Hearing FAQ

This document is to be read in conjunction with the Office of Institutional Equity Investigative Resolution Standards, which outlines hearing processes. Please see the OIE Investigative Resolution Standards for additional information about the investigative resolution process, including hearings. This document provides answers to frequently asked questions. Should you need additional information, please contact Allan Williams, Director of Resolutions in the Office of Institutional Equity at Williams.3839@osu.edu.

The Office of Institutional Equity’s Resolutions Department will provide hearings for all applicable cases as identified in policies, 1.10 and 1.15.

General Hearing FAQ’s

1. What types of cases will be sent to a hearing?
   - Any case where a student respondent named in an OIE formal complaint approved by OIE does not accept responsibility or does not agree to an informal resolution will be sent to a hearing.
     - Additional information involving Title IX formal complaint hearings below.
       1. Title IX Formal Complaints approved by OIE resulting in a hearing include student and employee respondents who do not accept responsibility or do not agree to an informal resolution.

2. Who serves as a hearing officer?
   - Typically hearing officers are trained staff within the Office of Institutional Equity who specialize in resolutions. The university reserves the right to use other designated individuals with sufficient training and credentials to perform this role if needed.
   - Complainants and Respondents will have the opportunity to speak with the hearing officer in a pre-hearing conference before the date of the hearing.

3. How are hearings scheduled?
   - The schedules of the hearing officer, complainant, respondent, and their respective advisors are considered when scheduling. OIE will make reasonable efforts to accommodate the schedules of the parties and their advisors; however, OIE has the discretion to not accommodate scheduling requests that are unreasonable or would cause undue delay.
   - A complainant or respondent can provide a request for postponement in writing citing a necessity for postponement. OIE will review the request, considering factors including, but not limited to, the reason for postponement and proximity in time to the hearing, to determine whether the request for postponement will be granted. The parties will be notified in writing if it is determined that the hearing will be postponed.

4. I know I can have an advisor - who should it be? Should I have a lawyer?
   - Your advisor can be anyone you choose. Hearings are not a legal proceeding. A lawyer is permitted but is not required. The advisor may only provide counsel or
support for a party and not actively participate in the process except to conduct cross-examination in hearings for Title IX formal complaints unless clarification is needed as determined by the university.

i. In cases where an advisor is provided by the university their role is solely to conduct questioning of cross examination.

5. How long are the pre-hearing conference and hearing?
   - A pre-hearing conference typically lasts an hour and is meant to provide a chance to meet the hearing officer, hear more about the hearing schedule and format, and ask any questions. A hearing typically ranges from 3-5 hours but can last longer if warranted.

6. Where will the hearing take place?
   - At this time, all hearings will take place over Zoom. All parties are required to be on video while the hearing is in session.

7. What should I wear to the hearing?
   - There is no dress code for hearings. You may wear whatever you will be comfortable in, and no determinations will be affected by your attire.

8. What will I need to do in a hearing?
   i. There are four types of participants (or parties) in a hearing. Below each role is explained.
      1. Complainant - individual who may have experienced behavior violating a university policy.
         a. Complainants provide testimony, can be questioned by the respondent and the hearing officer, and can ask questions of the respondent and witnesses. In Title IX formal complaints, cross-examination questions are asked through the parties’ advisors.
      2. Respondent - individual who is accused of violating a university policy.
         a. Respondents provide testimony, can be questioned by the complainant and the hearing officer, and can ask questions of the complainant and witnesses. In Title IX formal complaints, cross-examination questions are asked through the parties’ advisors.
      3. Advisor - a support person of each party’s choosing.
         a. Advisors may only provide counsel or support for a party and not actively participate in the process, except to conduct cross-examination during hearings in Title IX formal complaints, unless clarification is needed as determined by the university.
            i. In cases involving Title IX formal complaints where an advisor is provided by the university, their role is solely to conduct questioning of cross examination.
         b. Each party is limited to one advisor present at the hearing.
4. Witness - a party with information relevant to the matter being adjudicated in a hearing.
   a. Witnesses provide testimony and can be questioned by both parties and the hearing officer. In Title IX formal complaints, cross-examination questions are asked through the parties’ advisors.

9. Can I take notes or record my hearing?
   - All parties can take notes during the hearing. The hearing officer will audio record the hearing. Parties are not to record any part of the proceedings but can have access to the official audio recording.

10. What if I choose not to attend a hearing?
    - Participation in a hearing is not mandatory; however, because the most accurate and fair review of the facts can best be accomplished when all parties are present, all parties and witnesses are strongly encouraged to attend and participate. If an individual does not choose to attend a hearing, the matter will be reviewed as scheduled on the basis of the information available, and a decision will be made.
    - No inference may be drawn against a party for failing to attend a hearing or remaining silent. The decision will be based on the relevant evidence presented and that is not otherwise excluded pursuant to the relevant policies and procedures. No decision shall be based on the failure of the respondent or the complainant to attend the hearing or answer the allegations.
    - If a party or witness does not attend the hearing or attends but does not submit to cross-examination, the hearing officer must not rely on any statement of that party or witness in reaching a determination regarding responsibility.

11. Can I ask any questions I want in a hearing?
    - You can ask any questions you deem important to the information in question at the hearing. All questions will be reviewed in real time by the hearing officer before being answered. If the hearing officer determines a question is irrelevant they will provide reasoning for that decision on the record.

12. What if I attend the hearing, but do not answer questions?
    - All parties must be subject to cross examination.
    - If a party or witness does not submit to cross-examination at the hearing, the hearing officer must not rely on any statement of that party or witness in reaching a determination regarding responsibility.

13. What does “preponderance” mean?
    - The preponderance of evidence standard is a commonly used standard of evidence in civil rights matter in university administrative processes and the judicial system.
    - The preponderance standard states that based on the weight of the evidence it is “more likely than not” a violation of university policy occurred.
Respondents are presumed not responsible for the alleged conduct until a determination regarding responsibility is made after the hearing.

14. Will I know the outcome of the hearing immediately?
   - No, hearings are complicated procedures with a lot of evidence to consider. The hearing officer will take an appropriate amount of time to consider the evidence and make a determination.
   - Once the hearing officer has made a determination, complainants and respondents will receive a letter documenting the outcome, the evidence used in the decision, any sanctions if applicable, continued supportive measures for any parties, information on how to file an appeal, and additional information as described in applicable policy.

15. What if I need supportive measures for a hearing?
   - Civil Rights Intake Coordinators and Hearing Officers within the Office of Institutional Equity can help with requests for supportive measures to help parties actively participate in a hearing. Some possible supportive measures are listed below, but this list is not all encompassing.
     i. Translation services through third party services
     ii. ADA accommodations through the ADA Coordinator’s office
     iii. Communication with professors or employers
     iv. Private campus spaces

Title IX Formal Complaints have differing requirements based on federal regulations and guidance from the U.S. Department of Education. Some of these differences are highlighted below.

1. Who conducts cross examination in Title IX Formal Complaint hearings?
   a. In Title IX Formal Complaints an advisor must conduct cross examination
   b. If a party does not have an advisor for their hearing the university will provide an advisor to conduct cross examination at no charge.
     i. These advisors must ask any question provided to them by the party. The hearing officer must still determine whether a question is relevant before the question is answered by a party or witness.

2. Since my advisor can conduct cross examination can they also speak or give testimony for me?
   a. No, advisors have a similar role as in OIE Formal Complaint hearings. The only difference in their role is the requirement to conduct cross examination. They still are not an active participant in other aspects of the hearing.

3. Are hearings involving employees different than those involving students?
   a. Employees engaged in a Title IX Formal Complaint hearing have the same rights as students in the process.
   b. The only difference in process is the sanctioning portion of the process:
     i. For staff, the appropriate corrective action will be determined by Human Resources in accordance with university policy and/or applicable
collective bargaining agreements and implemented in collaboration with the employee’s supervisor.

ii. For faculty, discipline regarding policy violations must be implemented in accordance with the Faculty Rule 3335-5-04 process.