

KEEPING STUDENTS AT THE CENTER OF YOUR TITLE IX PROGRAM



Dr. Laura Valente

Policy, Planning, Performance

www.planningandperformance.com

4th Annual Title IX ExecuSummit

July 23 and 24, 2019

Mohegan Sun Convention Center

Uncasville, CT

TITLE IX

Considerations for Today:

- ▶ Mission for Title IX Programs
- ▶ Spirit vs. Letter of the Law
- ▶ Guidance vs. Requirements
- ▶ Compliance: purpose, extent, manner

The background features a light blue grid pattern on the left side. On the right side, there is a large, abstract graphic composed of overlapping, semi-transparent blue triangles and polygons in various shades of blue, ranging from light to dark. The overall design is clean and modern.

What has NOT Changed....

The Sources of Responsibility for Colleges

Protections for Complainants

- ▶ **Title IX:** No person in the United States shall, on the basis of sex, be **excluded from participation in**, be **denied the benefits of**, or be **subjected to discrimination** under any education program or activity receiving Federal financial assistance.
- ▶ **OCR Guidance**
- ▶ **State Requirements**
- ▶ **Campus Policy**

Protections for Respondents

▶ OCR Guidance

▶ Public Institutions: Due Process

Public institutions may not deprive students of their right to *liberty* or *property* without due process. Suspension and dismissal are almost always considered to require due process before imposition.

▶ Private Institutions: Generally accepted procedures

1. Following institution's established procedures.
2. Notice
3. Opportunity to Respond to Charges
4. Fairness



got fairness?

Balancing these responsibilities

- ▶ Are the duties we have to both complainants and respondents in competition with each other?
- ▶ Is there room for consideration of the needs of the greater community?
- ▶ Were our hands tied by the 2011 Dear Colleague letter? Are they tied by the 2017 guidance?
- ▶ What is the purpose of “compliance”?

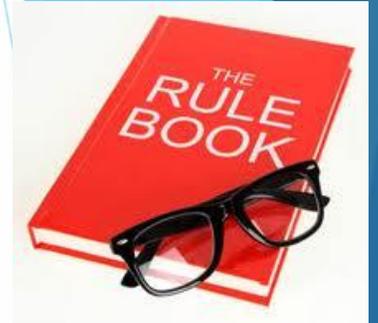
What DID Change?

- ▶ Withdrawal Of 2011 Dear Colleague Letter
And 2014 Guidance
- ▶ 2017 OCR Q&A Document
- ▶ *Dr. Laura Valente*

2017 Key Updates/Clarifications

- ▶ Interim measures: must be offered to both students
- ▶ Rights and opportunities to both parties on equal terms
- ▶ No fixed time frame for resolution
- ▶ Burden is on the school to find and report inculpatory and exculpatory evidence
- ▶ Standard of evidence- does not have to be “preponderance of the evidence”, can be “clear and convincing”.

Dr. Laura Valente



Continued...

- ▶ Investigators or separate decision-makers must make findings of fact.
- ▶ Both parties must have the opportunity to respond to the report in writing before decision of responsibility.
- ▶ Schools should inform the “reporting party” the decision, remedies and sanctions.
- ▶ Appeals can be offered to no one, to the respondent or both parties.

Dr. Laura Valente

Clery act response to changes

- ▶ Continue to rely on 2001 revised sexual harassment guidance.
- ▶ Under Clery, a formal complaint is not necessary to be granted accommodations
- ▶ Clery does not call for fixed time period for resolution but requires “prompt, fair, and impartial disciplinary process.”
- ▶ Emphasizes that mediation may only be used if entered into voluntarily by both parties.
- ▶ Reminder that prior to the 2011 Letter, 70% of schools were already using Preponderance of the Evidence.

dr. Laura Valente

Considerations



shutterstock · 211765900

- ▶ Federal law, guidelines
- ▶ State, local laws
- ▶ Institution, system policy
- ▶ Context, climate

Dr. Laura Valente

**But compliance is
not enough!**



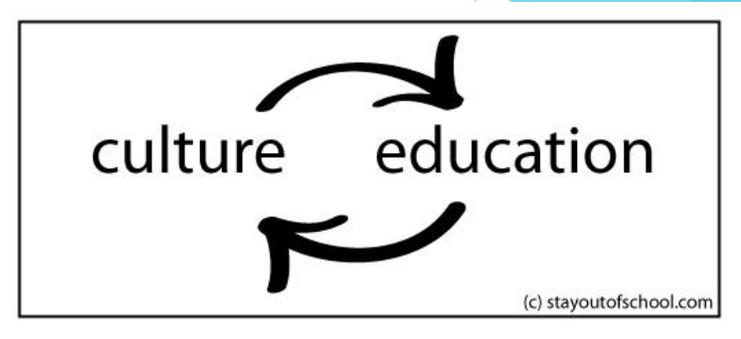
Keep Students at the Center of....

- ▶ Program and policy development
- ▶ Education (students)
- ▶ Training (staff)
- ▶ Support Services

Developing Title IX Programs

- ▶ Consider both *prevention and response*
- ▶ Both prevention and response should consider potential **complainants *and* respondents.**

Dr. Laura Valente



Goals of Education Initiatives

A. Prevention

- ▶ To stop interpersonal violence before it occurs.
- ▶ Defining and promoting respectful behaviors
- ▶ Expressing one's own personal boundaries
- ▶ Understanding others' personal boundaries
- ▶ Encouraging safe bystander intervention.
- ▶ Foster awareness of **what constitutes sexual harassment and assault**; and **how to access assistance** for themselves and others should the need arise.



Note:

- ▶ Go far beyond “don’t walk alone at night, watch your drink at a party”
- ▶ What does a student need to know to *avoid violating Title IX*?

Modes-

- ▶ in person, small and large groups, online, mandated, voluntary, conference, on campus, off site, publications, posters, special events

Dr. Laura Valente



Goals of Education Initiatives *cont'd*

B. Response

- ▶ Must be very intentional about creating processes for responding to all allegations of Title IX violations
- ▶ Must address the needs of all parties
- ▶ Must ensure support, investigation and adjudication that is rigorous, fair and timely. (note: perception matters: do both complainants and respondents perceive they are being treated fairly?)
- ▶ Support services: Campus (advocates and advisors, academic accommodations), Local Community, Medical, Psychological



Education and Training Options: What to choose? Best option, cheapest option, easiest option?

- ▶ **Internal experts:** Does your institution have staff members who are content experts and engaging presenters? Do they have the time to devote to frequent and meaningful training? If not, consider a consultant to review content, or an external speaker to do the presentation. (Or find someone who does both.)
- ▶ **External trainers/consultants:** Choose someone who can incorporate/review institution specific information if needed.
- ▶ **Online options:** Choose a vendor that allows for sufficient customization for your purposes, a tracking system for completion (*letter of the law*), and an assessment of learning outcomes (*spirit of the law*); one that offers different programs for staff/faculty and students, and offers references for you to contact.

Training Staff: DON'T Just Check the boxes!

- ▶ Training sessions support the educational campaigns but must be designed for true *capacity building*.
- ▶ These experiences must be focused on specific audiences, consider contexts for various groups, and offer real-world “how-to’s” for the group being trained. (responsible employees, faculty members, TAs, HR, etc.)
- ▶ Develop learning outcomes (measurable targets) and assessment methods.
- ▶ Review (internal and external reviewers) and revise.

Dr. Laura Valente

Title IX Website - Best Practice



- ▶ Dedicated page
- ▶ Easy to navigate
- ▶ Policy, rights, responsibilities and resources *for both*.
- ▶ Reporting: What. When, Where, Why and How
- ▶ Links from: Police/Safety, Counseling, Dean's Offices, Advising, HR, Provost's Office, Women's Center, Interfaith Center/Campus Ministry, Diversity/Multiculturalism, Athletics, Fraternity/Sorority, Student Government, EOP, Honors, other "affinity groups"

Dr. Laura Valente

Reporting:

Are your processes developed with administrative needs or student needs foremost in mind?

- ▶ Offer many ports of entry: In-person, In Writing, Online, By Phone, On Behalf Of Someone Else
- ▶ Immediate vs non-immediate reporting
- ▶ Responsible Employees
- ▶ Brochure
- ▶ Checklist

Dr. Laura Valente



Enforcement

1. Initial “intake” - Possible Violation? (Low Threshold)
2. Interim Action if applicable (for BOTH)
2. Investigation (Fact Finding)
3. Report
4. Replies from complainant and respondent

Dr. Laura Valente



Enforcement, cont'd

5. Mediation/hearing options
6. Determination of responsibility
7. Sanctions/ Actions
8. Notice of decisions and sanction

Dr. Laura Valente



Investigations

Investigators must be trained:

- ▶ Title IX
 - ▶ Clery Act
 - ▶ Institutional Sexual Harassment Policy
 - ▶ Student Code Of Conduct
 - ▶ Relevant Employment Agreements
 - ▶ Due Process (Public Institutions)
 - ▶ ***Appropriate Methods Of Questioning For Complainant, Respondent and Witnesses***
- ▶ *Dr. Laura Valente*



Decision/Sanction



- ▶ Recommended: investigator's report/recommendation and the response of parties be considered by a separate party for decision
- ▶ Decision and relevant sanctions/actions must be communicated to both parties
- ▶ Sanction options should be published in Code of Conduct or Title IX Policy
- ▶ Sanctions should be fairly consistent among similar violations/contexts

Dr. Laura Valente

Appeals



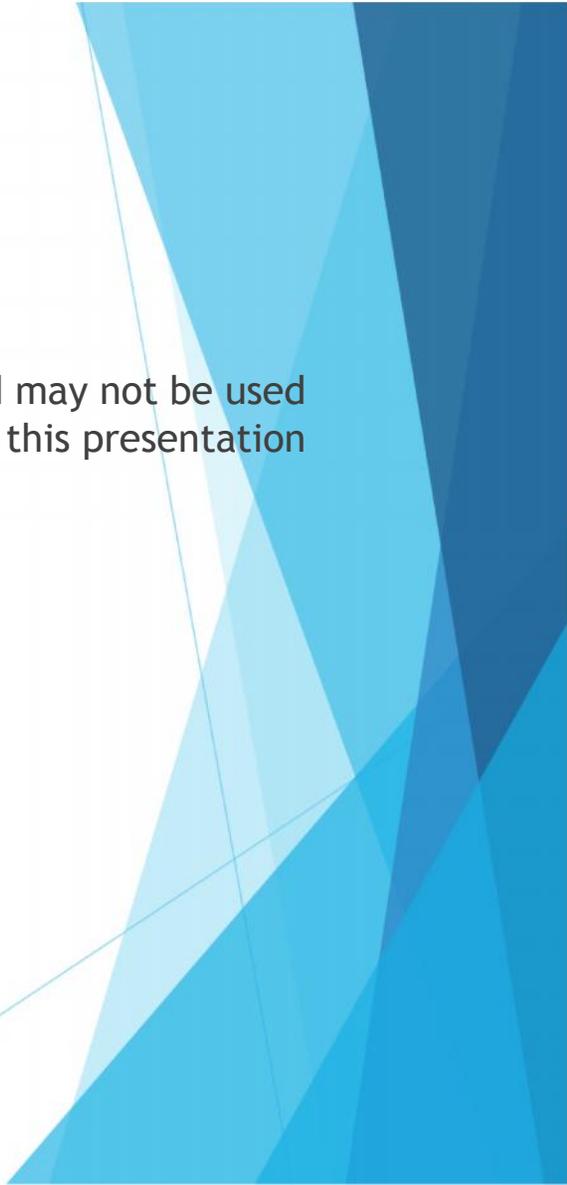
The following must be published and followed:

- ▶ *Whether* appeals are permitted;
- ▶ *Which party* is eligible to appeal;
- ▶ *Criteria* for appeal consideration;
- ▶ *Who reviews* the appeal
- ▶ *Deadlines/Time frame...*

Dr. Laura Valente

Questions?



- 
- ▶ The contents of this PowerPoint file belongs solely to Dr. Laura Valente, and may not be used without expressed permission. Requests for permission to use all or part of this presentation may be sent to drlauravalente64@gmail.com