

# Process Advisor Training

## for Sex and Gender Harassment/Discrimination

January 2021

Presented by Sarah Olejniczak, Lori Evans, and Judge Mark Warpinski



# Training Overview

- Introductions
- What is Title IX?
- Overview of Policies and Procedures
- Process Advisor Role
- Process/Hearing Structure
- *Cross Examination Practice (As time permits)*
- Supporting Respondents and Complainants
- Evaluating Your Bias
- Questions



# Introductions

## **Sarah Olejniczak**

Title IX and Compliance Coordinator



## **Lori Evans**

Director of Student Judicial Affairs



## **Judge Mark Warpinski**

Hearing Officer



# What is Title IX?

## **Title IX of the Education Amendments of 1972 (Office for Civil Rights)**

Title IX protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. Title IX states that:

*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 education program or activity receiving Federal financial assistance.*

\*Note: New federal Title IX regulations went into effect on August 14, 2020.



## What is Title IX? (continued)

- Applicable to all education settings receiving federal funding
- Considers multiple areas of sex-based equity in educational programs, including:
  - Athletics
  - Program offering
  - Support for pregnant/parenting students
  - Sexual violence prevention/response
  - Child sexual abuse (K-12, childcare)
  - Bullying
  - Retaliation
- Title IX affords rights to all members of a campus community, including students, staff, faculty, and parents (if minors).
- For more information, click [here](#).



# What is Title IX Sexual Harassment?

Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following:

- An employee of the college conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct ("quid pro quo sexual harassment");
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's education program or activity ("hostile environment sexual harassment"); or
- Sexual Assault, Dating Violence, Domestic Violence, or Stalking

Note: Other laws, including Title VII, have definitions for sexual harassment as well. SNC's campus policy is compliant with Title IX, Title VII, and other applicable laws/regulatory expectations.



# Overview of St. Norbert College's Sex and Gender Harassment/Discrimination Policy

## [SNC's Sex and Gender Harassment/Discrimination Policy](#)

- Two Main Policy Branches:
  - Title IX Sexual Harassment
  - Other Prohibited Conduct
- Umbrella Policy for Sexual Misconduct
- Covers all instances of sex and gender-based harassment, discrimination, and retaliation
- Includes definitions for things like sexual harassment, sexual assault, rape, fondling, stalking, domestic/dating violence. For more information, click [here](#).
  - Covers events that happen between community members on OR off campus
- Separate Response Procedure for [Employee](#) or [Student](#) Respondent



# The Process Advisor Role

- Requirements for providing Process Advisors under Title IX and/or Clery Act
- Available for both Complainant and Respondent
  - Note: **The complainant or respondent can select *anyone* to serve in this role**
- [Position Responsibilities](#)
  - Accompany complainant and respondent to meetings with investigators, coordinator, and hearing officer/hearing facilitator;
  - Review evidence and investigation reports;
  - **Cross examine the opposing party at the hearing;**
  - Support the party in understanding SNC policy and process
  - Act in the best interest of advisee, but set appropriate boundaries



## Procedure: Overview for Student Respondents

An initial intake meeting that leads to a formal complaint would then move to:

- Informal Resolution OR
- Formal Grievance Process
  - Investigation
  - Review of Evidence/Investigation Report
    - 10 Day Review Periods
  - Pre-Hearing Meeting
  - Hearing
  - Outcome/Sanctions (if found responsible)
  - Appeal (for either party)



# Hearing Structure

- Opening instructions, introductions
- Opening statements by both parties
- Questioning of the Complainant
  - By the Process Advisor for Complainant
  - By the Process Advisor for Respondent
  - By the Hearing Officer (as needed)
- Questioning of the Respondent
  - By the Process Advisors for Respondent
  - By the Process Advisor for Complainant
  - By the Hearing Officer (as needed)
- Questioning of any Witnesses
  - By the Process Advisor for Complainant and Respondent
  - By the Hearing Officer (as needed)
- Closing statements by both parties
- Closing



## Questioning at Hearings

- At the hearing, process advisors *must be allowed* to cross-examine the other party and all witnesses.
  - The complainant and respondent **MUST** have an advisor present at the hearing.
- Only relevant examination/cross-examination and other questions may be asked of a party or witness.
  - Before a complainant, respondent, or witness answers a cross-examination or other question, the hearing officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- Frame questions in ways that allow for the most useful answers and presentation of the investigation materials.
- [Evidence Admissibility and Standard of Proof](#)



## Some Helpful Information

- If a party or witness does not submit to cross-examination at the live hearing, the hearing officer must not rely on any statement of that individual (through the investigation) in reaching a determination.
- Your advisee may choose to appear, not to appear, to answer all questions, or to answer some but not all questions.
- If your advisee needs a witness's testimony or evidence, it is important that the witness participate in cross-examination.
- Work with your advisee so you understand what they want you to ask of each witness/party.
- Ask each party about all significant statements they have included in the report during cross-examination.
- Track what has already been asked, and be prepared to explain why your question is relevant if asked by the hearing officer.

Note: Information on this slide was provided during ATIXA's training for advisors and is linked at the end of this training guide.



## Cross Examination Practice

Sophia was taking a science class with Tim. They often flirted with one another, and Tim asked Sophia to go on a date with him one evening. They went to dinner together off campus, and then came back to Tim's room to spend time with one another. They watched a movie and briefly cuddled, and Sophia decided to return back to her residence hall room around 10:00 PM. They left the residence hall together, holding hands, and walking toward Sophia's residence hall.

While Tim was walking Sophia home, she started to act in a sexual manner. She kept grabbing Tim's hands and placing them on her breasts and sticking her hands on his groin. Tim asked Sophia to stop, and she did for a short time, but then would continue to touch him (or try to force him to touch her). When they got back to her residence hall, Sophia asked Tim to kiss her. Tim declined, saying that he knew it was against campus policy to remove his mask. Sophia then forcefully removed his mask and gave him a kiss while also touching his buttocks.

Tim lightly pushed Sophia away and returned to his residence hall. He felt uneasy about what took place and started experiencing nightmares about escalated encounters.

Practice formulating questions you might ask as an Advisor for both parties.



# Supporting Complainants and Respondents

- You are an advocate for your advisee!
- Be supportive when your advisee is being questioned.
- If your advisee seems uncomfortable, ask the hearing officer if everyone can take a break.
- If another advisor is acting inappropriately or you believe a question is inadmissible, ask the hearing officer to rule on that.
- Help your advisee to seek clarification when they need it – during investigations, in understanding processes, or at the hearing.
- Consider previous training on being responsive to the impact of trauma.



# Evaluating Yourself for Bias

- As the Process Advisor, it is your role to support the Complainant or Respondent. However, it is still important to consider your own bias or any conflict of interest prior to agreeing to this role with any particular party.
  - Bias and/or conflict of interest may exist if any of the following variables may improperly influence a finding and/or sanction:
    - Having a predetermined assumption of the outcome of the case (i.e., a party's responsibility or non-responsibility for violating a policy),
    - Knowledge of any personal implicit bias that may impact ability to remain impartial,
    - Fulfilling too many roles in the process, such as serving as both an investigator and a decision maker,
    - Not completing training that discussed bias or completing training that relied on sex stereotypes,
    - Situational or positional bias that may not allow an individual to remain impartial, or
    - Knowledge of intervention by senior-level institutional officials that may not allow for impartiality in the grievance process.
    - Knowledge of an individual, or any previous experience in disciplining a student or employee, is not enough to create bias or a conflict of interest.



## Other Thoughts

- You are advising parties regarding their participation in a SNC process, not of external laws; you are not a lawyer.
- You are the advisor, and are not serving as an investigator or in any other role as part of the formal grievance process.
- Complainants and Respondents have the right to access supportive measures at any point in the process; contact Sarah if you believe your advisee would benefit from additional support.
- Remember that Lori and Sarah are here to support you in this role!

