



**Office for Civil Rights
U.S. Department of
Education**

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**AN OVERVIEW OF
TITLE IX'S APPLICATION
TO STUDENT-ON-STUDENT
SEXUAL HARASSMENT AND
SEXUAL VIOLENCE**

This Presentation Will . . .

- Explain the importance of addressing sexual harassment and violence
- Provide information on Title IX's prohibition on sexual harassment and violence
- Define sexual harassment, which includes sexual violence
- Describe a school's required response to student-on-student sexual harassment or violence
- Explain schools' procedural requirements under Title IX
- Describe appropriate education and prevention programs and strategies
- Provide examples of remedies



**IMPORTANCE OF ADDRESSING
SEXUAL HARASSMENT AND
SEXUAL VIOLENCE**

According to a study on sexual assaults on college campuses:

- **20 -25%** of women are victims of rape or attempted rape during their time in college.
- **Approximately 6.1%** of men experience an attempted or completed sexual assault while in college.

*- The Campus Sexual Assault Study Final Report
(Krebs, Lindquist, Warner, Fisher, & Martin, 2007)*

In 2009, college campuses reported nearly **3,300** forcible sex offenses as defined by the Clery Act.

- U.S. Department of Education, Office of Postsecondary Education, Summary Crime Statistics, available at <http://www2.ed.gov/admins/lead/safety/criminal2007-09.pdf>

9 out of 10 college victims of completed and attempted rapes knew their attacker.

- *The Sexual Victimization of College Women*
(Fisher, Cullen & Turner 2000)

On average, **at least 50%** of sexual assaults of college students involve the use of alcohol or other drugs by the perpetrator, victim, or both.

(Krebs et al., 2007); *Alcohol-Related Sexual Assault: A Common Problem Among College Students* (Abbey, 2002)

Sexual violence is not isolated to college campuses.

- During the 2007-2008 school year, there were **800** reported incidents of rape and attempted rape at public high schools.
- During the same time period, there were **3,800** reported incidents of other sexual batteries at public high schools.

- *Indicators of School Crime and Safety: 2010*
(Simone Roberts, et al., 2010)

**POSSIBLE EFFECTS
OF SEXUAL HARASSMENT OR
SEXUAL VIOLENCE**

- Jeopardizes students' academic achievement
- Undermines their physical and emotional well-being
- Sexual assault victims are more likely to suffer from depression, post-traumatic stress disorder, to abuse alcohol and drugs, and to contemplate suicide.

**TITLE IX PROHIBITS
SEXUAL HARASSMENT AND
SEXUAL VIOLENCE**

Dear Colleague Letter

In April 2011, the Office for Civil Rights issued a "Dear Colleague" letter explaining to schools, colleges, and universities their obligations, under Title IX, to take immediate and effective steps to eliminate sexual harassment, **including sexual violence.**

TITLE IX

- Title IX prohibits sex-based discrimination in education programs and activities receiving federal financial assistance.
- Title IX applies to all public and private educational institutions receiving federal financial assistance.
- Sexual harassment, including sexual violence, is a form of sex discrimination covered by Title IX.

EDUCATION PROGRAMS AND ACTIVITIES

- "Education programs and activities" includes **all of a school's operations**, including school-sponsored activities or travel that occur away from school.
- Title IX's protection applies to third parties who participate in a school's education programs or activities. Examples include:
 - A high school student participating in a college's recruitment program
 - A visiting student athlete
 - A visitor in a college's on-campus residence hall

SUPREME COURT DECISIONS

Supreme Court decisions dealing with Title IX and sexual harassment of students in private lawsuits for monetary damages:

- *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998).
- *Davis v. Monroe County Bd. Of Educ.*, 526 U.S. 629 (1999).

OCR ENFORCEMENT

- This presentation discusses standards applicable to OCR’s administrative enforcement in cases raising sexual harassment and sexual violence issues.
- It does not address standards applicable to private Title IX lawsuits for monetary damages.

**SEXUAL HARASSMENT
DEFINED**

WHAT IS SEXUAL HARASSMENT?

- Conduct of a sexual nature;
- That is unwelcome, and
- Denies or limits a student’s ability to participate in or receive the benefits, services or opportunities of the school’s programs or activities.
- **This includes sexual violence.**

CONDUCT OF A SEXUAL NATURE

Determining whether conduct is of a sexual nature is very fact specific, but examples may include:

- Unwelcome sexual advances
- Requests for sexual favors
- Comments about an individual's body, sexual activity or sexual attractiveness
- Sexually suggestive touching, leering, gestures, sounds, comments, or displays of sexually suggestive objects

CONDUCT OF A SEXUAL NATURE, cont'd.

Such conduct also may be criminal in nature, such as:

- Rape
- Sexual assault
- Sexually motivated stalking

HOSTILE ENVIRONMENT

- Requires assessment of whether conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the school's program.
- A school has a duty to take prompt and effective action to stop the harassment/violence, prevent its recurrence, and remedy its effects if the school knew or should have known of the misconduct.
- A school's obligation may be triggered by sexual harassment or violence that occurred off school grounds if it creates a hostile environment at school.

DENIES OR LIMITS

To determine whether the conduct denies or limits benefits or services, consider:

- The conduct from subjective and objective perspectives
- Whether conduct is sufficiently severe or serious
- Effect of the conduct on the student's education
- All other relevant circumstances, such as:
type, frequency, location, and duration of conduct;
number of students involved; and the relationship/roles
of the parties

DENIES OR LIMITS, cont'd.

- Often, "harassment" is thought of as a series of events, or a pattern of conduct. However, schools must weigh all the relevant facts in a given situation, including the severity of the conduct.
- **The more severe the conduct, the less the need to show repeated incidents.**
- Sexual violence is a severe type of sexual harassment. The Dear Colleague letter clarifies that **a single incident of rape is sufficiently severe to create a hostile environment.**

NOTICE

A school has notice if a responsible employee knew, or in the exercise of reasonable care should have known, about the harassment/violence.

Examples of notice:

- A student complained to a teacher or filed a Title IX grievance.
- Parents contacted the principal or a teacher.
- A staff member witnessed the harassment.
- The media reported about an incident.
- The harassment is widespread, openly practiced, or well-known to students and staff.

HOW MUST A SCHOOL RESPOND TO STUDENT-ON-STUDENT SEXUAL HARASSMENT OR SEXUAL VIOLENCE?

SCHOOL'S RESPONSE

- **Once a school has notice of possible sexual harassment or violence, it must:**
 - take immediate and appropriate steps to investigate or otherwise determine what occurred; and
 - take prompt and effective steps reasonably calculated to end any harassment or violence.
- **What constitutes a reasonable response to information about possible sexual harassment or sexual violence will differ depending on the circumstances.**

SCHOOL'S RESPONSIBILITIES

- **Interim measures** during investigation
- If the school determines sexual harassment or violence has occurred, it must take reasonable, timely, age-appropriate, and **effective corrective action** tailored to the specific situation.

RESPONSIBILITIES, cont'd.

Appropriate steps include:

- Ending the harassment or violence
- Eliminating any hostile environment that has been created
- Preventing any further harassment or violence
- Preventing retaliatory actions

CONFIDENTIALITY

- Schools should obtain the consent of a complainant (or the student's parents) prior to investigating a complaint.
- In any investigation or proceeding, parties' names and allegations should be kept as confidential as possible.
- If a student asks that his/her name not be revealed, the school should take all reasonable steps to investigate and respond to the complaint consistent with that request, so long as it does not prevent the school from responding effectively and preventing harassment of other students.

**PROCEDURAL
REQUIREMENTS UNDER
TITLE IX**

PROCEDURAL REQUIREMENTS

Title IX requires schools to:

- adopt and publish a policy against sex discrimination
- designate at least one employee to coordinate and carry out Title IX responsibilities
- adopt grievance procedures providing for prompt and equitable resolution of sex discrimination

NOTICE OF NONDISCRIMINATION

- Each school district, college, and university must publish a notice of nondiscrimination stating that it does not discriminate on the basis of sex in the education programs and activities that it operates.
- The notice must be widely distributed to students, parents, employees, prospective students and employees, and other relevant individuals.

DISSEMINATION OF NONDISCRIMINATION NOTICE

- There are many methods by which a school, college or university should disseminate its notice.
- The Dear Colleague letter suggests that the notice be:
 - prominently posted on school websites;
 - posted at various school or campus locations; **and**
 - included in electronic and printed publications that provide information on the school's services and policies, such as employee or student handbooks.



TITLE IX COORDINATOR

- A school district, college, or university must notify all students and employees of the name or title and contact information of the designated Title IX coordinator.
- The coordinator's responsibilities include oversight of all Title IX complaints and addressing any patterns or systematic problems that arise during the review of such complaints.

TITLE IX COORDINATOR, cont'd.

- Title IX coordinators must be trained on what constitutes sexual harassment, including sexual violence, and the school's grievance procedures.
- Title IX coordinators should be available to meet with students as needed.
- Title IX coordinators should not have other job responsibilities that create a conflict of interest.

GRIEVANCE PROCEDURES

The elements for determining if grievance procedures are **prompt and equitable** include whether procedures:

- Provide for notice of procedures, including where complaints may be filed, to students and employees
- Apply to sexual harassment, including sexual violence, by employees, students, and third parties
- Provide for adequate, reliable and impartial investigation, including opportunity to present witnesses and evidence



GRIEVANCE PROCEDURES, cont'd.

- Have designated and reasonably prompt timeframes for major stages of the grievance process
- Provide for notice to parties of the outcome
- Provide assurance that school will take steps to prevent further harassment/violence and to correct its effects if appropriate

EXPLANATION OF ELEMENTS

The Dear Colleague Letter provides more detailed guidance on four of the elements used to determine whether a school's grievance procedures provide for a "prompt and equitable" resolution of sex discrimination complaints.

NOTICE OF GRIEVANCE PROCEDURES

- Grievance procedures should be:
 - Written in age-appropriate, easy-to-understand language
 - Prominently posted on school websites
 - Sent electronically to all members of the school community
 - Available at various locations throughout the school or campus
 - Summarized or included in major publications, such as handbooks, codes of conduct, or catalogs

ADEQUATE, RELIABLE, AND IMPARTIAL INVESTIGATION

- Sexual harassment or violence complaints may allege criminal conduct. In such cases, schools should:
 - Inform the complainant of the right to file a criminal complaint, and not discourage him/her from doing so
 - Conduct its own Title IX investigation, regardless of the status of any criminal investigation, and take immediate steps to protect the victim and the school community

ADEQUATE, RELIABLE, AND IMPARTIAL INVESTIGATION, cont'd.

- A school may have an agreement or memorandum of understanding with local law enforcement agencies concerning criminal student conduct. If so, the agreement should allow the school to:
 - Meet its obligations under Title IX
 - Notify victims of their Title IX rights
 - Take interim steps to ensure the safety and well-being of the victim and the school community

ADEQUATE, RELIABLE, AND IMPARTIAL INVESTIGATION, cont'd.

- A school's grievance procedures must use a "**preponderance of the evidence**" standard to investigate and resolve complaints.
 - This means that, to find a violation, the school must find that sexual harassment or violence more likely than not occurred.
 - Schools **may not** use a "clear and convincing" standard.

ADEQUATE, RELIABLE, AND IMPARTIAL INVESTIGATION, cont'd.

- The school must provide both parties with an equal opportunity to present witnesses and evidence, and to have similar and timely access to any information to be used at the hearing.
- If the school allows lawyers to participate at any stage of the proceedings, then both parties must be permitted to have a lawyer.
- Schools should provide an appeal process, and must do so equally for both parties.
- Anyone involved in the grievance procedure must be appropriately trained on handling sexual harassment and violence complaints.

DESIGNATED AND REASONABLY PROMPT TIME FRAMES

- Grievance procedures must specify the time frames for all procedural major stages, including when:
 - The school will complete its full investigation
 - Both parties will receive a response regarding the outcome of the complaint
 - The parties may file an appeal
- The grievance procedures must also provide a process for extending timelines.
- Both parties should be given periodic status updates.

NOTICE OF OUTCOME

- Both parties must be notified, **in writing**, of the outcome of the complaint, and of any appeal.
- FERPA allows **all institutions** to disclose to the harassed student information about a sanction imposed upon a student found to have engaged in harassment, when the sanction directly relates to the harassed student.
- The Clery Act requires, and FERPA allows, **postsecondary institutions** to inform both parties of the outcome and related sanction of any disciplinary proceeding alleging a sex offense.

EDUCATION AND PREVENTION

EDUCATION AND PREVENTION

- Schools should take proactive measures to prevent sexual harassment and violence from occurring.
- The Dear Colleague letter suggests that schools implement preventive education programs on sexual harassment and violence and provide victim resources and services.

EDUCATION AND PREVENTION, cont'd.

- These programs should:
 - Explain what constitutes sexual harassment and sexual violence, and what to do if it occurs
 - Describe the school's policies and disciplinary procedures related to sexual harassment and violence
 - Describe consequences for violating the school's policy
 - Provide information to encourage reporting sexual violence

REMEDIAL ACTION

- REMEDIAL ACTION**
- Schools may need to take interim steps before the investigation is complete.
 - Schools should protect against, and be ready to address, retaliation.
 - Remedial action should be tailored to the specific facts of the case.

- POSSIBLE REMEDIES**
- Remedial measures for the complainant might include:
- Ensuring the complainant and alleged perpetrator do not attend the same classes
 - Moving the complainant or alleged perpetrator to another school or residence hall
 - Providing an escort for moving between classes/activities
 - Counseling and/or medical services
 - Academic support services, such as tutoring

POSSIBLE REMEDIES, cont'd.

Remedies for the school population might include:

- Counseling or other victim services to all students affected by sexual harassment or violence
- Designating a counseling center employee to be "on call" to assist victims of sexual harassment or violence whenever needed
- Training for the Title IX coordinator and other employees who deal with sexual harassment and violence complaints
- Title IX training for school law enforcement unit

POSSIBLE REMEDIES, cont'd.

Remedies for the school population might include:

- Developing and distributing materials on sexual harassment and violence
- Ensuring communication between Title IX coordinator and school's law enforcement
- Conducting "climate check" to assess effectiveness of efforts
- Assessing student activities for compliance
- Submitting copies of all grievances and investigation materials to OCR

OTHER INFORMATION AND RESOURCES

The Clery Act

- Administered by the U.S. Department of Education's Office of Postsecondary Education
- Compliance required for all postsecondary institutions that participate in federal Title IV student aid programs
- Separate and independent from institution's Title IX responsibilities
- Compliance is an ongoing obligation.

The Clery Act, cont'd.

- **Requires colleges and universities to:**
 - Give timely warnings of crimes that represent a threat to the safety of students or employees.
 - Make campus security policies public.
 - Collect, report, and disseminate crime data to the campus community and to the U.S. Department of Education.

RESOURCES

- 2011 Sexual Violence Dear Colleague Letter
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>
- Resources for Addressing Sexual Harassment
<http://www.ed.gov/ocr/sexharassresources.html>
- Guidance on grievance procedures
www.ed.gov/ocr/prevention.html
- The Office of Safe and Drug Free Schools at the U.S. Department of Education
<http://www2.ed.gov/about/offices/list/osdfs/index.html>

RESOURCES, cont'd.

- Clery Act:
<http://www2.ed.gov/admins/lead/safety/campus.html>
- Department of Justice:
 - Community Relations Service - www.usdoj.gov/crs/
 - Office for Victims of Crimes - <http://www.ovc.gov/>
 - Office on Violence Against Women -
<http://www.ovw.usdoj.gov/>
- FERPA:
 - Family Planning Compliance Office at the U.S. Department of Education -
<http://www2.ed.gov/policy/gen/guid/fpco/index.html>

How to contact OCR [DALLAS OFFICE]:

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