The CSU’s Implementation of the Federal Title IX Regulations
Training for CSU Hearing Officers
Part 1

Office of the Chancellor
The California State University
Implementing the Title IX Regulations for the CSU
Recap: The Path to the Title IX Regulations

In November 2018, the Department of Education issued a proposal to amend the regulations implementing Title IX of the Education Amendments of 1972.

Following a period of consultation, DOE issued the Final Rules on May 6, 2020.

The implementation date for the new regulations was August 14, 2020. The regulations were implemented into CSU policy via Addendum B to EOs 1096 and 1097.

The regulations themselves are 26 pages – the accompanying preamble is over 2000 pages.
The Final Regulations – Key Requirements

- Apply to employees, as well as students.

- Institutions may choose whether to use preponderance of the evidence or clear and convincing (but must be same for student and employee cases).

- The CSU must provide an advisor to conduct questioning if a party does not already have one (can be, but not required to be, an attorney).

- Include dating and domestic violence, and stalking (in addition to sexual harassment and sexual misconduct).

- Live questioning will be conducted by a party’s advisor during a hearing.

- Institutions can address conduct falling outside the Regulations under their own codes of conduct.
Implementing the Regulations for the CSU

- **Addendum A:** Following the January 2019 CA Court of Appeal decision involving USC
- **Addendum B:** Following Federal Regulations

This means cases will be addressed under one of three possible procedures:

- EO 1096/1097 (single investigator model)
- Addendum A: State Mandated Hearing Addendum
- Addendum B: Federal Mandated Hearing Addendum
Allegations may be funneled through one process in terms of procedure, but different policies/definitions may apply.

1. Finding under Addendum B
2. Finding under EO 1096/1097
Addendum B Hearing Funnel Example

- Case Example: Allegation of quid pro quo sexual harassment that meets the requirements of Title IX Regulations (Addendum B) and allegations of hostile environment sexual harassment that do not meet the requirements for Addendum B
- Entire complaint is funneled through the Addendum B investigation and hearing processes, but the Hearing Officer will need to refer to the Addendum B definition of quid pro quo sexual harassment and the non-addendum definition of hostile environment sexual harassment under Executive Order 1096/1097 in their findings
Sexual Harassment
Quid Pro Quo
Quid Pro Quo - Definitions

Addendum B

- An employee of the institution conditioning the provision of an aid, benefit, or service of the institution on an individual’s participation in unwelcome sexual conduct

Non-Addendum

- Unwelcome verbal, nonverbal or physical conduct of a sexual nature where:
  - Submission to, or rejection of, the conduct is explicitly or implicitly used as the basis for:
    - (Students) for any decision affecting a CP’s academic status or progress, or access to benefits and services etc… or
    - (Employees) any decision affecting a term or condition of the CPs employment, or an employment decision
Quid Pro Quo - Addendum B

- Should be interpreted broadly (FR 30147, fn. 644)
- Applies whether the “bargain” proposed is communicated “expressly or impliedly” and does not require that harassment be severe and pervasive (FR 30147)
- “Consent” to conduct does not necessarily mean that the conduct is not “unwelcome,” especially where the conduct is “consented to” for purposes of avoiding negative consequences (FR 30148)
- Where the speech is, by definition, designed to compel sexual conduct it generally does not violate the 1st Amendment (FR 30142, fn. 625)
Affecting Terms and Conditions of Employment – Non-Addendum

- The test is not whether work has been impaired, but whether working **conditions** have been discriminatorily altered.
- [T]he adjudicator's inquiry should center, dominantly, on whether the discriminatory conduct has unreasonably interfered with … work performance. To show such interference, “[one] need not prove that his or her tangible productivity has declined as a result of the harassment.” …[i]t suffices to prove that a reasonable person subjected to the discriminatory conduct would find, as the plaintiff did, that the harassment so altered working conditions as to “ma[k]e it more difficult to do the job.”
Sexual Harassment
Hostile Environment
“Hostile Environment” - Definition

Addendum B

- Unwelcome conduct “on the basis of sex” determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to an education program or activity.

Non-Addendum

- Unwelcome verbal, nonverbal or physical conduct of a sexual nature where:
  - Sufficiently severe, persistent or pervasive that its effect could be considered by a Reas. P, and is, considered by the CP, to:
    - (students only) limit their ability to participate…
    - create an intimidating, hostile, or offensive environment
Elements of Hostile Environment

Addendum B

- Was there conduct on the basis of sex?
- Was the alleged conduct unwelcome?

Then, evaluating from the perspective of
  - Reasonable person

- Was the conduct so severe, and pervasive, and objectively offensive as to effectively deny Complainant equal access to an Education Program or Activity?

Non-Addendum

- Was there conduct of a sexual nature?
- Was the alleged conduct unwelcome?

Then, evaluating from the perspective of
  - Reasonable person in the Complainant’s shoes, and
  - Complainant themselves

- Was the conduct:
  - Students - sufficiently severe, or persistent or pervasive to limit their ability to participate in or benefit from… or creates an intimidating, hostile, or offensive environment?
  - Employees – Creates an intimidating, hostile, or offensive environment?
Elements of Addendum B Hostile Environment Sexual Harassment

Unwelcome conduct “on the basis of sex” determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to an education program or activity

- Did the Respondent engage in the alleged conduct?
- Was the alleged conduct unwelcome?
- If there was unwelcome conduct, would a reasonable person find the conduct to be so severe, and pervasive, and objectively offensive that it effectively denied Complainant equal access to an Education Program or Activity?
On the Basis of Sex vs. Of a Sexual Nature

Addendum B - Conduct

- For QPQ:
  - Sexual Conduct may be verbal, visual, or physical

- For Hostile Environment:
  - The phrase “unwelcome conduct on the basis of sex,” is broader than “unwelcome conduct of a sexual nature” phrase used in Department guidance. (FR 30152)
    - Ex: direct comparative evidence that only men, and not women, are groped and hazed
    - Ex: rumor was that a female employee had sex with her male superior to obtain promotion

Non-Addendum - Conduct

- For QPQ and Hostile Environment:
  - Visual conduct: leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters.
  - Verbal conduct: making or using derogatory comments, epithets, slurs and jokes. Verbal abuse of a sexual nature, graphic verbal commentaries about an individual’s body, sexually degrading words used to describe an individual.
  - Physical conduct: touching, assault, impeding or blocking movements.
Sexual Conduct and On the Basis of Sex

- For QPQ:
  - Sexual Conduct may be verbal, visual, or physical

- For Hostile Environment:
  - The phrase “unwelcome conduct on the basis of sex,” is broader than “unwelcome conduct of a sexual nature” phrase used in Department guidance. (FR 30152)
    - Ex: direct comparative evidence that only men, and not women, are groped and hazed
    - Ex: rumor was that a female employee had sex with her male superior to obtain promotion
What about conduct that is not sexual in nature but is based on sex or gender?

As noted by some commenters, sex-based harassment includes unwelcome conduct of a sexual nature but also includes unwelcome conduct devoid of sexual content that targets a particular sex. The final regulations use the phrase “sexual harassment” to encompass both unwelcome conduct of a sexual nature, and other forms of unwelcome conduct “on the basis of sex.” § 106.30 (defining “sexual harassment”).

(Preamble fn 670)
“Unwelcome”

- EEOC - When welcome-ness is at issue, the investigation should determine whether the CP's conduct is consistent, or inconsistent, with the assertion that the sexual conduct is unwelcome. Acquiescence in sexual conduct at the workplace may not mean that the conduct is welcome to the individual.

- OCR – The Department interprets “unwelcome” as a “subjective element”. Therefore, even if a CP “pretended to welcome the conduct,” the complainant’s subjective statement that they found the conduct to be unwelcome suffices to meet the “unwelcome” element.

- 2001 OCR Guidance (Rescinded) - Conduct is unwelcome if the student did not request or invite it and “regarded the conduct as undesirable or offensive.”
Who is the Reasonable Person?

- The severe, pervasive, and objective elements “must be evaluated in light of the known circumstances and depend on the facts of each situation but must be determined from the perspective of a reasonable person standing in the shoes of the complainant.” (FR 30156)

- The burden is on the educational institution to evaluate complaints by considering the totality of the circumstances, which “includes taking into account the complainant’s age, disability status, and other factors that may affect how an individual complainant describes or communicates about a situation involving unwelcome sex-based conduct.” (FR 30156)
What is Severe and Pervasive under Addendum B?

- Disseminating “revenge porn,” or conspiring to sexually harass people (such as fraternity members telling new pledges to “score”), particularly where the unwelcome sex-based conduct involves widespread dissemination of offensive material or multiple people agreeing to potentially victimize others and taking steps in furtherance of the agreement. (FR 30166)

- A single instance of unwelcome physical conduct may meet definitions of assault or battery prohibited by other laws, even if the incident does not meet one of the three prongs of the § 106.30 definition of sexual harassment. (FR 30166)
Evaluating Effective Denial – Addendum B

- This element:
  - does *not* require that a complainant has already suffered loss of education (FR 30169)
  - Does require that a person’s “equal” access to education has been denied, not that a person’s total or entire educational access has been denied (FR 30169)

- Signs of enduring *unequal* educational access may include:
  - skipping class to avoid a harasser,
  - a decline in a student’s grade point average,
  - having difficulty concentrating in class

- No concrete injury is required to conclude that serious harassment would deprive a reasonable person in the complainant’s position of the ability to access their education on an equal basis with persons who are not suffering such harassment. (FR 30170)
“Effectively denied Complainant equal access to an Education Program or Activity” – Addendum B

- The definition “has the advantage of being adopted from the Supreme Court’s interpretation of Title IX, yet does not act as a more stringent element than the “interferes with or limits a student’s ability to participate in or benefit from the school’s programs” language found in Department guidance.” (FR 30152)
Evaluating Severe Or Pervasive – EO 2001 OCR Guidance (Rescinded)

- Factors to Consider:
  - The degree to which the conduct affected one or more students’ education.
  - The type, frequency, and duration of the conduct.
  - The number of individuals involved.
  - The age and sex of the alleged harasser and the subject or subjects of the harassment.
  - The size of the school, location of the incidents, and context in which they occurred.
Additional Guidance on Severe Or Pervasive In Employment Context

- Cal. Prac. Guide – Can look to whether it is physically threatening or humiliating or a mere offensive utterance;
- EEOC - A single, unusually severe incident of harassment may be sufficient to constitute a violation
- CA SB 1300 - A single incident of harassing conduct is sufficient regarding the existence of a hostile work environment if the harassing conduct has unusually interfered with the plaintiff’s work performance or created an intimidating, hostile, or offensive working environment. (January, 2019)
Limited the Complainant’s ability to participate in or benefit from the services, activities or opportunities offered by the University – EO – 2001 OCR Guidance (Rescinded)

- A student’s grades going down or the student being forced to withdraw from school
- A student may also suffer physical injuries or mental or emotional distress.
- However, a student may have been able to keep up their grades and continue to attend school even though it was very difficult for them.
  - Are they avoiding the library, not attending sports events or somehow restricting their movement and participation in order to avoid the respondent?
Intimidating, Hostile, or Offensive Environment

- “Does not need to be a descent into the Inferno”
- SB 1300 - It is irrelevant that a particular occupation may have been characterized by a greater frequency of sexually related commentary or conduct in the past. In determining whether or not a hostile environment existed, [one] should only consider the nature of the workplace when engaging in or witnessing prurient conduct and commentary is integral to the performance of the job duties.
- Look at totality of circumstances, including:
  - Power differential between complainant and respondent
  - Frequency of conduct
  - Severity of conduct
  - Whether it is physically threatening or humiliating and
  - It alters the conditions of the work or educational environment
Sexual Assault
Sexual Misconduct vs. Sexual Assault
Sexual Misconduct/Sexual Assault

Addendum A
- Sexual Misconduct
  - Sexual activity
  - No affirmative consent
  - Incapacitation

Addendum B
- Sexual Assault
  - Rape
    - No affirmative consent
    - Incapacitation
  - Fondling
    - No affirmative consent
    - Incapacitation
  - Incest
  - Statutory Rape
Sexual Assault Under Addendum B

What is “Sexual Assault”?

• Rape
• Fondling
• Incest
• Statutory Rape
1. The Elements of Rape (Theory 1)

Did the Respondent penetrate, no matter how slightly, the Complainant’s vagina or anus with any body part or object, OR orally penetrate the Complainant with their sex organ?

AND

Was the vaginal, anal or oral penetration without Complainant’s Affirmative Consent?
1. The Elements of Rape (Theory 2)

Did the Respondent **attempt to** penetrate, no matter how slightly, the Complainant’s vagina or anus with any body part or object, **OR** attempt to orally penetrate the Complainant with their sex organ?

AND

Was the attempted vaginal, anal or oral penetration without Complainant’s Affirmative Consent?

AND

Did Respondent have the present ability and the intent to commit rape?
2. Elements of Fondling

- Did Respondent touch the private body parts of Complainant? **And**
- Was the touching for the purpose of sexual gratification? **And**
- Was the touching without the affirmative consent of Complainant?
3. Elements of Incest

Was there sexual intercourse between Complainant and Respondent? 

And

Are Complainant and Respondent related to each other within the degrees wherein marriage is prohibited by law?
3. Degrees wherein marriage is prohibited by law

1. Parents and children
2. Grandparents and grandchildren, or anyone else with an ancestor-descendant relationship (like great-grandparents and their great-grandchildren)
3. Siblings
4. Half-siblings; and
5. Uncles/aunts and nieces/nephews

CA Family Code 2200 – marriages between parents and children, ancestors and descendants of every degree, and between siblings of the half as well as the whole blood, and between uncles or aunts and nieces or nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate.
4. Elements of Statutory Rape

Did Respondent have sexual intercourse with Complainant? **And**

Was Complainant under the age of 18 years, when Respondent had sexual intercourse with Complainant?
Dating Violence
Addendum A

Abuse committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the victim.

This may include someone the victim just met; i.e., at a party, introduced through a friend, or on a social networking website.

For purposes of this definition, "abuse" means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to self or another. Abuse does not include non-physical, emotional distress or injury.

Addendum B

Physical violence or threat of physical violence committed by a person—

a) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and

b) where the existence of such a relationship shall be determined based on a consideration of the following factors:
   • The length of the relationship.
   • The type of relationship.
   • The frequency of interaction between the persons involved in the relationship.
Elements of Dating Violence - Addendum A

1. Did Respondent intentionally or recklessly cause bodily injury to Complainant?

   OR

2. Did Respondent attempt to cause bodily injury to Complainant?

   OR

3. Did Respondent place Complainant in reasonable apprehension of imminent serious bodily injury to self or another?

Note: Abuse under this definition does not include non-physical, emotional distress or injury.
Elements of Dating Violence - Addendum A

AND (required for 1, 2 and 3 on previous slide)
Are Complainant and Respondent in or have they been in a social or dating relationship of a romantic or intimate nature?

This may include Complainant and Respondent having just met; i.e., at a party, introduced through a friend, or on a social networking website. Abuse does not include non-physical, emotional distress or injury.
Elements of Dating Violence – Addendum B

1. Did Respondent engage in physical violence or threat of physical violence against Complainant? **AND**

2. Are Complainant and Respondent in or have they been in a social relationship of a romantic or intimate nature? The existence of such a relationship shall be determined based on a consideration of the following factors:
   - The length of the relationship
   - The type of relationship
   - The frequency of interaction between the persons involved in the relationship
Domestic Violence
Addendum A

Abuse committed against someone who is:

- a current or former spouse;
- current or former cohabitant;
- someone with whom the Respondent has a child;
- someone with whom the Respondent has or had a dating or engagement relationship; or
- a person similarly situated under California domestic or family violence law.

Cohabitant means two unrelated persons living together for a substantial period of time, resulting in some permanency of relationship. It does not include roommates who do not have a romantic, intimate, or sexual relationship. Factors that may determine whether persons are cohabiting include, but are not limited to:

1. sexual relations between the Parties while sharing the same living quarters;
2. sharing of income or expenses;
3. joint use or ownership of property;
4. whether the Parties hold themselves out as spouses;
5. the continuity of the relationship; and,
6. the length of the relationship.

For purposes of this definition, "abuse" means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to self, or another. Abuse does not include non-physical, emotional distress or injury.

Addendum B

Physical violence or threat of physical violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant.
Elements of Domestic Violence - Addendum

A

1. Did Respondent intentionally or recklessly cause bodily injury to Complainant?

OR

2. Did Respondent attempt to cause bodily injury to Complainant?

OR

3. Did Respondent place Complainant in reasonable apprehension of imminent serious bodily injury to self or another?

Note: Abuse under this definition does not include non-physical, emotional distress or injury.
Elements of Domestic Violence - Addendum

AND (required for 1, 2 and 3 on previous slide)

Is the Complainant:

- a current or former spouse (of the Respondent); or
- current or former cohabitant (of the Respondent); or
- someone with whom the Respondent has a child; or
- someone with whom the Respondent has or had a dating or engagement relationship; or
- a person similarly situated under California domestic or family violence law
Elements of Domestic Violence - Addendum A

Cohabitant means two unrelated persons living together for a substantial period of time, resulting in some permanency of relationship. It does not include roommates who do not have a romantic, intimate, or sexual relationship.

Factors that may determine whether persons are cohabiting include, but are not limited to:

1. sexual relations between the Parties while sharing the same living quarters
2. sharing of income or expenses
3. joint use or ownership of property
4. whether the Parties hold themselves out as spouses
5. the continuity of the relationship
6. the length of the relationship
Elements of Domestic Violence – Addendum B

1. Did Respondent engage in **physical violence** or **threaten physical violence** against Complainant?

   **AND**

2. Is Respondent:
   - a current or former spouse or intimate partner of the Complainant; or
   - a person with whom the Complainant shares a child in common; or
   - a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner; or
   - a person similarly situated to a spouse of the Complainant
Stalking
Non-Addendum
Engaging in a repeated Course of Conduct directed at a specific person that would cause a Reasonable Person to fear for the safety of self or others' safety or to suffer Substantial Emotional Distress.

Addendum B
Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

a) fear for his or her safety or the safety of others; or

b) suffer substantial emotional distress
Elements of Stalking – Non-Addendum

1. Did Respondent engage in a repeated course of conduct directed at a specific person (Complainant)?)

AND

2. Would Respondent’s alleged course of conduct cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress?
Elements of Stalking – Non-Addendum

Course of conduct

• Not a single incident – two or more
• Over what period of time?
• Does the behavior or conduct have to be the same each time or can it be different?

Example: Calling multiple times one day and sending an unwanted gift the following day.

• Some conduct in the context of an education program or activity and other conduct not?
Elements of Stalking – Non-Addendum

**Reasonable Person** – reasonable person under similar circumstances and with the same Protected Status(es) as the Complainant

**Substantial Emotional Distress** – significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling

• Context is important
Examples of Stalking Conduct

- Following
- Watching
- Waiting (outside a residence, car, class, etc.)
- Unwanted communication – in-person, phone calls, text messages, social media, emails, paper notes
- Unwanted gifts
- Threats against the Complainant or someone else (e.g. family/friends, or the Respondent themselves)
- Property damage
- Attempting to ruin someone’s reputation (e.g. spreading rumors about them or contacting their employer)
- Engaging in the above behaviors via a third party
Elements of Stalking – Addendum B

1. Did Respondent engage in a course of conduct directed at Complainant?

   AND

2. Would Respondent’s alleged course of conduct cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress?

Note: Definition almost identical to EO 1096/1097 – except no reference to “repeated” course of conduct
Stalking “on the basis of sex”

“Stalking may not always be ‘on the basis of sex’ (for example when a student stalks an athlete due to celebrity worship rather than sex), but when stalking is ‘on the basis of sex’ (for example, when the student desires to date the victim) stalking constitutes ‘sexual harassment’ under §106.30. Stalking that does not constitute sexual harassment because it is not ‘on the basis of sex’ may be prohibited and addressed under a recipient’s non-Title IX codes of conduct”

(FR 30172, fn 772)
The CSU’s Implementation of the Federal Title IX Regulations
Training for CSU Hearing Officers
Part 2

Office of the Chancellor
The California State University
Final Investigation Report
Directly Related vs. Relevant
Final Investigation Report

- Fairly summarize **Relevant** evidence (inculpatory and exculpatory).
- Must send to Party AND Support Advisor (if any).
- 10 Working Days prior to hearing.
- Party may provide written response.
Types of Evidence

- Relevant Evidence
- Directly Related [Not required to be Relevant]
- Evidence not directly related or relevant
Types of Evidence

Directly Related and Relevant
- Include in Preliminary Investigation Report.
- Include in Final Investigation Report.

Directly Related
- Include in Preliminary Investigation Report.

Not Directly Related
- Do not include in Preliminary Investigation Report or Final Investigation Report.

Privileged Materials
- Do not include in Preliminary Investigation Report or Final Investigation Report.
“Relevant”

• The final regulations do not define relevance, and the ordinary meaning of the word should be understood and applied (FR 30247, FN 1018)

• Addendum B, Article II.F – Relevant means having significant and demonstrable bearing on the matter at hand

• Even if a question relates to a Relevant subject or issue, the Hearing Officer may determine that the Party or witness being asked the question is not required to answer if the question is repetitive or duplicative of prior questions
“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
The Distinction between “Directly Related” and “Relevant”

- Preliminary Investigation Report must include all evidence that is Directly Related to the allegations raised in the Formal Complaint.
- Directly Related – anything that is not incidental to a matter at issue.
- Final Investigation Report will summarize all Relevant evidence.
- Possible that a Party may seek to argue at hearing that you should consider information deemed by the Investigator to be Directly Related but not Relevant – you will then need to determine whether it is Relevant.
Pre-Hearing
The Role of the Hearing Advisor

- University cannot limit a Party’s choice of Hearing Advisor
- Could also be Support Advisor during investigation process
- Asks questions of the other party and witnesses during the hearing
- Serves as the voice of a Party during hearing questioning, even if the Party is not present
Hearing Coordinator Duties

- Scheduling the hearing
- Acting as an **initial liaison** between the campus and the University-assigned Hearing Advisor (if applicable)
- Notifying witnesses of the hearing
- Ensuring that the Hearing Officer is provided with a copy of the report and exhibits
- Coordinating videoconferencing
- Securing a location for the hearing (if necessary)
- Determine whether conflicts of interest exist with Hearing Officer
- Act as **liaison** between the Parties and the Hearing Officer on procedural matters
Objections to the Hearing Officer

- Within 5 Working Days after notice of the identity of the Hearing Officer provided to the Parties
- Objection may only be based on an actual conflict of interest
- A conflict of interest exists if the Hearing Officer has a personal relationship with one of the Parties or witnesses or has demonstrated actual bias towards a Party or witness
- The fact that a Hearing Officer has previously served as a Hearing Officer in a University proceeding will not constitute a conflict of interest
- Hearing Coordinator will determine if a conflict of interest exists
Bias

“Whether bias exists requires examination of the particular facts of a situation and the Department encourages recipients to apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased, exercising caution not to apply generalizations that might unreasonably conclude that bias exists [...].”

(FR 30252)

Examples of generalizations (provided by OCR in preamble):

- Assuming that all self-professed feminists, or self-described survivors, are biased against men
- Assuming that a male is incapable of being sensitive to women
- Assuming that prior work as a victim advocate, or as a defense attorney, renders the person biased for or against complainants or respondents in a Title IX role

(FR 30252)
Serving Impartially

Serving impartially includes avoiding the following:

- **Prejudgment of the facts at issue** – an opinion about a situation or a person that is formed before knowing or considering all of the facts (Cambridge English Dictionary)

- **Conflicts of interest** – a conflict between the private interests and the official responsibilities of a person in a position of trust (Merriam Webster Dictionary)

- **Bias** – the action of supporting or opposing a particular person or thing in an unfair way, because of allowing personal opinions to influence your judgment (Cambridge English Dictionary)
Serving Impartially

“The Department wishes to emphasize that parties should be treated with equal dignity and respect by Title IX personnel […]” (FR 30254)

- Reflect on your own experiences and biases
  - What constitutes sexual assault?
  - Voluntary intoxication
  - Reporting delays
  - “If I were in their shoes…”
  - “When I was in college…”

- Consider your communications (verbal and written) – language and tone

- Continue to ask yourself whether there are additional facts to explore to ensure that your decision and report are as complete and impartial as possible

- Apply limitations on Support Advisor (and Hearing Advisor) role(s) equally
Witnesses

- Parties may submit proposed witness lists:
  - Names of witnesses
  - Current contact information for witnesses
  - Explanation of the relevance of each proposed witness's testimony and the disputed issue to which the witness's testimony relates

- Generally, witnesses should have been interviewed during the investigation

- Hearing Coordinator will share final witness list with Parties

- Hearing Coordinator will notify each witness of the date, time and location of the hearing
Advance Submission of Questions

- The Parties **may** submit a list of proposed questions for the other Party and witnesses to the Hearing Coordinator.
- The questions will be provided to the Hearing Officer.
- Not required but parties are strongly encouraged to provide questions in advance of the hearing – streamline process and opportunity for Hearing Officer to resolve relevancy concerns prior to the hearing.
- The proposed questions will **not** be shared with the other Party.
- The Hearing Officer will make all determinations regarding pre-hearing matters, including which witnesses have **relevant** testimony and will participate and which questions, if submitted, are **relevant** and will promptly notify the Hearing Coordinator who, in turn, will promptly notify the Parties.
The Hearing
Who attends the hearing?

- Hearing Officer
- Complainant
- Respondent
- Hearing Advisor and Support Advisor for Complainant
- Hearing Advisor and Support Advisor for Respondent
- Title IX Coordinator
- Title IX Investigator (if not also the Title IX Coordinator)
- Hearing Coordinator
- Student Conduct Administrator or other appropriate University administrator
- An administrator from the CSU Chancellor’s Office
- Witnesses (who will only be present during the part of the hearing that is relevant to their statement)
- Technology support/Interpreter/Security, if needed
The Hearing

What if a Party does not participate in the hearing?
Parties are not required to participate in a hearing, but there is risk in them not attending:

• If they are a Complainant
  • University’s ability to take action regarding their Formal Complaint may be limited
  • Absent extenuating circumstances, the Hearing Officer will not rely on prior statements made by the Parties or witnesses during the investigation whose credibility is central to the determination unless those Parties or witnesses make themselves available for examination by the Hearing Officer
  • Complainant’s Hearing Advisor will still be able to question the other Party
The Hearing

What if a Party does not participate in the hearing?

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

• If they are a **Respondent**
  • Absent extenuating circumstances, the Hearing Officer will not rely on prior statements made by the Parties or witnesses during the investigation whose credibility is central to the determination unless those Parties or witnesses make themselves available for examination by the Hearing Officer
  • Respondent’s Hearing Advisor will still be able to question the other Party
### The Hearing

<table>
<thead>
<tr>
<th>Conducted via videoconference in most cases</th>
<th>Parties must be able to simultaneously see and hear all the proceedings and testimony</th>
<th>Ensure all evidence provided during the investigation is available</th>
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<tbody>
<tr>
<td>Hearing Officer provides overview of the proceedings and Parties can ask questions of the Hearing Officer about the process</td>
<td>Each Party has the opportunity to make an opening statement of no more than 10 minutes – must be made by party themselves, not the Hearing Advisor</td>
<td>No closing statements</td>
</tr>
</tbody>
</table>

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Questioning

Generally, the Hearing Officer will begin questioning of the parties and each witness.

The Investigator or the Title IX Coordinator (if not the Investigator) will be the first witness and will describe the Formal Complaint, investigation process, and summarize the evidence.

Hearing Advisors will be permitted to ask relevant questions once the Hearing Officer has concluded their questioning of the other Party and each witness.
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.
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.
After the Hearing
Determination Regarding Responsibility

• The Hearing Coordinator will transmit the Hearing Officer’s Report to the Parties, the T9C and SCA/appropriate administrator within 15 Working Days

• Title IX Coordinator will review the Hearing Officer’s report to ensure compliance with EO

• Where no violation – President (or designee) is informed, and Parties notified of outcome

• Where violation – Parties may submit impact statement (within 5 working days) and T9C and SCA/appropriate administrator may submit written statement

• A Decision Letter will be sent to the Parties by the president or designee
Violation Found

**Usually within 15 Working Days of the close of the hearing:**
- Hearing Officer sends report to Title IX Coordinator, appropriate University Administrator and Parties (Title IX Coordinator will review the Hearing Officer’s report to ensure compliance with EO)

**Within 5 Working Days of receipt of report:**
- Parties may submit written impact statement (2000-word limit)
- Appropriate University Administrator and Title IX Coordinator submit written statement → aggravating/mitigating factors and recommendation as to disciplinary outcome

**Within 5 Working Days of Hearing Officer’s receipt of statements:**
- Hearing Officer submits Final Hearing Officer’s Report to President or Designee with recommendation and rationale for disciplinary outcome

**Within 10 Working Days of receipt of Final Hearing Officer’s Report:**
- President or Designee issues Decision Letter
No Violation Found

Usually within 15 Working Days of hearing:
- Hearing Officer sends report to Title IX Coordinator, appropriate University Administrator and Parties

Title IX Coordinator will review the Hearing Officer’s report to ensure compliance with EO

President (or designee) is informed, and Parties notified of outcome via Decision Letter
Appeals

Appeal granted where:

• the hearing outcome is not supported by substantial evidence (in other words, there was no reasonable basis for such findings or conclusions);

• a procedural irregularity occurred that affected the outcome of the matter;

• new evidence that was not reasonably available at the time of the hearing and would have affected the Hearing Officer's decision about whether the Respondent violated the Executive Order, including this addendum;

• the Title IX Coordinator, Investigator, or Hearing Officer had a Conflict of Interest or Bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; or

• the sanction(s) imposed as part of the outcome of the Formal Complaint process constituted an abuse of discretion based on the substantiated conduct.