PROPOSAL TO ADDRESS PROPOSED CHANGES IN TITLE IX REGULATION

(The final version of these procedures would be incorporated into a revised version of ARP 3.25)

Proposed changes of particular concern:

The sexual-harassment definition.

Under the Obama administration, sexual harassment was defined as "unwelcome conduct of a sexual nature." DeVos has proposed narrowing it to "unwelcome conduct of a sexual nature that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity." This definition would need to be changed in our policy if it becomes part of the proposed regulations.

Severe and pervasive v. severe or pervasive

Dismissing complaints that occur off-campus

Universities would have to dismiss many complaints of off-campus sexual assaults under the proposed regulations. A strictly arbitrary definition of 'only on campus' probably has the goal of limiting liability, but not limiting discrimination. Right now, if students are involved in an off-campus Title IX event, we will likely investigate. Just because it happened off campus, does not mean that a student’s educational progress is not harmed. Language should be added to ARP 3.25, so that we have the discretion to conduct an investigation when necessary, for an off-campus event.

Live Hearing Option

The Senate education committee held a hearing on the proposed regs on April 2, 2019, and is asking to be included in the decision-making. Of particular concern is the live hearing requirement. The committee suggested a number of other ways that the truth might be found, including students submitting questions to a hearing officer, in lieu of live cross-examination. Most experts believe that the live hearing option will happen.

To be clear, at this time these proposed regulations apply to all cases brought under Title IX, whether involving employees or students. It will important to review how proposed procedural changes may interact with the CBA or any processes for staff and faculty appeal of discipline.
FLOW OF TITLE IX CASES FROM COMPLAINT TO CONCLUSION

Complaint is filed or self-initiated and accepted (proposed rules do not require an investigation unless we receive a signed complaint from alleged victim.)

Investigation is conducted.

Parties review the findings of fact.
Disagree with findings of fact? Either party may request a live hearing.

Live Hearing conducted by a trained hearing officer. Need to develop rules for timeline for preparation for hearing, exchange of evidence, pleadings, entry of evidence, witness lists, interview of witnesses, cross-examination of witnesses, appointing an advocate if a student does not have one, etc.

Live hearing results in finding of guilt/violation of policy. Hearing officer assigns discipline.

Live hearing results in no finding of guilt/violation of policy. Aggrieved party can appeal.

Referral is made to Dean of Students or Ike for administration of discipline assigned by hearing officer.

Appeal Rights: Discipline may be appealed. The next level is dependent on the status of the individual receiving the discipline. Decision on appeal will be rendered in writing within 10 days.

Employee: Provost?
Main campus student: VP Student Success
DACC: President
Grants/Carlsbad/Alamogordo: President

The decision of the appeal authority is final.

No request for live hearing? OIE issues findings/determination.

Disagree with findings, but do not request a live hearing? May submit appeal to the Provost.