Reconsideration Requests, the Right to Appeal & the Appellate Process

Recusal of an Appellate Officer

- Appellate Officer shall not have a Conflict of Interest or Bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.
- If an Appellate Officer feels that they have a Conflict of Interest or Bias, or cannot make an objective determination, they must recuse themselves.
- If recusal occurs, an alternate appointment shall be made by:
  - Title IX - Chancellor (or Designee)
  - Equity – Student, Student Organization or University Staff Respondents – Chancellor (or Designee)
  - Equity – Faculty, UM System Staff or University as Respondent – President (or Designee)

Both Parties are allowed to request reconsideration of:
- the summary determination ending the process (Equity),
- or appeal:
  - the dismissal of all or part of a Formal Complaint (Title IX),
  - the findings of the AMC decision-maker (Title IX),
  - the findings of the Administrative Resolution Decision or Hearing Panel* (Equity or Title IX).

*Administrative and Hearing Panel Resolution is not available for Title IX allegations raised in matters that involve an Academic Medical Center.
• After review of the investigation and evidence gathered, Equity Officer determines whether there is a sufficient basis to proceed with the Complaint that Respondent is responsible for violating University policy.
• If so, the process will continue.
• If not, the Parties will be notified of the Equity Officer’s decision and advised of their right to request reconsideration.

Summary Resolution
under CRR 600.040 & 600.050

• Either Party may request that the Equity Resolution Appellate Officer reconsider summary determination ending the process
  • Must file written request
  • Must be filed with Appellate Officer
  • Must be filed within 5 business days of notice of summary determination

Request for Reconsideration
under CRR 600.040 & 600.050

• If Appellate Officer decides there is sufficient information to proceed with Complaint (reverse EO decision), process will continue pursuant to policy.
• If Appellate Officer decides there is insufficient information to proceed (agrees with EO decision), process ends.
• EITHER DECISION ➔
  • Appellate Officer must send to Complainant and Respondent simultaneously notice of the decision.
  • Decision is final. No further reconsideration is permitted.
Appeals under 600.030, 600.040, and 600.050

Appeals are limited to the following grounds:

a. A procedural irregularity that affected the outcome of the matter (e.g., material deviation from established procedure, etc.);

b. To consider new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter;

c. The Title IX Coordinator / Equity (HR) Officer, 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; or

d. The sanctions fall outside the range typically imposed for the offense, or for the cumulative conduct record of the Respondent.

Appellate Process

▪ Appeals are not full re-hearings and are intended to be deferential to original findings.
  ○ Record of the Case (i.e., investigative report, exhibits, recordings)
  ○ Written documentation (i.e., decision-maker(s) determination)
  ○ Relevant documentation regarding grounds for appeal

▪ Appellate Officer may grant reasonable extensions to deadlines in the appeal process to a Party, with notice provided to the other Party

Appellate Process

▪ Requests for appeal must be submitted in writing to Appellate Officer within 5 business days of delivery of notice of dismissal or written determination

▪ When any Party requests an appeal, opposing party will be notified and receive a copy of the request for appeal

▪ Non-appealing Party may file a response to the request for appeal within 5 business days of delivery of notice and copy of request for appeal
  ○ Sufficient grounds for appeal have not been met, and/or
  ○ Merits of the appeal
Appellate Process

▪ Appellate Officer will review Request for Appeal:
  o Is request timely?
  o Is appeal based on articulated bases for appeal?
  o If viewed in light most favorable to appealing Party, does the appeal state grounds that could result in an adjusted finding or sanction?

▪ If answer to these questions is no, appeal will be rejected.
▪ Decision to accept or reject an appeal will be made in writing within 15 days; otherwise, deemed accepted.
▪ If accepted, decision on appeal must be rendered within 10 business days from accepting request for appeal.
▪ If accepted, Appellate Officer must render written decision.

Appellate Process – Written Decision

PRACTICE POINTER

If you decide to accept appeal, you may combine decision to accept appeal & written decision on appeal into one decision.

(Will have to be completed within 15 days)

✓ Describe procedural history of appellate case
✓ List bases for appeal
✓ If combining acceptance of request for appeal, include rationale for this:
  • Timely
  • Based on appropriate grounds
  • Viewed in light most favorable, could result in adjusted finding or sanction
✓ State standard of review (deference to original findings and to what you are confining your review)
✓ State conclusion(s) & rationale for decision(s)
✓ Close by indicating that the outcome is final; further appeals are not permitted.
The decision of the Equity Resolution Appellate Officer is final.

Appeals under 600.030, 600.040 and 600.050

Appellate Process

❖ Consult with OGC

✓ You will be assigned an attorney who did not advise on the case
✓ Able to assist you as you work through the record on appeal and in writing your decision

❖ Seek logistical assistance from your University’s Title IX / Equity Office

Questions?