

Violence Against Women Act: Provisions related to presence of advisors in campus disciplinary proceedings

The specific provisions related to advisors are highlighted in bold on page 2.

STATUTORY LANGUAGE

PROPOSED REGULATORY LANGUAGE

“Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act” (§ 485 (f) of the Higher Education Act)

(8)(A) Each institution of higher education participating in any program until this title and title IV of the Economic Opportunity Act of 1964, other than a foreign institution of higher education, shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding—

(i) such institution’s programs to prevent domestic violence, dating violence, sexual assault, and stalking; and

(ii) the procedures that such institution will follow once an incident of domestic violence, dating violence, sexual assault, or stalking has been reported, including a statement of the standard of evidence that will be used during any institution conduct proceeding arising from such a report.

**Institutional security policies and crime statistics
(Code of Federal Regulations: 34 CFR §668.46)**

(k) *Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking.* As required by paragraph (b)(11)(vi) of this section, an institution must include in its annual security report 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 and that—

(1)(i) Describes each type of disciplinary proceeding used by the institution; the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; and how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking;

(ii) Describes the standard of evidence that will be used during any institutional disciplinary proceeding arising from an allegation of dating violence, domestic violence, sexual assault, or stalking; and

(iii) Lists all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceeding for an allegation of dating violence, domestic violence, sexual assault, or stalking; and

(iv) Describes the range of protective measures that the institution may offer following an allegation of dating violence, domestic violence, sexual assault, or stalking;

(B) The policy described in subparagraph (A) shall address the following areas:
* * *

(iv) Procedures for institutional disciplinary action in cases of alleged domestic violence, dating violence, sexual assault, or stalking, which shall include a clear statement that—

(I) such proceedings shall—
(aa) provide a prompt, fair, and impartial investigation and resolution; and

(bb) be conducted by officials who receive annual training on the issues related to domestic violence, dating violence sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

(II) the accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice; and

(III) both the accuser and the accused shall be simultaneously informed, in writing, of—

(aa) the outcome of any institutional disciplinary proceeding that arises from an allegation of domestic violence, dating violence, sexual assault, or stalking;

(bb) the institution's procedures for the accused and the victim to appeal the results of the institutional disciplinary proceeding;

(cc) of any change to the results that occurs prior to the time that such results become final; and

(dd) when such results become final.

* * *

(2) Provides that the proceedings will—

(i) Include a prompt, fair, and impartial process from the initial investigation to the final result;

(ii) Be conducted by officials who at a minimum receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;

(iii) Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice;

(iv) Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties; and

(v) Require simultaneous notification, in writing, to both the accuser and the accused, of—

(A) The result of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking;

(B) The institution's procedures for the accused and the victim to appeal the result of the institutional disciplinary proceeding, if such procedures are available;

(C) Any change to the result; and

(D) When such results become final.

(3) For the purposes of this paragraph—

* * *

(ii) *Advisor* means any individual who provides the accuser or accused support, guidance, or advice.

(iii) *Proceeding* means all activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact-finding investigations, formal or informal meetings, and hearings.

