

WHITMAN COLLEGE

Process Advisors

For the Title IX + Grievance Process

CASSANDRE BECCAI, PHR, SHRM-CP
DIRECTOR OF EQUITY AND COMPLIANCE
TITLE IX COORDINATOR

1


WHITMAN COLLEGE

Content Advisory

2

Learning Objectives

- Basic info about Title IX
- College's Obligation to Title IX
- Whitman College Title IX Policy and Process
- Advisor's Role Pre Hearing
- Advisor's Role During Hearing
- Advisor's Role Post Hearing



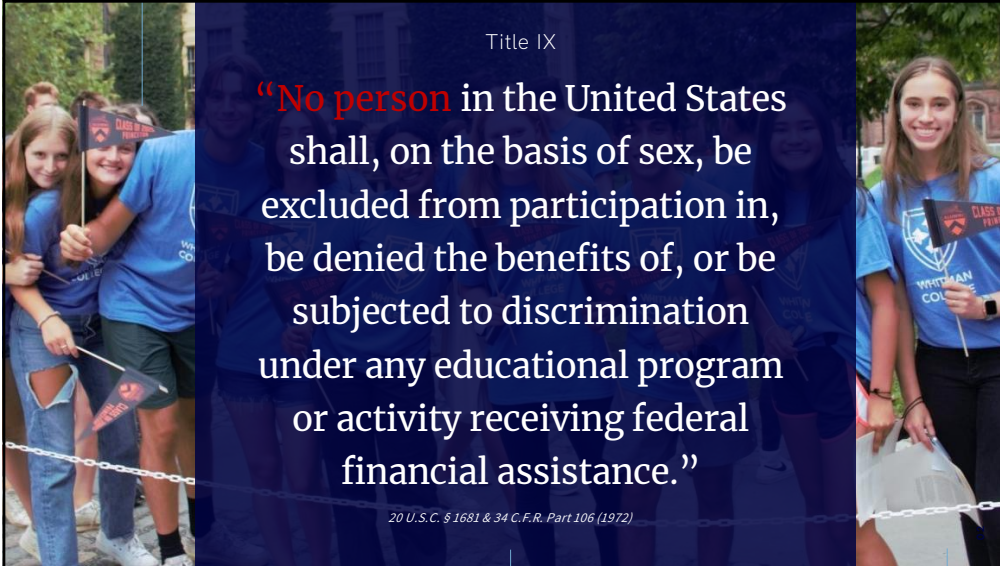
WHITMAN COLLEGE

3

Title IX

“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 educational program or activity receiving federal financial assistance.”

20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)



4

The Big Picture

As a recipient of federal financial assistance for education activities, Whitman College is required by Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities do not discriminate on the basis of sex/gender.

COLLEGE STANDARDS

The college does not discriminate on the basis of sex/gender. Sexual harassment, sexual assault, dating and domestic violence, stalking and sexual exploitation are prohibited under Title IX and by Whitman College policy.

RETALIATION

The college also prohibits retaliation against any person participating in good faith in any discrimination investigation or complaint process internal or external to the institution.

JURISDICTION

The policy applies to the education program and activities of the college, to conduct that takes place on the campus or on property owned or controlled by the college, at college-sponsored events, or in buildings owned or controlled by the college's recognized student organizations. The respondent must be a member of the college's community in order for the policy to apply.

WHITMAN COLLEGE

5

Title IX Coordinator's Duties

- Accepts reports of alleged violations including those from anonymous and third party reporters
- Offers supportive measures regardless of the status of the respondent, known or unknown
- Arranges Supportive Measures
- Provides information about how to file a formal complaint to initiate an informal or formal resolution process.
- Provides information about the formal and informal grievance resolution process.
- Reviews and/or updates the Title IX Policy on yearly basis

WHITMAN COLLEGE

6

Supportive Measures

- Referrals to service providers
- Safety planning
- Providing campus safety escorts
- Implementing no contact orders between the parties
- Course/program-related adjustments
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator (p. 9)

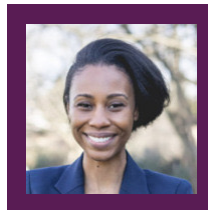


WHITMAN COLLEGE

7

Meet Us

Title IX
Coordinator and
Deputy Title IX
Coordinators.



CASSANDRE BECCAI

ALL COLLEGE

Director of Equity &
Compliance | Title IX
Coordinator

Memorial Building 301
509-522-4314
beccaic@Whitman.edu

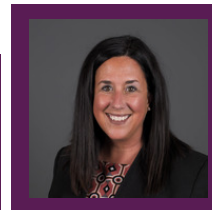


MELISSA CLEARFIELD

STUDENTS

Laura and Carl Peterson
Chair of Social Sciences |
Professor of Psychology

Hunter Conservatory 404
509-522-4427
clearfmw@Whitman.edu



CARA SETCHELL

EMPLOYEES

Assistant Director of
Human Resources

Memorial Building 105
509-527-5970
setchecl@Whitman.edu

WHITMAN COLLEGE

8

Sexual Harassment, Discrimination and Sexual Misconduct Policy and Procedure

whitman.edu/titleix

9

Some Key Statements in the Policy

1. Contact information of campus resources and local police. (p.4, 8, 22)
2. Contains written protocol outlining what happens when reports are received (p. 23)
3. All parties have the right to an advisor. (p. 26)
4. When the respondent is a member of the Whitman community this grievance process will be available regardless of the status of the complainant. (p. 4)
5. There is no time limitation on providing notice/ complaints to the Title IX Coordinator. (p. 12)
6. Amnesty for drug or alcohol possession and consumption. (p. 21)
7. Even when the respondent is not a member of the college's community, supportive measures, remedies, and resources may be accessible to the complainant by contacting the Title IX Coordinator. (p. 12)

10

Changes in the administration of Title IX

Whitman College


The Department of Education promulgated regulations that went into effect August 14, 2020.

These regulations limited the scope of Title IX to a very specific set of cases

The cases must meet a new definition of sexual harassment and jurisdictional requirements.

If a case meets all the required elements, then it will proceed under the Title IX grievance process, which includes a live hearing.

11



What Are the Title IX Regulatory Standards?

For a case to be resolved under Title IX Regulatory Grievance Process it must meet all the following standards:

1. The incident must occur in the US
2. The Respondent must be an individual over whom the college has authority or jurisdiction
3. The incident must occur in a program or activity of the College
4. The conduct alleged must meet the sexual harassment definition (p. 14)
5. The complainant is a member of the college community. (p.17)

WHITMAN COLLEGE

12

Title IX Sexual Harassment

Sexual Harassment, as an umbrella category

- 1. **Quid Pro Quo:** When an employee of the College conditions an aid, benefit or services of the College on an individual's participation in unwelcome sexual conduct
- 2. **Sexual Harassment:** Conduct that is sufficiently severe, pervasive and objectively offensive that it effectively denies a person from equal access to the College's education program or activity
- 3. **Sexual Assault** (6 types of conduct)
- 4. **Dating Violence**
- 5. **Domestic Violence**
- 6. **Stalking** (p. 14-17)

3. Sexual Assault

Sexual Assault: Any sexual act directed against another person, without the consent of the Complainant including instances where the Complainant is incapable of giving consent.

- a. **Forcible Rape:** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
- b. **Forcible Sodomy:** Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

3. Sexual Assault (cont.)

c. Sexual Assault With An Object: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

d. Forcible Fondling: The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

e. Incest: Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by state law.

f. Statutory Rape: Non-forcible sexual intercourse, with a person who is under the statutory age of consent of consent in Washington.

4. Dating Violence: violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the complainant.

i. The existence of such a relationship shall be determined based on the complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—

ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

iii. Dating violence does not include acts covered under the definition of domestic violence.

5. Domestic Violence: violence on the basis of sex committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Washington, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of Washington. *To categorize an incident as domestic violence, the relationship between the respondent and the complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

6. Stalking: Engaging in a course of conduct, on the basis of sex, directed at a specific person, that would cause a reasonable person to fear for the person's safety, or

- ii. the safety of others; or
- iii. suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Title IX Resolution Pathways

Formal Resolution Process

WHITMAN COLLEGE

Notice of Investigation and Allegations

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated
- Information on the need for each party to have an advisor of their choosing (p. 20)

Advisors

The advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose advisors from inside or outside of the college community. The Title IX Coordinator will also assign an advisor for any party if the party requests. An advisor is mandatory during the hearing stage to conduct cross examination. The advisor generally may not speak on behalf of their advisee. (p. 21)

19

Formal Resolution Process Overview


WHITMAN COLLEGE

Part 1	Part 2	Part 3	Part 4	Part 5
<ul style="list-style-type: none"> • Receive notice/ report • Offer supportive measures • Initial Assessment and Jurisdiction Determination (p. 25) • Receive Formal Complaint 	<ul style="list-style-type: none"> • Notice of Investigation and Allegation(s) to parties Investigation • Investigation commences 	<ul style="list-style-type: none"> • Draft Investigation Report • Evidence to Parties for review (10 days to review) • Final Investigation Report & evidence to parties (at least 10 more days to review before hearing) 	<ul style="list-style-type: none"> • Live hearing • Sanctioning 	<ul style="list-style-type: none"> • Appeal

20


Informal Resolution

- To initiate informal resolution, a complainant needs to submit a formal complaint
- A respondent who wishes to initiate informal resolution should contact the Title IX Coordinator.
- Prior to implementing informal resolution, the college will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result
- The college will obtain voluntary, written confirmation that all parties wish to resolve the matter through informal resolution before proceeding and will not pressure the parties to participate in informal resolution. (p. 25)



WHITMAN COLLEGE

21



What happens if it's not Title IX?

Sex/gender allegations that do not meet the criteria

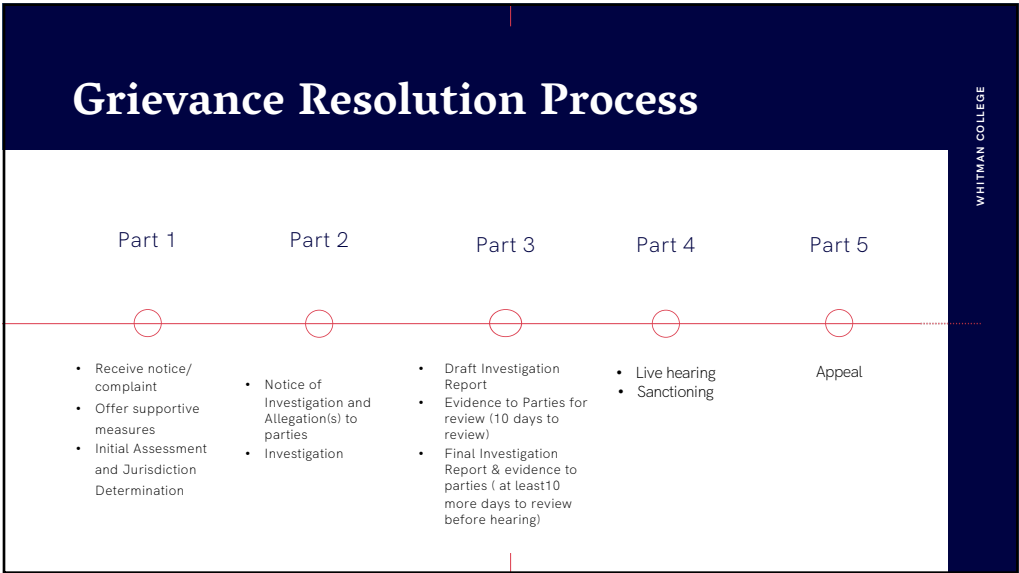
Will be addressed under the Whitman College Grievance Policy (p. 17). Examples include:

1. Off-campus conduct that effectively deprives an individual of access to the Whitman College educational program
2. On-line conduct when the Title IX Coordinator determines the conduct affects a substantial college interest
3. All forms of Sexual Exploitation

The College will address any notice/complaint to determine whether the conduct occurred in the context of its employment or educational program or activity or has continuing effects on campus or in an off-campus sponsored program or activity.

WHITMAN COLLEGE

22



23

Initial Assessment

- The Title IX Coordinator works with the complainant to determine whether the complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
- If a formal grievance process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX or this policy.
- Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints trained individuals to conduct the investigation (p. 23)

24

Discretionary Dismissal

The college may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; or
- 2) The respondent is no longer²⁵ enrolled in or employed by the college; or
- 3) Specific circumstances prevent the college from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. (p. 24)

25

Counterclaims

The college permits the filing of counterclaims but uses an initial assessment to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted. (p. 24)

26

Standards for Assessing Conduct

p.17

WHITMAN COLLEGE

27

CONSENT

Consent is knowing, and voluntary, and clear permission by word or action to engage in sexual activity.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied.

Consent can be withdrawn once given, so long as the withdrawal is reasonably and clearly communicated.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of kink, non-consent may be shown by the use of a safe word.

WHITMAN COLLEGE

28

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

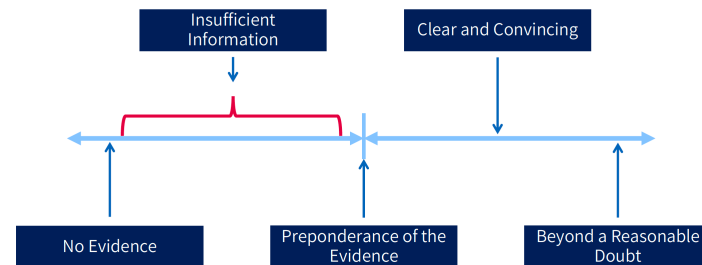
Incapacitation: Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

*It is a defense to a sexual assault policy violation that the respondent neither knew nor should have known the complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

29

Evidentiary Standard



ATIXA, 2023

30

Investigation

- Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.
- The investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.
- Prior to the conclusion of the investigation, provide the parties and their respective advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence for a ten (10) business day review and comment period.
- The investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The investigator shares the report with the Title IX Coordinator for feedback.
- The investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their advisors at least ten (10) business days prior to a hearing. (p. 22)

31

Hearing

- No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the chair will send notice of the hearing to the parties.
- The hearing notice will contain the time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Notification that the parties may have the assistance of an advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask.
- The college will designate a single decision-maker or a three-member panel at the discretion of the Title IX Coordinator.
- the decision-maker(s) has the authority to hear and make determinations on all
- allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additionally alleged violations that have occurred in concert with the sexual harassment and/or retaliation
- Participants at the hearing will include the chair, any additional panelists, the investigator(s) who conducted the investigation, the parties, advisors to the parties, any called witnesses, and anyone providing authorized accommodations or assistive services. (p. 24)

32

Deliberation

1. Was force used by the Respondent to obtain sexual or intimate access?
2. Was the Complainant incapacitated?
 - a. If so, did the Respondent know, or
 - b. Should the Respondent have known that the Complainant was incapacitated
3. What clear words or actions by the Complainant gave the Respondent permission for each specific sexual or intimate act that took place as it took place?

33

Deliberation + Notice of Outcome

- The decision-maker(s) will deliberate in closed session to determine whether the respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding.
- The preponderance of the evidence standard of proof is used.
- When there is a finding of responsibility on one or more of the allegations, the decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).
- The chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions or recommendations.
- Using the deliberation statement, the Title IX Coordinator will work with the chair to prepare a Notice of Outcome. The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing. (p. 24)

34

Sanctions and Appeals

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The respondent’s disciplinary history
- Previous allegations or allegations involving similar conduct

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

Any party may file a request for appeal, but it must be submitted in writing to the Title IX Coordinator within seven (7) days of the delivery of the Notice of Outcome.

Appeals are limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the specific complainant or respondent that affected the outcome of the matter.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. (p. 27)

WHITMAN COLLEGE

Keep in mind...

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

WHITMAN COLLEGE

Rights to an Advisor + Role of Advisors

WHITMAN COLLEGE

37

Advisor of Choice

Whitman College

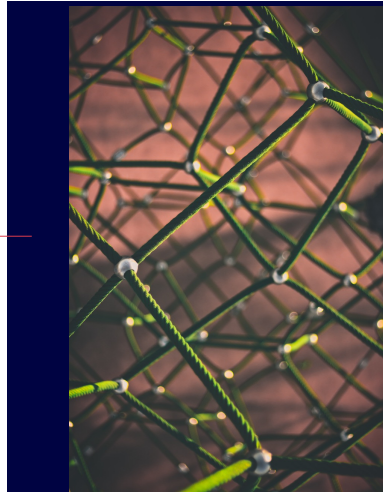
- Parties are entitled to an advisor of choice who may be, but is not required to be, an attorney
- If a party does not have an advisor, the institution must provide one for the purposes of cross examination
- Don't have to provide an attorney or equivalently educated/trained Advisor to one party just because the other party has one
- The advisor may accompany the party to any interviews/meetings and the hearing. They will conduct cross examination of the other party and witnesses at the hearing

10

38

College-Appointed Advisor

- Advisee ≠ Advisor's "client"
- Conversations not governed by privilege regardless of role
- Alignment with advisee not required, but lack of it can cause friction
- Advisors can refuse role due to conflicts of interest or commitment.



WHITMAN COLLEGE

39

Advisor Role

- Guide advisees through the entire resolution process and explain each phase
- Assist advisees in deciding whether to file a formal complaint and handling strategic choices like informal resolution.
- Prepare advisees for investigation interviews, including rehearsal, and help determine relevant evidence to share.
- Assist the advisee in accessing supportive measures, community resources, and advocacy services.
- Aid the advisee in reviewing and providing feedback on the investigation report.
- Support the advisee in advocating for the inclusion or exclusion of evidence during the process.
- Help the advisee prepare for the hearing, including documentation, opening and closing statements, impact statements, and conducting cross-examination.
- Guide the advisee in framing the appeal and preparing for the appeal process.

WHITMAN COLLEGE

40

Advocate vs Advisor

Advocate

- Confidential
- Supportive and non-directive approach
- Provide connections to resources
- Help obtain supportive measures
- Initiate follow-up after client contact
- Actively listen and allow clients to share their narrative based on their reality.

Advisor

- Private
- Supportive and directive approach
- Aid in navigating the process
- Initiate contact more frequently, including administrative matters
- Ask pertinent questions, which may include invasive or non-client reality-based queries
- Responsible for cross-examination during hearing.

41

Steps to take after you are assigned a case:

1. Review policy
2. Review materials provided (if any)
3. Reach out to advisee
4. Schedule a meeting

42

During Meeting with Advisee

- Build rapport
- Explain your role
- Advise them that their conversations with you are not privileged
 - And that you are not obliged to keep things confidential
 - And that you would have to testify truthfully were matter to go to court
- Review the policy and process with them
- Ask them to share their account
- Discuss the evidence

WHITMAN COLLEGE

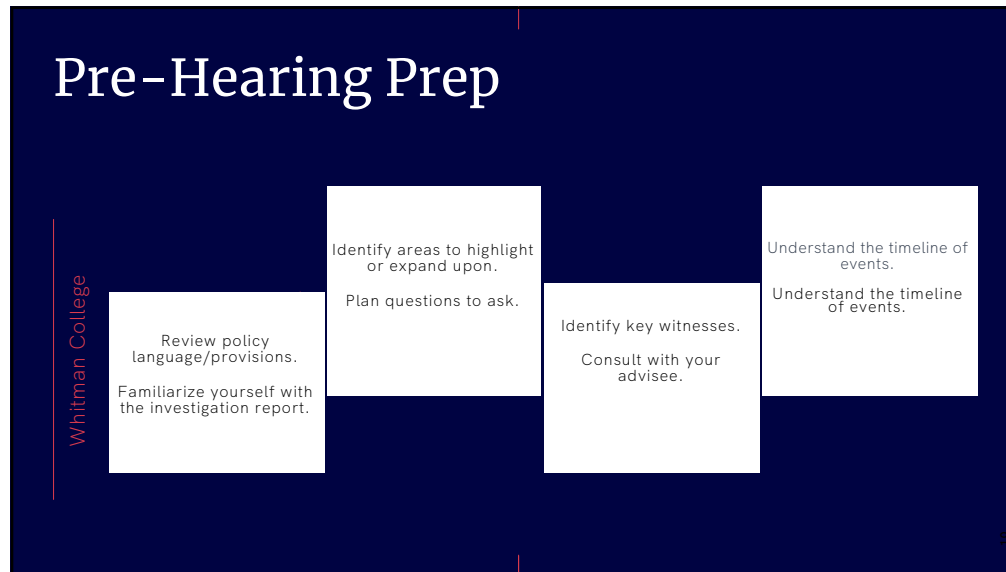
43

During the Investigation

- Help identify witnesses
- Aid in identifying evidence
- Provide information to the investigator
- Assist in preparing for investigative interviews
- Accompany advisee to investigative interviews
- Offer advice during the interview
- Assist with document/evidence review and response
- Help with the review of the report and response development

WHITMAN COLLEGE

44



45

Pre-Hearing Prep, continued...

Whitman College

- What are the elements for the charge?
- What are the definitions of those elements?
 - Consent?
 - Incapacitation?

You'll want to show...

- Credibility
- Reveal inconsistencies

46

46

Procedural Requirements for Hearing

1. Must be live, but can be remote
2. Cannot compel participation
3. Cross examination must be permitted and must be conducted by advisor of choice or one provided by institution
4. Decision maker determines relevancy of questions and evidence offered
5. Written decision must be issued that includes finding and sanction
6. Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

WHITMAN COLLEGE

47

Hearing + Cross Examination

WHITMAN COLLEGE

48

During the Hearing

- Decision-maker chair determines order of testimonies
- Parties may share an opening statement
 - Statement may highlight evidence
 - May be written out in advance
 - May not be provided on behalf of advisee
- After a question is asked, the Decision maker will assess its relevance.
- If the question is deemed relevant, the party or witness will be directed to answer.
- If a question is excluded as irrelevant, the Decision maker must provide an explanation for the decision.
- The relevance determination is final, although it could be raised on appeal if necessary.

WHITMAN COLLEGE

49

Cross-examination Questions

- May only ask relevant questions, "closely connected or appropriate to what is being done or considered."
- May not ask questions that seek to illicit irrelevant information:
 - Complainant's prior sexual history, unless they are presented to demonstrate that someone other than the Respondent is responsible for the alleged conduct, or they pertain to specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to establish consent.
 - Information protected by an unwaived legal privilege
- Medical treatment and care
- Duplicative questions
- Information that is not Relevant

WHITMAN COLLEGE

50

Special Considerations Re: Cross-examination

Does agreeing to cross-examination benefit the party's interests?

Does conducting cross-examination benefit the party's interests?

WHITMAN COLLEGE

51

Cross-Examination Prep

- Review and assess the evidence
- Determine your desired narrative or version of events to present
- Identify the relevant facts and the findings of fact you seek from the decision maker
- Develop a strategy to emphasize evidence supporting your narrative and desired findings of fact
- Create an outline of topics to explore during the presentation.
- There is no obligation to proceed with cross-examination if the advisee believes it unnecessary or potentially counterproductive.
- The Advisor should honor the advisee's decision in this regard.

WHITMAN COLLEGE

52

Tips for Conducting Cross-Examination

- Take your time, be thoughtful, and request breaks if necessary.
- Actively listen to the witness's responses.
- Avoid repeating everything the witness has already stated.
- Focus on highlighting testimony supporting your narrative.
- Be prepared to explore unexpected lines of questioning.
- Be efficient. Avoid multi-part questions.
- Anticipate that the panel or Decision-maker may ask numerous questions, potentially before the Advisor has an opportunity.
- In such cases, the Chair or Decision maker may disallow an Advisor's question if it duplicates a previously asked question.

WHITMAN COLLEGE

53

Things to Note

- Advisors may assist advisee with creating a closing statement
- May not provide closing statement on behalf of an absent party
- Highlight evidence that the party wants the decision-maker to focus on
- Advisor is not making complex legal arguments
- Treat parties with respect and fairness
- Title IX regulations govern the rules of evidence
- Not seeking a "gotcha" moment

WHITMAN COLLEGE

54

Advisors Role Post Hearing

- You might consider debriefing
- Review Notice of Outcome
- Help advisee formulate appeal based on appeal grounds:
 - Procedural irregularity impacting the outcome.
 - New evidence not previously available that could affect the outcome.
 - Conflict of interest or bias of Title IX personnel affecting the outcome. (p. 35)


WHITMAN COLLEGE

55

WHITMAN COLLEGE

Reach Me

For questions or more info



ADDRESS

Memorial Building 301

PHONE NUMBER

509-522-4314

EMAIL ADDRESS

beccaic@Whitman.edu

56