Reconsideration Requests, the Right to Appeal & the Appellate Process

November 2022

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Recusal of an Appellate Officer

- Appellate Officer **shall not have a Conflict of Interest or Bias** for or against Complainants or Respondents generally or an individual Complainant or Respondent.
- If an Appellate Officer feels that they have a Conflict of Interest or Bias, or cannot make an objective determination, **they must recuse themselves**.
- If recusal occurs, an alternate appointment shall be made by:
  - Title IX - Chancellor (or Designee)
  - Equity – Student, Student Organization or University Staff Respondents – Chancellor (or Designee)
  - Equity – Faculty, UM System Staff or University as Respondent – President (or Designee)

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Appellate Review under 600.030; 600.040 and 600.050

Both Parties are allowed to request reconsideration of:

- the summary determination ending the process (Equity),

Or, appeal:

- the dismissal of all or part of a Formal Complaint (Title IX),
- the findings of the AMC decision-maker (Title IX),
- the findings of the Administrative Resolution Decision or Hearing Panel* (Equity or Title IX).

*Administrative and Hearing Panel Resolution is not available for Title IX allegations raised in matters that arise out of an Academic Medical Center.

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Summary Resolution under CRR 600.040 & 600.050

- After review of the investigation and evidence gathered, Equity Officer determines whether there is a sufficient basis to proceed with the Complaint that Respondent is responsible for violating University policy.
- If so, the process will continue.
- If not, the Parties will be notified of the Equity Officer's decision and advised of their right to **request reconsideration**.

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Request Reconsideration under CRR 600.040 & 600.050

- Either Party may request that the Equity Resolution Appellate Officer reconsider summary determination ending the process
  - Must file written request
  - Must be filed with Appellate Officer
  - Must be filed within 5 business days of notice of summary determination

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Request for Reconsideration under CRR 600.040 & 600.050

- If Appellate Officer decides there is sufficient information to proceed with Complaint (reverse EO decision), process will continue pursuant to policy.
- If Appellate Officer decides there is insufficient information to proceed (agrees with EO decision), process ends.
- EITHER DECISION →
  - Appellate Officer must send to Complainant and Respondent *simultaneously* notice of the decision.
  - Decision is final. No further reconsideration is permitted.

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Appeals under 600.030, 600.040, and 600.050

Appeals are limited to the following grounds:

a. **A procedural irregularity** that affected the outcome of the matter (e.g., material deviation from established procedure, etc.);

b. **To consider 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;

c. The Title IX Coordinator / Equity (HR) Officer, Investigator(s), or decision-maker(s) had a **conflict of interest or bias** for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; or

d. The **sanctions fall outside the range typically imposed** for the offense, or for the cumulative conduct record of the Respondent.

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Appellate Process

- Appeals are not full re-hearings and are intended to be deferential to original findings.
  - Record of the Case (i.e., investigative report, exhibits, recordings)
  - Written documentation (i.e., decision-maker(s) determination)
  - Relevant documentation regarding grounds for appeal
- Appellate Officer may grant reasonable extensions to deadlines in the appeal process to a Party, with notice provided to the other Party

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Appellate Process

- Requests for appeal must be submitted in writing to Appellate Officer within 5 business days of delivery of notice of dismissal or written determination
- When any Party requests an appeal, opposing party will be notified and receive a copy of the request for appeal
- Non-appealing Party may file a response to the request for appeal within 5 business days of delivery of notice and copy of request for appeal
  - Sufficient grounds for appeal have not been met, and/or
  - Merits of the appeal

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Appellate Process

- Appellate Officer will review Request for Appeal:
  - Is request timely?
  - Is appeal based on articulated bases for appeal?
  - If viewed in light most favorable to appealing Party, does the appeal state grounds that *could* result in an adjusted finding or sanction?
- If answer to these questions is no, appeal will be rejected.
- Decision to accept or reject an appeal will be made in writing within 15 days; otherwise, deemed accepted.
- If accepted, decision on appeal must be rendered within 10 business days from accepting request for appeal.
- If accepted, Appellate Officer must render written decision.

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Appellate Process – Written Decision

PRACTICE POINTER

If you decide to accept appeal, you may combine decision to accept appeal & written decision on appeal into one decision.

(will have to be completed within 15 days)

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Appellate Process – Written Decision

- ✓Describe procedural history of appellate case
- ✓List bases for appeal
- ✓If combining acceptance of request for appeal, include rationale for this:
  - Timely
  - Based on appropriate grounds
  - Viewed in light most favorable, could result in adjusted finding or sanction
- ✓State standard of review (deference to original findings and to what you are confining your review)
- ✓State conclusion(s) & rationale for decision(s)
- ✓Close by indicating that the outcome is final; further appeals are not permitted.

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Appeals under 600.030; 600.040 and 600.050

The decision of the Equity Resolution Appellate Officer is final.

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Appellate Process

- Consult with OGC
  - ✓ You will be assigned an attorney who did not advise on the case
  - ✓ Able to assist you as you work through the record on appeal and in writing your decision
- Seek logistical assistance from your University's Title IX / Equity Office

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Questions?

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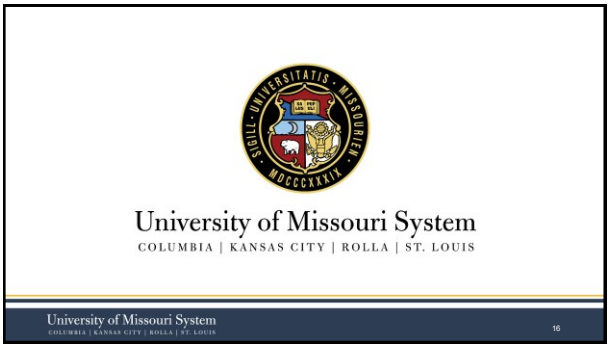
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