What can theater teach Title IX investigators?

By Andrew Michael Johnson

A Title IX investigation is a lot like a play. Both call for commitment, practice, and strong presentation skills. When called upon to serve as Title IX Investigators, administrators and faculty members must hunker down and focus on what will likely be a rigorous period of several weeks, during which other responsibilities will likely fall to the wayside. During these weeks, Investigators will need to review and implement their institution’s Title IX processes as thoroughly as possible. They will need to remain attentive to the evolving facts of the case, immerse themselves in repeated reassessment of what information must still be uncovered, and seek the fairest ways to acquire that information.

If a violation is found to have occurred, the case will most likely culminate in presenting the information to a decision-maker or decision-making body, at which time the Investigators must be prepared to present what they have learned, sharing the key points of the case and responding to questions while preserving an appropriate level of privacy. Then the process ends, leaving the Investigators to step back into their other lives at the institution.

For those learning and practicing investigative work in higher education, the juxtaposition of theater and the investigative process serves as a productive analogy. While perhaps an unlikely comparison, it illustrates some of the skills that help Investigators provide equity and fairness to students, staff, and faculty members involved with Title IX cases. Conversely, this comparison is in no way meant to suggest that the investigative process is a production with a predetermined outcome, nor is it meant to minimize the seriousness with which postsecondary institutions view and conduct their investigations. Rather, as a good liberal arts student might observe, this comparison brings into focus the dedication, preparation, and articulation required of investigators...

— Johnson
FROM THE FIELD | PREGNANT & PARENTING STUDENTS

Avoid pregnancy discrimination in practicums

By Cynthia Gomez, Editor

Make sure academic administrators and faculty — particularly in programs with practicums — know what constitutes pregnancy discrimination and that it’s prohibited by law. Doing so could help you avoid a situation like the one that led to the case of Varlesi v. Wayne State University, et al.

Tina Varlesi became pregnant after enrolling in WSU’s master’s in social work program. She began a practicum at the Veterans Administration Hospital, under supervision of Pamela Mackey. The placement was terminated early, and Varlesi accused Mackey of pregnancy discrimination. Her Faculty Advisor, Carol Premo, dismissed the accusation. Varlesi was then placed with the Salvation Army’s Adult Rehabilitation Center, an all-male facility for ex-convicts and drug addicts, with the expectation that she would make up hours from the previous practicum.

Her field supervisor, Joyce Stefan- ski, immediately questioned her marital status and living arrangements, and told her that the men at the rehabilitation facility “can look but they cannot touch.” Stefanksi then complained to Premo about Varlesi’s performance, attendance, and attitude, and asked Premo to remove Varlesi from the practicum. Premo refused. Varlesi accused Stefanksi of pregnancy discrimination. Stefanksi denied it, but admitted telling Varlesi to stop “rubbing her belly” and to wear looser clothing because the men at the facility were being “turned off by her pregnancy.” Stefancki and Anwar Najj-Durack, the Director of Field Education, also told Varlesi that she could drop out of the program.

Varlesi complained to WSU’s Office of Equal Opportunity, the Ombudsman, and again to Najjar-Durack. Premo rep- turned her complaint, but reassured her that she was “doing great” academically. Yet in the spring, Stefanksi gave her a failing evaluation and Premo then failed her for the placement, preventing her from graduating. Varlesi filed a formal complaint with WSU, but it was dismissed, and her grade appeal and reinstatement request were denied.

She sued, claiming discrimination and retaliation in violation of Title IX and Michigan law. The court granted summary judgment to the Salvation Army and StefanSKI, since they are not part of an educational institution and thus not subject to Title IX, but denied it for WSU. A jury found for Varlesi, awarding her $848,690 in damages, and the appellate court affirmed the decision.

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Investigators need to recognize the level of commitment that a case demands. They must dedicate themselves to the case from beginning to end. Investigators will need to closely manage their time to fulfill their other roles at the institution beyond that of Investigator. Other staff members may need to take on some of the investigators’ responsibilities related to these other positions. Recognizing and planning for this at the outset of an investigation can help make the balancing act more manageable.

» Study the script. The actors in a play must know the script before they begin. Similarly, Investigators need to fully understand the institution’s Title IX policies and procedures before engaging in the process. In addition to the sexual misconduct policy, they should understand the roles of other employees involved in Title IX and sexual assault prevention. The institution’s policy on retaliation, support services for all parties involved in a case, the appeals process, and institutional expectations for producing a report and presenting findings to a decision-maker.

» Learn your lines. For actors, memorizing lines is a time-consuming yet critical piece of the process. While Investigators have the benefit of referencing notes and other materials, they still need to know their lines for any given interview. Before each interview, they need to design appropriate questions by asking themselves what they need to know, why they need to know it, and how they are going to ask it in a respectful and impartial manner. In addition, Investigators need to know what information they are going to share with interviewees at the outset of the case, potentially including the goal of the investigation, campus resources available to them, and the ways in which the institution protects them from retaliation.

» Know your blocking. In theater, “blocking” refers to the movement and placement of actors on the stage. Similarly, Investigators need to carefully consider the setup of the spaces they will use for their interviews. The seating, lighting, location, furniture, and temperature of a room can all affect how interviewees will feel in the space. Investigators will want to carefully consider these factors to create a comfortable space that keeps the interview from feeling adversarial. For example, sitting on either side of a table’s corner as opposed to straight across from an interviewee can help to diminish confrontational perceptions, as can choosing a space that feels private, keeping the room at a comfortable temperature, and having water and tissues on hand.

» Rehearse. Investigators will need to meet frequently, going over what they’ve learned, identifying information that will be necessary to come to a finding, and planning for interviews. These meetings may even include role-playing interviews or panel meetings to practice offering support, asking questions, or presenting rationale that may need to be articulated at a later date. For Investigators, the presentation of findings is in many ways the culmination of their work. Because of this, they must have a full understanding of the evidence, both testimonial and real, such that they can clearly articu- late relevant information and the rationale for their recommendations, if any are being made. These lessons can help Investigators foster the focus and commitment neces- sary to be both responsive and effective in investigating the delicate situations with which we are routinely faced.
Ensure your investigators have the needed competencies to be effective

By Cynthia Gomez, Editor

Title IX Investigators must be well trained in a number of areas in order to carry out their responsibilities effectively. Having Investigators who lack the needed expertise is likely to land your institution both in court and under scrutiny with the Office for Civil Rights.

Training options for Title IX Investigators have increased in recent years, due at least in part to increased media and legislative attention to campus sexual assault and other Title IX-related issues, high-profile litigation by students who feel their cases were unfairly resolved, and OCR guidance. Leading organizations in this area include ATIXA, the Association of Title IX Administrators, with both campus- and hotel-based training and certification events for Investigators at every level of expertise and experience. Some schools, meanwhile, opt to provide training to their Investigators on their own. Regardless of how Investigators are trained, there are some key competencies developed by ATIXA over the years that can help ensure that your Title IX Investigators have the knowledge they need to do their jobs and keep your institution out of legal trouble.

W. Scott Lewis, a partner at The NCHERM Group, LLC, and founder and Advisory Board Member of ATIXA, presented at the last ATIXA/co-sponsored by TTU’s Student Resolution Center, and an Affiliated Consultant with The NCHERM Group, about the key competencies for Investigators.

They broke the competencies list into two sections: basic and additional. Because Title IX is a quickly expanding field, it’s only natural that different professionals will fall into different areas of the expertise and experience continuum, just as with any other profession. However, should your institution come under OCR or court scrutiny, being able to show that your Investigators have received training in all relevant competencies will be useful.

Basic competencies include knowledge of the following:

- The legal landscape, including the history of Title IX, related and current case law, related laws and their histories, OCR rules and guidance, and relevant state laws.
- The basic requirements of Title IX investigations, or what ATIXA refers to as “The IX Commandments,” which state that: 1) investigations must be thorough, reliable, and impartial; 2) the investigative process must be prompt, effective, and equitable; and 3) remedies must: end the discrimination, prevent its recurrence, and remedy the effects on the victim and community. All elements of the school policy, as well as model policies. Too often, campuses get in trouble not because they lacked adequate policies, but because they failed to follow them.
- The force/incapacity/consent construct. That begins with the concept that consent consists of clear, knowing, and voluntary words or actions that give permission for specific sexual activity. It involves asking: 1) Was force used by the responding party to obtain sexual access? 2) Did the responding party know, or should have known, the responding party was incapacitated? and 3) What clear words or actions by the reporting party gave the responding party permission for the sexual activity that took place? That construct also examines different types of force and the subtlety of coercion, as well as incapacity versus intoxication.
- All elements of the campus process. Investigators must not only be able to follow the process from start to finish, but must also be able to explain it to parties.
- Appellate requirements. Often, responding parties who are unsatisfied with the resolution of their cases will want to appeal. If Investigators fail to adequately inform them of available appeal options, campuses could find themselves as defendants in expensive lawsuits.
- How Titles IX and VII interconnect. Often, students are also employees, and vice versa, and some cases will inevitably involve both students and employees, so understanding how these laws intersect and when one may trump the other is essential to ensuring compliance.
- Informal resolution processes, including options such as mediation and restorative justice.
- The 10 components of an investigation, which are: 1) receiving a complaint or notice; 2) conducting a preliminary inquiry; 3) making a gatekeeper determination; 4) providing notice of allegation; 5) strategizing the investigation; 6) conducting a formal, comprehensive investigation; 7) interviewing witnesses; 8) gathering evidence; 9) engaging in analysis; and 10) making a finding. Interview skills, including everything from setting ground rules to working with students’ advocates. Interviewing of different parties should differ in several important ways. Additionally, sexual misconduct cases require a trauma-informed interviewing approach.
- Credibility determinations. This includes what factors to consider and how to include and explain them in the investigation report.
- Weighting the evidence, including, as with credibility determinations, how to articulate the weight given to different pieces of evidence in the investigation report.
- Rendering findings, when it’s applicable to do so, and how and when to articulate the parties’ responses without the need for word-for-word transcripts.
- The role of Investigators during the appellate process, including their role as star witness.
- Collective bargaining agreements and related issues when employees are involved in Title IX cases.
- Microaggressions, how to handle them, and how cultural competency, or lack thereof, can impact cases.
- Closed communities such as athletics groups, Greek life, student clubs, and ROTC, and issues specific to them that can impact how cases should be investigated.
- Victimology, including trauma-informed interviewing.
- Rape myths and how to address them within the investigative context.
- Predation and pattern behaviors.
- Victim psychology and the psychology of the accused.
- Pharmacology, especially giving the increase in prescription drug use and abuse among college students.
- Mock investigations, interviews, hearings, and appeals for training.
- Alternate dispute resolution, particularly how to implement restorative justice and other forms of ADR, and in what kinds of cases that may be most/least appropriate.
- Technology, tech-based evidence, and social media. Evidence often lives in students’ cell phones as text conversations, photos, and videos, and on social networks.

Cynthia Gomez is the editor of Title IX Today. She can be reached via email at Cynthia@atixa.org.
PROFESSIONAL PERSPECTIVE 1 TITLE IX ADMINISTRATION
Librarian turned Title IX Coordinator sheds insight on faculty perspectives

By Amy Murphy, Ph.D., Contributing Editor

Getting faculty members to understand and comply with Title IX’s requirements can prove problematic for some Title IX Administrators. But Eric A. Kidwell, a Professor and Director of the Library at Huntingdon College, commanded the respect of the faculty from the moment he stepped into the role of Title IX Coordinator. That’s because he’s been teaching at the small, Methodist-affiliated Alabama institution, for 31 years now. He spoke to us about the transition to Title IX from faculty work.

Q: Why do you think you were chosen to be the Title IX Coordinator at Huntingdon?
A: I am the second most senior full-time faculty member at the college. The Title IX Coordinator reports to the Chief Financial Officer, and he indicated that there was a great deal of respect among the faculty for me. When he announced during a faculty workshop that we had appointed a Title IX Coordinator, faculty members were hesitant about what was coming. But when the announcement was made that I was the new Coordinator, there was a sense of relief. When reading postings on the ATIXA listserv, I’ve noticed that some institutions are facing challenges in getting faculty buy-in related to being responsible employees. Because I have our faculty’s trust, that was not an issue.

Q: What skills and experiences have served you well in the Title IX Coordinator position?
A: I have always considered myself as having a keen sense of social justice. But when I was first approached about accepting the Coordinator role, my awareness of Title IX was limited mostly to equity in athletics. A couple of weeks later, I went to ATIXA Level 1 Coordinator Training. Because of my route into this work, attending the ATIXA training and reading the ATIXA listserv have been very helpful. Every time I start to feel like I am in over my head, I realize that we are all struggling with various aspects of this.

Q: What have your 30+ years in the classroom taught you related to conducting prevention and educational programming?
A: Educational programming is a moving target. It requires creativity, and as much variety as possible. Students can very easily get to the point where they say, “I am tired of hearing about Title IX.” I am currently planning a new program for fall that, while focused on what we are dealing with in regards to sexual assault and issues of gender and sexuality, avoids making reference to Title IX. The impetus for the program is the 75th anniversary of Wonder Woman, a character who straddles the fence between what society sees as being feminine and masculine. When you get down to it, a lot of our problems are tied to unhealthy definitions of masculinity. We’re assembling a panel of faculty and students to talk about that. The program will also feature the documentary called Wonder Women, a book about her character, and displays featuring Wonder Woman collectors’ items. I’m partnering with faculty in Communication Studies and Psychology who have an interest in sex and gender roles to make sure we have a diverse panel and that we bring males into this discussion while also being inclusive of non-heterosexual students.

Q: Given that approximately 65 percent of your students are in some way involved with school athletics, what prevention strategies do you feel work for athletes?
A: Developing a relationship with coaching staff is vital. Being at a small institution allows for more individual interaction. I meet regularly with coaching staff. They want to know what they need to be doing, how they can help students who come to them, whether I can tell them if a student-athlete reports an incident to me, and what they can do to alleviate the situation for students involved in Title IX-related complaints. There seems to be a sincere desire from the coaching staff to take situations seriously and provide the right environment for students.

In the fall, a representative on the faculty athletic committee approached me about doing a presentation about her experience as a student. She spoke about her own student experiences, her naiveté, and the lessons learned. She explained that she ignored red-flag behavior because it came from someone she trusted. She also talked about her experience early in her career at NASA, and later in advocating for legislation in Maryland related to sexual harassment. Bringing personal experience and some humor to what for many can be an uncomfortable topic allowed us another option for educating students. The fact that coaches encouraged student-athletes to attend helped too.

Q: What have you experienced related to educating first-year students?
A: When most people hear the term “sexual assault,” they think of something very specific. Even with so much coverage in the media, many first-year students and their parents still have an attitude that Title IX-related incidents, while often horrible, happen only to other people. We try to emphasize that sexual assault is only one area of sexual misconduct that we are trying to address, and that anyone can be a victim. Many of our incoming students are not very worldly, so helping first-year students understand sexual misconduct definitions and that we do take incidents seriously can be challenging.

Q: Your campus has recently completed a campus climate survey. How did it go?
A: Huntingdon’s climate survey was a partnership with the Higher Education Data Sharing Consortium. We reached out to faculty, Student Life staff, and student leaders to encourage students to participate. Our response rates were high compared to other small institutions, and showed that our marketing for the survey was effective. We published results because we wanted students to know that we were actively using their feedback, and their insights helped us improve our efforts. A summary of some of the actions taken following the survey is available at www.huntingdon.edu/wp-content/uploads/Title-IX-2015-Climate-Survey-summary-report-for-publication-final-version.pdf.

Q: What tips can you share with Title IX Coordinators about working with faculty members?
A: If there are faculty members with whom you already have developed a good working relationship, start there because they can then bring others on board. Identify your faculty leaders, and not just those who are leaders officially. Length of time at the institution or long-time sponsorship of a student organization may make someone be viewed as a faculty leader. These individuals can help others see that you are not an adversary. Faculty members can sometimes feel that you are making their job more difficult with requirements that they may think have nothing to do with teaching students. Help them see the connection between what you do and their own interest in the intellectual, physical, and psychological wellbeing of students.

About the Author
Amy Murphy is an Assistant Professor at Angelo State University, an Affiliate Consultant with The NCHERM Group, and the former Dean of Students at Texas Tech University.
Laura Walsh Rugless is the Director of Equity and Access Services and Title IX Coordinator at Virginia Commonwealth University; and Tammi Slovinsky is the Deputy Title IX Coordinator for Student Affairs at the institution. Together, they offer the following advice for improving your response to Title IX matters:

1. **Understand that we all have biases and operate from a framework shaped by our culture and previous experiences.** Being aware of personal biases helps in reviewing cases and meeting with students in a manner that is consistent and fair. Being open to additional training opportunities can also help you better serve students.

2. **Realize the importance of relationships.** Build teams across disciplines to develop an authentic and caring community response to discrimination and violence.

3. **Take care of yourself.** Take breaks when you can. When feeling overwhelmed, take a walk around campus and look at the students having fun, holding hands, and enjoying their day. We tend to see students at their lowest moments, but there are many more enjoying their college experience.

4. **Extend supportive outreach to reporters.** Even “just the messengers” can be impacted. Ask how those who report incidents that they themselves are not a party to are doing and let them know it’s OK to feel affected.

5. **Make the policy rounds with key groups on a regular basis.** Enhance the core content produced by your office to include information specific to different groups. For example, academic advisors will need to know more about academic accommodations than residential housing staff would.