

20 MINUTES TO...TRAINED STUDY GUIDE:

# APPEALS

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## **20 Minutes to Trained: Appeals Table of Contents**

- I. Learning Outcomes
- II. Discussion Questions
- III. Case Studies
  - a. Grant and Owen
  - b. Tim Lane and Elizabeth Williamson
- IV. Case Study Questions & Answers
  - a. Grant and Owen
  - b. Tim Lane and Elizabeth Williamson
- V. Supplemental slide set on Appeals



## 20 Minutes to Trained: Appeals Learning Outcomes

- Participants will be able to define the purpose and structure of the appeal process.
- Participants will understand the advantages of having articulated bases for appeals.
- Participants will be able to articulate the importance and role of deference and remands in the appeal process.
- Participants will be able to issue spot problems with an appeal process, including, but not limited to, “overactive” appeal officers who second-guess the prior decision-makers and appeal officers who give too much deference to the prior decision-makers.
- Participants will understand the pros and cons of reopening an investigation and fully re-investigating a report.



## 20 Minutes to Trained: Appeals Discussion Questions

- Should appeals be automatic, or based on clear criteria?
- Are most cases appealable, or ineligible because the grounds typically are not met?
- Should appeals officers make substantive decisions or more often refer a case back on remand?
- What types of interaction should appeals officers have with those who have made the prior decision?
- What types of interaction (if any) should appeals officers have with the parties?



## 20 Minutes to Trained: Appeals Case Studies

### Grant and Owen

Grant, Reporting Party  
Owen, Responding Party

### Grant's 1<sup>st</sup> Interview

Today I'm here to give my side of two situations between me and Owen. I feel I was sexually assaulted. The first incident was June 2015, before coming to college. We lived in the same city but went to different schools. We knew each other from Facebook – we were both in an accepted students group. Before this occasion in June, we had hooked up, but there was no sex. After that hookup, I told him I wasn't ready for a relationship, and he was upset.

The first incident happened the night of his graduation party at his friend's house. I went to the party with Owen, and in the car going to the party we kissed, 2 or 3 times. As the night went on, I tried to leave the party but didn't have enough money to get home and was kind of drunk so stayed the night even though I knew it was a bad idea. I was going to sleep on the couch in the living room. Owen came over to the couch, and we started talking and kissing. I know we went to the

bathroom for some privacy, but I don't really remember the conversation leading up to going to the bathroom.

So we're in the bathroom, we are kissing, pants come off. I found myself pinned to the sink and Owen says he wants me – he wants to fuck me. I told him no, not raw, but he tries anyway. I say no again, because it hurts. Owen says, "This is *my* graduation night; aren't you here to celebrate?" and tries again. I was able to turn around and tell him to stop, and his response was "Okay, then at least you can blow me." So, in an effort to placate him, that is what I did. It was rough and not enjoyable. He finished. I remember waking up with a hangover, and Owen is sleeping next to me on the couch with his pants off.

The second incident was this past Saturday. I was very drunk – way too drunk to consent to anything – and was at a friend's house party. People were dancing; Owen came up to me, and we started talking. He confronted me about a rumor he had heard (involving me, but I don't really want to talk about it), and I told him he couldn't make me feel shitty when he had assaulted me the summer before coming to school. He seemed confused. He said he apologized if that was my experience, but he didn't remember that night. I got emotional and we walked outside. I told him that what he had heard (the rumor) was true, but at that point people were walking by so I said we should have the conversation somewhere private.

He grabbed my hand and led me to his residence hall. I didn't let go of his hand but wasn't too thrilled he was holding my hand either. When we got to his room, we talked for about twenty minutes, and then we were kissing. It quickly went to our clothes being off and things happening. I don't remember how that happened. At some point he said he wanted to have sex, but he didn't have a condom or lube – I didn't want to do that anyway; penetration is a big deal for me. Owen suggested going to my room, but I didn't want to do that. I told him "I

don't want to get dressed" and kissed him to distract him from getting dressed and going to my room. That didn't work though, and soon we were dressed and walking over to my room.

We get to my room. Very quickly the clothes are off, and we are fooling around again. I leave the condoms and lube in the drawer because I didn't want to do anything with them. So, we are naked and fooling around, and he is in a position where he could theoretically have sex with me, and he said something like "I want to fuck you," and I said no, and he inserted himself anyway – it hurt like crazy, and I pushed him back and moved to the edge of the bed. Eventually it stopped hurting. Like the first time, I tried to make him happy and finish the interaction. He went to reciprocate, and I said no. I don't remember him cuddling me, but, when I woke up the next morning, he was in my bed with his arms around me. I remember waking up and feeling trapped and tried to move his arm off me. I fell back asleep at 7:30 and woke up again around 10:15. I tried to be casual and get out of bed, but he pulled me back – that happened twice. We stayed that way for another fifteen minutes before I could get out bed and get my clothes on, which he finally took as a cue to leave.

The only other thing I think you should know is that, while sober, I have denied him 4-5 times in the past six months, and I have text messages supporting this.

### Grant's 2<sup>nd</sup> Interview

Owen and I met in the accepted students Facebook page before we started college. I commented on a picture of him, and he messaged me, and we started talking and flirting, but I had a boyfriend at that time, and he knew that. We hung out and went to a movie, and at the end, he tried to kiss me. After that, I broke up with my boyfriend for unrelated reasons, and maybe three weeks after that, Owen and I

hooked up (there was no penetration but we both did oral). A few days later, I told Owen I might still be in love with my ex-boyfriend. Owen was upset; I felt bad, but I didn't want to lie.

The night of his graduation party was two weeks later. Things with my ex were definitely over at that point. Owen and his friends picked me up in the car and drove to one of his friend's houses. In the car, Owen and I are in the back. He tells me he's happy I came, leans in to kiss me, and we kiss a little bit. He reaches for my pants and feels I have an erection. I don't remember, I might have reciprocated. We get to the house, and at some point, his friends take out the alcohol. There was a slim can of alcohol – some pre-mixed vodka drink that was pretty strong. We also had Hennessy. Other than some chips, I didn't have anything to eat at the party.

Owen and I were flirting all night, but nothing really happened until after most people went home. I realized I didn't have money to get home, and it was really late, and Owen suggested I just stay on the couch. So, I start to take my shoes off, and Owen, who is on the side of the couch, starts leaning close to me, and we start kissing. After a while, we walk to the bathroom for some privacy – there are still a few of his friends around. There's kissing, pants come off, I don't remember how, and we both did some oral on each other. Somehow, I am up against the sink, and he is behind me. He said he wants me, he wants to fuck me. I told him no, not raw. He is rubbing his penis against my asshole and says "Come on, we're here to celebrate" and inserts himself in me. I say "No," "Ouch," and "That hurts," and am able to get out from between him and the sink. He tells me to blow him. I didn't want to, but I wanted the situation to be over, so I blew him, and he finished. Then he reciprocated, and I finished. I don't remember going back to the couch, but I woke up super hungover the next morning, and Owen's penis was out in the open. I redid his pants so his penis wasn't hanging out.

This year, in the fall semester, there was a pattern – Owen would text, asking me to hang out (what he really meant was hook up) late at night, and I kept making excuses or just telling him I didn't want to. He was texting quite a bit, and I have those texts. Between the first incident and the second incident, we hooked up, while on campus (everything but intercourse – never intercourse) one or maybe two times.

After I came back to school for spring semester, a mutual friend of ours, Kylie, had a party at her house. I was drinking at her house with my friend Emma. I had four shots of vodka, a double shot of Jägermeister, a Malibu shot, and then two beers, all within maybe three hours. When I started my third beer, I knew I was going to throw up, so I handed the beer to Emma. Emma can tell you how drunk I was. I know I was stumbling around and really out of it – I'm not the biggest guy, so all that drinking had an impact. I remember that Emma and I then went to Franklin Court to get some mozzarella sticks. I don't remember going back, but I know we were back at the house, and people had started dancing. Emma and I danced for a while, and after a little bit, Owen comes up to me and we start dancing.

I hadn't seen him at the party before this point. Owen starts asking about a rumor that I had been with some guy that he knew somehow – I don't know all the particulars. First, I denied it and told him he couldn't make me feel bad after what he did before we got to school. He was surprised. He basically said, "I'm sorry that's how you felt. I don't remember that night." I got emotional, and he and I left the house and talked outside for a little bit. I finally told him that the rumor he heard was true, but that we should talk somewhere private – more people were leaving the house at that point, and I didn't want anyone to overhear the conversation because we were using names. I didn't have a place in mind.

He takes my hand and we go to his room. At first, we are sitting on his bed, talking about the rumor. I don't remember much here. I know he started kissing me, and then he is on top of me, we're both on the bed, then pulls me off the bed. He undresses me, and he undresses himself. We are both naked, although I don't remember if I have socks on. We are kissing. I don't want to do this, but I feel like I can't say no. There is some oral that happens, both ways, some neck kissing. He eats me out a little bit, so I do it back. During all of this, he says he wants me to fuck him, but he has no condoms or lube. I don't want to do that anyway, and I told him that, multiple times. He wants me to get dressed and says we should go to my room. I don't want to and try to distract him by kissing him, but we eventually get dressed and walk to my room. I can't remember the walk to my room.

I remember getting to my room. In the beginning, we're standing up and kissing, and I pick him up for about five seconds and kiss, and we slammed against my closet. Then we were on the bed. He was on top a couple of times, and I was on top, too. There was a little more oral sex, both ways, I think. He gave me a hickey on my chest that I saw later. So, we're on my bed and my legs are up, kind of wrapped around him, and he is in the position where we could fuck, and then he starts to thrust himself inside of me. I say "No, not raw," but he thrusts again. I say "Ouch, Jesus," and he says, "Sorry, it was an accident; calm down." I tell him to stop, and finally he does. At this point, I am limp, and he is really hard, and it feels just like the other time when I wanted things to be over. I am jaggging him a little, he is jaggging himself, and then, without asking, he finishes on me, on my torso. I clean myself off. He tries to blow me, and I tell him to stop. I don't remember falling asleep, but I must have. I don't ask him to stay over.

The next morning, I wake up and feel trapped in his arms. I'm frustrated, I feel really gross. I didn't want any of that to happen. I was definitely too drunk to consent. In the grand scheme of things, if I woke

up in the morning and made out with someone, it would not have been as bad. Anything with clothes off is not okay if I am too drunk and too out of it to understand what's going on.

Around 7:30am I try to push him off and get up, but it was really awkward. I guess I fell back asleep because I woke up again around 10 a.m. and tried to get out of bed. He pulled me back twice, and I know he wanted a kiss but I wasn't going for it. Finally, I got out of bed, got ready, and we went about our day. He texted me on Sunday asking about an event I had earlier that day. I didn't answer. I talked to Adam about it on Sunday night, I think you should speak to him. My relationship with Adam – we are pretty close, not romantic, just friends.

### Owen's 1<sup>st</sup> Interview

*After learning the general information about the two incidents in the initial report:* I don't know why the incident prior to coming to campus is being addressed here? I don't think it should be addressed, and I'm not going to talk about it.

Grant and I both got accepted, and I could see other accepted students in the Facebook group. Grant was one of two people I friended who were from the city. I think he first commented on a picture of mine when I changed my Facebook profile picture. We developed a friendship online, then talked on the phone and texted a lot, too. I met up with Grant in person in the spring of our high school senior year; we went to the movies. After the movies, we walked around downtown, talking, holding hands. We talked about his ex-boyfriend, my ex-boyfriend, and how we were excited to start school. I know he got back with his ex for a little while, and then broke up with him again. After that, we hung out once, and I met his family – I think it was that day that we kissed for the first time. At the end of hanging out, he told me he still had feelings for his ex, which was upsetting. We didn't talk for a

while after that because he made me feel like complete crap. After a few weeks, we talked about it and decided to put everything behind us and just be friends.

When we got to school, our relationship had lots of ups and downs, like any normal relationship – we always checked in with each other, though, to show we cared. Sometimes we lost contact – we were doing our own thing – and then found our way back to one another. We care deeply about each other. There were a few nights when we had some sexual interactions – we were just figuring life out at college and meeting new people and finding our friend groups.

This past Saturday, my friend Lacy called me to see if I was going out. This was around 10 p.m. I told her I wasn't sure, and she came over to my room with some Malibu and a shot glass. We each took a shot. I took a shower and then took two more shots of her Malibu as I got dressed. We got to Kylie's house around 11:30 p.m. I saw Grant dancing with some people and went up to dance with him and talk. I brought up a rumor I had heard about him with someone we both know – someone who is not a good person – that had hurt my feelings. He immediately denied it and insisted I tell him who told me.

Grant then said that I couldn't make him feel bad about that. When I asked him why not, he said that I had sexually assaulted him at my friend's house the night of my graduation party, prior to coming to school. I was totally stunned and asked him what he was talking about. I remember we made out, gave each other head, and I remember saying I wanted to have sex with him, but he said "No" and we stopped and went to sleep on the couch. Grant said that was not all that happened, that we should go outside to talk, so we did. We talked some more outside – Grant said "You tried to have sex with me after I said no." I told him that didn't happen, and he told me I was pissy that night. We went back and forth a couple of times until I said something

like, “I’m sorry that is how you remember that night, that is not how I remember that night; that is not what happened.” We talked a little more, and Grant said he forgave me. He then told me that the rumor I had confronted him with was true and we should talk somewhere more private.

There was a large group of people outside the house, smoking and talking. We walked away, not going anywhere in particular, talking about the rumor. I was upset and I asked him why he had lied. We also just talked in general about how we were doing. When we started walking, things were tense, but as we talked, we both loosened up a bit and laughed. I reached for his hand partly because it was cold that night, partly to get rid of the tension – he didn’t pull away or show any sign of discomfort. We held hands until we ended up outside my room, which was closer than his.

Once we got into my room, we sat pretty close to each other on my bed; he positioned himself as leaning against me, and we continued to talk for a while. At one point, he lay completely down on the bed, opened his arms to me, and pulled me toward him. We were facing each other and very close...we embraced. I told him I have and always will care about him. He leaned his head toward mine and kissed me. Then we began making out. He lowered his hands to my butt, over my jeans, then used both hands to lift my shirt. I took this as he wanted me to take my shirt off, so I did; then he lifted his arms, and I took his shirt off. I stopped kissing him, got off the bed, and reached for him to follow.

We were standing, kissing. I undid his pants, took his pants and underwear off and performed oral sex on him. I was watching him, looking for cues. I kept going because I saw no discomfort and he never told me to stop. He was moaning in a good way. After a few minutes, he lifted me up, took off my pants, and went down on me. Neither of us

came. He turned me around to get on my knees. I did this willingly, and he started to rim me from behind. After a while, I turned and lay on my back on the carpet, and he got on top of me and kissed me. After a few minutes, I wasn't comfortable, so I went to the bed and held out my hand so he would go with me. I decided to reciprocate rimming – he turned willingly so I could rim him, and then we continued kissing, rimming, and doing oral on each other. Grant asked if I had any condoms or lube. I said no, that I had run out, and we joked about that. I told him I wasn't expecting this to happen. I asked if he had any in his room – he said he did, and I asked him if we could go there. He agreed.

We continued to kiss; we were both moaning, in a good way, and then we slowly got dressed, teasing each other with kisses and fondling as we got dressed. I stopped and said we are wasting time, so we finished getting dressed, left my room, and walked to his. I talked about the cold weather, and he commented on it, too; then said he couldn't believe what was happening. I asked if this was bad and he said "No." I wanted to check in to see where he was with things. He said Adam was right – because Adam, a mutual friend, had said Grant and I would hook up again. Adam knows us really well – he knows how we feel about each other. We kept walking, and I said "Whatever happens, happens," and Grant repeated this, and then stopped and kissed me.

We get to his hall, and I go in first. When we get to his room, we quickly start making out again and clothes come off. He got on his back on the bed; I was on top, holding his legs, rimming him, and he was moaning my name. I asked him if he liked it, and he said yes. I tried to ask him another question, but he told me to stop talking and lowered my head to his penis. I gave him oral sex for a few minutes. We took turns giving each other oral sex and rimming each other and kissing and then embracing and completely fell asleep in each other's arms. There was never a climax ever – neither one of us – that night. There was never any penetration or attempt at penetration.

I remember waking up to him slightly snoring, and I knew he was asleep. The next morning, he woke me up to check the time on his watch, which was right by the bed – he was against the wall, and I was on the edge. He said it was 7:30 a.m., too early to be awake. I tried to go back to sleep, but I couldn't. I think he may have fallen asleep, though. We were spooning each other, and it felt really good. I don't know how much time went by, but later, Grant said he needed to start the day. I saw him grab his towel and put it around his waist, so I put on my clothes. I had a lot to do that day, so I told him I was leaving. He said "Okay," and I told him have a good day. He said, "You too," and I left and went back to my room. When I left the room, I was happy. I had enjoyed myself, and although we have had our ups and downs, I care for him deeply. When I went to get lunch, I ran into Adam, and we ate lunch together. I told him I had hooked up with someone. His second guess was Grant. I told him that I really enjoyed myself and was surprised at how strong my feelings were for Grant. Adam knows more about how that night made me feel, and he helped give me some perspective about my feelings. He told me to take a few days to reflect on things – he knows I'm impulsive—and to think about if I wanted to pursue an actual relationship with Grant.

### Owen's 2<sup>nd</sup> Interview

Grant never said "Ouch" to any of the sexual contact – he never said "Ouch" at all that night. I also don't remember Grant picking me up or us slamming against the closet when we got to Grant's room.

I've been thinking, and there is something you need to know. The rumor that I asked Grant about was whether Grant had hooked up with J.R. Before Grant hooked up with J.R., I had reported J.R. to the Title IX office for an incident when J.R. had sexually assaulted me. There was a finding of responsible. People knew about it because lots of people

were talking about what happened. I was really upset that Grant hooked up with him. Also, because I was sexually assaulted by J.R., there is no way I could have sexually assaulted Grant. It's just not possible.

I was not drunk that night. Also, I am an R.A. and am trained in detecting when someone is intoxicated. Grant was maybe a little happy. I had assumed he had been drinking – it is the culture here to drink. But I didn't smell anything, his balance was okay, he wasn't dizzy, he wasn't stumbling, he wasn't going to vomit.

There were hickeys given both ways. When I started to give one to Grant, Grant didn't want one, so I stopped. He gave me two hickeys, although I never asked for them. I have pictures, I'll send them over.

### **Tim Lane and Elizabeth Williamson**

Tim Lane, Reporting Party

Elizabeth Williamson, Responding Party

#### Interview with Tim Lane, reporting party

- “Elizabeth emotionally and sexually abused me for two straight years.”
- Williamson was interested in BDSM and made Lane play out rape fantasies and Lane wasn't comfortable with that.
- Williamson would pressure Lane to act “hyper-masculine” and Lane was “pressured and shamed...to act a certain way or else [Lane] wasn't seen as attractive.”
- “I was manipulated into being certain ways for 2 straight years - affected academics, personal relationships, mental state. It causes problems in my current relationships. I am traumatized by it.”

- “Elizabeth wanted me to be this hyper aggressive and hyper sexual male ideal. Before I met Elizabeth I was identifying as asexual, gender-neutral - but in the relationship, I was told I couldn’t do that and needed to go by he/him pronouns. I am back to they/them.”
- “She told me I was weak and to fix it. I would ‘dom’<sup>1</sup> myself out of acting a certain way. She gave it a pet name when I was like that, “Tiger-Tim.” I hated that. She would eventually be able to bring me back into that state she wanted with relative ease because she trained it with positive reinforcement.”
- “Since deciding to go through with this process I haven’t kept up with my academics – I wake up tired. I’m exhausted, I have nightmares – that’s part of my PTSD. If I have a stressful day, that sets off nightmares – so now if I have a stressful day I won’t go to sleep. There was a time [I] scratched myself up all over my body because of self-hate because I couldn’t deal with the memories. I have had suicidal thoughts and none of this happened before Elizabeth.”
- When asked about their gender identity prior to starting the relationship with Williamson, Lane said: “Either a-gender or gender fluid. I wasn’t comfortable insisting on pronouns at that point but did tell people and was very open about being a-gendered...Everyone used he/him then because I wasn’t good at advocating for myself and people weren’t used to it since it is a relatively new thing.”
- “I felt pressure about a month and a half into the relationship to act out the gender role of hyper masculine man. At that point Elizabeth wanted me to act out and identify internally in that role as male.”
- When asked what was said about this, Lane stated: “Essentially just that if I was going to continue to be Elizabeth’s partner –

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<sup>1</sup> Dominate.

- what Elizabeth found attractive was this hyper male standard and if I wanted to continue to be attractive that I would need to play out that role. I wanted to be a good partner so I would keep trying to meet the standard.”
- “I was a-gendered in the beginning but the more I was pressured the more I changed internally. I still had a dissonance – it didn’t feel like me – but I did present differently. When I felt maximally dissonant was when I started to think I needed to get out of it. I never felt like who I actually was appreciated because I didn’t show my actual self.”
  - “She would say – the way you are acting is weak. Weak people do this. At the time I thought this person knows better than I do and I should act the way they want – classic gaslight response. Looking back on it I feel like any way I would act would have been received poorly.”
  - Regarding the enactment of the rape scene, Lane said they did that “several times, not without coercion. I would go ahead and do it even though I wasn’t comfortable with it. She said she had rape fantasies. She wanted that kind of sex.... [E]ither her or me [*sic*] would be sexually aroused or horny and if I tried to engage with that – one of the ways she would indicate she wanted that kind of treatment was that she would actively resist – early on I would get visibly uncomfortable with that – then she would tell me I should go ahead anyway – then I learned that when she acted like that she wanted me to proceed anyway.”
  - Regarding the dom/sub dynamic: “I was ok with toys and bed restraints but not with the power dynamic. The social hierarchy was what I wasn’t ok with.”
  - When asked about details regarding how Williamson pressured Lane, “Basically the entire [sexual] situation. When the situation is supposed to start with aggression and power and

- force I didn't – who I am – I didn't want to do it at all. I tried to push through that discomfort to try to do what she wanted but that's not me. Sometimes I felt unreal for hours afterward. I felt like I couldn't advocate for my own desires.”
- When asked what led Lane to make the decision to report, Lane stated that it “[t]ook me a long time to acknowledge that what happened was abusive and messed up. Felt like I couldn't keep quiet about it any longer and I don't like the idea of this happening to anyone else. It got so hard being around campus and seeing this person not having to deal with the consequences. I wasn't able to stay quiet about it any longer and I had to advocate for myself to prove I can and take some agency back and regain control.”
  - When asked if Lane derived sexual pleasure from their interactions, they stated: “It depends on what you mean by that. My body responded to it – but there was cognitive dissonance with my mind. I am not interested in engaging in any of those actions – they are the opposite of attractive to me – they are disgusting.”
  - “During between fifty and sixty percent of the sexual interactions with Williamson, I did not want to do those behaviors. I was unduly pressured to be hyper masculine and violent.”

### Interview with Elizabeth Williamson

- “In 2015 Tim and I started BDSM in the relationship – it was experimental and consensual – we set up safe words and boundaries and I had no reason to believe anything was wrong. They were very clear in saying they wanted to experiment with it. They operated predominantly as the dominant and I was the submissive. Safe words – and clear communication about what was permissible and what was not.”

- “Then Tim started to isolate me from my family – listen in on my phone calls with my mother. Summer of 2015 I came to the conclusion that the relationship with my parents was abusive and cut off all ties at Tim’s urging.”
- “Tim did assume the position of dominant more and brought the dynamic outside of the bedroom more. [Lane] tried to separate me more from my parents. I felt uncomfortable leaving my room without him. I had a lot of anxiety at the time that I believe was brought on by the relationship. [Lane] demanded I appear more feminine – how I dressed, exercising – what I ate. We broke up because I wanted to experiment with my gender and I had no idea Tim wanted to do the same.”
- “For the whole relationship Tim used he/him. At the beginning, they said they didn’t have any close relation to any gender identity. But throughout the course of the relationship Tim used he/him and then strongly identified as he/him. There were several conversations about gender at the beginning of the relationship. Being in college we explore these issues.”
- When asked if she communicated a preference to Lane about Lane’s gender identity, Williamson said: “I personally am straight. Rather I am bi leaning toward straight. I communicated about that.” Investigators asked again if she had a preference for how Lane identified, to which Williamson stated: “There was talk about the fact that I personally would prefer to date someone who identifies as male. But not in the context of my demanding [Lane] present a certain way.”
- When asked about Lane’s reaction to that, Williamson said: “Nothing in particular – there was a slow process that Tim identified more strongly with he.”
- When asked how often Williamson communicated her preference to Lane, she stated: “I imagine a handful of times. In college, we

talk about gender identity a lot. I always said I would support no matter what.”

- Lane’s friends referred to Lane “[a]s he. Tim openly and publicly identified as he. I haven’t had much contact since but I heard they were going by something non-binary. That wasn’t something I would have clearly expected given our relationship.”
- When asked how the dom/sub dynamic was initially discussed, Williamson stated: “I initially said I was interested in trying this in the bedroom and Tim agreed. “
- When asked if Williamson communicated that she wanted Lane to be more dominant, she stated: “In the bedroom certainly” but Lane never discussed discomfort about the dominant role.
- When asked about discussion about her rape fantasy, Lane said “No. That is one of my hard lines. I like rough sex but not simulation.”
- When asked if she remembered asking Lane to “dom his way” out of certain behaviors, she stated: “It’s a possibility I used that term. I remember [them] having troubles in situations and telling [them they] could overcome that. A potential conversation might be something like if school was getting the better of [them] – had a lot of work to do – I would say something like – you are dominant and can take control of the situation. [They were] usually receptive and would say I was right and would take charge and control the situation.”
- “There was communication about asking Tim to be more aggressive in certain scenes – but it was all consensual. I would say – I like it when you do this – Tim would ask if I would like [them] to do it more and I would say yes – and then [they] would.”
- When asked about their discussion regarding safe words, Williamson stated that it occurred “[v]ery early on. Green is go ahead – red is stop – and yellow is pause and discuss...We never

really had to use them. We did a lot of stopping and discussing throughout the relationship.”

- When asked if it was clear they both had access to safe words, Williamson said “I tried to make it as clear as possible. The conversation was that we should both have safe words. Tim said that was a good idea. Tim was not comfortable with anal play on [themselves] and that was the only clear boundary I got from [them].”
- When asked if Williamson had communicated to Lane that she enjoyed the dom/sub dynamic outside of their sexual interactions, she said: “Yes, originally. But then the dynamics went out of the bedroom. The most specific examples are the ones that make me uncomfortable. January and beyond 2016 – controlling what I wore, what I ate – defensive of me around my family. The later portion of it was when I started to become really uncomfortable and things made me upset. I felt that when I brought up having problems with the dynamic Tim would brush it off – say that it was confirmation bias and that the problem didn’t exist. That made it difficult to communicate any discomfort. This was with make-up and all the things listed – but also normal relationship things – like you don’t trust me – we didn’t discuss that – but those types of things.”
- “In January 2016, Tim began controlling my appearance and affecting my self-image and degree of attractiveness. [Lane] would tell me that [they] thought I was unattractive and had been gaining weight. [Lane] told me to start wearing makeup more in order to look more attractive and began telling me what to wear and what to eat. [Lane] also told me to start exercising to make myself look more feminine. [Lane’s] demands escalated to the point where I would have to ask permission to eat certain foods. During multiple instances, [Lane] would not allow me to eat dessert.” When asked whether she communicated her discomfort around Lane’s control of her appearance, she stated: “Yes, I said I

wasn't comfortable – that I wanted to wear what I wanted to wear. Tim never changed [their] behavior based on my communicated discomfort.”

- “There was a period of time that I wanted [them] to monitor my eating – but then I became uncomfortable with that and with the things [they] would say like ‘I’m not attracted to you when you do those things.’”
- Williamson denied calling Lane “weak.”
- When asked if Williamson told Lane that she wasn't attracted to them if they acted certain ways, she stated: “There may have been times that I said behaviors made me uncomfortable and I didn't know how to handle them and that [they weren't] as attractive to me – but it wasn't meant with any harm. There was a time [they] drank too much and started throwing up and I might have said I wasn't comfortable with that.”
- When asked if Williamson put pressure on Lane to act more masculine, she said: “Possibly. Never to harm though. I would say I liked certain things – and ask if [they] were comfortable doing them. [They] would say yes. [They] would continue. These were things in the bedroom.”
- Williamson stated that Lane did seem to derive pleasure from their sexual interactions.
- When asked about the “Tiger-Tim” state, Williamson said: “Yes, that was generally during sex when [Lane] got more forceful. Generally, it started in the bedroom and [they] would get more forceful at times. It was just a response as how things play out - you start having sex and things get heated...it wasn't really an altered state – just more forceful...[it ended] when sex ended.”
- When asked if Lane ever acted unlike their normal self, Williamson said no.
- “[They] would say [they] felt a bit different and that [they were] in a state that [they] wanted what [they] wanted. They enjoyed it –

[they] said [they] enjoyed it. [Lane] would say after the sex was done that it was some of the best sex [they] ever had.”

- When asked if Williamson communicated to Lane that she liked this state, she said “Yes, probably more than once.”
- Lane engaged in controlling behavior:
  - “My parents have a lot of expectations. I didn’t handle that well for a very long time. Tim convinced me not to talk to my parents, they would listen in when I was talking to my parents. Once I came to the conclusion that my parents were potentially abusive, Tim tried to convince me not to make up with them. Tim would get agitated and worry that my parents would do something to try to hurt me. There were several times that I wanted to discuss what I had considered problematic with my mother. Tim would immediately shut that down and convince me that was a bad idea. Tim went out of their way to not interact with my parents and convinced me to do the same.”
  - When asked about Lane listening in on her phone conversations with her parents, Williamson said that it started “Fall of 2014 and continued throughout the relationship. Sometimes I would have it on speaker and sometimes Tim would just be in the room. Early on that was okay with me and it became less okay as time went on and I wanted to have a relationship with my parents. They were oftentimes placing themselves as a barrier to having a relationship with my parents. Late Summer 2015 – Fall 2015 I became uncomfortable with it. At the time, I thought it was fine and looking back on it I don’t. I think it was Tim’s influence that had me seeing it that way. I really appreciate my relationship with my parents now. I went on a trip to Ireland with my mom over spring break and I wouldn’t have done that with Tim there.”

- When asked about Lane controlling her social life, Williamson stated: “At the time a lot of it was because I felt uncomfortable going to things without Tim. That seemed fine at the time but now is quite alarming. We had a lot of the same friends, mostly [Lane’s] friends, [Lane and their friends] would often disparage my social skills and said I wasn’t good with people or social skills. It was mostly Tim and his friend Eric and it made me extraordinarily anxious in social situations, and now I know I’m quite good at those interactions. Fall 2015/Spring 2016. People calling me awkward – saying I was poor at reading people, my rocking and constant motion annoyed people – Tim and Eric would say these things...I took it to heart. I trusted them and their assessment of me.”
- There was a time when it was okay that she and Lane went to events together but “I started to feel that Tim became upset when I would do things without them.” Williamson was unable to provide an example.
- “I am queer and I wanted to go to the LGBT center, to their meetings, to theatre showings. It was inconceivable to do things without Tim at the time. It is something that is hard for me to put into words...I wasn’t okay with my own social skills.”
- Lane controlled Williamson’ appearance:
  - “I went off Adderall Summer 2015 – it raises your metabolism and lowers your appetite and I gained about 20 pounds. [Lane] wanted me to work out more, lose weight, have a tighter body. I started getting into make-up – it was fun – art for your face. [Lane] said I should wear make-up more, that it looked good – that when I wasn’t wearing make-up I wasn’t attractive – I was frumpy. There was a period of time that they chose the clothes I wore – that

ended quickly. They would only comment positively on my appearance when I put in more effort than I generally do. They would disparage it otherwise.”

- Lane commented that Williamson was gaining weight, not as attractive. When asked if she remembered the conversation, Williamson said “not really.”
- Lane made “comments like you’d be so much more attractive if you worked out. I want you to have a tighter body.”
- When asked what her response was, Williamson said: “I felt I had to agree. Tim had already started working out at that point. I said I liked it and I liked the results.”
- “They liked it when I wore shorter shorts, higher heels, tighter tops.”
- When asked if there was a time when Williamson was okay with Lane picking out her clothes, she said: “Yeah, through manipulation. In Spring 2016, I told Tim I was going to wear what I wanted to wear. Initially I liked wearing makeup. I didn’t want to wear it as much or as heavy as they wanted me to wear it. I would say I didn’t want to wear makeup today - they would say they thought I should wear it. And I would.”
- When asked what she thought would have happened if she didn’t wear makeup, Williamson stated: “They wouldn’t have been attracted to me...I don’t think any sort of control like that is healthy. You are a partner, you are supposed to be supportive and make people feel better about themselves, not worse.”
- “They were pushing me to go to the gym. I’m not a gym person, so I proposed maybe I would watch what I eat to get them off my back. They agreed to that and when I would eat something like a dessert they would say I thought you were

trying to lose weight. It was me making a series of concessions to make them less upset with me.”

- “I just wanted the comments about my appearance to stop.”  
When asked if she communicated this to Lane, Williamson stated: “I wasn’t aware of what it was doing to me at the time. None of it is okay looking back on it.”
- When asked what led to the decision to report, Williamson stated: “I realized all these things had an effect on me. I didn’t know I could report until Tim did it.”



## 20 Minutes to Trained: Appeals Q&A

### Grant and Owen

#### For Discussion

#### *After Grant's 1<sup>st</sup> Interview:*

- What policies are potentially implicated?
  - Sexual Harassment
  - Non-Consensual Sexual Contact
  - Non-Consensual Sexual Intercourse
- Does (or should) the University have jurisdiction over interactions that happened before the start of their first semester on campus?
  - This depends on your school's policy and the details regarding when an individual is a student and/or when policy applies.
- What additional questions do you have for either party?
  - Possible questions:
    - Were there other interactions between the parties in the time span between the two reported incidents?
    - Did either party discuss either the incident or their relationship with friends?
- What are your next steps?
  - Possible next steps:

- Determine jurisdiction
- Speak with witnesses
- Obtain relevant communications/social media

*After Grant's 2<sup>nd</sup> interview:*

- Are any other/different policies implicated?
  - If oral sex is performed by both parties on the other, how does that affect (if at all) whether a policy is implicated by this conduct?
- Do you see any credibility issues?
  - Grant acknowledged picking Owen up and slamming him against the closet while kissing, which doesn't align with his overall position. Grant also noted that he was on top of Owen. Both physical positions indicate a fair degree of control over the situation which seems to contradict Owen's assertion that he was too drunk to consent.
  - Grant says he "didn't want any of that" to happen. Could he simply regret what happened? How do you determine whether that is the situation here?
- Does any information from the second interview change your investigation approach?
  - Grant is stating that he was too drunk to consent. How do you determine whether this was true?
- What additional questions do you have for Grant?
  - Possible Questions:
    - How much does Grant usually have to drink?
    - Given that there were several interactions in this particular incident, which (if any) interactions did Grant consent to?
    - What about communication between the parties throughout the night. Was it mostly verbal? Physical? A combination?

- What are your next steps?
  - Possible next steps:
    - Speak with Adam
    - Speak with other witnesses who may attest to Grant's level of intoxication

*After Owen's 1<sup>st</sup> interview:*

- How would you handle Owen's refusal to discuss the first reported incident?
  - One way to handle Owen's refusal is to communicate that you understand his refusal and you will make a note of his decision not to answer any related questions. You want to make sure you document his conduct for any future appeals.
- What are your next steps in trying to assess the situation?
  - One important distinction is to understand the conduct that "crossed the line" for Grant – what conduct was/was not acceptable.
  - Another important piece here is to understand the relationship between the parties, their history, and the existing dynamic.
  - Finally, the credibility of both parties is an important issue, as one party is asserting there was anal penetration and the other one is completely denying the same.

*After Owen's 2<sup>nd</sup> interview:*

- Do you see any credibility issues?
  - There is a discrepancy regarding whether Grant picked Owen up and slammed Owen against the closet.
- Does any information from the second interview change your investigation approach?

- Owen stated that he was sexually assaulted. Understanding the details of the incident (even just the general nature of the underlying conduct) may help you better assess the information Owen is providing and possibly his credibility.

## **Tim Lane and Elizabeth Williamson**

### For Discussion

#### *After Tim's interview:*

- What are your initial thoughts?
- What policies are potentially implicated?
  - Sexual Harassment
  - Non-Consensual Sexual Contact
  - Non-Consensual Sexual Intercourse
- What additional questions do you have?
  - How did Tim communicate their gender identity to Elizabeth?
  - What about with other people? Were Tim's friends aware of Tim's gender identity?
  - It seems that there were times when Tim was comfortable with the sexual interactions. When Tim wasn't comfortable, how did Tim communicate this to Elizabeth?
  - How much communication did the individuals have during the relationship? Would they discuss their sexual interactions or rely on physical signs?

#### *After Elizabeth's interview:*

- What are your initial thoughts?
- What policies are potentially implicated?
  - Sexual Harassment

- Stalking
- Intimate Partner Violence
- Do you have credibility concerns about either party?
  - Elizabeth’s “counter” report could be retaliation, it could be fabricated, or it could be legitimate. The best practice here would be to perform an initial inquiry to understand more about the conduct Elizabeth is alleging.
- How might these reports create appeal issues?
  - The handling of the two reports could absolutely open the door to appeal issues. Is it better to handle the reports as a singular investigation? Would you use the same investigator? What are the pros and cons to each approach?
  - If an investigator fails to at least perform an initial inquiry into Elizabeth’s report, this opens the door to the appearance of bias, a likely basis for an appeal.
  - Given the gender identity of the initial reporting party, the investigator needs to ensure that all the interviews and reports respect Tim’s gender identity – if not, this also opens the door to the appearance of bias and subsequently, the possibility of appeal.



# *SUPPLEMENTAL APPEALS SLIDES*

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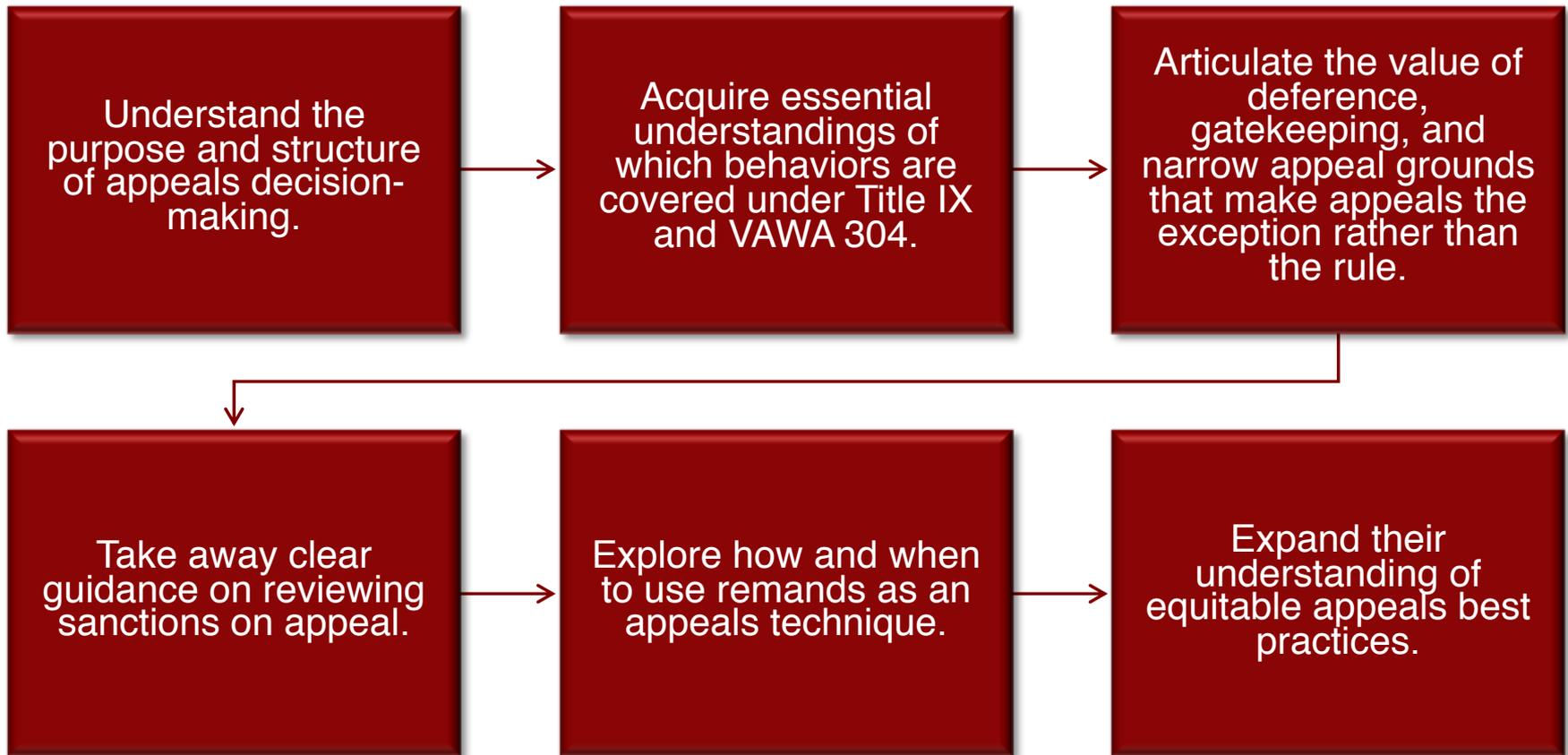
20 Minutes to Trained

# APPEALS



- Objectives
- Key Elements
- Philosophical Basis for Appeals
- When Appeals Go Off the Rails
- Best Practices
- Possible Outcomes
- The Process

# OBJECTIVES



# INTRODUCTION

- Title IX, VAWA Section 304, and appeals best practices.
- Appeals are not required by federal law.

If we provide them,  
they must be provided  
equitably.

Each party can request  
an appeal.

Each party can  
participate in an appeal  
to the same extent  
as all parties.

Grievance processes  
that function as final  
appeals are inequitable  
if the reporting party is  
not a participant.

# KEY ELEMENTS

One level of appeal is all you need.

Limit the grounds for appeal.

Show deference to initial decision

- Clear error in finding; compelling justification to change sanctions.

Sanctions usually take effect immediately.

Short window to request an appeal (3-7 days is common).

- Can always grant an extension if needed.

Document-based and recording review

- Limited interviews; NOT *de novo*.

Appeals should not be automatic; based on request.

Preponderance of evidence is standard for decision.

# The Philosophical Basis for Appeals

- Making sure the procedures were followed to a fair result.
- That result may not be how you would have decided it, but the goal is to show deference on appeal unless there is **clear error**.
- Initial investigation and decision should be presumptively sufficient until evidence shows otherwise.
- Under Title IX, many appeals now implicate sufficiency of investigation, a new concern.

## The Philosophical Basis for Appeals

- With the investigation now under a microscope on appeal, a layer of Title IX coordinator sign-off after investigation is critical to the integrity of the investigation process (Facebook example).
- You may disagree with sanction, but there must be a **compelling justification** to change it, not mere disagreement.
- Sanctions must bring an end to discrimination and reasonably prevent its reoccurrence (Title IX).
- Remedies must repair the harm; make whole the victim and the community.

# WHEN APPEALS GO OFF THE RAILS

Interventionist appeals officers who believe it is their job to second-guess.

Granting appeals for the chance at an education conversation/to teach a lesson.

The liability risk of a too strong appellate authority.

Hierarchs as appeals officers – a common practice and is often a mistake.

Failure of adequate training.

Too much deference can also bite you (if the initial decision is wrong, or results from lack of training, you do have to set things right).

# BEST PRACTICES



- Remand. Your judgment is not better than that of others in the process. If there is a problem and you can send it back, do so.
- Problems with investigation can be repaired by reopening the investigation, or in rare cases, by re-investigating.
- Problems with hearings can often be fixed by limited re-hearing. Re-dos should be rare.
- Between 80 and 90 percent of appeals should be denied. Of the remaining 10-20 percent, almost all should be remanded.

# BEST PRACTICES



- Joinder. Title IX sets up the potential for appeals of appeals of appeals.
- To avoid this (and you want to avoid it), you'll need a one-level appeal process (more levels are just bureaucracy and are not needed), where all parties are joined in the appeal regardless of whether they petition for it, and irrespective of what grounds are asserted.
- All viable grounds should be joined in one reconsideration with all parties participating.

# BEST PRACTICES



- Appeals are typically in writing.
- Review the investigation report, the hearing record, and all available documents.
- Interview the investigators, coordinator, and/or hearing officers/panelists.
- You may conduct limited interviews with the parties or witnesses as necessary, but avoid a full re-hearing. If needed, remand.
- Make an independent and impartial determination.
- Grounds for appeal or changes must be shown by evidence that is “more likely than not” under Title IX.

# BEST PRACTICES



- Letters of outcome, including finding, any sanctions, and rationale therefore, are applicable to appeals decisions under VAWA Section 304.
- Rights to advisors of the parties' choosing are as applicable to appeals as to any other stage in the process.
- If you are not eligible to hear appeals (provost, president, etc.), refer the angry parent on the phone to the proper official.

# BEST PRACTICES



- If the initial decision is presumptively correct, implement the sanctions immediately, not pending appeal.
- Coordinators or other administrators should have discretion to stay implementation of sanctions on a case-by-case basis, but the default should be that they go into effect immediately.
- Otherwise, we are saying the sanctions are presumptively incorrect until the appeal says they are OK.
- If that is the case, why not just skip the hearing and go right to the appeal?

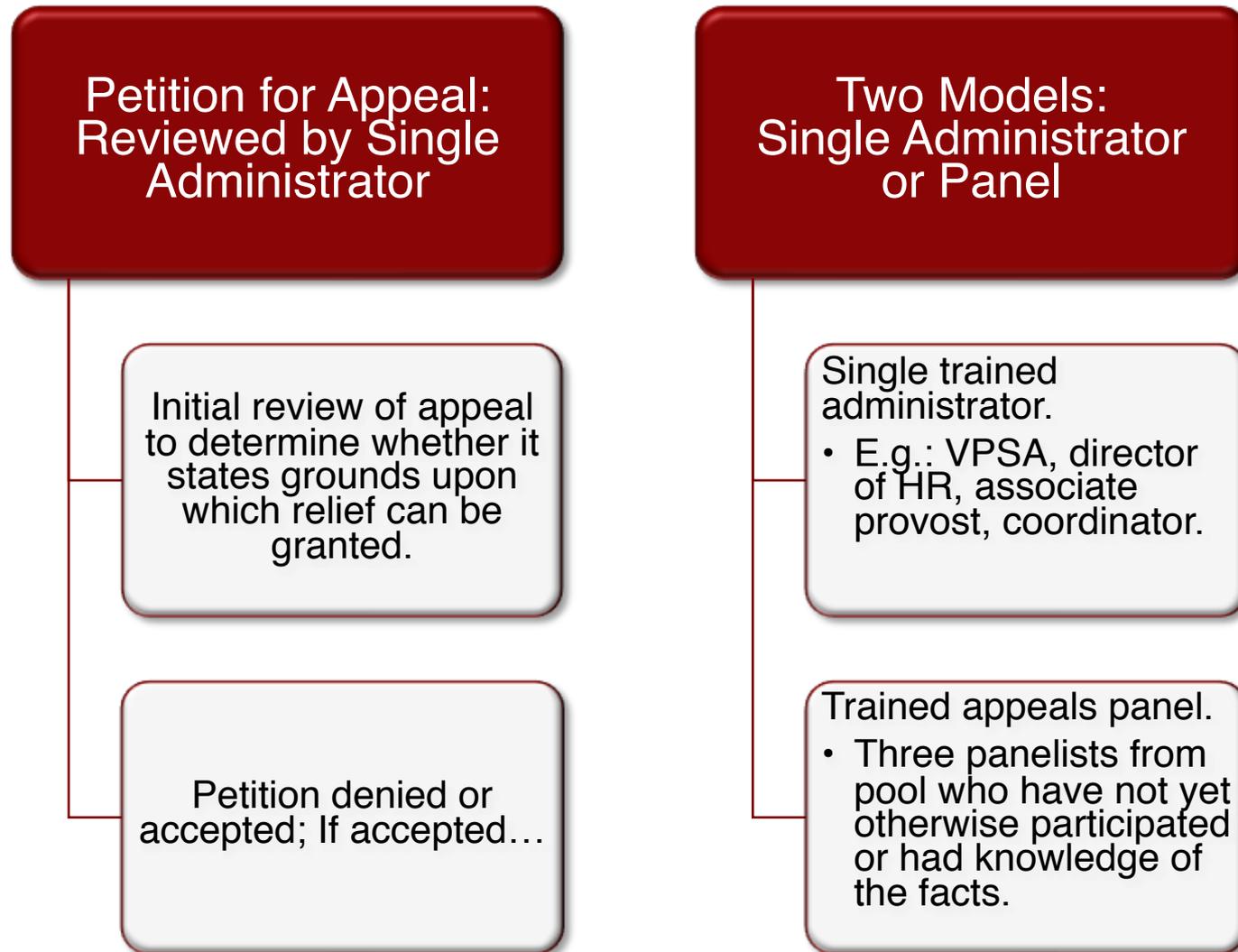
# GROUNDS FOR APPEALS

A procedural error or omission occurred that significantly impacted the finding (e.g., substantiated bias or material deviation from established procedures).

To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction.

- A summary of this new evidence and its potential impact must be included.

The sanctions imposed are substantially disproportionate to the severity of the violation (or: The sanctions fall outside the range of sanctions the university/college has designated for this offense and the cumulative record of the accused individual).



# COMMUNICATION PROTOCOLS

The status of the appeal is part of the status of the investigation. The reporting party is entitled to regular updates on this status.



When one party requests an appeal, the other party(ies) should be notified, and joined, either on the same basis that the appeal has been requested, or on other bases that they wish to assert as grounds.



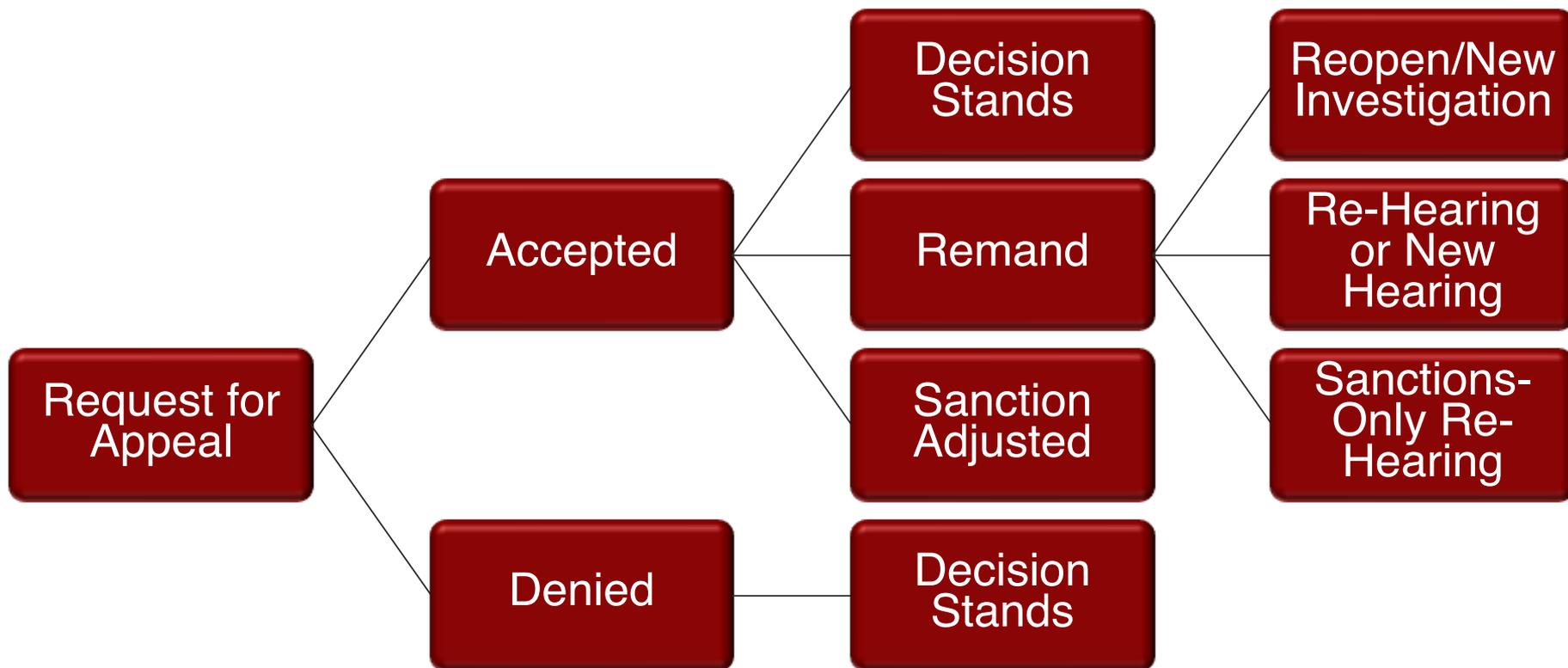
Exchange the appeals documents and requests between the parties, with an opportunity to respond.

# POSSIBLE OUTCOMES



- Request for appeal is denied.
  - Decision stands.
  
- Request for appeal is granted.
  - Decision stands.
    - **This should be the norm.**
  - Remand.
    - To correct a procedural error or address new evidence.
      - Re-open investigation (full redo uncommon).
      - Re-hearing (usually partial, unless full rehearing required).
    - To adjust the sanction.
  - Remand or sanction adjustment by appellate body.

# THE APPEALS PROCESS



# CONTACT US

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[www.atixa.org](http://www.atixa.org)