

# **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  
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# 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 group 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

# 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

## Advance Submission of Witness List and Questions (Add. A vs. Add. B)

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

# Questioning

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

Hearing Advisors will be permitted to ask **relevant** questions once the Hearing Officer has concluded their questioning of the other Party and each witness

Hearing Advisor asks question → Hearing Officer to determine relevance → if deemed relevant, witness answers

Generally, duplicative questions will not be 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

# Evidentiary Issues

# Types of Evidence

**Directly Related** – anything that is not incidental to a matter at issue (Addendum B, Article II.C)

**Relevant** means having significant and demonstrable bearing on the matter at hand (Addendum B, Article II.F )

<b>Directly Related and Relevant</b>	<b>Directly Related</b>	<b>Not Directly Related</b>	<b>Privileged Materials</b>
<ul style="list-style-type: none"><li>➤ Included in Preliminary Investigation Report</li><li>➤ Included in Final Investigation Report</li></ul>	<ul style="list-style-type: none"><li>➤ Included in Preliminary Investigation Report only</li></ul>	<ul style="list-style-type: none"><li>➤ <b>Not</b> included in Preliminary Investigation Report or Final Investigation Report</li></ul>	<ul style="list-style-type: none"><li>➤ <b>Not</b> included in Preliminary Investigation Report or Final Investigation Report</li></ul>

# “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:

- 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
- Non-appearing Party's Hearing Advisor will still be able to question the other Party and Witnesses

# 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 sent a text stating Complainant was too drunk to have sex.
- Complainant does not testify but submits the text in the final report, she 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?





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