

CM140- Title IX and VAWA Training: Building Safer Campuses

Course Learning Objectives

This course is designed to assist personnel at all levels of an educational institution in the understanding of the provisions of Title IX of the Education Amendments of 1972 ("Title IX"), and the Clery Act as it was amended in the Violence Against Women Reauthorization Act of 2013. ("VAWA"). These laws require that all individuals in an educational institution understand and comply with the laws in terms of what is prohibited behavior in relation to sexual harassment and/or sexual violence, and what steps are to be followed when such prohibited conduct occurs. This course gives the participants information about the laws, as well as procedures to follow, to provide for the rights of all individuals under the laws. It also provides additional resources to assist educational institutions in continuing to build and strengthen their Title IX and VAWA policies, procedures and training throughout the year.

Overview of Title IX and VAWA

- Explain the purpose of Title IX.
- Describe what types of conduct constitute sexual harassment and sexual violence.
- Identify the crimes of sexual violence ("VAWA crimes") required to be tracked and reported by institutions under the Clery Act.
- Recognize how VAWA expanded institutional policy and procedural requirements designed to prevent, promptly and fairly respond to, and remedy harm occurring to students from crimes of sexual violence.
- Explain the relationship between Title IX, VAWA, and the Clery Act.

Reporting and Response

- Explain the role and responsibility of a Title IX Coordinator.
- Describe how and to whom students and employees can report sexual harassment and sexual violence at your institution.
- Recognize when your institution is considered to be "on notice" of sexual harassment or sexual violence and what actions the institution must take to respond.
- Contrast the role of a Responsible Employee to that of a Title IX Coordinator.
- Assess the obligation of a school to keep Title IX complaints and victim identity confidential and the limitations of that confidentiality.

Investigations and Disciplinary Procedures

- Recognize the elements that must be contained in grievance procedures used by an institution to receive and evaluate complaints of sexual harassment.
- Identify the additional elements that must be contained in procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, and stalking.
- Explain how a Title IX Investigation is conducted.
- Contrast the purpose and standard of proof in an institutional Title IX proceeding with a criminal proceeding.
- Recognize how off-campus conduct can implicate a school's Title IX investigation obligations and how Title IX and VAWA off-campus jurisdiction differ.

Prevention and Education

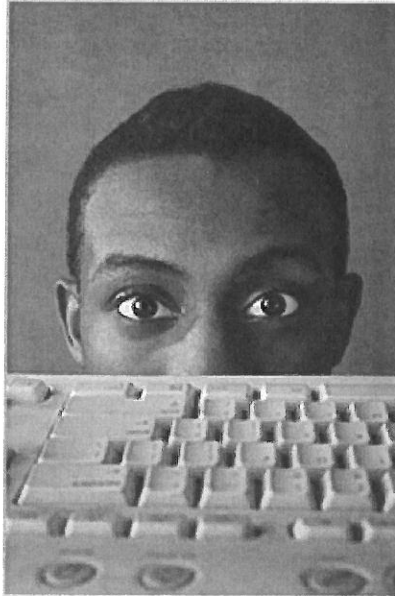
- Explain the sanctions and remedial measures your institution may impose for a VAWA crime.
- Explain the prohibition against retaliation for reporting or being involved in a disciplinary proceeding regarding a Title IX offense, including VAWA crime.
- Gain a basic familiarity with VAWA crime definitions under the Clery Act.
- Examine the meaning of consent, including under the state law where your institution is located.
- Describe strategies for bystander intervention to prevent sexual violence.
- Recognize the dynamics of sexual assault, including key aspects of victim behavior, trauma response, intimate partner violence, and capacity to consent.

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Title IX Overview



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What Is Title IX?

Title IX of the Education Amendments of 1972 (Title IX) (34 C.F.R. Part 106) prohibits discrimination based on sex in education programs and activities in federally funded schools at all levels. Title IX protects students, employees, applicants for admission and employment, and other persons from all forms of sex discrimination, including discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity. All students (as well as other persons) at postsecondary institutions are protected by Title IX—regardless of their sex, sexual orientation, gender identity, part- or full-time status, disability, race, or national origin—in all aspects of an institution’s educational programs and activities.

The essence of Title IX is that an institution may not exclude, separate, deny benefits to, or otherwise treat differently any person on the basis of sex unless expressly authorized to do so under Title IX or the U.S. Department of Education’s implementing regulations (for instance, single-sex all-female institutions are permitted to exclude male students without violating Title IX). Title IX was best known for its impact on collegiate athletics and is now recognized for the impact it has had on campus safety.

As part of their obligations under Title IX, institutions must designate at least one employee to coordinate their efforts to comply with and carry out their responsibilities under Title IX, and must notify all students and employees of that employee’s contact

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information. This employee is generally referred to as the “**Title IX Coordinator**.” This course will review the **Max Knowledge Online Training Center** in detail.

Is the Title IX law requiring equity in athletic programs and prohibiting gender-based discrimination in hiring and employment practices by educational institutions the same Title IX that we are discussing relevant to sexual misconduct?

Show Answer ▼

To Whom Does Title IX Apply?

Title IX protects students, employees, applicants for admission and employment, and other persons from all forms of sex discrimination, including discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity. All students (as well as other persons) at institutions are protected by Title IX—regardless of their sex, sexual orientation, gender identity, part- or full-time status, disability, race, or national origin—in all aspects of an institution’s educational programs and activities. In each case, students and employees are protected from sexual discrimination and the school must have policies and procedures in place to investigate and remedy the conduct where necessary.

What Geographic Area Is Covered by Title IX?

Title IX covers acts that occur:

- On campus and on other school property used for educational purposes including residential housing;
- At off-campus events sponsored by the college, or
- Off campus but that have the potential for impacting one or more students or employees on campus.

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Sex-Based Harassment



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What Is Sexual Harassment?

Title IX requires institutions to seek to prevent and promptly and equitably remedy sexual harassment. In order to best perform academically and to have equal access to all aspects of an institution's educational programs and activities, students must not be subjected to unlawful harassment, either in the classroom or while participating in other education programs or activities. Title IX prohibits sex-based harassment by peers, employees, or third parties that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's education programs and activities (i.e., creates a hostile environment).

When an institution knows or reasonably should know of possible sex-based harassment, it must take *immediate* and *appropriate* steps to investigate or otherwise determine what occurred. This is generally referred to as a "Title IX investigation." If an investigation reveals that the harassment created a hostile environment, the institution must take prompt and effective steps reasonably calculated to *end the harassment, eliminate the hostile environment, prevent the harassment from recurring, and, as appropriate, remedy its effects*. This course will review the requirements related to Title IX investigations in detail.

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Title IX prohibits several types of sex-based harassment.
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Sexual harassment is unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.

Sexual violence is a form of sexual harassment and 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). The meaning of consent in sexual relations is discussed in detail in this course. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

Gender-based harassment is another form of sex-based harassment and refers to unwelcome conduct based on an individual's actual or perceived sex, including harassment based on gender identity or nonconformity with sex stereotypes, and not necessarily involving conduct of a sexual nature. Title IX protects all students from sex-based harassment, regardless of the sex of the alleged perpetrator or complainant, including when they are members of the same sex. 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.

All of these types of sex-based harassment are forms of sex discrimination prohibited by Title IX.

Are transgender students protected by Title IX?

Show Answer ▼

Harassing conduct may take many forms, including verbal acts and name-calling, as well as non-verbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. 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.

Sexual harassment can include but is not limited to the following types of behavior:

- Making inappropriate and unwanted sexual or sexually charged remarks or gestures
- Telling lewd or sexually oriented stories, jokes, or anecdotes
- Sharing sexually inappropriate images or videos
- Making offensive comments about a person's gender or gender identity, including comments about their appearance, clothes, or body
- Physical acts such as any unwanted touching or close proximity

• Unwanted, suggestive, or predatory letters, notes, or e-mails

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- Staring in a sexually suggestive or offensive manner, or whistling

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When on notice of sexual harassment, Title IX requires a school to appropriately respond to all complaints by investigating and resolving all allegations of sexual or gender-based harassment. This course discusses in detail when institutions are deemed to be on notice of sexual harassment so as to trigger the requirement of a Title IX investigation.



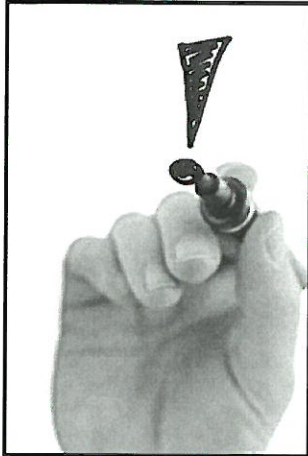
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Title IX Institutional Obligations



What Are a School's Obligations Under Title IX?

A school will violate Title IX unless it takes “*prompt and effective*” steps reasonably calculated to end sexual discrimination (which includes sexual harassment and sexual violence).

The key obligations of a school under Title IX are to:

- Disseminate a Title IX Notice of Nondiscrimination
- Designate a Title IX Coordinator
- Adopt and Publish Grievance Procedures Providing for Prompt and Equitable Resolution of Sex Discrimination Complaints
- Prohibit retaliation against complainants and have a campus culture open to allowing credible complaints

How should postsecondary institutions distribute their Title IX Notice of Nondiscrimination?

The notice should be widely distributed to all applicants for admission and employment, students, and employees. The notice should be prominently posted on the school's website, at various locations around campus, and in electronic and printed publications for general distribution. In addition, the notice must be included in any bulletins, announcements, publications, catalogs, application forms and recruitment materials (from April 2015 Title IX Resources Guide – OCR). A sample Notice of Non-Discrimination is included in Template A [[http://media.maxknowledge.com/404/Template A_Sample Title IX Notice of Nondiscrimination.pdf](http://media.maxknowledge.com/404/Template_A_Sample_Title_IX_Notice_of_Nondiscrimination.pdf)] and in the Additional Resources section.

When Are a School's Response Obligations Triggered Under Title IX?

A school's obligation to respond to a potential act of sex discrimination under Title IX by initiating a Title IX investigation is triggered once the school is on “notice” of the conduct. A school is considered to be on notice of sexual harassment when a “Responsible Employee” of the school has actual or constructive notice of the conduct. The notice to the school can come from anyone or anywhere, including from the victim, a witness, a friend of the victim, the victim's parents, a discussion on social media or

a news report, or from a third party with knowledge of the event. Once the school has the information that the event may have occurred, it is on notice and must respond with an investigation.

Who Are “Responsible Employees” Under Title IX?

A Responsible Employee includes the Title IX Coordinator and any other employee to whom the school has given the authority to take action to address acts of sexual discrimination (including harassment or violence), who has been given the duty by the school of reporting an incident of sexual discrimination to the Title IX Coordinator, or whom the student could reasonably believe has that duty, such a Residential Advisor, Campus Director, faculty member, or trip chaperone.

An institution must make clear to its employees and students which staff members have been designated by the school as “Responsible Employees” so that these employees are clear that they must report incidents to the Title IX Coordinator, and so the students know which individuals have an obligation to report incidents to the Title IX Coordinator. This information is important for students to know because Responsible Employees are required to report information to the Title IX Coordinator and, thus, are not individuals who can hold information in complete confidence if requested to do so by a student.

The Association of Title IX Administrators recommends that schools consider making all employees “Responsible Employees” for purposes of reporting Title IX violations, except those who may be professional counselors, doctors, or clergy who have a professional obligation to maintain confidentiality. Confidentiality is discussed in greater detail later in this course.

How Are Title IX Violations Enforced Against Institutions?

The U.S. Department of Education’s Office for Civil Rights (“OCR”) vigorously enforces Title IX to ensure that institutions comply with the law. The U.S. Department of Justice shares Title IX enforcement authority. OCR evaluates, investigates, and resolves complaints alleging sex discrimination when it learns of those incidents from students, through media reports, or from other sources. OCR enters into resolution agreements with institutions that require the institution to make changes to certain policies and procedures and to take other actions to improve the campus climate. In addition, Title IX contains a private right of action authorizing individuals who have been harmed by an institution’s failure to provide Title IX protections to file a Title IX lawsuit for damages in federal court against the institution.

In addition to its enforcement activities, OCR provides technical assistance and information and guidance to schools to assist them in voluntarily complying with the law. OCR’s Title IX Resource Guide

[<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix->

coordinators-guide-201504.pdf] is a useful tool for schools and their Title IX Coordinators to understand schools' obligations under Title IX.

What Training Is Required by Title IX?

Title IX requires that Title IX Coordinators, Responsible Employees who are required to report sexual harassment to Title IX Coordinators, and any other employee who assists a Title IX Coordinator in a Title IX investigation or disciplinary proceeding to obtain training on Title IX's requirements. The Association of Title IX Administrators recommends that schools consider training all of their employees as "Responsible Employees" required to report allegations of sexual discrimination of all types to the school's designated Title IX Coordinator, except those who may be professional counselors, doctors, or clergy who have a professional obligation to maintain confidentiality.

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Violence Against Women Act (VAWA)



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What Is VAWA?

The Violence Against Women Reauthorization Act (VAWA) was signed into law by President Obama in 2013 and imposes new obligations on institutions under Section 304 of that Act. That section of the Act is named the Campus Sexual Violence Act ("SaVE Act"). This amended the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), which is the law that requires postsecondary institutions to collect and report to the U.S. Department of Education and the public the number of certain crimes that occur on campus property.

Under VAWA, institutions are required to:

1. report any instance of **dating violence, domestic violence, sexual assault, and stalking**, in addition to other crime categories already required to be reported under the Clery Act;
2. adopt enhanced disciplinary procedures that include requirements for notifying victims of their rights; and
3. adopt enhanced institutional policies to prevent and address campus sexual violence, such as training all incoming and current students and employees about being aware of and preventing crimes of sexual violence.

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These federal VAWA regulations went into effect on July 1, 2015.

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What Is the Clery Act?

The Clery Act is the law that requires institutions to report annual statistics on crime occurring each calendar year on or near campus, and to disseminate that information in an Annual Security Report by October 1 of each year.

Who was Jeanne Clery and why is the Clery Act named after her?

Show Answer ▼

What Changes to the Clery Act Were Made by VAWA?

- VAWA added additional crimes for Clery Act reporting purposes (“VAWA crimes”): **Dating Violence, Domestic Violence, Stalking, and Sexual Assault**. Institutions were required to report VAWA crimes in their Clery Act Annual Security Report beginning with calendar year 2014 and distributed to students and employees by October 1, 2015.
- VAWA requires Clery Act Annual Security Reports to include specific “Statements of Policy” regarding programs to prevent sexual misconduct and procedures institutions will follow when VAWA crimes occur.
- VAWA added **gender identity** (the gender with which you identify yourself even if it differs from your birth gender) and **national origin** (birth nationality) as new categories of potential bias for hate crime reporting under the Clery Act. In other words, when a reportable crime occurs on campus, a school must determine if there is evidence that the victim was intentionally selected because of the perpetrator’s bias based on the following: gender identity or national origin (newly added), or race, gender, sexual orientation, religion, and disability (previously existing categories of potential hate crime bias).

How Do Title IX, Clery Act, and VAWA Relate to Each Other?

VAWA amended the Clery Act to add additional crimes of sexual violence to a school’s Clery Act reporting obligations: sexual assault, dating violence, domestic violence, and stalking (so-called “VAWA crimes”). VAWA overlaps with Title IX because VAWA crimes are always a form of sex discrimination prohibited by Title IX if the conduct is sufficiently serious to deny or limit a student’s ability to participate in or benefit from the school’s education programs and activities, and the institution does not respond to adequately remedy the situation and prevent its re-occurrence. However, other conduct that is a Title IX offense, such as verbal sexual harassment, is not a VAWA crime or Clery Act crime. In

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other words, an incident like verbal harassment may trigger an institution's obligation to investigate and take more stringent sexual violence victim protection requirements contained in VAWA.

However, it is important to note that nothing in the U.S. Department of Education's regulations or guidance would prevent a school from using the same victim protections required for VAWA crimes for all incidences of sexual misconduct, even if the incident does not rise to the level of a VAWA crime.



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VAWA Policies and Procedures: Part I



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What Policies and Procedures Regarding VAWA Crimes Is an Institution Required to Have?

VAWA requires that an institution include in its Clery Act Annual Security Report "a statement of policy regarding the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking ... and of procedures that the institution will follow when one of these crimes is reported." Two guidance documents were withdrawn in September 2017 including a Dear Colleague Letter dated April 4, 2011 and a Q&A document dated April 29, 2014. At the same time, the OCR issued a new Q&A on Campus Sexual Misconduct document. The OCR will continue to rely on the 2001 Revised Sexual Harassment Guidance and the 2006 Dear Colleague Letter on Sexual Harassment.

Based upon the 2017 interim guidance, colleges and universities should examine their existing Title IX policies and procedures to ensure that they do not afford rights or opportunities to complainants that are not available to respondents. They should also review confidentiality obligations that are imposed on parties to Title IX proceedings to ensure that all parties have adequate opportunity to obtain and present evidence.

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Colleges and universities now have more flexibility in key aspects of their Title IX procedures such as the [Max Knowledge Online Training Center](#) complaint resolution, and the potential for increased use of informal resolution methods in cases of sexual assault.

VAWA requires that an institution include in its Clery Act Annual Security Report “a statement of policy regarding the institution’s programs to prevent dating violence, domestic violence, sexual assault, and stalking ... and of procedures that the institution will follow when one of these crimes is reported.”

The statement of policy *must* include:

- A description of the institution’s education programs to promote the awareness of domestic violence, dating violence, sexual assault, and stalking. These programs must include:
 - *Primary prevention* and awareness programs for all incoming students and new employees; and
 - *Ongoing prevention* and awareness campaigns for students and faculty.
- A statement that the institution prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking;
- The definition of “dating violence,” “domestic violence,” “sexual assault,” and “stalking” under the law of the state in which the school is located;
- The definition of “consent,” in reference to sexual activity, under the law of the state in which the school is located; and
- A description of safe and positive options for bystander intervention; and information on risk reduction.
- Sanctions or protective measures that the institution may impose following a final determination of an institutional disciplinary proceeding regarding domestic violence, dating violence, sexual assault, or stalking.
- Procedures victims should follow if domestic violence, dating violence, sexual assault, or stalking has occurred including information in writing about:
 - The importance of preserving evidence as may be necessary to the proof of the crime or to obtaining a protection order
 - How and to whom the alleged offense should be reported
 - Options regarding law enforcement and campus authorities, including notification of a victim’s option to:
 1. Notify proper law enforcement authorities, including on-campus and local police;
 2. Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses;
 3. Decline to notify authorities;
 - Request an order of protection, such as a no contact or restraining order.

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- An explanation of the procedures for institutional disciplinary action in cases of alleged domestic violence, sexual assault, or stalking, which shall include a clear statement that such proceedings shall provide a prompt and equitable resolution of complaints of sex discrimination, including sexual misconduct.
- Such proceedings shall (a) provide a prompt, fair and impartial investigation and resolution; (b) utilize a “preponderance of the evidence” standard to determine if the alleged conduct occurred; and (c) be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability.
- The accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice.
- Both the accuser and accused shall be simultaneously informed in writing of:
 - The outcome of any disciplinary proceeding that arises from an allegation of domestic violence, dating violence, sexual assault, or stalking;
 - The institution’s procedures for the accused and victim to appeal the results of the institutional disciplinary proceeding;
 - Any change to the results that occurs prior to the time that such results become final; and
 - When such results become final

OCR has identified a number of elements in evaluating whether a school’s grievance procedures are prompt and equitable, including whether the school (i) provides notice of the school’s grievance procedures, including how to file a complaint, to students, parents of elementary and secondary school students, and employees; (ii) applies the grievance procedures to complaints filed by students or on their behalf alleging sexual misconduct carried out by employees, other students, or third parties; (iii) ensures an adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; (iv) designates and follows a reasonably prompt time frame for major stages of the complaint process; (v) notifies the parties of the outcome of the complaint; and (vi) provides assurance that the school will take steps to prevent recurrence of sexual misconduct and to remedy its discriminatory effects, as appropriate.

Template samples addressing statements of policy are available below and on the Additional Resources page:

- Template B (Template B_Sample Statement of Policy_Education Programs.pdf): A sample of a statement addressing an institution’s education programs.
- Template C (Template C_Sample Statement of Policy_Sanctions and Protective Measures.pdf): A sample of a statement describing the sanctions or protective measures an institution may impose after a VAWA crime final determination.
- Template D (Template D_Sample Statement of Policy_Sexual Violence and Victim Procedures.pdf): A sample of a statement regarding procedures the institution

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follows when a VAWA crime has occurred.

- **MaxKnowledge Online Training Center**
Template E (Template E_Sample Statement of Policy_Procedures for Disciplinary Action_VAWA crimes.pdf): A sample of a statement regarding the disciplinary procedures used when there is an allegation of a VAWA crime.



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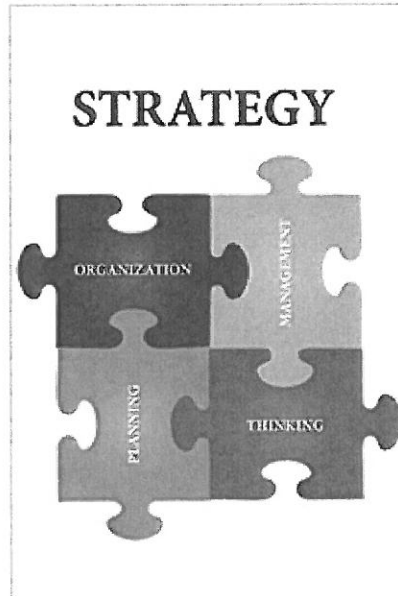
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VAWA Policies and Procedures – Part II



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This section continues to describe the types of policies and procedures regarding VAWA crimes that an institution is required to have in place. Specifically, as discussed previously, VAWA requires that an institution include in its Clery Act Annual Security Report “a statement of policy regarding the institution’s programs to prevent dating violence, domestic violence, sexual assault, and stalking ... and of procedures that the institution will follow when one of these crimes is reported.” The statement of policy must include:

- Information about how the institution will protect the confidentiality of the victim(s), including how publicly available recordkeeping will be accomplished without the inclusion of identifying information about the victim, to the extent permissible by law and will maintain as confidential any accommodations or protective measures provided to the victim to the extent that making such information confidential does not impair the ability of the school to provide those accommodations or protective measures.
- A statement that the institution will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims, both on campus and in the community.

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- A statement that the institution will provide written notification to victims about options for, and accommodations for, housing, dining, transportation, and working situations, if so requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.
- An explanation that, when a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options.

Template samples addressing statements of policy are available below and on the Additional Resources page:

- Template F (Template F_Sample Statement of Policy_Confidentiality of Victim of Sexual Violence.pdf): A sample of a statement regarding how the institution will protect the identity of the victim of a VAWA crime.
- Template G (Template G_Sample Statement of Policy_Victim Support Services.pdf): A sample of a statement about providing written notice to students about victim resources.
- Template H (Template H_Sample Statement of Policy_Interim Measures.pdf): A sample of a statement about providing written notice to victims about accommodations immediately following a VAWA crime.
- Template I (Template I_Sample Statement of Policy_Rights and Options of Victims of Sexual Violence.pdf): A sample of a statement explaining that a student or employee reporting being a victim of a VAWA crime will be provided written explanation of his or her rights and options.



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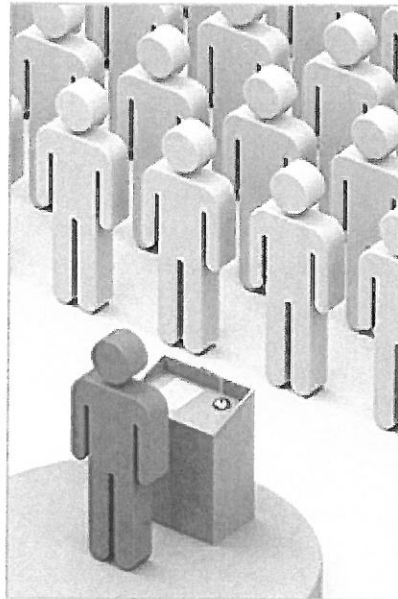
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The U.S. Department of Education's Financial Student Aid (FSA) office monitors VAWA compliance through its regular Title IV Program Review process, and also through focused Clery Act compliance reviews. Targeted Clery Act compliance reviews may be initiated by FSA for a variety of reasons including information obtained from students, the media, or the Department's Office for Civil Rights where a Title IX investigation raises Clery Act issues, such as failure to catalog and report crimes.

When FSA discovers that a school has failed to report a VAWA crime, has failed to prepare or distribute a complete Annual Security Report, or has failed to include a required VAWA statement of policy in its Annual Security Report, the U.S. Department of Education may impose fines up to \$35,000 per violation and may take additional steps to sanction the institution or refer the school to the Department's Office for Civil Rights for a separate Title IX investigation if FSA believes significant Title IX violations have occurred in addition to Clery Act/VAWA violations.

What Training Does VAWA Require for All New and Current Students and Employees?

VAWA requires all *new and current employees and students* to receive (1) primary and (2) ongoing **sexual violence awareness and prevention programming** at least once annually. Primary programming is that which is provided to new students and employees.

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or to current students and employees for the first time, while ongoing programming is for students and employees. **Max Knowledge Online Training Center** programming and are increasing their understanding of sexual violence and its prevention.

All prevention programming, whether primary or ongoing, must include training on all of the institution's policies and procedures for reporting and responding to VAWA crimes, and all of the required components of an institution's disciplinary proceedings (covered further in this course). This course also includes training components for new and current employees and students, required for primary and ongoing prevention and awareness programming.

Required components of primary and ongoing prevention and awareness programs go beyond institutional policies and procedures, to mandate community-wide initiatives designed to change student conduct and campus culture. "Awareness programming," for example, means "community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration." Awareness programming includes, for example, *Take Back the Night* type events that raise awareness of sexual violence and strategies for prevention. Additional information regarding awareness campaigns (<http://media.maxknowledge.com/404/SexualViolence.html>) is included in the Additional Resources section.

VAWA defines *primary prevention programming* to require, in addition to training on the institution's policies and procedures, "initiatives and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions."

VAWA defines "*ongoing prevention and awareness campaigns*" to require, in addition to training on the institution's policies and procedures, "initiatives and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences."

Additional information regarding additional training resources (<http://media.maxknowledge.com/404/AdditionalTraining.html>) with primary and ongoing prevention and awareness campaigns and strategies is included in the Additional Resources section.

What Other Training Does VAWA Require?

In addition to primary and ongoing prevention and awareness training for new and current students and employees, VAWA requires school employees and others involved in school disciplinary proceedings, including Title IX Coordinators, campus police, Responsible Employees, victim advocates, and others involved in adjudicating sexual misconduct allegations to be trained. Specifically, those individuals must receive training that covers:

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- The definition of VAWA crimes under federal law and the law of the state where the institution is located
 - The institution's VAWA policies and procedures; and
 - How to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

Does a Title IX Coordinator at a smaller school (for instance, less than 30 full- or part-time employees) need to serve in that role full time?

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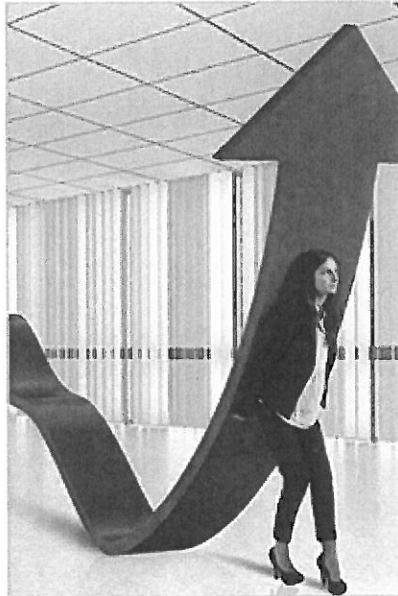
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Title IX Coordinator – Role and Function (<https://www.maxknowledge.com/print.php>)




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As part of its obligations under Title IX, each institution must designate at least one employee to coordinate the institution's efforts to comply with and carry out its responsibilities under Title IX. *The Title IX Coordinator is an integral part of the school's systematic approach to ensuring nondiscrimination, including a nondiscriminatory educational environment.*

The Title IX Coordinator's role is to coordinate the institution's efforts to review and appropriately respond to all complaints of sex discrimination and to work with other school employees and the campus community to prevent sex-based and gender-based harassment.

The U.S. Department of Education has described the Title IX Coordinator's core functions as follows:

- First, the Title IX Coordinator should assist in any **training** the school provides to the school community, including all employees, as to what conduct constitutes sexual and gender-based harassment and how to respond appropriately when it occurs. A PowerPoint template (<http://media.maxknowledge.com/404/Title IX Coordinator Training PPT.pptx>) Title IX Coordinators can use to tailor group training of students and employees is included in the Additional  es section.

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- Second, the Title IX Coordinator should help the school develop a method appropriate to the school to evaluate whether any discriminatory attitudes pervade the school culture, and determine whether any harassment or other problematic behaviors are occurring, where they happen, which students are responsible, which students are targeted, and how those conditions may best be remedied. The Additional Resources section includes a sample campus climate survey (<https://www.notalone.gov/assets/ovw-climate-survey.pdf>). At this time, there is no mandated form of such campus climate survey, but Title IX Coordinators are responsible for having all relevant information about Title IX complaints so that they can evaluate trends and need for increased training or action by the school to prevent re-occurrence of sexual harassment.
 - Third, because the Title IX Coordinator must have knowledge of all Title IX reports and complaints at the recipient institution, the Title IX Coordinator should be the person who evaluates **requests for confidentiality** by victims of sexual harassment and weighs those requests against the obligation to provide a safe, nondiscriminatory environment for all students. This topic is discussed in further detail in this training.
 - Fourth, the Title IX Coordinator should **coordinate recordkeeping** (for instance, in a confidential log maintained by the Title IX coordinator), monitor incidents to help identify students or employees who have multiple complaints filed against them or who have been repeated targets, and address any patterns or systemic problems that arise, including making school officials aware of these patterns or systemic problems as appropriate.
 - Fifth, the Title IX Coordinator should recommend, as necessary, that the school **increase safety measures**, such as monitoring, supervision, or security at locations or activities where harassment has occurred.
 - Sixth, the Title IX Coordinator should regularly **review the effectiveness** of the school's efforts to ensure that the school is free from sexual and gender-based harassment, and use that information to recommend future proactive steps that the school can take to comply with Title IX and protect the school community.

Does a Title IX Coordinator at a smaller school (for instance, less than 30 full- or part-time employees) need to serve in that role full time?

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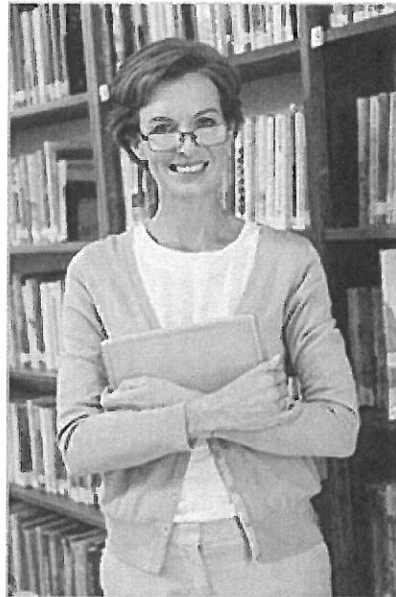
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Title IX Coordinator – Important Considerations



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The Title IX Coordinator must be visible and authoritative.

Visible – The Title IX Coordinator’s name, address, phone, and email address, and that of any of his/her Title IX deputies, assistants, or other Responsible Employees, must be made widely available to new and current students and employees through the school’s catalog, Annual Security Report, student and employee handbooks, and through other means of dissemination such as prominent postings at a central school location and on the website. The Title IX Coordinator should be located on campus and available to meet with students, parents, employees, or others at their request.

Can an institution have one Title IX Coordinator who oversees Title IX compliance at three different physical campuses of the same institution?

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Authoritative – The Title IX Coordinator must be given authority, autonomy, and resources by the school. ~~Max Knowledge Online Training Center~~ and acting on Title IX complaints and reports.

- The Title IX Coordinator should be involved in coordinating the school's response to all complaints involving sexual harassment to monitor outcomes, identify patterns, and assess effects on the campus climate. Such centralized coordination by the Title IX Coordinator can help an institution avoid Title IX violations, particularly violations involving sexual harassment and violence, by identifying and preventing incidents from recurring or becoming systemic problems. For instance, where the Title IX Coordinator has information about several verbal sexual harassment incidents, the Title IX Coordinator is in a position to implement a community-wide prevention and awareness campaign to improve campus knowledge about sexual harassment and prevent its re-occurrence.
- The Title IX Coordinator should have access to campus law enforcement and security records, regular communication with the school's Clery Act Campus Security Officer (who collects annual Clery Act crime statistics) about crimes of sexual violence that need to be reported under the Clery Act, and should be involved in all Title IX disciplinary procedures (including sexual violence allegations).
- The Title IX Coordinator should not be placed within the school's organizational structure such that performance of the job function creates actual or potential conflicts of interest. For example, a Title IX Coordinator who sits in the Student Affairs office and reports to a Director of Student Affairs may not be sufficiently detached from individual student interests to view Title IX complaints objectively. The Title IX Coordinator's objectivity and autonomy should be preserved by the school as much as possible.
- An institution can designate more than one Title IX Coordinator or designate specific employees to coordinate certain Title IX compliance issues, but, if a school has multiple Title IX Coordinators, then it should designate one lead Title IX Coordinator who has ultimate oversight authority.
- In a small school, it is likely that the Title IX Coordinator will have other job functions. The school should analyze those functions to determine if the Title IX Coordinator is at risk of competing loyalties or obligations that could compromise fair Title IX adjudication, and re-structure the job responsibilities to minimize actual or potential conflicts of interest.
- The Title IX Coordinator must also be senior enough to report directly to the leadership of the institution.



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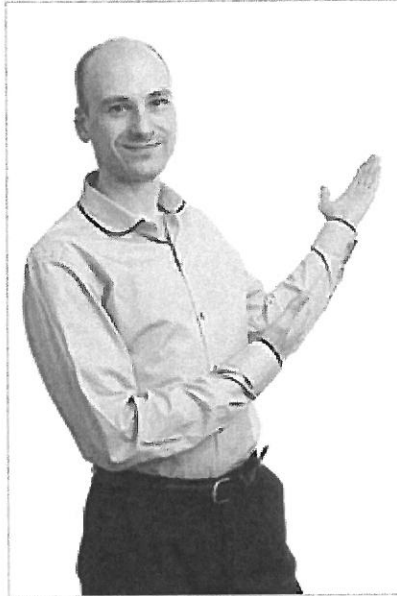
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Title IX Coordinator – Role in Training (<https://www.maxknowledge.com/print.php>)



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The Title IX Coordinator must be trained and involved in training others.

- The Title IX Coordinator must have knowledge of Title IX, including what constitutes sexual harassment and sexual violence, and must be very familiar with the institution's own grievance and disciplinary procedures.
- The Title IX Coordinator should be sufficiently trained to be effective in training students or employees about sexual harassment and sexual violence. A PowerPoint template (<http://media.maxknowledge.com/404/Title IX Coordinator Training PPT.pptx>) that a Title IX Coordinator could use to design in-person student and employee training sessions is included in the Additional Resources section.
- The Title IX Coordinator should be involved in the drafting and revision of the school's policies on sexual harassment and sexual violence to help to ensure that they comply with the current requirements of Title IX and VAWA.
- The Title IX Coordinator should have adequate training to coordinate the implementation and administration of the institution's procedures for resolving Title IX complaints, including educating the school community on how to file a complaint alleging a violation of Title IX, investigating complaints, working with law enforcement when necessary, and ensuring that complaints are resolved promptly and appropriately.

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- The Title IX Coordinator should be involved in developing community-wide prevention and training programs, including college trainings, on issues related to Title IX and VAWA to assist the school in making sure that all members of the school community, including students and staff, are aware of their rights and obligations under Title IX and VAWA. To perform this responsibility effectively, the Title IX Coordinator should regularly assess the adequacy of current training opportunities and programs and propose improvements as appropriate.
- Because Title IX prohibits discrimination in all aspects of a school's education programs and activities, the Title IX Coordinator should work closely with many different members of the school community, such as campus security, leadership, administrators, victim support groups, and legal counsel. The Title IX Coordinator may need to work with these groups because their job responsibilities relate to the school's obligations under Title IX.

The Title IX Coordinator's role is central to effective Title IX compliance. The institution's reporting structure for Title IX complaints should funnel all information received by students or employees to the Title IX Coordinator.

How often should a Title IX Coordinator review and revise Title IX and VAWA policies and procedures?

Show Answer ▼

When interacting with victims, the Title IX Coordinator must:

- Be sensitive not to *discourage reporting* to either the institution or police;
- Have a basic understanding of the psychology of trauma resulting from sexual violence; and
- Actively assist in preventing any retaliation against students or employees who report an alleged act of sexual harassment or who are involved in a disciplinary proceeding.



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Reporting Requirements – (<https://www.maxknowledge.com/print.php>) Title IX and VAWA



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A school's reporting structure should be such that a Title IX Coordinator may receive reports of sex-based harassment from any member of the school community. Once the information is received, it is the Title IX Coordinator's responsibility to make sure these complaints are processed appropriately.

In addition, the changes made by VAWA to the Clery Act require institutions to include in their Clery Act Annual Security Report the following policies and procedures that relate to reporting VAWA crimes (dating violence, domestic violence, sexual assault, and stalking) or other emergencies on campus:

- Procedures for students and others to report crimes of sexual violence occurring on campus, including a list of the titles of all those to whom students and employees should report crimes of sexual violence;
- Policies for making timely warning reports to members of the campus community including regarding crimes of sexual violence and other emergencies;
- Policies and procedures for victims or witnesses to report crimes of sexual violence on a voluntary and confidential basis solely for inclusion in the annual disclosure of Clery Act crime statistics;

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- A statement encouraging accurate and prompt reporting of all crimes to the campus police and the **Max Knowledge Online Training Center** a crime elects not to, or is unable to, make such a report; and
- Procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis solely for inclusion in the annual disclosure of crime statistics.

The institution's reporting structure must ensure that the Title IX Coordinator receives information about all reports of sexual violence.

Is the Clery Act Annual Security Report the only publication students and employees must receive that must contain these VAWA policies?

Show Answer ▼

Who Should Report?

- (1) Students and employees who believe they may be a victim of sexual harassment or sexual violence should report the information to the Title IX Coordinator and/or the U.S. Department's Office for Civil Rights (OCR) at ocr@ed.gov.
- (2) Students and employees who believe they may have witnessed sexual violence involving a student or employee, on or off campus, should report their concerns to the Title IX Coordinator.



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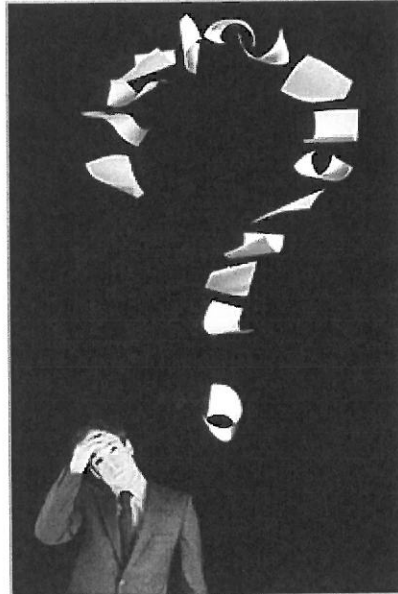
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What and to Whom to Report



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What Information Should Be Reported?

Students and employees have a right to report sexual discrimination in any form to the Title IX Coordinator, to have the school investigate what happened, and to have the complaint resolved promptly and equitably. Students and employees may also report such incidents to the U.S. Department's Office for Civil Rights (OCR) at ocr@ed.gov.

Any incident that may be sex or gender-based discrimination, including sexual violence, should be reported.

Students and employees should also report to the Title IX Coordinator any retaliation against them by any school employee for reporting a Title IX violation or for cooperating with or being involved in a Title IX disciplinary proceeding. Students and employees may also report such concerns to the U.S. Department's Office for Civil Rights (OCR) at ocr@ed.gov.

~~Students and employees who are victims of sexual violence may choose to, but do not have to, report the crime to campus or local law enforcement. However, a criminal complaint filed by a victim does **not** relieve the school of the duty under Title IX to respond promptly and effectively to information provided by the victim to the school.~~

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If a student is a victim of sexual violence on campus, is the student required to report that information to the police?

Show Answer ▼

To Whom Should the Information Be Reported?

Students and employees who believe they may be a victim or who may have witnessed sexual violence involving another student or employee should report that information *immediately* to the school's Title IX Coordinator. The student or employee may also report the incident to the U.S. Department's Office for Civil Rights (OCR) at ocr@ed.gov.

To ensure that the Title IX Coordinator receives all Title IX complaints, the school must ensure that all students and employees *are aware of who the Title IX Coordinator is and how to contact them, through wide distribution of the name, title, address, email, and phone number of the Title IX Coordinator to incoming and current students and employees*. The school must also ensure that employees who are Responsible Employees know of their obligations to report information to the Title IX Coordinator and that students know which employees are Responsible Employees who will report information to the Title IX Coordinator. Responsible Employees assist the Title IX reporting and response structure by filtering Title IX-related information and complaints to the Title IX Coordinator for centralized management and response.



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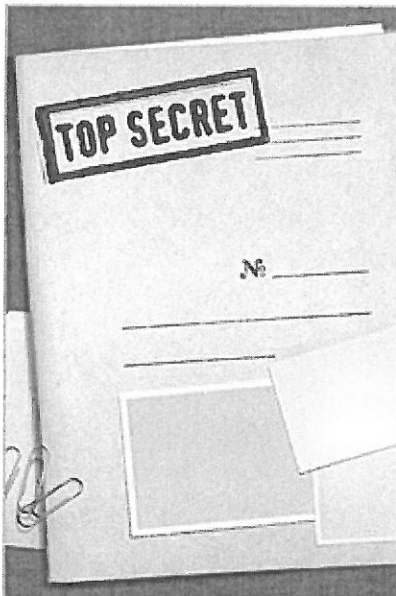
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Confidential Reporting



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How can information be reported confidentially?

An institution's policies and procedures must make clear who a victim of a VAWA crime can speak with on a confidential basis and must make clear to students when certain school employees cannot maintain absolute confidentiality. See Template F (http://media.maxknowledge.com/404/Template F_Sample Statement of Policy_Confidentiality of Victim of Sexual Violence.pdf) in the Additional Resources section for a sample of a Statement of Policy that includes the required confidentiality policies discussed below.

Confidential Resources: An institution must indicate clearly to students and employees where a student or employee can go, either on campus or off campus, to speak confidentially and/or to obtain victim advocacy, counseling, or other support services.

Professional counselors, clergy, medical service providers, attorneys, mental health providers, and victim advocates (such as rape crisis counselors) can often maintain information in absolute confidence based on the privilege of their communications in the scope of their professional obligations.

VAWA Crimes – Protection of Victim Identity in Crime Reports: In cases of sexual violence, VAWA requires Title IX Coordinators to provide VAWA crime information to Clery Act Campus Security Authorities in a manner that protects the **identity** of the victim.

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Limits of Confidentiality: The school must also make students and employees aware that the Title IX Coordinator is not required to honor requests under Title IX that require individual requests for confidential treatment of Title IX incidents to be weighed against the Title IX Coordinator's obligation to protect the campus community as a whole. The U.S. Department of Education views situations in which a Title IX Coordinator would not be able to honor a request for confidentiality of the incident or identity of the victim to be rare; however, there may be some situations where some information about the incident and/or victim may need to be released to protect the wider campus community.

Must an institution have a person on staff to whom a student or employee can report sexual violence in confidence, such as a professional counselor, clergy, doctor, or mental health provider?

Show Answer ▼

Responsible Employees and Confidentiality Requests: Before a person reveals information that he or she may wish to keep confidential to a Responsible Employee, the Responsible Employee must make every effort to ensure that the person understands:

- (i) The Responsible Employee's obligation to report the names of the alleged perpetrator and student involved in the incident, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX Coordinator;
- (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.

Title IX Coordinator and Confidentiality Requests from Victims of Sexual Violence: If a victim of sexual violence requests confidentiality, the Title IX Coordinator 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. A Title IX Coordinator may be required to override a student's request for confidentiality in order to meet his or her obligations to protect campus safety. The U.S. Department of Education advises that "these instances will be limited" and the information should only be shared with individuals who are responsible for handling the institution's response to incidents of sexual violence.

VAWA prohibits institutions from disclosing the names and personally identifiable information of victims when issuing a timely warning where a crime poses a continuing threat to the safety of the community.

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For Title IX purposes, if a student requests that his or her name not be revealed to the alleged perpetrator or that the institution 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.

- 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.
- If the student still requests that his or her name not be disclosed to the alleged perpetrator or that the institution not investigate or seek action against the alleged perpetrator, the institution 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.

The Title IX Coordinator is generally in the best position to evaluate confidentiality requests, but the U.S. Department of Education recognizes that an institution 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.

If an institution 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. There are steps an institution can take 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. An alleged perpetrator can also be put on notice of allegations of harassing behavior and be counseled appropriately without revealing, even indirectly, the identity of the student complainant.

General Institutional Obligation to Limit Disclosure of Information: Even if a student does not specifically ask for confidentiality, to the extent possible, an institution should only disclose information regarding alleged incidents of sexual violence to individuals who are responsible for handling the school's response.



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Role of Responsible Employees



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Under Title IX, “Responsible Employees” at an institution are those employees required to report incidences of sexual misconduct to the Title IX coordinator or other appropriate institution designee, subject to confidentiality obligations.

Who Is a Responsible Employee?

A Responsible Employee is any employee:

1. Who the institution or the Title IX Coordinator has designated as a Responsible Employee required to report information about Title IX violations to the Title IX Coordinator;
2. Who has been given authority by the school to take action to respond to sexual harassment (including sexual violence), such as a first responder or other employee;* or
3. Whom a student could reasonably believe has the authority or duty, such as a residential advisor or supervisor.*

* The Association for Title IX Administrators recommends that all employees be designated Responsible Employees with an obligation to report sexual violence to the Title IX Coordinator.

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How should an institution inform students and employees which employees are Responsible Employees who report to the Title IX Coordinator?

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Responsible Employees and Notice of Title IX Violations: When a Responsible Employee knows or reasonably should know of an incident of sexual harassment, including sexual violence, the U.S. Department of Education deems the institution as a whole to be on notice. Once the institution is on notice, it must take immediate steps to investigate or otherwise determine what occurred and, if the institution determines the offense created a hostile environment, the institution must then take appropriate steps to address the situation (by imposing sanctions and remedies if appropriate). This obligation is regardless of whether a formal complaint is filed with the school. In other words, even if the victim has not filed a formal complaint through the institution's grievance procedure, once the institution is on notice of sexual harassment or sexual violence, it must take immediate steps to investigate.

What Information Must a Responsible Employee Report?

A Responsible Employee should report to the Title IX Coordinator the name of the alleged perpetrator and student or employee involved in the incident, 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 and to limit dissemination of private information.

Must Responsible Employees Be Trained?

Responsible Employees should receive training on the institution's Title IX and VAWA policies and procedures.

What Should Responsible Employees Be Cautious Of?

- Responsible Employees must be careful not to discourage victims from reporting to the Title IX Coordinator or to police.
- Responsible Employees 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 employee's obligation to report to the Title IX Coordinator and the student's option to request that the school maintain confidentiality for evaluation by the Title IX Coordinator.
- Responsible Employees should participate in ensuring that students and employees reporting discrimination or participating in Title IX grievance procedures are not retaliated against.

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Questions for Title IX Coordinators about Designating and Training Responsible Employees:

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1. Which employees at the school should have direct authority to respond to or report sexual harassment or sexual violence? The campus director, faculty, supervisors, others? These individuals should be named Responsible Employees who have an obligation to report to the Title IX Coordinator.
2. In addition to the individuals above, which employees does the Title IX Coordinator need to assist him/her in reporting or responding to sexual harassment or sexual violence? For example, does the Title IX Coordinator want or need assistants or deputies to receive information about Title IX complaints that can be funneled to the Title IX Coordinator? These individuals should be named Responsible Employees.
3. Has the institution created a comprehensive list of Responsible Employees including their names and contact information and provided that information to all incoming and current students and employees? Is there a process in place at the school for updating that information on a regular basis?
4. Have each of the Responsible Employees been trained in Title IX and VAWA requirements and their obligation to report Title IX incidents to the Title IX Coordinator?



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When a Title IX Coordinator or Responsible Employee knows (or reasonably should know) of sexual harassment or sexual violence, the school must take immediate and *appropriate* steps to investigate or otherwise determine what occurred.

If the investigation concludes that the incident created a hostile environment, the institution must take prompt and effective steps reasonably calculated to end the conduct, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

VAWA provides that when a sexual violence report is received, the institution must protect the complainant *even before an investigation is initiated or concluded* by taking "interim steps" as soon as the school is on notice of a sexual violence allegation. Interim steps include changing classes, transportation arrangements, residential housing, or other steps designed to protect the victim from further harm and to minimize trauma and burden on the victim.

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If Student A was raped at her off-campus apartment by a student and did not report it, but a Responsible Employee read comments from Student B on Facebook boasting about having sex with Student A, and other student comments indicate Student A may have been passed out at the time after a night of heavy drinking, is the school on notice of potential sexual violence such that it must investigate even if has heard nothing directly from Student A, B, or any other student?

Show Answer ▼

When Is an Institution on Notice of Sexual Violence?

If the Title IX Coordinator or any Responsible Employee knew, or in the exercise of reasonable care, should have known, about the incident, the school is on notice.

Notice to a Title IX Coordinator or Responsible Employee can be received in various ways including but not limited to:

- Filing of a formal grievance;
- Verbal or written notice to the Title IX Coordinator or Responsible Employee;
- A report of the incident to a Responsible Employee by a student, parent, friend, or third party;
- A report received by campus law enforcement, student affairs, or another school employee that is communicated to the Title IX Coordinator or a Responsible Employee; or
- Notice received by the Title IX Coordinator or Responsible Employee through a media report or social networking site.

When the institution should have known about the incident had it made a proper inquiry but did not, knowledge will be imputed to the institution. Failure of the institution to take prompt and effective corrective action after obtaining notice of the incident violates Title IX in such case, even if a student did not report the incident to the institution, as the institution had an obligation to investigate as soon as it learned, or should have learned, about the incident.

What Are an Institution's Obligations When It Is on Notice of Sexual Violence?

Once the institution is on notice, it is required to investigate what occurred. If the investigation concludes that the incident created a hostile environment, the institution must take prompt and effective steps reasonably calculated to end the conduct, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects. These requirements are discussed further in this course.

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Title IX Grievance Procedures – Purpose

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The use of grievance procedures at an institution is triggered when a complaint is filed by or on behalf of a student or employee. Title IX requires that an institution adopt and publish grievance policies and procedures providing for **prompt** and **equitable** resolution of student and employee complaints of sexual discrimination.

The purpose of administrative grievance procedures is to ensure that the institution maintains an environment for students and employees that is free from unlawful sex discrimination in all aspects of the educational experience, including academics and extracurricular activities.

The requirement to establish a system for the prompt and equitable resolution of student and employee complaints under Title IX is designed to allow an institution the freedom to resolve complaints of sex discrimination, without the need for involvement by outside entities.

The procedures should provide an institution with a mechanism for discovering incidents of discrimination or harassment as early as possible and for effectively correcting individual and systemic problems.

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May an institutional grievance procedure require an informal process to resolve conflicts before utilizing a more formal procedure?

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Show Answer ▼

For crimes of sexual violence (dating violence, domestic violence, sexual assault, and stalking), VAWA added procedural protections for victims that must be incorporated into the grievance procedures an institution uses to address complaints of sexual violence. However, nothing in the law prevents an institution from including the enhanced VAWA victim protection procedures for all Title IX complaints, even those that do not rise to the level of sexual violence (dating violence, domestic violence, stalking, and sexual assault).

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Title IX Grievance Procedures – Requirements



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What Procedures Are Required by Title IX?

The U.S. Department of Education does not mandate one form of grievance procedures, but rather recognizes that the procedures that each school uses to resolve Title IX complaints may 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, and what the school has learned from past experiences.

However, the Department's Office for Civil Rights ("OCR") has identified a number of elements it uses to evaluate whether a school's grievance procedures adequately provide for prompt and equitable resolution of sexual harassment complaints. These elements also apply to sexual violence complaints because sexual violence is a form of sexual harassment.

OCR will review a school's grievance procedures to ensure they contain the following critical elements:

1. Notice to students and employees of the grievance procedure in easily understood language including where complaints may be filed;

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2. Application of the procedures to complaints alleging harassment carried out by employees, other staff, or students;
 3. Adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence;
 4. Designated and reasonably prompt time frames for the major stages of the complaint process;
 5. Notice to parties of the outcome of the complaint; and
 6. 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.

Under Title IX, is a school required to have separate grievance procedures for Title IX and VAWA complaints?

Show Answer ▼

How Must Grievance Procedures Be Made Available?

OCR recommends that the grievance procedures be:

- Prominently posted on school websites;
- 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, faculty, and staff.

What Standard Must the Institution Use to Resolve Title IX Complaints?

An April 4, 2011 Dear Colleague Letter issued by OCR directed that school officials apply a “preponderance of the evidence standard” to resolve Title IX complaints adjudicated through grievance procedures, which is the same standard OCR uses to resolve Title IX complaints filed against schools. However, in September of 2017, a Dear Colleague letter was issued withdrawing this minimal standard of proof.

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VAWA-Specific Requirements Related to Grievance Procedures



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VAWA-Specific Requirements Related to Grievance Procedures

VAWA requires that institutions include in their Clery Act Annual Security Report a Statement of Policy detailing the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, and stalking that:

1. Describe each type of disciplinary proceeding used by the institution.
2. Detail the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding.
 - o 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.
 - o 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.

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- o Both parties should be given periodic status updates and notice as to when the time for the next hearing will be used.
3. Explain how to file a disciplinary complaint.
 4. Explain how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking.
 5. Describe the standard of evidence that will be used during any institutional disciplinary proceeding arising from an allegation of dating violence, domestic violence, sexual assault, or stalking.
 6. List all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceeding for an allegation of dating violence, domestic violence, sexual assault, or stalking.
 7. Describe the range of protective measures that the institution may offer to the victim following an allegation of dating violence, domestic violence, sexual assault, or stalking.
 8. Provide that the proceedings will include a prompt, fair, and impartial process from the initial investigation to the final result.
 9. Provide that the proceedings will be conducted by officials who, at a minimum, receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability, and who are free of conflicts of interest.
 10. Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice.
 11. Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding (however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties).
 12. Require simultaneous notification, in writing, to both the accuser and the accused, of:
 - A. The result of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking;
 - B. The institution's procedures for the accused and the victim to appeal the result of the institutional disciplinary proceeding, if such procedures are available;
 - C. Any change to the result; and
 - D. When such results become final.

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What time frame constitutes a "prompt" investigation?
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Show Answer ▼

VAWA also requires that the proceeding be conducted in a manner that is consistent with the institution's policies and transparent to the accuser and accused; includes timely notice of meetings at which the accuser or accused, or both, may be present; and provides timely and equal access for the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings.

A sample of Statement of Policy that contains the above information is available in Template E (http://media.maxknowledge.com/404/Template E_Sample Statement of Policy_Procedures for Disciplinary Action_VAWA crimes.pdf) and on the Additional Resources page.



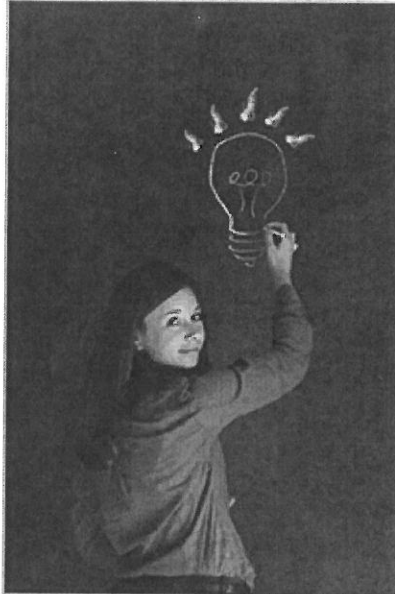
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Title IX Coordinator Role in Grievance Procedures (<https://www.maxknowledge.com/print.php>)



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There are several ways in which a Title IX Coordinator is expected to coordinate the institution's compliance with the Title IX regulatory requirements regarding grievance procedures (covering both sexual harassment and sexual violence allegations).

- First, the Title IX Coordinator should work with the institution to help make sure that the grievance procedures are written in language that is easily understood by the intended audience and widely disseminated.
- Second, the Title IX Coordinator should review the grievance procedures to help determine whether they incorporate all of the elements required for the prompt and equitable resolution of student and employee complaints under Title IX, consistent with the Title IX regulatory requirement and OCR guidance, including the requirements related to VAWA crimes.
- Third, the Title IX Coordinator should communicate with students, parents or guardians, and school employees to help them understand the school's grievance procedures; train employees and students about how Title IX protects against sex discrimination; and provide consultation and information regarding Title IX requirements to potential complainants.


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• Fourth, the Title IX Coordinator is responsible for coordinating the grievance process and making certain that individual complaints are handled properly. (<https://www.maxknowledge.com/elc/mod/resource/view.php?id=10793>) (<https://www.maxknowledge.com/elc/mod/resource/view.php?id=10795>)

coordination responsibility may include informing all parties regarding the process, notifying all parties of their right to and procedures for appeal, if any; monitoring compliance with all of the requirements and timelines specified in the grievance procedures; and maintaining grievance and compliance records and files.

- Fifth, Title IX Coordinator should work with other school employees to help the school keep and maintain accurate and complete records regarding its disciplinary incidents and monitor the school's administration of its discipline policies to ensure that they are not administered in a discriminatory manner. For example, the Title IX Coordinator should review the school's disciplinary records and data to ensure that similarly situated students are not being disciplined differently based on sex for the same offense (for example, female perpetrators are not given lighter sanctions for the same offense as compared to male perpetrators) and that the school's discipline policies do not have an unlawful disparate impact on students based on sex.
- Sixth, the Title IX Coordinator should work with the school to help ensure that its grievance procedures are accessible to English language learners and students with disabilities.

Why are a Title IX Coordinator's recordkeeping obligations so important?

Show Answer ▼

Grievance procedures generally may include voluntary informal mechanisms (e.g., mediation) for resolving some types of sexual harassment complaints. OCR has frequently advised schools, 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, OCR has stated that 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 of sexual violence allegations, OCR has stated that informal procedures are not appropriate.

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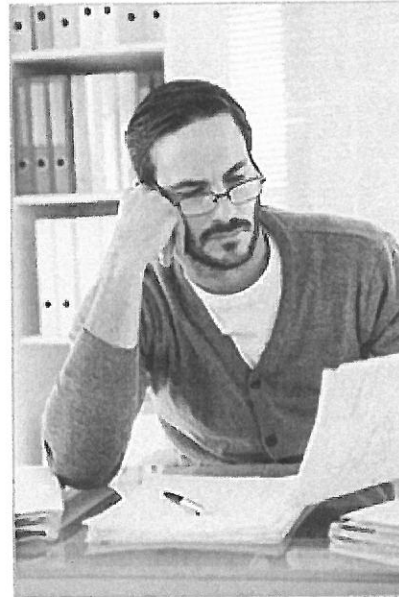
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Conducting Title IX Investigations – Overview

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When an institution is on notice of the potential for sexual harassment or sexual violence involving a student or employee, the institution's duty to investigate immediately is triggered. This duty is triggered even where the student or employee victim has not filed a complaint through the institutional grievance procedure. The term "investigation" refers to the process the school uses to inquire into and resolve Title IX complaints or to otherwise determine whether a hostile environment has been created such that the school must act to end and remedy any harm, including imposing sanctions against the perpetrator.

In cases where the student or employee has not filed a complaint utilizing the school's grievance procedure, the Title IX investigation should proceed on its own, utilizing all available sources of information even where the victim is not cooperative. In cases where a complaint has been filed, the Title IX investigation will proceed as part of or in tandem with the grievance process, depending on the school's own policies and procedures.

No matter how the process is structured, the Title IX Coordinator should play a key role in coordinating the Title IX investigation, as it is the Title IX Coordinator's responsibility to ensure the grievance procedures and the Title IX investigation are conducted to comply with Title IX requirements, including with regard to the heightened victim protections required by VAWA.

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The U.S. Department of Education understands that the specific steps in an institution's Title IX investigation will vary based on the nature of the alleged conduct, the size and administrative structure of the school, state or local legal requirements (including mandatory reporting requirements for schools working with minors), and what the school has learned from past experiences.

The investigation includes a 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 conduct, eliminate the hostile environment, and prevent its recurrence, which may include imposing sanctions on the perpetrator and providing remedies for the complainant and the broader student population.

Since the U.S. Department of Education has said it expects a typical Title IX investigation to take approximately 60 calendar days to resolve following receipt of the complaint, what are factors that could extend this period without violating the requirement for a "prompt" investigation?

Show Answer ▼

Is a Hearing Required?

A Title IX investigation and related grievance procedure may include a hearing to determine whether the conduct occurred, but Title IX does not require a hearing.

Is an Appeal Right Required?

A Title IX investigation and related grievance procedure may include the right to appeal, but Title IX does not require an appeal process. If one is made available, it must be made available to both parties.

Who May Conduct the Investigation?

The U.S. Department of Education's law and guidance does not specify who should or must conduct the investigation. It could be the Title IX Coordinator, provided there are no conflicts of interest, but it does not have to be. It could be an outside investigator, employees involved in an existing grievance process, or human resources staff, for example. The goal is the same: fair and impartial gathering of facts. In any event, the Title IX Coordinator should be involved to ensure the institution's Title IX policies and procedures are followed.

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How Should Employees Involved in Investigations Be Specially Trained?
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All persons involved in implementing a school's grievance procedure or conducting a Title IX investigation (e.g., ~~Max Knowledge Online Training Center~~ investigators) must have training or experience in handling complaints of sexual harassment and sexual violence, and in the school'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.

All persons involved in conducting a school's Title IX investigations must have training in Title IX, VAWA, and the institution's own grievance procedures. These individuals should also be trained in:

- Sexual assault dynamics
- Victim behavior
- Intimate partner violence
- Impact of drug and alcohol
- Evaluating consent



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Conducting Title IX Investigations – Steps



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What Information Should Be Collected During a Title IX Investigation?

During a Title IX investigation, the Title IX Coordinator or other responsible party should gather and evaluate objectively:

- Detailed interviews of accuser and accused, if possible, that include relevant information about the incident, any pre-existing relationship, and circumstances surrounding the report;
- Any corroborative material such as witness statements or interviews, physical evidence, or other evidence obtained via social media or video;
- Other similar incidents on campus; and
- Any other relevant information.

What Other Steps Should the Title IX Investigation Take?

The investigation may include, but is not limited to:

- Reviewing law enforcement investigation documents, if applicable, and coordinating with other investigating agencies as to available evidence,

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- Reviewing student and personnel files;
- Reviewing Title IX files regarding the institution's response to similar allegations made by other complainants to ensure consistency in decision-making;
- Gathering and examining other relevant documents or evidence that may be relevant to the complainant or the accused; and
- Careful written documentation and recordkeeping regarding all steps taken in the investigation and decision-making process.



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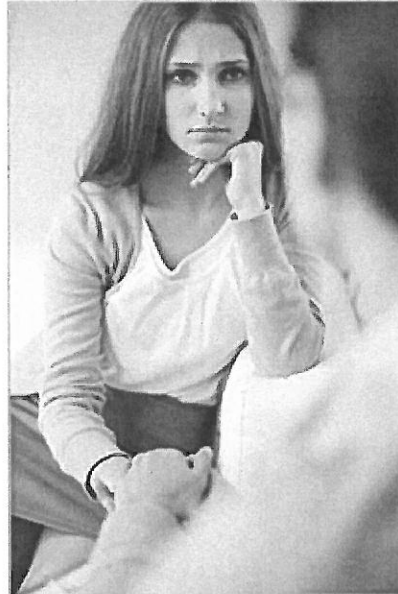
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Title IX Investigations – Rights of Complainant



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What Rights Do the Parties Have in a Title IX Investigation?

While a school has flexibility in how it structures the investigative process, for Title IX purposes, an institution must give the complainant and the accused equal rights. Specifically,

- Throughout the investigation, 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 any hearing. 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.
- If the alleged perpetrator is allowed to have a lawyer at a hearing or other meeting, the accuser is also allowed to have a lawyer. (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

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the ability of lawyers to speak or otherwise participate in the proceedings should apply equally.) **MaxKnowledge Online Training Center**

- If the school permits one party to submit third-party expert testimony, it must do so equally for both parties.

What is the relationship between FERPA confidentiality requirements, Title IX, and VAWA?

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- OCR strongly discourages schools from allowing the parties personally to question or cross-examine each other during a hearing. Allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment.
- If the school provides for an appeal, it must do so equally for both parties. OCR recommends, but does not require, that schools provide an appeal process.
- Both parties must be notified, in writing, about the outcome of both the complaint and any appeal, including any sanctions that relate directly to the victim.
- Both parties have a right to be notified of the timeframes for major stages of the investigation.
- The parties have the right to have the proceedings documented, including by written findings of fact, transcripts, or audio recordings.



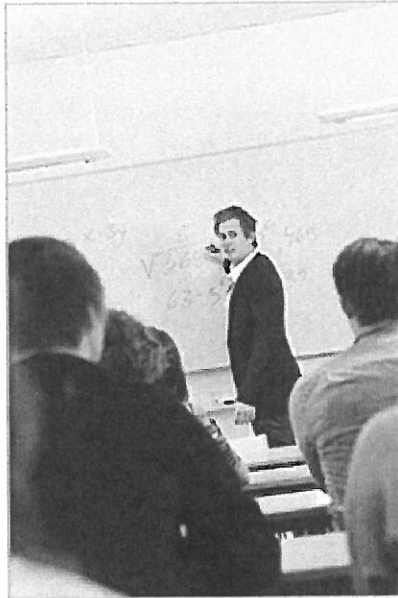
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School Employees – Role in Disciplinary Proceedings (<https://www.maxknowledge.com/print.php>)



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What Should All Employees Involved in Disciplinary Proceedings Consider?

The Title IX Coordinator and any other employee involved in the school's disciplinary procedures should be able to:

- Evaluate the credibility of the accuser and accused.
- Impartially evaluate and weigh evidence.
- Protect against any conflict of interest or bias toward the accuser or accused and be prepared to recuse themselves as soon as a conflict or bias is identified.
- State clearly to all parties how the school analyzes whether conduct was unwelcome under Title IX. In order for conduct to be sexual harassment, it must be unwelcome. Conduct is unwelcome if the student did not request or invite it and regards the conduct as undesirable or offensive. Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome.

For example, a student may decide not to resist sexual advances of another student or may not file a complaint out of fear. 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

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other hand, if a student actively participates in sexual banter and discussions and gives no indication of being harassed, the conduct generally will not support a conclusion that the conduct was unwelcome. These determinations should be based on the totality of the circumstances and all available evidence.

- Understand and apply how the school analyzes whether unwelcome sexual conduct creates a hostile environment. The Department of Education's Office for Civil Rights ("OCR") considers a variety of related factors to determine if a hostile environment has been created, i.e., if sexually harassing conduct 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 subjective (that victim's) and objective (a reasonable person's) perspective. Relevant factors include: the degree to which the conduct affected the education of one or more students so as to deny or limit 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. 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. For instance, if a young woman is taunted by one or more young men about her breasts, 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. 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.

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. It is the totality of the circumstances in which the behavior occurs that is critical in determining whether a hostile environment exists.

- Understand the confidentiality of the proceedings.

How should credibility of parties and witnesses be evaluated in a Title IX proceeding?

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Title IX Coordinators and the Disciplinary Process



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The U.S. Department of Education considers the imposition of sanctions against a person found to have engaged in sexual harassment or sexual violence a critical component of an institution's efforts to remedy past conduct and prevent future re-occurrence. The Title IX Coordinator, therefore, has an important role throughout the disciplinary process.

The Title IX Coordinator will be expected to be involved in the disciplinary process to ensure that the process:

- (1) Complies with the prompt and equitable requirements of Title IX;
- (2) Allows for appropriate interim measures (change of class, transportation, housing, no contact order, etc.) to be taken to protect the complainant during the pendency of the disciplinary process; and
- (3) Provides for remedies to the complainant and school community where appropriate.

Prompt and Equitable Requirements: The Title IX Coordinator is responsible for ensuring that the time frames and fairness provisions contained in its existing grievance procedures and other policies, including those specific to handling sexual violence complaints, are adhered to throughout the disciplinary process and are compliant with current requirements of Title IX and VAWA.

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Interim Measures: An institution should consider a number of factors in determining what interim measures to take when a disciplinary proceeding is pending, 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). When taking interim measures, the Title IX Coordinator should minimize the burden on the complainant.

When taking interim measures, how can an institution minimize burden on a complainant in a Title IX investigation?

Show Answer ▼

Remedial Action: After an investigation concludes that a hostile environment has been created, the Title IX Coordinator and others involved in the disciplinary process must determine what additional remedial action the school should take to end the hostile environment and prevent its re-occurrence. Effective remedial actions may include, but are not limited to, disciplinary action against the perpetrator up to and including expulsion; providing counseling for the victim, perpetrator and/or others in the school community; implementing additional training and awareness campaigns; and changes to the school's overall services or policies.

- All services needed to remedy the hostile environment, such as education and counseling, 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.
- 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;
 - 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

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secondary school student, to another school within the district;

- o Providing comprehensive, holistic victim services including medical, counseling, and academic support services, such as tutoring;
- o 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
- o 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.

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

- Designating an individual from the institution'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 institution'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; and
- 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.

Title IX requires both parties to be notified, in writing, about the outcome of both the complaint and any appeal. OCR recommends that the institution provide written notice of the outcome to the complainant and the alleged perpetrator concurrently.

For Title IX purposes, an institution 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 institution 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 institution may take to eliminate the hostile environment may include counseling and academic support services for the complainant and other affected students. Additional steps the institution may take to prevent recurrence may include sexual violence training for faculty and staff, revisions to the institution's policies on sexual violence, and campus climate surveys.

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Concurrent or Other Proceedings



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Criminal Proceedings – Understanding the Difference

It is important that Title IX Coordinators and other employees involved in Title IX grievance, investigation, and/or disciplinary procedures understand the difference between an institutional Title IX investigation and a criminal proceeding. A Title IX investigation by a school is a purely institutional, private proceeding that will never result in incarceration of an individual. Therefore, the same procedural protections and legal standards, including evidentiary standards, as in a criminal proceeding are not required.

While a criminal investigation is initiated at the discretion of law enforcement authorities, a *Title IX investigation is not discretionary*; upon notice of sexual harassment or sexual violence, an institution 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.

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

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not tell the complainant that it is working toward a solution and

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or ask, the complainant to wait to file the report. In addition, a school should not wait for the

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conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation and, if not, to refer 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 in a criminal proceeding. Also, the termination of a criminal investigation without an arrest or conviction does not affect the institution's Title IX obligations.

Even if a criminal investigation is ongoing by campus or other police, an institution must still conduct its own Title IX investigation. If a police department or other agency conducting a parallel investigation requests that the institution hold its investigative proceedings because it may interfere with that other proceeding, the institution must resume its proceeding as soon as that hold has been lifted.

If a criminal complaint for rape results in no charge, must the institution dismiss the accuser's complaint pending in the institutional grievance process?

Show Answer ▼

Cooperation and Coordination With Other Investigations:

During investigations of alleged sexual violence, an institution should coordinate with any other ongoing institution or criminal investigations of the incident, and establish appropriate fact-finding roles for each investigator.

An institution should also consider whether information can be shared among the investigators so that a complainant is not required to give multiple statements about a traumatic event. If the investigation includes forensic evidence, it may be helpful for the institution to consult with local or campus law enforcement or a forensic expert to ensure that the evidence is correctly interpreted by school officials.

Although not currently required by law, an institution may also want to enter into a memorandum of understanding (MOU) or other agreement with local police 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.

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Off-Campus Conduct



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Under Title IX, an institution must process all complaints of sexual violence, regardless of where the conduct occurred. The relevant questions are:

1. Did the conduct occur in the context of an education program or activity, or;
2. Even if the answer to (1) is no, did the conduct have continuing effects on campus or in an off-campus education program or activity?

If the institution determines that the alleged off-campus sexual violence occurred in the context of an education program or activity of the school, the institution must treat the complaint in the same manner that it treats complaints regarding on-campus conduct. The fact that the alleged misconduct took place off campus does not relieve the institution of its obligation to investigate the complaint as it would investigate a complaint of sexual violence that occurred on campus.

Off-campus education programs and activities 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 school club trip to another school or to a weekend competition).

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If a student is sent repeated sexually explicit, unwanted emails to her school account by a person who has never set foot on campus, is the institution required to investigate under Title IX?

Show Answer ▼

Even if the misconduct did not occur in the context of an education program or activity, an institution 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.

Once an institution is on notice of off-campus sexual harassment 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.

An institution 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 an institution may have to take steps to protect other students from possible assault by the alleged perpetrator.

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 institution still should handle these incidents as it would handle other off-campus incidents of misconduct or violence and consistent with any other applicable laws.

VAWA jurisdiction is more limited than Title IX jurisdiction, in that with regard to crime reporting under VAWA, only VAWA crimes that occur on Clery Act geography as defined by the Clery Act—including school property or public areas adjacent to the school—need to be included in Clery Act crime statistic reporting. For example, an institution may be required to investigate an off-campus rape of a student under Title IX, but not have an obligation to report the incident as a VAWA crime in its Annual Security Report if it did not occur on Clery Act geography (campus property or surrounding public property as defined by the Clery Act).



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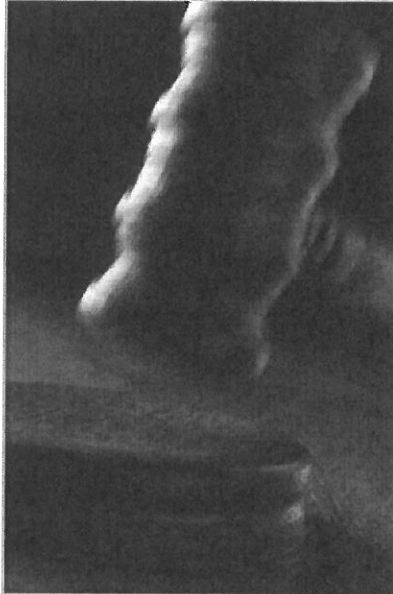
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Sanctions and Interim Measures



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Sanctions relate to penalties imposed on a student or employee after that person has been found to have engaged in sexual harassment or sexual violence through the conclusion of the institution's investigation and/or grievance process.

Interim measures refer to the steps institutions are required to take to protect the complainant during the period after a report of sexual harassment or sexual violence is made, but before the institutional process has concluded. The purpose of interim measures is to ensure that the institution does not perpetuate a hostile environment unnecessarily by making the complainant await conclusion of a disciplinary process before receiving protection and assistance.

Sanctions: Accountability for individuals found responsible for sexual harassment or violence, through the imposition of sanctions against the perpetrator, is a critical component of ending a hostile environment and preventing re-occurrence of sexual harassment or violence on campus. The U.S. Department of Education's Office for Civil Rights ("OCR") has stated that when schools do not hold perpetrators accountable through punishment or when the sanctions imposed are not commensurate with the seriousness of the act, the school is at risk for continuing to violate Title IX by allowing a hostile environment to continue.

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Sanctions that directly relate to the complainant (but that may also relate to eliminating the hostile environment at a Max Knowledge Online Training Center) are not limited to, written warning; mandatory counseling; mandatory education and training; no contact order; changes in academic, working, or living arrangements; revocation of certain campus privileges; or suspension or expulsion. Institutions have flexibility in the type and range of sanctions to impose on the perpetrator depending on the severity of the incident. The Title IX Coordinator should have a process in place to ensure that sanctions imposed are consistent with sanctions imposed in past incidents of similar conduct and are not imposed unequally based on gender (for example, a female found to have sexually harassed a transgender student receives a lighter sanction than a male student found to have sexually harassed a female student).

VAWA: For VAWA crimes (dating violence, domestic violence, sexual assault, and stalking), an institution's disciplinary procedure must specifically state the range of possible sanctions an institution may impose following the conclusion of a disciplinary procedure that finds sexual violence occurred. Institutions have the flexibility to determine what sanction to impose in individual cases, but the range of sanctions for a VAWA crime must be spelled out in the institution's Annual Security Report and any other institutional written policy addressing disciplinary action for VAWA crimes.

What should the school consider when determining the appropriateness of a sanction?

Show Answer ▼

Interim Measures: Title IX requires an institution to take steps to ensure equal access to its education programs and activities and protect the complainant as necessary by taking interim measures before the final outcome of an investigation. Even when an institution 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 institution must take immediate action to protect the complainant while keeping the identity of the complainant confidential.

Initial steps to protect a complainant may include: providing support services to the complainant including on- or off-campus crisis counselors; changing living arrangements or course schedules, assignments, or tests; and providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred. The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case.

An institution 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

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same residence hall, dining hall, class, transportation, or job location; and whether other judicial measures have been taken (e.g., no-contact orders, civil protection orders).

When taking interim measures, institutions should minimize the burden on the complainant.



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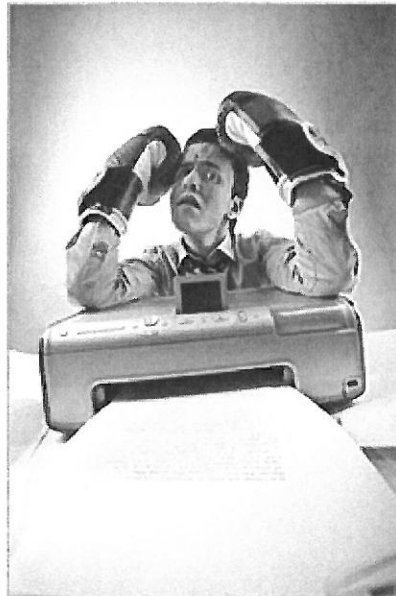
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Remedial Measures



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Remedial measures are focused on the complainant and the campus community after it has been determined that a hostile environment has been created by sexual harassment or sexual violence. Remedial measures include the interim measures provided to the complainant while the investigation was pending, as well as sanctions imposed against the perpetrator and actions focused on the overall school climate such as increased training, awareness activities, or other steps designed to raise awareness and prevent re-occurrence.

Services (such as counseling) 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.

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What should be the goal of remedial measures established by an institution following the final determination that an incident of sexual violence has occurred?

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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;
- 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.

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

- Designating an individual from the institution'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 institution'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; and
- 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.

Remedial measures are determined on a case-by-case basis as appropriate to the severity and nature of the incident and the Title IX Coordinator's determination of whether community-wide education, or other actions, are necessary to remedy a hostile environment.

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Remedial Measures



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Remedial measures are focused on the complainant and the campus community after it has been determined that a hostile environment has been created by sexual harassment or sexual violence. Remedial measures include the interim measures provided to the complainant while the investigation was pending, as well as sanctions imposed against the perpetrator and actions focused on the overall school climate such as increased training, awareness activities, or other steps designed to raise awareness and prevent re-occurrence.

Services (such as counseling) 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.

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What should be the goal of remedial measures established by an institution following the final determination that an incident of sexual violence has occurred?

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- 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.

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

- Designating an individual from the institution'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 institution'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; and
- 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.

Remedial measures are determined on a case-by-case basis as appropriate to the severity and nature of the incident and the Title IX Coordinator's determination of whether community-wide education, or other actions, are necessary to remedy a hostile environment.

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Retaliation Protection



If an individual brings concerns about a Title IX violation to an institution's attention, including publicly exposing sexual violence or filing a sexual violence or sexual harassment complaint with the school or any state or federal agency, it is unlawful for the institution to retaliate against that individual for doing so, and the institution's Title IX policy must clearly articulate its prohibition on retaliation.

It is also unlawful to retaliate against an individual because he or she testified as a witness, or participated in any manner, in an institution's investigation or proceeding. An institution's policies must state 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.


Why is retaliation prohibited by Title IX?

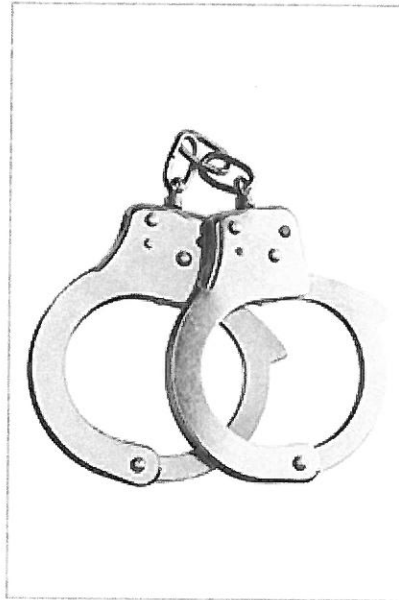
All of the Federal civil rights laws, including Title IX, make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws because if retaliation were not prohibited, individuals would be prevented by coercion, intimidation, harm, or threats of harm from asserting their legal rights, thereby undercutting the purpose of the law to protect them.

When an institution 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, just as it would in a Title IX investigation of potentially discriminatory conduct. Title IX requires the school to protect the complainant from retaliation and ensure his or her safety as necessary.

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Prohibition of VAWA Crimes

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A key component of preventing a crime of sexual violence is to ensure that employees and students at the institution understand what conduct is prohibited by law. Therefore, VAWA requires that all students and employees receive training that includes the VAWA crime definitions under both federal and state law.

VAWA crimes include domestic violence and dating violence, which are crimes of intimate partner violence (also known as relationship violence) because the perpetrator and victim are known to each other and have or have had an intimate relationship. The VAWA definitions of domestic violence and dating violence are listed below:

Domestic Violence: A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim, a person with whom a victim shares a child in common, a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner, a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

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Examples of domestic violence include: a husband hitting his wife or forcing her to have sex with him against her will, or using a weapon and threatening physical harm of her ex-boyfriend.

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, where the existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered by the definition of domestic violence.

Examples of dating violence include: threats of physical harm by a current or former boyfriend or girlfriend, or sexual acts, up to and including rape, performed against a person's will while they are in a social or dating relationship.

Why does VAWA require students and employees to be provided with state law definitions of VAWA crimes?

Show Answer ▼

Stalking: Means engaging in a course of conduct (two or more acts) directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress. Course of conduct includes but is not limited to acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property.

Examples of stalking include: sending repeated, unwanted emails to a person that cause that person to reasonably fear for their safety, or an ex-girlfriend who had previously threatened harm to her ex-boyfriend physically showing up at her ex-boyfriend's residence repeatedly after being instructed to stay away.

Sexual Assault: An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting System [WARNING: Some of these definitions are graphic]:

Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or

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permanent mental incapacity.

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Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Equivalent State Law Definitions: The definitions of Consent, Sexual Assault, Domestic Violence, Dating Violence, and Stalking under the law of the state where your institution is located are contained in your institution's Annual Security Report and at the following link:

<https://atixa.org/resources/consent-statutes-by-state/> (<https://atixa.org/resources/consent-statutes-by-state/>)

Note: Not all state laws have a definition of "consent," "stalking," or "dating violence."



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Safe and Positive Options for Bystander Intervention



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The U.S. Department of Education, Office for Civil Rights (“OCR”) requires that all prevention training on sexual violence cover strategies and skills for bystanders to intervene to prevent possible sexual violence before it occurs. “Bystander intervention,” as defined by VAWA, means “safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.”

Steps for safe bystander intervention include, but are not limited to:

1. Being aware of comments and behaviors from others that would indicate they were intent on having sexual intercourse even if the partner was unwilling. If you suspect that is someone’s intent, try to re-direct one or both individuals to a safe place or activity. Call 911 if you believe someone is in danger and needs help, rather than hoping someone else does.
2. Notice if someone seems intent on having sexual intercourse with a partner who is incapacitated. If you suspect that is someone’s intent, try to re-direct one or both

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individuals to a safe place or activity. Don't allow the incapacitated person to be alone with that person.

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3. Don't pressure or encourage friends to drink or have sex as often or with as many people as possible.
4. Open up a conversation with a friend who you think may be in an abusive relationship and offer help.
5. Don't joke about sexual assault; comments and jokes that are meant to "ease the tension" or are "just kidding around" can trivialize the severity of the behavior.
6. Know your level of comfort with conversations and talk about sexual behavior. If you find groups or individuals who joke about a woman's body or blame a rape victim, for example, that are not in sync with how you feel, state your discomfort rather than remaining silent.
7. Many perpetrators are unaware that what they have done is a crime. (They may say, "Yeah, that was messed up, but it was fun.") Let them know that what they did was not right and was against the law.
8. Cooperate in reporting an incident of sexual violence or offering witness or other information necessary to conduct an investigation.

Are individuals required by law to intervene if they think a crime of sexual violence is about to occur?

Show Answer ▼

If you become aware that a sexual assault has occurred or are told of an assault occurring:

- Believe the person.
- Do not blame the victim (what he/she was wearing, that he/she drank too much).
- Encourage a report (to campus or local police, to the Title IX Coordinator or other Responsible Employee). Realize however, there may be reasons why the person does NOT want to report. Respect that decision.
- Don't pry or try to get information out of the person if he/she is unwilling to be forthcoming with information... be ready to listen when the individual is ready to talk.
- If you learn of the perpetrator's identity, don't suggest physical or any other form of retaliation.
- Know available resources.
- Listen.
- Be patient.

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For more information on bystander intervention strategies, see
<http://stepupprogram.org/> **Max Knowledge Online Training Center** (<http://www.maxknowledge.com/elc/mod/resource/view.php?id=10807>)
<http://stepupprogram.org/topics/sexual-assault/>



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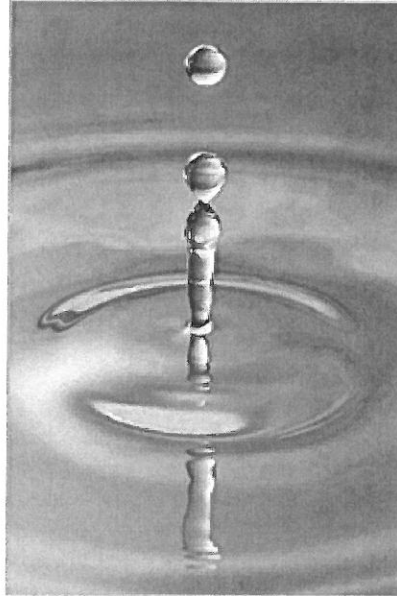
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Sexual Assault Dynamics



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What Is Unique About Sexual Assault Dynamics?

The U.S. Department of Education, Office for Civil Rights (“OCR”) requires that all Title IX Coordinators and those individuals involved in Title IX disciplinary proceedings have a basic understanding of the unique aspects of sexual assault dynamics. Specifically, sexual assault differs from other crimes in that:

- The overwhelming majority of sexual assaults in the postsecondary environment involve acquaintances or individuals who know each other.
- The overwhelming majority of sexual assaults in the postsecondary environment include the use of alcohol or drugs by one or both parties.
- Disputes over the consensual or non-consensual nature of the act are common.
- Evaluation of whether sexual violence occurred often involves he said/she said dynamics with little witness corroboration or physical evidence that test the ability of a Title IX Coordinator and other employees to determine credibility of each party.
- Victims of sexual violence often behave differently than victims of other crimes.

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What Should School Employees Involved in Title IX Investigation and Response Know About Victim Behavior and Trauma Response?

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Title IX Coordinators and other employees involved in responding to sexual violence should understand that **Max Knowledge Online Training Center** that impact victim behavior. For example, victims of sexual violence often act counter-intuitively in ways that can negatively impact a school's assessment of the victim's credibility including:

- Significant delays in reporting incident
- Wavering levels of cooperation
- Fear and anxiety
- Re-experiencing of the trauma
- Avoidance
- Guilt and shame
- Depression
- Negative beliefs about self, others, and the world
- Relationship difficulties

School employees involved in receiving and responding to crimes of sexual violence must be aware that a complainant's behavior may be unusual not because the person is lying or unsure of what occurred, but due to psychological trauma that may result in some of the behaviors listed above. Those considerations should be evaluated when making determinations about a complainant's credibility. More resources on psychological effects of trauma are available in the Additional Resources section.

Why is it important for Title IX Coordinators and others involved in disciplinary proceedings to have a basic understanding of the psychological impacts of sexual violence on a victim?

Show Answer ▼

What Factors Increase Sexual Assault Risk?

Alcohol use is most commonly associated with sexual assault on campus, according to a number of studies, which is why institutional drug and alcohol abuse prevention and awareness programs are so important to reducing risk of sexual violence on campus. Other risk factors tied to sexual assault based on studies include:

- The first two years of college are the highest risk years, and the first few months of the school year are the highest risk time of the year.
- Day of the week. More than half of sexual assaults took place on weekends. More than half occurred between midnight and 6:00 am. In a residential campus environment the risk of weekend sexual violence is high.

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- Off-campus parties. More than half of sexual assaults against college women took place in off-campus settings. Of the 10% of reported incapacitated sexual assault said they were at a party when the incident took place.
 - Risk groups for forced and incapacitated assault:
 - Individuals who experienced physically forced sexual assault before entering college.
 - Individuals who have experienced dating violence since entering college.
 - Individuals who have had more dating partners since entering college.

Additional information regarding factors that increase sexual assault risk can be found here:

<http://www.nij.gov/topics/crime/rape-sexual-violence/campus/pages/increased-risk.aspx>
(<http://www.nij.gov/topics/crime/rape-sexual-violence/campus/pages/increased-risk.aspx>)



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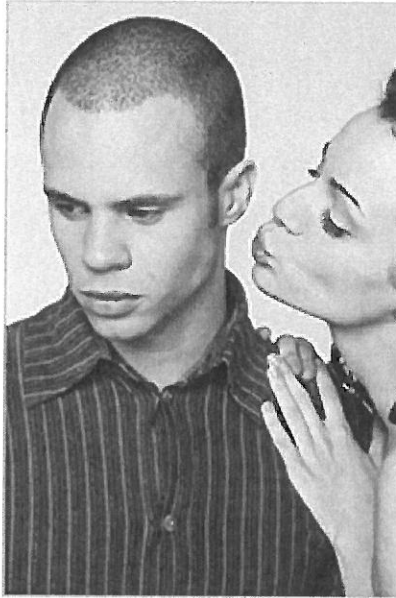
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Consent



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How Should Consent Be Evaluated?

VAWA requires that the training all students and employees receive on prevention and awareness of sexual assault include the definition of “consent” under the institution’s policies and under the law of the state where the institution is located. That definition is required to be contained in the institution’s Annual Security Report.

State law consent definitions are available here: <https://atixa.org/resources/consent-statutes-by-state/> (<https://atixa.org/resources/consent-statutes-by-state/>)

Note: Not all state laws have a definition of “consent.”

What Is the Meaning of Consent?

Although state laws may differ in the precise definition of “consent” for purposes of establishing whether a crime of sexual violence occurred, consent generally means the following:

- Consent is a voluntary agreement to engage in sexual activity.
- Someone who is mentally or physically incapacitated cannot give effective consent.
- Someone who is below the age of consent cannot give effective consent.

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- Past consent to an activity does not imply future consent.
 - Silence or absence of resistance does not imply consent because silence or inaction may be based on fear or intimidation.
 - Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person.
 - Consent can be withdrawn at any time.
 - Coercion, force, or threat of either invalidates any previously given consent.

When evaluating the presence or absence of consent in the context of sexual violence dynamics, Title IX Coordinators and those involved in receiving and evaluating sexual violence allegations should consider the above factors as well as the applicable institutional and state law definition of consent.



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