



# Title IX Appeals Training

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Davis Crow

# MEET YOUR FACILITATOR



## Davis Crow

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Senior Solutions Specialist with Grand River Solutions, Davis works as an investigator, decision maker, hearing panel chair, and appeals officer, and provides trainings, specializing in Title IX, Title VII, and the Americans with Disabilities Act. Davis has a J.D. from Stetson University College of Law and a M.Ed. University of Mississippi.



[Full Bio](#)

# THE BASIC TENETS

Dear Appeals Officer . . .

# EVIDENCE: GATHERING, WEIGHING, ANALYZING

Avoiding Common Errors

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# ALL APPEALS

Trauma-Informed

Everyone in Their Lane

Fundamental Fairness

Due Process

Consistent Process

# THE RIGHT TO APPEAL?

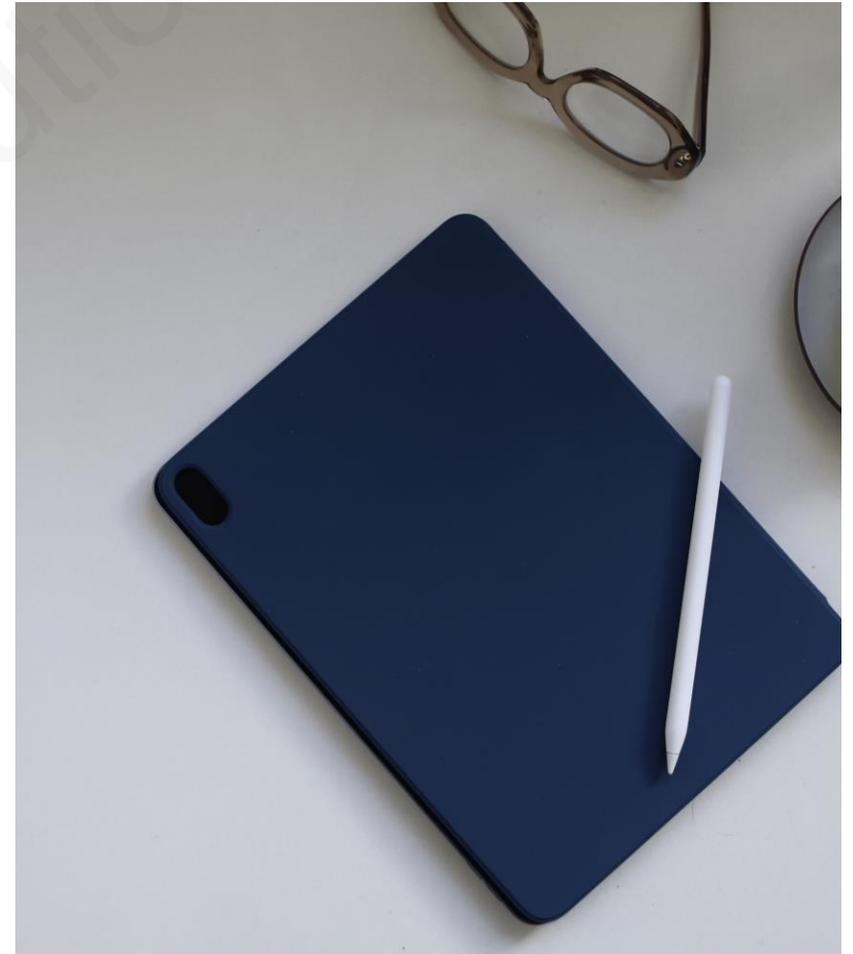
Both the complainant and respondent have the right to:



- Appeal the same things in the same way to the same person(s);
- Receive information about the appeal process;
- Appeal a sanction;
- Have all aspects of the process be the same for each party;
- Have their appeal reviewed and decided upon;
- Receive notice of the outcome of the appeal.

# SANCTIONS AND INTERIM MEASURES DURING APPEAL PROCESS

- Maintaining or changing interim measures during the process
- Communicating and documenting sanctions and interim measures
- Deciding whether to impose sanctions during the process
  - Pros and Cons



# DUE PROCESS DURING THE APPEAL PROCESS

- Regular, published procedures
- Standard grounds for appeal
- Who is reviewing or hearing the appeal



Equal Rights and  
Fair Process for  
Each Party

# BEFORE THE APPEAL

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# NOTIFICATION OF THE APPEALS PROCESS

## Who Gets Notified

- Complainant
- Respondent
- Student Conduct?
- Human Resources?
- Academic
- Personnel?

## What They are Notified Of

- Allegations
- Investigation Outcome
- Applicable Policy
- Appeals Process
- Timeline
- Links
- Dates
- How to submit

# WHOSE JOB IS IT TO...



Receive the  
appeals

Determine whether  
the grounds for  
appeal have been  
met

Notify the  
person(s)  
responsible  
for reviewing  
the appeal

Arrange the  
logistics for  
the appeal

Communicate  
the decision

Retain  
Documents

Determine  
Remedies

Communicate with  
complainant and  
respondent and  
advisors and  
witnesses as  
appropriate



## DE NOVO APPEALS?

We are NEVER, EVER  
going back to this...

# DIFFERENCES IN RESPONSIBILITY

## Resolutions

- Investigation
- Hearing
- Determine What Happened
- Findings of Fact
- Findings of Policy

SANCTION

## Appeal

- Review the Appeal
- Determine Whether Grounds for Appeal Have Been Met
- Make Decision Regarding Merits of Appeal

# DIFFERENCES IN BURDEN

College/  
University

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graph LR; A[College/University] --> B[Error correction]; C[Complainant Respondent] --> D["Persuade and point out error with supporting evidence or facts"]
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Error correction

Complainant  
Respondent

Persuade and point out error with supporting evidence or facts

# HAS THE BURDEN BEEN MET?

Review the information provided by Complainant and/or Respondent and determine whether it contains sufficient information concerning the grounds for appeal and the reasons related to those grounds

This step is **not** to decide the merits of the appeal, but to identify the nature and scope of the issues to be addressed.

## **WAS AN APPEAL FILED?**

Review the information provided by Complainant and/or Respondent and determine whether it contains sufficient information concerning the grounds for appeal and the reasons related to those grounds.

This step is not to decide the merits of the appeal, but to identify the nature and scope of the issues to be addressed.

# IN THEIR APPEAL, RESPONDENT WRITES:

- I have new evidence not previously available to me. Having read the hearing officer's report, I now know the hearing officer was biased (new evidence) because the hearing officer found against me, and there is no way that any unbiased hearing officer would have properly weighed the evidence and come to any conclusion other than the fact that complainant was lying.
- The hearing officer failed to call 1 key witness. The Title IX coordinator should have been questioned, and she could have explained that Complainant was given a free pass and allowed to drop out of organic chem after it was obvious Complainant was going to fail. This would have proven that Complainant made up the complaint and filed only to avoid failing a difficult class.



# COMMON CHALLENGES

## Non-Participating Parties

- Bias/conflict of interest
- Error

## Uncooperative Witnesses

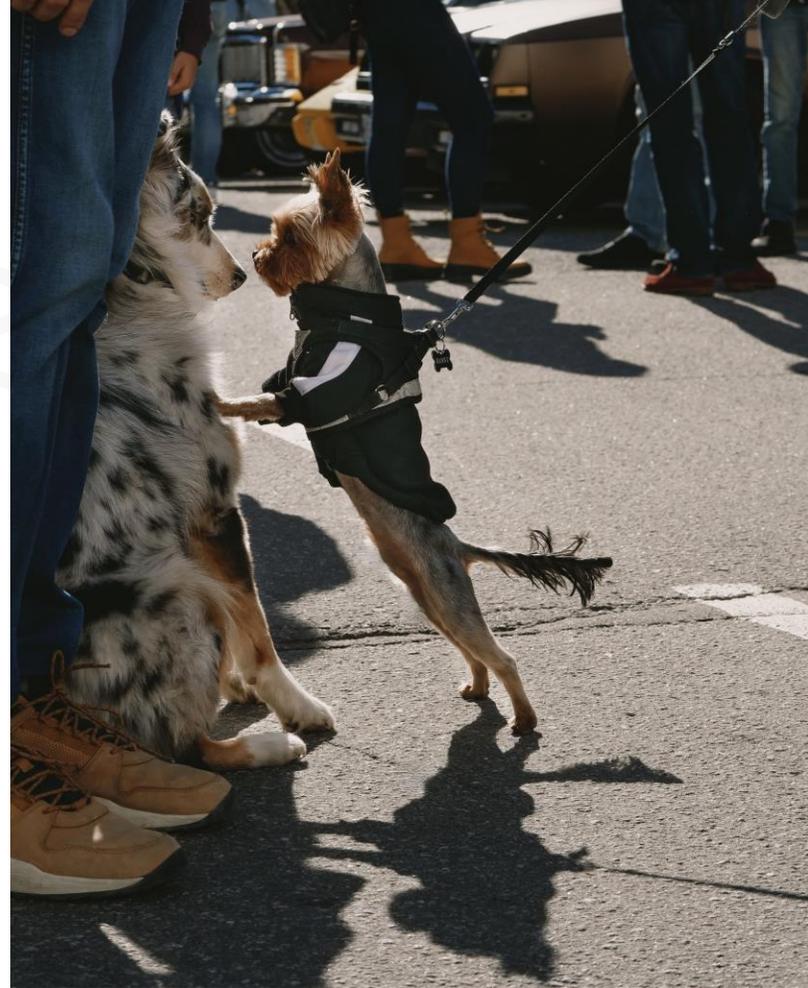
## Uncooperative Advisors

# DEAR APPEALS OFFICER...

- I am the victim of a false accusation...
- The police were not contacted and I was not charged by law enforcement with a crime
- After the supposed sexual assault, she sent me a friend request on Instagram and asked me to dance at a party
- No one listened to my explanation or reviewed the evidence so they could see that I was falsely accused.

# DOES THIS MEET ANY GROUNDS FOR APPEAL?

- Procedural error?
- Bias/conflict of interest?
- New evidence?



# NEW EVIDENCE: WHAT WOULD YOU DO?



Appeal states there is  
new evidence...

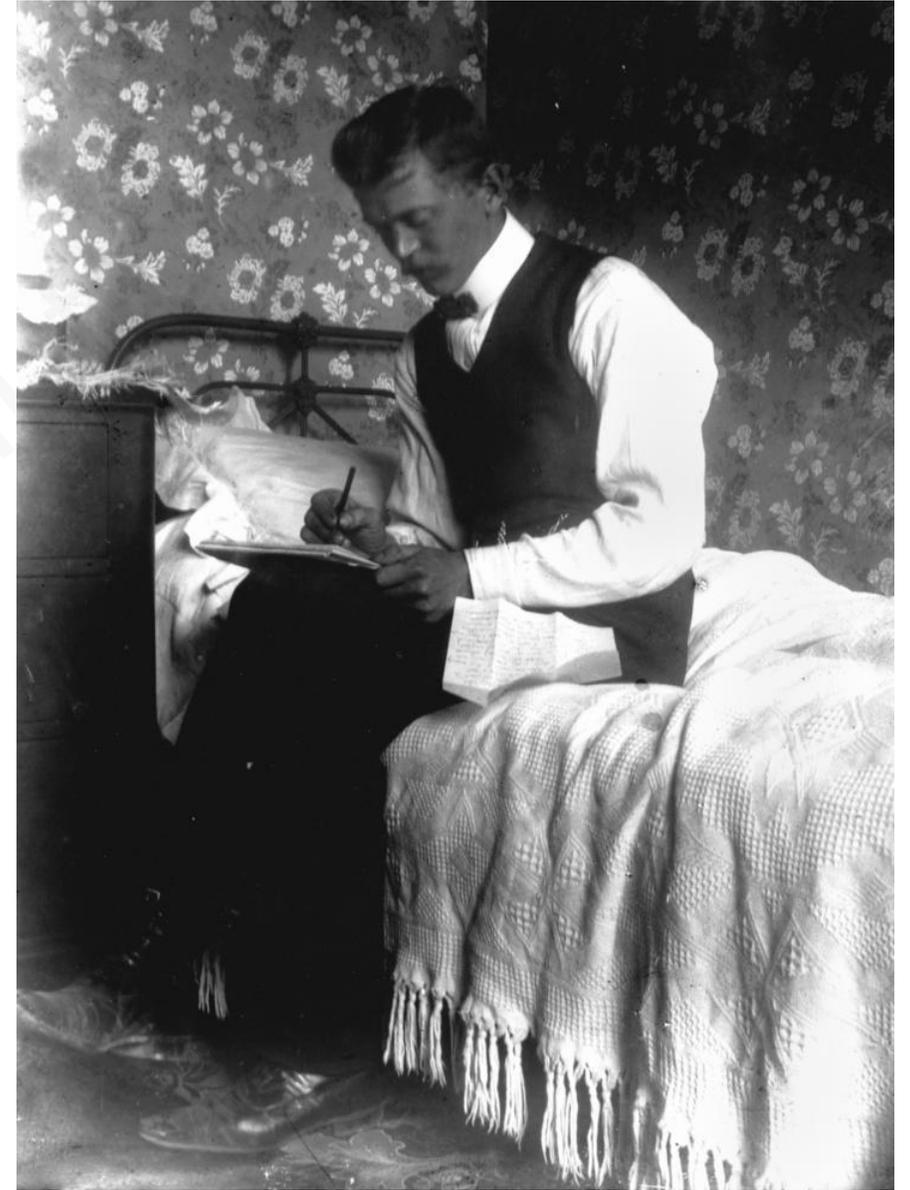
Evidence not provided with the appeal

How do you know it is new?

It is new but is it relevant and reliable?

# DEAR APPEALS OFFICER...

I am the victim of a false accusation. Something went terribly wrong.....



# PROCEDURAL ERROR: THE DECISION WAS UNREASONABLE

The decision was unreasonable based on the evidence.

- “I am the victim of a false accusation”
- “There was no crime”
- “She initiated it, not me”
- “We were both drunk”

# PROCEDURAL ERROR

There was a procedural error in the process that materially affected the outcome.

- Someone was not interviewed
- I was not allowed to cross-examine the complainant
- Burden was put onto me to prove consent

# DENIAL OF A PROCESS YOU DON'T OFFER

Cross examination

Representation

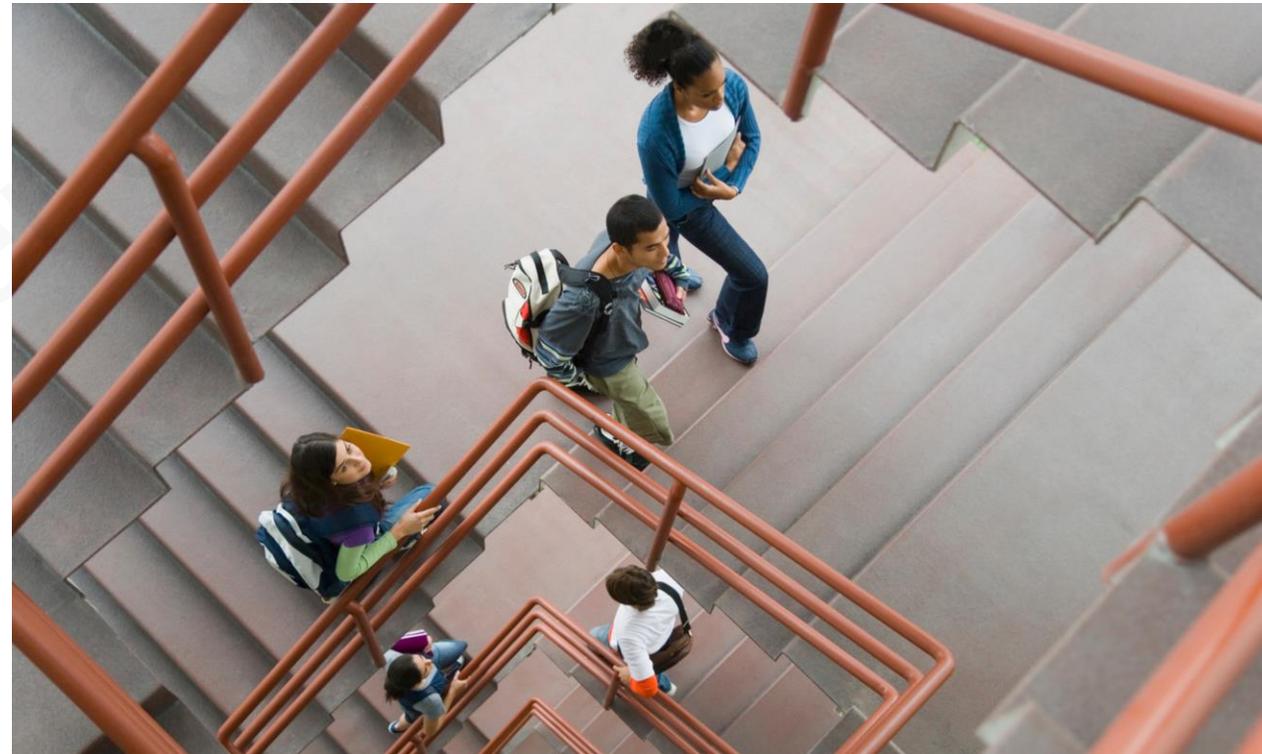
Discovery

Subpoena / compel witnesses

# WHEN A RESPONDENT REFUSES TO PARTICIPATE IN THE PROCESS BUT CLAIMS DUE PROCESS IS VIOLATED

“The Plaintiff waived his right to challenge the process resulting in his expulsion by failing to participate in the process afforded him.”

- Herrell v. Benson



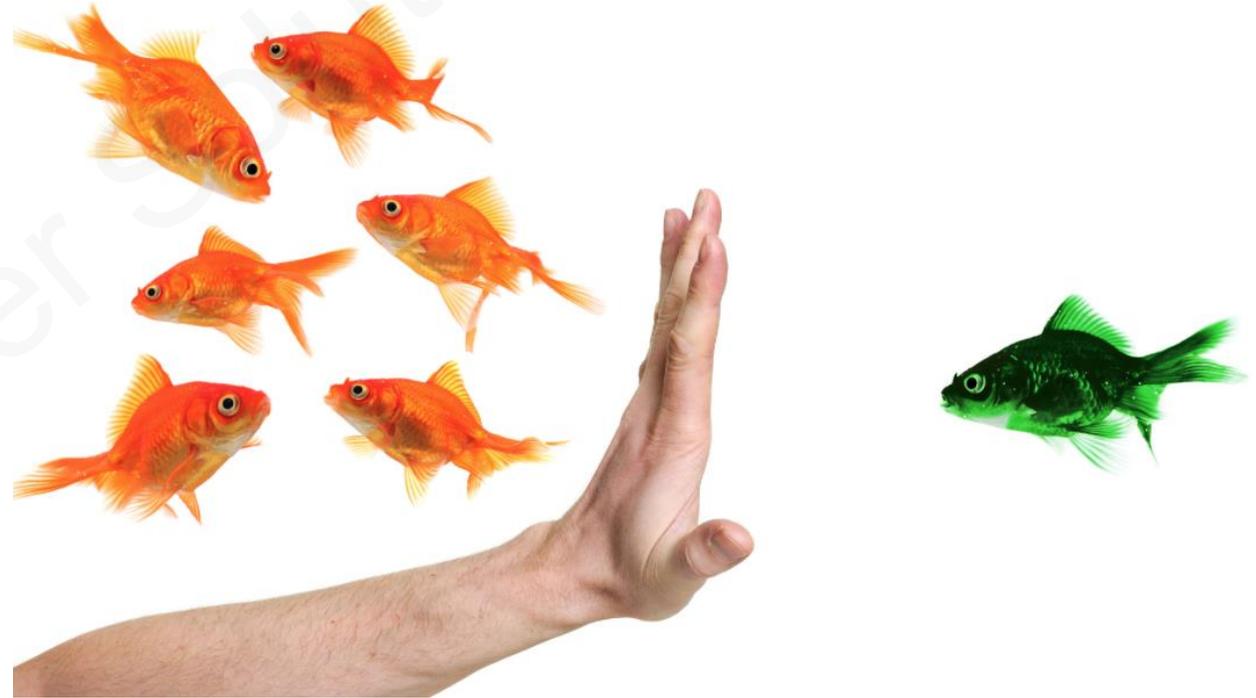
# WHEN EXCEPTIONS TO PROCESS OCCURS

Examples:

- University brings the case against one of its own
- Recusal of a member of a panel
- Changing composition of a panel

# BIAS

- What constitutes bias?
- The investigator was biased against me because...
- The investigator was biased against (complainants/respondents generally) because . . .



# ALLEGATIONS FOR BIAS

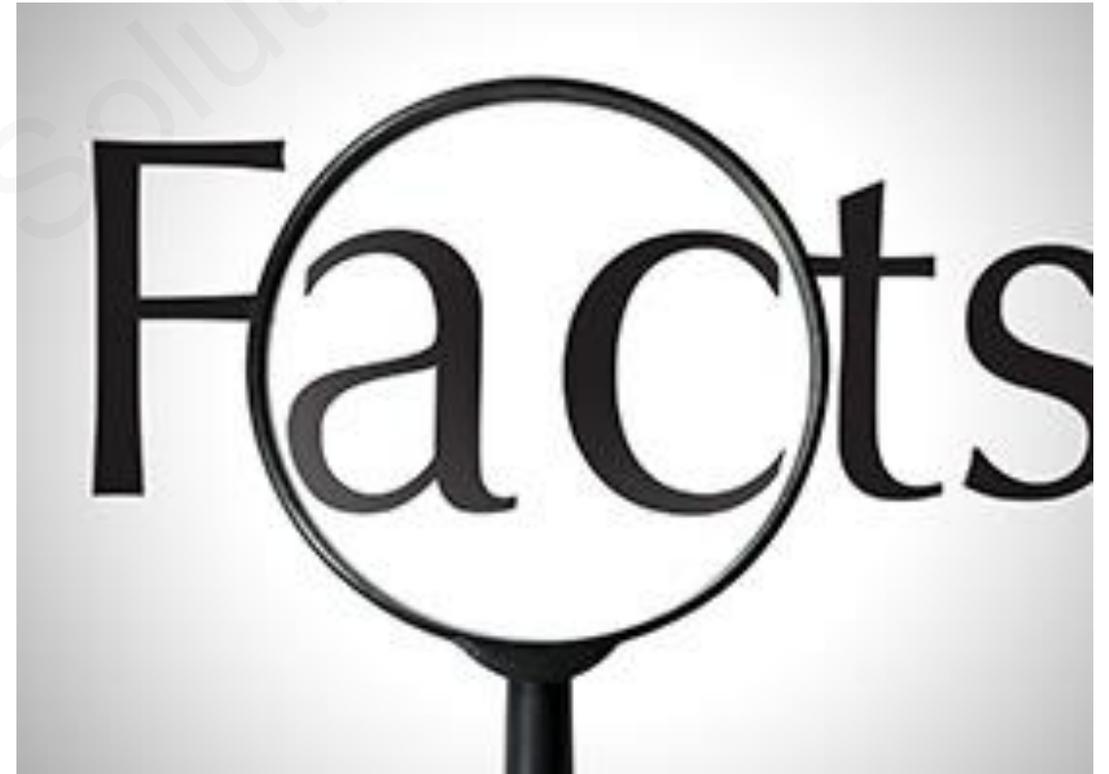
“Pro-victim bias does not equate to anti-male bias.”  
-Doe v. University of Colorado

Anti-violence bias does not equate to anti-male bias.

# ALLEGATIONS OF BIAS AS THE BASIS FOR APPEAL

An allegation of bias without factual support “no longer passes muster”.

-Doe v. University of Colorado



# NEW INFORMATION

- Is it really new?
- If it is new, would it change the findings/outcome
- Who investigates new information?



# COMMON ERRORS

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# SOMETIMES INSTITUTIONS DO THE WRONG THING



- Missing deadlines for providing materials
- Misunderstanding of consent or incapacitation
- Errors at a hearing

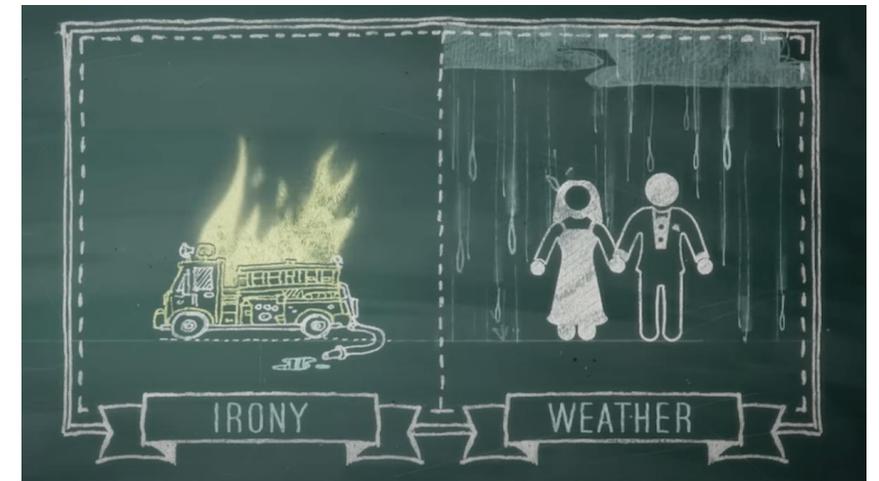
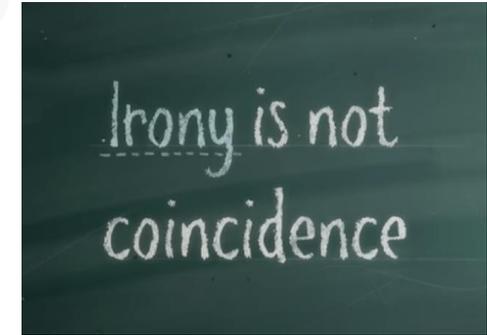
# DETERMINING CREDIBILITY ON APPEAL

If Complainant does not participate, can you judge credibility?

Do you need to see demeanor to note credibility?

# EVIDENCE – KNOWING WHAT TO CONSIDER

- Drunk vs. Intoxicated vs. Incapacitated
  - Language matters
  - Clarity and consistency of application
- Who has to prove consent?
- Know the language of your policy



Courtesy Weird Al's Word Crimes

# CROSS COMPLAINTS



- Was it handled?
- How was it handled?
- When raised for first time in the appeal, what is your process?
- Who handles?

# APPEALS PANELS THAT EXCEED THEIR AUTHORITY



- Stay In Your Lane
- How Do You Know
- How To Correct

# TREATING THE PARTIES DIFFERENTLY

1. He filed an appeal, argued there was a procedural error because he did not agree with the panel's interpretation of a text message. Appeal granted, determination overturned. She then filed an appeal on basis that appeal panel exceeded their authority, her request to file an appeal was denied. **What did the court say?**
2. Hearing chair did not inform parties that a key witness was her student, nor that he had discussed the case (in brief) with the witness prior to her first interview. **What did the court say?**

# WHY SHOW YOUR WORK: WHEN A JUDGE HAS A DIFFERENT DEFINITION OF CONSENT

“Because she removed her own shirt when Respondent suggested having sex, there was insufficient proof of a lack of affirmative consent.” *Haug v. SUNY Potsdam*, 2018

As the Complainant did not report the rape, and did not initially think she had been raped . . . more likely there was an erroneous outcome due to gender. *Doe v. Dordt University*, 2022

# LESSER-INCLUDED CHARGES ON APPEAL



There are no lesser-included charges

Reflects lack of notice and opportunity to respond.

- Powell v. St. Joseph's University
- Doe v. U.S.C.

# SANCTIONS ARE NOW WRONG BECAUSE FINDING WAS WRONG

Does appeals officer determine new sanction, or send case back for appropriate determinations?



# CAN A SANCTION INCREASE ON APPEAL?

A. In response to Complainant's appeal?

B. Sua sponte (meaning, just on their own determining it was not sufficient) ?

# LANGUAGE MATTERS WHEN WRITING APPEAL RESPONSE

You need clear and  
consistent application

Drunk vs. Intoxicated vs.  
Incapacitated

Who has to prove  
consent?

Know the language of  
your policy

# HOW MUCH INFORMATION TO PROVIDE ON APPEAL?

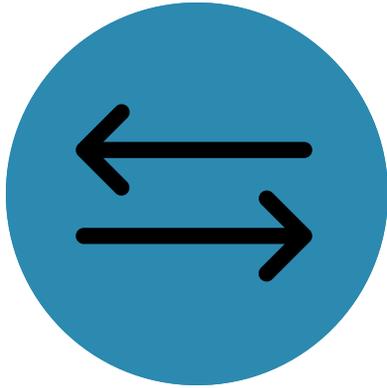
The appellate officer's failure to plainly articulate why he granted the appeal, which resulted in a new hearing that found the respondent in violation, was "perplexing" to the reviewing court, along with the appellate officer's ad hoc decision to request an independent Title IX opinion prepared in the course of determining the appeal.

# COMMUNICATIONS ERRORS

- Communicate the decision
  - Complainant and Respondent
  - Title IX
- Interim measures
- No contact directives
- Remedial measures
- Sanctions



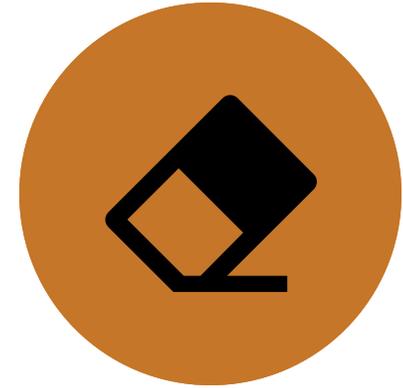
# APPELLATE OFFICER/PANEL MAY NOT...



Substitute their own findings for the findings of the decision maker



Engage in fact-finding/weigh new evidence



Correct procedural errors on their own

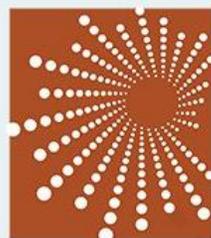
**QUESTIONS?**

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At the same place you do your business social media networking, you can now find The River Connect and all the great events, resources, and real-time discussions on the topics important to higher ed equity professionals.



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