

**EAST STROUDSBURG UNIVERSITY**  
**TITLE IX PROCESS ADVISOR**  
**RESOURCE GUIDE**

## **THE ROLE OF TITLE IX PROCESS ADVISOR**

Title IX of the Education Amendments of 1972 and the East Stroudsburg University (ESU) Sexual Misconduct (Title IX) Policy provide parties involved in the sexual misconduct resolution process the right to an advisor of choice, meaning that anyone may serve as an advisor, so long as they are able to comply with the institution's rules and guidelines. This advisor can be a friend, parent, family member, attorney, or any other person the student or employee chooses.

The ESU (Title IX) Policy defines the Title IX Process Advisor role as the following: An individual who may be present to provide support to a party throughout an investigation and/or formal hearing.

- Advisors may accompany a party to any meeting or hearing they are required or eligible to attend, but may not speak for the party, except during the formal hearing, and then only for the purposes of cross-examination.
- Each party is responsible for coordinating and scheduling with their choice of advisor.
- The advisor of choice may be an attorney (at the party's expense), a union representative (when applicable) or other individual selected by the party.
- If a party does not have an advisor of choice present for a hearing, the University will appoint a trained advisor for the limited purposes of asking questions and conducting cross-examination.
- If a party does not attend the hearing, the party's advisor may appear and ask questions or conduct cross-examinations on the party's behalf.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against a party, nor is the advisor prohibited from being a witness in the sexual misconduct resolution process.

### **SUPPORT YOUR ADVISEE**

Build Rapport:

Listen to questions and concerns, advise on process and policies, remain calm and supportive.

Develop a Plan:

Help your advisee understand participating in the process, create a "comfort plan" to use in meetings.

Prepare for the Formal Hearing:

Review investigative reports and policies with your advisee, help identify witnesses, help develop questions

### **CONDUCT CROSS-EXAMINATION IN THE FORMAL HEARING**

Prepare for the Formal Hearing:

Help your advisee create a list of questions and topics to explore with each hearing participant.

Cross-Examination:

Use the prepared questions to complete the cross-examination; listen to the statements and question responses provided during the formal hearing process.

## **ADDITIONAL GUIDANCE ON THE ADVISOR ROLE**

Advisors are not required to have any training, legal or otherwise, to fulfill the role. We do advise that anyone working as an advisor read and understand the ESU Sexual Misconduct (Title IX) Policy. If you have any questions regarding the policy or your role as an advisor, contact the Title IX Office via email ([titleixreport@esu.edu](mailto:titleixreport@esu.edu)) or via telephone (570-422-2277).

Additionally, you and your advisee will meet with the Title IX Coordinator (or designee) prior to the formal hearing to discuss the rules of hearing decorum, the hearing procedures, and answer any questions you may have regarding the hearing and appeals processes. For parties who are students, the Director of Student Conduct and Community Standards (or designee) also attends the meeting.

### **NOTES ON WHO CAN SERVE AS ADVISOR**

- The conflict of interest and bias rules that apply to officials in Title IX proceedings do not apply to advisors. This means that an advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- Take care, however, when institutional employees serve as advisors. Under the 2020 Title IX Final Rules, an advisor for a complainant or respondent is disqualified from serving as a Title IX Coordinator, investigator, decision-maker, or facilitator of an informal resolution process in that same case.
- Advisors are not prohibited from being a witness in the matter, but in general this is not advisable for a variety of reasons; for one, when that advisor testifies as a witness, a second advisor would have to join the hearing to cross-examine that advisor.
- Parents often consider serving as advisors. Before making this choice, both students and their parents should be sure they are comfortable with the level of specificity around sexual activities discussed during the grievance process.

### **CONFIDENTIALITY**

- While not bound by confidentiality or privilege, advisors should be discreet and respect the privacy of all individuals involved in the process. All participants in an investigation of sexual misconduct under the ESU Sexual Misconduct (Title IX) Policy, including advisors and witnesses, will be informed that privacy helps enhance the integrity of the investigation and protect the privacy interests of the parties, however, nothing in the policy is intended to impose restraints on a party's ability to discuss the allegations.
- Keep in mind, however, that advisors who do not have a legal privilege under their state's law (examples of people who do: attorney-client; pastoral; professional counselor; physician acting within that privileged role) may not be able to maintain the confidentiality of an advisee's disclosures outside the campus process, such as in a civil or criminal court.

## **PROFESSIONAL AND ETHICAL OBLIGATIONS**

- Your advisee may disclose information to you that raises professional or ethical concerns. Here are some possible scenarios and strategies for resolving them. If you have any questions about your obligations in the advisor role, consult the Title IX Office.
- If you believe your advisee is intentionally making materially false statements: Remind them of campus policies prohibiting them from doing so and the penalties of additional charges. If you are an attorney serving in this role, consider your professional ethical duties as well.
- If you are uncomfortable continuing to serve as an advisor: You may recuse yourself from participating at any time. The party may select another advisor, or the campus will appoint an advisor for the cross-examination portion.
- Your advisee may determine that they no longer seek your representation or advisement: It is not uncommon for advisees to stop communication with their advisor without notice. If your advisee does not answer your calls and messages, it is best to let the Title IX Office know that you can no longer provide advisement.

## **SELF CARE**

- Advisors themselves may need emotional support. You may find yourself emotionally invested in your advisee's case, and that can have secondary impact. Advisors may feel the need to share their own feelings and reactions to the situation. Remember, advisors may not share confidential information related to the case. The best option in this scenario is for the advisor to seek out a confidential resource, such as a counselor or spiritual advisor, to communicate their feelings and reactions.
- It is important to be self-aware as this process has the potential to raise personal triggers for you as an advisor. You may find this work particularly challenging if you are participating as an advisor when you have been a victim of sexual trauma. It is not necessary to disclose your trauma to anyone in this process, nor is it a trauma-informed practice to disclose unless there is a specific reason to do so in your role as an advisor. We mention this issue here only to encourage reflection on the difficulties that may arise in this space. Personal experience may make you an excellent advisor, drawing on relatable experiences you may have had. However, it may be too difficult to manage your own processing while helping an advisee navigate this experience.

## **LIMITS ON THE ADVISOR ROLE**

- Advisors may accompany their advisee to any meeting or hearing they are required or eligible to attend, but may not speak for the advisee, except for the purposes of cross-examination during the formal hearing. However, advisors can ask investigators to clarify questions they find unclear.
- Advisors may not conduct their own investigation into the matter.
- Unlike in the criminal justice process, there is no legal requirement that institutions direct communications to a party through their advisor.

## **THINGS YOU CAN DO AS AN ADVISOR**

Have clear expectations  
Read all applicable policies  
Assist with truth telling; use reflection  
Maintain their confidence to the extent possible  
Listen to their account, concerns, issues with care  
Encourage your advisee to advocate for themselves

## **THINGS YOU CAN NOT DO AS AN ADVISOR**

Conduct your own investigation  
Consult with a colleague about report details  
Side bar with parties, investigators, decision makers or appeals officers  
Promise confidentiality on all information  
Advocate for a particular outcome or  
Guess on or reassure an outcome  
Provide legal advice<sup>1,2</sup>

1 - A Title IX formal hearing is not a civil or criminal legal proceeding. It is an administrative procedure internal to the University handled according to the ESU Sexual Misconduct (Title IX) Policy.

2 - This does not apply to attorneys with an attorney-client relationship.

## **PREPARING FOR THE INITIAL MEETING WITH YOUR ADVISEE**

Explain the role of the Title IX Process Advisor

- Review the advisor role and purpose
- Discuss options for support and pre-hearing preparations

Set expectations

- Talk with the advisee about what they want you to be involved in
- Explain what you are comfortable participating in

Review any available case information

- Help your advisee understand applicable processes
- Review websites/policies/codes where they can view more information

### **TRAUMA INFORMED PRACTICE**

The evolving research on the neurobiology of trauma teaches us traumatic incidents impact individuals differently. At a minimum, advisors should have background knowledge in the impact of trauma on those involved in an incident of sexual harassment or violence. We encourage advisors to learn more about this topic and how it may impact memory formation and communication related to an incident. This includes advisors for both parties (complainants and respondents).

Participation in this process is often a stressful experience for parties. During hearings and interviews, be on the lookout for signs that your advisee may be in distress. Signs can include a lack of eye contact, heavy or labored breathing, wringing of hands, rocking back and forth, an inability to sit still, a glazed or blank look, or changes in speech (i.e., disrupted or interrupted speech, garbled speech, or speaking at a much faster pace). If you suspect your advisee may be in distress, make sure to ask for a break and consult with your advisee.

No party will be penalized or suffer a negative inference from their decision to take multiple breaks during an interview or formal hearing.

Be aware of services that can help your advisee deal with the impact of trauma. For example:

Local victim advocate services

Mental health professionals (university based, community based, established personal providers)

Local advocacy or crisis management organizations

## **PREPARING FOR AND PARTICIPATING IN INVESTIGATIVE INTERVIEWS**

Whenever possible, do not let your advisee enter any situation without a clear understanding of what they might expect to experience. If you have any questions about what to expect, contact the Title IX Office.

### **PREPARE FOR THE INTERVIEW**

This helps them feel more in control of the process. Some key things to explain to your advisee include:

- The initial interview with investigators could be long, investigators will block off approximately 1 hour for an initial interview. Talk with your advisee about their comfort level with this length of time and discuss whether they have any specific objections to it and be prepared to raise such objections with the investigators at the start of the interview.
- “Initial interview” does not necessarily mean the only interview it is not uncommon for a party to be interviewed multiple times by investigators. This could be for many reasons, including investigators acquiring information or evidence that spurred further questions for your advisee. Requests for additional interviews are not indicative of the investigator’s having any particular impression of the situation.
- The investigator’s questions may feel personal, private, and invasive make sure the advisee understands that the investigators are not asking these questions to make the advisee feel uncomfortable, even though that might be a natural reaction during the interview, but rather so they can get as much relevant and helpful information as possible to assist them in their investigation. Let your advisee know that, in a Title IX case, the information obtained in the interview will be included in an Investigative Report, which will be provided to the hearing decision-maker, so it is helpful to have the clearest and most complete picture.
- Always remind your advisee that if they are asked a question that they know the answer to, they should answer. Conversely, if your advisee is asked a question that they do not know the answer to or do not remember, it is okay to say, “I don’t know” or “I don’t remember” rather than to guess.
- Create a “comfort plan” that allows your advisee to prepare for the interview (or hearing) by creating a comfortable environment for themselves. Discuss with your advisee what sort of preparation they might need to help them feel the most comfortable on that day. Consider bringing water/drinks or snacks for consumption during breaks. Or small items that bring your advisee comfort.
- Due to the subject matter involved and many other factors, the process of participating in an investigative interview can be stressful regardless of a party’s role in the process. That includes being a complainant, respondent, or witness.

In the interview, your job is to support your advisee, not to serve as a zealous advocate or make an argument on their behalf. You may ask the investigators to clarify or rephrase a question that you think is vague or confusing, or to ask for a break. This is why the advisor role is often described as a “supportive potted plant.”

## **DURING THE INTERVIEW**

- Take notes: During the interview with the Title IX investigator(s), you can help your advisee by taking notes on a notepad or on a laptop.
- Don't forget breaks: As the advisor, you may request a break if you think your advisee needs one, especially if you observe them exhibiting signs of distress.
- Check off your agenda items: If you created an agenda, continue to refer to it and mark off when specific items are addressed. Use breaks to review uncompleted items with your advisee.
- Ask how to submit evidence: All parties have the same opportunity to present witnesses and evidence in a Title IX proceeding. Be sure to remind your advisee to ask the Title IX Office how they expect evidence to be submitted, such as through e-mail or a cloud storage platform.
- Ask how to submit a potential witness list: Once your advisee has finalized their witness list, it is generally a good idea for your advisee to let any potential witnesses know that members of the Title IX Office may be reaching out to speak with them. Note: Hearsay evidence may not be used to establish a fact necessary to establish responsibility consistent with the requirements under Chapter 505 of Title 22 of the Pennsylvania Code concerning Student Personnel.

## **PREPARING FOR AND PARTICIPATING IN THE FORMAL HEARING**

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation via a Preliminary Investigative Report.

The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to the completion of the Final Investigative Report.

Details on the inspection and review process to include deadlines and other administrative notes are contained in the ESU Sexual Misconduct (Title IX) Policy.

**IMPORTANT NOTE:** After both parties and their advisors receive the final investigative report and prior to the formal hearing, you and your advisee will meet with the appropriate officials to explain the hearing process and procedures, explain the rules of decorum for the hearing, and answer any related questions you might have.

## **HEARING PREPARATION TIPS**

- Help your advisee develop questions that you will ask the other party and witnesses during the cross-examination phase of the hearing.
- Practice asking your advisee questions, so they are better prepared for answering questions from the hearing board members (the decision makers) and during cross-examination questions from the other party's advisor.



- Fully review the rules of decorum for the hearing and review your comfort plan if your advisee wishes to use one.
- Prior to the hearing, consider condensing notes you have accumulated throughout the investigation, plus the summaries of witness interviews, into short digests. These digests may be easier to review during hearing breaks than the comprehensive set of notes, which you should also bring along for reference, or the entire final investigative report. Aim for each digest to be only one page in length.
- Remember, the hearing is not a time to recite every fact gathered in the investigation, because the decision-maker will already have the final investigative report.

## **DURING THE HEARING**

- Be present in the process – step away from obligations, silence your phone, etc.
- Conduct the cross-examination based on your/the advisee's prepared questions.
- Be ready to add new questions based on information presented during the hearing.
- Make sure to have at least one or two questions for each participant, even if only to confirm their limited knowledge/involvement.
- Support your advisee. Observe their behavior and share a note reminding them of the option to take a break and/or talk privately if it appears they need this. Look out for notes they share with you and pay attention to their requests.

## **CONDUCTING CROSS-EXAMINATION**

Under the federal Title IX regulations, colleges and universities must include the opportunity for the parties' advisors to cross-examine the other party and all witnesses during a formal hearing as part of each party's due process rights.

During the formal hearing, the University Conduct Board members ask questions of the participants (parties and witnesses). Then advisors will each be afforded the chance to cross-examine them. The federal Title IX regulations set strict parameters on how cross-examination may be performed, and advisors should not assume that courtroom rules of evidence will apply in this forum. These parameters will be explained during a pre-hearing meeting with the Director of Student Conduct and Community Standards and the Title IX Coordinator.

A party may refuse to answer cross-examination questions, but the University Conduct Board members may still consider any previous statements, testimony, or evidence provided by the party or witness in reaching a determination regarding responsibility.

Conducting cross-examination is a vital part of the advisor's role. The purpose is to use the cross-examination portion of a formal hearing to help point out information that University Conduct Board members will use to make determination(s) of responsibility on the alleged violation(s) of the ESU Sexual Misconduct (Title IX) Policy.

## HELPFUL HINTS FOR CROSS-EXAMINATION

- Pay attention and listen to the entire hearing proceedings to better assist your advisee.
- Confirm facts provided in the participant's statement (during the formal hearing) or beforehand (from the report/case documentation).
- Confirm any limitations on the importance of their provided information (for example, was a particular witness present for the alleged incident?)
- Build a strategy: Cross-examination is your opportunity to test the credibility of a particular witness who is providing testimony. When thinking about credibility, consider how you determine in your everyday life if someone is providing you with truthful or accurate information. You might ask questions about: The presence or absence of inconsistent statements, a motive to deceive (or lack of one), conflicts of interest and bias, or whether the witness has received (or not received) a benefit.
- Remember: Cross-examination is not a chance to harangue or badger a witness or call them a liar.
- Take note of the questions asked by other involved parties; adjust your questions as needed to highlight key details and avoid repetition.
- Asking repetitive questions could lead to an advisor's removal from the formal hearing, as it is part of the rules of decorum, which would be a disservice to the advisee.
- Point out information that helps to confirm the party's account of an interaction or incident.

## THE 3 E's OF CROSS EXAMINATION

### *EFFECTIVE*

Fully evaluate the report and all case information in advance  
Prepare a list of questions for each participant or witness in advance  
Design a list of themes or categories to focus on

### *EFFICIENT*

Use focused questions to emphasize key facts and information with care and precision  
Refrain from Unduly Repetitious Questions – remember to adhere to the Hearing Decorum

### *ELASTIC*

The absolute key to cross-examination: LISTEN to the responses!  
Adjust your questions as needed based on the responses/information provided in the hearing

## THE 3 C's OF CROSS EXAMINATION

This technique is used for the purpose of reviewing important information and pointing out potential areas of conflicting information to the decision makers for their determinations.

## *CONFIRM*

Briefly review the specific information or statement made during the hearing

Ex: "Can you please confirm that you made the following statement today...[statement]"

## *COMPARE*

Help review the context of the previous statement (to speak to credibility)

Ex: "In your previous meeting with the Title IX Investigator on [date], do you recall saying..."

## *CONFRONT*

Use respectful questions to bring up inconsistency

Ex: "You mentioned being best friends with [party]. Is there any information that can help the board understand how ...."

## **RELEVANCY OF QUESTIONS DURING CROSS-EXAMINATION**

During the formal hearing, the Chair of the University Conduct Board will determine if a particular question is relevant or not before the participant can answer the question. The Chair determines relevancy based on the question: "Does the question seek information that will aid the decision-maker in making a determination of responsibility"

### **RELEVANT QUESTIONS**

Are directly related to the allegations being investigated

Could help decision-makers decide if an allegation is more or less likely to be factual

Note: Questions may be about uncomfortable topics areas – be respectful in questioning

### **NON RELEVANT QUESTIONS**

Questions about a complainant's prior sexual behavior or sexual predisposition

Privileged information (protected by law) and/or undisclosed medical records

Repetitive questions that have already been answered in the formal hearing

Federal and state rape shield laws protect complainants from being required to answer questions about prior sexual behavior and/or sexual predisposition

- Sexual History: referring to any prior sexual acts.
- Sexual Predisposition: referring to sexual orientation, preferences for specific sexual acts, etc.

These types of questions are irrelevant UNLESS

- The question seeks to demonstrate another individual's responsibility for the alleged conduct.
- The question relates to prior sexual encounters between the complainant and the respondent with the purpose of demonstrating evidence of consent in the alleged incident.

## **AFTER THE FORMAL HEARING**

The University Conduct Board members conduct the formal hearing and make the decision of responsibility after the conclusion of the hearing. The board uses the “preponderance of evidence” standard when deliberating on their conclusion.

Prior to the conclusion of the formal hearing, the University Conduct Board will inform both parties and their advisors of the timeline in which to expect a determination letter that will be sent via email and contain the following information for each allegation:

- The findings of fact
- Conclusions regarding the application of the institution’s policy to the facts
- The rationale for the determination regarding responsibility
- Any sanctions placed on the respondent if found responsible
- The procedures and deadline for filing an appeal

### **HELP YOUR ADVISEE UNDERSTAND THE OUTCOME**

- Review the determination letter carefully with your advisee. Do they know what, if anything, is required of them?
- Make sure they understand that the implementation of sanctions and any changes to existing supportive measures will not take place until the completion of any appeals process, or when the period for filing appeals has expired.
- The determination letter will also indicate what sanctions will be imposed on the respondent and what ongoing remedies will be provided to the complainant, along with a rationale for those sanctions and remedies. The sanction rationale may consider the respondent’s prior conduct record, if any, and the gravity of the harm. The University Conduct Board will only consider the respondent’s prior conduct record after the responsibility determination is made.

### **APPEALS**

- One important purpose of this detailed determination letter is to allow the parties sufficient information necessary to decide whether and how to appeal the outcome. Do they want to appeal and know how to? Pay close attention to the appeal timeline.
- Appeals must be filed in writing, indicate the grounds for the appeal, and meet the deadline stated in the determination letter.
- Remember, appeals are generally not a re-hearing of the original case, but instead a process for reconsideration of the decision within specified grounds. Help your advisee frame an appeal that speaks to the provided grounds.

The ESU Sexual Misconduct (Title IX) Policy provides that each Party may appeal the dismissal of a formal complaint or any included allegations or a determination of responsibility on the following grounds:

- A procedural irregularity under the University policy or procedures that more likely than not affected the hearing outcome.
- New evidence that was not reasonably available through the exercise of reasonable diligence at the time of the hearing or dismissal of the Formal Complaint that more likely than not could affect the outcome of the matter.
- The Title IX Coordinator, Investigator(s), or Decision Maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that more likely than not affected the outcome of the matter.
- The Disciplinary Sanction imposed was arbitrary or capricious or the appropriateness of the sanction.

#### FINALITY

The determination regarding responsibility becomes final either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

*If you have any questions regarding this document or your role as an advisor, contact the ESU Title IX Office via email ([titleixreport@esu.edu](mailto:titleixreport@esu.edu)) or via telephone (570-422-2277).*