

Frequently Asked Questions for Witnesses

Addendum B – Federal Mandated Hearing Addendum¹

Key Terms:

- **Complainant** means an individual who alleges they have been subjected to Sexual Harassment.
- **Respondent** means an individual who has been reported to have engaged in conduct that could constitute Sexual Harassment.
- **The Parties** means the Complainant and the Respondent.
- **The Title IX Coordinator** is the individual designated by a campus with primary responsibility to monitor, supervise, and oversee all campus-wide implementation of and compliance with Title IX and the associated CSU Executive Orders.²
- **The Hearing Officer** is a neutral, third party who oversees a Title IX hearing.
- **The Hearing Coordinator** is a university administrator who is responsible for coordinating the pre-hearing and hearing processes.
- **A Hearing Advisor** is an individual chosen by a Complainant or Respondent or, if a Party does not have anyone to act in the role, provided by the University, who will ask questions of the other Party and witnesses during the hearing. Both the Complainant and the Respondent **must** have a Hearing Advisor for the hearing.
- **A Support Advisor** is an individual chosen by a Party to provide support to that Party during the investigation and hearing processes. The Support Advisor may not answer questions regarding the subject matter of the investigation for the Complainant or the Respondent or speak on behalf of a Complainant or Respondent. However, the Support Advisor may observe and consult with the Complainant or Respondent.

Why has the CSU revised its Title IX policy?

On May 6, 2020, the United States Department of Education, Office for Civil Rights (OCR) issued and amended Title IX Regulations (Title IX Regulations) implementing Title IX, of the Education Amendments of 1972. As of their effective date, August 14, 2020, and unless and until they are rescinded, the Title IX Regulations have the force of law, and all U.S. higher education institutions who receive federal funds, including the CSU, are obligated to comply with the Title IX Regulations.

¹ The purpose of these FAQs is to provide an overview of Addendum B – Federal Mandated Hearing Addendum to CSU Executive Orders 1096 and 1097 (effective August 14, 2020) and to answer what are anticipated to be frequently asked questions. **These FAQs do not constitute CSU policy, nor do they purport to represent a comprehensive statement of CSU policy.** Please direct any questions about CSU Title IX-related policy to your campus Title IX Coordinator.

² [CSU Executive Order 1095 \(June 23, 2015\)](#).

To implement the requirements of the Title IX Regulations, the CSU created an addendum to Executive Orders [1096](#) and [1097](#). This addendum is known as [Addendum B: Federal Mandated Hearing Addendum](#) (“Addendum B”), and it describes the investigation and resolution process for cases covered by the Title IX Regulations.

What kinds of cases are impacted by this new policy?

Addendum B, which incorporates the Title IX Regulation requirements, applies to cases involving allegations that are defined by the Title IX Regulations as Sexual Harassment in an Education Program or Activity against a person (including, but not limited to students and employees) in the United States.

How do these changes affect me?

If you are interviewed as a witness as part of an investigation under Addendum B, you may be asked to later attend a hearing to answer questions.

What is a hearing?

A hearing is a meeting that occurs once an investigation under Addendum B has finished and during which an independent Hearing Officer listens to the witnesses, including the Complainant and the Respondent, and analyzes the evidence. The Complainant’s and the Respondent’s Hearing Advisors ask questions of the other Party and witnesses. The Hearing Officer may also ask questions of the Parties and witnesses and decides about whether the Respondent is responsible for the conduct as alleged. The Hearing Officer will oversee and guide the hearing.

I already gave my statement to the Investigator, and they took notes – why do I have to attend a hearing?

The Federal Title IX Regulations require that the Parties (the Complainant and Respondent) have an opportunity to ask questions (through their Hearing Advisors) in a live hearing of each other and any other witness who provided a statement during the investigation, in order for those statements to be considered by the Hearing Officer in making their decision. The Hearing Officer may also ask the Complainant, Respondent, or a witness questions of their own. The Complainant and Respondent will not ask questions directly of the witnesses. Instead, they will each have a Hearing Advisor who will ask questions of witnesses on their behalves.

Will the Complainant and the Respondent know what I said during my interview with the Investigator?

Yes, all evidence that is directly related to the allegations, including witness statements, must be provided to the Parties and their Support Advisors, if any. We understand that it can be difficult to be asked questions about people who you know or work with, and who may even be your friends. You may be concerned that they will be upset with you for providing information. While we cannot control how other people feel, we can prohibit people taking negative action toward you based on those feelings (“retaliation”) that interfere with your ability to work or continue

with your education. Addendum B – Federal Mandated Hearing Addendum prohibits retaliation against anyone who files a complaint or assists or participates in a policy-related investigation/proceeding. This means that a Complainant, Respondent, or anyone else, is prohibited from taking negative action against you as a result of your participation as a witness. Please discuss any concerns you have about retaliation with the Title IX Coordinator and contact them immediately if you believe that you have been the target of retaliation. The Title IX Coordinator's contact information is provided on the final page of this document.

[I heard that the new process involves cross-examination – what does this mean?](#)

Cross-examination means asking questions of a witness (including the Complainant or Respondent) about the witness's statements or to assess credibility (i.e. believability). In the hearing process, the Respondent's and Complainant's Hearing Advisors will "cross-examine" the other Party and witnesses. Hearing Advisors will either be individuals of the Parties' choice or provided by the University. This means that the Complainant and Respondent will **not** be communicating directly with each other or witnesses, and such direct communication will not be permitted at any time during the hearing. This process of providing for "indirect" questioning by the Hearing Advisors is intended to minimize anxiety for the participants in the hearing.

[Why do Hearing Advisors ask the questions rather than the Hearing Officer?](#)

The Title IX Regulations require that the Parties' Hearing Advisors ask questions of the other Party and witnesses. Hearing Officers may also ask questions of their own.

[How will I know when and where the hearing will be?](#)

Your campus Title IX Office will provide you with all the details of the hearing, including the date, time, location, participants, and purpose of the hearing, as well as the identity of the Hearing Officer. This information will be sent to you in a communication called a "Notice of Hearing." The Notice of Hearing should indicate how long you should make yourself available for the hearing (for example, whether you will need to be available for a few hours or for a full day). If you have any questions about the hearing, you should contact the Hearing Coordinator, who will usually be the person who sends the Notice of Hearing. The Hearing Coordinator is a university administrator who is responsible for coordinating the pre-hearing and hearing processes.

[What if I have class, practice, or work at the time of the hearing?](#)

It is recommended that you consult your schedule as soon as you receive the Notice of Hearing, which tells you the date and time of hearing. The Hearing Coordinator can arrange reasonable accommodations, including an excused absence from class, practice, or work to enable you to participate in the hearing. It is important that you communicate to the Hearing Coordinator your need for any accommodations as soon as possible.

If you absolutely cannot attend the hearing for some reason, it is important that you communicate this to the Hearing Coordinator as soon as possible, providing your reasons.

If you have questions, or are concerned about attending the hearing, the Hearing Coordinator is available to talk to you and answer any questions you may have.

Where will the hearing take place?

The hearing will be conducted using videoconferencing technology, unless circumstances are such that videoconferencing would not be appropriate. The University will utilize technology to ensure that the Complainant and Respondent will be able to simultaneously see and hear all of the proceedings and statements made (including yours) during the hearing.

Do I have to be in the same room as the Complainant and Respondent?

No, the hearing will take place using videoconferencing technology (unless circumstances are such that videoconferencing would not be appropriate), which means that you can participate in the hearing from wherever you choose, although you should try to ensure that you have a private space from which you can participate.

What does a private space mean and why does that matter?

The issues that are discussed during a hearing can be very sensitive and personal for everyone involved. Therefore, it is important that you are able to participate from a location that is quiet and where other people will not be in the same room as you. You might also consider using headphones to further increase your privacy and that of others involved in the hearing. If you are concerned that you will not have a private space for the hearing, please contact the Hearing Coordinator as soon as possible.

What if I do not have access to technology for videoconferencing or I do not have a private space from which I can participate?

Please discuss these concerns with the Hearing Coordinator, who can make arrangements to ensure that you can fully participate in the hearing.

What if I am far from the campus at the time the hearing will be held?

In most instances, the hearing will take place using videoconferencing technology, which means you can participate from any private space of your choice. Therefore, you do not need to be close to the campus.

If you will be participating in the hearing from another state or from outside the United States, please inform the Hearing Coordinator so that they can consider any time differences in preparing everyone for the hearing.

How long will the hearing take?

It depends. A hearing will usually be scheduled for at least one full day but as a witness, you will only be expected to participate when it is your turn to answer questions. The Notice of Hearing should indicate how long you should plan to be available for when participating in the hearing.

Since it can be difficult to predict exactly how long it will take to hear each witness, including the Complainant and Respondent, it may sometimes be necessary for you to wait a while until it is your turn to participate in the hearing. We understand that your time is important and your flexibility in this regard is much appreciated.

What if I need accommodations for a disability during a hearing?

Please let the Title IX Coordinator or Hearing Coordinator know as soon as possible if you require reasonable accommodations for a disability to enable you to fully participate in the hearing.

What if I don't want to participate in the hearing?

Witness participation is an important part of the process, so we appreciate your cooperation in attendance at the hearing. If a witness does not attend the hearing, the Hearing Officer will not be able to rely on what that witness told the Investigator (even if it is described in the investigation report) because the witness will not be available to answer questions about those statements. While the outcome of the hearing does not rest on your statement alone, your non-participation may impact the Hearing Officer's ability to make a fully informed decision.

It is also important to know that if you are a witness and do not attend the hearing as requested, you may be subject to discipline (as a student or employee).

If you absolutely cannot attend the hearing for some reason, it is important that you communicate this to the Hearing Coordinator as soon as possible. If you have questions, or are concerned about attending the hearing, the Hearing Coordinator is available to talk to you and answer any questions you may have.

Who else will be present at the hearing?

The hearing will be "closed" – this means that only those who need to be present will be part of the hearing. Who is present may vary depending on the circumstances; however, usually the following individuals will be present:

- Hearing Officer;
- Complainant;
- Respondent;
- Hearing Advisor and Support Advisor for Complainant;
- Hearing Advisor and Support Advisor for Respondent;
- Title IX Coordinator;
- Title IX Investigator (if not also the Title IX Coordinator);
- Hearing Coordinator;
- Student Conduct Administrator;
- An administrator from the CSU Chancellor's Office;

- Witnesses (who will only be present during the part of the hearing that is relevant to their statement).

Sometimes, it may be necessary to have additional people present, such as an information technology employee to assist with technology.

What will the hearing be like?

A hearing is a meeting during which an independent Hearing Officer listens to the witnesses, including the Complainant and the Respondent, and analyzes the evidence. The Complainant's and the Respondent's Hearing Advisors ask questions of the other Party and witnesses. The Hearing Officer may also ask questions of the Parties and witnesses and decides about whether the Respondent is responsible for the conduct as alleged. The Hearing Officer will oversee and guide the hearing.

During the hearing, the Complainant's and the Respondent's Hearing Advisors and the Hearing Officer will ask you questions. Each time a Hearing Advisor asks you a question, and before you answer the question, the Hearing Officer will say whether the question is "relevant." You are only required to answer questions that the Hearing Officer says are relevant. If the Hearing Officer decides that a question is not relevant, they will give a brief explanation as to why the question is excluded.

Your job is to answer the questions truthfully. It is important to listen to the questions carefully, and ensure you understand the question before you answer. Remember to pause after you are asked a question by a Hearing Advisor so that the Hearing Officer can say whether the question is relevant. It is okay to ask the Hearing Advisor or Hearing Officer to repeat the question if you do not hear or understand it the first time. However, if you answer a question, the Hearing Officer will assume that you understood the question. If you do not know the answer to a question, or you cannot remember, you should say so – try not to guess.

During your meeting with the Investigator, they will have taken notes. If you have not already been provided with a copy of the statement that you gave to the investigator during your interview with them, you may ask the Hearing Coordinator for a copy. It is okay to refer to this during the hearing to refresh your memory. If there is anything written in the statement that you feel is inaccurate, you should tell the Hearing Officer.

You will only be present at the hearing when it is your turn to answer questions. Once the Hearing Advisors and Hearing Officer have finished asking you questions, you will be able to leave the hearing.

What happens if a Hearing Advisor is abusive toward me?

Addendum B requires that all questions must be asked in a respectful, non-abusive manner. The Hearing Officer determines whether a question satisfies this requirement and may require that Hearing Advisor rephrase a relevant question or repeat the question in a respectful manner

when the Hearing Officer determines that the question was asked in a disrespectful or abusive manner.

Abusive or otherwise disorderly behavior that causes a material disruption to a hearing will not be tolerated. The Hearing Officer may excuse from the hearing anyone (including either Party or their Hearing Advisor) whose behavior causes a material disruption.

It is important to know that you might be asked some questions that seem personal or intrusive. This does not automatically mean that the person asking the question is being rude or abusive. The nature of cases that are addressed through a hearing mean that personal and intimate details can sometimes be relevant. Hearing Officers are trained to recognize those questions that are personal but relevant and to distinguish those from questions that are simply intended to be abusive or humiliate someone.

Will what I say during the hearing determine the outcome?

The Hearing Officer will be considering various types of relevant evidence in order to make their decision, including statements made by the Complainant and Respondent, documentary evidence such as text messages or emails, as well as statements provided by witnesses. The outcome of the hearing does not rest on your statement alone. While your participation is important, you should not feel that the outcome of the hearing is your responsibility or your "fault."

Will the hearing be recorded?

Yes. An audio recording of the hearing will be taken. It is important that you speak clearly and perhaps a little louder than you might usually so that your statements can be picked up on the recording. No one other than the university is permitted to make a recording of the hearing.

What if I start to feel overwhelmed or upset during the hearing?

If you feel like you need a break, please speak up and tell the Hearing Officer. It will usually be possible to take a brief break to visit the restroom, have some water and a snack, or just to get some fresh air. The Hearing Coordinator can provide information about and help connect you to resources on and off campus, such as the counseling center or the Employee Assistance Program, if you would like to talk to someone after the hearing.

Do you believe the hearing requirement will have a negative effect on students and employees reporting sexual harassment or moving forward with their cases?

We hope not and will do our best to make the process as fair and compassionate as possible for everyone involved. All Hearing Officers receive training about our investigation and hearing process as well as the complex and sensitive issues surrounding allegations of sexual misconduct. We encourage students and employees to speak with their campus Title IX Coordinators and confidential campus resources, including psychological services, confidential

advocates, employee assistance programs and respondent advisors to discuss their experience and concerns.

Who can I contact if I have further questions?

Please contact your campus Title IX Coordinator:

Heather Borlase
Executive Director, Equity Programs and Compliance
Title IX Coordinator
Student Services Bldg., 4th Floor
hborlase@sfsu.edu
415-338-2032
<https://titleix.sfsu.edu>