



## UNIVERSITY RISK AND COMPLIANCE SERVICES

### DEPARTMENT OF INVESTIGATION AND ADJUDICATION

100 W. Dean Keeton St., SSB 4.102 • Mail Code D9250 • Austin, TX 78712 • (512) 471-3701  
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#### HEARING PROCEDURES FOR TITLE IX HEARINGS UNDER HOP 3-3031

The order of the proceedings will be as follows:

- 1) The hearing officer will open the hearing with introductions, a brief explanation regarding the hearing's procedures, and answer any procedural questions.
- 2) Parties may submit a written response to the completed investigation report. Should Complainant or Respondent choose to do so, the written response will be sent as a PDF to the hearing coordinator, to be placed in the Access to Evidence file. Parties will be given appropriate time during the hearing to review any written responses before proceeding. Written responses should not include new evidence or witnesses not previously known to the University or opposing party.
- 3) The University representative and the parties (Complainant and Respondent) will be permitted to make opening statements of approximately 10 minutes, no more than 15 minutes. Opening statements do not have to be memorized and may be read; however, opening statements should only be addressed to the hearing officer, and not to the opposing party.
- 4) The University representative will begin with the presentation of evidence and calling of witnesses. The University representative is a Department of Investigation and Adjudication (DIA) investigator, who has had no prior involvement with the investigation of the complaint being adjudicated. Their role at the hearing is to present information regarding the case, including the ability to present information and witnesses, question witnesses, and provide opening and closing statements. The University representative is a neutral figure at the live hearing. The witnesses identified by the University will be called first, subject to availability. For University-called witnesses, the University representative will first ask questions of the witness. After the University representative has finished questioning that witness, the Complainant's advisor will have an opportunity to ask questions of the witness. The Respondent's advisor will then have an opportunity to ask questions of that witness. Then, there will be an opportunity for any redirect examination by the University representative and any recross-examination by the parties' advisors. The hearing officer has the discretion to change the order in which advisors question witnesses. The hearing officer is also permitted to ask questions throughout the questioning performed by the University representative and parties.
- 5) For any witness not called by the University representative, but called by a party, the respective party's advisor will have the first opportunity to question that witness. Then the other party's advisor will have an opportunity to ask questions of that witness, followed by the University representative. Then, there will be an opportunity for any redirect examination by the party's advisor who put on the witness, and then recross-examination by the other party's advisor and the University representative.
- 6) The University representative and all advisors will have an equal time allotment for questioning parties and witnesses during the hearing. The University representative and advisors will have discretion to apportion their respective time allotment as they see fit in the questioning of parties



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and witnesses. The hearing officer has the authority to set time limits for the questioning of witnesses, provided an equal allotment of time is given to each party's advisor.

- 7) The University representative and the parties will be allowed to give closing statements, no more than five minutes in length. Closing statements do not have to be memorized and may be read; however, closing statements should only be addressed to the hearing officer, and not to the opposing party.
- 8) The parties will not be permitted to personally ask questions of another party or any witnesses. Advisors are not permitted to actively advocate for parties during the hearing, except to ask questions of the parties and witnesses, including direct, cross-examination, and follow-up questions. Advisors may object to a question by the opposing advisor or University representative, on the grounds of relevancy, non-relevant prior sexual history of a Complainant, or if the question has already been asked and answered. This objection shall be directed to the hearing officer, who will rule on it.

The following process is required during questioning by a party's advisor:

- 1) The advisor will ask a question of the witness.
- 2) Before the witness answers a question, the hearing officer will rule as to whether the question is relevant to the alleged Prohibited Conduct determination. Before the hearing officer rules on the relevance of the question, he/she may ask the advisor and party for an explanation as to why the question is relevant.
- 3) If the hearing officer determines the advisor's question is not relevant, the hearing officer will explain his/her decision. The witness will not answer the question, and the advisor will pose the next question.
- 4) The hearing officer has the authority to disallow any question that has previously been asked and answered.
- 5) The hearing officer has the authority to disallow any question concerning the prior sexual history of a Complainant, except when evidence about a Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the alleged conduct charged by the Complainant, or if the questions or evidence concerns specific incidents of the Complainant's prior sexual behavior with the Respondent and is offered to prove the Complainant's consent of the alleged conduct.
- 6) If the hearing officer allows the question as relevant, the witness may answer it. Witnesses must answer questions to the best of their recollection and may not read from prepared statements.

Advisors and the University representative should ask all questions they have for a particular witness when that witness is called to give testimony, regardless of who calls the witness. Only in unusual circumstances



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will the hearing officer permit re-calling the same witness to testify again. The hearing officer may limit the time for questioning if it becomes redundant. The hearing officer may ask questions directly of the parties and witnesses. As a reminder, the hearing will be recorded by the University, and no other recordings are permitted. The University recording will be shared with all parties and their advisors following the conclusion of the live hearing.

Only the parties and their advisors, University staff, witnesses submitted by the parties or the University representative, and any foreign language translators (if needed) will be provided a Zoom invitation to join the hearing. It is the responsibility of the parties and the University representative to ensure all witnesses whom they intend to call are available during the scheduled hearing time frame and have the necessary equipment to be seen and heard via Zoom (or Teams). The University of Texas at Austin does not have the authority to compel any student witness to participate in the hearing.

It is the responsibility of the parties and the University representative to be prepared to present evidence at the hearing and to raise any objections to the evidence submitted by others, which the hearing officer will rule on. Hard copies are not required for any evidence that was collected during the investigation and that is available on the secure, cloud-based server UT Box via the Access to Evidence file. When questioning a witness about a specific document in the Access to Evidence file, the party's advisor or the University representative will share that piece of evidence with the witness by using the "screen share" function of Zoom. When using this function, party advisors and the University representative must be diligent to ensure that no privileged information is shared on the screen. Please note the rules of evidence that apply in courtrooms do not apply to this hearing.

#### **Late Evidence:**

After the completed investigation report has been distributed to the parties, should either party wish to present new evidence not previously known to the University or opposing party, they may submit the new evidence in PDF format, with student FERPA information redacted, to the hearing coordinator. The hearing coordinator will add the new evidence to the Access to Evidence file and provide written notification to all stakeholders who are sent the written notice of hearing.

The party proffering the late evidence will need to make a request, via their advisor, to the hearing officer at the live hearing, asking the hearing officer to consider the late evidence. The opposing party's advisor may object to this request. The hearing officer will rule as to whether or not to consider the late evidence, and if so, how much weight to give it in the written determination letter.

#### **Late-Named Witnesses:**

Should either party identify an additional witness after the written notice of hearing has gone out, the party must provide the hearing coordinator with a written summary of the anticipated testimony and a statement explaining the reason for the late disclosure. The hearing coordinator will provide this information to all participants and establish a deadline for written objections by the opposing party. The hearing officer will determine the admissibility of the late-named witness before the date of the live hearing. If the witness is permitted, DIA will place a revised witness list in the Access to Evidence file. DIA will work with the parties



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to arrange the witness's participation in the hearing, but DIA cannot guarantee that late-named witnesses will be able to participate at the hearing.

