TITLE IX TEAM
TRAINING

PART I

OCTOBER 25, 2021

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IN RESPONSE TO 34 CFR PART 106.45(B)(10) OF THE 2020 TITLE IX REGULATIONS THAT MANDATES THE PUBLIC SHARING OF MATERIALS USED TO TRAIN COLLEGE TITLE IX TEAM MEMBERS, JJC IS PROVIDING THE AGGREGATE SITE FOR TRAINING MATERIALS FROM ATIXA. JJC STAFF PARTICIPATE IN TRAINING THROUGH ATIXA TO MEET ALL REQUIRED TRAINING, IN ACCORDANCE WITH STATE AND FEDERAL LAWS.
OVERVIEW OF TRAINING

• Definitions (10 minutes)
• Intimate Partner Violence (40 minutes)
• Best practices in Questioning (30 minutes)
• Due Process (40 minutes)
• Understanding OCR Processes (10 minutes)
• Trauma Informed Practices (40 minutes)
• Final assessment and questions (10 minutes)
DEFINITIONS
Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

• (1) An employee of JJC conditioning the provision of an aid, benefit, or service of JJC on an individual's participation in unwelcome sexual conduct (quid pro quo harassment);

• (2) Unwelcome conduct determined by a reasonable person to be so severe and pervasive and objectively offensive that it effectively denies a person equal access to JJC's education program or activity; or

• (3) “Sexual assault” as defined by the Clery Act (20 U.S.C. 1092) or “dating violence,” “domestic violence,” or “stalking” as defined in the Violence Against Women Act-VAWA (34 U.S.C. 12291).
VAWA DEFINITIONS

- Dating violence as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

- Domestic violence includes felony or misdemeanor crimes committed by an intimate partner.

- Stalking is defined as a course of conduct directed at a specific person that would cause a reasonable person to feel fear.

- Note: VAWA defines sexual assault as any conduct proscribed as sexual abuse by federal statute.
TITLE IX DEFINITIONS

• Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

• Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

• Jurisdiction
  • Education program or activity means locations, events, or circumstances where JJC exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by JJC.
  • occurring against a person in the United States.
  • At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of JJC.
NON-TITLE IX DEFINITIONS/KEY COMPONENTS

• Jurisdiction
• Expanded areas of violation (not limited to the three areas)
• Threshold
INTIMATE PARTNER VIOLENCE

Also referred to as dating and/or domestic violence
WHAT IS IT? WHY IS IT IMPORTANT?

- Violence against Women Act (VAWA) outlined 4 elements that schools must address
  - Dating and domestic violence (two areas) are combined into Intimate Partner Violence for the purposes of serving students
  - Our policies state dating and domestic violence, in accordance with VAWA
- Existence of a relationship
- Combined with violence
  - Physical violence
  - Emotional violence (intentional, deliberate control)
  - Sexual violence
ATIXA TWO-PRONG ANALYSIS (COPYRIGHT)
PRONG 1
ATIXA TWO-PRONG ANALYSIS (COPYRIGHT)
PRONG 2:
KEY CONSIDERATIONS

• Consent issues/challenges

• Protected speech (as it relates to verbal harassment/abuse)
  • Same standards
  • Objectionably offensive
  • Sufficiently severe, persistent or pervasive Timing/how often
    • Situations
    • Words used
  • Sufficient to limit or deny access/impact their life significantly

• Questions to ask during an interview need to assist with assessment of these items

• Title IX vs. non-Title IX processes

Compiled from multiple sources
UNIQUE FACTORS FOR INTIMATE PARTNER VIOLENCE

- Status of relationship at the point of the report
- Lack of control over the relationship outside of our institution
- Impact on the relationship (investigation may exacerbate the situation)
- Desire to withdraw the complaint
- Development of safety plan/assessment of risk
  - Personal, financial, housing, physical harm
  - Beyond traditional remediation
- Be mindful of communication channels
- Impact of gender—if sex/gender is not part of the intimate partner violence, it would still be a violation under VAWA but might not be TIX

Compiled from multiple sources
SCENARIO—RETURN AT 12:45 TO DISCUSS

• What behaviors stand out as potential concerns? What do you need to know more about? What questions might you ask?

• What assessments might you make on the two prongs?

• What do you do if Claire is uncertain about how she wants to proceed? What would you do if you had the information outlined in the case study, but Claire does not want to participate or file a complaint?
RESOURCES IN COMMUNITY

- Student Wellness Advocates

- Resources in the portal

- Campus Police/Protective Orders
  - OOP-Order of Protection (illinoisprotectionorder.org)
  - Domestic Violence Services - Will County State's Attorney (willcountysao.com)

- The domestic violence agency for Will County is:
  Guardian Angel Community Services
   Groundwork Domestic Violence Program 24 Hour Hotline: (815) 729-1228
   TTY: (815) 741-4643  www.guardianangelhome.org
BREAK
BEST PRACTICES IN QUESTIONING
KEY CONSIDERATIONS

• Tone (manage the setting, set the guidelines up front, provide overview of process)

• Be intentional in questions but not rigid
  • Plan ahead but be open to the flow of interview
  • Broad to specific

• Questioning process is gathering information—not making the decision

• How to address items that are contradictory to other statements/evidence
  • Not a “gotcha”
  • What you said doesn’t correspond with other information we have/help me to understand that/I am trying to understand all of this information
  • Errors of omission

Compiled from multiple sources
TIPS FOR EFFECTIVE QUESTIONING

• Not interrogation or cross-examination—should be a conversation to gather information and perspectives

• Be intentional about who leads the interview/who investigates
  • Gender
  • Age
  • Race and ethnicity

• Be flexible on the back end of the interview time—don’t want to stop a conversation that is moving along. Don’t schedule tightly on the back end.

Compiled from multiple sources
TIPS FOR EFFECTIVE QUESTIONING

• Start open—give them the floor first
• Tell me more about that
• How did that impact you?
• What else do you want me to know/what else do I need to know?

Compiled from multiple sources
SCENARIO REIMAGINED

• What would be one or two questions you might ask each of the individuals to learn more?
  • Ellen
  • Claire
  • David
DUE PROCESS

These are overarching principles—Title IX has specific Due Process requirements that are beyond the scope of this video.
BEST PRACTICES

- Equitable is not always equal
- Equal dignity for all
- Advisors must be allowed at all meetings and adequate time must be provided to allow this to happen
  - Role of advisor is specific in the TIX process
- Access to materials and information
  - In TIX process, this is required in advance of hearing
- Cross Examination by Advisors

Compiled from multiple sources
BEST PRACTICES

- Notices in advance—concurrently
- Free from conflicts of interest
  - Parties can bring forward potential conflicts
- Outcome in writing to both parties concurrently, including appeals options
- Supportive measures offered to both parties
- Presumption of innocence for both parties

Compiled from multiple sources
NOTICE

• In order for a report to be managed through the Title IX process, it must meet the criteria as defined and must be presented as a formal, signed complaint to the Title IX Coordinator, a Title IX Deputy, Human Resources, or any individual with the authority to institute corrective measures on behalf of JJC. (if not—not TIX)

• Preliminary inquiry(review to determine if the reported conduct, if true, would be a violation under TIX
  • If not, there is not investigation under TIX—may go through non TIX process
  • If it would be a violation, the TIX Coordinator will initiate the process
TITLE IX PROCESS

• Notice to both parties
• Supportive measures offered to both parties
• Right to an advisor at all meetings. Must have an advisor for a hearing for the purpose of cross examination
• Option for informal resolution (both parties must agree)
• Investigation-->Investigation Report to TIX Coordinator.
• Report provided to both parties (min. 10 days in advance, allow for written response or preparation)
TITLE IX PROCESS

• Hearing
  • Notice of hearing date and panel minimum 5 days in advance
  • Hearing Office role
  • Panel role
  • Live, real time, including cross examination

• Determination
  • Simultaneous notification
  • Preponderance of the Evidence standard

• Appeal
  • 4 grounds for appeal
NON-TITLE IX PROCESS

• Does not meet threshold of TIX

• Expanded jurisdiction
  A. On College property; or
  B. Off College property if:
     • The conduct was in connection with a College or College-recognized program or activity; or
     • The conduct may have the effect of creating a hostile, intimidating, or offensive environment for a member of the College Community.

• May include formal reports or other reports (anonymous, bystander, etc.)
NON-TITLE IX PROCESS

• Preliminary Investigation
• May participate in voluntary formal resolution
• Investigation
• Determination based on preponderance standard
• Notice to both parties

• Hearing is not required/no cross examination allowed
ADDRESSING TRAUMA
KEY CONSIDERATIONS

- Equity, dignity and respect in the process
- Managing bias (assumptions on how someone “should” respond, impartial with compassion)
- Creating a safe space
- Way we take notes (paper, computer)/recording
- Type and deliver of questions (check for understanding of answers/statement)
- Frequent breaks if needed
- Be mindful of the location and timing of interview
- Role of investigator is not the same as the role of a support personnel

Compiled from multiple sources
IMPACT OF TRAUMA

• Vulnerability, lack of trust
• Refusal to participate
• Response to interviewer
• Response to environment
• Hypersensitivity to noise, touch, environment
• Neurobiology of trauma and its impact
  • Memory gaps, disconnection, affect/presentation

Compiled from multiple sources
KEY ACTIONS

• Be aware of impact of trauma/acknowledge the trauma
• Focus on enabling empowerment in the process for reporting party
• Ask what they remember about the incident, tactile memories
• Ask how the experience impacted them
• Be proactive in communication throughout the process but be aware of method of communication and tone
• Safety plan
• Consider impact on the responding party as well (shame, anger, suicide risk)

Compiled from multiple sources
SCENARIO

What issues can you identify from this scenario that do not align with a trauma informed approach?

What questions could you do differently?
IMPACT OF TRAUMA

- Surge in flight/flight chemicals can impact responses, as well as memories
- Tonic immobility
- Flat affect or inappropriate affect (laughing as an example)
- Non-linear accounts of the incidents
- Gaps in memory

Compiled from multiple sources
BEING AWARE OF THE IMPACTS OF TRAUMA

• Wait 1-2 sleep cycles to interview, if possible
• Don’t ask narrow, specific questions
• Tap into senses of smell and sound
• Ask how the individual felt (feelings may help decode memories)
• Be patient/don’t press
• Be aware that the questioning/interview may re-traumatize the individual
  • Be strategic and transparent in questioning
  • Be aware of the environment

Compiled from multiple sources
Providing Choices with a Goal of Empowerment

• Ask general, open ended questions to provide the individual with control over how they share
• Remember it is their choice to report to police or file a formal report
• Be aware of ascribing your opinions, thoughts, or labels to their experience
• OK to ask for more details or for clarification (can you tell me more about that)
• Be aware of non-verbal cues—may need to come back to an area at a later time if the individual becomes more anxious

Compiled from multiple sources
UNDERSTANDING OCR
OCR—OFFICE OF CIVIL RIGHTS

Office for Civil Rights, Chicago Office

- U.S. Department of Education Citigroup Center
- 500 W. Madison Street, Suite 1475
- Chicago, IL 60661-4544 Telephone: (312)730-1560
- Email: OCR.Chicago@ed.gov

Role of OCR
Electronic complaint form or the fillable PDF complaint form linked at the bottom of the page.

Individual reporting will be asked to provide name, address, and email address; the name and address of the person discriminated against; and the name and address of the entity they believe discriminated.

Reporting party will be asked which of the kinds of discrimination forms the basis for the complaint and provide a description of the conduct that is believed to be discriminatory.

By law, complaints of discrimination must ordinarily be filed within 180 days of the last act of discrimination. If the complaint involves matters that occurred longer ago than this and the individual is requesting a waiver, they will be asked to show good cause why they did not file your complaint within the 180-day period.

Reporting party will be asked whether they have tried to resolve the matter using a grievance procedure or by filing with another agency.
SOME OF THE **REASONS** FOR OCR’S DISMISSAL OF A COMPLAINT INCLUDE:

- OCR does not have legal authority to investigate the complaint;
- The complaint fails to state a violation of one of the laws OCR enforces;
- The complaint was not filed timely (within 180 calendar days of the date of the alleged discrimination) and a waiver of the timeliness requirement was not granted;
- The complaint is speculative, conclusory, or incoherent, or lacks sufficient detail to infer discrimination and the complainant does not provide the information that OCR requests within 14 calendar days of OCR’s request, unless the complainant requests additional time to provide the requested information;
- The allegations raised by the complaint have been resolved and are therefore no longer appropriate for investigation;
SOME OF THE **REASONS** FOR OCR’S DISMISSAL OF A COMPLAINT INCLUDE:

- The complaint has been investigated by another Federal, state, or local civil rights agency or through a recipient’s internal grievance procedures, including due process proceedings, and there was a comparable resolution process pursuant to legal standards that are acceptable to OCR or, if still pending, OCR anticipates that there will be a comparable resolution process pursuant to legal standards that are acceptable to OCR. OCR will advise the complainant that he or she may re-file within 60 days of the completion of the other entity’s action;

- The same or similar allegations based on the same operative facts have been filed by the complainant against the same recipient in state or Federal court. OCR will advise the complainant that he or she may re-file within 60 days of the termination of the court proceeding if there has been no decision on the merits of the case or settlement of the court complaint;
OCR—OFFICE OF CIVIL RIGHTS PROCESS

- Evaluation
- Opening the Complaint for Investigation
- Investigation of the Complaint
- Resolution of the Complaint After a Determination of Noncompliance
- Resolution of the Complaint Prior to the Conclusion of the Investigation
  - Facilitated Resolution Between the Parties
  - Resolution Agreement Reached During an Investigation
- Appeal

- The complainant may have the right to file suit in Federal court, regardless of OCR’s findings. OCR does not represent the complainant in case processing, so if the complainant wishes to file a court action, he or she must do so through his or her own attorney or on his or her own through the court’s pro se clerk’s office.
FINAL ASSESSMENT AND QUESTIONS

In order to get “credit” for completion—email tmorris@jjc.edu the following:

1. Your answers to the scenario questions (no right or wrong)
2. On a scale of 1-10, how comfortable do you feel with your role in the Title IX process?
3. What area/areas do you still want more training in?