

Welcome & Introductions



Agenda:

1. Review appeal process in the final regulations for your policy
2. Question & Answer

■ Appeal Process

§106.45(b)(8)

- The Final Regulations require an appeal process for two types of appeals:
 1. Appeal process for a determination regarding responsibility.
 2. Appeal process following a mandatory or discretionary dismissal of a formal complaint or an allegation contained in a formal complaint.
- Appeals must be equally available to both parties.

Appeal Process

§106.45(b)(8)

For both types of appeals, a school must:

- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator or the Title IX Coordinator;
 - Decision-maker(s) for the appeal can be a single Appeal Officer or an Appeal Panel.

POLL

Who will conduct your
appeals process?

■ Appeal Process

§106.45(b)(8)

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■ Appeal Process

§106.45(b)(8)

The Final Regulations require at least three grounds for appeals:

- A. Procedural irregularity that affected the outcome;
- B. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome; and
- C. The Title IX Coordinator, investigator(s), and/or Hearing Panelists had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.

■ Appeal Process

§106.45(b)(8)

- Schools are permitted to include additional contents relating to the appeal process at their discretion.
- Schools may offer additional bases for appeal equally to both parties, such as to allow for an appeal on the severity or proportionality of the sanction. §106.45(b)(8)(ii).
- Allowing an appeal to challenge the remedies imposed is not necessary per OCR. (Preamble, p. 940 (Federal Register version)).

■ Appeal Process

§106.45(b)(8)

- The parties should have access to the recorded hearing or hearing transcript before the time to appeal lapses.
- Schools should provide a reasonable timeframe for the appeal process.
 - The Final Regulations require that all schools include “reasonably prompt” timeframes for investigation and resolution, including appeals.
- The parties may have an advisor of their choice during the appeal process, who may or may not be an attorney.

■ Appeal Process

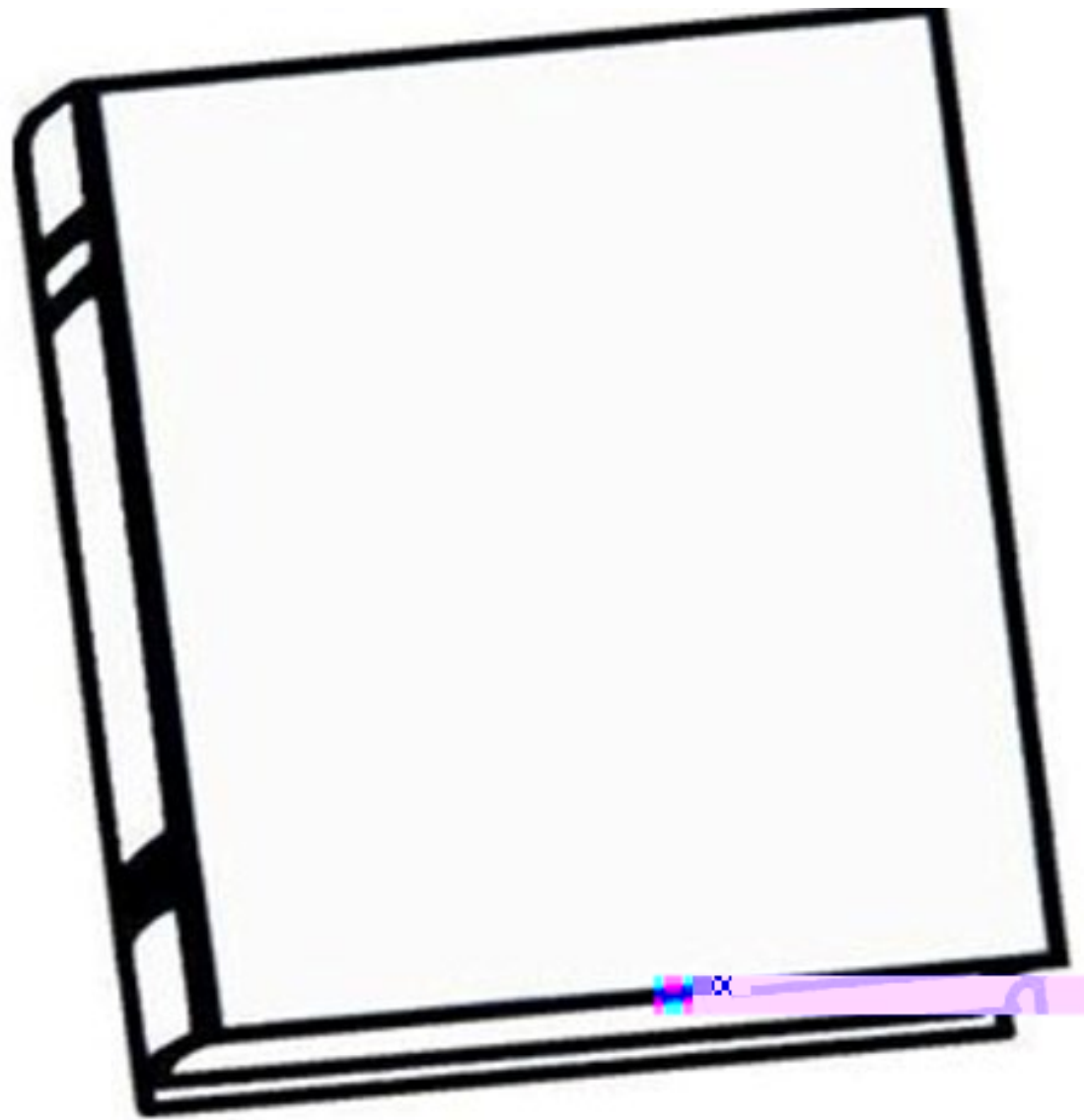
§106.45(b)(8)

- The written determination on responsibility and sanctions, if applicable, are postponed until the decision on the appeal is sent to the parties. § 106.45(b)(7)(iii).
 - Keep supportive measures in place during appeal period to maintain status quo between the parties and ensure equal access to education.
 - Can revisit emergency removal if necessary.
- Appeal decision is final.

CHAT

What types of qualifications are you looking for when designating your appeal officer(s)?

QUESTIONS



■ Appeal Procedure - Sample

1. Any party may appeal a determination regarding responsibility or a dismissal of part, or all of a formal complaint under the grounds set forth in Section ____ [insert grounds].
2. If no appeal is filed, or an appeal is not timely, the original finding will stand, effective on the date the appeal period expires.
3. The appeal procedures herein are implemented equally for all parties.
4. Supportive measures may be continued or reinstated by the Title IX



Appeal Procedure - Sample

5.

■ Appeal Procedure - Sample

8. The Title IX Coordinator will determine if the appeal is timely. If the appeal is timely, the Title IX Coordinator will:
 - a. Appoint an Appeal Officer to decide the appeal. The Appeal Officer is independent of the previous process, including from any dismissal appeal that may have been heard earlier in the process.
 - b. Provide the identity and contact information for the Appeal Officer to the parties.
 - c. If both parties submit appeals (i.e., cross- appeals or counter- appeals), the same Appeal Officer will decide both appeals individually, but contemporaneously. The same Appeal Officer will decide any appeals arising from the same facts and circumstances.





Appeal Procedure - Sample

14. If the Appeal Officer determines the appealing party has articulated valid grounds for appeal, the Appeal Officer will notify the parties simultaneously.
15. Following this notification, the non -appealing party has 2 business days to submit a written response to the appeal to the Appeal Officer, which will be provided to the appealing party.
16. The Appeal Officer may invite the investigator or Hearing Coordinator to submit a response to the appeal, which will be provided to the parties.
17. No further submissions related to the appeal are permitted.

■ Appeal Procedure - Sample

18. An appeal of a determination on responsibility is not a review of the entire matter; rather, it is an objective review of the written documentation related to the investigatory and hearing processes and record of the Hearing, along with the appeal-related submissions authorized herein.

19. Accordingly, the Appeal Officer will not interview, question, or meet with the parties or their advisors.

Appeal Procedure - Sample

20. The Appeal Officer is to defer to the original findings and determination, remanding only when there is clear reason to do so, and modifying the outcome and sanction(s) only when there is a compelling justification to do so.

21. The Appeal Officer may take one of three possible actions on appeal:
 - a) Dismiss the appeal for failure to meet the grounds of appeal, upholding the initial outcome and sanction(s), if applicable.
 - b) Remand to the original investigator or hearing panel with specific instructions on the remanded issue(s).
 - c) Modify the outcome and/or sanction with a rationale supporting the modification.

Appeal Procedure - Sample

22. The Appeal Officer will generally render a written decision on the appeal, as to each ground raised, and rationale for the decision, within five (5) business days from receipt of the appeal, absent exigent circumstances.
23. The Title IX Coordinator will simultaneously forward the Appeal Officer's written decision to the parties.
24. The Appeals Officer's decision is final and there are no further appeal options.

■ Appeal Procedure - Sample

25. If a sanction imposed in the original determination remains, the Title IX Coordinator will coordinate the implementation of the sanction. The Title IX Coordinator will also coordinate and implement the remedies owed to the Complainant and implement any other long -term support measures, as necessary.

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ACTIVITY

The Complainant filed a formal complaint alleging that the Respondent fondled the Complainant in a dorm room on campus. The parties completed the grievance process pursuant to §106.45 and the Hearing Panel found the Respondent responsible for fondling and issued a sanction of probation.

The Complainant submitted a timely appeal stating the following:

Dear Title IX Coordinator,

I am appealing the Respondent's sanction because it is too lenient. The Respondent should be expelled.

How do you proceed under your policy?

ACTIVITY

A Complainant filed a formal complaint against a Respondent where the Complainant alleged that the Respondent engaged in hostile environment sexual harassment.

After the Title IX Coordinator met with the Complainant to discuss the specific allegations, the Coordinator advised the Complainant that the Respondent was not responsible for the alleged conduct. The Respondent was found responsible for the alleged conduct and was suspended from the institution for one year.

ACTIVITY

Upon dismissal of the formal complaint, the Complainant immediately refiled the complaint against the Respondent with Student Conduct alleging General Harassment, an offense under the Conduct Code.

The Respondent then appealed the Title IX Coordinator's dismissal on the bases of "procedural irregularity that affected the outcome of the case" and asked that the formal complaint be reinstated as Title IX Hostile Environment Sexual Harassment.

Why would a Respondent want the formal complaint reinstated as Title IX Sexual Harassment opposed to going through the Student Conduct Process on the claim of General Harassment?

How do you proceed under the policy?

CHAT

Let's Chat!

Since we successfully completed five out of the six workshop series, let's use this time to hear from you!

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EVALUATION

Thank you!

Please remember to complete the event evaluation. Your comments will help us continually improve the quality of our programs.

