



What this training session will cover:

Disparate Treatment and Impact

The Role of the Investigator in Process A & B

Evidence and Relevance

Features of Informal Resolution in Process A & B

Features of Hearings [Process B]

Disparate Treatment

The background of the slide features abstract, overlapping geometric shapes in various shades of blue and orange. The shapes are primarily triangles and polygons, some of which are semi-transparent, creating a layered effect. The colors range from light, pale blues to deep, dark blues, and from bright oranges to muted, brownish oranges. The overall composition is modern and minimalist.

Disparate Impact

Disparate impact occurs when a facially neutral policy, practice, or procedure has a disproportionately adverse effect on a protected group.

Example: A company's hiring process requires applicants to be able to lift 50 pounds. This requirement disproportionately affects African Americans, who are more likely to be excluded from the hiring process. If the requirement is not job-related, it may constitute a disparate impact.

Example: A company's promotion policy requires employees to have a certain number of years of experience. This requirement disproportionately affects African Americans, who are more likely to have fewer years of experience. If the requirement is not job-related, it may constitute a disparate impact.

Disparate Treatment and Impact

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Role of the Investigator

[Process A & B]

What does the Investigator Do? In Both Process A & B

What does the Investigator Do? In Both Process A & B

What does the Investigator Do? In Process A vs. Process B

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What does the Investigator Do? In Process A vs. Process B

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[Policy and Processes | Title IX \(hope.edu\)](#)

The Department declines to add a reasonable cause threshold into § 106.45. The very purpose of the § 106.45 grievance process is to ensure that accurate determinations regarding responsibility are reached, impartially and based on objective evaluation of relevant evidence; the Department believes that goal could be impeded if a recipient's administrators were to pass judgment on the sufficiency of evidence to decide if reasonable or probable cause justifies completing an investigation.



What does the Investigator Do? In Both Process A & B

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What does the Investigator Do? Process A (Notice)

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What does the Investigator Do? Process B (Notice)

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What does the Investigator Do?

Process B (Notice)

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What does the Investigator Do? In Both Process A & B

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What does the Investigator Do? In Both Process A & B

What does the Investigator Do? In Both Process A vs. Process B

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What does the Investigator Do?
In Both Process A & B

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What does the Investigator Do? In Both Process A & B

What does the Investigator Do? In Process A vs. Process B

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What does the Investigator Do? In Both Process A & B

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Investigation Process A vs. B

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What does the Investigator Do?

Process A

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What does the Investigator Do? In Process B

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What does the Investigator Do? In Process B

The background features a light gray gradient. On the right side, there are several overlapping, semi-transparent geometric shapes in shades of blue and orange, creating a modern, abstract design.

Evidence and Relevance

[Process B Focus]

§ 106.45 (1)(iii) Grievance process for formal complaints of sexual harassment.

“A recipient must ensure that *decision-makers* receive training on . . . issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant”

“A recipient also must ensure that *investigators* receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence”

§ 106.45 (1)(ii) Grievance process for formal complaints of sexual harassment.

“(1)Basic requirements for grievance process. A recipient’s grievance process must—

. . . .

(ii) Require an objective evaluation of all relevant evidence - including both inculpatory and exculpatory evidence -

(emphasis added)

. . . § 106.45 does not set parameters around the “quality” of evidence that can be *relied* on, § 106.45 does prescribe that all relevant evidence, inculpatory and exculpatory, whether obtained by the recipient from a party or from another source, *must be objectively evaluated* by investigators and decision-makers free from conflicts of interest or bias and who have been



Exculpatory Evidence

Evidence tending to establish a defendant's innocence.

Evidentiary Standard

Using a

, and considering relevant definitions in the Policy, the hearing panel weighs the evidence to determine whether the Respondent violated the Policy.

50.01% likelihood or 50% and a feather

Which side do you fall on?

Contrast this with

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Relevance

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Definition of “Relevant”

evidence tending to prove or disprove the matter at issue or under discussion.

a - b .c





Prior Sexual History/Sexual Predisposition

Id. at 30103 (emphasis added).

Rape Shield Language

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Id. at 30336 n. 1308 (emphasis added).

Consent and Rape Shield Language

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Rape Shield Language

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Id. at 30352 (emphasis added).



Features of Informal Resolution [Processes A & B]





Features of a Hearing [Process B only]

Hearing Notification

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Hearing Notification

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Hearing Panel Composition

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Pre-Hearing Preparations

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Pre-Hearing Meetings

- ▶ !"#%&'(\$) &*\$, - . # - # \$ & / (# 0 " # & (' - 1 \$) ## 2' - 13456'2''2'' # \$ / & (2' # 4 & - 78, (\$2'' #' (\$97. '4, (4\$2, \$ ' - . '2# \$2'' #) \$2, \$4: ;) '2\$2'' # \$ < : # 42', - 4\$, (\$2, / '+ 4\$2'' # * \$32'' # \$ / & (2' # 4 & - 78, (\$2'' #' (\$97. '4, (45\$6'4'' \$ 2, \$ & 4 = \$, (\$7'4+ : 44\$ & 2\$2'' # \$ " # & (' - 1 > 4, \$2'' & 2\$2'' # \$ % " & ' (\$ + & - \$ (: ? # \$, - \$2'' #' (\$ # ? # . & - + # \$ & " # & 7\$, @2') # \$ 2, \$ & . , '7\$ & - * \$') / (, / # (\$ # . '7# - 2' & (* \$' - 2 (, 7: + 2', - \$' - \$2'' # \$ " # & (' - 1 \$, (\$ / (, . '7# \$ (# +,)) # - 7 & 2', - 4\$ @, (\$) , (# \$ & / / (, / (' & 2# \$ / " (& 4' - 1A \$ B, 6# . # (> 2'' 4\$ & 7. & - + # \$ (# . ' # 6\$, / / , (2: - '2* \$7, # 4\$ - , 2\$ / (# + ? : 7# \$2'' # \$ 97. '4, (4\$ @,) \$ & 4 = ' - 1\$ & 2\$2'' # \$ " # & (' - 1 \$ @, (\$ & \$ (# +, - 4' 7# (& 2', - \$; & 4# 7\$, - \$ & - * \$ - # 6\$ ' - @, () & 2', - \$, (\$2# 42') , - * \$, @ # (# 7\$ & 2\$2'' # \$ " # & (' - 1A ! " # \$ % " & ' (\$) : 42\$7, + :) # - 2\$ & - 7\$ 4'' & (# \$2'' #' (\$ (& 2', - & ? # \$ @, (\$ & - * \$ # C + ? : 4', - \$, (\$' - + ? : 4', - \$ & 2\$2'' 4\$ / (# 0 " # & (' - 1 \$) ## 2' - 1A
- ▶ !"#%&'&'< 6'2'' \$ @ : ? \$ & 1 (##) # - 2\$, @2'' # \$ / & (2' # 4 & \$) & * \$ 7# + ' 7# \$' - \$ & 7. & - + # \$, @2'' # \$ " # & (' - 1 \$ 2'' & 2\$ + # (2&' - 6'2' - # 44# 4\$7, \$ - , 2\$ - # # 7\$2, \$; # \$ / (# 4# - 2\$' @2'' #' (\$2# 42') , - * \$ + & - \$; # \$ & 7# < : & 2# ? * \$ 4:)) & (' D # 7\$; * \$2'' # \$ E - . # 42' 1 & 2, (345\$ - \$2'' # \$' - . # 42' 1 & 2', - \$ (# / , (2\$, (\$7: (' - 1\$2'' # \$ " # & (' - 1A
- ▶ 92\$ # & + " \$ / (# 0 " # & (' - 1 \$) ## 2' - 1\$ 6'2'' \$ & \$ / & (2* \$ & - 7\$2'' #' (\$97. '4, (> 2'' # \$ % " & ' (\$6'??\$ +, - 4' 7# (\$ & (1:) # - 24\$2'' & 2\$ # . '7# - + # \$ 7# - 2' @ # 7\$' - \$2'' # \$ @ - & ? \$' - . # 42' 1 & 2', - \$ (# / , (2\$ & 4\$ (# ? # . & - 2\$' 4 > \$' - \$ @ & + 2 > \$ - , 2\$ (# ? # . & - 2A \$ F') ' ? & (? * > \$ # . '7# - + # \$ 7# - 2' @ # 7\$ & 4\$7' (# + 2? * \$ (# ? & 2# 7\$; : 2\$ - , 2\$ (# ? # . & - 2\$; * \$2'' # \$ E - . # 42' 1 & 2, (345\$) & * \$; # \$ & (1: # 7\$2, \$; # \$ (# ? # . & - 2A ! " # \$ % " & ' (\$) & * \$ 7# + ' 7# \$, - \$2'' # 4# \$ & (1:) # - 24\$ / (# 0 " # & (' - 1 \$ & - 7\$ 6'??\$ 4'' & (# 7# + ' 4', - 4\$; # 26## - \$2'' # \$ / & (2' # 4\$ / (' , (2, \$2'' # \$ " # & (' - 1\$2, \$ & 44' 42\$' - \$ / (# / & (& 2', - \$ @, (\$2'' # \$ " # & (' - 1A ! " # \$ % " & ' (\$) & * \$ +, - 4: ? 2\$ 6'2'' ? # 1 & ? \$ +, : - 4# ? \$ & - 78, (\$2'' # \$ FGH % > \$, (\$ & 4 = \$ # '2'' # (\$, (\$; , 2'' \$2, \$ & 22# - 7\$ / (# 0 " # & (' - 1 \$) ## 2' - 14A
- ▶ !"# \$ / (# 0 " # & (' - 1 \$) ## 2' - 13456'??\$ - , 2\$; # \$ (# +, (7# 7 > \$: - ? # 44\$7##) # 7\$ - # + # 44 & (* \$; * \$2'' # \$ + " & ' (\$ & - 7\$ 6'2'' \$ +, - 4# - 2\$, @2'' # \$ / & (2' # 4A

Hearing Procedures

- ▶ 92\$2" #"\$ #&(' -1>\$2" #G#+ '4', -0) &=#(345\$" &4\$2" #&: 2" , ('2*\$2, \$" #&(\$&-7\$) &=#7#2#() '-&2', -4\$, -\$&??\$&??#1&2', -4\$, @7'4+(') '-&2', -> \$" &(&44) #-2>\$&-78, (\$(#2&'&2', -\$&-7\$) &*\$&?4, \$" #&(\$&-7\$) &=#7#2#() '-&2', -4\$, -\$&-*\$&77'2', -&?&??#1#7\$/ , ?'+*\$. ' , ?&2', -4\$2" &2\$" &. #\$, ++: ((#7\$'-\$+, -+#(2\$6'2"\$ 2" #7'4+(') '-&2', -> \$" &(&44) #-2>\$&-78, (\$(#2&'&2', -> \$. #-2" , : 1"\$2" , 4#\$+, ??&2#(&?&??#1&2', -4\$) &*\$-, 2\$4/#+'@+&??*\$&??\$6'2"' -2" #\$/ , ?'+*\$, -\$H<: &?I // , (2: -'2*>\$B&(&44) #-2>\$&-7\$ J, -7'4+(') '-&2', -A
- ▶ K&(2+' /&-24&\$2\$2" #"\$ #&(' -1\$6'??' -+?: 7#\$2" #"\$% "&'(>\$&-*\$&77'2', -&?\$/&-#?'423. 4(') : A

Witnesses

► Q)' * #22#2&6%2&4)2')* 3F)2 (#4&/" -; &' (#&\$%"')#28&> (-&%"#&#; \$+-<##2&
-/&L-\$#&B-++#3#&%"#&#R\$#.'#4&' -&. --\$#"%'#&>)' (&%"* 4&\$%"')\$%'#&)*&
L-\$#&B-++#3#l2&)*1#2')3%')- *&%"* 4&#"#2-+F')- *&\$"- .#229&

0*1#2')3%' -"&%"2&%"&?)' *#22

