Penn State
TITLE IX
Hearing Panel Manual
INTRODUCTION

Welcome to the Title IX Hearing Panel. The Title IX Hearing Panel plays an integral role in the adjudication of formal sexual misconduct cases pursuant to policy AD85 at the Pennsylvania State University. As members of the Hearing Panel, you provide students, faculty and staff with the opportunity to have their cases heard by a representative body of the University. Thus, your decisions influence the attitudes and behaviors of parties that choose to go through the formal process. The Hearing Panel is responsible for representing the University as it develops appropriate responses for students, faculty and staff who may engage in behavior that is inconsistent with the University mission, values, goals, and policies.

As members of the Title IX Hearing Panel, you will determine when the Respondent is responsible or not responsible for allegations of Title IX Prohibited Conduct and associated violations. This manual is an essential tool for your participation on the Panel and should enable you to successfully manage the important responsibilities that being a Panel member involves. Please note that this document and related procedures derive their authority from Penn State policy AD85; therefore, you should familiarize yourself with that document and assume that all of its definitions and policies are authoritative for the purposes of this manual and your responsibilities, as well. Also, please note that, for the purposes of this document, all references to the “Title IX Coordinator” shall include their designee.

Additionally, the Title IX Coordinator, Office of the President, Office of the Provost, the Affirmative Action Office, Student Affairs, the Office of Sexual Misconduct Prevention and Response, and the Office of Student Conduct, realize that you are committing valuable time to participate on the Title IX Hearing Panel. We appreciate your willingness to serve, and we hope that you will be able to have a rewarding experience as members of the Panel.

Sincerely,

Title IX Coordinator
Penn State University
PARTY CONDUCT VS. LEGAL SYSTEM

It is essential to recognize the role of Title IX as educational, not legal. The overall goal of Penn State is to provide our faculty, staff and students with an opportunity to learn from their choices, about the process, and to make good decisions. The following allows for you to differentiate institutional terminology from terminology used within the legal system:

<table>
<thead>
<tr>
<th><strong>Institutional Process</strong></th>
<th><strong>Legal System</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Not responsible</td>
<td>Innocent</td>
</tr>
<tr>
<td>Responsible</td>
<td>Guilty</td>
</tr>
<tr>
<td>Complainant</td>
<td>Plaintiff</td>
</tr>
<tr>
<td>Respondent</td>
<td>Defendant</td>
</tr>
<tr>
<td>Policy violation</td>
<td>Legal (civil or criminal) violation</td>
</tr>
<tr>
<td>Evidence (must be “relevant” and/or “directly related”)</td>
<td>Evidence</td>
</tr>
</tbody>
</table>
RESPONSIBILITIES

TITLE IX HEARING PANEL MEMBER RESPONSIBILITIES

Hearing Panel members are responsible for assisting in the overall administration of Title IX procedures to ensure all participants receive the equality and fair process rights granted to them throughout the hearing process.

- Arrive on time for the scheduled briefing meeting before the hearing and be prepared to be fully present during the hearing.
- Bring this Hearing Panel manual.
- Review all case information thoroughly, but do not do any investigating on your own.
- Prepare open-ended questions.
- Approach each case with the perspective that the Respondent has not violated the Title IX policy, unless or until you are persuaded otherwise by the information presented during the hearing. This is called a "presumption of non-responsibility."
- Listen carefully to each person, withholding any judgment until all available information has been presented and considered.
- Allow those responding to questions to develop a thorough discussion before moving on to the next area of questions.
- Engage in a meaningful discussion regarding the facts of the case during deliberation, even if your view is not shared by the majority. Full participation is critical in sound decision-making.
- All information is to be treated as confidential information. While the Complainant and/or Respondent may make public comments about the Title IX process and decision outside of the hearing, Hearing Panel members MAY NOT make any comment about the hearing to anyone (as a matter of federal law).
- Treat all Complainants, witnesses, Respondents, Advisors and fellow Panel members respectfully and consistently.
- Be creative and thorough in your discussion related to the finding.

Responsibilities of the Hearing Panel:

1. Ensure that only relevant cross-examination questions are asked before the party or witness answers. The Hearing Panel may exclude questions that are irrelevant or duplicative.
2. Ensure that the hearing process is administered in a fair and impartial manner and that all participants observe basic standards of decorum and that all questions are asked and answered in a respectful, non-argumentative, and non-abusive way. The Hearing Panel will be responsible for ensuring that all parties and witnesses are protected from answering questions designed to be harassing, intimidating, irrelevant or abusive.
3. Render a decision using a preponderance of the evidence standard using the facts as presented through careful examination of the final investigative report, witness testimony, including cross-examination, and the review of all relevant evidence.

HEARING PANEL CHAIR RESPONSIBILITIES

The Title IX Hearing Panel Chair is responsible for the overall implementation of formal hearing procedures and ensures that participants receive the equality and fair process rights granted to them.
Hearing Panel Chair Main Responsibilities:

• Be responsible for the administration of the hearing.
• Be responsible for leading the group in deliberation.
• Be responsible for notifying the Title IX Coordinator of the findings for submission to the sanctioning authority and the parties.

More Specifically, the Chair is Responsible For:

• Working with the Hearing Panel members before a hearing to develop areas of questioning.
• Ensuring that guidelines for operational procedures are followed (initiating introductions, explaining the purpose of the Panel, etc.)
• Monitoring appropriateness and relevance of questions asked by the Panel members and Advisors while allowing the Panel members to get the information that they need to make a decision.
• Monitoring the behavior of the Advisors for the Respondent or Complainant. If they are persistently ignoring warnings, the chair may ask them to leave the room.
• Delivering the Panel’s written decision to the Title IX Coordinator, within five (5) days, including:
  o The finding of responsibility or non-responsibility and rationale.

Ethical Standards for Hearing Officers

Ethical standards have been established to protect the privacy of the participants involved in a hearing and to maintain the educational environment of this process. These standards also indicate what the campus community has a right to expect of its hearing officers. It is the responsibility of each hearing officer to observe the following ethical standards:

1. Information regarding any participant’s disciplinary status is not to be discussed with anyone outside of the hearing besides the Title IX Coordinator and/or staff in the OSC or AAO, on an as-needed basis.
2. The behavior of any participant is not to be disclosed or discussed outside the hearing.
3. Any information given in confidence at a hearing should not be discussed outside the hearing.
4. When speaking with a party, Hearing Panel members should refrain from making accusations or statements that cannot be supported.
5. A Hearing Panel member must not participate in a hearing where they feel unable to be fair and impartial.
6. All Panel members must uphold the majority decision of the Panel, even if there are dissenting opinions.
7. A hearing officer represents the interests of Penn State. Hearing Panel members cannot assert personal beliefs while delivering a decision.

If asked by a party, before the formal hearing, what the outcome will be, Hearing Panel members should not commit to any course of action. The most appropriate comment to make is, “There is no way to predict the outcome before the hearing is held.”
Title IX Hearing Panel Statement on Conduct

Because Title IX compliance is a valued part of our educational mission, we take the conduct and actions of our Hearing Panel members very seriously. Moreover, procedural irregularities have the potential to affect the outcome of the proceedings, leading to potentially inequitable processes and even appeals. As representatives of Penn State, you are expected to abide by all of the policies and responsibilities set forth in this manual. Examples of these policies include Hearing Panel Member Responsibilities and the Ethical Standards for Title X Hearing Panel members. Failure to observe any of these policies may result in an action leading to your removal from the Hearing Panel.

Examples of such actions follow.

Low Level Problem: Showing disrespect for another member of the Hearing Panel, etc.

Action taken in this situation could include a conversation with the Title IX Coordinator, Associate Vice President for Affirmative Action and/or the Assistant Vice President for Student Affairs and understanding that behavior must be modified if you wish to remain on the Hearing Panel.

Moderate Level Problem: Editorializing to a party, etc.

Your status would be considered probationary, and if the behavior did not change, or if another similar situation occurred, you may no longer be permitted to serve on Hearing Panels.

High Level Problem: Disclosing confidential information from a hearing, showing extreme disrespect toward the Respondent, Complainant, witness or Advisor, missing a mandatory training without providing notice, etc.

Your status as a Hearing Panel member will likely be terminated as a result of any situation that falls within these examples, or any situation deemed to be of the same level of seriousness.
CONFIDENTIALITY AND COMMITMENT AGREEMENT

The Title IX adjudication process strives to address unacceptable behavior in a manner that informs and guides the parties toward a greater sense of personal responsibility and ethical standards.

The following is a voluntary agreement with the Title IX Coordinator/Affirmative Action Office:

I, ____________________________, am willing to serve as a member of the Title IX Hearing Panel for the period of at least one academic year (unless otherwise known). I understand and agree to uphold the following responsibilities and policies:

1. I understand that by signing this document, I am committing my time and service to any appointed Hearing Panel (on a case-by-case basis).
2. I agree to attend at least one mandatory training during the academic year. I understand that failure to attend may result in removal from hearing cases until I can attend the next available training.
3. I agree to keep all case information and hearing outcomes confidential. I understand that discussing these matters with anyone outside of the Hearing Panel (excluding appropriate consultations with the Title IX Coordinator/AAO staff) constitutes a breach of confidentiality for both the Complainant and Respondent.
4. I understand that a breach of confidentiality may be sufficient reason for dismissal from my duties as a Hearing Panel member.
5. I accept that it is my responsibility to keep any printed case materials in my possession outside of the office of the Title IX Coordinator, OSC or AAO confidential and that it is my responsibility to return these documents to the Title IX Coordinator or to AAO at the conclusion of the hearing.

______________________________  ______________________
Title IX Hearing Panel Member Signature   Date

______________________________  ______________________
Title IX Coordinator   Date
PROCEDURES

TITLE IX PROCESS

The process of investigating and adjudicating Title IX cases at Penn State exists to make the Title IX adjudication process as fair and just as possible for both parties, and also to support the University’s educational mission by making the process a learning and developmental experience for all involved. In the absence of compelling circumstances cases should be resolved in no more than 120 calendar days, or as soon as practical thereafter. The Formal Complaint process is outlined in Penn State Policy AD85: https://policy.psu.edu/policies/ad85.

1. A report is received by the Title IX Coordinator alleging a possible violation of University Policy AD85 (Title IX Policy).

2. The Title IX Coordinator conducts a preliminary inquiry into the report based on the origin of the report and the nature of the alleged violation. The Title IX Coordinator can find that no violation occurred, in which case the report is closed, or that a possible violation may have occurred, and that further action may be warranted.

3. If the Title IX Coordinator finds that a possible violation occurred based on the information provided by the Complainant and Respondent, they will arrange to meet with the party(s) to discuss the situation. If the Complainant wishes to move forward with a complaint under University Policy and sufficient information exists to support the decision to move forward, then the Title IX Coordinator will refer the matter to the Title IX Investigator in OSMPR or the AAO for a comprehensive investigation.

4. The Title IX Investigator will meet with the parties, witnesses, if any, and collect relevant documentation. Upon completing the investigation, Title IX Investigator will send preliminary Investigative Report (“Preliminary Report”) to the parties and their Advisors to allow them to review and supplement the Preliminary Report. After supplemental documents are submitted (if any), the investigation is complete, and a Final Investigation Report (“Report”) is distributed to the parties and their Advisors.

6. After reviewing the Report and meeting with the parties, if requested, the Investigator will forward a copy of the Final Investigative Report to the Title IX Coordinator.

7. Within five (5) days of receipt of the Final Investigative Report, the Title IX Coordinator will make a determination that: (1) the University will convene a hearing before an impartial fact-finding Hearing Panel who will hear testimony from the parties and relevant witnesses, review the relevant evidence, and make a determination as to responsibility OR (2) the matter will be dismissed because the investigation revealed facts that either: (a) require a dismissal under Title IX (e.g., the conduct alleged would not constitute Title IX Prohibited Conduct, even if true, did not occur in the University’s Education Program or Activity, or did not occur in the United States); or, (b) allow for a dismissal (e.g., if the Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint, the Respondent is no longer enrolled or employed by the University, or specific circumstances prevent the investigator from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein). The investigator will send to each party and their Advisors the final investigative report (including the Title IX Coordinator’s determination) for their inspection and review using a secure file-sharing platform of the University’s choice.
Any directly related evidence that is not in the Final Investigative Report, having been designated by the Investigator as “not relevant,” will be made available to the Hearing Panel, the parties and their Advisors during the hearing for use by the parties.

8. Within five (5) days of receipt of the final investigative report and following their determination to convene a hearing, the Title IX Coordinator or their designee will select the members of the Title IX Hearing Panel and will provide a copy of the final investigative report to the members of the Hearing Panel. Promptly after selection of the Hearing Panel members, the Title IX Coordinator or their designee will provide concurrent written notice to the parties of the date, time and location of the hearing.

9. Members of the Hearing Panel hear testimony from the parties and any witnesses in a hearing. After hearing the matter, the Hearing Panel will confer and by majority vote determine whether the evidence establishes that a violation of the Title IX Policy occurred using a preponderance of the evidence standard. The Hearing Panel will issue a letter addressing the outcome.
**PARTIES’ RIGHTS IN THE TITLE IX PROCESS**

Parties are entitled to certain rights to ensure a fair and impartial adjudication process. Parties have the right to:

- Be notified of their rights and the charges.
- Review available information and a list of witnesses.
- Propose information and witnesses.
- Be accompanied by one Advisor.
- The Complainant and Respondent shall be notified simultaneously, in writing, whether there has been a finding of responsibility for alleged sexual misconduct under University policy and any disciplinary measures relating to the sexual misconduct charge.
- The right to appeal.

Parties may not always be at a hearing, and in their absence the Hearing Panel is to use the information found in the written record to make a decision. However, the Panel may not consider any statements made at any time during the investigation or the hearing if they do not subject themselves to cross-examination during the hearing.

*Advisor:*
Both the Complainant and the Respondent may be accompanied by one Advisor to assist them throughout the Title IX process. It is the party’s responsibility to request and obtain the services of an Advisor. University officials are neither required nor obligated to act as an Advisor. The Advisor may not speak on behalf of the party throughout the disciplinary proceeding, aside from conducting cross-examination during the hearing.

An Advisor can be anyone that the party wants (examples include parent, friend, advocate, attorney, etc.) so long as that person is not planning to serve as a witness during the hearing. When a Title IX case proceeds to a hearing, the University will appoint an Advisor for parties who have not already selected their own.

In a hearing, it is the responsibility of the Advisor to allow their advisee to state their own case. An Advisor is a mouthpiece for their advisee and may NOT speak on behalf of their advisee. If the Advisor ignores these rules, the Hearing Panel chair will warn them, and if the behavior persists, the Advisor will be asked to leave the room. Also, during a hearing, an Advisor will be responsible for conducting cross-examination of the other party and witnesses. Finally, the Advisor may otherwise assist the party they are accompanying by:

- Passing notes and/or whispering to their advisee.
- Communicating quietly/discreetly with their advisee.
- Requesting a brief recess to confer with their advisee if necessary.
- Remote communication, including texting and email.

It is the duty of the Hearing Panel chair to clearly explain the role of the Advisor and monitor behaviors if necessary.

The University will appoint an Advisor for parties who have not selected their own. The role of the Advisor is to assist and guide the party during all related University Title IX proceedings. The Advisor, upon a party’s request may (1) accompany the party in any related meeting/proceeding, (2) advise the
party in the preparation and presentation of sharing of information, (3) conduct cross-examination in Title IX hearings on behalf of the party they represent, and (4) advise the party in the preparation of any appeals. The Advisor shall not perform any function in the process other than advising the party and may not make a presentation or represent the party, other than at the Title IX hearing. If, at any point, an Advisor becomes disruptive or fails to follow the rules for participation as set forth in this Policy, the University reserves the absolute and non-appealable right to remove the Advisor from the proceeding, and, if appropriate, any future meetings/proceedings. If a party’s Advisor is removed, that party may choose another Advisor or otherwise will have one appointed for them by the University.
Title IX Process & Procedures

**Formal Hearing Process:**

**A. Receipt of Final Investigative Report.** Within five (5) days of receipt of the final investigative report, the Title IX Coordinator or their designee will select the members of the Title IX Hearing Panel and will provide a copy of the final investigative report to the members of the Hearing Panel. Promptly after selection of the Hearing Panel members, the Title IX Coordinator or their designee will provide concurrent written notice to the parties of the date, time and location of the hearing.

**B. Responsibilities of Hearing Panel & Parties.** The Hearing Panel is required to objectively evaluate all relevant evidence both inculpatory and exculpatory, and to independently reach a determination regarding responsibility. The University may provide an attorney from its Office of General Counsel, or outside counsel, to advise the Hearing Panel.

**Responsibilities of the Hearing Panel:**

1. Ensure that only relevant cross-examination questions must be answered by a party or witness before the party or witness answers. The Hearing Panel may exclude questions that are irrelevant or duplicative.
2. Ensure that the hearing process is administered in a fair and impartial manner and that all participants observe basic standards of decorum and that all questions are asked and answered in a respectful, non-argumentative, and non-abusive way. The Hearing Panel will be responsible for ensuring that all parties and witnesses are protected from answering questions designed to be harassing, intimidating, or abusive.
3. Render a decision using a preponderance of the evidence standard using the facts as presented through careful examination of the final investigative report, witness testimony, including cross-examination, and the review of all relevant evidence.

**Responsibilities of the Parties at the Hearing (Complainant and Respondent):**

1. Truthfully answer questions posed by the Hearing Panel.
2. Truthfully answer relevant questions posed by the other party via their Advisor.
3. Attend the hearing in its entirety, being present for all witness testimony.
4. Adhere to basic standards of decorum by answering questions posed by the Hearing Panel or a party’s Advisor in a respectful, non-argumentative, and non-abusive way.

**C. General Rules for the Hearing**

1. Technical rules of process and evidence, such as those applied in criminal or civil court, are not used in these proceedings. Evidence permitted at the live hearing is limited to only that which is relevant to the allegations in the Formal Complaint. Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action. Evidence not previously provided in advance of the hearing may be accepted for consideration at the discretion of the Hearing Panel.

2. Per Title IX requirements for live cross-examination, parties have the right to cross-examine any witness, including the investigator, and present both fact and expert witnesses which may include investigators. Only Advisors can conduct cross-examination on behalf of a party; there is no right
of self-representation, however, the party should be an active participant in informing the questions posed by their Advisor.

3. Cross-examination is designed to allow a party to challenge the consistency, accuracy, memory and credibility of the opposing party or witness. Cross-examination must be relevant, respectful, and conducted in a non-abusive way. The University retains discretion under Title IX to apply rules of decorum at a live hearing that require participants (including parties, witnesses, and Advisors) to refrain from engaging in abusive, aggressive, or disruptive behavior. Failure to adhere to the rules outlined by the Hearing Panel may result in a decision to cease the hearing and reconvene once the disruptive behavior has been addressed.

4. Parties, through their Advisors, will ask each question one at a time and allow the Hearing Panel to determine the relevance of the question before the other party or witness is asked to answer. This process will be strictly adhered to throughout the entire hearing process. Submission of written questions for the purpose of ascertaining relevance is not permitted.

5. At the request of one or both parties, the Complainant and Respondent will be permitted to participate in the hearing in separate rooms, assisted by technology that allows each party to see, hear, and ask questions of the other party live and in real-time. Witnesses may also appear in separate rooms, but also must be clearly visible and audibly clear to the Hearing Panel, the parties, and their Advisors.

6. All witnesses will be considered the University’s witnesses. Names of witnesses may be provided by either party or others who may have been involved with the case. To assist this process, those who have not met with the investigator will be requested to provide a brief statement to the Title IX Coordinator or their designee outlining the relevant information they will share at least three (3) days in advance of the hearing.

7. There shall be a single audio record of all Title IX hearings which will be available to the parties for inspection and review. The parties are not permitted to record the hearing. The recording shall be the property of the University and will be maintained with all records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Prohibited Conduct for no fewer than seven (7) years. Accordingly, documents prepared in anticipation of the hearings (including the Formal Complaint, the preliminary investigative report, the final investigative report, the notices of hearing, and any prehearing submissions) and documents, testimony, or other information introduced at the hearings may not be disclosed outside of the hearing process, except as may be required or authorized by law or legal proceeding. In particular, to respect the reasonable privacy of all participants, no party (or representative), nor any witness, may record the hearing or disclose any recording of the hearing or any portion thereof. Any violation of privacy requirements shall constitute a violation of this Policy, which may result in disciplinary action.

8. Per Title IX requirements, if a party or witness, with notice, does not appear before the Hearing Panel, the hearing will take place in their absence. All statements previously made by the absent party or witness as part of the investigation or contained in evidence gathered during the investigation, will be stricken from the record, and cannot be relied upon by the Hearing Panel in making a finding. If a party or witness, with notice, appears at the hearing but refuses to answer questions posed to them by the other party’s Advisor, all statements provided by that party will be stricken and the Hearing Panel will not be permitted to consider the information in making a finding. The Hearing Panel will reach the determination using the remaining evidence available to them even if a party or witness refuses to undergo cross-examination. The Hearing Panel may not
draw any inference as to the responsibility of the Respondent based on any party or witness’s absence or refusal to undergo cross-examination. If a party’s Advisor does not appear at the time of the hearing, the University will provide an Advisor for that party without fee or charge, to conduct cross-examination on behalf of that party.

9. If the matter involves more than one Respondent, the Title IX Coordinator, in their discretion, may permit the hearing concerning each Respondent to be conducted either jointly or separately.

D. Conclusion of the Hearing. Following the conclusion of the hearing, the Hearing Panel will confer and by majority vote determine whether the evidence (including the information provided in and by the final investigative report, the parties’ written statements, if any, the evidence presented at the hearing, and the testimony of the parties and witnesses) establishes that it is more likely than not that the Respondent committed a violation of this Policy.

WRITTEN LETTER OF FINDING (See Addendum C)

The Hearing Panel will typically submit its finding of responsibility or non-responsibility and rationale in writing to the Title IX Coordinator within five (5) days of the hearing. Decisions made by the Hearing Panel are final, pending the normal review and appeal process. The Letter of Finding will be issued by the Hearing Panel Chair and will include:

1. If the Respondent is found responsible, the specific behaviors concluded to be Title IX Prohibited Conduct.
2. Findings of fact supporting the determination.
3. Statement of, and rationale for, the result of each allegation, including a determination regarding responsibility.

If the Respondent is found responsible, the finding will be sent to a separate sanctioning body to implement corrective measures. The Hearing Panel does not implement sanctions or corrective measures. The sanctioning body will decide how to appropriately address the finding and issue its sanctioning determination to the Title IX Coordinator, for inclusion in the final Notice of Outcome, which will include the Hearing Panel’s finding.

WRITTEN NOTICE OF OUTCOME

Within five (5) days of receipt of the notice of sanctions issued by the sanctioning body, the Title IX Coordinator will review the decision of the Hearing Panel and the sanctions, if applicable, and will send written notice (“Notice of Outcome”) of both simultaneously to the parties. The Notice of Outcome from the Title IX Coordinator or their designee will include:

1. If the Respondent is found responsible, the specific behaviors concluded to be Title IX Prohibited Conduct.
2. 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 University’s Student Code of Conduct (for student-related matters) or employee handbooks and other applicable University policies (for employee-related matters).
5. Statement of, and rationale for, the result of each allegation, including a determination regarding responsibility, and whether remedies designed to restore or preserve equal access to the University’s education program or activity will be provided by the University to Complainant.
6. Sanctions, if applicable.
7. Procedures and bases for the Complainant and Respondent to appeal.
QUESTIONING AND DELIBERATION

STANDARD OF PROOF

Similar to a court of law, a charged party is always not responsible until proven otherwise. However, unlike a court of law, the standard of proof is much lower and is known as more likely than not (“preponderance of the evidence”). In other words, if you imagine yourself weighing the evidence on an imaginary scale, you must be more than 50% sure that the party violated the policy to find them responsible. You do not need to be 100% or even 75% sure, just more than 50% sure (51% or 50.1%).

If sufficient doubt remains after considering all information presented, you should give the Respondent (charged party) the benefit of the doubt. Follow your best judgment, though it may be that not every piece of information serves as proof. You must, in all cases, ensure that a party that is not responsible is not unjustly treated through a responsible finding.

REQUIREMENT FOR FINDINGS

To establish that a violation has taken place, the University must provide information which:

- Constitutes a violation of the University's Title IX Policy
- Corroborates the alleged behavior charged, and
- Determines the accused party’s responsibility for the behavior reported.

With more likely than not or a preponderance of information presented establishes all three of these requirements, you must find two things: first that a violation of the Title IX Policy has occurred, and then that the charged party is responsible for the violation.

SPECIAL EVIDENTIARY ISSUES

- Questions and evidence about a Complainant’s sexual predisposition or prior sexual behavior are not relevant, 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 –
  - such questions concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent or lack thereof.

- Information protected under a legally recognized privilege –
  - (e.g., privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney)
• are not considered unless the information is relevant – and the person holding the privilege (usually the party) has waived the privilege (prior written consent).

• If a party or witness does not submit to cross-examination at the live hearing:
  o the hearing officer must not rely on any statement of that party or witness in reaching a determination regarding responsibility.
  o the hearing officer will not draw an inference about the determination regarding responsibility based solely on a party or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.

DETERMINING RELEVANCE

• Information is relevant when, if true, it supports/proves, or undermines/disproves, any disputed fact that is of consequence to the determination of the case

• Information can be:
  – Relevant to an actual issue or action
  – Relevant to credibility of a witness or information

• Important considerations:
  – Efficiency
  – Fairness

• Test for relevance
  – A) What facts are you trying to prove/determine?
  – B) Does the information help prove or disprove a fact?
  – C) Is the fact important in deciding a case?

• Useful information in a hearing to help separate relevant from irrelevant information:
  – Motivation
  – Ability
  – Malice
  – Threats, expressions, or earlier similar acts implying or denoting intent
  – Other behavior that tends to shake your belief in a person’s testimony

EVALUATING CREDIBILITY

If you find yourself having to make a “credibility” decision, having to decide whom you believe out of all the information that you are hearing, you will be assessing several types of information. Some of the information you hear will have no bearing on the case or incident and will be irrelevant to the hearing.

General Guidelines

• Credibility determination is neither an exact science nor a purely rational process.

• Even in a situation where it appears to be one person’s word against another’s, it is very rarely a
“draw,” as one person usually comes across as more credible than the other, or there is some kind of corroborative information.
- If it IS a complete draw, then you need to fall back on the fact that the charged party is presumed not responsible unless proven “in violation,” and that the University has the burden of proof (preponderance of the evidence, i.e., 51% or 50.1%).

- Don’t jump to conclusions based on your expectations. The decision is not based on your experiences.
- Remember, the credibility of both parties is at issue, not just the reporting party.
  - Review the behavior and statements of the Respondent as well as those of the reporting party.
- Inconsistency may or may not be important, depending on several factors:
  - is there is a reasonable explanation?
  - is the point significant or trivial?
- Just because a witness’s statement may vary over time, that does not compel a conclusion that the witness is lying
  - The variation might have resulted from memory lapse.
- Too much consistency could mean the story is rehearsed or memorized.
- There are no “perfect’ victims (or witnesses).
  - Who says all the right things
  - Knows all the right answers
  - Fulfills the stereotype of what a “victim” should be
- There are no “perfect” perpetrators
  - Who fulfill every stereotype of what a rapist/predator is.
- Weighing one person’s word against another:
  - Barring other forms of evidence, the testimony of the unbiased person is given more weight.
- When the party claims to have not known they were breaking a rule:
  - An attempt to get the Panel to accept the party’s failure to assume responsibility for their role in the alleged violation
  - Only in rare cases should this type of testimony be given any value
  - [See also the section on Consent related to intoxication and incapacitation, p. ___ ]
- Multiple witnesses corroborating the same set of facts:
  - it is only in a very rare situation that the number of witnesses be considered as a factor in determining responsibility.
- When the party introduces character witnesses:
  - The testimony of these witnesses will be of minimal value in determining responsibility.
  - Only exception would be if witness has information which suggests the party was physically unable to commit the violation.
Ultimately, you have to use your best judgment. Hearsay, statements made by others not present at the incident, or information offered as testimony about unrelated incidents should not be considered in the decision.

**EVALUATING CONSENT**

- Be familiar with Penn State’s definition of Consent from AD85.
- Avoid misconceptions about parties’ responses to assault or allegations of assault:
  - Why did the Complainant wait to report the assault?
  - Why did they first say they did not want us to take action but now they do?
  - Why do they describe events in a piecemeal fashion, rather than in a neat chronology?
  - Why did they come forward and state that they now remember more about an event that they didn’t tell in their first interview?
- Reactions of those who experience sexual assault or who are accused of sexual assault may appear counter-intuitive but in fact are quite common.
  - Reaction to trauma should not be misinterpreted as reflecting a lack of credibility about consent

**Role of Alcohol/Drugs in Determining Consent**

- Evaluating intoxication vs. incapacitation and avoiding bias related to alcohol consumption
- Gauge the impact of alcohol consumption by asking questions such as:
  - *What type of alcohol did you consume?*
  - *Over what period of time did you consume the alcohol?*
  - *How quickly was the alcohol consumed?*
  - *Did you consume any food? How much? When?*
  - *Were you taking any medication that has any restrictions regarding consumption with alcohol?*
  - *Can you describe the impact that the consumption of alcohol had on you?*
- Was the individual incapacitated by use of alcohol? Important to help distinguish sexual assault from a consensual (albeit intoxicated) sexual encounter. Possible factors to consider:
  - Was the Complainant conscious or unconscious? Did they regain consciousness during the incident? If so, what did the Respondent do?
  - Did the Complainant black out at any point?
  - Did the Complainant vomit at any point?
  - What was the Complainant’s condition when last seen by reliable third-party witnesses?
  - Did the Complainant seem to understand where they were and where they might be going?
  - Could the Complainant walk, or did someone have to assist or carry the Complainant?
  - Could the Complainant speak or communicate clearly? Were they slurring?
- What physical tasks did the Complainant perform, and how well did they perform them?
  - For example, was the Complainant using a Smartphone, and did their coordination seem impaired? If the Complainant was smoking, could they light their own cigarette?
- Could the Complainant make and maintain eye contact with others?
Was the Complainant able to remove their own clothes?
Is there anything to suggest that a Complainant or Respondent may have been less inclined to participate in consensual intercourse at the time of the incident?
   - i.e., was the Complainant or Respondent undergoing treatment for a genital infection or other uncomfortable condition?
Should the Respondent have been reasonably aware that the Complainant was incapacitated?
These questions may seem invasive but are important in evaluating consent and incapacitation to help reach and support the ultimate conclusion about consent.
In many sexual assaults, only the Complainant and Respondent were present. Pursue and evaluate other evidence to make an informed judgment call on the question of consent:

1. Witness accounts
2. Social media postings
3. Student or Employee ID card swipes
4. Surveillance videos

**TYPES OF SUPPORTING FACTS**
The types of supporting facts, as well as the information they give you, will vary as well:

- **Direct Evidence**: Based on personal observation or experience. You either believe the person saw or did what they saw/did or you don’t believe it.

- **Circumstantial Evidence**: Information which, although it does not include an eyewitness to the actual event, does include enough information to lead a reasonable person to the conclusion that the party did or did not do what they are alleged to have done.

- **Documentary Evidence**: Any supportive writings or documents including statements, reports, etc., that support or deny a fact at issue. Documents whose existence and content are known generally, or are known by any unbiased witness, need not be physically produced during the hearing to be relevant.

- **Expert Witness Testimony**: A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

  (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

  (b) the testimony is based on sufficient facts or data;

  (c) the testimony is the product of reliable principles and methods; and

  (d) the expert has reliably applied the principles and methods to the facts of the case.

The new Title IX regulations require that we allow expert witness testimony but do not provide guidelines on how to assess credentials. Expert witnesses may be helpful to a party’s case, but determining which experts are trustworthy may be more difficult. Examples of expert testimony include, but are not limited to:

(i) Toxicologists
(ii) Forensic psychologists
(iii) Polygraph experts
(iv) Forensic sexual assault nurse/physician examiners

- **Secondhand, or “hearsay” evidence:** Hearsay is an out of court statement offered to prove the truth of the matter asserted. Hearsay is *almost always admissible* in Title IX hearings. **BUT:**
  - It cannot be the only basis for your decision, but it can be used to reinforce your decision.
  - If a person is unwilling to testify in person, any evidence they offer cannot be considered.
  - Hearsay is generally inadmissible in court because it is not reliable but is very persuasive.
  - This means that when you admit or are presented with hearsay evidence, you can assign it evidentiary value based on its credibility.

**REMEMBER:** If a party or witness does not submit to cross-examination at the hearing, you cannot rely on any statement of that party or witness in reaching a determination regarding responsibility (including verbal statements, text messages, etc.).

**Evaluating Information Presented**

To evaluate information, ask three questions:

1. **Is the information relevant?**
   a. Is it related to the matter at issue and to what the party is trying to prove?

2. **Is the information credible?**
   a. How believable is it?

3. **Is the information convincing?**
   a. How strongly does it convince you of what the party is trying to prove?

**WEIGHING THE INFORMATION PRESENTED**

All testimony and information presented is not equal in value. Much testimony has some degree of bias or tends to lead the listener toward a single interpretation of a fact or situation. The following are some general guidelines:

- **Weighing one person’s word against another’s:** Barring other forms of evidence, the testimony of the unbiased person is given more weight. For example, more weight should be given to the testimony of an uninvolved bystander, or a police officer, than to the “significant other” of the Respondent or Complainant. If Hearing Panel members find that either party has totally unsupported evidence, then the Panel should inform the party of that observation and give them the opportunity to respond.

- **When the party claims to have not known they were breaking a rule:** This is frequently an attempt to get the listener to accept the party’s failure to assume accountability for their role in the alleged violation. Only in exceptionally rare cases should this type of testimony be given any value (i.e., an act that occurred before it was prohibited, or a rule or regulation that was not given reasonable distribution).

- **Multiple witnesses corroborating the same set of facts:** The number of such witnesses may be limited by the Hearing Panel Chair, or they may be asked to all come in together if they are
going to make the same statements. However, it is only in a very rare situation that the number of witnesses be considered as a factor in determining responsibility. The testimony of a single, unbiased and disinterested witness is worth a number of biased testimonies.

- **When a person admits responsibility during the hearing:** If a party takes responsibility for the violation, there is less need for the Hearing Panel to ask questions about the facts unless the Panel needs clarification on what happened.

- **When the party introduces character witnesses:** The testimony of these witnesses will be of minimal value in determining a party’s responsibility relative to the alleged violation. The only exception to this would be if the witness has information which suggests that the party was physically unable to commit the violation.

**TRAUMA INFORMED PRACTICES**

- **Impacts of Trauma**
  - Can result in a disorganization of the person’s mind;
  - Can cause one to lose the ability to process information if not addressed;
  - Can affect every aspect of one’s life;
  - Is linked to depression, anxiety, poor health;
  - Can lead to negative coping behavior.

- **Difficulties of Processing Trauma**
  - Response may vary as a result of accumulating incidents or other personal stress
  - Consider the victim’s age at the time of assault

- **Impacts on Memory**
  - Stress affects how a brain establishes, stores and retrieves memories;
  - Major trauma may lead to fragmented recall;
  - Differences in account over time may reflect memory processes rather than inattentiveness or deceit.

- **Stages of Recovery**

  - **Initial Shock:** physical and emotional range of reactions from withdrawal to highly expressive emotions
  - **Denial (pseudo-adjustment):** wanting to forget about the assault, attempting to continue normal routine to quiet inner turmoil
  - **Reactivation:** prompted by memories or recurring feelings; may include flashbacks, a sense of vulnerability, mistrust, physical complaints
  - **Anger:** towards self, friends, society, legal system, the Respondent
  - **Integration:** thoughts and feelings become integrated into life experience and an individual begins to move forward

- **During the hearing:**
  - Recognize the impact of trauma on memory
    - Allow the witness to give a narrative
    - Use open-ended free recall questions
• Build in an opportunity for follow-up
• Be transparent about how information will be used
• Develop rapport and allow for closure
• Allow sufficient time for thorough exploration of the issues

**Trauma-Informed Practices - EVIDENTIARY ISSUES**

- Always consider relevance
- Admission of medical information
  - Consider need for expert guidance in understanding and interpreting information
  - If provided voluntarily by the Complainant, should be shared with the Respondent
- Mental health records or other treatment records are not considered unless the information is considered relevant and:
  - The person holding the privilege has waived the privilege (prior written consent)
- Character evidence
- Prior Sexual History
  - Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are barred as **not relevant**, 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 if 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.
  - Questioning about the Complainant’s sexual history is not permitted if consent is not at issue.
    - This applies only to Complainants, unless the Respondent has made a counterclaim against the Complainant, such that the Respondent is also a Complainant.
- Pattern Evidence
  - Prior bad acts/pattern evidence
    - May be relevant and probative
    - Use at fact-finding
  - Consider relevance to:
    - Intent/state of mind/motive
    - Absence of mistake
    - Pattern
    - Identity

**QUESTIONING**

Questioning is the most important aspect of the hearing process. As Hearing Panel members become more skillful at phrasing their questions, more useful information will be obtained from all participants. In-depth questioning helps the Panel to ascertain the facts of the case and clarify vague issues.
However, it is important to be intentional and unbiased in one’s line of questioning to ensure equality and fairness.

Here are some areas to think about while you are preparing to ask questions:

**OPEN ENDED-QUESTIONS**
Carefully phrase your questions as open ended (who, what, how, etc.) rather than closed ended (did you, were you). Closed-ended questions often result in a yes/no response, which does not offer you much information. Open-ended questions will allow the charged party to answer as long as they desire, possibly yielding more information than requested. In-depth questioning helps the Hearing Panel to ascertain the true facts of the case and clarifies vague issues. For example:

Closed-Ended
Q: “Were you angry when the Complainant broke up with you?”
A: “No.”

Open-Ended
Q: “What were your feelings when the Complainant broke up with you?”
A: “I guess I was feeling pretty angry…”

**MULTIPLE CHOICE QUESTIONS**
Another pitfall Hearing Panel Officers run into is offering multiple choice questions for the charged party to answer. The Hearing Panel offers the charged party all of the choices they deem appropriate. Often this type of question also provides the charged party with the answer the Hearing Panel officers wish to hear. This may not be the answer that brings out the most relevant information. For example:

Q: “What were your feelings when you broke the Complainant’s car window? Were you angry, frustrated, or just letting off steam? This was right around finals time.”
A: “Oh, I was just letting off steam, exams weren’t going well…”

Ask the question and stop.

**SILENCE IS GOLDEN**
Do not be alarmed when a question is asked, and the person does not respond immediately. It is natural to think about a response before responding. Allow the person ample time to think without undue pressure to respond quickly. If the person needs clarification, let them ask for it; don’t assume that they do not understand the question. Some people need more time to formulate their answers, especially in an important setting like a Formal Hearing.

**ESSENTIAL QUESTIONS**
In any hearing, there are five points that must be determined: Who, What, Where, When, and Why.

1. **Who** was involved in the incident?
2. **What** was the potential violation? **What** amount of alcohol had you consumed in how much time? What would you do differently?
3. **Where** were you when this happened? Where you were walking to/from?
4. **When** did this happen?
5. **Why** were you engaging in X behavior?

**SAMPLE QUESTIONS with RESTORATIVE JUSTICE BASIS**

Besides fact related questions, here are some sample questions for you to consider during the hearing.

1. What effect did your actions (or behavior) have on others? On the community? On yourself?
2. Explain what you hoped to accomplish through your actions.
3. Who is responsible for your behavior?
4. What other options were there for you in this situation?
5. What was the purpose of your behavior?
6. How would you feel if others were engaged in similar behavior?
7. If you could do something differently that night/day, what would it be?
8. Have you talked with your family about this situation, how did they react?
9. What would be the consequences to the community if everyone engaged in similar behavior?
10. How does your responsibility for living with community standards apply to your actions in this situation?
11. How might you react if such a situation were to come up again?

**THINGS TO REMEMBER**

During every hearing remember these tips for being an effective Hearing Panel member:

1. Carefully listen to everything that is said.
2. Watch for non-verbal behaviors which may indicate attitudes, true feelings, or emotions.
3. Be sure you clarify any conflicting information before you enter into deliberation. Continue to ask questions until you have all of the necessary facts regarding the incident. Do not wait until you are in deliberation and then start guessing at reasons why the information presented was conflicting.
4. Carefully examine the time/date sequence of the incident. Follow-up on contradictions when questioning.
5. Avoid jumping from one line of questioning to another; attempt to examine an area completely before moving on. Hearing Panel members should learn to look to the other Hearing Panel members before changing lines of questioning.
6. Avoid unnecessary writing during the hearing. You should be concentrating on the content while developing lines of questioning. The digital recorder will provide a complete record of the hearing.

7. Note passing or whispering should not occur in the hearing unless absolutely necessary. You would not be showing the respect to the speaker that you would expect if you were speaking.

8. Maintain your concentration throughout the hearing and remain attentive. Good posture and eye contact should be demonstrated anytime the hearing is in session.

9. Never accuse a party or participate in heated arguments. Maintain your composure even if others do not.

10. Carefully prepare your questions in advance. Avoid questions that are not relevant to the hearing.

**DECISION-MAKING PROCESS**

As a Hearing Panel member, it is a very important part of your responsibility to actively participate in the deliberation for each case. While the Hearing Panel chair sets the tone for the discussion, their opinions should not dominate. Don’t be afraid to express your opinion, even if you are in the minority! Often, the best way to get to the heart of a case is through a disagreement:

**The deliberation process:**

You must determine whether the party is responsible or not responsible for the violation(s) in question. At this point, only the facts of the present case are considered. Remember when determining responsibility use the *more likely than not* standard of proof.

Hearing Panels do not need to make a unanimous decision; however, overall, the Panel members must be satisfied with the decision.

**During Deliberation, it is the responsibility of all committee members to:**

- Encourage every other member’s contributions without embarrassing the other members or putting them on the spot.
- Help the group make full use of everyone’s contributions.
- Express your own opinions.
- Listen to everyone else’s opinions.
- Recognize and practice the qualities of effective consensus-seeking groups.

**Qualities of Effective Consensus Seeking Groups:**

- Use synergistic thinking as opposed to either/or thinking.
• Generate more ideas than individuals generate independently.
• Have a high level of participation.
• Develop a climate in which members can be relaxed, open and direct, and are task oriented.

Attitudes that Support Consensus During Deliberation:

• Cooperation (NOT competition)
• Common ownership of ideas (NOT individually owning ideas)
• Valuing feelings (NOT emphasizing facts at the expense of feelings)
• Valuing conflict as a cooperative effort to bring out all perspectives (NOT suppressing feelings and avoiding conflict.)
• Valuing the contributions of all members (NOT allowing social prejudices to reflect in the group’s dynamics).
• Making an effort to equalize power (NOT relying on authority status.)
CONFIDENTIALITY OF STUDENT and EMPLOYEE RECORDS

FERPA

34 CFR part 99 Family Educational Rights and Privacy Act

Some of the exceptions to disclosing personally identifiable information are not part of the law itself but instead are exceptions created through other laws.

Who has to Comply with FERPA? Educational institutions (schools or other entities that provide educational services and are attended by students) and educational agencies (entities that administer schools directly linked to them) that receive funds under any program administered by the U.S. Secretary of Education.

Who has FERPA Rights at the Postsecondary Level? A student “in attendance” (regardless of age— even if under 18) and former students.

What are these Rights?

 ✓ Right to inspect and review education records
 ✓ Right to seek to Amend Records
 ✓ Right to Limit Disclosure of “Personally Identifiable Information: (Information that would directly identify the student or make the student’s identity easily traceable)

What are records under FERPA? Education records are defined as records which:

 ✓ Contain information which is directly related to a student; and
 ✓ Maintained by an educational agency or institution or by a party acting for the agency or institution.

What records are NOT Education records under FERPA?

 ✓ Sole Possession Records
 ✓ Law Enforcement Unit Records
 ✓ Employment Records (unless contingent on attendance e.g.: GA, TA, etc.)
 ✓ Medical Records made and maintained in the course of treatment
 ✓ Post-Attendance (Alumni) Records

What does FERPA Require of Colleges?

 ✓ Notify students of their rights annually
 ✓ Protect students’ rights to inspect and review records
 ✓ Protect students’ rights to request and amend Records
 ✓ Protect students’ rights to limit disclosure of personally identifiable information contained in education records
 ✓ Ensure that third parties do not re-disclose personally identifiable information, except under a few circumstances
 ✓ Keep records of requests for and disclosures of student educational records

What Happens if a College Does Not Comply with FERPA?
The Department of Education may issue a notice to cease the practice complained of and could ultimately withhold funds administered by the Secretary of Education. However, as a practical matter, the Family Policy Compliance Office has never withheld funds because voluntary compliance has always been secured.

**Employee Records**

Title IX investigation records will be maintained by AAO, including for statistical purposes and to document that the University has responded to complaints. Investigation determinations and records of administrative actions taken in response will be kept in employee personnel files if a complaint is substantiated. Further, such a record may be retained in personnel records where a finding of a violation of the Title IX policy was not sustained but where administrative action was determined to be appropriate.

Records maintained by AAO may include, but are not limited to, information to document receipt of the complaint and that the University has responded to all complaints; notification of the person against whom a complaint is made as well as their response; steps taken to investigate the complaint; and whether the complaint was a violation of policy. The records will document actions taken to stop discrimination (including discriminatory harassment) and any actions taken, corrective or disciplinary.

The University will comply with reporting obligations established by federal funding agencies, including, but not limited to, any required disclosure of investigative findings or disciplinary activity concerning researchers on federally funded projects.
The following procedures are intended to be used for Title IX formal grievance hearings pursuant to Penn State Policy AD85. They are more formal than necessary in some cases but provide a format that ensures a complete hearing where all participants are informed and aware of their responsibilities.

[The chairperson calls the hearing to order when all participants are assembled, including Hearing Panel members, the Hearing Panel’s Attorney Advisor, the Respondent and Complainant (if they have chosen to attend/participate), and their Advisors. Witnesses are ordinarily called for the time in which they are scheduled to provide testimony and be cross-examined. At this point, no one else should be permitted to enter the hearing space for the remainder of the hearing except for the appearance of planned witnesses. In no case should witnesses be permitted to attend the hearing except to provide testimony. Note, the parties are permitted to be present throughout the entire hearing, in addition to providing testimony. The parties have the right to have an Advisor, who may not participate in any way except that the parties may consult quietly with their Advisors throughout the hearing and the Advisor is the only individual permitted to conduct cross-examination of the other party. Either party may request to hear/observe the other party’s and witnesses’ interactions with the Hearing Panel through remote audio or video access, or in person. For in-person hearings, the Hearing Panel may reasonably accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the Respondent and/or Complainant during the hearing as determined in the sole judgment of the Title IX Coordinator (or designee) to be appropriate.]

[Chairperson’s Introduction:]

Today is [DATE] and it is [TIME]. We are in [LOCATION]. The Hearing will now begin. Thank you for joining us today. My name is [CHAIR NAME] and I will serve as chair of today’s hearing. Please note that the hearing is being electronically recorded, so please speak clearly for the recorder. This recording represents the sole official verbatim record of the hearing and is the property of The Pennsylvania State University. This Hearing Panel consists of members of the University’s Title IX Hearing Board and is charged with adjudicating alleged violations of Penn State Policy AD85.

I will now ask the other members of the Hearing Panel to introduce themselves.

I will also ask the Advisor to the Hearing Panel to introduce themself.

I will now ask each of the participants to introduce themselves as I call upon them:
- Complainant
  o Complainant’s Advisor
- Respondent
  o Respondent’s Advisor
- University staff from the Title IX Office (if present)
- University staff from the Office of Sexual Misconduct Prevention & Response (if applicable/present)
- University staff from the Office of Student Conduct (if applicable/present)
- University staff from the Affirmative Action Office (if applicable/present)
- Any witnesses who are present (some or all witnesses may join exclusively for their presentations, at the discretion of the Hearing Panel)

[The chairperson explains the role of the Advisors in the hearing:]

Advisors received guidance and rules of decorum prior to this hearing, which you are expected to follow. As an Advisor, you may do the following at the request of your party:

- quietly advise your party in a manner that doesn’t disrupt the normal flow of the hearing; and
- consult with your party during breaks.

As Advisors, you are the only ones who may conduct cross-examination of the other party and witnesses on your party’s behalf.

As Advisors, you may not perform any function in the hearing other than advising your party and conducting cross-examination. For example, you may not make a presentation on behalf of your party in any way.

The parties are expected to respond to questions from the Panel (at any time) and from the other Advisor (only during cross-examination) on their own behalf, without representation by you. Parties should note that they must answer any and all questions deemed by the Hearing Panel to be relevant; if a party does not, Title IX regulations do not permit us to consider any statement or writing that party has made before or during this hearing when we make our final decision regarding responsibility.

[The chairperson explains their role:]
As chairperson, I will ensure that only relevant cross-examination questions are answered by parties and witnesses. Irrelevant or duplicative questions or evidence will be excluded. I will also ensure that the hearing process is administered in a fair and impartial manner and require all participants to adhere to basic standards of decorum, which were provided to you prior to the hearing. To that end, all questions must be asked and answered in a respectful, non-argumentative, and non-abusive way. No one will be required to answer questions designed solely to harass, intimidate, or abuse. To make decisions regarding decorum, relevance, and procedure, I will consult with other members of the Hearing Panel and our Advisor as needed. Our decisions regarding these issues are final, including removing from the proceeding an Advisor or other participant who fails to follow our rules for participation.

[The role of the Hearing Panel members is explained by the chairperson:] All members of this Hearing Panel, including myself, may address questions to any party or any witness called by the University. We may request additional records and/or witnesses prior to making our decision. We have received the Investigative Report which includes all information deemed relevant by the Investigator, and we will not consider any evidence or testimony that is not relevant. However, if either party believes that certain evidence they submitted to the investigator that was deemed to be irrelevant is, in fact, relevant, they may raise that evidence with the Panel; we will decide whether that evidence is in fact relevant and may be considered. All directly related evidence was provided to you in the Preliminary Investigative Report. Following the conclusion of the hearing, we will confer and decide whether a preponderance of the evidence and testimony makes it more likely than not that the Respondent violated University policy. Parties will ordinarily receive written notice of the outcome within fifteen days of the conclusion of the hearing, if sanctions were warranted and assigned by the relevant sanctioning authority. If the Respondent is found “not responsible,” this timeline may be expedited; however, the University may alter any timelines at its discretion.

[The chairperson then asks the parties:] Do you understand that providing false or misleading information at a University hearing is a violation of Penn State policy and may result in disciplinary action?
Do you swear or affirm that the testimony you are about to give is truthful and accurate to the best of your knowledge?

[The chairperson announces the alleged conduct/policy violations, including specific reference to AD85 and/or the Conduct Code]. At the end of this statement, the chairperson states the following:

The Hearing Panel is meeting today to determine whether the Respondent is responsible for that conduct and/or policy violation by a preponderance of the evidence. We will review relevant facts and evidence as outlined in the investigative report, as well as hear relevant testimony from witnesses called by the University. We will decide solely whether the Respondent is responsible for the conduct; if the answer is yes, our decision will be forwarded to a separate sanctioning authority, as outlined in Penn State policy AD85, to decide which sanctions may be appropriate.

HEARING:

[The chairperson states the following to the Complainant:]
We have reviewed the investigative report and you may reference critical sections of it, but we ask you now to please explain, in your own words, what happened during the incident(s) in question.

[The Hearing Panel members can ask questions at this point. Remember that any questions posed must be relevant (this means, essentially, they are directly related to the allegations and the answer will make it more or less likely that the alleged conduct occurred). If the Complainant elects not to provide testimony or answer these questions, the hearing continues with questioning and with Respondent or witness testimony.]

[The chairperson now instructs the Respondent’s Advisor to conduct cross-examination of the Complainant. Remember that the Hearing Panel/Chair must make a relevancy determination for every single question before it is answered by the party/witness. You may consult with the Panel members and with your Attorney Advisor as needed and may briefly pause the hearing to do so, if necessary. While deliberating on these matters, you may turn the recorder off, but must be sure to turn it back on prior to resuming the hearing. You may also deem a question irrelevant if it is duplicative or harassing. You should require the Advisor and party/witness to follow rules of decorum. If the party/witness refuses to answer a cross-examination question that you have duly deemed relevant, then none of their statements or writings may be considered when you make your final decision—so it is crucial to manage this carefully].

[The chairperson states the following to the Respondent:]

We have reviewed the investigative report and you may reference critical sections of it, but we ask you now to please explain, in your own words,
what happened during the incident(s) in question.

[The Hearing Panel members can ask questions at this point. Remember that any questions posed must be relevant (this means, essentially, they are directly related to the allegations and the answer will make it more or less likely that the alleged conduct occurred). If the Respondent elects not to provide testimony or answer these questions, the hearing continues with questioning and with witness testimony.]

[The chairperson now instructs the Complainant’s Advisor to conduct cross-examination of the Respondent. Remember that the Hearing Panel/Chair must make a relevancy determination for every single question before it is answered by the party/witness. You may consult with the Panel members and with your Attorney Advisor as needed and may briefly pause the hearing to do so, if necessary. While deliberating on these matters, you may turn the recorder off, but must be sure to turn it back on prior to resuming the hearing. You may also deem a question irrelevant if it is duplicative or harassing. You should require the Advisor and party/witness to follow rules of decorum. If the party/witness refuses to answer a cross-examination question that you have duly deemed relevant, then none of their statements or writings may be considered when you make your final decision—so it is crucial to manage this carefully].

[Next, each witness is brought in one at a time, beginning with the Investigator. The chairperson introduces each witness to the Panel and to the parties. The chairperson then asks the witness(es) the following:]

[If the witness is a Penn State student or employee:]

Do you understand that providing false or misleading information at a University hearing is a violation of Penn State policy and may result in disciplinary action?
(witness answers)

[The chairperson asks each witness:]

Do you swear or affirm that the testimony you are about to give is truthful and accurate to the best of your knowledge?
(witness answers)

[The first witness is typically the Investigator. The chairperson will ask the Investigator the following:]

[Name of Investigator], please share with us an overview of the Investigation Report.

[The Hearing Panel Members can ask questions at this point. When the Panel has concluded its questioning, the chairperson then instructs one of the parties’ Advisors to conduct cross-examination of the Investigator. When that Advisor is finished, the other Advisor is permitted to conduct cross-examination of the Investigator.]

[For all other witnesses, the witness is told of the charge(s) and then the chairperson asks the following:]

Please explain, in your own words, what you know of the incident(s).
[Order of questioning. The order of questioning should ordinarily be as follows: Panel, Complainant’s Advisor, Respondent’s Advisor.]

Retaining witness for recall. At the end of each witness’ testimony, the Panel members, the Complainant, and the Respondent should be asked if they have any further questions and, if not, is there a need to have the witness recalled during the remainder of the hearing. If not, then the witness may be thanked and dismissed.

[Additional questions for the parties. If necessary, after all the witnesses have been heard, the Hearing Panel may ask additional questions of the parties.]

[Final Question for the Complainant, to be asked by the chairperson:]

Is there any information that was presented in the hearing that you did not have the opportunity to address? Is there any evidence you presented during the investigation that was not included in the investigative report or not presented in the hearing that you wish to present?

[Final Question for the Respondent, to be asked by the chairperson:]

Is there any information that was presented in the hearing that you did not have the opportunity to address? Is there any evidence you presented during the investigation that was not included in the investigative report or not presented in the hearing that you wish to present?

[Closing the hearing. The chairperson indicates that the Panel will proceed to deliberations and reach a decision based on testimony and evidence. The chairperson thanks the parties and their Advisors and dismisses them. The parties and their Advisors must leave the hearing materials folders and their contents but may take their personal notes. The parties will be notified of the outcome and any applicable sanctions by the Title IX Coordinator or their designee, ordinarily within fifteen days, but the University may alter this timeline at its discretion.]

DECISION:

[The Panel is reconvened and called to order (the Hearing Panel should reconvene, discuss, and vote with enough time to make a finding and submit their written rationale to the Title IX Coordinator within five days of the hearing).]

The chairperson instructs the members that they must consider all relevant evidence, including the information provided in and by the Investigative Report, the parties’ written statements, if any, the evidence presented at the hearing, and the testimony of the parties and witnesses. The Panel should also consider any directly related evidence brought to light by a party at the hearing that the Panel deemed to be relevant.
The chairperson states that the Panel has the responsibility to determine solely whether or not the Respondent is responsible for the alleged misconduct by a preponderance of the evidence (more likely than not). The Hearing Panel does not assign sanctions.

The Hearing Panel decides by majority vote. The Hearing Panel should vote after the discussion is concluded.

The Hearing Panel will submit its finding of responsibility or non-responsibility and rationale in writing to the Title IX Coordinator within five days of the hearing. A template is available for the Hearing Panel to use to communicate its finding and rationale.

[Finally, the Hearing Panel should be cautioned not to discuss the case outside of the hearing or to discuss the case with the parties, the Advisors, or the witnesses. The members should maintain the confidentiality of all testimony. Copies of all materials, documents, exhibits, notes, etc., should be collected by the chairperson, and the Panel thanked and dismissed. The chairperson will return all materials to the Title IX Coordinator.]
ADDENDUM B

Title IX Hearing
Rules of Decorum

Rules of Decorum are to be observed in the hearing, and applied equally to all parties and Advisors, regardless of whether they are in the role of Complainant or Respondent.

1. Questions must be conveyed in a neutral, respectful tone.

2. Parties and Advisors will refer to other parties, witnesses, Advisors, and institutional staff using the name and gender used by the person and shall not intentionally misname or mis-gender that person in communication or questioning.

3. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, Advisors, or decision-makers.

4. While an Advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.

5. The Advisor may not yell, scream, badger, or physically “lean in” to a party or witness’s personal space. Advisors may not approach the other party or witnesses without obtaining permission from the Hearing Panel Chair.

6. The Advisor may not use profanity or make irrelevant ad hominem attacks upon a party or witness. Questions are meant to be investigative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.

7. The Advisor may not ask repetitive questions. This includes questions that have already been asked by the Hearing Panel Officer(s) or by the Advisor in cross-examination. When the Hearing Panel Chair determines a question has been “asked and answered” or is otherwise not relevant, the Advisor must move on.

8. Parties and Advisors may take no action at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

Objections to Relevance of Testimony or Evidence

Subject to the Hearing Panel Chair’s discretion to regulate the decorum, timing and conduct of the hearing, the parties’ Advisors may generally raise objections to the relevance of questions, testimony or evidence. Such objections must be directed to the Hearing Panel Chair, who will determine whether a question is relevant and should be answered, or whether testimony or evidence is relevant and should be admitted. Questions deemed irrelevant do not need to be answered, and testimony or evidence deemed not relevant will not be considered by the Hearing Panel. Advisors may be limited in their making of objections if the Hearing Panel Chair determines that doing so is necessary to promote the decorum and efficiency of the hearing.
Warning and Removal Process

The Hearing Panel Officers shall have sole discretion to determine if the Rules of Decorum have been violated. The Hearing Panel Chair will notify the offending person of any violation of the Rules.

Upon a second or further violation of the Rules of Decorum, the Hearing Panel Chair shall have discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

Where the Hearing Panel removes a party’s Advisor, the party may select a different Advisor of their choice who is available at the time of the hearing or must accept an Advisor provided by the institution for the limited purpose of cross-examination at the hearing. Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an Advisor be removed. A party cannot serve as their own Advisor under any circumstance.

The Hearing Panel shall document any decision to remove an Advisor in the written determination regarding responsibility.

For flagrant, multiple, or continual violations of this Rule, in one or more proceedings, Advisors may be prohibited from participating in future proceedings at the institution in the Advisor role on a temporary or permanent basis.

Relevant Questions Asked in Violation of the Rules of Decorum

When or if an Advisor asks a relevant question in a manner that violates the Rules of Decorum, the question may not be deemed irrelevant by the Hearing Panel Officers simply because of the manner it was delivered. Under that circumstance, the Hearing Panel Chair will notify the Advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the Advisor (or a replacement Advisor, should the Advisor be removed for violation of the Rules of Decorum).
This report is to confirm the outcome of the Title IX hearing held on (insert date and time). The hearing was convened in accordance with the Formal Hearing Process as outlined in the Penn State University Title IX Policy (AD85).

I. Parties. The Complainant (insert name), appeared, supported by their Advisor (insert name).

The Respondent (insert name), appeared, supported by their Advisor (insert name).

OR [delete as appropriate]

The Complainant (insert name) [OR] the Respondent (insert name) declined to attend the hearing and a decision was taken to proceed with the hearing in their absence.

II. Panel Advisor. Hearing Panel Attorney Advisor (insert name) was also present to advise the Hearing Panel.

III. Witnesses. The following individuals were present as witnesses:

- (insert name(s) of witnesses)

IV. Allegations. At this hearing the Panel considered the allegation(s) that Respondent engaged in the following Title IX Prohibited Conduct:

- (list allegations set out in the Notice of Allegations and Investigation)

V. Considered testimony and documentation.

- (list specific information relied upon from the final investigative report, the parties’ written statements, if any, the evidence presented at the hearing, and the testimony of the parties and witnesses)

VI. Decision. By a majority vote, the Panel determined that the evidence outlined above establishes that it is more likely than not that the Respondent is responsible for [insert Title IX Prohibited Conduct]. Therefore, we find the Respondent RESPONSIBLE.
By a majority vote, the Panel determined that the evidence outlined above does not establish that it is more likely than not that the Respondent is responsible for [list Prohibited Conduct]. Therefore, we find the Respondent NOT RESPONSIBLE.

VII. Rationale.

- Provide a detailed analysis to support the finding of responsibility or non-responsibility. This should include how you considered and weighed the evidence upon which you relied as well as the testimony by each of the parties and the witnesses. Remember that if an individual did not submit to cross-examination, you may not consider any of their statements/writings in your decision and may not include them in this report. If credibility of a party or witness is at issue, include information regarding how you determined which party or witness was more credible on the point at issue.

Respectfully submitted,

Title IX Hearing Panel
[NAME], Chair