



Title IX Advisor Training

Annika Scharosch, Title IX Coordinator
Training for Student Conduct & Title IX Boards & Advisors
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Role of an Advisor

- **Role = support and advise**
 - Explain their rights in the process
 - Considerations for navigating the process (e.g. reaching out to the Student Care Team or Title IX Coordinator for supportive measures)
 - Assistance with completing forms/letters
 - Accompany them during the investigative process
 - Help them prepare for the hearing
 - Ask questions of witnesses on their behalf during the hearing



Resources to Guide You

- Title IX website: www.ewu.edu/titleix
- Review EWU policies:
 - Student Conduct Code, WAC 172-121
 - EWU Policy 402-01 (Sexual Misconduct, Interpersonal Violence & Title IX Responsibilities)
 - EWU Policy 402-05 (Title IX Investigations & Hearings)
- Call the Title IX Coordinator (359-6724)



Role #1

- Know the rights of complainants and respondents



Explaining Complainant's Rights: Students & Employees

- Right to:
 - Request supportive measures
 - Be informed of campus & community resources
 - File a formal complaint or not file
 - Have an advisor of their choosing
 - Fully participate in the process
 - Be informed of the outcome
 - File an appeal
 - Not have the burden of proof
 - Be free from retaliation



Amnesty for Certain Student Conduct Charges

- EWU Policy 402-01:

“The university encourages students to report incidents of sexual misconduct without fear of consequences for having possessed or consumed alcohol and/or drugs at the time of the incident. The university’s primary concern is to address student safety, discrimination, and sexual misconduct. The university does not condone drinking, use of illegal drugs, or other violations of law or university policy; **however, the university generally will not pursue Student Conduct Code allegations against a complainant for alcohol or drug use and/or possession at the time of the reported sexual misconduct. This amnesty does not extend to other potential violations of the Student Conduct Code. This limited amnesty is applicable only to university Student Conduct Code proceedings and is at the university’s discretion.**”



Explaining Respondent's Rights: Students

- Right to:
 - Request supportive measures
 - Be informed of campus & community resources
 - Be informed of the details of the allegations against them and respond to those allegations
 - Have an advisor of their choosing
 - Remain silent
 - Fully participate in the process
 - Presumed not responsible
 - Be free from retaliation
 - File an appeal



Explaining Respondent's Rights: Employees

- Right to:
 - Request supportive measures
 - Be informed of campus & community resources
 - Be informed of the details of the allegations against them and respond to those allegations
 - Have an advisor or union representative of their choosing
 - Remain silent
 - Fully participate in the process
 - Presumed not responsible
 - Be free from retaliation
 - File an appeal



Role #2

- Serve as a guide through the university process



Overview of Title IX Process

Notification

- Title IX report filed
- Title IX team notified by email
- EWU PD assesses for a timely warning

Support & Resources

- Student Care Team reaches out to the alleged victim to provide support, resources, and reporting options as required by VAWA
- Facilitates supportive measures for both parties (except employee respondent supportive measures which are provided by Title IX Coordinator)

Interim Restrictions

- Title IX Coordinator, Director of SRR or VP (employment) assess whether any interim restrictions are needed (no-contact order, housing restrictions, paid administrative leave, interim suspension, etc.)



Overview of the Title IX Process

Criminal Investigation

- EWUPD may conduct a criminal investigation

Title IX Investigation

- Title IX Investigator conducts an investigation and compiles an investigative report for SRR or HR

Hearing & Appeal

- SRR or HR conducts a hearing. Determines whether or not a respondent is responsible for sexual misconduct; imposes a sanction.
- Appeal to a vice president



Support & Resources

- Student Care Team is responsible for providing parties in a Title IX situation with resources and supportive measures
 - Supportive measures might include mutual no-contact orders, academic or work modifications, alternative campus housing, etc.
- Heidi Schnebly, Director of Student Care Team- overview of this step in the process



Interim Restrictions

- Respondents may have interim restrictions placed on them early on in the process
 - Students: no contact orders, interim restrictions, or suspensions
 - Interim restrictions may be appealed through an emergency hearing to the VP of Student Affairs
 - Employees: no contact orders, interim restrictions, or paid administrative leave



Criminal Investigation

- University advisors are not responsible to advise or support a respondent through a criminal investigation.
- If a respondent is facing potential criminal charges, recommend that they seek legal counsel.
- If they hire legal counsel or some other advisor, please let us know as your role as an advisor is no longer needed



Investigation

- All formal Title IX complaints will be referred to a university investigator (Ray Rector)
- Investigator's role is to gather relevant evidence
 - Gather physical evidence (text messages, social media posts, etc.)
 - Interview the complainant and the respondent
 - Interview witnesses identified by the parties
 - Summarize the evidence gathered in a report
 - Give the parties an opportunity to review the report and provide additional evidence/clarification



Investigative Report

- Report should document the relevant information collected by the investigator
- Parties have the right to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint
- Your role is to accompany them through this process, not advocate or speak on their behalf



Notice of Allegations/Hearing

- Respondent should receive a written notice of the charges against them and the possible policies they have violated
- Notice will include information about their rights and responsibilities



Role #3: Hearing Preparation



Student Conduct- Prehearing

- Complainant and respondent will be notified of a prehearing conference.
- Prehearing conference is designed to schedule a hearing date, gather information about the number of witnesses each party will be calling, and to ask questions
- We recommend you attend this prehearing with the person you are advising



Employment- Prehearing

- Labor Relations Manager will be reaching out to the parties to schedule a hearing time, identify witnesses, and answer any questions they might have
- Questions about the hearing should be directed to the Labor Relations Manager, Spenser Ross



Hearing Preparation

- You will need to help the complainant or respondent prepare for the hearing
 - Gather physical evidence if it was not previously provided to the investigator
 - Review all of the evidence provided to you by the investigator
 - Help the party identify whether or not they should call any witnesses. Make sure they schedule their witnesses.
 - Draft questions to ask parties and witnesses



Role #4: The Hearing

- You will accompany the party you are advising throughout the entire hearing
- You will ask questions of the party you are advising. Ask these types of questions in a way that enables them to tell their story.
 - E.g. can you tell me what happened the night of July 5th? Where were you? Who were you with? What happened next?



The Hearing

- You will also ask questions of other witnesses. These questions should be designed to make sure all of the relevant evidence is considered by the hearing board.
 - E.g. who else was at the party that night? Did you have any alcohol to drink?
- You may provide a closing statement on the party's behalf or they may provide it themselves.



Methods of Questions

- Closed vs. Open-ended
- Direct vs. Cross-examination
 - Leading Questions
- Pauses
- Absolutes (e.g. *I never*, *I always*)
- Preparation
 - What does each witness have to offer?
 - What is the significance of a particular exhibit?
 - Should I present unfavorable evidence?
 - Can I ask questions about sexual history?
 - Can I ask questions that might seek privileged information?
 - Should I ask a question that has already been asked?
 - What should I do if there is an objection to a question?
 - What if a witness either refuses to answer a question, does not answer as anticipated, or cannot recall previous statements?
- Drafting
 - Scripting?
 - Concepts?



Role #5: Advise About Appeal Rights

- After the hearing is completed, the hearing board will issue a written decision. The decision will include information about how to appeal.
- Make sure the party you are advising is aware of their right to appeal, time limits for appealing, and how to appeal.
- Your job is to advise them about how to appeal. Not to write the appeal for them as your role is to advise, not advocate for the party.



Student Conduct: Reasons for Appeal

- (1) Hearing was not conducted according to established procedures that affected the outcome of the manner;
- (2) Hearing authority misinterpreted the Student Conduct Code;
- (3) Whether the decision reached by the hearing authority was based on the information presented and whether the evidence was sufficient to reasonably establish violation of the Student Conduct Code based on a preponderance of the evidence;
- (4) Whether the sanction(s) imposed were reasonable and appropriate for the associated violation;
- (5) To consider newly discovered, material information that was not reasonably available at the time the determination was made that could affect the outcome of the matter;
- (6) Title IX Coordinator, investigator, or hearing authorities had a conflict of interest or bias that affected the outcome of the matter.



Student Conduct: Method for Appealing

- Appeal is filed with the Director of SRR
- Must be filed within 10 business days from service of the council's decision
- Must be in writing and explain why the party believes the decision is wrong and what remedy they are seeking
- Other party is given a copy of the appeal and has 3 business days to respond
- Appeal decision is made by the VP of Student Affairs based on the hearing record. If a student does not agree with this decision, they may appeal to superior court.



Employee Title IX Hearings: Reasons for Appeal

- (1) Procedural irregularity or failure to comply with a collective bargaining agreement that affected the outcome of the case;
- (2) New evidence that was not reasonably available at the time of the decision that could have affected the outcome of the case; or,
- (3) Title IX Coordinator, investigator, or hearing board had a conflict of interest or bias and such conflict/bias affected the outcome of the case.



Employee Title IX Hearings: Method for Appealing

- Complainant or respondent may appeal by filing a written appeal within 10 calendar days of service of the hearing board's decision.
- Must email or physically deliver an appeal to the Labor Relations Manager.
- Appeal must set forth why the person believes the decision was incorrect, how it fits within the bases for appeal, and relief requested.
- Other party is given a copy of the appeal and has 10 calendar days to respond.
- Appeal decision is made by a VP or designee based on the hearing record. If a party does not agree with this decision, they may appeal to superior court.



Title IX Grievances

- If someone reports to you that they feel like EWU is violating Title IX, there are two options:
 - EWU Title IX Grievance
 - Filed with Title IX Coordinator/Assoc. Vice President for Civil Rights (ascharosch@ewu.edu; (509) 359-6724)
 - External Complaint:
 - US Department of Education, Office of Civil Rights
(206) 442-1636
OCRSeattle@ed.gov



Resources on Campus & Spokane Community

<https://inside.ewu.edu/titleix/>

Confidential Resources:

- CAPS
- YWCA Domestic Violence
- Lutheran Community Services Northwest

Non-Confidential Support Services:

- Dean of Students Office & Student Care Team
- Title IX Coordinator





Presiding Officers

August 20, 2020



Running a Hearing

- Rulings on Evidence
- Decorum
- Detailed Review of the Process
- Continuances
- Accommodations
- Hearing Overview



Running a Hearing

- Rulings On Evidence
 - Evidence, including hearsay, is admissible if a reasonably prudent person could rely upon it, subject to Title IX's cross-examination requirement.
 - Irrelevant evidence may be excluded.
 - Any decision to exclude an irrelevant cross-examination question must be explained on the record.
 - Evidence protected by constitution, statute, or privilege must be excluded.
 - A written report following an EWU investigation is admissible if the author testifies at the hearing.
 - Official notice of facts may be taken in certain situations.
 - Subject to Title IX, all rulings must be in accordance with RCW 34.05.452, which includes using Washington's rules of evidence as guidelines.
 - Prior sexual history is admissible only if (1) to prove someone other than the respondent committed the alleged misconduct, or (2) to prove consent.



Running a Hearing

- Decorum

- Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.
- If necessary, establish expectations early and expressly.



Running a Hearing

- Detailed Review of the Process
 - Notice
 - Allegation
 - Investigation
 - Dismissal
 - Results of Investigation
 - Hearing Date
 - Results of Hearing
 - Appeal Rights
 - TimeFrames



Running a Hearing

- Continuances

- Student Conduct:

- Continuances, extensions of time, and adjournments may be ordered by the CRO. A party may file a timely request for a continuance if the party shows good cause for the continuance. A request for a continuance may be oral or written. Before granting a motion for a continuance, the CRO shall allow any other party to object to the request. The CRO will make a decision on the request and will communicate his/her decision in writing to the parties along with the reasons for granting or denying the request.

- Employment

- EWU must respond to Title IX complaints in a prompt and equitable manner. To assist the university in achieving this goal, [EWU Policy 402-05] identifies timelines for each part of the grievance process. If the university, complainant, or respondent, wishes to temporarily delay the grievance process or extend a timeline, the person seeking the extension must file a written request with the Title IX Coordinator . The request must identify the reason for the delay. The Title IX Coordinator may extend the timeframes for good cause. Good cause includes situations such as the absence of a party, party's advisor, or witness at a hearing; concurrent law enforcement activity; or the need for language assistance or accommodations. The Title IX Coordinator will issue a written response to the request and state the reasons for why the request has been granted, modified, or denied. A copy of this decision will be provided to the complainant and respondent.



Running a Hearing

- Accommodations
 - Remote Appearance
 - Interpreters
 - Support Animals
 - Notice and Timeframes



Running a Hearing

- Hearing Overview
 - Hearing Script
 - Admitting Exhibits
 - Swearing in Witnesses
 - Typical Hearing
 - Introduction/Housekeeping
 - Exhibits
 - Opening Statements
 - Testimony
 - EWU's Witnesses
 - Complainant's Witnesses, if any
 - Respondent's Witnesses, if any
 - Complainant
 - Respondent
 - Rebuttal Witnesses, if any
 - Closing Statements
 - Adjourn





Sanctions and Remedies

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After a Finding of Responsibility

- Sanctions
- Remedies
- Writing Findings of Fact and Conclusions of Law



Sanctions- Student Conduct

- Sanctions
 - Consistency and Fairness
 - Sanctioning on a Spectrum
 - Severity
 - Recurrence
 - Potential Sanctions for Student Conduct Violations
 - Admonition
 - Warning
 - Censure
 - Probation
 - Restitution
 - Fines
 - Discretionary Sanctions
 - Loss of Financial Aid
 - Suspension
 - Expulsion
 - Degree Revocation
 - Student organizations are subject to additional sanctioning



Remedies- Student Conduct

- Remedies

- For Title IX complaints, if the respondent is found responsible for violating the code, the university may provide remedies to the complainant designed to restore or preserve equal access to the university's educational programs or activities.



After a Finding of Responsibility

- Writing Findings of Fact and Conclusions of Law
 - Explain the rationale, but the order need not discuss every piece of evidence in complete detail.
 - [Example](#)



Sanctions for Employees

In addition to evaluating good cause and progressive discipline, hearing panel should take measures to make sure discipline is consistent with previous sanctions for similar behavior.



Previous Sanctions

Hearings Board should evaluate what sanctions were issued for employees/students who engaged in similar types of conduct.

- The information for employees is available through the Labor Relations Manager
- The information for students is available through the Director of Student Rights and Responsibilities



Types of Sanctions for Employees

- Constructive Action
- Written Warnings/Reprimands
- Reduction in pay
- Suspensions
- Demotions –permitted by some contracts
- Termination



Remedies

Designed to restore or preserve a complainant's equal access to the university's educational programs and activities. This may include long-term supportive measures, may be disciplinary and may burden a respondent. For example, one possible remedy is to permanently prohibit the respondent from contacting the complainant or restricting the respondent's ability to participate in a particular activity.

