

Dickinson

TITLE IX ADVISOR TRAINING

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Title IX

Title IX of the Education Amendments of 1972 –

“No person in the United States, shall, based on 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 aid.”

Training Aspirations

Overview of Training Requirements & Best Practices

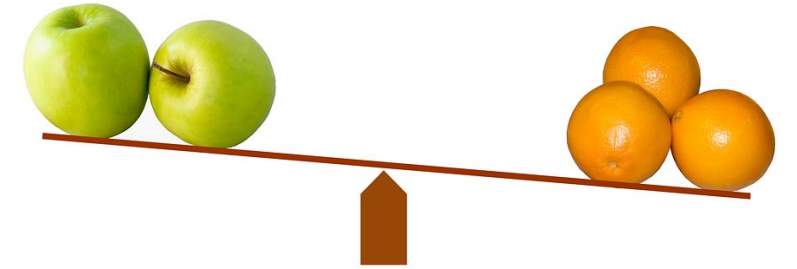
Understanding the Process & Process Options

ATIXA Video's – Lunch

Working with Advisees & Hearing Process

Tips for Advisor's

What are qualities/skills of an Advisor? Why?



Create a list of who can be an Advisor?

What qualities/skills do you think a COMPLAINANT would want in an Advisor? Why?

What qualities/skills do you think a RESPONDENT would want in an Advisor? Why?

ANYONE CAN BE AN ADVISOR



Advisor Role

Advisor can be any person of choice (caution when advisor is also witness).

Advisor may accompany Party to any TIX – related meeting/proceeding.

Advisor provides support and advice at any meeting or proceeding but cannot participate directly except to conduct cross-examination at the hearing.

Dickinson is required to appoint an Advisor if a party does not have one for the purposes of cross-examination at the hearing.

A party and their Advisor is provided a copy of the Draft Investigation Report and Final Report.

Training Requirements?

Training Requirements

TIX Regulations require annual training for:

- ✓ Title IX Coordinators
- ✓ Investigators
- ✓ Decision-Makers
- ✓ Informal Resolution Officers
- ✓ Appeals Officers

There are currently **no training requirements** for Advisors in the grievance process, but we train in best practices.



Title IX Training Requirements for Specialists

For Title IX Specialists include:

- Jurisdiction – understanding the “scope of the recipient’s education program of activity.”
- Definitions of “sexual harassment” under the Title IX regulations.
- How to serve impartially, without bias, free from conflict of interest, and without prejudgment of the facts.
- Understand their individual roles in the process.

BEFORE THE HEARING, ADVISORS PLAY AN IMPORTANT BACKGROUND ROLE



TIX ADVISORS SHOULD UNDERSTAND

- Title IX Coordinator's role
- Support services that are typically available
- Title IX jurisdiction
- Title IX definitions of sexual harassment
- The grievance process & options
- The roles of the Title IX Specialists in the grievance process
- The Hearing process and the Advisor's role in the Hearing
- The bases for Appeal

Title IX Coordinator's Role

TIX Coordinator

- Oversees procedural integrity – oversees the whole process and helps to ensure the written policy is applied in procedures.
- Ensures Investigators, Decision-makers, Informal Resolution Facilitators, Hearing Chair's and Appeal Officials are trained.
- Offers and Coordinates Support Services for Complainants and Respondents.
- Ensures Advisors are available for Hearings, and if not, appoints Advisors.
- Makes decision on issues that arise to ensure compliance with policy and laws.

Overview of the Process: Actual Knowledge



Notice of sexual harassment or allegations of sexual harassment to Dickinson's TIXC, Deputy Title IX Coordinators, or any Official who has authority to institute corrective measures on behalf of Dickinson – is Actual Knowledge.



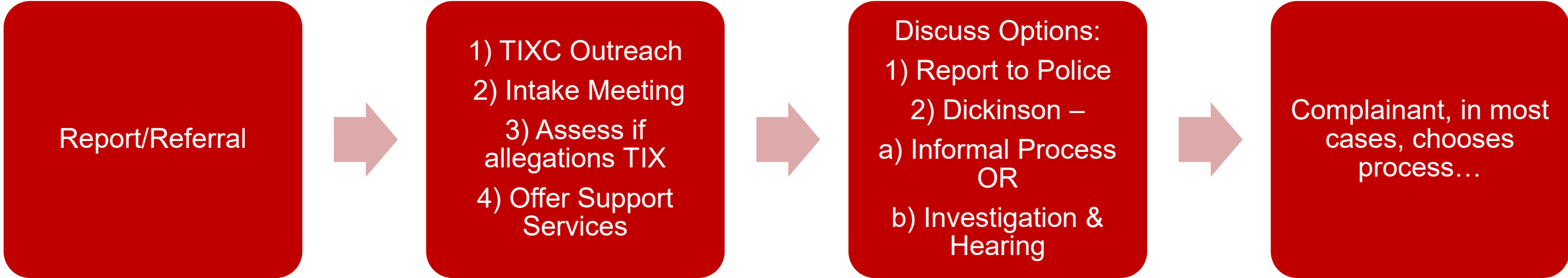
Notice to other employees is no longer enough to trigger actual knowledge (obligation to report by other employees to TIXC is not required; although Dickinson strongly encourages referrals to TIXC).



The purpose is to allow Complainants to speak with other employees without automatically triggering process, empowering them to decide if/when to report to the College.



Overview of TIXC's Intake Process



Do the Allegations Fall Under Dickinson's TIX Jurisdiction?

The incident occurred **in the United States**;

AND

Complainant is participating or attempting to participate in Dickinson's education program or activity;

AND

The incident occurred **within Dickinson's educational program or activity** (defined as locations, events or circumstances of which Dickinson exercises substantial control over both the Respondent(s)) and the context in which the alleged misconduct occurred, or any building owned or controlled by a student organization officially recognized by the College.

AND

Allegations, if proven true, would fall under Dickinson's SHM TIX Prohibited Conduct.

TIXC's Assessment includes: Policy Considerations

2020 TIX Rules –

Proscribes 2 sets of prohibited conduct:

1. Title IX Prohibited Conduct

1. Sexual or Gender-Based Prohibited Conduct

- Conduct that does not meet the definition of TIX Prohibited Conduct

Each of these two sets of Prohibited Conduct is investigated and adjudicated under a separate procedure. Even if allegations do not fall under TIX Jurisdiction, TIXC may refer to other Office for their review, under their policies.

TIX Jurisdiction – Prohibited Conduct

TIX - Sexual Harassment (SEVERE AND PERVASIVE AND OBJECTIVELY OFFENSIVE that it DENIES a person equal access to Dickinson's education program or activity).

- **Quid Pro Quo** - College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in **unwelcome sexual conduct**; or
- An individual engaging in **unwelcome conduct on the basis of sex** as determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Dickinson College's education program or activity.

TIX – Sexual Harassment includes (SHMP pp 6-10):

Sexual Assault

Fondling

Dating Violence

Domestic Violence

Stalking

Gender-Based Harassment

SUPPORT SERVICES

SUPPPORT SERVICES AIM TO...

Protect Safety

Preserve Access
to Education

Prevent/Remedy
Harassment

Free &
Confidential

With Filing a
Complaint/Without
Complaint

For both Parties –
Complainant &
Respondent

SUPPORT SERVICES

Counseling

Health/Wellness

Academic Adjustment

Class Schedule

Work Schedule

Residence Modification

Emergency Rooms

Campus Escort

No Contact Directives

Leave of Absence

Security

Monitoring

Informal Resolution



Both parties must voluntarily agree to participate



Either part may exit the process before agreeing to a resolution



A resolution is a mutual agreement

Can An Advisor...

Attend a mediation?

Attend shuttle diplomacy?

Not attend Informal Process, but still support someone before and after this Process?

Is Dickinson required to appoint Advisor for the Informal Resolution Process?

Who serves as Informal Resolution Facilitator?

The Investigator's Role



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Investigator's Role

Fair, neutral,
impartial, unbiased.

Interviews are
scheduled in
advance.

Advisor may not
disrupt or answer
questions in place of
the Party.

Do not make a
determination on the
facts.

Gather all relevant
evidence.

Each party may
present evidence to
Investigator.

Organizes all
relevant evidence.

Determines some
level of whether
evidence is relevant.

Writes Investigation
Report.

Each party will have
opportunity to review
and comment on all
evidence.

Offer of Pre-Hearing Meeting with TIXC



Parties and their Advisors are offered a pre-hearing meeting.



Parties are provided advanced written notice.



Parties, Advisors and Hearing Panelists are provided Investigation Report and materials 10 days before a Hearing.



Pre-Hearing Meeting is an opportunity for discussion of procedures and policies.

Decision – Maker’s Role

The Advisor will interact most with the Hearing Panel members during the grievance process.

The live cross-examination Hearing is where the Advisor has the most active role.

Hearing Panel's Role



Runs an orderly hearing process.



Makes relevancy determinations **BEFORE** any question is answered at the live cross-examination Hearing.



Chair writes decision, applying the policy, standard of evidence.

The Hearing

Can be conducted in physical hearing room/rooms or virtually with real-time audio and video participation.

Complainant, Respondent and their Advisors have the right to be present at the Hearing.

Hearing may proceed and outcome may be determined even if a Party does not attend or participate in the Hearing.

The Hearing Chair or Parties may request the attendance of any witness.

The College records the hearing (other Parties are not permitted to record).

Parties may review the recording at a later time.

Advisor poses the Parties questions.

If questions are irrelevant, duplicative, or reference privileged information – they may be barred.

Everyone is expected to behave in a respectful, professional manner.

Written Notice

Copy of link to Sexual Harassment and Misconduct Policy.

Provide written notice of allegations with sufficient time for review with sufficient detail, such as date, location if known, to prepare response.

Respondent presumed not responsible for alleged conduct and a determination is made at the conclusion of grievance process.

Provision in policy that prohibits knowingly making false statement or providing false information during the grievance process.

Additional notification to Parties if new allegations arise as part of the Investigation.

Parties may have an Advisor of choice.

Overview of Process - Hearing

The Chair has discretion of the Hearing process.

Must provide a live, cross-examination hearing.

Dickinson MUST provide an Advisor for a Party if the Party does not have one for the Hearing.

Advisors ask only relevant cross-examination questions.

Parties are not permitted to ask direct questions of one another or witnesses.

Hearing may be virtual and must be recorded or transcribed.

Hearing is held in a professional manner but will not adopt formality of civil or criminal process.

Decorum

Title IX hearings are not civil or criminal proceedings and are not designed to mimic formal trial proceedings.

They are primarily educational in nature.

The U.S. Department of Education describes the Title IX in the Final Rule as “purposefully designed...to allow recipients to retain flexibility to adopt rules of decorum that prohibit any party advisor or decision-maker from questioning witnesses in an abusive, intimidating, or disrespectful manner.”

Course of Hearing Procedure

Subject to discretion of the Hearing Chair.

- Introductions of attendees by Hearing Panel Chair, including allegation(s), and summary of procedures
- Questions posed by Hearing Panel to Complainant
- Questions posed by Respondent's Advisor to Complainant
- Questions posed by Hearing Panel to Respondent
- Questions posed by Complainant's Advisor to Respondent
- Questions posed by Hearing Panel to Witnesses
- Questions posed by Advisor's to Witnesses
- Parties or their Advisor may provide a closing statement, not to exceed 20 minutes
- Hearing Panel Chair excuses all parties from Hearing

Goals of Decision-Makers



ASK QUESTIONS TO ELICIT
INFORMATION TO AID
FINDINGS OF FACT



MAKE CONCLUSIONS
REGARDING APPLICATION
OF POLICY TO FACTS



MAKE A DETERMINATION
DECISION



IF PARTY RESPONSIBLE,
CONSIDER APPROPRIATE
SANCTIONS



Cross-Examination at the Hearing

Parties

- May NOT question each other or any witness

Cross-examination

- Performed by party's advisor
- Directly
- Orally
- In real time

Advisor

- May ask all relevant questions
- May ask follow-up questions
- Including questions challenging credibility

Exclusions



Rape Shield Exclusion

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 are offered to prove that someone other than the Respondent committed the conduct alleged by the complainant, or
- If the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

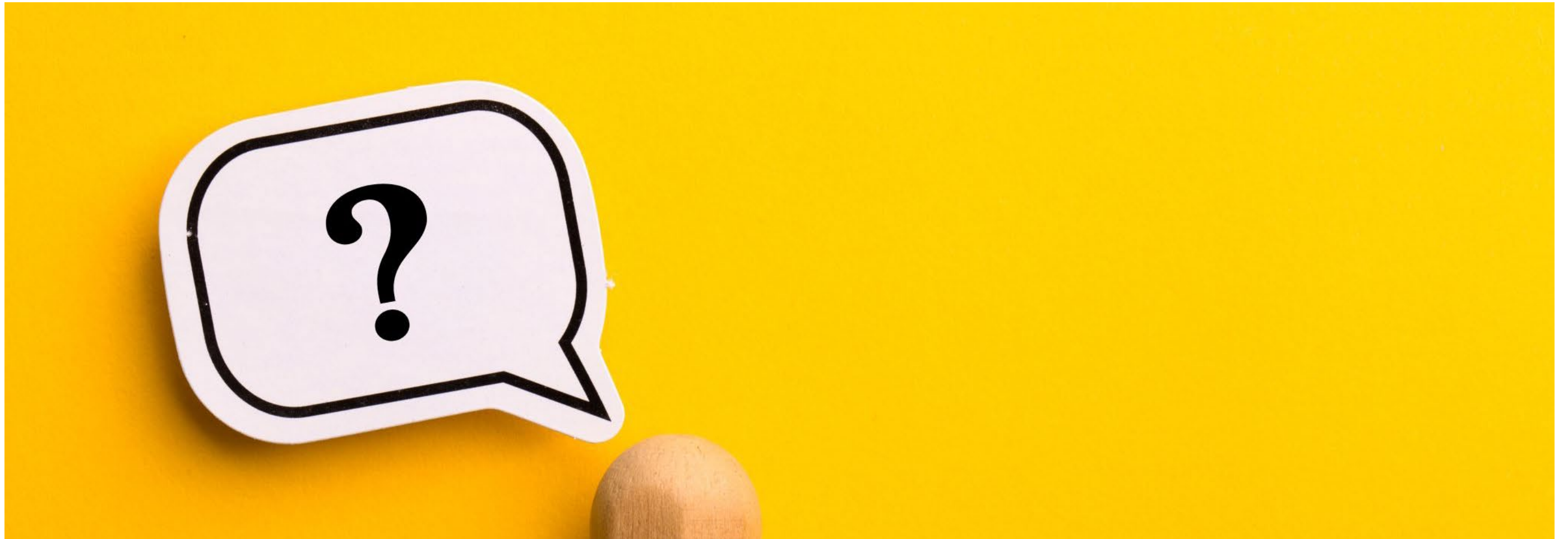
Legally Privileged Information

Questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege are irrelevant.

Individuals with legal privilege may include attorneys, medical providers (physician, dentist, nurse), psychologists, clergy, rape crisis counselors, and social workers.

Questions that call for information about any party's medical, psychological, and similar records are irrelevant **UNLESS** the party has given voluntary, written consent.

Duplicative Questions

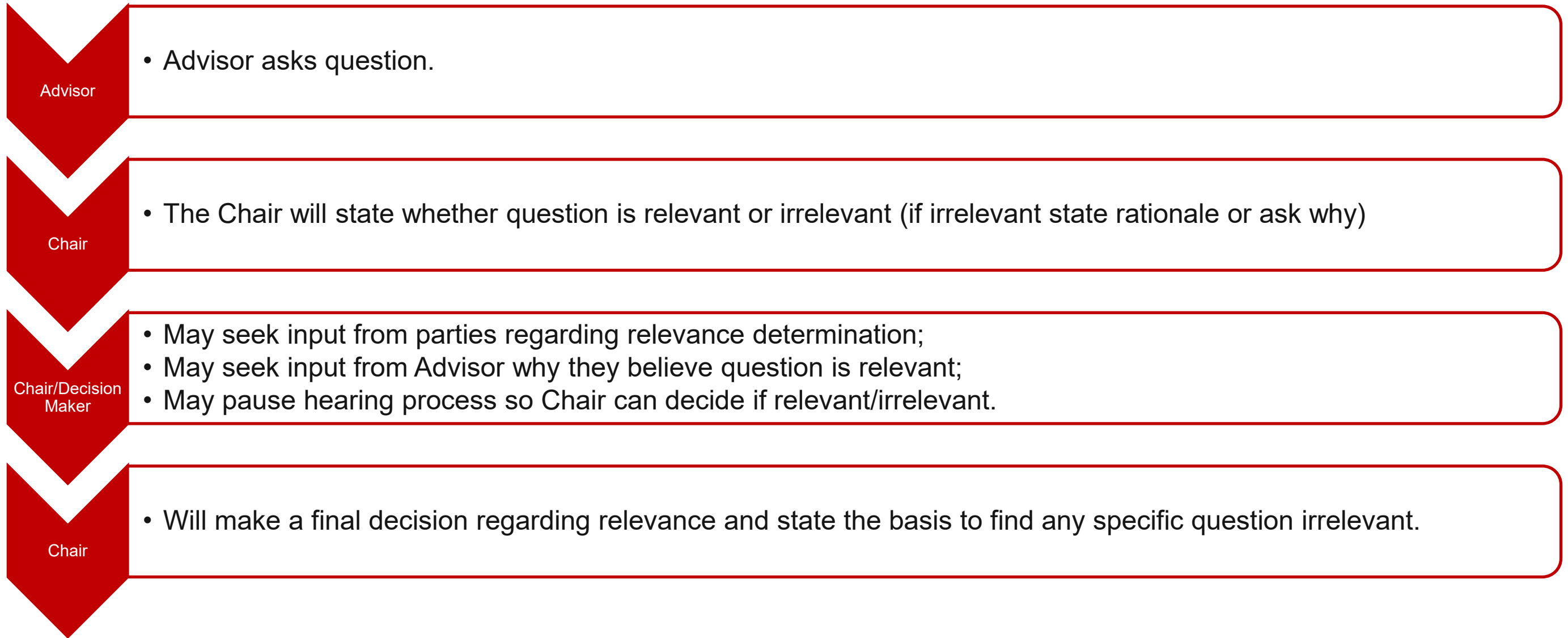


A question may be irrelevant if it duplicates another question that has already been asked and answered.









RELEVANT QUESTIONS

Questions that tend to make a fact at issue more or less likely to be true are relevant.

Relevance determination



Advisor Tips – Hearing Preparation

-  Review the whole Report
-  Review all evidence
-  Meet with your Party to review what your Party thinks and wants
-  Discuss strategy
-  Realize your Party may want to take an aggressive approach – if you are not comfortable with this approach, discuss it with the Party and check to see if you can advise your Party
-  Discuss the expectations of decorum vs. expectations of questioning the other Party and witnesses
-  Determine who the Witnesses are and whether your Party thinks they will show up to the hearing
-  Be careful of the line between asking a Party to participate vs. coercing a Party to participate as all Witnesses/Parties have a right to participate or choose not to participate

Advisor Tips



Consider developing a script



List each allegation and policy definitions



Standard of review – this can be helpful so that you may support relevancy determinations for your questions to show why they are relevant



List the questions you plan to ask for your Party - for the other party, and each witness



Be PREPARED to answer why each question is relevant

TIPS

Ask ONE QUESTION AT A TIME and wait for the Chair to determine if it is relevant

If the Chair has a question about why the question is relevant, be prepared to answer

Be respectful of the process so that you can effectively ask you party's questions

If you think your party or someone else is becoming too emotional, ask for a break to re-group

Be aware that the Decision-Makers and Chair have a duty to ask questions

Be aware that the other Advisor may ask your Party and Witnesses questions, and follow-up questions

The Decision-maker will issue a decision to both parties simultaneously

Under TIX regulations, the Advisor is not required to have any other role in the process

Advisors may choose to work with the party to appeal

Appeal Officials

- The appeal will be conducted in an impartial manner by the Appeal Official or their designee:
 - For Student Respondents/student Organizations - the Vice President and Dean of Student Life is typically the Appeal Official;
 - For Faculty Respondents – the Provost and Dean of the College is typically the Appeal Official;
 - For Staff Respondents - the Vice President for Human Resource Services is typically the Appeal Official.

Grounds for Appeal

Dissatisfaction with the outcome of the investigation is not grounds for appeal.

The limited grounds for appeal are as follows:

- New information that could affect the finding of the Investigator(s) or Review Panel and was not reasonably available through the exercise of due diligence at the time of the investigation;
- A deviation from College policy or procedures that materially affected the outcome;
- Conflict of interest or bias exhibited by the Title IX or Assistant Title IX Coordinator, or one or more of the investigators or Hearing panel members; and
- Sanction is too harsh or too lenient.

Retaliation is Strictly Prohibited

No person may retaliate against an individual for purpose of interfering with any rights or privileges under TIX or because they made a report, participated or refused to participate in the process.

Confidentiality

Dickinson must keep confidentiality of any individual who has made a report or complaint of sex discrimination, or any alleged Respondent, and any Witness unless required by law, or for the purposes of carrying out TIX regulations grievance process.

Thank you!