

Working with External Contractors/ Consultants in Title IX Processes

Title IX Coordinator Pathway Certificate

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YOUR PRESENTERS



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SESSION OUTLINE

- Starting Points and Considerations for using external contractors for intake, investigations, hearings, and appeals
- When to go external
- Hiring considerations
- Pitfalls

Starting Points

- Understand your available resources
 - If advocating for resources, consult with community partners to weigh benefits and risks
 - Your GC/Risk Management team may be particularly helpful
- Talk to your colleagues about their experiences
 - Don't rely on website blurbs
 - Ask for references
 - Ask current external partners

Starting Points (cont.)

- Work with legal counsel to define the scope of the work
 - Make sure this scope is in writing and understood by everyone involved
 - Consistent communication about role is key
 - Communicate the scope of this work to parties, Title IX team members, and the community
 - Ex: “I’m an attorney, but in this process I’m acting as an investigator to gather facts and information. This means I’m not *your* attorney, I’m not the attorney for [the other party], and I’m not the attorney for the University.”

Strategy for External Support

- Considerations:
 - Is this a temporary fix or a permanent solution?
 - Think about the costs and benefits of outsourcing particular roles
 - Intake (large volume, unpredictable, high burnout risk for staff)
 - Investigations (unpredictable in length and complexity, concern about restricting from a cost perspective)
 - Hearings (more predictable, but can be a challenge if previous steps in the process created risk)
 - Hearing Officers
 - Advisors
 - Appeals (more predictable, but can be a challenge if previous steps in the process created risk)

Group Discussion

- On your campus, when would external support be helpful?
- On your campus, when would external support be harmful?

When to go External

- Consider stakeholder expectations (including parties)
- Perceived or actual conflicts of interest/concerns of bias
- Institutional history
- Complexity of the case
- Parties involved in the case
- Legal risk
- Comfort level of Title IX staff

Building Capacity

- Don't waste the opportunity
- Ask contractors to train staff while they do the work
- If you get a break - take the break to step back and reconsider
 - Staffing
 - Best use for permanent external support
 - Costs/Benefits
 - Downsides to going external

Hiring Considerations

- Do they have higher ed experience?
 - Watch out for “dabblers”
 - Watch out for “Education Law”
- Do they have experience doing the exact work you’re looking for?
 - There can be a benefit to cross-training, but
 - Roles within the process can be very different (intake v. appeals)
 - Focus on experienced intake and hearing officer practitioners, in particular

Hiring Considerations (cont.)

- How do they view themselves working with you?
 - Partners?
 - Completely independent?
 - Highly deferential?
- Responsiveness
 - Consider this throughout the process
 - Advocate when needed
 - Cut ties when needed

Pitfalls

- Lack of responsiveness to the parties (which you may not be aware of)
- Lack of responsiveness to you (red flag)
- Missed deadlines
- Failure to seek input on issues related to policy interpretation
- Failure to get sufficient information
 - Intake
 - Investigations
 - Hearing Officers

Conclusion

- Working with external contractors/consultants in the Title IX process can relieve pressure on staff, allow for an independent assessment, and help in times of transition or turnover.
- Even if you plan to work with external contractors/consultants in the short-term, make longer-term plans for onboarding external support when needed, maintaining a consistent process, and getting the benefits of fresh ideas and approaches.
- Because you may not always have access to external support, take the opportunity to build capacity when external contractors/consultants are there to help with the Title IX process.

QUESTIONS?





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