SEXUAL MISCONDUCT APPEALS

A Training for Title IX Personnel

2020

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AGENDA

1. Title IX & VAWA 304
2. Philosophical Basis for Appeals
3. Regis Appeal Process Overview
4. Guidance on Appeal Review
5. Possible Outcomes
BEHAVIORS COVERED UNDER TITLE IX AND VAWA 304

- Sexual Violence
- Dating & Domestic Violence (Intimate Partner Violence (IPV))
- Stalking
- Sexual Harassment
- Other forms of physical and non-physical sex/gender-based discrimination (e.g. hazing, bullying, bias offenses, etc.)
THE PURPOSE OF PROVIDING AN APPEAL PROCESS

- Ensuring that procedures were followed to a fair result
  - At Regis, the grounds for filing an appeal of a decision in sexual misconduct hearings are:
    - A procedural irregularity occurred that significantly impacts the outcome of the hearing decision;
    - The sanction imposed is grossly disproportionate to the offense (including consideration of the respondent’s prior offenses);
    - Title IX personnel had a conflict of interest or bias that affected the outcome of the hearing decision; or
    - Newly discovered evidence could affect the outcome of the matter if presented
PROCESS OVERVIEW

- Complainant and Respondent have the right to appeal
- Appeals must be submitted within 5 days of the decision being rendered
  - An extension may be requested and granted by the EO & Title IX Coordinator
- Appeals are submitted through --------form
- The EO & Title IX Coordinator acts as the gatekeeper of appeals:
  - Reviews appeal request to determine if the appeal should be assigned to an officer, or denied.
  - Notifies other party of the appeal request
  - Assigns appeal reviews to appellate officer
GUIDANCE ON REVIEWING APPEALS

- Your role as an Appellate Officer
- Preponderance of the evidence standard
- Showing deference
- Reviewing materials
- Avoiding bias and conflict
YOUR ROLE AS AN APPELLATE OFFICER

**IS**
- Review materials of the case and the party’s argument(s) for appeal
- Show deference to the decision that was made while considering the grounds of appeal and fairness of outcome
- Look at page ## so we can walk through an example
- Utilize preponderance of the evidence standard in decision on appeal

**IS NOT**
- To reinvestigate the matter
- Conduct interviews of any parties or witnesses
- Hear the case *de novo*
- Base decisions on personal opinion
REVIEWING AN APPEAL

- You will review materials of the case and the appeal request:
  - Recording of hearing
  - Investigative report and evidence
  - Decision letters and rationales
  - Any other information or documents relevant to the case

- You may also:
  - Need to speak to other personal involved in the case for clarification, or any process questions
AVOIDING CONFLICT AND BIAS

- We are a small community, so conflict can be a very real problem.
- Before you agree to review an appeal, you must identify any perceived or real conflict or bias, and discuss that with the EO & Title IX Coordinator.
- If the EO & Title IX Coordinator determines there is a conflict, the appeal will be assigned to an alternate Appellate Officer.
POSSIBLE OUTCOMES

- Denied and decision stands
- Granted and decision stands
- Remand
  - To correct a procedural error or address new evidence
    - The investigation may be reopened, but a full re-investigation is uncommon
  - Re-hearing
    - Usually partial and done to adjust the sanction
APPEAL OUTCOME

• Your decision letter needs to be:
  • Professional and neutral in tone
  • Contain fact and not opinions
  • Treat the recipient with dignity and respect

• Your decision letter needs to include the following:
  • Acknowledgement of each item presented as grounds for appeal
  • A determination and rationale (including sources reviewed and used for that rationale) for each item
  • A point of contact for questions or concerns (the Title IX Coordinator)