

EQUAL OPPORTUNITY AND TITLE IX ADVISOR TRAINING

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WHAT DOES IT MEAN TO BE AN ADVISOR DURING AN EO OR TITLE IX HEARING?

LET'S TALK ABOUT THE DIFFERENT PEOPLE PRESENT AT A HEARING

ROLES:

HEARING PANELISTS (CHAIR AND BACKUP): ACT AS NEUTRAL FACT FINDERS (LIKE A JURY/JUDGE).

PARTIES: RESPONDENT AND COMPLAINANT: THE ALLEGED AND AGGRIEVED.

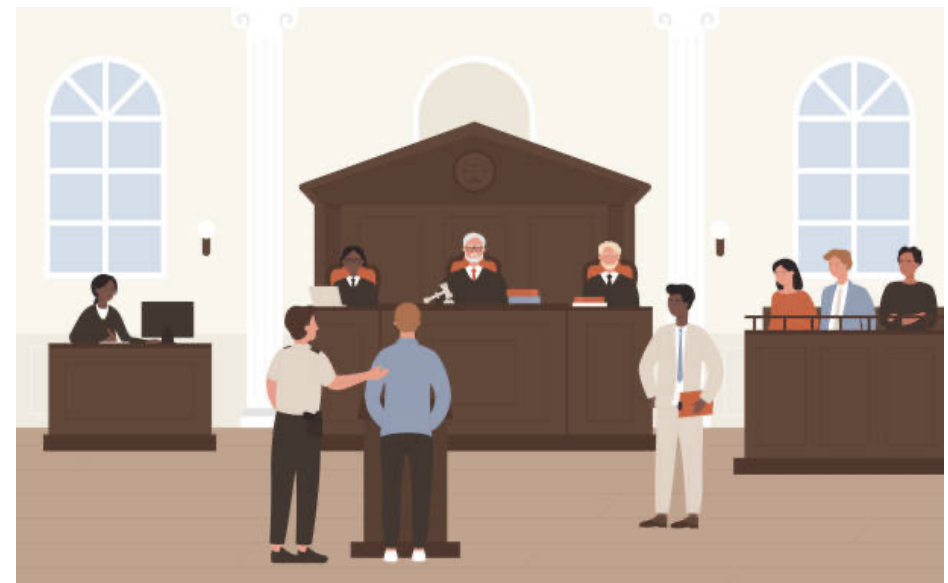
EO AND TITLE IX COORDINATOR: ORGANIZER/NEUTRAL THIRD PARTY INVESTIGATOR.

CHIEF LEGAL OFFICER: REGIS' ATTORNEY TO ADVISE/SUPPORT THE HEARING PANEL.

ADVISORS: POSE QUESTIONS ON BEHALF OF EITHER THE RESPONDENT OR COMPLAINANT (LIKE AN ATTORNEY DOES IN COURT). ADVISERS DO NOT ANSWER QUESTIONS FOR THEIR ADVISEES.

WITNESSES: PEOPLE WHO ARE NOT THE COMPLAINANT OR RESPONDENT BUT CONTAIN RELEVANT EVIDENCE THEY CAN TESTIFY ABOUT.

SUPPORT PEOPLE: MAY OR MAY NOT BE PRESENT IN THE ROOM AS A COMFORT TO PARTY MEMBERS BUT ARE NOT PERMITTED TO PARTICIPATE IN THE HEARING.



Hearing Components



Step One: Investigation

1. When a formal complaint is filed with the EO and TIXC an investigation is conducted and an Investigative Report is written and shared with Regis University and the parties.
2. Parties have been given the opportunity to review and comment on this report.
3. Once final comment is received by TIXC, parties are given the following:
 1. A copy of the final Investigative Report and all supporting documentation/evidence submitted and collected with 10 days to review prior to the hearing;
 2. A copy of Regis's Nondiscrimination, sexual misconduct, and retaliation policy and process; and,
 3. A copy of the sexual misconduct hearing guide
4. Parties are assigned an Advisor if they have not chosen an Advisor already
5. Parties are given notice of hearing that includes, date, time, locations, and hearing details
6. Parties have a deadline for voluntarily submitting questions/statements ahead of time for relevancy determinations.



Step Two: Hearing

1. The Hearing Panel Chair will open the hearing with information about decorum, and rules.
2. The Hearing Panel Chair will introduce the panel members, parties, and attendees.
3. Opening Statements: Each party has the opportunity to read aloud a 20 minute statement to the Hearing Panel depicting their account of what occurred. Advisors will help the Complainant and Respondent craft these statements. These statements are testimonial evidence and should seek to fulfill establishing proof or defense of the elements contained in each charge. (We will discuss identifying elements later on in the slides.)
4. After each opening statement the Panel will have the opportunity to ask questions of the presenter.
5. After the Panel asks their questions the opposing party will have a 15 minute opportunity to cross examine. Advisors will be responsible for cross examination. (We will discuss how to conduct a cross examination later on in the slides). Witnesses follow a like format.
6. Closing Statements: Both parties have the opportunity to express how the elements of each charge were either proved or disproved, impact the circumstances have had on the party member, and to request an outcome in favor of their party. (Advisors will deliver closings).



Step Three: Deliberation

Once the Hearing has adjourned, the Hearing Panel has five days to deliberate and return a written decision/determination.

The Chair will write the determination identifying the allegations, determining responsibility, and stating any disciplinary sanctions the Hearing Panel imposes on the Respondent if applicable as well as whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant.

Hearing Panel will make these determinations based on precedent, common practices, and with the guidance of University General Counsel.

Hearing Schedule



OPENING STATEMENTS

20 minutes: Complainant reads their opening statement. Complainant Advisor asks any Direct Examination Questions.

Hearing Panelists have opportunity to ask their questions.

15 minutes: Respondent Advisor has the opportunity to cross examine Complainant.

20 minutes: Either Respondent or Respondent Advisor reads their opening statement. Respondent Advisor asks any Direct Examination Questions.

Hearing Panelists have opportunity to ask their questions.

15 minutes: Complainant Advisor has the opportunity to cross examine Respondent/Respondent Advisor.



WITNESS TESTIMONY

Each side has a total of 15 minutes TOTAL to offer direct witness testimony and 10 minutes TOTAL for cross.

15 minutes: Complainant Advisor calls their witness to the stand and asks Direct Examination Questions to the witness.

Hearing Panel has time to ask questions.

10 minutes: Respondent Advisor cross examines witness.

Then Respondent Advisor calls their witness to the stand and asks Direct Examination Questions to the witness.

Hearing Panel has time to ask questions.

10 minutes: Complainant Advisor cross examines witness.

If there are multiple witnesses on either side the 15 minute direct and 10 minute cross must be divided among them. (ex. If the Complainant has two witnesses, the Complainant Advisor may spend 2 minutes direct examining one of them and 13 minutes direct examining the other, or any combination of time not to exceed 15 minutes across all witnesses.



CLOSING STATEMENTS

Respondent gives 10 minute closing.

Complainant gives 10 minute closing.

How is a Hearing Structured



HEARING PANEL

The Hearing Panel is a Neutral, Fact Finding/Deciding body consistent of three trained volunteers.



ADVISORS AND PARTIES

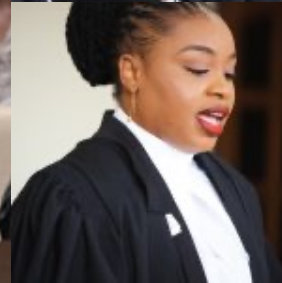
The Complainant (person making the allegation) and their Advisor (representative/advocate).

The Respondent (person who the allegation was made against) and their Advisor (representative/advocate).

ASSIGNMENT/RECUSAL

You will be asked by the EO and Title IX Coordinator to act as an advisor for either the Respondent or Complainant in a case. Sometimes the party member specifically requests you as their Advisor but typically the assignment is random.

If you feel you cannot adequately and fairly advocate on behalf of your assigned party then you should make this known right away to the EO and Title IX Coordinator so that you can be recused from your assignment in a timely manner.



WHAT DO ADVISORS DO?

ADVISORS GUIDE THEIR PARTY THROUGH THE HEARING PROCESS WITH THE HELP OF THE EO AND TITLE IX COORDINATOR.

ADVISORS HELP THEIR PARTY (EITHER THE RESPONDENT OR COMPLAINANT) FORMULATE THEIR OPENING STATEMENT AND FOLLOW UP WITH DIRECT EXAMINATION IF NEEDED.

IN HEARINGS, ADVISORS SPEAK ON BEHALF OF EITHER THE COMPLAINANT OR THE RESPONDENT DURING CROSS EXAMINATIONS AND FORMULATE/PRESENT CLOSING STATEMENTS.

HEARINGS ARE CONFIDENTIAL! ALL ADVISORS AND BACK UPS WILL SIGN A CONFIDENTIALITY AGREEMENT.

LEGAL STANDARD OF PROOF

- BY A PREPONDERANCE OF THE EVIDENCE:

- For an outcome finding in favor of the Complainant, the allegations must be proven by a preponderance of the evidence.

- To prove an element by a preponderance of the evidence simply means to prove that something is more likely to have occurred than not.

- The greater weight of evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

- If the evidence shows that it is a feather more likely than not that the element has occurred or that it is a feather more likely than not that the element has not occurred then the Panel must rule in favor of the relative party.



Identifying the elements of the allegations charged

Charges

- ▶ Both parties will receive the allegations charged (which need to be proven by a preponderance of the evidence) within the Notice Letter.
- ▶ Based on the facts alleged within the Formal Complaint, charges are identified by the EO and Title IX Coordinator with reference to Regis's Nondiscrimination, Sexual Misconduct and Retaliation Policy.

Allegation Elements

- ▶ Elements are the pieces that make up a charged allegation.
- ▶ For example, let's say a Respondent has been charged with Nonconsensual Sexual Penetration by way of penetrating the Complainant's vagina with his penis and partaking in sexual intercourse via vaginal penetration while Complainant was unable to give consent due to incapacitation.
- ▶ Element One: Penetration
- ▶ Element Two: Lack of Consent
- ▶ Element Three: Incapacitation

What would be sufficient to prove each element?

- ▶ What questions do I need to ask?
- ▶ What evidence do I need to see?
- ▶ Element One: How did you know the Respondent penetrated you?
 - ▶ I felt him inside me when I woke up.
 - ▶ I had bleeding and soreness the next day.
 - ▶ I found a used condom on the floor.
- ▶ Element Two: Did you at any time consent to having intercourse with the Respondent on the date in question?
 - ▶ Ask questions that are geared to Affirmative Consent. Did you say anything that would suggest you consented. Did you use any body language that would suggest consent?
- ▶ Element Three: You alleged that you were incapacitated. Can you explain further? Did you have any missing pieces of the night/gaps in your memory? Did you fall down at any point? Do you remember how you got home? Do you remember getting into bed?
 - ▶ I had drank so much I couldn't remember the night. I recall being carried back to my room but can't remember getting ready for bed.
 - ▶ I remember falling down while trying to walk. I remember not being able to think straight.

Relevancy Determinations

What is a Relevancy Determination?

- Relevancy Determinations are made by the Hearing Panel. These determinations decide whether or not certain questions, evidence, and testimony are allowed to be entered during the hearing/considered during deliberations.
- The Hearing Panelists make determinations as to whether a question posed is relevant by asking themselves if the question makes a fact of consequence more or less probable.

What is a Fact of Consequence?

- A fact of consequence is a fact that speaks to/proves or disproves an element of the alleged charges.
- For example, based on the allegation discussed in the previous slide, a fact that causes the Panel to lean in favor of whether or not the Complainant was incapacitated is a fact of consequence.
- For example, whether the Complainant has gaps in their memories is relevant because it goes towards showing that the Complainant is more likely than not or less likely than so to have been incapacitated at the time the intercourse took place.

Objecting to irrelevant questions, evidence, and testimony

- Advisors are able to object to irrelevant questions, evidence, and testimony.
- Questions, evidence, or testimony that doesn't make a fact of consequence more or less probable are irrelevant.
- For example, in the scenario we've been using, asking the Complainant if they often drink in excess would likely be ruled irrelevant because it doesn't speak to whether or not they were incapacitated on the night in question.
- Advisors will be asked to voluntarily submit the questions they plan to ask during the Hearing ahead of time so the Hearing Panel can make relevancy determinations/objections beforehand.
- When an objection as to the relevancy of a question arises, the Advisor who posed the question can make an argument on the record as to why the question is relevant. The Hearing Panel will then decide in real time whether or not they will allow the question to be asked/answered. General Counsel will step in as support if needed.

Rape Shield Law

What is Rape Shield?

- In cases of alleged sexual misconduct, questioning about the Complainant's sexual disposition or prior sexual behavior are not relevant and will typically not be permitted, especially when the purpose is purely to show the Complainant's sexual predisposition.
- However, in certain circumstances it may be permissible, such as if offered to prove that someone other than the respondent committed the conduct alleged by the Complainant, or if 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. (Colo. Rev. Stat. SS 18-3-407(2011)).

What do they mean by "sexual predisposition?"

- Rape Shield limits the ability of the Respondent's Advisor to introduce the Complainant's sexual history as evidence during a Sexual Misconduct Hearing and therefore prevents the Complainant from being discredited by information that is not relevant to the Respondent's guilt or innocence.
- Evidence regarding the Complainant's sexual history such as the number of sexual partners they have had, the type of sex they have (outside of that which occurred directly with the Respondent), their reputation for having sex, is irrelevant because it goes purely to the Complainant's sexual predisposition in an attempt to discredit them.



Asking Trauma Informed Questions

Examples of Trauma Informed question formulation. (what to do and what not to do)

- ▶ <https://www.theiacp.org/sites/default/files/2020-06/Final%20Design%20Successful%20Trauma%20Informed%20Victim%20Interviewing.pdf>

Trauma Informed Interviewing Training

- ▶ <https://www.youtube.com/watch?v=gkElzJ2zKjA>

Building Rapport

Introductory Meeting

- ▶ TIXC will set up an introduction between Advisor and Advisee.
- ▶ Introduce yourself and your usual role at Regis.
 - ▶ Explain how you came to be at Regis. Ex. Where you are from. If you have family in the area.
- ▶ Ask the Advisee about themselves.
 - ▶ Where are they from?
 - ▶ Do they have people they've been able to talk to about what's going on?
 - ▶ If they say yes, ask who? What is their name? Are you close with them? Ex. Sometimes people confide in siblings. I often follow up with "oh that's great. Are they your older or younger sibling? Are you guys close? I have four siblings, how many do you have?" This small exchange builds rapport.

Explain your role as an Advisor and what the process will look like.
- ▶ Give your contact information and set up two follow up meeting dates for crafting the Opening Statement.

Rapport Building Tips and Tricks

- ▶ Don't be afraid to ask about them/their friends/families/hobbies and to share about yourself. These small moments help personalize their experience.
- ▶ It's okay to stray from talking about the case. It can help to start off meetings with asking how their day/weekend was. I often ask what they are doing for themselves to feel good throughout this time.
- ▶ It's okay to be light in tone during moments in these meetings. It's okay to make jokes or laugh with your Advisee.
- ▶ It's okay to acknowledge that these are stressful circumstances.
- ▶ It's helpful to get coffee or hot chocolate together for an initial meeting or for meetings that don't require extensive writing.
- ▶ Sometimes Advisors find out what their Advisee's favorite candy is and brings it to them. I've also seen Advisors meet with Advisees for lunch to check in on them.
- ▶ It's best to hold meetings in a private setting such as an office or conference room when working on case materials, such as the opening.

Consent

State Law

- ▶ Colorado Revised Statutes Title 18 Criminal Code 18-3-401 defines “consent,” in reference to sexual activity, as cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act.

Regis University Policy

- ▶ Regis’s Policy defines consent as “informed, freely given, and mutually understood.”
- ▶ Consent requires an affirmative act or statement by each participant. Consent is not passive.
- ▶ Regis uses an affirmative consent standard when determining if there was consent to engage in sexual activity of any kind. Consent is defined as the affirmative, actively given, unambiguous and voluntary agreement to engage in a specific sexual activity during a sexual encounter. To obtain consent, a clear “yes,” verbal or otherwise, is necessary.
 - ▶ Consent cannot be inferred from the absence of a “no.”
 - ▶ Consent to one form of sexual activity does not imply consent to other forms of sexual activity
 - ▶ A current or previous relationship shall not be sufficient to constitute consent
 - ▶ Consent can be withdrawn
 - ▶ Consent may never be given by a minor under the age of 15, or by a minor under the age of 18 in certain situations depending on the ages of both parties and in instances where the adult is in a position of trust.
 - ▶ Consent cannot be given by individuals who are asleep, or mentally or physically incapacitated either through the effect of drugs or alcohol or for any other reason.
 - ▶ Submission under the influence of fear shall not constitute. Consent may not be given by an individual who is under duress, threat, coercion, or force.
 - ▶ A person who initially consents to sexual activity is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent.
 - ▶ Consent to previous sexual activity does not imply consent to future sexual activity

OPENING STATEMENT

- 20 minutes
- Openings lay out the who, what, where, when, why, and how of what occurred.
- This is an opportunity for both sides to tell their perspective stories.
- Complainant's opening must state what the allegations/charges are and how they plan to prove them.
- What is the allegation? What evidence will the Complainant/Respondent show to prove or disprove each element? Ex. Complainant might say, "You will see (_____ evidence) to show (_____ element)." Whereas Respondent would say, "The Complainant will fail to show you (_____ evidence) and therefore can't prove (_____ element.)"
- For the Complainant: Describe what happened. Describe how you will show it. Explain how it has impacted you.
- For the Respondent: This is what is alleged. There is a presumption of innocence. Respondent does not have to speak and this should not be held against them during deliberations. The burden is on the Complainant to prove this happened by a preponderance of the evidence. This is how the Complainant will fail to show it that the standard of proof has been met.
- It is helpful to first meet with your Advisee and explain the requirements of the Opening Statement/its purpose.
- Prior to your second meeting, have your Advisee draft their opening statement and send it to you for review and editing.
- Once you receive the Investigative Report, reference your Advisee's Investigative Witness Statement. The opening should have similar facts and details to those contained within their Investigative Witness Statement. If there are inconsistencies, ask for clarification because these inconsistencies will likely be asked about by the opposing party during cross examination.

DIRECT EXAMINATIONS

- ▶ Any direct examination questions the Advisor asks of their own party member must be asked during the 20 minute opening prior to the questions asked by the Hearing Panel.
 - ▶ -For example, the Complainant's Advisor may ask them direct examination questions if the Complainant misses something during the opening so long as these questions don't surpass the 20 minute allotted time frame.
 - ▶ Direct questions can be leading or non-leading in these hearings.
 - ▶ Leading questions are questions that elicit a "yes" or "no" answer. Ex. "During your opening you said you were sleeping in your dorm room bed. You meant you were in the Respondent's dorm room bed, isn't that correct?"
 - ▶ Non-Leading questions are open ended, allowing the person testifying to fill in the space. Ex. "During your opening you said you were sleeping in your dorm room bed but in your witness statement submitted to the TIXC you said you were sleeping in the Respondent's dorm room bed, can you explain which bed you were sleeping in?"

Advisors may elect not to ask any direct examination questions if their Advisee covers everything they want them to say during their Opening Statement.

It's best to have your Advisee practice saying their opening statement aloud to you so you know what questions you might want to prepare to ask.

DIRECT EXAMINING PARTY WITNESSES

Each Advisor will have a TOTAL of 15 minutes to direct examine any of their witnesses and a TOTAL of 10 minutes to Cross Examine any of the opposing witnesses.

Format:

1. Advisor Direct Examines Complainant Witness One. (15 minute timer begins ticking).
2. Timer freezes and Hearing Panel gets to ask questions.
3. Respondent Cross Examines Complainant Witness One. (10 minute timer begins ticking).
4. (Same format continues for the rest of Complainant Witnesses and then time is refreshed and Respondent Witnesses begin with a new 15 minutes for direct examination and Complainant with a new 10 minutes for Cross Examination.)

Direct Examination question guide:

Identify what information each witness brings to the table. You're looking for testimony that either proves or disproves the elements of the allegations (based on whether you are the Complainant or Respondent Advisor respectively) or lends itself to either the Complainant or Respondent's credibility or lack thereof.

1. Start by asking the witness to introduce themselves and explain their relationship with the Complainant and/or Respondent.
2. Use the Investigative Witness Statement for each witness contained within the Investigative Report to get an idea of the testimony they have to offer and formulate direct examination questions. The goal is to guide them in testifying to what they know/what information they have about the allegations. If there are things you'd like to address within their testimony that aren't present in their Investigative Witness Statement, now is the time to do so.

CROSS EXAMINATION

Each Advisor will have a TOTAL of 10 minutes to Cross Examine any opposing witnesses.

Cross Examination questions should be leading. This means they should be asked in a way that elicits a “yes” or “no” answer.

Good cross questions are those questions that the Advisor already knows the answer to. Meaning, the witness said this in their signed Investigative Statement.

These questions are meant to reveal inconsistencies in the witness’s testimony or poke holes in their story/credibility.

Ex.) let’s say a witness takes the stand and states they don’t remember the Respondent saying anything to them that night about sleeping with the Complainant. However, in their investigative witness statement they say the Respondent asked them to leave so that he could “get some.” The Complainant Advisor should ask them on cross examination about this inconsistency. That questioning could look something like this:

- “You said today that you don’t recall the Respondent saying anything to you that night about sleeping with the Complainant, isn’t that correct?”
- “However, in your investigative report you stated the Respondent told you to leave so that he could get some, in reference to the Complainant. Isn’t that true?”

If the witness doesn’t know, the cross examiner can show them their Investigative Witness Statement to refresh their memory.

- “Would you like to see your statement to refresh your memory?”
- “Please refer to line _____ and read it silently to yourself.” (allow the witness to read it silently and once they look back up at you repeat the original question.)
- “Now do you recall the Respondent telling you to leave so that he could get some?”
-

Cross Examination question guide:

- Whether you are cross examining the Respondent, Complainant, or an opposing witness ask leading questions that you know or can anticipate the answers to.
- If you don’t get the answer you want, ask a follow up question. If you can’t get the response you want, know when it is time to move on to the next question
- These are people in stressful circumstances. No matter who you are cross examining be respectful. Berating witnesses or disrespect will not be tolerated.

CLOSING STATEMENT

- Each advisee has 10 minutes to present their Closing Statement.
 - Respondent closes first.
 - Complainant closes second.
- The Advisor aids Advisee in drafting and writing the closing statement.
 - Respondent:
 - Explain The Complainant's burden
 - Ex.) Complainant had the burden to prove _____ occurred by a preponderance of the evidence.
 - Explain how Complainant failed to meet their burden.
 - Ex.) They failed to show that because x, y, z. (highlighting what evidence they failed to present or how the evidence presented is insufficient).
 - Remind the Hearing Panel what they heard: You heard _____ witness who said x, y, z in favor of our side. You heard _____ witness who said x, y, z in favor of their side and _____ is why that witness is not credible or that testimony is insufficient.
 - Complainant:
 - State what the allegations are and the elements of each allegation. Remind the Hearing Panel what evidence you showed during the hearing that proves those elements.
 - Ex. You heard witness one state x, y, z which shows you that I could not consent to the following sexual act because x, y, z.
 - You can also address arguments from the opposing side. Ex. "You heard opposing party say _____ and they are arguing that disproves our evidence of _____". Here is why that argument doesn't disprove what we showed you.

DELIBERATIONS

The Hearing Panel will have five days to deliberate after the Hearing Adjourns and return a decision.

Advisors and Advisees will receive an outcome letter via email from the EO and Title IX Coordinator.

Upon receipt and should the outcome not satisfy, the Complainant or Respondent must submit an appeal request form within five days to the TIXC, opposing side, and the Provost or Dean of Students for review.

Either the Dean of Students or Provost will review the outcome and submit a written reply within five days to both the parties and the TIXC.

Title



EO AND TITLE IX ADVISORS

**THANK YOU FOR PARTICIPATING IN
OUR PROCESS.
YOUR WORK IS VERY IMPORTANT AND
YOUR EFFORTS ARE APPRECIATED.**