

Equal Opportunity Policies & Hearings

Training Materials for Participants

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Section Seven

SECTION SEVEN

This section overviews general information about equal opportunity hearings including tips to prepare for a hearing hosted in the online virtual environment. The information in this section may be helpful regardless of the type of hearing you will attend.

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Slide Contents:

This section overviews general information about equal opportunity hearings including tips to prepare for a hearing hosted in the online virtual environment. The information in this section may be helpful regardless of the type of hearing you will attend.

Narrator Notes:

(same as above)

Learn About the Process

This series will overview the types of concerns covered by EOS policies and the various forms of resolution that may be applicable during EOS review.

1	Introduction to Equal Opportunity Services
2	Definitions of Misconduct Under EOS Policies
3	Preliminary Evaluation and Filing a Complaint
4	After a Formal Complaint: The Investigation Process
5	Understanding the Title IX Officer Hearing Process
6	Understanding the University Panel Hearing Process
7	Hearing Decorum and Preparing for the Hearing



Slide Contents:

Learn About the Process (Content Roadmap)

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3. Preliminary Evaluation and Filing a Complaint
4. After a Formal Complaint: The Investigation Process
5. Understanding the Title IX Officer Hearing Process
6. Understanding the University Panel Hearing Process
7. Hearing Decorum and Preparing for the Hearing (you are here about to start this section)

Narrator Notes:

Make sure you have reviewed section two if you are preparing for a hearing. For a Title IX Hearing, review section five, and for other hearings, review section six.



Reminders about Advisors

Hearing Advisor

One participates for each party at **Title IX Hearings only.**

The Hearing Advisor may act on behalf of their party during the Title IX hearing (make opening comments, present evidence, ask witness questions and make closing comments) while respecting rules of decorum.

Personal Advisor

Each party may have one and they do not participate.

A Personal Advisor is a private support person for one party and may not question witnesses, the Equal Opportunity representative or the Hearing Officer during the hearing. If a Hearing Officer has a question for the Personal Advisor, they may answer the question.

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Slide Contents:

Hearing Advisor

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Narrator Notes:

Reminders about Advisors.

These notes apply only in a Title IX Hearing. Appendix B, section 1.1 of the Sexual Misconduct Policy explains that, "both parties' Hearing Advisors will have the opportunity to present relevant evidence and ask questions of the parties and witnesses."

However, a Personal Advisor does not have the same role and participation in a hearing as a Hearing Advisor. Personal Advisors are allowed in Title IX and other types of equal opportunity hearings.

According to the Sexual Misconduct Policy, section 3.14, a Personal Advisor is chosen by a party to be "present during any meeting related to the investigation of Sexual Misconduct. This advisor may be an attorney, provided at the party's expense, with no cost to the University. Personal Advisors may not speak on behalf of the individual they are advising or be a witness at any hearing that they attend in the capacity of Personal Advisor or Hearing Advisor. A Personal Advisor may ask to briefly suspend any meetings, interviews, or hearings to provide private consultation related to the meeting or proceeding in process. An individual serving as a Personal Advisor may serve as a Hearing Advisor under Title IX Grievance Procedures."

And keep in mind, only Personal Advisors are permitted in the process for Anti-Discrimination cases.

Guidance about Advisors

Selecting an Advisor

When the party selects their own advisor, the advisor can be anyone (friend, family, mentor, attorney, etc.), and the University does not pay any cost.

It is not recommended to choose an advisor who is also a witness on the case. That person may have a conflict of interest, or it could be argued that their witness testimony is affected by the information they received in the advisor role. Such could detract from or delay the party's case.

What if I have no advisor?

The UH System will assign a Title IX Hearing Advisor (not a Personal Advisor), who is not required to be an attorney.

Confirming an Advisor

Students will need to give a **FERPA Release form** to EOS naming their advisor for the advisor to participate in EOS meetings and hearings.



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Selecting an Advisor

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What if I have no advisor?

- The UH System will assign a Title IX Hearing Advisor (not a Personal Advisor), who is not required to be an attorney.

Confirming an Advisor

- Students will need to give a FERPA Release form to EOS naming their advisor for the advisor to participate in EOS meetings and hearings.

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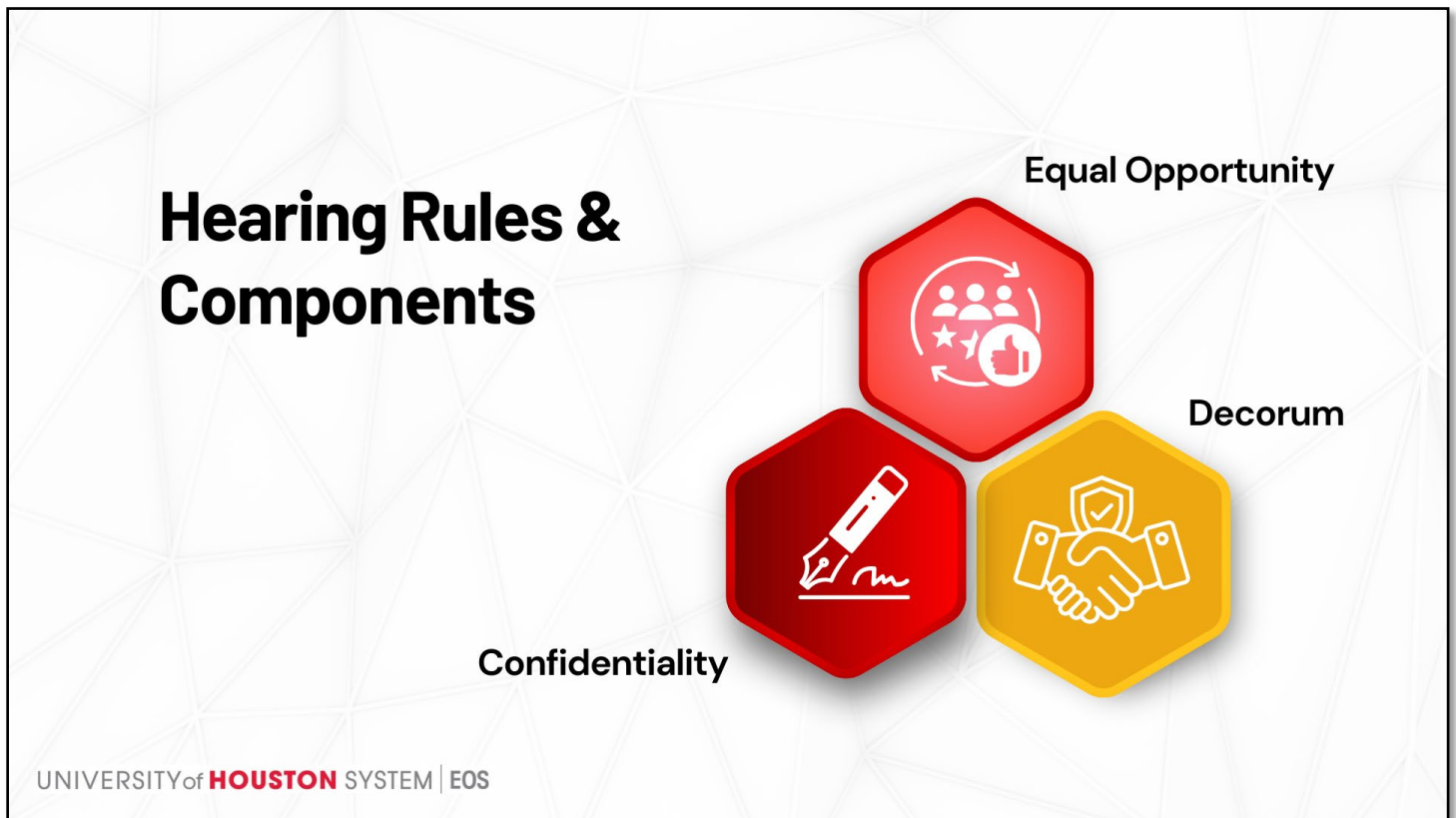
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The UH System will assign a Title IX Hearing Advisor (not a Personal Advisor), who is not required to be an attorney , if the party does not have a Hearing Advisor.

As the Sexual Misconduct Policy explains in section 11.2, "If a party is a student, the student will need to sign a FERPA Release form for the Personal or Hearing Advisor to be present at any meeting or proceeding. The FERPA Release allows staff to speak freely about the student's case when the Personal or Hearing Advisor is present. The student may revoke the FERPA release in writing if they choose to no longer have the individual serve as their Personal or Hearing Advisor or have access to the matter."



Now let's discuss hearing decorum and preparing for the hearing as guidance for participants.



Slide Contents:

Decorum

Equal Opportunity

Confidentiality

Narrator Notes:

This information on Hearing Rules & Components will focus on three areas:

- Decorum
- Equal Opportunity
- Confidentiality

Hearing Rules & Components (Part One)



Decorum

Decorum rules **apply to everyone** and allow for a respectful and professional setting to share sometimes difficult information. Decorum gives the parties the ability to participate without attempting to intimidate another participant or abuse the process.

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Narrator Notes:

Hearing Rules & Components (Part One-Decorum):

Decorum rules apply to everyone and allow for a respectful and professional setting to share sometimes difficult information. Decorum gives the parties the ability to participate without attempting to intimidate another participant or abuse the process.

See for example, Sexual Misconduct Policy, Appendix B, section 3.1.4, stating, "Parties must adhere to the rules of decorum." Section 3.1.3 outlines that a Hearing Officer may remove a Hearing Advisor from a hearing for disruptions.

What are the rules of decorum?

- Do not address the opposing party during the hearing.
- Refrain from making disparaging remarks or displays of hostility toward anyone;
- Refrain from making gestures, facial expressions, audible comments, etc., directly at witnesses or parties giving testimony in order to show approval or disapproval at any time;
- Refrain from interrupting or talking over one another;
- Do not disrupt the orderly operation of the hearing;

Note: No one should make comments once the decision-maker issues a determination about relevance, admissibility, or another matter except to note an objection for the record in an orderly manner.

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Narrator Notes:

What are the rules of decorum?

For example, according to the Sexual Misconduct Policy, Appendix B, section 3.2, "During the hearing, all participants are expected to adhere to the following rules of behavior and decorum. All participants should refrain from making disparaging personal remarks or displays of hostility toward opposing parties or advisors. All participants should refrain from making gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses or a party, or at any other time. All participants should refrain from interrupting or talking over one another. All participants shall not engage in conduct that disrupts the orderly operation of the hearing. Hearing Advisors and the parties shall refrain from making any comments after the Hearing Officer has issued any determination about relevance, admissibility, or other matter."

Hearing Rules & Components (Part Two)



Equal Opportunity

The hearing itself should represent equal opportunity where both parties have the same advance information such as the hearing date and type of hearing. For instance, one party should not have a private audience with the decision-maker while the other party does not.

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Slide Contents:

Equal Opportunity

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Narrator Notes:

(same as above)

Avoid Prejudgment

Investigators and decisionmakers should not have exhibit prejudice or operate with a bias against complainants in general, respondents in general, a specific party in the case or based on a person's protected class.

Examples of prohibited prejudices based on potential bias:

- Deciding an outcome before reviewing all information (including completion of any applicable Title IX hearing process).
- Presuming that all Complainants must be believed.
- Presuming that all Respondents must have done something wrong.

Evidence that bias or prejudice affected the outcome of a case may be used to overturn the conclusions on appeal.

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Examples of prohibited prejudices based on potential bias (which may include but are not limited to):

Deciding an outcome before reviewing all information (including completion of any applicable Title IX hearing process).

Presuming that all Complainant must be believed.

Presuming that all Respondents must have done something wrong.

Evidence that bias or prejudice affected the outcome of a case may be used to overturn the conclusions on appeal.

Conflicts of Interest

Examples of possible conflicts of interest include but are not limited to:

- Current or former relationship with a party, witness, or decisionmaker. Relationships may be personal, familial, professional, financial, mentoring, business dealings or another type that could interfere with ability to review the matter impartially.
- Having a previous agreement to advise or represent an opposing party.

If an investigator, advisor or decisionmaker has a potential conflict of interest, they can discuss with the Title IX Coordinator and request to recuse themselves from that part of the case.

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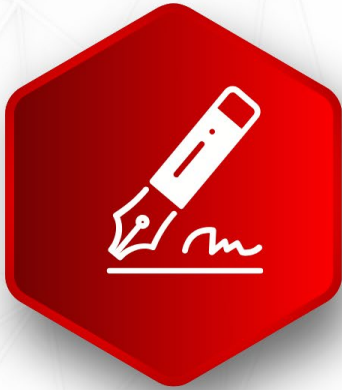
Conflicts of Interests can affect the ability of the investigator, advisor or decisionmaker to perform their function (or create that perception). Examples of possible conflicts of interest include but are not limited to:

Current or former relationship with a party, witness, or decisionmaker. Relationships may be personal, familial, professional, financial, mentoring, business dealings or another type that could interfere with ability to review the matter impartially.

Having a previous agreement to advise or represent an opposing party.

If an investigator, advisor or decisionmaker has a potential conflict of interest, they can discuss with the Title IX Coordinator and request to recuse themselves from that part of the case.

Hearing Rules & Components (Part Three)



Confidentiality

Personal and Hearing Advisors are subject to the same confidentiality expectations as everyone else in attendance, and students will need to sign an [FERPA Release form](#) for their advisor in order for the advisor to be present at an EOS hearing.

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Confidentiality:

Personal and Hearing Advisors are subject to the same confidentiality expectations as everyone else in attendance, and students will need to sign a [FERPA Release form](#) for their advisor in order for the advisor to be present at an EOS hearing.

Narrator Notes:

Hearing Rules & Components (Part Three-Confidentiality):

Under section 7 of the Anti-Discrimination Policy, "The confidentiality of a report or Formal Complaint under this Policy and all documents relating to the investigation will be maintained on a business need-to-know basis to the extent permitted by law."

Under the Sexual Misconduct Policy, section 11.1, "The University will keep confidential the identity of any individual who has made a report or Formal Complaint of Sexual Misconduct, any Complainant, any Respondent, and any witnesses, except as may be necessary to conduct an investigation, hearing, or judicial proceeding, or except as permitted by FERPA." Also note that per Appendix C, "A Personal Advisor is subject to the same confidentiality expectations applicable to others in attendance."

Privacy with an Advisor

Consider how to privately confer between a party and an advisor during a live hearing.

In a room together, you may quietly whisper or point at notes on a document.

In a virtual meeting, microphones or cameras could pick up talking and gestures between advisors and parties. Consider options such as:

- Planning to be at the same location, muting single microphone, and turning off video.
- If at the same location, test using same audio to avoid echoes/feedback.
- If not in the same location, plan how to speak with one another. For instance, calling through a separate device, mute and turning off cameras.

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Slide Contents:

Now let's consider how to privately confer between a party and an advisor during a live hearing.

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In a virtual meeting, microphones or cameras could pick up talking and gestures between advisors and parties. Consider options such as:

- Planning to be at the same location, so the advisor and party can mute their microphone, and and turn off their without leaving the meeting.
- If you are at the same location, test using a single speaker play the audio from the meeting to avoid echoes/feedback.
- If not in the same location, plan how to speak with one another. For instance, calling on another device, muting microphones and turning off cameras.

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Now let's consider how to privately confer between a party and an advisor during a live hearing.

In a room together, you may quietly whisper or point at notes on a document.

In a virtual meeting, microphones or cameras could pick up talking and gestures between advisors and parties. Consider options such as:

- Planning to be at the same location, so the advisor and party can mute their microphone, and turn off their camera output without leaving the meeting.

- If using the same location, the party and advisor may test their equipment using a single microphone and speaker to play the audio from the meeting to avoid echoes or feedback.
- If not in the same location, plan how to speak with one another. For instance, calling through a separate device, muting microphones and turning off cameras.

Recording in Progress

Remember, the hearing will be recorded!

A recording of the hearing will be kept for the use of the decision-maker and for any additional appeal.

Be mindful of side commentary you may make to your advisor and be sure to mute your microphone to keep your comments private.

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Narrator Notes:

Warning: Recording in Progress.

According to the Anti-Discrimination Policy, Appendix B, Section 9(G), "An audio recording of the hearing will be kept for the use of the Panel and for any appeal."

For a Title IX hearing, the Sexual Misconduct Policy states in Appendix B, section 3.3.5, "An audio and/or video recording of the hearing will be kept for the use of the Hearing Officer and for any appeal. The parties and their Hearing Advisors may request to review the recording."

Be mindful of side commentary you may make to your advisor and be sure to mute your microphone to keep your comments private.

Will everyone be in the same room?

It depends. Hearing may be virtual, allowing each party to select a place that is private and comfortable.

For an in-person hearings, either party may request to be in a separate room and to use technology so that the decision-maker and parties may participate simultaneously.

Whether a hearing is in-person or virtual, plan to be present and ready to join early, allowing you grace time in case you experience any delays.

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Whether a hearing is in-person or virtual, plan to be present and ready to join early, allowing you grace time in case you experience any delays.

Narrator Notes:

(same as above)

Will there be breaks?

Yes, the leader of the hearing (the decision-maker who is either the Hearing Officer or the Panel Chair) can call for breaks as needed.

If a party is experiencing discomfort, they can turn off their virtual camera and listen by audio only. **A party or their advisor may also request a break.**

The parties are not required to participate in a hearing, so if a party decides they no longer wish to participate, the hearing may continue in their absence.

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If a party is experiencing discomfort, they can turn off their virtual camera and listen by audio only. A party or their advisor may also request a break.

For instance, in the Anti-Discrimination Policy, Appendix B section 8(A)(4), the policy states that, "A non-appealing party does not have to participate."

If a party decides they no longer wish to participate, the hearing may continue in their absence.

What if I am late or leave early?

A hearing will not be delayed due to non-attendance of a party unless their advisor can provide good cause for the delay.

The decision-maker may request supporting documentation from the advisor for a request to delay.

If a virtual hearing suddenly loses contact with a party, the hearing may be briefly paused to allow them to rejoin. EOS staff may also attempt to reach the party by phone. If the party cannot be reached, the hearing may continue with a presumption that the party ceased participation.

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Narrator Notes:

(same as above)

How to prepare for a Virtual Hearing?

- Download and test the hearing platform in advance. You can request a brief test session with EOS staff.
- Test the features you would like to use on the platform, such as turning your camera and microphone on and off.
- Make sure any witness you plan to invite also has tested the platform.
- Test the same equipment you plan to use, in the setting you want to use.
- Make sure the location is private, with good internet connection.
- Make sure your equipment can clearly give/receive live audio/video.
- Practice sharing the items you want to show in the hearing.
- You will have a phone number to dial in as a backup.

Contact EOS staff if you need other accommodations.

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Contact EOS staff if you need other accommodations.

Narrator Notes:

(same as above)

Virtual Hearing Notes

- Participants may start joining the meeting a few minutes early.
- There may be a waiting room or lobby until the organizers are ready to start the meeting.
- Witnesses will not be permitted to join the hearing until the decision-maker indicates that it is their turn for testimony.
- All participants must be identified.
- Participants should mute their microphones when they are not speaking (to avoid background noise).

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- Participants should mute their microphones when they are not speaking (to avoid background noise).

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(same as above)

What about disruptions?

If a participant is disruptive, the decision-maker may pause to warn them not to disrupt the hearing.

- If a participant continues to fail to follow instructions, the organizers may temporarily remove their privileges, such as muting their microphone or suspending their screen-sharing.
- The decision-maker has discretion to announce when they will be unmuted at another point, or remove them from the hearing if they are repeatedly interfering with the order of the hearing or engaging in possible policy violations.

For other events (wifi outages, etc.), the hearing organizers will attempt to resume the hearing. If the hearing cannot resume, the hearing can be paused and rescheduled at a later date.

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The decision-maker has discretion to announce when they will be unmuted at another point, or remove them from the hearing if they are repeatedly interfering with the order of the hearing or engaging in possible policy violations.

According to the Sexual Misconduct Policy, the Hearing Officer may even remove a Hearing Advisor from a hearing if appropriate. Appendix B, Section 3.1.3 states, "The Hearing Officer has the authority to dismiss a Hearing Advisor who, in

the Hearing Officer's judgment, is badgering or harassing a witness or party. Should the Hearing Officer dismiss a party's Hearing Advisor, the hearing shall be suspended until that party is assigned or obtains a new Hearing Advisor.

For other events (wifi outages, etc.), the hearing organizers will attempt to resume the hearing. If the hearing cannot resume, the hearing can be paused and rescheduled at a later date.

What if I have a last-minute question?

EOS staff will be available in the thirty minutes before the hearing to try to answer last-minute questions.

- This conversation is not considered part of the hearing, but rather an opportunity to check in, verify technology is working and ask any last minute questions.

An advisor may also be able to help in final preparations for the hearing.

The decision-maker may also ask if there are any process questions before the parties begin to present their evidence.

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The decision-maker may also ask if there are any process questions before the parties begin to present their evidence.

Narrator Notes:

(same as above)

What are the parts of a hearing?

Introductions

- Introductions of decision-maker(s) and each participant.
- Virtual participants may be asked to show their room to the camera to verify privacy.
- General summary of the process from the decision-maker.
- Any questions before the presentation of the evidence.

Presentation of Information

- Opening statements from each party.
- Witnesses from each party (and questions by other party and decision-maker).
- Testimony and documentation from EOS representative (and questions from parties and decision-maker).
- Brief closing statements from each party.

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- Brief closing statements from each party.

Narrator Notes:

What are the parts of a hearing?

The Hearing Officer or Chair may seek to have each person introduce themselves or show their background to ensure confidentiality of the hearing, and that no unauthorized persons are present.

At this point, the recording of the hearing may begin (the Officer or Chair may ask for another round of short introductions to identify each person in the recording). They also may explain the process for the hearing and what order of events will take place. They may ask if the participants have any questions before the opening statements begin.

See, for example, section 3.3.3 of Appendix B of the Sexual Misconduct Policy for an outline of steps during the hearing where, "The Hearing Officer will convene the hearing, introduce the individuals present, give a brief description of the process, invite questions about the process, and allow the parties the opportunity to present a brief opening statement. The Complainant or the Hearing Advisor [in a Title IX Hearing] for Complainant shall present evidence (including calling and questioning their own witnesses) to the Hearing Officer. The Hearing Advisor for the Respondent shall have the opportunity to conduct cross-examination after the Hearing Advisor for the Complainant [in a Title IX Hearing] or the Complainant has completed questioning each of their own witnesses.

After all the Complainant's witnesses have been examined by both sides, the Respondent or the Hearing Advisor for the Respondent shall have the same opportunity to present their evidence and their own witnesses. The Hearing Advisor for the Complainant [in a Title IX Hearing] shall have the opportunity to conduct cross-examination after the Hearing Advisor for the Respondent [in a Title IX Hearing] or the Respondent has completed questioning each of their own witnesses.

After both parties have presented their witnesses, the Title IX [or Equal Opportunity representative in a non-Title IX hearing] representative may provide testimony and documentation regarding their investigation . . . [The] representative may be questioned by the Hearing Advisors or Hearing Officer, or through written questions by the parties in non-Title IX cases. The Hearing Officer will allow the parties the opportunity to present a brief closing statement before concluding the hearing."

In a non-Title IX hearing, the Panel Chair would conduct the steps listed. Instead of presenting cross-examination questions through a Hearing Advisor, the parties would present them in writing to the Chair for consideration.

How much time is provided for a statement or witness?

How much time is provided for a statement or witness?

The decision-maker may impose reasonable time limits on any stage of the hearing.

Timing may vary depending on number of allegations to discuss, number of witnesses to hear from, or other time constraints.

The decision-maker can note if a party's questions are duplicative, and require that they move on to other questions.

A party may want to practice or script their comments, and prioritize according to time constraints. For instance, if they practice with a 15-minute opening statement, they may want to identify and list first the most important points in case they present slower due to any nerves during the hearing.

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Slide Contents:

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Narrator Notes:

How much time is provided for a statement or witness?

According to the Anti-Discrimination Policy, Appendix B, section 9(B), "During the hearing, the Panel Chairperson may impose . . . reasonable time limits on any stage of the hearing."

Timing may vary depending on number of allegations to discuss, number of witnesses to hear from, or other time constraints.

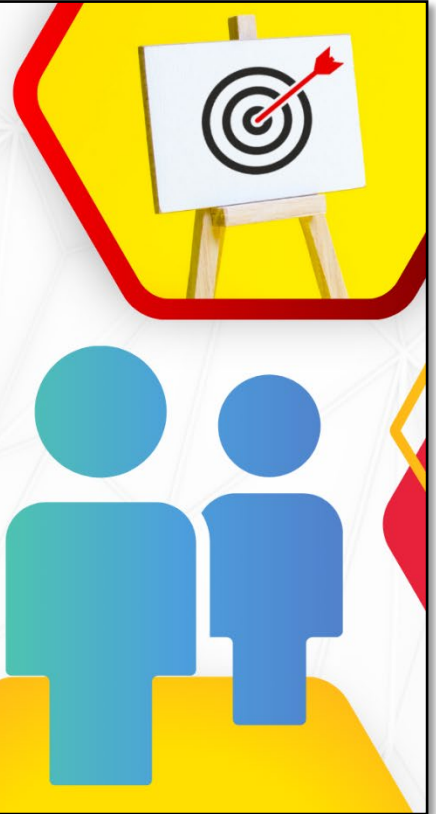
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Planning to Present Evidence

- 1** EOS will share information with the parties about the materials that will be available to the hearing, (includes exhibits listed in the "Evidence Collected" part of the investigation report).
- 2** Each party is responsible for notification and attendance of their own witnesses. The parties must provide the witness name and summary of expected testimony to EOS at least five business days before the hearing.
- 3** Any **additional materials** the parties plan to present at the hearing need to be provided to EOS at least five business days before the hearing (to allow other participants the chance to review before the hearing).

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Slide Contents:

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Narrator Notes:

(same as above)

What might be included in additional materials?

What might be included in additional materials?

Any materials not already listed in the investigation report, such as:

- Documents
- Emails
- Video or audio recordings
- Copies of text message or social media messages
- Public records or other publications, and more.

If a party is not sure if evidence is already in the record, they can check with their EOS contact person.

A party may also bring notes or blank paper with you to take notes. Additionally, parties may bring an electronic device, such as a laptop, to use when referring to notes and/or taking notes during the hearing.

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Narrator Notes:

What might be included in additional materials?

According to the Anti-Discrimination Policy, Appendix B, section 8(D), materials required five business days before a hearing include, "All documents and other tangible evidence that will be used as evidence during the hearing;

The names of any witnesses and a brief summary concerning the subject matter of the witness' expected testimony; and/or

The name of any advisor to be in attendance at the hearing and whether that person is an attorney."

For instance, records could include audio or video recordings, emails, letters, copies of social media messages or text transcripts, public records or other publications, and more.

If a party is not sure whether a record is already in the hearing folder, they can check with their EOS contact person.

If a party is not sure if evidence is already in the record, they can check with their EOS contact person.

A party may also bring notes or blank paper with you to take notes. Additionally, parties may bring an electronic device, such as a laptop, to use when referring to notes and/or taking notes during the hearing.

What may the decision-maker consider as evidence?

What may the decision-maker consider as evidence?

Information that is **relevant** or **admissible** may be presented at the hearing.

The decisionmaker may make determinations of relevance and/or admissibility at the hearing.

The Hearing may consider evidence that contain the statements of a party or witness who has not submitted to cross-examination (such as police reports, SANE reports, medical reports, and other documents and records).

If a Complainant refuses to answer cross-examination questions, but video or other evidence exists showing the underlying incident, the decision-maker may still consider the available evidence and make a determination.

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If a Complainant refuses to answer cross-examination questions, but video or other evidence exists showing the underlying incident, the decision-maker may still consider the available evidence and make a determination.

Narrator Notes:

What may the decision-maker consider as evidence?

According to Appendix B of the Sexual Misconduct Policy, section 3.4.1, "In addition to other relevant evidence, the following evidence is also considered admissible:

Evidence containing statements of a party or witness who does not submit to cross-examination at the hearing. The Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness' absence from the hearing or refusal to answer cross-examination or other questions.

Similarly, police reports, SANE reports, medical reports, and other documents and records may be considered by the Hearing Officer even if they contain the statements of a party or witness who has not submitted to cross-examination.

Where a Complainant refuses to answer cross-examination questions, but video or other evidence exists showing the underlying incident, the Hearing Officer may still consider the available evidence and make a determination."

For non-Title IX hearings, Appendix C, section 8.4 states, "8.4 The [decision-maker] may also determine the relevance of, and place restrictions on, any witness or information presented."

Similarly, the Anti-Discrimination Policy Appendix B, section 9(F) states that, "The Panel Chairperson may determine which questions are relevant, and the Panel Chairperson has the discretion to revise a question or to decline to ask the question."

What does “relevant” mean?

What does “relevant” mean?

Relevance in the context of an investigation means related to the allegations of discrimination under investigation.

Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred (or did not occur).

Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

Sometimes relevant information is described as information that makes an allegation more or less likely to be true.

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Slide Contents:

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Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

Sometimes relevant information is described as information that makes an allegation more or less likely to be true.

Narrator Notes:

(same as above)

What is not admissible?

What is not admissible?

For certain cases, parties may seek to use sensitive information. Review the policy for the relevant grievance process, which may restrict use of:

- Information protected by a legally-recognized privilege.
- Any party's medical, psychological, and similar records unless the party has given voluntary written consent or presents the records themselves.

Sexual history: Cannot be used in Title IX Hearing to prove character or reputation of a Complainant (may only be allowed to prove that someone other than the Respondent committed the alleged conduct or to prove consent).

Inferences: The decisionmaker cannot draw an inference about the determination of responsibility for a policy violation based solely on a party's or witness' absence from the hearing or refusal to answer cross-examination or other questions.

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Slide Contents:

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Sexual history: Cannot be used in Title IX Hearing to prove character or reputation of a Complainant (may only be allowed to prove that someone other than the Respondent committed the alleged conduct or to prove consent).

Inferences: The decisionmaker cannot draw an inference about the determination of responsibility for a policy violation based solely on a party's or witness' absence from the hearing or refusal to answer cross-examination or other questions.

Narrator Notes:

What is not admissible?

For a Title IX hearing, Appendix B, section 3.4.2 of the Sexual Misconduct Policy states, "Evidence that is not relevant or admissible [includes]:

Information protected by a legally recognized privilege.

Evidence about a Complainant's prior sexual history cannot be used to prove character or reputation and may only be allowed to prove that someone other than the Respondent committed the alleged conduct or if offered to prove consent.

Any party's medical, psychological, and similar records unless the party has given voluntary written consent or presents the records themselves."

Also, remember that the decision-maker cannot draw an inference about the determination of responsibility for a policy violation based solely on a party's or witness' absence from the hearing or refusal to answer cross-examination or other questions.

What if a party misses a deadline?

What if a party misses a deadline?

If a party did not submit documents, witness names or other evidence by the deadline, the decision-maker for the hearing may determine that such evidence is not admissible for purposes of the hearing.

If the information will not change the outcome of the decision (such as for duplicative or non-relevant evidence), the decision-maker may elect to include it in their review, but note that it did not affect the outcome as part of their written determination.

Regardless, the decision-maker should still keep a copy for the record of the hearing (so it is clear what evidence was ruled in or out of the hearing).

Another option? If the evidence appears relevant, the decision-maker could postpone the hearing to give the other party a chance to review.

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Regardless, the decision-maker should still keep a copy for the record of the hearing (so it is clear what evidence was ruled in or out of the hearing).

Another option? If the evidence appears relevant, the decision-maker could postpone the hearing to give the other party a chance to review.

Narrator Notes:

What if a party misses a deadline?

The Anti-Discrimination Policy, Appendix B, Section 8(D) states that, "No advisor, witness, document, or tangible evidence will be permitted at the hearing unless such information was timely submitted. No new information [as described in the Policy] will be presented to the hearing panel before or during the hearing."

If a party did not submit documents, witness names or other evidence by the deadline, the decision-maker for the hearing may determine that such evidence is not admissible for purposes of the hearing.

If the information will not change the outcome of the decision (such as for duplicative or non-relevant evidence), the decision-maker may elect to include it in their review, but note that it did not affect the outcome as part of their written determination.

Regardless, the decision-maker should still keep a copy for the record of the hearing (so it is clear what evidence was ruled in or out of the hearing).

Is there another option? If the evidence appears relevant, the decision-maker could postpone the hearing to give the other party a chance to review.

Witnesses at a Hearing

- It is the **party's responsibility** to ensure that any witnesses that they want to present testimony at the hearing are in attendance. The University cannot compel a witness to attend.
- If their witnesses does not attend, the Hearing Officer or Panel will make a decision based on the preponderance standard and relevant evidence and testimony available at the hearing, which may include any evidence containing previous statements of the witness.
- Witnesses should be on **standby** (ready to receive a call to enter the hearing) throughout the scheduled hearing time. Witnesses may not be allowed to observe other parts of the hearing when they are not testifying.



Slide Contents:

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Narrator Notes:

Witnesses at a Hearing:

As stated in Appendix B, section 2.6, "It is the responsibility of the party wanting to present a witness to secure that witness." There is the same provision in Appendix C, section 7.8, and the Anti-Discrimination Policy, Appendix B, section 8(D).

As stated and according to the Sexual Misconduct Policy, Appendix B, section 3.1.5(D), "Witnesses may be present in a hearing only during their testimony."

The decision-makers use the preponderance of the evidence standard. So what happens if a witness does not appear at the hearing?

According to Sexual Misconduct Policy Appendix B, section 3.4.1, "documents and records may be considered by the Hearing Officer even if they contain the statements of a party or witness who has not submitted to cross-examination."

As shared previously, the same provisions apply to non-Title IX hearings.

To help prepare witnesses for participation, parties may share that witnesses should be on standby (ready to receive a call to enter the hearing) throughout the scheduled hearing time. Witnesses may not be allowed to observe other parts of the hearing when they are not testifying.

Preparing Questions for Witnesses

- Parties may discuss with their advisor what questions may be allowed or not under the Policy (or if other questions need to be developed to demonstrate relevance or admissibility).
- **Open ended questions** invite a detailed response without leading the witness in their answer. For example:
 - What happened next?
 - Who was present?
 - What did you personally observe about the parties?

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Slide Contents:

Parties may discuss with their advisor what questions may be allowed or not under the Policy (or if other questions need to be developed to demonstrate relevance or admissibility).

Open ended questions invite a detailed response without leading the witness in their answer. For example:

- What happened next?
- Who was present?
- What did you personally observe about the parties?

Narrator Notes:

(same as above)

Closed-Ended Questions

- **Closed-ended questions** limit the range of answers to witnesses and may result in confusion if the witness' answer does not fit the framework of the question. For example, questions that prompt a yes or no answer are closed-ended questions.
 - Question: Did you run the red light?
 - Witness answer: No? I don't know.
- Even if prompted to give only a yes or no answer, a witness can state they do not remember (if that is true) or that they do not know (if that is true).
- Consider if another question format may yield more details:
 - Question: What color was the light in the intersection?
 - Witness answer: It was yellow when I entered the intersection.
 - Question: Did it turn another color?
 - Witness answer: I don't know.

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- Question: What color was the light in the intersection?
- Witness answer: It was yellow when I entered the intersection.
- Question: Did it turn another color?
- Witness answer: I don't know.

Narrator Notes:

(same as above)

Multiple Choice Questions

- **Multiple choice questions** are also not open-ended questions and may limit the information the witness may otherwise provide without **leading answers**. For example, consider these multiple choice questions:
 - **First Question:** Before you arrived at the light, were you playing with your phone, texting or calling someone?
 - Witness answer: No.
 - **Second question:** After the collision, did you stay in your car, check on the person in the crosswalk or leave the scene?
 - Witness answer: I stayed in my car.
- Consider if another question format may yield more details:
 - What were you doing immediately before arriving at the light?
 - What did you do after the collision?

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Slide Contents:

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- Witness answer: I stayed in my car.

Consider if another question format may yield more details:

- What were you doing immediately before arriving at the light?
- What did you do after the collision?

Narrator Notes:

(same as above)

How to Clarify Questions

- **Multipart questions** may be confusing to witnesses. The witness may seek to clarify the question, or the decisionmaker could seek to clarify the answer to the multipart question. For example:
 - Did you run the red light, did you not see the person in the crosswalk and how fast were you driving?
 - Witness Answer: No.
- **The witness could clarify:** "Could you please ask one question at a time? I did not run a red light. What were the other questions?"
- **The decisionmaker could clarify:** "You replied 'no.' Let's all please try to take questions one at a time. Did you mean no, you did not run the red light, or something else? . . . And then for the next questions, did you see the person in the crosswalk?"

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The witness could clarify: "Could you please ask one question at a time. I did not run a red light. What were the other questions?"

The decisionmaker could clarify: "You replied 'no.' Let's all please try to take questions one at a time. Did you mean no, you did not run the red light, or something else? . . . And then for the next questions, did you see the person in the crosswalk?"

Narrator Notes:

(same as above)

Can the appealing party withdraw their appeal?

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Yes, but EOS staff may try to understand the reason for the withdrawal, for instance, to see if potential retaliation is affecting the decision.

However, if the withdrawal is processed, the matter is final.

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Slide Contents:

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However, if the withdrawal is processed, the matter is final.

Narrator Notes:

Can the appealing party withdraw their appeal?

When a party requests to withdraw their appeal, Equal Opportunity staff may check in to see if there is any concern for possible retaliation.

According to the Anti-Discrimination Policy, Appendix B section 8(A)(5), "The appellant may seek to withdraw an appeal by submitting a request in writing to the Equal Opportunity Coordinator prior to the scheduled start of the hearing. A withdrawn appeal or the expiration of the appeal period, whichever is longer, will conclude the matter and the finding(s) will be final." For a similar provision in the Sexual Misconduct Policy, see Appendix C, section 3.6.

Concluding notes: Remedies and Supports

The outcome of a formal process may be Remedies, with or without a Finding of responsibility for violation of University policy.

In addition to formal Remedies, Supportive Measures may take place before or during the investigation process. Remedies may be offered to Complainants even if they declined previous Supportive Measures.



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Slide Contents:

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Narrator Notes:

(same as above)

Concluding notes: Supportive Measures

Advisors can help parties consider options from EOS staff, and officers or appropriate officials may help to implement Remedies or Supportive Measures such as:

- Mental health counseling services
- Extensions of academic deadlines or other adjustments;
- Modifications of work or class schedules;
- Campus escort and transportation services;
- Mutual restrictions on contact;
- Changes in work or housing locations;
- Leaves of absence; or
- Increased security and monitoring of certain areas of the campus.

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- Increased security and monitoring of certain areas of the campus.

Narrator Notes:

Concluding notes: Supportive Measures:

According to section 9.1.5 of the Sexual Misconduct Policy:

Supportive Measures may include, but are not limited to:

- Counseling for a Complainant or Respondent through a University-affiliated counseling center while the processes outlined in this Policy are ongoing;
- Extensions of deadlines or other course-related adjustments;
- Modifications of work or class schedules;

- Campus escort and transportation services;
- Mutual restrictions on contact between the parties;
- Changes in work or housing locations;
- Leaves of absence; or
- Increased security and monitoring of certain areas of the campus.

Similarly, under the Anti-Discrimination Policy, section 8, "When the Equal Opportunity office receives a report regarding an alleged violation of this Policy, it will take reasonable measures to . . . implement any appropriate Supportive Measures."

Concluding notes: Remedies

Advisors can help parties consider options from EOS staff, and officers or appropriate officials may help to implement Remedies such as:

- Options to facilitate separate locations of parties,
- Facilitating housing changes,
- Campus counseling and academic supports,
- Restoring Complainant's standing from adverse effects,
- Climate checks and proactive measures and/or group training,

Remedies are separate and additional to Supportive Measures. The Complainant may still access appropriate Remedies even if they previously declined Supportive Measures.

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Narrator Notes:

Concluding notes: Remedies:

According to the Sexual Misconduct Policy, Appendix B, section 3.5.5:

Remedies may include, but are not limited to:

- Ensuring the parties do not share classes, working environments, or extracurricular activities.
- Making modifications to the on-campus living arrangements of a party (if they request to be moved).
- Providing comprehensive services including medical, counseling, and academic support services such as tutoring.
- Determining whether the Sexual Misconduct adversely affected the Complainant's University standing and providing a remedy for the same.

- In conjunction with University leaders, conducting a University climate check to . . . and using that information to inform future proactive steps.
- Providing targeted group training.

The same Remedies are available in Appendix C, section 11.10. Several of these Remedies are also provided in a non-exhaustive list in the Anti-Discrimination Policy, section 12(E).

According to all three Appendices, "These remedies are separate from, and in addition to, any Supportive Measures that may have been provided before the end of the University's investigation. If the Complainant did not take advantage of a specific service (e.g., counseling) when offered as a Supportive Measure, [they] should still be offered . . . appropriate final remedies that may include . . . [a] declined . . . Supportive Measure." See Anti-Discrimination Policy, Appendix B, section 12(E), Sexual Misconduct Policy Appendix B, section 3.5.5 and Appendix C, section 11.11.

Where can I learn more?

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Where can I learn more?

Coordinator contacts, resources, prevention and policy information:

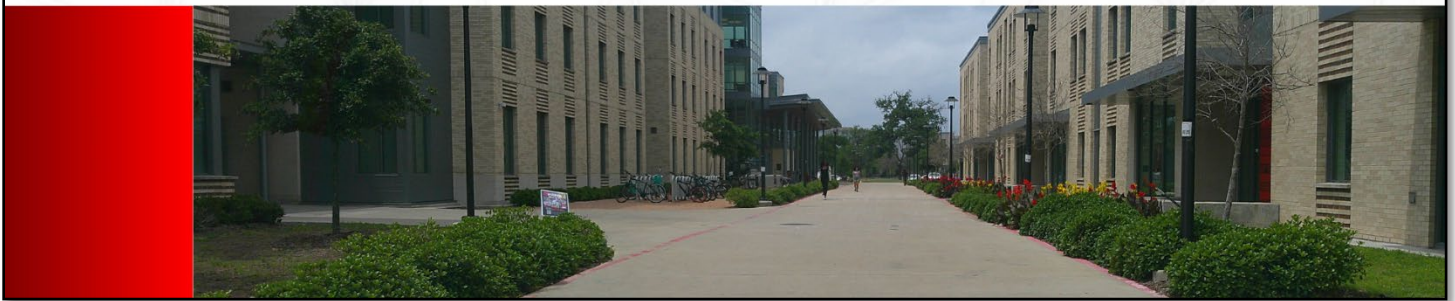
uhsystem.edu/crossroads/

SAM 1.D.7 Anti-Discrimination Policy:

uhsystem.edu/resources/compliance-ethics/_docs/sam/01/1d71.pdf

SAM 1.D.8 Sexual Misconduct Policy:

uhsystem.edu/resources/compliance-ethics/_docs/sam/01/1d8.pdf



Slide Contents:

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Narrator Notes:

(same as above)