

Right to Appeal & the Appellate Process

Recusal of an Appellate Officer

- Appellate Officer **shall not have a Conflict of Interest or Bias** for or against Complainants or Respondents generally or an individual Complainant or Respondent.
- If an Appellate Officer feels that they have a Conflict of Interest or Bias, or cannot make an objective determination, **they must recuse themselves.**
- If recusal occurs, an alternate appointment shall be made by:
 - Title IX - Chancellor (or Designee)
 - Equity – Student, Student Organization or University Staff Respondents – Chancellor (or Designee)
 - Equity – Faculty, UM System Staff or University as Respondent – President (or Designee)

Appeals
under
600.030;
600.040 and
600.050

Both Parties are allowed to appeal:

- the dismissal of all or part of a Formal Complaint (Title IX),
- the summary determination ending the process (Equity), or
- the findings of the Administrative Resolution Decision or Hearing Panel* (Equity or Title IX).

*Administrative and Hearing Panel Resolution is not available for Title IX allegations raised in matters that arise out of an Academic Medical Center.

Appeals under 600.030, 600.040, and 600.050

Appeals are limited to the following grounds:

- a. **A procedural irregularity** that affected the outcome of the matter (e.g., material deviation from established procedure, etc.);
- b. **To consider new evidence** that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter;
- c. The Title IX Coordinator / Equity (HR) Officer, Investigator(s), or decision-maker(s) had a **conflict of interest or bias** for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; or
- d. The **sanctions fall outside the range typically imposed** for the offense, or for the cumulative conduct record of the Respondent.

Appellate Process

- Appeals are not full re-hearings and are intended to be deferential to original findings.
 - Record of the Case (i.e., investigative report, exhibits, recordings)
 - Written documentation (i.e., decision-maker(s) determination)
 - Relevant documentation regarding grounds for appeal
- Appellate Officer may grant reasonable extensions to deadlines in the appeal process to a Party, with notice provided to the other Party

Appellate Process

- Requests for appeal must be submitted in writing to Appellate Officer within 5 business days of delivery of notice of dismissal or written determination
- When any Party requests an appeal, opposing party will be notified and receive a copy of the request for appeal
- Non-appealing Party may file a response to the request for appeal within 5 business days of delivery of notice and copy of request for appeal
 - Sufficient grounds for appeal have not been met, and/or
 - Merits of the appeal

Appellate Process

- Appellate Officer will review Request for Appeal:
 - Is request timely?
 - Is appeal based on articulated bases for appeal?
 - If viewed in light most favorable to appealing Party, does the appeal state grounds that could result in an adjusted finding or sanction?
- If answer to these questions is no, appeal will be rejected.
- Decision to accept or reject an appeal will be made in writing within 15 days; otherwise, deemed accepted.
- If accepted, decision on appeal must be rendered within 10 business days from accepting request for appeal.
- If accepted, Appellate Officer must render written decision

Appellate Process – Written Decision

PRACTICE POINTER

If you decide to accept appeal, you may combine decision to accept appeal & written decision on appeal into one decision.

(will have to be completed within 15 days)

Appellate Process – Written Decision

- ✓ Describe procedural history of appellate case
- ✓ List bases for appeal
- ✓ If combining acceptance of request for appeal, include rationale for this:
 - Timely
 - Based on appropriate grounds
 - Viewed in light most favorable, could result in adjusted finding or sanction
- ✓ State standard of review (deference to original findings and to what you are confining your review)
- ✓ State conclusion(s) & rationale for decision(s)
- ✓ Close by indicating that the outcome is final; further appeals are not permitted.

Appeals
under
600.030;
600.040 and
600.050

**The decision of the
Equity Resolution Appellate Officer
is final.**

Appellate Process

❖ Consult with OGC

- ✓ You will be assigned an attorney who did not advise on the case
- ✓ Able to assist you as you work through the record on appeal and in writing your decision

❖ Seek logistical assistance from your University's Title IX / Equity Office

Questions?



University of Missouri System

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