

# Right to Appeal & the Appellate Process



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# 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)



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Appeals  
under  
600.030;  
600.040 and  
600.050

**Both Parties** are allowed to appeal:

- the dismissal of all or part of a Formal Complaint (Title IX),
- the summary determination ending the process (Equity), or
- 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 arise out of an Academic Medical Center.



# 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



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# 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



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# Appellate Process

- Appellate Officer will review Request for Appeal:
  - Is request timely?
  - Is appeal based on articulated bases for appeal?
  - 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 to appeal into one decision.

(will have to be completed within 15 days)



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# Appellate Process – Written Decision

- 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.



Appeals  
under  
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**The decision of the Equity  
Resolution Appellate Officer is  
final.**



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# 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



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# Questions?



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