



**GEORGETOWN UNIVERSITY LAW CENTER • Office Memorandum**

**DATE:** December 22, 2011  
**TO:** Law Center Community  
**FROM:** William M. Treanor, Dean  
**RE:** Student Disciplinary Cases that Include Charges of Sexual Assault or Sexual Harassment by the Charged Student

The University's handling of sexual harassment and sexual assault disciplinary cases is subject to federal law, including the "Clery Act," 20 U.S.C. § 1092f, Department of Education (DOE) regulations promulgated thereunder, 34 C.F.R. § 668.46, and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. In 2006, Dean Aleinikoff, exercised his authority under the Code's Preamble of the Student Disciplinary Code to override provisions of the Code where "special circumstances" so require in order to institute a set of supplemental procedures to govern these cases to ensure that we were complying with federal law. These procedures were amended again in 2007 to comply with additional guidance from the DOE Office for Civil Rights (OCR).

For the reasons that follow, I am amending these "override" provisions again to specify that:

- 1) the complainant shall have the same right to appeal that is provided for the charged student;
- 2) the charged student shall not be allowed to personally question a complainant at any disciplinary proceeding whether or not the student is represented by counsel;
- 3) the complainant and the charged student shall both be entitled to counsel, but not necessarily faculty counsel, to represent them in these matters; and
- 4) Past and future guidance directives from the Department of Education (DOE) and its Office for Civil Rights, (OCR), are incorporated into these provisions by reference and shall be followed by hearing panels to the extent that they impose requirements not otherwise provided here or in the Student Disciplinary Code.

The first and second modifications are being made pursuant to OCR guidance issued in April, 2011. The fourth modification is being implemented as a catch-all to ensure that we are complying with all aspects of OCR guidance.

I am also modifying the right to counsel for the charged student and the complainant student to authorize representation by outside counsel rather than a faculty member, as is currently required for all cases. I am doing so based upon a request from University Counsel and, at the urging of Professor Steven Goldblatt, the Chair of our Professional Responsibility Committee, who is responsible for assigning counsel in all disciplinary cases. University Counsel is concerned that the use of faculty to represent students in these cases may pose conflict of interest problems that should be avoided. Prof. Goldblatt requested this modification because, as a practical matter, we cannot provide faculty representation in every case. He advises that we have had two of these cases in the past four years and that three of the four students represented in these matters had counsel who was not a faculty member. As a general matter, faculty members with the

necessary expertise rarely have the time to take on these difficult and contentious cases. As of right now, he has no faculty available for these assignments, should they arise.

The amendment allows us to use outside counsel more freely. We have had success in the past using alumni who practice in the District and are experienced litigators. They have accepted disciplinary case assignments either as pro bono matters or for modest fees paid by the Law Center.

The amendments and original text follow. The changes go into effect immediately and appear in the next Bulletin.

**Notice to Law Center Community Regarding Certain Disciplinary Proceedings Involving Law Center Students as Both Accuser and Accused.**

**(April 5, 2006, as amended, August 24, 2007 and December 22, 2011)**

December 22, 2011 amendments in *italics* and ~~strikethrough~~

The “Clery Act,” 20 U.S.C. § 1092f, the Department of Education (DOE) regulations promulgated thereunder, 34 C.F.R. § 668.46, and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., as interpreted by DOE’s Office of Civil Rights, require the University to implement particular procedures in certain disciplinary proceedings. In order to ensure compliance with the law and fair and responsive processes, the Law Center hereby directs the following:

1. In all disciplinary cases involving alleged conduct within the scope of the Clery Act or that implicate Title IX, in which both the accuser and accused are Law Center students, the following procedures shall be implemented:

a. When a Law Center student presents allegations against another Law Center student to the Ethics Counsel for investigation, the Ethics Counsel may direct that both the accused and the accuser refrain from contact with the other, either directly or indirectly, during the pendency of the disciplinary investigation and any proceeding initiated based upon the allegations.

b. Both the accuser and the accused shall be entitled to ~~faculty~~ counsel appointed by the Chair of the Professional Responsibility Committee at no expense and both accuser and accused shall have the right to have their appointed counsel present at the disciplinary hearing.<sup>1</sup>

c. The disciplinary hearing shall be confidential unless the accuser and the accused agree that the hearing shall be open to the public.

d. The Law Center acting through the Associate Dean for the J.D. Program, upon request of the accuser or accused, will change the student’s academic and/or University-controlled living conditions, if the changes are deemed to be reasonable. The Ethics Counsel may request such changes be made by the Associate Dean on behalf of the student, if such a request has not been made by the student directly.

e. Both the accuser and the accused shall be informed of the outcome of the disciplinary proceeding, including any sanctions imposed, to the extent required by the Clery Act and/or Title

---

*1 The requirement that counsel be a faculty member that previously was provided here and otherwise exists under the Code is no longer in force. The Chair of the Professional Responsibility Committee may request that the Dean provide reasonable compensation to attorneys who are not members of the faculty and accept appointments under this provision.*

## IX.

f. Ethics Counsel must notify the accused of the existence of the complaint within 30 days of the complaint being made to Ethics Counsel. Ethics Counsel must file charges or dismiss the matter within 30 days of notice to the accused of the complaint. The hearing panel must conduct its hearing within 45 days of the filing of charges and render its report within 45 days of the conclusion of the hearing. Any appeal must be resolved within 45 days after all briefs have been filed or after oral argument is concluded, whichever occurs later. These time limits are not jurisdictional and may be extended for good cause shown by the Chair of the Professional Responsibility Committee.

2g. In adjudicating allegations of sexual harassment, including allegations of any unwelcome conduct of a sexual nature, the standard of proof to be applied by the hearing panel under § 204(e) of the Code shall be a preponderance of the evidence standard.

*h. The accuser shall have the same right to appeal that is provided to the accused student.*

*i. Under no circumstances shall the accused student be allowed to personally question or cross-examine the accuser at any disciplinary proceeding.*

*j. Past and future guidance directives from the Department of Education and the Office for Civil Rights, such as the April, 2011 “Dear Colleague” letter, are incorporated into these provisions by reference and shall be followed by hearing panels to the extent that they impose requirements not otherwise provided here or in the Disciplinary Code.*

To the extent that any of these provisions is inconsistent with provisions of the Student Disciplinary Code, the Code is hereby overridden, as authorized by the Code “if special circumstances so require.” These superseding provisions shall take effect immediately and apply to all disciplinary proceedings pending at this time or arising thereafter, regardless of when the underlying conduct occurred. This announcement shall be distributed to the Law Center Community and included in the next published *Bulletin*.