

University of Colorado Equity Offices Hearing Manual

The information contained within the Equity Offices Hearing Manual is intended to provide general information to members of the university community and is not intended to, nor does it, create an express or implied contract between the university and community members. The Equity Offices reserve the right to change or eliminate any of the language herein at its discretion and without notice.

I. OVERVIEW

At the conclusion of the investigative process, after the final investigation report is distributed to the parties and where the case is eligible for a hearing as outlined in the Policy, the applicable Equity Office (“Equity Office”) for the respective campuses¹ will refer the matter for a live, virtual hearing before a Hearing Officer. The hearing process concludes with a written determination containing the Hearing Officer’s findings regarding responsibility and an attached sanction if applicable. The hearing is an internal process unique to the University of Colorado and is not governed by the rules and procedures used in civil and criminal courts.

II. STATEMENT OF PURPOSE

The purpose of the hearing is to provide both parties the opportunity to cross-examine the other party and any witnesses relevant to the allegations in dispute before a neutral Hearing Officer.

III. RULES OF DECORUM

The prehearing conference and the hearing itself are less formal than courtroom proceedings; however, proper decorum and a respectful hearing must be maintained at all times. Virtual hearing “backgrounds” must be neutral and respectful.

Any person who participates in the hearing process (*e.g.*, party, witness, advisor, support person, etc.) must engage the process with good faith. Any abuse, interference, or failure to comply with university hearing processes could result in the exclusion of individuals from the hearing process or referral to other university offices for resolution.

Advisors must be respectful of all participants and the hearing process. Abusive, intimidating, and harassing conduct will not be tolerated. Repetitive or redundant questioning may be deemed both lacking in relevancy and harassing. Advisors who violate these expectations after warnings to cease may be asked to leave and may be precluded from attendance at future meetings or hearings.

The Hearing Officer has broad discretion and authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding disruptive persons. Conduct violating these Rules of Decorum could result in the exclusion of individuals from the hearing process or referral to other university offices for resolution.

¹ Boulder ([Office of Institutional Equity and Compliance](#)); Colorado Springs ([Office of Institutional Equity](#)); and Denver/Anschutz ([Office of Equity](#)).

IV. ROLES IN THE HEARING PROCESS

- A. Equity Office Administrator(s) (including hearing facilitators, investigators and other Equity Office staff as needed for administrative tasks): During the hearing process, the participants and the Hearing Officer will be supported by Equity Office Administrator(s). An Equity Office Administrator will provide parties and advisors with the hearing case file, schedule and provide notice of the pre-hearing conference and the hearing, facilitate the technology for the hearing, and finally, provide the parties and advisors with the Hearing Officer's written determination regarding responsibility, and the disciplinary authority's sanction, if applicable.
- B. Parties: The complainant(s) and respondent(s) are the parties to the hearing. The parties may submit to cross-examination but are not required to attend the hearing or to submit to questioning at the hearing. Irrespective of the parties' participation in the hearing, the parties' advisors shall attend and participate in the hearing. The parties may not directly question the other party or witnesses during the hearing, only their advisor may do so.
- C. Hearing Officer: A trained Hearing Officer will preside over the pre-hearing conference and live hearing, maintain an orderly, fair, and respectful hearing, direct the order of the proceeding, make evidentiary findings, and author a written determination regarding responsibility, applying the preponderance of the evidence standard.
- D. Advisor: Throughout the grievance process, the complainant and respondent may have one advisor of their choice. Parties will have an advisor to conduct cross-examination during the hearing. Parties may use an advisor of their choice to conduct cross-examination at the hearing, or the university may provide one for the hearing. An advisor during the hearing process may be, but does not have to be, an attorney. The advisor must ask all questions during the hearing. Parties are prohibited from directly asking questions of the other party or witnesses at the hearing.
 - 1. Each party may bring one advisor of their choosing to conduct cross-examination during the live hearing, with prior notice to the university that the advisor will attend and that advisor's name.
 - 2. Advisors are not permitted to answer questions posed to parties or witnesses. However, a party may consult with their advisor during the hearing and the advisor may assist with preparation for the hearing.
 - 3. University-provided advisors are available for parties at no cost. Parties may request a university-provided advisor for the purposes of cross-examination through the Equity Office Administrator, and the university

will endeavor to assign an advisor at least fourteen days prior the scheduled pre-hearing conference.

4. A party cannot request a specific university-provided advisor.
 5. If a party declines to work with an advisor, the party will have a university advisor appointed, and the university-provided advisor will be present to conduct cross-examination of the other party and witnesses.
 6. 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 or witness who appears. As necessary, the hearing may be adjourned and rescheduled to allow the university-provided advisor time to prepare.
 7. If a party's advisor is removed or asked to leave a hearing, a new advisor will be allowed or appointed. The hearing will adjourn and reschedule to resume as promptly as possible to allow the new advisor time to become familiar with the allegations.
- E. Support Person: Each party may bring a support person of their choice to the hearing, with prior notice to the university that a support person will attend and that support person's name. If a witness is serving as a support person for a party, the witness may be present for the entirety of the hearing, but the Hearing Officer will schedule their questioning prior to any other witness or party. Otherwise, the support person will not speak during the hearing.
- F. Witnesses: Witnesses will be limited to those previously identified in the Final Investigation Report. Parties may also question the investigator through their advisors. Any university investigator will be advised by University Counsel.
- G. Evidence: The evidence will be information contained in the Equity Office investigative file. The evidence will be made available during the hearing.
- H. Hearing Participants: The only participants allowed at the hearing are the Hearing Officer, Equity Office Administrators (typically hearing facilitators), parties, party advisors, one support person per party, and witnesses only when they are testifying (including investigator as applicable). If witnesses are represented by an attorney, they may request attendance of their attorney at the hearing. Participants are also entitled to support services or staff to ensure equal access to the hearing, which could include, but is not limited to, disability-related accommodations, translators, or interpreters.

V. SCOPE OF THE HEARING PROCESS

Prior to the hearing, the applicable Equity Office will have conducted an investigation for the purpose of gathering witness statements and evidence in

accordance with its campus-based procedures.² The Equity Office investigation will provide the parties the opportunity to present information and evidence to the investigator, identify witnesses, respond to allegations, and review and respond to all evidence gathered that is directly related to the allegations.

At the conclusion of the investigation, the Equity Office will draft a Final Investigative Report. The Hearing Officer makes the ultimate factual findings and authors the written determination regarding responsibility only after a live hearing including the opportunity for cross-examination on relevant topics.

Prior to the hearing, the Hearing Officer will have reviewed the Final Investigative Report and any written response that the parties submit. The hearing will not be a repeat of the investigation.

VI. PRE-HEARING PROCESS AND CONFERENCE

- A. Written Responses: At the conclusion of the investigation portion of the grievance process, an Equity Office Administrator will provide the parties and their advisors with the Final Investigative Report and the entire investigative file. The parties and advisors will have an opportunity to review and respond in writing to the Final Investigative Report and evidence. An Equity Office Administrator will send any written responses to the Hearing Officer and to the other party as applicable.
- B. Case File: In advance of the pre-hearing conference, an Equity Office Administrator will provide parties and advisors with access to the hearing case file ("File"). The File will include:
 - 1. Equity Office's Final Investigative Report and all gathered evidence directly related to the allegations;
 - 2. Parties' written responses to the Final Investigative Report and evidence, if any.
- C. Pre-Hearing Conference: The Hearing Officer will convene a virtual, live pre-hearing conference with the parties and their advisors prior to the hearing. The advisor must attend the pre-hearing conference. The Equity Officer Administrator will record the prehearing conference. All rules of decorum apply to the pre-hearing conference. Prior to the pre-hearing conference, the parties will provide the Hearing Officer with a list of witnesses they may call and a list of exhibits they may use during the hearing. The parties and advisors will be provided the name of the Hearing Officer prior to the pre-hearing conference.

² Boulder ([OIEC Resolution Procedures](#)); Colorado Springs ([Office of Institutional Equity Resolution Procedures](#)); and Denver/Anschutz ([Sexual Misconduct, Intimate Partner Violence and Stalking Procedures](#))

During the pre-hearing conference, the Hearing Officer and the advisors will discuss, at a minimum, the following procedural topics:

1. Identification of the party's support person of choice, if any;
2. The date and time of the hearing;
3. Identification of witnesses requested to appear at the hearing;
4. The Hearing Officer will determine the order of parties and witnesses participating in the hearing;
5. Identification of exhibits from the investigative case file that will be presented for the cross-examination process; and
6. Acknowledgement of the rules of decorum and that failure to abide by the rules may result in adjournment of the hearing.

The Hearing Officer and the advisors will also discuss evidentiary guidelines:

1. No new evidence will be permitted outside the investigative record, meaning no new witnesses who have not been previously identified and no new documents (including photos, video, or other media) that have not been previously disclosed to the investigators.³ For example, if a witness was identified in the Final Investigative Report but was not interviewed by the Equity Office investigator, that witness is not a "new witness" and may still be called as a witness for the hearing.
2. The Hearing Officer will not accept briefings, memos, or motions from the parties or their advisors, other than the response to the Final Investigative Report. The Colorado and Federal Rules of Evidence do not apply. Advisors will not be required to offer evidence into the record, and the Hearing Officer will not authenticate evidence.

D. Notice of Hearing: The Equity Office Administrator will endeavor to schedule a hearing within thirty (30) days of the pre-hearing conference and provide written notice to the parties, advisors, and witnesses. Each party and relevant witness identified in the pre-hearing conference will be invited for questioning at the hearing.

1. Party Notification: The Equity Office Administrator will provide the parties and advisors concurrent written notice of the hearing at least seven (7) calendar days prior to the hearing. The written notification to the parties and advisors will include:

³ If a Hearing Officer has questions about whether evidence or witness(es) were contained within the Investigative File, the Hearing Officer will consult with the Equity Office Administrator, who may consult with the investigator(s).

- a. Date, time, location of the hearing, including any instructions for their participation (Zoom link, technology information, etc.)
 - b. Names of the Hearing Officer and parties;
 - c. The specific portions of the policy the respondent allegedly violated;
 - d. Name of the other party's advisor;
 - e. Name of the other party's support person, if applicable;
 - f. Names of the witnesses requested to participate in the hearing;
 - g. Electronic access to the File. No copies may be made of the information in the File, including taking pictures or screenshots except for the purpose of sending the Equity Office Administrator screenshots or copies of documents to be used as exhibits.
2. Witness Notification: Witnesses who are requested to participate in cross-examination at the hearing will receive written notification via email from the Equity Office Administrator. The notification will include:
 - a. Date, time, location of the hearing, including any instructions for their participation (Zoom link, technology information, etc.);
 - b. Access to their witness statement and any evidence they submitted during the investigation for the purpose of review prior to the hearing.

VII. HEARING PROCESS

The Hearing Officer is responsible for maintaining an orderly, fair, and respectful hearing. The Hearing Officer has broad discretion and 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. Conducting the Hearing: The live hearing will be conducted virtually, with technology that provides for simultaneous audio and visual participation. The parties, advisors, and support persons, if any, will have the opportunity to observe all portions of the hearing. Witnesses will only be present during the time they are questioned.⁴

The hearing is limited to questioning of parties and previously disclosed witnesses. Parties and advisors will not give opening or closing statements. Advisors should typically only question a party or witness once. The Hearing Officer may question a party or witness at any time during the proceeding, including re-calling a witness if necessary, at the Hearing Officer's discretion. The Hearing Officer will determine the relevance of each question before it is

⁴ If a witness is serving as an advisor for a party, the witness may be present for the entirety of the hearing, but the Hearing Officer should schedule their questioning prior to any other witness or party.

answered and will not rely on advisor objections to ensure that the hearing is conducted in an orderly and fair manner. The Hearing Officer may allow the advisors to question each party or witness, only interjecting when there are relevance concerns, without pausing for an affirmative ruling on relevance, if the Hearing Officer establishes this practice on the record.

Hearings will not ordinarily last more than one day. At the close of the hearing, the Hearing Officer will explain the next steps to the parties and advisors.

- B. Order of the Hearing: The Hearing Officer will have discretion to determine the structure of the hearing and how questioning is conducted. Presumptive hearing participants include the investigator⁵, the parties, and any witnesses. Hearing participants may request a break at any time during the hearing, though a mid-hearing conferral should not exceed ten minutes.

C. Participation and Evidence

1. The university cannot compel the participation of any party or witness, though parties and witnesses are encouraged to participate.
2. 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 Hearing Officer from making a determination regarding responsibility.
3. Failure to Appear or Submit to Cross-Examination: The Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
4. Materially False Statements: A person who knowingly or recklessly makes false statements or knowingly or recklessly submits false information during the grievance process violates the Sexual Misconduct Policy.⁶ Making a report or providing information in good faith, even if the facts alleged in the report are not later substantiated, will not constitute providing false or misleading information.

⁵ There is no requirement that the investigator appear as a witness.

⁶ Further, students are subject to the Student Code of Conduct and faculty and staff are subject to Regent Law and Policy, including but not limited to APS 2027, the Code of Conduct, and Regent Policy 8: Conduct of Members of the University Community.

5. Privilege and Rape Shield Protections

- a. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- b. A party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, may not be used unless the party provides voluntary, written consent to use those records.
- c. Information protected by a legally recognized privilege may not be used unless the party provides voluntary, written consent to use those records.

D. Cross-Examination Procedure: The Hearing Officer will permit each party's advisor to ask the parties and witnesses 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 are not permitted to directly question any party or witness.
2. All questions must be relevant. A relevant question seeks information that has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the information sought in the question. The opportunity to question may not be used to harass or intimidate the other party or witness(es).
3. Before a complainant, respondent, or witness answers a question, the Hearing Officer must first determine whether the question is relevant. The Hearing Officer must explain any decision to exclude a question as not relevant.
 - a. The Hearing Officer may ask an advisor to explain why a question is relevant. The Hearing Officer will provide the opportunity for the

other party's advisor to respond. The advisors may not challenge a Hearing Officer's determination regarding the relevance of a question after the Hearing Officer's decision, but the party may choose to challenge the decision on appeal. The Hearing Officer may explain their evidentiary determination(s) in the written decision.

4. Advisors will presumptively have one opportunity to question a party or witness.
5. Advisors should carefully consider the relevance of questions prior to asking them.
6. Advisors may only make objections to questions on the grounds of relevance or to state a privilege. Advisors must signal for the Hearing Officer's attention, calmly state their objection, and wait for a determination.

VIII. POST-HEARING

A. Optional Impact Statements

Following the hearing, an Equity Office Administrator will provide written instructions to the parties regarding an opportunity to submit information they may wish for the disciplinary authorities to consider regarding the incident(s) under investigation in the event the Hearing Officer were to determine that a Policy violation has occurred (an "impact statement").

This opportunity is available to the parties regardless of whether they participated in the live cross-examination process, and the parties are not required to submit an impact statement. ***This opportunity is provided while the written determination is pending and is in no way an indication of the Hearing Officer's potential finding.*** In cases resulting in a Policy violation, the Hearing Officer, prior to the issuance of the written determination, must refer the matter to the appropriate disciplinary authorities for a disciplinary sanction to be determined. Once the written determination and disciplinary sanction, if applicable, are complete, the Equity Office Administrator will then send all the documents to the parties and advisors.

B. Hearing Officer's Written Determination Regarding Responsibility and Final Written Determination.

The Hearing Officer will issue a written determination regarding responsibility. The written determination regarding responsibility will include:

1. Identification of the conduct allegedly constituting Sexual Misconduct;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, or hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the Policy to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility.

The Equity Office Administrator will then add the following to complete the Final Written Determination before sending it simultaneously to the parties:

1. Any disciplinary sanctions the university imposes on the respondent consistent with the Policy;
2. Whether remedies designed to restore or preserve equal access to the education program or activity will be provided by the university to the complainant; and,
3. The university's procedures and permissible bases for the complainant and respondent to appeal.

IX. MISCELLANEOUS

- A. Accommodations: The university is committed to providing equal opportunity and accessibility for participation in all programs, services, and activities. Accommodations for persons with disabilities may be requested by contacting the Equity Office Administrator. Any party requiring a translator or interpreter may request support directly from the Equity Office Administrator. Accommodations or interpretation services which require a person to be present will not negate the party's right to have an advisor present.
- B. Correspondence: Communication and correspondence related to the hearing process will be addressed to the respondent and complainant and their respective advisors. University of Colorado students and employees will be notified via the University of Colorado email system of all scheduled matters (hearings, decisions, sanctions, appeals, etc.) unless otherwise agreed upon in advance. ***It is the responsibility of each party and advisor to check their email on a frequent and consistent basis***, pursuant to university policy (APS 6002). Parties and advisors must notify the Equity Office

Administrator of any change in contact information. If a party or advisor is unable to access their email, or has a problem viewing any correspondence, it is their responsibility to seek the assistance of the Equity Office Administrator. The Equity Officer Administrator will provide communication to the Hearing Officer or others as appropriate.

- C. Scheduling: The Hearing Officer or Equity Officer Administrator will determine and notify the parties and advisors of the date and time of the pre-hearing conference and hearing in advance of the scheduled event. Any party or witness who needs assistance accommodating the scheduled date due to university employment or education commitments may request support from the applicable Equity Office. Any person who serves as an advisor should make themselves available for any scheduled meeting or hearing.
- D. Location: All parties will participate virtually. 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 contact the Equity Office Administrator to request to participate from a private location on campus. The Equity Office Administrator may provide instructions for arrival and departure from the campus location.
- E. No Contact Orders and other legal orders restricting contact: All parties are expected to abide by any applicable orders. Merely participating in the hearing with the opportunity to hear the other party answer questions will not constitute a violation of any university-issued no contact order. Parties who have additional no contact restrictions or personal protection orders are encouraged to review those restrictions and obtain any modifications necessary.
- F. 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 Equity 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 Equity 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.

- G. Status Updates and Timeframes: Parties will receive regular updates regarding the status of the hearing process. Timeframes in this document may be extended for good cause, provided that the parties are notified of the extension.
- H. Withdrawal Prior to Completion of the Case: If a student or employee leaves the university following the pre-hearing conference and 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.
- I. 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 parties the notifications to the parties and witnesses, the audio or video recording of the pre-hearing conference and hearing, the Hearing Officer's determination regarding responsibility, and the Final Written Determination.