

**WAC 478-121-655 Hearings.** (1) The hearing officer, or designee, will set the time and place of the hearing and give ten or more calendar days' notice to all parties and the investigator. At the hearing officer's discretion, any or all parties, witnesses, and other participants, such as advisors and investigator(s), may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other.

(2) Communications with the hearing officer, except for communications related to procedural aspects of maintaining an orderly process, must be made in the presence of, or with a copy to, all other parties, advisors (if any), and the investigator(s). Any communications not following such a procedure will be placed on the record, and other parties, hearing advisor(s), or investigator(s) will be given an opportunity to respond.

(3) Prior to the hearing, the hearing officer, upon a self-initiated motion or upon request of the parties, may request that the parties, advisors (if any), and the investigator(s) engage in a meeting or meetings to consider:

- (a) Simplification of issues;
- (b) Necessity of amending notices, if any;
- (c) The possibility of obtaining stipulations;
- (d) Limitations on the number of witnesses and/or which witnesses will testify at the hearing;
- (e) Procedural matters; and/or
- (f) Other matters that may aid in the disposition or settlement of the proceeding.

If such a prehearing meeting(s) is held, it may occur in person, by telephone conference, or by other technological means as determined by the hearing officer or designee. Further, if such a prehearing meeting(s) occurs, the hearing officer will issue, in writing, determinations regarding the issues discussed at the meeting(s). The determinations will be effective when served on the parties and advisors.

(4) At appropriate stages, the hearing officer will give parties reasonable opportunity to submit and respond to requests, such as pleadings, motions, and objections.

(5) The hearing officer has the discretion to grant postponements, continuances, extensions of time, and/or adjournment if good cause is shown.

(6) The applicable standard of proof is the "preponderance of evidence" standard. This means that, in order for a respondent to be held responsible for EDFR prohibited conduct as defined in WAC 478-121-605, the hearing officer must conclude, based on all of the evidence in the record, that it is more likely than not that the respondent engaged in an act or acts of EDFR prohibited conduct. The parties will be provided equal opportunity to present witnesses and other inculpatory and exculpatory evidence.

(7) During a hearing, all testimony of parties and witnesses shall be made under oath or affirmation. The hearing officer will permit each party's hearing advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination will be conducted directly, orally, and in real-time. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the hearing officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a hearing advisor is disruptive or interferes with any

aspect of the proceeding, as determined by the hearing officer, the hearing advisor may be removed and a new hearing advisor made available to the party.

(8) The university will create an audio, audiovisual, or transcribed recording of the hearing. Upon request to the hearing office or as may otherwise be required under Part VII of this code, the university will make the recording available to the parties for inspection and review.

(9) Hearings will be conducted in accordance with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99) except to the extent preempted by 34 C.F.R. Part 106.

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-655, filed 3/11/21, effective 4/11/21.]