



WICHITA STATE
UNIVERSITY

Advisor 2 Training

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Advisor Training Part 2

- Parties right to an Advisor
- Role of the Advisor
- Witnesses
- Hearing Process
- Cross examination/questioning
- Relevance
- Deliberations
- Appeals

Parties right to an Advisor

- Both the Complainant and the Respondent have the right to an Advisor of their choice (who may be, but need not be, an attorney)
- The Advisor may be present to assist the Party in navigating the Grievance Procedure.
- The Parties **must choose** an Advisor for the Hearing Process. If a Party does not, the University will provide an Advisor for the Hearing Process to assist the Party in navigating the Hearing Process and to conduct cross examination/questioning.

Role of the Advisor

- The Advisors role in the Hearing Process is limited as follows:
 - The Advisor’s role is solely to question the other Party and Witnesses.
 - The Advisor cannot respond to questions from the Hearing Panel or the other Advisor that are directed at their Party.
 - Complainants and Respondents are expected to respond to questions from the Hearing Panel and from the other Party’s Advisor on their own behalf.
 - The Advisor may consult with their Party in private during the Hearing but not while a question is pending.
 - Advisors **may not raise objections** to questions posed by the other Party’s Advisor, argue in support of their Party’s position, or otherwise represent their Party at the Hearing.

Witnesses

- The Decision makers will call the relevant witnesses named in the Investigation Report.
- The investigator may also serve as a witness.
 - Other witnesses may not be present to hear the testimony of the Parties or other witnesses.
- The investigator will be present for the entire hearing but not the Decision maker's deliberations.

New Witness

- If at the hearing a “new” witness arises, and that witness was not previously disclosed during the investigative process, but who chose not to participate, now desires to participate, the hearing chair may:
 - Temporarily adjourn the hearing and request the investigator to interview the “new” witness and provide the interview transcript or summary to the Parties before reconvening the hearing; or
 - Continue the hearing and invite the “new” witness to appear and submit to questions from the Decision makers and the Parties’ Advisors.

No-Show Parties or Witnesses

- If the Complainant, Respondent, or Witnesses fail to appear and/or participate, the hearing will continue as scheduled unless the Hearing Chair determines there is Good Cause to suspend the hearing.

Hearing Order

- The Hearing Rules and Procedures will be provided to the Parties in advance of the hearing and will set forth the process in greater detail.
- To begin the hearing, the Chair:
 - May allow Complainant and Respondent to provide a brief opening statement
- Investigator summarizes their investigation report
- Complainant provides information
- Respondent provides information
- Witnesses provide information

Cross Examination/Questioning

- Relevant Evidence: Evidence is relevant if it has the tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.
 - Why is the question being asked?
 - Has the question been asked and answered in a different format?
 - Is the purpose of the question to harass or badger the party or witness?

When Questions are Excluded –Determined Not Relevant

- The Decision-Maker must explain to the Advisor proposing the question(s) the reasoning why the question lacks relevance and therefore is excluded.
- The regulations have prescriptive questioning process:
 - The Advisor poses the question to the Decision-Maker.
 - The process “pauses” while the Decision-Maker considers the relevance of each question;
 - The Decision-Maker decides whether to permit the question.
 - If the Decision-Maker excludes the question, they must provide their reasoning.

When Questions are Excluded –Determined Not Relevant

- Abusive and unduly repetitious questions are **never** relevant
- The Decision-Maker may offer the Advisor posing the question an opportunity to re-frame or re-phrase the question
- The Decision-Maker may offer the Advisor posing the question an opportunity to explain the question's relevance
- If the Decision-Maker allows one party's Advisor to re-frame or explain a questions' relevance, they must offer the same opportunity to the other party's Advisor
- Most questions will be pre-determined relevant or irrelevant during pre-hearing conference

Cross Examination/Questioning

- The investigator and/or Decision makers may not rely on any evidence protected by legal privilege unless the privilege is voluntarily waived.
- Questions and evidence about the Complainant's prior sexual behavior or sexual predisposition **are not relevant unless:** (a) such questions and evidence about the Complainant's prior sexual behavior are offered to prove someone other than the Respondent committed the alleged conduct, or (b) if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Cross Examination/Questioning

- Questions about the Respondent's prior sexual behavior or sexual predisposition are almost always relevant because they go to "pattern".

What Happens When a Party or Witness Does not Attend the Hearing Or They Attend and Refuse to Participate?

- If a party or witness does not attend the hearing, and thus cannot submit to cross examination, the Decision-makers may not rely on any prior statement made by that party or witness. This includes their statements contained in the investigation report. And, the Decision-makers may not rely on any prior statement made by that party or witness as part of their ultimate determination (responsible or not responsible).

What Happens When the Party or Witness Attends the Hearing and Answers Some Questions and Not Others?

- Only the statements related to the cross-examination questions they refuse to answer cannot be relied upon.
- However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g. the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission.
- Similarly, statements can be relied upon when questions are posed by the Decision-makers, as distinguished from questions posed by Advisors through cross-examination.

Determination of Responsibility

- There are two parts:
 - **Deliberation:** The Decision-Makers speak with one voice. Their deliberations are not recorded.
 - The Decision-Maker(s) cannot be the same person who investigated the matter, either the Title IX Coordinator or investigator.
 - The Title IX Coordinator may investigate or serve as a hearing facilitator, but not both.
 - **Determination** of responsibility (or not) is issued in a written document applying the preponderance of the evidence standard.
 - The written determination must be sent/provided to the parties simultaneously.

Deliberations

- If the D-M's make a finding of responsibility:
 - May consider any previously submitted party impact statement
 - Review any conduct history
 - Determine sanction

Written Determinations

- The written determination **must** include:
 - Identification of the allegations potentially constituting sexual harassment as defined in WSU's policy and Regulations §106.30
 - A description of the procedural steps followed from the receipt of the formal complaint through the determination. This includes all notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
 - Findings of fact supporting the determination - Rationale
 - Conclusions regarding the application of WSU's policy to the facts

Notice of Outcome

- The TIXC and Chair prepare the Notice of Outcome letter.
- The TIXC will provide the Notice of Outcome and Deliberation Statement to both Parties.
 - Using email or Drop Box.

Sanctions

- Student Sanctions:
 - Disciplinary Warning
 - Disciplinary Probation
 - Suspension
 - Expulsion
 - Dismissal
 - Withholding Transcript or Degree
 - Revocation of Admission and/or Degree
 - Loss of University Privileges
 - No Contact Order/Campus or Building Ban

Sanctions

- Employee Sanctions'
 - Corrective Actions
 - Suspension
 - Separation
 - Job Reassignment
 - Loss of University Privileges
 - No Contact Order
 - No Trespass Order

Appeals

- Either party may submit a Request for Appeal – in writing to the TIXC within 5 days after the delivery of the Notice of Outcome.
- TIXC designates a single Appeal Chair.
- Appeal Chair determines if the Request for Appeal meets the grounds for appeal. “Standing”
- Not a review of the merits of the appeal, but whether the request is timely.

Grounds for Appeal

- Appeals are limited to the following grounds:
 - Procedural irregularity
 - New evidence
 - TIXC, investigator, Decision-makers had a conflict of interest and specify how the conflict affected the outcome
- If any of the grounds in the Request for Appeal are not met, the request will be denied by the Appeal Chair and the parties and their Advisors will be notified in writing.
- Sanctions are stayed during the appeal process.

Informal Resolutions

- An Informal Resolution does not involve a full investigation and adjudication and may be offered any time prior to reaching a determination of responsibility.
- An Informal Resolution – three types of approaches:
 - When the parties agree to resolve the matter using an informal resolution process
 - When the Respondent accepts responsibility for violating policy and desires to accept a sanction and end the resolution process; or
 - When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

Informal Resolutions

- There is NO requirement for the parties to participate in the Informal Resolution process, and this option is not available unless the Complainant has filed a Formal Complaint.
- The parties must engage voluntarily in the process and sign a written consent to the informal process.
- The Informal Resolution process is NOT available to resolve allegations that an employee sexually harassed a student.
- The TIXC must approve the agreement.
- Results of complaints resolved by Informal Resolution are NOT Appealable.

Retaliation

- Retaliation under the Regulations are more specific than the standard 3.19 policy definition of retaliation and apply to issues relating to matters arising under this policy.
- The exercise of rights protected under the 1st Amendment does not constitute retaliation.

Questions?

- Mock Hearing.

Mock Hearing – Riley and Owen

- Complainant – Riley
- Respondent – Owen
- Witnesses
 - Mandy (W1)
 - Quinn (W2)
 - Alex (W3)
- Evidence
 - Texts
 - Email (initial report from mandated reporter)
 - Surveillance video
 - Witness interviews
 - Investigative Report

Mock Hearing – Group Work

- You are an advisor for one of the parties (pre-assigned)
- What information do you want your party to share
- What information do you want from the other party?
- What information do you want from the witnesses?

- Develop some questions to ask the party and witnesses
- Consider *relevance*
 - Hearing chair determines relevance
 - Arguing relevance

Mock Hearing

- Observations?
- Discussion
- Questions about the advisor's role

Questions?
Thank you!!