

## Appeals (and Reconsideration Request) Overview (for matters on or after August 14, 2020) Equity Resolution Process—Faculty/Faculty-led Unit as Respondent

### Background

Initial decisions about whether faculty members are responsible are made by either the Provost's Designee or a Hearing Panel. If the faculty member is found responsible, then the Provost issues sanctions and informs the parties of the decision as well as their right to appeal.

### General Standards

- **Keep records of all emails and correspondence; forward to TIXE Investigator for the case file.**
- Send **separate** emails to the parties; do **not** email them together; this is for privacy and/or safety reasons.
- TIXE can send correspondence on your behalf, if you choose.
- If a party has an Equity Support Person, copy their Equity Support Person on correspondence.
- Be discreet. Remember FERPA and safeguard privacy. Privacy is particularly important in all equity cases, but especially in cases involving sex-based violence.
- Keep an open mind.
- Ask questions if you are unsure. We're here to help. Give us a call.
- Consult with Deputy General Counsel if you need legal advice.

### Key Contacts

- Paul Maguffee, Deputy General Counsel, attorney for the appellate process
- Dana Beteet Daniels, Title IX Coordinator & Chief Equity Officer
- Jessica Swederske, Deputy Title IX Coordinator and Equity Officer and Case Investigator

### Key Policies

- CRR [600.000](#) Equal Employment/Educational Opportunity Policy
- CRR [600.010](#) Equal Employment/Educational Opportunity and Nondiscrimination Policy
- CRR [600.040](#) Equity Resolution Process for Resolving Complaints of Discrimination and Harassment against a Faculty Member or Student or Student Organization
- CRR [330.065](#) Consensual Romantic Relationships

### Steps in the Reconsideration Process

#### **1. Summary Resolution Determination by Equity Officer**

During or upon the completion of the investigation, the Equity Officer will review the investigation materials, and based on that review, the Equity Officer will make a summary determination as to whether there is a sufficient basis to proceed with the complaint that the respondent is responsible for violating the University's Anti-Discrimination Policies. If the Equity Officer determines that there is a sufficient basis to proceed, then the process will continue to either Hearing Panel Resolution, Administrative Resolution (by the Provost/Provost Designee), or Conflict Resolution. If

the Equity Officer determines that there is an insufficient basis to proceed, then they will issue summary resolution, which ends the Equity Resolution Process.

## **2. Option for the Parties to Request Reconsideration**

The Parties may request reconsideration of the summary determination ending the process by filing a written request with the Equity Resolution Appellate Officer within **five (5) business days** of notice of the summary determination.

The Chancellor (or Designee) is the Appellate Officer in faculty matters. If the Appellate Officer decides that there is a sufficient basis to proceed with the complaint, they will reverse the determination ending the process and direct the process to continue. If they agree that there is an insufficient basis to proceed, then the process ends and no additional appeals are permitted.

## **Steps in the Appeal Process**

### **1. Decision by Equity Officer or Hearing Panel**

The Provost or their Designee, or a Hearing Panel, will determine responsibility (and sanctions) in a written decision. The parties have **five business days** to appeal to the Chancellor.

### **2. Notice of Potential Appeal**

TIXE Investigator notifies the Chancellor and their Chief of Staff that an appeal is possible, in light of a recent decision, and informs them of the parties' names and their Equity Support Person's name, if any.

### **3. Request to Appeal**

One or more of the parties may contact the Chancellor indicating they wish to appeal. They (or Designee) can grant an extension of the deadline to appeal (for a reasonable time, such as 7-10 business days). They should provide the extension to the other party as well.

When the Chancellor receives a request, they (or Designee) will notify TIXE Investigator. TIXE Investigator will invite the Chancellor (or Designee) to a **Box** folder with the relevant materials for the appeal, including the relevant CRRs.

The party must articulate one of acceptable grounds for appeal:

- **Procedural error** that significantly impacted the outcome (e.g., material deviation from established procedures, etc.);
- To consider **new evidence** not available during the original decision that could affect the outcome of the matter;
- The Equity 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

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

If one party submits an appeal request, the Chancellor (or Designee) must provide a copy of the request to the other party and give them an opportunity to respond. The response is due in 5 business days, but they can grant a reasonable extension (e.g. 7-10 business days).

#### **4. Decision of Whether to Accept Request to Appeal**

The Chancellor (or Designee) will consider the request and any response. They will decide:

- A. Is the appeal timely? (within 5 business days, unless extended as noted above)
- B. Is the appeal on one of the acceptable grounds?
  - Procedural error that significantly impacted the outcome (e.g., material deviation from established procedures, etc.);
  - To consider new evidence not available during the original decision that could affect the outcome of the matter;
  - The Equity 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
  - The sanctions fall outside the range typically imposed for the offense or for the cumulative conduct record of the accused
- C. When viewed in the light most favorable to the appealing party, does the appeal state grounds that *could* result in an adjusted finding?

If all three are yes, then the appeal must be accepted.

If not, the appeal is not accepted and the parties are notified. Do **not** notify the parties together; **email them separately** and copy the TIXE Investigator. Deputy General Counsel can help draft letters rejecting appeal requests.

A written decision on whether the appeal is accepted is due within 15 business days after the request for appeal is received, otherwise the appeal is deemed accepted. The Chancellor (or Designee) can extend that deadline for a reasonable time (e.g. 7-10 business days) and should notify the parties if doing so.

## **5. Determination of Appeal**

After accepting the appeal, the Chancellor (or Designee) considers the matter and determines whether to alter the decision and/or send it back to the Equity Officer or the Hearing Panel. Key principles include:

- Show deference to original decision.
- Appeals are not re-hearings. In most cases, focus on the written record.
- If an appeal is granted due to new evidence, then in most cases, remand to the Equity Officer or the Hearing Panel for reconsideration.
- Issue a written decision within 10 business days of accepting the appeal. If that timing cannot be met, notify the parties of the delay.
- All parties must receive written notice of the decision. Do **not** email the parties together. **Send separate emails.** Copy the Parties' Equity Support Person, if any, and TIXE Investigator.

## Appeals (and Reconsideration Request) Overview (for matters on or after August 14, 2020) Equity Resolution Process—Staff Member Respondent

### General Standards

- **Keep records of all emails and correspondence; forward to TIXE Investigator for the case file.**
- Send **separate** emails to the parties; do **not** email them together; this is for privacy and/or safety reasons.
- If a party has an Equity Support Person, copy the Equity Support Person on correspondence.
- Be discreet. Remember FERPA and safeguard privacy. Privacy is particularly important in all equity cases, but especially in cases involving sex-based violence.
- Keep an open mind.
- Ask questions if you are unsure. We're here to help. Give us a call.
- Consult with Deputy General Counsel if you need legal advice.

### Key Contacts

- Paul Maguffee, Deputy General Counsel, attorney for the appellate process
- Dana Beteet Daniels, Title IX Coordinator & Chief Equity Officer
- Jessica Swederske, Deputy Title IX Coordinator and Deputy Equity Officer and Case Investigator

### Key Policies

- CRR 330.065 Consensual Romantic Relationship Policy
- CRR 600.010 Equal Employment/Educational Opportunity Policy
- CRR 600.050 Equity Resolution Process for Resolving Complaints of Discrimination and Harassment against a Staff Member or the University of Missouri

### Steps in the Reconsideration Process

#### **1. Summary Resolution Determination by Equity Officer**

During or upon the completion of the investigation, the Equity Officer will review the investigation materials, and based on that review, the Equity Officer will make a summary determination as to whether there is a sufficient basis to proceed with the complaint that the respondent is responsible for violating the University's Anti-Discrimination Policies. If the Equity Officer determines that there is a sufficient basis to proceed, then the process will continue to either Administrative Resolution or Conflict Resolution. If the Equity Officer determines that there is an insufficient basis to proceed, then they will issue summary resolution.

## **2. Option for the Parties to Request Reconsideration**

The Parties may request reconsideration of the summary determination ending the process by filing a written request with the Equity Resolution Appellate Officer within **five (5) business days** of notice of the summary determination.

If the Appellate Officer decides that there is a sufficient basis to proceed with the complaint, they will reverse the determination ending the process and direct the process to continue. If they agree that there is an insufficient basis to proceed, then the process ends and no additional appeals are permitted.

## **Steps in the Appeal Process**

### **1. Decision by Equity HR Officer and Respondent's Supervisor**

The Equity HR Officer, along with the respondent's supervisor, issues a written decision. The parties have **five business days** to appeal to the Appellate Officer.

Any sanctions go into place immediately, unless a party asks the Appellate Officer to stay their implementation pending the outcome of the appeal. The complainant(s) should be notified if a stay of sanctions is *granted and* that stay impacts them directly (e.g., If a respondent is terminated or suspended as a sanction, but that sanction is stayed during the appeal process, such that the complainant may encounter or have to continue working with them in the meantime.)

### **2. Notice of Potential Appeal**

TIXE Investigator notifies the Appellate Officer that an appeal is possible, in light of a recent decision, and informs them of the parties' names and the Equity Support Person, if any.

### **3. Request to Appeal**

One or more of the parties may contact the Appellate Officer indicating they wish to appeal. They can grant an extension of the deadline to appeal (for a reasonable time, such as 7-10 business days). They should provide the extension to the other party as well.

When the Appellate Officer receives a request, they will notify TIXE Investigator. TIXE Investigator will invite the Appellate Officer to a **Box** folder containing materials for the appeal, including the relevant CRRs.

The party must articulate one of acceptable grounds for appeal:

- **Procedural error** that significantly impacted the outcome (e.g., material deviation from established procedures, etc.);
- To consider **new evidence** not available during the original decision that could affect the outcome of the matter;
- The Equity 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
- The **sanctions fall outside the range typically imposed** for the offense or for the cumulative conduct record of the accused

If one party submits an appeal request, the Appellate Officer must provide a copy of the request to the other party and give them an opportunity to respond. The response is due in 5 business days, but the appellate officer can grant a reasonable extension (e.g. 7-10 business days).

#### **4. Decision of Whether to Accept Request to Appeal**

The Appellate Officer will consider the request and any response. The Appellate Officer will decide:

- A. Is the appeal timely? (within 5 business days, unless extended as noted above)
- B. Is the appeal based on one of the three acceptable grounds?
  - Procedural error that significantly impacted the outcome (e.g., material deviation from established procedures, etc.);
  - To consider new evidence not available during the original decision that could affect the outcome of the matter;
  - The Equity 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
  - The sanctions fall outside the range typically imposed for the offense or for the cumulative conduct record of the Respondent
- C. When viewed in the light most favorable to the appealing party, does the appeal state grounds that *could* result in an adjusted finding?

If all three are yes, then the appeal must be accepted.

If not, the appeal is not accepted and the parties are notified. Do **not** notify the parties together; **email them separately** and copy TIXE Investigator. Deputy General Counsel can help draft letters rejecting appeal requests.

A written decision as to whether the appeal is accepted is due within 15 business days after the request for appeal is received, otherwise the appeal is deemed accepted. The Appellate Officer can extend that deadline for a reasonable time (e.g. 7-10 business days) and should notify the parties if doing so.

### **5. Determination of Appeal**

After accepting the appeal, the Appellate Officer considers the matter and determines whether to alter the decision and/or send it back to the Equity HR Officer and the respondent's supervisor. Key principles include:

- Show deference to original decision.
- Appeals are not re-hearings. In most cases, focus on the written record.
- If appeal was granted due to new evidence, then in most cases, remand to the Equity HR Officer and the respondent's supervisor for reconsideration.
- Issue a written decision within 10 business days of accepting the appeal. If that timing cannot be met, notify the parties of the delay.
- All parties must receive written notice of the decision. Do **not** email the parties together. **Send separate emails.** Copy the parties' Equity Support Person, if any, and TIXE Investigator.

## Appeals (and Reconsideration Request) Overview (for matters on or after August 14, 2020) Equity Resolution Process—Student Respondent or Student Organization

### General Standards

- **Keep records of all emails and correspondence; forward to TIXE Investigator for the case file.**
- Send **separate** emails to the parties; do **not** email them together; this is for privacy and/or safety reasons.
- If a party has an Equity Support Person, copy the Equity Support Person on correspondence.
- Be discreet. Remember FERPA and safeguard privacy. Privacy is particularly important in all equity cases, but especially in cases involving sex-based violence.
- Keep an open mind.
- Ask questions if you are unsure. We're here to help. Give us a call.
- Consult with Deputy General Counsel if you need legal advice.

### Key Contacts

- Paul Maguffee, Deputy General Counsel, attorney for the appellate process
- Dana Beteet Daniels, Title IX Coordinator & Chief Equity Officer
- Jessica Swederske, Deputy Title IX Coordinator and Equity Officer and Case Investigator

### Key Policies

- CRR 200.010 Standard of Conduct for Students and Student Organizations
- CRR 600.010 Equal Employment/Educational Opportunity and Nondiscrimination Policy
- CRR 600.040 Equity Resolution Process for Resolving Complaints of Discrimination and Harassment against a Faculty Member or Student or Student Organization

### Steps in the Reconsideration Process

#### **1. Summary Resolution Determination by Equity Officer**

During or upon the completion of the investigation, the Equity Officer will review the investigation materials, and based on that review, the Equity Officer will make a summary determination as to whether there is a sufficient basis to proceed with the complaint that the respondent is responsible for violating the University's Anti-Discrimination Policies. If the Equity Officer determines that there is a sufficient basis to proceed, then the process will continue to either Hearing Panel Resolution, Administrative Resolution, or Conflict Resolution. If the Equity Officer determines that there is an insufficient basis to proceed, then she will issue summary resolution, which ends the Equity Resolution Process.

## **2. Option for the Parties to Request Reconsideration**

The Parties may request reconsideration of the summary determination ending the process by filing a written request with the Equity Resolution Appellate Officer within **five (5) business days** of notice of the summary determination.

If the Appellate Officer decides that there is a sufficient basis to proceed with the complaint, they will reverse the determination ending the process and direct the process to continue. If they agree that there is an insufficient basis to proceed, then the process ends and no additional appeals are permitted.

### **Steps in the Appeal Process**

#### **1. Decision by Equity Officer or Hearing Panel**

The Equity Officer or a Hearing Panel issues a written decision. The parties have **five business days** to appeal to the Appellate Officer.

#### **2. Notice of Potential Appeal**

TIXE Investigator notifies the Appellate Officer that an appeal is possible, in light of a recent decision, and informs them of the parties' names and their Equity Support Persons' names, if any.

#### **3. Request to Appeal**

One or more of the parties may contact the Appellate Officer indicating they wish to appeal. The Appellate Officer can grant an extension of the deadline to appeal (for a reasonable time, such as 7-10 business days). The Appellate Officer should provide the extension to the other party as well.

When the Appellate Officer receives a request, they will notify TIXE Investigator. TIXE Investigator will invite the Appellate Officer to a **Box** folder with the relevant materials for the appeal, including the relevant CRRs.

The party must articulate one of acceptable grounds for appeal:

- **Procedural error** that significantly impacted the outcome (e.g. material deviation from established procedures, etc.);
- To consider **new evidence** not available during the original decision that could affect the outcome of the matter;
- The Equity 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
- The **sanctions fall outside the range typically imposed** for the offense or for the cumulative conduct record of the Respondent.

If one party submits an appeal request, the Appellate Officer must provide a copy of the request to the other party and give them an opportunity to respond. The response is due in 5 business days, but the Appellate Officer can grant a reasonable extension (e.g. 7-10 business days).

#### **4. Decision of Whether to Accept Request to Appeal**

The Appellate Officer will consider the request and any response. The Appellate Officer will decide:

- A. Is the appeal timely? (within 5 business days, unless extended as noted above)
- B. Is the appeal on one of the acceptable grounds?
  - Procedural error that significantly impacted the outcome (e.g., material deviation from established procedures, etc.)
  - To consider new evidence not available during the original decision that could affect the outcome of the matter;
  - The Equity 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
  - The sanctions fall outside the range typically imposed for the offense or for the cumulative conduct record of the Respondent
- C. When viewed in the light most favorable to the appealing party, does the appeal state grounds that *could* result in an adjusted finding?

If all three are yes, then the appeal must be accepted.

If not, the appeal is not accepted and the parties are notified. Do **not** notify the parties together; **email them separately** and copy the TIXE Investigator. Deputy General Counsel can help draft letters rejecting appeal requests.

A written decision on whether the appeal is accepted is due within 15 business days after the request for appeal is received, otherwise the appeal is deemed accepted. The Appellate Officer can extend that deadline for a reasonable time (e.g. 7-10 business days) and should notify the parties if doing so.

## **5. Determination of Appeal**

After accepting the appeal, the Appellate Officer considers the matter and determines whether to alter the decision and/or send it back to the Equity Officer or the Hearing Panel. Key principles include:

- Show deference to original decision.
- Appeals are not re-hearings. In most cases, focus on the written record.
- If an appeal is granted due to new evidence, then in most cases, remand to the Equity Officer or the Hearing Panel for reconsideration.
- Issue a written decision within 10 business days of accepting the appeal. If that timing cannot be met, notify the parties of the delay.
- All parties must receive written notice of the decision. Do **not** email the parties together. **Send separate emails.** Copy the parties' Equity Support Persons, if any, and TIXE Investigator.

**Appeals Overview (for matters on or after August 14, 2020)**  
**Title IX Process—All Respondents**

**General Standards**

- ***Keep records of all emails and correspondence; forward to TIXE Investigator for the case file.***
- Send **separate** emails to the parties; do **not** email them together; this is for privacy and/or safety reasons.
- If a party has a Support Person, copy their Support Person on correspondence.
- Be discreet. Remember FERPA and safeguard privacy. Privacy is particularly important in all cases, but especially in cases involving sex-based violence.
- Keep an open mind.
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**Key Contacts**

- Paul Maguffee, Deputy General Counsel, attorney for the appellate process
- Dana Beteet Daniels, Title IX Coordinator & Chief Equity Officer
- Jessica Swederske, Deputy Title IX Coordinator and Equity Officer and Case Investigator

**Key Policies**

- CRR 200.010 Standard of Conduct for Students and Student Organizations
- CRR 600.020 Sexual Harassment under Title IX Policy
- CRR 600.030 Resolution Process for Resolving Complaints of Sexual Harassment under Title IX

**Steps in the Dismissal Process**

1. ***Dismissal Determination by Title IX Coordinator.*** During or upon the completion of the investigation, the Title IX Coordinator will review the Formal Complaint and the investigative report, if available, to determine if the Formal Complaint is subject to dismissal. There are two types of dismissal: mandatory and discretionary.
  - a. **Mandatory Dismissal.** A Title IX Coordinator shall dismiss a Formal Complaint, or any allegations contained therein:
    - i. if the conduct alleged in the Formal Complaint would not constitute sexual harassment, as defined in CRR 600.020 even if proved;
    - ii. the conduct alleged in the Formal Complaint did not occur in the University's education program or activity, or
    - iii. the conduct alleged in the Formal Complaint did not occur against a person in the United States.
  - b. **Discretionary Dismissal.** A Formal Complaint or any allegations therein, may be dismissed at any time during the investigation or hearing, if:

- i. the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
  - ii. the Respondent is no longer enrolled or employed by the University; or
  - iii. specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or the allegations therein.
- c. If a decision to dismiss is made, the Title IX Coordinator will send written notice of the dismissal and the reason(s) therefor to the Parties.

## **2. *Option for the Parties to Appeal a Dismissal***

The Parties may appeal a dismissal by following the steps set forth in the Appeal process below.

### **Steps in the Appeal Process**

#### **1. *Decision by Title IX Coordinator, Administrative Resolution Process, Hearing Panel Process, or Academic Medical Center Process***

A written decision is issued. The parties have **five business days** to appeal to the Appellate Officer.

#### **2. *Notice of Potential Appeal***

TIXE Investigator notifies the Appellate Officer that an appeal is possible, in light of a recent decision, and informs them of the parties' names and their Support Person's names, if any.

#### **3. *Request to Appeal***

One or more of the parties may contact the Appellate Officer indicating they wish to appeal. The Appellate Officer can grant an extension of the deadline to appeal (for a reasonable time, such as 7-10 business days). The Appellate Officer should provide the extension to the other party as well.

When the Appellate Officer receives a request, they will notify TIXE Investigator. TIXE Investigator will invite the Appellate Officer to a **Box** folder with the relevant materials for the appeal, including the relevant CRRs.

The party must articulate one of acceptable grounds for appeal:

- **Procedural error** that significantly impacted the outcome (e.g. material deviation from established procedures, etc.);
- To consider **new evidence** not available during the original decision that could affect the outcome of the matter;

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

If one party submits an appeal request, the Appellate Officer must provide a copy of the request to the other party and give them an opportunity to respond. The response is due in 5 business days, but the Appellate Officer can grant a reasonable extension (e.g. 7-10 business days).

#### **4. Decision of Whether to Accept Request to Appeal**

The Appellate Officer will consider the request and any response. The Appellate Officer will decide:

- A. Is the appeal timely? (within 5 business days, unless extended as noted above)
- B. Is the appeal on one of the acceptable grounds?
  - Procedural error that significantly impacted the outcome (e.g., material deviation from established procedures, etc.)
  - To consider new evidence not available during the original decision that could affect the outcome of the matter;
  - 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; or
  - The sanctions fall outside the range typically imposed for the offense or for the cumulative conduct record of the Respondent
- C. When viewed in the light most favorable to the appealing party, does the appeal state grounds that *could* result in an adjusted finding?

If all three are yes, then the appeal must be accepted.

If not, the appeal is not accepted and the parties are notified. Do **not** notify the parties together; **email them separately** and copy the TIXE Investigator. Deputy General Counsel can help draft letters rejecting appeal requests.

A written decision on whether the appeal is accepted is due within 15 business days after the request for appeal is received, otherwise the appeal is deemed accepted. The Appellate Officer can extend that deadline for a reasonable time (e.g. 7-10 business days) and should notify the parties if doing so.

## **5. Determination of Appeal**

After accepting the appeal, the Appellate Officer considers the matter and determines whether to alter the decision and/or send it back to the original decision-maker. Key principles include:

- Show deference to original decision.
- Appeals are not re-hearings. In most cases, focus on the written record.
- If an appeal is granted due to new evidence, then in most cases, remand to the original decision-maker for reconsideration.
- Issue a written decision within 10 business days of accepting the appeal. If that timing cannot be met, notify the parties of the delay.
- All parties must receive written notice of the decision. Do **not** email the parties together. **Send separate emails.** Copy the parties' Support Person, if any, and TIXE Investigator.