



November 9, 2017

Office Of General Counsel

Responding to Sexual Violence: An Update

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Outline of Today's Presentation

- Review September 22, 2017, Letter from the OCR.
- Review the new Q&A on Campus Sexual Misconduct.
- Discuss impact on Board Policy 1B.3 and System Procedure 1.B.3.1.
- Resources.
- Questions/Discussion.



September 22, 2017 OCR Letter

- Withdraws.
 - OCR Dear Colleague Letter dated April 4, 2011.
 - Questions and Answers on Title IX and Sexual Violence dated April 29, 2014.
- Rationale.
 - “documents have led to the deprivation of rights for many students.”
 - Lack of clarity.
 - No notice and comment rule-making.

Timeline

- ~~April 4, 2011 OCR DCL on Sexual Violence.~~
- March 7, 2013 Violence Against Women Reauthorization Act and the Campus Sexual Violence Elimination Act.
 - Statute effective March 7, 2014.
 - Rules effective July 1, 2015.
- ~~April 2014 OCR Q&A on Title IX and Sexual Violence.~~
- May 2015 Minnesota Campus Sexual Assault Legislation.

September 22, 2017 OCR Letter

- OCR will not rely on withdrawn documents in its enforcement of Title IX.
- DOE intends to Rule-Make on this issue.
- September Q&A on Campus Sexual Misconduct.
 - Interim?

Title IX

- Title IX of the Educational Amendments of 1972, 20 U.S.C. §§ et seq., and its implementing regulations, 34 C.F.R. Part 106 prohibits discrimination on the basis of sex in education program or activities operated by recipients of federal financial assistance.
- Sexual harassment, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX.

Duty

- If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.



September 2017 Q&A

- More discretion to campuses.
- Result = No current changes to Board Policy 1B.3 and System Procedure 1B.3.1.



Interim Measures Pending Results of Investigation

- Examples.
 - Counseling.
 - Extensions of time or other course-related adjustments.
 - Modifications of work of class schedules.
 - Campus escort services.
 - Restrictions on contact between parties.
 - Changes in work of housing locations.
 - Leaves of absence.
 - Increased security and monitoring of certain areas of campus.

Interim Measures, continued

- September 2017 Q&A -- “[A] school may not rely on fixed rules or operating assumptions that favor one party over another, nor may a school make such measures available only to one party.”
- Individualized and appropriate.

Time Frame for Investigations

- September 2017 Q&A = No fixed time frame.
- 2011 DCL = 60 days.
- Minnesota State Board Policy = strive for 60 days.

Informal Resolution

- September 2017 Q&A = Allowed if appropriate.
- 2011 DCL = generally not allowed for sexual violence allegations.
- Minnesota State Board Policy = no fixed rule.

Standard of Proof

- September 2017 Q&A = No set standard required by the OCR.
- 2011 DCL = standard must be preponderance of evidence.
- Minnesota State Board Policy = preponderance of evidence.



Appeals

- September 2017 Q&A = School may choose to allow appeal solely by the responding party or by both parties.
- 2011 DCL = both parties must be allowed to appeal.
- Minnesota State Board Policy = both sides may appeal; respondent may invoke Ch. 14 if serious sanction.

Existing Resolution Agreements

- Remain binding on signing schools.
- Do not bind other schools.
- Impact on pending investigations?

2015 Minnesota Campus Sexual Assault Legislation

- Substantial revisions to Minn. Stat. § 135A.15 Sexual Harassment and Violence Policy.
- Effective August 1, 2016.
- MOU/Protocol team.
- OHE reporting
- Mandatory Training for Students.

Reporting to the Minnesota Office of Higher Education

- Legislation requires annual reporting of certain sexual assault statistics to the Minnesota Office of Higher Education (OHE) by October 1 of each year.
- OHE guidance manual at <http://www.ohe.state.mn.us/pdf/sexualassaultdataprtmanual.pdf>.
- Second Report – October 1, 2017.

Board Policy 1B.3 Sexual Violence and System Procedure 1B.3.1

- One system-wide Policy and Procedure.
 - Students and employees.
- Investigator/Decision-Maker Model.
 - Investigator.
 - Decision-Maker.
 - Appeal.
 - Ch. 14 or CBA.

Thoughts for Decision-Makers

- Analytical Order.
 1. Policy Violation.
 2. If yes to 1, then sanction.
- Look for corroborating information.

Sanctions

- Remember Basic Duty.
 - Eliminate harassment, prevent its recurrence, and address its effects.
- All possible conduct code sanctions available (Dean of Students can be a resource).
- Factors
 - Seriousness of Behavior.
 - Previous Disciplinary History.
 - On-going threat?
 - Remorse.
 - Similarity to past discipline.
 - Other factors?

Decision Letters

- Process map at your campus.
 - Each letter sets up the next letter.
- Some rationale for:
 - Finding on policy violation.
 - Sanction.
- No retaliation; appeal.
- Refer to services available to parties?



Final Thoughts

- Who is the campus person with the most information and experience on campus history and practices?
- OGC Assistance.
 - Student Respondent – Scott Goings.
 - Employee Respondent – Gary Cunningham.

What to Look for Over the Next Year

- Proposed Rules from DOE.
- Any change to consent standard in Board Policy 1B.3?
 - Students United affirmative consent initiative.
 - University of Minnesota affirmative consent policy at <https://policy.umn.edu/operations/sexualassault-appa>.

Resources

- OGC website “Responding to Sexual Violence” link.
<http://www.minnstate.edu/system/ogc/studentaffairs.html>.
- Webinars.
- MOU Template and Memo.
- OHE Guidance.

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