



*Proven Solutions for Safer Schools and Workplaces*

## **THE ROLE OF THE HEARING FACILITATOR OR TITLE IX CASE MANAGER**

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Many campuses, and ATIXA's One Policy, Two Procedures (1P2P Model), incorporate the idea of having a specific role for a hearing facilitator, even though the role is not specifically contemplated by the regs. I am coming to see this role as an overall case manager, not just a hearing facilitator. With all the separation of roles OCR is envisioning throughout the process, we still need someone to glue all the disparate parts together and manage them from start to finish (and that role might be played by the TIXC). That said, the hearing facilitator can take on a number of hearing-related tasks:

- Pre-hearing logistics and exchange of materials;
- Logistics of finalizing investigation report in the final ten-day, pre-hearing period<sup>1</sup>;
- Getting the right people in the right room(s) for pre-hearing and hearing;
- Copying and disseminating materials for the hearing;
- Arranging/monitoring/troubleshooting recording;
- Ensuring parties and witnesses are available and on time;
- Ensuring Advisors are available and on time;
- Ensuring space is available for deliberation, and arranging whatever physical holding room assignments are needed for witnesses/parties/families are needed;
- Collaborating to ensure that the TIXC, legal counsel, and/or sanctioning authorities (if applicable) are available as needed during process;
- Corraling all versions of outcome letters/rationales, etc.

Do I think in a pinch that the Chair could manage all of that in addition to Chair duties? Perhaps, but not with great effectiveness. The Chair's pre-hearing role is more substantive than procedural. I chaired a hearing last week under the new format as a demonstration, and I would not have easily been able to coordinate all of those steps in addition to Chairing. That's a lot of moving parts.

With enough pre-hearing prep, it would have been easier, but this was also Zoom-based, which is easier in some ways. The minute you are doing this live in-person, the Chair cannot be in two places at once, and it becomes very stop/start if the Chair is interrupting the hearing to go fetch a witness, or trying to manage the choreography of making sure the parties don't cross in the hall during breaks.

If you have a panel, I suppose the panelists could help with some of the ground game management. And, I've been in very herky-jerky hearings in terms of flow. They're slow-moving and a little chaotic logistically, but sometimes those breaks are useful to allow the parties to regroup, emotionally center, confer with their advisors, revise their closing statements, etc. There can be a lot of moving parts.

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<sup>1</sup> This might happen with any changes the Chair wants to make after the pre-hearing conference, before the report is shared with all panelists, to reallocate evidence between what is relevant and what is directly related, based on further responses from the parties.

I'll admit my OCD doesn't prefer a disjointed process, and there is a fatigue factor with how drawn out this can become (versus being efficiently run), but it's not fatal. Again, it can be done, but I don't know how well or who'd be willing to try to juggle all of that at once. It'd be very prone to error, and I would not be inclined to a combined Chair/hearing facilitator approach unless there was no other choice. When something goes awry at the hearing (and it always does) such as if a key party or witness does not show up, or a recording device malfunctions, it is very helpful to have another set of hands available to problem-solve.