



D. STAFFORD
& ASSOCIATES

Appellate Officer Class

Presented by:

**Beth Devonshire, Cathy Cocks,
Adrienne Murray and Ann Todd**
Associates

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TITLE IX

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To receive a certificate for classes held by D. Stafford & Associates, LLC or the National Association of Clerly Compliance Officers and Professionals (NACCOP), attendees must attend the majority of the class. This includes in-person classes and virtual classes. DSA and NACCOP understands that attendees may need to miss class for a legitimate reason for longer periods of time or may need to leave the room during a class for a few minutes to take a phone call or attend to other business.

For virtual classes, because we can't see all of the attendees all of the time like we can in an in-person class (based on the attendee controlling whether they have their camera turned on or not), the criteria for receipt of a certificate is determined based on missed class time (**no more than 30 minutes for this class**), depending on the length of the class) and participation in the Attendance Polls that will be launched throughout each day of class. Attendance polls are left up for approximately 5 minutes and the instructor notifies the attendees that a poll is being launched before doing so, to ensure that everyone who is there can/will respond to the poll. If there is an issue with responding to the attendance poll, the attendee would need to **immediately notify the Administrative Support person** in the course via the chat function in the zoom platform. That way we can immediately resolve any issues and give the attendee credit for being in attendance for the poll. Notifying us hours or days after having an issue with not being able to complete the attendance poll will not allow us to give the attendee credit for being in class during the poll.

Our classes qualify for credit toward a Master's Degree at New England College (and regardless if you decide to seek credit or not, but accreditation requirements mandate that we follow the same standards for all class attendees), so we have strict attendance standards that we follow for issuance of a certificate, which equates to verification that the participant attended the complete class. For DSA and NACCOP, issuance of a Certificate of Completion is verification of that fact.

If the attendee missed class for a legitimate reason, that doesn't mean that an attendee wasn't there for much of the class and that they didn't benefit from that attendance. It just means that based on the missed time and/or attendance polls (in virtual classes only), we aren't able to issue you a certificate of completion.

If an attendee has to miss time in class, the instructions attendees receive before the class provide instructions for notifying the Administrative Support person about the time that will be missed **IN ADVANCE**, so we can jointly identify what blocks of instruction will be missed, and the DSA/NACCOP team will then work with the attendee to see if we can get them in a future class module to make up that material, which would result in us being able to issue the attendee a certificate. We provide this service and opportunity at no additional cost, as we want each attendee to finish the class and get a certificate of completion. Effective communication by each attendee is the key to this option.



Catherine Cocks, M.A.
Consultant, Student Affairs, Title IX, and
Equity Compliance Services



Ms. Cocks has been a higher education professional for over thirty years. Her work with D. Stafford & Associates focuses on Title IX investigations and training; assessment of student affairs policies, practices and services; and behavioral threat assessment. Cathy was the Director of Community Standards for the University of Connecticut for 14 years where she managed the student conduct process, which included managing all Title IX cases involving student respondents and chaired the University's student threat assessment team. Prior to that, she held several positions within Residential Life at the University of Connecticut and Roger Williams University.

She is a faculty member for the Association for Student Conduct Administration's (ASCA) Donald D. Gehring Academy teaching on subjects such as ethics, governance, threat assessment, media relations, and higher education trends. She was an affiliated faculty

member for many years in the University of Connecticut's Higher Education and Student Affairs Master's program teaching "The Law, Ethics, and Decision-Making in Student Affairs."

Cathy has co-authored the "Philosophy of Student Conduct" chapter in the 2nd edition of "Student Conduct Practice" (2020) and was a member of the writing team for CAS Standards' Cross-functional Framework for Identifying and Responding to Behavioral Concerns.

Cathy is a Past President of ASCA. She has also served as a Circuit representative, co-chair of the Public Policy and Legislative Issues Committee, and as a member of the ASCA Expectations of Members Task Force. Cathy has served in a variety of leadership roles in NASPA Region I.

She was the 2015 recipient of ASCA's Donald D. Gehring Award. She is a past recipient of the NASPA Region I Mid-Level Student Affairs Professional Award and the NASPA Region I Continuous Service Award.

She earned her Master's degree in Higher Education Administration from the University of Connecticut and Bachelor's degree in Communications/Media from Fitchburg State University.



Beth Devonshire, Consultant
Equity Compliance and
Title IX/Civil Rights Training



Beth Devonshire, J.D. is an experienced student affairs professional with expertise in student conduct, Title IX, threat assessment teams, policy development, trainings for various constituencies, and the impact legislative and legal decisions have on higher education. From 2006-2018, Ms. Devonshire worked as the Associate Dean of Students at UMass Boston, the Director of Community Standards at Bridgewater State University, and the Director of Community Standards at Stonehill College. In these roles, Ms. Devonshire was charged with oversight of the student conduct systems, membership in CARE/BIT teams, serving as the Deputy Title IX Coordinator, and drafting policies and procedures related to students. Prior to her work in higher education, Beth served as a law clerk for the Justices of the Superior Court in Massachusetts and in multiple roles at the Massachusetts State House.

Ms. Devonshire has been an Associate with D. Stafford & Associates (DSA) since 2012 and she joined as a full-time consultant in August of 2018. In this role, Beth works with institutions on issues involving Title IX, Clery Act, threat assessment, and other compliance related issues; and advises on policy and procedures, conducts trainings, participates in investigations, reviews enforcement practices of campus law enforcement, and serves in interim roles. Ms. Devonshire also speaks on a variety of other topics including legislative and legal issues impacting higher education including FERPA, Clery, and Alcohol and other Drug Prevention.

Ms. Devonshire is a faculty member in New England College's Doctorate of Education Program and the Higher Education Administration program at Bridgewater State University. Additionally, Ms. Devonshire serves on the Public Policy Division for NASPA, and is also the former Massachusetts Public Policy Liaison for MA NASPA. Beth also served as the Director of the Legislative Committee for the Association for Student Conduct Administrators (ASCA) for two years.

Ms. Devonshire is a member of the Massachusetts Bar. She is a graduate of Stonehill College with a degree in English and Secondary Education and holds a J.D. from Suffolk University School of Law. She is also a trained mediator.



Adrienne Meador Murray, Executive Director,
Equity Compliance and Civil Rights Services



Adrienne Meador Murray began her career in municipal law enforcement as a civilian employee with the City of Richmond Police Department (Virginia). She graduated from the Virginia Commonwealth University Police Training Academy and began her career as a sworn police officer for the University of Richmond (UR) Police Department (Virginia). At UR, Murray progressed through the ranks from a night shift patrol officer to Operations Lieutenant (overseeing criminal investigations, crime prevention and patrol) over the span of a decade before becoming the Chief of Police at Davidson College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.). In January 2014, Murray joined the National Association of Clergy Compliance Officers & Professionals (NACCOP) and serves as the Director of Training and Compliance Activities and D. Stafford & Associates (DSA) where she currently serves as Executive Director, Equity

Compliance and Civil Rights Services after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012.

As the Executive Director, Equity Compliance and Civil Rights Services for DSA, Murray builds on her 17-year career in law enforcement in which she became a nationally recognized expert in the field of best practice postsecondary institutional response to the sexual victimization of college women in the United States and in Canada. She is also a trained civil rights investigator and is well respected throughout the country for her ability to aid institutions in understating how to do best practice criminal and civil rights investigations concurrently. She is well known for her work in having provided support, advocacy and criminal investigative services for victims of sexual assault, stalking and intimate partner violence and is a sought-out speaker and investigator. She has expertise in the construction of best practice law enforcement standard operating procedures and training police officers to respond in best practice and trauma-informed ways to victims of sexual assault and intimate partner violence. In her current role, Murray coordinates curriculum development and instruction for national classes, including basic and advanced sexual misconduct investigation classes; an investigation of dating violence, domestic violence and stalking class; and a Title IX Coordinator/Investigator class offered through D. Stafford & Associates. To date, Murray has trained more than 3,500 criminal and civil rights investigators throughout the U.S.

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA



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Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based trainings pertaining to the resolution of sexual misconduct offenses on college and university campuses. Murray frequently presents at regional and national conferences on topics such as the *Sexual Victimization of College Women*, *Understanding Consent and Incapacitation*, and *Responding to Sexual Assault on Campus: Clery Act and Title IX Implications*. Murray also conducts provincially specific sexual misconduct trainings throughout Canada.

Murray is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management and of New England College, where she received her Master's Degree in Campus Public Safety Administration. Murray is also a graduate of the 235th session of the prestigious FBI National Academy where she was awarded a graduate certificate in Criminal Justice from the University of Virginia. She has authored numerous journal articles.



Ann Todd

Consultant, Equity Compliance and Civil Rights Investigations



Ann Todd, Esq is a seasoned civil rights investigator in higher education for D. Stafford & Associates (DSA). Ms. Todd is a graduate of Davidson College with a degree in psychology and holds a JD from the University of Nebraska. Prior to joining DSA, she practiced law in Charlotte, NC, specializing in employment and civil rights and worked for a number of non-profit organizations. She returned to her alma mater (Davidson College) in 2008 and worked there through March of 2016 serving as the Assistant Director of Human Resources with the responsibility of managing employee relations and the learning and development function while also serving as the deputy Title IX Coordinator.

Ms. Todd joined the DSA in 2015 and currently serves as the Consultant, Equity Compliance and Civil Rights Investigations. She is the Senior Investigator for the DSA Title IX Investigation Team. She conducts external investigations on behalf of colleges and universities, specializing in investigating student allegations of sex discrimination, sexual assault, intimate partner violence, and stalking. Additionally, she brings a strong Human Resources background to investigating a range of employee misconduct—from performance issues to discrimination.

In addition to conducting investigations, Ms. Todd is a frequent speaker and consultant on Title IX investigations, conducting 20-30 courses every year on best practices for investigating sex discrimination and sex crimes on campus. She works with schools to draft policies and processes that provide equity and fairness to



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all parties involved and is adept at facilitating discussions with institutions to ensure the end product represents the values of the campus community.

Ms. Todd is licensed private investigator and a member of the NC Bar. She is a Certified Clery Compliance Officer through the National Association of Clery Compliance Officers and Professionals (NACCOP) and she is also a certified 360 facilitator through the Center for Creative Leadership. Ms. Todd lives in Davidson, NC where she volunteers on a number of local and town boards.



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Agenda

- The Title IX Grievance Process (2020 Regulations)
- Appeal Basics
- Types of Appeals
- Making a Determination
- Appeals Gone Wrong
- Serving Impartially

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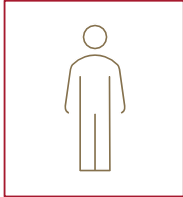
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Definitions: Parties/Witnesses



- Complainant
- Respondent
- Witnesses

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Definition of Sexual Harassment under Title IX



Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. 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 recipient's education program or activity;
3. "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).

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PRONG 1: Quid Pro Quo



- Must be an employee (not volunteer, visitor, student)
- "This for that" harassment
- When favorable professional or educational treatment is conditioned on a sexual activity

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Severe, Pervasive AND Objectively Offensive (Higher threshold than Title VII Sexual Harassment)

First Amendment protections

Not a zero tolerance policy

PRONG 2: Hostile Environment+ (The *Davis* Standard)

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Sexual Assault

- Rape
- Fondling
- Incest
- Statutory Rape

Intimate Partner Violence

- Dating Violence
- Domestic Violence

Stalking (sex-based)

PRONG 3: The VAWA Offenses

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Jurisdiction of Person

“At the time of filing a formal complaint...the complainant must be participating in or attempting to participate in the education program or activity”

The institution must exercise control over the Respondent

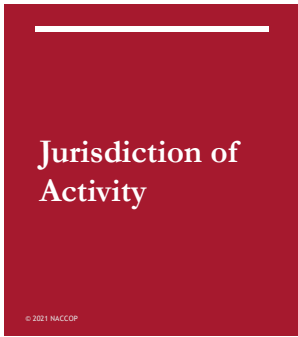
All regulations apply to students and employees



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- Behavior must occur as part of the "education program or activity"
 - Locations, events, or circumstances over which the recipient exercised substantial control over the context in which the sexual harassment occurs
 - Any building owned or controlled by a student organization that is officially recognized
- Must occur in the United States (including US territories)

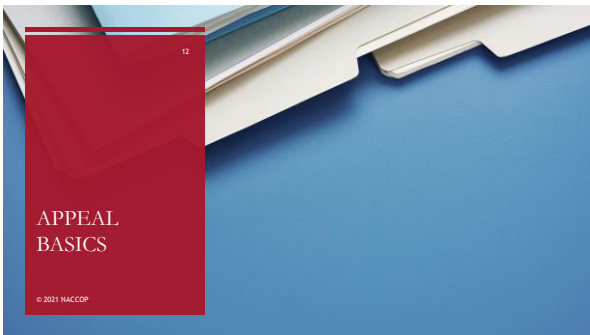
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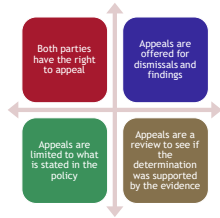
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Key Points of Appeals



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Appeals are Not...



A substitute for another's judgment



Political decisions

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Who is the Appeals Officer?



- Separate role
- Trained
- Conflict of interest or bias

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Policy Determinations



Findings and sanctions on hold



Grounds for appeal



Timing

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Procedural Determinations



How are you accessing information?



Who is sharing information with the parties?



Who is communicating with the parties/advisors?

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Timelines



Deadline for appeal



Submission of written statements



Written decision

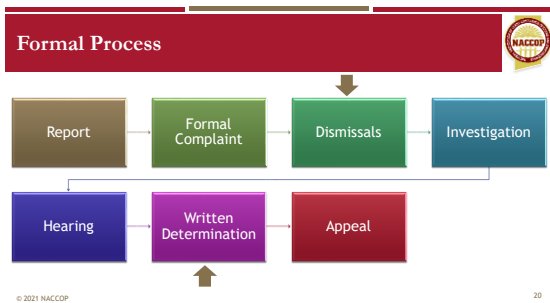
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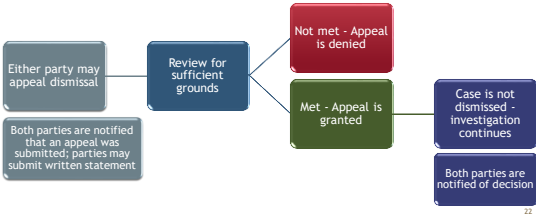
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§106.45(b)(3) Dismissal of a Formal Complaint

Must dismiss:	May dismiss:
<ul style="list-style-type: none"> Behavior does not constitute sexual harassment Did not occur in educational program or activity, not in the United States 	<ul style="list-style-type: none"> Complainant withdraws formal complaint Respondent no longer enrolled/employed Insufficient evidence

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Appeal of Dismissal



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Examples of Appeals Based on Dismissal

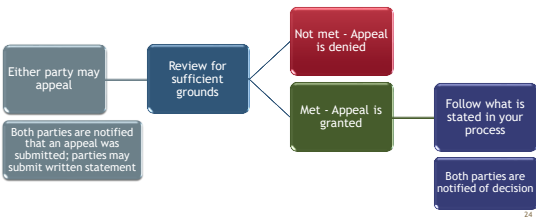


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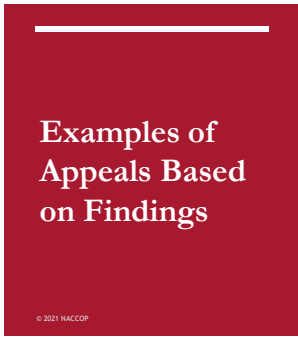
Appeal of Result



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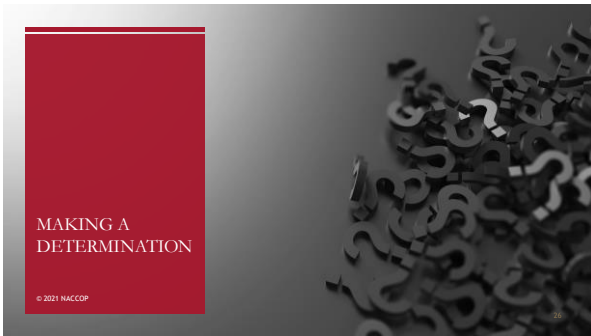
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- Erroneous relevancy determinations regarding evidence
- The hearing was not recorded or transcribed
- Advisors were not permitted to ask relevant questions
- The board members were biased against a party
- The written determination relied on statements from parties who did not participate
- The decision was erroneous and the board members were negligent in making their determination

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 Investigation Report
- 
 Written Responses
- 
 Audio/Video
- 
 Written Determination
- 
 Appeal statements

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Basis of Appeal



Procedural irregularity that affected outcome



New evidence that could affect the outcome



Conflict of interest or bias that affected the outcome



Additional Grounds are permitted (must be in policy)

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Appeal Determinations



Does the appeal state appropriate grounds?

Does the information in the appeal meet grounds?

What is the institution's response?

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Stating the Appropriate Ground



Does it state an appropriate ground?

Who makes this determination?

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Examples of "Stating a Ground"

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- I completely disagree with this decision.
- This decision is wrong and I believe that my coach had it out for me since I got here (the coach was not an investigator or decision-maker).
- I was not given proper notice, nor was I contacted to participate in this investigation. I only found out about the hearing when my mother emailed me to check my emails because I had not thanked my grandmother for the birthday gift she sent me.
- I am appealing based on new information as it was not until after the hearing that I was provided the phone records that I had requested.

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Meeting the Grounds



What information is provided?

Did it or could it "affect the outcome?"

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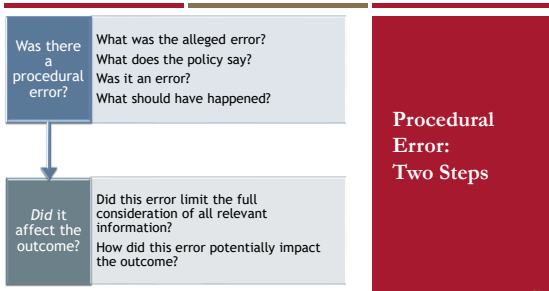
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PROCEDURAL ERROR


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Examples



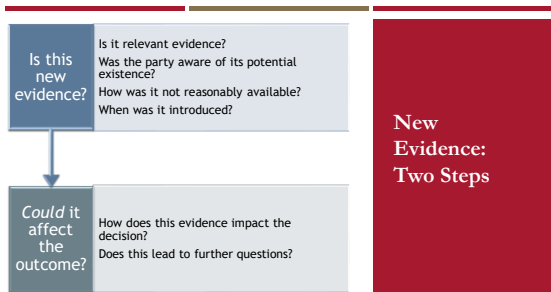
Example	What information do I need?	How does it impact the outcome?
The respondent was not provided proper notice prior to meetings	Notice documents, investigation report, written responses	Is the allegation true? If so, did the decision impact the outcome? How?
The decision-maker did not allow a party to ask relevant questions	Audio of hearing, relevancy determinations, explanation	Is the allegation true? Did it impact the outcome? How?
The DM relied on statements of a party who did not participate	Investigation report, audio of hearing, written determination	Is the allegation true? Did it impact the outcome? How?
The hearing was not recorded	Audio or transcript of the hearing	Is the allegation true? Does it impact the outcome?

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Examples

Example	What information do I need?	How does it impact outcome?
Social media posts that were available during the investigation	Your policy statement, investigation report, written responses	Is it new evidence? Is it allowed? Could it impact the outcome?
Text messages that were not available during the investigation	Your policy statement, investigation report, written responses	Is it new evidence? Is it allowed? Could it impact the outcome?
Information or a statement that was not subject to cross-examination at the hearing	Your policy statement, investigation report, written responses, audio of hearing	Is it new evidence? Is it allowed? Could it impact the outcome?

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Was there a conflict of interest or bias?	What is the conflict or bias? What is the evidence that there was a conflict or a bias? Was it previously raised?	Conflict of Interest or Bias: Two Steps
<i>Did it affect the outcome?</i>	How does conflict or bias impact the decision?	

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Examples

Example	What information do I need?	How does it impact outcome?
The investigator is a Director of the Women's Center	Notice documents, investigation report, written responses	Is the allegation true? Is there information to support claim of bias/conflict? If so, did the decision impact outcome? How?
All of the decision-makers are white, and I am a student of color	Notice documents, investigation report, written responses	Is the allegation true? Is there information to support claim of bias/conflict? If so, did the decision impact outcome? How?
The Title IX Coordinator "talked me into dismissing" my complaint	Notice documents, dismissal letter	Is the allegation true? Is there information to support claim of bias/conflict? If so, did the decision impact outcome? How?

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OTHER
GROUNDS

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Possible Additional Grounds



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Evaluating the Sanction Imposed



- This is not whether you agree with the sanction.
- Was a consistent decision-making process used to determine the sanction or corrective measure?



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Response to the Appeal

Denied

- No further process

Granted

- Procedural irregularity - what is the process to remedy error?
- New Evidence - does the case return to decision-maker?
- Conflict of interest or bias - what is the process to remedy error?

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Written Determination Requirements



The result



Rationale



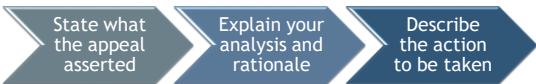
Simultaneous notification

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Articulating the Decision



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Doe v. Baum, 903 F.3d 575 (6th Cir. 2018)



- "The case went up to the university's Appeals Board, and a three-member panel reviewed the investigator's report. After two closed sessions (without considering new evidence or interviewing any students), the Board reversed. Although the Board found that the investigation was fair and thorough, it thought the investigator was wrong to conclude that the evidence was in equipoise. According to the Board, Roe's description of events was 'more credible' than Doe's, and Roe's witnesses were more persuasive. As a result, the university set the investigator's recommendation aside and proceeded to the sanction phase."
- "Specifically, the Board credited exclusively female testimony (from Roe and her witnesses) and rejected all of the male testimony (from Doe and his witnesses). In doing so, the Board explained that Doe's witnesses lacked credibility because 'many of them were fraternity brothers of [Doe].' But the Board did not similarly note that several of Roe's witnesses were her sorority sisters, nor did it note that they were female. This is all the more telling in that the initial investigator who actually interviewed all of these witnesses found in favor of Doe. The Board, by contrast, made all of these credibility findings on a cold record."

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Furey v Temple, 730 F. Supp. 2d 380 (E.D. Pa. 2010)



- "Presentation of evidence to the decision-making body outside the presence of the accused can be a due process violation...Ex parte conversations are a due process violation if 'the integrity of the process and the fairness of the result' is tainted by the communication."
- "The role of the Review Board, composed of students, faculty, and an administrator, who review the whole record and consider the allegations of error from the student is an important procedural safeguard against error. It is part of a detailed and comprehensive process to get to the truth of the alleged conduct. That whole process falls apart if the decision maker does not give the recommendations of the Review Board the deference required. Here, [the decision maker] not only did not give presumptive weight to the recommendations of the Review Board, but he was not able to articulate the reasoning for his rejection of the Review Board's recommendations and acceptance of those of the Hearing Panel."

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Avoiding Prejudgment of Facts



Open mind



Listen



Objective



Neutral

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CONFLICT OF INTEREST

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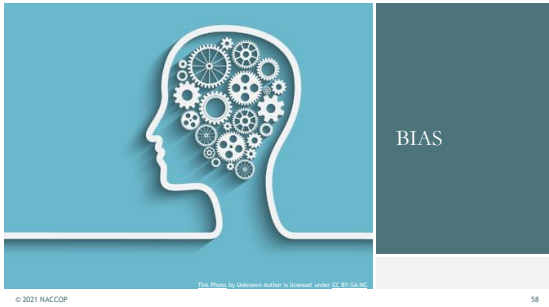
Conflict of Interest



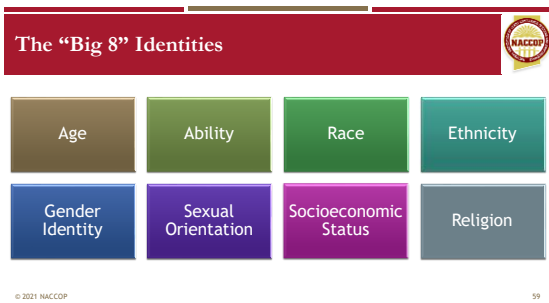
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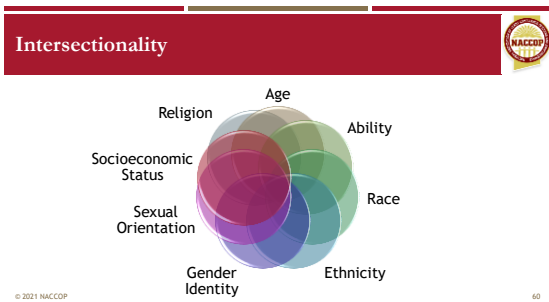
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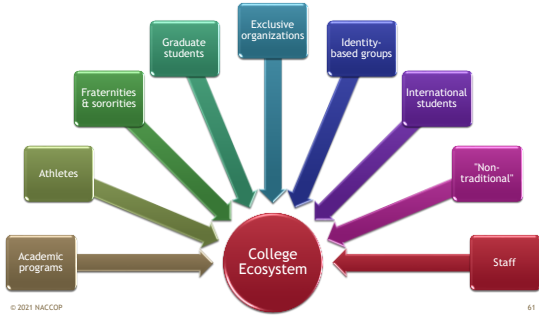
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Be A Bulldozer



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