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Title IX – APPEALS OFFICERS

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TITLE IX

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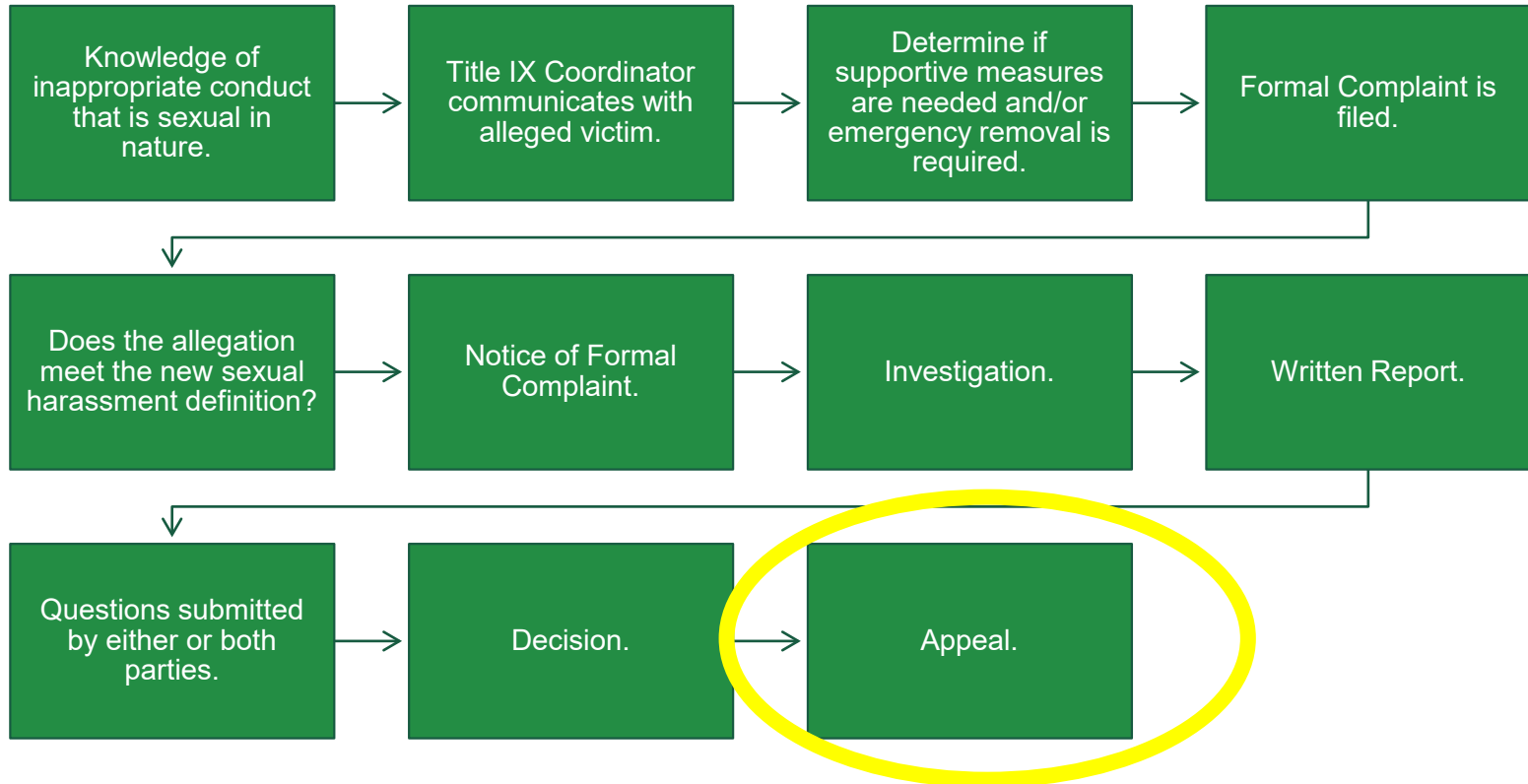


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Friday, Aug 14th 2020

Title IX Flow Chart

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New Terminology
Role of an Appeals Officer
Reasons for Appeal
The Appeals Process
Impartiality
Bias
Conflict of Interest
Understanding the Other Roles in the Title IX Process
Written Decisions

New Terminology	
<i>Complainant:</i> Person alleged to be the victim of sexual harassment.	<i>Respondent:</i> Person alleged to be the perpetrator of sexual harassment.

A parent may act on behalf of a minor student who is a Complainant or Respondent.



What is Sexual Harassment?

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OLD DEFINITION

Previously, the regulations described sexual harassment as
“unwelcome conduct of a sexual nature.”

Definition – Sexual Harassment

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The new Title IX regulation provides for a *narrower definition* of sexual harassment that constitutes sex discrimination. The new definition has **(3) types of sex-based conduct** which would constitute sexual harassment

Sexual assault,
dating violence,
domestic violence,
and stalking;

“Unwelcome
conduct that is **so**
severe,
pervasive and
objectively
offensive that it
effectively denies
a person equal
educational
access; AND

An employee
conditioning the
aid, benefit or
service on
participation of
unwelcomed
sexual conduct
(Quid pro Quo).

Role of an Appeals Officer

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An Appeals Officer should:

- Know the process from intake to appeal.
- Know the limited scope of review.
- Know the specific details of the case.
- Provide a written decision simultaneously to both parties.

Reasons for Appeal

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There are three (3) **required** bases for appeal:

1. Procedural irregularity;
2. New evidence; or
3. Conflict of interest or bias.

****Districts can add additional reasons for appeal.****



Procedural integrity

Did a breach in procedural integrity affect the outcome of the matter?

- Know the roles of the Title IX Coordinator, Investigator and Decision Maker.
- Determine if any deviation from the process actually affected the outcome.



New evidence

Evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.



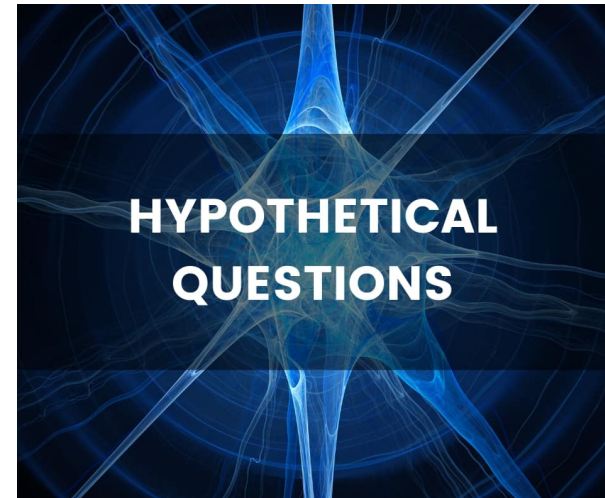
Conflict of Interest/ Bias

- The Appeals Officer needs to make determinations on bias and conflict of interest, usually regarding peers.
- The Appeals Officer needs to determine if any bias or conflict of interest impacted the outcome of the matter.



On appeal, the Respondent claims he asked the Investigator to speak to Brandi, another student, because she could provide an alibi for the night of the alleged incident, and she was a witness for a portion of the Respondent's interactions with the Complainant. The Investigator agreed to speak to the witness but failed to do so.

- Was there a procedural issue in this case?
- If yes, did it affect the outcome of the case?



- Respondent filed an appeal alleging bias on the part of the Decision Maker. Specifically, the appeal states the Decision Maker posted on twitter last year “Believe Survivors” with a picture of Christine Ford during Judge Kavanaugh’s confirmation. The Respondent believes the decision was biased and looks to have it overturned.

Hypothetical Instance

What if ...

Suppose that ...

- Did the Decision Maker have a bias?
- If Yes, did it affect the outcome of this matter?

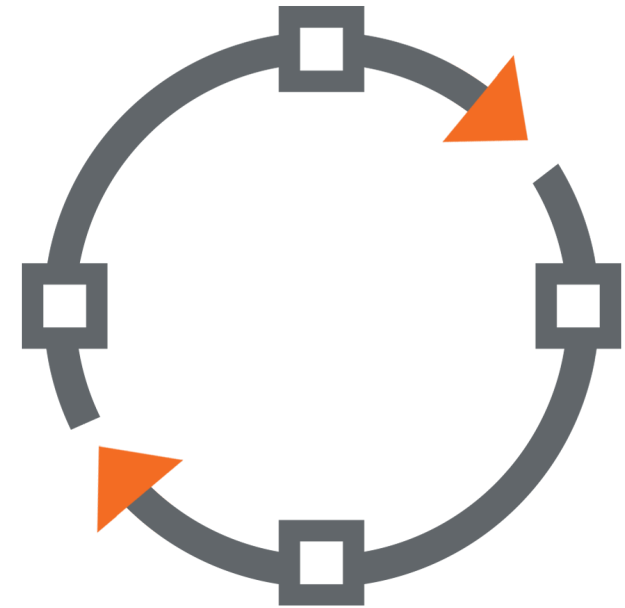


What does this mean for the Appeals Officer?

- The Appeals Officer must be free from partiality, bias and conflict of interest;
- The Appeals Officer must avoid prejudgment of facts; AND
- The Appeals Officer must be able to assess whether the Title IX Coordinator, Investigator, and Decision-maker on each case reviewed was free from bias and conflict of interest (as a basis for appeal).



1. Notify the other party in writing when an appeal is filed.
2. Make sure your Appeals Officer has not served in another role during the course of the Title IX Complaint (i.e. the Appeals Officer cannot be the person that served as the Investigator).
3. Provide both parties with an equal opportunity to submit a written statement either in support of the outcome or challenging the outcome.
4. Issue a written decision describing the result of the appeal and the rationale for the result.



PROCESS



- Be neutral.
- Do not pre-judge the facts.
- Do not be partial to a specific Complainant or Respondent.
- Do not be partial to Complainants and Respondents in general.



- Everyone has biases, but the Appeals Officer must learn to recognize what those biases are, and ensure they do not influence decision making.
- Social media posts and public comments.
- Be aware of implicit bias.
- Prior work with survivor's rights groups or respondent's rights groups?
- Prior work as a victim advocate?



Ways to avoid bias:

- Keep an open mind as a Decision Maker;
- Objectively review the investigative reports; and
- Remember that each case is unique.



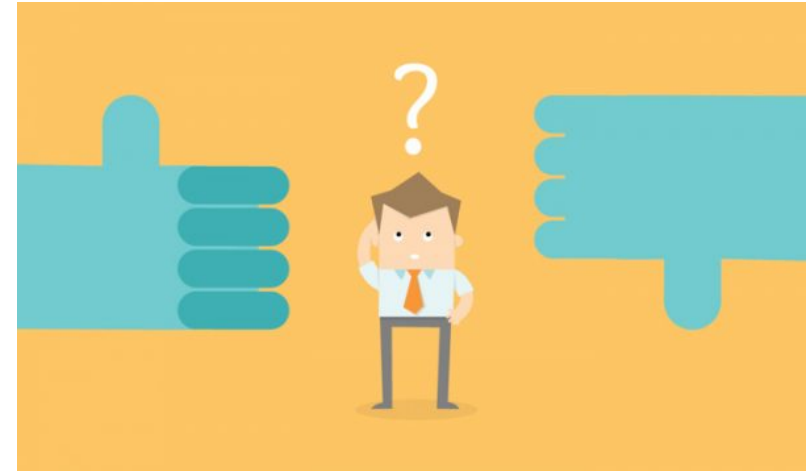
An Appeals Officer must not rely on sex stereotypes.

- Examples of sex stereotype in comments:
 - Women have regrets about sex and lie about sexual assault.
 - Men are more sexually aggressive and likely to have perpetrated a sexual assault.



Things to consider for conflict of interest:

- Does the Title IX Coordinator or Decision Maker directly supervise the Appeals Officer?
 - Could that create a conflict?
 - Should the District look at the hierarchy of the roles?
- Does past advocacy for a survivor or respondent's right group create a conflict?



- The Appeals Officer may be friends with a co-worker who served in another role in the Title IX process. The Appeals Officer must be able to check his or her own bias and determine whether there is a bias or a conflict of interest.



- You are an Appeals Officer in a Title IX case. You have received the investigative report, the decision and the written responses of the parties. The Respondent filed an appeal.
- The reason for appeal is alleged bias and conflict of interest.
- Respondent stated the Decision Maker included things in his report that were not part of the investigative report. This information was given to the Investigator but was never included in any of the documents. Specifically, the decision stated the Respondent was wearing a shirt that had a picture of a marijuana plant. Additionally, the decision stated the Respondent's actions were consistent with someone who would smoke marijuana.

Do you see a bias or
conflict of interest?
Do you think it impacted
the outcome of the
matter?



Understanding the Other Roles in the Title IX Process (For Appeals Officers Purposes)

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- It is important for the Appeals Officer to understand the role of each person in the Title IX process.
- Remember, procedural irregularity is a basis for appeal.



Title IX Coordinator

- Provides supportive measures to the Complainant.
- Determines if the allegations fall within the “education program or activity”.
- Determines if the allegations meet the new definition of sexual harassment.
- Determines if the Complainant wants to file a formal complaint and facilitate that process.
- Sends out written notice.

Investigator

- Gathers all relevant evidence.
- Does not make a determination on the facts.
- Ensures all relevant questions and evidence is admitted and considered.
- Allows for both parties to submit questions and review the evidence.



Decision Makers

- Makes relevancy determinations.
- Writes a decision that includes:
 - Identification of the allegations.
 - A description of the procedural steps taken.
 - Any potential violations of District policy.
 - Findings of facts.
 - Conclusions for each allegation.
 - A rationale for each conclusion.
 - A determination of responsibility.
 - Any disciplinary actions or remedies.
 - Reasons for appeal.



The written appeals decision must describe the result and the rationale for the result.



DECISIONS,
DECISIONS,
DECISIONS...



The Regulations do not detail what needs to be included in a written appeals decision the same way it details what needs to be in a Decision Maker's decision. Things to keep in mind when writing an appeals decision:

- Address each basis for appeal individually.
- For each basis for appeal include a result and a rationale for that result.
- Write clearly so if a person who does not know the case picks it up, they are able to understand it.

Questions?

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THANK YOU!

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