

University of Maine System

2022 Title IX Advisor Training

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Training Overview

I. Title IX Overview & UMS Policy

II. Title IX Process & Advisor Role

III. Hearing Structure & Basics

IV. Preparing for Hearing & Cross-Examination

V. Relevance

VI. What if a Party/Witness Does Not Submit to Cross-Examination?

VII. Decorum

VIII. After the Hearing: Written Determinations and Appeals

Applicable Policies

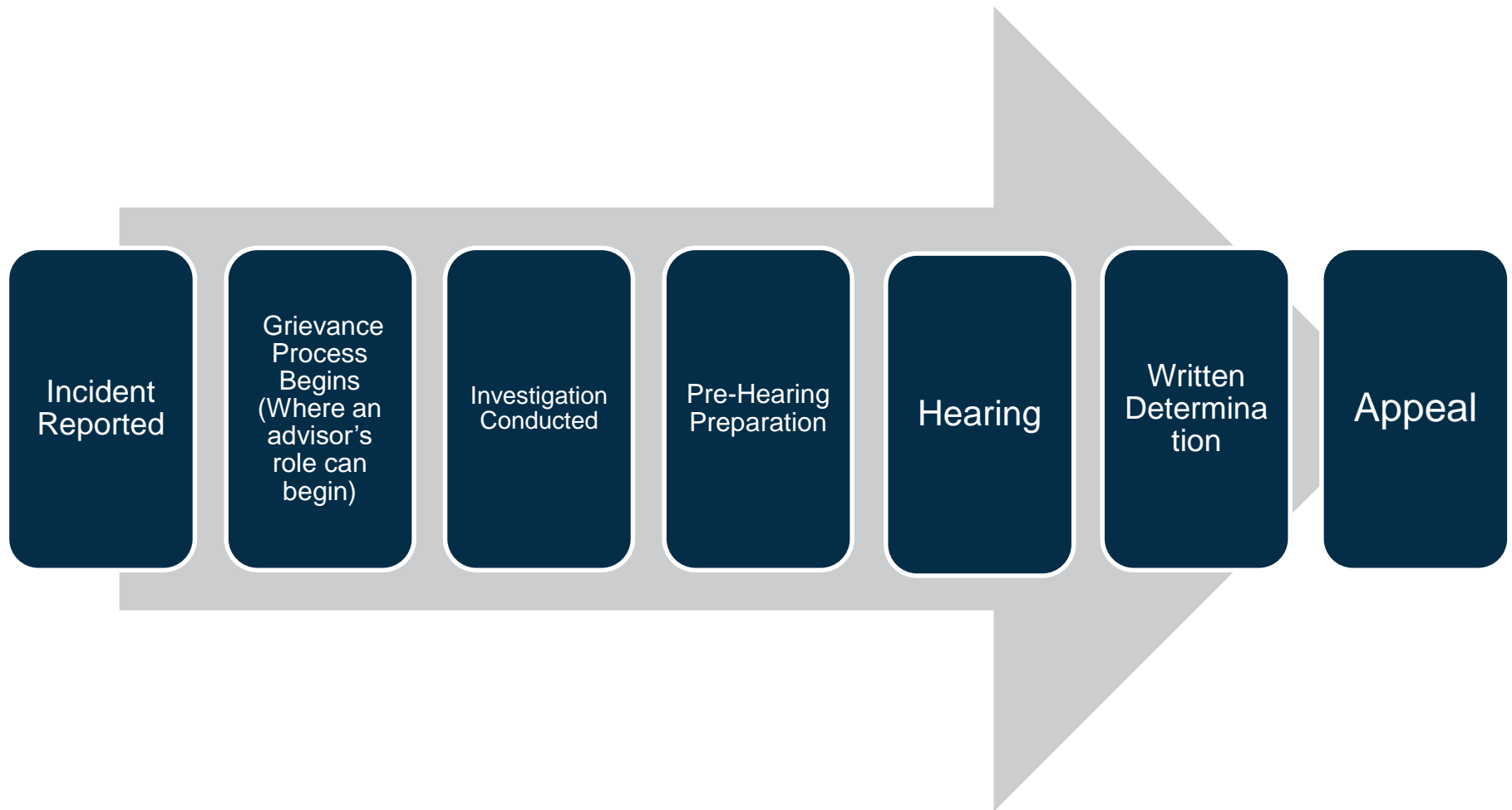
Section 402: Sex Discrimination, Sexual Harassment, Sexual Assault, Relationship Violence, Stalking and Retaliation and Title IX Sexual Harassment (<https://www.maine.edu/board-of-trustees/wp-content/uploads/sites/12/2021/08/527411-Conduct-Code-2021-with-Cover.pdf>)

a. UMS Procedures for Title IX Sexual Harassment ([UMS-Title-IX-Procedures-11-09-21-1.docx \(live.com\)](#))

What is an Advisor?

- UMS Procedures for Title IX Sexual Harassment: “Advisor means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the complaint process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.”
- Under the 2020 Title IX regulations, each direct party is entitled to an advisor of choice. Advisors can be:
 - A parent
 - An attorney
 - A school-assigned official
 - Any other individual the party chooses
- Advisors provide support throughout the formal Title IX process.
 - One of the most significant roles of a Title IX advisor is to conduct **cross-examination** on behalf of the party during the hearing process.
- Advisors must comply with University policy and guidelines, including rules of decorum.

Structure of Formal Title IX Process



Hearing Requirement



6) *Hearings.*

(i) For postsecondary institutions, the recipient's grievance process **must** provide for a live hearing. At the live hearing, the decision-maker(s) **must** permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

UMS Hearing Basics

- Hearing will be composed of a single Decision-maker or a panel of three Decision-makers at the discretion of the UMS Title IX Coordinator or Equal Opportunity Officer.
 - If hearing is composed of three Decision-makers, one of them will be designated as voting chair.
- **Pre-hearing meetings:** the Decision-maker or Chair will reach out to both parties and their Advisors for separate pre-hearing meetings.
- All UMS hearings are conducted live via Zoom and recorded by UMS.
- During the hearing, parties must be able to simultaneously see and hear the party or the witness answering questions.

UMS Hearing Basics Continued

- **Preponderance of the evidence standard:** During the hearing, the burden is on the University to show that it is more likely than not that the Respondent engaged in behavior that violated University policy.
- **Preparation:** All evidence gained over the course of the investigation (investigation report/attachments and evidence record) is provided to the parties, their advisors, and the decisionmaker prior to the hearing. Parties and their advisors can utilize this evidence during the hearing.
 - Parties and their advisors can request that “directly related” evidence, not deemed relevant by investigator, be considered by decisionmaker. Decisionmaker will rule on relevance/inclusion of this evidence.
- **Witnesses:** parties can make requests for any witness to appear that they think is relevant.

Sample Structure of a Hearing ...

Event	Time started	Length	Time Finished	Notes
Preliminary matters		15 minutes		
Adjudicator Opening		15 minutes		
Complainant Opening		15 minutes		
Respondent Opening		15 minutes		
Break				
Investigator statement + Questions		45 minutes		
Complainant Questions		1 hour		
Respondent Questions		1 hour		
Individual Witness Questions		1 hour		
Complainant Close		30 minutes		
Respondent Close		30 minutes		

Cross- Examination Requirement

“Such cross-examination at the live hearing **must be conducted** directly, orally, and in real time by the **party’s advisor of choice** and never by a party personally, notwithstanding the discretion of the recipient under paragraph (b)(5)(iv) of this section to otherwise restrict the extent to which advisors may participate in the proceedings. At the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.”

REMEMBER: The goal of cross-examination is **not** to recite every fact obtained over the course of the investigation, but instead to direct the decision-maker(s) to the specific evidence that supports your advisee’s position.

Advisor Role in Cross-Examination

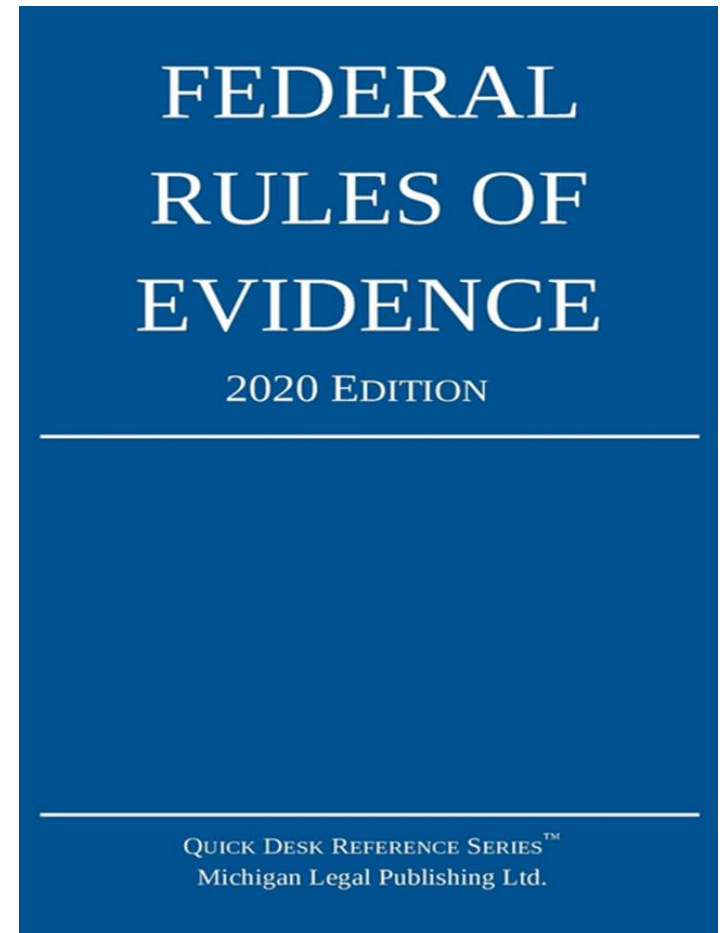
“If a party does not have an advisor present at the live hearing, the recipient **must** provide without fee or charge to that party, an advisor of the recipient’s choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.”



“Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.”

Do I need to brush up on the Federal Rules of Evidence to be prepared for hearings? **NO**

“The Federal Rules of Evidence constitute a complex, comprehensive set of evidentiary rules and exceptions designed to be applied by judges and lawyers, while Title IX grievance processes are not court trials and are expected to be overseen by layperson officials of a school, college, or university rather than by a judge or lawyer (p.981)”



Types of Evidence at Hearing

- 1 Direct evidence
- 2 Corroborating evidence
- 3 Circumstantial evidence

General Hearing Preparation



1. Review the investigation report and supporting evidence.
2. During review of the investigation report, determine if there is any missing information or any witnesses that still need to be interviewed...this is the last opportunity to put forward witnesses before the hearing.
3. Create a **digest!**
4. Create a timeline

No Surprise Witnesses!



If a Witness has not been shared with Investigator(s) or the Witness refused to be interviewed by the Investigator(s), the Witness cannot appear at the hearing to answer questions.

Preparing Cross-Examination Questions

- Brainstorm questions that you would like to ask the parties and all witnesses that will be present at the hearing.
- Meet with your advisee to review questions that they want to be posed to other party/witnesses.
- Basic structure of cross-examination:
 1. Obtain any relevant and helpful information from the party
 2. If party does not have helpful information then limit their significance
 3. Examine possibility of bias

Credibility

- Credibility of your advisee and their supporting witnesses is crucial to the decision-maker(s) making a determination in your advisee's favor.
- As part of hearing preparation, review advisee's recollection of events, supporting evidence, and arguments.
 - Are they prepared to answer likely lines of questioning?
- Identify gaps in opposing party's witness' recollection and supporting evidence.
- When opposing party or opposing party's witness provides information during the hearing and you believe a credibility issue exists ...
 1. Confirm: when you identify a credibility issue, ask the party to reiterate their prior statement.
 2. Compare: the party's testimony to prior statements provided by the party or prior evidence provided by the party.
 3. Confront: ask questions that confront the inconsistencies.

Preparing Your Advisee for the Hearing

- Review basic structure of hearing
- Help them develop opening and closing statements
- Work with party to review and develop questions for opposing party and witnesses
- Prepare your advisee to be questioned
- Ask party if there is any additional information that they think it is important for you to have (party dynamics, etc.)
- 19 Comfort plan

What to bring to the hearing

- ✓ IR, appendix, and any other relevant/corroborating evidence
- ✓ All the notes you have compiled, including digests.
- ✓ Timeline of events
- ✓ Hearing schedule
- ✓ Copies of all relevant University policies
- ✓ Note taking supplies

Only **RELEVANT** cross examination and other questions may be asked of a party or witness

Excluded:



- Non-relevant lines of questioning
- Evidence about a Complainant's prior sexual behavior unless exception is met
- Any party's medical, psychological, and similar records (unless the party has given voluntary, written consent)
- Redundant questions

Prior Sexual Behavior

“Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are 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 (p.1592)”

What about prejudicial versus probative?

“A recipient may not adopt evidentiary rules of admissibility that contravene those evidentiary requirements prescribed under § 106.45. For example, a recipient may not adopt a rule excluding relevant evidence whose probative value is substantially outweighed by the danger of unfair prejudice; although such a rule is part of the Federal Rules of Evidence... (p. 981).”



“If a party or witness is not present at the hearing or does not answer any or all cross-examination or other questions at the hearing, the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’ absence from the hearing or refusal to answer any or all cross-examination or other question(s). The University may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered.”

- If party chooses not to attend the hearing, their advisor must attend to cross-examine the other party.
- If a party’s advisor does not attend the hearing, UMS reserves the right to provide a free advisor of its choice to the party, so the advisor may cross-examine the other party and/or any witnesses.

What protections are available for parties or witnesses who refuse to be cross-examined?

- Prohibition against retaliation
- The decision-maker(s) may not draw any negative inferences from the absence of one or both parties' attendance of the hearing.
- If a party or the party's advisor choose not to cross-examine a party or witness, the party shall affirmatively waive cross-examination through a written or oral statement to the decision-maker(s).
- A party's waiver of cross examination does not eliminate the ability of the Chair or Decision-maker(s) to use prior statements made by the party.

Hearing Decorum

1. Questions must be conveyed in a neutral tone.
2. Parties and advisors will refer to others using correct pronouns and names.
3. No party may act abusively or disrespectfully during the hearing toward any other person.
4. Attorneys must conduct themselves in accordance with the educational purpose of the process and remember they are not in a courtroom.
5. Advisor may not yell, scream, pound the table, badger, or physically “lean in” to other’s space.
6. Advisor may not use profanity or make irrelevant ad hominem attacks upon party/witness.
7. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
8. The advisor may not ask repetitive or irrelevant questions.
9. Parties and advisors may take no action at the hearing that a reasonable person in the shoes of the affected party would view as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

Decorum Requirements



Advisors must conduct themselves in a respectful manner during the hearing.

- Advisors may not ask questions in an aggressive, intimidating or threatening manner
- Advisors must respect the decision of the Hearing Officer regarding relevancy

The Hearing Officer maintains the ability to ask the Advisor to leave the hearing if they refuse to cooperate with decorum requirements.

Written determination basics

- UMS Policy requires the decision-maker(s) to issue a written determination regarding responsibility within **15 business days** of the hearing.
- Written determination sent to the parties simultaneously.
- Written determination **MUST** include:
 1. Identification of allegations that potentially violate university policy.
 2. Description of procedural history
 3. Findings of fact supporting final determination.
 4. Conclusion regarding the application of university policy to the facts.
 5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any **disciplinary sanctions** the UMS imposes on the Respondent, and any remedies that will be provided to the Complainant.
 6. Procedural and permissible bases for the Complainant and Respondent to appeal.
- If Respondent is found responsible for a violation, the decision maker will consider any previous disciplinary action involving the Respondent when determining sanctions.

Appeals

- Complainant or Respondent can file an appeal of a written determination on the following bases:
 1. Procedural irregularity that affected the outcome of the matter.
 2. New evidence that was not reasonably available at the time of the determination, that could affect the outcome of the matter.
 3. TIXC, investigator(s), or decision-maker(s) had a conflict of interest or demonstrated bias for or against one of the parties or complainants/ respondents generally, that affected the outcome of the matter.
- Parties have **five days** to file appeal with TIXC, Deputy TIXC, or Equal Opportunity Officer.
- If an appeal is not filed within the designated timeline, the written determination becomes **final**.

Questions...

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