From One Title IX Coordinator to Another: A Practical Approach to Navigating Beyond Compliance in a Post Regulatory World

Day 2

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Chantelle Cleary Botticelli, J.D.
Day 2 Agenda

01 Receipt of Reports
Actual Knowledge, Report Response, Initial Assessments, & Supportive Measures

02 Complainant Intake & Supportive Measures

03 Report Resolution
Remedies Based, Informal, or Formal
Receipt of Reports

Actual Knowledge, Report Response, Initial Assessments, and Supportive Measures
Infrastructure for Reporting

- Develop methods/avenues for reporting
- Communicate reporting methods and what folks should expect after submitting a report
- Develop a plan for receiving and reviewing the reports
- Develop a protocol that ensures a prompt response to reports
- Develop and adhere to practices for documenting reports and responses
Regulatory Requirements

Notice to College/University

Outreach/Response from Title IX Coordinator

Support Measures, whether or not Formal Complaint is filed

How to File

Options
Receiving Reports and Initiating the Response

1. REVIEW THE REPORT
2. DETERMINE THE APPROPRIATE INITIAL RESPONSE
3. PROMPTLY INITIATE THAT RESPONSE
4. DOCUMENT/RECORD THE RECEIPT OF THE REPORT AND THE RESPONSE THERETO
## Initial Outreach

### FIRST — SAFETY

**Email**
- Create forms

**Phone**

**In person**
- Use RA
- Campus safety

**Follow up emails**
Emergency Removal of Student

➢ High threshold
➢ Not a determination of responsibility
➢ Whether or not grievance is underway
➢ Individualized
➢ Immediate threat (physical)
➢ Opportunity to challenge
The Title IX Office receives the following anonymous report via your institution’s online reporting form:

Riley Smith is in trouble. I live on their floor in River Hall and I constantly hear fighting and crying coming from their room at night. Every time I see Riley with their partner, they seem really submissive and nervous and I have noticed bruises on Riley the mornings after the biggest fights. The RA and Riley’s partner are friend and so the RA doesn’t do anything about it. It’s getting so bad that some of the other people on the floor are talking about intervening, but we are afraid of Riley’s partner too.
The Title IX Office is contact by a professor who forwards the following email from a student to you:

I really don't want to bother you but I'm in a really hard situation.

I and my boyfriend had a row for these days. And he beat me yesterday and this morning that I attached some pictures before XXXX final starts this afternoon because I found out I couldn't hold pencil because of trembling and I couldn't even think in the first thirty minutes. These pictures shows my arms after he twisting them, which doesn't look violent but feel hurt. One hour before lab final started, I told him I'm going to call police after he beat me, then he dragged me from bed to the floor and threatened to kill me if I call police. It was horrible and hard to reminisce. I knew he tends to use violence before and I forgave him some times when he just pinched my chin and dragged my arm. But this time it is too bad. So he took my phone away and restrain me in my room, not letting me go because I told him I would tell my TA about this whole thing after the final. So he just let me go to final after I promised I won't tell school and police.

When I go to two finals today (XXXX and XXXX, especially the latter), I really couldn't think and even hold pen (and I grabbed my bag but almost nothing in it) for the first thirty minutes. Now everything is done, he promised not to show up in my life nor my room, which is good because I don't want to take penalty on anyone. But I couldn't predict what my final shows out. It won't match my work for the whole semester. I don't expect any makeup chance. I just want to let you know since I barely know any American women here, am I doing wrong? Is there anything I can do to fix anything from academics or life?

Sorry for bothering.
The Title IX Office receives the following email from a responsible employee:

My name is Professor Jones. One of my students shared that they were raped last weekend at a party by another student. They don’t want the school starting an investigation, and so I am not going to share their name or the details with you. They are thinking about talking to the police but are not sure who to contact. Can you please provide me with information that I can share with the student?
Complainant Intake & Supportive Measures
Initial Meeting with the Complainant

- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available support
- Options for reporting
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps
Supportive Measures

- Non-Disciplinary
- Non-punitive
- Confidential

- May not unreasonably burden the other party
- Designed to restore or preserve equal access
- As appropriate and reasonably available

May not unreasonably burden the other party
Confidential
Supportive Measures
Non-Disciplinary
Non-punitive
Examples of Supportive Measures

- Assistance obtaining access to counseling, advocacy, or medical services;
- Assistance obtaining access to academic support and requesting academic accommodations;
- Changes in class schedules;
- Assistance requesting changes in work schedules, job assignments, or other work accommodations;
- Changes in campus housing;
- Safety escorts;
- Leaves of absence;
- Mutual restrictions on contact between the Parties (“No-contact” orders).
“Mutual Restrictions On Contact Between the Parties”
Post Meeting Tasks

- Document the meeting
- Send a summary email with resources, options, next steps
- Follow up
- Make connections
- Provide the supportive measures
- Document supportive measures requested, provided, and not provided. Where not provided, indicate why.
Report Resolution

Remedies Based, Informal, or Formal
How to Proceed?

**Remedies-based**
No formal process

**Alternative/Informal**
Signed agreement;
Voluntary;
What records?

**Formal/ Investigation/ Hearing**
All requirements of 106.45
Remedies Based Resolution

3(a)
Remedies Based Resolutions

- Supportive Measures
- Educational Conversations
- Targeted Education
Formal Complaint & Notice Requirements

3(b)
Formal Complaint Filed

By Complainant

By the Title IX Coordinator
Factors to Consider When Determining Whether to File a Formal Complaint

- Allegations of Violence
- Threats
- Use of weapons
- Serial predation
Formal Complaint

A Formal Complaint must include:

- The Complainant's digital or physical signature, or an indication that the Complainant is the person filing the Formal Complaint;
- An allegation of Prohibited Conduct as defined under this Policy. This may include:
  - Where the incident(s) occurred; what incident(s) occurred; when the incident(s) occurred;
- Identity of Respondent, if known;
- A request for a resolution.

Formal Complaints may be made to the Title IX Coordinator by US Mail, email, or in person.
## Dismissing Complaints

### MANDATORY
- Not sexual harassment
- Did not occur in program or activity
- Not against person in the U.S.

### DISCRETIONARY
- Complainant withdraws complaint
- Respondent no longer enrolled/employed
- School unable to collect sufficient info
Can Proceed Under Other Policy
Notifying the Respondent

FIRST—SAFETY

Don’t send on a Friday
Don’t send at 5pm
How will you notify
Consider impact of notification on Respondent
Make sure support available
Written Notification Meetings and Sufficient Time to Prepare
Notice of Allegation Requirements

• Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
  • the identities of the parties involved in the incident, if known,
  • the conduct allegedly constituting sexual harassment under § 106.30,
  • and the date and location of the alleged incident, if known.

• The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

• The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.

• The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
Advisor of Choice

The advisor can be anyone, including an attorney;

Institutions cannot place restrictions on who can serve

No training required

Institution must provide advisor for the purposes of cross examination, only.
Initial Meeting with Respondent

- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available supportive measures
- Supportive measures that provided to complainant that impact them
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps
Post Meeting Tasks

- Document the meeting
- Send a summary email with resources, options, next steps
- Follow up
- Provide the supportive measures
- Make connections
Formal Complaint Resolution

Informal Resolution

- Formal Complaint Required
- Parties must agree
- Can withdraw form process
- Alternate Resolution/Mediation
- No appeal

Formal Resolution

- Investigation and Adjudication process in compliance with Section 106.45
Informal Resolution

3(c)
Informal Resolution Requirements

- Formal Complaint must be filed
- Participation in an informal resolution must be voluntary
- Must occur prior to resolution via a formal process
- Parties must be permitted to withdraw and seek formal resolution
- Voluntary, written consent to the informal resolution must be obtained
- Facilitators of informal resolution must be trained
Informal Resolution Notice Requirements

- the allegations,
- the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process.
- and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
Facilitators of Informal Resolution as Witnesses
Informal Resolution is prohibited to resolve allegations that an employee sexually harassed a student.
Formal Resolution

3(d)
Procedural Requirements for Investigations

- Notice to both parties
- Equal opportunity to present evidence
- An advisor of choice
- Written notification of meetings, etc., and sufficient time to prepare
- Opportunity to review all evidence, and 10 days to submit a written response to the evidence prior to completion of the report
- Report summarizing relevant evidence and 10 day review of report prior to hearing
Title IX Coordinator’s Role

In the Investigation

➢ Title IX Coordinator is permitted to conduct the investigation, though this is not favored
➢ If conducting the investigation, do so in accordance with the applicable institutional policy
➢ If not conducting the investigation, may serve as a support to the investigators
➢ May serve as a resource to the parties
## Procedural Requirements for Hearings

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<thead>
<tr>
<th>Requirement</th>
<th>Details</th>
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<td>Must be live, but can be conducted remotely</td>
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<td>No Compelling participation</td>
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<td>Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters</td>
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<td>Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution</td>
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<td>Decision maker determines relevancy of questions and evidence offered</td>
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<td>Exclusion of Evidence if no cross examination</td>
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<td>Written decision must be issued that includes finding and sanction</td>
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Title IX Coordinator’s Role
In the Adjudication

➢ Title IX Coordinator may not serve as the decision maker
➢ May serve to support the decision maker(s)
➢ May participate in the hearing to provide logistical support to decision makers
➢ Responsible for effective implementation of remedies imposed
[l]nstitutions must offer both parties an appeal from a determination regarding responsibility, and from a recipient’s dismissal of a formal complaint or any allegations therein.

Final Rule § 106.45(b)(8)
Title IX Coordinator’s Role
In the Appeal

➢ Title IX Coordinator may not serve as an appellate reviewer
➢ May serve to support the appellate reviewer/panel
➢ May provide logistical support
➢ May coordinate implementation of appellate findings, where appropriate.
➢ Responsible for effective implementation of remedies imposed
Putting it all together...
Panel of Experts
Moderated by Chantelle

Michael Dunn
Assistant Vice President of Equity and Inclusion
St. Mary's College of Maryland

Lauren Branchini
Title IX Coordinator
Cornell University
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