

# TITLE IX Training

## Part 3: Grievance Process and Appeals

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# Grievance Process Overview

Four basic components:

- Investigation
  - Hearing
  - Determination of Responsibility
  - Appeals
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- Presumption that Respondent is Not Responsible, until entire process is complete.
  - Further detail on the Regis webpage, [Title IX Response and Grievance Process](#).

## Context – Where does the Grievance Process fit?

- A report has come in to the Title IX Coordinator or other official with authority to act (which will refer to the Title IX Coordinator). Consequently, Regis has Actual Knowledge.
- Supportive Measures have been discussed with the reporter and implemented, depending on the circumstances.
- The Formal Complaint and Grievance Process have been reviewed with the reporter.
- Reporter has decided to submit a Formal Complaint.
  - Remember: issues related to Educational Program or Activity.
  - When must/may a Formal Complaint be dismissed?
- And so . . . the Investigation begins.

# Investigation

- The fact gathering component of the Grievance Process.
  - Interviews, review of documents, files, media, or other – to gather information that is Directly Related.
- Burden is on Regis to gather information and to prove whether a Respondent is responsible for a violation
- Participation is voluntary – may limit ability to gather facts.
  - Remember: *may* dismiss where circumstances prevent Regis from gathering sufficient evidence.
  - If Respondent chooses *not* to participate, this choice will not affect the ultimate finding – based on evidence only.
- Equal chance to for the parties to:
  - Participate.
  - Suggest evidence, witnesses, things to investigate.
  - Review gathered information and respond in writing.
  - Have advisor of their choice present.

# Investigation – Parties Review of Evidence in Two Ways

- Review of everything Directly Related.
  - E.g. interview notes, documents, videos, photos.
- Review of the Investigation Report.
  - Title IX Coordinator or designee prepares at the conclusion of the Investigation.
  - Summarizes evidence Relevant to the allegations.
- In both cases, parties may provide a written response.

# Hearing

- Purpose: to allow the parties to pose questions to each other and to Relevant witnesses. The questions are meant to test/challenge the information/statements gathered as part of the investigation.
  - The Hearing Officer may also pose questions.
- Participation is voluntary.
- Only Relevant questions permitted – refer back to Training Part 2.
- No new evidence submitted during the Hearing.
  - If something emerges, referred back to Title IX Coordinator to re-initiate Investigation.
- May occur in person or via remote technology.
- Must be recorded, made available to parties to review/respond.

# Hearing – Roles

- Hearing Advisor
  - Asks questions of the other party or witnesses.
  - At no point may parties ask each other questions directly.
  - Chosen by a party.
  - If a party does not have a Hearing Advisor, then Regis must provide one at \$0.
- Hearing Officer
  - Manages the Hearing process and steps.
  - Makes Relevance determinations for each question.
  - Enforces conduct rules.
  - May be same official as Decision Maker, depending on available staffing.
- Decision Maker
  - Reviews Relevant evidence to makes Determination of Responsibility.

# Hearing – Prior to the Hearing

Before the Hearing date, each party must provide notice re:

- Their intention to participate. For scheduling/management purposes. A party can change their mind.
- The identity and contact info of their Hearing Advisor. To provide HA with Investigation Report and for Regis to provide the party with an HA if needed.
- Opening statements. Optional.
- Identity of intended witnesses to be questioned. For scheduling purposes.
- Anticipated Questions. Encouraged in order to review Relevance of questions in advance.



# Hearing – Questioning Procedure

- Hearing Officer asks questions first.
- When a Hearing Advisor asks a question:
  - Ask the question.
  - Party/witness waits to answer until . . .
  - Hearing Officer determines whether question is Relevant.
  - If yes, then party/witness answers.
- If the Hearing Officer determines that a question is not Relevant:
  - The HO will offer a brief explanation.
  - A party, through their HA may object – for the purposes of Appeal only.
  - HO's determination will stand.

## Hearing – A Review of Relevance (see Part 2)

- Information is relevant if 1) it has any tendency to make a fact more or less probable than it would be without the information **(WHAT HAPPENED?)** and 2) the fact is of consequence in the matter **(WAS THERE A VIOLATION?)**.
- NOT Relevant:
  - Related to the Reporting Party's sexual disposition or prior sexual behavior, unless Offered to prove that someone other than the Respondent committed the alleged conduct, or is related to the Reporting Party's prior sexual behavior with respect to the Respondent and is offered to prove consent.
  - Protected by a legally recognized privilege.
  - Derived from a party's medical, psychological, or similar records, unless that party has provided prior written consent.
  - It is duplicative or repetitive.

# Hearing – Conduct

- Parties and Hearing Advisors must conduct themselves in a respectful and non-abusive manner during the Hearing.
- Hearing Officer may:
  - Issue a warning.
  - Terminate Hearing with or without a warning.
    - Hearing will be rescheduled.
    - Hearing Officer may require a new Hearing Advisor.
- Warnings or terminations may not be considered in Determination of Responsibility.

# Hearing – Interruptions, Delays, Rescheduling

- A party may request for good cause.
  - Evaluate the need to proceed expeditiously and the need to treat the parties fairly.
- Regis may delay, reschedule, or interrupt for reasonable cause.

# Determination of Responsibility

- In writing issued by Decision Maker.
- No role for Title IX Coordinator or investigators – intentional separation.
  - Prohibition of the “single investigator” model.
- Based on Relevant evidence – including Investigation Report (and supporting documents), Hearing proceedings.
  
- Applies Preponderance of the Evidence standard – more than 50% of the Relevant evidence indicates that Respondent’s conduct constituted Sexual Harassment.

# Determination of Responsibility – MUST include

- Analysis of each allegation – see next slide.
- Description/review of the investigation history.
- Description of any remedies (non-disciplinary) provided to Reporting Party, but no description of the content of those remedies.
- Description of the Appeals process.
  
- Not required:
  - Consideration of all evidence presented at Hearing.
  - Description of credibility determinations.

# Determination of Responsibility – Analysis of Each Allegation

- Description of the allegation.
  - E.g. “Reporting Party alleges that Respondent had sexual intercourse with them without consent. If true, this conduct would be considered Sexual Assault.”
- Reference the rule/definition(s).
  - E.g. “The definition of Sexual Assault is . . . The definition of consent is . . .” (Remember Relevance: OF CONSEQUENCE).
- Facts supporting the determination.
  - E.g. “Reporting Party consumed ten shots of tequila in a span of one hour. After consuming the tequila, Reporting Party was not able to move or communicate. Reporting Party and Respondent then had sexual intercourse.” (Remember Relevance: WHAT HAPPENED?).
- Rationale applying the definition(s) to the facts.
  - E.g. “In this case, because Reporting Party was not able to able to move or communicate, they were not able to consent to sexual intercourse with Respondent.” (Remember Relevance: OF CONSEQUENCE?).
- Conclusion: Responsible/Not Responsible.
  - E.g. “Because Respondent had sexual intercourse with Reporting Party when Reporting Party was unable to consent, Respondent’s conduct constituted Sexual Assault. As a result, Respondent is Responsible for a Title IX violation.”
- Sanctions, if any, for Respondent.

# Appeals - Bases

- A procedural irregularity that affected the outcome of the matter.
- New evidence that was not reasonably available at the time of the dismissal of a Formal Complaint, the dismissal of allegations within a Formal Complaint, or the Final Determination that could have affected the outcome of the matter.
- An allegation that an official involved in the investigation or hearing (e.g. the Title IX Coordinator, an investigator, the Hearing Officer, or Decision Maker) had a conflict of interest or bias for or against Reporting Parties or Respondents in general or against the Reporting Party or Respondent involved in the matter specifically and that conflict of interest or bias affected the outcome of the matter.
- ... *that affected the outcome of the matter.*
- Student Matters Only. That the sanction imposed within a Final Determination of Responsibility is substantially disproportionate to the underlying conduct and the Respondent's prior Code of Conduct or Title IX violations, if any.
- Any other basis = whole/partial dismissal of appeal.



# Appeals – Remedies for Granted Appeals

- Where a Formal Complaint was dismissed in its entirety:
  - The initiation of an investigation and hearing process.
- Where certain allegations of a Formal Complaint were dismissed:
  - The initiation of an investigation and hearing process regarding those allegations only.
- Where a Determination of Responsibility has been made:
  - A re-investigation of the Reporting Party's allegations.
  - A repeated hearing.
- For allegations involving students only, a re-evaluation of the imposed sanction by the Decision Maker.
  
- COI basis for appeal = new personnel as appropriate.



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