



**Academic Standards, Regulations and Admissions Committee
&
Student Affairs Committee**

**Response to Charge S-2018
October 6, 2020**

S-2018: University Policy 60.1.33 Title IX Policy and Grievance Procedures and University Policy 10.2.11 Code of Student Conduct

Review and make recommendations on:

- *the new Interim University Policy 60.1.33 (intended to replace 10.3.12 and 60.1.28) Title IX Policy and Grievance Procedures*
- *the Interim University Policy 10.2.11 Code of Student Conduct which reflects the proposed changes made to the University's Title IX Policy*

Background

The interim University policies now in place incorporate changes in response to the Trump Administration's recent changes to Title IX. The Rutgers University Senate has been given the opportunity to review the process by which these interim policies were written and make recommendations. In order to understand, evaluate, and draft a response to Charge S-2018 to be submitted for review for the October 9 Executive Committee with the intent to docket it for the October 16 Senate meeting, the Academic Standards, Regulations and Admissions Committee (ASRAC) and the Student Affairs Committee (SAC) have taken the following steps:

- Convened an optional meeting for members of ASRAC and SAC to speak to Sarah Shobut, a student representative of the policy committee on September 21, 2020
- Convened a joint meeting with Tim Fournier, Senior Vice President for Enterprise Risk Management, on Friday, September 25, 2020.
- Shared the following materials via email and housed in this [shared google drive](#) accessible to members of both committees:
 - the interim policies under review and the policies they are replacing

- notes and materials provided by Tim Fournier regarding the review and implementation process
- a presentation prepared by Jackie W. Moran, J.D. (Director of Compliance and Title IX Coordinator, Office of Student Affairs Compliance and Title IX) summarizing the policy changes and the nature of the process when a student is accused of sexual misconduct
- Attended a presentation at the RUSA Town Hall by Jackie Moran on October 1, 2020 (attended by a selection of committee members)
- Convened a joint session of the ASRAC and SAC on October 2, 2020

Throughout the process, the committees eagerly sought input from student members of the committees, campus student organizations and all committee members.

Items of Discussion & Particular Consideration

In conducting our review of the process by which the interim policies were written and the resulting policies themselves, the following were of particular interest and consideration:

- Rutgers University was given a short period of time (3 months) to review and respond to the changes in Title IX (new Title IX regulations are 2033 pages in length)
- In response to changes to Title IX, the University convened a task force that was broadly representative of University stakeholders
- Of greatest concern to the University were the following modifications to Title IX:
 - Major changes to Title IX jurisdiction in that Title IX applies when:
 - Conduct is alleged to have occurred in the United States **and**
 - Conduct is alleged to have occurred in a Rutgers education program or activity **and**
 - Alleged conduct, if true, would constitute Covered Sexual Harassment as defined in the Title IX policy

****With this change, incidents involving students in off-campus settings are not covered by the revised policy. This is particularly relevant to Rutgers students - many of whom live in off-campus housing.****

- Major change to Title IX “covered sexual harassment”
 - Sexual harassment (so severe, and pervasive, and objectively offensive that it denies a person equal educational access)
 - Sexual assault
 - Dating violence
 - Domestic violence
 - Stalking

In practice, this represents a more restrictive and narrow definition of what constitutes “sexual harassment”

- Establishes new protocols that must be followed by Title IX coordinators upon receipt of complaints that fall within the newly revised and more restrictive definition of “sexual harassment”. In addition, changes to the formal complaint process may dissuade students from moving forward with a complaint.
- Establishes new procedural requirements regarding the investigation and adjudication of such complaints
 - All procedural requirements must be applied to all Title IX cases – regardless of whether respondent is a student, employee, or third party
 - Live hearings are required for all formal Title IX complaints, and both parties’ advisors must be permitted to conduct live cross-examination
 - Both parties are provided all case file materials not only the relevant information

**These changes are dramatic difference from previous procedures and may dissuade students from pursuing a complaint.

- The University addressed the changes to Title IX that were of greatest concern in the following ways in crafting their interim policies:
 - Revised Code of Student Conduct (10.2.11) to prohibit sexual misconduct by students that falls outside the parameters of the scope of the newly revised Title IX

- Provided a number of supportive measures including non-disciplinary and non-punitive individualized services
- There does remain continued concern that the nature of the cross-examination process will have a chilling effect and will deter students from reporting incidents. In her presentation at the RUSA Town Hall, Jackie Moran indicated that her office recognizes this dilemma but is hopeful that students will view the informal resolution process option with its focus on repairing harm as a satisfactory option. In fact, in the months preceding these changes, more students have been pursuing this route.
- While not within the scope of the sub-committees' work, support for the expansion of information resolution resources may be beneficial.
- Moran also indicated that:
 - all sexual misconduct cases against student respondents will be processed by the Title IX office
 - the office will continue to operate in a "trauma informed" manner – highly sensitive to the traumatizing effects of the experience on students who have reported incidents
 - Title IX staff is readily available to answer questions, speak with students, and discuss hypotheticals
- Our review highlighted the need for Rutgers University to clearly communicate the newly revised definitions related to sexual harassment, specifically to our students, ensuring clarity of the defined Title IX processes particularly related to the hearing, cross examination, and appeals. More importantly, our review highlighted the critical need for the University to more actively educate students about the revisions and complexities associated with the new policies and procedures as well as provide emotional and legal support, as needed, to support students through the process.
- Our discussions highlighted that the changes to the Title IX regulations, and the timeline in which they were instituted nationally, have created common concerns across higher education and are not specific to Rutgers. Related to this, there currently are no examples or models of the best practices nor implications of the policy approach Rutgers has taken in response to the changes to Title IX.

Recommendations

Our review led to a broad set of recommendations that informed the language of our resolution below.

1. We strongly recommend that the University develop meaningful methods of educating the campus as a whole and students in particular of the changes to Title IX protections and its ramifications nationally and on the Rutgers campus. This includes students being apprised of applicable federal and state law (including age of consent, geographic location, etc.). It also entails making the policy changes and complaint and informal resolution processes more understandable to students and possibly simplified with respect to the Student Code of Conduct. We also recommend that the revised policies place greater emphasis on how Rutgers will support students in light of these changes and even that the ordering of the policies be revised so this support is more prominent.
2. A number of complainants' resources are delineated in pages 35 through 54 of University Policy 60.1.33. In the interest of supporting students, we recommend greater clarity about the nature of support available to students and that the range of support available is broadly disseminated across the University. To ensure equity, we strongly recommend that advisors and decision-makers have the qualifications to effectively and sensitively support students issuing a complaint - budgetary constraints should not preclude the effective execution of student representation. This support would also include guidance and counseling regarding the traumatic effects of potentially hostile face-to-face cross examination. Additionally, we strongly recommend that stable financial support of victim assistance services on all campuses be provided to meet the needs of students.
3. Given that Rutgers University and campuses across the country were given a short time period to put these policies into place, it is critical that careful attention be paid to the effects on our campus and across peer institutions so policies can be modified as necessary. In her presentation at the RUSA Town Hall, Jackie Moran indicated that she feels confident, given how quickly the task force acted this summer, that they can move quickly to revise policies if warranted. She also indicated that campuses have approached these changes differently but none of these approaches have been put to the test.

We recommend that Rutgers develop a full review process to assess the implications of the revised policies on the Rutgers campus as well as how peer institutions are responding, to determine their effectiveness and identify possible need for revision. In order to have any modifications to policies in place for Fall 2021, we recommend conducting a review at the conclusion of the Spring 2021 semester so policies can be

revised if necessary during Summer 2021. If a large portion of the student body continues remote instruction in Spring 2021, it may be necessary to conduct an additional review after the campus is fully populated with students. In addition to concerns identified, it is essential that that all cases, including those that are violations of the Code of Conduct are adjudicated expeditiously and that timelines associated with each case be reviewed to determine factors affecting the process. Furthermore, the committee has concerns about the application of the same procedures for Title IX and Code of Conduct cases, specifically which require the use of in-person cross-examination, and request that these procedures be carefully reviewed for their effect, intended and unintended, to determine the need for revisions.

Resolution

As a result of our review of *University Policy 60.1.33 Title IX Policy and Grievance Procedures and University Policy 10.2.11 Code of Student Conduct*, we present the following resolution with appropriate recommendations:

Whereas, the Academic Standards, Regulations, and Admissions Committee and the Student Affairs Committee have considered the interim policies *University Policy 60.1.33 Title IX Policy and Grievance Procedures and University Policy 10.2.11 Code of Student Conduct*

Be it hereby resolved:

that the University Senate recommends that Rutgers University

- A. Develop and execute in the near future a highly visible campaign using several communication channels and responsive to local campus norms and student diversity that clearly and understandably apprises students and the campus at large of the changes to *University Policy 60.1.33 Title IX Policy and Grievance Procedures and University Policy 10.2.11 Code of Student Conduct*
- B. Develop and execute in the near future a highly visible campaign that clearly and understandably apprises students of the support available to them when they file a complaint under these revised policies including the informal resolution process
- C. Provide a permanent annual budget commitment to fund the advisors and decision-makers necessary to effectively and sensitively support students issuing a complaint
- D. Provide a permanent annual budget commitment to fund victim assistance services on all campuses
- E. Develop and execute a process by which the policies are reviewed and subsequently revised, if necessary, with particular attention to the timeliness by which Code of Student Conduct cases are reviewed and adjudicated as well as the requirement for in-person cross-examination with Code of Conduct violations. This review process should include a timeline that allows for modifications to policies to be in place for the Fall 2021 semester or soon thereafter pending the student body's return to campus.