



GICA Compliance Collaborative

2020 Webinar Training

Clery Act

(1 Hour Webinar – May 4, 2020)

AGENDA

Four Cornerstones of Clery Act

- Annual statistics
- Daily crime log
- Timely warnings/emergency notifications
- Policy/procedure disclosures)

Department of Education Audit Process

- Key areas of interest when auditing
- How tests for compliance

Strategies to improve compliance

Questions and Answers

Resources

Presenter: John Graff, J.D.

John is a partner at Hirsch Roberts Weinstein LLP in Boston where he assists colleges and universities throughout the country with legal and operational issues related to campus safety. John frequently advises and represents institutions under audit by the Department of Education's Clery Act compliance unit, assists schools in developing Clery compliance programs and policies, and provides Clery assessment/audit services to clients. John also conducts Title IX investigations involving allegations against institution executives and advises schools on Title IX compliance.



**Georgia Independent College Association
Compliance Collaborative Program**

2020 Title IX Role of Advisor Training

Tuesday, August 25, 2020

1-hour Webinar

Definitions

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

Standard of Evidence

Preponderance of evidence
Clear and convincing

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
- Non-Disclosure agreement

Live Hearing

- Must have Live Hearing
- Option – Informal Resolution prior to adjudication
- Parties physically present
- Recording
- Order of hearing
- Advisor
 - Attendance at hearing
- Must submit to cross-examination
- Questions of parties and witnesses by Advisor
- Cross-examination
- Determination by Decision-maker
- “Waiving” question
- Relevant questions
 - Not relevant questions
 - Legally recognized privilege
 - Rape shield protection
 - Medical records
 - Hearsay
- 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/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>

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, New York, 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

2020 Webinar Training

Title IX – Role of Decision-maker

(1 ½ Hour Webinar – September 29, 2020)

AGENDA

This webinar was designed to provide training on the role of the decision-maker and, more specifically, the role of a decision-maker making evidentiary rulings.

Logistics

- Pre-hearing checklist
- Live hearing with parties
- Recording
- Order of hearing
- Logistical – What ifs?

Advisor – Attendance

- What if Party attends without Advisor?
- What if Party does not attend and Advisor does attend?
- What if neither Party nor Advisor attend?

Cross-Examination

- What is cross-examination?
- Context of the cross-examination requirement
- Stated reasons for cross-examination
- Questions of Parties and witnesses by Advisors
- No requirement that questions must be submitted in advance
- More...cross-examination
- “Waiving” questions
- Must submit to cross-examination
- Practicalities of “must submit”

Determination by Decision-maker

Statutory language – determination by decision-maker
Ruling – statutory and preamble language
Practical Tips

Relevant Questions

What are relevant questions
What are not relevant questions
Legally recognized privilege
Rape shield protection
 Hypothetical scenarios
Medical records
Hearsay

Credibility

Credibility & weight = training
Credibility – weight (discretion)
Credibility – weight (prior bad acts)
Institutional decisions
 Expert witnesses, character witnesses, polygraph tests, other procedures
 Institutions decide weight to these types of witnesses or documentation
Credibility – status of party or witness
Credibility – factors
Credibility – judgment
Credibility – missing evidence
Credibility – trauma-informed approaches

Action Items

Use information to review your Title IX policy; any revisions needed?
Confirm insurance liability coverage for all Title IX team members.
Read Investigative Report; understand case BEFOE you enter the hearing.
Prepared hearing script/reference guide that includes common response.
Be prepared.

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/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/>

Speakers:**Brian Carlisle, J.D., Vice President and Dean of Students, LaGrange College**

Brian currently serves as Vice President for Student Engagement and Dean of Students at LaGrange College. For more than 20 years, he has investigated discrimination claims, including cases alleging Title IX violations. Brian also serves as a state expert on sexual assault with the State of Georgia Criminal Justice Coordinating Council.

Marti Fessenden, J.D., Special Counsel to the President and Title IX Coordinator, Agnes Scott College

Marti Fessenden has a unique 30+-year career in law, higher education administration and nonprofit leadership. She was a litigator for more than 26 years, most recently with her own law firm – The Fessenden Firm / Higher Ed Advise. Ms. Fessenden no longer litigates, solely providing advice and counsel within higher education. She joined Agnes Scott College as Special Counsel and Title IX Coordinator five years ago. For Agnes Scott and other institutions she currently advises, her focus is compliance and risk management across all campus divisions. Ms. Fessenden also has particular expertise in Title IX.

Regina Mincborg, J.D., University Counsel, Oglethorpe College

Regina Mincborg serves as University Counsel at Oglethorpe University where she provides legal advice to academic and administrative offices across campuses. Regina has previously served in the roles of Director of Compliance and Title IX Coordinator. Prior to Oglethorpe, she worked in a variety of capacities in and around the federal and state governments, defending clients in regulatory investigations, conducting congressional investigations on the U.S. House Oversight Committee, and shaping legislation and administrative policy. Regina earned her undergraduate degree from Florida State University and her law degree from Emory Law School.

Danny Price, In-house General Counsel, Berry College

Danny has served as General Counsel for Berry College since 2006. Prior to joining Berry, Danny was in private practice in the Savannah, GA area where his practice focused on litigation, real estate development and mortgage lender representation, and general business matters. He also served from 1999-2002 as the elected Solicitor-General for the State Court of Effingham County. Danny holds a BS in Economics from Berry College and received his JD from the University of GA in 1991.

Moderator:**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, New York, 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

2020 Webinar Training

Title IX - Trauma Informed Investigation and Questioning

(1 Hour Webinar – February 4, 2020)

AGENDA

Dynamics of Sexual Violence

- Common characteristics
- Reasons for not reporting

Fact Finding

- OCR guidelines
- Current legal cases/precedent
- Institution's policies and procedures
- Dynamics of sexual violence and violation
- History of legal and law enforcement response
- Student perceptions of sexual violence
- Campus climate data
- Understanding of gender socialization
- Understanding of trauma
- Your own biases

Basics of Trauma

- Review
- Intersectionality

Specific Skills and Techniques for Interviewing

- Open ending questioning
- Environmental considerations
- Consent questions
- Detail questions
- Clarification questions or reflective statements

Vicarious and Secondary Trauma

Action Items

Resources

Presenter: Presenter: Carol Mosely, MA

Carol served as the Healthy Campus Project Director for the Georgia Healthy Campus Initiative, 2017 - 2019. Prior to that initiative, Carol was a Director at We End Violence, a company that provided sexual violence prevention materials and training to higher education institutions and the U.S. military. Carol was the Director of the Rape Prevention Education Program at the University of California at Santa Barbara for 12 years. During that time, she was also a Subject Matter Expert for California POST (Peace Officers Standards and Training), serving on the team that developed and provided training on trauma-informed investigations.

Presenter: Judy Spain, J.D., CCEP

Judy currently serves as the GICA Compliance Program Consultant. She is a tenured Professor, an attorney licensed in Kentucky, Ohio, New York, 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. 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

2020 Webinar Training

Title IX – Hearing Panel Member Training – Part I

(1 Hour Webinar – September 2020)

AGENDA

Part I – PowerPoint

Title IX Hearing Panel Member Training

1-hour webinar

This PowerPoint is part of a 3-hour training program. The first hour used the PowerPoint; two hours were devoted to Title IX Hearing Panel Member training videos.

Definitions

- Sexual harassment
- Education program or activity
- Formal complaint
- Complainant
- Respondent

Standard of Evidence

- Preponderance of evidence
- Clear and convincing

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
- Non-Disclosure agreement

Live Hearing

- Must have Live Hearing
- Option – Informal Resolution prior to adjudication
- Parties physically present
- Recording
- Order of hearing
- Advisor
 - Attendance at hearing
- Must submit to cross-examination
- Questions of parties and witnesses by Advisor
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- “Waiving” question
- Relevant questions
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 - Not relevant questions
 - Legally recognized privilege
 - Rape shield protection
 - Medical records
 - Hearsay
- Written determination required
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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

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GICA Compliance Collaborative

2020 Webinar Training

Title IX – Hearing Panel Member Training – Part V

(2 Hour Webinar – September 2020)

AGENDA

Title IX Hearing Panel Member Training

Total of 11 videos were 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, five of the videos were used. The other 6 videos were used in the Title IX Investigator Training (both webinar and in-person August 2020).

Attendees watched the videos and then participated in discussion regarding the videos.

Videos show various steps in the Live Hearing. They are designed to develop Decision-maker competency skills; to expand attendees knowledge of the new 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; and to understand the need for standardization of process of opening/closing a Live Hearing.

Scene 7 – Complainant’s Testimony at Hearing

Actors:

Complainant – Jennifer Shore
Complainant’s Advisor – Elizabeth Shore
Title IX Hearing Panel Chair – Pat Jones
Respondent – Curtis Tripp
Respondent’s Advisor – Michael Dunlap

Date:

Wednesday, December 10, 2019
10:30 am

Synopsis: Complainant testified at hearing; Complainant testified that she said “no” and pushed Respondent to make him stop. Body language of Complainant’s Advisor was discussed.

Scene 8 – Cross-Examination of Complainant at Hearing

Actors:

Complainant – Jennifer Shore
Complainant’s Advisor – Elizabeth Shore
Title IX Hearing Panel Chair – Pat Jones
Respondent – Curtis Tripp
Respondent’s Advisor – Michael Dunlap

Date:

Wednesday, December 10, 2019
10:30 am

Synopsis: Complainant cross-examined by Respondent’s Advisor; escalation of questions by Respondent’s Advisor discussed; questions asked directly to Complainant with no intervention by Decision-maker.

Scene 9 – Respondent’s Testimony at Hearing (Take 1)

Actors:

Complainant – Jennifer Shore
Complainant’s Advisor – Elizabeth Shore
Title IX Hearing Panel Chair – Pat Jones
Respondent – Curtis Tripp
Respondent’s Advisor – Michael Dunlap

Date:

Wednesday, December 10, 2019
10:30 am

Synopsis: Respondent’s testimony at hearing; refused to testify; discussion of use of word “discounted” in reference to Respondent’s refusal to testify.

Scene 10 – Respondent’s Testimony at Hearing (Take 2)

Actors:

Complainant – Jennifer Shore
Complainant’s Advisor – Elizabeth Shore
Title IX Hearing Panel Chair – Pat Jones
Respondent – Curtis Tripp
Respondent’s Advisor – Michael Dunlap

Date:

Wednesday, December 10, 2019
10:30 am

Synopsis: Respondent’s testimony at hearing; discussed ways to encourage more detailed answers; Respondent continued to state that he did nothing wrong; Complainant’s Advisor’s body language again an issue.

Scene 11 – Cross-Examination of Respondent at Hearing

Actors:

Complainant – Jennifer Shore
Complainant’s Advisor – Elizabeth Shore
Title IX Hearing Panel Chair – Pat Jones
Respondent – Curtis Tripp
Respondent’s Advisor – Michael Dunlap

Date:

Wednesday, December 10, 2019
10:30 am

Synopsis: Respondent cross-examined by Complainant’s; escalation of questions by Complainant’s Advisor discussed; questions asked by Advisor to Decision-maker who directed Respondent to answer; Complainant’s Advisor behavior escalated until asked to leave the room; discussed what to do when remove an Advisor.

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

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GICA Compliance Collaborative

2020 In-Person and Webinar Training

Title IX – Investigator Training – Part V

(2 Hour In-Person, Webinar, and Videotaped August 2020)

AGENDA

Title IX Investigator Training – Part V

Total of 11 videos were 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, six of the videos were used. The remaining 5 videos are used in the Title IX Hearing Panel Member Training (September 2020).

Attendees watched the videos and then participated in discussion regarding the videos.

Videos show various steps in the Title IX investigation process. They are designed to develop investigator interview competency skills; to expand attendees knowledge of the new Title IX process; to promote discussion regarding what went right/what went wrong in the interviews and the process; to assist attendees to determine what could be an interview sequence; to encourage discussion regarding how to ask follow-up questions to determine facts and credibility of the interviewee; and to understand the need for standardization of process of opening/closing an interview by explaining the Title IX process, options for reporting/not reporting, next steps, Supportive Measures, providing handouts, etc.

Scene 1 – Complainant’s Initial Meeting (Take 1)

Actors:

Complainant – Jennifer Shore
Title IX Coordinator – Shelia Fox

Date:

Monday, October 7, 2019
9:00 am

Synopsis: Complainant met with Title IX Coordinator; Coordinator acted outside of Title IX boundaries

Scene 2 – Complainant’s Initial Meeting (Take 2)

Actors:

Complainant – Jennifer Shore
Title IX Coordinator – Shelia Fox

Date:

Monday, October 7, 2019
9:00 am

Synopsis: Complainant met with Title IX Coordinator; Coordinator stopped meeting mid-conversation; pulled in Title IX Investigators

Scene 3 – Complainant’s Interview

Actors:

Complainant – Jennifer Shore
Title IX Investigator – Abigail Thomas

Date:

Monday, October 7, 2019
9:00 am

Synopsis: Complainant met with Title IX Investigator(s); Investigator(s) conducted interview

Scene 4 – Respondent’s Interview

Actors:

Respondent – Curtis Tripp
Title IX Investigator – Abigail Thomas

Date:

Wednesday, October 9, 2019
3:00 pm

Synopsis: Respondent met with Title IX Investigator(s); Investigator(s) conducted interview

Scene 5 – Davenport’s Interview

Actors:

Front desk employee at Camden Hall/student – Ashton Davenport
Title IX Investigator – Abigail Thomas

Date:

Friday, October 11, 2019
10:30 am

Synopsis: Davenport met with Title IX Investigator(s); Investigator(s) conducted interview

Scene 6 – Montgomery’s Interview

Actors:

Complainant’s roommate – Lauren Montgomery
Title IX Investigator – Abigail Thomas

Date:

Monday, October 14, 2019
10:30 am

Synopsis: Montgomery met with Title IX Investigator(s); Investigator(s) conducted interview

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

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GICA Compliance Collaborative

2020 In-Person and Webinar Training

Title IX – Investigator Training – Parts I, II, and III

(3 Hour In-Person, Webinar, and Videotaped – August 2020)

AGENDA

Title IX Investigator Training – Part I

Definitions

- Sexual Harassment
- Education Program or Activity
 - Off-Campus Student Organizations
- Formal Complaint
- Complainant
- Respondent

Jurisdiction

- Triggering Event
- Actual Knowledge
- Official with Authority
- Mandatory Reporter/Responsible Employee
- No Formal Complaint
 - Filing by Title IX Coordinator
 - Unwilling Complainant
- Unknown Respondent

Dismissal of Complaints

- Mandatory Dismissal
- Discretionary Dismissal
- Non-Title IX Proceedings

Standard of Evidence

- Preponderance of Evidence
- Clear and Convincing
- Same Standards

Emergency Removal

- Purpose
 - Individualized assessment
- Administrative Leave

Supportive Measures

- Definition

- Offered to Complainant and Respondent; offered to student and employee

- Restore/Preserve Equal Access

Training Materials Publication Requirements Overview

- Publication Requirement

- Up-to-date Training

Title IX Investigator Training – Part II

Informal Resolution

- Definition

- Not Permitted Use – condition of employment or enrollment

- Not Permitted Use – Employee sexually harasses student

Investigative Process

- No Conflict of Interest or Bias

- Reasonably Prompt Time Frames

- Written Notice of Allegations

- Rights of Complainant and Respondent

- No Gag Order

- Inspect and Review Evidence

- Preliminary Report

 - Communication with Advisor, if any

- Investigative Report

 - Communication with Advisor, if any

Role of Advisor

- Advisor of Choice

- Restrictions

- Rules of Decorum

Title IX Investigator Training – Part III

Live Hearing

- Must Have

- Options – Informal Resolution

- Decision-Maker

 - Definition

- Parties Physically Present

- Recording

- Questions of Parties and Witnesses by Advisor

 - Cross-Examination

 - Must Submit

 - Relevant Questions

 - Determination of Relevancy

 - Rape Shield Protection

 - Hearsay

- Medical Records Exception
- Privilege Exception
- Written Determination
- Content
- Remedies
- Appeal
 - Both Parties Can Appeal
 - Grounds for Appeal
 - Additional Bases for Appeal
 - Requirements for Appeal

Resources Provided

OCR and Title IX

https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html

Joint Guidance on Title IX -

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

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GICA Compliance Collaborative

2020 In-Person and Webinar Training

Title IX – Investigator Training – Part IV

(1 Hour In-Person, Webinar, and Videotaped - August 2020)

AGENDA

Title IX Investigator Training – Part IV

ANSI/ASIS INV.1.-2015 – Investigation Standards

(Discussed relevancy of ANSI/ASIS INV.1.-2015 Investigation Standards to Title IX Investigations)

What a lawsuit will focus on if allegation of improper investigation:

- Does the institution have a policy/procedure in place to govern investigations?
- Was there a written disclosure of allegation?
- Was there disclosure of objective purpose of investigation?
- Were the investigator(s) identified?
 - Documentation of education, training, previous experience
- Were both parties provided the same opportunity to tell their story to the investigator, provide documentation, review record, present their story to the hearing panel, cross-examine witnesses, and appeal?

Overview

Investigation Defined

Investigation Framework

Plan-Do-Check-Act Model

Investigation Guiding Principles

Information Types

Testimonial

Documentary

Physical

Direct Evidence

Circumstantial Evidence

Forensic Evidence

Hearsay Evidence

Admissibility of Evidence

Materiality of Evidence

Establishing Investigation Scope

Establishing Investigation Roles
Establishing Legal Requirements
Investigator Competency Defined
Investigator Competency Skills
Prior to Investigation Commencing
Investigator's Information Collection Role
Preparing Investigation Conclusions
Evaluating Investigation Outcomes

Resources Provided

<https://www.asisonline.org/publications--resources/standards--guidelines/>

Each GICA Compliance Collaborative member institution was provided with one copy of these proprietary standards.

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