

## Title IX Hearings Under Addendum B – Federal Hearing Addendum Expectations for Party, Hearing Advisor, and Support Advisor Participation and Conduct

This document relates only to hearings under Addendum B – Federal Hearing Addendum (to CSU Executive Orders 1096 and 1097). It is intended to outline the hearing participation and conduct expectations for Complainants and Respondents, and their respective Hearing Advisors and, if present, Support Advisors. This document will be provided to the Parties and their Advisors in advance of the hearing so that they may familiarize themselves with the expectations. Parties and their Advisors will be regarded as being on notice of these expectations upon receipt. Any questions should be directed to the Hearing Coordinator.

**A live hearing before a neutral Hearing Officer allows the Parties to a complaint, the Complainant and Respondent, to indirectly cross-examine each other and relevant witnesses. The Hearing Officer will assess credibility, find facts, and determine if the policy has been violated.**

The Hearing will proceed as follows:

- Live hearings will be conducted using videoconferencing technology, unless both Parties request to be physically present. Neither Party will be required to be physically present in the same room as the Hearing Officer, each other, or witnesses. CSU will utilize technology that ensures that Parties will be able to simultaneously see and hear all of the proceedings and testimony.
- The hearing will commence with an overview of the hearing process given by the Hearing Officer, after which the Parties will be given an opportunity to ask questions about the hearing process. Each Party will be given an opportunity to make an opening statement that may not last longer than 10 minutes. Only the Parties themselves will be permitted to make opening statements. The Hearing Advisor and any Support Advisor are not permitted to make the opening statement. Closing arguments will not be made.
- Each Party is required to have a Hearing Advisor for purposes of questioning the other Party and witnesses during the hearing. If a Party does not have a Hearing Advisor prior to the hearing or at the start of the hearing, one will be provided to that Party for the purposes of asking the other Party and any witnesses all Relevant<sup>1</sup> questions and follow-up questions, including those questions challenging credibility. If a Party's Hearing Advisor does not appear or is excused for conduct that causes a material disruption, a Hearing Advisor will be provided. In either case, the Hearing Officer has discretion to proceed with or postpone the hearing.
- A Party may also have a Support Advisor, who may accompany them to the hearing but is not permitted to speak during the hearing.
- Generally, the Hearing Officer will start the questioning of witnesses and Parties. Hearing Advisors will be permitted to ask questions once the Hearing Officer has concluded questioning of the other Party and each witness.

**The Hearing Officer controls the hearing, is responsible for maintaining order during the hearing, and makes whatever rulings are necessary to ensure a fair hearing.**

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<sup>1</sup> Relevant is a term defined in Article II of Addendum B – Federal Hearing Addendum.

**Abusive or otherwise disorderly behavior that causes a material disruption will not be tolerated.**

**The Hearing Officer may excuse any person (including either Party, their Hearing Advisor, and Support Advisor) whose behavior causes a material disruption.**

**The expectations for participation and conduct during hearings are as follows:**

1. The Family Educational Rights and Privacy Act (FERPA) covers hearings. The hearing will be closed to all persons except:
  - The Parties;
  - One Hearing Advisor per Party;
  - One Support Advisor per Party;
  - Appropriate witnesses while they are testifying;
  - The Title IX Coordinator;
  - The Title IX Investigator
  - The Student Conduct Administrator;
  - The Hearing Officer; and
  - The Hearing Coordinator.

A CSU Administrator may be present but will not participate in the hearing. Campus police or a security officer may also be present if deemed appropriate or necessary by the appropriate Campus administrator, Hearing Coordinator or Hearing Officer. An individual providing technological support may also be present. No other individuals are allowed to hear or observe by any means.<sup>2</sup> Those present will be asked to identify themselves and their role in the hearing.

2. Participants who are attending the hearing remotely using videoconferencing technology will be asked to show the room from which they are participating and verbally confirm that they are alone in the room. A Party's Hearing Advisor and Support Advisor may be present with a Party in the same room.
3. The Campus will make or arrange for an official audio recording of the hearing. The recording is University property. No other recording of the hearing is permitted. A Party who records the hearing will be in violation of the Student Conduct Code (for students) or applicable professional code of conduct (for employees) and may be disciplined for doing so. The audio recording will be retained by the Hearing Coordinator or designee in accordance with the Campus records/information retention and disposition schedule. Parties may request to inspect and review the recording.
4. In order to ensure the efficiency of the hearing and the integrity of the audio recording, Parties and Hearing Advisors who are participating remotely will be required to mute their microphones when they are not speaking during the hearing. Support Advisors who are participating remotely will be required to mute their microphone throughout the hearing.
5. Hearing Advisors and Support Advisors are not permitted to make opening statements on behalf of a Party. Neither Parties themselves nor their Hearing Advisors or Support Advisors will make closing statements.
6. Parties themselves are not permitted to directly question another Party or witness. All questioning must be done by the Hearing Advisors and the Hearing Officer only.
7. All questions must be asked in a respectful, non-abusive manner. The Hearing Officer determines whether a question satisfies this requirement and may require that Hearing Advisor rephrase a relevant question or repeat the question in a respectful manner when the Hearing Officer determines that the question was asked in a disrespectful or abusive manner.
8. Immediately after each question is asked by a Hearing Advisor, and before the question is answered, the Hearing Officer will indicate whether the question is Relevant, and if it is not, provide a brief explanation as

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<sup>2</sup> Interpreters or individuals required by ADA accommodations are permitted. If applicable, that person will also identify themselves and their role in the hearing.

to why the question is excluded as not Relevant. If the Hearing Officer determines that a question is not Relevant, the individual being questioned is not required to answer that question.

9. Even if a question relates to a Relevant subject or issue, the Hearing Officer may determine that the Party or witness being asked the question is not required to answer if the question is repetitive or duplicative of prior questions.
10. The Hearing Officer has the discretion to request information from the Parties or Hearing Advisors regarding questions prior to deciding about the Relevancy of the question. Neither Party nor Hearing Advisors may assert objections to questions.
11. Parties may ask for a break to consult with their Hearing Advisor and/or Support Advisor. Breaks are at the discretion of the Hearing Officer. When a Hearing Advisor or Hearing Officer asks a Party a question, the Party will be expected to wait until after they have answered the question deemed relevant by the Hearing Officer to request a break. The Hearing Coordinator will provide a means for Parties to consult with their Hearing and Support Advisors in private.
12. A Hearing Advisor or Support Advisor may not “coach” or otherwise communicate with a Party during the hearing about the substance of their responses while questions are pending, including through electronic means.
13. Abusive or otherwise disorderly behavior, including a failure to adhere to the above expectations, that causes a material disruption will not be tolerated. The Hearing Officer may excuse from the hearing anyone (including either Party or their Hearing Advisor) whose behavior causes a material disruption. Should a Hearing Advisor be removed from a proceeding, the University will provide a Hearing Advisor. The Hearing Officer, in their discretion, may postpone the hearing. In deciding whether to postpone the hearing, the Hearing Officer will consider the equity of postponement as to both Parties.