

H.1.2.2 (Procedure) Civil Rights Complaints

Appeal Procedure

Responsible Department: Alamo Colleges District

Title IX/VII/IV/ADA/504 Coordinator

Based on Board Policy: H.1.2 Civil Rights Discrimination, Harassment and Retaliation

Board adoption: 10-28-14

Last Amended: 10-28-14, 9-27-16, 7-27-21, 3-22-22



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Purpose

This procedure provides the mechanism for either party to a complaint for discrimination, harassment and retaliation under Process A and Process B to challenge the determination of responsibility, notice of resolution, or decision rendered during the complaint process and any discipline or sanctions imposed as a result of the decision.

Process A Appeal Procedure

Process A applies only to complaints of sexual harassment, sexual assault, dating violence, domestic violence and stalking under Title IX of the Educational Amendments of 1972, 20 U.S.C. §1681 *et seq.* (“Title IX”) and its regulations at 34 CFR §§106.8, 106.30, 106.44, and 106.45.

A. Appeal of Live Hearing Determination or Discipline/Sanctions

- 1. Appeal Permissible.** A complainant or respondent may appeal the written determination of responsibility or non-responsibility issued after the live hearing, or the sanctions or discipline recommended to be imposed, or both. A party may also appeal a dismissal of a formal complaint or the dismissal of any allegations in a formal complaint. *34 CFR §106.45(b)(1)(viii).*
- 2. Notice of Appeal.** A notice of appeal must be timely submitted in writing or electronically to the Alamo Colleges District Title IX/VII/IV/ADA/504 Coordinator or the District Title IX/VII/ADA/504 Coordinator for Employees, or the District Title IX Coordinator for Students or the College Title IX Coordinator, stating the specific ground(s) of appeal and explaining, whichever is applicable, why the determination or responsibility finding is erroneous and should be overturned, why the sanctions or discipline are erroneous, excessive, or otherwise not merited or appropriate given the allegations and responsibility finding, or why the dismissal of a formal complaint or allegations in a formal complaint is erroneous and should be reinstated and investigated. *34 CFR §106.45(b)(8)(i).*
- 3. Time for Appeal.** A notice of appeal must be timely submitted in writing or electronically to the Alamo Colleges District Title IX/VII/IV/ADA/504 Coordinator or the District Title IX/VII/ADA/504 Coordinator for Employees, or the District Title IX Coordinator for Employees, or the College Title IX Coordinator within ten (10) calendar days from the date of the written determination issued by the decision-maker after the conclusion of a live hearing. If sanctions or discipline were imposed and are being appealed, the notice of

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appeal must be submitted within ten (10) calendar days from the date of the notification that sanctions, or discipline are being imposed. *34 CFR §106.45(b)(8)(i)*. If a party is appealing the dismissal of a formal complaint or any allegations in a formal complaint, a notice of appeal must be submitted within ten (10) calendar days from the date of the notification of the dismissal before an investigation is commenced.

4. Grounds for Appeal After Determination. A notice of appeal of the finding of responsibility or non-responsibility from either party and/or the sanctions or discipline recommended or imposed must state that the appeal is based on one or more of the following grounds:

- a) A procedural irregularity occurred that affected the outcome of the matter. The procedural irregularity cannot be that the grievance process or any step therein was not completed within the specified days unless the delay was unreasonable and prejudicial. *34 CFR §106.45(b)(8)(i)(A)*;
- b) New evidence that was not reasonably available at the time of the live hearing or the determination regarding responsibility or dismissal was made and that affected the outcome of the matter. The new evidence must be stated. *34 CFR §106.45(b)(8)(i)(B)*;
- c) The assigned Title IX Coordinator, Title IX Lead, investigator, and/or decision-maker for the case 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. *34 CFR §106.45(b)(8)(i)(C)*;
- d) The finding of responsibility on one or more allegations found to be substantiated or unsubstantiated is not supported by the preponderance of the evidence and affected the outcome of the matter. *34 CFR §106.45(b)(8)(ii)*;
- e) The sanctions or discipline recommended or imposed are erroneous, excessive, or otherwise not merited or appropriate given the allegations and responsibility finding.

5. Receipt of Appeal. Upon receipt of a notice of appeal after a determination has been issued, the assigned Title IX Coordinator will acknowledge in writing receipt of an appeal, notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties, including informing the parties of the equal right to submit a written statement in support of, or challenging the outcome at the live hearing. *34 CFR §106.45(b)(8)(iii)(A and D)*. The assigned Title IX Coordinator handling the complaint will provide a copy of the notice of appeal with the stated grounds for appeal and any documents submitted with the appeal to the other party within five (5) calendar days of the date the appeal was submitted. The appealing party also will be provided ten (10) calendar days to submit one or more statements and argument to support the grounds of the appeal and explaining and supporting the reversal of the determination and the specific evidence that

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would render a different result.

6. **Response to Appeal.** Upon receipt of the appealing party's submission support the reversal of the determination, the assigned Title IX Coordinator handling the complaint will send the appealing party's submission to the non-appealing party and provide the non-appealing party ten (10) calendar days to submit a response to the appealing party's notice of appeal and statements and other information submitted and a written statement in support of the outcome and determination.

7. **Appointment of Decision-maker on Appeal.** Within ten (10) calendar days of receiving the notice of appeal, the assigned Title IX Coordinator will appoint a decision-maker who does not have a conflict of interest or bias to decide the appeal. The decision-maker for the appeal cannot be the same person as the decision-maker who presided over the live hearing and reached the determination regarding responsibility or dismissal, or any of the Title IX Coordinators and Title IX Leads consulted on the complaint, or the investigator of the complaint. *34 CFR §106.45(b)(8)(iii)(B)*. The appointment of the decision-maker on appeal must be documented, and the appointment communication must inform the decision-maker on appeal of the requirement to serve impartially and avoid prejudgment of the facts at issue. *34 CFR §106.45(b)(8)(iii)(C)*.

8. **Record to Decision-maker an Appeal.** Within fifteen (15) calendar days of receiving the notice of appeal, the District Title IX Coordinator handling the complaint will:
 - a) Provide the decision-maker on appeal with the record and recording of the live hearing, documentary evidence introduced at the live hearing, the determination, which is the subject of the appeal, notice of appeal, all documents submitted by the appealing party, and any response from the other party and request that the decision-maker on appeal review all materials provided. The materials provided must be documented.
 - b) Inform the decision-maker on appeal in writing that: (1) he/she must render a written determination of the appeal, addressing the specific grounds on which the appeal is based and the reasons and rationale for the determination; (2) the determination of the hearing decision-maker may be affirmed, over-turned, or modified as appropriate; (3) the determination on appeal must state the appeal is final and not subject to further appeal.
 - c) Inform the decision-maker on appeal in writing that the written decision is due within fifteen (15) business days from date he/she receives all materials from the assigned Title IX Coordinator handling the complaint and must be sent dated and signed to the

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appropriate Title IX Coordinator.

9. **Determination to Parties.** Within two (2) business days of receiving the determination on appeal, the assigned D Title IX Coordinator handling the complaint will provide the written decision simultaneously to both parties and their advisors. *34 CFR §106.45(b)(8)(iii).*

 10. **Finality.** The determination regarding responsibility becomes final on the date the parties are provided with the written determination of the result of the appeal, if an appeal is filed, or if no appeal was filed, on the date on which the appeal would no longer be considered timely. *34 CFR §106.45(b)(7)(iii).*
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Process B Appeal Procedure

Process B applies to complaints which do not meet the definitions of sexual harassment, sexual assault, dating violence, domestic violence, and stalking and jurisdictional requirements of §§106.30, 106.44, and 106.45 of the Title IX regulations, complaints of gender discrimination and retaliation under Title IX, and complaints which arise under other civil rights statutes identified in H.1.1.1 (Procedure) Civil Rights Complaints and Resolution Procedure.

Process B is not intended for appeals of student sanctions or employee discipline issued subsequent to a Civil Rights Complaint Resolution decision. See *Appealing Student Sanctions or Employee Disciplinary Action* below.

1. **Grounds for Appeal.** Any party (complainant or respondent/accused) may appeal, but appeals are limited to the following grounds:
 - A procedural error or omission occurred that significantly impacted the outcome of the original civil rights complaint resolution process (e.g., substantiated bias, material deviation from established procedures, etc.).
 - To consider new evidence, unknown or unavailable during the original civil rights complaint resolution process that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included in the written notice of appeal.
 - To challenge that the responsibility finding(s) is/are not supported by the preponderance of the evidence.

2. **Notice and Time for Appeal.** An appeal of a Civil Rights Complaint Notice of Resolution (decision) that was issued under Procedure H.1.2.1 must be submitted in writing to the Title

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IX/VII/ADA/504 Coordinator within five (5) business days of the delivery of the written Complaint Notice of Resolution (Decision) or within five (5) business days of the issuance of employee discipline or student sanctions, whichever is later. An Appeal form is posted at www.alamo.edu/TitleIXCoordinator/. The form may be submitted online through the website or to:

Alamo Colleges District Title IX/VII/IV/ADA/504 Coordinator

Name: Linda Boyer-Owens, Alamo Colleges District Title IX/ VII/IV/ADA/504 Coordinator

Position: Associate Vice Chancellor Human Resources & Organizational Development

Address: 2222 N. Alamo Street, Room 230A-West Wing
San Antonio, Texas 78204-1429

Telephone: (210) 485-0230

Email: lboyer-owens@alamo.edu

3. **Civil Rights Appeal Hearing Panel.** A three-member Civil Rights Appeal Hearing Panel (none of whom were involved in the complaint resolution process previously) will be designated by the Alamo Colleges district Title IX/VII/IV/ADA/504 Coordinator from the pool of trained Title IX/VII/ADA/504 Investigators. One of the Panel Members will be designated as the Panel Chair.

If a student appeals any sanctions imposed as a result of the civil rights complaint resolution process, the appeal process in the Student Code of Conduct will be followed.

4. **Civil Rights Appeal Process.** A Civil Rights Appeal Procedure Diagram is attached to this procedure (see Attachment A.) The primary steps in the process are:

- a. Complainant or Respondent (accused) in a Civil Rights Complaint Resolution decision submits a timely written appeal of the decision to the Alamo Colleges District Title IX/Title VII/IV/ADA/504 Coordinator (see Filing an Appeal, above).
- b. The Title IX/VII/IV/ADA/504 Coordinator appoints a trained Hearing Panel and Hearing Panel Chair. A Title IX Coordinator (College or Student) or the Title IX/VII/ADA/504 for Employees will be designated to coordinate the Appeal Process. If the appeal is by a student regarding sanctions, the Title IX/VII/ADA/504 Coordinator refers the appeal to the proper college administrator for processing hearing under the Student Code of Conduct.
- c. The assigned Coordinator will issue a written acknowledgment of the Appeal and Notice of Hearing to all parties to the original Civil Rights Complaint Resolution decision at least five (5) business days before the hearing but not later than three (3) weeks following receipt of the written appeal. The written notification shall state the findings if the Investigative Panel. The notice of hearing shall state the time, date, and location of the hearing. If any party does not appear at the scheduled hearing, the hearing will be conducted in the party's absence. The Notice of Hearing shall provide the deadlines for submission of Witness

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Lists and exhibits to the assigned Coordinator for compelling, substantiated reasons, the Appeal Hearing Panel may re-schedule the hearing. The Notice of Hearing shall also notify the appealing party of the following:

- (1) The appeal hearing is a confidential, internal administrative proceeding.
 - (2) Parties to the appeal hearing may appear by themselves or with an adviser. The name of any advisor must be provided to the assigned Coordinator at least 48 hours prior to the scheduled commencement of the hearing.
 - (3) Both parties may call (present) witnesses at the hearing. Both parties must notify the assigned Coordinator in writing of the identity of any persons who will be called as witnesses at least 48 hours prior to the scheduled commencement of the hearing. The parties are responsible for getting their witnesses to appear at the hearing.
 - (4) Each party may present their case, offer evidence, examine witnesses, and argue on their own behalf at the hearing.
 - (5) All parties may question all witnesses.
 - (6) The Appeal Hearing Panel may pose questions to the parties and the witnesses.
 - (7) All parties to the Appeal will submit Witness Lists and exhibits to the Deputy Coordinator at least two (2) business days prior to the scheduled Appeal Hearing. The Deputy Coordinator will immediately provide copies of all witness lists and all exhibits to all parties.
- d. The Appeal Hearing will be conducted before the Hearing Panel. All evidence and witnesses will be presented.
 - e. The Appeal Hearing Panel Chair will lead the Panel in deliberation continuously during normal business hours until a decision is reached on the appeal.
 - f. The Hearing Panel Chair will issue a written decision to the assigned Coordinator. The decision may include a finding to overturn a sanction or employee discipline that the appeal decision renders inappropriate. The decision may also include a recommendation for further discipline or sanction considerations by the Administrator to support the appeal decision.
 - g. The assigned Coordinator will provide a written Appeal Determination to all parties and Administrator(s) for the student and/or employee parties. The decision is final, and no further appeals are permitted.
 - h. The responsible Administrator(s) will take action to promptly amend prior disciplinary actions or sanctions as necessary to reflect the results of the Appeal Determination.
- 5. Decisions on Appeal.** The Civil Rights Appeal Hearing Panel will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. The original finding and sanction are presumed to have been decided reasonably and appropriately.

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- Appeals decisions by the Civil Rights Appeal Hearing Panel are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a significant compelling justification to do so;
- Appeals are not intended to be full re-hearings of the complaint. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. Appeals granted based on new evidence should normally be remanded to the original hearing panel for reconsideration.
- Sanctions and disciplinary action imposed are implemented immediately and remain in place during an appeal unless the assigned Coordinator or designee stays their implementation in extraordinary circumstances, pending the outcome of the appeal;
- Once an appeal is decided, the outcome is final: further appeals are not permitted.

6. Sanction and Progressive Discipline Actions Resulting from or Amended by an Appeal.

The responsible Administrator notified of the Appeal Determination or designee, will complete the process to issue appropriate Student Sanctions or Employee Discipline appropriate to the Appeal Determination or, if necessary, modify or remove the Sanctions or Discipline issued in response to the original Complaint Determination.

All respondents are expected to comply with conduct sanctions/responsive/corrective actions within the time frame specified by the assigned Coordinator. Failure to comply with conduct sanctions/responsive/corrective actions by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination from the Alamo Colleges and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the assigned Coordinator.

7. Appealing Student Sanctions and Employee Disciplinary Actions.

This procedure is not intended for appeals of a student sanctions or employee discipline issued subsequent to a Civil Rights Complaint Resolution decision.

- Student Sanctions issued by College Administration in response original Civil Rights Complaint Resolution decision are issued under the Student Code of Conduct. Any appeal of student sanctions must be made and processed under the provisions of F.4.2.2 (Procedure) Non-Academic Misconduct Disciplinary Process, not under this Civil Rights Appeal Procedure.
- Progressive Discipline issued by Administration to employees in response a Civil Rights Complaint Resolution decision are issued under the applicable Progressive Discipline Policy. Any appeal of employee progressive discipline must be made and processed under the provisions of the D.3.3.1 (Procedure) Employee Complaints, not this Appeal Process for Civil Rights Complaint Determinations.