

Hearing Overview - Conflict of Interest/Bias

- Selection of Title IX Panel
- Selection of Hearing Advisors
- Hearing Officer/ Chair of Committee
- Pre-Hearing Considerations
- Role of the Investigator in the Hearing
- Evaluating Possible Conflict of Interest



Hearing Overview – Due Process

- Process follows the law (currently the Title IX regulations for Title IX sexual harassment)
- Process allows for fair, unbiased investigation and decision-making
- Process allows parties to have the opportunity to be heard and present evidence, subject to some (reasonable) limitations (e.g. relevance)



Hearing Overview – the Burden of Proof

- ISU has the burden of gathering evidence sufficient to reach a determination regarding responsibility.
 - Refers to the entire process, not to the investigation.*
- ISU Selected Standard: Preponderance of the Evidence
 - More likely than not

*Note this difference with the traditional university conduct process.



Hearing Overview – The Live Hearing

- Parties may be located in separate rooms (with technology) as long as panel and parties can simultaneously see and hear answers
- Cross examination
 - Must permit each party's advisor opportunity to ask other party and any witnesses relevant questions and follow-up questions
 - Questions may include those that challenge credibility
 - Must be conducted directly, orally, and in real time by the party's advisor – not by a party personally*



The Hearing - Logistics

- Participants
- Introductory Issues
- Expectations of Decorum
- Logistics (Recording, Microphone, Breaks)
- Order of the Hearing
- Cross Examination

Most Important – the Purpose of the Hearing is to Evaluate the Information Provided by the Investigator and the Parties, to make determinations about credibility and the weight of the evidence, and to come to a conclusion about whether or not it is more likely than not that the Respondent violated ISU Policy 923.



The Hearing - Relevance

- Role of the Hearing Officer
- Regulations require a determination of relevance of the evidence.
- No definition of relevance. Not the definition of relevance in the Federal Rules of Evidence.
- Prior bad acts (“Respondent has sexually harassed others”) or character evidence (“Complainant is an honest person”) or evidence that may be considered unduly prejudicial **cannot** be excluded.



The Hearing - Relevance

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 proving or disproving the allegations.

A determination regarding relevancy can rely on logic, experience or science.



The Hearing - Relevance

The Regulations Consider the Following Evidence *Not* Relevant

- Treatment records without consent.
- Protected by a legally recognized privilege.
- Questions of evidence about a complainant's sexual predisposition, and questions or evidence about a complainant's prior sexual behavior unless it meets one of two limited exceptions.
- Is made by a party or witness who does not submit to cross-examination. **Currently, not enforced by OCR but may apply under state law or law in some federal circuits.**



The Hearing - Credibility

Keep in Mind: Relevance, Credibility, and Weight/Persuasiveness are not the same thing.

Preamble: Admissible, relevant evidence must be evaluated for weight or credibility by the... decision maker.

Additional guidance from Preamble.

Consider: Believability, corroborating evidence, faulty memories, explore reasons for inconsistencies.

There are no perfect witnesses.



The Hearing - Credibility

Keep in Mind: Relevance, Credibility, and Weight/Persuasiveness are not the same thing.

Less credibility does not equate to dishonesty.

Consider what makes sense, use your logic, identify consistent facts and where evidence is contradictory to make a logical determination.

Weight: Some facts/inconsistencies are less important than others to the ultimate determination.



The Hearing - Credibility

Keep in Mind: Relevance, Credibility, and Weight/Persuasiveness are not the same thing.

Be Cautious

- About your own bias/assumptions that may stereotype or that may not take into account cultural norms.
- Eyewitness accounts
- Assumptions about memory



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Determination Regarding Responsibility

Written determination must include:

- Identification of allegation(s)
- Description of procedural steps taken (Formal Complaint to Hearing)
- **Findings of facts supporting determination**
- Conclusions regarding application of Policy 923 to facts
- **Statement of/rationale for result as to each allegation**
- If responsible, identify disciplinary outcomes
- Procedures and bases for appeal



Determination Regarding Responsibility

- Title IX Panel will deliberate and consider the evidence.
- Hearing Officer/Chair will undertake the writing of the determination.
- Determination will not be immediately available to parties. This is a lengthy and important part of the process for review.
 - Must include determinations about credibility and detailed rationale.
- Dissenting opinions will be included as part of the determination.



Range of Disciplinary Outcomes and Remedies

May include, but are not limited to:

- Conduct warning
- Conduct probation
- Mandated assessments
- Educational requirements
- Temporary / Permanent Separation



Bases for Appeal

Either party may appeal the determination to the President:

1. **Procedural irregularity** that affected the outcome.
2. **New evidence**, not reasonably available at the time of determination/dismissal, that could reasonably affect the outcome.
3. **Conflict of interest or bias** that affected the outcome of the hearing.

