

## Role of Advisors in Title IX Proceedings

### Frequently Asked Questions

#### **1. Who can serve as an Advisor in Title IX proceedings?**

- a. The Complainant and Respondent in a Title IX proceeding may each seek assistance from an Advisor of the student's choice. An Advisor may be a member of the University community, outside legal counsel (retained at student's expense), a friend or a family member.
- b. If outside counsel is chosen by a party as an Advisor, the Attorney must send a letter of representation to the General Counsel's Office at earliest convenience. Please contact the University's Office of General Counsel by phone at (413) 782-1542, or by email, at [csmith@wne.edu](mailto:csmith@wne.edu).

#### **2. What is the role of an Advisor in a Title IX Administrative Educational Conduct Review?**

- a. Advisors are permitted to attend meetings and the Administrative Educational Conduct Reviews, but may not defend, speak on behalf of, or advocate for a Complainant or Respondent. Advisors are not permitted to question witnesses at any time during a Title IX meeting or review. The Advisor cannot be a witness in the proceedings. An Advisor may write a note to the student party during a Conduct Review, and may request a brief recess to confer with a student party.
- b. An Advisor may review and read the record and take notes in the presence of the student only. No copies of any investigation materials will be given to the student or Advisor.
- c. Any Advisor deemed by the University to be disruptive or disrespectful during any Review or meeting will be asked to remove themselves from the process. The University will not postpone or discontinue an investigation, a Conduct Review, or a meeting because of the removal of an Advisor who does not comply with the University's participation guidelines.

#### **3. The incident resulting in the Title IX violation occurred off-campus; why is the University even involved?**

- a. The jurisdiction of the University and Title IX policy is applied based on an individual's relationship with the University, rather than the geographic location of the incident. The University expects all students (residential, commuters, and those participating in study abroad or off-campus University-sponsored travel) to comply with the University's Title IX policy, regardless of whether they are on or off campus.

- 4. The Respondent is charged with a crime off-campus for the same offense. Can the Administrative Educational Conduct Review for the University be delayed until after the criminal trial?**
- a. No. The Title IX process at Western New England University is not to determine if a student violated state or federal law; it is to determine whether a student's behavior was in violation of University's Discrimination/Harassment/Sexual Misconduct/Title IX Policy and the Student Code of Conduct. The goals of the criminal justice system and the University's administrative educational processes are substantially different. The University will not delay its process to accommodate the criminal process. Furthermore, court scheduling will not delay Western New England University's internal Title IX process.
- 5. Is the Title IX process double jeopardy for someone who is also facing criminal charges?**
- a. No. "Double jeopardy" is a legal concept that applies solely to criminal proceedings. The University's Title IX process is administrative in nature.
- 6. What will happen if a student refuses to participate in the process?**
- a. It is within the student's discretion to attend any and all parts of the process. However, having a student fail to participate in a Title IX process will not stop the University's Administrative Educational Process.
- b. The Title IX process will continue to move forward regardless of the student's participation. The Title IX Investigator or Review Officer will speak with the Respondent, the Complainant, and other witnesses to gather as much information as possible, and will then make a decision based on the information provided. Students are encouraged to fully participate in the process. Failure to do so will not be grounds for an appeal later.
- 7. Can a student withdraw from the University to avoid the process?**
- a. While the Office of the Vice President for Student Affairs and Dean of Students will not deny a student's ability to withdraw from classes while a Title IX case is pending, the Title IX Investigation and Administrative Educational Review will continue and sanctions may be imposed. Students may withdraw from the University in accordance with established University procedures.
- 8. Is the Review outcome confidential? Can information provided during the Review regarding a student be made available to the prosecutor's office if a criminal case is pending?**
- a. The Family Educational Rights and Privacy Act ("FERPA") may provide the right of ownership of student records to the student and could prevent the University from

disclosing this information without the consent of the student. Furthermore, there can be no guarantee of privacy as all student records are subject to lawful subpoenas. Records may include tape recordings as well as oral and written statements made during the Title IX Investigation. Additionally, the Complainant is entitled to know the outcome of a Conduct Review when there are allegations of sexual harassment or discrimination (including acts of sexual violence), pursuant to Title IX.

**9. Is a student given the same due process protection as those received in the criminal process?**

- a. No. The courts recognize and support the differing goals and interests of higher education institutions from those of the criminal justice process.

**10. What is the standard of proof in the Title IX process?**

- a. All decisions of the University's Title IX proceedings will be made based on a preponderance of the evidence standard: what is more likely than not to have occurred. This standard represents what is reasonable to believe given the circumstances and facts, and what is more likely than not to have occurred.

**11. Can a student appeal the decision and the sanctions imposed by the Review Officers?**

- a. Yes. Within the deadline set in the decision letter, students may appeal the decision of the Review Officers to the Vice President for Student Affairs and Dean of Students pursuant to the process below.

**12. I have a very busy schedule and cannot attend the Conduct Review time the University has established. How can the Conduct Review be rescheduled?**

- a. The University will use best efforts to schedule a Review that is convenient for the Respondent, the Complainant, the Advisors, and witnesses.

**13. If this is not a Title IX matter, who may serve as an advisor?**

- a. Advisors in non-Title IX proceedings may not be legal counsel and must be a member of the University community.

## **APPEALS PROCESS:**

### **Right to Appeal and Waiver:**

Upon receipt of the Review Officers' decision, the Complainant and Respondent shall each have the right to submit a written appeal of the outcome of the Review. This shall be submitted to the University's Vice President for Student Affairs and Dean of Students, or their designee, (hereinafter "Vice President for Student Affairs") within three (3) business days. Complainants and Respondents seeking an appeal must specify the grounds for the request. Any party who fails to file an appropriate written request for an appeal within three (3) business days waives their right to appeal. As this is an administrative educational process, the University strongly encourages Complainant and Respondent involved to author their own appeals/responses.

### **Grounds for Appeal:**

Appeals will be considered only in *one or more* of the following circumstances:

1. When the sanction is inconsistent with the gravity of the offense;
2. When new evidence that was not available at the time of the Review becomes available within the above referenced three (3) business day period; or
3. When there has been a substantial and material procedural error during the Review process.

### **Process of Appeal:**

#### **A. Initial Appeal Submission**

*Complainant Appeal:* If Complainant wishes to appeal, they must submit electronically a written statement not to exceed 1500 words specifying how the outcome of their Review is grounds for appeal. This must be done within three (3) business days of receiving the Review Officers' decision and is submitted to the Vice President of Student Affairs.

*Respondent Appeal:* If Respondent wishes to appeal, they must submit electronically a written statement not to exceed 1500 words specifying how the outcome of their Review is grounds for appeal. This must be done within three (3) business days of receiving the Review Officers' decision and is submitted to the Vice President of Student Affairs.

#### **B. Determining if the Appeal has Grounds**

The Vice President for Student Affairs will review the appeal and determine whether or not the appeal is based on valid grounds. Only those appeals that are based on at least one of the three above-stated grounds for appeal will be reviewed on their merit.

#### **C. The Right for a Response**

*Right of the Complainant:*

Once the Respondent has submitted an appeal that the Vice President for Student Affairs believes

has grounds for consideration, the Vice President for Student Affairs will notify the Complainant of the Respondent's appeal and the grounds for the appeal within three (3) business days. The Complainant is not entitled to view the letter of appeal. The Complainant then has three (3) days to respond electronically to [jsteffes@wne.edu](mailto:jsteffes@wne.edu) with a response letter addressed to the Vice President for Student Affairs, *limited to 1,500 words*. Failure to respond within three (3) business days constitutes a waiver of this right.

*Right of the Respondent:*

Once the Complainant has submitted an appeal that the Vice President for Student Affairs, believes has grounds for consideration, the Vice President for Student Affairs will notify the Respondent of the Complainant's appeal and the grounds for the appeal within three (3) business days. The Respondent is not entitled to view the letter of their appeal. The Respondent then has three (3) days to respond electronically to [jsteffes@wne.edu](mailto:jsteffes@wne.edu) with a response statement addressed to the Vice President for Student Affairs *limited to 1,500 words*. Failure to respond within three (3) business days constitutes a waiver of this right.

**D. Decision of Appeal**

Only those appeals and response statements that are received electronically, that meet the 1,500-word count limit, and that arrive within the prescribed deadlines will be considered for review.

Upon receipt of a timely, electronically-submitted, written appeal and response from the parties, the Vice President for Student Affairs shall review the above-noted appeal. The appeal is not a review of the entire case, whereby all details of the case would be viewed in a "new and fresh light"; instead, the appeal is a focused review of the existing record and is limited to the three grounds for appeal. The Vice President for Student Affairs shall have the power to:

1. Affirm the Review Officers' decision;
2. Reverse the Review Officers' decision;
3. Modify the sanctions imposed or not imposed; or
4. Remand the matter for further investigation and/or consideration by the Review Officers (only applicable when there is new evidence or there is a substantial and/or material procedural error).

The original decision and sanction will stand if the appeal is not timely, is not transmitted electronically to [jsteffes@wne.edu](mailto:jsteffes@wne.edu), or is not based on the grounds previously enumerated. The Vice President for Student Affairs will only review and consider the first 1500 words of any submitted appeal or response statement. After reviewing the written appeal and response statement, the Vice President for Student Affairs will deliver a written decision on the appeal to all parties within a reasonable time frame.

The decision of the Vice President for Student Affairs will be final.

The Title IX policy may be reviewed on the University's Title IX website.  
<http://www1.wne.edu/student-life/safety/title-ix.cfm>

