



TEXAS TECH UNIVERSITY™



Appeals Officer Training

Presented by:

Office of Student Conduct

and

Office for Student Civil Rights

& Sexual Misconduct

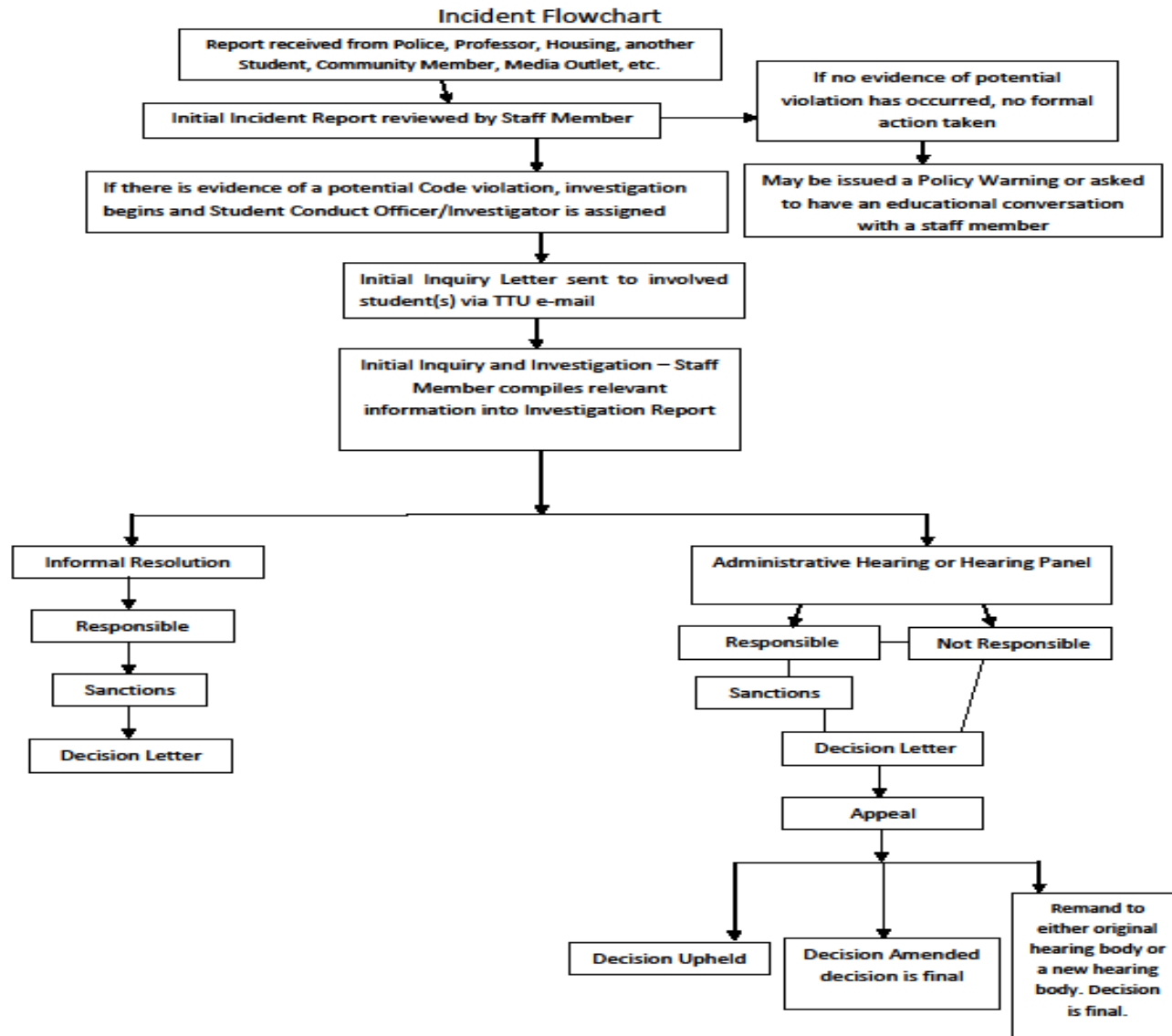
2021-2022

DUE PROCESS



- Notice and an opportunity to be heard
 - “Being Heard” = Investigation and a Hearing
- Follow established policy and processes (Student Handbook and *Code of Student Conduct*; System Regulation 07.06) – the process that is due
 - **Litigation most often ensues when officials stray from published policy and process – more on litigation...**
- Rights and Responsibilities in the process
- Prompt, fair, and equitable

THE CONDUCT PROCESS





APPEALS: KEY ELEMENTS (NON-TITLE IX)

One level of appeal is all you need

Limit the grounds for appeal

Show deference to initial decision

- Clear error in finding; Compelling justification to change sanctions

Timely and efficient response (some cases have been on-going for some time)

Window to request an appeal (5 days per TTU Code)

- Can always grant an extension *if necessary*

Information-based, policy, process review

- Not a Re-Hearing

Appeals are not automatic; based on request

Appeals should not be the answer for students who do not like the outcome

Appeals are not required by federal law

PHILOSOPHICAL BASIS FOR APPEALS



- Ensure policy and procedures were followed to a fair result (i.e. no procedural error or deviation from policy)
- The outcome (finding + sanction) may not be how you would have decided it, but the goal is to show deference on appeal *unless* there is a **clear error**
- Initial investigation and decision should be presumptively sufficient until evidence shows otherwise
- You may disagree with an outcome or a sanction, but there *must* be a **compelling justification** that a procedural error occurred to change the sanction, not mere disagreement
 - The focus of an appeal is not to make the parties to a complaint happy

COMMUNICATION PROTOCOLS



The status of the appeal is part of the status of the investigation. The reporting party is entitled to regular updates on this status.



When one party requests an appeal, the other party(ies) should be notified, and joined, either on the same basis that the appeal has been requested, or on other bases that they wish to assert as grounds.



Exchange the appeals documents and requests between the parties, with an opportunity to respond.

**Once a student receives the decision letter, the student may select the appeal link within the body of the letter. The student is asked to specify their grounds for appeal. The appeal is then routed to the Office of Student Conduct, via Maxient.

APPEALS: GROUNDS FOR APPEAL (NON- TITLE IX)



A procedural [or substantive] error occurred that significantly impacted the Hearing (e.g. substantiated bias, material deviation from established procedures, etc.);

The discovery of new evidence, unavailable during the original Hearing or review of the case, which could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included; or

**A credibility analysis of the new evidence should also be included.

The sanctions imposed substantially varies from the range of sanctions normally imposed for similar infractions

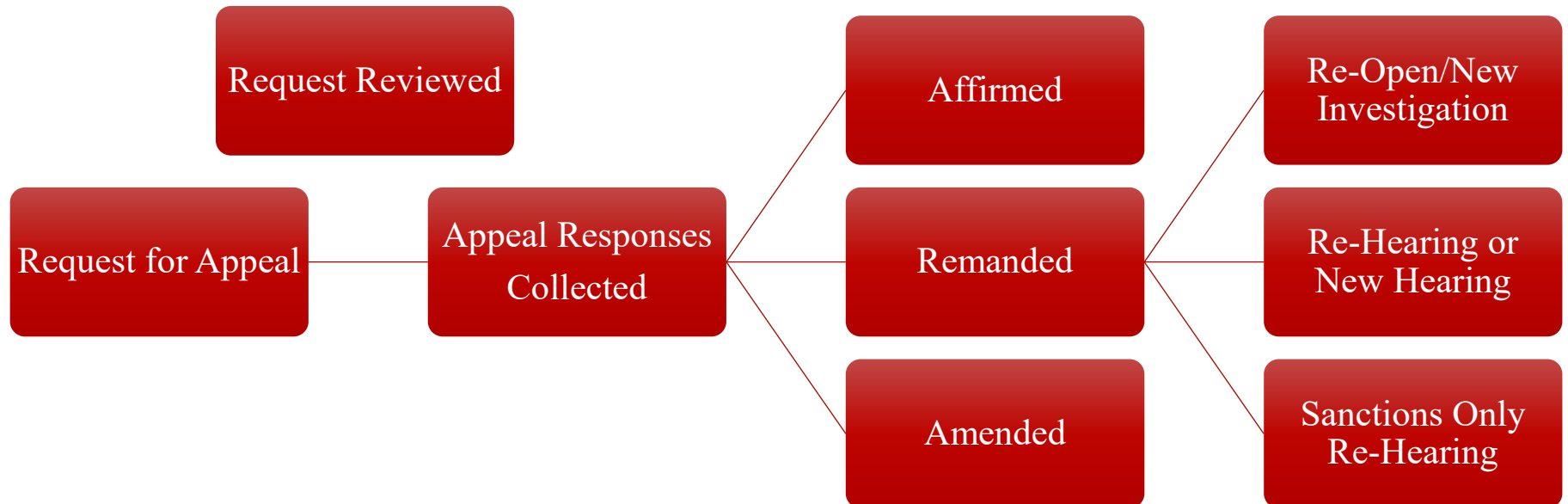
**Or, varies from the cumulative effect given the conduct history.



APPEALS: POSSIBLE OUTCOMES

- Request for appeal received, specifies appeal on one or more published appeal criteria, and is within an acceptable timeframe for submission
 - *Appeal is reviewed*
- Possible Appeal Outcomes
 - Affirmed
 - Remanded
 - *To correct a procedural error or address new evidence*
 - Remand to Investigation (partial or full)
 - Remand to Hearing (may be partial or full rehearing depending on error present; may be administrator or panel)
 - Remand to Sanction Only Hearing
 - Amended

Appeals: The Process





APPEALS: DELIBERATION

- Thoroughly review the investigation report, the hearing record/transcript, appeal responses, and all available documents.
- Review related sections of the Code of Student Conduct
- Utilize the lens of error in policy and process throughout your review
 - *An appeal is not a re-hearing*
- Pay particular attention to the rationale for the finding articulated by the panel in the hearing outcome document



THINGS TO LOOK AT RE SANCTIONING

- Sanctioning Matrix (or grid)
- Sexual Misconduct Sanction Matrix
- Is the student currently on a conduct status?
- What does past-precedent suggest if any?
- Timing of sanction implementation (timing during semester)
- Were mitigating or aggravating circumstances applied/considered?

OUTCOME OF AN APPEAL



The Office of Student Conduct shall make reasonable effort to notify the student(s) the result of the appeal within ten (10) University working days (Part I, section A.3) upon receipt of appeal and collection of all appeal responses.

- OSC Associate Director usually coordinates appeal response process.

If necessary, the Office of Student Conduct will notify the student should the appellate official need additional time to decide the appeal.

The decision of the designated appeal officer is final and cannot be appealed (one-level appeal).

If the designated appeal officer remands the decision for a partial/full re-Hearing, the decision of that Hearing official or panel is final and may not be appealed.

OUTCOME OF AN APPEAL



The Office of Student Conduct sends all decision letters via Maxient. Template letters are available in Maxient for appeal official use.

Templates in Maxient:

Letter 16- Appeal Letter (Affirmed)

Letter 17- Appeal Letter (Remanded)

Letter 18- Appeal Letter (Amended)

*If an appeal official would like to send a customized appeal decision letter, please contact OSC or SCRSM as appropriate



WHEN APPEALS ARE CHALLENGED

Interventionist appeals officers who believe it is their job to second-guess

Granting appeals for the chance at an education conversation/to teach a lesson

The liability risk of a too strong appellate authority

Hierarchs as appeal officers

Failure of adequate training

Too much deference can be problematic (if the initial decision is wrong, or results from lack of training, you do have to set things right)

Failure to recognize a conflict of interest



Appeals Best Practices

- You may conduct limited inquiries with the investigator, adjudicator(s), parties or witnesses as necessary, but avoid the resemblance of a re-investigation or re-hearing. Inquiries should be directed at confirming whether or not an error occurred.
- Make an independent and impartial determination.
- Grounds for appeal or changes must be shown by evidence that is “more likely than not”.
- Appeals and any accompanying rationale for the appeal decision(s) are communicated in writing.



Appeals Best Practices

- The judgment of an appeal official centers on the degree to which an error occurred. If there is a significant error that would change the outcome, it is appropriate to remedy the error. An appeal official may be able to address the error during the appeal or may remand the case.
- Substantial error in the investigation may be repaired by remanding to investigation, or on rare cases, re-investigation by a new investigator.
- Problems with hearings can often be fixed by limited re-hearing. Complete re-hearings should be rare.



Appeals Best Practices

- Sanctions go into effect following the hearing when no request for Appeal or Intent to Appeal is made by the student.
- A student may request an abeyance of sanctions. The Director of Student Conduct has the discretion to approve an abeyance of sanctions on a case-by-case basis and for good cause.
- Typical reasons for an abeyance include: a student appeals the decision and a student has a legitimate need for the sanction implementation to be delayed (e.g. finding new housing, timing in the semester, student research, etc.).



Sexual Misconduct/ TIX Appeals

TITLE



TITLE IX REGULATION REVIEW- KEY TERMS



Education Program or Activity

- Any location, event, or circumstance over which the recipient exercises substantial control over both the respondent and the context in which the sexual harassment occurs. Includes all education programs or activities, whether occurring on or off-campus, and any building owned or controlled by a student organization that is officially recognized by a postsecondary institution (such as a fraternity or sorority house).

Formal Complaint

- Document filed by a Complainant or signed by the University's Title IX Coordinator alleging Title IX Sexual Misconduct against a Respondent and requesting that the University investigate the allegation(s) of Title IX Sexual Misconduct. Provided, however, where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party under this regulation.

Grievance Process

- The process of addressing Formal Complaints of Title IX Sexual Misconduct before the imposition of any disciplinary or other actions that are not Supportive Measures against a Respondent. The Grievance Process is described in Section 8 of this regulation.

TITLE IX REGULATION REVIEW- KEY TERMS



Title IX Sexual Misconduct

- Conduct that allegedly occurred against a person in the United States, in University's Education Program or Activity, on the basis of sex, and that satisfies one or more of the following:

i. Quid Pro Quo

- A University employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct

ii. Severe, Pervasive, and Objectively Offensive Conduct

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Education Program or Activity. Without limiting the foregoing, the following types of conduct are deemed to meet this severe, pervasive, and objectively offensive standard:
 - 1. "Sexual Assault" as defined in 20 U.S.C. § 1092(f)(6)(A)(v);
 - 2. "Dating Violence" as defined in 34 U.S.C. § 12291(a)(10);
 - 3. "Domestic Violence" as defined in 34 U.S.C. § 12291(a)(8);
 - 4. "Stalking" as defined in 34 U.S.C. § 12291(a)(30).

TITLE IX REGULATION REVIEW- GRIEVANCE PROCESS (SYSREG 07.06)



Formal Complaint
required to initiate
Grievance Process

Initial Review of
Formal Complaint

Requirement:
Equitable Treatment of
Parties

Requirement: No
conflicts of Interest

Requirement:
Presumption of Non-
Responsibility

Requirement: Standard
of evidence is
preponderance of the
evidence

Requirement:
Objectivity

Requirement:
Privileged information

Timeframe: 120 days,
inclusive of Appeal

TITLE IX REGULATION REVIEW- GRIEVANCE PROCESS (SYSREG 07.06)



Notices:

- Initial notice to parties
- Supplemental notice to parties
- Notice to parties of all Hearings, Interviews or Meetings
- Written notice via University email

Investigation:

- Prior to completion of report, provide both parties/ advisors equal opportunity to inspect/ review any evidence obtained that is directly related to allegations raised in the Formal Complaint
- Send each party/advisor evidence in electronic format or hard copy
- Parties shall have at least 10 days to submit a written response

Investigation Report:

- Upon completion of the 10 days, finalize the report that fairly summarizes relevant evidence. Send to each party and advisor a copy of the completed report at least 10 days prior to the Hearing

TITLE IX REGULATION REVIEW- GRIEVANCE PROCESS (SYSREG 07.06)



Title IX Hearing Procedures

- Hearing Procedures outlined in [System Regulation 07.06.A-2](#)
- Hearing Panel Make Up
- Parties and witnesses must be subject to cross examination
- Party's advisor conducts cross examination
- Rules of Order and Decorum (provided to parties prior to Hearing)
- Hearing is recorded
- Title IX Hearing Officer rules on Relevance

Determination of Responsibility/ Decision Letter

- Provided to parties simultaneously

Appeal provided to both Complainants and Respondents equally

SEXUAL MISCONDUCT APPEALS



Two types of Appeals:

- Dismissal of Formal Complaint
- Determination of Responsibility

Must apply equally to both parties

SEXUAL MISCONDUCT APPEALS



- Bases for Appeal
 1. A procedural irregularity that significantly affected the outcome of the Hearing (e.g. material deviation from established procedures)
 2. The discovery of new evidence, not reasonably available at the time the determination of responsibility was made that could affect the outcome of the matter. A summary of this new evidence and its potential impact must be included
 3. The Title IX Coordinator, Investigator(s), or decision maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter
 4. The sanctions imposed substantially varies from the range of sanctions normally imposed for similar infractions

DISMISSAL OF FORMAL COMPLAINT

When a Formal Complaint is received, SCRSM will evaluate jurisdiction and mandatory and discretionary dismissal described below assess appropriate Supportive Measures for both parties, evaluate the need for Emergency Removal, and initiate the Grievance Process.

FORMAL COMPLAINT DISMISSAL



Mandatory Dismissal- SCRSM shall dismiss a Formal Complaint in the following situations:

- For Title IX Sexual Misconduct:
 - i. The allegation does not describe conduct that would constitute Title IX Sexual Misconduct as defined, even if proven;
 - ii. The Title IX Sexual Misconduct did not occur in the University's Education Program or Activity;
 - iii. The Title IX Sexual Misconduct did not occur against a person in the United States.
- For Non-Title IX Sexual Misconduct:
 - i. The allegation describes conduct that would not constitute Non-Title IX Sexual Misconduct as defined, even if proven.
 - ii. The Respondent is not a member of the University Community

FORMAL COMPLAINT DISMISSAL



Permissive Dismissal- SCRSM may dismiss a Formal Complaint in the following situations:

- The Complainant notifies the Title IX Coordinator in writing that they wish to withdraw the Formal Complaint or some allegations in the Formal Complaint
- The Respondent is no longer enrolled in or employed by the University
- Circumstances exist that prevent the University from gathering sufficient evidence to reach a determination as to the Formal Complaint or the allegations.

FORMAL COMPLAINT DISMISSAL



- Application of Other Policies Upon Dismissal- If SCRSM dismisses a Formal Complaint or any of the allegations in the Complaint, the office must promptly send written notice of the dismissal and the reason(s) for the dismissal simultaneously to the Complainant and Respondent. Dismissal of a Title IX Sexual Misconduct Formal Complaint does not preclude action under other policies, such as Non-Title IX Sexual Misconduct or the Code of Student Conduct.
- Appeal of Dismissal Decision- Any party can appeal the dismissal decision following the criteria and procedures listed below under Appeals.

SM/TIX APPEAL PROCESS



Notify

Notify the other party in writing when appeal is filed

Give

Give both parties reasonable, equitable opportunity to submit written statement

Issue

Issue written decision describing result of the appeal and the rationale

Provide

Provide decision simultaneously to both parties

SM/TIX APPEAL TIMELINE



Complainant/Respondent has 3 University working days to submit appeal to Title IX Coordinator

The other party has 3 University working days to respond to the Appeal

The Hearing Body has 3 University working days to respond to the Appeal

The Appeal officer has 5 University working days to complete the Appeal

SM/TIX DISCIPLINARY APPEAL OUTCOMES



Appeal Dismissed- was not timely or did not properly set forth appropriate grounds/ include adequate accompanying evidence

Decision Affirmed- original Hearing decision stands (findings and any sanction)

Decision Amended- modify the finding and/or increase, decrease, or otherwise modify the sanctions

Remanded

- When new evidence or procedural error would have substantially impacted the decision of the Panel
 - Remand to Investigation (partial or full)
 - Remand to Hearing (may be partial or full rehearing depending on error)
 - Remand to Sanctions Only Hearing



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