



Association of
Title IX Administrators

July 16, 2025

Exploring the Role of Defamation Claims and Reputational Harm in Title IX

Dan Fotoples, J.D., M.A., Consultant, TNG

Particia Hamill, J.D., Member, Clark Hill

Brett Sokolow, J.D., Chair, ATIXA

Today's Presenters



Dan Fotoples, J.D., M.A.
Consultant, TNG



Patricia Hamill, J.D.
Member, Clark Hill



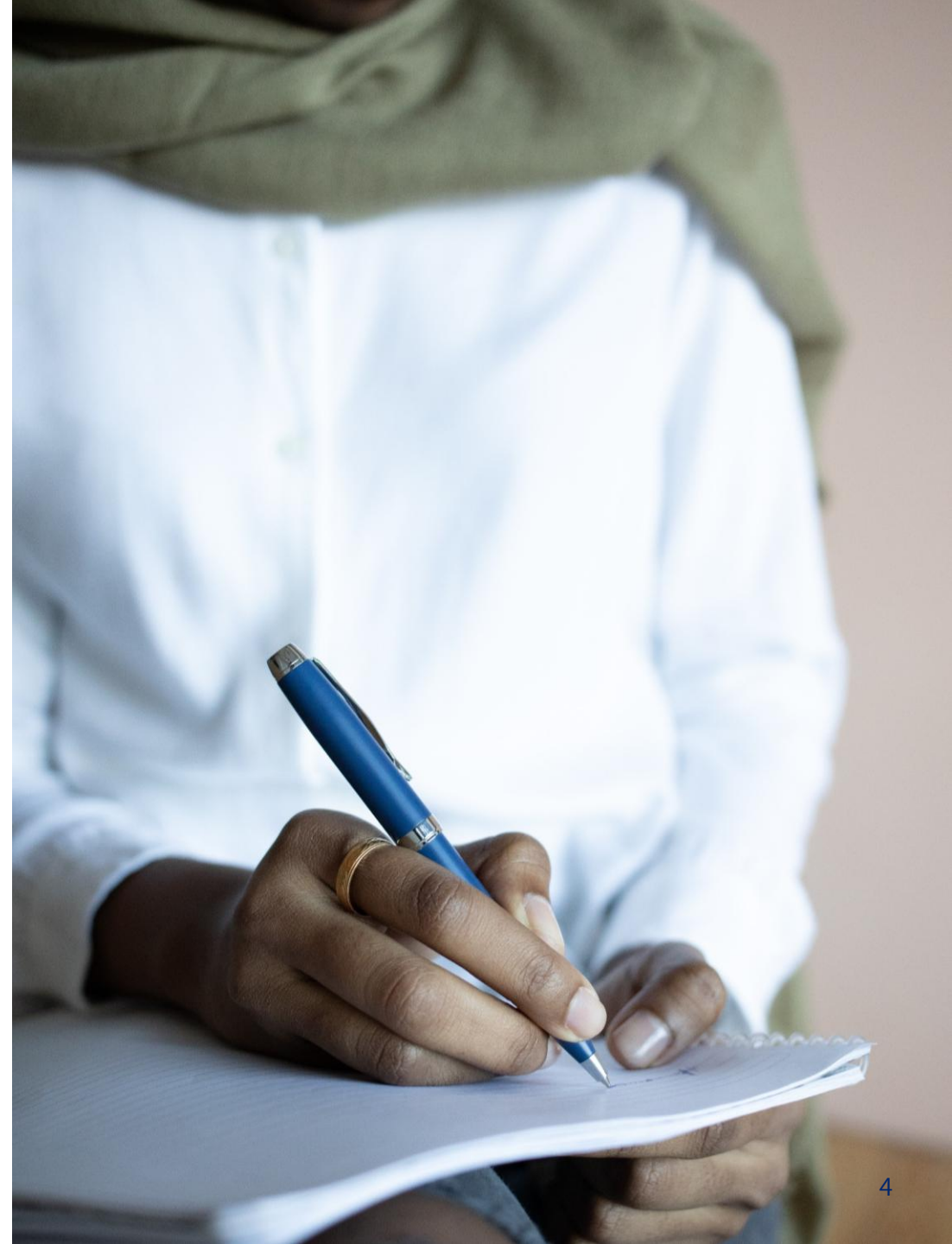
Brett A. Sokolow, J.D.
Chair, ATIXA



Any advice or opinion provided during this training, either privately or to the entire group, is **never** to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

Defamation

- Elements of a defamation claim:
 - False statement(s)
 - Publication/Communication to a third party
 - Fault
 - Knew it was false
 - Acted with reckless disregard for truth
 - Negligent in failing to ascertain the truth
 - Damages
- Varies state to state



Defamation Cases

- Holzgrafe v. Lozier
 - A tennis player (Lozier) spread a rumor that the coach (Holzgrafe) had a sexual relationship with another player
 - Investigation demonstrated the allegation was false
 - Lozier filed a \$10M lawsuit against institution (settled) and against Holzgrafe (dismissed)
 - Holzgrafe filed counterclaims for defamation, awarded \$2.9M from jury
- Pampu v. Wingo
 - 2015 sexual assault allegation; Respondent found responsible, upheld on appeal
 - Respondent sued institution, settled case and agreed to university's findings
 - Respondent sued Complainant, her father, and another student
 - Awarded \$3M for civil conspiracy; awarded \$2.3M for defamation
 - Overturned

Absolute Immunity & Quasi-Judicial Proceedings

Under what circumstances do courts find accusations can be privileged?

- Khan v. Yale
 - Stemming from a 2018 disciplinary hearing
 - Explored whether Yale's process had enough procedural safeguards typically associated with judicial proceedings to which immunity can be applied (it did not)
 - If it did, then statements made during the process would have absolute immunity and could not be used in other proceedings, like a defamation lawsuit
- Hushen v. Gonzales
 - Procedural safeguards are a clear signal, but not required
 - Must provide notice and an opportunity to be heard
 - The question is whether a proceeding involved consideration of an individual's rights through application of preexisting policies to present or past facts

Reputational Harm

- Social ostracization/shunning
 - Columbia mattress case in 2014-2015
 - Led to Columbia settling with the Respondent, though Columbia had found him not responsible and stood by its decision
 - Doe v. Sacks (2023)
 - Plaintiff named on a public Google document accusing NYU students of sexual misconduct, lost academic and professional opportunities
- Significant challenges exist to preventing and remedying reputational harm
 - Online, anonymous environments
 - Downstream effects of harm beyond an institution or district's control
 - Limits to the Title IX office's ability to respond
 - Neutral role, privacy concerns

Additional Considerations

- Procedural and due process safeguards as a tool to protect parties
- Responding when the parties threaten defamation
 - Counterclaims about defamation, retaliation
 - Defamation provisions in institutional policy
 - Avoiding abuse of process
- First Amendment considerations
- Role of social media
- Protecting the institution from defamation lawsuits
- Exposure for Title IX Coordinators signing formal complaints
- Exposure for third parties repeating defamatory allegations



Questions?

Thank you!

Dan Fotoples, J.D., M.A., Consultant
dan.fotoples@tngconsulting.com

Patricia Hamill, J.D., Member, Clark Hill
phamill@clarkhill.com

Brett A. Sokolow, J.D., Chair, ATIXA
brett.sokolow@tngconsulting.com