Davis Crow & Jody Shipper

GRAND RIVER I SOLUTIONS



MEET YOUR FACILITATORS



Davis Crow

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 Lawand a M.Ed.
University of Mississippi.





Jody Shipper

Co-Founder & Managing
Director of Grand River
Solutions, Jody Shipper is a
nationally-recognized
subject-matter expert with
more than 20 years of
experience in Title IX and
related fields. She is known
for her insight into best-inclass programming, policies,
and community outreach
aimed at addressing sexual
misconduct on campus. She
lectures extensively
throughout the U.S.

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EVIDENCE: GATHERING, WEIGHING, ANALYZING



Trauma-Informed

Each in their lane: The limits of an appeal officer's task

Fundamental Fairness

ALL APPEALS

Due Process

Follow Your Process

THE RIGHT TO APPEAL?

have the right complainant respondent Both the and <u>†</u>

Appeal the same things in the same way to the same person(s);

Receive information about the appeal process;

Appedra sanction;

Have all aspects of the process be the same for each party;

Have their appeal reviewed and decided nodn:

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

Equal Rights and Fair Process for Each Party

Using regular, published procedures

Grounds for appeal

Who is reviewing or hearing the appeal

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 PolicyAppeals Process
- Timeline
- Links
- Dates
- How to submit

Receive the appeals

Determine whether the grounds for appeal have been met Notify the person(s) responsible for reviewing the appear

WHOSE JOB

IS IT?

Arrange the logistics for the appeal

Communicate with complainant and respondent and advisors and witnesses as appropriate

WHOSE JOB IS IT? (CONTINUED)

- Communicate the decision
- Complainant and Respondent



DE NOVO APPEALS?

We Are Never, <u>EVER</u>, going back to this

DIFFERENCES IN RESPONSIBILITY

RESOLUTIONS

- Investigate, Hearing
- Determine What Happened
- Findings of Fact
- Findings of Policy



APPEAL

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

DIFFERENCES IN BURDEN

COLLEGE/ UNIVERSITY

Error correction

COMPLAINANT

Persuade and point out error with supporting evidence or facts

HAS THE BURDEN BEEN MET?

determine whether it contains sufficient information concerning the grounds for Review the information provided by Complainant and/or Respondent and 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?

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

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:

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

WHAT DOES THIS MEAN?

You are reviewing the appeal for what it says, not how it is said. You are identifying what the party says went wrong in the process or whether the party has identified new information and IF the party has articulated that what went wrong or what is new, if true, would have led to a different outcome.



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?

Evidence not provided with the appeal

How do you know it is new?

It is new but is it relevant and reliable?

Appeal states there is new evidence.

DEAR APPEALS OFFICER

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





UNREASONABLE The decision was unreasonable based on the evidence. PROCEDURAL ERROR: THE DECISION WAS

• I am the victim of a false accusation

• She initiated it, not me

• We were both dank

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

University brings the case against one if its 10/1

Recusal of a member of a panel

Changing composition of a panel

səldmbxə əmos

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 Colorada



NEW INFORMATION

Is it really new?

• Who investigates new information?

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 demeganor to note credibility?

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Courtesy Weird Al's Word Crimes

EVIDENCE – KNOWING WHAT TO CONSIDER

- Drunk vs. Intoxicated vs. Incapacitated
 - Language matters
- Who has to prove consented. Clarity and consistency of



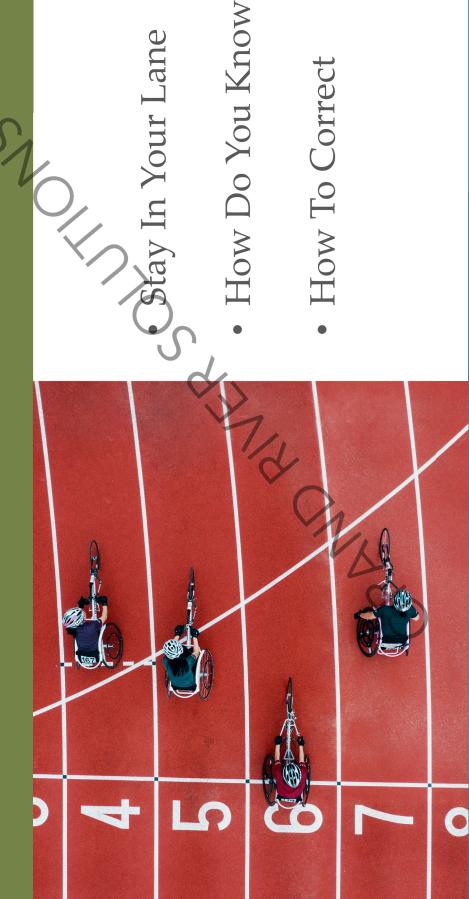


CROSS COMPLAINTS



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

APPEALS PANELS THAT EXCEED THEIR AUTHORITY



- How Do You Know
- How To Correct

TREATING THE PARTIES DIFFERENTLY

- on basis that appeal panel exceeded Their authority, her request to file Appeal granted, determination overtymbd. She then filed an appeal He filed an appeal, argued there was a procedural error because he did not agree with the panel's interpretation of a text message. an appeal was denied. What did the court say?
- 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. SUMY Potsdam, 2018

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

LESSER-INCLUDED CHARGES ON APPEAL

There are no lesser-included charges

opportunity to respond.

• Powell y. St. Joseph's University

• Doe w. U.S.C. Reflects lack of notice and

SANCTIONS ARE NOW WRONG BECAUSE 0// FINDING WAS WRONG

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





CAN A SANCTION INCREASE ON APPEAL?

A. In response to

Complainant Sappeal?

B. Sua sponte (meaning, just own determining) Mas not sufficient) ?

LANGUAGE MATTERS WHEN WRITING APPEAL RESPONSE

Drunk vs. Intoxicated vs. Incapacitated

Language matters

Clarity and consistency of application

Who has to prove consent?

Know the language of your policy

HOW MUCH INFORMATION TO PROVIDE ON APPEAL?

N AFFEAL?

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

COMMUNICATIONS ERRORS

Communicate the decision

Complainant and Respondent

• Title IX

• Interim measures

No contact directives

• Remedial measures

• Sanctions





APPELLATE OFFICER/PANEL MAY NOT...

Engage in fact-finding/weigh new evidence own findings for the findings of the decision Substitute their maker

procedural errors on their Correct



QUESTIONS?

THANKS FOR JOINING US!

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WE LOVE FEEDBACK

Your Opinion Is Invaluable!

