




DECISION MAKERS MODULE • CHOOSE YOUR OWN PATH

# An Adjudication Adventure



The following exercise presents a complex Title IX case with multiple opportunities for you to decide how to proceed. Read each segment, then consider the multiple choice options on the next page. The following page will reveal our answers. Here are the symbols we used:

-  *Best approach of the available choices*
-  *This approach may not violate the regulations, but isn't the best option*
-  *This approach violates the regulations*



## Getting Ready

The Title IX Coordinator informs you that you've been selected as the lead hearing officer for a new case and emails you the Investigative Report. He tells you that the case involves dating violence allegations between two students, Archer and Zion. Each party has made allegations of dating violence against the other. In essence, both parties are Complainants and both parties are Respondents. You have just reviewed your school's policies and procedures, as well as the definition of dating violence.

Your next step is to . . .

76

## Getting Ready

- A. Put the report in a safe place so that you can find it easily on the date of the hearing. No need to read about the case in advance – that's what the hearing is for.
- B. Carefully read the entire report and draft all the questions you would want to ask the parties and witnesses before making any determinations of responsibility.
- C. Carefully read the draft report but refrain from drafting questions for the parties and witnesses. Posing questions is the job of the advisors.

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77

## Getting Ready



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Carefully read the draft report but refrain from drafting questions for the parties and witnesses. Posing questions is the job of the advisors.

### Key



*Best approach of the available choices*



*This approach may not violate the regulations, but isn't the best option*



*This approach violates the regulations*



## Scheduling Witnesses

The investigators determined that one identified witness, Archer's roommate Avery, provided information that was directly related to the allegations, but not relevant. Therefore, Avery's witness statement was provided in the "directly related" section of the evidence packet. Archer disagrees with the investigators that Avery's information is not relevant. In advance of the hearing, Archer requests that Avery be put on the schedule. Zion protests and says that the investigators got it right – Avery's information is not relevant.

You decide that you will. . .

78

## Scheduling Witnesses

- A. Deny Archer's request to have Avery testify at the hearing. The investigators already decided that Avery's information is not relevant, and it is not efficient for you to revisit that decision.
- B. Grant Archer's request because the parties are allowed to freely gather and present evidence, and that includes witnesses, so you have no choice.
- C. Look closely at Avery's statement to determine if Avery has relevant information. This is your decision to make, and there is no easy, automatic answer.

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## Late-Breaking Development

Three days before the hearing, Zion emails you and the investigator. Zion explains that when he was talking with some other students in the residence hall last night, a girl named Zoe volunteered that she once saw Archer slap Zion in the laundry room. Zion asks that Zoe be added to the witness list so that she can share what she saw at the fast-upcoming hearing. The investigator responds (to you only) that Zoe's information certainly appears relevant to the allegations.

You reply to Zion that. . .

80

## Late-Breaking Development

- A. Because Zoe's information appears relevant, you will add her to the witness list and send her a notice for the upcoming hearing.
- B. Because Zoe's information appears relevant, you will postpone the hearing so that she can be interviewed and all parties put on notice of the new information.
- C. Despite the fact that Zoe's information appears relevant, it is too late to add her to the upcoming hearing, but Zion is free to raise the issue on appeal if he does not prevail in the case.

## Late-Breaking Development



Because Zoe's information appears relevant, you will add her to the witness list and send her a notice for the upcoming hearing.





Because Zoe's information appears relevant, you will postpone the hearing so that she can be interviewed and all parties put on notice of the new information.



Despite the fact that Zoe's information appears relevant, it is too late to add her to the upcoming hearing, but Zion is free to raise the issue on appeal if he does not prevail in the case.

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## Hearing Logistics

The hearing is tomorrow. Although the plan was for everyone to be in the same large room, Zion is now expressing discomfort about being near Archer and wishes to participate via video conference. Zion's advisor offers that he and Zion can Zoom in from his office across campus. Archer protests that everyone should be in the same room. Archer argues that the new proposed arrangement is unfair because Zion's advisor will be able to do more off-camera coaching.

You decide to . . .

82

## Hearing Logistics

- A. Deny Zion's request to participate remotely because, absent exceptional circumstances, it is better for everyone to be present in the same manner.
- B. Grant Zion's request to participate remotely so that Zion and Avery don't have to be in the same room, but ask that Zion's advisor be present in person.
- C. Grant Zion's request to appear remotely.



## Hearing Logistics



Deny Zion's request to participate remotely because, absent exceptional circumstances, it is better for everyone to be present in the same manner.





Grant Zion's request to participate remotely so that Zion and Avery don't have to be in the same room, but ask that Zion's advisor be present in person.




Grant Zion's request to appear remotely.

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## Unexpected Advisor

The hearing is today. When Archer and his advisor arrive, you are surprised to see that the advisor is not the same person who has been serving as Archer's advisor until now. The new advisor explains that she is an attorney who has just been retained by Archer's family and that she will be taking over from the geography professor who was serving as Archer's advisor previously.

You respond by . . .

84

## Unexpected Advisor

- A. Welcoming Archer's new advisor and introducing yourself. After all, each party is entitled to be accompanied by an advisor of their choice.
- B. Greeting Archer's new advisor and delaying the hearing by one hour so that the Title IX Coordinator can get her assent to the rules and to the school's non-disclosure agreement.
- C. Telling Archer and the new advisor that once an advisor for a case has been selected, no changes can be made, and Archer will need to stick with the geography professor.

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85

See answers on next page

## Unexpected Advisor



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Greeting Archer's new advisor and delaying the hearing by one hour so that the Title IX Coordinator can get her assent to the rules and to the school's non-disclosure agreement.



Telling Archer and the new advisor that once an advisor for a case has been selected, no changes can be made, and Archer will need to stick with the geography professor.

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## Tough Questions

The hearing is progressing, and it is becoming apparent that Archer and Zion know a lot about each other. When it is time for Archer to be questioned, Zion's advisor says, "Archer, isn't it true that after you got into a physical altercation with a date last summer, your psychologist wrote in your chart that you were a danger to yourself and others?"

Time for an on-the-spot relevance decision!  
You. . .

86

## Tough Questions

- A. Allow questions about the psychologist's notes, but block questions about what happened with the date last summer as irrelevant.
- B. Block questions about the psychologist's notes, but allow questions about what happened with the date last summer.
- C. Allow both questions.
- D. Block both questions.

## Tough Questions



Allow questions about the psychologist's notes, but block questions about what happened with the date last summer as irrelevant.



B. Block questions about the psychologist's notes, but allow questions about what happened with the date last summer.





Allow both questions.




Block both questions.

### Key

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## Tough Questions Continued

When you disallow the question about the psychologist's notes, Zion's advisor objects. He says that they are not seeking to introduce the counseling records themselves, and that the *content* of the records can be discussed because Archer freely disclosed it to Zion and others, therefore waiving any privilege. He asks you to reconsider your decision to disallow that part of the question.

You respond. . .

88

## Tough Questions Continued

- A. That when you make a decision about whether a question is allowable, that decision is final, and any objections can only be made on appeal.
- B. That you will consider Zion's objection and ask for Archer to weigh in, too. After listening, you change your mind and allow Zion's question about the psychologist's note.
- C. That you will consider the arguments of both sides. You subsequently reaffirm your original decision to block the question about the psychologist's note.

## Tough Questions Continued



That when you make a decision about whether a question is allowable, that decision is final, and any objections can only be made on appeal.




That you will consider Zion's objection and ask for Archer to weigh in, too. After listening, you change your mind and allow Zion's question about the psychologist's note.





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That you will consider the arguments of both sides. You subsequently reaffirm your original decision to block the question about the psychologist's note.

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## Gatekeeping

An August 24, 2021 letter from the U.S. Department of Education removed the prohibition on statements not subject to cross-examination.

Please see the following for additional details:

[Written summary](#)

[Video update](#)

One of the pieces of evidence is a two-minute video that shows Zane being interviewed by a hearing officer. The hearing officer asks Zane questions about the incident, but Zane does not answer any of the questions. The hearing officer kept out Zane's answers because Zane is not there to answer questions about it.

After listening to both sides, you...

90

## Gatekeeping

- A. Allow the video, but note that it may be accorded lesser weight because Zane was not interviewed. The video was filmed, why it states that Zane was not interviewed.
- B. Allow the video to be presented as evidence because Zane is not there to answer questions about the incident.
- C. Disallow the video because Zane is not there to answer questions about the incident.

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[Written summary](#)

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## Reluctant Witness

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[Written summary](#)

[Video update](#)

to the party, Aidan refuses to answer those questions, as well.

Time for you to intervene. You...

92

## Reluctant Witness

A. Explain to Aidan that if he refuses to answer questions about drug and alcohol use was taking.

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B. Explain to Aidan that if he refuses to answer questions about the record on the commission about questions.

Please see the following for additional details:

[Written summary](#)

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C. Explain to Aidan that if he refuses to answer some questions, then none of his statements will be able to stay on the record and his testimony will be disregarded completely.

## Reluctant Witness



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C. Explain to Aidan that if he chooses not to answer some questions, then none of his statements will be able to stay on the record and his testimony will be disregarded completely.

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## A Killer Question

When Zion is speaking at the hearing, you notice a major inconsistency between what Zion is saying now and what Zion told the investigators. The inconsistency and what it suggests about Zion's credibility is so significant that unless there is a convincing explanation for it, you think it could determine the outcome of the case. Archer's advisor is wrapping up her questions, and the glaring problem doesn't seem to have occurred to her or Archer.

When Archer's advisor says she has finished, you...

94

## A Killer Question

- A. Ask Zion about the inconsistency yourself. It is a major issue and you want to hear if Zion has any explanation for it.
- B. Move the hearing along and disregard the inconsistency since Archer didn't catch it. You are supposed to be objective and neutral. If you highlight Zion's inconsistency, it will appear that you are taking Archer's side.
- C. Move the hearing along in a neutral way, but make a note to yourself that Zion's credibility has been called into question.

## A Killer Question



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Move the hearing along and disregard the inconsistency since Archer didn't catch it. You are supposed to be objective and neutral. If you highlight Zion's inconsistency, it will appear that you are taking Archer's side.



Move the hearing along in a neutral way, but make a note to yourself that Zion's credibility has been called into question.

### Key



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## A Late Question

Following the hearing, you and the other two hearing panelists sit down to discuss the case and come to a decision. As you are going through the evidence, Dr. Chalmers says, “I wish I had thought to ask Archer about these ambiguous texts. They can really be read to have two totally different meanings.” You look at the texts in question and see that Dr. Chalmers is right. Depending on which interpretation you adopt, the whole case could come out differently.

You suggest that...

96

## A Late Question

- A. That since you aren't sure what the texts mean, you disregard them entirely.
- B. That since you aren't sure what the texts mean, you take your best guess based on context, Archer's other answers, etc.
- C. Email Archer and Archer's advisor with a follow-up question about the texts.
- D. Tell both parties and their advisors that you need to briefly reconvene the hearing the next day to ask a few follow-up questions.

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97

See answers on next page



## A Late Question



That since you aren't sure what the texts mean, you disregard them entirely.



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## Weighing the Evidence

Zion's side of the case is supported by Zion, three other witnesses, and Zane's video. Archer's side of the case is supported by Archer, six other witnesses, and Archer's text messages.

When you look at it like that, you realize that you must...

98

## Weighing the Evidence

- A. Assign each piece of evidence a weight depending on its relevance and reliability.
- B. Find in favor of Archer because they each have one piece of non-testimonial evidence, but Archer has six witnesses as opposed to three for Zion.
- C. Find in favor of Zion because actual video footage is more important than testimony and other forms of evidence.

## Weighing the Evidence



Assign each piece of evidence a weight depending on its relevance and reliability.





Find in favor of Archer because they each have one piece of non-testimonial evidence, but Archer has six witnesses as opposed to three for Zion.



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## Determining Responsibility

When you weigh all the evidence, you conclude that both Archer and Zion have engaged in acts of dating violence, but that Archer has done so more frequently and with greater severity.

Now that it is time to determine who should be held responsible, you issue a determination that...

100

## Determining Responsibility

- A. Both are responsible for dating violence because both engaged in conduct that meets the definition of dating violence.
- B. Archer is responsible and Zion is not responsible because Archer bears a higher degree of blame for the situation.
- C. Neither is responsible because they each treated the other badly and therefore there is no real victim.

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101

See answers on next page

## Determining Responsibility



A.

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Neither is responsible because they each treated the other badly and therefore there is no real victim.

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## Sanctions

You have decided that both Archer and Zion violated the school's prohibition on dating violence. Under your school's procedures, the hearing officer(s) also decide the sanctions. You consider the list of possible sanctions, which ranges from a formal reprimand and disciplinary probation to expulsion.

Your sanctioning decision is to...

102

## Sanctions

- A. Suspend both Archer and Zion for two semesters. Title IX requires that they receive the same sanction since they were found responsible for the same policy violation.
- B. Expel Archer and suspend Zion for one semester because those sanctions best line up with the level of culpability of each Respondent.
- C. Expel both Archer and Zion because all dating violence is worthy of expulsion, regardless of degree.

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## Post-Script

The next time you see your department Chair, you mention that the hearing is over. She knows you were handling a dating violence case between Archer and Zion – their troubles became pretty common knowledge in the months leading up to the hearing. “Oh my gosh,” she says. “That must have been intense. How did it all turn out?”

You reply ...

104

## Post-Script

- A. By giving her the highlights of the hearing and explaining your rationale for the two different sanctions. You can talk to her because she is your boss, but you remind her that the information is confidential.
- B. By stating that both students were found responsible, Archer was expelled, and Zion was suspended for one semester. Given the confidentiality rules, that’s all you can tell her.
- C. By saying that you’re not sure what you’re allowed to say about the case and need to check with the Title IX Coordinator.

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105

See answers on next page

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