

Title IX Appeal Officers: A Skills Training and Certification



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learning
OUTCOME

After participating, you will improve your ability to facilitate your institution's Title IX appeal process in compliance with Title IX regulations.

A collection of tools including a wrench, pliers, a hammer, a tape measure, and a caliper, arranged vertically on a dark background. The wrench is at the top, followed by pliers, a hammer with '1/2' on its head, a tape measure, and a caliper at the bottom.

AGENDA

Section 1:
The Regulations

Section 2:
Appeal Officer Roles and
Responsibilities

Section 3:
Grounds for Appeal

Section 4:
The Decision

POLL



WHO IS IN THE ROOM?

What role do you play in your institution's grievance process for Title IX sexual harassment?

POLL



BASELINE EXPERTISE?

How would you rate your own familiarity with Title IX and its implementing regulations for addressing Title IX sexual harassment?

POLL



ACTUAL EXPERIENCE?


How many appeals (of any kind – conduct, academic, or employment) have you heard/decided?

POLL



ACTUAL and CURRENT TITLE IX EXPERIENCE?

How many Title IX appeals have you heard/decided under the revised (2020) regulations?



#1

The Regulations

Background/Context

Title IX of the Education Amendments Act of 1972 and its implementing regulations in 34 C.F.R. Part 106 (“Title IX”) prohibits all educational institutions that are recipients of federal funds from discriminating on the basis of sex.

Sexual harassment, as specifically defined by Title IX (“Title IX sexual harassment”) is a form of sex discrimination. The institution’s treatment of a complainant or respondent in response to a formal complaint of Title IX sexual harassment may also be a form of sex discrimination.

When an institution has actual knowledge of allegations of Title IX sexual harassment, the institution has a responsibility to investigate the allegations and – if they are substantiated – take action to stop, prevent, and remedy the resulting inequity.

The precise method institutions must follow are codified in the regulations.

Overview of Regulations Concerning Title IX Appeals

Under 106.45(b)(8), institutions must offer appeals to both/all parties from:

1. Decisions of responsibility
2. Decisions to dismiss a formal complaint or any allegations therein

Three grounds for appeal are required, and others may be added as long as they are equally available to both/all parties:

1. Procedural irregularity
2. New substantive evidence
3. Conflict of interest/bias

Baseline Regulatory Requirements for All Appeals

1. Notice
2. Equal
3. No prior involvement by Appeal Officer
4. No conflicts of interest or biases
5. Adequately trained and prepared
6. Reasonable, equal opportunity for written support/challenge
7. Decisions simultaneous and in writing
8. Result and rationale

Other Regulatory Requirements Concerning Appeals

1. Advisors (may be different from original)
2. Records maintained
3. Supportive measures and/or accommodations
4. Written determination not final until appeal resolved OR appeal deadline passes

QUESTIONS?



#2

Appeal Officer Roles and Responsibilities

CHAT



What are the characteristics of a good appeal officer?



WHAT AM I EVEN DOING

UNFORTUNATE FACT:
There's No Job Description for Appeal Officers

Appeal Officer Responsibility #1: *Be Prepared*

Appeal Officers must be trained on the following content:

1. Definition of Title IX sexual harassment
2. Scope of the institution's education program or activity
3. How to conduct an investigation and grievance process, as applicable*
4. How to serve impartially
5. How to use applicable technology, as applicable*
6. Issues of relevance

Note for Coordinators/Trainers: Such training materials – like all training materials used to prepare Title IX administrators – must not rely on sex stereotypes and must promote impartiality.

Title IX Sexual Harassment

Three forms of sexual harassment are contemplated by the regs, each requiring “unwelcome conduct on the basis of sex...”

1. Quid Pro Quo
 - Conditioned benefits
 - Employee respondents only
2. Hostile Environment*
 - So severe, pervasive, and objectively offensive
 - Effectively denies equal access
 - Intent need not be proven
 - Reasonable person standard applies
3. Sexual Assault, Stalking, Dating Violence, or Domestic Violence
 - As defined by law/your policy

Appeal Officer Responsibility #1: *Be Prepared*

Appeal Officers must be trained on the following content:

✓ **Definition of Title IX sexual harassment**

1. Scope of the institution's education program or activity
2. How to conduct an investigation and grievance process, as applicable*
3. How to serve impartially (i.e., how to avoid prejudgment of the facts, conflicts of interest, and bias)
4. How to use applicable technology, as applicable*
5. Issues of relevance

Note for Coordinators/Trainers: Such training materials – like all training materials used to prepare Title IX administrators – must not rely on sex stereotypes and must promote impartiality.

Appeal Officer Responsibility #2: *Review Impartially*

- Fundamentally, Appeal Officers exist to “check the work” of the institution
- Goals: FAIRNESS and THOROUGHNESS
- Impartiality is absolutely necessary
- Cannot be biased, or have any conflict of interest
- Follow the appellant’s and appellee’s argument(s)

POLL



What role do you think the Appeal Officer should play in determining whether the policies and procedures of the institution are in compliance with the requirements of Title IX?

Appeal Officer Responsibility #3: *Communicate Clearly & Effectively*

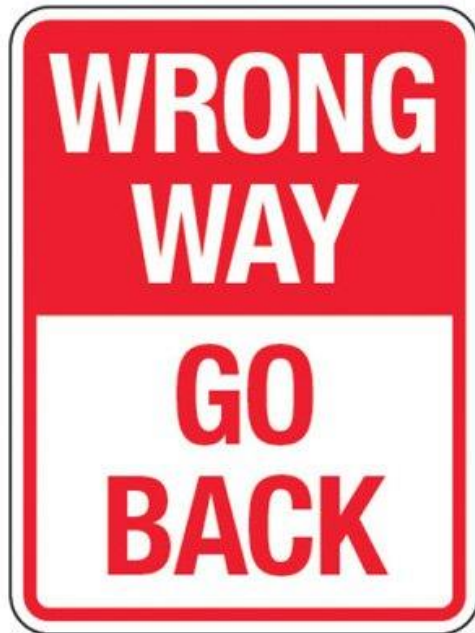
- Your writing has significant implications for your institution, legal risk, etc.
- Watch for bias in word choice
- Avoid charged or absolute language
- Written determination must be comprehensive (but should be concise)



#3

Grounds for Appeal

Permissible Grounds for Appeal





1. Procedural Irregularity

- Did not follow policy or procedure
- Substantive in nature
- Affected the outcome



2. New Evidence

- Was not reasonably available at the time of decision
- Substantive in nature
- Could have affected the outcome

A red stamp with the word "BIAS" in a bold, serif font, tilted slightly to the right. The stamp has a distressed, ink-like texture and a double-line border.

3. Bias or Conflict of Interest

- Title IX Coordinator, Investigator, or Decision-maker (key personnel)
- Conflict of Interest or Bias
- For or Against Either Party
- Generally or Individually
- Substantive in nature
- Affected the outcome

CHAT



What other grounds for appeal are offered in your policies?



BREAK



#4

The Decision

Process Review

1. Decision-maker(s) delivers the written determination
2. Window for appeal opens
3. Appeal requests typically to Title IX Coordinator
 - a. Timely received?
 - b. Grounds articulated?
4. Appellate review
 - a. May entail meeting with parties (not recommended, but if permitted, must be equal)
5. Appeal Decision Drafted
6. Appeal Decision Communicated
 - a. Include notice of final determination

Appeal Terminology (not specific to Title IX)

Appeals

- Allowed
- Dismissed

Cases

- Dismissed
- Remanded

Decisions

- Upheld / Affirmed
- Overturned / Reversed
- Modified

Sanctions

- Modified / Amended
- Vacated

Terminology and procedures for the results of appellate determinations vary; consult your institution's policies for guidance

Where to Begin?

Tips for Appellate Reviews

1. Familiarize yourself with the case, ensuring access to full record
2. Thoroughly review the appeal request(s) and any response(s)
3. Review the case through lens of appellant
4. Review the case through lens of appellee
5. Review the case through lens of decision-maker, Title IX Coordinator, Investigator, etc.
6. Keep your policy on hand, consult often
7. May seek information from key personnel
8. May meet with parties (must do so equally, however!)
9. Decide appeal
 1. Decision Affirmed / Upheld
 2. Decision Reversed / Overturned
 3. Decision Modified

Common Appellate Pitfalls

1. Pre-judging the facts
2. Splitting the baby
3. Emotional tug
4. Requiring more than the applicable standard of evidence



ACTIVITY



LET'S PRACTICE!

Case Study, one fact
pattern

Appealed on all 3 grounds

3 groups = 3 grounds

ACTIVITY

Breakout Group Processing Questions:

1. What information is necessary for you to make an informed decision? Is anything missing from the info provided?
2. What is the central question that needs to be answered (the “crux of the matter”)?
3. Are you persuaded by either party’s argument? Why?
4. What questions do you still have?

ACTIVITY

Large Group Processing Questions:

Let's **deliberate** (biggest appeal board ever!)

How do we find?

On which grounds?

Do we have a consensus?

ACTIVITY

Large Group:

What comes next?

How might you organize your rationale?

What concerns, doubts, reservations do you have?

How do you feel about the decision?

TAKEAWAYS

- ✓ Appeal Officers are the “last line of defense” for an institution to ensure the outcome of Title IX sexual harassment case is FAIR and THOROUGH
- ✓ Appeal Officers must be prepared, review impartially, and communicate clearly
- ✓ Appeal Officers must follow institutional policy and procedures, and ensure they were followed in all cases – for the benefit of both parties
- ✓ Appeal Officers must operate free from bias and conflicts of interest

QUESTIONS?

Thank you!

Please remember to complete the *event evaluation*.
Your comments will help us continually improve the
quality of our programs.