

## Frequently Asked Questions for Complainants and Respondents

### Addendum A – State Mandated Hearing Addendum<sup>1</sup>

#### Hearings

##### Key Terms:

- **Complainant** means an individual who is eligible to file a Complaint or report a violation of CSU Executive Order 1096 or CSU Executive Order 1097 (both revised August 14, 2020). It also includes any person who is reported to have experienced a violation of policy in cases where some other person has made a report on that person's behalf. A Complainant may also be referred to as a party to the Complaint.
- **Respondent** means the CSU, a CSU Employee, a Student, or a Third Party who is alleged to have violated CSU Executive Order 1096 or CSU Executive Order 1097.
- **The Parties** means the Complainant and the Respondent collectively.
- **The Title IX Coordinator** is the individual designated by a campus with primary responsibility to monitor, supervise, and oversee all campus-wide implementation of and compliance with Title IX and the associated CSU Executive Orders.<sup>2</sup>
- **The Investigator** is the person tasked by a Campus with investigating a Complaint.
- **The Hearing Officer** is a neutral, third party who oversees a Title IX hearing.
- **The Hearing Coordinator** is a university administrator who is responsible for coordinating the pre-hearing and hearing processes.
- **A Support Advisor** is an individual chosen by a Party to provide support to that Party during the investigation and hearing processes. The Support Advisor may not answer questions regarding the subject matter of the investigation for the Complainant or the Respondent or speak on behalf of a Complainant or Respondent. However, the Support Advisor may observe and consult with the Complainant or Respondent.

##### What is a hearing?

A hearing is a meeting that occurs once an investigation under [Addendum A – State Mandated Hearing Addendum](#) (“Addendum A”) has finished. During the hearing an independent Hearing Officer listens to the witnesses, including you and the other Party (Complainant or Respondent) and analyzes the evidence. The Hearing Officer will ask questions of the Parties and witnesses and decide about whether the Respondent is responsible for the conduct as alleged. The Hearing Officer will oversee and guide the hearing.

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<sup>1</sup> The purpose of these FAQs is to provide an overview of Addendum A – State Mandated Hearing Addendum to CSU Executive Orders 1096 and 1097 (effective August 14, 2020) and to answer what are anticipated to be frequently asked questions. **These FAQs do not constitute CSU policy, nor do they purport to represent a comprehensive statement of CSU policy.** Please direct any questions about CSU Title IX-related policy to your campus Title IX Coordinator.

<sup>2</sup> [CSU Executive Order 1095 \(June 23, 2015\)](#).

## I already gave my statement to the Investigator, and they took notes – why do I have to attend a hearing?

New requirements following two California Court of Appeal decisions mean that the parties (the Complainant and Respondent) to a case that meets the criteria to be handled under Addendum A must have an opportunity to ask questions in a live hearing of each other and any other witness who provided a statement during the investigation where that witness' credibility is central to the case. The Hearing Officer may also ask the Complainant, Respondent, or a witness questions of their own. You will not ask questions directly to the other party or witnesses, and the other party will not directly question you. Instead, you and the other party will submit your questions for each other and witnesses to the Hearing Officer in writing, and the Hearing Officer will ask the questions.

## I heard that the new process involves cross-examination – what does this mean?

Cross-examination means asking questions of a witness (including the Complainant or Respondent) to challenge that witness' statements or credibility. In the hearing process, the Respondent and Complainant will "cross-examine" by asking the Hearing Officer to ask questions of each other or of other witnesses. This means that the Complainant and Respondent will not be communicating directly with each other or witnesses. The university's process of providing for "indirect" questioning by the Hearing Officer is designed to minimize anxiety for the participants in the hearing.

## Can I ask questions during the hearing?

At the start of the hearing there will be an opportunity for you to ask the Hearing Officer any questions you have about the hearing. You will also be able to make a 10-minute opening statement. However, you will **not** be permitted to directly ask any questions of the other Party or witnesses. Questions you have for the other Party or witnesses can only be asked by the Hearing Officer.

## How will I know when and where the hearing will be?

Your campus Title IX Office will provide you with all the details of the hearing, including the date, time, and location (if the hearing will not be held using videoconferencing technology), as well as the identity of the Hearing Officer. This information will be sent to you in a communication called a "Notice of Hearing." If you have any questions about the hearing, you should contact the Hearing Coordinator. The Hearing Coordinator is a university administrator who is responsible for coordinating the pre-hearing and hearing processes.

## What if I have class, practice, or work at the time of the hearing?

It is recommended that you consult your schedule as soon as you receive the Notice of Hearing, which tells you the date and time of hearing. The Hearing Coordinator can arrange reasonable accommodations, including an excused absence from class, practice, or work to enable you to participate in the hearing. It is important that you communicate to the Hearing Coordinator your need for any accommodations as soon as possible.

If you absolutely cannot attend the hearing for some reason, it is important that you communicate this to the Hearing Coordinator as soon as possible, providing your reasons. If you do not attend the hearing without providing a valid reason, the hearing may still proceed in your absence.

If you have questions, or are concerned about attending the hearing, the Hearing Coordinator is available to talk to you and answer any questions you may have.

## Where will the hearing take place?

The hearing will be conducted using videoconferencing technology unless circumstances are such that videoconferencing would not be appropriate. Neither Party will be required to be physically present in the same room as the Hearing Officer, each other, or witnesses. The University will utilize technology to ensure that both Parties will be able to see and hear all of the proceedings and statements made during the hearing.

## Do I have to be in the same room as the other Party (Complainant or Respondent)?

No, the hearing will take place using videoconferencing technology (unless circumstances are such that videoconferencing would not be appropriate), which means that you can participate in the hearing from wherever you choose, although you should try to ensure that you have a private space from which you can participate. You will **not** be required to be physically present in the same room as the Hearing Officer, the other Party, or the witnesses.

### What does a private space mean and why does that matter?

The topics that are discussed during a hearing can be very sensitive and personal for everyone involved. You may not want family members or others who are around you to hear these details. Therefore, it is important that you are able to participate from a location that is quiet and where other people will not be in the same room as you. You might also consider using headphones to further increase your privacy and that of others involved in the hearing.

### What if I do not have access to technology for videoconferencing or I do not have a private space from which I can participate?

Please discuss these concerns with the Hearing Coordinator, who can make arrangements to ensure that you can fully participate in the hearing.

### What if I am far from my campus at the time the hearing will be held?

In most instances, the hearing will take place using videoconferencing technology, which means you can participate from any private space of your choice. Therefore, you do not need to be close to your campus.

If you will be participating in the hearing from another state or from outside the United States, please inform the Hearing Coordinator as soon as possible so that they can consider any time differences while preparing for the hearing.

### What if I need accommodations for a disability during the investigation and/or hearing processes?

Please let the Title IX Coordinator or Hearing Coordinator know as soon as possible if you require reasonable accommodations for a disability to enable you to fully participate in the hearing.

### Can I bring someone with me to the hearing?

The Complainant and Respondent may both bring one Support Advisor and one Support Person each. This could include an attorney, a friend or family member, a sexual assault victim's advocate, a respondent advisor, or any other individual of the Complainant or Respondent's choice, provided that person is not otherwise involved in the complaint or investigation (for example, a Support Advisor or Support Person cannot be someone who has been interviewed as a witness).

In choosing a Support Advisor and/or Support Person, you may wish to consider what is likely to be discussed during the hearing and whether you will feel comfortable with that person being present to hear that discussion. This may be a particular consideration if you are planning to bring a family member with you.

A Support Advisor or Support Person will not be allowed to speak during the hearing. You will be expected to answer questions and speak for yourself. However, you may consult with a Support Advisor and/or Support Person as needed. If you would like to speak with your Support Advisor/Support Person privately during the hearing, please ask the Hearing Officer to pause the hearing and excuse you. If the Hearing Officer asks you a question, you will be expected to answer that question before taking a break.

### What if I do not have anyone who can advise and support me?

Please contact the Title IX Coordinator to request information about support services and resources for Complainants and Respondents.

### How should I prepare for the hearing?

The Hearing Coordinator will provide you with information regarding the pre-hearing and hearing processes, including timeframes for information that you may need to submit (for example, the name and contact information of your Support Advisor and Support Person, if you have one or both).

You might wish to meet with your Support Advisor to discuss the questions that you would like to be asked of the other Party and witnesses during the hearing. Remember, the Hearing Officer will be the one to ask these questions.

### What if I don't want to participate in the hearing?

You are not required to participate in a hearing, but there is risk in not attending.

- If you are a Complainant and choose not to participate in the hearing, the University's ability to take action regarding your complaint may be limited. The hearing will happen, but statements you made during the investigation (even if described in the Final Investigation Report) might not be considered by the Hearing Officer because you will not be available to answer questions about those statements.
- If you are a Respondent and choose not to participate in the hearing, the hearing will happen, but statements you made during the investigation (even if described in the Final Investigation Report) might not be considered by the Hearing Officer because you will not be available to answer questions about those statements.

### Who else will be present at the hearing?

The hearing will be "closed" – this means that only those who need to be present will be part of the hearing. Who is present may vary depending on the circumstances; however, usually the following individuals will be present:

- Hearing Officer;
- Complainant;
- Respondent;
- Support Advisor and Support Person for Complainant;
- Support Advisor and Support Person for Respondent;
- Title IX Coordinator;
- Title IX Investigator (if not also the Title IX Coordinator);
- Hearing Coordinator;
- Student Conduct Administrator or other appropriate University administrator;
- An administrator from the CSU Chancellor's Office; and
- Witnesses (who will only be present during the part of the hearing that is relevant to their statement).

Sometimes, it may be necessary to have additional people present, such as an information technology employee to assist with technology.

### What will the hearing be like?

The hearing is a meeting at which the Hearing Officer listens to the witnesses, including you, and the Complainant/Respondent, and analyzes the evidence. The Hearing Officer will ask questions of the Parties and witnesses and decides about whether the Respondent is responsible for the conduct as alleged. The Hearing Officer will oversee and guide the hearing.

You will have the opportunity to make an opening statement during the hearing. Your opening statement will be no longer than 10 minutes. The Investigator or the Title IX Coordinator (if not the Investigator) will usually be the first witness and will describe the complaint, investigation process, and summarize the evidence.

During the hearing, the Hearing Officer will ask you questions. Your job is to answer the questions truthfully. It is important to listen to the questions carefully, and ensure you understand the question before you answer. It is okay to ask the Hearing Officer to repeat the question if you do not hear or understand it the first time. However, if you answer a question, the Hearing Officer will assume that you understood the question. If you do not know the answer to a question, or you cannot remember, you should say so – try not to guess.

During your meeting with the Investigator, they will have taken notes. If you have not already been provided with a copy of the statement that you gave to the investigator during your interview with them, you may ask the Hearing Coordinator for a copy. It is okay to refer to this during the hearing to refresh your memory. If there is anything written in the statement that you feel is inaccurate, you should tell the Hearing Officer.

You will have an opportunity to ask questions of the other party and witnesses during the hearing. Your questions should be submitted to the Hearing Coordinator in writing at least 5 days prior the hearing. You may also propose follow-up questions during the hearing. Any follow-up questions will need to be submitted to the Hearing Officer in writing. The Hearing Officer will then ask the other party or witness your questions, unless they determine that it is

not appropriate to do so in accordance with the Executive Order. The Hearing Officer may, at their discretion, modify or change the wording of a question, as long as the substance of the question is preserved

### What kind of questions will I be asked?

The questions that the hearing officer asks you may be similar to the type of questions that the Title IX Investigator asked you when you met with them. It is important to know that the Hearing Officer may ask some difficult and personal questions. It is not their intention to upset or embarrass you. Sometimes these types of questions are important and necessary for the Hearing Officer to make their decision.

The Hearing Officer will review all questions posed by the other party and decide whether or not it is appropriate to ask those questions.

### How long will the hearing take?

It depends. A hearing will usually be scheduled for one full day, and you should plan to make yourself available for that day unless the Hearing Coordinator tells you otherwise. Sometimes, a hearing may be scheduled across two or more days, for example if there are a significant number of witnesses to be heard, or if a case is very complex. If your hearing is expected to last longer than one day, the Hearing Coordinator will notify you.

### Will the hearing be recorded?

Yes. An audio recording of the hearing will be made. It is important that you speak clearly and perhaps a little louder than you might usually so that your statements can be picked up on the recording. The audio recording will remain the property of the University, but you may request to review the recording after the hearing. No one other than the University is permitted to make a recording of the hearing.

### What if I start to feel overwhelmed or upset during the hearing?

If you feel like you need a break, please speak up and tell the Hearing Officer. You may be able to take a brief break, including to consult with your Support Advisor and/or Support Person, visit the restroom, have some water and a snack, or just to get some fresh air.

Even if you do not have someone accompanying you during the hearing as Support Advisor and/or Support Person, you may find it helpful to arrange to speak with a trusted counselor, friend, or family member after the hearing.

The Hearing Coordinator can provide information about and help connect you to resources on and off campus, such as the counseling center, if you would like to talk to someone after the hearing.

### Can I submit new evidence at the hearing or ask the Hearing Officer to interview a new witness?

All available evidence should be provided to the Investigator during the investigation phase of the process. If relevant evidence, or a witness, was not reasonably available during the investigation phase, then the Hearing Officer may decide to permit the evidence or witness at the hearing. However, if the Hearing Officer concludes that the evidence or witness actually was reasonably available during the investigation or is not relevant, the Hearing Officer may not allow the evidence or witness at the hearing.

### What happens after the hearing?

After the hearing, the Hearing Officer will make written findings of fact and conclusions about whether the Respondent violated the Executive Order. The Hearing Coordinator will send you a copy of the Hearing Officer's Report, usually within 10 Working Days after the hearing is finished.

The standard of proof the Hearing Officer will use is whether each allegation is substantiated by a "Preponderance of the Evidence," which means the evidence on one side outweighs the evidence on the other side, or in other words, whether it is more likely than not that the alleged conduct occurred. A finding that a Respondent violated the Executive Order does not mean that the Hearing Officer concluded with absolute certainty the conduct occurred. Instead, it means that having considered all the relevant evidence, the Hearing Officer concluded that it was more likely than not that the conduct occurred. Likewise, a finding that the Respondent did not violate the Executive Order does not reflect a determination on the part of the Hearing Officer that the conduct absolutely did not occur as alleged.

### Finding of No Violation

If the Respondent is found **not** to have violated the Executive Order, both Parties will be notified and informed of their right to appeal the outcome. Information will be provided as to how an appeal may be submitted. Appeals are handled by the CSU Chancellor's Office.

### Finding of a Violation

If the Respondent is found to have violated the Executive Order, both Parties will be notified and will have an opportunity to submit a statement that is no more than 2000 words in length regarding discipline. The document is an opportunity for the Parties to suggest disciplinary outcomes and to provide information that they believe is important for the Hearing Officer to consider. The Title IX Coordinator and the Student Conduct Administrator may also submit a statement regarding aggravating and mitigating factors, including whether the Respondent was previously found to have violated university policy.

The Hearing Officer will then consider the information provided and make a recommendation as to discipline, submitted in writing to the campus president or their designee. The president or their designee will make the final decision regarding discipline and will communicate this decision to both the Complainant and Respondent in writing. Both Parties will have an opportunity to appeal the outcome and information will be provided as to how an appeal may be submitted. Appeals are handled by the CSU Chancellor's Office.

### Is there any alternative to having a hearing?

Yes. An Informal Resolution is an agreement between you and the other Party that would resolve the matter without a hearing. It could also occur after a hearing, as long as it is before the Hearing Officer makes a final decision.

- It is a completely voluntary process that can occur at any time up to the point where the Hearing Officer makes a final decision
- Neither the Complainant nor Respondent should feel pressured to agree to an Informal Resolution
- Both Parties and the campus Title IX Coordinator have to agree with the terms of the Informal Resolution before it can become final

If you would like to pursue Informal Resolution, you can discuss this option with your campus Title IX Coordinator. You may also review [the FAQs on Informal Resolution](#), which is a separate document.

### Who can I contact if I have further questions?

Please contact your campus Title IX Coordinator:

Allan Ford

Interim Title IX Coordinator and DHR Prevention Administrator

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