

# Title IX Appellate Officers

2025-2026

Summer 2025



WRIGHT STATE  
UNIVERSITY

# Aspirational Agenda

- Training Requirements
- Title IX Process
- Bias and Conflicts
- Review
- Writing Decision Letter



# Training Requirements

Appellate Officers must be Trained on:

- Jurisdiction
- Definition of Sexual Harassment (SPOO)
- Serving impartially
- Issues of relevance
- How to conduct appeals

# Definitions: Sexual Assault

- Rape- carnal knowledge
- Sodomy- oral or anal sexual intercourse
- Sexual Assault with an Object- unlawful penetration
- Fondling- touching for the purpose of sexual gratification
- Incest- sexual intercourse between relation
- Statutory Rape- sexual intercourse with anyone under 16 years old

# WSU Grievance Process

Harmed Party- Complainant  
Alleged Perpetrator- Respondent

Complainant has the opportunity to meet with the Title IX Coordinator, discusses **supportive measures** and reporting options:

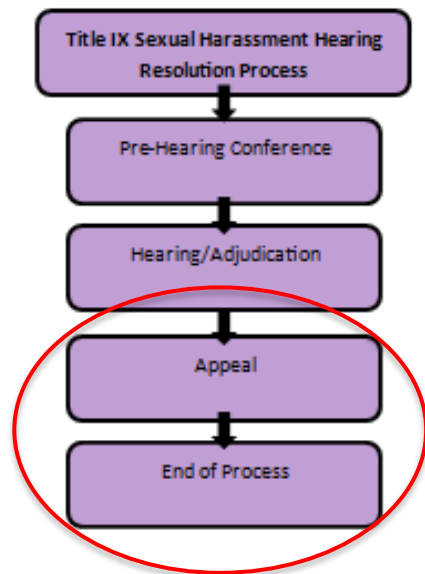
- Informal Resolution- must be at the same level
- Formal Resolution- option, only option for differing levels

Appellate Officer is part of the Formal Resolution process.

## Wright State University Title IX and Sexual Misconduct Decision Tree



# Formal Resolution



Appeals are determined by the Appellate Officers and are the **final** opportunity for the party to make their case in the Title IX process.

Appeals only occur in a formal procedure.

# Appeal Officer's Role(s)

- Know the process in the policy
  - How it functions
  - How it applies
- Know the big picture role
  - Specific details of the case
  - Be able to move back and forth between perspectives

## 3 Grounds for Appeal

- Procedural Irregularity
- New evidence
- Conflict of interest

Information about WSU's appeal process and grounds for appeal can be found in policy 1270, Appendix B.

# Bases for Appeal: Procedural Irregularity

- Some sort of irregularity within the procedure that affected the outcome of the matter.
  - Does the process in policy align with the process as applied?
    - Ie: Charges were for a policy that has since been updated and the party was not charged under the policy that existed at the time of the incident/complaint

# Bases for Appeal: New Evidence

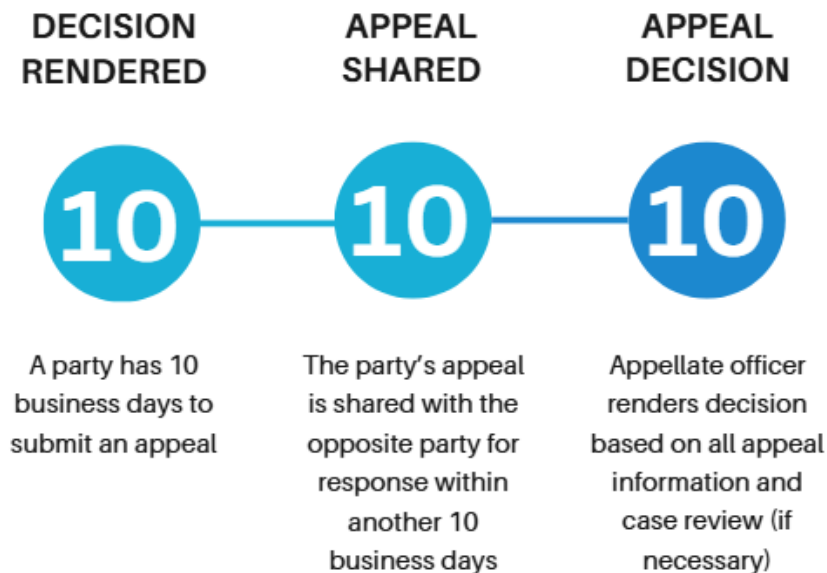
- New evidence that was *not reasonably available* at the time determination was rendered or when dismissal was made **and** could *affect the outcome* of the matter.
  - I.e. A new person came forward with a video of the incident that depicts the incident from a clear angle.

## Bases for Appeal: Conflict of Interest

- Conflict of interest or bias against a party by the Title IX Coordinator, investigator(s), or decision maker(s) that *affected the outcome of the matter.*

Requires that the appellate officer is able to make determinations on bias and conflict of interest and understands the case enough to determine if bias affected the outcome.

# Process for Appeal



# Title IX Process



# Title IX Coordinator

- Oversees the whole process and helps to ensure the written process and the applied process are the same.
- Often is the person who ensures investigators, decision-makers, informal resolution facilitators, and appellate officers are properly trained.
- Ensures advisors are available for hearings.
- Ensures compliance with updated regulations/court decisions.

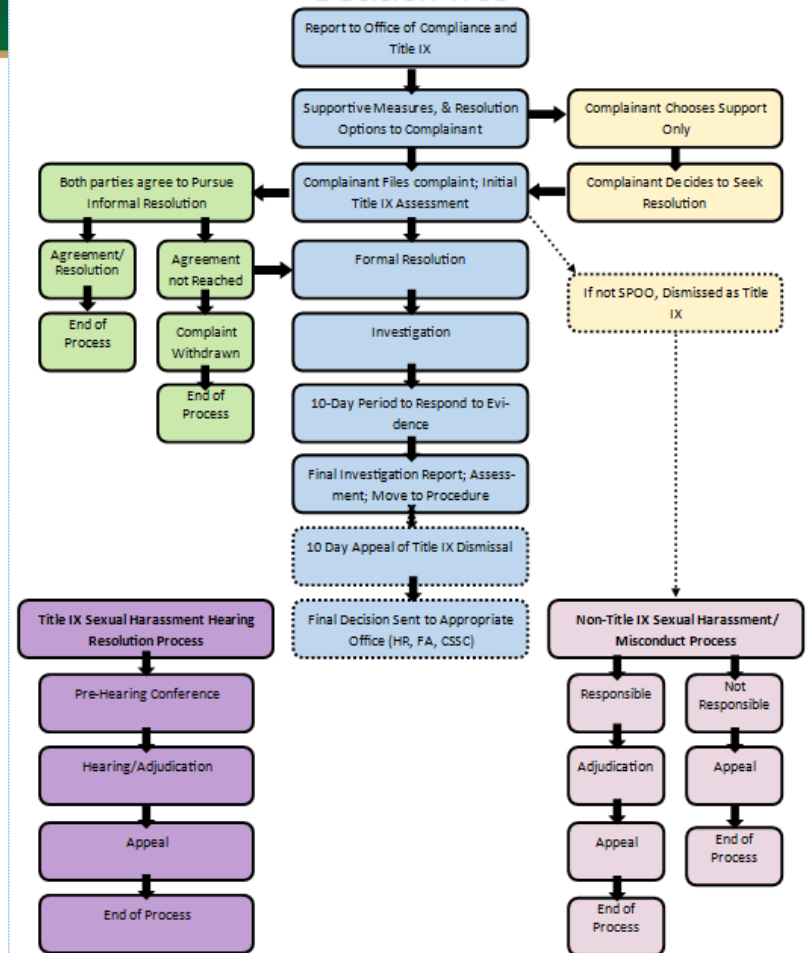
NOT A DECISION MAKER- apart from potential alignment with policy

## WSU Title IX Process Overview

Title IX Coordinator is responsible for intake and tracking of each report, facilitates signed formal complaints and offers reporting options.

- Identifies investigator and informal resolution facilitator (if desired)
- Identifies decision maker and appellate officer (if needed)
- Provides supportive measures to parties throughout process
- Coordinates hearing or informal resolution facilitation
- Shares case information with appropriate authority to address dismissed cases or determine sanctions
- Ensures all records are maintained

## Wright State University Title IX and Sexual Misconduct Decision Tree



# Investigator Role

- Gathers all relevant evidence.
  - Interviews parties and checks bias through sharing summary interview with parties for review
- Organizes relevant evidence.
  - Determines relevancy and why
- Writes a thorough report.

# Decision-Maker Role

- Participates in pre-hearing meetings with each party and their advisor.
- Facilitates the hearing.
  - Determines relevancy during cross-examination
- Renders a decision within 15 business days after hearing concludes.

# Live Cross-Examination: Regulations (1 of 2)

In this process:

- Decision-maker must permit each party's advisor to ask the other party and any witnesses **all relevant** questions and follow-up those questions, including those challenging **credibility**
- Must be conducted directly, orally, and in real time by the party's advisor, *but never the party personally*
- Only **relevant** cross-examination and other questions may be asked of a party or witness

## Live Cross-Examination: Regulations (2 of 2)

- Before a party of witness may answer a question, the decision-maker must first determine whether the question is relevant and explain the reason if not relevant
- Hearings will be audio/visually recorded and recordings are available to parties upon written request

# Relevance and Weight of Evidence

- Wright State must ensure that “all **relevant** questions and evidence are admitted and considered (through varying weight or credibility may of course be given to particular evidence by the decision maker).” (30331)



# Decision/Outcome Letter



# Relevancy



# Relevancy

WSU must ensure that “all relevant questions and evidence are admitted and considered (though varying weight or credibility may of course be given to particular evidence by the decision-maker).” (30331)

- WSU may not adopt rules excluding certain types of relevant evidence (ie lie detector or rape kits) where that type of evidence is not labeled irrelevant in the regulations (eg. Sexual history) or otherwise barred under 106.56 (privileged) and must allow fact and expert witnesses (30294).

# Relevancy: Not Relevant

The Department has determined that universities must consider relevant evidence with the following exceptions:

- (1) Complainant's sexual behavior (except for two narrow exceptions)
- (2) Information protected by a legal privilege
- (3) Party's treatment records (absent voluntary written waiver by the party) (30337)

# Relevancy: Not Relevant

The Department has determined that recipients must consider relevant evidence with the following exceptions:

**Party's  
medical/treatment  
records**

*(unless voluntary  
written consent)*



**Information  
protected by a  
legally  
recognized  
privilege**



**Complainant's  
sexual  
behavior**

*(except for two  
exceptions)*



# Relevancy: Rape Shield Law-Complainants

- According to 34 C.F.R. 106.45(b)(6)(i), Cross-examination **must exclude** evidence of the Complainant's "sexual behavior or predisposition **UNLESS**"
  - Its use is to prove that someone other than the Respondent committed the conduct, OR
  - It concerns specific incidents of the Complainant's sexual behavior with respect to the Respondent and is offered to prove consent

## Relevancy: Regulations' Rape Shield Law- Respondents

- Rape shield protections do not apply to Respondents
- “The Department reiterates that the rape shield language...does not pertain to the sexual predisposition or sexual behavior of respondents, so **evidence of a pattern** of inappropriate behavior by an alleged harasser must be judged for relevance as any other evidence must be.”
- BUT- is it relevant? Could it be harassing?

# Relevancy: Improper Inference

When parties do not participate:

- “if a party or witness does not submit to cross-examination at the live hearing...the decision-maker(s) cannot draw an inference about the determination regarding responsibility **based solely** on a party’s or witnesses' absence from the live hearing or refusal to answer cross-examination or other questions.” 34 C.F.R. 106.45(b)(6)(i)

# Appeals for Non-Participating Party

- Parties and witnesses cannot be compelled to participate in the Title IX process.
- A party who chooses not to participate has the right to appeal a decision.
- **Remember:** non-participation by itself is not a grounds for appeal
  - Parties will have multiple opportunities to participate in investigation and hearing

# Bias and Conflicts of Interest



# Free of Sex Stereotypes

Avoid stereotypes based on sex:

- “such that even if a cross-examination question impermissibly relies on **bias or sex stereotypes** while attempting to challenge a party’s plausibility, credibility, reliability, or consistency,
- **It is the trained decision-maker**, not the party’s advisor asking a question **who determines whether the question is relevant**, then evaluates the question and any resulting testimony in order to reach a determination on responsibility” (30325)

# Examples of Sex-Stereotypes

Decision-makers *must* not rely on sex stereotypes such as:

- Women have regret sex and lie about sexual assaults
- Men are sexually aggressive or likely to perpetrate sexual assault
- Consideration of marginalized groups: people with disabilities, people of color, people who identify in the “LGBTQ” community (30259-30260)

All volunteers should be aware to avoid sex stereotypes when serving in the Title IX process.

# AvoidRape Myths

“Beliefs about rape that serve to deny, downplay or justify sexually aggressive behavior that men commit against women” which “can be descriptive, reflecting how people believe instances of sexual assault should react” (30325)

- Myths about dress, consumption of alcohol, or previous relationships
- Belief that women make false accusations of rape
- Belief that “genuine assault” would be reported to authorities immediately
- Belief that a victim would “fight back”

# Confidentiality

- 106.71 requires that our process and volunteers keep party and witness identities confidential except as permitted by law or FERPA, and as needed to conduct an investigation or hearing (30316)
- Prevents anyone in addition to the advisor to attend the hearing with the party, unless otherwise required by law (30339)

# Conflict of Interest: Concerns from Preamble

- Similar to Bias:
  - Does a decision-maker's financial ties to the institution create conflict?
  - Would the Title IX Coordinator directly supervise the decision-maker?
  - Does past advocacy for a survivor's or respondent's rights group create conflict?
  - Are perceived conflicts sufficient or do the conflicts have to be actual?

# Preamble Discussion: Conflict of Interest

(1 of 2)

- No *per se* prohibited conflicts of interest from using employees and administrative staff, including supervisory hierarchies (30352)
  - However, we will not permit the Title IX Coordinator to directly supervise a decision-maker
- No *per se* conflict of interest or bias for professional experiences of affiliations of decision-makers and other roles in the grievance process (30353)

# Preamble Discussion: Conflict of Interest

(2 of 2)

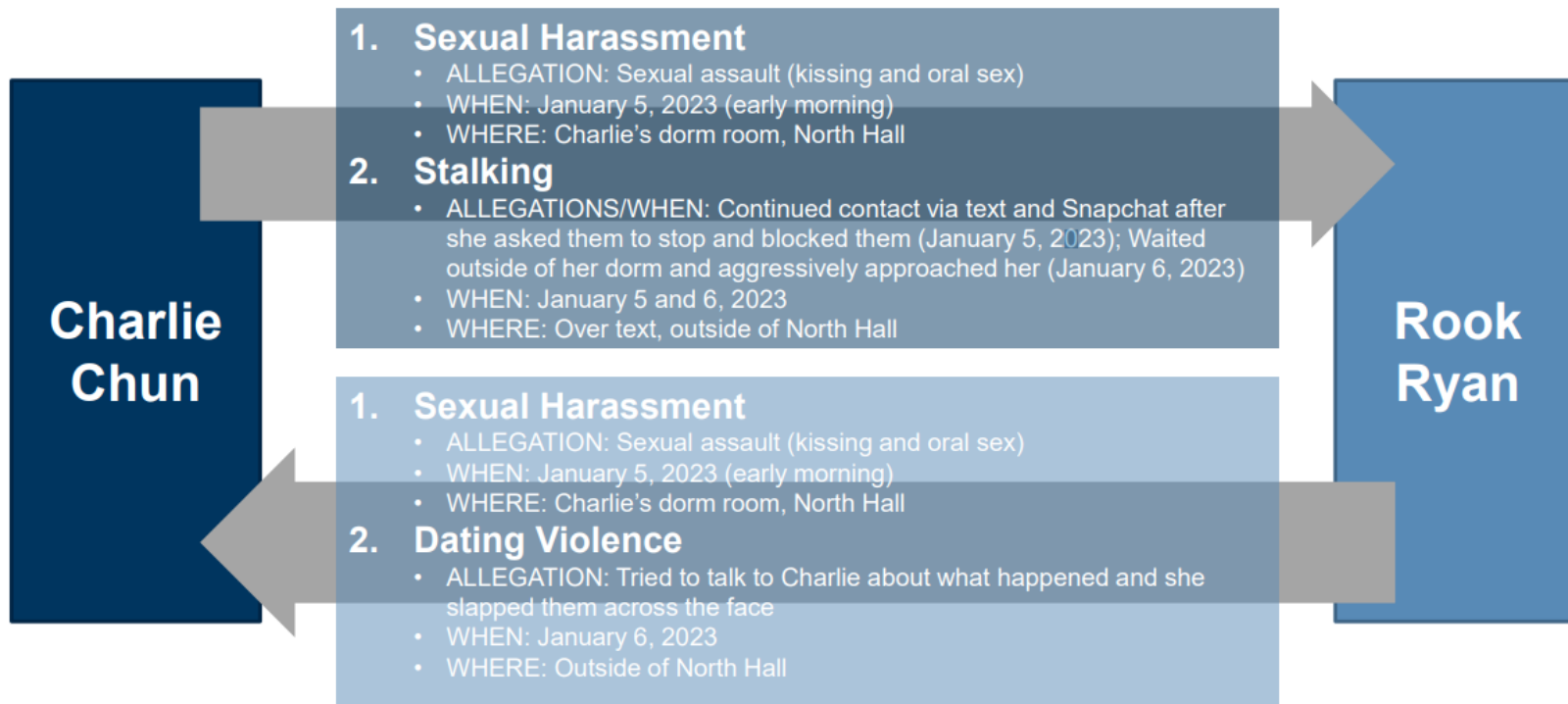
The preamble discussion:

- Provides as an example that it is not a *per se* bias or conflict of interest to hire professionals with histories of working in the field of sexual violence (30252)
- Cautions against using generalizations to identify bias and conflict of interest and instead recommends using a reasonable-person test to determine whether bias exists

# Review



# Summary of Allegations



# Hypothetical: Charlie → Rook

## Claims by Charlie against Rook

- Decision-maker (DM) finds that the record does not support a preponderance of the evidence that Rook engaged in conduct prohibited by the University's Title IX policy for **sexual assault: fondling** under Title IX.
- DM finds that the record does support a preponderance of the evidence that Rook engaged in conduct prohibited by the University's Title IX policy for **sex-based stalking** under Title IX.

# Hypothetical Rook ← Charlie

## Claims by Rook against Charlie

- DM finds that the record does not support by a preponderance of the evidence that Rook engaged in conduct prohibited by the University's Title IX policy for **sexual assault: fondling** under Title IX.
- DM finds that the record does support by a preponderance of the evidence that Charlie engaged in conduct prohibited by the University's Title IX policy for **dating violence** under Title IX.

## Hypothetical: Charlie's Appeal- Procedural Irregularity

The Investigator was biased against me and procedural irregularity existed, both effecting the outcome of the decision against me for the domestic violence finding against me. Specifically, the Investigator failed to interview any of the witnesses I requested who witnessed my fear and need to use self-defense when slapping Rook and that I was not motivated by anger. I requested the Investigator interview Juan Juarez and Kylie Kelp, both of whom I remember leaving the main door at North Hall on January 6, 2023. The Investigator did not interview them and they would have provided information that changed the outcome – which I raised in response to the evidence packet before the hearing, but nothing was done.

## Hypo: Charlie's Appeal- New Evidence

New evidence from the criminal case has come out since the decision that may change the outcome of the decision. Specifically, the attached video interview of Rook by the police supports that Rook was untruthful in their statements in the hearing, where they talked about never having lost memories from drinking. Although I made a FOIA request for this information months ago, the police just produced it to me yesterday, two days after the Decision.

## Hypo: Rook's Appeal- Irregularity

The Decision-Maker erred in making a relevancy determination that prevented my attorney from asking Wendy Wallis a question that supports that she was lying about my ability to consent. Since the Decision-Maker found that the evidence did not support by a preponderance of the evidence that Charlie assaulted me because of the alleged message provided by Wendy in the investigation, this would have changed the outcome. The Decision-Maker should have allowed my attorney to ask Wendy why she did not produce the Snapchat messages during the investigation. She didn't do it because they don't exist and never did. She made up what she told the investigator.

## Hypo: Rook's Appeal- Bias and Procedural Irregularity

The Decision-Maker was biased against me as a party, often rejecting my advisor's questions as not relevant when my advisor questioned Charlie about the sexual assault, but not providing the same protection for me when Charlie's advisor questioned me. This bias negatively affected the outcome of the decision because the Decision-Maker removed my attorney from the hearing and should have found that Charlie violated the Title IX Policy for fondling under Title IX. Had the Decision-Maker allowed my attorney to continue and properly question Charlie, the Decision-Maker would have found that Charlie violated the Title IX Policy. This entire process is biased against Respondents and that's exactly how I'm being treated here!

# Appeal Process

- Know the policy
- Regulations require an appeal if formal complaint is dismissed or after responsibility determined in live-cross examination

# Appeal Process

## MUST:

- Notify the other party in writing when an appeal is filed and implement procedures equally for both parties
- Ensure that you were not also the decision-maker below, investigator, or Title IX Coordinator
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- Issue and provide to both parties simultaneously a written decision “describing the result of the appeal and the rationale for the result”

# Appeal Considerations

## Procedural Issue?

- Was there a procedural issue?
- If yes, did it affect the outcome of the matter?

## New Evidence?

- Is there new evidence?
- If yes, was the evidence reasonably available at the time of the determination regarding responsibility or dismissal?
- If not, could its inclusion affect the outcome of the matter?

## Conflict of Interest or Bias?

- Did the Title IX Coordinator, investigator(s), decision-maker(s) have a conflict of interest or bias?
- If yes, was it for or against a party generally or specifically?
- If yes, did it affect the outcome of the matter?

# Written Decision



# Written Determination

- Per our policy, you will have 10 business days to complete and send the written decision (WSU1270, Appendix B)
- Decision template includes:
  - Determination of whether grounds for appeal was met
  - Explanation of fact

# Written Decision

- Include a statement of, and rationale for, the results as to each grounds for appeal, including determination regarding appeal, and any appropriate outcome that follows.

# Written Decision

- Statement of rationale: requiring recipients to describe, in writing, conclusions (and reasons for those conclusions) will help prevent confusion about how and why a recipient reaches determinations

# Be Clear

- Consistent in terminology
- Source of information:
  - “Bob stated that this happened” vs “this happened”
- Could someone unfamiliar with the case understand the decision?
- Make no assumptions that the reader will understand certain aspects of the community
- Write for a judge and jury to understand with no prior background

# Specific

- Set the scene visually (will help identify inconsistency in stories)
- Use quotation marks carefully
- Include details to the level that anyone can thoroughly understand
- Be careful of pronoun usage so that we always know who is saying what

# Empathy

- Maintain a non-judgemental tone
- Stay away from charged words of advocacy:
  - Clearly/obviously
  - Innocent/guilty
  - Victim/perpetrator
- Watch adjectives and adverbs- unless in a quote
- Recognize impact of words

# Questions?

