


Advisor Essentials: Navigating Title IX with Confidence

JUNE 3, 2025

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Agenda

What is an advisor?

Requirements and best practices

Supporting your advisee


Process roles of an advisor

Boundaries and self-care

Scenarios


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What is an
advisor?

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
Advisor Basics

- Parties involved in a Title IX grievance process have the right to an advisor **of their choice**.
- Advisors can be anyone – attorneys, individuals internal or external to the institution, family members, friends, advocates, mentors, etc.
- If a party does not have an advisor, the institution must provide an advisor to conduct cross-examination on the party's behalf **during the hearing**.
- No requirement that advisors be trained.


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Advisor's Role

- Provide support to their party, during and outside of meetings/process steps
- Attend meetings with their party (with the TIXC, Investigator, etc.)
- Assist in the evidence review process
- Assist with party responses
- Attend the hearing and ask questions on the party's behalf
- Provide opening/closing statements on behalf of the party during the hearing (new Minnesota law)



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Not within Advisor's Role

- Directly speak/respond for their party (except during the hearing, as allowed)
- Share personal views or opinions on what happened
- Participate directly in an interview
- Testify at a hearing

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Other support

Advisors don't provide accommodations or other services a party might need to equitably participate in the process.

If accommodations are needed, encourage party to request them early on in the process.


Examples:

- Interpreters
- Mental health or accessibility professionals providing an accommodation

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Why are Advisors important?

- It's a challenging process; parties need support
- Promote equity in process
- Monitor accountability to the policy during the process
- Shield parties during hearing

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Requirements and Best Practices

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Legal Compliance

- No training requirements for advisors
- Advisors have full access to party/witness statements and evidentiary materials
- FERPA still applies
- MN law states advisors **may** provide opening/closing statements on behalf of a party
- MN law emphasizes advisor's role as support person

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Institutional obligation to... respond "promptly"

*"A recipients grievance process must... Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for **good cause** with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. **Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;**"*

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Institutional obligation to... protect information

Institutions must take reasonable steps to protect confidentiality.
What could these steps look like?
Consider the interplay between FERPA and Title IX.

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What might the institution require?

- Advisor guidelines and expectations may vary depending on the institution.
- Many institutions have handouts or forms that advisors need to sign prior to participating in the process.
- Institutional advisor restrictions must apply equally to advisors of both parties.

Generally, guidelines incorporate:

- Whether advisors can communicate directly with the TIXC and/or the Investigator
- Parameters around the sharing of information learned during a process, especially during the evidence/report review stage



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Approaches to Institutional Advisors



Institutions can take various approaches to providing institutional advisors to parties.

- Training? Institutions aren't required to train advisors, but should you?
- Selection process? Should you offer a list of potential institutional advisor options to parties, or just assign someone?
- Timing? Should you provide an advisor earlier in the process, or strictly for the hearing?

What are the pros and cons of these approaches?

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Changing Advisors

- Parties get to choose who they want their advisor to be.
- Parties are allowed to have AN advisor.

But...

What if a party is asking to change their advisor partway through the process?




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Best Practices

- Be responsive
- Be flexible
- Raise scheduling conflicts ASAP
- Be familiar with Zoom/virtual platform
- Understand your role and limitations ahead of time
- Support party in understanding policy and process
- Remind about campus/community resources
- Help party stay focused on relevant information
- Help party raise concerns (process adherence, conflicts of interest, etc.)
- Stay within your role – you are not there to “win” a case




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Best Practices contd.




- Clarify information about policies and procedures
- Help party focus on allegations and relevant information
- Attend meetings (if requested)
- Encourage party to ask TIXC questions
- Remind about resources and what the TIXC can provide



- Promise an outcome
- Pass judgment
- Answer questions without knowing the answer
- Serve as a therapist/counselor
- Promise complete confidentiality
- Retaliate against the other party/witnesses/other advisors
- Interfere with the grievance process



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Supporting Your Advisee

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Supporting a party:

Key Principles

- You are not a therapist, and you are not the party's therapist.
- You cannot fix the situation.
- Meet the person where they're at.
- Not all students/parties are the same. Unique individuals have unique needs.
- Held identities may influence one's experience.

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What is a party feeling?

Stress
Trauma-response
Shame/embarrassment
Anxiety
Depression
Fear
Anger
Isolation

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
Differences
between
Complainants
and
Respondents?

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Interacting with Complainants: Dynamics of Sexual Violence

- Most victims know the perpetrator.
- The vast majority of incidents go unreported to law enforcement.
- Alcohol and/or drugs are involved in many instances of assault (particularly on college and university campuses).
- Most sexual assaults are committed without severe physical violence and without a weapon.
- Most victims do not physically resist during an assault.

https://www.wit.org/wp-content/uploads/Module_2_Dynamics_11.9.2020.pdf
<https://www.wit.org/effects-sexual-violence>


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Interacting with Complainants: Neurobiological Response to Trauma

Trauma can impact individuals in multiple, significant ways:


- Neurologically
- Emotionally
- Psychologically
- Socially
- Biologically

Trauma overwhelms our normal coping responses, which provide a sense of control and safety.


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Interacting with Complainants: Neurobiological Response to Trauma

- Growing body of research on this, specifically within the context of sexual violence
- During a traumatic event, an individual's ability to control their physical movements, to think rationally, and to encode memories may be significantly impaired
- This is a hard-wired response that is meant to offer protection
- This mainly has to do with the release of specific hormones during a traumatic event


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
Interacting with Complainants:

Dynamics of Sexual Violence

Complainants may experience:

- Difficulty talking about what happened and/or seeking help
- Counterintuitive reactions to trauma
- Feelings of shame, self-blame, and/or embarrassment
- Fear of not being believed
- Fear of retaliation
- Psychological, emotional, and physical effects (depression, flashbacks, PTSD, self-harm, STIs, substance abuse, dissociation, panic attacks, eating disorders, pregnancy, sleep disorders, suicidal ideation, etc.)
- Social ramifications
- Experiences may be exacerbated by the Grievance Process.


https://newintf.org/wp-content/uploads/Module_2_Dynamics-11.9.2020.pdf
<https://naism.org/effects-sexual-violence/>


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Tips for being trauma-informed

- Be an authentic, non-judgmental human
- Slow down; silence is ok. Remember that memory recall may be slow or out of order
- Be thoughtful about the language you use and the types of questions you ask (avoid “why?” questions)
- Emphasize transparency to the extent you are able
- Help parties understand what to expect
- Consider the physical (or virtual) environment of the meeting/interaction if possible
- Don’t automatically draw negative inferences based on a behavior or reaction that may be related to trauma



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Interacting with Respondents:

Potential Feelings/Concerns

- Stress/anxiety/depression
- Decline in physical wellbeing
- Shame or guilt
- Defensiveness
- Social ramifications
- Fear of retaliation
- Isolation
- Academic/work issues


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
Getting Others Involved

What is beyond your scope as an advisor?:

- Mental health assessment
- Social/familial ramifications
- Academic assistance
- Financial assistance
- Immigration assistance
- Chemical dependence

Offices within the institution can support these needs and concerns. But...


What if your advisee isn't seeking out assistance?


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Institutional Resources


- Title IX Coordinator can assist with supportive measures (No-Contact Orders; academic, housing, and work assistance; facilitate connection to on- and off-campus resources; etc.)
- Counseling
- Accommodations Office
- Deans
- Confidential Resources (counselors, chaplains, physical health providers, etc.)


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External Resources

- Counseling
- Law enforcement
- Advocacy centers
- Legal support (including immigration guidance)


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What types of questions could you ask to assess whether your party is getting the support they need?

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Advisor Roles and Process Steps

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Tips for getting started as an advisor

- Review the Notice of Allegations prior to an interview
- Review policy and procedures and assist party in understanding next steps
- Review TIX Website
- Encourage party to reach out to TIXC with questions
- Ask party about connection to resources and support
- Encourage timely responses to the investigator
- Talk about how you'll communicate with each other

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Prior to the initial interview...

- Encourage party to summarize their own account (writing/notes may be helpful to them)
- Help party think through witnesses to share with the Investigator and/or important details about their experience to share
- Encourage party to consider what questions the investigator should ask other parties/witnesses
- Encourage party to reflect on any evidence they might have that would corroborate their account (texts, social media, call logs, etc.)
- Consider plans or strategies around what the party could do if feeling stressed, anxious, etc. during an interview
- Help party understand what to expect – OK to ask for breaks, might be recorded, how long it will take, etc.

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First Interview


- Typically 90 minutes – 2 hours
- Party shares their full account
- Investigator may ask follow up questions
- Opportunity to provide names of witnesses and the information they could provide, any evidence/documentation, etc.
- Might be recorded
- Make plan for check-in/debrief after, if needed.

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Second Interview

- Generally not as long as the first interview.
- Investigator asks questions related to conflicting information and might share details of other party's account (if they haven't done so already).
- Encourage sharing of any other relevant information.
- Make plan for check-in/debrief after, if needed.
- Continue to check in with your party about any need for resources or supports during the interviewing stage of the process.

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Evidence review/response process

- During this phase of the process, parties and their advisors are allowed individual access to all directly related evidence and the Investigation Report. Typical document sharing platforms include Dropbox, Google Drive, Sharepoint, etc.
- Parties may respond to the evidence and/or the Investigation Report in writing. Note that some institutions have word limits.
- Each review/response period will have a hard deadline.

Parties and their advisors are expected to treat these files with extreme caution. Any unauthorized sharing of these files is a serious violation of the process.

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Assisting your advisee during this review

Important question for you to ask your advisee:

Would you like me to review these documents and assist with your response? How can I help you with this part of the process?

Encourage party to respond (if they want to) by the deadline. May offer to review and/or provide input into what the party includes in their response.

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Written responses guidance

An Investigation Report demonstrates what information the Investigator believes is most important. If your party believes relevant information was shared that is not in the report, and that the information should be provided to the decision-makers, the written response is an opportunity to address that concern.

Could also use the response as an opportunity to further clarify details of an account, offer any corrections to inaccurate information, or to clarify any characterizations in the report.

Remember:
The finalized Investigation Report is what the decision-makers will be using to make their determination of responsibility (in addition to information learned during the hearing).

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What the Regulations say about the 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. 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.

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Prior to the hearing...

- Review hearing procedures with the party
- Attend a pre-hearing meeting, if offered
- Ask questions in advance
- Encourage voicing any logistical hearing needs (Closed captioning, interpreter, accommodations, etc.)
- Raise concerns about any potential conflicts of interest with decision-makers/hearing panelists
- If applicable, revisit opportunity for informal resolution
- Encourage consideration of how to manage emotions and anxiety during the hearing

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Hearing preparation

Confer with your advisee about the following:

- Open/closing remarks? What should those say and who will give them?
- Develop questions for other party and witnesses
- Discuss desired outcome and potential sanctions
- What information is most important for the party to highlight, without being overly duplicative?
- Determine whether you'll attend separately (from your own computer) or from the same location (same device)
- Determine how you will privately communicate with each other during the hearing

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Attorney Advisors

What happens when one party's advisor is an institutional employee and the other party's advisor is an attorney?

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What to expect during a hearing

- Everyone in attendance is expected to be respectful and professional.
- There will likely be a lengthy introduction read by one of the hearing panel members that reiterates what has happened so far in the process as well as any hearing guidelines and expectations.
- Hearing Officer/panelist will make relevancy determinations for each question asked. A question you ask on behalf of your party might be barred if it is irrelevant, duplicative, or references privileged information.
- You may be prompted by your party to ask additional questions of the other party/witnesses as the hearing unfolds.
- Breaks are permitted, and it's okay to request a break as needed (pay close attention to how party is doing, and prompt them to request a break if needed).
- Hearings last hours and sometimes an entire day or may span across multiple days. Plan accordingly.

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Coming up with questions: In advance of the hearing

Based on your reading of the Investigation Report, are there questions that could be asked of the other party/witnesses that would further illuminate or emphasize what your party believes is important information?

Don't push your party to come up with questions if they don't have any. You don't have to ask questions.

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Coming up with questions:
During the hearing

Are there questions that can be asked to either bolster or poke holes in an individual's credibility (either your party or someone else)?

If inaccurate information is shared, are there questions you can ask to illuminate the inaccuracy?

Again, don't push your party to come up with questions if they don't have any. You don't have to ask questions.

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What's off limits?

Privileged information (unless waived by the party)

Treatment/health records (only permissible if party provides voluntary, written consent to include)

Information about a **reporting party's sexual behavior** unless:

- The information is being used to prove someone other than the responding party committed the misconduct

OR

- The information relates to prior sexual behavior between the reporting and responding parties and is submitted *in an effort to prove consent*

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The extent to which the decision-maker can rely on a witness's testimony to be accurate and helpful in their understanding of the case.

Credibility

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EEOC Statement on credibility in Sexual Harassment Cases (1999)

Inherent Plausibility	Demeanor	Motive to Falsify	Past Record	Corroboration
Is the testimony believable on its face? Does it make sense?	Did the person seem to be telling the truth or lying?	Did the person have a reason to lie?	Did the alleged harasser have a history of similar behavior in the past?	Is there witness testimony or physical evidence that corroborates the party's testimony?

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Remember!

None of these factors are determinative as to credibility.

For example:

- the fact that there are no eye-witnesses to the alleged harassment by no means necessarily defeats the complainant's credibility.
- the fact that the alleged harasser engaged in similar behavior in the past does not necessarily mean that they did so again.

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Assessing Credibility

Recommended Factors:

- Logic/Consistency of information provided
- Corroborating evidence
- Consistency of information— substance of statements
- Plausibility of all information given
- Amount of detail provided. Factual detail assessed against assertions that have no supporting detail. (But consider whether there may be other reasons.)

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A note about demeanor

Be careful about relying on demeanor when it comes to credibility.

Much of what you hear about "how to tell if someone is lying" is not based on actual research and has been debunked or is considered pseudoscience.



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Remember!

- Credibility determinations should **not** be based on gender, sexual orientation, race, ethnicity, nationality, ability, religion, etc.
- Focus on the evidence/information provided, **NOT** speculation, rumors, character assessment, etc.
- Memory errors do not necessarily destroy credibility
- Most people's memories are not that great
- Trauma affects memory
- Substance use may affect memory

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Determination Letters

These letters include the following:


- the finding about responsibility and any sanctions, if applicable.
- the appeal process steps and requirements, including available grounds for appeal, and appeal deadlines.
- reminders to each party about how to access hearing recordings and/or other process materials if needed.

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Determination Letters: Your Role




Be a support to the party




Offer resources and ask whether any other assistance is needed



Provide space or recommendations of places to process the determination



Ask party whether they intend to appeal and if so, how you can support


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Appeals


Appeals are only allowed on the grounds outlined in the institution's policy. Must include at least the following three grounds for appeal:

1. new evidence that wasn't available during the investigation...
2. conflict of interest or bias...
3. procedural error...
that would have affected the outcome.

Disagreeing with the determination is not an available ground for appeal.

If appealing, the non-appealing party will have an opportunity to review the appeal and respond.


The Appellate Officer can uphold the decision or could potentially remand for additional investigation or a new hearing, depending on what the appeal stated.


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Providing Support through an Appeal

- Offer to talk through the grounds for appeal and whether the party's concerns fit under any of the grounds
- Offer to review the hearing recording with the party, if their concern has to do with the hearing itself
- Offer to read through the party's appeal letter and provide recommendations
- Offer to be with the party when the appeal determination is released


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Boundaries & Self-Care

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Boundaries

Consider how to set expectations early in the advising relationship.

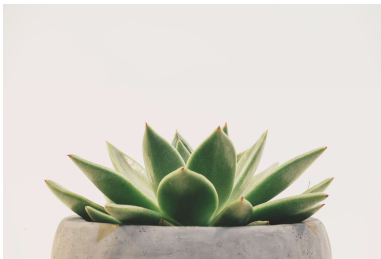
What about...

- How will you stay in contact? Are you comfortable providing your cell phone number to your advisee?
- You are not an "on-call" service for your advisee. How will you manage this?
- How much time are you able to dedicate per week? Be clear with your advisee what your capacity is.
- What if your advisee asks you for something that makes you uncomfortable? How will you handle that?

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Self-care

THE PRACTICE OF TAKING AN
ACTIVE ROLE IN PROTECTING
ONE'S OWN WELL-BEING
AND HAPPINESS.

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1. Break into small groups of 3-4 people (virtual folks, you'll be put in breakout rooms).
2. Take time to read SCENARIO 1, then discuss how you would respond with your group.
3. Prepare to report back to the large group! We'll call you back to the large group in 5-10 minutes so we can collectively discuss.
4. We'll repeat with Scenarios 2 and 3.

Scenario Time!

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Thank you!




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