

# Title IX Advisor Training

Advisors



WRIGHT STATE  
UNIVERSITY

# 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
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  - 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

- Advisor's Role
- Relevance and Relevancy Hypotheticals
- Live Cross Examination
- Debrief
- Hearing/Objective Evaluation
- Written Decision

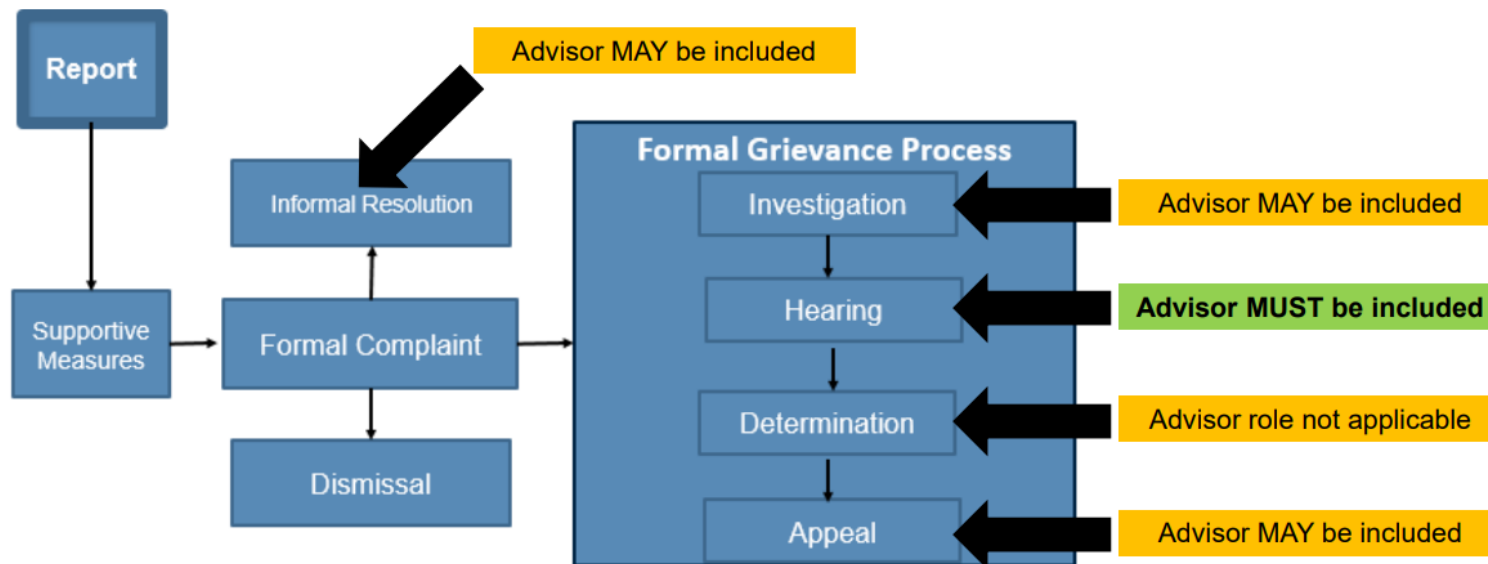
# Training Requirements

- 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

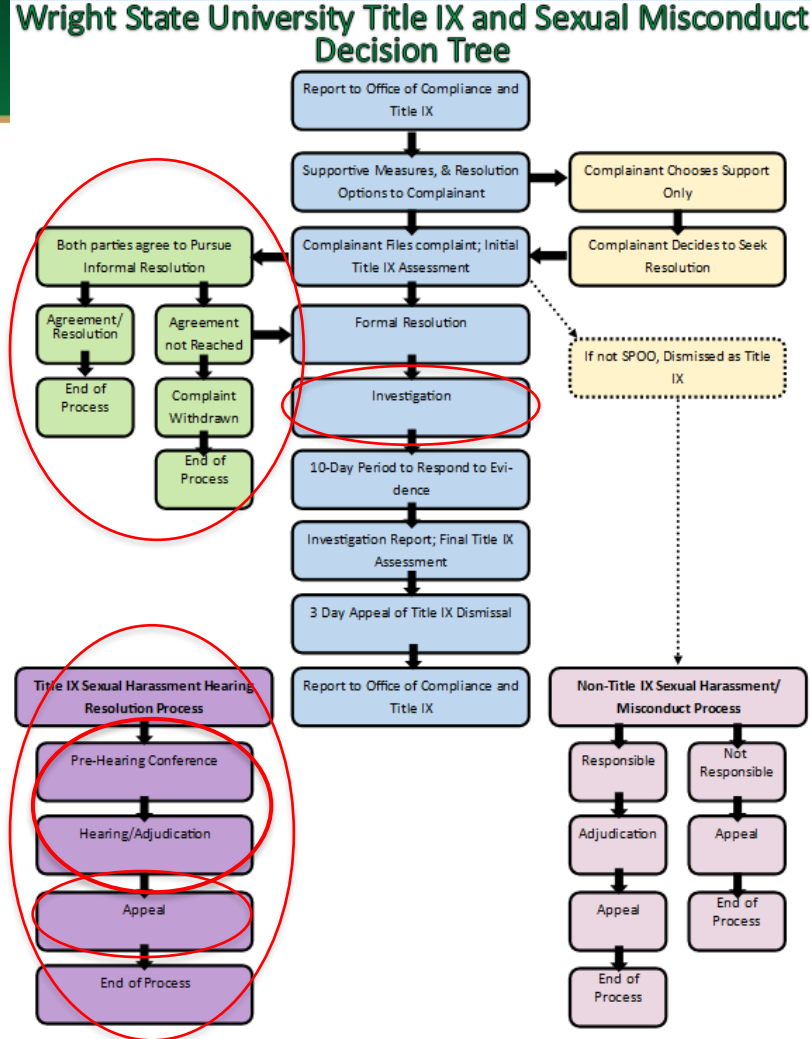


**Unless required by law**, permitted by FERPA, or **for the purpose of carrying out Regulation grievance process**



## Title IX

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)

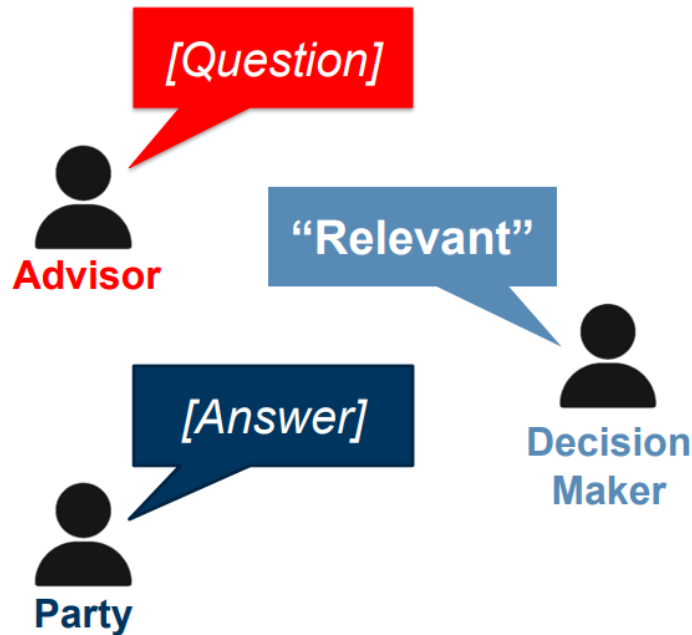
- Per 34 C.F.R. 106.45(b)(6)(i):

“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

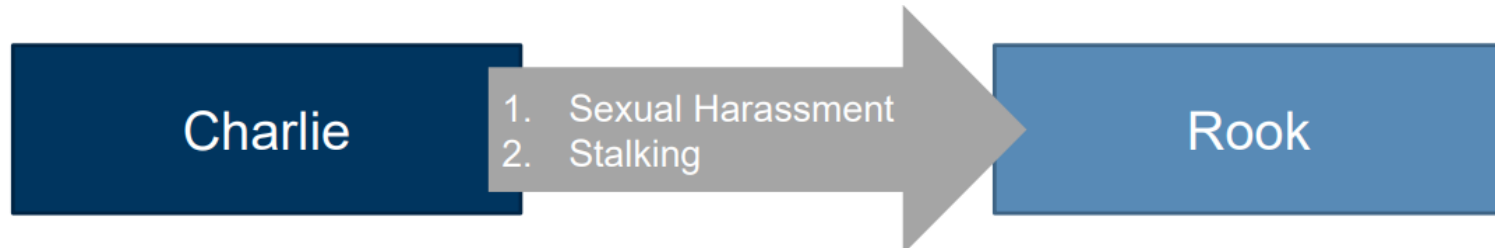
**Narrative:** Rook sexually assaulted me early in the morning of January 5, 2023. Rook STALKED me too, they contacted me after I told them to stop. I even blocked them, and they showed up outside of my dorm and aggressively approached me. So, I had to act in self-defense to get away from them. I retreated 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

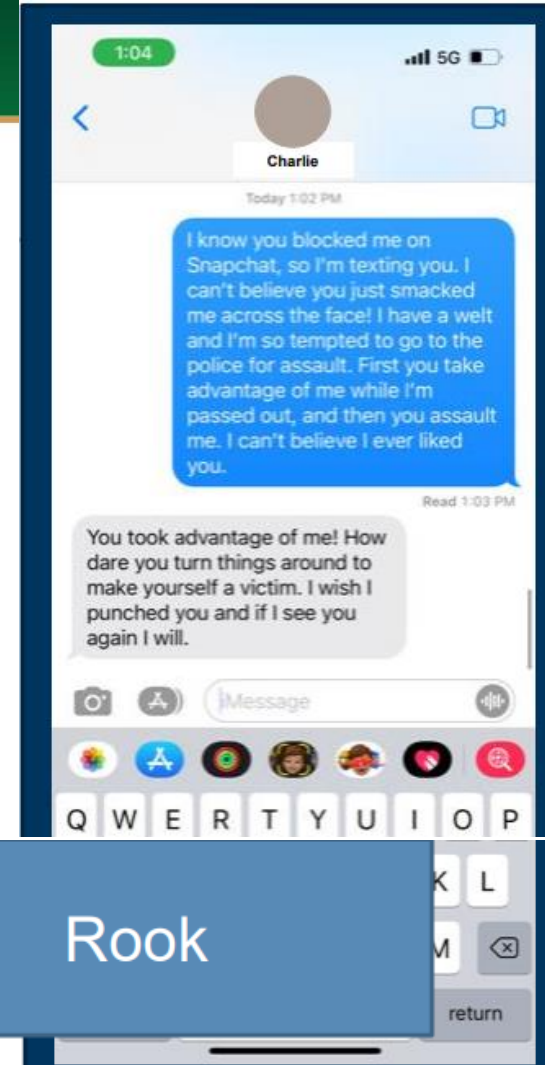
January 11, 2023

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

# Understanding 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?

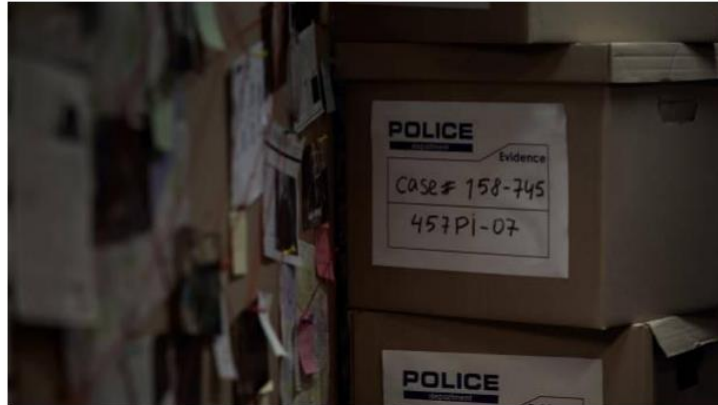
What you need to know to answer this question:

- 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:

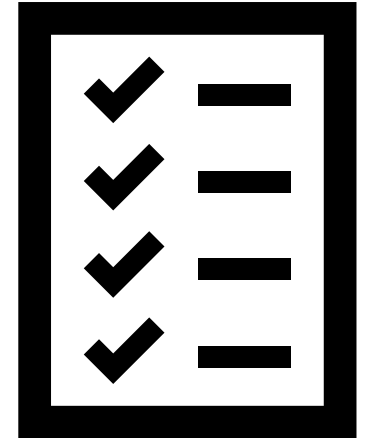
- List each allegation and policy definition/elements for the policy violation (e.g., sexual assault- know which definition and what must be met to show sexual assault under the policy)
- Standard of Review: this can be helpful to have written out so you can support relevancy determinations for your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



## Advocating for Your Party: Preparation (5 of 5)

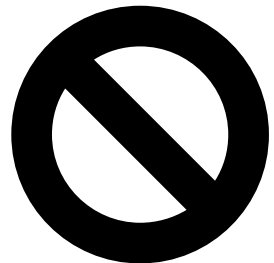
Consider a script:

- 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?

