

## Frequently Asked Questions for Witnesses

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

#### 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 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.

#### Why has the CSU revised its Title IX policy?

In January 2019, a California Court of Appeal ruled (in a case involving another university) that students accused of sexual misconduct who face severe discipline (expulsion or suspension) at any California university have the right to a hearing to cross-examine (question), directly or indirectly, their accusers and other witnesses if witness credibility is “central” to the case. Until that time, the University process did not include a hearing. In May 2020, following another California Court of Appeal decision, the right to a hearing was extended to students accused of engaging in dating or domestic violence where credibility is central to the case and the student is facing severe discipline if found responsible.

To implement the new requirements, the CSU created an addendum to Executive Orders [1096](#) and [1097](#). This addendum is known as [Addendum A: State Mandated Hearing Addendum](#) (“Addendum A”), and it describes the investigation and resolution process for cases that meet the above requirements.

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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 \(June 23, 2015\)](#).

## What kinds of cases are handled under Addendum A?

The revised policy applies only to certain cases that meet the following three criteria:

- Student (Respondent) is accused of Sexual Misconduct, or Dating or Domestic Violence as defined by Executive Orders (EOs) 1096/1097 (Revised August 14, 2020);
- Student accused of Sexual Misconduct, or Dating or Domestic Violence faces suspension or expulsion; and
- The credibility of the accuser (Complainant) or other witnesses is central to a determination of whether the accused student engaged in Sexual Misconduct, or Dating or Domestic Violence.

## How do these changes affect me?

If you are interviewed as a witness as part of an investigation under Addendum A, you may be asked to later attend a hearing to answer questions.

## What is a hearing?

A hearing is a meeting that occurs once an investigation under Addendum A has finished and during which an independent Hearing Officer listens to the witnesses, including the Complainant and the Respondent, and analyzes the evidence. The Hearing Officer asks questions (including questions proposed by the Complainant and Respondent) of the witnesses and decides about whether the Executive Order was violated.

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

The new requirements mean that the parties (the Complainant and Respondent) to a case that meets the three criteria above 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's credibility is central to the case. The Hearing Officer may also ask a witness questions of their own. The Complainant and Respondent will not ask you their questions directly. Instead they will submit their questions to the Hearing Officer in writing, and the Hearing Officer will ask the questions.

## Will the Complainant and the Respondent know what I said during my interview with the Investigator?

Yes, all evidence that is relevant to the allegations, including witness statements, must be provided to the Parties. We understand that it can be difficult to be asked questions about people who you know or work with, and who may even be your friends. You may be concerned that they will be upset with you for providing information. While we cannot control how other people feel, we can prohibit people taking negative action toward you based on those feelings ("retaliation") that interfere with your ability to work or continue with your education. CSU Executive Order 1096 and CSU Executive Order 1097 prohibit retaliation against anyone who files a complaint or assists or participates in a policy-related investigation/proceeding. This means that a Complainant, Respondent, or anyone else, is prohibited from taking negative action against you as a result of your participation as a witness. Please discuss any concerns you have about retaliation with the Title IX Coordinator and contact them immediately if you believe that you have been the target of retaliation. The Title IX Coordinator's contact information is provided on the final page of this document.

## 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) about the witness's statements or to assess credibility (i.e. believability). In the Addendum A hearing process, the Hearing Officer will "cross-examine" the other Party and witnesses. This means that the Complainant and Respondent will **not** be communicating directly with each other or witnesses, and such direct communication will not be permitted at any time during the hearing. This process of providing for "indirect" questioning by the Hearing Officer is intended to minimize anxiety for the participants in the hearing.

## 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 of the hearing. This information will be sent to you in a communication called a "Notice of Hearing." The Notice of

Hearing should indicate how long you should make yourself available for the hearing (for example, whether you will need to be available for a few hours or for a full day). If you have any questions about the hearing, you should contact the Hearing Coordinator, who will usually be the person who sends the Notice of Hearing. 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 or practice 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 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. The University will utilize technology to ensure that the Complainant and Respondent will be able to simultaneously see and hear all of the proceedings and statements made (including yours) during the hearing.

If the hearing will take place on-campus, it will usually be in a conference room or similar location. Please review the Notice of Hearing that was sent to you to make sure you know where the hearing you are attending will be held.

### 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 the campus.

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

If the hearing is taking place on campus with other participants physically present (rather than by videoconference) and you will not be in the local area at the time the hearing is scheduled for, it may be possible for you to participate via videoconference. Please contact the Hearing Coordinator as soon as possible to discuss these arrangements.

### Do I have to be in the same room as the Complainant and Respondent?

No, the hearing will usually 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.

If the hearing is taking place on campus with other participants physically present, but you do not want to be in the same room with a person involved in the complaint, please discuss your request with the campus Hearing Coordinator in advance of the hearing so that special arrangements can be made.

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

The issues that are discussed during a hearing can be very sensitive and personal for everyone involved. 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. If you are concerned that you will not have a private space for the hearing, please contact the Hearing Coordinator as soon as possible.

### 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.

## How long will the hearing take?

It depends. A hearing will usually be scheduled for at least one full day but as a witness, you will only be expected to participate when it is your turn to answer questions. The Notice of Hearing should indicate how long you should plan to be available for when participating in the hearing. Since it can be difficult to predict exactly how long it will take to hear each witness, including the Complainant and Respondent, it may sometimes be necessary for you to wait a while until it is your turn to participate in the hearing. We understand that your time is important and your flexibility in this regard is much appreciated.

## What if I need accommodations for a disability during a hearing?

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.

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

Witness participation is an important part of the process, so we appreciate your cooperation in attendance at the hearing. If a witness does not attend the hearing, the Hearing Officer might not be able to rely on what that witness told the Investigator (even if it is described in the investigation report) because the witness will not be available to answer questions about those statements. While the outcome of the hearing does not rest on your statement alone, your non-participation may impact the Hearing Officer's ability to make a fully informed decision.

It is also important to know that if you are a witness and do not attend the hearing as requested, you may be subject to discipline (as a student or employee).

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. 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.

## 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;
- An administrator from the CSU Chancellor's Office;
- 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 and the 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.

During the hearing, the Hearing Officer will ask you questions. Your only 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 only be present at the hearing when it is your turn to answer questions. Once the Hearing Officer has finished asking you questions, you will be able to leave the hearing.

### Will what I say during the hearing determine the outcome?

The Hearing Officer will be considering various types of relevant evidence in order to make their decision, including statements made by the Complainant and Respondent, documentary evidence such as text messages or emails, as well as statements provided by witnesses. The outcome of the hearing does not rest on your statement alone. While your participation is important, you should not feel that the outcome of the hearing is your responsibility or your “fault.”

### Will the hearing be recorded?

Yes. An audio recording of the hearing will be taken. 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. 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. It will usually be possible to take a brief break to visit the restroom, have some water and a snack, or just to get some fresh air. The Hearing Coordinator can provide information about and help connect you to resources on and off campus, such as the Counseling Center or the Employee Assistance Program, if you would like to talk to someone after the hearing.

### Do you believe the hearing requirement will have a negative effect on individuals reporting sexual misconduct, or dating or domestic violence, or moving forward with their cases?

We hope not and will do our best to make the process as fair and compassionate as possible for everyone involved. All Hearing Officers receive training about our investigation and hearing process as well as the complex and sensitive issues surrounding allegations of sexual misconduct and dating and domestic violence. We encourage students and employees to speak with their campus Title IX Coordinators and confidential campus resources, including psychological services, confidential advocates, employee assistance programs and respondent advisors to discuss their experience and concerns.

### 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

Email: [allan.ford@humboldt.edu](mailto:allan.ford@humboldt.edu)

Office: (707) 826-3385 (M-F, 8am-5pm)

Cell: (707) 296-4032 (any time)

<https://titleix.humboldt.edu>