



# Title IX University Appointed Advisor Training

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# Agenda

- Review of regulations and basic language
- Expectations of advisors
- Key steps in grievance process
- General Principles that govern the hearing process
- Purpose of cross examination
- What happens after the hearing
- General guidance for advisors

**Veteran Advisor Tip:** Take good notes during training, it may be awhile until you are called into a hearing.

# What is Required: TIX Regs

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.

<https://www.federalregister.gov/d/2020-10512/p-6488>

# TIX Regs: Preamble Insight

[EXPECTATION] **An advisor’s cross-examination “on behalf of that party” is satisfied where the advisor poses questions on a party’s behalf, which means that an assigned advisor could relay a party’s own questions to the other party or witness, and no particular skill or qualification is needed to perform that role.**

While an assigned advisor may have a personal or professional belief in, or dedication to, the position of the party on whose behalf the advisor conducts cross-examination, such a belief or dedication is not a requirement to function as the assigned advisor.

<https://www.federalregister.gov/d/2020-10512>

...conducting cross-examination “on behalf of a party” need not mean more than relaying that party's questions to the other parties and witnesses.

<https://www.federalregister.gov/d/2020-10512/p-3872>

# TIX Regs: Preamble Insight

[TRAINING] The Department **declines to require training** for assigned advisors because **the goal of this provision is not to make parties “feel adequately represented” but rather to ensure that the parties have the opportunity for their own view of the case to be probed in front of the decision-maker.**

<https://www.federalregister.gov/d/2020-10512/p-3882>

[BE PREPARED] The final regulations do not preclude recipients from adopting a rule that requires parties to inform the recipient in advance of a hearing whether the party intends to bring an advisor of choice to the hearing; **but if a party then appears at a hearing without an advisor the recipient would need to stop the hearing as necessary to permit the recipient to assign an advisor to that party to conduct cross-examination.**

<https://www.federalregister.gov/d/2020-10512/p-3881>

# TIx Regs: Preamble Insight

A party cannot “fire” an assigned advisor during the hearing, **but if the party correctly asserts that the assigned advisor is refusing to “conduct cross-examination on the party's behalf” then the recipient is obligated to provide the party an advisor to perform that function, whether that means counseling the assigned advisor to perform that role, or stopping the hearing to assign a different advisor.**

If a party to whom the recipient assigns an advisor refuses to work with the advisor when the advisor is willing to conduct cross-examination on the party's behalf, then for reasons described above that party has no right of self-representation with respect to conducting cross-examination, and that party would not be able to pose any cross-examination questions. Whether advisors also may conduct direct examination is left to a recipient's discretion (though any rule in this regard must apply equally to both parties). ...nothing in the final regulations prevents a recipient from training and assessing the competency of its own employees whom the recipient may desire to appoint as party advisors.

<https://www.federalregister.gov/d/2020-10512/p-3881>

# TIX Regs: Preamble Insight

The Department does not have control over claims made by parties against recipients in private litigation, but clarifies here that **this provision does not impose a burden on the recipient to ensure the “adequacy” of an assigned advisor, merely that the assigned advisor performs the role described in this provision.**

<https://www.federalregister.gov/d/2020-10512/p-3876>

[QUESTION IN ABSENCE] A party's advisor may appear and conduct cross-examination even when the party whom they are advising does not appear. **Similarly, where one party does not appear and that party's advisor of choice does not appear, a recipient-provided advisor must still cross-examine the other, appearing party “on behalf of” the non-appearing party,** resulting in consideration of the appearing party's statements but not the non-appearing party's statements (without any inference being drawn based on the non-appearance). Because **the statements of the appearing party were tested via cross-examination,** a fair, reliable outcome can result in such a situation.

<https://www.federalregister.gov/d/2020-10512/p-3925>

# Language You Will Encounter During the Hearing

- Complainant and Respondent
- Exculpatory evidence
- Inculpatory evidence
- Relevant question
- Relevance objection
- Cross examination



# Expectations

1. Review all the documentation provided. You should receive the final report, all evidence/exhibits, and all directly related but irrelevant documents.
2. Arrange a time to meet with your party to understand their theory of the case (but don't use that language with students).
3. Attend a prehearing meeting with your party (in the OAE process).
4. Attend the hearing.
5. Relay cross examination questions from your party to the other party and witnesses during the hearing.
6. Maintain a professional and respectful demeanor throughout the hearing.
7. Establish a mutually agreeable way to communicate with your party during the hearing (the zoom session is recorded).
8. Review opening statement (for OSCR).
9. Review the closing statements ahead of time.
10. After the hearing, permanently delete or shred all documents and notes you received or created during the hearing.
11. Hold what you learn in the process in the strictest confidence.

# Do Not Expect

1. To create the hearing strategy for the party's case or to determine the theory of the case.
2. To have to generate the questions.
3. Your conversations to be privileged. If you are ever called to testify in court about the matter, you will have to share what was said in your meetings with the party.
4. To act as a lawyer, this is a non-legal role.

# Preparing Your Advisee

1. Let them know that they can request breaks during the hearing.
2. Let them know that only relevant questions can be asked.
3. Help them understand what their questions should highlight based on the policy elements and the facts of the case.
4. Inform them that there may be relevance objections and requests to reword questions.
5. Encourage them to stay away from name-calling and character defamation. Parties can bring in relevant evidence for determining the credibility of a party or witness.
6. Encourage them to stay calm and civil.
7. Avoid vulgar questions.
8. Let them know who will be present at the hearing.
9. Inform them that the hearing will be recorded by the University and no one else.
10. Length of hearing is determined by number of witnesses and complexity of the case.

# Impermissible Evidence

1. Irrelevant
2. Sexual History, unless
  - a. Offered to prove that someone other than the respondent committed the conduct, or
  - b. If evidence of specific incidents of complainant's prior sexual behavior with the respondent are offered to prove consent.

# Practice Time: Closing Statement Review

# Key Steps in OSCR's Process

- Formal complaint (written) and Complainant interview.
- Notice to the Respondent and interview
- Witness interviews, evidence collection, and follow-up interviews.
- Evidence review and response (10 business days).
- Investigative report review and response (5 business days).
- Hearing Notice (7 business days in advance)
- (Possible) Email introduction
- Hearing (two phases)
- Decision Letter
- Appeal Process (no live hearing)

# Key Steps in OAE's Process

- Complainant files a formal written complaint and is interviewed.
- Notice to the Respondent
- Witness interviews and evidence collection.
- Preliminary report and final report.
- Email introduction to your party.
- Scheduling the prehearing meeting.
- Hearing (order of hearing)
- Deliberation
- Letter of Determination
- Appeal

# General Principles that Govern Hearings

- Purpose is for the hearing panel to hear testimony from parties and witnesses so that they can determine whether there has been a violation of policy.
- The chair of the panel is responsible for running the hearing, deciding procedural and admissibility issues, and maintaining order.
- Free from bias or stereotypes



# Cross Examination

1. Questions asked should be reasonably intended to support your advisee's case.
2. Prioritize your questioning to focus on the most compelling points.
3. Ask questions that will bear on credibility.
4. Questions should be clear and precise.
5. Only ask one question at a time.
6. Address the person you are questioning with respect and their preferred title.
7. Do not raise your voice, don't be sarcastic, don't try and be dramatic.
8. No physical movements that could be considered intimidating.
9. You are never required to repeat a question that you know is improper.

# What to Expect After the Hearing

## 1. OSCR

- a. After the first hearing phase, the parties will learn the finding. If the panel requires additional time to deliberate, the hearing may be continued to a later date (for oral notification of the finding and possible second phase proceedings).
- b. Written notification of the panel's decision and rationale is sent within five business days of the hearing's conclusion.
- c. Advisor not copied on communications after the hearing.

## 2. OAE

- a. After the hearing, the panel will deliberate in closed session.
- b. 14 days after the end of deliberation, the Letter of Determination will be sent.
- c. Advisor not copied on matters that transpire after the hearing.

# General Tips from Veteran Advisors

- **Give yourself time:** “It can take a fair amount of time to prepare for a hearing. The evidence packet and other documents often total well over 100 pages, if not closer to 200. As an advisor you don’t necessarily need to be able to remember every detail, but at a minimum you need to read through the information and have general knowledge of the information presented.”
- **Be proactive:** “A tip I got from Steve that has worked well is to reach out to your advisee if they don’t reach out to you first. I’ve had a couple advisees who did not show up to the hearing, so I feel better knowing that I have attempted to contact them.”
- **Ask:** “I have found it is helpful to ask my advisee to send me any questions they want to ask at the hearing, prior to the hearing. It doesn’t necessarily mean they won’t have additional questions based on what people say during the hearing, but it’s helpful to have their list of questions ahead of time to review for relevancy. I also find that often, one of the panel members asks most of the questions that I or my advisee have before it is my turn to ask questions.”

# Where Can Party Go If They Need Additional Support/Questions

## Title IX Office

- Complainant or Respondent
- Provide supportive measures for both parties, answer questions, request to withdraw complaint (complainant)
- Additional information on resources available on [wecare.illinois.edu](http://wecare.illinois.edu)

## Investigator/Case Coordinator (OSCR or OAE)

- Complainant or Respondent
- Answer procedural questions, updates, request changes to process (e.g., extensions, etc.)

## Confidential Advisor (Located in Women's Resources Center)

- Complainants only
- Confidential assistance, procedural questions



# Questions?