Appeals Officer Training
Presented by:
Office of Student Conduct
and
Office for Student Civil Rights & Sexual Misconduct
2021-2022
DUE PROCESS

- Notice and an opportunity to be heard
  - “Being Heard” = Investigation and a Hearing
- Follow established policy and processes (Student Handbook and Code of Student Conduct; System Regulation 07.06) – the process that is due
  - Litigation most often ensues when officials stray from published policy and process – more on litigation…
- Rights and Responsibilities in the process
- Prompt, fair, and equitable
THE CONDUCT PROCESS

Incident Flowchart

- Report received from Police, Professor, Housing, another Student, Community Member, Media Outlet, etc.
- Initial Incident Report reviewed by Staff Member
- If there is evidence of a potential Code violation, investigation begins and Student Conduct Officer/Investigator is assigned
- Initial Inquiry Letter sent to involved student(s) via TTU e-mail
- Initial Inquiry and Investigation – Staff Member compiles relevant information into Investigation Report

Informal Resolution
- Responsible
- Sanctions
- Decision Letter

Administrative Hearing or Hearing Panel
- Responsible
- Sanctions
- Decision Letter
- Appeal
  - Decision Upheld
  - Decision Amended; decision is final
  - Remand to either original hearing body or a new hearing body; decision is final.
- Not Responsible

If no evidence of potential violation has occurred, no formal action taken

May be issued a Policy Warning or asked to have an educational conversation with a staff member.
# Appeals: Key Elements (Non-Title IX)

<table>
<thead>
<tr>
<th>One level of appeal is all you need</th>
<th>Limit the grounds for appeal</th>
<th>Show deference to initial decision</th>
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<tbody>
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<td>Limit the grounds for appeal</td>
<td>Clear error in finding; Compelling justification to change sanctions</td>
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<tr>
<td>Timely and efficient response (some cases have been on-going for some time)</td>
<td>Window to request an appeal (5 days per TTU Code)</td>
<td>Information-based, policy, process review</td>
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<td></td>
<td>Can always grant an extension <em>if necessary</em></td>
<td>Not a Re-Hearing</td>
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<tr>
<td>Appeals are not automatic; based on request</td>
<td>Appeals should not be the answer for students who do not like the outcome</td>
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<td>Appeals are not required by federal law</td>
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Appeals are not automatic; based on request.
PHILOSOPHICAL BASIS FOR APPEALS

• Ensure policy and procedures were followed to a fair result (i.e. no procedural error or deviation from policy)

• The outcome (finding + sanction) may not be how you would have decided it, but the goal is to show deference on appeal unless there is a clear error

• Initial investigation and decision should be presumptively sufficient until evidence shows otherwise

• You may disagree with an outcome or a sanction, but there must be a compelling justification that a procedural error occurred to change the sanction, not mere disagreement

  • The focus of an appeal is not to make the parties to a complaint happy
The status of the appeal is part of the status of the investigation. The reporting party is entitled to regular updates on this status.

When one party requests an appeal, the other party(ies) should be notified, and joined, either on the same basis that the appeal has been requested, or on other bases that they wish to assert as grounds.

Exchange the appeals documents and requests between the parties, with an opportunity to respond.

**Once a student receives the decision letter, the student may select the appeal link within the body of the letter. The student is asked to specify their grounds for appeal. The appeal is then routed to the Office of Student Conduct, via Maxient.**
A procedural [or substantive] error occurred that significantly impacted the Hearing (e.g. substantiated bias, material deviation from established procedures, etc.);

The discovery of new evidence, unavailable during the original Hearing or review of the case, which could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included; or

**A credibility analysis of the new evidence should also be included.**

The sanctions imposed substantially varies from the range of sanctions normally imposed for similar infractions

**Or, varies from the cumulative effect given the conduct history.**
Request for appeal received, specifies appeal on one or more published appeal criteria, and is within an acceptable timeframe for submission

Appeal is reviewed

Possible Appeal Outcomes

- Affirmed
- Remanded
  - To correct a procedural error or address new evidence
    - Remand to Investigation (partial or full)
    - Remand to Hearing (may be partial or full rehearing depending on error present; may be administrator or panel)
    - Remand to Sanction Only Hearing
- Amended
Thoroughly review the investigation report, the hearing record/transcript, appeal responses, and all available documents.

Review related sections of the Code of Student Conduct

Utilize the lens of error in policy and process throughout your review

- An appeal is not a re-hearing

Pay particular attention to the rationale for the finding articulated by the panel in the hearing outcome document
Things to Look at re Sanctioning

- Sanctioning Matrix (or grid)
- Sexual Misconduct Sanction Matrix
- Is the student currently on a conduct status?
- What does past-precedent suggest if any?
- Timing of sanction implementation (timing during semester)
- Were mitigating or aggravating circumstances applied/considered?
The Office of Student Conduct shall make reasonable effort to notify the student(s) the result of the appeal within ten (10) University working days (Part I, section A.3) upon receipt of appeal and collection of all appeal responses.

• OSC Associate Director usually coordinates appeal response process.

If necessary, the Office of Student Conduct will notify the student should the appellate official need additional time to decide the appeal.

The decision of the designated appeal officer is final and cannot be appealed (one-level appeal).

If the designated appeal officer remands the decision for a partial/full re-Hearing, the decision of that Hearing official or panel is final and may not be appealed.
The Office of Student Conduct sends all decision letters via Maxient. Template letters are available in Maxient for appeal official use.

Templates in Maxient:
Letter 16- Appeal Letter (Affirmed)
Letter 17- Appeal Letter (Remanded)
Letter 18- Appeal Letter (Amended)

*If an appeal official would like to send a customized appeal decision letter, please contact OSC or SCRSM as appropriate
WHEN APPEALS ARE CHALLENGED

- Interventionist appeals officers who believe it is their job to second-guess
- Granting appeals for the chance at an education conversation/to teach a lesson
- The liability risk of a too strong appellate authority
- Hierarchs as appeal officers
- Failure of adequate training
- Too much deference can be problematic (if the initial decision is wrong, or results from lack of training, you do have to set things right)
- Failure to recognize a conflict of interest
Appeals Best Practices

• You may conduct limited inquiries with the investigator, adjudicator(s), parties or witnesses as necessary, but avoid the resemblance of a re-investigation or re-hearing. Inquiries should be directed at confirming whether or not an error occurred.

• Make an independent and impartial determination.

• Grounds for appeal or changes must be shown by evidence that is “more likely than not”.

• Appeals and any accompanying rationale for the appeal decision(s) are communicated in writing.
Appeals Best Practices

• The judgment of an appeal official centers on the degree to which an error occurred. If there is a significant error that would change the outcome, it is appropriate to remedy the error. An appeal official may be able to address the error during the appeal or may remand the case.

• Substantial error in the investigation may be repaired by remanding to investigation, or on rare cases, re-investigation by a new investigator.

• Problems with hearings can often be fixed by limited re-hearing. Complete re-hearings should be rare.
Appeals Best Practices

• Sanctions go into effect following the hearing when no request for Appeal or Intent to Appeal is made by the student.

• A student may request an abeyance of sanctions. The Director of Student Conduct has the discretion to approve an abeyance of sanctions on a case-by-case basis and for good cause.

• Typical reasons for an abeyance include: a student appeals the decision and a student has a legitimate need for the sanction implementation to be delayed (e.g. finding new housing, timing in the semester, student research, etc.).
Sexual Misconduct/TIX Appeals
**Title IX Regulation Review - Key Terms**

**Education Program or Activity**

- Any location, event, or circumstance over which the recipient exercises substantial control over both the respondent and the context in which the sexual harassment occurs. Includes all education programs or activities, whether occurring on or off-campus, and any building owned or controlled by a student organization that is officially recognized by a postsecondary institution (such as a fraternity or sorority house).

**Formal Complaint**

- Document filed by a Complainant or signed by the University’s Title IX Coordinator alleging Title IX Sexual Misconduct against a Respondent and requesting that the University investigate the allegation(s) of Title IX Sexual Misconduct. Provided, however, where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party under this regulation.

**Grievance Process**

- The process of addressing Formal Complaints of Title IX Sexual Misconduct before the imposition of any disciplinary or other actions that are not Supportive Measures against a Respondent. The Grievance Process is described in Section 8 of this regulation.
Title IX Sexual Misconduct

- Conduct that allegedly occurred against a person in the United States, in University’s Education Program or Activity, on the basis of sex, and that satisfies one or more of the following:

i. Quid Pro Quo

- A University employee conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct

ii. Severe, Pervasive, and Objectively Offensive Conduct

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s Education Program or Activity. Without limiting the foregoing, the following types of conduct are deemed to meet this severe, pervasive, and objectively offensive standard:
  1. “Sexual Assault” as defined in 20 U.S.C. § 1092(f)(6)(A)(v);
  2. “Dating Violence” as defined in 34 U.S.C. § 12291(a)(10);
  3. “Domestic Violence” as defined in 34 U.S.C. § 12291(a)(8);
<table>
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<tr>
<th>Requirement: No conflicts of Interest</th>
<th>Requirement: Presumption of Non-Responsibility</th>
<th>Requirement: Standard of evidence is preponderance of the evidence</th>
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<td>Requirement: Objectivity</td>
<td>Requirement: Privileged information</td>
<td>Timeframe: 120 days, inclusive of Appeal</td>
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Title IX Regulation Review: Grievance Process (SysReg 07.06)

Notices:
- Initial notice to parties
- Supplemental notice to parties
- Notice to parties of all Hearings, Interviews or Meetings
- Written notice via University email

Investigation:
- Prior to completion of report, provide both parties/advisors equal opportunity to inspect/review any evidence obtained that is directly related to allegations raised in the Formal Complaint
- Send each party/advisor evidence in electronic format or hard copy
- Parties shall have at least 10 days to submit a written response

Investigation Report:
- Upon completion of the 10 days, finalize the report that fairly summarizes relevant evidence. Send to each party and advisor a copy of the completed report at least 10 days prior to the Hearing
Title IX Hearing Procedures

• Hearing Procedures outlined in System Regulation 07.06.A-2
• Hearing Panel Make Up
• Parties and witnesses must be subject to cross examination
• Party’s advisor conducts cross examination
• Rules of Order and Decorum (provided to parties prior to Hearing)
• Hearing is recorded
• Title IX Hearing Officer rules on Relevance

Determination of Responsibility/ Decision Letter

• Provided to parties simultaneously

Appeal provided to both Complainants and Respondents equally
SEXUAL MISCONDUCT APPEALS

Two types of Appeals:

• Dismissal of Formal Complaint
• Determination of Responsibility

Must apply equally to both parties
SEXUAL MISCONDUCT APPEALS

• Bases for Appeal

1. A procedural irregularity that significantly affected the outcome of the Hearing (e.g. material deviation from established procedures)

2. The discovery of new evidence, not reasonably available at the time the determination of responsibility was made that could affect the outcome of the matter. A summary of this new evidence and its potential impact must be included

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

4. The sanctions imposed substantially varies from the range of sanctions normally imposed for similar infractions
When a Formal Complaint is received, SCRSRM will evaluate jurisdiction and mandatory and discretionary dismissal described below assess appropriate Supportive Measures for both parties, evaluate the need for Emergency Removal, and initiate the Grievance Process.
**MANDATORY DISMISSAL**

**SCRSM shall dismiss a Formal Complaint in the following situations:**

- **For Title IX Sexual Misconduct:**
  - i. The allegation does not describe conduct that would constitute Title IX Sexual Misconduct as defined, even if proven;
  - ii. The Title IX Sexual Misconduct did not occur in the University’s Education Program or Activity;
  - iii. The Title IX Sexual Misconduct did not occur against a person in the United States.

- **For Non-Title IX Sexual Misconduct:**
  - i. The allegation describes conduct that would not constitute Non-Title IX Sexual Misconduct as defined, even if proven.
  - ii. The Respondent is not a member of the University Community
Permissive Dismissal - SCRSM may dismiss a Formal Complaint in the following situations:

- The Complainant notifies the Title IX Coordinator in writing that they wish to withdraw the Formal Complaint or some allegations in the Formal Complaint
- The Respondent is no longer enrolled in or employed by the University
- Circumstances exist that prevent the University from gathering sufficient evidence to reach a determination as to the Formal Complaint or the allegations.
Application of Other Policies Upon Dismissal- If SCRSM dismisses a Formal Complaint or any of the allegations in the Complaint, the office must promptly send written notice of the dismissal and the reason(s) for the dismissal simultaneously to the Complainant and Respondent. Dismissal of a Title IX Sexual Misconduct Formal Complaint does not preclude action under other policies, such as Non-Title IX Sexual Misconduct or the Code of Student Conduct.

Appeal of Dismissal Decision- Any party can appeal the dismissal decision following the criteria and procedures listed below under Appeals.
SM/TIX APPEAL PROCESS

**Notify**
- Notify the other party in writing when appeal is filed

**Give**
- Give both parties reasonable, equitable opportunity to submit written statement

**Issue**
- Issue written decision describing result of the appeal and the rationale

**Provide**
- Provide decision simultaneously to both parties
SM/TIX APPEAL TIMELINE

Complainant/Respondent has 3 University working days to submit appeal to Title IX Coordinator

The other party has 3 University working days to respond to the Appeal

The Hearing Body has 3 University working days to respond to the Appeal

The Appeal officer has 5 University working days to complete the Appeal
## SM/TIX Disciplinary Appeal Outcomes

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<tr>
<th>Outcome Description</th>
<th>Details</th>
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<tr>
<td>Appeal Dismissed- was not timely or did not properly set forth appropriate grounds/ include adequate accompanying evidence</td>
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<td>Decision Affirmed- original Hearing decision stands (findings and any sanction)</td>
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<td>Decision Amended- modify the finding and/or increase, decrease, or otherwise modify the sanctions</td>
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| Remanded | - When new evidence or procedural error would have substantially impacted the decision of the Panel  
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- Remand to Hearing (may be partial or full rehearing depending on error)  
- Remand to Sanctions Only Hearing |