Title IX Appeals

EASTERN OKLAHOMA STATE COLLEGE
Session Points

- The Formal Complaint Framework
- Key Concepts
- Bases for Appeal
- Drafting Appeal Decisions
- Requirements for Appeal Officers
The Formal Complaint Framework
Formal Complaint

A formal complaint of Title IX sexual harassment means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.

For the purpose of addressing formal complaints of sexual harassment, a school’s Title IX complaint process must comply with a wide range of specific requirements set out in the new rule, including specific requirements concerning appeals.
## Formal Complaint Process

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Key Concepts
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- School must offer both parties an appeal from (1) a determination regarding responsibility, or (2) a school’s dismissal of a formal complaint or any allegations therein.

- Schools generally must implement appeal procedures equally for both parties.

- Schools must notify the other party in writing when an appeal is filed.

- Schools must ensure that the appeal officer is not the hearing adjudicator, investigator, or Title IX Coordinator.
Schools must ensure that the appeal officer has received required training.

They must give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

Schools must issue a written decision describing the result.

They must provide the written decision simultaneously to both parties.
Bases for Appeal
Bases for Appeal

Appeals may be granted on the following bases:

- a procedural irregularity that affected the outcome;
- new evidence that was not reasonably available at the time the determination or dismissal was made and could affect the outcome; and
- the Title IX Coordinator, investigator, or adjudicator had a conflict of interest or bias that affected the outcome of the matter.

A school also may offer an appeal equally to both parties on additional bases.
Bases for Appeal

Is the severity or proportionality of sanctions an appropriate basis for an appeal?
- “...the final regulations leave to a recipient’s discretion whether severity or proportionality of sanctions is an appropriate basis for appeal, but any such appeal offered by a recipient must be offered equally to both parties.”

Can a party request an appeal because of dissatisfaction with the result?
- Ground for appeal are defined by the bound of an institution’s policy.
Is there a way to appeal an appeal?

- No. If an appeal is filed, the determination regarding responsibility becomes final on the date the parties are provided the written determination of the result of the appeal.
- But note that party can file a lawsuit or complaint with the Office of Civil Rights.
Drafting Appeal Decisions
Drafting Appeal Decisions

What should appeal officers be considering when reviewing appeals?

• Understand applicable grounds for appeal.
• Have an open mind.
• Be guided by applicable policy and facts.

What are best practices to make written appeal outcomes as defensible as possible?

• Address, in some fashion, all claims raised.
• Ensure no bias or conflict of interest.
• Keep an eye toward litigation.
Requirements for Appeal Officers
Requirements for Appeal Officers

What are a few characteristics and qualities of the best appeal officers?
- Thoroughness and attention to detail.
- Understanding of Title IX process.
- Not afraid to find appeal has merit.

What positions at an institution should be considered to serve as the appeal officer?
- High ranking employee of institution.
- Legal background may be helpful but not necessary.
- Understanding of Title IX or student conduct process.
What are the training requirements for appeal officers?

- As a decision-maker, the appeal officer must receive training on:
  - The definition of sexual harassment in § 106.30.
  - The scope of the recipient’s education program or activity.
  - How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable.
  - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
  - Any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant.
Requirements for Appeal Officers

What happens if an appeal officer has a conflict of interest?

- An appeal officer with a conflict of interest should not hear the appeal.
- An institution’s policy should allow for the designation of a substitute appeal officer in the case of a conflict or unavailability.
THANK YOU!