



# Title IX Advisor Refresher Training

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Training for Student Conduct & Title IX Advisors  
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# Role of an Advisor

- **Role = support and advise**
  - Explain their rights in the process
  - Considerations for navigating the process (e.g. reaching out to the SAAS or Title IX Coordinator for supportive measures)
  - Assistance with completing forms/letters
  - Accompany them during the investigative process
  - Help them prepare for the hearing
  - Ask questions of witnesses on their behalf during the hearing



# Resources to Guide You

- Title IX website: [www.ewu.edu/titleix](http://www.ewu.edu/titleix)
- Review EWU policies:
  - Student Conduct Code, WAC 172-121
  - EWU Policy 402-01 (Sexual Misconduct, Interpersonal Violence & Title IX Responsibilities)
  - EWU Policy 402-05 (Title IX Investigations & Hearings)
- Call the Title IX Coordinator (359-6724)



**WHY DOES IT HAVE TO BE THIS WAY?**  
**EXPLAINING KEY CONCEPTS BEHIND THE PROCESS**





# Laws/Rules that Apply to EWU's Disciplinary Processes

- Due Process (14<sup>th</sup> Amendment)
- Administrative Procedures Act, RCW 34.05
- Clery/Violence Against Women  
Reauthorization Act/ Campus SaVE Act
- Title IX
- Washington Law Against Discrimination
- RCW 28B.112- Campus Sexual Violence
- Big Sky Serious Misconduct Rule



# Due Process

- If EWU suspends a student for 10+ days, the student is entitled to a hearing under the 14<sup>th</sup> Amendment. *Goss v. Lopez*
  - Exception for emergency circumstances
- Process for lower-level sanctions
- Key elements:
  - Notice of the charges against them
  - Opportunity to respond



# Administrative Procedures Act

- State law that governs hearing processes for state agencies. Two types of hearings: brief and full.
- *Arishi v. WSU* (2016)- must follow the procedures for a full adjudicative hearing if a student is facing the possibility of a suspension of 10+ days, expulsion, or the allegations include felony-level sexual misconduct



# Relationship Between Title IX & VAWA

- Title IX is a federal law that prohibits discrimination on the basis of sex at educational institutions.
- The Violence Against Women Reauthorization Act (VAWA) included an amendment to the Clery Act (Campus SaVE Act). The Clery Act addresses university's responses to and disclosure of crimes on campus.





# Key VAWA Concepts

- Must provide complainants with information about numerous resources
- Complainant has the right to equal participation in the process (receive notice, participate in the hearing, informed of the result)
- Applies regardless of the location of the incident or identity of the respondent



# Title IX

- Must respond promptly and equitably to incidents that may constitute discrimination on the basis of sex
- Numerous procedural rules
- Must have a formal complaint filed by the complainant or Title IX Coordinator
- Requires witnesses to appear at a hearing and be subject to cross-examination
- Requires universities to provide parties with an advisor



# In Summary...

- Process must be fair and unbiased
- Individuals serving as investigators and the hearing board must not have a conflict of interest
- Process must be prompt and equitable (goal of under 90 days for the entire process)
- Complainant must have the right to participate
- Respondent must know all of the evidence against them and have a right to respond



# Common Student Questions

- Do I have to participate in the investigation and/or hearing?
- Can I remain silent?
- Why do I have to file a complaint? Why does the respondent have a right to know my name?
- Why did I receive a letter from the Title IX Coordinator?



# Common Student Questions

- *What other questions have you received?*
- If you need help, the following individuals can assist you through the process:
  - Stacey Reece, Director of Student Rights & Responsibilities
  - Annika Scharosch, Title IX Coordinator



# **PROVIDING SUPPORT AND MAINTAINING BOUNDARIES**





## Why it is important to support the Respondent

What kinds of support do we offer?

- Supportive measures
- Referrals to counseling
- Guidance for family and friends
- Guidance for navigating the process
- Discuss common feelings
- Rights and responsibilities

- They are still an EWU student
- A finding of responsible or not responsible comes after the hearing
- Protecting a respondent's rights protects the complainant's rights



# Maintaining Boundaries

## **Respondent**

- Remember you are not the investigator
- Stay on the surface
- You are not responsible for advocating for the student

## **Complainant**

- Remind student of resources
- Remember you are not a counselor or advocate
- You are there to help the student through the process





# Effective Questioning and Cross-Examination Techniques



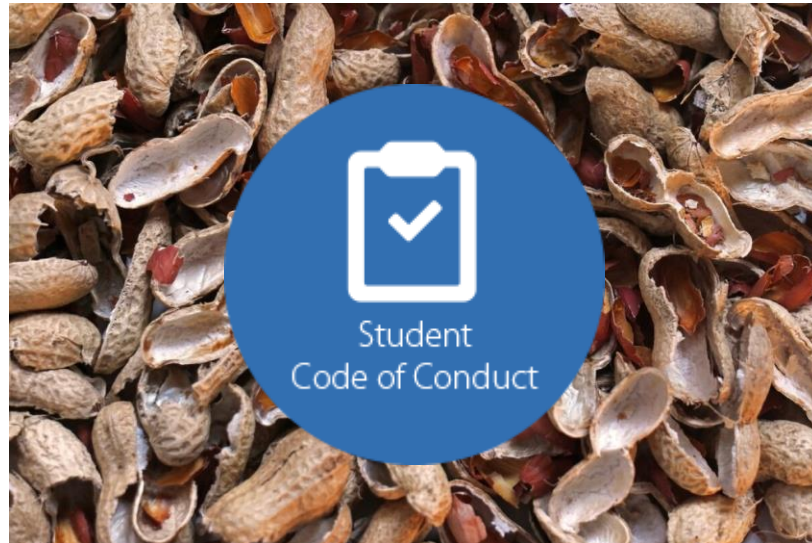


# Purpose

- Effective questioning:
  - Identifies issues
  - Eliminates distractions
  - Reduces confusion
  - Establishes case-theory
  - Provokes thought
  - Builds confidence
  - Persuades decision-makers



# Outcome



Conclusions ← Facts ← Evidence



# Evidence

- Type
  - Direct
  - Circumstantial
- Form
  - Exhibits
  - Testimony
- Principles
  - Reliable
  - Credible
  - Persuasive







# Before Drafting



- What does this witness have to offer?
- What is the significance of a particular exhibit?
- Should I present/confront unfavorable evidence as part of my case?
- Can I ask questions about sexual history?
- Can I ask questions that might seek privileged information?
- Is my inquiry relevant to the issues?
- Is my inquiry within the applicable timeframe?
- How deep should I probe?
- How should I respond if an objection to my question is sustained?
- What if a witness refuses to answer my question or answers my question in an unexpected way?



# Drafting

- Strategies
  - Scripting
  - Concept Clustering
  - Thematically
  - Chronology
- Question Starters
  - Who
  - What
  - When
  - Where
  - Why
  - How
  - Does\*
  - Is/Are\*
  - Was/Were\*
  - Would\*
  - Could\*
  - Can\*



\*not



# Drafting

- Direct Examination - Questioning *your* witness
  - Greater ability to establish the parameters and scope of evidence presented.
  - Less flexibility in the form of questions (i.e. leading questions usually not permitted).



- Cross Examination - Questioning *their* witness
  - Questions must be limited to the scope of the other party's direct examination.
  - Greater flexibility in the form of questions (i.e. leading questions permitted).



# Drafting



= Normal Question



= Leading Question

- What is a leading question?
  - A question that presumes the answer.
  - Pins the witness to the specific point of view expressed in the question.
  - Effective strategy to poke holes in other party's case.
- Examples:
  - *You were already intoxicated before the party, correct?*
  - *The Respondent never obtained verbal consent, did she/he/they?*
  - *The Complainant slurred words throughout the evening?*
  - *Does the Respondent own a camera? And that camera was the one used to record the Complainant without consent?*



# Drafting



- **Closed-ended Questions**

- A question that can be answered by a single word or phrase.

- *Q: Were you a student at the time of the alleged incident?*
  - *A: Yes.*

- **Open-ended Questions**

- A question that invites an unstructured response.

- *Q: What happened after the party?*
  - *A: [Open-ended answer].*



# Drafting

- **Funneling Questions**

- A sequence of questions that takes a witness in particular direction.
  - *Q: How many people were with you in the room?*
    - *A: Just the two of us.*
  - *Q: You and the Respondent?*
    - *A: Yes.*
  - *Q: Did you have a conversation?*
    - *A: Yes.*
  - *Q: What did you talk about?*
    - *A: [Open-ended answer].*

- **Probing Questions**

- A question seeking further explanation.
  - *Q: If you were concerned for your safety, why did you return to the Respondent's apartment the following day?*

- **Clarifying Questions**

- A question intended to clear up potential confusion.
  - *Q: What do you mean "you shook your head"?*





# And Beyond

- Use Pauses
- Challenge Absolutes
- Listen Carefully
- Embrace Curiosity



# Should and Should Not

- **Should:**
  - Ask one question at a time.
  - Pursue a logically-related line of questioning.
  - Be satisfied before moving on to next question.
- **Should Not:**
  - Ask questions outside the scope of issues.
  - Ask questions with unknown answers.
  - Return a witness' hostility.



# A Fundamental Truth of Advocacy



# Questions?







# Advisor's Roles & Setting Boundries



# *Advisor Dos*

## *Preparing for Hearing*

- You will need to help the complainant or respondent prepare for the hearing
  - *Help the student understand their rights during with in the student conduct review process (pg. 7 of SDC Manual or WAC 172-121-030)*
  - *Help gather physical evidence if it was not previously provided to the investigator*
  - *Review all of the evidence with the student that was provided by the investigator*
  - *Help the student identify whether or not they should call any witnesses. Make sure they schedule their witnesses*
  - *Help draft questions to ask the other party and witnesses*
  - *Help draft opening/closing statements, but do not write it for them*





# Opening/Closing Statements

- Opening Statement
  - Keep it simple – you do not need to retell every detail.
  - Highlight key points in the case
  - Express impact of other parties actions
  - Express desired outcome of hearing process
- Closing Statements
  - Brief version of the opening statement
  - Highlight any new points from hearing, if any



# ***Role during the Hearing***

- You will accompany the student you are advising throughout the entire hearing
- Support the student while in the hearing.
  - *Help them ask for a break*
  - *Remind them to breath and take their time*
  - *Help them draft new questions, if needed*
- You will ask questions of the party you are advising. Ask these types of questions in a way that enables the student to tell their story.
- You will also ask questions of other witnesses. These questions should be designed to make sure all of the relevant evidence is considered by the SDC.



- You will ask cross-examination of the other party and witnesses.
- Encourage the student to do their own opening/closing statements - it is more impactful for their case.
  - Only offer to provide the statement if the student truly cannot do it.
- Ensure the party you are advising is aware of their right to appeal, time limits for appealing, and how to appeal.



# Optional Roles - If You Choose

- Assistance with completing forms/letters
- Accompany them during the investigative process
- Attend the prehearing conference
- Don't worry about whether or not you should object to a question being asked during the hearing
  - Let the chair or the university presenter to this, if needed.



# Advisor Don'ts

- Do advise them about how to appeal. **Do not** write their appeal for them
- Accompany the student through this process, **do not** advocate or speak on their behalf
- **Do not** testify for them if you are providing their opening/closing statement. Avoid “I think” or “In my option/experience” statements
- We are **not** asking you to advise or support a respondent through a criminal investigation
- **Do not** provide any legal advise. If a respondent is facing potential criminal charges, you can recommend that they seek legal counsel



# Setting Boundaries

- Provide support and advice, not legal counsel
- Let the student know what you are willing to help them with, and what are “Hard Nos” for them early on in the process
- It is okay to say “No, I do not have time to meet at this moment.”

