

The Hearing

November 2021

Hearing Decorum

- Be professional, but not lawyerly or judge-like
- Be respectful
- Use active listening skills
- Listen carefully to everything that is said
- Nod affirmatively
- Do not fidget, roll your eyes, or give a “knowing” look to another panel member
- Do not look shocked, smug, stunned, or accusing

Referral for Hearing

- Final investigation report is completed and shared with the parties.
- Title IX Coordinator will refer for hearing. (Cannot be less than 10 business days from the conclusion of the investigation.)
- The Title IX Coordinator will select the appropriate Decision-Makers from the Pool to form a three member panel. Typically, the Associate Dean for Student Conduct will serve as Chair.
- Investigators will be witnesses in the hearing.

Evidentiary Considerations

- Decision-Makers ultimately determine what is relevant and credible and consider only that information.
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- The Panel *does not* consider:
 1. Incidents not directly related to the possible violation, unless they evidence a pattern.
 2. The character of the parties.
 3. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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.

* Previous disciplinary and impact statements only considered during a sanctioning phase.

Notice of Hearing

- Chair will send the notice and it will have all the pertinent information.
- Parties may object to any Decision-Maker on basis of demonstrated bias.
- The notice asks for parties to submit questions/topics wish to discuss so the Chair can rule on relevance ahead of time, but parties may still ask for reconsideration at the hearing.
- Decision-Makers will know who all hearing participants are and will be able to recuse themselves if they are unable to make an objective determination.

Order of the Hearing

- The Chair will first explain the procedures and introduce participants.
- The hearing will then follow a prepared script.
- A hearing facilitator may be present at the hearing to attend to logistics, but does not vote.

Investigator(s) Presentation

- Investigator(s) will present a summary of the final investigation report and be present throughout the entire hearing with the exception of the deliberations.
- Decision-Makers and the parties (through their Advisors) will have the opportunity to ask the Investigator(s) questions.
- The Investigator(s) should not be asked for their opinions on credibility, findings, or determinations. The Chair will direct that it be disregarded if this information is introduced.

Testimony and Questioning

- Parties and witnesses provide relevant information in turn, beginning with the Complainant first.
- The Chair will determine the order after the Complainant.
- The parties/witnesses will then answer questions from Decision-Makers and then by the parties through their Advisors.
- The Chair will determine relevancy of all questions. The proceeding will pause after each question for the Chair to consider it and determine whether the question will be permitted, disallowed, or rephrased.
- The Chair may limit or disallow questions that are irrelevant, unduly repetitious, or abusive.

Refusal to Submit to Cross and Inferences

- A party or witness must submit to cross-examination at the hearing for any prior statement to be relied upon in the determination of responsibility.
- Evidence provided that is something other than a statement by the party or witness may be considered. (video footage, card swipes)
- If the party or witness attends and answers some questions, only statements related to the questions they refuse to answer cannot be relied upon.
- Statements can be relied upon when questions are posed by the Decision-Maker(s), as distinguished from questions posed by Advisors through cross-examination.
- The Decision-Makers may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions. Reasonable inferences may be drawn.

Deliberation

- Closed session for deliberation will take place to determine whether the Respondent is responsible or not responsible using a simple majority vote.
- Preponderance of the evidence standard of proof used.
- If responsible, after reviewing any impact statement and previous history, appropriate sanctions will be determined.
- 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.
- Title IX Coordinator and Chair send a Notice of Outcome.