



## **GICA Compliance Collaborative**

### **2021 In-person and Zoom Title IX – Hearing Panel Member Training (3 ½ Hour Training – November 2021)**

#### **AGENDA**

##### **Overview**

This training is designed to provide Hearing Panel Members, Appeal Officers, Advisors, Title IX Coordinators, Deputy Coordinators, Investigators, HR personnel, and anyone associated with administering Title IX with an up-to-date understanding of current compliance requirements for the live hearing using a scenario-based training.

##### **Agenda**

1 Hour:

- Training Objectives
  - Introductions and Review of Title IX – Final Rule
  - Topics covered:
    - Logistics
    - Advisor – Attendance
    - Cross-Examination
    - Determination by Decision-maker
    - Relevant Questions
    - Credibility
    - Action Items

2 ½ Hours:

- Training Objectives
  - Utilizing case-scenario based approach and watching newly developed Title IX-specific videos, practice managing the logistics of a live hearing (evidentiary rulings, unruly participants, rules of evidence) and culminate the training with arriving at a written decision.

Total of 12 videos written by Judy Spain, J.D., CCEP, GICA Compliance Collaborative Program Consultant. Videos produced by DMZ Productions; copyright held by Spain and Spain, Inc., and licensed to GICA.

For this training, four of the videos were used. The other videos were used in the Title IX Investigator Training (both Zoom and in-person September 2021).

Attendees watched the videos and then participated in discussion regarding the videos which showed various steps in the Live Hearing. Videos were designed to develop hearing panel member competency skills; to expand attendees knowledge of the Title IX process; to promote discussion regarding what went right/what went wrong in the Live Hearing; to assist attendees to determine what could be relevant questions; to encourage discussion regarding how to ask follow-up questions to determine facts and credibility of the interviewee; to understand the need for standardization of process of opening/closing a Live Hearing; to discuss the burden of proof to be established; to make rulings on evidentiary matters; and to develop strategies to control unruly participants. The training concludes with the participants arriving at a written decision based on the facts.

Prior to the training, attendees received the Final Report, Final Report Appendix, and a template Title IX Policy. The Final Report contained a summary of interviews as well as the procedural history of the matter.

### **Scene 9 – Complainant’s Testimony at Hearing**

Actors:

Complainant – Pat Smith  
Complainant’s Advisor – Dr. Engle  
Title IX Hearing Panel Chair – Janine Small  
Respondent – Madison Cabot  
Respondent’s Advisor – Mr. Farm, J.D.

Date:

Thursday, December 1 at 9:00 am

Synopsis:

Complainant testified at hearing; Complainant testified that she would not have participated in the “body count” game if she knew that Respondent was playing the game. Complainant detailed window incident and offensive language used by Respondent. Cross-examined by Respondent’s Advisor who focused on issue of consensual/nonconsensual sexual acts; relevancy rulings by Hearing Panel Chair. Advisor was argumentative and discussions occurred regarding controlling the Advisors.

### **Scene 10 – Complainant’s Witness at Hearing**

Actors:

Witness – Fred Travis (Athletic Trainer)  
Complainant – Pat Smith  
Complainant’s Advisor – Dr. Engle  
Title IX Hearing Panel Chair – Janine Small  
Respondent – Madison Cabot  
Respondent’s Advisor – Mr. Farm, J.D.

Date:

Thursday, December 1 at 9:00 am

Synopsis:

Complainant’s witness (Fred Travis) testified as to his knowledge of the body count game which was played when he was a student at the institution. Travis testified to hearing Respondent

and Grace Newsome discussing Respondent's relationship with Complainant. Cross-examined by Respondent's Advisor who focused on the issue of the testimony being hearsay.

### **Scene 11 – Complainant's Witness at Hearing**

Actors:

Witness – Grace Newsome  
Complainant – Pat Smith  
Complainant's Advisor – Dr. Engle  
Title IX Hearing Panel Chair – Janine Small  
Respondent – Madison Cabot  
Respondent's Advisor – Mr. Farm, J.D.

Date:

Thursday, December 1 at 9:00 am

Synopsis:

Complainant's witness Grace Newsome is a member of the JV Cheer Squad and was Respondent's roommate. Newsome was planning on participating in the body count game but decided not to since she was interested in the female that she was dating. Newsome testified that she discussed the game and Respondent's role in the game in the athletic training room where Fred Travis was present. Respondent's Advisor asked questions focusing on whether or not Newsome was charged with a Title IX violation and what was the disciplinary action that she was given. Hearing Panel Chair ruled on relevancy issues.

### **Scene 12 – Respondent's Testimony at Hearing**

Actors:

Complainant – Pat Smith  
Complainant's Advisor – Dr. Engle  
Title IX Hearing Panel Chair – Janine Small  
Respondent – Madison Cabot  
Respondent's Advisor – Mr. Farm, J.D.

Date:

Thursday, December 1 at 9:00 am

Synopsis:

Respondent testified and did not dispute playing the body count game, pounding on Complainant's window, and calling Complainant offensive words. Respondent testified that she did not rape Complainant. Complainant's Advisor asked questions regarding Respondent's mental state, medical records, and conversations between Complainant and her attorney Advisor; all of which were ruled not relevant and Complainant directed by Hearing Panel Chair not to respond.

### **Author and Presenter:** Judy Spain, J.D., CCEP

Judy currently serves as the GICA Compliance Program Consultant. She is a Professor Emeritus, Eastern Kentucky University, an attorney licensed in Kentucky, Ohio, and Pennsylvania, and is a Certified Compliance and Ethics Professional. She served as General Counsel and Chief Ethics and Compliance Officer at Eastern Kentucky University and Manhattanville College, where she developed and implemented compliance programs. She has served in multiple Title IX roles and has lectured extensively in this area. Judy is the author of the first book on higher education

compliance, *“Higher Education Compliance: Blueprint for Success”*. Judy is also the author of *“Compliance Risk Assessments: An Introduction”* published by the Society for Corporate Compliance and Ethics.