



# Title IX Hearing Officer Training 2022-2023

# Title IX

**"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."**

# Definition of Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct; (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Title IX Regulations May  
19, 2020; § 106.30(a)

# Education Program or Activity

For the purposes of this section, §§ 106.30, and 106.45, “education program or activity” includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

# What is the SIM Policy?



- **Purpose**  
The Sexual and Interpersonal Misconduct (SIM) Policy prohibits discrimination and harassment on the basis of sex.
- **Prohibited Conduct**  
Sexual harassment, sexual assault (rape, fondling, incest, statutory rape), dating violence, domestic violence, stalking, sexual exploitation, complicity, sex or gender-based discrimination, and gender-based harassment, prohibited relationships by persons in authority, prohibited relationships with students.
- **Retaliation**  
The Policy also prohibits retaliation against a person who reports, complains about, or who participates in any proceeding under the Policy.

# Policy Applications



Students



Faculty



Staff



Contractors



Volunteers

# Policy Applications

## On Campus Conduct

Conduct that occurs on campus, including on property owned or controlled by the college.

## College Programs

Conduct that occurs in the context of college employment or education programs or activities, including study abroad and internship programs.

## Off Campus Conduct

Off-campus conduct that has continuing adverse effects on, or creates a hostile environment for, community members.



# Prohibited Conduct





# SIM Policy Prohibited Conduct

- Sexual Harassment

- Stalking

- Gender-Based Harassment

- Sexual Assault

- Sexual Exploitation

- Prohibited Relationships - with Students

- Dating Violence

- Complicity

- Prohibited Relationships - Person in Authority

- Domestic Violence

- Sex or Gender-Based Discrimination

- Retaliation

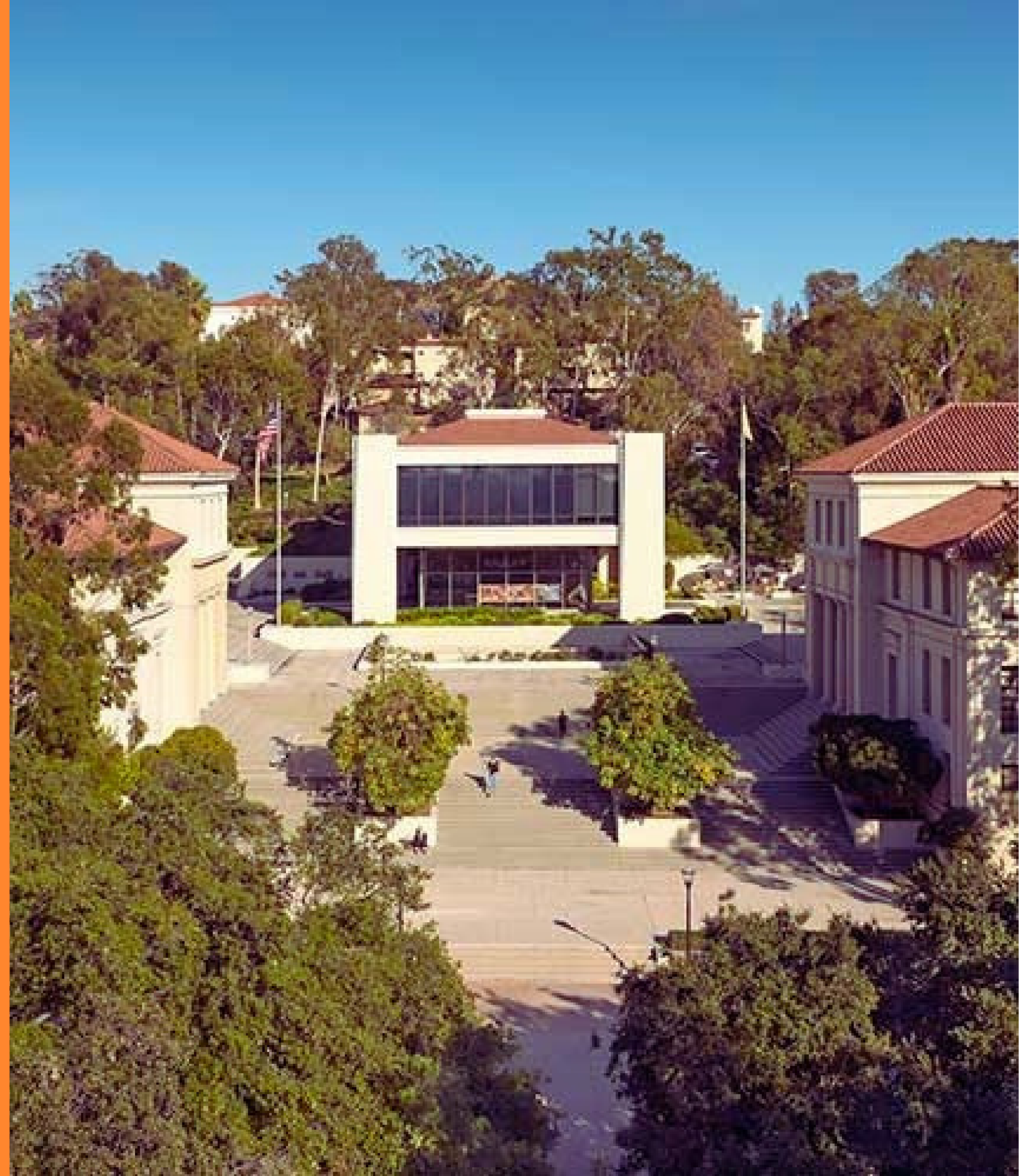
# Civil Rights & Title IX Office

## Services Provided

- Supportive Measures and Access to Resources
- Discussing Rights and Options Without Filing a Report
- Documentation-Only Reports
- Adaptable and Disciplinary Resolution
- Training and Education

## How to Contact or Report

- AGC Room 111
- [oxy.edu/civil-rights-title-ix](http://oxy.edu/civil-rights-title-ix)
- [afulcher@oxy.edu](mailto:afulcher@oxy.edu)
- (323) 259-1338

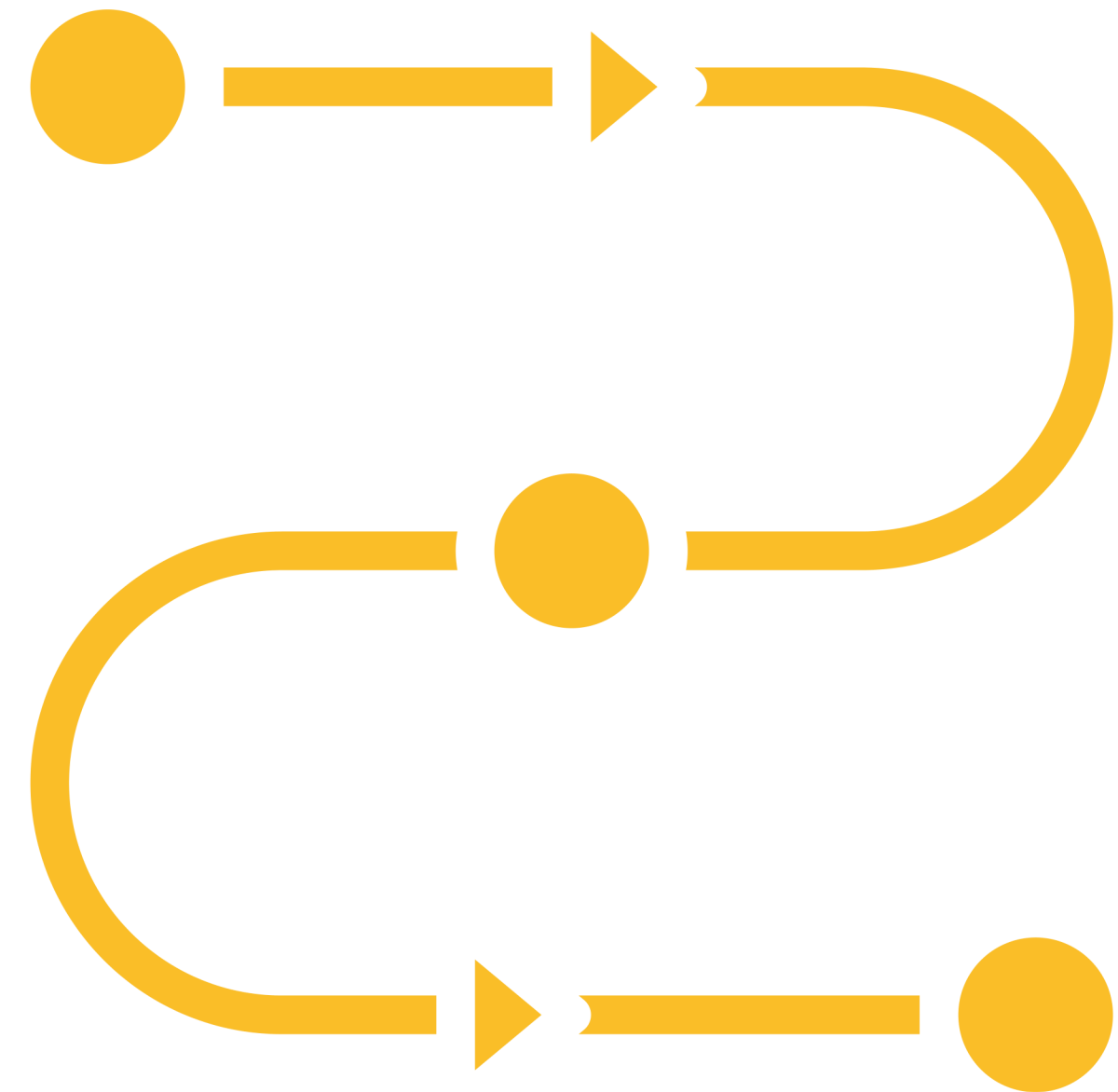


# Initial Assessment

RESPOND TO IMMEDIATE  
HEALTH OR SAFETY  
CONCERNS

DETERMINE JURISDICTION

OFFER SUPPORT AND  
ASSISTANCE THROUGH AN  
"OFFER TO MEET"

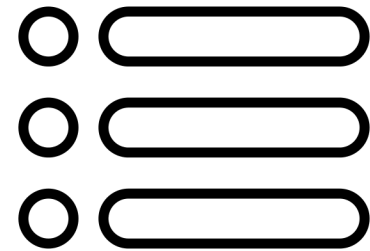


# Intake Meetings



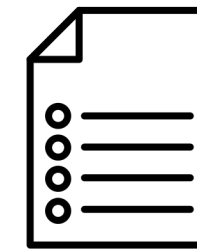
## ADVISORS

Both parties have the right to have an advisor of their choice present during any meeting or interview.



## SUPPORTIVE MEASURES

- Counseling
- Class or Work Schedule Changes
- No-Contact Directive



## REPORTING OPTIONS

- Reporting to Law Enforcement
- Document-Only
- Adaptable or Disciplinary Resolution

# Disciplinary Resolution

Involves an investigation into whether or not the SIM Policy was violated.

- Parties meet with an investigator, identify witnesses, submit evidence, and review and respond to the investigation report.
- A Hearing Officer or Investigator then determines if it is more likely than not that the SIM or DHR Policy was violated.
- The determination regarding responsibility can be appealed by either party.
- When a policy violation has occurred, the appropriate College officials will issue a sanction.
- Student sanctions: educational initiatives, warning, censure, disciplinary probation, restitution, removal from campus housing, suspension, expulsion, revocation of admission or degree, withholding degree.
- Employee Sanctions: warning, reprimand, restricted access or modification of duties, probation, suspension without pay, termination of employment, referral to faculty hearing committee.



# Basic Requirements

- Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent.
- Require an objective evaluation of all relevant evidence – Including both inculpatory and exculpatory evidence – Credibility determinations may not be based on a person's status
- Implementers must be trained and free from conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent

# Basic Requirements

- Presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process
- Follow reasonably prompt time frames for conclusion of the grievance process with permissible delay for good cause
- Provide a standard of evidence to be used to determine responsibility, applying either the preponderance of the evidence standard or the clear and convincing evidence standard
- Provide procedures and permissible bases for the complainant and respondent to appeal • Provide a range of supportive measures available • Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege

# Advisor of Choice

- Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.
- A recipient may establish restrictions on advisors' participation, as long as the restrictions apply equally to both parties.



# Evidentiary Considerations

- Privileged Information and Records
- Relevance
- Prior Sexual History
- Prior or Subsequent Misconduct
- Setting Evidentiary Rules

# Privileged Information

- Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege

# Relevance

While the proposed rules do not speak to admissibility of hearsay, prior bad acts, character evidence, polygraph (lie detector) results, standards for authentication of evidence, or similar issues concerning evidence, the final regulations require recipients to gather and evaluate relevant evidence, with the understanding that this includes both inculpatory and exculpatory evidence, and the final regulations deem questions and evidence about a complainant's prior sexual behavior to be irrelevant with two exceptions, and preclude use of any information protected by a legally recognized privilege (e.g., attorney-client).

# Prior Sexual History

The Department disagrees that the rape shield language is too broad. Scenarios described by commenters, where a respondent might wish to prove the complainant had a motive to fabricate or conceal a sexual interaction, do not require admission or consideration of the complainant's sexual behavior.

Respondents in that scenario could probe a complainant's motive by, for example, inquiring whether a complainant had a dating or romantic relationship with a person other than the respondent, without delving into a complainant's sexual behavior; sexual behavior evidence would remain irrelevant in such circumstances.

# Prior or Subsequent Misconduct

The regulations do not prohibit the use of prior or subsequent misconduct – “Evidence of a pattern of inappropriate behavior by an alleged harasser” permitted if relevant.

Prior or subsequent misconduct may be relevant to demonstrate: Intent/knowledge/state of mind, Motive, Opportunity, Lack of mistake, Pattern, Identity, Information that is inextricably interwoven with the facts

# Hearing Prep: Be Objective and Professional

- Identify and set aside personal biases and prejudices
- Be careful to avoid making assumptions as to how a person “should” react
- Avoid putting oneself in the shoes of the complainant or the respondent
- Recognize emotional impact, if any, but do not allow emotion to impact fair and impartial fact-finding
- Maintain an appropriate demeanor at all times
- Be polite and respectful to all parties
- Maintain appropriate sensitivity to presentation of difficult information
- Prepare for the hearing by reading and annotating all materials –  
Outline areas of inquiry – Consider wording of questions ahead of time

# Standard of Proof

- More likely to be true than not
- More probable than not
- The greater weight of the evidence
- Tipping the scale ever so slightly
- 51 %
- Based on the more convincing evidence and it's probable truth or accuracy, not on the amount
- Quality of the evidence, not quantity
- NOT beyond a reasonable doubt

# Appendix A Hearings: Logistics

- Hearings will be held via videoconferencing.
- Prior to the hearing, the Hearing Officer will receive instructions regarding the operation of any audio-visual equipment for the hearing. Each participant shall also be provided with instructions on how to access the hearing.
- Each hearing will be audio recorded. No individual is permitted to record while the hearing is taking place. The recording is the property of Occidental College but will be available to the parties for listening by contacting the Civil Rights & Title IX Coordinator.



# Appendix A Hearings: Witnesses

- The complainant, respondent, and the Hearing Officer all have the right to call witnesses.
- Witnesses must have information relevant to the incident.
- No party will be permitted to call as a witness anyone who was not interviewed by the Investigator as part of the Preliminary Investigation.
- Each party must submit the names of witnesses they would like to call to the Civil Rights & Title IX Coordinator no less than five (5) business days in advance of the hearing.

# Appendix A Hearings: Questions

- Five (5) business days prior to the hearing, each party must submit to the Civil Rights & Title IX Coordinator a preliminary list of questions they wish to pose to the other party, or to a witness.
- If the Hearing Officer determines that any questions are not relevant, the Hearing Officer will explain the reason for the exclusion of the question at the hearing.

# Appendix A Hearings: Time Limits

- The Hearing Officer will have the authority to limit the time allotted to any phase of the hearing, and/or to limit the time allotted to the full hearing. Any such limitation will be communicated to the parties no later than three (3) business days before the hearing.

# Appendix A Hearings: Order

The hearing will start with an overview of the hearing process from the Hearing Officer. The Hearing Officer will then pose questions to the complainant. When the Hearing Officer has concluded, the respondent's advisor will then pose questions to the complainant. If the Hearing Officer has any additional questions, those will be posed by the Hearing Officer. If the respondent's advisor has any follow-up questions for the complainant, the advisor will ask those questions. The same process will then be followed for questions posed to the respondent by the Hearing Officer, followed by questions from the complainant's advisor to the respondent. This process will then be followed for any witnesses who are to be interviewed.

# Appendix A Hearings: Objections

At the hearing, the non-questioning party will have an opportunity to note an objection to the questions posed. Any such objection must occur in written form, and neither the hearing officer nor the College are obligated to respond, other than to include any objection in the record. The hearing officer has the authority and obligation to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing.

# Appendix A Hearings: Decorum

The Hearing Officer will have the authority to maintain order and decorum at the hearing. The Hearing Officer also has the authority to determine whether any questions are abusive, intimidating, or disrespectful, and will not permit such questions. Further, the Hearing Officer may refuse to allow any questions that seek information that is not relevant under this Policy. The Hearing Officer is not required to provide a lengthy or complicated explanation but is required only to explain the reason why a question will not be permitted.

# Appendix A Hearings: Decorum

If either party does not appear, their advisor will be present for the purpose of asking questions of the other party, or of witnesses. During the hearing, if either party has any follow-up or clarifying questions for the other party, or for witnesses, the questions must be submitted in writing to the Hearing Officer. The Hearing Officer will determine the relevance of each question and explain why any question is deemed irrelevant. Each party will have the opportunity to make a closing statement. This statement is to be made by the party directly, and not by their advisor. This closing statement is not evidence but is intended as an opportunity to address the decision-maker directly.

# Appendix A Hearings: Advisors

Each party is entitled to one advisor at the hearing. The role of the advisor is to ask questions of the other party and of witnesses, but not to advocate for, or otherwise speak on behalf of, the advisee during the hearing. No party will be permitted to ask questions of the other party, or of a witness. An advisor of the College's choosing will be provided for any party who does not have an advisor.



# Appendix A Hearings: Written Notice

Following the conclusion of the hearing, the Hearing Officer will prepare a written notice of hearing outcome. To the extent credibility determination needs to be made, determinations will not be based on a person's status as complainant, respondent, witness. The Hearing Officer's written determination regarding responsibility and any sanctions, as determined by the procedures outlined in Appendix E or Appendix F, will be provided to the parties within fifteen (15) business days of the hearing.

# Appendix A Hearings: Written Notice

The Hearing Officer's written determination will include:

- Identification of the Prohibited Conduct section(s) of this policy, and of any other College policy sections considered in the investigation, alleged to have been violated;
- A description of the procedural steps taken from the receipt of the complaint through the determination, including but not limited to, as applicable, any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the College's definitions of Prohibited Conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- A statement of, and rationale for, any sanction imposed on the respondent, and whether remedies designed to restore or preserve equal access to the educational program or activity of the College will be provided by the College to the complainant; and
- Identification of procedures and permissible bases for the parties to appeal.

# Appendix A Hearings: Sanctions

Upon conclusion of the adjudication process, when there is a finding of responsibility, the complainant will be offered such remedies designed to restore or preserve equal access to the institution's education program or activity. If the Hearing Officer determines that the respondent is responsible for one or more violations of the College's antidiscrimination policies, the College will issue sanctions commensurate with the violation(s), in accordance with Appendix E or Appendix F. Any sanctions issued will be included in the Hearing Officer's written determination.

# Appendix A Hearings: Appeals

Appeals may be filed by either party and must be sent to the Civil Rights & Title IX Coordinator. When an appeal is filed, the other party will be notified, in writing, and will then have five (5) business days to respond to the appeal. Any party's decision not to submit a reply to an appeal is not evidence that the non-appealing party agreed with the appeal. The appeals process is documentary only, and no hearing is held. Appeals will follow the procedures outlined in Appendix G.

# Technology

- Zoom –
  - Ability to see and hear in real time
  - Breakout rooms
  - Recording
- Training webinars
  - Basics of meeting controls:  
<https://support.zoom.us/hc/enus/articles/201362603-What-Are-the-Host-Controls->
  - Break Out Rooms:  
<https://support.zoom.us/hc/enus/articles/206476093-Getting-Started-with-Video-BreakoutRooms>



Questions?

# Thank you!

FEEL FREE TO REACH OUT  
WITH ANY QUESTIONS OR IF I  
CAN BE OF ANY ASSISTANCE



## Alexandra Fulcher

Civil Rights & Title IX Coordinator

- **PHONE NUMBER**  
(323) 259-1338
- **EMAIL ADDRESS**  
afulcher@oxy.edu
- **WEBSITE**  
[oxy.edu/civil-rights-title-ix](https://oxy.edu/civil-rights-title-ix)