

## Title IX Information Session Introduction and Questions

Tuesday, June 30, 2020 10:00 - 11:00 AM

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This is information from the first of what we anticipate will be a series of webinars on Reed's approach to coming into compliance with the new amendments to Title IX issued by the Office for Civil Rights of the U.S. Department of Education (DOE).

The date that Reed must be in compliance with these regulations is August 14, 2020, including all updates to related Reed policies and procedures. We affirm our commitment to equity and fairness in all of our investigative and judicial processes for both those reporting sexual harassment and those accused of it. Supportive measures will continue to be available for those who are involved.

To ensure that our campus policies and processes comply with Title IX, the Clery Act, and Oregon laws, we have assembled a working group of students, staff, and faculty to carefully review the amendments and develop recommendations for changes to campus policies and processes.

A few words about the organization of this webinar:

The panel compiled questions submitted to begin the conversation, but questions were also submitted during the info session via the chat function. These questions were reviewed by the panel who did their best to answer as many as possible during the info session. The responses here include those addressed during the session, as well as those we did not have time to address during the session. The panelists shared a range of personal opinions and perspectives based on their familiarity with and role in the Title IX process.

1. *The question of who is and who is not an obligated reporter has significant impacts on our entire community. Staff and faculty must know what their responsibilities are for responding to any potential allegations, and students must know what to expect when they speak to someone about their experience. It is important to be able to clearly identify who is a confidential resource and who is not. **As we look at potentially revising the list of obligated reporters, what are the pros and cons of having a longer or shorter list of obligated reporters under Title IX?***

- An obligated reporter is required to pass on a Title IX allegation swiftly to a Title IX coordinator, which means that the school has actual knowledge and has to follow up with the complainant.
- Currently Reed, like many institutions under the old regulations, defines obligated reporters as:
  - All faculty members
  - All senior staff and supervisors of staff
  - Members of adjudicating boards
  - House advisors
  - Most employees in Student Life (with the exception of student workers, HCC staff, and the SHARE program director)
- New regulations allow fewer obligated reporters than we currently mandate in our policies, and the question before us is whether we should have fewer. There are advantages both ways, but overall a more restricted definition may work better.
  - The point of casting a wide net is that the institution will gather as much information and knowledge of allegations as possible. Proper information should help us grapple with the problem as a whole, as well as individual cases. Two problems I see with the wide net:
    - First, complainants have very few confidential resources, and typically many fewer than they think. I have seen frequent cases in my time as deputy TIX coordinator where a student shared information with a faculty member, thinking that the

information would be held in confidence, but then found it had to be passed on. This was unfortunate in itself, but also undermined the mentoring relationship, and potentially undermines the mentoring relationship more generally.

- Second, the more people who serve as obligated reporters, the less sure we can be that people will understand and fulfill their responsibilities, and this creates liabilities. It would be more efficient and effective to have a smaller group that could be more intensively trained and can be relied upon to serve in the role.

2. *Part of the challenge before the Working Group is understanding how our policies need to be adjusted to meet both Federal Law and Oregon Law. **What is the relationship between the Title IX policy (federal law) and the Discriminatory Harassment and Sexual Misconduct - DHSM policy (Oregon law)? How will the college determine which process to use?***

- The final rule identifies the Title IX Coordinator as the individual with primary authority to make the determination about which process should be used.
- Reed is obligated to respond when it has actual knowledge that sexual harassment has occurred in its education program or activity against a person in the United States.
  - i. Actual knowledge:
    - Notice of sexual harassment to the Title IX Coordinator or official with authority to institute corrective measures
  - ii. Sexual harassment:
    - Any instance of quid pro quo harassment by a Reed employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking (as defined in the Violence Against Women Act).
  - iii. Education program or activity:
    - Locations, events, or circumstances over which the college exercises substantial control over both the respondent and the context in which the harassment occurs; includes any building owned or controlled by a student organization that is officially recognized by the college.
  - iv. Person in the United States
- If reported behavior does not fall under Title IX, Reed can still address the behavior through other policies, especially the DHSM
- The DHSM complies with Oregon law
  - i. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal or physical conduct of a sexual nature where such conduct is sufficiently severe or pervasive that it has the effect, intended or unintended, of unreasonably interfering with an individual's work or academic performance or it has created an intimidating, hostile or offensive environment and would have such an effect on a reasonable person.

3. **Has there been discussion of supervisors of student workers and their obligated reporting requirements?**

- Yes, we think the basic idea that student supervisors should be obligated reporters makes sense. We need to be clear who is really in the supervisor role. There are some complexities there in situations like the summer research roles. Clarity for everyone through multiple means about who all obligated reporters are will be essential. We are considering multiple options for helping to communicate each community members' role in terms of reporting, from door signs to indicators in the online directory.

4. *Currently there are measures available to parties who have reported harm which are referred to as “interim” measures. An example of an “interim” measure would be a No-Contact Order between two parties. The new regulations require that the college offer “supportive” measures. Both “interim” and “supportive” measures are intended to help parties who have reported harm to feel safe while staying enrolled and attending classes. What are “supportive” measures as contrasted with “interim” measures? What more can we do to help aid those with marginalized identities? How does the impact of COVID affect what “supportive” measures can be offered?*
- They are using the term “supportive measures” to describe all the support that an institution is reasonably able to offer complainants after a report is made, whether or not a formal complaint is signed. These supports can continue to be offered regardless of whether or not there’s a finding of responsibility.
  - These supports are intended to restore or preserve access to educational programs and activities. Supportive measures must be personalized and not unduly burden the respondent. The resources that Reed can offer to parties who have reported harm will not be significantly different than they are now. No-contact orders, changes in housing and scheduling, and academic accommodations will still be available, and the new regulations specifically did not put limits on the kinds that can be offered, although they do not expect institutions to meet all of the needs of a party who has reported harm.
  - Because the individual needs of each student must be considered, students from communities and identities who have been marginalized will have the opportunity to request specific resources for their situation. Supportive measures provided by the college must be free of charge, but the college is not required to pay for off-campus resources such as culturally-specific counseling or healing practices. Because students can report without starting an automatic investigation, I hope that more students will feel comfortable making a report so that they can request (for example) financial support such as college fee waivers and co-pay assistance.
  - It will be challenging to provide services for students who are not located in the Portland area, but I am always happy to help students who have reported harm to locate resources that are local to them. I hope that the remote learning opportunities we are developing will expand how we provide academic support to survivors. And community resources such as restraining orders and advocate support during medical forensic exams continue to be offered remotely.
5. *For Reed’s Title IX process to comply with the new Federal requirements will require some significant adjustments. A primary question is how best to comply with the requirements while still holding onto the values of our community. **Would Reed be better served by a stand-alone separate TIX policy or a general policy that has special requirements around TIX-qualified complaints?***
- Well written and carefully implemented, either approach can bring Reed into compliance, as well as be effective guidelines for the community.
  - It is not possible to predict which approach could ultimately best serve our community. The changes in how our processes must work in order to comply with the updated law are many and far reaching. It is likely true that we--and nearly every institution like us--will need to do our best to come into compliance and try an approach for some period of time in order to understand the pros and cons of any approach.
  - Because of the extremely short timeline for compliance and the importance of having a system that we can use, it may be best to make as few changes as necessary for our first iteration of an updated policy, meaning leaving the policy as a single one with special requirements for Title IX-qualified complaints.
6. *Related to the previous question: The new Federal requirements more narrowly define what would fall within the Title IX process. **How will conduct that falls outside that definition be addressed?***
- This is an important question and an important point, and the answer was implied in the earlier discussion. The misconduct that falls under Title IX is not the sum total of possible misconduct. Some

sexual misconduct does not fall under the new Title IX regulations, perhaps because of where it took place or who was involved; and there are kinds of misconduct that do not fall under the new or the old Title IX jurisdiction.

- Equally, though, the Title IX policy is not the sum total of our conduct policy. We have a variety of other conduct policies, including the DHSM, and grievance procedures that support these. Allegations that fall outside the Title IX policy but within these other policies will be addressed through these channels, as is the case now. What is at stake here is a more restricted jurisdiction for Title IX, not a removal of these other policies.

7. *The Federal requirements leave the option of which standard of proof to use up to the individual institution. However, the same standard of proof must be used for students, staff, and faculty situations. **What are your considerations for using “clear and convincing evidence” or “preponderance of evidence” as a standard of proof?***

- Clear and convincing evidence the evidence must be *highly and substantially* more likely to be true than untrue while preponderance of evidence the evidence must be more likely to be true than not (greater than 50%)
- Clear and convincing evidence requires a higher burden of proof that often negatively impacts the complainant.
- In considering what is most equitable, what advocates for those who report harm recommend, and what is most likely to result in appropriate action being taken, continuing to use the preponderance of evidence would likely be most appropriate.

8. *One of the most significant changes to our process required by the new regulations are the requirements surrounding advisors in the process. Advisors are required for each party, and they will play a significant role in the required cross-examination of each party. **How can we make advising more equitable if one party is able to afford an experienced lawyer as an advisor while the other is not?***

- The Title IX working group is discussing this currently, including who Reed will assign if we need to provide an advisor to a complainant or a respondent
- There are resources available in Portland for complainants/harmed parties
- The Oregon State Bar has a lawyer referral service that allows a person to have an initial consultation with an attorney for a modest fee; a decision to hire an attorney can come after this discussion
- The person who facilitates hearings will also play a significant role in enforcing rules of decorum for all advisors, and determining if advisors' questions are relevant

9. *As noted earlier, cross-examination is now a required part of the Title IX process. We recognize that process can be hugely impactful on the individuals involved. **How can we provide as supportive of an environment as possible to help alleviate the impact cross-examination has on both parties?***

- Hearings can be conducted via Zoom, as long as the parties can see and hear each other, so they don't have to be in the same room.
- The greatest challenge is going to be ensuring that those who report harm have skilled legal support to conduct the cross-examination of the respondent, and to object to questions by the other side that violate federal rules of evidence. Good free legal support is available for survivors of sexual assault, but for those who experienced other types of violation, the college would have to make sure that the cross-examiner provided was equal to the other side's attorney in experience and skill for the hearing to truly be equitable.

10. *Informal resolution options are now allowed under the new regulations as a potential path for resolving a Title IX situation. **How can/should/will the Restorative Justice (RJ) policy be used to offer restorative options?***

- Training and not causing additional harm are primary considerations

- RJ is voluntary and generally begins with an acceptance of responsibility and willingness to be held accountable
- Please reference the [Restorative Justice Policy](#), supporting document III
- RJ Coalition Advisory Committee: The program's capacity shall be determined by a consensus of the Coalition Chairs, the Staff Advisor(s), the Dean of Sexual Health, Advocacy, and Relationship Education, and the staff member(s) responsible for counseling respondents in Title IX cases. It will necessarily also include the Title IX Coordinator.

11. *By its very nature, the investigative process can seem to favor the party who was accused of harm or the party who reported harm. **How can the investigative process do a better job of signaling neutrality to all parties involved as well as not burdening either party disproportionately?***

- Changes over the years have helped keep the process neutral by separating the investigation from the adjudication
- A strong Title IX Coordinator role helps maintain neutrality by giving oversight to the investigative process
- Reed's Sexual Assault Response Team (SART) also provides a group of people, including our SHARE advocate and others who can weigh in on how investigations work

12. *There is a lot of work to be done to determine how the new Federal regulations will be instituted, but even after decisions are finally made, one of the most important next steps will be to make the process as clear as possible. **How will we make these processes easily accessible and understandable? How will we help all parties to understand their options and their rights in the process?***

- It is important to have an informational, understandable web page with a directory for summary information as well as discussing details specific to each individual with each individual
- It needs to be clear and accessible where confidential resources may be found and how to contact the Title IX coordinator to go over any questions and help the parties determine next steps
- There should be obvious guidance on where to go to receive various resources like counseling, reporting, and academic accommodations
- Information must be provided during reporting, such as transparency on what might happen and what to expect before initial reports are given to allow all parties to fully understand their options as much as possible

13. *The new Federal regulations have changed some of the previous deadlines regarding the Title IX process. These processes can have a significant impact on the parties involved and their ability to stay enrolled or employed. **What systems can we put in place to ensure investigations and Title IX cases are completed efficiently?***

- Investigations are stressful for all concerned including complainants, respondents, and witnesses. It is important to get to a resolution as quickly as possible. Speed and thoroughness can be at odds, however; we have to find a happy medium where we pursue investigations properly, but also as quickly as possible. This is something that the new regulations are wrestling with. Deadlines have been replaced with vaguer requirements about proper haste; on the other hand, the old deadlines were sometimes hard to meet. People are not always equally able to participate, and this can dramatically influence timelines.
- Each case is unique and needs unique attention; a deadline cannot be guaranteed.
- The Title IX Coordinator provides broad oversight for the process, and works closely with investigators to make sure that steps are being completed in a timely manner.

14. *Even prior to our increased virtual environment following COVID concerns, the issue of online abuse was present and complicated. **How can we adjust our processes to better address this type of abuse?***

- One option is to update our policy to have guidance that is more specific to this issue, including clear policy language about both the responsibility of the college to respond and the limitations of the college's ability to respond to conduct on-line
- Communicating to our community our standards for on-line conduct is critical

*15. By August 14, 2020 we will have new policies in place to ensure we have met the federal and state requirements, and we will have communicated these changes to the community. However, our policies will continue to need adjustments to ensure they are meeting the needs of our ever-changing community and the values of our community. **How can we build in a system of assessment to hold ourselves accountable to continuing to serve our community through our policies? How can we engage the full community in the process of policy assessment and update? How can we open lines of communication between those who create the policy and those who utilize it when they are not always the same?***

- We'll look to the Title IX Coordinator to lead these efforts, and collaborate closely with SHARE, Senate, J-Board, Honor Council, the RJ Coalition, and others to gather ongoing student input
- The SHARE Program Director conducts a biannual Sexual Misconduct Survey, which gives us a sense of trends over time.
- We can continue to hold listening sessions, and the student senate can be very helpful in collecting concerns and advocating for policy change.
- The most important thing we can do as a community is have serious discussions about how to hold people who have harmed accountable over time. This has to include discussions about our responsibility to them and the larger community as well as those who have experienced harm. Isolation predicts recidivism.

If you have questions or comments for the Title IX working group, please send them our way via the link provided on the [Reed College Title IX Website](#). In addition, the Title IX Working Group is considering hosting a series of listening sessions as we continue our work to become compliant with the new Rules. Look for announcements on the Title IX Website, from the Reed electronic newsletter and emails to all students.