

What to Expect When Serving as a Panelist

First and foremost, thank you for your willingness and dedication to serve as a Panelist!

In accordance to USG 6.7 Sexual Misconduct Policy (SMC) and 4.6.5 Standards for institutional Student Code of Conduct and Disciplinary Proceedings Policy.

Sexual Misconduct Hearing Panel

In no case shall a hearing to resolve charge(s) of student misconduct take place before the investigative report has been finalized. Where the respondent indicates that he or she contests the charges, the matter shall be set for a hearing and once the investigative report has been finalized and copies provided to the respondent and alleged victim (where applicable). However, all cases involving charges of sexual misconduct that go to a hearing shall be heard by a panel of staff and/or faculty.

All members of the panel should realize that being called before a Sexual Misconduct Hearing Panel in no way implies a presumption of guilt.

Purpose

Where the respondent indicates that he or she contests the charges, the matter shall be set for a hearing and once the investigative report has been finalized and copies provided to the respondent and alleged victim (where applicable); however, the alleged victim (where applicable) and respondent may have the option of selecting informal resolution as a possible resolution in certain student misconduct cases where they mutually agree, except where deemed inappropriate by the Vice President for Student Affairs (or his/her designee) or the System Director.

Composition of the Sexual Misconduct Hearing Panel

Sexual Misconduct panel members shall receive appropriate annual training as directed by the System Director or Coordinator and required by the Clery Act.

The Sexual Misconduct Hearing Panel shall be appointed by the Assistant Vice President/Dean of Students (AVP/DOS) and will be composed of at least three members. The panel will include at least three faculty and/or staff members who have been trained to serve on Sexual Misconduct hearing panels. In addition, the Hearing Officer will select an alternate to serve in the event of an emergency. Neither the AVP/DOS, nor the Title IX Coordinator shall serve as a hearing panel member, but rather, serve as advisors to the process.

Expectation of Availability of Panelist

Typically, the hearing may last between four to six hours. After members from the panelist pool are chosen, it is expected that the panelist will attend pre-hearing meetings to review case information and to be in attendance throughout the duration of the hearing with the exception of an emergency.

The Hearing Procedure

The hearing panel will have the opportunity to thoroughly review the investigative report and documentation submitted by the investigator(s) prior to the hearing. The investigator may testify as a witness regarding the investigation and findings, but shall otherwise have no part in the hearing

process and shall not attempt to otherwise influence the proceedings outside of providing testimony during the hearing.

*The general course of the hearing procedure will be as follows, whenever possible:

1. Opening Phase
2. Complainant Phase
3. Respondent Phase
4. Closing Statement Phase
5. Hearing Conclusion Phase
6. Deliberation Phase
7. Conclusion Phase

**Please see Sexual Misconduct Hearing Panel Process for more specific details.*

Procedures Regarding Witnesses

The following standards will apply to any such hearing:

The complainant and respondent shall have the right to present witnesses and evidence to the hearing officer or panel. Witness testimony, if provided, shall pertain to knowledge and facts directly associated with the case being heard. Both parties shall have the right to confront any witnesses, including the other party, by submitting written questions to the hearing officer for consideration. Advisors may actively assist in drafting questions.

Questioning

The Panel shall ask the questions as written and will limit questions only if they are unrelated to determining the veracity of the charge leveled against the respondent(s).

Both parties have the opportunity to put forth questions of the other party and of witnesses. This is done by submitting questions to the panel in written format. The panel may determine which questions are relevant and which are duplicative in nature. The panel reserves the right to revise or remove submitted questions.

In any event, the Panel shall err on the side of asking all submitted questions and must document the reason for not asking any particular questions.

1. Where the hearing officer or panel determines that a party or witness is unavailable and unable to be present due to extenuating circumstances, the hearing officer or panel may establish special procedures for providing testimony from a separate location. In doing so, the hearing officer or panel must determine whether there is a valid basis for the unavailability, ensure proper sequestration in a manner that ensures testimony has not been tainted, and make a determination that such an arrangement will not unfairly disadvantage any party. Should it be reasonably believed that a party or witness who is not physically present has presented tainted testimony, the hearing officer or panel will disregard or discount the testimony.

In sexual misconduct cases, the hearing officer reserves the right to allow a party to testify in a separate room, so long as no party is unfairly disadvantaged by this procedure. A party must still give testimony in the presence of the Panel, and the opposing party must have the opportunity to view the testimony remotely and to submit follow-up questions.

2. Formal civil rules of evidence do not apply to the investigatory or resolution process.
3. The standard of review shall be a preponderance of the evidence; however, any decision to suspend or to expel a student must also be supported by substantial evidence at the hearing.
4. Institutions should maintain documentation of the proceedings, which may include written findings of fact, transcripts, audio recordings, and/or video recordings.

Sexual Misconduct Hearing Panel Deliberations

After taking statements and gathering information, the Panel will deliberate in private first to determine if there is a finding of responsibility of a violation of the Sexual Misconduct Policy. The panel will use “preponderance of evidence” as the standard of proof to determine whether a policy violation occurred. Preponderance of evidence means that a panel must be convinced based on the information provided that a policy violation was more likely to have occurred than to not have occurred in order to find a student responsible for violating a policy. Based on this standard, the panel may find a student responsible for an alleged violation of policy based on a majority vote. The panel may also vote by majority to dismiss the charge based on the same evidentiary standard.

The Notice of Findings

Following a hearing, both the respondent and alleged victim (where applicable) shall be simultaneously provided a written decision via institution email (where applicable) of the outcome and any resulting sanctions. The decision should include details on how to appeal, as outlined below. Additionally, the written decision must summarize the evidence in support of the sanction. The same form will be completed, regardless of whether the student opts for a hearing panel or an administrative proceeding.

Determining Possible Sanctions

In determining the severity of sanctions or corrective actions the following should be considered: the frequency, severity, and/or nature of the offense; history of past conduct; an offender’s willingness to accept responsibility; previous institutional response to similar conduct; strength of the evidence; and the wellbeing of the university community. The hearing panel, hearing officer or administrator that found that a policy violation occurred will determine sanctions and issue notice of the same, as outlined above.

Record

A report by the Hearing Officer of the Sexual Misconduct Hearing Panel will be provided to the Title IX Coordinator, to include the names of the parties, the alleged charge(s), the names of witnesses, the names of Panel members, the timeline for the proceedings, the finding of violation or non-violation and the resolutions, if any. The Title IX Coordinator retains records of Sexual Misconduct Hearing Panels. Institutions should maintain documentation of the proceedings, which may include written findings of fact, transcripts, audio recordings, and/or video recordings.