APPEALS

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GRAND RIVER | SOLUTIONS

MEET YOUR FACILITATORS

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Senior Solutions Specialist with Grand River Solutions, Davis works as an investigator, decision maker, hearing panel chair, and appeals officer, and provides trainings, specializing in Title IX, Title VII, and the Americans with Disabilities Act. Davis has a J.D. from Stetson University College of Law and a M.Ed. University of Mississippi.

Jody Shipper

Co-Founder & Managing Director of Grand River Solutions, Jody Shipper is a nationally-recognized subject-matter expert with more than 20 years of experience in Title IX and related fields. She is known for her insight into best-in-class programming, policies, and community outreach aimed at addressing sexual misconduct on campus. She lectures extensively throughout the U.S.

THE BASIC TENETS

Dear Appeals Officer . . .

EVIDENCE: GATHERING, WEIGHING, ANALYZING

Avoiding Common Errors

ALL APPEALS

- Trauma-Informed
- Each in their lane: The limits of an appeal officer's task
- Fundamental Fairness
- Due Process
- Follow Your Process

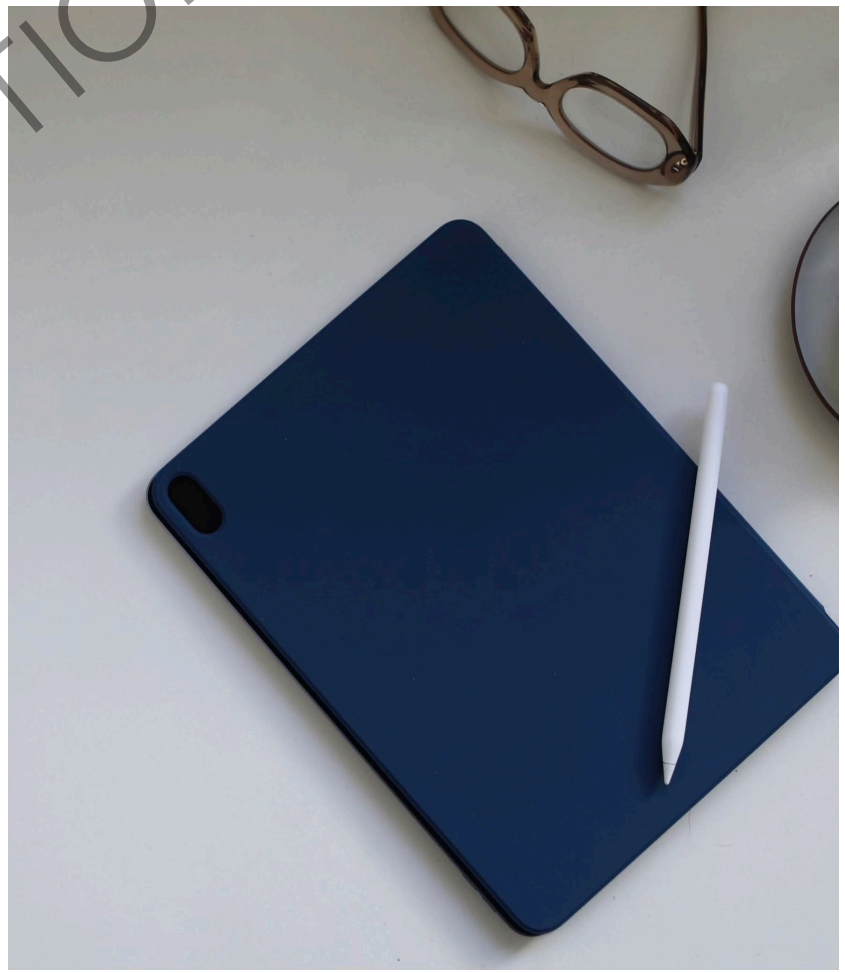
THE RIGHT TO APPEAL?

Both the complainant and respondent have the right to:

- Appeal the same things in the same way to the same person(s);
- Receive information about the appeal process;
- Appeal a sanction;
- Have all aspects of the process be the same for each party;
- Have their appeal reviewed and decided upon;
- Receive notice of the outcome of the appeal.

SANCTIONS AND INTERIM MEASURES DURING APPEAL PROCESS

- Maintaining or changing interim measures during the process
- Communicating and documenting sanctions and interim measures
- Deciding whether to impose sanctions during the process
    - Pros and Cons



DUE PROCESS DURING THE APPEAL PROCESS

Equal Rights and Fair Process for Each Party

- Using regular, published procedures
- Grounds for appeal
- Who is reviewing or hearing the appeal

BEFORE THE APPEAL

NOTIFICATION OF THE APPEALS PROCESS

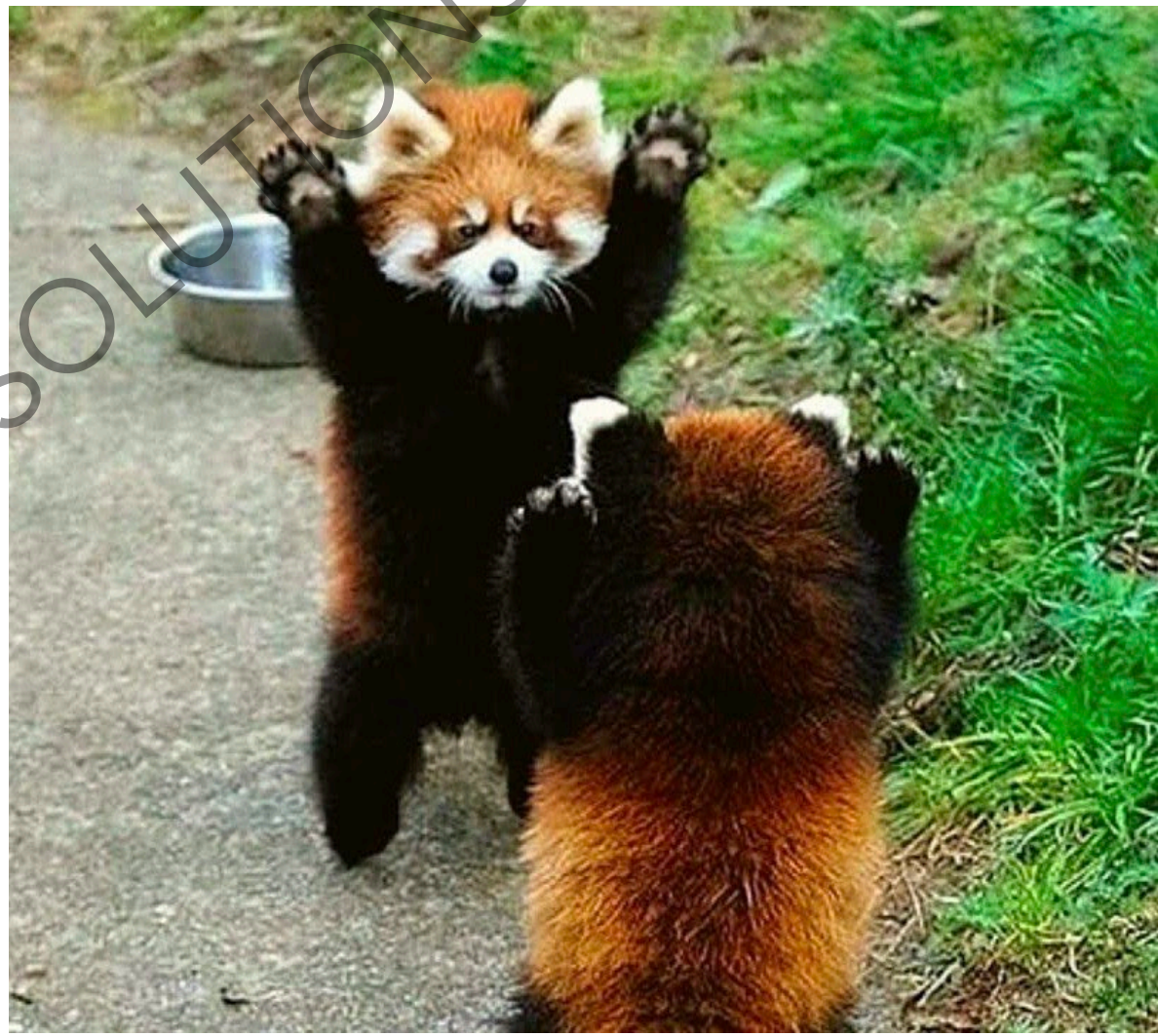
Who Gets Notified	What They are Notified Of
• Complainant • Respondent • Student Conduct? • Human Resources? • Academic • Personnel?	• Allegations • Investigation Outcome • Applicable Policy • Appeals Process • Timeline • Links • Dates • How to submit

WHOSE JOB IS IT?

- Receive the appeals
- Determine whether the grounds for appeal have been met
- Notify the person(s) responsible for reviewing the appeal
- Arrange the logistics for the appeal
- Communicate with complainant and respondent and advisors and witnesses as appropriate

WHOSE JOB IS IT ? (CONTINUED)

- Communicate the decision
  - Complainant and Respondent
  - Title IX
- Document retention
- Determine remedies



DE NOVO APPEALS?

We Are Never, EVER, going back to this

DIFFERENCES IN RESPONSIBILITY

RESOLUTIONS

- Investigate, Hearing
- Determine What Happened
  - Findings of Fact
  - Findings of Policy

SANCTION

APPEAL

- Review the Appeal
- Determine Whether Grounds for Appeal Have Been Met
- Make Decision Regarding Merits of Appeal

DIFFERENCES IN BURDEN

COLLEGE/ UNIVERSITY	Error correction
COMPLAINANT RESPONDENT	Persuade and point out error with supporting evidence or facts

HAS THE BURDEN BEEN MET?

Review the information provided by Complainant and/or Respondent and determine whether it contains sufficient information concerning the grounds for appeal and the reasons related to those grounds

This step is not to decide the merits of the appeal, but to identify the nature and scope of the issues to be addressed.

WAS AN APPEAL FILED?

Review the information provided by Complainant and/or Respondent and determine whether it contains sufficient information concerning the grounds for appeal and the reasons related to those grounds.

This step is not to decide the merits of the appeal, but to identify the nature and scope of the issues to be addressed.

IN THEIR APPEAL, RESPONDENT WRITES:

- I have new evidence not previously available to me. Having read the hearing officer's report, I now know the hearing officer was biased (new evidence) because the hearing officer found against me, and there is no way that any unbiased hearing officer would have properly weighed the evidence and come to any conclusion other than the fact that complainant was lying.
- The hearing officer failed to call 1 key witness. The Title IX coordinator should have been questioned, and she could have explained that Complainant was given a free pass and allowed to drop out of organic chem after it was obvious Complainant was going to fail. This would have proven that Complainant made up the complaint and filed only to avoid failing a difficult class.

WHAT DOES THIS MEAN?

- You are reviewing the appeal for what it says, not how it is said.

- You are identifying what the party says went wrong in the process or whether the party has identified new information and IF the party has articulated that what went wrong or what is new, if true, would have led to a different outcome.

COMMON CHALLENGES

Non-Participating Parties

- Bias/conflict of interest
- Error

Uncooperative Witnesses

Uncooperative Advisors

DEAR APPEALS OFFICER…

- I am the victim of a false accusation…
- The police were not contacted and I was not charged by law enforcement with a crime
- After the supposed sexual assault, she sent me a friend request on Instagram and asked me to dance at a party
- No one listened to my explanation or reviewed the evidence so they could see that I was falsely accused.

DOES THIS MEET ANY GROUNDS FOR APPEAL?

- Procedural error?
- Bias/conflict of interest?
- New evidence?

NEW EVIDENCE: WHAT WOULD YOU DO?

Appeal states there is new evidence…

- Evidence not provided with the appeal
- How do you know it is new?
- It is new but is it relevant and reliable?

DEAR APPEALS OFFICER…

I am the victim of a false accusation. Something went terribly wrong…..

PROCEDURAL ERROR: THE DECISION WAS UNREASONABLE

The decision was unreasonable based on the evidence.

- I am the victim of a false accusation
- There was no crime
- She initiated it, not me
- We were both drunk

PROCEDURAL ERROR

There was a procedural error in the process that materially affected the outcome.

- Someone was not interviewed
- I was not allowed to cross-examine the complainant
- Burden was put onto me to prove consent

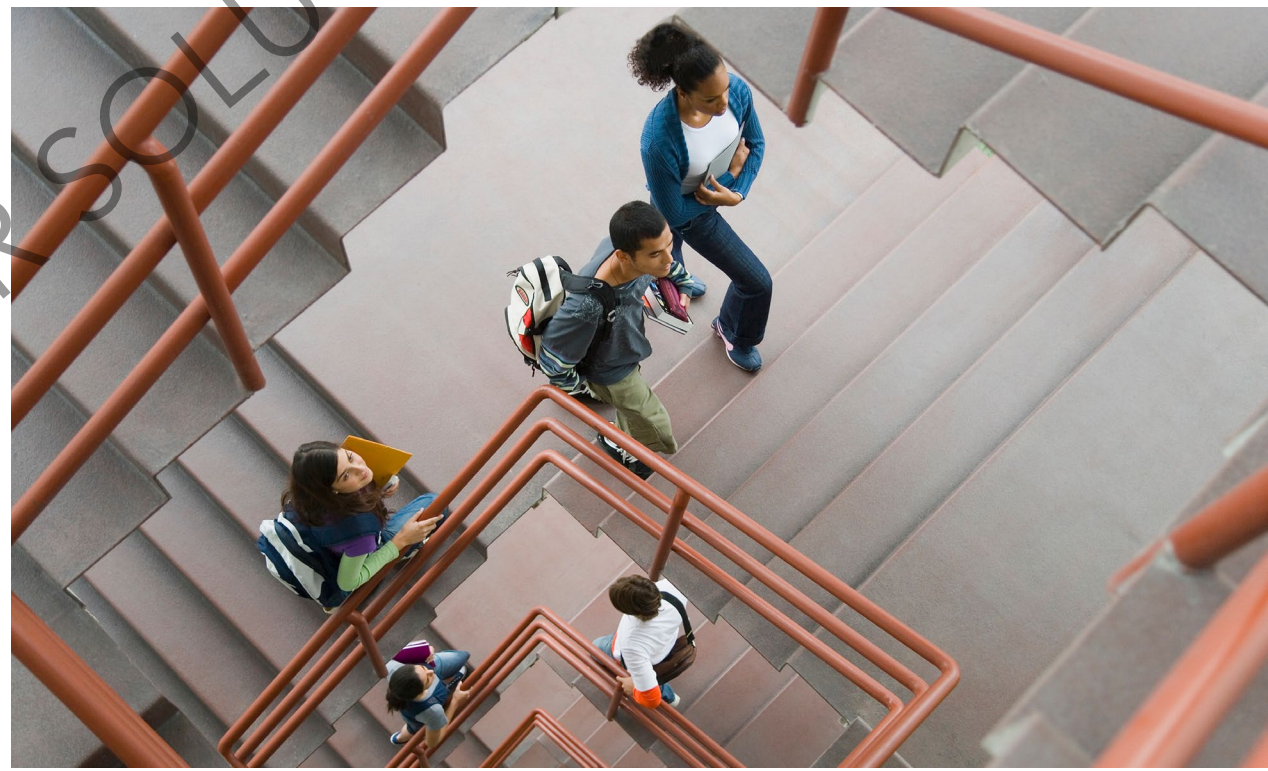
DENIAL OF A PROCESS YOU DON'T OFFER

- Cross examination
- Representation
- Discovery
- Subpoena / compel witnesses

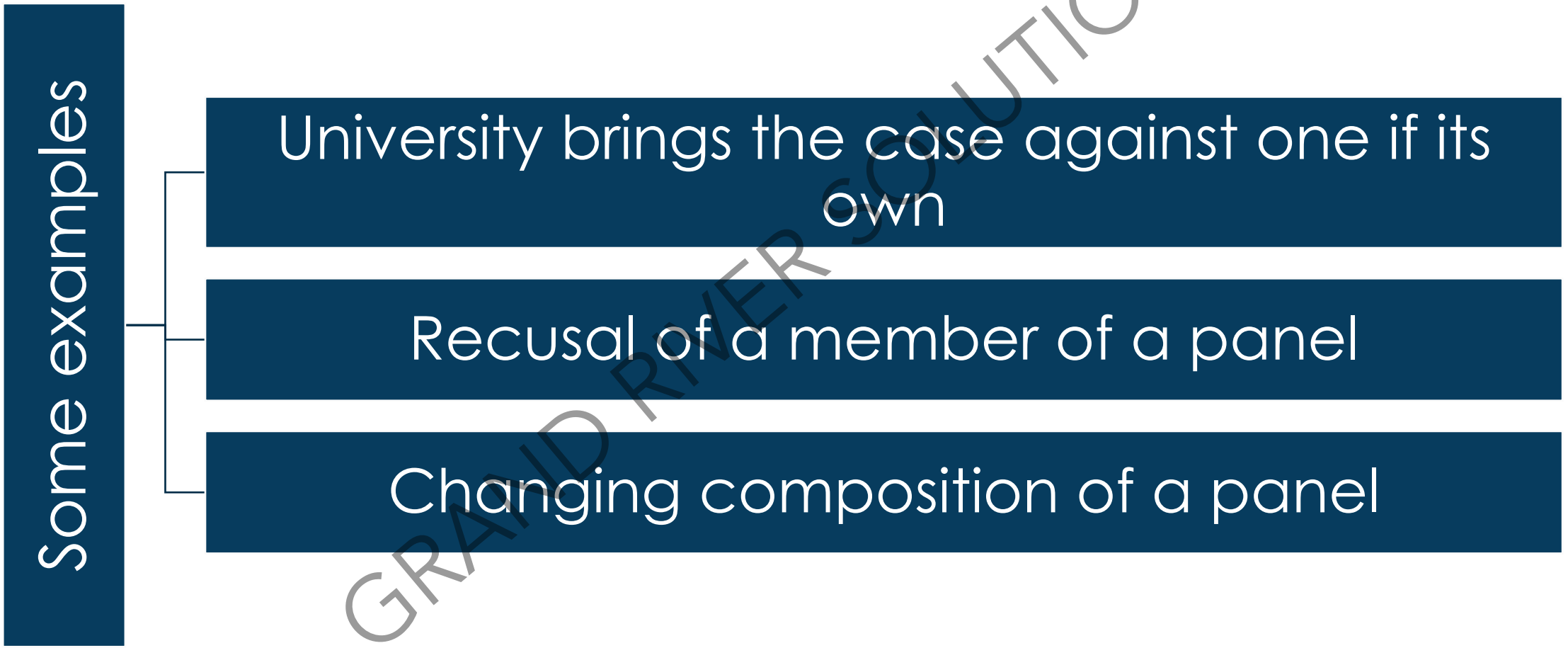
WHEN A RESPONDENT REFUSES TO PARTICIPATE IN THE PROCESS BUT CLAIMS DUE PROCESS IS VIOLATED

"The Plaintiff waived his right to challenge the process resulting in his expulsion by failing to participate in the process afforded him."

- Herrell v. Benson



WHEN EXCEPTIONS TO PROCESS OCCURS



BIAS

- What constitutes bias?
- The investigator was biased against me because…
- The investigator was biased against (complainants/respondents generally) because . . .

ALLEGATIONS FOR BIAS

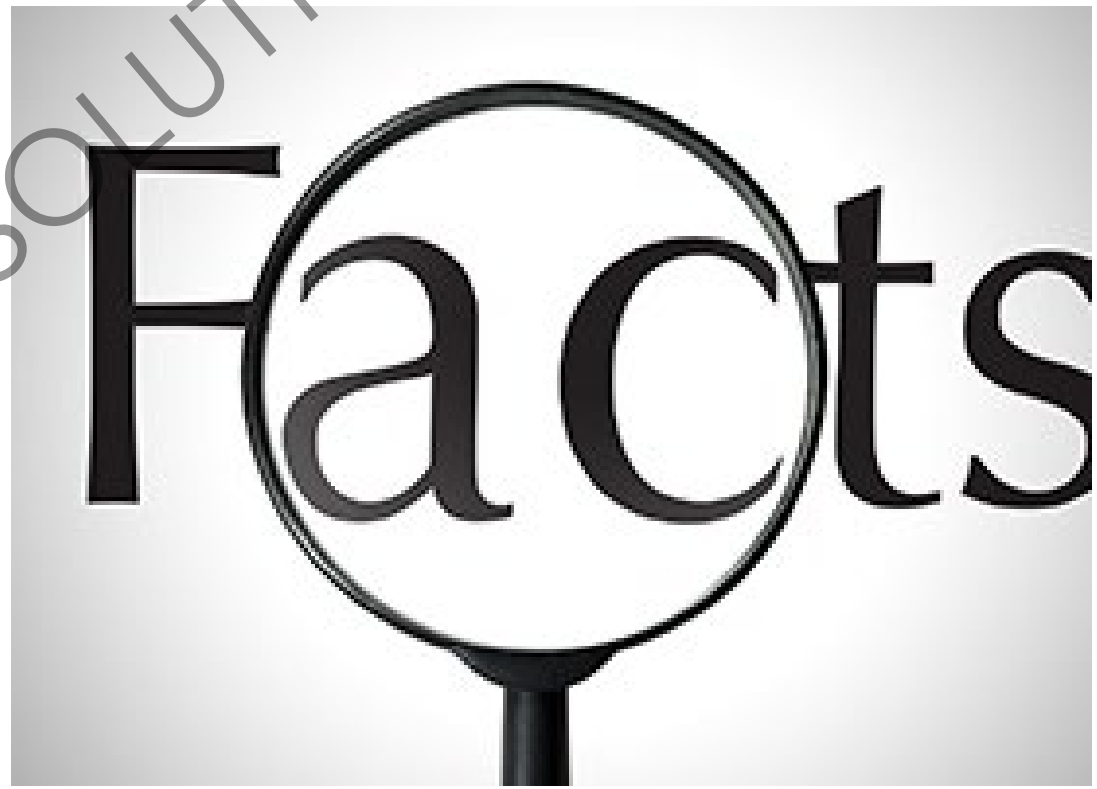
"Pro-victim bias does not equate to anti-male bias."
-Doe v. University of Colorado

Anti-violence bias does not equate to anti-male bias.

ALLEGATIONS OF BIAS AS THE BASIS FOR APPEAL

An allegation of bias without factual support "no longer passes muster".

-Doe v. University of Colorado



NEW INFORMATION

- Is it really new?
- If it is new, would it change the findings/outcome
- Who investigates new information?

COMMON ERRORS

SOMETIMES INSTITUTIONS DO THE WRONG THING

- Missing deadlines for providing materials
- Misunderstanding of consent or incapacitation
- Errors at a hearing

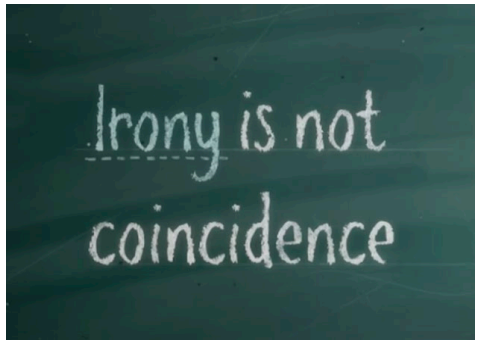
DETERMINING CREDIBILITY ON APPEAL

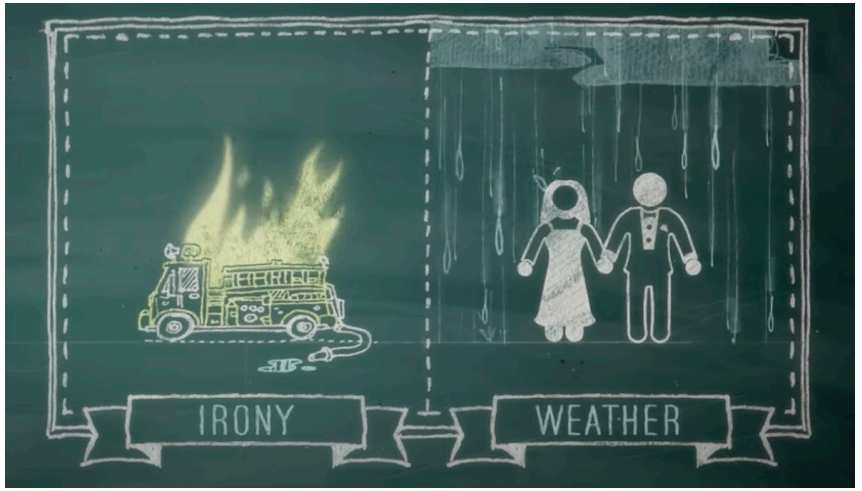
If Complainant does not participate, can you judge credibility?

Do you need to see demeanor to note credibility?

EVIDENCE – KNOWING WHAT TO CONSIDER

- Drunk vs. Intoxicated vs. Incapacitated
  - Language matters
  - Clarity and consistency of application
- Who has to prove consent?
- Know the language of your policy





Courtesy Weird Al's *Word Crimes*

CROSS COMPLAINTS

- Was it handled?
- How was it handled?
- When raised for first time in the appeal, what is your process?
- Who handles?

APPEALS PANELS THAT EXCEED THEIR AUTHORITY

- Stay In Your Lane
- How Do You Know
- How To Correct

TREATING THE PARTIES DIFFERENTLY

1. He filed an appeal, argued there was a procedural error because he did not agree with the panel's interpretation of a text message. Appeal granted, determination overturned. She then filed an appeal on basis that appeal panel exceeded their authority, her request to file an appeal was denied. **What did the court say?**
2. Hearing chair did not inform parties that a key witness was her student, nor that he had discussed the case (in brief) with the witness prior to her first interview. **What did the court say?**

WHY SHOW YOUR WORK: WHEN A JUDGE HAS A DIFFERENT DEFINITION OF CONSENT

"Because she removed her own shirt when Respondent suggested having sex, there was insufficient proof of a lack of affirmative consent." Haug v. SUNY Potsdam, 2018

As the Complainant did not report the rape, and did not initially think she had been raped . . . more likely there was an erroneous outcome due to gender. Doe v. Dordt University, 2022

LESSER-INCLUDED CHARGES ON APPEAL

There are no lesser-included charges

Reflects lack of notice and opportunity to respond.

- Powell v. St. Joseph's University
- Doe v. U.S.C.

SANCTIONS ARE NOW WRONG BECAUSE FINDING WAS WRONG

Does appeals officer determine new sanction, or send case back for appropriate determinations?

CAN A SANCTION INCREASE ON APPEAL?

A. In response to Complainant's appeal?

B. Sua sponte (meaning, just on their own determining it was not sufficient) ?

LANGUAGE MATTERS WHEN WRITING APPEAL RESPONSE

Drunk vs. Intoxicated vs. Incapacitated	Language matters
	Clarity and consistency of application
Who has to prove consent?	
Know the language of your policy	

HOW MUCH INFORMATION TO PROVIDE ON APPEAL?

The appellate officer's failure to plainly articulate why he granted the appeal, which resulted in a new hearing that found the respondent in violation, was "perplexing" to the reviewing court, along with the appellate officer's ad hoc decision to request an independent Title IX opinion prepared in the course of determining the appeal.

COMMUNICATIONS ERRORS

- Communicate the decision
  - Complainant and Respondent
  - Title IX
- Interim measures
- No contact directives
- Remedial measures
- Sanctions

APPELLATE OFFICER/PANEL MAY NOT…

- Substitute their own findings for the findings of the decision maker
- Engage in fact-finding/weigh new evidence
- Correct procedural errors on their own

QUESTIONS?

THANKS FOR JOINING US!

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WE LOVE FEEDBACK

Your Opinion Is Invaluable!