



What's New and Why?

NOT LEGAL ADVICE

What's New and Why

- Hypotheticals
- New Items of Special Note
- Test

HYPOTHETICAL

- I. Sexual assault occurs on Wydown Blvd. by student against another student, witnessed by 42 other students. Student files complaint with Fontbonne and student is told it cannot be processed.
 - Correct
 - Not Correct

HYPOTHETICAL

2. Student wants to file an anonymous complaint. She has been raped and brutally attacked in her dormitory. She is promised anonymity.
 - Correct
 - Not Correct

HYPOTHETICAL

3. Above student is told that she cannot be anonymous and decides not to file a complaint. OCR Coordinator decides that she has sufficient information to initiate a complaint and investigation without the formal complaint by student. OCR Coordinator files formal complaint to initiate the investigation.
 - Correct
 - Not Correct

HYPOTHETICAL

4. OCR Coordinator under the above scenario begins the investigation and the complainant refuses to cooperate. OCR investigator nonetheless convenes a hearing and begins the process.
 - Correct
 - Not Correct

HYPOTHETICAL

5. Student is attacked by stalker and files complaint. During the evidentiary hearing, the victim student is cross-examined for two hours and breaks down and is excused and does not return to complete the cross-examination. The hearing officer dismisses the claim.
 - Correct
 - Not Correct

HYPOTHETICAL

6. Former student reports that she was repeatedly raped by a professor and files a formal complaint. School responds and initiates investigation.
 - Correct
 - Not Correct

HYPOTHETICAL

7. After filing a formal complaint, the complainant seeks and is offered special support measures based on the allegations of the complaint such as classes without the alleged harasser. Supportive measures must and are also offered to the accused.
 - Correct
 - Not Correct

HYPOTHETICAL

8. Student visits OCR Coordinator and advises she is being stalked. Wants someone to talk to the stalker and informally tell him to back off and resolve it. OCR Coordinator agrees and contacts the stalker who agrees to stop the conduct.
 - Correct
 - Not Correct

HYPOTHETICAL

9. Student voluntarily goes to room of another student and both become inebriated. Sexual relations occur. Student files complaint saying that she did not consent. Inebriation is defense.
 - Correct
 - Not Correct

HYPOTHETICAL

10. Faculty member and student are drinking and become inebriated and have sexual relations. Student files complaint, hearing conducted, allegations admitted, and faculty member terminated.
- Correct
 - Not Correct

What's New and Why

- New regulations effective August 14, 2020
- Reaction to protect rights of accused
- Retroactive?



I. Valid Complaints

- On campus property or controlled by the school
- Current student or participant in school program
- Only conduct in the United States
- Signed by Complainant or OCR Coordinator
- OCR Coordinator complaint requires “not clearly unreasonable”



2. Supportive Measures

- Must be offered on notice before the filing of a formal complaint
- After formal complaint, must be offered to both parties
- Non-disciplinary and to restore/preserve equal access



3. Interim Student Removal

- Individualized determination
- Immediate threat to physical health and safety
- Immediate notice to challenge
- More flexible for employee

4. Standards for the Grievance Process

- Parties treated equally
- No presumptions except “not responsible until final determination”
- Full disclosure
- No conflicts of interest
- Standard of proof same for all (student/employee)
- Timing

5. Fair Notice for Investigation – First 5

- Notice of allegations/copy of complaint; date and location
- Description of investigative process and hearing
- Request to identify witnesses to be interviewed
- Notice of right to advisor who may be attorney
- Warning that false statement may be subject to discipline

6. Fair Notice for Investigation – Next 5

- Confidentiality can be requested but cannot restrict ability of parties to discuss or gather and present evidence
- Equal access to all evidence, including exculpatory evidence
- Each party has 10 days before investigative report is issued to address the evidence
- Investigative report fairly summarizes evidence and issued at least 10 days before hearing
- Warning of the range of sanctions

7. Fair Process for the Investigation

- See last 10
- No interview of party without 10 days' advance notice of time and location and purpose
- Entitled to advisor at investigation stage
- Entitled to identify witnesses to be interviewed
- Objective evaluation of evidence
- No conflict of interest/bias
- Statement that respondent is presumed not responsible until a determination on the need of the process



8. Informal Resolution

- Only after filing of formal complaint
- Both parties consent in writing
- Only after process notice is provided
- Notice that any party can withdraw at any time
- Not available if employee is harassing student

9. Dismissal of the Complaint - MUST

Must dismiss if:

- Conduct does not constitute sexual harassment
- Did not occur in a school's education program or activity
- Did not occur in the U.S.

10. Dismissal of the Complaint - MAY

- Complainant wants to withdraw complaint
- Respondent no longer enrolled or employed
- Specific circumstances prevent school from gathering sufficient information for determination



II. The Hearing - Process

- Live with real questioning
- Cross-examination in real time by advisor
- Can be in separate rooms with technology for full participation
- If refuse to submit to cross-examination, witness evidence is stricken
- Decision maker cannot be Title IX coordinator or investigator
- Decision to refuse to permit question must be explained in real time with reason
- Written Decision required



Stalking v. Chase

- What is the difference?
- Is there is a difference?
- What if you are in a relationship?



Requirements for Title IX Participant

- Respected
- Able to keep confidences
- Detail oriented
- Objective
- Empathetic and compassionate
- Mature in handling highly sensitive matters
- Neutral
- Fact based analysis
- Ask for help when needed



Consent to Sexual Relations

- Permission that is clear, knowing, voluntary and expressed prior to engaging in and during sexual actions.
- Active, not passive
- Silence = consent?