

TITLE IX GRIEVANCE POLICY & PROCEDURE OVERVIEW

To introduce new Policy and Procedures in compliance with the Title IX regulations that are in effect as of August 14, 2020





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CURRENT STATE OF SUB-REGULATORY GUIDANCE

- Withdrawn:
 - 2011 Dear Colleague Letter (DCL)
 - 2014 Q&A on Title IX and Sexual Violence
 - 2016 DCL on Transgender Students
- Still in effect:
 - 1975 Regs, as amended
 - 2001 OCR Revised Sexual Harassment Guidance
 - 2003 DCL on Title IX and Free Speech
 - 2010 DCL on Harassment and Bullying
 - 2013 DCL on Pregnant and Parenting Students
 - 2015 DCL on the role of Title IX Coordinators
 - 2017 Q&A on Campus Sexual Misconduct issued as interim guidance, still in place

DOE V. UNIVERSITY OF SCIENCES

- May 29, 2020
- Third Circuit case that covers Pennsylvania
- The Court held that Usciences' contractual promises of 'fair' and 'equitable' treatment to those accused of sexual misconduct require at least a real, live, and adversarial hearing and the opportunity for the accused or their representative to cross-examine witnesses—including the accuser(s).
- Applies to private universities

ITEMS TO NOTE

- Floor v. Ceiling
- Policy needs to be updated by August 14, 2020
- Live Cross Examination
- Decision Maker Role
- Advisor Role
- Training materials on our website



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STANDARDS FOR NOTICE

- Regulations do not require a Title IX investigation unless the institution receives actual notice through a formal complaint
 - Actual notice = written, signed complaint of sexual harassment to TIXC or appropriate official who has authority to implement corrective measures (OAA)
 - Constructive notice/respondent superior—insufficient to hold institution responsible
- Formal complaints are needed even for informal resolutions
- All forms of notice to TIXC requires appropriate supportive measures

PROCESS A PROCEDURES

- ! Expands due process per OCR
- ! Must state a presumption that Respondent is not responsible until determination reached in Notice of Investigation
- ! Continue to use preponderance of evidence standard
- ! Jurisdiction for Title IX cases limited to:
 - ! Incident occurred in the United States
 - ! Must have control of the harasser and the context of the harassment
 - ! Incident must have occurred in program or activity of the institution
 - ! Complainant is participating in or attempting to participate in University activity
 - ! Must meet definition of Sexual Harassment
- !

CONFLICT OF INTEREST / BIAS

- ! Grievance process must treat parties "equitably"
 - ! Must be designed to restore or preserve access to education programs
 - ! Must include enhanced due process protections before disciplinary sanctions are imposed
- ! Prohibits conflict of interest or bias by coordinators,

SUPPORT MEASURES

- ! Must be offered to both parties; cannot be punitive in any regard.
- ! Referral to counseling, medical, and/or other healthcare services;
- ! Referral to the Employee Assistance Program;
- ! Referral to community-based service providers such as the Victim Resource Center and Domestic Violence Service Center;
- ! Visa and immigration assistance;
- ! Student financial aid counseling;
- ! Education to the community or community subgroup(s);
- ! Altering campus housing assignment(s);
- ! Altering work arrangements for employees or student employees;

SUPPORT MEASURES

- ! Safety planning;
- ! Providing campus safety escorts;
- ! Providing transportation accommodations;
- ! Implementing contact limitations (no contact orders) between the parties;
- ! Academic support, extensions of deadlines, or other course/program related adjustments;
- ! Trespass or Persona Non Grata (PNG) orders;
- ! Connection to local resources for help on how to obtain a Protection from Abuse or Sexual Violence Protection Order;
- ! Timely warnings;
- ! Class schedule modifications, withdrawals, or leaves of absence;
- ! Increased security and monitoring of certain areas of the campus;
- ! Any other actions deemed appropriate by the Title IX Coordinator

INVESTIGATION

- ! Continue to use external investigators when we are able to;
- ! Parties continue to have a right to an advisor for all meetings/interviews;
- ! Prior to an investigation, parties may agree to an informal resolution process (must file a formal complaint first though);
- ! The investigation/hearing process will take ~~60~~ 60 business days;
 - ! Time period extended to allow for new requirements
 - ! Prior to conclusion of investigation, the parties must be given 10 business days to review the draft report and respond (must be given ALL evidence to review, even if not used or determined relevant by the investigator);
 - ! The report is then finalized and the parties are given another 10 business days to review before a hearing is scheduled.

HEARING

! Mandated live hearings for Higher Education

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HEARING LOGISTICS

! Hearings are going to be much longer given the fact that all witnesses need to

SANCTIONS

- ! The sanctioning process and range of sanctions will remain the same
- ! Factors to consider:
 - ! The nature, severity of, and circumstances surrounding the violation(s);
 - ! The Respondent's disciplinary history;
 - !

APPEALS

- ! Grounds for Appeal
- ! Appeals are limited to the following grounds:
 - ! Procedural irregularity that affected the outcome of the matter;
 - ! New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
 - ! The Title IX Coordinator, Investigator(s), or Decisionmaker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

APPEAL CONSIDERATIONS

- ! The Appeal Chair/Panel may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.

LONG-TERM REMEDIES

- ! Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the Parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.
- ! Counseling
- ! Educational programming
- ! Climate studies
- ! Etc.

QUESTIONS/DISCUSSION?

! Open Discussion