

## **NACUA 2015 Annual Conference**

### **Core Principals for Educating Campus Law Enforcement in the Handling of Sexual Violence Investigations under Title IX**

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Gone are the days when, as counsel, we could simply “advise” on our institution’s response to allegations of gender-based violence. Effective Title IX compliance now requires, and forever will depend upon, collaboration between institution counsel and campus law enforcement. That collaboration includes counsel’s assistance in the effort to train campus law enforcement on an institution’s Title IX compliance obligations. Law enforcement’s understanding of a few core principals affecting Title IX investigations will go a long way toward the effort to achieve compliance.

Campus police walk a difficult line. On the one hand, they are expected to provide the range of services offered by any municipal police agency (*e.g.* service assistance, emergency response, and law enforcement). On the other hand though, a campus police department has only relative independence because it is a part of an institutional whole. As such, a police department also must assist in the educational mission, which necessarily requires it to assist in achieving institutional compliance in a non-traditional capacity.

Campus police are in a unique position to positively impact a school’s approach to Title IX compliance. However, that potential cannot be realized fully unless both of the following occur: (1) campus police must acknowledge their non-traditional law enforcement role and affirmatively work to collaborate with institution employees, including the Title IX coordinator; and (2) reciprocally, the campus community, including the Title IX coordinator, must acknowledge law enforcement’s unique potential for making meaningful contributions to the compliance mission.

Training police or public safety officers is unlike most other educational endeavors. A police department is a paramilitary unit that depends for its success upon the officers’ compliance with a chain-of-command, rigid adherence to core values, and a service ethos unlike that of most other professions. Like many other groups in society, police officers have their own language and their own unique way of communicating. Effective public safety trainers embrace those attributes and adapt their messaging and communication styles to police officers, rather than expecting police officers to adjust to the trainer. This approach makes perfect sense. We expect officers to display sensitivity to Title IX issues and the related process in the context of real time deployment of law enforcement services.

Below are five fundamental principles campus law enforcement needs to understand in order to effectively assist in institutional compliance efforts. The list below is not exhaustive, but rather is intended to help counsel effectively communicate to law enforcement some basic

concepts from which more detailed understandings and enhanced contributions may derive. The points below are presented in a messaging style similar to that employed in basic law enforcement instruction.

**1. CAMPUS POLICE ARE “RESPONSIBLE EMPLOYEES” AND MUST REPORT ALLEGATIONS OF SEXUAL VIOLENCE TO THE TITLE IX COORDINATOR.**

It is not even remotely close to a close call. A campus law enforcement officer falls squarely within the definition of a “responsible employee” under Title IX. As a result, if an officer “knew, or in the exercise of reasonable care should have known” about sexual violence that has an actual or potential impact on a school community, the school is also on notice, period. If the officer fails to report allegations of sexual violence to the Title IX coordinator and the school fails to address the matter as a result, the school is deemed to have stood by idly.

Remember, law enforcement functions through a chain of command and according to a set of standard operating procedures comprised of lawful orders. A campus police department necessarily issues any number of directives unique to a college or university environment, most of which would not be issued by a traditional municipal police agency. The mandate for collaboration between law enforcement and the Title IX coordinator is one such directive. Communicating to police the nexus between Title IX compliance and other non-traditional law enforcement directives is a critical training component.

**Training Message to Law Enforcement:**

- The school administration is required to address *all* allegations of sexual violence disclosed to a “responsible employee” to the extent those allegations might impact the campus community.
- As campus police officers, you are responsible employees. As a result, both the law and the institution require you to immediately notify the Title IX coordinator of any allegations of sexual violence reported to you if those allegations could impact the school community.
- You may delay your reporting only to the extent doing so is critical to the law enforcement function, for example, preservation of evidence or maintenance of an element of surprise in confronting a suspect.

**2. REMEMBER “THE ROBERTS RULE”**

*“Strive for balance in your process.”*

*-Scott A. Roberts, Esq.*

The Roberts Rule is a simple maxim, but is all too often quickly forgotten. Both the accuser and the accused are members of your community, and both must be treated fairly and respectfully. A balanced process is one that: (1) observes procedural safeguards designed to protect the parties and the integrity of the process; (2) is conscious of the existence of and

ignores biases in fact finding and adjudication; and (3) avoids formation of conclusions prior to assembly and analysis of all of the relevant, available evidence.

Campus police are often the first officials on behalf of an institution to respond to reports of sexual violence. As a result, a responding officer will often create the reporting party's first, and likely lasting, impression of the institution's interest in the report and its sensitivity to the reporting party. The police officer often will also become the accused's first contact with the school regarding a matter. As a result, the responding officer may be in the unique position to convey on behalf of a school a lasting impression of impartiality and professionalism. Just as in the larger community, where trust in the law enforcement function is critical to the integrity of the justice system, so is trust in law enforcement's response to sexual violence critical to the integrity of the Title IX review process.

Most people bring some type of bias to some type of situation at some point in their lives, whether in the form of a cultural bias or even a mere food preference. Law enforcement cannot underestimate the powerful influence even the subtlest of biases – or preconceptions about a reporting party or accused – can yield, not only upon the integrity of the review process, but on a reporting culture. Law enforcement, perhaps above all others in society, needs to, and indeed should, adhere to the principal that investigation requires what Sir Arthur Conan Doyle referred to as “reasoning backward,” *i.e.* looking at an event and working backward to figure out what happened to cause that event, rather than looking at certain facts before completion of an investigation and determining what happened looking forward from those facts.

### **Training Message to Law Enforcement:**

- You are the face of the institution when responding to a report of sexual violence. The process begins with you, and your response can, and at times will, determine how reporting parties, accused parties, and external parties (such as the federal government or courts) will view the institution.
- Make sure anyone involved in an incident is safe, choose your words carefully, and convey *only* a desire to do the right thing – whether that be helping the reporting party find alternate housing as a safety mechanism, or helping an accused to establish a shield against further allegations through isolation from the reporting party.
- Be aware of your own potential biases concerning any aspect of any incident, including one involving allegations of sexual violence. If you have any biases, keep them out of your communications (whether those communications be verbal, written, or through body language, facial expressions, etc.).
- Don't jump to conclusions. Get all of the evidence first, and only then try to determine what happened.

### **3. TITLE IX COMPLIANCE REQUIRES PROMPT ACTION**

If a school fails to act promptly in response to a report of sexual violence with the result being the creation of a hostile environment, the school violates Title IX, plain and simple. The law could not be any clearer on this point. While Title IX permits some degree of delay of a Title IX investigation to accommodate an urgent need of law enforcement, that allowance does not extend to law enforcement's notification to the Title IX coordinator that a report was received. The reason for this is simple – absent such notification, the school cannot effectively ensure the implementation of adequate interim safeguards for the reporting party. A school may not delay its administrative fact-finding investigation pending completion of a law enforcement investigation.

#### **Training Message to Law Enforcement:**

- If you receive a report of sexual violence, and the incident reported is one that may impact the school community, you should notify the Title IX coordinator of the matter immediately.
- If you need the Title IX coordinator to delay investigation in order to preserve a tactical advantage to the police department in gathering evidence or apprehending a suspect, you should communicate that need to the Title IX coordinator. But you cannot delay simply notifying the Title IX coordinator of an incident because doing so may place the reporting party in greater physical and/or emotional jeopardy.

### **4. CONFIDENTIALITY IS TRICKY WHEN IT COMES TO TITLE IX**

Responsible employees, including campus police officers, must report to the Title IX coordinator whatever information they learn about an incident of sexual violence that may impact the campus environment. To prevent a reporting party from revealing information that he or she may want to keep confidential, OCR has directed responsible employees to make every effort to ensure that the reporting party understands three main points: (1) the employee receiving a report is required to notify the Title IX coordinator (or other appropriate school officials) of the names of the alleged perpetrator and reporting party involved in alleged sexual violence, as well as relevant facts regarding the alleged incident (including the date, time, and location); (2) the reporting party has the option to request that the school maintain his or her confidentiality, which the school (*e.g.*, Title IX coordinator) will consider; and (3) the reporting party may confidentially share information regarding an assault with counseling. There are no other blanket confidentiality protections.

#### **Training Message to Law Enforcement:**

- Confidentiality, though difficult to reconcile vis-à-vis the investigative process, is procedural.
- You need to inform the reporting party of the limitations on confidentiality, and do not make any promises.

- Hand the reporting party a card containing the points above, and incorporate issuance of such a card into your department's standard operating procedure.

#### **5. LAW ENFORCEMENT "BUY-IN" IS CRITICAL TO COMPLIANCE**

Law enforcement needs to be invested so they own a stake in the Title IX process, too. One of the biggest challenges facing an institution (aside from general lack of training or understanding) is that law enforcement often operates on an island apart from the rest of an institution, particularly from a student affairs unit. Each is well-meaning, but at times neither may communicate effectively with the other. And sometimes, both perceive a need to "protect their turf" in the investigative process. If law enforcement acknowledges the importance of its role in the Title IX process, plays a hand in determining the way things should happen, and understands the administrative process, it will develop a sense of ownership, and hopefully pride, in the overall system.

#### **Training Message to Law Enforcement:**

- The Title IX process is as much yours as it is that of any other unit. Without you, the ship is likely to sink.
- We need you to help us craft policy, educate the community, assist with investigations (particularly by sharing information), and cultivate a reputation for promptly, fairly, and adequately responding to reports of sexual violence.
- Much like your traditional law enforcement efforts, your contributions to the Title IX process can be very meaningful, both in terms of serving our community and protecting the institution.