Advisor Training

Legal Updates, including New Title IX Regulations, Title VII, and State and Local Laws and Ordinances

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## Advisors Summary

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| • Provide emotional, logistical, legal and general support or advice to a complainant or respondent  
• Accompany a party to any meeting or conversation related to the investigation or adjudication process  
• Assist a party in understand and navigating the process  
• Ask procedural or process questions at the appropriate time  
• Cross-examine the other party during the hearing subject to considerations of relevance and appropriateness  
• Assist during appeals process | • Provide active representation (i.e., Speak on behalf of a student during meetings, interviews or hearing or stand in for a party in their absence)  
• Contact a witness or other party participating in the investigation process  
• Impede the investigation process or hearing in an obstructive manner  
• Communicate with the other party outside of the limited permissible questioning during hearings | • Keep the information obtained throughout the investigation and adjudication process confidential | • Understand the University’s investigation process and their role within that process in order to provide accurate information and appropriate assistance and support the party  
• Be aware of supportive measures offered by the University |
Internal Complaint Resolution Process

• You are advising one of the parties with respect to alleged violations of University policy

• Advisors should be aware of, and understand, applicable policies, e.g. Sexual Misconduct Policy, Equal Opportunity and Affirmative Action Policy, Code of Student Conduct

• Advisors provide information and support, but do not speak for the party they are advising
Advisors

- Best practice is to provide for support early in the process
- During Hearings, the advisor directs questions to the other party and to witnesses
- Advisor may be person of the party’s choosing, including an attorney retained by that party
- The University provides information and education for faculty and staff who have volunteered to serve as advisors
Advisor’s Role

- Attend meetings and interviews with their advisee, including interviews by the investigators and hearings
- Help their advisee prepare for each meeting
- Assist their advisee in the reviewing and responding to the investigator’s report
- Help their advisee prepare for the hearing
- Direct questions to the other party and witnesses during the hearing
- Assist in review of decision of hearing panel and, if applicable, aid with preparing an appeal
Questioning the Other Party

Procedure:

• Step 1, Question: Advisor asks a question

• Step 2, Ruling: Panel determines whether the question is relevant
  – If not relevant, the panel must explain its reasoning for excluding the question

• Step 3, If relevant, question must be answered
Ground Rules

• Questions must be “relevant”
• The final regulations do not define relevance:
  – “Ordinary meaning of relevance should be applied throughout the grievance process.” 85 FR 30247, n. 1018.
• Typically, relevant questions are questions that have any tendency to make a fact more or less probable than it would be without the evidence and the fact in question is of consequence in determining the action
Relevant Evidence

• “Relevant” evidence and questions refer to any questions and evidence that tend to make an allegation of sexual harassment or misconduct more or less likely to be true.

• Relevant evidence includes both inculpatory and exculpatory evidence.

• Relevant evidence does NOT include:
  – Privileged information and records
  – Prior sexual history
Privileged Information

- Information protected under a legally recognized privilege cannot be sought, obtained, submitted, relied upon, or asked about unless:
- the person holding the privilege waives the privilege with voluntary, written consent
  - Examples:
    - Medical records or information
    - Mental health records or information
    - Attorney-client privileged communication and documents
Prior Sexual History

• Evidence and questions about the Complainant’s sexual predisposition or prior sexual behavior are not permitted unless:
• They are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
• They concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.
Prior or Subsequent Misconduct?

• Evidence of a pattern of behavior of inappropriate behavior by a Respondent is permissible and must be judged for relevance like any other evidence

• Prior or subsequent conduct may be relevant to demonstrate:
  – Intent, knowledge, or state of mind
  – Motive
  – Opportunity
  – Lack of mistake
  – Pattern
  – Identity
Prohibition of Gender Bias and Sex Stereotyping

• Investigations, hearing panel and appeals decisions must be gender neutral and free from bias
  – Includes sex bias, sex stereotyping
• Avoid questions that have a tendency to perpetuate such stereotypes
Tips for Questioning

- Prepare a witness outline
- Line of questions should be easy for factfinder to follow
- Avoid compound questions
- Avoid characterizations and conclusions
- Always consider relevance
- Ask questions respectfully
- Be patient with the witness
Tips for Questioning

- Traditionally, the types of questions posed to the other party or witnesses try to elicit “yes” or “no” answers, not explanations.
- Seek to elicit information witness is likely to concede
- Be familiar with the investigative report
- Try to avoid questions you don’t know the answer to
Consequences of failing to respond to questions at a hearing

• What happens if my advisee refuses to participate in the resolution process?
  – The investigation and adjudication process will take place in their absence
  – The party may not later use his or her refusal to participate as a ground for appealing

• If a party or witness does not submit to cross-examination during the hearing, then the hearing panel cannot rely on any statement of that party or witness in reaching a determination regarding responsibility
  – BUT! The hearing panel cannot draw an inference as to responsibility based on a party or witness’s refusal to answer
Resources

- University’s policies and materials
- If you have questions or need clarification, consult AVP and Title IX Officer
Questions?