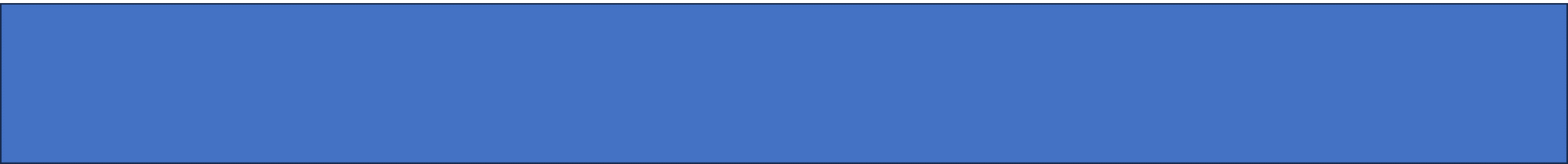


# Title IX Advisor Training 2025

## CCSNH



# The Role of The TIX Advisor

- **This role DOES:**

- Helping your advisee understand the policy
- Helping ensure that your advisee is participating in the most effective way
- Supporting your advisee during an emotionally difficult time
- Ensuring the Title IX Staff are following procedure

- **This Role DOES NOT:**

- Representing your advisee or telling their story for them

# CCSNH TIX Policy

- Sex Discrimination, Sex-Based Harassment, Sexual Misconduct, and Retaliation Policy - online
- Intakes – community members can report to a mandatory reporter (all employees) directly to the TIXC, or via online reporting form
- TIXC meets to discuss options & potential process – advisor may come in at this early stage
  - Don't promise what you cannot provide
  - If you don't know the answer to a question, let them know you will get the answer. Don't give your best guess
  - When someone discloses, stay future focused. What do they need? How can you help?
  - Don't investigate - Let the student share what they want, but let the investigator ask the investigative questions

# Supportive Measures

- Mutual No Contact Orders restricting communications between the parties – campus specific only
- Academic accommodations, including but not limited to deadline extensions, excused absences, incompletes, course changes or late drops, or other arrangements as appropriate
- Residential accommodations, including but not limited to arranging for new housing, or providing temporary housing options, as appropriate
- Changing transportation, working arrangements, or providing other employment accommodations, as appropriate
- Campus escort services and safety planning steps
- Assisting the individual in accessing support services, including, as available, victim advocacy, academic support, counseling, disability, health or mental health services, visa and immigration assistance, student financial aid services, and legal assistance both on and off campus, as applicable
- Informing the individual of the right to report a crime to local law enforcement and/or seek orders of protection, restraining orders, or relief from abuse orders

# Investigative Procedure 1<sup>st</sup> Stages

- Report received - TIXC reaches out to complainant to explain process, offer supportive measures, and explain resolution options.
- Complainant requests confidentiality/declines to file a formal complaint
  - TIXC determines whether to launch
- If no formal response is requested or required, case is closed, supportive measures are continued.

OR

- Formal resolution initiated/TIXC or complainant files a formal complaint
- NOAI sent to all parties
- Title IX Coordinator meets with respondent for intake meeting
- Informal Resolutions may be pursued after this point, with written consent of all parties upon approval by the TIXC
- If a condition prompts dismissal, the formal complaint may be dismissed.
  - If an appeal occurs, appeals officer determines whether the appeal should be reinstated. If no appeal, case is closed or complaint reinstated under TIX policy or other relevant College policy.

# Informal Resolutions

- Reports that fall within the scope of this policy may be resolved without a formal investigation and resolution process, in one of two circumstances, as follows:
  - When the parties agree to resolve the matter through an alternate resolution mechanism; or
  - When the respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process.

# Report vs. Formal Complaint

- A report is a notification of any type, with a variety of information made to the Title IX Office via a mandatory reporter, the online reporting form, or an email or call to the Title IX Coordinator
- A Formal Complaint is a specific document that includes sufficient information about the allegations that has been signed by the Complainant or the Title IX Coordinator that launches an informal or formal resolution
- Title IX is not a verb, & being reported is not the same as being investigated.
  - If a formal complaint is filed, the respondent WILL be notified with an NOAI

# Investigative Procedures 2<sup>nd</sup> Stage

- Investigator is appointed and parties are notified
- Parties and witnesses are interviewed, evidence is gathered
- Investigator begins working on investigative report
- Follow-up interviews may occur
- Draft investigative report is shared with all parties, along with all relevant evidence, 10 days for comment period
- Investigator finalizes report, including incorporating any necessary changes or additions based on the comments from the parties
- TIXC reviews the investigative report to ensure completeness, report sent to all parties
- TIXC initiates appropriate resolution procedure



# Comment Period

- 10 business days for review & submission of comments – not required
- Parties should review the report for the following
  - Was everyone the party wanted interviewed, interviewed?
  - Does the party want any other questions asked of any other party or witness?
  - Does the party want to submit any other evidence for the investigator to review?
  - Has the investigator sorted all of the evidence correctly?

# Evidence

- Investigators will only consider **relevant evidence**:
  - evidence which may aid in determining whether an allegation occurred or whether the behavior constitutes a violation of policy.
- Investigators will not consider **impermissible evidence**, including:
  - Questions and evidence about the complainant's sexual predisposition or prior sexual behavior (unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged or if questions/evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent)
  - Information protected under a legally recognized privilege (such as privileged communications between parties and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity or privileged communications between a party and their attorney) unless the person holding such privilege waives the privilege.
  - Previous disciplinary action of any kind involving the respondent may not be considered unless there is an allegation of a pattern of related misconduct. This information of pattern can also be considered when determining an appropriate sanction. Investigations and determinations can consider character evidence, if offered, but that type of evidence is unlikely to be relevant unless it is fact evidence or related to a pattern of conduct.

# Privileged Information

- Unless permission is given, privileged information is impermissible
- Records made or maintained by a
  - Physician
  - Psychiatrist
  - Psychologist
- Questions or evidence that seek disclosure of information protected under a legally recognized privilege must not be asked without permission
- \*\*Anything you submit can be seen & questioned by the opposing party, so think carefully about what evidence you want to submit

# Unauthorized Disclosure vs. Gathering Evidence

- Unauthorized Disclosure is a TIX policy violation:
  - Distributing or otherwise publicizing materials created or produced during an investigation or resolution process except as required by law or as expressly permitted by the College or publicly disclosing a party's personally identifiable information without authorization or consent.
- This does not restrict either party from obtaining and presenting evidence or restrict them from speaking to witnesses (as long as it does not constitute retaliation under this policy), consult with their family members, confidential resources or advisors, or otherwise prepare for or participate in the resolution process.

# Formal Hearing Process

- Investigative report completed and sent to parties
- TIXC appoints a decision maker, and notifies parties of the decision maker's appointment
- TIXC sends the investigative report, relevant evidence, and any responses from the parties to the decision maker
- TIXC schedules the live virtual hearing
- Parties are invited to submit relevancy arguments to the decision maker, who will make a pre-hearing determination on them, may also submit to the decision maker a written statement that identifies the facts they dispute and questions they believe the decision maker should ask of the parties and/or witnesses
- Live virtual hearing occurs, parties may make closing statements
- Decision maker deliberates and sends the TIXC a letter of outcome based on a preponderance of the relevant evidence.
- If the respondent is found responsible, sanctions will be assigned in letter of outcome
- TIXC will send outcome letter to all parties
- Parties may appeal, appeal process initiated

# Not Attending the Hearing

- Any party or witness may choose not to offer evidence and/or answer questions at the hearing either because they do not attend or because they attend but refuse to participate in some or all of the questioning.
- The decision maker can only rely on whatever relevant evidence is available through the investigation and hearing in making ultimate determination of responsibility.
- The decision maker may not draw any inference solely from a party or witness's absence or refusal answer questions.

# Prepping your Advisee for the Hearing

- Have a way to communicate with your advisee set up prior to the hearing (text/email/messaging)
- Help your advisee draft their questions to submit to the decision maker for the other party as well as any witnesses
- Help your advisee strategize how they will react to having to answer difficult questions
- Let your advisee know they are not required to participate in any/all of the hearing if they choose not to

# The Hearing

- TIXC or other staff may be hearing facilitator
- Other college TIXCs may act as decision maker, but never the assigned TIXC or any staff who has had any involvement with the case
- Hearings are recorded, may be reviewed upon request
- Introduction of new evidence
  - Any witness scheduled to participate in the hearing must have been first interviewed by the investigator unless all parties and the decision maker agree to the new witness's participation in the hearing. The same holds true for any evidence that is first offered in the pre-hearing statement made to the decision maker. If both parties and the decision maker do not assent to the admission of a new witness or newly offered evidence at the hearing, the decision maker has the discretion to delay the hearing to allow parties to review the new evidence or instruct that the investigation be re-opened to include that evidence if deemed relevant and permissible.



# Order of Hearing

- Hearing Facilitator will review rules & schedule
- Opening statements by parties (not advisors)
- Decision maker will ask their questions as well as relevant submitted party questions (submitted pre-hearing) to each party
- Decision maker will then ask their questions as well as relevant submitted party questions to any witnesses
- After the decision maker asks questions of each party/witness, the hearing facilitator will offer a short recess for the parties to confer with their advisors & submit any additional questions to the decision maker
  - The decision maker will briefly deliberate during the recess to determine relevance
- Closing statements by the parties (a short recess may be permitted to prepare with advisor)

# Decision Maker Questioning vs. Advisor Questioning

- 2020 TIX regulations has cross-examination done by advisors
- 2024 regs allow for decision maker questioning, less pressure on parties
- Given current election results, could revert back soon & advisors will be required to complete the questioning
  - Decision maker would still determine the relevancy of these questions

# Letter of Outcome

- The letter of outcome will contain a comprehensive breakdown of the investigative report & all information gathered from the hearing
- Investigative reports do not contain conclusions as to whether or not a policy was violated or as to whether or not a party was or was not credible.
- Facts will be outlined showing that someone's statements or provided evidence should be considered more or less credible, but that credibility is not about the person over all but should instead be considered on a fact-by-fact basis.
- This will all be evaluated & determined by the decision maker in the letter of outcome

# Credibility

- Sometimes a party or witness may say something that is not consistent with something else they have said, sometimes different witnesses will give different versions of what happened.
  - People may forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.
- However, if you decide that a party or witness has deliberately testified untruthfully about something important, you may choose not to believe anything the witness said. On the other hand, if you think the witness has testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.
- Number of witnesses who testify is not always significant - what is important is how believable the witnesses were, and how much weight you think their testimony deserves.

# Crafting Questions

- You can help your advisee by focusing on any inconsistencies/credibility issues they saw from the opposite party/witness in the investigative report or additional evidence they find to be compelling
- Focus on the policy & relevant definitions
- Closed vs. open ended questions
  - Did you know vs. How did you know?
  - Did you see that? vs. What happened?
- Usually helpful to avoid “why” questions, people may not know & struggle to answer. Instead ask “Please tell me more about that”

# Keeping your Advisee on Track

- Keep your advisee on track & relevant
- Stay focused on the facts, and on what is related to the policy
  - Ask questions that help a decision maker see if a policy element was/was not met
  - Ask questions that help a DM see whether or not a fact should have more or less weight due to the credibility of the party/witness/technology/source providing it
- If it seems like your advisee is in an emotionally turbulent place, potentially encourage them to reach out to the Counseling and Wellness Center – or connect them with the TIXC for additional resource connections
- Your advisee should be asking clarifying questions, they do not need to rehash the whole report

# Appeals Process

- Parties have 5 days to submit appeal in writing to TIXC
- TIXC will appoint an appeals decision maker to determine if the appeal has grounds
- If request does not meet grounds, will be dismissed
- If accepted, appeal decision maker will review relevant portions of the case
  - An appeal is typically confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds.
- Grounds for Appeal
  - Dismiss the appeal for failure to meet the grounds of appeal, therefore upholding the initial outcome and sanctions (if applicable).
  - Remand to the investigator or decision maker with specific instructions on the remanded issue(s)
    - In rare circumstances where an error cannot be cured by the original investigator, decision maker, and/or Title IX Coordinator (in cases of bias), the appeal decision maker may order a new investigation and/or determination with new members serving in the affected roles.
  - Modify the outcome and/or sanction with a rationale supporting the modification.
- Appeal decision maker decision is final

# Final Notes

- You are not confidential. If the student reports additional violations to you, you will need to share that.
- You can still be served a subpoena for a criminal or civil process and this role will not provide any confidentiality or privilege.
- You are not legal counsel
- You are not required to be the advisor for a student who asks you to
- If there is a concurrent legal process, you are not expected to be the advisor for that process or to provide advice to the student for that process. Nothing in this training is necessarily true for the criminal process and should not be interpreted as such.