



Association of
Title IX Administrators

ATIXA Guide to Racial Equity in Title IX Proceedings

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Guide Introduction

Race is always important, even when sex discrimination is the main focus of a complaint. To effectively implement a Title IX resolution process, Title IX administrators must be cognizant of the intersectionality of race and sex. We must be able to identify and be willing to address the systemic barriers that exist for BIPOC¹ individuals when navigating the Title IX process.

We know that BIPOC individuals experience incidents of sexual harassment, but have you ever wondered why BIPOC individuals tend to underreport to Title IX offices? Are you concerned that there may be an overrepresentation of BIPOC respondents engaged in your process? Do you have little to no participation of BIPOC individuals in your education and prevention events? What systems can you put into place to ensure BIPOC individuals feel comfortable accessing your services and feel assured that they will be treated equitably while doing so? How do you effectively develop rapport and trust with BIPOC parties? Collecting data, engaging with the BIPOC populations at your institution, and doing some personal work can put you on a path to answer these questions and more.

¹ BIPOC refers to Black, Indigenous, and People of Color. While there are different terms used to refer to these groups of individuals, I use this term as it expressly highlights specific population groups that are often disparately impacted and does not project a perception of inferiority that can arise from terms like “minority” or “marginalized.”

Gather Data to Support Your Work

Collecting and analyzing quantitative and qualitative data regarding your Title IX program will provide a baseline assessment of your current program and identify areas needing additional attention. This is more than just conducting a periodic climate survey. Rather, your data collection efforts should be specifically targeted to identify any racial inequities and barriers that may exist within your Title IX program for BIPOC individuals.

Following are some areas you should consider assessing for potential racial inequities:

REPORTING AND RESPONSE

- How many complaints do you receive from BIPOC individuals?
- Is there evidence to suggest that reports from BIPOC complainants tend to be perceived as false or are downplayed in severity?
- Is there a racial disparity/disproportion in the number of complaints that are dismissed?
- Are there racial disparities in the amount of time taken to resolve complaints?

SUPPORTIVE MEASURES

- Is there a disparity in the types, number, and/or duration of supportive measures offered and provided?
- Is it harder for BIPOC complainants to receive approval for requested supportive measures?
- Do BIPOC parties tend to bear the burden of ensuring supportive measures are implemented as prescribed by the Title IX office?
- Are supportive measures more restrictive for BIPOC respondents?

BEHAVIORAL INTERVENTION AND THREAT ASSESSMENT REFERRALS

Great care needs to be taken to ensure that BIPOC individuals, particularly Black males, are not misperceived as posing a threat. This can lead to BIPOC parties being referred to the Behavioral Intervention Team (BIT) in greater numbers and/or more often labeled as a “threat” and subsequently removed from education programs or activities.

- Is there a racial disparity in the number of individuals who are referred to your BIT?
- Is there a racial disparity in the number of individuals deemed to pose a threat?
 - Would similar outcomes or assessments have been made if the individuals being assessed were not BIPOC?
- Are your procedures for referral to your BIT uniformly applied?
- Are your evaluation protocols and tools designed to take into consideration factors unique to BIPOC individuals?
- Do you have BIPOC individuals serving on your BIT?

EMERGENCY REMOVALS

The use of emergency removals is connected to your BIT referrals because an institution must conduct an individualized violence risk assessment (VRA) to determine whether a respondent poses a threat prior to taking steps to remove that individual from any or all education programs or activities.

- Is there a racial disparity in the number and duration of emergency removals implemented?
- Are you equitably seeking an emergency removal under similar circumstances?
 - For example, are you only seeking an emergency removal for Black students accused of a violent sexual assault, but not when similar conduct occurs by a student of a different race?

ACCESS TO SERVICES

A deterrent to BIPOC individuals accessing services (mental health, healthcare, advocacy, etc.), whether on or off campus, is not having options to seek support from individuals who look like them. Ensuring diversity among your service providers and those who are deemed to be confidential resources can help BIPOC individuals feel more comfortable accessing services. Being able to see someone with whom they can identify and believe will be better positioned to relate to their lived experiences can help provide BIPOC with equitable access.

- Do you have BIPOC service providers that are representative of your campus/school population?
- Is the quality and variety of the services offered by BIPOC individuals comparable to that provided by other individuals?
- Are there barriers for individuals to access services provided by BIPOC individuals that are not present when accessing other services (e.g., individuals have to travel off campus to access services provided by a BIPOC provider; there are no services with 24/7 access provided by BIPOC individuals)?

USE OF INFORMAL RESOLUTION

Given that institutions were previously prohibited from mediation in cases of sexual violence, this may be an area where you lack historical data to inform your assessment. However, the 2020 Title IX regulations provide greater leeway for institutions to offer informal resolution.

- Do you tend to suggest informal resolution for some parties based on race?
- What is the rate of use of informal resolution by BIPOC parties?
- Are there disparities in the types of informal resolution approaches used?
- Are BIPOC parties subjected to harsher outcomes after participating in the informal resolution process?
- Are BIPOC complainants given less comprehensive remedies after participating in informal resolution?
- Do you have trained BIPOC informal resolution facilitators?

ADVISORS

All parties have the right to an advisor of their choice to assist them throughout Title IX and VAWA-compliant resolution processes. Additionally, postsecondary institutions must provide an advisor to any party who appears at the hearing without their own advisor for the purpose of conducting cross-examination during the hearing, if the party wishes to conduct cross-examination. While the Title IX regulations do not mandate that institutions provide parties with an advisor at the outset of a matter, consideration should be given to the impact on BIPOC individuals who may be less likely to secure their own advisor.

- What is the racial breakdown of parties who obtain their own advisor versus those who have an advisor appointed by the institution?
- Are there differences in case outcomes for parties who select their own advisor versus those who have an advisor provided by the institution?
- Do you have BIPOC advisors available for the parties?
- Are there socio-economic barriers to equity of advisors facing BIPOC that are different than those facing individuals of other races within your community?

INVESTIGATIONS

- Are there racial disparities in the types of investigations you undertake?
 - For instance, are BIPOC respondents more likely to be subjected to a pattern-based or culture/climate-based investigation?
- Are your investigators trained to identify and avoid potential self-bias in questioning and rapport-building with BIPOC parties and witnesses?
- Is there any indication of racial bias reflected in your investigation reports?
- Do your investigators tend to rely on demeanor-based credibility assessments more often for BIPOC parties, or assume negative conclusions when interviewing BIPOC witnesses based on nothing more than race disparity between interviewer and interviewee?

OUTCOMES/FINDINGS OF RESPONSIBILITY/APPEALS

- Are BIPOC respondents more likely to be found responsible?
 - Does it vary depending on whether the complainant is also BIPOC?
- Are complaints filed by BIPOC complainants less likely to result in a finding of responsibility?
- Do your decision-makers tend to rely on demeanor-based credibility determinations more often for BIPOC parties?
- Are there disparities in the number of appeals that are granted?
- Are there disparities in the outcome of appeals?

SANCTIONS AND REMEDIES

Sanctioning and remedy considerations are case-specific and individualized based upon the severity of the misconduct and the impact on the complainant and the community. However, steps should be taken to ensure that decisions regarding the appropriate sanctions and remedies are not influenced by the race of the parties.

- Do BIPOC respondents face harsher (in terms of severity, length, and impact) sanctions for engaging in similar conduct?
- Are your sanctioning rubrics and other factors for sanctioning consideration uniformly applied?
- Is there a disparity in the types of remedies provided to BIPOC complainants?

EFFECT OF PARTICIPATION IN THE RESOLUTION PROCESS

Often, the focus is on providing support and resources to preserve a party's access to educational programs and activities during the resolution process, but little, if any, attention is paid to how the parties fare after engaging in your resolution process. It is well known that disparities already exist in terms of the retention and graduation rates of some BIPOC students.

- What, if any, impact does participation in the Title IX resolution process have on exacerbating this disparity?
- Are there disparities in the retention and graduation rates of BIPOC parties as compared to other parties?
- Are there disparities in the academic performance of BIPOC parties as compared to other parties?

TITLE IX TEAM

Effort should be made to ensure your Title IX team is representative of your campus/school population. Institutions should have BIPOC individuals represented on your Title IX team as the Title IX Coordinator, Deputy Title IX Coordinators, investigators, decision-makers, informal resolution facilitators, and advisors. Does this mean that you should make assignments based on race or honor a party's request to have an individual of a particular race work on their case? No, as that in and of itself could be deemed discriminatory. However, having a diverse team shows an institution's commitment to inclusion and ensures BIPOC team members can lend their voices to inform discussions on how best to meet the needs of BIPOC individuals.

- Are you intentional in your efforts to recruit BIPOC candidates to your Title IX team?
- Are you intentional in promoting BIPOC team members based on merit?

EDUCATION AND PREVENTION SERVICES

The provision of intentionally inclusive, culturally-appropriate education and prevention activities should be a central component of your Title IX program.

- How many BIPOC individuals participate in your education and prevention activities?
- Are BIPOC individuals reflected in your Title IX materials (e.g., inclusive case studies, graphics, content)?
- How many BIPOC speakers/organizations are invited to conduct education and prevention activities?
- Are there prevention activities addressing barriers to reporting/access that may be specific to BIPOC?

Active Engagement with BIPOC Community

Opportunities should also be provided to gather qualitative data from your BIPOC students and employees so that you can hear real life examples directly from those impacted, instead of perhaps relying on your own perception of the racial disparities and barriers that may exist and how best to address them. This can be done through focus groups, listening sessions, town hall meetings, etc. In doing so, it will be important to ensure these sessions are facilitated by a trusted individual who is skilled at navigating the discussion of sensitive topics.

Your engagement with the BIPOC community should not be limited to data collection. Rather, you must have a commitment to active, personal engagement with the BIPOC community at your institution which will provide another level of insight into the cultural mores and experiences of BIPOC individuals. Do you engage in targeted outreach to BIPOC populations? Consider partnering with student organizations/affinity groups on campus to sponsor your Title IX activities. Carve out some time from your Title IX work to attend activities sponsored by BIPOC organizations at your institution. Show up and be present to let BIPOC individuals know you are an ally. As the saying goes, “People don’t care how much you know until they know how much you care.”²

Don’t Forget the Personal Work

An often-overlooked complement to your data collection and assessment efforts is the personal work that should occur. We each have our own unique lived experiences that impact how we approach our work – whether consciously or unconsciously. Whether you also have responsibility for Title VI and/or Title VII work at your institution, you should approach your work through an equity lens. Civil rights-based work, such as Title IX, demands it!

This will require you to engage in extensive introspection to become aware of your own biases and blind spots and acknowledge what you don’t know. Prioritizing diversity, equity, and inclusion (DEI) within Title IX should not be viewed as a fad moment sparked by the current social justice movement. Rather, truly honoring intersectional aspects of the work requires a commitment to continuous learning, to acquire and maintain a level of racial and cultural intelligence that informs your Title IX work. You may (and should, if you are doing the work properly) experience occasional discomfort while undertaking this work. However, you must get comfortable with being uncomfortable, as this is symbolic of growth.

² This quote has been attributed to both Theodore Roosevelt and John Maxwell - take your pick.

Those looking to enhance training on racial, cultural, ethnic, and other biases should not forget the training mandate under the 2020 Title IX regulations. All members of the Title IX team (Title IX coordinators, investigators, decision-makers, and informal resolution facilitators)³ must be trained on certain topics prior to serving a role in the Title IX resolution process, including the mandate to serve impartially and to avoid bias and conflicts of interest. While this may nominally include sex/gender bias, it is fairly read to include avoiding bias for or against an individual based upon their race or any other protected characteristic.

This provides a great opening to discuss how the Title IX team members assess cases, work with case studies, and render determinations. When is race relevant, and when is race a consideration that should not influence the outcome? How do different cultures view consent and dating violence? How does that, or should that, influence decision-making in those cases?

While the regulations do not prescribe how often such training should occur, best practice dictates that the team be trained at least annually, with “refresher” training provided throughout the year, as needed. There is also flexibility as it relates to the training modality. Training may be provided in-person, virtually, and/or in an asynchronous format. The Title IX Coordinator should ensure that all Title IX team members are trained, and it is common for institutions to seek training through external sources.

When considering the source of your training, it is imperative to ensure the training is provided by a source equipped to address issues of equity including areas of racial bias. Be mindful that this regulatory training mandate is just the bare minimum and the personal work that Title IX team members undertake should supplement the training mandate under the Title IX regulations. You may find it worthwhile to use case studies in training that intentionally put the issues of race, culture, and ethnicity into play, to see how your team members contextualize and respond to such situations.

The Best is Yet to Come

After the data has been collected and you have engaged in personal development, you may discover areas of disparity and systemic barriers for BIPOC individuals. Don't be alarmed. Just forge ahead with your Title IX team, in partnership with the BIPOC community at your institution, to do the work necessary to eliminate those disparities and systemic barriers to equity. Especially if your Title IX office is not staffed with diverse personnel, your ability to outreach to and establish allyship with the Equal Employment Opportunity office, the Affirmative Action program, multicultural affairs organizations, and similar groups can make all the difference in creating trust and a perception of the fact that your office is receptive, safe, and equitable. As you undertake these efforts, assess your progress, fine tune your strategy, and continue to make demonstrable incremental progress. Not only will your Title IX efforts be better off, but you will be too.

³ There is no mandate in the 2020 Title IX regulations to train institution-appointed advisors. However, ATIXA recommends that you do so.