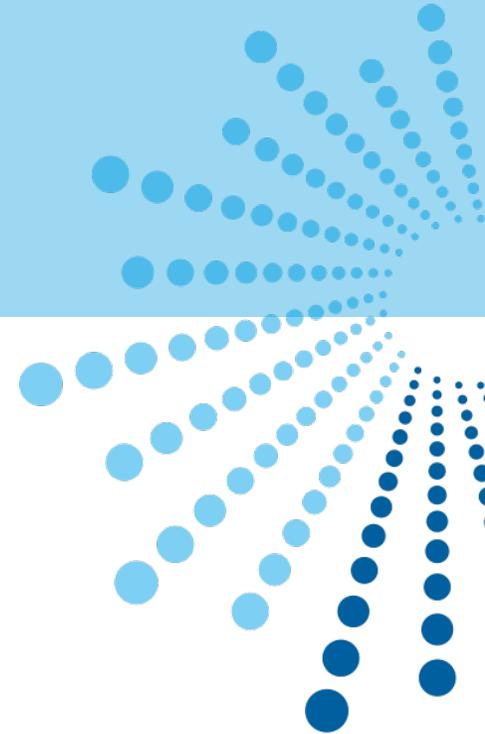
Schools “retain flexibility to adopt rules of decorum that prohibit any party advisor or decision-maker from questioning witnesses in an abusive, intimidating, or disrespectful manner.”

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# How do I Know which Questions to Ask?

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# Foundational Questions to Always Consider Asking

Were you interviewed?

Did you see the interview notes?

Did the notes reflect your recollection at the time?

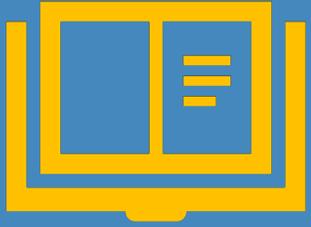
As you sit here today, has anything changed?

Did you review your notes before coming to this hearing?

# Did You Also Cover . . . ?

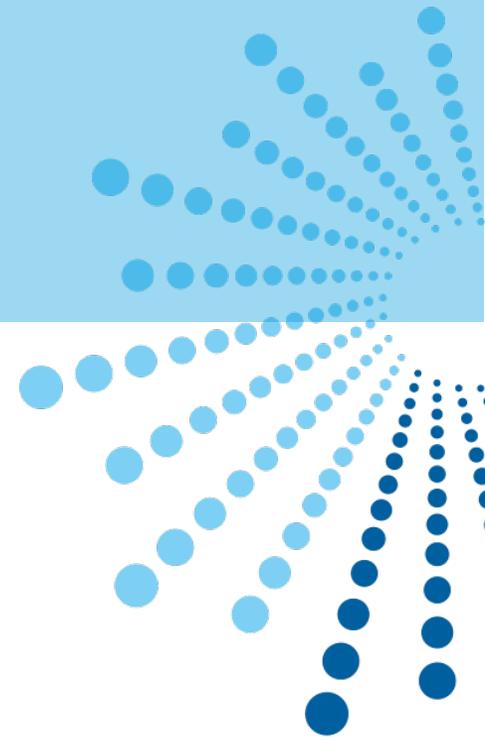
- On campus?
- Program or Activity?
- In a building owned or controlled by a recognized student organization
- Substantial control over respondent and context
- Complainant was attempting to access program/activity

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# Samantha and Oliver

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# Break Out!

#1

Say hi!

Pick a scribe

Discuss

- Develop Questions for Hearing Panel to ask...
- Group 1: Complainant
- Group 2: Respondent
- Group 3: Witnesses

Come back prepared to discuss

- I will call on each group one by one

# Report Out

Develop Questions  
for Hearing Panel  
to ask...

## Group 1

- Complainant Samantha

## Group 2

- Respondent Oliver

## Group 3

- Witness 1 Emma
- Witness 2 Charlie
- Witness 3 Nancy McPhee
- Witness 4 Tom



# Break Out!

## #2

Say hi again

Pick a scribe

Discuss

- Make determinations on questions and cite rationale
  - Group 1: Questions submitted by Complainant's Advisor for Respondent, Tom, and Charlie
  - Group 2: Complainant's questions for Emma and Professor McPhee, as well as Respondent's questions for Complainant.
  - Group 3: Questions submitted by Respondent's Advisor for Tom, Emma, and Professor McPhee

Prepare to report back



# Report Out, Group 1

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## Questions for Respondent (Group 1)

1. How often do you stalk girls?
2. Isn't it true that you do this all the time?
3. Do you keep stalking me because you're OCD?
4. Have you ever been removed from another group project because you could not get along with others?
5. Do you enjoy scaring women?
6. How often do you imagine that women like you?
7. When you first talked to me about your girlfriend breaking up with you, who was your girlfriend or did you make that up just so you could talk to me?
8. Why did you keep offering to work with Emma in person instead of by Zoom?
9. Did you have a thing for Emma?
10. Did you and Emma ever end up hooking up?

## Questions for Tom (Group 1)

1. Can you think of any reason for Oliver to be hanging out in the garage with flowers, other than to frighten Samantha?
  2. Oliver was pretty creepy, wasn't he?
  3. Did you see him throw an object at Samantha?
  4. Do you believe he was acting in self defense when he threw the object?
  5. Do you think there was any good reason for him to throw anything at her?
  6. You said Samantha is really pretty and guys hit on her a lot. Don't you think someone who has had a lot of male attention would be in the best position to know which kind of male attention is acceptable, and when it is stalking?
- 





# Report Out, Group 1

## Questions for Charlie (Group 1)

1. So are you the one you suggested he stalk her social media to find a food or drink she liked?
2. Is that your M.O. with girls?
3. Why do you think Samantha and Oliver had a plan to get together one night and talk?
4. Do you know for sure there was a confirmed plan?
5. What proof did Oliver give you to prove there was a *real* plan, and not an imaginary one?
6. You said Samantha was “rude” because you could not do a lot of work on the group project. What did you mean by that?
7. How long have you known Oliver?
8. Isn't it true you just don't like Samantha?
9. Have you ever been accused of sexual harassment or stalking?
10. Isn't it true that you would say anything to support a guy who has been accused?



# Report Out, Group 2

## Questions for Emma (Group 2)

1. Did Oliver seem fixated on Samantha when you were all part of the class project?
2. Did Oliver insist that the two of you work together in person instead of online?
3. How often did he force you to work in person with him after classes?
4. Were you afraid of him?
5. Why did you lie to Emma and tell her that Samantha was “really troubled” and “having personal issues”?
6. What did you mean by that?
7. Do you often tell lies?

## Questions for Professor McPhee (Group 2)

1. Why didn't you tell him to stop stalking me?
2. Weren't you supposed to forward my Title IX Complaint to the Coordinator and don't you think that if you had done so, I would have been spared his stalking?





# Report Out, Group 2

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## Questions for Complainant (Group 2)

1. Isn't it true you found me attractive after we first met?
2. You wanted to hook up with me, didn't you?
3. You made this complaint only because you wanted your boyfriend's attention, isn't that true?
4. You couldn't complete your end of the project without me, right?
5. You kept calling me and asking me for help, isn't that true?
6. You told the investigator you imagined seeing me everywhere. Where do you think you saw me?
7. Why were you always thinking of me?
8. And how often do you hallucinate?
9. Do you have any imaginary friends?
10. How often do you imagine seeing people who are not there?
11. How often has this happened in the past?
12. Why did you ask your boyfriend to walk you to your car when you knew you were supposed to meet me there?
13. You said you were frightened by seeing Oliver in the parking garage. Did he have a weapon? Did he try to touch you? Did he try to hit you? Describe each and every way he tried to attack you that night.





# Report Out, Group 3

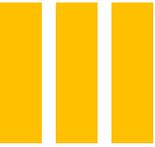
## Questions for Tom (Group 3)

1. When you saw Oliver in the parking garage, were you frightened?
2. What, specifically, did Oliver do that was frightening?
3. Does Samantha always over-react?
4. Does Samantha over-react when she is trying to get attention from you?
5. What, specifically, did Oliver throw at her?

## Questions for Emma (Group 3)

1. Were you frustrated when working on the group project?
2. Why?
3. Why did you think Oliver was more frustrated than others?
4. Why did you think he was “taking it out” on Samantha if he was frustrated with the whole group?
5. Are you and Samantha friends?
6. Did Samantha tell you what to say in the investigation?
7. Are you one of those “Believe all victims” people?



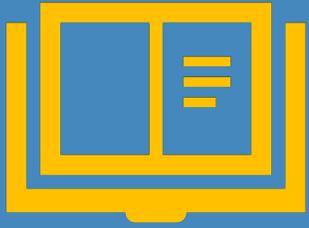


# Report Out, Group 3

## Questions for Professor McPhee (Group 3)

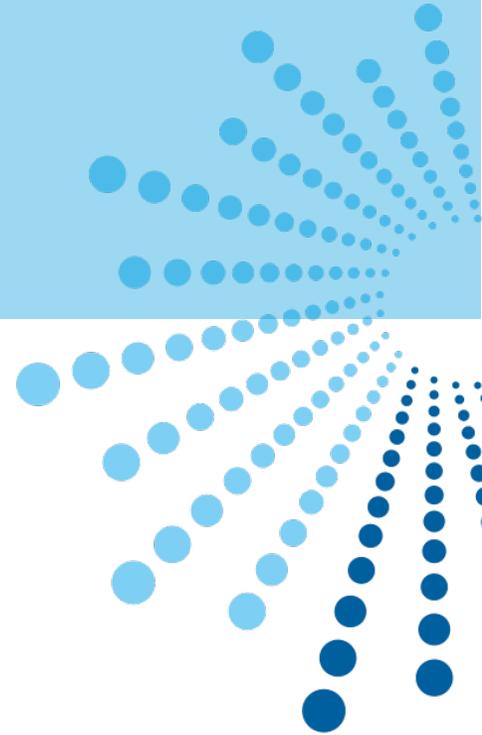
1. Isn't it true that Samantha was doing poorly in class?
2. What grade did she have up to the project and what grade did she get on the project?
3. After she made this complaint, did she get some special treatment or accommodation in your class?
4. Isn't it true that, once you told her she would have to do the work, she suddenly made up a story about Oliver to paint him in a bad light?
5. Isn't it true that, before she told you this lie, you had no reason to think poorly of Oliver?





# Evidentiary Issues

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**Evidence.**  
Is it . . .

Relevant

Reliable?

Does it matter (is it due  
any weight)?

# Relevance Is Not . . .

Strength of the  
evidence

Believability of  
the evidence

Based on type  
of evidence:  
circumstantial,  
direct

Based on  
complicated  
rules of court

# What about

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Polygraph examination

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Private investigator's  
interview notes

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Declarations submitted  
under penalty of perjury



# What about

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An expert report discussing low incidence of false reports

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An expert report discussing bias against male complainants

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An expert report on reasons why blackouts are not evidence of incapacitation

# What about

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News article that colleges are failing complainants

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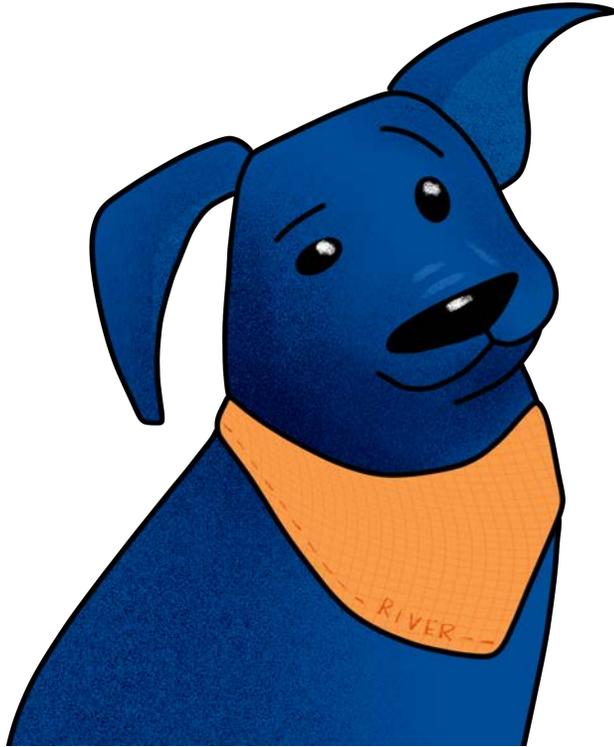
News article that colleges fail to provide due process, are biased

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News article about a related criminal case



# Questions?



Leave Us Feedback:



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