

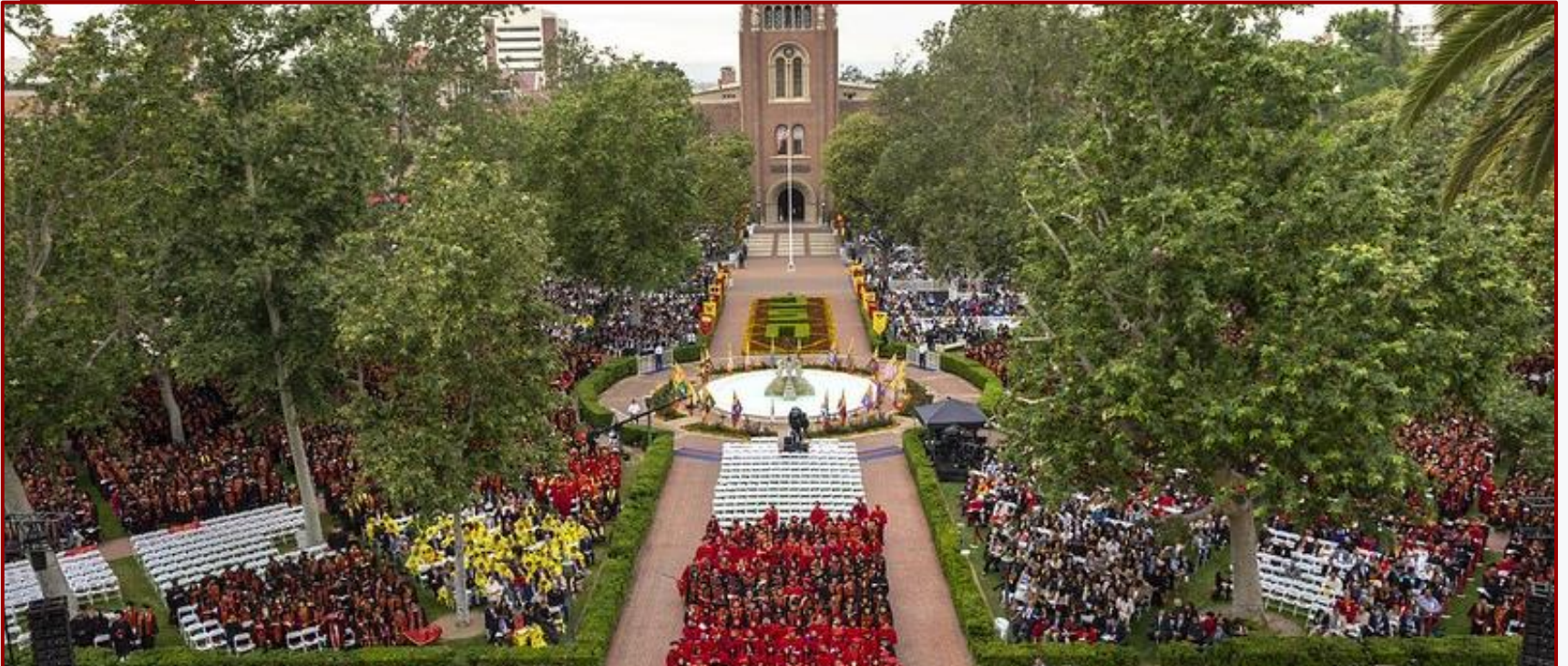


# APPELLATE AUTHORITY TRAINING



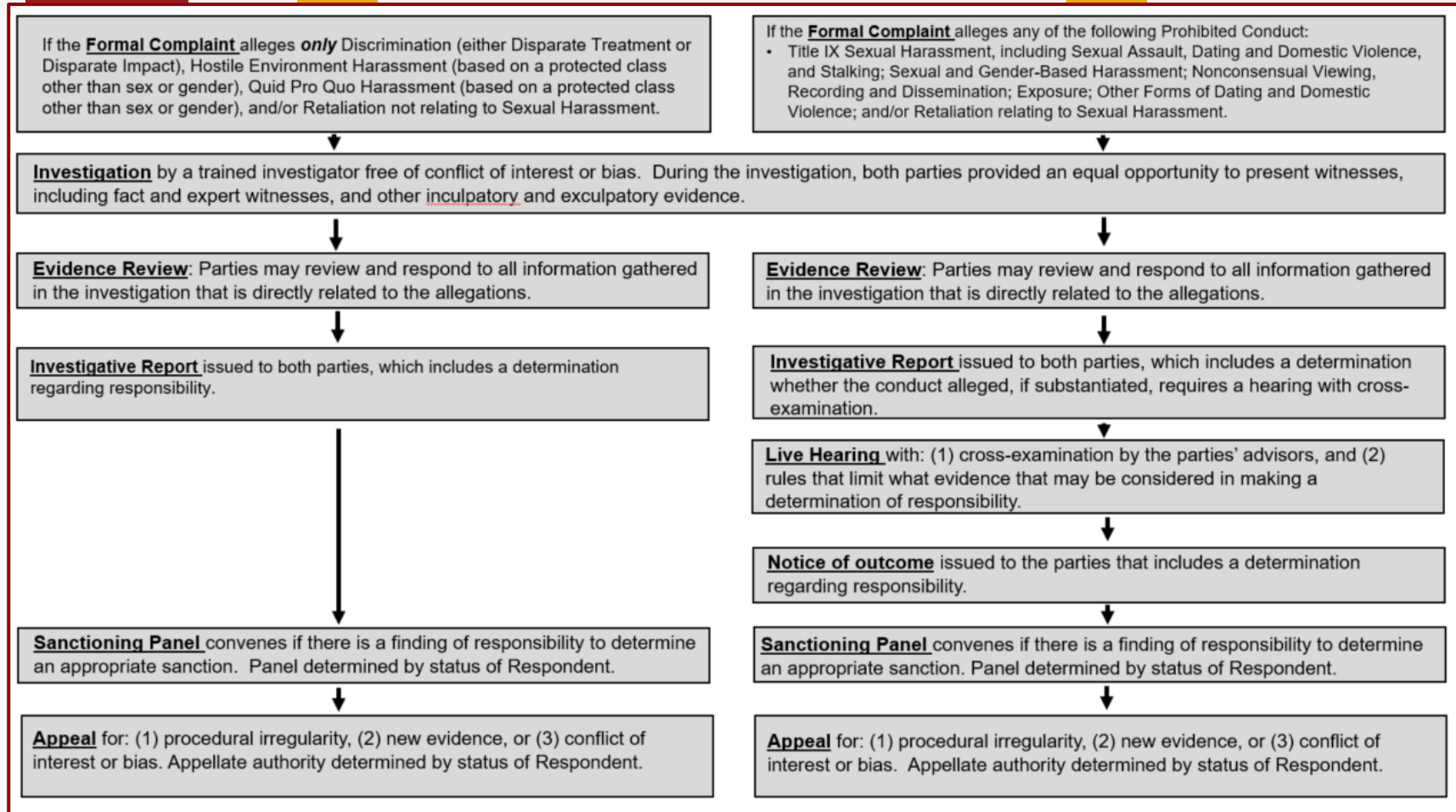
**USC** University of  
Southern California

February 8, 2024



USC POLICY ON PROHIBITED DISCRIMINATION,  
HARASSMENT, AND RETALIAION

# Two Formal Resolution Tracks



# KEY SECTIONS OF INVESTIGATIVE REPORT

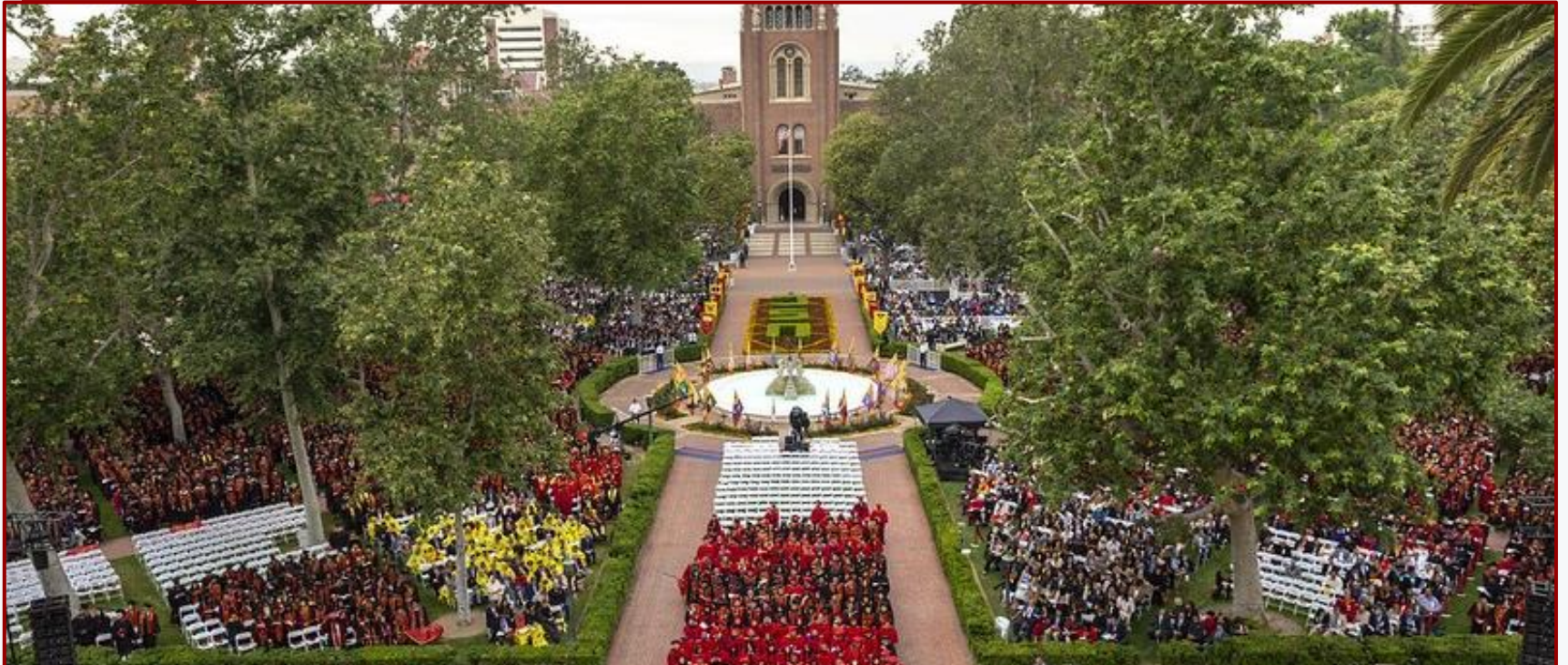
- Procedural background
- Overview of investigation
- Information about parties/witnesses
- Evidence review (including responses by parties)
- Potential policy violations (with elements)
- Summary of relevant evidence
- “The Road Map” (i.e., synthesis in narrative/chart form of disputed/not disputed evidence, including inculpatory and exculpatory)

# The Role of the Hearing Officer

- Review the investigative report and any written statements provided by the parties in response to the investigative report, all exhibits, and any additional relevant evidence introduced at the hearing.
- Determine the format of the hearing.
- Provide all parties with an equitable opportunity to be heard and to reach a full and fair determination as to responsibility and imposition of any sanction, should there be a finding of responsibility.
- Determine the relevance of every question posed by the parties' advisors and briefly explain any decision to exclude a question as not relevant.
- Determine whether there is sufficient evidence, by a preponderance of the evidence, to support a finding of responsibility as to each element of each Policy violation at issue.
- Reach credibility determinations if appropriate, but do not base credibility determinations on a person's status as a Reporting Party, Respondent, or witness.
- Prepare a written decision, which includes the finding of responsibility or non-responsibility and rationale for your decision.

- Assessing credibility factors:
  - Demeanor
  - Interest
  - Detail
  - Corroboration
  - Common sense
- Testing inherent plausibility in light of the known information, relationships, and circumstances of the disclosure

<b>Dynamics of Sexual Assault</b>	Informed understanding of dynamics of sexual and gender-based harassment and interpersonal violence.
<b>Demeanor</b>	Did the witness speak in a convincing manner? Was he/she uncertain, confused, self-contradictory or evasive? How did he/she look, act and speak while testifying / reporting?
<b>Interest / Motive / Bias</b>	Did the witness have any interest in the outcome of the case, bias, prejudice, or other motive that might affect his/her testimony?
<b>Detail</b>	Use direct quotes from testimony or statements. How well could the witness remember and describe the things about which he/she testified? Was the ability of the witness to see, hear, know, remember, or describe those things affected by youth or old age or by any physical, mental or intellectual deficiency?
<b>Corroboration</b>	How well did the testimony of the witness square with the other evidence in the case, including the testimony of other witnesses? Was it contradicted or supported by the other testimony and evidence?
<b>Common Sense</b>	Does it all add up? (Gut check) Is there something missing?

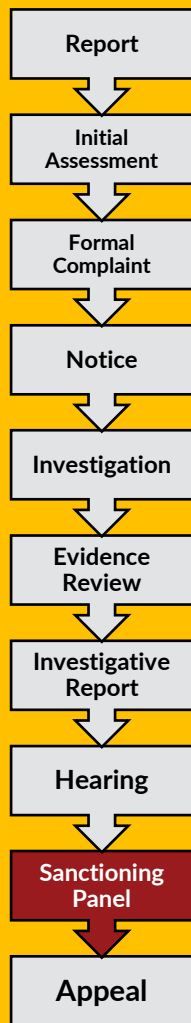


## THE SANCTIONING PANEL





# The Sanctioning Panel



## Student Respondents:

The Sanctioning Panel will be composed of two employees appointed by the Provost and Senior Vice President for Academic Affairs, and one student appointed by the Vice President for Student Affairs.

## Faculty Respondents:

The Committee on Professional Responsibility will serve as the Sanctioning Panel.

## Staff Respondents:

The Sanctioning Officer is a delegate of the Senior Vice President of Human Resources.

## Timing:

The Sanctioning Panel/Officer will convene no later than 10 calendar days following the referral of the Hearing Officer's finding of facts and determination of responsibility.

# Impact and Mitigation Statements



**Impact Statement:** The Reporting Party may submit a written statement describing the impact of the Sexual Misconduct on the Reporting Party.

**Mitigation Statement:** The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed.

The VP of EEO-TIX will provide any statements to the Sanctioning Panel/Officer. Each party has the opportunity to view the other party's statement prior to the imposition of sanctions.

## Factors for Consideration



- the nature and severity of the conduct;
- the impact of the conduct on the Reporting Party;
- the impact or implications of the conduct on the community or the University;
- prior misconduct for which the Respondent has been found responsible, including the Respondent's relevant prior discipline history, both at the University or elsewhere (if available), including criminal convictions;
- whether the Respondent has accepted responsibility for the conduct;
- maintenance of a safe and respectful environment conducive to learning, including whether there is a continued hostile environment on campus caused by the Respondent's conduct;
- presence or absence of bias as a motivation for the Respondent's conduct;
- protection of the University community requiring extended protective measures or other sanctions; and
- any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in each case.

# The Written Notice of Outcome Must Include:

1

- Identification of the allegations potentially constituting Prohibited Conduct;

2

- A description of all procedural steps, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

3

- Findings of fact supporting the determination;

4

- Conclusions regarding the application of the Policy to the facts;

5

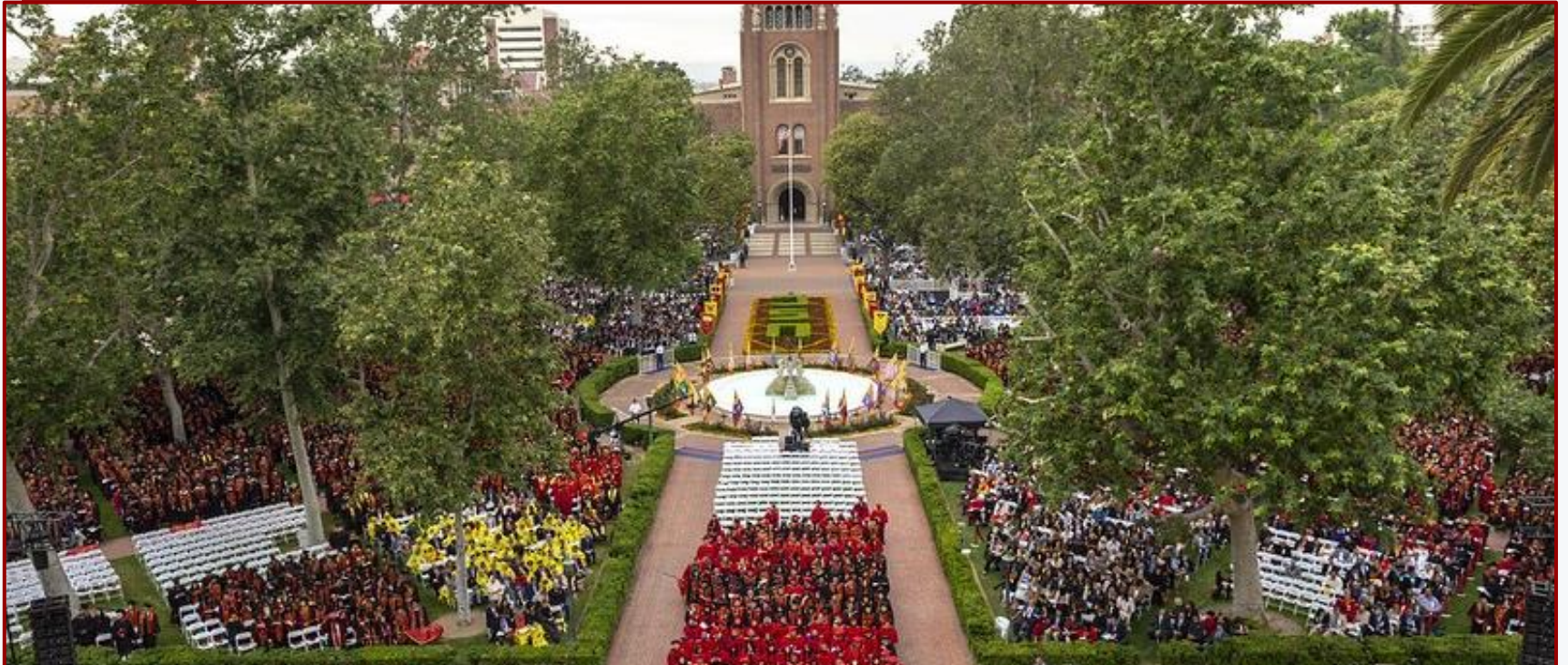
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;

6

- Any disciplinary sanctions imposed on the Respondent, and any remedies to the Reporting Party;

7

- The procedures and permissible bases for the Reporting Party and Respondent to appeal.



## THE APPEAL PROCESS



# What to Expect Before the Appeal



The appeal must be submitted to the VP of EEO-TIX/Title IX Coordinator within seven (7) calendar days following delivery of the written notice of outcome.

Written requests for appeal submitted by one party will be shared with the other party.

The non-appealing party has seven (7) calendar days to respond in writing to any appeal submitted by the other party.

# Grounds for Appeal by Either Party



1

- **Procedural irregularity** that affected the outcome of the matter.

2

- **New evidence**, not reasonably available at the time of the hearing, regarding responsibility or dismissal of the Formal Complaint, that could affect the outcome of the matter.

3

- The VP of EEO-TIX/Title IX Coordinator, Investigator(s), Hearing Officer, or Sanctioning Officer/Panel had a **conflict of interest or bias** for or against Reporting Parties or Respondents generally, or the individual Reporting Party or Respondent, that affected the outcome of the matter.



Student Respondent	<ul style="list-style-type: none"><li>• A delegate of the Vice President of Student Affairs who is not otherwise involved in any step of the process, or an external professional.</li></ul>
Faculty Respondent	<ul style="list-style-type: none"><li>• A delegate of the Provost who is not otherwise involved in any step of the process, or an external professional.</li></ul>
Staff Respondent	<ul style="list-style-type: none"><li>• A delegate of the Senior Vice President of Human Resources who is not otherwise involved in any step of the process, or an external professional.</li></ul>



# The Scope of the Appellate Review



The Appellate Authority will review:

- (1) the written appeal submissions by the parties,
- (2) the investigative report (including all exhibits and related materials), and
- (3) the written notice of outcome.

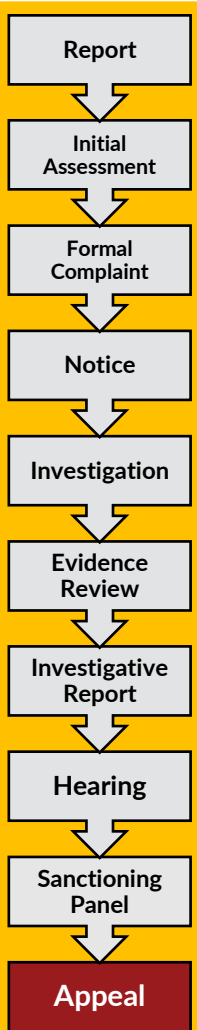
In reaching a decision, the Appellate Authority has the discretion to consult with relevant stakeholders.

The Appellate Authority may:

- (1) affirm the findings or determination of responsibility;
- (2) affirm or modify the sanction(s); or
- (3) remand the matter for reevaluation or further investigation.

The decision by the Appellate Authority is final.

## Possible Outcomes Following the Appeal



Appeal granted due to procedural irregularity:

- The matter may be remanded for further process to remedy the error (based on the nature of the procedural error).

Appeal granted due to the discovery of new evidence:

- The matter may be returned to the same Hearing Officer for reconsideration in light of the new evidence.

Appeal granted due to bias or conflict of interest:

- The matter should be remanded for further action consistent with the appellate finding.

Appeal denied:

- The Appellate Authority issues its written decision and the determination regarding responsibility becomes final.

## The Timing of the Appeal



The Appellate Authority will issue a simultaneous written decision to the parties within 10 calendar days of receipt of the appeal.

The time frame for filing an appeal based on newly-discovered information may be extended at the discretion of the VP of EEO-TIX where the evidence could not reasonably have been discovered within the time frame and a compelling justification exists for its consideration.

The VP for EEO-TIX may dismiss a Formal Complaint at whole or in part, at any stage of the process, in any for the following three circumstances:

- 1) the Reporting Party notifies the VP for EEO-TIX in writing that the Reporting Party would like to withdraw the Formal Complaint or any of its allegations;
- 2) the Respondent is no longer enrolled or employed by the University; or
- 3) specific circumstances, including a Reporting Party's decision not to respond to outreach by the EEO-TIX Office, prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or its allegations.

Upon any dismissal, the VP for EEO-TIX will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. Either party may appeal the dismissal of some or all of the allegations in a Formal Complaint by notifying the VP for EEO-TIX in writing of the challenge **within ten (10) calendar days** of receipt of notification of the dismissal. The other party will be notified of the appeal.

Under the Title IX regulations, the University must dismiss some or all of the allegations in the Formal Complaint that relate to Title IX Sexual Harassment if it is determined at any stage during the process that:

- 1) the conduct alleged, even if substantiated, would not constitute Title IX Sexual Harassment, as defined in the Title IX regulations and the Policy; and/or
- 2) the conduct did not occur within the University's education program or activity (which requires substantial control over both the Respondent and the context, or where the conduct occurred in a building controlled by recognized student organizations); and/or
- 3) the conduct did not occur against an individual in the United States.

In addition, under the Title IX regulations, the VP for EEO-TIX may dismiss a Formal Complaint, at any stage of the process, in any of the following three circumstances:

- 1) the Reporting Party notifies the VP for EEO-TIX in writing that the Reporting Party would like to withdraw the Formal Complaint or any of its allegations;
- 2) the Respondent is no longer enrolled or employed by the University; or
- 3) specific circumstances, including a Reporting Party's decision not to respond to outreach by the EEO-TIX Office, prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or its allegations.

Upon any dismissal, the VP for EEO-TIX will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. Either party may appeal the dismissal of some or all of the allegations in a Formal Complaint by notifying the VP for EEO-TIX in writing of the challenge **within five (5) calendar days** of the date of the notification of the dismissal.

Under certain circumstances, EEO-TIX, in conjunction with other University partners, will issue an Emergency Removal, which is like an interim suspension.

Before imposing an emergency removal, the University will undertake an **individualized analysis of safety and risk for the campus community** to determine whether the Respondent's presence in the University program or activity poses an **immediate threat to the physical health or safety of any student or other individual arising from the allegations of Prohibited Conduct**, and justifies removal of the Respondent from the University program or activity.

EEO-TIX provides written notice of Emergency Removal to the parties, and the Respondent has the opportunity to challenge the Emergency Removal. During any challenge, the Emergency Removal remains in effect.

- Respondent has 72 hours from the notice of the Emergency Removal to submit a written challenge to EEO-TIX.
- VP for EEO-TIX will assign reviews of challenges to Emergency Removal to the Vice President for Student Affairs or designee.
  - Evaluation of the information in support of the individualized safety and risk analysis and any information provided by Respondent and Reporting Party, as applicable.
- Vice President for Student Affairs will submit a final decision in writing to the Respondent and Reporting Party within three (3) calendar days, with a copy to EEO-TIX.

FOR  
QUESTIONS OR  
MORE  
INFORMATION:



# FIGHT ON FOR CIVIL RIGHTS!

If you observe or experience discrimination, harassment, or retaliation, contact USC's Office for Equity, Equal Opportunity, and Title IX (**EEO-TIX**) for help:

**(213) 740-5086**

**(M-F 8:30 AM – 5:00 PM)**



**USC**

**[eeotix@usc.edu](mailto:eeotix@usc.edu)**

For 24-hour reports (with the option to be anonymous), contact USC's Help & Hotline at:  
(213) 740-2500 or (800) 348-7454 or [report.usc.edu](http://report.usc.edu)