



## Sexual Misconduct Prevention Working Group

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Final Report and Recommendations

March 7, 2020

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# Sexual Misconduct Prevention Working Group

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## *Final Report and Recommendations*

### **History and Charge of the Working Group**

In March 2019, President Marjorie Hass established the Sexual Misconduct Prevention Working Group (SMPWG) at the request of the Rhodes Student Government. The SMPWG was given responsibility for conducting a comprehensive review of existing Rhodes Title IX policies, procedures and practices in order to identify strengths and areas for improvement. SMPWG researched best practices related to Title IX compliance and made recommendations to help guide and empower the Faculty/Staff Advisory Board and the Student Title IX Advisory Board in completing ongoing efforts to reduce the occurrence and impact of sexual misconduct on campus; to ensure that students, faculty, and staff have access to comprehensive prevention education; and to create an environment that values and promotes a culture of respect.

The SMPWG, consisting of student leaders, faculty, staff and administrators, held its initial meetings in May 2019. During those meetings, several key challenges associated with sexual misconduct were identified. Correspondingly, four committees were created to address those challenges.

#### Committee 1: Impairment & Consent

Consistently, research has shown that college students frequently struggle to understand what consent actually means. Many students find it hard to determine when someone is incapacitated, and, therefore, incapable of giving consent. Committee 1 examined the relationship between impairment and consent and offered recommendations for increasing awareness and changing behavior among students.

#### Committee 2: Engaging the Campus Community

Committee 2 considered strategies for engaging student organizations and other campus constituents in communicating a consistent message across various media throughout the year.

#### Committee 3: Prevention Education and Awareness

Committee 3 researched strategies for implementing and institutionalizing a comprehensive sexual misconduct prevention program on campus. Recommendations included peer-based and other approaches to providing students with a comprehensive understanding of Title IX policies, procedures and resources.

#### Committee 4: Title IX Formal Resolution Process Improvements

What are best practices related to Title IX procedures? What does law require? Are alternate dispute resolution and restorative justice effective approaches to resolving Title IX cases? Committee 4 was charged with reviewing all aspects of the Rhodes Title IX process, including the uses and potential uses of alternate dispute resolution and restorative justice, and making recommendations for improvement.

Each of the committees was responsible for ensuring that its recommendations were culturally relevant, inclusive and able to be assessed empirically. A summary of each committee's work follows.

### **Impairment & Consent Committee**

#### ***Comparison of Policies at Other Institutions***

In order to understand how issues pertaining to incapacitation and consent are addressed in other settings, the Impairment and Consent committee reviewed Title IX policies at other institutions. The

committee selected 20 colleges and universities that shared some similar characteristics as Rhodes, based on size, location, or student composition. Those institutions included:

- Berry College
- Birmingham Southern College
- Centre College
- Christian Brothers University
- Denison University
- Elon College
- Furman College
- Hendrix College
- Kenyon University
- Millsaps College
- Oglethorpe University
- Rollins University
- Samford University
- Southern Methodist University
- Southwestern University
- Trinity University (TX)
- University of Memphis
- University of the South
- Washington and Lee University
- Wittenberg University

The committee found that all of the institutions address incapacitation and explicitly state that consent cannot be received from someone while incapacitated and that all have nearly identical definitions for incapacitation. A quarter of the schools addressed impairment or intoxication and explicitly differentiated it from incapacitation, similar to what is in our policy, *"Incapacitation is a state beyond drunkenness or intoxication, in which alcohol, drugs, or other factors render one unable to make fully informed judgments or have an awareness of consequences."* The committee noted that language from policies at Sewanee and Rollins, shown in Table 1 below, was unique and could be useful to Rhodes' Title IX office.

**Table 1. Language Regarding Intoxication, Incapacitation and Consent**

Institution	Relevant Language
Sewanee	<i>"The University urges individuals to exercise extreme caution before engaging in sexual activity when either or both parties have been consuming alcohol or using other drugs. The use of alcohol or other drugs can lower inhibitions and create confusion as to whether effective consent is present. If there is any doubt about the level or extent of one's own, or the other party's, impairment, the safest course of action is to forgo or cease any sexual activity."</i>
Rollins	<p><i>"Intoxication or Incapacitation</i></p> <p><i>An individual who is incapacitated is unable to give consent to sexual contact. States of incapacitation include sleep, unconsciousness, intermittent consciousness, or any other state where the individual is unaware that sexual contact is occurring. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to consent to sexual contact. Alcohol or drug use is one of the prime causes of incapacitation. Where alcohol or drug use is involved, incapacitation is a state beyond intoxication, impairment in judgment, or "drunkenness." Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is incapacitated, and therefore unable to give consent, requires an assessment of whether the consumption of alcohol or other drugs has rendered the individual physically helpless or substantially incapable of:</i></p> <ul style="list-style-type: none"> <li>• <i>making decisions about the potential consequences of sexual contact;</i></li> <li>• <i>appraising the nature of one's own conduct;</i></li> <li>• <i>communicating consent to sexual contact; or</i></li> <li>• <i>communicating unwillingness to engage in sexual contact.</i></li> </ul> <p><i>Where an individual's level of impairment does not rise to incapacitation, it is still necessary to evaluate the impact of intoxication on consent. In evaluating whether consent was sought or given, the following factors may be relevant.</i></p> <p><i>Intoxication may impact one's ability to give consent and may lead to incapacitation (the inability to give consent).</i></p>

*A person's level of intoxication is not always demonstrated by objective signs; however, some signs of intoxication may include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness, or emotional volatility.*

*An individual's level of intoxication may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass, and metabolism.*

*No matter the level of an individual's intoxication, if that individual has not knowingly agreed to engage in sexual contact, there is no consent.*

*Anyone engaging in sexual contact must be aware of both their own and the other person's level of intoxication and capacity to give consent. The use of alcohol or other drugs can lower inhibitions and create an atmosphere of confusion about whether consent is effectively sought and freely given. If there is any doubt as to the level or extent of one's own or the other individual's intoxication or incapacitation, the safest course of action is to forgo or cease any sexual contact. A Responding Party's intoxication is never an excuse for or a defense to committing sexual or gender-based harassment, sexual violence, sexual assault, or interpersonal violence, and it does not diminish an individual's responsibility to seek and obtain consent to engage in sexual contact.*

*An individual in a blackout state may or may not meet the definition of incapacitation. Such an individual may appear to act normally but may not have later recall of the events in question. The extent to which a person in this state affirmatively gives words or actions indicating a willingness to engage in sexual activity and the other person is unaware – or reasonably could not have known – of the alcohol or drug consumption or blackout, must be evaluated in determining whether it could be considered that consent had been given.”*

### **Committee Recommendations:**

The Impairment and Consent committee also identified strategies to increase awareness and educate students on the intricacies of impairment and consent, with the goal being to change students' behavior. Committee members categorized each idea as being an "Easy Action," that could be implemented relatively quickly by the college, or a "Long Term Action" that would involve changing policies or require time to be developed by the college. Based on the research of the committee, the SMPWG offers the following recommendations:

**Recommendation #1:** Use wristbands and stamps with consent reminders at college-sponsored events such as Rites of Spring. (Easy Action)

**Recommendation #2:** Replace infographics that are cluttered with too much information, with those that can be understood quickly and effectively. Make sure consent posters are visible in all campus buildings. Any infographics pertaining to sexual misconduct or related matters should be filtered through the Title IX office for review. (Easy Action)

**Recommendation #3:** Ensure all first-year students save the phone number for Campus Safety in their cell phone during orientation. (Easy Action)

**Recommendation #4:** Review and evaluate the effectiveness of the Healthy Relationships Curriculum in educating students on sexual assault and consent and in influencing students' behavior. (Long-Term Action)

**Recommendation #5:** Include language that differentiates incapacitation and impairment/intoxication to our Title IX Policy. (Long-Term Action)

### **Engaging the Campus Community Committee**

In an article appearing in AAC&U's Diversity & Democracy publication, Allison Tombros Korman (2015), argued that it is critical for colleges and universities to partner with campus organizations and student leaders in order to shift the culture to end campus sexual assault. Identifying strategies to engage all constituents, but especially students, in shaping a community that is respectful and inclusive was the charge of Committee 3. Collaboration among student leaders, activists, survivors, peer advisors, athletes,

fraternities and sororities, the LGBTQ+ community and others can be an effective mechanism for transforming the campus culture.

### ***Development of A Community Message***

The Engaging the Campus Community committee developed a statement to be conveyed to the Rhodes student body to reinforce the message that everyone shares a responsibility to create and maintain a culture of respect at Rhodes:

*"We are all leaders when we make our community a safer place. Rhodes encourages anyone to take a stand to create a more inclusive and aware environment."*

The message has already been adopted by the student representatives on the working group. An expectation is that other student leaders on campus would be asked to share the message within their spheres of influence and that the message would be incorporated in documents that are targeted towards students (e.g., syllabi, campus newsletters, emails from the president/student body president, etc.). The consistent use of this message would reinforce the overall goal that everyone on campus bears responsibility for institutionalizing prevention.

### ***A Multi-Pronged Strategy for Engaging the Community***

Additionally, the committee developed a multi-pronged strategy that would serve students during and beyond their four years of matriculation at Rhodes.

- Providing a comprehensive prevention strategy that targets all members of the Rhodes community and engages the greater Memphis community in offering external resources and perspectives on ways to combat sexual misconduct on college campuses;
- Using student leaders to promote education and awareness that is relevant to all student groups on campus; and
- Providing a relevant curriculum that will engage and adhere to all members of campus.

### **Strategy 1: Targeting the "Red Zone"**

The committee proposed that prevention efforts target the first six to eight weeks of the semester when more sexual assaults take place than at any other time in the year, a period commonly referred to as the "red zone." The committee recommended providing consistent education and training opportunities across campus and also investing time in determining the effectiveness of our current methods.

### **Strategy 2: Promoting A More Inclusive Mindset and Language**

Members of the committee observed that conversations about sexual misconduct at Rhodes often begin with the assumption that everyone drinks and engages in sexual activity. Such assumptions may lead certain students to disengage from the conversation, particularly if they feel that the conversation does not pertain or is not relevant to them. It is the belief of the Working Group that cultural change requires the engagement of all community members – even those who may feel as though they are not directly contributing to the problem of sexual misconduct on campus. Thus, if we want alcohol-abstinent and sex-abstinent students to feel like the conversation about sexual assault has anything to do with them, we have to change the way we talk about both alcohol and sex on campus. An important strategy involves engaging an audience that does not partake in intercourse or socialize in settings where alcohol is prominent. The examples below highlight how language and campus programming can be used to change mindsets.

#### *Changing Mindsets Through Language*

Examples of how to counteract assumptions:

- During Welcome Week PAs might say to first-year students: "Drinking is not necessary to survive at Rhodes, many students abstain from both sex and alcohol, and as members of the community we all have a responsibility to take care of each other (even if we don't all drink)."
- A healthy relationships instructor might say: "Not all of us are having sex, but all of us are responsible for respecting our partners' consent—for holding hands and for having sex and for everything in between. In this presentation I will say "sex" as shorthand for "the intimacy you and your partner share." If you and your partner do not have sex, then still apply what I'm saying to the intimacy that you do share."
- We tend to report that alcohol is involved in every Title IX case. True as this may be, this can send the wrong message that incidents only happen with the presence of alcohol. Maybe replace "Alcohol is involved in every sexual assault at Rhodes College" with "Alcohol is involved in many Title IX cases, and it is all of our responsibility to create a community of respect."

#### Changing Mindsets Through Programming

Alcohol-abstinent student leaders can lead a monthly "I Don't Drink And..." dinner and conversation series on topics such as "I want to have healthy relationships" or "I want to be an active bystander." At these events, student leaders could facilitate conversations that begin with an assumption that participants may abstain from drinking.

#### **Strategy 3: Providing Support for Fraternities**

A particular request among IFC members of the Working Group was for specific training in how fraternities could confront dating and domestic violence within their organizations. For example, IFC/NPHC leaders might want to know how to identify risk factors for dating/domestic violence.

#### **Strategy 4: Engaging the Greater Memphis Community**

According to the Centers for Disease Control, "prevention programs and strategies should be developed or selected in collaboration with relevant prevention experts, practitioners, researchers, and key stakeholders and leaders in the community. These collaborators can help ensure that the prevention programs and strategies are grounded in theory and evidence, and likely to be supported by the community". In keeping with this recommendation, the Engaging the Campus Community committee has prioritized the strengthening of partnerships with Memphis-area community organizations. These partnerships could be integrated with our campus resources and culture to yield a more holistic approach to combatting sexual misconduct.

#### **Committee Recommendations:**

Based on the research of the committee, the Sexual Misconduct Prevention Working Group offers the following recommendations:

**Recommendation #6:** Review the educational opportunities provided to students, especially during the first six weeks of college (a.k.a. the "red zone") to include monitoring Everfi's effectiveness, integrating sexual misconduct prevention into the First Year Seminar curriculum, and ongoing Green Dot training.

**Recommendation #7:** Offer education and programming that is inclusive of students who choose not to drink and not to have sex.

**Recommendation #8:** Upon request of IFC members, offer programming that helps fraternities recognize warning signs and emphasize accountability among members.

**Recommendation #9:** Develop ways to collaborate with Memphis area nonprofit organizations working on issues of sexual violence, domestic violence, and challenges within the LGBTQ community.

### Prevention Education and Awareness Committee

Committee 3 was responsible for recommending strategies for implementing and institutionalizing a comprehensive sexual misconduct prevention program on campus. To guide their recommendations, the committee identified three pathways for gathering data:

- benchmarking against other colleges and universities to gain a better understanding of how Rhodes’ efforts compared to those of our peers;
- conducting a student survey to understand how current Rhodes students view Title IX and envision change within campus culture; and
- conducting a review of current college-based sexual assault prevention programs.

### Lessons Learned from Other Colleges and Universities

To learn about prevention efforts on other campuses, the committee sought information from a broad range of college and universities, including both those that were similar to and dissimilar from Rhodes. The following institutions responded to the request for information:

Institution	Location	Student Body Size	Type
Southern Oregon University	Ashland, OR	6,000 undergraduates 4,500 graduates	Public Liberal Arts
Trinity University	San Antonio, TX	2,430 undergraduates 176 post graduates	Private Liberal Arts
University of Richmond	Richmond, VA	3,250 undergraduates 877 post graduates	Private Liberal Arts
Wake Forest University	Winston-Salem, NC	5,102 undergraduates 3,104 postgraduates	Private Research
Washington & Lee University	Lexington, VA	2,223 undergraduates 394 post graduates	Private Liberal Arts

The questions along with the lessons learned from the other campuses are shown below.

Q1: How do you introduce Title IX to your students?	All institutions offer a type of training before students arrive to campus. In addition, information regarding bystander intervention is completed during first-year orientation. Wake Forest uses Culture of Respect from NASPA with many resources and programs. (See link to: <a href="#">Culture of Respect</a> )
Q2: Do you develop a curriculum approach for all class years? If so how?	Most, if not all, institutions reported not having a dedicated curriculum but it is something that they hope to have. Currently, most have something for athletes; one with a three-year rotation of programs so the students don’t get the same material.
Q3: What lessons have you learned from your Title IX education?	Having a centralized, intentional coordinated approach is important. One institution suggested having Title IX policy/process to be presented by the Title IX Coordinator or deputy, while having education and prevention delivered by another staff person



	in a different office, this allows for more candid conversations around prevention.
Q4: What would you say is your biggest challenge with Title IX education?	Time with students showed to be a challenge, institutions reported difficulty with getting students to understand information in such a short period of time. Ensuring that content is fresh enough as to not oversaturate the students to the point that they lose focus.
Q5: What does staffing for your Title IX efforts look like?	Most institutions reported having a Title IX Coordinator who was either full-time or did it part time with their other work responsibilities. Two institutions reported having education done by a Health Promotion staff member of the Counseling/ Health Center.
Q6: Do you engage your alumni in Title IX education efforts? If so, how	No institutions reported having anything formal for alumni.
Q7: Do you use Peer Leaders/Students for education purposes, if so how?	All institutions reported using students as peer educators who provided various different levels of training and prevention.
Q8: Do you have any advice you'd give a college to assist with Title IX efforts?	Utilize the NASPA Culture of Respect as a model, it is good for institutions with limited resources.  Create educational materials for each class and determine how often and long those populations will be trained.
Q9: Do you have any mandatory Title IX education for students if so what does that look like?	Some reported not having any enforced mandatory training for students. A few others mentioned that online modules and in-person presentations.

**Lessons Learned from Survey of Rhodes Students**

The committee sought an understanding of current students’ perceptions of Title IX and administered a survey to the Rhodes student body. There were 503 students who viewed the survey and 199 students who completed it. Students were fairly evenly distributed across class years - seniors (23%), juniors (25%), sophomores (29%) and first years (24%). Of the respondents, 74% were female identified, 2% are gender non-conforming. Of the respondents, the majority (76%) identified as white. Latinx (5%), Black or African American (14%), Asian (10%), Multiracial (2%), Indian (1%) and Other (1%) students, collectively, comprised approximately one-fourth of the respondents.

The questions along with the lessons learned from the students are shown below.

Q1: In your own words, what is Title IX?	Student responses indicate that they do have a general understanding of what Title IX is. Students most commonly report it as being either a law that protects against sex/gender discrimination or as an office that provides sex awareness. It would appear that they do not fully understand the role of the Title IX office.
Q2: Where do you believe the most sexual misconduct violations occur on campus? Why?	Most students responded that sexual misconduct violations occur most frequently in dorm rooms, fraternity houses, or in a general party atmosphere. Most responses cited alcohol as a reason assaults happen in these spaces.

<p>Q3: Do you trust the college to properly handle sexual misconduct violations? Why or Why Not?</p>	<p>Responses to this item varied greatly and ranged from “No” to “Yes.” Words such as “I would like to” or “I believe they do the best they can” were often used when it came to positive responses to the question. Students who reported “No,” did so for various reasons. One student shared that they did not trust the college to properly handle sexual misconduct violations, “because students believe the college does what it can, someone then sues, and gets a settlement” another student who felt they did not trust the college shared, “the investigations are not taken seriously and the perpetrator gets off with no punishment because they can pay to do so.”</p>
<p>Q4: Before entering Rhodes as a college first-year, did you have sexual health that taught more than abstinence?</p>	<p>65% reported having had sexual health that taught more than abstinence before entering Rhodes as a college first-year.</p>
<p>Q5: Do you know where to find the Title IX Sexual Misconduct Policy?</p>	<p>The majority, 67%, of students reported knowing where to find the Title IX Sexual Misconduct Policy.</p>
<p>Q6: What do you think the college needs to do to prevent sexual misconduct on campus?</p>	<ul style="list-style-type: none"> <li>• Students shared that the college should talk about Title IX more with opportunities for open conversations</li> <li>• Students shared that the college should require Green Dot Training for everyone.</li> <li>• A handful of students reported that they didn’t think there was much more the college could do that it isn’t already doing. They recognized that there are already efforts happening to educate students on campus and that the college cannot control student behavior.</li> </ul>
<p>Q7: What are your suggestions for making the policy more visible and known by students?</p>	<ul style="list-style-type: none"> <li>• “The information is on the website already for a student to read if they searched Title IX Rhodes College,”</li> <li>• “Mandating that students read the policy and more advertising of the policy.</li> <li>• Having a less dense version/summaries and put important items in bullet point for easier reading.</li> </ul>
<p>Q8: Additional comments?</p>	<ul style="list-style-type: none"> <li>• Some responses were that we provide a lot of information about Title IX during Welcome Week but after that they don’t hear about it.</li> <li>• The desire for more education within different student groups.</li> </ul>

**Lessons Learned from Review of Prevention Programs and Guides**

The committee reviewed sexual assault prevention guides and programs to identify current trends in campus prevention and education for sexual misconduct. The documents reviewed were:

- NCAA Sexual Violence Prevention: An Athletics Tool Kit for a Healthy and Safe Culture 2<sup>nd</sup> Edition  
This resource offers suggestions for NCAA member schools for how to develop and promote a culture on campus that is free from violence—one that values, respects, and defends the dignity of all people and upholds the inherent value of each individual.
- American College Health Association Shifting the Paradigm: Primary prevention of sexual violence  
This document provides facts, ideas, and strategies, conversation starters, and resources to everyone on campus who is involved with the prevention of sexual violence.
- Center for Disease Control: Sexual Violence on Campus Strategies for Prevention

This document provides information regarding the creation of a framework for guiding efforts regarding sexual violence prevention.

- *Continuum of Male Engagement: A conceptual model for engaging men to prevent gender-based violence and promote gender equity.*

This resource presents a continuum of male engagement with recommendations for educating men who are at different stages of involvement for gender equity and gender-based violence.

Much of the information described in the programs and resources cited above reflected practices that are already underway at Rhodes, such as the establishment of the SMPWG and the emphasis on training for first-year students and athletes. In keeping with the work being undertaken by Rus Funk, author of *Continuum of Male Engagement*, Rhodes should consider doing more to engage male students in sexual misconduct prevention. Funk's model would be especially valuable because it identifies varying levels of readiness that men have to engage in prevention efforts and it offers insight on how to engage men at each level of awareness. Funk's primary assumptions are that our work would have greater impact if we were to focus on those males who are most willing to be engaged (rather than attempting to engage all males on our campuses) and if we targeted our efforts based on the degree to which males were willing to be engaged on the topics.

### **Committee Recommendations:**

Based on the information the committee collected, SMPWG recommends the following next steps for improving prevention education and awareness at Rhodes.

**Recommendation #10:** Identify ways to incorporate the National Association of Student Personnel Administrators (NASPA) Culture of Respect Initiative into campus programming.

**Recommendation #11:** Develop a four-year co-curriculum that uses technology effectively to teach students about sexual violence prevention.

**Recommendation #12:** Restructure the Student Title IX Board to ensure representation of various campus organizations and active engagement of members.

**Recommendation #13:** Create a comprehensive list of sexual assault prevention-related programs, activities and education occurring on campus and identify opportunities for collaboration on programming sponsored outside the Title IX office.

**Recommendation #14:** Offer supplemental Title IX training to international students who may not be familiar with United States laws or policies.

**Recommendation #15:** Encourage Residence Life to take a more prevention-oriented approach to education about residence hall safety. Encourage RAs to offer engaging programs for residents about safe partying and other topics.

**Recommendation #16:** Engage in a trust-building campaign focused on enhancing student confidence in the Title IX office.

**Recommendation #17:** Create a document that outlines basic Title IX information, captures student attention and is easily understood. Also, draw more attention to the website by making it more interactive and using easy-to-find quick links.

**Recommendation #18:** Hold a focus group of diverse students to read through the policy to assist in identifying items that are unclear or that may have confusing legal jargon.

**Recommendation #19:** Develop a supplemental curriculum for male-identified students based on the Continuum for Male Engagement model to educate men, break down barriers, and involve them more actively in the process.

## **Title IX Formal Resolution Process Improvements Committee**

Committee 4 was responsible for reviewing all aspects of the Rhodes Title IX process, which includes the uses and potential uses of alternate dispute resolution and restorative justice, and for making recommendations for improvement. The committee's work was to be guided by an understanding of legal requirements and best practices within the Title IX field.

This essential piece of the SMPWG's work -- the review of our policies and practices -- is forthcoming. In November 2018, U.S. Secretary of Education Betsy DeVos released a set of proposed changes to Title IX regulations. The four areas that included the most drastic proposed revisions were the definition of sexual harassment, the triggers for an institution's legal obligation to respond, and requirements pertaining to due process and the standard of proof. The fact sheet, shown Appendix A, consists of a one-page summary of the Department of Education's proposed Title IX rule.

Due to the potential impact that the new regulations would have for Rhodes' Title IX policy and practice, the SMPWG agreed that it would be best to delay the work of Committee 4 until the new regulations have been released. We expect the U.S. Department of Education to release those regulations any time now. In January 2020, Bass, Berry and Sims PLC published a list of things that higher education institutions should do or know in preparation for the release of the Title IX regulations.<sup>1</sup> (See Appendix B.) Based on that article, SMPWG strongly encourages Rhodes to consider the following course of action.

**Recommendation #20:** In conjunction with the release of the final Title IX regulations, conduct a review of policies and processes to ensure that they are compliant with the new regulations.

**Recommendation #21:** Identify the team of individuals who will be involved in and responsible for the policy review process.

**Recommendation #22:** Clarify any changes in expectations regarding the standard of proof and/or due process in proceedings involving students, faculty and/or staff.

**Recommendation #23:** Clarify any changes in expectations regarding the conduct of hearings under the new regulations. Consideration should be given to who presides over hearings, the role of students' attorney, etc.

**Recommendation #24:** Anticipate receiving some transition time for implementing the new regulations. It is anticipated that the Department of Education would provide colleges and universities some time before the new regulations take effect.

**Recommendation #25:** Anticipate a period of uncertainty while the new regulations are being contested. Various women's rights and civil rights organizations are preparing to challenge the new regulations via the courts and state legislatures. Additionally, Congress has threatened to include a provision in the Higher Education Reauthorization Bill that would block some of the proposed regulations.

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<sup>1</sup> Source: <https://www.jdsupra.com/legalnews/5-steps-for-colleges-universities-to-90673/>

## Committee Members

### Administrators

Vice President for Strategic Initiatives  
Title IX Coordinator  
Associate Dean of Students  
Associate Dean of Students  
Director, Campus Safety  
Director, Counseling Center  
Associate Director of Residence Life  
Head Men's Tennis Coach, Athletics  
Director of New Student Programs & Leadership  
Student Health & Wellness Coordinator  
Director, Community Standards  
Director, Student Accessibility Services

Dr. Sherry Turner  
Tiffany Cox  
Dr. Alicia Golston  
Dr. Meredith Davis  
Ike Sloas  
Dr. Pam Detrie  
Kimberlee Small  
Tyler Cempre  
Ira Lawson  
Olivia Fowler  
Christine Fox  
Melissa Butler

### Faculty

Professor of Chemistry  
Associate Professor of Chemistry  
Associate Professor of English/ Dir., Search Program

Dr. Darlene Loprete  
Dr. Larryn Peterson (Summer 2019)  
Dr. Judith Haas

### Students

RSG  
RSG  
Student Title IX Advisory Board  
Student Title IX Advisory Board  
Culture of Consent  
IFC Council  
Panhellenic Council  
NPHC Rep - Fraternities  
NPHC Rep - Sororities  
Student Athlete Advisory Chair  
LGBTQ Working Group

Tony Eskridge '20  
Jacob Fontaine '21  
Grace Small '22  
Rebecca Risman '21  
Abbey Bako '20  
Richard O'Neil III '20  
Jackie Paiz '20  
D'on Coofer '20  
Emma Taylor '20  
Malika Rao '20  
Andie Caroline Dorn '20

# Appendix A. Proposed Title IX Regulation Fact Sheet

## U.S. Department of Education Proposed Title IX Regulation Fact Sheet

### Guiding Principles

- **Rulemaking Process:** It is important to address this issue through notice-and-comment rulemaking rather than non-binding guidance. The Department looks forward to the public's comments, and has benefitted from listening sessions and discussions with students, schools, advocates, and experts with a variety of positions.
- **Greater Clarity:** The proposed regulation seeks to ensure that schools understand their legal obligations and that complainants and respondents understand their options and rights.
- **Increased Control for Complainants:** The Department recognizes that every situation is unique and that individuals react to sexual harassment differently. The proposed regulation seeks to ensure that schools honor complainants' wishes about how to respond to the situation, including increased access to supportive measures.
- **Fair Process:** The proposed regulation is grounded in core American principles of due process and the rule of law. It seeks to produce more reliable outcomes, thereby encouraging more students to turn to their schools for support in the wake of sexual harassment and reducing the risk of improperly punishing students.

### Nature of a School's Response to Sexual Harassment & Assault

- The proposed regulation would adopt a clear definition of sexual harassment actionable under Title IX:
  - A school employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct (often called **quid pro quo harassment**);
  - Consistent with U.S. Supreme Court precedent, unwelcome conduct on the basis of sex that is so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the school's education program or activity; or
  - **Sexual assault**, as the Clery Act defines that crime in 34 CFR 668.46(a).
- Consistent with Supreme Court precedent and the text of Title IX, a school would be obligated to respond when: (1) the school has **actual knowledge** of sexual harassment; (2) that occurred within the school's own "**education program or activity**"; (3) against a "**person in the United States**."
- Consistent with U.S. Supreme Court precedent, the proposed regulation would hold a school liable under Title IX only when it is "**deliberately indifferent**" to known sexual harassment, meaning its response is "**clearly unreasonable in light of known circumstances**."
- The proposed regulation would require schools to investigate every **formal complaint** and to **respond meaningfully to every known report of sexual harassment**.
- The proposed regulation highlights the importance of **supportive measures** designed to preserve or restore access to the school's education program or activity, with or without a formal complaint.
- Where there has been a finding of responsibility, the proposed regulation would require **remedies designed to restore or preserve access** to the school's education program or activity.

### Due Process Protections & Reliable Outcomes

- To achieve fairness and reliable outcomes, the proposed regulation would require **due process protections**, including:
  - A **presumption of innocence** throughout the grievance process, with the **burden of proof on the school**;
  - **Live hearings** in the higher education context;
  - A **prohibition of the single-investigator model**, instead requiring a decision-maker separate from the Title IX Coordinator or investigator;
  - The clear and convincing evidence or preponderance of the evidence standard, subject to limitations;
  - The opportunity to **test the credibility** of parties and witnesses through **cross-examination**, subject to "rape shield" protections;
  - Written **notice of allegations** and an equal opportunity to **review the evidence**;
  - Title IX Coordinators, investigators, and decision-makers **free from bias or conflicts of interest**; and
  - **Equal opportunity for parties to appeal**, where schools offer appeals.

## Appendix B. Steps to Consider Before Regulations are Released

### 5 Steps for Colleges & Universities to Consider before Title IX Regulations are Released

Written by: Bass, Berry & Sims PLC

Source: <https://www.jdsupra.com/legalnews/5-steps-for-colleges-universities-to-90673/>

January 29, 2020

It has been well over a year since the Department of Education issued its proposed regulations under Title IX of the Higher Education Act for notice and comment and we are quickly coming up on the first anniversary of the date that the period for comments closed.

Amidst reports in the media that the Department intends to release the final regulations any day, here are five things that colleges and universities should do or be aware of in preparation for the final regulations:

- 1. Identify the Team.** Regardless of what the final regulations may contain, every educational institution will need to review its policies and processes to ensure that they are compliant with the new regulations. Now is the time to determine who on campus will be responsible for that review and who will be involved in the process. At some campuses, faculty, students or even community advocates may need to be part of the process. Laying the groundwork now for who will be involved in reviewing and revising your policies will save time when the regulations are announced.
- 2. Prepare to Choose the Standard of Proof.** The Proposed Regulations allow institutions to choose either the clear and convincing or the preponderance of the evidence standard of proof for their internal disciplinary proceedings for alleged violations under Title IX. Colleges and universities, however, may only use the preponderance standard if they use that standard for student conduct violations that do not involve sexual harassment but carry the same maximum disciplinary sanction. Also, the standard used to determine student violations must be the same that is used for determining violations by "employees, including faculty." So, if your campus uses something more demanding than a preponderance of the evidence standard for any student conduct process that has the sanction of expulsion (assuming that expulsion is the maximum sanction your institution uses for sexual misconduct), you may not use a preponderance standard for sexual misconduct, unless you also change the standard to preponderance of the evidence for the other student conduct process. Also of note, whatever standard your campus uses for employee (including faculty) violations must be used for students.  
  
This provision is problematic in that, among other things, it assumes that institutions currently use the same standard for faculty and staff. In any event, now is the time to review all student conduct processes used on your campus to determine the standard of proof currently in place as well as the standard of proof currently employed in faculty and staff sexual misconduct proceedings. You will need this information to understand the landscape your institution faces if this provision of the regulations is finalized without change.
- 3. Prepare for Hearings.** Despite the large number of comments received by the Department raising concerns about the portions of the proposed regulations requiring colleges and universities to provide live hearings before a student may be found responsible for a Title IX violation, this provision is expected to remain in the final regulations. If your campus process does not currently include a live hearing, and especially if your campus relies on the "single investigator" model, now is the time to begin discussions with campus partners to make sure that they understand that live hearings will almost certainly be a feature of the new regulations. Begin discussions about who on campus will be able to preside over hearings where students can be assisted by an attorney as an advisor and the presiding officer may be required to, among other things, make evidentiary-like rulings. Beginning conversations with campus partners on these questions now will serve you well when the regulations hit the street.

4. **Do Not Panic.** Everyone expects that the Department will give educational institutions some time before the new regulations take effect. It would be extraordinary if the new regulations went into effect before the fall 2020 semester begins.
5. **Expect Continued Uncertainty.** Congress is reportedly working on legislation that would block or make some of the proposed regulations obsolete. And, despite healthy skepticism about the effectiveness of any current Congressional efforts, there also is a possibility that the final regulations may face legal challenges right out of the gate, which, if successful, could at least pause their implementation. In addition, given the possibility of a change in presidential administrations in early 2021, the regulations may be short-lived, even if they do go into effect in the coming months.

Regardless of activity on the proposed regulations, Title IX remains an area of high interest for the Office of Civil Rights and for students and faculty who are frequently using the courts to protect their rights. Colleges and universities can expect this area to be active for some time to come.



## Appendix C. Recommendations and Responsible Parties

### SMPWG Recommendations and Responsible Parties

	<b>Recommendation</b>	<b>Responsible Office or Entity</b>
	<b>Committee 1: Impairment and Consent</b>	
1.	Use wristbands and stamps with consent reminders at college-sponsored events such as Rites of Spring.	<i>Student Activities Coordinator</i>
2.	Replace infographics that are cluttered with too much information, with those that can be understood quickly and effectively. Make sure consent posters are visible in all campus buildings. Any infographics pertaining to sexual misconduct or related matters should be filtered through the Title IX office for review.	<i>Title IX Office Student Title IX Board</i>
3.	Ensure all first-year students save the phone number for Campus Safety in their cell phone during orientation.	<i>Campus Safety First Year Programs</i>
4.	Review and evaluate the effectiveness of the Healthy Relationships Curriculum in educating students on sexual assault and consent and in influencing students' behavior.	<i>Title IX Coordinator</i>
5.	Include language that differentiates incapacitation and impairment/intoxication to our Title IX Policy.	<i>Title IX Coordinator First Year Programs</i>
	<b>Committee 2: Engaging the Campus Community</b>	
6.	Review the educational opportunities provided to students, especially during the first six weeks of college (a.k.a. the "red zone") to include monitoring Everfi's effectiveness, integrating sexual misconduct prevention into the First Year Seminar curriculum, and ongoing Green Dot training.	<i>Title IX Coordinator Project Coordinator FYS Assessment</i>
7.	Offer education and programming that is inclusive of students who choose not to drink and not to have sex.	<i>Health and Wellness Coordinator Project Coordinator Student Title IX Board</i>
8.	Upon request of IFC members, offer programming that helps fraternities recognize warning signs and emphasize accountability among members.	<i>Office of Fraternity &amp; Sorority Life Project Coordinator Title IX Coordinator</i>
9.	Develop ways to collaborate with Memphis area nonprofit organizations working on issues of sexual violence, domestic violence, and challenges within the LGBTQ community.	<i>Health and Wellness Kinney LGBT Group LGBTQ+ Working Group</i>
	<b>Committee 3: Prevention Education and Awareness</b>	
10.	Identify ways to incorporate the National Association of Student Personnel Administrators (NASPA) Culture of Respect Initiative into campus programming.	<i>Title IX Deputies Title IX Coordinator Project Coordinator All offices engaged in programming</i>

11.	Develop a four-year co-curriculum that uses technology effectively to teach students about sexual violence prevention.	<i>Title IX Coordinator Project Coordinator</i>
12.	Restructure the Student Title IX Board to ensure representation of various campus organizations and active engagement of members.	<i>Title IX Coordinator Project Coordinator New Student Programs &amp; Leadership</i>
13.	Create a comprehensive list of sexual assault prevention-related programs, activities and education occurring on campus and identify opportunities for collaboration on programming sponsored outside the Title IX office.	<i>New Student Programs &amp; Leadership Residence Life Student Counseling Student Health Services Campus Safety Athletics Academic Affairs Title IX Coordinator</i>
14.	Offer supplemental Title IX training to international students who may not be familiar with United States laws or policies.	<i>New Student Programs International Programs</i>
15.	Encourage Residence Life to take a more prevention-oriented approach to education about residence hall safety. Encourage RAs to offer engaging programs for residents about safe partying and other topics.	<i>Residence Life</i>
16.	Engage in a trust-building campaign focused on enhancing student confidence in the Title IX office.	<i>Student Title IX Board Other influential campus groups</i>
17.	Create a document that outlines basic Title IX information, captures student attention and is easily understood. Also, draw more attention to the website by making it more interactive and using easy-to-find quick links.	<i>Title IX Coordinator Office of Communication</i>
18.	Hold a focus group of diverse students to read through the policy to assist in identifying items that are unclear or that may have confusing legal jargon.	<i>Title IX Coordinator Director of Institutional Research</i>
19.	Develop a supplemental curriculum for male-identified students based on the Continuum for Male Engagement model to educate men, break down barriers, and involve them more actively in the process.	<i>Project Coordinator Athletics</i>
	<b>Committee 4: Title IX Formal Resolution Process Improvements</b>	
20.	In conjunction with the release of the final Title IX regulations, conduct a review of policies and processes to ensure that they are compliant with the new regulations.	<i>Working Group Committee (Chaired by Dr. Darlene Loprete) Legal Counsel Interim Title IX Coordinator External Consultants</i>
21.	Identify the team of individuals who will be charged with responsibility for the review and engaged in that process.	<i>President Hass Senior Leadership Team</i>
22.	Clarify any changes in expectations regarding the standard of proof in proceedings involving students, faculty and/or staff.	<i>Legal Counsel Interim Title IX Coordinator</i>
23.	Clarify any changes in expectations regarding the conduct of hearings under the new regulations. Consideration should be	<i>Legal Counsel Interim Title IX Coordinator</i>

	given to who presides over hearings, the role of students' attorney, etc.	
24.	Anticipate receiving some transition time for implementing the new regulations.	<i>President Hass Senior Leadership Team Legal Counsel Interim Title IX Coordinator All Interested and Involved Parties</i>
25.	Anticipate a period of uncertainty while the new regulations are being contested.	<i>President Hass Senior Leadership Team Legal Counsel Interim Title IX Coordinator All Interested Parties and Involved</i>