

## Due Process Rights in Sexual Misconduct Proceedings

Several recent cases have focused on the due process rights of university students accused of sexual misconduct. In two separate cases from the Sixth Circuit Court of Appeals—*Doe v. University of Cincinnati* and *Doe v. Baum*—students who were accused of sexual assault challenged their disciplinary hearings because the hearings did not allow the students to cross-examine their accusers. The court ruled in favor of the students in both cases, holding that a university must give an accused student the opportunity to cross-examine accusers and adverse witnesses when the case hinges on credibility. In another case, *Doe v. Miami University*, the Sixth Circuit held that a university must provide an accused student with an explanation of the evidence against them and an opportunity to present their side of the story to an impartial decision-maker.

These and other due process standards have been incorporated into newly proposed regulations from the U.S. Department of Education. The proposed regulations, announced on November 16th, would require universities to:

- use training materials that promote impartiality;
- allow the parties to freely discuss the allegations with others and to gather evidence;
- provide a live hearing with an opportunity for cross-examination;
- issue a written decision by an impartial decision-maker who must be separate from the investigator; and
- adopt various other standards and procedures .

OGC is analyzing the proposed regulations, which are subject to an ongoing 60-day comment period. If you have questions or concerns about the proposed regulations, please contact OGC. To report sexual misconduct by or against a UVU student or employee, please contact UVU's Office for Equal Opportunity & Affirmative Action.