

Appellate Officer Refresher Training

Equity and Compliance Programs
Spring 2024

Overview

In this training, we will learn about:

- The Role of an Appellate Officer
- The Appellate Process
- Drafting the Decision
- Practice Scenario

Title IX Administration in Equity & Compliance Programs



Alexis Martinez, EdD, JD
Executive Director, Interim
Title IX Coordinator
Alexis.martinez@gatech.edu



Kendra Brown, J.D.
Assistant Title IX
Coordinator
Kendra.brown@gatech.edu



Reona Blankumsee, M.S.
Equity Investigator
Reona.blankumsee@gatech.edu



(P) 404.317.2270

Content Warning

The presentation content contains scenarios, topics and descriptions that may be offensive or triggering.



Primary Functions of an Appellate Officer

- Be a neutral decision maker who gives a fair and unbiased review of the matter
- Be familiar with the GT Sexual Misconduct Policy and Formal Grievance process
- Review the information provided in appeals packet
- Catch errors and ensure that the underlying investigation and adjudication process was fair and thorough.
- Write an appellate decision letter



The Appeal Process

Formal Grievance Process



Equity and Compliance Programs

Supportive measures are available to all parties throughout the duration of this process.

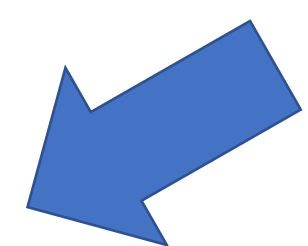
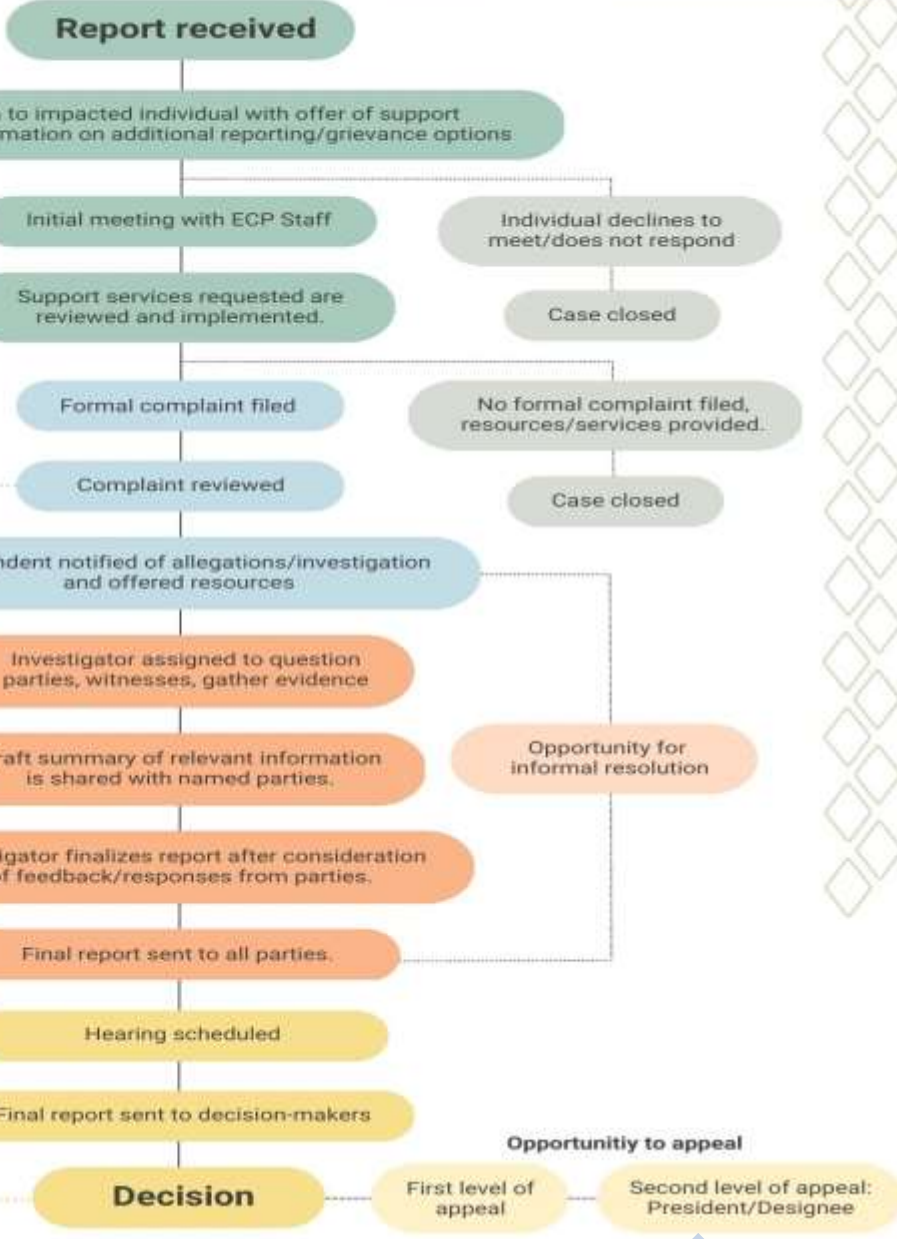
Assessment

If complaint doesn't meet policy requirements, it may be dismissed or referred for review under other Institute policy.

Investigation Period

Adjudication Period

If no appeal, decision is final and case closed.



Appeal Process

The Institute must offer both parties an appeal from a determination regarding responsibility – Responsible/Not Responsible

- Offered to Complainant
- Offered to Respondent

The party seeking appeal must submit the appeal

- In writing
- within 5 business days of the written decision issued to the parties

34 CFR 106.45(b)(8)

Student Appeals

- Appeal submitted to the Office of Student Integrity for processing
- OSI notifies non-appealing party of appeal and provides copy of appeal to non-appealing party
- Non-appealing party is given 5 business days to submit a response

1st Level:

- Associate Vice President/Dean of Students or Designee
- Decision issued within a "reasonable time period," typically 10 business days

2nd Level:

- Must be submitted within 5 business days of issuance of appellate decision
- OSI notifies non-appealing party of appeal and provides copy of appeal to non-appealing party
- Non-appealing party is given 5 business days to submit a response
- Appeal goes to the President or Designee
- Designee is normally the Vice President for Student Engagement and Well-Being but can be others in case of conflict or unavailability
- Decision issued within a "reasonable time period," typically 10 business days.
- This represents the final Institutional Decision.
- Sanctions, if imposed and upheld, take effect

3rd Level:

- Discretionary appeal to BOR

Employee Appeals

Appeal submitted to Hearing Coordinator – Human Resources ("HC_HR") for Processing.

- HC-HR notifies non-appealing party of appeal and provides copy of appeal to non-appealing party
- Non-appealing party is given 5 business days to submit a response

Staff

Faculty

1st Level:

Chief Human Resources Officer

1st Level:

Provost

Appellate decision shall be simultaneously issued in writing to the Complainant and the Respondent within a reasonable period, usually not exceeding twenty (20) business days, with a copy to the Title IX Coordinator.

2nd Level:

President

- Appeal must be submitted to HC-HR w/i 5 business days of 1st Level decision
- HC-HR notifies non-appealing party of appeal and provides copy of appeal to non-appealing party
- Non-appealing party is given 5 business days to submit a response

- President's decision shall be simultaneously issued in writing to the parties within a reasonable period, usually not exceeding twenty (20) business days, with a copy to the Title IX Coordinator.

- Final Decision of the Institute

3rd Level:

- Discretionary appeal to BOR

Appeal Packet (Student)

- Includes general information such as the student's name, the date the appeal was sent out, the date the appeal is due
- Student's Appeal
- Parties' response to Appeal (if applicable)
- Hearing Packet
- Student's Disciplinary History (if applicable)

Appeal Packet (Employees)

- Includes general information such as the Employee's name, the date the appeal was sent out, the date the appeal is due
- Employee's Appeal
- Parties' response to Appeal (if applicable)
- Hearing Packet
- Employee's Disciplinary History (if applicable)



slido



Can you name the three basis for appeals?

① Start presenting to display the poll results on this slide.

3 Basis for Appeals

1. **New information** or evidence that was not available at the time of the original hearing
2. **Procedural Error** that may have substantially impacted fairness or the outcome
3. **Finding inconsistent** with weight of information

**Appeals are not a do-over. There are limited bases on which a party can appeal.

(1) Grounds for Appeal: New Information/ Evidence

- Evidence or information that was **not known or knowable** to the person appealing **during the time of the investigation (or hearing)**; and
- That could affect the outcome of the matter ("**new information that is sufficient to alter the decision**")
- Could include evidence not found by investigator

Appeal officers should determine:

- (1) Was this information **not reasonably available at the time** of the hearing?
- (2) Would the new information be **sufficient to alter the decision**?

(2) Grounds for Appeal: Procedural Error

Procedural error within the **hearing process** that may have **substantially impacted** the fairness of the hearing (or appeal).

The procedural error must be material, meaning it had the potential to impact the outcome.

Examples:

- A failure to follow the Institute's procedures;
- A failure to objectively evaluate all relevant evidence, including inculpatory or exculpatory evidence;
- A determination regarding what evidence was excluded as irrelevant -- Did the Decision Maker improperly exclude any hearing questions that could have impacted the outcome?
- Conflict of interest or bias -- Was the decision tainted by a conflict of interest or bias on the part of the Title IX Coordinator, Conduct Officer, investigator(s), and/ or decision makers(s).

(3) Grounds for Appeal: Finding is inconsistent

- The finding was inconsistent with the **weight of the information**.
- This is one of the most commonly used basis for an appeal.

Appellate officers should:

- (1) Examine the information the appellant provides that addresses why the finding is inconsistent; and
- (2) Keep in mind the appeals process is designed to ensure the investigation and adjudication process was fair and thorough and is not an opportunity to second guess a decision, absent material error.

slido



The Respondent has submitted an appeal and contends that in the decision letter, the hearing panel only gave weight to the information cited during the hearing and ignored much of the information cited in the investigative report.

Does this appeal have a legitimate basis?

① Start presenting to display the poll results on this slide.

Drafting the Written Decision

Drafting the Written Decision

Appeals are:

- a review of the record only
- no new meeting with the Respondent or any Complainant is required

Appellate Decision Maker's Options:

- (1) **Affirm** the original sanction and finding
- (2) **Affirm** the original finding but **issue a new sanction** of greater or lesser severity
- (3) **Remand** the case back to any lower decision maker/investigator to correct a procedural or factual defect
- (4) **Reverse or dismiss** the case if there was a procedural or factual defect that cannot be remedied by remand.

Appellate Decision Letter Sections

- Introduction
- Guidelines and Process for Appeal
- Basis for Appeal
 - Summarize the claims
- Analysis for the Appeals Claims
 - Address each claim
 - You may organize the claims by the basis for appeal
- Notification of Decision
- Second Appeal/ Discretionary Review



Analysis for the Appeal Claims and Notification of Decision

Analysis of the Appeal Claims:

Introduction to the analysis

Appeal Basis #1

- Introduction of new information:
 - Analysis of each claim dealing with Introduction of New Information

Appeal Basis #2

- Procedural Error:
 - Analysis of each claim dealing with Procedural Error

Notification of Decision: affirm the original findings and decision/remand/change.

Drafting Appeal Decisions

What should appellate decision makers be considering when reviewing and drafting appeal decisions?

- Understand the applicable grounds for appeal
- Have an open mind (objectively make a determination as to whether the grounds for appeal have been established)
- Address all claims raised (each point) and articulate why they did/did not necessitate the outcome requested (ex., new hearing, or the findings be overturned)
- Be guided by applicable policy and facts

When may you remand?

Appeals granted for **procedural error** or **new evidence** should be remanded back to the original investigator and/or decision-maker (hearing panel or adjudicator) for reconsideration.

Appellate Decision Maker should:

- Provide rationale and specific instructions defining the scope of the issues.
- Include instructions for returning the case to the appellate Decision Maker, if appropriate (e.g., revised findings)
- Appeal Decision Maker makes a final determination.

When may you order a new hearing?

In rare cases where a procedural error cannot be cured (as in cases of bias) the appellate decision maker may order a new hearing.

- May prescribe a new decision-maker
- Decisions from any new hearing may be appealed

Note: Where an appeal results in reinstatement of privileges for a Respondent, all reasonable attempts should be made to restore the Respondent to his or her prior status.



Complainant Barker appeals a finding that Respondent Shaw **did not** violate the GT Sexual Misconduct Policy. The decision letter stated that Respondent Shaw was “not responsible” for the charge of Stalking.

Complainant Barker appeals the finding on the following grounds:

- Complainant Barker states that the Title IX Coordinator failed to meet with them to discuss the availability of supportive measures and their request for academic modifications. Due to this oversight, Complainant Barker contends that they were unable to adequately prepare for the hearing as they were bogged down in academics.
- Complainant Barker states that the Hearing Panel was biased since the panel was compromised of two men and one woman. Additionally, the appeal stated that the hearing panel failed to address the group messages between the Complainant and two witnesses that discussed the effect the Respondent’s actions had on the complainant in their day-to-day life. The messages spoke to how the complainant was scared to be on campus and spent majority of the day in their apartment having panic attacks.
- Complainant Barker states that another student named “G” has stepped forward alleging that the Respondent displayed the same behaviors towards them. Complainant Barker would like to add G as a witness to the investigation as G has new evidence that was not available at the time of the investigation. Complainant Barker and G met after the hearing concluded. It was at that time G shared with Complainant Barker that the Respondent exhibited the same behaviors towards them as well.

Questions?/Contact Us!

**Office of Equity and Compliance
Programs**

Paper Tricentennial Building

**500 10th Street NW, Atlanta, Georgia
30332**

(P) 404.317.2270

(E) Titleix@gatech.edu