VAWA Institutional Disciplinary Proceeding Requirements

VAWA ADJUDICATOR TRAINING PROGRAM

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VAWA's Jurisdiction

On Campus

Off Campus

Title IX's Jurisdiction

Program and Activity
United States (includes US territories)
Complainant's status
Control over Respondent

Examples Not Under Title IX's Jurisdiction

Occurred at a Study Abroad program or off-campus
Complainant is no longer a student or employee
Offense is not sex-based

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Terms - VAWA Offenses

- Sexual Assault
  - Rape
  - Statutory Rape
  - Incest

- Domestic Violence
- Dating Violence
- Stalking

Terms - Procedures and Processes

- VAWA
  - Institutional Disciplinary Action
  - Disciplinary Hearing

- Title IX
  - Grievance Procedures
  - Grievance Process

- Student Conduct
  - Student Conduct Process
  - Resolution Process

- Employment
  - Disciplinary Procedures

Terms - Roles

- Clery Act/VAWA
  - Victim/Accuser
  - Accused

- Title IX
  - Complainant
  - Respondent

Differences between Title IX and the Clery Act

- Refer to Title IX Regulations and Training
Notice Requirements

Written explanation of the student's or employee's rights and options whether the VAWA offense occurred on or off campus.
ASR and Disciplinary Proceedings

Annual Security Report must include "a clear statement of policy that addresses the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as defined in paragraph (a) of this section, and that..." (34 CFR Part 668)
A prompt, fair, and impartial process from the initial investigation to the final result.

- Reasonably Prompt Timeframes
- Consistent and Transparent Process
- No Conflict of Interest or Bias
Disciplinary Proceedings

Standards of Evidence

- Preponderance of the Evidence Standard
  - “More likely than not”
- Clear & Convincing Evidence
  - “Highly probably”

Hearings

- Clery Act
  - Silent
- Title IX
  - Live Hearings with Cross-Examination

Disciplinary Proceedings

Sanctions
Seven Years

Compliance with all information in the Procedures for institutional disciplinary action section does not constitute a violation of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g).
Purpose of Student Conduct Codes

Manage Institutional Expectations
Resolve Complaints
Educate

Foundational Aspects

Non-Adversarial
Notice
Opportunity to Be Heard
Types of Models

- Single Adjudicator
- "Paper Review"
- Hybrid
- Restorative Justice

Five Elements of a Resolution Process

1. Intake
2. Investigation
3. Adjudication
4. Final Resolution
5. Policy and Procedures

Personnel

- Selection
- Training
- Evaluation

Policy and Procedures

- VAWA obligations
- Other rights
- Procedures
Review the investigative report

Review the hearing procedures

Explain hearing rights and options

Offer alternative resolutions, if applicable

- Hearing Panel
  - Fair and impartial
  - No conflict of interest
  - Non-adversarial
  - Culturally competent
  - Collaborate

- Physical Setup
  - In person vs. virtual
  - Both Complainant and Respondent need to use the same medium
  - Breakout rooms
  - Accommodations
  - Recordings

- Building

- virtual

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Adjudication - Hearing

- Behavioral standards
  - Provided to all participants
  - Remind about retaliation policy

Fact-Finding
Sanctioning

Opening Remarks from Board
Response to Investigation
Questions
Final Remarks
Deliberation and Decision

Alleged Behavior
Determined Behavior
Violation?
Hearing - Sanctions

- Nature of violation
- Precedent
- Mitigating Factors
- Aggravating Factors
- Sanction(s)

Notification of Results

- Simultaneous
- Writing

Notification of Hearing Results

- Behavioral Allegation
- Behavioral Finding
- Determination on Violations
- Rationale for Finding
- Sanction(s) Imposed
- Rationale for Sanctions
- How to Appeal

Appeal

- Not Required for non-Title IX cases
- If offered, both parties can appeal
- Common grounds