Best Practices Regarding Students Who Withdraw
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My deputy Title IX coordinators and I have been engaged in an on-going debate regarding how we handle Title IX reports when one of the parties leaves the institution. Our policy is currently written so that upon withdrawal, we stop the investigation. Several respondents have withdrawn, and I have closed the investigation upon withdrawal. My rationale is that the university’s obligation is to stop, prevent, and remedy. When the individual withdraws, the harassment has stopped, and the respondent presumably cannot re-offend on our campus.

Even if we conclude an investigation/hearing, we do not place a notation on the transcript, and we are not obligated to provide disciplinary records if a student enrolls elsewhere (though we can do so). If the complainant withdraws, the institution could continue the investigation because we have control over the respondent and are still under the obligation to stop, prevent, and remedy. The Deputy Title IX Coordinator is mostly concerned that the respondent will re-enroll at our institution or that they will re-offend at a different institution.

How do other institutions handle this issue? I am trying to balance our legal obligations, the drain on resources to the institution, the likelihood of litigation, etc. And, perhaps more philosophically, is there/should there be an obligation for institutions of higher education to continue to pursue people who are not students?

We are left with a few options, the pros and cons of each below in my opinion:

1. Respondent withdraws while case is pending because investigation is not complete. Hold placed on student’s ability to re-enroll. School completes investigation and renders a finding and sanction.
   a. There is certainly an argument that, with the student gone and hold placed, the TIIX obligation to Stop-Prevent-Remedy is met. BUT, that merely means that we are not as vulnerable under a potential Title IX claim in court. It does not mean we did what we could. Think about the scenario where there are more victims of the respondent that we never learn about because we suspended the investigation. What if the Respondent had an accomplice or co-conspirator that we never uncover because we stop looking? The end game is we can still expel someone who has left. We can still suspend them. We can still engage in transcript notation. It does utilize resources however, and in many cases there will be no more fruit borne from the investigation. But at least we are complete.

2. Respondent withdraws while case is pending because investigation is not complete. Hold placed on student’s ability to re-enroll, pending them participating in the completion of the investigation. School closes investigation.
   a. This is certainly the most efficient from an “investigation now” resource perspective, but, it doesn’t really do anything for us as, when they re-enroll two years from now, no one is around and the
case is no longer ripe. So then we may reach an erroneous conclusion. Potentially more challenging would be the Claimant who is still around in two years who will later complain to Court and the OCR (whoever that is then) that the school COULD have completed its investigation and interviewed witnesses, etc. while they were around but didn't; but still left a path for the Respondent to return. What happened to reliable and thorough, they will claim? I think more cons than pros here.

3. Have a rule that if you withdraw during an investigation, you can’t return. An interesting proposition, but a couple of thoughts:
   a. If we do this, how do we get over the property right/due process challenge? A student is entitled to due process on the basis of their property (and liberty) interest in continued enrollment. Withdrawing for a term does not necessarily eliminate that interest (we have students who leave and return all the time, they still are “interested in continued enrollment”). We could offer a hearing on their withdrawal (I guess), but this seems odd, since it is the underlying claim that is the real issue.
   b. It still doesn’t address the issues of co-conspirator/accomplice from above, especially if they leave early enough in the investigation.

All that to say, there are no golden ticket answers, we just have to weigh the pros and cons. I am a fan of finishing and reaching conclusions. Just because a person resigns, it doesn't mean we can’t conclude that they were responsible and show them as terminated in our records. We don't have to accept their resignation. The same applies for withdrawn students. They didn't “withdraw,” they left. We decide when they actually leave. Just like we decide how long they are gone until we relinquish jurisdiction. Give them the opportunity to participate, but finish. If they opt out, that is on them.