

Title IX First Responder & Confidential Resources Training

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Meet Our Team



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Ballast Offerings

1

Drafting & Updating

Policy and process development and review

2

Training

Legally compliant Title IX and non-discrimination trainings tailored to individuals' roles and knowledge base

3

Investigators, Alternative Resolution Facilitators, & Decision-makers

Trained, skilled, experienced, and practical

4

Interim Roles

Interim services to fill gaps in various Title IX positions

5

Advice & Coaching

Legal and non-legal advising

Ballast Philosophy & Approach



Collaborative partnerships that honor institutional knowledge and values



Practical solutions that are compliant and make sense for your specific institution and community



Reasonable and fair pricing that acknowledges the financial constraints institutions are facing



First-hand experience and understanding from individuals who have previously worked within higher education institutions

Agenda

- What is Title IX?
- Roles and responsibilities of Title IX personnel
- First Responders
- Confidential Resources
- Trauma-informed considerations
- Title IX process overview
- Hypothetical case studies for discussion

A Note about 2024 Regs

- Effective August 1, 2024
- Have been enjoined in some states, but not in Minnesota—and seems unlikely
- 2020 Regs continue to apply to any situations that occurred before August 1, 2024
- OCR is not expecting all the required training to be done by August 1, 2024



Title IX Overview & Definitions

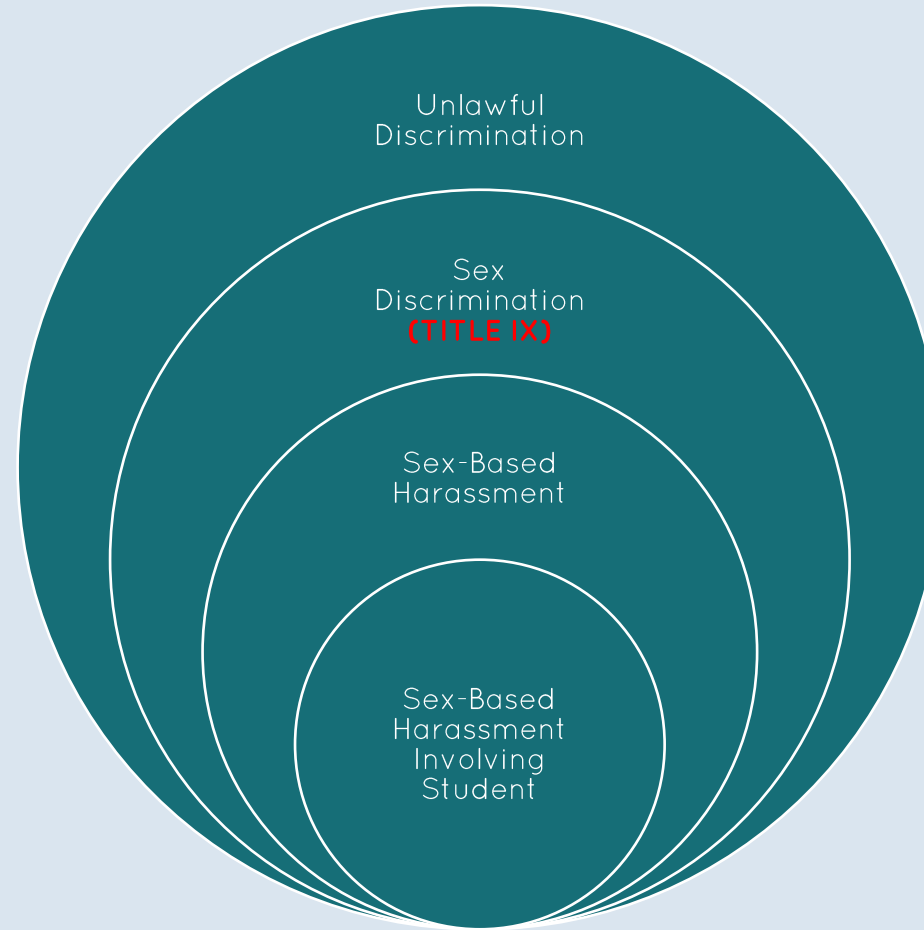
“

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.

”

20 U.S.C. § 1681

UNDERSTANDING HOW THE PIECES FIT TOGETHER



Title IX Basics

Prohibits
gender
discrimination

In any program
or activity

Applies to
students,
employees,
volunteers, etc.

Types of Discrimination

Discriminatory Treatment

Harassment

Retaliation

Sexual harassment =

conduct on the basis of sex that satisfies at least one of the following:

Quid Pro Quo

- Employee conditions an outcome on an individual's participation in unwelcome sexual conduct

Hostile Environment

- Unwelcome sex-based conduct that is subjectively and objectively offensive and is so severe **or** pervasive that it limits or denies a person's ability to participate in/benefit from program or activity

VAWA Crimes

- Sexual assault
- Dating Violence
- Domestic Violence
- Stalking

Retaliation

- Mistreatment directed at employee/student who has:
 - Complained about discrimination
 - Participated in an investigation, hearing or other proceeding
 - Refused to participate in an investigation, hearing or other proceeding
- Includes mistreatment for raising discrimination that affects others
- Also includes mistreatment of individuals closely related to someone who has complained
- Conduct that would dissuade a reasonable person from bringing a complaint or participating in an investigation

Pregnancy and Parenting

- Pregnancy or related conditions = pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
- Institutions must treat pregnancy or related conditions in the same way and under same policies as other temporary medical conditions
- Cannot discriminate on the basis of current, potential, or past pregnancy or related conditions or on the basis of current, potential, or past parental, family, or marital status

Sexual Assault

Any sexual act directed against another person, without the consent of that person, including instances where the individual is incapable of giving consent.

Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without their consent, including instances where they are incapable of giving consent because of age or temporary or permanent mental or physical incapacity.

Fondling: The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

Sexual Assault contd.

Any sexual act directed against another person, without the consent of that person, including instances where the individual is incapable of giving consent.

Statutory Rape: Nonforcible sexual intercourse with a person who is under the statutory age of consent

Sexual assault with an object: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity

Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity



Nonconsensual distribution of sexual images including deepfakes depicting intimate parts or sex acts



Revenge porn

Deepfake = “an image or recording that has been convincingly altered and manipulated to misrepresent someone as doing or saying something that was not actually done or said”

Extortion

Subdivision 1. **Crime defined.** (a) A person who engages in sexual contact with another person and compels the other person to submit to the contact by making any of the following threats, directly or indirectly, is guilty of sexual extortion:

- (1) a threat to withhold or harm the complainant's trade, business, profession, position, employment, or calling;
- (2) a threat to make or cause to be made a criminal charge against the complainant, whether true or false;
- (3) a threat to report the complainant's immigration status to immigration or law enforcement authorities;
- (4) a threat to disseminate private sexual images of the complainant as specified in section 617.261, nonconsensual dissemination of private sexual images;
- (5) a threat to expose information that the actor knows the complainant wishes to keep confidential; or
- (6) a threat to withhold complainant's housing, or to cause complainant a loss or disadvantage in the complainant's housing, or a change in the cost of complainant's housing.

Sex trafficking

Subd. 7a. **Sex trafficking.** "Sex trafficking" means:

(1) receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual; or

(2) receiving profit or anything of value, knowing or having reason to know it is derived from an act described in clause (1).

Consent

Institutions are not required to maintain a particular definition of consent; however, they must include a definition in their policy.

Consent is words or overt actions by a person clearly and affirmatively communicating a freely-given, present agreement to engage in a particular form of sexual contact.

Incapacitation

- An individual's physical and/or mental inability to make informed, rational judgments
- Incapacitated individuals cannot give consent to sexual contact
- Intoxication vs. Incapacitation
- Examples include: sleep, unconsciousness, or intermittent consciousness
- Signs include: slurred speech, difficulty walking, vomiting
- May also exist due to mental or developmental disability
- **Frequent decision point for adjudicators:** 1) *Was the complainant incapacitated;* and 2) *did or should the respondent (or a reasonable person) know/have known?*

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence

A felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the Complainant;
- By a person with whom the Complainant shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
- By a person similarly situated to a spouse of the Complainant under domestic or family violence laws;
- By any other person against an adult or youth Complainant who is protected from that person's acts under domestic or family violence laws.

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

Course of conduct means **two or more acts**, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Sexual exploitation

A form of sexual harassment that involves one or more of the following behaviors committed for any purpose, including sexual arousal or gratification, financial gain, or other personal benefit:

- taking sexual advantage of another person without consent;
- taking advantage of another's sexuality; or
- extending the bounds of consensual sexual contact without the knowledge of the other individual.

Roles & Responsibilities of Title IX Personnel

Title IX Coordinator: Role and Responsibilities

Must designate at least one Title IX Coordinator

Should have significant autonomy and seniority

- Creates and implements legally compliant policy and procedures
- Oversees response to reports and complaints as well as informal and grievance procedures
- Addresses barriers to reporting
- Implements supportive measures and facilitates connection to resources
- Ensures sanction and remedy compliance
- Training oversight
- Recordkeeping
- Receives annual training

Investigator: Role and Responsibilities

- Can be internal or external
- Burden to collect sufficient evidence
- Conducts fair, prompt, and impartial investigations
 - Identifies witnesses and evidence
 - Provides parties opportunity to submit evidence
 - Identifies factual issues
 - Maintains records, recordings, etc.
 - Creates an investigation report
- Works in coordination with the Title IX Coordinator, particularly around evidence and report review
- Maintains impartiality and avoids bias
- Receives annual training

Decision-maker: Role and Responsibilities

- Could be investigator, adjudication panel, or hearing officers
- Determines whether the institution's policy has been violated under the preponderance of evidence standard of review
- Determines sanctions - could be separate decision-maker(s) from responsibility decision-maker(s)
- Provides a written determination whether sex discrimination including a rationale
- Avoids bias and conflicts of interest
- Receives annual training



Appeals Officer: Role and Responsibilities

- Determines party's appeal under relevant appeal process
- May meet with parties
- Provides written determination that includes a rationale for the outcome
- Avoids bias and conflicts of interest
- Receives annual training



First Responders: Primary Responsibilities

Responsibility #1

Making sure the disclosure gets to the Title IX Coordinator

Responsibility #2

Attempting to ensure the reporting individual meets with the Title IX Coordinator

Confidential Resources: Primary Responsibility

~~Responsibility #1~~

~~Making sure the disclosure gets to the Title IX Coordinator~~

Responsibility #2

Attempting to ensure the reporting individual meets with the Title IX Coordinator

First Responders

Title IX Reporting for Non-Confidential Employees

Obligated to immediately share disclosures of sexual misconduct with the Title IX Coordinator

Should be upfront with community members about their reporting obligations

Should be well-versed in offering options and resources

First Responders: Role and Responsibilities

- Encourage and help facilitate the reporting party meeting with the Title IX Coordinator
- Believe the reporting party
 - In doing so, you're not compromising the institution or making it more difficult for the institution to respond appropriately
 - You ARE making it more likely for the reporting party to seek additional services and meet with the Title IX Coordinator
- Be well-versed in the various resources available to students and employees on campus
- Be well-versed in what the Title IX Office can offer
- Maintain privacy of what was shared with you, outside of the Title IX Office, whenever possible

What's your script?

Before you encounter a disclosure, work on developing a script for how to respond.

Make sure your script incorporates the following elements:

- Support the value in moving the report to the TIXC
- The steps you'll take in making a warm referral to the TIXC (including an offer to walk them to a specific office or help them write an email/make a call)
- An explanation of why you're not the best person to assist with this situation
- An explanation of what the TIXC can provide and assist with

***Work with your TIXC to develop this script!**

Why do employees have to share reports with the TIXC?

Legally

- Title IX **requires** higher education institutions to have designated employees who share disclosures with the Title IX Coordinator
- Institutions must be clear about who falls into this category and who is a **confidential resource**
- Students have a right to understand what their options are and to make an informed decision about how to proceed

Ethically

- Ensures that those who need assistance are put into contact with those best equipped to help them
- Schools can't help someone if they don't know about an issue
- Helps the Title IX office detect patterns of violence, repeat offenders, and other information that will aid in protecting the community



What types of conduct should you report?

Title IX/sexual misconduct violations

Sex discrimination

Sexual harassment

Sexual assault

- Fondling/groping

- Rape

- Statutory rape

- Incest

Dating violence

Domestic violence

Stalking

Sexual exploitation

Other forms of sexual misconduct

**When an incident happened, who perpetrated it, where it occurred, and whether it's already been reported do not influence whether a report is necessary – it's necessary!*

**Retaliation is also prohibited*



How do you report?

What format?

Will likely depend on your institution and potentially on your role – ask your Title IX Coordinator.

When?

ASAP! But definitely within 24 hours.

What information should you include?

*Everything that was shared with you.
Your name and contact information.*



What should you say?

Before a disclosure

I really want to hear what you have to say, but before you go any further, I want to remind you that I am not a confidential resource. If you disclose experiencing sexual misconduct, I'll need to share that with the Title IX Coordinator. If you'd rather speak with a confidential resource about this, I can help connect you...

- Remind community members of your reporting obligations often
- Remind about amnesty policy
- Remind about prohibition of retaliation

After a disclosure

- Thank you for telling me
- I'm obligated to share this with the Title IX Coordinator
- Offer emotional support – sit, listen, validate
- Do you feel safe right now?
- Do you need medical attention?
- How can I help in this moment?
- Would you like me to help you reach out to the Title IX Coordinator (or some other resource) right now?
- Remind them that they are in control and can choose how to engage, if at all, from here



What NOT to say or do...

- “Tell me more”
 - Do not ask additional questions about the incident or attempt to investigate in any way
- “Why didn’t you...?”
- Confront the accused person
- Talk to others about what was shared with you (outside of those who need to know)
- Promise confidentiality
- Attempt to categorize or label someone’s experience
- Pressure someone towards a specific course of action, outside of meeting with the Title IX Coordinator



What happens after you make your report?

Who sees your report?

- The Title IX Coordinator and potentially others – will depend on your specific institution

What happens next?

You may not be kept in the loop depending on your role (legal and ethical reasons for this)

The Title IX Coordinator reaches out to the person who disclosed to you to offer resources, options, and an opportunity to meet



Special Considerations for Campus Security under the Clery Act

Campus Security Officers need to be trained on the following:

- How to explain to the reporting party the role of the Title IX Coordinator and what that handoff will look like
- Intersections with law enforcement and to NOT automatically contact them unless that's what the reporting party wants
- Intersections with SANEs and to NOT require a reporting party to seek a medical forensic exam unless that's what the reporting party wants
- Need to let the reporting party remain in control **except** when there's an ongoing threat



Special Considerations for Campus Security under the Clery Act

Timely Warnings

- What is a Timely Warning?
- Typically, most reports do not present an ongoing, imminently dangerous situation when a Timely Warning would be needed; however, some reports will require a Timely Warning.
- Officers should always be analyzing whether a Timely Warning is needed.
- Know what the process is for sending out a Timely Warning and who needs to be involved in that decision.

Pregnancy & related condition disclosures

Non-confidential employees who learn about a student's pregnancy or related condition must promptly:

- 1) Provide that student with the Title IX Coordinator's contact information and
- 2) Inform the student that the Title IX Coordinator can coordinate specific actions to prevent discrimination and ensure the student's equal access to programs and activities

*Pregnancy or related conditions = pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

TIXC Role when informed of student pregnancy or a related condition

- Provide notice of nondiscrimination and institutional obligations
- Offer individualized “reasonable modifications” to policies, practices, or procedures to prevent discrimination and ensure equal access to programs and activities
 - Examples include breaks during class for milk expression, to breastfeed, attend health appointments, changes in schedule, extensions for class work, rescheduling exams, etc.
- Must allow voluntary leaves of absence with reinstatement right to cover, at minimum, the student’s healthcare provider’s recommendation
- Permit access to separate but comparable resources
- Maintain grievance process
- Must provide adequate lactation space
- Provisions around when institutions can request supporting documentation and when they can require a healthcare provider’s certification to participate.

Confidential Resources

What does “confidential” really mean?

- Confidential resources do not report disclosures of sexual misconduct
- Confidential resources are legally privileged, meaning they cannot be compelled to testify in court (criminal or civil). Victim may consent to have a confidential resource testify.
- Risk associated with treating someone as a confidential resource who does not actually qualify as “confidential” under state law.

Who can be a confidential resource?

An employee whose communications are privileged or confidential under Federal or State law.

*An employee who has been designated by an institution as confidential for the purpose of providing services to persons related to sex discrimination.

*An employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination.

*2024 regs



Confidential status only applies when a disclosure occurs while the employee is functioning within the scope of their confidential duties.

Who can be a confidential resource legally?

Anyone designated as a confidential resource under state law ***and who is functioning in that capacity.***

- A person associated with a **religious order/denomination**; recognized by order/denomination as someone who provides confidential counseling
- A person licensed to provide **mental health counseling**
- A licensed **healthcare provider**
- A non-licensed **victim advocate**; who has received at least 40 hours of training; supervisor from a crisis center



Requirements under the 2024 Regulations

After a disclosure, confidential resources must:

- Explain the employee's status as confidential and what that means
- Share how to contact the Title IX Coordinator and how to make a complaint of sex discrimination; and
- Share that the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the grievance procedures.



Obligations of Confidential Resources after a disclosure

1

Discuss reporting options and rights

- Explain your confidential status
- Discuss Title IX Coordinator role and how to contact
- Encourage preservation of any potential evidence

2

Discuss/offer institutional and external resources

- Assist with any health and/or safety concerns
- Offer to review Title IX resources

3

Discuss institution's prohibition of retaliation

Obligations of Confidential Resources

1

Reporting Options & Rights

- Clarify your role as a confidential resource and that you will not be reporting to the TIXC
- May speak with Title IX Coordinator about support services and process options (does not require initiating the institution's Grievance Process)
- May contact the police (when conduct is a crime)
- Offer assistance in making any reports
- Encourage preservation of evidence and offer support

Obligations of Confidential Resources

2

Resources

Discuss other available resources and offer assistance locating:

- Counseling
- Medical
- Academic Support
- Financial Aid
- Visa status for foreign students
- Legal assistance

Explain how the TIXC can coordinate services, options, and resources

Obligations of Confidential Resources

3

Retaliation

- Describe what retaliation is and how it is prohibited by your institution
- Confirm that institution takes measures to prevent retaliation from occurring and will respond strongly if it occurs
- Explain that your policy prohibits retaliation by other party, their friend or representative(s), witnesses, an institution official, or anyone else

Trauma-Informed Considerations

The Impact of Trauma on the Body and Brain



Trauma overwhelms our normal coping responses, which provide a sense of control and safety.

Trauma can impact individuals in multiple, significant ways:

- Neurologically
- Emotionally
- Psychologically
- Socially
- Biologically

Neurobiology of Trauma

- Growing body of research on this, specifically within the context of sexual violence
- During a traumatic event, an individual's ability to control their physical movements, to think rationally, and to encode memories may be significantly impaired
- This is a hard-wired response that is meant to offer protection
- This mainly has to do with the release of specific hormones during a traumatic event

Benefits of a trauma-informed lens

- Helps you be a better resource
- Puts individuals at ease and more likely to seek additional resources
- May provide context for counterintuitive reactions or occurrences
- Helps you maintain your role as a resource and helper – it's not your job to determine whether the misconduct occurred or not

Tips for being trauma-informed



- Be an authentic, non-judgmental human
- Slow down; silence is ok. Remember that memory recall may be slow or out of order
- Ask questions sparingly, and be thoughtful about the language you use (avoid “why?” questions)
- Emphasize transparency to the extent you are able
- Help parties understand what to expect
- Consider the physical (or virtual) environment of the meeting/interaction if possible
- Don’t automatically draw negative inferences based on a behavior or reaction that may be related to trauma

Title IX Process Overview

Title IX Process Overview

- Reporting party is offered on- and off-campus resources, accommodations, and other supportive measures
- Reporting party has the option to move forward with the institution's Grievance Process and/or with a report to law enforcement
 - Informal processes are available at many institutions
- Title IX Grievance Process includes a thorough investigation and adjudication process conducted by trained professionals
- Parties in a Grievance Process have the right to an advisor of their choice
- Schools legally **cannot** penalize someone unless and until they have been found responsible for misconduct
- Resources and supportive measures are **not** contingent upon moving forward with an investigation
- Especially egregious reports might be moved to an investigation process against the reporting party's wishes, at the discretion of the TIXC

Reporting Party Autonomy

Why is this important?



Supportive Measures through Title IX

- Access to counseling, medical, and other confidential services and assistance in setting up initial appointments on and off campus
- A mutual “no-contact directive” prohibiting contact between individuals
- Assistance in petitioning a court for an order for protection / harassment restraining order
- Providing campus security escorts to assure safe movement between classes and activities
- Rescheduling of exams or assignments
- Providing alternative course completion options
- Providing other academic support services, such as tutoring
- Assisting in setting up potential accommodations (academic or otherwise) through the institution’s disability services office
- Changing a student’s class or work schedule
- Changing a student’s work schedule or job assignment
- Changing campus housing arrangements and assistance with housing relocation



Hypothetical Case Studies

Case Study #1

Savannah is a campus victim advocate who has been trying to encourage her friend Rebecca to volunteer as an advocate. Rebecca isn't sure she has the wherewithal to be a volunteer, and she doesn't want to commit to the 40 hours of training if it isn't going to work out. Rebecca is already over-extended with her pre-med courses and being a Resident Advisor. To help Rebecca decide, Savannah suggests that Rebecca “shadow” Savannah in a few of her meetings with victims. The experience was really interesting for the most part. The only time it became uncomfortable for Rebecca was when one of the students from her dorm came in to report an assault.

Case Study #2

You are a counselor at the campus Counseling Center. One of your student clients shares their sexual assault experience that occurred at an off-campus house where several players on an athletic team reside. This student is terrified that friends will learn about the report and is adamant that you not say anything to others at the College about the incident. You are aware of other incidents occurring at the same house and you want to alert campus officials of whatever information you can. What do you do?

Case Study #3

You are the Dean of Students and one of the student workers in your office comes to you for advice. She tells you that her best friend, Callie, is in a relationship with someone who is very violent and abusive towards her. Callie knows she needs to get out of the relationship, but she's terrified about what her boyfriend will do if she tries to get help. Her friends have tried encouraging her to talk to the Title IX Coordinator, but Callie refuses to do so. The student worker then begs you to keep this "just between us" because Callie would never forgive her if she knew this friend was telling others about her business.

Case Study #4

During lunch in the campus café, you overhear a group of professors discussing the policy designating them as “mandated reporters” Some of the professors are concerned that this requirement is an invasion of their relationship with their students. Dr. Smith, a social work professor, then announces to the group, “I don’t have to worry. I have my counseling license so if students share information with me, I’m a confidential resource.”

Keep in touch!



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