

Michigan State University
Relationship Violence and Sexual Misconduct and Title IX Policy
Hearing Procedures
August 14, 2020

I. OVERVIEW

At the conclusion of the investigative process, after the investigation report is distributed to the parties and where the case is eligible for a hearing as outlined in the Policy, the Office of Institutional Equity (“OIE”) investigator will refer the matter to the Resolution Office for a live, virtual hearing before a Resolution Officer. The purpose of the hearing is to provide both parties the opportunity to ask questions of (cross-examine) the other party and any witnesses relevant to the allegations in dispute before a neutral Resolution Officer. The hearing process concludes with a written decision containing the Resolution Officer’s determination regarding responsibility.

The hearing is an internal process unique to Michigan State University and is not governed by the rules and procedures used in civil and criminal courts.¹ The hearing itself is less formal than a courtroom; however, proper decorum must be maintained at all times.

II. SCOPE & ROLES WITHIN THE HEARING PROCESS

Prior to the hearing, OIE will have conducted an investigation for the purpose of gathering relevant facts and evidence. Parties will have been given the opportunity to present information and evidence to the investigator, as well as to review and respond to all evidence gathered that is directly related to the allegations. The parties’ primary opportunity to tell their story and respond to allegations is during the investigation. The Resolution Officer will have reviewed the investigation report, and the hearing will not be a repeat of the investigation.

A. Hearing Administrator:

During the hearing process, the parties and the Resolution Officer will be supported by a Hearing Administrator. Prior to the hearing, the Hearing Administrator will provide parties and advisors with the hearing case file, notification of the pre-hearing conference, notification of the hearing, and finally, the written determination regarding responsibility.

B. Advisor and Support Person:

Throughout the hearing process, claimants and respondents may have one advisor of their choice, and one support person present at any meeting or hearing. Witnesses may have one advisor present at any meeting or hearing. An advisor assists and advises during the hearing process and may be an attorney.

1. Role of advisor to a party

- Advisors will conduct questioning on behalf of parties during the hearing. Advisors for witnesses are not permitted to conduct questioning.

¹ In cases alleging conduct prohibited by Title IX, applicable Title IX regulations will be followed.

- Advisors are not permitted to answer questions posed to parties or witnesses. However, a party or witness may consult with their advisor during the hearing and the advisor may assist with preparation for the hearing.

2. University-provided Advisors

- Advisors are available for parties at no cost. Parties may request a University-provided advisor through the Resolution Office.
- A party cannot request a specific University-provided advisor.
- If a party correctly asserts that an assigned advisor is refusing to conduct cross-examination on the party's behalf, the University will provide an advisor to perform the function.

3. Support Person: Parties are permitted one support person. A support person is not permitted to speak or participate in the hearing in any manner.

C. Witnesses and Evidence: Witnesses will be limited to those previously identified by the OIE investigator as relevant and any new witnesses permitted by the Resolution Officer in limited circumstances. Parties may also request to question the investigator. The evidence will be limited to the investigation report, the evidence identified as relevant by the investigator, and any new evidence permitted by the Resolution Officer in limited circumstances. The evidence will be made available during the hearing.

III. PRE-HEARING PROCESS

A. Written Responses: At the conclusion of the investigation portion of the grievance process, the OIE investigator will provide the parties, their advisors, and the Resolution Office with the investigation report and the relevant evidence. The parties and advisors will have ten (10) calendar days to review and respond in writing to the investigation report and evidence, including by providing appropriate context and correction, as well as arguments about whether all of the evidence is relevant, the investigator reached a wrong conclusion about the relevance of the evidence, or whether relevant evidence has been omitted. Any requests for new witnesses or evidence should be made in the response. The parties' responses should be submitted directly to the Resolution Office.

Upon receipt of the part(ies) response(s), if any, the Hearing Administrator will provide the responses to the Resolution Officer for review. Parties will be notified if the Resolution Officer determines that:

- there are additional relevant witnesses or evidence (beyond the evidence identified as relevant by the investigator) that may be material to the outcome and will be considered during the hearing process;² or

² The Resolution Officer has discretion to request that the OIE investigator interview additional proposed witnesses and provide additional witness statements in order to make a determination regarding relevancy and/or to supplement the investigation report.

- witnesses or evidence identified as relevant by the investigator are not in fact relevant.

Witnesses and evidence that were not identified during the investigation will only be permitted if the party previously acted with due diligence to identify relevant witnesses/evidence.

B. Case File: In advance of the pre-hearing conference, the Hearing Administrator will provide parties and advisors with access to the hearing case file (“File”). The File will include:

- OIE investigation report and relevant evidence;
- Parties’ written responses to the investigation report and relevant evidence, if any;
- Any additional relevant evidence permitted by the Resolution Officer after review of the responses.

The Hearing Administrator will notify the parties and advisors of any additions or updates to the File.

C. Pre-Hearing Conference: The Resolution Officer or Hearing Administrator will convene separate pre-hearing conferences with the parties and their advisors prior to the hearing. The pre-hearing conference is optional for the party; however, the advisor is required to attend. The Hearing Administrator will schedule the pre-hearing conference within seven (7) calendar days from the deadline for party responses to the investigation report. Reasonable extensions to this timeframe will be granted for good cause at the discretion of the Resolution Officer. Pre-hearing conferences will be recorded.

During the pre-hearing conference, participants will discuss, at a minimum, the following topics:

- Identification of the party’s advisor of choice and support person, including their contact information;
- The procedures to be followed at the hearing;
- The date and time of the hearing;
- Witnesses invited or expected to appear at the hearing, including their contact information;
 - For Title IX cases, each party and relevant witness identified in the investigation report will be invited for questioning at the hearing. *Parties and witnesses must participate in questioning at the hearing in order for the Resolution Officer to consider any statement made by that party or witness (at any time, including prior to or during the investigation) in determining responsibility.*
 - For cases involving RVSM conduct not prohibited by Title IX, advisors will identify the parties or witnesses they wish to question during the hearing. If a party wishes to challenge the credibility of a party or witness, they must request to question the party or witness during the hearing. (See Section V.A. Resolution Officer’s use of Prior Statements and Hearing Case File)
- The scope of questioning anticipated by the advisors, in order to inform scheduling for the hearing.

As this is not a legal proceeding, Resolution Officers and Hearing Administrators will not require, allow, or accept briefings, memos, or motions from the parties or their advisors, other than the response to the investigation report.

D. Notice of Hearing:

The Hearing Administrator will schedule a hearing within thirty (30) days of the pre-hearing conferences and provide written notice to the parties, advisors, and witnesses.

1. Party Notification: The parties will be provided concurrent written notice of the hearing at least seven (7) days prior to the hearing. The notification to the parties will include:

- Date, time, location of the hearing, including any instructions for their participation (Zoom link, technology, arrival or departure, etc.);
- Name of the Resolution Officer and Hearing Administrator;
- The specific portions of the policy the respondent potentially violated;
- Name of the other party's advisor and support person (if any);
- Names of the witnesses approved to participate in the hearing;
- Electronic access to the File. No copies may be made of the information in the File, including taking pictures or screenshots.

2. Witness Notification: Witnesses who will be invited or expected to be questioned at the hearing will receive written notification via email from the Hearing Administrator.

The notification will include:

- Date, time, location of the hearing, including any instructions for their participation (Zoom link, technology, arrival or departure, etc.);
- Access to their witness statement and any evidence they submitted during the investigation for the purpose of review prior to the hearing.

IV. HEARING PROCESS

The Resolution Officer is responsible for maintaining an orderly, fair, and respectful hearing. The Resolution Officer has broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding disruptive persons, and will ensure efficient administration of the hearing.

A. Manner of Conducting the Hearing: Parties have the right to not be present in the same location for the hearing. The live hearing will be conducted virtually, with technology that provides for simultaneous audio and visual participation. The parties will have the opportunity to observe all portions of the hearing. Witnesses will only be present during the time they are questioned.³

³ In cases involving conduct prohibited by Title IX, a witness serving as an advisor or support person may be present for the entirety of the hearing, but the Resolution Officer may schedule their questioning prior to any other witness or party.

The hearing is limited to questioning of parties and witnesses. Parties and advisors will not give opening or closing statements. Advisors should only question a party or witness once. The Resolution Officer may question a party or witness at any time during the proceeding.

The Resolution Officer will determine the relevance of each question before it is answered and will not rely on advisor objections to ensure that the hearing is conducted in an orderly and fair manner.

- B. Order of the Hearing:** The Resolution Officer will have discretion to determine the structure of the hearing and how questioning is conducted. Parties may request a break at any time during the hearing.

Typically, the hearing will proceed in the following order:

- Resolution Officer Opening (review of script with introductions, review of procedures and order of the hearing)
- Questioning of the Claimant
 - Respondent's advisor will question claimant.
 - Claimant's advisor may ask the claimant questions.
 - Resolution Officer may ask the claimant questions.
- Questioning of the Respondent
 - Claimant's advisor will question the respondent.
 - Respondent's advisor may ask the respondent questions.
 - Resolution Officer may ask the respondent questions.
- Questioning of Witnesses: The Resolution Officer will explain their rights and responsibilities in the process prior to any questioning of the witness.
 - Each advisor will question the witness, in the order determined by the Resolution Officer. Typically, the advisor of the party who is less likely aligned with the witness, who did not initially identify the witness, or who challenged the witness' credibility will conduct questioning first.
 - The Resolution Officer may ask the witness questions.
- Resolution Officer Closing (reminder of the next steps in the process)

- C. Participation:** The University will not compel the participation of any person, though parties and witnesses are encouraged to participate.

1. Voluntary Participation: Parties and witnesses may choose to answer some, all, or none of the questions posed to them during the hearing. If any party exercises the option to not participate or answer specific questions, it will not preclude the Resolution Officer from making a determination regarding responsibility.

2. Failure to Appear or Submit to Cross-Examination: No inferences or assumptions will be drawn with regard to a party's decision not to provide a statement, be interviewed, or submit to cross-examination. However, failure to answer questions at the hearing will impact the information the Resolution Officer may consider.

- i. **For Title IX cases**, if a party or witness does not submit to cross examination at the hearing, the Resolution Officer must not rely on any statement of that party or witness in reaching a determination of responsibility. The Resolution Officer cannot draw any inferences about the determination regarding responsibility based on a party's failure to appear at the hearing or answer cross-examination or other questions.
- ii. **For cases involving RVSM conduct not prohibited by Title IX**, if a party or witness whose credibility has been challenged does not submit to cross examination at the hearing, the Resolution Officer will weigh any statement of that party or witness appropriately in reaching a determination of responsibility.

3. False Information: All participants in the hearing process are expected to be truthful and may be subject to disciplinary action for failing to provide truthful information.⁴

D. Role of the Advisor and Support Person During the Hearing: Parties are highly encouraged to work with an advisor. All parties are prohibited from directly asking questions of the other party or witness(es) and may only have questions asked through an advisor.

1. Regardless of whether or not the party has an advisor, the party may attend the hearing, listen to questioning, and answer questions asked of them.
2. Any advisor or support person who is verbally abusive, disruptive, or persists in trying to substantially participate in the hearing process after warnings to cease may be asked to leave and may be precluded from attendance at future meetings or hearings.
3. A party may request to add or change their advisor at any time. If a party's advisor is removed or asked to leave a hearing, a new advisor will be allowed or appointed. The new advisor will not be permitted to ask questions of any party or witness who has already been questioned by the previous advisor.

4. For cases involving Title IX prohibited conduct:

- If a party does not have an advisor present at the hearing, the University must provide without fee or charge to the party, an advisor of the University's choice to conduct cross-examination on behalf of the party.
- A party who declines to work with an advisor will have a University advisor appointed, and the University provided advisor will be present to conduct cross-examination of the other party and/or witnesses on behalf of the party's interest.

⁴ Students are subject to the General Student Regulations in the Student Rights and Responsibilities. Faculty and employees are subject to the policies and expectations outlined in University policy including but not limited to the Rules Governing Personal Conduct of Employees.

- If a party does not appear and that party's advisor of choice does not appear, a University provided advisor must still cross-examine any other party who appears, on behalf of the non-appearing party.

E. Questioning (cross-examination): The Resolution Officer will permit each party's advisor to ask the parties and witness(es) all relevant questions and follow-up questions, including those challenging credibility.

1. Cross-examination must be conducted directly, orally, and in real-time by the party's advisor. Parties will not be permitted to directly question any party or witness.
2. The opportunity to question may not be used to harass or intimidate the other party or witness(es).
3. Before a claimant, respondent, or witness answers a question, the Resolution Officer must first determine whether the question is relevant.⁵ The Resolution Officer must explain to the party proposing the question any decision to exclude a question as not relevant. A Resolution Officer may choose to ask a party or advisor to explain why a question is relevant. If the Resolution Officer allows an explanation, they will provide the opportunity for the opposing party to respond. Once the Resolution Officer has made a determination regarding the relevance of a question, the parties and advisors may not challenge the decision further during the hearing, but may choose to challenge the decision on appeal. The Resolution Officer may expand on their determination in the written decision.
4. Advisors will have one opportunity to question a party or witness. Advisors are expected to be prepared for a clear, complete, yet concise delivery of questions. Questioning of each participant is expected to last no more than 30 minutes. The advisor asking the questions may request additional time.
5. Advisors should carefully consider the relevance of questions prior to asking them, in particular questions pertaining to an individual's appearance, body attributes, or clothing.

F. Determination to Reconvene: After all parties and witnesses present have been questioned, the Resolution Officer will determine whether there are unresolved issues that may be clarified by the presentation of additional information. If so, the Resolution Officer will suspend the hearing and reconvene it in a timely manner in order to receive such additional information. A suspension may not be based on the failure of parties, witnesses, or advisors to appear without good cause or on the proposed introduction of new evidence unless the information was

⁵ Determinations regarding relevance will take into account the Policy's directives regarding prior or subsequent conduct of the respondent, prior sexual history of the claimant, and privileged information. Evidence is typically considered relevant if it has a tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence in making a determination regarding responsibility. Questions that are redundant may not be relevant.

previously unavailable to the party submitting it and the party acted with due diligence to obtain such evidence. Once the hearing has concluded, the Resolution Officer will not reconvene the hearing, absent good cause.

V. DECISION

Following the conclusion of the hearing, the Resolution Officer will determine whether the evidence presented establishes by a preponderance of the evidence that the respondent is responsible for violating the Policy.

The Resolution Officer must objectively evaluate all relevant evidence both inculpatory and exculpatory and independently reach a determination regarding responsibility without giving deference to the investigation report.

A. Resolution Officer's Use of Prior Statements and Hearing Case File

- 1. Cases Involving RVSM Conduct Not Prohibited by Title IX:** The parties have the opportunity to challenge the credibility of a party or witness by requesting that they be questioned during the hearing.

If the credibility of a party or witness is not challenged by a request to question that party or witness at the hearing, the Resolution Officer will consider the recitation of that individual's statement as written by the investigator and evidence submitted.

If the credibility of a party or witness was challenged by a request to question that party or witness at the hearing, the Resolution Officer will consider the recitation of that individual's statement as written by the investigator (including any feedback), as well as the statements made by the party or witness during the hearing (including during cross-examination).

If a party or witness fails to appear at the hearing despite having been notified of a request to be questioned, the Resolution Officer will review and weigh the statement, taking into account that the credibility of that party or witness has been challenged, and the statement has not been tested by cross-examination at a hearing.

- 2. Cases Involving Title IX Prohibited Conduct:** In cases where a respondent is alleged to have engaged in behavior prohibited by Title IX, if a party or witness does not submit to cross-examination at the hearing, the Resolution Officer must not rely on any statement of that party or witness in reaching a determination of responsibility. The Resolution Officer cannot draw any inference about the determination regarding responsibility based on a party's failure to appear at a hearing or answer cross-examination or other questions.

B. Written Decision

The Resolution Officer will issue a written decision to the parties simultaneously within twenty (20) calendar days of the conclusion of the hearing. The written decision will include:

- Identification of the allegations and section(s) of the policy alleged to have been violated;
- Description of the procedural steps taken from the receipt of the formal complaint through the determination;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the Policy to the facts;
- A statement of, and rationale for, the result as to each determination, including a determination regarding responsibility;
- Any disciplinary sanctions imposed on the respondent (where applicable);
- Whether remedies designed to restore or preserve equal access to the University's programs or activities will be provided to the claimant (where applicable);
- Procedures to appeal the Resolution Officer's decision.

C. Sanctions & Appeals

When the Resolution Officer's decision is issued, the parties will receive information on the applicable sanction and the process for appeal.

1. Student Sanctions: If a student is found responsible for violation of the Policy, the written decision will include the sanction, as determined by the Associate Director of the Office for Civil Rights and Title IX.

A range of factors will be considered when determining the appropriate sanction(s) including but not limited to:

- The nature and severity of the misconduct
- The need to stop the misconduct and prevent its recurrence
- The need to remedy and address the impact or effects of the conduct on the claimant or other members of the campus community
- The respondent's prior record of misconduct
- The level of ongoing threat to the safety and security of the claimant or campus community
- Aggravating or mitigating factors
- When applicable, the impact of separation from the University, on both parties.

When present, the following aggravating factors may lead to more severe sanctions:

- Multiple perpetrators
- Multiple victims
- Respondent in a position of authority or influence

- Use of force or past violence
- Use or display of a weapon
- Use of drugs or alcohol to incapacitate or coerce consent
- Claimant under the age of 18

While disciplinary sanctions are case-specific and based on a consideration of all circumstances in a particular case, the University strives to apply consistent sanctions for cases involving similar acts of misconduct.

The length of a suspension will take into account the factors listed above, as well as:

- The nature and severity of injury to the claimant
- The enrollment status of the parties
- The respondent's conduct during the investigation and compliance with interim measures

A copy of the Resolution Officer's decision will be provided to the Dean of Students Office. If either party wishes to challenge the sanction, they may do so by submitting a written challenge to the Dean of Students Office within ten (10) calendar days after the determination of responsibility becomes final.⁶

The Dean of Students Office is responsible for implementation and compliance with all student sanctions.

2. Faculty, Academic Staff, Staff, or Other Respondent: If a non-student is found responsible for violating the Policy, the sanction will be referral to the appropriate process for discipline or corrective action facilitated by the Office of Employee Relations, Academic Human Resources and/or unit leadership to determine the appropriate personnel action or other corrective measure.

VI. OTHER

A. Interference or Abuse of the Policy Hearing Process or Participants: If a party, witness, advisor, or support person chooses to participate in the hearing process, they must engage the process with good faith. The Resolution Officer will respond to any abuse, interference, or failure to comply with university hearing processes (including, but not limited to, forcing unnecessary delay in any part of the hearing process, or harassing, intimidating, or attempting to influence anyone in relation to the hearing process) and such conduct could result in the exclusion of individuals from the hearing process or referral to other University offices for resolution.⁷

⁶ The determination regarding responsibility becomes final either on the date that the determination of the result of the appeal is sent to the parties, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

⁷ The Resolution Office or Title IX Coordinator may refer such conduct to the appropriate University office for violations of student or employee policies and regulations, including but not limited to, the Dean of Students Office for violations of the Student Rights and Responsibilities, Academic Human Resources or the Office of Employee Relations for violations of employee policy; or OIE for violations of the Policy and Anti-Discrimination Policy, including retaliation.

- B. Accommodations:** Michigan State University is committed to providing equal opportunity for participation in all programs, services, and activities. Accommodations for persons with disabilities may be requested by contacting the Hearing Administrator by a specified date. Requests received after the specified date will be honored whenever possible. Any party requiring a translator or interpreter may request support directly from the Hearing Administrator by the specified date. Accommodations or interpretation services which require a person to be present will not negate the party's right to have an advisor or support person present.
- C. Correspondence:** Communication and correspondence related to the hearing process will be addressed to the respondent(s) and claimant(s). MSU students and employees will be notified via the MSU email system of all scheduled matters (hearings, decisions, sanctions, appeals, etc.). Pursuant to University policy, it is the responsibility of each party to check their email daily. Parties must notify the OIE investigator or Hearing Administrator of any change in contact information. If a party is unable to access their email, or has a problem viewing any correspondence, it is their responsibility to seek the assistance of the Hearing Administrator. All communication related to the hearing process should be sent to the Hearing Administrator at ocradmin@msu.edu. The Hearing Administrator will provide communication to the Resolution Officer or others as appropriate.
- D. Scheduling:** The Resolution Officer or Hearing Administrator will determine and notify the parties and advisors of the date and time of the pre-hearing conference and hearing sufficiently in advance of the scheduled meeting or hearing to allow for preparation. Any party or witness who needs assistance accommodating the scheduled date due to University employment or education commitments may request support from the Campus Equity Navigator. Any person who serves as an advisor or support person should make themselves available for any scheduled meeting or hearing.
- E. Location:** All parties will participate remotely. Parties and witnesses will not be present in the same room as the Resolution Officer.
- Parties are not required to be on campus during the hearing. Parties may choose a location where they feel most comfortable, provided that the location is both quiet and private to protect the privacy of the parties and witnesses and the integrity of the process.
- Parties may request to have the Hearing Administrator provide a private location on campus to participate from. The Hearing Administrator may provide instructions for arrival and departure from the campus location.
- F. No Contact Orders:** All parties are expected to abide by no contact orders. No direct contact between parties will occur during the hearing or immediately prior to or following the hearing. Merely participating in the hearing with the opportunity to hear the other party answer questions will not constitute a violation of the order. Parties who have additional no contact restrictions or personal protection orders are encouraged to review those restrictions and obtain any modifications necessary.

- G. Recordings and Use of Technology:** The hearing will be video recorded and will serve as the official documentation of the hearing. The recording will be maintained as part of the case materials with the Resolution Office. The recording will remain the property of the University. No other audio, video, or digital recordings may be made. Parties may review the recording upon request to the Resolution Office. Hearings are closed proceedings and are not open to the public. Parties and witnesses must participate from a private location and may not record or share access to the hearing (live stream, screen share, screen shot, allowing other individuals access to the hearing, etc.).

Parties and witnesses who fail to abide by this expectation are subject to disciplinary action through applicable University policies.⁸

- H. Status Updates and Timeframes:** Parties will receive regular, bi-weekly updates regarding the status of the hearing process. Timeframes in this document may be extended for good cause, provided that the parties are provided with notice of the extension.
- I. Withdrawal Prior to Completion of the Case:** If a student or employee leaves MSU prior to a final determination regarding responsibility, the case will proceed according to the formal grievance process in the Policy and applicable hearing and appeal procedures regardless of the student or employee status, unless the formal complaint is dismissed.

Records: All hearing records will be maintained by the University for at least seven (7) years in accordance with law and university record retention policy. The hearing record will include the hearing case file, any written response from the Resolution Officer, the notifications to the parties and witnesses, the audio recording of the pre-hearing conference and hearing, and the Resolution Officer's decision.

Effective Date: August 14, 2020

Michigan State University reserves the right to develop and implement new rules, guidelines, and procedures not presently included in this document.

It is the responsibility of Michigan State University to reasonably attempt to inform the participants in the hearing process of any substantive change in or addition to the current procedures.

⁸ Students are subject to the General Student Regulations in the Student Rights and Responsibilities. Faculty and employees are subject to the policies and expectations outlined in University policy and Union contracts and may be charged with violation of University policy including but not limited to the Rules Governing Personal Conduct of Employees.