



# EASTERN WASHINGTON UNIVERSITY

# **REFRESHER TRAINING**

STUDENT DISCIPLINARY COUNCIL  
& TITLE IX ADVISER REFRESHER  
TRAINING MATERIALS

SHOWALTER 125  
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## Meet Your Trainers



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# TRAINING OVERVIEW

## **SDC Hearing Board Refresher Training**

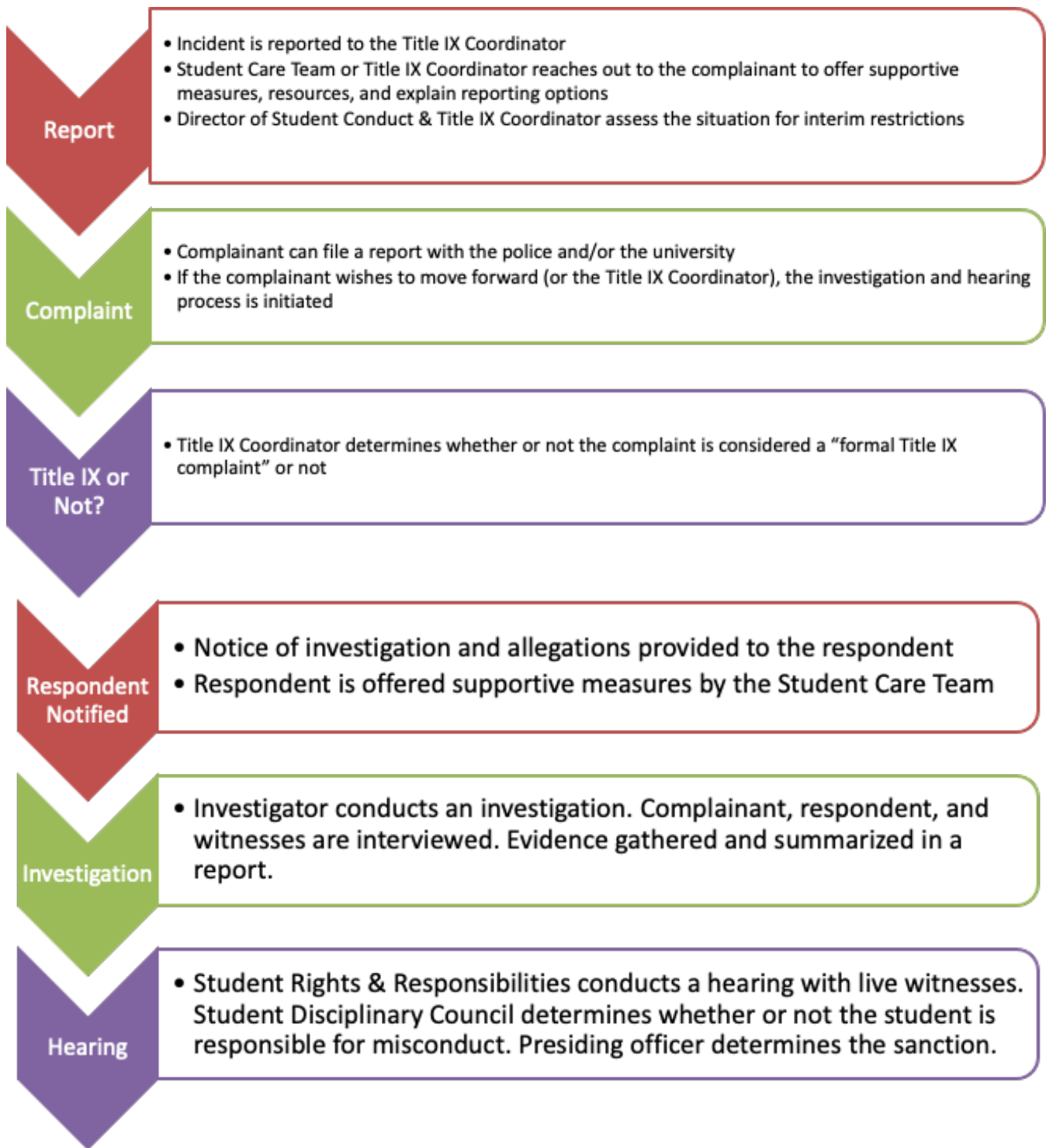
- Welcome & Introductions
- Investigative Process
- Advice and Lessons from an AAG
- Trauma Informed Questioning
- Student Conduct Code & Title IX Updates
- Panel Discussion

## **Title IX Advisor Refresher Training**

- Additional Title IX Updates
- Tips for Serving as an Advisor
- Advice from an AAG

# UNDERSTANDING THE PROCESS

## Title IX & Sexual Misconduct Process- Student Respondent



# INVESTIGATIONS

## Purpose of the Investigation

- For Title IX cases, EWU must investigate before a complaint can be sent to hearing
- Burden of gathering evidence is on EWU, not the parties
- Must not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence

## The Role of the Investigator

- Must always remain impartial
- Must provide both parties with an equal opportunity to submit, inspect, and review any evidence obtained during the process that is directly related to the allegations raised in the complaint
- Create an investigative report that fairly summarizes relevant evidence
- It is very important that there are no surprises- each party knows what information has been submitted and has a chance to respond before the investigation is completed

## Common Questions for Investigators

- How do you decide who to interview?
- How do you try to contact people? What if they do not respond?
- What if the police have already done an investigation?
- Can a party refuse to participate in the investigation?
- Why don't you investigate concerns about the complainant's behavior? Or additional concerns raised by the witnesses?

**Q: Do you have any questions for our investigator?**

# EVIDENCE

## NEW!! Student Conduct Code Update- Admissibility of Evidence

**We must consider “all relevant evidence” even if a witness does not testify**

- Federal court determined the Title IX regulation prohibiting the admission of evidence unless the speaker subjected themselves to cross-examination was arbitrary and capricious. Victim Rights Law Center, et al. v. Cardona, 552 F.3d 104 (D. Mass. 2021).
- OCR confirmed schools should no longer follow this regulation and university **must consider “all relevant evidence” even if a witness does not testify.**
- As a result, EWU updated its Student Conduct Code.
  - WAC 172-121-122: “Evidence, including hearsay evidence, is admissible if in the judgment of the CRO it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.”

## ASSISTANT ATTORNEY GENERAL

### Purpose and role of the AAG?

### Common Questions

- What weight should the investigative report be given?
- Should the SDC essentially start from scratch and ask questions the investigator previously asked?
- Can the SDC consider information contained in the investigative report if the witness who provided the information does not testify at the hearing?

### Advice and Tips from the AAG

**Q: Do you have any questions for our AAG?**

## Understanding the impact of Trauma as it relates to our role in SDC

### Introduction to Trauma Informed Practices:

- <https://youtu.be/IR4vVO-gXmg?feature=shared>

### Freezing:

- <https://youtu.be/DPqN789i00U?feature=shared>

### Did you know that in response to the anticipated trauma of sexual assault, hormones are released into the body which impact:

- Ability to react physically
- Ability to think rationally
- Ability to consolidate or group memories
- This is a neurobiological response, not a choice.

### Pair and Share

**In the sample report shared** – “Complainant stated she had no further memory until she awoke the following morning at 9:00 a.m.”

- Knowing what you know now – how might this alter how you approach questions and thinking in the hearing?
- What are three ways you could use a trauma-informed practice when asking questions of people in SDC hearings?

## NOTES

## Title IX- Scope of Responsibility

### Did you know our decisions could impact Federal Law?

EWU's obligations to its students to provide an educational environment that is free from discrimination is more expansive than its responsibilities under Title IX



- *Brown v. State of Arizona* (9th Cir. 2023): university may be responsible for abuse that took place off-campus because they exercised substantial control over the student
- *Pacific University* (2023): \$4 million jury verdict against the university for inappropriately handling a Title IX case, even though it followed Title IX regulations
- *Barlow v. WSU* (Wash. Sup. Ct. TBD): question of liability when a university finds a student responsible for a Title IX issue, issues a lower-level sanction, and the student then rapes another student off-campus

## Focus on Sexual Harassment

When serving on the SDC, you may be evaluating sexual harassment in a purely student situation or in an employment situation (Title IX, Title VII, and WLAD)

In an employment setting, EWU is directly responsible for any sexual harassment engaged in by its student employees or regular employees

### Hostile Environment Sexual Harassment

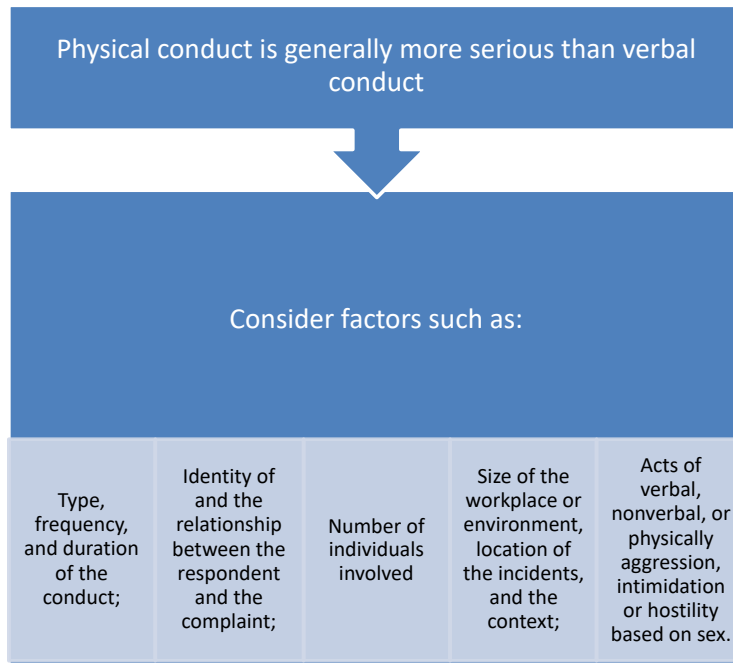
- Unwelcome conduct on the basis of sex that creates a hostile environment.
- Determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies the complainant equal access to the university’s programs or activities.

### Is the conduct severe, pervasive & objectively offensive?

Did Not Meet the Standard	Met the Standard
Once instance of being called a gay slur by another student. <i>Doe v. Princeton Univ.</i> (3 <sup>rd</sup> Cir. 2019)	Soccer coach repeatedly and consistently making inappropriate sexual comments. <i>Jennings v. Univ. North Carolina</i> (4 <sup>th</sup> Cir. 2007)
An isolated hug, even if forced upon the recipient. <i>Mosavi v. Mt. San Antonio College</i> , 805 F. App’x 502 (9 <sup>th</sup> Cir. 2020)	Single act of pressing up against someone in a sexual way. <i>Ault v. Oberlin College</i> (6 <sup>th</sup> Cir. 2015)
A singled comment that someone was “beautiful”, along with glancing. <i>Klocke v. Univ. of Texas at Arlington</i> (5 <sup>th</sup> Cir. 2019)	Gender-neutral profanity accompanied by obscene gestures towards a female employee’s private parts. <i>Xiayuan Tang v. Citizens Bank</i> (1 <sup>st</sup> Cir. 2016)



## In General:



## Music Creating a Hostile Environment?

Sharp v. S&S Activewear, L.L.C. (9th Cir. 2023)- when “sexually graphic, violently misogynistic” music is played routinely, it can constitute sexual harassment.

- Does not need to be directly targeted at a particular person or be targeted towards a particular gender
- Examples were songs like “Blowjob Betty” by Too \$hort that contained “very offensive lyrics that glorified prostitution” or “Stan” by Eminem describing extreme violence against women
- Court indicated conduct is to be viewed cumulatively and contextually, rather than in isolation. While offhanded comments and isolated incidents may not create a pervasively hostile environment, repeated and prolonged exposure to sexually foul and abusive music polluted the workplace and constituted sexual harassment



## Common Misconceptions About Sexual Harassment

Misconception	Truth
Male vs. female Opposite gender/gender identity Positions of authority	Sexual harassment can be perpetrated by anyone and anyone can be harassed
Motivated by a sexual desire	Sexual motivation is not required. Many times harassment is motivated by dominance, power, or bullying
Academic Freedom	The First Amendment does not protect speech that meets the definition of sexual harassment
It was just a joke...	Even if someone intends for a statement to be funny, it may be offensive to others. Sexual harassment is viewed from the perspective of a reasonable person in the complainant's circumstances
It was a compliment...	Reasonable person in the complainant's circumstances...

## PANEL – QUESTION AND ANSWER TIME!

### NOTES

# TITLE IX ADVISOR REFRESHER TRAINING

## Title IX Updates

**NOTES:**

**TIPS FROM AN EXPERIENCED ADVISOR:**

*TAKE A MINUTE TO JOT DOWN SOME GOOD QUESTIONS OR QUESTION STEMS....*

## Advice from an AAG

NOTES: