



Book	Policy Manual
Section	5000 STUDENTS
Title	Appeals
Code	BP 5130.10
Status	First Reading

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### **Title IX Appeals**

Under Title IX, the District must offer both parties an appeal from:

- A determination regarding responsibility; or
- From the District's dismissal of a formal complaint; or
- From the District's dismissal of any allegations in a formal complaint; or
- A sanction imposed.

Either party may appeal by filing a written request for appeal with the Title IX Coordinator or Superintendent's office. Appeals shall be filed within ten (10) calendar days from the date of distribution of the Decision-Maker's formal written decision.

A request for appeal shall be in writing and shall be on the form approved by the District. All requests for appeal shall include, at a minimum, the following information:

1. The name, address, and telephone number of the person filing the appeal;
2. A statement whether the appealing party challenges the finding, the remedies imposed, or both;
3. All relevant basis for review as well as the relief sought.

Failure to file an appeal within the time and manner provided shall be deemed a waiver of the right to any appellate review. Failure to raise a basis for appeal shall constitute a waiver of that point on appeal.

The basis for which an appeal may be filed are:

1. Procedural irregularities that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding the responsibility or dismissal was made, that could affect the outcome of the matter;
3. One or more of the Title IX personnel assigned to the matter had a conflict of interest or bias for or against the Complainant or Respondent either directly or generally which affected the outcome of the matter;
4. The Decision-Maker overlooked, misapplied, misconceived, or failed to consider a statute, decision, or material fact; or
5. The sanction imposed was improper in light of the circumstances.

A request for an appeal is filed on the date it is received or, if delivered to the District by United States mail, the date of the United States Postal Service (USPS) postmark stamped on the properly addressed cover in which the request is mailed.

The Title IX Coordinator's office will notify both parties, in writing, that an appeal has been received and will provide a copy of the request for appeal. Both parties will be provided an opportunity to submit a written statement in support of, or challenging, the appeal. Parties' written statements must be submitted within ten (10) calendar days from the date of distribution by the Title IX Coordinator's office. The Title IX Coordinator will also prepare a response which will be shared with the parties.

Either party may seek an extension of time by submitting a written request to the Title IX Coordinator's Office explaining the need for the extension and the proposed length of the extension. The Title IX Coordinator will respond to the request, in writing, within 48 hours and will inform the parties simultaneously whether or not the extension is granted. Any extensions granted for one party will be automatically granted for both parties (e.g., if one party is granted 2 additional days to submit the statement, the other party will automatically also have the 2 additional days).

Appeals will be reviewed by a three (3) member appellate panel comprised of Title IX trained District staff who have not otherwise participated or had knowledge of the facts in the matter being appealed.

The party requesting appellate review must show error in the original finding or sanction. The finding or sanction is presumed to have been decided reasonably and appropriately.

### **New Evidence**

If it is determined that new evidence should be considered, the matter will be returned to the Decision-Maker to reconsider in light of the new evidence only.

### **Curable Procedural Error**

If it is determined that a material procedural error occurred, the appellate panel may return the complaint to the Investigator and Decision-Maker with instructions to cure the error.

### **Incurable Procedural Error**

In rare cases, where the procedural error cannot be cured (as in cases of bias), the appellate panel may order a new review of the complaint with a new Investigator and/or Decision-Maker.

### **Remedies**

If the appellate panel determines that the remedies or disciplinary sanctions imposed are disproportionate to the severity of the violation, they may increase, decrease or otherwise modify the remedies or disciplinary sanctions.

### **Other Actions**

The appellate panel may seek additional information from the Investigator or the person(s) imposing sanctions. Any requests for additional information will be submitted in writing through the Title IX Coordinator's office.

The decision of the appellate panel will be submitted in writing, through the Title IX Coordinator's office, to both the Complainant and Respondent simultaneously. Every effort will be made to issue a decision within twenty (20) calendar days from the time all written statements are submitted. Should the appellate panel request or require additional information or investigation, the appellate panel will notify the parties, through the Title IX Coordinator's office, that it will need more time.

The written decision of the appellate committee is the final decision of the District and no further appeals are permitted under this Policy.

### **Status While Pending Appellate Review**

All remedies imposed by the District will be in effect during the appeal. A request may be made to the Superintendent for special consideration in exigent circumstances, but the presumptive stance of the District is that the remedies will stand. Graduation, study abroad, internships/externships, external job offers, do not in and of themselves constitute exigent circumstances. In cases where the appeal results in reinstatement to the District or of privileges, all reasonable attempts will be made to restore the person to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

### **Additional Considerations**

1. All parties will be timely informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision.
2. An appeal is not intended to be a full rehearing of the complaint. In most cases, appeals are confined to a review of the written documentation or record of the original Decision-Making process and pertinent documentation regarding the grounds for appeal.
3. An appeal is not an opportunity for the appellate panel to substitute their judgment for that of the Decision-Maker merely because they disagree with the finding or sanction. Appeal decisions are to be deferential to the Decision-Maker, making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so.

Legal Reference:

Title IX of the Educational Amendments, 20 U.S.C. §1681, et. seq.