



Working with Advisors in the Title IX Process

Bricker 
Graydon
Title IX In Focus
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Presenter – Jessica Galanos

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Presenter – Kristi Patrickus

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Disclaimers

We can't help ourselves. We're Lawyers.

- We are not giving you legal advice.
- Consult with legal counsel regarding specific situations.
- You will receive slides for today's presentation after we've concluded.

And another one...

Specific to the Title IX In Focus Webinar Series

- The 2020 Title IX regulations require training on several specific subjects
- While the Title IX In Focus webinar series will discuss some of the required subject matter, none of these one-hour webinars will cover all of the material required for Title IX training compliance
- Work with your TIXC to make sure that you are trained in accordance with Title IX, Clery, and any applicable state law

Can We Post These Materials?

YES – Post away!

Institutions are required by §106.45(b)(10)(i)(D) to post materials used to train Title IX personnel on its website.



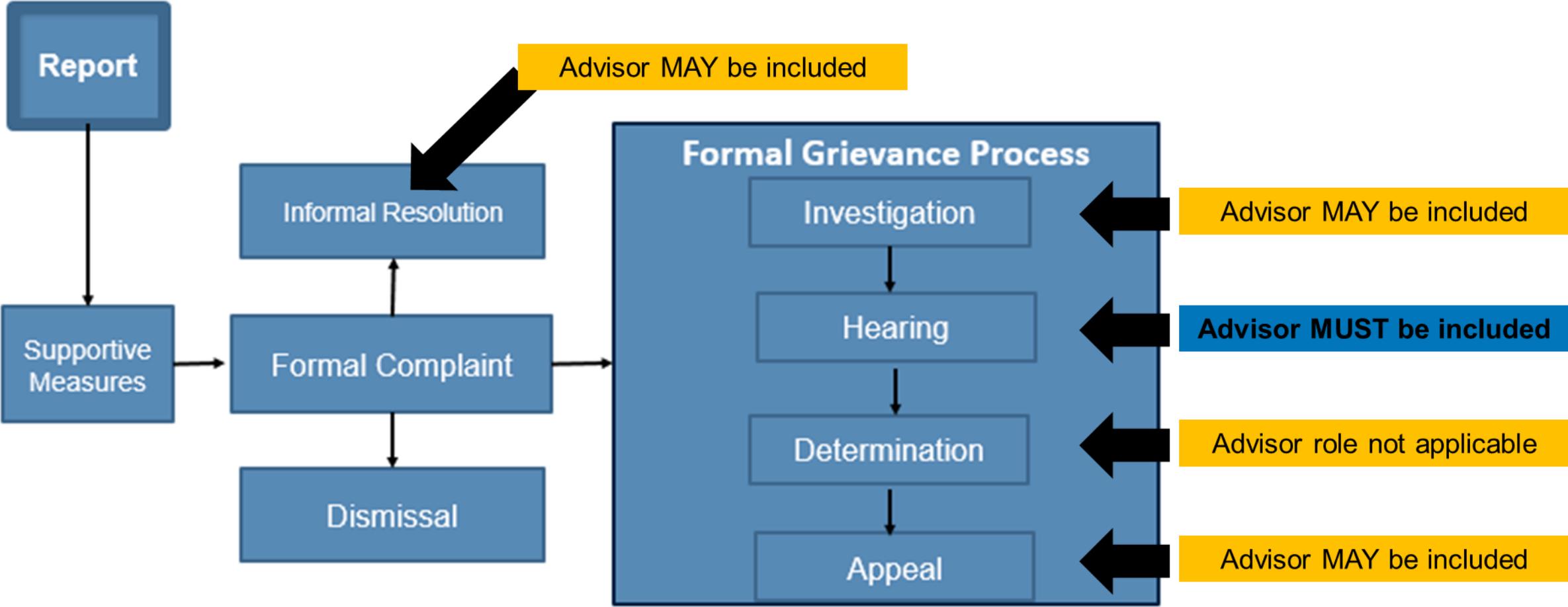
Agenda

- Overview of Advisors in the Title IX Process
- Discussion of Cross-Examination
- Things that Title IX Coordinators, Investigators, and Hearing Officers want Advisors to understand
- Things that Advisors want Title IX Coordinators, Investigators, and Hearing Officers to understand

Key Points about the Advisor Role

- Under the Title IX Regulations, there are NO training requirements for advisors
 - However – given the importance of their role at Hearings, training advisors is generally a good idea
- Bias on the part of advisors is REQUIRED
- May play a role in intake, investigations, and appeals, but
- MUST play a role in Title IX Hearings
 - Cross-examination of parties and witnesses on behalf of the parties they advise
- Remember – rules of evidence don't apply
- Remember – decorum rules can and will be enforced

Overview of the Process



Intake and Investigative Interviews

- Parties may have advisors present during the grievance process, including an advisor of choice who may or may not be an attorney
 - Advisors may be asked by the party to prepare for investigative interviews, sit with them for interviews, and/or review interview summaries or transcripts
 - Advisors may be asked to review draft reports/evidence and help formulate a response

Informal Resolution

- Not required, but may be helpful
- Can assist with evaluating options for agreement
 - Less emotional involvement
 - May have training in mediation or conflict resolution
 - May or may not be an attorney with experience settling matters for clients

- Part of the process that requires Advisors
- If a party does not have an Advisor, the Title IX regulations require that the institution provide one
- Primary duty under the Title IX regulations is cross-examination/questioning at the Hearing
 - May or may not be allowed to question their own party
 - May or may not be allowed to assist/present opening or closing statements

- Advisors conduct cross-examination, meaning they ask questions on behalf of their party to the other party.
- Purpose: redefine the story/add context; impeach credibility, knowledge, or recollection; obtain admissions or concessions; introduce additional evidence; cause the jury to dislike or mistrust the witness; make the jury believe the facts of the party doing the cross-examination; preview closing arguments.
 - Not entirely helpful in a Title IX context.
- Attorneys are trained in this particular skill set and it's hard to get this training if you aren't an attorney.
 - Rule #1: don't ask a question you don't already know the answer to.

What TIXCs, Investigators, and DMs want Advisors to Understand (1 of 3)

- No need for direct examination or to lay a foundation
 - Starting from the Investigation Report
 - Very different than a trial
 - Good Decision-Makers will know the materials well and be prepared for questioning

What TIXC, Investigators, and DMs want Advisors to Understand (2 of 3)

- There's no jury here – just me
 - Surprises usually aren't allowed
 - Not at all like Matlock
 - Sarcasm and jokes may not work

What TIXC, Investigators, and DMs want Advisors to Understand (3 of 3)

- I genuinely want to understand why your question is relevant
 - Objections may not be allowed, but a lot of Decision-Makers will want to hear from you about relevance
 - Be prepared to explain
 - Bonus points for citing to policy or procedures
 - Remember, the Rules of Evidence don't apply

What Advisors Want TIXC, Investigators, and DMs to Understand (1 of 3)

- Outside attorney skills and job duties are very different from Title IX advising work.
 - There isn't an equivalent legal area that aligns with Title IX advising work, so, we really don't know what to expect unless you tell us.
 - Cross-exam purpose, amount we can or cannot act on behalf of a client, etc.
 - We need to know YOUR process; we need the education even if we aren't required to have it under the Regs.

What Advisors Want TIXC, Investigators, and DMs to Understand (2 of 3)

- We are not intentionally adversarial; sometimes, we have to say or do things to preserve arguments off-campus.
 - *Jacob Doe v. Virginia Polytechnic Institute and State University*, No. 22-1971 (4th Cir. 2023)
 - If we do or say something that is obviously not something you would allow or something that doesn't make sense, it may have a purpose beyond this particular case.

What Advisors Want TIXC, Investigators, and DMs to Understand (3 of 3)

- We are required to be biased for our clients, which might not make your job easier.
 - We may tell a respondent to not interview until the first 10-day review.
 - We may tell a respondent not to speak at all if their off-campus implications are worse than their potential on-campus sanctions.
 - Ex: Measure 11 Offenses, Oregon

Upcoming Title IX In Focus Webinars

- All of these are free and held at 12:00 p.m. CT/1:00 p.m. ET
- Sign up at www.brickergraydon.com/events
 - October 30th – Weighing the Evidence in Sexual Violence Cases
 - November 20th – Title IX Litigation Update
 - February 26th – Informal Resolution
 - March 26th – Transferrable Skills for Title IX and Title VI Investigators
 - April 23rd – Legal History of Title IX
 - May 28th – Title IX Litigation Update

Upcoming Higher Ed Webinars

All of these are free and held at 11:00 p.m. CT/12:00 p.m. ET

- Oct. 15th – Campus Employment Law
- Dec. 12th – Clery Hot Topics
- Feb. 11th – Federal Grants and Sponsored Research
- March 6th - Athletics Hot Topics
- April 8th – The Intersection of Higher Ed and Copyright

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