

Writing Hearing Decisions and Appellate Decisions

March 8, 2021



Topics covered today

- Hearing decisions and key factors to consider
- Evaluating the evidence (Proof Matrix)
- Preponderance of the Evidence
- Putting the report together
- Appeal process
- Grounds for Appeal
- Writing appellate decision

Hearing decisions and key factors to consider

- The three-person Hearing Panel - equal decision makers
- The hearing will be presided over by a hearing officer who is not a decision maker
- Deliberate and discuss after the hearing.
 - Think about bias
 - Be sure to not consider evidence/testimony tossed out. Do not infer based on it being tossed out.
 - Look at each piece of evidence
 - Determine credibility
 - Determine weight
- Panel decides responsible/not responsible for each charge
 - Preponderance of evidence is the standard (more likely than not)
- Hearing panel determines sanctions (7.1). Look to precedent for guidance.

Evaluating the evidence

- Focus on each claim/incident/charge
- Evaluate elements of definition necessary
- Track evidence proving/disproving

CLAIMS	ELEMENTS	EVIDENCE PROVING/DISPROVING
SEXUAL ASSAULT	NO CONSENT	
	ACT/ATTEMPTED SEXUAL ACT	
	FORCE, THREAT, COERCION	

DEFENSE	ELEMENTS	EVIDENCE PROVING/DISPROVING
CONSENT	MENTAL CAPACITY	
	VOLUNTARY/FREE WILL	
	EXPRESS OR IMPLIED	
	NOT WITHDRAWN	
	SPECIFIC OR GENERAL SCOPE OF SEXUAL ACTIVITY	
	AGE OF MAJORITY	

Putting the hearing report together

- Hearing Report Template
- Put the pieces together – you have five days
 - Summary of allegations
 - Relevant policy provisions
 - Procedural Steps
 - Findings of fact (undisputed, disputed, how they relate to each allegation)
 - Determination
 - Discipline and remedies
 - Appeal rights

Hearing report - continued

- Put the pieces together
 - Summary of allegations
 - Relevant policy provisions
 - Procedural Steps
 - Findings of fact (undisputed, disputed, how they relate to each allegation)
 - Determination
 - Discipline and remedies
 - Appeal rights
- Hearing Report Template

Appeal Process

- Either party may appeal in writing to Title IX Coordinator - 10 business days to submit appeal. Once appeal received – 5 days to provide notice to other party to file a response – We have a template.
- Permissible grounds for appeal:
 - A procedural error occurred that materially affected the outcome of the hearing.
 - To consider new evidence that was not reasonably available at the time.
 - The Title IX coordinator, investigator, or decision maker had a conflict of interest or bias that affected the outcome of the matter.
 - The sanctions imposed are substantially disproportionate to the severity of the violation and substantially outside the parameters or guidelines set by the College.
- This is an administrative appeal – no additional hearing
- Appeal Board established
 - Three-person panel from training hearing officers
 - Decider is VP, Student Affairs or Chief Diversity Officer

Writing appellate decision

- Focus on the reason of the appeal
- Same standard of evidence applies – Preponderance of the Evidence (more likely than not)
- Use the appeal report template