

U.S. DEPARTMENT OF EDUCATION,  
OFFICE FOR CIVIL RIGHTS  
AND U.S. DEPARTMENT OF JUSTICE



An In-depth Overview of Schools'  
Obligations Under Title IX to Address  
Sexual Violence

This presentation provides general information and does not represent a complete recitation of the applicable law and OCR policy in this area. It does not address specific issues of compliance because determinations of compliance depend on specific facts and are made on a case-by-case basis. The language used in these slides is approved for purposes of this presentation only and should not be used for other purposes.

(September 1, 2016)

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## Roadmap for this Presentation

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- Title IX Overview and Students Protected by Title IX
- Notice and a School's Obligations to Respond to Sexual Violence
- Responsible Employees and Reporting
- Requests for Confidentiality
- Investigations
- Interim Measures
- Remedies and Notice of Outcome
- Education, Prevention, and Training
- Clery Act
- Contacting OCR/DOJ
- Resources



## Title IX Overview

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- Title IX prohibits sex discrimination in education programs and activities receiving Federal financial assistance.
- Education programs and activities include all of a schools operations, including school-sponsored and school-recognized activities or travel that occur away from school.

## Title IX Overview

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- Title IX applies to all public and private educational institutions receiving Federal financial assistance, including elementary, secondary, and postsecondary institutions.
- Sexual violence is a form of sex discrimination covered by Title IX.

## Students Protected By Title IX

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- Title IX protects all students from sexual violence, including:
  - ▣ Students with disabilities;
  - ▣ International or undocumented students, including English learners; and
  - ▣ All students regardless of their sexual orientation or gender identity.

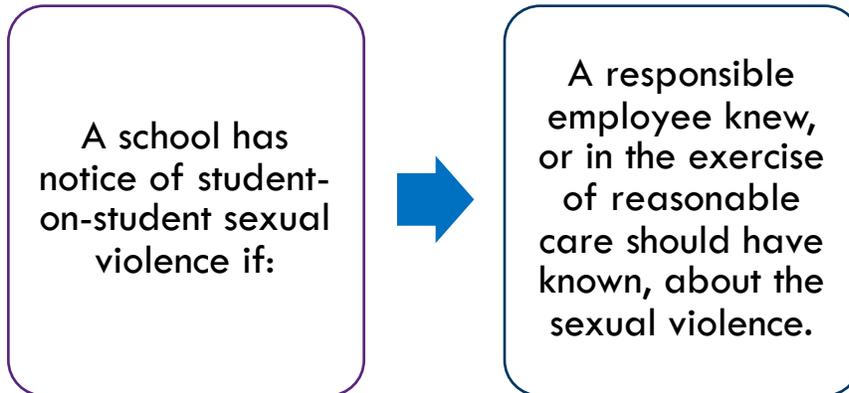
## Students Protected By Title IX

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- Title IX covers sexual violence between members of the same sex and both male and female students can be subjected to sexual violence.

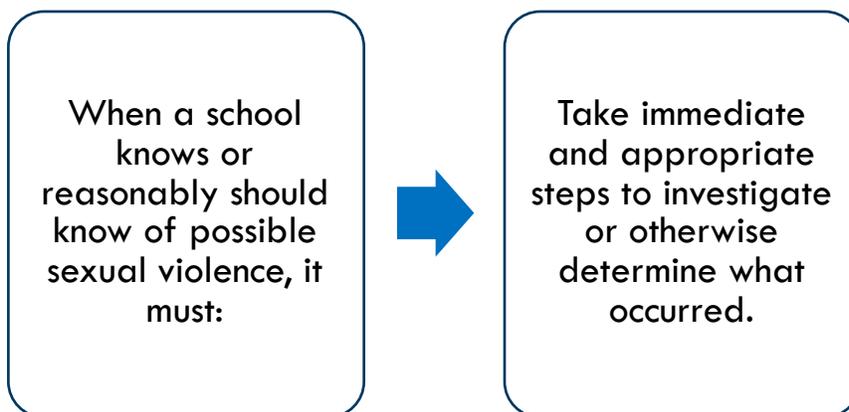
## When is a school on notice of sexual violence?

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## A School's Obligation to Respond to Sexual Violence

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## A School's Obligation to Respond to Sexual Violence

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If an investigation reveals that sexual violence created a hostile environment, the school must:



Take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate remedy its effects.

## Who is a responsible employee?

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- has the authority to take action to redress sexual violence;
- has been given the duty of reporting incidents of sexual violence or other misconduct by students to the Title IX coordinator or other school designee; or
- a student could reasonably believe has this authority or duty.

## Who is a responsible employee, cont'd.

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□ Whether an employee is a responsible employee varies depending on factors such as the age and education level of the student, the type of position held by the employee, and consideration of both informal and formal school practices and procedures.

## Duties of Responsible Employees

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- What should a responsible employee do when alleged sexual violence has been disclosed?
  - Report the information to the Title IX coordinator or other school designee.
  - Include all relevant details about the alleged sexual violence that the student or another person has shared and that the school will need to determine what occurred and resolve the situation.

## Requests for Confidentiality

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- OCR/DOJ strongly support a student's interest in confidentiality in sexual violence cases.
- The situations in which a school must override a student's request for confidentiality in order to meet its Title IX obligations will be limited.
- Information should only be shared with individuals responsible for handling the school's response.

## If a Student Requests Confidentiality

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- The school needs to determine whether or not it can honor the request while still providing a safe and nondiscriminatory environment for all students.
- The Title IX coordinator is generally in the best position to evaluate confidentiality requests.

## When a School Determines it Can Respect a Confidentiality Request

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- A school should take all reasonable steps to respond to the complaint consistent with the confidentiality request.
- The confidentiality request may limit a school's ability to respond fully, but it can still take steps to limit the effects of the alleged sexual violence and prevent recurrence.

## When a School Determines it Must Override a Confidentiality Request

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- A school should inform the student prior to disclosing the student's identity to the alleged perpetrator; and
- It is important for schools to take whatever interim measures are necessary to protect the student and ensure the safety of other students.

## Exception for Counselors and Advocates

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- Although certain employees may have responsibilities that would otherwise make them responsible employees for Title IX purposes, OCR recognizes the importance of protecting the counselor-client relationship which often requires confidentiality.
  - ▣ Pastoral and professional counselors
  - ▣ Non-professional counselors or advocates

## Exception for Counselors and Advocates

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- Pastoral and professional counselors whose official responsibilities include providing mental-health counseling to members of the school community are not required by Title IX to report *any* information regarding an alleged incident of sexual violence.

## Exception for Counselors and Advocates

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- Non-professional counselors or advocates (on-campus sexual assault centers, victim advocacy offices, women's centers, or health centers) are not required by Title IX to report any personally identifying information about a student.

## Exception for Counselors and Advocates

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- Schools should collect aggregate data about sexual violence incidents from these offices to identify patterns or systemic problems.
  - Only general information such as the nature, date, time, and general location of the incident.
  - No personally identifiable information about a student.

## Elements of a Title IX Investigation

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- Must be adequate, reliable, impartial and prompt, and include the opportunity for both parties to present witnesses and other evidence.
- May include a hearing, but Title IX does not necessarily require a hearing.
- May include an appeal (if included, must apply to both parties)
  - Schools should be aware that an unduly long appeals process may impact whether a school's response was prompt and equitable.

## Elements of a Title IX Investigation

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- All persons involved in conducting the investigation must have training or experience in handling sexual violence complaints and the school's grievance procedures.
- A school has flexibility in how it structures the investigative process, but for Title IX purposes a school must give the complainant any rights it gives to the alleged perpetrator.

## Specific Issues Related to Hearings

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- A school is not required to allow a complainant to be present for an entire hearing, but if the school allows one party to be present for the entirety of a hearing, it must do so equally for both parties.

## Specific Issues Related to Hearings

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- A school is not required to allow cross-examination of witnesses, including the parties. But if a school allows one party to cross-examine witnesses it must do so equally for both parties.
- Questioning about the complainant's sexual history with anyone other than the alleged perpetrator should not be permitted.

## Parallel Criminal Investigations

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- A school must still conduct its own Title IX investigation and the termination of a criminal investigation without an arrest/conviction does not affect a school's Title IX obligations because the standards are different.
- Criminal investigations may be useful for fact gathering if the criminal investigation occurs within the reasonable timeframe for Title IX investigations.

## Parallel Criminal Investigations

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- A school may temporarily delay the fact-finding of a Title IX investigation while the police are gathering evidence, but must promptly resume when this is complete.
- If a school delays its Title IX investigation while the police are gathering evidence, it must still take interim measures to protect the complainant in the educational setting and should continue to update the parties on the status of the investigation.

## Off-Campus Conduct

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- Under Title IX a school must process all complaints of sexual violence, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity, or has continuing effects on campus or in an off-campus education program or activity.

## Overview of Interim Measures

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- Title IX requires a school to take steps to ensure equal access to its education programs and activities and protect the complainant as necessary, including taking interim measures before the final outcome of an investigation.
- The school should take these steps promptly once it has notice of a sexual violence allegation.
- The school should provide the complainant with periodic updates on the status of the investigation.

## Examples of Interim Measures

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- Instituting a no contact order between the parties;
- Providing support services, including counseling, housing support, academic support; and
- Changing living arrangements, course schedules, assignments, or tests.

## How should a school determine which measures to take?

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- The specific interim measures implemented and process for implementing those measures will vary depending on the facts of each case.
- In general, schools should minimize the burden on the complainant.

## Remedies

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- If an investigation reveals that sexual violence occurred, effective remedial action may include:
  - ▣ Disciplinary action taken against the perpetrator (i.e. sanctions) and required counseling for the perpetrator;
  - ▣ Remedies for the complainant and others; and
  - ▣ Changes to the school's overall services or policies.
- These remedies are separate from, and in addition to, any interim measures that may have been provided.

## Notice of the Outcome

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- Title IX requires both parties to be notified, in writing, about the outcome of the complaint and any appeal.

## Notice of the Outcome

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- For Title IX purposes, the notice of the outcome for the complainant must include:
  - ▣ Whether or not the school found that the conduct occurred;
  - ▣ Any individual remedies offered to the complainant or sanctions imposed on the perpetrator that directly relate to the complainant; and
  - ▣ Other steps the school has taken to eliminate the hostile environment and prevent recurrence.

## Notice of the Outcome

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- In addition to the Title IX requirements for notice of the outcome, the Clery Act requires, and FERPA permits, postsecondary institutions to inform the complainant of the final determination and any disciplinary sanctions imposed on the perpetrator, not just those sanctions that directly relate to the complainant.

## Sexual Violence Training for Employees

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- A school needs to ensure that:
  - responsible employees with the authority to address sexual violence know how to respond appropriately to reports of sexual violence;
  - other responsible employees know that they are obligated to report sexual violence to appropriate school officials; and
  - all other employees understand how to respond to reports of sexual violence.

## Sexual Violence Training for Employees

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- Should ensure that pastoral and professional counselors and non-professional counselors and advocates understand the extent to which they can keep a report confidential.
- Should provide training to all employees likely to witness or receive reports of sexual violence, including faculty, campus law enforcement, administrators, counselors, general counsels, athletic coaches, health personnel, and resident advisors.
- No minimum number of hours required for training, but should be provided on a regular basis.

## Training for employees who implement the school's grievance procedures

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- Must have training or experience in handling sexual violence complaints and in the operation of the school's grievance procedures.
  - ▣ Title IX Coordinators
  - ▣ Others who receive complaints
  - ▣ Investigators
  - ▣ Adjudicators

## Training for Students

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- Should provide training to students regarding Title IX and sexual violence.
- May want to include training in orientation programs for new students and training for athletes and members of student organizations; and repeating training at regular intervals.
- Should clearly identify the offices or individuals with whom students can speak confidentially and clearly identify the school's responsible employees and explain what happens if students report incidents to responsible employees.

## Clery Act

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- Schools that participate in ED's federal financial student aid programs are subject to the requirements of the Clery Act and Title IX.
- Clery Act is enforced by ED's Office of Federal Student Aid (FSA). OCR and FSA coordinate as necessary.
- For those areas in which the Clery Act and Title IX both apply, schools must comply with both laws. The laws do not conflict.
- 2016 Clery Act Handbook  
<https://www2.ed.gov/admins/lead/safety/handbook.pdf>
- New Clery Act data website  
<http://ope.ed.gov/campussafety/#/>

## Clery Act

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- Overview of Clery Act Requirements:
  - ▣ Collect, classify, and count crime reports and statistics
  - ▣ Issue campus alerts
  - ▣ Provide educational programs and campaigns
  - ▣ Have procedures for institutional disciplinary action in cases of dating violence, domestic violence, sexual assault, and stalking
  - ▣ Publish an annual security report
  - ▣ Submit crime statistics to ED

## Contacting OCR

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OCR website:

[www.ed.gov/ocr](http://www.ed.gov/ocr)

Contact Information for OCR Headquarters:

(800) 421-3481

[OCR@ed.gov](mailto:OCR@ed.gov)

Contact Information for OCR Regional Offices:

<https://wdcrobcop01.ed.gov/CFAPPS/OCR/contactus.cfm>

## Options for Involving DOJ

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- **File a Complaint**

For information about filing a complaint, please go to:

[www.justice.gov/crt/complaint/#three](http://www.justice.gov/crt/complaint/#three)

- **Notify DOJ if a Title IX complaint has been filed in court because DOJ may consider getting involved (e.g., an amicus brief, statement of interest, or intervention):**

- ▣ You can use the complaint procedures above
- ▣ You can send an email with a copy of the complaint

## Title IX Resources

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- U.S. Department of Education, Office for Civil Rights
  - Title IX Resource Guide (2015) - [www.ed.gov/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf](http://www.ed.gov/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf)
  - OCR Reading Room - [www.ed.gov/ocr/publications.html](http://www.ed.gov/ocr/publications.html)
- U.S. Department of Justice, Civil Rights Division
  - DOJ Title IX websites: <http://www.justice.gov/crt/overview-title-ix-education-amendments-1972-20-usc-1681-et-seq> and <http://www.justice.gov/crt/educational-opportunities-cases#sex>
  - Title IX Common Rule, 65 Fed. Reg. 52869 (2000)
- Resources from the White House Task Force to Protect Students from Sexual Assault
  - [www.notalone.gov](http://www.notalone.gov) (includes sample policies and sample law enforcement MOU)

## Additional Sexual Violence Resources

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- Resources from the White House Task Force to Protect Students from Sexual Assault
  - [www.notalone.gov](http://www.notalone.gov) – Includes information for students, schools, any anyone interested in finding resources on how to respond to and prevent sexual assault
  - Sample Policies/Checklists - <https://www.notalone.gov/schools/>
    - Interim and Supportive Measures
    - Confidentiality
    - Sexual Misconduct Policy Checklist
  - Sample Law Enforcement MOU - [https://www.whitehouse.gov/sites/default/files/docs/white\\_house\\_task\\_force\\_law\\_enforcement\\_mou.pdf](https://www.whitehouse.gov/sites/default/files/docs/white_house_task_force_law_enforcement_mou.pdf)