HOW VICTIM SERVICE ADVOCATES CAN HELP STUDENTS
Many victim service providers – both community or within an institution of higher education (IHE)-based – are familiar with helping survivors of dating/domestic violence, sexual violence, and stalking (DVSAS) through the criminal justice process. Victim advocates provide invaluable support to survivors including helping those who have filed criminal complaints and are struggling to keep up with dates, paperwork, and their own recovery process. Victim service advocates who work with student survivors of DVSAS should know about an additional option to file a complaint with the students’ institution, which provides many potential remedies that the criminal justice system cannot. The two processes are different and victim advocates must understand both to help student survivors decide if they want to file complaints with either of these systems. This guide provides an overview of an IHE conduct process to help victim service providers support student survivors to make informed choices.

Key Differences Between Campus Conduct Process and the Criminal Justice System

Victim advocates are poised to help students understand the basics of each system and what outcomes are possible. One natural place to start with a student survivor is the intention of each system. The criminal justice system is broadly conceived to keep an entire community safe by addressing individuals who have violated criminal laws. Ultimately, the goal of the criminal justice system is to deter future crime, either by the person accused or other abusers, by imposing some form of penalty. Penalties for being criminally convicted can range from fines, probation, jail time, or the death penalty depending on the severity of the crime. The person making the report is the victim, the person bringing the charges is the prosecutor, and the person accused of the crime is the defendant. It is important to note that the victim is considered a witness at a criminal trial rather than a party and is not given an active role in determining strategy in the case. In the criminal justice system, the prosecutor represents the state, rather than the victim, and makes all decisions regarding whether the case goes forward, what evidence and witnesses will be called, and if the defendant will be offered a plea deal, often for less punishment. Prosecutors are not the victims’ attorney and do not share attorney-client privilege with the victim.

The higher education conduct system was created for a quite different purpose. Many institutions focus on an educational response to violations of their code of conduct to help students change their behavior. The party who files the complaint is called the Complainant or Reporting Party and the party accused is called the Respondent or Responding Party. Notice that parties are not referred to as Victim or Defendant as they are in the criminal justice system. There are a wide range of staff and administrators who can play different roles in an IHE conduct case including a Conduct Officer, Hearing Board Chair and members, Investigators, and the Title IX Coordinator.
Each can play a separate or collaborative role in the case. Sanctions for being found responsible for violating the code of conduct are far-ranging and are specific to each institution. On the more severe end, Responding Parties can be separated from their community for a specific amount of time (suspension) or permanently (expulsion or dismissal). Unlike the criminal justice system, parties can request accommodations and supportive measures from their institution even if they do not wish to go through a conduct process. These measures can include help with academics, stay away orders enforced by the institution, on-campus housing transfers (if applicable) and many other remedies.

Given that the penalties within the criminal justice system can result in jail time, the standard of proof required to convict someone accused of a crime is high. All criminal complaints are tried using a “beyond a reasonable doubt” standard, which requires a judge or jury to find a person guilty of the accused crimes with a high degree of certainty. The standard places the “burden” of proof on the prosecutor, not the defendant, to reflect the unequal balance of power the state has over the defendant. In an IHE setting, where the worst sanction is a permanent separation from the community, the standard of proof is less onerous. Generally, both parties come in as equals, provide statements and information, and a decision-maker determines what is more likely to have happened.

The timeline for each system also differs. A criminal justice case can range from 6 months to 5+ years depending on the state and complexity of a case. An IHE conduct case is typically a shorter time frame, generally resolving within a couple months. For students who plan to leave the area or will graduate soon, making a long-term commitment to a law enforcement case may be a deciding factor.
IHE Conduct Processes are Rooted in the Institution’s Policies

Unlike the criminal justice system, where one set of laws governs the entire state system, each institution has their own conduct policy and process. It is critical that victim advocates read and understand the general framework of each institution they are providing advocacy at, or if they are community-based, the differences between the conduct systems of the IHE’s within their service area. Victim advocates who are familiar with IHE administrators can also help survivors navigate who to contact about concerns or make immediate changes to schedules, housing, IHE-based employment, athletics, transportation needs, and many other IHE-based resources.

No institution has the same policy or process as another, so it is critical to be able to explain to the student survivor how the conduct process at their campus works, and be able to answer questions about timing, decision makers, and confidentiality of the process.

There are several common types of conduct models. Each of the following can have different elements within that change from institution to institution and could make a difference to a student survivor.

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• **Hearing Model.** After a complaint is filed, both parties bring all evidence to a hearing before a panel of IHE-based stakeholders. Panels can include only administrators, staff, and faculty, but some institutions include students. Both parties present their evidence at the hearing, which is normally chaired by one individual who makes any decision about policy implementation and questions throughout the hearing.

• **Investigation Model.** After a complaint is filed, both parties and any witnesses are interviewed by an investigator. All evidence is provided to the investigator, who compiles a report of their findings, and a recommendation of whether a violation has occurred. A separate administrator then reviews the report and delivers a sanction if necessary.

• **Investigation to Hearing Model.** In this model, an investigator interviews the parties, any witnesses, and gathers all evidence before the hearing. The investigator generally presents the evidence to the panel with the parties present and will answer questions from the panel about what was gathered. Parties and witnesses can be called to provide evidence and be questioned by the panel.

• **Investigation to a Report to a Hearing Model.** Unlike the previous model, here the investigator completes the investigation and draws up an extensive report for the Hearing Board to read prior to the hearing. In some instances, the investigator will suggest a finding based on the conclusion of their investigation. The hearing resembles the previous model, but the panel normally does not require presenting all evidence again as it is contained in the report, previously submitted to the Hearing Board. The panel can question the investigator, the parties or witnesses or ask that additional information is provided at the hearing if they conclude there are gaps in the report that should be addressed.

At the conclusion of the hearings, the decision maker(s) are expected to deliberate over the information provided and determine what evidence was credible. The decision maker determines whether the Responding Party has violated the institution’s policies and what sanction is warranted. This decision is provided in writing to both parties simultaneously, often a day or two later.

Both the Reporting and Responding parties are allowed to have an Advisor of Choice present for all meetings, interviews, and hearings to provide advice and support throughout the process. Each party can pick an advisor that meets their needs, and for some student survivors, an advocate in this setting can make sense. Some conduct processes require a live hearing component which includes cross-examination of the parties and any witnesses. The Advisor of Choice is expected to be prepared to cross-examine the opposing party and/or witnesses. Be sure to discuss this requirement with student survivors to ensure they are choosing the advisor who best fits their needs. Many advocates can continue providing care to a student survivor as a support person during the conduct process.

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1Student survivors should be advised that using an advocate as their Advisor of Choice could result in turning over records in the event of litigation. For more information about the privacy implications of choosing an advisor, see Integrating Victim Services into Policy on the OVW Campus Grantee Portal.
Victim Advocates Help Student Survivors Set Expectations

While juggling several factors, student survivors need realistic and informed support to manage a conduct complaint as well as their own recovery and education. Victim advocates can help student survivors set expectations around the IHE complaint timeline, persons involved, and what is needed to start and continue with the process. For those advocates with a close relationship to administrators, their working relationship can enable better access to services and a clarity around the exact requirements needed to access an accommodation or supportive measure. Given that student survivors often have a variety of competing needs, victim advocates can support the student beyond the conduct process as well. Advocates can provide access to culturally competent resources and discuss ongoing safety planning needs.

Conclusion

Victim services are a critical support network to help student survivors understand and navigate a conduct process. Strong collaborative relationships with both IHE-based and community-based advocates can provide an ideal framework to ensure student survivors find the culturally specific, age-appropriate, and trauma-informed services they need. Understanding the differences between the IHE conduct process and the criminal justice system is key to helping student survivors determine their path forward.

For more information on IHE advocate privacy implications, see Privacy on Campus: A Workbook for Advocates at www.victimrights.org

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