

## TITLE IX GUIDANCE – COVID-19 CAMPUS RESPONSE

This guidance is in response to the move to a remote environment. Even with all the changes to our work and educational environment, the UW System and its institutions must continue to provide an environment that is safe and free from violence and harassment. The UW System and its institutions are still required to make adequate, timely, and consistent responses to reports of sexual misconduct. This guidance is an information tool for institutions as they adapt to this new online environment for responding to and investigating incidents of sexual misconduct.

### PLAN – ACTION PLAN DEVELOPMENT

A quick note, if institutions have not already done so, the Title IX Coordinator should sit down with key stakeholders and develop an action plan to address the constraints and opportunities of this new remote environment regarding intake, response, interim measures, investigation, and resolution. After a plan is outlined, please make sure to determine a communication strategy including informing current parties with cases and members of your community.

<b>Action Plan Development Questions</b>	
<b>Assess and Review Open Cases</b>	<ul style="list-style-type: none"> <li>▪ Assess and Review Open Cases:               <ul style="list-style-type: none"> <li>○ Where are you at? What can be closed quickly?</li> <li>○ What cases have students with holds that will prevent them from registering for classes, participating in class, transferring or graduating?</li> <li>○ What cases have employees or faculty that are on some restriction or paid leave?</li> </ul> </li> </ul>
<b>Reporting Mechanisms and Mandatory Reporting</b>	<ul style="list-style-type: none"> <li>▪ Reporting Mechanisms:               <ul style="list-style-type: none"> <li>○ What reporting mechanisms are available beyond online? Is there a preference?</li> </ul> </li> <li>▪ Mandatory Reporting:               <ul style="list-style-type: none"> <li>○ How do mandatory reporting requirements need to be adjusted in a virtual environment? What should mandatory reporters be looking for in online instruction?</li> </ul> </li> </ul>

<b>Intake and Interim Measures</b>	<ul style="list-style-type: none"> <li>▪ Remote Intake: <ul style="list-style-type: none"> <li>○ What does remote intake look like? Do you have to change intake documents to reflect new procedures?</li> </ul> </li> <li>▪ Interim Measures: <ul style="list-style-type: none"> <li>○ How does this change with online instruction? How do you enforce no contact in a virtual environment?</li> </ul> </li> </ul>
<b>Investigation</b>	<ul style="list-style-type: none"> <li>▪ Investigation: <ul style="list-style-type: none"> <li>○ What methods are available at your institution for remote investigation? What needs are not met?</li> <li>○ What changes to investigation protocols are necessary?</li> <li>○ What are due process concerns?</li> </ul> </li> </ul>
<b>Hearing and Appeals</b>	<ul style="list-style-type: none"> <li>▪ Hearings and Appeals: <ul style="list-style-type: none"> <li>○ What methods are available for hearings and appeals?</li> <li>○ What are due process concerns?</li> </ul> </li> </ul>
<b>Communication Strategy</b>	<ul style="list-style-type: none"> <li>▪ How do you communicate changes to protocols to parties and your community?</li> <li>▪ What guidance or how-to documents are necessary for remote technologies that may be used?</li> </ul>

## CONSIDERATIONS AND STRATEGIES

Institutions are still required to respond to reports of sexual misconduct. On March 16, 2020, the Department of Education released a fact sheet about addressing the risks of COVID-19 while protecting the civil rights of students (see attached). While this fact sheet addresses issues such as curriculum delivery, the Department of Education reiterates throughout the document that schools are required to comply with their non-discrimination policies under federal civil rights laws as well as Section 504 and Title II. To this end, it is important to remember as we develop new strategies and ways of continuing to move forward with cases and responses that we are providing solutions that comply

with the ADA and Section 504. A reality is that this may mean that students that had previously not required an accommodation may do so in a completely online investigation environment. Parties in open matters should be notified of the ability to request accommodations as their case proceeds remotely. Standard communications and notices should be updated with how to request accommodation language if necessary.

Please check with your institution for standard ADA language that is used for requesting accommodations and review changes with your institution's ADA Coordinator. For additional guidance, please see [https://www.ada.gov/pcatoolkit/ch5\\_toolkit.pdf](https://www.ada.gov/pcatoolkit/ch5_toolkit.pdf).

Additional considerations and strategies for development of action plans and investigation/report protocols:

#### **Assess and Review Open Cases**

- i. Pull together a table of open cases and determine a strategy to clear open cases.
- ii. Triage and prioritize cases based on impact on parties. For example, if a student has a hold on registration, attending class, or transferring, then handle those cases first if possible. Similarly, if you have employees on paid leave or impacted schedules, then those should be addressed before cases that do not have such impact.

#### **Reporting Mechanisms and Mandatory Reporting**

- i. Communicate reporting mechanisms and preferences to your community beyond established online reporting.
- ii. Reiterate mandatory reporting requirements that incorporates issues that may come up in a remote environment, e.g. monitoring tone of parties that are in the same class in the online environment, watching for stalking behaviors, etc. It may be beneficial to send an email to those that are mandatory reporters on your campus reiterating their responsibilities as a mandatory reporter even in a remote environment from the language in your policy. In addition, include language such as:
  - a. "Please note your duties as a mandatory reporter do not change in a virtual environment. This requires you to treat your online classroom as you would your regular classroom. If you receive a report of sexual misconduct, please report it to your Title IX office. Be mindful of tone used

in your classes and in digital responses by your students as well as potential issues of stalking. If you have individuals with no-contact orders in your classes, please monitor interactions for adherence and report any violations.”

### **Intake and Interim Measures**

- i. Make sure that intake options and changes to protocols remotely or via website are ADA compliant.
- ii. Adjust and review no-contact orders to make sure that they robustly address the virtual environment as well as social media. Prepare for the potential rise of virtual stalking.
- iii. Determine how classroom accommodations will be effectuated in a virtual classroom.
- iv. Contact local courts or advocacy program to understand how changes to the protection order process may impact your community.

### **Investigations**

- i. Interviews can occur via video or phone and consider recording. Make sure to develop a standard paragraph that asserts that parties agree to be interviewed remotely via the method being utilized. Advisors may participate. If they do not and are going to raise a due process issue, please reach out to your legal department or Office of General Counsel/Compliance and Integrity for assistance.
- ii. Be understanding of technological limitations, consider adding some flexibility in process if required.
- iii. Set-up a digital case file, online evidence folder, and guidance on how that will be used as well as accessibility.
- iv. Use online signature software and watermarks.
- v. Make sure to develop a way for the parties to respond to the evidence being submitted against them as well as a method for validating digital evidence that is provided remotely.
- vi. Determine how to share report and limit permissions, such as not allowing it to be downloaded or screenshot. Language may need to be developed to have parties sign an agreement to not screenshot or download. Reminders of FERPA

protections.

- vii. Make sure changes are mindful of due process considerations.

### **Hearing and Appeals**

- i. Hearings and reviews should be done via video.
  - a. If a party raises the issue regarding due process or fairness of a virtual hearing, please make sure to address the concern immediately. A virtual environment still affords parties the right to confront their accuser, provide evidence, and ask questions of their accuser. If you have questions or a party is adamant they do not want to move forward due to concerns, please contact your legal counsel or the Office of General Counsel/Compliance and Integrity.
- ii. Make sure to develop a standard intro paragraph that verifies that parties can be seen, heard, and due process is being upheld. Also, make sure to account for ADA compliance.
- iii. Record hearings if possible.
- iv. If these are closed hearings, beyond advisors, make sure that there are no other people in the room. For example, have the party show the room to make sure no one else is there.
- v. Develop a protocol for hearing board members participating in a remote environment.

### **HELP AND ASSISTANCE**

The Office of Compliance is here to help. Sarah Harebo, Title IX and Clery Administrator for the UW System is available to help with planning, response, investigations, hearings, and questions. Please do not hesitate to contact her via email at [sharebo@uwsa.edu](mailto:sharebo@uwsa.edu).