



# Title IX Appeals

**EASTERN OKLAHOMA STATE COLLEGE**

# Session Points

The Formal Complaint Framework

Key Concepts

Bases for Appeal

Drafting Appeal Decisions

Requirements for Appeal Officers

# The Formal Complaint Framework



# Formal Complaint

A **formal complaint** of Title IX sexual harassment means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.

For the purpose of addressing formal complaints of sexual harassment, a school's Title IX complaint process must comply with a **wide range** of specific requirements set out in the new rule, including specific requirements concerning **appeals**.

# Formal Complaint Process

Core Requirements	• Details 10 core requirements of formal complaint process
Complaint Dismissal	• Grounds for dismissal and procedural requirements
Consolidation	• Complaint consolidation in specific circumstances
Notice of Allegations	• Requirements for initial and ongoing notice to parties
Investigations	• 7 required elements of formal investigation
Informal Resolutions	• Permits informal resolution where appropriate
Hearings	• Hearing requirements, including cross-x and advisors
Determinations	• Requirements for adjudicators and determinations
Appeals	• Grounds and procedures for appeals
Recordkeeping	• Record maintenance requirements for specified periods



# Key Concepts

# Key Concepts

- ❖ School must offer both parties an appeal from (1) a determination regarding responsibility, or (2) a school's dismissal of a formal complaint or any allegations therein.
- ❖ Schools generally must implement appeal procedures equally for both parties.
- ❖ Schools must notify the other party in writing when an appeal is filed.
- ❖ Schools must ensure that the appeal officer is not the hearing adjudicator, investigator, or Title IX Coordinator.

# Key Concepts

- ❖ Schools must ensure that the appeal officer has received required training.
- ❖ They must give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
- ❖ Schools must issue a written decision describing the result.
- ❖ They must provide the written decision simultaneously to both parties.



# Bases for Appeal

# Bases for Appeal

Appeals may be granted on the following bases:

- a procedural irregularity that affected the outcome;
- new evidence that was not reasonably available at the time the determination or dismissal was made and could affect the outcome; and
- the Title IX Coordinator, investigator, or adjudicator had a conflict of interest or bias that affected the outcome of the matter.

A school also may offer an appeal equally to both parties on additional bases.

# Bases for Appeal

## **Is the severity or proportionality of sanctions an appropriate basis for an appeal?**

- “...the final regulations leave to a recipient’s discretion whether severity or proportionality of sanctions is an appropriate basis for appeal, but any such appeal offered by a recipient must be offered equally to both parties.”

## **Can a party request an appeal because of dissatisfaction with the result?**

- Ground for appeal are defined by the bound of an institution’s policy.

# Bases for Appeal

## **Is there a way to appeal an appeal?**

- No. If an appeal is filed, the determination regarding responsibility becomes final on the date the parties are provided the written determination of the result of the appeal.
- But note that party can file a lawsuit or complaint with the Office of Civil Rights.

# Drafting Appeal Decisions



# Drafting Appeal Decisions

## **What should appeal officers be considering when reviewing appeals?**

- Understand applicable grounds for appeal.
- Have an open mind.
- Be guided by applicable policy and facts.

## **What are best practices to make written appeal outcomes as defensible as possible?**

- Address, in some fashion, all claims raised.
- Ensure no bias or conflict of interest.
- Keep an eye toward litigation.



# Requirements for Appeal Officers

# Requirements for Appeal Officers

## **What are a few characteristics and qualities of the best appeal officers?**

- Thoroughness and attention to detail.
- Understanding of Title IX process.
- Not afraid to find appeal has merit.

## **What positions at an institution should be considered to serve as the appeal officer?**

- High ranking employee of institution.
- Legal background may be helpful but not necessary.
- Understanding of Title IX or student conduct process.

# Requirements for Appeal Officers

## What are the training requirements for appeal officers?

- As a decision-maker, the appeal officer must receive training on:
  - The definition of sexual harassment in § 106.30.
  - The scope of the recipient's education program or activity.
  - How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable.
  - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
  - Any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

# Requirements for Appeal Officers

## **What happens if an appeal officer has a conflict of interest?**

- An appeal officer with a conflict of interest should not hear the appeal.
- An institution's policy should allow for the designation of a substitute appeal officer in the case of a conflict or unavailability.



**THANK YOU!**