

Title IX Hearing Procedures

Many Title IX violations can be resolved informally through a mediation process. However, once it is determined that a case must be heard by the Hearing Panel the following procedures should be followed:

I. Pre-Hearing Process

A. Naming of Hearing Panel Chairs

The Title IX Coordinator will name Hearing Panel Chair(s) based on the following:

1. If the Claimant and Respondent are both students, the Deputy Title IX Coordinator for Students will be chair.
2. If the Claimant and Respondent are both employees, the Deputy Title IX Coordinator for Employees will be chair.
3. If both students and employees are involved, the Deputy Title IX Coordinator for Students and the Deputy Title IX Coordinator for Employees will be co-chairs.

B. Use of Evidence

The Investigator(s) gathers information relating to the case and in consultation with the Hearing Panel Chair, identifies that portion of the materials that meets the following evidentiary guidelines based on the policy or code violations that were cited. This evidence is then placed into the Hearing File, which contains the material that will be reviewed by the Hearing Panel to make a decision on the responsibility for the violation. The rules of evidence applicable to court proceedings do not apply to this process.

In general, evidence may be presented during a hearing if it is relevant, not unduly repetitious, and the sort of information a reasonable person would find reliable.

Evidence is relevant if it:

1. aids in determining if an action more likely than not did occur.
2. aids in determining the credibility of a testifying party or witness in a material way and the value of this evidence is not outweighed by its prejudicial effect.

Information gathered during the investigation that is not relevant to the policy or code violation will not be placed into the Hearing File; irrelevant information appearing within a witness statement or other evidence will be redacted.

C. Reputation and Character Evidence, Including Past Sexual History

Reputation and character evidence concerns a party's positive or negative traits, truthfulness or untruthfulness, ethics, or morals. During the fact-finding portion of a

hearing, such evidence is not generally admissible to establish a person acted in accordance with the character or trait.

Accordingly, past conduct or violations by the Responding Student will not be considered in the fact-finding portion of a hearing, except to prove or disprove a pattern of conduct or knowledge of wrongdoing.

Past sexual history between the Respondent and Complainant is only relevant when the past sexual incident or history provides compelling evidence on a disputed issue, including credibility. Past sexual history of either party may only be considered if such information could prove or disprove a pattern of conduct or knowledge of wrongdoing or credibility.

D. Expert Witnesses

Expert witnesses may be permitted only if the Hearing Panel Chair decides that:

1. the case requires special expertise in order to have the Hearing Panel understand a technical matter, such as forensic evidence;
2. an understanding of that technical matter is likely to affect the Hearing Panel's finding; and
3. there is not a more efficient method of obtaining the information necessary to resolve that technical matter.

If allowed, an expert witness may be retained by either party or by the Hearing Panel Chair. If an expert witness is retained by a party, that party will be responsible for any costs incurred, and the other party will be allowed to respond to that expert's written or oral testimony. If an expert witness is consulted by the Hearing Panel Chair, the parties will be allowed to respond to that expert's written or oral testimony. Expert witnesses must be identified in the investigation phase and must be willing to submit to an interview with the Investigator.

E. "New" Evidence and/or Rebuttal Evidence

"New" evidence is evidence that was not available at the time of the decision to go to hearing, could not have been available based on reasonable and diligent inquiry, and is relevant to the matter.

Rebuttal evidence is evidence presented to contradict other evidence in the Hearing File, which could not have been reasonably anticipated by a party to be relevant information at the time of the investigation.

This section is not intended to permit a party who has declined to give a statement about the incident during the investigation to give such a statement for the first time after the Hearing File has been created. This section is intended to be invoked in rare instances to allow for the inclusion of information that was not available during the investigation or that could not have been reasonably anticipated to be relevant to

rebut an issue that came to light.

F. Parties' Access to Hearing Panel File

The Hearing Panel Chair will provide both parties with:

1. Opportunity to review, in the office of the Title IX Coordinator or designee, all materials (including surveillance videos or other evidence) in the Hearing File.
2. any expert witness(es) statement(s) or names of expert witnesses if they are to appear before the Hearing Panel; and
3. Witness(es)' statement(s) or names of witnesses if they are to appear before the Hearing Panel.

II. Evidentiary Review Process

If a party objects to evidence included or excluded from the Hearing File, or if a party wants to submit new evidence and/or rebuttal evidence after the parties have viewed the file, the party may make a written request for a review by the Hearing Panel Chair. New evidence and/or rebuttal evidence, if any, should be attached to the written request.

In order to consider the objections to the Hearing File, the Hearing Panel Chair will have access to all materials gathered by the Investigator during the investigation. The parties must submit the objections by the date set in the Hearing Schedule, generally five working days from the date the Hearing File is made available to the parties. The Hearing Panel Chair will make a decision and will provide a written decision that will be binding. The Hearing Panel Chair has the authority to make all evidentiary decisions relating to what information is relevant; that is, what information should be included or excluded from the Hearing File. During the hearing, parties and witnesses must comply with the evidentiary decisions that have been made by the Hearing Panel Chair.

Objections to the inclusion or exclusion of evidence that were, or could have been, resolved through the Evidentiary Review before the hearing cannot be the basis for an appeal, unless the appealing party demonstrates that the evidentiary decision was clearly erroneous and substantially affected the reviewing panel's decision to the detriment of the appealing party.

A. Response Statement to Hearing File

After the Hearing File has been finalized, each party may submit a written statement of their position to the Hearing Panel Chair.

1. This statement is each party's opportunity to respond to the Hearing File and the charges made and to provide a statement to the panelists about what the party believes the evidence shows.

2. No attachments will be accepted; references to evidence should be made to material in the existing Hearing File.
3. No new and/or rebuttal evidence may be submitted.
4. No information may be submitted that goes beyond the scope of the matter that is charged.

The parties must submit this statement within two (2) working days of their receipt of the Hearing File or by the date set by the Hearing Panel Chair.

The Hearing Panel Chair, in consultation with the Investigator and Title IX Coordinator as necessary, will remove information from a position statement that goes beyond the scope of the charge or that violates the evidentiary guidelines.

III. Hearing Process

A. Hearing Panel Selection

Each case will be heard by a panel of three (3) trained panelists, who will be selected from a pool consisting of faculty and staff. The panelist pool will be diverse and representative of the college community.

1. If the Claimant and Respondent are both students, the Deputy Title IX Coordinator for Students will be chair. The Hearing Panel Chair will name three other panel members.
2. If the Claimant and Respondent are both employees, the Deputy Title IX Coordinator for Employees will be chair. The Hearing Panel Chair will name three other panel members.
3. If both students and employees are involved, the Deputy Title IX Coordinator for Students and the Deputy Title IX Coordinator for Employees will be co-chairs. The Hearing Panel Chairs will name three other panel members

The Hearing Panel Chair(s) does/do not vote, but do participate in all other phases of the hearing.

The names of the panelists will be provided to the parties in advance of the hearing. No person who has a conflict of interest may serve as a voting member on the Hearing Panel. A conflict of interest exists if the panelist has prior involvement in or knowledge of the allegations at issue in the case, has a personal relationship with one of the parties or witnesses, or has some other source of bias that would cause them to be prejudicial toward either party. Either party may assert, in writing, that a Hearing Panel member has a conflict of interest. The Hearing Panel Chair will determine whether such a conflict exists. A request to recuse a panelist based on a conflict must be submitted to the Hearing Panel Chair within 24 hours of receipt of the names of the panelists. If

the Hearing Panel Chair determines that a panelist has a conflict of interest, that Hearing Panel member will be replaced by an alternate.

B. Hearing

The Investigator will attend and observe the hearing and will be available to answer any questions from the Hearing Panel about the investigation.

The Hearing Panel will meet with the parties and witnesses for the purpose of making findings of fact. The parties and witnesses may not speak to matters beyond the scope of the Hearing File (for example, by raising potential misconduct allegations that go beyond the scope of the charged conduct). Parties and witnesses must not disclose or reference information to the Hearing Panel that was excluded by the Investigator and/or Evidentiary Specialist. The Hearing Panel is expected to ask questions of the parties and/or witnesses.

1. Parties' Participation. Parties must appear before the hearing panel in person unless their absence or alternative means of attending is approved by the Title IX Coordinator. The parties will not be in the same room at the same time with each other. Each party will meet with the Hearing Panel in person while the other party listens in by telephone (or similar technology). Each party may be accompanied in the hearing room by one Support Person. The Support Person may not speak on behalf of the party during the hearing.
2. Witness' Participation. Parties are permitted to listen to witnesses as they are speaking to the Hearing Panel. The Hearing Panel is not obligated to speak to all witnesses; the Hearing Panel does not need to meet with a witness if the witness statement is sufficient and the credibility of the witness is not at issue.
3. Questions from the Parties: At the conclusion of a party's or witness' session with the Hearing Panel, there will be a break so that a party listening to the hearing is able to submit written follow-up questions to the Hearing Panel Chair by email (or similar technology). The Hearing Panel has ultimate authority as to what questions to ask. The recommended practice is to cover relevant subject matter areas requested by the parties that have not already been covered and that are likely to elicit information necessary to make findings of fact.

C. Deliberation

Using a preponderance of the evidence standard, the Hearing Panel will determine responsibility based on the contents of the Hearing File and the parties' and witnesses' statements and responses to questions. A finding that the Respondent has violated College Policy will be a consensus of the voting

members of the panel. The finding of responsibility will occur after a reasonable time for deliberation, but generally no more than 12 hours after the end of the hearing.

D. Sanction Phase

Upon a finding of responsibility, the process will move to the Sanction Phase. The parties may submit a statement regarding discipline. This document is the opportunity for the parties to suggest disciplinary outcomes and to provide aggravating or mitigating circumstances for the Hearing Panel to consider. The Hearing Panel Chair, in consultation with the Investigator, will remove information or speculation from these statements that would not be relied upon by reasonable people in making sanction determinations. Parties must submit this statement within two (2) working days, or by the date set by the Hearing Panel Chair.

The Hearing Panel Chair will set a date for the Hearing Panel to meet for the Sanction Phase. The parties do not meet with the Hearing Panel during this phase. At the Sanction Phase, the Hearing Panel will receive:

1. the sanction statements;
2. notice of the interim measures that were in place during the process; and
3. notice of any disciplinary history of the Respondent.

Based on a careful review of the foregoing information, the Hearing Panel will impose sanctions using the guidelines provided in the College Policy and Procedures Manual and/or the Student Code of Conduct.

IV. Post-Hearing Process

The results of the hearing including the Hearing File and the recommended sanction and/or remedy will be provided to the Title IX Coordinator. The Title IX Coordinator will then issue written Outcome Letters to the parties that will include a description of the sanctions and the remedies.

The Title IX Coordinator will provide SSEM and/or Human Resources with copies of the Outcome Letters for the purpose of maintaining a disciplinary record for the responsible party.

The Title IX Coordinator must explain decisions on responsibility and sanctions (if applicable) and remedies with enough specificity for the parties to be able to file meaningful appeals.

The consideration of whether remedies and sanctions go into immediate effect or are held in abeyance pending appeal or some combination thereof, will be determined on a case-by-case basis by the Title IX Coordinator in consultation with the appropriate Deputy Title IX Coordinator:

- If the Claimant and Respondent are both students, the Deputy Title IX Coordinator for Students will be consulted.
- If the Claimant and Respondent are both employees, the Deputy Title IX Coordinator for Employees will be consulted.
- If both students and employees are involved, the Deputy Title IX Coordinator for Students and the Deputy Title IX Coordinator for Employees will be consulted.

V. Appeal

A. Parties' Right to Appeal

The parties may appeal the Outcome Letter. Each party may submit a written appeal which will be shared with the other party. The parties must submit the appeal within two (2) working days from the receipt of the Outcome Letter or by the date set by the Hearing Panel Chair.

The grounds for appeal are limited to the following:

1. Were there any procedural irregularities that substantially affected the outcome of the matter to the detriment of the appealing party?
2. Was there any substantive new evidence that was not available at the time of the no charge decision or hearing and that could not have been available based on reasonable and diligent inquiry that would substantially affect the outcome of the decision?

In composing appeals, parties should format their responses following these three grounds as the organizational structure. Upon receipt of a party's appeal, the Title IX Coordinator will share it with the other party. Each party may submit a response to the other party's appeal. Each party must submit this response within two (2) working days after receipt of the other party's appeal, or by the date set by the Hearing Panel Chair. The appealing party will have access to the other party's response to the appeal, but no further responses will be permitted.

B. Appeal Decision

The Title IX Coordinator in consultation with the Hearing Panel Chair(s) will provide the final appeal decision no later than five (5) working days after receipt of all appeal documents.

The Title IX Coordinator may reject the appeal in whole or in part. If the Title IX Coordinator accepts any portion of the appeal it will be remanded back to the hearing panel with written instructions from the Title IX Coordinator as to what issues should be addressed in the re-hearing. If the appeal is rejected in whole, the remedies/sanctions remain in place.

The decision of the Title IX Coordinator is final.

VI. Ongoing Management

The Title IX Coordinator in consultation with the Deputy Title IX Coordinator(s) will have ongoing responsibilities to monitor the sanctions imposed and to administer and adjust safety and administrative remedies for the parties.

VII. Expedited Process for Violations of College Directives and Court Orders

During this process and after a Respondent has been found responsible for engaging in Prohibited Conduct, if there is a new allegation that the Respondent has violated a Court Order or College Remedy or Sanction relating to the matter, the Title IX Coordinator will expeditiously investigate the concern. The Title IX Coordinator may shorten the minimum times to respond in order to bring such a matter to a hearing on an expedited basis.

This expedited process is only available for Respondents following a final determination of responsibility through a hearing or administrative resolution. Reports of alleged violations of College codes of conduct or policies or Court Orders prior to a final determination either will be incorporated into the pending matter or referred separately through this process.

VIII. Changes in Hearing Procedures

In some rare instances, it may be necessary to deviate slightly from the procedures listed above to expedite the case or accommodate a party to the hearing. All changes to the listed procedures must be approved in advance by the Title IX Coordinator who must ensure the changes do not impact either parties' case. If approved by the Title IX Coordinator, the Hearing Panel Chair will notify both parties of the changes and the reasons for the changes. If the deviations are approved by the Title IX Coordinator and the Parties to the hearing have received adequate notice, the deviations will not be grounds for appeal.