

Frequently Asked Questions – Revised Title IX Policy¹

Why has the CSU revised its Title IX student policy?

A California Court of Appeal recently ruled (in a case involving another university) that students accused of Sexual Misconduct who face severe discipline (expulsion or suspension) at any California university have the right to a hearing to cross-examine (question), directly or indirectly, their accusers and other witnesses if witness credibility is “central” to the case. Until now, the University process did not include a hearing. On March 29, 2019, the Chancellor’s Office released revised Executive Orders 1096/1097 which include an Addendum titled *Investigation and Hearing Process – For Students Accused of Sexual Misconduct*.

What kinds of cases are impacted by this Addendum?

The Addendum applies only to cases that are not resolved via the Early Resolution Process that meet the following three criteria:

- Student (Respondent) is accused of Sexual Misconduct as defined by Executive Orders (EOs) 1096/1097 (Revised March 29, 2019);²
- Student (Respondent) faces suspension or expulsion; and
- The credibility of any party or witness is central to the finding of whether the accused student engaged in Sexual Misconduct.

What policy applies if the circumstances of my Title IX (sex discrimination/harassment) case do not meet these three criteria?

If the circumstances of your case do not meet all three of the criteria described above, a neutral Investigator makes findings of fact and the Title IX Coordinator makes the final determination about whether CSU policy was violated (see Executive Order 1096/1097, Article III).

How will these changes most directly affect me?

- ✓ After the Investigator has completed the Preliminary Investigation Report, Complainant and Respondent may ask to resolve the complaint (with the assistance of the campus Title IX Coordinator) without a hearing -- through the Early Resolution Process.
- ✓ If the case is not resolved, a hearing will be scheduled. Complainant and Respondent will identify relevant witnesses and prepare questions that they want the Hearing Officer to ask of the other Party and other witnesses.
- ✓ Participation in a hearing.
- ✓ The revised policy does not change the role of the Advisor. The Complainant and Respondent may also be accompanied at the hearing by a friend or other person to provide emotional support.

What is a hearing and what can I expect?

¹ The purpose of these FAQs is to provide an overview of CSU’s revised Title IX policy (effective March 29, 2019) and to answer frequently asked questions. **These FAQs do not constitute CSU policy nor do they purport to represent a comprehensive statement of CSU policy.** Please direct any questions about CSU Title IX-related policy to your campus Title IX Coordinator.

² <https://www.calstate.edu/eo/EO-1097-rev-3-29-19.pdf>
<https://www.calstate.edu/eo/EO-1096-rev-3-29-19.pdf>

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The hearing is a meeting at which a Hearing Officer (a neutral, third-party who will oversee the hearing) listens to the witnesses and analyzes the evidence. Each party will be given an opportunity to make an opening statement at the beginning of the hearing. The Hearing Officer may ask questions of the Complainant, Respondent, Investigator, any University official, and any witness. These questions include those questions proposed by the Complainant and Respondent. After the hearing, the Hearing Officer will make findings of fact and conclusions about whether the Respondent violated University Policy.

Who will attend the hearing?

The hearing is closed to all persons except the Parties, the Parties' respective Advisors and/or support people, appropriate witnesses (while they are testifying), the Student Conduct Administrator, Title IX Coordinator, Hearing Officer, and Hearing Coordinator. A CSU administrator may also be present, but will not participate in the hearing.

Will the Hearing Officer use a different standard of proof to make their finding?

No, the standard used to make determinations for all allegations addressed under Executive Order 1096/1097 is Preponderance of the Evidence.

Do I have to be in the same room as the other Party (Complainant or Respondent)?

Not necessarily. If you do not want to be in the same room with the other party, please submit your request in writing to the campus Hearing Coordinator for consideration in advance of the hearing so that arrangements can be made.

What does cross-examination mean?

In the hearing, the Respondent and Complainant will be able to "cross-examine" the other party or any witnesses by proposing questions to the Hearing Officer. Parties and their advisors/support person will not be permitted to directly question participants in the hearing. The University's process of providing for "indirect" questioning by the Hearing Officer is designed to minimize trauma for the participants in the hearing.

What if I don't want to participate in the hearing?

You are not required to participate in a hearing, but the lack of participation may have an impact on the information available for the Hearing Officer to consider and, therefore, the final determination.

- If you are a Complainant or Respondent and do not participate in the hearing, the University's ability to take action will be limited. The hearing will occur, but statements you made during the investigation (even if described in the investigation report) might not be considered at the hearing because you won't be available to answer questions about those statements. Please note, a Respondent will not be found to have violated University policy solely because they failed to appear at the hearing nor will a Respondent be found to *not* have violated policy solely because a Complainant failed to appear at the hearing.
- If you are a witness and do not attend the hearing, you may be subject to discipline (as a student or employee) and a hold may be placed on any student witness' transcript. If a witness does not attend the hearing, their statements in the investigation process might not be considered at the

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hearing (even if it is described in the investigation report) because the witness won't be available to answer questions about those statements.

Is there any alternative to having a hearing?

Yes, parties may choose to resolve a complaint via the Early Resolution process. An Early Resolution is an agreement between you and the other Party to provide appropriate and relevant remedies to a complaint that would resolve the matter without a hearing.

- ✓ It is a completely voluntary process that can occur at any time up until the Hearing Officer makes a final decision.
- ✓ Neither the Complainant nor Respondent should feel pressured to agree to an Early Resolution.
- ✓ Both parties and the campus Title IX Coordinator have to agree with the terms of the Early Resolution before it can become final.

If you would like to pursue an Early Resolution agreement, you can discuss this option with your campus Title IX Coordinator.

Can I submit new evidence at the hearing or ask the Hearing Officer to interview a new witness?

All available evidence should be provided to the Investigator during the investigation phase of the process. If relevant evidence, or a witness, was not reasonably available during the investigation phase, then the Hearing Officer may decide to permit its use at the hearing. However, if the Hearing Officer concludes that the evidence or witness actually was reasonably available during the investigation or is not relevant, the Hearing Officer may not allow the evidence or witness at the hearing.

Do you believe the hearing requirement will have a negative effect on students reporting Sexual Misconduct or moving forward with their cases?

While some individuals may choose not to pursue a complaint due to the extensiveness of this process, the campus will endeavor to provide alternate resolution options, support resources, and interim remedies where appropriate. For those that choose to move forward to a hearing, support resources will be made available. All Hearing Officers will receive training about our investigation and hearing process as well as the complex and sensitive issues surrounding allegations of Sexual Misconduct. We encourage students to speak with their campus Title IX Coordinators and confidential campus resources, including psychological services and survivor advocates, to discuss their experience, options, and concerns.

Will the Addendum apply to Dating and Domestic Violence or Stalking cases?

The Addendum only applies to matters involving Sexual Misconduct as defined by CSU policy. However, if a matter involves Sexual Misconduct **as well as** Dating and Domestic Violence or Stalking (or all three), all charges will be governed by Addendum to Executive Order 1096/1097. Please direct any questions to your campus Title IX Coordinator.

What effect does the revised policy have on closed cases?

Cases that were concluded before January 2019 were addressed under the applicable CSU policy and in compliance with law and will not be reopened for further investigation. Please direct any questions to your campus Title IX Coordinator.