

SEXUAL MISCONDUCT APPEALS

A Training for Title IX Personnel

2020

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AGENDA

1. Title IX & VAWA 304
2. Philosophical Basis for Appeals
3. Regis Appeal Process Overview
4. Guidance on Appeal Review
5. Possible Outcomes

BEHAVIORS COVERED UNDER TITLE IX AND VAWA 304

- ▶ Sexual Violence
- ▶ Dating & Domestic Violence (Intimate Partner Violence (IPV))
- ▶ Stalking
- ▶ Sexual Harassment
- ▶ Other forms of physical and non physical sex/gender-based discrimination (e.g. hazing, bullying, bias offenses, etc.)

THE PURPOSE OF PROVIDING AN APPEAL PROCESS

- ▶ Ensuring that procedures were followed to a fair result
 - ▶ At Regis, the grounds for filing an appeal of a decision in sexual misconduct hearings are:
 - ▶ A procedural irregularity occurred that significantly impacts the outcome of the hearing decision;
 - ▶ The sanction imposed is grossly disproportionate to the offense (including consideration of the respondent's prior offenses);
 - ▶ Title IX personnel had a conflict of interest or bias that affected the outcome of the hearing decision; or
 - ▶ Newly discovered evidence could affect the outcome of the matter if presented

PROCESS OVERVIEW

- ▶ Complainant and Respondent have the right to appeal
- ▶ Appeals must be submitted within 5 days of the decision being rendered
 - ▶ An extension may be requested and granted by the EO & Title IX Coordinator
- ▶ Appeals are submitted through -----form
- ▶ The EO & Title IX Coordinator acts as the gatekeeper of appeals:
 - ▶ Reviews appeal request to determine if the appeal should be assigned to an officer, or denied.
 - ▶ Notifies other party of the appeal request
 - ▶ Assigns appeal reviews to appellate officer

GUIDANCE ON REVIEWING APPEALS

- Your role as an Appellate Officer
- Preponderance of the evidence standard
- Showing deference
- Reviewing materials
- Avoiding bias and conflict

YOUR ROLE AS AN APPELLATE OFFICER

IS

- ▶ Review materials of the case and the party's argument(s) for appeal
- ▶ Show deference to the decision that was made while considering the grounds of appeal and fairness of outcome
- ▶ Look at page ## so we can walk through an example
- ▶ Utilize preponderance of the evidence standard in decision on appeal

IS NOT

- ▶ To reinvestigate the matter
- ▶ Conduct interviews of any parties or witnesses
- ▶ Hear the case *de novo*
- ▶ Base decisions on personal opinion

REVIEWING AN APPEAL

- ▶ You will review materials of the case and the appeal request:
 - ▶ Recording of hearing
 - ▶ Investigative report and evidence
 - ▶ Decision letters and rationales
 - ▶ Any other information or documents relevant to the case
- ▶ You may also:
 - ▶ Need to speak to other personal involved in the case for clarification, or any process questions

AVOIDING CONFLICT AND BIAS

- ▶ We are a small community, so conflict can be a very real problem
- ▶ Before you agree to review an appeal, you must identify any perceived or real conflict or bias, and discuss that with the EO & Title IX Coordinator.
- ▶ If the EO & Title IX Coordinator determines there is a conflict, the appeal will be assigned to an alternate Appellate Officer.

POSSIBLE OUTCOMES

- ▶ Denied and decision stands
- ▶ Granted and decision stands
- ▶ Remand
 - ▶ To correct a procedural error or address new evidence
 - ▶ The investigation may be reopened, but a full re-investigation is uncommon
 - ▶ Re-hearing
 - ▶ Usually partial and done to adjust the sanction

APPEAL OUTCOME

- ▶ Your decision letter needs to be:
 - ▶ Professional and neutral in tone
 - ▶ Contain fact and not opinions
 - ▶ Treat the recipient with dignity and respect
- ▶ Your decision letter needs to include the following:
 - ▶ Acknowledgement of each item presented as grounds for appeal
 - ▶ A determination and rationale (including sources reviewed and used for that rationale) for each item
 - ▶ A point of contact for questions or concerns (the Title IX Coordinator)