

# Title IX and Hearing Advisor Training

Jeff Lange, JD

Interim Director and Title IX Coordinator

ADA Coordinator

Office of Equal Opportunity and Access

# Title IX Hearing Advisor

- ▶ The new Title IX regulations require the University to appoint an Advisor to either or both the Complainant and Respondent at a live hearing
- ▶ This is only used when a party arrives at a hearing without an advisor of their choice
- ▶ This is the role you have volunteered to fulfill, when needed.
- ▶ This training will cover:
  - ▶ What is the University process prior to a hearing?
  - ▶ What are the expectations of this role at a hearing?
  - ▶ How do you manage potential conflicts of interest?
  - ▶ How to avoid bias?

# General Information

- ▶ Thank you for your willingness to serve in this important role
- ▶ These situations can be difficult for all parties involved
- ▶ Be familiar with campus and community resources for yourself and for the individual you are advising - these are available on the OEOA website
- ▶ Your role is vital to help ensure a fair and equitable process for the party you are advising
- ▶ Remember, they are going to rely on you at the hearing
- ▶ Be prepared to provide guidance to any party, whether Complainant or Respondent. You will be notified in advance of the party you will be advising.
- ▶ If you have questions prior to the hearing, please reach out to the Title IX Coordinator (NOT investigator) and ask them. We are here to help you as much as you are here to help our student

## Sexual Harassment - University Procedure 1.2(O)

Defined by federal law as the following:

- ▶ An employee of Illinois State University, including Laboratory School employees, conditions the provision of aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct; or
- ▶ Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it effectively denies a person equal educational access or
- ▶ Any instance of sexual assault as defined in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), and dating violence, domestic violence or stalking as defined in the Violence Against Women Act (VAWA).

# Sexual Harassment - University Policy

## 1.2(P)

### ▶ Sexual Misconduct/Violence

- ▶ Engaging in any act that is sexual in nature and which is committed without the full and informed consent of all persons involved. Examples of sexual assault/misconduct include, but are not limited to: any penetration of the mouth, vagina, or anus with any body part or other object; contact with a person's breasts, buttocks, groin, or genitals; touching another person with one's own breasts, buttocks, groin, or genitals; any other intentional bodily contact of a sexual nature, or; exposing one's intimate body parts to another person or persons.
- ▶ For purposes of this section informed consent must be freely and actively given through mutually understandable terms or actions. A person is deemed incapable of giving consent when that person is not of an age to legally give consent (i.e. juvenile, minor), mentally disabled, mentally incapacitated, physically helpless, incapacitated through the use of alcohol and/or drugs to the point of being unable to make an informed and rational decision, unconscious, or asleep. Informed consent cannot be obtained through physical force, compelling threats, intimidating behavior, or coercion. Consent cannot be derived based on: a lack of verbal or physical resistance, previous sexual relations between the same parties, consent provided to another party, previous or current sexual relations with other parties, or through the manner in which someone chooses to dress. A person always retains the right to revoke consent at any time during a sexual act. Attending an artistic or educational event or a class in which nudity occurs and for which advanced notice of nudity has been provided qualifies as informed consent.

# Continued

## ▶ Sexual Exploitation

- ▶ Engaging in any action that results in one or more persons taking nonconsensual or abusive sexual advantage of another person or persons. Examples of such behavior include, but are not limited to: invasion of sexual privacy; recording or broadcasting sexual activity, including redistribution of pictures, video, or audio; engaging in voyeurism; facilitating or allowing voyeurism without the consent of all parties; knowingly exposing another to a sexually transmitted disease; inducing another person or persons to commit an inappropriate sexual act, or; inducing incapacitation in another person with the intent to engage in sexual conduct, regardless of whether prohibited sexual conduct actually occurs.

# Continued

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

## ▶ Domestic Violence

- ▶
  - i. a current or former spouse or intimate partner of the alleged victim;
  - ii. a person with whom the alleged victim shares a child in common;
  - iii. a person who is cohabitating with, or has cohabitated with, the alleged victim as a spouse or intimate partner;
  - iv. a person similarly situated to a spouse of the alleged victim under the domestic or family violence laws of the State of Illinois; or
  - v. any other person against an adult or youth alleged victim who is protected from that person's acts under the domestic or family violence laws of the State of Illinois.

# Continued

## ▶ Stalking

- ▶ Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for the person's safety or the safety of others; or (ii) suffer substantial emotional distress.
- ▶ For the purposes of this definition (i) course of conduct means two or more acts, including, but not limited to, acts 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. (ii) Substantial emotional distress means significant mental suffering or anguish that may, but may not necessarily, require medical or other professional treatment or counseling.

# Retaliation - University Policy 1.2(Q)

- ▶ The University will not tolerate retaliation against students, employees, or faculty members who exercise their rights by filing a complaint with or participating in a protected investigation. Any action, or attempted action, directly or indirectly, against any person(s), who, in good faith, reports or discloses a violation of this policy, files a complaint, and/or otherwise participates under this policy. Retaliation includes, but is not limited to harassment, discrimination, threats, or negative impact on employment and/or academic progress. Actions are considered retaliatory if they have a materially adverse effect on the working, academic, or living environment of a person; or if they hinder or prevent the person from effectively engaging in University activities and programs. Any person or group within the scope of this policy who engages in retaliation is subject to a separate charge of retaliation.

# University Program or Activity

- ▶ For Title IX purposes, the University will only have jurisdiction over a matter if the alleged conduct occurred as part of a University program or activity
- ▶ Program or activity is defined as the following:
  - ▶ Locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context of the harassment
  - ▶ Buildings owned or controlled by a recognized student organization, such as fraternities and sororities
- ▶ Allegations that are not a part of a University program or activity are subject to mandatory or permissive dismissal for Title IX purposes, pursuant to University Policy 1.2.
  - ▶ Please understand that the case may still move forward under other University policies.

## Overview of University process for Investigating complaints under University Policy 1.2 (O) and (P).

- ▶ Formal complaint is received, reviewed, and assigned to investigator and it is determined the conduct was part of a University program or activity
  - ▶ Supportive measures offered
- ▶ Complainant and Respondent both notified of OEOA investigation with the following information:
  - ▶ Alleged violations of the policy, and when applicable, alleged violations of the Code of Student Conduct
  - ▶ Supportive Measures
  - ▶ Identities of the parties
  - ▶ A summary of the conduct at issue. This includes when and where it allegedly occurred, if known
  - ▶ The potential specific violations
  - ▶ The Respondent will be informed they are presumed not responsible for the alleged conduct and that a determination regarding responsibility is not made until the conclusion of the complaint process
  - ▶ If during the investigation there is evidence obtained or disclosed that establishes additional potential violations, the Respondent will be informed in writing at the time.

# Continued

- ▶ Complainant provided an opportunity to interview with the Investigator
- ▶ Respondent provided notice of opportunity to interview with Investigator and any additional information.
- ▶ Gather evidence from both parties, and any additional evidence reasonably available to the University as noted on prior slide
- ▶ Both parties and any witnesses interviewed provided a draft copy of statement to provide relevant and appropriate feedback
- ▶ Both parties provided an opportunity to review all evidence gathered during the investigation (10 University business days to review)
- ▶ Both parties provided draft investigation report and relevant evidence (10 University business days to review and provide feedback)
- ▶ Both parties provided final investigation report prior to formal hearing.
- ▶ Parties will attend a pre-hearing meeting with a member of the hearing panel to discuss the hearing process.
- ▶ When appropriate, the parties may be permitted and must give written consent to attend an Informal Resolution Conference to informally resolve prior to the hearing.

# University Hearing - University Procedure 1.2.2

- ▶ Formal hearing convened with the following members: SCCR (chair of the hearing panel), OEEOA representative (not the investigator), an unbiased and appropriately trained volunteer that is either faculty or staff at the University.
  - ▶ Closed to the public and audio recorded
  - ▶ Advisor of their choosing. If a party does not have their own advisor, the University will provide an advisor, without fee or charge, to conduct cross-examination
  - ▶ Cross-examination will be conducted directly, orally, and in real time by the advisor and never by the party personally. Before a party or witness answers a question, the decision-makers must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If deemed irrelevant, a party's advisor may challenge the decision to exclude the questions based on relevance.
  - ▶ All questions, including those that challenge credibility, must be relevant and appropriate
  - ▶ Must adhere to the relevancy parameters in previous slide.
  - ▶ Hear information presented on behalf of both parties and all individuals appearing at a hearing are subject to questioning by advisors and decision-makers.
  - ▶ If a party or witness does not submit to cross-examination at the hearing, the decision-makers must not rely on any statement of that party or witness in reaching a determination regarding responsibility.

# Continued

- ▶ At the request of either party, the audio recording of the hearing will be made available to them for their inspection and review.
- ▶ Hearing panel members (decision-makers) will deliberate and reach a decision, by majority.
  - ▶ The decision on the basis of whether there is a preponderance of information the Respondent violated each cited University regulation and will include the findings of fact, conclusions if the conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed, and whether remedies will be provided to the Complainant
- ▶ The written determination will be emailed simultaneously to the parties no later than seven (7) University business days after the hearing. This may be delayed if the panel needs additional time to review the information provided at the hearing and the parties will be notified.

# Appeals

- ▶ Both parties have a right to appeal the outcomes of cases, except when waived. Ten (10) calendar days to request from the date of delivery of the decision.
- ▶ The Dean or designee will review the request and relevant information to ensure criteria is met and may invite the appellant to provide additional information. The Dean will respond within ten (10) University business days of receipt. If the appeal is denied, the matter is considered closed. If an appeal hearing is granted, the appeal hearing will occur within ten (10) University business days.
- ▶ The Dean's Appeal Board, convened by the Assistant Vice President/Dean of Student's Appeal board shall be faculty and staff members recruited and selected by the Assistant Vice President/Dean of Students.
- ▶ Will consist of three members, including the AVP/Dean of Students as the chair of the hearing. All of which that have been specifically trained to hear Title IX related appeals.
- ▶ The Dean's Appeal Board makes a recommendation to the President or designee who makes the final decision on all appeals.

# Appeals Continued

- ▶ Appeals are not re-hearings and only serve to review the conditions within which a case was resolved.
- ▶ The burden rests with the appealing party to establish that the original hearing and/or decision was improper and the appeals board will give deference to the original decision, unless by a preponderance of the information it is shown the appellant was deprived of a fair process. They shall not supplant their judgment over the decision of the original hearing body without cause.
- ▶ The criteria for filing an appeal
  - ▶ Procedural irregularity - the appellant contends that a substantive error was committed as a part of the student conduct process that affected the outcome of the case
  - ▶ Newly Discovered Information - the appellant contends that there is newly discovered information that was unavailable to the appellant at the time of the original proceeding, and that this information could affect the outcome of the proceeding. The student must include the new information with the appeal. These criteria may not be utilized by students who choose or fail to attend or participate in the original proceeding they are appealing.
  - ▶ Disproportionate Sanction - the appellant is contending that the sanction is not appropriate for the finding of the case
  - ▶ Conflict of Interest or Bias - Title IX personnel and/or decision makers had a conflict of interest or bias that affected the outcome of the proceedings.
- ▶ Written findings of the appeal will be communicated to all parties within ten (10) business days of the decision.

# Your Role as an Advisor

- ▶ Only used when a Party notifies the University they will not have an Advisor present at the hearing or arrive at the hearing without an Advisor
- ▶ If a Party indicates they will not be bringing an Advisor of their choice, a number of Advisors will be notified of the upcoming hearing and their availability
- ▶ The Party will be provided with a list of 5 names and roles of Advisors and will be permitted to select or request the University select an Advisor
- ▶ The Advisor will be notified as soon as possible if they are selected and will provided the relevant materials to serve in the role
  - ▶ Investigation Report
  - ▶ Relevant Evidence
  - ▶ Contact information for the Party

# Your Role Continued

- ▶ If you agree to serve as an Advisor, you must be available for the date and time of the hearing (Unless you become unavailable for unforeseen circumstances such as illness, family emergency, etc.)
- ▶ A number of Advisors that are not selected will be asked to hold their calendars in the event there is a cancellation, or a party originally indicated they were bringing their own Advisor and arrived at the hearing without an Advisor.
- ▶ If you are appointed as an Advisor on the day of the hearing, you will be permitted time to meet with the party in private (in a separate physical space or private meeting room on Zoom) and have an opportunity to review materials

# Your Role at the Hearing

- ▶ You are the Advisor to the party
- ▶ You will be able to confer with that party throughout the hearing
- ▶ Your primary role will be to conduct cross-examination of the other party and witnesses
  - ▶ Asking questions of the other party and witnesses directed by the party you are advising
  - ▶ Asking questions you may have based on the investigation report
- ▶ The panel of decision-makers will determine if a question is relevant and appropriate prior to a party answering, and will inform you of such determination
  - ▶ You, as the advisor, can challenge their determination

# Relevance of Evidence

- ▶ All evidence that is used to render a decision must be relevant and appropriate
- ▶ Relevant information can be both inculpatory and exculpatory (covered on later slide)
- ▶ Both parties have the right to provide relevant information, including but not limited to identifying fact and expert witnesses
- ▶ The Investigator **MUST** gather other relevant information reasonably available to the University. This includes but is not limited to, documents, photographs, social media, communications between the parties, and other electronic records as appropriate
- ▶ In general - medical and counseling records are confidential, unless they are voluntarily shared with the Investigator. Any information from medical records that is confidential and/or irrelevant must be redacted by the PARTY. The Investigator, when relevant and appropriate, will summarize the medical records in the preliminary report to be shared with both parties.
- ▶ **Cross-examination in a live hearing MUST exclude evidence of the Complainant's sexual behavior or predisposition, unless such evidence about the Complainant's sexual behavior is offered to prove that someone other than the Respondent committed the conduct, or if the evidence concerns specific incident of the Complainant's sexual behavior with respect to the Respondent and is offered to prove consent.**

# How to Serve Effectively as an Advisor

- ▶ Make sure that you do not have a conflict of interest with any party involved (advising a student that the other party is a student in your class, staff, friend, partner, etc.)
- ▶ Remember, the Respondent is presumed not to be in violation
- ▶ Be open to any and all evidence as presented
- ▶ Understand the evidence is considered equally, including inculpatory and exculpatory evidence
  - ▶ Inculpatory is evidence is used to show the Respondent may be responsible.
  - ▶ Exculpatory is evidence used to show the Respondent may not be responsible.
- ▶ Listen intently to the party you are advising and all individuals at a hearing in order to conduct cross-examination
- ▶ If you believe you are not capable of serving impartially on a particular matter, notify OEQA immediately to be removed from serving as an Advisor on a particular matter

# Tips for Hearing Preparation and Questioning

- ▶ Be prepared with some of the questions you want to ask prior to the start of the hearing
- ▶ Discuss what questions the party you are advising may have
- ▶ Frame your questions to be easily understood by the other party and decision-makers
- ▶ Be prepared in case you are asked to rephrase the question
- ▶ Be familiar with the hearing procedures and ask questions if you do not understand
- ▶ Listen intently to others asking questions and take notes of follow-up questions you or the party you are advising may want to ask

# How to Avoid Bias and Conflicts of Interest

- ▶ Be aware of any preconceived notions you have about matters of sexual harassment
  - ▶ Stereotypes related to gender roles - “Males are always respondents” and “Only females can be victims of dating violence and sexual assault”
  - ▶ Educate yourself on issues of conscious and unconscious bias through internal and external sources - Health Promotion and Wellness, Student Affairs, Diversity Advocacy, University Speakers
  - ▶ When you believe you may have a conflict of interest- immediately notify the Title IX Coordinator to discuss. Do not put yourself and the University in a position that leads to an unfair and biased process
  - ▶ Educate yourself on all aspects of the University process and Title IX requirements to understand the rights and responsibilities afforded to all parties. When you have questions, reach out to the Title IX Coordinator and ask.
  - ▶ Look externally and internally for opportunities related to Diversity, Equity, and Inclusion to address potential bias.

# Practice Session (facts covered by trainer)

- ▶ What is your first step after hearing the facts?
- ▶ What would you discuss with the party you are advising?
- ▶ What questions do you think you may want to ask the other party or witnesses?
- ▶ Are there questions you think you want to ask but are not sure how to frame?
  - ▶ This is a good opportunity to discuss framing questions if you have any
- ▶ Any other questions?

## Posting of Training and Records Retention

- ▶ This training will be publically shared and posted on the Office of Equal Opportunity and Access Website
- ▶ A copy of this training will be retained for seven (7) years.
- ▶ Investigators, decision makers, and the Title IX Coordinator must receive eight (8) hours of training annually.