



**SCHOOL & COLLEGE LEGAL SERVICES
OF CALIFORNIA**

Conducting Legally-Defensible Title IX Investigations

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*Marin CCD's Unlawful Discrimination and
Harassment Investigator Training Part II*

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Agenda

- I. Brief overview of Title IX
- II. Title IX investigation requirements
- III. Conducting impartial investigations
- IV. Appropriate remedies and sanctions
- V. Legally compliant investigation reports
- VI. Enforcement of Title IX

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**SCHOOL & COLLEGE LEGAL SERVICES
OF CALIFORNIA**

I. Brief Overview of Title IX



What is Title IX?

“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 educational program or activity receiving federal financial assistance.”

20 U.S.C. § 1681 and 34 C.F.R. Part 106



What Is Title IX?

- Title IX of the Education Amendments of 1972
- Established to combat discrimination against women in the educational system
- Two objectives:
 - Prevent use of federal resources to support discriminatory practices in education
 - Provide individuals with protection against those practices
- Title IX protects any “person” against sex discrimination – both men and women

What Is Title IX?

- Title IX applies to “recipients of Federal financial assistance.”
- Every recipient must ensure that a student is not denied or limited in the ability to participate in or benefit from a school program or activity on the basis of sex.



Title IX Regulatory Framework

- Federal statutes - 20 U.S.C. § 1681
- Implementing regulations - 34 C.F.R. Part 106
- Office for Civil Rights (OCR) regulatory guidance
- Resolution Agreements and Letters with OCR and DOJ
- Trump Administration rescission of Transgender Dear Colleague Letter, 2011 and 2014 Title IX guidance, and new OCR investigatory guidance scaling back OCR's oversight purview
- Overlapping and related California law

Where Does Title IX Apply?

- Title IX protects students in connection with all academic, educational, extracurricular, athletic, and other programs of the district.
- Programs can take place in a district facility, on a district vehicle, at a program sponsored by the district at another location, or on a district-sponsored field trip.



Hot Seat

- Would Title IX apply to the following places? Why or why not?
 - Model UN conference off-campus
 - Study abroad trip
 - Off-campus housing



Requirements Under Title IX

- Once an institution knows or reasonably should know of sex discrimination, it must:
 - Investigate
 - End the discrimination
 - Prevent discrimination from occurring again
- Procedural requirements:
 - Adoption of certain policies
 - Adoption and publication of grievance procedures
 - Designation of a Title IX Coordinator
 - Fair and equitable investigations and proceedings

Responsible Employees


- A “responsible employee” is any employee:
 - Who has the authority to take action to redress sexual violence;
 - Who has been given the duty of reporting incidents of sexual violence/misconduct to the Title IX Coordinator/designee; or
 - Whom a student could reasonably believe has this authority or duty.
- When a “responsible employee” knows or should have known of sexual harassment/discrimination, the district must take certain steps.

II. Title IX Investigations Requirements



Title IX Complaint Procedures

- Title IX complaint procedures must provide for “prompt and equitable resolution” of Title IX complaints.
- COM’s complaint procedure for all allegations of unlawful discrimination and harassment, including those under Title IX, is Administrative Procedure 3435.



Policies &
Procedures

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Title IX Investigation Procedures: Duty to Investigate

- If a district knows or reasonably should know about an alleged Title IX violation, the district’s duty to investigate is triggered.
- A direct complaint from the victim is not necessary to trigger the duty to investigate and remediate.
- The district must take immediate action to eliminate the discrimination/harassment, prevent its recurrence, and address its effects.

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Pop Quiz

Does the District have a duty to investigate when a student alleges that other students in class made vulgar comments about her, but she cannot identify any of the students?

Why or why not?



Title IX Investigation Procedures: Investigations

- Investigations into alleged violations of Title IX must be prompt, thorough, and impartial.
- Investigators should be credible, impartial, and trained.
- The standard of evidence for COM's investigations is *preponderance of the evidence*
 - Over 50%
 - More likely than not

III. Conducting Impartial Title IX Investigations



What is an Investigation?

- An investigation includes both the fact-finding and decision-making processes (excluding appeals)
- It is the process by which district determines:
 - Whether or not the conduct occurred
 - If it did occur, whether the conduct is sufficiently serious
 - If it is, what actions are necessary to:
 - end the discrimination,
 - eliminate the hostile environment, and
 - prevent its recurrence

Legal Requirements Under Title IX

- A Title IX investigation must be:
 - Prompt
 - Thorough
 - Impartial
- It may, but is not required to, include a hearing
- It must include the opportunity for both the complainant and the respondent to offer evidence
- No fixed time frame; district must make a “good faith effort” to conduct a “fair impartial, investigation” in a “timely manner”



Investigations Will Vary by Institution

- The specific steps in a recipient’s Title IX investigation will vary depending on:
 - Nature of the allegation(s)
 - Source of the complaint
 - Age of student(s) involved
 - Size and administrative structure of school
 - State or local legal requirements (such as mandatory reporting or Title 5 regulations)
 - Lessons learned from past experiences

Investigations Will Vary by Institution

- Investigations may include:
 - Conducting interviews
 - Complainant
 - Respondent*
 - Other witnesses
 - Reviewing student and personnel files
 - Reviewing law enforcement documents, if applicable
 - Gathering and examining other relevant documents or evidence
 - Hiring an outside investigator

Investigation Fundamentals: First Steps

1. Review the applicable procedure
 - Enter the case into a complaint log
 - Map out the steps and timeline for the investigation based on the procedure
 - Make sure required notices are sent, including copies of the applicable procedure and other information required by the procedure
2. Develop an investigative strategy
 - Determine basic steps of the investigation
 - Determine who should be interviewed and what information should be reviewed



Investigation Fundamentals: Next Steps

3. Determine who will be part of the investigation team
 - District employees
 - Outside investigators
4. Conduct the investigation
 - Begin promptly
 - Determine who should be interviewed, and in what order
 - Begin interviews with core people and broaden as needed
 - Before interviewing, outline interview questions, including elements of a particular complaint
 - Before interviewing, review related documents/records



Investigation Fundamentals, cont'd.

4. Conduct the investigation, cont'd
 - Prepare for interviews by identifying the following elements:
 - Identity of interviewer
 - Identity of person to be interviewed
 - Location, date, and time of interview
 - Conduct interview in confidential setting
 - Make arrangements to record interviews if possible



Investigation Fundamentals, cont'd

- Should be looking for each element of the type of discrimination at issue
- Did unlawful conduct occur?
- Was each prong of the allegation met?
 - Unlawful discrimination -
 - (1) Unwelcome conduct that is
 - (2) sufficiently severe or pervasive to
 - (3) (a) significantly interfere with the employee's/student's job/academic performance *OR*
(b) create an intimidating, hostile or abusive working/academic environment

Title IX Investigation Procedures: Standards of Evidence

- Marin Community College District uses the preponderance of the evidence standard:
 - more than 50%, or
 - more likely than not

Notice of Investigation

- Once a district decides to investigate conduct that may lead to disciplinary action, district must provide written notice to respondent, including:
 - Allegations constituting a potential violation of district policy
 - Sufficient details of allegations:
 - Identity of the parties involved
 - Date(s) and location(s) of alleged incident(s)
 - Section(s) of the code allegedly violated
 - The precise conduct allegedly constituting the potential violation
- Must be provided a sufficient time in advance of the interview to allow respondent to prepare a response

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Interviews



- Explain that district is required to investigate allegations of [sexual harassment, sexual violence, sex discrimination] and take appropriate action
- State that no conclusions have been made
- Try to put interviewee at ease (use trauma-informed guidelines)
- Emphasize the expectation of best recollection and truthful answers
- Start with broad/overview questions

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Interviews

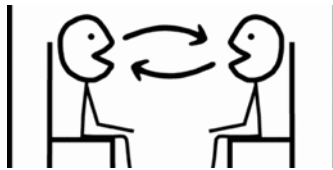
- Have interviewee describe the incident(s)/conduct in his/her own words
 - 5 W's – who, what, when, where, why
 - Ask if interviewee has told interviewer everything he/she can remember
 - After each answer, ask: “is there anything else?”
- Ask follow up questions, including questions to confirm chronology of events, to fill in any gaps in the 5 W's
- Don't offer information or provide the answer

Interviews

- Ask about and for copies of any relevant documents, texts, emails, etc.
- At the end of the interview:
 - Ask whether there is anyone else the interviewee thinks should be interviewed about the incident/conduct, and why
 - Provide your contact information and advise the interviewee to contact you with any additional information
 - Give the interviewee a copy of the relevant procedure
 - Caution against retaliation (or inform of prohibition on retaliation)
 - Remind the interviewee to maintain confidentiality
 - Advise interviewee you may need to follow-up with him/her as investigation proceeds

Interviews: Assessing Credibility

- Investigators should take into account all relevant evidence in determining witnesses' credibility
- Should not rely solely on eye-witness accounts, tangible physical evidence, or an admission to corroborate either party's story



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Interviews: Assessing Credibility

- **Factors to consider:**
 - Changes in behavior of the complainant
 - Complainant telling another person about the discrimination
 - Other complaints against same respondent
 - Witnesses' conduct during interviews, including body language, eye contact, tone, nervous behaviors, sweating
 - Consistent/inconsistent information
 - Corroboration by other witnesses, documents, or other evidence
- **Factors that aren't as relevant:** a delay in reporting, minor inconsistencies in story, that complainant and respondent once had a consensual relationship

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Hot Seat

Which of the following is appropriate to consider in a credibility determination?

1. Respondent says, "She was asking for it. Just look at what she was wearing!"
2. The complainant drops out of sports and drama club and starts missing school frequently.
3. Respondent's witness says, "She's such a good person. I know he could never do what he's accusing him of." [sexual harassment investigation]
4. Respondent says, "It was an accident. I didn't do it on purpose." after putting his hand on a male student's crotch.
5. Complainant writes in her journal after the assault about how the assault has impacted her.
6. Complainant tells his best friend that he's been harassed by a football player for the past 3 months.
7. Respondent says, "We used to date. I know he's okay with us fooling around."
8. You're the investigator. You diligently try to contact complainant to set up a time to interview him. He does not reply to your many overtures. When you try to approach him personally, he avoids you. When you finally get in touch with him, he says he doesn't want to be involved.

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Interviewing the Complainant

- Must be provided sufficient written notice in advance of any interview to prepare for meaningful participation
- Ask complainant specifically:
 - Has anything like this ever happened before? Use 5 W's
 - The nature and past history of any relationship between complainant and respondent
 - Whether complainant has previously complained about the respondent, and if so, to whom
 - Whether anyone else knew of or joined in conduct complained of
 - Whether complainant is aware of other incidents by respondent toward other individuals
 - Whether any documents exist to support the allegations

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Interviewing the Respondent

- Must be provided sufficient written notice (including the specific allegations) in advance of any interview to prepare for meaningful participation
- Verify that no determinations of wrongdoing have been made and that he/she will have a full opportunity to provide information
- Caution against retaliation
- The respondent (and complainant) should be allowed to have a representative present
 - For employees, this can be the union representative

Interviewing the Respondent, cont'd.

- Provide respondent a copy of applicable complaint procedures and explain district's obligation to investigate complaints
- Ascertain:
 - Whether respondent agrees with statements/allegations of complainant and other witnesses already interviewed
 - Whether any witnesses or other evidence exists that could corroborate respondent's version of events
 - The nature and past history of any relationship between complainant and respondent
 - Whether respondent knows if complainant has previously made complaints of a similar nature about respondent or others

Interviewing Other Witnesses

- Advise witness to keep matter confidential
- Discuss prohibition against retaliation
- If witness is a minor, notify parent/guardian of need to interview minor
- Identify the relation of witnesses to the complainant and/or respondent
- Questions may include:
 - Ask them to describe event in own words
 - Does witness know of similar incidents/conduct
 - Identify of any other witnesses



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Hot Seat

- Flip to Hypothetical 1
- Please work in groups to identify:
 - Any issues you see with how the district handled this investigation
 - How you would conduct this investigation in compliance with Title IX



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Interview Documentation

- Take and keep notes of interviews and the entire investigation (telephone conversations, meetings)
- Include date, time, and place of interview
- Include who attended the interview, and how long it lasted
- Note information provided by witnesses, and if it is consistent/inconsistent with information provided by other witnesses
- Note any documents/evidence provided during interview
- Note names of any potential witnesses provided by interviewee

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Preserve Evidence

- Take note of when, where, and from whom an item was taken
- Store all evidence in a secure location
- If any items are surrendered to law enforcement, take a picture of the item and note when, where, and to whom it was surrendered
- Photograph physical injuries and promptly arrange for appropriate first aid/medical attention
- Title IX regulations require institutions to keep records to send to OCR for compliance reviews
- Certain records must be sent to the Chancellor's Office



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Findings of Fact and Conclusions

- Some evidence may not be in dispute
- Some evidence can be corroborated by the investigator
- Information from complainant or respondent may be corroborated by witnesses
- When information received from complainant and respondent differs on important points, make credibility determinations
- State what facts are determined to be true/untrue and what areas could not be determined (if any)

Findings of Fact and Conclusions, cont'd.

- Based on the facts and analysis, reach a conclusion:
 - The complaint lacks merit
 - The evidence was not conclusive and cannot support a determination as to the merits of the complaint
 - The alleged conduct occurred, but did not violate policy, applicable standards (whatever else the complaint process addresses)
 - The conduct occurred and violated a standard of conduct or a standard of policy
- Prepare a report

Investigator Qualifications

- An equitable investigation requires a trained investigator to:
 - Analyze and document available evidence
 - Develop reliable decisions
 - Objectively evaluate the credibility of parties and witnesses
 - Synthesize all available evidence
 - Take into account unique and complex circumstances of each case
- Investigator may not rely on sex stereotypes or generalizations in conducting investigation or reaching conclusions



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Balancing Act



- The most defensible investigations will balance the rights of complainant and respondent
- Essentially, parties must be treated equally, including:
 - Equal opportunity to present witnesses and other relevant evidence
 - Same meaningful access to information used during any disciplinary meetings/hearings
 - Opportunity to respond to the investigation report in writing in advance of any decision of responsibility
 - Restrictions on ability to use lawyers must be applied equally
 - Interim measures must be considered for respondent and complainant

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Next Steps

- Determine action to be taken
- Communicate outcome of investigation
 - Both parties must be notified concurrently in writing of the outcome of the complaint and any appeal rights
- Document the investigation
 - Summary of steps taken
 - List of witnesses interviews
 - Findings of fact and analysis
 - Conclusion
 - Statement as to recommended corrective action
- Recordkeeping



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Confidentiality

- A complainant may make a request for confidentiality in the course of an investigation
- The district should inform the complainant that its ability to investigate/respond may be limited
- Requests for confidentiality must be evaluated in light of the district's responsibility to provide a safe and nondiscriminatory environment for all
- District should inform the complainant if it cannot ensure confidentiality

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Retaliation



- Districts need to be cognizant of the possibility of retaliation against complainants and witnesses
- Districts must have procedures in place to protect against retaliatory harassment
- Complainants should be advised how to report subsequent problems
- Any retaliation experienced by a complainant constitutes a separate Title IX violation



Hot Seat

Please work in groups to identify the issues and discuss how you would respond to this situation.

1. Complainant, Chris, tells Rocky Community College that he would like certain witnesses interviewed as part of the College's investigation into his sexual assault. The witnesses refuse to be interviewed. College has strong reason to believe they were pressured not to participate in the investigation.
2. The alleged assailant is a star on the College's volleyball team. The College hires an attorney to preside over the Title IX hearing. The attorney is a former volleyball player for the College and a regular donor to the volleyball program.

Parallel Criminal Investigations

- A criminal investigation does not alleviate schools of their duty to conduct an independent Title IX investigation or respond promptly and effectively to complaints
- Police investigations and reports are not necessarily determinative of whether harassment occurred under Title IX
- School should not delay its investigation until the outcome of a criminal investigation or the filing of charges

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Parallel Investigations – Coordinating with Law Enforcement

- A school should coordinate with any other ongoing school or criminal investigations
 - Establish fact-finding roles for each investigator
 - Consider whether information can be shared among investigators to limit re-traumatizing victim
 - If applicable, consult with forensic expert to ensure evidence is correctly interpreted by school officials
- Consider a memorandum of understanding with local law enforcement and local prosecutor's office

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Criminal vs. Administrative Investigations

Lieutenant John Adams will discuss:

- What to expect
- How are criminal and administrative investigations different?
- Why are they kept separate?



Respondents' Due Process Rights

- Districts must provide due process to the respondent.
- The complaint procedure and investigation must be fair and impartial.
- The respondent may have a right under FERPA to inspect and review portions of the complaint that directly relate to him/her.
 - The school must redact complainant's name and other identifying information before allowing respondent to inspect and review sections of complaint that relate to him/her.

Respondents' Due Process Rights



- Courts have added additional protections for respondents
- In sexual misconduct cases where the outcome depends on a credibility assessment, respondent has right to cross-examine the accuser and adverse witnesses
- Burden on complainant can be lessened by:
 - Use of videoconference or similar technology (Cal. Ct. App.)
 - Decisionmaker asking complainant questions posed by respondent (Cal. Ct. App.)
 - Use of a witness screen or other physical separation of the parties (6th Circuit)

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Policies, Policies, Policies

- In some instances, the same offense may give rise to separate violations
- For instance, an act of sexual assault may be investigated as (1) sexual harassment, and (2) sexual violence



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Pop Quiz

A college informed the respondent only that she was being investigated for “numerous nonconsensual interactions with the victim” over a 2 year period.

What issues do you see?



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A Word on FERPA



- The Family Educational Rights and Privacy Act (“FERPA”) prohibits educational institutions from disclosing information “maintained” in a student’s “education record”
- FERPA is implicated in two situations in the Title IX context
- Consult legal counsel with specific facts/questions

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Hearings

- A district may, but is not required to, use a hearing process to determine responsibility for acts of sex discrimination (including harassment and sexual assault)
- Districts' procedures will guide any hearing process
- OCR mandates that whatever is afforded to one party in the hearing context is afforded to the other party (e.g., representation by an attorney, opportunity to cross-examine witnesses)
- Real or perceived conflicts of interest should be disclosed

Hearings, cont'd.

- If a hearing is utilized, fact finder must make findings as to each allegation of misconduct
- Both parties must have meaningful access to any information that will be used during a disciplinary hearing
- Both parties should be notified in writing in advance of any hearing to allow sufficient time to prepare
- Districts must maintain documentation of all proceedings, including written findings, transcripts or audio recordings

Pop Quiz

District engaged an attorney to investigate and prosecute the charges against the respondent.

Neither the respondent nor the victim were permitted an attorney during the hearing process.

What issues do you see?



Appeals

- Title IX does not require an appeals process*
- California law at both the K-12 and the community college levels does require an appeals process under Title 5
- Specific appeals process is within discretion of school, subject to Title 5 regulations

Pop Quiz

A district's Title IX process – including investigation, prosecution, and decisionmaking functions – is vested in a single individual.

What issues do you see with this approach?



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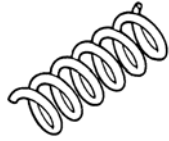


Blowback

- Respondents, often male students, are filing their own Title IX complaints against complainants and schools for subjecting them to investigation and/or disciplinary action.
- Male students allege that Title IX compliance efforts provide female students “preferential treatment,” and make it more difficult for the accused to defend themselves.
- Sometimes respondents sue to fight discipline imposed as a result of a Title IX investigation.

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An Interesting Twist



- When respondents appeal sanctions, the college may determine in the interests of justice those sanctions should be reduced.
- Before it does so, best practice is to notify the complainant and give them an opportunity to provide input.
- Districts should not reduce sanctions without an appropriate basis.
- Any sanctions that result from a reduction should also be within the college's complaint procedures/code of conduct/collective bargaining agreements.

V. Legally Compliant Investigation Reports



Notice of Outcome of Investigation

- Both parties must be notified of the outcome of the investigation and any appeal rights
- Notice to complainant should include:
 - Whether investigation substantiated that the conduct occurred
 - Remedies offered or provided to complainant
 - Sanctions imposed on the perpetrator that directly relate to the complainant
 - Other steps the school has taken to eliminate the hostile environment
- The respondent should not be notified of the individual remedies offered or provided to the complainant

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Additional Clery Requirement



- For community college districts, the Clery Act also requires districts to inform the complainant as to:
 - any final determination of the disciplinary investigation, and
 - any disciplinary sanctions imposed on the perpetrator
- This requirement is limited to cases involving sexual assault, dating violence, domestic violence, or stalking
- Includes all sanctions imposed on the perpetrator, not just those directly related to complainant

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Another Word on FERPA

- FERPA permits a school to disclose to the complainant any information about the sanction imposed upon the perpetrator when the sanction directly relates to the complainant
 - Stay away order
 - Harasser is prohibited from attending school for a period of time
 - Perpetrator was transferred to another class, campus, or residence hall
- FERPA also permits community colleges to disclose to the complainant the final results of a disciplinary proceeding in certain instances*

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Hot Seat

Please work in groups to identify the issues and discuss how you would respond to this situation.

1. A college disciplined Janet for groping Ruth in math class. At the time, same-sex sexual harassment was not prohibited by the student code of conduct. However, by the time the college investigated Ruth's complaint, the college had added same-sex sexual harassment to the list of prohibited conduct.
2. When its investigation was complete, the college sent the same notice of outcome of investigation to both Janet and Ruth.

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Investigation Reports

- Follow your institution's complaint procedures, and any applicable policies
- We recommend that it contain the following elements:
 - Parties
 - Incident – when was it reported, to whom; when did it take place
 - Alleged Violations – code of conduct, district policy, etc.
 - Interviews with parties
 - Additional information provided by parties
 - Summary of information provided by witnesses
 - Credibility determination
 - Findings of fact
 - Conclusion – “I conclude it is/is not more likely than not that respondent...”

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Title 5 Requirements – CCD

- Written report required under Title 5 regulations
- Report must include:
 - (a) a description of the circumstances giving rise to the complaint;
 - (b) a summary of the testimony provided by each witness, including the complainant and any viable witnesses identified by the complainant in the complaint;
 - (c) an analysis of any relevant data or other evidence collected during the course of the investigation;
 - (d) a specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint; and
 - (e) any other information deemed appropriate by the district.

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The Language of Sexual Violence

- How you write your report creates the narrative of the case
- Be careful to avoid language that:
 - victim-blames (“she was passed out”)
 - deflects responsibility from the perpetrator (“the rape”)
 - talks about the act without an agent (“battered woman”)
 - makes the victim the subject of the sentence (“Chris was raped by Jamie” vs. “Jamie raped Chris”)
 - eroticizes, romanticizes, or describes sexual violence in an affectionate way (“Morgan caressed Taylor’s breasts”)
 - uses language of consensual sex (“he had sex with her” or “she performed oral sex on him”)

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Hot Seat

How could you change the following statements to use more accountable language?

1. The rape occurred on Saturday, September 12 at approximately 1:15 am.
2. Robin is a rape victim.
3. This disciplinary action will impact Jordan [the harasser] for the rest of her life.
4. The allegation of sex-based harassment is sustained.
5. This is a classic “he said, she said” case.
6. The victim’s story is that the respondent drugged his drink.
7. The victim was date raped.

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Mirror the Victim

- Take your cues from the victim/survivor
- How does the person describe him or herself?
- He or she might use victim-blaming language themselves – they are a reflection of our victim-blaming culture
- When using the victim's language, use quotations
- Do not edit the language of the victim – but think about why you would hear that language from a potential recipient of harassment/violence



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Hot Seat

- Flip to Hypothetical 2
- Please work in groups to identify:
 - Any issues you see with how the district handled this investigation
 - How you would conduct this investigation in compliance with Title IX



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IV. Appropriate Remedies & Sanctions



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Interim Remedies

- Available to both parties prior to an investigation or when an investigation is pending
- Should be individualized
- What is appropriate will depend on the facts of each case
- Schools should take into account:
 - Specific need(s) expressed by complainant
 - Age of student(s) involved
 - Severity or pervasiveness of allegations
 - Continuing effects on complainant
 - Any ongoing contact between complainant and respondent (residence halls, dining hall, class, transportation, job location)
 - Whether other judicial measures are in place (protective order)

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Remedies

- Appropriate remedies (implemented after the investigation) will depend on the specific factual scenario, and may include:
 - Counseling services
 - Extensions of time or other course-related adjustments
 - Modifications to work or class schedules
 - Campus escort services
 - Restrictions on contact between the parties
 - Changes in work or housing locations
 - Leaves of absence
 - Increased security and monitoring of certain areas of campus

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Hot Seat

Please work in groups to identify any issues and discuss what interim remedies, if any, you would implement in this situation.

1. Complainant, Rosa, tells Ocean Community College that Chris recorded a video of her in class with his iPhone, and then posted the video on his Facebook page with the caption: “I’d like to do her.”
2. Rosa and Chris are in the same biology class and both participate in science club, an extracurricular activity.
3. Finals are in two weeks.

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Additional Clery Requirements

- The Clery Act requires postsecondary institutions to develop and distribute a statement of policy that informs students of their options to:
 - notify proper law enforcement authorities, including campus and local police,
 - be assisted by campus personnel in notifying such authorities.
- The policy also must notify students of existing counseling, mental health, or other student services for victims of sexual assault, both on campus and in the community

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Additional Clery Requirements

- Community colleges must provide simultaneous written notification to both parties of:
 - results of disciplinary proceeding
 - notification of the institution's appeal procedures, and
 - any changes to the result when it becomes final.
- Notification must include any initial, interim, or final decision by the institution; any sanctions imposed by the institution; and the rationale for the result and the sanctions.

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Case Study – What Not To Do

- Respondent filed an OCR complaint against his school
- He was expelled after livestreaming a video of himself and a female student engaged in a sexual act without the female student's knowledge or consent
- OCR found the school violated the respondent's rights by:
 - Not interviewing him as part of investigation
 - Suspending him without an opportunity to be heard
 - Completing the whole investigation in 10 days
 - Deleting recordings of the hearing 10 days after conclusion of the appeal*
 - Not allowing the respondent to "cross-examine" the complainant*

VI. Enforcement of Title IX



Enforcement of Title IX



- Title IX is enforced by the U.S. Department of Education, Office for Civil Rights (OCR).
- A possible penalty for violating Title IX is the loss of all federal funding.
- In 1979, the U.S. Supreme Court upheld a private right of action under Title IX.

Enforcement of Title IX

- If OCR finds a recipient has violated Title IX, OCR will seek appropriate remedies.
- OCR may propose a Resolution Agreement with the district that requires various corrective measures.
- If a district refuses to negotiate a Resolution Agreement, OCR may initiate administrative enforcement proceedings to suspend, terminate, or refuse to grant Federal financial assistance.
- OCR may refer the case to the Department of Justice.

Additional Resources

- COM Human Resources Title IX webpage (to be updated soon), <http://hr.marin.edu/title-ix>
- U.S. Department of Education, Office for Civil Rights: Title IX and Sex Discrimination, https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html
- The Center for Changing Our Campus Culture, www.changingourcampus.org
- California Office of the Attorney General, Campus Sexual Assault guidance and resources, <https://oag.ca.gov/campus-sexual-assault>
- California Community Colleges Chancellor's Office, www.cccco.ed

Questions?



Information in this presentation, including but not limited to PowerPoint handouts and presenters' comments, is summary only and not legal advice. We advise you consult with legal counsel to determine how this information may apply to your specific facts and circumstances.

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