



Title IX **APPELLATE**

2021 Training

TRAINING AGENDA

Review

Process

Grounds

Appeal

Considerations

Expectations

Title IX **APPELLATE**

2021 Training

Handouts that we will be using throughout this training:

- Pre-Training Handout
- Grievance Process Timeline

Please refer to the policy for the definitions of the prohibited behaviors that violate Title IX Sexual Harassment policy

Title IX Resolution Process



Appellate Involvement



Appeal Process Overview

Process

- Parties receive appeal process information in the Notice of Outcome with a link to submit
- Parties submit appeal directly in Maxient (appellate and Equity Office will be notified automatically)

Grounds for Appeal

Appeals are limited to the following grounds:

1. Procedural Irregularity: failure to follow institution's procedures **that affected the outcome of the matter**
 - Failure to follow College procedures
 - Failure to objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence
 - An inaccurate relevancy determination

Grounds

It affected or could of affected the outcome of the matter

Grounds for Appeal

Appeals are limited to the following grounds:

2. New Evidence: 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**

Grounds

Grounds for Appeal

Appeals are limited to the following grounds:

3. Conflict of Interest: The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against complainants or respondents generally or specifically **that affected the outcome of the matter**
 - The Equity Office will conduct a conflict of interest, bias and prejudice review before assigning roles.

Defined as: an actual, perceived or potential personal interest that may influence an individual's duties or obligations in the resolution process.

Grounds

Grounds for Appeal

Conflict of Interest Examples

- **Actual:** a direct conflict between one's official duties and responsibilities, and a competing interest or obligation.
An advisor is friends with the complainant's family
- **Perceived:** a situation where it could be perceived that a competing interest could improperly influence the performance of one's official duties and responsibilities
The decision-maker previously had a relationship with the family member of the respondent
- **Potential:** where a personal interest or obligation could conflict with one's official duties and responsibilities in the future.
The Title IX Coordinator and a faculty complainant co-chaired a committee and socialize outside of work on occasion.

Grounds

Appeal Process Overview

Process

- Appellate reviews appeal to determine if it meets the grounds for appeal and is timely
 - Denied: (not timely or doesn't meet grounds), parties receive written notification of denial and rationale
 - Approved: parties, decision-maker, and investigator are notified and given 5 business days to submit response to support or challenge

Grounds for Appeal

Each appellate will submit the Request for Appeal – Grounds Review to record the decision as to whether or not the appeal is accepted or denied

- Cannot be accepted if grounds not met or past deadline (5 days from the date of the NOO)
- Equity Office will draft Notice of Appeal letters upon receipt
- Appellate will have 24 hours to review and approve letters

The screenshot shows a web browser window displaying the "Request for Appeal - Grounds Review Evaluation Form" from Delta College. The browser's address bar shows the URL: cm.maxient.com/reportingform.php?DeltaCollege&layout_id=60. The form header includes the Delta College logo and the title "Request for Appeal - Grounds Review Evaluation Form". Below the header, a paragraph of text explains the form's purpose: "This form is to be completed by the appellate once an appeal has been filed. The appellate will review the appeal to determine if the request **meets the grounds for appeal**. This review is not a review of merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed. If so, the appeal will move forward for further review." The form also features a section titled "Appellate Information" and a link that says "Enable additional features by logging in."

Appeal Process Overview

Process

- After 5 day comment period, Equity Office will forward any responses to all parties and appellate
 - Non-appealing party may choose to raise a new ground for appeal (follow same previous process)
 - After comment period expires (and new comment period if new ground presented for appeal), no new requests for appeal can be made
- Appellate reviews appropriate case information
- Appellate renders a final decision (within 10 business days)
 - If additional time is needed to fully investigate new evidence, a written extension will be sent to the parties
- Notice of Appeal Outcome sent to parties
- Appellate decision is binding and final

Appeal Review

If the appeal is accepted for review, the following, at minimum, must be reviewed by the appellate:

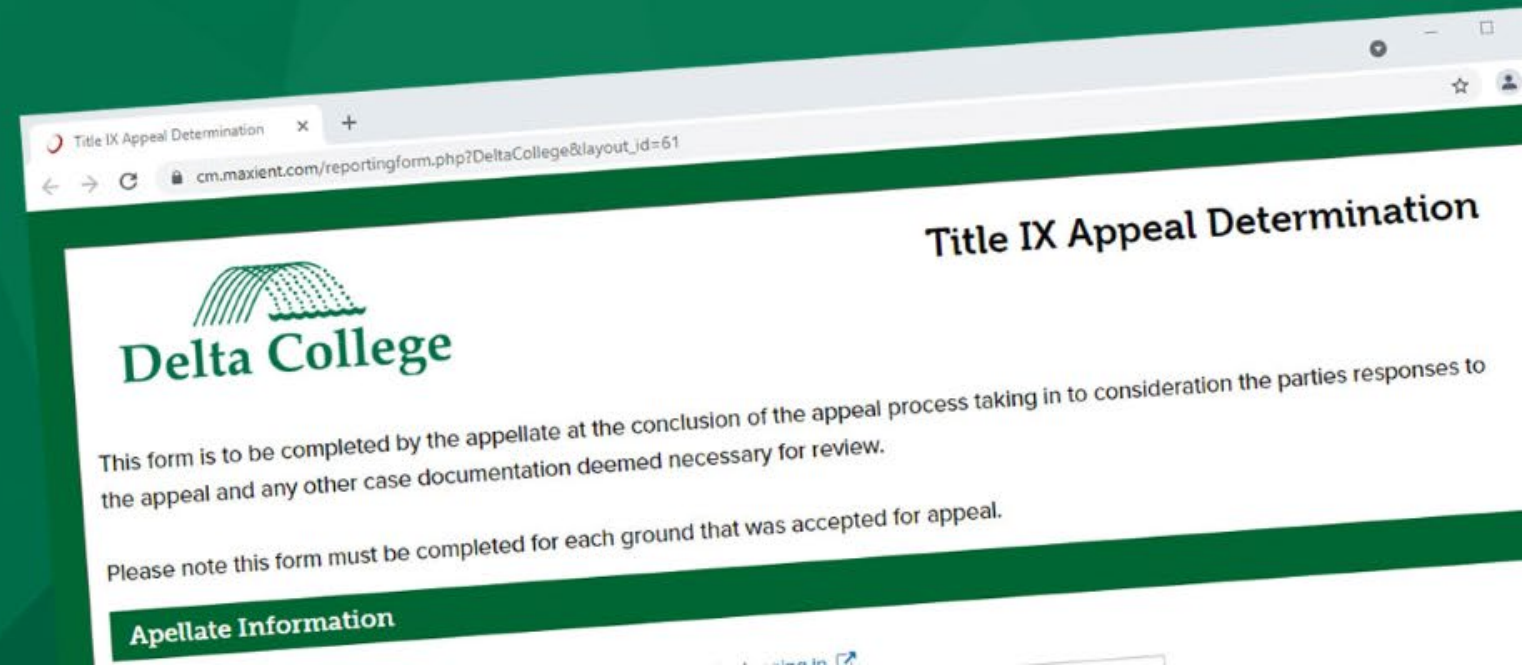
- The appeal and any evidence submitted with it
- Written responses received in response to the appeal
- Final investigation report
- Hearing recording
- Deliberation statement
- Any relevant evidence relied upon for determination

Appeal

Appeal Determination

Submit Title IX Appeal Determination form

- Must be completed within 10 business days after appeal notice comment period lapses
- Upon receipt, the Equity Office will draft appeal outcome letters
- Appellate will have 24 hours to review and approve letters



Appellate Considerations

- The hearing recording will be available, upon request, to all parties and the appellate during the appeal process
- Appeals are not intended for a full re-hearing of the allegation(s)
- Appeals are not an opportunity for the Appellate to substitute their judgment for that of the original decision-maker merely because they disagree

Considerations

Appellate Considerations

- An appellate may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of consultation will be maintained.
- Once appeal is decided, the outcome is final.

Considerations

Appellate Expectations

Maintain impartiality by avoiding biases, conflicts of interest and prejudgments

- **Bias**: an inclination or prejudice toward/against someone or a group of people.
- **Conflict of Interest**: an actual, perceived or potential personal interest that may influence an individual's duties or obligations in the resolution process.
- **Prejudgment**: the act of prematurely making a judgment before the completion of a fair investigation or making a judgement without sufficient reflection on the facts obtained from a fair investigation.

Appellate Expectations

Prejudgment Examples

- Assuming that because alcohol was involved, the complainant's account of events is inaccurate
- Assuming that because the parties had been in a previous consensual relationship, consent was given
- Utilizing sex stereotypes; men can't be sexually assaulted, etc.

Avoiding Prejudgment

- Keep an open mind throughout the process
- Wait to hear ALL of the facts
- Seek out additional information before jumping to conclusions
- Be cautious about checking your assumptions

Appellate Expectations

Bias Examples

- Assuming that all respondents are male
- Assuming that because a complainant isn't crying when talking about her sexual assault, that it probably didn't happen

Ways to Combat Bias

- Pay attention to your language
- Avoid generalizations
- Question your thinking and challenge your assumptions
- Listen!

Appellate Expectations

- Complete the Declaration of Impartiality for each case, the Equity Office will send it to you
 - You may have to do this even if an appeal does not happen
- Appellates are assigned according to the role of the respondent
 - For students/visitors: Shelly and Russ
 - For Faculty: Martha and vacant
 - For AP/SS/Fac/Aux: Andrea and Pam

Appellate Expectations

- Review all evidence before making a decision
- Maintain confidentiality
- Follow all deadlines
- Complete Grounds Evaluation and Appeal Determination Forms
- Review Appeal Outcome drafts within 24 hours

Concerns & Questions

If you have questions about your role,
please contact the Equity Office ASAP

equityoffice@delta.edu

989-686-9547