

20 MINUTES TO...TRAINED STUDY GUIDE:

# DOCUMENTATION

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## **20 Minutes to Trained: Documentation Table of Contents**

- I. Learning Outcomes
- II. Discussion Questions
- III. Case Studies
  - a. Professor Jones
  - b. Claire and David
- IV. Case Study Questions & Answers
  - a. Professor Jones
  - b. Claire and David
- V. ATIXA Model Policy on the Creation, Retention, and Storage of Records Related to Allegations of Sexual Misconduct and other Forms of Sex/Gender Discrimination
- VI. Related ATIXA Member Newsletter Tips of the Week



## **20 Minutes to Trained: Documents Learning Outcomes**

- Participants will understand the importance of documentation in an investigation.
- Participants will understand when and why to document using timelines.
- Participants will be able to articulate best practices relating to documentation, including, but not limited to: taking detailed notes, using direct quotes, noting everyone present at each interview, and reviewing/finalizing the notes with each interviewee upon completion of the interview.



## 20 Minutes to Trained: Documentation Discussion Questions

- If your decision is challenged in court, and your written documentation says one thing but your testimony of your own memory of what happened says something different, will the court pay more attention to what's in writing, or to your testimony of your own memory?
- As you are recordkeeping, which of these documents are important, and why?
  - The written letter of outcome?
  - Written notice of the allegations?
  - Written statements by the parties?
  - A log of all communications during the investigation?
  - A log of all evidence received during the resolution process?
  - A log of the timeline of the resolution process?
  - Written responses to the investigation report from the parties?
  - A letter of appeal outcome?
  - A summary of all remedies provided?
  - Written documentation that shows you provided the parties with regular updates on the status of the process?
- If a party discloses a specific disability diagnosis or prescription medications to you, do you think you should include it within the investigation documentation? Why or why not?
- If a party discloses evidence to you that is not permitted within your process, how should you include or not include it within your documentation?
- If another administrator not involved in your phase of the resolution process wants to make changes to the documentation you have created about your phase of the resolution process, what should you do?



## 20 Minutes to Trained: Documentation Case Studies

### Professor Jones

Frank, an openly gay student, comes to you to complain that Professor Jones, his (tenured) English professor, has made comments in class that make Frank “feel unsafe.”

Specifically, he alleges that Prof. Jones made the following comments:

- After the transgender letter was repealed by the Trump administration, Prof. Jones brought it up in class and said, “Finally, some common sense from Washington – you are either a man or a woman. Period.”
- When a student wore a gay pride shirt to class, Prof. Jones said, “I get not being ashamed of who you are having sex with, but is ‘proud’ really the word you should use?”
- He assigned all the students in class to write their persuasive essays on “trying to convince me that people should be able to use whatever bathroom they want to.”

There are about 26 students in the class, and Frank brought with him Georgina, Haley, Isaiah, Jeremy and Ken. He tells you that all the students will back him up and that he has heard that Jones is not liked in the department as well.

He also says he knows a student who was born biologically male, but identifies as a female. He says she is not comfortable even going to the English department offices because she also feels “unsafe.”

Frank requests that you assist him in withdrawing from Jones’s class, as do the other 5 students.

Further, Frank shares with you that a month ago, while walking across campus with Ken, he heard another student use the word “faggot.” He cannot identify the other student, but thinks he is in student government.

He also heard from Georgina that, at a recent social function, a group of students made fun of the LBGTO group on campus. As a result of this, he says that he feels even more “unsafe.”

Frank threatens to go to the media/OCR/hire a lawyer if you do not follow through.

## **Claire & David**

This case comes to your attention because Claire's roommate, Ellen, is concerned about them. She has heard them fighting both on the phone and in Claire's room. She feels that David is possessive and abusive.

### Ellen’s Statement

I've known Claire for almost 10 years. In the last couple of years since she started dating David, she has not been the strong independent woman that I've known. I've never witnessed David actually hit her, but I have noticed that after I hear them fighting she will always wear long sleeves and/or long pants. I've seen him grab her forcibly when we were out and he wanted to leave and she did not want to go. I also saw

him do it when he wanted her to go with him to his apartment and she did not want to leave our apartment.

The reason I'm here is because the other night when she was out studying he came by and wanted to come in and wait for her. I wasn't comfortable having him wait for her while I was going to bed, so I asked him to leave. He told me he would just wait a little while longer and then he would lock up. I told him no, and that I wanted him to leave now. He refused, and while we were arguing about this, Claire came home. He said, "Your bitch of a roommate was about to kick me out, do you mind if I stay here tonight with you?" Claire told him that she thought it would be better if they spent the night at his house, but he insisted on staying at ours. They went into her room, and I could hear them arguing. They weren't shouting but I could tell they were arguing.

Yesterday, when I came home, David was in our house. He said he was leaving a note and a gift for Claire. I asked him how he got in, and he said Claire gave him a key. I told him I didn't believe him, and that I thought he had had a key made without Claire knowing. He told me to go ahead and ask her. I did, and Claire told me that she did not give him a key and that he must've taken it from her purse when he dropped her off at class earlier that day. She seemed to think it wasn't a big deal, but I think it is.

I know that he has left marks on her that I've only seen very quickly but I'm afraid for her safety and you need to do something about this.

### Claire's Statement

Let me start by saying I know Ellen does not like David. He can be forceful, and he doesn't particularly care for her either. He has grabbed my arms, but to be fair, I have grabbed his arms too. Sometimes the stress of our relationship can get the better of both of us. When he gets

angry, he tends to raise his voice, and at least once in the library and in the academic building one of the staff had to tell him to be quiet.

He did take the key out of my purse the other day without my knowing and let himself into my apartment to leave me a note and a present. I know this really pissed Ellen off, but she just needs to get over it because I live there, too.

In response to a direct question about whether David ever hit her: He did hit me one time in the back and on the arm. It left bruises, and I was a little worried, but he apologized the next day and he had been drinking, so I wrote it off. My friends said that I should take pictures of the bruises, so I did. I don't feel comfortable giving them to anybody and I've only shown them to my friend, Gail, that one time. I wore long sleeves, to hide the bruises. Nobody said anything. Sometimes he will get forceful during sex and he has left marks on my arms and legs.

### David's Statement

Claire and I have a relationship that has its ups and downs like anyone else's relationship. I know her roommate Ellen doesn't care for me, and to be frank I don't care for either. She's really tightly wound and could probably stand to get a boyfriend around. To be honest, I think she's just jealous that Claire found someone, and she hasn't.

I did go over to Claire's the other night to meet up with her after her study group, but she wasn't there yet. Ellen made a big deal out of wanting me to leave but then Claire showed up and everything was cool.

When I took Claire to class the other day, I snuck her keys out of her purse so that I could go to her apartment and leave her a sweet note and a small present – it was a necklace – for our anniversary. Ellen was



there, and I tried to explain what was going on, but she threw a hissy fit.

In response to a direct question about whether he ever hit her: One night, when Claire and I were in a big fight, I went to leave, she grabbed my arms. I shrugged her off, and swung my hand to keep her from grabbing me again and ended up hitting her on the back because she turned around. When she came back at me, I grabbed her shoulders to stop her. I was pretty forceful that night, and the next day we talked about it and she apologized and I apologized. Ellen asked me about it, and I told her to mind her own fucking business.

Claire and I have engaged in some forceful sexual behavior, but we don't do it very often, and usually only after both of us have been drinking.



## 20 Minutes to Trained: Documentation Q & A

**Professor Jones**

For Discussion

What document-related considerations come to mind?

- Making sure you document Frank's report as well as separately documenting the other five students' accounts and have each interviewee review the interview notes.
- As the reported conduct has occurred over a period of time, constructing a timeline will help you keep track of the behavior and have a better understanding of how it may have affected others.
- Make note of all of your communications with individuals, including place and date, and each step you take in the process. If there are delays, note the reasoning. The fact that there is the potential for so many interviews only underscores the importance of maintaining clear interview notes and related documentation.
- Conduct your investigation process as if every investigation could end up in the hands of OCR and/or a lawyer – because it could.
- Documenting every step you take will also serve as a benefit for any appeals down the road.

## Claire & David

### For Discussion

At this point, Claire does not want to file a complaint and refuses to participate in an investigation. What are some considerations here?

- Even though Claire doesn't want to file a complaint or participate in an investigation, there needs to be an assessment to determine whether there is a threat to Claire or anyone else in the community. Regardless of the decision made, document the steps taken and thought processes involved in reaching your decision.
- Even though Claire doesn't want to file a complaint, make sure she understands the resources that are available to her, including, but not limited to, academic assistance and counseling. Document your communications to Claire so that you can keep track of what was offered and when.
- Keep careful documentation related to every individual interviewed (dates, times, content of interviews, interview note verifications) and evidence obtained or referenced (such as the photographs Claire mentioned). If you determine that there is no credible threat, that you will respect Claire's wishes, and decide not to proceed with an investigation for the behavior reported by Ellen, you want to have all of the information obtained on hand. Even if you do not act on the information you have gathered at the present time, you may return to it in the future if the parties are implicated in another report in the future.

**ATIXA Model Policy on the  
Creation, Retention, and Storage of Records Related to Allegations of Sexual Misconduct  
and other Forms of Sex/Gender Discrimination**

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Use and adaptation by ATIXA members is permitted.

**Policy Scope**

This policy covers records maintained in any medium that are created pursuant to the College's Sexual Misconduct Policy and/or the regular business of the College's Title IX Office. All such records are considered private by the Title IX Office, in accordance with FERPA and the directive from the Department of Education to maintain the confidentiality of records related to Title IX. These records may be shared internally with those who have a legitimate educational or administrative need-to-know, and will be shared with the parties to an investigation under the Sexual Misconduct Policy per the terms of this policy, applicable state and/or federal law, including FERPA, and/or Clery/VAWA §304. The Title IX Office controls the dissemination and sharing of any records under its control.

**Types of Records Covered Under this Policy**

**Records Pertaining to the Grievance-Resolution Process.** These records include, but are not limited to:

- Documentation of notice to the institution including incident reports;
- Anonymous reports;
- Any documentation supporting the preliminary inquiry;
- Investigation-related evidence (e.g., physical and documentary evidence collected and interview transcripts);
- Documentation related to the grievance-resolution process;
- The final investigative report (including findings and the basis for those findings);
- Remedy-related documentation;
- Resource and accommodation-related documentation;
- Appeal-related documentation;
- Any other records typically maintained by the College as the investigation file.

Specific examples of records pertaining to the grievance-resolution process include, but are not limited to: anonymous reports; intake documentation; incident reports; the written grievance; the names of the reporting party (if available), the responding party, any witnesses; any relevant statements or other evidence obtained; interview notes or transcripts; timelines, flowcharts and other forms used in the investigation process; witness lists, correspondence, telephone logs,

evidence logs and other documents related to the processing of an investigation; correspondence relating to the substance of the investigation; actions taken on behalf of the reporting party; actions taken to restrict the responding party; any interim measures taken for the parties; correspondence with the parties; medical, mental-health and forensic record evidence obtained during the course of the investigation; police reports; expert sources used in consideration of the evidence; documentation of outcome and rationale; correspondence and documentation of the appeals process; documentation of any sanctions/discipline resulting from the grievance-resolution process; and documentation of reported retaliatory behavior as well as all action taken to address these reports.

**Drafts and Working Files:** Drafts and “working files” are *not* considered records that must be maintained by the College, and these are typically destroyed during the course of an investigation or at its conclusion. They are preliminary versions of records and other documents that do not state a final position on the subject matter reviewed or are not considered to be in final form by their creator and/or the Title IX Coordinator. An example is a draft of a preliminary investigative report submitted to the Title IX Coordinator for review prior to finalization. An example of a “working file” would be the investigator notes made during one interview with topics the investigator wants to revisit in subsequent interviews. Sole possession records maintained as such in accordance with FERPA are also included in this category.

**Attorney Work-Product:** Communications from the Title IX Office or its designees with the College’s legal counsel may be work product protected by attorney-client confidentiality. These communications are not considered records to be maintained by the Title IX Office unless the Title IX Coordinator, in consultation with legal counsel as necessary, determines that these communications should be included as records.

### **Record Storage:**

Records may be created and maintained in different media formats; this policy applies to all records, irrespective of format. All records created pursuant to the Sexual Misconduct Policy, as defined above, must be stored in [database, digital and/or paper] format. The complete file must be transferred to the Title IX Office within fourteen (14) days of resolution of the grievance (including any appeal), if the file is not maintained within the Title IX Office already. Security protocols must be in place to preserve the integrity and privacy of any parts of any record that is maintained in the Title IX Office during the pendency of an investigation.

The Title IX Office will store all records created pursuant to the Sexual Misconduct Policy, regardless of the identities of the parties. Parallel records [should/should not] be maintained in the Office of Student Conduct and/or Human Resources, respectively [and should be maintained

in accordance with the security protocols of those offices]. Any extra copies of the records (both digital and paper) must be destroyed.

A copy of records showing compliance with Clery Act requirements by Title IX personnel will be maintained along with the case file in the Title IX Office [and in a separate aggregate annual Clery Act composite file, as well].

### **Record Retention:**

All records created and maintained pursuant to the Sexual Misconduct Policy must be retained *indefinitely* by the Title IX Office [in database, digital, and/ or paper form] unless destruction or expungement is authorized by the Title IX Coordinator, who may act under their own discretion, or in accordance with a duly executed and binding settlement of claim, and/or by court order.

### **Record Access:**

Access to records created pursuant to the Sexual Misconduct Policy or housed in the Title IX Office is strictly limited to the Title IX Coordinator and any individual the Coordinator authorizes in writing, at their discretion [or via permission levels within the database] [or insert a list of the titles of employees who have permanently approved authorizations into policy or in a separately maintained document]. Those who are granted broad access to the records of the Title IX Office are expected to only access records pertinent to their scope or work or specific assignment. Anyone who accesses such records without proper authorization may be subject to an investigation and possible discipline/sanction. The discipline/sanction for unauthorized access of records covered by this policy will be at the discretion of the appropriate disciplinary authority, consistent with other relevant college policies and procedures.

### **Record Security:**

The Title IX Coordinator is expected to maintain appropriate security practices for all records, including password protection, lock and key, and other barriers to access as appropriate. Record security should include protection from flood, fire, and other potential emergencies. Clothing, forensic, and other physical evidence should be stored [in the Title IX Office, designated secure storage area, and/or with the campus law enforcement entity]. All physical evidence will be maintained in a facility that is reasonably protected from flood and fire. A catalogue of all physical evidence will be retained with the case file.



**ATIXA Tip of the Week  
Newsletter  
July 9<sup>th</sup>, 2015**

**Q&A: Notification of Investigation and Requirements for Information**

Tip of the Week authored by Brett A. Sokolow, J.D., Executive Director, ATIXA

Once investigations are completed, what kind of requirements does one have as to the type and level of information to be release to the involved parties? We explore some questions and answers related to notification, sanctioning, formal resolution and written notification requirements.

***Q: When notifying parties of the outcome of an investigation, do you give all parties involved the complete investigation report?***

A: Under the [Federal Regulations](#), final determination is a term of art. It includes:

- The finding
- Any sanctions that result
- The rationale for the findings and any sanctions

[VAWA Section 304](#) adds to this letter the following additional mandates:

- Simultaneous
- In writing
- Includes when a determination is considered final
- Includes any changes that occur prior to finalization
- Includes information on whether there is an appeal and if so, the procedures for appeal

***Q: Assuming that the situation is not one of sexual violence, but of sexual harassment only and cannot be resolved informally, do the same rules apply regarding notification?***

A: According to the April 4, 2011 Dear Colleague Letter (DCL), it seems that the Office for Civil Rights (OCR) thinks not. The DCL references the technical FERPA rule, but the technical FERPA rule is not equitable, and I do not think OCR understands that as it impacts equitable appeals. Title IX trumps FERPA. With that said, OCR has required written notification of outcome, so there is not a clear message. ATIXA's answer is yes, we should treat all Title IX-covered behaviors the same way procedurally, but we are not a legal authority, of course.



**ATIXA Tip of the Week  
Newsletter  
July 7<sup>th</sup>, 2016**

**Providing Detailed and Specific Allegations**

Tip of the Week authored by Daniel C. Swinton, J.D., Ed.D., ATIXA Senior Associate Executive Director

Two recent court cases stress that under the principles of fairness and due process, institutions must provide the responding party with sufficiently detailed and specific allegations.

In *John Doe v. Brandeis University*, (D. Mass, March 31, 2016), the court declared, “Brandeis’ failure to inform [the responding party] of the details of the charges appears to have had a significant adverse effect on his ability to prepare a defense” (p. 64). The court added that this was particularly true because of the complexity and vagueness of the allegations, “[The responding party] was expected to defend himself against the vague and open-ended charge that he had ‘numerous nonconsensual interactions’ with [the reporting party] from September 2011 to May 2013....At a minimum, the failure to provide [the responding party] with notice of the specific charges against him may have substantially impaired the fairness of the proceeding” (p.65).

This is in-line with a key takeaway from *John Doe v. The Rector and Visitors of George Mason University* (E.D.Va. Feb. 25, 2016). In that case, the responding party was expelled from George Mason when the appellate officer overturned the decision of the hearing panel. The student was charged with “alleged involvement in an incident that took place on or about October 27<sup>th</sup> 2013 (and continuing) in a George Mason residence hall” (p.14). The panel found the responding party not responsible for the incident on October 27, though the appellate officer relied on the “(and continuing)” parenthetical to base a decision on a number of other incidents to warrant the expulsion. The court determined that the responding party did not have adequate notice of these additional incidents, “Simply put, [the responding party] was not fairly on notice that events other than those of October 27, 2013, were at issue in his disciplinary hearing” (p.17). It continued, “Failure to provide clear and specific notice at any point that might allow for a meaningful defense is constitutionally insufficient to provide due process” (p.19). Accordingly, he could not appropriately address, nor provide a defense to the unspecified allegations.

It is critical that institutions describe the incidents and the violations with specificity and detail particularly if there is more than one charge, incident or allegation.





**ATIXA Tip of the Week  
Newsletter  
August 18<sup>th</sup>, 2016**

**Documenting Interim Measures**

Tip of the Week authored by Brett A. Sokolow, J.D., ATIXA Executive Director

***Q: What is best practice in documenting interim measures utilized during an investigation?***

A: I don't know that it's a best practice, but I attach a page to the letter of final determination to the reporting party. That letter contains a checklist of all possible remedies offered by the college, with those elected checked off. I usually include the following text:

*This letter summarizes the remedial actions taken by the college on your behalf, to date. The below checklist reflects all available remedies, and those that are checked are those that you have elected to receive. Should there be any additional remedies listed here that you decide are needed, or other needs that arise for you from this matter, please do not hesitate to call on me for additional resources. If you find any inaccuracies in this list, please notify me immediately. On behalf of the college, I wish you the best of luck in your continued academic endeavors and now consider this matter to be closed.*

If there are any time delimited or renewable remedies, I will note those in this letter as well, and the procedures for their renewal or expiration.



**ATIXA Tip of the Week  
Newsletter  
August 25<sup>th</sup>, 2016**

**Outlining Details of the Allegation for Responding Parties**

Tip of the Week authored by Brett A. Sokolow, J.D., ATIXA Executive Director

***Q: Is it best practice to provide details of the allegation to the respondent before their initial interview with an Investigator?***

A: I will typically provide a general description of the allegations. No more than a paragraph and usually just a few sentences. I don't get deep on specifics. Here are some examples:

1. Jennifer Jones has alleged that on June 17, 2015, you engaged in sexual activity with her without her consent. Specifically, she alleges that during an otherwise consensual interaction, you placed your penis in her mouth without her permission, and that she had told you on many occasions that a condition with her jaw prevented her from being able to perform oral sex without discomfort. The University is seeking to determine whether the alleged conduct violates University policy, listed below. The University wishes to interview you related to these allegations so that the University can determine whether its policies, listed below, have been violated by your conduct. The University has not drawn any conclusions about these allegations, and will follow its procedures for investigation to obtain the evidence necessary to make a determination.
2. Harry Hayes has alleged that on three occasions recently, your behavior placed him in fear for his safety. He believes that you may be stalking him, and that you may intend to do him harm. The alleged incidents occurred on October 7th, October 8th and October 10th. Mr. Hayes believes you may be disgruntled following a break-up between you. Mr. Hayes also believes that you may have access to his computer without his authorization. You are directed to cease any incursions into his computer that may be occurring and to preserve all records on your computers or devices that may provide evidence related to these allegations. The University wishes to interview you related to these allegations so that the University can determine whether its policies, listed below, have been violated by your conduct. The University has not drawn any conclusions about these allegations, and will follow its procedures for investigation to obtain the evidence necessary to make a determination.
3. Mary Madison has been relocated by the college and will not be returning to your apartment. We will be sending a crew from facilities today to pack and remove her things. You will receive a no-contact order under separate cover, and I understand that you will be meeting with the dean tomorrow morning to determine if you will be interim suspended. Outside of the no-contact and potential interim suspension, the University is also obligated to conduct an investigation into Mary's allegations that you have been abusive and violent toward her since the beginning of your relationship over fourteen months ago. Mary alleges more than a dozen physical interactions in which you were violent or caused her injury. Further, she alleges that you were abusive toward her, controlling, and manipulative. Below, you will find details on the University policy on Intimate Partner Violence and Abuse. The University wishes to interview you related to these allegations so that the University can determine whether its policies, listed below, have been violated by your conduct. The University has not drawn any conclusions about these allegations, and will follow its procedures for investigation to obtain the evidence necessary to make a determination.

Sometimes, I give much less detail, intentionally, or do surprise interviews without any notice, but those are exceptions, not the rule.



**ATIXA Tip of the Week  
Newsletter  
September 15<sup>th</sup>, 2016**

**Q&A: Including Case Details in Notice Letters**

Tip of the Week authored by Brett A. Sokolow, J.D., ATIXA Executive Director

**Q:** Can the Notice of Interview and Investigation letter include details about the case?

**A:** Yes, indeed, in most cases, it should. I usually give about a paragraph of detail, when it makes strategic sense to do so.

**Q:** There is concern that offering details before the interview might lead to a greater tendency for the witness/respondent to consult with a party or other witnesses, potentially leading to discussion of what information they all want to share to an Investigator. As such, might it be more strategic to provide only minimal details and as little notice as possible?

**A:** While I can see this point, I want to challenge a little as well. No question there are times when too much release in advance is not strategic. But, the value I hear you prioritizing is the integrity of the process and its ability to uncover evidence. Another value that is worth prioritizing is the fairness of the process. Those values must be balanced. Sending a responding party into an interview virtually blind is not fair. I deal with a lot of attorneys who will not let their clients meet with me unless and until they have some sense of what the accusations are. This is part of the art of what we do, giving enough without giving too much. I don't provide a mere sentence, and I don't provide one or two pages of detail. I usually write one good solid paragraph of the nature of the allegations and the general (sometimes specific) policies that are being investigated.

Frankly, I have a lot of lawyers who just bring their clients in to meet with me to learn the details of the allegations, and they refuse to tell me much at all, in return. Then, they confer with counsel and schedule a follow-up interview to talk. That wastes a lot of time, so I lay the groundwork for the first interview to be an exchange, rather than a one-way sharing of information, by offering a descriptive paragraph and usually having a call or pre-meeting with their attorney/advisor where I often share some more details.

Sometimes, it's like "Let's Make a Deal" where I have to keep dripping information until the attorney tells me they are willing to meet. In such cases, your effort to give as little notice as possible isn't going to bear fruit for you with an interview, anyway, so you might as well play with more cards on the table. Flexible process, not rigid process, is the name of the game here, and while I agree that you lose the advantage of surprise that you gain with your approach, you often gain a more cooperative witness, who doesn't feel like they are subject to a one-sided, adversarial, "gotcha" process where all the cards are stacked against them. Your approach is more common with HR-led investigations of (at-will) employees than it would be with students who are owed due process at a state-supported institution.



**ATIXA Tip of the Week  
Newsletter  
October 27<sup>th</sup>, 2016**

**Notice of Outcome to Reporting and Responding Parties**

Tip of the Week authored by Daniel C. Swinton, J.D., Ed.D., ATIXA Senior Associate Executive Director

One of the most frequent questions I receive in trainings is whether Title IX requires institutions to notify both parties of the outcome of a Title IX complaint. The answer is, Yes. Then I almost always get the follow-up question, “But what about employees?” Again, the answer is, Yes. Equity demands it and Title IX is ultimately about equity.

The Office for Civil Rights (OCR) made the requirement quite clear in its recent [Resolution Letter](#) with Wesley College:

“Title IX requires that a school adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of sexual harassment and sexual violence. One element that is critical to achieving compliance with Title IX is providing notice to both parties of the outcome of the complaint” (p.27).

OCR continued, noting that Wesley College violated Title IX:

“... by failing to provide written notice of the outcome to victims, the College denied such students basic procedural protections to which they are entitled under Title IX, and the opportunity to appeal the College’s findings in accordance with the College’s grievance procedures” (p. 27).

But some may argue that this quote only applies to students. True, the language refers to a student case, but the principles of Title IX cited do not discriminate on the basis of the group (student, faculty, staff) to which the victim or the accused belongs. OCR called notice of the outcome a “basic procedural protection to which [both parties] are entitled under Title IX” (p.27).

In its [2014 Questions and Answers on Title IX and Sexual Violence](#), OCR is equally clear when answering the question, “What information must be provided to the complainant in the notice of the outcome?” OCR answers, “Title IX requires both parties to be notified, in writing, about the outcome of both the complaint and any appeal. OCR recommends that a school provide written notice of the outcome to the complainant and the alleged perpetrator concurrently” (H-3, p. 36). The notification to the complainant should include the applicable finding, sanction, and any remedial or other actions taken that directly relate to the complainant.

[VAWA Section 304](#), which amended the Clery Act is also direct on requiring notification of the reporting and responding parties in cases of dating violence, domestic violence, sexual assault, and stalking. The law requires “simultaneous notification, in writing, to both the accuser and the accused of (A) the result of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking...(C) any change in the result, and (D) when such results become final.” (p. 62789). The result is defined under VAWA as finding, sanction, and a detailed rationale and this applies to all institutional disciplinary proceedings, not just those involving students.



**ATIXA Tip of the Week  
Newsletter  
February 16<sup>th</sup>, 2017**

**Investigation Details in a Letter to the Respondent**

Tip of the Week authored by Daniel C. Swinton, J.D., Ed.D., Senior Associate Executive Director, ATIXA

**Q:** How much detail should an Investigator provide to a Respondent when they are notifying that a case has closed due to the Complainant no longer wishing to move forward?

**A:** Well is the case really closed or just on-hold? Is there a possibility the reporting party would come back in 3-6 months and ask that the case be addressed at that time? Title IX requires institutions to provide reporting parties this flexibility.

With that in mind, I would recommend stating that the reporting party does not wish to pursue the allegation further at this time. I would also recommend some language indicating that if the institution receives additional information from either the reporting party or other sources, the case may be re-examined at that time.

A caveat to consider, is the victim concerned about additional violence if the case were to proceed? If so, then I would be inclined to provide fewer details, though I would state that the reporting party has asked that the institution not proceed further with the investigation at this time.