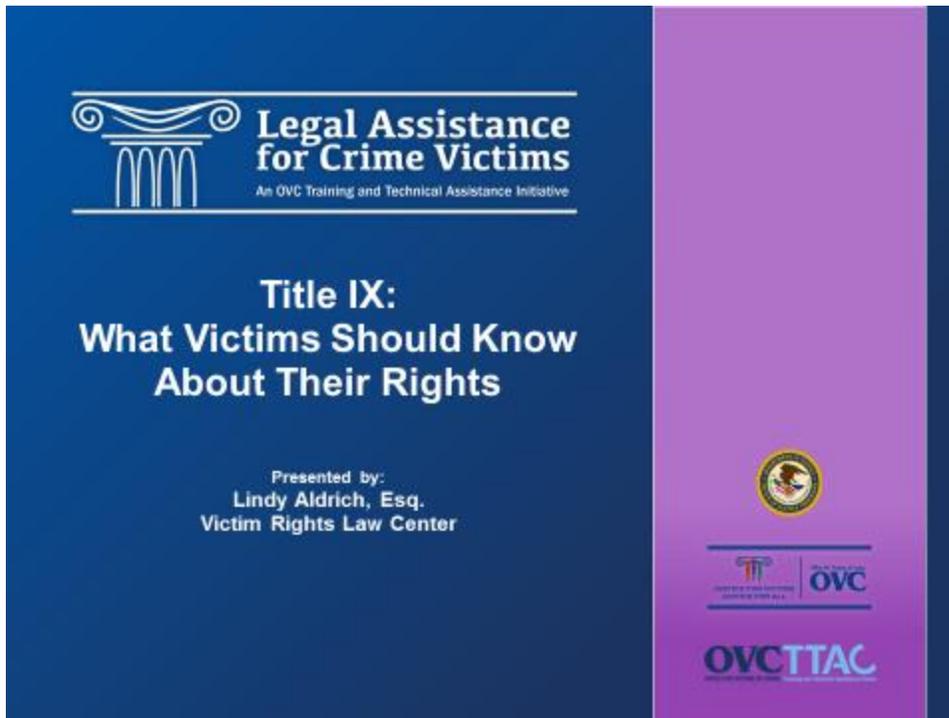




OVC
Webinar Transcript

Title IX: What Victims Should Know About Their Rights



Title IX: What Victims Should Know About Their Rights

Billie Matelevich-Hoang: Good afternoon, everyone. I think we are ready to get started. My name is Billie Matelevich-Hoang. On behalf of the Office for Victims of Crime Training and Technical Assistance Center's Legal Assistance for Crime Victims Initiative, I would like to welcome you to today's Webinar, *Title IX: What Victims Should Know About Their Rights*. This Webinar is presented by Lindy Aldrich, the Deputy Director with the Victim Rights Law Center (VRLC). We are honored to be working with Lindy and the staff at the Victim Rights Law Center on this project. Before we officially start, we do have some housekeeping issues to cover.

This presentation was produced as part of a collaboration between OVC TTAC and the Victim Rights Law Center, with funding from the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this presentation are those of the contributors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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Billie Matelevich-Hoang: I am now going to turn it over to Alex to discuss the Webinar platform.

As with all technology, we may experience a momentary lapse in the Webinar session. In the event of a problem, please be patient and remain on the line. If the problem persists, please contact our technical support representative, Alex Barry, by sending a private chat or e-mailing her at abarry@ovcttac.org for technical assistance.



The Session Today Will Be Recorded

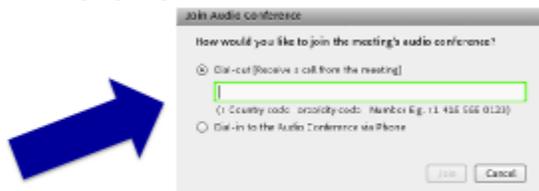
Alexandra Barry: Hello, everyone. My name is Alex Barry and I am with OVC TTAC. I am here today just to give a quick overview of Adobe Connect, the platform we will be using today, so everyone is comfortable and familiar with everything that will be going on. Just as a reminder, as with all technology, we may experience a momentary lapse in the Webinar session. In the event of a problem, please be patient and remain on the line. If the problem persists, please contact me, the technical support representative, by either sending me a private chat, which is something I will go over with you in just a few minutes, or by e-mailing me at the e-mail address on the screen. And, just as a reminder, the Webinar today will be recorded.

Make sure you are connected on the web and on the phone. *The audio for the Webinar is available by phone only. Please keep your phone muted during the presentation.*

Alexandra Barry: Please make sure you are connected on both the web and on the phone. The audio for today's Webinar will only be provided through the phone. Please keep your phones muted during the session.

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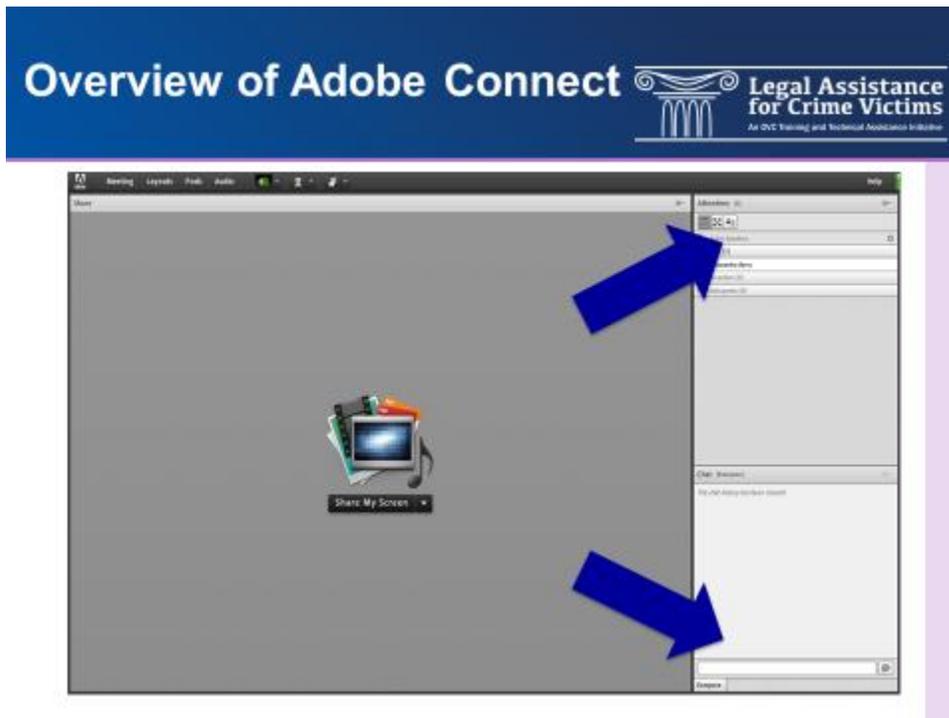
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Alexandra Barry: As you all probably know if you have joined your audio, when you joined the session today a pop-up box came on the screen. Through this box you were able to call into the Webinar to be able to listen to the audio. You had two options. You can either dial out, which allows Adobe Connect to call you. Using this option, you put in your phone number and then the system will call you. The other option is to choose the dial-in option, in which call-in information will be provided.

Alexandra Barry: If this box did not pop up for you, there is another option for finding that. At the top of your screen, about halfway through the page, there is a telephone icon. If you click the drop-down menu next to that and connect through Connect My Audio, the box will pop up and you will be able to join your audio.



Overview of Adobe Connect

Alexandra Barry: Now, just to do a quick overview of what you are seeing, we have three different pods that we will be using today. On the left-hand side of your screen is the largest pod, and that is the Sharing pod. This is where the presentation will be and you will see that it is labeled, *Know Your Title IX Rights* presentation. This is where the presentation will be the entire time. Please stay attentive to that. On the right side of your screen, at the top, you will see the Attendees pod. This is the list of everyone who is in attendance today. It starts with the host, which I am listed as one of the hosts, my name is Alexandra Barry. Second is presenters, and then participants. This is where if you need to start a private chat with me, you will be able to do that. The way you do that is you take your cursor and place it over top of my name, Alexandra Barry, again. There will be three options that come up. From there, you can choose Start Private Chat. So if any issues come up, please do that.

Alexandra Barry: Below that, you will see the chat pod. This is where you can ask questions to the host and presenters throughout the session. Down below, there are two tabs. The first one will

be Everyone and the second one is only there if you start a private chat. That chat will only be needed if any technical assistance is needed. And now I am going to go ahead and pass it back to Billie.

Billie Matelevich-Hoang: Thank you, Alex. Without further delay, I present to you Lindy Aldrich.

Who is the VRLC?

Lindy Aldrich: Hi, everybody. Thank you so much for joining this call today. I am excited about giving this Webinar. This is an area of law that is near and dear to my heart. It is definitely one I did not expect, it is an area of law I did not expect to get myself into, to be quite honest with you. But now that I am here, I have to say that it has become really something of a calling for me. And I am excited to kind of share some of the advocacy tips and how we are working in this area of law with you guys, because one of the biggest missions of the Victim Rights Law Center, we are going to talk a little bit more about us, is that we want to encourage other people to pick up the work that we are doing. So I hope that this today is one step towards more of that, and I really encourage you guys to ask questions and try to figure out if you have issues or kind of specific things, I really want to try to get into those issues with you. So thank you, again, for joining.

Lindy Aldrich: I also want to thank OVC for the opportunity today. This is such a critical need. Today is the first of a two-part series that, for victim advocates who wish to learn more about Title IX rights for campus sexual assault, domestic violence, and stalking victims. I would like to just mention here briefly that while we are going to be focusing on campus today, please know that Title IX extends from kindergarten to college. So many of these rights will extend to minors, which is, frankly, another training for another day. But I did want to say just while we have a quick moment that that is a big piece of what Title IX is and a lot of times people do not know that.

Who is the VRLC?



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Lindy Aldrich: So I want to talk about who the Victim Rights Law Center is because I think it is important for you guys to know the lens in which I train under. Hopefully, some of you already know us, but if you do not, well, frankly, a lot of you may know Jessie, Jessica Mindlin who is our Director of our Portland office. But we have been doing sexual violence and civil legal remedies for 11 years. The short story is that the Victim Rights Law Center started when our founder was a first-year law student and she began volunteering at a local rape crisis center. As she heard more and more victims call in, she realized that many of the issues they were presenting, things like how to get out of a lease because the victim was raped in her apartment, worried about being fired from a job when they had been raped by a coworker, fear of losing a scholarship at college because they were raped by a classmate. The idea dawned that rape victims needed attorneys, that they had civil rights. And that while going to the police was an option, it was not the only option, and the VRLC was born.

Lindy Aldrich: Our first mission is to provide direct legal services to rape victims in two states, Massachusetts and Oregon, but we are also OVW (Office on Violence Against Women) technical assistance providers to assist LAV (Legal Assistance to Victims) and rural attorneys and advocates to help provide legal services to sexual violence victims all across the country.

Lindy Aldrich: And before I move on, I just want to state that I use the word “victim” deliberately. Not only is it in our name, I have worked with hundreds of clients who are working towards becoming survivors but would not have used that term themselves. We use “victim” as a nod to those clients who are still working their way forward in their own recovery.

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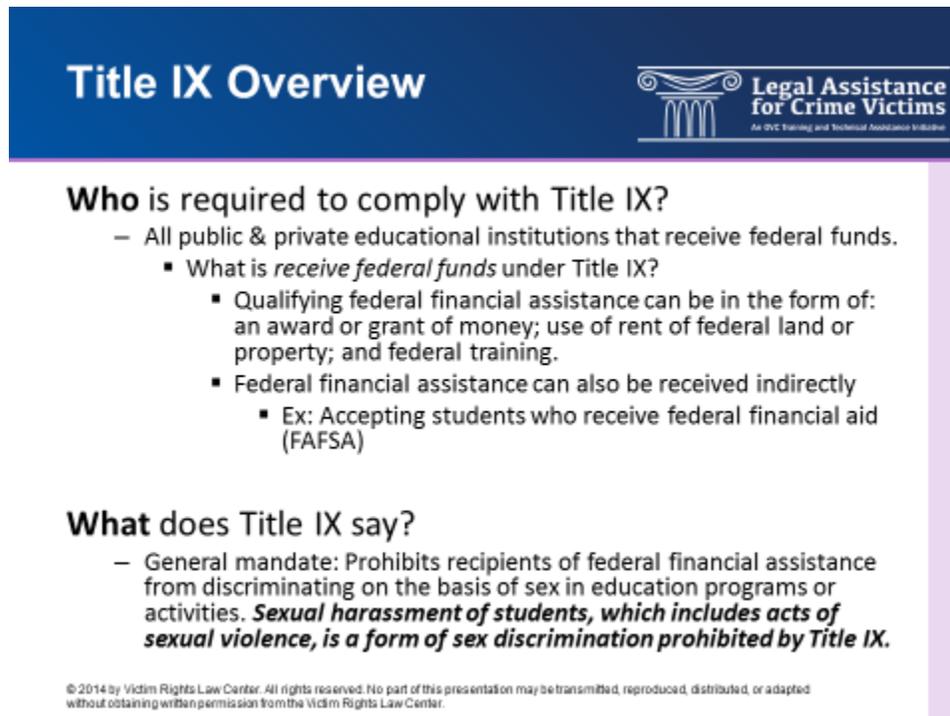
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Lindy Aldrich: So let us jump right in. First thing, while this presentation is being recorded today, if you have or want to use any of the slides included in this presentation I ask that you contact the VRLC for permission. And we have listed a name there and an e-mail. You may also need to ask OVC at some point as well, but I just wanted to give something specifically in case you wanted to use these for any other purposes. And because I am an attorney and I cannot help myself, I also have to tell you that we are not going to be providing legal advice today. And if you have questions about your own state laws, I am only barred in the State of Massachusetts, and there may be specific laws in your state that pertain to this discussion. I really encourage you to seek appropriate counsel in your state so you can find out more about the specifics of the uniqueness of your state.



Title IX Overview

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
 - Ex: 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, is a form of sex discrimination prohibited by Title IX.***

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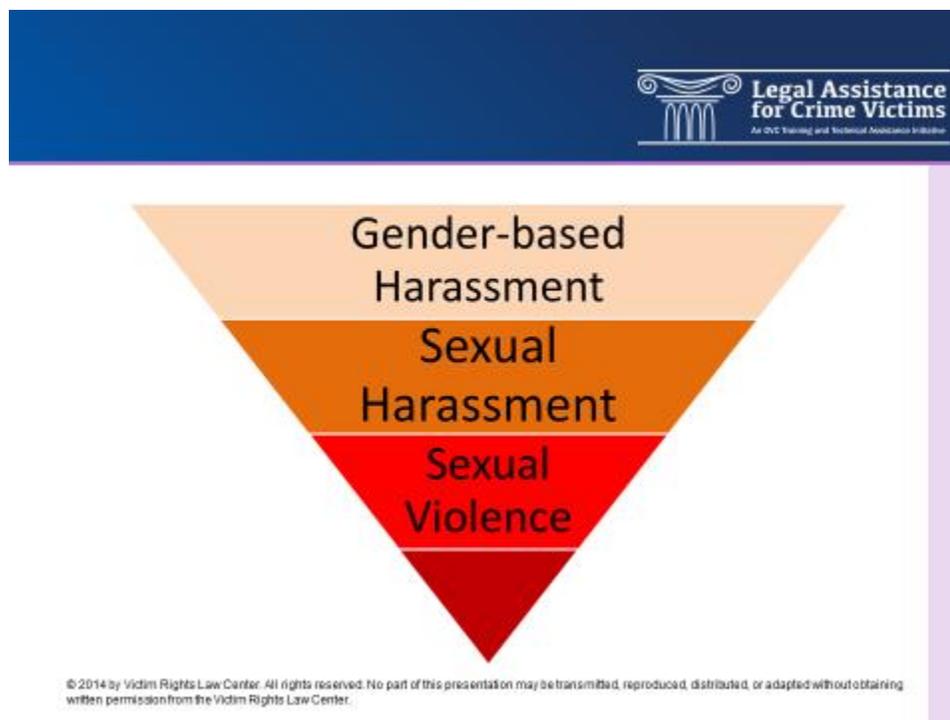
Title IX Overview

Lindy Aldrich: All right, so let us jump in. First, we are going to talk about Title IX. Who does it apply to? And what are the standards used? So, first thing, Title IX is from the Education Amendment of 1972, and many of you probably know of Title IX primarily as a vehicle to provide equity for women, women's athletics. Title IX is actually a huge federal statute that provides much, much more, and it is a vehicle to end gender-based discrimination and not just in sports.

Lindy Aldrich: So who is required to comply with Title IX? All public and private educational institutions that receive funds. And that does not necessarily mean specifically receiving money. Sometimes those funds can come through property or use of land, or if you attend a federal training. There is a lot of different ways that schools can actually access some of this federal funding. So just so you know, you can always contact – and we are going to talk a bit more about them – it is called the Office for Civil Rights (OCR). It is enforced by the Department of Education. So Title IX has 12 regional, what we will call OCR offices. And I really encourage you, if you have a case and you are wondering whether or not a school is in any way covered by

Title IX, they actually have a list. You can actually call them and ask about a particular school to determine whether or not the school that your particular client or victim you might be working with is part of Title IX. You can actually call them.

Lindy Aldrich: While we are talking about OCR, I think it is important also just to give you kind of a heads up about some documents. So the Department of Education's Office of Civil Rights has published a number of documents moving forward, and I am going to reference some of them as we move through this Webinar. So there are three. One is a *2001 Guidance*. The second one is a *2011*, what we call the *Dear Colleague Letter*. And a recent *2014 Frequently Asked Questions*. So I want you guys to be clear that I am going to be referencing those, and we also, at the very end of this presentation, we have given you links to all of those documents so that you can go and read them. I will tell you they are not, you know, the funnest read. If you want to stay awake I do not know if I would necessarily tell you to read it right before bed, but I do think that they are really important to this area of law and I think it is important, if you want to learn more about it, those three documents are a great place to start.



Lindy Aldrich: So, what does Title IX say? Generally, it prohibits recipients who receive monies from discriminating on the basis of sex. And it says that sexual harassment of students, which includes sexual violence, is prohibited by Title IX. So that sometimes is a little bit of a weird umbrella catch-all. So I want to just also tell you again in kind of a broader scope that the word “harassment” is what lawyers call a term of art in this instance. So what it means is that it has a different legal meaning than the word we typically have just in kind of conversation. So in this sense, harassment is, essentially under Title IX, is gender-based harassment which becomes sexual harassment in which sexual violence also falls under. So I think sometimes people are confused by the word “harassment” and they think that perhaps sexual violence would not fall under that umbrella, but it does. So I just wanted to kind of make sure that everyone understood that, you know, rape and sexual assault, also domestic violence and stalking, are all going to fall

under that gender-based harassment umbrella. So I wanted to kind of just give a quick example of how that works.

Overview



How does Title IX protect students?

- Protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the school.
- Also protects students who may have been sexually harassed off school grounds, outside a school's education program or activity, if the harasser was a fellow student.

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

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Overview

Lindy Aldrich: So, how does Title IX protect students? It protects students, it applies to both on-campus and off-campus incidents, but this is an important piece to understand. It has to involve a person who is of or related to the school. So let us think through a couple of examples of this. So let us say if two students of the same institution are at an off-campus party and one assaults the other, Title IX will likely cover this action. It also protects when there is a student, staff, or employment harassment or violence. So, for instance, if there was a study abroad program where a student is harassed or assaulted by an employee of the institution. And, obviously, if any violence occurs on campus, things like residence halls, classrooms, athletic centers, dining halls, all of that, it is going to cover. If both parties are attending that school or if one party is, you know, an employee or a staff member of that school, it is – they are all going to fall under Title IX.

Lindy Aldrich: The other piece here is to think about, okay, if that is the people who fall under it, who are the people who fall outside of it? Students, I think the one that we see the most often is the student that goes home for holiday break and is assaulted by a friend from the neighborhood or perhaps a step-parent. In these instances the only party who is [unclear] related to the school is the victim. I think we press schools to offer the same types of services to victims who have been, you know, home or had someone who is not related or does not fall within Title IX realm. So I think you can also encourage schools to, you know, provide counseling services and perhaps if there are medical leaves or academic accommodations or things like that. I still think that schools will offer those to victims, especially, you know, even if they do not fall under their Title IX jurisdiction. But just so that we are clear, those – that is a big distinction in terms of how does it protect and whom.

Lindy Aldrich: I also just want to say, again, that Title IX applies to kindergarten through twelfth grade, as well as colleges, so this is again something to consider when you are working with minors.

What is required of schools even before a report of sexual violence?



- Publish a notice of non-discrimination
- Designate employee/s to coordinate Title IX compliance
- Adopt and publish grievance procedures

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What is Required of Schools Even Before a Report of Sexual Violence?

Lindy Aldrich: Okay, so what is required even before a report of sexual violence? So there are really three things that every school has to do, and we are going to talk more about these as we move forward, but I wanted you to understand kind of the big picture before we drill down.

Lindy Aldrich: The three big things that schools are required to do, even with zero reports, which is unlikely but let us just say if it were. They have to publish a notice of non-discrimination, so that, you know, they will not allow discriminatory practices on their campus. They have to designate an employee or employees to be the Title IX Coordinator, somebody who is going to actually make sure that they are in compliance. And then they have to adopt and publish grievance procedures, meaning they have to have a policy that shows what all their procedures are and what their policies are in terms of ensuring that victims know what they would have to do if they wanted to go through a formal complaint.

A school receives a report of sexual violence...Now what?



The school must inform the survivor of their options, including:

- Medical treatment
- Counseling & mental health services*
- Disciplinary complaint
- Criminal complaint/Police report
- Options to avoid contact with perpetrator and to change living and academic situations*

**Also required under Clery's Victims' Bill of Rights*

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A School Receives a Report of Sexual Violence...Now What?

Lindy Aldrich: So, a school receives a report. Now what? So this is a critical piece that I think victims often are not aware of when they come forward to their school, and this is an excellent opportunity for you to be able to tell them how they, you know, they end up at your door first. I think schools really must tell victims what their options are, and it is a great place for those who are not within the campus system to make sure that victims are aware of you should be asking about these services if they are not telling you. They are supposed to tell you. And there are a lot of options, both on and off campus.

Lindy Aldrich: It is also a really important thing, again kind of setting up a foundation, a good time to talk about another lawyerly term. The difference between “shall” and “may.” Much of the recent guidance by the Department of Education’s Office of Civil Rights seems as though they are requiring schools to do various things, but it is really important to look closely at the words. In lawyer speak, the word “shall” means must, that you must do something. However, the word “may” means that the school is not required to take a particular action, but it is encouraged to do so. For those of you who are working in higher ed or have had some experience with it, we know that there are schools that will just do what is required and sometimes just ignore the rest. It is an important distinction, I think, for young victims to understand that schools have some things that they must do, but there are lots of other things that are not required. Sometimes I think when we work with our, our clients here, they do not have an understanding that when they read a document from the Office of Civil Rights, that everything that is in there is not a requirement. And, unfortunately, all of it is not. So I think one of the reasons that we are doing today’s Webinar is to give you guys a sense of what is required, and, hopefully, that more of this information can get out to victims and that they can start making more informed choices.

Lindy Aldrich: So we go back to the slide. They must inform the survivor of all the different options: medical treatment, counseling and mental health services, a disciplinary complaint with

the school, filing a criminal complaint or police report, and options to avoid contact with the perpetrator, such as changing your living and academic situations. I have also marked here on the end asterisks which show that some of these rights actually fall under another federal law, namely the Clery Act, which is – these asterisks are included under the Clery Victims’ Bill of Rights. So you may see asterisks where we talk about the Clery Act. It is another – Clery primarily talks about reporting of crimes that have been committed on campus. Sexual violence, domestic violence, and stalking are included within that. But it is mostly around how law enforcement reports those out to the greater community. But Clery also has a couple of really important victims’ rights pieces built into it, and these are some of them. So we are going to try to make you aware of those as we continue on.

Lindy Aldrich: Any questions thus far? I just want to take a quick moment to see if anyone has – if everyone is with me. Okay, seems like, seems like they are. Oh, somebody is typing. We will come – we will – hopefully we will be able to answer that in a second. All right, so...

Lindy Aldrich: Oh, I have a question from Jillon. Please clarify medical treatment. Okay. So, medical treatment often just means that if they have, if they have concerns about pregnancy, STDs, or any internal injuries, they can receive, in essence, making sure that they are actually okay and that they could perhaps get on HIV prophylaxis. It does not mean that you have to have a forensic exam. Although, I will say many schools also give that information at the same time. So they will tell them about, “Here is the health center,” or, “Here is a local hospital.” You can also receive a forensic exam at that time. So you have to let them know that they have the option to go do that, but you cannot be just, “You have to see a SANE (Sexual Assault Nurse Examiner) nurse.” It can also be, “You can also see a doctor if you have some other concerns around pregnancy and some of that.” I know that some of this is also included in the SANE exam, or Sexual Assault Nurse Examiner, but I just, I think there is a distinction for some victims who do not wish to proceed with a law enforcement, with a law enforcement complaint. Good question, thank you.

Title IX & the Grievance Process: FAQs



How long should a grievance process be?

- The process should be “reasonably prompt” and the DCL and FAQs offers 60 days as a general guideline for the length of a typical investigation.

What is the standard of proof?

- Preponderance of the evidence.

Can a school use both formal and informal processes?

- Yes, but mediation should not be used to resolve a sexual assault complaint. Also, the parties must be notified that they have the right to end the informal process at any time and begin the formal process.

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Title IX and the Grievance Process: FAQs

Lindy Aldrich: So, let us talk a little bit about how Title IX and the grievance process works. So, there are – we are going to go into a lot more of these different rights and things like that when we get into the second Webinar, but I wanted to start so that you guys really understand some of what Title IX is expected.

Lindy Aldrich: Oh, I have another question here. Christy asks: Are these laws limited to certain states, and, if so, is New Jersey included? Absolutely. This is a federal law. Title IX law applies to all states and territories. It is going to apply to any school that receives funds. So if the school, unless, and most, I would say the vast majorities of schools are going to fall under Title IX, these laws in terms of rights, as well as the Clery Act rights, are going to pertain to those schools. And, again, it goes all the way down to kindergarten and all the way up through college. So another great question.

Lindy Aldrich: So, the grievance process is when victim has come forward and made what I would call a formal report. So they are making a formal complaint to the school. And Title IX says, it starts talking about, “How long should that process be?” There is a standard within Title IX which we call prompt and equitable, which, taking out kind of the legal speak, means fast and fair. So the grievance process needs to be reasonably prompt, meaning that – and there is – when you see DCL and FAQs, I am referencing those documents that we talked about earlier that are going to have links at the end of the presentation. They generally say that 60 days is a good guideline for that type so that the school has enough time to do an investigation and actually have a hearing or whatever their kind of resolution process is.

Lindy Aldrich: The standard of proof under Title IX is preponderance of the evidence. Preponderance, and I want to – this is a good point, a good time also to talk about how, what that means in terms of other standards. Preponderance of the evidence means, more likely than not, that the harassment has occurred. So there has been a lot of discussion about this standard, and it is important to make sure that victims understand that this is a lesser standard than beyond a reasonable doubt. Beyond a reasonable doubt is used only in criminal cases, and is a much different standard that juries and judges typically have to use in terms of weighing the evidence. Preponderance standard is a lesser standard and it does not require as much evidence as sometimes a beyond a reasonable doubt standard would require. So it is important for victims to know that because I think a lot of our clients think that they are going to have to prove their case as stringently as, say, a criminal investigation would.

Lindy Aldrich: Can a school use both formal and informal processes? Yes. Many schools have a lot of different ways that they handle these cases. But I will say one of the biggest issues that I think Title IX takes on headfirst is that mediation really is not one of those informal processes that should be used in sexual violence. They, victims have the right at any time to stop an informal process and move to a formal process, as long as they are kind of aware of where they are in the process and can stop it at any point.

Title IX & Law Enforcement: FAQs



Is it sufficient that the local police investigated the sexual assault?

No, the school's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the school of its independent Title IX obligation to conduct an "adequate, reliable and impartial investigation of complaints."

Does Title IX require schools to notify local police if a sexual assault is reported?

No. Generally, the decision to file a criminal complaint will be up to the survivor. "Title IX does not require a school to report alleged incidents of sexual violence to law enforcement, but a school may have reporting obligations under state, local, or other federal laws." (FAQs page 27)

If the police determine that there is insufficient evidence to proceed criminally, can a school still find an accused student "responsible"?

Yes. There could be sexual harassment under Title IX even if there is insufficient evidence of a criminal violation.

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Title IX and Law Enforcement: FAQs

Lindy Aldrich: So, how does Title IX affect law enforcement? I think this is a critical piece of Title IX in terms of how both law enforcement, be it campus and/or local law enforcement, and how the disciplinary complaint systems interface. A lot of times in the different schools we will see that there is a lot of confusion around whether or not a victim is going to report to law enforcement, whether or not they have reported just to the school, what that timeline is, and how those two can work together. So one of the things that I think a lot of the FAQs and the *Dear Colleague Letter* did is to try to provide more information about how those two interface.

Lindy Aldrich: So, is it sufficient that the local police investigated the sexual assault? No. The school also has to provide their own Title IX investigation. Generally, what is required is that we ask that 7 to 10 days be given to law enforcement so that they can complete their investigation. I will be honest with you, there may be cases that require a lot more time for local law enforcement to handle the case, or campus law enforcement to handle the case. But generally, this is kind of just a baseline timing. At that point, it is expected that the school will begin their own Title IX investigation. They have to conduct an adequate, reliable, and impartial investigation of the complaint. So it is not as if just you can rely on completely law enforcement's investigation and that the school does not speak with any witnesses or does not take on any other actions.

Lindy Aldrich: Does Title IX require schools to notify... Ooh, I have another question, sorry. If a victim reports to law enforcement, does law enforcement need to tell the school about the assault? We are going to get to that in just one second. I am happy, I will be happy to address that in just one moment.

Lindy Aldrich: Does Title IX require schools to notify local police? No. Generally, the decision to file a criminal complaint will be up to the survivor. One of the biggest things that I am seeing is that there are a couple of states that do require, I think it is rather rare, but there are a couple of

states that actually do require reports to law enforcement when you have both a competent adult who has been the victim and, again, a competent adult who has been reported to. I think, again, this is an incredibly rare situation and the vast majority of states and territories do not have this requirement. Title IX is clear, but it is not a requirement within federal law to notify law, to notify law enforcement. And we really strongly suggest that the victim should make that choice and that the school should not be making it for them.

Lindy Aldrich: Let me make sure if there are any other questions here.

Lindy Aldrich: If the police determine that there is insufficient evidence to proceed, can a school find, still find the accused student responsible? Yes. As I think many of you probably know, there are plenty of investigations that law enforcement does where they do not have the evidence necessary to be able to proceed with a criminal charge. We would certainly say that happens in, you know, a lot of different cases. That is not going to be the standard for which the school is going to be able to determine whether or not they are going to proceed with their disciplinary proceedings. Schools have to have their own investigation, they have to proceed with the published policy, they have to come to their own resolution, and not just use the one that law enforcement has found. So there is a different stand...there are definitely different standards of evidence. The District Attorney's Office or the State Prosecutor has a different, you know, they have different, you know, standards in which they have to meet in order to decide whether or not they are going to proceed in the criminal direction. Schools have their own policies to follow, so there are really two systems that have to work simultaneously and they have to work – it is not that they cannot share with each other, it is just that they do have to kind of work together but each of them doing their own, right, their own obligations.

Title IX & Law Enforcement FAQs Continued



Local police asked the victim's school to wait on the Title IX investigation until they completed theirs. Is that ok?

- Yes, if the delay is temporary. Most LE investigations will conclude after 7-10 days.

Is it okay for a school to discourage victims from filing a police report?

- No, a school cannot dissuade a victim from filing a criminal complaint. Victims should be notified of all their reporting options.

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Title IX and Law Enforcement: FAQs Continued

Lindy Aldrich: All right, we talked a little bit about here about it is okay to wait until law enforcement has completed their investigations. It is generally about 7 to 10 days.

Lindy Aldrich: Another important one is: Is it okay for a school to discourage victims from filing a police report? No. A school cannot tell a victim that they should not file a criminal complaint. And I will be honest, when I really see these, it is less about a cover up for the school. What I am really seeing in many ways is that an advocate on campus is essentially saying, “I have concerns about the way, you know, I feel that law enforcement is going to handle this particular case, so I have concerns for you.” Still, even – even if they have personal feelings about whether or not law enforcement is going to handle the case correctly or not, I think there are plenty of law enforcement officers who are going to do a great job. They cannot discourage or dissuade a victim from – if they wish to move forward with a criminal investigation, they absolutely should be given that option and they should be helped, frankly, assisted into, you know, getting an appointment, meeting with campus law enforcement, or any of those things. They cannot be dissuaded.



What Rights Do Sexual Violence Victims Have Under Title IX?

What Rights Do Sexual Violence Victims Have Under Title IX?

Lindy Aldrich: All right, so we are now going to shift to talking about what specific rights victims have under Title IX. And, again, we are going to talk about more of these again in the second Webinar, but I thought we would get – we would start today talking about some of the foundational rights that victims have.

Empowering Survivors to Know their Rights

www.victimrights.org

"Know Your Rights: Understanding Title IX for Campus Sexual
Violence Victims"

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Empowering Survivors to Know Their Rights

Lindy Aldrich: Most of the language that I am referencing today comes from a document that the VRLC prepared for campus victims of sexual violence, and it can be found on our home page of our website. Please feel free to provide this resource to your clients. The...This particular document is actually, is going to run the entire gamut, so from the rights we are going to talk about now, all the way to the rights that we are going to talk about in the second Webinar. So it is an easy, it is an easy document to hand to victims. And, again, it is going to make that distinction as, you know, as we proceed with the “shall” versus “may,” the must versus you are encouraged to. And I think those are, again, really important distinctions that victims need to know about.

*Disclosure vs. Report:
How does the VRLC
Interpret the Difference?*

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Advocacy Tip: Title IX has specific reporting obligations for school officials and employees. Helping survivors understand the confidentiality implications of who they report to can help them protect their privacy and confidentiality as they make decisions about disclosing the assault.

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Disclosure vs. Report: How Does the VRLC Interpret the Difference

Lindy Aldrich: All right. I am sure you guys have seen this, especially if you are working with this particular population, which I know many of you are. When victims decide to come forward, be it in a campus setting or not, it has been our experience, and I am sure yours as well, that they come forward for really their own personal and unique reasons. Unfortunately, when you take a

look at Title IX or any of the guidances that we have been talking about, I do not think it is clear that victims have the ability, frankly, even the right, to make informed decisions about who to tell, why they tell, and the type of information they might be looking for when they tell. For our purposes, we have broken down how victims come forward into two distinctions: disclosure and report.

Lindy Aldrich: Now here is the rub. The word “disclosure” does not exist in any of the – in any OCR documents because it is not a theory, I think, frankly, that has been embraced fully yet. I know as, you know, as advocates in rape crisis and in the coalition world you see this distinction every day, and it is why we are going to spend some time on confidential reporting and how you guys can help victims better understand how to make decisions about disclosures and reports on their campus.

Lindy Aldrich: Again, I think it is an incredibly important tool to have victims, if they get to you first before they have told someone on campus, to really help them know how to protect their privacy and confidentiality as they make decisions. Because one of the biggest issues we are seeing in our caseload is that victims have told someone they did not realize was going to have to report, and that has begun a series of – the momentum has shifted out of their control and all of a sudden they are involved in an investigation and a disciplinary complaint that they had no intention of filing at that time.

Understanding Victim's Confidentiality and its Limits Under Title IX

Legal Assistance for Crime Victims
An OVC Training and Technical Assistance Initiative

Responsible Employees

Persons with Statutory Privilege

Persons with Confidentiality

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Understanding Victim’s Confidentiality and its Limits Under Title IX

Lindy Aldrich: All right, so there under the current Frequently Asked Questions, the Office of Civil Rights created three buckets, for lack of a better word. And they have been created as the new kind of Title IX reporting mechanisms for the campuses and their employees to use. So, we are going to talk thoroughly about each one of these and how they intersect with each other and with victims.

Lindy Aldrich: The three buckets are, as you can see here, the biggest one is Responsible Employees. The second one is Persons with Statutory Privilege. And the third is Persons with Confidentiality.

Confidentiality Rights



- If victims have an individual on their campus with statutory privilege, **victims have the right** to disclose to that individual and they are required by law to keep that information confidential.
- **Victims have the right** to request confidentiality from professors, administrators, resident hall staff, or other school staff you may report to; however, victims may be required to provide some identifying information about your disclosure to the campus Title IX Coordinator, and in very rare instances, the school may have to override the confidentiality request.

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Confidentiality Rights

Lindy Aldrich: All right, so let us talk a little bit about what rights the victim has. If victims, if there is an individual on a campus who has statutory privilege, and for those of you who may not be aware of what statutory privilege is, it essentially means that your state has a particular law that has certain people in certain professional roles who are given an elevated level of privacy. Meaning that they are not allowed to tell information about a client without strict permission. And there are a lot of different rules and sometimes there are exceptions to this, but generally it means that that person has the protections afforded to them by state law so that they do not have to give up any information without certain particular things, like maybe perhaps a court order or a victim's permission. These statutory laws differ all across the United States, so I do not want to be particular because different states have different rules. But if there are individuals on campus who have statutory privilege, have this statutory privilege, victims have the right to disclose to those people, and the laws will continue to protect that individual in their – in their capacity, their privileged capacity.

Lindy Aldrich: Victims also have the right to request confidentiality from professors, administrators, and other school staff. However, under Title IX, victims may be required to provide some identifying information about – about their disclosure to the campus Title IX Coordinator. Remember when we had talked earlier about the three things that the campus has to do? They have to do the non-discrimination policy. They have to create this Title IX Coordinator position. And then they have to have their own policies for the grievance procedures. The Title IX Coordinator in this instance is really at the top of the food chain. That person is really monitoring

any and all discriminatory practices on campus. So when we talk about people reporting, reporting to someone, generally they are talking to the Title IX Coordinator or one of their designees. So while victims always have the right to request confidentiality, depending on who they talk to, that is the determination of how much information is going to get to that Title IX Coordinator. So this is the really important part in terms of helping people to basically understand, you know, who they should talk to and make those informed choices.

Importance of Confidentiality



- “The specific steps in a school’s Title IX investigation will vary depending on the nature of the allegation, the age of the student or students involved, the size and administrative structure of the school, state or local legal requirements (including mandatory reporting requirements for schools working with minors), and what it has learned from past experiences.” (FAQs Page 24)
- “Schools should inform and **obtain consent from the complainant...before beginning an investigation.**” (DCL Page 5)
- “A school should be aware that disregarding requests for confidentiality can have a chilling effect and discourage other students from reporting sexual violence...” (FAQs Page 19)

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Importance of Confidentiality

Lindy Aldrich: So this is the flipside, and it is really – it is really why confidentiality is so important, especially to victims. When a victim wants to disclose but ends up reporting, schools under Title IX are required to investigate every report of sexual violence. It was – it essentially is language that says “must promptly investigate.” So schools are required to investigate any report of sexual violence, domestic violence, or stalking that they receive. However, as more and more victims understand how to access what they need with the person who can provide them confidentiality if they want it, I think there will be less argument about where a school or when a school begins their investigation.

Lindy Aldrich: Right now, the language obviously that is – I am citing both the *Frequently Asked Questions* and the *Dear Colleague Letter*. Essentially, it is saying, “Schools should inform and obtain consent from the complainant before beginning,” and that, “Schools that disregard requests for confidentiality can have a chilling effect.” A lot of this language is stemming from the fact that there are lots of reports in the media and lots of reports coming in from victims and complaints where victims did not know who they were speaking to, and I think things got outside of their control and bad things happened. Now, there is a whole other piece of what happens at the disciplinary hearing, and there is a whole other piece that happens in, you know, sometimes in the appeals stages and things like that. But oftentimes, we are seeing victims who come in who say, “I had no intention of making a formal report, but I told this person and this is what

happened.” And what is happening here is there is two pieces, two kind of conflicting areas of Title IX here where you have a victim who wants confidentiality but they have told a particular person who has no choice but to tell. So it is an unfortunate position when the victim does not have the information that they need.

Lindy Aldrich: All right, so let us talk about each of these three groups.

Group One: Responsible Employees

Legal Assistance for Crime Victims
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One
An Employee who has the authority to take action to redress the harassment or

Two
An employee who has the duty to report to the appropriate school officials sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee

Three
An individual who a student could reasonably believe has this authority or duty

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Group One: Responsible Employees

Lindy Aldrich: So, Responsible Employees are generally, they are going to fall into three buckets. One, an employee who has the authority to take action to address the harassment. Or, two, an employee who has the duty to report to appropriate school officials. Or, three, an individual who a student could reasonably believe has this authority or duty.

Lindy Aldrich: Now, do not forget that, again, as we have talked about, these prongs were created because we are talking about kindergarten all the way up through college. So a lot of times when – when parts of the federal law seem a little vague or are not completely sure, it is because they are trying to make sure that we are including minors as a part of this. So, especially on that third prong, you can imagine that a child who is 7 who witnesses or has been – had some kind of harassment or sexual violence occur, they want that person to speak to, frankly, any adult. And that that person at the elementary school will know that they have a duty to report that incident. So if it seems like a little weird to be considering college-age students as perceiving someone, it is because this law was meant for much younger children as well.

Lindy Aldrich: All right. So, when you think back on that original chart, the one with the three colors, there is a reason why the Responsible Employee bucket was by far the biggest. The vast amount of employees at a school are going to fall under this category. And I have included these legal definitions here. A school really has the right to choose who is – who is going to fall into

these – those three colored buckets. They have the absolute discretion to do that outside of statutory privilege. So, it is an important thing to notice here that, you know, a lot of times I think what the biggest problem with schools is that they easily can figure out who is in number one and who is in number two. Number three becomes a bit of a problem. I...There has been some argument or tension around whether faculty members would fall under the number three prong. I would make an argument that they do. I think schools, generally my perception is that schools are moving toward making any staff member who is not statutorily privileged or confidential to fall into the Responsible Employee bucket, but that is not all schools. But I just wanted to kind of throw up there how they are making their decisions and, essentially, so you know kind of what their responsibilities are, what schools' responsibilities are in terms of determining this.

Lindy Aldrich: So what does a Responsible Employee have to do? They have to report to the Title IX Coordinator all, quote, “relevant details.” And those details can include the name of the alleged perpetrator if it is known, there is no requirement that they ask. Number two, the name of the student who has experienced the violence. Number three, whether there were other students involved in the violence. And then other relevant facts, such as date, time, and location.

Lindy Aldrich: So that is a lot of information that has to be turned over, and especially for a student. And here is the general scenario that we have. You have a victim who comes forward to speak to a professor because the victim has been assaulted and, you know, the victim, he is having a tough time completing his classes, or he has got work that needs to be done and he needs to add, he needs to get a little bit more time. And the professor, let us say it is a school that has designated the professor as a Responsible Employee, now has to give back to the Title IX Coordinator a lot of information that that victim did not intend on giving. That victim was there to seek whether or not he could get some additional time on a paper or a test, or perhaps take an incomplete or a medical leave, or something of that nature, and had never intended for it to become a formalized report. So these are the consequences, I think, when victims do not understand who they are talking to.

Lindy Aldrich: So let us hold off on that Responsible Employee discussion and let us move on to talk about the next big bucket.

Group Two: Campus Employees with Privilege



Persons with statutory privilege are **NOT** required to report any information regarding a disclosure of sexual violence for Title IX purposes.

- Determined by state law
- Must be acting in that capacity at time of disclosure
- Does not prevent a formal report

Depending on your state laws, positions could include:
-campus mental-health counselors,
-pastoral counselors,
-social workers,
-psychologists,
-health center employees,
-or any other person with a professional license requiring confidentiality, or who is supervised by such a person

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Group Two: Campus Employees With Privilege

Lindy Aldrich: So, group two are Campus Employees With Privilege. So we have talked a little bit about this, but there are some things of note. So this bucket is a must do. So when we talked about the “shall” versus “may,” this is a “shall,” this is a must. That schools must communicate who is a privileged person on campus, and allow those folks to speak confidentially with victims of violence. Now, notice that there are – there are a number of positions that can be on campus, but it is really decided by state law. So while I listed a number of positions on here, folks like campus mental health counselors, pastoral counselors, social workers, health care employees, a number of different people, it really is determined by your state laws whether or not any or all of these positions would have privilege. So it is, again, something to kind of seek out in your state as to how it is specific to your state.

Lindy Aldrich: The other thing that is really important here is that the person with privilege must be acting in that capacity at the time of the disclosure. So, for instance, if a pastor also teaches a religion class, and a victim comes after class and discloses their assault, this privilege would likely not pass muster because the victim is approaching the pastor in their, kind of with their professor hat on rather than seeking pastoral counseling. So I think it is an important thing. We see a lot of this, for instance, in states where it has social worker privilege where there is a School of Social Work, and the professor is a well-known, popular professor, and the professor is also a licensed social worker in that state. But at the time of the disclosure, they are leading a class or they are in after hours, or they are, you know, they are, they have some special professional group that they lead or something like that. It has to be – they have to be acting as a social worker, as a therapist, as a pastor, in the capacity at the time of the disclosure.

Lindy Aldrich: And I think another hugely important piece is to say that even if it comes in to a person with privilege, it does not mean that at some later point that some – that a victim could not

proceed with a formal report later. It has been really our – it has been really our experience that victims who have had an opportunity to, what I like to call push the walls out, and make some immediate decisions in terms of their medical health or emotional health, and some of that thing, before jumping into a really complicated and perhaps retraumatizing disciplinary or criminal case. It is important for victims to have that moment, to have those weeks, if not months, to – if not years, frankly – to better assess where they are, to make sure that they have really the stamina that is going to be needed to pursue another type of case, essentially. So I think we truly believe that schools who will embrace having confidential reporters will actually see victims coming forward in greater numbers. But if they will just embrace having a few people who would be able to take some of these reports, it would be an important – an important piece. Okay.

Lindy Aldrich: So, how – I have another question – how does this work in a state where everyone is considered a mandated reporter? So, the one thing, the question I would have about that, it is fine if everyone is considered a mandated reporter. But does mandated reporting have anything to do with age or incompetency? So, by that, do I mean when you are talking about mandated reporting for a child or a person who is either mentally ill or has some kind of, you know, dementia or other incompetency. In those cases, that is typically not your average person on campus. If you are talking about a state that says if you hear about a crime and you have to tell local law enforcement, then I definitely think you are going to have to follow state law. I will say that I do think that is fairly rare, but there are states that have that requirement. So, again, state law is going to perhaps conflict with some of Title IX rules, but at the same time I think you have to take into consideration how those laws work. So it is a great question. I think it really just kind of underplays how important state law is going to be in some of these decisions.

Lindy Aldrich: I wanted to also just point out, and for those of you who just, because I find it really interesting, that the military has instituted some new systems recently where they have what they call a restricted and unrestricted reporting. And I recently heard that they have had a ton of success, that when military victims come forward through the restricted reporting – so for our purposes let us say that restricted means privileged, that they are telling somebody who is not, is not able to go and tell anyone else identifying information – that they have seen a 40 percent increase in reports that go on restricted. Those are huge numbers. I think, I think what it says to me is that when victims access the services that they need, when they are able to kind of make decisions that help them to either take a medical leave or access accommodations or medical services, or all different, depending on very unique and specific things that victims look for, that in many ways they do circle back around and they do, and many of them actually file a formal report of some kind. So I think it is an important, it is an important distinction here and I think it is important for you guys to know that you can help victims to make those decisions.

Group Three: Campus Employees with Confidentiality



“People who provide assistance to students who experience sexual violence and are not professional or pastoral counselors”

- “all individuals who work or volunteer in on-campus sexual assault centers,
- victim advocacy offices,
- women’s centers,
- health centers,
- including front desk staff and students.”

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Group Three: Campus Employees with Confidentiality

Lindy Aldrich: All right, group three. So, the recent FAQ, in an effort to try to essentially cover some of those states that do not have a lot of statutory privilege, I am not completely sure but I think there is around 24 to 29 states that actually have some form of privilege. Some of those are helpful to us, some of them are not. But there are a lot of states that do not have it, and I think what the Office of Civil Rights was attempting to do was to try to help schools who did not have confidential reporters. How can we create a bucket for them so that victims, where there is not an advocate privilege or where they do not have – doctors and nurses do not have privilege, or something of that nature, that they, that schools could create essentially a bucket that would allow victims to have confidential services?

Lindy Aldrich: Here is that big piece again where the “must” versus “encourage,” this is a strongly encourage, it is not a must. So schools are not required to take this step. I have seen some schools who are really actively attempting to take this step and I think it is, frankly, it will only result I think in having a safer community and having, frankly, more victims who are able to access the benefit of their education, access services, and be healthier. So I really do not see a downside to it, but many schools, just as many who are doing it, there are many who are not. So I am going to be honest with you.

Lindy Aldrich: What they were attempting to do was to create a bucket of people who may, you know, frankly, be working at the front desk, frankly, women’s centers, a lot of women’s centers in certain states are not covered under advocate privilege. There is also just various advocacy offices. There is also, I have been witnessing, a lot of affinity groups fall under this. So if you have a Rainbow Coalition or if you have various international students’ groups, essentially groups in which certain students would feel more comfortable reporting to those groups than they would be to, say, walk into the Title IX Coordinator or the Dean of Students office. So, again, that distinction between disclosure and report is clear, so that they actually would feel comfortable

coming forward, trying to access services, what I like to call push the walls out, and make some decisions about where they are headed with their, you know, whether or not they are actually going to move from, say, disclosure to a report.

Lindy Aldrich: I think the best thing I can say to those who are working with the population is we often, here at the Victim Rights Law Center, talk to victims about what are your goals. What are you looking to get in terms of your disclosure or your report? If you are looking to do only services, versus services and a formal report, I think there are some decisions to be made. And I encourage you to help victims to try and figure out what is going on on your campus. I know that when I am out training, I am talking with a lot of schools about, “How can you better communicate to your communities? Who is a Responsible Employee? Who has privilege? Who is going to be considered confidential, and what does that mean?”

Lindy Aldrich: I think it is important that you talk to them about, “What are the – what are – what are you essentially trying to get by coming out and talking to someone on your campus?” And then helping them to kind of figure out, you know, “What is the most informed way that I can do this.” And for those who I think, frankly, having, say, an 18-year-old in crisis who has just recently been assaulted, who was cutting or has substance abuse issues or suicidality issues, having somebody who even understands what statutory privilege means, having somebody who can help them to better understand what their state laws are is a massive resource. And I think it is really important for the work that you guys do to really help them just, you know, obviously you are going to help them do so many different things, but I think even to some extent giving them the tools to know this is what is going to happen is you tell this person and this is what is going to happen if you tell another one.

Lindy Aldrich: One last thing about this bucket, this group three, is that they are not required to give up identifying information, but they are required to give aggregated data to the Title IX Coordinator. Again, this is a – if you are going to create – if a school creates this Confidential bucket, which they do not have to do, but if they do, that particular person does not have to give the name of the victim, does not have to give the name of the accused if it is known. Essentially, what they have to provide is that it was, say, student on student, off-campus, on September 1, 2013, and it was a sexual assault. So aggregated data so that the school can obviously get as much information and understand what is the – what is the breadth of the problem that we are dealing with. So they do have, they are not required under Title IX in order to provide information, but I will say that they, you know, it is essentially in a – it is a Title IX definition in and of itself.

Lindy Aldrich: So, one other big piece here that I think is important is the term “confidential,” in terms of this bucket, does not mean that beyond the campus walls or beyond, frankly, Title IX, that they have any protection. So, for instance, if a victim does proceed with a criminal case and this potential, you know, the, the health center who is not, say, statutorily privileged, if records are requested at some future point, they are not going to be able to say, “Hey, I am a confidential reporter under Title IX.” That is not going to provide them any additional protections kind of in the outside world. It just means that for those victims coming forward to them on that campus, they can help them to, you know, try to get additional services.

Lindy Aldrich: All right, so those are the three buckets and those are really the decisions that we are hoping the victims can make. These are all straight out of Title IX. These are all – schools are in the midst of actually implementing these policies right now, and I am hopeful that you are going to see more – more attention being paid at all the various campuses in your area about how to communicate, you know, who has confidentiality and who does not.

- **Victims have the right** to ask for safety measures to be put in place by their school once there is a report or disclosure.
- **Victims have the right** to report any retaliation that occurs after a report. This may include retaliation by the accused or his or her friends, club members, or teammates.

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Accommodation Rights

Lindy Aldrich: All right, so the next big issue to discuss is accommodations. And I think this is another massive area, and we are going to talk more about this when we get to the second Webinar. But it is really important for victims to know that if they do come forward, even to disclose, not even in a formal report, that they have the right to ask for certain safety measures to be put in place.

Lindy Aldrich: They also have the right to report any retaliation that occurs after, and this can include not only retaliation by the accused, but also their friends, club members, or teammates.

Lindy Aldrich: So I wanted to talk about what different responses can be. So going back to that first bullet, if a victim comes forward to disclose, say they are looking for services, but they do not talk about who – who it is and they are not, you know, they may feel unsafe but they are not really willing to kind of take a formalized action. I think that the school, for due process reasons, has limited amounts that they can do against the accused at that point. It is something that we talk a lot about with our clients, which is this kind of give to get. That you have to give up information in order to get things. And a lot of times victims do not understand that intersection or that interplay because they do not want to give up any of their privacy, but yet they want to feel completely safe and secure.

Lindy Aldrich: There are due process rights that are involved here for the accused, and the school is going to have to really be the neutral arbiter of that. They have to, you know, they are responsible to both parties, not just the victim. So I do think, even if a victim wanted to maintain complete privacy, that there is definitely things that the victim can ask for. They can ask for, let us say, changing their class schedule, changing their residence, parking, dining hall reassignment. There are a number of things that they can ask for. Where I think the distinction becomes more concrete is when a victim asks for a no-contact order, because at that point the school is going to

have to alert the accused that there has been a disclosure. And it is important I think for victims to understand that while private means private, it means private from the accused, too. So if a victim does do a formal complaint, more rights are added on top of those accommodations that we have talked about.

Lindy Aldrich: Some, we have had some victims who have come to us and said, “Well, I want him to be moved out of my classes. I want him to be moved out of the residence hall.” And I think, in many ways, it comes down to whether or not they have made a formal complaint. If they have not, and they are still kind of under the veil of privacy or privilege or confidentiality, it is very difficult for the school to go to the accused and say, “Okay, you know, you are suspended,” or, “You are going to have to move out of your residence hall.” “Why?” “Cannot tell you.” Those, there are rights that are attached for the accused in terms of his ability to access the benefits of his education. So it is important to note that I think victims have to understand that interplay.

Lindy Aldrich: If you have – if, even with that mere disclosure, a victim is suffering retaliation, which we see all the time, and she has not come forward to make a formal complaint but there is already instant retaliation occurring, it is occurring, people are writing things on her door, people are shoving her as she walks across the [unclear], people are sending her crazy things on Facebook, they have generated some crazy Facebook wall that talks all about her sexual exploits and lies. We are seeing this type of rampant retaliation in cases where there has been no formal complaint. There is also threats of violence that are made if you complain. The school has an obligation to attempt to kind of remedy those retaliatory behaviors.

Lindy Aldrich: I think you guys also, being in both the Coalition and in rape crisis, have – have an excellent tool in terms of helping victims to really understand how to safety plan and how to work with the schools to better understand how to help them to negate some of these retaliatory behaviors, especially if the victim wants to remain as private as possible.

Lindy Aldrich: I will say that the Victim Rights Law Center has created a campus safety planning guide. We are in the midst of getting that published right now, and we will likely have that up on our website. But I think it is another excellent tool. It was written, I will tell you, for administrators because many of them have not worked with the population like you have. It was meant for people who do not have necessarily the knowledge of how trauma impacts victims and how the fear of retaliation and retaliation can impact an ability to try to go to class, or when you are living in an insular community, how that can really inhibit your ability to get out of your room, frankly, or eat, or access any of the activities you used to enjoy. So I will say I do think it is helpful to some advocates who are not necessarily working with campus-age survivors, so if you have interest, that will be published really soon.

Advocating for Safety



If your organization supports survivors in the restraining order process explain to campus survivors how you can assist them.

Advocacy Tip: Victims know their safety best. Schools may offer no-contact orders to survivors that provide various forms of protection on campus. This DOES NOT mean that the survivor cannot also obtain a protective order issued by a court. Restraining orders carry criminal liability for violations and thus increased consequences for perpetrators.

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Advocating for Safety

Lindy Aldrich: So, another big issue that we are seeing in terms of safety is if you are at – if your – if your organization supports survivors in the restraining order process, I think it is really important, and I think you would do this anyway, explaining to campus survivors how you can assist them. There are other options that are also within the school system. So victims, as you know, know their safety best. But schools can also offer a no-contact order on their particular – within their jurisdiction of their campus. It is something to consider depending, again, on the state laws that you have in your state about – and you are in a really unique position, frankly, a better position than I think the school is to have a frank conversation with the victim about whether or not they want to proceed to getting a court ordered protective order.

Lindy Aldrich: Oftentimes, schools are in a position where they cannot really advocate one way or the other, and they are not really able to provide assistance. A lot of times campuses will not send an advocate with a victim to a district court or wherever in order to obtain an order. So I think it is important – I think your role is incredibly, frankly, it is frankly the best role in terms of helping victims to assess whether or not they have the eligibility requirements, how difficult it may or may not be in your county or in your state. And I think it is important for victims to really think about, you know, what their safety encompasses and whether a no-contact order on campus would, in fact, do what they need it to do.

Lindy Aldrich: One of the things, and we are going to talk more about this in the second Webinar as well, is that I think advocates and attorneys in other states could really help schools to better understand victims' safety needs. A lot of times when we work with schools about no-contact orders, I do not think they have a great idea of how this particular victim could feel safer. And

you would be astonished at the number of times that schools do not just ask a victim, “How would you feel safer? What are the things that we could do to make you feel safer?”

Lindy Aldrich: One particular instance comes to mind. We had a – we had a client who was in a grad school program, and she was incredibly concerned about this particular area just outside the elevators. And when we went in to talk to the school, one of the first things they started talking about were the lockers, where she would put her bag. And that was not anything that she was really concerned about. I think she did not think that she would run into the accused in that area. I think she definitely – so they just kept talking about lockers. And at one point, one of my staff attorneys said, “Well, why do you not talk about what your real concerns are? Are you not concerned about the area around the elevator?” And as soon as it was clear that that was the place where she felt most unsafe, because there were a lot of people congregated in a small space, she felt that she would eventually have to come in close contact with the accused, and she wanted to talk about whether or not they could mandate that she could enter into one entrance, which we will call the north entrance, and that he could enter through the south entrance, and then they would exit in the same, you know, one would be north and one would be south. And once that initial conversation was out there, it was amazing how more accommodating the conversation went. It went from, why is not everyone getting excited about lockers, to, oh wow, this is...By asking the victim specifically how they wish to, or how they could feel safe, it really turned the tide in terms of coming up with a no-contact order and, frankly, just, you know, what were the procedures moving forward to make this victim feel better.

Lindy Aldrich: We have seen a lot of different types of accommodations, ranging from where you have to park, we have seen victims being moved into graduate housing that has its own kitchen so that you can avoid things like a single dining hall. We have seen, quote, “safe hours” where you can have, you know, if – so, for instance, in smaller schools that only have one dining hall, sometimes it is, instead of saying, you know, obviously either the accused or the victim can never go to the dining hall, or whatever, it is better to come up with hours. So breakfast is from 9:00 to 10:00, she gets 9:00 to 9:30, he gets 9:30 to 10:00. Gyms are another big one where we have “safe hours.”

Lindy Aldrich: So these are all different types of accommodations that I think advocates can play an incredible role in working with schools to better, frankly, navigate their no-contact order policy. I think it is really important to have all of that stuff in writing, and I think it is really important that you guys kind of work with schools and work with your clients, again, assessing their goal, assessing what is best for them, and then trying to get that communicated to the school.

You should always refer survivors to an attorney in your state for legal questions or individual representation.

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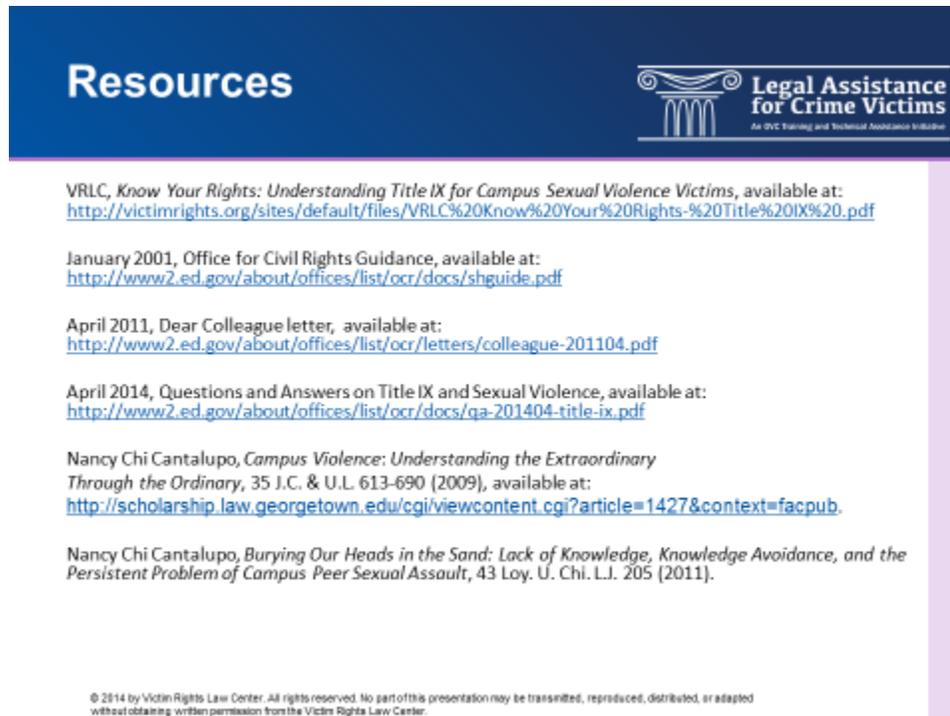
Legal Support

Lindy Aldrich: Legal support. You know, it is easy for me to say that I think it is important for victims to have counsel. I understand that that is really easier said than done in many states. I know that there are lots of attorneys out there who are working in coalitions and they are working at various rape crisis, and while that is just a really important – it is an important role that they have but there just are not enough of us. That said, I think rape crisis and coalitions are in a unique position to really spot the needs and reach into the community and ask for other civil attorneys in the area to respond to that need. And we are seeing pockets of that across the country where various, you know, rape crisis and coalitions are really doing an excellent job of trying to find, you know, interested civil attorneys who are willing to take on a variety of different cases. Again, I know it is easier said than done, but I think there are some that are doing a really good job. Obviously, you know, if anyone knows anyone in Oregon or Massachusetts, feel free to refer them to the Victim Rights Law Center.

Lindy Aldrich: I think that victims who are able to access counsel have a much better shot at getting a fair shake in the process. They are able to better advocate for themselves. They are better able to articulate what rights they have. They are better able to really kind of think out or think through the process and get the safety needs, get the academic or housing needs. And, in many ways, I do not think that has to be an attorney. I think it has to be somebody who is invested in helping them to kind of figure out how they can move forward, and a lot of times there just are not enough people to do that. And so that is why I am so grateful to have had the attention that we have had on these Webinars, because I am hopeful that that means there is growing attention happening across the country to help victims to better understand what their rights are and how to help them with their individual schools.

Lindy Aldrich: I wanted to just take a minute, because we have gone through a lot here. Does anybody have any questions that I can answer? So we can just kind of stop here before we get

into like the final slides. Does anybody have any questions about your cases or any particular, you know, needs in your state? It does not look like it. Oh, somebody is typing. That is good to know. I am just going to give somebody just a second. So, actually, while they are doing that, and please feel free to ask more questions, I am really happy to answer some of them.



Resources

 Legal Assistance for Crime Victims
An OVC Training and Technical Assistance Initiative

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).

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Resources

Lindy Aldrich: So while that is coming through, I did want to let you know that we have a number – all of the resources that we have talked about today, we are providing either at least a site or a link to. So at the top is the VRLC’s *Know Your Rights* document that I talked about that is on our home page. We also, I wanted to include links for the *2001 Office for Civil Rights Guidance*, the *2011 Dear Colleague Letter*, and the *FAQ* from 2014.

Lindy Aldrich: There are two articles, also, that I think are excellent articles if you wanted to kind of delve even deeper into this particular area of law. Nancy Chi Cantalupo has released two articles on education law and especially campus sexual violence. They are excellent and I think they do a really good job of explaining kind of where a lot of the hot spots are and where potentially, you know, we have to go in the future and some of the changes that we are going to be making. There has been some really exciting new developments with the White House Task Force, and I think the Department of Education is also doing more work in terms of trying to create transparency and to make the process even more victim friendly. So that is something I think we are excited to see what is coming up.

Lindy Aldrich: So, we have another question. Does the rape crisis center have any obligation to report to a school in aggregate on assaults of students? Okay, so here comes the lawyer answer. It depends. If you have an MOU with the school, I would first send you to that MOU, which is a memorandum of understanding. So if you have an MOU with the school, because some schools are paying, obviously, rape crisis centers to be their counseling centers, to, you know, to be their

sexual assault advocates. I would go back to that document first. If you do not have an MOU, if you just have, you know, a relationship, a community partner, things of that nature, then no. You have no obligation to report to them under Title IX any of the cases in which you are hearing, and especially so if you have any privilege that you are operating under at that rape crisis center. If you have licensed therapists or licensed doctors, if you have social work privilege, any of those things in your state, you have no responsibility to report to those schools in the aggregate.

Lindy Aldrich: I am going to make one other push here though. If you think that you are receiving a lot of cases that a particular school is experiencing a number of, a lot of sexual violence that they are not addressing, I do think it might be worth it to get a meeting with the school. And I am sure many of you are already doing some of this work. I think sometimes when we have privilege there is this feeling like we can never, we can never talk about the issues. I think you could talk about the issues in a non-identifying way. We get a lot of questions from folks on campus who have privilege that are saying, you know, "But I, I really want to bring to their attention that I received 20 sexual assault reports, but because of my privilege I cannot make them as a formal report." And I say, "I think that is okay. You are not breaking privilege because you are not giving identifying information. What you are doing is you are alerting that school to the fact that you are seeing a just rash outbreak of sexual assault, and that they need to be made aware that they need likely be taking steps to do more prevention work, more response work. And if they have not gotten a single one of those reports for their disciplinary process, that is a problem too. It likely suggests that either students do not know how to access it or will not access it, because they fear that they are not going to be received fairly, that they are not going to be treated properly, and I think schools need to know that." And you guys are, again, in an excellent position to help them better understand.

Lindy Aldrich: Now, does it not come without its own hostilities? Yes, it does, I will be honest with you. That said, I do think there are a lot of great relationships that are going on across the country between rape crisis coalitions and dual coalitions with various campus partners. And I do know that some of those conversations are happening and they are happening successfully. So I encourage you guys to even reach out to, you know, some of the schools that, you know, might be a little bit more hostile than you would think, and see if you can engage them in conversation.

Lindy Aldrich: Does anybody else have any other questions? I am happy to take them. All right, it does not look like we do. So, Billie, I think I am turning it back over to you.

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](#).

Information and Evaluation

Billie Matelevich-Hoang: Okay. Thanks, Lindy, for the excellent information. We really appreciate it. And just a few items I have before we close for the day. Just once again I would like to thank Lindy again and the Victim Rights Law Center for the Webinar today. If you would like more information about the Legal Assistance for Crime Victims Training and Technical Assistance Initiative, please visit our website at www.ovcttac.gov. You will find information about upcoming and prerecorded Webinars offered by the Initiative under the Legal Assistance tab.

Billie Matelevich-Hoang: If you have any ideas for additional training on specific Title IX topics, or other topics, or if you need technical assistance support pertaining to other legal matters affecting crime victims, please contact us at legalassistance@ovcttac.org.

Billie Matelevich-Hoang: Thank you for attending this Webinar, and we ask that you please take a few minutes to complete the evaluation. And that is all we have for today. Thank you and we hope that you will join us for our future Webinars. Have a nice day.

[End.]