

GRAND RIVER | SOLUTIONS

After the Title IX Hearing: Appeals

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Your Facilitator



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Co-Founder and Managing Director

Jody Shipper is a nationally-recognized subject-matter expert with more than 20 years of experience in Title IX and related fields. She is known for her insight into best-in-class programming, policies, and community outreach aimed at addressing sexual misconduct on campus. She lectures extensively at universities and conferences throughout the U.S. on Title IX, VAWA, harassment, and implementation of best and emerging practices. Jody received her J.D. from the University of California, Hastings College of Law and her bachelor's degree from Georgetown University's School of Foreign Service.



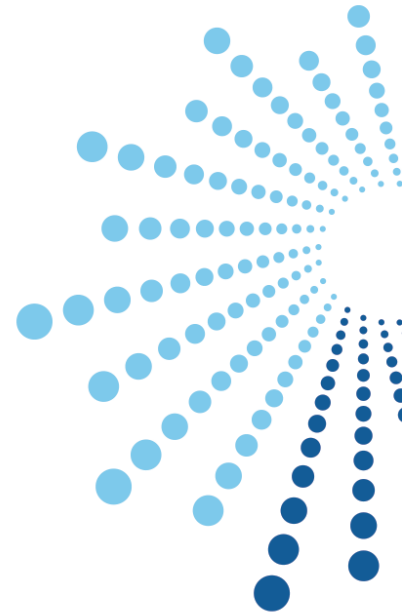
Today's Agenda

01

Appeals

02

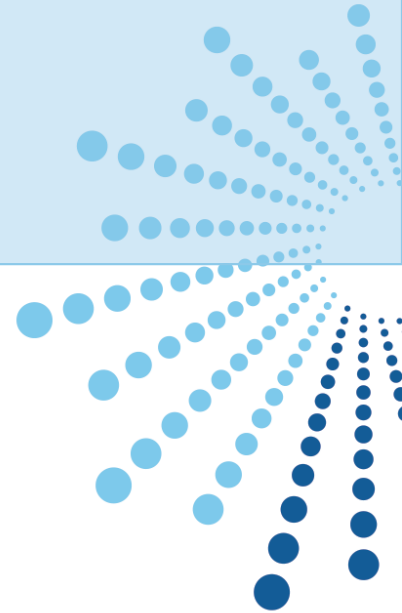
Common Errors on Appeal





Appeals

01



In Short...



Title IX



Appeal Officer(s)

Differences in Burden

COLLEGE/ UNIVERSITY	Figure out what happened and get to the truth of the matter, & error correction
COMPLAINANT RESPONDENT	Persuade and point out error with supporting evidence or facts



Who Can File



Either party has the right to file an appeal, which is reviewed by an annually trained appeal reader, who does not have any other role in the process. Only decisions reached through a hearing can be appealed and must be submitted in writing within five business days of the written determination regarding responsibility.



QUESTION: If you do not attend the hearing, can you appeal?

Timing is Everything

The parties will be notified in writing when an appeal is submitted. The non-appealing party will receive a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. If the non-appealing party wishes to submit a written statement, that party shall do so within five business days of receiving written notification of the appeal.



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Grounds for Appeal

- i. Procedural irregularity that affected the outcome;
- ii. New evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome;
- iii. The Title IX Coordinator, investigator, or decision-maker had a general or specific conflict of interest or bias against the Complainant or Respondent that affected the outcome.



Was an appeal filed?

Review the information provided by Complainant and/or Respondent and determine whether it contains sufficient information concerning the grounds for appeal and the reasons related to those grounds

This step is not to decide the merits of the appeal, but to identify the nature and scope of the issues to be addressed.



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What Does This Mean?

- You are reviewing the appeal for what it says, not how it is said.
- You are identifying what the party says went wrong in the process or whether the party has identified new information and IF the party has articulated that what went wrong or what is new, if true, would have led to a different outcome.



Your Grounds for Appeal

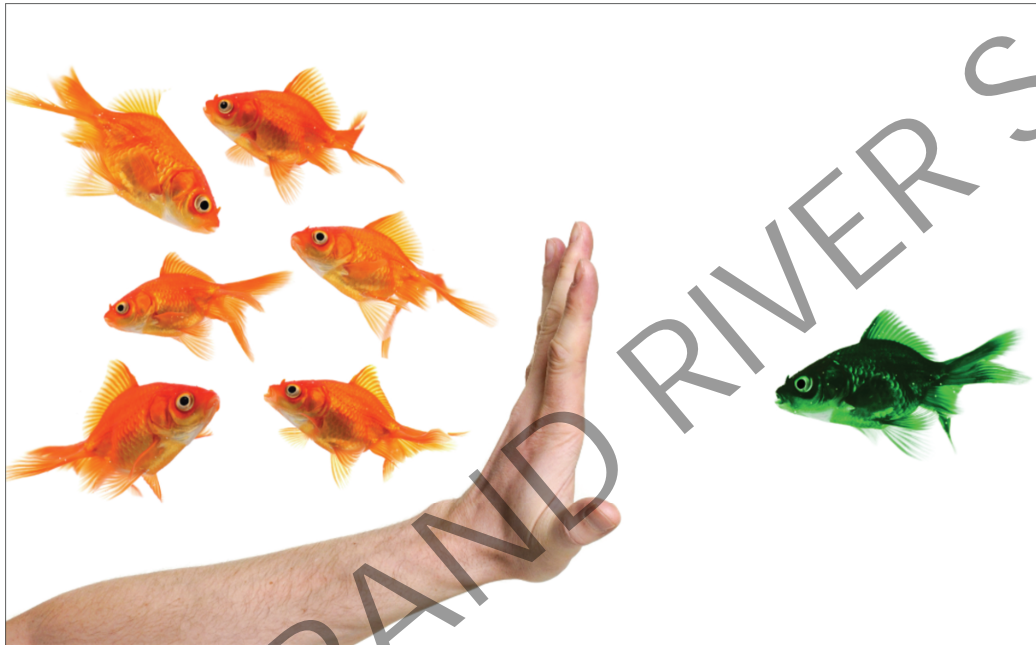
Procedural

- Bias/conflict of interest
- Error

New information

Affected the outcome

Bias



- What constitutes bias?
- The investigator was biased against me because...
- The investigator was biased against (complainants/respondents generally) because . . .

Allegations for Bias

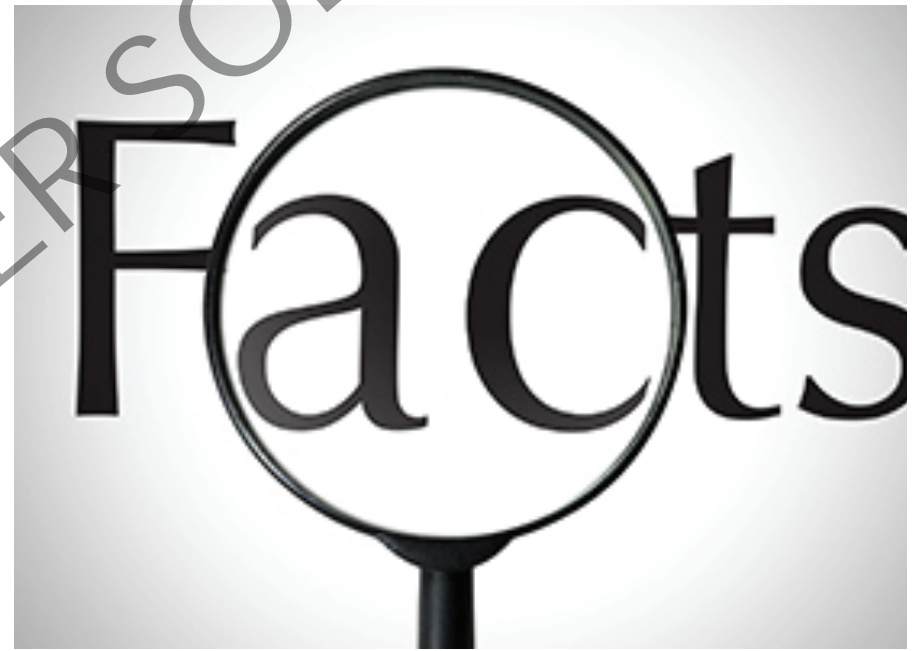
“Pro-victim bias does not equate to anti-male bias.”

-Doe v. University of Colorado

Anti-violence bias does not equate to anti-male bias.

Allegations of Bias as the Basis for Appeal

An allegation of bias without factual support “no longer passes muster”.
-Doe v. University of Colorado



New Information

- Is it really new?
- If it is new, would it change the findings/outcome
- Who investigates new information?
- Timeline



New Evidence: What Would You Do?

Appeal states there is
new evidence...

Evidence not provided
with the appeal

How do you know it is
new?

It is new but is it
relevant and reliable?

Procedural Error

There was a procedural error in the process that materially affected the outcome.

- Someone was not interviewed
- I was not allowed to cross-examine the complainant
- Burden was put onto me to prove consent

Sometimes Institutions Do the Wrong Thing



- ❖ Missing deadlines for providing materials
- ❖ Misunderstanding of affirmative consent
- ❖ Errors at a hearing

Dear Appeals Officer...

I am the victim of a false accusation...

- The police were not contacted and I was not charged by law enforcement with a crime
- After the supposed sexual assault, she sent me a friend request on Instagram and asked me to dance at a party
- No one listened to my explanation or reviewed the evidence so they could see that I was falsely accused.



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Denial of A Process You Don't Offer



Representation

Discovery



Subpoena / compel
witnesses



When a Party Refuses to Participate in the Process but Appeals the Process

“The Plaintiff waived his right to challenge the process resulting in his expulsion by failing to participate in the process afforded him.”

- Herrell v. Benson



Common Errors on Appeal

02

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Evidence

Direct

Circumstantial

Character



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Evidence – Knowing What to Consider

Drunk vs. Intoxicated vs.
Incapacitated

Language matters

Clarity and consistency of application

Who has to prove
consent?

Know the language of your policy

DANGER

**DO NOT
ENTER**

**De Novo
Appeals**



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Appeals Panels That Exceed Their Authority

- Stay in your lane
- How do you know
- How to correct



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Sanctions Are Now Wrong Because Finding Was Wrong

Does appeals officer determine new sanction, or send case back for appropriate determinations?



Solutions When you Err*

- Re-do and get it right.

Lesser-Included Charges on Appeal**

- There are no lesser-included charges.
- Reflects lack of notice and opportunity to respond.

When a Sanction Changes Due to an Appeal***

Appeals panel “sua sponte and without any explanation recommended enhancing the penalty to expulsion.”

*John Doe v. University of Kentucky; Doe v. Alger; **Powell v. St. Joseph's University; Doe v. U.S.C.; ***Haug v. SUNY Potsdam



You've Identified the Problem... What Now?

The parties will receive written decision regarding the appeal describing the results of the appeal and the rationale for each result. If the appeal is granted, the matter shall be either referred to the original Hearing Officer for re-opening of the hearing to allow reconsideration of the original determination or the appeal reader will determine any change in sanction. If an appeal is denied, the matter shall be considered final.

Documenting the Appeal

Policy

- Rights
- How notified
- Who decides
- Step-by-step process
- Communications

Outcome

- Notification
- Decision
- Rationale
- Record-keeping
- Office of record

Questions?



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