

What Title IX Coordinators, Investigators, Decision-Makers and Facilitators Need to Know About the New Title IX Regulations

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Topics for Discussion

- Pertinent Regulatory Background
- Overview of Middlebury Policy Framework, Reporting Obligations and Confidential Resources
- Focusing on Conduct, Not Gender
- Definitions of Covered Misconduct
- Scope of Middlebury's Education Programs and Activities
- Serving Impartially, Including by Avoiding:
 - Prejudgment of the Facts at Issue
 - Conflicts of Interest, and
 - Bias

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Topics for Discussion

- Ensuring that Witness-Centered Investigation and Adjudication Approaches are Applied in a Manner that is Demonstrably Impartial, Thorough, and Fair to All Parties
- Investigation and Adjudication Procedures
 - "Directly Related" and "Relevance" Concepts
 - Special Evidentiary Issues
 - Investigative Reports
 - Sanctioning Considerations
 - Conducting Hearings
 - Appeals

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Pertinent Regulatory Background

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The Long Road to the New Regulations...

- **September 7, 2017:** Department of Education Secretary Betsy DeVos announces notice and comment process
- **September 22, 2017:** OCR issued:
 - Dear Colleague Letter ("2017 DCL") withdrawing 2011 DCL and 2014 Q&A
 - Q&A on Campus Sexual Misconduct ("2017 Q&A")
- **November 16, 2018:** Proposed Regulations Posted
 - Officially published in Federal Register later in November, 2018
 - Fact Sheet and Summary also posted

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The Long Road to the New Regulations...

- Approximately 125,000 public comments were submitted
- **May 6, 2020:** Final Regulations Posted
 - Officially published in Federal Register May 19, 2020
- **August 14, 2020:** Final Regulations Effective

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NACUANOTES

J. Nolan, "Promoting Fairness in Trauma-Informed Investigation Training"

- National Association of College and University Attorneys ("NACUA") NACUANOTE, February 8, 2018, Vol. 16 No. 5
- cited once in Title IX regulations Preamble

Updated Holland & Knight white paper version available at:
<https://www.hklaw.com/en/insights/publications/2019/07/fair-equitable-trauma-informed-investigation-training>

- cited 8 times in Title IX regulations Preamble

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Scope of Institutional Responsibility

- Institution must respond when it has:
 - "Actual knowledge"
 - When "an official of the recipient who has authority to institute corrective measures" has notice, e.g., Title IX Coordinator
 - of "sexual harassment" (as newly defined)
 - that occurred within the school's "education program or activity"
 - "includes locations, events, or circumstances over which the recipient exercised substantial control" over the respondent and the context in which the sexual harassment occurred
 - Fact specific inquiry focused on control, sponsorship, applicable rules, etc.
 - against a "person in the United States" (so, not in study abroad context)

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Selected Procedural Changes

- Must investigate “formal complaints”
- Must satisfy certain notice and ongoing notice requirements
- Must produce investigation report with certain elements
- Must give parties and advisors opportunity to review all information “directly related to allegations”
 - Broader than:
 - “all relevant evidence” as otherwise used in Title IX regulations, and
 - “any information that will be used during informal and formal disciplinary meetings and hearings” as used in Clery Act

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Selected Procedural Changes

- New procedures require that schools:
 - Ensure that burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the school and not on the parties
 - Provide equal opportunity for parties to present witnesses and other inculpatory and exculpatory evidence;

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Selected Procedural Changes

- New procedural regulations require that schools:
 - Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence
 - Essentially, follow many aspects of Sixth Circuit’s *Doe v. Baum* decision in student and employee cases involving alleged Title IX Sexual Harassment
- Many other changes will be discussed as they are applied in context of new Middlebury procedures

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[Overview of Middlebury Policy Framework](#)
[Reporting Obligations](#)
[Confidential Resources](#)

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Reporting Obligations

- Responsible employee concepts and examples
- Confidential resources concepts and examples

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Focus on Conduct, Not Gender

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Focus on Conduct, Not Gender

- » Majority of reported incidents and investigations in college and university context involve cisgender heterosexual women as complainants and cisgender heterosexual men as respondents, but:
 - The gender, gender identity and/or sexual orientation of any party to an investigation should have no bearing on how colleges and universities will investigate

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CDC National Intimate Partner and Sexual Violence Survey, Summary Report (2011)

- » 16,507 survey respondents
- » Found that men and women had similar prevalence of nonconsensual sex in the previous 12 months
- » Estimated 1.270 million women raped and 1.267 million men “made to penetrate”

http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf

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Focus on Conduct, Not Gender

- » See *Nungesser v. Columbia Univ.*, 169 F.Supp.3d 353, 365 n.8 (S.D.N.Y. 2016) (citing Lara Stemple and Ilan H. Meyer, *The Sexual Victimization of Men in America: New Data Challenge Old Assumptions*, 104 Am. J. Of Public Health, e19 (June 2014))
 - (“noting that although the idea of female perpetrators sexually assaulting male victims is ‘politically unpalatable,’ studies have found that up to 46% of male victims report a female perpetrator”)) (parenthetical note in *Nungesser*)
- » *Sexual Victimization of Men* article is available here:
 - https://www.researchgate.net/publication/262306031_The_Sexual_Victimization_of_Men_in_America_New_Data_Challenge_Old_Assumptions

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Focus on Conduct, Not Gender

Sexual Victimization of Men article observes in part (with citations):

- » Portraying male victimization as aberrant or harmless adds to the stigmatization of men who face sexual victimization
- » Fallacies described as “rape myths” in context of female victimization have been discredited in American society (to some extent), but this discourse has not been developed in the context of male victims
- » Myths regarding sexual assault of men pose obstacles to men coping with victimization

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Focus on Conduct, Not Gender

- » See also Jessica A. Turchik, *Sexual Victimization Among Male College Students: Assault Severity, Sexual Functioning, and Health Risk Behaviors*, *Psych. of Men & Masculinity*, Vol. 13, No. 3, 243-255 (2012) (available at: https://www.researchgate.net/publication/232425813_Sexual_Victimization_Among_Male_College_Students_Assault_Severity_Sexual_Functioning_and_Health_Risk_Behaviors/link/09e41510807d975c0a000000/download)
- » 299 male college students asked whether they had experienced at least one sexual victimization experience since age 16:
 - 21.7% reported unwanted sexual contact, 12.4% reported sexual coercion, and 17.1% reported completed rape
 - 48.4% of these experiences involved female perpetrators

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Court Decisions Focused on Conduct, Not Gender

- » *Nungesser v. Columbia University*, No. 1:15-cv-3216-GHW (S.D.N.Y. March 11, 2016)
- » Court granted University’s motion to dismiss “successful” respondent’s claim that University failed to appropriately address public statements and activism by complainant in his case because, e.g.:
 - Plaintiff’s claim was based on the “logical fallacy” that because the allegations against him concerned a sexual act, that everything that follows from it is “sex-based” for Title IX purposes
 - Personal animus by complainant against him was based on their belief that he raped them, not per se because he is male
 - Persons of any gender may be perpetrators or victims of sexual assault

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Court Decisions Focused on Conduct, Not Gender

- » *Doe v. University of Chicago*, No. 16 C 08298 (N.D.Ill. September 20, 2017)
- » “Successful” plaintiff/respondent claimed that University’s response to public statements about him by complainant was so inadequate as to violate Title IX
 - Court rejected claim for the most part, holding, among other things:
 - Personal animus expressed toward someone because they are believed to have engaged in sexual assault is not per se discrimination because of sex for Title IX purposes

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Court Decisions Focused on Conduct, Not Gender

John Doe v. Columbia College Chicago, 2017 WL 4804982 (N.D.Ill. Oct. 25, 2017):

- » “As in *University of Chicago*, any harassment that Doe suffered at the hands of Roe and her friends—including the alleged physical assault, the verbal comments made to Doe, and the social media comments and text messages—was ‘because they believed he had committed sexual assault or because of personal—not gender—animus.’”
- » “Doe’s own allegations make clear that he was harassed because of his relationship with Roe and because of his status as a person accused of sexual assault, not because of his gender.”

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Court Decisions Focused on Conduct, Not Gender

John Doe v. Columbia College Chicago, 2017 WL 4804982:

- » “Roe and her followers’ social media statements about Doe, for example, labeled him a “predator,” a “rapist,” and a “danger” to CCC’s students. Even viewed in the light most favorable to Plaintiff, these statements are not gender-based harassment because they derive solely from Doe’s status as a person who Roe and her friends believed committed a sexual assault, not from Doe’s status as a male.”
- » As the court in *Nungesser* explained, calling someone a rapist is not “inherently gendered.”

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Recognize Potential for Retaliation

- » It should be noted that these court decisions focused on whether respondent/plaintiff was subjected to sex discrimination for purposes of Title IX
- » It should be recognized that adverse actions taken against respondents could implicate:
 - prohibitions against Retaliation (discussed below) and/or
 - other Middlebury conduct policies

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Colleges are “Anti-SA, Anti-IPV, Anti-Stalking”

- » Colleges are opposed to prohibited misconduct that is established by the evidence in a particular case
- » They are not opposed to anyone on the basis of their gender
- » *Gomes v. Univ. of Maine Sys.* (D. Me. 2005): “There is not exactly a constituency in favor of sexual assault, and it is difficult to imagine a proper member of the Hearing Committee not firmly against it. It is another matter altogether to assert that, because someone is against sexual assault, she would be unable to be a fair and neutral judge as to whether a sexual assault had happened in the first place.”

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Definitions

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Definitions

Title IX Sexual Harassment

- Is conduct on the basis of sex in which:
 - An Employee conditions the provision of a University aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
 - A Student, Employee, or Third Party engages in unwelcome conduct determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies another person equal access to a University Program or Activity; or
 - A Student, Employee, or Third Party engages in:
 - Sex or Gender-Based Stalking;
 - Dating Violence;
 - Domestic Violence; or
 - Sexual Assault

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Scope of Middlebury's Education Program or Activity

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Title IX Definition of “education program or activity”

- An institution’s “Program or Activity” includes:
 - (1) any location, event, or circumstance where the college exercises substantial control over both the respondent and the context in which the conduct occurs;
 - (2) any building owned or controlled by a student organization recognized by the college; and
 - (3) a college campus.

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Decision Point: School’s “education program or activity”

- “[N]othing in the final regulations prevents recipients from initiating a student conduct proceeding or offering supportive measures to students affected by sexual harassment that occurs outside the recipient’s education program or activity.”
- Given this change, colleges **had to decide** whether to prohibit and investigate sexual misconduct that occurs outside more narrowly-defined “education program or activity”
- Middlebury decided to do so

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Education Programs and Activities at Middlebury

- » Discussion of:
 - Examples, and
 - Scenarios

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Impartiality:
Avoiding Prejudgment,
Conflicts of Interest, and Bias

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Impartiality: Avoiding Prejudgment of Facts at Issue

From Title IX 2020 Regulation Preamble:

- » “the Department’s interest in ensuring impartial Title IX proceedings that avoid prejudgment of the facts at issue necessitates a broad prohibition on sex stereotypes so that decisions are made on the basis of individualized facts and not on stereotypical notions of what ‘men’ or ‘women’ do or do not do.”

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Impartiality: Avoiding Prejudgment and Bias

From Title IX Regulation Preamble:

- » “Contrary to the concerns of some commenters, a prohibition against reliance on sex stereotypes does not forbid training content that references evidence-based information or peer-reviewed scientific research into sexual violence dynamics, including the impact of trauma on sexual assault victims.”
- » “Rather, § 106.45(b)(1)(iii) cautions recipients not to use training materials that ‘rely’ on sex stereotypes in training Title IX personnel on how to serve in those roles
 - impartially and without prejudgment of the facts at issue,
 - meaning that research and data concerning sexual violence dynamics may be valuable and useful,
 - but cannot be relied on to apply generalizations to particular allegations of sexual harassment.”

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Impartiality: Avoiding Prejudgment and Bias

» Analogous regulatory language:

- Regulations’ “presumption of non-responsibility” requires schools to investigate and resolve complaints: “without drawing inferences about credibility based on a party’s status as a complainant or respondent.”
- Hearing officers must not have “bias for or against complainants or respondents generally or for an individual complainant or respondent”

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Impartiality: Avoiding Prejudgment and Bias

» Preamble repeatedly warns against risk of “sex-based bias” in decision-making

» Preamble:

- “To the extent that commenters accurately describe negative stereotypes applied against students with disabilities, and particularly against students with disabilities who are also students of color or LGBTQ students, the final regulations expressly require recipients to interact with every complainant and every respondent impartially and without bias.”
- “A recipient that ignores, blames, or punishes a student due to stereotypes about the student violates the final regulations.”

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Impartiality: Avoiding Prejudgment and Bias

- » Practical application of these concepts in investigations:
 - Do not rely on cultural “rape myths” that essentially blame complainants
 - Do not rely on cultural stereotypes about how men or women purportedly behave
 - Do not rely on gender-specific research data or theories to decide or make inferences of relevance or credibility in particular cases

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Impartiality: Avoiding Prejudgment and Bias

- » Practical application of these concepts in investigations and adjudications:
 - Recognize that anyone, regardless of sex, gender, gender identity or sexual orientation, can be a victim or perpetrator of sexual assault or other violence
 - Avoid any perception of bias in favor of or against complainants or respondents generally
 - Employ interview and investigation approaches that demonstrate a commitment to impartiality

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Impartiality: Avoiding Conflicts of Interest

- » Commenters argued that investigators and hearing officers employed by schools have an “inherent conflict of interest” because of their affiliation with the school, so Department should require investigations and hearings to be conducted by external contractors
- » Department noted that some of those commenters argued that this resulted in bias against complainants, and some argued that this resulted in bias against respondents

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Impartiality: Avoiding Conflicts of Interest

- » Department’s response:
 - Department’s authority is over schools, not individual investigators and other personnel,
 - so Department will focus on holding school’s responsible for impartial end result of process,
 - without labeling certain administrative relationships as per se involving conflicts of interest

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Impartiality: Avoiding Conflicts of Interest

- » Department also rejected commenters' arguments that individuals should be disqualified from serving as investigators because of past personal or professional experience
 - "Department encourages [schools] to apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased" WHILE
 - "exercising caution not to apply generalizations that might unreasonably conclude that bias exists (for example, assuming that all self-professed feminists, or self-described survivors, are biased against men, or that a male is incapable of being sensitive to women, or that prior work as a victim advocate, or as a defense attorney, renders the person biased for or against complainants or respondents"

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Impartiality: Avoiding Conflicts of Interest

- » Discussion:
 - Middlebury procedures for identifying and addressing potential conflicts of interest
 - Addressing potential conflicts that arise during investigation or resolution process

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Impartiality: Avoiding Prejudgment, Bias, and Conflicts of Interest

- » Bottom line:
 - Focus on facts of every individual case
 - Strive to conduct investigations, formal proceedings and informal resolution processes in manner that will not allow even a perception of prejudice or bias
 - for or against any party, or
 - for against complainants or respondents generally

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Ensuring that Witness-Centered Investigation and Adjudication Approaches are Applied in a Manner that is Demonstrably Impartial, Thorough, and Fair to All Parties

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NACUA NOTES

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Interviewing and Questioning for Clarification

- Following witness-centered approaches may yield better information, but:
 - It is crucial to interview and question witnesses for clarification
- Promotes accuracy and fairness
- If done appropriately, should not alienate witnesses
- Examples of how to present evidence, statements of other witnesses to parties

Fair, Witness-Centered Approach

Investigators should seek clarification on crucial points, but starting with a more open-ended, witness-centered approach can:

- Yield more, and more accurate, information
- Better encourage witness participation
- Be less likely to interfere with authentic memory

Fair, Witness-Centered Approach

- Even witnesses who do not appear to have experienced trauma (e.g., many respondents), may be experiencing substantial stress due to investigation and interview setting
- Same open-ended questioning approach is just as effective when used with respondents
 - And should be used if used with complainants, to promote neutrality
- As with complainants, should not rely unduly on "presentation as evidence"

Fair, Witness-Centered Approach

- Like complainants, respondents can be provided opportunity for open-ended narrative
- Sensory information can be gathered from respondents
- Avoiding leading questions, yes/no questions, paraphrasing, etc. is important for respondent questioning as well
- Neutral, open-ended questioning approach may be used with both parties

Title IX Investigation and Adjudication Procedures

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“Directly Related” and “Relevance” Concepts

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“Directly Related” Evidence

2020 Title IX Regulation:

- » Parties must have equal opportunity to inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint
- » Including evidence upon which the school does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source
- » So that each party can meaningfully respond to the evidence prior to the conclusion of the investigation

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“Directly Related” Evidence

- » In Preamble, Department declines to define “directly related” further, indicating that it “should be interpreted using [its] plain and ordinary meaning.”
- » Department notes that term aligns with (similarly undefined) term in Family Educational Rights and Privacy Act (“FERPA”), which defines covered education records in part as documents that are:
 - “directly related to a student; and
 - Maintained by an educational agency or institution”
- » Department ties parties’ right to review directly related information under Title IX regulations with Department’s prior position that students may review FERPA-protected information about other students if necessary to preserve their due process rights

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“Directly Related” Evidence

- » Term is broader than:
 - “all relevant evidence” as otherwise used in Title IX regulations, and
 - “any information that will be used during informal and formal disciplinary meetings and hearings” as used in Clery Act
- » Point of information-sharing provision is to promote transparency and allow parties to object to investigator’s conclusion that certain evidence is not relevant, and argue why certain evidence should be given more weight
- » Cautious approach:
 - Read term broadly, withholding or redacting information only where explicitly irrelevant under regulations (see below), or where not related to allegations

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“Relevant” Evidence

- » Investigative reports must “summarize relevant evidence”
- » The Department declines to define “relevant”, indicating that term “should be interpreted using [its] plain and ordinary meaning.”
- » *See, e.g.,* Federal Rule of Evidence 401 Test for Relevant Evidence:
 - “Evidence is relevant if:
 - (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
 - (b) the fact is of consequence in determining the action.”

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“Relevant” Evidence

- » Department emphasizes repeatedly in Preamble that investigators have discretion to determine relevance
 - Subject to parties’ right to argue upon review of “directly related” evidence that certain information not included in investigative report is relevant and should be given more weight
- » Investigators will have to balance discretionary decisions not to summarize certain evidence in report against:
 - Each party’s right to argue their case, and
 - Fact that decisions regarding responsibility will be made at hearing, not investigation stage

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Special Evidentiary Issues

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Special Evidentiary Issues

- » Questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant, unless
 - such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant,
 - concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent

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Special Evidentiary Issues

- » Information protected under a legally recognized privilege
 - (e.g., privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney),
- » are not considered unless the information is relevant
 - and the person holding the privilege has waived the privilege

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Special Evidentiary Issues

- » If a party or witness does not submit to cross-examination at the live hearing,
 - the hearing officer will not rely on any statement of that party or witness in reaching a determination regarding responsibility.
- » The hearing officer will not draw an inference about the determination regarding responsibility based solely on a party or witness's absence from the live hearing or refusal to answer cross-examination or other questions
- » Nonetheless, investigators should summarize information from parties and witnesses as it is provided, because how this rule will be applied will not be established definitively until the hearing

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Preliminary and Final Investigative Reports

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Summarizing “Relevant” Evidence

- » Again, Department emphasizes repeatedly in Preamble that investigators have discretion to determine relevance
 - Subject to parties’ right to argue upon review of “directly related” evidence that certain information not included in investigative report is relevant and should be given more weight
- » Investigators will have to balance discretionary decisions not to summarize certain evidence in report against:
 - Each party’s right to argue their case, and
 - Fact that decisions regarding responsibility will be made at hearing, not investigation stage

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Investigative Reports

» Regulation:

- “Prior to completion of the investigative report, the [school] must send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and
- the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.”

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Investigative Reports

» Regulation:

- Investigative reports must “fairly summarize relevant evidence”
- “at least 10 days prior to a hearing . . . send to each party and the party’s advisor, if any, the
 - investigative report in an electronic format or a hard copy, for their review and written response.”
- » Investigator does not need to revise investigative report in light of this written response from parties

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Conducting Title IX Hearings

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Conducting Hearings

- Title IX Hearings may be conducted live and in person, or
- At discretion of the College, may be conducted live but virtually, with technology enabling all participants (hearing officer, parties, advisors, and witnesses) to see and hear one another in real time
- Parties and witnesses could be away from campus or
- Could be located in separate rooms on campus

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Conducting Hearings

Technology to be Used in Live Hearings

- Discussion of:
 - Technology options, and
 - Respective responsibilities for operating technology

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Conducting Hearings

Advisors

- Each party may have an advisor of their choice present at the hearing.
- The advisor does not participate in the hearing except for the limited purpose of conducting cross-examination on behalf of that party.
- Advisors may be, but are not required to be, attorneys.
- If a party does not have an advisor of their choice present at a hearing, Middlebury will, without fee or charge to the party, provide an advisor of the College's choice,
 - for the sole and limited purpose of conducting cross-examination on behalf of that party

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Conducting Hearings

Advisors

- At a time and in a manner deemed appropriate by the hearing officer, the advisor for each party will be permitted to ask the other party and any witnesses all relevant cross-examination questions and follow-up questions, including those challenging credibility
- Except for that limited role, advisors may not participate actively in the hearing and may not speak or otherwise communicate on the part of their advisee
 - However, the advisor may request to consult privately in a non-disruptive manner with their advisee during the hearing and/or at a recess in the hearing

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Conducting Hearings

Advisors

- Middlebury reserves the right to take appropriate action regarding any advisor who disrupts the process,
- or who does not abide by the restrictions on their participation as determined in the sole discretion of the hearing officer,
- which may include exclusion of the advisor from the hearing
- and the appointment of an alternate Middlebury-provided advisor

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Conducting Hearings

Conduct of the Hearing and Relevance

- Subject to the discretion of the hearing officer, hearings will ordinarily begin with introductory remarks by the hearing officer,
 - followed by the hearing officer asking relevant initial questions of the parties.
- During this portion of the hearing, advisors may confer privately and in a non-disruptive manner with their advisee,
 - but they are not allowed to make opening statements or otherwise address the hearing officer or anyone else present at the hearing

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Conducting Hearings

Conduct of the Hearing and Relevance

- After the hearing officer has asked their initial questions of the parties, the hearing officer will permit each party's advisor to ask the other party all relevant questions and follow-up questions, including those challenging credibility
- The hearing officer may ask follow-up questions as necessary
- Subject to the discretion of the hearing officer, the questioning of witnesses will generally follow a similar process, whereby the hearing officer will pose relevant questions to witnesses, and then the parties' advisors will be permitted to ask relevant questions of witnesses
- Such cross-examination of the parties and witnesses by advisors will be conducted directly, orally, and in real time by the party's advisor of choice and never by the party personally

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Conducting Hearings

Conduct of the Hearing and Relevance

- Only relevant cross-examination and other questions may be asked of a party or witness
- Before a complainant, a respondent, or a witness answers a cross-examination or other question, the hearing officer will first determine
 - whether the question is relevant and
 - explain any decision to exclude a question as not relevant

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Written Determinations

» The Hearing Outcome will include:

- Identification of the section(s) of the Policy alleged to have been violated;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including but not limited to, as applicable, the notification to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of definitions of prohibited conduct in the policy to the facts;

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Written Determinations

» The Hearing Outcome will include:

- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility; and
- Identification of the College's procedures and permissible bases for the complainant and respondent to appeal

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Sanctioning Considerations

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Sanctioning Considerations

- » Sanctioning procedures
- » Sanction options
- » Sanctions in student respondent cases
- » Sanctions in employee respondent cases

Appeals

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Title IX Appeal Grounds

- Either party in any case may file a written appeal from a hearing outcome
- Title IX requires that appeals must be permitted on the following grounds:
 - Procedural irregularity that materially affected the outcome of the matter
 - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could materially affect the outcome of the matter; and/or
 - The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that materially affected the outcome of the matter

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Appeal Grounds Discussion

- Procedural irregularity that materially affected the outcome of the matter
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could materially affect the outcome of the matter; and/or
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that materially affected the outcome of the matter

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Questions?