



DECISION MAKERS: BEST PRACTICES AND CHALLENGES

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DAN SCHORR, LLC

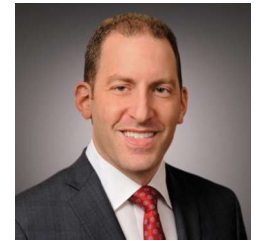
OUR SERVICES

- Title IX, Civil Rights, and Misconduct Investigations
- Decision Makers and Hearing Officers
- Hearing and Process Advisors
- Trainings
- Policy and Program Reviews
- Interim Title IX Coordinator Coverage

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DAN SCHORR

President
New York



Dan Schorr is a former criminal prosecutor and municipal inspector general with more than 20 years of legal and investigative experience. He manages a variety of complex assignments, including investigations into sexual misconduct, Civil Rights, and fraud allegations at educational institutions, corporations, and government entities. In addition to specializing in Title IX investigations, Dan assists higher education and K-12 schools by conducting policy and program reviews, training personnel on all aspects of Title IX and Civil Rights compliance, and serving in hearing officer and decision maker roles. Dan is a pre-approved Sexual Misconduct Investigator for the United Educators ProResponse Expert Services Benefit.

ALYSSA-RAE MCGINN

Vice President, Investigations
Boston



Alyssa-Rae McGinn has extensive experience leading a variety of complex investigations, with particular expertise in conducting investigations at educational institutions and corporations into allegations of sexual misconduct and identity-based harassment involving students, faculty, staff, and corporate leadership. Alyssa-Rae was previously a Senior Associate at Ankura, where she and Dan established the firm's Title IX and Civil Rights Investigations practice and grew it to assist institutions nationwide. Prior to Ankura, Alyssa-Rae was an Associate Director in Kroll's Business Investigations & Intelligence practice.

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PREPARING FOR THE HEARING

- Read investigative report and review all evidence
- Ensure you are aware of procedures that preceded hearing
- Familiarize yourself with relevant policies and procedures
- Coordinate with other panel members to ensure understanding of expectations
- Identify and address any potential conflicts of interest
- Determine whether there are any reasons why the investigation needs to be re-opened

PREPARING YOUR QUESTIONS

- The purpose of the hearing is not to conduct a trial but to gain as full and fair an account as possible in order to determine responsibility
- When drafting your questions:
 - What do you need to know after reviewing the report and evidence?
 - What elements of the policy are/are not clearly met?
- When questioning, be transparent, kind, comfortable, and flexible

IRRELEVANT AND INAPPROPRIATE QUESTIONS

- Questions about a party's sexual history
- Questions about a party or witness's health, including mental health
- Questions about aspects of a party or witness's life that are not pertinent to the alleged conduct
- Questions that improperly blame a complainant or witness for the alleged conduct
- Questions that are phrased rudely or unkindly, or intended to bully a party or witness
- Questions that ask the party or witness to speculate
- Questions that only satisfy curiosity and go down "rabbit holes"
- Questions that are repetitive

EVALUATING EVIDENCE

DIRECT

Supports the truth of an account directly

CIRCUMSTANTIAL

Relies on inference to support a conclusion of facts

ASSESSING CREDIBILITY

- Inherent plausibility and logic of story
- Consistency
- Demeanor
- Level of detail provided – beware of the “categorical denial”
- Past record and pattern behavior
- Cross-corroboration
- Corroboration by evidence
- Not a moral judgment on honesty
- Evaluating credibility is a continuous process

SEXUAL ASSAULT MYTHS

- There is not one way to respond to experiencing sexual assault
- Be aware of stereotypes
- It is not unusual for a complainant to appear numb, detached, or unaffected; delay reporting; blame themselves; express denial, confusion, or fear; minimize their experience; recant some or all of the allegations made; or interact with the respondent after the alleged incident(s)
- Cannot evaluate through “that wouldn’t bother me”

PANEL DELIBERATIONS

- Should be private and confidential
- All panel members must have the opportunity to voice opinions and have equal influence, regardless of power imbalances among panel members
- Consider each element of each allegation in turn and weigh the evidence for and against a finding of responsibility by preponderance of the evidence
- Evaluation of the evidence includes credibility assessment, analysis of discrepancies and corroboration, and comparison to policy
- Do not rely on outside or excluded evidence
- For each allegation, vote to determine findings and document rationale

NON-HEARING DECISION MAKERS

- Thoroughly evaluate investigative record and relevant policies
- Ask for clarification from the investigator, if needed
- If the existing record does not provide satisfactorily thorough information to support a decision, then no decision should be issued at that time
- If there are unanswered issues that are relevant/important, additional questions may need to be asked of witnesses
- Follow institutional policy to determine who asks follow-up questions and in what manner
- Decision maker is NOT the investigator – important to understand the difference

DETERMINING SANCTIONS

- Sanctions should be appropriate considering **severity** and **pervasiveness** of behavior
- May also consider complainant's requests regarding sanctions, as well as respondent's demonstration of accountability and remorse
- Sanctions must be defensible according to evidence and policy
- Primary goals:
 - Stopping the behavior
 - Contributing to healing
 - Protecting complainant/campus safety

WRITTEN DETERMINATION

- Policies considered
- Procedural steps from receipt of complaint through determination
- Statements of determinations as to each allegation
- Findings of fact and rationales for determinations as to each allegation
- Sanctions for findings of responsibility
- Remedies provided to the complainant to restore or preserve access to education program or activity impacted by allegations
- Procedures and bases for appeal

THE TITLE IX AND CIVIL RIGHTS

PODCAST



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"Final Table is a compelling, timely, and fast-paced story of a sexual assault survivor's fight to regain control of her life in the face of fear, self-doubt, international intrigue, and looming retribution. Former sex crimes prosecutor Dan Schorr's nuanced and layered debut novel smashes stereotypes and cliches with a strikingly original and memorable narrative."

- **SUNNY HOSTIN**,
Emmy-Winning Co-Host of *The View* and best-selling author of *I Am These Truths* and *Summer on the Bluffs*



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