

Title IX Coordinator Training

Presented by the
National Association of College and University Attorneys (NACUA)

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National Association of College and University Attorneys

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The Conclusion, Other Issues & Review

Ms. Smith, Jane and Kyle

The Case Study Continues

- Spring break ended, Ms. Smith, the Title IX Coordinator, wishes to move quickly with the investigation.
- Jane agrees to participate but only as a witness, not as complainant.
- Ms. Smith schedules separate meetings with Jane and Kyle to discuss the process.



The Case Study Continues

- Before her meeting with Kyle, Ms. Smith realizes she's not sure if this should be handled under the institution's Title IX process or as a student conduct matter due to the bruises.
- She stops to see the Dean of Students who advises, "Describe the process generally for now. We'll put something in writing when we figure it out."





- What should Ms. Smith do?

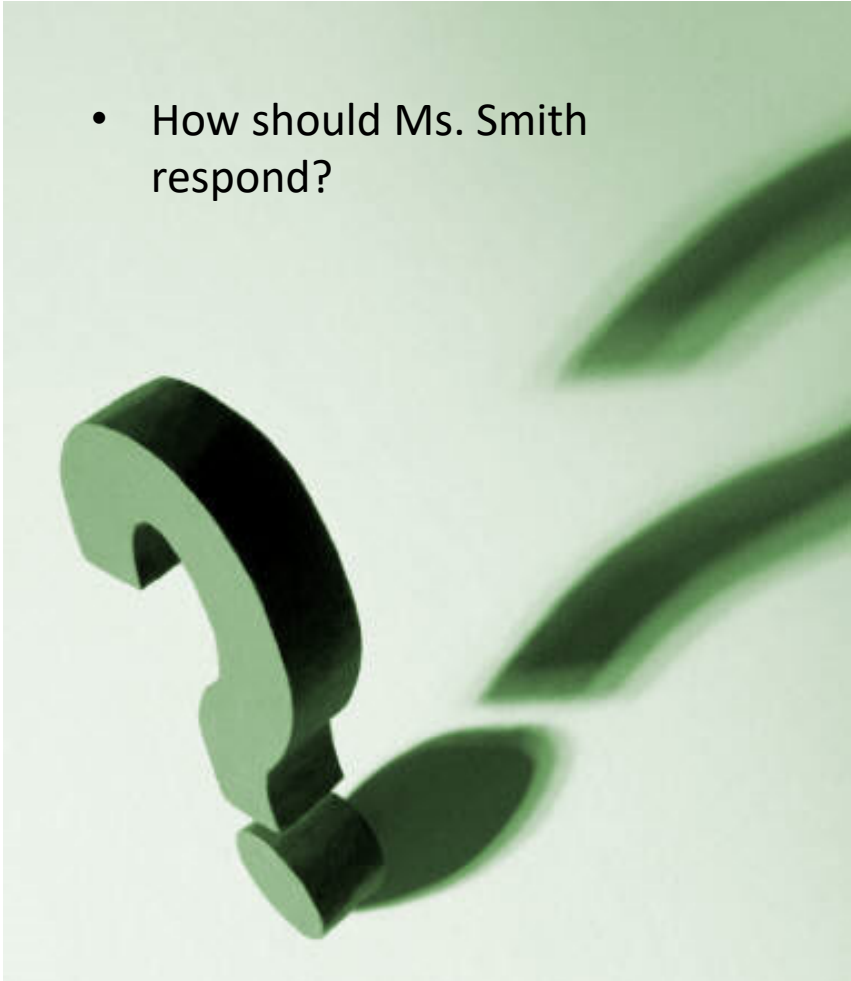
The Case Study Continues

- Kyle describes that Jane agreed to come to his room but then started to beat on him when she saw a girl's sweater on the bed. He held Jane's wrists to defend himself. Once she calmed down, she apologized and consented to having sex.
- Kyle alleges Jane stayed with him all night, initiated sex in the morning and has hung out with him twice since.



The Case Study Continues

- Kyle asks:
 - Will Ms. Smith interview the witnesses he identifies?
 - Can he be represented?
 - Can he have a copy of the process that will be used?
- Jane asks:
 - What the school is going to do to protect her?
 - Is the school going to stop Kyle's friends from discussing the incident?

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- How should Ms. Smith respond?

The Case Study Continues

- Ms. Smith begins her investigation. When she talks with Jane, Jane repeatedly describes the lamp in Kyle's room but doesn't answer questions about what occurred when she entered Kyle's room.
- Jane tells Ms. Smith she spent time with Kyle after the alleged assault so he "wouldn't be mad at me."



What if...?

- Kyle provides a list of 15 witnesses for Ms. Smith, some of whom refuse to respond to Ms. Smith?
- Jane stops by Ms. Smith's office to ask who she's interviewed and to ask more about the process?
- Prof. Gray calls to ask Ms. Smith how the investigation is going?
- The faculty member Jane chose to advise her during the process is the advisor to the Model U.N. and has traveled with the delegation. Kyle takes part in Model U.N. activities.

The Case Study Continues

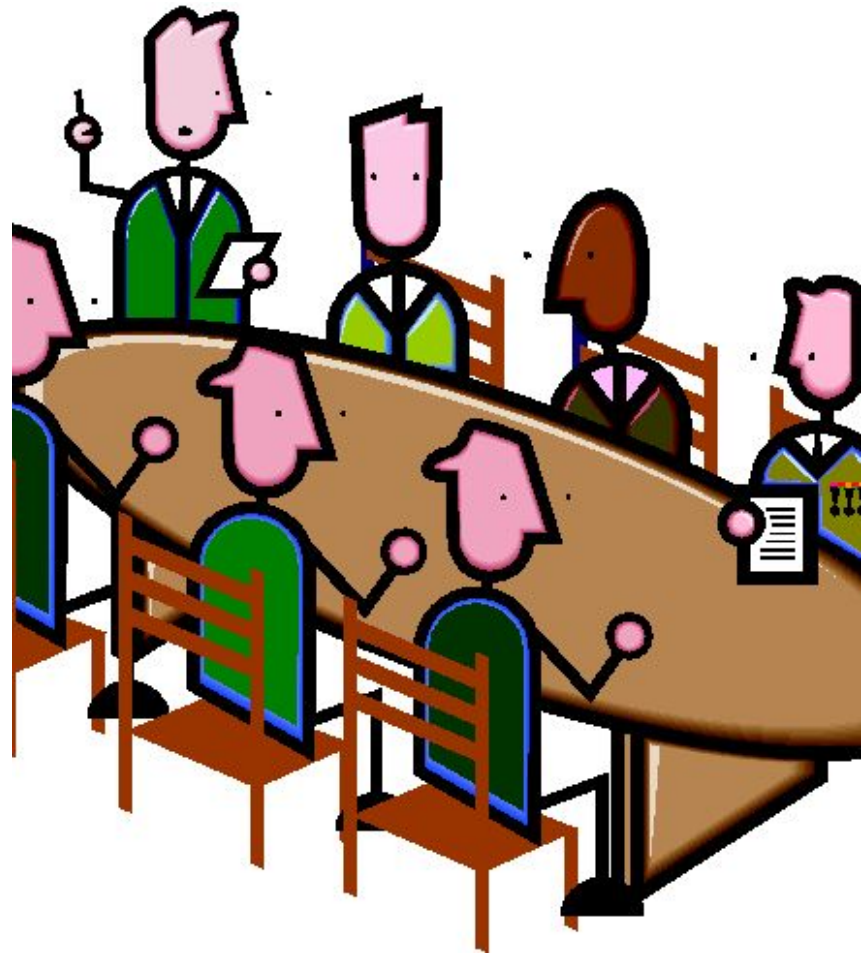
- Ms. Smith decides Kyle should be charged with violating both Title IX and the Student Conduct Code. Ms. Smith wonders if the college should hold two hearings.
- Ms. Smith also is concerned about how a hearing panel will view Jane's statements.
- On the advice of her counselor, Jane wants to attend the hearing but rely on her statements and not testify.
- Kyle's lawyer states that he intends to ask questions at the hearing and wants to see all the documents that will be presented and a list of witnesses.

The Case Study Continues – The Hearing

- Jane’s mother and father arrive at the hearing accompanied by a lawyer. All express a strong desire to sit through the hearing with Jane to provide support.
- During a recess, the chair of the hearing panel asks Ms. Smith, “How do I know who’s telling the truth?”
- Kyle objects to a member of the hearing panel who recently published a paper titled, “When Will They Ever Learn?: Teaching Young Males to Respect ‘No’.”

The Case Study Continues

- After the hearing, Ms. Smith prepares a draft letter of outcome based on the hearing panel's instructions.
- Jane's mother learns of the draft report and objects because of Ms. Smith's role in the investigation.
- Kyle is found responsible for sexual misconduct. His lawyer requests the report to consider "next steps."



Ms. Smith's Dilemmas

- With a vote of 2 to 1 on responsibility, the hearing panel has not yet come to an agreement as to sanctions.
- Kyle's lawyer asks if Kyle can submit a statement prior to the imposition of sanctions.
- The University's policy simply states "sanctions imposed for sexual misconduct will normally range from probation to expulsion."
- The Dean of Students reports that Kyle has now been criminally charged with sexual assault arising from the incident the Dean had previously reported to Ms. Smith.

Appeals

- Kyle's sanction: a 2-year suspension and a 4-year no contact order.
- Jane files an appeal, alleging that the sanction imposed is too lenient.
- Kyle's lawyer files an appeal, alleging Jane's failure to give live testimony at the hearing violated Kyle's due process rights.
- Kyle's parents inform the university they will sue if Jane's appeal is considered because Jane was not a party to the proceedings, only a witness.

The Aftermath

- Ms. Smith learns that Jane’s parents plan to put an ad in the local paper and in Kyle’s hometown paper describing Kyle as a “convicted rapist,” the university’s response as “inadequate,” and the sanctions as “a joke.”
- Ms. Smith proposes mandatory training regarding sexual assault, alcohol, and bystander intervention for all employees and students. The Dean of Students supports that recommendation. The President responds, “Faculty hate training. Most won’t attend, and what will we do then?”

**Waiting for
the final
rulemaking –
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Waiting for the final rulemaking – what should we do now?

- Ensure policies include notice to the respondent before an interview.
- If still using a single investigator model, consider whether to move to a hearing model; alternatively, discuss what such a model would look like if required.
- Ensure policies afford both parties the same opportunity to challenge the other's narrative.
- Ensure policies provide the investigator and decision-maker the opportunity to assess credibility.

Waiting for the final rulemaking – what should we do now?

- Ensure training materials do not use stereotypes or fixed assumptions, and are articulated in neutral terms.
- Discuss how the institution might handle a more active role for attorneys.
- Ensure policies are clear as to how and when off-campus conduct will be addressed.
- Discuss and be able to articulate the circumstances under which the institution will investigate multiple reports concerning the same student.

Waiting for the final rulemaking – what should we do now?

- Ensure supportive measures really are available to both complainants and respondents.
- Brainstorm how measures can be implemented in an appropriately non-punitive way.
- If permitting informal resolution, ensure policy describes the process and the limits of informal resolution.
- Review the timeframes in your policy to ensure appropriate flexibility.

Waiting for the final rulemaking – what should we do now?

- Ensure institution is meeting the Sept. 2017 standard as to documents (i.e., both parties must have the opportunity to fully review all relied on during the investigation and adjudication).
- Consider ensuring the standard of evidence used in all student-related processes is consistent; audit standard for employee processes.
- Discuss whether to offer (continue offering) the opportunity for appeal. If offered, maintain as bilateral.

Questions?



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