

## Policies for a Title IX Hearing

### I. Pre-hearing meeting.

- A. Prior to the Title IX hearing, a pre-hearing meeting will take place.
- B. The pre-hearing meeting is meant to accomplish a number of objectives.
  - 1. It is to explain to the party and their advisor the actual hearing process by going over the procedures of a Title IX hearing.
    - a. This should allow the party and their advisor to be able to better visualize what to expect on the day of the hearing.
    - b. Go over the schedule for the hearing and its process including such things as opening statements, questioning process of the parties and witnesses, and closing statements.
    - c. Evidentiary and witness procedures.
  - 2. Discuss the witness list by each party.
    - a. Questions may be asked to the party and advisor on the relevancy of a given witness.
    - b. It may be determined that a given witness is not relevant, most likely because their previous testimony may be considered sufficient or not relevant.
  - 3. Provide the opportunity for any evidentiary concerns.
  - 4. Clearly go over the rules of decorum within the hearing by both the party and their advisor. Clearly state that the hearing is not a court hearing and does not operate as one. So that how people behave is clear.
  - 5. The agenda of the hearing will be established and agreed to by the parties and their advisors.
  - 6. Reduce any anxiety that the party and their advisors may have.
- C. The pre-hearing meeting ideally should happen roughly ten business days prior to the hearing if possible. (Please note that for the pre-hearing meeting and the hearing itself, “business days” is based upon the business days that the college is open.)
- D. Pre-hearing meetings are to be recorded.
- E. Pre-hearing meetings are to be held separately for each party and their advisor.
- F. The party themselves does not have to participate or even be present, but their advisor does.
- G. The decision-maker(s) will conduct the pre-hearing meeting and hearing coordinator will be present.
- H. The pre-hearing meetings can take place either face-to-face or online.

## II. Hearing Coordinator.

A. The Title IX coordinator will serve as the hearing coordinator unless there is a compelling reason to have someone else assigned as hearing coordinator.

B. Hearing coordinator is present at the hearing.

C. Hearing coordinator works to set up the scheduling of the hearing, schedule witnesses, and triage emergency situations.

## III. Does a party have to attend and participate in the hearing?

A. The party, whether the complainant or the respondent, does not have to attend the hearing.

B. The party's advisor must attend the hearing.

C. If a party does not attend the hearing:

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot 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.<sup>1</sup>

## IV. Whenever possible the hearing will take place via Zoom or another online platform. The hearing will and must always be recorded (if the hearing is taking place via an online platform such as Zoom then the recording can be made via the use of that system).

A. If a party and their advisor wish to discuss things privately they should not use the online chat feature as it may be part of the recording. They should instead use other means to communicate.

B. If an online format is being used, a breakout room can be created for the party and their advisor.

C. A live hearing, whether in person or via an online platform must be held for a hearing.

## V. Evidence and witnesses.

A. Evidence submitted by a party/advisor must be focused or related to the allegations as set forth in the Investigative Report under Potential Policy Violations.

B. No new evidence may be submitted by either party/advisors within five business days of the start of the hearing. (Business days do not include Weatherford College holidays.)

C. If either party believes that new evidence must be submitted within the five business days prior to the start of the hearing this must be reviewed by the Title IX coordinator. The decision-maker(s) or the other party may ask for a delay in the hearing as a result. The decision-makers make the ultimate decision on whether or not to delay the hearing.

D. A prompt hearing of the complaint will take place. Ongoing delays by either party will not be tolerated.

E. Like the evidence, witnesses that one party or another may wish to call must be in some way related to the allegations although special exceptions may be made if approved by the decision-maker(s).

F. Those witnesses that either party wishes to call must be submitted prior to the pre-hearing meeting.

G. At the time of the hearing (and possibly at the pre-hearing conference) decision-makers may ask what is the relevance or purpose of a given witness. The decision-makers may deem that a witness does not need to be heard, especially if that witness has already provided testimony.

H. If a decision-maker(s) determine that a witness should be heard, that is not to imply that the decision-maker(s) put greater weight on the reliability of their testimony versus others.

I. If a party after the pre-hearing meeting wishes to add a witness or witnesses, they must make a special request via their advisor.

1. That request will be made through the Title IX Coordinator and the hearing coordinator.

2. This request must be for strong reasons that must be explained by the advisor in the request.

3. The Title IX Coordinator and decision-maker(s) will determine whether or not the new witness or witnesses will be allowed.

4. The request must be made at least five business days prior to the hearing.

J. It should be noted that any acceptance of evidence or witnesses does not imply that the decision-maker(s) or Title IX Coordinator are accepting the evidence or what the witnesses may have to say as fact.

#### VI. Rules of Decorum for the hearing.

A. The hearing is not a court room. The hearing is an educational disciplinary hearing.

B. All participants in the hearing must treat everyone with respect and dignity.

C. Advisors nor a party can “object” to relevancy determinations or the other party’s question or answer.

D. Repetitive or harassing questions by advisors will not be permitted.

E. Raised voices is not permitted.

F. No personal insults or hostility.

G. Warnings may be issued and if disruptive or disrespectful behavior or words continue the individual will be asked to leave or in the case of use of an online platform they will be muted and potentially removed from the online hearing.

H. While this will be discussed again, advisors may not answer questions for their party nor may they coach their party or a witness.

## VII. Opening and closing statements.

A. Both the complainant and the respondent may make opening and closing statements if they choose but are not required.

B. Opening statement:

1. Opening statement is to be no more than ten minutes in length.
2. The party can only make the statement (if they are going to make one). It may be prepared ahead of time.
3. The statement must be focused on the relevant issues of the Title IX complaint. If the statement begins to lose that focus the decision-maker(s) will redirect. If necessary, after a clearly stated warning the opening statement opportunity can be ended.
4. If the opening statement begins to violate the rules of decorum the decision-maker(s) will provide a clearly stated warning and if the rules of decorum continue then the opening statement opportunity can be ended.
5. The hearing coordinator will keep time of the opening statement and if the statement reaches nine minutes in length the hearing coordinator will provide a one-minute warning.
6. If the opening statement exceeds ten minutes in length the hearing coordinator will announce the ten minutes is over and the statement will cease at that point.
7. If the decision-maker(s) must interject during the time of the opening statement, that time will not consume part of the ten minutes that is allowed for the opening statement.

C. Closing statement:

1. Closing statement is to be no more than ten minutes in length.
2. Only the party themselves may make the closing statement (if they choose to make one).
3. The statement must be focused on the relevant issues and evidence of the Title IX complaint. If the statement begins to lose that focus the decision-maker(s) will redirect. If necessary, after a clearly stated warning the closing statement opportunity can be ended.

4. If the closing statement begins to violate the rules of decorum the decision-maker(s) will provide a clearly stated warning and if the rules of decorum continue then the closing statement opportunity can be ended.
5. The hearing coordinator will keep time of the closing statement and if the statement reaches nine minutes in length the Hearing Coordinator will provide a one-minute warning.
6. If the closing statement exceeds ten minutes in length the hearing coordinator will announce the ten minutes is over and the statement will cease at that point.
7. If the decision-maker(s) must interject during the time of the closing statement, that time will not consume part of the ten minutes that is allowed for the closing statement.

#### VIII. Questioning procedures of the parties and witnesses.

- A. The rules of decorum will be enforced.
- B. The advisor for a given party is the one that asks questions of the witnesses and cross-examines the other party or parties. The party themselves is not allowed to ask questions or participate in the questioning process with the exception of answering questions.
- C. Before a witness or a party answers any question put to them the question is first asked and the decision-maker(s) must state whether or not they deem the question relevant.
  1. If the question is considered relevant the decision-maker(s) will state "relevant." (This is not to imply that the decision-maker(s) are accepting anything as fact.)
  2. The decision-maker(s) may ask questions on why a given question may be relevant.
  3. If the decision-maker(s) determine that a question is not relevant they will state "non-relevant." The decision-makers must explain why they deem a given question non-relevant.

#### D. Questions

1. The goals of the question process of the hearing are:
  - a. To get the best evidence out on the table for the decision-maker(s).
  - b. To allow the complainant and the respondent to be heard.
  - c. To allow the complainant and the respondent to have the questions asked that they feel are necessary to present their view.
2. In the process of answering a question, the advisor cannot lead the witness or their party into an answer.
3. While the advisor is to ask questions that the party wants asked, if the party is being cross examined by the other advisor or the decision-makers, the advisor may not communicate with their party in such a manner that might be encouraging them to answer a certain way or to feed them information.

IX. Determination regarding responsibility.

- A. The decision-maker(s) will approach the hearing without having a preconceived idea on the matter and must assume that until proven otherwise by a preponderance of the evidence the respondent is considered not responsible of any allegations.
- B. The decision-maker(s) must not have a conflict of interest or bias for against the complainant(s) or respondent(s) either generally or individually.
- C. Following the hearing the decision-maker(s) will examine the evidence and apply the standard of evidence (a preponderance of evidence).
- D. It is recommended that there be a panel of oddly numbered decision-makers. They will vote on each issue and the majority vote will be the one representative of the panel. The decision-makers are to keep the discussions and votes confidential to them.
- E. A written determination must be provided in a reasonably prompt manner.
- F. The written determination must include the following:

- 1. Identification of the allegations that potentially constitute sexual harassment sexual assault as described below:

Definitions of Sexual Harassment

- a. According to Weatherford College's Student Handbook, Sexual Harassment is defined as

Definition – Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- Submission to or rejection of such conduct is made explicitly or implicitly a term or the condition of instruction, employment, status or participation in any course, program or other College activity.
- Submission to or rejection of such conduct is used as a basis for evaluation in making academic or personnel decisions affecting an individual; or if
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work or educational performances; creating an intimidating, hostile, and/or offensive environment.

- b. According to CFR 106.30 of definitions

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or

(3) "Sexual assault" as defined in [20 U.S.C. 1092\(f\)\(6\)\(A\)\(v\)](#), "dating violence" as defined in [34 U.S.C. 12291\(a\)\(10\)](#), "domestic violence" as defined in [34 U.S.C. 12291\(a\)\(8\)](#), or "stalking" as defined in [34 U.S.C. 12291\(a\)\(30\)](#).<sup>2</sup>

2. 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.

3. Findings of fact supporting the determination.

4. Conclusions regarding the application of the recipient's code of conduct to the facts.

5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant.

6. The recipient's procedures and permissible bases for the complainant and respondent to appeal.

G. The recipient must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient 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.

H. The Title IX Coordinator is responsible for effective implementation of any remedies.<sup>3</sup>

## X. Appeals.

A. A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases:

1. Procedural irregularity that affected the outcome of the matter.
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

B. As to all appeals, the recipient must:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

C. Ensure that the decision-maker(s) for the appeal complies with the standards set forth with the standards of all decision-maker(s).

D. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

E. Issue a written decision describing the result of the appeal and the rationale for the result.

F. Provide the written decision simultaneously to both parties.<sup>4</sup>

G. Any appeal must be made no more than ten business days following the issuance of the report of determination of responsibility.

H. Depending on the circumstances either the Director of Human Resources and/or the Vice-President of Student Services will ultimately decide on if the appeal has merit.

1. They will provide a written statement that will be issued simultaneously to both parties on their decision.
2. If they decide that the appeal lacks merit, there are no grounds for further appeals.
3. If they decide that the appeal has merit and there should be a second hearing, they will determine the people that serve in the various roles of Title IX coordinator, investigators, decision-makers (if warranted) and advisors if needed. [According to 34 c.f.r 105.45 (b) in part 8 section iiiB states in regards to a granted appeal "Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator."]<sup>5</sup>

4. If a party makes an appeal and it is heard, the decision made either by the Title IX coordinator or the decision-makers will be the final decision. The other party may appeal, but again they have only that one appeal.

5. If either or the Director of Human Resources or the Vice-President of Student Services may have a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that may affect their consideration of the appeal, then an alternative may be selected.

#### XI. Informal resolution.

A. A recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, a recipient may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient -

B. Means of an informal resolution.

1. Provides to the parties a written notice disclosing:

The allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

2. Obtains the parties' voluntary, written consent to the informal resolution process; and

C. An informal resolution cannot be pursued if the allegations involve an employee sexually harassing a student.<sup>6</sup>

#### XII. Recordkeeping.

A. A recipient must maintain for a period of seven years records.

B. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the

respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity must be preserved for seven years.

C. Any appeal and the result therefrom.

D. Any informal resolution and the result therefrom.

All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

E. For each response required under § 106.44, a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.<sup>7</sup>

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<sup>1</sup> Code of Federal Regulations, Title 34 C.F.R. 106.45 (b)(1)(iii).

<sup>2</sup> Code of Federal Regulation, 34 C.F.R. 106.30.

<sup>3</sup> Most of parts F, G, and H are taken almost word-for-word from 34 C.F.R. 106.45.

<sup>4</sup> Most parts of part VIII are taken almost word-for-word from 34 C.F.R. 106.45.

<sup>5</sup> Code of Federal Regulation, 34 C.F.R. 106.45 part 8 (section iiiB).

<sup>6</sup> Most parts of IX are taken almost word-for-word from 34 C.F.R. 106.45.

<sup>7</sup> Most parts of X are taken almost word-for-word from 34 C.F.R. 106.45.