



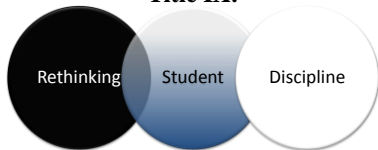
Welcome to Today's
PaperClip Communications
Webinar



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Title IX:



February 23, 2012
2 – 3:30 p.m. (ET)

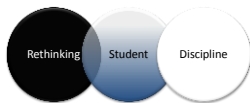
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Polling Questions

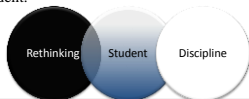
- A. Which core values undergird the purpose of your work when it comes to campus conduct and conflict management? (mark all that apply):
 - a. Safety
 - b. Fairness
 - c. Education
 - d. Justice
 - e. Other



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B. What guiding principles inform your campus' response to allegations of student sexual misconduct? (mark all that apply):

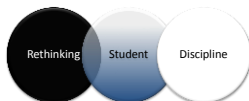
- a. **Access and Inclusion** – Our practices seek to create an inclusive campus climate that models access for all members of the campus.
- b. **Risk Management** – Our practices are focused on safety and compliance with relevant federal and state laws.
- c. **Student Learning and Development** - Our practices focus on providing students with transformative learning experiences that encourage reflection and development for success during and after their college experience.
- d. **Community Restoration** – Our practices emphasize repairing the harm caused by student sexual misconduct in a way that includes all stakeholders affected by the incident.
- e. **Other**



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C. If any of the aforementioned guiding principles inform your work, how does your campus prioritize them? (ranking)

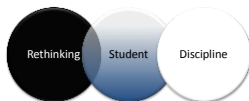
- a. Access and Inclusion
- b. Risk Management
- c. Student Learning and Development
- d. Restoration



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D. The guidance offered by the U.S. Department of Education and its Office for Civil Rights (OCR) via the April 4, 2011 Dear Colleague Letter _____ affirm(s) the guiding principles and core values central to my campus' work around student sexual misconduct.

- a. mostly
- b. somewhat
- c. does not



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E. My campus' response to the U.S. Department of Education Office for Civil Rights (OCR) April 4, 2011 Dear Colleague Letter includes (mark all that apply):

- a. Relief as the letter offered a catalyst for much needed change in policy.
- b. Fear of becoming subject to investigation by the DOE.
- c. A sense of frustration due to loss of discretion.
- d. Confusion on how to settle competing interests.
- e. None of the above.



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F. My campus is struggling with balancing the following interests when it comes to responding to student sexual misconduct allegations (mark all that apply):

- a. campus safety
- b. a survivor's desire to engage or not engage the process
- c. considering freedom of expression advocate critiques
- d. the proper standard of evidence
- e. Identifying an appropriate location for this work on campus
- f. fairness and due process
- g. not re-victimizing participants in the process.
- h. My campus is struggling with interests not listed here.
- i. My campus is not struggling with balancing interests.



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Co-editors: *Reframing Campus Conflict: Student Conduct Practice through a Social Justice Lens* (Stylus 2009).

Presenters



Jennifer Meyer Schrage, J.D. teaches for the Sandra Day O'Connor College of Law at Arizona State University. Schrage also provides education policy review services and is currently providing project leadership for development of the University of Michigan's response to allegations of student sexual misconduct. Schrage's work in developing restorative campus conflict and conduct management models has been cited in the *Chronicle of Higher Education* and in the 2011 publication *Restorative Justice Dialogue: An Essential Guide for Research and Practice* (Springer). In 2010, the Association for Student Conduct Administration honored Ms. Schrage with the *Award of Excellence for Significant Contributions to the Field*. Schrage has over ten years of experience as a student affairs educator having provided leadership for student conflict and conduct management programs at the University of Michigan and Eastern Michigan University. Prior to her career in higher education, she practiced law with a focus on dispute resolution. Schrage earned her *Juris Doctor* degree from the University of Arizona.

Contact Jennifer at: jschrage@umich.edu
<http://sites.google.com/site/jennfermeyerenschrage/>



Nancy Geist Giacomini, Ed.D. is a graduate instructor in the Department of Human Development and Family Studies at the University of Delaware and a mediator for the PA Office for Dispute Resolution. Career campus roles have included assistant dean of students (judicial affairs) and conflict resolution program associate at Delaware. During her tenure as assistant dean, she received the University's highest honor (Trabant Award) for contributions as multi-year chair of sexual assault awareness week, victim advocacy and campus training related to student sexual misconduct. Nancy is a past president of the Association for Student Conduct Administration (ASCA) and recipient of the Getting Award. She is an active member of the Association for Conflict Resolution (ACR) and a nationally recognized advocate for restorative campus conflict and conduct management initiatives.

Contact Nancy at: nancygiacomini@yahoo.com
DtGG@campusconflict.com
<http://www.linkedin.com/in/nancygiacomini>

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Contributing authors: *Reframing Campus Conflict: Student Conduct Practice through a Social Justice Lens* (Sylus 2009).

Presenters



Ryan C. Holmes is the Associate Dean of Students and Director of Judicial Affairs at the University of Texas, El Paso. He chairs UTEP's Behavior Assessment Team. Ryan is currently serving as the President for the Association for Student Conduct Administration (ASCA) following his tenure as Conference Chair and President-Elect. He is a nationally known student advocate, speaker, and author on social justice; bias as it relates to race, gender, and other unchangeable traits; conflict resolution; and entitlement.

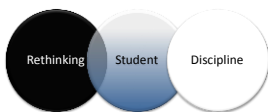
Contact Ryan at: rholmes@utep.edu



Jay Wilgus, J.D., M.D.R., is Director of the Office of Student Conflict Resolution at the University of Michigan where he leads a spectrum-based approach to conflict management that aims to Build Trust, Promote Justice, and Teach Peace. He formerly served as Assistant Dean of Students at the University of Utah where he was responsible for Greek Life and a shared student conduct caseload. Wilgus is a certified rape crisis counselor and a member of the Utah State Bar where he previously practiced criminal defense. Wilgus earned his law degree from the S.J. Quinney College of Law at the University of Utah and his Master's in Dispute Resolution from the Straus Institute for Dispute Resolution at Pepperdine University.

Contact Jay at: jwilgus@umich.edu

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Today's Goal

The goal of this webinar is to provide space for shifting our focus and reframing the dialogue around student sexual misconduct work in a way that fully **honors the complexity of our work.**

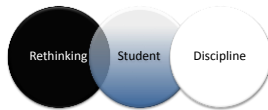
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Title IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefit of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

20 U.S.C.A. Section 1681 (a)



Find Title IX at:
<http://www.dol.gov/oasam/regs/statutes/titleix.htm>

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Overview

The Office for Civil Rights released a "Dear Colleague" letter in April 2011 to clarify OCR's position and guidelines for responding to student sexual misconduct under Title IX.

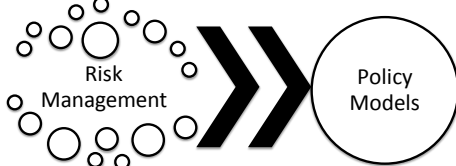
Among OCR requirements:

- identify a **Title IX coordinator**
- take effective **steps to protect** to the complainant
- must take **action to investigate**
- apply a **preponderance of evidence standard**
- **eliminate mediation** as an option for alleged sexual assault cases
- insure **equitable due process allowances** including right to appeal
- provide **timely resolution**
- **share outcomes** with both parties

Overview and program DCL quotes found at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>

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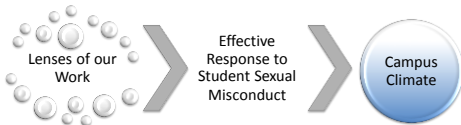
Student Sexual Misconduct The Current Dialogue



- Fear
- Compliance
- Urgency

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Rethinking (or Reframing) the Dialogue

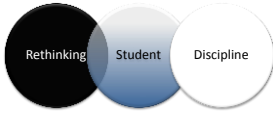


- Student Learning & Development
- Access & Inclusion
- Restorative Justice
- Rights & Risk Management

- Develop
- Implement

Safe & Just

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Today's Agenda

- Review the lenses of our work
- Consider the balance of interests involved in managing student sexual misconduct allegations
- Examine cases through the decision matrix exercise

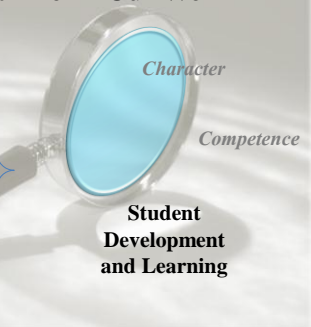


Image created using core values from ACPA, NASPA and ASCA. Create your own unique "wordle" at wordle.net

Lenses That Inform Our Work

"Educating the mind without educating the heart is no education at all." Aristotle

We find familiar common ground when we consider our practice through the Student Development and Learning Lens. This lens speaks to the heart of our practice and is universal as a foundation for our work. Here are the values and principles that inform and guide our practice as educators and advocates, as we help students learn and grow in ways that will serve them while in college and beyond graduation. It's the stuff of self-actualization.

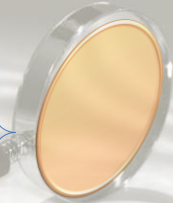


"Judicial affairs administrators ... are central to the task of building what Boyer calls a just community and a disciplined community. Programs must be designed that are proactive attempts to combat campus racism and sexism with the idea of creating a community where each individual is respected, but individuals also accept their obligations to the community."

Gehring, 1998

"Donald Gehring ... provides perhaps one of our earliest glimpses into what it means to view student conduct work through a social justice lens. His wise reflection on the role of student conduct administrators in building campus community captures the essence of balancing the rights of the individual and the responsibility of community. These are the forces that challenge higher education every day and frame the theoretical and practical applications of social justice."

From Ryan C. Holmes, Keith Edwards, and Michael DeBowes in their introduction to Chapter Four -- Why Objectivity is Not Enough: The Critical Role of Social Justice in Campus Conduct and Conflict Work.



Access & Inclusion

"...[H]igher education institutions are constantly managing their responsibilities to safeguard the community's well-being and to develop and educate the individual student. Ideally, we are able to meet the individual student's needs without compromising the health and safety of the community or the institution's overall fiduciary responsibilities."

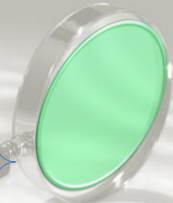


Rights & Risk Management

From Taylor, S.H. & Varner, D.T. (2009). When student learning and law merge to create educational student conflict resolution and effective conduct management programs. In J. Schrage & N. G. Giacomini (Eds.), Reframing Campus Conflict: Student Conduct Practice Through a Social Justice Lens (pp. 22-49). Sterling: Stylus.

Punishment is a dirty word on campuses where education, development, and community restoration reign supreme.

Through this lens, we remind ourselves that our role is to put things right individually, relationally, and communally, and that suspension or expulsion alone will not repair the harm. Indeed, they may pass it along.



Community Restoration

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The Lenses of our Work

Figure developed by J. Schrage with N. Giacomini & M.C. Thompson

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Balancing Interests on Pivotal Issues: Using Our Lenses to Inform Our Approach

The national dialogue highlights the following as possible areas of tension for practitioners seeking to balance each of the lenses of our work to be effective and compliant when it comes to student sexual misconduct allegations:

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Balancing Interests

Campus

- Required investigation
- Proper location for this work
- Freedom of Expression

Participants

- Fairness & due process
- Standard of evidence
- Personal power & control

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Foundational Elements The Who & Where



Identifying a **location for this work on campus** that possesses the requisite expertise and resources and that fully grasps the role of **student development** in misconduct cases



- Risk Management says...
- Access/Inclusion says...
- Student learning and development says...
- Restorative justice says...

Foundational Elements The Who & Where

“...**notify** all students...of the name or title and contact information of the person designated to coordinate the recipient’s compliance with Title IX...”

“...**overseeing** all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints...”



Foundational Elements The Who & Where

“...ensure that employees designated to serve as Title IX coordinators have **adequate training** on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient’s grievance procedures operate.”



Foundational Elements

The Who & Where

“...**notify** all students...of the name or title and contact information of the person designated to coordinate the recipient’s compliance with Title IX...”

“...**overseeing** all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints...”



Risk Management Lens

- Risk Management
 - Elimination of a threat
 - Stopping actions before a hostile campus environment is created
 - Formal Processes
 - Compliance Offices/EEO
 - Student Employees
 - Student –Faculty/Staff concerns
 - Student Conduct Offices
 - Student – Student
 - Making sure that the process is followed
 - Protection of Individuals and the University
 - Preponderance of the evidence
 - University Police Departments or Equivalent
 - Criminal Investigation
 - Statistics



Access/Inclusion Lens

Pertinent Information Availability

- All electronic, school-based sites, that student would have access to
- Major Publications (i.e. handbooks and conduct codes)
- Presentations (i.e. Orientation Sessions, University Seminars, Information Fairs)
- University Faculty and Staff



Student Learning and Development Lens

- Student Activity Centers/Development Centers
- Counseling Centers
- Student Club and Organization Advisors
- Providing for for students to discuss these issues and consequences



Access/Inclusion Lens

Pertinent Information Availability

- All electronic, school-based sites, that student would have access to
- Major Publications (i.e. handbooks and conduct codes)
- Presentations (i.e. Orientation Sessions, University Seminars, Information Fairs)
- University Faculty and Staff



Definitional Issues The What & Why



Learning and teaching **definitions** (concrete and nuanced) of sexual misconduct, sexual violence, sexual harassment, discrimination, consent, seduction vs. coercion, etc. while **honoring freedom of expression** requirements ... all in ways that build campus capacity, are inclusive, compliant, authentic and developmentally appropriate (!)



- Risk Management says...
- Access/Inclusion says...
- Student learning and development says...
- Restorative justice says...

“OCR recommends that all schools implement **preventive education programs** and **make victim resources, including comprehensive victim services, available**. Schools may want to include these education programs in their (1) **orientation** programs for new students, faculty, staff, and employees; (2) training for students who serve as **advisors in residence halls**; (3) training for **student athletes and coaches**; and (4) **school assemblies and ‘back to school nights.’** These programs should include a discussion of **what constitutes sexual harassment and sexual violence**, the school’s policies and disciplinary procedures, and the consequences of violating these policies. The education programs also should include **information aimed at encouraging students to report incidents of sexual violence...**”



Risk Management Lens:

•Create, publish and widely disseminate definitions for sexual harassment, sexual misconduct, sexual violence, consent, coercion and seduction ...

•Educate community of what constitutes a violation / the people, processes and options for redress ... What’s a confidential conversation / a formal grievance.

•Be vigorous and timely in investigations/follow stated policies.

•Weigh eagerness to create safe discrimination-free communities against academic freedom/freedom of expression.



Access & Inclusion Lens:

•Behaviors are complex and nuanced. How do we balance compliant language with accessible language that resonates within and across social group identities and cultures?

• Developmental issues inform this lens ... How might a nontraditional aged student interpret or perceive definitions differently than a traditional age freshman?

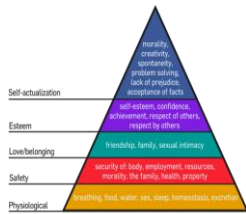
•How can we account for all these considerations when defining violations and establishing procedures?



Student Learning & Development Lens:

- Hearty new measures to educate students around sexual conduct/misconduct issues.
- Investments of time and money for professional development balanced with the cost to create / adopt best practice orientation programs, publications, targeted efforts in at risk communities, etc.
- Student-centered responses appropriate for each developmental stage including basic needs for closeness, friendship, sex and intimacy without compromising health, future, safety or sense of self.

Maslow's Hierarchy of Needs



Retrieved from http://en.wikipedia.org/wiki/Maslow's_hierarchy_of_needs



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Restorative Justice Lens:

- Develop communities that are engaged in one another's well being, that respect and value one another and create/uphold expectations of one another in the most effective, appropriate and interpersonal ways.
- Teach and model opportunities for students to engage in safe inclusive community dialogue around difficult of issues like sexual misconduct.
- Build community capacity for confronting one another in healthy ways and managing conflict at low levels.

"Create an environment that takes young and inexperienced people and helps them to succeed."



John Anderson Fry, President, Drexel University
38th Delaware Valley Student Affairs Conference
February 17, 2012

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Excerpt used with permission from Gary Pavela's ASCA Law and Policy Report Thursday February 16, 2012 No. 412

Commenting on the **Barnes v. Zaccari decision** (public university president may be personally liable for administrative withdrawal of "dangerous" student without due process) Pavela observes that:

"the neural wiring for fear in the human brain is more efficient than the wiring for cognition. Fear readily dominates cognition—often with bad results ... The Barnes decision highlights the importance of collaborative, fact-driven thinking in resolving student conduct cases. This kind of thinking is undertaken by [1] discussing and defining educational objectives in advance; [2] collaboration and teamwork; and [3] due process.

"...the educational objective is not to find creative ways to dismiss troubled students, but to find safe, creative ways to keep them in school. Collaboration and teamwork then facilitate fact-driven analysis, cross-functional cooperation, and individualized assessment. Due process serves as a final ethical and legal check--a means to make sure an accused student is heard, and to foster community participation (e.g. students and faculty members serving on hearing panels.)"

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Effective Response The How & When



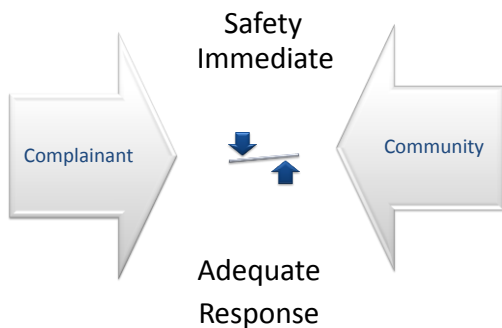
Providing an adequate and timely response that honors the rights of the community to a **safe campus** while honoring a **survivor's desire to engage or not engage** in formal investigation procedures (reluctant complainant issue)



- Risk Management says...
- Access/Inclusion says...
- Student learning and development says...
- Restorative justice says...

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Balancing Interests: Effective Response

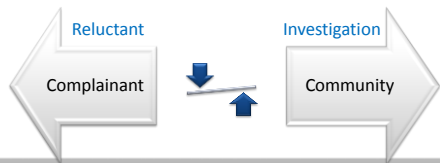


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Effective Response: Risk Management

A school must take steps to protect the complainant as necessary, including **interim steps** taken prior to the final outcome of the investigation.

Once a school knows or *reasonably should know* of possible sexual violence, it must take immediate and appropriate action to investigate or otherwise determine what occurred.



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Effective Response: Access & Inclusion

Does required investigation improve the climate for reporting or create a "chilling effect"?



See Handeyside, A., Wickliffe, S., Adams, J. (2007) *From Striving for Justice: A Toolkit for Judicial Resolution Officers on College Campuses Responding to Sexual Assault and Dating and Domestic Violence* (University of Michigan Division SAPAC) www.paper-clip.com

Effective Response: Student Learning

Do immediate interim measures and a required investigation encourage cognitive and psychological growth?

"Students learn best what they discover for themselves cognitively, affectively, and experientially."

"...a compelling case for students...to play an active role in constructing their own learning and making their own meaning."



Taylor, S.H., & Varner, D.T. (2009). When student learning and law merge to create educational student conflict resolution and effective conduct management programs. In J. Schrage & N. G. Giacomini (Eds.), *Reframing Campus Conflict: Student Conduct Practice Through a Social Justice Lens* (pp.22-49). Sterling: Stylus. www.paper-clip.com

Effective Response: Restorative Justice

Does a required investigation provide a response that includes all stakeholders affected or harmed by the sexual misconduct?

Viewed through a restorative justice lens, "crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance."



Howard Zehr
Changing Lenses: A New Focus for Crime and Justice. Scottsdale, Pennsylvania;
Waterloo, Ontario: Herald Press, 1990, p 181. www.paper-clip.com

Evidentiary & Remedial Issues ...



The "Now What"

Providing a process that respects traditional notions of **fairness and due process** while providing an **equitable** process that meets the **needs of involved stakeholders**.



- Risk Management says...
- Access/Inclusion says...
- Student learning and development says...
- Restorative justice says...

The Standard of Evidence

- Competing Interests
 - Traditional Notions of Due Process
 - Presumption of innocence
 - Burden of proof
 - Beyond a reasonable doubt
 - Equitable treatment of parties
 - Avoidance of privilege
 - Leveling the field
- Informative Lenses
 - Risk Management
 - Access/Inclusion
 - Student Learning
 - Restorative Justice
- Purposeful & Effective



The "Mediation" Limitation

- Competing Interests
 - Set One:
 - Private justice
 - Community accountability
 - Set Two:
 - Self-determination
 - Revictimization
- Informative Lenses
 - Risk Management
 - Access/Inclusion
 - Student Learning
 - Restorative Justice
- Purposeful & Effective



The Remedies Available

- Competing Interests
 - Stated Goals
 - End harassment
 - Prevent recurrence
 - Remedy effects
 - Traditional Theories
 - Deterrence
 - Education
 - Rehabilitation
 - Incapacitation
 - Retribution
- Informative Lenses
 - Risk Management
 - Access/Inclusion
 - Student Learning
 - Restorative Justice
- Purposeful & Effective



Operationalizing Multiple Lenses Assessment and Decision Making Processes

Our core values and multiple lenses can be used to frame assessment and decision making criteria as a matrix for understanding and responding to student sexual misconduct

The transferable matrix model used in the following case studies helps provide a safe and effective way to engage the conversation in an accessible and inclusive way.

Decision Matrix

Developed by J.M. Schrage

	Student Learning & Development	Inclusion & Social Justice	Restoration & Community	Rights & Risk Management	Total Score
Case 1					

Consider the campus response that follows the OCRDCL guidelines and score through each of four lenses

5	4	3	2	1
• Fully aligns with this lens	• Mostly aligns with this lens	• Somewhat aligns with this lens	• Does not align with this lens	• Extreme deficit in this lens



Case Number One

Johnny is a junior at your institution. During the first three weeks of fall semester, he meets a freshmen named Allie at an off-campus party and begins giving her cups of "jungle juice" from a cooler on the floor. Not recognizing the potency of the concoction, Allie consumes several cups and soon becomes very drunk. Johnny suggests that he walk Allie back to her dorm room. She agrees. On the way back, Allie vomits in the street and has trouble speaking/walking. Upon arriving at her room, she thanks Johnny for his help, says she'll be fine, and immediately passes out on her bed. Shortly thereafter, she wakes up on her chest to find her pants and underwear removed and Johnny on top of her "having sex" with her. She screams. Johnny jumps up and runs out of the room. Students nearby hear her and see Johnny running away. They call the police and Johnny is apprehended 30 minutes later.



Case Number One

Consider:

What does the campus response look like if it is following the OCR DCL guidelines?

Decision Matrix

Developed by J.M. Schrage

	Student Learning & Development	Access & Inclusion	Restoration & Community	Rights & Risk Management	Total Score
Case 1					

Consider the campus response that follows the OCR guidelines and score through each of four lenses

5	4	3	2	1
• Fully aligns with this lens	• Mostly aligns with this lens	• Somewhat aligns with this lens	• Does not align with this lens	• Extreme deficit in this lens



Case Number Two

Alex and Jesse are juniors and have been friends for two years. They occasionally flirt with one another, but that's it. Jesse wants to date Alex, but Alex does not feel the same way. Alex, who has been dating someone else for a month, insists to Jesse and others that they "are just friends." Last Friday, Alex needed Jesse's help with homework. Jesse told Alex to "come over before the party." Alex did. While working on the homework, Alex remarked that Jesse looked "Hot. As always..." When they finished the homework, Alex kissed Jesse on the cheek, then said, "Jesse - you're always so sweet to me. Thank you! Now let's go downstairs and have some fun!" Jesse and Alex proceeded to have several drinks together before Alex got drunk and began worrying about driving home.



Case Number Two

Jesse said, "you can stay in my room as long as we can cuddle a little bit tonight!" Alex laughed. An hour later, Alex fell asleep in Jesse's bed fully clothed. Jesse partied with friends for a while longer, then went to bed and cuddled up next to Alex. Thinking Alex was awake, Jesse began gently touching Alex's shoulders, hips, and legs. Jesse then kissed the back of Alex's neck. After unzipping Alex's pants, Jesse realized Alex was not awake. Disappointed and ashamed, Jesse went to bed. The following morning, Alex woke Jesse up and asked to take a shower before going "straight to work." Jesse said, "Of course...there's a towel in the cabinet." Two days later, Jesse answered a knock at the door. It was the police informing Jesse that Alex had filed a report alleging sexual assault. Jesse was shocked. Although feeling hurt and violated, Alex told investigators (on campus and in the community) it would likely be possible to "talk it out."



Case Number Two

Consider:

What does the campus response look like if it is following the OCR DCL guidelines?



Feedback

We want your feedback on today's event!

If you would like to provide suggestions for improvement and/or ideas for future event topics, please email Tamie Klumpyan at:

tamie@paper-clip.com

and she will send you the link to our brief online survey.

Thank you for your participation,
PaperClip Communications

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- Campus Parking & Transportation: Sustainability Standards and Funding - February 29, 2012
- Grant Funding Strategies for Community Colleges - February 29, 2012
- Merging Counseling & Health Centers: Partnerships, Opportunities & Challenges - March 1, 2012
- Adjunct Faculty 2012: 8 Critical Issues for Training & Support - March 6, 2012
- Classroom Management – March 7, 2012
- Community Colleges: Integrating Basic Education and Skills Training - March 7, 2012
- Parent Perspective – March 8, 2012

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