



MAINTAINING TITLE IX PROGRAM INTEGRITY IN THE FACE OF A PANDEMIC

March 13, 2020

YOUR FACULTY



Brett A. Sokolow, J.D.

President, ATIXA
Chair, TNG



W. Scott Lewis, J.D.

Advisory Board, ATIXA
Partner, TNG



Sandra K. Schuster, J.D.

Advisory Board, ATIXA
Partner, TNG



Poppy Fitch, Ed.D.

Director, Disability Support
Programs and Services
San Diego Community College
District

Kim Pacelli, J.D.

AGENDA



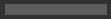
- Campus Status
 - Open/Closed
 - Conducting Classes
- Current Investigations
 - Level of Investigations
 - Triage
- Interim Measures
 - What is in place
 - Effectiveness when campus is partially or fully closed
- Hearings
 - Scheduling considerations

AGENDA



- Future Cases
 - Risk factors
 - Incoming cases
 - Training
- Other Considerations
 - Length of closure (full or partial)
 - Maintenance of practices post-crisis

CAMPUS STATUS



CAMPUS STATUS



- Is your campus fully closed?
 - Are staff expected to report to campus or work remotely?
- Is your campus partially open?
 - Do you have students who cannot leave because of resources, visa concerns, etc.?
- OCR considerations.
 - Ongoing investigations by OCR
 - Regs
 - Promptness complaints
 - Failure of remedy complaints

Although this crisis is evolving rapidly, thoughtfully anticipating issues and needs will benefit you when this crisis ends.

CURRENT INVESTIGATIONS

- What is the level of those investigations (e.g. major or minor allegations)?
- This is the time to print a spreadsheet or other document that allows you to view the current level and status of those investigations.
 - Triage as needed
 - Can lower end cases be put on hold and interim measures maintained until the campus fully reopens?
 - Are there cases that can be resolved informally and quickly using a remote communication platform (e.g. Zoom, Skype, FaceTime)?
 - Some parties may have more availability during this time.
 - Some parties may want to be fast-tracked, while others may resist.

CURRENT INVESTIGATIONS



- Are there more complex cases that can be put on hold and interim measures maintained until the campus fully reopens?
 - This is more likely if the campus is completely closed (including administrative functions).
 - Consider pros and cons
 - What are the real effects on the parties if the case is put on hold?
 - Is future enrollment at stake?
 - Will a party complete their classes online (during this downtime) and graduate?
 - You MUST put the parties on notice as to the delay.
- This may be a good time to complete interviews remotely.
 - Schedules may be freer or more flexible - especially with online/recorded classes.

INTERIM MEASURES

INTERIM MEASURES



- What interim measures are currently in place?
- Will those measures reasonably stop and prevent sex-based discrimination or harassment (as defined in your policy) while the campus is partially or fully closed?
 - Do any new interim measures need to be put in place given the new circumstances? Can current interim measures be modified accordingly?
 - Housing relocations – especially with “lockdowns” in effect.
 - Existing No Contact Orders between students who are in the same class, but now class discussion is online.
 - Physical separation is easier now but difficulty may arise with online class discussion.
 - Should you modify the language of current No Contact Orders so that class participation does not result in failure to comply with a No Contact Order?

INTERIM MEASURES



- For students who cannot go home or relocate during this crisis, access to cafeterias and other services may be limited and affect existing No Contact Orders.
 - May need to get more detailed and establish schedules for the parties to access the cafeteria and other services (e.g. counseling).

HEARINGS

- Are any hearings scheduled during the time campus is closed?
- Can the hearing be rescheduled?
 - If so:
 - Put the parties and witnesses on notice and/or get their agreement.
 - Schedule for some reasonable time further out (e.g. summer).
 - Do NOT leave these hearings unscheduled – you do NOT want to be in the position of scheduling multiple hearings at the same time.
 - If people are working remotely, can everyone video into a central location?
 - Be sure this technologically possible before you offer this option.
 - Do a practice run to understand the technology so you can avoid glitches.
 - Do not oversell it as anything more than less than ideal – manage expectations.

HEARINGS



- Are remote hearings an option?
 - Much to choreograph logistically, but feasible, if sufficient Wifi connection enabled. Phone may not be sufficient.
 - Will need to arrange and test technology beforehand.
 - Use a technology that can record.
 - Make sure materials are disseminated as necessary, in advance.
 - Establish rules for use of the technology platform to avoid cross-talk.
 - Use a technology that allows parties to sidebar and consult with their advisors off-camera/outside of hearing.
 - You may be able to use the same technology to facilitate deliberation by a panel, but make sure connection is private.
 - Third-party neutral services (like TNG's) can provide you with remote hearing officers if you cannot find enough on campus or yours are not trained in time for a needed hearing.
 - Will advisors be physically present with parties, or participating remotely themselves?
 - Same with appeals.

FUTURE CASES



—

- Risk factors:
 - Students are having extended spring breaks – this could result in more cases.
 - Students may be “locked down” in their homes, apartments, and residence halls.
 - If classes are also cancelled, this may provide an environment with students confined without much to do. This can increase the risk of sexual misconduct.
 - You should be prepared to implement interim measures for reports received during this period, especially if housing remains open.
 - Residential protective measures (safe housing).
 - Who will enforce?

FUTURE CASES



- Prepare now for incoming cases.
 - Be sure your online portal for incident reports is still being monitored.
 - Be sure first responders are aware of what TIX resources are available and not available.
 - This includes resources both on- and off-campus.
 - Be sure campus officials know how to contact the TIX coordinator and/or TIX team members during this time.
- Training
 - Students are home or on some sort of lockdown.
 - This is a good time to send out reminders of overall behavioral expectations. This is an opportunity to highlight policy that prohibits discrimination - including TIX and race-based discrimination.

FUTURE CASES



- This may be a good time for students and employees to complete their required online trainings.
- There may be some opportunity to leverage technology and live-stream training for students and employees that you planned to do in-person.

OTHER CONSIDERATIONS



- How long will this last?
- Can we (and should we) retain any of these practices post-COVID-19 crisis?
 - Should we make remote interviews for parties and witnesses a standard option?
 - What about remote hearings – especially in light of recent court decisions and the proposed regs?

CONTACT INFORMATION

Brett A. Sokolow, J.D.

Brett.sokolow@atixa.org

Sandra K. Schuster, J.D.

Sandra.Schuster@tngconsulting.com

W. Scott Lewis, J.D.

Scott.lewis@tngconsulting.com

Poppy Fitch, Ed.D.

poppyfitch@gmail.com