

**PRINCIPLES AND PROCEDURES FOR TITLE IX HEARING CROSS
EXAMINATIONS**

PRE-HEARING GUIDE

Case Name and Case No.:	
Investigator Name:	
Investigator Name:	
Investigation Dates:	
Date of Hearing:	
Location/Time of Hearing:	
Hearing Decision-maker Name:	

The purpose of this guide is to provide information to all parties regarding the live hearing scheduled in the above-referenced case. Included below is information and expectations for before, during, and after the hearing.

BEFORE THE HEARING

- Evidence is collected during the investigative process and has been made available to the Complainant, Respondent, and their Advisors for review and comment at least ten (10) days prior to the hearing. **New evidence (evidence not gathered and considered during the investigative phase) may not be introduced during the live hearing. Likewise, new witnesses (who have not been interviewed by the investigators) are not permitted at the hearing.**
- Parties shall report to the assigned location at the respective college campus indicated in the Notice of Hearing.
- Participation at the hearing is mandatory. If a party does not attend, the hearing will continue without them and the decision will be made absent their interview statements/testimony.

DURING THE HEARING

- The hearing may not exceed two (2) hours.
- The Decision-maker, or the Hearing Facilitator--at the request of the Decision-maker--will begin the hearing with an introduction of all parties in the hearing. The introduction will consist of the full name of the participant, followed by the role they will play at the hearing. The introduction will be made on the record and will consist of introduction of the following participants:
 - Decision Maker
 - Complainant
 - Respondent
 - Advisor
 - Title IX Coordinator
 - Hearing Facilitator
 - Investigators
- **Decorum /etiquette expectations**
 - All parties are expected to be civil and not engage in behavior that violates collegial standards, such as talking over someone, yelling, taking an aggressive stance towards someone (i.e., shaking a fist or standing too close to someone's face), or any other behavior that is deemed disruptive by the Decision-maker.
 - Parties may not interrupt any testimony or cross-examinations being conducted.
 - The Complainant, Respondent, and their Advisors shall be allowed to attend the entire portion of the live hearing.
 - Witnesses are only allowed to attend during the time the credibility of their evidence is being reviewed; however, all witnesses will need to be available during the entire hearing.
 - Advisors are not to disrupt the proceedings by making an opening or closing statement or by advising their advisee to refuse from answering questions.
- **Location / Access to the Live Hearing**
 - The live hearing will take place virtually and recorded using an online meeting platform. The link to access the live hearing will be set-up by the hearing facilitator on-site at the beginning of the hearing.
 - All parties must be physically on-campus at the respective college, unless otherwise approved by the Title IX Coordinator, and the Office of the General Counsel. Such approvals will only be granted due to extenuating circumstances.
 - Each party will be located in a separate room / office with a computer with a webcam and microphone. The Complainant and Respondent will be in the same room / office with their Advisor.
 - The Title IX Coordinator and investigators shall be in the same room as the Decision-maker.
 - The Hearing Facilitator (and possibly support staff) will be available on-site to launch the live hearing and provide support during the hearing.

- Federal Title IX Regulations require that all parties be able to see and hear each other, so at no point may any party shut off their microphone or video during the hearing, with the exception of breaks approved by the Decision-maker.
- Use of personal audio/video recording devices is not permitted during the hearing. In the case that either party appeals the Decision-maker's determination or otherwise wishes to review the recording of the hearing, they may make a request to do so with the Title IX Coordinator. The time period to request inspection and review of the hearing recording is ten (10) business days after the hearing.
- **Protocol for Questioning:**
 - The live hearing provides the opportunity for the Complainant and Respondent to ask relevant direct questioning and cross-examination questions. Per CAC policy, the Complainant and Respondent have had a chance to review this evidence and provide comments prior to the hearing and have a copy of the entire investigative file and the investigative report.
 - Only Advisors may ask direct questions or cross-examination questions. The Complainant and Respondent are never permitted to ask questions of the other party. All questions must be directed to the party's Advisor of choice.
 - The Decision-maker may also ask questions of any party and/or any witness during the hearing.
 - Once the hearing has begun and introductions are out of the way, all parties will review the evidence provided. After reviewing the evidence, questioning will begin. The Advisor of the other party may ask questions of the submitting party and of witnesses provided by the submitting party. Once a question has been asked, it may not be answered until the Decision-maker has determined the question to be relevant.
 - The Decision-maker's responses may include:
 - Approved, the question is relevant and should be answered.
 - Denied, the question is not relevant to the matter at hand and does not have to be answered by the party being questioned. In the case of denials due to lack of relevancy, the Decision-maker must provide information to substantiate the denial.
 - Further rationale needed: the asking party must provide additional rationale for why the question is relevant to the matter at hand.
 - Breaks may be taken to allow the decision-maker time to review the relevancy of the question or for either party to consult with their Advisor.
 - At the close of the hearing, the audio and visual recording will be stopped.

AFTER THE HEARING

- The Decision-maker closes the hearing for deliberation. Deliberations are not recorded.
- The Decision-maker determines credibility of documentary and oral testimony and finalizes the written report to share with the Complainant and Respondent.
- Both the Complainant and Respondent have the right to appeal the decision made by the Decision-maker based on one of three criteria:
 - 1) Procedural irregularity;

- 2) New evidence that was not reasonably available at the time of the hearing;
- 3) Title IX Coordinator, investigator(s), decision-maker(s) had a conflict of interest or bias.

If you would like to appeal and believe you meet the grounds for appeal outlined above, you must submit your request for appeal in writing to the Title IX Coordinator within five (5) days of the delivery of this Notice of Outcome Letter. If you do not submit your request for appeal within the five (5) days, you will lose your right to appeal, and the matter will be deemed closed.

The request for appeal will be forwarded to the Appeal Chair (the VP Student Services), for consideration to determine if the request meets the grounds for appeal. The Appeal Chair will deny any request for appeal that does not meet the grounds as outlined above. Denials based on lack of grounds shall be communicated to the requesting party within five (5) days of the request for appeal being received by the Appeal Chair.

If the request for appeal is granted, the Appeal Chair will provide the other party(ies) and their advisor(s), the Title IX Coordinator, and, when appropriate, the investigators and/or the decision-maker a copy of the appeal request with the approved grounds outlined and provide them five (5) days to submit a response to the appeal that involves them. A decision on the appeal will be rendered no more than fifteen (15) days from the date the request for appeal was filed. The appeal decision will apply the preponderance of the evidence standard.

QUESTIONS?

Questions prior to the hearing shall be directed to the Title IX Coordinator. [\[Enter Name Here\]](#).

PRINCIPLES AND PROCEDURES

Purposes of Cross-Examination

Cross-examination tests the evidence, allowing the Decision-maker to assess the probative weight to give to each piece of evidence, including oral testimony. Even if evidence is relevant and material, how much weight should it be given in concluding whether the violation (or element of a violation) occurred?

Ways that cross-examination tests the evidence:

1. Helps the Decision -maker assess the credibility of a witness
2. Ensures “due process” under the Fifth Amendment of the U.S. Constitution
 - Fifth Amendment = can’t deprive a person of property (e.g., education) without due process of law
3. Allows the accused individual to face their accuser
 - Analogous to the Sixth Amendment of the U.S. Constitution, in which an accused person in criminal case is entitled to confront the witnesses against them

Role of Decision-Maker in Cross-Examination

In cross-examination, the Decision maker's role is to limit the scope of testimony to the presentation of relevant, material facts. "Relevant" means that the item of evidence tends to prove or disprove one or more of the allegations or a required element of a violation, and "material" means important to the outcome and not merely tangential.

1. The Decision-maker has the discretion to ask or not to ask a question or to interrupt answers on the basis of irrelevance, and should advise the hearing participants accordingly.
2. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the Respondent committed the alleged conduct, 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.
3. Procedure and Special Rules:
 - a. The Decision-maker will establish and communicate the format for cross-examination and the method and timing for submitting questions to be considered. All hearings will be conducted via video conference with parties in separate rooms at the same location (college). At a minimum, cross-examination will consist of a set of questions asked by the Advisor to the party that is adverse to the witness and determined by the Decision-maker to be relevant. In their discretion, the Decision-maker may offer one or more breaks in cross-examination to allow the adverse party to submit additional questions for consideration. If the advisor for the adverse party submits no questions, the Decision-maker may ask their own cross-examination questions at their discretion.
 - b. If a party or witness does not submit to cross-examination at the live hearing, the Decision-maker must not rely on any statement of that party or witness in reaching a determination regarding whether a violation occurred.
 - What this means: In order for the Decision-maker to consider testimony or statements from a witness (including a party), the witness or party must submit to cross examination at the hearing and can't merely give their side and then excuse themselves from the proceeding.
 - *Illustration:* If a Complainant submits a written statement of what happened, but does not show up to the hearing, the Decision-maker cannot consider the contents of the written statement as evidence of a violation. There may, however, be other evidence to substantiate a

violation, such as independent witnesses who do testify and submit to cross-examination, which the decision maker can consider.

- c. Conversely, the Decision-maker must not draw an inference – positive or negative – about whether a violation occurred based solely on a party’s or witness’ absence from the live hearing or refusal to answer cross-examination or other questions.
 - What this means: If one party is absent from the hearing, the other party must still present evidence and give testimony in order for the decision maker to have a reasonable basis for concluding that a violation did or did not occur.
 - *Illustrations:* If a Complainant decides not to testify, the Decision-maker cannot infer that the incident did not occur merely because of the Complainant’s decision not to testify. If a Respondent decides not to testify, the Decision-maker cannot infer that the incident did occur merely because of the Respondent’s decision not to testify.

Role of the Advisor in Cross-Examination

Parties to the hearing (Complainant and Respondent) are required to have an Advisor present at the hearing. The Advisor may be, but is not required to be, an attorney. If a party does not or cannot provide their own Advisor at the live hearing, the District must provide an advisor of the District’s choice without fee or charge to the party needing one.

The Advisor’s objectives in cross-examination are to test the accuracy and completeness of a witness’s testimony or written statement, elicit facts that tend to clarify, disprove or diminish the witness’s version of events, and/or possibly even call into question the truthfulness of the witness. How the Advisor does this:

1. Consults with the person whom the Advisor is representing, to create a set of questions they would like asked of a witness on cross-examination.
2. Submits cross-examination questions to the Decision-maker for consideration.
3. Subject to the Decision maker’s requirements of format and timing, submits additional cross-examination questions based on a witness’s answers to previous cross-examination questions.

An Advisor is not permitted to--

1. Interrupt or interject while the Decision-maker is asking questions of a witness or a witness is giving testimony.
2. Make formal “objections” based upon rules of evidence.
3. File motions, briefs, or written statements on behalf of a party.
4. Engage in argument or advocacy on a party’s behalf.
5. Take any other actions which, in the Decision-maker’s determination, will delay or obstruct the proceeding.