



Technical College System of Georgia

Title IX Hearing Process

Josh McKoon, General Counsel
Technical College System of Georgia

Key Aspects of the Hearing Process

- **Advisors**

- The Complaining Party and the Responding Party are required to have Advisors that assist them throughout the Title IX Process and are allowed to cross-examine witnesses during the hearing.
- Either party may hire an attorney to serve as an Advisor.
- The Title IX Rules promulgated by the U.S. Department of Education and the TCSG Procedure based on them do not contemplate providing Advisors for witnesses, whether they be students, faculty, or staff.
- We are considering changes to our existing process to allow the TCSG Office of Legal Services to staff the Advisor role in some circumstances.

Key Aspects of the Hearing Process (Cont'd)

- **Cross Examination**

- In order to give any weight to testimony shared with the Title IX Investigator, a witness must submit to cross examination during the Title IX Live Hearing.
- Cross examination is by its very nature a hostile and adversarial process. The Decision Maker that presides over the Title IX Live Hearing has limited discretion to stop a question from being posed to a witness.
- Advisors are given wide latitude to explore many different lines of inquiry with each witness as a component of the due process guarantees built into the federally mandated Title IX Live Hearing rules.
- The Decision Maker cannot provide witnesses with notice in advance of what questions will be asked or otherwise limit testimony outside of the narrow authority provided for under federally mandated rules reflected in TCSG Procedure 6.1.2p.
- TCSG Staff will work with your Title IX Coordinators to provide written resources for potential witnesses to better understand what to expect beyond the interview with the Title IX Investigator.

Key Aspects of the Hearing Process (Cont'd)

- **Decision Maker**

- TCSG Office of Legal Services has been staffing the Decision Maker role in the Title IX Live Hearing Process.
- The Decision Maker must remain neutral during the Live Hearing Process, which can create friction between college personnel and the TCSG Office of Legal Services.
- TCSG Office of Legal Services is exploring the possibility of contracting with the Office of State Administrative Hearings (OSAH) to provide Administrative Law Judges to serve in the Decision Maker role.
- This solution will provide a neutral third party Decision Maker and allow the TCSG Office of Legal Services to provide assistance with regard to staffing of the Advisor role.

Identification of Best Practices

- **Have All Parties On Site**

- If possible, the Title IX Live Hearing should be conducted in person. While a platform like WebEx should be utilized to meet the recording requirement of the federal rules, it reduces the opportunities for technical problems delaying the hearing.
- Having all the parties in the same room makes management of the live hearing and sequestration of witnesses simpler and removes the potential for an objection based on who is in the room with a witness.
- If parties are separated, please make witnesses available in their own room.

- **Perform a test run**

- Do not wait until the day of the hearing to learn there are technology, space, or security issues.
- Perform a test to make sure the venue selected can handle the requirements of a Title IX Live Hearing.

Identification of Best Practices (Cont'd)

- **Security**
 - There should be security officers in the room to handle any potential problems, insure sequestration of witnesses, and to handle any other needs that may arise during the Title IX Live Hearing.
- **Ready Access to Office Equipment**
 - It is possible that there will be a need to make copies of documents or to handle other administrative tasks as the Title IX Live Hearing proceeds, so having a venue with a printer/copier and other office equipment will result in fewer delays.
- **Audio/Visual Technology**
 - In addition to computers if in a remote setting, having equipment to allow for the display of exhibits or the playing of recordings related to the complaint may be necessary – making sure the venue has these assets in place avoids potential delays to place evidence in the record.

Questions?

