

UConn

Advisor Update



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TODAY'S DISCUSSION

- Role of the Advisor
- Preparation
- Questioning



106.45(b)(5)(iv) Advisors of Choice

- May be, but not required to be an attorney.
- UConn may restrict extent to which advisor may actively participate

Except: Where a postsecondary institution must hold a live hearing with cross-examination, such cross-examination must be conducted by party advisors.

85 FR 30026, 30298

"parties' right to an advisor of choice differs from the right to legal representation
in a criminal proceeding"

85 FR 30026, 30297

§ 106.45(b)(5)(iv) gives each party the right to choose an advisor to assist the party, but does not require that the advisor be an attorney (or other advisor who may charge the party a fee for their representation)

85 FR 30026, 30066

(3) Section 106.45(b)(2) requires written notice of the allegations to both parties, including informing the parties of the right to select an advisor of choice.

85 FR 30026, 30053

Advising at UConn

Guidance, Not Instruction



Help the party tell their story

99% Preparation

- orienting story to the process
- reviewing documents
- identifying gaps/opportunities for questions

1% cross examination during the hearing
(if there is a great report and well trained
hearing body)

What is **not** the role of the Advisor?

- To help the party "win" at all costs
- To help the party hide facts/information
- To interrogate witnesses/party
- To serve as party's counselor/therapist

What Makes a Good Advisor?

Understanding of Policies, Hearing Process,
Rights Afforded Under Each
Boundaries (and referral resources)
Listening

Key Policy Points For Advisors

Definitions of Prohibited Behaviors

Title IX Sexual Harassment

Sexual Assault

Dating Violence

Domestic Violence

Stalking

Rights Afforded

Participation

Advisor of Choice

Withdraw Complaint (Complainant)*

Present Witnesses and Evidence

Review all directly related Evidence

Review Investigation Report

Advisor Question Witnesses

Appeal

TIX DEFINITIONS

TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 (20 U.S.C. §1681, ET SEQ.) AND ITS IMPLEMENTING REGULATIONS (34 C.F.R. PART 106) PROHIBIT DISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES:

“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 education program or activity receiving Federal financial assistance.”

TIX DEFINITIONS**

Conduct:

§ On the basis of sex,

§ that occurs within the institution's education program or activity,

§ within the United States, and

§ Involves

Title IX sexual harassment

- An institution's employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct OR

- Unwelcome conduct that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity;

- Big 4

TIX DEFINITIONS**

UConn's Educational Program of Activity

- locations, events, or circumstances
- over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred,
- and also includes any building owned or controlled by a student organization that is officially recognized by a post secondary institution (such as a fraternity or sorority house).
- Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off-campus (but not internationally). A school may address sexual harassment affecting its students or employees that falls outside Title IX's jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.

TIX DEFINITIONS**



Sexual Assault
Domestic Violence
Dating violence
Stalking

SEXUAL ASSAULT

RAPE: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

FONDLING: The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

INCEST: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

STATUTORY RAPE: Non-forcible sexual intercourse with a person who is under the statutory age of consent. (Age of consent is 16 in CT, so anyone 15 or younger cannot consent; slightly more complicated.)

CONSENT

"Affirmative consent" means an active, clear and voluntary agreement by a person to engage in sexual activity with another person

Consent is an understandable exchange of affirmative words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity.

Consent must be informed, freely and actively given. It is the responsibility of the initiator to obtain clear and affirmative responses at each stage of sexual involvement. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. The lack of a negative response is not consent.

An individual who is incapacitated by alcohol and/or other drugs both voluntarily or involuntarily consumed may not give consent. Past consent of sexual activity does not imply ongoing future consent.

CONSENT

Force: is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and/or coercion that overcome resistance.

Coercion: is unreasonable pressure for sexual activity. Coercion is more than an effort to persuade, entice, or attract another person to have sex. Conduct does not constitute coercion unless it wrongfully impairs an individual's freedom of will to choose whether to participate in the sexual activity.

Incapacitation: is a state where an individual cannot make rational, reasonable decisions due to the debilitating use of alcohol and/or other drugs, sleep, unconsciousness, or because of a disability that prevents the individual from having the capacity to give consent. Intoxication is not incapacitation and a person is not incapacitated merely because the person has been drinking or using drugs. Incapacitation due to alcohol and/or drug consumption results from ingestion that is more severe than impairment, being under the influence, drunkenness, or intoxication. The question of incapacitation will be determined on a case-by-case basis. Being intoxicated or incapacitated by drugs, alcohol, or other medication is not a defense to any violation of this Policy.

DATING VIOLENCE

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and

(i) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(ii) For the purposes of this definition—

(A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(B) Dating violence does not include acts covered under the definition of domestic violence.

DOMESTIC VIOLENCE

- Any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under Connecticut domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Connecticut.

STALKING

(i) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(A) Fear for the person's safety or the safety of others; or

(B) Suffer substantial emotional distress.

(ii) For the purposes of this definition—

(A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

(C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Rights

- Equitable Grievance Process
- Investigation and determination of outcome conducted by individuals w/o bias or conflict of interests
- Advisor of Choice
- Request Withdrawal a Formal Complaint (Complainant)
- Present witnesses (even character witnesses)
- Review all materials hearing body may use in making its determination (in stages)
- Simultaneous notifications
- Appeal (including on the basis of bias)



Materials Provided to Advisors (Everything, but in this order)

1. Directly Related Evidence
2. Investigation Report (including related materials)
3. Hearing Notice
4. Written Notice of Outcome
5. Appellate documents?

Prepare

Meeting One

Clarify role and seek to understand how they want you to provide help

Where in the timeline you are?

Assist with referral to appropriate resources.

Meeting Two

Review the documents

Review language of alleged policy violation, check for understanding

Meeting Three

Assist with opening/closing statement? (10 min each)

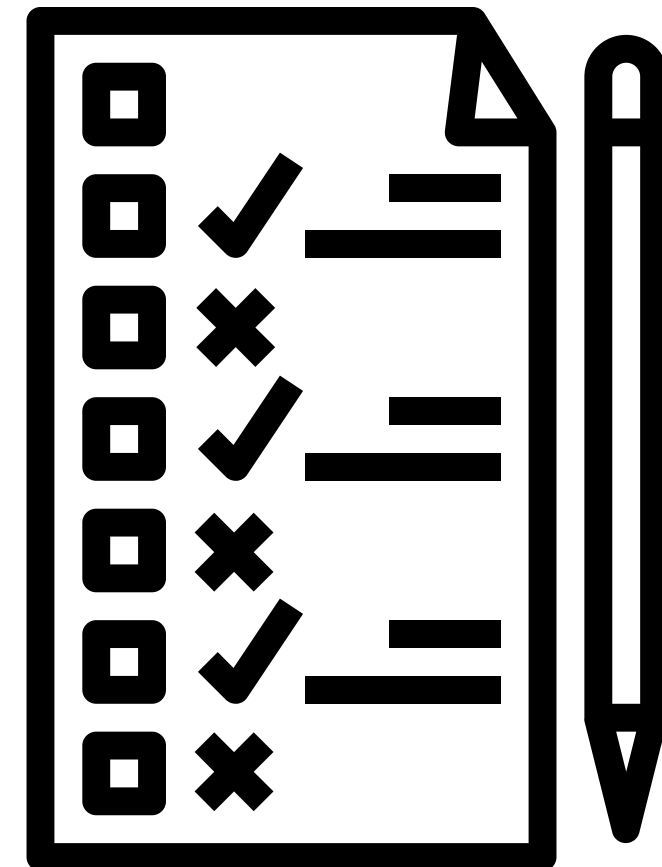
Hearing

Question witnesses and parties

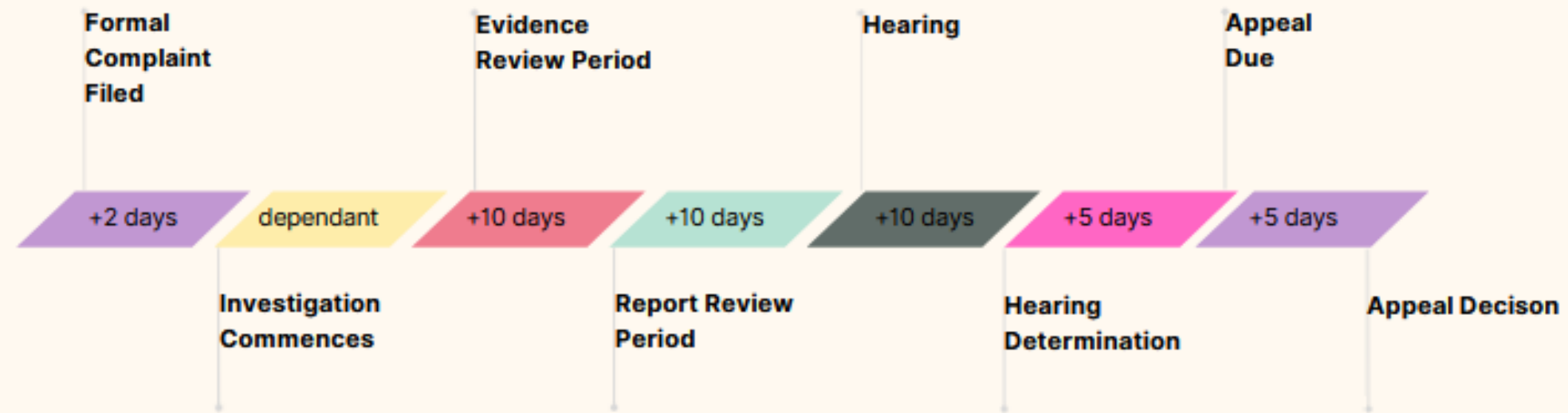
Post-hearing

Impact Statement

Appeals?



Approximate Title IX Investigation and Adjudication Timeline



Supportive Measures Available

- one time delay
- dismissal of formal complaint appeal process
- amount of time for investigation is dependent upon many factors such as number of parties and witnesses/ease of gathering evidence....



Questioning

Formulating Your Questions

- What facts must be present to constitute a violation?
(breakdown sheet)
- Credibility/Inconsistencies

Questioning strategies (how will you get there)

Be respectful (no one wants to be there)

