



February 26, 2015

Letter to the Department of Education

The following is an open letter written to the Department of Education regarding student participation in Title IX-related hearings. 75 different student body presidents, representing 1.2 million students from 25 different states, have signed the letter. The letter has been submitted to Secretary Duncan, Robert Gomez with Higher Ed Outreach within the Dept. of Education, and an employee within the Office of Civil Rights. The letter has also been mailed to the offices of Senators of the 25 states that the undersigned student body presidents are from. The hope of this letter is that the following recommendations may take the place of a blanket policy that is detrimental to student survivors of sexual violence. Creating a culture where sexual assault is unacceptable, and survivors are truly supported is the ultimate goal.

For additional information, please contact:

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The Honorable Arne Duncan
Secretary of Education
United States Department of Education
400 Maryland Avenue SW
Washington, D.C. 20202-0100

Secretary Duncan,

As student leaders from 77 universities, and representing 1.2 million students nationwide, we humbly write you to address a growing concern about the role of students on conduct boards.

The conversation surrounding sexual violence and the movement to address it is one that, in many ways, defines our generation.

Many of us are working to raise awareness and foster change in our communities with the White House-led “It’s On Us” campaign and other student-led initiatives. With greater scrutiny placed on how college administrations handle these issues and respond to sexual violence, we greatly appreciate the work you and your department do to promote the interests of students and survivors.

The Office for Civil Rights (OCR) recommends that students should not be permitted to serve as adjudicators in campus conduct hearings related to Title IX (see OCR 2014 “Questions and Answers on Title IX and Sexual Violence,” at n.30). While we understand and support the good spirit of the recommendation—to ensure well-trained and unbiased participation—we strongly feel that it has significant unintended consequences. We oppose the recommendation as written for the following reasons:

1. Students provide valuable perspective as peers that faculty and staff cannot. They relate to the student experience directly and provide insight during questioning and discussion, enhancing the quality of hearings.
2. Hearing boards with students help ensure a more fair and balanced hearing process. Both parties involved in a hearing involving sexual violence may perceive the process as being fairer if students are also involved in the process.
3. At most institutions, student volunteers receive extensive training at the beginning of the academic year, and additional direction prior to each hearing—the same amount of training provided to faculty and staff volunteers.
4. Citizens over the age of 18 who serve as jurors on criminal and civil cases receive significantly less training than members of University conduct boards.
5. For institutions committed to the inclusion of students through a shared governance structure, it would be consistent to permit students to contribute to hearing boards as peers in their community.

6. At some institutions, a generational gap may still exist with regard to how sexual assault is perceived and where blame is placed. The student perspective, illustrated by widespread student-led “It’s On Us” campaigns, among other student-led initiatives, deserves to be heard.

To truly protect potential victims and survivors of sexual assault, student conduct hearings must bear integrity, fairness, and respect for all parties involved. Peers should be permitted to participate in evaluating fitness for membership in our own campus communities. We understand that this recommendation was created by virtue of preventing discrimination under Title IX. However, we believe that it inadvertently perpetuates discrimination against students on the basis of our status as students alone. For this reason, we implore you to reconsider this policy.

A reasonable alternative would require adoption of baseline standards for training and confidentiality expectations for all members of conduct hearing boards. Core principles guide our approach to establishing such standards, a few of which are outlined below:

1. The implementation of mandatory Title IX training annually, offered by an expert, for student, faculty, and staff adjudicators alike. See Appendix entry C.c. (Xavier University) for an exemplary program.
2. The adoption of procedures to protect the confidentiality of parties to the hearing and to prevent conflict-of-interest. See Appendix entry B.a. (Brown University) for an exemplary program.
3. The provision of an option to the student defendant, to choose between a full-board hearing, or an administrative hearing with an employee of the conduct office/ a community Title IX expert. See Appendix entry A.e. (The Ohio State University, pre-2014) for an exemplary program.
4. The provision of an option to the student plaintiff, to provide testimony to a conduct officer/ confidential advisor, in lieu of or in addition to testimony before a full-board hearing
5. Hearing board members should, preceding any Title IX case, receive information/training regarding burden of proof, issues of consent, etc.
6. Each institution’s Title IX Coordinator should be briefed on all conduct cases involving sexual assault, sexual harassment, and stalking

It is our hope that above-mentioned recommendations may take the place of a blanket policy that we believe to be detrimental to student survivors of sexual violence. Working together, we can create a culture where sexual assault is unacceptable, and survivors are truly supported.

Thank you for your consideration.

Signed,
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Appendix

A. The Ohio State University (pre 2014-2015 academic year)

<http://studentlife.osu.edu/csc/>

a. Procedure to address conflict of interest:

Student adjudicators are provided hearing materials >1 week in advance to ensure that parties to the hearing are unknown to them. Student adjudicators can refuse to adjudicate a hearing within this period, for any reason.

b. Procedure to ensure confidentiality:

Student adjudicators pledge, with signature, to not share hearing details from hearings before, during or after the hearing. Noncompliance would be met with disciplinary action via Student Conduct.

c. Training for student/staff adjudicators:

Student and staff adjudicators attend identical, annual, robust training sessions. Training retreats last for one day and include ~3 hours of Title IX-specific training. This training encapsulates adjudicator behavior in the presence of potentially traumatized plaintiffs/defendants. It also includes information on types of conduct that constitute sexual violence, same-sex violence, consent and the role of drugs/alcohols in ability to consent, the effects of trauma, and cultural awareness with respect to the dynamic impact sexual violence causes depending on cultural background.

d. Procedure for appointing student/staff adjudicators:

Student adjudicators are appointed, following an application process, by the Undergraduate Student Government. Students with upstanding behavior, academic, and civic involvement are considered for appointment.

e. Procedure for plaintiff/defendant participation in full-board conduct hearings:

If the defendant denies charges, he/she opts for a private hearing with a conduct officer, or a full-board hearing, with student adjudicators. Plaintiffs provide evidence and in-person testimony to a conduct officer, in either case. If comfortable, plaintiffs are invited to testify/interview before a full-board hearing, with student adjudicators, but are not obligated to do so. They may participate over the phone or via video feed if preferred.

f. Purpose for use of student adjudicators in Title IX Conduct Hearings:

The University believes that the presence of students within conduct hearings enhances the integrity and accountability of the hearing for student peers. Student and staff adjudicators receive more rigorous training than the federal government requires for jury volunteers in cases of a similar nature. The shared governance model at Ohio State emphasizes the importance of the contribution of students as peers within the University community. Internal conduct hearings are meant to evaluate, by peers, whether and how students remain a part of the community following misconduct.

B. Brown University

http://www.brown.edu/Administration/Dean_of_the_College/curriculum/documents/principles.pdf

a. Procedure to address conflict of interest:

Both parties to a hearing are provided with a list of possible board members prior to a hearing. Parties to the hearing eliminate any volunteers that they're familiar with or wouldn't want to adjudicate. From the remaining pool of volunteers, a student panelist is selected. Volunteers not selected will never receive the identities of students undergoing the process.

Additionally, the University (OSL) takes measures to ensure the comfort of students, so assigning no-contact orders can happen before a case is heard and immediately when the plaintiff charges another. This lies in the jurisdiction of the Dean handling Code violation cases after hearing the nature of the charges.

b. Procedure to ensure confidentiality:

There is a strict confidentiality agreement that anyone hearing a case cannot speak of it to anyone while the case is ongoing. Students, faculty and deans are expected by the nature of their positions to uphold integrity and confidentiality when hearing a case.

c. Training for staff/student adjudicators:

After students and faculty are appointed to participate in hearings, they are given a walk-through of the Code, of the sanctions process, of the data indicating how often Brown gives what sanctions and to what types of cases (without disclosing plaintiff or defendant information). They also run through the process of a hearing, who speaks when, what kind of information is relevant for different types of cases, and the rights of both the plaintiff and defendants.

d. Procedure for appointing student/staff adjudicators:

Procedures vary by type of hearing. The Deans of Student Life Office, a student, and faculty hear and discuss the process. The Deans' purview of these hearings is dictated in their job; students are chosen through the Student Council's (student government) appointment process into University committees- so students choose students. There are at least 6 professors who can be called to hear a case, and one chosen at random for every hearing, ensuring confidentiality and reducing chances for conflicts of interests.

e. Procedure for plaintiff/defendant participation in full-board conduct hearings:

The defendant is the student involved in the hearing, who sits for the entirety of the case, answers questions and states their cases. During this process, both the defendant and plaintiff are allowed an advisor, professor, or staff, who will support them through the hearing (they can decide to be in the room or not); generally, these advisors (which the University has a list of, but who can be anyone the defendant is comfortable seeking guidance from) help in a range of ways— moral support, drafting statements for the hearing, calling parents, and

being there for the student. The plaintiff can also have an advisor to help gather evidence and witnesses, however this responsibility usually lies with the University. The plaintiff is usually not in the room, however sometimes and quite often they are called as witnesses; under the Code, is it a violation to not appear when called as a witness, ergo plaintiffs must go (unless there are extenuating circumstances- such as the witness and plaintiff would suffer distress by being in the room with the defendant, in which cases the Deans review and make a decision on prior to the hearing).

C. Xavier University (pre 2014-2015 academic year)

<http://www.xavier.edu/student-integrity/documents/studenthandbook.pdf>

a. Procedure to address conflict of interest:

Procedure for conflict of interest (from Student Handbook, Section 3.6.5.5(2))

“At least five business days before the hearing, Respondent and Complainant, if any, will be notified of the name of the Hearing Officer or the names of Hearing Panel members. Respondent and Complainant, if any, have two business days after notice of the name of the Hearing Officer or names of Hearing Panel Members is sent to object to the Hearing Officer or any Hearing Panel member in writing to the Director of Student Integrity. The objection must state why it is believed a particular individual or individuals cannot be fair and impartial. Upon receipt of such objection, the Director of Student Integrity or designee will replace an objected-to individual only if, in his or her judgment, it is determined that the objected to individual, may not be fair and impartial in considering the matter. The parties will be notified in writing of any change of the Hearing Officer or to the Hearing Panel at least two business days before the hearing.”

b. Procedure to ensure confidentiality:

Policy regarding confidentiality (Student Handbook, Section 3.6.3.1)

The name, status, and violations or alleged violations of any student will not be disclosed to anyone other than the appropriate University officials, except as required or permitted by law. Generally, the outcome of any Student Conduct Process and appeal will remain confidential. These statements of general confidentiality are subject to the following rules on required disclosures and permissible disclosures.

Also, significant training regarding confidentiality requirements is included in UCB training

c. Training for student/staff adjudicators:

Student, faculty and staff members of the University Conduct Board (UCB) participate in the same thorough training program during the fall semester. All UCB members participate in more than 6 hours of mandatory training. Additional monthly in-service trainings are offered for all UCB members throughout the academic year. Training is provided by the Director of Student Integrity and the Title IX Coordinator.

The following topics are included:

- Philosophy/History of Student Conduct
- The Student Conduct Process
- Critical Thinking Skills

- How to Prepare for a Hearing
- Hearing Decorum
- Questioning Skills
- Weighing Evidence
- Analyzing Policy
- Standards of Proof
- Gender Based and Sexual Misconduct Cases)
 - UCB Sexual Misconduct section
 - Elements of each violation
 - Consent & capacity
 - Weighing evidence in this context
 - Special consideration for Sex Discrimination Cases
 - SANE slide
- Expert sources and Police Reports (see #11)
- Relationship and Domestic Violence
- The Psychology/Sociology of the Alleged Victim
- The Psychology/Sociology of the Accused Individual
- Stalking/Bullying/Harassment
- Sanctioning/remedies
- Deliberation
- Mock Hearings
- The Appeals Process

d. Procedure for appointing student/staff adjudicators:

UCB Member selection:

- Faculty members are appointed by Faculty Committee to serve 3 year terms
- Administrative members are appointed by Staff Council to serve 3 year terms
- Student members are appointed by Student Government Association to serve a 1 year term

e. Procedure for plaintiff/defendant participation in full-board conduct hearings:

Hearing Determination (Student Handbook section 3.6.1.)

Determining Who Will Hear a Student Conduct Matter

Alleged violations of the Standards of Student Conduct will be reviewed and decided upon by a Hearing Panel or a Hearing Officer at one of the two Hearing Levels described below

The Director of Student Integrity or designee shall determine which Hearing Level is the appropriate venue for the particular matter. The Director of Student Integrity or designee shall also determine if the matter will be heard by a Hearing Panel or a Hearing Officer. In making these decisions, the Director of Student Integrity or designee may consider the nature of the alleged violation(s), the possible sanctions, the interests of Xavier, and the interests of the Complainant and Respondent, if appropriate, though the decision shall be made in the Director's or designee's sole discretion. The Director of Student Integrity may

also generally designate that all matters of a particular variety be handled in a particular way (e.g., that all afterhours noise violations be heard by a Level 2 Hearing Officer).

Complainant options for hearings:

Rights of the Complainant (Student Handbook section 3.6.2.3.)

(6) A Complainant may choose how much he or she wants to participate in the hearing process:

(a) Full participation – the Complainant may question the Respondent (if permitted) and witnesses recount the facts and circumstances relating to the charge and make an impact statement.

(b) Partial participation – the Complainant may serve as a witness, answer questions, but not ask questions, and make an impact statement.

(c) The Complainant may choose not be involved in the hearing but to have a statement read in his/her absence. It should be understood that this will limit the process's ability to fully address to the charges.

f. Purpose for use of student adjudicators in Title IX Conduct Hearings:

- Students have a unique and important perspective on our student campus culture and often play a critical role in relaying those realities to the faculty/staff on the UCB.
- Students board members play an important role in communicating the message that our campus policies reflect norms that are supported and validated by peers
- Student representation on the UCB sends a message that student opinions are equal to faculty/staff in responding to violations of community expectations
- The UCB process at XU is institutionally well-regarded and students regularly seek out opportunities to participate in this challenging but important work
- Even though faculty and staff are able to understand policy, there are many other aspects of student life that the faculty and staff are unable to relate to; whether it is due to age differences or lack of direct involvement. If a conduct committee is to host a hearing without student voice, it leaves both the defendant and the respondent at a great disadvantage for clarification.

D. Indiana University Bloomington (pre 2014-2-15 academic year)

<http://www.iu.edu/~code/bloomington/index.shtml>

a. Procedure to address conflict of interest:

All hearing panel members are trained to remove themselves from a case if a conflict of interest exists. Student members received the hearing packets at least three days ahead of time. At times, the Office of Student Ethics might specifically ask a student member during the course of scheduling a hearing if they have a conflict of interest for any of the involved parties, without outing protected information until the member is scheduled for the hearing.

b. Procedure to ensure confidentiality:

All hearing panel members receive training on FERPA. They are trained on mitigating risks of having access to and/or possessing student records for a hearing. Non-compliance would result in a referral to Student Conduct for adjudication.

c. Training for staff/student adjudicators:

All hearing panel members receive approximately 50 plus hour training model with in person training, independent study/reading, quiz based, learning outcome supported model for the applicable Appendix E.

d. Procedure for appointing student/staff adjudicators:

Students applied for the conduct boards around campus. For the Review board, students were appointed by IUSA from their Supreme Court. The same general process applied to faculty from their governance structure. Professional staff are identified by reaching out to various departments across the university and seeking volunteers.

e. Procedure for plaintiff/defendant participation in full-board conduct hearings:

The parties are referred to as complainant and respondent, we do not refer to plaintiff/defendant as this is not a criminal or civil court processing. Both parties are entitled to full participation. For pre-2014, please see the procedures at: http://www.indiana.edu/~code/bloomington/discipline/appendix_e.shtml (Appendix E). The new procedures track this and also codify our standard practice that the parties may not question each other directly. <http://policies.iu.edu/policies/categories/administration-operations/equal-opportunity/sexual-misconduct.shtml#procedures>

E. University of Wisconsin- Madison

<http://www.students.wisc.edu/doso/docs/NewUWS%2017.pdf>

a. Procedure to address conflict of interest:

Recusal is addressed in training of all misconduct committee members. The person should address the issue with the legal affairs staff member, prior to the hearing date, on the hearing committee for guidance.

b. Procedure to ensure confidentiality:

Confidentiality is addressed during training and all are reminded that the contents of a hearing are confidential under FERPA as hearing information are student records. Hearing panel participants are also directed not to read their hearing packet where others could see it, and are instructed not to download the packet or share it with others.

c. Training for staff/student adjudicators:

All students and staff members on the misconduct committee receive training. They receive a basic 101 training for all cases, and a specific sensitive case training if they want to participate for sexual misconduct cases.

d. Procedure for appointing student/staff adjudicators:

Students are appointed ASM through an application/shared governance process.

e. Procedure for plaintiff/defendant participation in full-board conduct hearings:

Students can choose a panel hearing or work individual with a conduct officer.

F. University of Illinois at Urbana-Champaign (2014-2015 academic year)

Our Campus Senate is composed of faculty, staff and students and has a Committee on Student Discipline. The Committee on Student Discipline is responsible for setting student discipline policies and hearing appeal cases from its subcommittees on student conduct, which is where all cases originate. These subcommittees are managed by the Office of the Dean of Students and supervised by the Campus Senate Committee on Student Discipline.

http://studentcode.illinois.edu/FullCode_Web2014.pdf

a. Procedure to address conflict of interest:

All adjudicators are given a hearing packet to review about 30 minutes before the hearing; the hearing does not begin until all of the adjudicators have read the packet. If an adjudicator believes there is a conflict of interest, then he or she must divulge from the hearing. In addition, the very first question alleged victims and respondents are asked is whether they believe any adjudicators cannot remain objective. If an alleged victim or respondent believes an adjudicator cannot remain objective, then the adjudicator will be excused from the hearing.

b. Procedure to ensure confidentiality:

During the training session at the beginning of the academic year, all adjudicators sign a confidentiality agreement. Breaking the confidentiality agreement would result in removal from a subcommittee on student conduct.

c. Training for student/staff adjudicators:

New adjudicators must attend one day of training led by the Office of the Dean of Students. The day of training introduces them to the subcommittees on student conduct. This training underlines due process at Illinois, the Student Code, expectations of adjudicators and the specifics of hearings including questioning, credibility, deliberating and sanctioning.

Both new and experienced adjudicators — faculty, staff and students — spend another day at an annual training session provided by the Office of the Dean of Students. This training session serves as a mock hearing, with every member of the discipline process present (and videotaped for those who cannot be present). The mock hearing is usually a sexual assault case. Facilitators from our First Year Campus Acquaintance Rape Education (FYCARE) program serve as actors for the mock hearing. The mock hearing includes the practice of asking appropriate questions, establishing credibility, the practice of “finding of fact” and giving appropriate sanctions.

d. Procedure for appointing student/staff adjudicators:

The Campus Senate's Committee on Committees, which is also comprised of faculty, staff and students, is responsible for nominating faculty, staff and students to the Committee on Student Discipline, as well as all other Campus Senate committees. Members of the Committee on Committees ask peers and colleagues to find candidates interested in serving on all Campus Senate committees, and the full Campus Senate then votes on the nominations. Faculty and staff are appointed for two-year terms while students are appointed for one-year terms.

The Committee on Student Discipline's subcommittees on student conduct recruits potential members that apply through the Office of Conflict Resolution, a subsidiary of the Office of the Dean of Students. After a review of applications, the Office of Conflict Resolution contacts individuals for rigorous interviews. Faculty, staff, students and deans with experience in the discipline process are responsible for conducting interviews. After the application and interviews are completed, the Office of Student Conflict Resolution will appoint selected individuals to its subcommittees.

e. Procedure for plaintiff/defendant participation in full-board conduct hearings:

Conduct officers from the Office of Student Conflict Resolution reach out to all who are involved in a case (alleged victims, respondents, witnesses and any other persons involved) and collect information. Alleged victims and respondents have the opportunity to provide written testimony, participate in a private interview with a conduct officer or participate in the hearing. If respondents admit guilt and do not wish to go through with a hearing, a conduct officer can assign them sanctions.

f. Purpose for use of student adjudicators in Title IX Conduct Hearings:

Shared governance is an important part of all decision making at the University of Illinois at Urbana-Champaign. In our Campus Senate, faculty, staff and students work side-by-side with administrators to develop policy, collaborate and make decisions. All of the governance decisions at Illinois are not simply the result of administrators' ideas, but they are a result of elaborate reasoning with stakeholders across campus. With 44,000 students on our campus, we believe it is critical that students remain a part of all shared governance processes—including participation in T

G. Bowling Green State University

<http://www.bgsu.edu/content/dam/BGSU/student-affairs/Student-Conduct/documents/Student-Handbook.pdf>

a. Procedure to address conflict of interest:

Members of the University Conduct Committee (UCC) are trained, knowledgeable, and just educators who conduct themselves in a professional, confidential, ethical and responsible manner. If there is a conflict of interest, members are trained and expected to remove themselves from a hearing. After the hearing starts, both parties are

asked if there is a conflict of interest with any members of UCC to ensure a fair hearing. If there is an objection to any member of UCC, they will be removed from the specific hearing.

b. Procedure to ensure confidentiality:

All members of the UCC are required to sign a confidentiality statement and they are reminded of this during a hearing.

c. Training for staff/student adjudicators:

There is intensive training required for all faculty, staff and student members of the UCC. Members learn about the Code of Conduct, Title IX, sexual misconduct, and the overall UCC process.

d. Procedure for appointing student/staff adjudicators:

The Undergraduate Student Government and Graduate Student Senate make recommendations to the Office of the Dean of Students for student representatives to UCC. Staff from the Office of the Dean of Students secure faculty and administrative staff appointments from across the campus community.

e. Procedure for plaintiff/defendant participation in full-board conduct hearings:

- a. The complainant or respondent is not required to appear in person for a full-board conduct hearing. Privacy for the victim is extremely important, so they could phone in, provide a written statement, or request that the defendant vacate the hearing during their statement. If the complainant or respondent are not in the actual hearing, we provide a private location for each (along with their advisor) to participate in all aspects of the hearing via phone.

H. University of Cincinnati – Administrative Review Committee (ARC)

http://www.uc.edu/conduct/Code_of_Conduct/nonacademic-misconduct.html

a. Procedure to address conflict of interest:

The complainant or accused may challenge participation of any committee member on the grounds of conflict of interest. Challenges must be submitted in writing to the hearing chair within three days of notice of the committee composition. The challenge must specify reasons that would prevent the individual from being unbiased with respect to the hearing proceedings. The hearing chair shall decide whether the challenge has merit. If the challenge is granted, a substitute will be appointed and the same option to challenge shall exist. If the hearing

chair is challenged, the dean of students shall determine the validity of the challenge and either replace or retain the hearing chair.

b. Procedure to ensure confidentiality:

Students on the ARC sign a confidentiality statement before joining the committee. Committee hearings shall be recorded by the university. Committee deliberations shall not be recorded. Any record of the hearing shall remain the property of the university. Either party may have post-hearing access to the recorded hearing. However, to maintain confidentiality, students are not permitted an audio copy of the recorded hearing. The ARC hearing shall be closed to the public.

c. Training for staff/student adjudicators:

The ARC will receive at least annual training on issues related to harassment and discrimination as well as annual training on how to conduct the hearing process.

d. Procedure for appointing student/staff adjudicators:

A pool of members shall be made available to serve on the ARC. This pool shall consist of: five faculty and staff selected by the director of the OUJA in consultation with academic colleges, no fewer than ten student representatives selected by the OUJA in consultation with Student Government, and no fewer than four graduate or professional students selected by the OUJA in consultation with Graduate Student Governance Association. The ARC hearing consists of the hearing administrator (only votes in a tie), two faculty/staff, and four undergraduate students or two graduate students.

e. Procedure for plaintiff/defendant participation in full-board conduct hearings:

Presence at hearings shall be restricted to the complainant and accused involved except as otherwise noted. If either party chooses not to attend the hearing, his or her written statements shall be reviewed and evaluated based on the information available. The complainant and accused may elect to have an adviser present who may counsel but not actively participate as a spokesperson or vocal advocate in the hearing. The university Ombuds may be present as an observer. Witnesses are strongly encouraged to be present for hearings. Witnesses shall be present only when giving testimony. However, if they are unable to attend, statements may be submitted.