



## **GICA Compliance Collaborative**

### **2021 In-person and Zoom Title IX Investigator Training (6 ½ Hour Training – September 2021)**

#### **AGENDA**

##### **Overview**

This training is designed to provide Title IX Coordinators, Deputy Coordinators, Investigators, Hearing Panel Members, Advisors, Appeal Officers, HR personnel, and anyone associated with administering Title IX with an up-to-date understanding of current compliance requirements using a scenario-based training.

This training utilized newly developed training videos detailing an interesting fact pattern. Attendees were exposed to the overall alleged Title IX issue; developed an interview/investigative plan; watched the video interviews; developed interview summaries; and wrote an investigative report.

##### **9:00 a.m. to 10:00 a.m.**

- Introduction
- PowerPoint – Title IX Overview
  - Topics covered:
    - Prevention
    - Definitions and Guidance
      - Sexual harassment
      - Respondent
      - Formal complaint
      - Attempting to participate
      - Effective denial to equal access
      - Actual Notice
    - Informal Resolution
      - Permitted use
      - Not permitted use
      - Use at any time

- Live Hearing
  - Cross-examination (statutory definition and court case)
- NCAA Guidance

**10:00 a.m. to 10:10 a.m.**

- Break

**10:10 a.m. to 11:45 a.m.**

Total of 12 videos written by Judy Spain, J.D., CCEP, GICA Compliance Collaborative Program Consultant. Videos produced by DMZ Productions; copyright held by Spain and Spain, Inc., and licensed to GICA.

For this training, eight of the videos were used. The other videos were used in the Title IX Hearing Panel Member Training (both Zoom and in-person November 2021).

Attendees watched the videos and then participated in discussion regarding the videos which showed various steps of the investigative process. Videos were designed to develop investigator competency skills; to expand attendees knowledge of the Title IX process; to promote discussion regarding what went right/what went wrong in the interviews; to assist attendees to determine what could be relevant questions; to encourage discussion regarding how to ask follow-up questions to determine facts and credibility of the interviewee; to understand the need for standardization of the interview process; and to discuss the burden of proof to be established.

Summary of Issue:

Body Count Game involving JV Cheer Team in fall semester. The following are members of the JV Cheer Team: Madison Cabot, Grace Newsome, Sam Barkley, Maggie Peters, and Bob Speaker. Hailey Nichols is a member of the Varsity Cheer Team. Complainant is Pat Smith.

Grace Newsome, Sam Barkley, and Maggie Peters were all charged with violations of Title IX Policy. All agreed to Informal Resolution. Hailey was provided notice of charges; case did not move forward; discretionary dismissal. Madison Cabot was also charged with violation of Title IX Policy – sexual hostile environment and gender-based harassment. Cabot did not accept Informal Resolution; case went through Formal Resolution process to a Live Hearing.

- Post 1<sup>st</sup> item - “concern about comment” email
- Post 2<sup>nd</sup> item - “follow up from previous email” email
- Discuss
  - Step 1:
    - Identification of possible Title IX matter
  - Step 2:
    - Identify possible witnesses
  - Step 3:
    - Compile questions:
      - Staff questions

- Witness/respondent questions
  - Step 4:
    - Begin interview process
    - Identify order of witnesses
    - Identify need for notification of possible Title IX violation
- Show video 1 – Interview of Coach Tony Roberts
  - Synopsis: Roberts had no knowledge of anyone on either the JV or Varsity Cheer Team playing the body county game.
- Show video 2 – Interview of Athletic Trainer Fred Travis
  - Synopsis: Travis had knowledge of the body count game since it was played when he was a student. Travis overheard Newsome and Cabot discussing the game while they were in the training room. Travis failed to report possible Title IX matter to anyone at the institution.
- Show video 3 – Interview of Pat Smith
  - Synopsis: Smith has transitioned from male to female. Smith had consensual sex with Cabot but stated that she would not have had consensual sex if she knew that Cabot was playing the game. Smith detailed an incident involving Cabot, Newsome, Peters, and Barkley pounding on her window and calling her derogatory names. Smith also detailed other incidents where she was called derogatory names. Smith was initially interviewed as a witness; Smith decided to file a formal complaint against Cabot, Newsome, Peters, Barkley, and Nichols.
- Post 3<sup>rd</sup> item – Template Form 1 – Title IX – Complainant and Respondent Initial Meeting
- Post 4<sup>th</sup> item – Template Form 2A – Notice of Allegation to Respondent – hostile environment
- Post 5<sup>th</sup> item – Template Form 2B – Notice of Allegation to Respondent – sex and gender harassment
- Show Video 4 – Interview of Grace Newsome
  - Synopsis: Newsome is Cabot’s roommate. Newsome intended to play the body count game, but became involved with a student and chose not to post any points. Newsome detailed a conversation with Cabot in the athletic training room, where Athletic Trainer Travis was present, regarding Cabot playing the game.
- Show Video 5 – Interview of Madison Cabot
  - Synopsis: Cabot did not deny having consensual sex with Smith. Cabot did not deny pounding on Smith’s window or calling Smith derogatory names.
- Send transcripts of interviews to all attendees for the following individuals:
  - Coach Tony Roberts
  - Athletic Trainer Fred Travis
  - Complainant Pat Smith
  - Respondent Grace Newsome
  - Respondent Madison Cabot

**11:45 a.m. to 1:00 p.m.**

- Lunch Break
- During lunch, each attendee to work in a group to prepare a summary of the interview of one of the five individuals identified above. Summary to be sent to Presenter for inclusion into the draft Preliminary Report.

**1:00 p.m. to 2:15 p.m.**

- Show video 6 – Interview of Sam Barkley
  - Synopsis: Barkley acknowledged knowing about the body count game but not playing the game. Barkley acknowledged pounding on Smith’s window and calling Smith derogatory names.
- Show video 7 – Interview of Hailey Nichols
  - Synopsis: Nichols is the RA in Smith Hall and lives right next door to Smith. Nichols acknowledged that she heard pounding on Smith’s window but did not investigate the incident. Nichols acknowledged that she overheard Cabot and Newsome talking about the body count game when Cabot and Newsome were in the athletic training room. Nichols did not report any possible Title IX matter to anyone at the institution.
- Show video 8 – Interview of Bob Speaker
  - Synopsis: Speaker had heard of the game but had not played the game. Speaker provided to institution a copy of the GroupMe chat that Cabot posted concerning the points she received by playing the body count game with a transgender person.
- Post 6<sup>th</sup> item – Template Form 3 – Informal Resolution Agreement – Grace Newsome
- Post 7<sup>th</sup> item – Template Form 4 – Informal Resolution Outcome – Grace Newsome

**2:15 p.m. to 2:30 p.m.**

- Break

**2:30 p.m. to 4:00 p.m.**

- Post 8<sup>th</sup> item – Investigative Report Template
  - Template includes the summary of the interviews of witnesses.
- Post 9<sup>th</sup> item – Template Title IX NDA
- Post 10<sup>th</sup> item – Template Form 5A – Live Hearing Notification – Madison Cabot
- Post 11<sup>th</sup> item – Template Form 5B – Live Hearing Format – Madison Cabot
- Summary discussion

**Author and Presenter: 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, 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.