



D. STAFFORD
& ASSOCIATES

Appellate Officer Class

Presented by:

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

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The Appellate Officer

- The Title IX Grievance Process
- Appeal Basics
- Types of Appeals
- Making a Determination
- Appeals Gone Wrong
- Serving Impartially
- Case Study



TITLE IX

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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, Associate



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. In August 2022, she joined Wentworth Institute of Technology and currently serves as the Associate General Counsel. 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 was a full-time consultant from August of 2018 to August 2022. 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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Training for Decision-makers



- Definition
- Scope of program or activity
- Grievance process
- Impartiality
- Technology
- Relevancy of questions and evidence

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Definitions



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Definitions: Parties/Witnesses




- Complainant
- Respondent
- Witnesses

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Definitions: Title IX Personnel





- Title IX Coordinator
- Investigator
- Decision-Maker
- Informal Resolution Facilitator

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Definitions: Advisor





- Parties may have an advisor of choice
- Can be accompanied to any related meeting or proceeding by the advisor of their choice
- Can't limit the choice of advisor
- Institutions may establish equally applied restrictions regarding the extent to which the advisor may participate in the proceedings

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Definitions: Key Terms





- Actual Knowledge
- Formal Complaint
- Supportive Measures

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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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PRONG 2: Hostile Environment+ (The Davis Standard)







-  No definition of consent required
-  Not the same Title VII "hostile environment" or 2001 Guidance
-  First Amendment protections

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PRONG 3: The VAWA Crimes



 Sexual Assault	Rape Fondling Incest Statutory Rape
 Intimate Partner Violence	Dating Violence Domestic Violence
 Stalking	

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Definitions - Consent

The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault.

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Retaliation

- Cannot intimidate, threaten, coerce, or discriminate others
- MAY use the same grievance procedure
- First Amendment considerations

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Program & Activity

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Title IX Sexual Harassment Jurisdiction

Occurred in the context of educational program or activities (Online)

Occurred in the United States

Control over the Respondent

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Scope of Program and Activity


- The term “program or activity” and the term “program” mean all of the operations of -
 - a college, university, or other postsecondary institution, or a public system of higher education...
 - any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 1681 of this title to such operation would not be consistent with the religious tenets of such organization.


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
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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

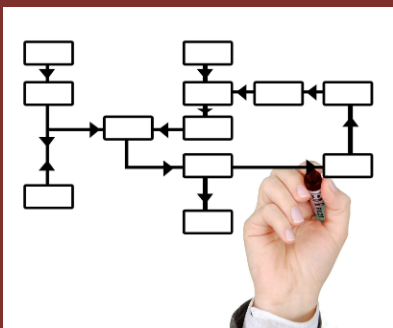
 All regulations apply to students and employees

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Process





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Formal Complaint





Signed formal complaint



Complainant or Title IX Coordinator




Complainant **MUST** be participating in the education activity at the time of filing

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Dismissal of Formal Complaints



Must Dismiss

- Behavior does not constitute sexual harassment
- Did not occur in educational program or activity or not in the United States



May Dismiss

- Complainant withdraws formal complaint
- Respondent no longer enrolled/employed
- Insufficient evidence

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Notice Requirements

Grievance process	Sufficient details and sufficient time to prepare	Identities of the parties, alleged conduct	Date and location of incident
Presumed not responsible	Advisor of choice	False statements	Additional allegations

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Post-Notice Timeline


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    graph LR
      A[Investigation] --> B[Preliminary Report]
      B --> C[Parties may provide written response]
      C --> D[Final Investigative Report]
      D --> E[Parties may provide final written response]
      E --> F[Resolution (hearing or informal resolution)]
  
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Investigations and Evidence Gathering



- Burden of proof on the recipient
- Equal opportunity to present witnesses and facts
- No restrictions on discussing allegations

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Advisors

<p>Investigation</p> <ul style="list-style-type: none">■ May accompany party to investigation meetings■ Receives preliminary and investigative reports	<p>Hearing</p> <ul style="list-style-type: none">■ Institutions must provide an advisor if a party does not have one at hearing■ Conducts cross examination of witnesses and opposing party
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Hearings

 <p>Live hearing</p>	 <p>Cross-examination</p>
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Evidentiary Standard



<p>Clear and Convincing</p> <ul style="list-style-type: none"> ■ Substantially more likely than not to have occurred ■ High probability that a particular fact is true ■ Higher than preponderance, but not as high as “beyond a reasonable doubt” 	<p>Preponderance of the Evidence</p> <ul style="list-style-type: none"> ■ More likely than not ■ 50% and a feather
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Recordkeeping (Seven Years)





Case Materials



Training materials

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Relevancy



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When is Evidence Relevant?

Makes a fact more or less probable than it would be without the evidence

+

The fact is of consequence in determining the action

=

Relevance

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Key Relevancy Points

The evidence does not need to be conclusive

Is sufficient if it constitutes a link in the chain

Enough if in connection with other evidence, helps "a little"

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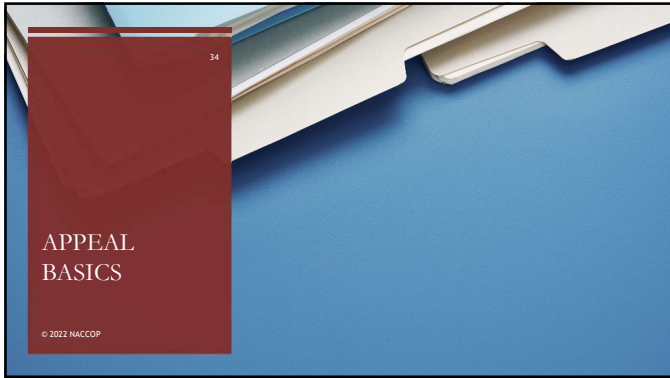
Relevancy Exceptions

"Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent."

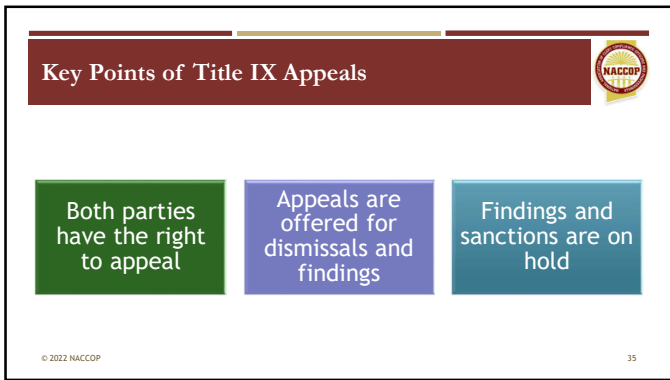
- 2020 Title IX Regulations

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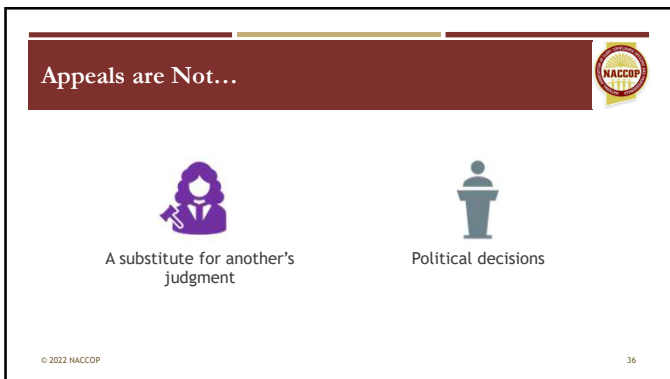
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Who is the Appellate Officer?





- Separate role
- Trained
- Conflict of interest or bias

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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



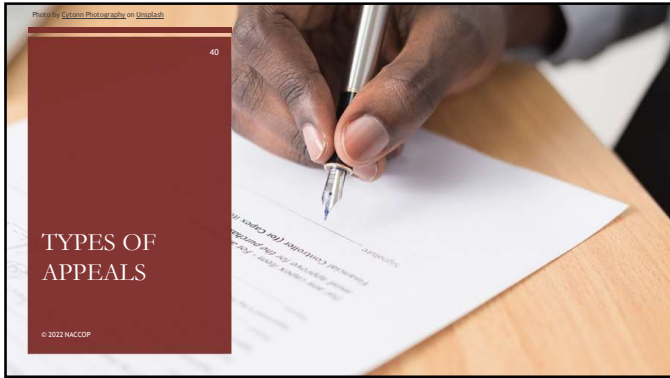
Submission of written statements



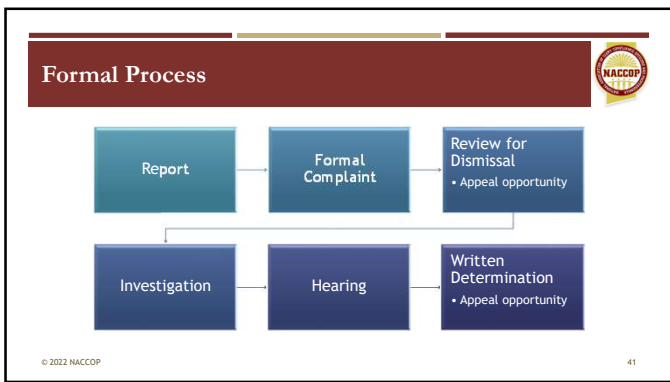
Written decision

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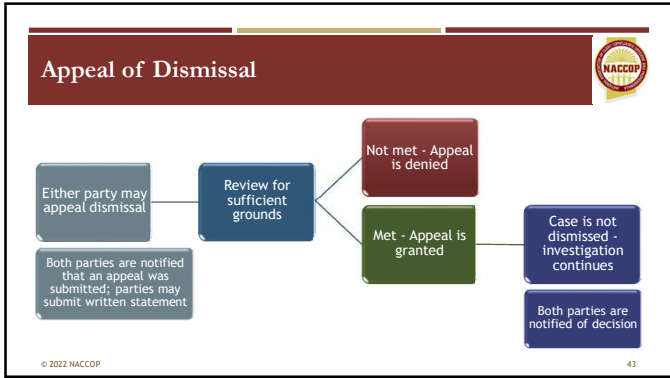


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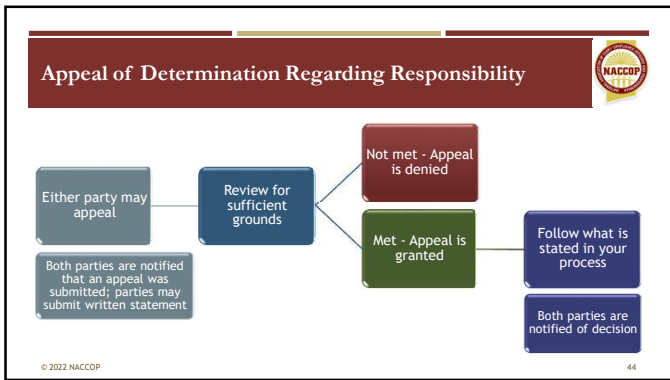
§106.45(b)(3) Dismissal of a Formal Complaint

Must dismiss: <ul style="list-style-type: none">Behavior does not constitute sexual harassmentDid not occur in educational program or activity, not in the United States	May dismiss: <ul style="list-style-type: none">Complainant withdraws formal complaintRespondent no longer enrolled/employedInsufficient evidence
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What about Emergency Removals?

“Nothing in this part precludes a recipient from removing a respondent from the recipient’s education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.”

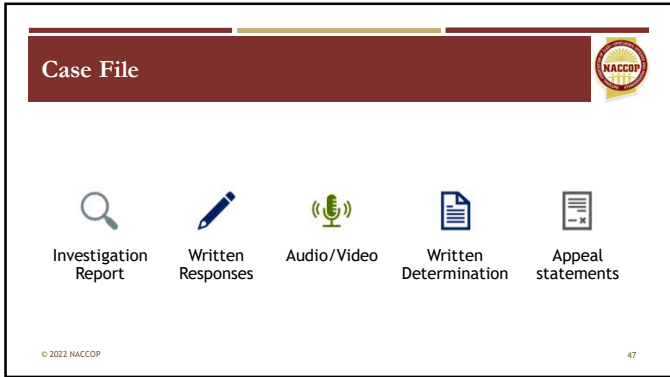
Who at your institution makes these challenges?

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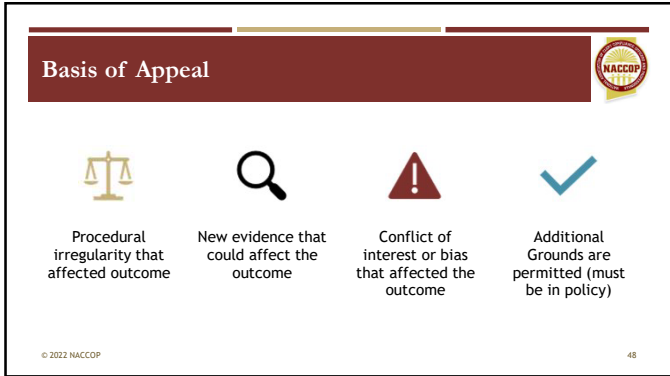
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Review for Appellate Grounds



Does the appeal state appropriate grounds?

Does the information in the appeal meet grounds?

What is the institution's response?

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PROCEDURAL ERROR

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Was there a procedural error?

- What was the alleged error?
- What does the policy say?
- Was it an error?
- What should have happened?

↓

Did it affect the outcome?

- Did this error limit the full consideration of all relevant information?
- How did this error impact the outcome?

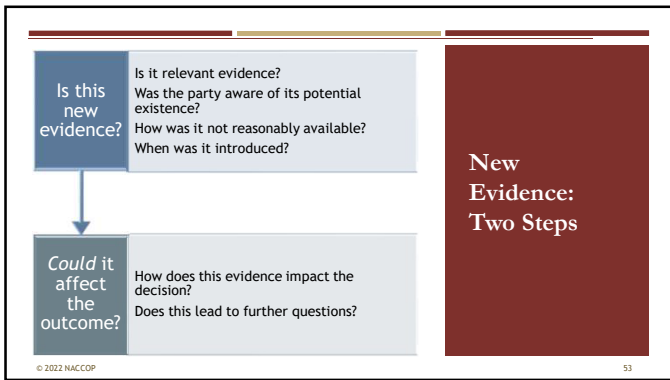
**Procedural Error:
Two Steps**

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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
Did it affect the outcome?	How does conflict or bias impact the decision?	


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	OTHER GROUNDS
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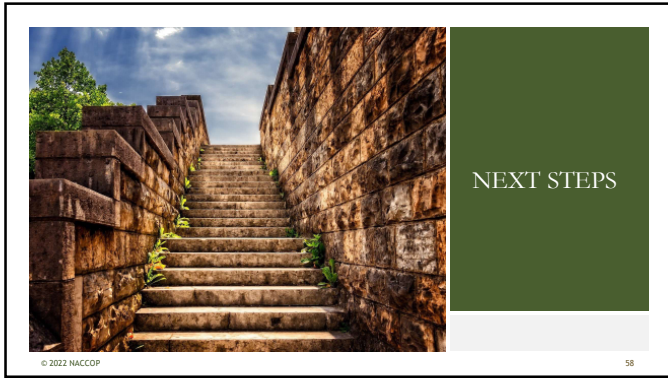
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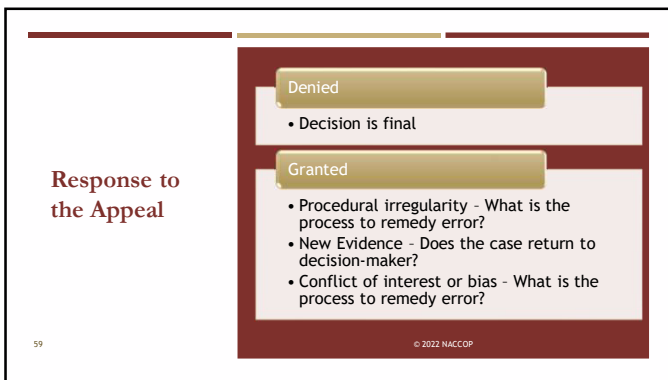
Possible Additional Grounds			
Sanction	Erroneous Outcome	Other	

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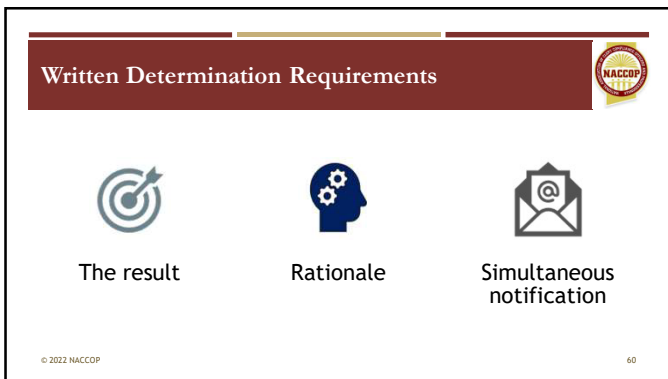
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Articulating the Decision 

State what the appeal asserted → Explain your analysis and rationale → Describe the action to be taken

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APPEALS GONE WRONG



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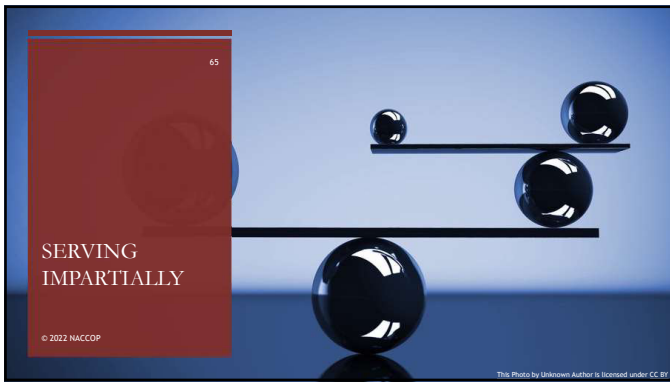
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Furey v Temple, 730 F. Supp. 2d 380 (E.D. Pa. 2010) 

- “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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SERVING IMPARTIALLY

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Serving Impartially 

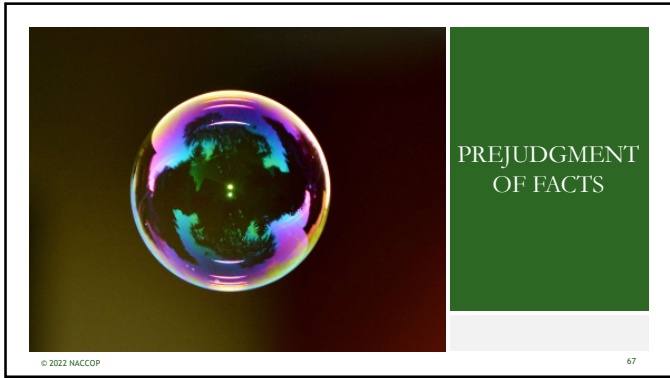
Prejudgment of facts

Conflict of Interest

Bias

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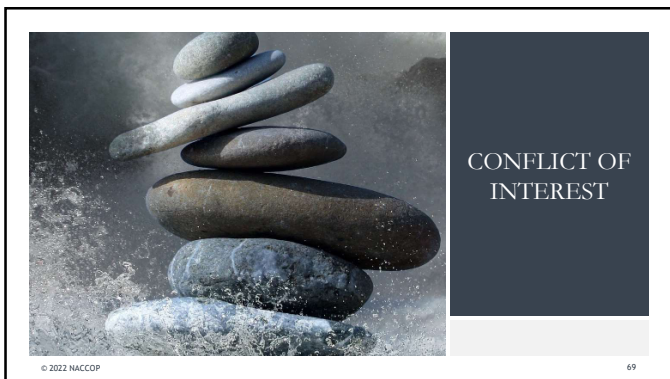
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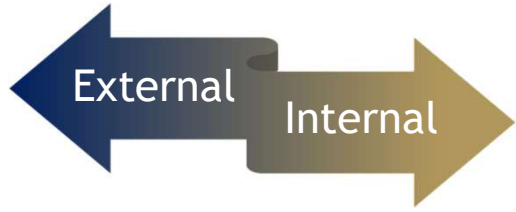



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Conflict of Interest



External Internal

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BIAS

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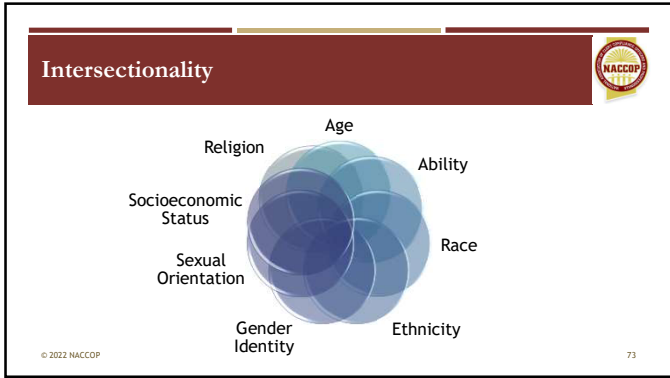
The "Big 8" Identities



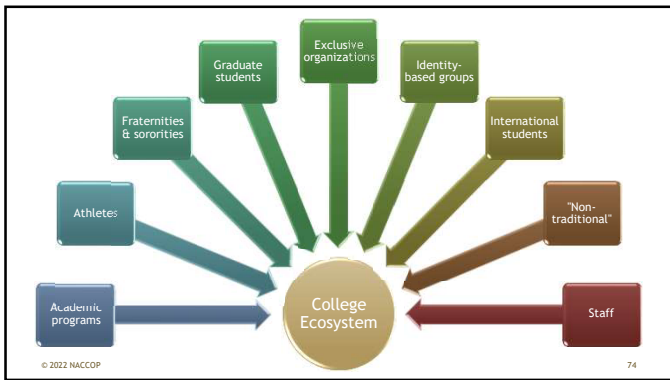
Age	Ability	Race	Ethnicity
Gender Identity	Sexual Orientation	Socioeconomic Status	Religion

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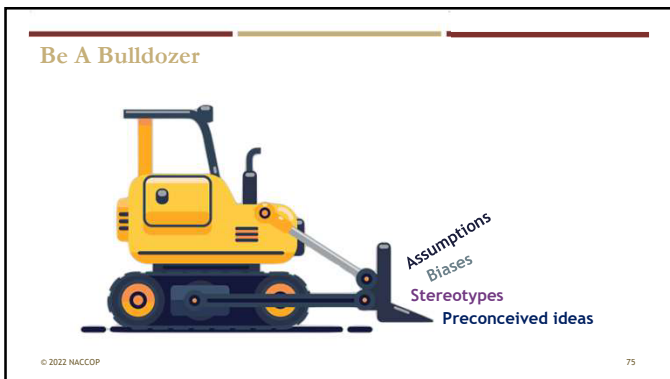
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The Appeal

- Breakout #1
 - What are the grounds that the appeal identifies?
 - Are those grounds to appeal within your policy?
- Report out
- Breakout # 2
 - Make a decision and write your analysis and rationale.

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