

SEXUAL HARASSMENT HEARING PROCEDURES

I. Purpose and Nature of These Procedures

These procedures supplement the University's Sexual Harassment Policy and specify how the University will conduct hearings regarding Formal Complaints of Sexual Harassment. To the extent there is a conflict between these procedures and the University's Sexual Harassment Policy, the Sexual Harassment Policy shall control.

II. The Hearing Officer

The hearing officer oversees the hearing process, rules on questions of relevance and admissibility, resolves all procedural disputes, and renders a determination of responsibility for the allegations in the Formal Complaint at the conclusion of the hearing process and in the manner specified in the policy. The hearing officer has discretion to interpret, apply, and modify these procedures in any manner that is not clearly unreasonable and is consistent with the policy.

III. Pre-Hearing Review of Investigation Report and Evidence

Prior to commencement of the hearing, the hearing officer will review the investigation report and a copy of all evidence transmitted to the parties by the investigator as specified in Section XIX(A)(1) of the policy. This review of materials is provisional and intended to provide background and orientation to the hearing officer in planning and conducting the hearing. The hearing officer must exclude from consideration in deliberation any evidence developed during the investigation that is deemed inadmissible at the hearing, including specifically, but not limited to, the statements of any party or witness who refuses to submit to questioning by a party advisor as specified in Section XIX(A)(6) of the policy.

IV. Convening the Hearing

Immediately prior to convening the hearing, the hearing officer will ensure that an audio recording of the hearing is being made by the University and that the hearing room is cleared of all individuals who are not permitted to be present during the hearing as specified in Section XIX(A)(5) of the policy. The hearing officer will then convene the hearing and clearly state for the record the date, time, and location of the hearing; the names of the Complainant and Respondent; the parties present at the hearing; any accommodations that have been provided at the request of a party or in the University's discretion; whether all or a portion of the hearing is being conducted virtually as specified in Section XIX(A)(5) of the policy; and any other introductory matters that the hearing officer deems appropriate.

V. Statement of the Investigator

After convening the hearing, the hearing officer will call the investigator to give an overview of the investigation process. Thereafter, the investigator will be subject to questioning by the hearing officer, followed by questioning from each party's advisor commencing first with questioning from the advisor for the Complainant followed by questioning from the advisor for the Respondent.

VI. Statements of the Parties

After questioning of the investigator is complete, the hearing officer will invite the Complainant to provide a statement to the hearing officer regarding the events in question and identify and comment on any non-testimonial evidence the Complainant believes is relevant. After the Complainant has made a statement, or waived the right to make a statement, the Complainant will be subject to questioning by the hearing officer, followed by questioning from the advisor for the Respondent.

After questioning of the Complainant is complete, the hearing officer will invite the Respondent to provide a statement to the hearing officer regarding the events in question and to identify and comment on any non-testimonial evidence the Complainant believes is relevant. After the Respondent has made a statement, or waived the right to make a statement, the Respondent will be subject to questioning by the hearing officer, followed by questioning from the advisor for the Complainant.

VII. Testimony of Witnesses

After questioning of the parties is complete, witnesses will be called to testify in the order determined by the hearing officer. Unlike the parties, witnesses will not be invited to make a statement but, instead, will be subject to questioning from the hearing officer followed by questioning from each party's advisor commencing first with questioning from the advisor for the Complainant followed by questioning from the advisor for the Respondent.

VIII. Investigation Materials

After the questioning of witnesses is complete, the hearing officer will identify any portion of the evidence developed during the investigation that the hearing officer has determined should be excluded from the hearing record based on rulings made at the pre-hearing conference, during the hearing itself, due to the refusal of a party or witness to submit to questioning by a party advisor, or for any other reason. The hearing officer will then provide the parties a final opportunity to raise any additional objections to inclusion of any other portions of the investigation record into evidence and resolve any such objections. All evidence from the investigation and hearing not specifically excluded by the hearing officer shall be deemed admitted into the hearing record and may be considered by the hearing officer as part of the deliberation.

IX. Closing Argument

After the questioning of the witnesses is complete, the hearing officer will invite the Complainant to make a closing argument. After the Complainant has made a closing argument, or waived the right to make a closing argument, the hearing officer will invite the Complainant to make a closing argument.

X. Deliberation

After closing arguments are complete, the hearing officer will conclude the hearing and deliberate and render a determination as specified in Section XIX(A)(7) of the policy.

XI. Access to and Use of Investigation Evidence

During the hearing, the parties and their advisors shall have access to the investigation report and a copy of all evidence transmitted to the parties by the investigator as specified in Section XIX(A)(5) of the policy. Such evidence may be utilized in the questioning of witnesses where relevant. Non-testimonial evidence utilized during the hearing shall be marked and referred to in such a manner as to make it clearly identifiable by audio (i.e., such as sequential marking of “exhibits”).

XII. Rulings on Evidence

Throughout the hearing, the hearing officer will independently and contemporaneously screen all questions for relevance and resolve any contemporaneous evidentiary objections raised by the parties. If the hearing officer does not exclude a question, it is presumed the hearing officer has deemed the question relevant and admissible. Although formal rules of evidence do not apply, the hearing officer may, in the hearing officer’s discretion, utilize evidentiary principles similar to those specified in the Federal Rules of Evidence to the extent such evidentiary principles are not contrary to the policy.

XIII. Timing and Continuances

The hearing officer will have discretion to set the overall length of the hearing and may set time limits for statements of the parties, questioning of parties and witnesses, and closing arguments. A hearing will not exceed seven (7) hours in length absent extraordinary circumstances. Once a hearing is commenced, it will be continued only for good cause as determined by the hearing officer.

XIV. Role of Advisors

As specified in Section XXII of the policy, advisors to the parties must play a passive role in the hearing with the sole exception that advisors are permitted to question parties and witnesses as specified in Section XXII(A)(5) of the policy. Advisors are not permitted to speak for their advisee, make objections, present arguments, or engage in any other active role.

XV. Disruptions

All parties, advisors, and other persons present at a hearing are required to act professionally, maintain decorum, and abide by the policy, these procedures, and any other rules specified by the hearing officer. Any party, advisor, or other person who materially disrupts the proceeding or violates applicable policies, procedures, and rules, may be barred from further participation and/or have their participation limited, as the case may be, by the hearing officer.

XVI. Questioning

Wherever these procedures contemplate questioning of a party or witnesses, the hearing officer has discretion to permit more than one round of questioning. In addition to ruling on questions of relevancy, the hearing officer may limit cumulative and redundant questioning.

XVII. Discretion in Application

The University retains discretion to interpret and apply these procedures in a manner that is not clearly unreasonable, even if the University's interpretation or application differs from the interpretation of the parties.

Despite the University's reasonable efforts to anticipate all eventualities in these procedures, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express language of these procedures, in which case the University retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.