



D. STAFFORD
& ASSOCIATES

Sexual Misconduct

Custom Decision Maker Class

Coppin State University

Presented by:

A D. Stafford & Associates
Title IX Team Member

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Once an institution is a member, individual membership is \$50.00. You can sign up your entire Clergy Compliance Committee for membership!

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TITLE IX

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ISSUANCE OF CERTIFICATES FOR COMPLETION

To receive a certificate, attendees must attend the majority of the class and have paid class invoice in full. This applies to both in-person classes and virtual classes. We understand that attendees may need to miss class for a legitimate reason for longer periods of time or may need to leave the room during a class for a few minutes to take a phone call or attend to other business. If an attendee misses a significant amount of the class (depending on the length of the class) or they miss an attendance poll, they will not be issued a certificate of completion for the class.

Attendees should report each absence using the online form provided (each class has its own unique form that is sent to all attendees via email prior to class). Attendees should complete the form twice for each absence: once to record their departure, and again to record their return. Attendees should complete the form immediately before leaving class and as soon as practicable upon their return. If an attendee signs out but does not sign back in, they will be marked absent for the remainder of the day.

The criteria for receiving a certificate is determined based on missed class time and participation in the Attendance Polls that will be launched throughout each day of class. Attendance polls are left up for approximately 5 minutes and the instructor notifies the attendees that a poll is being launched to ensure that everyone who is present can respond to the poll. If an attendee is unable to respond to the attendance poll, the attendee would need to **immediately post "I am here"** in the chat feature within the Zoom platform. That way we can give the attendee credit for being in attendance for that specific poll. Notifying us after the attendance poll has been closed will not allow us to give the attendee credit for being in class during the poll.

Some of our classes may qualify for credit toward a Master's Degree at New England College (and regardless if you decide to seek credit or not, accreditation requirements mandate that we follow the same standards for all class attendees), so we have strict attendance standards that we follow for issuance of a certificate. For DSA & NACCOP, issuance of a Certificate of Completion is verification of attendance.



Adrienne Meador Murray, Executive Director of Training and Compliance Activities



Adrienne Meador Murray began her career in municipal law enforcement as a civilian employee with the City of Richmond Police Department (Virginia). She graduated from the Virginia Commonwealth University Police Training Academy and began her career as a sworn police officer for the University of Richmond (UR) Police Department (Virginia). At UR, Murray progressed through the ranks from a night shift patrol officer to Operations Lieutenant (overseeing criminal investigations, crime prevention and patrol) over the span of a decade before becoming the Chief of Police at Davidson College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.). In January 2014, Murray joined the National Association of Clergy Compliance Officers & Professionals (NACCOP) and D. Stafford & Associates where she currently serves as Executive Director of Training and Compliance Activities after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012.

As the Executive Director, Equity Compliance and Civil Rights Services, Murray builds on her 17-year career in law enforcement in which she became a nationally recognized expert in the field of best practice postsecondary institutional response to the sexual victimization of college women in the United States and in Canada. She is also a trained civil rights investigator and is well respected throughout the country for her ability to aid institutions in understating how to do best practice criminal and civil rights investigations concurrently. She is well known for her work in having provided support, advocacy and criminal investigative services for victims of sexual assault, stalking and intimate partner violence and is a sought-out speaker and investigator. She has expertise in the construction of best practice law enforcement standard operating procedures and training police officers to respond in best practice and trauma-informed ways to victims of sexual assault and intimate partner violence. In her current role, Murray coordinates curriculum development and instruction for national classes, including basic and advanced sexual misconduct investigation classes; an investigation of dating violence, domestic violence and stalking class; and a Title IX Coordinator/Investigator class offered through D. Stafford & Associates. To date, Murray has trained more than 3,500 criminal and civil rights investigators throughout the U.S.

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based




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trainings pertaining to the resolution of sexual misconduct offenses on college and university campuses. Murray frequently presents at regional and national conferences on topics such as the *Sexual Victimization of College Women*, *Understanding Consent and Incapacitation*, and *Responding to Sexual Assault on Campus: Clery Act and Title IX Implications*. Murray also conducts provincially specific sexual misconduct trainings throughout Canada.


Murray is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management and of New England College, where she received her Master's Degree in Campus Public Safety Administration. Murray is also a graduate of the 235th session of the prestigious FBI National Academy where she was awarded a graduate certificate in Criminal Justice from the University of Virginia. She has authored numerous journal articles.



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Decision-Makers
in Title IX Hearings:
An Abbreviated Course for Coppin State
Presented April 4, 2023

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COURSE AGENDA FOR ABBREVIATED COURSE

- Module 1: The Law and the Hearing Process
- Module 2: The Hearing

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Introduction

	
Name	Role on Campus

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Course Logistics

- Camera
- Breaks
- Interact
- Attendance

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The Law and the Hearing Process
The 2020 Title IX Regulations and the Formal Process

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Agenda

- The Title IX Grievance Process
 - Legal Overview
 - Definitions
 - Jurisdiction
 - Hearing Basics
- Conflict of Interest and Bias

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Interpreting Laws

Law Regulations Substantive guidance Case law

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Definitions: Parties/Witnesses

Complainant

Respondent

Witnesses

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Definitions: Key Terms

Actual Knowledge

Formal Complaint

Supportive Measures

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Definitions: Title IX Personnel



Title IX Coordinator

Investigator

Decision-Maker

Informal Resolution Facilitator


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New Regulations

For it to be covered under Title IX, it must meet:

- New Definitions
- Jurisdiction of person
- Jurisdiction of activity




If it does NOT meet these requirements...

- Mandatory dismissal
- Can go to different resolution process


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
Jurisdiction of Person



"At the time of filing a formal complaint...the complainant must be participating in or attempting to participate in the education program or activity"



The institution must exercise control over the Respondent



All regulations apply to students and employees

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Jurisdiction of Activity

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- Behavior must occur as part of the “education program or activity”
- Locations, events, or circumstances over which the recipient exercised substantial control over the context in which the sexual harassment occurs
- And any building owned or controlled by a student organization that is officially recognized
- Must occur in the United States (including US territories)

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Definition of Sexual Harassment under Title IX

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Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
3. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

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PRONG 1: Quid Pro Quo

☞

Must be an employee (not volunteer, visitor, student)

🤝

“This for that” harassment

★

When favorable professional or educational treatment is conditioned on a sexual activity

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PRONG 2: Hostile Environment+ (The *Davis* Standard)

- Not the same Title VII “hostile environment” or 2001 Guidance
- First Amendment protections
- Not a zero tolerance policy

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PRONG 3: The VAWA Offenses


Sexual Assault	Rape Fondling Incest Statutory Rape
Intimate Partner Violence	Dating Violence Domestic Violence
Stalking	

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§106.30 Definitions - CONSENT

The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault



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Other Considerations



First Amendment



Retaliation



Bias/Conflict of Interest




State Laws


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Three Primary Stages



Intake



Investigation



Resolution

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Title IX Case Flowchart Post Outreach

Title IX Coordinator determines its eligibility...

Complainant Decision

Formal Complaint signed

No Formal Complaint

Informal Process

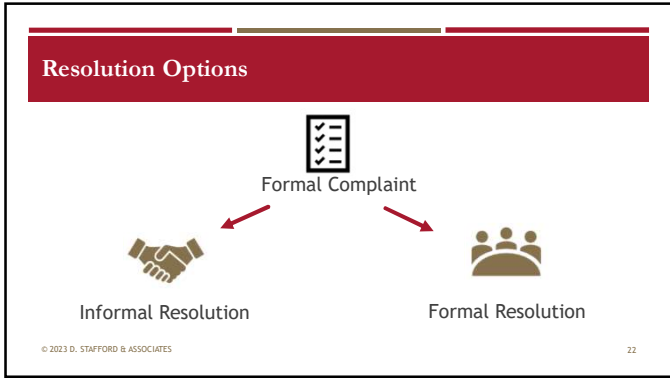
Formal (Investigation-Hearing-Appeal)

Case closed (except for supportive measures)

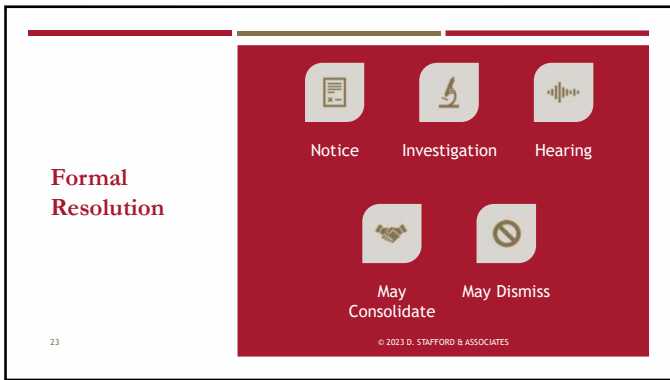
Title IX Coordinator may sign complaint

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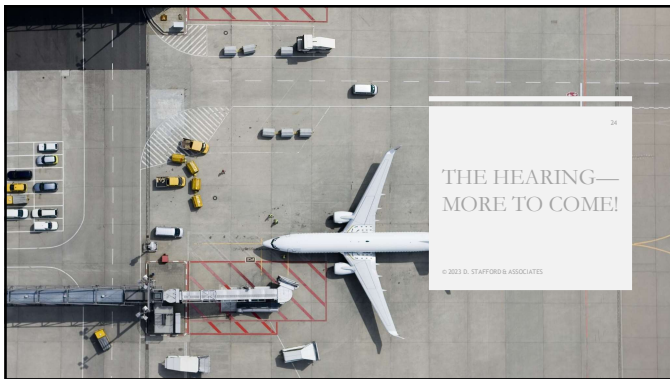
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Hearing Basics

Live Cross Examination Advisors

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Standard of Evidence

Preponderance Clear and Convincing

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Conclusions

Sanctions/Remedies Written Determination Options for Appeal

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**Bias--From
Regs**

- Bias against Complainants or Respondents
- Bias against THIS Complainant or Respondent
- Sex Stereotyping

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Bias

Parties Race Gender Gender identity Sexual orientation Nationality

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Bias

Personal experience Personal identity Social identity Theoretical perspective

Professional identity Religious perspective Political perspective

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How to address



Training Acknowledgements Party-identified Conflict Decision-maker-identified Conflict

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THE HEARING

PREPARATION, RULES, AND CONSIDERATIONS IN MAKING A FINDING

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EVIDENCE & RELEVANCY

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Types of Evidence



Real evidence



Demonstrative



Documentary




Testimonial


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Statements




Investigator Interviews



Written Statements



Formal Complaint



Other

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Other Sources of Evidence

Photographs

Text messages

Social media/dating apps

Documents
(diagrams, memos, letters, notes)

Voicemail

Phone logs

Guest lists

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Evidence

Inculpatory
Evidence demonstrating culpability for an act

Exculpatory
Evidence tending to excuse, justify, or absolve the act

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Versions of the Report

Preliminary Report:
Scope
Methodology
Evidence Obtained

Final Report:
Scope
Methodology (edited)
Evidence Obtained
Summary of Relevant Evidence

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Evidence Collection

Everything Collected

Directly Related

Relevant

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What Does Relevancy Mean?



- Directly related to the issue and helps prove or disprove the issue
- Fact must be material to an issue in the case
- Makes something more/less true or more/less false

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Other Ways to Put It...

The evidence does not need to be conclusive

The evidence constitutes a link in the chain of proof

The evidence, in connection with other evidence, helps "a little"

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Relevancy Examples



Admissions



Eyewitness




Credibility

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Relevancy Examples



Background



Charts



Floorplans

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Relevant Examples



Research



Character and Character Traits



Expert Testimony

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WHAT IS NOT RELEVANT?

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Not Applying Federal Rules of Evidence

Rule 403: The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 404: Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

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NOT RELEVANT (from the Regs)

Past Sexual Behavior

- Complainant's sexual predisposition or prior sexual behavior unless...
 - Offered to prove that someone other than the respondent committed the conduct alleged or
 - Complainant's prior sexual behavior with respect to the respondent and are offered to prove consent


Privileged Information

- Physician, psychiatrist, psychologist records in connection with the provision of treatment to the party unless
 - Voluntary, written consent


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Not Relevant



Repetitive



Related By Not Relevant



New Evidence - Is It Relevant?

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STAYING ON POINT

- Allegation
- Definitions
- Summary of Relevant Evidence

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ROLES AT THE HEARING

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Relevancy Determination



“Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.”

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Advisor

1) Cross-examination of Other Party and Witnesses

2) No Training Required (Recommended if appointed)

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Cross-examination – The Preamble

The Department clarifies here that conducting cross-examination consists simply of posing questions intended to advance the asking party’s perspective with respect to the specific allegations at issue . . . (Fed. Reg. 30319)

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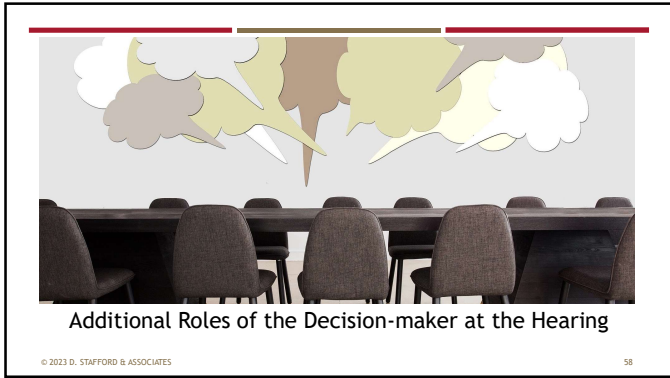
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Role of the Decision-maker

- Relevancy Determinations
- Credibility Assessment
- Make Finding
- Written Determination

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Questioning by the Advisors

- Question**
 - By Advisor
- Relevancy Determination**
 - By Decision-Maker
- Answer**
 - By Party or Witness

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RELEVANCY DETERMINATIONS

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Relevancy and Admissibility Determinations

- Past sexual history
- Privileged information
- Repetitive question
- New information
- Not probative of material fact


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Reason for Relevancy Determination




Not a lengthy or complicated explanation



Logic and common sense



Shows neutrality




May trigger appeal ("procedural irregularity")

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"New Evidence" at the Hearing


APPEAL GROUND: "New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter"



Allow



Disallow




Stop Hearing


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Decision-maker Questions



Statement of Accuracy



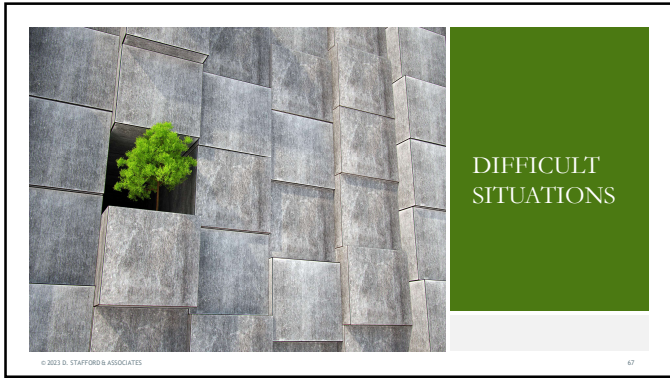
Credibility



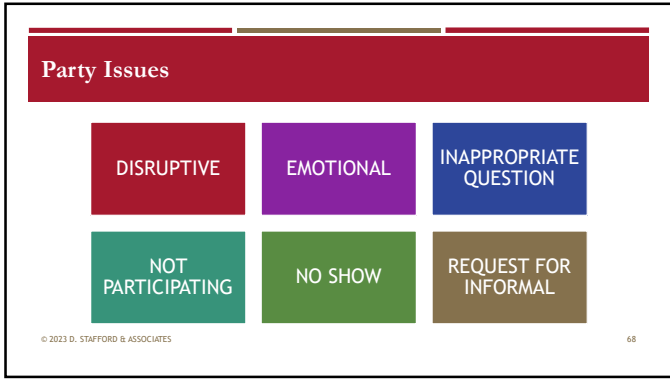
Clarity

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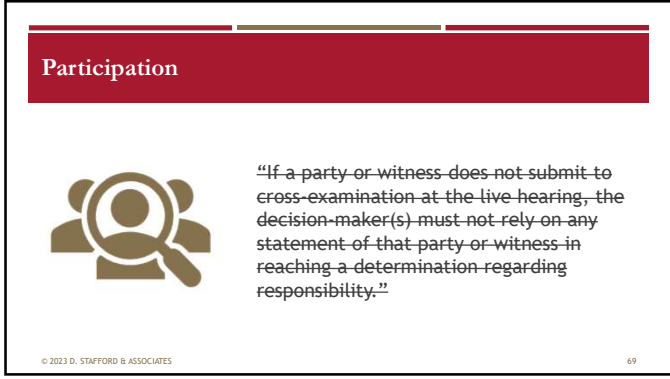
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Attendance



“The decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross - examination or other questions.”

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Advisor Issues

Disruptive

Refusal to cross

Inappropriate cross


Relationship with party

Relationship with case


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Decision-maker issues (appeal grounds)



Procedural Error



New Evidence




Bias/Conflict


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Situational issues




Safety



Disability



Length



Phrasing


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Versions of the Report



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Summary of Relevant Evidence



Written Determination:
Scope
Methodology (edited),
Summary of Evidence (edited),
Results (including rationale,
sanctions, remedies)

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