

It's On Us Too: Understanding & Navigating Title IX as an Academic Advisor

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Overview

Many institutions are grappling with new Title IX requirements and the issues surrounding the reporting and investigation of relationship violence and sexual misconduct. Many academic advisors are now mandated reporters, yet have little knowledge of the policies, procedures, and support services available to both complainants and respondents. As advising may be the only area where students have sustained contact with a representative of the institution, academic advisors may find themselves on the forefront of these difficult conversations. In this webinar, advisors will receive a primer on Title IX legislation, student rights and responsibilities in the investigation process, and the resources available to support all parties involved, as well as a review of what being a “mandated reporter” means and the implications for the advising relationship.

Pre-Webinar Activity Suggestions

The following case studies will be discussed during the presentation. Consider the following questions in relation to each scenario.

- Does the advisor have a legal obligation to report this interactions?
 - What are the next steps the advisor should take?
 - What options can the advisor present to the student?
1. You are an academic advisor and a student enters your office and is visibly distraught. The student alludes to an “incident” but keeps referencing that he wishes to keep it confidential.
 2. You are an academic advisor and a student enters your office and is visibly distraught. The student describes an incident wherein she was walking back home at night and was sexually assaulted on campus grounds. She knows the attacker but refuses to name this person and is requesting that you keep this confidential.
 3. An SLS instructor provides you with an essay written by a student which references a sexual assault that he experienced while he was a high school student. The report does not name names and is generally vague. In a meeting with you, the student confirms that the essay is a legitimate account of being forced to perform sexual acts against him will by another individual. The student does not wish to discuss the essay further with you and requests that you keep it confidential.

Additional Information

Example Phrase to Use When Breaking Confidentiality

As a member of this institution, I am considered a mandated reporter. You shared something with me that must be reported to the proper authorities. I will do my best to respect your privacy, but I can not guarantee confidentiality. I am here to help you in this process and would like to talk with you about some of the other services offered on campus. Before going any further, did you have any questions for me?

General Guidelines for Reporting - Be prepared!

- Know who to contact so that you appear competent to the student
- Look for the signs that a conversation is heading toward a mandated reporting instance and provide the student with an understanding of your status as a mandated reporter
- Practice scenarios with supervisors and other advisors to hone your understanding of specific advising situations
- Get to know the person who handles Title IX reporting

References and Recommended Resources

Davis, T. & Ritchie, M. (1993). *Confidentiality and the school counselor: A challenge for the 1990's*. *The School Counselor*, 41(1), 23-30.

Koocher, G. P., & Keith-Spiegel, K. (2009, January 01). "What should I do?" - 39 ethical dilemmas involving confidentiality. Retrieved January 29, 2017, from <http://www.continuingcourses.net/active/courses/course049.php>

Lake Sumter State College webpage on Title IX and Sexual Harassment - <http://lssc.edu/about/Pages/Safe%20LSSC/titleix.aspx>

Michigan State University

Policy on Relationship Violence and Sexual Misconduct - <http://www.titleix.msu.edu/>

Charter of the Office of University Ombudsperson -

<https://msu.edu/~ombud/About/Charter%20of%20the%20Office%20of%20the%20Ombudsperson%20at%20Michigan%20State%20University.pdf>

It's on Us website - <http://itsonus.org/>

Title IX of the Educational Amendments of 1972 –

<http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title20-chapter38&saved=%7cMjAgVVNDIDE2ODE6IFNleA%3D%3D%7cdHJIZXNvcnQ%3D%7cdHJ1ZQ%3D%3D%7c10%7cttrue%7cprelim&edition=prelim>

United States Department of Education Office for Civil Rights - <https://www2.ed.gov/about/offices/list/ocr/index.html>

Clery Act Resources - <https://www2.ed.gov/admins/lead/safety/campus.html#statute>

United States Department of Education Office for Civil Rights. (2014, April 29). *Questions and Answers on Title IX and Sexual Violence*. Retrieved January 29, 2017, from <https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

United States Department of Education Office for Civil Rights. (2001, January 19). *Revised sexual harassment guidance: Harassment of students by school employees, other students, or third parties title ix*. Retrieved January 29, 2017, from <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>

University of California – Los Angeles, (2017, January 01). *If you've been accused*. Retrieved February 2, 2017, from <http://www.sexualviolence.ucla.edu/If-Youve-Been-Accused>

University of Illinois - Champaign Urbana. (2017, January 01). *FAQs about reporting*. Retrieved January 29, 2017, from <http://wecare.illinois.edu/faq/reporting/>

Conversation Building Skills Resources

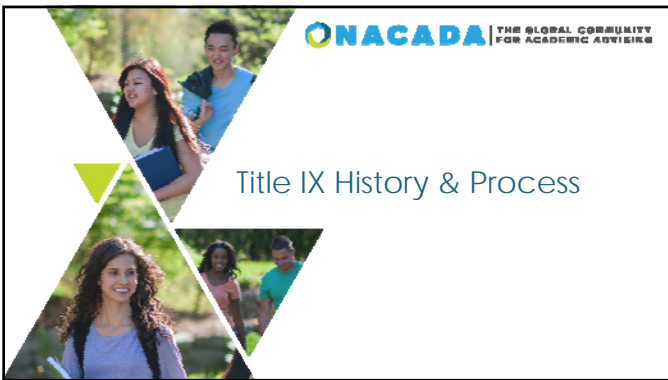
- Stone, D., Patton, B., & Heen, S. (2000). *Difficult conversations: How to discuss what matters most*. New York, N.Y: Penguin Books.
- Patterson, K. (2002). *Crucial conversations: Tools for talking when stakes are high*. New York: McGraw-Hill.

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Title IX History & Process

Overview

- History of Title IX
- The Investigation Process
- Reporting
- Advisors & Confidentiality

What is Title IX?

- Title IX of the Education Amendments of 1972
- 2011 Dear Colleague Letter
 - Guidance on school’s responsibility to investigate and address sexual violence;
 - Guidance about Title IX requirements and how they relate to sexual violence;
 - Discusses proactive efforts schools can take to prevent sexual violence;
 - Discusses connections between Title IX; FERPA; and the Clery Act;
 - Provides examples of remedies and enforcement strategies.
- 2001 Guidance (OCR)



Isn't it an athletics issue?



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Supplemented by...

- Family Educational Rights and Privacy Act (FERPA)
- The Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (“Clery Act”)



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Definitions

- Complainant - eligible to file a Complaint to report a violation of this policy
- Respondent - the person against whom a complaint or allegation is reported
- **Responsible** - when the evidentiary standard meets the level appropriate to the situation at hand



Procedures in place

- Disseminate a notice of nondiscrimination
- Designate at least one employee as the "Title IX Coordinator"
- Adopt and publish grievance procedures



When is it considered that a school "knows"?



- When a responsible employee knew
 - In the exercise of reasonable care should have known
- Can be direct or indirect



When might a student contact you?

Predictors

- Who the victim is
- Type of incident
- Context of incident
- Who the offender is
- Consequence for the victim



What do you report?

All relevant details!

But wait! What about confidentiality?



The Investigation

- Nature of investigation
 - Conducting interviews of complainant, respondent, and any witnesses
 - Reviewing law enforcement investigation documents
 - Reviewing student and personnel files
 - Gathering and examining other documents/evidence
- Other investigations



Evidentiary Standards

- Beyond a Reasonable Doubt
 - Criminal litigation
- Civil Litigation
 - Clear and Convincing
 - Preponderance of the Evidence

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Interim Step & Remedy Impact

- An escort so that the individual can move safely between classes;
- Ensuring the complainant and respondent do not share classes or extra-curricular activities
- Extra time to complete or re-take a class or withdraw without penalty
- Dismissal or suspension from the institution
- Requiring alternate arrangements

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Advisors, Confidentiality, and Mandated Reporting



Advisors and Confidentiality

- Tensions Between Trust and Reporting
- Levels of Protected Speech
- Three Scenarios
- Suggestions for Breaking Confidentiality
- Training/Practice Suggestions

Tensions – Required to Report

“When a school knows or reasonably should know of possible sexual violence, it **must** take **immediate** and appropriate steps to investigate or otherwise determine what occurred...OCR deems a school to have notice of student-on-student sexual violence if a responsible employee knew, or in the exercise of reasonable care should have known, about the sexual violence.”



Tensions – Individual Privacy vs. Campus Safety

“If the student continues to ask that his or her name not be revealed, the school should take all reasonable steps to investigate and respond to the complaint consistent with the student's request as long as doing so does not prevent the school from responding effectively to the harassment and preventing harassment of other students.”



Levels of Protected Speech

Privacy vs. Confidentiality vs. Privilege

- **Privacy**
 - The basic entitlement of people to decide how much to share with others
- **Confidentiality**
 - Professional obligation not to discuss information about a client
- **Privilege**
 - Protection from disclosure in legal proceedings



Scenario #1

- Does the advisor have a legal obligation to report this interactions?
- What are the next steps the advisor should take?



Scenario #2

- Do you have to report this?
- What options can you present to the student?



Scenario #3



- Do you have to report this?
- What options can you present to the student?

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Example Phrase to Use When Breaking Confidentiality

As a member of this institution, I am considered a mandated reporter. You shared something with me that must be reported to the proper authorities. I will do my best to respect your privacy, but I can not guarantee confidentiality. I am here to help you in this process and would like to talk with you about some of the other services offered on campus. Before going any further, did you have any questions for me?

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Breaking Confidentiality

How to Break Confidentiality

- Decide who to inform and the sequence of informing
 - Should you first inform the student?
- Best practice is to explain the necessity of breaking confidentiality
- Avoid “beating around the bush”
- Anticipate negative reactions

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Davis, T. & Ritchie M. (1993). Confidentiality and the school counselor: A challenge for the 1990s.



General Guidelines

- Be prepared
 - Know who to contact
 - Anticipate conversation is heading toward a mandated reporting instance
 - Practice scenarios with supervisors and other advisors
 - Get to know the person who handles Title IX reporting



Common Student Questions When Making a Title IX Report

- *Will I be punished if I was drinking or using drugs when the incident happened?*
- *Will the person named in the report be contacted?*
- *Can I remain anonymous?*
- *Do you (the advisor) have to tell?*



What if the Student is the Respondent?

- Innocent until proven guilty
- Avail the student of campus resources:
 - Legal services
 - Counseling
 - Title IX office
 - Respondent services
- The same rules of mandated reporting and confidentiality apply



Summary

- History of Title IX
- The Investigation Process and Reporting
- Tensions Between Trust and Protected Speech
- Breaking Confidentiality
- Training/Practice Suggestions

Questions



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