

# Report of the Title IX Ad Hoc Committee

Executive Summary: 22 January 2018

## Formation, Charge, and Definitions

On November 1, 2016, Father Mark Poorman, C.S.C., President of the University of Portland, formed a Title IX Ad Hoc Committee consisting of members of the faculty, staff, and student body.<sup>1</sup> Fr. Poorman charged the committee with reviewing the University's current Title IX policies, procedures, and services, as well as identifying additional best practices and opportunities that could further benefit our community.

Essentially, Title IX prohibits sex discrimination in educational institutions that receive any type federal funding, including the federal student loan program. Under Title IX, schools are legally required to respond and remedy sex-based discrimination that creates hostile educational environments, or possibly lose its federal funding. Sex-based discrimination includes sexual harassment, sexual violence (dating/relationship/domestic violence, sexual assault, and stalking), and gender-based harassment.<sup>2</sup>

## Committee's Review Process and Approach

In carrying out its review of the policies, processes, and resources for addressing sex-based discrimination at the University of Portland, the Committee focused on several specific subject areas: campus prevention and education efforts; relevant resources, including personnel and training; reporting resources and procedures; policies related to informal and formal resolutions; investigations; the formal hearing process through the Student Conduct Office; the case review process; sanctions and related matters; and post-process support. The Committee also examined policies for employees through the Office of Human Resources. In its review of these areas, the Committee gathered relevant input, information, and data through the following:

- Reviewing relevant policies and procedures of the University of Portland
- Reviewing relevant resources at UP such as websites, handbooks, handouts, and other such materials
- Interviewing current and former UP employees with Title IX related duties or whose work with students may involve or relate to Title IX, including members of the Health & Counseling Center, Public Safety Officers, and the Community Against Violence Team
- Gathering input from faculty and staff via listening sessions with members of the Athletic staff & coaches, Campus Ministry, Residence Hall Directors and the Gender and Women's Studies Advisory Committee

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<sup>1</sup> The Title IX Committee consists of the following members: Elise Moentmann, Chair, Associate Professor and Associate Dean for Students, CAS; Sandy Chung, Associate Vice President for Human Resources; Tim Doughty, Associate Professor, Shiley School of Engineering; Gerry Gregg, Director of Public Safety; Nick Krautscheid, Student, School of Education ('18); Megan Launceford, Student, Pamplin School of Business ('17); Sarah Meiser, Associate Director for Community Standards, Residence Life; Karen Peters, Senior Associate Athletic Director, Athletics; Matt Rygg, Associate Vice President for Student Development, Office of Student Affairs; Anne Santiago, Associate Professor, Political Science.

<sup>2</sup> <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/sex.html>

- Interviewing representatives from a variety of student groups and student employees, including Associated Students of UP (ASUP), Students Against Sexual Assault (SASA), Gay Straight Partnership (GSP) and Resident Assistants (RAs)
- Gathering input from students via a listening session held on March 8, 2017
- Interviewing several student reporters and respondents who had been through both the informal and formal Title IX processes at UP
- Reviewing input gathered from the University community (77 students, 21 faculty, and 32 staff) via an anonymous questionnaire developed by the Committee
- Reviewing input gathered from the 1121 UP undergraduate students who completed the HEDS Campus Climate survey in March 2017 (organized by Institutional Research and the Title IX Coordinator)<sup>3</sup>
- Reviewing input from several alumni of UP
- Reviewing guidelines and expectations regarding Title IX set out by the Department of Education through the Office of Civil Rights (OCR)
- Reviewing information from other institutions of higher education about their Title IX policies, processes, structures, and resources

With the information and input attained from these constituents and sources, the Committee gained a deeper understanding of UP’s education and training efforts as well as policies, procedures, and processes surrounding Title IX matters; an indication of “best practices” in higher education; and suggestions for possible areas of improvement.

As the Committee analyzed the many comments, suggestions, and data that it received, it was informed by the University’s mission of educating the whole person, a mission closely aligned with the rich tradition of Catholic Social Teaching that emphasizes respect and recognition of the inherent dignity of each individual person and promotes care for the common good. Thus, any matter or situation that violates Title IX is inconsistent with the University’s fundamental values.

The Committee was also informed by examining Federal Title IX documents, what and how best practices have evolved, and why Title IX has been a challenging area for higher education generally. Some of the factors that contribute to the complexity of the Title IX landscape include the following:

- Gender-related differential treatment, sexual harassment, sexual assault, dating/relationship/domestic violence, and stalking continue to affect many individuals (particularly women and LGBTQ individuals) in American society, and institutions of higher education, including UP, are not immune from these forms of unequal treatment, disrespect, and violence.
- In its efforts to address incidents of such treatment on college campuses, Title IX encompasses a wide range of situations, ranging from disparate treatment of male versus female students/employees to sexual harassment, to sexual violence, and to discrimination towards transgender students.
- The federal government has sought to address certain forms of Title IX (such as sexual assault, dating/relationship/domestic violence, and stalking) on college campuses via more recent legislation and other efforts, including legislation such as the Violence Against Women Act, the Campus SaVE Act, and “Dear Colleague” letters promulgated

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<sup>3</sup> HEDS stands for the Higher Education Data Sharing Consortium. HEDS is a consortium of institutions of higher education who share and analyze information via common surveys.

by the Office of Civil Rights (OCR) for the U.S. Department of Education. The legal landscape, however, has not remained consistent, and there have been significant changes over time in the guidance provided in the “Dear Colleague” letters.

- A significant part of the framework recommended by OCR for Title IX investigations comes from Title VII, the federal law that prohibits discrimination and sexual harassment in employment. However, Title VII guidelines were not developed for the contours and contexts of college campuses and college students, and, therefore, often do not fully address the complexities of Title IX cases.
- Many types of sex/gender-related differential treatment and sexual harassment are not criminal violations and hence not subject to law enforcement’s jurisdiction.
- Title IX matters might involve only UP students as the reporting and responding parties but can also involve an employee or an individual from outside the UP community as a reporting or responding party.
- Even if a Title IX violation is found to have occurred based on the evidence, full restoration and healing does not necessarily result through an adjudication process.

Based on these foundational considerations, the Committee asked the following overarching question in its review: How does UP navigate the complex social, legal, and structural challenges posed and reflected by Title IX in a manner that is consistent with the University’s values of educating the whole person, respecting and recognizing the inherent dignity of each individual person, and promoting care for the common good?

### **UP’s Current Title IX Policies, Processes, Resources, Education, and Training**

In carrying out its review, it was clear to the Committee that many offices and employees across campus have committed a great deal of time and care to developing UP’s Title IX policies, processes, resources, education, and training. These offices include: the Title IX Coordinator and Deputy Coordinators, Office of Student Conduct, Office of Residence Life, the Health and Counseling Center, Student Activities, Human Resources, Campus Ministry, and the Shepherd Academic Resource Center, along with groups such as Community Against Violence (CAV), and the Service and Justice Coordinators from the Moreau Center.

The Committee also found that the members of the campus community who deal with Title IX matters, especially those groups listed above, continue to look out for new ideas and policies that might be implemented to ensure that we are doing more than simply meeting our legal obligations and are keeping up with best practices in this area. The formation of the Ad Hoc Committee is one such example of these expanded efforts. The Committee especially commends the following practices or policies:

- The area of Title IX at UP, as it relates to students, faculty, and staff, consists of a dedicated team that includes the Title IX Coordinator and several deputy coordinators.
- Partly due to the efforts of this Title IX Team, most Title IX cases at UP involving students are resolved through informal processes. For example, in the 2016-17 academic year, fewer than 9% percent of the Title IX cases brought to the Title IX Team resulted in a formal investigation and hearing process.
- Even after a Title IX case is resolved, the Title IX Team works to develop accommodations designed to promote the students’ welfare on campus so that they are able to continue their education unrestricted.
- Every first-year student receives education in Title IX matters before arriving on campus and during Orientation.

- The formation of the Green Dot Program has greatly increased awareness of students' responsibilities to each other as bystanders.
- All policies and procedures regarding Title IX are available to students in *Life on the Bluff*, UP's student handbook. Some policies and resources for students regarding sexual harassment and sexual violence are also outlined in abbreviated form in the pamphlet created by the Community Against Violence Team (CAV), entitled "Interpersonal Violence Resource Guide for Our UP Community," and on various campus webpages, including the CAV and Title IX webpages.

Even most recently, since the Ad Hoc Committee's formation in November 2016, some policies, procedures, and resources at the University have been improved for the 2017-18 academic year. Several examples include:

- The University named an additional deputy Title IX Coordinator, a female staff member, bringing to five the number of deputy coordinators (three of whom work specifically with students).
- The Title IX Coordinator continued to expand Title IX training and information sessions to various campus groups. Such efforts include meeting with every faculty unit on campus in August 2017 to ensure that faculty members understand their obligations under Title IX, and meeting with student athletes as well as groups of students in each residence hall.
- In its revision of *Life on the Bluff* during Summer 2017, Student Affairs consolidated all policies and procedures related to Interpersonal Violence into a distinct section of the handbook, making this information easier to find and access.
- The University adopted the ProtoCall service, a 24-hour confidential resource that is available to all students regardless of whether they live on or off campus. The service is also available to students studying abroad.

Despite the fact that the University is meeting federal expectations in its Title IX policies and procedures, and that offices across campus continue to improve their Title IX services, feedback from the university community and additional information gathered from our research suggests that there remain areas in which UP could improve its policies, procedures, education, and resources in relation to Title IX.

### **Summary of Campus Feedback and Information: Students**

The Committee received feedback from approximately 200 students through the Committee's anonymous campus survey, the listening session for students, and interviews with both individual students and smaller student groups. Additionally, the Committee is informed by the 1121 UP undergraduate students who completed the HEDS Survey. Common themes from these student sources are explained below.

- Students expressed the general belief that significant percentages of undergraduate students at UP – particularly female students and LGBTQ students – experience sexual harassment and sexual assault.
- Students expressed the concern that in many cases of sexual harassment or sexual assault, students do not report such incidents to the Title IX team.
- Students acknowledged that UP provides Title IX related education and trainings – particularly when students start at UP as first-year students and through programs

such as Green Dot. However, there was substantial feedback that students want and need more education and training.

- Students acknowledged that the University provides Title IX related informational resources on campus. However, there was substantial feedback that students would like the University to provide these resources in ways that are easier to access, understand, and use, especially by students who may be experiencing trauma.
- Students acknowledged that confidential Title IX resources are available to students on campus. However, there was substantial feedback that students want an expansion of the confidential resources available to them on campus. (This input was given before the University adopted ProtoCall.)
- Especially through the HEDS survey, students indicate that alcohol & drugs play a significant role in incidents of sexual assault.
- Through our survey, the listening session, and several individual interviews, students who had participated as both reporting and responding parties in Title IX's formal resolution process (the formal investigation and Student Conduct Title IX hearing) found the process to be a negative, often traumatic experience.
- Through our survey, listening session, and individual interviews, a significant number of students, including several who had gone through the Title IX formal process and had been found responsible for violating a sexual harassment or sexual violence-related policy at UP, asked for more clarity in the communication of possible outcomes for being found responsible for such violations by a Student Conduct Title IX hearing.

### **Summary of Campus Feedback: Staff & Faculty**

- Feedback included the suggestion that although the University has made various educational/training and resource materials available to students and employees, the University could benefit from a consolidated Title IX educational campaign for the entire community – students, faculty, and staff.
- Feedback suggested that the diffusion of Title IX related efforts (policies, processes, resources, and training) across campus could affect consistency and coordination and that it can create unnecessary redundancies or gaps in communications and resources.
- Concern was expressed that Title IX matters can take up significant work time for employees with Title IX responsibilities and especially when they have non-Title IX duties as well. Similarly, concern was expressed that the continuity and momentum of the University's Title IX efforts could be impacted when employees with significant Title IX responsibilities leave their positions.
- Faculty and staff wondered whether certain employee groups on campus may need more Title IX related trainings. Particular groups included faculty, Residence Life staff (including RAs), and Public Safety Officers who serve as UP's investigators.
- Certain employee groups on campus (such as faculty) expressed the desire to participate more with Title IX processes.
- Some members of the faculty and staff expressed concern that the Title IX team is male-dominated. (At the time that the Committee was conducting its interviews and listening sessions, the team consisted of four persons, one female and three males. Since that time, one female has been added to the team, meaning that two of the five members are female.)

- Some faculty and staff asked for more transparency regarding the Title IX process, especially the formal resolution process.

### **Summary of Information or Data External to UP**

- Since 2011, the Department of Education and the Office of Civil Rights began issuing “Dear Colleague” letters to educational institutions with increased expectations and guidelines regarding their obligations surrounding Title IX matters. Most recently, in September 2017, OCR issued new guidance to institutions of higher education about sexual misconduct cases.<sup>4</sup> The Committee is aware that this guidance does not yet constitute clear directives or regulations and that OCR is working on the process for implementing new regulations that would be more binding on institutions. However, it is likely that the September 2017 Guidance portends what OCR may incorporate in the new regulations.
- Most schools similar to UP in size and mission have a Title IX Coordinator who also has other, non-Title IX responsibilities on campus. Most commonly, the Title IX Coordinator is also either the administrator who oversees diversity, inclusion, and/or equity initiatives at the school or the Director of Human Resources.
- Based on information gathered from other schools, it appears that as institutions strive to improve the policies and procedures that increase the equality and safety of their students, an increasing number of institutions are moving to a single investigator model as their formal resolution process for Title IX incidents. Unfortunately, it is too early to assess, due to a lack of data, to what extent this model may improve reporting of Title IX violations or help to resolve such violations in a more effective manner.

### **Recommendations**

Informed by the considerations, suggestions, and information highlighted above, the Committee offers recommendations for the University to consider in ten different areas.

#### **1. Recommendation Area One: Educational Efforts**

While the Committee recognized that many offices and personnel have committed time and care to developing UP’s Title IX policies, processes, resources, and training, it appears that many students may not fully see and understand these efforts. Therefore, the Committee recommends that the University expand its educational efforts and provide greater coordination of these efforts by the Title IX Coordinator and/or Deputy Coordinators. Such expansion and coordination may be focused in three areas.

- A. **Consider developing a campus-wide educational campaign that creates a common language – based on UP’s values and mission – among students, faculty, and staff, in the areas encompassed by Title IX.**
- B. **Educate students about Title IX matters throughout their entire time at UP.**
- C. **Provide more education surrounding the effects of alcohol/drug use and its impact on decision making.**

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<sup>4</sup> <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>

## 2. Recommendation Area Two: Title IX trainings for employees

Despite the fact that the amount of in-person training and information sessions for faculty and staff provided by the Title IX Coordinator has increased over the past 1-2 years, the Committee's observation is that Title IX training efforts could still be better coordinated and expanded for employees. Therefore, **the Committee recommends that the University explore ways to better coordinate and expand Title IX training for all employees, including faculty, staff, and student workers.**

## 3. Recommendation Area Three: General Title IX resources

Based on a review of existing Title IX resources and feedback from students, faculty, and staff, the Committee believes that general Title IX resources could be better coordinated, expanded, and improved. Specific recommendations include:

- A. **Revise the Title IX website.** Consolidate as much information as possible regarding Title IX policies and resources in one easy-to-access and use place.
- B. **Communicate more clearly the informal and formal resolution processes for Title IX incidents.** Such enhanced communication should appear on the Title IX website and in other Title IX related materials, and it should include explanations of the formal process involving investigations and the Student Conduct hearing process.
- C. **Assist in providing access to additional and more thorough long-term healing resources.** Such resources should be available, as appropriate to the situation, on or off campus, even after the Title IX process is complete (for both reporters and respondents), and no matter what the outcome of that process. Consider a special section on the Title IX webpage about healing, self-care, next steps, etc.
- D. **Consider whether UP's Title IX system would benefit from volunteer advisors.** Such advisors would be members of the University community who are educated in Title IX policies and processes and could help a student understand the various steps in the process and how far they wish to proceed in the process.

## 4. Recommendation Area Four: Title IX confidential and reporting resources

During the 2016-2017 academic year, the number of UP students who contacted UP's Title IX Team increased by approximately 60 percent from the prior year. Notwithstanding this increased reporting of possible Title IX violations by students, the Committee believes that there is significant room for improvement in this area. Recommendations include:

- A. **Provide more easy to access information on reporting resources and procedures.**
  - On Title IX website, include an easily accessible section on reporting resources.
  - Add a clear section on UP's Title IX website about anonymous reporting.
  - Consider including a flow chart(s) on the Title IX website that clearly explains the process(es) and resource(s) available to students.
  - Consider adding a Title IX tab in the Moodle and Student Portal pages to help students more easily access Title IX information.
- B. **Continue to evaluate the possibility of additional confidential resources on campus.** Expanding confidential resources available to students may help increase Title IX related reporting rates. Certainly, the recent addition of the after-hours ProtoCall resource greatly expands the confidential resources available to students, instituted after our listening session and survey. However, some students might yet prefer a face-to-face resource, especially after hours.

## **5. Recommendation Area Five: Title IX policies.**

Notwithstanding the efforts that various offices and groups on campus have made for the Title IX policies to be more accessible, the Committee received significant feedback from students that they did not know where to access the policies and/or did not know about the content of the policies. The Committee also received significant feedback from students that they found it difficult to translate or apply the policies to real-life situations. Further, there was feedback that some of the terms used in the policies did not appear fully consistent with how terms are used by OCR or at other institutions. Thus, the Committee makes the following recommendations:

- A. **Review the communication of key policies and procedures, especially beyond *Life on the Bluff*, that are part of the Title IX process.**
- B. **Review policies and definitions associated with or closely related to Title IX.**
  - Such a review should include the terms *consent*, *intoxication*, and *incapacitation*.
  - Clarify the amnesty policy in *Life on the Bluff* so that it clearly applies to a student who reports sexual harassment or sexual assault.
  - Consider further initiatives that might help our LGBTQ students to feel safer on campus and more confident that they are welcomed and respected members of the UP community.

## **6. Recommendation Area Six: Title IX structure and staffing resources**

The Committee observed that various aspects of educational outreach, policies, and procedures related to Title IX are housed in disparate offices or units throughout the campus. Such dispersion is likely one factor in the apparent lack of knowledge and understanding of these policies and procedures within the student body. Therefore, the Committee makes the following recommendations:

- A. **Review UP's Title IX staffing and resource structure, including the assignment/delegation of responsibilities and authority, the allocation of staffing and non-staffing resources, the financial responsibility over such resources, and the reporting structure and its effectiveness.**
- B. **Establish a set time period (e.g. every 3-5 years) for review of all Title IX policies, processes, resources, and training.**

## **7. Recommendation Area Seven: Title IX Investigations & Title IX Hearings**

Despite the small percentage of Title IX cases that go through the formal resolution process, one of the most common themes that the Committee heard during our meetings and interviews, especially with those students who had experienced a formal resolution, was a deep dissatisfaction with the formal process, especially the panel hearing.

Furthermore, many students, faculty, and staff are unaware that the University has Title IX hearing panels that are distinct from standard Student Conduct hearing panels, consisting of individuals who have received special Title IX training. The fact that the hearing panel is coordinated by the Student Conduct Office and housed in the Office of Residence Life has created the perception that the hearing panel is the same as a Student Conduct Hearing panel. Responses from the University community also reflected a lack of awareness as to how the formal process actually works.

Given the observations and feedback regarding the formal resolution process, the Committee makes several recommendations to help the University meet its aspirations on a



more consistent basis for those few individuals who end up going through the formal process to resolve a Title IX case.

- A. **Assess the benefits and feasibility of the single investigator model, given UP's size, resources, numbers of Title IX cases, and Title IX institutional goals, among other factors.** Review the list of schools that have moved to this model, especially as these schools accumulate more reliable data over the next 1-2 years as regards to the effectiveness of the model and its impact on such things as an increased reporting of Title IX violations.
- B. **Review all pieces of communication that explain both the formal hearing process and the make-up of the hearing board and edit for greater transparency and ease of understanding.**
- C. **Review the location of the Student Conduct Office.** Consider whether organizationally it should remain within the Residence Life Office and whether the Student Conduct administrator should continue to report to the Residence Life administrator.

#### **8. Recommendation Area Eight: Sanctions.**

Based on input from UP students and practices used by other schools, the Committee has two recommendations regarding sanctions for violations of Title IX policies by students.

- A. **Consider publishing on UP's Title IX webpage and in other Title IX literature information the range of possible sanctions that may result from a student being found responsible for violating a Title IX policy.**
- B. **Review the established language for written communication with both the reporting and responding parties who go through the Title IX formal process to minimize misinterpretations or unexpected conditions for continuing at UP or for a possible return to UP after suspension.**

#### **9. Recommendation Area Nine: Case review**

Based on feedback from students, faculty, and staff, **the Committee recommends that the University consider establishing a Title IX Case Review Team in place of a single-person case review.** Such a team should be composed of faculty and staff who have received specialized Title IX training, similar to the members of the Hearing Board.

#### **10. Recommendation Area Ten: Office of Human Resources**

The Office of Human Resources (HR) coordinates with the Title IX Coordinator for any sex-based discrimination matter involving a student and a University employee. When the responding party is an employee in a Title IX matter, HR handles such cases. HR has plans to review its Discrimination & Harassment policies and to review its Title IX-related training for University employees. Therefore, the Committee makes the following recommendations for Title IX related issues that involve members of the University's faculty and staff:

- A. **Ensure that the University's Human Resources Office review UP's Discrimination & Harassment policy and processes for employees to make sure the policy and processes are in compliance with OCR's most recent guidance.**
- B. **Ensure that the University's Human Resources Office review Title IX related training and implement training as appropriate and necessary for all employees, whether members of the staff, faculty, or student body.**