

Title IX Appeals Annual Training



2022



THE UNIVERSITY OF ARIZONA
GLOBAL CAMPUS

Policy/Definitions Review

Formal Complaint Process

Definition of Sexual Harassment in § 106.30: Sexual harassment means conduct on the basis of sex that satisfies one or more of the following

- An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual 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 recipient's education program or activity ; or
- "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30). See below.
 - To determine whether a person has been effectively denied equal access to an education program or activity, the University will evaluate "whether a reasonable person in the complainant's position would be effectively denied equal access to education compared to a similarly situated person who is not suffering the alleged sexual harassment. Examples of specific situations that likely constitute effective denial of equal access to educational opportunities include a decline in a student's grade point average, and having difficulty concentrating in class. A complainant does not need to have "already suffered loss of education before being able to report sexual harassment. Effective denial of equal access to education does not require "that a person's total or entire educational access be denied." Complainants do not need to have exhibited specific trauma symptoms to be effectively denied equal access. It is impermissible to deny the review a complaint by deciding the complainant was not traumatized.



Bases for Appeal

The University will offer both parties an appeal from a determination regarding responsibility, and from any dismissal of a formal complaint or any allegations therein, on the following alleged bases

- Procedural irregularity that affected the outcome of the matter
- 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; and
- The 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 of the matter



Appeal Procedure

The University will

- Notify the other party, simultaneously and in writing, when an appeal is filed and implement appeal procedures equally for both parties
- Ensure that the decision-maker for the appeal is not the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator , or the Title IX Coordinator
- Ensure that the decision-maker for the appeal complies with the standards set forth in this policy and procedure
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- Issue a written decision describing the result of the appeal and the rationale for the result; and
- Provide the written decision simultaneously to both parties



Appeal Outcome

If the complainant and/or respondent do not indicate their acceptance or Appeal of the findings within five business days of communication, non-communication will be considered acceptance

If the appeal is denied, the Title IX Coordinator will proceed accordingly with any sanctions determined by the hearing chair

If the appeal is granted, the Title IX Coordinator will begin an adjusted investigation/hearing process and all involved will proceed without prejudice



Best Practices

- Address, in some fashion, all claims raised,
- Ensure no bias or conflict of interest,
- Keep an eye toward litigation,
- Appeal Officer should have access to everything Hearing Officer had access to.



Title IX Appeals



Thompson Copburn LLP
Module 6 Title IX Training Series
Please watch.



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