

Queens University TIX Coordinator Training: “Which Grievance Procedure Model Now??”

Josh Whitlock

Whitlock Law, PLLC

July 15, 2024



WHITLOCK LAW, PLLC

Road map

- Philosophy minute: Frankl, Epictetus
- 2024 TIX regs: highlights / most major shifts
- The most important question and call: “Which grievance procedure model now??”
- Recommendation on most important call: **single initial investigator/decision maker +++**



Stimulus, Space, Response

“Between stimulus and response, there is a space. In that space is our power to choose our response. In our response lies our growth and freedom.”

- Viktor Frankl



Quality of Attention and Action

“Show me one person who cares how they act, someone for whom success is less important than the manner in which it is achieved....

While out walking, who gives any thought to the act of walking itself? Who pays attention to the process of planning, not just the outcome?

No one ever consults a seer or spends the night in a temple out of concern for the means rather the ends of their actions.

Find me one such person, I want to see [them]. This is the person I have looked for ... the true genius and aristocrat. I don't care if they be old or young, just find me one.”

- Epictetus



2024 TIX Regs: Highlights / Most Major Shifts

- In full effect August 1 + require significantly revised policies and procedures
- Massive re-expansion of scope of TIX grievance procedures
 - Prohibited / covered conduct definitions = big expansion
 - Covered geography / locations = big expansion
 - Much less formality / barriers to complaint / response trigger
 - Highly likely to lead to spike and multiplication of covered allegations and related investigations / proceedings
- Very significant expansion of TIXC roles / responsibilities
- Removal of live hearing requirement + explicit blessing of “single investigator / decision maker” model



The Most Important Question and Call: “Which GP Model Now??”

- Major possibilities: (1) pure single investigator/decision maker; (2) handoff to decision maker (non-live hearing); (3) live hearing; and (4) many in-between / hybrid variations
- Why such a critically important decision?
 - Drives resource decisions, amount, use, and allocation (through impact on staffing and training requirements, outside legal/contractor spend, etc.)
 - Heavy impact on quality / feasibility of team performance
 - Heavy impact on party, witness, and other participant perception and experience
 - Must withstand criticism / second-guessing (due process challenges etc.)
- Decision requires careful, informed, and nuanced balancing of many factors and interests, including but not limited to those just mentioned



Pros and Cons of Three Major Options

- Pure single investigator/decision maker (in purest form no appeal)
 - Pros: efficiency; straightforwardness; increase in quality of performance and experience; leanness of staffing and related training requirements; closeness of decision maker to facts
 - Cons: enough process (especially “due process”)??; potential for bias; reputation / perception; not an option in some jurisdictions (but is in NC *with specific and critical procedural additions/modifications*)
- Handoff to decision maker model (without live hearing)
 - Pros: extra layer of process, but less complexity than live hearing; separation from investigation?; potentially decreased chance of bias
 - Cons: not as lean, straightforward, or efficient as SI/DM; separation from investigation, how much gained in the tradeoff?
- Live hearing
 - Pros: the most process; arguably the least possibility of impactful bias
 - Cons: intensely resource intensive; highly complex; quality/feasibility?; barriers to reporting and continuing in process (both inward and outward facing)



Recommendation: Single Initial Investigator/Decision Maker +++

- More specifically, strongly recommend use of a single *initial* investigator / decision maker ± robust ability to challenge appointment of that person ± robust ability to review and provide evidence, including proposed questions ± robust appeal right
- Really an in-between option to (1) traditional/pure single investigator/decision maker and (2) handoff to decision maker (without live hearing)
- Captures and enhances the pros of both of those models, dramatically mitigates the cons of those two models, and avoids altogether live hearing's complexity/downsides/questionable benefits



Thank you!



Josh Whitlock
Whitlock Law, PLLC
josh@whitlocklawpllc.com
704.614.6005



WHITLOCK LAW, PLLC