



# APPEALS PROCESS

TITLE IX

# Purpose

Key Concepts

Grounds for Appeal

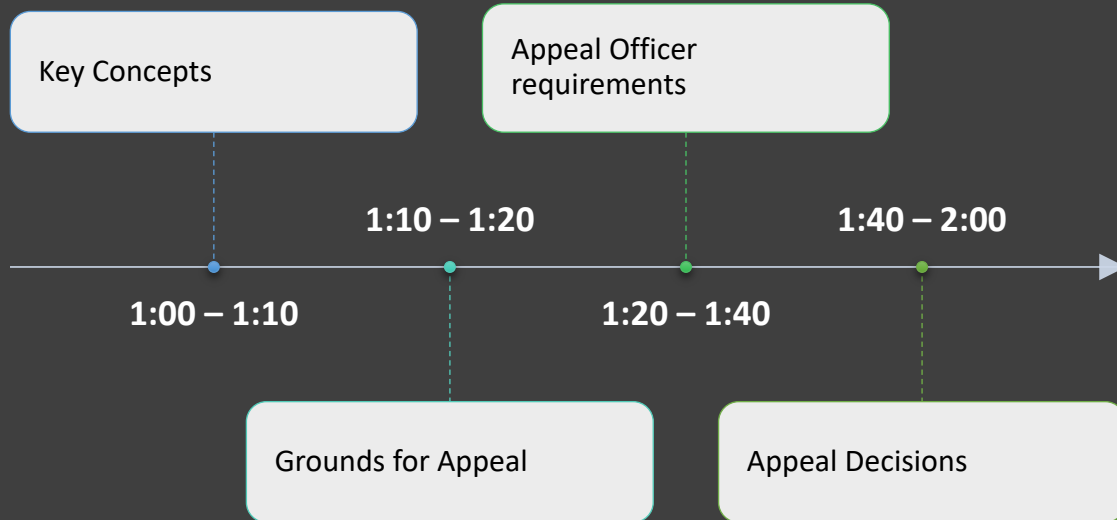
Appeal Officer(s) requirements

Appeal Decisions





# Agenda



# Key Concepts

- Schools must offer both parties an appeal from:
  - (1) a determination regarding responsibility, or;
  - (2) a school's dismissal of a formal complaint or any allegations therein.
- Schools generally must implement appeal procedures equally for both parties.
- Schools must notify the other party in writing when an appeal is filed.
- Schools must ensure that the appeal officer is not the hearing adjudicator, investigator, or Title IX Coordinator.



# Key Concepts cont.

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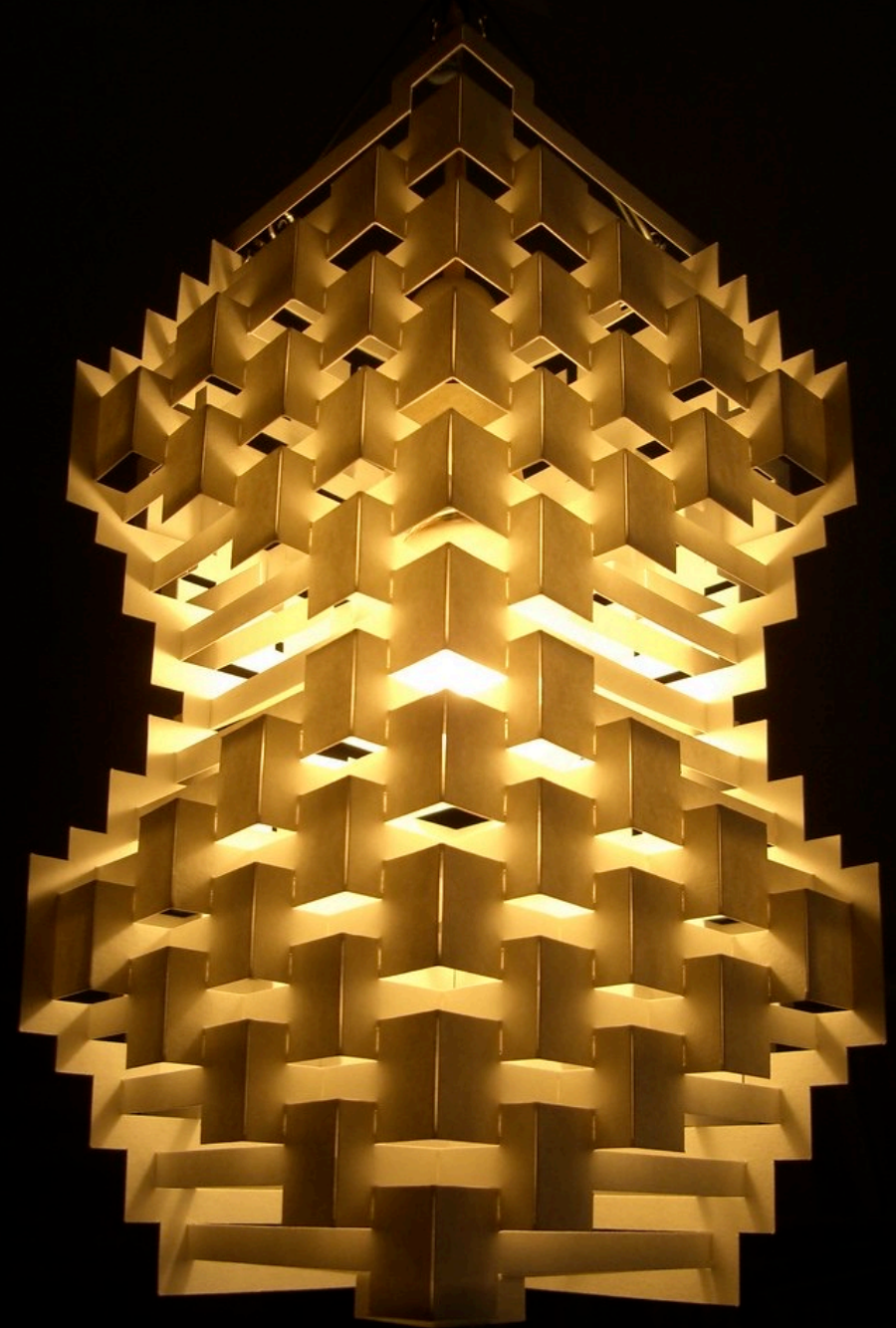
- Schools must ensure that the appeal officer has received required training.
  - They must give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
  - Schools must issue a written decision describing the result.
  - They must provide the written decision simultaneously to both parties.
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# Intersection of AP3434

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- A Complainant or Respondent may appeal the District's determination regarding responsibility or the dismissal of a formal complaint or any allegations.
- A Complainant or Respondent must submit a written appeal within five business days from the date of the notice of determination regarding responsibility or from the date of the District's notice of dismissal of a formal complaint or any allegations.





A modern conference room with a large, dark, circular table. Several black chairs are arranged around the table. In the background, there is a large window with a view of a brick building outside. A small white podium is visible near the window. The text "APPEAL OFFICER REQUIREMENTS" is overlaid in the center of the image.

# APPEAL OFFICER REQUIREMENTS

# Selection Process for designee

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## 1. What are a few characteristics and qualities of the best appeal officers?

- Thoroughness and attention to detail.
- Understanding of Title IX process.
- Not afraid to find appeal has merit.

## 2. What positions at an institution should be considered to serve as the appeal officer?

- High ranking employee of institution.
- Legal background may be helpful but not necessary.
- Understanding of Title IX or student conduct process.







# Training Requirements

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- ❖ The definition of sexual harassment in §106.30.
- ❖ The scope of the recipient's education program or activity.
- ❖ How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable.
- ❖ How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- ❖ Any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.



# Conflict of Interest

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- An appeal officer with a conflict of interest should not hear the appeal.
- An institution's policy should allow for the designation of a substitute appeal officer in the case of a conflict or unavailability.





# Grounds for Appeal

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# Appeal Review

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Schools must ensure that the appeal officer is not the hearing adjudicator, investigator, or Title IX Coordinator.

The chancellor or designee will serve as the Decision-Maker on Appeal.



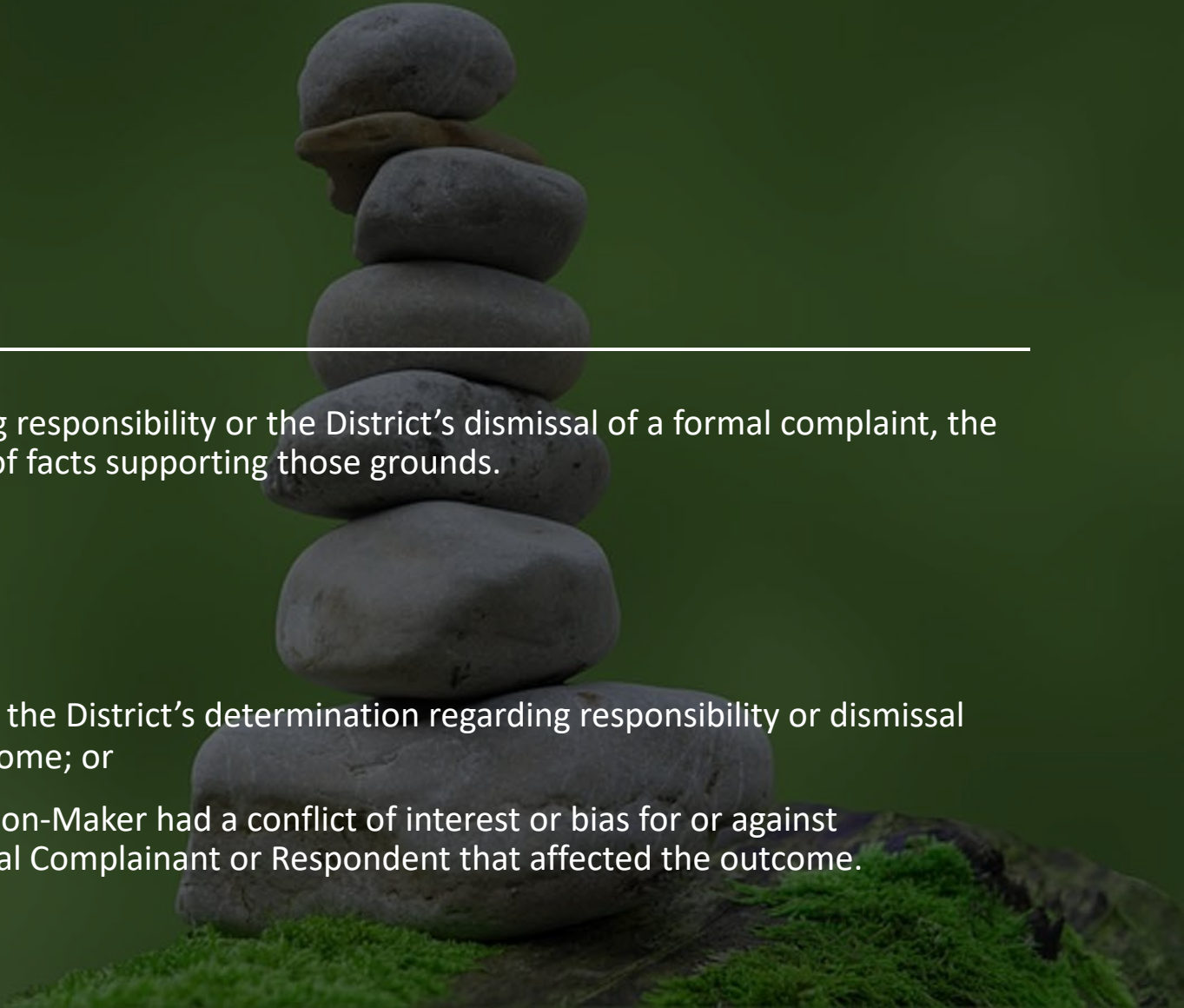


# Justifiable Reason

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In filing an appeal of the District's determination regarding responsibility or the District's dismissal of a formal complaint, the Party must state the grounds for appeal and a statement of facts supporting those grounds.

The grounds for appeal are as follows:

- ✓ A procedural irregularity affected the outcome;
  - ✓ New evidence was not reasonably available at the time the District's determination regarding responsibility or dismissal was made, and this new evidence could affect the outcome; or
  - ✓ The District's Title IX Coordinator, investigator, or Decision-Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.
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# Questions....

## **1. Is the severity or proportionality of sanctions an appropriate basis for an appeal?**

“...the final regulations leave to a recipient’s discretion whether severity or proportionality of sanctions is an appropriate basis for appeal, but any such appeal offered by a recipient must be offered equally to both parties.”

## **2. Can a party request an appeal because of dissatisfaction with the result?**

Ground for appeal are defined by the bound of an institution’s policy.

## **3. Is there a way to appeal an appeal?**

No. If an appeal is filed, the determination regarding responsibility becomes final on the date the parties are provided the written determination of the result of the appeal.

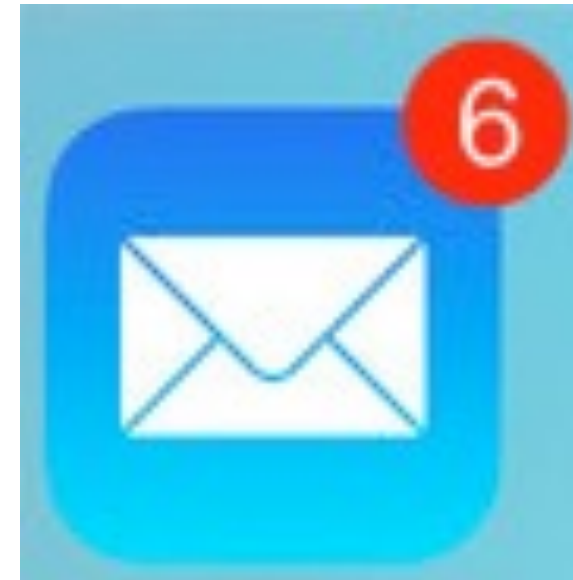
But note that party can file a lawsuit or complaint with the Office of Civil Rights.



# APPEAL DECISIONS

# Notification & Timeline

- If the Complainant or Respondent submit an appeal to the District, the District will:
- Notify the other Party in writing within five business days of receiving a Party's appeal;
- Allow the non-appealing Parties at least ten business days from the date of receipt of the appeal to submit a written statement in support of, or challenging, the outcome;





# APPEAL DECISION

## 1. What should appeal officers be considering when reviewing appeals?

- Understand applicable grounds for appeal.
- Have an open mind.
- Be guided by applicable policy and facts.

## 2. What are best practices to make written appeal outcomes as defensible as possible?

- Address, in some fashion, all claims raised.
- Ensure no bias or conflict of interest.
- Keep an eye toward litigation.



A background image showing a hand holding a pen, writing on a document. The document has some text, but it is mostly illegible due to a dark overlay. There is a small orange rectangle in the top left corner.

# WRITTEN OUTCOME

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- The appeal Decision-Maker will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within 45 business days after the Decision-Maker on appeal receives the response to the appeal or the last day to provide a response. The District will provide the written decision simultaneously to both Parties.
- The Decision-Maker on appeal may extend or otherwise modify the deadlines provided above. Either Party may seek an extension by submitting a written request to the appeal Decision-Maker explaining the need for the extension and the proposed length of the extension. The Decision-Maker will respond to the request within 48 hours in writing and will inform the Parties simultaneously whether the extension is granted.



# Overview of Process

- Provide both parties notice for an appeal after final decision
- Adhere to timelines
- Select designee if not Chancellor
- Guard against conflict of interest
- Ensure appeal officer has been trained
- Appeal officer must weigh the rationale based on the factors for an appeal
- Final decision is rendered in 45 days.









**THANK YOU!**