

## APPELLATE DECISION MAKERS MODULE

# Practice Scenarios

For each scenario, try to identify the problem or “grounds” on which the appealing party is making their appeal. Consider whether that problem actually impacted the outcome of the hearing. Finally, decide whether you think the appeal should be granted. Our own brief answers for each scenario are on the following page.



The Complainant’s Formal Complaint was dismissed by the Title IX Coordinator on the grounds that it was not within the school’s program or activity. The incident took place off campus at an annual 10K organized by the campus acapella group as a fundraiser. The Complainant appeals.

**Grounds for appeal**

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**Affected the outcome**

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**Ruling on appeal**



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**Grounds for appeal**

Procedural irregularity – potential misapplication of the dismissal rules

**Affected the outcome**

Yes – resulted in dismissal (unless it was not the sole grounds)

**Ruling on appeal**

Granted. Regardless of its geographic location, this was a formal activity of a school-sponsored organization. Title IX Coordinator reversed. Case will now proceed to investigation and hearing.



After Respondent is found responsible for Level 4 expressive harassment, a new witness steps forward to state that the Complainant subjected her to very similar treatment. Respondent appeals.

**Grounds for appeal**

**Affected the outcome**

**Ruling on appeal**



After Respondent is found responsible for Level 4 expressive harassment, a new witness steps forward to state that the Complainant subjected her to very similar treatment. Respondent appeals.

**Grounds for appeal**

New evidence

**Affected the outcome**

No

**Ruling on appeal**

Denied. Determination of hearing Decision Maker upheld. Witness can file a complaint against Complainant.

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After Respondent is found not responsible for sexual assault, Complainant appeals. In her appeal, Complainant, who is an honors scholar and accomplished musician, argues that she and the witnesses who supported her were much more serious and believable than Respondent and the witnesses who supported him.

**Grounds for appeal**

**Affected the outcome**

**Ruling on appeal**

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**Grounds for appeal** No allowable grounds

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**Affected the outcome** N/A

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**Ruling on appeal** Denied. Ruling of hearing Decision Maker upheld.

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Following an investigation and hearing, Respondent is found not responsible for Sexual Harassment and stalking. Complainant appeals on the grounds that no one ever met with him to discuss supportive measures and his request for a safer parking space on campus was unreasonably denied without any explanation.

**Grounds for appeal**

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**Affected the outcome**

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**Ruling on appeal**

33



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**Grounds for appeal**

Procedural irregularity – the Coordinator must contact the Complainant to discuss the availability of supportive measures and consider the Complainant’s wishes with respect to supportive measures.

**Affected the outcome**

No (at least not on these scant facts)

**Ruling on appeal**

Appeal denied. Hearing determination upheld.



Respondent is a star swimmer who has been accused of sexual assault. Decision Maker, who is the coach of the women’s basketball team, finds Respondent not responsible. Two days later, the school announces that the long-serving Athletic Director is departing and the coach of the women’s basketball team has been named Interim Athletic Director. Complainant appeals.

**Grounds for appeal**

**Affected the outcome**

**Ruling on appeal**



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**Grounds for appeal**

Conflict of interest

**Affected the outcome**

If pending appointment was known, arguably yes

**Ruling on appeal**

Granted and remanded for a new hearing with a different Decision Maker.



Dr. Kehl, the Chair of the Ecology Department, is one of the school's most outspoken progressive activists. She has published numerous articles warning of the dangers of climate change denialism, and she was sharply critical of the Trump Administration's energy policies. Dr. Kehl and an administrator from the athletic department were assigned to investigate a sexual assault case. Both the Complainant and the Respondent have leadership roles with the College Republicans. After the Respondent is found responsible for sexual assault, the Respondent appeals.

**Grounds for appeal**

**Affected the outcome**

**Ruling on appeal**



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**Grounds for appeal**      Bias

**Affected the outcome**      Tricky – can Respondent identify evidence of bias in the report or elsewhere?

**Ruling on appeal**      Denied. Determination of hearing Decision Maker upheld.

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Respondent is charged with Sexual Harassment and stalking. During cross examination, Respondent's advisor asks questions about Complainant's prior dating relationships in which she seemingly tolerated worse behavior (one former boyfriend urinated on her car and another broke into her apartment). After Respondent is found not responsible, Complainant appeals on the grounds that the "rape shield" rule should have protected her from answering questions about prior relationships.

**Grounds for appeal**

**Affected the outcome**

**Ruling on appeal**

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**Grounds for appeal**

Procedural irregularity – failure to apply rape shield

**Affected the outcome**

No, because no error. Rape shield applies to sexual predisposition and behavior.

**Ruling on appeal**

Appeal denied