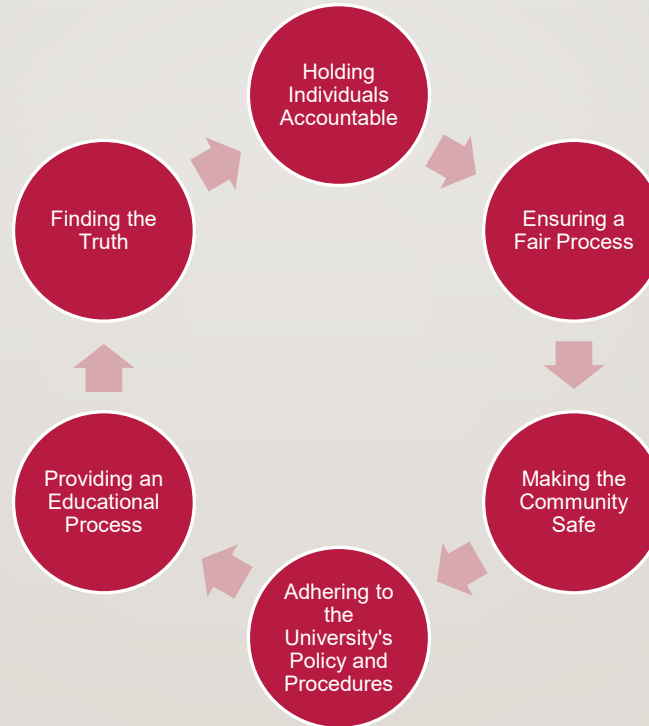


PROCEDURES TRAINING

SEXUAL MISCONDUCT, SEXUAL HARASSMENT AND GENDER
DISCRIMINATION TRAINING FOR SOLE EXTERNAL REVIEWERS

WHAT ARE SOME OF THE IMPORTANT PRIORITIES IN FULFILLING YOUR ROLES?



UMBC POLICY

- **Policy on Sexual Misconduct, Sexual Harassment and Gender Discrimination** (effective August 14, 2020)
- [USM Policy](#) (effective June 21, 2019) on Harassment

SUMMARY OF INVESTIGATIVE PROCESS

- Investigations can include issues related to Sexual Harassment, Sexual Assault, Relationship Violence, Domestic Violence, Stalking, Sexual Intimidation, Sexual Exploitation, Sexual Coercion, and Retaliation, discrimination on the basis of gender, sexual orientation or pregnancy
- Formal complaint can be presented orally or through written submission.
- Investigator is assigned (internal or external) and conducts an investigation.
- Either party can suggest witnesses and can suggest questions to be answered by the other party. Investigator has discretion regarding which witnesses to interview and which questions to ask.

SUMMARY OF INVESTIGATIVE PROCESS

- Issues related to Sexual Harassment I
 - An employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct; or
 - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Education Program or Activity
 - Sexual Assault, Dating Violence, Domestic Violence, Stalking

SUMMARY OF INVESTIGATIVE PROCESS

(cont'd)

- Issues related to Sexual Harassment II, Gender Discrimination, Sexual Exploitation, and Retaliation are handled under a separate Review Meeting process (not TIX Hearing)
- All complaints/reports which proceed through the University's formal intervention/investigation process will be presented to a Board of Review or a Sole External Reviewer
- Investigators will conduct the investigation, synthesize the information/evidence collected, and draft a report with a recommended finding(s) as to whether a policy violation(s) occurred or not.

INVESTIGATIVE REPORT

- The Draft Investigative Report and all evidence is shared with the parties and they have the opportunity to review, comment or provide additional information. The Draft Report Review period is both parties' final opportunity to identify or submit any additional evidence, information, questions, or witnesses, before the report and investigative recommendation are finalized and issued.
- In the absence of demonstrable good cause, information discoverable through the exercise of due diligence that is not provided to the Investigator during the Draft Investigative Report review period will not be considered by the Investigator, the Board of Review, the Board of Appeal, the Sole External Reviewer, or the Sole External Appeal Reviewer.
- A Final Report is then shared, and a Hearing or Review Meeting is scheduled, as applicable.

SOLE EXTERNAL REVIEWER

- The Board of Review (BOR) or Sole External Reviewer (SER) must have the requisite annual training and relevant experience to serve in the role
- The University will provide the SER with the names of the Complainant, Respondent, and relevant witnesses to determine if there are any conflicts, that would prevent participating as the Sole External Reviewer for the particular matter. The University will also seek the SER's availability for proposed meeting dates.
- The University will send an invitation to a Box folder in advance of the scheduled meeting date.

BOX FILE

- The Box file will include all relevant information obtained in the course of the investigation, an analysis, the investigative recommended finding(s), a copy of the Draft Investigative Report, the Updated Draft Investigative Report if applicable, including the documents relied upon (Exhibits), and any responses/comments submitted by the parties,
- The size of each case will vary, depending upon the issues alleged, the number of witnesses, and the number of parties involved.

ROLE OF THE SOLE EXTERNAL REVIEWER

- The Sole External Reviewer's role is to **independently** determine whether a Policy violation did or did not occur, based upon the preponderance of the evidence standard, and if warranted, determine the appropriate sanctions.
- The preponderance of the evidence means “more likely than not.”
- In other words, if you were weighing evidence on an imaginary scale, you must be more than 50% sure that the record establishes that the alleged party (Respondent) engaged in the alleged Prohibited Conduct, to make a determination that a Policy violation occurred.

TYPES OF EVIDENCE

- Direct Evidence: Based on personal observation or experience. You either believe the person saw or did what they saw/did or you don't believe it. (Maybe credibility will be at issue)
- Circumstantial/Indirect Evidence: Information which, although it does not include an eyewitness to the actual event, does include enough information to lead a reasonable person to a particular conclusion. For example, if you are in a hallway and you see a water bottle being thrown out of a room, into the hallway (but you didn't see who threw it, but you did see which room the water bottle came out of), and you immediately walk to that room and there is only one person in that room, it may be reasonable to conclude that person threw the water bottle.

TYPES OF EVIDENCE

- Documentary Evidence: Any documents including statements, reports, email, text messages, etc., that support or deny a fact at issue.
- Secondhand, or “hearsay” evidence: It is acceptable for individuals to provide secondhand information or “hearsay.”
- As the Reviewer, you can assess/determine, how much weight, if any, should be given to secondhand, or “hearsay” evidence.

ROLE OF THE SOLE EXTERNAL REVIEWER

- The Sole External Reviewer's role is not to re-investigate the matter.
- The Sole External Reviewer **shall** make the final determination(s) regarding credibility of all the information/evidence presented.
- However, no negative inferences related to final credibility determinations, shall be made solely because of a person's status as a Complainant, Respondent, or witness, or because a party does not appear or does not participate at the scheduled meeting.

ASSESSING CREDIBILITY

- The process of “weighing evidence,” to make a determination whether a preponderance of evidence exists to support a finding of a policy violation, must include a credibility assessment.
- A preponderance can be established simply because you believe one party and not the other based on the assessment of the credibility of the parties and the evidence provided.

ASSESSING CREDIBILITY

- The process of “weighing evidence,” to make a determination whether a preponderance of evidence exists to support a finding of a policy violation, must include a credibility assessment.
- Some things that may be considered in assessing credibility:
- Contents, detail, plausibility, corroboration, temporal proximity, physical proximity/ location, neutrality/ bias, demeanor with investigator or at meeting
- Whether consistent with / contradicted by other circumstantial evidence
- Note: A witness can still be found credible in the absence of any corroboration.
- Note: Memories may be affected by trauma and may be non-linear and/or fragmented.

ASSESSING CREDIBILITY

- Some things that **must not** be factored into credibility:
- Clothing, appearance, likability/ dislike, character evidence, popularity, personal bias
- Delay in reporting prohibited conduct (very common)
- Decision to not attend the meeting
- Note: Retelling or revisiting a traumatic experience may result in the expression of emotions or lack of emotional expression that appears inconsistent with the experience being recounted

CONSENT ANALYSIS

- Consent is a knowing, voluntary, and affirmatively communicated willingness to mutually participate in a particular sexual activity or behavior.
- It must be given by a person with the ability and capacity to exercise free will and make a rational and reasonable judgment.
- Consent may be expressed either by affirmative words or actions, as long as the words or actions create a mutually understandable agreement to sexual activity or behavior.
- Consent can never be assumed; the absence of a verbal “no”, silence or a failure to physically resist does not equal consent.

CONSENT ANALYSIS

- An analysis of consent may rest fully upon evidence or may require an additional credibility assessment
- First look to see if evidence supports a finding that there was either force, the threat of force, coercion, or incapacity. Where any one of these factors can be established, there is no consent and further analysis is not necessary.
- When the facts do not plainly demonstrate the presence of force, threat of force, coercion or incapacity, look to the corroborated and agreed upon facts in combination with the credibility of each party and their assertions related to consent.

MEETING PROCEDURES

- A checklist and script will be provided ahead of time for your review
- You will be expected to have read the files in the Box folder, prior to the meeting date
- The Sole External Reviewer will be responsible for facilitating the meeting, ensuring that time limits for each part of the review process are adhered to, and to oversee and control the flow of the meeting.
- There will be a “Host” from our office who will assist with the technical aspects of the Webex call.

ROLE OF SUPPORT PERSON, ATTORNEY, ADVOCATE OR NON-ATTORNEY ADVISOR

- Students have the right to a Support Person, an Advisor, Advocate or Attorney including:
- Attendance at the meeting (no more than two people)
- Private consultations with the party during meetings, except during questioning (we will establish a process to request a break for consultation & will then mute their audio & video)
- The Support Person, Attorney or Non-Attorney Advisor/Advocate may not delay, disrupt, or otherwise interfere with the meeting/ hearing.
- The Support Person, Attorney, or Non-Attorney Advisor shall not be an active participant, cannot be a fact witness, and will not be allowed to provide testimony or statements on behalf of a party.

EVIDENCE THAT CANNOT BE CONSIDERED

- **Privileged Information**

The institution shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege;

- **Health Records**

The institution cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the institution obtains that party's voluntary, written to do so.

- **Mental Health Records**

An adjudicating official, decision-maker or investigator is prohibited from considering evidence about a student's history of mental health counseling, treatment, or diagnosis, unless the student consents.

- **Prior Sexual History**

Sexual history will not be used for purposes of illustrating either party's individual character or reputation.

An adjudicating official or body is prohibited from considering a Complainant's prior sexual history, behavior or predisposition, unless: (1) such questions and evidence are offered to prove that someone other than the Respondent committed the Prohibited Conduct; or (2) the questions and evidence concern specific incidents of the Complainant's prior sexual behavior *with the Respondent* and are offered to prove consent. The mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to establish Consent.

An adjudicating official or body is prohibited from considering a Respondent's prior sexual history with an individual other than a party to the proceedings, except to: (1) prove prior sexual misconduct; (2) support a claim that a student has an ulterior motive; or (3) impeach a student's credibility after that student has put their own prior sexual conduct at issue.

PROCEDURES (TIX Hearing)

- A live hearing with cross-examination of witnesses is required to adjudicate Formal Complaints of Sexual Harassment I, including Sexual Assault, Domestic Violence, Dating Violence and Stalking.
- At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
- Only relevant cross-examination and other questions may be asked of a party or witness.
- Before a Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- If a party does not have an advisor present at the live hearing to conduct cross-examination on behalf of that party, the institution must provide without fee or charge to that party, an advisor of the institution's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
- Live hearings may be conducted with all parties physically present in the same geographic location or, at the institution's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- The University will create a single audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. The recording will be the property of the University.

PROCEDURES (Review Meeting; non-TIX Hearing)

- A Sole Decision-Maker or Review Board is identified and notice of the meeting is provided to the parties.
- The University will create a single audio/audiovisual recording or transcript, of any live hearing and make it available to the parties for inspection and review. The recording will be the property of the University.
- The investigator presents the report, recommendation, and conclusion for no longer than fifteen (15) minutes; the Board of Review or Sole Decision-Maker may, but is not required to, ask questions.
- The Complainant has an opportunity to give a closing and/or impact statement no longer than fifteen (15) minutes; the Board of Review or Sole Decision-Maker may, but is not required to, ask questions.
- The Respondent has an opportunity to give a closing and/or impact statement no longer than fifteen (15) minutes; the Board of Review or Sole Decision-Maker may, but is not required to, ask questions.
- The parties cannot ask questions of one another.
- The Board of Review or Sole Decision-Maker may: (a). Accept the Investigator's recommended finding(s); (b). Reject the Investigator's recommended finding(s); or (c). Refer the matter back for further/additional Investigation.

MEETING PROCEDURES

- The Complainant and Respondent may also decline to attend the meeting and no negative inference shall be drawn for any party that does not attend the meeting.
- Further, a parties' voluntary absence will not preclude the meeting from moving forward. The Sole External Reviewer will still hear from the party that attends the meeting, the Investigator, and may hear from any witnesses in attendance.
- The Sole External Reviewer will make the final determination/decision based on the information/documents that have already been submitted in the Final Investigative Report, and on any information that may be provided by the Investigator and the party in attendance at the meeting.
- The Sole External Reviewer will be responsible for facilitating the meeting, ensuring that time limits for each part of the review process are adhered to, and to oversee and control the flow of the meeting.

MEETING PROCEDURES

- No written or pre-recorded statements from the Investigator, the Complainant, Respondent, or their respective attorneys, advisors, and/or support persons, will be accepted by the Sole External Reviewer at the meeting, or in lieu of the parties' presence at the meeting.

MEETING PROCEDURES (REVIEW MEETING)

- While all parties who wish to participate are present, the Investigator will have 15 minutes to present the information and recommendation from the Final Report. Only the Sole External Reviewer can ask the Investigator questions. (Due to the number of parties and issues involved, the allowable time may be adjusted)
- The Sole External Reviewer will then invite the Complainant to present a closing statement, no longer than 15 minutes. Only the Board can ask the Complainant questions. (Due to the number of Complainants and issues involved, the allowable time may be adjusted)
- The Chair will then invite the Respondent to present a closing statement, no longer than 15 minutes. Only the Board can ask the Respondent questions. (Due to the number of Respondents and issues involved, the allowable time may be adjusted)

MEETING PROCEDURES/ CLOSING STATEMENTS

- While both parties will be allowed significant latitude, the statements should be confined to the issue that has been investigated and should not be used as an opportunity to engage in malicious personal attacks against the other party or witnesses.

MEETING PROCEDURES/QUESTIONS

- After the Investigator's presentation, the Sole External Reviewer may, but is not required to, ask the Investigator questions. Only the Sole External Reviewer can ask questions of the Investigator during the meeting. At the conclusion of the questions to the Investigator, the Sole External Reviewer will instruct the Investigator to remain for the duration of the meeting.
- After the Complainant's presentation, the Sole External Reviewer may, but is not required to, ask the Complainant questions. Only the Sole External Reviewer can ask questions of the Complainant during the meeting.
- After the Respondent's presentation, the Sole External Reviewer may, but is not required to, ask the Respondent questions. Only the Sole External Reviewer can ask questions of the Respondent during the meeting.
- If deemed necessary, but not required, the Sole External Reviewer may ask the Investigator, Complainant, and/or Respondent additional questions before concluding the meeting.

TIPS FOR ASKING QUESTIONS

- Questioning helps to better understand the facts of the case and to *clarify any vague issues*.
- However, it is important to be unbiased in your line of questioning to ensure equality and fairness, treat all parties with respect, and maintain a balanced approach.
- Open-ended questions are best. Open-ended questions tend to lead the individual into providing more information, that will likely assist in the Board's better understanding of the case. (Who, what, how, etc.)

TIPS FOR ASKING QUESTIONS

- Closed-ended questions often result in a yes/no response, which does not offer you much information. (Were you, did you)

For example, Close-Ended:

“Were you angry when you broke the window?”

For example, Open-Ended:

“What were your feelings when you broke the window?”

- Avoid asking multiple choice questions, compound questions, and leading questions. These types of questions generally result in slanted or misleading responses.

Questions that start with “why” are especially prone to being experienced as victim-blaming and are generally not considered trauma-informed

TIPS FOR ASKING QUESTIONS

- Learn to be comfortable with silence, after you have asked a question.
- Be willing to ask the tough/awkward questions, but be sure that the line of questioning is relevant to the issues in the case.
- Allow the individual ample time to think about the question, without undue pressure to respond quickly.
- If the individual needs clarification, let them ask for it; don't assume that they do not understand the question.

RECENTLY DISCOVERED EVIDENCE

- The Sole External Reviewer has the authority and discretion to determine the relevance of, place restrictions on, or exclude any information and/or evidence. In the event a party has recently discovered relevant evidence, information, and/or a witness, that was not discoverable through the exercise of due diligence during the Investigation and Draft Investigative Report review period, the Sole External Reviewer will allow the party presenting the recently discovered evidence an opportunity to explain: 1. the reason the evidence, information, and/or witness was not discoverable earlier and; 2. the relevancy of such evidence, information, and/or witness.
- The Sole External Reviewer may ask the party questions in response to the reasons offered.
- Thereafter, the Sole External Reviewer will allow the other party an opportunity to provide a response, explaining their objection and/or opposition, if any. The Sole External Reviewer will then deliberate in private to determine whether that evidence, information, and/or witness should be presented to the Investigator for review and consideration and that the meeting should be postponed, or whether the meeting should continue.

MEETING PROCEDURES/RECORDINGS

- A single recording of the meeting will be made and will be the property of the University.
- If the recording malfunctions, the Sole External Reviewer (assisted by the Host) shall create a sufficiently detailed summary of the meeting, to be maintained in the file. The file and the recording shall be maintained in the Office of Equity and Inclusion (OEI), and only made available to the Complainant and Respondent, and their respective attorneys and advocates, and support persons (upon request and with any applicable signed releases), the Board of Review or the Sole External Reviewer, and if an appeal is filed, the Board of Appeal or the Sole External Appeal Reviewer.

DELIBERATIONS

- You must first make a final decision whether to:
 - Accept the Investigator's recommended finding;
 - Reject the Investigator's recommended finding; or
 - Refer the matter back to the Investigator for further/additional investigation.

DELIBERATIONS

- If the Sole External Reviewer has accepted the Investigator's recommended finding of a policy violation, the Sole External Reviewer must also determine any sanctions and/or conditions. Sanctions are designed to eliminate Prohibited Conduct under the Policy, prevent its recurrence, and remedy its effects.
- The Sole External Reviewer may consult with OEI, Student Conduct & Community Standards, Student Affairs, Department of Human Resources, and/or any other University administrative offices about any prior disciplinary actions regarding the Respondent and about sanctions imposed in similar cases in the past.
- Consistency in sanctions of similar cases is important, however, similar offenses may result in different sanctions where there are distinguishing facts and circumstances.
- Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved and the entire UMBC community, or so deleterious to the educational or working environment, that it requires severe sanctions.

SANCTIONS

Possible Sanctions include:

Title IX Reprimand: “good standing” status is in jeopardy and further violations may result in Probation, Suspension, or Dismissal. May include conditions.

Title IX Probation: places the Respondent on Title IX probationary status during which further violations of the Policy may result in Suspension or Dismissal. May include conditions.

Title IX Suspension: (transcript notation): terminates a Respondent’s status as an enrolled student for either a specific or indefinite period of time. The Title IX suspension may take effect immediately, on some future date to be specified, or be held in abeyance. May include conditions for return.

Title IX Dismissal: (transcript notation): permanently terminates a Respondent’s status as an enrolled student.

FACTORS TO CONSIDER FOR SANCTIONS

- Include but are not limited to:
- The nature and violence of the conduct at issue.
- The impact of the Prohibited Conduct on the Complainant.
- The impact or implications of the Prohibited Conduct on UMBC community members.
- Prior misconduct by the Respondent, including prior discipline history at the University or elsewhere (if known), including criminal convictions.
- Maintenance of a safe and respectful environment.
- Any other mitigating, aggravating, or compelling circumstances to assist in reaching a just and appropriate resolution in each case.

CONDITIONS

- Even where no sanctions are imposed, the University has the right to impose conditions which are designed to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects while supporting the University's mission.
- Conditions may include, but are not limited to: 1. Financial restitution for any loss sustained or incurred by the institution or member(s) of the University community; 2. Community restitution; 3. Participation in a restorative circle or conference; 4. Attendance at an alcohol and other drug assessment or education program; 5. Counseling Intake or Evaluation Session; 6. Educational project; 7. Suspension of computer account; 8. Restriction from specific University buildings, areas, or facilities; 9. Termination of UMBC Residential Life license; 10. Termination of Food Services contract; 11. Restriction or denial of campus driving privileges for disciplinary violations involving the use or registration of motor vehicles and/or parking permits; 12. No Contact Order with designated person(s); 13. Residential Life housing reassignment or loss of ability to re-license or reapply for UMBC housing; 14. Establishment of educational achievement expectations; 15. Academic registration block; 16. Monetary fines; 17. Loss of University privileges, including social privileges, athletic privileges, housing privileges, co-curricular privileges, and/or facility-use privileges; 18. Residential Life Probation – This condition places the student on a notice that further violations may lead to the termination of the student's UMBC Residential Life license; 19. Random drug

NOTICE OF MEETING OUTCOME

Within ten (10) calendar days of the conclusion of the meeting, the University will issue a Notice of Meeting Outcome to the Complainant, Respondent, and the Investigator.

The Notice of Meeting Outcome will include the finding(s), rationale for the finding(s), and the sanctioning decision and/or the imposition of conditions, if warranted.

The Notice of Meeting Outcome will also include information about the Appeal process, including the available grounds for Appeal, the timeframe for submitting an Appeal, and the name of the individual to whom the Appeal shall be addressed.

REVIEW OF APPEAL

If an Appeal is timely and properly filed, the non-Appealing party will be given the opportunity to review the Appealing party's written Appeal and respond to it in writing.

The University has the discretion to select from a pool of trained University personnel to serve on the Board of Appeal or to select a Sole External Appeal Reviewer.

A Sole External Appeal Reviewer shall decline to participate in a particular case on the basis of an actual conflict of interest, bias, or lack of impartiality.

An individual that served as the Sole External Reviewer for a particular matter under the Procedures, is precluded from serving as the Sole External Appeal Reviewer for the same matter.

APPEAL REVIEW PROCESS

Prior to Consideration of the Appeal, the University will send the parties the Notice of Appeal Meeting, identifying the Board of Appeal member(s) or Sole External Appeal Reviewer, date, time, and location of the Appeal meeting.

The Board / Sole External Appeal Reviewer's role is to independently review the matter, based upon the grounds for Appeal filed by the parties, and to confirm that the matter has been timely filed. The scope of Review is strictly limited to the permissible grounds.

The Appeal Reviewer will review the Final Investigative Report (with the supporting documentation), the Review Meeting recording, the Notice of Meeting Outcome, and any Appeals filed; the Appeal process is not intended to be a re-investigation of the matter.

The appeal is based on the record of the case. There is no meeting with the Parties, witnesses, or Investigator and there is no recording made of the Sole External Appeal Reviewer's deliberative process.



APPEALS

The grounds for Appeal are strictly limited to the following:

1. Substantive Due Process violation(s). Specified procedural errors or errors in interpretation of the Policy that were so substantial as to effectively deny the Complainant and/or Respondent notice or a fair opportunity to be heard.
2. New and Significant Information/Evidence that has become available, which a reasonably diligent person could not have discovered during the Investigation and/or at the time of the meeting, that would change the Reviewer's finding(s), decision(s), and/or sanctioning decision(s);
3. 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 individual Complainant or Respondent that affected the outcome of the matter;
4. Excessiveness or insufficiency of the sanctioning decision.

Mere dissatisfaction or mere deviations from procedures that were not so substantial as to deny a party notice or a fair opportunity to be heard, are not valid bases for an Appeal.

APPEAL DECISION

The University will render a written decision on the Appeal(s) within ten (10) calendar days after Consideration of the Appeal. The written decision will include the Appeal Reviewer's finding(s) and rationale and will be sent simultaneously to the Complainant, Respondent, and Investigator.

The Board of Appeal or Sole External Appeal Reviewer may:

- Concur with the finding(s) and sanctioning decision of the Board of Review or the Sole External Reviewer;
- Concur with the findings of the Board of Review or Sole External Reviewer and amend/alter the sanctioning decision; or
- Only in cases of clear Policy error, vacate the finding(s) and sanction decision of the Board of Review or Sole External Reviewer and return the matter for additional Investigation or request that a new Board of Review or Sole External Reviewer is selected to review the matter. For purposes of the Procedures, clear Policy error constitutes the misapplication of relevant Policy sections and/or improperly applying the Policy.