

**University of Cincinnati
August 8, 2022**



Disclaimer

- While I am a licensed attorney, I am not here to give you legal advice.
- Contact your excellent Office of General Counsel for legal advice on specific situations.

Discussion Rules

- Questions are encouraged!
- “For the sake of argument...”
- Be aware of your own responses and experiences
- Follow up with someone if you have questions or concerns
- Take breaks as needed

Aspirational Agenda

- Quick exercise
- Review of “Off-Ramps”
- Table-Top Exercise

Exercise

- What are the top three values that are fundamental to both our conduct and Title IX process? (one word each)
- What is the most important thing we want students to take away from these procedures? (three words or less)

You have 90 seconds. Go.

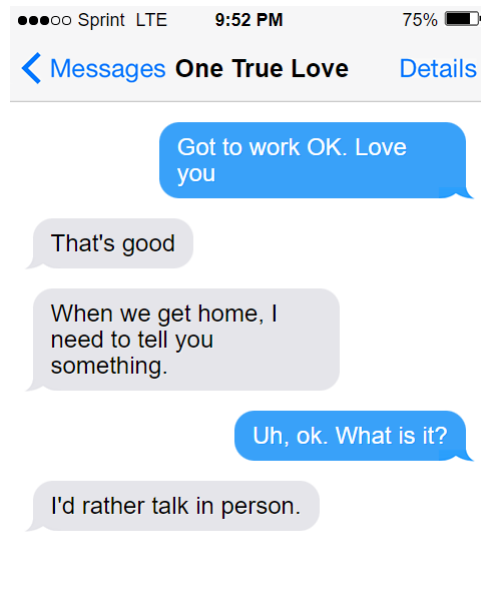
Institutional Ethic of Care

- The values you build into your investigative/adjudicative procedures
- The values you build into your community
- The way you treat members of your campus community
- The way you expect members of your campus community to treat each other

Note: Your ethic of care should be consistent across the institution.

Roles in the Process

- Our court system is adversarial. Is that what your process is?
- Does your process have the equivalent of the police and the prosecutors, or is your process something different entirely?



Overarching Themes (1)

- “Follow your policies. Follow your process.”
- Monitor the emotional temperature of the case.
- Provide regular updates.
 - “If they don’t hear from you, they’ll assume that you’re doing nothing or actively working against them.”
- Be mindful of any language that might suggest predetermination (e.g. perpetrator, victim).

Overarching Themes (2)

- Base decisions on evidence, not your “gut.”
- Individuals under pressure are constantly “reading the tea leaves.”
 - Transparency encourages participation, reduces stress, and increases trust in the outcome.
 - “Never miss a chance to be transparent.”

Emotional Management

- Follow up meetings in writing
- Manage anxiety – what comes next?
- Access to counseling
- Encourage use of support person/advisor

Other Barriers to Address

- Disability accommodations
- Language needs
- Cultural perspectives
- Parental friction
- Social friction
- Managing academic expectations
- Concern about visa status
- *Figuring out which policy applies in the first place!*



Which Policy Applies?

Title IX Sexual Harassment Policy

- Must meet all of the following:
 - Occurred against a person in the United States
 - Occurred in UC's education program or activity
 - Complainant participating or attempting to participate in education program or activity when formal complaint is filed
 - Formal complaint must allege sexual harassment

Education Program or Activity

- Locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the sexual harassment occurs
- Includes building owned or controlled by a student organization that is officially recognized by the University

If not Title IX?

- Conduct may be addressed through other University policies and rules:
 - Student Code of Conduct
 - Collective Bargaining Agreements
 - Human Resources Policies

Student Conduct: Jurisdiction

- UC reserves the right to respond to conduct that undermines, interferes with, or obstructs the safety and security of the university community or that adversely affects the integrity or interests of the educational mission or functions of the university

Student Conduct: Off-Campus

- Applies when the behavior or the presence of a student or student organization ... impairs, obstructs, or interferes with the mission or process or functions of the university.
- When conduct poses an obvious threat of serious harm to any member of the university community or when conduct has continuing effects that effectively deny community members access to resources and opportunities, unreasonably interfere with community working and living environment, or deprive community members of protected rights in a university program or activity

Student Conduct: Factors to Consider

- Whether the student was acting as a representative of the university
- Seriousness of the offense
- Injuries to students or others
- Extent of danger posed to the community
- Whether a student organization was involved
- Whether the incident could result in a felony charge
- Whether weapons, drugs, or alcohol were involved

Jurisdictional Scenarios (1)

- Student sexually harasses another student on a study abroad trip sponsored by UC
- Student sexually assaults neighbor at home in California over break
- Student racially harasses another student on campus

Jurisdictional Scenarios (2)

- Student alleges another student called them an inappropriate gendered term on two occasions in the residence hall
- Student alleges non-consensual kiss on campus by another student
- Student alleges another student recorded them while having sex; video is not distributed
 - What if the video is distributed?



Teamwork Required: Monday Morning Cross-Claims

Introduction

- What are Emily's options?
- How confident are you that Emily would be aware of her options?
- Of these options, which do you think would be most helpful for Emily in the short term? In the long term?
- Emily, what do you choose to do?

Complainant: Emily

- What are Emily's options?
- How confident are you that Emily would be aware of her options?
- Of these options, which do you think would be most helpful for Emily in the short term? In the long term?
- Emily, what do you choose to do?

Ramira the RA

- What are Ramira's options?
- How confident are you that Ramira would be aware of her options?
- Ramira, what do you choose to do?

Title IX Coordinator

- Do we have enough for emergency removal here?
 - Must conduct an "individualized safety and risk analysis" and determined that "an immediate threat to the physical health or safety of any student or other individual" that arises "from the allegations of sexual harassment" justifies removal
- Title IX Coordinator, what do you choose to do?

Madison: Respondent/Complainant

- What are Madison's options?
- What supports and services might Madison seek on campus?
- Madison, what do you choose to do next?

Rumi the Roomie

- What are Rumi's options for support?
- Are you confident that students in Rumi's position would know about these options?
- Rumi, what do you choose to do next?

Housing Assignment Coordinator

- Should Emily be removed from the room? Should Madison? What is equitable?
- What are some options for approaching this equitably and allowing everyone to feel safe and continue with their education?
- How much can and should the Title IX Coordinator share about the situation?
- Housing Assignment Coordinator, what do you choose to do?

Professor Plum

- Should Professor Plum have had any information about this situation? (Title IX or roommate concerns)
- How much student conduct information should be shared with faculty members?
- Who would we want Professor Plum to contact in this situation, if anyone?

Counselor

- What can the counselor communicate to others at the institution?
 - Taken to a hospital?
 - Suicidal?
 - Needs assistance upon return?
 - Confessed to policy violation?

Madison's Parent

- Which of the people that the parent called should call the parent back, and what can they say?
- What role can the parent play in this process?
- What can the campus do immediately to alleviate the parent's concerns?