



# **FORT HAYS STATE UNIVERSITY**

## **TITLE IX HEARING PROCEDURES**

### **I. Purpose and Nature of These Procedures**

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

### **II. The Hearing Officer and Hearing Panel Members**

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

The Hearing Panel reviews the investigation report and hearing files in advance of the hearing, may question parties and witnesses when invited to do so by the Hearing Officer, and deliberates with the Hearing Officer to determine responsibility for the allegations in the Formal Complaint at the conclusion of the hearing process.

### **III. Pre-Hearing Procedures**

#### **Hearing Notice and Written Response to Investigation Report**

After the Hearing Officer and Hearing Panel are selected, the Compliance Officer will send written notice to the parties notifying them of the deadline for the parties to submit any written response to the investigation report; a date for the pre-hearing conference; and a date and time for the hearing. Neither the pre-hearing conference, nor the hearing itself, may be held any earlier than fourteen (14) calendar days from the date of transmittal of the written notice specified in this section.

A party's written response to the investigation report must include:

1. To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
2. Any evidence that a party did not have a reasonable opportunity to provide during the Title IX investigation or that the party believes was improperly excluded by the Compliance Officer;

3. Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history, or for any other reason;
4. A list of any witnesses that the party contends should be called to attend the hearing pursuant to an attendance notice issued by the Compliance or Hearing Officer;
5. A list of any witnesses that the party intends to bring to the hearing without an attendance notice issued by the Compliance or Hearing Officer;
6. Any request that the parties be separated physically during the pre-hearing conference and/or hearing;
7. Any other accommodations that the party seeks with respect to the prehearing conference and/or hearing;
8. The name and contact information of the advisor who will accompany the party at the pre-hearing conference and hearing;
9. If the party does not have an advisor who will accompany the party at the hearing, a request that the University provide an advisor for purposes of assisting the party in preparing for the hearing and conducting questioning at the hearing.
10. Any objections or conflicts of interest with the Hearing Officer and/or Hearing Panel members.

A party's written response to the investigation report may also include:

1. Argument regarding whether any of the allegations set for by the Formal Complaint are supported by a preponderance of the evidence; and,
2. Argument regarding whether any of the allegations set forth by the Formal Complaint constitute Sexual Harassment.

### **Pre-Hearing Review of Investigation Report, Written Response, and Evidence**

Prior to commencement of the hearing, the Hearing Officer and Hearing Panel will review the investigation report and a copy of all evidence made available to the parties by the investigator as specified in the policy. This review of materials is provisional and intended to provide background and orientation to the Hearing Officer and Hearing Panel in planning and conducting the hearing. The Hearing Officer must exclude from consideration in deliberation any evidence developed during the investigation that is deemed inadmissible at the hearing, including specifically, but not limited to, the statements of any party or witness who refuses to submit to questioning by a party advisor, and whose testimony is excluded by the Hearing Officer at the hearing on that basis, as specified in the policy.

### **Pre-Hearing Conference**

Prior to the hearing, the Hearing Officer will conduct a pre-hearing conference with the parties, their advisors, the Compliance Officer, the Hearing Panel (as deemed necessary by the Hearing Officer), and FHSU General Counsel (as deemed necessary by FHSU or the

Hearing Officer). By default, the pre-hearing conference will be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology. However, upon request of either party, or in the Hearing Officer's discretion, the pre-hearing conference may take the form of separate, sequential meetings between the Hearing Officer and each party, whether conducted virtually or in-person.

During the pre-hearing conference, the Hearing Officer will discuss the hearing procedures with the parties; address matters raised in the parties' written responses to the investigation report, as the Hearing Officer deems appropriate; discuss whether any stipulations may be made to expedite the hearing; discuss the witnesses the parties have requested be served with notices of attendance and/or witnesses the parties plan to bring to the hearing without a notice of attendance; and resolve any other matters that the Hearing Officer determines, in the Hearing Officer's discretion, should be resolved before the hearing.

#### **IV. Convening the Hearing**

Immediately prior to convening the hearing, the Hearing Officer will ensure that an audio and/or video recording of the hearing is being made by the University and that the hearing room (virtual or physical) is cleared of all individuals who are not permitted to be present during the hearing. The hearing is closed to all persons except the parties, their advisors, the investigator(s), the Hearing Officer and Hearing Panel, the Compliance Officer, and any other necessary University personnel (to include FHSU General Counsel) as determined by the University or Hearing Officer. With the exception of the investigator and the parties, witnesses will be sequestered until such time as their testimony is provided. By default, and in the Hearing Officer's discretion, the hearing will be conducted virtually, by use of video and audio technology, where all parties participate simultaneously and contemporaneously by use of such technology. The Hearing Officer will then convene the hearing and clearly state for the record the date, time, and location of the hearing; the names of the Complainant and Respondent; the parties present at the hearing; any accommodations that have been provided at the request of a party or in the University's discretion; whether all or a portion of the hearing is being conducted virtually; and any other introductory matters that the Hearing Officer deems appropriate.

#### **V. Statement of the Investigator**

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

#### **VI. Statements of the Parties**

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

Panel, followed by questioning from the advisor for the Respondent.

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

## **VII. Testimony of Witnesses**

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

## **VIII. Investigation Materials**

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

## **IX. Closing Argument**

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

## **X. Deliberation**

After closing arguments are complete, the Hearing Officer will conclude the hearing, deliberate with the Hearing Panel, and render a determination as specified in the policy.

## **XI. Access to and Use of Investigation Evidence**

During the hearing, the parties and their advisors shall have access to the investigation report and a copy of all evidence made available to the parties by the investigator as specified in the policy. Such evidence may be utilized in the questioning of witnesses where relevant. Non-testimonial evidence utilized during the hearing shall be marked and referred to in such a

manner as to make it clearly identifiable by audio (i.e., such as sequential marking of “exhibits”).

## **XII. Rulings on Evidence**

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

## **XIII. Timing and Continuances**

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

## **XIV. Role of Advisors**

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

## **XV. Disruptions**

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

## **XVI. Questioning**

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

## **XVII. Discretion in Application**

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

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