

Sexual Misconduct Advisor Training

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Fall 2024—UT Arlington



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Agenda

1. Background
2. Pre-Hearing
3. At the Hearing
4. Hypotheticals



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Pre-Hearing



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Before the Hearing:



- Review materials.
- Review your institution's policy.



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Look at the Provision(s) at Issue:

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

For the purposes of this definition:

- **Course of conduct** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.
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Look at the Provision(s) at Issue:

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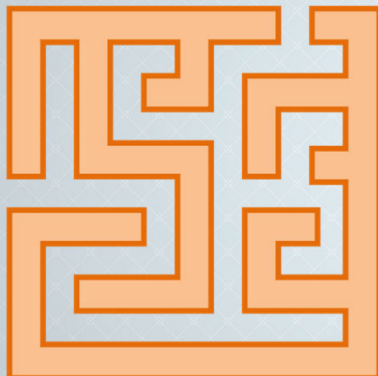
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Before the Hearing: Attempt to Meet With Your Advisee



- Explain your **Advisor role**. You are not “representing” the advisee.
- Discuss a **strategy**:
 - Accept responsibility? No administrative disposition. RP may agree to conduct. Do you want to focus on mitigating factors?
 - What is the story? What evidence exists to support that story?
 - Review the investigation report & evidence. Outline what is important. What do you need from each witness to tell the story?

Note: The use of the word “**story**” does **not** mean false. Different people often have different perceptions of same events.

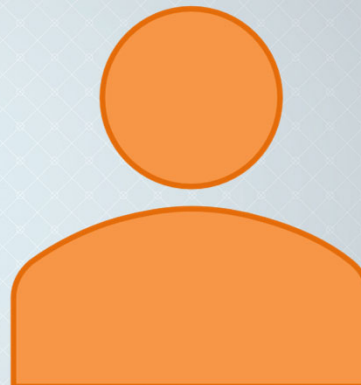
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Before the Hearing:

Tips for Examining Witnesses:

- If it's a witness you & your Advisee are calling, before the hearing (if possible):
 - Ask your Advisee for questions they'd like asked of each witness.
 - With the Advisee & each witness: Meet or talk through what you will ask.
 - In drafting questions, focus on what is **relevant** to a potential **policy violation**.



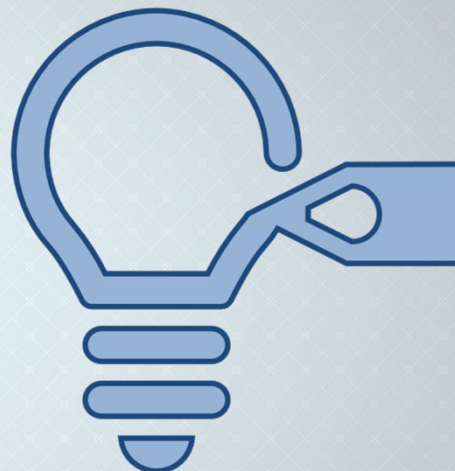
Note: A prior meeting with the advisee or witnesses may not be possible or practicable before the hearing.

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Tips at the Hearing:

- Ensure that your Advisee is **heard** and **felt heard** by giving your Advisee an opportunity to tell their story.
- Feel free to take **breaks** & talk to your Advisee.
- **Before** finishing with a witness, ask your Advisee if he/she/they have any other questions for that witness.



Remember: This is likely a **major life event** for both the Complainant & Respondent.

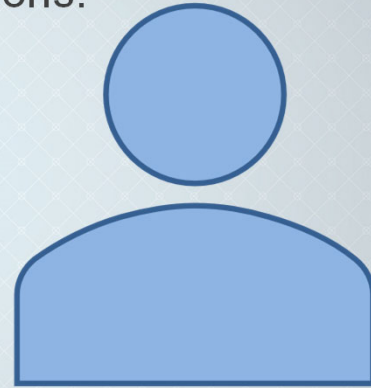
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Tips at the Hearing: Examining Witnesses

If it is a witness **you** call, tell the story.
What happened? Use open ended questions.

- *What...*
- *Who...*
- *When...*
- *What did you do next?*
- *What happened after that?*
- *Describe...*
- *Tell us...*
- *Explain to the hearing officer why...*



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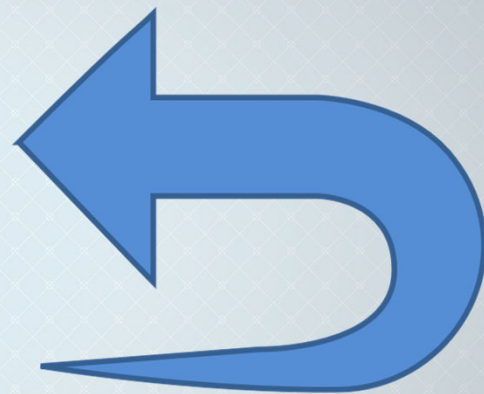
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Tips at the Hearing: Examining Witnesses

Focus on what is important.

- Policy violation
- Example: *Stalking*
 - (1) Course of conduct
 - (2) directed at a person
 - (3) that would cause a reasonable person to fear for their safety or cause substantial emotional distress

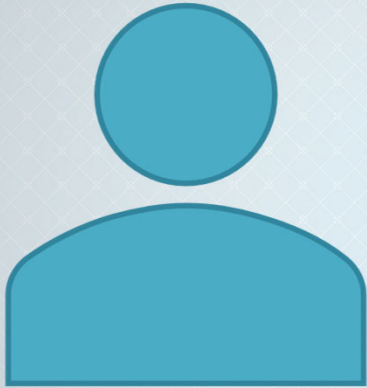


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Tips at the Hearing: Examining Witnesses



For witnesses called by the opposing party:

- Get in. Get out. Could be very short.
- Brief questions.
- Leading questions.
 - *Isn't it true that...*
 - *XYZ, right?*
 - *XYZ, correct?*
 - *Its also true that...*

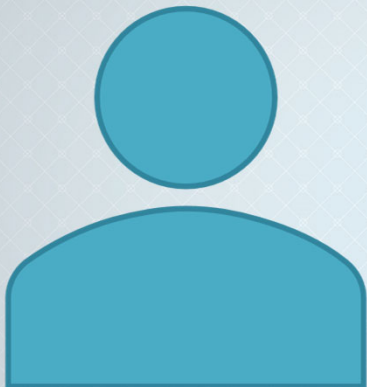


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Tips at the Hearing: Examining Witnesses



For witnesses called by the opposing party:

- Calm demeanor. Normal volume. Not TV.
- Listen.
- Don't quarrel or fight.
- If the answer is contrary to the evidence, it shows the witness is not credible.
- If the witness's explanation doesn't make sense, you just made your point. Don't ask them to explain. Move on.
- Questions may focus on credibility.



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Tips at the Hearing: Examining Witnesses

Credibility:

- Are there inconsistencies? Is an explanation plausible?
- What did the witness do? What did they *not* do?
- Are there motives for the witness to be less than truthful?
- Are there motives for the witness to frame the event in a way more favorable to themselves? Are they lying to themselves?
- Is there an opportunity for a good faith mistake?



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Tips at the Hearing: Examining Witnesses



Test for **implicit bias**:

- What is the essence?
- Create hypo that includes elements. Switch genders.



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Advisor FAQ's & Hypotheticals



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Hypothetical 1

You have been assigned to advise a student at an upcoming hearing. Two weeks before the hearing, you attempt to contact the student but the student doesn't respond. You email again two more times and call the student. The student does not respond.

What do you do?



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Hypothetical 2

You have been assigned an Advisee. Your Advisee states he/she/they did not commit the policy violation. Among the evidence is a video showing the person committing the policy violation. The Advisee wants you to ask cross-examination questions of the witnesses and to ask questions that you think are ridiculous.



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Hypothetical 2 Continued

If a party wants to ask a question that the advisor thinks is not a good idea (and is potentially even detrimental to the party's position), does the advisor have to ask that question?

In other words, if the party and advisor disagree on a course of action, must the advisor go along?

What do you do?



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Hypothetical 3

You are advising a student (RP) in a case where the student is accused of sending three inappropriate text messages expressing a romantic interest in the CP. You ask the RP for any questions RP has for the other party. Together with any questions you can think of, you estimate the cross-examination will only last 5 minutes. You wonder if this is adequate.

What do you do?



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Hypothetical 4

You advise a party. After the hearing, the Advisee thanks you for your help.



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Q & A



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Sexual Misconduct Appellate Officer Training

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Party's Right to Participate in an Appeal

- To be given **equal chance** to participate in a grievance process.
- To be **equally informed** of any **determinations** regarding responsibility, dismissals of formal complaints, and/or a party's filing of an appeal.
- To **appeal** a determination regarding responsibility and/or dismissals of formal complaints.
- To **respond** as the non-appealing party to an appeal of a determination regarding responsibility and/or dismissals of formal complaints



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Appeal: Logistics Flowchart

If a Party submits an Appeal to the Appellate Officer...

Provide copy of Appealing Party's Appeal to the Non-Appealing Party for opportunity to respond & deadline to respond.

Appellate Officer:
Consider **ALL** points of view & relevant evidence impartially

Appellate Officer:
Renders Final Determination
*Issue copy to CP and RP;
cc: TIXC, cc: RP's file
(Adjudication Office)*

Specific deadlines may be published in the institution's policy and/or procedures.

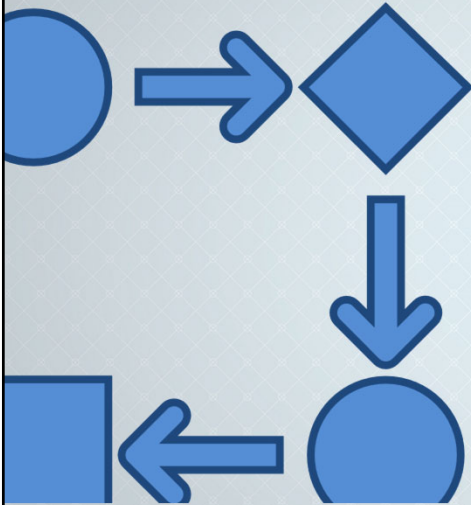


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Appeals following:



- Formal Complaint Dismissals
- Hearing Determinations
- Administrative Dispositions



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Mandatory
Formal
Complaint
Dismissals
under Title IX

Mandatory Dismissals are required when the **definitional** or **any** element of the **jurisdictional** framework under Title IX **is not met**.



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Source: Title IX Regulations (2020)

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Dismissing a Formal Complaint under Title IX doesn't preclude an institution from addressing conduct prohibited under an institution's policy through a fair and equitable grievance process...

Source: Title IX Regulations (2020)

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Mandatory Formal Complaint Dismissals under Title IX

Under Title IX regulations, universities are **required** to distinguish between prohibited conduct that is “under Title IX” and prohibited conduct that is a violation of university policy. Under Title IX, the University **must dismiss** a Formal Complaint or the part of the allegations in a Formal Complaint, if applicable, where:

Sexual Harassment is alleged and where:

- The conduct alleged does not meet the definition of Sexual Harassment;
- The alleged conduct did not occur in the University's education program or activity; or
- The alleged conduct did not occur against a person in the United States.

Note: A dismissal under this provision only applies to allegations of Sexual Harassment under Title IX. In such an instance, the University may still investigate a Formal Complaint for allegations of Sexual Harassment under this Policy. The University may also investigate allegations of prohibited conduct under this Policy but it will not technically be “under Title IX.”

Source:

UT System Model Policy for Sexual Misconduct



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The University may dismiss a Formal Complaint, at its **discretion**, under this Policy’s Grievance Process for any of the following circumstances:

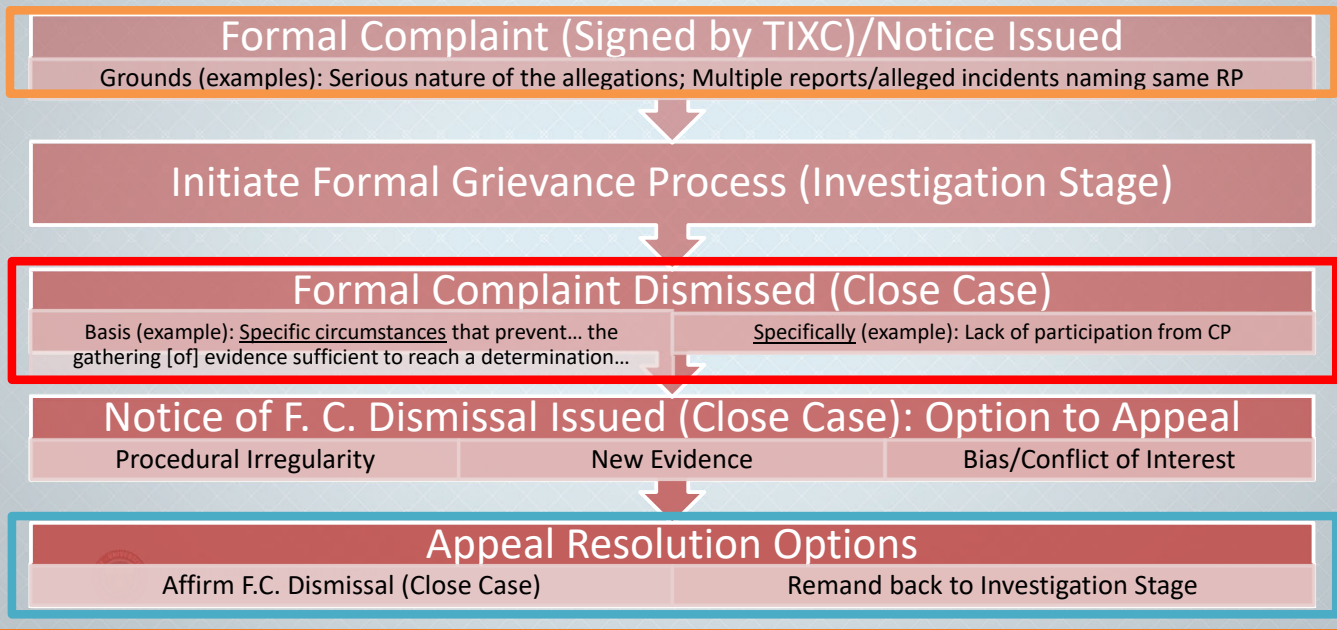
- If the Complainant requests in writing to dismiss a Formal Complaint (e.g. withdraws the Formal Complaint or any allegations therein), as outlined in Section 4 of this Policy;
- If the Respondent is an employee and no longer employed by the University;
- Any specific circumstances that prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or any allegations therein; or
- The conduct alleged does not meet the definition of any prohibited conduct under this Policy.

Discretionary Dismissals



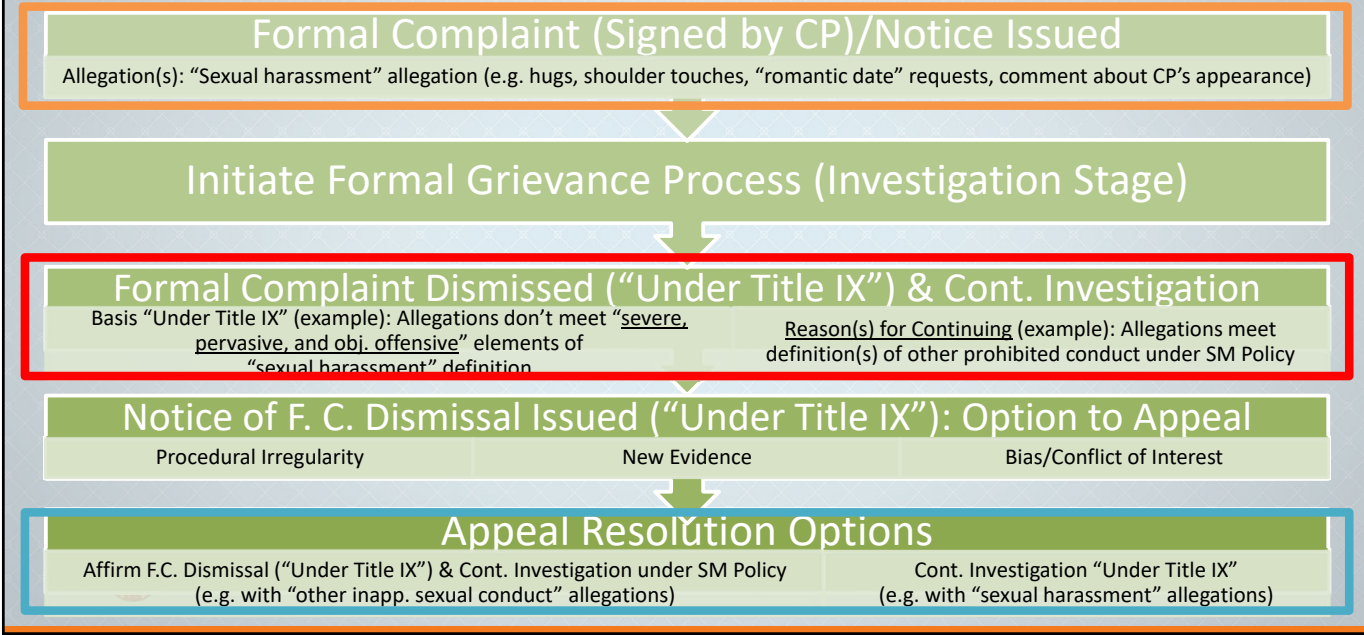
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Formal Complaint Dismissal (Example #1)



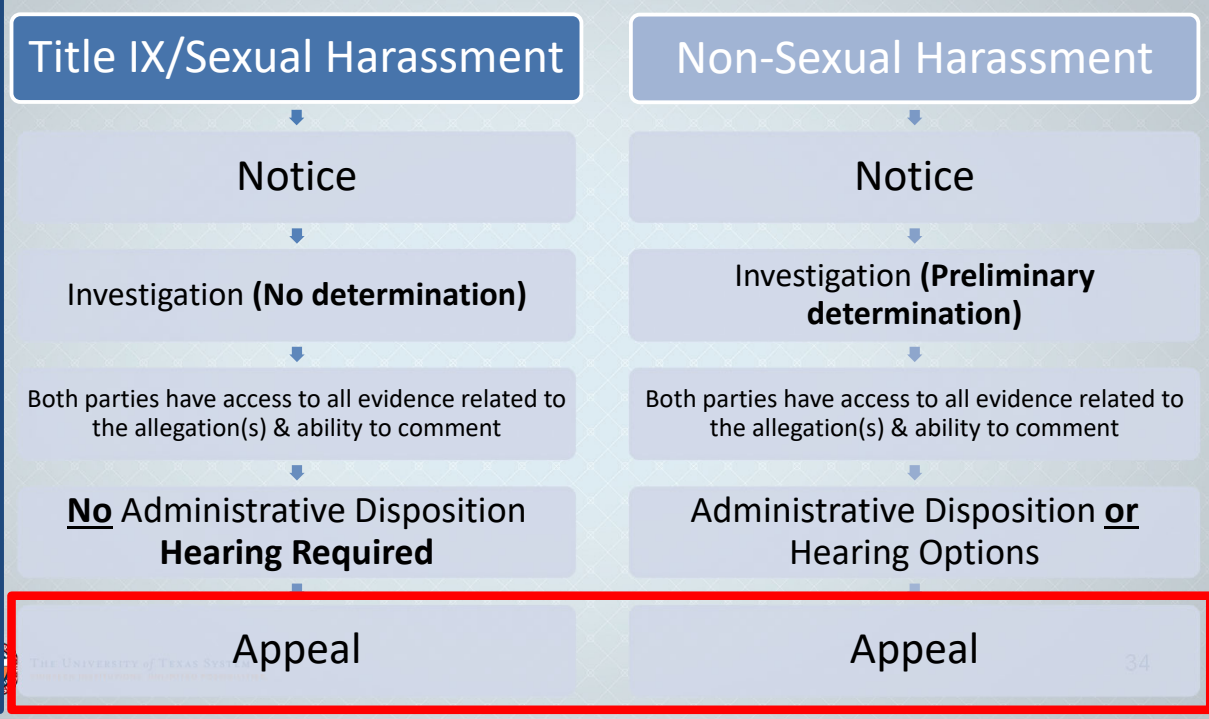
Formal Complaint Dismissal (Example #2)

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Outline Comparisons...



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Appellate Officer's Role in Process

Final Decision-Maker



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Grounds for Appeal

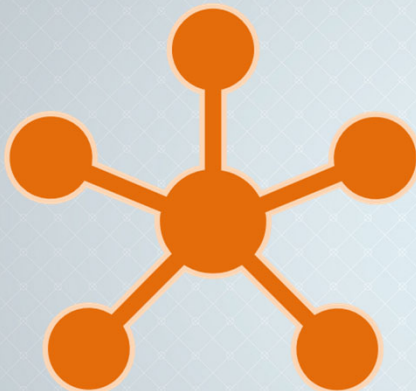


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Grounds for Appeal



- A **procedural irregularity** that affected the outcome of the matter;
- There is **new evidence** that was not reasonably available at the time of the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; **or**
- The Title IX Coordinator, investigator(s), or hearing officer had a **conflict of interest** **or bias for or against the parties** (generally, or specifically in this matter) that affected the outcome of the matter.



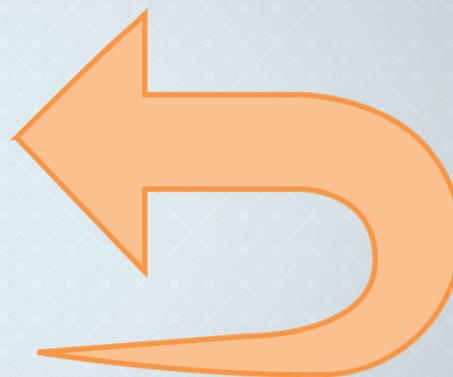
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Appeal of Sanctions: Administrative Dispositions

“Agree to the determination of responsibility for each of the applicable allegations, appeal (in writing) the sanctions and/or remedies outlined in the administrative disposition, and waive the option of a hearing...”



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Source:

UT System Model Policy for Sexual Misconduct

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Appeal Resolution Options



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Appeal Resolution Options

1. Affirm the hearing officer's determination regarding the Respondent's responsibility and affirm the disciplinary sanctions and remedies, if applicable;
2. Affirm the hearing officer's determination regarding the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable;
3. Affirm the University's dismissal of a Formal Complaint (or any allegations in the Formal Complaint);
4. Remand the process back to the investigation or hearing stage for the hearing officer (or applicable equivalent) to remedy any procedural irregularity or consider any new evidence;
5. Reverse the hearing officer's determination of the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable; or
6. Affirm or amend the sanctions and/or remedies outlined in the administrative disposition.



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Source:

UT System Model Policy for Sexual Misconduct

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Making Your Decision...



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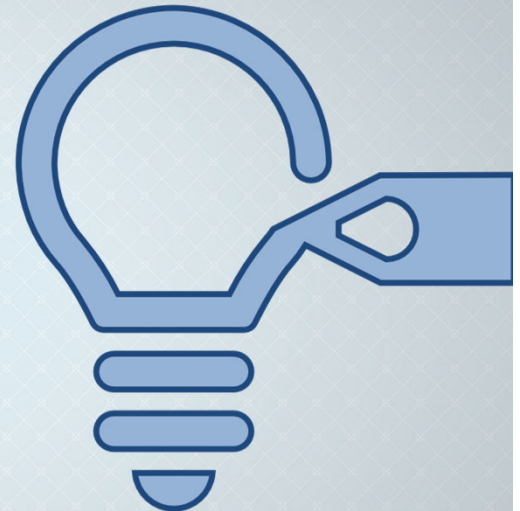
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In Making Your Decision:

- Review the materials.
- Review the policy.
- What is the **ground or argument** on appeal?
- What is the **reasoning** in the initial decision-maker's letter or disposition?



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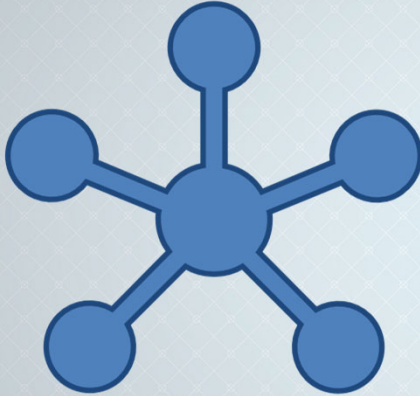
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Considerations:



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Q & A



Contact Information

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