



Advisor Training

Angelo A. Stio III

Angelo.Stio@Troutman.com

(609) 951-4125

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Serving as an Advisor

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1. Obtain and review Title IX Grievance Procedure – available at <https://www.shu.edu/policies/title-ix-grievance-procedure.cfm>
 - A. Understand the type of sexual harassment being alleged.
 - Quid Pro Quo Sexual Harassment
 - Unwelcome Conduct
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking
 - B. Understand the definition of consent.

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2. Obtain a copy of the Formal Complaint.
3. Meet with Complainant/Respondent to discuss your role.
 - A. An Advisor has no obligation to uncover evidence.
 - B. An Advisor has no obligation to perform direct examinations at the hearing.
 - C. The parties may have an Advisor throughout the entire process (meetings, interviews, hearings). 34 CFR §106.45(b)(5)(iv).
 - D. Parties must have an Advisor for purposes of the hearing. 34 CFR § 106.45(b)(6)(i).
 - E. An Advisor must conduct cross-examination on behalf of a Complainant or Respondent. 34 CFR § 106.45(b)(6)(i).
 - F. An Advisor must comply with the [Rules of Decorum](#). See 34 CFR §106.45(b)(5)(iv).

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4. Obtain copies of relevant evidence related to the allegations in the Complaint. 34 CFR §106.45(b)(5)(vi).
 - A. Complainant Advisor - Identify the relevant evidence supporting allegations that constitute sexual harassment.
 - B. Respondent Advisor - Identify gaps in evidence or relevant evidence that refutes a finding that sexual harassment occurred.
5. Identify witnesses that may appear at the hearing.

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6. The party you are advising should begin to consider an outline of cross-examination for witnesses.

A. **NOTE** – An Advisor’s cross examination of a witness on behalf of a party is satisfied by the Advisor posing 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.” 85 Fed. Reg. 30340 (May 19, 2020).

1. You may offer support and provide assistance to a party in crafting questions and/or offering advice on cross-examination questions.

B. Complainant Advisor –

- Must ask questions that are relevant.
 - “Relevant” means having a tendency to prove or disprove a fact at issue.
- Consider questions to obtain inculpatory evidence (e.g., evidence to help establish the allegations in the Complaint occurred).
 - Lack of consent

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A. Complainant Advisor Cont'd

- Consider questions to establish the lack of credibility of a witness.
 - Inconsistencies
 - Motivation not to tell the truth
 - Defects in perception
 - Defects in recollection
 - Lack of personal knowledge
 - Documents do not lie. What do documents say?
- You cannot ask questions that seek the disclosure of information protected under a legally-recognized privilege (attorney-client, priest-penitent, therapist-patient, and physician/healthcare provider-patient). 34 CFR §106.45(b)(1)(x).
- You cannot ask questions about party's medical or psychological condition unless the party has given voluntary written consent. 34 CFR § 106.45(b)(5)(i)

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A. Complainant Advisor *Cont'd*

- You cannot ask questions about a party's prior sexual behavior, subject to two exceptions. 34 CFR §106.45(b)(5)(vi).
 - a. The questions or evidence are being offered to prove that someone other than the Respondent is responsible for the conduct alleged by the Complainant.
 - b. The questions or evidence are about prior sexual behavior between Complainant and Respondent and are asked to establish consent.

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6. Prepare outline of cross-examination for witnesses.

A. Respondent Advisor –

- Must ask questions that are relevant.
 - “Relevant” means having a tendency to prove or disprove a fact at issue.
- Questions to obtain exculpatory evidence (e.g., evidence to help establish the Respondent didn’t do what is being alleged, had consent to do it, or did what is being alleged, but it is not a violation)
- Questions to establish the lack of credibility of a witness.
 - Inconsistency
 - Motivation to lie or distort the truth
 - Defects in perception
 - Defects in recollection
 - Lack of personal knowledge
 - Documents do not lie. What do documents say?

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A. Respondent Advisor *Cont'd*

- You cannot ask questions about a party's prior sexual behavior, subject to two exceptions. 34 CFR §106.45(b)(5)(vi).
 - The questions or evidence are being offered to prove that someone other than the Respondent is responsible for the conduct alleged by the Complainant.
 - The questions or evidence are about prior sexual behavior between Complainant and Respondent and are asked to establish consent.
- You cannot ask questions about a Complainant's sexual predisposition. There are no exceptions. 34 CFR §106.45(b)(5)(vi).
- You cannot ask questions that seek the disclosure of information protected under a legally-recognized privilege (attorney-client, priest-penitent, therapist-patient, and physician/healthcare provider-patient). 34 CFR §106.45(b)(1)(x).
- You cannot ask questions about party's medical or psychological condition unless the party has given voluntary, written consent. 34 CFR § 106.45(b)(5)(i).

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7. **At the hearing, after each witness completes direct examination, assess which cross-examination questions to delete or add.**
8. **Conduct cross-examination**
 - A. Include just one fact per question
 - B. Ask mostly leading questions that seek relevant information
 - C. Make your point and move on

Questions

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