

# Title IX Employee Hearing Procedures (Revised August 1, 2024)

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## Section I: Purpose

Complaints of employee sex discrimination and/or sex-based harassment, as defined in [Executive Policy \(EP\) #15B](#) Prohibiting Discrimination and Harassment – Sex Discrimination and Sex-Based Harassment, have specific hearing and appeal requirements, pursuant to federal regulations. The following procedures describe the appropriate rights of complainant(s) and respondent(s) involved in matters involving EP#15B grievance processes and supplement procedures described in CCR Procedural Guidelines.

## Section II: Scope

The following procedures apply to matters involving allegations of EP 15B Sex Discrimination or Sex-Based Harassment to the following respondent employee types:

- Administrative Professionals
- Non-Represented Classified Staff (not covered under a Collective Bargaining Agreement)
- Temporary Hourly employees (nonpermanent, professional hourly, student hourly)
- Collective Bargaining Unit employees

Respondent represented employees should refer to their respective [Collective Bargaining Agreement](#).

Respondent faculty should refer to [Faculty Manual](#) Section II.F regarding disciplinary process and procedures for alleged [EP 15B](#) sex discrimination and sex-based harassment.

## Section III: Determination of Responsibility

### **Section III.A. Sex-discrimination and sex-based harassment, except sex-based harassment involving a student complainant**

After the investigation process of WSU Compliance and Civil Rights (CCR) is final, CCR will issue an investigation report with written determinations of responsibility based on a preponderance of the evidence. See CCR Procedural Guidelines for additional information. CCR's investigation report will be provided to the Appointing Authority and relevant supervisor(s) and administrator(s). Parties will have the opportunity to appeal the CCR determinations to the CCR Appeals Committee, see [Section V](#) and CCR Procedural Guidelines.

After the appeals are exhausted, the Appointing Authority will determine appropriate action. Corrective or disciplinary action, if any, will be in accordance with University policies, handbooks, and/or collective bargaining agreements.

### **Section III.B. Sex-based harassment involving a student complainant**

After the investigation process of WSU Compliance and Civil Rights (CCR) is final, CCR will provide parties with access to relevant evidence and will provide an investigation report with recommended findings; parties will continue to have access to relevant evidence

through the completion of the hearing and appeals process. WSU will initiate an Employee Live Hearing process no more than thirty (30) calendar days after the investigation process is completed. The Employee Live Hearing process will be initiated for all matters investigated by CCR involving allegations of Sex-based Harassment, as defined by [EP 15B](#), where the complainant is a student, regardless of the outcome of the CCR investigation.

#### Section III.B.1 Notice of Live Hearing

A written Notice of Hearing will be issued by the University Decision Maker to the complainant(s), and the respondent(s) (individually a “party” and collectively “the parties”) within thirty (30) calendar days of the completion of a CCR investigation. The Notice of Hearing will also include the following:

1. Date, time, and place of the hearing
2. Name(s) of the Decision Maker(s) and/or presiding officer
3. The applicable grievance procedures and policies
4. Purpose of the hearing
5. Specific allegations, including the identities of the parties involved, the alleged conduct, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available
6. Notice that respondent is not presumed responsible for the alleged conduct and that a determination is made at the conclusion of the hearing described in this section
7. A statement that retaliation is prohibited
8. Rights to have an advisor, which may be a support person or attorney, participate in the hearing
9. Notice the hearing will be held in a venue that allows for separate rooms for complainant and respondent or the hearing will be held virtually
10. Rights to appear virtually
11. Right to review relevant evidence, as provided by CCR, and to respond either in writing prior to or during the hearing, or to provide an oral statement in response during the hearing
12. Right to present relevant evidence, including the right to call witnesses
13. Right to have the matter heard by a trained, impartial decision maker
14. EP 15’s prohibition on making false statements

#### Section III.B.2 Employee Title IX Hearing Decision Maker

The respondent’s appointing authority or designee will act as the Decision Maker. The University may, but is not required to, also appoint a presiding officer to preside over the hearing to make legal, evidentiary, and procedural rulings. The Decision Maker and presiding officer must receive training on WSU’s Title IX obligations, grievance procedures, how to serve impartially (including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias), the meaning and application of the term “relevant” in relation to questions and evidence, and types of evidence that are impermissible.

The Decision maker is required to objectively evaluate all relevant evidence, that is otherwise not impermissible, including both inculpatory and exculpatory evidence. The Decision Maker is responsible for making credibility determinations. Credibility determinations cannot be based on a person’s status as a complainant, respondent, or witness.

The Decision Maker and presiding officer must not have a conflict of interest or bias towards the complainant or respondent, or towards complainants or respondents generally. Concerns of potential bias or conflict of interest can be directed to Human Resource Services for review.

### Section III.B.3 Employee Live Hearing Advisors

Respondents and complainants may have an advisor (which may be a support person or attorney) present at the live hearing. Advisors are permitted to call witnesses or participate in presenting witness questions to the Decision Maker or presiding officer for consideration. Where a complainant or respondent has not already informed CCR of the existence of an advisor, they must submit the name and contact information of their advisor to the Decision Maker or presiding officer as applicable no less than 72 hours prior to the scheduled hearing.

### Section III.B.4 Calling and Questioning Witnesses

The parties and/or their advisors may call witnesses at the hearing. The names and contact information for any witnesses the parties intend to call must be submitted to the Decision Maker and/or presiding officer no later than fourteen (14) calendar days prior to the scheduled hearing. The Decision Maker and/or presiding officer will provide the parties with the names of all live hearing witnesses, no later than seven (7) calendar days prior to the hearing.

The Decision Maker has discretion to determine whether the parties may present expert witnesses as long as the determination applies equally to the parties.

The Decision Maker or presiding officer may ask parties and witnesses questions to assess a party's or witness's credibility, as needed. Parties and/or their advisors may also propose questions and follow-up questions they want to be asked of any party or witness to the Decision Maker or presiding officer for consideration. The Decision Maker or presiding officer will determine whether the question is relevant and not impermissible, and the Decision Maker or presiding officer will explain any decision to exclude a question as not relevant. The Decision Maker or presiding officer will ask any relevant and permissible questions. The Decision Maker or presiding officer will not ask questions that are unclear or harassing of a party or witness being questioned. Where the Decision Maker or presiding officer determines a question is not permissible, the Decision Maker or presiding officer will provide the party with an opportunity to clarify or revise their question.

### Section III.B.5 Evidence

Relevant fact evidence is generally permitted. Relevant evidence is that evidence that has any tendency to make fact that is of consequences to the determination more probable or less probable than it would be without the evidence. The following types of evidence are impermissible (i.e., must not be accessed or considered, except by the decision-maker or presiding officer to determine whether an exception below applies; must not be disclosed; and must not otherwise be used), regardless of whether they are relevant: Evidence that is protected under a privilege as recognized by Federal or state law, unless the person to whom the privilege is owed has voluntarily waived their privilege, including, but not limited to:

- Spousal/domestic partner privilege;
- Attorney-Client and attorney work product privileges;
- Privileges applicable to members of the clergy and priests;
- Privileges applicable to medical providers, mental health therapists, and counsellors;
- Privileges applicable to sexual assault and domestic violence advocates; and
- Other legal privileges identified in [RCW 5.60.060](#).

Evidence that was provided to a confidential employee as defined in [EP15](#), unless the person to whom the privilege or confidentiality is owed has voluntarily waived the confidentiality.

A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the party or witness provides voluntary, written consent for use of those records in these grievance procedures; or

Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

The Decision Maker may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions. The Decision Maker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The Decision Maker may not make an inference regarding responsibility solely on a party's role as a respondent or complainant.

#### Section III.B.7 Live Hearing Technology:

Audio or audiovisual recordings of the hearings will be available for party's inspection and review as soon as practical after issuing the written determination of responsibility, upon request of the party.

Technology will be made available for virtual hearings or where a hearing is conducted in person, to provide for separate rooms for complainant and respondent. Requests to participate in the live hearing process in a separate room or virtually must be submitted to the Decision Maker 72 hours prior to any scheduled in-person hearings.

#### Section III.B.8 Determination of Responsibility

Within thirty (30) calendar days of the end of the scheduled hearing, based on preponderance of evidence (i.e. more likely than not), the Decision Maker will issue a written determination to both parties simultaneously. The written determination will include the following:

1. Identification of allegations constituting sex-based harassment as defined by EP 15B
2. Description of policies and procedural steps used to evaluate the allegations
3. Findings of facts supporting the determination
4. Conclusions relating to whether the respondent committed EP 15B sex-based harassment
5. A statement of, and rationale for, the result as to each allegation, including determination regarding responsibility
6. Any remedies and corrective or disciplinary actions imposed
7. Rights to appeal, including the time for appeal and to whom the appeal should be addressed.

The decision is final after the appeal is completed or if no appeals are filed, the date after the appeal period expires.

#### Section III.B.9. Corrective or Disciplinary Actions and Remedies

Corrective or Disciplinary actions may be imposed by the Decision Maker, as outlined in the applicable State and University policy or employee handbook, including the [Administrative Professional Handbook](#), [WAC 357-40](#) (civil service employees), and applicable [Collective Bargaining Agreements](#). Range of corrective or disciplinary actions may include, but are not limited to:

1. Verbal Counseling or Reprimand
2. Notice of counseling
3. Performance improvement plan, employee directed training
4. Letter of reprimand
5. Pay affecting actions
  - Suspension
  - Reduction in pay
  - Demotion
6. Termination

Remedies may be implemented by appropriate decision makers and may include, but are not limited to:

1. Ongoing workplace management plan
2. Employee mediation
3. Permanent change to reporting lines
4. WSU job or area transfer
5. Ongoing from home or teleworking options
6. Permanent schedule change

#### Section III.B.10 Timeframes

The timeframes described for the hearing process may be extended for good cause by the decision maker. The Decision Maker may provide for reasonable delays, including relating to participant safety, in order to adequately and equitably address the allegations. Where an extension is granted, the Decision Maker will notify the parties in writing.

#### Section IV. Supportive Measures

During the employee hearing or determination process, employee supportive or protective

measures may continue to be provided for parties through consultation with CCR, HRS, and/or the parties' department/college. The range of supportive measures may include, but are not limited to:

1. Employee Assistance Program (counseling, financial, legal):  
[hrs.wsu.edu/employee-assistance-program](https://hrs.wsu.edu/employee-assistance-program)
2. Leave Provisions
3. Workplace management/safety plans
4. Work schedule adjustments or leave, as needed to obtain medical, mental, health, legal assistance, and/or confidential secure shelter
5. Domestic violence, sexual assault, stalking leave, [RCW 49.76](#), [hrs.wsu.edu/dvsasleave](https://hrs.wsu.edu/dvsasleave)
6. Change reporting lines in consultation with supervisors/HRS
7. Identify alternate work in consultation with supervisors/HRS
8. Work from home options in consultation with supervisors/HRS
9. Work schedule changes in consultation with supervisors/HRS
10. Work accommodations/reasonable accommodations through HRS Disability Services

#### Section V: Appeal Procedure

The Parties have the right to appeal the determination of responsibility from an EP 15B matter, in whole or part, as set forth in the written determination to the CCR Appeals Committee. For specifics on this appeals process, see CCR Procedural Guidelines.