LIVE QUESTION & ANSWER ADVISORS

August 2020
AGENDA

• Why?
• 106.45.6. Hearings (additional information on p. 1044ff)
• Live question & answer at Taylor University
• Responsibility of the advisor
• Ask questions throughout
WHY?
The Department further reiterates that the tool of cross-examination is equally as valuable for complainants as for respondents, because questioning that challenges a respondent’s narrative may be as useful for a decision-maker to reach an accurate determination as questioning that challenges a complainant’s narrative (p. 1073)
... this provision ensures that advisors conducting cross-examination will be either professionals (e.g., attorneys or experienced advocates) or at least adults capable of understanding the purpose and scope of cross-examination (p. 1109).
WHY NOT SELF-REPRESENTATION?

… requiring postsecondary institutions to provide advisors to parties for the purpose of conducting cross-examination best serves Title IX’s non-discrimination mandate by ensuring that adversarial cross-examination occurs, thereby ferreting out the truth of sexual harassment allegations, while protecting sexual harassment victims from personal confrontation with a perpetrator (p. 1110).
WHAT DOES TITLE IX REQUIRE?
106.45.6 HEARINGS

- Grievance process must provide for a live hearing.
- The decision-maker must permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
106.45.6 HEARINGS

- If the party does not have an advisor, the institution must provide without fee or charge and advisor of the institution’s choice.
- May or may not be an attorney.
CONDUCT CROSS-EXAMINATION ON BEHALF OF THAT PARTY
HOW WILL ADVISING LOOK?
PRIOR TO LIVE Q & A

1. Coordinator will be in communication with complainant and respondent re: advisor.
2. If they need a TU advisor, coordinator will assign.
3. Advisor and participant meet prior to live Q&A to discuss questions.
LIVE Q & A

- Advisor and participant may be in the same room.
- Advisor asks questions on behalf of the participant.
PRIOR SEXUAL BEHAVIOR

Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior (1) are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or (2) concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.
QUESTION APPROVAL

Before a complainant, respondent, or witness answers a question, the adjudicators must first determine whether the question is relevant and, if the adjudicators determine any question is irrelevant, must explain the decision to exclude it.
Participants are not prohibited from conferring with their advisor during the Q & A, but he or she must answer any pending question before taking a break to confer with his or her advisor. The role of the advisor is to ask questions, not coach the complainant or respondent.
LIVE Q & A FOR TAYLOR UNIVERSITY
The purpose of the live Q & A is to provide the complainant and respondent the opportunity to ask questions through an advisor to each other and any witnesses.

The live Q & A provides the adjudicators an opportunity to ask questions and seek clarification.
PARTICIPANTS

• coordinator, who will serve as the facilitator,
• the complainant and his or her advisor,
• the respondent and his or her advisor,
• two adjudicators, and
• relevant witnesses.
WITNESSES

Relevant witnesses will include witnesses determined by the adjudicators or determined by the complainant and respondent. All participating witnesses at the Q & A must be accessible on the day of the Q&A, although they may not be called to answer questions. All participants in the Q & A must have previously been interviewed during the investigation.
PROCESS

- Confidentiality
- Opening directions by the coordinator
- Complainant ask questions
- Respondent ask questions