

# Fresno Pacific University – Legal Counsel Policy Review Session

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*Presented by*  
*Ashley Emerzian, Esq., Legal Counsel*  
*Pam Schock, Title IX Coordinator*  
*Jordan Sharp, Human Resources Director*

*February 5, 2021 9:00 AM – 11:00  
AM via Remote Video Conference*





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***1. The Three Buckets Model***

***2. Protocol Discussion***

***3. Case Studies & Hypos***

***4. Q/A***

# The Three Buckets

*Bucket 0: Informal Resolution (limited cases, requires RA approval)*

*Bucket 1: Non-T9 Allegations of Harassment, Discrimination, Sexual Misconduct, Retaliation & Other T9*

*Bucket 2: T9 Sexual Harassment (New Regulations)*

## ***Responsible Administrators***

### ***Title IX Coordinator***

- All gender-based or sex-based complaints, including cross-overs.

### ***Highest Level Admin for HR***

- All other complaints involving employees, including student-employees.

### ***Highest Level Admin for Campus Life***

- All other complaints involving only students.

Anticipated Changes To:

# 2020 Title IX Regulations

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**Top Priority for Biden**



**T9 - Biden's Signature Issue as VP**



**Multiple Avenues for Change**

New Statute  
(unlikely)

Ongoing  
Litigation (wait  
& see)

Repeal  
(compliance  
issues)

Repeal and  
Replace (most  
likely)

# Bucket 1: Nuts & Bolts

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*1. Support & Notice for All Parties*

*2. Investigation (If Required – 90 days)*

*3. Report Goes to Responsible Admin*

*4. Decision & Corrective Measures*

*5. Appeal (Paper Review If Requested)*

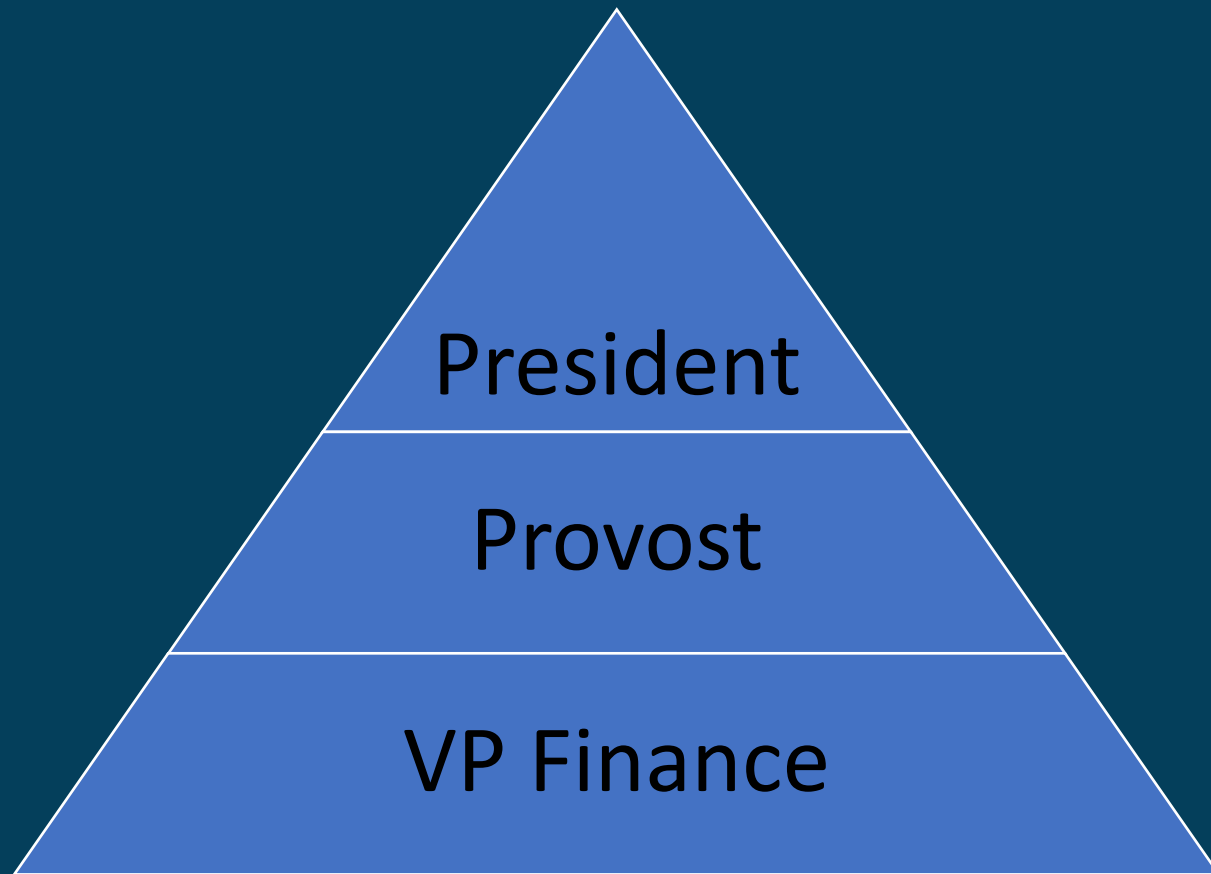
## Hearing Requirements

- ✓ *Students Only*
- ✓ *Upon Request After Decision*
- ✓ *Suspension/Expulsion Only*
- ✓ *Uses Student Judicial Board*



# Protocol Discussion

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EE-EE

EE-ST

ST-EE

ST-ST



# Case Studies & Hypos

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# Karasek v. Regents of Univ. of Cal. (N.D. Cal. 2020)

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1. *Deliberate Indifference – overuse of informal process, failure to educate on sex-based misconduct*
2. *Heightened Risk – mishandling of complaints put students at risk*
3. *Causal Link – “But, for...”*
4. *Severity – unwanted physical touching*

*HELD: MSJ Denied in part.*

*UC Berkeley maintained a de facto policy of deliberate indifference that created a heightened risk of harassment.*



# Cavalier v. Catholic Univ. of Am. (D. D.C. 2021)

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- *Cavalier alleged rape by Doe and Doe denies*
- *Upon completing investigation, University decides it will not conduct a hearing*
- *Cavalier appeals, hearing is held and finds Doe not in violation*
- *Cavalier files suit alleging unlawful discrimination under Title IX*

## *HELD:*

*A reasonable jury could find that the University's investigation was clearly unreasonable for failing to meaningfully consider Cavalier's incapacitation.*





# Hypo Questions

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***1. Is this the University's educational program or activity?***

***2. Which bucket are we in?***

***3. Who is the responsible administrator?***

***4. When should VP Finance, Provost and/or President be alerted?***

# Virtual Game Night

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Mark is a freshman. Due to the pandemic, the entire semester is scheduled to be online. Mark joins a student organization that helps new students get acclimated to the college campus and meet new friends. The organization hosts a virtual game night on the first Friday of every month and the theme is “Casino Night.”

Shortly after logging into the meeting, Mark realizes the group is playing strip poker. Uncomfortable with the situation, Mark immediately logs off. The next day, Mark receives an e-mail from the organization, stating that he is not a good fit for the group.



# The Faculty Lounge

Professor Lee and Professor Simmons eat lunch together in the faculty lounge most days. They are long-time friends. They went to college at the University together years ago. Professor Lane also usually lunches around the same time and overhears their conversations. Sometimes they talk about other female employees in ways that make Professor Lane uncomfortable.



# The Pregnant Professor

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Professor Smith is 5 months pregnant. She told her students at the beginning of the semester that she plans to be available through final exams and has a back-up plan should she unexpectedly need to be out sooner than that to have her baby. Michael, a student, raised concerns during the first week of class via the classroom chat about Professor Smith not being able to do her job while pregnant. During online class sessions he routinely makes derogatory comments about Professor Smith. On several occasions Michael states that she should be at home with her children while her husband works. Professor Smith gets fed up and reports it to the Dean of Campus Life for help managing the student.



# Study Abroad

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A group of your students are studying abroad in the same program in France. Taylor reports that Taylor and Alex were touched inappropriately by fellow student, Sara, after an evening during the trip in Sara's hotel room. Taylor shares with the study abroad advisor that this occurred, and the advisor has reported it to the Office of Title IX.



# Nursing Student Internship

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Jenni is a nursing student and is assigned to a local Urgent Care facility as part of the internship requirements to complete her program. The Office Manager at the Urgent Care, Brian, routinely keeps Jenni after her shifts in his office asking her about her dating life. Brian tells Jenni she should dump her boyfriend and date an older man. Brian touches Jenni on the arm from time to time. Brian also makes comments about Jenni being Asian.



# Movie Assignment

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The T9 Coordinator receives a report from a student about a History professor who required their students to watch a film that depicts nudity and marital infidelity and included a diverse cast. The Complainant states that the film offended her as a Christian and as a woman of color.

The T9 Coordinator follows up with the Dean and is informed that the film did not meet any learning objectives and there were plenty of other films that could have been selected via university resources. The Dean wishes to handle the matter directly and never reported it to HR or Title IX.



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