

Texas Tech University System
Regulation 07.06.A – Attachment 2

Title IX Sexual Misconduct Hearing Procedures

1. General Requirements

- a. *Hearing.* A live hearing may be conducted with all parties physically present in the same geographic location or, at the University’s discretion, any or all parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling participants to simultaneously see and hear each other. At the request of either party, the live hearing may occur with the parties located in separate rooms; however, technology enabling the Hearing Panel, Hearing Officer, parties, and witnesses to simultaneously see and hear the party or the witness answering questions must be used.
- b. *Hearing Panel.* The University will appoint a four-member Hearing Panel (“Hearing Panel”). The Title IX Hearing Officer will be one of the four members of the Hearing Panel and will serve as the Hearing Panel’s chair. The Hearing Panel will be the decision-maker that objectively evaluates all relevant evidence and renders a determination regarding responsibility after the hearing. The determination regarding responsibility will be made by a majority vote of the Hearing Panel. The Hearing Panel has the right and responsibility to ask questions and elicit information from parties and witnesses on its own initiative to aid in obtaining relevant evidence both inculpatory and exculpatory.
- c. *Title IX Hearing Officer.* The University will appoint an independent Title IX Hearing Officer to oversee and conduct the hearing and chair the Hearing Panel (“Hearing Officer”). When the independent Hearing Officer is a licensed attorney, the Hearing Officer will provide confidential legal advice to the Hearing Panel when the panel is deliberating the determination regarding responsibility and drafting the written determination regarding responsibility.
- d. *Parties and Witnesses at Hearing.* All parties, witnesses, and other participants in a hearing must be physically or virtually present in a manner where all participants can simultaneously see and hear each other. As set forth in Section 2.e.ii, below, statements of a party or witness that is not present and subject to cross-examination at the hearing will not be relied on in making a determination of responsibility.
- e. *Advisors.* Each Complainant and Respondent shall have an advisor present at the hearing, and each is entitled to select an advisor of their choice. Each party must inform the University at least ten (10) days prior to the hearing whether the party intends to select and bring an advisor of their choice to the hearing. If a Complainant or Respondent does not have an advisor of their choice present at the hearing, the University will provide without fee or charge to that party, an advisor of the University’s choice. The advisor may be, but is not required to be, an attorney; provided, all advisors appointed or provided by the University shall act only in a capacity as an advisor for the Title IX Grievance Process and not in a capacity as legal counsel for any party. The advisors’ only permissible roles at the hearing are to advise the party and to conduct cross-examination on behalf of that party.
- f. *Rules of Order and Decorum.* The University will adopt rules of order and decorum provided for and enforced by the Hearing Officer. Such rules will include, without limitation, time limits, hearing order, and requirements that participants not badger a witness, and repetition of the same question may be deemed irrelevant by the Hearing Officer; no party be asked

questions in an abusive or intimidating manner; and questioning shall be relevant, respectful, and non-abusive.

2. Hearing Procedure

- a. *Title IX Hearing Officer to Direct Hearing.* The Hearing Officer will set the Rules of Order and Decorum and agenda for the hearing and will direct and oversee the hearing in accordance with this regulation and the Rules of Order and Decorum. The hearing shall be no more than four (4) hours in length, unless the Hearing Officer determines that exceptional circumstances exist justifying a longer hearing.
- b. *Record of Hearing.* The University will create a record of the live hearing and make it available to the parties for inspection and review upon request. The Hearing Panel's deliberations are not part of the live hearing and therefore will not be part of the record.
- c. *Evidence Not Included in the Investigative Report.* Only evidence (including but not limited to documents, media, witnesses, and other tangible evidence) provided by the parties to the Investigator during the pre-hearing investigation, and/or identified or included in the Investigative Report may be presented, introduced, or used at the hearing. Any new evidence identified after completion of the Investigative Report that a party intends to present, introduce, or use at the hearing must be provided to the Title IX Coordinator at least five (5) days prior to the hearing and to the other party at least three (3) days prior to the hearing. Failure to comply with this provision will result in the new evidence being excluded from consideration during the hearing and decision-making process.
- d. *Opening and Closing Statements.* At the direction of the Hearing Officer, Complainants and Respondents will have an opportunity to offer their own opening and closing statements, subject to time limits set by the Hearing Officer.
- e. *Presentation of Evidence.* Each party will have an opportunity to introduce evidence to the Hearing Panel.
 - i. *Rules of Evidence; Relevance.* The Hearing Officer will be responsible for making determinations regarding evidence, including relevance. Information that will be deemed not relevant includes, without limitation, information protected by a legal recognized privilege; questions or evidence about Complainant's sexual predisposition or prior sexual behavior (unless offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent); any party's medical, psychological, and similar records (unless the party has given voluntary written consent); and party or witness statements that have not been subjected to cross-examination at the hearing.
 - ii. *Must Be Subject to Cross-Examination.* If a party or witness does not submit to cross-examination at the hearing, the Hearing Panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility. If a party or witness does not attend the hearing or refuses to answer cross-examination or other questions at the hearing, the Hearing Panel cannot draw an inference regarding responsibility based solely on that absence or refusal to answer.

f. *Examination of Witnesses*

- i. *Direct Examination.* Direct examination may be conducted by the Hearing Officer or the Hearing Panel.
- ii. *Cross-Examination.* All cross-examination must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. Only relevant cross-examination and other questions, including those challenging credibility, may be asked of a party or witness. Before a participant answers a cross-examination or other question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.