



THE ATIXA ONE POLICY, ONE PROCESS MODEL POLICY

Why Choose the One Policy/One Process Model?

College and university administrators have been working diligently since April of 2011 to implement the mandates of the OCR Dear Colleague Letter addressing campus sexual violence under Title IX. We're witnessing a sea change on this issue, touching campuses all across the country at the same time in an unprecedented way. We have much work to do, but we have come very far, very quickly. The dramatic increases in the number of reports of incidents by students on our campuses are evidence of the effectiveness of our efforts.

Yet, many campuses are still missing one key point about Title IX that went unremarked in the DCL, but must be acknowledged if we're going to get Title IX right. Title IX applies to employees. You knew that already. Title IX controls an employee-on-student or student-on-faculty complaint of sex or gender discrimination, and you've adapted your policies and procedures accordingly. But that's not the whole story.

Staff-on-staff complaints and faculty-on-faculty complaints, both of which are employee-on-employee situations, fall within Title IX. That has been settled law since the Supreme Court decided *North Haven v. Bell* 456 U.S. 512 (1982) thirty years ago. The mandates of the DCL apply to employees in much the same way as they apply to student-on-student cases, and they apply broadly -- not just to sexual harassment-- but to all forms of gender and sex-based discrimination, including stalking, relationship violence, bullying and sexual violence.

We're not suggesting that Title VII doesn't apply to an employee-on-employee complaint of sex or gender discrimination. It does. But, Title IX is an additional overlay, and colleges and universities must be compliant with both laws. We have made strides to bring equity to our campus student conduct processes. Rights, privileges, benefits or opportunities in those processes that are typically afforded to males are now also typically afforded to females, and vice versa. We need to carry those changes into the faculty and employee resolution processes as well, and into our renegotiations of our collective bargaining agreements.

If your campus has modified policies and procedures in cases of cross-constituent complaints (faculty-on-student, for example), we want to provoke deeper questions about equity in all of your remedial processes. In 2012, the AAUP challenged the DCL's mandate for the use of the preponderance of evidence standard believing that it would make faculty vulnerable to accusations by employees and students. AAUP's stance is mystifying, given that in cases of faculty-on-faculty harassment or discrimination, the preponderance standard better protects the victim who in this case is also a faculty member whose protection the AAUP professes to ensure. And, in an equitable environment, why should one campus constituency be more or less protected than any other? Victims deserve as much protection of their rights as the accused does and this has not been the case on many campuses prior to the issuance of the DCL. More importantly, the application of Title IX to these cases means that we have to provide that equitable protection of rights on our campuses, regardless of interest group advocacy.

The AAUP has long championed multi-tiered, hierarchical hearing and appeals processes to protect accused faculty members. But, consider what value that model will have in an environment of Title IX equity today? Every chance to appeal for an accused faculty member must also provide a chance for the complainant to appeal as well. Five levels of

appeal now afford no more protection to an accused employee than one level or two, because equitable appeals under Title IX cannot be unilateral, by definition. The more appeals there are in an equitable framework, the more vulnerable to accountability an accused employee may be. We've dispensed with one-sided due process protections in our student-related procedures, and now it will make sense to do so with our employee-related procedures as well. Title VII is silent on equitable procedures, but Title IX now speaks loudly and carries a big stick.

Additional complexity is added by the fact that not all complaints are intra-constituency (student-on-student) or cross-constituency (employee-on-faculty), but are hybrids. Faculty members take classes; students teach them, and serve as our employees. The employee-student and the student-employee pose challenging questions of what policy and process will apply when there are multiple processes that could apply, all of which vary to some degree in the rights, privileges, benefits and opportunities they afford to their participants.

While the following example may be an outlier, it proves the point the one time it is relevant on any campus. Imagine the nightmare of the master degreed non-tenure track faculty member who is taking doctoral classes, works part time in the rec center, serves as the graduate student rep to student government and plays a sport. That's potentially 5-6 separate processes that a complainant may have to endure to "be heard." It's obvious that no complainant would want to pass through such a gauntlet (you wouldn't) and explains why guidance on Title IX is compelling us to "clean up the mess" and merge the processes.

Title IX also poses an additional challenge to our tendency to resolve complaints based on role-defined rather than gender-defined rights. A faculty member accused in a faculty process has certain protections. Their faculty accuser may not under your current policies. But, under student conduct policies revised in accordance with the DCL, a faculty accuser of a student has rights as a complainant in the student conduct process that they likely lack when accusing another faculty member of the very same misconduct. Compare your processes and ask why a faculty member should be more protected as an accused person in the faculty process than if they were a complainant in the student conduct process accusing a student? Such inequity defies logic and any reasonable justification.

Accordingly, campuses really have three options in considering the implications of the DCL and its applicability to employees. One is to maintain legacy processes for students, faculty, and staff (collective bargaining units, etc.) that have historically been disparate and will remain so, though at the risk of non-compliance with Title IX guidance. A second option is to take however many resolution processes your campus utilizes and, while keeping them separate, move them to mostly align with each other and reflect similar rights, privileges, benefits and opportunities. A third and final option is to move to a unified single policy and process that governs all sex or gender discrimination complaints for all faculty, students and staff. Campuses could even use this model to address all forms of discrimination, not just those based on gender or sex.

The advantages of a unified policy and process are clear. Options one and two either create disparate protections that can undermine equity, or they create unnecessary and inefficient duplication of resources by leaving us to manage three or more parallel processes, distinguished only by the constituency of those involved (except when they cross constituencies or present a hybrid incident).

A unified policy addressing sexual misconduct and other forms of discrimination covers everyone equally with the same kind and degree of protection of their rights. A unified process can be centrally administered and overseen, often by expanding the Title IX Coordinator role in the form of an institutional equity officer. Unification simplifies the investigation function and avoids duplicative training when there are multiple bodies all resolving the same kinds of complaints across the campus. Unification allows consistent sanctions and responsive actions for the same types of

misconduct, whether it is committed by a student, faculty or staff member. Unification fosters collaboration across the departments that are stakeholders, including HR, student conduct, and academic affairs while retaining their needed voice in the resolution process. Critically, a unified process can also be essential to the detection and tracking of patterns of misconduct, to limit the frequency of repeat offenses that vex campuses.

Ultimately, we believe unified models will become the standard accepted practice. For those who fear that campus cultures or politics will not accept a unified approach, we suggest that the momentum created by the DCL make may this the right window of time to champion such sweeping change. It will also be easier in the long run to fix it right the first time, rather than to band aid existing processes not designed for equity in the hopes they will suffice. If we wait, the OCR and the courts will continue to enforce, legislate and remonstrate with what we do in these instances until we end up at a single process. Our hope is that now is the time to envision what can and should be done, and to lay the groundwork for a unified policy and resolution model on your campus. A model policy and procedure is available from ATIXA.

The Model Policy is available for \$2,500 per campus. Additional optional implementation packages are also available, upon request.

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