

Addressing Challenging Title IX Issues on Campus

Title IX Summit 2025
with Rebecca Mosely, Ph.D. and Josh Nolan


OBERLIN
COLLEGE & CONSERVATORY

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1

Presentation Rules

- Questions are encouraged
- “For the sake of argument...” questions help to challenge the group, consider other perspectives, and move the conversation forward
- This is not legal advice.
- The hypothetical is not based on real cases – any similarity is coincidental



2


Agenda

Introductions

- Rebecca Mosely, Ph.D. – Oberlin College Director of the Office of Institutional Equity, ADA/Section 504 Coordinator
- Josh Nolan, J.D. – Partner and Co-chair of Higher Education practice at Bricker Graydon

Topics:

- Addressing concerns before they “become a thing”
- Working with classroom/pedagogical concerns
- Student → Faculty and Faculty → Student claims
 - Faculty Handbooks and Processes
- Student Organization Involvement (Newspapers, Athletics, etc.)



3

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The Hypothetical

4

Introduction

- **Jack Frost** (Junior) – a finance and gender studies double major and captain of the men’s lacrosse team; has a 4.0 (for now) and wants to be valedictorian.
- **Prof. Laura Smith** (Full professor with tenure) – a “hard, but rewarding teacher” and accomplished researcher; Jack’s *Gender in Modern Cinema* professor. All of her classes have a participation requirements worth 30% of the total grade.

5

Background

- Jack is one of the few men in the University’s gender studies program. He is personable and well-regarded by his peers. He’s driven to succeed and has been recognized for his academics and service.
- Prof. Smith is respected by her peers and her students. But some of her anonymous teacher evaluations were critical of “her ability to manage difficult conversations in the classroom.” One student evaluation last year stated that she “holds men to an unfair standard” during class discussions regarding masculinity.
- You met with Prof. Smith after her department chair found the student evaluation comment troubling and asked for you to engage in a “developmental conversation.”
- It is your assessment that there are times in which she loses control of the emotional tenor in the class, and this creates a situation in which students feel uncomfortable. But you did not find support that Prof. Smith is “unfair” to men in her classes.

6

Questions about “Background”

1.

Are the comments in the Student Evaluations cause for concern?

2.

For the sake of argument, would you have engaged in the conversation with Prof. Smith regarding her Student Evaluations? Is this a “Title IX issue” or a “faculty issue?”

7

Jack’s Outreach (1 of 2)

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It’s a Monday and you meet Jack outside your office. He’s been waiting since 8:00 AM.

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Jack tells you that he is in Professor Smith’s gender in film class and he feels that he has been “the target of discriminatory conduct related to his gender.” He tells you:

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He is one of the few men in the class, and that some of the other individuals in the class made comments about the fact that he is a man in a gender studies program.

–

He gets questioned a lot about why he is interested in gender studies as a “lax bro.”

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He explained that he comes from a single parent home and that he observed his mom go through several difficulties in her personal life. He explained that his mom was a huge supporter of his athletic activities and, being a good athlete herself, taught him many of the skills and fitness habits that he has today. He explained that he grew up angry with the way in which “society” has disregarded her parenting skills because she “couldn’t be a father figure to him” according to his “closeminded hometown.”

8

Jack’s Outreach (2 of 2)

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You listen intently, taking notes, and have the general feeling that Jack is being incredibly sincere. He went into more detail about the class discussion.

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He explained that during class two weeks ago, a conversation about Reality TV dovetailed into a discussion about toxic masculinity, the recent increase of it in political discourse, and that this discourse is acutely felt on college campuses. Jack said the conversation was getting heated.

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Jack stated that Professor Smith looked at him and said, “what’s up with bro culture?” Jack said he felt “uncomfortable” but laughed and made a comment that as the captain of the men’s lacrosse team, he’s in a constant battle against it.

–

Throughout the conversation, some of his peers made comments like “all men suck,” and shared rumors related to the men’s lacrosse team and sexist memes that were sent out on a group text.

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Some of classmates became angry calling him “performative” as a male in a gender studies major and that “he shouldn’t speak in class, but he should listen based on his privileged position.” As a result, Jack stopped participating in class.

9

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3

Questions about “Jack’s Outreach”

- Is there discriminatory or harassing conduct?
 - Severe, pervasive, and objectively offensive?
- What should you do now? Who should you bring in to assist with this issue? What can you share (does FERPA/Title IX limit disclosure)?
- Would your faculty handbook have provisions that would require review by a Faculty Standards Board?

10

Prof. Smith and Jack’s potential C-

- Jack reported to you later that he recently received his midterm grade report, which showed that he would get a C- in the class if his participation grade did not improve.
- Jack explained that the course syllabus has a class participation grade which accounts for 30% of his overall grade for the course.
- Jack indicated that he has a number of ungraded assignments, but he strongly believes that he will receive an A on these assignments because “I’ve never gotten anything lower than that here.”
- Jack went to see Professor Smith during her office hours. He stated that she told him that she has not observed him participating as much as before and that it’s her belief that he won’t receive the full thirty percent based on his lack of participation.
- Jack is dumbfounded. He said that he angrily explained that he stopped participating because of the aggressive discussion in class where his peers “called him out” and Prof. Smith “did nothing” to stop it.

11

Questions about “Jack’s potential C-”

Is Jack experiencing Title IX Sexual Harassment? Why or why not?

Did Prof. Smith have a duty to intervene in the class discussion?

12

Prof. Smith's response

- With Jack's permission, you schedule a meeting with Professor Smith.
- She greets you warmly as you enter her office. You explain that Jack has come to see you and that he has expressed concerns about the ways in which he has been treated by his peers in class and how the behavior has caused him to not participate as fully as he once did.
- Professor Smith stated that she has a lot of respect for Jack, but his outward conversations about having a 4.0 and that he is on track to be the first men's lacrosse player to be valedictorian, she finds to be a bit "braggy."
- She also stated that in her classroom there were recent "pedagogical concerns" that are "sex or gender adjacent."
- She acknowledged that Jack brought concerns to her about his lack of performance and his grade. Professor Smith stated that "it seems like Jack is using this Title IX report to preemptively guarantee that he will get a good participation grade by "mediating this incident."

13

Questions about "Prof. Smith's Response"

What are the concerns here?

If you were the Title IX coordinator, how would you handle this conversation?

Are there any concerns about how Professor Smith framed this dispute within the context of grade manipulation?

14

A formal complaint; a concern about Jack (1 of 2)

- Jack files a formal complaint involving Prof. Smith
- Jack starts to obsess about his grades. His coach is aware of the Title IX report and Coach states that some of Jack's teammates notice that he is distracted in practice and that he's not his "normal positive self."
- One of Jack's roommates, who is also your work-study, emails you directly stating that he's concerned about Jack because Jack has been obsessed with identifying where Professor Smith lives. The roommate tells you that while he's concerned that Jack is taking his grades too seriously, he doesn't "think that Jack will end up all stalker-like."

15

A formal complaint; a concern about Jack
(2 of 2)

- Professor Smith reports to you in a very long email that Jack has “repeatedly shown up at Professor Smith’s office – at least 5 times.” She informed you that Jack has also shown up at Professor Smith’s house. She tells you that he was outside her house standing on the sidewalk when she let her dog out in the front yard. She explained that Jack quickly walked away and didn’t say anything to her.
- Professor Smith stated that driven college students, in her experience, don’t react well when their grades are on the line.
- She was going to “chalk it up as a stress reaction” until she started seeing Jack in the supermarket, outside of her yoga studio, and walking down her street at odd times of the day.
- Professor Smith believes that the conduct needs to stop immediately. She stated that the last time she saw him walking down the street, she told Jack that he needed to stop obsessing over his grade and to not be out in front of her house. She reported that Jack replied, “It’s a public space. I can walk where I want. Don’t be a hag.”
- She’s now worried for her safety and the safety of her family.

16

Questions about “A concern about Jack”

Do you offer supportive measures? What kind? To whom?

Is Jack engaging in stalking?

What can you share with Coach? Work-study?

17

An Attorney-advisor with a big helping of vandalism (1 of 2)

- Jack has hired a local attorney as his advisor. The attorney continuously attempts to speak on Jack’s behalf. Your investigators have told you that the advisor is “rude and aggressive.” While you did not experience that behavior initially, the attorney has started sending you terse emails.
- The case goes to a hearing with cross examination. During the hearing, the advisor is objectively rude, but short of abusive to the witnesses and to Professor Smith.
- In one particularly notable interchange, the attorney found an inconsistency between Professor Smith’s emails to Jack and to you as the Title IX Coordinator explaining her position about her conduct that is different from what she said in the hearing. The attorney states “so basically you’re telling me that you’re a liar! Either you were telling the truth in your emails and you’re lying now, or you were not telling the truth then, which is it?”

18

An Attorney-advisor with a big helping of vandalism (2 of 2)


- During the hearing, Jack seems anxious when his advisor is speaking and appears to be conflicted about the advisor’s conduct. At one point he tells his attorney to “calm down. This is a college proceeding.”
- At the hearing, the hearing panel and the advisor to Professor Smith ask between fifteen and forty-five minutes of each of the parties and the witnesses. Jack’s advisor, on the other hand, takes 1.5 hours to question the first witness, which takes up a majority of the hearing for that day.
- After the first hearing session goes late into the evening, Prof. Smith goes to the parking lot and finds her car vandalized. It has been egged and covered in shaving cream. Someone has drawn penises in shaving cream and wrote “BITCH” on her windshield. Prof. Smith refuses to return to campus based on the conduct.
- Campus security caught four lacrosse team members – all first-year students wearing only shaving cream – who immediately admit to the conduct after campus security show the players the parking lot camera footage. They say that the “older lacrosse” players made them do it.
- Coach is furious; he summarily suspends the Fall season for the entire team, including Jack.

19

A Short Note about Title IX Retaliation

No recipient [i.e., college or university subject to Title IX] or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX... Intimidation, threats, coercion, or discrimination, ***including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment,*** for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.

34 CFR 106.71(a)(emphasis added).



20

Questions about “Attorney + Vandalism”

Would the attorney’s conduct violate your Title IX process?

Does Prof. Smith have a sexual harassment case under Title IX? Retaliation?

Is the potential hazing case a Title IX issue?

Did the coach engage in Title IX retaliation by suspending the team’s season?

21

Common hazing practices include alcohol consumption, humiliation, sex acts

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• How might hazing intersect with Title IX and other policies and concerns for your campus?

Title IX Policy

Civil Rights Policy

Athletics Handbook Student Handbook

State laws regarding hazing

Student Organization Misconduct

Hazing

22

Overlap between processes

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Student Organization Conduct Process

Common Ground

Title IX Process

• Investigation Required

• Notice requirement

• Directive to refrain from phone usage

• Participation required

• Group Interviews

• Anonymity allowed**

• Investigation by a trained Title IX investigator

• Right to an advisor

• Title IX-Compliant Notice to the Parties

• Group Interviews?

• Limit communication as necessary to gather information in a group setting

• Hearing with cross-examination

• Investigation required by a specially trained investigator

• Right to an advisor

• Notice that identifies conduct and potential policy violation

• Participation is voluntary

• No prohibition on speaking with others about the case

• Hearing with cross-examination

• Anonymity not allowed

For illustrative purposes only. Not intended to depict all of the procedural requirements under Title IX.

23

Campus Hazing Transparency Report

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• Institutions must begin collecting data on July 1, 2025 (20 U.S.C. 1092(f))

• The reports must document:

- each incident involving a student organization where a hazing violation was found, including the name of the student organization,
 - NOTE: "Student organization" only applies to student orgs that are "established or recognized by the institution." You do not have to use the Clery definition.
 - NOTE: "Hazing" is defined as the institution's standards of conduct. You do not have to use the Clery definition.
- a description of the finding (noting whether it involved alcohol or drugs),
- the institution's conclusions and the sanctions imposed, and
- the date the incident occurred, the date the investigation began, the date of the responsibility finding, and the date the institution notified the student organization of the finding.

24

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8

Compliance Notes

NEW! Campus Hazing Transparency Report

- Remember that the reporting cycles are *different* than ASR
- Required data collection begins **July 1, 2025**
- Initial report must be posted to public website by **December 23, 2025**
 - It must be updated at least 2 times each year
- Carve out for institutional definition of **student orgs** and **hazing**
 - "... summarizing findings concerning any student organization (except that this shall only apply to student organizations that are established or recognized by the institution)..."
 - Actual violations only
- No personally identifiable information

25

25

CHTR & Collin's Law (Ohio)

Collin's Law Reports

- Name of the subject (remember, no PII)
- Date of when the subject of the investigation was charged with a violation
- Description, investigation & findings, penalties
- Date the matter was resolved
- Aug. 1 and Jan.1 of each year**

Think about it: Will your numbers be the same?
Work with legal counsel

CHTR

- Each incident involving a **student organization** where a **hazing** violation was **found**, including the name of the student organization,
- a description of the finding (noting whether it involved alcohol or drugs),
- Conclusions and sanctions
- Dates(when the incident occurred, the date the investigation began, the date of the responsibility finding, and the date the institution notified the student organization of the finding
- Dec. 23, 2025 and then "not less frequently than 2 times per year"**

26

26

Social Media and the Media

- During the hearing process, the Student Newspaper contacts Jack and asks him to share his experience with Professor Smith. The newspaper decides to quote Jack and after his quote, the article makes a conclusory statement, which is not attributable to Jack, that Professor Smith has been "rightfully accused of harassment"
- Jack does not agree with the way the newspaper reporter handled his interview. He posts on his public Instagram account a screenshot of the front page of the newspaper. His post states "Professor Smith has allowed a hostile environment to occur within her classroom. However, as much as I appreciate the support of the newspaper, I can't comment now as to whether or not Professor Smith allowed sexual harassment to occur."
- Professor Smith starts receiving phone calls and emails from people off campus telling her that she needs to quit her job. The comments become increasingly hostile towards her.
- After Jack's post, Professor Smith files a formal report against Jack for stalking and a violation of the non-discriminatory harassment provisions in the student code of conduct stating that Jack instigated the vandalism and the false claims in the Student Newspaper. She asks for the case to be adjudicated as soon as possible.

27

27

Questions about “Social Media and the Media

Can the Student Newspaper face disciplinary action?
Can Jack be disciplined for providing information to the Student Newspaper? For posting on Instagram?
Would the University put the hearing on hold until Prof. Smith’s claims are investigated and a new hearing was scheduled? Would it be retaliatory if not?

28



Questions?

29
