

Comments on the Dear Colleague Letter

Changes to the DCL should include the following protections for all accused students (in no particular order – all are important):

1. No college investigation should begin without an accused student being advised of their rights and told that anything they say can be used against them by the school and/or turned over to law enforcement
2. Students and parents should be given more information on Title IX/DCL and college disciplinary procedures related to violation of the college's sexual and gender misconduct policy
3. Schools provide a lot of information on when and how to file a TIX claim against someone. Students should be given clear instructions on what to do if they are accused, including:
 - a. They should call their parents/guardians immediately. This is as serious as being arrested and they cannot handle it on their own. This isn't underage drinking or cheating on a test. This is an unbelievably complicated, very criminal-like procedure, with life-altering consequences. No college-age student is prepared to handle this alone.
 - b. Colleges should be compelled to have all students sign a consent form that compels the college to IMMEDIATELY notify parents/guardians if their student has been accused of a violation of anything that falls under the TIX/DCL – before any statements are made to any campus official. In fact, perhaps they (both students and parents/guardians) should sign a form that DECLINES this notification.
 - c. They should not make any statements to anyone, including campus safety or a TIX administrator without seeking counsel from someone NOT AFFILIATED WITH THE SCHOOL.
 - d. Accused students should be given access to a list of resources NOT AFFILIATED WITH THE COLLEGE that they can contact for support. This should be provided as soon as a student is informed that a claim has been made and prior to ANY statements are made. Accused students should be given adequate time to access these resources.
 - e. It should not be a secret the rights that you DO NOT HAVE. It is not fair to simply refer students to the policy of the school. Most are worded in a very innocuous way. It is impossible to see/know what the risks are for accused students. Most students (and their parents/guardians) will assume that "normal" due process rights apply. This is not the case and this should be stated specifically.
4. **Accused students should never have to choose between having a qualified advisor and having a parent/guardian present during all interviews, meetings, procedures. If the student agrees, a parent should always be allowed to remain in the room.**
5. Incoming students (I would argue all students) need more than training on **"affirmative consent."** If this is the bar, all students should be informed that this consent can be withdrawn or nullified AT ANY TIME, even (days, weeks, months, years) after the encounter has ended, **and what will happen if this is the case.**
6. Male students should be trained to understand what stalking and harassment looks like so that they can know if they are a victim of this and that they can, and should, file a claim with the Title IX office (ex. Unsolicited snapchat pictures of certain body parts, or threats to file a claim if you break-up or withdraw your affections). Most men do not think of themselves as victims of emotional/non-physical forms of harassment/assault.

7. Schools should disclose that they are required to accept accuser's version as the truth, which means that the accused's version has little or no weight, especially when there are no witnesses, and if alcohol is involved.
8. Accused cannot have a lawyer represent them in the way they would in a normal legal process. The school disclose what this means – and accused students should NOT BE DISCOURAGED FROM USING AN OUTSIDE ADVISOR
 - a. Students with certain learning disabilities are at a distinct disadvantage during interviews and hearing boards and accommodations BEYOND what they receive under an IEP or other plan should be requested and granted.
9. Accused cannot cross examine the accuser. The school must disclose what this means and how this impacts the process.
10. Evidence provided by and witnesses of an accused student are secondary to those of the accuser. The school must disclose what this means.
11. School must disclose that a "school-trained" advisor does not mean that they are trained to defend you or help you prevail in an investigation or school disciplinary hearing. They are only trained in the "procedures" of the school, which presents inherent risk in the current environment. The requirements of the DCL create a distinct and unavoidable conflict of interest for all school officials, **and accused students are second class citizens from the onset.**
12. No one questions the fact the colleges are using tuition and other revenue to pay for **all resources available to accusing students**, without providing equal resources for accused students, and denying them of their due process rights, using the preponderance of the evidence standard, and allowing their accusers to appeal the findings and sanctions of disciplinary proceedings.
13. Accused students who can afford to retain outside resources to defend against accusations, are only able to use them at about 30% of capacity. Advisors cannot speak on the behalf of the accused at during investigations or during disciplinary procedures.
14. Every school has their own way of handling claims. Even lawyers, trained in the rule of law, must navigate the nuance and idiosyncrasies of each school's administration, policies, procedures – **both the written ones and the ones they carry out in secret.**
15. Students should be advised of the details of the claim against them prior to any questioning. TIX admins/campus police should not be allowed to question an accused student on their version of the events without providing this information. Failure to do so allows the school to use the interview process to lead the accuser to admit to some action/behavior that would allow a claim to proceed to formal charges. **This is entrapment.**
16. Accused students should be informed that a college "trained" advisor does not mean that they are trained to help a student defend themselves against the charges. They are trained in the colleges procedures and are charged with protecting the college.
17. **If students are going to be indoctrinated that all encounters should be viewed through the lens of sexual assault, all students should be properly prepared should an accusation be made.**
18. Interviews and meetings should be recorded by a non-school employee and transcripts provided to all participants in a timely manner for review and comment.
19. When more than one claim has been made against a student (yes, this does happen), the school should be required to inform the accused student, regardless of whether one or both accusers wants to proceed with the formal process. AND the school should immediately hire independent

investigators for each claim. There is no way the school can conduct an unbiased investigation once they have knowledge of more than one claim against a single person, particularly when the assumption is always that the accuser is telling the truth.

20. Accused students should be given access to all information related to their case, in a timely fashion, and in a manner that does not add to the burden of their defense. **College should be compelled to provide a full packet for both the accused student and their advisor.**
21. Under the current DCL process, all sexual assault education is based on the assumption that an accuser has a legitimate claim. This allows any and all claims to be rubber-stamped. **There should be serious consequences for false accusations, and the process should provide adequate mechanisms for lies to be exposed.** There is just too much at stake to abdicate this responsibility.

Thank you for giving me the opportunity to comment.