

Pepper-Freeh Group Higher Education Webinar Series: Investigating and Resolving Sexual Assaults on Campus



March 13, 2013 | John K. DiPaolo, Matthew Dolan, Gina Maisto Smith, Angelo A. Stio III



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Moderator: Matthew Dolan



757-773-8574
dolan@freehgroup.com

- Managing Director, Freeh Group International Solutions, LLC and former general counsel, United States Naval Academy
- Member of the Pepper/FGIS Education Risk Counseling, Investigations and Litigation Services Team
- Counsels clients on internal investigations, compliance reviews, NCAA issues, financial improprieties, bribery and corruption
- Experience in criminal prosecutions, investigations, ethics, physical security, strategic planning, governance, and compliance
- Served on crisis action teams as legal advisor and planner for operations around the world.

Panelist: Gina Maisto Smith



215-981-4490
smithgm@pepperlaw.com

- Partner in the White Collar Litigation and Corporate Investigations Practice Group of Pepper Hamilton LLP, resident in the Philadelphia office
- National practice focused on the institutional response to all aspects of sexual misconduct matters
- Dedicated nearly 20 years in the Philadelphia District Attorney's Office to the investigation and prosecution of thousands of cases related to sexual violence, domestic violence, child abuse and homicides
- Frequently called upon to advise colleges and universities about sexual misconduct policies, changes in law, and investigations into allegations of sexual misconduct including sexual violence

Panelist: Angelo A. Stio III



609.951.4125
stioa@pepperlaw.com

- Partner in Pepper Hamilton's Princeton, New Jersey Office and an experienced civil trial attorney
- Member of Pepper Hamilton's Litigation and Dispute Resolution Department and the Pepper/FGIS Education Risk Counseling, Investigations and Litigation Services Team
- Counsels higher education clients on issues relating to risk management, internal investigations, board governance, the First Amendment and privacy
- Former University Advancement administrator.

Panelist: John K. DiPaolo



- Deputy Assistant Secretary for Policy, Office for Civil Rights, U.S. Department of Education
- Leads the team of attorneys and staff who craft OCR's policy guidance for schools and colleges, such as the Sexual Violence Dear Colleague Letter.
- Has extensive experience in all aspects of education including administration, policy reform, law, and teaching.
- He has managed a foundation overseeing charter schools and served in the general counsel's office of an educational services company.

The Program

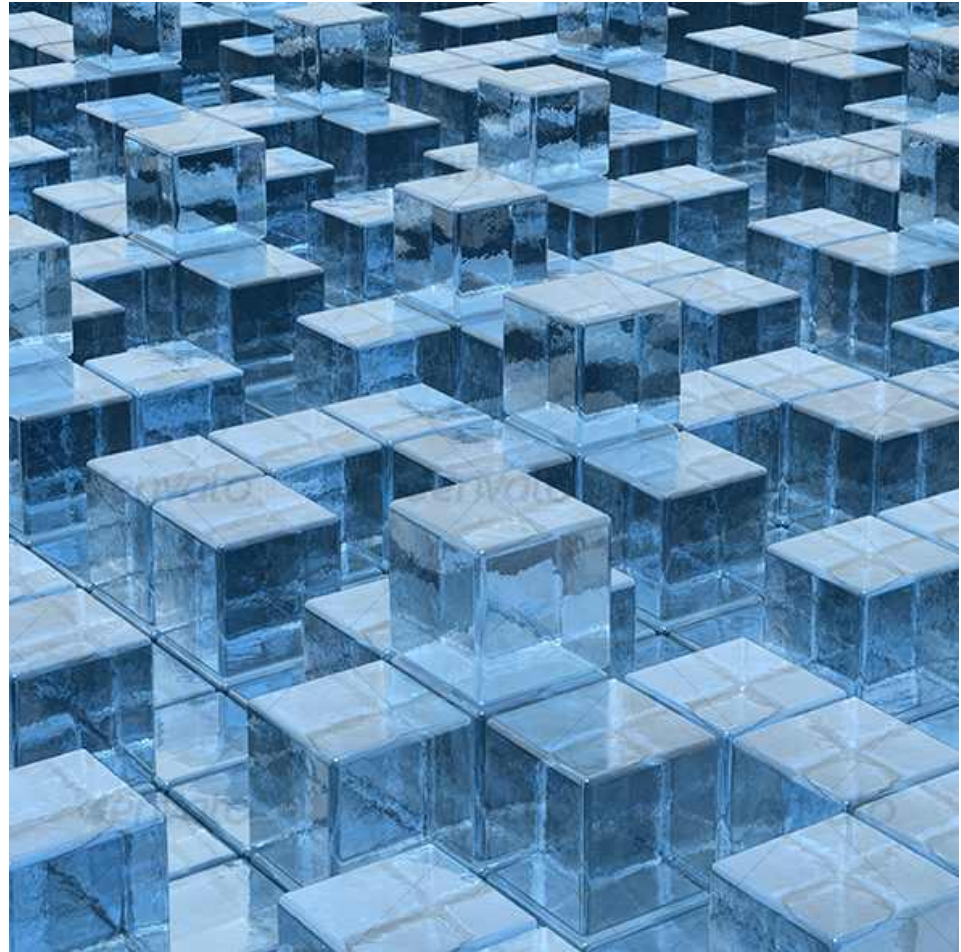
- Setting the Stage
- Office for Civil Rights
 - The State of the Union
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- Preferred Practices in:
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The Program

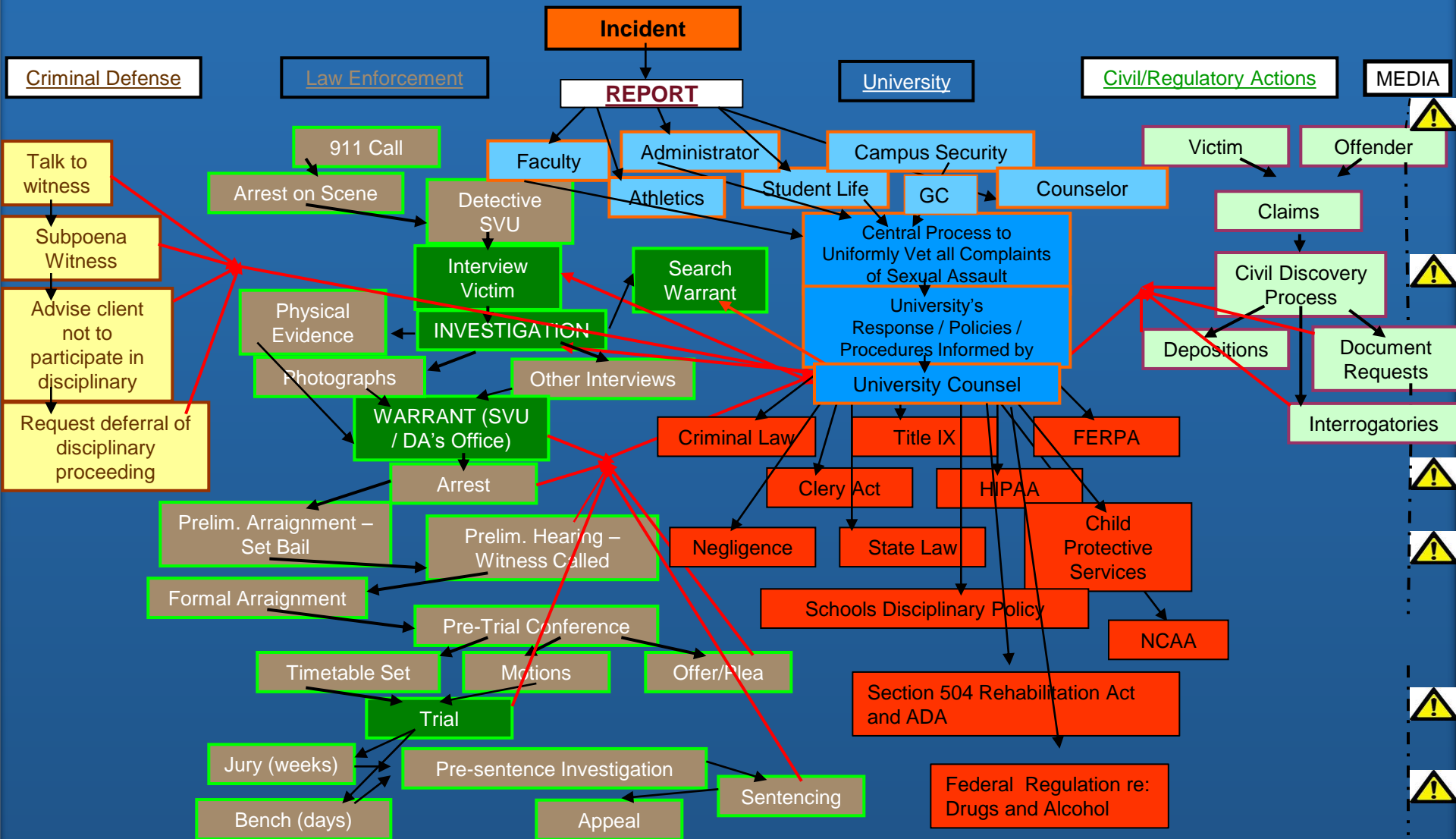
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Setting the Stage: The Context

- Regulatory Framework
- Dynamics of Sexual Misconduct
- Individual Culture, Climate, History, Resources, Policies, Procedure, and Personnel of the Institution



Setting the Stage: The Challenge of the Context



Setting the Stage: The Regulatory Framework



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 education program or activity receiving Federal financial assistance.”
- Prohibits sexual harassment, sexual violence and all forms of sexual misconduct
- Once school **knows or reasonably should know** about student or employee harassment that creates a hostile environment, school must take **immediate and corrective action** to:
 - Eliminate the harassment
 - Prevent its recurrence
 - Address its effects

Setting the Stage: The Regulatory Framework



“Knows or reasonably should know:

- “Responsible employee”
 - has the **authority** to take action to redress harassment;
 - has the **duty** to report sexual harassment or other misconduct; or
 - is someone an individual **could reasonably believe** has this authority or responsibility
- School must provide prompt and equitable grievance procedures
- School must provide appropriate interim remedies to address safety and well-being of both parties prior to the final outcome of the investigation

Setting the Stage: The Regulatory Framework



- *2001 Revised Sexual Assault Guidance*
 - Doing nothing is always the wrong response
 - Depending on the circumstances, there may be more than one right way to respond
- April 4, 2011 Dear Colleague Letter
 - Examine current policies and procedures on sexual harassment and sexual violence and implement changes as needed
- Voluntary Resolution Agreements
 - Not binding guidance
 - Lessons learned

Setting the Stage: The Regulatory Framework

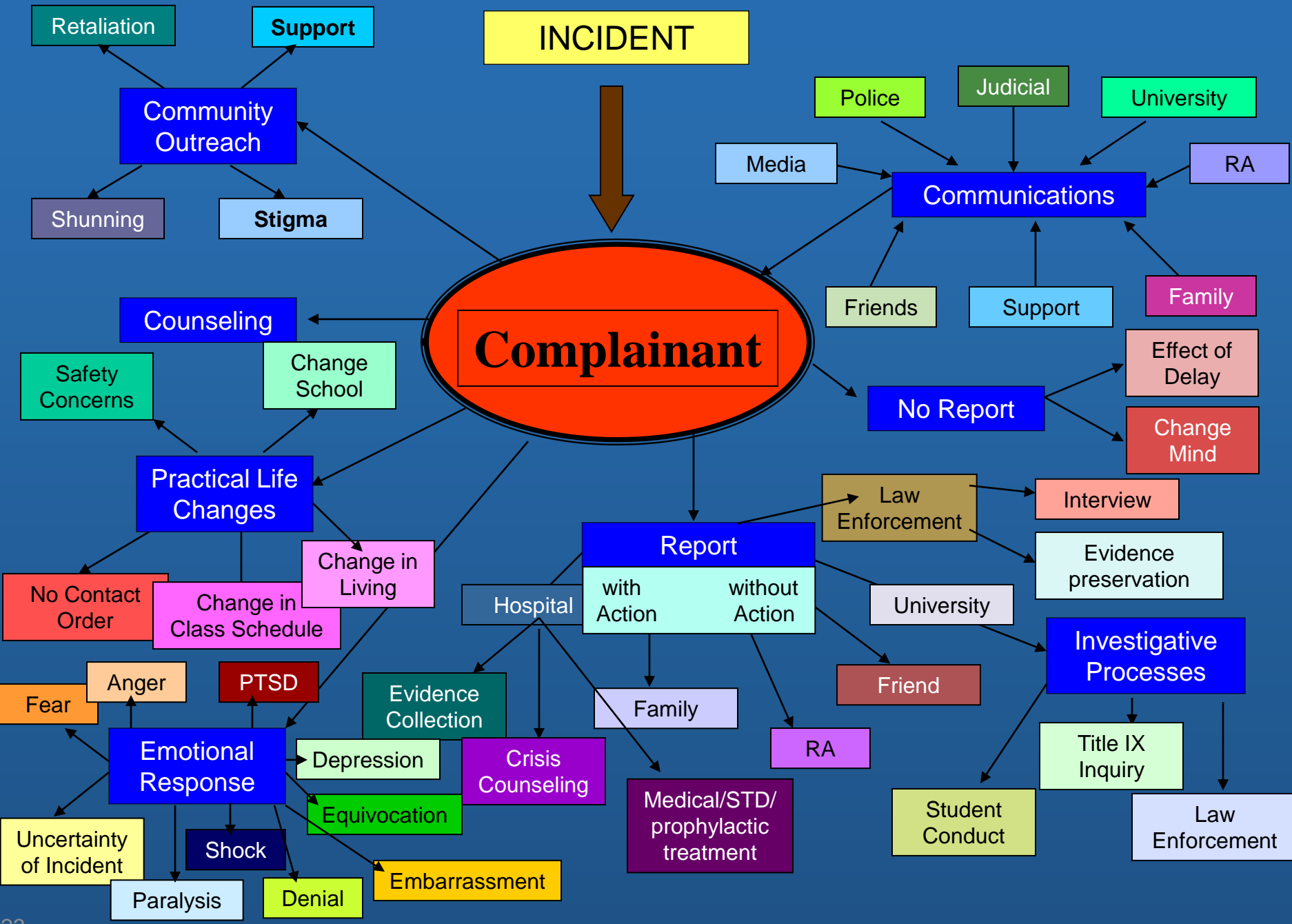
High Level Mandates:

- Notice of Non-discrimination
- Title IX Coordinator
- Grievance Procedures
 - Prompt and equitable requirements
 - Notice of grievance procedures
 - Adequate, reliable, and impartial investigation of complaints
 - Designated and reasonably prompt time frames
 - Notice of outcome
- Education and Prevention
- Remedies and Enforcement
- Training

Setting the Stage: The Dynamics of Sexual Assault



- Nature of victimization
- Counter-intuitive victim behaviors
- Delay in reporting
- Wavering level of cooperation/recantation
- Role of drugs and alcohol
- Most sexual assaults committed by someone known to the victim
- Most sexual assaults are achieved through threats, intimidation, and exploiting vulnerabilities or incapacitation
- Likelihood of repeat offenders and undetected predators
- Concerns over false reports
- Little to no physical or forensic evidence
- Most common defense is consent
- Decisions based solely on credibility
- Inability to completely eliminate occurrence
- Emotionally charged and incendiary in nature



ALLEGATION



Student
Conduct

Law
Enforcement

Title IX
Investigation

School

Parents

Peers

Information

Legal Rights

Community
Reaction

Media

Questions
?????

Support

Shunning

Attorney

Emotional Response

Practical Life Changes

Fear

Shame

Embarrassment

Financial

No Contact
Order

Change in
Class Schedule

Change
Living

Denial

Anger

CONSEQUENCES

Sanction

Arrest

Fine

Exoneration

Expulsion



Setting the Stage: Your Institution



- No such thing as “best practices”
- Each school is unique in:
 - Institutional values
 - Policies and procedures
 - Resources
 - Personnel
 - Public vs. Private
 - Culture
 - Challenges
- Assess history and current climate
- Evaluate coordination of systems and personnel
- Understand campus perceptions
- Correct misinformation
- Provide consistent tone and message in policy and procedures

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OCR: The State of the Union



- Administration's commitment to education
- Partnership approach between schools and OCR
 - How OCR can help
- Sexual violence continues to be a top priority
- 2012 year in review
 - Schools are doing good work



Things to avoid

- Focusing so much on the rights of the accused that you neglect the rights of the victim
- Chilling reporting of sexual violence by requiring complainants to sign a “no contact” order merely for filing a complaint
- Failing to recognize the full range of types of sexual misconduct, such as stalking or electronic harassment
- At large universities, having a network of Title IX coordinators without centralized oversight

OCR: Lessons Learned



Things to avoid (cont'd)

- Having Title IX coordinators who only provide informal remedies involving no discipline, yet have no connection to the formal process that will be needed in some instances
- Giving a full-time faculty member responsibility for investigating complaints – there isn't time in a professor's day for this kind of responsibility
- Lacking a formal process of coordination between a university police department, which may receive complaints of sexual violence, and the university's procedures and resources for addressing sexual violence
- Failing to have timeframes for investigation and resolution of complaints
- Failing to keep records of complaints and outcomes



2001 Guidance:

- Judgment and common sense of teachers and school administrators are important elements of a response that meets the requirements of Title IX
- Doing nothing is always the wrong response
- Depending on the circumstances, there may be more than one right way to respond

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Preferred Practices in Structure



- Role of the Title IX Coordinator
- Centralized Review Process (Title IX Team)
 - Coordination of Information for:
 - Investigation/review/assessment
 - Support services
 - Clearly delineated options for proceeding under the appropriate grievance procedure
- Reporting Responsibilities
 - Clear employee/staff/faculty policies re: duty to share
- Education and consistency in message re:
 - Confidential resources
 - Reporting options

Preferred Practices in Structure: The Title IX Coordinator



- Coordinates the recipient's compliance with Title IX
- Responsibilities include:
 - Oversee all Title IX complaints, remedies, processes, training, education and prevention programming
 - Identify and address any patterns or systemic problems
 - Be available to meet with students and employees as needed
- Should not have other job responsibilities that may create a conflict
- A school may designate more than one coordinator
 - Must have clearly delineated responsibilities
 - Must have titles reflecting supporting role

Preferred Practices in Structure: The Title IX Coordinator



- Title IX coordinator must have appropriate authority, access, autonomy, and resources
- Oversight vs. in the weeds
- Structural considerations
 - Reporting structure and chain of command
 - Where do they sit?
- Use of deputy coordinators
 - Subject matter (policy, prevention, case management)
 - Procedure based (student, faculty, employee processes)
- Dedicated investigator?

Preferred Practices in Structure: Incident Response and Management



1    Incident

2  Incident reported verbally to:

Administration

Campus LE/PS

Athletics

Student/Friend

Hotline

Clery: CSA

Faculty

Student Life

General Counsel

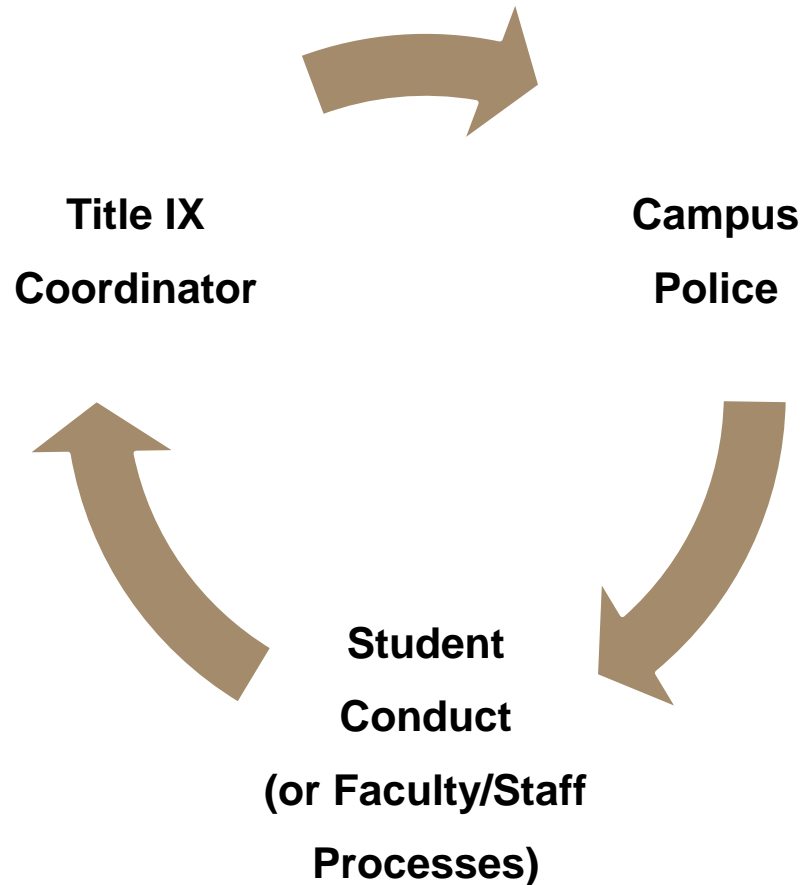
Health Services

Office of President

3  Incident report form filed

4  Central process to uniformly vet
all complaints of sexual assault

Preferred Practices in Structure: Central Process/Review Team

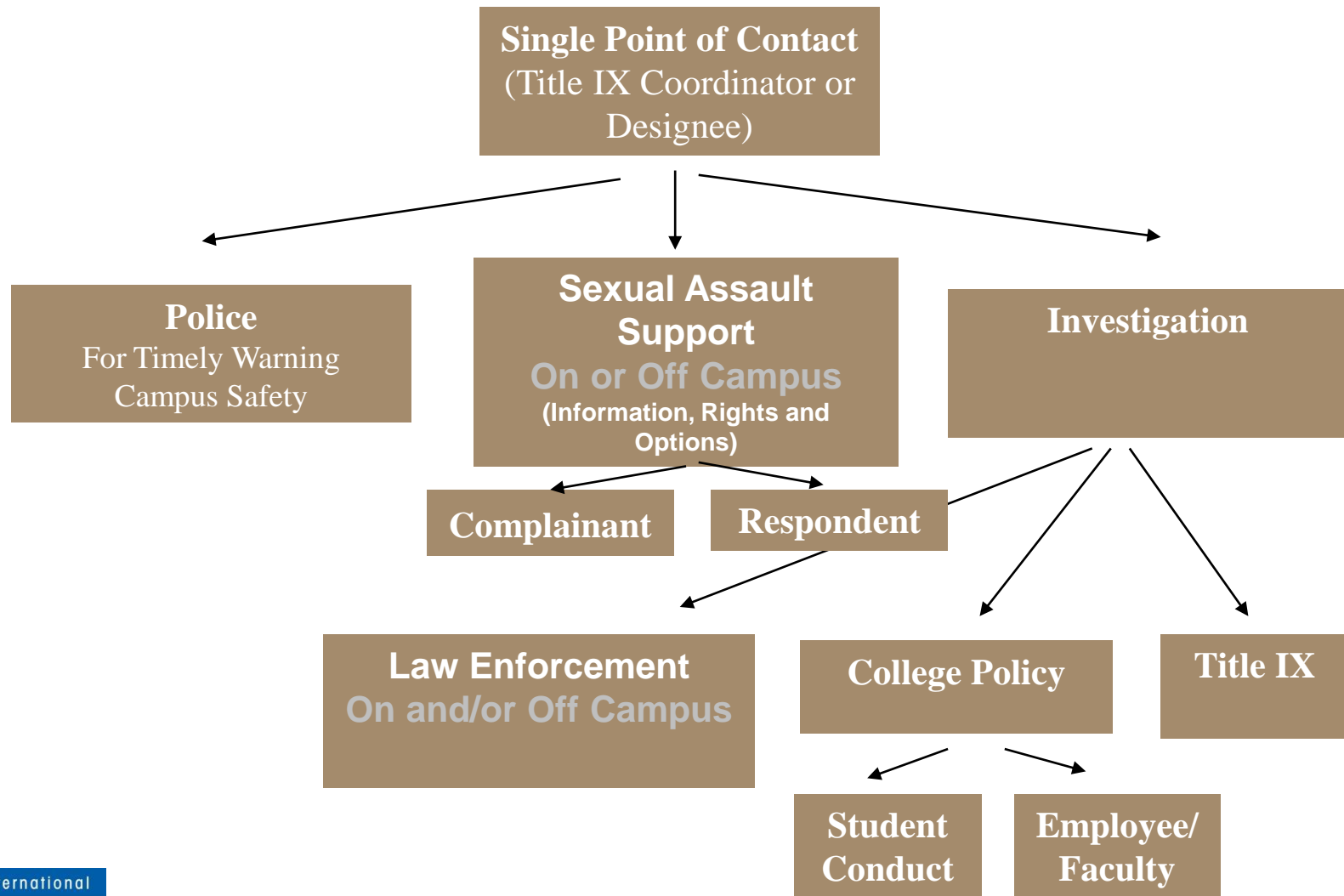


Preferred Practices in Structure: The Title IX Team



- Core stakeholders
 - Title IX Coordinator
 - Student conduct
 - Campus safety/police
 - Human resources
 - Dean of faculty
- Additional stakeholders
 - Campus mental health
 - Health Center
 - Clergy
- Clearly delineated roles and responsibilities
- Plan in advance
- Coordinated communication
- Documentation and record-keeping
- Template communications
 - Cooperative complainant
 - Reluctant complainant
 - Third party report

Preferred Practices in Structure: A Coordinated Response



Preferred Practices in Structure: Resources vs. Reporting Options



- Confidential Resources
 - Medical Services
 - Mental health/counseling
 - Clergy
 - Rape crisis counselor
- Structural Challenges:
 - Employees with multiple hats, e.g., counselor *and* administrator
 - Ombuds
- Reporting Options
 - Emergency for safety, physical or emotional
 - Dedicated campus access points
 - Title IX
 - Campus safety/police
 - Student conduct
 - To *any* school employee
 - Anonymous
 - Law enforcement

Preferred Practices in Structure: Reporting Responsibilities



- School is on notice if a responsible employee knew or should have known about harassment
- Identify and train all “responsible employees” regarding reporting responsibility
- Understand difference between “responsible employee” and campus security authority under Clery
- Responsible employee
 - has the **authority** to take action to redress harassment;
 - has the **duty** to report sexual harassment or other misconduct; or
 - is someone an individual **could reasonably believe** has this authority or responsibility

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Preferred Practices in Policy and Procedures: Practical Questions



- Does your policy communicate your values?
- Does your policy thoroughly implement the law?
- Does your policy provide practical procedures?
- Does your policy incorporate an awareness of the dynamics of sexual violence?
- Does your policy create a perception of bias as to what kind of response a complainant chooses?
- Does your policy incorporate effective tools to address safety and retaliatory conduct?
- Does your policy provide for balanced access to support for the respondent?
- Are your policies and procedures effectively communicated to your constituents?
- Are administrators well informed about policy and responding in a timely and consistent fashion?

Preferred Practices in Policy and Procedures: Initial Considerations



- Location
 - Alphabetical?
 - Multiple policies?
 - Umbrella policy?
- Language
 - Tone
 - Value-laden terms
 - Consistency
- Organization
 - Modular
 - Intuitive
 - Redundant
- Web-based
 - Searchable
 - Links
- Supported by
 - Flow Charts
 - Clear step by step guidance
 - FAQ
 - Consistent definitions
- Alignment

Preferred Practices in Policy and Procedures: Key Components



- Institutional values
- Notice of non-discrimination
- Purpose
 - Set behavioral expectations
- Scope
 - Applies to all community members
 - On and off campus
- Privacy vs. confidentiality
- Resources
 - Confidential
 - Campus
 - Community
- Interim remedies
- Reporting options
 - Emergency assistance for safety, physical and emotional well-being
 - *All* employees directed to share with central review process
- Investigative/review process
 - Complainant no consent
 - Threshold determination?
- Procedures for resolution
 - Based on role of the respondent
 - Must be in alignment
- Timeframes for investigation, hearing, and appeal

Preferred Practices in Policy and Procedures: Key Components



- Definitions
 - Sexual harassment
 - Forms
 - Examples
 - Sexual violence
 - Tie to sexual harassment
 - Prohibited conduct
 - Consent
 - Incapacitation
 - Intimate partner violence
- Prior sexual history or pattern evidence
- Consensual relationships
 - Prohibited?
 - Discouraged?
- Child protection policies
 - Mandatory reporter obligations
- Protections
 - No retaliation
 - Alternative presence
 - No cross-examination

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Preferred Practices in Investigations



- Choice of language:
 - Investigation
 - Review
 - Assessment
- Who investigates?
 - Student conduct
 - Campus safety/police
 - Attorney
 - Mental health professional
 - Dedicated Title IX investigator
 - EEO/Human Resources
 - External investigator
- Considerations:
 - Training & experience
 - Impartiality
 - Culture of campus
 - No conflict in role
 - Cannot serve dual role of victim support and impartial investigation
 - Should not be fact-gather and fact-finder
 - Comprehensive interview techniques
 - Evidence Collection

Preferred Practices in Investigations



- School takes the lead
 - *Not* the burden of the complainant or respondent
- Goals:
 - To gather the most robust set of facts
 - To listen with an earnest intent to understand
 - To learn, not assume
 - To tend to the individual
 - Search for corroboration
- Key tasks:
 - Manage expectations
 - Regular and timely communications
- Documentation/Report
 - Verbatim/“quotes”
 - Areas of agreement and disagreement
 - FERPA/state law re: criminal investigation records
- Coordination with law enforcement/campus safety and security

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Preferred Practices in Adjudication: Grievance Procedures



- Preponderance of the evidence standard
- Impartial hearing officers to resolve complaints
- Parties should not be allowed to question or cross-examine each other during the hearing
- Due Process:
 - Ensure due process rights of the accused do not restrict or unnecessarily delay the Title IX protections for the complainant
- Balance in Process
 - Complainant and accused entitled to the same opportunities to have others present during a disciplinary proceeding
 - Provide parties with the same rights in regard to the participation of lawyers
 - If a school provides for appeal of the findings or remedy, it must do so for both parties
 - Consistent with FERPA, notify both parties, in writing, about the outcome of both the complaint and any appeal
- Procedure to preserve documentation of all proceedings

Preferred Practices in Adjudication: Grievance Procedures



- Defining conduct, consent, and interplay with alcohol
 - Provide clear standards for use by adjudicator
 - Consent
 - Burden on the initiator
 - Affirmative communication?
 - Intoxication, impairment & incapacitation
 - Where do you draw the line?
- Timeframes
 - 60 days is guideline
 - Key is regular and timely communication
 - Can extend when circumstances require additional time
- Composition of the hearing board

Preferred Practices in Adjudication: Grievance Procedures



- Using prior misconduct of the respondent
 - Clear criteria for when it may be considered:
 - Responsibility or sanction only?
 - Pre-hearing review
 - “Weigh... whether there have been other harassment complaints about the same individual (DCL, p. 5)
- Using prior sexual history of the complainant
 - Clear criteria for use may remove barrier to reporting
 - Pre-hearing review
 - “The alleged perpetrator should not be given access to communications between the complainant and the counselor or information regarding the complainant’s sexual history.” (DCL, p. 11, n. 29)

Preferred Practices in Adjudication: Checklist for Training Adjudicators



- Title IX mandates
- University policies
- Elements of conduct violations
- Dynamics of sexual assault
- Counter-intuitive victim behaviors
- Understanding disclosure and recantation
- Components of a competent investigation
- Typical sources and types of evidence
- Applying the preponderance of the evidence standard
- How to evaluate credibility: demeanor, interest, detail, corroboration, common sense
- Evaluating consent
- Understanding the role of alcohol: intoxication, impairment, and incapacitation
- Addressing the admissibility and relevance of facts (prior sexual history or pattern evidence)
- Identifying bias and ensuring objectivity
- Proper questioning techniques
- Proper deliberation techniques
- Appropriate sanctions
- Self-care re: secondary trauma
- Confidentiality of proceedings
- Recusal or conflict of interest

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Your Homework



- Identify your team
- Assess your policies
- Assess your structure
- Review prior cases
- Engage your community
 - Students
 - Faculty
 - Staff
 - Leadership
 - Local partners
- Make a plan with measurable action items:
 - Task force
 - Consider external policy audit
 - Constituency survey
 - Training and education schedule
- Continue the conversation
 - one person at a time

Questions & Answers



The Voluntary Resolution Agreements



Voluntary Resolution Agreements



- September 2010 Notre Dame College
- November 2010 Eastern Michigan University
- July 2011 University of Notre Dame
- June 2012 Yale University
- July 2012 Xavier University

Combined Elements

- ❑ To adopt a “**preponderance** of the evidence” standard;
- ❑ To clarify a Complainant’s option to **pursue a criminal complaint and require a written confirmation of Complainant's choice**
- ❑ To allow, in extraordinary circumstances, to **proceed despite a law enforcement** investigation where a **threat to the safety** of the Complainant and/or other students exists.
- ❑ To advise Complainants that the **University will investigate allegations of sexual harassment**, and take appropriate action, even if the complainant does not wish to pursue the disciplinary process, but that any response by the University may be hindered by the complainant’s wishes for anonymity and/or inaction;
- ❑ To issue “**No contact**” orders to all parties to an alleged sexual assault promptly after the University receives notice of a complaint.
- ❑ To **initiate discussions with the complainant about academic, extracurricular activities, housing and on-campus dining arrangements** of the parties to determine if adjustments in schedules or housing are necessary with minimal the burden on the complainant’s educational program;
- ❑ To **provide both parties** the opportunity to present witnesses and other evidence, and equivalent notice of the process, access to peer support, information about procedures and **written notice of the outcome**;
- ❑ To include **a reference to cyber harassment** in the University’s IT Policy
- ❑ To **prohibit actual or threatened retaliation** or any act of intimidation by third parties as well as accused students; and
- ❑ To make the medical, counseling and pastoral **resources available to complainants also available to accused** students and witnesses.

Combined Elements

- To provide for **alternative arrangements** for complainants who do not want to be present in the same room as the accused during the disciplinary hearing.
- To allow the complainant to initiate a **case review** upon the completion of the Disciplinary Hearing process
- To use **standardized, detailed and complete investigation reports**.
- To develop **written materials** summarizing the rights, under Title IX and the University's policies and procedures, of all victims of sexual harassment
- To **provide such materials** to anyone alleging sexual harassment **within 24** hours of receiving the complaint.
- To provide an **adequate, reliable, and impartial investigation** of all complaints, including the opportunity for the parties to present witnesses and other evidence
- To designate Title IX Coordinator(s) and clearly define their responsibilities
- To thoroughly train all who will be directly involved **in processing, investigating, and/or resolving complaints**
- To develop and widely publish detailed grievance procedures that include:
 - How the procedures apply
 - How to file a complaint
 - With whom a complaint is filed
 - Definitions
 - Timeframes
 - Information on confidentiality
 - Information on retaliation

Combined Elements

- To widely publish a notice of nondiscrimination
- To establish a **committee of students** to identify strategies for broader compliance
- To include **programs on Title IX** in student orientations
- To designate an “**on-call**” **contact** for victims of sexual assault
- To develop and **widely publish a document for victims of sexual assault** providing support information including the “on-call” contact
- To develop and **widely publish a second document on the definitions** of sexual harassment and assault and the grievance procedure
- To conduct **climate checks with students** to assess the effectiveness of remedial measures
- To **review matters handled solely by law enforcement for violations of Title IX requiring further remedies**
- To hold **campus events** raising awareness for Title IX

Title IX Coordinator

- ❑ To designate a University-wide Title IX Coordinator and deputy coordinators to ensure compliance with Title IX
- ❑ To publish, annually in print and on-line, the name, email, and telephone contact information, and duties of the University Title IX Coordinator and deputy coordinators
- ❑ To ensure coordination with the deputy coordinators and appropriate student services offices on campus to: (1) track trends on campus and address any patterns or systemic problems; (2) assess the overall efficacy of the coordination among these various services; and (3) solicit feedback on the efficacy of the overall response to sexual misconduct
- ❑ To provide information to individuals regarding their Title IX rights, the University's formal and informal grievance processes, the availability of interim measures during an investigation of a grievance, and the ability to file a complaint with Yale Police Department ("YPD")
- ❑ **To conduct a semiannual review of all formal and informal Title IX complaints brought to the University Title IX Coordinator and deputy Title IX coordinators, before the University-Wide Committee on Sexual Misconduct, any other grievance procedures, and/or independently investigated by the University in order to identify and address any patterns or systemic problems**
- ❑ To communicate with YPD regarding the University's obligations under Title IX and serving as a resource on Title IX issues.
- ❑ To notify complainants in criminal cases of their right to file a Title IX complaint with the University in addition to pursuing a criminal process
- ❑ To provide complainants with written information describing the University's Sexual Harassment and Assault Response and Education Center, the University-Wide Committee on Sexual Misconduct, and the Title IX Coordinators;
- ❑ To provide the University Title IX Coordinator with synopses of sexual misconduct complaints
- ❑ **To provide the University Title IX Coordinator with access to YPD records of its investigation and findings regarding Title IX investigations, so long as it does not significantly compromise any pending criminal proceeding**
- ❑ To periodically assess the efficacy of the University's overall Title IX compliance efforts

Grievance Procedures Addressing Sexual Misconduct

- ❑ To form the University-Wide Committee on Sexual Misconduct (“UWC”) as its primary mechanism to promptly and equitably respond to complaints of sexual misconduct under Title IX both informally and formally
- ❑ **To launch, and continue to widely publicize on an annual basis, a website specific to the UWC to raise awareness about its function and availability**
- ❑ To ensure that if the University creates a new Title IX grievance process, it affords the following:
 - ❑ Broad notice to the University community of the procedures applicable to a complaint of sexual misconduct;
 - ❑ Applicability of the process to student and third party complainants;
 - ❑ **If informal process(es) are available, the option for complainants to bypass an informal process for a formal process at any point, per the complainants’ discretion;**
 - ❑ **No complainant will be required to have face-to-face interaction with an alleged perpetrator in any informal resolution or mediation involving a complaint of sexual assault;**
 - ❑ Designated timeframes for major stages of the process;
 - ❑ Adequate, prompt and impartial investigations of allegations of sexual misconduct including:
 - ❑ Not delaying the University’s investigation of possible sexual misconduct under Title IX until related criminal processes are concluded;
 - ❑ Equitable information gathering from both the complainant(s) and the alleged perpetrator(s);
 - ❑ Use of the preponderance of evidence standard in determining whether sexual misconduct occurred;
 - ❑ Availability of interim measures to protect the parties during the University’s investigation of possible sexual misconduct. **Such interim measures should not disproportionately impact the complainant(s).**
 - ❑ Assurances that the University will take steps to stop any sexual misconduct if found, prevent its recurrence and remedy its effects on those impacted;
 - ❑ Assurances that retaliation is prohibited and that retaliation will be handled promptly and equitably if it occurs;
 - ❑ Notice in writing to the relevant parties regarding the outcome of the process including whether sexual misconduct was found and a description of the University’s response; and
 - ❑ Equitable rights to both parties throughout the process, including the right to appeal, if applicable.
- ❑ **To strengthen students’ understanding, through education and enforcement, that they are subject to the Undergraduate Regulations both on and off campus**
- ❑ **To revise and expand its definition of sexual misconduct and its definition of hazing in its Undergraduate Regulations**

Training

- ❑ To conduct and continue to hold annual training for all Title IX Coordinators and UWC members on: (1) the University's obligations under Title IX; (2) its regulations regarding sexual misconduct; relevant resources available on campus; (3) the UWC's procedures, including accepting, processing and investigating complaints of sexual misconduct; (4) interacting with victims of sexual misconduct; (5) gathering relevant evidence and assessing it in the Title IX context; (6) the importance of confidentiality, fair process, impartiality, and applicable legal standards; (7) safety considerations when determining interim measures and disciplinary sanctions; (8) and other topics it deems relevant.
- ❑ To conduct annual training for relevant YPD officers on: (1) interacting with victims of sexual misconduct, (2) the resources available on campus, and (3) the protocol for referring students to the Sexual Harassment and Assault Response and Education Center
- ❑ To conduct annual training for relevant YPD officers on reporting and referring information and complainants to the University Title IX Coordinator and/or the UWC
- ❑ To conduct and continue to hold annual training for Residential College Deans and Masters, Sexual Harassment and Assault Response and Education Center staff, and Freshmen Counselors on: interacting with victims of sexual misconduct, the Undergraduate Regulations regarding sexual misconduct, resources on campus, the UWC, reporting requirements and other topics it deems relevant.
- ❑ The University has conducted and will continue to hold annual training for freshmen students on: (1) the Undergraduate Regulations regarding sexual misconduct, (2) resources on campus, (3) the UWC, reporting requirements, and (4) other topics it deems relevant such as bystander intervention.
- ❑ **To hold trainings for sophomore students, including on bystander intervention, and reaffirm the topics presented to freshman students**
- ❑ **To conduct and continue to hold annual training for leaders of registered student groups and varsity teams on the critical role student organizations play in creating and maintaining a safe learning and living environment at the University. The training will continue to include information on the University's alcohol and hazing policies and the Undergraduate Regulations including those related to sexual misconduct, resources on campus, and other topics it deems relevant.**
- ❑ **To train other populations and/or shift the focus of trainings as identified through applicable assessments and analyses discussed throughout the Agreement**



Sexual Harassment and Assault Response and Education Center

- ❑ The University's Sexual Harassment and Assault Response and Education Center (SHARE) will serve as the initial place of referral for students seeking services and options as the result of sexual misconduct
- ❑ To commit to ensure that SHARE has adequate resources to provide services to students, such as its 24/7 'on-call' counselors, and take actions to raise the awareness of SHARE'S functions and availability through a comprehensive website

University-wide Climate Assessment

- ❑ To conduct periodic assessments (at least annually) of campus climate with regard to gender discrimination, sexual misconduct and Title IX, seeking input from students and student groups, including women's groups, as well as a wide variety of other sources
- ❑ To consider such assessments in identifying future actions to ensure that it maintains an environment that is safe and supportive to all students and in compliance with Title IX

Miscellaneous

- ❑ **To continue to implement actions intended to improve observance of appropriate behavioral norms by campus organizations and at organized student events**
- ❑ **To continue its educational efforts to promote responsible drinking**
- ❑ To continue its efforts to expand its student leadership councils to promote norms of responsible conduct, and including efforts to create a council of fraternity and sorority leaders
- ❑ **To continue to study and address issues related to hazing and initiations by student organizations**
- ❑ **To maintain all records of informal and formal complaints, consistent with the UWC's procedures**, and all retained records and actions taken in response to complaints brought to the University and deputy Title IX Coordinators.



Title IX Grievance Procedures

- ❑ To submit to OCR either new or revised Title IX grievance procedures to specifically address complaints of sex discrimination and provide for the prompt and equitable response and resolution of complaints alleging sex discrimination, including student-on-student discrimination
- ❑ To provide notice that the procedures apply to complaints alleging sex discrimination by employees, students, or third parties
- ❑ To explain how to file a complaint pursuant to the procedures
- ❑ To provide information regarding the name or title, office address, and telephone number of the individual with whom to file a complaint
- ❑ To define and provide examples of what types of actions may constitute sex discrimination
- ❑ To ensure adequate, reliable, and impartial investigation of all complaints
- ❑ To afford the opportunity for the parties to present witnesses and other evidence
- ❑ To assure the Title IX Coordinator's supervision and oversight of the University's Title IX grievance process
- ❑ To provide timeframes for the major stages of the investigation, with a provision indicating that the University will comply with law enforcement requests for cooperation, that such cooperation may require the University to temporarily suspend the fact-finding aspect of a Title IX investigation while the law enforcement agency is in the process of gathering evidence, and that the University will promptly resume its Title IX investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process
- ❑ To clarify that the University will implement appropriate interim steps during the law enforcement agency's investigation period to provide for the safety of the victim(s) and the campus community and to avoid retaliation
- ❑ To assure that victims are aware of their Title IX rights and available resources, such as counseling and the local rape crisis center, as well as their right to file a complaint with a local law enforcement agency
- ❑ **To assure that the University will not use mediation and other informal mechanisms to resolve allegations of sexual assault, and to only offer an informal process to resolve other types of sexual harassment complaints on a voluntary basis when appropriate**, with notification of the right to end the informal process at any time and begin the formal stage of the complaint process
- ❑ To clarify that the University will not require a student victim filing a complaint with the Campus Police or Title IX Coordinator to sign a no-contact order on the sole basis that the student filed a complaint
- ❑ To clarify that in instances where a complainant requests confidentiality, the University will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, and **where the University cannot take disciplinary action against an alleged harasser because of a complainant's insistence on confidentiality, it will pursue other steps to limit the effects of the alleged harassment and prevent its recurrence**
- ❑ To provide written notification to the parties of the outcome of the complaint
- ❑ To notify the parties of their opportunity to appeal the findings
- ❑ To assure that an appeal will be conducted in an impartial manner by an impartial decision-maker
- ❑ To assure that the University will take steps to prevent recurrence of any discrimination, with examples of the range of possible disciplinary sanctions and the types of remedies available to address the discriminatory effects on victims and others
- ❑ To issue a statement that Title IX prohibits retaliation against any individual who files a complaint under Title IX or participants in a complaint investigation
- ❑ To, within 60 calendar days of receipt of the OCR-approved, revised Title IX grievance procedures, adopt and implement the procedures and provide all students and employees with electronic or written notice regarding the new grievance procedures, together with information on how to obtain a copy of the procedures. The University, at a minimum, will make this notification through the University's website and electronic mail messages to employees and students, as well as by any other additional means of notification the University deems effective to ensure that the information is widely disseminated. The University may adopt and publish the procedures at an earlier date, and will then within such timelines as mentioned above, adopt and publish necessary amendments, if any, after receipt of the described response from OCR

Training for Title IX Coordinator and University Personnel

- ❑ To provide, within 45 calendar days of receipt of the OCR-approved, revised Title IX grievance procedures, Title IX training to its Title IX Coordinator, and any other coordinators, Campus Police staff, and any University Officials and administrators who will be directly involved in processing, investigating, and/or resolving complaints of sex discrimination or who will otherwise coordinate the University's compliance with Title IX
- ❑ To conducting training on the University's grievance procedures for Title IX complaints and provide attendees with instruction on recognizing and appropriately addressing allegations and complaints pursuant to Title IX
- ❑ To conduct training on sex discrimination and the University's responsibilities under Title IX to address allegations of sexually inappropriate behaviors, whether or not the actions are potentially criminal in nature, and the need for a process of coordination between Campus Police and the Title IX Coordinator.
- ❑ The conduct training on how to conduct and document adequate, reliable, and impartial Title IX investigations, including the appropriate legal standards to apply in a Title IX investigation, as well as how the University's responsibility under Title IX and the Clery Act differ.
- ❑ To conduct training that advises staff to ensure that victims of sexual offenses that are criminal in nature are aware of the University's Title IX obligations and its Title IX grievance procedures
- ❑ To develop an ongoing Title IX program for staff and faculty that will include annual training and annual written notices from the University to all staff and faculty.
- ❑ **To invite staff and faculty to participate in one or more offered in-depth training sessions and to participate in refresher sessions on an annual basis thereafter**
- ❑ To ensure that University staff and faculty are aware of any changes to the law, University police, and University practices in this area
- ❑ To conduct training that addresses the process for ensuring coordination between Campus Police and the Title IX Coordinator.
- ❑ To send staff and faculty annual notices from the University that addresses the topics described above
- ❑ To provide OCR with documentation that it implemented the above items within 15 calendar days. This includes a copy of the documents that the University adopted and provided notice of its revised Title IX grievance procedures, any agendas, outlines, handouts, and sign-in sheets from the training(s) provided to faculty and staff, a description of the qualifications of the presenters, a copy of the training program developed, and a copy of the notice sent out
- ❑ **To submit to OCR copies of the complete documentation of all sexual harassment investigations that the University conducted during the 2012-2013 and 2013-2014 academic years respectively, including but not limited to interview memoranda, investigation notes, evidentiary documents such as transcripts and records, written findings of fact and other conclusions, and appeal decisions**

Student-Focused Remedies

- ❑ **To add additional representative leaders from the student community to the Title IX Committee**
- ❑ The ensure that the Committee continues to take steps to identify strategies for ensuring that students understand their rights under title IX, as well as how to report possible violations of Title IX, and feel comfortable that the University officials to whom they make such reports will take them seriously and promptly and equitably respond
- ❑ To continue to identify **strategies for the prevention** of sexual harassment/sexual assault incidents, including outreach and educational activities, such as continuing the **requirement that all incoming freshmen take a course or attend a workshop that highlights the connection between alcohol abuse and sexual harassment and sexual violence**
- ❑ To offer a series of informational session(s) to students to ensure that they: (1) are aware of the University's prohibition against sex discrimination (including sexual harassment, sexual assault, and sexual violence); (2) can recognize such sex discrimination and sexual harassment when they occur; and (3) understand how and with whom to report any incidents of sex discrimination
- ❑ To offer sessions that cover the University's grievance procedures for Title IX complaints, as well as a general overview of what Title IX is, the rights it confers on students, the resources available to students who believe they have been victims of sexual harassment/assault/violence, and the existence of OCR and its authority to enforce Title IX
- ❑ **To provide these sessions as part of the annual student orientation for new students, annual refresher sessions for returning students, and annual residence life orientation for students residing in campus housing**
- ❑ To develop and submit to OCR a pamphlet on sexual harassment. The pamphlet will contain information on what constitutes sexual harassment, what to do if you have been the victim of sexual harassment, and contact information for on- and off-campus resources for victims of sexual harassment.
- ❑ To include in the pamphlet, information on how to file a complaint of sexual harassment with the University, how to file a separate complaint of sexual assault with the University, the name and contact information for the University's Title IX Coordinator(s) and a description of the Title IX Coordinator's role, information on how to obtain counseling and academic assistance in the event of sexual harassment, and information on what interim measures can be taken if the alleged perpetrator lives on campus and/or attends classes with the victim
- ❑ To post the above pamphlet, within 45 calendar days of receipt of written notification from OCR, on the University's website, included in the University's student handbooks and staff handbooks, discussed at all future student orientations, and distributed at any sex discrimination awareness events held in accordance with the above
- ❑ To widely post the key information contained in the pamphlet throughout campus buildings, in particular in residence calls, athletic facilities, student unions, and fraternity and sorority houses
- ❑ To distribute the pamphlet to each individual who makes a complaint of sexual harassment and/or assault

- ❑ To conduct, with the support and assistance of student group leaders on campus, annual climate check or series of climate checks with students on campus to assess the effectiveness of steps taken pursuant to this Resolution Agreement or otherwise by the University to ensure a campus free of sexual harassment, including sexual assault and sexual violence
- ❑ To develop a monitoring program to assess the effectiveness of the University's anti-harassment efforts, taking into consideration the recommendations and suggestions made by its Committee and the information gathered during the climate checks.
- ❑ To conduct, at or before the conclusion of each academic year, **an annual assessment of the effectiveness of the University's anti-harassment efforts. The assessment shall include:**
 - ❑ **Consultation with the Committee;**
 - ❑ **Student and faculty surveys and at least one public meeting each academic year to identify student and faculty concerns and to determine where and when harassment on the basis of sex occurs;**
 - ❑ **A review of all reports of harassment and University responses;**
 - ❑ **Evaluation and analysis of the data collected, including a disaggregated assessment of whether the reported incidents of harassment have increased or decreased in number and severity; and**
 - ❑ **Proposed recommendations for improvement to the University's anti-harassment program and timelines for the implementation of the recommendations**
- ❑ **To review campus police records for the 2010-2011 and 2011-2012 academic years and, for complaints of sexual assault/sexual violence that were treated solely as a criminal or disciplinary matter and/or where the Title IX Coordinator was not involved, the University's Title IX Coordinator will review the matter to determine whether the victim or the alleged perpetrator is still enrolled as a student and, if the incident(s) in question raise possible sexual harassment, take appropriate steps to address the harassment**
- ❑ To issue a letter to Student A **offering to reimburse her for counseling services** undergone from April 8, 2011 through the present that relate to sexual harassment at issue in the complaint, to be paid within two weeks of Student A's production to the University's Title IX Coordinator of supporting documentation, such as billing invoices, receipts, cancelled checks, or other similar records of Student A's **out-of-pocket costs for the counseling, and reimbursement of the out-of-pocket costs for individual counseling twice a month by a licensed therapeutic counselor of Student A's choice for one year from the date of this Agreement**, also to be paid upon Student A's production of supporting documentation of the cost of the counseling to the University's Title IX Coordinator
- ❑ **To take appropriate measures within one week to protect Student A in the event that the male student at issue in the above-referenced complaint returns to the University at any time during Student A's enrollment, which could include some or all of the following: (1) the enforcement of a "no contact" order prohibiting the male student's contact with Student A, directly or through a third party; (2) prohibiting the male student's enrollment in the same courses, academic activities, and extracurricular activities in which Student A is enrolled; and/or (3) the designation of a contact person for Student A on campus should the male student approach Student A or otherwise violate the no-contact order**

Key Themes: Voluntary Resolution Agreements



- Student-focused remedies:
 - Include in task force membership
- Remedial measures in:
 - Title IX procedural requirements
 - Training and education
 - Reporting/implementation
- Annual “climate checks” of student body to gauge effectiveness of remedial measures
- Title IX Coordinator to review campus police records for violations of Title IX and respond
- Coordinate with local law enforcement to ensure Title IX compliance in instances of reported criminal conduct
- Provide participants with Title IX rights and resources and take any necessary steps to ensure their safety and safety of campus community
- College to pay for complainant’s counseling expenses
- Use of informal processes for resolution

Thank You!



Matthew Dolan
757-773-8574
dolan@freehgroup.com



Gina Maisto Smith
215-981-4490
smithgm@pepperlaw.com



Angelo A. Stio III
609.951.4125
stioa@pepperlaw.com



John K. DiPaolo

For more information, visit

www.pepperlaw.com or

www.freehgroup.com

