




Appeal Training for Advisors

May 3, 2023



When can someone appeal? Dismissal of Formal Complaints

Mandatory for Title IX when:

The conduct alleged would not constitute Title IX sexual harassment even if true

The conduct did not occur in an educational program/activity and/.or the university did not exercise substantial control of the respondent at the time of the alleged conduct

The conduct did not occur against a person in the United States

At the time the complaint was filed the complainant is not participating or attempting to participate in an educational program or activity



Discretionary Dismissal-Title IX

Complainant
withdraws
complaint

Respondent no
longer affiliated
with the university

Complainant stops
participating in the
investigation
process or refuses
to participate



Non-Title IX Sexual Misconduct/Discrimination- Discretionary Factors for Dismissal

Not a policy
violation

No reasonable basis
for investigation

Complainant is no
longer participating
or attempting to
participate

Complaint filed
many years after
alleged conduct

Respondent no
longer affiliated

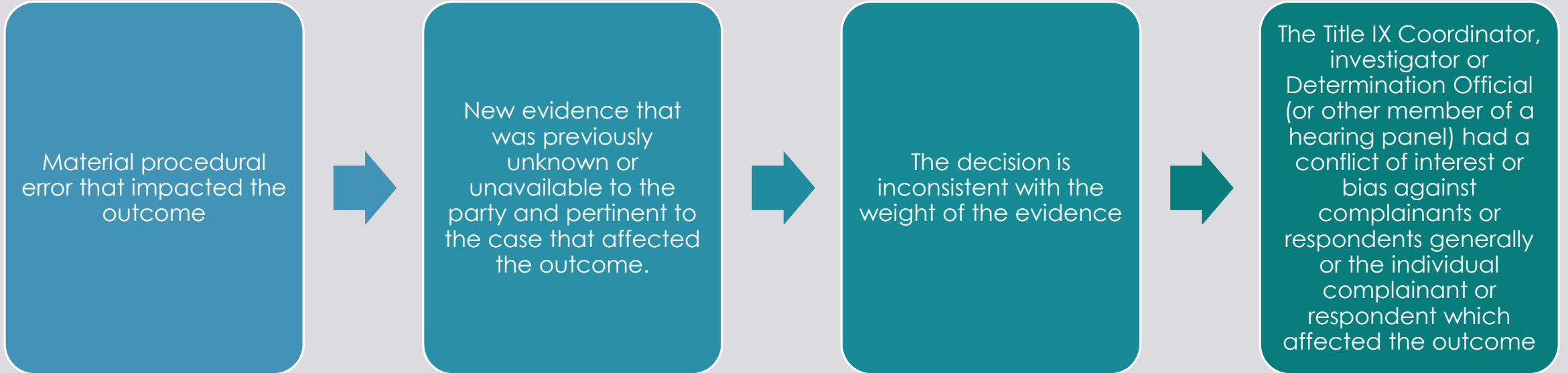
Complaint contains
allegations that are
the same allegations
the university has
already investigated



When can someone appeal?
After the Determination and Sanction Issued
Parties can appeal both the determination and sanction, if issued



Grounds for Appeal





The appeal must specify the procedural provision that was violated and the impact on the outcome

Procedural or technical deviations that do not affect the outcome of the determination will not be sufficient to sustain an appeal

Examples that may be sufficient to sustain an appeal:

Failure to provide a party with an opportunity to review all evidence, including exculpatory evidence collected

Failure to provide a party the opportunity to respond to the investigation report

Material Procedural Error

What is NOT Material Procedural Error

- I did not like the outcome
- I did not think the outcome was fair
- A witness was not interviewed but the investigator provided a sound rationale explaining why that person was not interviewed (for example, the party stated that the witness would have provided repetitive information that was already confirmed or disputed by another witness or documentation, or the person was identified as a character witness with no knowledge of the allegation)
- Someone waited a year to file and then appealed because the process took longer than 60-90 business days and witnesses graduated and/or forgot a lot of the information (likely would not be error because the delay in filing could also be a reason witnesses graduated and/or forgot; parties are updated weekly on status of investigation so are made aware of timelines in the moment)



New Evidence

Evidence that is NOT merely corroborative or repetitive and was previously unknown or unavailable to a party AND pertinent to the case that affected the outcome of the determination.

The appealing party *MUST* provide an explanation as to why the evidence was unknown or unavailable.



What it does not mean

- Repetitive information
- I forgot to include it
- I forgot to provide this person as a witness
- Statement that there is new evidence, but no new evidence is provided with the appeal
- It is new, but not relevant and would have had no impact on the decision

Decision is
inconsistent
with the
weight of the
evidence

- The appellate officer does not replace the Determination Official's judgment with their own
- They review the matter to determine whether the evidence presented appears sufficient to support the determination based on the preponderance of the evidence standard
- Evidence must be evaluated as a whole
- For sanctioning, they consider whether the sanction is among those allowed by the procedure
- Case by case determinations

Likely would
not be
granted:

- Complainant files an appeal that the sanction is inconsistent with the weight of the evidence because a Respondent was found responsible for harassment for making a sexual comment but not suspended or expelled as part of the sanction. They were given training and education and had to resign as the president of an organization. In the appeal the complainant states that the Respondent should be expelled and have a permanent notation on their transcript as a sanction based on the conduct.
- A respondent files an appeal that the sanction is inconsistent with the weight of the evidence because they were found responsible for dating violence, and they were suspended for 2 semesters.

Conflict of Interest or Bias

Standard is reasonable-person test to determine whether bias exists

The appealing party **MUST** provide details or examples of why the individual had a conflict of interest or bias and this affected the outcome of the determination.

The Title IX Coordinator was biased against me because... (specific examples that affected the outcome)

The Investigator was biased against me because ... (specific examples that affected the outcome)

Ex: finding a party not credible because English is not their first language

Ex: Investigator was a previous supervisor of one of the parties



What Bias/Conflict of Interest is NOT

- I didn't like the outcome
- Certain number of outcomes result in a determination of responsibility or non-responsibility
- Based on stereotypes such as all self-professed feminists or former survivors are biased against men (one does not necessarily mean the other)
- Title IX Coordinator's signature on a formal complaint
- Professional affiliations
- They didn't like me



Appeal Process

The appellate officer (Provost) does not review the case as if considering it for the first time

Deference is given to the determination and investigator's actions such as decisions regarding the relevance of evidence


Appeals must be submitted to the Title IX Coordinator, or designee, within 5 business days of the issuance of the notification of determination.

Appeals must be in writing and clearly cite one of the grounds for appeal and provide supportive evidence.

The other party has 3 business days to respond to the appeal

Once the appeal packet is complete, the Title IX Coordinator, or designee, will send the packet to the Provost

The Provost shall render a determination on the appeal within 10 business days of receipt of the appeal packet. The Provost's decision is final and not subject to further appeal.



Possible Outcomes of Appeal

Material Procedural Error:

- Matter will typically be remanded to remedy the irregularity

Decision is inconsistent with the weight of the evidence

- Determination may be modified or further investigation ordered

New Material Evidence:

- Matter will typically be remanded to the Determination Official for additional investigation or consideration

Bias

- Matter will typically be remanded to the Title IX Coordinator for reassignment to a different investigator or Determination Official
- If the Title IX Coordinator was found to have a conflict of interest or bias that affected the outcome of the case, the case will be reviewed by the Provost to determine if the matter should be dismissed entirely or can be remedied for a fair and equitable outcome with another administrator serving as the Title IX Coordinator



Questions?