Striking Balance: Recognition of Increased Risks and Recommended Support of Responding Parties in Title IX Investigations

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Abstract
Some colleges and universities are grappling to provide equitable, prompt, fair, and impartial treatment of responding parties in order to comply with Title IX. Some interpretations of Title IX, the Dear Colleague Letter and the Questions and Answers on Title IX and Sexual Violence have resulted in universities imposing interim measures or sanctions that increase the risk of suicide for a responding party due to the emotional, financial and academic trauma that ensues. It is essential that colleges and universities balance their support for both the impacted and responding parties in Title IX investigations by providing appropriate support and resources to both parties.

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It is summer time as I write this. The majority of students are gone. The campus is quiet. My phones, both office and cell, are silent. I can find a parking spot. I look forward to this time of year. It gives me and my staff time to regroup, reflect, and prepare for the next onslaught of student crises. I am reviewing procedures, writing staff evaluations, and preparing my annual report for the powers that be. I am a Case Manager in Student Affairs and my job is to work with students in crisis. At Colorado State University, my office has been charged, repeatedly, with the duty of offering and providing support to students in crisis. A portion of those students suffer from significant mental health issues that result in self-harm behavior or a suicide attempt. You could say that my job exists as one mechanism in a large machine designed in an attempt to prevent suicide. My office also supports the responding party in Title IX investigations.

Some interpretations of Title IX, the Dear Colleague Letter and the Questions and Answers on Title IX and Sexual Violence have resulted in colleges and universities taking interim measures or meting out sanctions that increase the risk of suicide for a responding party. It is essential that colleges and universities balance their support for both the impacted and responding parties in Title IX investigations.

I will preface the rest of my article with a disclaimer: I do not, in any way, discount or diminish the trauma and impact that a survivor of sexual assault faces on a daily basis. I am fully supportive of protecting an impacted party from further distress or suffering if it is within our power to prevent. As a female whose teen years were influenced by movies such as Animal House, Revenge of the Nerds, and the “Brat Pack” flicks that portray sexual assault as commonplace and expected, I am ecstatic that social values, norms, mores and the law are shifting and that my daughter has the support of the United States government in keeping her safe from exploitation and rape on a college campus. And, Colleges and Universities must recognize the need to also support the responding party in a Title IX investigation.

I also have sons and one of them is a senior in college. I had some very uncomfortable (for him, not me) conversations with him this year. Those conversations have centered on consent, sexual assault, harassment, and stalking. I tossed him a May 2014 issue of Time Magazine that has a college pennant and the word RAPE on the front cover and demanded he read the article “The Sexual Assault Crisis on American Campuses.” I have been non-relenting in my preaching and I know that he has gone out of his way to avoid me on certain days; days when he recognizes the glimmer in my eye or the tilt of my chin that warns—because of some TV show or commercial that belittles, disparages, or diminishes women, especially those in the college setting—another lesson in Title IX is imminent. I have scared him with the potential consequences of being accused of a Title IX violation and terrified him with the consequences of being found responsible for a violation of Title IX.

My office has worked with a steadily-increasing number of responding parties, male and female, who are grappling with significant interim measures taken during the Title IX investigation process. Some of the interim measures include immediate removal from the residence hall, restriction
from some or all classes, denial of use of facilities, including dining halls, and, for a percentage of those students, a full exclusion from campus. And sometimes, the responding party has limited knowledge of the allegations of which he or she is being accused. A student is notified of an investigation and is often given an immediate “no contact” order with the impacted party. The responding student can often deduce who has made an accusation, but little information is given on the nature of the accusation (the what, where, when) until an investigation is conducted and a student is charged with alleged violations of conduct codes. The student may be challenged with finding shelter and food, missing classes, and the social repercussions (residence halls are very tight knit living/learning communities; when a member is removed, an entire floor or hall will know about it).

The emotional, financial and academic trauma on a responding party in a Title IX investigation may increase the risk of suicide. Some reasons for suicide include:

1. **Depression** – whether situational or clinical, students who are depressed are at a higher risk of self-harm and suicide. Students facing a Title IX investigation can find the ordeal depressing.

Imagine a scenario where you are delivered a letter by police or campus officials that require you vacate your home immediately, forbids you from going to your workplace, and cuts you off from all of your known social supports. Sound depressing? Interim measures may require a student to vacate the residence hall within a few hours and may exclude the student from areas of campus, including dining halls, classes, and access to campus resources.

Responding students often think that their situation can, and will be resolved within a relatively short time frame. A student may become depressed when told that the Title IX investigation process can take approximately sixty days. Sixty days in the average adult life is relatively short; sixty days to the average 18-22 year old is not considered quick or prompt. Sixty days in an academic environment equates to the majority of a semester.

2. **Stressful life event** – suicide is greater for persons who suffer a significant stressful life event including serious financial stressors, legal/criminal difficulties, loss of a relationship (breakup, death), and serious health issues, to name a few. According to the Mayo Clinic suicide is “the result of feeling like you can't cope when you're faced with what seems to be an overwhelming life situation.” A Title IX investigation may be one of the most stressful events that a young adult could face at college.

Financial hardship may be imminent for students displaced from the residence halls. Students have paid for their housing and meal plan, may be denied access and use, and often may not receive a refund (immediate or long term, without a lengthy appeal process). Students
are expected to find and pay for alternative living arrangements, with limited notice. I live in a town that has one of the lowest vacancy rates in the state. A hotel room at the Best Western University Inn has a nightly rate of $99-$219 per night depending on the time of year; multiply that by 60 days and there is a potential bill of $5,940-$13,140. Out-of-state students rarely have friends or family in the area to stay with, and in-state students who are not from the area will be challenged in the same way. Some students sleep in their car if they have one, some students couch surf if they know people in the area, but most students will return home within a few days and typically have to withdraw from the university because of lack of financial means to pay for housing. The financial burden extends when students and families often hire legal representation to aid them with the process that rarely has criminal implications. Does any of this sound stressful?

3. **Feelings of shame, guilt, victimization, rejection, loss and loneliness** – escaping these feelings can lead a student to seek a permanent solution. There is shame for many students in just having an accusation made against them, there may be guilt for their actions or that they have let others down, or a student can feel like a “victim of the system.” This feeling is increased when the likelihood of resolution through the university judicial system is reported to be approximately 60 days in the future. Despite the existence of a number of support systems, including case management, the counseling center, and other resources, a student may feel displaced by the university, experience feelings of extreme loss (shelter, food, purpose, and support systems), and become isolated and lonely during the investigation process.

The risk of academic failure increases for the semester that the student is accused. Many students on interim suspension are forced to withdraw from the university for the semester. There are very few opportunities for a student to pass a class with excessive absences. Attendance aside, missing lectures, quizzes, tests, and note taking opportunities, increases the odds of a failing grade. Students may also be restricted from registering for future classes or obtaining transcripts pending the outcome of the investigation and campus judicial process. The inability to register for classes can feel like judgment or that outcome has already been determined. For freshman, delays in registering can result in required classes being full. For students in a structured and regimented academic program where specific classes are only offered at specific times or semesters, academic pursuits can be delayed for a year. For International students, visa status requires that students attend class. Visa status can be revoked, academic failure can result in loss of sponsorship, and/or extreme
cultural shame that can result in being completely cut off financially and emotionally from family (disowned).

4. Loss of basic needs: food, shelter, purpose, support system – often found in victims of natural and man-made disasters but transferable to some Title IX scenarios. A student who has interim measures may be deprived of housing (shelter) and dining hall privileges (food), may be excluded from attending classes (purpose in life), become isolated from friends and campus resources (support services and system) all before due process through the campus judicial system and without the student knowing the full or detailed allegations against him or her. The emotional impact of a traumatic event, such as a Title IX investigation, may last for years.

5. Lack of coping skills – although no single factor or triggering event may be traced back to suicide, persons who attempt or complete suicide often lack definitive coping skills to balance life situations or manage emotions. According to the American Academy of Pediatrics, “colleges are seeing a generation of students who appear to be manifesting increased signs of depression, anxiety, perfectionism and stress”. Many of the current generation of students lack resilience and strategies to cope with the traditional college stressors such as failing a test, let alone a Title IX accusation and investigation.

The Checklist for Campus Sexual Misconduct Policies clearly states that colleges and universities “provide the respondent and complainant equitable rights during the investigative process” in the important effort to support victims, yet many have struggled in fulfilling their responsibilities to the responding student. Colleges and Universities must recognize the need to support all students, including the responding party.

In the interest of providing equitable, fair, and impartial treatment of all students, consider the following:

1. Have a dedicated staff member to work with and communicate with the responding party and his/her parents/guardians/emergency contacts. This is often a case manager but could be another individual if your institution does not have a case manager, or if your only case manager is supporting the impacted party. Communicate regularly with the responding student and his/her family. Even if you have nothing new to say, no new information to provide, make sure a dedicated person is checking in regularly so that the student feels supported. If the student expresses hopelessness or depression, ask if the student is thinking about harming him or herself.

If a student is restricted from housing or classes, consider notifying parents (or guardian or emergency contact) if the student is under age 21 and a dependent. Notification for a student 21 years or older or independent, should be
made on a case by case basis – biological age is not always a determination of emotional or developmental status. With the potential loss of social supports on campus, family or community supports are often critical to the emotional well-being of a student.

2. Encourage a student to speak with an attorney prior to any interviews. The Fifth Amendment of the Constitution gives the student “the right to remain silent.” The Sixth Amendment gives the student the right to have an attorney present during any questioning. Students should always be made aware of their right to seek professional guidance prior to making any statement or participating in any interview.

3. Have alternative housing available for displaced students. In some instances, a student can be moved to another part of campus and in some cases, it doesn’t make sense to remove a student from one residence hall and place her or him in another. However, it is illogical to think that a displaced student could find appropriate or affordable living arrangements in many circumstances.

4. If you cannot provide alternative housing, a refund for pro-rated on-campus housing and unused dining plans should be quickly processed at the request of the responding student (this can be tricky when financial aid and scholarships are at play). Financial stressors could be significantly alleviated if a student had the means to acquire temporary housing and funds to purchase food off campus.

5. Provide students access to health and counseling services if available on campus. Problem-solving therapy can improve hopelessness and depression that some students may experience. Have the student communicate future (or needed) appointments in advance. Notify campus police/security and the impacted party that the responding party will be on campus on a given date at a given time for a specific period. If your campus does not provide health or counseling services, have a referral list for off-campus providers and a dedicated university person (see number one) should aid the student with finding an appropriate provider(s). A counselor or therapist can also help the student process the situation and develop or increase coping skills.

6. Coordinate with faculty and instructors – it should not be left solely to the student to communicate interim measures and restrictions to staff and faculty (again, see number one). One obstacle may be that faculty will be unwilling or unable to give specific or general adjustments to their course (labs that cannot be duplicated, strict departmental attendance policies). If necessary, allow the student to withdraw from the course to avoid grading penalties or a failing grade or give
the student the ability to repeat a course.

7. In the event that the responding party is found “not responsible” or found “responsible” but interim measures are lifted and lesser sanctions imposed, consider other obstacles such as grant and scholarship academic requirements, NCAA eligibility, and visa status if a student is unable to successfully complete a semester, receives a failing grade, or does not complete a requisite number of credit hours. It is difficult to determine how institutions will remedy this.

Allegations of sexual misconduct may be one of the most agonizing situations for young adults to find themselves in. However, it is often a temporary situation and the emotions associated with it, also temporary. If appropriate, timely, and continued support is provided, suicidal thoughts, ideation, attempts or completion rates may be reduced. And, offering effective counseling and/or psychiatric care (whether on campus or in the community) and a continued connectedness to campus (through personal communication), may increase protective factors that will lower the likelihood of suicidal behavior.

Every support should be offered, and every resource should be made available, to all or both students in a Title IX investigation. Colleges and universities must never forget that a responding party is still a student.


ii April 4, 2011 Dear Colleague Letter. Web http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html

iii Questions and Answers on Title IX and Sexual Violence. 29 April, 2014 http://www2.ed.gov/about/offices/list/ocr/topics.html?src=rt#T


v Mayo Clinic Staff. “Suicide and suicidal thoughts” 9 June 2012. Web http://www.mayoclinic.org/diseases-conditions/suicide/basics/causes/con-20033954


