Title IX Appeal Officers: A Skills Training and Certification

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1

learning **OUTCOME**

After participating, you will improve your ability to facilitate your institution's Title IX appeal process in compliance with Title IX regulations.

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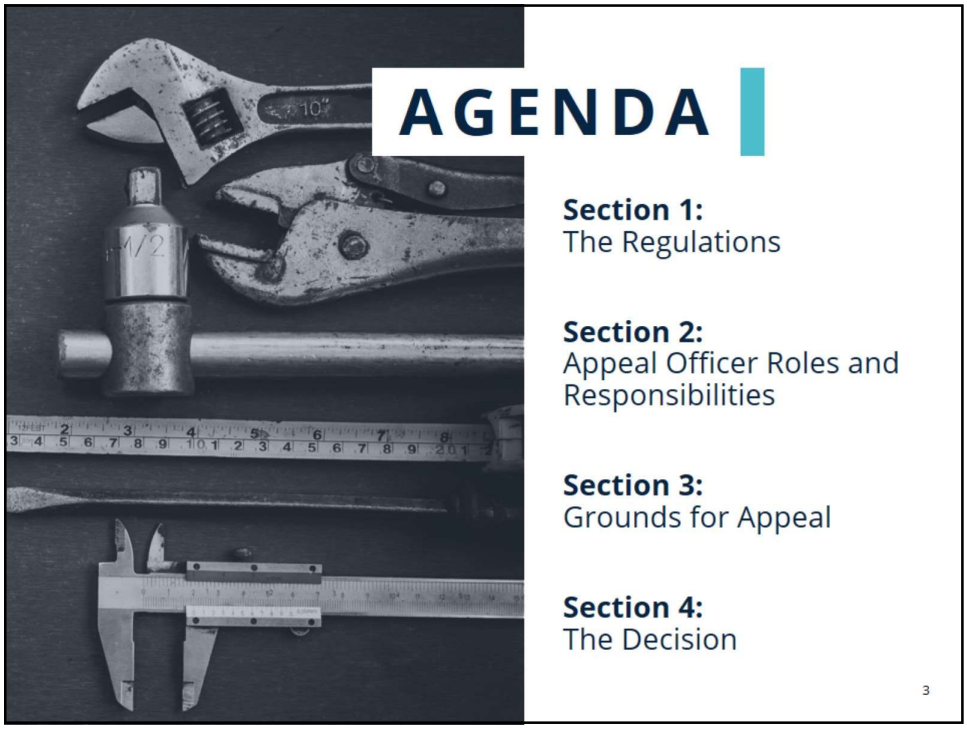
AGENDA
Section 1:
The Regulations
Section 2:
Appeal Officer Roles and Responsibilities
Section 3:
Grounds for Appeal
Section 4:
The Decision
3

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POLL
WHO IS IN THE ROOM?
What role do you play in your institution's grievance process for Title IX sexual harassment?
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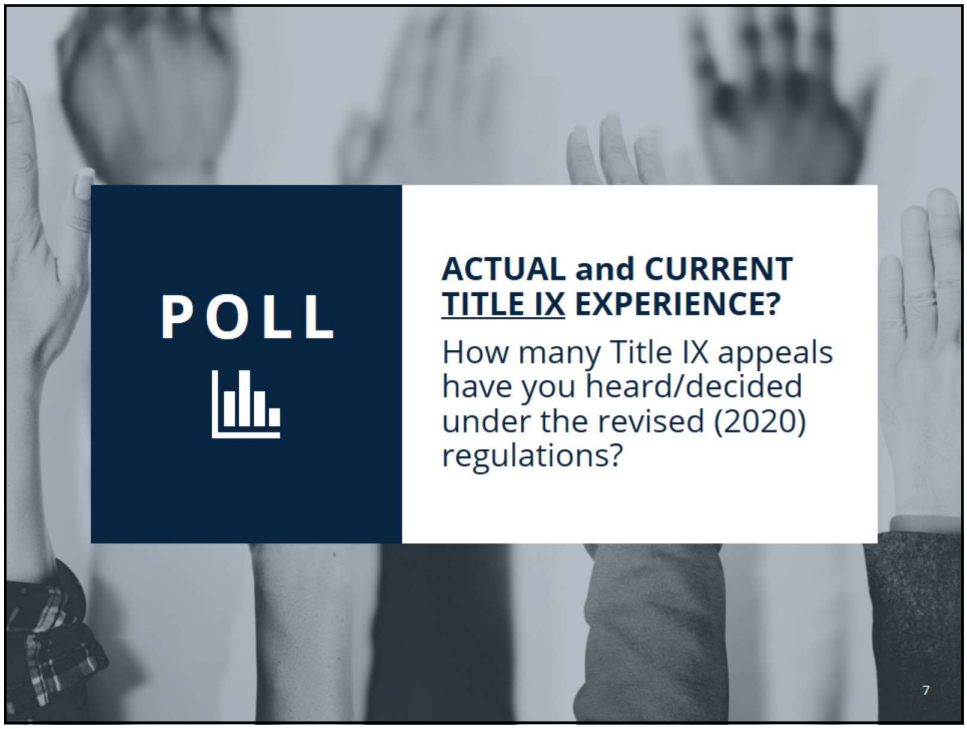

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Background/Context

Title IX of the Education Amendments Act of 1972 and its implementing regulations in 34 C.F.R. Part 106 ("Title IX") prohibits all educational institutions that are recipients of federal funds from discriminating on the basis of sex.

Sexual harassment, as specifically defined by Title IX ("Title IX sexual harassment") is a form of sex discrimination. The institution's treatment of a complainant or respondent in response to a formal complaint of Title IX sexual harassment may also be a form of sex discrimination.

When an institution has actual knowledge of allegations of Title IX sexual harassment, the institution has a responsibility to investigate the allegations and – if they are substantiated – take action to stop, prevent, and remedy the resulting inequity.

The precise method institutions must follow are codified in the regulations.

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Overview of Regulations Concerning Title IX Appeals

Under 106.45(b)(8), institutions must offer appeals to both/all parties from:

1. Decisions of responsibility
2. Decisions to dismiss a formal complaint or any allegations therein

Three grounds for appeal are required, and others may be added as long as they are equally available to both/all parties:

1. Procedural irregularity
2. New substantive evidence
3. Conflict of interest/bias

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Baseline Regulatory Requirements for All Appeals

1. Notice
2. Equal
3. No prior involvement by Appeal Officer
4. No conflicts of interest or biases
5. Adequately trained and prepared
6. Reasonable, equal opportunity for written support/challenge
7. Decisions simultaneous and in writing
8. Result and rationale

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Other Regulatory Requirements Concerning Appeals

1. Advisors (may be different from original)
2. Records maintained
3. Supportive measures and/or accommodations
4. Written determination not final until appeal resolved OR appeal deadline passes

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QUESTIONS?
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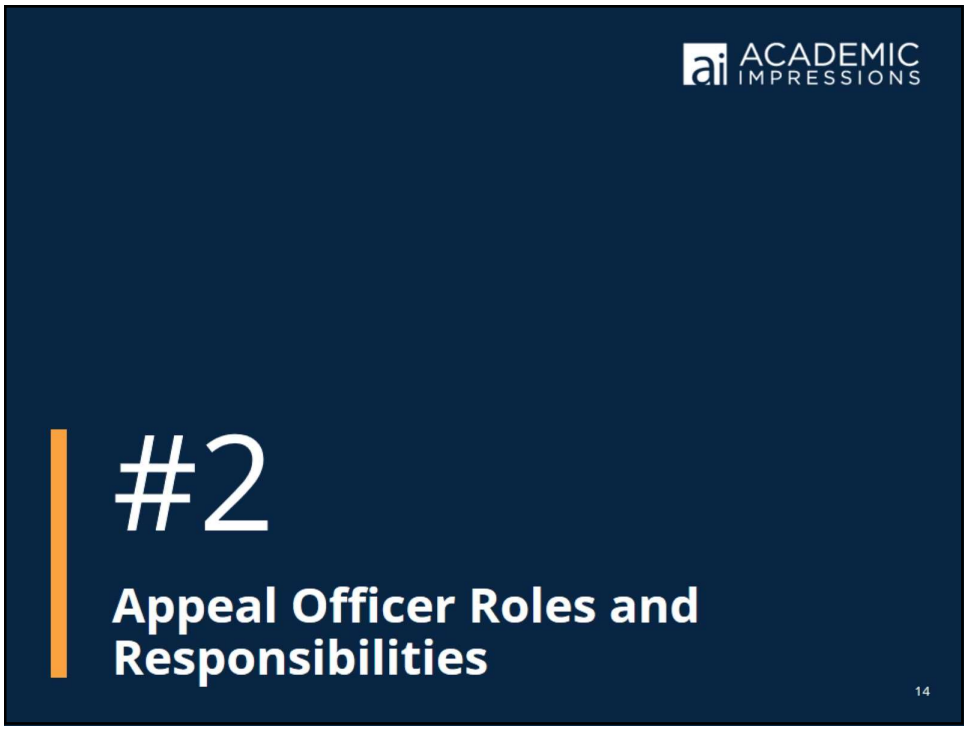
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#2
Appeal Officer Roles and Responsibilities
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CHAT
What are the characteristics of a good appeal officer?
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WHAT AM I EVEN DOING
UNFORTUNATE FACT:
There's No Job Description for Appeal Officers
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Appeal Officer Responsibility #1: *Be Prepared*

Appeal Officers must be trained on the following content:

1. Definition of Title IX sexual harassment
2. Scope of the institution's education program or activity
3. How to conduct an investigation and grievance process, as applicable*
4. How to serve impartially
5. How to use applicable technology, as applicable*
6. Issues of relevance

Note for Coordinators/Trainers: Such training materials – like all training materials used to prepare Title IX administrators – must not rely on sex stereotypes and must promote impartiality.

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Title IX Sexual Harassment

Three forms of sexual harassment are contemplated by the regs, each requiring "unwelcome conduct on the basis of sex…"

1. Quid Pro Quo
   - Conditioned benefits
   - Employee respondents only
2. Hostile Environment*
   - So severe, pervasive, and objectively offensive
   - Effectively denies equal access
   - Intent need not be proven
   - Reasonable person standard applies
3. Sexual Assault, Stalking, Dating Violence, or Domestic Violence
   - As defined by law/your policy

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Appeal Officer Responsibility #1: *Be Prepared*

Appeal Officers must be trained on the following content:

✓ Definition of Title IX sexual harassment

1. Scope of the institution's education program or activity
2. How to conduct an investigation and grievance process, as applicable*
3. How to serve impartially (i.e., how to avoid prejudgment of the facts, conflicts of interest, and bias)
4. How to use applicable technology, as applicable*
5. Issues of relevance

Note for Coordinators/Trainers: Such training materials – like all training materials used to prepare Title IX administrators – must not rely on sex stereotypes and must promote impartiality.

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Appeal Officer Responsibility #2: *Review Impartially*

- Fundamentally, Appeal Officers exist to "check the work" of the institution
- Goals: FAIRNESS and THOROUGHNESS
- Impartiality is absolutely necessary
- Cannot be biased, or have any conflict of interest
- Follow the appellant's and appellee's argument(s)

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Appeal Officer Responsibility #3: *Communicate Clearly & Effectively*

- Your writing has significant implications for your institution, legal risk, etc.
- Watch for bias in word choice
- Avoid charged or absolute language
- Written determination must be comprehensive (but should be concise)

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#3

Grounds for Appeal

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Permissible Grounds for Appeal

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1. Procedural Irregularity

- Did not follow policy or procedure
- Substantive in nature
- Affected the outcome

2. New Evidence

- Was not reasonably available at the time of decision
- Substantive in nature
- Could have affected the outcome

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3. Bias or Conflict of Interest

- Title IX Coordinator, Investigator, or Decision-maker (key personnel)
- Conflict of Interest or Bias
- For or Against Either Party
- Generally or Individually
- Substantive in nature
- Affected the outcome

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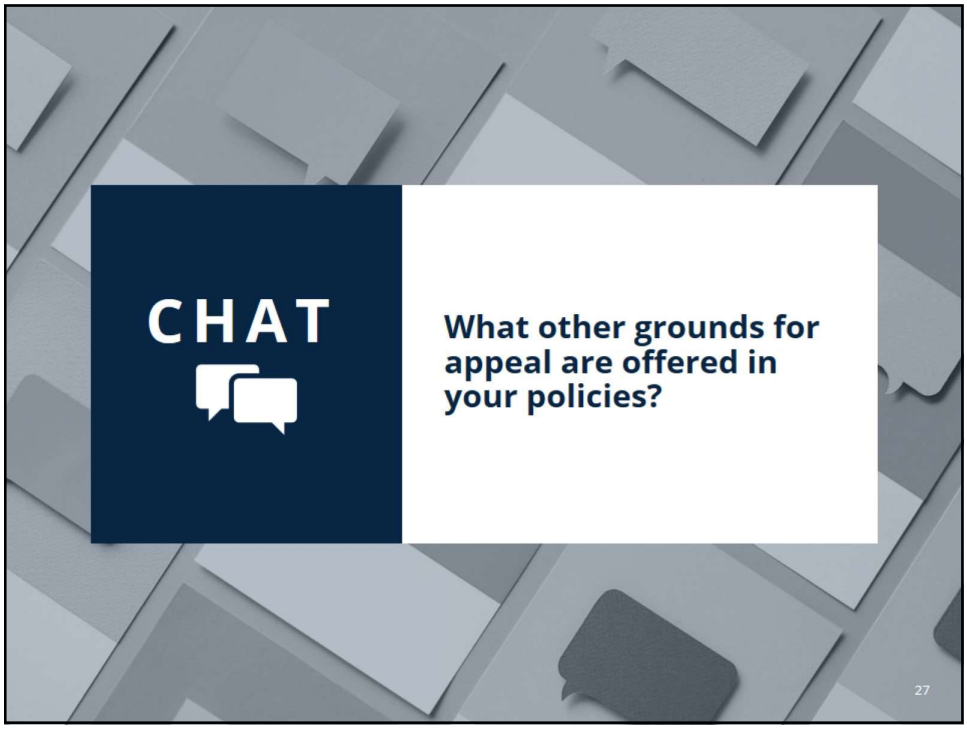
CHAT
What other grounds for appeal are offered in your policies?
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BREAK
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#4

The Decision

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Process Review

1. Decision-maker(s) delivers the written determination
2. Window for appeal opens
3. Appeal requests typically to Title IX Coordinator
   a. Timely received?
   b. Grounds articulated?
4. Appellate review
   a. May entail meeting with parties (not recommended, but if permitted, must be equal)
5. Appeal Decision Drafted
6. Appeal Decision Communicated
   a. Include notice of final determination

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Appeal Terminology (not specific to Title IX)

Appeals
- Allowed
- Dismissed

Cases
- Dismissed
- Remanded

Decisions
- Upheld / Affirmed
- Overturned / Reversed
- Modified

Sanctions
- Modified / Amended
- Vacated

Terminology and procedures for the results of appellate determinations vary; consult your institution's policies for guidance

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Where to Begin?
Tips for Appellate Reviews

1. Familiarize yourself with the case, ensuring access to full record
2. Thoroughly review the appeal request(s) and any response(s)
3. Review the case through lens of appellant
4. Review the case through lens of appellee
5. Review the case through lens of decision-maker, Title IX Coordinator, Investigator, etc.
6. Keep your policy on hand, consult often
7. May seek information from key personnel
8. May meet with parties (must do so equally, however!)
9. Decide appeal
    1. Decision Affirmed / Upheld
    2. Decision Reversed / Overturned
    3. Decision Modified

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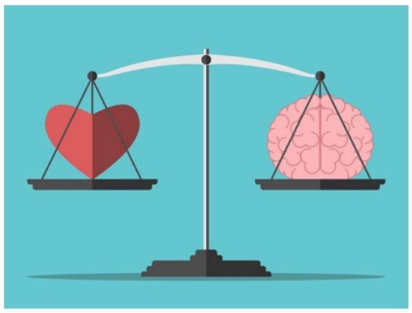
Common Appellate Pitfalls

1. Pre-judging the facts
2. Splitting the baby
3. Emotional tug
4. Requiring more than the applicable standard of evidence



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ACTIVITY

LET'S PRACTICE!

Case Study, one fact pattern

Appealed on all 3 grounds

3 groups = 3 grounds

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ACTIVITY

Breakout Group Processing Questions:

1. What information is necessary for you to make an informed decision? Is anything missing from the info provided?
2. What is the central question that needs to be answered (the "crux of the matter")?
3. Are you persuaded by either party's argument? Why?
4. What questions do you still have?

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ACTIVITY

Large Group Processing Questions:

Let's **deliberate** (biggest appeal board ever!)

How do we find?

On which grounds?

Do we have a consensus?

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ACTIVITY

Large Group:

What comes next?

How might you organize your rationale?

What concerns, doubts, reservations do you have?

How do you feel about the decision?

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TAKEAWAYS

- ✓ Appeal Officers are the "last line of defense" for an institution to ensure the outcome of Title IX sexual harassment case is FAIR and THOROUGH
- ✓ Appeal Officers must be prepared, review impartially, and communicate clearly
- ✓ Appeal Officers must follow institutional policy and procedures, and ensure they were followed in all cases – for the benefit of both parties
- ✓ Appeal Officers must operate free from bias and conflicts of interest

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QUESTIONS?
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