

Title IX Tabletop Exercise Training Fact Pattern 1 and 2

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AGENDA

Overview

Review Fact Pattern #1

- Review Procedural/Substantive Requirements under Title IX
- Discussion

Review Fact Pattern #2

- Review Procedural/Substantive Requirements under Title IX
- Discussion





Title IX Regulations Overview

What do the Regulations Require?

1. Respond **promptly** and **supportively** to persons alleged to have experienced sexual harassment.
2. **Resolve** allegations of sexual harassment **promptly** and **accurately** under a predictable, **fair grievance process** that provides due process protections to the alleged victim and alleged perpetrators of sexual harassment.
3. **Effectively implement** remedies and supportive measures for all parties involved.



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Key Terms Repeated in the Regulations

- Prompt
- Equitable
- Supportive
- Fundamental fairness
- Remedies

Keep these terms in mind as you walk through the fact patterns.



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Let's Review Fact Pattern #1



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FACT PATTERN #1 PROCEDURAL CONSIDERATIONS

ISSUES TO CONSIDER

What policies/procedures apply?

- Incident at field trip occurred on August 12, 2020 (pre-2020 implementation)
- Incidents continued through the initial report of August 24, 2020

Do you use old policy (pre August 14) or new policy? [old policy for definitions/new procedures]

Scope of Responsibility/Jurisdiction

Is this something we can and must act on/respond to?

If yes, to what extent?

Determine the relationship of the parties to the school and then jurisdiction. *Does the conduct:*

--fall under the definition of Title IX?

--occur against a person in the United States?

Did the reported incident occur in the context of an education program or activity?

Did the college exercise substantial control over both the Respondent and the context in which the conduct occurred?



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Official With Authority

- The formal report to Public Safety was on the August 24, 2020. Is this the notice date?
- An informal complaint was made to Title IX on September 14, 2020. Is this the notice date?

What do you do about the lack of communication from the OWA to the Title IX Coordinator?

Communication with Aaron

Title IX Coordinator must reach out to Aaron to:

Discuss formal/informal complaint

Offer Supportive Measures

Discuss Title IX Process (why he can't file a formal complaint), confidentiality/privacy

Can the Title IX Coordinator become the complainant? Should he/she?



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Communication with Chris

Title IX Coordinator must reach out to Chris to:

Discuss formal/informal complaint

Offer Supportive Measures

Discuss Title IX Process, right to advisor, confidentiality/privacy

Can the Title IX Coordinator become the complainant? Should he/she?



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When/how do you contact Katy?

Do you contact Katy after receiving Aaron's email or do you contact Chris to find out what is happening before calling Katy?

What is your regulatory requirement on notice to the Respondent?



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Supportive Measures

Individualized services reasonably available that are:

- non-punitive,
- non-disciplinary, and
- not unreasonably burdensome to the other party

while designed to ensure equal educational access, protect safety, or deter sexual harassment.

Offered to both parties

What types of supportive measures would you consider?

- counseling
- course-related adjustments,
- campus escort services,
- mutual restrictions on contact between the parties?

Must maintain confidential any supportive measures provided to the C or R, to the extent that it would not impair the ability of the college to provide the supportive measures.



More on Supportive Measures

Title IX Coordinator:

- is responsible for coordinating the effective implementation of supportive measures.
- serves as the point of contact for the affected students to ensure the supportive measures are effectively implemented,
- Should not pass the burden of navigating paperwork or other administrative requirements onto the affected student.

Always document if you don't provide supportive measures and why such a response was not clearly unreasonable in light of the known circumstances and how denying the supportive measure was not deliberately indifferent.



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substantive

FACT PATTERN #1
SUBSTANTIVE CONSIDERATIONS



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Stalking—what definition do you use?

“Stalking” as defined in 34 U.S.C.
12291(a)(30)

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to
- Fear for the person’s safety or the safety of others; or
- Suffer substantial emotional distress



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Hostile Environment

- “[c]onduct of a sexual nature [that] is sufficiently severe, persistent, **or** pervasive to limit a student’s ability to participate in or benefit from the education program, or to create a hostile or abusive educational environment.” (pre-August 14)
- “unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the College’s education program or activity.” (post Aug 14)

Referral to BIT for Katy?

- Do you pursue an emergency removal?
- Do you pursue a BIT referral (and not an emergency removal)?
- Do you do initiate a suicidal ideation review?



Next Steps

What do you do if the Chris doesn't want to pursue a formal investigation?

What do you do if he does want to pursue a formal investigation?

What policies are at play?

Investigation

- How does the investigator get copies of the evidence turned over to public safety?
- How do you address the issues related to the faculty asking for phone numbers



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Okay -
what did
I miss?



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Let's Review Fact Pattern #2



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FACT PATTERN #2

PROCEDURAL CONSIDERATIONS

ISSUES TO CONSIDER

What policies/procedures apply?

- COVID Protocols/HR safety policies
- Title IX
- Anti-Discrimination policies
- ADA/504 Accommodation Policy

Is this a Title IX Case?



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Scope of Responsibility/Jurisdiction

Is this something we can and must act on/respond to?

If yes, to what extent?

Does the conduct:

*--fall under the definition of Title IX? **NO***

--occur against a person in the United States?

~~Did the reported incident occur in the context of an education program or activity?~~

~~Did the college exercise substantial control over both the Respondent and the context in which the conduct occurred?~~



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Communication with Cami

- Never presuppose what the complaint is or is not about.
- Contact Cami to inquire about the complaint—what conduct do you want investigated and why?
- Do you offer supportive measures?
- Document, Document, Document, especially if you do not offer supportive measures requested by the complainant.



Different Investigations

If the complaint is COVID protocol related, where do you send the complaint?

If the complaint is discrimination based on race, where do you send the complaint?

If it is both, what do you do?



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Protection Against Retaliation

– “[N]o recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX or its implementing regulations.”

Does the complaint about harsher grading and rude behavior warrant an investigation? If so, who does it?



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FACT PATTERN #1
SUBSTANTIVE CONSIDERATIONS



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What do you document?

Where do you document the receipt of the complaint forward from HR?

What do you document?

Another Procedural issue that could create substantive issues: Do you need to notify the faculty member that you received the complaint?



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Okay -
what did
I miss?



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**WHAT
QUESTIONS
DO YOU
HAVE FOR
ME?**





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