



# Title IX Appeals



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# Title IX

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Title IX prohibits sex discrimination in any education program or activity that receives federal financial assistance. The goal is to ensure equal access to the university for all genders.

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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.

20 U.S.C. § 1681



# Title IX v. Sex-Based Misconduct



## Title IX

- On Campus
- In a VCU Education Program or Activity
- VCU Affiliated Complainant
- Includes defined prohibited conduct

## Sex-Based Misconduct

- Off-Campus Conduct
- Non-Affiliated VCU Complainant
- Includes other Title IX Prohibited Conduct plus sexual exploitation and a broader definition of sexual harassment

# Reasons for Dismissal

## Mandatory - Title IX

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### Not a Policy Violation

The conduct alleged would not constitute Title IX sexual harassment even if proved true.

2

### Jurisdiction

The conduct did not occur in a VCU education program or activity and/or the university did not exercise substantial control of the respondent at the time of the events giving rise to the complaint.

3

### Location

The conduct did not occur against a person in the United States; and/or

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### Unaffiliated Complainant

At the time of filing a formal complaint, the complainant is not participating in or attempting to participate in a VCU education program or activity.



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## 1 Withdrawal of Complaint

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A complainant submits written notification that they would like to withdraw their formal complaint or any allegations therein.

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## 2 Respondent No Longer Affiliated

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The respondent is no longer enrolled in or employed by the university.

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## 3 Specific Circumstances Related to Gathering Evidence

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Specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

# Reasons for Dismissal

## Discretionary - Title IX

# Sex-Based Misconduct Dismissals

## Discretionary

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|----------------------------|--|
| ◆ Not a Policy Violation   | ◆ Withdrawal of Complaint                              |
| ◆ Jurisdiction             | ◆ Respondent No Longer Affiliated                      |
| ◆ Unaffiliated Complainant | ◆ Specific Circumstances Related to Gathering Evidence |

# Grounds for Appeal

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There are three grounds for appeal in the Title IX Sexual Harassment Policy - Interim and the Sex-Based Misconduct Policy - Interim.

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- i. Procedural irregularity that affected the outcome of the matter;
- ii. 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; and
- iii. The Title IX Coordinator or investigator(s), Hearing Officer or other member of the hearing panel had a conflict of interest or bias against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

# Sample Appeal: Grounds Check

An appeal is received from a respondent in a Title IX matter.

The statement included references the following:

**I was targeted by the staff who responded to this incident and harassed to give my information for their report, therefore the outcome of this case cannot be fair to me.**

Does this statement appropriately identify a grounds for appeal, per the Policy? If so, which one?



# Appeal

## Opportunities to Appeal - Title IX

### ◆ Dismissal

The results of an appeal to a dismissal could be: 1) overturning the dismissal and directing investigation under Title IX, or 2) upholding the dismissal and permitting the investigation under SBM (if applicable).

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### ◆ Determination of Responsibility

Appeal to determination could uphold or change the findings of responsibility (and discuss the impact to sanctioning, if applicable).

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# Sanctions alone cannot be appealed.

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Although a party may disagree with a decision or the sanctions assigned, that alone is not a basis for appeal.

However, any sanctions imposed as a result of the hearing are stayed during the appeal process.

# Sample Appeal: Dismissal

Parties traveled to another country for vacation during the winter break, and Complainant alleges that Respondent sexually assaulted her. Respondent graduated prior to the break. Complainant appeals the dismissal, stating the following:

**I don't feel safe returning to VCU because of this incident, and VCU should investigate this respondent's actions.**

Is this dismissal mandatory or discretionary? How might you respond to the Complainant's appeal?



# Appellate Process



## Step 1: Party Submits an Appeal

The appeal must be submitted to the Title IX Coordinator after the notification of dismissal or hearing panel determination.

## Step 2: Appellate Review of Grounds

The Appellate Officer will determine if the request meets the grounds for appeal.

## Step 3: Appellate Review

The Appellate Officer will review any documents or evidence as deemed necessary.

## Step 4: Notification of Outcome

The Appellate Officer will issue the outcome of the appeal and the rationale for the result simultaneously to the parties and Title IX Coordinator.



# Important Appeal Timeframes

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## 1 Submission of Appeal Request

The appealing party must submit their request within 5 business days of the notice of the decision they are appealing.

## 2 Review of Appeal

Once both parties have been notified that the appeal is valid, then both parties have 10 business days to submit a written statement in support of or challenging, the appeal.

## 3 Notification of Decision

Within 10 business days of receipt of the written statements, the Appellate Officer will issue the outcome of the appeal and the rationale for the result simultaneously to the parties and Title IX Coordinator.



# Review of Appeal

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The Appellate Officer's initial review is not for the merits but for:

- (1) timeliness, and
- (2) based on at least one of the limited grounds for appeal listed on the previous slides.





# Sample Appeal: Initial Review

A Sex-Based Misconduct matter was referred to a review panel based on the Respondent's contesting statement. The hearing panel upheld the investigator's findings, and issued notice to the parties on December 2nd. The Respondent submits a request for appeal on December 8th, citing the following grounds:

**One of the hearing panel members was my adviser freshman year and cannot be impartial.**

For the purposes of your initial review, does this request qualify for consideration? How do you know?

# Making a Decision

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The Appellate Officer shall render a decision applying the following principles:

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- The burden of proof lies with the appellant;
- The review shall be prompt and narrowly tailored to the specific grounds approved for appeal;
- The appeal is not intended to be a new investigation or a full re-hearing of the formal complaint;  
and
- The original decision is presumed reasonable and appropriate unless a preponderance of the evidence demonstrates that one or more of the grounds of the appeal are met, and that either or both parties were deprived of a fair process.





# Sample Appeal: Evidence Review

The respondent in this matter was found not responsible for sexual assault. The complainant submits the following evidence for consideration with their appeal.

- A copy of their final investigation report
- A copy of their transcript for the semester in which the alleged incident occurred
- A video submitted to the investigator and deemed irrelevant
- A new social media post from the respondent about the decision

Which evidence should be reviewed for the appeal? Why?

# Communications with the Parties

Once an appeal is received, the Appellate Officer can communicate with the parties as outlined below:

1. The Appellate Officer may choose to meet with a party if they deem it necessary for their review of the appeal. If the opportunity to meet is provided to one party, it must be provided automatically to the other party.
2. The Appellate Officer is responsible for notifying the parties, their advisers, the Title IX Coordinator, and, when appropriate, the investigator and/or Hearing Officer, in writing that the appeal request has been approved.
3. The Appellate Officer will issue the outcome of the appeal and the rationale for the result simultaneously to the parties and Title IX Coordinator.



The Appellate  
Officer's decision is  
final.







# Thank you!

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Thank you for serving in this important role and for your continued partnership with our office.