



KENT STATE  
UNIVERSITY



# Title IX University Appointed Advisor Training Course

Workshop Counts Toward 1-Hour Beyond Compliance Required Courses

Office of Gender Equity and Title IX

October 28, 2021





**Office of Gender Equity & Title IX**

**250 Kent Student Center**

**Email: [titleix@kent.edu](mailto:titleix@kent.edu) or Phone: 330-672-7535**

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# Agenda

- Title IX Law and KSU Policy 5-16.2
- Overview of Advisor Roles
- The Advisor's Role Pre-Hearing
- Advisor's Role During the Hearing
- Advisor Live Hearing Scenarios

# **Federal Law and KSU Administrative Policies**

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”*

## **Title IX Law**



# August 14, 2020 New Regulations and Two New Policies

## **Discrimination Policy (5-16.1)**

Prohibits discrimination and harassment based on race, color, religion, gender, sex, sexual orientation, national origin, ancestry, disability, genetic information, age, and military or veteran status

## **Title IX Sexual Harassment Policy (5-16.2)**

Maintaining an environment free of unlawful discrimination on the basis of sex in university education programs or activities, in accordance with title IX. (Applies to students, staff, faculty, visitors, and applicants).



# Overview of Roles



# Who's Who in the Title IX Process?

- ❑ **The Title IX Coordinator** – an official responsible for the recipient's compliance with Title IX. Not a substantive Decision-maker on whether policy was violated. May have a role in emergency removals, supportive measures, informal resolution, review of final investigation report, and dismissal decisions.
- ❑ **The Investigator(s)** – employees or attorneys who gather evidence and compile an investigation report
- ❑ **Deputy Title IX Coordinator(s)** – administrators who assist and support the coordination of Title IX.
- ❑ **Hearing Officer(s)** – The Decision-maker or a panel. The Hearing Officer(s) renders a finding/determination, any sanctions, and any recommended remedies. Also may be the administrator who serves to run the logistics of the hearing (recording, technology, witness timing, copying/distributing materials, etc.).
- ❑ **Advisors** – You. Each party (Complainant and Respondent) is allowed an advisor at the live hearing to **ask the other party and any witnesses all relevant questions**, and follow-up questions.
- ❑ **Appeal Officer(s)** – The person or panel who Chairs and/or decides the appeal of the hearing or dismissal

# Identifying Advisors for the Hearing

- Kent State must provide the parties with the same opportunities to have an advisor present during the grievance proceeding.
- We are not required to provide attorneys or equivalently talented advisors just because the other party has one.

# University-Appointed Advisor

- ☐ Your advisee is not your “client”
- ☐ Your advisee should not ask you to do something unethical, such as mislead or conceal evidence.
- ☐ You need an ethical code or strong personal/professional integrity to guide you.
- ☐ If a party appears at a hearing **without an advisor, we need to stop the hearing to permit time to assign an advisor to the complainant or respondent at no fee.**

# University-Appointed Advisor

- ☐ You may not believe in your advisee's cause.
- ☐ You can't be an advisor on both sides of the same complaint but you can be an advisor for multiple parties. Ex. Multiple complainants or respondents (If, you are the advisor of choice).
- ☐ An advisor must be eligible and available; Must refuse to serve as an advisor if doing so would create a conflict of interest.



# Advisor Role Prior to the Live Hearing

# Advisor Role Prior to Hearing

- Kent State's University Appointed Advisors **WILL NOT**....
- Assist advisee during the **pre-hearing conference**.
- Help the advisee review and comment on case file or the investigation report.
- Help prepare questions for live hearings

**Advisors will only ask questions for parties**

# Investigation & Grievance Procedures

- ❑ Intake/Informal Resolution or Formal Complaint
- ❑ Notice of Allegation/Dismissal Assessment
- ❑ Informal Resolution (potentially) or Formal Investigation
- ❑ Initial Case File Review [**Policy 5-16.2 (D)(9)(i)**]
- ❑ Investigation Report Review [**Policy 5-16.2 (D)(9)(i)**]
- ❑ Informal Resolution (potentially)
- ❑ Hearing **Policy 5-16.2 (D)(10)(a - h)**
- ❑ Sanctions or No Finding
- ❑ Appeal

# **Advisor's Role at the Live Hearing**



# Live Hearings Questions & Cross-Examination

- Questions are asked only by the Advisor to the other party and all witnesses.
- Questions are **never** orally asked by the party personally.
- The Decision-maker must permit relevant questions and follow-up questions, including those challenging credibility.
- Advisors may ask the Decision-Maker to consult with the Advisee to help explain why a question is relevant or will lead to a relevant answer. The rules permit you to do so.
- Once you pose a question, Decision-maker must first determine whether a question is relevant and direct party to answer, and explain any decision to exclude a question as not relevant.
- The final determination by the Decision-maker is final and both parties may appeal.

# Live Hearings Questions & Cross-Examination

- All parties and witnesses must be asked questions by an advisor or attorney.
- All parties must testify in-person (or virtually).
- Witnesses include police officers, experts, witnesses, the investigator, etc.
- Your advisee could choose to appear, not appear, appear and only answer some but not all questions.

# Live Hearings Questions & Cross-Examination

- A party's advisor may conduct cross-examination **even when the party (advisee) they are advising does not appear** (Without any inference being drawn on the party's non-appearance).

# Important Reminders - Prior Sexual History

- ❑ Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, 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, or
  - ❑ the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the Respondent and are offered to **prove consent**.



# Post Hearing Determination of Responsibility

- ❑ After the close of all evidence, the hearing officer(s) will deliberate, determine responsibility and issue a written determination applying the standard of evidence.
- ❑ A detailed Notice of Outcome will be prepared and provided to the parties simultaneously.
- ❑ The determination regarding responsibility becomes final on the date that the recipient provides the parties with the written determination.

# **Title IX Hearings: Advisors & Questioning Parties**

# **Administrative Policy 5-16.2**

## **Regarding complaints of Title IX sexual harassment**

### **Hearings (10)(b)**

At the live hearing, the decision-maker(s) shall permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

**Meaning: Only Advisors can ask questions of parties.**

# **Administrative Policy 5-16.2**

## **Regarding complaints of Title IX sexual harassment**

### **Hearings (10)(c)**

At the request of either party, the hearing may occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

**Meaning: Parties and Advisors can be located in separate rooms.**

# **Administrative Policy 5-16.2**

## **Regarding complaints of Title IX sexual harassment**

### **Hearings (10)(d)**

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) shall first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

**Meaning: Decision-maker will determine if the question is relevant and will inform the individual when to provide an answer.**

# Administrative Policy 5-16.2

## Regarding complaints of Title IX sexual harassment

### Hearings (10)(d) continued.....

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior **are not relevant**, unless

- (1) To prove someone other than the respondent committed the conduct alleged by the complainant, or
- (2) Offered to prove consent because of a prior specific act or incident between the respondent and complainant



# Advisor Hearing Scenarios

# Scenario One

## Decision-Maker Introduction

# Scenario Two

## Complainant Questioned by Respondent's Advisor

# Scenario Three

## Complainant Questioned by Respondent's Attorney

# **University Appointed Advisor Training**

## **Title IX Quiz**

**During cross-examination, who, other than the decision-maker, is allowed to ask questions to the other party and witnesses?**

- a) The complainant or respondent
- b) The Title IX Officer
- c) The advisor
- d) Anyone is allowed to ask questions during the live hearing

## Under which of the following conditions might a case qualify as Title IX – Sexual Harassment?

- a) An unwanted sexual act that occurred during a study abroad trip
- b) An unwanted sexual act that occurred when a male graduate student visited his professor during office hours
- c) An unwanted sexual act that occurred when a student and a faculty member happened upon each other while on vacation over spring break (during a non-KSU sanctioned trip).



## Under which of the following conditions would sexual predisposition questions be allowed during cross-examination?

- a) Someone other than the respondent committed the conduct alleged by the complainant
- b) Questions and evidence concern specific sexual interactions or events between the complainant and the respondent and are offered to prove consent.
- c) A and B
- d) I'm not sure.

**Can an attorney be the advisor for either the complainant or the respondent during Title IX sexual harassment adjudication processes?**

a) Yes

b) No

c) It depends on the specific situation

d) I'm not sure

# **If the complainant or respondent do not have an advisor, what occurs?**

- a) The complainant or respondent can act as their own advisor
- b) The hearing continues with no advisor
- c) An advisor is appointed/supplied for them by the university
- d) The hearing is postponed until the individual is able to secure an advisor

**True or False: When a question is asked of the complainant, respondent or witness, there is a pause after each question to allow the decision-maker time to assess the question and determine if the question is relevant prior to allowing the individual to answer.**

- a) True
- b) False

# Questions?



**Thank You**

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