Legal Representation for Victims of Campus Sexual Assault

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Training Overview

Survivors of Campus Sexual Assault
- Understanding the population

Title IX Basics

Legal Representation in Education Matters
- Negotiate with the institution
- Participate in the disciplinary process
- Assess and file an OCR complaint
Getting to Know the Language

- Perpetrator/Assailant and Victim/Survivor
- Accused and Accuser
- Respondent and Complainant
From 2005-2010, incidents of rape and/or sexual assault against female victims age 12 and older were perpetrated by the following:

- **34%** Intimate Partner
- **66%** Non-Intimate Partner
- **38%** Acquaintance
- **6%** Relative
- **22%** Stranger
Dr. David Lisak’s Research

- 120 Rapists

- 63% had committed more than one rape

- 483 rapes and attempted rapes
  - Serial Rapist: 439 rapes and attempted rapes
  - Single Act Rapist: 44 rapes and attempted rapes

- Average of 4 rapes per rapist
Practical Implications of “Trauma-Informed”

- Myths & Stereotypes
- Impact of Trauma
- Cultural Competency
Myths and Stereotypes

1. Victim bears responsibility
2. False allegation rates are high
3. Rape is a misunderstanding
4. Incapacitation can’t mean the victim is physically functioning
5. This is a law enforcement issue
In 98% of cases, the perpetrator doesn’t spend a single day in jail.

For every 100 rapes committed:

- 19 are reported to police
- 7 result in prosecution
- 3 result in conviction
- 2 result in incarceration
Practical Implications of “Trauma-Informed”

- Myths & Stereotypes
- Impact of Trauma
- Cultural Competency
Assault Responses

- Fight
- Flight
- Freeze
The Impact of Trauma

Can’t remember details of the incident

Only remember certain details vividly

Experience triggers

Trouble with chronology
Practical Implications of “Trauma-Informed”

- Myths & Stereotypes
- Impact of Trauma
- Cultural Competency
About Title IX

Who is required to comply with Title IX?
- All public and private educational institutions that receive federal funds

What does Title IX say?
- Prohibits recipients from discriminating on the basis of sex in education programs or activities. Sexual harassment of students, which includes sexual violence, is a form of sex discrimination prohibited by Title IX.
Harassment Covered

Gender-based Harassment

Sexual Harassment

Sexual Violence
How does Title IX protect students?

- Protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the institution
  - “Of or related to the institution”

- Also protects students who may have been sexually harassed off school grounds, outside an institution’s education program or activity, if the harasser was a fellow student
Upon “Notice”

An institution “must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation.” (DCL, 4)

- Inquiry must be prompt, thorough, and impartial
Confidentiality and its Limits

- Responsible Employees
- Persons with Statutory Privilege
- Persons with Confidentiality
Providing Legal Services

- Negotiate with the institution
- Provide legal advocacy and support throughout the disciplinary process
- Assess and file an Office for Civil Rights complaint
Privacy Considerations
Negotiate With the Institution

**Step 1:** Discuss with the survivor what services are desired or what assistance she/he needs

**Step 2:** With the help of the survivor, identify individuals on campus who are in a position to provide those services and assistance

**Step 3:** Contact institution to determine willingness to work with the survivor

**Step 4:** Make requests for services or assistance in writing
Services and Assistance on Campus

- Safety measures
- No contact order
- Housing changes
- Academic assistance

Practical Tip: Be Creative! Title IX provides a floor, not a ceiling. The facts and circumstances surrounding each case are different. Survivors are in the best position to tell you and the institution what will make them feel safe.
During Disciplinary Process: Help With Drafting Statement

- Focus the statement on the details of the incident(s)
- Don’t let the survivor “cross-examine” her/himself
- Be upfront about “bad facts”
- Lay out the facts that show policy violation

**Practical Tip:** A disciplinary process can be emotionally taxing on survivors. Survivors have a choice as to whether they pursue the disciplinary process. Helping a survivor weigh the potential impact of the process on her/his academic, social, and extracurricular life against her/his personal goals can assist a survivor in making a decision that is best for her/him.
During Disciplinary Process: Help Prepare for Interview/Hearing

- Let survivor know about her/his rights
  - Adequate, reliable, impartial investigation of complaint (DCL, 9)
  - Process facilitated by trained individual(s) (DCL, 12)
  - “Advisor of your choice” (VAWA Amendments § 668.46(k)(2)(iii) and (iv))
  - Equal and timely access to any information as the accused (VAWA Amendments § 668.46(k)(2)(v))
  - Equal opportunity to present relevant witnesses and evidence (Q&A, 12; DCL, 11)
  - Strong discouragement of the accused directly questioning (Q&A 31; DCL, 12)
  - Documented proceeding (DCL, 12)
- Go over what the survivor should/should not focus on and the key points
During Disciplinary Process: Provide Support Post-Interview/Hearing

- Let survivor know of her/his right to receive written simultaneous notification of the results and any available appeal procedures (VAWA Amendments to the Clery Act § 668.46(k)(2)(v))
  - Including: the decision (responsible/not), sanction, and rationale

- If there is an appeals process, set the survivor’s expectations and discuss it with her/him.
Assessment

- Does the institution receive federal funds?

- Was the last act of discrimination less than 180 days ago?

- Does this type of discrimination fall within Title IX?
  - Bullying vs. sexual harassment
Strategic Considerations

Is this right for the survivor?

- There is a breakdown in communication or trust between the survivor and the institution

- Survivor is seeking institutional or systemic change

- Survivor understands that the complaint is not likely to result in immediate change and the process is lengthy
Drafting a Complaint

Limit the description of facts regarding the incident(s)

- Helps to avoid inconsistencies if the survivor has an ongoing criminal process or decides to report to law enforcement at a later date

- Privacy purposes – Typically not necessary for the complaint, so no reason to share the details
Drafting a Complaint

- Include brief background/procedural history
- Keep the focus on the institution’s actions and how those actions failed to comply with Title IX
- Highlight the most significant issues
- Conclude with remedies being sought
- Attach relevant materials as exhibits
- Request a meeting with attorney and investigator
Filing a Complaint

1. Contact your regional office

2. Submit written complaint

3. Submit consent form
   - Freedom of Information Act
   - Advise survivor that her/his name will be released to the institution
Post Filing a Complaint

No action

- An investigation is not opened

If OCR opens an investigation:

- OCR will contact the complainant and the institution
- Interview/meet with the complainant
- “Data requests”
- Resolution letter depending on investigation and findings
In Conclusion

- Negotiate with the college or university
- Provide advocacy and support throughout the disciplinary process
- File an Office for Civil Rights complaint
Resources


April 2014, Questions and Answers on Title IX and Sexual Violence, available at: http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf


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