



Title IX Coordinator Training Online Course Seminar November 29, 2018

Melinda Grier
Melinda Grier Consulting

Janet P. Judge,
Holland & Knight LLP



Today's Program

Case Study Issue Spotting Q & A

The NACUA logo and footer, identical to the one on the first slide, located at the bottom of this slide.

Proposed Regulations:

- 60 Day Notice and Comment
- After the Notice and Comment Period Ends.
- What to do now?
- Handling Public Relations.



But first, a poll:

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

Case Study:

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



How Would You Respond?



Case Study

- On a Wednesday in March, two weeks before the start of spring break, the University's Title IX Coordinator, Leia Smith, passes Professor Anne Gray, Undergraduate Advisor for the English Department, in the hall.
- Prof. Gray asks Ms. Smith if they could talk "off the record" about a something a student shared with her in confidence.



How should Ms. Smith respond?

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



Case Study

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

Case Study

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

Case Study

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



Case Study

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



Case Study

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

Interim Measures

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



What if ...?

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

Case Study: Campus Safety & Police

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



Case Study

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



What if...?

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



Questions?

Note

The content of this presentation is to provide news and information on legal issues and all content is provided for informational purposes only and should not be considered legal advice.

The transmission of information in this presentation does not establish an attorney-client relationship with the recipient. The recipient should not act on the information contained in this presentation without first consulting retained legal counsel.

If you desire legal advice for a particular situation, you should consult an attorney.