# ERAU Title IX Appeals Decision-Maker Training

LINDA DAMMER, TITLE IX COORDINATOR
2021

### DEFINITIONS

#### Appeals Decision-Maker

Refers to the person that reviews Title IX Sexual Harassment requests for appeals; determines approval/denial of the appeal; and if the appeal is approved, makes the final determination as to whether the original determination by the Hearing Decision-Maker stands.

#### Hearing Decision-Maker

Refers to those who have decision-making authority within the University's Formal Grievance process for Title IX Sexual Harassment cases.

## DEFINITIONS Continued

#### Title IX Coordinator

- An official designated by the university to ensure compliance with Title IX and university policies.
- All communications/decisions/actions by the Hearing Decision-Maker and the Appeals Decision-Maker are coordinated through the Title IX Coordinator for delivery to the parties.

#### Sexual Harassment

- Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the University's education program or activity
- Also includes quid pro quo, sexual assault, dating / domestic violence, and stalking.

#### TITLE IX FORMAL GRIEVANCE PROCESS

- Title IX Coordinator receives a formal grievance alleging conduct in violation of the Title IX Sexual Harassment policy and/or University Sexual Misconduct Policy.
- Prior to a Title IX Hearing a Title IX Investigator conducts a thorough investigation and completes a comprehensive investigative written report surrounding the allegations.
- The investigation involves interviewing the Complainant, Respondent, and witnesses.
- Documentation (such as texts, voice mails, pictures, etc.) associated with the incident(s) is included if relevant to the allegations.
- The Complainant and Respondent (parties) review all statements, reports, and documentation throughout the process and can provide comments.

#### HEARING

- The Hearing Decision-Maker receives a copy of the investigative report and documentation approximately 7-10 days prior to the Hearing.
- The Hearing Decision-Maker has absolute discretion with respect to administering the hearing.
  - ▶ Decides if evidence, cross examination questions, or witnesses are relevant or irrelevant. All relevant evidence and witnesses are always permitted.
  - Present at the Hearing (normally via Zoom) includes the Complainant, Respondent, Title IX Investigator, witnesses (each witness is only present during their specific time slot) the parties' respective advisors and the Title IX Coordinator.

### DECISION PROCESS

- ► The Hearing Decision-Maker makes the determination based on the clear and convincing evidence standard as to whether the Respondent violated the Title IX Sexual Harassment Policy.
- The Hearing Decision-Maker provides the Title IX Coordinator with a written determination to include but not limited to:
  - ▶ The allegations constituting Title IX Sexual Harassment
  - ► The findings of fact supporting the determination
  - Statement of rationale for each allegation
  - Determination of Sanctions

# DECISION PROCESS Continued

- ► The Title IX Coordinator provides the Complainant, Respondent and their advisors with the Notification of Outcome as determined by the Hearing Decision-Maker simultaneously.
- ► The Notification of Outcome letter includes relevant appeal information.

#### HOW TO APPEAL

► To appeal the Complainant or Respondent must electronically submit a written appeal statement to the Title IX Coordinator within 5 business days of receipt of written determination.

#### **APPEALS**

Both parties have equal rights to an impartial appeal upon receiving the Hearing Decision-Maker's written determination regarding responsibility and, when applicable, sanctions and remedies.

- Basis for Appeals
  - Procedural irregularity that could have affected the decision outcome
  - New evidence that was not reasonably available at time of determination that could have affected the decision outcome
  - The Title IX Coordinator, Title IX Investigator, or Hearing Decision-Maker had a conflict of interest or bias against complainant or respondent that could have affected the decision outcome.

#### PURPOSE OF AN APPEAL

- Appeals are limited in scope. The purpose is not to initiate a review of the substantive issues of fact or a new determination of whether a violation of Title IX Sexual Harassment occurred.
- The Appeals Decision-Maker may consider the case file, investigative report, the hearing record, the written determination, any responses, appeals or party statements.
- The Appeal Decision-Maker may consider other materials the University deems relevant that have been shared with the parties.
- The non-appealing party receives notification and a copy of the appeal and may respond accordingly within 3 business days to the Title IX Coordinator.

### NOTIFICATION OF APPEAL DECISION

- Both parties receive notification should the Appeals Decision-Maker determine that the appeal is timely and meets the grounds for review.
- ▶ If the Appeal Decision-Maker determines that procedural irregularity affected the outcome, the matter is remanded back to the Hearing Decision-Maker to determine appropriate action.
- If the Appeal Decision-Maker determines that new evidence not reasonably available previously, the matter is remanded back to the Hearing Decision-Maker.
- If the Appeal Decision-Maker finds that the Title IX Coordinator, Title IX Investigator, or Hearing Decision-Maker had a conflict of interest or bias the Appeal Decision-Maker takes appropriate measures to address and remediate the impact of the bias or conflict consistent with the general procedures of the Title IX Sexual Harassment Policy.
- If the Appeal Decision-Maker determines that the original decision stands both parties receive notification, and the Title IX Sexual Harassment case is closed.

# NOTIFICATION OF APPEAL DECISION Continued

- ► The Appeal Decision-Maker seeks to complete the review within ten (10) business days of receipt of the appealing/party's written appeal.
- The Appeal Decision-Maker's decision becomes final on the date that the parties are provided with the written determination or result of the appeal.

### ADDITIONAL RESPONSIBILITIES

- In addition to determining if an appeal to a decision by the Hearing Decision-Maker meets the criteria for review, the Appeal Decision-Maker will review appeals filed by a party disagreeing with a decision by a Title IX Coordinator to dismiss a formal complaint.
- Reasons why a Title IX Coordinator may dismiss a formal Title IX Sexual Harassment complaint.
  - The alleged event does not constitute prohibited conduct as defined in the Title IX Sexual Harassment policy.
  - The alleged event did not occur within the jurisdiction of a Title IX Sexual Harassment Violation.
  - The Respondent is no longer enrolled or employed by the University
  - Specific circumstances prevent the University from gathering sufficient evidence to reach a determination as to the formal complaint or the allegations/therein.

# APPEALING DISMISSAL OF FORMAL GRIEVANCE

- Basis for appeal of dismissal of formal grievance
  - Procedural irregularity that affected decision by the Title IX Coordinator to dismiss the grievance.
  - New evidence that was not reasonably available at the time of the dismissal of the formal grievance.
  - ► The Title IX Coordinator or their investigator(s) had a conflict of interest or bias against any of the parties.

Should the Appeals Decision-Maker find cause based on one of the above reasons to accept the appeal, they would communicate with the Title IX Coordinator their rationale.

### CONFIDENTIALITY

- The Appeal Decision-Maker respects that all information surrounding a Title IX Appeal remain confidential.
- ► The Appeal Decision-Maker does not disclose information or discuss a Title IX case with anyone outside of the Title IX Office, Hearing Decision-Maker, Vice President and General Counsel.

### ADDITIONAL RESOURCES

The university highly recommends that the Appeals Decision-Maker read the provided Title IX Sexual Harassment and University Sexual Misconduct policies to better understand the entire Title IX process.

Title IX is complex, and you are not expected to know all the nuances. However, gaining more knowledge will help you gain more perspective on the importance of your role as the Appeals Decision-Maker.

### CONTACT INFORMATION

#### **ERAU Title IX Coordinators**

Daytona Beach and Worldwide Campuses

Linda Dammer, 386-226-7971, <a href="mailto:dammerl@erau.edu">dammerl@erau.edu</a>

#### Prescott Campus

Elizabeth Frost, 928-777-3747, <a href="mailto:froste@erau.edu">froste@erau.edu</a>