

Title IX Appellate Decision-Maker Training

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Overview

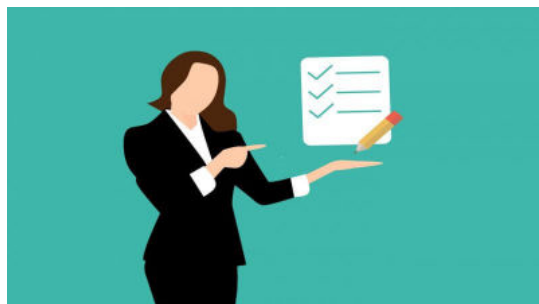
You have been appointed to serve as the Appellate Decision-Maker in a formal Title IX proceeding. Now what?



1

Appellate Decision-Maker's Role Generally

- Review and decide appeals of determinations of responsibility and dismissals of formal complaints.
- Ensure appeal procedures are implemented consistently and equitably.
- Issue written determination to both parties simultaneously within appropriate timeframe.



2

Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

Appellate Decision-Maker's Role: A Step-by-Step Look

- 1) Check for potential conflicts of interest.
- 2) Obtain written appeal request.
- 3) Ensure Notice of Appeal was issued to both parties.
- 4) Review written appeal request and identify ground(s) for appeal.



3

Appellate Decision-Maker's Role: A Step-by-Step Look

- 5) Gather relevant materials from Title IX Coordinator and/or Hearing Officer.
- 6) Allow parties to submit written statements in support of or challenging appeal.
- 7) Review relevant evidence and make appeal determination.
- 8) Prepare and issue written determination within timeframe required under Sex-Based Misconduct Procedures.



4



Conflicts of Interest & Bias

- Title IX Regulations provide that any individual designated to serve as the Title IX Coordinator, investigator, decision-maker, or **APPELLATE DECISION-MAKER** must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- Can be a basis for appeal if the conflict of interest or bias affects the outcome.

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5

Conflicts of Interest

The PSVHEA requires that an institution have a sufficient number of individuals trained to resolve complaints so that:

- A substitution can occur in the case of a conflict of interest; and
- An individual with no prior involvement in the initial determination or finding hear any appeal brought by a party.

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6

Conflicts of Interest



- Key question:
 - Does the Appellate Decision-Maker's prior or existing relationship with or knowledge of a party prevent the Investigator from serving impartially?

Conflicts of Interest

- Where you self-identify a conflict of interest, notify the Title IX Coordinator that you will need to recuse yourself.
- Where a party believes that you have a prohibited conflict of interest, the party must contact the Title IX Coordinator to request a substitution.
 - The Title IX Coordinator may request information from you to help them evaluate the claim.

Hypothetical

- You serve on the College's Behavioral Intervention Team. At a BIT meeting, you took part in a decision to remove a respondent from the College's educational program on an emergency basis. The College subsequently conducted a Title IX investigation with respect to that respondent, and you have just been appointed to serve as an Investigator for the case.
- Do you have a conflict of interest?

How to Address Implicit Bias



- More deliberate or conscious thinking
 - Allow time to fully think through a scenario before coming to a decision / conclusion
- Create and follow checklists
 - Procedural requirements
 - Allegations to be proven / disproven
- Document treatment of both parties and ensure it remains equitable
 - Opportunities to provide evidence
 - Details of the parties' interviews (time to prepare, breaks, advisors' roles, etc.)
 - Access to relevant evidence
 - Offering flexibility or granting requests for accommodations

Appeals Within The Overall Process



11

Appeals

Both parties have right to appeal any:

- Determination regarding responsibility
- Dismissal of any formal complaint or allegations therein

Party must submit written appeal request to Title IX Coordinator

- Within 7 business days* of receipt of written determination or dismissal

Title IX Coordinator must forward request to appellate decision-maker

12

STEP 2: Obtain Written Appeal Request



Written Request for Appeal

- The Complainant or Respondent may request an appeal of any determination of responsibility or dismissal of a formal complaint (or allegations therein) within 7 business days of receipt of the written determination or dismissal notice.

Written Request for Appeal

- The request for appeal should be sent directly to the Title IX Coordinator and should identify the ground(s) on which the party seeks to appeal the determination or dismissal.

Written Request for Appeal

Within seven (7) business days of the Title IX Coordinator's receipt of the appeal request, the Title IX Coordinator will forward the appeal request to the Appellate Decision-Maker.



STEP 3:

Ensure Notice of Appeal was issued to both parties.



17

Notice of Appeal

- Within seven (7) business days of the Title IX Coordinator's receipt of the appeal request, the Title IX Coordinator must issue the Notice of Appeal to both parties.



18

Notice of Appeal

Informs parties that an appeal has been filed.

Notifies parties of the Appellate Decision-Maker appointed to review the appeal.

Informs parties of their right to submit a written statement in support of or challenging the appeal.



STEP 4:

Review appeal request and identify ground(s) for appeal.



Permissible Grounds for Appeal

The permissible grounds for appeal under the Title IX Regulations and Preventing Sexual Violence in Higher Education Act include:

- a) A procedural irregularity occurred
- b) New evidence or information exists that could affect outcome of the matter
- c) The Title IX Coordinator, Investigator or Hearing Officer had a conflict of interest or bias that affected the outcome of the matter
- d) The sanction is disproportionate with the violation



21

Hypothetical

- The Respondent, a student, was found to have engaged in Title IX sexual harassment against a fellow student in Philosophy class. Title IX Coordinator forwards you the Respondent's appeal request, in which Respondent claims that they are entitled to appeal the determination of responsibility because the Hearing Officer was a former professor of the Complainant.
- Has the Respondent established sufficient grounds to bring an appeal?
- What are your next steps?



22

Hypothetical

- The Complainant, a student, accused the instructor of Title IX sexual harassment, claiming that the instructor made ongoing inappropriate comments to them, both during and outside of class. Following an investigation and hearing, the Hearing Officer determined that there was insufficient evidence to find that the Respondent engaged in Title IX sexual harassment. The Complainant appealed the determination, claiming that another student in the class told them that they witnessed the Respondent's inappropriate comments on at least 2 occasions.
- Has Complainant established sufficient grounds for an appeal?
- What additional information might be helpful in making this determination?



23

STEP 5:
Gather relevant materials from Title IX Coordinator and/or Hearing Officer.



24

Relevant Materials

Investigation Report

Determination of Responsibility or
Notice of Dismissal

Hearing transcript/recording; other
evidence gathered during
investigation and/or presented
during live hearing

Other relevant materials, depending
on basis for appeal (e.g. prior
discipline records of Respondent,
new evidence submitted by
appealing party, documentation of
past interactions between parties
and Title IX personnel).

Tip: You may gather information
beyond that contained in the
investigation record if necessary to
thoroughly review and consider the
appeal.



25

Hypothetical

- A Respondent was determined to have engaged in Title IX sexual harassment. The Respondent requests an appeal of the determination of responsibility, alleging that the Hearing Officer has a bias against them, which resulted in the finding of responsibility.
- According to the appeal request, the Hearing Officer was a former instructor of the Respondent, and when the Respondent was in the class, the Hearing Officer had accused the Respondent of cheating and had given them an F in the course.
- What materials would be relevant to your review of this appeal?



26

STEP 6:

Allow parties to submit written statements in support of or challenging appeal.



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27

Written Statements

- Before reaching a determination regarding an appeal, both parties must be given an opportunity to submit a written statement in support of or challenging the appeal.
- As a best practice, we recommend directing the parties to submit their written statements directly to the Appellate Decision-Maker.
- Title IX does not delineate a timeframe for submission of the written statements.
- Robbins Schwartz Notice of Appeal directs parties to submit written statements within five (5) business days after their receipt of the Notice of Appeal.

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28

Written Statements

Q&A

Q: Are the parties required to submit written statements?



Written Statements Q&A

Q: Are the parties required to submit written statements?

A: No. So long as the College affords each party an opportunity to submit a written statement, a party may elect not to submit a statement.

Hypothetical

- You are reviewing an appeal in a student-student Title IX sexual harassment proceeding. Both parties have submitted written statements concerning the appeal. In reviewing the Complainant's written statement, it appears that the statement was written by the Complainant's advisor (who is an attorney) and not by the Complainant.
- What should you do?

31

STEP 7:
Review relevant evidence and make appeal determination.



32

Possible Outcomes of Appeal



Affirm



Reverse



Modify



Dismiss

33

Appeal Determination: Relevant Considerations

Questions to Ask:

1. Did the requesting party establish sufficient grounds to bring forward an appeal?
 - If no, you may dismiss the appeal.
 - If yes, proceed to question 2.
2. Did such affect the outcome and/or result in prejudice to the requesting party?
 - If no, you should affirm the underlying determination or dismissal.
 - If yes, proceed to question 3.
3. Is such sufficient to warrant reversal or modification of the determination of responsibility (or associated sanction) or dismissal?

34

Best Practices for Considering Appeals

- The appealing party has the burden of demonstrating why the determination of responsibility (or associated sanction) or dismissal decision should be overturned.
- The Appellate Decision-Maker is not required to meet with the parties or other individuals when reviewing/considering the appeal.
- In most cases, meeting with the parties or other individuals will not be necessary; the Appellate Decision-Maker should not “re-investigate” the matter.



35

Best Practices for Considering Appeals

- In cases where the appeal is based on an alleged procedural error, consider whether such procedural error was harmless.
 - If so, you may affirm the finding notwithstanding the procedural error.
 - Example: The Respondent did not receive certified mail copy of the initial written notice of the allegations, but it is documented elsewhere that the Respondent received the notice via e-mail and had an opportunity to review and respond to the allegations during an in-person interview with the Investigator. The Respondent also participated in the live hearing and was able to cross-examine the Complainant and several witnesses.



36

Best Practices for Considering Appeals



- In cases where a party's appeal is based on the discovery of new evidence, determine whether the new evidence would have impacted the outcome if it were considered by the Hearing Officer.
- If not, you may affirm the finding despite the new evidence.

Best Practices for Considering Appeals

- In cases where a party's appeal is based on an alleged conflict of interest or bias on the part of the Title IX Coordinator, Investigator or Hearing Officer, consider:
 - Whether the individual in question had a prior or existing relationship with or knowledge of the Complainant or Respondent that impacted their ability to serve impartially
 - Whether such relationship or knowledge affects the outcome of the case
- You may need to gather additional information from the individual in question concerning his/her relationship with or knowledge of the parties.

Best Practices for Considering Appeals

- In cases where a party's appeal is based on an allegation that the sanction is disproportionate with the violation, consider:
 - The severity of the misconduct for which the Respondent was found responsible
 - The rationale for the sanction imposed
 - This information should be contained in the determination of responsibility.
 - The Respondent's disciplinary history (if prior discipline was relevant to the determination of an appropriate sanction)
 - The appealing party's rationale or explanation for why the sanction was disproportionate

Considering Appeals Q&A



Q: Where a party's appeal is based on an allegation that the sanction is disproportionate with the violation, may the Appellate Decision-Maker consider prior cases involving similar misconduct by other individuals when reviewing the appeal?

Considering Appeals Q&A

Q: Where a party's appeal is based on an allegation that the sanction is disproportionate with the violation, is it permissible for the Appellate Decision-Maker to consider prior cases involving similar misconduct by other individuals when reviewing the appeal?

A: Yes.

Hypothetical

- The Complainant and Respondent are both students. The Complainant filed a formal complaint alleging that the Respondent made inappropriate sexual advances toward them over a period of three months.

After a lengthy investigation and live hearing, the appointed Hearing Officer determined that the Respondent was not responsible for Title IX sexual harassment.

- The Complainant has appealed, alleging that the Hearing Officer is the Respondent's coach and is therefore biased. In the written statement, the Complainant admits that they knew the Hearing Officer was the Respondent's coach at the time they were appointed to serve as the Hearing Officer; however, after the Hearing was held and the determination of responsibility was issued, the Complainant found out that the Respondent and Hearing Officer regularly go out for beers after practice.
 - What information would be relevant when reviewing this appeal?

Hypothetical

- As part of your review, you obtain a copy of the hearing transcript and determination of responsibility. In the hearing transcript, you note that the Complainant brought forth several witnesses who testified that they saw the Respondent make inappropriate sexual advances toward the Complainant—information that the hearing officer seemed to ignore in the making the written determination.
- What are your next steps?



43

Hypothetical

- A Respondent's appeal request states that the sanction issued by the Hearing Officer (a one semester suspension and requirement that the Respondent participate in sexual harassment training) is disproportionate with the violation in which the Respondent was found to have engaged ("hostile environment" sexual harassment).
- What information should you consider when reviewing the Respondent's appeal?



44

STEP 8: Issue Written Determination



45

Written Determination



Must be issued to both parties simultaneously within 7 business days of the conclusion of the appeal review



Affirms, reverses or amends the determination of responsibility or notice of dismissal (or dismisses appeal if request failed to establish sufficient grounds for appeal)



Describes outcome and rationale
Notes that decision by Appellate Decision-Maker is final



Robbins Schwartz Appeal Determination Letter

46



47

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48



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PRACTICE AREAS

Board Governance
Education
Special Education
Student Rights

EDUCATION

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ADMITTED TO PRACTICE

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Supreme Court of Illinois

Michelle L. Weber practices in education law, with a primary focus on special education and student matters. Michelle brings a wealth of experience to her role at Robbins Schwartz, representing educational institutions, including school districts, community colleges and private schools. Michelle works with clients on a wide range of student-related legal issues, including special education, student discipline, student records, free speech, and board policy development. Michelle is also a member of the firm's Freedom of Information Act and Title IX working groups and provides counsel to clients in these areas as well.

Michelle is passionate about education and her strengths lie in finding creative and practical solutions to complex legal issues. Prior to joining Robbins Schwartz, she served as an in-house attorney for Waukegan Public Schools and Chicago Public Schools, focusing on special education. Michelle began her career as a Teach for America Corps Member and middle school language arts teacher; an experience that significantly influenced her career trajectory. Drawing on her experience as a classroom teacher, Michelle offers clients a unique perspective, aiming to partner with them to achieve their goals while prioritizing the best interests of students.

Beyond her legal practice, Michelle actively contributes to the community. She serves on the Board of Directors of North Park Elementary School, expanding her commitment to education and experience in the field. Outside of her professional pursuits, Michelle enjoys running, yoga, hiking, and spending quality time with her family.

Publications

"DeVos Rollbacks Could Hit Schools Hard," *Chicago Daily Law Bulletin* (2017)

Presentations

The Last Word: Discipline, Residency, and UGP Complaints, IASB/IASA/IASBO Joint Annual Conference (November 2025)

Friend or Foe? Collaborating with Educational Advocates in the IEP Process, IAASE Fall Conference (October 2025)

Student Discipline and Trauma-Informed Practices for School Boards, Illinois State Board of Education Approved Professional Leadership Development Training (May 2023)

Navigating the IEP Process when DCFS is Involved, IAASE Winter Conference (February 2023)



ORGANIZATIONS

Chicago Bar Association

Hellenic Bar Association

Illinois Council of School
Attorneys

Illinois Local Government
Lawyers Association

Illinois State Bar
Association

LEADERSHIP

Student Rights and Special
Education Practice Group
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Education
Employee Benefits
Labor & Employment
Litigation
Municipal
Student Rights

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Supreme Court of
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Elizabeth (Liz) J. Becker focuses her practice on labor and employment, education, student rights, and board governance. She advises educational and public-sector employers on workplace investigations, discipline, and campus climate issues, and helps institutions align their policies, contracts, and handbooks with complex federal and state regulations, including Title IX, Title VII, the ADA, and the FMLA.

Before entering private practice, Liz built a career in higher education administration, association governance, and public service. Her roles with the National Panhellenic Conference, the NCAA, and a congressional district office provided her with a strong understanding of governance and compliance, as well as community expectations in educational and nonprofit settings. This experience shapes her practical, relationship-focused approach to client advising and sensitive investigations.

Liz earned her J.D. from Loyola University Chicago School of Law, where she took on leadership roles as Managing Editor of the Loyola University Chicago Law Journal and as a member of the Deans' Advisory Committee. She also holds a master's degree in Postsecondary Administration and Student Affairs from the USC Rossier School of Education and a B.A. in Political Science and History from the University of California, Davis.

Liz is a long-time fraternity/sorority volunteer and serves in leadership roles with Kappa Alpha Theta Fraternity, supporting collegiate chapters on policy, governance, and student leadership development. Outside of work and volunteering, she enjoys walking her dog along the Chicago lakefront and following Formula One racing. Despite living in the Midwest for a decade, this native Californian will never adjust to Chicago winters.

Presentations

Navigating Payroll Laws, Illinois ASBO Bookkeepers Conference (March 2026)



ORGANIZATIONS

Illinois State Bar
Association

Women's Bar Association
of Illinois

LEADERSHIP

Kappa Alpha Theta
Fraternity, Vice President

