



GICA Compliance Collaborative

2020 Webinar Training

Title IX – Role of Decision-maker

(1 ½ Hour Webinar – September 29, 2020)

AGENDA

This webinar was designed to provide training on the role of the decision-maker and, more specifically, the role of a decision-maker making evidentiary rulings.

Logistics

- Pre-hearing checklist
- Live hearing with parties
- Recording
- Order of hearing
- Logistical – What ifs?

Advisor – Attendance

- What if Party attends without Advisor?
- What if Party does not attend and Advisor does attend?
- What if neither Party nor Advisor attend?

Cross-Examination

- What is cross-examination?
- Context of the cross-examination requirement
- Stated reasons for cross-examination
- Questions of Parties and witnesses by Advisors
- No requirement that questions must be submitted in advance
- More...cross-examination
- “Waiving” questions
- Must submit to cross-examination
- Practicalities of “must submit”

Determination by Decision-maker

Statutory language – determination by decision-maker
Ruling – statutory and preamble language
Practical Tips

Relevant Questions

What are relevant questions
What are not relevant questions
Legally recognized privilege
Rape shield protection
 Hypothetical scenarios
Medical records
Hearsay

Credibility

Credibility & weight = training
Credibility – weight (discretion)
Credibility – weight (prior bad acts)
Institutional decisions
 Expert witnesses, character witnesses, polygraph tests, other procedures
 Institutions decide weight to these types of witnesses or documentation
Credibility – status of party or witness
Credibility – factors
Credibility – judgment
Credibility – missing evidence
Credibility – trauma-informed approaches

Action Items

Use information to review your Title IX policy; any revisions needed?
Confirm insurance liability coverage for all Title IX team members.
Read Investigative Report; understand case BEFOE you enter the hearing.
Prepared hearing script/reference guide that includes common response.
Be prepared.

Resources

OCR and Title IX

- https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html
- <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>

Federal Register

- <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal#citation-1152-p30294>

Joint Guidance on Title IX –

- <https://system.suny.edu/sci/tix2020/>

Speakers:**Brian Carlisle, J.D., Vice President and Dean of Students, LaGrange College**

Brian currently serves as Vice President for Student Engagement and Dean of Students at LaGrange College. For more than 20 years, he has investigated discrimination claims, including cases alleging Title IX violations. Brian also serves as a state expert on sexual assault with the State of Georgia Criminal Justice Coordinating Council.

Marti Fessenden, J.D., Special Counsel to the President and Title IX Coordinator, Agnes Scott College

Marti Fessenden has a unique 30+-year career in law, higher education administration and nonprofit leadership. She was a litigator for more than 26 years, most recently with her own law firm – The Fessenden Firm / Higher Ed Advise. Ms. Fessenden no longer litigates, solely providing advice and counsel within higher education. She joined Agnes Scott College as Special Counsel and Title IX Coordinator five years ago. For Agnes Scott and other institutions she currently advises, her focus is compliance and risk management across all campus divisions. Ms. Fessenden also has particular expertise in Title IX.

Regina Mincberg, J.D., University Counsel, Oglethorpe College

Regina Mincberg serves as University Counsel at Oglethorpe University where she provides legal advice to academic and administrative offices across campuses. Regina has previously served in the roles of Director of Compliance and Title IX Coordinator. Prior to Oglethorpe, she worked in a variety of capacities in and around the federal and state governments, defending clients in regulatory investigations, conducting congressional investigations on the U.S. House Oversight Committee, and shaping legislation and administrative policy. Regina earned her undergraduate degree from Florida State University and her law degree from Emory Law School.

Danny Price, In-house General Counsel, Berry College

Danny has served as General Counsel for Berry College since 2006. Prior to joining Berry, Danny was in private practice in the Savannah, GA area where his practice focused on litigation, real estate development and mortgage lender representation, and general business matters. He also served from 1999-2002 as the elected Solicitor-General for the State Court of Effingham County. Danny holds a BS in Economics from Berry College and received his JD from the University of GA in 1991.

Moderator:**Judy Spain, J.D., CCEP**

Judy currently serves as the GICA Compliance Program Consultant. She is a Professor Emeritus, Eastern Kentucky University, an attorney licensed in Kentucky, Ohio, New York, and Pennsylvania, and is a Certified Compliance and Ethics Professional. She served as General Counsel and Chief Ethics and Compliance Officer at Eastern Kentucky University and Manhattanville College, where she developed and implemented compliance programs. She has served in multiple Title IX roles and has lectured extensively in this area. Judy is the author of the first book on higher education compliance, *“Higher Education Compliance: Blueprint for Success”*. Judy is also the author of *“Compliance Risk Assessments: An Introduction”* published by the Society for Corporate Compliance and Ethics.