MAINTAINING TITLE IX PROGRAM INTEGRITY IN THE FACE OF A PANDEMIC

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YOUR FACULTY

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AGENDA

• Campus Status
  – Open/Closed
  – Conducting Classes

• Current Investigations
  – Level of Investigations
    ▪ Triage

• Interim Measures
  – What is in place
    ▪ Effectiveness when campus is partially or fully closed

• Hearings
  – Scheduling considerations
AGENDA

• Future Cases
  – Risk factors
  – Incoming cases
  – Training

• Other Considerations
  – Length of closure (full or partial)
  – Maintenance of practices post-crisis
CAMPUS STATUS

• Is your campus fully closed?
  – Are staff expected to report to campus or work remotely?

• Is your campus partially open?
  – Do you have students who cannot leave because of resources, visa concerns, etc.?

• OCR considerations.
  – Ongoing investigations by OCR
  – Regs
  – Promptness complaints
  – Failure of remedy complaints
Although this crisis is evolving rapidly, thoughtfully anticipating issues and needs will benefit you when this crisis ends.
CURRENT INVESTIGATIONS
CURRENT INVESTIGATIONS

• What is the level of those investigations (e.g. major or minor allegations)?

• This is the time to print a spreadsheet or other document that allows you to view the current level and status of those investigations.
  - Triage as needed
    ▪ Can lower end cases be put on hold and interim measures maintained until the campus fully reopens?
    ▪ Are there cases that can be resolved informally and quickly using a remote communication platform (e.g. Zoom, Skype, FaceTime)?
      o Some parties may have more availability during this time.
      o Some parties may want to be fast-tracked, while others may resist.
Are there more complex cases that can be put on hold and interim measures maintained until the campus fully reopens?
- This is more likely if the campus is completely closed (including administrative functions).
- Consider pros and cons
  - What are the real effects on the parties if the case is put on hold?
  - Is future enrollment at stake?
  - Will a party complete their classes online (during this downtime) and graduate?
- You MUST put the parties on notice as to the delay.

This may be a good time to complete interviews remotely.
- Schedules may be freer or more flexible - especially with online/recorded classes.
• What interim measures are currently in place?
• Will those measures reasonably stop and prevent sex-based discrimination or harassment (as defined in your policy) while the campus is partially or fully closed?
  – Do any new interim measures need to be put in place given the new circumstances? Can current interim measures be modified accordingly?
    ▪ Housing relocations – especially with “lockdowns” in effect.
    ▪ Existing No Contact Orders between students who are in the same class, but now class discussion is online.
      o Physical separation is easier now but difficulty may arise with online class discussion.
    ➢ Should you modify the language of current No Contact Orders so that class participation does not result in failure to comply with a No Contact Order?
INTERIM MEASURES

- For students who cannot go home or relocate during this crisis, access to cafeterias and other services may be limited and affect existing No Contact Orders.
  - May need to get more detailed and establish schedules for the parties to access the cafeteria and other services (e.g. counseling).
• Are any hearings scheduled during the time campus is closed?
• Can the hearing be rescheduled?
  – If so:
    ▪ Put the parties and witnesses on notice and/or get their agreement.
    ▪ Schedule for some reasonable time further out (e.g. summer).
      o Do NOT leave these hearings unscheduled – you do NOT want to be in the position of scheduling multiple hearings at the same time.
    ▪ If people are working remotely, can everyone video into a central location?
      o Be sure this technologically possible before you offer this option.
        ➢ Do a practice run to understand the technology so you can avoid glitches.
      o Do not oversell it as anything more than less than ideal – manage expectations.
HEARINGS

• Are remote hearings an option?
  – Much to choreograph logistically, but feasible, if sufficient Wifi connection enabled. Phone may not be sufficient.
  – Will need to arrange and test technology beforehand.
  – Use a technology that can record.
  – Make sure materials are disseminated as necessary, in advance.
  – Establish rules for use of the technology platform to avoid cross-talk.
  – Use a technology that allows parties to sidebar and consult with their advisors off-camera/outside of hearing.
  – You may be able to use the same technology to facilitate deliberation by a panel, but make sure connection is private.
  – Third-party neutral services (like TNG’s) can provide you with remote hearing officers if you cannot find enough on campus or yours are not trained in time for a needed hearing.
  – Will advisors be physically present with parties, or participating remotely themselves?
  – Same with appeals.
FUTURE CASES
• Risk factors:
  – Students are having extended spring breaks – this could result in more cases.
  – Students may be “locked down” in their homes, apartments, and residence halls.
  – If classes are also cancelled, this may provide an environment with students confined without much to do. This can increase the risk of sexual misconduct.
  – You should be prepared to implement interim measures for reports received during this period, especially if housing remains open.
    ▪ Residential protective measures (safe housing).
    ▪ Who will enforce?
FUTURE CASES

• Prepare now for incoming cases.
  – Be sure your online portal for incident reports is still being monitored.
  – Be sure first responders are aware of what TIX resources are available and not available.
    ▪ This includes resources both on- and off-campus.
  – Be sure campus officials know how to contact the TIX coordinator and/or TIX team members during this time.

• Training
  – Students are home or on some sort of lockdown.
  – This is a good time to send out reminders of overall behavioral expectations. This is an opportunity to highlight policy that prohibits discrimination - including TIX and race-based discrimination.
This may be a good time for students and employees to complete their required online trainings.

There may be some opportunity to leverage technology and live-stream training for students and employees that you planned to do in-person.
OTHER CONSIDERATIONS

• How long will this last?

• Can we (and should we) retain any of these practices post-COVID-19 crisis?
  – Should we make remote interviews for parties and witnesses a standard option?
  – What about remote hearings – especially in light of recent court decisions and the proposed regs?