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Hudson College, Scenario D: Title IX, Instructor's Manual

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EMPLOYMENT LAW
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SOCIETY FOR HUMAN
RESOURCE MANAGEMENT

Hudson College
Scenario D: Title IX

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PROJECT TEAM

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About This Case Study

The case begins with introductory information about the organization and is then divided into five scenarios. Each scenario includes question sets for undergraduate and graduate students. A debrief is included with each scenario, but because management dilemmas can be resolved using a variety of solutions, expect that students may come up with solutions that differ from those included in the scenarios. This document contains only Scenario D: Title IX. The scenarios are as follows:

- Scenario A: Talent management.
- Scenario B: Employee engagement.
- Scenario C: Performance management.
- Scenario D: Title IX.
- Scenario E: Employee benefits.

Hudson College: Overview

Founded in 1881, Hudson College is a private liberal arts institution located in Beacon, New York. Hudson is a four-year undergraduate institution accredited through the Middle States Association of Colleges and Schools. Nestled in the Hudson River Valley in Dutchess County between New York City and Albany, Hudson College prides itself in its core values of creativity, collaboration and civility. One of its strengths is its strong partnership with the vibrant Beacon community. Many of Hudson's employees serve on boards of local nonprofit organizations. Three years ago, the college helped improve the local transit system to provide better access to transportation for students and college employees. The college's presence in the downtown region is evident with the recent construction of the college bookstore, a coffee house and three student housing complexes along the Hudson River waterfront. Students choose Hudson for a variety of reasons, but most often they point to the low faculty-to-student ratio (12:1), the variety of academic programming and the proximity to New York City (approximately a one-hour drive).

Dr. Sara Richards became the 13th president of the college last year. She replaced the popular Dr. Robert McNulty, who retired after a 12-year tenure, which included a 20 percent increase in student applications, the addition of 15 academic programs, a strong emphasis on global education (the college now offers eight study abroad programs), and an increase in the enrollment of international students from 3 to 7 percent of the total enrollment.

Richards came to Hudson after serving as the provost at a similar liberal arts institution in the Midwestern region of the country. The transition from McNulty to Richards has been viewed as positive, but for many, it is too soon to tell. There is a small number of students and employees who feel the college lacks the necessary leadership to take Hudson to the next level. Richards reports directly to the board of trustees.

Edward Coburn has served as the board chair for the past three years. He retired in 2011 after a long, successful career at Appalachian Trust Bank in Poughkeepsie, New York, where he was the chief executive officer during the last 11 years of his career. The board of trustees, who traditionally have not meddled in human resource (HR) operations, are deeply concerned about the rise in health care costs and have focused their attention on this and other financial challenges facing the college.

Like so many colleges and universities, Hudson has been challenged by the difficult economic climate, increased competition among schools within and outside its peer group, and external pressure from its key stakeholders. The college's current strategic plan, now in its fourth year, outlined an ambitious agenda focused on diversity and inclusion, a reenergized commitment to increasing the school's affinity among its

alumni, and a multiyear capital project initiative that includes new construction and renovations to support the academic and residential experiences for students.

Hudson's endowment, despite losing 16 percent between 2008 and 2010 due to market conditions, has now reached \$350 million for the first time in the college's history. Despite serving as a positive performance measurement, most of this growth can be attributed to a rebound in the market. Large donations from alumni have been difficult to secure, making it a challenge to keep up with competitors.

David Bridges, vice president of human resources and risk management, has been in his current role for six years. He came to Hudson College from a university in New York City, where he was the director of human resources. Bridges has been described by his colleagues as a visionary who has led several key initiatives since coming to Hudson, including increasing efficiencies through technology enhancements and offering a more competitive compensation model compared to the local market and its peer institutions. Bridges reports directly to Richards.

Janet Mullins, director of human resources, has worked in the human resources and risk management division for 19 years. She started her career as a benefits analyst and moved into her current role shortly after Bridges' arrival. She reports directly to Bridges.

Elizabeth Guthry, director of organizational development, recently transitioned to higher education after six years as a corporate trainer for a *Fortune* 500 company. She has struggled with the cultural differences and has found it difficult to produce positive change in her short time at Hudson. She also reports directly to Bridges.

Hudson College has been named one of the "Top 100 Best Organizations to Work For in the State of New York" for four years in a row. Many attribute this ranking to the college's strong sense of teamwork and employee loyalty to the institution. The human resources and risk management division has also been recognized by local surveys for its care for employees and family-friendly benefits. Despite these recognitions, some faculty and administrative staff believe recent retirements and resignations of individuals in key positions have affected employee morale and the college's reputation of providing outstanding service to its students. Most of the open positions created by these departures were filled by external candidates, causing employees to question the college's commitment to its own people.

IN DAVID'S OFFICE

Bridges has been putting together a summary document he planned on giving Richards to prepare for their annual meeting about the division's goals for the upcoming year. As Bridges reflects on the past year, he notes a number of significant accomplishments that were made in the division. Despite these successes, he admits that it has been the most challenging year since he joined Hudson College.

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INSTITUTIONAL DATA	
Category	Figures
Enrollment	2,641 undergraduate students
Percentage of international students	7%
Percentage of students of color	13%
Acceptance rate*	46.1%
Discount rate**	44.8%
Retention rate	92%
Endowment (current)	\$354,106,198
Fundraising (fiscal year)	\$9,828,637

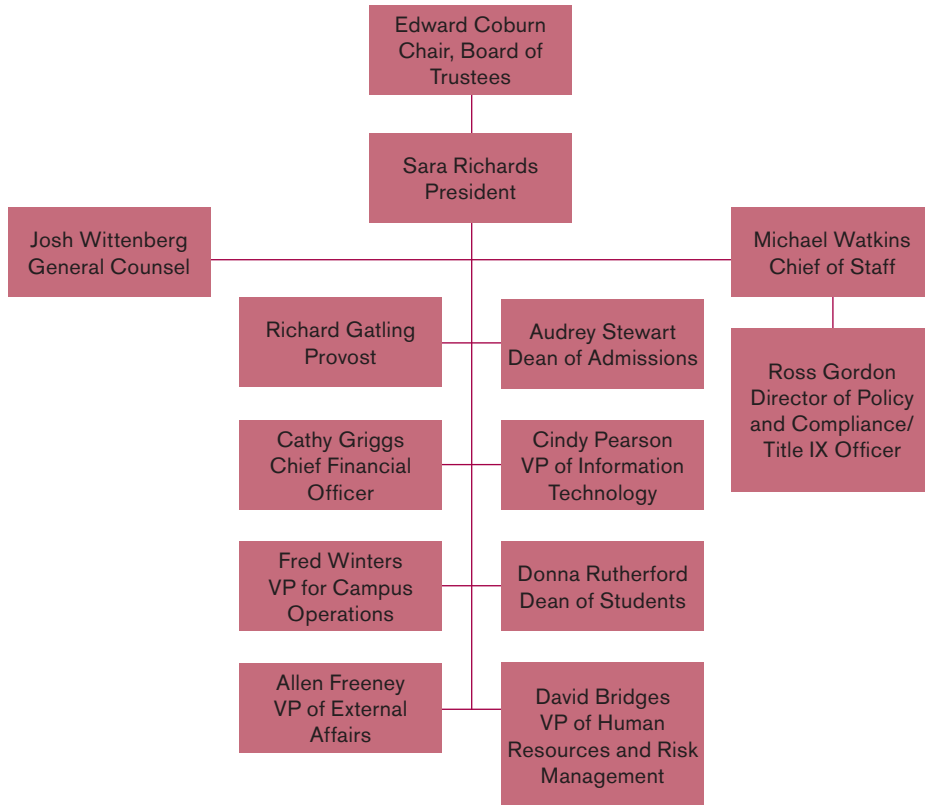
* Acceptance rate: The percentage of student applicants the college accepts.

** Discount rate: Institutional grant aid awarded to undergraduates as a percentage of the institution's gross tuition revenue.

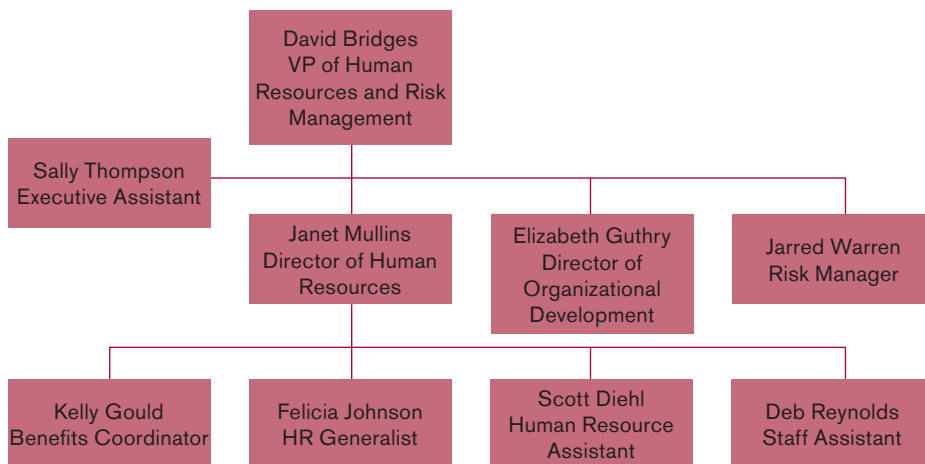
NUMBER OF FULL-TIME EMPLOYEES BY GENDER			
Number of Full-Time Employees	Male	Female	Total
Faculty	113	93	206
Administrative	109	141	250
Hourly	106	167	273
Total	328	401	729

EEO STATUS (FULL-TIME)		
Classification	Number of Employees	% of Total Employees
African American, Black	133	18.2%
Asian American	34	4.7%
Hispanic, Latino	103	14.1%
Multiethnic	6	0.8%
Native American, Alaskan Native	5	0.6%
White or Caucasian	448	61.4%

ORGANIZATIONAL CHART: EXECUTIVE TEAM



ORGANIZATIONAL CHART: DIVISION OF HUMAN RESOURCES AND RISK MANAGEMENT



Scenario D: Title IX

PLAYERS

- Ross Gordon, director of policy and compliance/Title IX coordinator
- Janet Mullins, director of human resources
- Richard Gatling, provost
- Michael Watkins, chief of staff

Ross Gordon sat in his office feeling perplexed and overwhelmed. It has been a month since his role as director of policy and compliance was expanded to include Title IX coordinator. This additional responsibility not only added to his portfolio, but also earned him a seat on the President's Cabinet alongside his supervisor and chief of staff, Michael Watkins.

The college had just brought its general counsel, Josh Wittenberg, in house a year ago, and Gordon felt his learning curve was even steeper without the important historical knowledge that would typically come from the college's attorney. At the top of his list was the coordination of three disparate sexual harassment policies, none of which had been updated to satisfy Title IX requirements under the U.S. Department of Education's Office of Civil Rights (OCR), and more specifically the 2011 Dear Colleague Letter (DCL).

Title IX prohibited sex-based discrimination in schools that receive federal funding. The DCL essentially asked schools to examine their current policies and procedures on sexual harassment and sexual violence to determine whether those policies complied with the requirements of the letter and the Revised Sexual Harassment Guidance issued in 2001. In addition, the DCL required grievance procedures to be "prompt and equitable" and defined what the OCR considered a "prompt and equitable resolution" of a complaint. Finally, the DCL provided a roadmap on how the OCR would evaluate whether a school was in compliance.

To see if there was something he was missing, Gordon asked his peer and confidante, Janet Mullins, director of human resources, if she knew anything about the college's approach to dealing with Title IX issues.

"Everyone sort of does their own thing," said Mullins. "There was an all-campus e-mail when the DCL came out, but that was about it. There is so much that needs to be done, but for some reason, it hasn't been a top priority. It's a definite risk."

Gordon was confused over the lack of a coordinated effort toward policy development and training and, at the very least, how to properly report a claim. "Well, how do people know what to do if there's an issue?" Gordon asked.

“I hope, at the very least, people are telling their immediate supervisors. They don’t really know what constitutes a claim,” Mullins responded.

If it were a matter of updating and streamlining language, the project would have been fairly easy to complete. Gordon had learned that the college’s key stakeholders were accustomed to collaborating on this kind of work, and he had convened strategic work groups about a number of institutional matters in his policy and compliance position, but this situation was more complicated. For starters, it was clear that a lot of focus had been placed on the student affairs dimension of sexual harassment as a result of the heightened national discourse about sexual misconduct and sexual violence. In this regard, the college’s student policies were aligned with Title IX compliance standards.

Things were a bit more disorganized on the employee side. The faculty handbook had not been updated after the release of the DCL in 2011. The DCL did not apply to faculty, according to Provost Richard Gatling. Because the DCL highlighted student-on-student sexual violence in particular, Gatling felt the school’s policy on student-on-student sexual violence was sufficient. It was his contention that the DCL put student affairs under the microscope, not academic affairs.

The cultural divide between student affairs and academic affairs was palpable. The generally accepted philosophy was that policies, rules and regulations were designed to place parameters related to the undergraduate experience in order to guide students’ perceived underdeveloped sense of judgment. But the faculty were less receptive to notions of bureaucracy, having made many decisions based on informal conversations and consensus-building in faculty meetings. As a result, something as serious as legal compliance was a very serious issue for the college and required genuine investment on the part of the faculty in terms of how compliance work would be operationalized. Gordon wondered if Wittenberg found this as troubling as he did.

The school had dealt with a fairly publicized Title IX case just a year before. It involved a female student who threatened to go public with a discrimination case against the school for insufficient practice space for women’s sports as opposed to men’s sports. Although the college was able to mitigate the claim by running reports to show that the practice times were proportional to the size and gender compilation of the teams, the administration made a commitment to periodically meet with team captains and assistant coaches to hear student concerns related to equity, access and inclusion. Although the college avoided significant scrutiny in the press, everyone from the dean of students and the dean of enrollment to Alumni Council president and board chair was aware of student unrest and the need to negotiate with the student body on a mutually acceptable resolution of their concerns. Based on minutes from past President Cabinet meetings that Gordon has requested from Watkins, this issue took up much of the senior staff agenda. In a brief conversation with Gordon even Watkins recollected, “We spent a lot of time figuring out how to keep the press out of the situation with athletics. Everyone was nervous that we would draw attention to ourselves with the OCR.”

Another Title IX issue arose in the academic program that same year, but it was handled very differently. Only the provost and department faculty were involved in the resolution of the issue of a young woman who claimed her chemistry professor called on men for participation in classroom discussion disproportionately more than he called on women. Several students (both male and female) corroborated the claim and demanded that the provost launch an investigation. Although no substantial evidence was found, the college convened a task force on gender equity and student engagement to address issues of gender balance in classroom enrollment and pedagogical strategies. Gordon couldn't find much evidence about what more was done or what recommendations came from the group. "This is a pretty informal community, Ross," said Watkins. "The main point is to get people talking, not to produce a bunch of charts and graphs. The president hates that. She calls it busy work. There's a time and place for that kind of stuff, and this isn't it. People mainly need to know that we won't tolerate harassment in the workplace."

Gordon had little experience with "managing up," but it was now or never, he thought to himself. "With all due respect, Mike, we've got some pretty serious issues here. There's no coordinated effort to understand Title IX, and there are some pretty significant gaps in policy and training."

"How much training do people really need? We have sexual harassment training, so we're not out of compliance with that. If people read the Dear Colleague Letter, they'll know how to keep OCR at bay. The only folks who have to stay on top of this stuff every day are those from student affairs. The students are the real liability here, not the workforce, but you have my support if you want to discuss this issue with HR."

Despite these conversations, Gordon was increasingly nervous about the lack of process and protocol. Even in the faculty handbook, the language regarding sexual harassment and harassing behavior did not clearly articulate reporting obligations, explain to whom reports or concerns should be directed, or clearly define what constituted harassing behavior. Despite annual votes to approve the faculty handbook, it was clear that no one had been tasked with actually reviewing its content for accuracy.

The employee handbook (a different publication from the faculty handbook) was in fairly good order, but included a major flaw. It included an entire section on the informal mediation process, but no one at the institution was explicitly charged with and responsible for identifying or training mediators. From all indications, there were no trained individuals on staff positioned or prepared to mediate sexual harassment claims. Water-cooler talk suggested that at one time, there was an office that had multiple issues with a particular staff person who behaved in inappropriate ways toward female employees. None of the women, apparently, wanted to pursue a claim, but it was well known that if you met a certain profile, you would likely have problems with this employee. What would have happened if this rumor was valid and a victim of inappropriate behavior was looking for a protocol and process to resolve or at least mitigate the situation? Something had to be done. Gordon felt that the

college was taking unnecessary risks with its workplace environment, which could lead to a variety of negative outcomes, from press coverage to increased turnover. It was a major compliance problem.

Gordon recalled his earlier conversation with Watkins and immediately picked up the phone to call David Bridges, vice president of human resources and risk management, as he thought “This is like an onion, but every layer reveals more questions than answers!”

SCENARIO D: QUESTIONS FOR UNDERGRADUATE STUDENTS

1. Describe the role of human resources and risk management in this scenario. What responsibilities do you believe Bridges has as they relate to institutional compliance and staff training?
2. In terms of identifying personnel to serve as mediators, what do you see as the role of training in mitigating risk? If you were in Gordon's position, how would you articulate the value and urgency of identifying and training mediators?

SCENARIO D: QUESTIONS FOR GRADUATE STUDENTS

1. As the leader of human resources and risk management, what function does Bridges serve in resolving the issues about fragmented policy language and misalignment, disparate perspectives regarding compliance, lack of identified and trained personnel, and inconsistencies in reporting practices?
2. In what ways do the prevailing Title IX issues place the college at risk? Gordon is responsible for addressing workforce education and development as they relate to policy. How would you recommend he frame the issues with Bridges in terms of the overall culture of a campus workforce that is not cohesive in its response to Title IX compliance?

Debrief

SCENARIO D: QUESTIONS FOR UNDERGRADUATE STUDENTS

1. Describe the role of human resources and risk management in this scenario. What responsibilities do you believe Bridges carries as they relate to institutional compliance and staff training?

Bridges should start with the facts. There are multiple documents that say different things about a policy that is supposed to cover all employees and agents of the college. The fact that a clearly identified group of individuals with connection to Title IX issue-resolution has not been identified and trained places the college in a compromising position. Framing and articulating the importance of Title IX compliance to the employee community is not solely the job of the Title IX coordinator but the overall responsibility of the human resources and risk management division. A framework should be established to develop a comprehensive, college-wide policy. Bridges, as a senior officer of the college, should lead the institutional effort by presenting the major risks and issues to Wittenberg.

Wittenberg also has a role in this matter. A viable partnership should be formed between the human resources and risk management division and Wittenberg as the primary “force” with which policies (particularly policies that relate to regulation and compliance) are properly developed, vetted and evaluated.

2. In terms of identifying personnel to serve as mediators, what do you see as the role of training in mitigating risk? If you were in Gordon’s position, how would you articulate the value and urgency of identifying and training mediators?

There is a glaring omission of who in the college has ultimate responsibility for Title IX compliance at the institutional level despite Gordon’s appointment to the formal position. The multiple places where policies live seem to reflect various micro-communities that have their own respective “approach” to addressing Title IX issues, rather than having an institutional policy organized by cross-sections of the community (faculty, staff and student constituencies). In a pluralistic work environment, the role of a convener who standardizes practice and helps frame institutional philosophy is critical.

Gordon’s responsibilities as the Title IX coordinator give him permission to be that convener. He will need to “manage up” and have some important conversations with senior leaders, including Watkins and Wittenberg, and he must serve as a champion for Title IX compliance at Hudson College. He must illustrate the specific disparities he has discovered in a short amount of time, and he must make a compelling case for those who are responsible for keeping the college protected from certain

vulnerabilities. This is what he was asked to do when Watkins approached him about the Title IX coordinator role.

The fact that no one can point to a group of trained mediators is a liability. This means that individuals have been left to their own interpretation of how to best resolve complaints due to the lack of a succinct and clearly articulated campus protocol that everyone can follow. Training would be difficult if the policy is an indication of what the institution knows about reporting and follow-through. The DCL should be used as a primary training tool that offers guidance on the conditions for and components of compliances. Finally, the provost's perception is not only incorrect but reflects a lack of training and institutional vision at the highest leadership level. All senior managers should know to whom these policies are connected and to whom they apply. There is an issue with content knowledge "at the top." Senior leaders are ultimately responsible for institutional compliance.

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Debrief

SCENARIO D: QUESTIONS FOR GRADUATE STUDENTS

- 1. As the leader of human resources and risk management, what function does Bridges serve in resolving the issues about fragmented policy language and misalignment, disparate perspectives regarding compliance, lack of identified and trained personnel, and inconsistencies in reporting practices?**

As vice president of human resources and risk management, Bridges should champion the important work of getting the college in compliance with OCR's expectations and the college's obligations as outlined in the DCL. Bridges has the opportunity to partner with relevant stakeholders to ensure compliance and move the workforce beyond compliance to actually underscore the aspirational values of the Hudson workforce. This is not just a training issue, though. This is an example of a transformational vs. transactional HR function that engages employees in training and conversation about current policies and practices to ensure that the community is clear about the college's values and its obligations to report instances of harassment and possible gender inequities (Harikurman, 2012).

Bridges also has more history on his side than Gordon. As the senior leader of the human resources and risk management division, he may have the power to balance his views with the provost's views. Is it irresponsible to allow any one administrator to believe "his people" are outside of an institutional problem and that the problem is with a different set of stakeholders? Even if this is functionally true, it is HR's role to make sure the college is fair and equitable in training and development of policy that is intended for all functional areas and departments. Any impending litigation would look for evidence of fundamental fairness in process before considering anything else. Bridges and Wittenberg have a vested interest in supporting Gordon as he goes about institutionalizing this work.

- 2. In what ways do the prevailing Title IX issues place the college at risk? Gordon is responsible for addressing workforce education and development as they relate to policy. How would you recommend he frame the issues with Bridges in terms of the overall culture of a campus workforce that is not cohesive in its response to Title IX compliance?**

The only thing saving the institution from extreme vulnerability is that most cases will not go through a formal mediation process. Nevertheless, individuals need to be properly selected and trained. The fact that the college has not been attentive to such a practice will make it difficult to move quickly, because even when individuals have been identified and trained, it will take time to implement a comprehensive

policy and educate individuals accordingly. The idea of having a cross-section of the community involved in the resolution of such sensitive issues will take time to pervade the existing campus culture. Nevertheless, identifying and training a cohort of rotating mediators will go a long way toward mitigating risk to the college.

Bridges must assert his responsibility for compliance by framing the discovered disparities as risks. This should get Wittenberg's attention. If Gordon can show the ways the varied approaches to discussing and resolving harassment issues are playing out on campus, he can frame each scenario as an actual case study and play it out in terms of settlement and outcome.

In this sense, student life has more protocols in place, making them less vulnerable in terms of outside scrutiny. The academic and administrative sectors, however, still require protocols, policy language and training to build an infrastructure the institution can stand behind and feel confident about. HR should identify strategic partners from among the senior staff to help build a more vested community, one that appreciates the importance of cohesive policy and trained staff charged with upholding those policies through both formal and informal processes.

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