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California

LEGISLATIVE INFORMATION

SB-967 Student safety: sexual assault. (2013-2014)

SECTION 1. *Section 67386 is added to the Education Code, to read:*

67386. (a) *In order to receive state funds for student financial assistance, the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions shall adopt a policy concerning sexual assault, domestic violence, dating violence, and stalking, as defined in the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1092(f)) involving a student, both on and off campus. The policy shall include all of the following:*

(1) An affirmative consent standard in the determination of whether consent was given by both parties to sexual activity. "Affirmative consent" means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

(2) A policy that, in the evaluation of complaints in any disciplinary process, it shall not be a valid excuse to alleged lack of affirmative consent that the accused believed that the complainant consented to the sexual activity under either of the following circumstances:

(A) The accused's belief in affirmative consent arose from the intoxication or recklessness of the accused.

(B) The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the complainant affirmatively consented.

(3) A policy that the standard used in determining whether the elements of the complaint against the accused have been demonstrated is the preponderance of the evidence.

(4) A policy that, in the evaluation of complaints in the disciplinary process, it shall not be a valid excuse that the accused believed that the complainant affirmatively consented to the sexual activity if the accused knew or reasonably should have known that the complainant was unable to consent to the sexual activity under any of the following circumstances:

(A) The complainant was asleep or unconscious.

(B) The complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the complainant could not understand the fact, nature, or extent of the sexual activity.

(C) The complainant was unable to communicate due to a mental or physical condition.

(b) In order to receive state funds for student financial assistance, the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions shall adopt detailed and victim-centered policies and protocols regarding sexual assault, domestic violence, dating violence, and stalking involving a student that comport with best practices and current professional standards. At a minimum, the policies and protocols shall cover all of the following:

(1) A policy statement on how the institution will provide appropriate protections for the privacy of individuals involved, including confidentiality.

(2) Initial response by the institution's personnel to a report of an incident, including requirements specific to

assisting the victim, providing information in writing about the importance of preserving evidence, and the identification and location of witnesses.

(3) Response to stranger and nonstranger sexual assault.

(4) The preliminary victim interview, including the development of a victim interview protocol, and a comprehensive followup victim interview, as appropriate.

(5) Contacting and interviewing the accused.

(6) Seeking the identification and location of witnesses.

(7) Providing written notification to the victim about the availability of, and contact information for, on- and off-campus resources and services, and coordination with law enforcement, as appropriate.

(8) Participation of victim advocates and other supporting people.

(9) Investigating allegations that alcohol or drugs were involved in the incident.

(10) Providing that an individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the institution's student conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

(11) The role of the institutional staff supervision.

(12) A comprehensive, trauma-informed training program for campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence, and stalking cases.

(13) Procedures for confidential reporting by victims and third parties.

(c) In order to receive state funds for student financial assistance, the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions shall, to the extent feasible, enter into memoranda of understanding, agreements, or collaborative partnerships with existing on-campus and community-based organizations, including rape crisis centers, to refer students for assistance or make services available to students, including counseling, health, mental health, victim advocacy, and legal assistance, and including resources for the accused.

(d) In order to receive state funds for student financial assistance, the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions shall implement comprehensive prevention and outreach programs addressing sexual violence, domestic violence, dating violence, and stalking. A comprehensive prevention program shall include a range of prevention strategies, including, but not limited to, empowerment programming for victim prevention, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction. Outreach programs shall be provided to make students aware of the institution's policy on sexual assault, domestic violence, dating violence, and stalking. At a minimum, an outreach program shall include a process for contacting and informing the student body, campus organizations, athletic programs, and student groups about the institution's overall sexual assault policy, the practical implications of an affirmative consent standard, and the rights and responsibilities of students under the policy.

(e) Outreach programming shall be included as part of every incoming student's orientation.

SEC. 2. *If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*

Sexual Violence on Campus

How too many institutions of
higher education are failing
to protect students

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JULY 9, 2014

UNITED STATES SENATE

A report prepared by the U.S. Senate Subcommittee on Financial & Contracting Oversight – Majority Staff

I. EXECUTIVE SUMMARY

At the request of Chairman Claire McCaskill, this report assesses how colleges and universities report, investigate, and adjudicate sexual violence. The report is based on a survey of 440 four-year institutions of higher education, which includes a national sample and separate samples of the nation's largest public and private institutions. It also draws on interviews with stakeholders and three roundtable discussions held by the Subcommittee on Financial and Contracting Oversight in 2014.

The survey results showed that many institutions are failing to comply with the law and best practices in how they handle sexual violence among students. These problems affect nearly every stage of the institutions' responses to sexual violence.

- **Lack of Knowledge About the Scope of the Problem.** According to the most recent report conducted by the Department of Justice, less than 5% of rape victims attending college report their attack to law enforcement. Experts agree that annual climate surveys—confidential student surveys regarding behaviors that constitute or are associated with sexual assault—are one of the best ways to get an accurate portrait of sexual assault issues on a campus. However, only 16% of the institutions in the Subcommittee's national sample conduct climate surveys.
- **Failure to Encourage Reporting of Sexual Violence.** Many policies and procedures have been shown to improve reporting of sexual violence on college campuses. These include allowing reports to be made via a hotline or website, designating an official who can receive reports, and permitting survivor reports to be kept confidentially. However, only 51% of institutions in the national sample provide a hotline to survivors and only 44% of institutions in the national sample provide the option to report sexual assaults online. Approximately 8% of institutions still do not allow confidential reporting.
- **Lack of Adequate Sexual Assault Training.** More than 20% of institutions in the national sample provide no sexual assault response training at all for members of their faculty and staff. More than 30% of schools do not provide any sexual assault training for students.
- **Reported Sexual Violence Goes Uninvestigated.** Federal law requires every institution that knows or reasonably should have known about sexual violence to conduct an investigation to determine what occurred. More than 40% of schools in the national sample have not conducted a single investigation in the past five years. More than 20% of the nation's largest private institutions conducted fewer investigations than the number of incidents they reported to the Department of Education, with some institutions reporting as many as seven times more incidents of sexual violence than they have investigated.
- **Lack of Adequate Services for Survivors.** Sexual violence survivors may need a variety of services, such as academic and residential accommodations, to enable them to continue their education after the assault. While most schools reported using a team approach to respond to sexual assaults, their approach often does not include

representatives of services that could help the survivor. For example, only 25% of institutions that use a team approach incorporate the local prosecutor's office. And though more than 90% of institutions state that sexual assault survivors have access to community victim assistance/advocacy programs, only 51% of schools reported incorporating those services into their team approach. Most institutions also fail to provide access to a Sexual Assault Nurse Examiner (SANE), a specially trained nurse who can provide medical and other services to survivors of sexual assault.

- **Lack of Trained, Coordinated Law Enforcement.** Law enforcement officials at 30% of institutions in the national sample receive no training on how to respond to reports of sexual violence. In addition, more than 70% of institutions in the national sample do not have protocols regarding how the institution and local law enforcement should work together to respond to sexual violence.
- **Adjudication Fails to Comply with Requirements and Best Practices.** Federal law requires institutions that receive claims of sexual assault to conduct an adjudication process to determine whether an assault occurred and, if it did, conduct an adjudication to reach a final determination. Many schools use adjudication processes that do not comply with best practices. More than 30% of institutions in the national sample failed to provide training regarding "rape myths" to the persons who adjudicate sexual assault claims. More than 40% of the nation's largest public schools allow students to help adjudicate sexual assault cases. More than 20% of institutions in the national sample give the athletic department oversight of sexual violence cases involving student athletes.
- **Lack of Coordinated Oversight.** Institutions are required to name one individual to serve as their Title IX coordinator, with responsibility for coordinating the institution's Title IX compliance efforts, including coordinating any investigations of sexual harassment and sexual violence. More than 10% of institutions in the Subcommittee's national sample do not have a Title IX coordinator.

An appendix to this report contains the complete results of the Subcommittee's survey.

II. INTRODUCTION AND METHODOLOGY

Approximately one in five undergraduate women has been the victim of attempted or completed sexual violence during college.¹ Under federal law, colleges and universities are required to take certain actions to address and report sexual violence on campus. Since the

¹Centers for Disease Control and Prevention, *Sexual Violence: Facts at a Glance* (2012) (online at <http://www.cdc.gov/violenceprevention/pdf/sv-datasheet-a.pdf>). Because of underreporting, the percentage is likely much higher. Bonnie S. Fisher, Francis T. Cullen, and Michael G. Turner, *The Sexual Victimization of College Women*, U.S. Department of Justice (2000) (online at <https://www.ncjrs.gov/pdffiles1/nij/182369.pdf>). There is no reliable, comprehensive data available regarding the prevalence of attempted or completed sexual violence committed against undergraduate men, who also experience sexual violence during college.

passage of the Clery Act in 1990, post-secondary institutions that participate in federal student financial assistance programs must report campus crime statistics and security information, including incidents of rape and sexual assault, to the U.S. Department of Education.² Schools are also required to publish an annual security report containing safety and security related policy statements and crime statistics and distribute it to all current students and employees.³ In addition, all public and private institutions receiving federal funds must comply with Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex, including sexual harassment or sexual violence.⁴

In 2002, the Education Development Center, Inc. in partnership with the University of Cincinnati and Police Executive Research Forum published a study funded by the National Institute of Justice (NIJ Report) to address issues of sexual assault.⁵ The report was submitted to the U.S. Department of Justice and Congress to provide a baseline look at how the nation's postsecondary institutions of higher education were responding to sexual assault on their campuses. At that time, 12 years ago, the NIJ report found that few schools had implemented best practices in how they dealt with the problem of sexual assault.

At the request of Chairman Claire McCaskill, the Subcommittee on Financial and Contracting Oversight launched a national survey to assess how colleges and universities are currently handling sexual violence. The survey also assessed how institutions work with law enforcement to ensure that reports of rape and sexual assault are investigated and prosecuted. To assess whether any changes in how institutions handle sexual violence have occurred over the past decade, the survey questionnaire based 28 questions on questions asked in the NIJ Report.⁶

To conduct the survey, the Subcommittee selected three samples pulled from data from the Integrated Postsecondary Education Data System for the 2011-2012 school year. The Subcommittee's national sample comprises 350 schools selected from a population of all four-year postsecondary institutions that participate in Federal Title IV financial aid programs. The population of these 3,104 institutions was stratified into one of nine selection strata: public institutions with more than 10,000 students, public institutions with between 1,000 and 9,000 students, public institutions with fewer than 1,000 students, private non-profit institutions with more than 10,000 students, private non-profit institutions with between 1,000 and 9,000 students, private non-profit institutions with fewer than 1,000 students, private for-profit institutions with more than 10,000 students, private for-profit institutions with between 1,000 and 9,000 students, and private for-profit institutions with fewer than 1,000 students.

² Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 USC § 1092(f).

³ *Id.*

⁴ 20 U.S.C. §§1681-1688.

⁵ Heather Karjane, Bonnie Fisher, and Francis Cullen, *Campus Sexual Assault: How America's Institutions of Higher Education Respond* (2002) (online at <https://www.ncjrs.gov/pdffiles1/nij/grants/196676.pdf>).

⁶ The survey asked institutions to answer a maximum of 215 questions.

A target sample size of 300 institutions was proportionally allocated across the nine selection strata. For the strata that were allocated fewer than 20 institutions, the Subcommittee increased the sample size to 20. The resulting sample size was 350 institutions. Within each of the nine strata, the Subcommittee randomly selected a sample of institutions. This selection strategy ensured adequate representation of institutions by type and by size within the sampled population. The schools selected as part of the Subcommittee's national sample collectively educate more than 2.3 million students.

The Subcommittee also selected two additional samples to examine the policies and procedures at the nation's flagship colleges and universities. The second sample consists of the 50 largest public four-year institutions in the country. The third sample consists of all private non-profit four-year institutions in the country with enrollments of 15,000 students or more, a total of 40 schools. The schools selected as part of the Subcommittee's second and third sample collectively educate more than 3 million students.

All schools in the samples received a letter to the head of the institutions with an invitation to participate in the survey. A copy of each letter was also e-mailed to each institution head's office. All schools participating in the survey received at least three phone calls, and institutions that did not respond within four weeks were e-mailed and/or called at least one more time. To encourage accurate and complete information, schools were assured that neither their responses nor their participation in the survey would be shared outside of Senator McCaskill's office, either with members of the public, the media, or other offices or branches of the government.

The Subcommittee's national sample received 236 responses, yielding a response rate of 67%. The Subcommittee's second and third samples had a response rate of 98% and 85%, respectively.

III. SUMMARY OF FINDINGS

Institutions are failing to comply with the law and best practices in handling sexual violence on campus. These failures include failing to have a Title IX coordinator, not knowing the scope of the problem on their campuses because of inadequate outreach, not responding to reports of sexual violence made by students, not training students, faculty, and staff on preventing and responding to sexual violence, and having biased or harmful sexual assault adjudication procedures. Although there have been some improvements over the last decade, there is clearly still much work to be done.

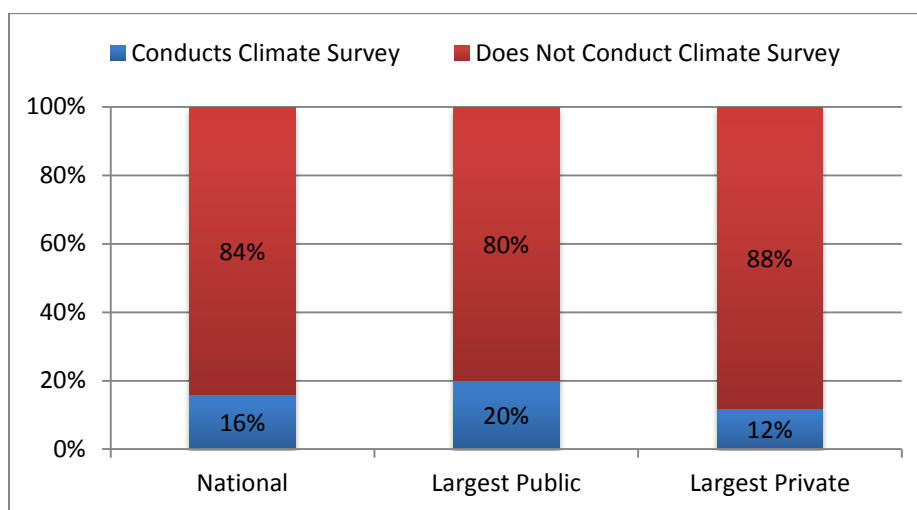
A. Schools Don't Know the Scope of the Problem

Sexual assaults on college campuses are widely underreported. According to the most recent report conducted by the Department of Justice, less than 5% of rape victims attending college report their attack to law enforcement.⁷ In many cases, victims wishing to report sexual assault experienced confusion over how to report, confusion over acceptable standards of conduct and definitions of rape and sexual assault, and a fear of punishment for activities

⁷ Bonnie S. Fisher, Francis T. Cullen, and Michael G. Turner, *The Sexual Victimization of College Women*, U.S. Department of Justice (2000) (online at <https://www.ncjrs.gov/pdffiles1/nij/182369.pdf>).

preceding some assaults, such as underage drinking.⁸ As a result, most colleges and universities lack accurate information about the real number of sexual assaults that occur on campus.

Experts agree that annual climate surveys—confidential student surveys regarding behaviors that constitute or are associated with sexual assault—are one of the best ways to get an accurate portrait of sexual assault issues on a campus.⁹ However, only 16% of the institutions in the Subcommittee’s national sample reported conducting climate surveys. Only 20% of the nation’s largest public schools and 12% of the largest private schools reported conducting climate surveys.



B. Schools Fail to Encourage Reporting of Sexual Violence

There are many policies and procedures on campus that have been shown to improve reporting of sexual violence. These include providing a hotline or website as a reporting tool, having a designated official who can receive reports, and permitting survivor reports to be kept confidentially. Many institutions have failed to take these steps to encourage reporting.

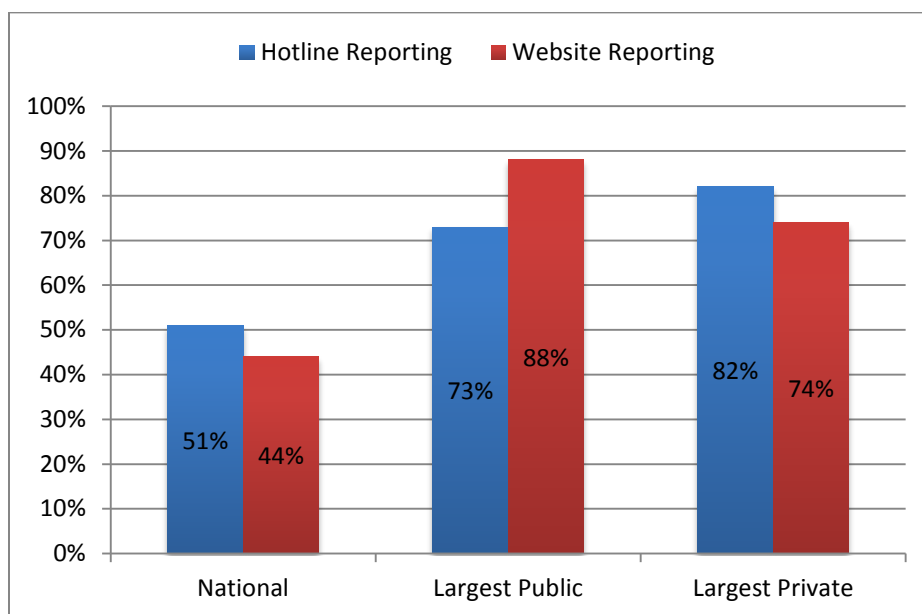
One way to encourage reporting is to provide a 24-hour hotline for people to report incidents of sexual assault. While more than 73% of the largest public institutions and 82% of the largest private schools provide reporting hotlines, only 51% of institutions in the national sample stated that they provided this reporting tool.

Another factor that can encourage reporting is to allow reports to be made through a website. Despite the relative ease of providing this option, only 44% of institutions in the

⁸ The Center for Public Integrity, *Sexual Assault on Campus: A Frustrating Search for Justice* (2010) (online at <http://cloudfront-files-1.publicintegrity.org/documents/pdfs/Sexual%20Assault%20on%20Campus.pdf>).

⁹ Subcommittee on Financial and Contracting Oversight, Roundtable on Sexual Assault: Complying with and Enforcing the Clery Act and the Campus SaVE Act (May 19, 2014).

national sample reported providing the option to report sexual assaults online. The nation's largest public and private schools are significantly more advanced in this area, with 88% and 74%, respectively, providing the option to report online.



Another factor that can encourage reporting is confidential reporting, in which the names and possible identifiers of victims are kept private. The 2002 NIJ Report results showed that approximately 16% of institutions did not allow confidential reporting.¹⁰ The Subcommittee's survey results showed an improvement, but approximately 8% of institutions in the national sample stated that they still do not allow confidential reporting. However, the nation's largest public schools do better as all of them provide confidential reporting.

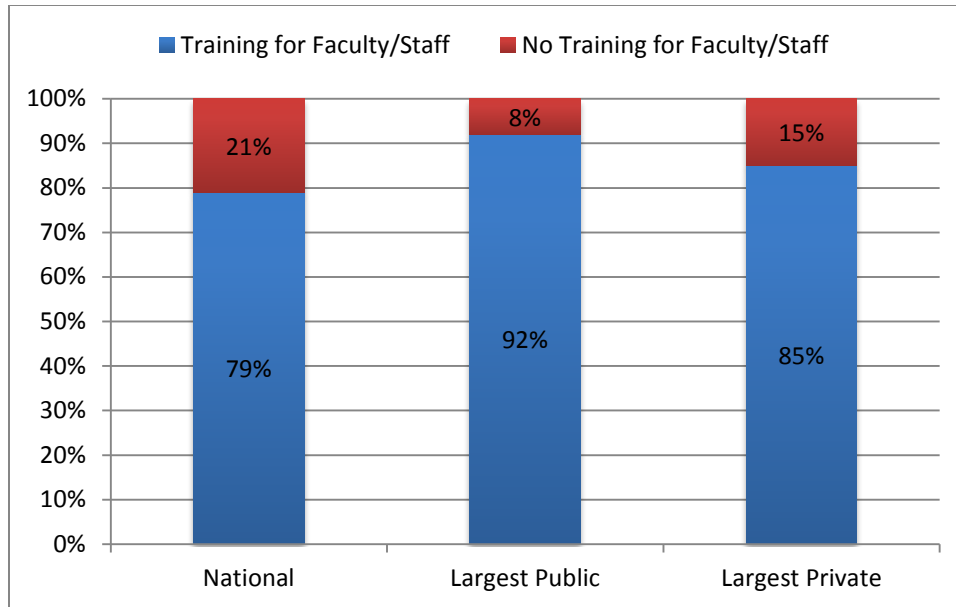
C. Schools Fail to Provide Sexual Assault Response Training for Faculty and Staff

The first person to whom a sexual assault survivor reports the incident is often a member of the institution's faculty or staff. This faculty or staff member may be the survivor's first point of contact in the process, and the quality of that experience can have a tremendous impact on whether a victim obtains access to services and/or chooses to pursue accountability for the perpetrator of the assault.

Approximately 20% of institutions in the national sample reported providing no sexual assault response training for their faculty and staff. This represents an improvement from 2002, when 49% of schools provided no training for faculty and staff, but a relatively small improvement over a decade.¹¹ In the other samples, 8% of the nation's largest public schools and 15% of the largest private schools provide no training at all for faculty and staff.

¹⁰ Heather Karjane, Bonnie Fisher, and Francis Cullen, *Campus Sexual Assault: How America's Institutions of Higher Education Respond* (2002) (online at <https://www.ncjrs.gov/pdffiles1/nij/grants/196676.pdf>).

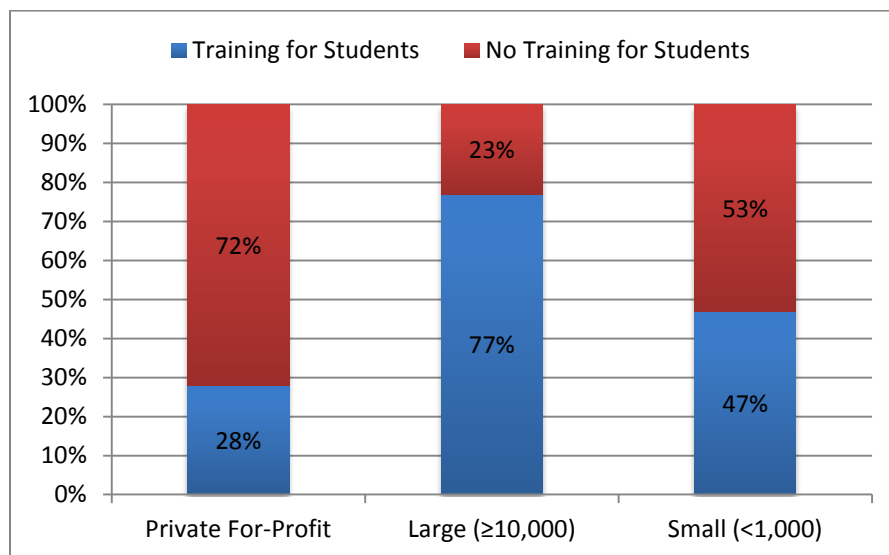
¹¹ *Id.*



D. Institutions Fail to Provide Adequate Sexual Assault Training for Students

Prevention and response education for students can drastically lower the incidence of sexual assaults, both by educating potential perpetrators about what constitutes sexual assault and also by educating future bystanders on how to recognize and safely intervene to prevent sexual assault. Today, 31% of schools stated that they do not provide any sexual assault training for students. This represents an improvement from 2002, when 58% of schools stated they did not provide any sexual assault training for students.

Some types of schools, however, fall substantially behind the national average. Today, 72% of private for-profit institutions fail to provide any sexual assault training for students. And while 77% of institutions with more than 10,000 students provide some training, approximately 53% of institutions with fewer than 1,000 students provide no training at all.

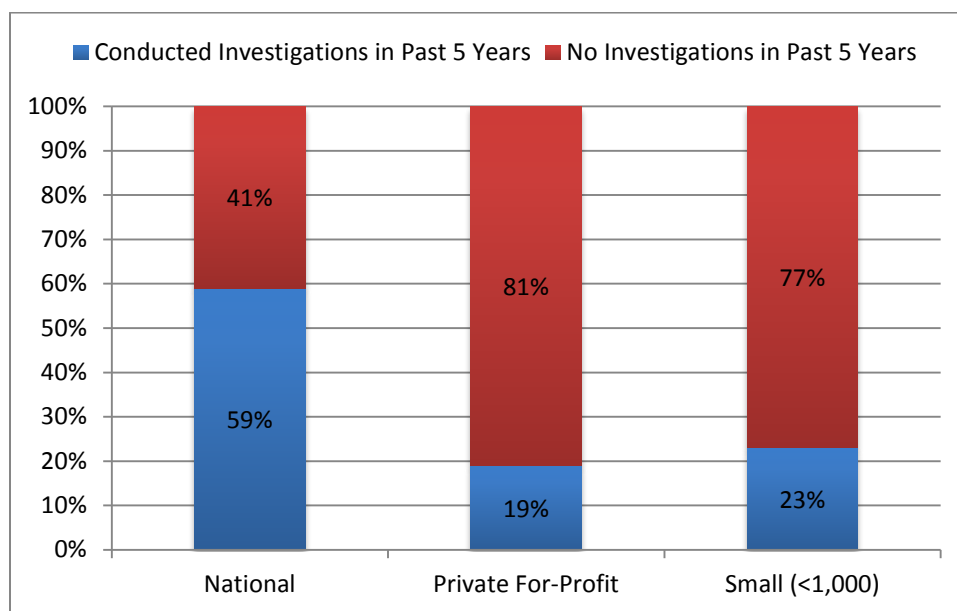


Schools are also still failing to provide targeted training for certain groups of students among whom sexual violence happens with greater frequency than the general population of students.¹² For example, only 22% of schools in the national sample provide sexual violence training targeted at the Greek system and only 37% provide training targeted at student athletes.¹³ These numbers increase significantly for schools that participate in Division I athletics, where 64% of schools target training at the Greek system and 82% target training for student athletes.

E. Investigation of Sexual Assault Reports by Institutions

Every institution that knows or reasonably should have known about sexual violence has an obligation to conduct an investigation to determine what occurred. This obligation to investigate is independent of any other investigation (for example, law enforcement) that may cover the incident.¹⁴

Despite the prevalence of campus sexual assaults, about 41% of schools in the national sample reported not having conducted a single investigation in the past five years. More than 81% of private for-profit schools and 77% of institutions with fewer than 1000 students have not conducted any investigations. Interestingly, approximately 6% of the nation's largest public institutions also have not conducted any investigations in the last five years.



¹² Sarah Murnen and Marla Kohlman, Athletic Participation, Fraternity Membership, and Sexual Aggression Among College Men: A Meta-Analytic Review (2007).

¹³ These percentages include a small number of schools which do not have Greek systems or student athletes.

¹⁴ 20 USC §§1681-1688; U.S. Department of Education, *Dear Colleague Letter: Sexual Violence* (April 4, 2011) (online at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>).

To determine whether the absence of investigations is due to a lack of reports received or due to the institutions' failure to comply with federal law, the Subcommittee compared the survey results with available data on the number of campus sexual assaults the institutions reported to the Department of Education.¹⁵

Overall, the Subcommittee found that 9% of schools in the national sample conducted fewer investigations of forcible and non-forcible sexual offenses in the past five years than they reported to the Department of Education. The Subcommittee also found that 21% of the nation's largest private institutions conducted fewer investigations than the number of incidents reported to the Department of Education, with some institutions reporting as many as seven times more incidents of sexual violence than they have investigated.

F. Lack of Trained, Coordinated Law Enforcement

Due to the widespread concerns regarding the handling of sexual assault cases by local law enforcement, many sexual assault survivors prefer to avoid reporting to police at all.¹⁶ As a result, the survivor may not get access to necessary services. In addition, the lack of law enforcement action creates a widespread and self-perpetuating perception that perpetrators of sexual assault act with impunity.¹⁷

One difficulty for student survivors of sexual violence is that their institution may work with a variety of law enforcement agencies both on and off campus, including sworn law enforcement officers employed by the school, private security employed by the school, private security employed not by the school but by the landlord of the facility the school occupies, and local law enforcement unaffiliated with the institution. These law enforcement and security units may or may not work together or coordinate their activities. More than 73% of institutions in the national sample do not have protocols regarding how they should work together to respond to sexual violence.

Regardless of their affiliation, many law enforcement officials lack adequate training in how to respond to reports of sexual violence. Interviewing victims and gathering evidence in a trained, skilled, and effective manner is essential to empowering victims and ensuring a fair and

¹⁵ The Subcommittee compared the investigations that schools reported that they conducted from 2009 to the present with the number of reported Clery incidents from 2009 to 2012, the latest year for which information is available. If 2013 Clery data were available, it's likely that all these percentages would be even higher.

¹⁶ Kimberly Lonsway and Joanne Archambault, *The "Justice Gap" for Sexual Assault Cases: Future Directions for Research and Reform*, 18 *Violence Against Women* 145-168 (2012); Cassia Spohn and Katharine Tellis, *The Criminal Justice System's Response to Sexual Violence*, 18 *Violence Against Women* 169-192 (2012).

¹⁷ Bonnie S. Fisher, Francis T. Cullen, and Michael G. Turner, *The Sexual Victimization of College Women*, U.S. Department of Justice (2000) (online at <https://www.ncjrs.gov/pdffiles1/nij/182369.pdf>).

timely response to a sexual crime.¹⁸ Unfortunately, law enforcement at 30% of institutions in the national sample do not receive training on how to respond to reports of sexual violence.

G. Institutions Fail to Provide Adequate Services to Sexual Assault Survivors

Sexual violence survivors may need a variety of different services, including academic and residential accommodations, to enable them to continue their education after the assault. These services often require the participation of many professionals, including administrators, health professionals, housing officials, professors, and local law enforcement.

One of the more effective responses to sexual violence in general has been the use of coordinated Sexual Assault Response Teams.¹⁹ Most schools use a team approach to respond to sexual assaults. Approximately 85% of institutions in the national sample use a team approach. 86% of the largest public institutions and 94% of the largest private institutions use a team approach.

However, many schools do not include representatives of services that could help the survivor. For example, only 25% of institutions that use a team approach incorporate the local prosecutor's office. And although more than 90% of institutions state that sexual assault survivors have access to community victim assistance/advocacy programs, only 51% of schools reported incorporating those services into their team approach.

In addition, many schools do not use a written protocol for how the team should coordinate its response to sexual violence. Only 52% of institutions in the national sample reporting doing so.

Most institutions also fail to provide access to a Sexual Assault Nurse Examiner (SANE), a specially trained nurse who can provide medical and other services to survivors of sexual assault. Only 15% of institutions in the national sample have a SANE available on campus. Approximately 42% of the nation's largest public schools and 21% of the largest private schools have a SANE.

H. Formal Adjudication Processes Fail to Comply with Requirements and Best Practices

Under Title IX, institutions that receive claims of sexual assault must conduct an investigation to determine whether an assault occurred and, if it did, conduct an adjudication to reach a final determination. Institutions are not required to have a separate grievance procedure for sexual harassment or sexual violence cases. As a result, many use the same student conduct adjudication process for sexual assault cases that they use for other types of student misconduct, such as cheating or plagiarism. Title IX requires institutions to ensure that whatever process is

¹⁸ Kimberly Lonsway and Joanne Archambault, The "Justice Gap" for Sexual Assault Cases: Future Directions for Research and Reform, 18 *Violence Against Women* 145-168 (2012); Cassia Spohn and Katharine Tellis, The Criminal Justice System's Response to Sexual Violence, 18 *Violence Against Women* 169-192 (2012).

¹⁹ National Institute of Justice, *Responses to Sexual Violence: Effectiveness of SANE/SART Programs* (online at <http://www.nij.gov/topics/crime/rape-sexual-violence/Pages/response.aspx>) (accessed July 5, 2014).

used must afford the complainant “a prompt and equitable resolution.” The Department of Education’s guidance states that the Title IX Coordinator should review the process to ensure Title IX compliance.²⁰

One required element of conducting a prompt and equitable resolution is to provide notice to the participants about what procedures will be used. However, approximately 13% of institutions in the national sample fail to make information about the adjudication process available to students.

Many schools use adjudication processes that do not comply with best practices. The overwhelming majority of experts believe that students should not participate in adjudication boards in campus sexual assault cases.²¹ Student participation can present privacy concerns for survivors who can be forced to divulge intimate and painful details of their experiences to peers that they live and study among. They also create conflicts of interest, as students may know the survivor and/or the alleged perpetrator. Despite these concerns, 27% of institutions in the national sample reported having students participate in adjudicating sexual assault claims. The percentage actually increases for the nation’s largest public and private institutions, where 43% and 30%, respectively, allow students to help adjudicate sexual assault cases.

Many institutions also use different adjudication procedures for student athletes. More than 20% of institutions in the national sample give the athletic department oversight of sexual violence cases involving student athletes. Approximately 20% of the nation’s largest public institutions and 15% of the largest private institutions allow their athletic departments to oversee cases involving student athletes.

Institutions are also failing to provide adequate training for the individuals who adjudicate sexual assault claims. This is particularly problematic because of pervasive and culturally ingrained misunderstandings of what constitutes sexual assault, such as the prevalence of acquaintance rape versus stranger rape, what constitutes consent, the type of conduct that constitutes rape, and how trauma can impact the survivor’s demeanor and memory.²² Yet 33% of institutions in the national sample failed to provide training regarding these issues to the persons who adjudicate sexual assault claims.

In the adjudication process, it is necessary to balance the rights of survivors with the rights of alleged perpetrators.²³ There has been concern voiced among some groups that if universities adopted more victim-centered approaches in their handling of sexual assault cases, they would violate the due process rights of alleged perpetrators. Some have even said the system is already too survivor-focused. Contrary to these concerns, it appears that some

²⁰ U.S. Department of Education, *Dear Colleague Letter: Sexual Violence* (April 4, 2011) (online at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>).

²¹ Subcommittee on Financial and Contracting Oversight, Roundtable on Sexual Assault: The Administrative Process and the Criminal Justice System (June 23, 2014)

²² Sarah McMahon, *Changing Perceptions of Sexual Violence Over Time*, National Online Resource Center on Violence Against Women (2011) (online at http://www.vawnet.org/Assoc_Files_VAWnet/AR_ChangingPerceptions.pdf).

institutions actually afford certain due process elements more frequently to alleged perpetrators than they do to survivors. For example, 82% of schools allow alleged perpetrators to challenge hearing members regarding impartiality or conflicts of interest, while only 78% provide the same right to survivors.

Many schools also fail to use the appropriate standard of proof for their administrative adjudications of sexual assault cases. The Department of Education has stated that the standard of evidence to be used in administrative proceedings is a preponderance of the evidence, which is the standard for civil litigation in the civil rights. However, only 85% of institutions in the national sample use the preponderance of the evidence standard, with 15% using a higher standard. 100% of the nation's largest public institutions reported using the preponderance of the evidence standard. In the national sample, 75% of schools with fewer than 1,000 students reported doing so.

Institutions also frequently fail to use effective penalties to hold perpetrators accountable and ensure that their campuses are safe. For example, approximately 19% of institutions in the national sample reported that they do not impose orders that would require the perpetrator to avoid contact with the survivor of the assault. Only 31% impose fraternity or sorority sanctions, and only half use athletic team sanctions. Nearly all institutions, however, may use suspension (94%) or expulsion (97%) should a student be found to have committed a sexual assault.

I. Failure to Comply with Oversight Requirements

Institutions are required to name one individual responsible for coordinating the institution's oversight of sexual discrimination, including sexual harassment. Under the federal regulations implementing Title IX, institutions are required to name one individual to serve as their Title IX coordinator, with responsibility for coordinating the institution's Title IX compliance efforts, including coordinating any Title IX investigations.²⁴

The Title IX coordinator can also be a good resource for encouraging students to report, since the coordinator should have the knowledge and training to guide victims through their school's particular reporting and adjudication processes. The coordinator should also help ensure that the institution's processes and procedures for responding to sexual violence comply with federal law as well as assist students in understanding their rights under federal law should institutions fail to comply.

Despite the legal requirement, many schools have failed to designate a Title IX coordinator. More than 10% of institutions in the Subcommittee's national sample do not have a Title IX coordinator. This includes approximately 12% of both private for-profit and private non-profit institutions, and more than 20% of institutions with fewer than 1,000 students.

²⁴ 34 C.F.R § 106.8 (2014)

IV. APPENDIX

A1. How many investigations of sexual violence has your institution conducted in the past five years?

Type of School	0	1	2-5	6-10	>10
National Sample	41%	9%	14%	11%	25%
Large ($\geq 10,000$)	15%	4%	12%	12%	50%
Medium (1,000 - 9,999)	26%	13%	19%	18%	25%
Small (<1,000)	77%	7%	10%	2%	4%
Public	25%	7%	10%	18%	40%
Private For-Profit	81%	9%	9%	0%	2%
Private Not-For-Profit	30%	10%	20%	12%	27%
Division I	0%	0%	7%	11%	81%
Division II	7%	10%	17%	31%	34%
Division III	10%	0%	23%	26%	42%
40 Largest Private Institutions	3%	3%	12%	9%	74%
50 Largest Public Institutions	6%	0%	4%	4%	86%

A2.1. For all students, how does your institution provide information about how to file a Title IX complaint regarding sexual violence? [On the institution's website]

Type of School	Yes	No
National Sample	86%	14%
Large ($\geq 10,000$)	100%	0%
Medium (1,000-9,999)	92%	8%
Small ($< 1,000$)	71%	29%
Public	97%	3%
Private For-Profit	70%	30%
Private Not-For-Profit	88%	12%
Division I	100%	0%
Division II	93%	7%
Division III	97%	3%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	100%	0%

A2.2. For all students, how does your institution provide information about how to file a Title IX complaint regarding sexual violence? [In the Student Handbook/Code of Conduct]

Type of School	Yes	No
National Sample	93%	7%
Large ($\geq 10,000$)	94%	6%
Medium (1,000-9,999)	93%	7%
Small ($< 1,000$)	93%	7%
Public	95%	5%
Private For-Profit	91%	9%
Private Not-For-Profit	93%	7%
Division I	96%	4%
Division II	97%	3%
Division III	94%	6%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	84%	16%

A2.3. For all students, how does your institution provide information about how to file a Title IX complaint regarding sexual violence? [In printed materials located in the Admissions office]

Type of School	Yes	No
National Sample	39%	61%
Large ($\geq 10,000$)	46%	54%
Medium (1,000-9,999)	40%	60%
Small ($< 1,000$)	33%	67%
Public	48%	52%
Private For-Profit	42%	58%
Private Not-For-Profit	31%	69%
Division I	54%	46%
Division II	40%	60%
Division III	32%	68%
40 Largest Private Institutions	33%	67%
50 Largest Public Institutions	54%	46%

A2.4. For all students, how does your institution provide information about how to file a Title IX complaint regarding sexual violence? [In printed materials located in the office of Greek life]

Type of School	Yes	No
National Sample	14%	86%
Large ($\geq 10,000$)	34%	66%
Medium (1,000-9,999)	14%	86%
Small ($< 1,000$)	1%	99%
Public	37%	73%
Private For-Profit	0%	100%
Private Not-For-Profit	13%	87%
Division I	46%	54%
Division II	20%	80%
Division III	23%	77%
40 Largest Private Institutions	41%	59%
50 Largest Public Institutions	63%	38%

A2.5. For all students, how does your institution provide information about how to file a Title IX complaint regarding sexual violence? [In printed materials located in the office of Athletics]

Type of School	Yes	No
National Sample	31%	69%
Large ($\geq 10,000$)	43%	57%
Medium (1,000-9,999)	43%	57%
Small ($< 1,000$)	10%	90%
Public	45%	55%
Private For-Profit	2%	98%
Private Not-For-Profit	39%	61%
Division I	68%	32%
Division II	54%	46%
Division III	54%	46%
40 Largest Private Institutions	41%	59%
50 Largest Public Institutions	73%	27%

A2.6. For all students, how does your institution provide information about how to file a Title IX complaint regarding sexual violence? [In printed materials located in the office of Student Affairs]

Type of School	Yes	No
National Sample	66%	34%
Large ($\geq 10,000$)	69%	31%
Medium (1,000-9,999)	73%	27%
Small ($< 1,000$)	55%	45%
Public	73%	27%
Private For-Profit	46%	54%
Private Not-For-Profit	72%	28%
Division I	86%	14%
Division II	62%	38%
Division III	86%	14%
40 Largest Private Institutions	74%	26%
50 Largest Public Institutions	83%	17%

A2.7. For all students, how does your institution provide information about how to file a Title IX complaint regarding sexual violence? [In printed materials located in the Residential Services Center]

Type of School	Yes	No
National Sample	39%	61%
Large ($\geq 10,000$)	47%	53%
Medium (1,000-9,999)	52%	48%
Small ($< 1,000$)	20%	80%
Public	46%	54%
Private For-Profit	7%	93%
Private Not-For-Profit	52%	48%
Division I	79%	21%
Division II	5%	50%
Division III	69%	31%
40 Largest Private Institutions	55%	45%
50 Largest Public Institutions	63%	37%

A2.8. For all students, how does your institution provide information about how to file a Title IX complaint regarding sexual violence? [In new student orientation materials]

Type of School	Yes	No
National Sample	78%	22%
Large ($\geq 10,000$)	74%	26%
Medium (1,000-9,999)	78%	22%
Small ($< 1,000$)	81%	19%
Public	85%	15%
Private For-Profit	75%	25%
Private Not-For-Profit	75%	25%
Division I	82%	18%
Division II	79%	21%
Division III	81%	19%
40 Largest Private Institutions	85%	15%
50 Largest Public Institutions	87%	13%

A3.1. For students who report sexual violence, how does your institution provide information to them about how to file a Title IX complaint regarding sexual violence? [On the institution's website]

Type of School	Yes	No
National Sample	84%	16%
Large ($\geq 10,000$)	98%	2%
Medium (1,000-9,999)	90%	10%
Small ($< 1,000$)	67%	33%
Public	96%	4%
Private For-Profit	70%	30%
Private Not-For-Profit	83%	17%
Division I	96%	4%
Division II	90%	10%
Division III	94%	6%
40 Largest Private Institutions	97%	3%
50 Largest Public Institutions	100%	0%

A3.2. For students who report sexual violence, how does your institution provide information to them about how to file a Title IX complaint regarding sexual violence? [In the Student Handbook/Code of Conduct]

Type of School	Yes	No
National Sample	91%	9%
Large ($\geq 10,000$)	92%	8%
Medium (1,000-9,999)	90%	10%
Small ($< 1,000$)	91%	9%
Public	89%	11%
Private For-Profit	93%	7%
Private Not-For-Profit	92%	8%
Division I	96%	4%
Division II	93%	7%
Division III	94%	6%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	84%	16%

A3.3. For students who report sexual violence, how does your institution provide information to them about how to file a Title IX complaint regarding sexual violence? [In printed materials located in the Admissions office]

Type of School	Yes	No
National Sample	34%	66%
Large ($\geq 10,000$)	45%	55%
Medium (1,000-9,999)	31%	69%
Small ($< 1,000$)	29%	71%
Public	40%	60%
Private For-Profit	42%	58%
Private Not-For-Profit	24%	76%
Division I	48%	52%
Division II	33%	67%
Division III	29%	71%
40 Largest Private Institutions	31%	69%
50 Largest Public Institutions	51%	49%

A3.4. For students who report sexual violence, how does your institution provide information to them about how to file a Title IX complaint regarding sexual violence? [In printed materials located in the office of Greek life]

Type of School	Yes	No
National Sample	14%	86%
Large ($\geq 10,000$)	33%	67%
Medium (1,000-9,999)	14%	86%
Small ($< 1,000$)	1%	99%
Public	26%	74%
Private For-Profit	0%	100%
Private Not-For-Profit	13%	87%
Division I	42%	58%
Division II	16%	84%
Division III	23%	77%
40 Largest Private Institutions	39%	61%
50 Largest Public Institutions	59%	41%

A3.5 For students who report sexual violence, how does your institution provide information to them about how to file a Title IX complaint regarding sexual violence? [In printed materials located in the office of Athletics]

Type of School	Yes	No
National Sample	30%	70%
Large ($\geq 10,000$)	42%	58%
Medium (1,000-9,999)	40%	60%
Small ($< 1,000$)	10%	90%
Public	46%	54%
Private For-Profit	2%	98%
Private Not-For-Profit	35%	65%
Division I	63%	37%
Division II	50%	50%
Division III	54%	46%
40 Largest Private Institutions	39%	61%
50 Largest Public Institutions	71%	29%

A3.6 For students who report sexual violence, how does your institution provide information to them about how to file a Title IX complaint regarding sexual violence? [In printed materials located in the office of Student Affairs]

Type of School	Yes	No
National Sample	65%	35%
Large ($\geq 10,000$)	69%	31%
Medium (1,000-9,999)	74%	26%
Small ($< 1,000$)	52%	48%
Public	73%	27%
Private For-Profit	46%	54%
Private Not-For-Profit	71%	29%
Division I	85%	15%
Division II	69%	31%
Division III	87%	13%
40 Largest Private Institutions	70%	30%
50 Largest Public Institutions	82%	18%

A3.7 For students who report sexual violence, how does your institution provide information to them about how to file a Title IX complaint regarding sexual violence? [In printed materials located in the Residential Services Center]

Type of School	Yes	No
National Sample	39%	61%
Large ($\geq 10,000$)	48%	52%
Medium (1,000-9,999)	53%	47%
Small ($< 1,000$)	19%	81%
Public	46%	54%
Private For-Profit	7%	93%
Private Not-For-Profit	53%	47%
Division I	81%	19%
Division II	54%	46%
Division III	70%	30%
40 Largest Private Institutions	53%	47%
50 Largest Public Institutions	67%	33%

A3.8 For students who report sexual violence, how does your institution provide information to them about how to file a Title IX complaint regarding sexual violence? [In new student orientation materials]

Type of School	Yes	No
National Sample	72%	28%
Large ($\geq 10,000$)	69%	31%
Medium (1,000-9,999)	76%	24%
Small ($< 1,000$)	68%	32%
Public	79%	21%
Private For-Profit	60%	40%
Private Not-For-Profit	73%	27%
Division I	78%	22%
Division II	79%	21%
Division III	81%	19%
40 Largest Private Institutions	79%	21%
50 Largest Public Institutions	85%	15%

A4.1 Does your institution conduct an annual internal survey to gauge the climate regarding sexual violence-related issues among the campus community?

Type of School	Yes	No
National Sample	16%	84%
Large ($\geq 10,000$)	23%	77%
Medium (1,000-9,999)	16%	84%
Small ($< 1,000$)	11%	89%
Public	14%	86%
Private For-Profit	16%	84%
Private Not-For-Profit	17%	83%
Division I	29%	71%
Division II	14%	86%
Division III	19%	81%
40 Largest Private Institutions	12%	88%
50 Largest Public Institutions	20%	80%

A4.2. Is the survey: [Mandatory]

Type of School	Yes	No
National Sample	15%	85%
Large ($\geq 10,000$)	8%	92%
Medium (1,000-9,999)	19%	81%
Small ($< 1,000$)	20%	80%
Public	13%	87%
Private For-Profit	31%	69%
Private Not-For-Profit	6%	94%
Division I	11%	89%
Division II	0%	100%
Division III	0%	100%
40 Largest Private Institutions	29%	71%
50 Largest Public Institutions	0%	100%

A4.3. Is the survey: [Confidential (survey participants' identities are protected)]

Type of School	Yes	No
National Sample	85%	15%
Large ($\geq 10,000$)	92%	8%
Medium (1,000-9,999)	76%	24%
Small ($< 1,000$)	89%	11%
Public	75%	25%
Private For-Profit	92%	8%
Private Not-For-Profit	83%	17%
Division I	78%	22%
Division II	75%	25%
Division III	83%	17%
40 Largest Private Institutions	86%	14%
50 Largest Public Institutions	75%	25%

A4.4. Is the survey: [Anonymous (survey participants do not provide their identities)]

Type of School	Yes	No
National Sample	79%	21%
Large ($\geq 10,000$)	83%	17%
Medium (1,000-9,999)	82%	18%
Small ($< 1,000$)	70%	30%
Public	88%	12%
Private For-Profit	62%	38%
Private Not-For-Profit	89%	11%
Division I	78%	22%
Division II	75%	25%
Division III	100%	0%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	90%	10%

A5.The federal government is responsible for overseeing how well colleges and universities across the country are enforcing Clery Act and Title IX requirements. In your opinion, how rigorous do you consider federal oversight of universities regarding sexual violence to be?

Type of School	Extremely rigorous	Very rigorous	Moderately rigorous	Somewhat rigorous	Not at all rigorous
National Sample	13%	54%	25%	6%	2%
Large ($\geq 10,000$)	15%	60%	23%	2%	0%
Medium (1,000 - 9,999)	16%	50%	22%	11%	2%
Small ($< 1,000$)	9%	56%	29%	4%	2%
Public	19%	20%	57% ¹	1%	1%
Private For-Profit	2%	56%	32%	9%	2%
Private Not-For-Profit	15%	51%	24%	8%	2%
Division I	7%	68%	25%	0%	0%
Division II	28%	31%	38%	3%	0%
Division III	13%	58%	19%	6%	3%
40 Largest Private Institutions	18%	53%	29%	0%	0%
50 Largest Public Institutions	31%	55%	12%	2%	0%

A6. Is your institution currently under investigation for non-compliance with Title IX requirements regarding sexual violence?

Type of School	Yes	No
National Sample	8%	92%
Large ($\geq 10,000$)	13%	87%
Medium (1,000-9,999)	3%	97%
Small ($< 1,000$)	10%	90%
Public	18%	82%
Private For-Profit	0%	100%
Private Not-For-Profit	5%	95%
Division I	8%	92%
Division II	0%	100%
Division III	10%	90%
40 Largest Private Institutions	12%	88%
50 Largest Public Institutions	18%	82%

A7. Since 2003, how many times has your institution been under investigation for non-compliance with Title IX requirements regarding sexual violence?

Type of School	0	1	2-3
National Sample	89%	10%	1%
Large ($\geq 10,000$)	78%	16%	6%
Medium (1,000 - 9,999)	94%	6%	0%
Small ($< 1,000$)	90%	10%	0%
Public	81%	19%	0%
Private For-Profit	100%	0%	0%
Private Not-For-Profit	88%	9%	3%
Division I	70%	26%	4%
Division II	100%	0%	0%
Division III	86%	10%	3%
40 Largest Private Institutions	73%	12%	15%
50 Largest Public Institutions	73%	20%	6%

A8. Is your institution currently under investigation for non-compliance with Clery Act requirements regarding sexual violence?

Type of School	Yes	No
National Sample	43%	57%
Large ($\geq 10,000$)	0%	100%
Medium (1,000-9,999)	3%	97%
Small ($< 1,000$)	9%	91%
Public	11%	89%
Private For-Profit	0%	100%
Private Not-For-Profit	2%	98%
Division I	0%	100%
Division II	3%	97%
Division III	7%	93%
40 Largest Private Institutions	3%	97%
50 Largest Public Institutions	41%	59%

A9. Since 2003, how many times has your institution been under investigation for non-compliance with Clery Act requirements regarding sexual violence?

Type of School	0	1
National Sample	95%	5%
Large ($\geq 10,000$)	92%	8%
Medium (1,000-9,999)	99%	1%
Small ($< 1,000$)	91%	9%
Public	87%	13%
Private For-Profit	100%	0%
Private Not-For-Profit	97%	3%
Division I	85%	15%
Division II	100%	0%
Division III	97%	3%
40 Largest Private Institutions	88%	12%
50 Largest Public Institutions	94%	6%

B1. When was the last time your institution’s sexual violence policies and procedures were updated?

Type of School	Within the last 5 years	6-10 years ago	More than 10 years ago	No official policies
National Sample	95%	3%	1%	1%
Large (≥10,000)	98%	2%	0%	0%
Medium (1,000 - 9,999)	95%	4%	0%	1%
Small (<1,000)	94%	4%	1%	1%
Public	96%	1%	1%	1%
Private For-Profit	98%	2%	0%	0%
Private Not-For-Profit	94%	5%	0%	1%
Division I	93%	7%	0%	0%
Division II	97%	3%	0%	0%
Division III	100%	0%	0%	0%
40 Largest Private Institutions	100%	0%	0%	0%
50 Largest Public Institutions	96%	2%	2%	0%

B2.1. How does your institution provide security/law enforcement on campus?
[Sworn law enforcement officers employed by the institution]

Type of School	Yes	No
National Sample	40%	60%
Large (≥10,000)	70%	30%
Medium (1,000-9,999)	47%	53%
Small (<1,000)	12%	88%
Public	82%	18%
Private For-Profit	2%	98%
Private Not-For-Profit	32%	68%
Division I	75%	25%
Division II	62%	38%
Division III	55%	45%
40 Largest Private Institutions	53%	47%
50 Largest Public Institutions	98%	2%

B2.2. How does your institution provide security/law enforcement on campus?
 [Private security employed by the institution]

Type of School	Yes	No
National Sample	57%	43%
Large ($\geq 10,000$)	55%	45%
Medium (1,000-9,999)	66%	34%
Small ($< 1,000$)	49%	51%
Public	43%	57%
Private For-Profit	39%	61%
Private Not-For-Profit	77%	23%
Division I	61%	39%
Division II	43%	57%
Division III	77%	23%
40 Largest Private Institutions	88%	12%
50 Largest Public Institutions	57%	43%

B2.3. How does your institution provide security/law enforcement on campus?
 [Private security employed by the facility owner/landlord]

Type of School	Yes	No
National Sample	22%	78%
Large ($\geq 10,000$)	32%	68%
Medium (1,000-9,999)	16%	84%
Small ($< 1,000$)	23%	77%
Public	16%	84%
Private For-Profit	37%	63%
Private Not-For-Profit	18%	82%
Division I	25%	75%
Division II	17%	83%
Division III	17%	83%
40 Largest Private Institutions	41%	59%
50 Largest Public Institutions	17%	83%

B2.4. How does your institution provide security/law enforcement on campus?
[Rely on local (e.g., municipal, county, special district) law enforcement agency]

Type of School	Yes	No
National Sample	53%	47%
Large ($\geq 10,000$)	42%	58%
Medium (1,000-9,999)	48%	52%
Small ($< 1,000$)	67%	33%
Public	36%	64%
Private For-Profit	60%	40%
Private Not-For-Profit	61%	39%
Division I	46%	54%
Division II	38%	62%
Division III	45%	55%
40 Largest Private Institutions	62%	38%
50 Largest Public Institutions	27%	73%

B3.1. Are campus law enforcement/security officers required by law or institutional policy to be specifically trained to respond to reports of sexual violence

Type of School	Yes	No	No campus security
National Sample	57%	30%	13%
Large ($\geq 10,000$)	74%	20%	6%
Medium (1,000 - 9,999)	69%	30%	1%
Small ($< 1,000$)	29%	38%	33%
Public	72%	28%	0%
Private For-Profit	32%	23%	45%
Private Not-For-Profit	59%	35%	6%
Division I	89%	11%	0%
Division II	72%	28%	0%
Division III	72%	28%	0%
40 Largest Private Institutions	88%	9%	3%
50 Largest Public Institutions	86%	14%	0%

B3.2. If specific sexual violence training is required of law enforcement/security officers, does the training include explanations of what constitutes sexual assault, sexual abuse, rape, and other related terms?

Type of School	Yes	No
National Sample	98%	2%
Large ($\geq 10,000$)	100%	0%
Medium (1,000-9,999)	99%	1%
Small ($< 1,000$)	95%	5%
Public	100%	0%
Private For-Profit	93%	7%
Private Not-For-Profit	98%	2%
Division I	100%	0%
Division II	100%	0%
Division III	100%	0%
40 Largest Private Institutions	97%	3%
50 Largest Public Institutions	95%	5%

B3.3. If specific sexual violence training is required of law enforcement/security officers, does the training include how to work with local prosecutors?

Type of School	Yes	No
National Sample	57%	43%
Large ($\geq 10,000$)	73%	27%
Medium (1,000-9,999)	53%	47%
Small ($< 1,000$)	39%	61%
Public	81%	19%
Private For-Profit	7%	93%
Private Not-For-Profit	50%	50%
Division I	72%	28%
Division II	45%	55%
Division III	68%	32%
40 Largest Private Institutions	70%	30%
50 Largest Public Institutions	74%	26%

B3.4. If specific sexual violence training is required, how often is it given to law enforcement/security officers?

Type of School	Once, upon hiring	Annually	Other
National Sample	17%	65%	18%
Large ($\geq 10,000$)	14%	60%	26%
Medium (1,000 - 9,999)	16%	70%	14%
Small ($< 1,000$)	24%	59%	18%
Public	27%	50%	23%
Private For-Profit	12%	88%	0%
Private Not-For-Profit	9%	74%	17%
Division I	16%	60%	24%
Division II	19%	67%	14%
Division III	0%	75%	25%
40 Largest Private Institutions	20%	67%	13%
50 Largest Public Institutions	34%	41%	24%

B3.5. If specific sexual violence training is required, who provides the training?
[Faculty/staff of the institution]

Type of School	Yes	No
National Sample	60%	40%
Large ($\geq 10,000$)	68%	32%
Medium (1,000-9,999)	52%	48%
Small ($< 1,000$)	68%	32%
Public	54%	46%
Private For-Profit	80%	20%
Private Not-For-Profit	61%	39%
Division I	64%	36%
Division II	43%	57%
Division III	65%	35%
40 Largest Private Institutions	80%	20%
50 Largest Public Institutions	76%	24%

B3.6. If specific sexual violence training is required, who provides the training?
[Faculty/staff of the law enforcement/security agency]

Type of School	Yes	No
National Sample	56%	44%
Large ($\geq 10,000$)	62%	38%
Medium (1,000-9,999)	62%	38%
Small ($< 1,000$)	25%	75%
Public	60%	40%
Private For-Profit	13%	87%
Private Not-For-Profit	64%	36%
Division I	72%	28%
Division II	57%	43%
Division III	74%	26%
40 Largest Private Institutions	67%	33%
50 Largest Public Institutions	76%	24%

B3.7. If specific sexual violence training is required, who provides the training?
[Specialized trainers under contract to the institution or law enforcement/security agency]

Type of School	Yes	No
National Sample	48%	52%
Large ($\geq 10,000$)	46%	54%
Medium (1,000-9,999)	52%	48%
Small ($< 1,000$)	38%	62%
Public	43%	57%
Private For-Profit	27%	73%
Private Not-For-Profit	58%	42%
Division I	60%	40%
Division II	62%	38%
Division III	47%	53%
40 Largest Private Institutions	57%	43%
50 Largest Public Institutions	51%	49%

B3.8. If specific sexual violence training is required, who provides the training?
[State training academy]

Type of School	Yes	No
National Sample	44%	56%
Large ($\geq 10,000$)	58%	42%
Medium (1,000-9,999)	42%	58%
Small ($< 1,000$)	25%	75%
Public	70%	30%
Private For-Profit	0%	100%
Private Not-For-Profit	32%	68%
Division I	52%	48%
Division II	50%	50%
Division III	50%	50%
40 Largest Private Institutions	46%	54%
50 Largest Public Institutions	83%	17%

B3.9. If specific sexual violence training is required, who provides the training?
[Local prosecutors]

Type of School	Yes	No
National Sample	21%	79%
Large ($\geq 10,000$)	30%	70%
Medium (1,000-9,999)	21%	79%
Small ($< 1,000$)	5%	95%
Public	30%	70%
Private For-Profit	0%	100%
Private Not-For-Profit	20%	80%
Division I	36%	64%
Division II	20%	80%
Division III	17%	83%
40 Largest Private Institutions	21%	79%
50 Largest Public Institutions	55%	45%

B4.1. Are there written protocols between campus law enforcement and local law enforcement agencies for responding to sexual violence cases?

Type of School	Yes	No
National Sample	27%	73%
Large ($\geq 10,000$)	36%	64%
Medium (1,000-9,999)	34%	66%
Small ($< 1,000$)	11%	89%
Public	39%	61%
Private For-Profit	5%	95%
Private Not-For-Profit	29%	71%
Division I	52%	48%
Division II	36%	64%
Division III	33%	67%
40 Largest Private Institutions	50%	50%
50 Largest Public Institutions	39%	61%

B4.2. If such protocols exist, which of the following are included? [Requirement to report incident to local or nearest police agency]

Type of School	Yes	No
National Sample	67%	33%
Large ($\geq 10,000$)	53%	47%
Medium (1,000-9,999)	73%	27%
Small ($< 1,000$)	78%	22%
Public	57%	43%
Private For-Profit	25%	75%
Private Not-For-Profit	83%	17%
Division I	71%	29%
Division II	78%	22%
Division III	50%	50%
40 Largest Private Institutions	82%	18%
50 Largest Public Institutions	53%	47%

B4.3. If such protocols exist, which of the following are included? [Explanation of what constitutes a reportable incident]

Type of School	Yes	No
National Sample	66%	34%
Large ($\geq 10,000$)	56%	44%
Medium (1,000-9,999)	72%	28%
Small ($< 1,000$)	63%	38%
Public	54%	46%
Private For-Profit	33%	67%
Private Not-For-Profit	81%	19%
Division I	50%	50%
Division II	78%	22%
Division III	90%	10%
40 Largest Private Institutions	88%	12%
50 Largest Public Institutions	65%	35%

B4.4. If such protocols exist, which of the following are included? [Procedures for dual or cross-reporting of incidents]

Type of School	Yes	No
National Sample	58%	42%
Large ($\geq 10,000$)	58%	42%
Medium (1,000-9,999)	55%	45%
Small ($< 1,000$)	71%	29%
Public	61%	39%
Private For-Profit	25%	75%
Private Not-For-Profit	60%	40%
Division I	71%	29%
Division II	78%	22%
Division III	50%	50%
40 Largest Private Institutions	69%	31%
50 Largest Public Institutions	60%	40%

B4.5. If such protocols exist, which of the following are included? [Procedures for Uniform Crime Reporting]

Type of School	Yes	No
National Sample	63%	38%
Large ($\geq 10,000$)	58%	42%
Medium (1,000-9,999)	65%	35%
Small ($< 1,000$)	67%	33%
Public	65%	35%
Private For-Profit	25%	75%
Private Not-For-Profit	65%	35%
Division I	64%	36%
Division II	89%	11%
Division III	50%	50%
40 Largest Private Institutions	50%	50%
50 Largest Public Institutions	65%	35%

B4.6. If such protocols exist, which of the following are included? [Procedures for Campus Security Act (Clery Act) reporting]

Type of School	Yes	No
National Sample	68%	32%
Large ($\geq 10,000$)	63%	37%
Medium (1,000-9,999)	72%	28%
Small ($< 1,000$)	67%	33%
Public	70%	30%
Private For-Profit	50%	50%
Private Not-For-Profit	69%	31%
Division I	64%	36%
Division II	78%	22%
Division III	70%	30%
40 Largest Private Institutions	71%	29%
50 Largest Public Institutions	80%	20%

B4.7. If such protocols exist, which of the following are included? [Investigative responsibility]

Type of School	Yes	No
National Sample	82%	18%
Large ($\geq 10,000$)	79%	21%
Medium (1,000-9,999)	82%	18%
Small ($< 1,000$)	88%	13%
Public	96%	4%
Private For-Profit	25%	75%
Private Not-For-Profit	76%	24%
Division I	93%	7%
Division II	89%	11%
Division III	70%	30%
40 Largest Private Institutions	82%	18%
50 Largest Public Institutions	80%	20%

B4.8. If such protocols exist, which of the following are included? [Information-sharing]

Type of School	Yes	No
National Sample	82%	18%
Large ($\geq 10,000$)	84%	16%
Medium (1,000-9,999)	79%	21%
Small ($< 1,000$)	88%	13%
Public	89%	11%
Private For-Profit	25%	75%
Private Not-For-Profit	83%	17%
Division I	86%	14%
Division II	78%	22%
Division III	80%	20%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	80%	20%

B4.9. If such protocols exist, which of the following are included? [Resource-sharing (e.g., medical facilities)]

Type of School	Yes	No
National Sample	54%	46%
Large ($\geq 10,000$)	53%	47%
Medium (1,000-9,999)	50%	50%
Small ($< 1,000$)	75%	25%
Public	67%	33%
Private For-Profit	0%	100%
Private Not-For-Profit	50%	50%
Division I	64%	36%
Division II	44%	56%
Division III	33%	67%
40 Largest Private Institutions	47%	53%
50 Largest Public Institutions	85%	15%

B4.10. If such protocols exist, which of the following are included? [Referrals to victim support services]

Type of School	Yes	No
National Sample	64%	36%
Large ($\geq 10,000$)	42%	58%
Medium (1,000-9,999)	72%	28%
Small ($< 1,000$)	80%	20%
Public	68%	32%
Private For-Profit	0%	100%
Private Not-For-Profit	69%	31%
Division I	43%	57%
Division II	78%	22%
Division III	78%	22%
40 Largest Private Institutions	53%	47%
50 Largest Public Institutions	75%	25%

C1.1. Where could a student get information about what to do in the case of sexual violence? [Student handbook/Student code of conduct]

Type of School	Yes	No
National Sample	97%	3%
Large ($\geq 10,000$)	98%	2%
Medium (1,000-9,999)	97%	3%
Small ($< 1,000$)	95%	5%
Public	95%	5%
Private For-Profit	98%	2%
Private Not-For-Profit	97%	3%
Division I	96%	4%
Division II	100%	0%
Division III	97%	3%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	86%	14%

C1.2. Where could a student get information about what to do in the case of sexual violence? [New student/Freshman orientation]

Type of School	Yes	No
National Sample	82%	18%
Large ($\geq 10,000$)	78%	22%
Medium (1,000-9,999)	87%	13%
Small ($< 1,000$)	79%	21%
Public	90%	10%
Private For-Profit	58%	42%
Private Not-For-Profit	89%	11%
Division I	89%	11%
Division II	93%	7%
Division III	100%	0%
40 Largest Private Institutions	91%	9%
50 Largest Public Institutions	94%	6%

C1.3. Where could a student get information about what to do in the case of sexual violence? [Seminars held periodically (e.g., semester, quarter, trimester)]

Type of School	Yes	No
National Sample	66%	34%
Large ($\geq 10,000$)	79%	21%
Medium (1,000-9,999)	79%	21%
Small ($< 1,000$)	42%	58%
Public	81%	19%
Private For-Profit	37%	63%
Private Not-For-Profit	72%	28%
Division I	93%	7%
Division II	82%	18%
Division III	97%	3%
40 Largest Private Institutions	74%	26%
50 Largest Public Institutions	94%	6%

C1.4. Where could a student get information about what to do in the case of sexual violence? [Posted in public spaces (e.g., bathrooms, bulletin boards, dorm hallways)]

Type of School	Yes	No
National Sample	58%	42%
Large ($\geq 10,000$)	69%	31%
Medium (1,000-9,999)	67%	33%
Small ($< 1,000$)	38%	62%
Public	74%	26%
Private For-Profit	26%	74%
Private Not-For-Profit	63%	37%
Division I	86%	14%
Division II	64%	36%
Division III	81%	19%
40 Largest Private Institutions	64%	36%
50 Largest Public Institutions	83%	17%

C1.5. Where could a student get information about what to do in the case of sexual violence? [Institution's website]

Type of School	Yes	No
National Sample	85%	15%
Large ($\geq 10,000$)	98%	2%
Medium (1,000-9,999)	92%	8%
Small ($< 1,000$)	68%	32%
Public	99%	1%
Private For-Profit	63%	37%
Private Not-For-Profit	88%	12%
Division I	96%	4%
Division II	97%	3%
Division III	100%	0%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	100%	0%

C1.6. Where could a student get information about what to do in the case of sexual violence? [Annual Security Report]

Type of School	Yes	No
National Sample	92%	8%
Large ($\geq 10,000$)	96%	4%
Medium (1,000-9,999)	90%	10%
Small ($< 1,000$)	93%	7%
Public	93%	7%
Private For-Profit	93%	7%
Private Not-For-Profit	91%	9%
Division I	100%	0%
Division II	100%	0%
Division III	90%	10%
40 Largest Private Institutions	97%	3%
50 Largest Public Institutions	96%	4%

C1.7. Where could a student get information about what to do in the case of sexual violence? [Available upon request]

Type of School	Yes	No
National Sample	95%	5%
Large ($\geq 10,000$)	98%	2%
Medium (1,000-9,999)	94%	6%
Small ($< 1,000$)	95%	5%
Public	97%	3%
Private For-Profit	96%	4%
Private Not-For-Profit	93%	7%
Division I	93%	7%
Division II	100%	0%
Division III	100%	0%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	100%	0%

C1.8. Where could a student get information about what to do in the case of sexual violence? [By referral]

Type of School	Yes	No
National Sample	80%	20%
Large ($\geq 10,000$)	83%	17%
Medium (1,000-9,999)	89%	11%
Small ($< 1,000$)	68%	32%
Public	88%	12%
Private For-Profit	67%	33%
Private Not-For-Profit	82%	18%
Division I	89%	11%
Division II	96%	4%
Division III	97%	3%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	100%	0%

C2.1. Which of the following offer services to students who have reported that they have experienced sexual violence? [Campus law enforcement]

Type of School	Yes	No
National Sample	74%	26%
Large ($\geq 10,000$)	85%	15%
Medium (1,000-9,999)	91%	9%
Small ($< 1,000$)	45%	55%
Public	96%	4%
Private For-Profit	28%	72%
Private Not-For-Profit	83%	17%
Division I	100%	0%
Division II	97%	3%
Division III	97%	3%
40 Largest Private Institutions	97%	3%
50 Largest Public Institutions	98%	2%

C2.2. Which of the following offer services to students who have reported that they have experienced sexual violence? [Campus victim assistance/advocacy program(s)]

Type of School	Yes	No
National Sample	43%	57%
Large ($\geq 10,000$)	70%	30%
Medium (1,000-9,999)	50%	50%
Small ($< 1,000$)	15%	85%
Public	61%	39%
Private For-Profit	18%	82%
Private Not-For-Profit	44%	56%
Division I	68%	32%
Division II	57%	43%
Division III	73%	27%
40 Largest Private Institutions	82%	18%
50 Largest Public Institutions	82%	18%

C2.3. Which of the following offer services to students who have reported that they have experienced sexual violence? [Student health services]

Type of School	Yes	No
National Sample	61%	39%
Large ($\geq 10,000$)	72%	28%
Medium (1,000-9,999)	76%	24%
Small ($< 1,000$)	35%	65%
Public	86%	14%
Private For-Profit	5%	95%
Private Not-For-Profit	73%	27%
Division I	96%	4%
Division II	90%	10%
Division III	97%	3%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	90%	10%

C2.4. Which of the following offer services to students who have reported that they have experienced sexual violence? [Student mental health services]

Type of School	Yes	No
National Sample	73%	27%
Large ($\geq 10,000$)	81%	19%
Medium (1,000-9,999)	89%	11%
Small ($< 1,000$)	47%	53%
Public	94%	6%
Private For-Profit	26%	74%
Private Not-For-Profit	83%	17%
Division I	100%	0%
Division II	97%	3%
Division III	97%	3%
40 Largest Private Institutions	91%	9%
50 Largest Public Institutions	94%	6%

C2.5. Which of the following offer services to students who have reported that they have experienced sexual violence? [Campus legal service counseling]

Type of School	Yes	No
National Sample	13%	88%
Large ($\geq 10,000$)	24%	76%
Medium (1,000-9,999)	11%	89%
Small ($< 1,000$)	8%	93%
Public	25%	75%
Private For-Profit	0%	100%
Private Not-For-Profit	11%	89%
Division I	39%	61%
Division II	11%	89%
Division III	7%	93%
40 Largest Private Institutions	18%	82%
50 Largest Public Institutions	59%	41%

C2.6. Which of the following offer services to students who have reported that they have experienced sexual violence? [Campus women's center]

Type of School	Yes	No
National Sample	18%	82%
Large ($\geq 10,000$)	38%	62%
Medium (1,000-9,999)	17%	83%
Small ($< 1,000$)	5%	95%
Public	32%	68%
Private For-Profit	0%	100%
Private Not-For-Profit	18%	82%
Division I	50%	50%
Division II	29%	71%
Division III	21%	79%
40 Largest Private Institutions	32%	68%
50 Largest Public Institutions	59%	41%

C2.7. Which of the following offer services to students who have reported that they have experienced sexual violence? [Local community law enforcement]

Type of School	Yes	No
National Sample	93%	7%
Large ($\geq 10,000$)	92%	8%
Medium (1,000-9,999)	93%	7%
Small ($< 1,000$)	95%	5%
Public	96%	4%
Private For-Profit	90%	10%
Private Not-For-Profit	93%	7%
Division I	93%	7%
Division II	100%	0%
Division III	97%	3%
40 Largest Private Institutions	97%	3%
50 Largest Public Institutions	96%	4%

C2.8. Which of the following offer services to students who have reported that they have experienced sexual violence? [Community victim assistance/advocacy program(s)]

Type of School	Yes	No
National Sample	92%	8%
Large ($\geq 10,000$)	100%	0%
Medium (1,000-9,999)	90%	10%
Small ($< 1,000$)	90%	10%
Public	97%	3%
Private For-Profit	93%	7%
Private Not-For-Profit	88%	12%
Division I	93%	7%
Division II	96%	4%
Division III	100%	0%
40 Largest Private Institutions	97%	3%
50 Largest Public Institutions	98%	2%

C2.9. Which of the following offer services to students who have reported that they have experienced sexual violence? [Community health services]

Type of School	Yes	No
National Sample	90%	10%
Large ($\geq 10,000$)	96%	4%
Medium (1,000-9,999)	91%	9%
Small ($< 1,000$)	87%	13%
Public	96%	4%
Private For-Profit	82%	18%
Private Not-For-Profit	89%	11%
Division I	96%	4%
Division II	96%	4%
Division III	100%	0%
40 Largest Private Institutions	97%	3%
50 Largest Public Institutions	98%	2%

C2.10. Which of the following offer services to students who have reported that they have experienced sexual violence? [Community mental health services]

Type of School	Yes	No
National Sample	92%	8%
Large ($\geq 10,000$)	98%	2%
Medium (1,000-9,999)	89%	11%
Small ($< 1,000$)	91%	9%
Public	96%	4%
Private For-Profit	94%	6%
Private Not-For-Profit	87%	13%
Division I	92%	8%
Division II	96%	4%
Division III	97%	3%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	98%	2%

C2.11. Which of the following offer services to students who have reported that they have experienced sexual violence? [Community legal services]

Type of School	Yes	No
National Sample	70%	30%
Large ($\geq 10,000$)	80%	20%
Medium (1,000-9,999)	74%	26%
Small ($< 1,000$)	59%	41%
Public	78%	22%
Private For-Profit	62%	38%
Private Not-For-Profit	69%	31%
Division I	78%	22%
Division II	85%	15%
Division III	85%	15%
40 Largest Private Institutions	83%	17%
50 Largest Public Institutions	93%	7%

C2.12. Which of the following offer services to students who have reported that they have experienced sexual violence? [Community women's center]

Type of School	Yes	No
National Sample	77%	23%
Large ($\geq 10,000$)	81%	19%
Medium (1,000-9,999)	76%	24%
Small ($< 1,000$)	75%	25%
Public	82%	18%
Private For-Profit	81%	19%
Private Not-For-Profit	71%	29%
Division I	71%	29%
Division II	76%	24%
Division III	96%	4%
40 Largest Private Institutions	80%	20%
50 Largest Public Institutions	84%	16%

C2.13. Which of the following offer services to students who have reported that they have experienced sexual violence? [Local community rape crisis hotline]

Type of School	Yes	No
National Sample	90%	10%
Large ($\geq 10,000$)	100%	0%
Medium (1,000-9,999)	93%	7%
Small ($< 1,000$)	80%	20%
Public	96%	4%
Private For-Profit	99%	1%
Private Not-For-Profit	90%	10%
Division I	96%	4%
Division II	93%	7%
Division III	100%	0%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	96%	4%

C3.1. Does your institution provide training for faculty and staff about how to respond to disclosures of sexual violence?

Type of School	Yes	No
National Sample	79%	21%
Large ($\geq 10,000$)	92%	8%
Medium (1,000-9,999)	87%	13%
Small ($< 1,000$)	61%	39%
Public	93%	7%
Private For-Profit	66%	34%
Private Not-For-Profit	77%	23%
Division I	96%	4%
Division II	93%	7%
Division III	93%	7%
40 Largest Private Institutions	85%	15%
50 Largest Public Institutions	92%	8%

C3.2. Is this training mandatory or voluntary? [Mandatory due to state law]

Type of School	Yes	No
National Sample	18%	82%
Large ($\geq 10,000$)	21%	79%
Medium (1,000-9,999)	16%	84%
Small ($< 1,000$)	18%	82%
Public	21%	79%
Private For-Profit	6%	94%
Private Not-For-Profit	21%	79%
Division I	16%	84%
Division II	19%	81%
Division III	13%	88%
40 Largest Private Institutions	11%	89%
50 Largest Public Institutions	19%	81%

C3.3. Is this training mandatory or voluntary? [Mandatory due to institutional policy]

Type of School	Yes	No
National Sample	73%	27%
Large ($\geq 10,000$)	73%	27%
Medium (1,000-9,999)	70%	30%
Small ($< 1,000$)	77%	23%
Public	70%	30%
Private For-Profit	79%	21%
Private Not-For-Profit	72%	28%
Division I	63%	37%
Division II	68%	32%
Division III	65%	35%
40 Largest Private Institutions	72%	28%
50 Largest Public Institutions	73%	27%

C3.4. Is this training mandatory or voluntary? [Voluntary]

Type of School	Yes	No
National Sample	54%	46%
Large ($\geq 10,000$)	60%	40%
Medium (1,000-9,999)	53%	47%
Small ($< 1,000$)	49%	51%
Public	63%	37%
Private For-Profit	30%	70%
Private Not-For-Profit	58%	42%
Division I	68%	32%
Division II	59%	41%
Division III	68%	32%
40 Largest Private Institutions	79%	21%
50 Largest Public Institutions	70%	30%

C3.5. If your institution provides mandatory sexual assault violence response training for staff and faculty, who must attend?

Type of School	All faculty and staff	Select faculty and staff
National Sample	50%	50%
Large ($\geq 10,000$)	38%	62%
Medium (1,000 - 9,999)	57%	43%
Small ($< 1,000$)	53%	47%
Public	44%	56%
Private For-Profit	57%	43%
Private Not-For-Profit	52%	48%
Division I	48%	52%
Division II	39%	61%
Division III	47%	53%
40 Largest Private Institutions	10%	90%
50 Largest Public Institutions	37%	63%

C3.6. If your institution provides sexual violence response training for staff and faculty, how often is it provided?

Type of School	Upon hiring	Annually	Periodic-ally	Other
National Sample	1%	47%	43%	8%
Large ($\geq 10,000$)	11%	27%	59%	4%
Medium (1,000 - 9,999)	14%	48%	30%	7%
Small ($< 1,000$)	5%	46%	33%	15%
Public	13%	36%	45%	6%
Private For-Profit	8%	69%	19%	4%
Private Not-For-Profit	13%	40%	40%	7%
Division I	8%	27%	54%	12%
Division II	11%	44%	41%	4%
Division III	15%	41%	41%	4%
40 Largest Private Institutions	18%	7%	68%	7%
50 Largest Public Institutions	14%	14%	49%	24%

C3.7. If your institution provides sexual violence response training for staff and faculty, who provides it? [Institution's staff/faculty]

Type of School	Yes	No
National Sample	87%	13%
Large ($\geq 10,000$)	93%	7%
Medium (1,000-9,999)	92%	8%
Small ($< 1,000$)	73%	27%
Public	92%	8%
Private For-Profit	70%	30%
Private Not-For-Profit	91%	9%
Division I	93%	7%
Division II	96%	4%
Division III	96%	4%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	98%	2%

C3.8. If your institution provides sexual violence response training for staff and faculty, who provides it? [Outside group's staff]

Type of School	Yes	No
National Sample	50%	50%
Large ($\geq 10,000$)	50%	50%
Medium (1,000-9,999)	58%	42%
Small ($< 1,000$)	36%	64%
Public	47%	53%
Private For-Profit	31%	69%
Private Not-For-Profit	63%	37%
Division I	59%	41%
Division II	56%	44%
Division III	60%	40%
40 Largest Private Institutions	64%	36%
50 Largest Public Institutions	49%	51%

C3.9. If your institution provides sexual violence response training for staff and faculty, who provides it? [Institution's law enforcement/security agency]

Type of School	Yes	No
National Sample	33%	67%
Large ($\geq 10,000$)	39%	61%
Medium (1,000-9,999)	32%	68%
Small ($< 1,000$)	26%	74%
Public	39%	61%
Private For-Profit	9%	91%
Private Not-For-Profit	39%	61%
Division I	44%	56%
Division II	44%	56%
Division III	38%	63%
40 Largest Private Institutions	59%	41%
50 Largest Public Institutions	44%	56%

C3.10. If your institution provides sexual violence response training for staff and faculty, who provides it? [Outside/local law enforcement/security agency]

Type of School	Yes	No
National Sample	18%	82%
Large ($\geq 10,000$)	11%	89%
Medium (1,000-9,999)	22%	78%
Small ($< 1,000$)	19%	81%
Public	10%	90%
Private For-Profit	18%	82%
Private Not-For-Profit	26%	74%
Division I	19%	81%
Division II	28%	72%
Division III	12%	88%
40 Largest Private Institutions	15%	85%
50 Largest Public Institutions	5%	95%

C4.1. Does your institution provide sexual violence prevention and response training for students?

Type of School	Yes	No
National Sample	69%	31%
Large ($\geq 10,000$)	77%	23%
Medium (1,000-9,999)	81%	19%
Small ($< 1,000$)	47%	53%
Public	90%	10%
Private For-Profit	28%	72%
Private Not-For-Profit	75%	25%
Division I	96%	4%
Division II	86%	14%
Division III	97%	3%
40 Largest Private Institutions	88%	12%
50 Largest Public Institutions	92%	8%

C4.2. Is this training mandatory or voluntary? [Mandatory due to state law]

Type of School	Yes	No
National Sample	15%	85%
Large ($\geq 10,000$)	8%	92%
Medium (1,000-9,999)	15%	85%
Small ($< 1,000$)	25%	75%
Public	25%	75%
Private For-Profit	0%	100%
Private Not-For-Profit	10%	90%
Division I	15%	85%
Division II	10%	90%
Division III	12%	88%
40 Largest Private Institutions	4%	96%
50 Largest Public Institutions	9%	91%

C4.3. Is this training mandatory or voluntary? [Mandatory due to institutional policy]

Type of School	Yes	No
National Sample	64%	36%
Large ($\geq 10,000$)	68%	32%
Medium (1,000-9,999)	62%	38%
Small ($< 1,000$)	65%	35%
Public	67%	33%
Private For-Profit	21%	79%
Private Not-For-Profit	73%	27%
Division I	70%	30%
Division II	76%	24%
Division III	75%	25%
40 Largest Private Institutions	79%	21%
50 Largest Public Institutions	73%	27%

C4.4. Is this training mandatory or voluntary? [Voluntary]

Type of School	Yes	No
National Sample	74%	26%
Large ($\geq 10,000$)	76%	24%
Medium (1,000-9,999)	77%	23%
Small ($< 1,000$)	63%	37%
Public	72%	28%
Private For-Profit	78%	22%
Private Not-For-Profit	74%	26%
Division I	85%	15%
Division II	76%	24%
Division III	69%	31%
40 Largest Private Institutions	78%	22%
50 Largest Public Institutions	85%	15%

C4.5. If your institution provides mandatory sexual violence prevention and response training for students, who must attend? [All students]

Type of School	Yes	No
National Sample	55%	45%
Large ($\geq 10,000$)	41%	59%
Medium (1,000-9,999)	53%	47%
Small ($< 1,000$)	78%	22%
Public	62%	38%
Private For-Profit	71%	29%
Private Not-For-Profit	48%	52%
Division I	39%	61%
Division II	48%	52%
Division III	56%	44%
40 Largest Private Institutions	44%	56%
50 Largest Public Institutions	46%	54%

C4.6. If your institution provides mandatory sexual violence prevention and response training for students, who must attend? [Student resident assistants]

Type of School	Yes	No
National Sample	82%	18%
Large ($\geq 10,000$)	91%	9%
Medium (1,000-9,999)	89%	11%
Small ($< 1,000$)	45%	55%
Public	75%	25%
Private For-Profit	20%	80%
Private Not-For-Profit	92%	8%
Division I	100%	0%
Division II	100%	0%
Division III	93%	7%
40 Largest Private Institutions	92%	8%
50 Largest Public Institutions	97%	3%

C4.7. If your institution provides mandatory sexual violence prevention and response training for students, who must attend? [Student security officers]

Type of School	Yes	No
National Sample	26%	74%
Large ($\geq 10,000$)	39%	61%
Medium (1,000-9,999)	27%	73%
Small ($< 1,000$)	5%	95%
Public	33%	67%
Private For-Profit	0%	100%
Private Not-For-Profit	22%	78%
Division I	30%	70%
Division II	31%	69%
Division III	35%	65%
40 Largest Private Institutions	48%	52%
50 Largest Public Institutions	39%	61%

C4.8. If your institution provides sexual violence prevention and response training for students, how often is it provided?

Type of School	For all new students	Annually	Periodically	Other
National Sample	27%	34%	36%	3%
Large ($\geq 10,000$)	18%	18%	59%	5%
Medium (1,000 - 9,999)	28%	37%	33%	2%
Small ($< 1,000$)	45%	30%	23%	3%
Public	27%	27%	36%	6%
Private For-Profit	28%	39%	28%	6%
Private Not-For-Profit	29%	33%	38%	0%
Division I	22%	15%	59%	4%
Division II	16%	44%	36%	4%
Division III	27%	40%	23%	0%
40 Largest Private Institutions	40%	13%	43%	3%
50 Largest Public Institutions	47%	16%	36%	2%

C4.9. If your institution provides sexual violence prevention and response training for students, who provides it? [Institution's staff/faculty]

Type of School	Yes	No
National Sample	91%	9%
Large ($\geq 10,000$)	98%	2%
Medium (1,000-9,999)	94%	6%
Small ($< 1,000$)	76%	24%
Public	94%	6%
Private For-Profit	53%	47%
Private Not-For-Profit	97%	3%
Division I	100%	0%
Division II	100%	0%
Division III	100%	0%
40 Largest Private Institutions	97%	3%
50 Largest Public Institutions	96%	4%

C4.10. If your institution provides sexual violence prevention and response training for students, who provides it? [Outside group's staff]

Type of School	Yes	No
National Sample	62%	38%
Large ($\geq 10,000$)	66%	34%
Medium (1,000-9,999)	61%	39%
Small ($< 1,000$)	60%	40%
Public	56%	44%
Private For-Profit	63%	37%
Private Not-For-Profit	66%	34%
Division I	63%	37%
Division II	46%	54%
Division III	79%	21%
40 Largest Private Institutions	66%	34%
50 Largest Public Institutions	58%	42%

C4.11. If your institution provides sexual violence prevention and response training for students, who provides it? [Institution's law enforcement/security agency]

Type of School	Yes	No
National Sample	49%	51%
Large ($\geq 10,000$)	68%	32%
Medium (1,000-9,999)	52%	48%
Small ($< 1,000$)	18%	82%
Public	60%	40%
Private For-Profit	17%	83%
Private Not-For-Profit	48%	52%
Division I	63%	37%
Division II	75%	25%
Division III	43%	57%
40 Largest Private Institutions	71%	29%
50 Largest Public Institutions	64%	36%

C4.12. If your institution provides sexual violence prevention and response training for students, who provides it? [Outside/local law enforcement/security agency]

Type of School	Yes	No
National Sample	19%	81%
Large ($\geq 10,000$)	12%	88%
Medium (1,000-9,999)	16%	84%
Small ($< 1,000$)	31%	69%
Public	13%	87%
Private For-Profit	42%	58%
Private Not-For-Profit	17%	83%
Division I	7%	93%
Division II	8%	92%
Division III	26%	74%
40 Largest Private Institutions	11%	89%
50 Largest Public Institutions	9%	91%

C4.13. If your institution provides sexual violence prevention and response training for students, who provides it? [Peer educators/trainers]

Type of School	Yes	No
National Sample	45%	55%
Large ($\geq 10,000$)	73%	27%
Medium (1,000-9,999)	43%	57%
Small ($< 1,000$)	14%	86%
Public	52%	48%
Private For-Profit	16%	84%
Private Not-For-Profit	46%	54%
Division I	74%	26%
Division II	70%	30%
Division III	46%	54%
40 Largest Private Institutions	54%	46%
50 Largest Public Institutions	89%	11%

C5.1. Does your institution use a team approach for responding to reports of sexual violence on campus?

Type of School	Yes	No
National Sample	85%	15%
Large ($\geq 10,000$)	89%	11%
Medium (1,000-9,999)	91%	9%
Small ($< 1,000$)	76%	24%
Public	96%	4%
Private For-Profit	73%	27%
Private Not-For-Profit	85%	15%
Division I	93%	7%
Division II	97%	3%
Division III	97%	3%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	86%	14%

C5.2. If your institution uses a team approach, which of the following services are represented on the team? [Campus law enforcement]

Type of School	Yes	No
National Sample	80%	20%
Large ($\geq 10,000$)	93%	7%
Medium (1,000-9,999)	94%	6%
Small ($< 1,000$)	48%	52%
Public	88%	12%
Private For-Profit	43%	57%
Private Not-For-Profit	92%	8%
Division I	100%	0%
Division II	96%	4%
Division III	100%	0%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	98%	2%

C5.3. If your institution uses a team approach, which of the following services are represented on the team? [Student health services]

Type of School	Yes	No
National Sample	60%	40%
Large ($\geq 10,000$)	67%	33%
Medium (1,000-9,999)	72%	28%
Small ($< 1,000$)	35%	65%
Public	74%	26%
Private For-Profit	0%	100%
Private Not-For-Profit	77%	23%
Division I	77%	23%
Division II	82%	18%
Division III	93%	7%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	76%	24%

C5.4. If your institution uses a team approach, which of the following services are represented on the team? [Student mental health services]

Type of School	Yes	No
National Sample	78%	22%
Large ($\geq 10,000$)	80%	20%
Medium (1,000-9,999)	93%	7%
Small ($< 1,000$)	52%	48%
Public	87%	13%
Private For-Profit	36%	64%
Private Not-For-Profit	90%	10%
Division I	92%	8%
Division II	96%	4%
Division III	100%	0%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	86%	14%

C5.5. If your institution uses a team approach, which of the following services are represented on the team? [Campus victim assistance/advocacy services]

Type of School	Yes	No
National Sample	44%	56%
Large ($\geq 10,000$)	67%	33%
Medium (1,000-9,999)	48%	52%
Small ($< 1,000$)	15%	85%
Public	57%	43%
Private For-Profit	5%	95%
Private Not-For-Profit	51%	49%
Division I	65%	35%
Division II	52%	48%
Division III	68%	32%
40 Largest Private Institutions	77%	23%
50 Largest Public Institutions	83%	17%

C5.6. If your institution uses a team approach, which of the following services are represented on the team? [Student legal services]

Type of School	Yes	No
National Sample	6%	94%
Large ($\geq 10,000$)	11%	89%
Medium (1,000-9,999)	5%	95%
Small ($< 1,000$)	4%	96%
Public	11%	89%
Private For-Profit	0%	100%
Private Not-For-Profit	6%	94%
Division I	16%	84%
Division II	4%	96%
Division III	4%	96%
40 Largest Private Institutions	7%	93%
50 Largest Public Institutions	22%	78%

C5. 7. If your institution uses a team approach, which of the following services are represented on the team? [Housing/residential services]

Type of School	Yes	No
National Sample	69%	31%
Large ($\geq 10,000$)	76%	24%
Medium (1,000-9,999)	81%	19%
Small ($< 1,000$)	43%	57%
Public	71%	29%
Private For-Profit	13%	87%
Private Not-For-Profit	93%	7%
Division I	96%	4%
Division II	93%	7%
Division III	97%	3%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	86%	14%

C5.8. If your institution uses a team approach, which of the following services are represented on the team? [Community law enforcement]

Type of School	Yes	No
National Sample	59%	41%
Large ($\geq 10,000$)	42%	58%
Medium (1,000-9,999)	60%	40%
Small ($< 1,000$)	71%	29%
Public	55%	45%
Private For-Profit	83%	17%
Private Not-For-Profit	50%	50%
Division I	46%	54%
Division II	40%	60%
Division III	59%	41%
40 Largest Private Institutions	48%	52%
50 Largest Public Institutions	40%	60%

C5.9. If your institution uses a team approach, which of the following services are represented on the team? [Community health services]

Type of School	Yes	No
National Sample	46%	54%
Large ($\geq 10,000$)	38%	62%
Medium (1,000-9,999)	43%	57%
Small ($< 1,000$)	58%	42%
Public	42%	58%
Private For-Profit	70%	30%
Private Not-For-Profit	38%	62%
Division I	42%	58%
Division II	19%	81%
Division III	39%	61%
40 Largest Private Institutions	42%	58%
50 Largest Public Institutions	36%	64%

C5.10. If your institution uses a team approach, which of the following services are represented on the team? [Community mental health services]

Type of School	Yes	No
National Sample	45%	55%
Large ($\geq 10,000$)	33%	67%
Medium (1,000-9,999)	43%	57%
Small ($< 1,000$)	58%	42%
Public	42%	58%
Private For-Profit	73%	27%
Private Not-For-Profit	33%	67%
Division I	27%	73%
Division II	23%	77%
Division III	39%	61%
40 Largest Private Institutions	37%	63%
50 Largest Public Institutions	38%	62%

C5.11. If your institution uses a team approach, which of the following services are represented on the team? [Community victim assistance/advocacy services]

Type of School	Yes	No
National Sample	51%	49%
Large ($\geq 10,000$)	44%	56%
Medium (1,000-9,999)	47%	53%
Small ($< 1,000$)	61%	39%
Public	57%	43%
Private For-Profit	70%	30%
Private Not-For-Profit	35%	65%
Division I	38%	62%
Division II	31%	69%
Division III	50%	50%
40 Largest Private Institutions	48%	52%
50 Largest Public Institutions	49%	51%

C5.12. If your institution uses a team approach, which of the following services are represented on the team? [Community legal services]

Type of School	Yes	No
National Sample	22%	78%
Large ($\geq 10,000$)	23%	77%
Medium (1,000-9,999)	17%	83%
Small ($< 1,000$)	27%	73%
Public	19%	81%
Private For-Profit	34%	66%
Private Not-For-Profit	17%	83%
Division I	15%	85%
Division II	8%	92%
Division III	25%	75%
40 Largest Private Institutions	24%	76%
50 Largest Public Institutions	21%	79%

C5.13. If your institution uses a team approach, which of the following services are represented on the team? [Local prosecutors]

Type of School	Yes	No
National Sample	25%	75%
Large ($\geq 10,000$)	20%	80%
Medium (1,000-9,999)	27%	73%
Small ($< 1,000$)	26%	74%
Public	34%	66%
Private For-Profit	21%	79%
Private Not-For-Profit	19%	81%
Division I	15%	85%
Division II	12%	88%
Division III	41%	59%
40 Largest Private Institutions	25%	75%
50 Largest Public Institutions	36%	64%

C5.14. Is there a written protocol that guides the team's activities?

Type of School	Yes	No
National Sample	52%	48%
Large ($\geq 10,000$)	54%	46%
Medium (1,000-9,999)	56%	44%
Small ($< 1,000$)	44%	56%
Public	49%	51%
Private For-Profit	60%	40%
Private Not-For-Profit	52%	48%
Division I	42%	58%
Division II	63%	37%
Division III	53%	47%
40 Largest Private Institutions	69%	31%
50 Largest Public Institutions	42%	58%

D1.1. Which of the following personnel are required to contribute data on sexual violence for purposes of the statistical summary included in the Annual Security Report? [No required reporters]

Type of School	Yes	No
National Sample	3%	97%
Large ($\geq 10,000$)	2%	98%
Medium (1,000-9,999)	3%	97%
Small ($< 1,000$)	4%	96%
Public	4%	96%
Private For-Profit	0%	100%
Private Not-For-Profit	4%	96%
Division I	7%	93%
Division II	0%	100%
Division III	4%	96%
40 Largest Private Institutions	0%	100%
50 Largest Public Institutions	0%	100%

D1.2. Which of the following personnel are required to contribute data on sexual violence for purposes of the statistical summary included in the Annual Security Report? [Owner or director of institution]

Type of School	Yes	No
National Sample	61%	39%
Large ($\geq 10,000$)	61%	39%
Medium (1,000-9,999)	57%	43%
Small ($< 1,000$)	68%	32%
Public	63%	37%
Private For-Profit	75%	25%
Private Not-For-Profit	53%	47%
Division I	65%	35%
Division II	74%	26%
Division III	52%	48%
40 Largest Private Institutions	44%	56%
50 Largest Public Institutions	52%	48%

D1.3. Which of the following personnel are required to contribute data on sexual violence for purposes of the statistical summary included in the Annual Security Report? [Other senior administrators (e.g., student dean, chancellor)]

Type of School	Yes	No
National Sample	95%	5%
Large ($\geq 10,000$)	92%	8%
Medium (1,000-9,999)	94%	6%
Small ($< 1,000$)	98%	2%
Public	94%	6%
Private For-Profit	95%	5%
Private Not-For-Profit	95%	5%
Division I	96%	4%
Division II	93%	7%
Division III	90%	10%
40 Largest Private Institutions	97%	3%
50 Largest Public Institutions	90%	10%

D1.4. Which of the following personnel are required to contribute data on sexual violence for purposes of the statistical summary included in the Annual Security Report? [Director of campus law enforcement]

Type of School	Yes	No
National Sample	76%	24%
Large ($\geq 10,000$)	89%	11%
Medium (1,000-9,999)	91%	9%
Small ($< 1,000$)	49%	51%
Public	96%	4%
Private For-Profit	32%	68%
Private Not-For-Profit	87%	13%
Division I	100%	0%
Division II	96%	4%
Division III	100%	0%
40 Largest Private Institutions	97%	3%
50 Largest Public Institutions	100%	0%

D1.5. Which of the following personnel are required to contribute data on sexual violence for purposes of the statistical summary included in the Annual Security Report? [Campus police officers]

Type of School	Yes	No
National Sample	69%	31%
Large ($\geq 10,000$)	85%	15%
Medium (1,000-9,999)	85%	15%
Small ($< 1,000$)	38%	62%
Public	94%	6%
Private For-Profit	23%	77%
Private Not-For-Profit	76%	24%
Division I	100%	0%
Division II	100%	0%
Division III	90%	10%
40 Largest Private Institutions	85%	15%
50 Largest Public Institutions	98%	2%

D1.6. Which of the following personnel are required to contribute data on sexual violence for purposes of the statistical summary included in the Annual Security Report? [Director of residential life]

Type of School	Yes	No
National Sample	63%	37%
Large ($\geq 10,000$)	75%	25%
Medium (1,000-9,999)	77%	23%
Small ($< 1,000$)	36%	64%
Public	82%	18%
Private For-Profit	9%	91%
Private Not-For-Profit	79%	21%
Division I	100%	0%
Division II	100%	0%
Division III	100%	0%
40 Largest Private Institutions	91%	9%
50 Largest Public Institutions	88%	12%

D1.7. Which of the following personnel are required to contribute data on sexual violence for purposes of the statistical summary included in the Annual Security Report? [Resident assistants]

Type of School	Yes	No
National Sample	54%	46%
Large ($\geq 10,000$)	72%	28%
Medium (1,000-9,999)	67%	33%
Small ($< 1,000$)	27%	73%
Public	76%	24%
Private For-Profit	5%	95%
Private Not-For-Profit	66%	34%
Division I	93%	7%
Division II	93%	7%
Division III	94%	6%
40 Largest Private Institutions	82%	18%
50 Largest Public Institutions	80%	20%

D1.8. Which of the following personnel are required to contribute data on sexual violence for purposes of the statistical summary included in the Annual Security Report? [Doctors, nurse practitioners, nurses]

Type of School	Yes	No
National Sample	36%	64%
Large ($\geq 10,000$)	42%	58%
Medium (1,000-9,999)	44%	56%
Small ($< 1,000$)	21%	79%
Public	51%	49%
Private For-Profit	4%	96%
Private Not-For-Profit	43%	57%
Division I	43%	57%
Division II	52%	48%
Division III	69%	31%
40 Largest Private Institutions	35%	65%
50 Largest Public Institutions	47%	53%

D1.9. Which of the following personnel are required to contribute data on sexual violence for purposes of the statistical summary included in the Annual Security Report? [Mental health counselors]

Type of School	Yes	No
National Sample	28%	72%
Large ($\geq 10,000$)	25%	75%
Medium (1,000-9,999)	39%	61%
Small ($< 1,000$)	18%	83%
Public	35%	65%
Private For-Profit	2%	98%
Private Not-For-Profit	38%	62%
Division I	32%	68%
Division II	43%	57%
Division III	40%	60%
40 Largest Private Institutions	29%	71%
50 Largest Public Institutions	29%	71%

D1.10. Which of the following personnel are required to contribute data on sexual violence for purposes of the statistical summary included in the Annual Security Report? [Women's center staff]

Type of School	Yes	No
National Sample	19%	81%
Large ($\geq 10,000$)	30%	70%
Medium (1,000-9,999)	18%	82%
Small ($< 1,000$)	12%	88%
Public	35%	65%
Private For-Profit	0%	100%
Private Not-For-Profit	18%	82%
Division I	32%	68%
Division II	31%	69%
Division III	25%	75%
40 Largest Private Institutions	27%	73%
50 Largest Public Institutions	53%	47%

D1.11. Which of the following personnel are required to contribute data on sexual violence for purposes of the statistical summary included in the Annual Security Report? [Peer educators]

Type of School	Yes	No
National Sample	19%	81%
Large ($\geq 10,000$)	31%	69%
Medium (1,000-9,999)	23%	77%
Small ($< 1,000$)	5%	95%
Public	25%	75%
Private For-Profit	11%	89%
Private Not-For-Profit	18%	82%
Division I	32%	68%
Division II	42%	58%
Division III	38%	62%
40 Largest Private Institutions	18%	82%
50 Largest Public Institutions	41%	59%

D1.12. Which of the following personnel are required to contribute data on sexual violence for purposes of the statistical summary included in the Annual Security Report? [Clergy]

Type of School	Yes	No
National Sample	11%	89%
Large ($\geq 10,000$)	4%	96%
Medium (1,000-9,999)	19%	81%
Small ($< 1,000$)	6%	94%
Public	1%	99%
Private For-Profit	0%	100%
Private Not-For-Profit	24%	76%
Division I	7%	93%
Division II	26%	74%
Division III	10%	90%
40 Largest Private Institutions	18%	82%
50 Largest Public Institutions	2%	98%

D1.13. Which of the following personnel are required to contribute data on sexual violence for purposes of the statistical summary included in the Annual Security Report? [Staff/faculty]

Type of School	Yes	No
National Sample	72%	28%
Large ($\geq 10,000$)	85%	15%
Medium (1,000-9,999)	80%	20%
Small ($< 1,000$)	54%	46%
Public	89%	11%
Private For-Profit	46%	54%
Private Not-For-Profit	75%	25%
Division I	81%	19%
Division II	89%	11%
Division III	87%	13%
40 Largest Private Institutions	91%	9%
50 Largest Public Institutions	94%	6%

D2. Does your institution collect statistical information on the use of alcohol for reports regarding sexual violence?

Type of School	Yes	No
National Sample	46%	54%
Large ($\geq 10,000$)	34%	66%
Medium (1,000-9,999)	53%	47%
Small ($< 1,000$)	46%	54%
Public	55%	45%
Private For-Profit	37%	63%
Private Not-For-Profit	44%	56%
Division I	37%	63%
Division II	45%	55%
Division III	52%	48%
40 Largest Private Institutions	44%	56%
50 Largest Public Institutions	57%	43%

D3. Does your institution collect statistical information on the presence of underage alcohol use for reports regarding sexual violence?

Type of School	Yes	No
National Sample	40%	60%
Large ($\geq 10,000$)	28%	72%
Medium (1,000-9,999)	46%	54%
Small ($< 1,000$)	39%	61%
Public	49%	51%
Private For-Profit	30%	70%
Private Not-For-Profit	38%	62%
Division I	33%	67%
Division II	38%	62%
Division III	45%	55%
40 Largest Private Institutions	38%	62%
50 Largest Public Institutions	42%	58%

D4. Does your institution collect statistical information on the use of "date rape drugs" (e.g., Rohypnol or "roofies", GHB, etc.) for reports regarding sexual violence?

Type of School	Yes	No
National Sample	36%	64%
Large ($\geq 10,000$)	26%	74%
Medium (1,000-9,999)	47%	53%
Small ($< 1,000$)	29%	71%
Public	50%	50%
Private For-Profit	19%	81%
Private Not-For-Profit	35%	65%
Division I	22%	78%
Division II	43%	57%
Division III	48%	52%
40 Largest Private Institutions	30%	70%
50 Largest Public Institutions	42%	58%

E1.1. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Option to report via a website]

Type of School	Yes	No
National Sample	44%	56%
Large ($\geq 10,000$)	64%	36%
Medium (1,000-9,999)	50%	50%
Small ($< 1,000$)	23%	77%
Public	66%	34%
Private For-Profit	25%	75%
Private Not-For-Profit	39%	61%
Division I	82%	18%
Division II	72%	28%
Division III	47%	53%
40 Largest Private Institutions	74%	26%
50 Largest Public Institutions	88%	13%

E1.2. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Single-sex-only residence policy]

Type of School	Yes	No
National Sample	27%	73%
Large ($\geq 10,000$)	11%	89%
Medium (1,000-9,999)	44%	56%
Small ($< 1,000$)	18%	82%
Public	21%	79%
Private For-Profit	7%	93%
Private Not-For-Profit	43%	57%
Division I	18%	82%
Division II	67%	33%
Division III	42%	58%
40 Largest Private Institutions	24%	76%
50 Largest Public Institutions	37%	63%

E1.3. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Publicity for outcomes of cases adjudicated on campus]

Type of School	Yes	No
National Sample	7%	93%
Large ($\geq 10,000$)	4%	96%
Medium (1,000-9,999)	8%	92%
Small ($< 1,000$)	6%	94%
Public	3%	97%
Private For-Profit	2%	98%
Private Not-For-Profit	12%	88%
Division I	7%	93%
Division II	4%	96%
Division III	13%	87%
40 Largest Private Institutions	6%	94%
50 Largest Public Institutions	6%	94%

E1.4. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [New student orientation program with sexual violence]

Type of School	Yes	No
National Sample	70%	30%
Large ($\geq 10,000$)	70%	30%
Medium (1,000-9,999)	80%	20%
Small ($< 1,000$)	59%	41%
Public	86%	14%
Private For-Profit	35%	65%
Private Not-For-Profit	79%	21%
Division I	89%	11%
Division II	89%	11%
Division III	97%	3%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	88%	12%

E1.5. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Illegal drug use policy]

Type of School	Yes	No
National Sample	99%	1%
Large ($\geq 10,000$)	100%	0%
Medium (1,000-9,999)	98%	2%
Small ($< 1,000$)	99%	1%
Public	100%	0%
Private For-Profit	98%	2%
Private Not-For-Profit	98%	2%
Division I	100%	0%
Division II	100%	0%
Division III	100%	0%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	100%	0%

E1.6. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Sexual violence education programs targeted at athletes]

Type of School	Yes	No
National Sample	37%	63%
Large ($\geq 10,000$)	62%	38%
Medium (1,000-9,999)	48%	52%
Small ($< 1,000$)	7%	93%
Public	52%	48%
Private For-Profit	2%	98%
Private Not-For-Profit	47%	53%
Division I	82%	18%
Division II	80%	20%
Division III	63%	37%
40 Largest Private Institutions	74%	26%
50 Largest Public Institutions	80%	20%

E1.7. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Publication of names of alleged perpetrators (such as in a campus newspaper)]

Type of School	Yes	No
National Sample	3%	97%
Large ($\geq 10,000$)	4%	96%
Medium (1,000-9,999)	5%	95%
Small ($< 1,000$)	0%	100%
Public	6%	94%
Private For-Profit	0%	100%
Private Not-For-Profit	3%	97%
Division I	4%	96%
Division II	4%	96%
Division III	3%	97%
40 Largest Private Institutions	9%	91%
50 Largest Public Institutions	6%	94%

E1.8. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Emergency call boxes on campus]

Type of School	Yes	No
National Sample	56%	44%
Large ($\geq 10,000$)	79%	21%
Medium (1,000-9,999)	71%	29%
Small ($< 1,000$)	21%	79%
Public	79%	21%
Private For-Profit	18%	82%
Private Not-For-Profit	60%	40%
Division I	96%	4%
Division II	76%	24%
Division III	87%	13%
40 Largest Private Institutions	91%	9%
50 Largest Public Institutions	96%	4%

E1.9. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Judicial boards made up of students for adjudicating sexual assault incidents]

Type of School	Yes	No
National Sample	27%	73%
Large ($\geq 10,000$)	27%	73%
Medium (1,000-9,999)	34%	66%
Small ($< 1,000$)	17%	83%
Public	35%	65%
Private For-Profit	13%	87%
Private Not-For-Profit	28%	72%
Division I	32%	68%
Division II	36%	64%
Division III	32%	68%
40 Largest Private Institutions	30%	70%
50 Largest Public Institutions	43%	57%

E1.10. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Alcohol use policy]

Type of School	Yes	No
National Sample	99%	1%
Large ($\geq 10,000$)	98%	2%
Medium (1,000-9,999)	99%	1%
Small ($< 1,000$)	99%	1%
Public	100%	0%
Private For-Profit	98%	2%
Private Not-For-Profit	98%	2%
Division I	100%	0%
Division II	100%	0%
Division III	100%	0%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	96%	4%

E1.11. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Campus-wide publicity of high-risk factors/past crimes on campus]

Type of School	Yes	No
National Sample	67%	33%
Large ($\geq 10,000$)	77%	23%
Medium (1,000-9,999)	67%	33%
Small ($< 1,000$)	59%	41%
Public	74%	26%
Private For-Profit	70%	30%
Private Not-For-Profit	59%	41%
Division I	82%	18%
Division II	72%	28%
Division III	68%	32%
40 Largest Private Institutions	69%	31%
50 Largest Public Institutions	87%	13%

E1.12. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Athletic Dept. oversight of sexual violence involving student athletes]

Type of School	Yes	No
National Sample	22%	78%
Large ($\geq 10,000$)	10%	90%
Medium (1,000-9,999)	37%	63%
Small ($< 1,000$)	13%	87%
Public	30%	70%
Private For-Profit	4%	96%
Private Not-For-Profit	26%	74%
Division I	18%	82%
Division II	48%	52%
Division III	27%	73%
40 Largest Private Institutions	15%	85%
50 Largest Public Institutions	20%	80%

E1.13. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Third party or proxy reporting (reports made by direct witnesses or people to whom the incident was disclosed)]

Type of School	Yes	No
National Sample	76%	24%
Large ($\geq 10,000$)	92%	8%
Medium (1,000-9,999)	79%	21%
Small ($< 1,000$)	63%	38%
Public	85%	15%
Private For-Profit	60%	40%
Private Not-For-Profit	79%	21%
Division I	93%	7%
Division II	86%	14%
Division III	81%	19%
40 Largest Private Institutions	91%	9%
50 Largest Public Institutions	96%	4%

E1.14. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Victim assistance office on campus]

Type of School	Yes	No
National Sample	34%	66%
Large ($\geq 10,000$)	62%	38%
Medium (1,000-9,999)	32%	68%
Small ($< 1,000$)	17%	83%
Public	51%	49%
Private For-Profit	5%	95%
Private Not-For-Profit	37%	63%
Division I	64%	36%
Division II	50%	50%
Division III	52%	48%
40 Largest Private Institutions	76%	24%
50 Largest Public Institutions	86%	14%

E1.15. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Anonymous reporting (names/identifiers of victims are not provided)]

Type of School	Yes	No
National Sample	79%	21%
Large ($\geq 10,000$)	87%	13%
Medium (1,000-9,999)	79%	21%
Small ($< 1,000$)	73%	27%
Public	92%	8%
Private For-Profit	70%	30%
Private Not-For-Profit	75%	25%
Division I	93%	7%
Division II	93%	7%
Division III	81%	19%
40 Largest Private Institutions	91%	9%
50 Largest Public Institutions	98%	2%

E1.16. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Sexual assault nurse examiner program (SANE)]

Type of School	Yes	No
National Sample	15%	85%
Large ($\geq 10,000$)	21%	79%
Medium (1,000-9,999)	22%	78%
Small ($< 1,000$)	4%	96%
Public	27%	83%
Private For-Profit	0%	100%
Private Not-For-Profit	16%	84%
Division I	29%	71%
Division II	15%	85%
Division III	40%	60%
40 Largest Private Institutions	21%	79%
50 Largest Public Institutions	42%	58%

E1.17. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Sexual violence education programs targeted at the Greek system)]

Type of School	Yes	No
National Sample	22%	78%
Large ($\geq 10,000$)	47%	53%
Medium (1,000-9,999)	25%	75%
Small ($< 1,000$)	1%	99%
Public	38%	62%
Private For-Profit	0%	100%
Private Not-For-Profit	23%	77%
Division I	64%	36%
Division II	42%	58%
Division III	40%	60%
40 Largest Private Institutions	53%	47%
50 Largest Public Institutions	82%	18%

E1.18. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Requirement that victims participate in adjudication process]

Type of School	Yes	No
National Sample	13%	87%
Large ($\geq 10,000$)	10%	90%
Medium (1,000-9,999)	13%	87%
Small ($< 1,000$)	14%	86%
Public	7%	93%
Private For-Profit	18%	82%
Private Not-For-Profit	14%	86%
Division I	7%	93%
Division II	7%	93%
Division III	10%	90%
40 Largest Private Institutions	9%	91%
50 Largest Public Institutions	4%	96%

E1.19. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Incorporation of sexual violence issues into the curriculum]

Type of School	Yes	No
National Sample	39%	61%
Large ($\geq 10,000$)	49%	51%
Medium (1,000-9,999)	42%	58%
Small ($< 1,000$)	30%	70%
Public	62%	38%
Private For-Profit	10%	90%
Private Not-For-Profit	40%	60%
Division I	63%	38%
Division II	45%	55%
Division III	50%	50%
40 Largest Private Institutions	35%	65%
50 Largest Public Institutions	70%	30%

E1.20. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Task force to annually review campus safety issues]

Type of School	Yes	No
National Sample	67%	33%
Large ($\geq 10,000$)	64%	36%
Medium (1,000-9,999)	69%	31%
Small ($< 1,000$)	65%	35%
Public	76%	24%
Private For-Profit	54%	46%
Private Not-For-Profit	67%	33%
Division I	75%	25%
Division II	68%	32%
Division III	71%	29%
40 Largest Private Institutions	74%	26%
50 Largest Public Institutions	69%	31%

E1.21. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Availability of information about the adjudication process]

Type of School	Yes	No
National Sample	87%	13%
Large ($\geq 10,000$)	96%	4%
Medium (1,000-9,999)	92%	8%
Small ($< 1,000$)	75%	25%
Public	97%	3%
Private For-Profit	73%	27%
Private Not-For-Profit	88%	12%
Division I	100%	0%
Division II	97%	3%
Division III	100%	0%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	100%	0%

E1.22. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Information and referral system for faculty and staff to readily access]

Type of School	Yes	No
National Sample	76%	24%
Large ($\geq 10,000$)	77%	23%
Medium (1,000-9,999)	85%	15%
Small ($< 1,000$)	64%	36%
Public	86%	14%
Private For-Profit	57%	43%
Private Not-For-Profit	79%	21%
Division I	93%	7%
Division II	88%	14%
Division III	87%	13%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	88%	12%

E1.23. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Sexual violence peer educators]

Type of School	Yes	No
National Sample	26%	74%
Large ($\geq 10,000$)	53%	47%
Medium (1,000-9,999)	28%	72%
Small ($< 1,000$)	5%	95%
Public	45%	55%
Private For-Profit	2%	98%
Private Not-For-Profit	25%	75%
Division I	61%	39%
Division II	33%	67%
Division III	47%	53%
40 Largest Private Institutions	52%	48%
50 Largest Public Institutions	83%	17%

E1.24. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Confidential reporting (names/identifiers of victims are kept private)]

Type of School	Yes	No
National Sample	92%	8%
Large ($\geq 10,000$)	94%	6%
Medium (1,000-9,999)	93%	7%
Small ($< 1,000$)	90%	10%
Public	94%	6%
Private For-Profit	93%	7%
Private Not-For-Profit	90%	10%
Division I	89%	11%
Division II	100%	0%
Division III	93%	7%
40 Largest Private Institutions	97%	3%
50 Largest Public Institutions	100%	0%

E1.25. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Designated individuals to whom reports of sexual violence must be made]

Type of School	Yes	No
National Sample	79%	21%
Large ($\geq 10,000$)	85%	15%
Medium (1,000-9,999)	86%	14%
Small ($< 1,000$)	67%	33%
Public	89%	11%
Private For-Profit	60%	40%
Private Not-For-Profit	83%	17%
Division I	89%	11%
Division II	83%	17%
Division III	87%	13%
40 Largest Private Institutions	85%	15%
50 Largest Public Institutions	73%	27%

E1.26. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Coordinated crisis response across campus and community to provide victim services]

Type of School	Yes	No
National Sample	68%	32%
Large ($\geq 10,000$)	83%	17%
Medium (1,000-9,999)	77%	23%
Small ($< 1,000$)	46%	54%
Public	90%	10%
Private For-Profit	35%	65%
Private Not-For-Profit	70%	30%
Division I	96%	4%
Division II	90%	10%
Division III	90%	10%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	90%	10%

E1.27. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Specific sexual violence awareness events]

Type of School	Yes	No
National Sample	70%	30%
Large ($\geq 10,000$)	81%	19%
Medium (1,000-9,999)	84%	16%
Small ($< 1,000$)	44%	56%
Public	93%	7%
Private For-Profit	32%	68%
Private Not-For-Profit	74%	26%
Division I	93%	7%
Division II	93%	7%
Division III	97%	3%
40 Largest Private Institutions	91%	9%
50 Largest Public Institutions	96%	4%

E1.28. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Campus law enforcement protocols for responding to sexual violence on campus]

Type of School	Yes	No
National Sample	72%	28%
Large ($\geq 10,000$)	85%	15%
Medium (1,000-9,999)	85%	15%
Small ($< 1,000$)	46%	54%
Public	89%	11%
Private For-Profit	32%	68%
Private Not-For-Profit	82%	18%
Division I	96%	4%
Division II	93%	7%
Division III	100%	0%
40 Largest Private Institutions	97%	3%
50 Largest Public Institutions	94%	6%

E1.29. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Outreach and services to underserved populations]

Type of School	Yes	No
National Sample	45%	55%
Large ($\geq 10,000$)	69%	31%
Medium (1,000-9,999)	48%	52%
Small ($< 1,000$)	26%	74%
Public	61%	39%
Private For-Profit	33%	67%
Private Not-For-Profit	40%	60%
Division I	74%	26%
Division II	56%	44%
Division III	57%	43%
40 Largest Private Institutions	71%	29%
50 Largest Public Institutions	87%	13%

E1.30. Below is a list of policies and procedures that may encourage or discourage victims to disclose and report sexual violence. For each item, please indicate whether it is present at your institution: [Centralized 24-hour hotline for victims to report incidents and connect to necessary services]

Type of School	Yes	No
National Sample	51%	49%
Large ($\geq 10,000$)	66%	44%
Medium (1,000-9,999)	57%	43%
Small ($< 1,000$)	34%	66%
Public	73%	27%
Private For-Profit	32%	68%
Private Not-For-Profit	51%	49%
Division I	68%	32%
Division II	59%	41%
Division III	70%	30%
40 Largest Private Institutions	82%	18%
50 Largest Public Institutions	73%	27%

F1.1. Does your institution use a formal adjudication process for sexual violence?

Type of School	Yes	No
National Sample	84%	16%
Large ($\geq 10,000$)	92%	8%
Medium (1,000-9,999)	93%	7%
Small ($< 1,000$)	67%	33%
Public	93%	7%
Private For-Profit	68%	32%
Private Not-For-Profit	84%	16%
Division I	100%	0%
Division II	100%	0%
Division III	97%	3%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	98%	2%

F1.2. If your institution uses a formal adjudication process for sexual violence, who is present during adjudication? [Students]

Type of School	Yes	No
National Sample	81%	19%
Large ($\geq 10,000$)	78%	22%
Medium (1,000-9,999)	79%	21%
Small ($< 1,000$)	86%	14%
Public	82%	18%
Private For-Profit	70%	30%
Private Not-For-Profit	84%	16%
Division I	78%	22%
Division II	59%	41%
Division III	90%	10%
40 Largest Private Institutions	93%	7%
50 Largest Public Institutions	83%	17%

F1.3. If your institution uses a formal adjudication process for sexual violence, who is present during adjudication? [Faculty]

Type of School	Yes	No
National Sample	78%	22%
Large ($\geq 10,000$)	80%	20%
Medium (1,000-9,999)	73%	27%
Small ($< 1,000$)	85%	15%
Public	75%	25%
Private For-Profit	77%	23%
Private Not-For-Profit	81%	19%
Division I	78%	22%
Division II	58%	42%
Division III	93%	7%
40 Largest Private Institutions	83%	17%
50 Largest Public Institutions	80%	20%

F1.4. If your institution uses a formal adjudication process for sexual violence, who is present during adjudication? [Staff]

Type of School	Yes	No
National Sample	82%	18%
Large ($\geq 10,000$)	83%	17%
Medium (1,000-9,999)	83%	17%
Small ($< 1,000$)	82%	18%
Public	80%	20%
Private For-Profit	73%	27%
Private Not-For-Profit	88%	12%
Division I	85%	15%
Division II	82%	18%
Division III	96%	4%
40 Largest Private Institutions	90%	10%
50 Largest Public Institutions	91%	9%

F1.5. If your institution uses a formal adjudication process for sexual violence, who is present during adjudication? [Administrators]

Type of School	Yes	No
National Sample	93%	7%
Large ($\geq 10,000$)	100%	0%
Medium (1,000-9,999)	89%	11%
Small ($< 1,000$)	93%	7%
Public	89%	11%
Private For-Profit	97%	3%
Private Not-For-Profit	93%	7%
Division I	100%	0%
Division II	93%	7%
Division III	93%	7%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	87%	13%

F2.1. Which types of formal or informal adjudication procedures for sexual violence exist at your institution? [Open hearing]

Type of School	Yes	No
National Sample	6%	94%
Large ($\geq 10,000$)	6%	94%
Medium (1,000-9,999)	4%	96%
Small ($< 1,000$)	7%	93%
Public	15%	85%
Private For-Profit	0%	100%
Private Not-For-Profit	2%	98%
Division I	7%	93%
Division II	0%	100%
Division III	3%	97%
40 Largest Private Institutions	0%	100%
50 Largest Public Institutions	12%	88%

F2.2. Which types of formal or informal adjudication procedures for sexual violence exist at your institution? [Closed hearing]

Type of School	Yes	No
National Sample	84%	16%
Large ($\geq 10,000$)	92%	8%
Medium (1,000-9,999)	92%	8%
Small ($< 1,000$)	68%	32%
Public	92%	8%
Private For-Profit	72%	28%
Private Not-For-Profit	85%	15%
Division I	96%	4%
Division II	100%	0%
Division III	87%	13%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	92%	8%

F2.3. Which types of formal or informal adjudication procedures for sexual violence exist at your institution? [Finding of facts made by a single adjudicator]

Type of School	Yes	No
National Sample	44%	56%
Large ($\geq 10,000$)	58%	42%
Medium (1,000-9,999)	45%	55%
Small ($< 1,000$)	35%	65%
Public	56%	44%
Private For-Profit	40%	60%
Private Not-For-Profit	39%	61%
Division I	54%	46%
Division II	66%	34%
Division III	45%	55%
40 Largest Private Institutions	56%	44%
50 Largest Public Institutions	77%	23%

F2.4. Which types of formal or informal adjudication procedures for sexual violence exist at your institution? [Finding of facts made by a panel of adjudicators]

Type of School	Yes	No
National Sample	76%	24%
Large ($\geq 10,000$)	81%	19%
Medium (1,000-9,999)	79%	21%
Small ($< 1,000$)	70%	30%
Public	81%	19%
Private For-Profit	79%	21%
Private Not-For-Profit	71%	29%
Division I	86%	14%
Division II	76%	24%
Division III	81%	19%
40 Largest Private Institutions	84%	16%
50 Largest Public Institutions	71%	29%

F2.5. Which types of formal or informal adjudication procedures for sexual violence exist at your institution? [Written records are kept of the proceedings]

Type of School	Yes	No
National Sample	81%	19%
Large ($\geq 10,000$)	81%	19%
Medium (1,000-9,999)	86%	14%
Small ($< 1,000$)	76%	24%
Public	79%	21%
Private For-Profit	84%	16%
Private Not-For-Profit	82%	18%
Division I	75%	25%
Division II	93%	7%
Division III	83%	17%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	88%	13%

F2.6. Which types of formal or informal adjudication procedures for sexual violence exist at your institution? [Audio records are kept of the proceedings]

Type of School	Yes	No
National Sample	41%	59%
Large ($\geq 10,000$)	56%	44%
Medium (1,000-9,999)	47%	53%
Small ($< 1,000$)	23%	77%
Public	74%	26%
Private For-Profit	13%	88%
Private Not-For-Profit	33%	67%
Division I	79%	21%
Division II	55%	45%
Division III	47%	53%
40 Largest Private Institutions	59%	41%
50 Largest Public Institutions	82%	18%

F2.7. Which types of formal or informal adjudication procedures for sexual violence exist at your institution? [Defendant has a right to hearing transcripts]

Type of School	Yes	No
National Sample	45%	55%
Large ($\geq 10,000$)	50%	50%
Medium (1,000-9,999)	44%	56%
Small ($< 1,000$)	44%	56%
Public	66%	34%
Private For-Profit	39%	61%
Private Not-For-Profit	34%	66%
Division I	64%	36%
Division II	55%	45%
Division III	38%	62%
40 Largest Private Institutions	43%	57%
50 Largest Public Institutions	70%	30%

F2.8. Which types of formal or informal adjudication procedures for sexual violence exist at your institution? [Victim has a right to hearing transcripts]

Type of School	Yes	No
National Sample	45%	55%
Large ($\geq 10,000$)	45%	55%
Medium (1,000-9,999)	48%	52%
Small ($< 1,000$)	42%	58%
Public	65%	35%
Private For-Profit	38%	63%
Private Not-For-Profit	36%	64%
Division I	64%	36%
Division II	57%	43%
Division III	38%	62%
40 Largest Private Institutions	43%	57%
50 Largest Public Institutions	68%	32%

F2.9. Which types of formal or informal adjudication procedures for sexual violence exist at your institution? [Institution defers an internal hearing until either civil or criminal investigations and trials are completed]

Type of School	Yes	No
National Sample	10%	90%
Large ($\geq 10,000$)	0%	100%
Medium (1,000-9,999)	14%	86%
Small ($< 1,000$)	12%	88%
Public	7%	93%
Private For-Profit	7%	93%
Private Not-For-Profit	14%	86%
Division I	0%	100%
Division II	14%	86%
Division III	13%	87%
40 Largest Private Institutions	6%	94%
50 Largest Public Institutions	2%	98%

F2.10. Which types of formal or informal adjudication procedures for sexual violence exist at your institution? [Victim has a right to be informed of the outcome]

Type of School	Yes	No
National Sample	91%	9%
Large ($\geq 10,000$)	94%	6%
Medium (1,000-9,999)	94%	6%
Small ($< 1,000$)	86%	14%
Public	96%	4%
Private For-Profit	91%	9%
Private Not-For-Profit	88%	12%
Division I	100%	0%
Division II	100%	0%
Division III	100%	0%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	98%	2%

F2.11. Which types of formal or informal adjudication procedures for sexual violence exist at your institution? [Defendant has a right to be informed of the outcome]

Type of School	Yes	No
National Sample	92%	8%
Large ($\geq 10,000$)	94%	6%
Medium (1,000-9,999)	94%	6%
Small ($< 1,000$)	88%	13%
Public	96%	4%
Private For-Profit	91%	9%
Private Not-For-Profit	89%	11%
Division I	100%	0%
Division II	100%	0%
Division III	100%	0%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	98%	2%

F2.12. Which types of formal or informal adjudication procedures for sexual violence exist at your institution? [Violations are noted on student transcripts/permanent records]

Type of School	Yes	No
National Sample	49%	51%
Large ($\geq 10,000$)	60%	40%
Medium (1,000-9,999)	39%	61%
Small ($< 1,000$)	54%	46%
Public	44%	56%
Private For-Profit	58%	42%
Private Not-For-Profit	48%	52%
Division I	50%	50%
Division II	38%	62%
Division III	52%	48%
40 Largest Private Institutions	65%	35%
50 Largest Public Institutions	69%	31%

F2.13. Which types of formal or informal adjudication procedures for sexual violence exist at your institution? [Adjudicator(s) receive training about rape myths (e.g., it is rape if the victim is forced by someone s/he knows, or someone s/he has been with before)]

Type of School	Yes	No
National Sample	67%	33%
Large ($\geq 10,000$)	76%	24%
Medium (1,000-9,999)	70%	30%
Small ($< 1,000$)	56%	44%
Public	77%	23%
Private For-Profit	54%	46%
Private Not-For-Profit	66%	34%
Division I	85%	15%
Division II	89%	11%
Division III	80%	20%
40 Largest Private Institutions	84%	16%
50 Largest Public Institutions	90%	10%

F3.1. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Defendant receives written notice of the charges prior to the hearing]

Type of School	Yes	No
National Sample	87%	13%
Large ($\geq 10,000$)	96%	4%
Medium (1,000-9,999)	93%	7%
Small ($< 1,000$)	74%	26%
Public	96%	4%
Private For-Profit	69%	31%
Private Not-For-Profit	90%	10%
Division I	100%	0%
Division II	93%	7%
Division III	93%	7%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	94%	6%

F3.2. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Defendant is informed of rights before hearing]

Type of School	Yes	No
National Sample	92%	8%
Large ($\geq 10,000$)	100%	0%
Medium (1,000-9,999)	94%	6%
Small ($< 1,000$)	84%	16%
Public	99%	1%
Private For-Profit	80%	20%
Private Not-For-Profit	93%	7%
Division I	100%	0%
Division II	100%	0%
Division III	93%	7%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	98%	2%

F3.3. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Victim is informed of rights before hearing]

Type of School	Yes	No
National Sample	91%	9%
Large ($\geq 10,000$)	100%	0%
Medium (1,000-9,999)	94%	6%
Small ($< 1,000$)	81%	19%
Public	99%	1%
Private For-Profit	79%	21%
Private Not-For-Profit	91%	9%
Division I	100%	0%
Division II	100%	0%
Division III	94%	6%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	96%	4%

F3.4. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Defendant may bring an adviser or lawyer]

Type of School	Yes	No
National Sample	75%	25%
Large ($\geq 10,000$)	85%	15%
Medium (1,000-9,999)	80%	20%
Small ($< 1,000$)	60%	40%
Public	97%	3%
Private For-Profit	53%	47%
Private Not-For-Profit	70%	30%
Division I	96%	4%
Division II	83%	17%
Division III	83%	17%
40 Largest Private Institutions	88%	12%
50 Largest Public Institutions	98%	2%

F3.5. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Victim may bring an adviser or lawyer]

Type of School	Yes	No
National Sample	75%	25%
Large ($\geq 10,000$)	85%	15%
Medium (1,000-9,999)	80%	20%
Small ($< 1,000$)	61%	39%
Public	97%	3%
Private For-Profit	54%	46%
Private Not-For-Profit	70%	30%
Division I	96%	4%
Division II	83%	17%
Division III	84%	16%
40 Largest Private Institutions	88%	12%
50 Largest Public Institutions	98%	2%

F3.6. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Defendant is permitted to be present at the hearing]

Type of School	Yes	No
National Sample	86%	14%
Large ($\geq 10,000$)	94%	6%
Medium (1,000-9,999)	89%	11%
Small ($< 1,000$)	78%	22%
Public	92%	8%
Private For-Profit	69%	31%
Private Not-For-Profit	86%	14%
Division I	100%	0%
Division II	89%	11%
Division III	90%	10%
40 Largest Private Institutions	91%	9%
50 Largest Public Institutions	92%	8%

F3.7. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Victim is permitted to be present at the hearing]

Type of School	Yes	No
National Sample	83%	17%
Large ($\geq 10,000$)	88%	12%
Medium (1,000-9,999)	86%	14%
Small ($< 1,000$)	75%	25%
Public	90%	10%
Private For-Profit	66%	34%
Private Not-For-Profit	82%	18%
Division I	96%	4%
Division II	89%	11%
Division III	90%	10%
40 Largest Private Institutions	88%	13%
50 Largest Public Institutions	90%	10%

F3.8. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Defendant is required to be present at the hearing]

Type of School	Yes	No
National Sample	27%	73%
Large ($\geq 10,000$)	15%	85%
Medium (1,000-9,999)	33%	67%
Small ($< 1,000$)	27%	73%
Public	14%	86%
Private For-Profit	8%	92%
Private Not-For-Profit	39%	61%
Division I	14%	86%
Division II	41%	59%
Division III	33%	67%
40 Largest Private Institutions	9%	91%
50 Largest Public Institutions	14%	86%

F3.9. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Victim is required to be present at the hearing]

Type of School	Yes	No
National Sample	9%	91%
Large ($\geq 10,000$)	6%	94%
Medium (1,000-9,999)	11%	89%
Small ($< 1,000$)	9%	91%
Public	6%	94%
Private For-Profit	6%	94%
Private Not-For-Profit	13%	87%
Division I	4%	96%
Division II	14%	86%
Division III	10%	90%
40 Largest Private Institutions	0%	100%
50 Largest Public Institutions	2%	98%

F3.10. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Defendant has the right to challenge hearing members concerning impartiality/conflict of interest]

Type of School	Yes	No
National Sample	82%	18%
Large ($\geq 10,000$)	89%	11%
Medium (1,000-9,999)	85%	15%
Small ($< 1,000$)	74%	26%
Public	91%	9%
Private For-Profit	73%	27%
Private Not-For-Profit	81%	19%
Division I	93%	7%
Division II	90%	10%
Division III	90%	10%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	94%	6%

F3.11. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Victim has the right to challenge hearing members concerning impartiality/conflict of interest]

Type of School	Yes	No
National Sample	78%	22%
Large ($\geq 10,000$)	81%	19%
Medium (1,000-9,999)	82%	18%
Small ($< 1,000$)	69%	31%
Public	82%	18%
Private For-Profit	71%	29%
Private Not-For-Profit	78%	22%
Division I	89%	11%
Division II	89%	11%
Division III	83%	17%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	92%	8%

F3.12. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Defendant has a right to question and call witnesses]

Type of School	Yes	No
National Sample	67%	33%
Large ($\geq 10,000$)	77%	23%
Medium (1,000-9,999)	71%	29%
Small ($< 1,000$)	54%	46%
Public	87%	13%
Private For-Profit	40%	60%
Private Not-For-Profit	67%	33%
Division I	81%	19%
Division II	86%	14%
Division III	73%	27%
40 Largest Private Institutions	75%	25%
50 Largest Public Institutions	86%	14%

F3.13. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Victim has a right to question and call witnesses]

Type of School	Yes	No
National Sample	64%	36%
Large ($\geq 10,000$)	71%	29%
Medium (1,000-9,999)	70%	30%
Small ($< 1,000$)	49%	51%
Public	79%	21%
Private For-Profit	35%	65%
Private Not-For-Profit	67%	33%
Division I	81%	19%
Division II	83%	17%
Division III	70%	30%
40 Largest Private Institutions	75%	25%
50 Largest Public Institutions	79%	21%

F3.14. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Defendant has a right to an appeal]

Type of School	Yes	No
National Sample	91%	9%
Large ($\geq 10,000$)	92%	8%
Medium (1,000-9,999)	95%	5%
Small ($< 1,000$)	85%	15%
Public	91%	9%
Private For-Profit	80%	20%
Private Not-For-Profit	97%	3%
Division I	96%	4%
Division II	93%	7%
Division III	97%	3%
40 Largest Private Institutions	97%	3%
50 Largest Public Institutions	94%	6%

F3.15. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Victim has a right to an appeal]

Type of School	Yes	No
National Sample	85%	15%
Large ($\geq 10,000$)	88%	12%
Medium (1,000-9,999)	89%	11%
Small ($< 1,000$)	78%	22%
Public	83%	17%
Private For-Profit	78%	22%
Private Not-For-Profit	90%	10%
Division I	93%	7%
Division II	86%	14%
Division III	93%	7%
40 Largest Private Institutions	97%	3%
50 Largest Public Institutions	84%	16%

F3.16. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Defendant is presumed innocent until proven guilty]

Type of School	Yes	No
National Sample	94%	6%
Large ($\geq 10,000$)	94%	6%
Medium (1,000-9,999)	94%	6%
Small ($< 1,000$)	94%	6%
Public	94%	6%
Private For-Profit	98%	2%
Private Not-For-Profit	91%	9%
Division I	93%	7%
Division II	97%	3%
Division III	97%	3%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	96%	4%

F3.17. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Burden of proof is clearly articulated]

Type of School	Yes	No
National Sample	74%	26%
Large ($\geq 10,000$)	77%	23%
Medium (1,000-9,999)	77%	23%
Small ($< 1,000$)	68%	32%
Public	86%	41%
Private For-Profit	50%	50%
Private Not-For-Profit	78%	22%
Division I	82%	18%
Division II	85%	15%
Division III	79%	21%
40 Largest Private Institutions	81%	19%
50 Largest Public Institutions	89%	11%

F3.18. Which of the following due process elements exist in your institution's formal or informal adjudication process? [Standard of proof is clearly articulated]

Type of School	Yes	No
National Sample	88%	12%
Large ($\geq 10,000$)	98%	2%
Medium (1,000-9,999)	90%	10%
Small ($< 1,000$)	78%	22%
Public	97%	3%
Private For-Profit	64%	36%
Private Not-For-Profit	94%	6%
Division I	100%	0%
Division II	93%	7%
Division III	100%	0%
40 Largest Private Institutions	97%	3%
50 Largest Public Institutions	96%	4%

F4. Which standard of proof do you use in your institution's adjudication process?

Type of School	Beyond a reasonable doubt	Clear and convincing evidence	Preponderance of evidence
National Sample	4%	11%	85%
Large ($\geq 10,000$)	4%	2%	94%
Medium (1,000 - 9,999)	2%	12%	86%
Small ($< 1,000$)	6%	19%	75%
Public	3%	4%	93%
Private For-Profit	6%	17%	78%
Private Not-For-Profit	3%	14%	83%
Division I	0%	0%	100%
Division II	7%	3%	90%
Division III	0%	7%	93%
40 Largest Private Institutions	3%	3%	94%
50 Largest Public Institutions	0%	0%	100%

F5.1. Does your institution utilize any of the following evidentiary practices in its adjudication process? [Names of witnesses are made available to all parties prior to the hearing]

Type of School	Yes	No
National Sample	44%	56%
Large ($\geq 10,000$)	70%	30%
Medium (1,000-9,999)	47%	53%
Small ($< 1,000$)	25%	75%
Public	65%	35%
Private For-Profit	22%	78%
Private Not-For-Profit	42%	58%
Division I	75%	25%
Division II	55%	45%
Division III	55%	45%
40 Largest Private Institutions	83%	17%
50 Largest Public Institutions	76%	24%

F5.2. Does your institution utilize any of the following evidentiary practices in its adjudication process? [Your state's rape shield laws or the equivalent are applied to the proceedings]

Type of School	Yes	No
National Sample	58%	42%
Large ($\geq 10,000$)	1%	29%
Medium (1,000-9,999)	55%	45%
Small ($< 1,000$)	52%	48%
Public	72%	28%
Private For-Profit	53%	48%
Private Not-For-Profit	51%	49%
Division I	58%	42%
Division II	64%	36%
Division III	61%	39%
40 Largest Private Institutions	62%	38%
50 Largest Public Institutions	63%	37%

F5.3. Does your institution utilize any of the following evidentiary practices in its adjudication process? [Hearsay evidence is not allowed]

Type of School	Yes	No
National Sample	37%	63%
Large ($\geq 10,000$)	28%	72%
Medium (1,000-9,999)	43%	57%
Small ($< 1,000$)	37%	63%
Public	31%	69%
Private For-Profit	39%	61%
Private Not-For-Profit	41%	59%
Division I	15%	85%
Division II	35%	65%
Division III	63%	37%
40 Largest Private Institutions	13%	87%
50 Largest Public Institutions	10%	90%

F5.4. Does your institution utilize any of the following evidentiary practices in its adjudication process? [Victim may make a "victim impact statement"]

Type of School	Yes	No
National Sample	81%	19%
Large ($\geq 10,000$)	91%	9%
Medium (1,000-9,999)	85%	15%
Small ($< 1,000$)	67%	33%
Public	83%	17%
Private For-Profit	72%	28%
Private Not-For-Profit	83%	17%
Division I	96%	4%
Division II	89%	11%
Division III	97%	3%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	94%	6%

F5.5. Does your institution utilize any of the following evidentiary practices in its adjudication process? [Formal rules of evidence apply in judicial hearings]

Type of School	Yes	No
National Sample	15%	85%
Large ($\geq 10,000$)	7%	93%
Medium (1,000-9,999)	18%	82%
Small ($< 1,000$)	15%	85%
Public	8%	92%
Private For-Profit	9%	91%
Private Not-For-Profit	22%	78%
Division I	14%	86%
Division II	13%	87%
Division III	30%	70%
40 Largest Private Institutions	3%	97%
50 Largest Public Institutions	10%	90%

F6.1. Which penalties does your institution impose on perpetrators of sexual violence? [Community service]

Type of School	Yes	No
National Sample	39%	61%
Large ($\geq 10,000$)	33%	67%
Medium (1,000-9,999)	48%	52%
Small ($< 1,000$)	31%	69%
Public	55%	45%
Private For-Profit	9%	91%
Private Not-For-Profit	44%	56%
Division I	36%	64%
Division II	48%	52%
Division III	60%	40%
40 Largest Private Institutions	38%	62%
50 Largest Public Institutions	37%	63%

F6.2. Which penalties does your institution impose on perpetrators of sexual violence? [Counseling]

Type of School	Yes	No
National Sample	72%	28%
Large ($\geq 10,000$)	73%	27%
Medium (1,000-9,999)	81%	19%
Small ($< 1,000$)	59%	41%
Public	84%	16%
Private For-Profit	39%	61%
Private Not-For-Profit	81%	19%
Division I	86%	14%
Division II	96%	4%
Division III	87%	13%
40 Largest Private Institutions	76%	24%
50 Largest Public Institutions	87%	13%

F6.3. Which penalties does your institution impose on perpetrators of sexual violence? [No-contact order]

Type of School	Yes	No
National Sample	81%	19%
Large ($\geq 10,000$)	90%	10%
Medium (1,000-9,999)	92%	8%
Small ($< 1,000$)	63%	38%
Public	96%	4%
Private For-Profit	50%	50%
Private Not-For-Profit	88%	12%
Division I	100%	0%
Division II	97%	3%
Division III	100%	0%
40 Largest Private Institutions	97%	3%
50 Largest Public Institutions	96%	4%

F6.4. Which penalties does your institution impose on perpetrators of sexual violence? [Fine]

Type of School	Yes	No
National Sample	16%	84%
Large ($\geq 10,000$)	12%	88%
Medium (1,000-9,999)	23%	77%
Small ($< 1,000$)	11%	89%
Public	12%	8%
Private For-Profit	5%	95%
Private Not-For-Profit	26%	74%
Division I	21%	79%
Division II	33%	67%
Division III	29%	71%
40 Largest Private Institutions	15%	85%
50 Largest Public Institutions	7%	93%

F6.5. Which penalties does your institution impose on perpetrators of sexual violence? [Restitution]

Type of School	Yes	No
National Sample	34%	66%
Large ($\geq 10,000$)	35%	65%
Medium (1,000-9,999)	46%	54%
Small ($< 1,000$)	17%	83%
Public	41%	59%
Private For-Profit	14%	86%
Private Not-For-Profit	40%	60%
Division I	36%	64%
Division II	48%	52%
Division III	52%	48%
40 Largest Private Institutions	29%	71%
50 Largest Public Institutions	44%	56%

F6.6. Which penalties does your institution impose on perpetrators of sexual violence? [Suspension]

Type of School	Yes	No
National Sample	94%	6%
Large ($\geq 10,000$)	98%	2%
Medium (1,000-9,999)	93%	7%
Small ($< 1,000$)	93%	7%
Public	97%	3%
Private For-Profit	95%	5%
Private Not-For-Profit	91%	9%
Division I	100%	0%
Division II	100%	0%
Division III	100%	0%
40 Largest Private Institutions	94%	6%
50 Largest Public Institutions	100%	0%

F6.7. Which penalties does your institution impose on perpetrators of sexual violence? [Expulsion]

Type of School	Yes	No
National Sample	97%	3%
Large ($\geq 10,000$)	98%	2%
Medium (1,000-9,999)	99%	1%
Small ($< 1,000$)	95%	5%
Public	96%	4%
Private For-Profit	98%	2%
Private Not-For-Profit	98%	2%
Division I	96%	4%
Division II	100%	0%
Division III	100%	0%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	100%	0%

F6.8. Which penalties does your institution impose on perpetrators of sexual violence? [Fraternity/sorority sanctions]

Type of School	Yes	No
National Sample	31%	69%
Large ($\geq 10,000$)	55%	45%
Medium (1,000-9,999)	32%	68%
Small ($< 1,000$)	13%	87%
Public	57%	43%
Private For-Profit	0%	100%
Private Not-For-Profit	30%	70%
Division I	75%	25%
Division II	54%	46%
Division III	53%	47%
40 Largest Private Institutions	61%	39%
50 Largest Public Institutions	80%	20%

F6.9. Which penalties does your institution impose on perpetrators of sexual violence? [Athletic team sanctions]

Type of School	Yes	No
National Sample	51%	49%
Large ($\geq 10,000$)	64%	36%
Medium (1,000-9,999)	70%	30%
Small ($< 1,000$)	19%	81%
Public	69%	41%
Private For-Profit	2%	98%
Private Not-For-Profit	67%	33%
Division I	89%	11%
Division II	89%	11%
Division III	90%	10%
40 Largest Private Institutions	76%	24%
50 Largest Public Institutions	85%	15%

G3. Is your institution a residential campus?

Type of School	Yes	No
National Sample	60%	40%
Large ($\geq 10,000$)	66%	34%
Medium (1,000-9,999)	75%	25%
Small ($< 1,000$)	37%	63%
Public	67%	33%
Private For-Profit	11%	89%
Private Not-For-Profit	81%	19%
Division I	89%	11%
Division II	100%	0%
Division III	100%	0%
40 Largest Private Institutions	91%	9%
50 Largest Public Institutions	88%	12%

G4. Is your institution exclusively online?

Type of School	Yes	No
National Sample	3%	97%
Large ($\geq 10,000$)	9%	91%
Medium (1,000-9,999)	1%	99%
Small ($< 1,000$)	0%	100%
Public	0%	100%
Private For-Profit	11%	89%
Private Not-For-Profit	0%	100%
Division I	0%	100%
Division II	0%	100%
Division III	0%	100%
40 Largest Private Institutions	0%	100%
50 Largest Public Institutions	2%	98%

G9. Does your institution have a Title IX coordinator?

Type of School	Yes	No
National Sample	89%	11%
Large ($\geq 10,000$)	94%	6%
Medium (1,000-9,999)	89%	11%
Small ($< 1,000$)	79%	21%
Public	92%	8%
Private For-Profit	88%	12%
Private Not-For-Profit	87%	13%
Division I	96%	4%
Division II	93%	7%
Division III	94%	6%
40 Largest Private Institutions	100%	0%
50 Largest Public Institutions	100%	0%

Addendum. Investigations compared to Clery reports

Type of School	Fewer investigations than number of Clery-reported sexual assaults	At least as many investigations as number of Clery-reported sexual assaults
National Sample	9%	91%
40 Largest Private Institutions	21%	79%
50 Largest Public Institutions	6%	94%

Consent Pledge

Rights	Responsibilities
I have the right to trust my own instincts and experiences.	I have the responsibility to accept "NO" for an answer.
I have the right to leave any situation without explaining myself.	I have the responsibility to communicate in advance or in the moment, what I want or do not want.
If I do not want physical closeness, I have the right to say "NO" at any point in the interaction.	I have the responsibility to check my actions and decisions to make sure they are good for me and others.
I have the right to feel safe.	I have the responsibility to educate myself about sex and intimacy.
I have the right to mutually consensual, pleasurable physical experiences.	I have the responsibility to know when I am too tired, drunk or otherwise incapable of making a responsible decision.
I have the right to tell someone when I feel I have been mistreated.	I have the responsibility to ask when I am unclear about the other person's needs and wants.
I have the right change my mind whenever I want.	I have the responsibility to ensure all parties actively want each step of the interaction to occur.
I have the right to tell my partner what I want physically and emotionally.	I have the responsibility to communicate when I am uncomfortable.
I have the right to be heard and respected.	I have the responsibility to ensure my partner is comfortable.
	I have the responsibility of dealing with the repercussions of a sexual encounter no matter my relationship with the other person.
	I have the responsibility to interfere when I think someone else is being mistreated, coerced or is unable to fend for themselves.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 4, 2011

Dear Colleague:

Education has long been recognized as the great equalizer in America. The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime.

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX. In order to assist recipients, which include school districts, colleges, and universities (hereinafter "schools" or "recipients") in meeting these obligations, this letter¹ explains that the requirements of Title IX pertaining to sexual harassment also cover sexual violence, and lays out the specific Title IX requirements applicable to sexual violence.² Sexual violence, as that term is used in this letter, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape,

¹ The Department has determined that this Dear Colleague Letter is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at:

http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/012507_good_guidance.pdf. OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This letter does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

² Use of the term "sexual harassment" throughout this document includes sexual violence unless otherwise noted. Sexual harassment also may violate Title IV of the Civil Rights Act of 1964 (42 U.S.C. § 2000c), which prohibits public school districts and colleges from discriminating against students on the basis of sex, among other bases. The U.S. Department of Justice enforces Title IV.

sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.

The statistics on sexual violence are both deeply troubling and a call to action for the nation. A report prepared for the National Institute of Justice found that about 1 in 5 women are victims of completed or attempted sexual assault while in college.³ The report also found that approximately 6.1 percent of males were victims of completed or attempted sexual assault during college.⁴ According to data collected under the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), in 2009, college campuses reported nearly 3,300 forcible sex offenses as defined by the Clery Act.⁵ This problem is not limited to college. During the 2007-2008 school year, there were 800 reported incidents of rape and attempted rape and 3,800 reported incidents of other sexual batteries at public high schools.⁶ Additionally, the likelihood that a woman with intellectual disabilities will be sexually assaulted is estimated to be significantly higher than the general population.⁷ The Department is deeply concerned about this problem and is committed to ensuring that all students feel safe in their school, so that they have the opportunity to benefit fully from the school's programs and activities.

This letter begins with a discussion of Title IX's requirements related to student-on-student sexual harassment, including sexual violence, and explains schools' responsibility to take immediate and effective steps to end sexual harassment and sexual violence. These requirements are discussed in detail in OCR's *Revised Sexual Harassment Guidance* issued in 2001 (*2001 Guidance*).⁸ This letter supplements the *2001 Guidance* by providing additional guidance and practical examples regarding the Title IX requirements as they relate to sexual violence. This letter concludes by discussing the proactive efforts schools can take to prevent sexual harassment and violence, and by providing examples of remedies that schools and OCR may use to end such conduct, prevent its recurrence, and address its effects. Although some examples contained in this letter are applicable only in the postsecondary context, sexual

³ CHRISTOPHER P. KREBS ET AL., THE CAMPUS SEXUAL ASSAULT STUDY: FINAL REPORT xiii (Nat'l Criminal Justice Reference Serv., Oct. 2007), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>. This study also found that the majority of campus sexual assaults occur when women are incapacitated, primarily by alcohol. *Id.* at xviii.

⁴ *Id.* at 5-5.

⁵ U.S. Department of Education, Office of Postsecondary Education, Summary Crime Statistics (data compiled from reports submitted in compliance with the Clery Act), available at <http://www2.ed.gov/admins/lead/safety/criminal2007-09.pdf>. Under the Clery Act, forcible sex offenses are

defined as any sexual act directed against another person, forcibly and/or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. 34 C.F.R. Part 668, Subpt. D, App. A.

⁶ SIMONE ROBERS ET AL., INDICATORS OF SCHOOL CRIME AND SAFETY: 2010 at 104 (U.S. Dep't of Educ. & U.S. Dep't of Justice, Nov. 2010), available at <http://nces.ed.gov/pubs2011/2011002.pdf>.

⁷ ERIKA HARRELL & MICHAEL R. RAND, CRIME AGAINST PEOPLE WITH DISABILITIES, 2008 (Bureau of Justice Statistics, U.S. Dep't of Justice, Dec. 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/capd08.pdf>.

⁸ The *2001 Guidance* is available on the Department's Web site at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>. This letter focuses on peer sexual harassment and violence. Schools' obligations and the appropriate response to sexual harassment and violence committed by employees may be different from those described in this letter. Recipients should refer to the *2001 Guidance* for further information about employee harassment of students.

harassment and violence also are concerns for school districts. The Title IX obligations discussed in this letter apply equally to school districts unless otherwise noted.

Title IX Requirements Related to Sexual Harassment and Sexual Violence

Schools' Obligations to Respond to Sexual Harassment and Sexual Violence

Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment prohibited by Title IX.⁹

As explained in OCR's *2001 Guidance*, when a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For instance, a single instance of rape is sufficiently severe to create a hostile environment.¹⁰

Title IX protects students from sexual harassment in a school's education programs and activities. This means that Title IX protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the school, whether those programs take place in a school's facilities, on a school bus, at a class or training program

⁹ Title IX also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. The Title IX obligations discussed in this letter also apply to gender-based harassment. Gender-based harassment is discussed in more detail in the *2001 Guidance*, and in the 2010 Dear Colleague letter on Harassment and Bullying, which is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

¹⁰ See, e.g., *Jennings v. Univ. of N.C.*, 444 F.3d 255, 268, 274 n.12 (4th Cir. 2006) (acknowledging that while not an issue in this case, a single incident of sexual assault or rape could be sufficient to raise a jury question about whether a hostile environment exists, and noting that courts look to Title VII cases for guidance in analyzing Title IX sexual harassment claims); *Vance v. Spencer Cnty. Pub. Sch. Dist.*, 231 F.3d 253, 259 n.4 (6th Cir. 2000) ("[w]ithin the context of Title IX, a student's claim of hostile environment can arise from a single incident" (quoting *Doe v. Sch. Admin. Dist. No. 19*, 66 F. Supp. 2d 57, 62 (D. Me. 1999))); *Soper v. Hoben*, 195 F.3d 845, 855 (6th Cir. 1999) (explaining that rape and sexual abuse "obviously qualify as...severe, pervasive, and objectively offensive sexual harassment"); see also *Berry v. Chi. Transit Auth.*, 618 F.3d 688, 692 (7th Cir. 2010) (in the Title VII context, "a single act can create a hostile environment if it is severe enough, and instances of uninvited physical contact with intimate parts of the body are among the most severe types of sexual harassment"); *Turner v. Saloon, Ltd.*, 595 F.3d 679, 686 (7th Cir. 2010) (noting that "[o]ne instance of conduct that is sufficiently severe may be enough," which is "especially true when the touching is of an intimate body part" (quoting *Jackson v. Cnty. of Racine*, 474 F.3d 493, 499 (7th Cir. 2007))); *McKinnis v. Crescent Guardian, Inc.*, 189 F. App'x 307, 310 (5th Cir. 2006) (holding that "the deliberate and unwanted touching of [a plaintiff's] intimate body parts can constitute severe sexual harassment" in Title VII cases (quoting *Harvill v. Westward Commc'ns, L.L.C.*, 433 F.3d 428, 436 (5th Cir. 2005))).

sponsored by the school at another location, or elsewhere. For example, Title IX protects a student who is sexually assaulted by a fellow student during a school-sponsored field trip.¹¹

If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.¹² Schools also are required to publish a notice of nondiscrimination and to adopt and publish grievance procedures. Because of these requirements, which are discussed in greater detail in the following section, schools need to ensure that their employees are trained so that they know to report harassment to appropriate school officials, and so that employees with the authority to address harassment know how to respond properly. Training for employees should include practical information about how to identify and report sexual harassment and violence. OCR recommends that this training be provided to any employees likely to witness or receive reports of sexual harassment and violence, including teachers, school law enforcement unit employees, school administrators, school counselors, general counsels, health personnel, and resident advisors.

Schools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school's education program or activity. If a student files a complaint with the school, regardless of where the conduct occurred, the school must process the complaint in accordance with its established procedures. Because students often experience the continuing effects of off-campus sexual harassment in the educational setting, schools should consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus. For example, if a student alleges that he or she was sexually assaulted by another student off school grounds, and that upon returning to school he or she was taunted and harassed by other students who are the alleged perpetrator's friends, the school should take the earlier sexual assault into account in determining whether there is a sexually hostile environment. The school also should take steps to protect a student who was assaulted off campus from further sexual harassment or retaliation from the perpetrator and his or her associates.

Regardless of whether a harassed student, his or her parent, or a third party files a complaint under the school's grievance procedures or otherwise requests action on the student's behalf, a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. As discussed later in this letter, the school's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct. The specific steps in a school's

¹¹ Title IX also protects third parties from sexual harassment or violence in a school's education programs and activities. For example, Title IX protects a high school student participating in a college's recruitment program, a visiting student athlete, and a visitor in a school's on-campus residence hall. Title IX also protects employees of a recipient from sexual harassment. For further information about harassment of employees, see *2001 Guidance* at n.1.

¹² This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. See *2001 Guidance* at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. See *Davis v. Monroe Cnty. Bd. of Ed.*, 526 U.S. 629, 643, 648 (1999).

investigation will vary depending upon the nature of the allegations, the age of the student or students involved (particularly in elementary and secondary schools), the size and administrative structure of the school, and other factors. Yet as discussed in more detail below, the school's inquiry must in all cases be prompt, thorough, and impartial. In cases involving potential criminal conduct, school personnel must determine, consistent with State and local law, whether appropriate law enforcement or other authorities should be notified.¹³

Schools also should inform and obtain consent from the complainant (or the complainant's parents if the complainant is under 18 and does not attend a postsecondary institution) before beginning an investigation. If the complainant requests confidentiality or asks that the complaint not be pursued, the school should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the school should inform the complainant that its ability to respond may be limited.¹⁴ The school also should tell the complainant that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

As discussed in the *2001 Guidance*, if the complainant continues to ask that his or her name or other identifiable information not be revealed, the school should evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the school may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.¹⁵ The school should inform the complainant if it cannot ensure confidentiality. Even if the school cannot take disciplinary action against the alleged harasser because the complainant insists on confidentiality, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence. Examples of such steps are discussed later in this letter.

Compliance with Title IX, such as publishing a notice of nondiscrimination, designating an employee to coordinate Title IX compliance, and adopting and publishing grievance procedures, can serve as preventive measures against harassment. Combined with education and training programs, these measures can help ensure that all students and employees recognize the

¹³ In states with mandatory reporting laws, schools may be required to report certain incidents to local law enforcement or child protection agencies.

¹⁴ Schools should refer to the *2001 Guidance* for additional information on confidentiality and the alleged perpetrator's due process rights.

¹⁵ For example, the alleged harasser may have a right under FERPA to inspect and review portions of the complaint that directly relate to him or her. In that case, the school must redact the complainant's name and other identifying information before allowing the alleged harasser to inspect and review the sections of the complaint that relate to him or her. In some cases, such as those where the school is required to report the incident to local law enforcement or other officials, the school may not be able to maintain the complainant's confidentiality.

nature of sexual harassment and violence, and understand that the school will not tolerate such conduct. Indeed, these measures may bring potentially problematic conduct to the school's attention before it becomes serious enough to create a hostile environment. Training for administrators, teachers, staff, and students also can help ensure that they understand what types of conduct constitute sexual harassment or violence, can identify warning signals that may need attention, and know how to respond. More detailed information and examples of education and other preventive measures are provided later in this letter.

Procedural Requirements Pertaining to Sexual Harassment and Sexual Violence

Recipients of Federal financial assistance must comply with the procedural requirements outlined in the Title IX implementing regulations. Specifically, a recipient must:

- (A) Disseminate a notice of nondiscrimination;¹⁶
- (B) Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX;¹⁷ and
- (C) Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex discrimination complaints.¹⁸

These requirements apply to all forms of sexual harassment, including sexual violence, and are important for preventing and effectively responding to sex discrimination. They are discussed in greater detail below. OCR advises recipients to examine their current policies and procedures on sexual harassment and sexual violence to determine whether those policies comply with the requirements articulated in this letter and the *2001 Guidance*. Recipients should then implement changes as needed.

(A) Notice of Nondiscrimination

The Title IX regulations require that each recipient publish a notice of nondiscrimination stating that the recipient does not discriminate on the basis of sex in its education programs and activities, and that Title IX requires it not to discriminate in such a manner.¹⁹ The notice must state that inquiries concerning the application of Title IX may be referred to the recipient's Title IX coordinator or to OCR. It should include the name or title, office address, telephone number, and e-mail address for the recipient's designated Title IX coordinator.

The notice must be widely distributed to all students, parents of elementary and secondary students, employees, applicants for admission and employment, and other relevant persons. OCR recommends that the notice be prominently posted on school Web sites and at various

¹⁶ 34 C.F.R. § 106.9.

¹⁷ *Id.* § 106.8(a).

¹⁸ *Id.* § 106.8(b).

¹⁹ *Id.* § 106.9(a).

locations throughout the school or campus and published in electronic and printed publications of general distribution that provide information to students and employees about the school's services and policies. The notice should be available and easily accessible on an ongoing basis.

Title IX does not require a recipient to adopt a policy specifically prohibiting sexual harassment or sexual violence. As noted in the *2001 Guidance*, however, a recipient's general policy prohibiting sex discrimination will not be considered effective and would violate Title IX if, because of the lack of a specific policy, students are unaware of what kind of conduct constitutes sexual harassment, including sexual violence, or that such conduct is prohibited sex discrimination. OCR therefore recommends that a recipient's nondiscrimination policy state that prohibited sex discrimination covers sexual harassment, including sexual violence, and that the policy include examples of the types of conduct that it covers.

(B) Title IX Coordinator

The Title IX regulations require a recipient to notify all students and employees of the name or title and contact information of the person designated to coordinate the recipient's compliance with Title IX.²⁰ The coordinator's responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. The Title IX coordinator or designee should be available to meet with students as needed. If a recipient designates more than one Title IX coordinator, the notice should describe each coordinator's responsibilities (*e.g.*, who will handle complaints by students, faculty, and other employees). The recipient should designate one coordinator as having ultimate oversight responsibility, and the other coordinators should have titles clearly showing that they are in a deputy or supporting role to the senior coordinator. The Title IX coordinators should not have other job responsibilities that may create a conflict of interest. For example, serving as the Title IX coordinator and a disciplinary hearing board member or general counsel may create a conflict of interest.

Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. Because sexual violence complaints often are filed with the school's law enforcement unit, all school law enforcement unit employees should receive training on the school's Title IX grievance procedures and any other procedures used for investigating reports of sexual violence. In addition, these employees should receive copies of the school's Title IX policies. Schools should instruct law enforcement unit employees both to notify complainants of their right to file a Title IX sex discrimination complaint with the school in addition to filing a criminal complaint, and to report incidents of sexual violence to the Title IX coordinator if the complainant consents. The school's Title IX coordinator or designee should be available to provide assistance to school law enforcement unit employees regarding how to respond appropriately to reports of sexual violence. The Title IX coordinator also should be given access to school law enforcement unit investigation notes

²⁰ *Id.* § 106.8(a).

and findings as necessary for the Title IX investigation, so long as it does not compromise the criminal investigation.

(C) Grievance Procedures

The Title IX regulations require all recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints.²¹ The grievance procedures must apply to sex discrimination complaints filed by students against school employees, other students, or third parties.

Title IX does not require a recipient to provide separate grievance procedures for sexual harassment and sexual violence complaints. Therefore, a recipient may use student disciplinary procedures or other separate procedures to resolve such complaints. Any procedures used to adjudicate complaints of sexual harassment or sexual violence, including disciplinary procedures, however, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution.²² These requirements are discussed in greater detail below. If the recipient relies on disciplinary procedures for Title IX compliance, the Title IX coordinator should review the recipient's disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX.²³

Grievance procedures generally may include voluntary informal mechanisms (e.g., mediation) for resolving some types of sexual harassment complaints. OCR has frequently advised recipients, however, that it is improper for a student who complains of harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the school (e.g., participation by a trained counselor, a trained mediator, or, if appropriate, a teacher or administrator). In addition, as stated in the *2001 Guidance*, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault complaints.

²¹ *Id.* § 106.8(b). Title IX also requires recipients to adopt and publish grievance procedures for employee complaints of sex discrimination.

²² These procedures must apply to all students, including athletes. If a complaint of sexual violence involves a student athlete, the school must follow its standard procedures for resolving sexual violence complaints. Such complaints must not be addressed solely by athletics department procedures. Additionally, if an alleged perpetrator is an elementary or secondary student with a disability, schools must follow the procedural safeguards in the Individuals with Disabilities Education Act (at 20 U.S.C. § 1415 and 34 C.F.R. §§ 300.500-300.519, 300.530-300.537) as well as the requirements of Section 504 of the Rehabilitation Act of 1973 (at 34 C.F.R. §§ 104.35-104.36) when conducting the investigation and hearing.

²³ A school may not absolve itself of its Title IX obligations to investigate and resolve complaints of sexual harassment or violence by delegating, whether through express contractual agreement or other less formal arrangement, the responsibility to administer school discipline to school resource officers or "contract" law enforcement officers. See 34 C.F.R. § 106.4.

Prompt and Equitable Requirements

As stated in the *2001 Guidance*, OCR has identified a number of elements in evaluating whether a school's grievance procedures provide for prompt and equitable resolution of sexual harassment complaints. These elements also apply to sexual violence complaints because, as explained above, sexual violence is a form of sexual harassment. OCR will review all aspects of a school's grievance procedures, including the following elements that are critical to achieve compliance with Title IX:

- Notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;
- Application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence;
- Designated and reasonably prompt time frames for the major stages of the complaint process;
- Notice to parties of the outcome of the complaint;²⁴ and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

As noted in the *2001 Guidance*, procedures adopted by schools will vary in detail, specificity, and components, reflecting differences in the age of students, school sizes and administrative structures, State or local legal requirements, and past experiences. Although OCR examines whether all applicable elements are addressed when investigating sexual harassment complaints, this letter focuses on those elements where our work indicates that more clarification and explanation are needed, including:

(A) Notice of the grievance procedures

The procedures for resolving complaints of sex discrimination, including sexual harassment, should be written in language appropriate to the age of the school's students, easily understood, easily located, and widely distributed. OCR recommends that the grievance procedures be prominently posted on school Web sites; sent electronically to all members of the school community; available at various locations throughout the school or campus; and summarized in or attached to major publications issued by the school, such as handbooks, codes of conduct, and catalogs for students, parents of elementary and secondary students, faculty, and staff.

(B) Adequate, Reliable, and Impartial Investigation of Complaints

OCR's work indicates that a number of issues related to an adequate, reliable, and impartial investigation arise in sexual harassment and violence complaints. In some cases, the conduct

²⁴ "Outcome" does not refer to information about disciplinary sanctions unless otherwise noted. Notice of the outcome is discussed in greater detail in Section D below.

may constitute both sexual harassment under Title IX and criminal activity. Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation. In addition, a criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.

A school should notify a complainant of the right to file a criminal complaint, and should not dissuade a victim from doing so either during or after the school's internal Title IX investigation. For instance, if a complainant wants to file a police report, the school should not tell the complainant that it is working toward a solution and instruct, or ask, the complainant to wait to file the report.

Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation and, if needed, must take immediate steps to protect the student in the educational setting. For example, a school should not delay conducting its own investigation or taking steps to protect the complainant because it wants to see whether the alleged perpetrator will be found guilty of a crime. Any agreement or Memorandum of Understanding (MOU) with a local police department must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any charges), the school must promptly resume and complete its fact-finding for the Title IX investigation.²⁵ Moreover, nothing in an MOU or the criminal investigation itself should prevent a school from notifying complainants of their Title IX rights and the school's grievance procedures, or from taking interim steps to ensure the safety and well-being of the complainant and the school community while the law enforcement agency's fact-gathering is in progress. OCR also recommends that a school's MOU include clear policies on when a school will refer a matter to local law enforcement.

As noted above, the Title IX regulation requires schools to provide equitable grievance procedures. As part of these procedures, schools generally conduct investigations and hearings to determine whether sexual harassment or violence occurred. In addressing complaints filed with OCR under Title IX, OCR reviews a school's procedures to determine whether the school is using a preponderance of the evidence standard to evaluate complaints. The Supreme Court has applied a preponderance of the evidence standard in civil litigation involving discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.* Like Title IX,

²⁵ In one recent OCR sexual violence case, the prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances.

Title VII prohibits discrimination on the basis of sex.²⁶ OCR also uses a preponderance of the evidence standard when it resolves complaints against recipients. For instance, OCR's Case Processing Manual requires that a noncompliance determination be supported by the preponderance of the evidence when resolving allegations of discrimination under all the statutes enforced by OCR, including Title IX.²⁷ OCR also uses a preponderance of the evidence standard in its fund termination administrative hearings.²⁸ Thus, in order for a school's grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (*i.e.*, it is more likely than not that sexual harassment or violence occurred). The "clear and convincing" standard (*i.e.*, it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence.

Throughout a school's Title IX investigation, including at any hearing, the parties must have an equal opportunity to present relevant witnesses and other evidence. The complainant and the alleged perpetrator must be afforded similar and timely access to any information that will be used at the hearing.²⁹ For example, a school should not conduct a pre-hearing meeting during which only the alleged perpetrator is present and given an opportunity to present his or her side of the story, unless a similar meeting takes place with the complainant; a hearing officer or disciplinary board should not allow only the alleged perpetrator to present character witnesses at a hearing; and a school should not allow the alleged perpetrator to review the complainant's

²⁶ See, e.g., *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99 (2003) (noting that under the "conventional rule of civil litigation," the preponderance of the evidence standard generally applies in cases under Title VII); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 252-55 (1989) (approving preponderance standard in Title VII sex discrimination case) (plurality opinion); *id.* at 260 (White, J., concurring in the judgment); *id.* at 261 (O'Connor, J., concurring in the judgment). The 2001 Guidance noted (on page vi) that "[w]hile *Gebser* and *Davis* made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the *Davis* Court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX." See also *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007) ("We look to case law interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX.").

²⁷ OCR's Case Processing Manual is available on the Department's Web site, at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

²⁸ The Title IX regulations adopt the procedural provisions applicable to Title VI of the Civil Rights Act of 1964. See 34 C.F.R. § 106.71 ("The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference."). The Title VI regulations apply the Administrative Procedure Act to administrative hearings required prior to termination of Federal financial assistance and require that termination decisions be "supported by and in accordance with the reliable, probative and substantial evidence." 5 U.S.C. § 556(d). The Supreme Court has interpreted "reliable, probative and substantial evidence" as a direction to use the preponderance standard. See *Steadman v. SEC*, 450 U.S. 91, 98-102 (1981).

²⁹ Access to this information must be provided consistent with FERPA. For example, if a school introduces an alleged perpetrator's prior disciplinary records to support a tougher disciplinary penalty, the complainant would not be allowed access to those records. Additionally, access should not be given to privileged or confidential information. For example, the alleged perpetrator should not be given access to communications between the complainant and a counselor or information regarding the complainant's sexual history.

statement without also allowing the complainant to review the alleged perpetrator's statement.

While OCR does not require schools to permit parties to have lawyers at any stage of the proceedings, if a school chooses to allow the parties to have their lawyers participate in the proceedings, it must do so equally for both parties. Additionally, any school-imposed restrictions on the ability of lawyers to speak or otherwise participate in the proceedings should apply equally. OCR strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing. Allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment. OCR also recommends that schools provide an appeals process. If a school provides for appeal of the findings or remedy, it must do so for both parties. Schools must maintain documentation of all proceedings, which may include written findings of facts, transcripts, or audio recordings.

All persons involved in implementing a recipient's grievance procedures (*e.g.*, Title IX coordinators, investigators, and adjudicators) must have training or experience in handling complaints of sexual harassment and sexual violence, and in the recipient's grievance procedures. The training also should include applicable confidentiality requirements. In sexual violence cases, the fact-finder and decision-maker also should have adequate training or knowledge regarding sexual violence.³⁰ Additionally, a school's investigation and hearing processes cannot be equitable unless they are impartial. Therefore, any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties should be disclosed.

Public and state-supported schools must provide due process to the alleged perpetrator. However, schools should ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant.

(C) Designated and Reasonably Prompt Time Frames

OCR will evaluate whether a school's grievance procedures specify the time frames for all major stages of the procedures, as well as the process for extending timelines. Grievance procedures should specify the time frame within which: (1) the school will conduct a full investigation of the complaint; (2) both parties receive a response regarding the outcome of the complaint; and (3) the parties may file an appeal, if applicable. Both parties should be given periodic status updates. Based on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint. Whether OCR considers complaint resolutions to be timely, however, will vary depending on the complexity of the investigation and the severity and extent of the harassment. For example, the resolution of a complaint involving multiple incidents with multiple complainants likely would take longer than one involving a single incident that

³⁰ For instance, if an investigation or hearing involves forensic evidence, that evidence should be reviewed by a trained forensic examiner.

occurred in a classroom during school hours with a single complainant.

(D) Notice of Outcome

Both parties must be notified, in writing, about the outcome of both the complaint and any appeal,³¹ *i.e.*, whether harassment was found to have occurred. OCR recommends that schools provide the written determination of the final outcome to the complainant and the alleged perpetrator concurrently. Title IX does not require the school to notify the alleged perpetrator of the outcome before it notifies the complainant.

Due to the intersection of Title IX and FERPA requirements, OCR recognizes that there may be confusion regarding what information a school may disclose to the complainant.³² FERPA generally prohibits the nonconsensual disclosure of personally identifiable information from a student's "education record." However, as stated in the *2001 Guidance*, FERPA permits a school to disclose to the harassed student information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student. This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.³³ Disclosure of other information in the student's "education record," including information about sanctions that do not relate to the harassed student, may result in a violation of FERPA.

Further, when the conduct involves a crime of violence or a non-forcible sex offense,³⁴ FERPA permits a postsecondary institution to disclose to the alleged victim the final results of a

³¹ As noted previously, "outcome" does not refer to information about disciplinary sanctions unless otherwise noted.

³² In 1994, Congress amended the General Education Provisions Act (GEPA), of which FERPA is a part, to state that nothing in GEPA "shall be construed to affect the applicability of title VI of the Civil Rights Act of 1964, title IX of Education Amendments of 1972, title V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program." 20 U.S.C. § 1221(d). The Department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between the requirements of FERPA and the requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. *See 2001 Guidance* at vii.

³³ This information directly relates to the complainant and is particularly important in sexual harassment cases because it affects whether a hostile environment has been eliminated. Because seeing the perpetrator may be traumatic, a complainant in a sexual harassment case may continue to be subject to a hostile environment if he or she does not know when the perpetrator will return to school or whether he or she will continue to share classes or a residence hall with the perpetrator. This information also directly affects a complainant's decision regarding how to work with the school to eliminate the hostile environment and prevent its recurrence. For instance, if a complainant knows that the perpetrator will not be at school or will be transferred to other classes or another residence hall for the rest of the year, the complainant may be less likely to want to transfer to another school or change classes, but if the perpetrator will be returning to school after a few days or weeks, or remaining in the complainant's classes or residence hall, the complainant may want to transfer schools or change classes to avoid contact. Thus, the complainant cannot make an informed decision about how best to respond without this information.

³⁴ Under the FERPA regulations, crimes of violence include arson; assault offenses (aggravated assault, simple assault, intimidation); burglary; criminal homicide (manslaughter by negligence); criminal homicide (murder and

disciplinary proceeding against the alleged perpetrator, regardless of whether the institution concluded that a violation was committed.³⁵ Additionally, a postsecondary institution may disclose to anyone—not just the alleged victim—the final results of a disciplinary proceeding if it determines that the student is an alleged perpetrator of a crime of violence or a non-forcible sex offense, and, with respect to the allegation made, the student has committed a violation of the institution’s rules or policies.³⁶

Postsecondary institutions also are subject to additional rules under the Clery Act. This law, which applies to postsecondary institutions that participate in Federal student financial aid programs, requires that “both the accuser and the accused must be informed of the outcome³⁷ of any institutional disciplinary proceeding brought alleging a sex offense.”³⁸ Compliance with this requirement does not constitute a violation of FERPA. Furthermore, the FERPA limitations on redisclosure of information do not apply to information that postsecondary institutions are required to disclose under the Clery Act.³⁹ Accordingly, postsecondary institutions may not require a complainant to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the redisclosure of this information.

Steps to Prevent Sexual Harassment and Sexual Violence and Correct its Discriminatory Effects on the Complainant and Others

Education and Prevention

In addition to ensuring full compliance with Title IX, schools should take proactive measures to prevent sexual harassment and violence. OCR recommends that all schools implement preventive education programs and make victim resources, including comprehensive victim services, available. Schools may want to include these education programs in their (1) orientation programs for new students, faculty, staff, and employees; (2) training for students who serve as advisors in residence halls; (3) training for student athletes and coaches; and (4) school assemblies and “back to school nights.” These programs should include a

non-negligent manslaughter); destruction, damage or vandalism of property; kidnapping/abduction; robbery; and forcible sex offenses. Forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person’s will, or not forcibly or against the person’s will where the victim is incapable of giving consent. Forcible sex offenses include rape, sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses are incest and statutory rape. 34 C.F.R. Part 99, App. A.

³⁵ 34 C.F.R. § 99.31(a)(13). For purposes of 34 C.F.R. §§ 99.31(a)(13)–(14), disclosure of “final results” is limited to the name of the alleged perpetrator, any violation found to have been committed, and any sanction imposed against the perpetrator by the school. 34 C.F.R. § 99.39.

³⁶ 34 C.F.R. § 99.31(a)(14).

³⁷ For purposes of the Clery Act, “outcome” means the institution’s final determination with respect to the alleged sex offense and any sanctions imposed against the accused. 34 C.F.R. § 668.46(b)(11)(vi)(B).

³⁸ 34 C.F.R. § 668.46(b)(11)(vi)(B). Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person’s will, or not forcibly or against the person’s will where the person is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses include incest and statutory rape. 34 C.F.R. Part 668, Subpt. D, App. A.

³⁹ 34 C.F.R. § 99.33(c).

discussion of what constitutes sexual harassment and sexual violence, the school's policies and disciplinary procedures, and the consequences of violating these policies.

The education programs also should include information aimed at encouraging students to report incidents of sexual violence to the appropriate school and law enforcement authorities. Schools should be aware that victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of school or campus rules were involved.⁴⁰ As a result, schools should consider whether their disciplinary policies have a chilling effect on victims' or other students' reporting of sexual violence offenses. For example, OCR recommends that schools inform students that the schools' primary concern is student safety, that any other rules violations will be addressed separately from the sexual violence allegation, and that use of alcohol or drugs never makes the victim at fault for sexual violence.

OCR also recommends that schools develop specific sexual violence materials that include the schools' policies, rules, and resources for students, faculty, coaches, and administrators. Schools also should include such information in their employee handbook and any handbooks that student athletes and members of student activity groups receive. These materials should include where and to whom students should go if they are victims of sexual violence. These materials also should tell students and school employees what to do if they learn of an incident of sexual violence. Schools also should assess student activities regularly to ensure that the practices and behavior of students do not violate the schools' policies against sexual harassment and sexual violence.

Remedies and Enforcement

As discussed above, if a school determines that sexual harassment that creates a hostile environment has occurred, it must take immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects. In addition to counseling or taking disciplinary action against the harasser, effective corrective action may require remedies for the complainant, as well as changes to the school's overall services or policies. Examples of these actions are discussed in greater detail below.

Title IX requires a school to take steps to protect the complainant as necessary, including taking interim steps before the final outcome of the investigation. The school should undertake these steps promptly once it has notice of a sexual harassment or violence allegation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to change academic or living situations as appropriate. For instance, the school may prohibit the alleged perpetrator from having any contact with the complainant pending the results of the school's investigation. When taking steps to separate the complainant and alleged perpetrator, a school should minimize the burden on the

⁴⁰ The Department's Higher Education Center for Alcohol, Drug Abuse, and Violence Prevention (HEC) helps campuses and communities address problems of alcohol, other drugs, and violence by identifying effective strategies and programs based upon the best prevention science. Information on HEC resources and technical assistance can be found at www.higheredcenter.org.

complainant, and thus should not, as a matter of course, remove complainants from classes or housing while allowing alleged perpetrators to remain. In addition, schools should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling, health, and mental health services, and their right to file a complaint with local law enforcement.⁴¹

Schools should be aware that complaints of sexual harassment or violence may be followed by retaliation by the alleged perpetrator or his or her associates. For instance, friends of the alleged perpetrator may subject the complainant to name-calling and taunting. As part of their Title IX obligations, schools must have policies and procedures in place to protect against retaliatory harassment. At a minimum, schools must ensure that complainants and their parents, if appropriate, know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred.

When OCR finds that a school has not taken prompt and effective steps to respond to sexual harassment or violence, OCR will seek appropriate remedies for both the complainant and the broader student population. When conducting Title IX enforcement activities, OCR seeks to obtain voluntary compliance from recipients. When a recipient does not come into compliance voluntarily, OCR may initiate proceedings to withdraw Federal funding by the Department or refer the case to the U.S. Department of Justice for litigation.

Schools should proactively consider the following remedies when determining how to respond to sexual harassment or violence. These are the same types of remedies that OCR would seek in its cases.

Depending on the specific nature of the problem, remedies for the complainant might include, but are not limited to:⁴²

- providing an escort to ensure that the complainant can move safely between classes and activities;
- ensuring that the complainant and alleged perpetrator do not attend the same classes;
- moving the complainant or alleged perpetrator to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district;
- providing counseling services;
- providing medical services;
- providing academic support services, such as tutoring;

⁴¹ The Clery Act requires postsecondary institutions to develop and distribute a statement of policy that informs students of their options to notify proper law enforcement authorities, including campus and local police, and the option to be assisted by campus personnel in notifying such authorities. The policy also must notify students of existing counseling, mental health, or other student services for victims of sexual assault, both on campus and in the community. 20 U.S.C. §§ 1092(f)(8)(B)(v)-(vi).

⁴² Some of these remedies also can be used as interim measures before the school's investigation is complete.

- arranging for the complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record; and
- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.⁴³

Remedies for the broader student population might include, but are not limited to:

Counseling and Training

- offering counseling, health, mental health, or other holistic and comprehensive victim services to all students affected by sexual harassment or sexual violence, and notifying students of campus and community counseling, health, mental health, and other student services;
- designating an individual from the school's counseling center to be "on call" to assist victims of sexual harassment or violence whenever needed;
- training the Title IX coordinator and any other employees who are involved in processing, investigating, or resolving complaints of sexual harassment or sexual violence, including providing training on:
 - the school's Title IX responsibilities to address allegations of sexual harassment or violence
 - how to conduct Title IX investigations
 - information on the link between alcohol and drug abuse and sexual harassment or violence and best practices to address that link;
- training all school law enforcement unit personnel on the school's Title IX responsibilities and handling of sexual harassment or violence complaints;
- training all employees who interact with students regularly on recognizing and appropriately addressing allegations of sexual harassment or violence under Title IX; and
- informing students of their options to notify proper law enforcement authorities, including school and local police, and the option to be assisted by school employees in notifying those authorities.

Development of Materials and Implementation of Policies and Procedures

- developing materials on sexual harassment and violence, which should be distributed to students during orientation and upon receipt of complaints, as well as widely posted throughout school buildings and residence halls, and which should include:
 - what constitutes sexual harassment or violence
 - what to do if a student has been the victim of sexual harassment or violence
 - contact information for counseling and victim services on and off school grounds
 - how to file a complaint with the school
 - how to contact the school's Title IX coordinator

⁴³ For example, if the complainant was disciplined for skipping a class in which the harasser was enrolled, the school should review the incident to determine if the complainant skipped the class to avoid contact with the harasser.

- what the school will do to respond to allegations of sexual harassment or violence, including the interim measures that can be taken
- requiring the Title IX coordinator to communicate regularly with the school's law enforcement unit investigating cases and to provide information to law enforcement unit personnel regarding Title IX requirements;⁴⁴
- requiring the Title IX coordinator to review all evidence in a sexual harassment or sexual violence case brought before the school's disciplinary committee to determine whether the complainant is entitled to a remedy under Title IX that was not available through the disciplinary committee;⁴⁵
- requiring the school to create a committee of students and school officials to identify strategies for ensuring that students:
 - know the school's prohibition against sex discrimination, including sexual harassment and violence
 - recognize sex discrimination, sexual harassment, and sexual violence when they occur
 - understand how and to whom to report any incidents
 - know the connection between alcohol and drug abuse and sexual harassment or violence
 - feel comfortable that school officials will respond promptly and equitably to reports of sexual harassment or violence;
- issuing new policy statements or other steps that clearly communicate that the school does not tolerate sexual harassment and violence and will respond to any incidents and to any student who reports such incidents; and
- revising grievance procedures used to handle sexual harassment and violence complaints to ensure that they are prompt and equitable, as required by Title IX.

School Investigations and Reports to OCR

- conducting periodic assessments of student activities to ensure that the practices and behavior of students do not violate the school's policies against sexual harassment and violence;
- investigating whether any other students also may have been subjected to sexual harassment or violence;
- investigating whether school employees with knowledge of allegations of sexual harassment or violence failed to carry out their duties in responding to those allegations;
- conducting, in conjunction with student leaders, a school or campus "climate check" to assess the effectiveness of efforts to ensure that the school is free from sexual harassment and violence, and using the resulting information to inform future proactive steps that will be taken by the school; and

⁴⁴ Any personally identifiable information from a student's education record that the Title IX coordinator provides to the school's law enforcement unit is subject to FERPA's nondisclosure requirements.

⁴⁵ For example, the disciplinary committee may lack the power to implement changes to the complainant's class schedule or living situation so that he or she does not come in contact with the alleged perpetrator.

- submitting to OCR copies of all grievances filed by students alleging sexual harassment or violence, and providing OCR with documentation related to the investigation of each complaint, such as witness interviews, investigator notes, evidence submitted by the parties, investigative reports and summaries, any final disposition letters, disciplinary records, and documentation regarding any appeals.

Conclusion

The Department is committed to ensuring that all students feel safe and have the opportunity to benefit fully from their schools' education programs and activities. As part of this commitment, OCR provides technical assistance to assist recipients in achieving voluntary compliance with Title IX.

If you need additional information about Title IX, have questions regarding OCR's policies, or seek technical assistance, please contact the OCR enforcement office that serves your state or territory. The list of offices is available at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>. Additional information about addressing sexual violence, including victim resources and information for schools, is available from the U.S. Department of Justice's Office on Violence Against Women (OVW) at <http://www.ovw.usdoj.gov/>.⁴⁶

Thank you for your prompt attention to this matter. I look forward to continuing our work together to ensure that all students have an equal opportunity to learn in a safe and respectful school climate.

Sincerely,

/s/

Russlynn Ali
Assistant Secretary for Civil Rights

⁴⁶ OVW also administers the Grants to Reduce Domestic Violence, Dating Violence, Sexual Assault, and Stalking on Campus Program. This Federal funding is designed to encourage institutions of higher education to adopt comprehensive, coordinated responses to domestic violence, dating violence, sexual assault, and stalking. Under this competitive grant program, campuses, in partnership with community-based nonprofit victim advocacy organizations and local criminal justice or civil legal agencies, must adopt protocols and policies to treat these crimes as serious offenses and develop victim service programs and campus policies that ensure victim safety, offender accountability, and the prevention of such crimes. OVW recently released the first solicitation for the Services, Training, Education, and Policies to Reduce Domestic Violence, Dating Violence, Sexual Assault and Stalking in Secondary Schools Grant Program. This innovative grant program will support a broad range of activities, including training for school administrators, faculty, and staff; development of policies and procedures for responding to these crimes; holistic and appropriate victim services; development of effective prevention strategies; and collaborations with mentoring organizations to support middle and high school student victims.



MAGAZINE | ESSAY

Getting to ‘No’

By SUSAN DOMINUS DEC. 11, 2014

The night started, as so many college nights do, with a red cup pressed into a hand. Ubiquitous at tail gates and parties, those bright plastic cups are a harbinger of carnival, of unleashing. The hand around the cup was mine.

I remember many of the details only vaguely, but the cup shines through; I can still taste the sweet-sour drink inside it. No matter how much I sipped — and each sip made the next one easier — the cup remained filled, courtesy of a young man, a fellow college senior, attending to its contents. I liked him, a little; I found his focus — on me — impressive.

I drank from the red cup, and in the next scene from that evening that I can recall, I am on my bed, and he is on top of me. I am resisting, but he is heavy, so heavy, and my limbs so leaden. I am certain he thought he was, as we used to say back then, a totally decent guy. Even now, I can imagine him as someone’s loyal husband, a maker of pancakes, his kids’ soccer coach. But that night I said no, and still he lay there, massive, pleading, sloppy with beer, for what seemed to be hours (but surely was not), until I finally stopped holding him off. Too close to sleep to rouse myself to outrage, I settled for capitulation, then revulsion.

In the past weeks, I have been thinking about that evening, its foggy events summoned by the two dozen or so women who bravely stepped forward to accuse Bill Cosby; by reports of sexual assaults on campuses; by a young woman at Columbia University so furious that she carries around a mattress in protest. All of this has jolted me, and other women, into a moment of openness, an openness that reveals not just a secret, but the

secrecy itself. We would have thought ourselves too enlightened, too freed from a legacy of shame, to have hidden those complicated stories all these years. But some of us did. A woman I know recently told me about a sexual assault she endured in college; it was the first time she had spoken of it, she said, in 20 years, including many in therapy. I had never told anyone — not my husband, not my best friend and roommate at the time — about that particular night in college.

I have found myself having conversations with friends and female acquaintances and women I know only online, some of whom were painfully re-evaluating past experiences as sexual assault. But many conversations were attempts to make sense of encounters that fell, in our own minds, into some murky realm. There was no roofie, no preplanned assault, nor, in some instances, were there protestations — but those encounters were upsetting nonetheless. One friend described a sexual experience, at 19, with a friend's much older brother: "In my head, I was trying to think of ways to get him to stop, and I couldn't, so I just lay there, paralyzed."

By the legal definition, what happened the night of the red cup was sexual assault: I said no. He pressured me, until, under the influence, I stopped resisting. I can imagine other young women in similar situations justifiably going to their universities or pressing charges. But in the disgusted days that followed my own encounter, though I was angry, I did not consider myself the victim of an attack. If I had been afraid of anything, it was only of some deeply awkward moment. I did not have it in me to make a scene.

In 1993, one year after I graduated from college, Katie Roiphe published an incendiary op-ed in *The New York Times* called "Date Rape's Other Victim," in which she suggested that the issue of sexual assault on campus was overblown, that some feminists were casting women as passive victims in need of protection. She offered one way I could look at what happened to me that evening: "There is a gray area in which one person's rape may be another's bad night," she wrote. I was no ingénue, and had had "bad nights"; and yet the night of the red cup stood out as something significantly more troubling than that.

The language we use for a given experience inevitably defines how we feel about it. I could not land on language that felt right — to me — about that encounter. I still cannot.

Struggling to find language to define that experience after the fact left me longing for more words that could have been used in the moment. What I wish I had had that night was a linguistic rip cord, something without the mundane familiarity of “no” or the intensity demanded in “Get off or I’ll scream.”

“No” and “stop” — of course, they should be said and respected. But several women who told me they felt their consent was ambiguous said that in the moment, they froze, and language eluded them altogether: They said nothing. Because those words are inherently confrontational, they can require a degree of strength that someone who is feeling pressured or confused or is just losing her nerve or changing her mind might not have.

What if every kid on every college campus was given new language — a phrase whose meaning could not be mistaken, that signaled peril for both sides, that might be more easily uttered?

One phrase that might work is “red zone” — as in, “Hey, we’re in a red zone,” or “This is starting to feel too red zone.” Descriptive and matter-of-fact, it would not implicitly assign aggressor and victim, but would flatly convey that danger — emotional, possibly legal — lay ahead. Such a phrase could serve as a linguistic proxy for confronting or demanding, both options that can seem impossible in the moment. “We’re in a red zone” — the person who utters that is not a supplicant (“Please stop”); or an accuser (“I told you to stop!”). Many young women are uncomfortable in either of those roles; I know I was.

In an ideal world, clear consent will always precede sex, and young women (and men) who do find themselves in a tricky situation will express their discomfort firmly. But in the imperfect world in which we live, new language — if not red zone, then some other phrase that could take off with the universality of slang — might fill a silence.

Quite possibly no language would have worked for me that night: most

men who do not heed no are not going to heed “red zone” either. But if such a phrase had existed, I think I would have reached for it: a quick, unemotional way to telegraph how deeply uncomfortable I was, without having to explain to someone I barely knew just how deeply uncomfortable I was. It is hard to talk about sex under the best of circumstances. I could not rise to the challenge of confrontation, much less frank talk, which required an intimacy that he and I did not share and that I had no interest in.

In the days following that encounter, I avoided calls from the guy, who so clearly misunderstood the situation that he thought he was courting me; there may have been flowers, but not to apologize. I considered him someone between a brute and an oaf, my own experience falling somewhere between assault and just a bad night. I never felt I was a victim; looking back, I was an English major for whom language failed at a moment when I needed it most.

Susan Dominus is a staff writer for the magazine.

A version of this article appears in print on December 14, 2014, on page MM21 of the Sunday Magazine with the headline: About That Night.

ABA JOURNAL

EDUCATION LAW

Harvard Law School resolves probe of sex-assault policies, loosens standard of proof

By Debra Cassens Weiss
Dec 31, 2014, 10:04 am CST

Harvard Law School has agreed to change its sexual assault and harassment policies to comply with Title IX requirements for prompt and equitable responses to complaints, according to the U.S. Department of Education's Office for Civil Rights.

An investigation by the department determined that Harvard Law School failed to respond appropriately to two sexual assault complaints by students, according to a [press release](#). The [Wall Street Journal](#) (sub. req.), the [Boston Globe](#) and the [National Law Journal](#) (sub. req.) have stories on the agreement.

In one instance, the press release says, the law school took more than a year to make a final determination in which it reversed a decision to expel an accused student. During that time, the complainant wasn't allowed to participate in the extended appeal.

The investigation also concluded the law school improperly used a "clear and convincing evidence" standard of proof, according to a [resolution letter](#) (PDF) to law dean Martha Minnow. The school has since adopted a "preponderance of the evidence" standard and decided to provide appeal rights to both parties.

The press release says new procedures used by the law school will be monitored by the department, including its use of the university's new sexual-harassment policies.

Twenty-eight law professors [blasted the new policies](#) as stacked against the accused in an opinion column published in October.

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Magazine

Hooking Up at an Affirmative-Consent Campus? It's Complicated

OCT. 21, 2014

Essay

By EMILY BAZELON

One afternoon during Labor Day weekend, a group of 15 or so Yale freshmen met in a classroom where history and French classes would soon be held. As they snacked on pretzels and Skittles, a few volunteered to act out a series of scenarios in which one student asks another out for frozen yogurt. In the first bit of role playing, one student was told to make it clear, in an easygoing way, that he or she wants to go out. The recipient of the invitation was told that he or she also wants to go but has a paper due. “How can you show enthusiasm while still turning down the invitation?” a prompt on a card asked. The answer generally wasn’t hard to convey or, for the freshmen watching, to interpret. Most students found that they knew how to demur while keeping the door open for next time.

In the second scenario, the stakes rose. Now the inviter must get the other person to the frozen-yogurt shop. And the invitee does not want to go, although — like most of us — he or she doesn’t want to be rude. “How would your character handle this unwanted invitation?” the second card read. The interaction made everyone in the room uncomfortable, as the inviter grew increasingly persistent and the invitee tried to fend the other off.

The intended lesson of this 90-minute workshop was that the line

between a request and a demand, welcome interest and unwanted pressure, is usually fairly obvious. “This is the skill set people hammer out as little kids,” says Melanie Boyd, an assistant dean of student affairs. She wants students to realize that they know how to recognize agreement, refusal and ambiguity.

The workshop reinforced policies, newly adopted by a growing number of universities, requiring students to make sure they have continuing affirmative consent for every phase of a sexual encounter. The policies, many of which have gone into effect in the last year, were created to help clarify internal university investigations of sexual-assault accusations. In the past, the main question was whether the person (usually a woman) who claimed that she was raped had made it clear that she said no (“No means no”). The new rule shifts the inquiry to whether the student accused of assault got a signal of consent (“Yes means yes”). In California, Gov. Jerry Brown recently signed an affirmative-consent bill, making “yes means yes” the standard at the state’s colleges and universities. To continue to receive state funds for student financial aid, California institutions investigating allegations of sexual assault must determine whether both parties gave “affirmative, conscious and voluntary agreement.” Lack of resistance and silence no longer constitute proof of consent.

“Yes means yes” is part of a new conversation on campus. When I was a Yale student more than 20 years ago, I remember a few women setting up a microphone, after a Take Back the Night march, to tell stories of what we called date rape. But I don’t remember anyone thinking the university would do anything about it. Ten years ago, I wrote about a handful of women who wanted better treatment from Yale, but their complaints seemed isolated and not much came of them. Then beginning around 2011, student activists from across the country started going public. They found one another online, called themselves survivors and demanded that their institutions change. And now everyone is talking about the problem, including President Obama.

The activism has forced not just administrators, faculty members and politicians to reckon with what goes on when students have sex, but also young men on campus. The White House wants them to sign on to a campaign called

It's on Us. Fraternities are holding training sessions about preventing sexual assault (as many cope with related investigations and lawsuits). At Yale, students are required to participate in multiple workshops on sexual misconduct. "You can't go on Facebook or Twitter for 10 minutes without seeing a post about these issues," a 19-year-old English major told me.

He was confidently navigating the cultural shift. "Asking, 'Are you O.K. with this?' doesn't have to be uncomfortable," he said. "And in the aftermath, it's huge. You have a more positive memory of having sex with that person, because you don't feel worried."

But most male students expressed some nervousness about accidentally running afoul of consent rules, especially because drinking usually precedes a casual hookup. "It creates a crazy gray area that scares the hell out of everyone," one 21-year-old economics major told me. Some wondered whether training can really prepare you for what is often sex between relative strangers. One freshman woman explained the complicated dynamic by telling me about another freshman-orientation workshop, this one on intimacy. She was startled to hear several men say that they found holding hands more intimate than getting a hand job. The male students I talked with pointed out that holding hands, especially in public, is something you do when you are in a relationship, while a hand job could happen during a hookup. In theory, when it comes to sex, it might make sense to talk about what the other person wants as it's happening. But to do so, you might have to be a little bit tender, a little bit vulnerable. It's hard to have that sort of conversation if there's no intimacy.

"It would be much more gratifying, and in both parties' best interest, for both the girl and guy to be straightforward — 'Hey, I'm willing to do this,' " a 19-year-old male water-polo player said. "And yet the vocabulary for it is not really there." Affirmative-consent policies try to address this by recognizing body language as a form of consent. But to most of the men I talked to, this seemed like an invitation to more ambiguity, not less.

One area where the men were more at ease was "bystander intervention." Universities know that probably the biggest threat to women on campus comes from a small group of serial predators who, research suggests, are responsible

for most assaults. Some institutions, like Yale, are training students to watch for warning signs that someone might be at risk. Sophomores take a workshop in which they watch an eight-minute video of a girl who goes out dancing, drinks to the point of bleary-eyed obliteration and lets a guy take her into a bedroom, where he forebodingly shuts the door. The second half of the video rewinds, noting the points at which a friend, a bartender, a stranger or a roommate could have stepped in to protect her. The interventions mostly aren't lengthy or heroic. They're small moments, and students are encouraged to be alert to indications that someone is exerting or feeling sexual pressure and to feel comfortable stepping in.

And they do. Every male student I talked to had a story about intervening on the dance floor or at a party, mostly by just saying hello to someone who looked like a target of unwanted aggressive attention. The students said they looked out for their friends. They said they looked out for nonfriends who seemed headed for drunken trouble. As observers of a potentially fraught sexual encounter, if perhaps not as participants, they did know how to ask, "Are you O.K. with this?" "Doing that yourself is way more awkward than doing it as a bystander," a 20-year-old rugby player said.

In the quest for a safer campus, it probably comes more naturally to institutions to help students learn prevention than to adjudicate disputes over consent after the fact. Education has always been the business of universities, and while federal law requires those that receive federal funds to make investigating and responding to sexual-assault complaints their business too, it's not easy. Even as survivors push for more protections for victims, other groups — including more than two dozen Harvard law professors, in a recent statement — are challenging new disciplinary procedures, saying they are unfairly stacked against those accused of sexual assault. This is difficult territory to get right. But for the first time, at some universities throughout the country, relative indifference has given way to dead seriousness.

Emily Bazelon is a staff writer for the magazine and teaches a writing course at Yale Law School.

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with the headline: The Meaning of Yes.

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Inside The Sexual Assault Civil War At Occidental College

For the first time, the faculty member at the heart of the conflict tells her story. Also exclusive: allegations from the complaint that opened a federal investigation into the private California college.

posted on March 26, 2014, at 1:51 p.m.



Jessica Testa

BuzzFeed News Reporter



Occidental College. Wikimedia Commons: QueerAlice / Creative Commons / Via commons.wikimedia.org

LOS ANGELES — Festering complaints that Occidental College's administration has retaliated against those who speak up about sexual violence have broken open with new revelations of how faculty and students were allegedly treated after they reported sexual assaults or supported those who did.

The tony liberal arts college was thrust into the spotlight last week when the Los Angeles Times fired investigative reporter Jason Felch, who had been covering how the school handles cases of sexual misconduct.

The Times dismissed Felch after Occidental representatives provided evidence

that he got a key figure wrong in a [Dec. 7 story](#). Separately, Felch disclosed to his editors an “inappropriate relationship” with a source who provided information for that story.

For the first time, the woman Felch was involved with — a faculty member critical of Occidental’s administration — has told her story, describing acts that she said are reflective of the suspicion and tension felt by the school’s critics on campus.

For example, she said, while serving as a faculty advocate for a female student allegedly raped by a tennis player last spring, a tennis ball — bearing the letters SCIAC, for the Southern California Intercollegiate Athletic Conference — was placed and replaced in her campus mailbox for weeks. Days before the school approached the Times for a correction, her workspace was broken into; while nothing was stolen, she said, pages from her journal that referenced her relationship with Felch were laid out on her desk.

Other faculty members also told BuzzFeed of break-ins and activities they found suspicious. Last summer, Caroline Heldman, chair of Occidental’s politics department, added a disclaimer to the bottom of her work email signature: “Please be aware that Occidental College administrators are tracking this email.” She told BuzzFeed her office was broken into three times last spring, in what she suspects were attempts to intimidate her into quelling her criticism of the school.

Allegations of retaliation at Occidental have been formally lodged in a confidential “Title IX” complaint with the Department of Education’s Office for Civil Rights. Title IX is a federal law that requires schools to [“respond promptly and effectively”](#) to sexual violence and harassment, prevent recurrence, and address its effects.

In that document, obtained by BuzzFeed, current and former Occidental students, faculty, and staff allege that they were verbally reprimanded or even lost jobs at the college after speaking up about the school’s sexual misconduct policies or supporting those who did.

The complaint alleges that the school downsized the responsibilities of the director of the school’s sexual assault prevention and education program after he showed support to those critical of the administration. A staff member wrote that he believed his job was terminated while on medical leave because he criticized the administration for how it reported sexual assaults.

While the existence of this complaint has been known, most of its specific allegations have not previously been reported.

In a statement to BuzzFeed, Occidental Director of Communications Jim Tranquada said the college hasn’t seen the Title IX complaint but takes “the issue of retaliation seriously and responds quickly and appropriately when such allegations are made.”

He said that neither the college nor its PR firm had “played any role” in Felch’s firing. In dealing with the Times, the college’s only goal was to ensure accuracy,

he said. Felch's story didn't meet the standard of responsible journalism, Tranquada said, "and it was for this reason alone the college lodged its successful protest."

"[Some] critics are suggesting that Occidental's effort to set the record straight is part of a larger conspiracy to silence critics and distract attention from Title IX deficiencies," Tranquada said. "They have even gone so far as to accuse the college of snooping on faculty email and breaking into faculty offices. As we have said repeatedly, these allegations are false and completely unfounded."

But with Felch's firing, the standoff between the faculty and the administration appears to have intensified. A recording obtained by BuzzFeed of a March 18 meeting between Occidental President Jonathan Veitch and the faculty captures the acrimonious atmosphere. During the 30-minute question-and-answer session, one faculty member alleged "dirty tactics" were being used, and another said Occidental is "not the kind of college I want to be at."

Told that BuzzFeed had obtained the recording, college spokesman Tranquada called the leak "disturbing and unlikely to help rebuild trust on campus."



Jonathan Veitch became president of Occidental College in July 2009. waltarrrr / Creative Commons (CC BY-NC-ND 2.0) / Via Flickr: waltarrrr

The controversy at Occidental — a small, private college in Los Angeles' Eagle Rock neighborhood that charges [\\$44,570 a year](#) in tuition and fees — dates back to at least April 2013. That's when Caroline Heldman and others with the Oxy Sexual Assault Coalition — or OSAC, a campus advocacy and awareness group unaffiliated with the administration — filed Title IX and Clery Act complaints, alleging Occidental didn't follow federal laws in investigating and disciplining sexual misconduct. [The Clery Act](#) requires that schools disclose crime statistics, including forcible and non-forcible sex offenses, that occur on campus, in public areas adjacent to campus, and at certain "non-campus facilities."

In October 2013, Felch and fellow reporter Jason Song [wrote](#) that Occidental acknowledged its failure to disclose 24 reports of sexual assault to federal officials in 2010 and 2011. On Dec. 7, Felch wrote that Occidental failed to report an additional 27 allegations in 2012.

On Jan. 20, the college said, it hired G.F.Bunting, a crisis communications firm headed by former Los Angeles Times editor Glenn Bunting. Another executive at the firm is Ralph Frammolino, Felch's former reporting partner and co-author of *Chasing Aphrodite*, a book about the J. Paul Getty Museum's dealings in the illegal antiquities. Frammolino and Felch have since fallen out, according to three sources familiar with the circumstances of Felch's firing.

Occidental president Veitch explained why the college hired the firm: "As I heard that Ralph had written a book on the Getty with Jason Felch, that seemed to be a great way to understand how Jason was thinking about the story," he said at the March 18 faculty meeting. "If [the firm] didn't have any connection we wouldn't have had access to the Los Angeles Times. We chose somebody that had worked for that newspaper before."

Veitch said he knew Frammolino and Felch had a "financial relationship" that presented a "conflict of interest," which is why, he said, Frammolino was kept out of discussions with the Times.

Still, one faculty member at the meeting said, "It looks like we hired a firm that had somebody who could find a way of discrediting [Felch] and ruining his career, and that's the kind of aggressive behavior on the part of the college — if that's what's going on ... If that's the way we're operating in this public arena, that's not the kind of college I want to be at."

Citing the firm's nondisclosure agreement with its clients, G.F.Bunting officials declined to comment. Felch also declined to comment.

On March 3, six weeks after G.F.Bunting was hired, it approached the newspaper with concerns about Felch's reporting, according to the three sources. In two meetings, the firm presented information to Times editors indicating that "the 27 incidents did not fall under the [Clery Act's] disclosure requirements for a variety of reasons," according to a March 14 [editor's note](#).

In that note, the Times also said that Felch revealed to editors that he had an "inappropriate relationship with someone who was a source for the Dec. 7 story

and others Felch had written.” Felch told the Times of the affair right after he learned that G.F.Bunting had contacted the paper, the sources said.

Felch later said in a statement that he was “dismissed for creating the appearance of a conflict of interest,” and disputed some of Occidental’s version of events, with outlets from the [Washington Post](#) to [The Wrap](#) covering the imbroglio. The Los Angeles Times referred all of BuzzFeed’s questions regarding Felch’s firing to its editor’s note.

When pressed at the March 18 faculty meeting, Veitch said Felch’s “inappropriate relationship” was “news to us.” Later, in its statement to BuzzFeed, the college clarified that the “first time Occidental learned about the relationship and firing was immediately prior to online publication of the editor’s note.”

The source who was romantically involved with Felch said she believes she’s suffered retaliation and worries about more. When approached by BuzzFeed for this article, she initially agreed to be named but later changed her mind.

She described a series of events beginning in the spring of 2013, when she ramped up her work advocating for victims of rape and sexual assault. About a month before the tennis balls began appearing in her mailbox, she spoke to reporters about Occidental’s failure to notify students about an on-campus rape report. Five days later, college president Veitch sent a campus-wide email expressing dismay at “a number of well-intentioned people [who] have chosen to cast our motives into doubt; vilify dedicated, hard-working members of Student Affairs; question the sincerity of our response; and actively sought to embarrass the College on the evening news.” (Two weeks later, in a separate campus-wide email, Veitch apologized for his tone.)

Around this time, she and Heldman said, administrators would reference matters that they had discussed in private emails with other people. Once, after meeting with sexual assault policy consultants hired by the school to compose its own investigation, the source returned to her office to find her previously locked door wide open. A stack of student papers had been removed from her desk.

These incidents all occurred before the source met Felch in late August 2013, she said. They began an extramarital affair in late December 2013, lasting “intermittently for a period of time,” though the relationship has since definitively ended, she told BuzzFeed. The source said she believed no one knew about the relationship while it lasted.

In February, the source said, concerned about her office’s safety, she reserved a private locked library carrel, only telling four colleagues about it. She said that she arranged for the carrel via Occidental email, and that the carrel was unmarked, with no sign or indication that it belonged to her.

She recalled that on March 1, as she went to use the carrel for the second time, she discovered that it was broken into and vandalized. Her work was shredded in pieces on the floor and desk, apparent in photos she showed BuzzFeed. Most disturbing, she said, was that a few loose-leaf pages from her journal that she had stored inside a textbook were removed and laid out on top of the desk. Those

pages referenced her relationship with Felch. She said she notified a librarian, who called Occidental Campus Safety.

In his statement to BuzzFeed, Occidental spokesman Tranquada said “the College and its PR firm had nothing — nothing — whatsoever to do with the March 1 break-in.” The college told BuzzFeed its investigation is still ongoing.

The source said she firmly believes the college has retaliated against people who’ve been critical of the school’s sexual misconduct policies. But she emphasized that while she finds the timing of the carrel break-in “peculiar,” she doesn’t know who’s responsible for it. Still, “to see that it had been vandalized and broken into was another reminder to me that this is not a safe place for you to be,” she said. “And for whoever’s doing it, for whatever reasons, it’s terrifying.”

Today, when discussing issues related to the college, Felch’s source only uses a “burner” phone — a black, lightweight, modern model, made to resemble a Blackberry — that she bought after the March 1 break-in. She paid for her new phone in cash.

“It’s not about, ‘They’re tracking my location,’ or anything like that,” she said. “It’s just to be able to speak freely and not have to worry about what I’m saying.”

For weeks, she said, her personal iPhone had been acting strangely: flashing every few minutes while she wrote text messages or emails, as if the phone were taking screenshots, and running the battery down seven or eight times a day. She would restore the phone to its original settings and those problems would stop, only to gradually return.

She alleged the most recent digital oddity came on March 14, the day of Felch’s firing. She said she “never deletes anything,” but on that day she noticed files missing from her digital archive, where she stores documentation about the school’s handling of sexual assault cases, including recent notes about its hiring of G.F.Bunting.

“As if with surgical precision, anything regarding the PR firm has been removed from that archive,” she said. “I don’t know who would have had the capabilities to do this.”

“I sound so conspiratorial,” she said. But surveillance is one of her research areas; she said she knows how easy and untraceable electronic monitoring can be. And now she knows the feeling of being watched.

“My ability to work has been shattered — my ability to concentrate,” she said. “Whether or not you’re actually being surveilled, if you think you are, it’s still destructive.”



Caroline Heldman (right) with attorney Gloria Allred and six sexual assault victims on April 18, announcing the filing of the Title IX complaint. Irfan Khan / Los Angeles Times / MCT

The most complete record of retaliation allegations against Occidental is the Title IX complaint, which Heldman filed on behalf of 37 complainants last April. The following month, the Department of Education's Office for Civil Rights opened an investigation into the college. Since then, 16 additional people have joined the complaint, Heldman said.

In the version of the complaint obtained by BuzzFeed — updated last week — at least 17 individuals or groups of people describe acts of retaliation.

Occidental said it doesn't have a copy of the Title IX complaint and hasn't had the chance to review any of these allegations.

One Occidental student alleged that two weeks after speaking publicly about her assault at a campus event — calling for the school to take students' concerns seriously — she was told her work-study job in an administrative office was being eliminated at the end of the semester. The basis for the decision, she was told, was a specific conversation she and another complainant had with a third party about sexual assault issues in the office. (Both students said that they didn't remember this conversation, according to the complaint.)

"I thought these were people I could trust and now I feel like they are waiting for me to mess up at something for an excuse to fire me," one of the students said in

the complaint. “I feel that I’m being watched carefully by my employers for anything I say or do that might give them a reason to treat me unfairly; I feel like they are trying to limit my voice on campus.”

In another allegation in the complaint, a student employee with ties to OSAC said that one night she drove an alleged rape victim who was bleeding vaginally to a hospital’s sexual assault reporting center. Days later, after being initially praised by superiors, she was told by two deans that they saw her actions “as an attack” on her department, according to the complaint.

Three students who were programming assistants at Project SAFE — the school’s sexual assault prevention and education program — said in the complaint that they were retaliated against for supporting OSAC. One of the three, who identifies as a rape survivor, wrote that she was verbally reprimanded for joining an on-campus demonstration and that her responsibilities steadily diminished throughout that school year.

The complaint also includes two faculty members saying they and six others had their laptops seized by the college last summer. They were told it was the school’s “legal obligation to preserve all information in its possession, custody or control which is or may be relevant to the [Office for Civil Rights’] investigation and the possible litigation,” according to an email from the school’s chief technology officer included in the complaint. The faculty members believe, however, that they were targeted in the seizure as “vocal and helpful advocates to students involved in rape adjudication cases.”

It was after the laptop seizures, Heldman said, that she added the warning on her work email that the college might be “tracking” her correspondence. Multiple other faculty members told BuzzFeed they believed their work communications could be monitored, while acknowledging that the school may have the legal right to do so. Last summer, former philosophy professor Kory Schaff sent an email to the faculty listserv about why he left the college:

The culminating reason I did not apply for tenure at this college can be traced to an incident in May 2009 involving the violation of my email privacy by Sandy Cooper (former General Counsel). Not only did she read an email I did not send to her, she attempted to use her official position to violate my academic freedom of speech regarding said email. Although I filed a grievance against her by following Faculty Handbook procedures, no facts were discovered about how she acquired that email, or who gave it to her, or who authorized her failed attempt to intimidate me.

Cooper could not be reached for comment.

Tranquada told BuzzFeed, “Occidental College does not monitor or inspect, and has not directed anyone to monitor or inspect the email of any faculty, staff, student or administrator without their knowledge in any way.”

Some Occidental students have tried to raise men’s awareness of sexual assault

on campus. But Tyler Kintz, a Title IX complainant and former Occidental football player hired at Project SAFE to help engage with male athletes, told BuzzFeed that he lost his programming assistant job in 2012 over his criticism of the dean of students and assistant dean of students. He said he was told to resign or be fired, and that he chose to resign.

“They wanted me to be a silent partner in what they were doing,” he said. “I didn’t want to be part of that.”

Another student — who is not a complainant — told BuzzFeed about a March 2013 meeting he attended with one sophomore and one junior from each men’s athletic team, just before the federal complaints were filed and while the alleged rape case involving a male tennis player was unfolding.

According to the student, the meeting was led by the school’s general counsel at the time, Carl Botterud, who talked about creating an on-campus group of male students to stand against rape but also to counter the “radical” OSAC. The student recalled that Botterud talked about how he’d “seen too many times when women have come back and filed sexual harassment against their ex-boyfriend a month later or a year later, as backlash or something like that.” Botterud’s comments appeared to upset many of the athletes, the student said. At one point, Botterud said “fuck ‘em,” referring to OSAC, the student said.

In a statement to BuzzFeed, Botterud clarified that while he didn’t recall his exact words, he’s sure he “never said ‘fuck ‘em’ referring to members of OSAC.”

Botterud said he told the men they need to be absolutely certain that they have consent. “As part of my efforts to get them to think about acts and consequences, I also said that I had seen cases where allegations were brought after relationships had ended, where the issue of consent during the relationship [was] raised as part of a complaint lodged after the relationship had ended. Seeing that happen even once is too many times for me.”

After Heldman filed a formal complaint over what she heard occurred in the meeting, the school found Botterud not responsible for creating a hostile environment. But the faculty later passed a vote of “no confidence” in Botterud.

Heldman also told BuzzFeed that her office was broken into three times in the month before she filed the Title IX and Clery Act complaints. In each instance, she said, nothing was taken, and the damage was minor — business cards and pens would be dumped or thrown around.

“Lots of really stupid things where it’s just threatening, right?” she said. “It’s this idea that I was in your office, and I can come into your office whenever I want. That was the message that was, loud and clear, sent to me.”



An OSAC candlelight vigil during a board of trustees campus visit last spring. Courtesy of OSAC / Via facebook.com

Some members of the faculty, including the source who had the relationship with Felch, said that whatever the Los Angeles Times drama may reveal about Occidental, it has overshadowed their larger concern that the school still isn't properly handling sexual assault cases.

At the March 18 faculty meeting, Veitch acknowledged that the college has "chosen to fight this battle publicly, rather than internally." He said that "this is a reputational concern for all of us," and that "there are serious consequences at stake."

"I think what makes me just so wary of this whole thing is this allows us to get involved in all kinds of gossip and other stuff," one faculty member responded. "Forgetting the fact that the college has an abysmal record of dealing with sexual assault before that article was even written, and I suspect even since."

Veitch asked that judgments be reserved until investigative reports by the federal government and by the college are released. "I think you're right to be skeptical, but it's too early to draw conclusions that we have an abysmal record," Veitch said at the meeting. "I think we have a problematic record on Clery and a better

record on Title IX.”

Just before the meeting, associate sociology professor Richard Mora sent an email to the faculty listserv, urging his colleagues to keep the Felch scandal in perspective.

“The past relationship between two consenting adults — a reporter and a member of the Oxy community — has nothing to do with Oxy’s inadequate sexual assault policies, the troubling issues related to sexual assault reports, and hearings that have come to light, or the repeated delay and the consultant’s final report,” Mora wrote. “Thus, I hope the faculty will stay focused on the matter at hand — ensuring that the College provides all students with the safest possible learning environment.”

According to Occidental Campus Safety’s crime log — which does not take into account incidents revealed to confidential reporters, such as medical professionals — the last on-campus rape report was made anonymously to Campus Safety on Jan. 31.

The incident, according to the log report, happened in September.

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Tagged:occidental college, caroline heldman, jason felch, jonathan veitch, rape, sexual assault, title ix

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More college men are fighting back against sexual misconduct cases

By **TERESA WATANABE**

JUNE 7, 2014, 6:15 PM

Peter Yu, Drew Sterrett and Lewis McLeod were headed toward bright futures at prestigious colleges and universities when each got involved in one-night sexual encounters.

All three young men claimed the encounters were consensual — but the women asserted otherwise. In each case, campus officials found the men responsible for sexual assault and expelled or suspended them.

But all three are pushing back, suing the schools on charges that their rights to a fair hearing were violated.

As universities and colleges launch intensified efforts against sexual misconduct, more cases are shifting from campuses to courtrooms.

The three young men are suing Vassar College, the University of Michigan and Duke University, respectively; students who were suspended or expelled for sexual assault have also filed actions against Occidental College, Columbia University, Xavier University, Swarthmore College, Delaware State University and a host of other campuses.

Most are arguing that the college hearing process is unfair. In a new twist, some young men also are asserting that the college discipline process is skewed against them because of their gender, violating the 1972 Title IX law, which bans sex discrimination by schools receiving federal funds.

The lawsuits reflect growing concern about the legal rights of the accused, especially as complaints of sexual misconduct increase.

Some critics argue that students should have the right to an attorney and to directly question their accusers — protections not granted on all campuses.

They also expressed concerns about the federal government's 2011 directive to apply a lower burden of proof — "preponderance of evidence" — in these sexual misconduct hearings, instead of the higher standard of "clear and convincing evidence" that some campuses had been using.

That directive by the Department of Education's Office of Civil Rights also gave both parties the right to appeal a decision, which critics argue amounts to "double jeopardy" for the accused student who was cleared once.

"I think there has been a significant amount of pressure on universities to treat all of those accused of sexual misconduct with a presumption of guilt," said Robert Shibley, senior vice president of the Philadelphia-based Foundation for Individual Rights in Education, a leading voice for free speech and due process rights at colleges and universities.

But many activists who fought hard for stronger federal action against campus sexual assault are dismayed by contentions that universities are improperly punishing innocent students. Thanks to activist pressure, the federal government has launched more investigations, fines and directives since 2011 than ever before.

Annie Clark, a former University of North Carolina student who has helped more than a dozen groups file federal complaints on sexual misconduct, said campus hearing processes are still riddled with problems for both sides. But overall, she said, accusers face more problems making their claims than do the accused.

Last week, for instance, hundreds of students rallied at Stanford University to protest what they regard as weak sanctions against sexual assailants.

The rally organizer, Leah Francis, is protesting Stanford's decision not to expel a student that a university disciplinary panel found responsible for forcible sexual assault against her. Instead the university imposed a five-quarter suspension, community service and sexual assault education.

Erin Buzuvis, a law professor at Western New England University who writes the Title IX Blog, said claims by men of sex discrimination under Title IX would be difficult to prove. Among other things, it would require men to show that women accused of sexual assault received more lenient treatment — and there are few such cases, if any, she said.

Still, Andrew Miltenberg, a New York attorney who represents plaintiffs suing Vassar and Drew University, said interest in filing such cases has surged in the last year; he is now receiving three to four calls a week from all over the country.

"The common thread is really egregious due process violations," he said.

In the Vassar case, a female student filed a charge of sexual assault against Miltenberg's client, Yu, a year after the encounter occurred. In court filings, Yu claims the encounter was consensual and that Vassar ignored evidence, such as the female student's friendly Facebook messages saying she had "a wonderful time" and was "really sorry" she led him on.

In addition, Yu contends in the court filing that the university refused his request to have a student on the hearing panel, which was made up of three colleagues of the victim's father, a Vassar professor.

Sterrett filed his lawsuit against the University of Michigan in April, alleging "significant due process violations," including failure to provide notice of charges or the names of witnesses against him. In media reports, the university has denied allegations of negligence.

In his case against Duke University, McLeod recently won a court ruling blocking his expulsion while his lawsuit proceeds. A North Carolina judge found that McLeod had demonstrated a "likelihood of success" in his claims that Duke violated his rights in the disciplinary hearing process. McLeod asserted in the lawsuit that the sex was consensual and that he immediately stopped when she began to cry.

Some universities are settling lawsuits. In April, basketball standout Dezmine Wells settled his lawsuit against Xavier University, which expelled him after finding him responsible for sexual assault.

Wells asserted in the lawsuit that he had consensual sex with a woman after she took off most of her clothes, kissed him and gave him a lap dance during a game of "Truth or Dare." She later recanted her charges, he claimed in the lawsuit.

Wells sued for sex discrimination and negligence, among other things. He asserted that Xavier used inadequately trained investigators and advisors and improperly placed the burden of proof on him to demonstrate his innocence. Both sides have declined to comment on the settlement.

In the Occidental case, college officials expelled an 18-year-old freshman for sexual assault last year after ruling that his classmate, then 17, was too drunk to consent to sex.

The young man is now suing Occidental in Los Angeles civil court to reverse its decision, arguing that the college failed to give him a fair hearing, follow its own sexual misconduct policy and provide sufficient evidence for the finding.

He has identified himself as John Doe in the lawsuit, claiming that using his real name would invade his privacy. Reached by The Times, he agreed to an interview on condition of anonymity to avoid backlash.

He said he had learned in campus presentations on sexual misconduct that those who are too drunk cannot give consent for sex. But he said he believed his classmate was lucid enough to consent.

The college's investigative report, performed by an outside firm, said both parties agreed on the following facts: Both had been drinking, she went to his room, took off her shirt while dancing, made out with him and returned to his room later for sex, asking if he had a condom. When friends stopped by the room to ask if she was OK, she told them yes.

The crux of the case was whether she was too drunk to understand what she was doing — and whether he knew or should have known of her impaired condition.

The Los Angeles County district attorney's office concluded that witnesses agreed that both parties were drunk but "willing participants exercising bad judgment," according to a report by its investigating deputy. The office declined to file rape charges, citing insufficient evidence. The college hired an outside attorney to examine the investigative report and offer a conclusion.

The attorney, Marilou F. Mirkovich, found that the young man did not know that his classmate was too drunk to consent because he, too, was inebriated. But, citing the college's policy that does not allow alcohol or drug consumption to excuse sexual misconduct, Mirkovich found that he should have known and was responsible for the assault.

A sober person would have seen that the classmate had been swigging vodka, slurring her words, vomiting and walking unsteadily, causing her worried friends to remove her from his room, she concluded.

Occidental officials affirmed the conclusion and rejected the young man's appeal. In his lawsuit he argued that the college denied him the right to an attorney, failed to allow all of his questions to witnesses, refused his request for a three-person hearing panel and ignored critical evidence, among other things.

"Occidental is turning drunken sex into rape," he said. "In an effort to curb the epidemic of sexual assault on campus, the pendulum is swinging too far the other way."

In a court filing, Occidental called the young man's assertions "meritless" and said its sexual misconduct policy was neutral and fair. The case is expected to advance to a court hearing later this year.

The woman's Pasadena attorney, Lauren Teukolsky, said the evidence was overwhelming that her client was incapacitated. Teukolsky decried the young man's implications that the woman was lying as "offensive and outrageous."

The one-night encounter and its aftermath have devastated the lives of both parties.

The female student has dropped out of school for now, is in therapy and is suffering from post-

traumatic stress disorder, her attorney said.

The male student said he had been physically attacked and called a rapist and is still struggling to restart his college career. One out-of-state school that accepted him earlier this year abruptly rescinded its acceptance on the day he arrived after receiving an anonymous phone call about his case, he said.

"It's been a soul-crushing experience," he said.

On one point, all parties seem to agree: Campuses should improve training to help clarify when a person is too drunk or high to give consent. Brett Sokolow, executive director of the Assn. of Title IX Administrators, said a checklist of signs could help, such as stumbling, slurred words and vomiting.

Campuses are preparing sexual assault prevention training for this fall, as required by new federal policies. In a significant shift, federal regulations in the works will give students access to attorneys at all campuses that receive federal funds, although administrators may limit their role.

At present, campuses vary in policies on attorneys — the University of California allows them but Occidental does not.

Ruth Jones, Occidental's Title IX coordinator, said the college has barred attorneys to prevent the discipline process from being too "adversarial" but would change the policy in accord with final federal regulations.

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NOT ALONE

The First Report of the White House Task Force to
Protect Students From Sexual Assault

April 2014





President Barack Obama signs the Presidential Memorandum establishing the White House Task Force to Protect Students From Sexual Assault on January 22, 2014.
(Official White House Photo by Lawrence Jackson)

Sexual violence is more than just a crime against individuals. It threatens our families, it threatens our communities; ultimately, it threatens the entire country. It tears apart the fabric of our communities. And that's why we're here today -- because we have the power to do something about it as a government, as a nation. We have the capacity to stop sexual assault, support those who have survived it, and bring perpetrators to justice.

President Barack Obama, January 22, 2014

Freedom from sexual assault is a basic human right... a nation's decency is in large part measured by how it responds to violence against women... our daughters, our sisters, our wives, our mothers, our grandmothers have every single right to expect to be free from violence and sexual abuse.

Vice President Joe Biden, January 22, 2014

This report was prepared by the White House Task Force to Protect Students From Sexual Assault.

The Task Force is Co-Chaired by the Office of the Vice President and the White House Council on Women and Girls.

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Executive Summary

Why We Need to Act

One in five women is sexually assaulted in college. Most often, it's by someone she knows – and also most often, she does not report what happened. Many survivors are left feeling isolated, ashamed or to blame. Although it happens less often, men, too, are victims of these crimes.

The President created the Task Force to Protect Students From Sexual Assault to turn this tide. As the name of our new website – NotAlone.gov – indicates, we are here to tell sexual assault survivors that they are not alone. And we're also here to help schools live up to their obligation to protect students from sexual violence.

Over the last three months, we have had a national conversation with thousands of people who care about this issue. Today, we offer our first set of action steps and recommendations.

1. Identifying the Problem: Campus Climate Surveys

The first step in solving a problem is to name it and know the extent of it – and a campus climate survey is the best way to do that. We are providing schools with a toolkit to conduct a survey – and we urge schools to show they're serious about the problem by conducting the survey next year. The Justice Department, too, will partner with Rutgers University's Center on Violence Against Women and Children to pilot, evaluate and further refine the survey – and at the end of this trial period, we will explore legislative or administrative options to require schools to conduct a survey in 2016.

2. Preventing Sexual Assault – and Engaging Men

Prevention programs can change attitudes, behavior – and the culture. In addition to identifying a number of promising prevention strategies that schools can undertake now, we are also researching new ideas and solutions. But one thing we know for sure: we need to engage men as allies in this cause. Most men are not perpetrators – and when we empower men to step in when someone's in trouble, they become an important part of the solution.

As the President and Vice President's new Public Service Announcement puts it: if she doesn't consent – or can't consent – it's a crime. And if you see it happening, help her, don't blame her, speak up. We are also providing schools with links and information about how they can implement their own bystander intervention programs on campus.

3. Effectively Responding When a Student Is Sexually Assaulted

When one of its students is sexually assaulted, a school needs to have all the pieces of a plan in place. And that should include:

Someone a survivor can talk to in confidence

While many victims of sexual assault are ready to file a formal (or even public) complaint against an alleged offender right away – many others want time and privacy to sort through their next steps. For some, having a confidential place to go can mean the difference between getting help and staying silent.

Today, we are providing schools with a model reporting and confidentiality protocol – which, at its heart, aims to give survivors more control over the process. Victims who want their school to fully investigate an incident must be taken seriously – and know where to report. But for those who aren't quite ready, they need to have – and know about – places to go for confidential advice and support.

That means a school should make it clear, up front, who on campus can maintain a victim's confidence and who can't – so a victim can make an informed decision about where best to turn. A school's policy should also explain when it may need to override a confidentiality request (and pursue an alleged perpetrator) in order to help provide a safe campus for everyone. Our sample policy provides recommendations for how a school can strike that often difficult balance, while also being ever mindful of a survivor's well-being.

New guidance from the Department of Education also makes clear that on-campus counselors and advocates – like those who work or volunteer in sexual assault centers, victim advocacy offices, women's and health centers, as well as licensed and pastoral counselors – can talk to a survivor in confidence. In recent years, some schools have indicated that some of these counselors and advocates cannot maintain confidentiality. This new guidance clarifies that they can.

A comprehensive sexual misconduct policy

We are also providing a checklist for schools to use in drafting (or reevaluating) their own sexual misconduct policies. Although every school will need to tailor a policy to its own needs and circumstances, all schools should be sure to bring the key stakeholders – including students – to the table. Among other things, this checklist includes ideas a school could consider in deciding what is – or is not – consent to sexual activity. As we heard from many students, this can often be the essence of the matter – and a school community should work together to come up with a careful and considered understanding.

Trauma-informed training for school officials

Sexual assault is a unique crime: unlike other crimes, victims often blame themselves; the associated trauma can leave their memories fragmented; and insensitive or judgmental questions can compound a victim's distress. Starting this year, the Justice Department, through both its Center for Campus Public Safety and its Office on Violence Against Women, will develop trauma-informed training programs for school officials and campus and local law enforcement. The Department of Education's National Center on Safe and Supportive Learning Environments will do the same for campus health centers. This kind of training has multiple benefits: when survivors are treated with care and wisdom, they start trusting the system, and the strength of their accounts can better hold offenders accountable.

Better school disciplinary systems

Many sexual assault survivors are wary of their school's adjudication process – which can sometimes subject them to harsh and hurtful questioning (like about their prior sexual history) by students or staff unschooled in the dynamics of these crimes. Some schools are experimenting with new models – like having a single, trained investigator do the lion's share of the fact-finding – with very positive results. We need to learn more about these promising new ideas. And so starting this year, the Justice Department will begin assessing different models for

investigating and adjudicating campus sexual assault cases with an eye toward identifying best practices.

The Department of Education's new guidance also urges some important improvements to many schools' current disciplinary processes: questions about the survivor's sexual history with anyone other than the alleged perpetrator should not be permitted; adjudicators should know that the mere fact of a previous consensual sexual relationship does not itself imply consent or preclude a finding of sexual violence; and the parties should not be allowed to personally cross-examine each other.

Partnerships with the community

Because students can be sexually assaulted at all hours of the day or night, emergency services should be available 24 hours a day, too. Other types of support can also be crucial – like longer-term therapies and advocates who can accompany survivors to medical and legal appointments. Many schools cannot themselves provide all these services, but in partnership with a local rape crisis center, they can. So, too, when both the college and the local police are simultaneously investigating a case (a criminal investigation does not relieve a school of its duty to itself investigate and respond), coordination can be crucial. So we are providing schools with a sample agreement they can use to partner with their local rape crisis center – and by June, we will provide a similar sample for forging a partnership with local law enforcement.

4. Increasing Transparency and Improving Enforcement

More transparency and information

The government is committed to making our enforcement efforts more transparent – and getting students and schools more resources to help bring an end to this violence. As part of this effort, we will post enforcement data on our new website – NotAlone.gov – and give students a roadmap for filing a complaint if they think their school has not lived up to its obligations.

Among many other things on the website, sexual assault survivors can also locate an array of services by typing in their zip codes, learn about their legal rights, see which colleges have had enforcement actions taken against them, get “plain English” definitions of some complicated legal terms and concepts; and find their states' privacy laws. Schools and advocates can access federal guidance, learn about relevant legislation, and review the best available evidence and research. We invite everyone to take a look.

Improved Enforcement

Today, the Department of Education's Office for Civil Rights (OCR) is releasing a 52-point guidance document that answers many frequently asked questions about a student's rights, and a school's obligations, under Title IX. Among many other topics, the new guidance clarifies that Title IX protects all students, regardless of their sexual orientation or gender identity, immigration status, or whether they have a disability. It also makes clear that students who report sexual violence have a right to expect their school to take steps to protect and support them, including while a school investigation is pending. The guidance also clarifies that recent amendments to the Clery Act do not alter a school's responsibility under Title IX to respond to and prevent sexual violence.

OCR is also strengthening its enforcement procedures in a number of ways – by, for example, instituting time limits on negotiating voluntary resolution agreements and making clear that schools should provide survivors with interim relief (like changing housing or class schedules) pending the outcome of an OCR investigation. And OCR will be more visible on campus during its investigations, so students can help give OCR a fuller picture about what’s happening and how a school is responding.

The Departments of Education and Justice, which both enforce Title IX, have entered into an agreement to better coordinate their efforts – as have the two offices within the Department of Education charged with enforcing Title IX and the Clery Act.

Next Steps

This report is the first step in the Task Force’s work. We will continue to work toward solutions, clarity, and better coordination. We will also review the various laws and regulations that address sexual violence for possible regulatory or statutory improvements, and seek new resources to enhance enforcement. Also, campus law enforcement officials have special expertise to offer – and they should be tapped to play a more central role. We will also consider how our recommendations apply to public elementary and secondary schools – and what more we can do to help there.

* * *

The Task Force thanks everyone who has offered their wisdom, stories, expertise, and experiences over the past 90 days. Although the problem is daunting and much of what we heard was heartbreaking, we are more committed than ever to helping bring an end to this violence.

Introduction

For too many of our nation's young people, college doesn't turn out the way it's supposed to.

One in five women is sexually assaulted while in college.¹ Most often, it happens her freshman or sophomore year.² In the great majority of cases (75-80%), she knows her attacker, whether as an acquaintance, classmate, friend or (ex)boyfriend.³ Many are survivors of what's called "incapacitated assault": they are sexually abused while drugged, drunk, passed out, or otherwise incapacitated.⁴ And although fewer and harder to gauge, college men, too, are victimized.⁵

The Administration is committed to turning this tide. The White House Task Force to Protect Students From Sexual Assault was established on January 22, 2014, with a mandate to strengthen federal enforcement efforts and provide schools with additional tools to help combat sexual assault on their campuses. Today, we are taking a series of initial steps to:

- 1. Identify the scope of the problem on college campuses;**
- 2. Help prevent campus sexual assault;**
- 3. Help schools respond effectively when a student is assaulted; and**
- 4. Improve, and make more transparent, the federal government's enforcement efforts.**

As the Task Force recognized at the outset, campus sexual assault is a complicated, multi-dimensional problem with no easy or quick solutions. These initial recommendations do not purport to find or even identify all of them. Our work is not over.⁶

¹ Krebs, C.P., Lindquist, C.H., Warner, T.D., Fisher, B.S., & Martin, S.L. (2007). *The Campus Sexual Assault (CSA) Study*. Washington, DC: National Institute of Justice, U.S. Department of Justice.; Krebs, C.P., Lindquist, C.H., Warner, T.D., Fisher, B.S., & Martin, S.L. (2009). College Women's Experiences with Physically Forced, Alcohol- or Other Drug-Enabled, and Drug-Facilitated Sexual Assault Before and Since Entering College. *Journal of American College Health*, 57(6), 639-647.

² Krebs et al., *The Campus Sexual Assault (CSA) Study*.

³ *Ibid.*

⁴ *Ibid.*; see also Kilpatrick, D.G., Resnick, H.S., Ruggiero, K.J., Conoscenti, L.M., & McCauley, J. (2007). *Drug Facilitated, Incapacitated, and Forcible Rape: A National Study*. Charleston, SC: Medical University of South Carolina, National Crime Victims Research & Treatment Center.

⁵ The *CSA Study* found that 6.1% of college males were victims of either attempted or completed sexual assault. Although many advocates prefer to use the term "survivor" to describe an individual who has been sexually assaulted, the term "victim" is also widely used. This document uses the terms interchangeably and always with respect for those who have been subjected to these crimes.

⁶ This first Task Force report focuses on sexual assault at postsecondary institutions – such as colleges, universities, community colleges, graduate and professional schools, and trade schools – that receive federal financial assistance. Thus, our use of the term "schools" refers to these postsecondary institutions.

Our First Task: Listening

Many people are committed to solving this problem. To hear as many of their views as possible, the Task Force held 27 listening sessions (12 webinars and 15 in-person meetings) with stakeholders from across the country: we heard from survivors; student activists; faculty, staff and administrators from schools of all types; parents; alumni; national survivors' rights and education associations; local and campus-based service providers and advocates; law enforcement; civil rights activists; school general counsels; men's and women's groups; Greek organizations; athletes; and researchers and academics in the field. Thousands of people joined the conversation.

Not surprisingly, no one idea carried the day. But certain common themes did emerge. Many schools are making important strides and are searching in earnest for solutions. A new generation of student activists is effectively pressing for change, asking hard questions, and coming up with innovative ways to make our campuses safer.

Even so, many problems loom large. Prevention and education programs vary widely, with many doing neither well. And in all too many instances, survivors of sexual violence are not at the heart of an institution's response: they often do not have a safe, confidential place to turn after an assault, they haven't been told how the system works, and they often believe it is working against them. We heard from many who reached out for help or action, but were told they should just put the matter behind them.

Schools, for their part, are looking for guidance on their legal obligations and best practices to keep students safe. Many participants called on the federal government to improve and better coordinate our enforcement efforts, and to be more transparent. And there was another constant refrain: get men involved. Most men are not perpetrators – and when we empower men to speak up and intervene when someone's in trouble, they become an important part of the solution.

I. How Best to Identify the Problem: Campus Climate Surveys

When then-Senator Joe Biden wrote the Violence Against Women Act 20 years ago, he recognized a basic truth: no problem can be solved unless we name it and know the extent of it. That is especially true when it comes to campus sexual assault, which is chronically underreported: only 2% of incapacitated sexual assault survivors, and 13% of forcible rape survivors, report the crime to campus or local law enforcement.⁷

The reasons for non-reporting (whether to a school or to law enforcement) vary. Many survivors of acquaintance rape don't call what happened to them rape and often blame themselves. One report found that 40% of college survivors feared reprisal by the perpetrator.⁸ Survivors also cite

⁷ Krebs et al., *The Campus Sexual Assault (CSA) Study*.

⁸ Sampson, Rana (2002). *Acquaintance Rape of College Students*; Washington, DC: Office of Community Oriented Policing Services, U.S. Department of Justice.

fear of treatment by authorities, not knowing how to report, lack of independent proof, and not wanting families or other students to find out what happened.⁹ Still others don't report because they don't want to participate in a formal college adjudication process.¹⁰

For colleges and universities, breaking the cycle of violence poses a unique challenge. When a school tries to tackle the problem – by acknowledging it, drawing attention to it, and encouraging survivors to report – it can start to look like a dangerous place. On the flip side, when a school ignores the problem or discourages reporting (either actively or by treating survivors without care), it can look safer. Add to this the competition for top students or a coveted spot on a college rankings list – and a school might think it can outshine its neighbor by keeping its problem in the shadows.

We have to change that dynamic.

Schools have to get credit for being honest – and for finding out what's really happening on campus. Reports to authorities, as we know, don't provide a fair measure of the problem. But a campus climate survey can. When done right, these surveys can gauge the prevalence of sexual assault on campus, test students' attitudes and awareness about the issue, and provide schools with an invaluable tool for crafting solutions. And so:

- **We are providing schools with [a new toolkit](#) for developing and conducting a climate survey.** This guide explains the methods for conducting an effective survey – and contains a set of evidence-based sample questions to get at the answers.
- **We call on colleges and universities to voluntarily conduct the survey next year.** Again, a school that is willing to get an accurate assessment of sexual assault on its campus is one that's taking the problem – and the solution – seriously. Researchers recommend that schools conduct the survey in the winter or spring semesters, rather than when students first arrive on campus in the fall.

Rutgers University, with its leading research institute on violence against women,¹¹ will pilot and evaluate the survey. Also, the Justice Department's Office on Violence Against Women will work with its campus grantees to conduct the survey and evaluate it. And the Bureau of Justice Statistics will further refine the survey methodology. What we learn from these pilots, evaluations, and schools' experiences will chart the path forward for everyone – and will culminate in a survey for all to use.

- **We will explore legislative or administrative options to require colleges and universities to conduct an evidence-based survey in 2016.** A mandate for schools to periodically conduct a climate survey will change the national dynamic: with a better picture of what's really happening on campus, schools will be able to more effectively tackle the problem and measure the success of their efforts.

⁹ Krebs et al., *The Campus Sexual Assault (CSA) Study*.

¹⁰ *Ibid.*

¹¹ The Center on Violence Against Women & Children at the School of Social Work.

II. Preventing Sexual Assault on Campus

Participants in our listening sessions roundly urged the Task Force to make prevention a top priority. Some even suggested that if prevention and education efforts don't start earlier, it's too late by the time students get to college. While we certainly agree that this work should begin early, the college years, too, are formative. During this transition to adulthood, attitudes and behaviors are created or reinforced by peer groups. And students look to coaches, professors, administrators, and other campus leaders to set the tone. If we get this right, today's students will leave college knowing that sexual assault is simply unacceptable. And that, in itself, can create a sea change.

Federal law now requires schools to provide sexual assault prevention and awareness programs.¹² To help colleges and universities in this endeavor, we are providing schools with new guidance and tools.

- **Best practices for better prevention.** The Centers for Disease Control and Prevention (CDC) conducted a systematic review of primary prevention strategies for reducing sexual violence, and is [releasing an advance summary](#) of its findings. CDC's review summarizes some of the best available research in the area, and highlights evidence-based prevention strategies that work, some that are promising, and – importantly – those that don't work. The report points to steps colleges can take now to prevent sexual assault on their campuses.

Among other things, CDC's review shows that effective programs are those that are sustained (not brief, one-shot educational programs), comprehensive, and address the root individual, relational and societal causes of sexual assault. It also includes a listing of prevention programs being used by colleges and universities across the country, so schools can better compare notes about effective and encouraging approaches.¹³

- **Getting everyone to step in: bystander intervention.** Among the most promising prevention strategies – and one we heard a lot about in our listening sessions – is bystander intervention. Social norms research reveals that men often misperceive what other men think about this issue: they overestimate their peers' acceptance of sexual assault and underestimate other men's willingness to intervene when a woman is in trouble.¹⁴ And when men think their peers don't object to abusive behavior, they are

¹² See 20 U.S.C. § 1092(f) (The Jeanne Clery Disclosure of Campus Security and Campus Crimes Statistics Act, commonly known as the Clery Act). The Department of Education is currently engaged in negotiated rule-making to implement the VAWA 2013 amendments to the Clery Act that require schools to provide education and awareness programs and to improve their campus security policies. Rule-making is scheduled to be completed in 2015, but schools are expected to make a good faith effort now to meet the new requirements.

¹³ For a concise and complementary factsheet on prevention strategies, see <http://notalone.gov/assets/prevention-overview.pdf>.

¹⁴ Berkowitz, A.D. (2010) "Fostering Healthy Norms to Prevent Violence and Abuse: The Social Norms Approach." Accessed from: <http://www.alanberkowitz.com/articles/Preventing%20Sexual%20Violence%20Chapter%20-%20Revision.pdf>

much less likely to step in and help. Programs like *Bringing in the Bystander*¹⁵ work to change those perspectives – and teach men (and women) to speak out against rape myths (e.g., women who drink at parties are “asking for it”) and to intervene if someone is at risk of being assaulted.

- **To help enlist men as allies, we are releasing [a Public Service Announcement featuring President Obama, Vice President Biden, and celebrity actors](#).** The message of the PSA is simple: if she doesn’t consent – or can’t consent – it’s a crime. And if you see it happening, help her, don’t blame her, speak up. We particularly urge men’s groups, Greek organizations, coaches, alumni associations, school officials and other leaders to use the PSA to start campus conversations about sexual assault.
- **To help keep these conversations going, we are [providing a basic factsheet on bystander intervention](#).** In addition to the CDC summary, this document identifies the messages and skills that effective programs impart, describes the various ways to get the word out (in-person workshops, social marketing campaigns, online training, interactive theater) and provides links to some of the more promising programs out there.
- **Developing new prevention strategies.** More research is needed to develop and evaluate evidence-based programming to prevent sexual violence on campus. And so:
 - In Fall 2014, the CDC, in collaboration with the Justice Department’s Office on Violence Against Women and the Department of Education, will convene a panel of experts to identify emerging, promising practices to prevent sexual assault on campus. CDC will then convene pilot teams to put the consensus recommendations into practice.
 - The Justice Department’s Office on Violence Against Women (OVW) is developing a multi-year initiative on campus sexual assault which, among other things, will test and evaluate prevention programs used by its campus grantees. Grantees will work with OVW and technical assistance experts to meet core standards and evaluate the results. The next group of campus grantees will be selected by October 2014.
 - In 2015, the CDC will solicit proposals to identify, and fill, gaps in the research on sexual violence prevention.

¹⁵ Banyard, V. L., Moynihan, M. M., & Plante, E. G. (2007). Sexual violence prevention through bystander education: An experimental evaluation. *Journal of Community Psychology*, 35, 463-481

III. Responding Effectively When a Student is Sexually Assaulted

Sexual assault is a crime – and while some survivors turn to the criminal justice system, others look to their schools for help or recourse. Under federal law, when a school knows or reasonably should know that one of its students has been sexually assaulted, it is obligated to act. These two systems serve different (though often overlapping) goals. The principal aim of the criminal system is to adjudicate a defendant's guilt and serve justice. A school's responsibility is broader: it is charged with providing a safe learning environment for all its students – and to give survivors the help they need to reclaim their educations. And that can mean a number of things – from giving a victim a confidential place to turn for advice and support, to effectively investigating and finding out what happened, to sanctioning the perpetrator, to doing everything we can to help a survivor recover. The Task Force is taking the following steps:

Giving Survivors More Control: Reporting and Confidentially Disclosing What Happened

Sexual assault survivors respond in different ways. Some are ready to make a formal complaint right away, and want their school to move swiftly to hold the perpetrator accountable.

Others, however, aren't so sure. Sexual assault can leave victims feeling powerless – and they need support from the beginning to regain a sense of control. Some, at least at first, don't want their assailant (or the assailant's friends, classmates, teammates or club members) to know they've reported what happened. But they do want someone on campus to talk to – and many want to talk in confidence, so they can sort through their options at their own pace. If victims don't have a confidential place to go, or think a school will launch a full-scale investigation against their wishes, many will stay silent.

In recent years, some schools have directed nearly all their employees (including those who typically offer confidential services, like rape crisis and women's centers) to report all the details of an incident to school officials – which can mean that a survivor quickly loses control over what happens next. That practice, however well-intentioned, leaves survivors with fewer places to turn.

This is, by far, the problem we heard most about in our listening sessions. To help solve it:

- **Schools should identify trained, confidential victim advocates who can provide emergency and ongoing support.** This is a key “best practice.” The person a victim talks to first is often the most important. This person should understand the dynamics of sexual assault and the unique toll it can take on self-blaming or traumatized victims. The advocate should also be able to help get a victim needed resources and accommodations, explain how the school's grievance and disciplinary system works, and help navigate the process. As many advocates have learned over the years, after survivors receive initial, confidential support, they often decide to proceed with a formal complaint or cooperate in an investigation.

- **We are also providing schools with [a sample reporting and confidentiality protocol](#).** A school, of course, must make any policy its own – but a few guiding principles should universally apply. As noted, some sexual assault survivors are ready to press forward with a formal (or even public) complaint, while others need time and privacy to heal. There is no one-size-fits-all model of victim care. Instead, there must be options.

That means, at a minimum, that schools should make it clear, up front, who on campus will (or will not) share what information with whom. And a school's policy should also explain when it may need to override a request for confidentiality (and pursue an alleged perpetrator) in order to provide a safe campus for everyone. The watchword here is clarity: both confidential resources and formal reporting options should be well and widely publicized – so a victim can make an informed decision about where best to turn.

And in all cases, the school must respond. When a student wants the school to take action against an offender – or to change dorms or working arrangements – the school must take the allegation seriously, and not dissuade a report or otherwise keep the survivor's story under wraps. Where a survivor does not seek a full investigation, but just wants help to move on, the school needs to respond there, too. And because a school has a continuing obligation to address sexual violence campus-wide, it should always think about broader remedial action – like increasing education and prevention efforts (including to targeted groups), boosting security and surveillance at places where students have been sexually assaulted, and/or revisiting its policies and practices.

Developing a Comprehensive Sexual Misconduct Policy

Every college and university should have an easily accessible, user-friendly sexual misconduct policy. As the Task Force recognizes, there is no one approach that suits every school – but as we also learned, many schools don't have adequate policies. To help:

- **We are providing schools with [a checklist for a sexual misconduct policy](#).** This checklist provides both a suggested process for developing a policy, as well as the key elements a school should consider in drafting one. Importantly, schools should bring all the key stakeholders to the table – including students, survivors, campus security, law enforcement, resident advisors, student groups (including LGBTQ groups), on-campus advocates, and local victim service providers. Effective policies will vary in scope and detail, but an inclusive process is common to all.

We have not endeavored with this checklist to provide schools with all the answers: again, depending on its size, mission, student body, location, administrative structure and experience, a school community needs to tailor the checklist and make the policy its own.

- **By September 2014, the Task Force will provide samples of promising policy language on several other key issues.** While all schools are different, we have identified several challenging areas (in addition to confidentiality) where sample language could be helpful. These include definitions of various forms of sexual misconduct; the role of the

Title IX coordinator (recognizing that there may be various appropriate models for different schools); and the proper immediate, interim and long-term measures a school should take on behalf of survivors, whether or not they seek a full investigation.

Training for School Officials

Sexual assault can be hard to understand. Some common victim responses (like not physically resisting or yelling for help) may seem counter-intuitive to those unfamiliar with sexual victimization. New research has also found that the trauma associated with rape or sexual assault can interfere with parts of the brain that control memory – and, as a result, a victim may have impaired verbal skills, short term memory loss, memory fragmentation, and delayed recall.¹⁶ This can make understanding what happened challenging.

Personal biases also come into play. Insensitive or judgmental comments – or questions that focus on a victim's behavior (*e.g.*, what she was wearing, her prior sexual history) rather than on the alleged perpetrator's – can compound a victim's distress.

Specialized training, thus, is crucial. School officials and investigators need to understand how sexual assault occurs, how it's perpetrated, and how victims might naturally respond both during and after an assault. To help:

- **By September 2014, the Justice Department's Center for Campus Public Safety will develop a training program for campus officials involved in investigating and adjudicating sexual assault cases.** The Clery Act requires these officials to receive annual training on sexual assault (and also on domestic violence, dating violence and stalking). The Center will develop a trauma-informed training program consistent with the new requirements.
- **By June 2014, the Justice Department's Office on Violence Against Women will launch a comprehensive online technical assistance project for campus officials.** Key topics will include victim services, coordinated community responses, alcohol and drug-facilitated sexual assaults, and Clery Act compliance. Webinars and materials will include the latest research, promising practices, training opportunities, policy updates, prevention programming, and recent publications. The project will feature strategies and training materials for campus and local law enforcement.
- **By December 2014, the Department of Education, through the National Center on Safe and Supportive Learning Environments, will develop trauma-informed training materials for campus health center staff.** Often, campus health centers are the first responders for victims of sexual assault. Services will vary according to the

¹⁶ Bremner, J.D., Elzinga, B., Schmahl, C., & Vermetten, E. (2008). Structural and functional plasticity of the human brain in posttraumatic stress disorder. *Progress in Brain Research*, 167(1), 171-186; Nixon, R. D., Nishith, P., & Resick, P. A. (2004). The Accumulative Effect of Trauma Exposure on Short-Term and Delayed Verbal Memory in a Treatment-Seeking Sample of Female Rape Victims. *Journal of Traumatic Stress*, 17(1), 31-35.

school's resources, but all staff should be trained on trauma-informed care – and these materials will help.

New Investigative and Adjudicative Protocols: Better Holding Offenders Accountable

Separate and apart from training, we also need to know more about what investigative and adjudicative *systems* work best on campus: that is, who should gather the evidence; who should make the determination whether a sexual assault occurred; who should decide the sanction; and what an appeals process, if the school has one, should look like.

Schools are experimenting with new ideas. Some are adopting different variations on the “single investigator” model, where a trained investigator or investigators interview the complainant and alleged perpetrator, gather any physical evidence, interview available witnesses – and then either render a finding, present a recommendation, or even work out an acceptance-of-responsibility agreement with the offender. These models stand in contrast to the more traditional system, where a college hearing or judicial board hears a case (sometimes tracking the adversarial, evidence-gathering criminal justice model), makes a finding, and decides the sanction.

Preliminary reports from the field suggest that these innovative models, in which college judicial boards play a much more limited role, encourage reporting and bolster trust in the process, while at the same time safeguarding an alleged perpetrator's right to notice and to be heard. To evaluate these ideas:

- **By October 2014, the Justice Department's Office on Violence Against Women and National Institute of Justice will begin assessing models for investigating and adjudicating campus sexual assault cases, and identify promising practices.** OVW will also further test and evaluate these models through its campus grantees – which will be selected by October 2014.
- **On April 29, 2014, the Justice Department's SMART Office will release a solicitation for a pilot sex offender treatment program targeting college perpetrators.** Research suggests that treatment can be effective in reducing recidivism among offenders, yet no programs currently exist for the college population. Regardless of campus-imposed sanctions, we need to help reduce the risk that young perpetrators will offend again. This first-of-its kind pilot project holds out new hope for reducing sexual violence on campuses.

Providing Comprehensive Support: Partnering with the Community

Rape Crisis Centers. Sexual assault survivors often need a variety of services, both immediate and long-term, to help them regain a sense of control and safety. While some schools may be able to provide comprehensive trauma-informed services on campus, others may need to partner with community-based organizations.

Regardless of where they are provided, certain key elements should be part of a comprehensive victim-services plan. Because students can be assaulted at all hours of the day or night, crisis intervention services should be available 24 hours a day, too. Survivors also need advocates who can accompany them to medical and legal appointments. And because, for some survivors, the road to recovery is neither short nor easy, longer-term clinical therapies can be crucial.

Rape crisis centers can help schools better serve their students. These centers often provide crisis intervention, 24-hour services, longer-term therapy, support groups, accompaniment to appointments, and community education. Rape crisis centers can also help schools train students and employees and assist in developing prevention programs. And so:

- **To help schools build these partnerships, we are [providing a sample Memorandum of Understanding \(MOU\)](#) with a local rape crisis center.** Schools can adapt this MOU depending on their specific needs and the capacity of a local center.
- **To help schools develop or strengthen on-campus programs, we are also [providing a summary of promising practices in victim services](#).** This guide reviews the existing research on sexual assault services and outlines the elements of an effective victim services program.
- **To assist Tribal Colleges and Universities (TCUs) with victim services, the Justice Department's Office on Violence Against Women will continue to prioritize TCUs in its campus grant program solicitations.** OVW is working to raise awareness of funding opportunities by engaging with leading tribal organizations and partnering with the White House Initiative on American Indian and Alaska Native Education. OVW will also work with tribal domestic violence and sexual assault coalitions to provide TCUs with technical assistance on victim services.

Local Law Enforcement. At first blush, many may ask why all cases of sexual assault are not referred to the local prosecutor for criminal prosecution. Some, of course, are – but for many survivors, the criminal process simply does not provide the services and assistance they need to get on with their lives or to get their educations back on track. There are times, however, when the local police and a school may be simultaneously pursuing a case. A criminal investigation does not relieve a school of its independent obligation to conduct its own investigation – nor may a school wait for a criminal case to conclude to proceed. Cooperation in these situations, thus, is critical. So:

- **By June 2014, we will provide schools with a sample Memorandum of Understanding (MOU) with local law enforcement.** An MOU can help open lines of communication and increase coordination among campus security, local law enforcement and other community groups that provide victim services. An MOU can also improve security on and around campus, make investigations and prosecutions more efficient, and increase officers' understanding of the unique needs of sexual assault victims.

Developing a Research Collaborative: Enlisting School Researchers to Find New Solutions

Many schools have research institutes that can measurably improve our thinking about sexual assault. Schools are uniquely suited to identify gaps in the research and develop methods to address them. To lead by example, three universities have committed to developing research projects that will better inform their response to the problem and contribute to the national body of work on campus sexual assault:

- The Johns Hopkins University School of Nursing will study sexual assault among student intimate partners, including LGBTQ relationships.
- The University of Texas at Austin School of Social Work will develop and evaluate training for campus law enforcement and examine the effectiveness of Sexual Assault Response Teams.
- The University of New Hampshire Prevention Innovations Center will design and evaluate a training program for incoming students on sexual assault policies and expectations for student conduct.

We invite others to join this collaborative – and to add their own research brains and resources toward finding solutions.

IV. Improving the Federal Government’s Enforcement Efforts, and Making Them More Transparent

The federal government plays an important role in combatting sexual violence. And as we outlined in our recent report, [“Rape and Sexual Assault: A Renewed Call to Action,”](#) this Administration has taken aggressive action on many fronts.

We need to build on these efforts. To better address sexual assault at our nation’s schools, we need to both strengthen our enforcement efforts and increase coordination among responsible federal agencies. Also, and importantly, we need to improve our communication with students, parents, school administrators, faculty, and the public, by making our efforts more transparent.

Some Background on the Laws

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, requires schools that receive federal financial assistance to take necessary steps to prevent sexual assault on their campuses, and to respond promptly and effectively when an assault is reported. Title IV of the 1964 Civil Rights Act, 42 U.S.C. § 2000c *et seq.*, also requires public schools to respond to sexual assaults committed against their students. The Clery Act requires colleges and

universities that participate in federal financial aid programs to report annual statistics on crime, including sexual assault and rape, on or near their campuses, and to develop and disseminate prevention policies.¹⁷

The Department of Education's Office for Civil Rights (OCR) is charged with administrative enforcement of Title IX in schools receiving financial assistance from the Department. OCR may initiate an investigation either proactively or in response to a formal complaint. If OCR finds a Title IX violation, the school risks losing federal funds. In these cases, OCR must first seek to voluntarily resolve the non-compliance before terminating funds. Through this voluntary resolution process, OCR has entered into agreements that require schools to take a number of comprehensive steps to remedy the problem on their campuses.

The Department of Education's Federal Student Aid (FSA) office is responsible for enforcing the Clery Act, and conducts on-site reviews to ensure compliance. If a school is found to have violated Clery, FSA directs it to take steps to comply and can impose fines for violations.

The Justice Department (DOJ) is responsible for coordinating enforcement of Title IX across all federal agencies. DOJ shares authority with OCR for enforcing Title IX, and may initiate an investigation or compliance review of schools receiving DOJ financial assistance. If schools are found to violate Title IX and a voluntary resolution cannot be reached, DOJ can initiate litigation, including upon referral from other federal agencies, or seek to terminate DOJ funds. DOJ is also responsible for enforcing Title IV. DOJ can use its authority under Title IV, Title IX, and other federal civil rights statutes to bring all facets of a school, including its campus police, and local police departments into compliance with the law. DOJ can also intervene, file amicus briefs, and/or file statements of interest in court cases involving these statutes.

Improving Transparency and Information-sharing

The Administration is committed to making our enforcement efforts more transparent, and getting schools and students more resources. And so:

- **The Task Force is launching a dedicated website – NotAlone.gov – to make enforcement data public and to make other resources accessible to students and schools.** Although many tools and resources exist, students and schools often haven't been able to access them – either because the materials haven't been widely available or because they are too hard to find. Today, we are changing that.

Our new website will give students a clear explanation of their rights under Title IX and Title IV, along with a simple description of how to file a complaint with OCR and DOJ and what they should expect throughout the process. It will help students wade through often complicated legal definitions and concepts, and point them toward people who can give them confidential advice – and those who can't.

¹⁷ Other laws also authorize the Justice Department to investigate campus sexual assaults and help campus police as well as local, tribal and state law enforcement adopt comprehensive policies and practices to address the problem. These include the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141; and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d.

The website will also put in one central place OCR resolution letters and agreements (except those that raise individual privacy concerns), and all DOJ federal court filings, including complaints, motions, and briefs, consent decrees, and out-of-court agreements (which are also available on DOJ's website). These documents will be posted as a matter of course, so students, school officials, and other stakeholders can easily access the most current agreements.

The website will also contain the relevant guidance on a school's federal obligations, best available evidence and research on prevention programs, and sample policies and model agreements.

Finally, the website will have trustworthy resources from outside the government – like hotline numbers and mental health services locatable by simply typing in a zip code. It will also have a list of resources broken down by issue – like advocacy/survivor services, student groups, or LGBTQ resources – so someone can find more issue-specific information.

- **The Task Force will continue to work with developers and advocates to find ways that tech innovations can help end the violence.** On April 11, more than 60 innovators, technologists, students, policy experts, and survivors of sexual assault gathered at the White House for a “Data Jam” to brainstorm new ways to use technology to shed light on campus sexual assault and better support survivors.
- **Federal agencies are making datasets relevant to sexual assault readily available.** In keeping with the Administration's open data pledge, federal agencies, including the Departments of Education, Justice, Interior, and Health & Human Services have made public [more than 100 datasets](#) related to sexual assault and higher education. These datasets include survey results related to sexual violence, program evaluations, and guidance documents. This data is posted on data.gov.
- **The Department of Education is taking additional steps to make its activities more transparent.** As noted, OCR is posting nearly all recent resolution letters and agreements with schools on its website. OCR will also make public the schools that are under OCR investigation, including those that involve Title IX sexual violence allegations. This information will be made available by [contacting the Department of Education](#).
- **The Department of Education will collect and disseminate a list of Title IX coordinators by next year.** Every school must designate at least one employee to coordinate its efforts to carry out its Title IX responsibilities. Although schools must notify students of the name and contact information of the Title IX coordinator, there is no central, national repository of coordinator contact information. The Department of Education's Office of Postsecondary Education and OCR will collect and disseminate the list of higher education Title IX coordinators annually so anyone can easily locate a coordinator. This information will also encourage coordinators to talk to each other and share positive practices to Title IX compliance.

Improving Our Enforcement Efforts

The Administration is also committed to improving, and better coordinating, our enforcement efforts. And so:

- **The Department of Education is providing more clarity on schools' obligations under Title IX.** In April 2011, OCR [issued groundbreaking guidance](#) to schools on their obligations to prevent and respond to sexual violence under Title IX. Since then, schools and students have asked for further guidance and clarity – and, today, OCR is [issuing its answers](#) to these frequently asked questions.

Among many other topics, this new guidance clarifies that:

- Title IX protects all students, regardless of their sexual orientation or gender identity, immigration status, or whether they have a disability;
- non-professional on-campus counselors and advocates – like those who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women's centers and health centers – can generally talk to a survivor in confidence;
- questioning or evidence about the survivor's sexual history with anyone other than the alleged perpetrator should not be permitted during a judicial hearing;
- adjudicators should know that the mere fact of a previous consensual dating or sexual relationship does not itself imply consent or preclude a finding of sexual violence; and
- the parties should not be allowed to personally cross-examine each other.

The Q&A also discusses (again, among many other topics) college employees' reporting obligations; the role of the Title IX coordinator; how a school should conduct investigations; and Title IX training, education and prevention.

- **The Department of Education is strengthening its enforcement procedures.** OCR has made changes to its enforcement procedures.¹⁸

Among other things, OCR is instituting time limits for negotiating voluntary resolution agreements. By law, OCR is required to pursue a voluntary resolution with a school before initiating an enforcement action. Although this process is usually much faster than litigation, it can also take time and, as a result, be frustrating for survivors who typically remain on campus or enrolled in school for a limited time. To help guard against the risk that a school may extend negotiations to delay enforcement, OCR is placing a 90-day limit on voluntary resolution agreement negotiations where it has found a school in violation of Title IX.

OCR's procedures also now make explicit that schools should provide survivors with interim relief – such as changing housing or class schedules, issuing no-contact orders, or providing counseling – pending the outcome of an OCR investigation. OCR will also be

¹⁸ See <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

more visible on campus and reach out to more students and school officials during its investigations, in order to get a fuller picture as to whether or not there is a problem on campus.

- **The Department of Education is also clarifying how key federal laws intersect.** In addition to Title IX and the Clery Act, the Family Educational Rights and Privacy Act (FERPA),¹⁹ which protects the privacy of student education records, can also come into play in campus sexual violence investigations. In response to requests for guidance, the Department of Education [has created a chart](#) outlining a school's reporting obligations under Title IX and the Clery Act, and how each intersects with FERPA. The chart shows that although the requirements of Title IX and the Clery Act may differ in some ways, they don't conflict.
- **The Departments of Education and Justice have entered into an agreement clarifying each agency's role vis-à-vis Title IX.** OCR and the Justice Department's Civil Rights Division (CRT) both enforce Title IX. To increase coordination and strengthen enforcement, the agencies have entered into a formal memorandum of understanding.²⁰
- **The Department of Education offices responsible for Title IX and Clery Act enforcement have also entered into an agreement clarifying their respective roles.** As noted, the Federal Student Aid (FSA) office is responsible for Clery Act compliance, whereas OCR enforces Title IX. Sometimes, their efforts overlap. To clarify their roles and increase efficiency, FSA and OCR have formalized an agreement to ensure more efficient and effective handling of complaints and to facilitate information sharing.

Next Steps

The action steps and recommendations highlighted in this report are the initial phase of an ongoing plan. The Task Force is mindful, for instance, of the continuing challenges schools face in meeting Title IX and Clery Act requirements. We will continue to work toward solutions, clarity, and better coordination. We will also review the various laws and regulations that address sexual violence for possible regulatory or statutory improvements, and seek new resources to enhance enforcement. Also, campus law enforcement officials have special expertise – and they should be tapped to play a more central role. We will also consider how our recommendations apply to public elementary and secondary schools – and what more we can do to help there.

Our work continues.

¹⁹ 20 U.S.C. § 1232g; 34 C.F.R. Part 99.

²⁰ See http://www.justice.gov/crt/about/cor/ED_DOJ_MOU_TitleIX-04-29-2014.pdf.

BUSINESS INSIDER

How 'Consensual' Sex Got A Freshman Kicked Out Of College And Started A Huge Debate



PETER JACOBS

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Mike Nudelman/Business Insider

Occidental College is a small liberal arts school in the Eagle Rock area of Los Angeles that for years was best known as the institution where Barack Obama used to smoke cigarettes and hang out with "Marxist professors and feminist structuralists and punk rock performance poets," as he wrote in his memoir, "[Dreams from My Father](#)."

But in recent years it's become better known as a flashpoint in the campus sexual-assault crisis. An ongoing legal dispute over a drunken sexual encounter between two freshmen, which occurred one year ago last week at the college, has become a battle over how to define the terms that govern campus sexual-assault policies.

Sexual assault is a massive problem on college campuses, one that is increasingly drawing the scrutiny of the media and lawmakers, in part thanks to the tireless efforts of a new generation of campus activists determined to finally bring the issue to light. Perhaps the most visible result has been a proposed congressional bill cosponsored by a bipartisan group of eight senators, which would create an annual anonymous survey to measure the prevalence of sexual assaults on campus and increase penalties for schools that violate government guidelines.

The majority of sexual assaults on college campuses involve unwanted contact. Typically, the victims — who may be intoxicated, under the influence of a "date-rape drug," or both — are made to have sex against their will.

The Occidental lawsuit is a rare instance where the facts of the night are not in dispute. The case was filed by a former student, referred to in court documents as John Doe, who claims he was wrongly expelled his freshman year. There's no "he said, she said."

An outside investigator hired by the college concluded that both John Doe and Jane Doe made statements indicating their consent the night they had sex.

The contact between the students appears to have been welcome, at least initially. What is in question is the nature of Jane Doe's consent: whether the woman — who was intoxicated to the point of blacking out — had the ability, according to Occidental's policy, to legitimately agree to have sex at all. Also in question is whether John Doe, also extremely drunk, violated the school's policy by failing to recognize the woman's consent was essentially meaningless as it was given while she was incapacitated.

Both John Doe and Jane Doe later said that they were the drunkest they had ever been that night.

John Doe seems to be taking the only route he can to appeal his expulsion, Stanford law professor Michele Dauber told Business Insider.

"He admits to having sex, so his only potential argument is that she didn't appear incapacitated, that he didn't know she was incapacitated, and that it was unreasonable for him to know," Dauber, who has reviewed John Doe's lawsuit and the eventual report that led to his expulsion, said.

John is one of a growing number of male students who are suing their colleges and universities after being found responsible of sexual assault and expelled or placed on involuntary leave from school. These former students claim that they have been discriminated against by college policies that appear to favor the predominately female victims.

Because the interaction between John Doe and Jane Doe appears to have begun

consensually, the case has been championed by men's-rights activists who see the accused student as a victim of a sexual-assault panic run amok.

The Occidental case is unique for another reason. College sexual-assault investigations are conducted in strict confidence. But in suing the school for discrimination, John Doe's legal team made public about 200 pages of witness statements, internal reports, and decision-rendering documents from seemingly every step of the investigation. The material offers a rare look into the efforts of a private institution to craft and enforce a sexual-assault policy not tied to any legal system.

Occidental would not comment on the pending case, other than to offer the following statement:

In accordance with College procedure, complainants and respondents in Title IX cases have the opportunity to view relevant records through a secure 'view-only' website. They are prohibited from downloading, copying, distributing or retaining those records. The investigative report was one such record in this case, and the College believes that it was removed from the 'view-only' website in violation of College policy.

According to Occidental, John Doe's lawyer has refused to answer questions about how the files were obtained. He also declined to comment to Business Insider about any aspect of the case. The documents are hosted online by a civil-liberties advocacy group called the Foundation for Individual Rights in Education (FIRE), which has also refused to remove them from its website. Although Occidental subsequently petitioned the court to have the materials sealed, a judge declined to do so, stating that the college waited too long to make its request.

These documents were the source of further controversy this summer when The Huffington Post reported that many of the witnesses whose statements were included were [being harassed online](#). One female student told The Huffington Post that she had received an email saying that she represented "what's worst about America."



[Via Flickr](#)

Occidental College's Mediterranean-inspired campus is located in Los Angeles' Eagle Rock neighborhood.

Whatever the source of the documents, no one doubts their authenticity. And they provide a valuable window into what happened at Occidental in the early-morning hours of Sept. 8, 2013, and how the college made its decision to expel John Doe. More important, they shed much-needed light on how colleges are struggling to navigate the complex issues around sexual assault at a time when the issue is as politically charged and legally fraught as it has ever been.

While we have relied on the documents in reporting this story, we have taken every effort to ensure the identities of John Doe and Jane Doe remain confidential.

With laws and college policies being scrutinized, reexamined, and furiously rewritten to keep pace with a shifting social landscape, a detailed examination of the Occidental case raises important questions about an institution's authority, and its ability, to properly protect its student victims and punish abusers.

The Basics Of The Case

In the early morning of Sept. 8, 2013, after a long night of drinking that left the students more drunk than either had ever been, two Occidental College freshmen, one male and one female, had sex. Evidence indicates that the sex appeared consensual at the time it occurred.

A week later the female student, Jane Doe, filed a complaint with Occidental, saying she'd been the victim of a sexual assault. Just over three months later, and following an intensive official college investigation, the male freshman, John Doe, was notified he had been found responsible of sexual assault and non-consensual sex and was expelled from Occidental. Weeks later, he lost an appeal to overturn the decision.

Jane told investigators she didn't remember having sex with John or understand why she appears to have voluntarily gone to his room that night with full knowledge at the time of what would likely happen.

Among the key pieces of evidence that John and his legal team are relying on are two text messages that Jane had sent before going to John's room, one to him asking if he had a condom and another to a friend from her hometown saying "I'mgoingtohave sex now" (sic).

"The thing is I have no clue what I was thinking," Jane later told investigators. "I would never have done that if I had been sober ... I don't know what was going through my head."

I would never have done that if I had been sober ... I don't know what was going through my head.

Nobody disputes that Jane had been drinking or that she had sent the texts. The question is whether she was too impaired that night to make and understand her own decisions.

The answer is far from simple. One of Jane's friends, Kelly (all student names have been changed to maintain anonymity), was interviewed by the investigators and noted the apparent contradiction:

According to Kelly, Jane Doe's demeanor did not appear as if she knew what was going on, but her text messages and her physically going to John's room seem to indicate that Jane Doe had some idea of where she was, of what was taking place, and of what would happen if she went to John's room.

If Jane did consent to sex then, was John truly responsible for disregarding that consent? Quite possibly yes.

An outside lawyer hired by Occidental to adjudicate the sexual-assault hearing found that John was impaired beyond the point where he could have understood Jane's condition but should nonetheless be held as responsible as if he had been sober.

According to the external adjudicator's report, "If a respondent did not know or should not have known that the Complainant was incapacitated at the time she engaged in conduct that demonstrated consent for sexual intercourse, a respondent does not violate the College's sexual misconduct policy."

As the report further states, "The external adjudicator finds that this level of intoxication so impaired the Respondent's ability to assess the Complainant's incapacitation that he did not have actual knowledge of the Complainant's incapacitation."

However, the adjudicator notes, the final determination as to John Doe's guilt must also take into account another clause in Occidental's sexual-assault policy, a version of which is also in use at many other colleges, which says that intoxication or incapacitation "does not diminish one's responsibility to obtain consent."

In other words, John Doe's severe level of intoxication cannot be considered a factor in

the decision. Although John Doe's judgement was determined to have been impaired, the policy required him to evaluate Jane Doe's ability to consent with the same judgment he would have employed had he been sober.

As the report puts it:

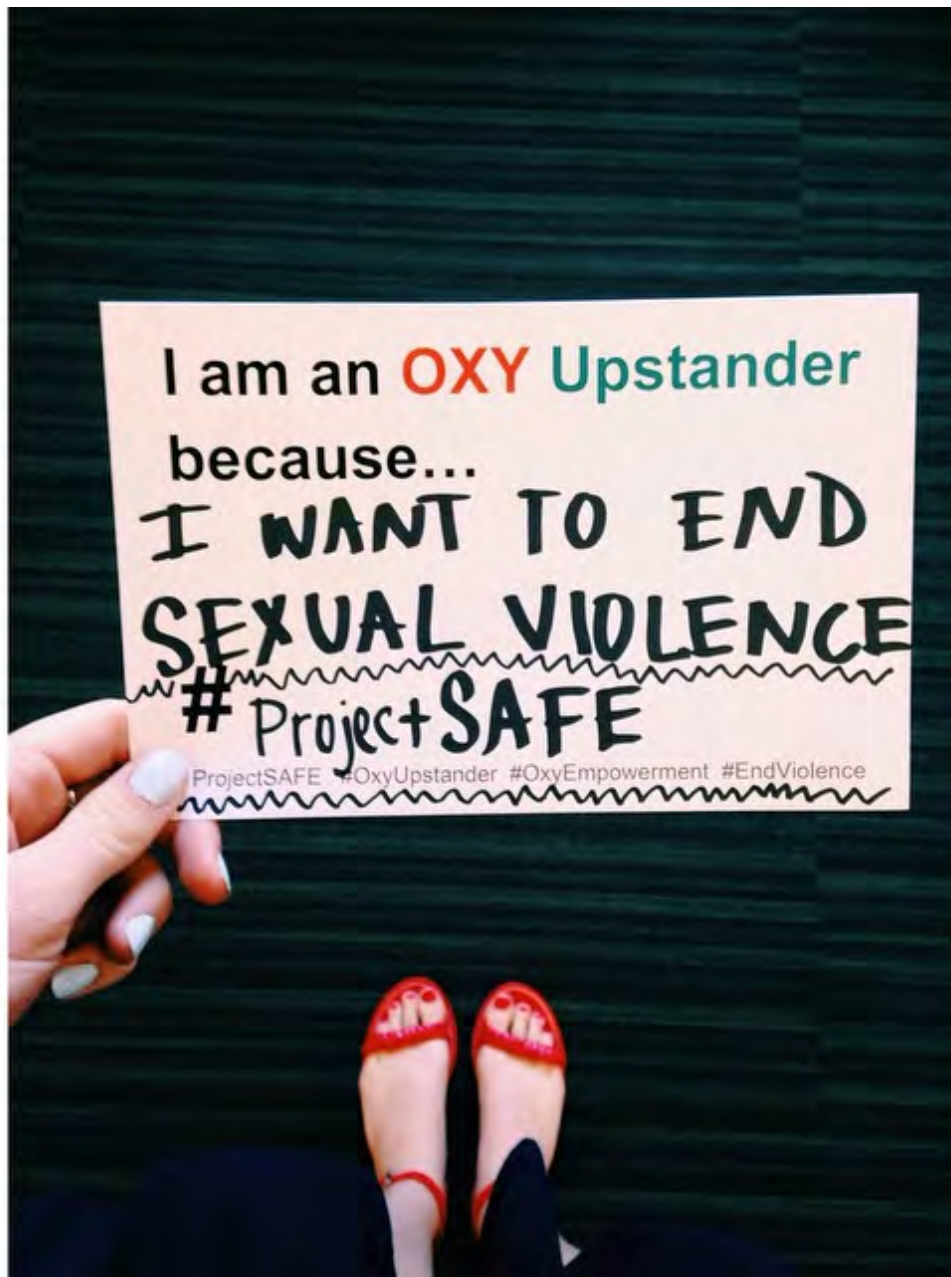
The external adjudicator finds that a sober respondent would have known that the Complainant was incapacitated [emphasis added] at the time she engaged in comments or made statements that indicated consent. Accordingly, the external adjudicator finds that the Respondent should have known that the Complainant was incapacitated.

There is considerable evidence, examined in depth below, that would lead a reasonable person to conclude that Jane Doe's actions that night were affected by the amount of alcohol she had consumed. Therefore, the external adjudicator concludes, based on Occidental's policy it was reasonable to expect John Doe to realize that Jane was too drunk to consent.

In the end, having found that "all elements of sexual assault under the College's Policy have been established," the adjudicator found John to have violated the school's sexual-misconduct policy and expelled him from Occidental.



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A National Epidemic

More and more, a necessary conversation about sexual assault on college campuses is being pushed into the public consciousness, both by national forces such as the White House — which has pressed for reforms such as campus surveys since early 2014 — and by students who feel they have been mistreated and ignored by their colleges.

According to studies cited by the White House, about one in five women will be sexually assaulted during college, an ugly number — often labeled an epidemic — that presumably all reasonable people agree needs to be remedied.

A recent legislative push spearheaded by Missouri Senator Claire McCaskill is attempting to ensure colleges are more diligent about investigating sexual-assault complaints while maintaining an open culture where students feel comfortable turning to their schools for help. This follows a 2011 "Dear Colleague" letter from the Department of Education that explicitly stated that Title IX, which prohibits discrimination based on sex, also covers sexual violence — making colleges responsible for ending sexual assault on their campuses.

Occidental College is no stranger to sexual-assault controversies. The school is one of more than 70 colleges under investigation by the Department of Education for potential Title IX violations. An in-depth [BuzzFeed feature](#) on the college's "sexual assault civil war" documented a campus in crisis. The administration reportedly retaliated against professors who had supported students' sexual-assault claims by breaking into their offices and, in one case, terminating a staff member.

BuzzFeed also detailed a large Title IX complaint filed against the school by a number of students and faculty members. The complaint, which has been updated with the accounts of more alleged victims since it was filed last year, said Occidental did not do enough to punish students found responsible of sexual assault, or to protect students who wanted to report what happened to them.

Last September, Occidental reached a monetary settlement with at least 10 of the complainants, who were represented by prominent civil-rights lawyer Gloria Allred.



AP Photo/Nick Ut

Gloria Allred and a group of Occidental College students announced a Title IX complaint against Occidental in April 2013.

A new bill passed in August by California lawmakers seeks to tighten how Occidental and other colleges in the state deal with sexual assaults on campus, proposing a controversial "affirmative consent" policy that would require students to actively give and receive

consent before engaging in any sort of sexual activity.

According to John Doe's lawsuit, and those filed by other expelled college men across the country, his guilty verdict was in part motivated by Occidental's desire to make sure it took a strong action against accused rapists. Critics of college sexual-assault policies often describe this perceived overcompensation as the "pendulum" swinging the wrong way — against men.

A Night In September

John Doe and Jane Doe lived in the same freshman dorm at Occidental, a three-story residence hall with floors separated by gender. John lived on the second floor, a male hall, and Jane lived on the floor above, a female hall.

Although the two were neighbors, they didn't meet until the second week of school, during an off-campus field trip for a class they took together. They saw each other again at a dance party "pregame" in John's dorm room that Friday, where a large group of students were drinking before Occidental's annual Septemberween party, a costume dance party for freshmen that's one of the first big social events of the year.

It's worth noting that sexual assaults tend to peak at the start of an academic year, [a period that has been dubbed the "Red Zone" by awareness advocates](#). According to multiple studies, female students are at an increased risk for sexual assault during the first few weeks of their first semester on campus.

The next night, Saturday, Sept. 7, after attending an Occidental men's soccer game, Jane and some friends made their way back to their dorm to "pregame" for the night.

In the room of her friend Brad — another freshman, who lived on the same floor as John — Jane began taking shots of lemon vodka she found in the dorm-room freezer, also mixing some of the alcohol into a small bottle of orange juice she was carrying. The students played an iPhone game that made participants guess a word displayed on their forehead. Jane told investigators she was "tipsy" but could "still kick butt at the game."

At one point Jane went upstairs to her own room to get changed. Her roommate, Anne, noted that Jane was drinking the vodka-and-orange-juice mixture but was "pretty lucid" and "was talking and walking normally."

Eventually the students made their way to a fraternity party just off campus in a residential neighborhood. While walking over, however, they learned that the party had been shut down.

Jane said it was while walking around the perimeter of campus that she first began to feel seriously intoxicated. Her friends noticed too, Jane said, and began to comment that she was being a little loud and couldn't walk straight. At one point early on in their outing, Jane slipped trying to navigate a set of steps, cutting her knee, an injury she said she didn't notice until later in the night.

Eventually, Jane was having so much difficulty walking that she needed a piggyback ride

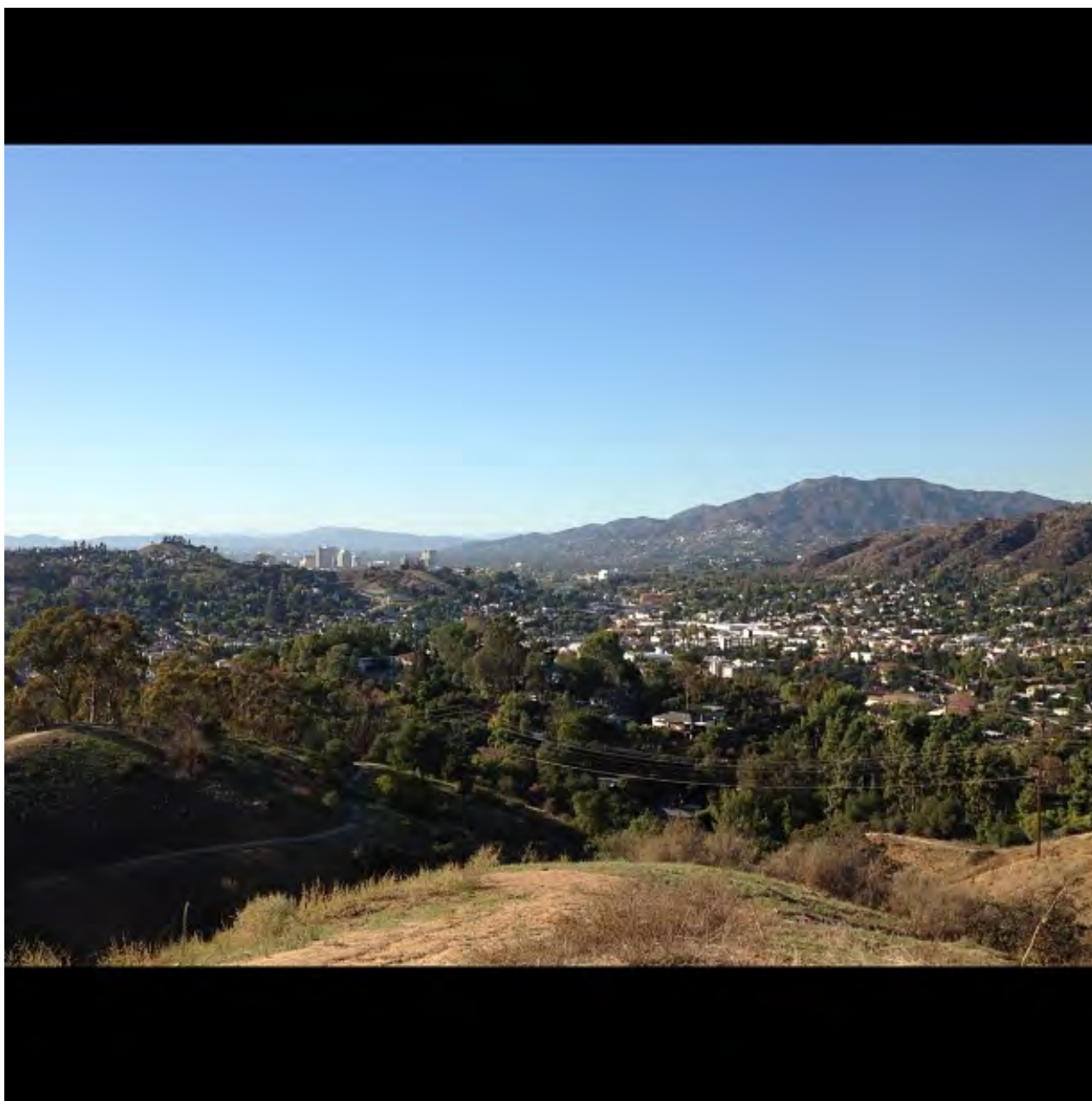
from one of her friends.

By midnight, two of Jane's friends, Kelly and David, were worried enough about her state to stay behind while the rest of the students went up to Mt. Fiji, an off-campus hill that has become a popular hangout spot near the freshman dorm. But they quickly lost track of her. She told them she was going upstairs to get something from her room and didn't return for a worrisome amount of time.



karamickvay • 29 months ago

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A daytime view from popular student hangout spot Mt. Fiji, a hill near the freshmen dorms.

Jane Doe told investigators that she did head back to her room but quickly became bored

and left to find people downstairs. "I [was] wired with energy," Jane said.

Meanwhile, as a freshman and new member of one of Occidental's athletic teams, John was participating in the annual "I-night," an initiation ceremony his attorney describes as "hazing" in the lawsuit against the college.

There's less information available about how John spent the evening, in part because he did not participate in Occidental's investigation. However, several people who were with him that night did speak to the investigators.

One of John's new teammates told a mutual friend that the freshmen members had to drink a lot of beer and a "good amount" of vodka. According to this teammate, a group of four or five freshmen — including John — had to finish a half-gallon of vodka by themselves.

According to this teammate, a group of four or five freshmen — including John — had to finish a half-gallon of vodka by themselves.

John told some friends he started drinking at 1:00 p.m. About 10 hours later, around the time he got back to his dorm, he was, his friend Curtis told the investigators, a "shit show."

John returned to his dorm just as his roommate, Shawn, was preparing to go out for the night. Shawn agreed that John was clearly intoxicated — stumbling around, slurring his words, and talking loudly. Eventually, Shawn decided to cancel his plans in order to "keep an eye on" John.

Shawn told investigators that at around midnight he went upstairs to let his friends know that he was staying in for the night. On his way back down to his room, he ran into a female student he knew from a class. She was leaning against a hallway wall on his floor, slurring her words and clearly drunk. Jane Doe.

Jane And John

According to Shawn's statement, he and John had been blasting music loud enough to hear in the hallway. Shawn told investigators that Jane Doe started walking back to his room with him, asking if there was a "kickback" there — a party. "No, John is having a dance party by himself," Shawn replied, to which Jane responded, excitedly, "Oh, John's there?"

Jane began walking ahead, and by the time Shawn got to his room, John and Jane were "in an embrace," he told investigators, "hugging and, possibly, kissing." Shawn then decided to go out for the night, after all, leaving John and Jane alone in the room.

At this point, Jane acknowledged, her memory has a "big hole," due to the amount of alcohol she had consumed. With no statement from John, we have to rely more heavily on their friends' witness statements. While accounts differ slightly, taken together, they offer what appears to be a reasonably full understanding of the sequence of events.

At the moment Jane ran into Shawn and met up with John, two of her friends — David and Kelly — were searching for her, having grown concerned about her condition. Kelly had called Jane three times and eventually Jane picked up, telling her friends she was in John's room. About five minutes had passed since they'd seen her.

Kelly told the investigators they were tracking Jane because she "did not seem like she was in a sober state ... We were trying to make sure she didn't do anything she would regret."

We were trying to make sure she didn't do anything she would regret.

As new students on campus, they had all attended an orientation during which they were implored to watch out for one another at parties. "I know it sounds corny, but I was trying to be a good person and be there for Jane Doe as much as I could," Kelly said.

When Jane's two friends found her she was alone with John in a dimly lighted dorm room with loud techno music blaring. John and Jane were dancing, and it was immediately clear to the other freshmen that both were extremely drunk.

David said John had told them about his sport team's initiation, saying he had been drinking since 1:00 p.m. and detailing the amount of alcohol he'd consumed, "as if to say, 'This is why I'm acting like I'm so crazy.'" David described John as "loud, obnoxious, kind of pushing everyone, going nuts a bit ... very bouncy, very touchy" with the two friends.

The other students joined Jane and John, although Kelly told investigators they were only in John's dorm room "to watch Jane Doe because they were worried about how drunk she was." All four freshmen began dancing and passed around a bottle of Smirnoff vodka, something that Jane said "should have burned her throat going down, but it didn't because she was so intoxicated at the time."

At one point, Jane Doe took her shirt off, continuing to dance around in just a bra — by all accounts behavior that was highly out of character. Jane later told investigators that at the time she thought she had a bandeau over her bra. David and Kelly apparently made sure she redressed.

Among Jane and her two friends, all of whom were interviewed for Occidental's report, accounts differ as to how Jane and John interacted during this half hour in the dorm room.

Jane told investigators that John interfered with her putting her shirt back on, grabbing the shirt away from Jane and grabbing Kelly's wrist when she went to help Jane. Jane also said that John pushed her on to his bed, where they made out for a while, and told her to get rid of her two friends.

Her friends remembered their time in John Doe's room differently. Kelly told the investigators that Jane "was grabbing John and trying to kiss him." The investigators note that Kelly also said that "John was 'somewhat' responsive to Jane Doe but 'also seemed pretty indifferent' to Jane Doe's advances."

John, Kelly said, "was not at all going for her ... [it was] not like he was grabbing her and

pulling her onto the bed."

Eventually, David said, Jane and John lay down on his bed together, and the two were "getting really physical." Jane, David said, "was kind of riding on top of John. Her hips were moving ... It looked like something was going down." At this point, both David and Kelly realized it was time to get Jane back to her dorm room.

Both friends agreed that John did in fact attempt to physically remove them from his room, though they didn't feel physically threatened. "I don't really understand it," Kelly told investigators. "It might have been because he didn't know us at all, which he didn't. It may not have been because he wanted us to leave so he could have sex with Jane Doe."

According to the investigators' report, Kelly "summarized the events of the 30 minutes that Kelly and David were with John and Jane Doe as: Jane Doe trying to kiss John and dance with him; Jane Doe trying to drink from the bottle of alcohol and Kelly trying to take it away; and John trying to get Kelly and David to leave his room."

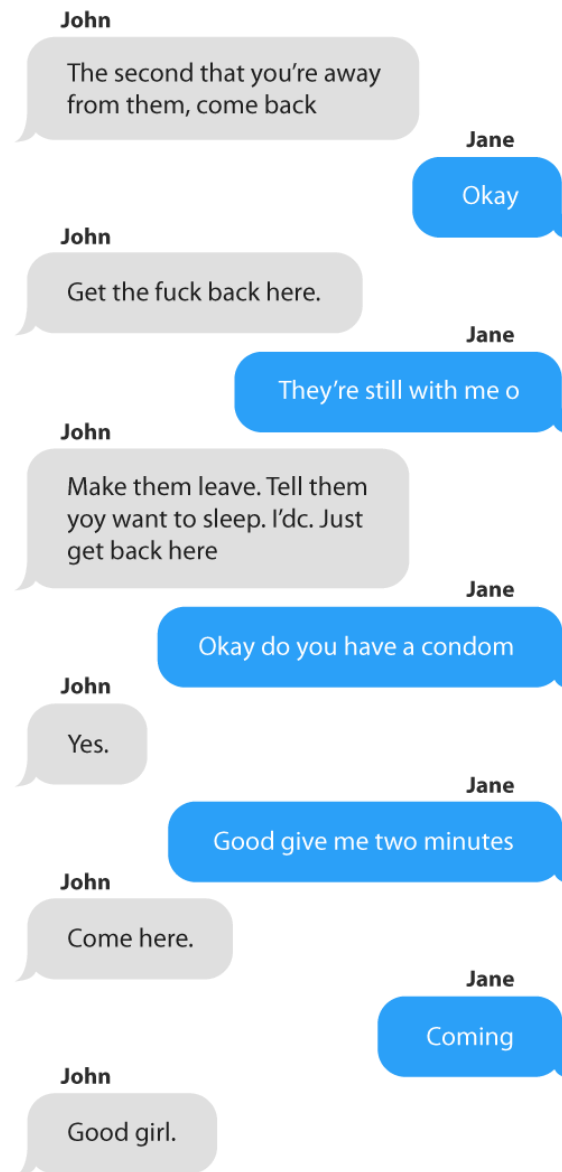
Meanwhile, Kelly and David were trying to get Jane to leave with them. When the two friends finally managed to do so, David told investigators, Jane was upset and resisted a little bit, but "at the same time, she was aware that we were doing the right thing" by taking her back to her room.

Before she left, Jane said to investigators, John told her to come back down "so he can fuck me."

Texts Precede A Meeting

When Jane and her two friends got back to her room, her roommate, Anne, was still out. According to David, Jane was "super drunk" at this point and "talking but making no sense." Her friends put Jane in bed, draped a blanket over her, and closed the door.

At this point, Jane entered into a text-message conversation with John — evidence, John's legal team says, that Jane was a willing participant in subsequent events.



Texts rendered by Business Insider

At the same time as she was texting with John, Jane sent a series of texts to a close friend from home who was at another school — "I'm wasted"; "The worlds moving"; "I'mgoingtohave sex now".

According to John Doe's lawsuit, these texts also demonstrate Jane's awareness of her actions at the time.

Jane told investigators she then realized that David was still outside her door, speaking with her residence assistant, or RA. In a series of texts with John, he laid out a plan for her to evade them, telling her to "Leave. Say you're going to the bathroom." Jane responded, "Okay."

David told investigators that Jane Doe "had only been in her room for about 30 seconds before she opened the door," gave him a hug, and went down the hall alone toward the women's bathroom. David let the floor's RA know Jane was in the bathroom and then returned to his own dorm, comfortable, he said, that the RA was looking out for her.

According to Jane, she "walked down to the hall to the bathroom, but did not enter it." Instead, she headed downstairs, "feeling excited that she had succeeded in sneaking past the bathroom," the report says.

However, Jane said, as she walked down the stairs to John's floor, she began to feel "really dizzy" and "really sick," holding on to the railing for support.

For the second time that night, John Doe's roommate, Shawn, ran into Jane Doe on his floor. She was, Shawn said, "having a hard time walking, and was stumbling."

He held Jane's hair back as she vomited into a trash can in the hallway, then led her to the men's bathroom, where she vomited again. Jane told him she felt better, Shawn said, and they went their separate ways.

Shawn told investigators that "he assumed that Jane Doe was going back to her room" and was "done for the evening."

What happened next is somewhat unclear. The only confirmation that John and Jane had sex, besides the text messages leading up to their meeting, comes from two people who walked into the dorm room while John and Jane were together.

Having left Jane in the hallway, Shawn went to go meet up with friends, but soon realized he'd forgotten his wallet and returned to the dorm room. When he opened the door, Shawn told investigators, he saw John and Jane having sex.

Curtis, another student on their floor, after being told later in the night that Jane and John were extremely drunk and alone together, went to go check on them as well. Yelling through the closed door, Curtis asked three times if Jane was OK — repeating the question, he told investigators, because she had answered "kind of unconvincingly ... [and sounded] kind of sad."

Curtis asked three times if Jane was OK — repeating the question, he told investigators, because she had answered 'kind of unconvincingly ... [and sounded] kind of sad.'

However, Curtis told investigators, after the third time Jane said she was OK, "I took her word for it."

Shortly thereafter, about 2 a.m., Shawn received a text from John giving the all clear to return to the room. Jane ran into her friend Kelly and her roommate, Anne, who helped her back to her room.

The Next Morning

On Sunday, Sept. 8, Jane woke up feeling lightheaded and dehydrated. From her text messages the night before, Jane said, she thought something may have happened with her and John, but she wasn't sure.

While in the library that Sunday, Jane received a Facebook message from Curtis, asking how she was doing. Jane told investigators this struck her as odd because she didn't remember seeing him the night before. Curtis then asked her if he could talk to her.

Meeting Jane in her dorm room, Curtis told Jane, "I think you may have slept with John." Curtis told investigators that Jane responded, "Yeah, I figure that might've happened." This is how Jane would learn she had lost her virginity.

Her reaction, as Curtis told investigators, was like "when someone expects the worst, and then [the person] hears that was what happened."

Several of Jane's friends also reported that she did not remember having had sex with John Doe.



Content unavailable

A group of students hang out at The Marketplace, an Occidental dining hall.

Whatever conclusions someone might draw about Jane's ability to consent, or about John's responsibility to determine her level of inebriation, it is hard to read about Jane's reaction to the incident without recognizing that whatever happened was a profoundly harmful experience:

Jane Doe stated that she was not going to report the incident as a rape, but she began to have more and more emotional difficulties. She stated she had difficulty concentrating, and would often 'zone out' for five or ten minutes at a time. She said she would periodically flash back to the knocking at John's door, as well as other 'random bits and pieces' from her memories of that night. She stated she was having nightmares, and intrusive thoughts. She noted that she tried to go to yoga, something which she was usually able to focus on, but found she could not concentrate. She stated, 'It honestly scared me.'

Jane Doe stated that during this period, she continued to try to remember the events of that night, stating, 'That [missing] hour still freaks me.' She said she would see people on campus who looked like John, and her 'heart would start racing,' and she would feel very frightened. When she actually saw John, she said she felt nauseous for hours. She stated, since the incident with John, navigating around corners with right angles, 'scare[d] the hell out of me [because] I don't know what is around the corner.' She said she went for a week and a half without talking to her parents, which was unusual for her.

Occidental sociology professor Danielle Dirks, whom Jane turned to in the week following the incident, told investigators she believed Jane was suffering from post-traumatic stress disorder, noting the freshman was having trouble sleeping. Additionally, the report states, "Dirks noted that Jane Doe's reluctance to call what had happened to her 'rape' was consistent with other victims of sexual assault whom Dirks has talked to on campus."

Overall, Dirks said, Jane's symptoms were like "the dozens of other survivors [of sexual assault] I have met with on campus."

From the onset of their discussions, Jane's testimony indicates, Dirks appears to have concluded that Jane was raped — telling Jane that John fit the profile of a rapist and that, from her observations, there was a pattern of male Occidental students who take advantage of drunk female freshmen.

[Jane] stated that she had learned that 90 percent of rapes are done by repeat offenders. She stated that another reason she decided to report this incident was because, based on what Jane Doe was told by Professor Dirks, John fit the profile of other rapists on campus in that he had a high GPA in high school, was his class valedictorian, was on [a sports] team, and was 'from a good family.'

In a statement to Business Insider, Dirks said that there were factual inaccuracies with how her discussions with Jane were reported:

Regarding my alleged statements on the 'profile of a rapist' at Occidental, the College's investigative report misrepresents my statements and contains factual

errors regarding my involvement in the case. Had I seen these documents prior to them being posted online, I would have sought correction at the time. When I asked the College to correct false statements made by their representatives about me, they declined to do so, citing that they were unclear on the 'wisdom and the legality' of publicly commenting on ongoing litigation. I shared my grave concerns with Occidental's president that the publication of these documents will discourage other Occidental students from reporting sexual violence and witnesses from serving in these cases.

Jane said that Dirks' counsel was not the only reason she decided to file a complaint and speak to the police. Rather it was a dawning realization of how much the incident had affected her emotionally, and the sense that John remained unconcerned.

As the report put it, "She noted that he attended his classes without difficulty, and she 'saw that he wasn't fazed by what had happened at all.'"

The Aftermath

A week after the incident, Jane Doe went to the Los Angeles Police Department to report the alleged rape. In the precinct house, she later recalled, she began crying after being told — incorrectly — by a detective that because John did not force her into his room, it was not rape. However, a week later the LAPD came to campus to let Jane Doe know they had decided to open an investigation into the alleged assault.

Almost two months later, the LAPD finished its investigation, notifying Jane Doe that there was insufficient evidence for them to charge her alleged attacker with a crime.

As noted in the police report, "Witnesses were interviewed and agreed that the victim and suspect were both drunk [and] that they were both willing participants exercising bad judgement."

The LAPD also raised an issue that would become a key part of Occidental's decision to expel John Doe: whether he was reasonably aware of Jane's condition.

More problematic is the inability to prove the suspect knew or reasonably should have known that she was prevented from resisting if she was in that state. It would be reasonable for him to conclude based on their communications and her actions that, even though she was intoxicated, she could still exercise reasonable judgement.

While the police were determining their course of action, Jane Doe also brought her complaint to Occidental's Title IX office, which hired a group of outside investigators to determine the events of the night, predominantly based on witness interviews. Their report — given to Occidental administrators on Nov. 14, about two months after Jane's original complaint — is seemingly unchallenged by any party in this case, and appears to be a thorough investigation into the facts of what happened between John Doe and Jane Doe.

Nonetheless, in the absence of an account of the actual sex act by either party, investigators had only the witness statements of third parties to work with to determine

if Jane had been sexually assaulted. And Jane's and John's friends seemed to disagree whether what happened was rape.

Jane's roommate, Anne, for instance, clearly believed her friend was raped by John. As the witness statement noted:

Anne stated that Jane Doe was correct to pursue a complaint against John. According to Anne, Jane Doe had sex that she did not remember and was intoxicated to the point of having impaired speech and not being able to control her motor skills. Anne said, 'The girl I helped that night was not my roommate in any sense.' Anne also noted the emotional toll that Jane Doe experienced following the events with John. 'It seemed pretty obvious to me that it was a rape,' Anne said.

Kelly, who told the investigators that she was with Jane for the majority of the night, said she didn't think it was that simple.

"I think Jane was just as much a part of this as John. I wouldn't say that it is was just John coming on to her, or forcing her. She could have said, 'No,' or she could have just not responded to his texts, or just not gone back down to his room," Kelly said in her witness statement.

She could have said, 'No,' or she could have just not responded to his texts, or just not gone back down to his room.

Additionally, the only person to actually witness John and Jane having sex — John's roommate, Shawn — told the investigators that based on his understanding of the school's sexual-assault policy, what he witnessed was not rape.

"Shawn volunteered his view that, based on what he saw, he did not believe a sexual assault had occurred," the report states. He testified that Jane did not seem to be resisting and appeared to be conscious when the two of them were having sex. The report continues: "Shawn noted that he had attended sexual assault prevention training during orientation, and had been told what to do if he witnessed a sexual assault. 'This didn't look like one to me,' he said."

At the core of this whole case is the arguably simple fact that John Doe was found to have broken Occidental's policy — which, as a private organization, has no obligation to set the same standards as any legal system, although it is required to maintain federal standards in processing sexual-assault allegations.

Per Occidental's policy, students are unable to consent if they are "incapacitated" — a state of being that, although often caused by alcohol, is distinct from drunk or intoxicated.

After examining all of the evidence provided by Occidental's team of outside investigators, an external adjudicator made several key determinations. First, that sexual intercourse had in fact occurred; second, that Jane Doe gave her consent; and, third, that Jane was incapacitated when she did so.

As the external adjudicator wrote:

[T]he fact that Complainant successfully navigated herself, under her own power, to the Respondent's room, indicates both that, at the time, she had an awareness of where she was and that her motor skills were sufficiently intact to enable her to walk unassisted. Those factors, however, must be considered not in isolation but along with all of the other evidence regarding the Complainant's condition during the relevant period.

The report added that Jane Doe was "incapacitated at the time she engaged in the conduct or statements that indicated she consented to sexual intercourse with the Respondent."

One final question remained: Should John Doe have known that Jane Doe was incapacitated, and thus unable to effectively consent?

Indeed he should have, the adjudicator found. Citing Occidental's policy stating that "Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, sexual violence, stalking or intimate partner violence and does not diminish one's responsibility to obtain consent," the adjudicator determined that John Doe had committed sexual assault, despite not having knowledge of Jane Doe's state at the time.



micalastevenss • 6 months ago

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An early morning shot of Occidental's campus.

It is without a doubt safer to have a policy with this sort of language than to not.

For example, one can look to the ongoing case of a former Cornell University wrestler, currently on trial in Ithaca, New York, for rape and sexual assault after he allegedly broke into a female student's off-campus house and raped her while she was asleep. According to [court documents](#) reviewed by local news site The Ithaca Voice, the wrestler's lawyers are arguing their client was too drunk to be aware of his actions and "had diminished mental capacity for perpetration of those offenses due to his intoxication."

It's indisputable that being drunk should not excuse someone for forcing himself on an unaware victim. Students are likely well served by schools' sexual-assault policies that include explicit language to this effect.

But it begins to pose a potential problem when both parties are intoxicated and consent is explicitly granted. Even if the students indicate their consent at the time, as Occidental determined Jane and John both did, they are both deemed incapable of determining the other's ability to consent, yet remain responsible for doing so.

The ongoing issue of how to determine a student's consent and intoxication is not isolated to Occidental by any means. Colleges across the country are working through their sexual-assault policies, to better protect their students and keep their rules in line with Title IX and other federal standards.

As a similar lawsuit unfolds at Duke University, [one administrator revealed](#) what some critics see as a potential double standard in the school's sexual-assault policy, according to local newspaper Indy Week.

During the trial two months ago, Duke's dean of students, Sue Wasiolek, was asked whether she would characterize a situation in which two students "got drunk to the point of incapacity, and then had sex" as their having raped each other. No, she said. Rather, "Assuming it is a male and female, it is the responsibility in the case of the male to gain consent before proceeding with sex."

Statements like this have drawn the ire of men's-rights groups and right-wing blogs, which argue that in their zeal to address the issue of sexual assault, colleges are creating an unfair double standard that penalizes male students, who are almost always the accused parties.

As [one conservative female blogger](#) on the website Chicks On The Right wrote about the Occidental John Doe suit, "Universities are now so completely overrun by rabid activists on the side of women who shriek 'RAPE,' even if they've just gotten a freaking catcall, that men are being punished unfairly."

Most reasonable parties agree that the problem of sexual assault is a serious one, and victims need to be protected, listened to, and afforded real justice, both within the legal system and under their colleges' guidelines.

The College

With all the blame going around, it also makes sense to consider what responsibility a college has for the environment it provides its students.

Both John and Jane were under the legal drinking age on the night of the incident. Both were freshmen, experiencing a measure of adult independence for the first time.

John was reportedly forced to drink by other members of an Occidental varsity team, and Jane began drinking in her freshman dorm. Over the course of the night, the two freshmen continued drinking hard alcohol in the dorm.

Several years ago, to better comply with federal standards, the college made an effort to crack down on underage drinking. After years of lax policing, in 2009 Occidental referred 389 cases of alcohol violation to law enforcement, as opposed to 31 the year before. According to U.S. News, that was triple the average for the top 50 liberal arts schools.

As one [student told the school newspaper](#), The Occidental Weekly, "[The administration] used to pour the alcohol, now they write you up."

Meanwhile, for years, Occidental maintained a tradition of hosting multiple campus-wide parties. The themes ranged from "Splatter" (during which students were doused with colored paint) and "Sex on the Beach" (renamed "Shipwrecked" because of the number of sexual-assault complaints associated with the previous iteration) to "Toga" (arguably the school's signature social event, a late-night toga party).



Screenshot Via YouTube

Occidental College students dressed up in costume for a campus-wide Halloween party in 2012.

As Occidental amped up its campaign against student intoxication the past few years, these parties came under intense scrutiny.

The school-sponsored "Splatter" party in 2011 led to eight alcohol-related hospitalizations — seven Occidental students and one visiting high-school student — all of whom were under the legal drinking age. After local news outlets picked up the story, Occidental's president, Jonathan Veitch, blasted the hospitalized students themselves, [telling The Weekly](#) that such behavior could affect the school's ranking and potential donations.

"I hope the [student] response is embarrassment," he added, "because you bring shame on the institution when you're seen on the six o'clock news in that kind of state."



Via Flickr

Occidental College President Jonathan Veitch.

Many students, however, insisted the school's restrictive policies were contributing to the problem, The Weekly reported, "encourag[ing] unsupervised binge drinking in the dorms."

Veitch dismissed this line of thought.

"Of all the things that have been suggested, self-policing is likely to be the most effective tool if students embrace it," he said. "If we have a zero-tolerance policy and it's not working, then what more can one do short of ratcheting up the consequences on the students that are involved?"

Occidental's director of communications, Jim Tranquada, also seemed to throw up his hands, insisting in a statement to The Weekly that "You can lead a horse to water but you can't make it drink, and if people don't care and aren't interested in being part of the conversation, then ... We make stuff available online, we talk to the Weekly, we send out emails which most students don't read because most students don't check email."

Common sense, though, suggested that the students had a point. For instance, a new rule preventing partygoers from exiting and returning — presumably to curb drinking outside the venue — apparently led some students to binge beforehand as a way of making sure they would remain drunk throughout the festivities. Another rule mandated that students who were caught drinking at the party or were obviously intoxicated were kicked out of the event, which meant that rather than receiving care they sometimes wound up wandering the campus alone. And on the whole, the zero-tolerance policy acted as a powerful deterrent for students who'd broken the rules from seeking medical help — for themselves or their friends.

The issue came to a head last year, during John Doe's and Jane Doe's first semester on campus, when six students were hospitalized at "Toga," leading to a [yearlong](#)

moratorium on campus-wide dances.

"We can't continue to have these events if we're constantly calling 911," Tamara Rice, Occidental's assistant dean of students and director of student life, told The Weekly.

We can't continue to have these events if we're constantly calling 911.

Business Insider reached out to Occidental to ask whether the college had made any changes with regard to how it enforces these rules or discourages binge drinking by students. A college representative provided us with the following statement:

Occidental is not alone in dealing with this issue. According to the National Institute on Alcohol Abuse and Alcoholism, four out of five college students drink, and of those, half report binge drinking. Underage drinking is against the law, and Occidental, like other colleges, is obliged to enforce the law. In addition to our preventative education programs, we continue to talk to our students about alcohol, including the student members of our Alcohol and Other Drugs Committee.

Alcohol is not the cause of sexual assaults. Perpetrators are responsible for sexual assaults. Although research shows that alcohol is associated with the majority of sexual assault cases on college campuses, the use of alcohol or drugs is not a defense for sexual misconduct, as Occidental's policy makes clear. In addition, Occidental's policy provides for amnesty for alcohol and drug violations when reporting sexual misconduct (one of the provisions of U.S. Sen. Claire McCaskill's pending bill).

Occidental's policy on underage drinking is clear: "Students under the age of 21 may not possess or consume alcohol. A state of intoxication implies consumption." Possession and consumption of alcohol in a freshman dorm is also against Occidental's policy. More broadly, the policy says, "Organized drinking games or items used for the purpose of quick or mass consumption of alcohol are prohibited. Public intoxication and events where there is pressure or an expectation to consume excessive amounts of alcohol are prohibited."

Given the ongoing problems with student drinking, it's hard not to wonder: Whom do these policies protect, the college or the students?

Strong action against sex abusers is welcome — and long overdue. But until Occidental and other colleges adopt effective policies that transform the binge-drinking culture that prevails on so many campuses, it seems altogether likely that the problem of sexual abuse will persist, and attending college will remain a dangerous experience for many young people.

One Year Later

As the summer came to an end, a new crop of freshmen began arriving with their parents on Occidental's campus, met their new roommates, and began moving into their dorm rooms, brimming with excitement and eager to start their adult lives. But like first-year students across the country, many will undoubtedly face social situations they can't possibly be prepared for.



torio326 • 7 months ago

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Members of the Occidental Class of 2018 walk towards Thorne Hall for convocation.

These students and their parents rightfully expect that the policies their college put in place will protect them, especially as they explore the increased freedom that college offers.

For both John Doe and Jane Doe, a one-night encounter that took place within their first few weeks on campus a year ago will color the remainder of their college careers, and perhaps their lives. The Los Angeles Times [reported that both of the students have struggled](#) since the case was resolved by Occidental. As of June, John had not been able

to secure admission at another college. Jane had left Occidental, citing PTSD.

There's no doubt alcohol fueled the actions of both students that night. Occidental determined that both were unable to understand the consequences of their decisions.

But one can't help wondering: Is it even proper for the college to judge a situation that it arguably helped facilitate or, at the very least, could have done more to prevent?

For now, the answer to that question, and many others, remains murky. But the students are likely drawing their own lessons from what happened. On the evening of Monday, Sept. 9, less than 48 hours after John Doe's encounter with Jane, he and his roommate exchanged a series of text messages:

John: "Bro I feel like such shit."

Shawn: "Why?"

John: "I'm sick and I have an ear infection, but that's not even it. Just about everything this weekend. I'm borderline furious with myself"

Shawn: "Did you fuck up this weekend? Absolutely. But can you learn from your mistakes? Totally. This is college and it's all about navigating through it and testing the waters which inevitably will entail fuck ups. But if you make it a learning experience, it's not as bad."

Clarification: An earlier version of this article stated that Occidental's external adjudicator found John Doe to be incapacitated. In fact, the external adjudicator was never asked whether John Doe was incapacitated and never made this determination.

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UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

Questions and Answers on Title IX and Sexual Violence¹

Title IX of the Education Amendments of 1972 ("Title IX")² is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities. All public and private elementary and secondary schools, school districts, colleges, and universities receiving any federal financial assistance (hereinafter "schools", "recipients", or "recipient institutions") must comply with Title IX.³

On April 4, 2011, the Office for Civil Rights (OCR) in the U.S. Department of Education issued a Dear Colleague Letter on student-on-student sexual harassment and sexual violence ("DCL").⁴ The DCL explains a school's responsibility to respond promptly and effectively to sexual violence against students in accordance with the requirements of Title IX.⁵ Specifically, the DCL:

- Provides guidance on the unique concerns that arise in sexual violence cases, such as a school's independent responsibility under Title IX to investigate (apart from any separate criminal investigation by local police) and address sexual violence.

¹ The Department has determined that this document is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf. The Office for Civil Rights (OCR) issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202.

² 20 U.S.C. § 1681 *et seq.*

³ Throughout this document the term "schools" refers to recipients of federal financial assistance that operate educational programs or activities. For Title IX purposes, at the elementary and secondary school level, the recipient generally is the school district; and at the postsecondary level, the recipient is the individual institution of higher education. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that the law's requirements conflict with the organization's religious tenets. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a). For application of this provision to a specific institution, please contact the appropriate OCR regional office.

⁴ Available at <http://www.ed.gov/ocr/letters/colleague-201104.html>.

⁵ Although this document and the DCL focus on sexual violence, the legal principles generally also apply to other forms of sexual harassment.

- Provides guidance and examples about key Title IX requirements and how they relate to sexual violence, such as the requirements to publish a policy against sex discrimination, designate a Title IX coordinator, and adopt and publish grievance procedures.
- Discusses proactive efforts schools can take to prevent sexual violence.
- Discusses the interplay between Title IX, the Family Educational Rights and Privacy Act (“FERPA”),⁶ and the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (“Clery Act”)⁷ as it relates to a complainant’s right to know the outcome of his or her complaint, including relevant sanctions imposed on the perpetrator.
- Provides examples of remedies and enforcement strategies that schools and OCR may use to respond to sexual violence.

The DCL supplements OCR’s *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, issued in 2001 (*2001 Guidance*).⁸ The *2001 Guidance* discusses in detail the Title IX requirements related to sexual harassment of students by school employees, other students, or third parties. The DCL and the *2001 Guidance* remain in full force and we recommend reading these Questions and Answers in conjunction with these documents.

In responding to requests for technical assistance, OCR has determined that elementary and secondary schools and postsecondary institutions would benefit from additional guidance concerning their obligations under Title IX to address sexual violence as a form of sexual harassment. The following questions and answers further clarify the legal requirements and guidance articulated in the DCL and the *2001 Guidance* and include examples of proactive efforts schools can take to prevent sexual violence and remedies schools may use to end such conduct, prevent its recurrence, and address its effects. In order to gain a complete understanding of these legal requirements and recommendations, this document should be read in full.

Authorized by

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights

April 29, 2014

⁶ 20 U.S.C. §1232g; 34 C.F.R. Part 99.

⁷ 20 U.S.C. §1092(f).

⁸ Available at <http://www.ed.gov/ocr/docs/shguide.html>.

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A. A School's Obligation to Respond to Sexual Violence

A-1. What is sexual violence?

Answer: Sexual violence, as that term is used in this document and prior OCR guidance, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (*e.g.*, due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

A-2. How does Title IX apply to student-on-student sexual violence?

Answer: Under Title IX, federally funded schools must ensure that students of all ages are not denied or limited in their ability to participate in or benefit from the school's educational programs or activities on the basis of sex. A school violates a student's rights under Title IX regarding student-on-student sexual violence when the following conditions are met: (1) the alleged conduct is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's educational program, *i.e.* creates a hostile environment; and (2) the school, upon notice, fails to take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.⁹

A-3. How does OCR determine if a hostile environment has been created?

Answer: As discussed more fully in OCR's *2001 Guidance*, OCR considers a variety of related factors to determine if a hostile environment has been created; and also considers the conduct in question from both a subjective and an objective perspective. Specifically, OCR's standards require that the conduct be evaluated from the perspective of a reasonable person in the alleged victim's position, considering all the circumstances. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. Indeed, a single or isolated incident of sexual violence may create a hostile environment.

⁹ This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. See *2001 Guidance* at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. See *Davis v. Monroe Cnty Bd. of Educ.*, 526 U.S. 629, 643 (1999).

A-4. When does OCR consider a school to have notice of student-on-student sexual violence?

Answer: OCR deems a school to have notice of student-on-student sexual violence if a responsible employee knew, or in the exercise of reasonable care should have known, about the sexual violence. See question D-2 regarding who is a responsible employee.

A school can receive notice of sexual violence in many different ways. Some examples of notice include: a student may have filed a grievance with or otherwise informed the school's Title IX coordinator; a student, parent, friend, or other individual may have reported an incident to a teacher, principal, campus law enforcement, staff in the office of student affairs, or other responsible employee; or a teacher or dean may have witnessed the sexual violence.

The school may also receive notice about sexual violence in an indirect manner, from sources such as a member of the local community, social networking sites, or the media. In some situations, if the school knows of incidents of sexual violence, the exercise of reasonable care should trigger an investigation that would lead to the discovery of additional incidents. For example, if school officials receive a credible report that a student has perpetrated several acts of sexual violence against different students, that pattern of conduct should trigger an inquiry as to whether other students have been subjected to sexual violence by that student. In other cases, the pervasiveness of the sexual violence may be widespread, openly practiced, or well-known among students or employees. In those cases, OCR may conclude that the school should have known of the hostile environment. In other words, if the school would have found out about the sexual violence had it made a proper inquiry, knowledge of the sexual violence will be imputed to the school even if the school failed to make an inquiry. A school's failure to take prompt and effective corrective action in such cases (as described in questions G-1 to G-3 and H-1 to H-3) would violate Title IX even if the student did not use the school's grievance procedures or otherwise inform the school of the sexual violence.

A-5. What are a school's basic responsibilities to address student-on-student sexual violence?

Answer: When a school knows or reasonably should know of possible sexual violence, it must take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions discussed in Section E). If an investigation reveals that sexual violence created a hostile environment, the school must then take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its

effects. But a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.

Title IX requires a school to protect the complainant and ensure his or her safety as necessary, including taking interim steps before the final outcome of any investigation.¹⁰ The school should take these steps promptly once it has notice of a sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. If the school determines that the sexual violence occurred, the school must continue to take these steps to protect the complainant and ensure his or her safety, as necessary. The school should also ensure that the complainant is aware of any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement. For additional information on interim measures, see questions G-1 to G-3.

If a school delays responding to allegations of sexual violence or responds inappropriately, the school's own inaction may subject the student to a hostile environment. If it does, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately. For example, if a school's ignoring of a student's complaints of sexual assault by a fellow student results in the complaining student having to remain in classes with the other student for several weeks and the complaining student's grades suffer because he or she was unable to concentrate in these classes, the school may need to permit the complaining student to retake the classes without an academic or financial penalty (in addition to any other remedies) in order to address the effects of the sexual violence.

A-6. Does Title IX cover employee-on-student sexual violence, such as sexual abuse of children?

Answer: Yes. Although this document and the DCL focus on student-on-student sexual violence, Title IX also protects students from other forms of sexual harassment (including sexual violence and sexual abuse), such as sexual harassment carried out by school employees. Sexual harassment by school employees can include unwelcome sexual advances; requests for sexual favors; and other verbal, nonverbal, or physical conduct of a sexual nature, including but not limited to sexual activity. Title IX's prohibition against

¹⁰ Throughout this document, unless otherwise noted, the term "complainant" refers to the student who allegedly experienced the sexual violence.

sexual harassment generally does not extend to legitimate nonsexual touching or other nonsexual conduct. But in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment. For example, a teacher repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment. Early signs of inappropriate behavior with a child can be the key to identifying and preventing sexual abuse by school personnel.

A school's Title IX obligations regarding sexual harassment by employees can, in some instances, be greater than those described in this document and the DCL. Recipients should refer to OCR's *2001 Guidance* for further information about Title IX obligations regarding harassment of students by school employees. In addition, many state and local laws have mandatory reporting requirements for schools working with minors. Recipients should be careful to satisfy their state and local legal obligations in addition to their Title IX obligations, including training to ensure that school employees are aware of their obligations under such state and local laws and the consequences for failing to satisfy those obligations.

With respect to sexual activity in particular, OCR will always view as unwelcome and nonconsensual sexual activity between an adult school employee and an elementary school student or any student below the legal age of consent in his or her state. In cases involving a student who meets the legal age of consent in his or her state, there will still be a strong presumption that sexual activity between an adult school employee and a student is unwelcome and nonconsensual. When a school is on notice that a school employee has sexually harassed a student, it is responsible for taking prompt and effective steps reasonably calculated to end the sexual harassment, eliminate the hostile environment, prevent its recurrence, and remedy its effects. Indeed, even if a school was not on notice, the school is nonetheless responsible for remedying any effects of the sexual harassment on the student, as well as for ending the sexual harassment and preventing its recurrence, when the employee engaged in the sexual activity in the context of the employee's provision of aid, benefits, or services to students (*e.g.*, teaching, counseling, supervising, advising, or transporting students).

A school should take steps to protect its students from sexual abuse by its employees. It is therefore imperative for a school to develop policies prohibiting inappropriate conduct by school personnel and procedures for identifying and responding to such conduct. For example, this could include implementing codes of conduct, which might address what is commonly known as grooming – a desensitization strategy common in adult educator sexual misconduct. Such policies and procedures can ensure that students, parents, and

school personnel have clear guidelines on what are appropriate and inappropriate interactions between adults and students in a school setting or in school-sponsored activities. Additionally, a school should provide training for administrators, teachers, staff, parents, and age-appropriate classroom information for students to ensure that everyone understands what types of conduct are prohibited and knows how to respond when problems arise.¹¹

B. Students Protected by Title IX

B-1. Does Title IX protect all students from sexual violence?

Answer: Yes. Title IX protects all students at recipient institutions from sex discrimination, including sexual violence. Any student can experience sexual violence: from elementary to professional school students; male and female students; straight, gay, lesbian, bisexual and transgender students; part-time and full-time students; students with and without disabilities; and students of different races and national origins.

B-2. How should a school handle sexual violence complaints in which the complainant and the alleged perpetrator are members of the same sex?

Answer: A school's obligation to respond appropriately to sexual violence complaints is the same irrespective of the sex or sexes of the parties involved. Title IX protects all students from sexual violence, regardless of the sex of the alleged perpetrator or complainant, including when they are members of the same sex. A school must investigate and resolve allegations of sexual violence involving parties of the same sex using the same procedures and standards that it uses in all complaints involving sexual violence.

Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation. Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a school's obligations. Indeed, lesbian, gay, bisexual, and transgender (LGBT) youth report high rates of sexual harassment and sexual violence. A school should investigate and resolve allegations of sexual violence regarding LGBT students using the same procedures and standards that it

¹¹ For additional informational on training please see the Department of Education's Resource and Emergency Management for Schools Technical Assistance Center – Adult Sexual Misconduct in Schools: Prevention and Management Training, available at http://rem.s.ed.gov/Docs/ASM_Marketing_Flyer.pdf.

uses in all complaints involving sexual violence. The fact that incidents of sexual violence may be accompanied by anti-gay comments or be partly based on a student's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy those instances of sexual violence.

If a school's policies related to sexual violence include examples of particular types of conduct that violate the school's prohibition on sexual violence, the school should consider including examples of same-sex conduct. In addition, a school should ensure that staff are capable of providing culturally competent counseling to all complainants. Thus, a school should ensure that its counselors and other staff who are responsible for receiving and responding to complaints of sexual violence, including investigators and hearing board members, receive appropriate training about working with LGBT and gender-nonconforming students and same-sex sexual violence. See questions J-1 to J-4 for additional information regarding training.

Gay-straight alliances and similar student-initiated groups can also play an important role in creating safer school environments for LGBT students. On June 14, 2011, the Department issued guidance about the rights of student-initiated groups in public secondary schools under the Equal Access Act. That guidance is available at <http://www2.ed.gov/policy/elsec/guid/secletter/110607.html>.

B-3. What issues may arise with respect to students with disabilities who experience sexual violence?

Answer: When students with disabilities experience sexual violence, federal civil rights laws other than Title IX may also be relevant to a school's responsibility to investigate and address such incidents.¹² Certain students require additional assistance and support. For example, students with intellectual disabilities may need additional help in learning about sexual violence, including a school's sexual violence education and prevention programs, what constitutes sexual violence and how students can report incidents of sexual

¹² OCR enforces two civil rights laws that prohibit disability discrimination. Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits disability discrimination by public or private entities that receive federal financial assistance, and Title II of the American with Disabilities Act of 1990 (Title II) prohibits disability discrimination by all state and local public entities, regardless of whether they receive federal funding. See 29 U.S.C. § 794 and 34 C.F.R. part 104; 42 U.S.C. § 12131 *et seq.* and 28 C.F.R. part 35. OCR and the U.S. Department of Justice (DOJ) share the responsibility of enforcing Title II in the educational context. The Department of Education's Office of Special Education Programs in the Office of Special Education and Rehabilitative Services administers Part B of the Individuals with Disabilities Education Act (IDEA). 20 U.S.C. 1400 *et seq.* and 34 C.F.R. part 300. IDEA provides financial assistance to states, and through them to local educational agencies, to assist in providing special education and related services to eligible children with disabilities ages three through twenty-one, inclusive.

violence. In addition, students with disabilities who experience sexual violence may require additional services and supports, including psychological services and counseling services. Postsecondary students who need these additional services and supports can seek assistance from the institution's disability resource office.

A student who has not been previously determined to have a disability may, as a result of experiencing sexual violence, develop a mental health-related disability that could cause the student to need special education and related services. At the elementary and secondary education level, this may trigger a school's child find obligations under IDEA and the evaluation and placement requirements under Section 504, which together require a school to evaluate a student suspected of having a disability to determine if he or she has a disability that requires special education or related aids and services.¹³

A school must also ensure that any school reporting forms, information, or training about sexual violence be provided in a manner that is accessible to students and employees with disabilities, for example, by providing electronically-accessible versions of paper forms to individuals with print disabilities, or by providing a sign language interpreter to a deaf individual attending a training. See question J-4 for more detailed information on student training.

B-4. What issues arise with respect to international students and undocumented students who experience sexual violence?

Answer: Title IX protects all students at recipient institutions in the United States regardless of national origin, immigration status, or citizenship status.¹⁴ A school should ensure that all students regardless of their immigration status, including undocumented students and international students, are aware of their rights under Title IX. A school must also ensure that any school reporting forms, information, or training about sexual violence be provided in a manner accessible to students who are English language learners. OCR recommends that a school coordinate with its international office and its undocumented student program coordinator, if applicable, to help communicate information about Title IX in languages that are accessible to these groups of students. OCR also encourages schools to provide foreign national complainants with information about the U nonimmigrant status and the T nonimmigrant status. The U nonimmigrant status is set

¹³ See 34 C.F.R. §§ 300.8; 300.111; 300.201; 300.300-300.311 (IDEA); 34 C.F.R. §§ 104.3(j) and 104.35 (Section 504). Schools must comply with applicable consent requirements with respect to evaluations. See 34 C.F.R. § 300.300.

¹⁴ OCR enforces Title VI of the Civil Rights Act of 1964, which prohibits discrimination by recipients of federal financial assistance on the basis of race, color, or national origin. 42 U.S.C. § 2000d.

aside for victims of certain crimes who have suffered substantial mental or physical abuse as a result of the crime and are helpful to law enforcement agency in the investigation or prosecution of the qualifying criminal activity.¹⁵ The T nonimmigrant status is available for victims of severe forms of human trafficking who generally comply with a law enforcement agency in the investigation or prosecution of the human trafficking and who would suffer extreme hardship involving unusual and severe harm if they were removed from the United States.¹⁶

A school should be mindful that unique issues may arise when a foreign student on a student visa experiences sexual violence. For example, certain student visas require the student to maintain a full-time course load (generally at least 12 academic credit hours per term), but a student may need to take a reduced course load while recovering from the immediate effects of the sexual violence. OCR recommends that a school take steps to ensure that international students on student visas understand that they must typically seek prior approval of the designated school official (DSO) for student visas to drop below a full-time course load. A school may also want to encourage its employees involved in handling sexual violence complaints and counseling students who have experienced sexual violence to approach the DSO on the student's behalf if the student wishes to drop below a full-time course load. OCR recommends that a school take steps to ensure that its employees who work with international students, including the school's DSO, are trained on the school's sexual violence policies and that employees involved in handling sexual violence complaints and counseling students who have experienced sexual violence are aware of the special issues that international students may encounter. See questions J-1 to J-4 for additional information regarding training.

A school should also be aware that threatening students with deportation or invoking a student's immigration status in an attempt to intimidate or deter a student from filing a Title IX complaint would violate Title IX's protections against retaliation. For more information on retaliation see question K-1.

¹⁵ For more information on the U nonimmigrant status, see <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/questions-answers-victims-criminal-activity-u-nonimmigrant-status>.

¹⁶ For more information on the T nonimmigrant status, see <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>.

B-5. How should a school respond to sexual violence when the alleged perpetrator is not affiliated with the school?

Answer: The appropriate response will differ depending on the level of control the school has over the alleged perpetrator. For example, if an athlete or band member from a visiting school sexually assaults a student at the home school, the home school may not be able to discipline or take other direct action against the visiting athlete or band member. However (and subject to the confidentiality provisions discussed in Section E), it should conduct an inquiry into what occurred and should report the incident to the visiting school and encourage the visiting school to take appropriate action to prevent further sexual violence. The home school should also notify the student of any right to file a complaint with the alleged perpetrator's school or local law enforcement. The home school may also decide not to invite the visiting school back to its campus.

Even though a school's ability to take direct action against a particular perpetrator may be limited, the school must still take steps to provide appropriate remedies for the complainant and, where appropriate, the broader school population. This may include providing support services for the complainant, and issuing new policy statements making it clear that the school does not tolerate sexual violence and will respond to any reports about such incidents. For additional information on interim measures see questions G-1 to G-3.

C. Title IX Procedural Requirements

Overview

C-1. What procedures must a school have in place to prevent sexual violence and resolve complaints?

Answer: The Title IX regulations outline three key procedural requirements. Each school must:

(1) disseminate a notice of nondiscrimination (see question C-2);¹⁷

(2) designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX (see questions C-3 to C-4);¹⁸ and

¹⁷ 34 C.F.R. § 106.9.

¹⁸ *Id.* § 106.8(a).

(3) adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee sex discrimination complaints (see questions C-5 to C-6).¹⁹

These requirements apply to all forms of sex discrimination and are particularly important for preventing and effectively responding to sexual violence.

Procedural requirements under other federal laws may also apply to complaints of sexual violence, including the requirements of the Clery Act.²⁰ For additional information about the procedural requirements in the Clery Act, please see <http://www2.ed.gov/admins/lead/safety/campus.html>.

Notice of Nondiscrimination

C-2. What information must be included in a school's notice of nondiscrimination?

Answer: The notice of nondiscrimination must state that the school does not discriminate on the basis of sex in its education programs and activities, and that it is required by Title IX not to discriminate in such a manner. The notice must state that questions regarding Title IX may be referred to the school's Title IX coordinator or to OCR. The school must notify all of its students and employees of the name or title, office address, telephone number, and email address of the school's designated Title IX coordinator.²¹

Title IX Coordinator

C-3. What are a Title IX coordinator's responsibilities?

Answer: A Title IX coordinator's core responsibilities include overseeing the school's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. This means that the Title IX coordinator must have knowledge of the requirements of Title IX, of the school's own policies and procedures on sex discrimination, and of all complaints raising Title IX issues throughout the school. To accomplish this, subject to the exemption for school counseling employees discussed in question E-3, the Title IX coordinator must be informed of all

¹⁹ *Id.* § 106.8(b).

²⁰ All postsecondary institutions participating in the Higher Education Act's Title IV student financial assistance programs must comply with the Clery Act.

²¹ For more information on notices of nondiscrimination, please see OCR's Notice of Nondiscrimination (August 2010), available at <http://www.ed.gov/ocr/docs/nondisc.pdf>.

reports and complaints raising Title IX issues, even if the report or complaint was initially filed with another individual or office or if the investigation will be conducted by another individual or office. The school should ensure that the Title IX coordinator is given the training, authority, and visibility necessary to fulfill these responsibilities.

Because the Title IX coordinator must have knowledge of all Title IX reports and complaints at the school, this individual (when properly trained) is generally in the best position to evaluate a student's request for confidentiality in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students. A school may determine, however, that another individual should perform this role. For additional information on confidentiality requests, see questions E-1 to E-4. If a school relies in part on its disciplinary procedures to meet its Title IX obligations, the Title IX coordinator should review the disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX as discussed in question C-5.

In addition to these core responsibilities, a school may decide to give its Title IX coordinator additional responsibilities, such as: providing training to students, faculty, and staff on Title IX issues; conducting Title IX investigations, including investigating facts relevant to a complaint, and determining appropriate sanctions against the perpetrator and remedies for the complainant; determining appropriate interim measures for a complainant upon learning of a report or complaint of sexual violence; and ensuring that appropriate policies and procedures are in place for working with local law enforcement and coordinating services with local victim advocacy organizations and service providers, including rape crisis centers. A school must ensure that its Title IX coordinator is appropriately trained in all areas over which he or she has responsibility. The Title IX coordinator or designee should also be available to meet with students as needed.

If a school designates more than one Title IX coordinator, the school's notice of nondiscrimination and Title IX grievance procedures should describe each coordinator's responsibilities, and one coordinator should be designated as having ultimate oversight responsibility.

C-4. Are there any employees who should not serve as the Title IX coordinator?

Answer: Title IX does not categorically preclude particular employees from serving as Title IX coordinators. However, Title IX coordinators should not have other job responsibilities that may create a conflict of interest. Because some complaints may raise issues as to whether or how well the school has met its Title IX obligations, designating

the same employee to serve both as the Title IX coordinator and the general counsel (which could include representing the school in legal claims alleging Title IX violations) poses a serious risk of a conflict of interest. Other employees whose job responsibilities may conflict with a Title IX coordinator's responsibilities include Directors of Athletics, Deans of Students, and any employee who serves on the judicial/hearing board or to whom an appeal might be made. Designating a full-time Title IX coordinator will minimize the risk of a conflict of interest.

Grievance Procedures

C-5. Under Title IX, what elements should be included in a school's procedures for responding to complaints of sexual violence?

Answer: Title IX requires that a school adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints of sex discrimination, including sexual violence. In evaluating whether a school's grievance procedures satisfy this requirement, OCR will review all aspects of a school's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

- (1) notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;
- (2) application of the grievance procedures to complaints filed by students or on their behalf alleging sexual violence carried out by employees, other students, or third parties;
- (3) provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;
- (4) designated and reasonably prompt time frames for the major stages of the complaint process (see question F-8);
- (5) written notice to the complainant and alleged perpetrator of the outcome of the complaint (see question H-3); and
- (6) assurance that the school will take steps to prevent recurrence of any sexual violence and remedy discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the school processes complaints, a school's Title IX grievance procedures should also explicitly include the following in writing, some of which themselves are mandatory obligations under Title IX:

- (1) a statement of the school's jurisdiction over Title IX complaints;
- (2) adequate definitions of sexual harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment;
- (3) reporting policies and protocols, including provisions for confidential reporting;
- (4) identification of the employee or employees responsible for evaluating requests for confidentiality;
- (5) notice that Title IX prohibits retaliation;
- (6) notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
- (7) notice of available interim measures that may be taken to protect the student in the educational setting;
- (8) the evidentiary standard that must be used (preponderance of the evidence) (*i.e.*, more likely than not that sexual violence occurred) in resolving a complaint;
- (9) notice of potential remedies for students;
- (10) notice of potential sanctions against perpetrators; and
- (11) sources of counseling, advocacy, and support.

For more information on interim measures, see questions G-1 to G-3.

The rights established under Title IX must be interpreted consistently with any federally guaranteed due process rights. Procedures that ensure the Title IX rights of the complainant, while at the same time according any federally guaranteed due process to both parties involved, will lead to sound and supportable decisions. Of course, a school should ensure that steps to accord any due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant.

A school's procedures and practices will vary in detail, specificity, and components, reflecting differences in the age of its students, school size and administrative structure, state or local legal requirements (*e.g.*, mandatory reporting requirements for schools working with minors), and what it has learned from past experiences.

C-6. Is a school required to use separate grievance procedures for sexual violence complaints?

Answer: No. Under Title IX, a school may use student disciplinary procedures, general Title IX grievance procedures, sexual harassment procedures, or separate procedures to resolve sexual violence complaints. However, any procedures used for sexual violence complaints, including disciplinary procedures, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution (as discussed in question C-5), including applying the preponderance of the evidence standard of review. As discussed in question C-3, the Title IX coordinator should review any process used to resolve complaints of sexual violence to ensure it complies with requirements for prompt and equitable resolution of these complaints. When using disciplinary procedures, which are often focused on the alleged perpetrator and can take considerable time, a school should be mindful of its obligation to provide interim measures to protect the complainant in the educational setting. For more information on timeframes and interim measures, see questions F-8 and G-1 to G-3.

D. Responsible Employees and Reporting²²

D-1. Which school employees are obligated to report incidents of possible sexual violence to school officials?

Answer: Under Title IX, whether an individual is obligated to report incidents of alleged sexual violence generally depends on whether the individual is a responsible employee of the school. A responsible employee must report incidents of sexual violence to the Title IX coordinator or other appropriate school designee, subject to the exemption for school counseling employees discussed in question E-3. This is because, as discussed in question A-4, a school is obligated to address sexual violence about which a responsible employee knew or should have known. As explained in question C-3, the Title IX coordinator must be informed of all reports and complaints raising Title IX issues, even if the report or

²² This document addresses only Title IX's reporting requirements. It does not address requirements under the Clery Act or other federal, state, or local laws, or an individual school's code of conduct.

complaint was initially filed with another individual or office, subject to the exemption for school counseling employees discussed in question E-3.

D-2. Who is a “responsible employee”?

Answer: According to OCR’s *2001 Guidance*, a responsible employee includes any employee: who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty.²³

A school must make clear to all of its employees and students which staff members are responsible employees so that students can make informed decisions about whether to disclose information to those employees. A school must also inform all employees of their own reporting responsibilities and the importance of informing complainants of: the reporting obligations of responsible employees; complainants’ option to request confidentiality and available confidential advocacy, counseling, or other support services; and complainants’ right to file a Title IX complaint with the school and to report a crime to campus or local law enforcement.

Whether an employee is a responsible employee will vary depending on factors such as the age and education level of the student, the type of position held by the employee, and consideration of both formal and informal school practices and procedures. For example, while it may be reasonable for an elementary school student to believe that a custodial staff member or cafeteria worker has the authority or responsibility to address student misconduct, it is less reasonable for a college student to believe that a custodial staff member or dining hall employee has this same authority.

As noted in response to question A-4, when a responsible employee knows or reasonably should know of possible sexual violence, OCR deems a school to have notice of the sexual violence. The school must take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions discussed in Section E), and, if the school determines that sexual violence created a hostile environment, the school must then take appropriate steps to address the situation. The

²³ The Supreme Court held that a school will only be liable for money damages in a private lawsuit where there is actual notice to a school official with the authority to address the alleged discrimination and take corrective action. *Gebser v. Lago Vista Ind. Sch. Dist.*, 524 U.S. 274, 290 (1998), and *Davis*, 524 U.S. at 642. The concept of a “responsible employee” under OCR’s guidance for administrative enforcement of Title IX is broader.

school has this obligation regardless of whether the student, student's parent, or a third party files a formal complaint. For additional information on a school's responsibilities to address student-on-student sexual violence, see question A-5. For additional information on training for school employees, see questions J-1 to J-3.

D-3. What information is a responsible employee obligated to report about an incident of possible student-on-student sexual violence?

Answer: Subject to the exemption for school counseling employees discussed in question E-3, a responsible employee must report to the school's Title IX coordinator, or other appropriate school designee, all relevant details about the alleged sexual violence that the student or another person has shared and that the school will need to determine what occurred and to resolve the situation. This includes the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location. A school must make clear to its responsible employees to whom they should report an incident of alleged sexual violence.

To ensure compliance with these reporting obligations, it is important for a school to train its responsible employees on Title IX and the school's sexual violence policies and procedures. For more information on appropriate training for school employees, see question J-1 to J-3.

D-4. What should a responsible employee tell a student who discloses an incident of sexual violence?

Answer: Before a student reveals information that he or she may wish to keep confidential, a responsible employee should make every effort to ensure that the student understands: (i) the employee's obligation to report the names of the alleged perpetrator and student involved in the alleged sexual violence, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator or other appropriate school officials, (ii) the student's option to request that the school maintain his or her confidentiality, which the school (*e.g.*, Title IX coordinator) will consider, and (iii) the student's ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services (*e.g.*, sexual assault resource centers, campus health centers, pastoral counselors, and campus mental health centers). As discussed in questions E-1 and E-2, if the student requests confidentiality, the Title IX coordinator or other appropriate school designee responsible for evaluating requests for confidentiality should make every effort to respect this request

and should evaluate the request in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students.

D-5. If a student informs a resident assistant/advisor (RA) that he or she was subjected to sexual violence by a fellow student, is the RA obligated under Title IX to report the incident to school officials?

Answer: As discussed in questions D-1 and D-2, for Title IX purposes, whether an individual is obligated under Title IX to report alleged sexual violence to the school's Title IX coordinator or other appropriate school designee generally depends on whether the individual is a responsible employee.

The duties and responsibilities of RAs vary among schools, and, therefore, a school should consider its own policies and procedures to determine whether its RAs are responsible employees who must report incidents of sexual violence to the Title IX coordinator or other appropriate school designee.²⁴ When making this determination, a school should consider if its RAs have the general authority to take action to redress misconduct or the duty to report misconduct to appropriate school officials, as well as whether students could reasonably believe that RAs have this authority or duty. A school should also consider whether it has determined and clearly informed students that RAs are generally available for confidential discussions and do not have the authority or responsibility to take action to redress any misconduct or to report any misconduct to the Title IX coordinator or other appropriate school officials. A school should pay particular attention to its RAs' obligations to report other student violations of school policy (e.g., drug and alcohol violations or physical assault). If an RA is required to report other misconduct that violates school policy, then the RA would be considered a responsible employee obligated to report incidents of sexual violence that violate school policy.

If an RA is a responsible employee, the RA should make every effort to ensure that *before* the student reveals information that he or she may wish to keep confidential, the student understands the RA's reporting obligation and the student's option to request that the school maintain confidentiality. It is therefore important that schools widely disseminate policies and provide regular training clearly identifying the places where students can seek confidential support services so that students are aware of this information. The RA

²⁴ Postsecondary institutions should be aware that, regardless of whether an RA is a responsible employee under Title IX, RAs are considered "campus security authorities" under the Clery Act. A school's responsibilities in regard to crimes reported to campus security authorities are discussed in the Department's regulations on the Clery Act at 34 C.F.R. § 668.46.

should also explain to the student (again, before the student reveals information that he or she may wish to keep confidential) that, although the RA must report the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location to the Title IX coordinator or other appropriate school designee, the school will protect the student's confidentiality to the greatest extent possible. Prior to providing information about the incident to the Title IX coordinator or other appropriate school designee, the RA should consult with the student about how to protect his or her safety and the details of what will be shared with the Title IX coordinator. The RA should explain to the student that reporting this information to the Title IX coordinator or other appropriate school designee does not necessarily mean that a formal complaint or investigation under the school's Title IX grievance procedure must be initiated if the student requests confidentiality. As discussed in questions E-1 and E-2, if the student requests confidentiality, the Title IX coordinator or other appropriate school designee responsible for evaluating requests for confidentiality should make every effort to respect this request and should evaluate the request in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students.

Regardless of whether a reporting obligation exists, all RAs should inform students of their right to file a Title IX complaint with the school and report a crime to campus or local law enforcement. If a student discloses sexual violence to an RA who is a responsible employee, the school will be deemed to have notice of the sexual violence even if the student does not file a Title IX complaint. Additionally, all RAs should provide students with information regarding on-campus resources, including victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. RAs should also be familiar with local rape crisis centers or other off-campus resources and provide this information to students.

E. Confidentiality and a School's Obligation to Respond to Sexual Violence

E-1. How should a school respond to a student's request that his or her name not be disclosed to the alleged perpetrator or that no investigation or disciplinary action be pursued to address the alleged sexual violence?

Answer: Students, or parents of minor students, reporting incidents of sexual violence sometimes ask that the students' names not be disclosed to the alleged perpetrators or that no investigation or disciplinary action be pursued to address the alleged sexual violence. OCR strongly supports a student's interest in confidentiality in cases involving sexual violence. There are situations in which a school must override a student's request

for confidentiality in order to meet its Title IX obligations; however, these instances will be limited and the information should only be shared with individuals who are responsible for handling the school's response to incidents of sexual violence. Given the sensitive nature of reports of sexual violence, a school should ensure that the information is maintained in a secure manner. A school should be aware that disregarding requests for confidentiality can have a chilling effect and discourage other students from reporting sexual violence. In the case of minors, state mandatory reporting laws may require disclosure, but can generally be followed without disclosing information to school personnel who are not responsible for handling the school's response to incidents of sexual violence.²⁵

Even if a student does not specifically ask for confidentiality, to the extent possible, a school should only disclose information regarding alleged incidents of sexual violence to individuals who are responsible for handling the school's response. To improve trust in the process for investigating sexual violence complaints, a school should notify students of the information that will be disclosed, to whom it will be disclosed, and why. Regardless of whether a student complainant requests confidentiality, a school must take steps to protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. For additional information on interim measures see questions G-1 to G-3.

For Title IX purposes, if a student requests that his or her name not be revealed to the alleged perpetrator or asks that the school not investigate or seek action against the alleged perpetrator, the school should inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator. The school should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. This includes retaliatory actions taken by the school and school officials. When a school knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate

²⁵ The school should be aware of the alleged student perpetrator's right under the Family Educational Rights and Privacy Act ("FERPA") to request to inspect and review information about the allegations if the information directly relates to the alleged student perpetrator and the information is maintained by the school as an education record. In such a case, the school must either redact the complainant's name and all identifying information before allowing the alleged perpetrator to inspect and review the sections of the complaint that relate to him or her, or must inform the alleged perpetrator of the specific information in the complaint that are about the alleged perpetrator. See 34 C.F.R. § 99.12(a) The school should also make complainants aware of this right and explain how it might affect the school's ability to maintain complete confidentiality.

and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and ensure his or her safety as necessary. See question K-1 regarding retaliation.

If the student still requests that his or her name not be disclosed to the alleged perpetrator or that the school not investigate or seek action against the alleged perpetrator, the school will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. As discussed in question C-3, the Title IX coordinator is generally in the best position to evaluate confidentiality requests. Because schools vary widely in size and administrative structure, OCR recognizes that a school may reasonably determine that an employee other than the Title IX coordinator, such as a sexual assault response coordinator, dean, or other school official, is better suited to evaluate such requests. Addressing the needs of a student reporting sexual violence while determining an appropriate institutional response requires expertise and attention, and a school should ensure that it assigns these responsibilities to employees with the capability and training to fulfill them. For example, if a school has a sexual assault response coordinator, that person should be consulted in evaluating requests for confidentiality. The school should identify in its Title IX policies and procedures the employee or employees responsible for making such determinations.

If the school determines that it can respect the student's request not to disclose his or her identity to the alleged perpetrator, it should take all reasonable steps to respond to the complaint consistent with the request. Although a student's request to have his or her name withheld may limit the school's ability to respond fully to an individual allegation of sexual violence, other means may be available to address the sexual violence. There are steps a school can take to limit the effects of the alleged sexual violence and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the student complainant. Examples include providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees; changing and publicizing the school's policies on sexual violence; and conducting climate surveys regarding sexual violence. In instances affecting many students, an alleged perpetrator can be put on notice of allegations of harassing behavior and be counseled appropriately without revealing, even indirectly, the identity of the student complainant. A school must also take immediate action as necessary to protect the student while keeping the identity of the student confidential. These actions may include providing support services to the student and changing living arrangements or course schedules, assignments, or tests.

E-2. What factors should a school consider in weighing a student's request for confidentiality?

Answer: When weighing a student's request for confidentiality that could preclude a meaningful investigation or potential discipline of the alleged perpetrator, a school should consider a range of factors.

These factors include circumstances that suggest there is an increased risk of the alleged perpetrator committing additional acts of sexual violence or other violence (e.g., whether there have been other sexual violence complaints about the same alleged perpetrator, whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence, whether the alleged perpetrator threatened further sexual violence or other violence against the student or others, and whether the sexual violence was committed by multiple perpetrators). These factors also include circumstances that suggest there is an increased risk of future acts of sexual violence under similar circumstances (e.g., whether the student's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group). Other factors that should be considered in assessing a student's request for confidentiality include whether the sexual violence was perpetrated with a weapon; the age of the student subjected to the sexual violence; and whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

A school should take requests for confidentiality seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. For example, if the school has credible information that the alleged perpetrator has committed one or more prior rapes, the balance of factors would compel the school to investigate the allegation of sexual violence, and if appropriate, pursue disciplinary action in a manner that may require disclosure of the student's identity to the alleged perpetrator. If the school determines that it must disclose a student's identity to an alleged perpetrator, it should inform the student prior to making this disclosure. In these cases, it is also especially important for schools to take whatever interim measures are necessary to protect the student and ensure the safety of other students. If a school has a sexual assault response coordinator, that person should be consulted in identifying safety risks and interim measures that are necessary to protect the student. In the event the student requests that the school inform the perpetrator that the student asked the school not to investigate or seek discipline, the school should honor this request and inform the alleged perpetrator that the school made the decision to go forward. For additional information on interim measures see questions G-1 to G-3. Any school officials responsible for

discussing safety and confidentiality with students should be trained on the effects of trauma and the appropriate methods to communicate with students subjected to sexual violence. See questions J-1 to J-3.

On the other hand, if, for example, the school has no credible information about prior sexual violence committed by the alleged perpetrator and the alleged sexual violence was not perpetrated with a weapon or accompanied by threats to repeat the sexual violence against the complainant or others or part of a larger pattern at a given location or by a particular group, the balance of factors would likely compel the school to respect the student's request for confidentiality. In this case the school should still take all reasonable steps to respond to the complaint consistent with the student's confidentiality request and determine whether interim measures are appropriate or necessary. Schools should be mindful that traumatic events such as sexual violence can result in delayed decisionmaking by a student who has experienced sexual violence. Hence, a student who initially requests confidentiality might later request that a full investigation be conducted.

E-3. What are the reporting responsibilities of school employees who provide or support the provision of counseling, advocacy, health, mental health, or sexual assault-related services to students who have experienced sexual violence?

Answer: OCR does not require campus mental-health counselors, pastoral counselors, social workers, psychologists, health center employees, or any other person with a professional license requiring confidentiality, or who is supervised by such a person, to report, without the student's consent, incidents of sexual violence to the school in a way that identifies the student. Although these employees may have responsibilities that would otherwise make them responsible employees for Title IX purposes, OCR recognizes the importance of protecting the counselor-client relationship, which often requires confidentiality to ensure that students will seek the help they need.

Professional counselors and pastoral counselors whose official responsibilities include providing mental-health counseling to members of the school community are not required by Title IX to report *any* information regarding an incident of alleged sexual violence to the Title IX coordinator or other appropriate school designee.²⁶

²⁶ The exemption from reporting obligations for pastoral and professional counselors under Title IX is consistent with the Clery Act. For additional information on reporting obligations under the Clery Act, see Office of Postsecondary Education, *Handbook for Campus Safety and Security Reporting* (2011), available at <http://www2.ed.gov/admins/lead/safety/handbook.pdf>. Similar to the Clery Act, for Title IX purposes, a pastoral counselor is a person who is associated with a religious order or denomination, is recognized by that religious

OCR recognizes that some people who provide assistance to students who experience sexual violence are not professional or pastoral counselors. They include all individuals who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women's centers, or health centers ("non-professional counselors or advocates"), including front desk staff and students. OCR wants students to feel free to seek their assistance and therefore interprets Title IX to give schools the latitude not to require these individuals to report incidents of sexual violence in a way that identifies the student without the student's consent.²⁷ These non-professional counselors or advocates are valuable sources of support for students, and OCR strongly encourages schools to designate these individuals as confidential sources.

Pastoral and professional counselors and non-professional counselors or advocates should be instructed to inform students of their right to file a Title IX complaint with the school and a separate complaint with campus or local law enforcement. In addition to informing students about campus resources for counseling, medical, and academic support, these persons should also indicate that they are available to assist students in filing such complaints. They should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. This includes retaliatory actions taken by the school and school officials. When a school knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and ensure his or her safety as necessary.

In order to identify patterns or systemic problems related to sexual violence, a school should collect aggregate data about sexual violence incidents from non-professional counselors or advocates in their on-campus sexual assault centers, women's centers, or

order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor. A professional counselor is a person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of his or her license or certification. This definition applies even to professional counselors who are not employees of the school, but are under contract to provide counseling at the school. This includes individuals who are not yet licensed or certified as a counselor, but are acting in that role under the supervision of an individual who is licensed or certified. An example is a Ph.D. counselor-trainee acting under the supervision of a professional counselor at the school.

²⁷ Postsecondary institutions should be aware that an individual who is counseling students, but who does not meet the Clery Act definition of a pastoral or professional counselor, is not exempt from being a campus security authority if he or she otherwise has significant responsibility for student and campus activities. See fn. 24.

health centers. Such individuals should report only general information about incidents of sexual violence such as the nature, date, time, and general location of the incident and should take care to avoid reporting personally identifiable information about a student. Non-professional counselors and advocates should consult with students regarding what information needs to be withheld to protect their identity.

E-4. Is a school required to investigate information regarding sexual violence incidents shared by survivors during public awareness events, such as “Take Back the Night”?

Answer: No. OCR wants students to feel free to participate in preventive education programs and access resources for survivors. Therefore, public awareness events such as “Take Back the Night” or other forums at which students disclose experiences with sexual violence are not considered notice to the school for the purpose of triggering an individual investigation unless the survivor initiates a complaint. The school should instead respond to these disclosures by reviewing sexual assault policies, creating campus-wide educational programs, and conducting climate surveys to learn more about the prevalence of sexual violence at the school. Although Title IX does not require the school to investigate particular incidents discussed at such events, the school should ensure that survivors are aware of any available resources, including counseling, health, and mental health services. To ensure that the entire school community understands their Title IX rights related to sexual violence, the school should also provide information at these events on Title IX and how to file a Title IX complaint with the school, as well as options for reporting an incident of sexual violence to campus or local law enforcement.

F. Investigations and Hearings

Overview

F-1. What elements should a school’s Title IX investigation include?

Answer: The specific steps in a school’s Title IX investigation will vary depending on the nature of the allegation, the age of the student or students involved, the size and administrative structure of the school, state or local legal requirements (including mandatory reporting requirements for schools working with minors), and what it has learned from past experiences.

For the purposes of this document the term “investigation” refers to the process the school uses to resolve sexual violence complaints. This includes the fact-finding investigation and any hearing and decision-making process the school uses to determine: (1) whether or not the conduct occurred; and, (2) if the conduct occurred, what actions

the school will take to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, which may include imposing sanctions on the perpetrator and providing remedies for the complainant and broader student population.

In all cases, a school's Title IX investigation must be adequate, reliable, impartial, and prompt and include the opportunity for both parties to present witnesses and other evidence. The investigation may include a hearing to determine whether the conduct occurred, but Title IX does not necessarily require a hearing.²⁸ Furthermore, neither Title IX nor the DCL specifies who should conduct the investigation. It could be the Title IX coordinator, provided there are no conflicts of interest, but it does not have to be. All persons involved in conducting a school's Title IX investigations must have training or experience in handling complaints of sexual violence and in the school's grievance procedures. For additional information on training, see question J-3.

When investigating an incident of alleged sexual violence for Title IX purposes, to the extent possible, a school should coordinate with any other ongoing school or criminal investigations of the incident and establish appropriate fact-finding roles for each investigator. A school should also consider whether information can be shared among the investigators so that complainants are not unnecessarily required to give multiple statements about a traumatic event. If the investigation includes forensic evidence, it may be helpful for a school to consult with local or campus law enforcement or a forensic expert to ensure that the evidence is correctly interpreted by school officials. For additional information on working with campus or local law enforcement see question F-3.

If a school uses its student disciplinary procedures to meet its Title IX obligation to resolve complaints of sexual violence promptly and equitably, it should recognize that imposing sanctions against the perpetrator, without additional remedies, likely will not be sufficient to eliminate the hostile environment and prevent recurrence as required by Title IX. If a school typically processes complaints of sexual violence through its disciplinary process and that process, including any investigation and hearing, meets the Title IX requirements discussed above and enables the school to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, then the school may use that process to satisfy its Title IX obligations and does not need to conduct a separate Title IX investigation. As discussed in question C-3, the Title IX coordinator should review the disciplinary process

²⁸ This answer addresses only Title IX's requirements for investigations. It does not address legal rights or requirements under the U.S. Constitution, the Clery Act, or other federal, state, or local laws.

to ensure that it: (1) complies with the prompt and equitable requirements of Title IX; (2) allows for appropriate interim measures to be taken to protect the complainant during the process; and (3) provides for remedies to the complainant and school community where appropriate. For more information about interim measures, see questions G-1 to G-3, and about remedies, see questions H-1 and H-2.

The investigation may include, but is not limited to, conducting interviews of the complainant, the alleged perpetrator, and any witnesses; reviewing law enforcement investigation documents, if applicable; reviewing student and personnel files; and gathering and examining other relevant documents or evidence. While a school has flexibility in how it structures the investigative process, for Title IX purposes, a school must give the complainant any rights that it gives to the alleged perpetrator. A balanced and fair process that provides the same opportunities to both parties will lead to sound and supportable decisions.²⁹ Specifically:

- Throughout the investigation, the parties must have an equal opportunity to present relevant witnesses and other evidence.
- The school must use a preponderance-of-the-evidence (*i.e.*, more likely than not) standard in any Title IX proceedings, including any fact-finding and hearings.
- If the school permits one party to have lawyers or other advisors at any stage of the proceedings, it must do so equally for both parties. Any school-imposed restrictions on the ability of lawyers or other advisors to speak or otherwise participate in the proceedings must also apply equally.
- If the school permits one party to submit third-party expert testimony, it must do so equally for both parties.
- If the school provides for an appeal, it must do so equally for both parties.
- Both parties must be notified, in writing, of the outcome of both the complaint and any appeal (see question H-3).

²⁹ As explained in question C-5, the parties may have certain due process rights under the U.S. Constitution.

Intersection with Criminal Investigations

F-2. What are the key differences between a school's Title IX investigation into allegations of sexual violence and a criminal investigation?

Answer: A criminal investigation is intended to determine whether an individual violated criminal law; and, if at the conclusion of the investigation, the individual is tried and found guilty, the individual may be imprisoned or subject to criminal penalties. The U.S. Constitution affords criminal defendants who face the risk of incarceration numerous protections, including, but not limited to, the right to counsel, the right to a speedy trial, the right to a jury trial, the right against self-incrimination, and the right to confrontation. In addition, government officials responsible for criminal investigations (including police and prosecutors) normally have discretion as to which complaints from the public they will investigate.

By contrast, a Title IX investigation will never result in incarceration of an individual and, therefore, the same procedural protections and legal standards are not required. Further, while a criminal investigation is initiated at the discretion of law enforcement authorities, a Title IX investigation is not discretionary; a school has a duty under Title IX to resolve complaints promptly and equitably and to provide a safe and nondiscriminatory environment for all students, free from sexual harassment and sexual violence. Because the standards for pursuing and completing criminal investigations are different from those used for Title IX investigations, the termination of a criminal investigation without an arrest or conviction does not affect the school's Title IX obligations.

Of course, criminal investigations conducted by local or campus law enforcement may be useful for fact gathering if the criminal investigation occurs within the recommended timeframe for Title IX investigations; but, even if a criminal investigation is ongoing, a school must still conduct its own Title IX investigation.

A school should notify complainants of the right to file a criminal complaint and should not dissuade a complainant from doing so either during or after the school's internal Title IX investigation. Title IX does not require a school to report alleged incidents of sexual violence to law enforcement, but a school may have reporting obligations under state, local, or other federal laws.

F-3. How should a school proceed when campus or local law enforcement agencies are conducting a criminal investigation while the school is conducting a parallel Title IX investigation?

Answer: A school should not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title IX investigation. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, it is important for a school to understand that during this brief delay in the Title IX investigation, it must take interim measures to protect the complainant in the educational setting. The school should also continue to update the parties on the status of the investigation and inform the parties when the school resumes its Title IX investigation. For additional information on interim measures see questions G-1 to G-3.

If a school delays the fact-finding portion of a Title IX investigation, the school must promptly resume and complete its fact-finding for the Title IX investigation once it learns that the police department has completed its evidence gathering stage of the criminal investigation. The school should not delay its investigation until the ultimate outcome of the criminal investigation or the filing of any charges. OCR recommends that a school work with its campus police, local law enforcement, and local prosecutor's office to learn when the evidence gathering stage of the criminal investigation is complete. A school may also want to enter into a memorandum of understanding (MOU) or other agreement with these agencies regarding the protocols and procedures for referring allegations of sexual violence, sharing information, and conducting contemporaneous investigations. Any MOU or other agreement must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably, and must comply with the Family Educational Rights and Privacy Act ("FERPA") and other applicable privacy laws.

The DCL states that in one instance a prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances. OCR understands that this example may not be representative and that the law enforcement agency's process often takes more than ten days. OCR recognizes that the length of time for evidence gathering by criminal investigators will vary depending on the specific circumstances of each case.

Off-Campus Conduct

F-4. Is a school required to process complaints of alleged sexual violence that occurred off campus?

Answer: Yes. Under Title IX, a school must process all complaints of sexual violence, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity.

A school must determine whether the alleged off-campus sexual violence occurred in the context of an education program or activity of the school; if so, the school must treat the complaint in the same manner that it treats complaints regarding on-campus conduct. In other words, if a school determines that the alleged misconduct took place in the context of an education program or activity of the school, the fact that the alleged misconduct took place off campus does not relieve the school of its obligation to investigate the complaint as it would investigate a complaint of sexual violence that occurred on campus.

Whether the alleged misconduct occurred in this context may not always be apparent from the complaint, so a school may need to gather additional information in order to make such a determination. Off-campus education programs and activities are clearly covered and include, but are not limited to: activities that take place at houses of fraternities or sororities recognized by the school; school-sponsored field trips, including athletic team travel; and events for school clubs that occur off campus (*e.g.*, a debate team trip to another school or to a weekend competition).

Even if the misconduct did not occur in the context of an education program or activity, a school must consider the effects of the off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity because students often experience the continuing effects of off-campus sexual violence while at school or in an off-campus education program or activity. The school cannot address the continuing effects of the off-campus sexual violence at school or in an off-campus education program or activity unless it processes the complaint and gathers appropriate additional information in accordance with its established procedures.

Once a school is on notice of off-campus sexual violence against a student, it must assess whether there are any continuing effects on campus or in an off-campus education program or activity that are creating or contributing to a hostile environment and, if so, address that hostile environment in the same manner in which it would address a hostile environment created by on-campus misconduct. The mere presence on campus or in an

off-campus education program or activity of the alleged perpetrator of off-campus sexual violence can have continuing effects that create a hostile environment. A school should also take steps to protect a student who alleges off-campus sexual violence from further harassment by the alleged perpetrator or his or her friends, and a school may have to take steps to protect other students from possible assault by the alleged perpetrator. In other words, the school should protect the school community in the same way it would had the sexual violence occurred on campus. Even if there are no continuing effects of the off-campus sexual violence experienced by the student on campus or in an off-campus education program or activity, the school still should handle these incidents as it would handle other off-campus incidents of misconduct or violence and consistent with any other applicable laws. For example, if a school, under its code of conduct, exercises jurisdiction over physical altercations between students that occur off campus outside of an education program or activity, it should also exercise jurisdiction over incidents of student-on-student sexual violence that occur off campus outside of an education program or activity.

Hearings³⁰

F-5. Must a school allow or require the parties to be present during an entire hearing?

Answer: If a school uses a hearing process to determine responsibility for acts of sexual violence, OCR does not require that the school allow a complainant to be present for the entire hearing; it is up to each school to make this determination. But if the school allows one party to be present for the entirety of a hearing, it must do so equally for both parties. At the same time, when requested, a school should make arrangements so that the complainant and the alleged perpetrator do not have to be present in the same room at the same time. These two objectives may be achieved by using closed circuit television or other means. Because a school has a Title IX obligation to investigate possible sexual violence, if a hearing is part of the school's Title IX investigation process, the school must not require a complainant to be present at the hearing as a prerequisite to proceed with the hearing.

³⁰ As noted in question F-1, the investigation may include a hearing to determine whether the conduct occurred, but Title IX does not necessarily require a hearing. Although Title IX does not dictate the membership of a hearing board, OCR discourages schools from allowing students to serve on hearing boards in cases involving allegations of sexual violence.

F-6. May every witness at the hearing, including the parties, be cross-examined?

Answer: OCR does not require that a school allow cross-examination of witnesses, including the parties, if they testify at the hearing. But if the school allows one party to cross-examine witnesses, it must do so equally for both parties.

OCR strongly discourages a school from allowing the parties to personally question or cross-examine each other during a hearing on alleged sexual violence. Allowing an alleged perpetrator to question a complainant directly may be traumatic or intimidating, and may perpetuate a hostile environment. A school may choose, instead, to allow the parties to submit questions to a trained third party (*e.g.*, the hearing panel) to ask the questions on their behalf. OCR recommends that the third party screen the questions submitted by the parties and only ask those it deems appropriate and relevant to the case.

F-7. May the complainant's sexual history be introduced at hearings?

Answer: Questioning about the complainant's sexual history with anyone other than the alleged perpetrator should not be permitted. Further, a school should recognize that the mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of sexual violence. The school should also ensure that hearings are conducted in a manner that does not inflict additional trauma on the complainant.

Timeframes

F-8. What stages of the investigation are included in the 60-day timeframe referenced in the DCL as the length for a typical investigation?

Answer: As noted in the DCL, the 60-calendar day timeframe for investigations is based on OCR's experience in typical cases. The 60-calendar day timeframe refers to the entire investigation process, which includes conducting the fact-finding investigation, holding a hearing or engaging in another decision-making process to determine whether the alleged sexual violence occurred and created a hostile environment, and determining what actions the school will take to eliminate the hostile environment and prevent its recurrence, including imposing sanctions against the perpetrator and providing remedies for the complainant and school community, as appropriate. Although this timeframe does not include appeals, a school should be aware that an unduly long appeals process may impact whether the school's response was prompt and equitable as required by Title IX.

OCR does not require a school to complete investigations within 60 days; rather OCR evaluates on a case-by-case basis whether the resolution of sexual violence complaints is prompt and equitable. Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct. OCR recognizes that the investigation process may take longer if there is a parallel criminal investigation or if it occurs partially during school breaks. A school may need to stop an investigation during school breaks or between school years, although a school should make every effort to try to conduct an investigation during these breaks unless so doing would sacrifice witness availability or otherwise compromise the process.

Because timeframes for investigations vary and a school may need to depart from the timeframes designated in its grievance procedures, both parties should be given periodic status updates throughout the process.

G. Interim Measures

G-1. Is a school required to take any interim measures before the completion of its investigation?

Answer: Title IX requires a school to take steps to ensure equal access to its education programs and activities and protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. The school should take these steps promptly once it has notice of a sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow the complainant to change academic and extracurricular activities or his or her living, transportation, dining, and working situation as appropriate. The school should also ensure that the complainant is aware of his or her Title IX rights and any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement. If a school does not offer these services on campus, it should enter into an MOU with a local victim services provider if possible.

Even when a school has determined that it can respect a complainant's request for confidentiality and therefore may not be able to respond fully to an allegation of sexual violence and initiate formal action against an alleged perpetrator, the school must take immediate action to protect the complainant while keeping the identity of the complainant confidential. These actions may include: providing support services to the

complainant; changing living arrangements or course schedules, assignments, or tests; and providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred.

G-2. How should a school determine what interim measures to take?

Answer: The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. A school should consider a number of factors in determining what interim measures to take, including, for example, the specific need expressed by the complainant; the age of the students involved; the severity or pervasiveness of the allegations; any continuing effects on the complainant; whether the complainant and alleged perpetrator share the same residence hall, dining hall, class, transportation, or job location; and whether other judicial measures have been taken to protect the complainant (*e.g.*, civil protection orders).

In general, when taking interim measures, schools should minimize the burden on the complainant. For example, if the complainant and alleged perpetrator share the same class or residence hall, the school should not, as a matter of course, remove the complainant from the class or housing while allowing the alleged perpetrator to remain without carefully considering the facts of the case.

G-3. If a school provides all students with access to counseling on a fee basis, does that suffice for providing counseling as an interim measure?

Answer: No. Interim measures are determined by a school on a case-by-case basis. If a school determines that it needs to offer counseling to the complainant as part of its Title IX obligation to take steps to protect the complainant while the investigation is ongoing, it must not require the complainant to pay for this service.

H. Remedies and Notice of Outcome³¹

H-1. What remedies should a school consider in a case of student-on-student sexual violence?

Answer: Effective remedial action may include disciplinary action against the perpetrator, providing counseling for the perpetrator, remedies for the complainant and others, as well as changes to the school's overall services or policies. All services needed to remedy the hostile environment should be offered to the complainant. These remedies are separate from, and in addition to, any interim measure that may have been provided prior to the conclusion of the school's investigation. In any instance in which the complainant did not take advantage of a specific service (*e.g.*, counseling) when offered as an interim measure, the complainant should still be offered, and is still entitled to, appropriate final remedies that may include services the complainant declined as an interim measure. A refusal at the interim stage does not mean the refused service or set of services should not be offered as a remedy.

If a school uses its student disciplinary procedures to meet its Title IX obligation to resolve complaints of sexual violence promptly and equitably, it should recognize that imposing sanctions against the perpetrator, without more, likely will not be sufficient to satisfy its Title IX obligation to eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects. Additional remedies for the complainant and the school community may be necessary. If the school's student disciplinary procedure does not include a process for determining and implementing these remedies for the complainant and school community, the school will need to use another process for this purpose.

Depending on the specific nature of the problem, remedies for the complainant may include, but are not limited to:

- Providing an effective escort to ensure that the complainant can move safely between classes and activities;

³¹ As explained in question A-5, if a school delays responding to allegations of sexual violence or responds inappropriately, the school's own inaction may subject the student to be subjected to a hostile environment. In this case, in addition to the remedies discussed in this section, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately.

- Ensuring the complainant and perpetrator do not share classes or extracurricular activities;
- Moving the perpetrator or complainant (if the complainant requests to be moved) to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district;
- Providing comprehensive, holistic victim services including medical, counseling and academic support services, such as tutoring;
- Arranging for the complainant to have extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty; and
- Reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the sexual violence and the misconduct that may have resulted in the complainant being disciplined.³²

Remedies for the broader student population may include, but are not limited to:

- Designating an individual from the school's counseling center who is specifically trained in providing trauma-informed comprehensive services to victims of sexual violence to be on call to assist students whenever needed;
- Training or retraining school employees on the school's responsibilities to address allegations of sexual violence and how to conduct Title IX investigations;
- Developing materials on sexual violence, which should be distributed to all students;
- Conducting bystander intervention and sexual violence prevention programs with students;
- Issuing policy statements or taking other steps that clearly communicate that the school does not tolerate sexual violence and will respond to any incidents and to any student who reports such incidents;

³² For example, if the complainant was disciplined for skipping a class in which the perpetrator was enrolled, the school should review the incident to determine if the complainant skipped class to avoid contact with the perpetrator.

- Conducting, in conjunction with student leaders, a campus climate check to assess the effectiveness of efforts to ensure that the school is free from sexual violence, and using that information to inform future proactive steps that the school will take;
- Targeted training for a group of students if, for example, the sexual violence created a hostile environment in a residence hall, fraternity or sorority, or on an athletic team; and
- Developing a protocol for working with local law enforcement as discussed in question F-3.

When a school is unable to conduct a full investigation into a particular incident (*i.e.*, when it received a general report of sexual violence without any personally identifying information), it should consider remedies for the broader student population in response.

H-2. If, after an investigation, a school finds the alleged perpetrator responsible and determines that, as part of the remedies for the complainant, it must separate the complainant and perpetrator, how should the school accomplish this if both students share the same major and there are limited course options?

Answer: If there are limited sections of required courses offered at a school and both the complainant and perpetrator are required to take those classes, the school may need to make alternate arrangements in a manner that minimizes the burden on the complainant. For example, the school may allow the complainant to take the regular sections of the courses while arranging for the perpetrator to take the same courses online or through independent study.

H-3. What information must be provided to the complainant in the notice of the outcome?

Answer: Title IX requires both parties to be notified, in writing, about the outcome of both the complaint and any appeal. OCR recommends that a school provide written notice of the outcome to the complainant and the alleged perpetrator concurrently.

For Title IX purposes, a school must inform the complainant as to whether or not it found that the alleged conduct occurred, any individual remedies offered or provided to the complainant or any sanctions imposed on the perpetrator that directly relate to the complainant, and other steps the school has taken to eliminate the hostile environment, if the school finds one to exist, and prevent recurrence. The perpetrator should not be notified of the individual remedies offered or provided to the complainant.

Sanctions that directly relate to the complainant (but that may also relate to eliminating the hostile environment and preventing recurrence) include, but are not limited to, requiring that the perpetrator stay away from the complainant until both parties graduate, prohibiting the perpetrator from attending school for a period of time, or transferring the perpetrator to another residence hall, other classes, or another school. Additional steps the school has taken to eliminate the hostile environment may include counseling and academic support services for the complainant and other affected students. Additional steps the school has taken to prevent recurrence may include sexual violence training for faculty and staff, revisions to the school's policies on sexual violence, and campus climate surveys. Further discussion of appropriate remedies is included in question H-1.

In addition to the Title IX requirements described above, the Clery Act requires, and FERPA permits, postsecondary institutions to inform the complainant of the institution's final determination and any disciplinary sanctions imposed on the perpetrator in sexual violence cases (as opposed to all harassment and misconduct covered by Title IX) not just those sanctions that directly relate to the complainant.³³

I. Appeals

I-1. What are the requirements for an appeals process?

Answer: While Title IX does not require that a school provide an appeals process, OCR does recommend that the school do so where procedural error or previously unavailable relevant evidence could significantly impact the outcome of a case or where a sanction is substantially disproportionate to the findings. If a school chooses to provide for an appeal of the findings or remedy or both, it must do so equally for both parties. The specific design of the appeals process is up to the school, as long as the entire grievance process, including any appeals, provides prompt and equitable resolutions of sexual violence complaints, and the school takes steps to protect the complainant in the educational setting during the process. Any individual or body handling appeals should be trained in the dynamics of and trauma associated with sexual violence.

If a school chooses to offer an appeals process it has flexibility to determine the type of review it will apply to appeals, but the type of review the school applies must be the same regardless of which party files the appeal.

³³ 20 U.S.C. § 1092(f) and 20 U.S.C. § 1232g(b)(6)(A).

I-2. Must an appeal be available to a complainant who receives a favorable finding but does not believe a sanction that directly relates to him or her was sufficient?

Answer: The appeals process must be equal for both parties. For example, if a school allows a perpetrator to appeal a suspension on the grounds that it is too severe, the school must also allow a complainant to appeal a suspension on the grounds that it was not severe enough. See question H-3 for more information on what must be provided to the complainant in the notice of the outcome.

J. Title IX Training, Education and Prevention³⁴

J-1. What type of training on Title IX and sexual violence should a school provide to its employees?

Answer: A school needs to ensure that responsible employees with the authority to address sexual violence know how to respond appropriately to reports of sexual violence, that other responsible employees know that they are obligated to report sexual violence to appropriate school officials, and that all other employees understand how to respond to reports of sexual violence. A school should ensure that professional counselors, pastoral counselors, and non-professional counselors or advocates also understand the extent to which they may keep a report confidential. A school should provide training to all employees likely to witness or receive reports of sexual violence, including teachers, professors, school law enforcement unit employees, school administrators, school counselors, general counsels, athletic coaches, health personnel, and resident advisors. Training for employees should include practical information about how to prevent and identify sexual violence, including same-sex sexual violence; the behaviors that may lead to and result in sexual violence; the attitudes of bystanders that may allow conduct to continue; the potential for revictimization by responders and its effect on students; appropriate methods for responding to a student who may have experienced sexual violence, including the use of nonjudgmental language; the impact of trauma on victims; and, as applicable, the person(s) to whom such misconduct must be reported. The training should also explain responsible employees' reporting obligation, including what should be included in a report and any consequences for the failure to report and the procedure for responding to students' requests for confidentiality, as well as provide the contact

³⁴ As explained earlier, although this document focuses on sexual violence, the legal principles apply to other forms of sexual harassment. Schools should ensure that any training they provide on Title IX and sexual violence also covers other forms of sexual harassment. Postsecondary institutions should also be aware of training requirements imposed under the Clery Act.

information for the school's Title IX coordinator. A school also should train responsible employees to inform students of: the reporting obligations of responsible employees; students' option to request confidentiality and available confidential advocacy, counseling, or other support services; and their right to file a Title IX complaint with the school and to report a crime to campus or local law enforcement. For additional information on the reporting obligations of responsible employees and others see questions D-1 to D-5.

There is no minimum number of hours required for Title IX and sexual violence training at every school, but this training should be provided on a regular basis. Each school should determine based on its particular circumstances how such training should be conducted, who has the relevant expertise required to conduct the training, and who should receive the training to ensure that the training adequately prepares employees, particularly responsible employees, to fulfill their duties under Title IX. A school should also have methods for verifying that the training was effective.

J-2. How should a school train responsible employees to report incidents of possible sexual harassment or sexual violence?

Answer: Title IX requires a school to take prompt and effective steps reasonably calculated to end sexual harassment and sexual violence that creates a hostile environment (*i.e.*, conduct that is sufficiently serious as to limit or deny a student's ability to participate in or benefit from the school's educational program and activity). But a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.

OCR therefore recommends that a school train responsible employees to report to the Title IX coordinator or other appropriate school official any incidents of sexual harassment or sexual violence that may violate the school's code of conduct or may create or contribute to the creation of a hostile environment. The school can then take steps to investigate and prevent any harassment or violence from recurring or escalating, as appropriate. For example, the school may separate the complainant and alleged perpetrator or conduct sexual harassment and sexual violence training for the school's students and employees. Responsible employees should understand that they do not need to determine whether the alleged sexual harassment or sexual violence actually occurred or that a hostile environment has been created before reporting an incident to the school's Title IX coordinator. Because the Title IX coordinator should have in-depth knowledge of Title IX and Title IX complaints at the school, he or she is likely to be in a better position than are other employees to evaluate whether an incident of sexual

harassment or sexual violence creates a hostile environment and how the school should respond. There may also be situations in which individual incidents of sexual harassment do not, by themselves, create a hostile environment; however when considered together, those incidents may create a hostile environment.

J-3. What type of training should a school provide to employees who are involved in implementing the school's grievance procedures?

Answer: All persons involved in implementing a school's grievance procedures (*e.g.*, Title IX coordinators, others who receive complaints, investigators, and adjudicators) must have training or experience in handling sexual violence complaints, and in the operation of the school's grievance procedures. The training should include information on working with and interviewing persons subjected to sexual violence; information on particular types of conduct that would constitute sexual violence, including same-sex sexual violence; the proper standard of review for sexual violence complaints (preponderance of the evidence); information on consent and the role drugs or alcohol can play in the ability to consent; the importance of accountability for individuals found to have committed sexual violence; the need for remedial actions for the perpetrator, complainant, and school community; how to determine credibility; how to evaluate evidence and weigh it in an impartial manner; how to conduct investigations; confidentiality; the effects of trauma, including neurobiological change; and cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds.

In rare circumstances, employees involved in implementing a school's grievance procedures may be able to demonstrate that prior training and experience has provided them with competency in the areas covered in the school's training. For example, the combination of effective prior training and experience investigating complaints of sexual violence, together with training on the school's current grievance procedures may be sufficient preparation for an employee to resolve Title IX complaints consistent with the school's grievance procedures. In-depth knowledge regarding Title IX and sexual violence is particularly helpful. Because laws and school policies and procedures may change, the only way to ensure that all employees involved in implementing the school's grievance procedures have the requisite training or experience is for the school to provide regular training to all individuals involved in implementing the school's Title IX grievance procedures even if such individuals also have prior relevant experience.

J-4. What type of training on sexual violence should a school provide to its students?

Answer: To ensure that students understand their rights under Title IX, a school should provide age-appropriate training to its students regarding Title IX and sexual violence. At the elementary and secondary school level, schools should consider whether sexual violence training should also be offered to parents, particularly training on the school's process for handling complaints of sexual violence. Training may be provided separately or as part of the school's broader training on sex discrimination and sexual harassment. However, sexual violence is a unique topic that should not be assumed to be covered adequately in other educational programming or training provided to students. The school may want to include this training in its orientation programs for new students; training for student athletes and members of student organizations; and back-to-school nights. A school should consider educational methods that are most likely to help students retain information when designing its training, including repeating the training at regular intervals. OCR recommends that, at a minimum, the following topics (as appropriate) be covered in this training:

- Title IX and what constitutes sexual violence, including same-sex sexual violence, under the school's policies;
- the school's definition of consent applicable to sexual conduct, including examples;
- how the school analyzes whether conduct was unwelcome under Title IX;
- how the school analyzes whether unwelcome sexual conduct creates a hostile environment;
- reporting options, including formal reporting and confidential disclosure options and any timeframes set by the school for reporting;
- the school's grievance procedures used to process sexual violence complaints;
- disciplinary code provisions relating to sexual violence and the consequences of violating those provisions;
- effects of trauma, including neurobiological changes;
- the role alcohol and drugs often play in sexual violence incidents, including the deliberate use of alcohol and/or other drugs to perpetrate sexual violence;
- strategies and skills for bystanders to intervene to prevent possible sexual violence;
- how to report sexual violence to campus or local law enforcement and the ability to pursue law enforcement proceedings simultaneously with a Title IX grievance; and
- Title IX's protections against retaliation.

The training should also encourage students to report incidents of sexual violence. The training should explain that students (and their parents or friends) do not need to determine whether incidents of sexual violence or other sexual harassment created a

hostile environment before reporting the incident. A school also should be aware that persons may be deterred from reporting incidents if, for example, violations of school or campus rules regarding alcohol or drugs were involved. As a result, a school should review its disciplinary policy to ensure it does not have a chilling effect on students' reporting of sexual violence offenses or participating as witnesses. OCR recommends that a school inform students that the school's primary concern is student safety, and that use of alcohol or drugs never makes the survivor at fault for sexual violence.

It is also important for a school to educate students about the persons on campus to whom they can confidentially report incidents of sexual violence. A school's sexual violence education and prevention program should clearly identify the offices or individuals with whom students can speak confidentially and the offices or individuals who can provide resources such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. It should also identify the school's responsible employees and explain that if students report incidents to responsible employees (except as noted in question E-3) these employees are required to report the incident to the Title IX coordinator or other appropriate official. This reporting includes the names of the alleged perpetrator and student involved in the sexual violence, as well as relevant facts including the date, time, and location, although efforts should be made to comply with requests for confidentiality from the complainant. For more detailed information regarding reporting and responsible employees and confidentiality, see questions D-1 to D-5 and E-1 to E-4.

K. Retaliation

K-1. Does Title IX protect against retaliation?

Answer: Yes. The Federal civil rights laws, including Title IX, make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. This means that if an individual brings concerns about possible civil rights problems to a school's attention, including publicly opposing sexual violence or filing a sexual violence complaint with the school or any State or Federal agency, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she testified, or participated in any manner, in an OCR or school's investigation or proceeding. Therefore, if a student, parent, teacher, coach, or other individual complains formally or informally about sexual violence or participates in an OCR or school's investigation or proceedings related to sexual violence, the school is prohibited from retaliating (including intimidating, threatening, coercing, or in any way

discriminating against the individual) because of the individual's complaint or participation.

A school should take steps to prevent retaliation against a student who filed a complaint either on his or her own behalf or on behalf of another student, or against those who provided information as witnesses.

Schools should be aware that complaints of sexual violence may be followed by retaliation against the complainant or witnesses by the alleged perpetrator or his or her associates. When a school knows or reasonably should know of possible retaliation by other students or third parties, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and witnesses and ensure their safety as necessary. At a minimum, this includes making sure that the complainant and his or her parents, if the complainant is in elementary or secondary school, and witnesses know how to report retaliation by school officials, other students, or third parties by making follow-up inquiries to see if there have been any new incidents or acts of retaliation, and by responding promptly and appropriately to address continuing or new problems. A school should also tell complainants and witnesses that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation, but will also take strong responsive action if it occurs.

L. First Amendment

L-1. How should a school handle its obligation to respond to sexual harassment and sexual violence while still respecting free-speech rights guaranteed by the Constitution?

Answer: The DCL on sexual violence did not expressly address First Amendment issues because it focuses on unlawful physical sexual violence, which is not speech or expression protected by the First Amendment.

However, OCR's previous guidance on the First Amendment, including the 2001 Guidance, OCR's July 28, 2003, Dear Colleague Letter on the First Amendment,³⁵ and OCR's October 26, 2010, Dear Colleague Letter on harassment and bullying,³⁶ remain fully in effect. OCR has made it clear that the laws and regulations it enforces protect students from prohibited discrimination and do not restrict the exercise of any expressive activities or speech protected under the U.S. Constitution. Therefore, when a school works to prevent

³⁵ Available at <http://www.ed.gov/ocr/firstamend.html>.

³⁶ Available at <http://www.ed.gov/ocr/letters/colleague-201010.html>.

and redress discrimination, it must respect the free-speech rights of students, faculty, and other speakers.

Title IX protects students from sex discrimination; it does not regulate the content of speech. OCR recognizes that the offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a hostile environment under Title IX. Title IX also does not require, prohibit, or abridge the use of particular textbooks or curricular materials.³⁷

M. The Clery Act and the Violence Against Women Reauthorization Act of 2013

M-1. How does the Clery Act affect the Title IX obligations of institutions of higher education that participate in the federal student financial aid programs?

Answer: Institutions of higher education that participate in the federal student financial aid programs are subject to the requirements of the Clery Act as well as Title IX. The Clery Act requires institutions of higher education to provide current and prospective students and employees, the public, and the Department with crime statistics and information about campus crime prevention programs and policies. The Clery Act requirements apply to many crimes other than those addressed by Title IX. For those areas in which the Clery Act and Title IX both apply, the institution must comply with both laws. For additional information about the Clery Act and its regulations, please see <http://www2.ed.gov/admins/lead/safety/campus.html>.

M-2. Were a school's obligations under Title IX and the DCL altered in any way by the Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, including Section 304 of that Act, which amends the Clery Act?

Answer: No. The Violence Against Women Reauthorization Act has no effect on a school's obligations under Title IX or the DCL. The Violence Against Women Reauthorization Act amended the Violence Against Women Act and the Clery Act, which are separate statutes. Nothing in Section 304 or any other part of the Violence Against Women Reauthorization Act relieves a school of its obligation to comply with the requirements of Title IX, including those set forth in these Questions and Answers, the 2011 DCL, and the *2001 Guidance*. For additional information about the Department's negotiated rulemaking related to the Violence Against Women Reauthorization Act please see <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/vawa.html>.

³⁷ 34 C.F.R. § 106.42.

N. Further Federal Guidance

N-1. Whom should I contact if I have additional questions about the DCL or OCR's other Title IX guidance?

Answer: Anyone who has questions regarding this guidance, or Title IX should contact the OCR regional office that serves his or her state. Contact information for OCR regional offices can be found on OCR's webpage at <https://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>. If you wish to file a complaint of discrimination with OCR, you may use the online complaint form available at <http://www.ed.gov/ocr/complaintintro.html> or send a letter to the OCR enforcement office responsible for the state in which the school is located. You may also email general questions to OCR at ocr@ed.gov.

N-2. Are there other resources available to assist a school in complying with Title IX and preventing and responding to sexual violence?

Answer: Yes. OCR's policy guidance on Title IX is available on OCR's webpage at <http://www.ed.gov/ocr/publications.html#TitleIX>. In addition to the April 4, 2011, Dear Colleague Letter, OCR has issued the following resources that further discuss a school's obligation to respond to allegations of sexual harassment and sexual violence:

- Dear Colleague Letter: Harassment and Bullying (October 26, 2010),
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>
- *Sexual Harassment: It's Not Academic* (Revised September 2008),
<http://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.pdf>
- *Revised Sexual Harassment Guidance: Harassment of Students by Employees, Other Students, or Third Parties* (January 19, 2001),
<http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>

In addition to guidance from OCR, a school may also find resources from the Departments of Education and Justice helpful in preventing and responding to sexual violence:

- Department of Education's Letter to Chief State School Officers on Teen Dating Violence Awareness and Prevention (February 28, 2013)
<https://www2.ed.gov/policy/gen/guid/secletter/130228.html>
- Department of Education's National Center on Safe Supportive Learning Environments
<http://safesupportivelearning.ed.gov/>
- Department of Justice, Office on Violence Against Women
<http://www.ovw.usdoj.gov/>

**REVISED SEXUAL HARASSMENT GUIDANCE:
HARASSMENT OF STUDENTS
BY SCHOOL EMPLOYEES, OTHER STUDENTS,
OR THIRD PARTIES**

TITLE IX



January 2001

**U.S. Department of Education
Office for Civil Rights**

PREAMBLE

Summary

The Assistant Secretary for Civil Rights, U.S. Department of Education (Department), issues a new document (revised guidance) that replaces the 1997 document entitled “Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties,” issued by the Office for Civil Rights (OCR) on March 13, 1997 (1997 guidance). We revised the guidance in limited respects in light of subsequent Supreme Court cases relating to sexual harassment in schools.

The revised guidance reaffirms the compliance standards that OCR applies in investigations and administrative enforcement of Title IX of the Education Amendments of 1972 (Title IX) regarding sexual harassment. The revised guidance re-grounds these standards in the Title IX regulations, distinguishing them from the standards applicable to private litigation for money damages and clarifying their regulatory basis as distinct from Title VII of the Civil Rights Act of 1964 (Title VII) agency law. In most other respects the revised guidance is identical to the 1997 guidance. Thus, we intend the revised guidance to serve the same purpose as the 1997 guidance. It continues to provide the principles that a school¹ should use to recognize and effectively respond to sexual harassment of students in its program as a condition of receiving Federal financial assistance.

Purpose and Scope of the Revised Guidance

In March 1997, we published in the Federal Register “Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties.” 62 FR 12034. We issued the guidance pursuant to our authority under Title IX, and our Title IX implementing regulations, to eliminate discrimination based on sex in education programs and activities receiving Federal financial assistance. It was grounded in longstanding legal authority establishing that sexual harassment of students can be a form of sex discrimination covered by Title IX. The guidance was the product of extensive consultation with interested parties, including students, teachers, school administrators, and researchers. We also made the document available for public comment.

Since the issuance of the 1997 guidance, the Supreme Court (Court) has issued several important decisions in sexual harassment cases, including two decisions specifically addressing sexual harassment of students under Title IX: Gebser v. Lago Vista Independent School District (Gebser), 524 U.S. 274 (1998), and Davis v. Monroe County Board of Education (Davis), 526 U.S. 629 (1999). The Court held in Gebser that a school can be liable for monetary damages if a teacher sexually harasses a student, an

¹ As in the 1997 guidance, the revised guidance uses the term “school” to refer to all schools, colleges, universities, and other educational institutions that receive Federal funds from the Department.

official who has authority to address the harassment has actual knowledge of the harassment, and that official is deliberately indifferent in responding to the harassment. In Davis, the Court announced that a school also may be liable for monetary damages if one student sexually harasses another student in the school's program and the conditions of Gebser are met.

The Court was explicit in Gebser and Davis that the liability standards established in those cases are limited to private actions for monetary damages. See, e.g., Gebser, 524 U.S. 283, and Davis, 526 U.S. at 639. The Court acknowledged, by contrast, the power of Federal agencies, such as the Department, to "promulgate and enforce requirements that effectuate [Title IX's] nondiscrimination mandate," even in circumstances that would not give rise to a claim for money damages. See, Gebser, 524 U.S. at 292.

In an August 1998 letter to school superintendents and a January 1999 letter to college and university presidents, the Secretary of Education informed school officials that the Gebser decision did not change a school's obligations to take reasonable steps under Title IX and the regulations to prevent and eliminate sexual harassment as a condition of its receipt of Federal funding. The Department also determined that, although in most important respects the substance of the 1997 guidance was reaffirmed in Gebser and Davis, certain areas of the 1997 guidance could be strengthened by further clarification and explanation of the Title IX regulatory basis for the guidance.

On November 2, 2000, we published in the Federal Register a notice requesting comments on the proposed revised guidance (62 FR 66092). A detailed explanation of the Gebser and Davis decisions, and an explanation of the proposed changes in the guidance, can be found in the preamble to the proposed revised guidance. In those decisions and a third opinion, Oncale v. Sundowner Offshore Services, Inc. (Oncale), 523 U.S. 75 (1998) (a sexual harassment case decided under Title VII), the Supreme Court confirmed several fundamental principles we articulated in the 1997 guidance. In these areas, no changes in the guidance were necessary. A notice regarding the availability of this final document appeared in the Federal Register on January 19, 2001.

Enduring Principles from the 1997 Guidance

It continues to be the case that a significant number of students, both male and female, have experienced sexual harassment, which can interfere with a student's academic performance and emotional and physical well-being. Preventing and remedying sexual harassment in schools is essential to ensuring a safe environment in which students can learn. As with the 1997 guidance, the revised guidance applies to students at every level of education. School personnel who understand their obligations under Title IX, e.g., understand that sexual harassment can be sex discrimination in violation of Title IX, are in the best position to prevent harassment and to lessen the harm to students if, despite their best efforts, harassment occurs.

One of the fundamental aims of both the 1997 guidance and the revised guidance has been to emphasize that, in addressing allegations of sexual harassment, the good judgment and common sense of teachers and school administrators are important elements of a response that meets the requirements of Title IX.

A critical issue under Title IX is whether the school recognized that sexual harassment has occurred and took prompt and effective action calculated to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. If harassment has occurred, doing nothing is always the wrong response. However, depending on the circumstances, there may be more than one right way to respond. The important thing is for school employees or officials to pay attention to the school environment and not to hesitate to respond to sexual harassment in the same reasonable, commonsense manner as they would to other types of serious misconduct.

It is also important that schools not overreact to behavior that does not rise to the level of sexual harassment. As the Department stated in the 1997 guidance, a kiss on the cheek by a first grader does not constitute sexual harassment. School personnel should consider the age and maturity of students in responding to allegations of sexual harassment.

Finally, we reiterate the importance of having well- publicized and effective grievance procedures in place to handle complaints of sex discrimination, including sexual harassment complaints. Nondiscrimination policies and procedures are required by the Title IX regulations. In fact, the Supreme Court in Gebser specifically affirmed the Department's authority to enforce this requirement administratively in order to carry out Title IX's nondiscrimination mandate. 524 U.S. at 292. Strong policies and effective grievance procedures are essential to let students and employees know that sexual harassment will not be tolerated and to ensure that they know how to report it.

Analysis of Comments Received Concerning the Proposed Revised Guidance and the Resulting Changes

In response to the Assistant Secretary's invitation to comment, OCR received approximately 11 comments representing approximately 15 organizations and individuals. Commenters provided specific suggestions regarding how the revised guidance could be clarified. Many of these suggested changes have been incorporated. Significant and recurring issues are grouped by subject and discussed in the following sections:

Distinction Between Administrative Enforcement and Private Litigation for Monetary Damages

In Gebser and Davis, the Supreme Court addressed for the first time the appropriate standards for determining when a school district is liable under Title IX for money damages in a private lawsuit brought by or on behalf of a student who has been sexually harassed. As explained in the preamble to the proposed revised guidance, the Court was explicit in Gebser and Davis that the liability standards established in these cases are limited to private actions for monetary damages. See, e.g., Gebser, 524 U.S. at 283, and Davis, 526 U.S. at 639. The Gebser Court recognized and contrasted lawsuits for money damages with the incremental nature of administrative enforcement of Title IX. In Gebser, the Court was concerned with the possibility of a money damages award against a school for harassment about which it had not known. In contrast, the process of administrative enforcement requires enforcement agencies such as OCR to make schools

aware of potential Title IX violations and to seek voluntary corrective action before pursuing fund termination or other enforcement mechanisms.

Commenters uniformly agreed with OCR that the Court limited the liability standards established in Gebser and Davis to private actions for monetary damages. See, e.g., Gebser, 524 U.S. 283, and Davis, 526 U.S. at 639. Commenters also agreed that the administrative enforcement standards reflected in the 1997 guidance remain valid in OCR enforcement actions.² Finally, commenters agreed that the proposed revisions provided important clarification to schools regarding the standards that OCR will use and that schools should use to determine compliance with Title IX as a condition of the receipt of Federal financial assistance in light of Gebser and Davis.

Harassment by Teachers and Other School Personnel

Most commenters agreed with OCR's interpretation of its regulations regarding a school's responsibility for harassment of students by teachers and other school employees. These commenters agreed that Title IX's prohibitions against discrimination are not limited to official policies and practices governing school programs and activities. A school also engages in sex-based discrimination if its employees, in the context of carrying out their day-to-day job responsibilities for providing aid, benefits, or services to students (such as teaching, counseling, supervising, and advising students) deny or limit a student's ability to participate in or benefit from the schools program on the basis of sex. Under the Title IX regulations, the school is responsible for discrimination in these cases, whether or not it knew or should have known about it, because the discrimination occurred as part of the school's undertaking to provide nondiscriminatory aid, benefits, and services to students. The revised guidance distinguishes these cases from employee harassment that, although taking place in a school's program, occurs outside of the context of the employee's provision of aid, benefits, and services to students. In these latter cases, the school's responsibilities are not triggered until the school knew or should have known about the harassment.

One commenter expressed concern that it was inappropriate ever to find a school out of compliance for harassment about which it knew nothing. We reiterate that, although a school may in some cases be responsible for harassment caused by an employee that occurred before other responsible employees of the school knew or should have known about it, OCR always provides the school with actual notice and the opportunity to take appropriate corrective action before issuing a finding of violation. This is consistent with the Court's underlying concern in Gebser and Davis.

Most commenters acknowledged that OCR has provided useful factors to determine whether harassing conduct took place "in the context of providing aid, benefits, or services." However, some commenters stated that additional clarity and examples regarding the issue were needed. Commenters also suggested clarifying

² It is the position of the United States that the standards set out in OCR's guidance for finding a violation and seeking voluntary corrective action also would apply to private actions for injunctive and other equitable relief. See brief of the United States as Amicus Curiae in Davis v. Monroe County.

references to quid pro quo and hostile environment harassment as these two concepts, though useful, do not determine the issue of whether the school itself is considered responsible for the harassment. We agree with these concerns and have made significant revisions to the sections “Harassment that Denies or Limits a Student’s Ability to Participate in or Benefit from the Education Program” and “Harassment by Teachers and Other Employees” to clarify the guidance in these respects.

Gender-based Harassment, Including Harassment Predicated on Sex-stereotyping

Several commenters requested that we expand the discussion and include examples of gender-based harassment predicated on sex stereotyping. Some commenters also argued that gender-based harassment should be considered sexual harassment, and that we have “artificially” restricted the guidance only to harassment in the form of conduct of a sexual nature, thus, implying that gender-based harassment is of less concern and should be evaluated differently.

We have not further expanded this section because, while we are also concerned with the important issue of gender-based harassment, we believe that harassment of a sexual nature raises unique and sufficiently important issues that distinguish it from other types of gender-based harassment and warrants its own guidance.

Nevertheless, we have clarified this section of the guidance in several ways. The guidance clarifies that gender-based harassment, including that predicated on sex-stereotyping, is covered by Title IX if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from the program. Thus, it can be discrimination on the basis of sex to harass a student on the basis of the victim’s failure to conform to stereotyped notions of masculinity and femininity. Although this type of harassment is not covered by the guidance, if it is sufficiently serious, gender-based harassment is a school’s responsibility, and the same standards generally will apply. We have also added an endnote regarding Supreme Court precedent for the proposition that sex stereotyping can constitute sex discrimination.

Several commenters also suggested that we state that sexual and non-sexual (but gender-based) harassment should not be evaluated separately in determining whether a hostile environment exists. We note that both the proposed revised guidance and the final revised guidance indicate in several places that incidents of sexual harassment and non-sexual, gender-based harassment can be combined to determine whether a hostile environment has been created. We also note that sufficiently serious harassment of a sexual nature remains covered by Title IX, as explained in the guidance, even though the hostile environment may also include taunts based on sexual orientation.

Definition of Harassment

One commenter urged OCR to provide distinct definitions of sexual harassment to be used in administrative enforcement as distinguished from criteria used to maintain private actions for monetary damages. We disagree. First, as discussed in the preamble to the proposed revised guidance, the definition of hostile environment sexual harassment used by the Court in Davis is consistent with the definition found in the proposed guidance. Although the terms used by the Court in Davis are in some ways different from

the words used to define hostile environment harassment in the 1997 guidance (see, e.g., 62 FR 12041, “conduct of a sexual nature is sufficiently severe, persistent, or pervasive to limit a student’s ability to participate in or benefit from the education program, or to create a hostile or abusive educational environment”), the definitions are consistent. Both the Court’s and the Department’s definitions are contextual descriptions intended to capture the same concept -- that under Title IX, the conduct must be sufficiently serious that it adversely affects a student’s ability to participate in or benefit from the school’s program. In determining whether harassment is actionable, both Davis and the Department tell schools to look at the “constellation of surrounding circumstances, expectations, and relationships” (526 U.S. at 651 (citing Oncale)), and the Davis Court cited approvingly to the underlying core factors described in the 1997 guidance for evaluating the context of the harassment. Second, schools benefit from consistency and simplicity in understanding what is sexual harassment for which the school must take responsive action. A multiplicity of definitions would not serve this purpose.

Several commenters suggested that we develop a unique Title IX definition of harassment that does not rely on Title VII and that takes into account the special relationship of schools to students. Other commenters, by contrast, commended OCR for recognizing that Gebser and Davis did not alter the definition of hostile environment sexual harassment found in OCR’s 1997 guidance, which derives from Title VII caselaw, and asked us to strengthen the point. While Gebser and Davis made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the Davis Court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX. We also believe that the factors described in both the 1997 guidance and the revised guidance to determine whether sexual harassment has occurred provide the necessary flexibility for taking into consideration the age and maturity of the students involved and the nature of the school environment.

Effective Response

One commenter suggested that the change in the guidance from “appropriate response” to “effective response” implies a change in OCR policy that requires omniscience of schools. We disagree. Effectiveness has always been the measure of an adequate response under Title IX. This does not mean a school must overreact out of fear of being judged inadequate. Effectiveness is measured based on a reasonableness standard. Schools do not have to know beforehand that their response will be effective. However, if their initial steps are ineffective in stopping the harassment, reasonableness may require a series of escalating steps.

The Relationship Between FERPA and Title IX

In the development of both the 1997 guidance and the current revisions to the guidance, commenters raised concerns about the interrelation of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and Title IX. The concerns relate to two issues: (1) the harassed student’s right to information about the outcome of a sexual harassment complaint against another student, including information about sanctions imposed on a student found guilty of harassment; and (2) the due process rights of

individuals, including teachers, accused of sexual harassment by a student, to obtain information about the identity of the complainant and the nature of the allegations.

FERPA generally forbids disclosure of information from a student's "education record" without the consent of the student (or the student's parent). Thus, FERPA may be relevant when the person found to have engaged in harassment is another student, because written information about the complaint, investigation, and outcome is part of the harassing student's education record. Title IX is also relevant because it is an important part of taking effective responsive action for the school to inform the harassed student of the results of its investigation and whether it counseled, disciplined, or otherwise sanctioned the harasser. This information can assure the harassed student that the school has taken the student's complaint seriously and has taken steps to eliminate the hostile environment and prevent the harassment from recurring.

The Department currently interprets FERPA as not conflicting with the Title IX requirement that the school notify the harassed student of the outcome of its investigation, i.e., whether or not harassment was found to have occurred, because this information directly relates to the victim. It has been the Department's position that there is a potential conflict between FERPA and Title IX regarding disclosure of sanctions, and that FERPA generally prevents a school from disclosing to a student who complained of harassment information about the sanction or discipline imposed upon a student who was found to have engaged in that harassment.³

There is, however, an additional statutory provision that may apply to this situation. In 1994, as part of the Improving America's Schools Act, Congress amended the General Education Provisions Act (GEPA) -- of which FERPA is a part -- to state that nothing in GEPA "shall be construed to affect the applicability of ... title IX of the Education Amendments of 1972...."⁴ The Department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between requirements of FERPA and requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. The Department is in the process of developing a consistent approach and specific factors for implementing this provision. OCR and the Department's Family Policy Compliance Office (FPCO) intend to issue joint guidance, discussing specific areas of potential conflict between FERPA and Title IX.

³ Exceptions include the case of a sanction that directly relates to the person who was harassed (e.g., an order that the harasser stay away from the harassed student), or sanctions related to offenses for which there is a statutory exception, such as crimes of violence or certain sex offenses in postsecondary institutions.

⁴ 20 U.S.C. 1221(d). A similar amendment was originally passed in 1974 but applied only to Title VI of the Civil Rights Act of 1964 (prohibiting race discrimination by recipients). The 1994 amendments also extended 20 U.S.C. 1221(d) to Section 504 of the Rehabilitation Act of 1973 (prohibiting disability-based discrimination by recipients) and to the Age Discrimination Act.

FERPA is also relevant when a student accuses a teacher or other employee of sexual harassment, because written information about the allegations is contained in the student's education record. The potential conflict arises because, while FERPA protects the privacy of the student accuser, the accused individual may need the name of the accuser and information regarding the nature of the allegations in order to defend against the charges. The 1997 guidance made clear that neither FERPA nor Title IX override any federally protected due process rights of a school employee accused of sexual harassment.

Several commenters urged the Department to expand and strengthen this discussion. They argue that in many instances a school's failure to provide information about the name of the student accuser and the nature of the allegations seriously undermines the fairness of the investigative and adjudicative process. They also urge the Department to include a discussion of the need for confidentiality as to the identity of the individual accused of harassment because of the significant harm that can be caused by false accusations. We have made several changes to the guidance, including an additional discussion regarding the confidentiality of a person accused of harassment and a new heading entitled "Due Process Rights of the Accused," to address these concerns.

**REVISED SEXUAL HARASSMENT GUIDANCE:
HARASSMENT OF STUDENTS¹
BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES**

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I. Introduction

Title IX of the Education Amendments of 1972 (Title IX) and the Department of Education's (Department) implementing regulations prohibit discrimination on the basis of sex in federally assisted education programs and activities.² The Supreme Court, Congress, and Federal executive departments and agencies, including the Department, have recognized that sexual harassment of students can constitute discrimination prohibited by Title IX.³ This guidance focuses on a school's⁴ fundamental compliance responsibilities under Title IX and the Title IX regulations to address sexual harassment of students as a condition of continued receipt of Federal funding. It describes the regulatory basis for a school's compliance responsibilities under Title IX, outlines the circumstances under which sexual harassment may constitute discrimination prohibited by the statute and regulations, and provides information about actions that schools should take to prevent sexual harassment or to address it effectively if it does occur.⁵

II. Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.⁶ Sexual harassment of a student can deny or limit, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the school's program. Sexual harassment of students is, therefore, a form of sex discrimination prohibited by Title IX under the circumstances described in this guidance.

It is important to recognize that Title IX's prohibition against sexual harassment does not extend to legitimate nonsexual touching or other nonsexual conduct. For example, a high school athletic coach hugging a student who made a goal or a kindergarten teacher's consoling hug for a child with a skinned knee will not be considered sexual harassment.⁷ Similarly, one student's demonstration of a sports maneuver or technique requiring contact with another student will not be considered sexual harassment. However, in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment. For example, a teacher's repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment.

III. Applicability of Title IX

Title IX applies to all public and private educational institutions that receive Federal funds, i.e., recipients, including, but not limited to, elementary and secondary schools, school districts, proprietary schools, colleges, and universities. The guidance uses the terms "recipients" and "schools" interchangeably to refer to all of those institutions. The "education program or activity" of a school includes all of the school's operations.⁸ This means that Title IX protects students in connection with all of the academic, educational, extra-curricular, athletic, and other programs of the school,

whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere.

A student may be sexually harassed by a school employee,⁹ another student, or a non-employee third party (e.g., a visiting speaker or visiting athletes). Title IX protects any “person” from sex discrimination. Accordingly, both male and female students are protected from sexual harassment¹⁰ engaged in by a school’s employees, other students, or third parties. Moreover, Title IX prohibits sexual harassment regardless of the sex of the harasser, i.e., even if the harasser and the person being harassed are members of the same sex.¹¹ An example would be a campaign of sexually explicit graffiti directed at a particular girl by other girls.¹²

Although Title IX does not prohibit discrimination on the basis of sexual orientation,¹³ sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student’s ability to participate in or benefit from the school’s program constitutes sexual harassment prohibited by Title IX under the circumstances described in this guidance.¹⁴ For example, if a male student or a group of male students target a gay student for physical sexual advances, serious enough to deny or limit the victim’s ability to participate in or benefit from the school’s program, the school would need to respond promptly and effectively, as described in this guidance, just as it would if the victim were heterosexual. On the other hand, if students heckle another student with comments based on the student’s sexual orientation (e.g., “gay students are not welcome at this table in the cafeteria”), but their actions do not involve conduct of a sexual nature, their actions would not be sexual harassment covered by Title IX.¹⁵

Though beyond the scope of this guidance, gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping,¹⁶ but not involving conduct of a sexual nature, is also a form of sex discrimination to which a school must respond, if it rises to a level that denies or limits a student’s ability to participate in or benefit from the educational program.¹⁷ For example, the repeated sabotaging of female graduate students’ laboratory experiments by male students in the class could be the basis of a violation of Title IX. A school must respond to such harassment in accordance with the standards and procedures described in this guidance.¹⁸ In assessing all related circumstances to determine whether a hostile environment exists, incidents of gender-based harassment combined with incidents of sexual harassment could create a hostile environment, even if neither the gender-based harassment alone nor the sexual harassment alone would be sufficient to do so.¹⁹

IV. Title IX Regulatory Compliance Responsibilities

As a condition of receiving funds from the Department, a school is required to comply with Title IX and the Department’s Title IX regulations, which spell out prohibitions against sex discrimination. The law is clear that sexual harassment may constitute sex discrimination under Title IX.²⁰

Recipients specifically agree, as a condition for receiving Federal financial assistance from the Department, to comply with Title IX and the Department’s Title IX regulations. The regulatory provision requiring this agreement, known as an assurance of

compliance, specifies that recipients must agree that education programs or activities operated by the recipient will be operated in compliance with the Title IX regulations, including taking any action necessary to remedy its discrimination or the effects of its discrimination in its programs.²¹

The regulations set out the basic Title IX responsibilities a recipient undertakes when it accepts Federal financial assistance, including the following specific obligations.²² A recipient agrees that, in providing any aid, benefit, or service to students, it will not, on the basis of sex—

- Treat one student differently from another in determining whether the student satisfies any requirement or condition for the provision of any aid, benefit, or service;²³
- Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;²⁴
- Deny any student any such aid, benefit, or service;²⁵
- Subject students to separate or different rules of behavior, sanctions, or other treatment;²⁶
- Aid or perpetuate discrimination against a student by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students;²⁷ and
- Otherwise limit any student in the enjoyment of any right, privilege, advantage, or opportunity.²⁸

For the purposes of brevity and clarity, this guidance generally summarizes this comprehensive list by referring to a school's obligation to ensure that a student is not denied or limited in the ability to participate in or benefit from the school's program on the basis of sex.

The regulations also specify that, if a recipient discriminates on the basis of sex, the school must take remedial action to overcome the effects of the discrimination.²⁹

In addition, the regulations establish procedural requirements that are important for the prevention or correction of sex discrimination, including sexual harassment. These requirements include issuance of a policy against sex discrimination³⁰ and adoption and publication of grievance procedures providing for prompt and equitable resolution of complaints of sex discrimination.³¹ The regulations also require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance.³²

To comply with these regulatory requirements, schools need to recognize and respond to sexual harassment of students by teachers and other employees, by other students, and by third parties. This guidance explains how the requirements of the Title IX regulations apply to situations involving sexual harassment of a student and outlines measures that schools should take to ensure compliance.

V. Determining a School's Responsibilities

In assessing sexually harassing conduct, it is important for schools to recognize that two distinct issues are considered. The first issue is whether, considering the types of harassment discussed in the following section, the conduct denies or limits a student's ability to participate in or benefit from the program based on sex. If it does, the second issue is the nature of the school's responsibility to address that conduct. As discussed in a following section, this issue depends in part on the identity of the harasser and the context in which the harassment occurred.

A. Harassment that Denies or Limits a Student's Ability to Participate in or Benefit from the Education Program

This guidance moves away from specific labels for types of sexual harassment.³³ In each case, the issue is whether the harassment rises to a level that it denies or limits a student's ability to participate in or benefit from the school's program based on sex. However, an understanding of the different types of sexual harassment can help schools determine whether or not harassment has occurred that triggers a school's responsibilities under, or violates, Title IX or its regulations.

The type of harassment traditionally referred to as quid pro quo harassment occurs if a teacher or other employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct.³⁴ Whether the student resists and suffers the threatened harm or submits and avoids the threatened harm, the student has been treated differently, or the student's ability to participate in or benefit from the school's program has been denied or limited, on the basis of sex in violation of the Title IX regulations.³⁵

By contrast, sexual harassment can occur that does not explicitly or implicitly condition a decision or benefit on submission to sexual conduct. Harassment of this type is generally referred to as hostile environment harassment.³⁶ This type of harassing conduct requires a further assessment of whether or not the conduct is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's program based on sex.³⁷

Teachers and other employees can engage in either type of harassment. Students and third parties are not generally given responsibility over other students and, thus, generally can only engage in hostile environment harassment.

1. Factors Used to Evaluate Hostile Environment Sexual Harassment

As outlined in the following paragraphs, OCR considers a variety of related factors to determine if a hostile environment has been created, i.e., if sexually harassing conduct by an employee, another student, or a third party is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program based on sex. OCR considers the conduct from both a subjective³⁸ and objective³⁹ perspective. In evaluating the severity and pervasiveness of the conduct, OCR considers all relevant circumstances, i.e., "the constellation of surrounding circumstances, expectations, and relationships."⁴⁰ Schools should also use these factors to evaluate conduct in order to draw commonsense distinctions between conduct that constitutes

sexual harassment and conduct that does not rise to that level. Relevant factors include the following:

- The degree to which the conduct affected one or more students' education. OCR assesses the effect of the harassment on the student to determine whether it has denied or limited the student's ability to participate in or benefit from the school's program. For example, a student's grades may go down or the student may be forced to withdraw from school because of the harassing behavior.⁴¹ A student may also suffer physical injuries or mental or emotional distress.⁴² In another situation, a student may have been able to keep up his or her grades and continue to attend school even though it was very difficult for him or her to do so because of the teacher's repeated sexual advances. Similarly, a student may be able to remain on a sports team, despite experiencing great difficulty performing at practices and games from the humiliation and anger caused by repeated sexual advances and intimidation by several team members that create a hostile environment. Harassing conduct in these examples would alter a reasonable student's educational environment and adversely affect the student's ability to participate in or benefit from the school's program on the basis of sex.

A hostile environment can occur even if the harassment is not targeted specifically at the individual complainant.⁴³ For example, if a student, group of students, or a teacher regularly directs sexual comments toward a particular student, a hostile environment may be created not only for the targeted student, but also for others who witness the conduct.

- The type, frequency, and duration of the conduct. In most cases, a hostile environment will exist if there is a pattern or practice of harassment, or if the harassment is sustained and nontrivial.⁴⁴ For instance, if a young woman is taunted by one or more young men about her breasts or genital area or both, OCR may find that a hostile environment has been created, particularly if the conduct has gone on for some time, or takes place throughout the school, or if the taunts are made by a number of students. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. For instance, if the conduct is more severe, e.g., attempts to grab a female student's breasts or attempts to grab any student's genital area or buttocks, it need not be as persistent to create a hostile environment. Indeed, a single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment.⁴⁵ On the other hand, conduct that is not severe will not create a hostile environment, e.g., a comment by one student to another student that she has a nice figure. Indeed, depending on the circumstances, this may not even be conduct of a sexual nature.⁴⁶ Similarly, because students date one another, a request for a date or a gift of flowers, even if unwelcome, would not create a hostile environment. However, there may be circumstances in which repeated, unwelcome requests for dates or similar conduct could create a hostile environment. For example, a person, who has been refused previously, may request dates in an intimidating or threatening manner.
- The identity of and relationship between the alleged harasser and the subject or subjects of the harassment. A factor to be considered, especially in cases involving allegations of sexual harassment of a student by a school employee, is the identity of

and relationship between the alleged harasser and the subject or subjects of the harassment. For example, due to the power a professor or teacher has over a student, sexually based conduct by that person toward a student is more likely to create a hostile environment than similar conduct by another student.⁴⁷

- The number of individuals involved. Sexual harassment may be committed by an individual or a group. In some cases, verbal comments or other conduct from one person might not be sufficient to create a hostile environment, but could be if done by a group. Similarly, while harassment can be directed toward an individual or a group,⁴⁸ the effect of the conduct toward a group may vary, depending on the type of conduct and the context. For certain types of conduct, there may be “safety in numbers.” For example, following an individual student and making sexual taunts to him or her may be very intimidating to that student, but, in certain circumstances, less so to a group of students. On the other hand, persistent unwelcome sexual conduct still may create a hostile environment if directed toward a group.
- The age and sex of the alleged harasser and the subject or subjects of the harassment. For example, in the case of younger students, sexually harassing conduct is more likely to be intimidating if coming from an older student.⁴⁹
- The size of the school, location of the incidents, and context in which they occurred. Depending on the circumstances of a particular case, fewer incidents may have a greater effect at a small college than at a large university campus. Harassing conduct occurring on a school bus may be more intimidating than similar conduct on a school playground because the restricted area makes it impossible for students to avoid their harassers.⁵⁰ Harassing conduct in a personal or secluded area, such as a dormitory room or residence hall, can have a greater effect (e.g., be seen as more threatening) than would similar conduct in a more public area. On the other hand, harassing conduct in a public place may be more humiliating. Each incident must be judged individually.
- Other incidents at the school. A series of incidents at the school, not involving the same students, could — taken together — create a hostile environment, even if each by itself would not be sufficient.⁵¹
- Incidents of gender-based, but nonsexual harassment. Acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex, but not involving sexual activity or language, can be combined with incidents of sexual harassment to determine if the incidents of sexual harassment are sufficiently serious to create a sexually hostile environment.⁵²

It is the totality of the circumstances in which the behavior occurs that is critical in determining whether a hostile environment exists. Consequently, in using the factors discussed previously to evaluate incidents of alleged harassment, it is always important to use common sense and reasonable judgement in determining whether a sexually hostile environment has been created.

2. Welcomeness

The section entitled “Sexual Harassment” explains that in order for conduct of a sexual nature to be sexual harassment, it must be unwelcome. Conduct is unwelcome if

the student did not request or invite it and “regarded the conduct as undesirable or offensive.”⁵³ Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome.⁵⁴ For example, a student may decide not to resist sexual advances of another student or may not file a complaint out of fear. In addition, a student may not object to a pattern of demeaning comments directed at him or her by a group of students out of a concern that objections might cause the harassers to make more comments. The fact that a student may have accepted the conduct does not mean that he or she welcomed it.⁵⁵ Also, the fact that a student willingly participated in conduct on one occasion does not prevent him or her from indicating that the same conduct has become unwelcome on a subsequent occasion. On the other hand, if a student actively participates in sexual banter and discussions and gives no indication that he or she objects, then the evidence generally will not support a conclusion that the conduct was unwelcome.⁵⁶

If younger children are involved, it may be necessary to determine the degree to which they are able to recognize that certain sexual conduct is conduct to which they can or should reasonably object and the degree to which they can articulate an objection. Accordingly, OCR will consider the age of the student, the nature of the conduct involved, and other relevant factors in determining whether a student had the capacity to welcome sexual conduct.

Schools should be particularly concerned about the issue of welcomeness if the harasser is in a position of authority. For instance, because students may be encouraged to believe that a teacher has absolute authority over the operation of his or her classroom, a student may not object to a teacher’s sexually harassing comments during class; however, this does not necessarily mean that the conduct was welcome. Instead, the student may believe that any objections would be ineffective in stopping the harassment or may fear that by making objections he or she will be singled out for harassing comments or other retaliation.

In addition, OCR must consider particular issues of welcomeness if the alleged harassment relates to alleged “consensual” sexual relationships between a school’s adult employees and its students. If elementary students are involved, welcomeness will not be an issue: OCR will never view sexual conduct between an adult school employee and an elementary school student as consensual. In cases involving secondary students, there will be a strong presumption that sexual conduct between an adult school employee and a student is not consensual. In cases involving older secondary students, subject to the presumption,⁵⁷ OCR will consider a number of factors in determining whether a school employee’s sexual advances or other sexual conduct could be considered welcome.⁵⁸ In addition, OCR will consider these factors in all cases involving postsecondary students in making those determinations.⁵⁹ The factors include the following:

- The nature of the conduct and the relationship of the school employee to the student, including the degree of influence (which could, at least in part, be affected by the student’s age), authority, or control the employee has over the student.
- Whether the student was legally or practically unable to consent to the sexual conduct in question. For example, a student’s age could affect his or her ability to do so. Similarly, certain types of disabilities could affect a student’s ability to do so.

If there is a dispute about whether harassment occurred or whether it was welcome — in a case in which it is appropriate to consider whether the conduct would be welcome — determinations should be made based on the totality of the circumstances. The following types of information may be helpful in resolving the dispute:

- Statements by any witnesses to the alleged incident.
- Evidence about the relative credibility of the allegedly harassed student and the alleged harasser. For example, the level of detail and consistency of each person's account should be compared in an attempt to determine who is telling the truth. Another way to assess credibility is to see if corroborative evidence is lacking where it should logically exist. However, the absence of witnesses may indicate only the unwillingness of others to step forward, perhaps due to fear of the harasser or a desire not to get involved.
- Evidence that the alleged harasser has been found to have harassed others may support the credibility of the student claiming the harassment; conversely, the student's claim will be weakened if he or she has been found to have made false allegations against other individuals.
- Evidence of the allegedly harassed student's reaction or behavior after the alleged harassment. For example, were there witnesses who saw the student immediately after the alleged incident who say that the student appeared to be upset? However, it is important to note that some students may respond to harassment in ways that do not manifest themselves right away, but may surface several days or weeks after the harassment. For example, a student may initially show no signs of having been harassed, but several weeks after the harassment, there may be significant changes in the student's behavior, including difficulty concentrating on academic work, symptoms of depression, and a desire to avoid certain individuals and places at school.
- Evidence about whether the student claiming harassment filed a complaint or took other action to protest the conduct soon after the alleged incident occurred. However, failure to immediately complain may merely reflect a fear of retaliation or a fear that the complainant may not be believed rather than that the alleged harassment did not occur.
- Other contemporaneous evidence. For example, did the student claiming harassment write about the conduct and his or her reaction to it soon after it occurred (e.g., in a diary or letter)? Did the student tell others (friends, parents) about the conduct (and his or her reaction to it) soon after it occurred?

B. Nature of the School's Responsibility to Address Sexual Harassment

A school has a responsibility to respond promptly and effectively to sexual harassment. In the case of harassment by teachers or other employees, the nature of this responsibility depends in part on whether the harassment occurred in the context of the employee's provision of aid, benefits, or services to students.

1. Harassment by Teachers and Other Employees

Sexual harassment of a student by a teacher or other school employee can be discrimination in violation of Title IX.⁶⁰ Schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student who was harassed. The extent of a recipient's responsibilities if an employee sexually harasses a student is determined by whether or not the harassment occurred in the context of the employee's provision of aid, benefits, or services to students.

A recipient is responsible under the Title IX regulations for the nondiscriminatory provision of aid, benefits, and services to students. Recipients generally provide aid, benefits, and services to students through the responsibilities they give to employees. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out these responsibilities over students engages in sexual harassment – generally this means harassment that is carried out during an employee's performance of his or her responsibilities in relation to students, including teaching, counseling, supervising, advising, and transporting students – and the harassment denies or limits a student's ability to participate in or benefit from a school program on the basis of sex,⁶¹ the recipient is responsible for the discriminatory conduct.⁶² The recipient is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has "notice" of the harassment. (As explained in the section on "Notice of Employee, Peer, or Third Party Harassment," for purposes of this guidance, a school has notice of harassment if a responsible school employee actually knew or, in the exercise of reasonable care, should have known about the harassment.) Of course, under OCR's administrative enforcement, recipients always receive actual notice and the opportunity to take appropriate corrective action before any finding of violation or possible loss of federal funds.

Whether or not sexual harassment of a student occurred within the context of an employee's responsibilities for providing aid, benefits, or services is determined on a case-by-case basis, taking into account a variety of factors. If an employee conditions the provision of an aid, benefit, or service that the employee is responsible for providing on a student's submission to sexual conduct, i.e., conduct traditionally referred to as quid pro quo harassment, the harassment is clearly taking place in the context of the employee's responsibilities to provide aid, benefits, or services. In other situations, i.e., when an employee has created a hostile environment, OCR will consider the following factors in determining whether or not the harassment has taken place in this context, including:

- The type and degree of responsibility given to the employee, including both formal and informal authority, to provide aids, benefits, or services to students, to direct and control student conduct, or to discipline students generally;
- the degree of influence the employee has over the particular student involved, including in the circumstances in which the harassment took place;
- where and when the harassment occurred;
- the age and educational level of the student involved; and

- as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable for the student to believe that the employee was in a position of responsibility over the student, even if the employee was not.

These factors are applicable to all recipient educational institutions, including elementary and secondary schools, colleges, and universities. Elementary and secondary schools, however, are typically run in a way that gives teachers, school officials, and other school employees a substantial degree of supervision, control, and disciplinary authority over the conduct of students.⁶³ Therefore, in cases involving allegations of harassment of elementary and secondary school-age students by a teacher or school administrator during any school activity,⁶⁴ consideration of these factors will generally lead to a conclusion that the harassment occurred in the context of the employee's provision of aid, benefits, or services.

For example, a teacher sexually harasses an eighth-grade student in a school hallway. Even if the student is not in any of the teacher's classes and even if the teacher is not designated as a hall monitor, given the age and educational level of the student and the status and degree of influence of teachers in elementary and secondary schools, it would be reasonable for the student to believe that the teacher had at least informal disciplinary authority over students in the hallways. Thus, OCR would consider this an example of conduct that is occurring in the context of the employee's responsibilities to provide aid, benefits, or services.

Other examples of sexual harassment of a student occurring in the context of an employee's responsibilities for providing aid, benefits, or services include, but are not limited to -- a faculty member at a university's medical school conditions an intern's evaluation on submission to his sexual advances and then gives her a poor evaluation for rejecting the advances; a high school drama instructor does not give a student a part in a play because she has not responded to sexual overtures from the instructor; a faculty member withdraws approval of research funds for her assistant because he has rebuffed her advances; a journalism professor who supervises a college newspaper continually and inappropriately touches a student editor in a sexual manner, causing the student to resign from the newspaper staff; and a teacher repeatedly asks a ninth grade student to stay after class and attempts to engage her in discussions about sex and her personal experiences while they are alone in the classroom, causing the student to stop coming to class. In each of these cases, the school is responsible for the discriminatory conduct, including taking prompt and effective action to end the harassment, prevent it from recurring, and remedy the effects of the harassment on the victim.

Sometimes harassment of a student by an employee in the school's program does not take place in the context of the employee's provision of aid, benefits, or services, but nevertheless is sufficiently serious to create a hostile educational environment. An example of this conduct might occur if a faculty member in the history department at a university, over the course of several weeks, repeatedly touches and makes sexually suggestive remarks to a graduate engineering student while waiting at a stop for the university shuttle bus, riding on the bus, and upon exiting the bus. As a result, the student stops using the campus shuttle and walks the very long distances between her classes. In this case, the school is not directly responsible for the harassing conduct because it did not occur in the context of the employee's responsibilities for the provision

of aid, benefits, or services to students. However, the conduct is sufficiently serious to deny or limit the student in her ability to participate in or benefit from the recipient's program. Thus, the school has a duty, upon notice of the harassment,⁶⁵ to take prompt and effective action to stop the harassment and prevent its recurrence.

If the school takes these steps, it has avoided violating Title IX. If the school fails to take the necessary steps, however, its failure to act has allowed the student to continue to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program. The school, therefore, has engaged in its own discrimination. It then becomes responsible, not just for stopping the conduct and preventing it from happening again, but for remedying the effects of the harassment on the student that could reasonably have been prevented if the school had responded promptly and effectively. (For related issues, see the sections on "OCR Case Resolution" and "Recipient's Response.")

2. Harassment by Other Students or Third Parties

If a student sexually harasses another student and the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the program, and if the school knows or reasonably should know⁶⁶ about the harassment, the school is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence.⁶⁷ As long as the school, upon notice of the harassment, responds by taking prompt and effective action to end the harassment and prevent its recurrence, the school has carried out its responsibility under the Title IX regulations. On the other hand, if, upon notice, the school fails to take prompt, effective action, the school's own inaction has permitted the student to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program on the basis of sex.⁶⁸ In this case, the school is responsible for taking effective corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had it responded promptly and effectively.

Similarly, sexually harassing conduct by third parties, who are not themselves employees or students at the school (e.g., a visiting speaker or members of a visiting athletic team), may also be of a sufficiently serious nature to deny or limit a student's ability to participate in or benefit from the education program. As previously outlined in connection with peer harassment, if the school knows or should know⁶⁹ of the harassment, the school is responsible for taking prompt and effective action to eliminate the hostile environment and prevent its recurrence.

The type of appropriate steps that the school should take will differ depending on the level of control that the school has over the third party harasser.⁷⁰ For example, if athletes from a visiting team harass the home school's students, the home school may not be able to discipline the athletes. However, it could encourage the other school to take appropriate action to prevent further incidents; if necessary, the home school may choose not to invite the other school back. (This issue is discussed more fully in the section on "Recipient's Response.")

If, upon notice, the school fails to take prompt and effective corrective action, its own failure has permitted the student to be subjected to a hostile environment that limits

the student's ability to participate in or benefit from the education program.⁷¹ In this case, the school is responsible for taking corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had the school responded promptly and effectively.

C. Notice of Employee, Peer, or Third Party Harassment

As described in the section on "Harassment by Teachers and Other Employees," schools may be responsible for certain types of employee harassment that occurred before the school otherwise had notice of the harassment. On the other hand, as described in that section and the section on "Harassment by Other Students or Third Parties," in situations involving certain other types of employee harassment, or harassment by peers or third parties, a school will be in violation of the Title IX regulations if the school "has notice" of a sexually hostile environment and fails to take immediate and effective corrective action.⁷²

A school has notice if a responsible employee "knew, or in the exercise of reasonable care should have known," about the harassment.⁷³ A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.⁷⁴ Accordingly, schools need to ensure that employees are trained so that those with authority to address harassment know how to respond appropriately, and other responsible employees know that they are obligated to report harassment to appropriate school officials. Training for employees should include practical information about how to identify harassment and, as applicable, the person to whom it should be reported.

A school can receive notice of harassment in many different ways. A student may have filed a grievance with the Title IX coordinator⁷⁵ or complained to a teacher or other responsible employee about fellow students harassing him or her. A student, parent, or other individual may have contacted other appropriate personnel, such as a principal, campus security, bus driver, teacher, affirmative action officer, or staff in the office of student affairs. A teacher or other responsible employee of the school may have witnessed the harassment. The school may receive notice about harassment in an indirect manner, from sources such as a member of the school staff, a member of the educational or local community, or the media. The school also may have learned about the harassment from flyers about the incident distributed at the school or posted around the school. For the purposes of compliance with the Title IX regulations, a school has a duty to respond to harassment about which it reasonably should have known, i.e., if it would have learned of the harassment if it had exercised reasonable care or made a "reasonably diligent inquiry."⁷⁶

For example, in some situations if the school knows of incidents of harassment, the exercise of reasonable care should trigger an investigation that would lead to a discovery of additional incidents.⁷⁷ In other cases, the pervasiveness of the harassment may be enough to conclude that the school should have known of the hostile environment — if the harassment is widespread, openly practiced, or well-known to students and staff

(such as sexual harassment occurring in the hallways, graffiti in public areas, or harassment occurring during recess under a teacher's supervision.)⁷⁸

If a school otherwise knows or reasonably should know of a hostile environment and fails to take prompt and effective corrective action, a school has violated Title IX even if the student has failed to use the school's existing grievance procedures or otherwise inform the school of the harassment.

D. The Role of Grievance Procedures

Schools are required by the Title IX regulations to adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment, and to disseminate a policy against sex discrimination.⁷⁹ (These issues are discussed in the section on "Prompt and Equitable Grievance Procedures.") These procedures provide a school with a mechanism for discovering sexual harassment as early as possible and for effectively correcting problems, as required by the Title IX regulations. By having a strong policy against sex discrimination and accessible, effective, and fairly applied grievance procedures, a school is telling its students that it does not tolerate sexual harassment and that students can report it without fear of adverse consequences.

Without a disseminated policy and procedure, a student does not know either of the school's policy against and obligation to address this form of discrimination, or how to report harassment so that it can be remedied. If the alleged harassment is sufficiently serious to create a hostile environment and it is the school's failure to comply with the procedural requirements of the Title IX regulations that hampers early notification and intervention and permits sexual harassment to deny or limit a student's ability to participate in or benefit from the school's program on the basis of sex,⁸⁰ the school will be responsible under the Title IX regulations, once informed of the harassment, to take corrective action, including stopping the harassment, preventing its recurrence, and remedying the effects of the harassment on the victim that could reasonably have been prevented if the school's failure to comply with the procedural requirements had not hampered early notification.

VI. OCR Case Resolution

If OCR is asked to investigate or otherwise resolve incidents of sexual harassment of students, including incidents caused by employees, other students, or third parties, OCR will consider whether — (1) the school has a disseminated policy prohibiting sex discrimination under Title IX⁸¹ and effective grievance procedures;⁸² (2) the school appropriately investigated or otherwise responded to allegations of sexual harassment;⁸³ and (3) the school has taken immediate and effective corrective action responsive to the harassment, including effective actions to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.⁸⁴ (Issues related to appropriate investigative and corrective actions are discussed in detail in the section on "Recipient's Response.")

If the school has taken, or agrees to take, each of these steps, OCR will consider the case against the school resolved and will take no further action, other than monitoring compliance with an agreement, if any, between the school and OCR. This is true in cases

in which the school was in violation of the Title IX regulations (e.g., a teacher sexually harassed a student in the context of providing aid, benefits, or services to students), as well as those in which there has been no violation of the regulations (e.g., in a peer sexual harassment situation in which the school took immediate, reasonable steps to end the harassment and prevent its recurrence). This is because, even if OCR identifies a violation, Title IX requires OCR to attempt to secure voluntary compliance.⁸⁵ Thus, because a school will have the opportunity to take reasonable corrective action before OCR issues a formal finding of violation, a school does not risk losing its Federal funding solely because discrimination occurred.

VII. Recipient's Response

Once a school has notice of possible sexual harassment of students — whether carried out by employees, other students, or third parties — it should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps

reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. These steps are the school's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.⁸⁶ As described in the next section, in appropriate circumstances the school will also be responsible for taking steps to remedy the effects of the harassment on the individual student or students who were harassed. What constitutes a reasonable response to information about possible sexual harassment will differ depending upon the circumstances.

A. Response to Student or Parent Reports of Harassment; Response to Direct Observation of Harassment by a Responsible Employee

If a student or the parent of an elementary or secondary student provides information or complains about sexual harassment of the student, the school should initially discuss what actions the student or parent is seeking in response to the harassment. The school should explain the avenues for informal and formal action, including a description of the grievance procedure that is available for sexual harassment complaints and an explanation of how the procedure works. If a responsible school employee has directly observed sexual harassment of a student, the school should contact the student who was harassed (or the parent, depending upon the age of the student),⁸⁷ explain that the school is responsible for taking steps to correct the harassment, and provide the same information described in the previous sentence.

Regardless of whether the student who was harassed, or his or her parent, decides to file a formal complaint or otherwise request action on the student's behalf (including in cases involving direct observation by a responsible employee), the school must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. However, in all cases the inquiry must be prompt, thorough, and impartial. (Requests by the student who

was harassed for confidentiality or for no action to be taken, responding to notice of harassment from other sources, and the components of a prompt and equitable grievance procedure are discussed in subsequent sections of this guidance.)

It may be appropriate for a school to take interim measures during the investigation of a complaint. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to place the students immediately in separate classes or in different housing arrangements on a campus, pending the results of the school's investigation. Similarly, if the alleged harasser is a teacher, allowing the student to transfer to a different class may be appropriate. In cases involving potential criminal conduct, school personnel should determine whether appropriate law enforcement authorities should be notified. In all cases, schools should make every effort to prevent disclosure of the names of all parties involved -- the complainant, the witnesses, and the accused -- except to the extent necessary to carry out an investigation.

If a school determines that sexual harassment has occurred, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation.⁸⁸ Appropriate steps should be taken to end the harassment. For example, school personnel may need to counsel, warn, or take disciplinary action against the harasser, based on the severity of the harassment or any record of prior incidents or both.⁸⁹ A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.⁹⁰ In some cases, it may be appropriate to further separate the harassed student and the harasser, e.g., by changing housing arrangements⁹¹ or directing the harasser to have no further contact with the harassed student. Responsive measures of this type should be designed to minimize, as much as possible, the burden on the student who was harassed. If the alleged harasser is not a student or employee of the recipient, OCR will consider the level of control the school has over the harasser in determining what response would be appropriate.⁹²

Steps should also be taken to eliminate any hostile environment that has been created. For example, if a female student has been subjected to harassment by a group of other students in a class, the school may need to deliver special training or other interventions for that class to repair the educational environment. If the school offers the student the option of withdrawing from a class in which a hostile environment occurred, the school should assist the student in making program or schedule changes and ensure that none of the changes adversely affect the student's academic record. Other measures may include, if appropriate, directing a harasser to apologize to the harassed student. If a hostile environment has affected an entire school or campus, an effective response may need to include dissemination of information, the issuance of new policy statements, or other steps that are designed to clearly communicate the message that the school does not tolerate harassment and will be responsive to any student who reports that conduct.

In some situations, a school may be required to provide other services to the student who was harassed if necessary to address the effects of the harassment on that student.⁹³ For example, if an instructor gives a student a low grade because the student failed to respond to his sexual advances, the school may be required to make arrangements for an independent reassessment of the student's work, if feasible, and change the grade accordingly; make arrangements for the student to take the course again

with a different instructor; provide tutoring; make tuition adjustments; offer reimbursement for professional counseling; or take other measures that are appropriate to the circumstances. As another example, if a school delays responding or responds inappropriately to information about harassment, such as a case in which the school ignores complaints by a student that he or she is being sexually harassed by a classmate, the school will be required to remedy the effects of the harassment that could have been prevented had the school responded promptly and effectively.

Finally, a school should take steps to prevent any further harassment⁹⁴ and to prevent any retaliation against the student who made the complaint (or was the subject of the harassment), against the person who filed a complaint on behalf of a student, or against those who provided information as witnesses.⁹⁵ At a minimum, this includes making sure that the harassed students and their parents know how to report any subsequent problems and making follow-up inquiries to see if there have been any new incidents or any retaliation. To prevent recurrences, counseling for the harasser may be appropriate to ensure that he or she understands what constitutes harassment and the effects it can have. In addition, depending on how widespread the harassment was and whether there have been any prior incidents, the school may need to provide training for the larger school community to ensure that students, parents, and teachers can recognize harassment if it recurs and know how to respond.⁹⁶

B. Confidentiality

The scope of a reasonable response also may depend upon whether a student, or parent of a minor student, reporting harassment asks that the student's name not be disclosed to the harasser or that nothing be done about the alleged harassment. In all cases, a school should discuss confidentiality standards and concerns with the complainant initially. The school should inform the student that a confidentiality request may limit the school's ability to respond. The school also should tell the student that Title IX prohibits retaliation and that, if he or she is afraid of reprisals from the alleged harasser, the school will take steps to prevent retaliation and will take strong responsive actions if retaliation occurs. If the student continues to ask that his or her name not be revealed, the school should take all reasonable steps to investigate and respond to the complaint consistent with the student's request as long as doing so does not prevent the school from responding effectively to the harassment and preventing harassment of other students.

OCR enforces Title IX consistent with the federally protected due process rights of public school students and employees. Thus, for example, if a student, who was the only student harassed, insists that his or her name not be revealed, and the alleged harasser could not respond to the charges of sexual harassment without that information, in evaluating the school's response, OCR would not expect disciplinary action against an alleged harasser.

At the same time, a school should evaluate the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. The factors that a school may consider in this regard include the seriousness of the alleged harassment, the age of the student harassed, whether there have been other complaints or reports of harassment against the alleged harasser, and the rights of the

accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result.⁹⁷

Similarly, a school should be aware of the confidentiality concerns of an accused employee or student. Publicized accusations of sexual harassment, if ultimately found to be false, may nevertheless irreparably damage the reputation of the accused. The accused individual's need for confidentiality must, of course, also be evaluated based on the factors discussed in the preceding paragraph in the context of the school's responsibility to ensure a safe environment for students.

Although a student's request to have his or her name withheld may limit the school's ability to respond fully to an individual complaint of harassment, other means may be available to address the harassment. There are steps a recipient can take to limit the effects of the alleged harassment and prevent its recurrence without initiating formal action against the alleged harasser or revealing the identity of the complainant. Examples include conducting sexual harassment training for the school site or academic department where the problem occurred, taking a student survey concerning any problems with harassment, or implementing other systemic measures at the site or department where the alleged harassment has occurred.

In addition, by investigating the complaint to the extent possible — including by reporting it to the Title IX coordinator or other responsible school employee designated pursuant to Title IX — the school may learn about or be able to confirm a pattern of harassment based on claims by different students that they were harassed by the same individual. In some situations there may be prior reports by former students who now might be willing to come forward and be identified, thus providing a basis for further corrective action. In instances affecting a number of students (for example, a report from a student that an instructor has repeatedly made sexually explicit remarks about his or her personal life in front of an entire class), an individual can be put on notice of allegations of harassing behavior and counseled appropriately without revealing, even indirectly, the identity of the student who notified the school. Those steps can be very effective in preventing further harassment.

C. Response to Other Types of Notice

The previous two sections deal with situations in which a student or parent of a student who was harassed reports or complains of harassment or in which a responsible school employee directly observes sexual harassment of a student. If a school learns of harassment through other means, for example, if information about harassment is received from a third party (such as from a witness to an incident or an anonymous letter or telephone call), different factors will affect the school's response. These factors include the source and nature of the information; the seriousness of the alleged incident; the specificity of the information; the objectivity and credibility of the source of the report; whether any individuals can be identified who were subjected to the alleged harassment; and whether those individuals want to pursue the matter. If, based on these factors, it is reasonable for the school to investigate and it can confirm the allegations, the considerations described in the previous sections concerning interim measures and appropriate responsive action will apply.

For example, if a parent visiting a school observes a student repeatedly harassing a group of female students and reports this to school officials, school personnel can speak with the female students to confirm whether that conduct has occurred and whether they view it as unwelcome. If the school determines that the conduct created a hostile environment, it can take reasonable, age-appropriate steps to address the situation. If on the other hand, the students in this example were to ask that their names not be disclosed or indicate that they do not want to pursue the matter, the considerations described in the previous section related to requests for confidentiality will shape the school's response.

In a contrasting example, a student newspaper at a large university may print an anonymous letter claiming that a professor is sexually harassing students in class on a daily basis, but the letter provides no clue as to the identity of the professor or the department in which the conduct is allegedly taking place. Due to the anonymous source and lack of specificity of the information, a school would not reasonably be able to investigate and confirm these allegations. However, in response to the anonymous letter, the school could submit a letter or article to the newspaper reiterating its policy against sexual harassment, encouraging persons who believe that they have been sexually harassed to come forward, and explaining how its grievance procedures work.

VIII. Prevention

A policy specifically prohibiting sexual harassment and separate grievance procedures for violations of that policy can help ensure that all students and employees understand the nature of sexual harassment and that the school will not tolerate it. Indeed, they might even bring conduct of a sexual nature to the school's attention so that the school can address it before it becomes sufficiently serious as to create a hostile environment. Further, training for administrators, teachers, and staff and age-appropriate classroom information for students can help to ensure that they understand what types of conduct can cause sexual harassment and that they know how to respond.

IX. Prompt and Equitable Grievance Procedures

Schools are required by the Title IX regulations to adopt and publish a policy against sex discrimination and grievance procedures providing for prompt and equitable resolution of complaints of discrimination on the basis of sex.⁹⁸ Accordingly, regardless of whether harassment occurred, a school violates this requirement of the Title IX regulations if it does not have those procedures and policy in place.⁹⁹

A school's sex discrimination grievance procedures must apply to complaints of sex discrimination in the school's education programs and activities filed by students against school employees, other students, or third parties.¹⁰⁰ Title IX does not require a school to adopt a policy specifically prohibiting sexual harassment or to provide separate grievance procedures for sexual harassment complaints. However, its nondiscrimination policy and grievance procedures for handling discrimination complaints must provide effective means for preventing and responding to sexual harassment. Thus, if, because of the lack of a policy or procedure specifically addressing sexual harassment, students are unaware of what kind of conduct constitutes sexual harassment or that such conduct is

prohibited sex discrimination, a school's general policy and procedures relating to sex discrimination complaints will not be considered effective.¹⁰¹

OCR has identified a number of elements in evaluating whether a school's grievance procedures are prompt and equitable, including whether the procedures provide for —

- Notice to students, parents of elementary and secondary students, and employees of the procedure, including where complaints may be filed;
- Application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- Designated and reasonably prompt timeframes for the major stages of the complaint process;
- Notice to the parties of the outcome of the complaint;¹⁰² and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.¹⁰³

Many schools also provide an opportunity to appeal the findings or remedy, or both. In addition, because retaliation is prohibited by Title IX, schools may want to include a provision in their procedures prohibiting retaliation against any individual who files a complaint or participates in a harassment inquiry.

Procedures adopted by schools will vary considerably in detail, specificity, and components, reflecting differences in audiences, school sizes and administrative structures, State or local legal requirements, and past experience. In addition, whether complaint resolutions are timely will vary depending on the complexity of the investigation and the severity and extent of the harassment. During the investigation it is a good practice for schools to inform students who have alleged harassment about the status of the investigation on a periodic basis.

A grievance procedure applicable to sexual harassment complaints cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint. Thus, the procedures should be written in language appropriate to the age of the school's students, easily understood, and widely disseminated. Distributing the procedures to administrators, or including them in the school's administrative or policy manual, may not by itself be an effective way of providing notice, as these publications are usually not widely circulated to and understood by all members of the school community. Many schools ensure adequate notice to students by having copies of the procedures available at various locations throughout the school or campus; publishing the procedures as a separate document; including a summary of the procedures in major publications issued by the school, such as handbooks and catalogs for students, parents of elementary and secondary students, faculty, and staff; and identifying individuals who can explain how the procedures work.

A school must designate at least one employee to coordinate its efforts to comply with and carry out its Title IX responsibilities.¹⁰⁴ The school must notify all of its students and employees of the name, office address, and telephone number of the employee or employees designated.¹⁰⁵ Because it is possible that an employee designated to handle Title IX complaints may himself or herself engage in harassment, a school may want to designate more than one employee to be responsible for handling complaints in order to ensure that students have an effective means of reporting harassment.¹⁰⁶ While a school may choose to have a number of employees responsible for Title IX matters, it is also advisable to give one official responsibility for overall coordination and oversight of all sexual harassment complaints to ensure consistent practices and standards in handling complaints. Coordination of recordkeeping (for instance, in a confidential log maintained by the Title IX coordinator) will also ensure that the school can and will resolve recurring problems and identify students or employees who have multiple complaints filed against them.¹⁰⁷ Finally, the school must make sure that all designated employees have adequate training as to what conduct constitutes sexual harassment and are able to explain how the grievance procedure operates.¹⁰⁸

Grievance procedures may include informal mechanisms for resolving sexual harassment complaints to be used if the parties agree to do so.¹⁰⁹ OCR has frequently advised schools, however, that it is not appropriate for a student who is complaining of harassment to be required to work out the problem directly with the individual alleged to be harassing him or her, and certainly not without appropriate involvement by the school (e.g., participation by a counselor, trained mediator, or, if appropriate, a teacher or administrator). In addition, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. In some cases, such as alleged sexual assaults, mediation will not be appropriate even on a voluntary basis. Title IX also permits the use of a student disciplinary procedure not designed specifically for Title IX grievances to resolve sex discrimination complaints, as long as the procedure meets the requirement of affording a complainant a “prompt and equitable” resolution of the complaint.

In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. Police investigations or reports may be useful in terms of fact gathering. However, because legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively.¹¹⁰ Similarly, schools are cautioned about using the results of insurance company investigations of sexual harassment allegations. The purpose of an insurance investigation is to assess liability under the insurance policy, and the applicable standards may well be different from those under Title IX. In addition, a school is not relieved of its responsibility to respond to a sexual harassment complaint filed under its grievance procedure by the fact that a complaint has been filed with OCR.¹¹¹

X. Due Process Rights of the Accused

A public school's employees have certain due process rights under the United States Constitution. The Constitution also guarantees due process to students in public and State-supported schools who are accused of certain types of infractions. The rights established under Title IX must be interpreted consistent with any federally guaranteed due process rights involved in a complaint proceeding. Furthermore, the Family Educational Rights and Privacy Act (FERPA) does not override federally protected due process rights of persons accused of sexual harassment. Procedures that ensure the Title IX rights of the complainant, while at the same time according due process to both parties involved, will lead to sound and supportable decisions. Of course, schools should ensure that steps to accord due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant. In both public and private schools, additional or separate rights may be created for employees or students by State law, institutional regulations and policies, such as faculty or student handbooks, and collective bargaining agreements. Schools should be aware of these rights and their legal responsibilities to individuals accused of harassment.

XI. First Amendment

In cases of alleged harassment, the protections of the First Amendment must be considered if issues of speech or expression are involved.¹¹² Free speech rights apply in the classroom (e.g., classroom lectures and discussions)¹¹³ and in all other education programs and activities of public schools (e.g., public meetings and speakers on campus; campus debates, school plays and other cultural events¹¹⁴; and student newspapers, journals, and other publications¹¹⁵). In addition, First Amendment rights apply to the speech of students and teachers.¹¹⁶

Title IX is intended to protect students from sex discrimination, not to regulate the content of speech. OCR recognizes that the offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a sexually hostile environment under Title IX.¹¹⁷ In order to establish a violation of Title IX, the harassment must be sufficiently serious to deny or limit a student's ability to participate in or benefit from the education program.¹¹⁸

Moreover, in regulating the conduct of its students and its faculty to prevent or redress discrimination prohibited by Title IX (e.g., in responding to harassment that is sufficiently serious as to create a hostile environment), a school must formulate, interpret, and apply its rules so as to protect academic freedom and free speech rights. For instance, while the First Amendment may prohibit a school from restricting the right of students to express opinions about one sex that may be considered derogatory, the school can take steps to denounce those opinions and ensure that competing views are heard. The age of the students involved and the location or forum may affect how the school can respond consistently with the First Amendment.¹¹⁹ As an example of the application of free speech rights to allegations of sexual harassment, consider the following:

Example 1: In a college level creative writing class, a professor's required reading list includes excerpts from literary classics that contain descriptions of explicit

sexual conduct, including scenes that depict women in submissive and demeaning roles. The professor also assigns students to write their own materials, which are read in class. Some of the student essays contain sexually derogatory themes about women. Several female students complain to the Dean of Students that the materials and related classroom discussion have created a sexually hostile environment for women in the class. What must the school do in response?

Answer: Academic discourse in this example is protected by the First Amendment even if it is offensive to individuals. Thus, Title IX would not require the school to discipline the professor or to censor the reading list or related class discussion.

Example 2: A group of male students repeatedly targets a female student for harassment during the bus ride home from school, including making explicit sexual comments about her body, passing around drawings that depict her engaging in sexual conduct, and, on several occasions, attempting to follow her home off the bus. The female student and her parents complain to the principal that the male students' conduct has created a hostile environment for girls on the bus and that they fear for their daughter's safety. What must a school do in response?

Answer: Threatening and intimidating actions targeted at a particular student or group of students, even though they contain elements of speech, are not protected by the First Amendment. The school must take prompt and effective actions, including disciplinary action if necessary, to stop the harassment and prevent future harassment.

Endnotes

¹ This guidance does not address sexual harassment of employees, although that conduct may be prohibited by Title IX. 20 U.S.C. 1681 et seq.; 34 CFR part 106, subpart E. If employees file Title IX sexual harassment complaints with OCR, the complaints will be processed pursuant to the Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance. 28 CFR 42.604. Employees are also protected from discrimination on the basis of sex, including sexual harassment, by Title VII of the Civil Rights Act of 1964. For information about Title VII and sexual harassment, see the Equal Employment Opportunity Commission's (EEOC's) Guidelines on Sexual Harassment, 29 CFR 1604.11, for information about filing a Title VII charge with the EEOC, see 29 CFR 1601.7–1607.13, or see the EEOC's website at www.eeoc.gov.

² 20 U.S.C. 1681; 34 CFR part 106.

³ See, e.g., Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 649-50 (1999); Gebser v. Lago Vista Ind. Sch. Dist., 524 U.S. 274, 281 (1998); Franklin v. Gwinnett County Pub. Sch., 503 U.S. 60, 75 (1992); S. REP. NO. 100-64, 100th Cong., 1st Sess. 14 (1987); Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (1997 guidance), 62 FR 12034 (1997).

⁴ As described in the section on “Applicability,” this guidance applies to all levels of education.

⁵ For practical information about steps that schools can take to prevent and remedy all types of harassment, including sexual harassment, see “Protecting Students from Harassment and Hate Crime, A Guide for Schools,” which we issued jointly with the National Association of Attorneys General. This Guide is available at our web site at: www.ed.gov/pubs/Harassment.

⁶ See, e.g., Davis, 526 U.S. at 653 (alleged conduct of a sexual nature that would support a sexual harassment claim included verbal harassment and “numerous acts of objectively offensive touching;” Franklin, 503 U.S. at 63 (conduct of a sexual nature found to support a sexual harassment claim under Title IX included kissing, sexual intercourse); Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 60-61 (1986) (demands for sexual favors, sexual advances, fondling, indecent exposure, sexual intercourse, rape, sufficient to raise hostile environment claim under Title VII); Ellison v. Brady, 924 F.2d 872, 873-74, 880 (9th Cir. 1991) (allegations sufficient to state sexual harassment claim under Title VII included repeated requests for dates, letters making explicit references to sex and describing the harasser's feelings for plaintiff); Lipsett v. University of Puerto Rico, 864 F.2d 881, 904-5 (1st Cir. 1988) (sexually derogatory comments, posting of sexually explicit drawing of plaintiff, sexual advances may support sexual harassment claim); Kadiki v. Virginia Commonwealth University, 892 F.Supp. 746, 751 (E.D. Va. 1995)

(professor's spanking of university student may constitute sexual conduct under Title IX); Doe v. Petaluma, 830 F.Supp. 1560, 1564-65 (N.D. Cal. 1996) (sexually derogatory taunts and innuendo can be the basis of a harassment claim); Denver School Dist. #2, OCR Case No. 08-92-1007 (same to allegations of vulgar language and obscenities, pictures of nude women on office walls and desks, unwelcome touching, sexually offensive jokes, bribery to perform sexual acts, indecent exposure); Nashoba Regional High School, OCR Case No. 01-92-1377 (same as to year-long campaign of derogatory, sexually explicit graffiti and remarks directed at one student).

⁷ See also Shoreline School Dist., OCR Case No. 10-92-1002 (a teacher's patting a student on the arm, shoulder, and back, and restraining the student when he was out of control, not conduct of a sexual nature); Dartmouth Public Schools, OCR Case No. 01-90-1058 (same as to contact between high school coach and students); San Francisco State University, OCR Case No. 09-94-2038 (same as to faculty advisor placing her arm around a graduate student's shoulder in posing for a picture); Analay Union High School Dist., OCR Case No. 09-92-1249 (same as to drama instructor who put his arms around both male and female students who confided in him).

⁸ 20 U.S.C. 1687 (codification of the amendment to Title IX regarding scope of jurisdiction, enacted by the Civil Rights Restoration Act of 1987). See 65 FR 68049 (November 13, 2000) (Department's amendment of the Title IX regulations to incorporate the statutory definition of "program or activity").

⁹ If a school contracts with persons or organizations to provide benefits, services, or opportunities to students as part of the school's program, and those persons or employees of those organizations sexually harass students, OCR will consider the harassing individual in the same manner that it considers the school's employees, as described in this guidance. (See section on "Harassment by Teachers and Other Employees.") See Brown v. Hot, Sexy, and Safer Products, Inc., 68 F.3d 525, 529 (1st Cir. 1995) (Title IX sexual harassment claim brought for school's role in permitting contract consultant hired by it to create allegedly hostile environment).

In addition, if a student engages in sexual harassment as an employee of the school, OCR will consider the harassment under the standards described for employees. (See section on "Harassment by Teachers and Other Employees.") For example, OCR would consider it harassment by an employee if a student teaching assistant who is responsible for assigning grades in a course, i.e., for providing aid, benefits, or services to students under the recipient's program, required a student in his or her class to submit to sexual advances in order to obtain a certain grade in the class.

¹⁰ Cf. John Does 1 v. Covington County Sch. Bd., 884 F.Supp. 462, 464-65 (M.D. Ala. 1995) (male students alleging that a teacher sexually harassed and abused them stated cause of action under Title IX).

¹¹ Title IX and the regulations implementing it prohibit discrimination "on the basis of sex;" they do not restrict protection from sexual harassment to those circumstances in

which the harasser only harasses members of the opposite sex. See 34 CFR 106.31. In Oncale v. Sundowner Offshore Services, Inc. the Supreme Court held unanimously that sex discrimination consisting of same-sex sexual harassment can violate Title VII's prohibition against discrimination because of sex. 523 U.S. 75, 82 (1998). The Supreme Court's holding in Oncale is consistent with OCR policy, originally stated in its 1997 guidance, that Title IX prohibits sexual harassment regardless of whether the harasser and the person being harassed are members of the same sex. 62 FR 12039. See also Kinman v. Omaha Public School Dist., 94 F.3d 463, 468 (8th Cir. 1996), rev'd on other grounds, 171 F.3d 607 (1999) (female student's allegation of sexual harassment by female teacher sufficient to raise a claim under Title IX); Doe v. Petaluma, 830 F.Supp. 1560, 1564-65, 1575 (N.D. Cal. 1996) (female junior high student alleging sexual harassment by other students, including both boys and girls, sufficient to raise a claim under Title IX); John Does 1, 884 F.Supp. at 465 (same as to male students' allegations of sexual harassment and abuse by a male teacher.) It can also occur in certain situations if the harassment is directed at students of both sexes. Chiapuzo v. BLT Operating Corp., 826 F.Supp. 1334, 1337 (D.Wyo. 1993) (court found that if males and females were subject to harassment, but harassment was based on sex, it could violate Title VII); but see Holman v. Indiana, 211 F.3d 399, 405 (7th Cir. 2000) (if male and female both subjected to requests for sex, court found it could not violate Title VII).

In many circumstances, harassing conduct will be on the basis of sex because the student would not have been subjected to it at all had he or she been a member of the opposite sex; e.g., if a female student is repeatedly propositioned by a male student or employee (or, for that matter, if a male student is repeatedly propositioned by a male student or employee.) In other circumstances, harassing conduct will be on the basis of sex if the student would not have been affected by it in the same way or to the same extent had he or she been a member of the opposite sex; e.g., pornography and sexually explicit jokes in a mostly male shop class are likely to affect the few girls in the class more than it will most of the boys.

In yet other circumstances, the conduct will be on the basis of sex in that the student's sex was a factor in or affected the nature of the harasser's conduct or both. Thus, in Chiapuzo, a supervisor made demeaning remarks to both partners of a married couple working for him, e.g., as to sexual acts he wanted to engage in with the wife and how he would be a better lover than the husband. In both cases, according to the court, the remarks were based on sex in that they were made with an intent to demean each member of the couple because of his or her respective sex. 826 F.Supp. at 1337. See also Steiner v. Showboat Operating Co., 25 F.3d 1459, 1463-64 (9th Cir. 1994), cert. denied, 115 S.Ct. 733 (1995); but see Holman, 211 F.3d at 405 (finding that if male and female both subjected to requests for sex, Title VII could not be violated).

¹² Nashoba Regional High School, OCR Case No. 01-92-1397. In Conejo Valley School Dist., OCR Case No. 09-93-1305, female students allegedly taunted another female student about engaging in sexual activity; OCR found that the alleged comments were sexually explicit and, if true, would be sufficiently severe, persistent, and pervasive to create a hostile environment.

¹³ See Williamson v. A.G. Edwards & Sons, Inc., 876 F.2d 69, 70 (8th Cir. 1989, cert. denied 493 U.S. 1089 (1990)); DeSantis v. Pacific Tel. & Tel. Co., Inc., 608 F.2d 327, 329-30 (9th Cir. 1979)(same); Blum v. Gulf Oil Corp., 597 F.2d 936, 938 (5th Cir. 1979)(same).

¹⁴ It should be noted that some State and local laws may prohibit discrimination on the basis of sexual orientation. Also, under certain circumstances, courts may permit redress for harassment on the basis of sexual orientation under other Federal legal authority. See Nabozny v. Podlesny, 92 F.3d 446, 460 (7th Cir. 1996) (holding that a gay student could maintain claims alleging discrimination based on both gender and sexual orientation under the Equal Protection Clause of the United States Constitution in a case in which a school district failed to protect the student to the same extent that other students were protected from harassment and harm by other students due to the student's gender and sexual orientation).

¹⁵ However, sufficiently serious sexual harassment is covered by Title IX even if the hostile environment also includes taunts based on sexual orientation.

¹⁶ See also, Price Waterhouse v. Hopkins, 490 U.S. 228, 251 (1989) (plurality opinion) (where an accounting firm denied partnership to a female candidate, the Supreme Court found Title VII prohibits an employer from evaluating employees by assuming or insisting that they match the stereotype associated with their sex).

¹⁷ See generally Gebser; Davis; See also Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 65-66 (1986); Harris v. Forklift Systems Inc., 510 U.S. 14, 22 (1993); see also Hicks v. Gates Rubber Co., 833 F.2d 1406, 1415 (10th Cir. 1987) (concluding that harassment based on sex may be discrimination whether or not it is sexual in nature); McKinney v. Dole, 765 F.2d 1129, 1138 (D.C. Cir. 1985) (physical, but nonsexual, assault could be sex-based harassment if shown to be unequal treatment that would not have taken place but for the employee's sex); Cline v. General Electric Capital Auto Lease, Inc., 757 F.Supp. 923, 932-33 (N.D. Ill. 1991).

¹⁸ See, e.g., sections on "Harassment by Teachers and Other Employees," "Harassment by Other Students or Third Parties," "Notice of Employee, Peer, or Third Party Harassment," "Factors Used to Evaluate a Hostile Environment," "Recipient's Response," and "Prompt and Equitable Grievance Procedures."

¹⁹ See Lipsett, 864 F.2d at 903-905 (general antagonism toward women, including stated goal of eliminating women from surgical program, statements that women shouldn't be in the program, and assignment of menial tasks, combined with overt sexual harassment); Harris, 510 U.S. at 23; Andrews v. City of Philadelphia, 895 F.2d 1469, 1485-86 (3rd Cir. 1990) (court directed trial court to consider sexual conduct as well as theft of female employees' files and work, destruction of property, and anonymous phone calls in determining if there had been sex discrimination); see also Hall v. Gus Construction Co., 842 F.2d 1010, 1014 (8th Cir. 1988) (affirming that harassment due to the employee's sex

may be actionable even if the harassment is not sexual in nature); Hicks, 833 F.2d at 1415; Eden Prairie Schools, Dist. #272, OCR Case No. 05-92-1174 (the boys made lewd comments about male anatomy and tormented the girls by pretending to stab them with rubber knives; while the stabbing was not sexual conduct, it was directed at them because of their sex, i.e., because they were girls).

²⁰ Davis, 526 U.S. at 650 (“Having previously determined that ‘sexual harassment’ is ‘discrimination’ in the school context under Title IX, we are constrained to conclude that student-on-student sexual harassment, if sufficiently severe, can likewise rise to the level of discrimination actionable under the statute.”); Franklin, 503 U.S. at 75 (“Unquestionably, Title IX placed on the [school] the duty not to discriminate on the basis of sex, and ‘when a supervisor sexually harasses a subordinate because of the subordinate’s sex, that supervisor “discriminate[s]” on the basis of sex.’ ... We believe the same rule should apply when a teacher sexually harasses and abuses a student.” (citation omitted)).

OCR’s longstanding interpretation of its regulations is that sexual harassment may constitute a violation. 34 CFR 106.31; See Sexual Harassment Guidance, 62 FR 12034 (1997). When Congress enacted the Civil Rights Restoration Act of 1987 to amend Title IX to restore institution-wide coverage over federally assisted education programs and activities, the legislative history indicated not only that Congress was aware that OCR interpreted its Title IX regulations to prohibit sexual harassment, but also that one of the reasons for passing the Restoration Act was to enable OCR to investigate and resolve cases involving allegations of sexual harassment. S. REP. NO. 64, 100th Cong., 1st Sess. at 12 (1987). The examples of discrimination that Congress intended to be remedied by its statutory change included sexual harassment of students by professors, id. at 14, and these examples demonstrate congressional recognition that discrimination in violation of Title IX can be carried out by school employees who are providing aid, benefits, or services to students. Congress also intended that if discrimination occurred, recipients needed to implement effective remedies. S. REP. NO. 64 at 5.

²¹ 34 CFR 106.4.

²² These are the basic regulatory requirements. 34 CFR 106.31(a)(b). Depending upon the facts, sexual harassment may also be prohibited by more specific regulatory prohibitions. For example, if a college financial aid director told a student that she would not get the student financial assistance for which she qualified unless she slept with him, that also would be covered by the regulatory provision prohibiting discrimination on the basis of sex in financial assistance, 34 CFR 106.37(a).

²³ 34 CFR 106.31(b)(1).

²⁴ 34 CFR 106.31(b)(2).

²⁵ 34 CFR 106.31(b)(3).

²⁶ 34 CFR 106.31(b)(4).

²⁷ 34 CFR 106.31(b)(6).

²⁸ 34 CFR 106.31(b)(7).

²⁹ 34 CFR 106.3(a).

³⁰ 34 CFR 106.9.

³¹ 34 CFR 106.8(b).

³² 34 CFR 106.8(a).

³³ The 1997 guidance referred to quid pro quo harassment and hostile environment harassment. 62 FR 12038–40.

³⁴ See Alexander v. Yale University, 459 F.Supp. 1, 4 (D.Conn. 1977), aff'd, 631 F.2d 178 (2nd Cir. 1980)(stating that a claim “that academic advancement was conditioned upon submission to sexual demands constitutes [a claim of] sex discrimination in education...”); Crandell v. New York College, Osteopathic Medicine, 87 F.Supp.2d 304, 318 (S.D.N.Y. 2000) (finding that allegations that a supervisory physician demanded that a student physician spend time with him and have lunch with him or receive a poor evaluation, in light of the totality of his alleged sexual comments and other inappropriate behavior, constituted a claim of quid pro quo harassment); Kadiki, 892 F.Supp. at 752 (reexamination in a course conditioned on college student’s agreeing to be spanked should she not attain a certain grade may constitute quid pro quo harassment).

³⁵ 34 CFR 106.31(b).

³⁶ Davis, 526 U.S. at 651 (confirming, by citing approvingly both to Title VII cases (Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57,67 (1986) (finding that hostile environment claims are cognizable under Title VII), and Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 82 (1998)) and OCR’s 1997 guidance, 62 FR at 12041-42, that determinations under Title IX as to what conduct constitutes hostile environment sexual harassment may continue to rely on Title VII caselaw).

³⁷ 34 CFR 106.31(b). See Davis, 526 U.S. at 650 (concluding that allegations of student-on-student sexual harassment that is “so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits” supports a claim for money damages in an implied right of action).

³⁸ In Harris, the Supreme Court explained the requirement for considering the “subjective perspective” when determining the existence of a hostile environment. The Court stated— “... if the victim does not subjectively perceive the environment to be abusive, the

conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation." 510 U.S. at 21-22.

³⁹ See Davis, 526 U.S. at 650 (conduct must be "objectively offensive" to trigger liability for money damages); Elgamil v. Syracuse University, 2000 U.S. Dist. LEXIS 12598 at 17 (N.D.N.Y. 2000) (citing Harris); Booher v. Board of Regents, 1998 U.S. Dist. LEXIS 11404 at 25 (E.D. Ky. 1998) (same). See Oncale, 523 U.S. at 81, in which the Court "emphasized ... that the objective severity of harassment should be judged from the perspective of a reasonable person in the [victim's] position, considering 'all the circumstances,'" and citing Harris, 510 U.S. at 20, in which the Court indicated that a "reasonable person" standard should be used to determine whether sexual conduct constituted harassment. This standard has been applied under Title VII to take into account the sex of the subject of the harassment, see, e.g., Ellison, 924 F.2d at 878-79 (applying a "reasonable woman" standard to sexual harassment), and has been adapted to sexual harassment in education under Title IX, Patricia H. v. Berkeley Unified School Dist., 830 F.Supp. 1288, 1296 (N.D. Cal. 1993) (adopting a "reasonable victim" standard and referring to OCR's use of it).

⁴⁰ See Davis, 526 U.S. at 651, citing both Oncale, 523 U.S. at 82, and OCR's 1997 guidance (62 FR 12041-12042).

⁴¹ See, e.g., Davis, 526 U.S. at 634 (as a result of the harassment, student's grades dropped and she wrote a suicide note); Doe v. Petaluma, 830 F. Supp. at 1566 (student so upset about harassment by other students that she was forced to transfer several times, including finally to a private school); Modesto City Schools, OCR Case No. 09-93-1391 (evidence showed that one girl's grades dropped while the harassment was occurring); Weaverville Elementary School, OCR Case No. 09-91-1116 (students left school due to the harassment). Compare with College of Alameda, OCR Case No. 09-90-2104 (student not in instructor's class and no evidence of any effect on student's educational benefits or service, so no hostile environment).

⁴² Doe v. Petaluma, 830 F.Supp. at 1566.

⁴³ See Waltman v. Int'l Paper Co., 875 F.2d 468, 477 (5th Cir. 1989) (holding that although not specifically directed at the plaintiff, sexually explicit graffiti on the walls was "relevant to her claim"); Monteiro v. Tempe Union High School, 158 F.3d 1022, 1033-34 (9th Cir. 1998) (Title VI racial harassment case, citing Waltman; see also Hall, 842 F. 2d at 1015 (evidence of sexual harassment directed at others is relevant to show hostile environment under Title VII).

⁴⁴ See, e.g., Elgmil 2000 U.S. Dist. LEXIS at 19 ("in order to be actionable, the incidents of harassment must occur in concert or with a regularity that can reasonably be termed pervasive"); Andrews, 895 F.2d at 1484 ("Harassment is pervasive when 'incidents of harassment occur either in concert or with regularity'"); Moylan v. Maries County, 792 F.2d 746, 749 (8th Cir. 1986).

⁴⁵ 34 CFR 106.31(b). See Vance v. Spencer County Public School District, 231 F.3d 253 (6th Cir. 2000); Doe v. School Admin. Dist. No. 19, 66 F.Supp.2d 57, 62 (D. Me. 1999). See also statement of the U.S. Equal Employment Opportunity Commission (EEOC): “The Commission will presume that the unwelcome, intentional touching of [an employee’s] intimate body areas is sufficiently offensive to alter the conditions of her working environment and constitute a violation of Title VII. More so than in the case of verbal advances or remarks, a single unwelcome physical advance can seriously poison the victim’s working environment.” EEOC Policy Guidance on Current Issues of Sexual Harassment, 17. Barrett v. Omaha National Bank, 584 F. Supp. 22, 30 (D. Neb. 1983), aff’d, 726 F. 2d 424 (8th Cir. 1984) (finding that hostile environment was created under Title VII by isolated events, i.e., occurring while traveling to and during a two-day conference, including the co-worker’s talking to plaintiff about sexual activities and touching her in an offensive manner while they were inside a vehicle from which she could not escape).

⁴⁶ See also Ursuline College, OCR Case No. 05-91-2068 (a single incident of comments on a male student’s muscles arguably not sexual; however, assuming they were, not severe enough to create a hostile environment).

⁴⁷ Davis, 526 U.S. at 653 (“The relationship between the harasser and the victim necessarily affects the extent to which the misconduct can be said to breach Title IX’s guarantee of equal access to educational benefits and to have a systemic effect on a program or activity. Peer harassment, in particular, is less likely to satisfy these requirements than is teacher student harassment.”); Patricia H., 830 F. Supp. at 1297 (stating that the “grave disparity in age and power” between teacher and student contributed to the creation of a hostile environment); Summerfield Schools, OCR Case No. 15-92-1929 (“impact of the ... remarks was heightened by the fact that the coach is an adult in a position of authority”); cf. Doe v. Taylor I.S.D., 15 F.3d 443, 460 (5th Cir. 1994) (Sec. 1983 case; taking into consideration the influence that the teacher had over the student by virtue of his position of authority to find that a sexual relationship between a high school teacher and a student was unlawful).

⁴⁸ See, e.g., McKinney, 765 F.2d at 1138-49; Robinson v. Jacksonville Shipyards, 760 F. Supp. 1486, 1522 (M.D. Fla. 1991).

⁴⁹ Cf. Patricia H., 830 F. Supp. at 1297.

⁵⁰ See, e.g., Barrett, 584 F. Supp. at 30 (finding harassment occurring in a car from which the victim could not escape particularly severe).

⁵¹ See Hall, 842 F. 2d at 1015 (stating that “evidence of sexual harassment directed at employees other than the plaintiff is relevant to show a hostile environment”) (citing Hicks, 833 F. 2d, 1415-16). Cf. Midwest City-Del City Public Schools, OCR Case No. 06-92-1012 (finding of racially hostile environment based in part on several racial incidents at school shortly before incidents in complaint, a number of which involved the same student involved in the complaint).

⁵² In addition, incidents of racial or national origin harassment directed at a particular individual may also be aggregated with incidents of sexual or gender harassment directed at that individual in determining the existence of a hostile environment. Hicks, 833 F.2d at 1416; Jefferies v. Harris County Community Action Ass’n, 615 F.2d 1025, 1032 (5th Cir. 1980).

⁵³ Does v. Covington Sch. Bd. of Educ., 930 F.Supp. 554, 569 (M.D. Ala. 1996); Henson v. City of Dundee, 682 F.2d 897, 903 (11th Cir. 1982).

⁵⁴ See Meritor Savings Bank, 477 U.S. at 68. “[T]he fact that sex-related conduct was ‘voluntary,’ in the sense that the complainant was not forced to participate against her will, is not a defense to a sexual harassment suit brought under Title VII.... The correct inquiry is whether [the subject of the harassment] by her conduct indicated that the alleged sexual advances were unwelcome, not whether her actual participation in sexual intercourse was voluntary.”

⁵⁵ Lipsett, 864 F.2d at 898 (while, in some instances, a person may have the responsibility for telling the harasser “directly” that the conduct is unwelcome, in other cases a “consistent failure to respond to suggestive comments or gestures may be sufficient....”); Danna v. New York Tel. Co., 752 F.Supp. 594, 612 (despite a female employee’s own foul language and participation in graffiti writing, her complaints to management indicated that the harassment was not welcome); see also Carr v. Allison Gas Turbine Div. GMC., 32 F.3d 1007, 1011 (7th Cir. 1994) (finding that cursing and dirty jokes by a female employee did not show that she welcomed the sexual harassment, given her frequent complaints about it: “Even if ... [the employee’s] testimony that she talked and acted as she did [only] in an effort to be one of the boys is ... discounted, her words and conduct cannot be compared to those of the men and used to justify their conduct.... The asymmetry of positions must be considered. She was one woman; they were many men. Her use of [vulgar] terms ... could not be deeply threatening....”).

⁵⁶ See Reed v. Shepard, 939 F.2d 484, 486-87, 491-92 (7th Cir. 1991) (no harassment found under Title VII in a case in which a female employee not only tolerated, but also instigated the suggestive joking activities about which she was now complaining); Weinsheimer v. Rockwell Int’l Corp., 754 F.Supp. 1559, 1563-64 (M.D. Fla. 1990) (same, in case in which general shop banter was full of vulgarity and sexual innuendo by men and women alike, and plaintiff contributed her share to this atmosphere.) However, even if a student participates in the sexual banter, OCR may in certain circumstances find that the conduct was nevertheless unwelcome if, for example, a teacher took an active role in the sexual banter and a student reasonably perceived that the teacher expected him or her to participate.

⁵⁷ The school bears the burden of rebutting the presumption.

⁵⁸ Of course, nothing in Title IX would prohibit a school from implementing policies prohibiting sexual conduct or sexual relationships between students and adult employees.

⁵⁹ See note 58.

⁶⁰ Gebser, 524 U.S. at 281 (“Franklin ... establishes that a school district can be held liable in damages [in an implied action under Title IX] in cases involving a teacher’s sexual harassment of a student....”; 34 CFR 106.31; See 1997 Sexual Harassment Guidance, 62 FR 12034.

⁶¹ See Davis, 526 U.S. at 653 (stating that harassment of a student by a teacher is more likely than harassment by a fellow student to constitute the type of effective denial of equal access to educational benefits that can breach the requirements of Title IX).

⁶² 34 CFR 106.31(b). Cf. Gebser, 524 U.S. at 283-84 (Court recognized in an implied right of action for money damages for teacher sexual harassment of a student that the question of whether a violation of Title IX occurred is a separate question from the scope of appropriate remedies for a violation).

⁶³ Davis, 526 U.S. at 646.

⁶⁴ See section on “Applicability of Title IX” for scope of coverage.

⁶⁵ See section on “Notice of Employee, Peer, or Third Party Harassment.”

⁶⁶ See section on “Notice of Employee, Peer, or Third Party Harassment.”

⁶⁷ 34 CFR 106.31(b).

⁶⁸ 34 CFR 106.31(b).

⁶⁹ See section on “Notice of Employee, Peer, or Third Party Harassment.”

⁷⁰ Cf. Davis, 526 U.S. at 646.

⁷¹ 34 CFR 106.31(b).

⁷² 34 CFR 106.31(b).

⁷³ Consistent with its obligation under Title IX to protect students, cf. Gebser, 524 U.S. at 287, OCR interprets its regulations to ensure that recipients take reasonable action to address, rather than neglect, reasonably obvious discrimination. Cf. Gebser, 524 U.S. at 287-88; Davis, 526 U.S. at 650 (actual notice standard for obtaining money damages in private lawsuit).

⁷⁴ Whether an employee is a responsible employee or whether it would be reasonable for a student to believe the employee is, even if the employee is not, will vary depending on

factors such as the age and education level of the student, the type of position held by the employee, and school practices and procedures, both formal and informal.

The Supreme Court held that a school will only be liable for money damages in a private lawsuit where there is actual notice to a school official with the authority to address the alleged discrimination and take corrective action. Gebser, 524 U.S. at 290, and Davis, 526 U.S. at 642. The concept of a “responsible employee” under our guidance is broader. That is, even if a responsible employee does not have the authority to address the discrimination and take corrective action, he or she does have the obligation to report it to appropriate school officials.

⁷⁵ The Title IX regulations require that recipients designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulations, including complaint investigations. 34 CFR 106.8(a).

⁷⁶ 34 CFR 106.31. See Yates v. Avco Corp., 819 F.2d 630, 636 (6th Cir. 1987); Katz v. Dole, 709 F.2d 251, 256 (4th Cir. 1983).

⁷⁷ For example, a substantiated report indicating that a high school coach has engaged in inappropriate physical conduct of a sexual nature in several instances with different students may suggest a pattern of conduct that should trigger an inquiry as to whether other students have been sexually harassed by that coach. See also Doe v. School Administrative Dist. No. 19, 66 F.Supp.2d 57, 63-64 and n.6 (D.Me. 1999) (in a private lawsuit for money damages under Title IX in which a high school principal had notice that a teacher may be engaging in a sexual relationship with one underage student and did not investigate, and then the same teacher allegedly engaged in sexual intercourse with another student, who did not report the incident, the court indicated that the school’s knowledge of the first relationship may be sufficient to serve as actual notice of the second incident).

⁷⁸ Cf. Katz, 709 F.2d at 256 (finding that the employer “should have been aware of the problem both because of its pervasive character and because of [the employee’s] specific complaints ...”); Smolsky v. Consolidated Rail Corp., 780 F.Supp. 283, 293 (E.D. Pa. 1991), reconsideration denied, 785 F.Supp. 71 (E.D. Pa. 1992) “where the harassment is apparent to all others in the work place, supervisors and coworkers, this may be sufficient to put the employer on notice of the sexual harassment” under Title VII); Jensen v. Eveleth Taconite Co., 824 F.Supp. 847, 887 (D.Minn. 1993); “[s]exual harassment ... was so pervasive that an inference of knowledge arises The acts of sexual harassment detailed herein were too common and continuous to have escaped Eveleth Mines had its management been reasonably alert.”); Cummings v. Walsh Construction Co., 561 F.Supp. 872, 878 (S.D. Ga. 1983) (“... allegations not only of the [employee] registering her complaints with her foreman ... but also that sexual harassment was so widespread that defendant had constructive notice of it” under Title VII); but see Murray v. New York Univ. College of Dentistry, 57 F.3d 243, 250-51 (2nd Cir. 1995) (concluding that other students’ knowledge of the conduct was not enough to charge the school with notice, particularly because these students may not have been aware that the conduct was offensive or abusive).

⁷⁹ 34 CFR 106.9 and 106.8(b).

⁸⁰ 34 CFR 106.8(b) and 106.31(b).

⁸¹ 34 CFR 106.9.

⁸² 34 CFR 106.8(b).

⁸³ 34 CFR 106.31.

⁸⁴ 34 CFR 106.31 and 106.3. Gebser, 524 U.S. at 288 (“In the event of a violation, [under OCR’s administrative enforcement scheme] a funding recipient may be required to take ‘such remedial action as [is] deem[ed] necessary to overcome the effects of [the] discrimination.’ §106.3.”).

⁸⁵ 20 U.S.C. 1682. In the event that OCR determines that voluntary compliance cannot be secured, OCR may take steps that may result in termination of Federal funding through administrative enforcement, or, alternatively, OCR may refer the case to the Department of Justice for judicial enforcement.

⁸⁶ Schools have an obligation to ensure that the educational environment is free of discrimination and cannot fulfill this obligation without determining if sexual harassment complaints have merit.

⁸⁷ In some situations, for example, if a playground supervisor observes a young student repeatedly engaging in conduct toward other students that is clearly unacceptable under the school’s policies, it may be appropriate for the school to intervene without contacting the other students. It still may be necessary for the school to talk with the students (and parents of elementary and secondary students) afterwards, e.g., to determine the extent of the harassment and how it affected them.

⁸⁸ Gebser, 524 U.S. at 288; Bundy v. Jackson, 641 F.2d 934, 947 (D.C. Cir. 1981) (employers should take corrective and preventive measures under Title VII); accord, Jones v. Flagship Int’l, 793 F.2d 714, 719-720 (5th Cir. 1986) (employer should take prompt remedial action under Title VII).

⁸⁹ See Doe ex rel. Doe v. Dallas Indep. Sch. Dist., 220 F.3d 380 (5th Cir. 2000) (citing Waltman); Waltman, 875 F.2d at 479 (appropriateness of employer’s remedial action under Title VII will depend on the “severity and persistence of the harassment and the effectiveness of any initial remedial steps”); Dornhecker v. Malibu Grand Prix Corp., 828 F.2d 307, 309-10 (5th Cir. 1987); holding that a company’s quick decision to remove the harasser from the victim was adequate remedial action).

⁹⁰ See Intlekofer v. Turnage, 973 F.2d 773, 779-780 (9th Cir. 1992)(holding that the employer’s response was insufficient and that more severe disciplinary action was

necessary in situations in which counseling, separating the parties, and warnings of possible discipline were ineffective in ending the harassing behavior).

⁹¹ Offering assistance in changing living arrangements is one of the actions required of colleges and universities by the Campus Security Act in cases of rape and sexual assault. See 20 U.S.C. 1092(f).

⁹² See section on “Harassment by Other Students or Third Parties.”

⁹³ University of California at Santa Cruz, OCR Case No. 09-93-2141 (extensive individual and group counseling); Eden Prairie Schools, Dist. #272, OCR Case No. 05-92-1174 (counseling).

⁹⁴ Even if the harassment stops without the school’s involvement, the school may still need to take steps to prevent or deter any future harassment — to inform the school community that harassment will not be tolerated. Wills v. Brown University, 184 F.3d 20, 28 (1st Cir. 1999) (difficult problems are posed in balancing a student’s request for anonymity or limited disclosure against the need to prevent future harassment); Fuller v. City of Oakland, 47 F.3d 1522, 1528-29 (9th Cir. 1995) (Title VII case).

⁹⁵ 34 CFR 106.8(b) and 106.71, incorporating by reference 34 CFR 100.7(e). The Title IX regulations prohibit intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX.

⁹⁶ Tacoma School Dist. No. 10, OCR Case No. 10-94-1079 (due to the large number of students harassed by an employee, the extended period of time over which the harassment occurred, and the failure of several of the students to report the harassment, the school committed as part of corrective action plan to providing training for students); Los Medanos College, OCR Case No. 09-84-2092 (as part of corrective action plan, school committed to providing sexual harassment seminar for campus employees); Sacramento City Unified School Dist., OCR Case No. 09-83-1063 (same as to workshops for management and administrative personnel and in-service training for non-management personnel).

⁹⁷ In addition, if information about the incident is contained in an “education record” of the student alleging the harassment, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, the school should consider whether FERPA would prohibit the school from disclosing information without the student’s consent. Id. In evaluating whether FERPA would limit disclosure, the Department does not interpret FERPA to override any federally protected due process rights of a school employee accused of harassment.

⁹⁸ 34 CFR 106.8(b). This requirement has been part of the Title IX regulations since their inception in 1975. Thus, schools have been required to have these procedures in place since that time. At the elementary and secondary level, this responsibility generally lies

with the school district. At the postsecondary level, there may be a procedure for a particular campus or college or for an entire university system.

⁹⁹ Fenton Community High School Dist. #100, OCR Case 05-92-1104.

¹⁰⁰ While a school is required to have a grievance procedure under which complaints of sex discrimination (including sexual harassment) can be filed, the same procedure may also be used to address other forms of discrimination.

¹⁰¹ See generally Meritor, 477 U.S. at 72-73 (holding that “mere existence of a grievance procedure” for discrimination does not shield an employer from a sexual harassment claim).

¹⁰² The Family Educational Rights and Privacy Act (FERPA) does not prohibit a student from learning the outcome of her complaint, i.e., whether the complaint was found to be credible and whether harassment was found to have occurred. It is the Department’s current position under FERPA that a school cannot release information to a complainant regarding disciplinary action imposed on a student found guilty of harassment if that information is contained in a student’s education record unless — (1) the information directly relates to the complainant (e.g., an order requiring the student harasser not to have contact with the complainant); or (2) the harassment involves a crime of violence or a sex offense in a postsecondary institution. See note 97. If the alleged harasser is a teacher, administrator, or other non-student employee, FERPA would not limit the school’s ability to inform the complainant of any disciplinary action taken.

¹⁰³ The section in the guidance on “Recipient’s Response” provides examples of reasonable and appropriate corrective action.

¹⁰⁴ 34 CFR 106.8(a).

¹⁰⁵ Id.

¹⁰⁶ See Meritor, 477 U.S. at 72-73.

¹⁰⁷ University of California, Santa Cruz, OCR Case No. 09-93-2131. This is true for formal as well as informal complaints. See University of Maine at Machias, OCR Case No. 01-94-6001 (school’s new procedures not found in violation of Title IX in part because they require written records for informal as well as formal resolutions). These records need not be kept in a student’s or employee’s individual file, but instead may be kept in a central confidential location.

¹⁰⁸ For example, in Cape Cod Community College, OCR Case No. 01-93-2047, the College was found to have violated Title IX in part because the person identified by the school as the Title IX coordinator was unfamiliar with Title IX, had no training, and did not even realize he was the coordinator.

¹⁰⁹ Indeed, in University of Maine at Machias, OCR Case No. 01-94-6001, OCR found the school's procedures to be inadequate because only formal complaints were investigated. While a school isn't required to have an established procedure for resolving informal complaints, they nevertheless must be addressed in some way. However, if there are indications that the same individual may be harassing others, then it may not be appropriate to resolve an informal complaint without taking steps to address the entire situation.

¹¹⁰ Academy School Dist. No 20, OCR Case No. 08-93-1023 (school's response determined to be insufficient in a case in which it stopped its investigation after complaint filed with police); Mills Public School Dist., OCR Case No. 01-93-1123, (not sufficient for school to wait until end of police investigation).

¹¹¹ Cf. EEOC v. Board of Governors of State Colleges and Universities, 957 F.2d 424 (7th Cir. 1992), cert. denied, 506 U.S. 906 (1992).

¹¹² The First Amendment applies to entities and individuals that are State actors. The receipt of Federal funds by private schools does not directly subject those schools to the U.S. Constitution. See Rendell-Baker v. Kohn, 457 U.S. 830, 840 (1982). However, all actions taken by OCR must comport with First Amendment principles, even in cases involving private schools that are not directly subject to the First Amendment.

¹¹³ See, e.g., George Mason University, OCR Case No. 03-94-2086 (law professor's use of a racially derogatory word, as part of an instructional hypothetical regarding verbal torts, did not constitute racial harassment); Portland School Dist. 1J, OCR Case No. 10-94-1117 (reading teacher's choice to substitute a less offensive term for a racial slur when reading an historical novel aloud in class constituted an academic decision on presentation of curriculum, not racial harassment).

¹¹⁴ See Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University, 993 F.2d 386 (4th Cir. 1993) (fraternity skit in which white male student dressed as an offensive caricature of a black female constituted student expression).

¹¹⁵ See Florida Agricultural and Mechanical University, OCR Case No. 04-92-2054 (no discrimination in case in which campus newspaper, which welcomed individual opinions of all sorts, printed article expressing one student's viewpoint on white students on campus.)

¹¹⁶ Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506 (1969) (neither students nor teachers shed their constitutional rights to freedom of expression at the schoolhouse gates); Cf. Cohen v. San Bernardino Valley College, 92 F.3d 968, 972 (9th Cir. 1996) (holding that a college professor could not be punished for his longstanding teaching methods, which included discussion of controversial subjects such as obscenity and consensual sex with children, under an unconstitutionally vague sexual harassment policy); George Mason University, OCR Case No. 03-94-2086 (law professor's use of a

racially derogatory word, as part of an instructional hypothetical regarding verbal torts, did not constitute racial harassment.)

¹¹⁷ See, e.g., University of Illinois, OCR Case No. 05-94-2104 (fact that university's use of Native American symbols was offensive to some Native American students and employees was not dispositive, in and of itself, in assessing a racially hostile environment claim under Title VI.)

¹¹⁸ See Meritor, 477 U.S. at 67 (the "mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee" would not affect the conditions of employment to a sufficient degree to violate Title VII), quoting Henson, 682 F.2d at 904; cf. R.A.V. v. City of St. Paul, 505 U.S. 377, 389 (1992) (citing with approval EEOC's sexual harassment guidelines); Monteiro, 158 F.3d at 1032-34 (9th Cir. 1998) (citing with approval OCR's racial harassment investigative guidance).

¹¹⁹ Compare Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 685 (1986) (Court upheld discipline of high school student for making lewd speech to student assembly, noting that "[t]he undoubted freedom to advocate unpopular and controversial issues in schools must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior."), with Iota Xi, 993 F.2d 386 (holding that, notwithstanding a university's mission to create a culturally diverse learning environment and its substantial interest in maintaining a campus free of discrimination, it could not punish students who engaged in an offensive skit with racist and sexist overtones).

Know Your Rights: Title IX Prohibits Sexual Harassment¹ and Sexual Violence Where You Go to School

Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. §1681 *et seq.*, is a Federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities. All public and private elementary and secondary schools, school districts, colleges, and universities (hereinafter “schools”) receiving any Federal funds must comply with Title IX. Under Title IX, discrimination on the basis of sex can include sexual harassment or sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion.

Below is additional information regarding the specific requirements of Title IX as they pertain to sexual harassment and sexual violence.

What are a school’s responsibilities to address sexual harassment and sexual violence?

- A school has a responsibility to respond promptly and effectively. If a school knows or reasonably should know about sexual harassment or sexual violence that creates a hostile environment, the school must take immediate action to eliminate the sexual harassment or sexual violence, prevent its recurrence, and address its effects.
- Even if a student or his or her parent does not want to file a complaint or does not request that the school take any action on the student’s behalf, if a school knows or reasonably should know about possible sexual harassment or sexual violence, it must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation.
- A criminal investigation into allegations of sexual harassment or sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.

What procedures must a school have in place to prevent sexual harassment and sexual violence and resolve complaints?

- **Every School Must Have And Distribute A Policy Against Sex Discrimination**
 - Title IX requires that each school publish a policy that it does not discriminate on the basis of sex in its education programs and activities. This notice must be widely distributed and available on an on-going basis.
 - The policy must state that inquiries concerning Title IX may be referred to the school’s Title IX coordinator or to OCR.
- **Every School Must Have A Title IX Coordinator**
 - Every school must designate at least one employee who is responsible for coordinating the school’s compliance with Title IX. This person is sometimes referred to as the Title IX coordinator. Schools must notify all students and employees of the name or title and contact information of the Title IX coordinator.
 - The coordinator’s responsibilities include overseeing all complaints of sex discrimination and identifying and addressing any patterns or systemic problems that arise during the review of such complaints.

¹ Use of the term “sexual harassment” throughout this document includes sexual violence unless otherwise noted.

- **Every School Must Have And Make Known Procedures For Students To File Complaints Of Sex Discrimination.**

- Title IX requires schools to adopt and publish grievance procedures for students to file complaints of sex discrimination, including complaints of sexual harassment or sexual violence. Schools can use general disciplinary procedures to address complaints of sex discrimination. But all procedures must provide for prompt and equitable resolution of sex discrimination complaints.
- Every complainant has the right to present his or her case. This includes the right to adequate, reliable, and impartial investigation of complaints, the right to have an equal opportunity to present witnesses and other evidence, and the right to the same appeal processes, for both parties.
- Every complainant has the right to be notified of the time frame within which: (a) the school will conduct a full investigation of the complaint; (b) the parties will be notified of the outcome of the complaint; and (c) the parties may file an appeal, if applicable.
- Every complainant has the right for the complaint to be decided using a preponderance of the evidence standard (*i.e.*, it is more likely than not that sexual harassment or violence occurred).
- Every complainant has the right to be notified, in writing, of the outcome of the complaint. Even though federal privacy laws limit disclosure of certain information in disciplinary proceedings:
 - Schools must disclose to the complainant information about the sanction imposed on the perpetrator *when the sanction directly relates to the harassed student*. This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.
 - Additionally, the Clery Act (20 U.S.C. §1092(f)), which only applies to postsecondary institutions, requires that both parties be informed of the outcome, including sanction information, of any institutional proceeding alleging a sex offense. Therefore, colleges and universities may not require a complainant to abide by a non-disclosure agreement, in writing or otherwise.
- The grievance procedures may include voluntary informal methods (e.g., mediation) for resolving some types of sexual harassment complaints. However, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. In cases involving allegations of sexual assault, mediation is not appropriate.

If you want to learn more about your rights, or if you believe that a school district, college, or university is violating Federal law, you may contact the U.S. Department of Education, Office for Civil Rights, at (800) 421-3481 or ocr@ed.gov. If you wish to fill out a complaint form online, you may do so at: <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.



U.S. Department of Education

Office for Civil Rights



Dear Colleague Letter: Sexual Violence Background, Summary, and Fast Facts April 4, 2011

Sexual Violence Statistics and Effects

- Acts of sexual violence are vastly under-reported.¹ Yet, data show that our nation's young students suffer from acts of sexual violence early and the likelihood that they will be assaulted by the time they graduate is significant. For example:
 - Recent data shows nearly 4,000 reported incidents of sexual battery and over 800 reported rapes and attempted rapes occurring *in our nation's public high schools*.² Indeed, by the time girls graduate from high school, more than one in ten will have been physically forced to have sexual intercourse in or out of school.³
 - When young women get to *college*, nearly 20% of them will be victims of attempted or actual sexual assault, as will about 6% of undergraduate men.⁴
- Victims of sexual assault are more likely to suffer academically and from depression, post-traumatic stress disorder, to abuse alcohol and drugs, and to contemplate suicide.⁵

Why is ED Issuing the Dear Colleague letter (DCL)?

Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. Sec.1681, *et seq.*, prohibits discrimination on the basis of sex in any federally funded education program or activity. ED is issuing the DCL to explain that the requirements of Title IX cover sexual violence and to remind schools⁶ of their responsibilities to take immediate and effective steps to respond to sexual violence in accordance with the requirements of Title IX. In the context of the letter, sexual violence means physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. A number of acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion.

¹ For example, see HEATHER M. KARJANE ET AL. SEXUAL ASSAULT ON CAMPUS: WHAT COLLEGES AND UNIVERSITIES ARE DOING ABOUT IT 3 (Nat'l. Institute of Justice, Dec. 2005).

² SIMONE ROBERS ET AL. INDICATORS OF SCHOOL CRIME AND SAFETY 104 (U.S. Dep't of Education & U.S. Dep't of Justice, Nov. 2010), *available at* <http://nces.ed.gov/pubs2011/2011002.pdf>.

³ EATON, D. K., KANN, L., KINCHEN, S., SHANKLIN, S., ROSS, J., HAWKINS, J., ET AL., YOUTH RISK BEHAVIOR SURVEILLANCE-UNITED STATES 2009, *Morbidity and Mortality Weekly Report*, 1-148.

⁴ CHRISTOPHER P. KREBS ET AL., THE CAMPUS SEXUAL ASSAULT STUDY FINAL REPORT xiii, 5-5. (Nat'l. Criminal Justice Reference Service, Oct. 2007), *available at* <http://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>.

⁵ For example, see WORLD HEALTH ORGANIZATION, WORLD REPORT ON VIOLENCE AND HEALTH 162-164 (Etienne G. Krug, et al. eds., 2002), *available at* http://whqlibdoc.who.int/publications/2002/9241545615_eng.pdf; CENTERS FOR DISEASE CONTROL, UNDERSTANDING SEXUAL VIOLENCE: FACT SHEET 1 (2011), *available at* http://www.cdc.gov/violenceprevention/pdf/SV_factsheet_2011-a.pdf.

⁶ "Schools" includes all recipients of federal funding and includes school districts, colleges, and universities.

What does the DCL do?

- Provides guidance on the unique concerns that arise in sexual violence cases, such as the role of criminal investigations and a school's independent responsibility to investigate and address sexual violence.
- Provides guidance and examples about key Title IX requirements and how they relate to sexual violence, such as the requirements to publish a policy against sex discrimination, designate a Title IX coordinator, and adopt and publish grievance procedures.
- Discusses proactive efforts schools can take to prevent sexual violence.
- Discusses the interplay between Title IX, FERPA, and the Clery Act⁷ as it relates to a complainant's right to know the outcome of his or her complaint, including relevant sanctions facing the perpetrator.
- Provides examples of remedies and enforcement strategies that schools and the Office for Civil Rights (OCR) may use to respond to sexual violence.

What are a school's obligations under Title IX regarding sexual violence?

- Once a school knows or reasonably should know of possible sexual violence, it must take immediate and appropriate action to investigate or otherwise determine what occurred.
- If sexual violence has occurred, a school must take prompt and effective steps to end the sexual violence, prevent its recurrence, and address its effects, whether or not the sexual violence is the subject of a criminal investigation.
- A school must take steps to protect the complainant as necessary, including interim steps taken prior to the final outcome of the investigation.
- A school must provide a grievance procedure for students to file complaints of sex discrimination, including complaints of sexual violence. These procedures must include an equal opportunity for both parties to present witnesses and other evidence and the same appeal rights.
- A school's grievance procedures must use the preponderance of the evidence standard to resolve complaints of sex discrimination.
- A school must notify both parties of the outcome of the complaint.

How can I get help from OCR?

OCR offers technical assistance to help schools achieve voluntary compliance with the civil rights laws it enforces and works with schools to develop approaches to preventing and addressing discrimination. A school should contact the OCR enforcement office serving its jurisdiction for technical assistance. For contact information, please visit ED's website at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>.

A complaint of discrimination can be filed by anyone who believes that a school that receives Federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age. The person or organization filing the complaint need not be a victim of the alleged discrimination, but may complain on behalf of another person or group. For information on how to file a complaint with OCR, visit <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html> or contact OCR's Customer Service Team at 1-800-421-3481.

⁷ The Family Educational Rights and Privacy Act is at 20 U.S.C. Sec. 1232g, and the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act is at 20 U.S.C. Sec 1092(f).