5 Steps to Facilitate Your Title IX Hearing Deliberation Meetings

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learning OUTCOME

After participating…
you will be able to apply five steps that will allow you to structure your deliberation meetings so that your time together is effective and efficient.

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AGENDA

Step 1: Analyze facts in dispute and not in dispute

Step 2: Assess and evaluate credibility of witnesses and evidence

Step 3: Analyze the facts and the policy together to understand a cohesive narrative

Step 4: Determine responsibility based on your policy's standard of proof

Step 5: Prepare your written determination letter

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#1

Analyze Facts in Dispute and Not in Dispute

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Disputed and Undisputed Facts

- List important, undisputed facts
- List important, disputed facts

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Disputed and Undisputed Facts

Undisputed facts – get parked to the side for later use in the puzzle

Disputed facts – move on to "the assess and evaluate credibility" – Step #2
*****Panelists must resolve the disputed facts*****

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ACTIVITY

Zack and Julie Case Study

1. Please read it.
2. Type in chat ***disputed*** facts.
3. Type in chat ***undisputed*** facts.

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#2

Assess and Evaluate Credibility of Witnesses and Evidence

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"Assess" Credibility of Witnesses and Evidence based on these categories:

- Reputation for truthfulness/untruthfulness
- Memory
- Perception – Were they drunk? Couldn't see well?
- Motive to lie - relationships
- Bias
- Demeanor
- Inconsistencies and contradictions/consistencies

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Differences among types of evidence

Primary evidence

- Authentic, relevant tangible evidence
- Firsthand, uninvolved, unimpaired witness reports

Secondary or tertiary

- Secondhand reports (rumors)
- Relevant, tangible evidence that can't be authenticated

"Anti-evidence"

- Fabricated or tainted evidence

NOT ALL EVIDENCE IS CREATED EQUAL!

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Evaluate Credibility of Evidence

Example 1: surveillance video or photos/videos

Example 2: standard forms or database information

Example 3: e-messages (emails, Instagram/ FB posts, texts)

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ACTIVITY

Surveillance camera in Julie and Zack Case

- Apply the categories under the "*assess*" piece of the puzzle

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Evaluate Credibility of Witnesses

- Other facts corroborate their version of events
- Inconsistencies and explanations to those inconsistencies
- Circumstantial evidence v. direct evidence

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POLL

Is Circumstantial Evidence *less credible* than Direct Evidence?

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Circumstantial Evidence

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence; that is, it is proof of one or more facts from which one can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

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Evaluate Credibility of Witnesses – TIPS

- It's human nature to have imperfect or inconsistent recall.
- Just because it doesn't make sense to you does not mean the person saying it is lying.
- Just because someone is inconsistent (or flat wrong) doesn't mean s/he's a liar.

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ACTIVITY

Listen to the mock hearing audio clips of Julie's and Zack's testimony

- Evaluate credibility on disputed fact

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Putting it Together

1. Assess the person's testimony standing alone.
2. Assess the person's testimony with evidence received from that person over time.
3. Assess the person's testimony with testimony from others (consistent/inconsistent?).
4. Assess the person's testimony with evidence received from others (e.g., video, documents, etc.).

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Analyze the Facts and the Policy Together to Understand a Cohesive Narrative

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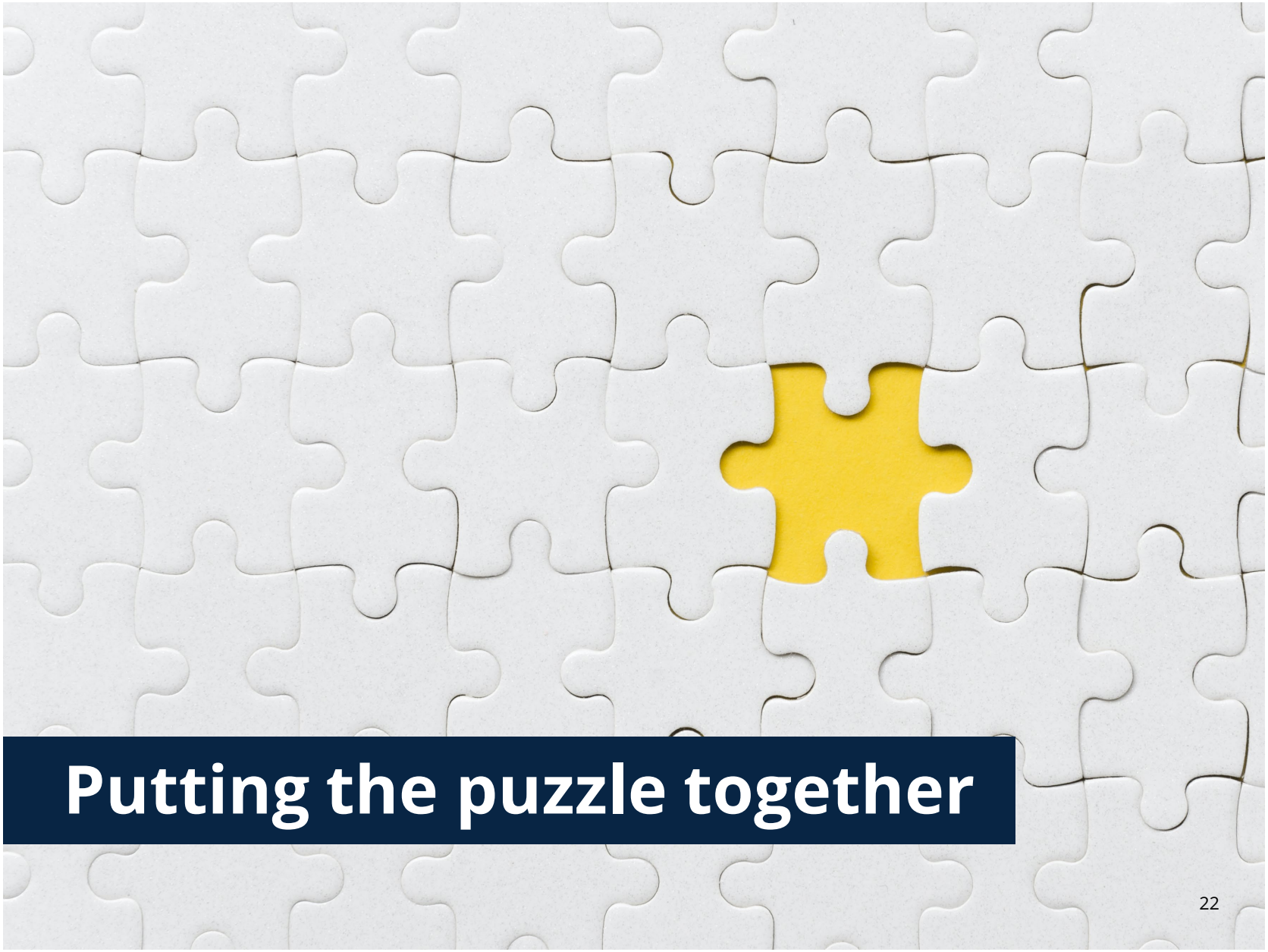

Putting the puzzle together

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IRAC Model

- Identify the legal **issues** to be resolved (the I of IRAC);
- Interpret statutes and other **rules** (the R of IRAC);
- Provide reasons **(analysis)** why the rules do or do not apply to the facts (the A of IRAC); and
- **Conclude** by answering the legal issues through holdings and a disposition (the C of IRAC).

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Practical Tips

- Use a matrix tool – proof analysis, IRAC, use a wipe board
- Pick a scribe to fill in matrix
  - Same scribe to write the "determination"
- Every voice is heard – no bullies
  - Timer; hold stick - gets to talk; organize your thoughts
  - Seek to understand point of view

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ACTIVITY

Group Deliberation

- Case Study
- Audio Clips

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Determine Responsibility Based on Your Policy's Standard of Proof

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POLL

Have you ever sat on a jury –
civil or criminal?

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Each Element Analyzed Based on Standard of Proof

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Responsibility Determined

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Prepare Your Written Determination Letter

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NEW REGS – Written Determination

STEP #1: APPLY STANDARD OF EVIDENCE

STEP #2: FOLLOW THE NEW REGS on what must be included in the written determination

STEP #3: SEND TO PARTIES SIMULTANEOUSLY

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What's required in the Written Determination?

Six areas must be included

(1) Identification of the allegations potentially constituting sexual harassment as defined in § 106.30;

(2) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

(3) Findings of fact supporting the determination;

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What's required in the Written Determination?

Six areas must be included

(4) Conclusions regarding the application of the recipient's code of conduct to the facts;

(5) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and

(6) The recipient's procedures and permissible bases for the complainant and respondent to appeal.

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Example Structure

Start with the **vote?**

Then the **standard**

1. ALLEGATIONS
2. PROCEDURAL STEPS
3. FACTS FOUND
4. CONCLUSIONS MADE BASED ON POLICY
5. **RATIONALE AND DETERMINATION AND SANCTIONS AND REMEDIES TO COMPLAINANT AND RESPONDENT**
6. APPEAL RIGHTS

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QUESTIONS?

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RESOURCE

- Ninth Circuit Jury Instruction 3.8 and 3.9
- Example Proof Analysis
- Credibility Assessment Tool

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TAKEAWAYS

1. Choose facilitator/hearing chair/scribe for deliberating
2. Get organized – use tools to assist the process
3. Apply the undisputed and resolved facts to policy elements/definitions
4. Write decision letter using DOE's criteria and YOUR TEMPLATE

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