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.
  – 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.
  - 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- OCR will not rely on withdrawn documents in its enforcement of Title IX.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


• 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.
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

• Webinars.
• MOU Template and Memo.
• OHE Guidance.
Contact Information
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