

# Title IX Coordinator & Investigator Training

## ABHE

November 10-11, 2021

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# Session 1

## Foundations of Title IX

Any advice or opinion provided during this training, either in private conversation or group presentation, is never to be considered legal advice. You should seek the wisdom of legal experts in your state to ensure you are making proper legal decisions for your institution.

The outcome of these two days is focused on the dialog and conversation surrounding continually changing regulations of Title IX.

Our goal is to help you create a **Safe Campus** for your learning community. The experiences shared among participants help shape the learning process for **ALL** of us.

If we don't cover every PPT slide that is OK.

# A Biblical Foundation for Shaping a Culture of Campus Safety

We have a Biblical command to care for and value people.

- The greatest of these is love [1 Corinthians 13:13](#)
- Love bears all things; believes all things, hopes all things, endures all things [1 Corinthians 13:7](#)
- For all have sinned [Romans 3:23](#)
- Israel provided standards on sexual activity. [Leviticus 18](#)
- Israel informed of punishments for sexual sin. [Leviticus 20](#)
- We all stumble in many ways [James 3:2](#)
- No human being can tame the tongue [James 3:8](#)

We need to value and care for people with a sin nature

# Title IX & Sin Nature

The federal government expectation is that institutions are generally not responsible for harassment and discrimination taking place amongst community members.

We are responsible for investigating it and putting an end to any ongoing issues to ensure a fair right to an education.

# Mrs. Rivera

- Daughter Lauren is a freshman
- Lauren confided in her mom that on the first night on campus a boy tried to take advantage of her at the gazebo.
- She told her mom that the upper classmen male student who did this claimed its “newbie day”
- Lauren learned over the next days that several girls on her hall had heard of newbie day and had been approached by male upperclassmen although she was the only one that stated her acquaintance had tried to touch inappropriately.
- Mrs. Rivera emailed the Dean of Students and the President demanding to know why this college was not safe and “what kind of pervert show did they run”.

# Mrs. Rivera

- The Dean of Students immediately referred this incident to the Title IX Coordinator.
- Meanwhile, Lauren was mad that her mother had reached out to the college and she angrily told her Mom that she could deal with it.
- When Lauren was questioned by the Title IX Coordinator during an intake interview the incident became more clear. It was revealed by Lauren that the male had pinned her to a wall and removed her t-shirt. He tried to convince her to be part of newbie tradition by allowing him to take a picture of her in just a bra.

# Level Playing Field

Christian Education whether in K-12, or Higher Education, historically talked about their school/campus as **“being safe”** as one of the top selling points.

No longer a private school distinctive as all schools now try to sell this perspective.

However, across the country our schools/institutions are actually less safe than ever.

# Biblical Higher Ed Students Enroll with a Distinct Purpose, However:

- Christian College students arrive with most of the same social expectations and influencers.
- Less Christian families practice total separation from the secular culture.
- Students are willing to post everything about their lives and the lives of others.
- Students engage in most of the cultural rites of college students while attempting to navigate the “Christian rules”.

## Biblical Higher Ed Students Enroll with a Distinct Purpose, However:

- Trying to find their way with the liberties of alcohol and in some states, Marijuana.
- Just as anxious about sexual intimacy as their secular counterparts.
- Potentially at risk to be victims of sexual misconduct.

# Title IX

## Embrace or Embattle?

### We would agree that:

- Gender equity is a right and worthy goal.
- Eliminating discriminatory and harassing behavior is an institutional priority.
- Reducing the risk of sexual abuse while increasing community safety is a must.

### Where we disagree is when:

- Governmental definitions of marriage and sexuality are in conflict with the Bible and our educational community.

# Embrace Title IX

ABHE Institutions should embrace the intent of Title IX to provide a safe learning environment on your campus and bring resolution to students who have been impacted by the wrongful behaviors of other members of the educational community.

The construct of Title IX allows you to build components of a distinctly Biblical Worldview Title IX Policy that complies with the federal government and honors Biblical teaching.

# History of Title IX

- 1965 Congress passes Higher Education Act.
- 1972 Congress passes amendments to the 1965 legislation.
- Congress looking for victories in the fight for civil rights turns to Indiana Senator Birch Bayh.



# Legacy of Birch Bayh

- US Senator from Indiana 1962-1981
- Had previously authored
  - ❖ 25<sup>th</sup> amendment to the US constitution on Presidential succession (1967)
  - ❖ 26<sup>th</sup> amendment to the US constitution on voting age (1971)



# Simple?

According to Bayh, the simplicity in establishing an equity clause was keeping it one sentence long and therefore directly on point.

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

# Title IX Moves UP

- Title IX is administratively enforceable by the United States Department of Education (DOE) and its Office for Civil Rights (OCR) since inception in 1980.
- 1987 OCR first establishes a complaint procedure and mentioned requiring a Title IX Coordinator. In 1997 published sexual harassment guidelines.
- OCR long situated in the basement moved upstairs to the suite next door to the Secretary of Education in the Washington DC headquarters of the Department of Education.
- Intentional decision by Obama administration and Education Secretary Arne Duncan to focus on civil rights issues as a means of equalizing education in the USA.

# Dear Colleague Letters

The Obama administration began to establish Title IX compliance through Dear Colleague Letters.

- OCR stated that while the content in the April 4, 2011, DCL was not new, it certainly expanded the scope and compliance expectations immensely.
- Cover letter to the DCL stated:

“Education Department is issuing the DCL to explain that the requirements of Title IX cover sexual violence and to remind schools of their responsibilities to take immediate and effective steps to respond to sexual violence in accordance with the requirements of Title IX.”

# Legal Standing of Dear Colleague Letters

Dear Colleague Letters have become common means for members of congress and federal agencies to communicate official interpretations of law.

Technically for a federal agency (OCR) to make new rules it must follow the **Administrative Procedure Act** which requires a lengthy notice and comment period.

For eight years the Obama administration depended on numerous DCL. In contrast the 2020 regulations under the Trump administration were created under federal rule making guidelines of the Administrative Procedure Act.

# Focus Redirected by the April 4, 2011 DCL

In this one communication; the focus went from gender equity to close scrutiny of colleges to comply with precise and yet ambiguous expectations in the prevention, and investigation of sexual violence which was felt to be the most impactful form of sexual harassment taking place regularly on college campuses.

# Surge of Incidents / Surge of Investigations

## Sexual Violence Complaints

- 2009 22
- 2010 34
- 2011 41
- 2012 33
- 2013 62
- 2014 96
- 2015 118
- 2016 Stopped publishing the list

## Institutions

Notre Dame  
Penn State  
Yale  
Xavier  
University of Montana  
Harvard  
Princeton  
Virginia  
North Carolina  
USC  
Cedarville  
Moody Bible

# Dear Colleague Letters Rescinded

The Trump administration officially rescinded many of the Obama administration Dear Colleague Letters including the foundational April 2011 DCL.

However, your understanding of Title IX and the pendulum swings which have taken place must start with an understanding of the 2011 DCL expectations.

# 2011 DCL Focal Points

From the beginning of Title IX, sexual harassment grew to be one of the focal points.

The 2011 DCL letter re-defined sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical contact of a sexual nature including sexual violence which was a broader term for rape, sexual assault, sexual battery and sexual coercion.

# 2011 DCL & Title IX

- Schools are to take preventive measures focused on eliminating sexual harassment and responding promptly if it does occur.
- Must designate an employee who will be the Coordinator of Title IX compliance.
- This Title IX Coordinator must be trained. (2014)
- All notices of non-discrimination and assistance offered are to include the name, title, office address, telephone number and email address of the school Title IX Coordinator.

# 2011 DCL & Title IX

- Notices, policies and procedures are to also include the contact information for OCR.
- Schools must respond immediately to direct or indirect reports of sexual harassment.
- At that point, the focus is on eliminating the harassment, preventing the recurrence, and addressing its effects.
- Training for school employees should be directed to anyone who might witness or receive reports of harassment.

# 2011 DCL & Title IX

- School investigations are not law enforcement investigations and thus must take place whether a law enforcement investigation is taking place or not.
- Title IX does not require a distinct grievance procedure and can be linked to the school disciplinary procedure.
- All Sexual Misconduct Policies should offer mediation at some early stages.

# 2011 DCL & Title IX

- All school personnel involved in investigations and hearings are to be trained in handling issues of sexual harassment and violence.
- Investigations should take 60 days to complete. Victim has a window of 180 days to make report.
- Both parties should be notified in writing about the outcome of an investigation.

# 2011 DCL & Title IX

- Guidelines of FERPA and Clery must be followed. However rights to privacy do not prevent the victim from knowing of the sanctions or outcome of the perpetrator.
- When report is first made the school should immediately attempt to end any type of hostile environment. This should include moving housing, class assignments, and no contact orders. The perpetrator should be the focus of movement or restriction not the victim.

# 4 steps Once Notice is Received

- Identify and investigate
- Immediate and legitimate action to stop the issue
- Remedy the effects
- Prevent it from happening again

# Pending Legislation

**Equality Act:** Sweeping policy changes aggressively supporting SOGI issues & LGBTQ rights.

Would limit the application of existing religious freedom constructs making Christian Colleges (all faith groups) vulnerable to lawsuits on LGBTQ.

– Passed US House 224-206



# Pending Legislation

## Fairness for All Act:

Bill attempting to counter the impact of the Equality Act by outlawing discrimination on sexual orientation, honoring LGBTQ rights, yet protecting religious liberties.

- Supporters suggest this is the best approach in civic pluralism.

# Religious Exemption

- Historically there was an understanding of religious exemption.
- This was bolstered by a process that began in the 1980's where a college could ask for exemption for specific element of Title IX.
- Continued through the Obama administration but became increasingly slow process.
- Trump administration removed the process to return to the premise that there is a standing religious exemption.

# Court Cases

## Franklin v. Gwinnett Public Schools (1992)

- Supreme Court established sexual harassment was a form of sex discrimination under Title IX.
- Allowed for private citizen to sue for damages under Title IX.

## Gebser v. Lago Vista Independent School (1998)

- Supreme Court established high standard that must be met to prevail in a sexual harassment case against a school.
- Monetary damages against the school only when school showed indifference after actual notice.

# Court Cases

## Davis v. Monroe County (1999)

- Student on student sexual harassment.
- Parents complained to 3 teachers and principal.
- Boy was charged and plead guilty.
- Parents filed Title IX action alleging the school's indifference led to student not being able to attend school.
- Court indicated school must have actual notice and show indifference.
- Court stated harassment must be severe, pervasive and objectively offensive and that the indifference is systemic.

# Montana Resolution Agreement

OCR Case No 10126001 / DOJ DJ Number 169-44-9

- DOE & DOJ called this resolution a blueprint for all colleges and universities.(2014)
- Uniformity between conduct and harassment policies.
- Policies must be easily accessible. (3 clicks on a website)
- Report must make it to Title IX Coordinator within 24 hours.
- Prohibit retaliation.
- Training for faculty, staff and students.
- Conduct Climate Surveys.

# Pending Court Cases

## Hunter v. Department of Education

- Collective of current & former Christian College students suing the DOE to have religious protections removed from Title IX.
- Could force colleges to stop taking federal aid to avoid being forced into a compromised position.

## Maxon v. Fuller Seminary

- Two students who entered into same sex marriage and were dismissed from Fuller.
- Suit challenges the legal statutes and constitutional protections of religious exemption.

# Embrace Title IX

ABHE Institutions should embrace Title IX.

Despite the push of non-biblical agendas from the federal government ABHE colleges still need to provide a safe learning environment and bring resolution to students who are impacted by wrongful behaviors of fellow members of the educational community.

The construct of Title IX allows ABHE institutions to build components of a distinctly Biblical Worldview Title IX Policy that complies with the federal government and honors Biblical teaching.

# Q & A

# Session 2

## Crafting Title IX Policy

## Think About This

**Do students or employees violate Title IX when involved in an isolated incident(s)?**

# Compliance of Title IX

If the attention of Title IX is more focused on the institution rather than the incident, then we need to recognize that DEO, OCR compliance centers on the institution having policy and process which:

- follows guidelines,
- are communicated and taught,
- that a Title IX team is trained,
- and that the process is equitable.

# Ten Commandments of Title IX

1. Prompt investigation
2. Thorough investigation
3. Reliable investigation
4. Impartial & Fair investigation
5. Timely process
6. Effective process
7. Equitable process
8. Stop the harassment/discrimination as a remedy
9. Prevent repeat of the incident as a remedy
10. Find equitable solutions in your remedy

# DEO,OCR Compliance

Office of Civil Rights has three enforcement mechanisms

- ✓ Technical assistance
- ✓ Complaint investigations
- ✓ Compliance reviews



# Stages of an OCR Investigation

- OCR investigations
  - Notification letter
  - Data request (massive)
  - Interviews (electronic and in person)
  - Site visit

# Commonly Utilized Complaint Resolution

## OCR offers alternative Investigation Process

- Early complaint resolution – both parties agree to dispute resolution.
- Investigation and Voluntary Resolution “302” – after investigation commences, institution expresses interest in resolving the complaint through a resolution.
- Still will be an Investigation and findings.

## 302 Voluntary Agreements

- Does not indicate admission or liability.
- Complainant approval not required.
- Monitored for three years.

# The Consequence of Title IX Investigation

Threat of loss of funding

Threat of referral to the justice department

Threat of legal action from original party

Lengthy list of expectations

# Policy & Procedure

- Write good policy, re-examine every year, and stick to it.
- Totally eliminate old versions and copies from circulation and archive them.
- Realize that effective and equitable process does not happen without intentional (backwards) design.

# Policy & Procedure

## Bleiler v College of the Holy Cross

- Both students were impaired in a sexual encounter, but only he was held accountable.
- Sued college claiming his Title IX rights were violated.
- Claimed that men were under stricter liability than women.
- Courts ruled for Holy Cross
  - Although elements of the case would support his accusation, the courts honored the Holy Cross Policy.
  - Follow your procedures; provide finding of responsibility and justification for the decision.

# Before You Start

- Review your existing student conduct policy and process of adjudicating incidents.
- Review your institutional grievance policy.

Your Title IX Policy should be informed and in fact mirror much of what you do in other institutional investigative processes. This makes training, report writing and the appeals process much smoother.

# Policy Shaped by Institutional Culture

1. Do you have residential students?
2. Do you have on-line only?
3. Do you have hybrid of on campus and on-line?
4. Do you have satellite campuses?
5. Do you have athletics?
6. Do you have students utilizing academic support?
7. Do you have a history of complaints?
8. Do you offer health and or counseling services?
9. How many staff have capacity to be on Title IX team?
10. Will you conduct the training or outsource?

# Policy Components

- Purpose Statement
- Terms & Definitions
- How can notice be given?
- Investigative Process
  - Intake
  - Informal (light investigation & mediation)
  - Formal
- Supportive Measures

# Policy Components

- Standards of Evidence
- Adjudication
  - Single adjudicator
  - Hearing Panel
- Retaliation
- Appeals



# Terms:

## Defining Sexual Harassment 2020

- *An institutional employee conditioning educational benefits on participation in unwelcome sexual conduct (quid pro quo): or*
- *Unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies a person equal access to the school's education program or activity: or*
- *Sexual assault, dating violence, domestic violence, or stalking as defined in the Violence Against Women Act.*

# Terms:

Establish consistent use of terms with particular emphasis on victim and person responsible.

**Complainant** – individual who is alleged to be a victim of conduct that could constitute harassment.

**Respondent** – individual who has been reported to be the perpetrator of alleged conduct.

# Policy Components

Consider inclusion of:

- Terminology of Cyber-bullying & Hazing in your broader Title IX Policy.
- Connect this policy with your  
“Minors on Campus Policy”

# Minors Policy

## Operative questions

- How many minors are on your campus each day?
- Who knows they are there?
- Who is responsible for them?
- Are all parties responsible for supervision of minors trained on Title IX and protection of minors?

Have a statement that you protect minors and that all employees will report any form of abuse of minors.

# A Reminder on Clery

## Jeanne Clery Act

- Act was enacted following the rape and murder of Lehigh University student Jeanne Clery.
- Her parents were alarmed that on campus crime had increased dramatically and administration was aware of this, but was not warning students.
- Passed in 1990, as the “Student Right to Know Act and Campus Security Act”. Reauthorized by Higher Ed acts in 1992, 1998, 2008, and then by VAWA in 2013.

# Components of Clery:

**Annual Security reports**

**Campus Crime log**

**Timely warnings**

## **Point of Emphasis:**

No University has ever been fined for FERPA violations, but violators have paid substantial fines for Clery, and others have had to pay legal settlements for Title IX issues.



# Violence Against Women Act

- Originally passed in 1994 reauthorized in 2000, 2005, 2013, 2019.
- 2013 version included substantial amendments to the Clery Act. 2019 protections of transgender.
- Reporting of Domestic Violence, Dating Violence, Sexual Assault, Stalking.
- Codified elements of April 4, 2011 DCL along with sexual assault emphasis in section 304 which is known as Campus Sexual Violence Elimination Act or **SaVE**

# SaVE Emphasis

- Substantial training expectations
  - New employees and incoming students
  - Plus ongoing prevention and awareness to the educational community
  - Coordinator Training
  - Train the Trainer
  - Teach consent
- Distinctions between forcible and non-forcible sex offenses
- Prohibit retaliation

# Prevention of Retaliation

Must be part of Title IX institutional policy.

Includes institutional retaliation, but most often focus is on a party within the investigation.

- Do not restrict or create situation of disadvantage to the complainant after a report is made. Treat this person the same way all others are treated.
- Must take time during initial conversations with all parties to explain about retaliation and make sure severe consequences are known.

# Appeals

- When a student accepts the findings and the sanctions they generally cannot appeal it later. Best to get signed acknowledgment of findings.
- Appeals are not automatic - they must be asked for by a party directly involved.
- Have a short window of time. (3-5 days)
- Must be grounds for the appeal
  - Procedural error
  - New evidence
  - Sanctions are too difficult or not proportionate

# Title IX Team

## Institutional Considerations:

1. Freedom from administrative interference
2. Release time?
3. Compensation?
4. Training takes time
5. Budget for professional development

# Title IX Team

Form a team and make sure the individuals have some element of a position description.

- Coordinator
- Deputy Coordinator
- Lead Investigator
- Investigators
- Hearing Panelists
- Appeals Officer
- (Athletics liaison, 504 liaison)

Q & A

# Session 3

## Moving from Report to First Stages of an Investigation

# Title IX Investigation Stages

## Notice

Reporters  
Confidentiality  
Jane/John Doe  
Title IX Coordinator

## Intake:

Start File  
Communication  
Jurisdiction  
Supportive Measures  
Retaliation Warning

## Process:

Conduct  
Title IX  
Informal  
Formal

## Formal Investigation

Notice to Parties  
Witness List  
Interviews  
Evidence



# Notice

## NOTICE

- Reporters
- Confidentiality
- Jane/John Doe
- Title IX Coordinator

The institution has knowledge of the incident at the moment notice is received by any member of the community.

This remains the primary reason to make as many members of your educational community mandatory reporters.

# Making a Report or Giving Notice

- Any statement by a student, staff, faculty, parent about an incident, whether told directly by a person victimized, or by someone with knowledge of the incident.
- Note, that victims may not consent to an investigation or cooperate. Colleges must conduct at least a basic investigation even without consent or cooperation.
- Anonymous reports are permitted and must be investigated.
- Off campus location within notice does not necessarily imply that it does not impact the College responsibility. Is the nexus of control of the harasser (subject to our institutional rules) and control over the context of the harassment (our property, our program or at events we sponsor)?

# Mandatory Reporting

## Who is a “Responsible Person”?

A person who has the authority to take action or redress the alleged harassment.

A person who has the duty to report misconduct to superiors.

“Someone who a student could reasonably believe has authority to report or take action”

# Designate your Reporters

- OCR expects that each college will clearly designate what employees are classified as “Reporters”.
- Guidance early on was for most of an institution to be mandatory reporters but has moved to understand that institutions may want to be more targeted.
- Colleges must accept there is an additional burden of training that must be done for “Reporters”.

# “Privilege” of Confidentiality

- The value of privileged conversation is that it helps to restore control to the victim.
- Train your institution to allow the victim/ complainant to have control of when and to whom the incident is revealed.

# “Privilege” of Confidentiality

- Lawyers
- Doctors / Therapists / Counselors
- Clergy

# “Privilege” of Confidentiality

**For privilege to apply, the person must be:**

- Licensed,
- Working in the job they are licensed for,
- And engaged in that work when they hear of an incident.

# “Privilege” of Confidentiality

- Faculty licensed as clergy, but teaching in your institution are not automatically granted the protection of “privilege” by OCR standards.
- For confidentiality to be expressed:
  - The student needs to be informed of the concept of confidentiality, and
  - probably should be signing an intake form.

# Protection within Confidentiality

If a victim reports to a person with confidentiality can the campus still be protected from a perpetrator?

**Yes**

Jane/John Doe Report



# John and Jane Doe Reports

In order to investigate promptly and effectively, and to protect the campus while fulfilling our obligation to make the campus community aware of any type of imminent threat; it is imperative that all those receiving report of an incident of violence, domestic violence, dating violence, stalking, sexual assault, terroristic threat and the like make that known to the Title IX coordinator.

In those situations when a student makes a report to an employee with the privilege of confidentiality who is working in the Counseling Center or the Health Center, the reporter can file a report to the Director of Safety without providing any names or any other identifying information. By providing this information in anonymous form to the Director of Safety, the director is then able to promptly assess the need of providing warning to the campus community while still protecting confidentiality.

If such an assessment is made by the Director of Safety, that person will inform the Title IX Coordinator of the incident and the need to make the report of a threat to campus.

# Where does Notice Go?

- The initial route might be convoluted. This is not that important as long as notice promptly gets to the Title IX Coordinator.
- Make it clear how to contact the Title IX Coordinator.
- If at all possible have a form fill on the website going directly to the Title IX Coordinator.

# Title IX Coordinator

April 24, 2015 DCL on the importance of the Title IX Coordinator.

- Must have training and experience.
- Should be protected from retaliation at the institution.
- Suggested full time coordinators and multiple coordinators.
- Must be visible and known on campus.
- Independent from administrative interference.

# Title IX Coordinator

Ensure that your institution is committed to training for the coordinator and enough funding to be in compliance and meet the needs of the community.

Recognize that compliance and ensuring a safe community requires setting aside time for the coordinator to be an effective leader.

# INTAKE

## Intake

- Start a File
- Communication
- Jurisdiction
- Supportive Measure
- Retaliation

## Start a File

- Remember all notes are open access documents.
- Date each record including the time of meeting and who was present.
- Lead investigator will write a summary report at the conclusion of the investigation.

# Record Keeping

Begin the process of documenting your communication to each party in the incident, witnesses and team members.

Legal experts often warn not to accept written statements from either party. Once you make it part of the record you have to deal with it even though it has potential error. You want to write your own notes of all statements given.

# Filing System

- Files must be secure from all other institution members. (Organized Network files)
- Files must be accessible to team members.
- Incident files
  - Yearly files
  - File number by date of incident #3.12.20
  - 3 Tiered Files
    - Correspondence
    - Documents
    - Investigation



# Remedy & Long Term Intervention

## Remedy

- Onset of a “Report” or “Notice”.
- Remedy relieves the ongoing nature of the incident.
- Find help for either party with emphasis on the complainant.
- Ensure that remedies don’t punish respondent before the investigation has even commenced.

## Intervention

- Final form of remedy with emphasis on overall institution and campus safety.

# Jurisdiction

Institution must respond when the alleged incident takes place on campus or occurs in any program or activity under institutional jurisdiction or in locations (buildings, grounds) that the institution exercised control over.

# Supportive Measures

- Actions the institution can offer to lessen emotional and physical burdens which incidents trigger in the short and long term.
- Inform each party they can have a support person.
- Create a published list of supportive measures.
- Supportive measures are not new. Was typically part of initial remedy.
- Usually focused on the victim (complainant) on occasions beneficial to the responsible party (respondent) also.

# Retaliation

Institution must have clear written statements of deterrence against retaliation. This must be part of the initial conversation with all parties and witnesses.

# Retaliation

Party v. Party

Witness Intimidation

Whistle Blower

# Process

## Process

- Conduct
- Title IX
  - Informal
  - Formal
    - Single Adjudicator
    - Hearing Panel

Once notice has resulted in initial communication and record keeping it is imperative to assess whether the incident is a violation of institutional conduct policy or if it qualifies to be investigated under a Title IX protocol.

# Conduct v. Title IX

Many incidents reported to the Title IX Coordinator will not meet the parameters of Title IX. Carefully examine what is known and determine if the incident should be investigated under the institutions' conduct policy or under Title IX policy.

Since both policies should have common elements and process you can assure a thorough and impartial proceeding and redirect if needed.

# Title IX: Informal Resolution

Informal mediation resolution can be used in non-sexual assault investigations when both parties indicate desire to voluntarily proceed this way.

- Conduct with trained mediators
- Have a signed agreement by both parties
- If non-productive can revert back to formal investigation process.
- If productive it is binding
- Never use informal resolution in:
  - Sexual assault
  - Quid Pro Quo

# Title IX: Formal Investigation

When the incident meets jurisdiction, timing, defining characteristics of VAWA or other harassment/discriminatory behaviors it should be moved into a formal Title IX Investigation.

**Sexual Assault:**

Investigation to Hearing Panel

**Discrimination/Harassment nonsexual:**

Investigation to Single Adjudicator or Mediation

Q & A

# Session 4

## Completing the Investigation

# Title IX Investigation Stages

## Notice

Reporters  
Confidentiality  
Jane/John Doe  
Title IX  
Coordinator

## Intake:

Start File  
Communication  
Jurisdiction  
Supportive  
Measures  
Retaliation  
Warning

## Process:

Conduct  
Title IX  
Informal  
Formal

## Investigation

Standard of Evidence  
Burden of Proof  
Due Process  
Evidence  
Final Report

## Adjudication

Single  
Hearing Panel  
Appeals



# Investigation Components

## Investigation

- Standard of Evidence
- Burden of Proof
- Due Process
- Evidence

Now that the investigation has commenced there are crucial components to ensure a thorough, fair, impartial and reliable investigation.

# Standard of Evidence

The most controversial element of the 2011 OCR Title IX expectations was the Burden of Proof / Standard of Evidence

## 2011 DCL, OCR dictates:

- “Preponderance” Greater than 50% chance it happened.

## Legal System uses:

- Clear and Convincing (High Probability, Civil Cases)
- Beyond a Reasonable Doubt (Highest Level of proof for criminal cases)

# Standard of Evidence

No Evidence

Insufficient Evidence

Preponderance of Evidence

Clear and Convincing Evidence

Beyond a Reasonable Doubt



# Burden of Proof in Harassment

- OCR originally applied a three pronged approach for Title IX Burden of Proof in 2011-2016 documents
  - Severe
  - Pervasive
  - Persistent
- 2020 regulations state harassment is any unwelcome conduct that a reasonable person would determine is so severe, pervasive and **objectively offensive** that it effectively denies a person equal access to the school's education program or activity.

# Burden of Proof in Harassment

Incidents brought to the attention of the Title IX process may not be determined to meet the full burden of proof for harassment under Title IX.

They could still be wrong, damaging and potential institutional infractions. The same process of intervention, remedy and investigation need to be present if you are going to care for your students.

# Due Process?

The advice for private colleges always was:

- Due process is a requirement in public institutions but not in private. Keep the wording out of your policy.
- What matters in the private institution is that you do what you say you do to provide a fair process.
- So be consistent about what you say and what you do.

# Due Process

The 2020 regulations made it clear that all colleges needed to conduct investigative process that offers constitutional due process.

- Due Process has historically been the protections and rights that the responsible part has in an investigation.
- 2020 regulations turn the same attention to the complaining party recognizing that the initial incident and resulting investigation can deprive the person of rights.

# Due Process

## Due Process seen in two lenses

### Procedural

- Policies afford protective rights and the ability to present witnesses and evidence,
- Institution follows the policies,
- Investigation is thorough and systemic to the process.



# Due Process

## Due Process seen in two lenses

### Substantive

- Decisions made on fair grounds,
- Impartial and not capricious,
- Based on the evidence.



# Due Process 2020

1. Provided with written notice of allegation and review of the investigative file.
2. Can collect and present evidence on their own behalf.
3. Know and review any evidence against them.
4. Able to present witnesses.
5. Be accompanied by an advisor who could be an attorney.
6. Can ask questions via an advisor during the hearing.

# Evidence

Evidence in Title IX is any information which helps to prove or disprove a component of the alleged incident.

During the investigation process investigators are gathering evidence and assessing that evidence on the basis of credibility and relevance.

# Relevant Evidence

## Question:

Is this evidence admissible to the adjudication process because it proves or disproves a stated aspect of the incident?

Relevant to the policy violation?

Relevant to the credibility of a person?

Once known to be relevant it should be part of the investigator report without bias.

# Credible Evidence

## Question:

What amount of weight should be assessed to the evidence based on the reliability and it's correlation to the incident?

A piece of evidence could be relevant, but not credible based on the totality of the evidence in the investigation.

# Directly Related Evidence

The investigator(s) must sort through the testimony and collection of evidence to determine which evidence will be listed as the **Directly Related Evidence** (DRE) in the investigation file.

Evidence not considered directly related must still be part of the record, yet is not presented for adjudication.

# Forms of Evidence

Hard Evidence-	artifacts, physical objects
Documentary-	written content, call data
Electronic-	texts, photos, videos,
Hearsay-	credible not directly related
Character-	informational

# Investigative Team

The size of your investigative team was always dependent upon the size and scope of your institution and your organizational priorities.

The 2020 regulations on hearing panels and adjudication make it important to increase the size and cross training of the team.

# Investigative Team

**Lead Investigator** – Can keep a case or assign and supervise

## Investigators

- Experienced
- New - in action training

## Adjudicators

- Senior Investigators who know policies well

## Hearing Panelists

- Are not always investigators

# Investigative Report

At the conclusion of the investigation:

1. Overview of notice, remedy and supportive measures,
2. Record of the parties, witnesses and meetings,
3. Account of the incident, (agreed upon facts)
4. Directly Related Evidence.

# Consent of Private Records

Institution cannot access, consider or disclose a party's health provider (psychiatrist, psychologist, physician) records by any format without prior and voluntary written consent to do so.

# Rape Shields

Rape shield protections are granted. Complainant cannot be asked about previous sexual behavior unless to prove someone other than the respondent is responsible or that prior consent was given.

Q & A

# Session 5

## How to Work through Notice to Determine Title IX Process and Relevance

# Quick Case Review

- Tanya
- Jon & Amy
- Trey
- Professor Matthews

# Intake

Intake should reveal enough basic information to determine if this needs to be examined as a conduct investigation or as a Title IX investigation.

The information that the intake will reveal are the preliminary items that will become part of the record and evidence.

Intake also reveals if the incident meets preliminary standards of jurisdiction, community membership and credibility.

# Terminology & Relevance

## Harassment:

Verbal or physical conduct designed to belittle, threaten, intimidate, or coerce an individual. These actions prevent students from participating or benefitting from the university's educational program or activities and interfere with (or prevent, or hinder) employees ability to do their jobs. Harassment can include, but is not limited, to actions such as:

- Hostile, threatening or intimidating actions or gestures
- Physical interference with normal work or movement
- Slurs
- Taunting
- Verbal Abuse
- Degrading comments or jokes
- Display of derogatory objects, cartoons, postings, drawings, or pictures in print or electronic form.

# Terminology & Relevance

## Discrimination:

Any distinction, preference, advantage for or detriment to an individual compared to others that is based upon an individual's gender, race, color, age, national or ethnic origin, physical or other protected status, that is so severe, persistent, or objectively offensive that it unreasonably interferes with or limits a student's ability to participate in or benefit from the institution's educational program or activities, or an employee's ability to benefit from a safe and non-discriminatory workplace.

# Terminology & Relevance

## Sexual Misconduct:

Any form of sexual contact between two or more individuals that is considered to be outside of the parameters of a healthy and appropriate sexual relationship described in the Bible; that being a relationship between a married man and woman.

Any form of sexual conduct not permitted in the institution's code of conduct.

# Terminology & Relevance

## Sexual Harassment:

Any unwelcome sexual conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal educational access.

Reports of sexual assault, dating violence, domestic violence and stalking do not need to meet the description of severe, pervasive and objectively offensive.



# Terminology & Relevance

## Sexual Assault:

Any sexual intercourse, however limited or slight, with any object, by a man or a woman, upon a man or a woman, that is without consent having been given, or by force. This would include penetration of any orifice or genital area by a body part or any object, no matter how slight or limited the contact.

# Terminology & Relevance

## Dating Violence:

Violence committed by a person who is or has been in a social relationship of a romantic nature with the victim. This violence includes but is not limited to sexual, physical abuse, or abusive taunting and threats.

## Domestic Violence:

Violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child, or by a person who is cohabitating with or has cohabitated with the victim.

# Terminology & Relevance

## Stalking:

Engaging in a course of conduct directed at a person that would cause a reasonable person to fear for his or her safety, or the safety of others, or suffer substantial emotional distress.

# Terminology & Relevance

## Hostile Environment:

Unwelcome conduct determined by a reasonable person to be so severe and pervasive and objectively offensive that it effectively denies a person equal access to institution's education programs or activities including employment.

# Hostile Environment: **Severity**

Could the person escape the situation/setting?

Was there embarrassment or humiliation?

Was there a threat of violence?

Any physical contact/conduct meeting VAWA terms is severe.

# Hostile Environment: **Pervasive**

Well known by portion of the community,

Gauntlet of action,

Frequency, duration,

- Regularity
- Always connected to specific time or event.

# Hostile Environment: Objectively Offensive

Overwhelming by the number of persons involved,

Humiliating,

Ridicule,

Age and relationship gives obvious power over,

You know it when you see it.

# Hostile Environment: Weighing the Factors

This is actually a high standard to meet. It is not simply a matter of a person being offended.

## Weigh:

- Severity and pervasiveness together.
- Was physical threat involved?
- Did this deny right to education/employment?
- A reasonable person would say this is S/P/OO
- Is this rude and offensive yet not S/P/OO?

# Hostile Environment: Weighing the Factors

Hostile environment incidents may be better served in informal resolution (mediation) rather than proceeding to a decision making panel.

Particularly when they are not deemed VAWA violations (dating or domestic violence, stalking, sexual assault) or when S/P/OO are not obvious.

# Terminology & Relevance

## Consent:

Communication that is voluntarily expressed through words or actions making it clear that permission can be given to engage in sexual activity.

- Consent can be obtained or denied through clear expression of “yes, I want to do this” or “no, I don’t want to do this.”
- Silence is not a guarantee of consent.
- Consent to one activity or one event in time does not imply consent to future sexual actions.
- In order to give consent, one must be of legal age.
- A person can not give consent when they are mentally or physically incapacitated.

# Terminology & Relevance

## Incapacitation:

A person who is impaired due to drugs, alcohol, injury, illness, sleep, physical restraint, or the taking of medications.

This is not a determination of blood alcohol level or other types of measures.



# Terminology & Relevance

## Quid Pro Quo:

An employee of the institution conditioning the provision of aid, assistance, benefit, favor, or service on an individual's participation in sexual conduct of any kind.

Q & A

# Session 6

# Investigator Training

# Student Training and Prevention

- Orientation
- Class registration
- Res Life Meeting / Orientation
- Student Athlete Orientation
- Online modules
- Emails
- Posters
- Website

(Record Keeping)

# Training Audiences

- Students
- Employees (volunteers)
- Administration & Board of Trustees
- Title IX Coordinator
- Title IX Team- **Investigators**
- Subgroups of College Life

# Training & Policy Education

- Don't forget any segment of your institution.
- Determine how often each population trains and stick with it.
- Attempt to make it less about compliance and more about caring for the community.
- Use multiple modalities for effective teaching.

# Training

Outside Professionals



**OR**

Within the Organization

# Investigator Basics

You are not finding people guilty or innocent within your investigation.

The Process moves from:

- Founded vs not founded (conduct investigation)
- Responsible vs not responsible (adjudication)

# Investigator Basics

Remember:

You have no “side” other than the process!

# Investigator Basics

## What is your Duty?

**End the Misconduct  
Harassment or  
Assault**

**Eliminate the  
environment  
allowing the  
incident to take  
place**

**Prevent the incident  
from reoccurring**

**Remedy the impact**

# Value of the Investigator(s)

Your “**CARE**” throughout the investigation builds trust in this investigation and builds a culture of trust within the students that the institution **VALUES** a safe campus.

Your ability to conduct a thorough and fair process which equitably evaluates facts creates the **VALUE** of integrity and compliance.

Eliminates any perception that the institution does not care or **VALUE** finding the truth and would instead attempt to hide a troubling incident.

# Role of the Investigator

1. Meet with Title IX Coordinator
2. Begin communication with complainant and respondent
3. Assign additional investigators if needed
4. Speak to everyone
5. Fact find
6. Evaluate facts for
  - Credibility
  - Reliability
7. Read the body language
  - Avoid side notes that express bias
8. Document everything
9. Prepare final report
10. Meet with Title IX Coordinator



# Investigator Training

- Designate multiple investigators within institution staff and faculty.
- Represent a true cross-section of the community.
- Train thoroughly and continually.
- Train on the development of questioning and listening skills.
- Use case studies or even role play by actors.

# Investigator Training

- Equitable rights of complainant and respondent.
- Institutional Standard of Evidence.
- Train investigators to collect and evaluate evidence.
  - Physical evidence
  - Electronic evidence
  - Prior records

# Investigator Training

- Initial Overview.
  - Review Institutional policy.
  - Include the role and function of OCR.
- Impartial: possible need to recuse yourself.
- Definitions of terms.
- Understanding of consent and incapacitated.

# Training Investigators

- Be wary of False Reporters.
  - Rare but time consuming.
  - Danger of jumping to that conclusion.
- Appeals process is a must.
  - Recommended:** Utilize the same structural components of your normal university appeals and grievance process.
- Help Investigators recognize that other institutional personnel may have to review a file and grant an appeal.

# Investigator Knowledge Base

Institutional Policies

VAWA Terms

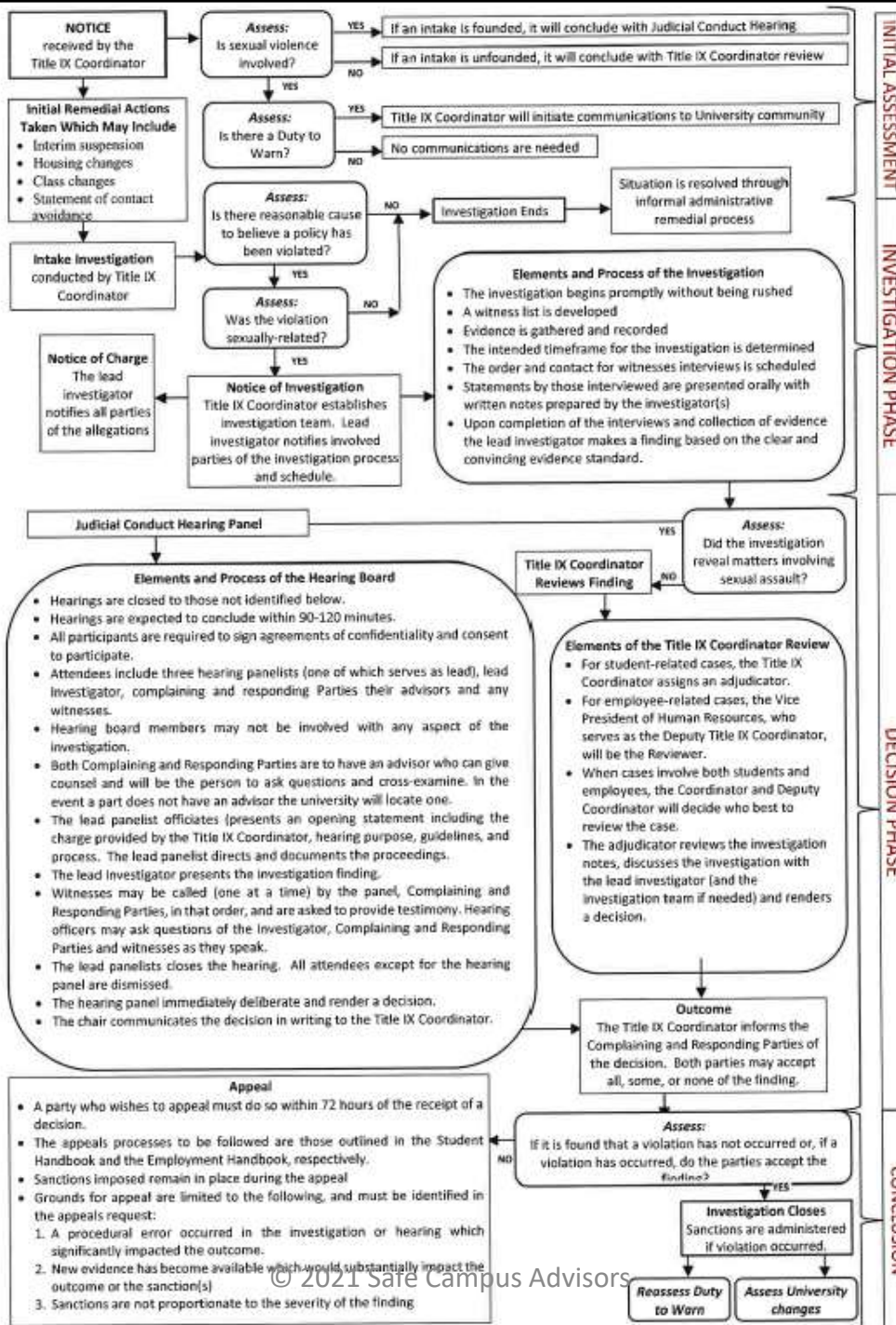
Interview Techniques

Report Writing

Institutional Flow Chart

# Title IX Investigation: Summary & Documentation

INCIDENT INFORMATION	
Alleged Victim <span style="color: red; font-size: small;">~~~~~</span>	Is victim a student? <input type="checkbox"/> Yes <input type="checkbox"/> No
Incident Date:	Date Institution became aware of complaint:
Accused:	Is accused a student? <input type="checkbox"/> Yes <input type="checkbox"/> No
Reporter:	Location of incident:
Have criminal charges been filed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Incident ID #
TYPE OF ALLEGED HARASSMENT (CHECK ALL THAT APPLY)	
<input type="checkbox"/> Hostile Environment	<input type="checkbox"/> Using electronic devices to transmit nudity or sex acts
<input type="checkbox"/> Quid Pro Quo	<input type="checkbox"/> Coercing or intimidating someone into sexual behavior
<input type="checkbox"/> Retaliatory	<input type="checkbox"/> Forcing or coercing someone into touching a person in a sexual manner
<input type="checkbox"/> Hazing	<input type="checkbox"/> Sexual harassment – unwelcome sexual advances
<input type="checkbox"/> Gender or ethnic discrimination	<input type="checkbox"/> Sexual harassment – requests for sexual favors
<input type="checkbox"/> Initiating sexual activity without having consent	<input type="checkbox"/> Sexual harassment – verbal, written, physical contact of sexual nature
<input type="checkbox"/> Unwanted touching or groping	<input type="checkbox"/> Attempted Rape /Rape
<input type="checkbox"/> Ignoring a sexual limit communicated by partner	<input type="checkbox"/> Stalking
<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Sexting
<input type="checkbox"/> Dating Violence	<input type="checkbox"/> Other: Describe:
<input type="checkbox"/> Voyeurism	<input type="checkbox"/> Other: Describe:
<b>Description of Alleged Harassment:</b>	



# Establishing Investigative Communication

Warm up to the conversation if they are receptive otherwise ease into the basics.

Make eye contact and have a light smile from the onset.

Pay attention to your own body language.

Know where you want to go with questions so that you are listening and not thinking of the next question.

Always have them tell the story instead of Q&A.

Read their recall and intensity to determine if you can ask clarifying questions during the account.

# Avoid Investigative Stifling Language

- Just ignore it
- It's just flirting, its no big deal
- Students here are not known for that behavior
- You need to learn to handle this
- It may have just been a joke
- You know how men are
- Teenage hormones
- They hug everyone its just part of their personality
- Maybe it was just a compliment
- If you did not say "no" then you gave consent

# Note Taking

FERPA & DEO,OCR state your notes are public record to the parties.

Avoid being preoccupied with your notes. Remember to have eye contact even when taking notes.

Pre-prepared questions can assist the note taking.

Pre-prepared questions can make you too dependent on the next question instead of the content dictated follow-up.

Listen for statements that should be written verbatim.

Your perceptions on credibility, reliability, lying should be noted not by statement but with a sentence or question.

Clarify your notes within 24 hours to boost recall.

# Investigation Final Report

## Investigation

- Notice
- Prompt from Title IX Coord.
- Communication to parties
- Investigation team
- Dates & times of interviews
- Complete interview list
- Evidence gathered
- Unresolved questions

## Incident

- Date(s) of incident
- Duty to Warn
- Crime stat inclusion?
- Complainant
- Respondent
- Supportive Measures
- Initial Remedy

# Psychological Impact Upon the Parties

- Depression
- Anxiety or panic attacks
- Health related issues – headaches, stomach issues
- Sleeplessness
- Difficulty concentrating
- Physical location anxiety
- Dropping courses
- Change major
- Trust issues
- Feeling powerless
- Withdrawal
- Suicidal thoughts

# Trauma Informed Care

Provision of supportive services to victims in response to the impact of a traumatic incident(s) which emphasizes emotional, physical, and psychological care.

# Value of Trauma Informed Investigations

## Trauma Informed

- Empathy from start to finish.
- Thorough investigation due to sensitivity.
- Control re-established.
- Slow healing can begin.
- More details lead to better chance of identifying perpetrator.

## Non Trauma Informed

- Lack of empathy makes attaining information more important than the dignity of the complainant.
- Investigation can be quicker yet risks leaving out critical information.
- Victim has not been able to gain back small elements of personal control.

# Research on Trauma

Even with modern science researchers have not been able to determine why responses are so different among trauma victims.

Brain imaging details how trauma triggers chemical, emotional, and physical reactions in the body.

Memory/Recollection often becomes a broken pattern early on.

Victims struggle to defend their responses as many times their perception of their reactions is personally confusing.

# Brain Functions & Trauma

- Stress & Fear prevent the frontal lobes from doing their job.

## WHY

- Amygdala starts firing as it processes the event.
- Neurotransmitters; Norepinephrine & Dopamine rush to the frontal lobe and hippocampus impacting the normal processing, reactions and fragmenting the memory.



# Brain Functions & Trauma

The responses of the brain to the initial trauma:

- Freeze
- Fight
- Flight
- Submit and Negotiate
- Frozen fright (Immobile, dissociation)

# Normal Investigative Process (Non-Trauma Informed)

- Investigators and those around the victim know the critical level of the incident and want to see justice done so they value the quickest telling of the incident.
- When in fact the rapid retelling will be foggy and have gaps and order issues. The person compensates by then trying to place things in rational order. Repeated telling of the story brings out inconsistencies.
- Now the investigator begins to question the validity of the story being told.

# Trauma Informed Investigative Process

- Don't rush the victim to give an account immediately.
- Prepare the victim for the interview.
- Give time and space in the telling.
- Let them go the whole way through the story without interruptions.
- Plan a follow up interview from the start. Allow details to become clearer.

# Trauma Informed Investigative Process

- Avoid victim blaming. **Why did you?**
- Appeal to the person to utilize their five senses  
**Do you remember smelling, hearing...?**
- Anything I didn't ask that I should have?  
**Is there anything you want to add?**



Q & A

# Session 7

## Hearing Panels Conducting a Fair Hearing

# Decision Makers

2020 Regulations Require Adjudication of a  
**Formal** Investigation by:

Single Adjudicator  
or a  
Hearing Panel

These individuals can be trained internal personnel, or  
paid external professionals.

# Internal Policy Dictates Hearing Panel Deliberations

Colleges write policy of what constitutes sexual misconduct / harassment within the culture of that institution as defined by Title IX regulations.

A decision maker is not actually determining right or wrong. They are determining whether an individual(s) has violated institutional policy.

# Hearing Panel Policy

Don't treat Hearing Panels as a simple add-on to your policy.

Make this a separate policy or if added onto the primary sexual misconduct policy give proper attention and emphasis.

Terms and definitions are essential components.

# Hearing Panel Policy (cont.)

Make a statement about the time it takes to conduct a proper hearing.

Have specific consent forms for each role.

Hearing must be live. State in your policy that recorded testimony is not permitted.

Does your amnesty statement impact witnesses?

# Preparing for a Hearing

## Investigator:

- communicates with Title IX Coordinator that investigation is coming to a conclusion.
- reviews the case with the Title IX Coordinator.
- prepares a draft of the Investigative Report.
  - Summary of the incident
  - Presentation of Direct Related Evidence
  - Other evidence or information not deemed directly related
- makes edits to the draft and submits final document.
- prepares to present the case without judgement, bias or leaning at the hearing.

# Preparing for a Hearing

## Title IX Coordinator:

- confirms investigation coming to a close.
- appoints panelist & chair.
- establishes tentative date and time of hearing.
- distributes draft report from investigator.
- allow ten days of feedback and input.
- distribute final report from investigator.
- allow ten days for final preparation.
- finalize logistics and facilitate the hearing.

# Preparing for a Hearing

## Hearing Panel Chair:

- communicate with other panelists.
- confirm they have the investigative report and any copies of policies needed.
- set-up meeting to finalize process, answer any concerns and determine any strategy to the proceedings.
- ready to have control at the hearing. (not the Title IX Coordinator)

# Basic Flow of the Hearing

## Opening Statement by the Panel Chair

- Welcome and review of the purpose of the hearing.
- Establish expectations of decorum and civility.
- Distinction between legal procedure and institutional conduct hearing.

## Presentation of case by Investigator

- Unbiased account of case from notice through investigation.
- Recap of what investigation revealed in testimony and in gathered evidence.
- What led to the investigator recommending formalized accusation against the respondent.

## Direct questions for the parties

- Hearing Panel asks questions of the complainant and respondent.
- Direct questions will lead to cross-examination by the parties which must be done by the advisors.

# Basic Flow of the Hearing (cont.)

## Direct questions for the witnesses

- Witnesses are called as needed and requested.
- Same process of direct and cross-examination.

## Panel Chair determines closure

- Chair communicates with panel and parties to determine that sufficient presentation and discussion has taken place.

## Room is cleared

- Chair asks for the room to be vacated, informing all participants that the hearing is concluded. A decision will be communicated later.

## Deliberations of the Panel

- Panel deliberate immediately in that room on outcome and potential sanctions.
- Title IX Coordinator communicates decision and allows for appeals.

# Investigative Report

- Assigned investigator writes draft report.
- Distributed to party, their advisors and panelists.
- Allow ten days for review and edits.
- Final report redistributed at least a week before the scheduled hearing.
- Can be written or electronic format. (distribution warning)
- Two primary sections to the investigative report:
  - Summary without bias or judgement.
  - Directly related evidence.

# Cross Examination

Cross examination was encouraged in the 2020 regulations with the expectation of direct questions preceding the cross.

Cross must always be by the advisor. Thus anticipate that the party and advisor will need side conversations to strategize.

Cross examination is to clarify, provide more information or challenge credibility.

Cross examination should not be used to pose repeated questions for effect. Chair can rule a repeated question as not relevant due to it being “asked and answered”.

Failure to participate or answer questions does not prevent the panelist from considering information provided in the investigation. (Victims Rights Law Center v. Cardona, July 28, 2021)

# DEO OCR Statement on

(Victims Rights Law Center v. Cardona, July 28, 2021)

“A decision maker at a postsecondary institution may now consider statements made by parties or witnesses during the investigation, emails or text exchanges between the parties leading up to the alleged sexual harassment, and statements about the alleged sexual harassment that satisfy the regulation’s relevance rules regardless of whether the parties or witnesses submit to cross examination at the live hearing.”

# Role and Limits on Advisors

- Can be anyone.
- Can be an attorney.
- Institution does not need to train.
- Institution must provide an advisor for a party who does not have one at no fee to the person.
- Advisor is only an active participant during cross-examination.
- Hearing panelists (chair) will need to anticipate keeping the advisor limited to cross-examination.

# Hearing Panel Deliberations

1. Stay in the hearing room and dismiss all others.
2. Stop the recording.
3. Task is to determine if policy was violated based on the credibility of evidence and testimony.
4. All panelists must have equal voting power.
5. Written statement must have rationale for each charge with linkage to the evidence that supports the rationale.
6. Can not make use of outside or indirect evidence to make a decision.
7. Determine sanctions if respondent is responsible.
8. Follow up with written documents of determination.

# Bias and Conflict of Interest

- Occur anytime (small institution dilemma)
- Pre-disposition/pre-determination
- Interference from stakeholder
- Impartiality deterred by lack of time
- Title IX Coordinator should be the decision maker on conflict and possible recusal.

# Decorum of the Hearing

## 1. Room Preparation

- Have a set layout for the room.
- Avoid direct visibility of parties facing one another.
- Controlled climate, water and tissues available, restrooms nearby, notepads and pens.
- Avoid busy hallway with noise.
- Close location for witnesses who will be called into the room. (personnel to monitor this location)

## 2. Climate and Culture

- Silence e-devices.
- Encourage professional dress.
- Chair needs to establish ground rules.

# Decorum of the Hearing (cont.)

## 3. Technology

- Work orders established well in advance.
- Skilled technician standing by. (best if not in room)
- Audio, video, live conference call.
- Do not allow tech to be the reason a party cries foul.

## 4. Script

Although not required, having an established script for the hearing chair to follow ensures that all steps are included and maintains order of progression.

# Hearing Officer Training & Skill Set

- Title IX & VAWA.
- Institutional policies on sexual misconduct and discrimination.
- Internal hearing protocols. (script)
- Investigation techniques.
- Presumption of innocence.
- Boldness in keeping order and handling advisors.
- Questioning skills. (trauma informed)
- Understanding of consent & incapacity.
- Weighing evidence for relevance & credibility.
- Standard of evidence.

# Training of Hearing Panelists

Even temperament – prevent your emotion and responses from setting the tone.

Although cloaked in legal appearance this is not a courtroom. Keep the tone professional but not court like.

Make the presentations, direct questions, and cross examinations a conversation not a courtroom preceding.

# Training of Hearing Panelists

Control your body language. Do not send intended or unintended signals.

Since this hearing is a relative unknown to almost all participants don't fear stopping the hearing to make a procedural decision.

The panel chair must determine the relevance of each question. Most will go unchecked. On occasions the chair will need to rule on the relevance and state the rationale for that decision.

# Panelists Prep for a Hearing

1. Honest assessment of time and willingness to participate.
2. Thorough reading of summary and evidence.
3. Consider institutional policy and the alleged offense.
4. Identify pre-hearing what your questions are and who you need to hear from.
5. Clear your schedule around the hearing. Could go long...

Q & A

# Session 8

## Bring on the Cases



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