

THE SCULPTURE GARDEN





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- What are some of the statements we might not be able to consider?
- How are we going to minimize risk of witnesses not participating?

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- Respondent is a wealthy member of the law faculty and has hired Paige Duggins-Clay to represent him in a Title IX hearing initiated by a complaint filed by poor



1. Appoint hearing officer
2. Allow parties meaningful opportunity to challenge for bias – what does this look like?
3. Provide hearing officer a copy of the investigation report and a copy of all evidence transmitted to the parties by the investigator
4. Hearing officer should carefully review in preparation



After the hearing officer is appointed, the hearing officer should:

1. set a deadline for the parties to submit any written response to the investigation report
2. set a date for a pre-hearing conference
3. set a date and time for the hearing
4. provide a copy of the University's Hearing Procedures (if any)



A Party's written response to the investigation report should include:

1. Disagreement with the investigative report
2. What evidence should be categorically excluded
3. A list of any witnesses that the Party contends should be requested to attend the hearing
4. A list of any witnesses that the Party intends to bring to the hearing
5. Any request that the parties be separated physically
6. Any other accommodations that the Party seeks
7. The name and contact information of the advisor
8. 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 conducting questioning



- Discuss the hearing procedures with the parties
- Address matters raised in the parties' written responses to the investigation report
- Discuss whether any stipulations may be made to expedite the hearing
- Identify and discuss witnesses and ensure witnesses have been served with notices of attendance
- Anything else?







- For a physical space, consider the following:
 - If all in the same room, two exits are helpful
 - Even if all parties want to be in the same space, they will need separate rooms to take a break, confer with their advisors, etc.
 - Have photos of or a schematic of the room to share with participants so they can see the set up in advance.
 - Make things easy for everyone – set up the room(s) in advance with notepads, pens, highlighters, sticky notes, tissues, hand sanitizer, and water.
 - If meeting in person, have copies of all reports, evidence, etc. available
- Consider a “Rules of Engagement” document – written expectations for all involved.



- Create a script for the hearing
 - If you use a database like Maxient, make the script into a “letter/form” – can print a customized copy for each hearing and insures consistency.
 - Give each party a copy of the script so they can follow along.
- Color-code or sticker any documents you provide to the parties in hard copy
 - This will allow you to collect them more easily at the end of the hearing to insure that you get them all back.
- Make sure all parties, including witnesses, have received written notice



- In an in-person hearing, plan for parties to enter and exit the room separately (with their advisor, etc.). Give them enough time to vacate hallways, etc.
- Discuss how the parties can request breaks and expectations during breaks. Put into the script at the beginning.
- Plan for a break every 60-90 minutes, if the parties do not ask for one.
- Know when to stop.
- New/additional evidence may be presented during the hearing, even if it is technically not permitted. Discuss in advance how to address this should it occur. Label anything submitted during the hearing with the date and who supplied it.



- Start with the investigation report
 - Allow the parties to make an opening statement commenting on or responding to the report
 - The goal of the hearing is to explore inconsistencies/areas of disagreement in the report – not to start from square one like a criminal trial
- Consider starting with the hearing officer/hearing panel asking the first round of questions to each participants.
 - It helps to set a respectful tone and de-escalate the situation.
 - It helps the hearing officer/panel to establish credibility with the parties when they see decisionmakers ask hard questions and take the proceedings seriously.



Evaluating questions

- Hearing officer/panel must evaluate each question prior to the participant answering for relevancy and/or appropriateness (e.g. sexual history)
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