

Title IX/Equity Decision Maker & Appeals Training

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September 4 & 5, 2024

Life of a Complaint

- Report Received
 - Title IX Coordinator conduct initial assessment
 - Assess Title IX Policy, Equity Policy, Sexual Misconduct & Gender Discrimination Policy or other Delta college Policies
 - If there is potentially a violation of Title IX- proceed with formal complaint
 - A formal complaint may only be filed by the complainant or the Title IX Coordinator
 - Notice of Investigation
 - Must go out to complainant and respondent
 - Must include their rights, including the right to an Advisor
 - Must also include supportive measures
 - Investigation
 - Draft Investigative Report
 - Sent to both parties, 10 day review period
 - Final Investigative Report
 - Sent to both parties, 10 day review period
 - Hearing Notice
 - Sent to both parties and Decision Maker, 10 day review period
 - Hearing
 - Notice of Outcome
 - Within 8 days of hearing
 - Appeal

Supportive Measures

- Individualized measures offered, as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent. The intent of supportive measures is to:
 - Restore or preserve that party's access to Delta College educational program or activities
 - Includes measures that are designed to protect the safety of the parties or the educational environment
 - Provide support during Delta College grievance procedures

Supportive Measures

- May include
 - Counseling
 - Course modifications
 - Leave of absence
 - Campus escort services
 - Change in extracurricular or other activity
 - Increased security or monitoring of certain areas
 - Training and educational programs related to discrimination
 - Restrictions on contact applied to one or more parties

Supportive Measures

- May:
 - Be terminated or modified at the conclusion of the grievance procedures
 - Continue at the conclusion of the grievance procedure
- May not:
 - Unreasonably burden a party
- Must:
 - Be designed to protect the safety of the parties or educational environment or to provide support
 - Provide the opportunity to seek additional modifications of supportive measures if the circumstances materially change
 - Consult with the appropriate offices (such as ODR) if applicable
- Must not:
 - Impose supportive measures for punitive or disciplinary purposes
 - Disclose information about supportive measures to individuals other than to whom they apply unless necessary to provide the supportive measure or restore or preserve access

Emergency Removals

- In order to remove a student, school must determine:
 - Imminent and serious threat to the health or safety of a complainant or other person arising from the allegations of discrimination
- Administrative Leave
 - Employees may be placed on an administrative leave during the pendency of the grievance procedures

Decision Maker Responsibilities

- Pre-hearing
 - Review Investigative Report
 - Draft questions for all parties, including investigator
 - Review the hearing outline and script
 - Attend pre-hearing conference, if applicable
- Hearing
 - Call to order
 - Facilitate flow
 - Ask relevant questions
 - Allow for cross-examination by Advisors
 - Wrap up

Cross-examination

- For purposes of truth-seeking, not a means of personal attack
- An Advisor is required for cross-examination, and all questions must be asked by the Advisor to opposing party and witnesses.
- The Decision Maker will determine the relevancy of each question before it is permitted to be asked.
- The Decision Maker will make real-time determinations of relevancy and provide rationale for why a question is determined to be irrelevant and therefore does not need to be answered.

Relevance

- The Regulations do not define relevance
 - “Ordinary meaning of relevance should be applied throughout the grievance process”
 - “Can be made by layperson recipient officials impartially applying logic and common sense”
 - “Cross-examination must focus only on questions that are relevant to the allegations in dispute”
 - “Ensure that questioning is relevant, respectful and non-abusive”

Merriam-Webster’s Definition: Related to the matter at hand

Relevance

- Always Irrelevant (prohibited under rape shield laws)
 - Evidence of a complainant's sexual behavior with anyone other than the respondent is not permitted
 - Questions/evidence about a respondent's sexual predisposition or prior sexual behavior are not subject to any special consideration and should be evaluated based on relevancy.
 - Unless it is to prove that someone else other than the respondent committed the alleged misconduct
 - Unless to show consent between the parties
 - Consent: knowing, voluntary and clear permission by word or action to engage in sexual activity
 - Cannot use information from a physician, psychiatrist, psychologist or other recognized professional without the voluntary and written consent
 - Cannot use information protected by a legally recognized privilege without a waiver
 - Duplicative evidence may be deemed irrelevant

Dismissal of Complaint

- Complaint may be dismissed if:
 - Unable to identify the respondent after taking reasonable steps to identify them
 - The Respondent is NOT participating in the education program or activity and is not employed by the school
 - The Complainant voluntarily withdraws any or all allegations in the complaint, and the remaining allegations would not constitute discrimination even if proven
 - Even if proven, the conduct would not constitute discrimination

Relevancy Conclusion

- At the hearing, the decision-maker must apply logic and common sense to reach relevancy conclusions and must explain their rationale
 - No lengthy or complicated explanation is required
 - “The question is irrelevant because it calls for prior sexual behavior and does not meet the exceptions.”
 - “The question is irrelevant because it is not probative of any material fact concerning the allegations.”
 - Parties (not advisors) must be afforded the opportunity to challenge the relevance determinations

Hearing Decorum

- Manner of Asking Questions
 - Address parties respectfully using a preferred title of courtesy (Mr., Ms., Mrs., Dr., Professor...)
 - Use an even and appropriate tone of voice
 - No shouting, snide tones, sarcasm or dramatics
 - Do not use intimidating physical actions
 - No finger pointing, fist pounding or exasperated gestures
- You cannot forbid a party from conferring with advisor
- Should adopt rules for conduct during hearing

After the Hearing

- Deliberation and Determination
 - Complete Title IX Deliberation Statement Form within five business days from the date of the hearing
 - One form must be completed for each allegation being adjudicated
 - Provide rationale for each allegation
 - Provide evidence used to support and evidence not relied upon
 - Assess credibility of all parties
 - Determine sanctions, as needed
 - Recommend a need for remedies to restore/preserve equal access

Notice of Determination

- The Equity Office will use the Deliberation Statement to draft the Notice of Outcomes (NOO)
- Equity Office will provide draft letters for your review
- You will have 24 hours to provide your approval
- Inform the Equity Office to request any changes
- Most information must stay based on the regulation and to provide consistency

After Dismissal

- Delta College must:
 - Promptly notify the Complainant of the dismissal and the right to appeal
 - If the Respondent has been notified, they must be notified of the dismissal and their right to appeal
 - Offer supportive measures to each party
 - Take other appropriate, prompt and effective steps to ensure that discrimination does not continue to occur.

Grounds for Appeal of Dismissal

- Procedural irregularity that would change the outcome
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made
- The TIXC, Investigator or Decision Maker had a conflict of interest or bias for or against either (or both) parties that would change the outcome.

Determinations

- A determination becomes final:
 - The date the parties are provided with the written determination of the result of any appeal
 - OR
 - The date when an appeal would no longer be considered timely (day after the appeal deadline)

Grounds for Appeal of Determination

- Procedural irregularity that would change the outcome
 - Failure to follow College procedures
 - Failure to objectively evaluate all relevant evidence
 - An inaccurate relevancy determination
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made
- The TIXC, Investigator or Decision Maker had a conflict of interest or bias for or against either (or both) parties that would change the outcome.
 - Conflict of Interest: an actual, perceived or potential personal interest that may influence an individual's duties or obligations in the resolution process

Conflict of Interest

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.

Consider Bias

- Affinity Bias- unconscious bias that causes people to gravitate towards others who appear to be like them.
- Anchoring Bias- being overly influenced by the first piece of information we receive.
- Confirmation Bias- Listening to or respecting data or information that aligns with our viewpoints
- Halo Bias- cognitive bias that claims that positive impressions of people, brands and products in one area positively influence our feelings in another area
- Horn Bias- cognitive bias that causes our negative impression of someone or something in one area to change our impression of them in other areas
- Overconfidence Bias- overly confident in our own intelligence, experience or opinions

Grounds for Appeal?

A respondent has been found in violation of the policy. Three days after receiving the NOO, the respondent files an appeal on the grounds of new evidence. The new evidence provided are screenshots of text messages between the respondent and complainant that show the complainant never asked the respondent to stop texting them.

Grounds for Appeal?

A finding has been made stating that the respondent has not violated our policy. Nine days after receiving the NOO, the complainant files an appeal stating that the decision-maker had a conflict of interest with the respondent (the decision-maker was neighbors with the respondent's cousin).

Grounds for Appeal?

The complainant contends that the investigator failed to interview 15 witnesses who have knowledge of an alleged sexual assault based on discussions with complainant or the complainant's friends following the incident. The investigator only interviewed 9 of the witnesses. The complainant filed an appeal 4 days after receiving the NOO on the grounds of a procedural error.

Appeal Process Overview

- 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
- Submit Determination via Maxient Form to the Equity Office
- Equity Office will draft letter
- You will have 24 hours to review and approve the letters

Appeal Process Overview

- 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

Considerations

- If a hearing was held, the recording will be available.
- Appeals are not intended for a full re-hearing.
- Appeals are not an opportunity for the Appellate to substitute their judgement for that of the original Decision Maker merely because they disagree
- You may consult with the TIXC on questions of procedure or rationale, for clarification, if needed.
- Once an appeal is decided, the outcome is final.

Concerns or Questions

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