BEST PRACTICES FOR LEADING SEXUAL HARASSMENT/MISCONDUCT INVESTIGATIONS

CHANGES TO INVESTIGATIONS FROM NEW REGS

• Notice requirements and process for getting to formal investigation
• New Scope, Jurisdictions, and Definitions
• Application to Employees
• Distribution and Review of Evidence and Report
  – 10-Day Review Periods
  – Involvement of Advisors
• Training for Investigators
• Removal of Single Investigator Model
• Relevancy of Evidence and what must be included
• Witnesses including Character and Expert Witnesses
WHAT ARE WE INVESTIGATING?

- **Jurisdiction**
  - Location
  - Program/Activity
  - Control Over Involved Parties

- **Definitions of Prohibited Conduct**
  - VAWA Crimes
  - Quid Pro Quo
  - Severe, Pervasive, and Objectively Offensive

- **Title IX vs Title VII and application to Employees**

- **What does your policy say?**

THINGS TO CONSIDER AS PART OF GATEKEEPING FUNCTION

- What is a formal complaint?
- Jurisdiction and scope
- Title IX Coordinator signing complaint
- Decision on type of resolution
- Informal vs. Formal
- Dismissal
POLL

How is your institution managing complaints that fall outside the Title IX Coordinator’s jurisdiction?

OVERVIEW OF AN INVESTIGATION

- Formal Complaint/Notice to Title IX Coordinator
- ‘Investigation/Gate Keeping Function Simultaneous with Supportive Measures
- Title IX Determination for Application and Formal/Informal
- Investigation
- Appointment of Investigators with Ability to Appeal Appointment
- Notice of Allegation
- 10-Day Evidence Review Period
- 10-Day Report Review Period
- Final Report and Transition for Live Hearing
### ROLE OF THE TITLE IX COORDINATOR

- Gatekeeping Function
- Supportive Measures
- Emergency Removal
- Training Oversight
- Actual Notice
- Coordinates Individual Functions of Resolution Process

### ROLE OF THE INVESTIGATOR

- Gather **all** information regarding an allegation and determine relevancy
- Interview all parties and witnesses, including character and expert witnesses
- Fact gathering vs. fact finding
- Collect and organize evidence and distribute to parties for review and comment
- Weighing evidence
  - Preponderance of the Evidence or Clear and Convincing
- Write a detailed investigative report
WHO SHOULD/SHOULD NOT SERVE?

- Attorneys?
- Outside Investigator?
- General Counsel?
- Campus Safety/Security?
- Title IX Coordinator/Deputy Title IX Coordinator?
- Faculty?
- Students?
- Human Resources?
- Other members of Title IX or Conduct Team

REQUIRED TRAINING

- Definition of Sexual Harassment
- Educational Program or Activity
- Conducting an Investigation and Relevancy of Evidence
- Bias Prevention
- Technology Use
- ADDITIONAL TRAINING CONSIDERATIONS

- Trauma informed investigations in light of new regulations?
- How to conduct remote investigations
- Working with advisors
- Impact of Alcohol and Drugs on Consent
- Allegations involving minors
- Terminology, language
- Social Media

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**POLL**

Which standard of proof does your campus use or plan on using for your Title IX cases?
BUILDING YOUR INVESTIGATION TOOLKIT

Policy and Procedures

Planning Documents and Templates
- Prohibited Conduct Breakdown and Elements Worksheet
- Communication and Evidence Logs
- Evidence Analysis Chart and Relevancy Buckets
- Pre-investigation Checklist

Technology Plan
- Consistent plan for use of technology to support intake and investigation
- Method for evidence collection and distribution
- Confidentiality and record security

Other Considerations
- Model and policy for working with advisors

CONSIDERATIONS FOR THE TITLE IX COORDINATOR’S INVOLVEMENT DURING AN INVESTIGATION

- What role does the Title IX Coordinator play in the review process during investigation and before finalizing the report?
- Coordination amongst Title IX Coordinator and Investigator related to ongoing provision of supportive measures?
- Elevation of safety risk factors that may trigger need for emergency removal considerations?
- Assistance with enforcement of policy deviations or violations?
- Need for amended notification for violations?
**SETTING YOUR RESOLUTION TIMELINE**

- Gatekeeping Function
- Supportive Measures and Risk Management
- Path of Resolution
- Investigation Phase 1
- Phase 2: Evidence Review
- Phase 3: Report Review
- Final Report
- Transfer for Final Resolution

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**DURING THE INTERVIEW: DIFFERENTIATING THE ROLE OF THE INVESTIGATOR FROM COORDINATOR**

- Introduce yourself and explain your role as an investigator
  - You are the fact gatherer, not the fact finder.
  - Explain rules and procedure
  - Define process for seeking additional supportive measures and how you will communicate with Title IX Coordinator
- State that you will be taking notes during the interview and explain why this is important
- Explain the Investigation Process
- Explain the role of advisors
- Ask the interviewee if they have any questions about the process
  - Information will be kept as confidential as possible
  - Anti-Retaliation and Intimidation Policy
  - Purpose of Investigation
  - Amnesty Policy if Applicable
- Next Steps
  - Follow up with Title IX Coordinator
COLLECTING EVIDENCE

How are you storing physical evidence?

Who is providing the evidence?

Potential Sources of evidence:
- Text messages, social media, phone records, etc.
- Diaries, journals, timelines, etc.
- Law Enforcement
- Campus Records
- Medical Evidence

CREDIBILITY ASSESSMENTS, FACT ANALYSIS, AND RECOMMENDATIONS: WHAT GOES IN THE REPORT?

Credibility Observations
Without Findings of Fact or Determination

Using Evidence to Support Fact Finding Through Report Organization

Recommendations?
ORGANIZING YOUR DIGITAL CASE FILE

- UNDERSTANDING OF SYSTEM FOR COLLECTION AND DISTRIBUTION
- SORTING AND DISTRIBUTING EVIDENCE AND REPORT APPROPRIATELY
- FINALIZING THE OFFICIAL RECORD OF THE INSTITUTION’S RESOLUTION

QUESTIONS AND KEY CONSIDERATIONS WHEN IMPLEMENTING THE NEW REGS

- Determining Scope and Application of Policies and what you investigating
- Challenges with remote or digital investigations
- Working with Advisors
- Tandem Law Enforcement Investigations
- Application to Employees
  - Faculty Unions and Contract
- Respecting Confidentiality while not prohibiting communication
- Working with Witnesses
- Investigator role in the Hearing Process
- Enhanced record protection when distributing reports including storage, redaction, and FERPA considerations
SHARE OUT & DISCUSSION!
What have been some of your procedural challenges related to facilitating your investigation process? What have you recently adjusted considering the proposed regs, if any?