Fordham Title IX Program Review - DiGrazia

Danielle DiGrazia
ddigraz1@law.villanova.edu

Follow this and additional works at: https://digitalcommons.law.villanova.edu/title_ix

Recommended Citation
DiGrazia, Danielle, "Fordham Title IX Program Review - DiGrazia" (2024). Title IX at 50. 6.
https://digitalcommons.law.villanova.edu/title_ix/6

This student-authored report was created as an assignment for Professor Ann Juliano’s Title IX at 50 course and is for educational purposes only. The content is the sole responsibility of the student author and does not represent the views of Villanova University. This report sets forth the results of student research, is intended to assist future researchers, and should be independently reviewed and verified by the reader. No representations are made as to the content's currency, accuracy, or applicability to a particular legal situation. Readers should take the report's date into account and consider that the institution featured in the report may have made updates to its policies and procedures. The information provided in this report does not, and is not intended to, constitute legal advice. Readers of this report should contact their attorney to obtain advice with respect to any particular legal matter.

This Article is brought to you for free and open access by the Student Works at Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Title IX at 50 by an authorized administrator of Villanova University Charles Widger School of Law Digital Repository. For more information, please contact reference@law.villanova.edu.
TITLE IX PROGRAM REVIEW

Fordham University

Danielle DiGrazia
# TABLE OF CONTENTS

**GENERAL INFORMATION** ................................................................. 1  
Accessibility and Organization ......................................................... 1  
Title IX Coordinator .................................................................... 2  
Training ......................................................................................... 2  
Current Investigations .................................................................. 4  

**ATHLETICS** .................................................................................. 4  
General Information ...................................................................... 4  
Equity in Athletics Data Analysis (EADA) ....................................... 5  
Complaints and Investigations ....................................................... 8  
Transgender Athletes .................................................................... 8  
NIL Policy ..................................................................................... 9  

**SEXUAL MISCONDUCT** ................................................................. 10  
General Information ..................................................................... 10  
Reporting an Incident .................................................................. 10  
Investigation Process ................................................................... 11  
Retaliation .................................................................................... 14  
Clery Act ....................................................................................... 15  

**PREGNANCY** .............................................................................. 15  
Resources ..................................................................................... 15  
Cases Regarding Pregnancy Discrimination .................................... 16  

**LGBTQ** ....................................................................................... 16  
Protections ................................................................................... 16  
Residential Life ............................................................................ 17  

**RECOMMENDATIONS** ................................................................. 18  
Substance ..................................................................................... 18  
Accessibility ............................................................................... 20
GENERAL INFORMATION

ACCESSIBILITY AND ORGANIZATION

General information on the Title IX Office is easy to find, though other resources related to Title IX are incredibly dispersed throughout Fordham’s website. A student or employee can easily Google “Fordham University Title IX” and select the first result to navigate directly to the Gender Equity and Title IX Office webpage. A student or employee who may be more familiar with Fordham’s website could also start on Fordham’s home webpage, hover over “About,” click on “Administrative Offices,” and click on “Title IX/Institutional Equity and Compliance” to get to the same place.

The Title IX Office Webpage highlights Fordham’s commitment to Title IX and the Office’s responsibilities. The text and history of Title IX is nowhere to be found the Title IX Office Webpage, so it seems like the Title IX Office just assumes that students and employees know what Title IX is and what it protects. There is a menu on the lefthand side of the Title IX Office Webpage that has quick links to other webpages with more specific Title IX information. One of these links is to “Title IX Sexual and Related Misconduct,” which includes Fordham’s Sexual and Related Misconduct Policies and Procedures. I think this menu is organized in a way that is helpful to students and employees because it includes clear and concise titles for each webpage. However, it is missing a lot of important Title IX information. For example, there aren’t links to more specific information on Title IX protections over athletics, pregnancy, or LGBTQ rights.

GENDER EQUITY AND TITLE IX OFFICE WEBPAGE

Gender Equity and Title IX Office

Fordham University is committed to a living, learning, and work environment free of any kind of sexual violence or misconduct. The University will take prompt steps reasonably calculated to end the sexual violence, eliminate any hostile environment, prevent recurrences, and, as appropriate, remedy any effects.

The Gender Equity and Title IX Office is responsible for the University’s Title IX compliance efforts and violations of University policies, including gender equity in athletics, limitations on consensual relationships, sex and gender discrimination, sexual harassment, sexual assault, other sexual misconduct, stalking, forcible touching, dating and domestic violence, intimidation and retaliation for filing such complaints. For more information and full descriptions of prohibited conduct, please read the Sexual and Related Misconduct Policies and Procedures for the Fordham University Community.

Inquiries concerning the application of Title IX and its implementing regulation may be referred to the designated Gender Equity and Title IX Coordinator or to the Office for Civil Rights of the U.S. Department of Education.

View the Sexual and Related Misconduct Policies and Procedures

1 Gender Equity and Title IX Office, Fordham Univ., https://www.fordham.edu/about/leadership-and-administration/administrative-offices/gender-equity-and-title-ix-office/. The Gender Equity and Title IX Office webpage will be referred to as the “Title IX Office Webpage” throughout the remainder of this review.
TITLE IX COORDINATOR

After clicking on the first link in the menu on the Title IX Office Webpage, “About the Office of Gender Equity and Title IX,” a student or employee would find general information about the Gender Equity and Title IX Office, followed by the headshots, titles, office locations, phone numbers, and email addresses of two Title IX personnel. The first, Kay Turner, Esq., is the Vice President for Human Resources and Interim Title IX Coordinator. The second, Maureen Cross, is the Gender Equity & Title IX Case Manager. It is noteworthy that Kay Turner is an attorney, though Maureen Cross does not seem to be an attorney. It is also noteworthy that Kay Turner is the “Interim” Title IX Coordinator. It is a bit concerning that Fordham only has a temporary Title IX Coordinator and hasn’t hired a permanent Title IX Coordinator. I think this could send a bad message that Fordham is not committed to Title IX efforts.

TITLE IX PERSONNEL

TRAINING

One of the links in the menu on the Title IX Office Webpage is for “Education and Training.” Fordham notes that its “[e]ducation and training programs have been established so that members of the community can recognize discrimination, know what to do when confronted with or become aware of discrimination, and know who to contact for assistance and to report discrimination.” The remainder of the information on the page somewhat generally alludes to the training the Title IX Office can provide and encourages other departments to contact the office for discrimination training. There is also a link to a one-page guide for faculty, staff, and administrators on how to report sexual and related misconduct specifically for student incidents. The guide encourages faculty to “care for the student by providing a supportive response [. . . ] communicate the limits of confidentiality [. . . ] and contact [the Department of Public Safety, the

---


deans of each of campus, or the Director of Gender Equity/Title IX Coordinator] to submit a report." It’s interesting that the office to contact varies based on the type of incident. For example, for incidents occurring between students, a faculty member should contact the dean, but for incidents involving faculty, staff, administrators, or third-parties, a faculty member should contact the Title IX Coordinator. Moreover, the report is outdated, as it has the previous Title IX Coordinator’s name and contact information.

The second to last link in the menu on the Title IX Office Webpage, “Training Resources,” provides the trainings attended by the Gender Equity and Title IX Office. There are three Department of Education Office for Civil Rights training webinars – one titled “Title IX Regulations Addressing Sexual Harassment,” one titled “New Title IX Protections Against Sexual Assault,” and one titled, “Conducting and Adjudicating Title IX Hearings.” There is a list of other training resources provided by different organizations, including Civil Rights Investigator trainings from ATIXA Training, and trauma-informed investigations trainings and report writing workshops from Grand River Solutions. However, I tried clicking on some of these links to see what the trainings were, and many of them were broken links, resulting in a message that said, “Our Apologies! We can't seem to find the page you were looking for. Please use the search feature above to continue your search." Fordham should update these links as soon as possible to more effectively convey that its Title IX Office Personnel are properly informed and trained.

Title IX training for students seems to be completely missing from the Title IX Office Webpage, but there are some training resources for students related to student life. Under the “Student Life” tab on Fordham’s home webpage, there is a link to “Living on Campus.” There is information for Living on Campus at each of Fordham’s Rose Hill and Lincoln Center campuses. Rose Hill is Fordham’s main campus in the Bronx, so I clicked on “Living on Campus at Rose Hill.” On the lefthand side of this webpage, there is a link for “Campus Assault and Relationships Education (CARE) Information.” The CARE webpage provides information on the type of sexual and related misconduct Fordham prohibits pursuant to Title IX, the Clery Act, VAWA, and New York State laws, the educational programs Fordham offers, and the response team Fordham activates in response to a sexual and related misconduct incident. The educational programs include “campus-wide distribution of the CARE brochure; online training for new students; new student orientation programs related to sexual violence; the CARE core program for new undergraduate students; peer education workshops on topics that include the nature of sexual misconduct and dating violence, keys to prevention, and coping with the aftermath of an assault; public safety presentations; residential life presentations; bystander intervention and sexual assault awareness programs; individual and group counseling; and other support services.” Although there is a detailed menu on the lefthand side of the CARE webpage with additional resources, I can’t find a link to

---

5 Living on Campus at Rose Hill, Fordham Univ., https://www.fordham.edu/student-life/living-on-campus/living-on-campus-at-rose-hill/.
many of these educational programs (notably the CARE brochure and the online trainings).

**CAMPUS ASSAULT AND RELATIONSHIP EDUCATION RESOURCES**

<table>
<thead>
<tr>
<th>Students' Bill of Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conduct Covered by the</td>
</tr>
<tr>
<td>Sexual and Related</td>
</tr>
<tr>
<td>Misconduct Policy and</td>
</tr>
<tr>
<td>Procedures</td>
</tr>
<tr>
<td>Protecting Yourself</td>
</tr>
<tr>
<td>Rape Survivors: What You Can Do</td>
</tr>
<tr>
<td>Reporting Procedures for the University</td>
</tr>
<tr>
<td>Title IX Student Conduct Process</td>
</tr>
<tr>
<td>Reporting Procedures for the Local Police Departments</td>
</tr>
<tr>
<td>Bystander Intervention Information</td>
</tr>
<tr>
<td>How to Help a Friend Affected by Sexual Violence</td>
</tr>
<tr>
<td>CARE Resources</td>
</tr>
<tr>
<td>CARE/Sexual Misconduct FAQ</td>
</tr>
<tr>
<td>Actions Against Sexual Violence</td>
</tr>
<tr>
<td>Special Committee on Clergy Sexual Abuse</td>
</tr>
</tbody>
</table>

**CURRENT INVESTIGATIONS**

Per the Office of Civil Rights database, Fordham is not currently under investigation for any Title IX complaints. 7

**ATHLETICS**

**GENERAL INFORMATION**

Fordham has a storied athletics history. The Fordham Rams compete in NCAA Division I varsity athletics, specifically in the Atlantic 10 Conference (A10) for most sports and in the Patriot League of the Division I Football Championship Subdivision (FCS) for football. While Fordham’s men’s sports teams were some of the first competitive college athletics teams in the country, Fordham’s women’s sports teams were introduced at a much slower pace, largely because Fordham did not technically start

---

admitting women until 1964.\textsuperscript{8} For example, men’s baseball was founded in the late 1850s and men’s basketball was founded in 1902, while women’s softball was founded in 1985 and women’s basketball was founded in 1970.\textsuperscript{9} Men’s football was founded in 1882 and is notorious for producing legendary Green Bay Packers Coach Vince Lombardi and for playing in the first televised American football game in 1939.\textsuperscript{10} As a result of their early introduction, men’s baseball and football are some of the winningest programs in the NCAA.\textsuperscript{11} However, the women’s softball team has been the most successful program in recent history, winning 7 out of 8 A10 Championships from 2011 to 2018.\textsuperscript{12}

Despite its respectable athletics tradition, Fordham Athletics seems to be out of touch with Title IX compliance. The official website of Fordham Athletics does not have any information related to Title IX. I am unable to find a Title IX Coordinator for Athletics – it seems the only Title IX Coordinator at Fordham is Kay Turner, the Interim Title IX Coordinator. I also can’t find any information for filing a complaint or lodging a concern other than through the Title IX Office Webpage.

**EQUITY IN ATHLETICS DATA ANALYSIS (EADA)**

The official website of Fordham Athletics has a webpage titled “Inside Athletics,” where it has published the 2022-2023 Equity in Athletics Disclosure Act (EADA) Report.\textsuperscript{13} The report includes information on Fordham’s sports teams, athletics participation, number of coaches, coaches’ salaries, athletically related student aid, operating (game-day expenses), and other expenses.

The official website of Fordham Athletics lists 22 men’s and women’s varsity sports teams, with 11 teams for each of the men and women. Fordham counts cross country separately from indoor and outdoor track. Fordham also counts cheerleading and dance as women’s varsity sports. After consolidating cross country and track and removing cheerleading and dance from the count, there are 10 men’s varsity sports teams and 8 women’s varsity sports teams. Therefore, men’s varsity sports teams make up 55.6% of all teams, while women’s varsity sports teams make up 44.4% of all teams. There is a head coach for each team in the same proportion. There are 25 assistant coaches for men’s teams, which makes up 59.5% of all assistant coaches, compared to 17 assistant coaches for women’s teams, or 40.5% of all assistant coaches.

\textsuperscript{10} Id.; see also James P. McCabe, *125 Years of Fordham Football*, Fordham University (Fall 2007), https://research.library.fordham.edu/cgi/viewcontent.cgi?article=1000&context=lib_ifl#:~:text=Football%20got%20off%20to%20a,(2%20games)%2C%20St.
\textsuperscript{11} See *Fordham Rams*, supra note 9.
\textsuperscript{12} Id.
## TOTAL EXPENSES BY MEN’S AND WOMEN’S SPORTS TEAMS

<table>
<thead>
<tr>
<th>Item</th>
<th>Men’s Teams</th>
<th>Women’s Teams</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Total of Head Coaches’ Salaries</td>
<td>1,747,980</td>
<td>1,084,048</td>
<td>2,832,028</td>
</tr>
<tr>
<td>2 Total of Assistant Coaches’ Salaries</td>
<td>1,664,730</td>
<td>666,060</td>
<td>2,330,790</td>
</tr>
<tr>
<td>3 Total Salaries (Lines 1+2)</td>
<td>3,352,680</td>
<td>1,750,108</td>
<td>5,102,788</td>
</tr>
<tr>
<td>4 Athletic Related Student Aid</td>
<td>9,517,056</td>
<td>8,415,857</td>
<td>17,932,913</td>
</tr>
<tr>
<td>5 Recruiting Expenses</td>
<td>693,522</td>
<td>155,843</td>
<td>846,365</td>
</tr>
<tr>
<td>6 Operating (Game Day) Expenses</td>
<td>3,461,174</td>
<td>1,867,277</td>
<td>5,328,451</td>
</tr>
<tr>
<td>7 Summary of Subset Expenses (Lines 3+4+5)</td>
<td>17,024,432</td>
<td>12,196,085</td>
<td>29,220,517</td>
</tr>
<tr>
<td>8 Total Expenses for Teams</td>
<td>21,661,981</td>
<td>13,600,252</td>
<td>35,262,233</td>
</tr>
<tr>
<td>9 Total Expenses for Teams Minus Subset Expenses (Line 8 – Line 7)</td>
<td>4,637,549</td>
<td>1,414,167</td>
<td>6,051,716</td>
</tr>
<tr>
<td>10 Not Allocated Expenses</td>
<td>8,709,069</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The total expenses for men’s and women’s sports teams are disproportionately in favor of the men’s teams. For example, the total coaches’ salaries, including head and assistant coaches, is $3,352,680, or 65.7% in favor of men’s teams, compared to $1,750,108, or 34.3% in favor of women’s teams. With respect to student aid, the numbers are a bit more proportional, with $9,517,056, or 53.1% in favor of men’s teams, compared to $8,415,857, or 46.9% in favor of women’s teams. Recruiting expenses are also grossly disproportionately in favor of men’s teams, with $693,522, or 81.9% in favor of men’s teams, compared to $152,843, or 18.1% in favor of women’s teams. Finally, operating or game-day expenses are also grossly disproportionately in favor of men’s teams, with $3,461,174, or 65% in favor of men’s teams, compared to $1,867,277, or 35% in favor of women’s teams.
PARTICIPATION BY MEN’S AND WOMEN’S SPORTS TEAMS

<table>
<thead>
<tr>
<th>Varsity Teams</th>
<th>Men’s Teams</th>
<th>Women’s Teams</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baseball</td>
<td>36</td>
<td>N/A</td>
</tr>
<tr>
<td>Basketball</td>
<td>17</td>
<td>25</td>
</tr>
<tr>
<td>All Track Combined</td>
<td>94</td>
<td>107</td>
</tr>
<tr>
<td>Football</td>
<td>90</td>
<td>N/A</td>
</tr>
<tr>
<td>Golf</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Rowing</td>
<td></td>
<td>46</td>
</tr>
<tr>
<td>Soccer</td>
<td>34</td>
<td>31</td>
</tr>
<tr>
<td>Softball</td>
<td>N/A</td>
<td>18</td>
</tr>
<tr>
<td>Squash</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Swimming and Diving</td>
<td>24</td>
<td>35</td>
</tr>
<tr>
<td>Tennis</td>
<td>9</td>
<td>8</td>
</tr>
<tr>
<td>Volleyball</td>
<td></td>
<td>15</td>
</tr>
<tr>
<td>Water Polo</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Total Participants</td>
<td>344</td>
<td>285</td>
</tr>
<tr>
<td>Unduplicated Count</td>
<td>289</td>
<td>222</td>
</tr>
<tr>
<td>(Number of individuals who participated on at least one varsity team)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Caveat

Women’s basketball had 25 participants; 17 female participants, and 8 male practice participants. Men’s squash had 12 participants; 11 male participants, and 1 female participant. The number of full-time enrolled undergraduates at the Rose Hill campus (traditional campus for athletics program) is as follows: 2,904 males (44%); 3,735 females (56%).

One of the tests to assess Title IX compliance in athletics, the substantial proportionality test, requires the number of men and women participating in varsity athletics to be substantially proportionate to undergraduate enrollment. However, the men’s and women’s participants are grossly disproportionate to the total undergraduate population at Fordham.

The first step of the substantial proportionality test is determining the proportion of undergraduate enrollment. Fordham has a total of 9,613 full-time undergraduate students, consisting of 3,803 men and 5,810 women. Women therefore make up 60.4% of the undergraduate student body while men make up the remaining 39.6%.

The next step is determining the proportion of men and women participating in varsity athletics. There are two measures of proportionality to consider – the unduplicated measure, which does not count multi-sport athletes, and the duplicated measure, which does count multi-sport athletes. Though both measures are usually calculated, the duplicated measure is considered to the authoritative measure.

To determine the true number of participants in varsity athletics at Fordham, the male practice players must be backed out from the total number of participants on women’s teams, and the female participants must be backed out from the total number of participants on men’s teams. The EADA provides there were 8 male practice players in women’s basketball and 1 female participant in men’s squash. After backing out the 8 male practice players on women’s teams, there are 277 duplicated participants on women’s teams and 214 unduplicated participants on women’s teams. After backing out the 1 female participant on men’s teams, there are 343 duplicated participants on men’s
teams and 288 unduplicated participants on men’s teams. Adding the participants on the men’s and women’s teams together, there are a total of 620 duplicated participants and 502 unduplicated participants. The proportion of duplicated women participants, calculated as 277/620, is about 44.7%. The proportion of duplicated male participants, calculated as 343/620, is about 55.3%. The proportion of unduplicated women participants, calculated as 214/502, is about 42.6%. The proportion of unduplicated male participants, calculated as 288/502, is about 57.4%.

Based on these calculations, Fordham does not meet the substantial proportionality test. Women make up 60.4% of undergraduate enrollment but only 42.6% of unduplicated varsity athletics participation. This is a staggering 17.8% difference when the difference should be closer to 1%.

Fordham could improve these numbers by adding new women’s sports teams or adding roster spots to current teams. However, at least in the last 20 years, Fordham has not added a new sports team.14

COMPLAINTS AND INVESTIGATIONS

Per the Office of Civil Rights database, Fordham is not currently under investigation for any Title IX complaints in the area of athletics. After a bit of research, I did find a case from 2004 in which Kevin Morris, the former head coach of the women’s basketball team, sued Fordham for violations of Title IX and the Equal Pay Act.15 Morris alleged “disparate treatment and disparate impact in relation to allegedly inferior resources and opportunities available for the women's basketball team in comparison to the men's basketball team.”16 Specifically, Morris alleged disproportionate funding with respect to coaches’ salaries, equipment, travel, and other supplies.17 Interestingly, Morris sought compensatory and punitive damages as well as injunctive relief, including “100% compliance with Title IX.”18 The court denied Fordham’s motion to dismiss with respect to the Title IX claim but dismissed the Equal Pay Act claim.19 I am assuming this case later settled as I cannot find any subsequent procedural history, but the injunctive relief must not have been granted because Fordham’s athletics program is obviously not in compliance with Title IX based on its failure to meet the substantial proportionality test.

TRANSGENDER ATHLETES

I can’t find any policy or statements concerning transgender athletes anywhere on Fordham’s home webpage or on the official website of Fordham Athletics. The official

---

16 Id. at *1.
17 Id.
18 Id.
19 Id. at *3-4.
website of Fordham Athletics has a webpage for “Diversity, Equity, Inclusion and Belonging” that states, “[i]n solidarity with Fordham University’s Jesuit mission, we disavow all racism, xenophobia, homophobia, sexism, Islamophobia, anti-Semitism, classism, ableism, and hate speech or actions that attempt to silence, threaten, degrade, or subordinate others.” Transphobia is noticeably absent from this list. The rest of the webpage outlines Fordham Athletics’ purpose and commitment to developing student athletes and “fostering an inclusive environment.” There is also information on the Fordham Athletics Inclusion, Diversity, Equity, and Awareness Committee (IDEA), which consists of various administrators, coaches, and student athletes and organizes trainings for staff and student athletes.

I also searched the “General Releases” webpage on the official website of Fordham Athletics for the word “transgender,” but my search yielded no results. I did see a recent release from February 2024 regarding Fordham’s DEI+ Annual Report, which outlines Fordham’s progress in DEI initiatives from 2020-2023. This 20-page report doesn’t independently include the word “transgender,” but it does highlight two LGBTQ+ initiatives. One such initiative is the organization of a group called “Connect” in which student athletes can “connect and engage in dynamic conversations with one another monthly.” Connect has a subgroup specifically for LGBTQ+ student athletes. The only other initiative mentioned in the report is “LGBTQ+ Pride-themed sporting events.”

**NIL POLICY**

The Fordham Athletics website has a webpage for Fordham and NIL, and its NIL policy is directly linked to that webpage. Fordham’s NIL policy is a 7-page document. It starts by introducing NIL and providing information on state and NCAA legislation and regulations. Fordham’s NIL policy provides that student athletes may earn compensation for their NIL activities but must disclose such activities within 30 days of either the receipt of compensation for an NIL activity or the execution of an NIL agreement. The policy also notes that engaging in NIL activities and earning compensation for such activities will not impact athletic scholarships or eligibility to compete in intercollegiate athletics unless the student athlete fails to disclose the activity or violates NCAA and state laws. The policy does not mention Title IX.

---

SEXUAL MISCONDUCT

GENERAL INFORMATION

Sexual misconduct resources are arguably the most robust Title IX resources that Fordham’s Title IX Office offers. On the Title IX Office Webpage, there is a link to “Title IX Sexual and Related Misconduct.” The Title IX Sexual and Related Misconduct webpage does not have information on a Title IX Coordinator specifically for sexual misconduct – it seems the only Title IX Coordinator at Fordham is Kay Turner, the Interim Title IX Coordinator, and her contact information is on the left-hand side of this webpage. The Title IX Sexual and Related Misconduct webpage includes two key links – one for the “Sexual and Related Misconduct Policies and Procedures” and one for “Reporting an Incident.”23 Each of these are detailed below.

REPORTING AN INCIDENT

The “Reporting an Incident” webpage has tabs with information for (1) Reporting an Incident to the University, (2) Reporting Incidents Occurring Between Students, (3) Reporting Incidents Involving Faculty, Staff, or Third-parties, and (4) Reporting an Incident to Law Enforcement.24 It’s interesting that the information provided is different for each of these potential incidents. For example, with respect to Reporting Incidents Occurring Between Students, the information provided is simply the contact information for each of the deans at each of Fordham’s campuses. However, with respect to Reporting Incidents Involving Faculty, Staff, or Third-parties, the information provided includes a list of the types of conduct faculty and staff members are required to report and the contact information for the Interim Title IX Coordinator. There is an exception to the mandatory reporting requirements for Clinical Counselors in Counseling and Psychological Services, Pastoral Counselors in Campus Ministry, and Medical Service Providers in University Health Services.

I have a few concerns about the reporting process based on some recent events. My first concern is related to the person responsible for reports of incidents between students. Students are advised to report incidents occurring between students to Christopher Rodgers, the Dean of Students at Rose Hill. In 2017, Fordham “launched an investigation into comments made by [Dean] Rodgers . . . during the Campus Assault and Relationship Education (CARE) and Bias segment of Resident Assistant (RA)

training." Apparently, Dean Rodgers “showed a trailer for the documentary ‘The Hunting Ground,’ . . . [which claims] [i]nstitutions of higher education . . . fail to adequately address sexual assault on campus,” and said the video showed the “‘agenda’ of the political left.” He then “showed a video from PragerU which argues that there is no evidence of a campus rape epidemic and no evidence that sexual violence is a cultural norm,” and said the video represented the “political right.” Fordham’s Title IX Coordinator conducted an investigation, and a third-party law firm reviewed the facts and recommendations, but they ultimately concluded that Dean Rodgers didn’t violate any university policies. I don’t think Dean Rodgers should be in a role where he is the sole point of conduct for reports of sexual misconduct between students. As a student, I would feel uncomfortable reporting sexual misconduct to him and would not trust him to do what was in my best interest.

My next concern is related to the Pastoral Counselor exception to the mandatory reporting requirements. Fordham is a Catholic and Jesuit university, and there are about 130 Jesuits who live at Fordham in designated residence halls. Fordham apparently has had a few prior incidents in which Jesuit priests accused of sexual misconduct were granted permission to live on Fordham’s campus. As a result, I am concerned there is a risk that Fordham students may unknowingly report sexual misconduct to Jesuits who themselves have been formerly accused of sexual misconduct but who can nonetheless avoid mandatory reporting because of their status as “Pastoral Counselors.” On January 26, 2023, Fordham’s first female, non-Jesuit President, Tania Tetlow, published a statement in solidarity with survivors of sexual abuse in response to a report called, “Taking Responsibility: Jesuit Educational Institutions Confront the Causes and Legacy of Clergy Sexual Abuse.” I am hopeful that with President Tetlow, a former prosecutor, at the helm, Fordham will be more conscious of this risk.

**INVESTIGATION PROCESS**

The Sexual and Related Misconduct Policies and Procedures webpage includes a robust table of contents with links to different information.

---

26 *Id.*
27 *Id.*
After clicking on “Procedural Options Available to the Parties,” there are three procedural options available to explore: (1) Supportive Measures, (2) Informal Resolution Process, and (3) Formal Resolution Process. Supportive Measures covers counseling and various accommodations for parties. Informal Resolution Process covers situations where the parties don’t want to proceed with an investigation and adjudication. The Formal Resolution Process covers four types of conduct: (1) Conduct Not Under Title IX Student Respondent, (2) Conduct Not Under Title IX Student Complainant and Employee Respondent, (3) Conduct Not Under Title IX Both Parties are Employees, and (4) Conduct Under Title IX All Members of the University Community.

The Conduct Under Title IX All Members of the University Community webpage includes a description of the rights and options available in all formal Title IX investigations. Upon receiving a report of sexual and related misconduct, Fordham will provide the parties access to advisors and support persons, and each party will be able to choose an “Advisor of Choice” who may accompany the party to any required meeting or hearing. A party may choose to file a Formal Complaint by providing the Director of Gender Equity/Title IX Coordinator, the Department of Public Safety, or their designee [collectively referred to as Fordham’s Title IX Personnel hereinafter] with a written, signed complaint describing the facts alleged. If a party does not want to file a Formal Complaint but Fordham’s Title IX Personnel determine a Formal Complaint is necessary, they will serve as the complainant. After a Formal Complaint is filed, Fordham’s Title IX

---

Personnel will provide a Notice of Allegations to the parties. After issuing a Formal Complaint and Notice of Allegations, Fordham’s Title IX Personnel will conduct a formal investigation.

Fordham serves as the factfinder and is responsible for gathering information. The parties will have an equal opportunity to inspect and review the information obtained during the investigation and may each submit a written response to the investigator. The investigator will compile an Investigative Report summarizing information directly related to the allegations. Fordham will then conduct a live hearing in which only the parties, the Advisors of Choice, the witnesses, and the Decision-Maker can participate. During the hearing, the parties will be given the opportunity to provide opening statements, the Decision-Maker will be able to ask questions of the parties and witnesses, and each Advisor of Choice may ask questions of the party the Advisor represents. Only the Advisor of Choice may conduct a cross-examination of the other party and any witnesses. The Decision-Maker determines whether the cross-examination questions are relevant before the questions are answered. The Decision-Maker will singlehandedly decide the outcome of the hearing. Fordham uses the preponderance of the evidence standard for investigations and determinations regarding responsibility, meaning the Decision-Maker must decide whether it is more likely than not that a violation of Title IX policies and procedures has occurred. An outcome letter describing the findings of fact and determination of responsibility will be distributed to all parties in a “reasonably prompt time frame after the completion of the hearing.”

The dismissal of a Formal Complaint or a determination of responsibility may be appealed within five business days of receipt. The appeal process differs slightly depending on whether a student or employee is the respondent, and if the student is the respondent, whether the conduct falls under Title IX or not, and whether the appeal is related to the dismissal of a Formal Complaint or a determination of responsibility. With respect to an appeal of the dismissal of a Formal Complaint when a student is the respondent and the conduct falls under Title IX, the appeal is heard by the Vice President for Student Affairs. In contrast, with respect to an appeal of a determination of responsibility when a student is the respondent and the conduct falls under Title IX, the appeal is heard by the Student Conduct Review Council (SCRC), which is comprised of two faculty members appointed by the President of the Faculty Senate, one of whom is appointed as chairperson; one administrator appointed by the Vice President for Student Affairs; and two students appointed by the President of the United Student Government. The SCRC may uphold the decision, uphold the decision but change the sanction, or remand back to the Hearing Officer. The decisions of the SCRC are determined by majority vote and are final and not appealable.

I have a few comments and concerns about the investigatory and adjudicatory process. First, I am concerned that the Sexual and Related Misconduct Policies and

---

Procedures don’t define certain terms like “Advisor of Choice” and “Decision-Maker.” It’s a bit unclear to me who can serve in these critical roles. Second, I think it’s interesting that the Advisor of Choice is the only one who can cross-examine a party. I suppose this is meant to prevent the parties from engaging in potentially heated cross-examination of each other, but it places a great deal of pressure and responsibility on the Advisor of Choice who may not have the expertise, experience, time, or capacity to sufficiently cross-examine the other party. I also don’t love that there is a single Decision-Maker; I would probably prefer a panel to make such important decisions. Finally, I don’t think it’s appropriate that two students serve on the SCRC during the appeals process as it feels like a breach of privacy and a sacrifice of expertise.

RETALIATION

Fordham’s retaliation policies can be found in two sections of the Sexual and Related Misconduct Policy, specifically in the sections titled “Conduct Prohibited by Title IX of the Education Amendments of 1972” and “Conduct Prohibited by University Policy and/or Laws Other Than Title IX of the Education Amendments of 1972.”

Conduct Prohibited by Title IX of the Education Amendments of 1972

Retaliation (Title IX): Neither the University nor any person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the U.S. Department of Education, or because the individual has made a report or Formal Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of “Sexual Harassment,” or a report or Formal Complaint of “Sexual Harassment” -- as the term is defined by the U.S. Department of Education -- for the purpose of interfering with any right or privilege secured by the U.S. Department of Education, constitutes retaliation.

Conduct Prohibited by University Policy and/or Laws Other Than Title IX of the Education Amendments of 1972

Intimidation and Retaliation for Reporting: Direct or indirect attempts to violate a University No-Contact Restriction or to intimidate, threaten, interfere with, restrain, coerce, discriminate against, or harass any person for attempting to report misconduct, reporting misconduct, pursuing a Formal Complaint, serving as a witness, or being a potential party or witness in a University investigation regarding possible violations of any of the University’s policies regarding sexual and related misconduct is prohibited. Members of the University community who engage in this conduct will be subject to prompt and appropriate disciplinary action, including possible termination or expulsion from the University. Individuals engaging in this conduct who are not members of the University community will be subject to campus bans and other actions deemed appropriate by the Title IX Coordinator or their designee.
CLERY ACT

Fordham’s Clery Act statistics are displayed by offense, by location, and by campus.\textsuperscript{34} With respect to criminal offenses on campus across all of Fordham’s campuses, the rape statistics have steadily increased over the past three years, from 9 in 2020, to 12 in 2021, to 18 in 2022. The fondling statistics have varied over the past three years, from 4 in 2020, to 6 in 2021, then back down to 3 in 2022. With respect to VAWA offenses on campus across all of Fordham’s campuses, domestic violence offenses have stayed relatively low, with 0 in 2020 and 2021 and just 2 in 2022. Dating violence offenses were 2 in 2020, 4 in 2021, and 2 in 2022. Finally, stalking offenses were 6 in 2020, 4 in 2021, and 5 in 2022.

PREGNANCY RESOURCES

In the menu on the Title IX Office Webpage, there is a link to “Non-discrimination Policy.” Within the Non-discrimination Policy menu, there is another link to “Pregnancy and Parenting Resources.”\textsuperscript{35} These resources are pretty sparse. Fordham first notes that its “non-discrimination policy specifically prohibits discrimination against those of marital or parental status, which includes on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery there from.” Fordham then outlines the complaint process for a complaint of discrimination based upon pregnancy or parenting status, which is different from the sexual misconduct complaint process. Students should first address concerns with their professors, then with the dean, and then may file a complaint with the Title IX Coordinator. Employees should first contact the Office of Human Resources Management and then may also file a complaint with the Title IX Coordinator. I find it interesting that students and employees are told to first go to the people somewhat immediately in charge of them – and the people who could be the ones discriminating against them based upon pregnancy or parenting status – before filing a complaint with the Title IX Coordinator.

This webpage also provides information on reasonable accommodations. Specifically, “[f]aculty are required to offer . . . reasonable accommodations . . . [such as] viable alternatives or additional time to complete required course requirements.” Moreover, “[s]tudents who are pregnant and anticipate missing coursework due to pregnancy, giving birth, or recovery from childbirth should, if possible, inform their professors early in the course or program so that it may be easier for the professor to explore options to assist the student in completing your coursework.” This list notably

excludes students who are pregnant and anticipate missing coursework due to abortions or other pregnancy termination measures.

Finally, this webpage provides the location of lactation rooms for nursing mothers at each of its Westchester, Lincoln Center, and Rose Hill campuses. The location description includes details of the amenities at each location, such as a sink and refrigerator.

**CASES REGARDING PREGNANCY DISCRIMINATION**

I am unable to find any cases against Fordham dealing with pregnant students.

**LGBTQ PROTECTIONS**

Fordham’s non-discrimination policy does not explicitly mention LGBTQ rights or protections. The first two sentences of the non-discrimination policy note that Fordham admits students “of any race, color, national and ethnic origin” and Fordham “does not discriminate on the basis of race, color, national and ethnic origin.” I think it’s interesting that Fordham doesn’t include “sex” in this list. The non-discrimination policy does later say that Fordham complies with Title IX, Title VII, VAWA, and other applicable anti-discrimination laws. It notes the Director of Gender Equity/Title IX Coordinator is responsible for coordinating Fordham’s response to sex- or gender-based discrimination claims.

Information on LGBTQ resources can instead be found by navigating from Fordham’s home webpage to “Student Life,” then to “Multicultural Affairs,” and finally to “LGBTQ Resources.” However, these resources are mostly related to the programs Fordham offers for LGBTQ students rather than the protections afforded to such students. For example, there is information on an LGBTQ and Ally Network of Support that provides training and strives to create a welcoming campus environment for LGBTQ students. There is also information on two LGBTQ student organizations, one at each of the Rose Hill and Lincoln Center campuses. Finally, there is information on single occupancy restrooms at each of the Rose Hill and Lincoln Center campuses.

It was interesting to read the LGBTQ Resources webpage knowing that Fordham promotes itself as “the Jesuit University of New York.” Fordham acknowledges its Jesuit and Catholic tradition multiple times on the LGBTQ Resources webpage, noting it is important to create a welcoming campus environment and promote an understanding and acceptance of LGBTQ students “in keeping with the Jesuit tenet of Cura Personalis (care for the whole person) and the principle that all persons should be treated with dignity and respect.”

---

respect, which is explicit in Catholic teaching.” I think this statement is intended to show support for LGBTQ students, and if you are well-versed in Jesuit tenets, you likely understand this statement to be an olive branch of sorts. However, it could be confusing for LGBTQ students who may not be as familiar with Jesuit tenets and may be more familiar with Catholic teachings that condemn gay marriage and homosexuality, since it seems to equate Jesuit tenets with Catholic teaching.

**RESIDENTIAL LIFE**

Under the “Student Life” tab on Fordham’s home webpage, there is a link to “Living on Campus.” There is information for Living on Campus at each of Fordham’s Rose Hill and Lincoln Center campuses. After clicking on “Living on Campus at Rose Hill,” a student could find information on Room Selection, All Gender Restrooms, and Residence Halls. The Room Selection webpage provides that the Office of Residential Life “will work on a case-by-case basis with individual residents to identify housing options and an assignment that aligns with their gender self-identity.” The webpage also notes that a student may indicate on the housing application that they would like to discuss their housing needs and preferences related to their gender identity. The All Gender Restrooms webpage provides a list of the locations of single-occupancy, all gender bathrooms. Each of Fordham’s First-Year Student Housing Residence Halls are “co-ed with wings being either all male or female.” Fordham’s Upper Classmen Student Housing Residence Halls are generally co-ed as well, but they don’t have gendered wings. Fordham’s use of gendered wings in its residence halls sheds light on a perhaps unstated, conservative stance that gender is binary rather than that gender is a spectrum.

This potential emphasis on gender as binary can also be found in Fordham’s overnight guest policy. Fordham’s Residence Hall Agreement historically provided that undergraduate students can only have overnight guests of the same sex (a perhaps unstated win for LGBTQ students 😊), and they must request and receive guest passes for each overnight guest who is a non-resident of Fordham housing or a non-student visitor. In April 2024, the Office of Residential Life announced that it would now allow students to have overnight guests of the opposite sex provided they have prior consent of roommates, confirmed in email.

---

37 Room Selection for Current Rose Hill Campus Residents, Room Selection and Housing Assignments: An Inclusive Community, Fordham Univ., https://www.fordham.edu/student-life/living-on-campus/living-on-campus-at-rose-hill/room-selection-for-current-residents/.
RECOMMENDATIONS

SUBSTANCE

COMMIT TO HIRING PERMANENT TITLE IX PERSONNEL

Fordham should immediately hire a permanent Title IX Coordinator to convey that it takes Title IX efforts seriously. At the moment, Kay Turner is the Interim Title IX Coordinator, and there is only one other Title IX staff member. As it stands, if I was a student, I would be worried that there could be some transition in the personnel who are handling my case.

DEFINE KEY TERMS IN SEXUAL AND RELATED MISCONDUCT POLICIES

Fordham’s Sexual and Related Misconduct Policies and Procedures webpage has a link to a Glossary, but many defined terms used throughout the Policies and Procedures are not included in the Glossary. Fordham should explicitly define “Advisor of Choice,” “Decision-Maker,” and other key terms. This will help students understand the role of key personnel throughout the investigation process. Fordham should also provide a list of potential criteria that a student should consider when selecting an Advisor of Choice.

Defined terms that include cross-references to other defined terms should all be consolidated in the Glossary. This is both a substantive and accessibility issue that should be remedied. For example, the definition of “Confidentiality” simply refers to “the ability of designated Confidential Resources to refrain from sharing reports of prohibited conduct under the Policy and Procedures without prior permission from the person sharing the incident, except for extreme circumstances such as a health and/or safety emergency or child abuse.” However, “Confidential Resources” isn’t defined in the Glossary – you can only find its definition by navigating from the Sexual and Related Misconduct Policy and Procedures webpage to the “Reporting” tab, then to the “Speaking with Confidential Resources” tab.

We also learned that “Privacy” is different than “Confidentiality.” I think the Glossary can do a better job of providing examples of what type of information is “private” versus what type of information is “confidential.”

UPDATE REPORTING PROCESS TO ADD TITLE IX COORDINATOR AS A FIRST CALL

Fordham should update its “Reporting an Incident” policy to include the option to call the Title IX Coordinator in each of its potential incident scenarios. As it stands, the name and contact information of the Title IX Coordinator is not included under the tab for Reporting an Incident to the University or under the tab for Reporting Incidents.

Occurring Between Students. I think the Title IX Coordinator should always be available as an option to students seeking to report a potential Title IX violation. This will also relieve students of the pressure to speak to the dean first, especially if the student attends Rose Hill and doesn’t feel comfortable speaking to Dean Rodgers given his well-known history of insensitivity toward sexual misconduct.

**AMEND MAKEUP OF STUDENT CONDUCT REVIEW COUNCIL IN APPEALS PROCESS**

Fordham’s current appeals process for a complaint in which a student is the respondent and the conduct falls under Title IX includes a review by the Student Conduct Review Council (SCRC), which includes two faculty members appointed by the President of the Faculty Senate, one administrator appointed by the Vice President of Student Affairs, and two students appointed by the President of the United Student Government, who is also a student. I think Fordham should update the makeup of the SCRC to exclude students. It just doesn’t seem fair for students to be reviewed by their peers, especially with respect to highly sensitive, personal, and confidential matters. Fordham could add other faculty or administrators to replace these students on the SCRC, or it could just remove students entirely and keep the other three members on the SCRC. I note that an odd number of members on the council is necessary because the SCRC makes decisions by majority vote.

**ADDRESS TRANSGENDER AND LGBTQ RIGHTS IN NON-DISCRIMINATION AND ATHLETICS POLICIES**

Fordham needs to address transgender and LGBTQ rights in its non-discrimination policies. The first two sentences of the non-discrimination policy are: “Fordham University admits students of any race, color, national and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the school. It does not discriminate on the basis of race, color, national and ethnic origin in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.” The policy later describes the role of the Title IX office to oversee sex- or gender-based discrimination. It wouldn’t be difficult to add “sex” and “gender” as protected categories in this policy, and it would show LGBTQ students that Fordham will actually support and protect them.

Fordham also needs to acknowledge transgender rights in athletics. The official website of Fordham Athletics does not mention transgender athletes. Fordham Athletics’ diversity statement currently reads, “[i]n solidarity with Fordham University’s Jesuit mission, we disavow all racism, xenophobia, homophobia, sexism, Islamophobia, anti-Semitism, classism, ableism, and hate speech or actions that attempt to silence, threaten, degrade, or subordinate others.” Fordham should add “transphobia” to this list. Fordham Athletics also does not set any guidelines for athletes who may be in the process of transitioning and seeking to compete for a sport under their correct gender. At the very

---

least, Fordham should add a link to the NCAA’s Transgender Student-Athlete Participation Policy.

**IMPROVE WOMEN’S SPORTS OPPORTUNITIES**

Fordham is severely out of compliance with Title IX, specifically with respect to expenditures and participation for women’s sports as compared to men’s sports. Fordham should consider surveying the student body, assessing the current club sports teams, and adding new women’s sports at the varsity level or adding roster spots to current teams. Adding new women’s sports teams will force Fordham to spend money on women’s sports and increase the number of women’s sports participants, which should hopefully bring the substantial proportionality analysis closer to a 1% variance between athletics participation and the undergraduate student body.

**ACCESSIBILITY**

**UPDATE AND CONSOLIDATE INFORMATION ON TITLE IX OFFICE WEBPAGE**

The Title IX Office Webpage has a plethora of information related to sexual misconduct, but it would be helpful to add information related to Title IX in athletics and LGBTQ protections. I had to really dig through Student Life resources to find any information on LGBTQ protections. I think it would be better to include LGBTQ protections in the Title IX Office’s Non-discrimination Policy.

I also had to dig through Student Life resources to find Title IX trainings that are available to students. Moreover, the links to trainings currently posted on the Title IX Office Webpage are broken. The Title IX Office should update these links and consolidate all trainings offered to students, faculty, and Title IX Personnel on one webpage for transparency and accessibility.

**ADD TITLE IX RESOURCES TO OFFICIAL WEBSITE OF FORDHAM ATHLETICS**

The official website of Fordham Athletics needs to have Title IX information – the EADA report is not enough, especially when it shows how dramatically out of compliance Fordham Athletics are with Title IX requirements. At the very least, there should be a link to the Title IX Office Webpage, so student athletes know who to contact if they want to file a Title IX Complaint. There should also be a Title IX liaison in the Athletics Department to facilitate communications between the Athletics Department and the Title IX Office.