

Training for Appeal Officers

9/22/2020

Quinnipiac
UNIVERSITY





Review of Law

TITLE IX REVIEW

What is Title IX?

No person in the United States shall, **on the basis of sex**, be excluded from participation in, be denied the benefits of, or **be subjected to discrimination under any education program or activity** receiving Federal financial assistance





Review of Policy

Sexual Harassment under Title IX

Conduct on the basis of sex that satisfies one or more of the following:

- An employee of the University conditioning the provision of an aid, benefit, or service of the University 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 [University'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).



Gender-Based Discrimination and Harassment



The university prohibits:

- A. Sexual harassment, as defined by the [Title IX Policy](#)
- B. [Gender-based discriminatory harassment, as defined in the Discrimination, Discriminatory Harassment and Bias Motivated Acts and Behavior Policy](#)
- C. Sexual assault, as defined by the Title IX Policy
- D. Dating violence, as defined by the Title IX Policy
- E. Domestic violence, as defined by the Title IX Policy
- F. Stalking, as defined by the Title IX Policy
- G. Sexual exploitation, as defined [by the code of conduct]

Allegations containing any element of sex discrimination or sexual misconduct... shall be investigated and adjudicated pursuant to the procedures outlined in the Title IX Policy.





Jurisdiction Review

Programs or Activities Under Title IX



No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to **discrimination under any education program or activity** receiving Federal financial assistance

A program or activity is defined as “locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the [alleged conduct] occurs.”



University Definition of Jurisdiction

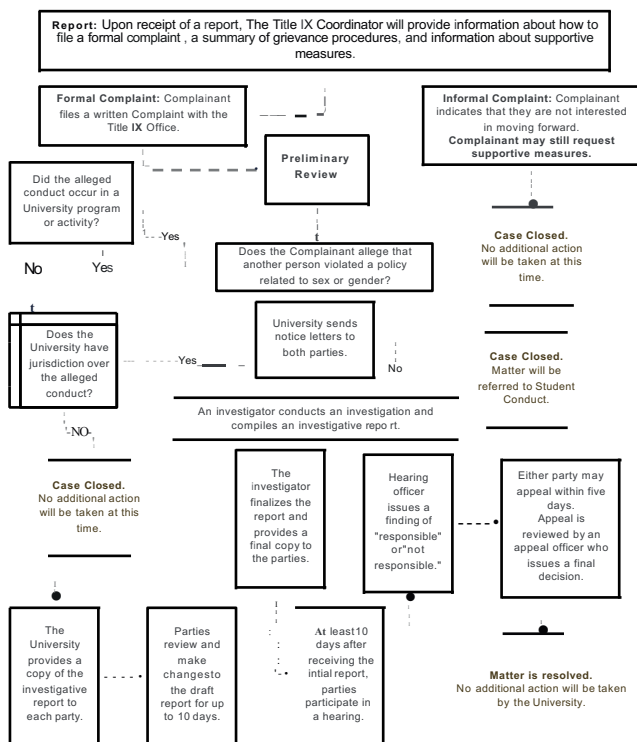


Quinnipiac University is committed to providing an environment free from gender-based or sexual discrimination and misconduct. As reflected in the statement on jurisdiction, ***Quinnipiac reserves the right to address, through the Student Code of Conduct process, incidents that occur off campus that may endanger the health, safety and welfare of self or others and/ or adversely affect the University and/or the pursuit of its objectives***





Overview of Title IX Compliant Grievance Procedures





Appeals



Initiation of Appeal Process

APPEALS

Timeline for Appeal

- After receiving notification of the hearing officer's decision, or after receiving notification that the university dismissed a formal complaint or any allegation therein, both complainant and respondent have five business days to notify the Title IX coordinator of their intent to appeal the decision.
- A formal letter of appeal specifying the grounds upon which the appeal is based and supporting information must be submitted **within five days** of notification of the hearing officer's decision or notification of dismissal.
- The Title IX coordinator has the discretion to extend the deadline for submission of a letter of appeal.



APPEALS

Specifications for the Appeal Letter

- The letter of appeal specifies the grounds upon which the appeal is based, **and** how those grounds materially affected the outcome (responsibility or sanctions) of the original meeting.
- The letter of appeal must be completed and signed by the student or submitted directly from the party's Quinnipiac University email account.





Sanction(s) imposed by the hearing officer will remain in effect while the appeal is pending.



APPEALS

Grounds for Appeal

- 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;
- procedural irregularity that affected the outcome of the matter;
- the Title IX coordinator, 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
- the sanction(s) assigned by the hearing officer did not adhere to the sanction guidelines stated in this policy.





Appointment of Appeal Officer



The university Title IX coordinator receives the request for an appeal.

Upon receipt, the Title IX coordinator designates a trained university staff member to serve as the appeal officer.



Review of the Appeal by Appeal Officer

REVIEWING THE APPEAL

Communication to Parties

- **Policy:**

“Both parties shall be given equal opportunity to submit a written statement in support of, or challenging, the outcome.”

- **What the appeal officer needs to do:**

Send a letter to BOTH parties, inviting them to provide a written statement, for consideration by the appeal officer.

The party who is appealing may choose to defer to the contents of their appeal letter.



REVIEWING THE APPEAL

Preliminary Review

- **Policy:**

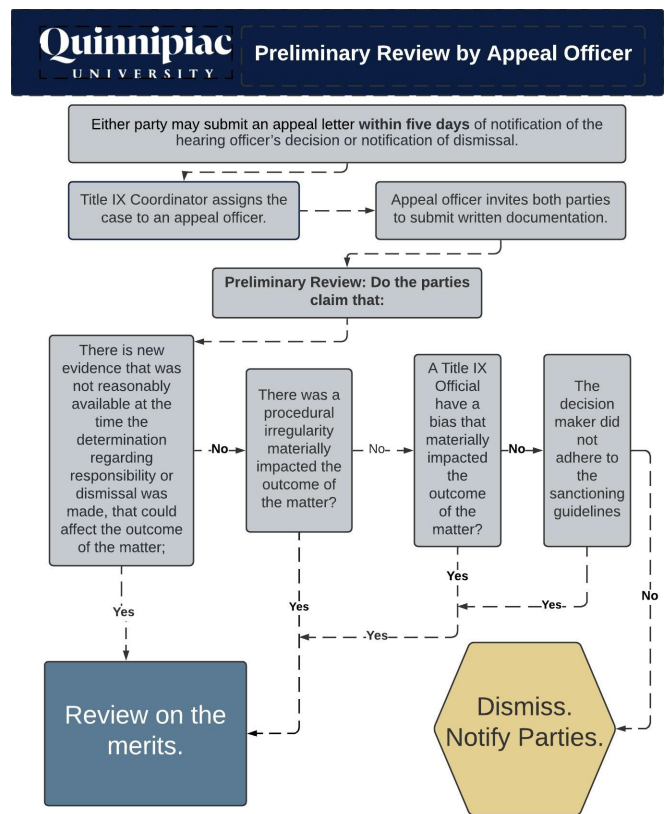
“If the appeal letter(s) does not bring forward sufficient grounds for appeal, the officer will deny the appeal..”

- **What the appeal officer needs to do:**

Review the appeal letter to determine whether the appealing party raises sufficient grounds for appeal.



Preliminary Review





Review on the Merits

Review on the Merits

- The appeal officer should review:
 - The appeal letter
 - Written statements provided by both parties
 - The full investigative record, including exhibits
 - The hearing officer's decision letter
 - Any documentation provided during the hearing
 - Any notes or documentation created by the hearing officer
 - Any other relevant information, as necessary and appropriate

The appeal officer may request follow up information from the investigator(s) or from either party, as necessary to make a fair determination.



Considerations



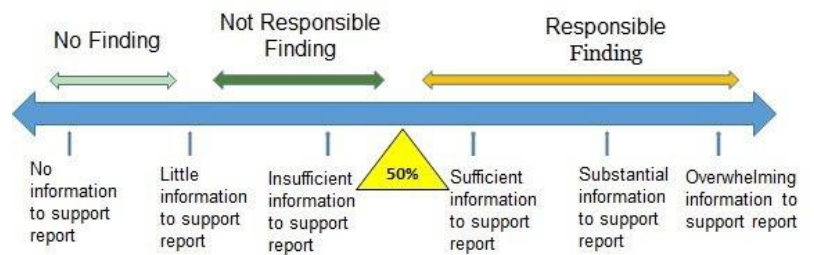
- Is there a preponderance of the evidence to support the Appealing Party's Claim?
 - **EXAMPLE:** Consider: Is there a preponderance of the evidence to support a finding that there is new evidence that was not available at the time of the hearing?
 - **EXAMPLE:** Consider: Is there a preponderance of the evidence to support a finding that there was a procedural irregularity?
 - **EXAMPLE:** Consider: Is there a preponderance of the evidence to support a finding that an involved Title IX official 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



Standard of Evidence

Preponderance of Evidence Standard

*A Requirement that **More than 50%** of the Evidence
Points to Something*





If there is not a preponderance of the evidence to support the claim, the case is dismissed.

The appeal officer must affirm the decision of the hearing officer.

REVIEW ON THE MERITS

If there is a preponderance of the evidence to support the claim, the appeal officer **MUST** consider whether the matter raised materially impacted the outcome of the case.



- If the matter raised did NOT materially impact the outcome, the appeal officer must affirm the decision of the appeal officer.
- If the matter raised DID materially impact the outcome, the appeal officer may:
 - remand the matter for re-investigation or re-hearing, depending on which is necessary to absolve the grievance process of error or irregularity; I
 - initiate a new Title IX administrative hearing





Decision Letter



Upon completion of the appeal process, the decision maker must communicate the outcome of the appeal to both parties.

DECISION LETTER

The decision letter should include:

- The name of the appeal officer
- A description of the appeal officer's role at the institution
- A clear articulation of the appeal officer's decision
- A rationale for the appeal officer's decision
 - If the case is dismissed prior to a consideration on the merits, the letter should note that the party did not raise sufficient grounds to appeal
 - If the appeal officer reviews the case on the merits, the letter should contain a consideration as to whether there is a preponderance of evidence to support the claim raised and, if appropriate, a consideration as to whether the matter materially impacted the outcome.





Questions?