

December 19, 2023

OCR's 2023 Higher Education Resolution Agreements: Session 1

An ATIXA Webinar

NOT FOR DISTRIBUTION

TODAY'S PRESENTERS



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Strategic Risk
Management Solutions



Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law, any applicable state or local laws, and evolving federal guidance.

ARCADIA UNIVERSITY

- Multiple Complainants alleged a tenured faculty member made numerous sexual comments during his course
- Students raised concerns with multiple people, over multiple years, and the behaviors continued and were unaddressed
 - Non-TIX administrators determined the conduct was not TIX
- Formal complaints filed in 2021
 - “Legacy Policy and Procedures” (Pre-Regs)
- Faculty member delayed the hearing for 3+ months citing health issues
 - Once AU reset the case for hearing, Respondent immediately requested to begin his retirement from the institution
 - Case was then closed, with no hearing

TAKEAWAYS

Institutions cannot skip a preliminary inquiry/assessment conducted by trained personnel

Cases involving employee respondents must still go through the Title IX process

Informal reports or complaints can often constitute notice

A dismissal does not alleviate the obligation to Stop, Prevent, and Remedy

TAFT COLLEGE

- Trans female student unofficially began transitioning while enrolled by sharing new pronouns and her chosen name with some students, faculty – the transition was known widely
- Multiple faculty and administrators deadnamed or misgendered
- Student was told by one faculty that “their” pronouns were invalid outside of LGBTQ+ community
- Taft maintained that they were never on notice of discrimination and the student never made a formal complaint
 - The student was provided unclear reporting information
 - Policy was unclear re: non-sexual sex-based discrimination
 - The student feared retaliation after filing a report
 - The Dean had suggested faculty would retaliate

TAKEAWAYS

Policies must be clear
and apply broadly to
sex-based
discrimination

Centralized policies
streamline to whom
and how to report

Even informal reports
can constitute notice

Offer an investigation
even if also addressing
the harassment in
other ways

CALIFORNIA CAREER COLLEGE (CCC)

- Two administrators at CCC noticed a student was pregnant and told her she would need to take a leave of absence
- CCC's Director told her that she would need to withdraw from the program since she could not complete clinicals
- CCC disputed the student's account, saying the student made the withdrawal decision on her own
- Title IX Coordinator and Title IX office information was not readily available to the student during process
- When the student informed CCC of her desire to return, CCC told her that she would need to complete the semester over again

TAKEAWAYS

Institutions required to excuse student absences for pregnancy needs

Students should be reinstated to the status held prior to leave

Students should have opportunity to make up work

Pregnant students must be able to get clear info about Title IX and rights

TROY UNIVERSITY

- Student notified the University of her pregnancy prior to the start of the fall 2020 term and received accommodations
- Faculty expressed concern about the student missing class, counted absences against her grades, and put restrictions on late assignments
- The student notified the TIXC that faculty had denied her accommodations
- TIXC failed to communicate with the student, coordinate support, intervene in a timely manner, and failed to monitor accommodations
- Troy also failed to provide its community with information about the rights of pregnant students

TAKEAWAYS

Institutions should establish a procedure for handling pregnancy discrimination complaints

TIXCs must coordinate accommodations in an iterative process

TIXCs should maintain oversight of accommodation effectiveness and compliance

Train institutional community on rights of pregnant students

INDIANA UNIVERSITY-PURDUE UNIVERSITY

- Complaint alleged that the University discriminates against males and non-blacks by operating the Girls STEM Institute (GSI), a program that empowers Black girls to explore STEM
- University provided “significant assistance” to GSI:
 - IUPUI professor founded GSI
 - IUPUI employees administer GSI programs
 - GSI offices on IUPUI campus
 - GSI conducts programs at IUPUI
 - IUPUI fundraises for GSI
- IUPUI asserted GSI open to all students, but program materials geared towards “girls of color”

IUPUI RESOLUTION AGREEMENT

- By [Date], the University will publish that the GSI is open to all eligible students regardless of sex and race and will ensure that all communication and promotional materials it develops related to the GSI effectively communicates that the GSI is available to all students regardless of sex and race
- Specifically, the University will update all application and promotional materials as well as pages on its website that reference the GSI to reflect that the GSI is open to all students regardless of sex and race

TAKEAWAYS

Significant
assistance analysis

Audit single-sex
programs

All communication
must clearly state
“open to all”



Association of
Title IX Administrators

Questions?

Session 2 of OCR's 2023 Higher Education Resolution Agreements Webinar is January 9, 2024, from 2:00pm-3:15pm ET

www.atixa.org/events



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Title IX Administrators

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