

SCHNEIDER —
EDUCATION &
EMPLOYMENT
— LAW

Title IX & Campus Civil Rights in 2026

Day Two — One Case, Four Populations

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Day Two at a glance

1

Advanced evidence & credibility issues

9:05

2

Different populations, different problems

10:15

3

Retaliation, culture & the mistakes that grow cases

1:00

4

Workshop: what to fix before the next year

2:00

OUR METHOD

One hard case — the Rivera athletics matter — carried across the day:

- Advanced evidence & credibility
- The same facts across four populations
- Retaliation & culture
- Then: what will you fix?

How we'll work today

- One hard case, carried all day. *The Rivera athletics matter — messier evidence, more players, higher stakes than yesterday.*
- It touches four populations at once. *A student-athlete, a graduate-assistant employee, a tenured faculty rep, and a coach — one incident, four playbooks.*
- Same three questions. *What does the law require? What are the hard judgment calls? How do we do it well?*
- It ends in a plan. *The gaps this case exposes become your fix-it list in the closing workshop.*

Ground rule: Hypotheticals only. Share the shape of a problem — never identifying details of a real, live matter.

1

ADVANCED EVIDENCE & CREDIBILITY

When the record won't cooperate

Meet the Rivera case — delayed, multi-source, and full of digital breadcrumbs.

The report

- **An anonymous email to the Athletic Director alleges that Coach Rivera, a popular assistant coach, has crossed lines with athletes.**
- Weeks later, Taylor — a student-athlete — comes forward: a season of sexualized comments and one incident of unwanted physical contact on a team trip.
- Taylor reports months after the incident, once the season is over.
- There is a team GroupMe with relevant messages, a since-deleted video someone described, and texts between Taylor and Rivera that look ambiguous.
- Morgan, a graduate-assistant on staff, may have witnessed some of it — but is worried about their position.

Discussion: Where do you even start with an anonymous tip, a delayed report, and vanishing digital evidence?

First instincts on a messy report

1 Does an anonymous tip obligate you to do anything? How far do you go?

2 Taylor reported weeks later — does that change the analysis?

3 What is disappearing right now while we talk?

Four evidence problems that trip people up

Inconsistent accounts

Separate core consistency from peripheral detail. Inconsistency is a factor to weigh, not an automatic verdict.

Delayed reporting

Common, with many causes. Explore the reasons neutrally; delay is not proof either way.

Digital evidence

GroupMe, texts, a deleted video, metadata. Authenticate, keep in context, preserve chain of custody.

Third-party & anonymous reports

A response duty may still attach. Corroborate what you can; be transparent about limits.

The throughline: None of these decides the case by itself. Each is a factor to weigh, document, and explain.

Delayed reporting — analyze it, don't score it

- Delay is common and expected. *Fear of retaliation, team dynamics, shame, and uncertainty all drive delay — especially in athletics.*
- Explore the reasons on the record. *Ask neutrally why now and why not earlier; document the explanation.*
- Don't let delay substitute for analysis. *It neither proves nor disproves the account; weigh it with everything else.*
- Watch for corroboration that survives delay. *GroupMe threads, prior confidants, and patterns can anchor a late report.*

Best practice — the digital evidence in this case

- ✓ Preserve immediately: hold letters to the AD, IT, and relevant staff the moment a complaint is anticipated.
- ✓ Freeze the GroupMe: capture the full thread with metadata, not screenshots — and identify every member/custodian.
- ✓ Chase the deleted video: platform preservation requests and device forensics before it's unrecoverable.
- ✓ Authenticate: match handles to people, verify timestamps, and preserve surrounding context.
- ✓ Chain of custody: log who collected what, how, when, and where it's stored; hash at acquisition and transfer.
- ✓ Keep an evidence log from minute one.

The accounts diverge

- Coach Rivera denies everything and says the texts show a friendly, appropriate mentoring relationship.
- Morgan, the graduate assistant, confirms some comments — but grows vague when asked for specifics, glancing at their contract status.
- Two teammates give inconsistent accounts of the trip; one now says they “don't really remember.”
- **You have a denial, a frightened employee-witness, and shaky peripheral witnesses.**

Discussion: How do you weigh a witness whose fear may be shaping the testimony?

Writing findings in a close case

Rivera is a genuinely close case. A defensible finding shows its work.

1

State the standard

Name it — preponderance or clear-and-convincing — and apply it honestly, even when the answer is uncomfortable.

2

Show the weighing

Lay out what supported and undercut each conclusion; a close call should read like reasoned judgment.

3

Tie facts to findings

Every conclusion points to specific evidence — not impressions, not the coach's reputation.

4

Name the gaps

Acknowledge what you couldn't resolve. Candor about uncertainty is a strength, not a liability.

The test: A careful reader who disagrees with the result should still see it was reached fairly, by the evidence, and by the stated standard.

Write the finding you can defend

THE SETUP

The evidence genuinely cuts both ways. The point isn't the 'right' outcome — it's a rationale a skeptical reader would respect.

HOW TO RUN IT

- Hand out a two-page evidence summary of the Rivera trip incident.
- Tables draft two or three sentences of finding-and-rationale under a preponderance standard.
- Swap with a neighboring table and pressure-test each other's reasoning.
- Debrief: what made the strongest rationales strong?

Timing & format: 14 minutes · tables draft, then peer swap

Best practices — advanced evidence, in one screen

- ✓ Treat every evidence problem as a factor to weigh and document — never a shortcut to a verdict.
- ✓ Preserve digital evidence immediately; go native, not screenshots; keep chain of custody.
- ✓ Explore delay and reluctance neutrally and put the reasons on the record.
- ✓ Weigh credibility on articulable factors; name the pressures without letting them decide.
- ✓ Write close-case findings that state the standard, show the weighing, and name the gaps.

2

DIFFERENT POPULATIONS, DIFFERENT PROBLEMS

Same facts, four worlds

One incident — a student, an employee, a faculty member, and a coach. Four playbooks.

One incident, four people, four playbooks

Taylor — student

The complainant athlete. FERPA, the student process, and developmental context shape the response.

Morgan — employee

The graduate-assistant witness (and possible complainant). Title VII, HR, and possible contract terms.

Prof. Doyle — faculty

The tenured faculty athletics rep who allegedly discouraged reporting. Tenure and academic-freedom concerns.

Coach Rivera — athletics

The respondent. Power dynamics, mandatory reporting, visibility, and NCAA overlay.

The constant: Fairness, neutrality, and documented reasoning never change. The procedure, timeline, and who's at the table do.

Six dials that move by population

1

Governing framework

Which laws and policies lead — Title IX, Title VII, the faculty handbook, the student code.

2

Process & due process owed

Notice, representation, and appeal rights differ — most for tenured faculty and represented employees.

3

Who's at the table

HR, provost/academic affairs, athletics, general counsel, and unions — coordination changes by context.

4

Confidentiality & records

FERPA for students; personnel-record rules for employees; different disclosure expectations.

5

Power, risk & sanctions

Authority gaps and retaliation potential run highest in athletics and faculty; available sanctions differ.

Use it as a worksheet: Run Taylor, Morgan, Doyle, and Rivera through these five dials — the differences jump out.

Faculty: speech, tenure, and academic freedom

If you want to discipline Prof. Doyle for discouraging reporting or for comments, First Amendment and tenure analysis kick in (at public institutions).

1

Pickering–Connick balance

Public-employee speech on matters of public concern is weighed against the institution's interest in operations.

2

Garcetti

Speech made pursuant to official duties is generally not protected citizen speech — but academic work is contested.

3

Academic freedom

Sweezy: “a free society depends on free universities.” Tread carefully where teaching and scholarship are involved.

4

Tenure & process

Dismissal-for-cause procedures and shared governance mean longer timelines and higher process for Prof. Doyle.

Illustrative: Porter v. NC State (4th Cir. 2023) and Vlaming v. West Point Sch. Bd. (Va. 2023) show how fact-specific and contested this terrain is.

Route the Rivera case

1 Which office leads on Rivera — and who must be at the table for Taylor, Morgan, and Doyle?

2 Where do the four processes risk colliding or contradicting each other?

3 What supportive/interim measures differ for a student vs. an employee witness?

One incident, many owners — coordinate or collide

- Name a lead and map the handoffs. *Decide who owns Rivera, who owns Morgan's employee piece, and how they share facts without contaminating each process.*
- Align timelines and messaging. *Four parallel tracks that contradict each other are a litigation gift.*
- Protect each person's distinct rights. *FERPA for Taylor, personnel rules for Morgan, tenure process for Doyle — simultaneously.*
- Keep one coherent record. *A shared, access-controlled file so the matter's history survives the handoffs.*

Same facts, four worlds

THE SETUP

One incident, four contexts. Watching the same facts route four ways makes the population differences concrete and memorable.

HOW TO RUN IT

- Assign each table one population: student, employee, faculty, or athletics.
- Map the Rivera facts through the six dials for your assigned person.
- Identify the single biggest risk in your track.
- Report out side by side to expose the contrasts.

Timing & format: 14 minutes · assigned tables, then side-by-side report-out

Best practices — populations, in one screen

- ✓ Hold the principles constant — fairness, neutrality, documented reasoning — and adapt the mechanics.
- ✓ Run each person through the six dials before you design the process.
- ✓ Get the right people at the table early: HR, provost, athletics, counsel, unions.
- ✓ Protect each population's distinct confidentiality and process rights simultaneously.
- ✓ Name a lead, align timelines, and keep one coherent record across the tracks.

3

RETALIATION, CULTURE & THE MISTAKES THAT GROW CASES

The second harm

What happens after the report is often what becomes the lawsuit.

The aftermath

- After Taylor reports, Taylor's playing time drops and the coach benches Taylor “for performance.”
- Morgan's graduate-assistant hours are cut and their duties reassigned.
- The team GroupMe turns on Taylor; teammates post that Taylor “ruined the season.”
- A booster emails the President demanding the “witch hunt” against Rivera stop.
- **The underlying case may be survivable. The aftermath is where the real risk now lives.**

Discussion: Which of these is retaliation — and who is responsible for stopping them?

Analyze the adverse actions

1 Is benching Taylor “for performance” retaliation? How do you test the stated reason?

2 Are Morgan's cut hours retaliation — and does Muldrow change your analysis?

3 What do you do about the GroupMe pile-on, and about the booster's email?

How institutions make it worse

Weak follow-through

Measures promised but not delivered; no one owns Taylor's aftercare. Trust and the record erode.

Communications failures

Careless emails, inconsistent messaging, and booster/rumor management that reads as taking sides.

Secondary harm

The response itself isolates or exposes Taylor and Morgan, compounding the original injury.

Silence & signaling

What leaders don't say — and how the team reads it — decides whether anyone trusts the process.

The pattern: The original matter is often survivable; the mishandling of the aftermath is what becomes the lawsuit, the OCR complaint, or the headline.

Protecting Taylor and Morgan now

- Deliver, then monitor. *Put concrete measures in place and assign an owner to check that they actually happen.*
- Address peer retaliation directly. *The GroupMe conduct needs its own response — don't treat it as background noise.*
- Insulate from the booster pressure. *Leadership must protect the process publicly and privately, not signal a preferred outcome.*
- Document the aftercare. *Record every check-in and action; retaliation risk persists after the matter closes.*

Find where this goes sideways

THE SETUP

A matter that's substantively okay but quietly mishandled around the edges. The learning is spotting the second harm before it becomes the bigger case.

HOW TO RUN IT

- Hand out the Rivera aftermath as a short 'handled fine on the merits' summary.
- Tables hunt for retaliation, follow-through, and communications failure points.
- Mark each risk and a concrete fix.
- Debrief into a short 'don't-make-it-worse' checklist.

Timing & format: 14 minutes · tables, then group debrief

Best practices — retaliation & aftercare, in one screen

- ✓ Tell every party and witness that retaliation is prohibited — and how to report it.
- ✓ Analyze adverse actions for pretext; remember harm “need not be significant.”
- ✓ Treat peer retaliation as real; respond to the GroupMe conduct directly.
- ✓ Deliver supportive measures, assign an owner, and monitor over time.
- ✓ Discipline communications; protect the process from booster and public pressure.
- ✓ Document the aftercare — the risk persists after the case closes.

4

POLICY & PROCESS WORKSHOP

What will you fix before the next year?

The Rivera case exposed the gaps. Now turn them into an owned, dated plan.

From the case to your campus

- The Rivera case was a stress test. *Every place it went sideways is a gap you can close before the next academic year.*
- You don't need to fix everything. *Pick the few fixes with the highest risk reduction for the effort.*
- A fix without an owner won't happen. *Name a person and a date for each — that's what turns a list into a plan.*
- Use the self-audit template. *The Pre-Academic-Year Self-Audit & Action Plan is your worksheet for the hour and your take-home.*

Where fixes usually pay off

Policy alignment

Confirm your policy reflects the 2020 rule and is consistent across offices.

Templates & forms

Standardize intake, supportive measures, investigation, and determination documents.

Roles & training

Named, trained, conflict-free investigators and decision-makers; deputy coverage.

Records & timelines

Access-limited files, retention, and realistic tracked timelines.

Coordination

A working way for Title IX, HR, disability, and athletics to confer on overlaps.

Retaliation & aftercare

A standing practice for follow-through and monitoring.

The gaps this case exposed

Anonymous reporting

Is there a clear channel and a plan for acting on anonymous or third-party tips?

Athletics oversight

Reporting lines independent of coaches; training for staff caught between loyalty and duty.

Retaliation monitoring

A standing way to watch for and respond to playing-time, hours, and peer retaliation.

Cross-office coordination

One lead, aligned timelines, and a shared record when a case spans populations.

Evidence preservation

Fast holds for GroupMe, ephemeral video, and team communications.

Communications discipline

A plan for booster/public pressure that protects the process.

Prompt: Which of these is thinnest on your campus — and what's the one move that would strengthen it most?

Leave with a plan, not just notes

THE SETUP

The capstone. By the end of the hour you have a short, owned, dated action plan — not a wish list — ready to take back to campus.

HOW TO RUN IT

- Run your self-audit across the six fix areas.
- Circle the three highest-value fixes for your campus.
- Assign an owner and a date to each.
- Name one first step you'll take within thirty days.

Timing & format: The full session · individual + table support

Commit before you leave

- 1 What are your top three fixes — and which is first?
- 2 Who owns each, and by when?
- 3 What is the one step you will take within thirty days?

One case, a stronger campus

- Weigh hard evidence as factors — and write close-case findings that show your reasoning
- Hold the principles constant; adapt the playbook to student, employee, faculty, and athletics
- Treat retaliation, follow-through, and communications as core risk controls
- Coordinate across offices — one lead, aligned timelines, one record
- Turn today's gaps into an owned, dated plan before the new year

KEEP IN TOUCH

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