

TITLE IX ADVISOR TRAINING

Presented by Katsura Kurita, Melissa Lees and David Tiscione



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OVERVIEW OF TRAININGS

- Hearing Panel Member, Advisor, and Title IX Intake Officer Training (Friday, September 18- 11 AM – 12:30 PM)
- Title IX Intake Officer Training (Friday, September 25- 10 AM –12 PM)
- **Advisor Training (Thursday, October 1- 2 - 4 PM)**
- Hearing Panel Member Training (Friday, October 9- 2 – 4 PM)
- Combined case study (Friday, October 16- 2 – 4 PM)

- SUNY SCI online trainings due October 16.



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OVERVIEW OF TODAY

- Introductions and Expectations of Advisors
- Overview of Intake Meeting
- Overview of Investigation Process
- Technology
- Overview of Hearing Process
 - Hearing preparation
 - During hearing
 - After hearing
- Relevance
- Cross Examination
- Esteemed Panel- Melissa
- Wrap Up



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INTRODUCTIONS

- Share Name, Title & Office
- Name ONE responsibility or expectation of the Advisor

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SHARING ROLE OF ADVISOR

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SHARING ROLE OF ADVISOR

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COMMON TERMS

- Complainant = reporting individual/ victim/ injured party
 - If 3rd party – write down name of Complainant
- Respondent = Responding party/ accused/ “alleged perpetrator”
- Parties – refers collectively to Complainants and Respondents



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ROLE OF ADVISOR

- Any individuals who assist a party through the formal and informal processes related to sexual misconduct matters
- May be chosen by a party or appointed by the University
- Accompanies party through the process
- May be an attorney, but does not need to be
- Can be a parent, friend, mentor, criminal defense attorney or faculty, etc.
- No particular advisor qualifications



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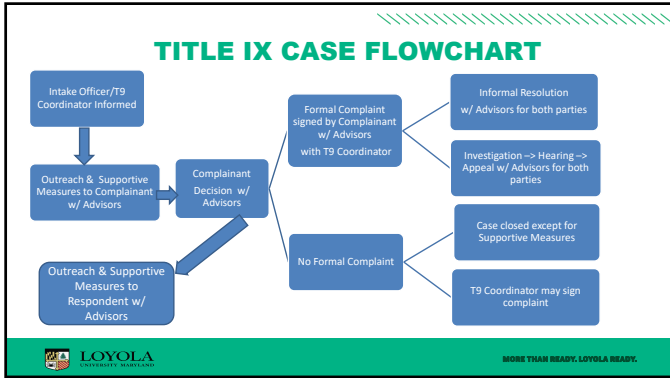
3 POSSIBLE WAYS TO SELECT ADVISORS

- Independent advisor chosen by the party
- Advisor selected by a party from a trained pool at the University
- Trained advisor appointed from the institutional pool and chosen by the University (Cross-Examination only)



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- ### ROLE OF ADVISORS PREP FOR INTAKE MEETING
- ✓ Know the Title IX and related policies and procedures, including definitions of sexual harassment, etc.
 - ✓ Know initial steps of reporting; supportive measures; other resources – **NOTICE OF RIGHTS AND OPTIONS**
 - ✓ Share role of Advisor – explain keeping information private, not confidential
 - ✓ Encourage party to be honest and truthful rather than misleading, omitting a fact or lying. Caution them about disciplinary action for providing false information.
 - ✓ Consider leave of absences, withdrawals to transfer to another school for parties, if appropriate and under specific circumstances
 - ✓ Retaliation against any party, witness or any other individual associated with the parties is strictly prohibited.
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- ### OVERVIEW OF INTAKE MEETING
- Information on Title IX Grievance Process; reporting options; and supportive measures
 - Release of Information by party to permit disclosures of information and communications
 - Non-disclosure agreement needs to be signed by Advisor
 - Brief description of incident (names welcome but not required)
 - Notice of Rights and Options
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FORMAL COMPLAINT FILING

- Formal complaints must be filed with Title IX Deputy Coordinator
- Must include
 - identify of parties;
 - conduct alleged;
 - date, time and location of alleged incident;
 - Brief description of the incident.
- Signed by Complainant
- Notice will be given to Respondent



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DISMISSAL OF FORMAL COMPLAINTS



Must Dismiss:

- Behavior does not constitute sexual harassment
- Did not occur in educational program or activity
- Not in the United States



May Dismiss:

- Complainant withdraws formal complaint
- Respondent no longer enrolled/employed
- Insufficient evidence



Dismissed case may be adjudicated under the Sexual and Gender-Based Misconduct Policy



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CONSOLIDATION OF COMPLAINTS

Multiple Respondents

More than one complaint against one or more respondents

Cross complaint



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EMERGENCY REMOVAL

- Individualized safety and risk analysis
- Immediate** threat to physical harm
- Notice and Opportunity to challenge



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INFORMAL RESOLUTION

- Option after Formal Complaint is filed.
- Voluntary by both parties
- Any party may revert back to formal process.
- Respondents may offer agreeable sanctions to avoid disciplinary sanctions.
- Not allowed for employee/student matters.
- Not permitted for sexual assault cases.



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OVERVIEW OF INVESTIGATION PROCESS

Title IX Deputy Coordinator is responsible for scheduling all meetings with Investigator and will provide:

- Notice of date, time & location of interview with investigator(s)
- Request names and contact info for all witnesses
- Request that the party provide all evidence (ie, photos, screen shots, text messages, voicemails, social media posts, etc.) to investigator(s)

During meeting with investigator(s), Advisors may not speak for party.

- Party is permitted to submit questions for the Investigator(s) to ask others.



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OVERVIEW OF INVESTIGATION PROCESS

- Preliminary Investigation Summary Report will be provided to both Parties and Advisors for review and comment for 10 days.
 - Note errors
 - Note any questions for the investigator(s)
 - Suggest additional witnesses or evidence that should be obtained
 - Argue for or against any findings made
 - Raise any issues of bias or conflict of interest that must be addressed
 - Raise concerns about the evidence that is contained in the report or that there is evidence that was not considered directly relevant by the Investigator(s) and should be in the report.
- After all comments are reviewed and addressed by Investigator(s), then the Investigation Summary Report is issued and sent to the Parties, Advisors and Office of Student Conduct for a hearing before a hearing panel or to external Decision-Makers for Employee cases.



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TECHNOLOGY OVERVIEW

- Regulations require parties to be seen and heard when answering questions in Title IX cases
 - Regulations do not require parties to watch or listen
 - We will utilize Zoom or similar platforms to conduct the hearings
 - Parties not answering questions may be asked to turn off their cameras and mute themselves
 - Parties and their advisors will be able to connect via phone or breakout room
 - A practice session may be conducted in the pre-hearing conference
- Regulations do not apply to non-Title IX cases
 - We are only required for parties to be heard
 - This may be done through phone and/or a combination of zoom and breakout rooms



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PRE-HEARING CONFERENCE

- Pre-hearing Conference will be scheduled after investigation report has been finalized and before the scheduled hearing (likely within 10 days of the report being finalized)
- Prior to or during conference, student will be asked to complete a panel member strike list
- Student should submit questions or topics about which they wish ask at the hearing 2 business days prior to conference
 - Chair will rule on relevance and document ruling
 - Does not preclude questions from being asked, especially based on testimony provided
- Chair may consider arguments for relevance and document ruling
- Chair will conduct a technology overview
- Chair will review the hearing agenda
- Chair will review advisor roles and responsibilities



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PRE-HEARING PREPARATION

- Review documents with advisee
- Suggest drafting an opening and closing statement
- Discuss style and role during a hearing
 - Note taking
 - What do they need?
 - How will you know they need a break?
- Discuss when, where, and how you will meet on the day of the hearing
- Assist in preparing cross examination questions for other parties
- Assist in drafting or reviewing an impact statement (complainant)
- Be aware of own concerns regarding case
- Ask party to remind important witnesses of their participation
- Character statements are not permitted



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PRE-HEARING PREPARATION

- Parties may have more up to 2 advisors
 - Discuss roles with party and other advisor
- Only one advisor can conduct cross examination at a time



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DAY OF HEARING PREPARATION

- Check in with advisee at least 30 minutes prior to hearing
- Chair will meet with party and advisor immediately prior to the hearing and review the agenda and any additional details
- Plan to bring water and snacks
- If using electronics, ensure it is charged or bring charger
- Ensure party has access to relevant documents (printed or electronic)
- Ensure party has a method to take notes
- Ask party to remind important witnesses of their participation



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ROLE DURING HEARING

- Listen to and take notes about what is being said during hearing
- Pay attention to non-verbals of your advisee for suggesting breaks
- Assist advisee in understanding questions if a disconnect is noticed
- Cross-examination during Title IX process or suggested questions during non-Title IX process
- Remind advisee of items they've previously mentioned, but did not raise during hearing
- Advisor cannot address the panel or other parties except for Cross Examination during Title IX hearing or in private meetings



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HEARING AGENDA

- Introduction
 - Panel, parties, and advisors introduce themselves
 - Rights and responsibilities are reviewed
 - Charges are read and respondent pleads responsible or not responsible
- Investigator will present a summary of the investigation and be questions by panel
 - Cross examinations by parties' advisor (Title IX hearing)
 - Suggested questions by parties (non-Title IX hearing)
- Respondent opening statement and questions by panel
 - Cross examination by complainant advisor
 - Suggested questions by parties (non-Title IX hearing)
- Complainant opening statement and questions by panel
 - Cross examination by respondent advisor
 - Suggested questions by parties (non-Title IX hearing)
- Witness testimony and question by panel
 - Cross examination by parties' advisors
 - Suggested questions by parties (non-Title IX hearing)
 - All witnesses will be called in title IX hearings
 - Only witnesses the panel or parties call will be called for non-Title IX hearings
- Closing statement by complainant
- Closing statement by respondent
- Closed deliberation



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RELEVANCE

- Chair determines relevance
- Relevance can be defined as directly related to the issue and helps prove (inculpatory) or disprove (exculpatory) the allegation
- The following is irrelevant:
 - Sexual predisposition or prior sexual behavior
 - Unless such questions and evidence about the complainant's prior sexual behavior are offered to prove:
 - That someone other than the respondent committed the conduct alleged by the complainant
 - Consent when the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent
 - Privileged information
 - Medical Records
 - Duplicative or abusive questions



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CROSS EXAMINATION

- Advisors will have the opportunity to cross examine the investigator, other party, and all witnesses during Title IX hearings
- If someone does not submit to cross examination, no statement of theirs can be relied upon for sexual misconduct charges
- Advisor will ask question verbally and live
- Chair will determine and state if the question is relevant or ask the advisor to rephrase
- If the question is relevant, the person will be asked to answer
- If the question is not relevant, the person will be asked not to answer



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CROSS EXAMINATION

- Purpose is to highlight points that support your advisee's position and challenge points that do not support your advisee's position.
- When questioning a witness who is not favorable, you may want to ask leading or closed-ended questions
 - Closed-ended questions help to pin down a point, but don't allow a party to expand
 - Didn't you say "you don't remember exactly what was said"?
- When questioning a witness who is favorable, you may want to ask open ended questions
 - Open ended questions allow a party to expand, but can be challenging to pin down a point
 - May not be helpful if a party seems chatty and willing to share even damaging information
 - What was your reaction when they told you about the assault?
- You don't have to ask any questions; you could simply ask "Is there any information contained in your statement in the investigation report that you wish to elaborate on, clarify, or correct?"

Adapted from ATIXA Guide to Effective Advising in Formal Title IX Proceedings



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CROSS-EXAMINATION

- Appointed advisor
- Ask the questions the party suggests
- Consult with Title IX Coordinator if conflicts arise
- Selected advisor
 - Work with the party to come up with questions
 - Help the party understand relevance
 - Help the party phrase questions appropriately
 - Help the party understand the process and point of cross-examination

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QUESTIONS FROM PARTIES DURING NON-TITLE IX HEARINGS

- After each party provides testimony, the chair will allow the other party to suggest questions
- The chair can ask the questions as suggested, refuse to ask them, or rephrase them to get the same information.
- Questions should be submitted in advance
- Repetitive or blaming questions will not be asked
- Leading and abusive questions will be rephrased

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ADVISING AFTER THE HEARING

- Ask them what they need in the moment (i.e. break, food, etc.)
- Reflect on the hearing or plan a time to reflection on the hearing
- Remind them of the timelines (10 business days for the outcome)

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OUTCOME

- Normally within 10 business days of hearing
- Be prepared for any outcome and to manage response to any outcome
- Outcome is usually an "in person" meeting
- Outcome letter will include:
 - Whether the respondent was responsible or not for each charge
 - A detailed rationale for the findings
 - Sanctions for the outcome, if any
 - A detailed rationale for the sanctions, if any
 - A list of procedural steps taken from formal complaint to determination
 - Whether complainant received remedies
 - Procedures for appeal
- Chair will review outcome and answer questions
- Assist advisee in asking questions about the outcome and the appeal



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APPEAL PROCESS

- Parties may appeal dismissal or hearing outcome
- Grounds for appeals
 - The party alleges that there were procedural irregularities that affected the outcome of the matter;
 - The party alleges new evidence that was not reasonably available when the determination of responsibility or dismissal of the complaint was made that could affect the outcome of the matter;
 - The party alleges the Title IX Coordinator or Deputies, investigators, or hearing panel had a conflict of interest or bias for or against the complainant(s) or respondent(s) generally, or the individual complainant or respondent that affected the outcome of the matter.
 - The party alleges that the sanctions imposed are grossly disproportionate to the findings of responsibility.



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DISMISSAL APPEAL PROCESS

- Appealed to Dean of Students (student cases) or Title IX coordinator (employee cases)
- Recipient will appoint an independent decision maker to decide the appeal
- Outcome is given to parties



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HEARING OUTCOME APPEAL PROCESS

- Paper appeal process
- Appeals from both parties will be reviewed by same panel
- Appeal must be submitted within 5 business days of the outcome to the Dean of Students
- No appeal submitted means the party waived their right to appeal
- Burden is on the party to provide support to appeal
- Dean of Students will determine if the burden has been met
- Other party will be given opportunity to submit a written response to the appeal
- Appeals will be decided by panel selected from UBOD (modified when warranted)

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POSSIBLE OUTCOMES OF APPEAL

- Affirm the original decision
- Affirm the original decision of responsibility for some or all charges and change the sanction
 - Sanction may be reduced or increased
- Reverse the original decision of responsibility for some or all charges and change the sanction
 - Sanction may be reduced or increased
- Remand to original hearing panel
 - Cases of new evidence
- Outcome will be communicated in writing within 5 days of the panel meeting

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PANEL

- How do you begin a relationship?
 - How do you maintain a relationship?
- How do you sit with people during difficult times?
 - What does being an advisor mean?
- What things have students asked of you as an advisor?
- What do you do if conflict arises with your advisee?

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WRAP UP

- ❖ If you don't know, please reach out to Katsura, Karen, Dave or Melissa
- ❖ It's okay if you decline the advisor role at any point in the process. Just let us know.
- ❖ You are not required to act as an "attorney."

Questions or Concerns



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