

Appeals Training Hypothetical

Dear Appeals Officer,

I am writing to appeal the Title IX investigator's investigation and the determination made by the Student Conduct Officer in the case filed against me.

I want to start by letting you know that I take the crime of sexual assault very seriously, and agree that any criminal who engages in a sexual assault should be punished to the fullest extent of the law. It is important to note here that law enforcement was never contacted, and no charges were brought against me. There was no crime committed here.

First, there was no sexual assault in this case. Debbie and I have been in three classes together in the last year, and we often studied together. Even after this alleged sexual assault, she sent me a friend request on Instagram. She also asked me to dance when we saw each other at a party the week after the alleged sexual assault. To think that I would become a victim of a false allegation is something I never thought would happen to me when I got to college. To think that my explanation has fallen on deaf ears is even worse. Please undo this incredible wrong by reviewing the evidence so that you can properly find that I did not sexually assault Debbie.

Appeal Ground #1: Procedural irregularity that affected the outcome:

1. The investigator did not interview Mr. Uberlyft, the driver who drove Debbie home. I asked the investigator to interview Mr. Uberlyft, but the investigator did not do so. Had he been interviewed, he surely would have been able to provide testimony that Complainant was not drunk, not slurring her words, and certainly not incapacitated.
2. While Complainant was supported by an entire victim advocacy office, I did not have a campus advocate. No one helped me prepare for interviews or told me what to bring, no one helped me to write this appeal, and I was overwhelmed. As a result of the stress of this case, I am now failing two classes.
3. I was denied the opportunity to have an attorney make objections at the hearing and raise the argument that the investigation had made an error. I was told that my right to hire an attorney to advocate for me would be denied.
4. The hearing panel was supposed to have 3 members. One member recused herself because of a conflict, and no one was appointed in her place. Therefore there were only 2 members, which violates my right to a fair hearing.
5. The determination as to whether or not there was affirmative consent unfairly shifted the burden to me to prove that there was consent, rather than having the burden on the person making the allegation to show that there was not consent.

Appeal Ground #2: The decision-maker had bias against me that affected the outcome.

1. No reasonable person could say that I did this. Debbie is the one who initiated the sexual contact, and she is the one who started removing her own clothing. She also put her hand and forehead on my chest, which is a very intimate thing to do. It is unreasonable to say that the evidence suggests I assaulted her.
2. The decision stated that I did not get consent. That is incorrect. She gave consent, but the investigation determined it was not “sufficiently clear” consent. This is ridiculous. Also, this unfairly shifted the burden of proof to me, as noted above.
3. Even if she was really drunk, there is no way I could have known she was incapacitated. How could I have known? It is unfair to say that I knew she was incapacitated, and no reasonable person could come to that conclusion.
4. Because the decision is unreasonable, it is clear that the Decision-Maker is biased.
5. Last year, the Decision-Maker walked in the “Victims Bill of Rights” walk-a-thon, and the year before attended a fundraiser for the local rape treatment center, and posted photos of attending the event on her Instagram. The Decision-Maker is clearly biased against anyone accused of rape.

Appeal Ground #3: New evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome:

1. Complainant stated that she had a medical exam after the alleged assault, but she did not offer any proof. Also, during the hearing, I was not allowed to ask any questions about the medical exam. I believe that she should provide proof that she went to get the medical exam and, if she cannot provide that proof, then that is new evidence to show that she is lying.
2. In addition, I recently learned that Debbie has gotten into an honors class for this quarter. She could only have gotten into that course if she had done well the first quarter, which proves she was not traumatized and therefore not sexually assaulted.
3. I recently learned that the Decision-Maker is biased against me, which I did not know until I read the report. I could not have known of this demonstrated bias until receiving the Decision-Maker’s report.

Because I was wrongfully found responsible, the sanction is also wrong. Two years is an exceedingly long penalty for someone who did not commit any crime, but is particularly inappropriate here because, even had I been properly found responsible for a sexual assault (and, again, I was not), the wrong sanction was applied.

I consumed at least as much alcohol as did Complainant, and I was, at most, only slightly affected by the alcohol. She is the one who asked for the drinks, and I delivered them to her, at her request. I had no intent to hurt her or have sex with her, and no intent to get her drunk, and certainly no intent to incapacitate her. As evidence that I did not intend to hurt her, I called



her, twice, in the days after we met at the party, in order to check on her and see if she was doing well. That behavior is not consistent with being a rapist and proves that I had no intent to incapacitate her in order to have sex with her. Also, the fact that she later wanted to be my friend, and asked me to dance, supports that she knows, deep down, that I had no intent to get her drunk or have sex with her against her wishes.

Even if you were to find that I engaged in sexual misconduct, it is unreasonable to find that the sanction should be a two-year suspension. Last year, someone received only a one-year suspension for violating the same policy. If the panel finds there was any wrong done, perhaps due to any miscommunication, then the only appropriate sanction should be additional training, a non-contact order, and an agreement from me that if ever Debbie and I were to end up in the same class or dorm, I would gladly be the one to move. I will never again have sex with anyone who has had a drink, and so there is zero likelihood that I pose any danger to the community as I continue my studies. Therefore, a two-year suspension that will entirely derail my career is inappropriate and unfair.

Sincerely,

Robert Respondent

