



**Wright State University
Title IX Appeals Training
December 22, 2022**



Disclaimer

- Title IX is in a perpetual state of change. Watch for further updates, and expect to see policy revisions on a regular basis as case law and guidance develop.

Posting These Training Materials?

- Yes!
- Your Title IX Coordinator is required by 34 C.F.R. §106.45(b)(10)(i)(D) to post materials to train Title IX personnel on its website
- We know this and will make this packet available to your institution electronically to post



The Appeals Officer's Role

The Appeals Officer's Role(s)

Be able to see the forest and the trees

- **Know the process in your policy** (how it should function) and **know the process as applied** (how it actually functioned in each case) from intake to the time it hits your desk.
- **Know your big picture role** (the limited scope of your review) and **know the specific details of your case** (the often thick and detailed case file) and be able to move back forth between these perspectives

Bases for appeal: WSU's Policy

The only three bases for appeal in WSU's Policy are:

1. The submission of new evidence that did not exist or was not known to exist prior to the hearing;
2. The submission of information that indicates an error in process or bias among decision makers;
3. Indication that the sanction is too severe for the violation.

Not a basis for appeal: "I don't like how the case came out." Your job is to evaluate the above bases, not review the entire case and decide whether you would have come out the same way.

#1 New Evidence

1. The submission of new evidence that did not exist or was not known to exist prior to the hearing.

Tips:

- Parties are expected to submit all known evidence during the hearing process.
- Not sharing evidence during the investigation, the two review periods, or the hearing process means the other party did not have a chance to respond. This undermines a fair process.

#2 Procedural Error or Bias

2. The submission of information that indicates an error in process or bias among decision makers;

Tips:

- Look to the policy as to whether there was an error in process.
- Did the decision-maker show bias toward one party specifically, or to complainants or respondents more generally?
- Did the decision-maker use gendered or otherwise inappropriate assumptions in reaching a decision?

#3 Procedural Error or Bias

3. Indication that the sanction is too severe for the violation.

Tips:

- Look to factors such as:
 - Respondent's prior conduct history;
 - How the University has sanctioned similar incidents in the past;
 - Nature and violence of the conduct;
 - Impact of the conduct on complainant/campus;
 - Whether respondent accepted responsibility

What if No Basis for Appeal is Articulated?

When you read the appeal, are you able to articulate the bases that you are to review?

- If yes, continue.
- If no, you are permitted to dismiss the appeal on its face because it does not articulate a basis for appeal.

What if a Basis for Appeal exists?

Your choices:

- Uphold the original decision;
- Indicate corrective actions to be completed before a decision can be finalized; or
- Alter the decision.

Note: If a basis for appeal exists, ask – does it make a difference in the final outcome? If not, you may uphold the original decision. If so, consider, do you fix it and send it back for additional review, or do you

Preparing to Make a Substantive Decision

- Review the Appeal and Response (if any)
- Review the case file and hearing video or transcript
- Review the Appeal/Response again

Writing Your Appeal Decision

- There are no regulatory or policy requirements regarding the format that you use, other than you must describe the result and the rationale for the result.
- Recommended Format:
 - Brief Procedural History (when was complaint submitted, when was hearing held, when was appeal submitted, when was response submitted if any)
 - Bases for Appeal – list them
 - Address each basis in turn and explain rationale for why you agree/disagree. Refer back to the policy for support.
 - Explain whether you are upholding, correcting, or altering and why.

Sticky Appeals Issues

- Example: “If the decision-maker had ruled this question relevant (or not relevant), the outcome of the case would have been different.”
 - Does this fit into one of the bases for appeal?
 - Does this constitute a procedural issue if you would have made a different relevancy determination?
 - What if it is just wrong and contrary to the Title IX regulations?
 - Does the relevancy determination by a decision-maker at the hearing indicate conflict of interest or bias?

Questions?