

# An Appeal to Reason: Handling and Avoiding Appeals Under Title IX

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**Presented By**

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## Reminders!

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- To post or not to post?
- This is a training on Federal Law
- This is not legal advice
- Keep it hypothetical
- Ask questions
- Have fun!

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## Required Appeals Training (2024 Rule)

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### In this training:

- Required grievance procedures related to appeals
- The meaning of the term “relevant” in relation to questions and evidence
- The types of evidence that are impermissible regardless of relevance
- How to serve impartially

*\*\*All other required training covered in the first two sessions*

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## Appeals – 2020 & 2024 Rules

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Both Rules require:

- Appeals for all dismissals [of sexual harassment formal complaints (2020) and complaints of sex discrimination (2024)]
- Appeals for all written determinations [of formal complaints of sexual harassment (2020) and determinations of complaints of sex discrimination (2024)]

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## **Specified Appeal Bases (2020 Rule)**

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Under the 2020 Rule, appeals must be offered on three bases:

- Procedural irregularity + affected the outcome
- New evidence not reasonably available at the time of the determination + could affect the outcome
- Bias or conflict of interest of Title IX team member + affected the outcome

*Can offer appeals on other bases if do so equally between the parties*

- The appeal decision-maker cannot be the Title IX Coordinator, the investigator(s), or the decision-maker(s)

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## **Appeals – 2024 Rule**

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- The 2024 Rule preserves the three appeal bases in K-12 *only for dismissals of complaints of sex discrimination*
- For appeals of determinations on complaints of sex discrimination, must provide the same appeal as used for comparable cases

*Can offer appeals on other bases if do so equally between the parties*

- For dismissals, The Decisionmaker for appeal must be person who did not “take part in” an investigation or decision being appealed

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## **“Comparable” Appeal – 2024 Rule**

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- In addition to an appeal of a dismissal, an educational institution must offer the parties “an appeal process that, at a minimum, is the same as it offers in all other comparable proceedings, if any
- The Department noted that offering the opportunity to appeal a determination in proceedings related to other student conduct violations while denying the same opportunity for sex discrimination complaints may give rise to confusion, the perception of unfairness, and resentment in ways that are counterproductive to preventing and responding to sex discrimination in the educational institution’s education program or activity

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## **“Comparable” Appeal – 2024 Rule**

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- The Department of Education did not define “comparable proceedings” and said it may vary from school to school
- It likely includes, at a minimum:
  - Proceedings relating to other discrimination complaints” involving the same category of respondents (e.g., students or employees) and
  - Allegations of similar types of person-to-person offenses that are physical in nature and not based on sex
- The Department recognized that schools may have obligations under Federal law to employees under Title VII and Title IX and may also have obligations under other State or local laws, which may require processes that are specifically adapted for employee-to-employee complaints and may include the opportunity to appeal a determination

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## Appeal Steps (2024 Rule)

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Step 1: Notify parties of the right to appeal in the dismissal or written determination

Step 2: Notify parties when an appeal is filed (required to be in writing in 2020, not in 2024)

Step 3: Provide parties a reasonable and equal opportunity to make a statement in support of, or challenging, the dismissal or decision (required to be in writing in 2020, not in 2024)

Step 4: Notify parties of the result and rationale for the result (required to be in writing in 2020, not in 2024)

*\*\*Even if not required, doing these steps in writing can protect the district\*\**

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## Dismissal Basics (2024 Rule)

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- No more mandatory dismissal, all permissive
- Must provide notice of dismissal, basis, and notice of right to appeal to party's who have notice of the complaint (not required to be in writing for K-12, although must be provided simultaneously to the parties if provided to both the complainant and the respondent)

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## Dismissal Basics (2024 Rule)

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### Dismissal Bases:

- Unable to identify the respondent after taking reasonable steps
- Respondent is not participating in the education program or activity and is not employed
- Complainant voluntarily withdraws any or all of the allegations in the complaint in writing, the Title IX Coordinator declines to initiate a complaint, and the educational institution determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX
- After making reasonable efforts to clarify the allegations with the complainant, the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX

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## Scenario

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- You have been assigned as the appellate decisionmaker regarding the dismissal of a complaint of sex discrimination
- The complaint alleged that a teacher gave the complainant a low grade, which the complainant believed was based on sex
- The complainant did not provide any details about why they thought the conduct was based on sex
- The complaint was dismissed because the Title IX Coordinator determined the alleged conduct would not constitute sex discrimination under Title IX even if substantiated
- The complainant appeals, claiming that the Title IX Coordinator did not make reasonable efforts to clarify the allegations with the complainant before dismissing the complaint and that, had the Coordinator done so, the complainant would have explained that a student of the opposite sex performed worse in the class but received a better grade


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## Evaluation of the Appeal for Validity

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- Evaluation just considers whether a valid appeal basis is being raised
- It does not address the "weight" of the argument (how persuasive it is)

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### Who should decide whether the complainant has made a valid appeal?

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The Title IX Coordinator	<input type="text"/>	0%
The Title IX Coordinator's Supervisor	<input checked="" type="checkbox"/>	0%
The Appellate Decision-Maker	<input checked="" type="checkbox"/>	0%

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## Is the appeal valid?

Yes - new evidence + could affect the outcome	<input type="text"/>	0%
Yes - procedural error + affected the outcome	<input checked="" type="checkbox"/>	0%
Yes - bias or conflict + affected the outcome	<input type="text"/>	0%
No	<input type="text"/>	0%

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## Dismissal Appeal Basis #1: Procedural Error

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Did the appealing party identify a procedural irregularity?

- Failure to follow policy/procedure steps
- Failure to analyze all relevant evidence
- Inappropriate disqualification of evidence or questions

Did the appealing party identify how they believe the error affected the outcome/decision made?

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## **Dismissal Appeal Basis #2: New Evidence**

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Did the appealing party identify new evidence that wasn't reasonably available at the time the decision being appealed was made?

Did the appealing party identify how they believe the new evidence could outcome/decision made?

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## **Dismissal Appeal Basis #3: Bias or Conflict**

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Did the appealing party identify an alleged bias or conflict of interest by a Title IX team member?

Did the appealing party identify how they believe the bias or conflict affected the outcome?


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## Analyzing the Appeal

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- This is where you consider the “weight” of the arguments made in the appeal
- Make sure to consider arguments raised by both sides
- SHOW YOUR WORK!
- Include policy definitions and procedural requirements
- Assess whether there is sufficient evidence of impact on the outcome

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### If the appeal is granted, what should be the outcome?

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A finding of sex discrimination in favor of the complainant	<input type="text"/>	0%
A remand of the case to the Title IX Coordinator to initiate the grievance process	<input checked="" type="checkbox"/>	0%
A remand of the case to the Title IX Coordinator to reconsider their decision	<input type="text"/>	0%

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## Reverse vs. Remand

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Reversal: Where the appeal makes clear the decision was incorrect



Remand: Where more information is needed

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## Serving Impartially

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## **Bias, Conflicts of Interest, and Prejudgment**

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- Both the 2020 and 2024 Rules require Title IX team members to be impartial
- Let's look at some examples Title IX Appellate Decisionmakers might face

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## **Impartiality Concerns in Title IX Appeals**

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- Having pre-formed opinions about the case or parties involved
- Personal or professional conflicts (e.g., relationships)
- Influences from board, supervisors, community members, etc.

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## **Avoiding Impartiality Concerns in Title IX Appeals**

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- Regularly participate in training on impartiality, conflict of interest, and bias.
- Follow documented procedures and guidelines strictly.
- Documenting reasons for all decisions (SHOW YOUR WORK!)

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## **Don't Forget Your Records & Trainings**

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- Under both the 2020 and 2024 Rules, educational institutions must maintain records related to Title IX cases for no less than 7 years
- The 2020 Rule requires posting of all trainings for Title IX Team members (including these!) on your educational institution's website
- The 2024 Rule would only require that the training materials be maintained and made available if requested (you can still post online but are not required)

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## Questions?

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