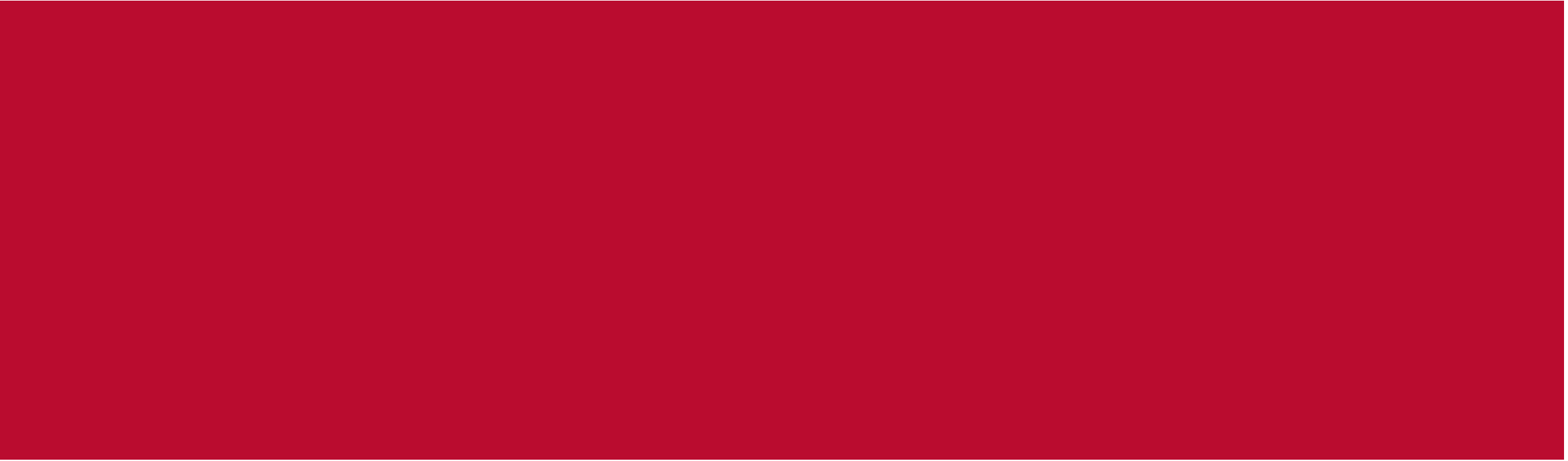

University Conduct Board

Serving as a Process Advisor

Lunch & Learn Series

Training for Current Faculty and Staff on the UCB



Training Note

This training was created for University Conduct Board members at East Stroudsburg University in Pennsylvania.

Training materials are provided on the Student Conduct and Community Standards website to adhere to the Title IX Federal Regulations of 2020.

Questions about training materials can be directed to SCCS.

Learning Outcomes

1. Faculty and Staff members serving on the University Conduct Board will articulate the purpose of the Process Advisor role in the Formal Hearing process.
2. Participants will identify the key elements of an effective cross-examination process, which is one of the main requirements for Process Advisors.
3. Participants will review the SUNY SCI Advisor Resource and Process Advisor Resources from SCCS.

Purpose of SCCS – Our Approach to Conduct

Office Mission Statement

- To engage students in the recognition of responsibility and commitment to being a productive citizen of the communities in which they belong.

Office Values

- Holistic Approach that is Respectful of Students
- Education-Based --- Learning Opportunities
- Rights in the Process
- Following the Title IX Federal Regulations effective August 2020, Advisors are required to complete the cross-examination portion of the live hearing for respondents and complainants.



The Role of the Process Advisor At ESU

Additional Resources:

- *Process Advisor Role Information from SCCS*
- *Advisor Resource Guide from SUNY SCI*

Process Advisor Role Description

Overview of the PA Role

- A Process Advisor (PA) is an individual who **provides support and guidance to a student** in the conduct process **for cases involving sexual misconduct and sexual harassment**.
- Process Advisors are available for both respondents and complainants.
- The PA will serve as an **advisor** to help the student understand their rights and responsibilities.
- The PA will also complete the **cross-examination** portion of the Formal Hearing process.



Remember: The most important parts of this role are supporting the student and conducting the cross-examination.

Key Components In the Process Advisor Role

Provide Support and Guidance for the Involved Student

Build rapport with students

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

Develop a Plan

Help student understand options for participating in the process; consider creating a “comfort plan” to use in meetings

Prepare for the Formal Hearing

Review full reports, review documents with the student, help identify witnesses, etc.

Conduct Cross-Examination (on the Student's Behalf) in a Live Hearing

Prepare for the Formal Hearing

Create a list of questions and topics to explore with each identified witness and 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

Expectations for the Process Advisor Role

1. **Assist a student in understanding processes**, including:
 - Sexual Misconduct/Title IX Investigations, Conduct Meetings & Formal Hearings, Appeal Process
2. **Help students prepare to participate** in the process:
 - Review the Student Code of Conduct, Help students understand their rights, Provide guidance in understanding policy, Prepare for meetings in advance, Review materials with the student
 - Attend conduct meetings with the student, at the student's request
3. For **Formal Hearing Processes**:
 - Assist in drafting questions for a Formal Hearing, Review the Hearing Decorum with the student, Sign a Hearing Decorum form to attend a Formal Hearing, Conduct the cross-examination portion of a Formal Hearing for the student
4. **Attend trainings** provided by the University to effectively serve in this role

Additional Notes for Process Advisors

Conflicts of Interest

- Process Advisors CANNOT serve as an investigator or decision-maker in the cases they serve on

Addressing Student Questions or Concerns

- For questions about processes, refer students to the appropriate office
- Reach out to SCCS and/or Title IX for assistance with questions about the Formal Hearing Process

Important Modules to Complete on SUNY SCI:

- Effective Interviewing of Parties and Witnesses
- Determining Relevancy in a Title IX Formal Hearing
- Cross-Examination in a Title IX Formal Hearing
- Neurobiology of Sexual Assault Trauma
- Privacy, Confidentiality and Privilege in Disclosures
- Sexual Harassment: Legal Definitions
- Student Conduct and Disciplinary Process (for PASSHE)

NOTE: These are already some of the required modules for faculty & staff UCB members



PA Role: Preparing for The Initial Meeting

Additional Resources:

- *Process Advisor Checklist from SCCS*
- *Advisor Resource Guide from SUNY SCI*

Conducting an Initial Meeting with a Student

Explain the role of the Process Advisor

- Review the Process Advisor role and purpose
- Discuss options for support and pre-Hearing preparations

Review Case Information

- Review the case information available on Guardian
- Help student understand applicable processes
 - Review websites/policies/codes where they can view more information

Remember:

At this initial meeting, talk with the student about what they want you to be involved in and explain what you are comfortable participating in. The federal requirement states that the University must provide a Process Advisor for the specific purpose of cross-examination in the Formal Hearing; anything additional is optional.

Process Advisor Role

YES

Things You CAN Do
as a Process Advisor

NO

Things You CANNOT
Do as a Process Advisor

Have clear expectations	Investigate
Read and reread all applicable policies	Consult with a colleague about report details
Assist with truth telling; use reflection	Side bar with involved parties, investigators, adjudicators or appeals officers
Maintain their confidence to the extent possible	Promise confidentiality on all information
Listen to their account, concerns, issues with care	Advocate for a particular outcome; Guess on or reassure an outcome
Encourage students to advocate for themselves	Provide legal advice



PA Role: Participating in The Formal Hearing

Additional Resources:

- *PA Role Information and PA Checklist from SCCS*
- *Advisor Resource Guide from SUNY SCI*

Process Advisor Role: Preparing for the Formal Hearing

Optional Services:

- Assist the student in creating a “comfort plan” so that they can fully participate in the Formal Hearing
- Help the student identify additional witnesses to invite to the Formal Hearing process
- Practice asking the student questions so they are better prepared for providing a statement and/or answering cross-examination questions

Required Services:

- Create a list of possible questions for each participant, based on the reports and information available
- Conduct the cross-examination in a live hearing (Formal Hearing) on the student’s behalf

Remember:

After the initial meeting, follow the student’s lead on your level of involvement for anything beyond the requirement of conducting the cross-examination in a Formal Hearing.

Process Advisor Role: During the Formal Hearing

Formal Hearing Procedures:

- Be present in the process – step away from obligations, silence phones, etc.
- Fully review the Formal Hearing Decorum, with particular attention to PA role

Cross-Examination:

- Conduct the cross-examination based on your/the student's prepared questions
- Be ready to add new questions based on Formal Hearing information
- Make sure to have at least one-to-two questions for each participant, even if only to confirm their limited knowledge/involvement

Support for the Student:

- 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

Remember:

Process Advisors are required to conduct the cross-examination process in a Formal Hearing.

You are also there to support the student in what is likely to be a challenging situation, no matter their role in the process.



PA Role: Conducting the Cross-Examination

Additional Resources:

- *SUNY SCI Training Modules (especially the modules on cross-examination and definitions)*
- *Advisor Resource Guide from SUNY SCI*

General Process for Cross-Examination

For Each Participant and Each Witness:

- **Overall:** PA Role is to use the cross-examination portion of a Formal Hearing to help point out information that decision-makers will use to make determinations on the alleged violations of community standards and/or University Policy.
- PAs will:
 - Gather information (by listening to statements)
 - 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, were they present for the alleged incident?)
- **Remember: Listen, listen, listen!!!**



What are Relevant Questions?

Remember: *The Chair of the Formal Hearing will determine if a particular question is relevant or not before the student/participant/witness will answer the question. The Chair determines relevancy based on the question: “Does the question seek information that will aid the decision-maker in making determinations?”*



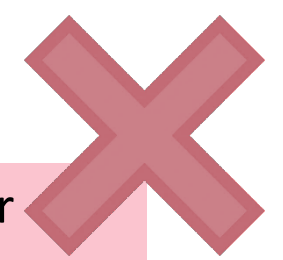
Components of Relevant Questions

Directly relates to evidence/information that would be considered in determining an Outcome for an alleged violation

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

Categories of Irrelevant Questions



Questions about a complainant's prior sexual behavior or sexual predisposition (more information and notes on next slide)

Privileged Information (protected by law) and/or Undisclosed Medical Records

Repetitive questions that have already been answered in the Formal Hearing

Irrelevant Questions in Cross-Examination

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 considered to be irrelevant UNLESS:

- The questions 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



Conducting the Cross Examination

DO NOT ask Unduly Repetitious Questions

- Take note of the questions asked by other involved parties; adjust your questions as needed to highlight key details and avoid too much repetition
- This practice takes the Decision-Makers focus away from the pertinent details and can lead to frustration among the involved students
- Most importantly: this could lead to removal from the process, as it is part of the Formal Hearing Decorum, which would be a disservice to the student

Focus on the Key Details

- Pay particular attention to point out information that helps to confirm the student's account of an interaction/incident
- Use the Three E's for effective Cross-Examination & the Three C's for effective review of inconsistencies in statements



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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

For an in-depth review of this topic, check out the “Cross-Examination in a Title IX Hearing” module on SUNY SCI. Remember that you can always access the training modules for additional review.

The 3 C's of Cross-Examination: Pointing out Inconsistencies in Party/Witness Information

Remember: *This technique is to be used specifically 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... [different statement]"

Confront

Use respectful questions to bring up the inconsistency

Ex: "You mentioned being best friends with [party]. Is there any information that can help the UCB understand how the details changed to [statement 2] from [statement 1]"

Remember: *Be sure to use the 3 C's with consideration, care, and caution. This is a developmental process for students and our focus is on gathering the best information AND respecting the involved parties.*



Let's Apply Our New Knowledge

Putting it Into Practice:

Practice Scenario - Definitions of Alleged Violations

Scenario: A Respondent is participating in a Formal Hearing based on a formal complaint from a Complainant, as outlined in the Sexual Misconduct (Title IX) Policy. Both individual are students at the University. The following are the Alleged Violations of the Code of Conduct for the Respondent:

- **Sexual Harassment (f.) – Sexual Assault – Sexual Contact Without Consent:** *Knowingly touching or fondling a person's genitals, breasts, buttocks, or anus, or knowingly touching a person with one's own genitals or breasts, when Consent is not present. This includes contact done directly or indirectly through clothing, bodily fluids, or with an object. It also includes causing or inducing a person, when Consent is not present, to similarly touch or fondle oneself or someone else.*
- **Retaliation (b.):** *Any action, directly or through others, which is aimed to deter a reasonable person from reporting sexual misconduct or participating in an investigation or hearing or action that is done in response to such activities. This includes but is not limited to intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations; or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing.*
- **Stalking/cyber-stalking:** *Means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her safety or the safety of others; or suffer substantial emotional distress. A course of conduct is when a person engages in two or more acts that include, but are not limited to, acts in which the person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person in a prohibited way, or interferes with a person's property. Stalking includes the concept of cyberstalking, in which electronic media such as the Internet, social networks, blogs, cell phones, texts, email or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.*

Putting it Into Practice:

Practice Scenario - Serving as an Advisor For a Respondent

■ Scenario:

- The **Respondent** has been charged with the following alleged violations: *Sexual Harassment (f.) – Sexual Assault – Sexual Contact Without Consent, Retaliation – B*, and *Stalking* relating to three separate incidents reported by the **Complainant**.
- Complainant alleges one incident of non-consensual “groping” of the complainant’s genitals and buttocks that occurred during an off-campus party, and two instances of continued contact from the Respondent after directly communicating a request for discontinued communication (occurring after the non-consensual sexual contact allegation).
- Complainant further alleges that the Respondent was waiting outside their residence hall room twice (after the no contact request) and made intimidating statements including “You know you wanted it!” and “Why did you have to go to the University?”. Complainant alleges this conduct was unwanted and continued after direct statements asking for communication to end.
- **What options do you have for best supporting the respondent?**
- **What questions are you asking during the Formal Hearing (on the respondent’s behalf)?**

Putting it Into Practice:

Practice Scenario - Serving as an Advisor For a Complainant

■ Scenario:

- The **Respondent** has been charged with the following alleged violations: *Sexual Assault – Sexual Contact Without Consent*, *Retaliation – B*, and *Stalking* relating to three separate incidents reported by the **Complainant**.
- Respondent alleges that the sexual contact between Respondent and Complainant was consensual. Respondent states that the contact occurred at an off-campus party and neither individual consumed alcohol or other drugs, to their knowledge. Respondent alleges that after they kissed in the main party room, the Complainant directly stated an interest in “getting physical” and “moving outside [to the deck]” to be more intimate.
- Respondent alleges that Complainant never made a statement asking for ceased communication in-person or otherwise. Respondent states that they have a friend living in the same building as the complainant, which Respondent did not know until after seeing the Complainant outside their door. Respondent does confirm asking “Why did you go to the University?”, but states no other statements were made to the Complainant.
- What options do you have for best supporting the complainant?
- What questions are you asking during the Formal Hearing (on the complainant’s behalf)?

Thank You!



Thank you for serving as a Process Advisor to students in the Title IX-related conduct process!

We appreciate your commitment to East Stroudsburg University, the Office of Student Conduct and Community Standards, the Title IX Office and, to our students.

Please remember to contact SCCS with any questions about your role as a process advisor.

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References and Special Thanks

Resources/References:

ESU Student Code of Conduct: Available on the SCCS Website

[SCCS Website](#)

[Sexual Misconduct \(Title IX\) Policy](#)

Special Thanks to:

West Chester University's Office of Student Conduct – for sharing additional resources on the “Policy and Process Advisor” role at WCU. This information was used in developing the PA role for this University.

The SUNY Student Conduct Institute – for creating the “Advisor Resource Guide for Title IX Investigations and Hearings” (September 2021 edition) for SCI members.

[Direct Link to Download the Advisor Resource Guide](#)