



Title IX Advisor Training

Advisors

2026-2027
Summer 2026



Disclaimer

- This training is being recorded for future and ongoing use for volunteers in the Title IX process at Wright State University.
- Any questions about the training or volunteer opportunities should be directed to the Title IX Coordinator
 - Kate Page, PhD
 - Kate.page@wright.edu
 - 937-775-3512

Presentation Guidelines

- Questions are encouraged
 - “for the sake of argument...”
- Be aware of your own responses
- Follow up when you have questions
- Take breaks as needed

Agenda

- WSU Title IX Policy
- Confidentiality
- Advisor's Role
- Relevance and Relevancy Hypotheticals
- Live Cross Examination
- Debrief
- Hearing/Objective Evaluation
- Written Decision

Title IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subject to discrimination under any educational program or activity receiving federal financial assistance.”

-Title IX of the Education Amendments of 1972

- Signed in 1972
- Part of United States Code (U.S.C.) and the Code of Federal Regulations (C.F.R.)
 - 20 U.S.C. §1681
 - 34 C.F.R. §160
- Wright State policy 1270
 - Sex/Gender-Based Discrimination, Harassment, and Sexual Misconduct

Federal Title IX Oversight

- **Historically:** Office of Civil Rights (OCR) within the Department of Education (ED)
- **Currently:** OCR of Department of Justice (DOJ) and/or Health and Human Services (HHS)
 - Recent cases in Maine and Minnesota have been determined by HHS and resulted in consistent oversight of the school systems

Impacting our Policy

Title IX of 1972

34 CFR §106

Title IX defines sexual harassment and outlines the grievance process for complaints

Clery Act of 1990

34 CFR §668

Clery defines sexual assault including rape, fondling, statutory rape, incest

VAWA of 1994

34 CFR §668.46

VAWA defines dating violence, domestic violence, and sex-based stalking

Changes Over Time



THE CLERY ACT & TITLE IX

1972

Title IX, a federal civil rights law prohibiting sex discrimination in educational programs, is signed into law.

1986

Jeanne Clery was raped and murdered in her college residence and the Clery family begins to advocate for transparency and accountability related to campus crimes.

1990

The Crime Awareness and Campus Security Act, later renamed the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, was signed into law, requiring colleges and universities to record campus crime statistics and safety policies.

1992

Amendments are made to the Clery Act to implement policies and procedures to protect the rights of sexual assault survivors.

2011

The Office of Civil rights issues a "Dear Colleague Letter" with guidance on what measures institutions should take to address sexual harassment.

2013

The Clery Act was expanded to include all incidents of sexual violence, sexual assault, domestic violence, dating violence and stalking.

2020

Updated Title IX regulations came into effect, resulting in significant changes to how institutions must define and respond to sexual harassment.

2022

Celebrating the 50th anniversary of Title IX!

Covered Within WSU Policy

- Sex/Gender-Based Harassment, Discrimination, and Sexual Misconduct policy (WSU 1270)
 - Program equity (ie sports)
 - Pregnant & parenting related conditions
 - Transgender inequality
 - Sexual harassment:
 - Conduct on the basis of sex that is unwelcome and determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity. (1270.4(6))

Scope of Title IX at Wright State

What?

- Rape
- Sodomy
- Sexual Assault with an Object
- Fondling
- Incest
- Statutory Rape
- Dating Violence
- Domestic Violence
- Sex-based Stalking
- Quid Pro Quo Sexual Harassment
- Unwelcome Sexual Conduct

Who?

- Members of the university community
- Faculty
- Staff
- Registered students
- Student organizations
- Vendors
- Volunteers
- Visitors on and off campus
- *Covers behavior on and off campus

Title IX at Wright State

- Sex/~~Gender~~-Based Harassment, Discrimination, and Sexual Misconduct policy (WSU 1270)
- Prohibited Behaviors:
 - Sexual Assault: rape, statutory rape, incest, assault with an object, fondling, sodomy
 - Dating Violence
 - Domestic Violence: felony or misdemeanor crime of violence
 - Sex-Based Stalking
 - Quid Pro Quo Sexual Harassment
 - Unwelcome Conduct Sexual Harassment
 - Sexual Misconduct

Wright State's Non-Discrimination Policy

(1280)

Prohibits discrimination based on protected traits including:

- Race
- Color
- Religion
- Gender
- Gender identity or expression
- National origin
- Military status
- Disability
- Age (40 years or older)
- Status as a parent (pregnancy and after birth)
- Status as a parent of a young child
- Status as a nursing mother
- Status as a foster parent
- Genetic information
- Sexual orientation

Definitions: Sexual Assault

- **Rape-** carnal knowledge
- **Sodomy-** oral or anal sexual intercourse
- **Sexual Assault with an Object-** unlawful penetration
- **Fondling-** touching for the purpose of sexual gratification
- **Incest-** sexual intercourse between relation
- **Statutory Rape-** sexual intercourse with anyone under 16 years old

Definitions: Dating Violence

- Conduct on the basis of sex that consists of violence committed by a person who is or has been in a romantic or intimate relationship with the complainant.
 - Intimate/romantic relationship =
 - length of relationship
 - Type of relationship
 - Frequency of interactions between individuals

Definitions: Domestic Violence

- Conduct on the basis of sex that consists of a felony or misdemeanor crime of violence by
 - Current/former spouse or intimate partner
 - Person with whom the victim shares a common child
 - Person cohabitating (or former) of the victim as a spouse or intimate partner
 - Person similarly situated to spouse of victim y domestic/family violence laws of the jurisdiction
 - Any other person against an adult or youth victim who is protected from that person's acts under domestic/family violence laws

Definitions: Sex-Based Stalking

- Conduct on the basis of sex that consists of engaging in a course of conduct directed at a specific person to cause reasonable: (A) fear for safety; (B) suffer emotional distress
 - Two or more acts: direct or indirect action, method, device, or means to follow, monitor, observe, surveil, threaten, or communicate to or about, or interferes with a person's property

Sex-Based Stalking (Continued)

- Reasonable Person: reasonable under similar circumstances with identities similar to the victim
- Substantial Emotional Distress: significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling



Definitions: Quid Pro Quo Sexual Harassment

- Conduct on the basis of sex when a university employee, vendor, or volunteer conditions the provision, aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct. Includes but not limited to:
 - Unwelcome sexual advances
 - Requests for sexual favors
 - Other verbal/physical conduct of a sexual nature by a person with authority over others

Definitions: Retaliation

- None, including the university, may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with rights or privileges secured by Title IX or this policy because of a report or complaint
- Reports of retaliation will be addressed in accordance with policies regarding retaliation.

Scope (1 of 2)

- Operations of the University
- Locations, events, or circumstances over which the University substantial control over both the respondent and the prohibited behaviors
- Buildings that are owned or controlled by recognized student organizations

Scope (2 of 2)

Conduct must have occurred:

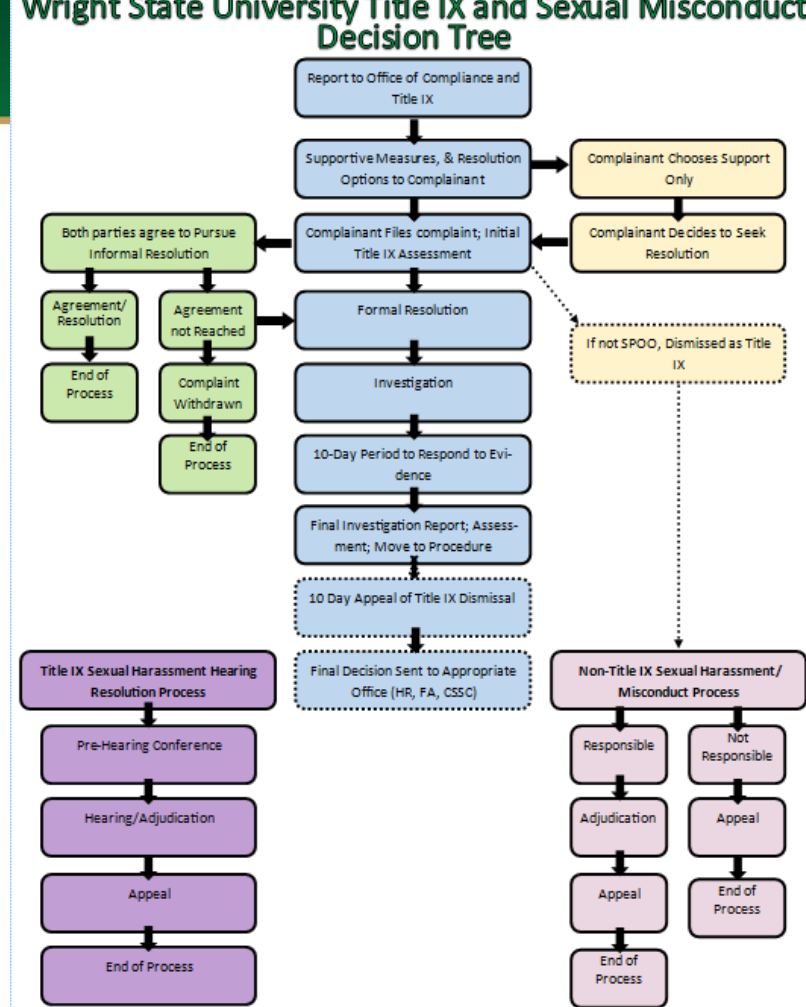
- Against a person in the United States
- Within WSU's education program or activity
- Complainant must be participating in, or attempting to participate in, education program or activity at the time the formal complaint is filed

WSU Grievance Process

Harmed Party- Complainant
Alleged Perpetrator- Respondent

Complainant has the opportunity to meet with the Title IX Coordinator, discusses

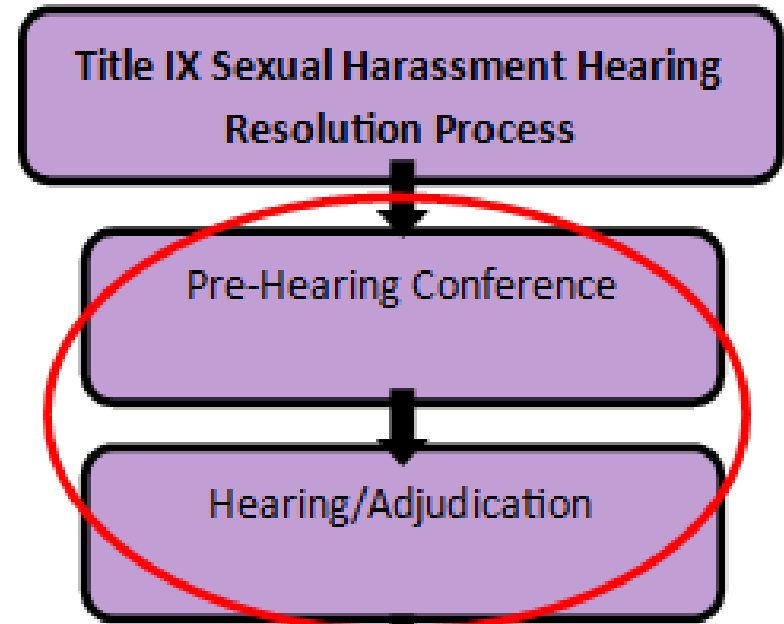
- **Supportive/Modifying Measures**- no further action requested or available from University
- **Informal Resolution**- does not require an investigation, may not be part of educational record
- **Formal Resolution**- requires an investigation, likely to be part of educational record



Advisors

Only role which may be biased toward advisee.

- Represents party during a formal hearing, or provides silent assistance during informal procedure
- Not required to assist with appeal



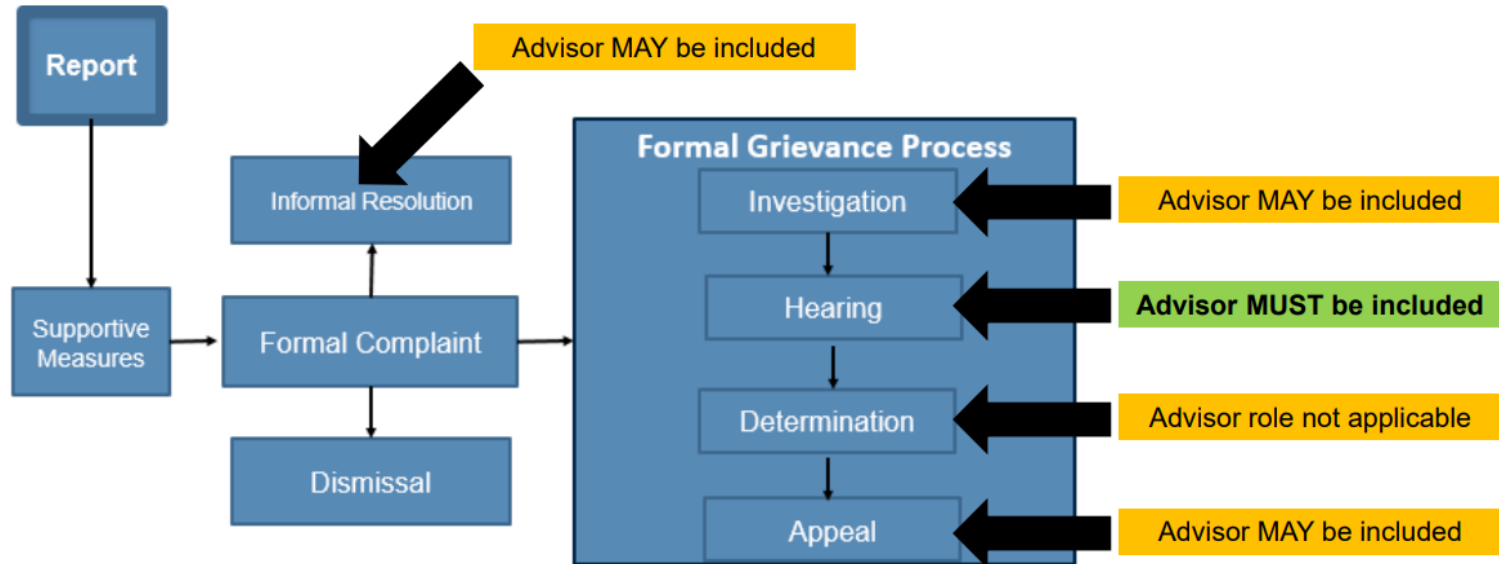
Training Requirements

- Under current 2020 regulations for Title IX, specific training is required for:
 - Title IX Coordinators
 - Investigators
 - Decision Makers
 - Informal Resolution Facilitators
 - Appeals Officers



**No training
requirement for
advisors!**

Overview



Overview: Determinations

Advisor MAY
be involved

- Decision maker will issue a written determination within 15 business days of hearing (or longer with written notice)

Allegations

Procedural steps taken
from receipt of formal
complaint

Findings of fact

Conclusions

Statement of and rationale for each result of each allegation, including determination of responsibility and any disciplinary imposition and whether remedies designed to restore or preserve access to educational program or activity will provided to complainant

Procedures and bases
for appeal by both
parties

Provide written
determination to parties
simultaneously

Overview: Confidentiality

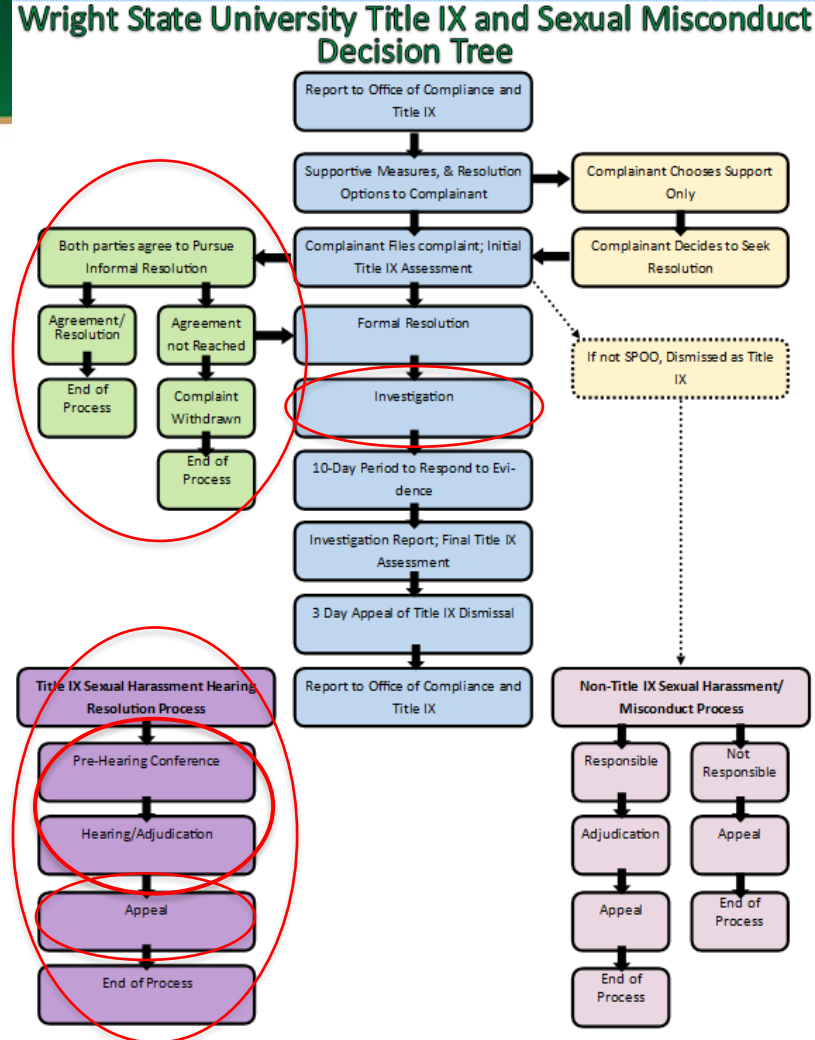
- WSU **must keep confidential the identity of any individual** who has made a report or complaint, including any
 - Reporter
 - Complainant
 - Alleged perpetrator
 - Respondent
 - Witness



Unless required by law, permitted by FERPA, or **for the purpose of carrying out Regulation grievance process**

Title IX Process

1. Informal Resolution Facilitator
2. Investigator
3. Advisor
4. Decision Maker
5. Appellate Decision Maker



The Advisor and Decision Maker

- The Advisor interacts most closely with the Decision Maker
 - **In the pre-hearing meeting** to discuss questions or concerns about the hearing procedure, and practice using the technology for the hearing itself
 - **During the hearing,** the Advisor will ask questions of the witnesses and opposing party, the Decision Maker determines relevancy before the party/witness is permitted to answer
 - *This process is odd at first and may take some practice to get into a cadence with each party/witness. Encourage your party to take a breath before answering questions.*
- If a question is deemed irrelevant, explain relevance or move on. Try not to dwell on the decision.
 - Remember the decision for appeal, just in case.

Live Cross-Examination: Theory and Practice



Live Cross-Examination: Theory (1 of 3)

- Essential for truth seeking (30313)
- Provides opportunity of both parties to test “consistency, accuracy, memory, and credibility so the decision maker can better assess whether a narrative should be believed” (30315)

Live Cross-Examination: Theory (2 of 3)

- Provides parties the opportunity to “direct the decision maker’s attention to **implausibility, inconsistency, unreliability, ulterior motives, and lack of credibility**” in the other party’s statements (30330)
- Promotes transparency and equal access (30389)

Live Cross-Examination: Theory (3 of 3)

According to the Department, the process in 106.45 best achieves the purposes of:

1. Effectuating Title IX's non-discrimination mandate by ensuring **fair, reliable outcomes** viewed as **legitimate** in resolution of formal complaints of sexual harassment so that victims receive remedies
2. **Reducing and preventing sex bias** from affecting outcomes; and
3. Ensuring that Title IX regulations are consistent with **constitutional due process and fundamental fairness** (30327)

Cross Tools: Goals of Cross-Examination

Obtain **factual admissions** helpful to your party's case.



Corroborate the **testimony** of your party's witnesses.

Minimize the other party's case by ***impeachment of witness*** being questioned.

Minimize the other party's case by ***impeachment of other witnesses*** through the witnesses being questioned.

Reduce **confusion** and **seek truth**.

Cross Tools: Impeachment (1 of 5)

- Bias: (a) lay witnesses and (b) experts.
- Relationships (friendship and romantic)
- Experts: getting paid for testimony
 - You charge fees based on an hourly rate?
 - You were paid to produce a written report?
 - Based on this report, you're testifying today?
 - You're charging money for each hour you're here?

Cross Tools: Impeachment (2 of 5)

- Perception and Recall
 - What is the witness's perception of the facts?
 - Has time impacted recall or ability to remember clearly?
 - How many times has the witness talked about to the other party about this case?
 - Was there anything that impacts the person's physical or mental ability to perceive or recall facts accurately?
 - Is the expert limited by the information provided to inform the expert report?
 - Does the witness form a conclusion without knowing certain information?

Cross Tools: Impeachment (3 of 5)

- Example: intoxication level information from a witness.
 - You did not see the consumption, or keep track of how long the party was consuming alcohol, did you?
 - You did not measure the alcohol served to the party, did you?
 - Is it true that your statements are based on information provided by other people?
 - The party made statements to you after they consumed alcohol, correct? After you consumed alcohol?

Remember: Delineate whether the party or witness is speaking from personal knowledge.

Cross Tools: Impeachment (4 of 5)

- **Inconsistency in statements** (only happens if you interview the parties or witnesses multiple times)
 - If a fact was very important, why is the hearing the first time it has come up?
 - What possible reasons might the witness have for changing their testimony?
 - Did a witness receive coaching from the party or others between making one statement and another?
 - Has the witness's perspective or motive changed between statements?
 - Does changing this fact help the other party's case?

Cross Tools: Impeachment (5 of 5)

- **Lack of Corroborating Evidence**

- Example: missing receipts...

- You testified that you were drinking with the Complainant on the night of the incident, correct?
 - You testified that you paid for the alcohol, correct?
 - Did you pay with your credit card?
 - Since you paid with your credit card, why did you not provide the receipt to the investigator?
 - Did you provide access to your credit card statement? Why not?



Relevancy



Relevancy (1 of 2)

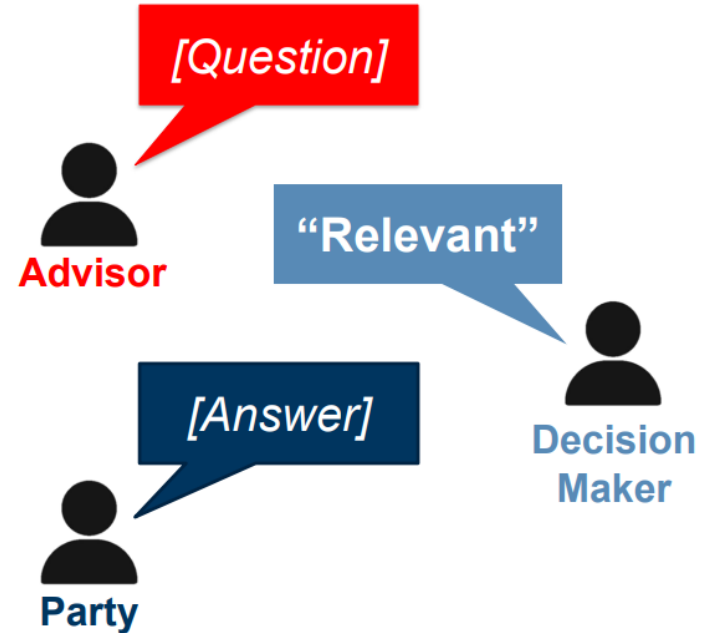
- Per 34 C.F.R. 106.45(b)(6)(i):

“Only relevant cross-examination and other questions may be asked of a party or witness.”

“[C]ross examination **must focus only on questions that are relevant to the allegations in dispute.**” (30319)

Relevancy (2 of 2)

- Party or witness **cannot** answer a question until the decision-maker determines whether it is a relevant.
 - Requires decision-makers to make “on the spot” determinations and explain the “why” if a question or evidence is not relevant (30343)



Preponderance Standard



Relevance and Weight of Evidence

- Recipient must ensure that “all **relevant** questions and evidence are admitted and considered (through varying weight or credibility may of course be given to particular evidence by the decision maker).” (30331)



This Means:



Cannot exclude redundant evidence



Cannot exclude character evidence



Cannot exclude hearsay



Cannot exclude evidence where the probative value is substantially outweighed by the danger of unfair prejudice (30294)



Relevancy: Not Relevant

The Department has determined that recipients must consider relevant evidence with the following exceptions:

**Party's
medical/treatment
records**

*(unless voluntary
written consent)*



**Information
protected by a
legally
recognized
privilege**



**Complainant's
sexual
behavior**

*(except for two
exceptions)*



Relevancy: Rape Shield Provision & Complainant

- Evidence about **complainant's** prior sexual history (must exclude) unless such questions/evidence:
 - Are offered to prove that someone other than the respondent committed the conduct, or
 - If the questions/evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Relevancy: Rape Shield Provision & Respondent

- Rape shield protections do not apply to Respondents
- “The Department reiterates that the rape shield language...does not pertain to the sexual predisposition or sexual behavior of respondents, so **evidence of a pattern** of inappropriate behavior by alleged harasser **must be judged for relevance as any other evidence must be.**”
- Guidance from September 2021 Q&A: no parties sexual history usually relevant

Relevancy: Improper Inference

Party does not want to participate at the hearing?

- “if a party or witness does not submit to cross-examination the live hearing...the decision maker(s) cannot draw an inference about the determination regarding responsibility **based solely** on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.” 34 C.F.R. 106.45(b)(6)(i).
- When parties elect not to participate, a recipient **cannot retaliate** against them (30322)

Relevancy Practice



Relevancy Determination Hypothetical (1 of 2)

- Are these questions relevant for you to ask in the hearing?
 - You are the advisor who was handed information from the Title IX Coordinator.
- For practice, we pose questions in cross-examination format, which is aimed at eliciting a short response, “yes” or “no”.
 - For example, instead of “How old are you?”, ask “You’re 21 years old, aren’t you?”

Relevancy Determination Hypothetical (2 of 2)

- For each practice hypothetical, ask yourself:
 - Is this question relevant or seeking relevant information?
 - What is the fact this question aims to prove?
 - Is this question probative about the material fact?
 - Why or why not?
 - Does the answer to this depend on additional information?
 - If so, what types of additional information would you need to make a relevancy determination?

Hypothetical Report

Reporter Name: Charlie Chun

Received: January 10, 2025

Intake Format: EthicsPoint

Parties Identified: Charlie Chun, Ryan Rook

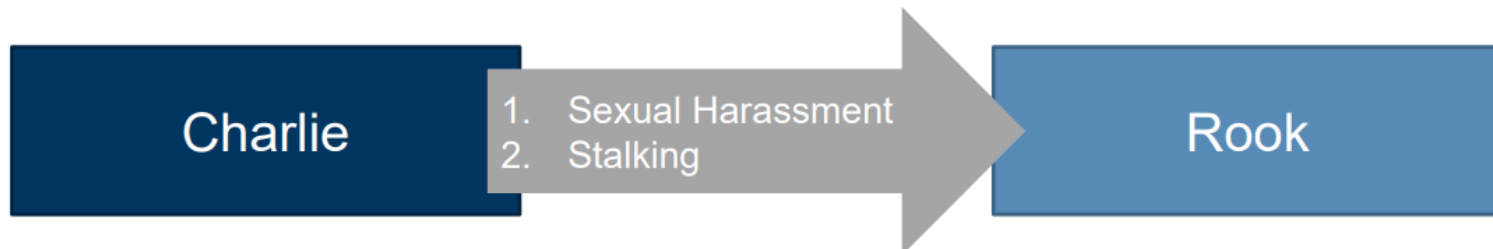
Narrative: Rook sexually assaulted me early in the morning of January 5, 2023. Rook STALKED me too, they contacted me after I told them to stop. I even blocked them, and they showed up outside of my dorm and aggressively approached me. So, I had to act in self-defense to get away from them. I retreated to my room and hid in there for several days, which made me miss class. Here is a screenshot of a Snapchat conversation with my roommate Wendy and Rook. Rook is a PREDATOR!!!!



Notices of Allegations

January 10, 2025

Title IX Office sent Notices of Allegations to the parties that Charlie had filed a formal complaint alleging that Rook engaged in prohibited conduct that could violate Title IX for sexual harassment and stalking and that the Title IX Office was initiating an investigation.



Hypothetical Report #2

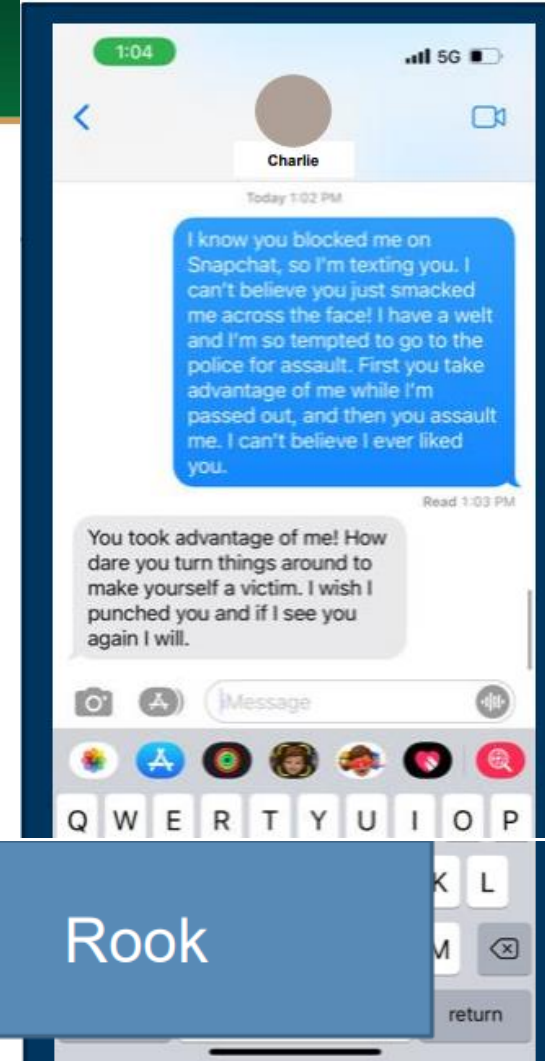
January 11, 2023

After receiving the Notice of Allegations, Rook came to the Title IX Office and filed a formal complaint against Charlie alleging that she engaged in prohibited conduct under Title IX for sexual harassment and dating violence.

Charlie

1. Sexual Harassment
2. Dating Violence

Rook



Summary of Allegations



Practice Hypothetical #1

“Charlie, isn’t it true that you had slept with a lot of other people before dating Rook?”

Is it relevant?

Practice Hypothetical #2

“Rook, isn’t it true that you had never slept with anyone before Charlie?”

Is it relevant?

Practice Hypothetical #3

“Charlie, isn’t it possible that you wanted to have sex that night but were too drunk to remember?”

Is it relevant?

Practice Hypothetical #4

“Rook, did your attorney tell you not to answer that question?”

Is it relevant?

Practice Hypothetical #5

“Rook, did you tell your counselor that Charlie was unresponsive during sex in the alleged incident?”

Is it relevant?

Practice Hypothetical #6

“Charlie, isn’t it true you took off Rook’s clothing during the sexual encounter?”

Is it relevant?

Practice Hypothetical #7

“Rook, isn’t it true you began sexual contact with Charlie while she was asleep?”

Is it relevant?

Practice Hypothetical #8

“Charlie, isn’t it true that you hit Rook before January 5, 2025?”

Is it relevant?

Practice Hypothetical #9

“Rook, if you were as drunk as you just stated you were, isn’t it possible that you initiated sexual contact with Charlie while she was asleep?”

Is it relevant?

Practice Hypothetical #10

“Charlie, if you were sexually assaulted, why didn’t you go to the police right away?”

Is it relevant?

Practice Hypothetical #11

“Rook, you could be wrong about that timeline, right?”

Is it relevant?

Practice Hypothetical #12

“Charlie, you had sex with someone else the following night, didn’t you?”

Is it relevant?

Practice Hypothetical #13

“Rook, why didn’t you go to the Title IX Office instead of confronting Charlie?”

Is it relevant?

The Hearing



The Setup

- Wright State will primarily host meetings virtually
- Rooms will be provided to parties and advisors if they request the meeting ahead of the hearing date
- If requested, the parties can meet in person

Process

- Questions begin with the decision maker and then moves to the advisors

	Decision Maker	Second Line of Question	Third Line of Question
Complainant	DM	Respondent's Advisor	Complainant's Advisor
Respondent	DM	Complainant's Advisor	Respondent's Advisor
Witnesses	DM	Complainant's Advisor	Respondent's Advisor

- Cross-examination by party's advisor or choice, not by the party themselves

Advisors (1 of 3)

If a party does not have an advisor present at the live hearing, the recipient **must provide** without fee or charge to that party, an advisor **of the recipient's choice**, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

106.45(b)(6)(i), Preamble 30339

Advisors (2 of 3)

- Advisors do not require Title IX training, however a recipient may train its own employees whom the recipient chooses to appoint as party advisors (30342)
- A party cannot “fire” an appointed advisor (30342)
- “but, if the party correctly asserts that the assigned advisor is refusing to ‘conduct cross-examination on the party’s behalf’ then the recipient is obligated to provide the party an advisor to perform that function, whether counseling the advisor to perform the role or stopping the hearing to assign a different advisor” (30342)

Advisors (3 of 3)

- Regulations permit a recipient to adopt rules that (applied equally) do or do not give parties or advisors the right to discuss relevance determinations with the decision-maker during the hearing. (30343)
- “If a recipient believes that arguments about a relevance determination during a hearing would unnecessarily protract the hearing or become uncomfortable for parties, the recipient may adopt a rule that prevents parties and advisors from challenging the relevance determination (after receiving the decision-maker’s explanation) during the hearing.” (30343)

Advisors: But Other Support People?

- Support person's are permitted in the hearing, but **CANNOT** serve as a secondary advisor.
- “These confidentiality obligations may affect a recipient's ability to offer parties and a recipient-provided advisor to conduct cross examination in addition to allowing the parties' advisors of choice to appear at the hearing.”
- ADA accommodations-required by law
- CBA require advisor, faculty may request an attorney as well

Hearing Recording

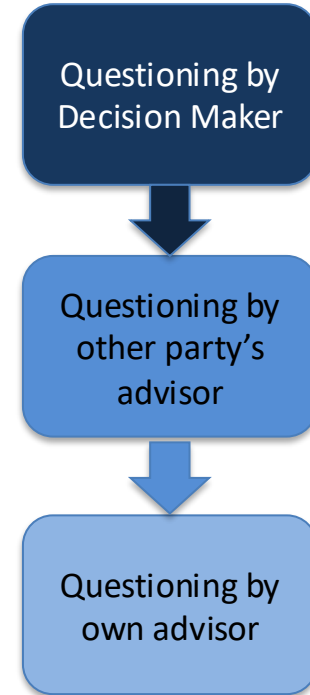
- Wright State hearings occur virtually and are both audio and visually recorded.
- The decision maker and Title IX Coordinator will manage the recording.
- The parties can request a copy of the recording in writing if needed.



Audio Visual

The Hearing Order

- Order of questioning parties and witnesses- not in regulations
 - Consider time restraints on witnesses
 - Questioning of complainant
 - Questioning of respondent



Questioning by Decision Maker (1 of 2)

- The decision maker's role is to remain neutral throughout the hearing process.
- “[P]recisely because the recipient must provide a neutral, impartial decision maker, the function of adversarial questioning must be undertaken by persons who owe no duty of impartiality to the parties.” (30330)
 - AKA the advisor

Questioning by Decision Maker (2 of 2)

- BUT “the decision maker has the right and responsibility to ask and elicit information from parties and witnesses on the decision maker’s own initiative to aid the decision maker in obtaining relevant evidence both inculpatory and exculpatory, and the parties also have equal rights to present evidence in front of the decision maker so the decision maker has the benefit of perceiving each party’s unique perspective about the evidence.” (30331)

The Hearing: Ruling on Relevancy

- Ruling on relevancy between every question and answer by a witness or party
 - Assumption that all questions are relevant unless decision maker otherwise states...risky!
 - Set expectations that party or witness cannot answer questions before decision maker decides question is relevant.
-  Pros: helps diffuse any overly aggressive or abusive questions/resets tone
-  Cons: may lengthen hearing

The Hearing Revisions

- “[N]othing in the final regulations precludes a recipient from adopting a rule that the decision maker will, for example, send to the parties after the hearing any revisions to the decision maker’s explanation that was provided during the hearing.” (30343)

The Hearing: Decorum (1 of 5)

The preamble contains many decisions of an institution's discretion to set rules to maintain decorum throughout hearings and to remove non-complying advisors, parties, or witnesses.

Note: In our experience, we have seen decorum issues more commonly with advisors than parties...and have seen this equally on both sides.



The Hearing: Decorum (2 of 5)

“Recipients may adopt rules that govern the **conduct and decorum of participants at live hearings** so long as such rules comply with these final regulations and **apply equally to both parties**... These final regulations aim to ensure that the truth-seeking value and function of cross-examination applies for the benefit of both parties while minimizing the discomfort or traumatic impact of questions about sexual harassment.” (30315)

The Hearing: Decorum (3 of 5)



“[W]here the **substance of a question is relevant**, but the manner in which an advisor attempts to ask the question is **harassing, intimidating, or abusive** (for example, the advisor yells, screams, or physically ‘leans in’ to the witness’s personal space), the recipient may appropriately, evenhandedly enforce rules of decorum that require relevant questions to be asked in a respectful, non-abusive manner.” (30331)

The Hearing: Decorum (4 of 5)

“The Department acknowledges that predictions of **harsh, aggressive, victim-blaming** cross-examination may dissuade complainants from pursuing a formal complaint out of fear of undergoing questioning that could be perceived as interrogation. However, recipients retain discretion under the final regulations to educate a recipient’s community about what cross-examination during a Title IX grievance process will look like, including developing rules and practices (**that apply equally to both parties**) to oversee cross-examination to **ensure that questioning is relevant, respectful, and non-abusive.**”
(30316; 30315; 30340)

The Hearing: Decorum (5 of 5)

“[T]he essential function of cross-examination is **not to embarrass, blame, humiliate, or emotionally berate a party**, but rather to ask questions that prove a party’s narrative in order to give the decision maker the fullest view possible of the evidence relevant to the allegations at issue.” (30319)

Nothing in this rule prevents recipient from enforcing decorum rules in the hearing and “the recipient may require to use a different advisor” if the advisor does not comply and may provide a different advisor to conduct cross-examination on behalf of the party”. (30320)



Understanding the Basis for Appeal

The Basis for Appeal

May impact how an advisor approaches the hearing, especially regarding relevancy determinations of which you disagree.

- Whether you are involved in the appeal process or not, it is helpful to think about how to set up relevancy challenges for appeal while in the hearing.

Three Bases for Appeal

Required

1. Procedural Irregularity

2. New Evidence

3. Conflict of Interest or Bias

Procedural Irregularity

Concern with procedure that affected the outcome of the matter

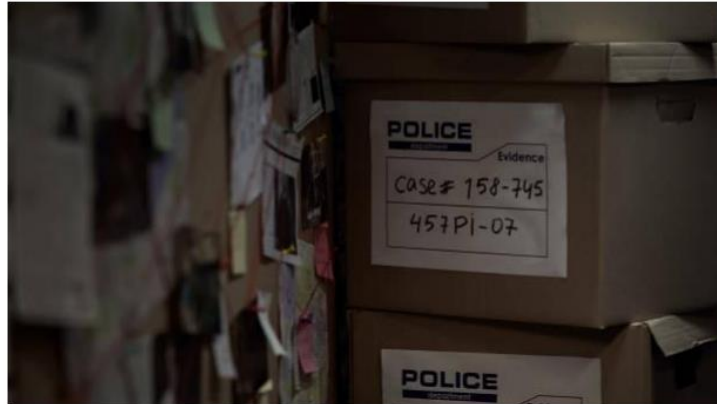
→ Does the process in policy align with the process applied?

→ What you need to know to answer this question:

- The process in your specific policy (to the extent it adds to the detailed process in the regulations)
- The Title IX Coordinator's role
- The Investigator's role
- The Decision-Maker's role (relevancy determinations)
- How to determine if any deviation from the process actually affected the outcome

New Evidence

Evidence that was *not reasonably available* at the time the determination regarding responsibility or dismissal was made, that **could** affect the outcome of the matter



Conflict of Interest or Bias (1 of 2)

Against a party by the Title IX Coordinator, investigator(s), or decision maker(s) that affected the outcome of the matter.

This basis for appeal requires the appeals officer to be able to make determinations on bias and conflict of interest, usually on peers and understand the case to know if any bias or conflict of interest would impact the outcome of the matter.

Conflict of Interest or Bias (2 of 2)

- How do you make these determinations of conflict of interest or bias, especially with coworkers or supervisors?
- How do you determine if this actually affected the outcome?



Tips for Advocating for Your Party

Advocating for Your Party: Preparation (1 of 5)

- Review the entire final investigation report
- Review all evidence (some may have non-relevant evidence also-know if you disagree with any relevancy determinations made by the investigator)
- Meet with your party to review what your party thinks and wants
- Discuss strategy



Advocating for Your Party: Preparation (2 of 5)

- Realize that your party may want to take a more aggressive approach- if you are not comfortable with the approach, discuss it with the party and check to see if you can advise your party
- Discuss the expectations of decorum vs. the expectations of questioning the other party and witness

Advocating for Your Party: Preparation (3 of 5)

- Determine who your witnesses are and whether your party thinks they will show up to the hearing
- Be careful of the line between asking a party to participate and explain the importance of their statements vs. coercing a party to participate who has the right not to participate

Advocating for Your Party: Preparation (4 of 5)

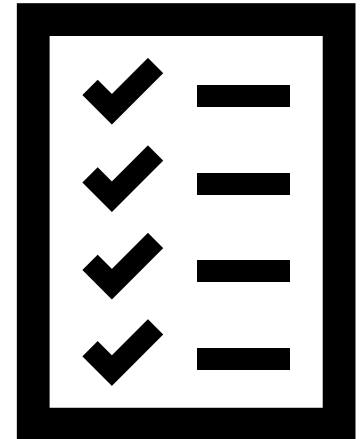
Consider a script:

- List each allegation and policy definition/elements for the policy violation (e.g., sexual assault- know which definition and what must be met to show sexual assault under the policy)
- Standard of Review: this can be helpful to have written out so you can support relevancy determinations for your questions to show why they are relevant

Advocating for Your Party: Preparation (5 of 5)

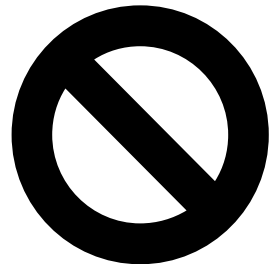
Consider a script:

- List your questions and plan to ask for your party, other party, witnesses, and prepare to answer WHY they are relevant
- Have a list of relevancy definitions to refer to if they come up
 - Rape shield law and two exceptions
 - Privileged information in your jurisdiction
 - Language on treatment records



Advocating for Your Party: The Hearing (1 of 2)

- Ask one question at a time and wait for decision maker to determine relevancy
- If the decision maker has a question about relevancy, be prepared to answer the question
- Be respectful of the process so you can effectively ask your party's questions- if you or someone else is not being respectful, ask for a break



Advocating for Your Party: The Hearing (2 of 2)

- Be aware that the other advisor may not be as prepared as you and the decision maker has a duty to ask questions the advisor does not- this doesn't mean the decision maker is biased or trying to help the other side- you may not like it, but it's a requirement for the decision maker
- The other advisor may also be overly prepared, do not let a trained attorney intimidate you; they are not trained on Wright State's Title IX process

Advocating for Your Party: Post-Hearing

- The decision maker will issue a decision to both parties at the same time.
- Under the regulations, the advisor is not required to have any further role in the process (especially if the advisor is appointed)
- Other advisors (attorney or parent) may choose to work with the party to appeal

Questions?

