



**SEXUAL HARASSMENT & TITLE IX TRAINING
CONFERENCE**
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Session 2 - Starting Strong: Navigating the First Steps of Title IX

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My Background with Title IX

- Re-wrote DBU's Sexual Misconduct Policy in 2016
- Provided legal guidance on all of DBU's cases from 2016-2024
- Served as the Hearing Officer on a variety of cases that went to a full hearing

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Disclaimer

- This is not legal advice
- What I am relating today is my own story as a Title IX practitioner

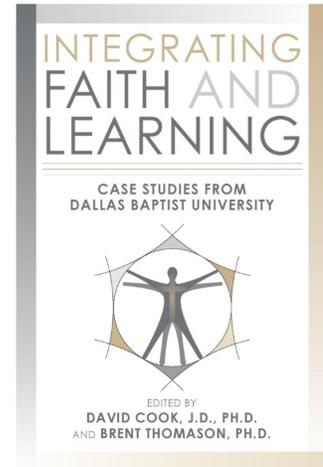
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Integrating Faith into Title IX

"...Colossians 3:17 reminds us, 'In everything you do, do it as a representative of the Lord Jesus. This includes even our roles as investigators and adjudicators in Title IX. We realize that we can be 'salt and light' in these difficult cases as we handle them in a Christ-like spirit with excellence, efficiency, care, and compassion. And the starting point for that is that we understand that each party involved in these cases is made in the Imago Dei, and thus they have inherent worth. No matter what they have done, they deserve respect, fairness, and equity because they are created in the image of God. Just as the Lord commanded the prophet Zechariah to 'administer true justice, show mercy and compassion to one another,' (Zech. 7:9) we feel a deep call to show kindness, respect, compassion, and mercy to all parties, even as we are ultimately seeking justice for any wrongs that may have been committed. We seek to do so in a spirit of humility, as God directs in Micah 6:8 when He calls His followers to 'act justly and to love mercy and to walk humbly with your God.'"

[Excerpt from Ch. 14, pp. 293-294 of "Integrating Faith and Learning: Case Studies from Dallas Baptist University," Edited by Cook & Thomason]



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Mandatory Reporting

- Key Consideration: Ensuring that your campus leaders know when and how to report to Title IX
 - Mandatory Reporters: Almost every university employee is a mandatory reporter (or should be)
 - Tip: Make all Full-time employees Mandatory Reporters with some exceptions (counselors, clergy, medical professionals - when they are operating in their official capacity)
 - Tip: Specifically list which student workers are mandatory reporters (e.g., RAs, student workers in certain offices on campus, student workers in Campus Security, etc.)
 - Note: Some state laws (e.g., TX) may put penalties on F/S who do not report
 - Train your Student Affairs staff, Campus Safety Staff, Counselors, and Medical Professionals on their responsibilities
 - Example: Instances where staff did NOT report to Title IX but instead went to Campus Security

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Preparing Yourself for Success

- Create a detailed procedural checklist with ready-made forms you can use when you need them
 - This is incredibly helpful to: a) ensure you don't forget a key step; b) can gather info from multiple people who may be working on a portion of the case; and c) this document becomes important on appeal or in litigation
- Cases come at inopportune times and can be fast paced (at least at the beginning)
- Have your materials ready so that when the crisis hits, you can work your pre-prepared plan
- Have good people who are trained in how to: a) show compassion; b) handle difficult issues; c) ask hard questions; and d) are well-trained in your procedures (including how to use your checklist)

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A Complaint Comes to Your Desk...

Step 1: Allegation Received

Date	Initials	Action
<input type="checkbox"/> Click or tap to enter a date.		Upon receiving notice of a potential claim, an initial meeting with either the Title IX Coordinator or a Deputy Title IX Coordinator will be set up as soon as possible with the Complainer/potential Complainant (within hours of the initial allegation if there is a continuing threat)
<input type="checkbox"/> Click or tap to enter a date.		Title IX Coordinator/Deputy Title IX Coordinator utilizes Appendix A to listen to the allegation, help the Complainer understand his/her rights, and determine the <u>Complainer's intended</u> involvement (File a formal complaint while acting as the Complainant or NOT filing a formal complaint while participating as a witness IF the university takes it up on its own motion), seek immediate care for the Complainer, and draft detailed notes of the meeting. Appendix A- Documents to be used in this meeting include: <ol style="list-style-type: none"> 1) Notes Sheet 2) Medical Resources Sheet 3) Complainant's Rights Sheet 4) Formal Complaint Document 5) FAQ Sheet about Informal Resolution (if you think it might be applicable) 6) Give them a copy of the available Advisors provided by the University 7) Initial Report Template 8) Copy of Sexual Misconduct Policy for the Complainant

Note: If you'd like an example copy of the Procedural Checklist for Title IX cases I created, just email me at dcook@tusculum.edu.

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Initial Intake

Step 1: Listen & Ask Questions

- Ask Key Q’s: Names and Contact Info for Parties and Witnesses, Where the Incident Happened, Whether the parties were under the influence of alcohol or drugs, and specific questions about the alleged sexual misconduct

Step 2: Assess the need for care

- Important Consideration: Know where your nearest hospital with a SANE nurse is located before you are in a situation where you need it

Step 3: Review Complainant’s Rights Document and Formal Complaint Document

Step 4: Prepare Report



Initial Decisions

Step 2: Initial Decisions

	Date	Initials	Action
<input type="checkbox"/>	Click or tap to enter a date.		Set up meeting to make initial decisions within 48-72 hours (Note: This may need to be sooner if a continuing threat is present) ➤ Meeting participants: Title IX Coordinator, the Hearing Officer, and either the VP of Student Affairs (if Respondent is a student) or the Director of Human Resources (if Respondent is a faculty or staff member).
<input type="checkbox"/>	Click or tap to enter a date.		Decision #1: Type of Case ➤ Use the factors in Appendix B to determine if this is a: Title IX Case, Texas Law Case, Institutional Offense Case, or none of the above (at which point the case could be remanded to Student Affairs or HR as appropriate). Determination: Choose an item.
<input type="checkbox"/>	Click or tap to enter a date.		Decision #2: Whether to Take up the Case on Our Own Motion ➤ If the Complainer does not wish to sign a formal complaint, use the factors in Appendix C to determine whether the University needs to take up the case on its own motion. Determination: Choose an item. Note: Draft a short Word document for the digital file explaining why we did/did not take this up on our own motion (if applicable).

Tip: Consider having a team of 3 people make these initial determinations



Key Consideration: Is this even a Title IX Case?

- Just because they use the magic words does not mean that they have alleged a Title IX incident
- Key Question: If, for purposes of this stage, you considered everything that the complainant says is true, would those allegations assert a claim that rises to the level of Title IX?
 - *For example, a complaint may state that the individual felt “harassed,” but do the actions allege activity that is either quid pro quo or creates a hostile environment (severe, pervasive, and objectively offensive)*
 - *Another example: a complainant may say they felt like the respondent was “stalking” them, but does the alleged conduct constitute a “course of conduct (i.e., more than one act) directed at a specific person which would cause a reasonable person to feel fear, to experience substantial emotional distress, or to fear for their safety or the safety of a third person.” (DBU Language)*

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Key Consideration: Is this even a Title IX Case?

- In studying the allegations, if they don't fit into Title IX, then remand
- Remanding the case to Student Affairs or HR may actually be a good thing

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Key Consideration: Taking up a Case on Your Own Motion

- It is important to have a clause that gives you the right to take up a case on your own motion to protect the rest of your university family, if necessary
- Key Factors We Used:
 - Potential Threat Involved (including aggravating factors, potential for recurrence against the complainant, potential for future action against others, etc.)
 - Whether the Allegation was of an Isolated or Recurring Nature
 - The harm involved (severity level of the incident(s), injuries involved, whether the complainant fears for his/her ongoing safety)
 - Other Factors (Issues of Consent, Coercion, Incapacitation, etc.)

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Key Consideration: Taking up a Case on Your Own Motion

- Factors from the 2024 Regs (helpful and useful though not binding):
 - 1) the complainant's request not to proceed with initiation of a complaint; 2) the complainant's reasonable safety concerns regarding initiation of a complaint; 3) the risk that additional acts of sex discrimination (including, but not limited to, sexual assault, domestic violence, dating violence, stalking, or sexual harassment) would occur if a complaint is not initiated; 4) the severity of the alleged incident(s), including whether this misconduct, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the misconduct and prevent its recurrence; 5) the age and relationship of the parties, including whether the respondent is an employee of the university; 6) the scope of the alleged incident(s), including information suggesting a pattern, ongoing misconduct, or misconduct alleged to have impacted multiple individuals; 7) the availability of evidence to assist a decisionmaker in determining whether misconduct occurred; 8) whether the university could end the alleged misconduct and prevent its recurrence without initiating its grievance procedures under this Policy; 9) whether the allegation involved aggravating factors (e.g., weapons); 10) whether there was a question of consent; 11) whether either party was incapacitated

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Initial Decisions

			<p>Decision #3: Whether to Take Up Institutional Offenses</p> <ul style="list-style-type: none"> ➤ If the ONLY alleged offenses are institutional offenses (see below), determine whether to take up the case and whether to use a Title IX or Texas Law procedure. <p>“Sexually Inappropriate Conduct or Sexual Exploitation, as defined in the Definitions Section of this Policy; or Other sexual misconduct cases involving sexual assault, sexual violence, sexual harassment, sexual discrimination, domestic or dating violence, stalking, sexual exploitation, sexually inappropriate conduct, and other sexual misconduct outlined in the Definitions section of this policy which do not meet the geographic or other requirements to be handled as Title IX cases or Texas Law cases, but in which the nexus to the University’s campus or one of its educational activities or some other compelling reason weighs in favor of University protecting its faculty, staff, students, and visitors by exercising jurisdiction over the case.”</p> <p>Determination: Choose an item.</p> <p>Procedural Determination: Choose an item.</p> <p>NOTE: Draft a short Word document for the digital file explaining why we did/did not take this up and which procedure we chose (if applicable).</p>
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Initial Decisions

<input type="checkbox"/>	Click or tap to enter a date.		<p>Decision #4: Severity Level</p> <ul style="list-style-type: none"> ➤ Use the factors in Appendix C to determine if this is a severe (Section 6) or non-severe (Section 8) case. <p>Determination (choose from the drop-down menu): Choose an item.</p>
<input type="checkbox"/>	Click or tap to enter a date.		<p>Decision #5: Interim Supportive Measures</p> <ul style="list-style-type: none"> ➤ Use the factors in Appendix C to determine appropriate interim measures. <p>Interim Measures: Click or tap here to enter text.</p>
<input type="checkbox"/>	Click or tap to enter a date.		<p>Decision #6: Clery Timely Warning to Campus</p> <ul style="list-style-type: none"> ➤ Using the factors described in Appendix C, if the severity level is very high and the likelihood of future attacks is very high, the President and VP for Administrative Affairs should be notified of the need to make a campus-wide Timely Warning to the campus. <p>Determination (choose from the drop-down menu): Choose an item.</p>
<input type="checkbox"/>	Click or tap to enter a date.		<p>Decision #7: Availability of Informal Resolution</p> <ul style="list-style-type: none"> ➤ Determine if Informal Resolution is an appropriate alternative that can/should be offered to the parties. See applicable rules for when Informal Resolution is available in Section 5(k) of the Sexual Misconduct Policy. <p>Determination: Informal Resolution <input type="checkbox"/> Is available <input type="checkbox"/> Is NOT available</p>
<input type="checkbox"/>	Click or tap to enter a date.		Decision #8: Transcript Hold

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Supportive Measures

- no-contact order
- revision of academic schedule or accommodations regarding exams/assignments
- change in housing arrangements
- a change in work schedule/job assignment
- removal from campus*
- other supportive measures

*Must include appeal option

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Informal Resolution

- We found this to be very productive and redemptive in many cases
 - Note: Not appropriate in certain cases
- We used a mediation-style setting (parties in separate rooms with a Facilitator who shuttles between the rooms and seeks consensus)

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Notice of Case

- Very important to get this right - create a good form
- **Must:**
 - Disclose sufficient details of the complaint, conduct at issue, and date and location of the alleged incident for the parties to be alerted of the issues involved;
 - Provide a statement that the respondent is presumed not responsible until he/she is proven responsible,
 - Provide a statement concerning the parties' right to select an advisor of their choosing, and
 - Provide a statement disclosing the institution's policy on making false statements.
- Make sure to update the Notice of Case if you find new allegations/new charges

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Notice of Case - Example Language

- **Allegation:** On _____ (Date), you made an allegation in which you claim that _____ (Respondent) sexually assaulted you and he engaged in other sexual misconduct that could constitute one or more of the following under the DBU Sexual Misconduct Policy: non-consensual sexual penetration, forceful non-consensual sexual contact, non-violent sexual contact, sexual harassment, sexual exploitation, and/or sexually inappropriate conduct _____. [Insert all that apply]. You alleged that this occurred on _____ (Date). The report detailing this allegation is attached. Because of the nature of this allegation, we will immediately begin an investigation into this matter utilizing the procedures outlined in _____'s (insert name of institution) Sexual Misconduct Policy for Title IX Cases that are classified as severe (attached).

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Notice of Case - Example Language for Supportive Measures

- Removal from Campus Housing – _____ (Respondent) will not be allowed to reside in campus housing during the pendency of this case. If he needs to enter his campus housing unit during the pendency of the case, he will need to obtain permission from the Deputy Title IX Coordinator for Students.
 - Appeal of Removal from Campus: _____ (Respondent) has the right to appeal the above decision to remove you from campus, which appeal may be made to the Title IX Coordinator in writing at the following email address: _____. A hearing on this appeal of removal from campus would be decided by _____.
- Move to Virtual Classes – _____ (Respondent) will be allowed to attend his/her classes virtually but not in-person during the pendency of the case. The Title IX office will contact the Respondent’s professors to alert them of this necessary accommodation.
- No Campus Activity – _____ (Respondent) will not be allowed to come to campus during the pendency of this case other than for meetings with our investigators, his Advisor, his Confidential Consultant, members of our counseling center, or our hearing panel.
- No Contact Order – Both _____ (Respondent) and _____ (Complainant) will not be allowed to have any contact with each other during the pendency of this case. This means that you are not to have contact with each other in person, over the phone, via email, text, Snapchat, any form of social media, by a third party, or by any other means. If you believe this No Contact Order has been violated, please contact me immediately.

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