

Title IX Coordinator Training

*Presented by the
National Association of College and University Attorneys (NACUA)*

Amy C. Foerster, Pepper Hamilton LLP
Melinda Grier, Melinda Grier Consulting
Janet P. Judge, Holland & Knight LLP

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Instructors



Amy C. Foerster
Pepper Hamilton LLP



Melinda Grier
Melinda Grier Consulting



Janet P. Judge
Holland & Knight LLP



Today's Program



Proposed Regulations:

- 123,405+ Public Comments
- Possible Fall 2019 Release



“Highlights” of Proposed Regulations:

- Live hearing with cross-examination by advisor
- Explain exclusion of questions as not relevant
- “Must terminate grievance process” if conduct would not constitute sexual harassment or did not occur within the institution’s program or activity
- “Forced disposition” of multiple reports
- Access to “directly related” evidence
- Consistent standard of evidence

But first, a poll:

- Has your institution changed its policies as a result of the 2017 interim guidance?
 - Yes, standard of proof.
 - Yes, additional procedural protections for respondents.
 - Yes, informal resolutions.
 - Yes, other.
 - No changes.
 - Not sure.

Case Study:

- Leia Smith, the university's Title IX Coordinator, walks into her office on a Monday morning in March to discover a voice mail from her President's Chief of Staff.
- The President is scheduled to meet with the Board that afternoon and they have asked to be updated on the school's current Title IX policies in light of the Sept. 2017 guidance and talk of new regulations.
- There are judges and lawyers on the board and they are particularly interested in the policy language around standard of proof and the due process protections.
- The President expects a call back within the hour.



How Would You Respond?



Case Study

- Later that day, which is just two weeks before the start of spring break, Ms. Smith passes Professor Anne Gray, Undergraduate Advisor for the English Department, in the hall.
- Prof. Gray asks Ms. Smith if they could talk “off the record” about something a student shared with her in confidence.



How should Ms. Smith respond?

- Tell Professor Gray she's welcome to come talk but you can't guarantee anything will be off the record.
- Tell Prof. Gray you'd love to talk and invite her into your office.
- Ask Prof. Gray to call your office to schedule a time you can talk.
- Invite Prof. Gray into your office, ask her what she wants to talk about and explain how you will handle any information she gives you.



Case Study

- Prof. Gray tells Ms. Smith that last Friday she noticed bruises on the wrist of a freshman student she was advising.
- When asked about the bruises, Prof. Gray said the underage student reluctantly admitted to having a “few drinks” at an off campus party, but then started to feel sick and left to head back to the dorm to sleep.
- Shortly after leaving, the student received a text from another student named Kyle. The student and Kyle have hooked up a couple of times this year. Kyle suggested they hang out at Kyle’s off-campus apartment.

Case Study

- The student initially texted Kyle that the student wasn’t up to it because the student wasn’t feeling well. Kyle texted back something like, “c’mon, we’ll just hang out for awhile. We won’t do anything if you don’t want to, but I bet you will.” The student “didn’t feel like arguing” and agreed to go to Kyle’s apartment.
- Once the student got to Kyle’s apartment, they went to his bedroom and he closed the door. They kissed for a couple of minutes, but the student started to feel sick, stopped and said, “I have to leave.” Kyle grabbed the student hard by the wrists, forced the student against the wall and sexually assaulted the student.
- Prof. Gray said she asked the student what the student wanted to do and urged the student to file a complaint but wasn’t sure if the student would. The student asked Professor Gray not to tell anyone and Prof. Gray agreed.
- Prof. Gray had training “a while ago” and declines to provide any additional information. She asks for Ms. Smith’s advice.

Case Study

- Using information provided by Prof. Gray, Ms. Smith contacts the student, Jane Johnson.
- What should Ms. Smith say?



Case Study

- Jane acknowledges talking to Prof. Gray but is upset she shared the information and doesn't want to talk about it. She says she just needs to get through mid-term exams and that she may be willing to talk more after spring break in mid-March.
- How should Ms. Smith respond?



Case Study

- The next day, Jane calls Ms. Smith back, saying she's given it more thought, talked to her parents who are attorneys, and that she wants to talk about next steps.
- The student who allegedly assaulted her, Kyle Williams, lives in the same off campus housing, is in her freshman seminar, and is active in student government.
- Jane reports that she is having trouble sleeping and studying. She says that whenever she sees Kyle, she feels as if she's back in Kyle's room and re-lives that night.
- She says a number of times that she is having difficulty concentrating on her work and is worried about mid-terms.

Interim Measures

- What types of interim measures should be considered?
- How should the impact on Kyle be considered in deciding which interim measures Jane should be provided?
- What steps should be taken before providing interim measures?



What if ...?

- Jane's resident assistant, not Prof. Gray, talked with Ms. Smith?
- Kyle Williams is neither a student nor an employee?
- Jane says she was so intoxicated that she can't really remember what happened that night but assumes something bad happened because of her bruises ?
- Jane is a 17 year old student?
- The initial call came directly from Jane into the crisis hotline?

Case Study: Campus Safety & Police

- Jane tells Ms. Smith she does not want to report to Campus Safety or local law enforcement.
- The Dean of Students calls Ms. Smith to report that her colleague at the local community college has alerted the Dean to a rumor that Kyle recently sexually assaulted a student at the community college.
- What should Ms. Smith do?



Case Study

- Ms. Smith gets a call from someone who identifies herself as Kyle's lawyer.
- She asks what process occurred before the interim measures were put in place and how Kyle can appeal them.
- She says Kyle probably won't cooperate with any investigation unless Jane agrees not to pursue criminal charges.
- She says Kyle is considering transferring to another school and expects this complaint will not be shared with other schools.
- What should Ms. Smith do?



What if...?

- The President of the Student Senate meets with Ms. Smith to tell her she thinks Jane's allegations may be a way to keep Kyle from running for Senate President next year?
- The Senate Vice President (SVP) has called a meeting to organize support for Kyle?
- The SVP says there is a photo online of Kyle and Jane out together the night after the alleged sexual assault?
- Kyle alleges Jane engaged in non-consensual touching the night after the alleged assault?



Questions?

Note

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