

## Frequently Asked Questions re Interim Revised Title IX Policy<sup>1</sup>

### **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.

### **What kinds of cases are impacted by this interim revised policy?**

The interim revised policy applies only to cases that meet the following three criteria:

- Student (respondent) is accused of Sexual Misconduct as defined by Executive Orders (EOs) 1096/1097 (Revised October 5, 2016);<sup>2</sup>
- Student accused of Sexual Misconduct faces suspension or expulsion; and
- The credibility of the accuser (complainant) or other witnesses is central to a determination 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, EOs 1096/1097 (Revised October 5, 2016) applies to your case. The investigator makes findings of fact and the Title IX Coordinator makes the final determination about whether CSU policy was violated.

### **How will these changes most directly affect me?**

<b>Your Role in the Case</b>	<b>Most Significant Effects of Interim Revised Policy</b>
Complainant/Accuser	<ul style="list-style-type: none"><li>✓ After the investigator has completed the investigation report, you may ask to resolve your complaint (with the assistance of the campus Title IX Coordinator) without a hearing -- through the Early Resolution Process.</li><li>✓ If the case does not resolve, a hearing will be scheduled. You will identify witnesses and prepare questions that you want the hearing officer to ask of the respondent and other witnesses.</li><li>✓ You will participate in the hearing.</li></ul>
Respondent/Accused	<ul style="list-style-type: none"><li>✓ After the investigator has completed the investigation report, you 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. You will identify witnesses and prepare questions that you want the hearing officer to ask of the complainant and other witnesses.</li><li>✓ You will participate in the hearing.</li></ul>
Advisors	<ul style="list-style-type: none"><li>✓ The interim revised policy does not change the role of the advisor. The advisor may help you to prepare for the hearing and may consult with you</li></ul>

<sup>1</sup> The purpose of these FAQs is to provide an overview of CSU’s interim revised Title IX policy (effective April 2, 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.

<sup>2</sup> <http://www.calstate.edu/eo/EO-1097-rev-10-5-16.pdf>

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	during the hearing, but not speak for or on behalf of the complainant or respondent.
Support Person	✓ The complainant and respondent may also be accompanied at the hearing by a friend or other person to provide emotional support.

### What will the hearing be like?

The hearing is a meeting at which the hearing officer (the individual who will oversee the hearing) listens to the witnesses and analyzes the evidence. The hearing officer asks questions (including questions proposed by the complainant and respondent) of the witnesses and makes a decision about whether the Executive Order was violated.

### 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 person involved in the complaint, please discuss your request with the campus hearing coordinator in advance of the hearing so that special arrangements can be made.

### What does cross-examination mean?

Cross-examination means asking questions of a witness (including the complainant or respondent) to challenge that witness's statements or credibility. In the hearing process, the respondent and complainant will "cross-examine" by asking the hearing officer to ask questions of the witnesses. The university's process of providing for "indirect" questioning by the hearing officer is designed to minimize anxiety 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 there is risk in not attending.

- If you are a complainant and do not participate in the hearing, the University's ability to take action will be limited. The hearing will happen, 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.
- If you are a respondent and do not participate in the hearing, the hearing will happen, 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. If you are a witness and do not attend the hearing, you subject yourself to discipline (as a student or employee) and a hold may be placed on any student witness's transcript. If a witness does not attend the hearing, the hearing officer will likely not rely on what that witness told the investigator (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. An Early Resolution is an agreement between you and the other party that would resolve the matter without a hearing.

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- ✓ It is a completely voluntary process that can occur at any time up to the point where 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.

### **When will my case go to hearing?**

If your case is in the investigation phase, the investigator will interview witnesses, gather the evidence, show you the evidence, invite you to respond to the evidence, and then prepare a report of the evidence. If you would like, you may explore Early Resolution with your campus Title IX Coordinator during this time. As soon as the interim policy becomes effective, cases that have been investigated will begin to be scheduled for a hearing.

### **Why is this policy an “interim” policy?**

This interim policy was prepared in response to the recent California court of appeal ruling described above and to ensure that pending matters move forward as quickly as possible under the circumstances. This area is constantly evolving and we expect to revise the Executive Orders shortly.

### **Do you believe the hearing requirement will have a negative effect on students reporting sexual misconduct or moving forward with their cases?**

We hope not, and will do our best to make the process as fair and compassionate as possible for everyone involved. 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 and concerns.

### **Will the new policy apply to dating and domestic violence or stalking cases?**

The interim policy 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 likely be governed by the interim policy. Please direct any questions to your campus Title IX Coordinator.

### **What effect does the interim policy have on closed cases?**

Cases that were concluded before January 2019 cases were properly addressed under CSU policy and in compliance with law. Please direct any questions to your campus Title IX Coordinator.