

Title IX Hearing Procedures for Wright State University **Employees**

A. Overview

At the conclusion of the investigative process outlined in Wright State University's Sex/Gender-Based Harassment, Discrimination, and Sexual Misconduct Policy (Policy Number 1270), for matters that fall within the scope of Section 1270.4, the final investigation report will be forwarded to the appropriate adjudicating office. For students, the appropriate adjudicating office is the Office of Community Standards and Student Conduct. For faculty, the appropriate adjudicating office is the Provost's Office. For staff, the appropriate adjudicating office is the Office of Human Resources. Regardless of the adjudicating office for a particular matter, the following procedures will apply.

The purpose of the Title IX hearing is to provide parties the opportunity to cross-examine or otherwise question, through an advisor, the other parties and any witnesses in front of the decision-maker. Advisors will be permitted to ask parties and witnesses all relevant questions and follow-up questions, including questions that challenge credibility.

The Title IX Coordinator will appoint an individual or hearing panel to serve as decision-maker, and the appropriate adjudicating office will facilitate a live hearing. The decision-maker(s) for all cases that fall within the scope of Section 1270.4 may be a single hearing officer or a hearing panel. If a hearing panel is appointed to serve as the decision-maker, the number of members and their composition (e.g. students, faculty, staff, non-voting chairpersons, etc.) will be determined at the discretion of the Title IX Coordinator.

The decision-maker(s) will oversee the hearing process, permit relevant questioning of the parties and witnesses, and issue a written determination regarding responsibility in accordance with these procedures. The University maintains the right to use an external hearing officer or hearing panel when appropriate.

Decision-makers are trained to serve as individual hearing officers and/or members of a hearing panel in accordance with Title IX. Decision-maker(s) will not be the Title IX Coordinator, the investigator(s) who investigated the allegations, or the informal resolution officer for the particular case at issue. The decision-maker(s) will evaluate all relevant evidence, both inculpatory and exculpatory.

B. Pre-Hearing Process

i. Written Responses to the Final Investigation Report

At the conclusion of the investigation, the investigator(s) will provide the parties (and, if either party is an employee covered by a collective bargaining agreement, an appropriate representative of that union) with the Final Investigation Report and relevant evidence. The parties and their respective advisors (which may, for bargaining unit employees, include their labor representative) will have ten calendar days to respond to the Final Investigation Report and relevant evidence in writing. All written responses from the parties will be reviewed by the investigator(s) and the Title IX Coordinator, and then forwarded to the decision-maker(s) for the case. These written responses may also be shared with the parties prior to pre-hearing conferences.

ii. Pre-Hearing Conferences

Each party will have a separate Pre-Hearing Conference at least five (5) days prior to the scheduled hearing. The Title IX Coordinator or decision-maker will communicate to the parties and their advisors the date, time, and format for their Pre-Hearing Conference. The decision-maker and the advisor must be in attendance. While the parties are strongly encouraged to attend, they are not required to do so.

Evidence and witnesses may be presented at the Title IX hearing only if they were submitted to the investigators and made available to the parties for review, unless they were unavailable at the time of the investigation or the relevance was unknown until after the Final Investigation Report was submitted. The decision-maker(s) will address any requests to present new evidence and new witnesses at the Pre-Hearing Conference.

At the Pre-Hearing Conference, the decision-maker(s) will discuss the processes, expectations and guidelines for appropriate behavior and decorum during the hearing. Parties and advisors are strongly encouraged to discuss the following topics with the decision-maker at their respective Pre-Hearing Conferences:

- Identification of the party's advisor of choice for the hearing, including the advisors' contact information;
- The procedures to be followed at the hearing;
- The date and time of the hearing;
- The witnesses each party wants to question at the hearing (if a party wants to challenge the credibility of a party or witness, they must raise their request to question the party or witness at the time of the Pre-Hearing Conference);
- Scheduling conflicts that may affect the order of testimony and witness availability at the hearing; and
- Questions related to the relevance of particular pieces of evidence and/or lines of questioning.

Because the hearing process is not a legal proceeding, decision-makers will not require, allow, or accept briefings, memos, or motions from the parties or their advisors, other than the written materials submitted in response to the Final Investigation Report.

iii. Notice of Title IX Hearing

The Title IX Coordinator will schedule a hearing no less than ten calendar days from the day the Final Investigation Report is shared with the parties and their advisors. The parties will receive written notice of the hearing date, along with the time and location, including any instructions regarding the use of technology (e.g. web conferencing link, schedule for arrival and departure, etc.).

Witnesses who have been requested to appear at the hearing will receive written notification of the hearing via email from the Title IX Coordinator.

C. Hearings

Hearings will be conducted virtually, and any or all parties, witnesses, and other participants may appear at the live hearing using technology which enables participants simultaneously to see and hear each other.

All evidence subject to the parties' inspection and review will be available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

Hearing witnesses will only participate in the Hearing when they are answering questions. They will not be permitted to observe or otherwise participate in the Hearing unless they are serving as an Advisor, as outlined below.

Wright State University will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

The University will seek to complete the hearing within 15 business days once the investigatory report is submitted to the adjudicating office. However, context and complexity may require that the process extend beyond 15 days.

i. Hearing Structure

The decision-maker(s) will have discretion to determine the structure of the hearing, including the order of questioning. Parties may request a break at any time during the hearing, however they may be asked to answer a pending question before taking a break.

Typically, hearings will begin with questioning of the Complainant by either the decision-maker(s) or the Respondent's advisor. If questioning begins with the decision-maker(s), the next round of questions would come from the Respondent's advisor, followed by the Complainant's advisor. The Complainant's advisor does not need to lay a foundation for evidence or repeat information that was previously provided in the Final Investigation Report; instead, the Complainant's advisor may choose to ask questions that will help to clarify the issues and testimony already given by the Complainant. The decision-maker(s) may also choose to ask questions before or after the advisors question the Complainant.

After questioning of the Complainant has been completed, the Respondent may be questioned by either the decision-maker(s) or the Complainant's advisor. If questioning begins with the decision-maker(s), the next round of questions would come from the Complainant's advisor, followed by the Respondent's advisor. The Respondent's advisor does not need to lay a foundation for evidence or repeat information that was previously provided in the Final Investigation Report; instead, the Respondent's advisor may choose to ask questions that will help to clarify the issues and testimony already given by the Respondent. The decision-maker(s) may

also choose to ask questions of the Respondent before or after the advisors question the Respondent.

After the parties have answered questions, each advisor will have an opportunity to question each witness, in the order determined by the decision-maker(s). The decision-maker(s) may choose to ask questions of each witness first, prior to questioning by the advisors, or choose to ask questions of the witness after the party advisors have completed their questioning.

The hearing is limited to questioning of parties and witnesses. Parties and advisors will not give opening or closing statements. Advisors will only be permitted to question a party once, unless the decision-maker(s) permits additional questioning.

ii. Advisors at Hearings

In order to question a party or witness at a hearing, a party must be accompanied by an advisor. Parties will not be permitted to conduct cross-examination on their own. The University will not limit the choice or presence of any advisor for a Complainant or Respondent, and the advisor of their choice may be, but is not required to be, an attorney. If a party does not have an advisor present at the live hearing, the University will provide, without fee or charge to that party, an advisor of the University's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. In the case of a party who is a bargaining unit employee and lacks an advisor, an appropriate member of the respective labor union may choose to serve as that party's advisor.

Each party's advisor is invited to ask relevant questions and follow-up questions, including those challenging credibility, of each party as well as each witness. Cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. All questioning at the live hearing must be relevant, respectful, and non-abusive. No party will be harassed, yelled at, or asked questions in any otherwise abusive or intimidating manner. If a party's advisor refuses to comply with the procedural and/or behavioral guidelines set by the University, the University may require that the party use a different Advisor.

Before a party or witness answers a question asked by an advisor, the decision-maker will first determine whether the question is relevant and will explain any decision to exclude a question as not relevant.

iii. Relevancy

Relevant evidence is evidence that tends to make a fact that is important to the case either more probable or less probable. Relevant questions are those questions that are designed to elicit relevant evidence.

The following may be considered irrelevant:

- Repetitive or duplicative questions or evidence;

- Information that is protected by a legally recognized privilege, such as attorney-client privilege or spousal privilege;
- 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
 - 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;
- Any party’s medical, psychological, and similar records, unless the party has given voluntary, written consent for their use in the process.

The decision-maker will not exclude relevant evidence because such relevant evidence may be “hearsay,” unduly prejudicial, concern prior bad acts (unless excluded above), or constitute character evidence. However, the decision-makers may objectively evaluate such evidence to determine how much weight it should be given.

If a party or witness does not submit to cross-examination at the live hearing, evidence attributable to that party or witness will be identified as such in the record or proceedings, and the decision-maker will weigh any relevant statements of the party or witness appropriately in reaching a determination of responsibility. The decision-maker will not draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.

Before a Complainant, Respondent, or witness answers a question asked by an advisor, the decision-maker¹ must first determine whether the question is relevant. The decision-maker must then explain any decision to exclude a question as not relevant. A decision-maker may choose to ask a party or advisor to explain why a question is relevant. If the decision-maker asks for this type of explanation, the decision-maker will give the opposing party’s advisor an opportunity to respond. Decision-makers are not required to give a lengthy or complicated explanation of a relevancy determination during the hearing. Once the decision-maker has made a determination regarding the relevance of a question, the parties and advisors may not challenge the decision further during the hearing. The decision-maker may expand on their relevance determinations in the written decision.

iv. Credibility

The decision-maker(s) will evaluate all relevant evidence for weight and credibility. The decision-maker(s) has the right and responsibility to ask questions and elicit information from parties and witnesses on the decision-makers’ own initiative to aid in obtaining relevant evidence, both inculpatory and exculpatory. The parties will have equal rights to present evidence in front

¹ When the case is heard by a hearing panel, and not a single decision-maker, the hearing panel chair will determine whether each question is relevant.

of the decision-maker(s) so the decision-maker(s) has the benefit of perceiving each party's unique perspectives about the evidence.

The degree to which any inaccuracy, inconsistency, or implausibility in a narrative provided by a party or witness should affect a determination regarding responsibility is a matter to be decided by the decision-maker(s), after having the opportunity to ask questions of parties and witnesses, and to observe how parties and witnesses answer the questions posed by the other party. Corroborating evidence is not required for any particular factual determination.

Decision-makers' credibility determinations are not based solely on observing demeanor, but also on other factors such as specific details, inherent plausibility, internal consistency, and corroborative evidence. Credibility determinations will not be based on an individual's status as a Complainant, Respondent, or witness.

A party's answers to questions can and should be evaluated by decision-maker(s) in context, including taking into account that a party may experience stress while trying to answer questions. Parties will not be unfairly judged due to inability to recount each specific detail of an incident in sequence, whether such inability is due to trauma, the effects of drugs or alcohol, or simple fallibility of human memory.

v. Additional Hearing Procedures

Good Faith Participation: All parties, witnesses, and advisors who participate in the hearing process must participate in good faith. The decision-maker(s) may address any and all conduct that is abusive or otherwise interferes with the hearing process, including but not limited to: unreasonable delay in any part of the hearing process; engaging in harassing or intimidating conduct during the hearing process; and/or attempting to improperly influence anyone in relation to the hearing process or its outcome. Such conduct may result in the exclusion of individuals from the hearing, and/or referral of the conduct to other University offices for resolution.

No Contact Orders: All parties are expected to abide by any applicable University-issued No Contact Order. No direct contact between parties will occur during the hearing or immediately before or after the hearing. Merely participating in the hearing with the opportunity to hear the other party answer questions will not constitute a violation of a University-issued No Contact Order. Parties who have additional no contact restrictions or personal protection orders are encouraged to review those restrictions and obtain any modifications as necessary.

Recordings and Use of Technology: The hearing will be audio-video recorded and will serve as the official documentation of the hearing. The recording will be maintained as part of the case materials with the Title IX office. The recording will remain the property of the University. No other audio, video, or digital recordings may be made. Parties may review the recording upon request to the appropriate adjudicating office when they have appealed a decision. Hearings are closed proceedings and are not open to the public. Parties and witnesses must participate from a private location and may not record or share access to the hearing (live stream, share screen, screenshot, or otherwise allow other individuals access to the hearing).

D. Decisions

At the conclusion of the hearing, the decision-maker(s) will make a determination using the “preponderance of the evidence” standard. A “preponderance of the evidence” is a determination based on facts that are more likely true than not. In the preponderance of the evidence standard, where the evidence in a case is “equal” or “level,” the preponderance of the evidence standard results in a finding that the Respondent is not responsible. The University will apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints.

In reaching this determination, the decision-maker(s) must objectively evaluate all relevant evidence, both inculpatory and exculpatory, and must independently reach a determination regarding responsibility without giving undue deference to the investigative report.

The decision-maker’s written determination will include the following:

- Identification of the allegations potentially constituting Title IX – Sexual Harassment;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the University Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including:
 - A determination regarding responsibility,
 - any disciplinary sanctions the University imposes on the Respondent (see Section VII(G)7), and
 - whether remedies will be provided by the University to the Complainant (see Section VII(G)8),
- The University’s procedures and permissible bases for the Complainant and Respondent to appeal (see Section VII(G)9).

The determination will lay out the evidentiary basis for conclusions reached in the case. The nature of remedies to the Complainant, if any, will not be included within the determination. The written determination will be provided to the parties simultaneously within 15 business days of the hearing.

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

E. Sanctions

The sanctions issued in a particular matter will depend on the nature and context of the violation, the Respondent's applicable disciplinary history and University precedent in similar prior cases, if any. Any disciplinary procedures and/or sanctions will be subject to any relevant language in the respective collective bargaining agreement, if applicable.

F. Remedies

Where a determination of responsibility for Title IX Sexual Harassment is made, the University will provide remedies to a Complainant designed to restore or preserve equal access to the University's education program or activity. Such remedies may include the same individualized services provided as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent after a determination of responsibility has been issued. The Title IX Coordinator is responsible for effective implementation of remedies.

G. Appeals

Any party may appeal the decision-maker's determination regarding responsibility, or the University's dismissal of a formal complaint or any allegation therein. The parties must submit a written appeal within 10 business days from the date of written determination or date of the written notice of dismissal. For additional information regarding the appeal process for Title IX determinations, see Appendix B of the Sex/Gender-Based Harassment, Discrimination, and Sexual Misconduct Policy.