

## How to Prepare & Hold Title IX Pre-Hearing Conferences

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## Our Objectives Today

- Outline the objectives for a good pre-hearing conference
- Suggest topics of discussion for the decision-maker and Title IX Coordinator to review with parties
- Recognize procedural choices that institutions can make in designing an equitable pre-hearing process
- Consider common questions that parties and advisors ask during the process

## Audience Poll #1

What is your role?

- A. Title IX Coordinator
- B. Decision-Maker (Hearing Officer/Panel Member)
- C. Investigator
- D. Student Conduct
- E. Advisor
- F. Other

## Audience Poll #2

What is your experience level with Title IX hearings since August 14, 2020?

- A. Have seen many
- B. Have seen one or two
- C. Have never seen one

## Legal Underpinnings for Pre-Hearing Conferences

- There is no legal requirement that institutions of higher education hold pre-hearing conferences.
  - It is not found in the regulations.
  - U.S. Department of Education refers to pre-hearing conferences in its July 2021 Q&A document in sample policy language

## Why are Pre-Hearing Conferences a Best Practice?

- Promotes transparency
- Helps to reduce anxiety of the parties (and advisors)
- Allows for the decision-maker to address logistical issues
- Provides an opportunity to raise evidentiary concerns
- Helps the decision-maker plan the hearing and schedule witnesses

## Goals for a Pre-Hearing Conference

- Help the parties and advisors be able to visualize what to expect on the day of the hearing
- Help the advisors understand the questioning process to better prepare for the hearing
- Reinforce behavioral expectations

## Who Comes to a Pre-Hearing Conference?

- Decision-Maker(s?) – If a panel, will the whole panel attend?
- Hearing Coordinator(?)
- Party(?)
- Party's Advisor
- Note: Pre-Hearing Conferences are held **separately** for each party.

## The Magic of Hearing Coordinators

- Can be the Title IX Coordinator or someone else
- Can communicate with witnesses behind the scenes to promote efficiency
- Can triage emergency situations without requiring the decision-maker to do so (which may affect perception of bias)
- May help reduce cost and burden on decision-maker(s)

## Can you require a party to come?

- What will be the penalty if they don't?
- Is the penalty reasonable based on the requirements of the regulations?
- Can we introduce barriers to participating in the hearing that are not part of the regulatory requirements?

## Will you Record?

- Some institutions record pre-hearing conferences and some do not.
- Recording the pre-hearing conference increases transparency, even if the other party may not see the recording unless there is a lawsuit.
- Whatever you choose, be consistent!

## Introduction at Pre-Hearing Conference

- Identify the proceeding for the recording
- Outline agenda
- Encourage questions at any point – including right at the beginning

## Explain Your Role

- Consider relevant evidence
- Make decisions about relevancy at the hearing
- Enforce decorum expectations
- Prepare a written decision using (preponderance/clear and convincing)
- Assign sanctions(?)

## Mode of Hearing

- Technology vs. In Person
- Institution records; no other recordings permitted
- Participate from a private space if not in person

## Specifics for Technology

- Do they have to keep the camera on?
- How can they avoid seeing the person if they wish?
- Explain break-out rooms
- Witnesses will be admitted only for their portion
- How can they communicate with their advisor?

## Comfort

- Breaks when needed
  - Not disruptive
  - Not when a question is pending
- Wear something comfortable – not necessary to dress up

## Role of the Advisor

- If advisor cannot serve, let us know and we will assign one
- Check policy for restrictions on advisor behavior

## Questioning, Relevancy, and Decorum

- Check policy for language
- Relevancy determinations:
  - I will say “relevant,” “not relevant,” or ask questions of the advisor.
- Objections – Policies typically don’t permit these
- Exclusionary rule if a person doesn’t submit to cross-examination?

## Witnesses

- Exclusionary rule may make have the practical effect that all witnesses must be questioned
- Do you have the ability to have the parties agree that individuals do not need to attend?
- Can you call witnesses as the decision-maker?
- Did all witnesses participate in the investigative process?

## Evidence

- Parties may use all evidence that was disclosed as part of the hearing process
- Helps if the advisors will have page numbers ready so that evidence can be pulled up during the hearing
- If a party wants to introduce new evidence, does your process permit it?

## Technology – Arriving at the Hearing

- All parties, advisors, and witnesses will be initially placed in a waiting room
- Will admit one party and their advisor at a time to do sound check and place in breakout room
- They will not see the other party until everyone rejoins the main room

## In Person – Arriving at the Hearing

- Which door should they use?
- Which room should they wait in?
- Will all parties be brought together in the same room, or will they remain separated?
- Where will witnesses go to wait and to testify?

## Order of the Hearing

- Introduction, reminders, schedule
- Review of allegations
- Opening statements (if permitted by policy)
- Questioning of Complainant
- Questioning of Respondent
- Questioning of Witnesses (as available)
- Closing statements (if permitted by policy)

## Typical procedural questions

- Who questions each party/witness first? What order?
- Who delivers open/closing statements, if permitted?
  - Note: Closing statements are a great time to point out inconsistencies in testimony, if they are allowed.

## Requests for Accommodations/Interpreters

- Explain the availability of accommodations and interpreters
- Does the party or advisor anticipate needing anything?
- Do they have any questions about this?

## Logistical Issues

- Choose date/time for hearing
  - Estimate how many days required based on number of witnesses
- Let them know when they can expect various pre-hearing notifications (date set, witness list)

## Closing Reminders

- No retaliation – please report it if anyone is making you feel uncomfortable
- Supportive measures continue to be available
- No contact order remains in place (if applicable) but participation in the hearing does not violate that order

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## Special Issues

- What if...
  - a party doesn't show up?
  - an advisor doesn't show up?
  - someone has an emergency on the day of the hearing?
  - there is a protective order in place by a court?
  - the parties sue each other before the hearing takes place?

## Next Title IX Webinars

- July 7<sup>th</sup>, 1:00 ET – Title IX Hearings: Effective Questioning
- August 1<sup>st</sup>, 3:00 ET (tentative) – Proposed Title IX Regulations

See [www.InnovativeEducators.org/pages/events](http://www.InnovativeEducators.org/pages/events) for upcoming training!



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