

WAC 132E-122-490 Title IX appeals. (1) The parties have the right to appeal from the determination of responsibility and/or from a Title IX dismissal, in whole or part, of a formal complaint, as set forth in the initial order.

(2) The president or the president's delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.

(3) If a request for reconsideration is received, the Title IX coordinator shall respond within seven business days. The Title IX coordinator shall either deny the request or, if the Title IX coordinator determines that the request for reconsideration has merit, issue amended findings.

(4) If any of the grounds in the request for appeal do not meet the grounds in this policy, that request will be denied and the parties and their advisors will be notified in writing of the denial and the rationale.

(5) If any of the grounds in the request for appeal meet the grounds in this policy, then the other party(ies) and their advisors, and, when appropriate, the investigators and/or the original decision-maker(s) will be notified of the decision.

(6) The other party(ies) and their advisors, and, when appropriate, the investigators and/or the original decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and be provided seven business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the appeal decision-maker(s) to all parties for review and comment.

(7) The nonappealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the appeal decision-maker(s) and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the investigator(s) and/or original decision-maker(s), as necessary, who will submit their responses in seven business days, which will be circulated for review and comment by all parties.

(8) Neither party may submit any new requests for appeal after this time period. The appeal decision-maker(s) will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and will render a decision in no more than seven business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

(9) A notice of appeal outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The notice of appeal outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the recipient is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the recipient is permitted to share under state or federal law.

(10) Notification will be made in writing and may be delivered by one or more of the following methods: In person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' recipient-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

(11) The grounds for appeal are as follows:

(a) Procedural irregularity that affected the outcome of the matter;

(b) 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; and

(c) The Title IX coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the specific complainant or respondent that affected the outcome of the matter.

(12) All decisions reached through this process are final. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

(13) If no request for reconsideration is received within seven days, the findings become final.

(14) Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.

(15) Appeals are not intended to provide for a full rehearing of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

(16) An appeal is not an opportunity for appeal decision-maker(s) to substitute their judgment for that of the original decision-maker(s) merely because they disagree with the finding and/or sanction(s).

(17) Once an appeal is decided, the outcome is final. Further appeals are not permitted, even if a decision or sanction is changed on remand except in the case of a new hearing.

(18) Any amended findings are final and no further reconsideration is available.

[Statutory Authority: Chapter 34.05 RCW, RCW 28B.50.140(13), 20 U.S.C. § 1092(f), Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-07-110, § 132E-122-490, filed 3/23/21, effective 4/23/21.]