

Appeals Officer Training

Presented by:

Office of Student Conduct

and

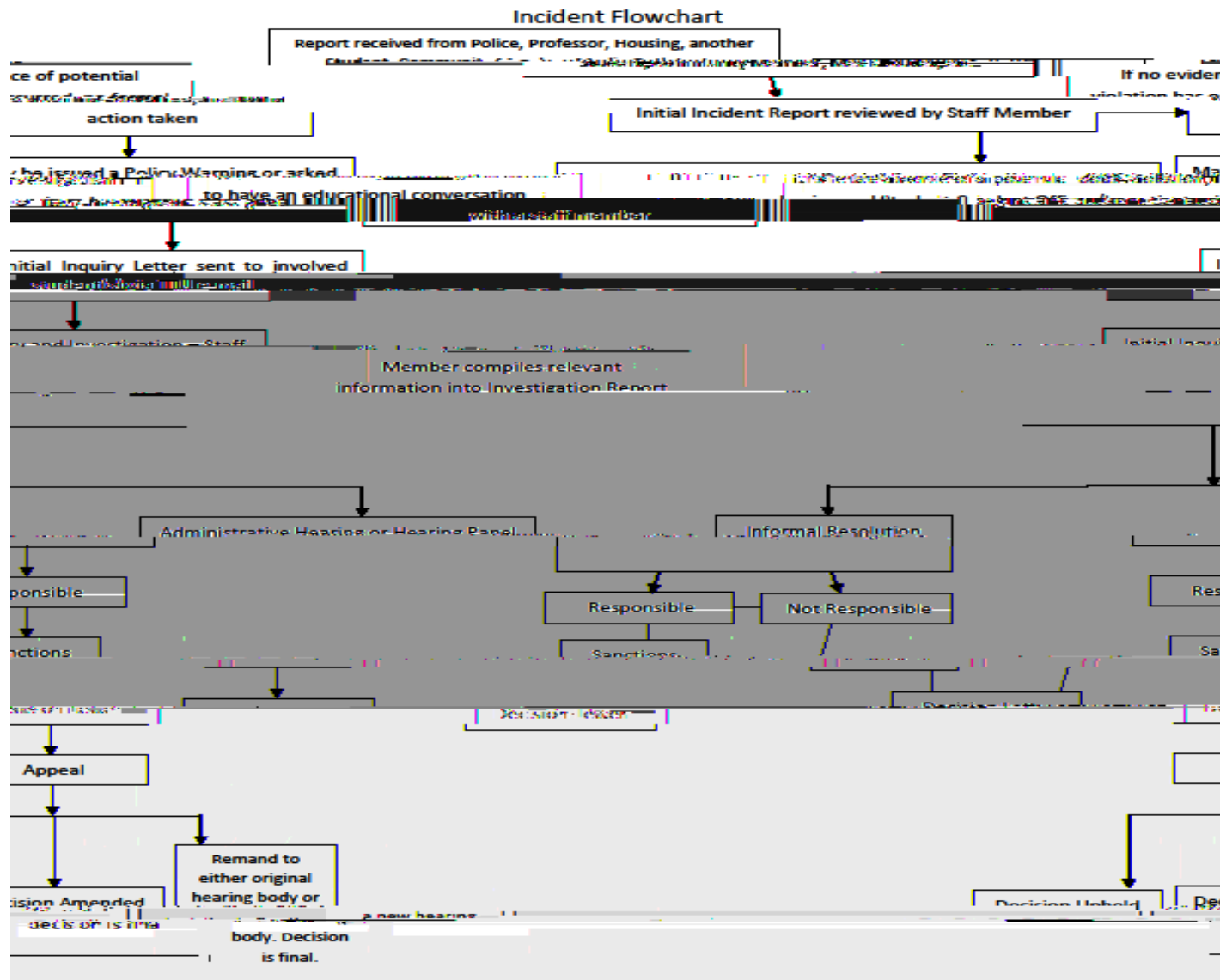
Office for Student Civil Rights

& Sexual Misconduct

2021-2022



THE CONDUCT PROCESS



PHILOSOPHICAL BASIS FOR APPEALS



- Ensure policy and procedures were followed to a fair result

COMMUNICATION PROTOCOLS



The status of the appeal is part of the status of the investigation. The reporting party is entitled to regular updates on this status



When one party requests an appeal the other party(ies) should be notified, and joined, either on the same basis that the appeal has been requested, or on other bases that they wish to assert as grounds.



Exchange the appeals documents and requests between the parties with an opportunity to respond.

**Once a student receives the decision letter, the student may select the appeal link within the body of the letter. The student is asked to specify their grounds for appeal. The appeal is then routed to the Office of Student Conduct, via Maxient.

APPEALS: GROUNDS FOR APPEAL (NON-TITLE X)



A procedural [or substantive] error occurred that significantly impacted the Hearing (e.g. substantiated bias, material deviation from established procedures etc.);

The discovery of new evidence, unavailable during the original Hearing or review of the case, which could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included; or

**A credibility analysis of the new evidence should also be included.

The sanctions imposed substantially varies from the range of sanctions normally imposed for similar infractions

**Or, varies from the cumulative effect given the conduct history.

APPEALS POSSIBLE OUTCOMES



... Request for appeal received, specifies appeal on one or more published appeal criteria, and is within an acceptable timeframe for submission

... Appeal is reviewed

... Possible Appeal Outcomes

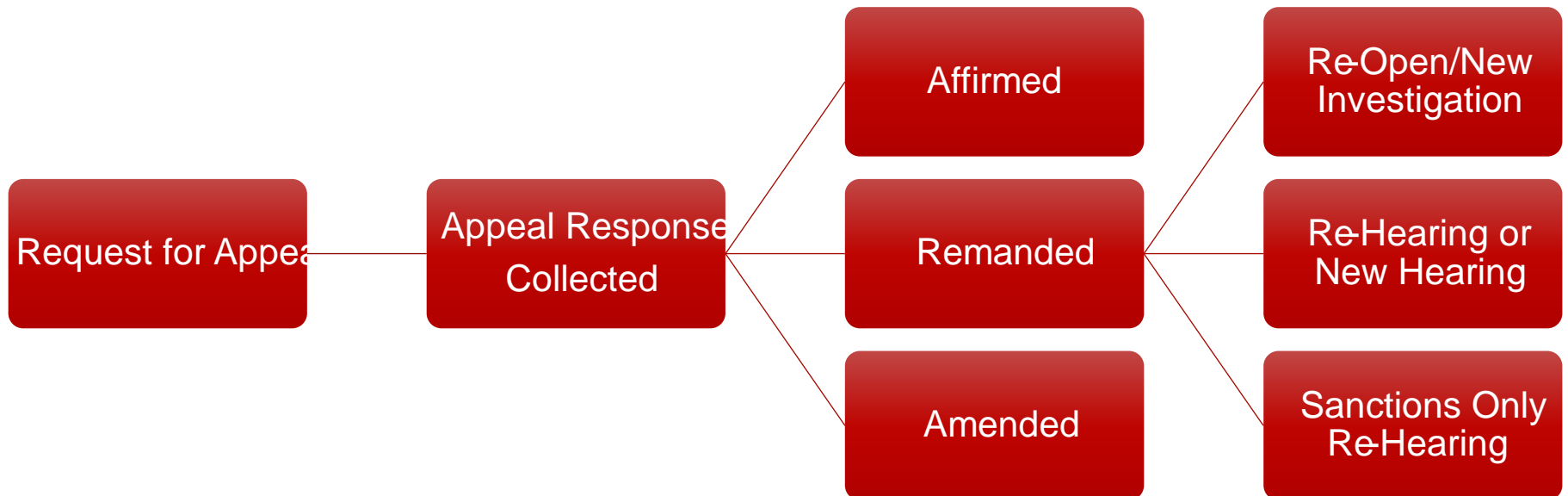
f Affirmed

f Remanded

- To correct a procedural error or address new evidence
 - Remand to Investigation (partial or full)
 - Remand to Hearing (may be partial or full rehearing depending on error present; may be administrator or panel)
 - Remand to Sanction Only Hearing

f Amended

Appeals: The Process



APPEALS DELIBERATION



- f* Thoroughly review the investigation report, the hearing record/transcript, appeal responses, and all available documents.
- f* Review related sections of the Code of Student Conduct
- f* Utilize the lens of error in policy and process throughout your review
 - An appeal is not a re-hearing
- f* Pay particular attention to the rationale for the finding articulated by the panel in the hearing outcome document

THINGS TO LOOK AT RE SANCTIONING



- Sanctioning Matrix (or grid)
- Sexual Misconduct Sanction Matrix
- Is the student currently on a conduct status?
- What does past precedent suggest if any?
- Timing of sanction implementation (timing during semester)
- Were mitigating or aggravating circumstances applied/considered?

OUTCOME OF AN APPEAL



The Office of Student Conduct shall make reasonable effort to notify the

OUTCOME OF AN APPEAL



The Office of Student Conduct sends all decision letters via Maxient. Template letters are available in Maxient for appeal official use.

Templates in Maxient:

Letter 16-AppealLetter (Affirmed)

Letter 17-AppealLetter (Remanded)

Letter 18-AppealLetter (Amended)

*If an appeal official would like to send a customized appeal decision letter, please contact OSC or SCRSM as appropriate

WHEN APPEALS ARE CHALLENGED



Interventionist appeals officers who believe it is their job to second-guess

Granting appeals for the chance at an education conversation/to teach a lesson

The liability risk of a too strong appellate authority

Hierarchs as appeal office

Failure of adequate training

Too much deference can be problematic (if the initial decision is wrong, or results from lack of training, you do have to see things right)

Failure to recognize a conflict of interest



Appeals Best Practices

- You may conduct limited inquiries with the investigator, adjudicator(s), parties or witnesses as necessary, but avoid the resemblance of a re-investigation or re-hearing. Inquiries should be directed at confirming whether or not an error occurred.
- Make an independent and impartial determination.
- Grounds for appeal or changes must be shown by evidence that is “more likely than not”.
- Appeals and any accompanying rationale for the appeal decision(s) are communicated in writing.



Appeals Best Practices

- The judgment of an appeal official centers on the degree to which an error occurred. If there is a significant error that would change the outcome, it is appropriate to remedy the error. An appeal official may be able to address the error during the appeal or may remand the case.
- Substantial error in the investigation may be repaired by remanding to investigation, or on rare cases, re-investigation by a new investigator.
- Problems with hearings can often be fixed by limited re-hearing. Complete re-hearings should be rare.



Appeals Best Practices

- Sanctions go into effect following the hearing when no request for Appeal or Intent to Appeals made by the student.
- A student may request an abeyance of sanctions.



Sexual Misconduct/ TIX Appeals

TITLE IX REGULATION REVIEW- KEY TERMS



Education Program or Activity

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TITLE IX REGULATION REVIEW- KEY TERMS



Title IX Sexual Misconduct

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TITLE IX REGULATION REVIEW- GRIEVANCE PROCESS(SYSREG 07.06)



Notices:

- Initial notice to parties
- Supplemental notice to parties
- Notice to parties of all Hearings, Interviews or Meetings
- Written notice via University email

Investigation:

- Prior to completion of report, provide both parties advisors equal opportunity to inspect/ review any evidence obtained that is directly related to allegations raised in the Formal Complaint
- Send each party/advisor evidence in electronic format or hard copy
- Parties shall have at least 10 days to submit a written response

Investigation Report:

- Upon completion of the 10 days, finalize the report that fairly summarizes relevant evidence. Send to each party and advisor a copy of the completed report at least 10 days prior to the Hearing

SEXUAL MISCONDUCT APPEALS



Two types of Appeals:

- Dismissal of Formal Complaint
- Determination of Responsibility

Must apply equally to both parties

SEXUAL MISCONDUCT APPEALS



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DISMISSAL OF FORMAL COMPLAINT

When a Formal Complaint is received, SCRSM will evaluate jurisdiction and mandatory and discretionary dismissal described below assess appropriate Supportive Measures for both parties, evaluate the need for Emergency Removal, and initiate the Grievance Process.

FORMAL COMPLAINT DISMISSAL



Mandatory Dismissal- SCRS shall dis563 Ss [(23a)-1.8 (a) (FoT)

FORMAL COMPLAINT DISMISSAL



Permissive Dismissal§CRSMmay dismiss a Formal Complaint in the following situations:

- The Complainant notifies the Title IX Coordinator in writing that they wish to withdraw the Formal Complaint or some allegations in the Formal Complaint
- The Respondent is no longer enrolled in or employed by the University
- Circumstances exist that prevent the University from gathering sufficient evidence to reach a determination as to the Formal Complaint or the allegations.

SM/TIX APPEAL TIMELINE



Complainant/Respondent has 3 University working days to submit appeal to Title IX Coordinator

The other party has 3 University working days to respond to the Appeal

The Hearing Body has 3 University working days to respond to the Appeal

The Appeal officer has 5 University working days to complete the Appeal

