



Association of
Title IX Administrators

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What Your Legal Counsel Needs to Know About Civil Rights Compliance

ATIXA Time with IX

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Today's Presenters



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Legal Counsel: A Civil Rights Partner

In Partnership

- The Title IX Coordinator (TIXC) is responsible for overall Title IX compliance
- Legal counsel identifies and analyzes legal risk, interprets governing law, and protects the institution's legal interests
- Those responsibilities overlap—but they are not interchangeable
 - Each role brings distinct expertise to the institution
- A strong partnership preserves both legal judgment and the integrity of civil rights processes
 - Each role “owns” specific aspects of the processes, but the processes are stronger when the roles work together

Why Counsel Needs to Know the Program

- Attorneys serving as legal counsel have varied knowledge of and experience navigating civil rights laws, including Title IX
 - Although some (mostly larger) institutions hire legal counsel that have extensive experience in Title IX, many attorneys are generalists or have competing issues requiring their attention
 - There is distinction between general counsel and litigation counsel
- **Legal counsel needs to understand:**
 - The core requirements of applicable civil rights laws and regulations
 - The process from report intake to resolution
 - Administrator/Institutional policy and decision-making discretion
 - The intersection of Title IX, other civil rights laws, and institutional processes
 - The difference between a defensible policy and a defensible practice

Differing Perspectives

- TIXCs primarily view policies, practices, and potential concerns through a Title IX lens
 - TIXCs often (but not always) keep up with civil rights-related changes
- Legal counsel typically approach issues through compliance, risk, and reputational lenses
 - Does not consider issues solely through Title IX, or civil rights framework
 - Must also consider: State laws, contracts, union rights, exposure, precedent, liability, and reputation
 - Often responsible for monitoring a range of legal updates, including changes that do not fall under Title IX
 - **Examples:** Bullying/Hazing, employment, state civil rights, federal agency enforcement, and litigation trends
 - Often concerned with instances in which laws/regulations/compliance requirements may differ or sometimes conflict

Build the Partnership Before the Crisis

- Schedule periodic TIXC and legal counsel check-ins
- Designate opportunities for partnership
- Review reports, outcome letters, drafts of published materials
 - Review policies, templates, and high-risk decision points together
- Clarify who handles agency complaints, subpoenas, litigation holds, and media-sensitive matters
 - Agree on escalation triggers
- Discuss privilege before a crisis
- Make consultation routine enough that escalation does not itself signal panic

The Threshold Question: What Hat Is Legal Counsel Wearing?

Not every conversation with legal counsel is privileged

- Legal advisor: Interpret law, assess legal exposure, give legal advice
- Process advisor: Address procedure, jurisdiction, preservation, or external questions, especially when policy is silent
- Institutional representative: Respond to agency action, litigation, subpoenas, or threatened claims
- Operational participant: Perform a function the policy permits counsel to perform
- Risk Manager: Predict downstream effects from a particular situation

A Practical Escalation Protocol

Involve counsel when the issue involves:

- Conflict involving high-profile actors
- Competing legal obligations (state laws conflict with federal requirements)
- Emergency action with substantial legal consequences
- External scrutiny requiring coordinated legal response
- Material litigation or regulatory exposure
- Novel or unsettled legal question
- Significant departure from ordinary process

Legal Counsel's Role in High-Profile Matters

High-profile matters require more coordination, not different procedural rules

- Clarify roles and decision-making authority early
 - Coordinate external obligations involving litigation, regulatory inquiries, preservation, subpoenas, and public communications
 - Separate legal, reputational, and operational pressure from the evidentiary and procedural decisions assigned by policy
- Establish clear communication among TIXC, legal counsel, leadership, and other necessary stakeholders
 - Define what information leadership or the Board needs—and what it does not
- Protect the independence of Investigators and Decision-makers from institutional pressure or informal influence
- Distinguish risk arising from the alleged conduct from risk created by the institution's response

Legal Counsel's Role in the Title IX Grievance Process

- Counsel should play a role in the process, but it is distinct from other Title IX roles
- **Legal counsel should:**
 - **Help assess** novel or complex legal issues without directing the TIXC's exercise of their independent responsibilities
 - **Advise on the intersection** of Title IX with other legal obligations and institutional processes
 - Individuals with Disabilities Education Act (IDEA)/Manifestation Determination Review (MDR)/Section 504 concerns, conflicting state/federal laws, multiple applicable processes
 - **Identify and address legal risk** without assuming ownership of the grievance process
 - **Preserve appropriate role boundaries**, neutrality, and independent decision-making
 - Does legal counsel interact with attorney advisors? Does counsel come to hearings?
 - **Serve as a thought partner** or a second set of eyes for reports and outcome letters

Legal Counsel Review vs. Substantive Control

- **A legal counsel review may include:**
 - Procedural gaps
 - Internal inconsistencies
 - Incorrect legal standards
 - Missing analysis
 - Language that creates unnecessary legal exposure
- **Substantive control looks like:**
 - Changing factual findings
 - Directing credibility conclusions
 - Selecting an outcome because it reduces institutional risk
 - Rewriting the rationale so the stated reasoning no longer belongs to the DM

The Record: Another Part of Compliance

- Legal counsel can help TIXCs ensure the record will make sense to someone who was not in the room when the decision was made
 - Can a later reader tell who made the decision?
 - Does the record explain why?
 - Does the rationale track the applicable policy and standard?
 - Are legal advice and process ownership clearly separated?
 - Does the written record accurately reflect what actually occurred?
- Legal counsel needs to understand not only the legal requirements, but how the institution's civil rights process is being carried out and documented

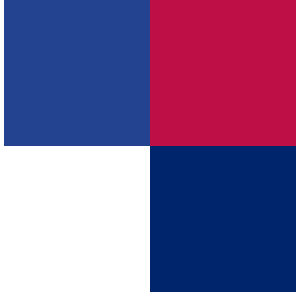
Legal Counsel and TIXC: Best Practices

- Ensure legal counsel understands the program, not just the policy
- Recognize the different expertise and perspectives each role brings
- Establish clear escalation triggers
- Use legal counsel as a thought partner, not a shadow decision-maker
- Keep legal counsel current on operational realities, and expect counsel to keep the civil rights team current on relevant legal developments.
- Be intentional about privilege and documentation
- Build the partnership before the crisis
- Be clear about what role legal counsel is playing

Questions

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