



CREATING A SUCCESSFUL TITLE IX COMPLIANCE PROGRAM

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BACKGROUND – UNIVERSITY OF NORTH CAROLINA SYSTEM

- Public university system – 16 universities and 1 constituent high school.
- Board of Governors and the president.
- Each institution is headed by a chancellor, who reports to the system president.
- Each institution has a board of trustees, exercising authority delegated by the Board of Governors.



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SETTING THE STAGE

- System-wide, Public, Campus Safety/Security Study.
- Reviewed responses to serious offenses against persons, including sexual violence; safety and security operations; crime reporting and awareness; and alcohol and other substance abuse among students.
- Three focus areas with distinct work groups.
 - Crimes/offenses against individuals, including sexual violence.
 - Campus public safety operations.
 - Security reporting and awareness (Clery, etc.).



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CAMPUS SAFETY/SECURITY STUDY

- Educated leadership on federal regulation of campus safety.
 - Clery Act
 - Title IX
 - Constitutional due process requirements:
 - Educational institutions are not courts.
 - But institutions must provide: notice; opportunity to be heard; impartial decision-maker; and an opportunity to confront witnesses.
- System policies provide for basic due process protections.



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CAMPUS SAFETY/SECURITY STUDY

- Major Findings and Recommendations.
 - University policies/procedures relating to sexual assault should be regularly reviewed, revised, and updated to reflect legal and regulatory requirements and best practices.
 - Institutions need access to System-wide policies, guidelines, checklists, manuals, and other materials.
 - Nature of CLERY and Campus SaVE Act requirements highlight the need for a designated compliance person at each institution.
 - Institutions should work together to develop standards to ensure that all campuses have the capacity to promptly, thoroughly, and impartially investigate and adjudicate sexual violence.



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CAMPUS SAFETY/SECURITY STUDY

- Major Findings and Recommendations.
 - Institutions should collaborate to develop compliance standards and protocols for Clery and Title IX matters.
 - Develop guidelines and materials to assist in compliance.
 - Each institution should have a Title IX response team.
 - The system should enhance its staff capacity to support institutions with compliance assistance, training, and coordination in Title IX, Clery, and other campus safety matters.



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DEVELOPMENT OF THE COMPLIANCE PROGRAMS

- Title IX Program – System Level
 - University Compliance Director.
 - System-level campus security committee, with representatives from several institutions.
 - Development of model Title IX Program and manual – standards based.
 - Regular review and updating.
 - Based on law and regulation.
 - Provide flexibility within limits for policies adopted by individual institutions.

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DEVELOPMENT OF THE COMPLIANCE PROGRAM – TITLE IX

- Title IX Program – System Level (continued)
 - Foundational matters.
 - Definitions, designation of Title IX coordinator, etc.
 - Initial response:
 - Emergency removal; employee administrative leave.
 - Supportive measures.
 - Reporting.
 - Grievance Procedures.
 - Commencement of the grievance process.

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DEVELOPMENT OF THE COMPLIANCE PROGRAM – TITLE IX

- Title IX Program – System Level (continued)
 - Information resolution.
 - Investigations of formal complaints.
 - Conduct of the investigation.
 - Documenting the investigation.
 - Preparing the report.
 - Hearings.
 - Conduct of the hearing.
 - Exchange of information.
 - Notices.



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DEVELOPMENT OF THE COMPLIANCE PROGRAM – TITLE IX

- Title IX Program – System Level (continued)
 - Determination of Responsibility.
 - Appeals.
 - Other provisions.
 - Record-Keeping.
 - Notices.
 - System-level policies – minimum due process standards.



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DEVELOPMENT OF THE COMPLIANCE PROGRAM – TITLE IX

- Title IX Program – System Level (continued)
 - Establishment of Title IX Coordinator professional group.
 - Develop professional identity within the university system.
 - Regular conference calls and in-person meetings.
 - Agendas developed by the system-level compliance director, with input.
 - Reports on certain items delivered to VCs for student affairs; chief legal officers; chancellors; etc.



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DEVELOPMENT OF THE COMPLIANCE PROGRAM – TITLE IX

- Title IX Program – System Level (continued)
 - Development of a training calendar.
 - Based on input from Title IX Coordinators, student affairs professionals, law enforcement, investigators, etc.
 - Basic level investigator training – annual basis.
 - Intermediate/Advanced investigator training.
 - Documenting investigations and preparing the investigative report.
 - Hearing officer training.



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DEVELOPMENT OF THE COMPLIANCE PROGRAM – TITLE IX

- Title IX Program – System Level (continued)
 - Forms, checklists, and guidelines – self-monitoring.
 - Linkage to Internal Audit – institutional monitoring.
 - Periodic reviews of Title IX programs by internal audit.
 - High level reports on areas of improvement.



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DEVELOPMENT OF THE COMPLIANCE PROGRAM – CLERY PROGRAM

- Linkage to Clery Compliance.
 - Standards-based program – annual updates on a collaborative/collegial basis.
 - Professional network of Clery compliance officers.
 - Self-monitoring, coupled with monitoring visits.
 - Reports to institutional leadership identifying areas of improvement and areas of strength.
 - Linkage to Title IX program.
 - Periodical review by internal audit.



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DEVELOPMENT OF THE COMPLIANCE PROGRAM – CLERY PROGRAM

- Reporting to Leadership and Governing.
 - Institutional level: the chancellor of each institution shall provide an annual presentation to the constituent institution’s board of trustees with relevant data and information concerning campus security, the safety of students and others, sexual assault, alcohol and drug use, risk management, and associated institutional policies.
 - The president shall provide an annual campus safety and security presentation to the Board of Governors, which may include information presented to boards of trustees and any other relevant information.



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INTRODUCTION

- UA is the only college or university in the country that has voluntarily, publicly disclosed Title IX failings:
 - We did it within our community.
 - Within our state.
 - On CNN.
- We did it because:
 - We were being audited by OCR.
 - We found significant problems before OCR found them.
 - Wanted to do the right thing by our students and communities.



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INTRODUCTION

- As a result, our leadership was committed to fixing this compliance issue:
 - “Fixing” was estimated at \$1.5 million per year.
 - “Fixing” would require public acknowledgment, requiring institutional embarrassment.
 - “Fixing” would require culture change, not just compliance.



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INTRODUCTION

- Compliance is elusive:
 - Department of Education guidance from 2001, 2011, 2014, 2015, 2016, and draft guidance has come and (is partially) gone, conflicts itself, and is consistently vague.
 - Average tenure for a Title IX coordinator is 18 months, so by the time they are trained, they leave.
 - Complexity of sexual violence cases increase the challenge of compliance.
 - Case volume growth outpaces staffing and funding capacity.
- Given that complete and perfect compliance is an impossible task, I'll share what are reasonable steps for a university to take to encourage and track compliance.



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BACKGROUND – UNIVERSITY OF ALASKA (UA)

- Alaska is a majestic state that covers 663K square miles.
- Alaska has a problem with sexual violence. Alaska’s rate of sexual assault is 2½ times the national average; sexual assault of children is 6 times higher than the national average; homicide of females is 3 times the national average.
- University of Alaska is a public university system – three separately accredited universities and 13 community campuses across, just under 28,000 students.
- System-level governance by the Board of Regents and leadership by the system president.
- Each institution headed by a chancellor, who reports to the system president.
- A singular set of university policies and regulations is used by all universities and campuses.



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HISTORY IN BRIEF

- 2014-2019
 - University of Alaska selected for Office of Civil Rights (OCR) review along with over a hundred other universities. UA implements training; designates Title IX Coordinator; OCR visits.
 - UA conducts internal audit of Title IX and student discipline processes at all campuses. UAF makes national headlines by announcing failures in its student discipline process. UA conducts its first climate survey; implements new training system; initiates external audit; designates staff and faculty as responsible employees.
 - External audit report releases; UA develops public Title IX scorecard to track and report Title IX progress.



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HISTORY IN BRIEF

- 2014-2019 (continued)
 - UA signs Voluntary Resolution Agreement with the OCR. Appoint Chief Title IX Officer; UA meets every deadline on a rigorous schedule of VRA requirements; establishment of new sexual discrimination and sexual misconduct policy and regulations and implementing training for students and employees. UA releases first metrics on Title IX reports. Accountability, transparency and compliance is critical.
 - Complete loss of investigative staff across system. UA staffs up and university President appoints additional \$1.13M for additional Title IX positions; 81% increase in reports to Title IX offices. Continue Title IX compliance while the North star remains to “do the right thing”.



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HISTORY IN BRIEF

- 2014-2019 (continued)
 - Continue mandatory training for students and faculty; release the climate survey results; continue internal oversight of every Title IX case file; Title IX team collaboration on processes; engage in the negotiated rulemaking process.



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COMPONENTS OF A SUCCESSFUL COMPLIANCE PROGRAM:

- Leadership commitment.
 - University of Alaska’s President and Board’s commitment to “do the right thing”.
 - Responsibility is vested in the Chancellors; this issue can never be shelved even when budgets are lean and turnover renders Title IX offices inadequately staffed.
- Implement and maintain effective and consistent university policies and procedures.
 - June 2017 new “sexual and gender based discrimination” of university policy and regulation.



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COMPONENTS OF A SUCCESSFUL COMPLIANCE PROGRAM (continued):

- Regular climate survey administration.
 - UA uses the ARC3 instrument; latest climate survey conducted March 2019.
- Transparency and consistent public reporting.
 - Title IX updates provided at Board of Regents meetings, written updates in non-Board meeting months, university leadership meetings, UA Title IX Compliance website launched and maintained, internal newsletters, established the System wide Title IX Task Force, quarterly scorecards updated to reflect VRA Title IX progress; biannual metrics of all reports to Title IX.



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COMPONENTS OF A SUCCESSFUL COMPLIANCE PROGRAM (continued):

- Accurate information provided to the university community.
 - When a title IX incident occurs, it's critical that your students, staff and faculty know who, how, and where to report to.
- Engagement of stakeholders.
 - UA holds over 50 meetings per year of critical stakeholders. Teams include the statewide Title IX task force, student advisor groups, Title IX leadership, and others.
- Coordination with law enforcement.
 - Establish Memorandums of Agreement and maintain a positive working relationship with campus and local law enforcement.



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COMPONENTS OF A SUCCESSFUL COMPLIANCE PROGRAM (continued):

- Placement of student with other entities.
 - Notify students going to internships, clinical programs, to field research or otherwise of their rights and resources in the event of a Title IX incident.



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DRAFT TITLE IX REGULATION: HIGHLIGHTS OF PROPOSED CHANGES

- More narrow response obligation trigger.
- More narrow definition of “sexual harassment.”
- “Actual knowledge.”
- Notice to “authority to institute corrective measures.”
- “Educational program or activity” (still fairly broad, new list of factors, only in U.S.).



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HIGHLIGHTS OF PROPOSED CHANGES (continued)

- A new fork in the road.
- Only “formal complaints” and multiple complaints against the same respondent may be processed under formal sexual harassment grievance procedures.
- Mandatory dismissal if:
 - Would not constitute sexual harassment; and
 - Not within program or activity or outside U.S.
- In absence of formal complaint / in case of dismissal offer and provide “supportive measures.”



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HIGHLIGHTS OF PROPOSED CHANGES (continued)

- Prescriptive requirements for formal grievance procedures (with enhanced respondent protections):
 - Pre-investigation notice and expanded rights to review of investigative report, evidence, etc.
 - Mandated live hearing (single investigator out).
 - Co-equal right to cross-examination.
 - Standard of proof choices (C&C or preponderance).
 - More robust written decision.

HIGHLIGHTS OF PROPOSED CHANGES (continued)

- Limits on institutional liability:
 - Synching with courts on “deliberate indifference”.
 - Safe harbors (only apply to Department!).
 - Explicit deference to decision makers.
 - No money damages.

HIGHLIGHTS OF PROPOSED CHANGES (continued)

- New informal resolution criteria and new recordkeeping requirements:
 - Informal resolution allowed even for sexual assault (with voluntary participation of both parties).
 - Written notice: allegations, informal resolution requirements, ability to resume formal complaint, potential consequences of engaging in informal resolution.
 - Maintain records of investigations and training materials for three years.



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CLOSING

- Importance of Title IX compliance.
- Contact information:
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THANK YOU



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QUESTIONS?



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