

Campus Collaborative In-Person Retreat November 19, 2025

Disclaimers

- While I am a lawyer, I might not be your lawyer.
- I'm happy to answer questions about the materials we are reviewing, and to address hypotheticals.
- If you have a need for legal advice about how to handle a particular situation, consult with competent legal counsel in a setting that doesn't involve four other institutions. 😊

Agenda

- 9:00-10:00 – Federal/State Legal Update
- 10:00-11:00 – Title IX & NCAA
- 11:00-11:30 – Notice
- 11:30-12:00 – Structuring an Office & Training Requirements
- 12:00-1:00 – Lunch
- 1:00-2:30 – Outreach, Intake, and Triage
- 2:30-3:45 – Writing Investigative Report
- 3:45 – Pick up boxes!

*Yes, we'll take breaks here and there as it feels appropriate.

Federal & State Legal Update

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- Federal shutdown has ended (at least until January 30, 2026)
 - Most OCR offices are now closed or dramatically understaffed
 - We are now served by the Denver Office – in the Mountain Time Zone
 - We have not yet seen new complaints or any movement on pending complaints since the shutdown ended
 - What have we seen this year (2025) in terms of enforcement?
 - How does the OCR downsizing change what we may see in terms of enforcement going forward?

Title VI

- Title VI prohibits discrimination on the basis of race, color, and national origin
- Guidance extends to ethnicity and shared ancestry
- Most complaints we are seeing relate to the situation involving Israel and Gaza
- OCR has issued 12 resolution agreements under Title VI since January 1, 2025 – but only one under the current administration

Brown University “Resolution Agreement”

- This is actually a settlement agreement that requires the federal government to release federal grant money in exchange for a \$50m payment from Brown to “state workforce development organizations operating in compliance with anti-discrimination laws, over the ten years following the Effective Date”

Brown University – Title VI portion (1 of 3)

- Support a “thriving Jewish community, research and education about Israel, and a robust Program in Judaic Studies”
- Will outreach to Jewish Day School students for recruitment
- Will provide resources for religiously observant Jewish community members
- Will renew partnerships with Israeli academics and national Jewish organizations
- Will support enhanced security at Hillel
- Will convene alumni, students, and faculty to celebrate 130 years of Jewish life at Brown

Brown University – Title VI portion (2 of 3)

- Conduct climate survey via third party to evaluate campus climate for Jewish students and evaluate social media harassment
- Continued monitoring of reports of discrimination/harassment on the basis of national origin (including shared ancestry or ethnic characteristics) and the University's response
- All student course evaluations will be reviewed for antisemitism concerns and referred to the University's civil rights office for appropriate action

Brown University – Title VI portion (3 of 3)

- No programs that promote unlawful efforts to achieve race-based outcomes, quotas, diversity targets, or similar efforts
 - Summarize compliance with this requirement to OCR, “including an assurance that Brown has acted responsibly to ensure its program do not promote unlawful DEI goals”
- Merit-based admission policies required
 - No proxy for racial admission
 - “Brown may not use personal statements, diversity narratives, or any applicant reference to racial identity as a means to introduce or justify discrimination”
- Must provide disaggregated admissions data every year, which will be “subjected to a comprehensive audit by the United States”

That's Not All For Title VI

- Much of this is happening more in the press and in litigation than it is in a resolution agreement
- Takeaways:
 - When a report comes in, consider:
 - Does this report suggest a particular human respondent may have engaged in a policy violation?
 - When this report is considered in the aggregate of other reports, does it suggest that there is a hostile environment on campus?
 - If so, what can the institution do to eliminate the harassment, prevent its recurrence, and address its effects?

Title IX

- Enforcement focus has been in three areas:
 - Transgender athletes
 - Single-sex bathrooms/locker rooms for women
 - Scholarships for women

Note: The proposed “Compact for Academic Excellence in Higher Education” included this line: “Women’s equality requires single-sex spaces, such as bathrooms and locker rooms, and fair competition, such as in sports.” (None of the nine institutions have signed the agreement.)

Brown University – Title IX portion

- Define “male” and female” as assigned at birth
- Provide female student-athletes with female-only locker rooms and bathrooms
- Provide women the option of female-only housing, restrooms, and showering facilities
- Provide students with access to single-sex floors
- Will not provide gender affirming care to minor children (which is not how this was worded)

University of Pennsylvania – Resolution Agmt

- Define “male” and female” as assigned at birth
- No transgender women on women’s teams
- Locker rooms and bathrooms strictly separated on the basis of sex
- Rescind any records, titles, honors, or awards issued to transgender women athletes
- “Officially recognize the restoration of all individual Recognitions that female athletes earned and would have been given but for the Recognitions being given to male athletes who competed in women’s athletics, regardless of whether the female athlete remains currently, or is no longer, a student enrolled in the University”
- Send a personalized apology letter to each swimmer when their award is restored

34 CFR 106.37(a) - Scholarships

§ 106.37 Financial assistance.

- A. **General.** Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:
1. On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate;
 2. Through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or
 3. Apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

34 CFR 106.37(b) – Legal Instruments

B. Financial aid established by certain legal instruments.

1. A [recipient](#) may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; *Provided*, That the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.
2. To ensure nondiscriminatory awards of assistance as required in [paragraph \(b\)\(1\)](#) of this section, [recipients](#) shall develop and use procedures under which:
 - i. [Students](#) are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;
 - ii. An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each [student](#) selected under [paragraph \(b\)\(2\)\(i\)](#) of this section; and
 - iii. No [student](#) is denied the award for which he or she was selected under [paragraph \(b\)\(2\)\(i\)](#) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that [student](#)'s sex.

34 CFR 106.37(c) – Athletic Scholarships

C. Athletic scholarships.

1. To the extent that a [recipient](#) awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of [students](#) of each sex participating in interscholastic or intercollegiate athletics.
2. Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and [§ 106.41](#).

Title VII – EEOC enforcement

- Remember, the EEOC is bound by *Bostock*, which states that employers cannot discriminate on the basis of gender identity or sexual orientation
- This is reflected on their website
- So far, we haven't seen any major changes by the EEOC in terms of Title VII enforcement
- EEOC is reopening and will need to work through a backlog of complaints
- Consider whether an EEOC complaint requires an investigation by your institution, and remember to notify your insurance company so you can get counsel to help you respond!

Stop Campus Hazing Act

- You should have begun collecting data on July 1, 2025 – see 20 USC 1092(f)
- Initial report must be posted on your website by December 23, 2025 and must be updated “at least 2 times each year”

CHTR & Collin's Law (Ohio)

Collin's Law Reports

- Name of the subject (remember, no PII)
- Date of when the subject of the investigation was charged with a violation
- Description, investigation & findings, penalties
- Date the matter was resolved
- **Aug. 1 and Jan.1 of each year**

Think about it: Will your numbers be the same?

Work with legal counsel

CHTR

- Each incident involving a student organization where a hazing violation was **found**, including the name of the student organization,
- a description of the finding (noting whether it involved alcohol or drugs),
- Conclusions and sanctions
- Dates(when the incident occurred, the date the investigation began, the date of the responsibility finding, and the date the institution notified the student organization of the finding
- **Dec. 23, 2025 and then "not less frequently than 2 times per year"**

Senate Bill 1 - Public vs. Private

- SB1, as enrolled, only applies to state institutions of higher education.
 - Some provisions only apply to state universities, which is a narrower category.
- How might this affect private institutions?
 - If you have a public/private partnership, particularly one in which you may co-teach courses or programs, this bill may affect those courses
 - Joint work on research grants
 - Who can participate in consortium-wide trainings
- There are already discussions about expanding the requirements, but these are unclear at this time. No updates here!

NIBRS – Manual Update – Rape

- New definition of “rape”
- “Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.”

NIBRS – Manual Update – Criminal Sexual Contact

- “Fondling” is now “Criminal Sexual Contact” in NIBRS
- “The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The forced touching by the victim of the actor’s clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.”

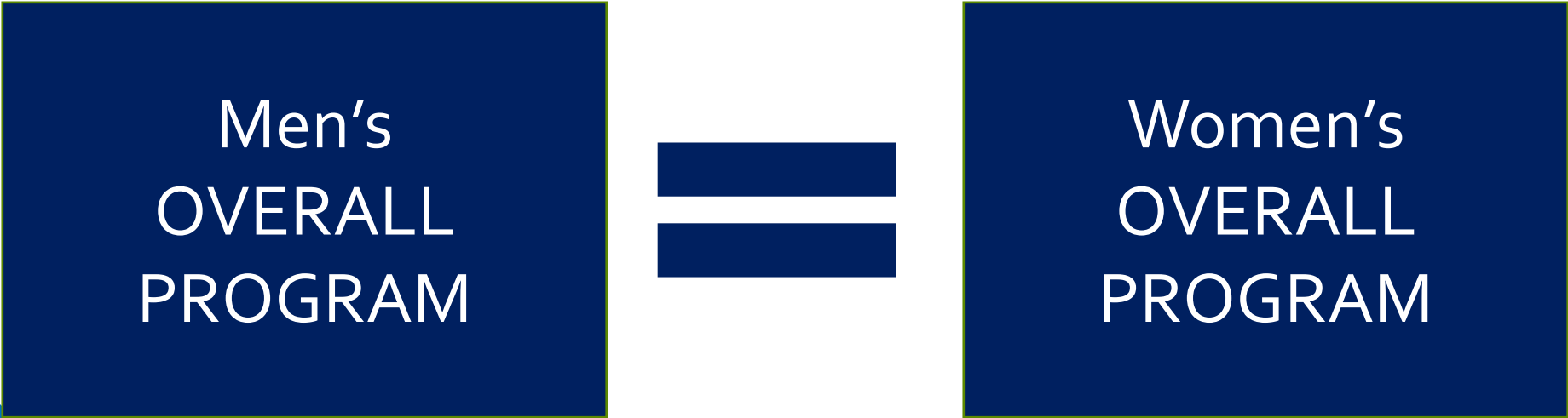
What's on the horizon?

- Lots...

Athletics & Gender Equity

Overall program analysis

- Title IX regulations require that a school offer equivalent benefits, opportunities, and treatment to its men's and women's teams overall.
- Not sport-to-sport comparison (*e.g.*, men's basketball to women's basketball, baseball to softball)



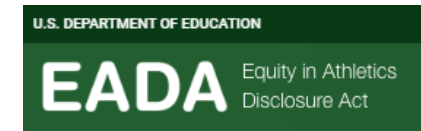
Men's
OVERALL
PROGRAM



Women's
OVERALL
PROGRAM

A note on EADA...

- Can be used to evaluate (1) athletic participation opportunities and (2) financial aid
- **EADA & Title IX**
 - Although it may not *fully* reflect, it is *pretty* close
 - Example: Title IX participants
 - In lawsuits, Plaintiffs often rely on EADA data and courts have used these numbers to issue preliminary injunctions



You can use the questions below to help assess your school's provision of scholarships and athletic financial assistance. Your school's athletic director or other school leaders may be able to provide you with the information needed to answer these questions. Also, the Department's Office of Postsecondary Education maintains the [Equity in Athletics Data Analysis \(EADA\) website](#), which publishes information provided by all coeducational schools that have an intercollegiate athletic program and participate in Federal Student Aid programs. Data on the EADA website may be helpful¹¹ in answering the questions below. But please note that OCR does not rely solely on this data or any one data point to determine compliance with Title IX.

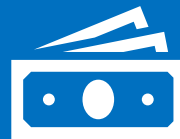
Overview of your Legal Duties

- Must meet compliance with all three “buckets”:

Accommodation
of Interests and
Abilities



Athletic
Scholarships



Benefit &
Treatment
Areas



- Intro to the Nuts and Bolts of Title IX Athletics and Equal Opportunities
- **Accommodation of Interests & Abilities**
- Scholarships
- Benefits and Treatment Areas

Compliance Requirement #1:

Accommodation of Interests and Abilities

The “three prong test”

- Your school has flexibility in choosing **one** of these options:
 1. **Substantial Proportionality:** whether the percentage of athletic participation compared to full-time undergraduate enrollment is "substantially" proportional ☒
 2. **History and Continuing Practice:** whether you are adding opportunities for the underrepresented sex ☐
 3. **Interests and Abilities of Students:** whether you are fully accommodating the interests and abilities of the underrepresented sex ☐

Prong 1

- Ask: Are the percentage of women and men participants on athletic teams equal to – or “**substantially proportionate**” to—the percentage of women and men enrolled full-time as undergraduates at your school?

% full-time undergraduate male = % male participants
% full-time undergraduate females = % female participants

Athletic participants

1. Can you count the
sport?

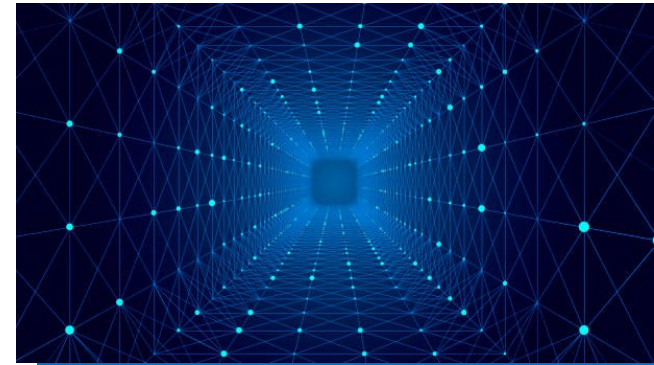


2. Can you count the
participants?

- Sport on EADA/Traditional Sport?
Yes.
- Emerging sports? Likely yes.
 - Keep records of how it meets the requirements
- Other sports? It depends...
 - 1. Are you in a jurisdiction that recognizes it?
 - **2. Evaluate under 2008 DCL guidance**
 - Keep records of how it meets the requirements



- Counting participants has become increasingly complicated....



How close is close enough?

- Now you know how to count, what is “**substantially proportionate**”?
- What is the “safe harbor”?
- Two data points to consider:

1. Participation gap

- How many additional opportunities are required for the underrepresented sex in order to achieve perfect proportionality?

2. Percentage differential

- What is the difference between the full-time undergrad population vs. athletic participants?

Percentage Differential

- Courts in the past have looked at this number
- Calculation
 - % full-time undergraduate male - % male participants = [*percentage differential*]
 - % full-time undergraduate females = % female participants = [*percentage differential*]
- Based on case law, if percentage differential is:
 - Over 10% = unlikely compliant
 - Between 3.5% and 10% = less clear, but unlikely compliant
 - Below 3.5% = likely compliant



Participation Gap

- The most the important data point for courts
- **How many additional opportunities are required for the underrepresented sex in order to achieve perfect proportionality?**
 - If sufficient to field a “viable team” = non-complaint ✗
 - If not sufficient to field a “viable team” = compliant ✓
- Million dollar question: what is a “viable team”?
 - OCR examples:
 - 62 part. gap → can fit a viable team → not compliant ✗
 - 6 part. gap → cannot fit a viable team → compliant ✓
 - So what about 6-62 part. gap?

Participation Gap – Magic Number?

- *Balow v. Michigan State*
 - So what about 6-62 part. gap?
 - Used viable team at issue – women's swimming and diving
 - **31 part. gap is enough to sustain a viable team** because the smallest swimming & diving team in the Big Ten Conference was 21 females





Key Takeaways – Prong 1

- Challenging because of the changing demographics
 - Rise of female students since 1970
- If relying on this prong:
 - Do an internal count – don't just rely on EADA data
 - Have rigorous and well-document procedures in place that support the roster numbers being used
 - Calculate the participation gap
 - Consider having a roster management policy
 - Consult with legal counsel and/or experts

Prong 2

- In evaluating “**history**,” OCR looks at the institution’s record for:

- adding teams, (within the last 3-4 years)
- increasing participants on existing teams, and
- the institution to requests to



- In assessing “**continuing practice**,” OCR examines:
 - the institution’s current policy for adding teams and
 - an institution's current implementation of a plan of program expansion that is responsive to developing interests and abilities.





Key Takeaways - Prong 2

- **You MUST have a long-plan program expansion Gender Equity Plan**
 - → If you don't have a plan, prepare one.
 - → Include benchmarks to expand women's participation (adding teams, **roster management**) and rough timetable
- **You MUST have a history of adding women's participation opportunities**
 - → Look at the last time you added a women's team. If more than 4 years have passed, be cautious (especially if you have added or are looking to add a men's team).
 - → Look at your women's sports participation over the past decade. If this number has dropped, be cautious (especially if your men's participation has gone up).
- **You MUST have a policy regarding requesting the addition of varsity sports.**
 - → If you don't have one, prepare a policy and procedure.
 - → If you have one, effectively communicate it (website, handbook, etc.) and make sure you document responses to sport requests.
- **Collect information from your students and others on campus including club and intramural sports**

Prong 3

- This is the most complicated because the metrics are nuanced
- Usually referred to as the "survey" prong
- **Question – is there enough (1) demand/interest, (2) skill/talent, and (3) competition at your school among [women/men] to sustain a viable team or sport?**
 - → If the answer is “no” to *any* of these questions, your school can likely use Prong 3
 - → If the answer is “yes” to *all* three questions, your school likely cannot use this option.

Competition + Interest + Ability

Competition

Are there other schools in your area or **region** currently competing in the sport?

Look at normal competitive region; the average mileage to away events and conference opponents

Interest

Is there an unmet **interest** in a particular sport that is not offered at your school?

*Look at participation in club sports, intramural and recreation programs; requests from students/parents; **surveys**; high school and community participation in the College's normal recruitment area*

Ability

Is there enough **talent and skill** among the student body to sustain a team in the sport?

Look at whether students have experience or accomplishments playing the sport; administrators/coaches believe that there's enough talent to support a team; high participation in other sports that require similar skills

Surveys

- How to assess student's interests and abilities
- Note that you do not have to administer a survey to rely upon prong 3
- OCR has released guidance on this prong because it has been controversial
 - Does not consider nonresponses to surveys as evidence of lack of interest or ability in athletics.
- Cross campus commitment





Key Takeaways – Prong 3

- Collect good information
 - Surveys can be complicated. Using an expert might be beneficial.
- Document the analysis
 - If you decide not to add a sport that has been requested, you should **document** the reasons you made that decision, which should include the results of assessing the abilities of interested students and viability of the sport.

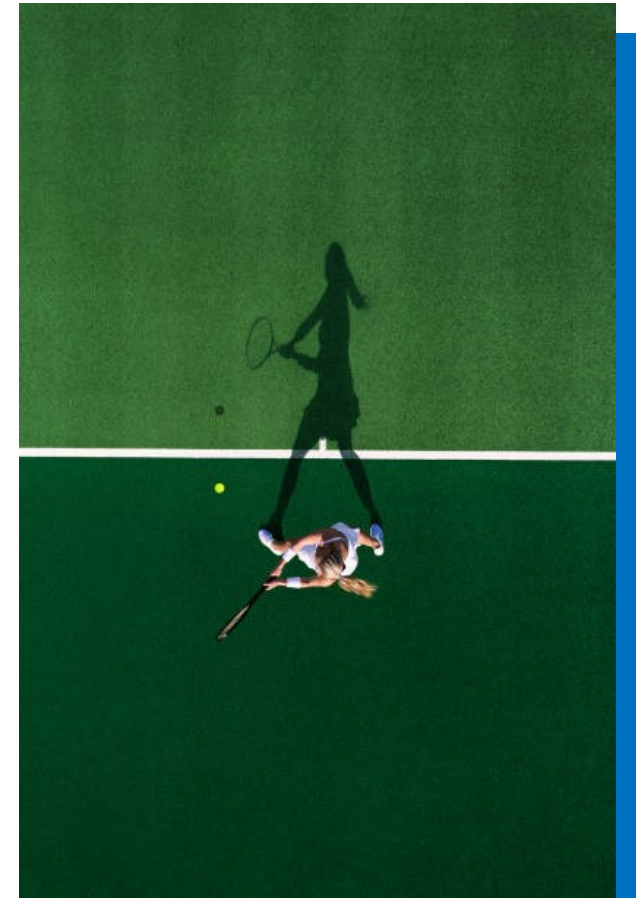
- Intro to the Nuts and Bolts of Title IX Athletics and Equal Opportunities
- Accommodation of Interests & Abilities
- **Scholarships**
- Benefits and Treatment Areas

Compliance Requirement #2

Scholarships

Scholarships

- OCR considers whether the total amount of athletic scholarship aid a school makes available to men and women is “**substantially proportionate**” to their participation rates
- “substantially proportionate”= **within 1%**
 - However, this is subject to adjustment of disparities that are legitimate and non-discriminatory
 - What does this mean? Outside 1% might be okay if:
 - Actions are taken to promote athletic program development
 - Differences between in-state and out-of-state tuition
 - Unexpected fluctuations in participation (someone quits)



The Calculation

- Calculation –

- Male

- Male participation = 59%
 - Male scholarship dollars awarded = 57.8%
 - **Difference = 1.2%** →

- Female

- Female participation = 41%
 - Female scholarship dollars awarded = 42.2%
 - **Difference = 1.2%** →

If institution can
show they have
**legitimate non-
discriminatory
reasons** for the
0.2% difference

→ **Complaint.**

New Money

- *Alston* payments
- NIL money
 - University of Oregon female athlete lawsuit (*Schroeder, et al. v. University of Oregon*)





Key Takeaways - Scholarships

- Analyze this each year
- Document legitimate, non-discriminatory disparities
- Keep copies of policies, procedures, and criteria for awarding scholarship including how determinations are made
- Exercise oversight of coaches

- Intro to the Nuts and Bolts of Title IX Athletics and Equal Opportunities
- Accommodation of Interests & Abilities
- Scholarships
- **Benefits and Treatment Areas**

Compliance Requirement #3

Benefit and Treatment Areas

Benefit and Treatment Areas

The “Laundry List”



Equipment and
Supplies

Scheduling Games and
Practice Time

Travel and Daily
Allowance

Coaching

Academic tutors

Locker Rooms and
Fields, Courts, or Other
Facilities for Practice
and Competition

Medical and Training
Facilities and Services

Housing and Dining
Services

Publicity

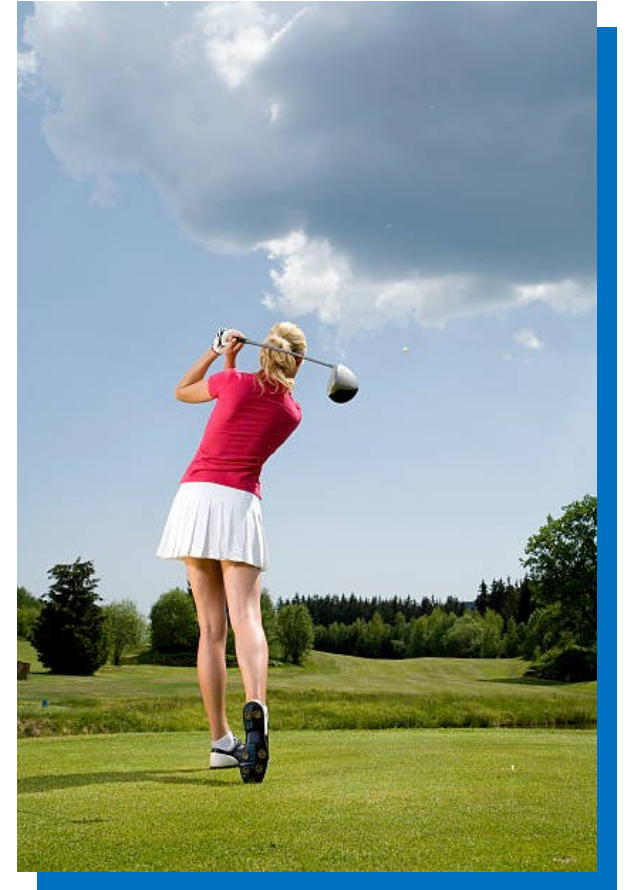
Recruitment

What is a disparity?

- There are going to be differences amongst the men's and women's program, but when is it a big enough difference to be a compliance concern?
 - Disadvantage *based on gender*
 - Depends on how many student-athletes it impacts
 - Depends on the benefit
- A disparity in of itself is likely not a Title IX violation, but a pattern or practice of multiple disparities may indicate discrimination and may rise to the level of a violation

A few more notes...

- You can consider the nature of particular sports
- You (and your coaches) can make reasonable professional decisions, but it cannot be discriminatory
 - Example: less expensive equipment
 - If the reason is “tradition” or “that is the way it has always been done” you may want to reconsider



Recruiting

1. Are coaches and other personnel given substantially equal **opportunities** to recruit women and men for athletic teams?
2. Is recruitment for men and women athletes **funded** in a way that is equivalently adequate to meet the needs of each men's and women's athletic program?



Title IX and the Money

- Funding does not have to be the same for the men's and women's overall program
 - Not dollar-for-dollar matching
 - But there are two program components where funding does matter: athletic scholarships & recruitment
- **What matters is the tangible benefits provided to students**
 - Evaluate what students *receive*, regardless of the source of the funds
 - Budget is intent



Donations and Fundraising

Donations

- If an entity provides benefits that creates a disparity, the school is on the hook to offset that disparity
 - Solution: Reallocate funds 
- If the benefits bring you closer to compliance, likely no disparity

Fundraising

- Men's and women's programs have equitable opportunities to fundraise (allow teams to use facilities, etc.)
- Fundraising creates a disparity...
 - Challenging because some coaches effort is not rewarded while other coaches lack of effort and lack of donors is not penalized.



Key Takeaways – Benefits and Treatment Areas

- Keep your eyes and ears open
- Meet with your student-athletes and coaches
- Monitor how coaches are spending their budget
 - Monitor fundraising efforts and successes
 - Have conversations with donors
 - Be prepared to provide offsetting benefits
- Have administrators travel with teams
- Identify and remedy immediate compliance concerns



Today's Recap and Themes

Have a written Gender Equity Plan

- Document! Document! Document!
- One that is current, supported by top leadership at the institution, and reviewed by department leadership continuously
- Have an administrator as a “point of contact/responsibility”
- In-house plan (committee) or external plan?
- Importance of start and end date

Control your own destiny

Federal judges and OCR investigators are not afraid to tell you how to run your athletic department.

Notice of Allegations

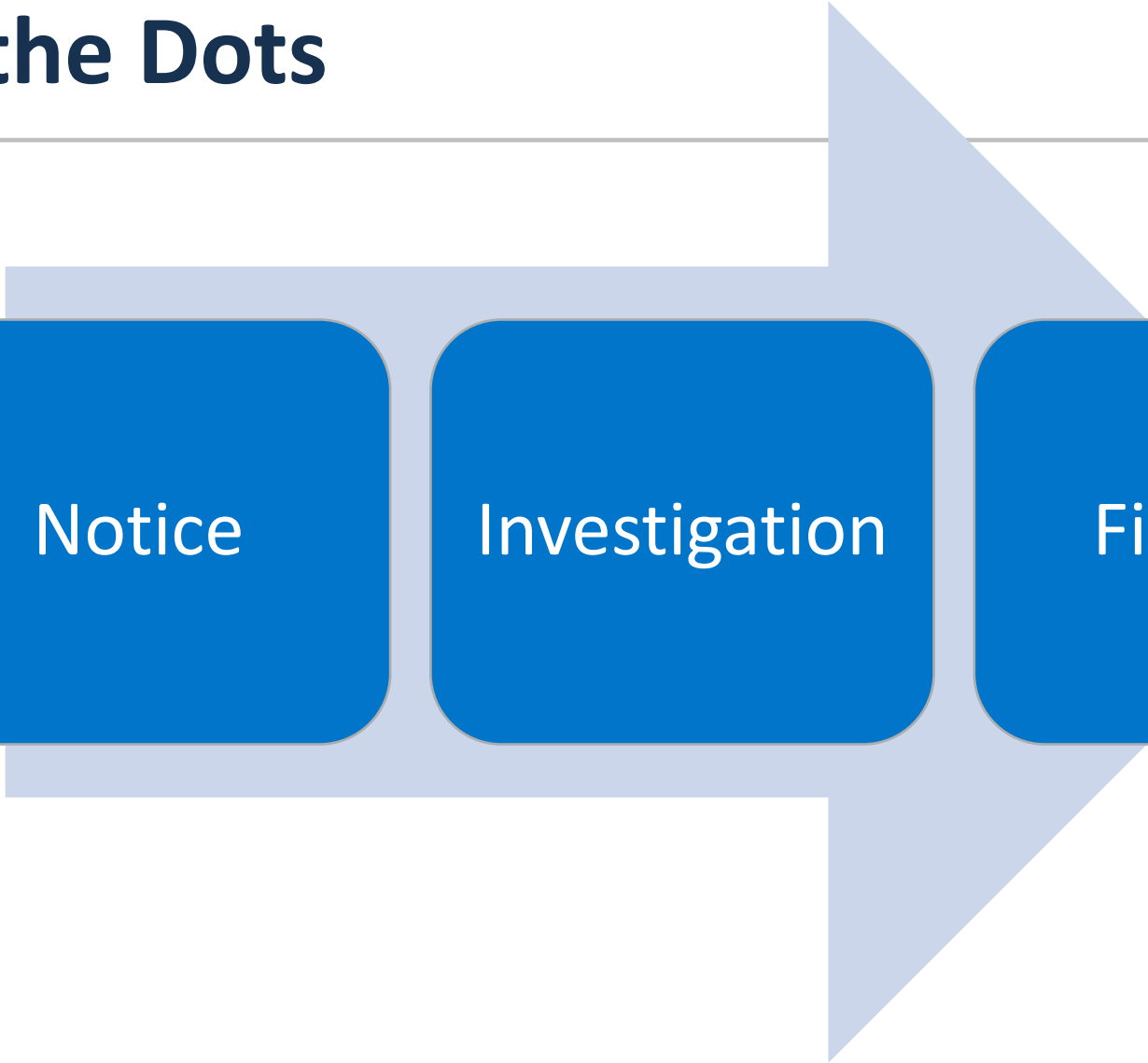
What is the Purpose?

- It is not just compliance.
- Institutional Ethic of Care:
 - Fairness
 - Integrity
 - Honesty
 - Transparency
 - Parties feeling heard

Who needs the Notice?

- Intake personnel should be conscious of what information is required in the formal complaint and the notice so they can help obtain the information.
- Investigators and decision-makers need it to establish their scope.
- Parties and advisors need it to help define what information is relevant and what information they wish to provide.
- Coordinators need the notice because it documents that they addressed all potential policy violations.

Connect the Dots



Notice

Investigation

Findings

Title IX Requirements

- 34 CFR 106.45(b)(2) – Must provide to the parties
 - Notice of the grievance process
 - Notice of the allegations of sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.
 - Identities of the parties involved in the incident, if known
 - Conduct allegedly constituting sexual harassment
 - Date and location of the alleged incident, if known

Title IX Requirements (cont.)

- Statement that the respondent is presumed not responsible for the alleged conduct
- Statement that a determination regarding responsibility is made at the conclusion of the grievance process
- Parties may have an advisor of their choice, who may be, but is not required to be, an attorney
- Parties and their advisors may inspect and review evidence gathered during the investigation process
- Inform the parties of any provision in the code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

Other Civil Rights Laws

- Title VII – None
- ADA/504 – None
- Title VI – None
- What's up with that? But check your policies, as they may be more specific.
- Consider: Should parties get less notice in cases involving other types of allegations? Is there a downside to giving more notice?

Allegations

- Be specific! Consider attaching the formal complaint.
- Include parties, dates, locations, and conduct.
- “Title IX Sexual Harassment” is too broad. Is it quid pro quo? Stalking?
- What specific sections of the policy might have been violated?
- Make sure to use the policy prohibitions that were in place at the time of the prohibited conduct.
 - You can’t get a ticket for running a stop sign that won’t get put up until tomorrow.

Allegations: Identities

- Can a complainant remain anonymous?
 - Under Title IX, the notice of allegations must include the name of the parties “who are known.”
 - If the institution knows who the complainant is, the name must typically be provided.
- Consider: How can a respondent properly prepare to defend against the allegations if they don’t know who the complainant is?

Allegations: Identities (pt. 2)

- Consider whether it is helpful to include the relationships of the parties.
 - Relationship to the institution
 - Student, employee, third party? This matters for Title IX jurisdiction.
 - Relationship to each other
 - May be important if there is a power differential underlying the reported conduct

Allegations: Conduct

- Be specific as to the types of sexual activities that are reported as non-consensual or to be violent.
 - Example: Sexual Assault can be anything from unwanted grinding on the dance floor to nonconsensual penetration.
- When handling discrimination cases, include all given examples of both direct discrimination and disparate treatment.

Allegations: Date and Location

- Date helps identify which policy language was in effect at the time of the conduct.
- Location helps to identify whether the conduct was in the context of your education program or activity.
 - Title IX: Does it fall within the scope of the regulated conduct?
 - Other civil rights laws: If it occurred off-campus, is it within the scope of jurisdiction in your policy?

Allegations: Incomplete Examples

- Respondent is alleged to have engaged in sexual harassment in violation of the Title IX Policy.
- Respondent is alleged to have engaged in unwanted oral sex with Complainant.
- Respondent is alleged to have engaged in stalking of Complainant between January and June 2022.

Allegations: Better Examples (1 of 2)

- If true as reported, Respondent may have violated the following provisions of the 2021-2022 Title IX Policy:
 - Section X.4 – Title IX Sexual Harassment – Sexual Assault
 - Section X.5 – Title IX Sexual Harassment – Stalking
- A copy of the 2021-2022 Policy is attached.

Allegations: Better Examples (2 of 2)

- Complainant reported that Respondent engaged in the following conduct:
 - On January 21, 2022, in Respondent's residence hall room, Respondent performed oral sex on Complainant without Complainant's consent.
 - On January 28, 2022, Respondent continued to text Complainant after being told to leave Complainant alone.
 - On January 29, 2022, Respondent followed Complainant from her residence hall to her class, then waited outside to talk to her.

To Whom Do You Send It?

- To both parties (and their advisors, if known).
- They both need the same information about allegations and policy violations.
- You can write two separate letters, or you can cc: the complainant on the letter to the respondent.
 - The complainant may find it jarring to receive a letter addressed to the respondent.
- Pro tip: Choose a format that facilitates a repeat of the same information in both letters, regardless of recipient.

Incomplete Formal Complaints

- Formal complaints for purposes of Title IX must allege conduct that, if true, would constitute Sexual Harassment.
 - If it's an “unwelcome conduct” prong, or stalking is alleged, the impact is an element of the formal complaint.
 - Initial assessment may require that the formal complaint be amended to include necessary information prior to sending Notice.
- Outside the Title IX context, “formal complaints” aren't necessarily required. Check your policy for specifics.

What if I'm not sure about...

- If you are considering whether to include a potential policy violation, be careful not to fall into the trap of pre-adjudicating cases before issuing notice.
 - Initial assessment, yes. “This could potentially constitute...”
 - Pre-adjudication, no. “There is no way they will have the evidence to support this allegation...”
 - This is different from “There is no way these allegations can possibly constitute...”
- This is an art form, not a science.

Multiple Policies?

- If something could be both Title IX and Non-Title IX, note that in the notice. Respondents should understand that both definitions apply.
- If other policies might apply (e.g. prohibited relationships, acceptable use policy), consider including notice of these as well, even if they may not use the same adjudication process.

Things You Don't *Have* To Include...

- How to access supportive measures
- A reminder that retaliation is prohibited, including who to contact if retaliation occurs
- How to request an interpreter* for the party or their advisor
- How to request disability accommodations for the process
- Name of investigator(s) and how to raise concerns about bias or conflict of interest
- Lists of confidential resources
- Information on how to access an institution-appointed advisor if available at this point, in these circumstances

Amending Notice

- Investigators should consider themselves mandatory reporters.
- Any time they learn of a potential policy violation, they should report it to the Coordinator.
- The Coordinator should decide whether the conduct can be added to the current investigation. Factors to consider:
 - Same parties? Same type of conduct? Same policies?
 - More examples to demonstrate violations?
- Issue an amended notice so that investigators may ask questions about additional conduct that must be adjudicated.

At The End of the Process

- It is helpful to have the notice of allegations attached to the report.
- The notice will be what the decision starts with, to set forth the potential allegations and policy violations.
- The decision will be limited to the allegations and policy violations in the notice.
- Think of it like an electric current – the notice connects to the investigation, which connects to the report, which connects to the decision. The current can't grow between stages, but it can flow.

Office Structure and Training Requirements

What's Your Function?

- What are the functions your office is expected to handle?

Who performs the work?

- What are the different ways in which staffing can be accomplished?
- Remember:
 - Coordinators can't be Decision-Makers
 - Investigators can't be Decision-Makers
 - Coordinators can be Investigators
 - Coordinators and Investigators can do Intake
 - Anyone other than Decision-Makers can provide supportive measures
 - Anyone can do Informal Resolution
 - Anyone can do preventive education

What works best at each stage?

Outreach & Intake



Case Management



Grievance Process

Training Requirements - Overview

- Basic Training – See 34 CFR 106.45(b)(1)(iii)
 - Only required once
- Annual Clergy Training – See 34 CFR 668.46(k)(2)(ii)

Title IX Training Requirements

- All team members must be trained in:
 - Definition of sexual harassment as defined in 34 CFR 106.30(a)
 - Scope of the institution's education program or activity
 - How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable
 - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

Investigators & Decision-Makers

- Relevance, including the “rape shield protection” provided to complainants

Decision-Makers

- How to use any technology that might be used for a live hearing

Title IX says Stay Impartial!

- Training materials cannot rely on sex stereotypes
- Must promote impartial investigations
- Can reference evidence-based information or peer-reviewed scientific research into sexual violence dynamics, including the impact of trauma on sexual assault victims (see 2020 regulations preamble at 30254)
 - DO NOT use this information as a generalization for purposes of analyzing a particular allegation of sexual harassment
 - Remember:
 - Signs of trauma ≠ policy violation
 - No signs of trauma ≠ no policy violation

Annual Clery Requirements

- Individuals who conduct grievance proceedings regarding allegations of sexual assault, dating violence, domestic violence, and stalking must undergo annual training on:
 - The issues related to dating violence, domestic violence, sexual assault, and stalking; and
 - How to conduct an investigation and hearing process that protects the safety of victims [read: parties] and promotes accountability

Has My Team Been Trained Enough?

- Is the individual trained sufficiently to perform their role in compliance with the law, your policy, and your institution's ethic of care?
- If a lawsuit is filed, is the amount of training defensible?

Training Requirements – Campus Community

Comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that:

- Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome; and
- Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels.

Campus Community (1 of 4)

Comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that:

- Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome; and
- Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels.

Incoming students, new employees, and ongoing campaigns for both

See 34 CFR 668.46(a) and (b)(11)

Campus Community (2 of 4)

ASR must include a description of the institution's primary prevention and awareness programs for **all incoming students** and **new employees**, which must include:

- A statement that the institution prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking;
- The definitions of each of these crimes in the applicable jurisdiction;
- The definition of “consent” in reference to sexual activity, in the applicable jurisdiction;
- A description of safe and positive options for bystander intervention;
- Information on risk reduction

Campus Community (3 of 4)

Also:

- Information from 34 C.F.R. 668.46(b)(11), including:
 - Information regarding what to do if one experiences such crimes, and the confidentiality that will be provided to victims and other necessary parties;
 - Information to complainants about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within the institution and in the community;
 - Information about accessing protective and supportive measures;
 - An explanation of the procedures used to investigate and adjudicate cases involving allegations of such crimes; and
 - Information that the institution will provide complainants with written documentation of their rights and options, regardless of whether such crimes occurred on or off campus.

Campus Community (4 of 4)

ASR must also include a description of your ongoing prevention and awareness campaigns for students and employees regarding these categories.

See 34 CFR 668.46(j).

Outreach, Intake, and Triage

Case #1 – Mabel Ray

Dear Title IX Team,

One of my students, Mabel Ray, told the class during a discussion that she is a survivor of sexual assault. I don't know any more than that, but I thought I would pass it along.

Sincerely,

Professor Kim

Tips for Outreach

- Use a template
- Link to policy/procedures
- Offer supportive measures and a discussion of options
- Include a scheduling link
- No retaliation
- Second attempt: give a deadline to respond or the case will be closed (but can always be reopened)

Intake Meetings with Complainants

- Information about the resolution process
- Discussion of Title IX jurisdiction
- Potential discussion of definitions
- Information about the interactions between the parties
- Supportive measures
- Protection from retaliation
- “I need to provide you with information, and it would be helpful for you to provide me with information. Would you like me to talk about the process first? Or would you like to share your concerns with me first? Either is fine, and if you can’t decide, I’m happy to help.”

Initial Assessment

- Goal: Get enough information to determine if they are speaking to the right office.
 - Sexual Harassment?
 - Title IX Box vs. Offramp?
- If the person wishes to move forward with a Formal Complaint, what are the appropriate charges?

What is Trauma?

- The Substance Abuse and Mental Health Services Administration (SAMHSA) defines trauma as “a result from an event, series of events or set of circumstances that is experienced by an individual as physically or emotionally harmful or life-threatening and that has lasting adverse effects on the individual’s functioning and mental, physical, social, emotional or spiritual well-being.”
- The CDC defines trauma as "a physical, cognitive, and emotional response caused by a traumatic event, series of events, or set of circumstances that is experienced as harmful or life-threatening."

Trauma and Its Effects

- Trauma can affect the way an individual responds in the moment while an incident is occurring
- Trauma can affect the way an individual encodes memories while an incident is occurring
- Trauma can affect the way an individual decodes memories when trying to relate what happened

Intake: Being Trauma-Informed

- Encourage them to bring an advisor.
- Limit the number of times a person is required to tell their story. Initial assessment doesn't require all the details.
- Offer autonomy whenever possible.
- Take breaks when needed.
- If the meeting is in person, have water, snacks, and tissues available.
- Take excellent notes and give the person the opportunity to review and suggest revisions after the meeting.
- Document what is discussed and send it in a follow-up email to the person.

Supportive Measures

- Non-disciplinary, non-punitive individualized services
- Offered as appropriate, as reasonably available, and without fee or charge
- Available before or after the filing of a formal complaint or where no formal complaint has been filed
- Designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party
- Includes measures designed to protect the safety of all parties or the educational environment, or deter sexual harassment
- Kept confidential except as necessary to provide the support

Supportive Measures: Examples

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Other similar measures

Protection from Retaliation

- Protecting parties and witnesses from retaliation is important to ensure the integrity of the process
- Retaliation means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege under Title IX, 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
- Many policies will offramp retaliation allegations; check your policy!

Options to Discuss

- Make a report
 - Title IX
 - Law enforcement (if potentially criminal)
 - Both or neither
- Get supportive measures
- Formal Complaint
 - Informal Resolution
 - Formal Resolution
- Does any other policy apply?
- The choice that you make now can change later.

Intake for Respondents?

- Yes – this typically occurs once Respondents are aware of the situation. (They are not usually notified until a no-contact order or notice of allegations is issued.)
- What is the difference between intake for complainants and respondents? There isn't any difference!
 - Respondents may have experienced trauma as a result of the same incident.
 - Respondents may have prior trauma that affects the way they respond to this incident.
 - Respondents may have claims against the Complainant for sexual harassment.
 - Respondents may have claims that can be reported to law enforcement.
 - Etc.

So... Let's Do It!

- Intake with Mabel

Case #2 - Camden

Dear Title IX Coordinator,

There is a girl on campus named Mabel who is stalking me and telling people I raped her. I didn't rape her. I don't know what to do. Can you help me?

Thanks,

Camden

What Do We Do With Camden?

- Short Intake

Back to Mabel – “Formal Complaint”

“On October 1, 2025, Camden sexually assaulted me. I would like to make a formal complaint.”

What are we missing?

What do we do next?

Back to Camden – “Formal Complaint”

On October 1, 2025, I had consensual sex with Mabel. Beginning October 2, 2025, she began to spread rumors that I had sexually assaulted her. She also stalked me. I want her to be suspended.

What are we missing?

What do we do next?

Triaging this Cases

- How do we communicate with Mabel? With Camden? Any differences?
- Structuring the Notice of Allegations

Writing Investigative Reports

Goals

- Report must “fairly summarize” the relevant evidence
- Allows the parties “equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint”
- Transparency
- Accuracy
- Completeness
- Neutrality

Good Reports Start With Good Summaries

- No magic formula
- Try to draft them near the time of the interview
- Summarize the discussion with as much detail as possible
 - Include policy and procedure discussions
 - Include questions asked and answered
 - Use quotations when possible

Good Interview Summaries (cont.)

- Must be readable
- Must be accurate
- Incorporate feedback promptly
 - Otherwise you might forget what was said or what the feedback is referencing
- Put the work in
 - If your summaries are accurate and readable, they may become the bulk of your report (depending on your institution's report format)
 - Putting the work in now may save you time later

Templates

- Save time
- Makes it easier to review
- Provides some consistency between reports

At the Beginning

- Type “Confidential” at the top?
- Appropriate Heading (Preliminary/Final Investigation Report)
- Case Identifiers – Party names* and case number
- Date
- Name of Investigator
- Page numbers

Introduction

On April 24, 2025, Mabel Betty (“Mabel” or “Complainant”) filed a Formal Complaint alleging that Moxie Runner (“Moxie” or “Respondent”) engaged in Sexual Assault: Fondling in violation of the University’s Title IX Policy (“the Policy”). On April 25, 2025, both parties were provided Notice of the Allegations, and Melissa Carleton was identified as the Investigator. This report explains the procedural history of the investigation, fairly summarizes the information collected by the Investigator, and attaches all directly related evidence as Attachments 1-14. Consistent with the Policy, this report does not contain findings of fact or credibility assessments.

Procedural History

- Your Decision-Maker is required to include this, so make it easy on them!
- Include:
 - Procedural steps taken from the receipt of the Formal Complaint
 - Notifications to the parties
 - Interviews with parties and witnesses
 - Site visits
 - Methods used to gather other evidence

Notifications to the Parties

- In the procedural history phase, I typically suggest summarizing the Notice of Allegations, any amendments, and any other notifications provided to the parties
- We will include verbatim language from the Notice of Allegations later!

Interviews – Who Did You Interview?

- Name
- Date(s)
- Relationship to the parties
- Who named them as a witness?

Interviews – Who Didn't You Interview?

- The Investigator contacted Bob to schedule an interview, but Bob:
 - Did not respond to two requests
 - Scheduled an interview but did not attend and did not respond to attempts to reschedule
 - Declined to participate via email on XXXX
- Complainant asked for Bob to be interviewed, but indicated she had not seen or spoken with Bob since before she met Respondent. The Investigator determined that Bob did not have any relevant information regarding the allegations under investigation and therefore declined to interview Bob.

Evidence

- Formal Complaint
- Notice of Allegations
- Interview Summaries
- Any other evidence attached to the report
- Was there other evidence that is not attached but should be discussed?
 - “Respondent provided a copy of the phone book. However, neither Complaint nor any of the witnesses are listed in the phone book, and the phone book does not contain information relevant to the investigation. Therefore, the Investigator declined to attach this evidence to the report.”
 - “Investigator contacted campus safety to obtain surveillance footage, but was told that because the request was made more than six months after the incident, the footage was no longer available.”

Reviews and Response

- When were the parties provided the opportunity to review the evidence?
- Did the parties provide written responses and if so, when?
 - Attach them, and integrate throughout the report as may be appropriate.
- Was any additional investigation undertaken as a result of the responses?
- When was the final investigative report distributed?

Think: What Else?

- Is there anything else that happened procedurally in this case that is:
 - Unusual
 - Confusing
 - Something the parties don't seem to understand well about your process
- If so – explain it

Notice of Allegations (Cont.)

- This should be included as a verbatim copy of what was provided to the parties
 - Allegations
 - Policy provisions at issue
 - Attach notices to the report
- Amended versions should also be included

Provisions of Policy At Issue

- Use the policy language in place at the time of the reported conduct
- Cut and paste the definitions that may have been violated
- Include any other definitions that may be relevant:
 - Consent
 - Incapacitation
 - Force
 - Course of Conduct
 - Etc.

Summarize the Information!

- Chronological – according to how the investigation was conducted
 - This is the easiest method
 - If you put in the entire interview summaries, no need to also attach them
- Chronological – according to when the allegations were reported to have occurred
- By theme according to allegation

Helpful to Include

- Agreed-Upon Timeline
- Listing of Undisputed Facts
- Listing of Disputed Facts

Citation, citation, citation!

Formatting Tips

- Number all pages sequentially starting at 1
- Be consistent in indentations and justification
- Choose a citation format that is brief and easy, and be consistent
- Use block quotes for excerpts at least 50 words in length

Drafting Tips

- Avoid pronouns for clarity
- Judgment words should be there because they are quotes – check your adjectives and adverbs for this
- Be consistent with verb tense
- Make sure all dates are accurate

Footnotes

- Slang words
- Campus-specific words or explanations
- All citations?

Checklist

- Is the appropriate policy language included in the document?
- Can you look at the report and tell immediately where a particular piece of evidence can be found?
- Is all of the evidence in the attachments?
- Would a reader perceive bias from your report?
- Have you included everything that your policy requires?

Examples for Discussion

- Bob said the Complainant sat down, but Dave said the Complainant stood up.
- Complainant said she was on the couch, but then later she moved to the floor.
- Respondent was clearly drunk out of his mind.
- Complainant and Bob do not like each other.
- Complainant and Bob used to date, but broke up.
- Bob believes Respondent is lying about what happened.

Thank You

