



Title IX Advisor Training

MARCH 3, 2021

Role of Advisors

- Both parties to a Title IX investigation are allowed to select an advisor of their choice.
- An advisor is a person chosen by a party or appointed by the College to accompany the party to meetings related to the grievance process, to advise the party on that process, and to conduct cross-examination for that party at the hearing
- The advisor may be, but need not be, an attorney.
- A party's advisor could also be a friend, family member, or colleague.
- College-appointed advisors are not involved in the Title IX process unless a Title IX Coordinator receives a Formal Complaint, and determines that the complaint is "valid." At that point, if a party does not have an advisor, the College will make one available.

Role of Advisors (Cont'd)

- While the College must make advisors available, the parties are not obligated to use them.
- However, only advisors may conduct cross-examination at the hearing. Therefore, the College will ensure that each party has an advisor at the hearing.
- Parties may change advisors (e.g., switch from their own to a College-appointed advisor)
- Advisors' role is to help the party navigate the process and to conduct cross-examination on their behalf.
- Advisors' role is limited to the Title IX process. Advisors should not be involved in other matters (e.g., concurrent criminal investigations).

Role of Advisors (Cont'd)

- Advisors must advise their parties honestly and in good faith.
Advisors should avoid conflicts of interest.

Investigation Phase



- The investigation phase is the period during which the investigators will gather all of the relevant information and evidence that will be used for the report, hearing, and ultimately, the determination.
- Explain to your party the nature of the allegations and the elements of the offense so that they can understand and focus on what is relevant. Start by identifying what must be proven for a “responsible” determination.
- Advise your party that, although it is the investigator’s burden to gather information, they should ensure that they provide the investigators with all the information they can provide during the investigation. Afterward, it is too late.
- Tell your party to begin refreshing their recollection of the incident, gathering evidence such as photos, text messages, and identifying witnesses. Parties can provide both fact and expert witnesses.

Investigation Phase (Cont'd)

- Explain to your party that the Informal Resolution Process is available to the parties if they both agree to it.

Explain to your party that during the investigation process they will be interviewed one or more times depending on the needs of the investigation.

Remind your party to answer honestly and that failure to do so could be grounds for discipline.

Work with your party on scheduling interviews and determine whether you should be present during the interviews (assume you should).

Investigation Phase (Cont'd)

- When your party is interviewed, your primary roles are to observe and to ask for any clarifications to help your party understand the process.

Your role does not include answering for your party during the interviews. You may not make any presentation or statement on behalf of your party.

You may confer with your party during their interview (pass notes, ask for a break, etc). But your role does not include telling them what to say.

Post-Investigation Submittals

- Advisors and parties will receive copies of all evidence related to the allegations after the investigation is completed.

Parties will have at least 10 days to inspect, review, and respond to the evidence before the investigative report is prepared.

Advise your party to take this opportunity. Use it to describe the evidence in a manner that is consistent with their position and tied to the relevant standards and definitions.

Advisors and parties will also receive a copy of the investigative report with at least 10 days to respond. Use this opportunity as well.

Hearing

- There may be a pre-hearing conference during which the parties and advisors can talk with the hearing officer about hearing arrangements and mechanics.

The hearing will be conducted live, but all parties will appear virtually.

The hearing will be similar to hearings in legal proceedings, but with less formality (e.g., most rules of evidence do not apply).

If a party or witness does not submit to cross-examination, the hearing officer cannot rely on any of their statements (including those in the report). Ensure that your party and your witnesses attend.

Hearing (Cont'd)

- Only relevant evidence may be presented at the hearing. Relevant evidence includes all evidence having any tendency to make the existence of any fact that is of consequence more or less probable.
- One rule of relevancy evidence is the Rape Shield Law.
 - No questions about prior sexual behavior unless:
 - Used to prove that someone other than the respondent committed the alleged misconduct or used to prove consent.
 - The questions are limited to questions about the past sexual conduct between the parties.
 - The questions are material to the facts at issue.
 - The questions have probative effects that outweigh their potential prejudice.

Hearing (Cont'd)

- Hearing may begin with opening statements. Opening statements can be given by parties themselves.
- Investigators will present a summary of their investigative report and will be questioned by the hearing officer. Advisors may also question the investigators.
 - This might, in fact, be portion that generates the most examination questions.
- The Complainant then proceeds with their witnesses. The witnesses will be questioned by the hearing officer and then subject to cross-examination by the Respondent's advisor.
- The Respondent will then proceed with their witnesses. The witnesses will be questioned by the hearing officer and then subject to cross-examination by the Complainant's advisor.

Hearing Cont'd)

- The hearing officer will determine whether each cross-examination question is allowed before directing the witness whether to answer (or whether the question must be withdrawn or rephrased).
- The hearing officer may only rely on statements from people who submit to cross-examination.
- All cross-examination will be conducted by the advisors, never by parties.
 - For this reason, there must be advisors present at the hearing on behalf of both parties.

Tips for Witness Examination

- You will have seen the investigative report beforehand. Most of the hearing will be based on the content of the report. Use your questioning to highlight, deemphasize, or contest information in the report as appropriate.

Keep the legal standards and applicable definitions in mind as you develop your cross examination.

There's no required sequence of witnesses. Use a logical and understandable order. Chronological order is usually best.

Outline your questions (or at least topics) ahead of time. But don't be boxed in by your outline.

Tips for Witness Examination (Cont'd)

- Your questions should be based on the personal knowledge of the witness.
- Remember the five Q's – who, what, where, when, and why.

The focus should be on the witness. You are not testifying.

Avoid complicated or compound questions. Keep it straightforward.

During direct exam, your goal is to concisely present your side's case using "friendly" witnesses.

On cross-exam, your goal is to elicit information that helps your case or to discredit hostile witnesses.

Tips for Witness Examination (Cont'd)

- Decide whether to conduct cross-examination at all, particularly of parties. Only do it if there is a benefit (e.g., if their testimony has hurt your case and you have an opportunity to rebut that you won't get with your own witnesses).
- The most useful type of cross examination often involves pointing out prior inconsistent statements. The hearing officer will be considering credibility.
- Don't be argumentative and don't mischaracterize evidence.

Appeal

- Advise your party on the permitted grounds for appeal:
 - Procedural irregularities that affected the outcome.
 - Newly discovered evidence that could have affected the outcome had it be available originally.
 - A conflict of interest or bias that affected the outcome.
 - Appeal of the sanction imposed (too strict, too lenient, etc.)
- Appeals are not allowed simply because a party disagrees with the outcome. Appeals must be based on one or more of the grounds above.



Thank You!