

WAC 478-121-635 Appeal from a dismissal of a formal complaint.

(1) A party may appeal a dismissal of a formal complaint or dismissal of any allegations in a formal complaint on any of the following bases:

(a) Procedural irregularity affected the outcome of the matter;
(b) New evidence that was not reasonably available at the time the dismissal was made; and/or

(c) A university official involved in the dismissal of the formal complaint 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.

If one of the grounds is to consider newly discovered evidence, that evidence must be provided with the appeal.

(2) An appeal must be submitted in writing to the investigator within five business days of the notice of dismissal of formal complaint. The appeal is the party's opportunity to provide the party's position regarding why the appeal should be granted, and it must identify at least one of the grounds outlined in subsection (1) of this section.

(3) When an appeal is received, the university will:

(a) Notify both parties in writing that the appeal was received, of the name of the individual(s) who will be deciding the outcome of the appeal, and when the nonappealing party's response is due;

(b) Provide the nonappealing party an opportunity to submit a written statement within five business days of receipt of notice of the appeal. This is the nonappealing party's opportunity to respond to the appeal;

(c) Consider the available evidence, which may include, but is not limited to, any summaries of interviews conducted by the investigator, evidence gathered by or provided to the investigator, and/or any newly discovered evidence;

(d) Issue a written decision describing the result of the appeal and rationale for such result; and

(e) Provide the written decision simultaneously to both parties.

(4) Communications with the individual(s) deciding the appeal, except for communications related to procedural aspects of maintaining an orderly process, must be made in the presence of, or with a copy to, all other parties, advisors (if any), and the investigator(s). Any communications not following such a procedure will be placed on the record, and others will be given an opportunity to respond.

(5) Appeals of a dismissal of a formal complaint may be decided by a single individual, and such appeals will be decided within five business days of the deadline for the nonappealing party's response.

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-635, filed 3/11/21, effective 4/11/21.]