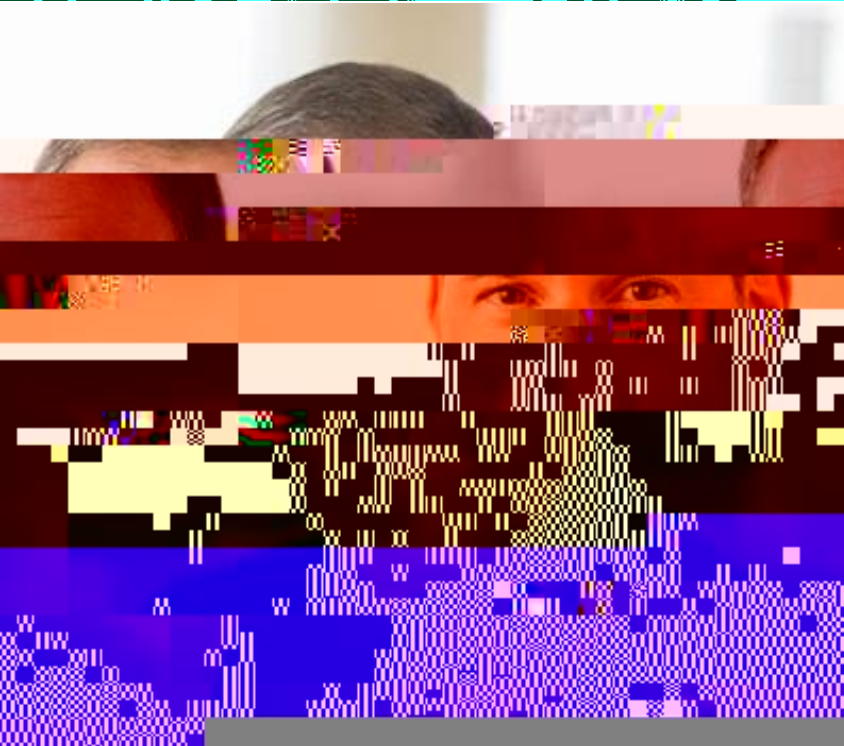


2020 TITLE IX ADVISOR TRAINING &
CERTIFICATION COURSE

Your Faculty



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Overview

Module One . Overview of Advisor Rights and Roles in Ψ_{00}

Title IX

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.

IV

MODULE ONE

Overview of Advisor Rights and Roles in Title IX Proceedings

Advisor of Choice



Institution-Appointed Advisor



What is Expected of the Advisor?

Risks to Being an Advisor?

The Advisor in K-12 Settings



Limitations on the Role of the Attorney-Advisor

The Rights of the Advisee

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Supportive Measures

Supportive Measures

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Supportive Measures

Response to Sexual Harassment

Emergency Removal

Employee Administrative Leave



Training Minimums

Training

Promptness

Sanctions

Standard of Proof

Clear and convincing evidence: It is highly probable that policy was violated.

Highly and substantially more likely to be true than untrue; the fact finder must be convinced that the contention is highly probable.

65% 75% 85% . part of the lack of clarity with this standard is there is no real consensus on how to quantify it.

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The only equitable standard

50.1% (50% plus a feather)

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Privileged Information

Permission required for:

“ 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.

“ You cannot ask for information without permission unless you ask about the records first.

Notice to Parties

Notice to Parties



Mandatory Dismissal (Four Grounds)

Notice of Dismissal

Consolidation of Formal Complaints

Fairness and Due Process



MODULE TWO

Pre-Hearing Steps

For most colleges and schools, the steps in the pre-hearing resolution process include:

Intake/Formal Complaint

Notice of Allegation/Investigation

Initial/Dismissal Assessment

Investigation

Informal Resolution (potentially)

Post-investigation report/evidence review

Pre-hearing matters

Intake to Investigation

The advisor may accompany their advisee to any intake meetings. The institution can conduct intake without an advisor present if the party assents.

The advisor can and should help their advisee to understand the details of the Notice of Investigation and Allegations (NOIA)

During the initial assessment (a formal or informal step in the process), the parties may wish to advocate for or against dismissal, and their advisors can help them to frame their arguments, and their appeals of any dismissal decisions with which they disagree.

Investigation

The advisor may accompany the party to all investigation interviews

There should be clear institutional rules on the role of the advisor during the investigation

The advisor is permitted to interact with (and coach) their advisee, but should not play an active role in the interview

Clarify with investigators whether you need to take a break or sidebar with your advisee or can speak directly to them during the interview.

Clarify whether the Advisor can address the investigators, and under what circumstances.

Investigation Report



Party Access to Evidence/Report

Pre-Hearing Interactions with the Investigator(s)

- ” During the 10-day period where the report is being finalized, the advisee and Advisor may:
 - ” Suggest new witnesses
 - ” Suggestion additional questions to be asked of parties or witnesses
 - ” Comment on the evidence
 - ” Offer new evidence
 - ” Challenge investigator determinations of what is relevant (evidence to be considered by the Decision-maker versus what is directly related (evidence not to be considered by the Decision-maker)

Pre-Hearing Interactions with the Panel, Chair, or Decision-maker

- “ Although not explicitly required or even mentioned in the Title IX regulations, the Chair or Decision-maker may conduct pre-hearing meetings for each party (in writing, or in person)
- “ Pre-hearing meetings can provide an opportunity to:
 - “ Answer questions the parties and advisors have about the hearing and its procedures.
 - “ Clarify expectations regarding logistics, decorum, and technology (when applicable).
 - “ Clarify expectations regarding the limited role of advisors.
 - “ Discern whether parties intend to ask questions of any or all witnesses (in order to evaluate which witnesses should be invited to attend the hearing), or whether a party intends not to testify at the hearing
 - “ The Chair or Decision-maker can invite parties to submit questions in advance, but this is not required
 - “ The Chair or Decision-maker may try to discern any conflicts of interest/vet recusal requests.
 - “ The Chair or Decision-maker may seek to understand any questions regarding relevance of evidence or questions and may make pre-hearing rulings.

Informal Resolution

Informal Resolution

Requirements of Informal Resolution Options

MODULE THREE



Live Hearings

Provision of an Advisor

Hearing Technology

Questioning & Cross-Examination

- “ The live hearing requirement for higher education allows the parties to ask (direct and) cross-examination questions of the other party and all witnesses through their advisor.
- “ Such cross-examination must be conducted directly, orally, and in real time by the] æ c q Á a ç a [! Á æ a Á ^ ç ^ ! Á ^ Á æ] æ c Á ^ ! • [} æ | ^ É
- “ The Chair or Decision-maker must permit relevant questions and follow-up questions, including those challenging credibility.
- “ You may want to explain why you think a question is relevant or will lead to a relevant answer but be clear that the rules permit you to do so.
- “ Once you pose a question, the Chair or Decision-maker must first determine whether a question is relevant and direct party to answer.
 - “ Must explain any decision to exclude a question as not relevant.
- “ The determine of relevance by the Chair or Decision-maker is final, pending appeal.

Questioning & Cross-Examination



Questioning & Cross-Examination

Questioning & Cross-Examination



Questioning & Cross-Examination

Questioning & Cross-Examination

Prior Sexual History

Formal Resolution for K-12 Schools and Other Recipients



Written Determinations

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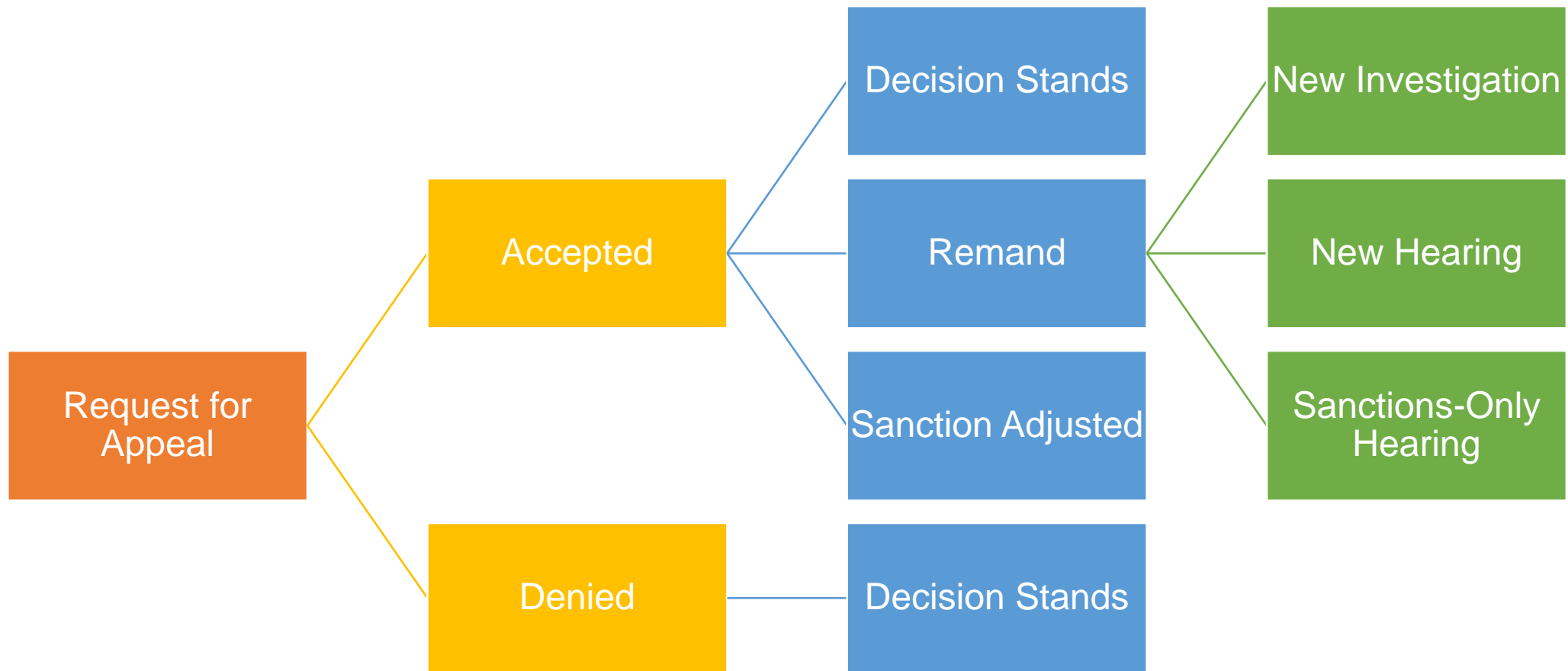
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MODULE FOUR



Appeals

Appeals





Conflict of Interest

“ Conflicts of interest are expressly prohibited in the 2020 Title IX regulations.

“ Types of conflicts:

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Bias

- ” Advisors should be prepared to recognize and raise issues of bias
- ” During the investigation, raise issues of bias with the Title IX Coordinator
- ” If bias appears at the hearing, request a sidebar to raise it with the Chair or Decision-

Record Keeping

Record Keeping

Training Records



Retaliation

interfering with any right or privilege secured by Title IX. for the purpose of

Retaliation

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