



SGBM Investigator Training

JOEL AURE
TITLE IX COORDINATOR
SKIDMORE COLLEGE
SEPTEMBER 27, 2019

Acknowledgement

- ▶ This training was adapted from the training provided by Julia Green from Harter Secrest & Emery in September 2017.

Overview

- I. Process Overview
- II. Scope: Formal Complaint & Investigation Plan
- III. Outreach and Communication
- IV. Investigating
- V. Points to Consider
- VI. Case Law Lessons
- VII. Investigations
- VIII. Interview Summaries & Reports
- IX. Questions

Process Overview



Process Overview

- ▶ Title IX Coordinator (TIXC) meets w/ Reporting Individual (Formal Complaint filed)
- ▶ TIXC meets w/ Responding Student (Formal Complaint provided)
- ▶ Fact-Finding Investigation
- ▶ Initial Investigation Report created & sent to RI/RS (5 days business to review/comment)
- ▶ TIXC starts organizing Adjudication Panel

Process Overview (continued)

- ▶ Investigators address comments/questions from RI/RS review & create Appendix.
- ▶ Investigators send Final Report & Appendix to TIXC
- ▶ TIXC sends Final Report/Appendix to RI, RS, and Adjudication Panel
- ▶ Adjudication Panel reviews Final Report/Appendix, refers questions to TIXC

Process Overview (continued)

- ▶ TIXC/Investigators address questions and create a second Appendix if necessary.
- ▶ Adjudication Panel convenes for Commenting Session w/ RI & RS.
- ▶ Adjudication Panel makes a finding and, if necessary, applies/recommends sanction(s).
- ▶ TIXC notifies RI & RS of outcome.
- ▶ Appeals Process



Scope: Formal Complaint & Investigation Plan

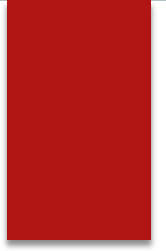
Formal Complaint

- ▶ Narrows the scope of inquiry: date, time, location, Prohibited Conduct, factual allegation(s), etc.
- ▶ Informs Investigation Plan and action steps:
 - ▶ Interview Order
 - ▶ Evidence to seek
 - ▶ Elements of Prohibited Conduct
 - ▶ Types of questions to ask
- ▶ Does the Formal Complaint need to be amended?

Investigation Plan

- ▶ Determine what information you need
- ▶ Determine order of interviews
- ▶ Determine when interviews and meetings can be scheduled
- ▶ Set deadline to be complete (recommended max. 30 days or fewer)
- ▶ Be flexible

Outreach and Communication



Outreach and Communication

- ▶ Confirm safety protocols and other details with Title IX Coordinator
- ▶ Determine who to contact first and when
- ▶ Determine whether some parties be contacted only after interviewing another party first.
- ▶ Students talk to each other so be cognizant of the fact that by talking to one student, another student may be made aware, which could affect the investigation.
- ▶ Document every communication (ie. retain emails and file note phone calls)

Outreach and Communication (cont.)

- ▶ If proxies (ie. parent, lawyer, AoC, etc.) reach out on their student's behalf, notify TIXC.
- ▶ TIXC will determine appropriate way to respond.

Investigating

- CONDUCTING INTERVIEWS
- COLLECTING EVIDENCE
- REPORT VERIFICATION
- INVESTIGATION REPORT
- REDACTING
- CREDIBILITY DETERMINATIONS
- FINISHING INVESTIGATION

Points to Consider

- ▶ Investigators do not make credibility determinations as part of Skidmore's process.
- ▶ Stay focused on the scope of the complaint and investigation
- ▶ Seek both inculpatory & exculpatory evidence
- ▶ Record posed questions
- ▶ Be attuned to other issues (ie. academic, environmental, conduct, social, etc.)
- ▶ Communication with Title IX Coordinator & co-investigators
- ▶ Address mistakes as identified



CONTENT OMMITTED

PROPRIETARY TO HARTER, SECREST & EMERY

Sources

- ▶ Title IX
 - ▶ Title IX of the Education Amendments of 1972, 20 U.S.C. §1681, et seq.
 - ▶ <http://www.justice.gov/crt/title-ix-education-amendments-1972>
 - ▶ Title IX Regulations, 34 C.F.R. Part 106
 - ▶ <http://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr106.html>

- ▶ U.S. Department of Education's Office for Civil Rights: Significant Guidance
 - ▶ 1997 Guidance: Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties
 - ▶ <http://www2.ed.gov/about/ofces/list/ocr/docs/sexhar01.html>
 - ▶ 2001 Guidance: Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties
 - ▶ <http://www2.ed.gov/about/ofces/list/ocr/docs/shguide.pdf>
 - ▶ Title IX Resource Guide (April 2015)
 - ▶ <https://www2.ed.gov/about/ofces/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>
 - ▶ 2017 Dear Colleague Letter
 - ▶ <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf>

Sources

U.S. Department of Education's Office for Civil Rights: Dear Colleague Letters

- ▶ October 26, 2010 DCL (Harassment and Bullying)
 - ▶ <http://www2.ed.gov/about/ofces/list/ocr/letters/colleague-201010.pdf>
- ▶ April 4, 2011 DCL (Sexual Harassment and Sexual Violence) (Rescinded September 2017)
 - ▶ <http://www2.ed.gov/about/ofces/list/ocr/letters/colleague-201104.pdf>
- ▶ April 24, 2015 DCL (Title IX Coordinators)
 - ▶ <http://www2.ed.gov/about/ofces/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>
- ▶ May 13, 2016 DCL (Transgender Students)
 - ▶ <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>
- ▶ February 22, 2017 DCL (Rescinding May 13, 2016 DCL on transgender students)
 - ▶ <https://www.justice.gov/opa/press-release/file/941551/download>
- ▶ September 22, 2017 DCL (Rescinded April 11, 2011 DCL)
 - ▶ <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf>

Sources

- ▶ U.S. Department of Education's Office for Civil Rights: Recent Resolutions
 - ▶ <http://www2.ed.gov/about/ofces/list/ocr/frontpage/faq/readingroom.html>

- ▶ U.S. Department of Education Office of Postsecondary Education
 - ▶ Handbook for Campus Safety and Security Reporting. (June 2016)
 - ▶ <http://www2.ed.gov/admins/lead/safety/handbook.pdf>

- ▶ The White House
 - ▶ Not Alone: The First Report of the White House Task Force to Protect Students From Sexual Assault (April 2014)
 - ▶ http://www.whitehouse.gov/sites/default/files/docs/report_0.pdf
 - ▶ <https://www.notalone.gov/> (main website)

- ▶ New York State
 - ▶ Enough is Enough New York State Education Law Article 129-B
 - ▶ New York State Education Department and New York State Office of Campus Safety Joint Guidance Regarding Compliance with Education Law Article 129-B
 - ▶ <http://www.highered.nysed.gov/ocue/documents/Article129-BGuidance.pdf>



Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

ROCHESTER • BUFFALO • ALBANY • CORNING • NEW YORK CITY

Questions?

JOEL AURE

TITLE IX COORDINATOR

518-580-5708

JAURE@SKIDMORE.EDU