

Title IX: A Review & Legal Update

An Overview of the Law and Discussion
of Best Practices and Procedures

Presented by

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Today's Presenter



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What is Title IX?

- Title IX of the Education Amendments of 1972
- Federal civil rights law that prohibits discrimination on the basis of sex in any education program or activity that receives federal funding



Title IX – Statutory Language

- ***No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.***

Definitions

- Discrimination:
 - Sexual Harassment
 - Rape
 - Sexual Assault
- Sexual harassment: qualifies as discrimination if it is “so severe, pervasive, and objectively offensive that it effectively bars *a reasonable person* access to an educational opportunity or benefit.”
- Even a single instance of rape or sexual assault meets this standard.

Dear Colleague Letter (DCL)

- April 4, 2011 “Dear Colleague Letter” (DCL)
 - Guidance issued from the U.S. Department of Education
 - Issued shortly after the Department settled multiple cases arising from sexual harassment cases
 - Part of an emphasis by the Obama administration on Title IX violations

The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime.

In order to assist recipients, which include school districts, colleges, and universities. . . in meeting these obligations, this letter explains that the requirements of Title IX pertaining to sexual harassment also cover sexual violence, and lays out the specific Title IX requirements applicable to sexual violence. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.

Trump Administration

- On Sept. 22, 2017, the 2011 Dear Colleague Letter was rescinded.
- New rules announced in May 2020 – over 2,000 pages.
- The new rules refer to “requirements” of colleges and universities, not “guidance” as under Obama administration.

2020 Rules

- Schools required to “respond meaningfully to known reports” of sexual harassment or sexual assault and “to investigate” every formal complaint.



2020 Rules

- Complaining students must be offered supportive measures, including deterrence of further harassment and referrals to resources/counseling, etc. ... With or without a formal complaint.
- Supportive measures may include reassignment of classes or living arrangements.
- A complaining student may not be compelled or pressured to participate in an adjudicative process.

Continued

2020 Rules

- The institution only has an obligation to respond when it has “actual notice” of an alleged incident. This only occurs when a report is made to the institution’s Title IX coordinator or another employee who has authority to take corrective action on behalf of the institution.
- The method of notice may not be limited – may be by phone, email, in person, etc.

Continued

2020 Rules

- Requires a clear, predictable and transparent “Grievance Process” for adjudication of complaints.
- Expands the “jurisdiction” for complaints to “situations over which the school exercised substantial control” and also “buildings owned or controlled by student organizations officially recognized” by the school such as fraternity and sorority houses.
- Limits interim measures against the responding student.

Continued

2020 Rules

- Every formal complaint must be investigated, and the grievance process must include all of the following:
 1. Written notice of the allegations to both parties
 2. An opportunity for both parties to select an advisor who may or may not be an attorney
 3. Both parties may submit and review all evidence during the investigation

Continued

2020 Rules

4. Trained Title IX personnel must evaluate the evidence free of bias or conflicts
5. Written authorization to use any medical or psychological evidence during investigation
6. Consent before any informal resolution process
7. No informal resolution process if an employee has been accused of the sexual misconduct

Continued

2020 Rules

8. A presumption of innocence for the accused student with the “burden of proof” on the school
9. Uniform application of burden of proof whether the accused is a student or employee
10. Separate decision makers and investigators

Continued

2020 Rules

11. Live hearings with cross examination
12. Parties may not directly cross examine each other. All cross examination must be done by the student's "advisor" who may or may not be an attorney.
13. If a party cannot afford to hire an advisor, the school must provide an advisor to conduct cross examination at the live hearing.

Continued

2020 Rules

15. Prior sexual history questions prohibited.
16. Written decisions which contain an analysis of the reasoning for the outcome.
17. Effective remedies for complaining student if misconduct is found.
18. An equal opportunity to appeal any decision on the grounds of: procedural irregularity; new evidence; demonstrated bias of an investigator or decision maker.

Continued

2020 Rules

19. Prohibition of retaliation against parties, participants and witnesses
20. Maintenance of records, including reports, investigation materials, outcomes
21. Public disclosure of all training materials and training records for personnel and advisors

Continued

2020 Rules

- Participation at hearings:
 - If a party or witness does not submit to cross examination during a live hearing, the decision makers cannot rely on any pre-hearing statements of that party or witness.
 - Decision makers cannot draw any inference related to responsibility for misconduct if the student does not appear at hearing or does not submit to cross examination.

Collegiate Struggles

- Balancing act that must take place between rights of victim and rights of accused



The Training Conundrum

- Pre-Dear Colleague letter, training of hearing officers and hearing panels did not get much attention.
- Post-Dear Colleague letter, colleges and universities added curriculum to their training materials designed to disavow hearing officers of stereotypical notions regarding sexual assault (i.e., ... That a woman's clothing can lead to her being raped, that rapists are strangers who jump out of bushes.)

Continued

The Training Conundrum

- Male students suing colleges after being found responsible for sexual misconduct have had some success arguing that training designed to educate hearing officers on myths regarding sexual assault may actually serve to prejudice the hearing officers against male students.

2020 Training

- New regulations require that investigators and decision makers receive training on:
 - The definition of sexual harassment
 - How to conduct the grievance process, including investigations and hearings and how to prepare outcome documents
 - Relevance of questions and evidence, including questions about past sexual behavior or sexual stereotypes
 - Impartial investigations and bias

Training Failures

- *Doe v. Brown University*, U.S. District Court, Rhode Island
- Male student sued for Title IX violations and breach of contract after being dismissed from the University following a three-person hearing panel finding him responsible for non-consensual sex.
- District Court bench trial in September of 2016

Doe v. Brown University

- Panel members at Brown University had been trained that victims of sexual assault engage in counterintuitive behaviors such as maintaining contact with the alleged perpetrator and seeking to “normalize” the relationship with the perpetrator.

Continued

Doe v. Brown University

- One of the three panel members testified during the court bench trial that she “did not consider any of [complaining student’s] post-encounter conduct, including [any] text messages, as ‘evidence as to whether or not [the complaining student] had been sexually assaulted one way or another.’”

Continued

Doe v. Brown University

- The panel member's evaluation of the evidence was, at least in part, based on the training about counterintuitive behaviors exhibited by sexual assault survivors. The panel member concluded, "that it was beyond [her] degree of expertise to assess the [complaining student]'s post-encounter conduct ... because of a possibility that it was a response to trauma."

Continued

Doe v. Brown University

- The judge used, in part, the testimony of the panel member regarding the panel training to conclude that the accused student did not get a fair hearing.
- The judge ordered that the accused student be granted a new hearing.

Continued

Doe v. Brown University

- The opinion states, “It appears what happened here was that a training presentation was given that resulted in at least one panelist completely disregarding an entire category of evidence.”
- The post-encounter text messages and behavior of the accusing student.

Doe v. University of Pennsylvania

- Pending in the U.S. District Court for Eastern District of Pennsylvania
- U.S. District Judge on Sept. 13, 2017, denied defendant's motion to dismiss Title IX gender discrimination claims based, in part, on the University's training materials.
- The judge took issue with the following training materials:

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Doe v. University of Pennsylvania

- With respect to accusing students: The training “advises of the potential for profound, long-lasting, psychological injury to victims; explains that major trauma to victims may result in fragmented recall, which may result in victims ‘recount[ing] a sexual assault somewhat differently from one retelling to the next’; warns that a victim’s ‘flat affect [at a hearing] does not, by itself, show that no assault occurred; and cites studies suggesting that false accusations of rape are not common.”
- Continued*

Doe v. University of Pennsylvania

- With respect to responding students: The training materials state that they may “have many ‘apparent positive attributes such as talent, charm, and maturity’ but that these attributes ‘are generally irrelevant to whether the respondent engaged in nonconsensual sexual activity.’ It also warns that a ‘typical rapist operates within ordinary social conventions to identify and groom victims’ and states that ‘strategically isolating potential victims[] can show the premeditation’ commonly exhibited by serial offenders.”

Painter v. Adams (UNC-Charlotte)

- A male student found responsible for sexual assault sued for violation of procedural due process.
- University's motion for summary judgment denied, in part, because the U.S. district judge was "troubled" by the training provided to the disciplinary panel.

Continued

Painter v. Adams (UNC-Charlotte)

- The panel refused to allow the accused student to submit post-incident text messages from the accusing student.
- Accused student offered the texts to disprove the accusing student's claim that she "had come to fear him" after sex.

Continued

Painter v. Adams (UNC-Charlotte)

- The panel chair testified that the panel training indicated that the panel was not to consider any evidence at the hearing that did not “directly answer the question of consent, to consent to sexual acts,” so post-encounter text messages were deemed not relevant.

Lessons: Impartiality and Bias

1. Except for evidence of a complaining student's prior sexual behavior, do not disregard any categories of evidence, including post-event communications between the parties.
2. Investigators and decision makers cannot engage in any "pre-judging" in the event of allegations of sexual misconduct.
3. Do not consider gender-based stereotypes.

Impartiality

- Impartiality (also called evenhandedness or fair-mindedness) is a principle of justice holding that decisions should be based on objective criteria, rather than on the basis of bias, prejudice, or preferring the benefit to one person over another for improper reasons.

Bias

- A particular tendency, trend, inclination, feeling, or opinion, especially one that is preconceived or unreasoned.
- Unreasonably hostile feelings or opinions about a social group; prejudice.

Sexual Harassment

- **Quid Pro Quo:** conditioning an educational benefit or service on student's willingness to participate in sexual harassment/activity.
- **Hostile Environment:** unwelcomed conduct which is so severe that it would deny a reasonable person access to educational benefit.
- **Clery Act/VAWA definitions:** Sexual assault, dating violence, stalking or domestic violence.

Clery Act/VAWA Definitions

- **Rape:**
 - The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Clery Act/VAWA Definitions

- **Domestic Violence:**

- A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Clery Act/VAWA Definitions

- **Dating Violence:**
 - Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Clery Act/VAWA Definitions

- **Stalking:**
 - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress.

Relevance

- Ohio Rules of Evidence:
 - “Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Relevance

- Per the new DOE regulations:
 - The sexual history or proclivities of the complaining student is not relevant to the claim of sexual misconduct, so that type of evidence should be disallowed in the hearing.

What is Evidence?

- Direct evidence and circumstantial direct evidence:
 - Direct evidence is simply evidence such as the testimony of an eyewitness which, if you believe it, directly proves a fact.
 - If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

What is Evidence?

- Circumstantial evidence:
 - Circumstantial evidence is the proof of facts or circumstances by direct evidence from which you may reasonably infer other related or connected facts that naturally and logically follow according to the common experience of people. For instance, if someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

Evidence & Credibility

- To weigh the evidence, you may be called upon to consider the believability of the witnesses. To do this, you will use the test of truthfulness that you use in your daily lives.

Continued

Evidence & Credibility

- Credibility tests include considering the manner in which the witness testified, the reasonableness of the testimony, the opportunity s/he had to see hear and know the things concerning which s/he testified, his/her accuracy of memory; frankness or lack of it; knowledge, interest and bias, if any; together with all the facts and circumstances surrounding the testimony. Use these tests and assign to each witness's testimony such weight as you think proper.

Preponderance of the Evidence

- Preponderance of the evidence is the greater weight of the evidence; that is, evidence that you believe because it outweighs or overbalances in your minds the evidence opposed to it. A preponderance means evidence that is more probable, more persuasive, or of greater probative value. It is the quality of the evidence that must be weighed. Quality may or may not be identical with quantity or the greater number of witnesses.

Continued

Preponderance of the Evidence

- **CONSIDER ALL EVIDENCE.** In deciding whether any fact in issue has been proved by a preponderance of the evidence in the case, the hearing panel may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who produced them.

Continued

Preponderance of the Evidence

- **EQUALLY BALANCED.** If the weight of the evidence is equally balanced or if you are unable to determine which side of an issue has the preponderance, the party who has the burden of proof has not established such issue by a preponderance of the evidence.
- Here, the University has the burden of proof, to demonstrate the misconduct “more likely than not” occurred in order to find responsibility.

Additional Considerations

- Not applicable to non-students
 - *Jennings v. Univ. of N.C.*, 482 F.3d 686 (4th Cir. 2007)
 - The plaintiff must allege that she is a student as an element of Title IX claim.
 - *Simpson v. Univ. of Colorado Boulder*, 500 F.3d 1170 (10th Cir. 2007)
 - High school girl attended off-campus party hosted by college football player for visiting recruits and alleged that she was sexually assaulted at the party – not a student and not protected.

Continued

Additional Considerations

- Retaliation a stand-alone claim
 - U.S. Supreme Court has recognized a retaliation claim under Title IX – *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167 (2005)
 - Courts use the same retaliation framework as Title VII retaliation cases.
 - Elements: (1) protected activity; (2) known to the defendant; (3) adverse action; (4) but-for causation.

What is NOT included?

- Disparate impact:
 - No private right of action to enforce a disparate impact regulation under similarly worded Title VI
- Violation of federal Title IX regulations:
 - No implied private right of action for failure to comply with regulations alone

Miami University Interim Sexual Misconduct Protocol for Students

- All reports of an alleged Title IX violation by a student will follow the Title IX Protocol for Students.
 - Issues between students or if student is alleged wrongdoer; if employee is alleged wrongdoer, follow Title IX Protocol for Employees
 - Arising under U.S. Department of Education's Title IX regulations or University's Code of Student Conduct

Continued

Miami University

Sexual Misconduct Protocol

- Within the geographical territory of the United States of America
- While the complainant was participating in or attempting to participate in an educational program or activity of the University, including locations, events or circumstances in which the University exercised substantial control over both the respondent and the context in which the misconduct occurred and includes any building owned or controlled by a recognized student organization (e.g. fraternity house).

Continued

Miami University

Sexual Misconduct Protocol

- **Report:** A verbal or written account of alleged sexual misconduct made to a person with authority to initiate corrective action.
- **Formal Complaint:** A formal document filed by a complainant alleging sexual misconduct against a respondent and requesting that the University investigate the allegation of Sexual Misconduct. Formal Complaints may also be filed by a Title IX Coordinator. When a Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party to the investigation or any process which may result from an investigation.

Miami University

Sexual Misconduct Protocol

- **Initiation of corrective action:**
 - Office of Community Standards- Director, Associate and Assistant Directors
 - Title IX Investigator
 - Dean of Students
 - Title IX Coordinator; Deputy Title IX Coordinators
 - Office of Equity and Equal Opportunity Director and Associate Directors

Continued

Miami University

Sexual Misconduct Protocol

- Miami University Police Officers
- Office of Residence Life- Director, Associate Directors and Assistant Directors
- Vice President for Student Life
- Associate and Assistant Vice Presidents for Student Life
- Cliff Alexander Office- Director, Associate Directors, and Assistant Directors
- Intercollegiate Athletics- Coaches and Trainers

Continued

Miami University

Sexual Misconduct Protocol

- The new DOE regulations no longer allow an interim suspension of an accused student.
- *New option – Emergency Removal:*
 - The removal of a respondent from the University’s educational programs or activities on an emergency basis, if it is determined that the respondent poses an immediate threat to the physical health and or safety of any student or other individual.

Continued

Miami University

Sexual Misconduct Protocol

- **Definition of Consent:**
 - Consent is a knowing and voluntary verbal or non-verbal agreement between both parties to participate in each and every sexual act.
 - Consent to one sexual act does not imply consent to other or all sexual acts.
 - Conduct will be considered “non-consensual” if no clear consent, verbal or non-verbal, is given. The absence of “no” does not mean “yes.”

Continued

Miami University

Sexual Misconduct Protocol

- **Definition of Consent:**
 - A person has the right to change one's mind at any time. In other words, consent can be withdrawn at any point, as long as the person clearly informs the other party of the withdrawal.
 - Taking drugs or consuming alcohol does not relieve the obligation to obtain consent.
 - A person is not required to physically or otherwise resist an aggressor.

Miami University

Sexual Misconduct Protocol

- **Effective Consent:**
 - Effective consent can be given by words or actions so long as the words or actions create a mutual understanding between both parties regarding the conditions of the sexual activity.
 - Ask: “Do both of us understand and agree regarding the who, what, where, when, why, and how this sexual activity will take place?”

Continued

Miami University

Sexual Misconduct Protocol

- **Effective Consent:**
 - When a person affirmatively demonstrates that:
 - They do not want to have sex
 - They want to stop any sort of sexual act, or
 - They do not want to go any further, the other party must stop completely.
 - Continued pressure after that point can be coercive.

Miami University

Sexual Misconduct Protocol

- **Consent in Relationships:**
 - Current or past sexual relationships or current or past dating relationships are not sufficient grounds to constitute consent.
 - Regardless of past experiences with other partners or a current partner, consent must be obtained.

Continued

Miami University

Sexual Misconduct Protocol

- **Consent in Relationships:**
 - Consent can never be assumed, even in the context of a relationship. A person has the right to say “no” and has the right to change their mind at any time.

Miami University

Sexual Misconduct Protocol

- **A person cannot legally consent (no matter what they may say), if:**
 - Person is substantially impaired due to alcohol or drugs, incapacitated, or unconscious.
 - Person is physically or mentally disabled or incapacitated.
 - Person was coerced due to force, threat of force, or deception or when the person was beaten, threatened, isolated, or intimidated.

Miami University

Sexual Misconduct Protocol

- **Limited Amnesty:**
 - While the University does not condone underage drinking, illegal drug use, or violation of other University policies, it considers addressing sexual misconduct and interpersonal violence to be of paramount importance. To encourage reporting and adjudication of sexual misconduct and interpersonal violence, Miami University extends limited amnesty to both parties. The University will generally not seek to hold the student responsible for a violation of the law (e.g., underage drinking or illegal drug use) or Code of Student Conduct during the period immediately surrounding the alleged sexual misconduct or interpersonal violence.

Miami University

Sexual Misconduct Policy

- **Confidentiality:**

- A complainant may request confidentiality. The University takes such requests seriously; however, such requests may severely limit the University's ability to investigate and take reasonable action in response to a report. In such cases, or if applicable law requires, the University will not be able to keep the reporting confidential.

Supportive Measures

- This may be requested by complainant, respondent, a witness, or other impacted members of the University community. Supportive measures are available regardless of whether a formal complaint is filed.
- Deputy Title IX Coordinator will exercise discretion and sensitivity about sharing the identity of the student when arranging for supportive measures. Efforts will be made to maintain the confidentiality and privacy of the complainant unless one of the requested supportive measures requires revealing the identity of the complainant (e.g. a no contact directive). A student can access these services at any time, even if the student initially declined the service.

Supportive Measures

- Academic support services and accommodations, including the ability to reschedule exams and assignments, change in class schedule, or tutoring
- Short- and long-term housing accommodations (available to Oxford students)
- On-campus counseling services and/or assistance in connecting to community-based counseling services
- Provide transportation/parking options
- Assistance connecting to community-based medical services

Continued

Supportive Measures

- Assistance with completing the process of protecting a student's directory information at Miami University
- Work schedule or job assignment modifications (for University employment)
- Mutual no contact directive
- Assistance with connecting with resources regarding legal protections available to immigrants or international students in the form of U or T visas
- Information about and/or assistance with obtaining personal protection orders
- A combination of any of these measures

Continued

Investigation

- Complaint Procedures – Initial steps:
 - Formal complaints will be investigated whether filed by a student or filed by the Title IX Coordinator.
 - Prior to filing a formal complaint, the Title IX Coordinator may conduct a preliminary review in order to “weigh factors” for the potential filing of a formal complaint.

Preliminary Review

- Seriousness of the alleged violation (including whether the violation involved the use of a weapon, other illegal activity, illegal drug or intoxicants, multiple respondents, etc.).
- Whether there have been other complaints/ reports made regarding the respondent (e.g., a history of arrests, a record of misconduct at Miami or other institutions).
- Availability of other information to support the alleged violation.

Continued

Preliminary Review

- Whether the circumstances suggest there is an increased risk of the respondent committing additional sexual misconduct violations (e.g., a pattern of behavior).
- Whether the respondent has threatened the complainant or others.
- Safety of the complainant and others.

Miami University

Sexual Misconduct Protocol

- **Reporting to Law Enforcement:**
 - Cannot force an alleged victim to make a report.
 - Look out for “mandatory reporting” issues: if the alleged victim is younger than 18 years old, required by state law to make the report.
 - If a complaint of sexual violence comes in to a responsible person, Clery Act is satisfied when violence is reported to a Title IX coordinator.

Notice of Investigation

- If a formal complaint is filed, the University cannot keep the name of the complaining student confidential because the responding student has a right to know the complaining student's name.
- The University will issue a written "Notice of Allegations" to the parties to initiate the investigation.
- Investigator cannot also be a hearing officer.

Continued

Notice of Investigation

- Notice of the investigation and disciplinary process, including any informal resolutions which may be available. A copy of the formal complaint received by Miami University identities of the parties involved in the incident, if known.
- Conduct allegedly constituting sexual misconduct and the specific sections of the Code of Student Conduct allegedly violated
- Date and location of the alleged incident, if known

Continued

Notice of Investigation

- Copy of the Code of Student Conduct
- Statement that the respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility has been made at the conclusion of the disciplinary process.
- Potential sanction(s) that Miami University may implement following any determination of responsibility
- Statement that the student may be accompanied throughout the process by an advisor of their choice who may be, but is not required to be, an attorney

Continued

Notice of Investigation

- Statement that the complainant and respondents may request to inspect and review evidence
- Statement informing the parties that it is a violation of the “Dishonesty” section of the Code to knowingly make false statements or knowingly submit false information during the investigation or any resulting process under this Code
- Date, time and location of the initial investigatory interview(s)

Continued

Notice of Investigation

- A statement informing the parties of the process which allows for the temporary delay of the investigation or any resulting process, or the limited extension of time frames for good cause. Good cause may include the absence of parties, a party's advisor, or witnesses, concurrent law enforcement activity, or the need to accommodate language assistance or accommodation of disabilities. The timeline may also be affected by the winter or spring break periods and summer or winter terms.

Continued

Notice of Investigation

- A statement that if, in the course of an investigation, Miami University decides to investigate allegations of a Sexual Misconduct Violation or any other Code of Student Conduct violation about the complainant or respondent that are not included in the Notice of Allegations, Miami University will provide notice of the additional allegations to the parties whose identities are known.
- Identity of the investigator

Outcomes of the Investigation

- Mandatory dismissal if the alleged behavior does not constitute sexual misconduct under the U.S. Department of Education's Title IX Regulations, in that it did not occur while the complainant was participating or attempting to participate in an educational program or activity of the University, or did not occur within the geographical territory of the United States.
- Mandatory dismissals may be appealed.

Continued

Outcomes of the Investigation

- Case proceeds to hearing
- Cases may be consolidated where complaints against multiple respondents, multiple complainants rise out of same facts and circumstances.
- Permissive dismissal (any time during process), if complaint withdrawn in writing, if respondent is no longer enrolled or circumstances prevent a full investigation and adjudication

Conclusion of Investigation

- The parties will have equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including all relevant evidence, including both those that tend to prove the allegations or absolve the respondent.

Continued

Conclusion of Investigation

- Upon completion of the draft of the investigation report, the draft report will be sent to each party and the party's advisor (if any). The purpose of the draft report is to provide both parties with an equal opportunity to inspect, review, and comment on any evidence relevant to the allegations raised in the formal report. The parties will have at least 10 days to submit a written response to the draft report. Written responses, if any, received prior to the deadline will be considered by the investigator prior to completion of the final investigation report.

Continued

Conclusion of Investigation

- In the investigation report, the investigator will summarize relevant evidence and will either find reasonable basis to proceed to hearing for some or all of the allegations made in the formal complaint, or no reasonable basis to proceed, resulting in a dismissal of the formal complaint.
- If the investigator finds that the matter should proceed to a hearing, the specific disciplinary sections allegedly violated will be listed as charges in the investigation report.

Notice of Hearing

- To be issued at least 10 days before hearing.
- Content of notice:
 - Description of violative conduct
 - Copy of Code of Student Conduct
 - Respondent presumed not responsible until proven responsible.
 - Description of potential sanctions

Continued

Notice of Hearing

- Student allowed an advisor of choice who may be an attorney.
- Parties may request to review evidence.
- Violation of the Student Code of Conduct to make dishonest statements in investigation or hearing
- Names of hearing panel members.
- Informing parties of circumstances for delay of process

Roles of Advisors

- Cross-examination in a hearing must be conducted by a party's advisor, not the party themselves.
- All parties have the opportunity to be accompanied to a meeting, or student conduct proceeding, by an advisor of their choice, which may be an attorney.
- If a party does not have an advisor at the hearing to conduct cross-examination, one will be provided for them by Miami University.

Roles of Advisors

- If an advisor does not adhere to the rules of decorum and other expectations communicated as part of the student conduct process, they may be dismissed from the process by the hearing authority or Office of Community Standards and barred from further participation and another advisor will be appointed.

Hearing

- Adjudication by a three-person hearing panel
- Hearing panel will rule on relevancy of all questions and will supervise cross examination.
- If witness is not present for cross examination, panel cannot consider prior written statement or interview of witness.
- If there are safety or other concerns, the University will accommodate separation.

Continued

Hearing

- Parties are not required to divulge any medical, psychological, or similar privileged records as part of the student conduct process.
- An audio recording of the hearing will be made by the Office of Community Standards.
 - The recording will be made available to the parties upon request.

Written Notification of Outcome

- Specific allegation that constitutes sexual misconduct
- Description of procedures that were followed, starting with the formal complaint and continuing through determination
- Finding of facts that support the outcome
- Conclusion applying the appropriate definition of the policies determined to have been violated

Continued

Written Notification of Outcome

- Rationale for each allegation regarding the determination of responsibility, sanctions of the respondent and remedies for the complainant
- Appeal procedures

Sanctions

- Sanctions include suspension and dismissal and vary depending on the severity of the violation and the respondent's conduct history. Possible sanctions for sexual misconduct violations include as follows:
 - dismissal, suspension, removal from campus housing, educational intervention, no-contact orders and/or restrictions from participating in intercollegiate athletics or co-curricular activities.

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Sanctions

- The notice of allegation will contain the possible sanctions that may be imposed if the respondent is found responsible.
- Remedies will be provided to the complainant as appropriate to restore or preserve equal access to the University's educational programs or activities.

Appeals

- Either party may appeal the outcome of the hearing to the Vice President of Student Life. All appeals must be submitted in writing within five business days of the receipt of the outcome of the hearing.
- All parties will be notified when an appeal has been filed and will be provided with a copy of the appeal and given an opportunity to respond prior to the appeal being submitted to the Vice President for Student Life. The appeal(s) and any responses will be submitted to the Vice President for consideration.

Appeals: Grounds

- A conflict of interest or bias exists on the part of the investigator, Board member(s), or Title IX coordinator
- New information exists that was not reasonably available at the time the determination was made that is determined to be substantial enough to have changed the outcome of the hearing
- A procedural irregularity in the hearing of the case occurred that is found to be substantial enough to have changed the outcome of the hearing, including failure to objectively evaluate all relevant evidence or error(s) related to determination of relevance
- Inappropriate sanction(s)

Timelines

- The University's investigation, disciplinary, and resolution processes generally take up to 120 business days depending upon the complexity of the matter.
- We conduct prompt and thorough investigations—typically within 45 business days of receipt of the report; hearings within 45 business days and any available appeals are typically resolved within 30 business days.
- On occasion the disciplinary process may be temporarily delayed for good cause, including the absence of parties, a party's advisor, or witnesses, concurrent law enforcement activity (see section: Legal Options), or the need to accommodate language assistance or accommodation of disabilities.

Writing Outcome Letters

- Brief but thorough
- Need to walk the line between providing too much of a narrative – because it provides ammunition in litigation – and providing enough of a rationale to satisfy the requirements of the Violence Against Women Act (VAWA).
- Do not need to recant the testimony of every witness.

Writing Outcome Letters

- First, list the date of the hearing and a brief summary of the factual allegations against the responding student.
- Second, list the conduct infractions with which he or she was charged.
- Third, simply list the evidence that was considered at the hearing – i.e., text messages, video tapes, etc.

Continued

Writing Outcome Letters

- Fourth, list the witnesses whose testimony was considered and whether the witnesses appeared live or via written statement.
- Fifth, list the evidence standard applied – preponderance of the evidence.
- Sixth, list how the board weighed the evidence

Continued

Outcome Letter Sample Rationale

- In assessing the credibility and plausibility of the witness testimony and documentary evidence, the Board weighed the appearance of each witness; the reasonableness of the testimony; the opportunity the witness had to see, hear and know the things concerning which the witness testified; the witness' accuracy of memory, interest and bias, if any; together with all the facts and circumstances surrounding the testimony or documentary submission.

Continued

Outcome Letter Sample Rationale

- Based on the Board's weighing of the evidence, it was determined that the preponderance standard was not met. The Board based this determination in part on your testimony that _____ . In addition, witnesses X, Y and Z provided testimony that corroborated elements of the information you shared.

Outcome Letters

- Next, if responsibility is found, address sanction and any continuing interim measures.
- Provide a brief rationale for the sanction
- Lastly, outline appeal rights

Questions?



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**Thank
You!!!**