APPEALS IN CIVIL RIGHTS INVESTIGATIONS
WHO CAN APPEAL AND TIMELINE FOR APPEAL

• Either party can petition for an appeal regardless of finding/sanctions

• Timeline for appeals
  • The appeal must be submitted within 5 business days of the investigative/hearing decision notification to be considered
  • Petition for appeal is reviewed for standing within three business days
  • Appeal is sent to other party(ies)/investigators for response. Other party(ies)/investigators have three business days to respond
  • The appellate panel has 15 business days from receipt of the appeal to render a decision. Extensions can be granted.
GROUNDS FOR AN APPEAL

- Timely
- A procedural irregularity affecting the outcome of matter.
- To consider new evidence, unavailable during the original hearing or investigation, which could substantially impact the decision in the matter. A summary of this new evidence and its potential impact must be included.
- Investigation/hearing panel personnel had a conflict of interest or bias affecting the outcome of the matter.
INFORMATION AVAILABLE TO THE PARTIES

- Investigation report
- Hearing report (if there is a hearing)
- Relevant evidence
- Related evidence
Sanctions remain in effect during the appeal process.
Termination and employment transfer will be treated as suspension while the appeal is in process.
Expulsion and dismissal will be treated as suspension while the appeal is in process.
Sanctions are not appealable.
APPEAL PROCESS

- Appeal is submitted entirely in writing
- Appeal is reviewed for grounds/standing by a member of our team
- If standing/grounds are approved, the appeal is sent to the other party(ies)/investigators for a response
- The response from the other party is shared with the initial appellate party
- All responses are sent to the appellate panel made of up of one to three members of our team
PETITION TO APPEAL

• If you are the person who reviews for standing consider the following
  • New Information
    • Is the new information actually new or was it withheld
    • If the new information is true, would it actually change the outcome of the decision maker
  • Procedural irregularity
    • Is the procedural irregularity substantial enough to change the outcome
  • Bias
    • Is there actual evidence of bias
    • How does the evidence of bias impact the outcome of the case
• Usually are generous with granting a review by an appellate body
APPEAL REVIEW PROCESS

- Deferential to the original hearing body
- Not an opportunity for appeals officers to substitute their judgment for that of the original hearing body
- Not a de novo review of the original complaint
- Appellate panel can only make the following decisions:
  - Remand case to the original hearing panel
  - Remand case to a new hearing panel
  - Remand case back to the original investigators
  - Remand case to a new set of investigators
  - Make no change to the decision or sanction
APPELLATE REVIEW PROCESS

• Appeal panel will receive
  • The investigative report
  • The hearing report (if there is one)
  • All related and relevant evidentiary documents
  • All appeal documents

• The appeal panel may
  • Make the decision off of the written materials
  • Ask questions in person or in written format of the parties, witnesses, or the investigators
APPELLATE REVIEW PROCESS

• Communication
  • The appeal panel can
    • Communicate directly with the parties and others they wish to discuss
    • Communicate through the Title IX Coordinator or their designee
    • Identify a communication member to lead all communication
  • Have a process to review the appropriate material
    • Do not have to review all materials but may
    • Should review materials relevant to the appeal
    • Should review the investigation/hearing reports
  • Must meet as a group to discuss and come to a decision
WHAT TO CONSIDER IN THE REVIEW PROCESS?

• New information
  • How does the new information impact the understanding of the incident
  • Is the new information actually new

• Procedural irregularity
  • Did this impact the decision making in a way it needs to be reconsidered
  • Is the decision reasonable without the procedural irregularity

• Bias
  • Is the bias about not liking the outcome of the decision?
  • Did the alleged bias materially impact the decision?
  • Is there evidence to support the bias?

• Overarching question: Is the decision the decision makers came to a reasonable one?
APPELLATE DECISION

- Submitted in writing to the parties/investigators
- Remanded or a final decision
- If it is remanded, it goes back to the appropriate stage
- If it is final, there are no additional steps available
- Appellate panel or Title IX Coordinator can send out the final decision
Questions