



## **Decision-Maker Determination Regarding Responsibility Checklist**

- ☐ Identification of the Allegations

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- ☐ Description of Procedural Steps Taken
  - Notifications to the Parties
  - Interviews with Parties and Witnesses
  - Site visits
  - Methods used to gather other evidence
  - Hearings held

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- ☐ Findings of Fact Supporting Determination

---
- ☐ Conclusions Regarding the Application of the Code of Conduct to the Facts

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- ☐ Result of Each Allegation Including Rationale
  - Determination Regarding Responsibility
  - Disciplinary sanctions
  - Whether remedies designed to restore or preserve equal access to education program or activity provided to the Complainant

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- ☐ Procedures and Permissible Bases for Appeal

# Investigation Flow Chart

## Notice of Allegations

### Investigation

Notice to parties of all meetings and  
interviews with time to prepare

### Review

Opportunity for parties to inspect, review,  
and respond to all evidence directly  
related to allegations- relevant or not  
Written Response: 10 days

### Investigative Report

- Considers responses to evidence
- Determines what evidence is relevant
- Summarizes the relevant evidence
- May include recommended finding

### Review

Opportunity for parties to review the  
investigative report. Can provide written  
response  
10 days

## Hearing



# Notice of Allegations Checklist

- ☐ **Notice of Grievance Process; Including Informal**

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- ☐ **Allegations Potentially Constituting Sexual Harassment**
  - Identities of the Parties
  - Conduct Constituting Sexual Harassment
  - Date of Incident
  - Location of Incident

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- ☐ **Statement: Respondent Presumed Not Responsible/Responsibility Determined After Process**

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- ☐ **Right to Advisor of Choice**

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- ☐ **Code of Conduct Provision Prohibiting False Statements or False Information in Process**

HIGHER EDUCATION



# TITLE IX ADVISOR

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# LESSON ONE

INTRODUCTION AND OVERVIEW



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# AGENDA



- Lesson One** Introduction and Overview
- Lesson Two** Title IX Process: Generally and Investigations
- Lesson Three** Process: Hearings and Appeals
- Lesson Four** Role of Advisor
- Lesson Five** Hearing: Questioning and Unique Circumstances
- Lesson Six** Closing Thoughts and Assessment




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# COURSE OBJECTIVES



- Understand the law and regulations
- Explain Title IX formal grievance process
- Understand your role in the formal Title IX grievance process



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# REMINDERS!!!

-  Title IX is about access
-  Entitled to an advisor during the entire process, but you may not be involved until the hearing
-  Review conduct and jurisdiction from Intro course
-  Title IX team




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## TITLE IX APPLIES TO:



- 01** Student on student
- 02** Employee on employee
- 03** Student on employee
- 04** Employee on student



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**SEE YOU IN LESSON 2!**



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# LESSON TWO

**TITLE IX PROCESS: GENERALLY, AND INVESTIGATIONS**



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# TITLE IX TEAM



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# LANGUAGE



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# TERMINOLOGY



- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Complainant         | <input checked="" type="checkbox"/> Witnesses  |
| <input checked="" type="checkbox"/> Respondent          | <input checked="" type="checkbox"/> Title IX Coordinator<br>/Investigator/<br>Decision-Maker |
| <input checked="" type="checkbox"/> Advisor vs Advocate |  |



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# CAMPUS PROCESS



Title IX Process



Not Criminal Process



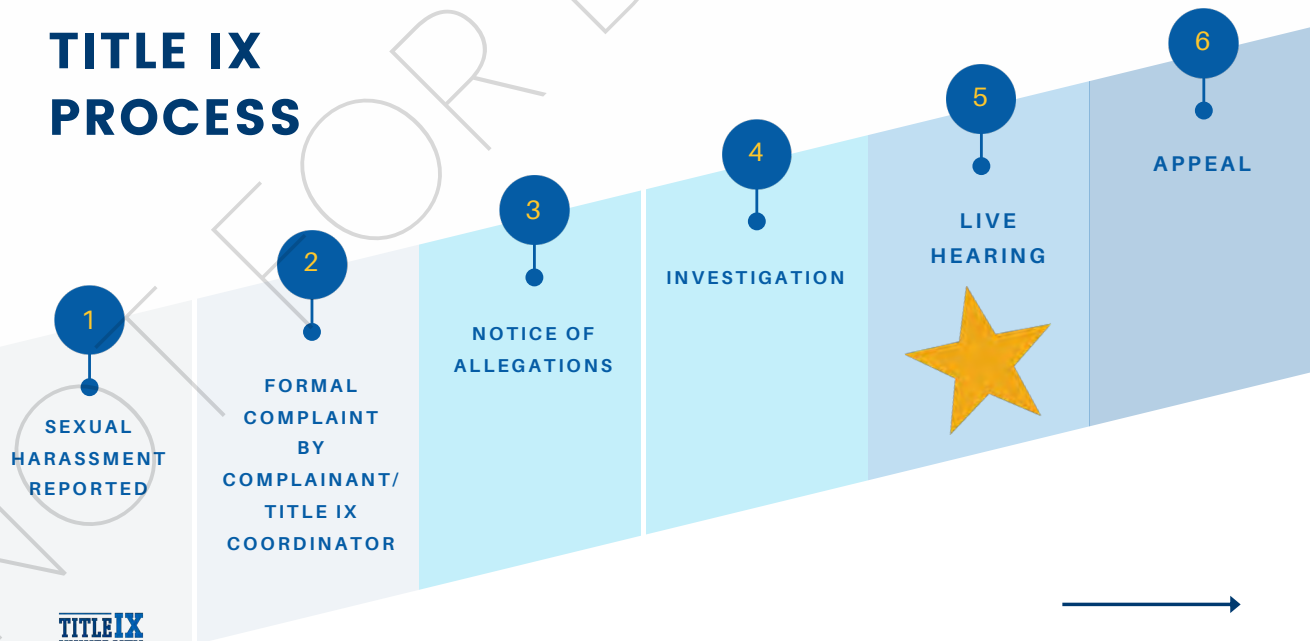
Not Courtroom



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## TITLE IX PROCESS



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# Formal Complaint: *Document (Written)*

- Alleging Sexual Harassment
- Requesting investigation
- Signed by:
  - Complainant or Title IX Coordinator

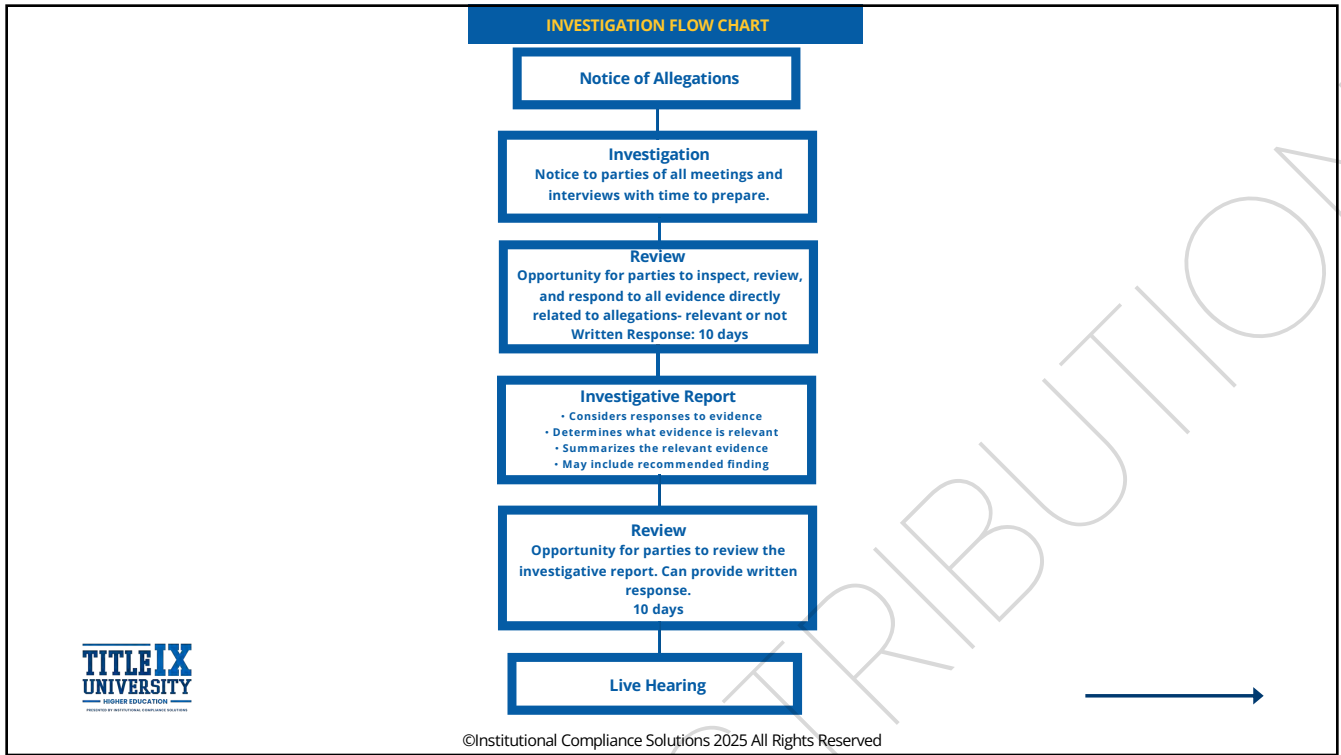


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## NOTICE OF ALLEGATIONS



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# LESSON THREE

PROCESS: HEARINGS AND APPEALS



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## INDIVIDUALS IN TITLE IX HEARINGS

☒ Complainant

☒ Respondent

☒ Advisor

☒ Witnesses

☒ Title IX Coordinator  
/Investigator/  
Decision-Maker



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# HEARINGS



Live Hearing (in same room or using technology in separate rooms- not only via telephone)

- Permit ADVISOR to ask the other party and witnesses RELEVANT questions (including those challenging credibility)

Recording (audio, visual, or transcript) made available to parties for inspection and review

Cross-Examination

- Directly, orally, in real time by ADVISOR

Written determination regarding responsibility and sanctions with rationale

Effective implementation of remedies (Title IX Coordinator)

Burden of proof (Clear and Convincing or Preponderance of the Evidence)

Decision provided to parties simultaneously

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# RULES



- ☑ Set by the institution
- ☑ Designed to maintain order in the hearing
- ☑ Enforced by the decision-maker
- ☑ Advisor can be removed for failing to follow
- ☑ Reminder: not a courtroom

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**ICS INSTITUTIONAL COMPLIANCE SOLUTIONS**

**Decision-Maker Determination Regarding Responsibility Checklist**

- ☐ Identification of the Allegations
- ☐ Description of Procedural Steps Taken
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  - Site Visits
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  - Hearings Held
- ☐ Findings of Fact Supporting Determination
- ☐ Conclusions Regarding the Application of the Code of Conduct to the Facts
- ☐ Result of Each Allegation Including Rationale
  - Determination Regarding Responsibility
  - Disciplinary Sanctions
  - Whether Remedies Designed to Restore or Preserve Equal Access to Education Program or Activity Provided to the Complainant
- ☐ Procedures and Permissible Bases for Appeal



# WRITTEN DETERMINATION REGARDING RESPONSIBILITY

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## BASIS FOR APPEAL

Procedural irregularity that affected the outcome of the matter

New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter



Other bases as determined by institution

The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter



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# YOU MUST!

## If appealed, the school **MUST**:

- ☒ Notify the parties of any appeal;
- ☒ Ensure that the appellate Decision-Maker has been trained;
- ☒ Provide parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- ☒ Notify the parties of the result of the appeal and the rationale for the result.
- ☐ Ensure that the Decision-Maker of the appeal did not take part in an investigation of the allegations or dismissal of the complaint;



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## INFORMAL RESOLUTIONS



### May NOT:

- Be required/condition of enrollment or employment
- Be offered unless Formal Complaint is filed
- Be offered or facilitated when allegations of employee sexually harassing student

### May:

- Be facilitated at any time after Formal Complaint and prior to determination regarding responsibility
- Expel if agreed to in Informal Resolution
- Provide Informal Resolution Process (NOT REQUIRED TO PROVIDE)

### Must:

- Provide information regarding Informal Resolution Process in initial Notice of Allegations
- Provide parties written notice of informal resolution with
  - Allegations
  - Requirements of process (including what information/documents will be shared)
  - Circumstances which presume Formal Complaint arising from same allegations
  - Right to withdraw/resume grievance process
  - Consequences-including records kept/shared
- Obtain voluntary, written consent
- Have reasonably prompt time frames



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# REMINDER!!!

-  Institution must provide an advisor to a party only during the live hearing
-  Get clarity now on whether you will be involved in the investigation/appeal/IR



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## SEE YOU IN LESSON 4!



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# LESSON FOUR

## ROLE OF ADVISOR



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## WHO CAN SERVE AS AN ADVISOR?



- ▶▶▶ Anyone
- ▶▶▶ No legal background required
- ▶▶▶ Not recommended that a witness serve as an advisor



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# WHAT IS YOUR ROLE?

Your role is important, required, and will look exceptionally different depending upon the parameters set by your institution.



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# LEARN YOUR POLICY AND PROCESS

- Know it better than the participants
- Ask questions NOW before you are involved in a case
- If something is unclear, ask for clarity both from participants (for factual questions) and Title IX Coordinator (for policy and process questions)
- Review the policy and process often when serving as an advisor in a case



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# REMAIN AVAILABLE

- Within reason
- Make sure the party has your contact information
- Set realistic expectations for your response to participants and/or review of information
- If you cannot take on the amount of time necessary to fulfill your role, do not take it on
- Be prepared for meetings and appointments
- Only reschedule when absolutely necessary



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# PROVIDE SUPPORT



- Check in on the party
- Stop a meeting/hearing if the party needs a break
- Give the party space if they need it
- Listen
- Look for signs of distress
- Refer the party to the Title IX Coordinator if need additional supportive measures
- Don't try to be their counselor or friend
- Advisor vs. Advocate



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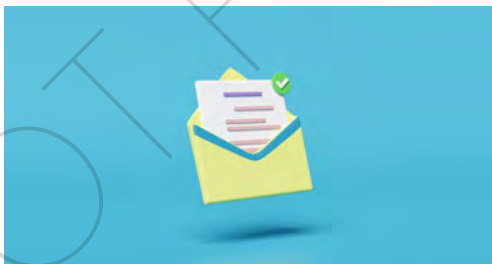
## GENERALLY, NOT SPEAK ON BEHALF OF PARTY... EXCEPT AT HEARING FOR CROSS-EXAMINATION/QUESTIONING

This may be challenging. Make sure to understand whether you are permitted to ask questions during meetings, via email, or via phone or if you are only permitted to be present.



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## ONCE YOU ARE NOTIFIED



01

Make sure all documents are signed to allow you to view documents, evidence and information (institution specific requirements on how this is done)

02

Meet with the party

03

Review the information

04

Regulations require that you are copied on review of evidence and report (unless party expressly requests that you are not)



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## PRE-MEETINGS AND INTERVIEWS

- Meet with party to discuss the purpose of the meeting (if cannot meet in person use phone call or virtual meeting)
- Discuss your role, what the party should expect, and ask whether they would like for you to take notes or help in any other way
- Review information/evidence



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## MEETINGS/ INTERVIEWS

- Be on time
- Listen
- Take notes if you have agreed to for the party
- Ask for breaks if necessary
- Make sure that the process is explained and that the party understands what to expect regarding next steps



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## POST-MEETINGS AND INTERVIEWS

- Check in on the party
- Connect with Title IX Coordinator if necessary
- Provide the party with your notes
- Provide an email/communication with next steps



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## AFTER INVESTIGATION



- Review and written response of evidence "directly related to the allegation(s)" – 10-day period for review and response (Advisors provided simultaneously with the parties)
- Investigation report that "fairly summarizes relevant evidence" – 10-day period for review and response (Advisors provided simultaneously with the parties)
- Notice of Live Hearing

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**SEE YOU IN LESSON 5!**



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# LESSON FIVE

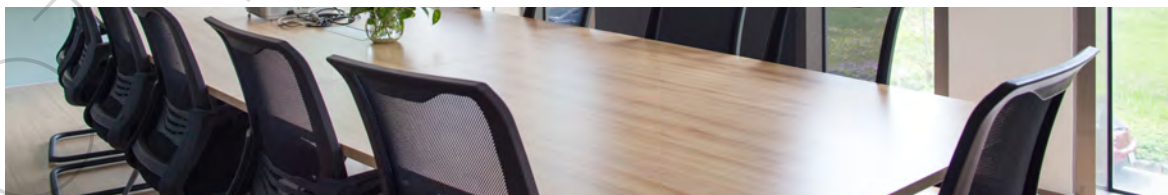
HEARING: QUESTIONING AND UNIQUE CIRCUMSTANCES



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## IN THE HEARING...

- Follow the Rules of Decorum!
- Know the facts/be prepared
- Help your party remain calm
- Be kind
- Ask appropriate questions
- Use an appropriate tone
- Ask follow up questions as necessary



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# RELEVANCE



Institution must: “objectively evaluate all RELEVANT evidence”.

Focus on evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true.

## NOT RELEVANT:

- Evidence about a Complainant's prior sexual history unless they are offered to prove that someone other than Respondent committed the sexual harassment, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove consent
- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent
- Information protected by any legally recognized privilege



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# RELEVANCY



➤ Regulations do not prescribe rules governing how admissible, relevant evidence must be evaluated for weight or credibility.

➤ Institutions have discretion to adopt and apply rules about evaluation of evidence.

- Rules must apply to both parties.
- Ex: Weight or credibility given to prior bad acts so long as applied equally to complainants and respondents.
- Rules should be reflected in training materials and provided on website.



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# A DEEPER DIVE INTO CROSS- EXAMINATION

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## Who are you questioning?



Parties



Witnesses (including experts)

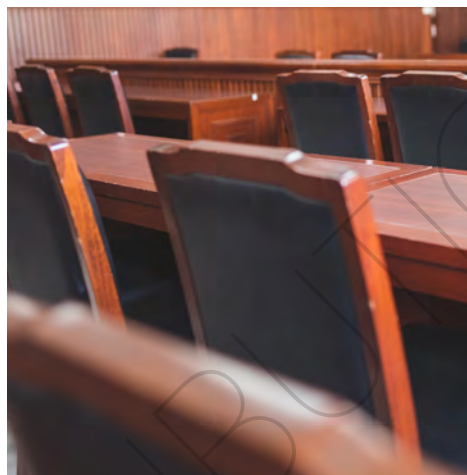


Investigators



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# THE PURPOSE OF THE "CROSS"



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## PREPARING FOR QUESTIONING



- ▶ Review investigation file: pay close attention to witness statements
- ▶ Look for inconsistencies in statements/information
- ▶ Meet with party and determine if they have any specific questions they would like asked at the hearing



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# REMINDER!!!


👉 Be kind!  
This is not a courtroom!


→

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Questions **MUST** be "live" and asked during the hearing





You **MAY** be asked to submit questions in advance of the hearing for consideration by the Decision-Maker. This should not preclude live questions during the hearing, follow up questions during the hearing, or limit your questioning to the written questions submitted in advance.

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# TYPES OF QUESTIONS TO AVOID

- Prior sexual history
- Compound questions (try to establish one fact per question)
- Character attacks - especially when not relevant to the matter
- Badgering
- Redundant

*Ensure each question has a specific goal/purpose*



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## SPECIAL CONSIDERATIONS/ CIRCUMSTANCES



- You may be an advisor from Formal Complaint through determination
- You may be brought in just for the live Hearing because the parties are required to have an advisor at the Hearing
- You may be asked to attend without the party if the party refuses to participate

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# AFTER THE HEARING

- Check on the party
- Review notice of determination
- Discuss options with the party
- Review an appeal if one is filed
- Review response by party if there is an appeal



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**SEE YOU IN LESSON 6!**



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# LESSON SIX

CLOSING THOUGHTS AND ASSESSMENT



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## CLOSING THOUGHTS

You do not have to be an attorney to be an effective advisor

If you are an attorney, this is not a courtroom and "cross" should look and feel very different

Be kind

Gain clarity on your role at your institution

Bookmark your policies and procedures



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# QUESTIONS?

Title IX Coordinator

[info@titleixu.com](mailto:info@titleixu.com)



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# CONGRATULATIONS!!



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