

The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to deep navy blue. The shapes are primarily triangles and polygons, creating a dynamic, layered effect. The central text is positioned on a white background that is partially framed by these blue shapes.

Title IX Hearing Officer Training

April 2022

Overview

- ▶ Substantive changes current Policy Versus Previous Policies
- ▶ Steps Prior to the Hearing
- ▶ Role of the Hearing Officer
- ▶ Relevance
- ▶ Hearing Procedures
- ▶ Determination of Responsibility
- ▶ Sanctions
- ▶ Other related Laws/Regulations and Policies
- ▶ Case Review

2020 Changes

- ▶ Codified into CFR—Effective 14 August 2020
- ▶ Title IX integrated into UCM’s Sexual Misconduct Policy and Procedures
- ▶ Due process oriented
- ▶ Complainant and Respondent clarified
- ▶ Complainant must sign a “Formal Written Complaint”
- ▶ Equal “Rights and Options” for Both Parties
- ▶ Informal Resolution is an option except when the Respondent is a UCM employee
- ▶ Complete Transparency In Sharing information for each party
- ▶ Live Hearing as part of the grievance process

Steps taken prior to a Hearing

- ▶ Starts with a signed complaint
- ▶ May have an attempt at informal resolution—If not resolved, then investigation
- ▶ Investigator is appointed by Title IX Coordinator
- ▶ Investigator completes investigation and completes a preliminary report—Note that all information used in the investigation is shared with both parties and they have input prior to the report being finalized.
- ▶ Please note that the investigation does not make a determination on the allegations—merely fact finding
- ▶ The Title IX Coordinator will identify the Hearing Officer in advance
- ▶ Once investigation is complete, the final report is shared with both parties to review prior to the hearing and the Hearing Officer will also receive the report at that time to begin preparation for the pre hearing and live hearing
- ▶ Title IX Coordinator will schedule the hearing in accordance with established timelines

Steps taken prior to a Hearing Cont.

- ▶ The Hearing Officer will conduct a pre hearing meeting with the parties to explain ground rules and expectations as well as sort through questions the parties may have about the pending hearing. (See attached Hearing Guide)
 - ▶ This is probably the biggest investment towards having a smooth hearing
 - ▶ This may be done separately but must be documented and the same information is shared with both parties (equal access to information). A checklist of your topics will be helpful in maintaining consistency
 - ▶ This is an opportunity for the parties to become acquainted with you and how you will conduct the hearing. It is better and more comfortable to address questions and concerns here rather than the actual hearing.
 - ▶ Supportive Measures such as having a support person available outside the hearing room, should be discussed at this stage.

Relevance

- ▶ The Hearing Officer will have to make relevancy determinations throughout the hearing.
 - ▶ Evidence is relevant if:
 - ▶ It has any tendency to make a fact more or less probable than it would be without the evidence; and
 - ▶ The fact is of consequence in determining the action

Role of the Hearing Officer

- ▶ The hearing officer will facilitate a live hearing, which may be conducted in an electronic format in the hearing officer's sole discretion, and the hearing officer will ensure all parties follow the established hearing protocols. If held electronically, the parties will be located in separate rooms with technology enabling the parties to see and hear each other.
- ▶ The hearing officer will objectively evaluate all relevant evidence, inculpatory and exculpatory, and will avoid basing credibility determinations on a person's status as a complainant, respondent, or witness.
 - ▶ Inculpatory Evidence: Evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish guilt.
 - ▶ Exculpatory Evidence: Evidence favorable to the respondent that exonerates or tends to exonerate the respondent of guilt.
- ▶ Before, during, and after the hearing, the Hearing Officer may consult with the Title IX Coordinator, University administrators, the University's attorneys, or other parties as needed.

Hearing Procedures

- ▶ The hearing will be recorded by the University and should not be recorded by the parties or anyone else present.
 - ▶ The entire hearing is recorded and becomes the “record” of the hearing.
 - ▶ You will want verbalize what’s happening during the hearing and be able to explain each decision you make—best to do as you make each decision.
 - ▶ I’m going to allow/not your question regarding ex boyfriends because it is/is not relevant.
- ▶ The hearing officer will determine the order of speakers and will allow structured cross examination of every party and witness by the hearing officer and the parties’ advisors.
 - ▶ This is the Hearing Officer’s call on structure and order of witnesses and presentation and may be fluid depending of immediate circumstances. The investigation report is helpful in determining your game plan. You may consult with Title IX Coordinator or General Counsel
 - ▶ The Pre Hearing meeting will help shape order and structure

Hearing Procedures Cont.

- ▶ At the live hearing, each party's advisor is permitted to ask the other party and any witnesses all relevant questions posed by the party the advisor is assigned to, and follow-up questions, including those challenging credibility. All questions posed by an advisor must be raised by the party to which they are assigned but relayed by the advisor. Parties may request a pause in the proceedings for time to confer with their advisors, which may or may not be granted in the hearing officer's discretion.
 - ▶ The Hearing Officer controls the requests and tempo of the hearing.
 - ▶ Determining the relevancy of the questions is not always easy so feel free to exercise your right to ask for clarification or hit pause for a moment to evaluate the request. Remember to state on the record your determination and reason for relevancy
 - ▶ Bear in mind that the Advisor is not acting independently on behalf of the parties—The questions come from the party and then relayed by the advisor

Hearing Procedures Cont.

- ▶ Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
 - ▶ This is something that can be covered at the pre hearing
 - ▶ The aspect of cross examination is perhaps the most difficult aspect of the hearing for the parties. Every person has their own idea on what this is and it probably doesn't match the hearing format being used. Please go over this in detail in the pre hearing meeting and allow for some practice if possible

Hearing Procedures Cont.

- ▶ Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the hearing officer must first determine whether the question is relevant and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not relevant, inviting comments as to relevance if desired. For example, after a question is posed, the hearing officer may state either "that's a relevant question, please answer" or "I don't see the relevance to that question, Ms. Advisor why do you think that is relevant to today's hearing" and then make a decision. If the hearing officer deems a question irrelevant, it will not be answered.
 - ▶ Again, the prehearing is an excellent opportunity to work through this so each party not only knows how the process works, but the cadence in which it's done. The pause between hearing an actual question and answering or not answering after your response takes practice.

Hearing Procedures Cont.

- ▶ Advisors may not make any objections.
 - ▶ Again, the hearing Officer makes the relevancy determination. Please take the time to explain your determinations for the record.
 - ▶ If a party does not have an advisor present at the live hearing, the university will provide one for them, without fee or charge to that party.
 - ▶ An advisor will be chosen from a pre established list
 - ▶ We can ask the parties to affirm they will have an advisor or affirm their request to have one appointed (ahead of the hearing)
 - ▶ The pre hearing meeting is an opportunity to meet and speak with advisors

Hearing Procedures Cont.

- ▶ If a party does not have an advisor present at the live hearing, the university will provide one for them, without fee or charge to that party.
 - ▶ The issue of an advisor is normally sorted out ahead of the hearing. However, it may be necessary to appoint an advisor at the last minute.

Hearing Procedures Cont.

- ▶ Presence and Participation
 - ▶ Complainant, Respondent, or witnesses are not required to be present in order for the hearing to proceed.
 - ▶ Hearing Officer may still rely their statements contained in the investigation report in reaching a determination regarding responsibility.

Hearing Procedures Cont.

- ▶ The University will honor rape shield protections for complainants, deeming irrelevant questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.
 - ▶ Discuss Rape Shield Protections

Determination of Responsibility

- ▶ After the conclusion of the hearing, (generally within 10 days) the Hearing Officer will prepare and issue a written determination regarding responsibility including:
 - ▶ Identification of the allegations at issue;
 - ▶ The allegations are listed in the signed written complaint and the investigative report will also contain this information
 - ▶ Description of the procedural steps taken throughout the case;
 - ▶ The Title IX office will have an extensive list of steps taken from the start of the complaint up to the hearing and will have already provided this information ahead of the hearing

Determination of Responsibility

- ▶ Findings of fact supporting the determination
- ▶ Conclusions regarding application of the sexual misconduct policy;
 - ▶ The policy itself is a guide to whether the parties, Title IX staff, investigators, ect followed protocol and applied the appropriate procedures throughout the process

Determination of Responsibility

- ▶ A statement and rationale as to the determination for each allegation;
 - ▶ You have the file as well as the hearing video available to assist you
- ▶ If a policy violation is found, a statement of any sanctions imposed and whether any remedies will be provided to the complainant

Determination of Responsibility

- ▶ A description of the procedures and permissible grounds for appeal.
 - ▶ This is clearly listed in the Sexual Misconduct policy
- ▶ In complaints involving university employees & student employees, this may involve coordination with complainant's and/or respondent's supervisors or HR.
 - ▶ If you are recommending sanctions or remedial actions that impact their job
- ▶ The hearing officer will send the written determination simultaneously to the parties along with information about how to file an appeal.
- ▶ The written determination shall be final, subject only to the right of appeal under certain parameters set forth in policy.

Determination of Responsibility

- ▶ If a policy violation is found, the hearing officer will outline reasonable steps to correct the effects of such conduct on the complainant and others and to prevent the recurrence of sexual misconduct and retaliation. Sanctions, remediation and other appropriate actions are discussed more below.

Determination of Responsibility

- ▶ In complaints involving University employees, this may involve coordination with complainant and respondent supervisors and HR; this is not a violation of confidentiality.
- ▶ If no violation of this policy is found, it does not necessarily mean that the complainant's allegations were false or unfounded, or that no other policy was violated.
 - ▶ The hearing may reveal that other conduct policies for other forms of discrimination are at play. You can and should refer those issues to the appropriate department for review or action
 - ▶ Student Guide to Good Decision Making
 - ▶ Employment Policies and Procedures

Sanctions

- ▶ The University will carefully review each incident on an individual basis. The specifics of the incident, will determine the severity of the sanctions imposed. The University may impose various sanctions, ranging from verbal warning to expulsion or termination of employment, depending on the severity of the offense. Sanctions will be determined by the hearing officer after the hearing.
 - ▶ This can be difficult to navigate as there are many possibilities. Please utilize the Office of General Counsel and the Title IX Coordinator as well as the full spectrum of university polies to aid you determining available and appropriate sanction

Other Related Laws/Regulation/Policies

- ▶ Rape Shield Laws
- ▶ VAWA
- ▶ Title VII
- ▶ UCM Personal Conduct and Student Conduct

Questions

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