



Legal Assistance for Crime Victims

An OVC Training and Technical Assistance Initiative

Campus Sexual Assault: Advocating Under Title IX

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Thank you.

Who is the VRLC?



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Agenda

Overview of Title IX

Highlights from the April 2014 FAQs

Areas to Advocate

- Negotiate With Schools
- Disciplinary Process
- Office for Civil Rights Complaints
- Department of Justice Civil Rights Division

Who is required to comply with Title IX?

- All public & private educational institutions that receive federal funds.
 - What is *receive federal funds* under Title IX?
 - Qualifying federal financial assistance can be in the form of: an award or grant of money; use of rent of federal land or property; and federal training.
 - Federal financial assistance can also be received indirectly
 - Example: Accepting students who receive federal financial aid (FAFSA)

What does Title IX say?

- General mandate: Prohibits recipients of federal financial assistance from discriminating on the basis of sex in education programs or activities. ***Sexual harassment of students, which includes acts of sexual violence, can be a form of sex discrimination prohibited by Title IX.***



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 and activities of the school.

Advocacy Tip: Remember that Title IX applies to K-12 schools, as well as colleges. Keep this in mind when working with minor survivors.

Highlights



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Highlights from the April 2014 FAQs

The Highlights



- Title IX protects against discrimination based on gender identity
- Title IX protects students regardless of their immigration status or citizenship status (ex. International students)
- Disclosures at public awareness events are not considered notice to the school (ex. Take Back the Night)
- Responsible employee analysis
- When a student-victim reports but requests confidentiality, the school must do a safety-risk assessment
- Even when the perpetrator is not affiliated with the school, the school must provide appropriate remedies to the complainant and, where appropriate, the broader school population
- Title IX does NOT require a school to report to law enforcement, although such a report may be required by state, local, or other federal laws.

FAQs: When the Perpetrator is Not Affiliated With the School



“Even though a school’s ability to take direct action against a particular perpetrator may be limited, the school **must still** take steps to provide appropriate remedies for the complainant and, where appropriate, the broader school population.”

Example: Perpetrator is athlete or band member from a visiting school

The Office for Civil Rights recommends:

- Investigate
- Report the incident to visiting school
- Encourage visiting school to take appropriate action
- Notify the complainant of any right to file with perpetrator’s school or local law enforcement
- The school could decide not to invite back the visiting school to its campus

FAQs: Responsible Employee Analysis



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Responsible employees MUST report incidents of sexual violence. Once a responsible employee has received a report of sexual violence, the school is on notice for purposes of Title IX.

Responsible Employees

Persons with Statutory
Privilege

Persons with
Confidentiality



Practically Speaking...

*How often should schools **not** honor a request for confidentiality?*

- “Instances will be limited” – OCR FAQ page 19
- Nearly all requests for confidentiality will preclude a meaningful investigation. Few investigations will be productive or result in a sanction without a cooperation of the victim.

Safety Risk Assessment



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Safety Risk Factors:

- Whether there have been other sexual violence complaints about the same alleged perpetrator
- Whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence
- Whether the alleged perpetrator threatened further sexual violence or other violence against the student or others
- Whether the sexual violence was committed by multiple perpetrators
- Increased risk of future acts of sexual violence under similar circumstances (e.g., pattern of perpetration – use illicit drugs/alcohol at a given location or by a particular group)
- Whether the sexual violence was perpetrated with a weapon
- The age of the student subjected to the sexual violence
- Whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence)

Areas to Advocate



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- Negotiate With School
- Disciplinary Process
- Office for Civil Rights Complaints
- Department of Justice Complaints



Negotiate With the School

Negotiate With the School



Step 1: Discuss desired services or assistance needed from the school with client

Step 2: With the help of the client, identify people on campus who are in a position to provide services and assistance

Step 3: Contact school to determine willingness to work with victim

Step 4: Make requests for services or assistance in writing to the school

Negotiate With the School: Services and Assistance on Campus



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What can you request on behalf of a survivor?

- Safety measures
- Housing changes
- Campus no-contact order
- Academic assistance

Advocacy 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 the school what will make them feel safe.



Disciplinary Process

Advocating During the Disciplinary Process



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Assist a victim when drafting their initial statement for the disciplinary process.

- Focus the statement on the details of the sexual assault(s), rather than the events leading up to or following the assault.
- Don't "cross-examine" yourself!
- Be up front about "bad facts."

Advocacy 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 their academic, social, and extracurricular life against their personal goals can assist a survivor in making a decision that is best for them.

Advocating During the Disciplinary Process (continued)



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Help victim prepare for disciplinary hearing.

- **Victims have the right** to be afforded similar and timely access to any information the accused is given, that will be used at the hearing
- If a school allows the victim or the accused to have an attorney participate in a disciplinary proceeding, then **they both must have the right** to have an attorney participate

Advocating During the Disciplinary Process (continued)



Support victim during a hearing/fact finding process:

- Throughout a school's Title IX investigation, including at any hearing, **victims have the right** to an equal opportunity to present relevant witnesses and other evidence
- **Victims have the right** to a grievance procedure facilitated by an administrator with training or experience in their campus process
- Schools are strongly discouraged from allowing the accused to cross-examine or directly question the victim during the disciplinary process

Advocating During a Disciplinary Process (continued)



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Support victim after a hearing/fact-finding process:

- For any disciplinary proceeding, **victims have the right** to have that proceeding documented, which may include written findings of facts, transcripts, or audio recordings, depending on the campus process
- **Victims have the right** to be notified, in writing, about the outcome of the complaint – whether or not the accused was found responsible. The right to notice of the outcome only refers to information about the findings of responsibility and not disciplinary sanctions, unless otherwise noted by the school’s conduct or disciplinary policy



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Office for Civil Rights Title IX Complaints

Can You File an OCR Complaint?



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- Does the school 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 When Filing an OCR Complaint



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If eligible, is this the right solution for the victim?

- There is a breakdown in communication or trust between the victim and the school
- Victim wants additional training for the school
- The changes the victim is seeking are institutional or systemic
- Victim may seek personal compensation, but understands that the complaint and investigation process is lengthy

How to File an OCR Complaint



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1. Contact your regional Office for Civil Rights
2. Submit written complaint
3. Victim signs a consent form
 - Freedom of information Act request
 - Advise student that her/his name will be released to the school

Drafting an OCR Complaint



- Limit the description of facts regarding the sexual assault
- Helps to avoid inconsistencies if the victim has an ongoing criminal process or decides to report to law enforcement at a later date
 - Police report is not needed to file OCR complaint
 - Privacy considerations
 - Don't share more than you need to meet eligibility requirements

Can You File a Title IV or Title IX DOJ Complaint?



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- Is the school a public college or university (or a public K-12 school)?
- If not public, does the school receive federal funding from DOJ?
- No statute of limitations for filing a complaint but the further in time from the incident, the more difficult it can be to investigate
- DOJ does not open an inquiry into every complaint it receives – even when it has jurisdiction; DOJ refers some complaints to OCR

How to File a DOJ Complaint



The Educational Opportunities Section accepts complaints of sexual harassment and violence (as well as other forms of discrimination):

By e-mail to education@usdoj.gov

By facsimile at (202) 514-8337

By letter to the following address:

U.S. Department of Justice Civil Rights Division

950 Pennsylvania Avenue, N.W.

Educational Opportunities Section, PHB

Washington, D.C. 20530

In order to properly respond to a complaint, the Section requests that complainants provide their name, address, and the name of the school/school district/university where the alleged discrimination occurred.

Additional Helpful Tips



- Provide additional relevant documentation when filing the complaint
 - E-mail correspondence, school’s policy, website screenshots, etc.
- Request an initial meeting with the staff attorney/investigator

What happens after I file?

- **No action** - you file a complaint and no investigation is opened

- **If OCR opens an investigation:**
 - OCR will contact the Complainant and the school
 - Interview victim
 - Gather documents - “data request”

Complaint Investigation



- Following data requests and interviews, a determination is made about whether or not there was a violation of Title IX
- Resolution letter is issued showing violations and mandating corrective behavior

Resources



VRLC, *Know Your Rights: Understanding Title IX for Campus Sexual Violence Victims*, available at: <http://victimrights.org/sites/default/files/VRLC%20Know%20Your%20Rights-%20Title%20IX%20.pdf>

January 2001, Office for Civil Rights Guidance, available at: <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>

April 2011, Dear Colleague letter, available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

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>

Nancy Chi Cantalupo, *Campus Violence: Understanding the Extraordinary Through the Ordinary*, 35 J.C. & U.L. 613-690 (2009), available at: <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1427&context=facpub>.

Nancy Chi Cantalupo, *Burying Our Heads in the Sand: Lack of Knowledge, Knowledge Avoidance, and the Persistent Problem of Campus Peer Sexual Assault*, 43 Loy. U. Chi. L.J. 205 (2011).

Information on filing a complaint at DOJ is available at: <http://www.justice.gov/crt/complaint/#three>

Information & Evaluation



Through OVC's Legal Assistance for Crime Victims Training and Technical Assistance Initiative, OVC's Training and Technical Assistance Center (OVC TTAC) is working to develop and deliver training and provide technical assistance to the legal community. Training and technical assistance provides attorneys across the country with the tools they need to increase their knowledge base about crime victim issues and increase their capacity to provide pro bono or no-cost legal representation to crime victims.

Visit the [Legal Assistance for Crime Victims Initiative](#) page to learn more about upcoming and archived trainings, or e-mail us at legalassistance@ovcttac.org for technical assistance and support.

Thank you for attending this Webinar. Please take a few minutes to complete the [evaluation](#).