

Appellate Officer Training

Office of Title IX Compliance

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01. Introduction

- What is Title IX?
- Title IX and Appeal Processes
- Appeals and Responses
 - What is an Appeal/Response?
 - What are the grounds for an Appeal?
 - Who can submit an Appeal?

Title IX of the Education Amendments of 1972

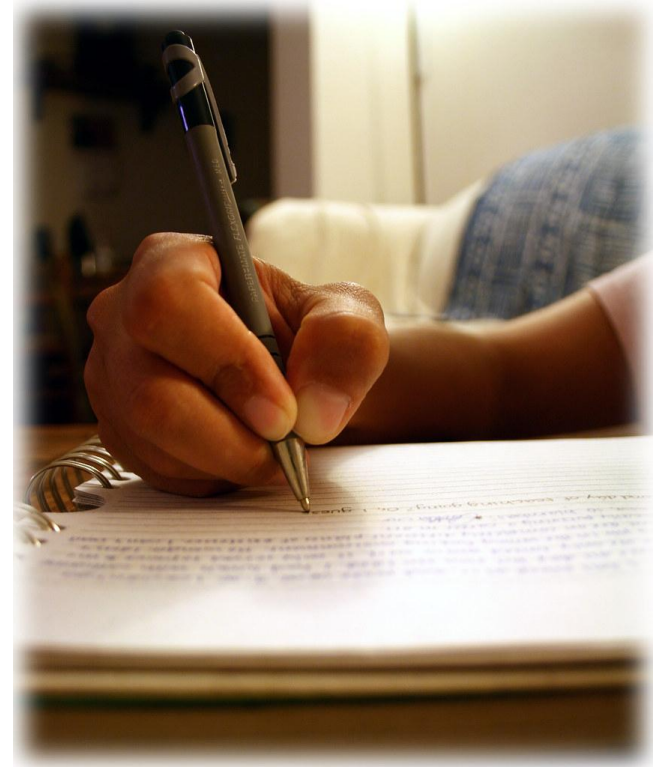
“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

“On the basis of sex” - The current federal understanding, based on the Supreme Court of the United States’ ruling in *Bostock v. Clayton County, Georgia*, 140 S.Ct. 1731 (2020), is that protections guaranteed “on the basis of sex” shall cover gender, gender identity, and sexual orientation.

What is an Appeal/Response?

An appeal is an opportunity for parties to submit a written statement against (“Appeal”) or in support (“Response”) of the final determination.

The appeal itself is an objective, independent review designed primarily to detect any significant errors in the investigation or outcome of a formal complaint, including dismissal.



Who Can File an Appeal/Response?



Complainant ✓

Respondent ✓

Witnesses ✗

Advisors ✗

Parents/Guardians of the Complainant ✗

Parents/Guardians of the Respondent ✗

Other Third Party Individuals ✗

What are the Grounds for an Appeal?

- (1) Procedural irregularity that affected the outcome of the matter;
- (2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made;
- (3) The Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.



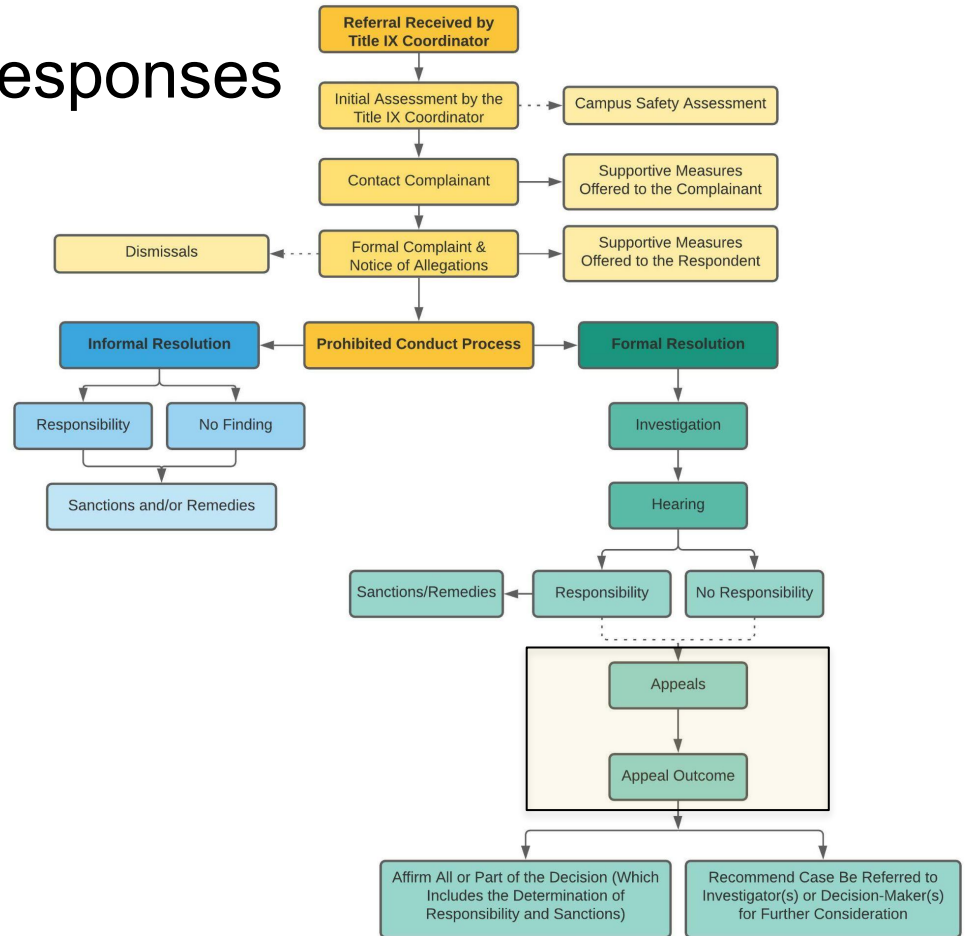
02. Process for Appeals/Responses

- When can an Appeal or Response be Submitted
- Timeline for Appeal Process

Process for Appeals and Responses

Parties are granted an opportunity to submit an appeal after a determination of responsibility and sanctions (if applicable).

Appeals are not permitted in informal resolution processes.



Timeline of Appeal Process

- **Notice of Appeal Options:** Included in the Notice of Outcome Letter, delivered within 10 (ten) days of receiving the Decision-Maker(s) determination and sanctions (if applicable).
- **Submission of Appeal or Response:** Within 5 (five) days of receiving the Notice of Outcome Letter.
- **Assignment of Appellate Officer:** Within 3 (three) days of receiving an appeal, the Title IX Coordinator will designate and assign the Appellate Officer.
- **Appeal Outcome:** The Appellate Officer will provide a determination of the Appeal within 10 (ten) days of receiving the Appeal Packet, unless the Appellate Officer requests an extension of the timeline from the Title IX Coordinator for good cause.
- **Notice of Appeal Outcome:** Parties will be informed of the outcome of the appeal 10 (ten) days of the Appellate Officer receiving the Appeal Packet.



Submitting an Appeal or Response



Office of Title IX Compliance- Appeal Form

Any party may submit a written Appeal of the dismissal or final determination of a formal complaint under Appalachian State University's [Policy 112: Sex-Based Misconduct](#). The statement of Appeal must be submitted to the Title IX Coordinator within five (5) days of receiving notice of a dismissal of a Formal Complaint or of receiving a Notice of Outcome from a Formal Resolution, subject to reasonable requests for extensions that may be granted. The process followed when a request for appeal is submitted is described in the [Sex-Based Misconduct Procedures](#).

Appeals are limited to the grounds specified in the Sex-Based Misconduct Procedures. You may request an appeal on one or more bases. The request must set forth specific facts supporting the ground(s) for appeal and all documentation to be considered for the appeal must be submitted with this form.

Background Information

You are currently authenticated as Dr. Ellen Grulke. [Not you?](#)

Date of Dismissal/Outcome (Required):

mm/dd/yyyy



Learn more

Your Information

Full Name

Role

ID Number

Phone number

Email address

[Add another party](#)

Questions

Please answer the questions below fully and to the best of your ability.

I am submitting this appeal on the following grounds: (Required)

- ☐ Procedural irregularity that affected the outcome of the matter.
- ☐ New evidence that was not reasonably available at the time the dismissal or determination regarding responsibility was made, that could affect the outcome of the matter.
- ☐ The Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

By submitting this form and requesting an appeal of the dismissal or outcome of a formal complaint alleging violations of Policy 112, I understand that: (Check All that Apply): (Required)

- ☐ The Title IX Coordinator will notify the parties in writing when an Appeal is filed.
- ☐ The Title IX Coordinator will assign the Appeal to a trained Appellate Officer not previously involved in any process as outlined in the Sex-Based Misconduct Procedures.
- ☐ The parties will receive in writing the outcome of the Appeal, which will explain the result of the Appeal and the rationale for the determination.

Please provide a detailed statement below. Please note, there is an opportunity to upload documentation including a written statement to this form. (Required)

If including additional documents (upload below), please describe the materials and how they support your appeal. (Required)

Supporting Documentation

Attach any documents or materials you wish to provide with your appeal. 5GB maximum total size.

Attachments require time to upload, so please be patient after submitting this form.

Choose files to upload

Choose Files

Submit report



02. Role of the Appellate Officer

- Accepting the Appellate Officer Role
 - Things to consider
- About the Role

Accepting the Appellate Role

You may be contacted by the Title IX Coordinator to serve as an Appellate Officer in the event an appeal is filed. Here are some things to consider:

1. The appeal process takes, on average, 10 (ten) days. What does your schedule look like during this timeframe?
2. Identify any conflict of interest or bias in relation to the parties, or the context of the incident. Should you feel you have a conflict of interest or bias, you need to immediately notify the Title IX Coordinator.

Philosophical Basis of Appeals

- ★ Making sure the procedures were followed to a fair result.
- ★ The final determination of the case may not be how you would have decided it, but the goal is to show deference on appeal unless there is clear error.
- ★ Initial investigation and decision should be presumptively sufficient until evidence shows otherwise.
- ★ Many appeals now implicate sufficiency of the investigation, hearing process, or determination.
- ★ You may disagree with sanction, but there must be a compelling justification to change it, not mere disagreement.
 - Sanctions must bring an end to discrimination and reasonably prevent its reoccurrence.
 - Remedies must repair the harm; make whole the Complainant and the community.

The Role of an Appellate Officer

- You must complete an objective and independent review of the appeal to determine whether there are grounds for the appeal to stand.
- You have the authority to:
 - Affirm all or part of the decision (which includes the determination of responsibility, as well as the sanction(s); and/or
 - Recommend the case be referred to the same or new Investigator(s) or Decision-Maker(s) for further consideration. This recommendation to made to the Title IX Coordinator.
- You may contact the parties, Investigator(s), Decision-Maker(s), or the Title IX Coordinator should you have questions or need additional information as it relates to the grounds of the appeal and rationale so long as it aides you in making a determination. Reminder, this is not *de novo* (from the beginning).
- You may consult with the Title IX Coordinator and/or the Office of General Counsel should you have questions or concerns throughout the appeal process.



03. Step-By-Step Guide

- Reviewing the Appeal
- Procedural Irregularity
- New Evidence
- Conflict of Interest or Bias

Step-By-Step Guide: Reviewing the Appeal

You will be supplied with an Appeal packet that contains the following:

1. The appeal;
2. The non-appealing party's response to the Notice of Outcome, if provided;
3. The Final Investigative Report;
4. The Decision-Maker(s)'s written determination on responsibility;
5. Any information reviewed or considered by the Investigator or Decision-Maker(s);
6. All evidence submitted to the Investigator or Decision-Maker(s);
7. The University Administrator's written determination on sanctions and/or remedies; and
8. A recording of the hearing

Review these documents carefully, focusing on the identified grounds for appeal and rationale.

Step-By-Step Guide:

Grounds for Appeal- Procedural Irregularity

Procedural irregularity that affected the outcome of the matter.

1. Review the procedural irregularity identified by the party in their submitted appeal.
2. Review the Office of Title IX Compliance's policy and procedure to identify the procedure addressed in the submitted appeal.
3. Determine whether the procedures followed during the investigation and/or hearing were irregular.

Determination:

1. If you determine there was not procedural irregularity you will affirm the determination or dismissal.
2. If you determine there was procedural irregularity **AND** it affected the outcome of the determination or dismissal, you will uphold the appeal and recommend the case be referred to the same or new Investigator(s) or Decision-Maker(s) for further consideration. This recommendation is to made to the Title IX Coordinator.

Step-By-Step Guide:

Grounds for Appeal- New Evidence

New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made.

1. Review the evidence identified by the party in their submitted appeal.
2. Review the evidence supplied during the investigation and hearing procedures.
3. Determine whether the evidence is new and was **not reasonably available** at the time the determination or dismissal was made.
 - a. To determine whether or not the evidence was reasonably available, identify the reason the evidence was not obtainable during the process. If the rationale is reasonable, you may determine that the evidence indeed “new”.

Determination:

1. If you determine the evidence is not new, you will affirm the determination or dismissal.
2. If you determine the evidence is new **AND** was not reasonably available at the time of the determination or dismissal, you will uphold the appeal and recommend the case be referred to the same or new Investigator(s) or Decision-Maker(s) for further consideration. This recommendation is to be made to the Title IX Coordinator.

Step-By-Step Guide:

Grounds for Appeal- Conflict of Interest or Bias

The Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

1. Review the identified conflict of interest or bias in the party's submitted appeal.
2. Determine whether the grounds for appeal meet the definition of conflict of interest or bias, if proven.
3. Review the evidence and documentation supplied during the investigation and hearing procedures.
4. Determine whether the Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias as identified by the party in the appeal

Determination:

1. If you determine there was not a conflict of interest or bias, you will affirm the determination or dismissal.
2. If you determine there was a conflict of interest or bias you will uphold the appeal and recommend the case be referred to the same or new Investigator(s) or Decision-Maker(s) for further consideration. This recommendation is to made to the Title IX Coordinator.



04. Appellate Officer Review

- Appeals under Title IX
- Role of the Appellate Officer
- Step-By-Step Guide

Thank you for your time!

And we encourage you to participate in supplemental trainings that will be given out periodically.

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