

Addendum B: Federal Mandated Hearing Addendum to CSU Executive Orders 1096 and 1097 Training for CSU Hearing Officers

Office of the Chancellor
The California State University
May 27, 2021

Highlights of Addendum B Hearings

- Definition of “sexual harassment” is broader than the EO 1096/1097 definition
- The Hearing Officer will initially question every witness by asking questions that the Hearing Officer has drafted
- The Parties **must** have Hearing Advisors
- Hearing Advisors permitted to ask witnesses all Relevant questions and follow-up questions, including those that challenge credibility

The Role of the Hearing Advisor

Hearing Advisors

- A Hearing Advisor will be responsible for asking the other Party and any witnesses all Relevant questions and follow-up questions, including those that challenge credibility, during the hearing
- Hearing Advisor may be anyone – an attorney, family member, friend, witness in the case
- If a Party does not have a Hearing Advisor, the University will provide one
- Parties may also have a Support Advisor each

The Role of the University-Assigned Hearing Advisor

- The CSU has created a pool of Hearing Advisors from across various campuses
- Serves when a Party does not select a Hearing Advisor
- Asks questions of the other party and witnesses
- Serves as the voice of a Party during hearing questioning, even if the Party is not present
- Does not “represent” a Party

The Disruptive Party or Advisor

- The Hearing Officer may excuse from the hearing anyone (including either Party or their Hearing Advisor) whose behavior causes a material disruption
- Should a Hearing Advisor be removed from a proceeding, the University will provide a Hearing Advisor
- The Hearing Officer, in their discretion, may postpone the hearing
- In making a determination whether to postpone the hearing, the Hearing Officer will consider the equity of postponement as to both Parties
- Apply approach to disruptive Parties and Hearing Advisors equally for both Parties

Relevance and Evidentiary Issues

“Relevant”

- The Hearing Officer will determine after each question, if the question is relevant. If the question is not relevant, provide an explanation for why the question is excluded on the record
- Relevant means having significant and demonstrable bearing on the matter at hand (Addendum B, Article II.F)

Evidence that is not Relevant

The following evidence is considered **irrelevant**:

- A question is considered **NOT** relevant if it relates to the **Complainant's sexual predisposition** or **prior sexual behavior**. Exceptions to the **latter only**:
 - such questions about the Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
 - if the question concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is asked to prove consent.
- Any party's medical, psychological, and similar treatment records without the party's voluntary, written consent
- Any information protected by a legally recognized privilege without a waiver

Non-Participation in the Hearing

What if a Party or Witness does not participate in the hearing?

Parties are not required to participate in a hearing, but there is risk in them not attending:

- Statements they made during the investigation (even if described in the Final Investigation Report) cannot be considered by the Hearing Officer
- Non-appearing Party's Hearing Advisor will still be able to question the other Party and Witnesses

A Party or Witness must answer **all** relevant cross-examination questions in order for their prior statements to be relied upon by the Hearing Officer

Questioning

Purpose of Questioning

- Questioning is intended to give Parties an opportunity to ask **relevant** questions of witnesses in order to assist the Hearing Officer in determining the **credibility** of the witness
- Ultimately the Hearing Officer's responsibility to ensure all necessary questions are asked

Advance Submission of Witness List and Questions

- Advance submission of witness list and questions encouraged but not required

Questioning

Hearing Advisor
asks question of
Party

Hearing Officer
will indicate
whether question
is relevant*

If question is
deemed relevant,
Party will answer

***With explanation if
deemed not relevant**

Questioning

Hearing Officer has the discretion to request information from the Parties or Hearing Advisors regarding questions prior to making a determination about the relevancy of the question

Objections to questions are **not** permitted

Question should be asked in a **respectful, non-abusive manner**. The Hearing Officer determines whether a question satisfies this requirement

Hearing Officer may require that Hearing Advisor rephrase a relevant question or repeat the question

Questions?



Scenarios

Hearing Scenarios

- During a hearing, Complainant would like to ask Respondent, “Didn’t you sexually assault Jane Smith last year?”
- There has been no finding made by the University in relation to this allegation involving Respondent and Jane Smith.

- A) Is Complainant’s question relevant?
- B) Consider the same scenario, but there **was** a finding that Respondent sexually assaulted Jane Smith. Is the question relevant?



Hearing Scenarios

- Respondent wants to ask Complainant questions about interactions during previous sexual encounters between Complainant and Respondent, who had a dating relationship.
- 1) “During your relationship, didn’t you usually indicate that you wanted to have sex with the Respondent by stroking their neck?”
- 2) “On a prior date, did you enjoy having sex with the Respondent?”
- Are either of these questions relevant?



Hearing Scenarios

- Respondent asserts at the hearing that Complainant never them sent a text stating Complainant was too drunk to have sex.
- Complainant does not testify but submits the text they sent to Respondent as evidence.



Hearing Scenarios

- A witness submits a video that shows: (i) the Respondent pushing the Complainant, and (ii) the Complainant stating, “you hurt me.”
- Complainant does not testify.



Questions?





www.calstate.edu