



## **GICA Compliance Collaborative**

### **2021 In-person and Zoom Title IX – Hearing Panel Member Training (3 ½ Hour Training – November 2021)**

#### **AGENDA**

##### **Overview**

This training is designed to provide Hearing Panel Members, Appeal Officers, Advisors, Title IX Coordinators, Deputy Coordinators, Investigators, HR personnel, and anyone associated with administering Title IX with an up-to-date understanding of current compliance requirements for the live hearing using a scenario-based training.

##### **Agenda**

1 Hour:

- Training Objectives
  - Introductions and Review of Title IX – Final Rule
  - Topics covered:
    - Logistics
    - Advisor – Attendance
    - Cross-Examination
    - Determination by Decision-maker
    - Relevant Questions
    - Credibility
    - Action Items

2 ½ Hours:

- Training Objectives
  - Utilizing case-scenario based approach and watching newly developed Title IX-specific videos, practice managing the logistics of a live hearing (evidentiary rulings, unruly participants, rules of evidence) and culminate the training with arriving at a written decision.

Total of 12 videos written by Judy Spain, J.D., CCEP, GICA Compliance Collaborative Program Consultant. Videos produced by DMZ Productions; copyright held by Spain and Spain, Inc., and licensed to GICA.

For this training, four of the videos were used. The other videos were used in the Title IX Investigator Training (both Zoom and in-person September 2021).

Attendees watched the videos and then participated in discussion regarding the videos which showed various steps in the Live Hearing. Videos were designed to develop hearing panel member competency skills; to expand attendees knowledge of the Title IX process; to promote discussion regarding what went right/what went wrong in the Live Hearing; to assist attendees to determine what could be relevant questions; to encourage discussion regarding how to ask follow-up questions to determine facts and credibility of the interviewee; to understand the need for standardization of process of opening/closing a Live Hearing; to discuss the burden of proof to be established; to make rulings on evidentiary matters; and to develop strategies to control unruly participants. The training concludes with the participants arriving at a written decision based on the facts.

Prior to the training, attendees received the Final Report, Final Report Appendix, and a template Title IX Policy. The Final Report contained a summary of interviews as well as the procedural history of the matter.

### **Scene 9 – Complainant’s Testimony at Hearing**

Actors:

Complainant – Pat Smith  
Complainant’s Advisor – Dr. Engle  
Title IX Hearing Panel Chair – Janine Small  
Respondent – Madison Cabot  
Respondent’s Advisor – Mr. Farm, J.D.

Date:

Thursday, December 1 at 9:00 am

Synopsis:

Complainant testified at hearing; Complainant testified that she would not have participated in the “body count” game if she knew that Respondent was playing the game. Complainant detailed window incident and offensive language used by Respondent. Cross-examined by Respondent’s Advisor who focused on issue of consensual/nonconsensual sexual acts; relevancy rulings by Hearing Panel Chair. Advisor was argumentative and discussions occurred regarding controlling the Advisors.

### **Scene 10 – Complainant’s Witness at Hearing**

Actors:

Witness – Fred Travis (Athletic Trainer)  
Complainant – Pat Smith  
Complainant’s Advisor – Dr. Engle  
Title IX Hearing Panel Chair – Janine Small  
Respondent – Madison Cabot  
Respondent’s Advisor – Mr. Farm, J.D.

Date:

Thursday, December 1 at 9:00 am

Synopsis:

Complainant’s witness (Fred Travis) testified as to his knowledge of the body count game which was played when he was a student at the institution. Travis testified to hearing Respondent

and Grace Newsome discussing Respondent's relationship with Complainant. Cross-examined by Respondent's Advisor who focused on the issue of the testimony being hearsay.

### **Scene 11 – Complainant's Witness at Hearing**

Actors:

Witness – Grace Newsome  
Complainant – Pat Smith  
Complainant's Advisor – Dr. Engle  
Title IX Hearing Panel Chair – Janine Small  
Respondent – Madison Cabot  
Respondent's Advisor – Mr. Farm, J.D.

Date:

Thursday, December 1 at 9:00 am

Synopsis:

Complainant's witness Grace Newsome is a member of the JV Cheer Squad and was Respondent's roommate. Newsome was planning on participating in the body count game but decided not to since she was interested in the female that she was dating. Newsome testified that she discussed the game and Respondent's role in the game in the athletic training room where Fred Travis was present. Respondent's Advisor asked questions focusing on whether or not Newsome was charged with a Title IX violation and what was the disciplinary action that she was given. Hearing Panel Chair ruled on relevancy issues.

### **Scene 12 – Respondent's Testimony at Hearing**

Actors:

Complainant – Pat Smith  
Complainant's Advisor – Dr. Engle  
Title IX Hearing Panel Chair – Janine Small  
Respondent – Madison Cabot  
Respondent's Advisor – Mr. Farm, J.D.

Date:

Thursday, December 1 at 9:00 am

Synopsis:

Respondent testified and did not dispute playing the body count game, pounding on Complainant's window, and calling Complainant offensive words. Respondent testified that she did not rape Complainant. Complainant's Advisor asked questions regarding Respondent's mental state, medical records, and conversations between Complainant and her attorney Advisor; all of which were ruled not relevant and Complainant directed by Hearing Panel Chair not to respond.

### **Author and Presenter:** Judy Spain, J.D., CCEP

Judy currently serves as the GICA Compliance Program Consultant. She is a Professor Emeritus, Eastern Kentucky University, an attorney licensed in Kentucky, Ohio, and Pennsylvania, and is a Certified Compliance and Ethics Professional. She served as General Counsel and Chief Ethics and Compliance Officer at Eastern Kentucky University and Manhattanville College, where she developed and implemented compliance programs. She has served in multiple Title IX roles and has lectured extensively in this area. Judy is the author of the first book on higher education

compliance, *“Higher Education Compliance: Blueprint for Success”*. Judy is also the author of *“Compliance Risk Assessments: An Introduction”* published by the Society for Corporate Compliance and Ethics.



## **GICA Compliance Collaborative**

### **2021 In-person and Zoom Title IX Investigator Training (6 ½ Hour Training – September 2021)**

#### **AGENDA**

##### **Overview**

This training is designed to provide Title IX Coordinators, Deputy Coordinators, Investigators, Hearing Panel Members, Advisors, Appeal Officers, HR personnel, and anyone associated with administering Title IX with an up-to-date understanding of current compliance requirements using a scenario-based training.

This training utilized newly developed training videos detailing an interesting fact pattern. Attendees were exposed to the overall alleged Title IX issue; developed an interview/investigative plan; watched the video interviews; developed interview summaries; and wrote an investigative report.

##### **9:00 a.m. to 10:00 a.m.**

- Introduction
- PowerPoint – Title IX Overview
  - Topics covered:
    - Prevention
    - Definitions and Guidance
      - Sexual harassment
      - Respondent
      - Formal complaint
      - Attempting to participate
      - Effective denial to equal access
      - Actual Notice
    - Informal Resolution
      - Permitted use
      - Not permitted use
      - Use at any time

- Live Hearing
  - Cross-examination (statutory definition and court case)
- NCAA Guidance

**10:00 a.m. to 10:10 a.m.**

- Break

**10:10 a.m. to 11:45 a.m.**

Total of 12 videos written by Judy Spain, J.D., CCEP, GICA Compliance Collaborative Program Consultant. Videos produced by DMZ Productions; copyright held by Spain and Spain, Inc., and licensed to GICA.

For this training, eight of the videos were used. The other videos were used in the Title IX Hearing Panel Member Training (both Zoom and in-person November 2021).

Attendees watched the videos and then participated in discussion regarding the videos which showed various steps of the investigative process. Videos were designed to develop investigator competency skills; to expand attendees knowledge of the Title IX process; to promote discussion regarding what went right/what went wrong in the interviews; to assist attendees to determine what could be relevant questions; to encourage discussion regarding how to ask follow-up questions to determine facts and credibility of the interviewee; to understand the need for standardization of the interview process; and to discuss the burden of proof to be established.

Summary of Issue:

Body Count Game involving JV Cheer Team in fall semester. The following are members of the JV Cheer Team: Madison Cabot, Grace Newsome, Sam Barkley, Maggie Peters, and Bob Speaker. Hailey Nichols is a member of the Varsity Cheer Team. Complainant is Pat Smith.

Grace Newsome, Sam Barkley, and Maggie Peters were all charged with violations of Title IX Policy. All agreed to Informal Resolution. Hailey was provided notice of charges; case did not move forward; discretionary dismissal. Madison Cabot was also charged with violation of Title IX Policy – sexual hostile environment and gender-based harassment. Cabot did not accept Informal Resolution; case went through Formal Resolution process to a Live Hearing.

- Post 1<sup>st</sup> item - “concern about comment” email
- Post 2<sup>nd</sup> item - “follow up from previous email” email
- Discuss
  - Step 1:
    - Identification of possible Title IX matter
  - Step 2:
    - Identify possible witnesses
  - Step 3:
    - Compile questions:
      - Staff questions

- Witness/respondent questions
  - Step 4:
    - Begin interview process
    - Identify order of witnesses
    - Identify need for notification of possible Title IX violation
- Show video 1 – Interview of Coach Tony Roberts
  - Synopsis: Roberts had no knowledge of anyone on either the JV or Varsity Cheer Team playing the body county game.
- Show video 2 – Interview of Athletic Trainer Fred Travis
  - Synopsis: Travis had knowledge of the body count game since it was played when he was a student. Travis overheard Newsome and Cabot discussing the game while they were in the training room. Travis failed to report possible Title IX matter to anyone at the institution.
- Show video 3 – Interview of Pat Smith
  - Synopsis: Smith has transitioned from male to female. Smith had consensual sex with Cabot but stated that she would not have had consensual sex if she knew that Cabot was playing the game. Smith detailed an incident involving Cabot, Newsome, Peters, and Barkley pounding on her window and calling her derogatory names. Smith also detailed other incidents where she was called derogatory names. Smith was initially interviewed as a witness; Smith decided to file a formal complaint against Cabot, Newsome, Peters, Barkley, and Nichols.
- Post 3<sup>rd</sup> item – Template Form 1 – Title IX – Complainant and Respondent Initial Meeting
- Post 4<sup>th</sup> item – Template Form 2A – Notice of Allegation to Respondent – hostile environment
- Post 5<sup>th</sup> item – Template Form 2B – Notice of Allegation to Respondent – sex and gender harassment
- Show Video 4 – Interview of Grace Newsome
  - Synopsis: Newsome is Cabot’s roommate. Newsome intended to play the body count game, but became involved with a student and chose not to post any points. Newsome detailed a conversation with Cabot in the athletic training room, where Athletic Trainer Travis was present, regarding Cabot playing the game.
- Show Video 5 – Interview of Madison Cabot
  - Synopsis: Cabot did not deny having consensual sex with Smith. Cabot did not deny pounding on Smith’s window or calling Smith derogatory names.
- Send transcripts of interviews to all attendees for the following individuals:
  - Coach Tony Roberts
  - Athletic Trainer Fred Travis
  - Complainant Pat Smith
  - Respondent Grace Newsome
  - Respondent Madison Cabot

**11:45 a.m. to 1:00 p.m.**

- Lunch Break
- During lunch, each attendee to work in a group to prepare a summary of the interview of one of the five individuals identified above. Summary to be sent to Presenter for inclusion into the draft Preliminary Report.

**1:00 p.m. to 2:15 p.m.**

- Show video 6 – Interview of Sam Barkley
  - Synopsis: Barkley acknowledged knowing about the body count game but not playing the game. Barkley acknowledged pounding on Smith’s window and calling Smith derogatory names.
- Show video 7 – Interview of Hailey Nichols
  - Synopsis: Nichols is the RA in Smith Hall and lives right next door to Smith. Nichols acknowledged that she heard pounding on Smith’s window but did not investigate the incident. Nichols acknowledged that she overheard Cabot and Newsome talking about the body count game when Cabot and Newsome were in the athletic training room. Nichols did not report any possible Title IX matter to anyone at the institution.
- Show video 8 – Interview of Bob Speaker
  - Synopsis: Speaker had heard of the game but had not played the game. Speaker provided to institution a copy of the GroupMe chat that Cabot posted concerning the points she received by playing the body count game with a transgender person.
- Post 6<sup>th</sup> item – Template Form 3 – Informal Resolution Agreement – Grace Newsome
- Post 7<sup>th</sup> item – Template Form 4 – Informal Resolution Outcome – Grace Newsome

**2:15 p.m. to 2:30 p.m.**

- Break

**2:30 p.m. to 4:00 p.m.**

- Post 8<sup>th</sup> item – Investigative Report Template
  - Template includes the summary of the interviews of witnesses.
- Post 9<sup>th</sup> item – Template Title IX NDA
- Post 10<sup>th</sup> item – Template Form 5A – Live Hearing Notification – Madison Cabot
- Post 11<sup>th</sup> item – Template Form 5B – Live Hearing Format – Madison Cabot
- Summary discussion

**Author and Presenter: Judy Spain, J.D., CCEP**

Judy currently serves as the GICA Compliance Program Consultant. She is a Professor Emeritus, Eastern Kentucky University, an attorney licensed in Kentucky, Ohio, and Pennsylvania, and is a Certified Compliance and Ethics Professional. She served as General Counsel and Chief Ethics and Compliance Officer at Eastern Kentucky University and Manhattanville College, where she developed and implemented compliance programs. She has served in multiple Title IX roles



and has lectured extensively in this area. Judy is the author of the first book on higher education compliance, *“Higher Education Compliance: Blueprint for Success”*. Judy is also the author of *“Compliance Risk Assessments: An Introduction”* published by the Society for Corporate Compliance and Ethics.



## **Georgia Independent College Association Compliance Collaborative Program**

### **2021 Title IX Training - Overview**

#### **Live and Recorded Webinar**

#### **1 ½ Hour Webinar**

#### **Definitions**

- Sexual harassment
- Education program or activity
- Formal complaint
- Complainant
- Respondent
- Non-Title IX Proceedings

#### **Jurisdiction**

#### **Dismissal of Complaints**

- Mandatory Dismissal
- Discretionary Dismissal

#### **Standard of Evidence**

- Preponderance of evidence
- Clear and convincing

#### **Emergency Removal**

- Students
- Administrative Leave – Students
- Administrative leave – non-student employee

#### **Supportive Measures**

- Not punitive
- Provided to both parties
- Example

## **Role of Advisor**

- Definition
- Role Advisor
- Represent or permit advisor participation
- Restrictions on who can be an Advisor
- Rules of decorum

## **Investigative Process**

- No conflict of interest or bias
- Reasonable prompt time frames
- No gag order
- Written notice required
  - Presumption of not responsible
  - Rights of Complainant and Respondent
- Informal Resolution
  - Not permitted to require as condition of employment or continuing in education program
  - Not permitted to resolve allegations that employee sexually harassed a student
- Formal Resolution
  - Inspect and review evidence
  - Preliminary Report
  - Investigative Report

## **Live Hearing**

- Must have Live Hearing
- Option – Informal Resolution prior to adjudication
- Parties physically present
- Recording
- Advisor
  - Attendance at hearing
- Must submit to cross-examination
- Questions of parties and witnesses by Advisor
- Cross-examination
- Determination by Decision-maker
- Relevant questions
  - Rape shield protection
- Written determination required
- Remedies

## **Appeal**

- Both parties can appeal
- Grounds for appeal
- Additional bases for appeal
- Requirements for appeal

## Resources

OCR and Title IX

[https://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html)

<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>

Federal Register

<https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal#citation-1152-p30294>

Joint Guidance on Title IX -

<https://system.suny.edu/sci/tix2020/>

<https://system.suny.edu/media/suny/content-assets/documents/sci/tix2020/Live-Hearings,-Cross-Examination-and-Advisors-of-Choice.pdf>

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