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Facilitating Hearings With Confidence

August 19, 2021

Speakers: Judge Michael Jamison &
Judge Patricia Riehl

Pre-Hearing Meetings



What is a pre-hearing meeting?

- Meeting prior to the hearing that provides the opportunity to:
 - Clarify the purpose of the live hearing and standard of evidence
 - Preponderance of the Evidence vs. Clear and Convincing Evidence
 - Discuss the practical mechanics of the hearing
 - Establish the allegations & related evidence
 - Review the rights & responsibilities of the Parties & role of Advisors
 - Confirm witness attendance
 - Discuss relevancy
 - Answer questions

Who attends the pre-hearing meeting?

- Parties & Advisors
 - Advisors are invited, but not required, to attend
 - Parties may not have Advisors at this point
- Decision Maker(s) ("Hearing Officer")
- Hearing Facilitator (if applicable)



When does the pre-hearing meeting occur?

- After Parties & Advisors have received & responded to the Investigative Report
- After the Investigation Report has been finalized
- Before the live hearing



Why can pre-hearing meetings be important for the parties?

- Most individuals have not participated in this type of hearing
 - The many “unknowns” surrounding the live hearing may be anxiety-inducing for the parties
 - Pre-hearing meetings may help ease some anxiety because the Hearing Officer addresses many of those “unknowns”
 - Unfortunately, this does not mean that the parties will not be anxious during the hearing

Why can pre-hearing meetings be important for the parties?

- Parties are beginning to fully understand the hearing process & what it entails
 - Process & potential consequences of the Title IX process become "real"
 - After the pre-hearing meeting, some parties may decide to move forward with informal resolution (if permitted)
- Can help make the live hearing more efficient, focused, and effective

Why can pre-hearing meetings be important for Decision-Maker(s)?

- Clarify the authority of the Decision- Maker(s) in front of the Advisors and Parties
- Ensure Parties and Advisors have the same understanding of and expectations for the live hearing



Decision-Makers should review the investigative report prior to the pre-hearing meeting to become familiar with the case details, witnesses, and evidence

Sample pre-hearing meeting agenda

1. Introductions

- Parties, Advisors & Hearing Officer

2. Hearing Preparation

- Confirm Parties' access to Investigative Report & Evidence
- Discuss witnesses that will be expected to attend the hearing

3. Review Live Hearing Procedures

- May differ depending on the school's Title IX policy

Sample Live Hearing Procedures

- Decision-Maker(s) opens the hearing
- Decision-Maker(s) questions Complainant
- Decision-Maker(s) questions Respondent
- Respondent Advisor cross-examines Complainant
- Complainant Advisor cross-examines Respondent
- Witnesses will be called and questioned by the Decision-Maker(s) and cross-examined by the Advisors
- Decision-Maker(s) concludes the hearing



⚠ *Hearing procedures may vary, as long as the school's Title IX policy is followed.*

Sample pre-hearing meeting agenda

4. Outline Live Hearing Rules

- Authority of the Decision-Maker at the hearing
 - Permission to speak, requests for breaks, etc.
- Consequences of not submitting to cross-examination
- Expectations & Rules of Decorum
 - Punctuality, inclusive language, prohibited behavior, etc.
- Relevance under Title IX

What is not relevant under Title IX?

- Evidence about a Complainant's sexual predisposition
- Evidence about a Complainant's prior sexual behavior, except when:
 - Questions & evidence are offered to prove someone other than Respondent committed the alleged conduct; or
 - Questions & evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent & are offered to prove consent.
- Medical and similar privileged records unless the party has provided written consent

Sample pre-hearing meeting agenda

5. State date & time for the live hearing

6. Ask for questions from Parties & Advisors

Hearings & Hearing Officers



What is expected of Hearing Officers?



- Hearing Officers are independent examiners of the facts
- Hearing Officers are not judges
 - Not a court of law; but the outcome of any hearing has legal consequences
- Cannot be the Title IX Coordinator or Investigator

What to do when chosen as a Hearing Officer?

- Take a deep breath & say a prayer!
- Read & understand the school's Sexual Harassment Policy
 - The Policy is the Hearing Officer's guide throughout the process
- Read the Investigative Report & supplemental documents
- Organize the Report to easily access information during the hearing
- Take note of important statements & evidence from Report
 - This can inform the Hearing Officer's direct examination questions

Crafting Direct Examination Questions



- Consider the Investigative Report
 - Are there any inconsistencies that need to be addressed or clarified?
 - What questions did the Investigator NOT ask the Parties or Witnesses that must be addressed?
- Use clear, specific language
 - Questions may need to address intimate or personal details
 - Use appropriate terminology
 - Do not be shy!
- Keep trauma in mind
 - Trauma impacts individuals differently

Hearing Day



* Be patient with scheduling

1. Opening Statement to the Parties
2. Direct examination of the Complainant
3. Complainant's Advisor conducts cross-examination
 - Pause for relevance determinations
4. Direct examination of the Respondent
5. Respondent's Advisor conducts cross-examination
 - Pause for relevance determinations

⚠ Actual order of direct and cross-examination may differ depending on the school's Sexual Harassment Policy.

Conclusion of the Hearing

6. Request recommended sanctions & remedies from the Parties & school

7. Prepare the final written determination within 10 days

Do not share the determination with anyone in advance

Lessons learned



- A pre-hearing meeting should occur several days before the hearing
- Incidental findings can be discussed at the pre-hearing meeting
- Pre-hearing meetings allow the Hearing Officer to rule on evidence that a Party may legitimately want to exclude from the hearing

Dos and Don'ts



- Do make sure the Hearing Officer is trained
- Do understand the school's Sexual Harassment Policy
- Do ask for the transcript of the hearing
 - Don't surprise the Title IX Office with a transcript request on the day of the hearing
- Do phrase direct examination questions with trauma in mind
- Do be aware of Advisor power imbalances
 - Interject for clarification, if needed
 - Thorough direct examination may help "level" imbalances

Dos and Don'ts



- **Don't** make the entire Investigative Report part of your record
- **Don't** be guided or influenced by conclusions from the Investigator
- **Do** establish Rules of Decorum for the hearing
- **Don't** forget that these are emotional and personal matters
- **Don't** be afraid to step in if the hearing goes "sideways"
- **Do** be patient
- **Do** remember that kindness matters

Thank you!

Questions?

Contact us:

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