Title IX at Faith-Based Institutions

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Abstract
Title IX has caused a barrage of changes in higher education across the nation. The greatest shift in implementation occurred for most institutions in April 2011 after the issuance of the “Dear Colleague Letter” from the Department of Education. Faith-based institutions have unique challenges that have slowed forward progress in appropriately responding to the April 2011 DCL and other guidance issued by the Office for Civil Rights and the Department of Education. This reading will elucidate many of these challenges and describe both advantages and practical tips to put into practice for faith-based institutions as they address required changes in how they implement Title IX.
Introduction

After the “Dear Colleague Letter” (DCL) was issued in April of 2011, most institutions of higher education quickly changed how they responded to sexual violence on their campuses. For many, this letter was the beginning of something that no one anticipated. The DCL (2011) outlined an expectation for institutions to “take immediate and effective steps to end sexual harassment and sexual violence” (p. 4). However, for other institutions, a climate shift did not ensue until late 2014, after the Department of Education issued a set of questions and answers on Title IX, and investigations by the Office for Civil Rights spiked, while institutions under investigation found themselves under media scrutiny. Unfortunately, many faith-based institutions were among these late adopters of OCR’s guidance.

Generally speaking, the purpose of faith-based colleges and universities is to prepare students to think about and engage with the world from a faith-centered perspective. Such institutions are founded on religious values that typically drive their day-to-day operations (Alleman, 2015) (Ferrari, Cowman, Milner, Gutierrez, and Drake, 2009). Ironically, according to The Chronicle of Higher Education’s Title IX Tracker (2016), OCR opened investigations into at least 10 faith-based postsecondary institutions between April 2011 and October 2014. Some of these investigations have since been resolved through a resolution agreement with the agency, but others remain ongoing. Historically, many faith-based institutions have hidden behind the guise of “private” or “religious freedom,” while others have simply lacked the resources and training to appropriately respond to a seldom-discussed sexual violence or harassment problem on campus.

As a result of the inherent cultural challenges of openly discussing taboo topics such as sex and alcohol at faith-based institutions, the solutions for such institutions have included placing an emphasis on moral ethics or the institutional honor code, redirection to religious tenets and principles, and even an altogether avoidance of any topics that might touch on Title IX. While sexual violence in all of higher education has remained inadequately addressed for many decades, faith-based institutions must now confront the issue by identifying challenges, recognizing areas of strength, and employing practical tools for not only effecting change on the campus, but on the faith-based culture in general.

Challenges

For many Title IX Coordinators and administrators at faith-based institutions, the task of compliance and education may feel insurmountable. Often, these administrators simply do not know where to begin. As with any other challenge, identification of the problem should be the first step. Based on much of the negative media attention and public response to some of the practices at faith-based institutions, as well as complaints filed with OCR, some of the most common challenges faced by Title IX Administrators at faith-based institutions are outlined here.

The Honor Code

One of the greatest challenges that religious institutions face in appropriately responding to sexual discrimination, harassment, and violence in their campus communities is the honor or conduct code, which typically outlines the basic principles of the institution and what members of the campus community generally see as being foundational to their individual moral codes.

At Brigham Young University, a Mormon institution and the largest faith-based institution of higher education in the country, the honor code states:

“...achieving and retaining good Honor Code standing is an extensive process... applicants must meet with their local bishop and discuss how to live a moral, church-centered life. The bishop uses that interview to determine whether a student receives an ecclesiastical endorsement. Students must renew that endorsement annually with their campus bishop to stay at BYU. A bishop can pull the endorsement at any time without explanation (Brown, 2016).”

“The Liberty Way” further states: “We, the students, faculty, and staff of Liberty University, have a responsibility to uphold the moral and ethical standards of this institution and personally confront those who do not” (2015).

Honor codes appear at faith-based institutions around the United States (Anderson, 2014). As at other institutions, the honor code is taken very seriously by the campus communities of faith-based institutions. Typically, these codes outline prohibited conduct for any of the following reasons: 1) the conduct is prohibited by law; 2) it is prohibited by the religion; or 3) institutional policy forbids it. Major conduct violations are
typically those covering behavior that is prohibited by law (e.g., illegal drug use) or that is prohibited by the religion (e.g., extra-marital sexual intercourse). Two of the major conduct violations that often give complainants pause in reporting for fear of repercussions involve any type of pre-marital sexual contact and alcohol consumption, both of which are often associated with sexual violence.

Unfortunately, the assumption by much of the faith-based higher education community is that any conduct violation associated with a report to the Title IX office will result in the reporting party being held responsible for the associated violations in the honor code. The concern is that a sexual assault victim may then end up becoming the focus of the school’s discipline, instead of the alleged perpetrator, since the “conduct violation” of the victim is much easier to prove than the sexual assault. In essence, the complainant’s report becomes an admission to conduct that is in violation of school policy.

Too many college leaders fail to understand that the violation of a campus honor code by a victim has no relevance to the criminal act that has been committed (GRACE Report, 2014). Boz Tchividjian, a former child-abuse prosecutor who now advocates and investigates sexual abuse in religious communities, noted that, “faith-based schools have the added dynamic where they attract students who come from backgrounds where any sexual activity outside marriage is really frowned upon. So at faith-based schools, you see a greater reluctance to come forward to report the crime versus at a secular school” (Boorstein, 2016). Yet, many faith-based institutions have amnesty policies. At places such as Liberty and Grand Canyon University, these policies allow students to report sexual misconduct without fear of sanctioning for conduct connected to the reported incidents that is otherwise prohibited by their conduct codes. Thus, while campus expectations for student behavior spelled out in an honor or conduct code can seemingly present barriers to reporting, this same code can be used to provide the protection that students may be seeking and reassurance of appropriate treatment post-reporting.

**Shame and Culturally Acceptable Behavior**

“Although no known religion in modern culture suggests that sexual abuse is condoned or taught as part of its tenets, some... leaders engage in conduct suggesting the [victim] is equally, if not more, to blame than the perpetrator, while also urging immediate reconciliation between the perpetrator and victim...” (Tchividjian and Vieth, 2011). Difficult to identify and address, the subtle shame associated with such a reaction by a responsible employee can create an added barrier to reporting. Many responsible employees may fail to recognize how their response to a victim can trigger feelings of shame and make them shirk away from reporting.

While such behavior is often not intentional, verbal and non-verbal reactions of responsible employees can be negatively influenced by their adherence to the tenets of the honor or conduct code regarding behavior of a sexual nature. This often includes asking victim-blaming questions (e.g., What were you wearing? Why would you stay at his house off campus? Why were you out after curfew? Why did you drink that much? Why were you alone in a car? or Why would you do all that with him in the first place if he wasn’t your boyfriend?). Many faith-based institutions pride themselves on being founded on a theology or doctrine that positions them as being in some ways better and safer than their secular counterparts, but this “advantage” can also create an environment in which a complainant risks being seen as “impure” and “broken” (Anderson, 2014) for reporting sexual misconduct.

Additionally, reports of sexual violence between two persons who have engaged in consensual, same-sex activity can also be challenging for the faith-based community and its culture. While such institutions must respond to same-sex violence under Title IX, for many, this is a new challenge. There is a question of whether the institution, in responding, is essentially condoning a practice that is otherwise discouraged in the faith-based community. This additional dynamic can also discourage reporting from victims who are fearful of exposure of a “counter-cultural” lifestyle. The GRACE Report (2014) emphasized that, “sexual offenders also know they can thrive in an environment where victims have symptoms and display behaviors that are considered troublesome” (p. 214). However, as stated in the DCL (2011), institutions have a responsibility to take “immediate and effective steps” to respond to reports of sexual violence. This is not contrary to the principles, tenets, or moral obligations to which faith-based institutions adhere. There is, therefore, a responsibility to respond equitably.
Forgiveness is a foundational tenet to faith-based religions. As mentioned throughout the GRACE Report, administrators can make the mistake of using a positive tool tactlessly and prematurely. While forgiveness is a step that can be pivotal in a victim’s healing process, it is not the appropriate expected response for any reporting victim. The GRACE Report (2014) stated that, “victims must first experience enough safety for their symptoms to be relieved in order for them to even begin to consider forgiveness” (p. 110). A reporting party should never feel pressured into forgiving a responding party (GRACE, 2014). Neither is it appropriate to ask victims to consider what part they played in causing the sexual violence. As stated in the GRACE Report, several of the victims counseled felt re-victimized by their interactions with counselors and administrators as a result of such missteps (2014). However, it is very easy for any untrained responsible employee who is immersed in a faith-based culture to make such mistakes. Understanding these missteps and how they can be made is the first step in avoiding them.

**Parental Expectations and Support**

“BYU students arrive with less knowledge of sex than does the average young adult… there is little discussion of the gray areas of sexual activity, like non-consensual contact, given that premarital sex is considered a sin” (Brown, 2016). Likewise, many students come to faith-based institutions having little to no knowledge or experience with sexual activity, and may have grown up in homes that see sexual activity outside the confines of marriage as being sinful. Unfortunately, when an incident occurs, students are often afraid to report it for fear that their parents will have to be notified. More often than not, the reported incident is associated with other conduct that is inconsistent with both the honor code and the personal moral code that students of such institutions are expected to maintain. According to Baker’s Evangelical Dictionary, “sexual immorality” can be defined as “interpersonal activity involving sex organs that does not conform to God’s revealed laws governing sexuality.” Examples of this would include extramarital oral sex, extramarital sexual intercourse, and same-sex sexual activity.

Many students have never discussed any issue related to sexuality with their parents, and therefore refrain from reporting for the fear of parental involvement and disappointment. Equally challenging, students may speak with parents prior to making a report and be advised by their parents not to do so. Parents may advise against reporting to protect their children from an unknown process, out of fear that reporting is consistent with having to file a police report, or to avoid potential embarrassment to the family. As appropriate, it is helpful to work to identify the reasons that may be keeping a victim from reporting to appropriately address them.

**Governmental Reach and Directives**

“But what about separation of church and state?” “We’re a private institution.” “Religious freedom protects us.” These are all statements that are frequently thrown around at faith-based institutions because of a failure to truly understand Title IX and the reauthorization of the Violence Against Women Act of 2013 (VAWA), and their appropriate collegiate application. Title IX states that, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

An institution that is provided funding from the government has a responsibility to make sure that everyone has the ability to exercise his/her right to receive and participate in an education free of gender-based discrimination. Therefore, if anyone at an institution uses government grants or loans to attend, that institution must comply, regardless of religious or faith-based affiliation. While many institutions have applied for and received religious exemptions, it is important to provide education about Title IX and its practical application. This will only further assist in the college or university’s efforts to gain the institutional support for Title IX-related initiatives.

**Resources Provision**

One of the age-old challenges at small, faith-based institutions has always been the lack of funding available for supportive resources. It is important to identify what resources are already available at the institution that could be useful in the support of both a reporting party and a respondent. Additionally, it is important to explore what community resources currently exist and are publicly available to your institution. There may be concern that such resources are inconsistent with the institution’s faith-based ideology. However, by seeing what resources are available and how they are administered, institutions can duplicate them internally in a way that is more consistent with their belief systems.
Since a lack of resources may discourage reporting because of the institution’s failure to properly support complainants once they have committed to participating in the investigation and adjudication process, it is critical that the support needs of students be adequately addressed. In early 2016, a law firm by the name of Pepper Hamilton conducted an “independent and external review” of Baylor University’s institutional response to Title IX-related compliance issues. Baylor released Pepper Hamilton’s 13-page summary report of findings, entitled “Findings of Fact.” The firm noted that “the insufficient dedication of resources and support to the university’s Title IX function led to limited visibility of Title IX on campus” (Pepper Hamilton, LLC, 2016). While it is beneficial to find creative ways to make the best use of the resources available, it is even more imperative to communicate to the senior campus leadership the need to appropriately allocate funding to meet the basic Title IX needs of your campus community.

Prevention Education

VAWA and the Clery Act collectively require post-secondary institutions to provide primary prevention programs for their students. A primary prevention program consists of programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome, that are intended to stop sexual misconduct before it occurs, through the promotion of behaviors that foster healthy sexuality (VAWA, 2013) (Clery Act, 1990). The obvious challenge is that most third-party programs available that meet these criteria communicate a healthy sexual relationship model in a non-traditional and non-conservative manner. Faith-based institutions may thus be discouraged from purchasing such programs and opt instead to create in-house programming, which can present both compliance and quality issues. The outside companies can guarantee to provide state and federal compliance updates. On the other hand, institutions that are low on resources to begin with may not be able to keep up with such updates on their own. Fortunately, some organizations have worked diligently to create programs that meet federal compliance responsibilities while also addressing the unique needs of faith-based institutions. Some of these programs include Campus Answers by WorkPlace Answers, Campus Clarity by Law Room, and SafeColleges by Scenario Learning.

Advantages

While many Title IX administrators at faith-based institutions share common struggles, they also enjoy various advantages in comparison to their peers at secular institutions. Some of the very idiosyncrasies that present hurdles to administrators, discourage reporting parties from coming forward, and impede appropriate education can support and nurture an environment that prohibits gender-based discrimination and sexual violence. Being able to recognize these individualities can inspire administrators to make the most of the opportunities before them.

Honor Code/Moral Code

At first glance to the outside world, it may appear that a faith-based institution’s honor or conduct code does nothing but hinder individuals from reporting Title IX-based violations to campus authorities. However, the code can provide an inherent measure of protection to the student body. The prohibitions of things such as alcohol consumption, co-ed dorms, and sexual activity discourage the onset of conditions that can facilitate sexual violence.

While there is not an assumption that engagement in such behavior leads to sexual violence, their prohibition can create an extra protective barrier. In 2014, 97,000 students between the ages of 18 and 24 reported experiencing alcohol-related sexual assault or date rape (NIH, 2014). Because alcohol is often a factor in sexual assaults, even secular institutions such as Stanford University have even taken steps to issue bans or limits on alcohol (Mangan and Acuna, 2016).

In addition, many of the students who choose to attend faith-based colleges and universities are in agreement with the moral standards that under-gird their school’s honor code and the general culture of the campus. As is the case at Liberty and Brigham Young, students may be required to sign the honor code upon admission to the institution. “The Honor Code can appear onerous to non-Mormons, but it’s a point of pride for most BYU students. It means they’re surrounded by peers who are focused on academics, volunteering, and spiritual growth” (Brown, 2016). Because students must pledge their agreement with the code, personal convictions of their faith may make them feel morally obligated to report incidents, as well as cooperate as a witnesses in investigations.
Spiritual Support
The emphasis on the spiritual health of each student is typically a strength for faith-based institutions. In response to victim harm, many schools believe that there is a direct correlation between individuals’ spiritual health and their healing process. In an online presentation, Vieth (2012) explained that spiritual support can “contribute to decreased symptoms, greater self-esteem, and overall greater life satisfaction” (Bryant-Davis, 2012). The easy availability of spiritual support on most faith-based campuses means that resources are readily obtainable for every reporting party and respondent. Additionally, an open environment of prayer can perpetuate healing and hearten disclosure. In a study of 2,964 female child abuse survivors, researchers noted “significantly more post-traumatic symptoms” in those with no current religious practices (Elliott, 1994). “Religious coping, spirituality, and faith-based approaches to trauma recovery include endorsement of beliefs, engagement in behaviors, and access to support from faith communities” (Bryant-Davis, Wong, 2013).

Residential Life
Residential life at most faith-based institutions can look significantly different than residential life at other post-secondary institutions. Most faith-based institutions do not have co-ed living arrangements, which implicitly limits the opportunity for heterosexual sexual violence to occur in the dorms. At Liberty University, members of one sex may not enter dormitories assigned to someone of the opposite sex. Failure to adhere to this rule results in a major honor code violation.

Because faith-based institutions recognize the need to provide their student bodies with leisure activities, they often focus on offering options that do not include activities prohibited by the honor code (i.e., drinking and off-campus parties). These options tend to embrace those schools’ belief systems and may include mission trips; bringing spiritual speakers, artists, or authors to campus; and organizing campus plays and movie showings that do not promote or showcase unsupported lifestyles.

Many faith-based institutions also have curfews, with residential students required to check-in to their dorms by a certain time at night. At institutions such as Pensacola Christian College, Bob Jones University, Lancaster Bible College, and many others, check-ins are highly monitored. Resident Assistants typically check each room, and students are prohibited from leaving the dorm before designated morning hours. These students may have limited opportunities to engage in activities after-hours outside of their dormitory room. While this may not eliminate same-sex sexual misconduct, it creates a significant barrier to any heterosexual sexual misconduct after curfew.

Historically, a large number of reported campus sexual assaults have been associated with Greek life, leading some institutions to consider removing Greek organizations from their campuses (Scott-Sheldon, Carey, and Carey, 2008). Since many faith-based institutions do not have a significant Greek presence due to fraternities and sororities’ frequent associations with parties and alcohol consumption, this is one fewer area of concern for such institutions.

Mindfulness Tips
As we engage in Title IX work, it is important to not only identify where strengths lie, but to be cognitive of faith-based institutional challenges as well. Self-assessment is critical to building a foundation for awareness, prevention, education, and compliance. Based on some of the challenges and advantages discussed in this article, some recommendations that may be helpful in moving forward include:

• Educate students about Title IX without condoning or encouraging violations of the honor or conduct code. Institutions have to recognize that violations will occur, and students should know what to do when they find themselves in a difficult situation.
• Have a robust amnesty policy that is widely publicized to encourage reporting and increase cooperation with investigations.
• Ensure that shame is never a part of a response to a complainant. We need to be mindful to keep the blame where it is supposed to be — with whoever caused the harm.
• Be clear in communicating who the confidential reporting options are on campus.
• Provide the necessary education to senior leadership to get the buy-in and resource needed to ensure Title IX compliance.
• Educate all responsible employees on appropriate responses to reports.
• Actively participate and connect with your Sexual
Assault Response Team to learn of appropriate and reasonably priced (or free) educational and training opportunities.

- Remain informed and connected with local, state, and federal legislative updates. Never let the “private” or “faith-based” designation keep your institution from being relevant.

References


